

August 1, 2024

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

*Submitted via regulations.gov*

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

The 90 undersigned consumer, civil rights and community organizations and academics submit these comments on the Consumer Financial Protection Bureau’s Interpretive Rule regarding buy now pay later (BNPL) credit. We support the CFPB’s conclusion that accounts used to access BNPL credit are credit cards that must comply with credit card rules governing disputes, errors, periodic statements and disclosures. Those protections will enhance the safety of BNPL credit and make it easier for consumers to manage their finances.

However, consumers still face the risk of becoming over-indebted and paying costly fees on credit that is supposedly free. Low-income and financially vulnerable consumers, women, Black, and Latino consumers are especially likely to make a purchase using BNPL. We urge the CFPB to go further and to require BNPL providers to comply with other protections required for credit cards, including ability to repay assessments and reasonable and proportional penalty fees.

**BNPL accounts are a form of credit card under the Truth in Lending Act (TILA).**

We agree with the CFPB that BNPL accounts are a form of credit card that must comply with appropriate protections under the Truth in Lending Act (TILA) and Regulation Z. Like traditional credit cards, BNPL accounts are reusable devices used to obtain credit at the point of sale for the purchase of goods and services. BNPL providers typically give consumers the equivalent of a credit line through an “available to spend” amount, which decreases as consumers make purchases and is replenished as those purchases are repaid.

Congress intended TILA to be a flexible consumer protection law interpreted liberally to ensure the transparent and safe use of credit. Regulation Z has long had a broad definition of “credit card” that is not limited to plastic cards branded as Visas and MasterCards. That flexibility is especially important in order to protect consumers and ensure the continued relevance of our consumer protection laws as evolving technology and business models lead financial products to take different forms while performing the same essential function, with similar risks to consumers.

**The interpretive rule gives BNPL borrowers important protections.**

We support the conclusion in the Interpretive Rule that BNPL providers must comply with the credit card protections found in Subpart B of Regulation Z, including the requirements governing

dispute and error protections, periodic statements, and clear disclosures. Those requirements will make BNPL credit safer for consumers and help to ensure a fair and competitive marketplace. Dispute and error protections. As with traditional credit card issuers, consumers who make purchases using BNPL credit at the point of sale should not be on the hook if they did not get what they paid for, returned an item, or were billed by mistake. Most BNPL providers claim to provide those protections, but problems frequently arise and consumers do not presently have clear legal rights. TILA sets out consumers' rights and has clear procedures that lenders must follow when the consumer has a dispute or raises an error. Ensuring that all BNPL providers follow those rules will promote accountability and give consumers greater confidence when purchasing using BNPL accounts.

**Periodic statements.** Credit cards are required by law to provide consumers with a clear periodic statement listing all transactions in the previous month, any fees or interest, the amount due, and the due date. In contrast, BNPL accounts can be very confusing, with each purchase treated as a separate transaction and no regular statements collecting all of the transactions under a single account. By applying TILA's statement requirements, consumers will have a clearer view of their total purchases, amounts outstanding, fees, and upcoming payments.

The CFPB did not state how frequently BNPL statements must be provided. For BNPL credit that has biweekly payment, statements should be provided biweekly. Moreover, the CFPB should encourage or require BNPL providers to align payment due dates for different purchases so that payments fall on the same, regular dates no more than twice a month, rather than at multiple, random times throughout the month. The irregularity and multiplicity of BNPL payment due dates today makes it difficult for consumers to manage their budgets, contributing to late payments and late fees.

**Clear disclosures.** The CFPB stated that BNPL providers are required to comply with Regulation Z's Subpart B cost of credit disclosure rules. Those rules include the requirement to disclose fees clearly and conspicuously, up-front through account opening disclosures using a uniform "Schumer box" chart like that required for credit cards. The CFPB's 2021 BNPL report noted that BNPL credit lacks standardized disclosures. The CFPB should also require clear, transparent up-front fee disclosures in advertising and solicitations for BNPL credit, in order to level the competition and make it easier for consumers to avoid providers who charge junk fees.

### **BNPL providers should be required to comply with other TILA credit card rules.**

While the Interpretive Rule is an important step forward, it does not go far enough to provide the full protections needed for BNPL accounts. The protections that apply to credit cards through the Credit Card Accountability, Responsibility and Disclosure Act of 2009 (Credit CARD Act) are also important for BNPL accounts. Two missing credit card requirements are especially important for BNPL credit.

**Ability to repay.** One of the biggest flaws of BNPL credit is that it is often extended without regard to the consumer's ability to repay. At check-out, with pay-in-four products, consumers are presented with the option of paying one-quarter of the price in a manner that makes purchases look cheaper than they are. Data increasingly shows that many consumers are taking on BNPL credit

when they are over-extended and cannot afford more debt. BNPL providers, especially those that charge fees that should be considered a finance charge, should be required to conduct an ability-to-repay assessment just as traditional credit cards must. Failure to assess ability to repay is also unfair and abusive.

**Reasonable and proportional penalty fees.** Many BNPL providers charge late fees, which can turn “free” BNPL credit into costly credit. Late fees can be a disguised finance charge, a form of interest, given that many BNPL providers anticipate and plan on late fee revenue. The Credit CARD Act requires that penalty fees like late fees be reasonable and proportional to the cost of the violation, rather than an excessive profit center. Applying that rule to BNPL credit would enhance the incentive to do responsible underwriting and limit consumers’ exposure to hidden, back-end junk fees.

**The CFPB should encourage BNPL reporting to credit bureaus to be in a form that helps consumers build credit.**

Currently, BNPL credit can harm consumers’ credit reports but is unlikely to help them. That is because delinquencies are likely to be reported, likely as debt collection items, but positive payments either are not reported or are not reported in a way that enhances credit scores. Our credit scoring system is built around traditional models of credit, especially open-end credit. Reporting BNPL credit as a series of short-term individual closed-end loans that are constantly opened and closed is trying to fit a square peg into a round hole, which could damage credit scores even if the consumer pays on time. The CFPB should conclude that BNPL credit is open-end credit, which would not only bring with it the Credit CARD Act protections described above but would also make it more likely that BNPL accounts will be reported to credit bureaus as open-end credit in a way that can enhance consumers’ credit scores. Consistent reporting in an appropriate form will also enable more accurate assessments of the ability to repay.

Thank you for your efforts to protect consumers who use BNPL credit. We support the CFPB’s interpretive rule and urge the CFPB to continue its work to enhance the safety of BNPL credit.

Sincerely,

20/20 Vision  
Accountable.US  
Alliance 85  
Americans for Financial Reform Education Fund  
Better Markets  
Blue Future  
Blue Ridge Legal Services, Inc.  
CAMEO Network  
CASA of Oregon  
CASH Campaign of Maryland  
Center for Economic Integrity  
Center for Economic Justice  
Center for Responsible Lending

Citizen Action/Illinois  
Coastal Enterprises, Inc.  
Communities First Initiative  
Community Legal Services of Philadelphia  
Consumer Action  
Consumer Federation of America  
Consumer Federation of California  
Consumer Reports  
Delaware Community Reinvestment Action Council, Inc.  
Economic Action Maryland  
Economic Empowerment Center DBA Lending Link  
Economic Progress Institute  
Exodus Lending/Minnesotans for Fair Lending  
Famicos Foundation  
Georgia Advancing Communities Together, Inc.  
Georgia Watch  
Habitat for Humanity of Camp County, TX inc.  
Housing and Economic Rights Advocates  
Housing and Family Services of Greater New York  
Indiana Community Action Poverty Institute  
Kentucky Equal Justice Center  
Legal Aid Center of Southern Nevada  
Legal Aid Justice Center  
Legal Services of New Jersey  
Maine People's Alliance  
Massachusetts Action for Justice  
Maui Economic Opportunity, Inc.  
Mission Asset Fund  
National Association for Latino Community Asset Builders (NALCAB)  
National Association of Consumer Advocates  
National Center for Law and Economic Justice  
National Consumer Law Center (on behalf of its low-income clients)  
National Consumers League  
National Action Network  
New Jersey Appleseed Public Interest Law Center  
New Jersey Citizen Action  
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UnidosUS  
Virginia Organizing  
Virginia Poverty Law Center  
VOICE (Oklahoma)  
WESPAC Foundation, Inc.  
William E. Morris Institute for Justice  
Woodstock Institute  
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National Coalition for Asian Pacific American Community Development (National CAPACD)  
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League of United Latin American Citizens (LULAC)  
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