National Consumer Law Center
Fighting Together for Economic Justice

NATIONAL HEADQUARTERS
7 Winthrop Square
Boston, MA 02110
(617) 542-8010

WASHINGTON OFFICE
Spanogle Institute for Consumer Advocacy
1001 Connecticut Avenue, NW, Suite 510
Washington, DC 20036
(202) 452-6252

NCLC.ORG

August 28, 2026

vivian.connor@dfs.ny.gov
Vivian Connor
New York State
Department of Financial Services

Re: Proposed New 3 NYCRR 423 and Amendment to 23 NYCRR 101 re: Buy-Now-Pay-Later Lenders

Dear Ms. Connor,

Thank you for the opportunity to submit comments on the New York State Department of Financial Services' (NY DFS) proposed regulations implementing the New York Buy-Now-Pay-Later Act (BNPL Act), Banking Law Article 14-B. 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 that New York adopted in 2025 in the Buy-Now-Pay-Later Lenders Act. The BNPL Act addresses two forms of loans offered at the point-of-sale: interest-bearing and interest-free. Our comments below primarily focus on protections needed for interest-free BNPL loans (i.e., the "pay-in-four" model), though we have some suggestions for provisions governing interest-bearing loans as well.

Our top recommendation is to limit late fees to $8 per month in total, for all purchases, consistent with the amount that the Consumer Financial Protection Bureau 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. We also have recommendations on limiting repeated efforts to collect on unaffordable loans, preventing evasive and hidden fees, ensuring protection when people do not get what they paid for with a BNPL loan, enhancing transparency of the BNPL market, and ensuring that consumer complaints are heard. Our detailed comments follow.

Table of Contents

Overview

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.

The proposed regulations generally provide a strong basis for implementing the law. We do make a number of suggestions for strengthening them and preventing evasions. The most important changes we suggest are:

- **Late fees.** The proposed safe harbor allowing late fees up to $8 per late payment is far too high. As calculated on page 9, consumer who takes out one BNPL per week and then has trouble making the payments could face ***$88*** in late fees in one month. Instead, DFS should limit lenders to ***$8 per month for all loans***. Limiting late fees is important to protect consumers from excessive costs; to prevent lenders from using late fees as a hidden form of interest; and to ensure that lenders have sufficient incentive to make affordable loans that borrowers can afford to repay.
- **Re-presentment of failed payments**. Lenders should not be allowed to resubmit debits that bounce multiple times against a borrower's account using different payment methods (i.e., via a debit card, ACH transaction, or another method). Lenders should be required to follow the federal payday loan rule permitting only one additional attempt per payment, and cutting off the payment authorization for future payments if there are two consecutive bounces.
- **Fees on "interest-free" loans.** The regulations should make clear that no fees are permitted on interest-free loans other than the penalty fees and fees for expedited payments through live customer service covered by the regulations. That includes subscription fees, which are a disguised form of interest.
- **Enforcing the 16% rate cap on interest-bearing loans.** The regulations generally adopt a strong approach to ensure that fees are covered under the 16% interest rate cap for interest-bearing loans. DFS should specify that subscription fees are interest and should include an example of how the 16% rate cap applies to them. The regulations should also specify that any fees "incident to" the loan – not just "as a condition of" the loan – are interest other than the permitted penalty fees and expedited payment fees.
- **Incorporate "claims and defenses" against disputed purchases.** The BNPL Act requires lenders to comply with the federal claims and defenses rules that apply to credit cards, which allow a consumer to refrain from making payments on a purchase if they have problems with the purchase and thus could claims or defenses against the seller. But the regulations fail to incorporate this requirement.
- **Monthly and year-to-date fee totals.** Periodic statements should cumulate the fees that consumers have paid in the previous month and year to date.

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

- **Make annual reports public.** The final, quarterly report that lenders must submit should be a cumulative annual report that is made public and should cover key issues such as the size of loans, amount of fees, and rate of late payments, bounced payments, and defaults. DFS should also publish an annual report summarizing the data and trends from the lender reports.
- **Provide Spanish disclosures by default.** We support the general language access provisions and urge DFS, in addition, to include Spanish language disclosures automatically.
- **Establish a DFS ombudsman for BNPL complaints.** In addition to requiring companies to address complaints fairly, DFS should have its own mechanism for receiving complaints.

423.1 Definitions

We support the definition of "BNPL lender," which follows the statute. The definition encompasses not only one who originates a loan but also one who "offers" the loans, including through a platform, software or system used for taking out the loans, as well as one to whom ownership is transferred. This definition is necessary to prevent evasions and encompass the entities that play the primary role in running BNPL loan programs.

We read this definition to also encompass a person to who the predominant economic interest in the receivables (not the loan itself) is transferred, as that person (or a related entity) is normally the one who offers the loans. DFS may wish to make that explicit.

423.2 License and application; 423.3 Authorization

We support the requirements under proposed sections 423.2 and 423.3, which require either a license or specific authorization from the superintendent to offer BNPL loans, except for exempt entities, which are generally federally-chartered banks. These requirements follow the statute. New York is appropriately exercising its authority to the fullest extent possible to ensure that consumers are safe and covered by the protections of the BNPL Act.

423.7 Reports and financial disclosures

Section 423.7(c) requires lenders to support quarterly reports in the form the superintendent prescribes. Quarterly reports should also detail complaints that the lender has received and the types of issues covered by those complaints.

The final report should be an annual report and should be made public. Those annual reports should include:

- The median, mean and range in size of loans.
- The median, mean and range in fees and interest of different types, and total costs, that consumers pay, both per loan and for all loans from that lender in year.
- The percentage of loans that have a late payment and of consumers who, over the course of the entire year for all loans, have a late payment.
- The percentage of payments that bounce, the percentage of bounced payments that are resubmitted and the percentage of those that bounce, and any additional efforts to re-submit the payments.

- The percentage of loans that default and the percentage of consumers over the course of a year who default.

DFS should use those reports to produce a public report on the BNPL market, similar to the reports that the California Department of Financial Protection and Innovation (DFPI) products under the California Financing Law and other laws.[2] The report should include key trends, including pricing and loan performance.

423.8 Advertising and marketing

We support the provisions governing advertising and marketing and, in particular, the provisions aimed at ensuring that pricing and other key terms are not misleading or deceptive.

We support the requirement of 423.8(d) that the disclosure of the total of payments and time period to repay the obligation must be equally prominent to the statement of the periodic payment amount. That would prevent lenders from focusing attention on the size of individual payments without clearly seeing the full amount due and time to repay.

We support 423.8(e) prohibiting advertisements with terms such as "as low as" or "from" without prominently and contemporaneously disclosing the likelihood of obtaining the advertised credit terms. DFS should make clear that a fine print footnote, i.e., that says that few consumers receive the advertised amount or rate, is not prominent.

But DFS should go farther and prohibit use of terms like "as low as" or "from" if very few consumers receive those rates. Instead, DFS should prohibit advertisement of rates that fewer than half of borrowers receive unless it is stated as a range (i.e., "10% APR to 36% APR"), with the likelihood of receiving the lower end of that range prominently disclosed.

DFS should also include a similar statement that it is deceptive to use terms like "interest free," or "no mandatory fees" if there are any fees other than late fees. In addition, lenders should be prohibited from using those terms if a significant portion of borrowers pays late fees. For example, lenders should not be allowed to market "interest free" loans if a quarter of consumers end up paying late fees or other fees.

423.9 Interest, charges and fees; maximum cumulative amounts

423.9(a)(1) to (3), Interest-bearing BNPL loans

Section 423.9(a)(1) limits BNPL lenders to the rate of interest permitted by General Obligations Law section 5-501. Section 5-501 generally imposes a 6% annual limit but permits the rate allowed under Banking Law section 14-A, which is 16% per year.

DFS should make it clearer that 16% is the rate cap, such as by referencing that rate in the regulation.

Section 423.9(a)(2) states that "Amounts that are interest under section 4.2(b) of this Title shall be interest for the purposes of Banking Law article 14-B and this Part notwithstanding how they are characterized as a fee, charge or otherwise." 3 NYCCR § 4.2(b) provides that interest "shall

[2] *See, e.g.,* Cal. DFPI, Annual Report of Operation of Finance Lenders, Brokers, and PACE Administrators Licensed Under the California Financing Law, 2024 (Nov. 2025).

mean all amounts paid or payable, directly or indirectly, by any person, to or for the account of the lender which would be includible as interest under New York law as it existed prior to the enactment of chapter 349 of the Laws of 1968."

We support this proposal, which makes clear that "interest" is a broad term designed to prevent evasions and is not limited to periodic interest or costs characterized as interest. It includes all "amounts" that are "paid or payable" whether "directly or indirectly."

Notably, this definition includes purportedly voluntary payments such as "tips" or "expedite" fees that are common on cash advance apps. For the time being, these deceptive forms of interest do not appear to be present in the BNPL loan market, and they should be discouraged. We thank DFS for removing the provision of the draft regulations that would have acknowledged and legitimized these evasive forms of interest. To the extent that such costs are solicited and collected by BNPL lenders, they should be covered by the definition of interest as amounts "payable." Thus, any lender that received such amounts would be making interest-bearing BNPL loans and the costs would be subject to the 16% annual interest cap.

We recommend that DFS add to Section 423.9(a)(2): "The term 'interest' includes, but is not limited to, all charges that are included in the Military Annual Percentage Rate under the regulations adopted by the Department of Defense, 32 C.F.R. § 232.4(c)(1), as effective October 1, 2015. We note that the military APR includes subscription and other participation fees except for open-end credit card accounts. *See* § 232.4(c)(1)(iii)(C), (d)(1). But BNPL loans under the New York law are closed-end loans.

Section 423.9(a)(3) provides two examples of interest: (i) any amount "charged as a condition of making or originating BNPL loan" and (ii) any amount "charged for the making of an installment of a BNPL loan." The phrasing of those two examples, however, could imply that the definition of interest is narrower than it is, requiring interest be "a condition" of the loan or be a mandatory "charge." Section 4.2(b), however, does not require that an amount be a condition of the loan or a "charge." It includes any amounts "paid or payable," "directly or indirectly" for the loan or forbearance. Those terms should be incorporated into the examples. The regulations should make clear that the New York definition of "interest" is not the same as (and is broader than) the federal definition of "finance charge," which has some loophole. Thus, we recommend that the examples be removed and be replaced with this general statement:

(i) Any amount paid or payable, directly or indirectly, by any person, to or for the account of the BNPL lender. An amount shall be considered interest under this section whether or not it is considered a finance charge under the federal Truth in Lending Act.

In addition, DFS should add specific examples of the types of fees it is alluding to. The first proposed example (a fee charged as a condition of making or originating a loan) appears to capture subscription fees when a subscription is required to get a loan. It would be better to add an example about subscription fees directly to avoid any doubt. As discussed below, we believe that subscription fees are often interest even if a subscription is not required; the subscription fee is often an alternative form of interest.

Similarly, the second proposed example, an amount charged for the making of an installment, appears aimed at pay-to-pay fees such as the types covered by section 423.9(c). Notably, those fees are not excluded by Section 423.9(a)(4), which excludes penalty fees from the definition of interest. We agree that pay-to-pay such fees should be considered interest, but it would be better to say so directly rather than in an opaque fashion as in proposed 423.9(a)(3)(ii).

In addition, we recommend that DFS include other more specific examples to make clear that certain costs are interest. In particular, DFS specify that subscription fees and reschedule/payment delay fees are interest. (Payment delay fees are discussed under section 723.9(a)(6), below.) There are other fees that DFS should also clarify are interest.

For example, Sezzle charges these fees,[3] which are interest because they are amounts payable directly in consideration for the making of a loan or an installment (other Sezzle fees are penalty fees):

Sezzle Fees		
Fee	**Description**	**Why it is interest**
Reschedule Fee: Up to $7.50	A payment may be rescheduled for up to 2 weeks later for a fee.	The fee is payable in consideration for the making of an installment. It essentially serves as a finance charge for extending additional credit for 2 more weeks.
Finance Charge (Service Fee): Up to $7.49	A prepaid finance charge will be included in the down payment when using Sezzle On-Demand.	The fee is payable in consideration for the making of a loan.
Subscription Fee for Sezzle Premium: $13.99	A subscription fee will be charged on the monthly anniversary of your enrollment date to Sezzle Premium.	The fee is a substitute for the service fee at Sezzle "premium brands."[4] It also provides two "free" reschedules of installments. As noted above, a reschedule fee is a finance charge.
Subscription Fee for Sezzle Anywhere: $19.99	A subscription fee will be charged on the monthly anniversary of your enrollment date to Sezzle Anywhere.	The fee is a substitute for finance charges (which are waived) and is payable in consideration for making loans "anywhere" (i.e., not only at merchants that display Sezzle as a payment option).[5]

[3] Sezzle, Licenses, Fees, & Subscriptions (updated Mar. 30, 2026) (last visited Aug. 13, 2026).
[4] Sezzle, What is a Service Fee? (last visited Aug. 13, 2026).
[5] Sezzle, What is Sezzle Anywhere, and how do I sign up? ("Sezzle, What is Sezzle Anywhere?") (last visited Aug. 13, 2026).

The following illustrations show why subscription fees should be considered interest.

Sezzle's "finance charge/service fee" up to $7.49 is clearly interest: It is a fee for creating a single-use virtual card to obtain a BNPL loan at a limited number of merchants, payable in consideration for making the loans.[6] Sezzle's website gives an example of a $300 loan with one $75 down payment, three $75 biweekly payments, and a $5.99 service fee charged at loan origination.[7] The website provides a 35.40% APR for that loan.[8] (That rate exceeds the 16% rate cap under New York Banking Law. The loan is originated by either WebBank or Sezzle.[9] Either way, it appears that Sezzle is the true lender and should be subject to New York's rate caps.[10])

The subscription fee for either Sezzle Premium or Sezzle Anywhere is a substitute for and another way of charging that finance charge, as shown in this chart:[11]

What is a Service Fee?

3 months ago · Updated

A service fee is a prepaid fee (finance charge) incurred when creating a single-use virtual card to Pay Later with certain merchants without having a subscription. In the Sezzle app, you can see which virtual card merchants incur a fee under the following filters: Anywhere, Premium, and Sezzle Partner.

Fees by Membership Status & Merchant Type

	Sezzle Partner	Premium Brand	Anywhere
No subscription	No fee	Service fee applies	Service fee applies
Premium subscriber	No fee	No fee	Service fee applies
Anywhere subscriber	No fee	No fee	No fee

[6] Sezzle, What is a Service Fee, *supra.*
[7] *Id.*
[8] *Id.*
[9] *Id.*
[10] *See* NCLC, Consumer Credit Regulation § 3.4.3 (4th ed. 2025), updated at library.nclc.org (describing the true lender doctrine).
[11] Sezzle, What is a Service Fee, *supra.*

Sezzle Premium allows the consumer to avoid the service fee on “premium brands” and to obtain BNPL loans (with a service fee) on 250+ gift cards.[12] That is, the subscription fee is payable in consideration for obtaining loans at those brands or for gift cards.

The Sezzle Anywhere subscription allows the consumer to obtain a multi-use virtual Visa card and to use it without a service fee at any store that access Visa.[13] Again, the fee is a consideration for obtaining BNPL loans through the Sezzle app using the Sezzle virtual card.

Klarna also has a membership fee that is a substitute for a finance charge that is interest. Pay-in-four purchases through Klarna’s virtual debit card without a membership incur a $1.29 to $5.99 fee. In a fine print footnote, Klarna provides an example of a $248 purchase with a $4.99 service fee and a 35.685% APR.[14] Or those purchases are “free” with a Klarna membership costing $9.99 per month (or up to $44.99 for more premium memberships).[15] A paid membership is required to obtain a physical Klarna debit card.

While memberships or subscriptions may come with other supposed benefits in addition to the ability to obtain BNPL loans, the access to the loans at a broader array of lenders, and the ability to pay a flat monthly fee in lieu of per loan fees, are undoubtedly the primary benefit and primary motivation for signing up for the subscription. Thus, the full fees should be considered interest.

To avoid any doubt or confusion, DFS should state explicitly that subscription fees are interest. That means that any BNPL lender that charges a subscription fee should be required to have a category permission for interest-bearing BNPL loans, and that those loans must comply with the 16% annual interest cap, including the subscription fee.

DFS should also explain how it will calculate the interest rate for loans made under a subscription fee. The rate that the fee will yield will depend on the size and number of loans obtained in the month that the fee covers. The rate could be calculated prospectively using certain assumptions, or retroactively based on actual purchases. DFS could provide a safe harbor fee based on assumptions that represent typical average usage.

423.9(a)(4), Exemption of Penalty Fees from Interest

Section 423.9(a)(4) provides that fees described by 423.9(b), which covers penalty fees, are not interest. We do not object to the general concept that reasonable penalty fees are not interest. However, some BNPL providers have a history of using late fees as a revenue generator, effectively a form of interest.[16] Since some BNPL providers do not even charge late fees, it is

[12] Sezzle, What is Sezzle Premium, and how do I sign up? (last visited Aug. 13, 2026).
[13] Sezzle, What is Sezzle Anywhere?, *supra.*
[14] Klarna, The card. Reimagined. (last visited Aug. 13, 2026). As with Sezzle, the loans are originated through WebBank, but Klarna is likely the true lender.
[15] Klarna, Klarna on max (last visited Aug. 13, 2026).
[16] *See* McLean Roche Consulting Group, Global Payments 2020-30: A seismic shift in the next ten years (Feb. 2021) (submission to Australia Department of Treasury) (finding that the BNPL business model rests on “Very high ‘late fees’ which, when converted to APRs, are up to 68%.”); Tom Richardson, The Nightly (Australia), Impairments push Afterpay’s losses beyond $12.2 billion since 2023 (Dec. 1, 2025) (“[T]he accounts lodged with the Australian Securities and Investments Commission, under a holding company named Lanai AU 1, reveal Afterpay charged local shoppers up to $123.5m in late fees in 2024 at more than $10m a month on average. The fees equalled 15 per cent of its total revenue. ‘One of the big things when they

especially important to protect fair competition by preventing unscrupulous competitors from using late fees to disguise the cost of their products. As discussed below, we believe that the late fee limits in the proposed regulations are far too low.

No other fees should be exempt from the definition of interest.

423.9(a)(5), (6) Fees for payment delay transactions

Section 423.9(a)(5) provides that a payment delay transaction does not violate Banking Law § 745(1)(b) if the modified transaction has a permissible interest rate that would have been permissible at the outset *and* any fee for the delay is included as interest.

We support that provision and believe that it is important to prevent evasions and bait-and-switch practices. It would also be helpful if DFS provided an example of how that provision would work in practice.

For example, as described above, Sezzle has a reschedule fee up to $7.50, in addition to the finance charge up to $7.49. DFS should state that both fees are considered to be interest and should give an example explaining how the rate would be calculated.

We also support Section 423.9(a)(6) requiring BNPL lenders that enter into payment delay transactions on interest-free BNPL loans to obtain a category permission for DFS (to ensure that their practices are compliant) and to provide new disclosures to the consumer using a Model Form.

To prevent unfair and deceptive "bait and switch" practices, BNPL lenders should be prohibited from soliciting consumers to refinance interest-free BNPL loans into interest-bearing loans, and that prohibition should be added to the regulation.

423.9(b) Penalty Fees

$8 safe harbor for penalty fees

Section 423.9(b) provides limits on penalty fees. Section 423.9(b)(1)(i) sets a safe harbor allowing penalty fees up to $8, and subsections (ii) and (iii) allow a higher fee, with DFS approval, if the lender shows that it has costs that justify a higher fee.

The $8 fee, which is for "violating the terms or other requirements of a BNPL 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.[17] A recent survey found that nearly half (48%) of respondents

---

were a listed company is they generated a lot of money from late fees,' said Mr Brown. 'So, it's pretty dubious stuff, they used to generate about 9.5 per cent of income from late fees when they were listed, but from these accounts it's now over 15 per cent.'");

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

use BNPL at least weekly.[18] 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
>
> 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 no higher than $30 and $41, depending on whether it was the first violation.[19]

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.[20]

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

---

[18] *Id.*

[19] 86 Fed. Reg. 60357 (Nov. 2, 2021).

[20] 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).

accounts.[21] 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 (discussed under Section 423.11 below) 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 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, DFS 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 was a reasonable and proportional penalty for late payments on credit cards.[22] (In 2025, however, the CFPB agreed to vacate the rule after a bank challenge.[23]) 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, DFS could retain Section 423.9(b)(1)(ii), which allows lenders to charge higher fees if they can justify them based on their costs.

Penalty fees based on costs

To the extent that lenders attempt to justify late fees above $8 based on their costs under Section 423.9B)(ii), we support subsections (iii),(iv) and (v) requiring advance approval and annual reevaluation, and prohibiting inclusion of collection and charge-off costs.

Prohibited penalty fees

We support Section 423.9(b)(2)(i), prohibiting fees that exceed the dollar amount associated with the violation (i.e., the amount of the late payment) or that do not have an associated dollar amount and (ii) prohibiting multiple penalty fees per single event (i.e., a returned payment fee and a late fee). This is the same rule that applies to credit cards under the Credit CARD Act.

[21] 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).
[22] *See* CFPB, Press Release, CFPB Bans Excessive Credit Card Late Fees, Lowers Typical Fee from $32 to $8 (Mar. 5, 2024).
[23] *See* NCLC, Press Release, CFPB and Chamber of Commerce Move To Remove Limits on Credit Card Late Fees (Apr. 15, 2024).

Section 423.9(b)(2)(iii) limits the maximum cumulative amount of penalty fees to the original amount financed. That is too high. If DFS does not adopt our proposed monthly cap of $8 in late fees, then penalty fees should be limited to 10% of the loan amount.

We agree that, as required under Section 423.9(b)(2)(iv), consumers should not incur late fees unless they get notice of the due date at least seven days before and no more than one statement cycle before.

423.9(c) Payments (including payment fees and payment allocation)

Section 423.9(c)(1) prohibits pay-to-pay fees unless the payment involves "an expedited service by a customer service representative of the BNPL lender." For example, the fee would be permitted if the consumer speaks to a live customer service agent in order to make a payment on the same day that it is due.

We support the general ban on pay-to-pay fees. Consumers should not incur fees to pay their loans.

But we recommend eliminating the fee for expedited service. That could lead to evasions and is unnecessary. If it is not eliminated, fees should not be permitted unless the BNPL lender provides a readily available method to make a payment without a customer service agent, including by providing that option in the phone menu. In addition, DFS should clarify that "customer service representative" means an oral conversation with a human being. Service through chats, which are more automated and where it is not easy to distinguish between chatbots and humans, should not incur a fee.

Section 423.9(c)(2)(i) and (ii) require a readily accessible payment interface with disclosures about payments on each loan. We support the provision.

In addition to the disclosures required under 423.9(c)(2)(ii)(c) for each loan, the payment interface should also disclose the aggregate total amount due on all outstanding loans.

We support the ban in 423.9(c)(2)(iii) on fees for pre-paying a loan and the payment allocation rules of 423.9(c)(2)(iv) and (v) and (c)(3).

Additional limits needed on other fees on "interest-free" loans

Section 423.9 addresses three categories of fees:

(a) Fee on interest-bearing loans

(b) Penalty fees on all loans

(c) Pay-to-pay fees on all loans

However, the proposed regulations do not address the possibility of interest-free BNPL loans charging fees that they claim not to be interest. An obvious example is the "reschedule fee" that allows the borrower to defer payment for two weeks, which essentially serves as interest for those two weeks. The proposed regulations prohibit those fees on interest-bearing BNPL loans unless the fee does not exceed the interest cap, but there is no provision addressing such fees charged by lenders of interest-free BNPL loans.

The regulations should explicitly state that interest-free BNPL loans may not charge any fees other than penalty fees permitted under 423.9(b) and payment fees permitted under 423.9(c).

No subscription fees should be allowed for interest-free BNPL loans. If a subscription fee is charged, the loan should be considered an interest-bearing loan and, with the fee included, should be required to conform to the 16% annual interest requirement for those loans.

At a minimum, any BNPL lender making loans that purport to be interest-free should be required to obtain permission before charging any fees other than the penalty fees and payment fees permitted under the regulations.

423.11 Prohibited acts; failed payments

Section 423.11 covers prohibited acts. We support subsection (a), which provides that a violation related to one loan may not subject the consumer to a penalty on another loan, and (c), which apply general rules against unfair and deceptive practices.

For completeness, we also urge DFS to add the ban on providing inaccurate information to a consumer reporting agency that is in the BNPL Act, § 744(2)(d).

Section 423.11(b) prohibits lenders from making more than two attempts to obtain payment via "the consumer's same payment method in connection with any one due and payable amount" unless the BNPL lenders obtains a new and specific authorization from the consumer.

This provision is modeled on, but is substantially weaker than, the rule that applies under the CFPB's Payday, Vehicle Title, and Certain High-Cost Installment Loans Rule.[24] Under the CFPB rule, the lender's payment authorization is completely revoked if there are two consecutive failed payments. For example, if a lender attempts to debit an account for a payment but the debit is rejected for insufficient funds, and then a second attempt to debit the account fails, then the lender's authorization to debit the account is revoked. The rule proposed by DFS is weaker than the CFPB rule in two respects.

First, the DFS proposal applies only to payment attempts using the "same payment method" and appears to allow additional attempts using a different payment method, whereas the CFPB rule is a flat limit of two attempts. The DFS rule appears to allow a lender to first make two attempts by debit card, and then make two additional attempts by ACH payment. Potentially even additional attempts could be made by a third payment method (such as a remotely created check or a new payment method such as one using stablecoins).

Second, the DFS rule only limits additional payment attempts "in connection with any one due and payable amount." That is, if a payment is due May 1 and bounces twice, the lender could not resubmit it a third time using the same payment method, but it could attempt to debit the account for the May 15 payment. But under the CFPB rule, once a BNPL lender has made two consecutive

[24] The payday loan rule covers the typical pay-in-four BNPL loan with three biweekly payments, as those loans have a term of 42 days and the rule includes loans of 45 days or less (as well as certain longer balloon-payment and high-cost loans). 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).

failed payment attempts, the preauthorization for any additional payments on that loan, including future payments, is revoked.

DFS should amend the regulation to follow the CFPB rule, to read as follows:

> b) Failed payments. A BNPL lender shall not make any additional attempts to initiate a payment on a BNPL loan after two consecutive failed attempts ~~more than two attempts to obtain payment via the consumer's same payment method in connection with any one due and payable amount~~, unless the BNPL lender obtains a new and specific authorization to make further attempts from the consumer.

BNPL lenders already must comply with the CFPB rule, which went into effect March 30, 2025, so codifying the rule would impose no additional requirements at the present. It is important to codify the rule given the aggressive efforts to rollback protections at the federal level. Indeed, a trade association representing BNPL lenders has already asked the CFPB to exempt them from the rule.[25]

Further limits are needed to protect consumers from overdraft fees and unaffordable payments when funds are needed for necessities.

If the payment bounces twice, a third debit attempt at later time after more funds have been deposited into the account may go through but trigger an overdraft fee, or may leave the consumer with insufficient money to pay other important expenses like rent, food and medical care. A recent survey by the Federal Reserve Board found that BNPL users are more prone to experiencing overdraft fees -- 30% of those who used BNPL incurred an overdraft fee in the previous year – and 11% had a BNPL payment directly trigger an overdraft or NSF fee.[26]

Limiting payment attempts also reinforces the ability-to-repay requirement and provides incentives to ensure loans are affordable. If a payment has bounced twice, that is a strong indicator that the loan is unaffordable. Indeed, if a payment bounces, the consumer may be in such dire straits that the bank is not covering the payment through its overdraft services.[27]

After two failed payment attempts, lenders could still ask the consumer to reauthorize automatic payments, could work out a payment plan, or could 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

---

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

[26] Anna Tranfaglia, Federal Reserve Board, Buy Now, Pay Later, Consumer & Community Context, Vol.7, o. 1 (Aug. 2026) (discussing Federal Reserve Survey of Household Economics and Decisionmaking (SHED) (May 2026)).

[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).

rule would help implement the underwriting provision and would protect consumers from practices that the CFPB determined to be unfair and abusive.[28]

423.12(a) Disclosures

423.12(a)(1) General disclosure requirements; language access

We support the requirement that disclosures be clear, conspicuous, in legible writing and in a form consumers can keep. Pop-up disclosures or disclosures consumers must click on that are not subsequently emailed to them are not ones consumers can keep.

Section 423.12(a)(1) requires that all mandatory disclosures be provided in English and that lenders accurately translate the disclosures into Spanish and into any language principally used in any advertisements of the lender in the state. The rule provides that the non-English disclosures, including those in Spanish, shall be available contemporaneously. This is implemented by requiring the lender to include accurately translated brief statements, in all of the languages other than English in which the disclosures are available, on the English language disclosure identifying the availability of translated versions of the specified disclosure (which would then, it appears, be provided immediately upon request).

We strongly support these proposed requirements, including the mandate to have all BNPL lenders make Spanish translations available, as well as in any other languages principally used in any advertisements by the lender. Customers entering into a BNPL transaction must have access to meaningful disclosures. We also support the requirement to ensure all translations are accurate and that they are flagged for consumers, in accurately translated notices, on the English disclosure.

We recommend, however, that the Spanish disclosures be provided, by default, to all borrowers. Almost half of New York state residents who are LEP (LEP), and thus do not speak English very well, are Spanish speakers.[29] In addition, Hispanics are more likely than other consumers to use BNPL loans.[30]

We also support the requirements, discussed in Section 423.12(f)(1) and (f)(2) below, to require BNPL lenders to accept and respond to customer service and other communications from consumers in other languages.

423.12(a)(2) Pre-transaction disclosures

We generally support the pre-transaction disclosure requirements, including the requirement that they be provided on a standardized model form and the content of the disclosures.

Section 423.12(a)(2)(iv)(c) requires disclosures of the "amount financed, "finance charge" and "annual percentage rate," using those terms. Those terms are defined in and generally required

---

[28] 12 C.F.R. § 1041.7; 82 Fed. Reg. 54472, 54731 (Nov. 17, 2017).
[29] New York State, Office of General Services, Data View: Language Diversity in New York State (last visited Aug. 26, 2026).
[30] *See* CFPB, Press Release, CFPB Publishes New Findings on Financial Profiles of Buy Now, Pay Later Borrowers (Mar. 2, 2023).

to be disclosed under TILA, but they do not appear to have state law definitions. We recommend adding:

> (iv) Content: A pre-transaction disclosure shall disclose the following items, to the extent applicable. <u>For purposes of this subsection, the definitions set forth in the Truth in Lending Act, 15 U.S.C. § 1601 *et seq.*, shall apply to the extent applicable.</u>

Section 423.12(a)(2)(iv)(e) requires disclosure of the APR. The APR as defined in TILA may not include some fees that are "interest" under New York law, and it is possible that the TILA APR could technically be 0% even when there are costs. In particular, it is unclear if subscription fees for BNPL loans are finance charges included in the TILA APR even though they are a substitute for interest, as discussed above.[31]

Therefore, to prevent deceptive practices, we suggest that (e) be amended to add:

> An annual percentage rate of 0% may be deceptive and therefore should not be disclosed if there are any costs to obtain the BNPL loan, including subscription fees, even if those costs are not finance charges under the federal Truth in Lending Act, 15 U.S.C. § 1605.

Prohibiting deceptive 0% APR disclosures is not preempted by TILA because TILA does not require disclosure of an APR if there is no finance charge, making the APR 0%.[32]

Section 423.12(a)(2)(iv)(f) requires disclosure of the payment schedule. The regulation should be amended to include not only the amounts to be due under the immediate BNPL loan that has not yet been consummated but also the full payment schedule for all cumulative amounts that would be due on all outstanding BNPL loans by that lender. That is important to inform the consumer about the full amounts that will be due and to ensure that the consumer is prepared and able to make all required payments.

Section 423.12(a)(2)(iv)(h) requires disclosure of "any fees or charges that may be imposed" beyond finance charges. This provision should be amended to be phrased more broadly, consistent with the definition of interest, not requiring the cost be deemed a "fee" or "charge" or be "imposed." In addition, given the uncertainty over whether subscription fees are finance charges (even if they are interest under New York Law), those fees should be included in the disclosures. Thus, we recommend:

> (h) Fees. A description of and the amount of any fee, charge, interest or other amount that may be paid or payable, excluding any fees disclosed under clause (d) of this subparagraph. Any subscription fees and the time period covered by the fee must be disclosed unless disclosed under clause (d).

---

[31] For example, fees for participation in a credit plan are not finance charges under Regulation Z. 12 C.F.R. § 1026.4(c)(40. Credit plans are typically open-end credit. It is not clear if subscription fees for closed-end credit like interest-free BNPL loans would be finance charges under TILA, but they should be considered "interest" under New York BNPL regulations, as discussed above.

[32] 15 U.S.C. § 1638(a)(4); Regulation Z, 12 C.F.R. § 1026.18(e). While the BNPL Act covers only closed-end BNPL loans, if BNPL lenders were to structure the credit as an open-end account, an APR disclosure would be required under TILA only if there is a periodic interest rate that is used to calculate a finance charge on outstanding balances. *Id.* § 1026.60(b)(1).

423.12(a)(3) Post-transaction confirmations.

As recommended above for the pre-transaction disclosure, the post-transaction confirmation should include the full payment schedule on all outstanding BNPL loans.

423.12(a)(4) Periodic statements

Section 423.12(a)(4) governs periodic statements. In general, New York should encourage lenders to provide statements on either a biweekly or monthly basis, covering all outstanding loans. Statements provided more frequently, and tied to the payment dates of individual loans, could overwhelm consumers, cause them not to review the statements, and cause confusion.

Section 423.12(a)(4)(i) defines a "statement cycle" as the interval between regular periodic statements and states that they shall be equal and no longer than 30 days. We suggest that the regulations permit an exception that allows statement cycles to be unequal or longer than 30 days if the statement cycle is defined as a calendar month.

Section 423.12(a)(4)(iii)(b) prohibits late fees unless the consumer has been given notice of the required payment date at least seven days before, and no more than one month before, the applicable payment date. In order to encourage BNPL lenders to provide monthly statements, the regulations should clarify that the notice of the payment date may be provided in a statement or in another notice.

For example, consider a BNPL lender that has made an interest-free, pay-in-four BNPL loan with payments due March 7, March 21, and April 4. If the lender delivered a statement on the 1st of each month, the March 1 statement would not qualify for the notice of the April 4 payment as it is more than one month before, and the April 1 statement would not be seven days' notice. Therefore, the lender should be permitted to provide a payment reminder notice outside of the regular statements at least seven days before April 4.

Section 423.12(a)(4)(iv) requires periodic statements to include all BNPL loans. We strongly support that requirement, which will enable consumers to see all of their loans from that lender in one place.

Section 423.12(a)(4)(v) covers the content of periodic statements. We support the required content but recommend that it also require totals for the last 30 days, and year-to-date, for all fees and interest.

Subsection (v)(g) requires statements to include the telephone number and address for notice of billing errors. The regulation should be amended to require inclusion of an email address as well as any other method online or through the app where the consumer may submit billing error notices. That would be consistent with the requirements of proposed 423.12(f)(2)(iii), which requires the lender to prominently displace an electronic mail address through which customer service issues, including billing errors, may be submitted.

423.12(b) Underwriting

We strongly support the requirement that "reasonable risk-based underwriting" include, "at a minimum, assessing a consumer's income and indebtedness." 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. The regulations do not mandate specific underwriting procedures and give lenders flexibility about how to assess income and indebtedness.

We also support the prohibition on using social networks to assess creditworthiness. Use of such networks will only lead to discrimination and unfair treatment of individuals.

423.12(c) Refunds and credits

We support the proposed regulations governing refunds and credit, which address a significant pain point when consumers are caught between the seller and the BNPL lender.

The requirement under 423.12(c)(2) to refund the credit balance within three business days should also apply to any late fee that the BNPL lender has assessed.

Section 423.12(c)(3) requires any credit balances remaining after six months to be refunded. DFS should add that they must be refunded within three business days if the consumer requests, and that consumers may make that request by any reasonable method specified in the customer service section.

423.12(d) Disputes and unauthorized charges

The BNPL Act, Banking Law § 746(5), requires lenders to resolve or cause to be resolved disputes in a manner that is fair and transparent to consumers and, among other requirements, to comply with 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. We support the proposed regulations, which generally reflect the requirements of TILA and the BNPL Act.

However, there is one glaring exception: The regulations fail to incorporate the claims and defenses provisions of the Truth in Lending Act set forth in 15 U.S.C. § 1666i, which are required by the BNPL Act. TILA allows consumers 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."[33]

We urge two changes to the regulations to correct this problem. First, the regulations should codify TILA itself, as the BNPL Act does, explicitly requiring lenders to comply with 15 U.S.C. §§ 1643, 1666, 1666a, *and* 1666i. Second, the regulations should set forth the requirements of 15 U.S.C. § 1666i in the same manner as the regulations do for the other incorporated portions of TILA.

There appears to be a typo in 423.12(d)(2)(i): the telephone or address is required to be disclosed under subdivision (a)**<u>(4)</u>**(v)(g), governing periodic statements, not (a)**<u>(3)</u>**(v)(g). Moreover, as discussed above, periodic statements should also include an email address and any other method online or through the app where the consumer may submit billing error notices. Thus, in 423.12(d)(2)(i), the phrase "telephone number or address" should be amended to reflect the full list of notice methods disclosed in periodic statements and permitted under 423.12(f)(2)(iii) governing customer service.

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

Proposed 423.12(d)(7) allows a lender, after rejecting a consumer's dispute, to report an unpaid amount starting "10 days after delivery" of a notice that of the payment due. That should be amended to say "10 days after the consumer should have received" the notification, consistent with Regulation Z under TILA, Official Interpretations of Regulation Z § 1026.13(g).

Proposed 423.12(d)(9) should be deleted, as it could be misinterpreted to limit the consequences of failing to comply with billing error requirements. Instead, the regulations should simply reference TILA, as discussed above.

Subsection (d)(9) provides that lenders that fail to comply with the procedural requirements for disputes forfeit the right to collect from the consumer, up to $50. That provision copies TILA, 15 U.S.C. § 1666(e). But the Federal Reserve Board, which at the time was in charge of TILA regulations, made clear that "the Board does not interpret the statutory forfeiture penalty under TILA Section 161(e) [15 U.S.C. § 1666e] as being intended to override Section 161's overall protections."[34] To prevent any confusion, the Federal Reserve explicitly declined to "reflect the statutory forfeiture provision" in the official interpretation of Regulation Z[35] and made clear that failure to follow billing error requirements could have consequences greater than $50. For example, the official commentary states that a creditor cannot reverse a credit if it belatedly (beyond the mandated investigation period) decides that a consumer is responsible.[36] The commentary also states that the creditor fails to deliver a written explanation of its assertion that a billing error did not occur, "the creditor generally must credit the disputed amount and related finance or other charges, as applicable, to the consumer's account."[37]

423.12(d)(10) Unauthorized use

The regulations governing unauthorized use generally restate the provisions under TILA.

Section 423.12(d)(1) and (d)(10)(i) define as billing errors or as unauthorized, respectively, an loan not made to the consumer or a person with "actual, implied or apparent authority." The words "implied or apparent" should be deleted. Consumers should be able to challenge errors and unauthorized charges even if there is an argument that someone else had "implied" or "apparent" authority. Indeed, a criminal using the consumer's login credentials has "apparent" authority.

Moreover, agentic AI systems may soon enable AI to make purchases on consumers behalf. It thus will be especially important to give consumers rights to challenge purchases that they did not knowingly authorize or that were made in error.

Similarly, the definition of "unauthorized use" in Section 423.12(d)(10)(i) should not include uses that were made without authorization but for which the consumer purportedly receives a "benefit." That provision has caused confusion in the TILA context and could be used to deny protection to a consumer who receives a good or service they did not want. For example, one court has

---

[34] 74 Fed. Reg. 5244, 5367 (Jan. 29, 2009). Although the final rule adopted in the same Federal Register notice was subsequently repealed as supplanted by the Credit CARD Act, the same language remains in Official Interpretations of Regulation Z.

[35] *Id.*

[36] Official Interpretation of Reg. Z § 1026.13(c)(2)-2. *See* 74 Fed. Reg. at 5366-67.

[37] *Id.*

indicated that a debt collector might be able to debit an account without proper authorization since the consumer received the "benefit" of reducing the debt owed.[38]

Section 423.12(d)(10)(iv) potentially allows a BNPL Lender to make the consumer liable for the first $50 of an unauthorized charge, similar to the TILA provision.[39] However, we recommend that DFS remove that potential $50 liability. The BNPL Act does not simply incorporate TILA; it allows DFS to "promulgate rules and regulations regarding treatment of unauthorized use, so that consumers are liable for use of buy-now-pay-later loans in their name only under circumstances where such liability would be fair and reasonable." Banking Law § 746(5). It is not fair or reasonable 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.[40] The $50 liability provision in TILA is a remnant from the early days of credit cards and should not be imported into a modern New York statute.

423.12(e) Data privacy

Section 423.13(e) requires BNPL lenders to obtain the consumer's consent to sell, share, or use the consumer's non-public information ("covered data") for purposes other than what is "reasonably necessary" to make the particular BNPL loan. Such consent must include a number of mandatory disclosures. These disclosures must be clear, conspicuous, and as equally prominent as the request for consent.

We strongly support this requirement for BNPL lenders to obtain consumer consent for uses of covered data other than to make the BNPL loan. Lenders should not use, sell, or share non-public data for uses other than what the data was intended for, unless the consumer grants active and knowing permission. We also support the provision at Section 423(e)(1)(iii), which excludes from treatment as "reasonably necessary" and thus specifically requires consent for "targeted advertising of non-requested products or services, determining individualized pricing of non-requested products or services, cross-selling of non-requested products or services."

DFS should also include a similar exclusion for certain other problematic non-requested uses, such as collection of any debt other than the particular BNPL loan.

DFS should require that the consent and disclosures be provided in a stand-alone document. DFS should also mandate that the consent and disclosures be written at or below a sixth grade reading level.

---

[38] Aikens v. Portfolio Recovery Asset Assocs., L.L.C., 716 Fed. Appx. 37, 40 (2d Cir. 2017) (finding plaintiff, who authorized debits orally but not in writing, had no injury and thus lacked standing; noting that a debit is unauthorized under the Electronic Fund Transfer Act only if the consumer receives no benefit, but the debt collector's withdrawals "provided Aikens the decided benefit of reducing her debt").
[39] 15 U.S.C. § 1643(a)(1)(B).
[40] 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).

When a consumer does consent, the BNPL lender should be only permitted to use, sell, or share the least amount of information necessary for the non-requested use, *i.e.*, that there be a data minimization standard for the use, sharing, or sale of covered data for non-requested use.

We support the duration limitation at Section 423.12(e)(2)(ii), which provides that the consents are only effective for only one year. We also support the requirement in Section 423.12(e)(5)(iii) that the lender delete any covered data, and cause the deletion by the recipient, when the consent expires or the consumer revokes their consent. DFS should be more specific regarding how the lender must cause the deletion, by requiring lenders to include contract provisions with recipients to comply with these provisions.

Section 423.12(e)(4) prohibits a BNPL lender from conditioning its approval of a loan (or any related service), or the pricing, on the consumer's providing consent to the use, sale, or sharing of covered data for a non-requested purpose. The BNPL lender must also must provide a clear and conspicuous notice that consent is not a condition of or requirement for obtaining the BNPL loan. We support these provisions.

Finally, we urge DFS to include a provision on data security in the rule. Such a provision could simply clarify that BNPL lenders who are not depository institutions must comply with the FTC Safeguards rule, 16 C.F.R. Part 314. Non-bank BNPL lenders are likely considered "financial institutions" under the broader definition set forth in the Gramm Leach Bliley Act (GLBA), 15 U.S.C. § 6809(3),[41] but a provision in the rule would make certain that the BNPL lenders are required to comply with the FTC Safeguards Rule. And of course, depository institutions are governed by and must comply with the GBLA data security rules promulgated by the applicable federal banking regulator.

423.12(f)(1) Language requirements

Section 423.12(f)(1) requires that the lender accept and respond, completely and accurately, to customer service inquiries and other communications from consumers, including billing error notices, notices of unauthorized use, and requests for forbearance, in English, Spanish and any language principally used in any advertisements by the lender. It appears that this requirement applies both to written and oral communications, given the requirement to publish a toll-free number for customer service–an approach we strongly support. Commercial language lines or internal staffing can be used to meet these requirements. We strongly support this set of requirements on accepting and responding to consumer communications in other languages, as such opportunities are key to LEP consumers having meaningful customer service during the length of their transaction.

423.12(f)(2) Customer service

We support the requirement for a prominent display of a toll-free telephone number for various customer service issues, including potential billing errors, unauthorized use, forbearance requests and other customer service. One of the biggest problems with newer "fintech" products is that it

[41] 15 U.S.C. § 6809(3) refers to 12 U.S.C. § 1843(k), which is the Bank Holding Act provision setting forth what constitutes a "financial activity." *See generally* National Consumer Law Center, Fair Credit Reporting § 19.4.1.3 (11th ed. 2026), updated at www.nclc.org/library.

is impossible to reach someone when something goes wrong. Automated chatbots and other methods are often insufficient.

We similarly support requiring prominent display of email addresses for contacting customer service for the same issues. It often benefits both the consumer and the company to have concerns put in writing. And consumers may have trouble logging into an account or using other message features within the online or mobile interface.

It is also essential that display of the phone number and email be “prominent” so consumers can find them easily. When consumers cannot find a customer service number, they may use an internet search to find one and sometimes are directed to fraudulent numbers.

We also support requiring the customer service line to be operative at least 10 hours a day Monday through Friday (except Federal holidays).

423.13 Complaints

We support the requirements for policies to “fairly and timely” resolve complaints and for disclosing methods for complaining in a “clear and conspicuous manner.”

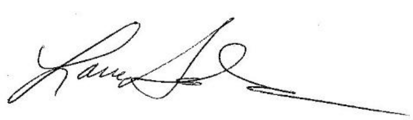
We also urge DFS to establish its own ombudsman program to accept and process complaints on BNPL loans. Consumers should have a way of getting help with the company is not responsive. It will also benefit DFS to hear directly from consumers about the problems they are facing, especially with the CFPB turning a blind eye to consumers.

Conclusion

New York’s BNPL Act and the regulations under it will be models to which other states will look. We urge DFS 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