

United States Senate

WASHINGTON, DC 20510

September 10, 2024

Hon. Rohit Chopra, Director
Consumer Financial Protection Bureau
1700 G Street NW
Washington, DC 20552

Re: Truth in Lending (Regulation Z); Use of Digital User Accounts To Access Buy Now, Pay Later Loans (Docket No. CFPB-2024-0017).

Dear Director Chopra:

We write in support of the Consumer Financial Protection Bureau's interpretive rule confirming that providers of "Buy Now, Pay Later" payment methods are credit card issuers. The Rule will protect consumers by ensuring that BNPL providers establish uniform methods for calculating the cost of credit, provide meaningful disclosure of those costs to consumers, provide standardized mechanisms for resolving credit billing disputes, and provide periodic statements. We also urge the CFPB to begin supervising the biggest BNPL providers on a compulsory basis and to publish additional data on the BNPL market.

I. Consumers need the protection of the Rule because the lack of Federal regulation leaves BNPL users at risk of financial loss.

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 pandemic, as more consumers turned to online shopping. Recent growth in the BNPL industry has been explosive. According to data from the CFPB and Adobe Analytics, BNPL credit totaled an estimated \$2 billion in 2019, at least \$24 billion in 2021, and is expected to be around \$85 billion this year.

In December 2021, we began oversight of BNPL providers by calling on the CFPB to adopt protections similar to those applied to credit cards. These include monthly billing statements, reasonable and proportional penalty fees, and the ability to raise merchant-related disputes. We are pleased that the Rule will deliver many of these protections to consumers and will help them avoid hidden fees, better manage their finances, and have more transparency into the terms and conditions of BNPL loans. The Rule is an important step toward clarifying the regulatory status of BNPL loans in order to keep pace with consumer adoption of this new and emerging loan product.

These protections are crucial now because BNPL users seem to be struggling to repay their debts to an even greater degree than credit card holders. According to *Bloomberg*, 43% of those who owe money to BNPL services said they were behind on payments and 28% said they were delinquent on other debt because of BNPL spending. Indeed, the CFPB has found that BNPL

borrowers “exhibit measures of financial distress that are statistically significantly higher than other consumers.” Researchers from the Federal Reserve Bank of New York have reached similar conclusions that “a disproportionate share of BNPL users are already financially fragile” and that while BNPL may deliver benefits to lower-income consumers, “BNPL may attract consumers who already have financial difficulties and are struggling to pay their existing bills and debt payments.”

II. The CFPB should initiate a separate rulemaking to bring the largest BNPL providers under Federal supervision.

We reiterate the request we made in our letter to you dated March 24, 2023, to move quickly toward bringing the largest BNPL lenders under Federal supervision in order to better protect consumers from unfair, deceptive and abusive acts and practices. As we wrote, supervisory expectations for BNPL lenders should keep pace with the explosion of consumer usage of these loans. BNPL providers are not currently subject to compulsory 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 system may allow potential violations of consumer protection laws to fall through the cracks, leaving consumers exposed to harm. While some BNPL providers have voluntarily submitted to Federal supervision, the CFPB should require supervision so that the largest BNPL lenders are all subject to similar oversight.

III. The CFPB should publish additional data on BNPL usage and adjust its regulations if justified.

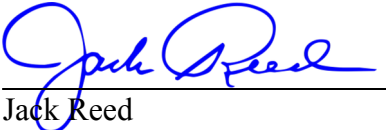
We further urge the CFPB to publish additional data on BNPL usage, in order to inform its regulatory approach and spot potential sources of consumer harm. Because BNPL providers are not subject to Federal supervision or standardized regulatory reporting, there are significant data gaps, including the size of the market and consumer delinquency and default rates. Credit card issuers are already required to provide similar information. We are pleased that the CFPB has used its authority to obtain detailed qualitative and quantitative information from the five largest BNPL lenders in the United States and that the Bureau published some of this data in December 2022. But since that time, the BNPL market has at least doubled. Accordingly, we encourage the CFPB to publish current data on the state of the BNPL market and to update this information on an annual basis moving forward. If this data shows that BNPL users face elevated levels of defaults or delinquencies, then additional regulation such as ability-to-repay requirements and tighter underwriting criteria would be warranted.

IV. Conclusion

We fully support the CFPB’s Rule to apply many of the consumer protections associated with credit cards to BNPL credit. The Rule will help consumers address problems when they do not get what they pay for and will help ensure that BNPL lenders deal with their customers fairly and honestly. We view the Rule as a first step to bringing BNPL within the regulatory perimeter and urge the CFPB to go further by supervising the largest BNPL firms and tightening its regulations if necessary based on additional data.

Thank you for your consideration of these comments.

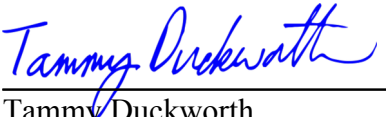
Sincerely,



Jack Reed
United States Senator



Sherrod Brown
Chairman
Senate Committee on
Banking, Housing, and Urban
Affairs



Tammy Duckworth
United States Senator