



States Can Protect Buy Now, Pay Later Borrowers

February 2026

New York has passed the first comprehensive law to protect shoppers who use Buy Now, Pay Later (BNPL) loans. Some details remain to be fleshed out through regulations, and the law does not address every issue BNPL borrowers may face. But it is a significant step forward and provides a helpful roadmap for other states. Here are some of the highlights of the [New York Buy-Now-Pay-Later Act](#) (NY BNPL Act) and suggestions for how they can be implemented in New York or adapted in other states to protect BNPL users.

Background

With the typical “pay-in-four” BNPL loan, a quarter of the price is due at checkout followed by three additional payments every two weeks for the next six weeks. Most BNPL loans carry no interest or up-front fees, but they can charge late fees and other fees. This issue brief focuses primarily on BNPL loans that require four payments. The New York law also covers other interest-bearing credit offered at retail stores, and new business models may emerge.

As with all forms of credit, BNPL loans can be useful if the loans are affordable. But BNPL loans have [many risks](#), including hidden costs, unaffordable debt, overdraft fees, issues with disputed or returned purchases, complicated repayment dates, loan stacking from multiple providers, and risks to credit reports and scores. [Most BNPL loans](#) are taken out by users with subprime or deep subprime credit scores. BNPL borrowers are [disproportionately](#) Black, Hispanic, female, and younger, and these populations will be especially impacted by BNPL’s risks.

State protections and oversight for BNPL loans are especially important now that the Consumer Financial Protection Bureau (CFPB) has been gutted. The CFPB [has also created ambiguity](#) about the protections under federal law. States can fill those gaps. State action is also critical given the high risks of BNPL loans and the historically marginalized populations that disproportionately use the loans.

Building on the New York model, states looking to regulate BNPL lenders should address:

- 1. Broad scope addressing different types of loans**
- 2. Clear disclosures**
- 3. Interest and fee limits**
- 4. Reasonable underwriting for ability to repay**
- 5. Repeat Debiting that Triggers Overdraft Fees**
- 6. Credit reporting and data sharing**

- 7. Refunds, disputes, and errors
- 8. Easy Cancellation of Subscriptions
- 9. Unfair, deceptive or abusive practices
- 10. Fair lending
- 11. Language access
- 12. Consumer remedies
- 13. Reports, available to the public

1. Broad scope addressing different types of loans

The problem: Some state lending laws are written with narrow coverage and only reach loans that charge interest. Laws may have other gaps.

NY BNPL Act: The NY BNPL Act has a fairly broad scope. It applies to closed-end credit provided to a consumer in connection with the consumer's particular purchase of goods or services, other than a motor vehicle. The Act covers both "buy-now-pay-later zero-interest loans" that have no interest or finance charges, as well as "buy-now-pay-later installment loans" that have interest or finance charges.

Additional protections: Laws should also cover open-end credit, such as a BNPL account styled as a line of credit. In fact, BNPL accounts effectively operate as a line of credit by giving users an "available to spend" amount.

When crafting the scope of a BNPL law, states should be mindful to cover the growing use of BNPL loans and other split payment loans in a wide variety of contexts, not just retail, including health care, rental housing (for security deposits, move-in expenses, and rent payments) and debt settlement.

2. Clear disclosures

The problem: While BNPL loans promise "no interest," they can charge various fees, including monthly fees, installment fees for longer loans, convenience fees for using a card to make payments, late fees, failed payment fees, and rescheduling fees. These fees are not always clearly disclosed and can add up to the equivalent of a high annual percentage rate (APR). The lack of standardized fee and APR disclosures makes it difficult to compare BNPL companies or to compare BNPL credit to credit cards and other credit options.

NY BNPL Act: BNPL lenders must explain key loan terms—such as costs, the repayment schedule, dispute options, credit reporting, and more—in a "clear and conspicuous" manner. These disclosures must follow federal regulations under the Truth in Lending Act. N.Y. Banking Law (NYBL) § 746(1).

Additional protections: BNPL lenders should also be required to provide the same simple, standardized chart (the “Schumer box”) that credit card companies must provide listing all fees, the APR, and other information.

3. Interest and fee limits

The problem: As noted above, BNPL loans promise “no interest,” but many charge fees that can act as disguised interest. In other markets, lenders ask for so-called “tips” and “donations.” In addition to clear disclosures, the full cost of BNPL loans must be reasonable.

NY BNPL Act: The NY Law allows lenders to make either “buy-now-pay-later zero-interest loans” with no interest or finance charges or “buy-now-pay-later installment loans” that have interest and/or finance charges. Regulations will establish a maximum cumulative amount of interest, charges, and fees that a BNPL lender can charge for each type of loan. Lenders may not directly or indirectly charge, contract for, or receive any interest, discount, or consideration greater than the maximum set and in no case greater than 16% per year, including all amounts paid or payable. NYBL § 745.

The regulations must also set the maximum amount or percentage allowed for origination, late payment, default, and other penalty fees. Lenders may charge only one fee for each late payment, default, or violation. NYBL.

Additional protections:

- For “no interest” BNPL loans, states should not allow any fees other than a limited late fee. Other fees are forms of disguised interest and make “no interest” claims deceptive.
- For interest-bearing loans, states should establish a firm APR cap that includes all fees and other costs, including subscription fees. The federal Military Lending Act regulations generally provide a good model for how to ensure that fees and add-ons do not distort the APR, though states should provide clarity on how to calculate APRs.
- States should make sure that purportedly voluntary costs such as credit insurance, “tips” and “donations” (interest evasions used in [other markets](#)) are included in the APR cap.
- Late fees should be limited to a total of \$8 per month (as the CFPB [attempted](#) to do for credit cards) covering all loans that month. No other type of penalty fee should be allowed. Per payment default charges could also be limited to 5% of the installment in default, as required by NYBL § 351. But a total monthly late fee cap for each lender is essential because many borrowers take out multiple loans in a given month and late fees can multiply, unlike with a credit card that has a single payment each month.

4. Reasonable underwriting for ability to repay

The problem: BNPL lenders do little to no underwriting to ensure that borrowers can afford to repay the loans. Mandatory automatic payments over a short period of time ensure that lenders collect, keeping default rates low, but borrowers may still be incurring overdraft fees or struggling to handle BNPL payments while meeting other expenses. BNPL loans are disproportionately used by people who have subprime credit scores who often are struggling with other credit and who often experience problems such as [overspending and missed payments](#).

NY BNPL Act: Before offering a BNPL loan, lenders are required to assess the borrower's ability to repay using "reasonable risk-based underwriting" and to clearly share what factors are considered. They must not use information about the credit rating of others in the borrower's social network or group averages when making lending decisions. NYBL § 746(2).

Additional protections: To clarify what [reasonable underwriting entails](#) and to ensure that BNPL loans are affordable, lenders should be required to:

- Ensure that the borrower has the ability to repay the BNPL loan, along with other expenses, without reborrowing.
- Consider both the borrower's income or assets *and* the borrower's current obligations, as credit card lenders [must do](#).
- Continuously evaluate their underwriting and make adjustments if a borrower has significant late or bounced payments.

Ensuring that the lender is able to collect and has a low default rate is not the same thing as ensuring ability to repay. Automated repayment, along with debits that may trigger overdraft fees, can result in the lender being repaid even if the loan is unaffordable and results in a cascade of hardships.

5. Repeat Debiting that Triggers Overdraft Fees

The problem: BNPL lenders require automatic payments, which can trigger overdraft fees on unaffordable loans. Lenders may debit accounts more than once if a payment bounces, causing additional fees.

NY BNPL Act: No specific provisions.

Additional Protections: As in the [CFPB's payday loan payments rule](#), lenders should not be allowed to attempt a payment more than twice. If a payment is rejected due to lack of funds two consecutive times, the lender should be prohibited from debiting the account again for that payment or future payments unless the consumer specifically authorizes it.

6. Credit reporting and data sharing

The problem: The impact of BNPL loans on credit reports and scores is unclear. FICO is starting to [incorporate](#) BNPL loans, though [some lenders](#) are, for now, refusing to report on time payments to credit bureaus. Timely payments likely [would not help](#) under older credit scoring models, though FICO is [adjusting](#) newer models. Some banks even [penalize BNPL users](#) regardless of whether they are paying on time. If the borrower defaults on a BNPL loan, the lender or a debt buyer may report the debt, which will definitely harm the borrower's credit score.

BNPL lenders sometimes collect user data to share and sell to third parties without obtaining clear borrower consent, for purposes that the borrower would not expect. The data collected can include a borrower's precise location, name, address, phone number, and credit score.

NY BNPL Act: Lenders must not provide inaccurate data to credit reporting agencies. NYBL § 744(2)(d). They must maintain policies and procedures for keeping accurate data. NYBL § 746(3). A lender can use, sell, or share consumer data only with the consumer's consent, following clear and conspicuous disclosures about how the data will be used and how the consumer can withdraw their consent. However, this does not restrict lenders from using information in accordance with the Fair Credit Reporting Act or furnishing data to credit reporting agencies. NYBL § 746(6). The Department of Financial Services can prohibit certain uses of consumer data through regulation.

Additional protections: States should prohibit lenders from making or implying any unsubstantiated claims about how BNPL products may improve credit scores or reports. In addition to obtaining consent for third-party sharing, lenders should not be allowed to collect data that is not necessary to make the BNPL loans, use the borrower's data in ways the borrower would not expect, or sell data for certain uses such as target marketing. A [CFPB rule](#) finalized in 2024 should serve as a model for data protections, although the rule has been challenged and the CFPB [proposed](#) to revise it

7. Refunds, disputes, and errors

The problem: BNPL lenders often have complicated procedures for borrowers to dispute charges or errors. 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 do 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, but there is some [uncertainty](#).

NY BNPL Act: Lenders must ensure "fair, transparent, and not unduly burdensome" processes for providing refunds or credits. They must also maintain clear policies and disclose refund procedures in a "clear and conspicuous" manner. NYBL § 746(4). Lenders must provide fair, transparent, and accessible methods for resolving consumer disputes. They are also required to

follow the credit card dispute rights and unauthorized charge protections under the federal Truth in Lending Act (TILA). NYBL § 746(5). BNPL lenders must not misapply payments to the outstanding balance of any loan or to any related fees. NYBL § 744(2)(c).

Additional protections: TILA provides strong dispute and error resolution standards, but whether they apply to BNPL loans remains a matter of dispute. States should incorporate those requirements into their state laws, as New York has done. In addition, states should require lenders to provide monthly statements that cover all loans that month. Statements will help BNPL users see all of their loans, fees and payments in one place, enable them to spot errors and unauthorized charges, and monitor their overall debt and fee load.

8. Easy Cancellation of Subscriptions

The problem: Some lenders are moving to subscription models. Subscriptions can be notoriously difficult to cancel and consumers may not realize that they are being billed every month even if they do not take out new loans. The Federal Trade Commission issued a [“Click-to-Cancel” rule](#), but it was overturned in court as outside the FTC’s authority.

NY BNPL Act: A separate provision of the same bill that enacted the BNPL Act requires businesses (not just BNPL lenders) to notify consumers of upcoming renewals and price changes and to provide clear instructions on how to cancel subscriptions. The cancellation process must be simple, transparent, and fair. N.Y. Gen. Bus. Law § 527-a.

9. Unfair, deceptive or abusive practices

The problem: Some lenders engage in unfair, deceptive or abusive practices or use other means to deprive people of their rights. Some state laws against unfair or deceptive acts or practices have [loopholes](#).

NY BNPL Act: Lenders are prohibited from taking confessions of judgment (a method of obtaining an automatic court judgment against the person), from employing schemes to defraud or mislead, or from engaging in deceptive or unfair practices. N.Y. Banking Laws § 744(1), (2).

Additional protections: States should ensure that their law against unfair or deceptive acts or practices (UDAP) is [strong](#), reaches all conduct by BNPL lenders, and includes protections against abusive practices. Violations of the BNPL statute should be considered a violation of the UDAP statute.

10. Fair lending

The problem: BNPL loans are taken out disproportionately by people with subprime credit scores, and credit scores [reflect](#) strong racial disparities. Data show that Black, Hispanic, and female borrowers are especially heavy users of BNPL. To the extent that BNPL loans are unaffordable or harm credit scores, historically marginalized populations will be heavily affected.

NY BNPL Act: The BNPL Act has no fair lending specific provisions, but New York has a strong general fair lending law.

Additional protections: States should ensure that BNPL lenders are covered by strong state laws requiring fair lending and prohibiting discrimination, including practices that have a disparate impact on protected classes or that discourage protected classes from applying.

11. Language access

The problem: BNPL loans may be marketed in languages other than English and targeted at communities with limited English proficiency (LEP), but disclosures, apps, and websites, as well as any customer service phone lines, may not be provided in those languages. Customers with limited English proficiency need adequate information in language to make an informed decision about BNPL loans.

NY BNPL Act: No specific provisions.

Additional protections: States should make vital disclosures and other vital information available in English and Spanish. Over 60% of individuals who are LEP are Spanish speakers, and Hispanics are [high users](#) of BNPL loans. In addition, any vital documents should include taglines or “Babel notices” in the other [top five languages](#) spoken by LEP individuals in the United States, and any additional languages that are spoken by a significant number of LEP individuals in the state. These tagline notices should state that translated versions (not summaries) are available in those languages. Companies should be required to make available those translated materials. In addition, companies should be required to make oral interpretation available in a broad range of languages, either through staff or a language line.

12. Consumer remedies

The problem: People need remedies if they are harmed by violations of the law, but some laws are not clearly enforceable by individuals. People should not have to depend on public enforcement. They need strong remedies against such lenders to be made whole and deter misconduct. Laws should also strongly deter unlicensed and illegal activity.

NY BNPL Act: BNPL loans made by unlicensed or unauthorized persons are void. The lenders have no right to collect or receive any payment by consumers, including the principal of the loan. NYBL § 746(7).

Additional protections: In addition to making unlicensed loans void and uncollectible, the BNPL law should give borrowers a clear private right of action to enforce the requirements of the law with attorneys’ fees and penalties. Enforcement may be possible through the state’s law against unfair or deceptive acts or practices, but some state UDAP laws have gaps or weaknesses that limit their effectiveness.

13. Reports, available to the public

The problem: The BNPL market is rapidly evolving and it is difficult for regulators and the public to understand industry practices, risks, consumer protection issues, and gaps in laws.

NY BNPL Act: Lenders must provide annual reports with the content to be determined by the Department of Financial Services. NYBL § 743(2).

Additional protections: The reports should include, at a minimum:

- Information about the fees and other costs that BNPL users are paying;
- The effective APRs on loans even if APRs are not disclosed;
- Late payment and default rates;
- Use of repayment plans and any refinancing;
- The size and frequency of loans;
- Credit reporting practices; and
- A list of languages the loans are offered in.

Data should include both averages and ranges. Lender reports should be made available to the public, and the regulator should provide an annual public report summarizing the market.

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For more information about BNPL and how states can protect borrowers, see the [Fintech & Disguised Credit](#) page of NCLC's website and NCLC's [comments](#) to the New York Department of Financial Services.