

August 1, 2024

VIA EMAIL

Comment Intake—2024 BNPL Interpretive Rule
c/o Legal Division Docket Manager
Consumer Financial Protection Bureau
1700 G Street NW
Washington, DC 20552
2024-BNPL-InterpretiveRule@cfpb.gov

Re: Interpretive Rule, Request for Comment: 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:

On behalf of the Center for Responsible Lending (CRL),¹ thank you for the opportunity to comment on the Consumer Financial Protection Bureau’s interpretive rule regarding Buy Now, Pay Later (BNPL) digital user accounts.

The Bureau’s interpretive rule is timely, affirms that BNPL lenders are both creditors and card issuers under the Truth in Lending Act, and points out to the industry that their products are properly classified as digital credit cards. Accordingly, the Bureau’s interpretive rule reminds industry participants that they must provide consumers with disclosures, statements, and protections around errors and disputes based on the consumer protections found in subpart B of Regulation Z--thereby addressing some of the challenges that consumers have faced using BNPL products. We commend the Consumer Financial Protection Bureau (CFPB) for addressing the industry’s mistakes in these areas and attempting to rectify inconsistency among BNPL lenders, leading to a more fully protected and uniform consumer experience.

Given that the CFPB’s proposal confirms the applicability of existing regulations and definitions to the BNPL industry, an interpretive rule is the proper method to dispense this information, and the affirmation of BNPL creditor responsibilities is fully supported by law. The interpretive rule does not “create a standard independent of the statute or legislative rule it interprets,” rather it clarifies the existing nature of BNPL lenders and products under the law.² There is also no suggestion that noncompliance “forms an independent basis for action in matters that determine the rights and obligations of any member of the public.”³ Instead, the definitions are consistent with the purposes of the Truth in Lending Act to provide “a meaningful disclosure of credit terms so that the consumer will be able to compare more readily the various credit terms available to him and avoid the uninformed use of credit, and to protect the consumer against inaccurate and unfair credit billing and credit card practices.”⁴ Similarly, the definitions of credit, card issuers, and credit cards are consistent with those set forth in Regulation Z.⁵

¹ The Center for Responsible Lending is a non-profit, non-partisan research and policy organization dedicated to protecting homeownership and family wealth by working to eliminate abusive financial practices, including predatory or abusive fintech products. CRL’s views on buy now, pay later products are informed by its affiliation with Self-Help, one of the nation’s largest nonprofit community development financial institutions. Self-Help has provided \$6 billion in financing to 70,000 homebuyers, small businesses and nonprofits and serves more than 80,000 mostly low-income families through 30 retail credit union branches in North Carolina, California, and Chicago.

² [2019-16946.pdf \(govinfo.gov\)](#)

³ Id.

⁴ [15 USC CHAPTER 41, SUBCHAPTER I: CONSUMER CREDIT COST DISCLOSURE \(house.gov\)](#)

⁵ [§ 1026.2 Definitions and rules of construction. | Consumer Financial Protection Bureau \(consumerfinance.gov\)](#)

Finally, though no notice and comment period is actually required under the Administrative Procedure Act, the Bureau has voluntarily presented the public with an opportunity to do so, consistent with the recommendations set forth by the Administrative Conference of the United States.⁶ This opportunity allows all members of the public to argue for a modification, rescission or waiver of the rule through the comment process.

CRL has also signed on to a separate comment letter in support of the interpretive rule in coalition with 90 other civil rights, consumer, and community organizations. That letter highlights the importance of the interpretive rule for younger, Black, Latino and low to moderate income consumers who are more likely to use BNPL.⁷ In this separate letter, we argue that the CFPB should use its regulatory authority beyond the existing proposed interpretative rule by eventually extending the Credit CARD Act's ability to repay standard to BNPL providers and requiring BNPL creditors to assess reasonable and proportional late fees.

While the interpretive rule correctly suggests BNPL has characteristics of closed-end credit, BNPL also resembles open-end credit, which may confuse consumers. Consumers should receive clear fee disclosures that occur as soon as the relationship with the creditor begins and continue to have access to such information as they use the product. Consumers would also likely benefit from disclosures around BNPL credit limits, often explicitly displayed to consumers, which may be changed without notice or explanation. Finally, CRL sets forth considerations for an ability to repay standard and the assessment of reasonable and proportional late fees.

I. The Need For An Interpretive Rule

A. Most Consumers Expect BNPL Products to Function Like Credit Cards

Enhanced clarity of BNPL will benefit consumers, as many consumers believe that BNPL has the same protections that credit cards do, when this is simply not the case. For example, Consumer Federation of America and CRL's research with a group of California consumers demonstrates a mismatch in consumer expectations and their experience.⁸ Nearly three-quarters (73%) viewed BNPL as most similar to either a credit card or another form of installment loan, both of which are subject to the Truth in Lending Act (TILA) and other state and federal credit laws.⁹ Consumer understanding of how BNPL functions and is regulated was very low. Among this group, consumers were given several statements to describe BNPL and had difficulty accurately matching them with BNPL.¹⁰

Similarly, consumers also seem to expect robust dispute and error protections. One of the most common complaints in the CFPB database for BNPL is the dispute process. As noted by the Bureau, 13% of BNPL transactions involved a return or dispute.¹¹ In 2021, people disputed or returned \$1.8 billion in transactions at the five largest BNPL firms surveyed.¹² The following narrative exemplifies the challenges that consumers face when attempting to return an item:

⁶ [2019-16946.pdf \(govinfo.gov\)](#)

⁷ [90 Consumer, Civil Rights and Community Organizations and Academics Comments to CFPB Regarding Buy Now, Pay Later Loans Interpretive Rule - NCLC](#)

⁸ [Microsoft Word - CFA CRL BNPL Issue Brief 1025 v3 \(responsiblelending.org\)](#)

⁹ Id.

¹⁰ Id.

¹¹ [CFPB Takes Action to Ensure Consumers Can Dispute Charges and Obtain Refunds on Buy Now, Pay Later Loans | Consumer Financial Protection Bureau \(consumerfinance.gov\)](#)

¹² Id.

I placed an order on XXXX using a credit card issued by Zip/QuadPay so I could pay for the item in 4 installments. The zip order # is XXXX. I never received this item from the merchant, and I have tried to contact the merchant numerous times uncessfully. The merchant is not responding and has not delivered my item. I contacted Zip on XX/XX/XXXX to try to initiate a dispute regarding this transation, but was told I needed to wait for 13 days. I contacted them again XX/XX/XXXX, and am again being told it is too early to initiate a dispute. They have told me if I want to dispute the charge with the bank I can but that it would affect my zip account standing. Zip issued this credit card that was used to pay, and should be able to initiate a chargeback request with the merchant to get the money back. More than 13 days have passed since I placed the order. I have tried to resolve this on my own. Zip needs to initiate a dispute, investigate this money with the merchant, and refund the money I've paid for this item I've never received. **Complaint ID 8000976**¹³

This narrative expresses the consumer's frustration in going back and forth between the BNPL creditor and merchant without resolution. In addition, some consumers noted the difficulty resolving disputes related to identity theft that were left in a stalemate:

Affirm credit took out 3 charges on XXXX for {\$19.00}... XXXX for {\$9.00} and also on XXXX for {\$19.00} which were all fraudulent. I made several phone calls to affirm notifying them that this was not my charge from a XXXX charge that was not mine. I asked for a proof of debt it was not provided to me, nor anything at all in writing only texts and phone calls after several attempts asking them for something in writing. I also checked my online XXXX orders and there was no order for the fraudulent charge. I received several calls and texts that were also threating and was repeatedly contacted after my bank found in my favor when I filed a dispute and given back my money that they took out that was credited on XXXX in the amount of \$ XXXX also have a letter that my information was found to be in a date breach which I sent to them and also filled out and Affirm identity theft victim 's complaint and affidavit. And still they kept trying to contact me. Now I received a collection letter from XXXX XXXX on XX/XX/XXXX that I now am in collections. I have also submitted a dispute with them as well. **Complaint ID 6090880**

Each of the narratives details multiple unsuccessful attempts to resolve matters, which suggests that clarifying the industry's obligations involving requirements for disputes and errors would be of help.

B. Both Consumers and the Industry will Benefit from Greater Clarity on Disclosures

Disclosures could assist consumers in comparing the pricing of different products and avoiding unexpected fees. BNPL should make disclosures of fees at the beginning of the relationship with the consumer and as needed, as each subsequent transaction occurs. Fee disclosures should be integrated into the relatively seamless experience a consumer has with the BNPL lender.

¹³ All narratives are copied directly from the CFPB complaint database and presented without edits. For additional detail, see the following narratives. Disputes: Complaint IDs: **7485621, 7640600** Credit Limits: Complaint IDs: **5952400, 6098718, 6965447, 8112816, 5952400, 5801748** Late fees: Complaint IDs: **7403576, 5597455**

As we will note in further detail below, BNPL has elements of both closed end and open-ended credit. Disclosures regarding fees could be modeled after the prepaid card rule,¹⁴ which incorporates the notion that prepaid cards are a hybrid product that have elements of a bank account, debit card, and credit card.

With respect to BNPL, short form disclosures modeled after the prepaid rule could certainly benefit consumers when they begin using a BNPL digital credit card account. This type of disclosure should be given at the time a consumer opens their BNPL credit account, so that consumers know what costs they may incur, facilitating comparison shopping between products. This is not to say it should be a one-time event. As the relationship continues, consumers should continue to have access to disclosures about costs they may incur. As noted in further detail *infra*, consumers would likely benefit from more detail about the assessment of late fees, especially because some creditors assess fees for each late payment, rather than per purchase.

Periodic statements showing all due dates and pending payments in one place will benefit consumers because BNPL purchases and payments can occur at any time throughout the month, which may be challenging for consumers to keep track of. Statements may be of particular use to consumers who have multiple concurrent purchases with a creditor. Given the frequency of payments, a monthly statement may not be sufficient, therefore a biweekly statement seems most reasonable.

II. CRL's Recommendations For Further Clarification or Rulemaking On BNPL

A. Consumers Need More Clarity Around BNPL Credit Limits

BNPL resembles both closed and open-end credit, causing consumer confusion. There are three elements of open-end credit, per Regulation Z, § 1026.2(a)(20):¹⁵

- 1) The creditor reasonably contemplates repeated transactions;
- 2) The creditor may impose a finance charge from time to time on an outstanding unpaid balance; and
- 3) The amount of credit that may be extended to the consumer during the term of the plan (up to any limit set by the creditor) is generally made available to the extent that any outstanding balance is repaid.

BNPL behaves much like an open-end credit card, especially from the perspective of a consumer. For “pay-in-four” products, BNPL creditors anticipate repeated transactions, evidenced by the existence of a credit limit and repeated reminders to use the products. Upon making a purchase and opening their digital credit card account, BNPL lenders determine a credit limit which appears to user, and in at least one case, the creditor advertises a specific amount available for all users on their website.”¹⁶ In addition, consumers may repeatedly get notifications, emails and offers for browser extensions to access the credit account

¹⁴ See [Federal Register :: Prepaid Accounts Under the Electronic Fund Transfer Act \(Regulation E\) and the Truth In Lending Act \(Regulation Z\)](#): The short form disclosure sets forth the prepaid account's most important fees and certain other information to facilitate consumer understanding of the account's key terms and comparison shopping among prepaid account programs. The long form disclosure, on the other hand, provides a comprehensive list of all of the fees associated with the prepaid account and detailed information on how those fees are assessed, as well as certain other information about the prepaid account program.

¹⁵ <https://www.consumerfinance.gov/rules-policy/regulations/1026/2/#a-20>

¹⁶ “Every Afterpay customer starts with \$600 limit.” [Financial Wellness \(afterpay.com\)](#)

with what the Bureau has called the app-drive acquisition model of new purchases.¹⁷ The existence of an ongoing account relationship and credit limit make BNPL closely resemble a typical credit card account.

Changes in the credit limit are common, lack transparency, and do not seem to align with consumer expectations for digital credit card accounts, based on our review of the CFPB database. Consumers express confusion on changes in their credit limit, not just for one, but for multiple BNPL creditors. There appears to be little information from the consumer's perspective as to when the credit limit decreases and why. In addition, it is unclear whether the credit limit is a true limit and whether a consumer can spend up to that limit and when:

In addition the zip app I opened authorized me a {\$350.00} spending credit but when I went to make a purchase the account had a hold on it saying I didnt meet the criteria, but you already offered me credit it did make sense In short they are incompetent at best with XXXX standard level of customer service unable to resolve the simplest problems a total waste of time.

Complaint ID 6126818

In this example, the consumer expects to be able to use their purported credit limit but cannot do so.

Consumers should be provided with clear information on the amount of credit they have, how it is calculated, and how and whether a decrease affects them in a disclosure or by some other means. It may be of use to investigate whether under certain circumstances changes in the credit limit constitute adverse actions under the Equal Credit Opportunity Act and/or Fair Credit Reporting Act.

CFPB may wish to do additional guidance or an interpretive rule that reminds creditors of their obligation when offering BNPL credit card accounts that show a credit limit, however it is labeled by the BNPL creditor.

B. BNPL Creditors Should Adopt Ability-to-Repay Requirements

Given BNPL's hybrid nature and risks for borrower overextension related to its use, CFPB should extend some other protections to it, some associated with open-end credit. The Bureau has found users have certain characteristics that tend to put them at financial risk such as higher debt loads, credit card utilization rates, and lower credit scores.¹⁸ A study of 10.6 million users did in fact show a causal negative effect on financial health.¹⁹ Users experienced increased overdraft fees, credit card interest and late fees after adopting use of BNPL.²⁰

The Bureau has the authority to incorporate clauses from the CARD Act in crafting its assessment of the ability to repay, given the high likelihood of repeat borrowing and hybrid nature of the product. The CARD Act standard is applied as follows: "card issuer considers the consumer's ability to make the required minimum periodic payments under the terms of the account based on the consumer's income or assets and the consumer's current obligations."²¹

¹⁷ [Buy Now, Pay Later: Market trends and consumer impacts \(consumerfinance.gov\)](#) at 13.

¹⁸ [Consumer Use of Buy Now, Pay Later: Insights from the CFPB Making Ends Meet Survey | Consumer Financial Protection Bureau \(consumerfinance.gov\)](#)

¹⁹ deHaan, Ed and Kim, Jungbae and Lourie, Ben and Zhu, Chenqi, Buy Now Pay (Pain?) Later (August 28, 2023). Management Science, Forthcoming, Available at SSRN: <https://ssrn.com/abstract=4230633> or <http://dx.doi.org/10.2139/ssrn.4230633>

²⁰ Id.

²¹ [§ 1026.51 Ability to Pay. | Consumer Financial Protection Bureau \(consumerfinance.gov\)](#)

An assessment based on the CARD Act could use credit reports. If credit reports are used in determining ability to repay, it's imperative that any credit reporting models for BNPL reflect positively on consumers for paying off very short-term loans while ensuring opening multiple short term credit accounts does not only negatively affect consumers. Consumers may have multiple concurrent purchases and inquiries with a BNPL lender, with CFPB's recent report noting that some 15% of consumers had more than 5 or more purchases per quarter.²²

In practice, it may be worth considering more robust measures than used under the CARD Act. In a context where consumers may have multiple concurrent debts to the creditor and use the product repeatedly, the Bureau may wish to revisit whether some of the rationale for ability to repay in the payday lending context would be helpful to protect consumers here. For example, whether there it is an unfair practice to increase available credit or offer concurrent purchases without reasonably determining that consumers have the ability-to-repay the credit.²³

C. BNPL Creditors Should Be Required To Assess Reasonable And Proportional Late Fees

Late fees vary considerably among BNPL creditors. Some charge no late fees, others \$7 for each delinquent payment, or \$10 per purchase. Still others charge tiered late fees based on the amount of the purchase.²⁴ The average amount of a BNPL purchase is \$135 according to the Bureau,²⁵ with some recent research showing a quarter of purchases under \$50 and about half under \$100.²⁶ As noted above, fee disclosures are important to promote competition among BNPL creditors. Another layer of protection should be applied so that consumers are not charged unreasonable and disproportionate late fees on small transactions.

In addition, consumer complaints highlight late fees being unfairly or unexpectedly assessed. Some complaints identify difficulty in getting late fees waived, despite consumers arguing they were wrongfully applied:

On, XX/XX/2020, I ordered a sheet set from XXXX XXXX and agreed to pay with Quadpay, four equal payments of {\$39.00} scheduled every two weeks. On XX/XX/XXXX, XXXX after making two payments, I emailed XXXX for status on shipment. They replied the order had not shipped. I requested to cancel my order and XXXX emailed me proof of cancellation due to non shipment the same day. I also notified Quadpay on XX/XX/2020 by email of my cancelled order, with a screenshot of the cancellation from XXXX and asked when I would receive my refund. Quadpay said it should take 3-5 day but sometimes up to 13 days. I emailed Quadpay again on XX/XX/2020 of no refund and they replied they would have to look into the matter because they did not see the cancellation. I resent the proof of cancellation and told them I was also receiving notifications of payment due on the cancelled order. They respond they will look into it. I now have late fees, loan default and they have not cancelled my account or refunded my payments. Quadpay does not answer the phone and I get the same standard message of how long it takes and we will look into it every time I email to communicate my grievances. **Complaint ID 3893295**

²² [CFPB Publishes New Findings on Financial Profiles of Buy Now, Pay Later Borrowers | Consumer Financial Protection Bureau \(consumerfinance.gov\)](https://www.consumerfinance.gov/newsroom/cfpb-publishes-new-findings-on-financial-profiles-of-buy-now-pay-later-borrowers/)

²³ [201710_cfpb_executive-summary_payday-loans-rule.pdf \(consumerfinance.gov\)](https://www.consumerfinance.gov/newsroom/201710-cfpb-executive-summary-payday-loans-rule.pdf)

²⁴ [2024 Buy Now, Pay Later Trends Study | The Motley Fool](https://www.motleyfool.com/2024-buy-now-pay-later-trends-study/)

²⁵ [Buy Now, Pay Later: Market trends and consumer impacts \(consumerfinance.gov\)](https://www.consumerfinance.gov/newsroom/buy-now-pay-later-market-trends-and-consumer-impacts/)

²⁶ [2024 Buy Now, Pay Later Trends Study | The Motley Fool](https://www.motleyfool.com/2024-buy-now-pay-later-trends-study/)

Beyond considering the reasonableness of the amount of late fees, it is notable that late fees in this example are associated with disputes. Therefore, clearing up and standardizing the dispute process may assist consumers lessen unexpected late fees.

Conclusion

The Center for Responsible Lending thanks the Bureau for soliciting public input on the interpretive rule. Once adopted, the interpretive rule will increase industry clarity, improve competition, and enhance consumer experience by ensuring that they correctly benefit from pre-existing consumer protections that should be considered standard for the industry as a whole.

Thank you again for the opportunity to share our support and suggestions. For further information, please contact Nadine Chabrier, Senior Policy Counsel, nadine.chabrier@responsiblelending.org.

Sincerely,

The Center for Responsible Lending