

# United States Senate

WASHINGTON, DC 20510

March 22, 2023

The Honorable Rohit Chopra  
Director, Consumer Financial Protection Bureau  
1700 G St. NW  
Washington, DC 20552

Dear Director Chopra,

We write to urge the Consumer Financial Protection Bureau (CFPB) to move quickly towards bringing the largest buy now, pay later (BNPL) lenders under Federal supervision, in order to better protect consumers from unfair, deceptive and abusive acts and practices.

BNPL is marketed as a form of interest-free credit. The typical “pay-in-four” BNPL product allows consumers to purchase a product and then pay back the loan over four equal installments, with the first installment akin to a down payment. In the mid-2010s, BNPL became a popular alternative to credit cards for online retail purchases, particularly among younger consumers. Its popularity soared during the COVID-19 pandemic, as more consumers turned to online shopping. According to CFPB research, the five largest participants in the BNPL market originated \$24.2 billion in BNPL loans in 2021. That’s a tenfold increase since 2019. More recently, big tech companies have entered the market. These new BNPL products raise additional concerns regarding concentration of market power and threats to privacy given these lenders’ incentives to monetize consumer data.

Supervisory expectations for BNPL lenders should keep pace with the explosion of consumer interest in these loans. BNPL providers are not currently subject to Federal supervision by the CFPB. Rather, they may be subject to supervision only by the states in which they do business. Some states require registration and conduct examinations, while others do not. This patchwork system may allow potential violations of consumer protection laws to fall through the cracks, leaving consumers exposed to harm. BNPL borrowers may be particularly vulnerable. According to CFPB research, they “exhibit measures of financial distress that are statistically significantly higher than other consumers.”

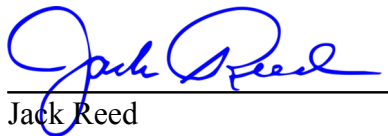
Congress provided the CFPB with supervisory authority over “larger participants” in consumer finance markets. The CFPB has rulemaking authority to determine who is a “larger participant,” and we urge you to exercise this authority to supervise the largest BNPL lenders. Any supervisory program should be tailored to the size of each BNPL lender, the volume of its lending activity, and the extent of existing state oversight. Consumers have an expectation that whatever form of credit they choose, their lender will deal with them honestly and will comply with the law. That’s why Federal supervision should not turn on whether a borrower uses BNPL credit from a nonbank or a credit card issued by a bank.

Federal supervision means on-site examinations to review lenders’ books and records, interview management, and evaluate compliance systems. It means issuing confidential examination

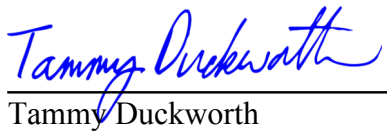
reports and compliance ratings to address problems before they spiral out of control and cause consumer harm on a wide scale. And it means aggressively and publicly enforcing the consumer financial protection laws against lenders who fail to address issues raised during the examination process.

We appreciate your attention to this important matter and look forward to your prompt reply.

Sincerely,



Jack Reed  
United States Senator



Tammy Duckworth  
United States Senator



Sherrod Brown  
United States Senator