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for Economic Justice*

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Submitted to BNPL@dfs.ny.gov
New York State Department of Financial Services

Re: Request for Information Regarding “Buy-Now-Pay-Later” Activities

The National Consumer Law Center is pleased to submit these comments in response to the New York Department of Financial Services’ (DFS) request for information on buy now, pay later loans and the implementation of the Buy Now, Pay Later Act (BNPL Act).¹ These comments address issues that DFS should consider when writing regulations in order to protect consumers.

The BNPL Act gives DFS broad authority to promulgate rules consistent with the purposes of the Act to protect consumers and to define deceptive or unfair practices. N.Y. Banking Law § 747(2). DFS should use that authority to ensure that BNPL loans are safe, fair and nondiscriminatory. Strong rules are especially important in light of the facts that subprime and deep subprime consumers take out most BNPL loans and that BNPL credit is disproportionately used by Black and Hispanic consumers, who already face disadvantages in the credit marketplace.

Below we address various issues DFS should consider as it implements the BNPL Act. We highlight in particular the need to:

1. Interpret the law’s scope broadly to address emerging uses of BNPL loans;
2. Require clear, uniform disclosures of fees and key terms;
3. Prevent hidden forms of interest:
 - Prohibit fees and other costs, other than reasonable late fees, on zero-interest loans, which consumers expect to be free;
 - Ensure that all fees and costs, other than reasonable late fees, are encompassed within the 16% interest rate limit for interest-bearing BNPL installment loans;
4. Limit late and other penalty fees to \$8 per month for all loans that month;

¹ [Buy-Now-Pay-Later Act](#), to be codified at New York Banking Law article 14-B (effective 180 days after promulgation of regulations).

5. Require responsible underwriting designed to ensure that the borrower has the ability to repay the BNPL loan, while meeting other expenses, without reborrowing;
6. Prohibit lenders from automatically re-debiting accounts after a payment has bounced twice;
7. Monitor credit reporting practices, prevent deceptive claims of credit building, and disclose whether the lender reports to a credit bureau;
8. Enforce and strengthen the requirements for dealing with disputes, returns and errors;
9. Require monthly statements covering all loans;
10. Allow lenders to share consumer data only as necessary; prohibit using, sharing or selling data for purposes the consumer would not expect; and prohibit selling or sharing for targeted personalized marketing or debt collection unrelated to the BNPL loan.
11. Enforce New York's fair lending laws, especially in connection with the use of data and artificial intelligence;
12. Require key disclosures, documents and customer service to be available in Spanish and other languages;
13. Publish a list of lenders licensed in New York in order to deter unlicensed lending; and
14. Collect fulsome data in reports from providers in order to monitor their practices and the impact on consumers; make those reports public; and compile and publish regular DFS reports on the status of the BNPL market.

1. Scope

The scope of the BNPL Act is limited to “closed-end credit provided to a consumer in connection with such consumer's particular purchase of goods and/or services, other than a motor vehicle”. Sec. 736(3). As the use of BNPL loans is growing to more and more contexts, DFS should ensure that the phrase “particular purchase of goods and/or services” is interpreted broadly.

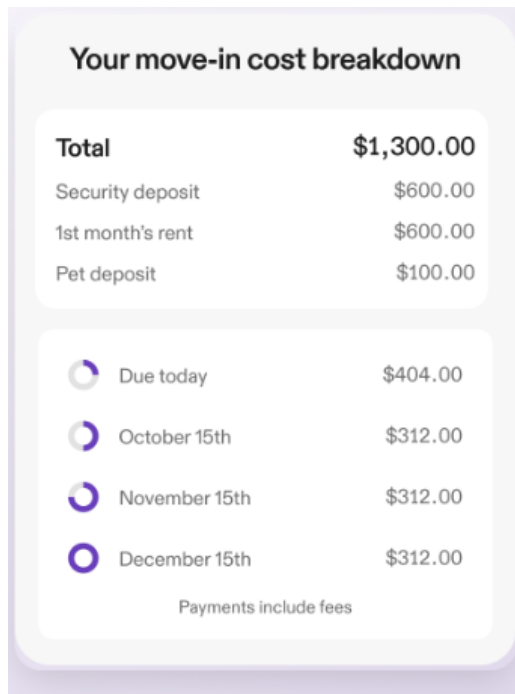
Currently, BNPL loans are primarily used for retail purchases. Other uses of BNPL have the same risks of lack of transparency around pricing, fees that disguise usurious interest, unaffordable loans that put people into a cycle of debt, and other issues. Areas besides retail where split payment and installment loans have been offered, and that DFS should make sure are covered include credit offered in connection with:

- medical, dental or other health care services;
- educational and training services, including training repayment agreement provisions (TRAPs);²
- services offered in connection with rental housing; and
- debt settlement services.

For example, some companies are offering split payment loans for move-in expenses including security deposits and for rental payments. Flex offers Flex Move-in, showing a \$1,300 expense split into four payments (one due immediately), just like other BNPL loans, with costs equating to APRs of 16.95%-23.84%.³

² See generally Student Borrower Assistance Program, [Training Repayment Agreement Provisions](#).

³ <https://getflex.com/move-in>.



The BNPL Act does not cover open-end credit. However, it is possible that some providers could structure their credit that way, and in fact, we have urged that BNPL be considered to be open-end credit under federal law.⁴ Open-end credit can be particularly problematic, because federal rules for disclosing the APR in advertising exclude many fees, leading companies to disclose no APR or a 0% APR even when there are costs.

For example, in addition to the Flex closed-end loan for move in expenses, Flex also offers “Flexible Rent” financing styled as a line of credit used to split a monthly rent payment into two payments. Flex charges a \$14.99 per month subscription fee plus 1% of the total rent, yet discloses no APR on its website.⁵ Assuming \$1,500 in monthly rent, with the consumer paying half up front and getting a \$750 loan for half a month, that equates to nearly 100% APR. Put differently, a two-week loan to defer half the rent for half a month is essentially a payday loan. Similar models combining lines of credit with split payments could be used for other types of split payment BNPL loans for goods and services.

DFS should consider using other authorities, including its regulation of credit generally and its law against deceptive practices, to ensure that BNPL credit does not escape the protections of the BNPL Act and that fees for open-end BNPL credit do not escape New York’s usury caps. In addition, if a lender does structure BNPL credit as open-end credit, that would make it a credit

⁴ NCLC & Consumer Reports, [Comments to CFPB Regarding Buy Now, Pay Later Loans Interpretive Rule](#) at 11-14 (Aug. 1, 2024).

⁵ <https://getflex.com/flexible-rent>.

card under federal law and the Truth in Lending Act protections would apply,⁶ which New York could enforce.

2. Clear Disclosures

BNPL lenders tout “interest-free” loans, implying that the loans are free. However, some lenders convenience fees and service fees, and some are starting to charge subscription fees. Others charge late fees, bounced payment fees, and other penalty fees, which if significant may be a profit center and a disguised form of interest. The lack of standardized fee and APR disclosures makes it difficult to compare BNPL companies to each other, or to compare BNPL credit to credit cards and other credit options.

The BNPL Act requires lenders to explain key loan terms, such as costs, repayment schedule, dispute options, credit reporting, and more, to consumers in a “clear and conspicuous” manner. These disclosures must follow federal regulations, including Regulation Z. N.Y. Banking Law § 746(1).

To implement this requirement, DFS should require lenders to disclose costs and other key terms in the same simple, standardized chart (the “Schumer box”) that credit card companies use. Having a standardized disclosure form will help consumers to comparison shop. DFS could develop rules for a standardized disclosure form and provide a sample form.

The disclosure form should be required to be provided in an easily findable location on the provider’s website and in the app, and lenders should provide it in a conspicuous manner before a consumer takes out a BNPL loan.

3. Interest

The Act requires the Superintendent to establish a maximum cumulative amount of all interest, charges and fees that a BNPL lender can charge in connection with each category of loan, BNPL zero-interest loans and BNPL installment loans. In no case may the rate be greater than 16% per year, including all amounts paid or payable. N.Y. Banking Law § 745. The Superintendent must also set the maximum amount or percentage allowed for origination fees (as well as penalty fees, discussed below). *Id.*

A. BNPL zero-interest loans.

⁶ Those protections would go beyond those provided under the CFPB’s 2024 interpretive rule, see NCLC, [What Rights do Buy Now, Pay Later Purchasers Have?](#) (June 26, 2025), because the CFPB’s rule only addressed the protections that apply to BNPL accounts that access closed end credit. If the BNPL credit is explicitly structured as open-end, then the additional protections under the Credit Card Accountability, Responsibility and Disclosures Act of 2009 (Credit CARD Act) would apply.

BNPL zero-interest loans, by definition, are loans “without any interest or finance charge.” N.Y. Banking Law § 736(3)(a). Regulations should prohibit zero-interest BNPL lenders from collecting or receiving any fees, costs or amounts payable other than late fees.

The BNPL Act does not directly define either “interest” or “finance charge.” However, New York generally views the term “interest” very broadly. See § 745(1)(c) (lenders may not “directly or indirectly charge, contract for, or receive any interest, discount, or consideration” greater than the rate permitted by the superintendent and in no case greater than NY Gen. Oblig. Law § 5-501); NY Gen. Oblig. Law § 5-501 (“No person or corporation shall, directly or indirectly, charge, take or receive any money, goods or things in action as interest on the loan ... at a rate exceeding the rate above prescribed. The amount charged, taken or received as interest shall include **any and all amounts paid or payable**, directly or indirectly, by any person, to or for the account of the lender in consideration for making the loan”) (emphasis added).

Thus, regulations should make clear that BNPL zero-interest loans may not charge, solicit, collect or receive any fee or other amount beyond late fees (see below). Allowing any fees or costs on zero-interest loans would be deceptive, as these loans are typically promoted as “no interest,” implying that they are free. Lenders can also use fees on BNPL zero-interest loans to evade rate caps for installment loans. Examples of fees that should not be allowed for BNPL zero-interest loans include:

- *Installment fees.* For example, Zip charges a fee that varies by the amount of the BNPL loan taken out,⁷ which can result in an APR of over 31%.⁸
- *Service fees* for pay-in-four loans or a “one time card” used outside the BNPL lender’s network.⁹
- *Convenience fees* when a user uses a credit, debit, or prepaid benefits card to pay their installments.¹⁰
- *Purportedly voluntary costs* such as “tips” and “donations.” While those interest evasions have not yet spread to the BNPL market, they could. Regulations should emphasize the fact that the 0% rate cap covers all amounts “paid or payable” or “received.” Since lenders typically market BNPL zero-interest loans as having no interest, allowing the lender to collect any fee or other cost poses a strong risk of deceptive practices.

⁷ Consumer Reports found that the installment fee is \$4 for purchases from \$35 to \$99.99, \$5 for purchases from \$100 to \$199.99, and \$6 for purchases \$200 and above. See Chuck Bell, Consumer Reports, [Buy Now, Pay Later: Consumer Protections Needed for the Popular New Way to Pay](#) at 11 (Nov. 21, 2022) (“Consumer Reports, Buy Now, Pay Later”).

⁸ See <https://zip.co/us/how-it-works> (last visited 8/15/2025) (footnotes 2 and 3 at the bottom of the page describing the cost and APR of a \$335 4-payment loan and a \$400 8-payment loan).

⁹ See Klarna, [One-time Card Service Terms](#) (Mar. 22, 2023). Klarna notes that those service fees could cost a “loyal” Klarna consumers about \$12 per month. See Klarna, Press Release, [Klarna enters booming subscription market with the launch of Klarna Plus in the US](#) (Jan. 24, 2024).

¹⁰ Consumer Reports, Buy Now, Pay Later, *supra*, at 11.

- *Add-ons and expedite fees.* DFS should also prohibit fees for services such as expediting a payment¹¹ or other add-ons in connection with the credit. This is consistent with the approach of the federal Military Lending Act, which includes add-on services as part of the finance charge in computing the military APR.¹²

Subscription fees should also be prohibited on BNPL zero-interest loans. If a lender wishes to charge a subscription fee, it should get an installment loan license and ensure that the subscription fee does not cause the loan to exceed the rate cap, as discussed below. Moreover, subscription plans are inherently problematic because consumers incur costs even if they do not take out loans. Subscriptions may induce higher levels of unaffordable borrowing because the consumer feels they have already paid for the credit so they should to take advantage of it. Subscriptions can also be difficult to cancel. The Federal Trade Commission has brought lawsuits over cash advance apps that hide their fees and make it difficult to cancel subscriptions.¹³

Lenders may claim that subscription fees cover other services or perks and not the loan.¹⁴ But often the perks have little value and companies find ways to make the free version unattractive and less usable in order to push people into signing up for subscriptions. It would be difficult for DFS to police what the subscription fee covers. Thus, the best approach is to prohibit all fees for BNPL zero-interest loans and to ensure that fees on BNPL installment loans do not exceed the rate cap.

B. BNPL installment loans

DFS is required “to establish a maximum cumulative amount of all charges and fees that a buy-now-pay-later lender can charge a consumer in connection with each category of buy-now-pay-later loans.” N.Y. Banking Law § 745(2). Lenders may not “directly or indirectly charge, contract for, or receive any interest, discount, or consideration” that exceeds the maximum set by the superintendent, and that “in no case greater than the rate permitted by General Obligations Law § 5-501 (Rate of interest).” N.Y. Banking Law § 745(1)(c).

¹¹ The expedite fees that are used as an interest evasion in the cash advance market might not seem well suited to BNPL loans, which are typically approved instantly at the point of sale. But one could imagine an evasive service that charged a fee to authorize an instant BNPL loan or amount of credit immediately before a purchase, while offering a fee-free option to authorize credit the next business day.

¹² 10 U.S.C. § 987(i)(4); 32 C.F.R. § 232.4(c).

¹³ FTC, Press Release, FTC Action Leads to \$18 Million in Refunds for Brigit Consumers Harmed by Deceptive Promises About Cash Advances, Hidden Fees, and Blocked Cancellation (Nov. 2, 2023); FTC, Press Release, FTC Acts to Stop FloatMe’s Deceptive ‘Free Money’ Promises, Discriminatory Cash Advance Practices, and Baseless Claims around Algorithmic Underwriting (Jan. 24, 2024).

¹⁴ See, e.g., Klarna, Press Release, [Klarna enters booming subscription market with the launch of Klarna Plus in the US](#) (Jan. 24, 2024).

For BNPL installment loans, DFS should make clear that the 16% interest rate cap in N.Y. General Obligations law § 5-501 applies,¹⁵ and that the rate cap includes all charges, fees or other costs other than limited late fees (discussed below). This cap should include any cost however labeled, including application, origination, participation, subscription, installment, payment plan and any other type of fee or cost such as tips, donations or expedite fees, as discussed in Section 3.A above. Fees that increase the cost of loans above the stated interest rate mislead people about the cost of credit and make APR disclosures deceptive.

For the reasons discussed in the previous section, subscription fees should be encompassed within the rate cap. Otherwise, those fees will be used as an evasion and will circumvent the requirement that lenders may not “directly or indirectly charge, contract for, or receive any interest, discount, or consideration upon the loan, use, forbearance of money, goods, or things, or inaction, or upon the loan, use, or sale of credit” greater than the rate permitted. N.Y. Banking Law § 745(1)(c). Subscription fees are directly charged and received in connection with a lending plan.

Regulations should also explain how to calculate the interest rate when providers charge or collect fees like subscription fees that are not charged in connection with a specific loan. We offer these suggestions:

- Prohibit participation fees and other flat fees that are not tied to the amount of credit and are not clearly encompassed within the APR. Those fees distort the APR and lead to evasions of the state’s rate cap.
- Alternatively, if any such fees are permitted, the lender should be required, each month, to ensure that the interest rate for all credit extended that month, including any subscription fee and other costs other than late fees, does not exceed the rate cap. If it does (i.e., because there was a monthly fee but no credit extended, or the monthly fee together with any other costs exceeds the interest rate when applied against the amount of credit), then the lender should be required to refund the consumer any excess.
- Allow origination, application and other fees only if they do not cause the APR to exceed the rate cap.
- Incorporate the federal Military Lending Act regulations effective October 1, 2015, 80 Fed. Reg. 43560 (July 22, 2015). The MLA regulations specifically include participation fees, such as subscription fees, in the military APR. 32 C.F.R. 232.4(c)(iii)(C).

4. Late fees and other penalty fees

The Act requires the Superintendent to set the maximum amount or percentage allowed for late payment, default and other penalty fees. Lenders may only charge one fee for each late payment, default, or violation. N.Y. Banking Law § 745(2).

¹⁵ General Obligations Law § 5-501(1) limits interest to 6% per year unless a different amount is prescribed in Banking Law § 14-a. Banking Law § 14-a(1) sets the maximum interest under section 5-501 at 16% per year.

For both zero-interest and installment BNPL loans, late fees should be limited to a total of \$8 per month, including all purchases or credit extended under a particular account. That is the amount that the Consumer Financial Protection Bureau determined was reasonable for credit card lenders,¹⁶ and BNPL loans are used as an alternative to (in fact, are a form of) credit cards.

Late fees must be kept low in order to provide incentives to underwrite for ability to repay and to ensure that late fees are not a profit center. Indeed, some BNPL lenders do not charge late fees at all. The CFPB found that limiting credit card lenders to \$8 per month would encourage them to use other measures to help consumers pay on time.¹⁷

It is essential that regulations specify a total monthly cap on late fees, not just a per loan amount. Given the structure of BNPL loans, with separate payment terms at biweekly intervals based on the date of each purchase, consumers can have numerous payments due in a given month. Thus, unaffordable lending could lead consumers to incur multiple late fees that could add up. The complicated payment structure of BNPL loans is one of the significant downsides compared to a credit card, which has only a single payment each month. BNPL lenders should be required to monitor and consider the consumer's ability to handle and manage all of the credit that has been extended by that lender (and other lenders). Lenders also should not be allowed to profit from multiple late fees on unaffordable loans. Lenders can have incentives to break loans into small pieces and charge multiple small fees to pad profits, as the New York Attorney General found in its lawsuit against DailyPay.¹⁸

With respect to a per payment limit on late fees, N.Y. Banking Law § 351(5)(b)(i) limits licensed lenders to default charges of 5% of an installment in default by more than 10 days. A five percent limit may be appropriate for BNPL late fees as well, though as noted above, an overall monthly cap is essential. For example, if a consumer had three \$100 loans that each have \$25 payments, the lender could charge a \$1.25 late fee on each late payment, which would be no more than 5% of the late payment and cumulatively \$7.50 that month even if six payments were late. If the consumer had three \$200 loans with \$50 payments, individual late payments could be \$2.50, but the cumulative maximum could not exceed \$8.

As discussed in Section 8 below, if DFS requires lenders to provide a monthly statement aggregating all loans, payments and fees, that statement can be used as a vehicle to ensure that penalty fees stay within the monthly cap.

All penalty fees and other fees related to late or potentially late payments should be encompassed within the limit on late fees. Otherwise, lenders will come up with other ways of

¹⁶ Credit Card Penalty Fees, Final Rule, 89 Fed. Reg. 19128 (Mar. 15, 2024).

¹⁷ See, e.g., 89 Fed. Reg. at 19197 ("If issuers bear no net cost from late payments, or even profit from them, then they have no incentive to take even inexpensive steps to reduce the incidence of late payments. Even with this final rule changes, Larger Card Issuers will not have incentives to take all steps they could that would efficiently reduce the incidence of late payment since the late fees they do charge mean they do not bear the full cost of late payments.").

¹⁸ See NCLC, [DailyPay Extracts Hundreds of Dollars From Low-Wage Workers' Pay](#) (May 8, 2025) (summarizing data from NY AG complaint).

charging late fees and of profiting from struggling consumers. For example, Sezzle has charged:

- a failed-payment fee when an electronic funds transfer fails
- a reschedule fee when more than one payment reschedule has been applied to a single order.¹⁹

Yet both of those are related to the fact that a payment is late or is about to be late. Thus, they should be included in an \$8 per month cap on late fees.

5. Responsible underwriting

BNPL loans are disproportionately used by subprime consumers, who often are struggling with other credit and who often experience problems like overspending and missed payments.²⁰ Yet pay-in-four BNPL lenders do little to no underwriting to ensure that borrowers can afford to repay the loans. While they may consider various data sources and will stop making new loans if a consumer defaults, the lenders' primary aim is to ensure that the lender is repaid, which is not the same thing as responsible underwriting to ensure the borrower has the ability to repay. Automatic payments over a short period of time ensure that lenders will collect and keep default rates low. However, even if the lender is being repaid, automatic payments can trigger overdraft fees or lead borrowers to struggle to handle BNPL payments while meeting other expenses.

BNPL installment loans may entail actual underwriting. But they, too, typically debit accounts automatically for payments and may be able to collect even if the consumer is struggling. The right to automatically debit an account is a form of collateral-based lending.

The BNPL Act requires lenders, before offering a BNPL loan, lenders must assess the borrower's ability to repay using "reasonable risk-based underwriting" and clearly share what factors are considered.

Reasonable, responsible underwriting should be designed to minimize the risk of unaffordable lending to ensure that the borrower:

- has the ability to repay the BNPL loan
- while meeting other expenses,
- without reborrowing.²¹

Collateral-based lending, such as loans secured by the right to debit bank accounts, may ensure that the lender can collect with low default rates, but that is not the same thing as underwriting for ability to repay.

¹⁹ See Consumer Reports, Buy Now, Pay Later Loans, *supra*, at 11.

²⁰ Lauren Nowacki, Bankrate, [Survey: About half of buy now, pay later users have experienced issues like overspending and missing payments](#) (May 5, 2025).

²¹ See NCLC, [Federal ability-to-repay requirements for small dollar loans and other forms of non-mortgage lending](#) (Nov. 2021).

The lender should be required to consider *both* the consumer's income or assets *and* the consumer's current obligations, as credit card lenders must do, to ensure that the consumer will be able to make the scheduled payments.²² Credit cards are routinely opened at the point of sale both in department stores and online, i.e. when offered in connection with the purchase of an airline ticket. There is no reason that BNPL lenders cannot comply with the same requirements when the consumer opens up a BNPL account. We understand that BNPL lenders already collect information like the Social Security number when a new account is opened (which enables them to make a soft inquiry from a credit bureau), and the additional information required under credit card rules is minimal.

Lenders should also account for the fact that consumers may have loans from multiple BNPL lenders. While the current state of BNPL credit reporting may make that difficult, consumer reports are not the only source of information. For example, cashflow underwriting tools that account for all of the consumer's expenses can be a more accurate way to assess the ability to take on and repay more debt. We do not support a mandatory requirement for lenders to report BNPL loans to the Big Three credit bureaus, but New York could require the creation of a separate database, which would be a specialty consumer reporting agency.

Lenders should be required to evaluate their underwriting continuously and to make adjustments if a borrower has significant late or bounced payments. Late or bounced payments are a strong indicator of unaffordability even if the lender is eventually repaid. As discussed below, DFS should collect data on late and bounced payments.

The BNPL Act also prohibits use of information about the credit of the borrower's social network or group averages when making lending decisions. N.Y. Banking Law § 746(2). DFS should ensure that other inappropriate factors are not used in underwriting, especially those that correlate with race or other protected characteristics.

6. Measures to prevent overdraft fees and automatic collection of unaffordable loans

One way to help enforce the requirement to implement risk-based underwriting is to prevent BNPL lenders from repeatedly debiting accounts that have insufficient funds. Most BNPL loans are secured by automatic debit card payments.

BNPL loans are currently covered by the CFPB's payday loan rule, which prohibits lenders from continuing to debit an account after a payment bounces two consecutive times.²³ After two consecutive bounces, the lender may not debit the account again, including for a subsequent payment, unless the consumer specifically authorizes it. The CFPB determined that it is an unfair and abusive practice for a lender to make further attempts to withdraw payment from

²² Reg. Z, 12 C.F.R. § 1026.51(a)(1)(i).

²³ 12 C.F.R. § 1041.7 *et seq.*; see Lauren Saunders & Carla Sanchez-Adams, [Rule on Bounced Payday and High-Cost Loan Payments Now in Effect](#) (Apr. 23, 2025).

consumers' accounts after two consecutive failed attempts unless the lender obtains the consumers' new and specific authorization to make further withdrawals from the account.²⁴

However, a trade association representing BNPL lenders has asked the CFPB to exempt them from the rule.²⁵ It appears that the CFPB is planning to open a new rulemaking to amend the rule.²⁶

If a payment has bounced twice, that is a strong indicator that the loan is unaffordable. That is especially true because debits may be paid despite the account having insufficient funds if the consumer is opted in to overdraft coverage.²⁷ If the payment bounces twice, a third payment, even if it goes through, may generate an overdraft fee, or may leave the consumer with insufficient money to pay other important expenses like rent, food and medical care. Lenders can ask the consumer to reauthorize automatic payments, can work out a payment plan, or can use other collection tools. However, they should not be allowed to continuously debit accounts for unaffordable loans, especially given their obligation to engage in risk-based underwriting. Giving lenders some exposure on unaffordable loans will provide greater incentives to do appropriate underwriting.

Codifying the CFPB bounced payment rule would be consistent with DFS's authority to promulgate rules to implement the provisions of the BNPL Act and to protect consumers. Such a rule would help implement the underwriting provision and would protect consumers from practices that the CFPB determined to be unfair and abusive.

7. Credit Reporting

While BNPL lenders had begun to report loans to credit bureaus, some still are not or have stopped in light of reports that banks are treating use of BNPL credit negatively even if the consumer is successfully making payments.²⁸ Some of the largest BNPL providers, such as Afterpay and Klarna, have stated they will not be furnishing consumer payment data to the credit bureaus because they contend the way the system is currently set up could hurt credit scores of consumers who are repaying their loans.²⁹

²⁴ 12 C.F.R. § 1041.7; 82 Fed. Reg. 54472, 54731 (Nov. 17, 2017).

²⁵ [Letter from American Fintech Council to Russell Vought](#) (Mar. 13, 2025).

²⁶ Lori Sommerfield & Chris Willis, Consumer Financial Monitor, [CFPB Briefly Releases Semi-Annual Rulemaking Agenda Amidst Uncertainty](#) (Aug. 21, 2025).

²⁷ Banks often push people unknowingly into opting in to allow overdraft fees on debit card transactions. See Nick Bourke & Rachel Siegel, Pew Charitable Trusts, [Customers Can Avoid Overdraft Fees, but Most Don't Know How: Bank disclosures and poor communication obscure options despite federal law](#) (Mar. 21, 2018).

²⁸ Imani Moise, Wall Street Journal, [Banks Hate 'Buy Now, Pay Later'—and May Penalize Its Users](#) (July 22, 2025).

²⁹ Afterpay, [Does Afterpay conduct credit checks?](#) ("Afterpay does not currently report to credit bureaus in the United States, and we won't until we see concrete evidence that BNPL data reflecting responsible payment behavior will help, not hurt, the credit scores of our customers."); Imani Moise, Wall Street Journal, [Push to Add 'Buy Now, Pay Later' Loans to Credit Scores Hits a Snag: Klarna says it plans to withhold data until it is assured its customers won't be unfairly penalized](#) (Aug. 5, 2025).

Thus, it is not clear how much reporting will help credit scores in the immediate future, and reporting may hurt credit scores under older scoring models, even if the consumer pays on time. Nor is it apparent what implications use of BNPL credit should have for underwriting if the consumer is making BNPL payments. With only a limited set of BNPL data, it is not known whether there is a sufficient amount for empirical research by credit scoring modelers to analyze the predictiveness of BNPL repayment behaviors. If the consumer defaults on a BNPL loan, the lender or a debt buyer may report the debt, which will definitely harm the consumer's credit score.

BNPL is structured very differently from the traditional types of credit that make up the bulk of credit bureau data. FICO has attempted to address some of this by aggregating BNPL loans, but this may not be sufficient to conform this product to the standardized credit reporting format.³⁰ Credit reports are built to look at payments in 30-day increments, not the bi-weekly payment structure of BNPL pay-in-four loans. The standardized Metro 2 format does not even consider a loan payment to be late unless it is 30 days late; how does that work with loan payments that are due every 14 days?

The BNPL Act prohibits lenders from providing inaccurate data to consumer reporting agencies. N.Y. Banking Law § 744(2)(d). Lenders must maintain policies and procedures for keeping accurate data. § 746(3). While these requirements echo those imposed on furnishers under the federal Fair Credit Reporting Act, the furnisher provisions are not privately enforceable.³¹

Consumers may believe that use of BNPL credit will not affect their credit reports or scores or will help them build credit, which may not be accurate. Those beliefs could be compounded by representations lenders may make, such as “no credit check.”

DFS should require lenders to clearly disclose whether and how they report to credit bureaus. This information should not just be buried in vague language in the fine print of agreements but should be in clear language readily available on websites and in apps and should be updated as practices change. While the Fair Credit Reporting Act requires a one-time consumer notice if a financial institution furnishes negative information about that customer,³² that notice is not sufficient, as the notices are buried in fine print and do not cover potentially positive reporting.

DFS should lenders from making or implying any claims about how BNPL products may improve credit scores or reports. It is simply not possible to make any accurate claims or implied representations in light of the current state of BNPL credit reporting.

8. Refunds, Disputes and Errors

³⁰ FICO, FICO Unveils Groundbreaking Credit Scores That Incorporate Buy Now, Pay Later Data. Une 23, 2025, <https://www.fico.com/en/newsroom/fico-unveils-groundbreaking-credit-scores-incorporate-buy-now-pay-later-data>

³¹ 15 U.S.C. § 1681s-2(c).

³² 15 U.S.C. § 1681s-2(a)(7).

BNPL lenders often have complicated procedures for providing refunds or disputing charges, even when consumers are clearly entitled to them. As a result, people have had trouble canceling BNPL loans when they did not get what they paid for or when purchases were returned. BNPL accounts can also have unauthorized charges, billing errors, and inappropriate fees, but lenders did not always have clear and timely dispute procedures. Federal law likely requires BNPL lenders to comply with the same dispute and error resolution procedures that credit cards follow. However, there is some uncertainty now that the CFPB has rescinded the BNPL interpretive rule.³³

The BNPL Act prohibits lenders from misapplying payments to the outstanding balance of any loan or to any related fees. N.Y. Banking Law § 744(2)(c). Lenders must ensure “fair, transparent, and not unduly burdensome” processes for providing refunds or credits when consumers are entitled to them. They must also maintain clear policies and disclose refund procedures in a “clear and conspicuous” manner. § 746(4). Lenders must provide fair, transparent, not unduly burdensome methods for resolving consumer disputes. *Id.*

Importantly, the BNPL Act requires lenders to follow the unauthorized charge, error resolution, and chargeback requirements that apply to credit cards under the federal Truth in Lending Act,³⁴ regardless of whether BNPL accounts are considered credit cards under TILA. N.Y. Banking Law § 746(5). That is, even if TILA does not directly apply, New York law requires BNPL lenders to follow those requirements.

Whether in guidance or otherwise, DFS should summarize the requirements for lenders, which include, *inter alia*:

- Protecting the consumer from liability for unauthorized charges, with the burden on the lender to show that a charge was authorized;³⁵
- Correcting billing errors, including unauthorized charges, charges for goods or services not accepted or delivered, payments not properly reflected, and computational errors.³⁶ The TILA billing error provisions also require lenders to respond to requests for clarification.
- Allowing consumers to dispute BNPL charges based on claims or defenses against the merchant (commonly known as “chargeback” protections),³⁷ which protects people from having to repay credit when they did not get what they paid for.

While consumers must submit a “written” notice of a billing error in order to trigger TILA’s error resolution requirements,³⁸ DFS should require lenders to address disputes if submitted in any reasonable manner, including electronic, i.e., through a website, email or chat, and by telephone. In addition, as discussed below, requiring monthly statements will help facilitate the billing error requirements.

³³ See NCLC, [What Rights Do Buy Now, Pay Later Purchasers Have?](#) (June 26, 2025).

³⁴ 15 U.S.C. §§ 1643, 1666, 1666a, 1666i.

³⁵ 15 U.S.C. § 1643(a), (b).

³⁶ 15 U.S.C. §§ 1666, 1666a.

³⁷ 15 U.S.C. § 1666i.

³⁸ 15 U.S.C. § 1666.

The BNPL law specifically allows DFS to promulgate rules and regulations for treatment of unauthorized use. DFS should go beyond TILA and require BNPL lenders to protect consumers from liability for the full amount of any unauthorized charge, rather than only the amount above \$50. Under Visa and MasterCard rules and bank custom, credit card companies do not hold consumers responsible for that first \$50, and BNPL lenders regularly tell consumers that BNPL products are safe and consumers are protected. People do not expect that they could be held responsible for any part of a BNPL charge that was unauthorized, and DFS should clarify that they have that protection.

DFS can also strengthen and enforce the chargeback protections by requiring lenders to incorporate the “holder” language required by the FTC’s Holder in Due Course Rule.³⁹ That rule applies to merchants that arrange financing in connection with a sale of goods or services, and requires that the credit agreement contain language making the credit contract subject to all claims and defenses that the borrower could assert against the seller. The FTC rule itself may not directly apply to BNPL zero-interest loans, though it would apply to interest bearing loans.⁴⁰ DFS should require the holder language to be included in both types of BNPL loans. Relatedly, it should require a disclosure of the chargeback rights.

The holder rule language would be helpful for a couple of reasons. First, it would make clear on the face of the BNPL agreement that the consumer may assert seller related claims and defenses against the creditor. Second, some types of BNPL debt may be sold to debt buyers, and including the holder language would especially strengthen the consumer’s protections against third parties that do not have dispute resolution systems and ignore the consumer’s seller-related claims and defenses. This may be especially important in areas like financing of potentially predatory for-profit schools and other areas where BNPL credit could be used for significantly large amounts in problematic contexts.

9. Statements

In order to implement the error resolution requirements and to help people budget and monitor their BNPL loans, DFS should require lenders to provide monthly statements that include all loans, fees and costs, payments made, and payments due for all BNPL loans from that lender that month. Indeed, the TILA billing error procedures discussed above require that consumers provide notice of a dispute no later than 60 days after the statement that reflects the error.⁴¹ If BNPL lenders do not issue a statement, the consumer technically never has a deadline for submitting a billing error dispute.

³⁹ 16 C.F.R. § 433.2. The rule is formally known as the “Trade Regulation Rule Concerning Preservation of Consumers’ Claims and Defenses.”

⁴⁰ See 16 C.F.R. 433.1(i).

⁴¹ 15 U.S.C. § 1666(a); Reg. Z § 1026.13(b)(1).

While TILA likely requires BNPL lenders to send statements,⁴² DFS should reinforce that obligation by requiring statements at least monthly. Statements with all information about all loans in one place are essential to enable consumers to review their accounts for errors and unauthorized charges. Otherwise, consumers may be confused about which payments or which costs go to which loan. Statements will also help consumers see all payments that are due to be debited from their accounts and when, and will help them manage their finances by being able to see their total spending and costs.

10. Consumer Data

BNPL lenders collect significant amounts of user data, and they may share that data or sell it to third parties without obtaining clear consumer consent beyond fine print disclosures. The data collected can include a consumer's precise location, name, address, phone number, and credit score. Data may also be used, shared or sold in ways that consumers do not expect and would not want.

The BNPL Act allows lenders to use, sell, or share consumer data only with the consumer's consent (except to the extent permitted by the FCRA). Prior to obtaining consent, lenders must clearly and conspicuously disclose how the data will be used and how the consumer can withdraw their consent. DFS should issue regulations that specify how BNPL can obtain consent in a clear and conspicuous manner, including through a sample disclosure and authorization.

DFS can prohibit certain uses of consumer data through regulation. DFS should prohibit BNPL lenders from selling or sharing data to third parties for purposes of targeted personalized marketing or debt collection unrelated to the collection of the BNPL loan itself.

Regulations should allow lenders to share or sell data only for purposes necessary to provide the loan and should prohibit them from using, sharing or selling consumer data for purposes that the consumer would not expect. The CFPB's 2024 rule under Section 1033 protects consumers from improper sharing, but the rule has been challenged and the CFPB has said it will be revised.⁴³ DFS should draw from the 2024 rule in order to enact robust protections for New York borrowers.

11. Fair Lending

Data show that Black, Hispanic and female consumers are more likely to use BNPL products than other groups.⁴⁴ Black (26 percent) consumers are more likely than white (16 percent) consumers; Hispanic (24 percent) consumers are more likely than non-Hispanic (15 percent)

⁴² See *supra* note 33.

⁴³ See CFPB, [CFPB Finalizes Personal Financial Data Rights Rule to Boost Competition, Protect Privacy, and Give Families More Choice in Financial Services](#) (Oct. 22, 2024).

⁴⁴ See CFPB, Press Release, [CFPB Publishes New Findings on Financial Profiles of Buy Now, Pay Later Borrowers](#) (Mar. 2, 2023) ("Black, Hispanic, and female consumers are more likely than average to use Buy Now, Pay Later products, along with consumers with income between \$20,001-\$50,000.").

consumers to have made a purchase using BNPL; and women are more likely to borrow using BNPL (20 percent) compared to men (14 percent).⁴⁵

Relatedly, the majority of BNPL originations are taken out by people with subprime or deep subprime credit scores,⁴⁶ and consumers with low credit scores disproportionately come from communities of color and other disadvantaged communities.⁴⁷ These groups, therefore, will be especially impacted if BNPL loans are unaffordable, harm credit scores, or have other negative impacts. This disparate impact heightens the importance of strong rules to ensure that BNPL loans are safe and fair.

The use of artificial intelligence (AI) to make BNPL loans, as in other types of lending, could also result in disparate impacts. If the data that goes into AI models correlate with race, or if underwriting models focus on struggling consumers, people of color and other protected communities could be targeted for unaffordable loans, could be improperly denied credit, or could be offered credit on worse terms.

New York bans credit discrimination based on a wide array of factors. Exec. Law § 296-a. DFS should monitor the market for discrimination in the BNPL market and should issue guidance for BNPL lenders, particularly in connection with the use of AI, which can result in disparate impacts that are difficult to detect.

12. Language access

BNPL loans may be marketed in other languages and targeted at communities with limited English proficiency (LEP). However, whether or not marketing was in another language, providers should provide disclosures, apps and websites, as well as customer service phone lines, in Spanish and other languages. About 2.5 million out of the 20 million residents in New York State (or 12.5%) are LEP.⁴⁸ These New Yorkers need adequate information to make an informed decision about BNPL loans.

The BNPL Act does not have any specific provisions governing language access. However, New York State has had a strong policy of providing language access.⁴⁹

⁴⁵ *Id.*

⁴⁶ CFPB, [Consumer Use of Buy Now, Pay Later and Other Unsecured Debt](#) (Jan. 2025).

⁴⁷ NCLC, [Past Imperfect: How Credit Scores and Other Analytics “Bake In” and Perpetuate Past Discrimination](#) (Feb. 27, 2024).

⁴⁸ New York State Office of General Services, New York State Language Dashboard, <https://ogs.ny.gov/language-dashboard>.

⁴⁹ New York state agencies are required to provide language access to residents under its language access law. N.Y. Exec Law § 202-a. Moreover, New York requires translated documents for certain types of transactions already. N.Y. Pers. Prop. Law § 428 (McKinney) (door-to-door sales), N.Y. Gen. Bus. Law § 369-ee (McKinney) (cancellation notices for prize awards), N.Y. Gen. Bus. Law § 394-c(7)(b) (McKinney) (dating services), N.Y. Real Prop. Law § 265-a(3) (McKinney) (requiring delivery of Spanish-language copies of “contracts incident to foreclosure” and notice of cancellation thereof if homeowner speaks primarily Spanish), N.Y. Real Prop. Acts. Law § 1304(5) (McKinney) (requiring delivery of foreclosure notice in common foreign languages if borrower speaks limited English).

DFS should require BNPL lenders to make key disclosures and other written information available in English and Spanish. About half of New Yorkers who are LEP are Spanish speakers,⁵⁰ and Hispanics are high users of BNPL loans.⁵¹ In addition, any vital required documents should include taglines on the English versions of the documents in other top LEP languages notifying consumers that translated versions (not summaries) are available in those languages (and such translated documents should be required to be generated and provided). Companies also should be required to have customer service available in Spanish and in any other top 11 languages in which it markets, through either staff or a language line.

13. Licensed and Unlicensed Lending

The BNPL Act requires lenders, other than exempt financial institutions, to obtain a license. N.Y. Banking Law § 737(1). The Act defines “Buy-now-pay-later lender” to include not only those making loans but also those “offers” loans, including by operating a platform. § 736(4). Thus, even if a loan is originated through a bank or other exempt organization, a nonbank that offers the loan or operates a BNPL platform must obtain a license.

The BNPL Act also makes loans by unlicensed or unauthorized persons void, and there is no right to collect or receive any payment by consumers on such loans. § 746(7).

In order to enforce this provision, DFS should provide a list of licensed BNPL lenders on its website, and should provide clear information that any loans by unlicensed lenders, other than those that are exempt, are void.

14. Data and Reports

The BNPL Act requires lenders to provide annual reports, with the content to be determined by the Superintendent. N.Y. Banking Law § 743(2). DFS should require those reports, at a minimum, to contain information about:

- The median, mean and range of the size of loans;
- The median, mean and range in the number of loans individual consumers take out at one time and over the course of a year;
- Fees or other costs that consumers are paying, including total amounts, median, mean and ranges for each type of fee or cost and total cost;
- The APRs, including all fees other than late fees, for each type of loan the lender makes, including the average and the range;
- Rates of late payment, bounced payments, defaults, and alternative payment plans, including refinancing; and

⁵⁰ New York State Office of General Services, New York State Language Dashboard, <https://ogs.ny.gov/language-dashboard>

⁵¹ See CFPB, Press Release, [CFPB Publishes New Findings on Financial Profiles of Buy Now, Pay Later Borrowers](#) (Mar. 2, 2023)

- Information on any marketing the lender does in other languages and any written translations or oral interpretation it makes available.

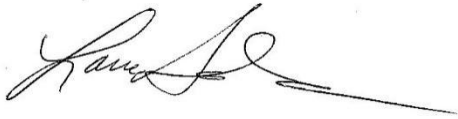
DFS should make the lender reports available to the public on DFS's website.

DFS should also provide an annual public report summarizing the data in individual reports and the state of the BNPL market. The BNPL market is rapidly evolving, and New York's new regime will provide an important contribution to help the public and regulators in other states understand industry practices, risks and consumer protection issues.

* * *

Thank you for the opportunity to submit these comments. Please contact me at lsaunders@nclc.org or (202) 595-7845 if you have any questions.

Yours truly,

A handwritten signature in black ink, appearing to read 'Lauren Saunders', with a long horizontal flourish extending to the right.

Lauren Saunders
Associate Director
National Consumer Law Center