

August 1, 2024

The Honorable Rohit Chopra  
Director  
Consumer Financial Protection Bureau  
1700 G Street NW  
Washington, DC 20552

Dear Director Chopra:

We write regarding the Consumer Financial Protection Bureau's (CFPB) May 2024 Interpretive Rule, which applies certain provisions under Regulation Z to the use of digital user accounts to access buy now, pay later (BNPL) products.<sup>1</sup> If the CFPB intends to take the expansionary interpretation of Regulation Z, as the Interpretive Rule proposes, American consumers are at risk of losing access to low-cost, innovative financial products that currently offer convenient alternative financing methods. We strongly urge the CFPB to extend the comment period, extend the effective date, and consider several changes to account for the unique business model of, and consumer interaction with, BNPL products.

### Benefit to Consumers

Recent years have illustrated an increasing consumer demand for BNPL products.<sup>2</sup> These products often allow customers to obtain financing (typically between \$50 to \$1000 dollars) at the time of purchase, which is then typically repaid in four – or fewer – interest-free installments with no finance charge. The first payment is typically 25% of the value, followed by three subsequent payments of 25% each, usually two weeks apart.

Typically, at the time of purchase, consumers are presented with the option to pay with traditional debit or credit cards or a BNPL product. Retailers often partner with a BNPL provider that offers consumers a “digital user account” to access their respective BNPL products. Most BNPL providers also have online or mobile applications that allow consumers to shop for retail products and access BNPL products during this process. Regardless of the method, when a customer creates an account, they are not applying for an open-end line of credit. Rather, the approval or denial and relevant disclosures for any offering occurs at the time of each individual purchase, typically resulting in a closed-end loan for each transaction, if approved.

The CFPB should not mischaracterize or impair BNPL product offerings that are responsible alternatives to open-end lines of credit. Consumers rely on BNPL products to distribute their spending over a finite period, allowing them to manage their finances with more flexibility. Such financing offers a convenient transactional experience, benefiting both consumers and small businesses.

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<sup>1</sup> Truth in Lending (Regulation Z); Use of Digital User Accounts to Access Buy Now, Pay Later Loans, 89 Fed. Reg. 47068 (published May 31, 2024) (hereinafter, “Interpretive Rule”).

<sup>2</sup> Ben Walker, The Ascent, Buy Now, Pay Later Statistics (Jul. 17, 2024), <https://www.fool.com/the-ascent/research/buy-now-pay-later-statistics/>

Unfortunately, the Interpretive Rule threatens the availability of innovative and pro-consumer BNPL products. Rather than mischaracterize BNPL digital user accounts used to access BNPL products by equating them to “credit cards” in accordance with the Truth in Lending Act (TILA) and Regulation Z<sup>3</sup> the CFPB should adopt tailored, common-sense rules and guidance to ensure consumers are protected while still being able to reap the benefits of these products.<sup>4</sup>

### Common Sense and Practical Disclosures

Digital user accounts used to access BNPL products should not be inappropriately forced into an open-ended credit disclosure framework under Regulation Z. The CFPB’s Interpretive Rule performs regulatory jiu-jitsu as a method of capturing traditional BNPL products. The CFPB should account for BNPL products’ structural differences as it strives to maintain consumer protections.

Standardized disclosures for BNPL products benefit customers. While this Interpretive Rule claims to achieve this, it effectively creates a regime incompatible with BNPL products, potentially confusing customers. For instance, many BNPL products have two-week periods between statements, which conflicts with Reg Z’s requirement for a statement to be issued 21 days before a payment is due. It is unclear if the CFPB intends to alter the timing structure of BNPL products; thus, such products should be exempted from this requirement.

Furthermore, some customers have multiple BNPL products. Complying with this Interpretive Rule would result in customers receiving multiple statements that do not reflect the payment cycle of the consumer. This will lead to greater customer confusion. Currently, there is a less than 3% delinquency rate among BNPL users, which indicates the consumer understands the terms and conditions and their obligations. Creating a disclosure statement without relevance to the product will be counterproductive. The CFPB should consider how this information could be presented to customers in a clear and concise manner and take into account the tools BNPL providers already provide consumers to manage their BNPL products. As currently written, the Interpretive Rule would result in a haphazard disclosure regime.

There are significant differences between receiving a credit card and opening an account with a BNPL provider. For instance, opening a BNPL “digital user account” does not imply approval for a BNPL product. Each loan is approved on an individual basis, and disclosures are provided at the point of purchase. The CFPB should not require disclosure of all potential finance charges upon opening an account with a BNPL provider; instead, this disclosure should occur when a consumer initiates a BNPL product for each purchase.

The CFPB’s argument that a “digital user account” is a credit card is fundamentally flawed and contradictory of prior CFPB findings. A credit card does not include, for example, an account number that accesses a credit account unless it accesses an open-ended line of credit or a hybrid pre-paid card.<sup>5</sup> The CFPB’s definition of “digital user account” seems to capture more than just the BNPL products contemplated in the rulemaking. The CFPB should ensure no other products are captured in this definition. Furthermore, by shoehorning digital user accounts and BNPL providers into Subpart B of Regulation Z, which places requirements on open-ended credit products, it is unclear which aspects of Subpart B apply to BNPL products which are closed-ended.

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<sup>3</sup> Interpretive Rule at 47071

<sup>4</sup> TILA defines “credit card” to mean a physical device: “(l) The term ‘credit card’ means any card, plate, coupon book or other credit device existing for the purpose of obtaining money, property, labor, or services on credit.” 15 USC § 1602(l). The Interpretive Rule seeks to expand the definition of “credit cards” to include BNPL products without a physical device. Moreover, Regulation Z provides that, without a physical device, digital user accounts and/or BNPL products can be “credit cards” only if they can access an open-end line of credit to purchase goods and services. 12 C.F.R. § 1026.2(a)(15)(i), Cmmt-2(ii)(C).

<sup>5</sup> Regulation Z, Comment 2(a)(15)-2.ii

As drafted, this Interpretive Rule does not achieve its intended goal: protecting consumers. Given the ambiguity and confusion in requirements, it will create a number of varied approaches to disclosures, billing, and potentially disputes which will only cause confusion for consumers.

*Need for More Information Prior to Implementation*

The CFPB's approach of regulating through guidance first and subsequently requesting comments later is not the appropriate way to implement major policy decisions. Furthermore, the 60-day compliance timeline is far too short for BNPL providers to implement the compliance processes required by this Interpretive Rule, and it contravenes TILA's applicable effective date requirement.<sup>6</sup> Lastly, the CFPB adds confusion by not clarifying the status of BNPL products offered during the 60-day period before the rule takes effect.

The CFPB should rescind this Interpretive Rule and start anew to provide consistent, common sense, and consumer-friendly disclosures. Given that the Interpretive Rule seeks to impose new obligations, requiring that BNPL providers comply with Regulation Z requirements, including provisions relating to disclosure, the CFPB should at least modify the implementation deadline to October 1, 2025, as opposed to July 30, 2024. Thank you for your attention to this important matter.

Sincerely,



Byron Donalds  
Member of Congress



French Hill  
Chairman, Subcommittee on Digital Assets, Financial Technology and Inclusion  
Member of Congress

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<sup>6</sup> TILA, 15 U.S.C. § 1604(d), requires that “[a]ny regulation of the Bureau, or any . . . interpretation thereof, requiring any disclosure which differs from the disclosures previously required by this part, part D, or part E or by any regulation of the Bureau . . . shall have an effective date of that October 1 which follows by at least six months the date of promulgation . . .”