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Fighting Together for Economic Justice

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By email to Craig.Ceilini@Illinois.gov
Craig Celiini
Illinois Department of Financial and Professional Regulation
320 West Washington, 3rd Floor
Springfield, IL 62786

Re: Draft regulations under Buy-Now-Pay-Later Loan Consumer Protection Act

Dear Mr. Cellini,

Thank you for the opportunity to submit comments on the Illinois Department of Financial and Professional Regulation's draft regulations implementing the Buy-Now-Pay-Later Consumer Protection Act (BNPL Act). Since 1969, the nonprofit National Consumer Law Center® (NCLC®) has used its expertise in consumer law and energy policy to work for consumer justice and economic security for low-income and other disadvantaged people in the United States. NCLC's expertise includes policy analysis and advocacy; consumer law and energy publications; litigation; expert witness services, and training and advice for advocates. NCLC works with nonprofit and legal services organizations, private attorneys, policymakers, and federal and state government and courts across the nation to stop exploitative practices, help financially stressed families build and retain wealth, and advance economic fairness.

We support the proposed regulations, which implement the important protections of the BNPL Act. Used sparingly, BNPL loans can provide a reasonable alternative to incurring debt and interest on credit cards. But BNPL loans carry many risks, particularly for the largely subprime population that uses them the most heavily.[1] The loans can be unaffordable, can carry disguised costs, and can make it difficult for consumers to manage their finances. BNPL loans are being promoted for an expanding list of uses, including for basics like food, utilities and rent, as well as for sending funds through person-to-person services. Consequently, it is especially important regulations ensure that the loans be offered in a fair, safe, transparent and affordable manner.

We will submit more detailed comments later once the First Notice for the formal rulemaking is issued. For now, we would like to flag some important improvements needed in the regulations.

Most critically, the $8 per loan late fee limit is far too high. We recommend that late fees be limited to $8 per month in total, for all purchases, consistent with the amount that the Consumer Financial Protection Bureau (CFPB) found was reasonable for credit cards. We estimate that allowing $8 per loan could result in up to $88 a month in late fees for consumers who use BNPL pay-in-four loans every week. Most BNPL borrowers are subprime or deep subprime and

[1] *See* NCLC, Risks and Advice for Buy Now, Pay Later Borrowers (May 19, 2025)

frequently pay late, and is it essential that lenders not exploit or profit off of those borrowers, and that lenders have incentives to ensure that people can afford to repay on time.

Other improvements we recommend:

- The underwriting section should require lenders to assess the borrower's **income and obligations.**
- The regulations should restate the requirement to comply with the **rate cap** of the Predatory Loan Prevention Act and should prevent **subscription fees** and other fees seen on BNPL loans from evading that rate cap.
- The regulations do not address **re-submission of bounced payments** and should codify the protections in the statute.
- The dispute protections should include the ability to assert **claims and defenses** that the consumer has against the seller if they do not get what they paid for, and consumers should not have to bear up to $50 in unauthorized charges.
- Disclosures should automatically be provided to all consumers in **Spanish** as well as English.
- The regulations do not address **privacy protections.** Those protections should be added and, to the extent possible, be modeled after the New York protections.
- Lender's **annual reports should be public**, and **IDFPR should publish its own annual report** summarizing the lenders' reports and market trends.
- IDFPR should establish an **ombudsman for BNPL complaints.**

1. Late fees: Limit to $8 per month in total

The $8 safe harbor late fee for "violating the terms or other requirements of a loan agreement" is too high. Presumably, that safe harbor would permit an $8 late fee for every missed payment on every BNPL loan.

Those fees could multiply excessively, especially as BNPL loans are being used for everyday expenses like food and lenders are encouraging consumers to take out debit cards that they use repeatedly throughout the month.[2] A recent survey found that nearly half (48%) of respondents use BNPL at least weekly.[3] More than one-third of Gen X, Gen Z and millennials use it more than once per week.

For example, if a consumer took out one pay-in-four BNPL loan every week starting March 20, by May they could have six loans outstanding (taken out March 20, March 27, April 3, April 10, April 17, April 24). If the consumer then got into trouble and missed the biweekly payments starting May 1, and took out no further loans, they could incur 11 late fees just in the month of May as follows:

March 20 loan: One late fee May 1.

March 27 loan: One late fee May 8

[2] Fullstory, Fullstory Survey: BNPL is a weekly habit for nearly half of consumers (Mar. 24, 2026).
[3] *Id.*

April 3 loan: Two late fees May 1, May 15

April 10 loan: Two late fees May 8, May 22

April 17 loan: Three late fees May 1, May 15, May 29

April 24 loan: Two May late fees May 8, May 22 (plus one in June)

If each one of those 11 late fees was $8, the total would be **$88 in late fees** in May alone, not counting any additional late payments in June. The only apparent limitation on those fees would be if any of the payments due was less than $8.

In contrast, if the consumer had put those purchases on a credit card, there would be only one monthly late fee. That fee could be no higher than $30, or $41 if it was not the first violation.[4]

That type of exploding late fees can make it impossible for a consumer to get back on track. Even late fees significantly lower than $88 per month would be a high cost for purportedly "free" loans.

Late fees make the promise of free loans deceptive. While not every BNPL lender charges late fees, for those who do, a significant proportion of their borrowers likely pay those fees. The most recent LendingTree survey reports:

> A growing percentage of buy now, pay later (BNPL) users say they've paid late on one of these loans in the past year. Now, 47% of BNPL users have done so, up six percentage points from 2025 and 13 percentage points from two years ago.[5]

The Federal Reserve's Survey of Household Economics and Decisionmaking (SHED) also reports rising numbers of BNPL borrowers paying late, with the rate highest for those with the lowest incomes. Overall, the SHED survey found 26% of borrowers paying late, but 40% for those with under $25,000 in income and 33% for those from $25,000 to $33,000.

These late payment rates are likely even higher at BNPL lenders that charge late fees. Those lenders likely have looser underwriting standards and make up some of the risk of chargeoffs with late fee income. It is important to keep in mind that most BNPL loans go to subprime or deep subprime borrowers and BNPL borrowers are likely to hold high balances on other credit accounts.[6] BNPL lenders specifically target this population and undoubtedly anticipate receiving late fees.

The fact that BNPL lenders often attempt to debit accounts repeatedly if a payment is rejected means that lenders may eventually receive the payment even if it is late and the consumer incurs a late fee. Overdraft fees can add to the burden of late fees.

Late fees also weaken the lender's incentive to underwrite appropriate for ability to repay. While the proposed rules impose a direct ability-to-repay requirement, the requirement is vague and difficult to police. Lenders who know that they can generate substantial revenue through late

[4] 86 Fed. Reg. 60357 (Nov. 2, 2021).
[5] LendingTree, BNPL Tracker: Nearly Half of BNPL Users Have Paid Late in the Past Year, Up for a Second Straight Year (updated Aug. 19, 2026).
[6] CFPB Press Release, CFPB Research Reveals Heavy Buy Now, Pay Later Use Among Borrowers with High Credit Balances and Multiple Pay-in-Four Loans (Jan. 13, 2025).

fees are less concerned about making unaffordable loans and more likely to profit off of those unaffordable loans. The best way to enforce the ability-to-repay requirement is by making it self-policing, with lenders suffering consequences that they cannot recoup through late fees when they make unaffordable loans.

Instead, IDFPR should limit late fees to $8 per month regardless of the number of loans or late payments in that month. That is the same amount that the Consumer Financial Protection Bureau established, after a study of late fees,[7] was a reasonable and proportional penalty for late payments on credit cards.[8] (In 2025, however, the CFPB agreed to vacate the rule after a bank challenge.[9]) Notably, consumers typically make multiple credit card purchases for month, carry far higher credit card debt than their cumulative BNPL debt, and are not required to authorize automatic repayments as they must for pay-in-four BNPL loans. So if $8 per month is a reasonable late penalty for credit card lenders, it should be for BNPL lenders as well.

Notably, some BNPL lenders like Affirm do not charge any late fees at all. So late fees are not necessary, and limiting those fees more significantly will not unduly impede the BNPL market.

Even with an $8 per month safe harbor, the regulations would allow lenders to charge higher fees if they can justify them based on their costs.

2. Underwriting: Include income and indebtedness

The BNLA Act, Section 26, requires lenders to undertake reasonable risk-based underwriting. The lender must consider not only outstanding loans from that lender, but also "the financial ability of the borrower to repay the loan in the time and manner provided in the loan contract."

The draft regulations, however, focus on reviewing the lender's own loan files, which are not sufficient to ensure that the borrower has the financial ability to repay the loan. Past BNPL history with just one lender – which may not even exist – is a tiny slice of the consumer's overall financial picture. Even if the consumer has taken out and repaid other BNPL loans, that does not mean that they have the ability to repay, as lenders debit accounts automatically, and those debits may leave borrowers without enough funds to pay other expenses. BNPL lenders may even receive payments despite an account having insufficient funds if the consumer is opted in to overdraft coverage.

The proposed regulations make a vague reference to reviewing "available data" beyond loan files, and that should be expanded. The New York BNPL statute uses the same "reasonable risk-based underwriting" standard, N.Y. Banking Law Article 14-B, § 746(2). But the proposed New York regulations require "at a minimum, assessing a consumer's income and indebtedness." Proposed 3 NYCRR Part 423, § 423.12(b). IDFPR should add that standard to its regulations.

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[7] CFPB, Credit card late fees (March 2022); *see* CFPB, Press Release, CFPB Finds Credit Card Companies Charged $12 Billion in Late Fee Penalties in 2020 (Mar. 29, 2022).
[8] *See* CFPB, Press Release, CFPB Bans Excessive Credit Card Late Fees, Lowers Typical Fee from $32 to $8 (Mar. 5, 2024).
[9] *See* NCLC, Press Release, CFPB and Chamber of Commerce Move To Remove Limits on Credit Card Late Fees (Apr. 15, 2024).

Without an assessment of both the consumer's income and their other expenses, it is impossible to determine whether the consumer has sufficient residual income to be able to make BNPL loan payments on top of other obligations. The suggested standard above does not mandate specific underwriting procedures and gives lenders flexibility about how to assess income and indebtedness.

Lenders' assessment of the consumer's indebtedness should include other BNPL loans. Loan stacking is a real problem, and other BNPL debt that the consumer must repay in a short time period will impact the ability to repay any given BNPL loan.

3. **Interest rate and fee limits: Emphasize the rate cap, address subscription and other fees**

The BNPL Act, Section 28, states that BNPL loans are "subject to the rate cap set forth in Section 15-5-5 of the Predatory Loan Prevention Act" (PLPA). For completeness, that requirement should be stated in the regulations as well.

While PLPA governs what that rate cap is, IDFPR should be attentive to ways in which BNPL lenders may use fees to evade that rate cap. In particular, many BNPL lenders are starting to charge subscription fees in lieu of finance charges. Those fees should be considered interest. BNPL lenders may also charge financing fees or other fees that are a disguised form of interest.

Our comments on the proposed New York BNPL regulations, which we will forward, address how subscription and other fees should be treated. We recommend adding detail regulations under either the BNPL Act or the PLPA to address subscription fees and other fee issues that will arise for BNPL loans.

4. **Add limits on re-presentment of failed payments**

The draft regulations do not address the failed payment provision in Section 27(g) of the BNPL Act:

> "A lender shall not attempt to debit a consumer's account if it is notified that there are insufficient funds to pay in the account or if it has reason to believe there are insufficient funds to pay in the account without seeking additional, express approval from the consumer. A lender shall present an ACH debit for payment not more than twice."

That prohibition should be included in the regulations for completeness.

In addition, the regulations should clarify the interaction between the prohibition in the first sentence against any subsequent attempt to debit an account once the lender has reason to believe there are insufficient funds, and the second sentence, which prohibits presenting an ACH debit more than twice.

If an ACH debit is rejected for insufficient funds, the lender will receive a return entry that will notify it of that reason. But an ACH debit may fail for reasons other than insufficient funds. It may be an incorrect account or routing number, or there could be other technical reasons the debit fails.

We also note that the prohibition on repeat debiting in the first sentence of the Act covers subsequent debit attempts no matter what type of payment method the lender uses. Thus, if a debit card payment is rejected for insufficient funds, the lender may not re-present it as an ACH payment. Some lenders argue that they should be allowed to switch payment methods.

To ensure that the rule is clear, the regulations should state:

> "A lender shall not attempt to debit a consumer's account a subsequent time by any method if it is notified that there are insufficient funds to pay in the account or if it has reason to believe there are insufficient funds to pay in the account without seeking additional, express approval from the consumer. A lender may present an ACH debit for payment up to two times but only if the debit has not been not rejected for insufficient funds.

Limiting repeat payment attempts reinforces the ability-to-repay requirement and provides incentives to ensure loans are affordable. After a failed payment attempt, lenders can still ask the consumer to authorize another payment, could work out a payment plan, or could use other collection tools. However, they should not be allowed to repeatedly debit accounts for unaffordable loans. Giving lenders some exposure on unaffordable loans will provide greater incentives to do appropriate underwriting.

5. <u>Disputes: Claims and Defenses</u>

The BNPL Act requires lenders to "apply to [BNPL] loans the dispute rights and unauthorized charges requirements that apply to credit cards under the federal Truth in Lending Act …" Section 27(c). While the draft regulations address error resolution procedures and unauthorized charges, they do not address the right that credit card consumers have under 15 U.S.C. § 1666i to dispute payments if they have claims and defenses against a seller that did not deliver what the consumer paid for. The Illinois BNPL Act is based on the New York one, which makes clear that § 1666i is among the TILA dispute rights provisions.[10]

The regulations should include the right that consumers have under § 1666i to withhold payment on a credit card charge if they have claims and defenses they can assert against the seller. This rule is especially appropriate in the BNPL context, as BNPL lenders typically have a relationship with the seller and promote each other. The TILA claims and defenses rule is essentially the equivalent of the Federal Trade Commission's "Holder Rule."[11]

6. <u>Unauthorized use: Eliminate the $50 liability</u>

The draft regulations governing unauthorized use, Section __.280(j)(5)(ii), potentially allow a BNPL Lender to make the consumer liable for the first $50 of an unauthorized charge, similar to the TILA provision.[12] However, we recommend that IDFPR remove that potential $50 liability. The BNPL Act does not simply require credit card level protections. It also requires lenders to

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[10] "A buy-now-pay-later lender shall apply to buy-now-pay-later loans the dispute rights and unauthorized charges requirements that apply to credit cards under the Truth in Lending Act, 15 U.S.C. § 1643, 1666, 1666a, 1666i …." N.Y. Banking Law Article 14-B, § 746(5).

[11] FTC, Trade Regulation Rule Preserving Consumers' Claims and Defenses, 16 C.F.R. § 433.1(c).

[12] 15 U.S.C. § 1643(a)(1)(B).

"resolve disputes in a manner that is fair and transparent to consumers." Section 27(c). It is not fair or transparent for a consumer to have to pay $50 for a loan they did not authorize.

Indeed, despite the TILA provision, we are not aware of any credit card companies that hold consumers liable for the first $50 of an unauthorized charge. In fact, card issuers like Visa and MasterCard have "zero liability" policies that fully protect consumers from unauthorized charges.[13] The $50 liability provision in TILA is a remnant from decades ago when credit cards were new and should not be imported into a modern Illinois statute.

7. Additional issues

The regulations do not address privacy protections. Those protections should be added and, to the extent possible, be modeled after the New York protections.

For additional recommendations, we will send our more detailed comments on the proposed New York BNPL regulations. The draft Illinois regulations appear to be largely the same as the New York ones, and our New York comments may be relevant to IDFPR.

In particular, as we recommended in New York:

- Disclosures should automatically be provided to all consumers in Spanish as well as English.
- Lender's annual reports should be public, and IDFPR should publish its own annual report summarizing the lenders' reports and market trends.
- IDFPR should establish an ombudsman for BNPL complaints.

8. Conclusion

The BNPL Act and the regulations under it will be models to which other states will look. We urge IDFPR to set a high standard for consumer protection that will help the BNPL industry live up to its promise of offering affordable loans with protections equal to or better than credit cards, rather than adding to the debt and problems faced by families struggling with high debt loads and financial precarity.

Thank you for the opportunity to submit these comments. If you have any questions, please contact Lauren Saunders at lsaunders@nclc.org.

Yours truly

Lauren Saunders
Senior Attorney

[13] Visa, Our Zero Liability Policy lets you shop without worry, https://www.visa.com/en-us/personal/security/zero-liability-policy (last visited Aug. 19, 2026); Mastercard, Zero liability protection, https://www.mastercard.com/us/en/personal/protection-and-security/zero-liability-protection.html (last visited Aug. 19, 2026).