Center for Responsible Lending

**Via email: Vivian.connor@dfs.ny.gov**

September 14, 2026

Vivian Connor
New York State Department of Financial Services
1 State Street
New York, NY 10004-1511

Re: Final BNPL Regulations - New 3 NYCRR 423 and amendment to 23 NYCRR 101

Dear Ms. Connor:

On behalf of the Center for Responsible Lending,[1] thank you for the opportunity to offer our feedback on New York's final BNPL Regulations – the new 3 NYCRR 423 and amendment to 23 NYCRR 101.

With the "Buy-Now-Pay-Later Act" (L.2025, c. 58, Part Y, New York Banking Law Article 14-B) (the Act),[2] the State of New York has taken an essential step towards better protecting its consumers from financial harm. The implementing regulations developed by the Department of Financial Services serve financially vulnerable consumers, who are the heaviest users of BNPL, who turn to the product in times of financial difficulty.[3]

Specifically, the Act and its implementing regulations address documented issues that consumers using BNPL experience, such as unanticipated, expensive costs and fees, inadequate underwriting,

[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 small dollar lending. 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 more than $12 billion in financing to help more than 174,000 borrowers buy homes, start and grow businesses and strengthen community resources. It also serves more than 235,000 members through 80 retail credit union branches in California, Connecticut, Florida, Georgia, Illinois, North Carolina, South Carolina, Virginia, Washington and Wisconsin.

[2] New York State. (2025). *Banking Law* § 735, *N.Y. Laws*. Available at [N.Y. Banking Law Section 735 – Short title (2025).]

[3] See, e.g., Board of Governors of the Federal Reserve System, *Buy Now, Pay Later*, Consumer & Community Context, Vol. 7, No. 1 (Aug. 2026), https://www.federalreserve.gov/publications/files/consumer-community-context-20260819.pdf, Jeff Larrimore, Alicia Lloro, Zofsha Merchant & Anna Tranfaglia, Payment Preference or Necessity: Who Uses BNPL and Why, 59 J. Consumer Aff. 3, e70024 (2025), https://doi.org/10.1111/joca.70024, Christopher Wheat, Makada Henry-Nickie, Scott Kim, Michael Neal & Anthony Francisco, *Convenience or Liquidity Valve? Buy Now, Pay Later, and Homeowner Balance Sheets*, JPMorgan Chase Institute (2024), https://www.jpmorganchase.com/institute/all-topics/housing/convenience-or-liquidity-valve-buy-now-pay-later

trouble with refunds, returns, fraud, and disputes, and high levels of consumer data collection and use by providers. The regulations link directly to these problems by requiring adherence to the New York rate cap, limiting fees, mandating underwriting, providing transparency on underwriting, providing dispute and fraud resolution disclosures and rights, prohibiting multiple representments, simplifying returns/refunds and requiring disclosures. Further, since February 2026, DFS has made refinements in the final version that are appropriate and necessary.

Therefore, we write this comment to highlight the ongoing consumer harms that key elements of the regulations address, offer suggestions to improve the existing regulations and affirm the refinements to the previously proposed regulations.

I. DFS final regulations appropriately address consumer harms associated with BNPL.

a. DFS final regulations protect financially vulnerable consumers.

A vitally important purpose of regulating BNPL is to protect financially vulnerable consumers. Mounting research suggests that the most financially insecure borrowers are those who use BNPL most:

> **Adults who report lower overall financial well-being and those who appear liquidity or credit constrained were among the most likely to use BNPL.** (emphasis added) These credit and liquidity-constrained consumers also disproportionately indicated that they used BNPL because it was the only way they could afford to make the purchase.[4]

BNPL borrowers are, on average, much more likely to be highly indebted, have revolving balances on their credit cards, have delinquencies in traditional credit products, and use high-interest financial services such as payday, pawn, and overdraft compared to non-BNPL borrowers.[5] BNPL borrowers have higher credit card utilization rates and lower credit scores.[6] Users experience increased overdraft fees, credit card interest, and late fees after adopting the use of BNPL.[7]

Consumers with less cash on hand are using BNPL at a much higher rate than those with more resources:

> ..[I]ndividuals who were unable to cover modest emergency expenses using only their savings were more likely to use BNPL than those with greater amounts of savings. BNPL usage was 31 percent among adults whose largest emergency expense they could cover using only their savings was less than $100, and it steadily decreased to 8 percent among

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[4] Board of Governors of the Federal Reserve System, *Buy Now, Pay Later*, Consumer & Community Context, Vol. 7, No. 1 (Aug. 2026), https://www.federalreserve.gov/publications/files/consumer-community-context-20260819.pdf.

[5] Consumer Financial Protection Bureau. (2023, March). *Consumer use of buy now, pay later: Insights from the CFPB Making Ends Meet Survey* (CFPB Office of Research Publication No. 2023-1). U.S. Department of the Treasury. https://files.consumerfinance.gov/f/documents/cfpb_consumer-use-of-buy-now-pay-later_2023-03.pdf

[6] Id.

[7] deHaan, E., Kim, J., Lourie, B., & Zhu, C. (2024). *Buy Now Pay (Pain?) Later*. *Management Science, 70*(8), 5586-5598. https://doi.org/10.1287/mnsc.2022.03266.

adults able to cover an emergency expense of $2,000 or more. Over time, the growth in BNPL has been concentrated among those experiencing credit and liquidity constraints.[8]

Additionally, first time homebuyers turn to BNPL when experiencing financial stress, and those who use BNPL frequently have a slightly higher chance of missing a payment in their first year of homeownership.[9]

b. DFS final regulations strengthen data privacy for BNPL users.

BNPL borrower data is widely collected and valuable to BNPL providers and third parties. The volume of data collected is vast and consumers may not be aware just how their data is being used for marketing and other purposes:[10]

- Afterpay collects the most data about its users, interacting with 20 different data types, which include contacts, location, web history, personal information and financial information. It's followed by Klarna and Uplift, each interacting with 19 data types.
- Sezzle and Zip collect web-browsing histories, while Klarna collects in-app messages.
- Most apps collect and/or share location information, except for Four.
- Afterpay reported sharing a whopping 17 data types with third parties, including credit scores.
- 9 data types were found to be *both collected and shared* for the purposes of advertising, mostly by Afterpay.

New York's regulations help address the concerns CFPB has long raised regarding data harvesting and monetization in its reports:

> BNPL lenders have access to the valuable payment histories of their customers. Some have used this collected data to create closed loop shopping apps with partner merchants, pushing specific brands and products, often geared toward younger audiences.[11]
>
> Many Buy Now, Pay Later lenders are shifting their business models toward proprietary app usage, which allows them to build a valuable digital profile of each user's shopping preferences and behavior. The practice of harvesting and monetizing consumer data across the payments and lending ecosystems may threaten consumers' privacy, security, and autonomy. It also may lead to a consolidation of market power in the hands of a few large tech platforms who own the

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[8] Board of Governors of the Federal Reserve System, *Buy Now, Pay Later*, Consumer & Community Context, Vol. 7, No. 1 (Aug. 2026), https://www.federalreserve.gov/publications/files/consumer-community-context-20260819.pdf.

[9] Christopher Wheat, Makada Henry-Nickie, Scott Kim, Michael Neal & Anthony Francisco, *Convenience or Liquidity Valve? Buy Now, Pay Later and Homeowner Balance Sheets*, JPMorganChase Institute (Mar. 3, 2026), https://www.jpmorganchase.com/institute/all-topics/housing/convenience-or-liquidity-valve-buy-now-pay-later

[10] Incogni, *The Overlooked Risks of Buy Now, Pay Later Apps: A Data-Privacy Perspective* (2026), https://blog.incogni.com/bnpl-apps-data-privacy

[11] Consumer Financial Protection Bureau, "Consumer Financial Protection Bureau Opens Inquiry Into 'Buy Now, Pay Later' Credit" (Dec. 16, 2021), https://www.consumerfinance.gov/archive/newsroom/consumer-financial-protection-bureau-opens-inquiry-into-buy-now-pay-later-credit/

largest volume of consumer data, and reduce long-term innovation, choice, and price competition.[12]

Fortunately, the regulations are explicit in mandating disclosures and borrower consent for data usage. The law now requires consent for each specific use case rather than giving blanket consent for any purpose.

c. Final regulations achieve an appropriate amount of oversight on BNPL providers.

The oversight contemplated by the regulations is particularly important as CFPB supervisory highlights in 2024 suggested there are deficiencies in BNPL examinations and incidences of unfair and deceptive practices, namely, lenders failing to timely resolve consumer disputes, misrepresenting loan costs or terms, and denying credit based on payment processing deficiencies from earlier loans.[13] Further, appropriate supervision is not fully realized for either pay-in-four or installment BNPL lenders. Non-bank installment lenders are not fully supervised federally.[14] Banks with assets above $10 billion are, of course, subject to supervision by the CFPB, while non-depositories offering the same products – or riskier products – are not subject to supervision. [15] Even more, CPFB has explicitly deprioritized supervision and enforcement of non-bank lenders.[16] The current regulatory regime creates both an unlevel playing field and a significant risk that consumer protection issues affecting vulnerable consumers will go undetected.

d. BNPL borrowers will benefit from more explicit procedures for billing errors, disputes, returns, and refunds.

Consumer complaints to the CFPB reveal ongoing problems with BNPL providers failing to properly credit consumers for returns, refunds owed, fraud and other disputes.[17]

The regulations mandate strong disclosures about the rights of borrowers around disputes, returns, and unauthorized use. In addition, there is specificity as to the timeframe in which borrowers

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[12] Consumer Financial Protection Bureau, "CFPB Study Details the Rapid Growth of 'Buy Now, Pay Later' Lending" (Sept. 15, 2022), https://www.consumerfinance.gov/archive/newsroom/cfpb-study-details-the-rapid-growth-of-buy-now-pay-later-lending/

[13] Consumer Financial Protection Bureau. (2025, January 6). *Supervisory highlights, issue 37 (Winter 2024)* [Notice]. *Federal Register, 90*(3), 607–613. FR Doc. 2024-31670, available at 2024-31670.pdf.

[14] CFPB previously indicated it would proceed with a larger participant rule for installment lenders per the petition filed by CRL and Consumer Bankers Association, prior to the administration change. See, Consumer Financial Protection Bureau. (2025, January 13). *Center for Responsible Lending (CRL) and Consumer Bankers Association (CBA)*. Consumer Financial Protection Bureau. https://www.consumerfinance.gov/rules-policy/petitions-rulemaking/crl-cba/.

[15] Id.

[16] See, e.g., Consumer Financial Protection Bureau, *Supervision and Enforcement Priorities* (May 28, 2026), https://www.consumerfinance.gov/enforcement/supervision-and-enforcement-priorities/; Stefanie Jackman, Jesse Silverman, Lori Sommerfield & Chris Willis, "CFPB Proposes Stricter Standards Limiting Supervision of Nonbanks," *Consumer Financial Services Law Monitor* (Aug. 28, 2025), https://www.consumerfinancialserviceslawmonitor.com/2025/08/cfpb-proposes-stricter-standards-limiting-supervision-of-nonbanks/.

[17] Center for Responsible Lending, *Comment Letter on CFPB's BNPL Interpretive Rule*, at 1–7 (Aug. 1, 2024), https://www.responsiblelending.org/sites/default/files/nodes/files/research-publication/crl-comment-cfpb-interpretive-rule-bnpl-aug2024.pdf

receive credit. Similarly, the regulations ensure reasonable efforts are disclosed and effectuated to resolve billing errors and unauthorized use. Borrowers with disputed items will additionally receive a specific timeline in which they are protected from credit reporting and collections.

The regulations have been carefully crafted to include provisions that will protect all consumers who use BNPL and will be particularly important for LMI borrowers.

## II. Potential Improvements to Regulations

CRL is highly supportive of the final regulations. Section 747(1) of the Act provides that the Superintendent may promulgate rules "appropriate to implement the provisions of this article, protect consumers, and ensure the solvency and financial integrity of buy-now-pay-later lenders." Given this broad mandate, we suggest the following to further protect and benefit consumers:

- Enhanced reporting requirements. Providers should be required to publicly release detailed, disaggregated data about the full scope of usage of BNPL, as this would assist in filling in gaps in information. Examples may include but should not be limited to outcomes for BNPL borrowers, such as data on the amount of fees paid for late payments, incidence of extended payment plans, and subscription usage.
- Ease of subscription cancellation. Pay in Four providers in particular frequently offer subscriptions, which allow access to various products and other services. Providers should ensure cancellation is simple and easily accessible.
- Application of existing laws to BNPL. Pre-existing credit, debt collection, consumer or other laws beyond the Act should be applied to BNPL. For example, regulators should carefully evaluate whether various fees charged are finance charges under the law, including subscription fees, and whether 0% interest products reflect the true APR charged.
- Fair lending. DFS should examine BNPL providers for compliance with state and federal fair lending laws.

## III. Refinements made to the final regulations are necessary and appropriate.

The following refinements were made to the regulations, which further serve consumer needs.

- Tips are no longer authorized.

The provision that allowed tips was removed from the final regulations. This was a worthwhile and important change. First, tips are not typically extracted by BNPL providers, whether it be Pay in Four or longer installment loans. Authorizing such charges, even with limits, suggests that tips are an acceptable practice. On the contrary, tips in this context are not a gratuity, provide no real benefit to consumers, and are simply a means to extract fees from consumers.

- Data privacy is restricted.

The final regulations have been revised so that product improvement is no longer expressly treated as a permitted use without separate consent, which will appropriately limit data usage.

- Payment allocation has become more consumer-directed.

Consumers can allocate payments among specific BNPL loans and prepay principal and accrued interest, while the regulation supplies default allocation rules when the consumer does not make an allocation. This is a meaningful shift away from a primarily lender-controlled allocation methodology.

## IV. Conclusion

CRL continues to believe that Buy Now Pay Later (BNPL) products and the entities providing them will benefit from additional supervision, monitoring, and research to minimize consumer harm. The final regulations account for proper oversight of Buy Now Pay Later lenders doing business in New York and will provide a proving ground for states wishing to BNPL lenders and thoughtfully crafted consumer protections.

In the absence of a strong federal regulator, developing solid best practices becomes even more important. We appreciate the opportunity to share our thoughts on this important issue.  For further information, please contact Nadine Chabrier, Senior Litigation and Policy Counsel, nadine.chabrier@responsiblelending.org.