FINANCIAL HEALTH NETWORK

Comment of the Financial Health Network
on the
Interpretive Rule on the Use of Digital User Accounts to Access Buy Now, Pay Later Loans
CFPB–2024-0017

August 1, 2024

The Financial Health Network appreciates this opportunity to comment on the Consumer Financial Protection Bureau's (CFPB) interpretive rule with respect to the use of digital user accounts to access buy now, pay later (BNPL) loans. The Financial Health Network brings together financial institutions, employers, innovators, and nonprofits all working to achieve financial health for all. The Financial Health Network is a recognized expert on the state of financial health in the United States and on the ways in which various financial products and services affect consumers' financial health.[1]

Of particular relevance, for the past three years the Financial Health Network, as part of our ongoing effort to explore how households are using and how much they are paying for financial services, has conducted an annual nationally-representative, probability-based survey–the FinHealth Spend Survey–which, among other topics, has explored consumers' usage of BNPL loans.[2] That research, coupled with other published research which we discuss below, has shed light both on the potential benefits and the potential risks of BNPL from a financial health perspective.

In our view, the research findings make plain the value of guardrails to provide protections for consumers with respect to the potential risks BNPL poses to consumer financial well-being. We are, therefore, generally supportive of the CFPB's decision to take action in this area and of its determination that a digital user account through which a consumer can access BNPL loans meets the definition of a "credit card" under the Truth in Lending Act (TILA) and Regulation Z. We are concerned, however, that the interpretive rule creates some uncertainty as to which provisions of Reg. Z are applicable to BNPL lenders and, moreover, that certain provisions that may be applicable under the rule were designed for quite different products and are not well tailored to fit the BNPL construct. Such provisions could create confusion for BNPL users or, worse, disrupt the benefits that BNPL offers consumers. Accordingly, we submit this comment to urge the CFPB to clarify some of

[1]The Financial Health Network is funded through membership dues including (but not limited to) financial institution members, consulting contracts, and foundation grants. We retain full editorial control over all research we publish. To the extent we take positions on public policy issues through comments on proposed rules or other public (or private) communications, the Financial Health Network does not purport to speak for, or represent the views, of any of the members of the Network but rather expresses the independent views of the Financial Health Network's leadership.

[2] We reported on the results of our first FinHealth Spend Survey that included questions regarding BNPL in Gdlman, Greene & Celik, Buy Now, Pay Later: Implications for Financial Health, Financial Health Network, June 2022. We reported more briefly on subsequent surveys in Greene, Chege, Falgout, & Celik, FinHealth Spend Report 2023, Financial Health Network, June 2023. The results of our most recent survey are forthcoming in our 2024 FinHealth Spend Report.

the implications of the interpretive rule and, moreover, to engage in follow-on legislative rulemaking to craft rules designed specifically for BNPL lending.

I. The Financial Health Benefits and Risks of Buy Now, Pay Later

In our most recent (not yet published) survey conducted in January 2024, we found that during the prior year 17% of consumers had used BNPL at least once in the past year. That finding is in line with findings from other recent surveys conducted by the New York[3] and Philadelphia Federal Reserve Banks.[4] The usage rate has been rapidly growing over the past several years.[5]

The consumers who use BNPL are disproportionately struggling financially. The Financial Health Network uses our FinHealth Score® to place consumers in one of three financial health tiers based on their responses to an eight-question instrument. We have found that Financially Vulnerable households–those who struggle in most or all areas of their financial lives–use BNPL at nearly four times the rate as Financially Healthy households.[6] In a similar vein, the most recent Survey of Households and Economic Decision Making found that those who rated their credit scores as very poor, poor, or fair were using BNPL three to four times more frequently than those who rated their credit score as excellent.[7] And, the New York Federal Reserve Bank has found that BNPL usage monotonically decreases as income increases, and that BNPL users are disproportionately "financially fragile" as measured by their ability to withstand financial shocks.[8]

At least for some of these consumers, BNPL may provide a lifeline when they face an emergency need and lack any other form of liquidity. Indeed, the CFPB has found that over 30% of BNPL users had no or negative credit card liquidity, and that 25% of BNPL users had no non-retirement savings or cash that could be used for emergencies.[9] And, the New York Federal Reserve Bank has found that financially fragile BNPL consumers use the product more often, and for smaller purchases, than those who are financially stable.[10]

[3] Aidala, Mangrum, & van der Klaauw, Who Uses "Buy Now, Pay Later?", Liberty Street Economics, September 2023.
[4] Akana & Doubinko, *4-in-6* Payment Products--Buy Now, Pay Later: Insights from New Survey Data, February 2024.
[5] The Federal Reserve Board's annual Survey of Households and Economic Decision Making (SHED) found the usage rate increased from 10% in the 2021 survey to 14% in the 2024 survey. Our research has found an even more rapid increase, although part of that may be attributable to changes in the questions used to measure BNPL usage since 2021.
[6] Gdalman, *supra* n.1
[7] Federal Reserve Board, Economic Well-Being of U.S. Households in 2023, March 2024.
[8] Aidala, Mangrum, & van der Klaauw, *supra* n.2
[9] Shupe, Li & Fulford, Consumer Use of Buy Now, Pay Later: Insights from the CFPB Making Ends Meet Survey, Consumer Financial Protection Bureau, March 2023.
[10] Aidala, Mangrum, & van der Klaauw, How and Why Do Consumers Use "Buy Now, Pay Later"? Liberty Street Economics, February 2024.

Moreover, even for consumers who do have alternative sources of liquidity, BNPL can provide a material benefit to the extent it substitutes for higher-cost forms of credit that these consumers would otherwise use. For example, in our research, one-third of BNPL users reported that, had BNPL not been available, they would have made the purchase using a credit card.[11] Given that BNPL users are overwhelmingly revolvers,[12] and given the tendency of revolvers to carry debt for prolonged periods of time at high interest rates,[13] for these consumers BNPL may be enabling them to better manage their financial lives by repaying debts quickly (over 45 days) and with no interest expense. That is even more true for consumers who might otherwise turn to overdraft or to alternative financial services; the CFPB found that 43% of BNPL users also used overdraft during the prior twelve months and that 20% had used an alternative financial service (primarily payday and pawn loans).[14]

At the same time, BNPL as it exists in the market today poses certain identifiable risks to consumers' financial health. To begin with, BNPL loans generally are not reported to the national consumer reporting agencies (NCRAs), so that lenders using credit bureau data to make underwriting determinations lack visibility into the extent of BNPL users' obligations. This can lead to "loan stacking", either across BNPL lenders or across lenders making different types of loans. Indeed, in our most recent (not-yet published) survey we found that 31% of BNPL users reported making more than one BNPL purchase in the prior month and that 62% of those said they used multiple providers, suggesting that they may hold multiple concurrent BNPL loans.

Although BNPL lenders generally do obtain consumer reports or credit scores before extending credit, to the extent that BNPL lenders (or other lenders for that matter) make loans without awareness of the full extent of consumers' obligations, consumers may suffer adverse consequences. Almost 90% of BNPL users authorize repayment via their debit card, which means that consumers may be subject to up to three overdraft fees over a period of 45 days; indeed, academic research has found that new BNPL users experience rapid increases in overdraft charges.[15] Further, if any of the attempted payments fail, consumers may incur late fees; although not all BNPL lenders charge such fees, the CFPB found that in 2021, 10.5% of BNPL borrowers were charged at least one late fee, a 35% increase from the prior year.[16] And if a consumer ends up defaulting on a BNPL loan or is unable to repay an overdraft caused by a BNPL loan, the consumer may find herself being pressed by third-party debt collectors. Of course, most if not all of these negative consequences also could result if the consumer used some other form of credit, such as a credit card.

---

[11] Gdalman, *supra* n.1.

[12] In our most recent survey, XX% of BNPL users indicated that they also carry credit card balances from month to month. That finding aligns with the Boston Federal Reserve Bank's finding from its analysis of data from the Survey and Diary of Consumer Payment Choices. Stavins, Buy Now, Pay Later: Who Uses It and How (2024).

[13] Grodzicki & Kulaev, Data Point: Credit Card Revolvers, CFPB (2019).

[14] Shupe, Li & Fulford, *supra* n.8.

[15] De Haan, Kim, Lourie & Zhu, Buy Now Pay (Pain?) Later, October 2022.

[16] Kleinbard, Sollows & Udis, Buy Now, Pay Later: Market trends and consumer impacts, CFPB, September 2022.

Moreover, even for consumers who can cover their BNPL loan payments and still meet their other obligations and basic living expenses without overdrafting, BNPL usage still can negatively affect their long-term financial well being to the extent the easy availability of "free" credit induces consumers to make purchases they otherwise would not have made. As the Bureau has observed, "BNPL lenders promote their value proposition to retailers with the phrase *incremental sales*, defined as real revenue generated because of their platforms that would not have occurred without them."[17] Consistent with that, in our most recent survey we found that one-third of BNPL users report that they spent more than they would have, or made a purchase they would not have made, if BNPL had not been available; this varies considerably by financial health tier, with fully 49% of the Financially Vulnerable BNPL users but just 13% of the Financially Healthy users so reporting. And, an academic paper using administrative data found that BNPL usage leads to a significant and persistent increase in spending.[18] (It is unclear whether this is more true of BNPL than, e,g. private label credit cards with a 0% deferred interest period.)

In short, compared to the alternative credit vehicles available to consumers – including payday loans or overdraft for those without credit card access and revolving balances at high interest rates for those with available credit on a credit card – BNPL loans are generally preferable because there is a disciplined repayment structure and no interest expense.. However, the BNPL business model does create risks, primarily resulting from the absence of credit reporting and the potential for over-borrowing.

In an ideal world, the Financial Health Network would urge the Bureau to adopt rules mandating reporting of BNPL loans to the NCRAs and establishing some friction to reduce the allure of free credit. We recognize, however, that there may be substantive limits on the Bureau's authority to mandate credit reporting, and that the Bureau faces further procedural limits in light of its decision to proceed via an interpretive rule. For present purposes, therefore, we urge the Bureau simply to clarify the requirements flowing from the interpretive rule so that the rule does not have unintended consequences that would deprive consumers of the benefits BNPL offers, and to follow this rulemaking with a legislative rulemaking to develop BNPL-specific requirements.

II. The Bureau Should Further Clarify the Implications of the Interpretive Rule and Develop BNPL-Specific Disclosure Requirements

---

[17] *Id.*

[18] Di Maggio, Williams & Katz, Buy Now, Pay Later Credit: User Characteristics and Effects on Spending Patterns, National Bureau of Economic Research, September 2022.

The core conclusion of the Interpretive Rule is that digital user accounts used to access buy now, pay later loans are a "credit device existing for the purpose of obtaining … .property or services on credit" and thus fall within TILA's definition of a "credit card."[19] We agree that this interpretation is consistent both with the language of the statute and its underlying intent.

The immediate consequence of this interpretation is, of course, that BNPL providers are "card issuers" and consumers who are provided with digital user accounts to access BNPL loans are "cardholders" since TILA defines those terms to mean, respectively, "any person who issues a credit card" and "any person to whom a credit card is issued.[20] Further, for purposes of Subpart B of Reg. Z, the interpretation of "credit card" to encompass digital user accounts to access BNPL loans means that BNPL lenders are "creditors" since Reg. Z provides that for such purposes the term "creditor" encompasses any "card issuer" without regard to whether the card issuer is offering open-end credit, charges a finance charge, or requires repayment in more than four installments.[21]

In more concrete terms, it is clear, as the Interpretive Rule notes, that the consequence of treating digital access devices as credit cards is that the provisions of Reg. B governing credit card disputes and refund rights are applicable to such devices. Those provisions, in terms, either grant certain protections to "cardholders"[22] or impose certain duties on "card issuers"[23] or "creditors"[24] The Rule thus would assure that consumers do not forgo rights that they otherwise would enjoy by virtue of their decision to use a BNPL loan to make a purchase.

It is less clear, however, what disclosure obligations BNPL lenders face as a consequence of the Interpretive Rule. Subpart B does contain a set of "account opening disclosure" requirements addressed to "creditors," but the subsection of Subpart B containing those requirements is headed "Rules affecting open-ended (not home-secured) plans."[25] Because the Interpretive Rule concludes that "traditional BNPL products do not meet the definition of 'open-end credit,'" it is not entirely clear whether such rules are applicable to BNPL lenders. Moreover, many of the disclosure requirements in that subsection apply only to "credit card accounts under an open-end (not home-secured) consumer credit plan" or to "charges imposed as part of an open-end (not home-secured) plan", and thus seemingly would not apply to BNPL lenders.[26]

In contrast, although the Interpretive Rule concludes that BNPL lenders "are generally not subject to the credit card regulations appearing in Subpart G" because Subpart G "generally applies only to 'credit card account[s] under an open-end (not home-secured) consumer credit card plan," the

[19] 15 U.S.C. § 1602(*l*).
[20] *Id.* § 1602(n),(o).
[21] 12 C.F.R. § 1026.2(17)(iii).
[22] *Id.* § 1026.12(b),(c).
[23] *Id.* § 1026.12(d).
[24] *Id.* §§ 1026.12(e), 1026.13.
[25] *Id.* § 1026.6(b).
[26] *Id.* § 1026.6(b)(2)(F). 2-06.6(b)(3)(i).

Interpretive Rule notes that the subsection of Subpart G containing disclosure requirements with respect to credit card applications and solicitations "may apply" to BNPL lenders, presumably because that subsection is, in terms, addressed to "card issues."[27] (This subsection was moved from Subpart B to Subpart G when the Federal Reserve Board promulgated Subpart G to implement the CARD Act.)

Whatever the Bureau's intent with respect to the obligation of BNPL lenders to deliver Reg. Z-compliant application, solicitation, and account opening disclosures, at least this much is clear: none of those requirements were developed with an eye towards BNPL loans and, consequently, none is well tailored for that product.

Consider, for example, the subsection of Subpart G setting forth application and solicitation requirements for card issuers. The only term that BNPL lenders would be required to disclose under that subsection–in a "tabular format"[28]–would be the late fee, as BNPL lenders do not charge maintenance fees, transaction fees, or other penalty fees.[29] In addition, BNPL lenders seemingly would be required to include "a statement that charges incurred by use of the [BNPL loan] are due when the periodic statement is received" even though that is not an accurate statement.[30] And, BNPL lenders also would be required to include a reference to the CFPB's website along with a "statement that consumers may obtain on the Web site information about shopping for and using credit cards", which may or may not be true with respect to BNPL products.[31]

Equally telling is what BNPL lenders would not be required to disclose. The material risks of BNPL loans, as discussed above, arise at least in part from the lack of visibility of other outstanding BNPL loans from other lenders resulting from the fact that BNPL loans generally are not being reported to the national consumer reporting agencies. Yet nothing in the required disclosures would identify this risk or the risks resulting from preauthorized debits from the consumer's checking account.

The periodic statement requirements that would apply to BNPL loans under Reg. Z are equally problematic. Again, there is some uncertainty as to whether any of those requirements are applicable under the Interpretive Rule, since they are contained in a subsection of Subpart B headed "Rules affecting open-end (not home-secured) plans."[32] But assuming that the Bureau intends to apply those requirements to BNPL products, compliance may prove problematic because the periodic statement disclosure requirements are premised on the existence of discrete billing cycles,

---

[27] 12 C.F.R. § 1026.60.
[28] *Id.* § 1026.60(a)(2)
[29] 12 C.F.R. § 1026.60 contains separate requirements for credit cards and charge cards. A BNPL account would fall within the definition of charge card since it is "an account for which no periodic rate is used to compute a finance charge." Accordingly, BNPL lenders would be subject only to those provisions of 1026.60 that apply to charge cards.
[30] 12 C.F.R. § 1026.60(b)(7).
[31] *Id.* § 1026.60(b)(15). For some reason, although this provision is, in terms, applicable to charge cards, *see id.*at § 1026.60(b), the model form for such cards does not include this language.
[32] *Id.* § 1026.7(b). Certain provisions of this subsection in terms apply only to a "credit card account under an open-end (not home secured) consumer credit card plan," and thus clearly would not apply to BNPL loans. *See id.* § 1026.7(b)(11),(12).

must be given "for each billing cycle at the end of which an account has a debit or credit balance of more than $1," and must include the account balance outstanding at the beginning of each billing cycle, credits occurring during the billing cycle, the closing date of the billing cycle, and the account balance outstanding on that date.[33]

None of this fits the BNPL product construct under which, as the Interpretive Rule notes, each purchase creates a discrete closed-end loan with its own set of scheduled payments. That means, for example, that if a consumer were to make one BNPL purchase on the 5th day of a month and a second on the 10th day, at the end of that month the consumer would have payments due on the 20th and 25th days of the ensuing month. It is not at all clear how a BNPL lender could issue a periodic statement that complies with the requirements of the rule and accurately conveys to the consumer their payment obligations.

All of this leads us to make two recommendations to the Bureau. First, we urge the Bureau to add to its Interpretive Rule clarification as to which of the disclosure requirements set forth in Reg. Z it views as binding on BNPL lenders and how BNPL lenders are expected to comply with those requirements. Second, and even more importantly, we believe the Bureau should move expeditiously to conduct a legislative rulemaking to develop rules specifically tailored for the BNPL product. Such rules should, at a minimum, include disclosures or warnings designed, with the benefit of consumer testing, to make the BNPL risks–including the risk of loan stacking and overborrowing–salient to consumers considering making a purchase using a BNPL loan.

The Financial Health Network stands ready and willing to assist the Bureau as may be useful in developing such rules.

[33] *Id.* §§ 1026.6(b),1026.7(b)(1),(3),(10).