

Alert | Financial Regulatory & Compliance



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CFPB Issues Interpretive Rule Classifying BNPL Products as ‘Credit Cards’

Go-To Guide:

- Consumer use of Buy Now, Pay Later (BNPL) products in retail transactions has grown rapidly in recent years, leading to the CFPB’s information gathering and review of market data and continuing consideration of standards to protect consumers.
- The CFPB has determined that lenders issuing digital user accounts to access BNPL products are “card issuers” under Regulation Z because such digital user accounts are “credit cards.”
- The CFPB has also determined that BNPL lenders are “creditors” subject to the requirements of Subpart B of Regulation Z, such as consumer disclosures, billing error resolution procedures and refund rights, and periodic statements.
- The CFPB states that while the interpretative rule is not subject to the Administrative Procedure Act, it is nevertheless accepting public comments on the proposed Interpretive Rule until Aug. 1, 2024, and “may” make revisions at a later time “as appropriate in light of feedback received.”

Introduction

On May 22, 2024, the Consumer Financial Protection Bureau (CFPB) **issued** a significant **Interpretive Rule and Request for Comment** (the “Rule”) finding that “Buy Now, Pay Later” (BNPL) credit access

products are subject to certain requirements of Regulation Z¹ under the Truth in Lending Act² (TILA). Specifically, the Rule determines that (i) digital user accounts (“Accounts”) for access to BNPL products constitute “credit cards” under Regulation Z; (ii) consequently, the issuers of such Accounts (“Lenders”) providing access to BNPL credit are “card issuers” under Regulation Z; (iii) these Lenders are therefore subject to certain regulations in Subpart B of Regulation Z, despite the fact that Subpart B generally applies to open-end credit; and finally (iv) although Accounts for access to BNPL credit constitute “credit cards” under Regulation Z, the Lenders of BNPL credit are generally *not* subject to the credit card regulations in Subpart G of Regulation Z, but 12 CFR 1026.60 in Subpart G may apply.

Generally, BNPL credit products are “closed-end loans payable in four or fewer installments without a finance charge, used to make purchases on credit.”³ For purposes of the Rule, BNPL means a “consumer loan for a retail transaction that is repaid in four (or fewer) interest-free installments and does not otherwise impose a finance charge. The loan generally requires an initial down payment of 25%, followed by three additional installments due every two weeks.”⁴

CFPB Rule Follows Years of Study of BNPL Credit Market

BNPL product offerings and consumer usage in the U.S. have exploded in recent years, which has led to thorough regulatory scrutiny by the CFPB and other agencies and industry participants. CFPB began its review of BNPL credit access products with **information-gathering inquiries** from multiple BNPL providers in 2021. Following this data collection, the CFPB **issued** a report in September 2022, “**Buy Now, Pay Later: Market Trends and Consumer Impacts.**” (“Market Trends Report”). The CFPB **followed up** with a March 2023 report, “**Consumer Use of Buy Now, Pay Later**” (“Consumer Use Report”), which set forth a review of BNPL consumer financial profiles based on data collected in the CFPB’s annual Making Ends Meet survey. Finally, in March 2024 the CFPB **issued** its 2023 **Consumer Response Annual Report**, which, as summarized in the Rule, found “issues consumers faced with merchants regarding BNPL, such as non-receipt of items and challenges in canceling loans.” To demonstrate the rapid growth of the BNPL market, the 2022 Market Trends Report highlighted that it found:

From 2019 to 2021, the number of BNPL loans originated in the U.S. by the five lenders surveyed grew by 970 percent, from 16.8 to 180 million, while the dollar volume of those originations (commonly referred to as Gross Merchandise Volume, or GMV) grew by 1,092 percent, from \$2 billion to \$24.2 billion.

As BNPL products have grown in popularity, other innovations in the payments space have arisen in parallel, such as increasing fintech-bank partnerships; “neo-banks” that solely operate online; increasing e-banking offerings and mobile phone apps; and the use of QR codes for payment processing at the point of sale. The CFPB **published** a report in August 2022, “**The Convergence of Payments and Commerce: Implications for Consumers.**”

In addition to these market studies and reports, the CFPB has published multiple blog posts focusing on BNPL products, warning consumers of the risks of relying on BNPL credit, and outlining policy concerns and updates – for example: “**Should you buy now and pay later?**” in July 2021; “**Know before you buy (now, pay later) this holiday season**” in December 2021; “**Buy Now, Pay Later and Credit Reporting**” in

¹ 12 CFR Part 1026.

² 15 U.S.C. §§ 1601 *et seq.*

³ Rule, p. 3.

⁴ Rule, p. 4.

June 2022. Needless to say, the CFPB has been focused on the rapid rise of BNPL products and the need for appropriate consumer protection requirements and operational guardrails.

BNPL credit is generally considered to be rather “consumer friendly” compared to other forms of consumer credit due to its ease of use and lack of accruing interest. However, this ease of use has also driven concerns that BNPL products may encourage consumers to more frequently incur BNPL debts, often from different Lenders, which presents risks to consumers.

Application of Regulation Z to BNPL Products

In the Rule, the CFPB concludes that “lenders that issue BNPL digital user accounts are ‘card issuers’ under Regulation Z because the digital user accounts they issue constitute ‘credit cards’ under Regulation Z.”⁵ Although credit cards are commonly understood as consisting of the conventional physical cards that are used at a retail point of sale, “[t]he definition of ‘credit card’ in TILA and Regulation Z is not limited to a plastic or metal embossed physical card.” (emphasis added.) Indeed, the Rule notes that the term “credit card” as defined in TILA⁶ and Regulation Z⁷ includes an “other credit device” or “other single credit device” which are used for obtaining extensions of credit, and “credit card” is already used to include “virtual credit cards where the account number itself is the ‘credit card.’”⁸ Additionally, while a credit device must be usable from “time to time” to constitute a “credit card” under Regulation Z, the CFPB has determined that a “single-use virtual card . . . would not preclude the credit device from satisfying the ‘time to time’ requirement.”⁹

Accordingly, the CFPB has determined that “Lenders that issue [Accounts] are ‘card issuers’ as defined at 12 CFR 1026.2(a)(7) and ‘creditors’ for purposes of subpart B of Regulation Z, as defined at 12 CFR 1026.2(a)(17)(iii).”¹⁰ And although BNPL credit products will constitute “credit cards” and Lenders must comply with certain provisions of Subpart B under the proposed Rule, the Subpart G requirements for credit cards – such as penalty fee limits and ability-to-pay determination requirements – will not apply to BNPL products or Lenders of BNPL credit. The CFPB also stated that BNPL products do not meet certain other definitions applicable to open-end credit, such as 12 CFR 1026.2(a)(20) and 12 CFR 1026.2(a)(15)(ii).

Applicability of Subpart B to BNPL Products

Subpart B of Regulation Z generally applies to, and is titled as, “Open-End Credit.” In the Rule, the CFPB explains why BNPL access products and Lenders thereof nonetheless fall under Subpart B and some of its requirements, noting that a Subpart B provision “specifically states that subpart B also applies to credit that is not open end if, as with BNPL, the credit is not subject to a finance charge and is not payable by written agreement in more than four installments.”¹¹ As noted by the Rule, TILA mandates that “the [CFPB] shall, by regulation, apply [open-end credit] requirements to [card issuers that extend credit with no finance charge that is payable in four or fewer installments] to the extent appropriate, even though the

⁵ Rule, p. 8.

⁶ TILA defines “credit card” as “any card, plate, coupon book or other credit device existing for the purpose of obtaining money, property, labor, or services on credit.” 15 U.S.C. § 1602(l).

⁷ Regulation Z defines “credit card” as “any card, plate, or other single credit device that may be used from time to time to obtain credit.” 12 CFR § 1026.2(a)(15)(i).

⁸ Rule, p. 10.

⁹ Rule, p. 14, fn. 48.

¹⁰ Rule, p. 3.

¹¹ Rule, p. 3.

requirements [of the open-end credit provisions] are by their terms applicable only to creditors offering open-end credit plans.”¹²

While BNPL credit will be governed by applicable provisions in Subpart B, certain inapplicable provisions and portions of Subpart B, such as those covering home-equity plans, will not apply to BNPL products.

As Lenders of credit products subject to Subpart B, BNPL companies must comply with applicable requirements such as:

- Cost of credit disclosures, including account opening disclosures, periodic statements, and other required disclosures;¹³
- Billing error resolution procedures;¹⁴
- Special credit card provisions, including cardholder liability limitations;¹⁵

The Rule is silent as to the applicability of the Advertising requirements provision in Subpart B¹⁶, but certain portions of it may apply to advertisements for BNPL products. As noted above, the Rule indicates that 12 CFR 1026.60 in Subpart G may apply to BNPL products. Therefore, certain provisions in Subpart B or in other Subparts that are not addressed in the Rule may also apply to BNPL Lenders.

Regulatory Impact, Request for Comments, and Implementation

Given the CFPB’s ongoing scrutiny of BNPL products and the BNPL industry’s impact on the consumer credit market since 2021, the proposed Rule did not arrive unexpectedly. However, it remains unclear whether the Interpretive Rule will prompt significant objection from the industry. Financial Technology Association President and CEO Penny Lee said in a [statement](#) that its members “are committed to strong consumer protections, including for disputes and refunds,” but noted that “BNPL products are fundamentally different from credit cards.” Ms. Lee continued:

These products have zero interest on outstanding balances, no ability to revolve a balance, and a profit model centered on user success. We look forward to providing additional comments to the CFPB and distinguishing BNPL from products whose business models rely on revolving debt and high consumer fees.

The CFPB’s determination that BNPL providers are “creditors” under Regulation Z will necessitate that companies review their current processes and procedures to ensure compliance under Subpart B and its applicable requirements. Furthermore, BNPL providers should be aware of any additional complexities involving applicable state consumer credit laws, which the Interpretive Rule may complicate.

The CFPB has included with the proposed Rule a request for comments from the public until Aug. 1, 2024. The Rule may be revised before its final implementation, which will occur 60 days after the Rule’s publication in the Federal Register.

¹² Rule, p. 4 *citing* 15 U.S.C. § 1602(g).

¹³ 12 CFR § 1026.6 - 1026.9 cover mandatory disclosures.

¹⁴ 12 CFR § 1026.13 covers billing error disputes and resolution.

¹⁵ 12 CFR § 1026.12.

¹⁶ 12 CFR § 1026.16.

Authors

This GT Alert was prepared by:

- **Shane Foster** | +1 602.445.8037 | Shane.Foster@gtlaw.com
- **Lisa Lanham** | +1 305.579.0500 | Lisa.Lanham@gtlaw.com
- **Rinaldo Martinez** | +1 202.331.3186 | Rinaldo.Martinez@gtlaw.com
- **W. H. Langley Perry, Jr.** | +1 202.533.2353 | perryrl@gtlaw.com

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