

BUY NOW/PAY LATER: NEW YORK MOVES FORWARD AFTER CFPB MAKES A U-TURN

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I. INTRODUCTION

Once hailed as the sleek, interest-free alternative to credit cards, Buy Now, Pay Later (BNPL) loans have become a defining feature of modern consumer finance. Consumers like them because, with just a few clicks, they can purchase a product or service immediately and then pay for it, typically, in four (or fewer) manageable installments with no interest and no fuss. Further, BNPL loan providers, initially at least, liked them because (they thought) no-interest BNPL loans repayable in no more than four in-

stallments were not subject to the federal Truth in Lending Act¹ (TILA)—the key U.S. consumer credit protection law that requires creditors to disclose the terms and costs of each loan they make and subjects them to penalties if they fail to meet these disclosure requirements.

BNPL's appeal to consumers is undeniable—52 percent of Americans have used it, with Generation Z and Millennials leading the charge.² Members of these younger generations often find themselves with greater financial challenges than earlier generations, including difficulties obtaining employment, inflationary prices, and debilitating student loan debt.³ BNPL loans give these cash-strapped consumers the ability to obtain goods and services they need or want *today* without having to pay for them in cash or using a credit card to pay for them (which could trigger hefty interest charges if they do not pay their entire balance when the payment due date arrives).

However, the popularity of BNPL loans has recently drawn scrutiny. A 2024 study by the Federal Reserve Board (FRB) found that “while BNPL is a convenient payment mechanism that consumers can use to access credit, some financially vulnerable consumers may be overextending themselves by using BNPL to make purchases that they otherwise could not afford.”⁴

The concerns raised in the FRB report were subsequently amplified in a recent Wall Street Journal (WSJ) article titled “*The Perils of Buying Botox and Concert Tickets With Buy Now Pay Later Loans.*”⁵ This article explores the growing trend of using BNPL services for discretionary purchases like cosmetic procedures and entertainment; it warns that, while BNPL loans offer consumers a way to split payments into manageable installments, this convenience can lead to financial strain, especially when used for non-essential items. Further, it points out that many users underestimate the long-term impact of accumulating multiple BNPL obligations, which can result in missed payments, mounting debt, and damage to credit scores.

The WSJ article also highlights how BNPL providers are increasingly targeting lifestyle spending, blurring the line between responsible borrow-

1. 15 U.S.C. 1601 *et seq.*

2. *BNPL on the Rise: 65% of Gen Zers Using BNPL More in 2025*, PARTNER-CENTRIC (Apr. 30, 2025), <https://partnercentric.com/blog/bnpl-industry-consumer-trends/>.

3. Angel Au-Yeung, *A Generation Is Turning to ‘Buy Now, Pay Later’ for Botox and Concert Tickets*, WALL ST. J. (Aug. 2, 2025), https://www.wsj.com/personal-finance/credit/the-perils-of-buying-botox-and-concert-tickets-with-buy-now-pay-later-loans-23a59c7e?reflink=desktopwebshare_permalink.

4. Jeff Larrimore et al., “*The Only Way I Could Afford It*”: *Who Uses BNPL and Why*, BD. OF GOVERNORS OF THE FED. RESRV. SYS., FEDS NOTES (Dec. 20, 2024), <https://www.federalreserve.gov/econres/notes/feds-notes/the-only-way-i-could-afford-it-who-uses-bnpl-and-why-20241220.html>.

5. Yeung, *supra* note 3.

ing and impulsive consumption. Experts caution that without proper budgeting and awareness, consumers may find themselves trapped in a cycle of short-term gratification and long-term adverse financial consequences. The Article urges its readers to treat BNPL like any other form of credit—understanding the terms, assessing affordability, and prioritizing needs over wants.⁶

II. CFPB RESPONSE: A TALE OF TWO ADMINISTRATIONS

With the above background in mind and as explained further below, the Biden and Trump Administrations have taken diametrically opposite approaches toward regulating the BNPL industry.

A. Biden Administration.

In September 2022, the Consumer Financial Protection Bureau (CFPB), under the leadership of then-CFPB Director and Biden appointee, Rohit Chopra, reported that the overall number of BNPL Loans issued by five of the most prolific providers of BNPL loans during 2019 and 2021 grew by 970 percent (from 16.8 to 180 million), and the dollar volume of those loans also grew significantly (from \$2 billion to \$24.2 billion).⁷ The CFPB also found that the industry mix of BNPL usage is diversifying. For example, while the percentage of all BNPL loans made by these companies during 2019 and 2021 that were used to purchase apparel and beauty products *decreased*, from 80.1% to 58.7%, that same percentage *increased* for BNPL purchases of (1) home goods, travel and entertainment, and automotive products (from 2.3% to 8.8%), and (2) “everyday” or “necessity” items (gas, groceries, and utilities), from 0.2% to 0.9%.⁸

A subsequent CFPB report, issued in March 2023, identified characteristics shared by the most likely and least likely users of BNPL loans, finding that “[a]fter controlling for other factors, having at most a high school degree and a super-prime credit score are most negatively associated with the likelihood of BNPL use [while b]eing Black, Hispanic, female, and having household income between \$20,001 and \$50,000 annually are characteristics positively associated with the likelihood of having borrowed using BNPL.”⁹

Responding to the findings in both of these reports, the CFPB took a bold step. On May 22, 2024, it issued an interpretative rule (Rule), effective July 30, 2024, construing, *for the first time*, BNPL lenders as “credit issuers”

6. *Id.*

7. CONSUMER FIN. PROT. BUREAU, BUY NOW, PAY LATER: MARKET TRENDS AND CONSUMER IMPACTS 31 (Sept. 15, 2022).

8. *Id.* at 35.

9. CONSUMER FIN. PROT. BUREAU, CONSUMER USE OF BUY NOW, PAY LATER: INSIGHTS FROM THE CFPB MAKING ENDS MEET SURVEY 8 (March 2023), [cfpb_consumer-use-of-buy-now-pay-later_2023-03.pdf](#).

and BNPL digital accounts as “credit cards,” thereby bringing both under the purview of TILA and its implementing regulation, Regulation Z. The result was that BNPL lenders would henceforth, beginning on the Rule’s effective date, be required to provide consumers with “some key legal protections and rights that apply to conventional credit cards[, including] a right to dispute charges and demand a refund from the lender after returning a product purchased with a [BNPL] loan.”¹⁰

The CFPB’s rationale for reaching this result derives primarily from Regulation Z’s definition of “creditor” as (1) “[a] person who regularly extends consumer credit that is subject to a finance charge or is payable by written agreement in more than four installments (not including a down payment) . . . ,” or (2) [f]or purposes of subpart B, any *card issuer* that extends either open-end credit or credit that is not subject to a finance charge and is not payable by written agreement in more than four installments.”¹¹ As indicated above, because BNPL loans typically do not require the payment of finance charges and require repayment in four installments or fewer, they clearly fall outside the first of these two definitions.

The CFPB, however, focused on the second definition of “creditor.” Finding that many if not most consumers obtain BNPL loans through the use of a personal “digital user account” (DUA) (a “secure, personal profile that the BNPL provider activates for a consumer which enables the consumer to access and utilize BNPL credit”), the CFPB determined that BNPL lenders are “card issuers” as defined in Regulation Z because they issue “credit cards” to obtain closed-end credit that is repayable without any finance charge and in four or fewer installments.¹² Note that while Regulation Z defines a “credit card” to mean a “card, plate, or other single credit device that may be used from time to time to obtain credit,” the CFPB took the position that a consumer’s DUA number or code constituted an “other single credit device” as that term is used in Regulation Z. The CFPB also pointed out that once a DUA is activated for a consumer, the consumer can use it, much as they might use an ordinary credit card, “on an ongoing basis to access credit to make additional purchases.”¹³

Less than three months after the Rule became effective, a fintech trade group, the Financial Technology Association (FTA) filed a lawsuit in the Washington D.C. District Court challenging the Rule as (1) having been adopted in violation of the Administrative Procedure’s Act’s notice-and-comment requirements, (2) ignoring TILA’s effective date requirement for

10. Truth in Lending (Regulation Z); Use of Digital User Accounts to Access Buy Now, Pay Later Loans, 89 Fed. Reg. 47068 (May 31, 2024) [hereinafter DUA/BNPL Int. Rule].

11. 12 C.F.R. § 1016.2(a)(17) (2024).

12. DUA/BNPL Int. Rule, *supra* note 10, at 47069–72; 12 C.F.R. § 1026.2(a)(7), (15)(i) (2024) (definitions of “card issuer” and “credit card”).

13. DUA/BNPL Int. Rule, *supra* note 10, at 47070.

new disclosure requirements, and (3) being arbitrary and capricious.¹⁴ With regard to this last assertion, the FTA claimed that the CFPB:

overlooked that certain obligations the . . . Rule purports to impose are a poor fit for BNPL products; overlooked that the . . . Rule grants insufficient time for BNPL providers to come into compliance with the new obligations the . . . Rule purports to impose; and neglected the serious reliance interests that its prior policy on BNPL products engendered.¹⁵

B. Trump Administration.

President Trump fired CFPB Director Chopra on February 1, 2025. Two days later, he appointed Treasury Secretary Scott Bessent to serve as Acting CFPB Director, and less than a week after that, he appointed Russell Vought, his Director of the Office of Management and Budget, to replace Treasury Secretary Bessent in his role as Acting CFPB Director. Thereafter, the FTA and the CFPB filed a joint motion to stay the FTA's challenge to the Rule, which the court granted on April 2, 2025. On May 6, 2025, Acting Director Vought announced in a press release that the CFPB will not prioritize enforcement of the Rule and is further contemplating taking appropriate action to rescind it. On May 12, 2025, the CFPB published in the Federal Register that it was withdrawing, applicable immediately, several CFPB guidance documents, including the Rule.¹⁶ Finally, on June 2, 2025, the FTA filed a Stipulation of Dismissal formally ending its challenge to the Rule.¹⁷

III. NEW YORK'S APPROACH

As the federal government pulled back, New York moved forward. On May 9, 2025, Gov. Kathy Hochul signed into law Senate Bill S3008C, the Buy-Now-Pay-Later Act (BNPL Act), codified as part of Article 14-B of the New York Banking Law.¹⁸

Per Gov. Hochul's May 9, 2025, press release,¹⁹ the BNPL Act is an attempt to address the "risks to consumers, including overextension, incon-

14. Complaint at 2–3, *Fin. Tech Ass'n. v CFPB*, No. 1:24-cv-2966-ACR (D.D.C. Oct. 18, 2024), <https://www.ftassociation.org/wp-content/uploads/2024/10/FTA-Complaint-File.pdf>.

15. *Id.* at 3.

16. Interpretive Rules, Policy Statements, and Advisory Opinions; Withdrawal, 90 Fed. Reg. 20084, 20086 (May 12, 2025).

17. *CFPB Announcement Regarding Enforcement Actions Related to Buy Now, Pay Later Loans*, CONSUMER FIN. PROT. (May 6, 2025), <https://www.consumerfinance.gov/about-us/newsroom/cfpb-announcement-regarding-enforcement-actions-related-to-buy-now-pay-later-loans/>.

18. N.Y. BANKING LAW § 735 *et seq.* (McKinney 2025).

19. *Governor Hochul Signs New Legislation to Protect Consumers and Keep Money in New Yorkers' Pockets as Part of the FY 2026 Budget*, N.Y. STATE DEP'T OF FIN. SERVS. (May 9, 2025), https://www.dfs.ny.gov/reports_and_publications/press_releases/pr20250509_2.

sistent credit reporting, data exploitation and excessive fees” posed by BNPL products. It creates the first state-level licensing regime specifically for BNPL lenders and introduces “safeguards, such as disclosure requirements, dispute resolution standards, limits on charges and fees, and data privacy protections to ensure consumers are better protected when using these financial products.”

A. Effective Date and Scope.

The BNPL Act becomes effective 180 days after the DFS adopts regulations implementing its provisions.

The BNPL Act applies to BNPL loans and BNPL lenders. It defines BNPL loans broadly to mean “closed-end credit provided to a consumer in connection with [the] consumer’s particular purchase of goods and/or services,” with exceptions only for credit provided to purchase a motor vehicle and credit provided by the *seller* of the goods and/or services.²⁰ It defines BNPL lenders broadly to include not only persons who offer to make BNPL loans directly to a New York resident consumer but also to persons who operate “a platform, software or system with which a [NY-resident] consumer interacts and the primary purpose of which is to allow third parties to offer [BNPL] loans. . . .”²¹

The BNPL Act specifically exempts federally chartered banking institutions, including foreign banking corporations licensed by the New York State Office of the Comptroller of the Currency (OCC) (Exempt Organizations) from its licensing requirement and the other requirements in the Act that apply only to “licensees.” Exempt Organizations, however, must still comply with any non-exempted provisions in the BNPL Act that apply to “[BNPL] lenders.”

B. License Requirement.

The primary obligation the BNPL Act places on BNPL lenders is to obtain a BNPL lender license from the DFS before offering a BNPL loan to a New York resident consumer.²² Exempt Organizations need not obtain this license. In addition, New York-chartered banking organizations, foreign banking corporations licensed by the DFS to transact business in New York or originate BNPL loans from a branch in New York, and persons licensed under the New York Licensed Lenders Act (collectively, Authorized BNPL lenders) are also not required to obtain this license, *provided* they obtain written authorization from the DFS to act as a BNPL lender for the specific category or categories of BNPL loans they wish to offer in New York. A BNPL license authorizes the licensee to offer BNPL “zero-interest loans,” BNPL “installment loans” (on which interest or a finance charge is imposed), and any other category of BNPL loans the DFS establishes by regu-

20. N.Y. BANKING LAW § 736(3) (McKinney 2025).

21. *Id.* at § 736(4).

22. *Id.* at § 737(a).

lation. To offer any other type of BNPL loan, a licensee must obtain prior approval from the DFS.

Typical of other New York licensing statutes applicable to financial services providers, the BNPL Act gives the DFS discretion (1) to approve, deny or revoke licenses after reviewing the applicant's financial responsibility including capital adequacy, experience, character and general fitness, and (2) broad authority to adopt regulations "to implement the provisions of the [BNPL Act], protect consumers, and ensure the solvency and financial integrity of [BNPL] lenders."²³ Further details concerning the licensing process and the qualifications to obtain a license can be expected to be found in regulations yet to be proposed by the DFS. BNPL providers should be alert to the issuance by the DFS of proposed regulations, so they can timely submit comments on aspects that can adversely impact their businesses and offer better alternatives.

It is critical that persons required to obtain a BNPL license do so before the effective date of the BNPL Act. If they do not, a provision in the BNPL Act voids any BNPL loan they make after such date and deprives them of any "right to collect or receive any principal, interest or charge whatsoever" in connection with the loan.²⁴

C. Oversight.

The BNPL Act gives the DFS broad oversight authority over BNPL licensees, including the power to:

- set or prescribe a methodology to calculate required capital requirements.
- conduct investigations to determine whether licensees have conducted themselves in a manner that would justify revocation of their license.
- examine their books and records.
- approve or deny proposed acquisitions of control of their businesses.
- require them to keep specific records²⁵ and file annual reports with the DFS concerning their operations.
- revoke or suspend their licenses for various reasons, including violations of applicable law, failure to disclose facts in their license application process that, if known by the DFS, would have resulted in a license denial, and failure to comply with any lawful DFS demand for payment of monies or any other DFS order, demand, or requirement.²⁶

23. *Id.* at § 738.

24. *Id.* at § 746(7).

25. *Id.* at § 743(1) (noting that while § 743 is headed "Licensee's books and records; reports," subsection (1) refers to any BNPL lender).

26. *Id.* at §§ 741–43 (authorizing the DFS to suspend a BNPL license *without notice and a hearing* for a period of not more than 30 days for "good cause" i.e., engaging in a practice prohibited by the BNPL Act or regulations or "dishonest

In addition, the BNPL Act empowers the DFS to “make such investigations as . . . necessary to” determine whether *any* [BNPL] lender or any other person has violated any of the provisions of [the BNPL Act] or any other applicable law.²⁷ This provision appears on its face to authorize the DFS to investigate not only licensees, but also Authorized BNPL lenders, Exempt Organizations, and any other persons with respect to suspected violations of the BNPL Act or other applicable New York laws.

D. Consumer Protections.

The BNPL Act includes various consumer protection provisions applicable to *all* BNPL lenders, including but not limited to the following:

- **Prohibitions.** The BNPL Act prohibits BNPL lenders from taking confessions of judgment or powers of attorney to confess judgments, engaging in deceptive or unfair practices, misapplying borrower payments, and providing inaccurate information to consumer reporting agencies.
- **Interest and Fee Limits.** BNPL lenders may not:
 - Charge interest in excess of the maximum rate allowed by law (or set by the DFS).
 - Charge interest at a rate that has not been clearly disclosed to the consumer and to which the consumer has not agreed.
 - Impose fees and charges which individually or collectively exceed limits set by the DFS.
- **Disclosure Obligations.** BNPL lenders must clearly and conspicuously disclose to consumers the terms of their BNPL loans (interest, fees, repayment schedule, billing practices and how to dispute a bill, whether the transaction will be reported to a credit reporting agency, and any other material conditions) and do so in compliance with “applicable federal regulations, including . . . [R]egulation Z.”²⁸
- **Policies and Procedures.** BNPL lenders must maintain policies and procedures for:
 - “Reasonable risk-based underwriting,” considering only the *applicant’s* creditworthiness, standing, or capacity.
 - Credit reporting designed to ensure that the data they may report to consumer reporting agencies is accurate.

or inequitable practices which may cause substantial harm to the public.” *id.* § 741(5)).

27. *Id.* at § 742(1).

28. *Id.* at § 746. Based on the CFPB’s withdrawal of the Rule, one could argue that Regulation Z does not apply to BNPL loans that are repayable without any finance charge in four or fewer installments, potentially negating the requirement that disclosures relating to such loans comply with Regulation Z.

- Handling consumer requests for refunds or credits for goods or services purchased with the proceeds of a BNPL loan.
- Handling consumer disputes consistent with the dispute rights that apply to credit card charges under TILA (even if TILA is not applicable).
- Sharing consumer data with third parties, which they may do only with the consumer's consent.²⁹

E. Penalties.

The BNPL Act provides for the imposition of both criminal and civil penalties on BNPL licensees and other persons who violate or participate in a violation of the BNPL Act or any of the regulations adopted by the DFS to implement it, including Authorized BNPL lenders, Exempt Organizations, and "any member, officer, director or employee of" a BNPL lender. Conviction of a violation is a misdemeanor punishable by a fine of not more than \$500 and/or imprisonment of not more than six months. Additionally, the DFS can pursue violators administratively and impose fines.³⁰

F. Industry Pushback.

The BNPL industry, as one might expect, opposed passage of the BNPL Act while it was under consideration in the Legislature. The president of one industry group that represents the interests of a network of some of the most well-known FinTech leaders characterized New York's law as "flawed," criticized its treatment of BNPL loans as equivalent to credit cards, and warned that it could stifle access to low-cost credit at a time when consumers are already burdened by inflation and debt.³¹

IV. THE ROAD AHEAD

With the retreat by federal regulators, additional states may be tempted to enact laws like the BNPL Act. Indeed, there is evidence of interest on the part of other states in doing just that. On March 25, 2025, following publication of the Rule but before the CFPB's ultimate decision to withdraw it, the Illinois Attorney General, on behalf of the Attorneys General of

29. N.Y. BANKING LAW §§ 744–746 (McKinney 2025).

30. *Id.* at § 748. Note that the Act does not address the amount of or any limitation on the amount of the fines DFS may impose. However, in another section of the BNPL Act, it authorizes the DFS to adopt "such rules and regulations as may be necessary for the enforcement of [the BNPL Act]." See also *id.* at § 747(2)(d).

31. FTA Statement on Flawed BNPL Provisions in New York State Budget, FIN. TECH. ASS'N (May 7, 2025), <https://www.ftassociation.org/fta-statement-on-flawed-bnpl-provisions-in-new-york-state-budget/>.

22 states, submitted a joint comment letter to the CFPB.³² The letter commended the CFPB for inquiring into BNPL lending practices and voiced concerns that BNPL loans, while marketed as innovative and consumer-friendly, could replicate harmful features of high-cost, small-dollar credit products, such as a lack of transparency, no credit checks, and easy approvals that can lead to cycles of debt. Moreover, California, Illinois, and Massachusetts have already initiated exploratory committees to assess the feasibility of legislation similar to the BNPL Act.

States considering BNPL legislation, however, should recognize two facts. First, consumers are primarily attracted to BNPL loans—aside from the fact that they are simple and easy to understand—because they allow consumers to obtain short-term credit without having to pay high credit card interest rates or payday loan fees. Second, each new state BNPL licensing and regulatory regime that is implemented will necessarily increase costs for BNPL providers, putting them between the proverbial rock and a hard place. They could choose to eat those costs, thereby cutting into their profitability, or pass those costs to their borrowers in the form of interest or fees, which would probably make their loans subject to **all** of the closed-end credit provisions in TILA and Regulation Z (thereby further raising their costs). Neither scenario appears likely to result in a good outcome for the industry or consumers.

If the BNPL Act does end up having a “ripple effect” in other state capitals, that could also lead to a patchwork of state BNPL laws, which typically prompts calls from affected financial services providers for a not-too-restrictive preemptive federal law with which they can comfortably comply. Unfortunately, as has often been the case, proponents start out with a preemptive bill, but the preemption provision gets carved out during the legislative give and take, leaving proponents with the worst of outcomes—a comprehensive federal law and similar but not identical laws in numerous individual states, each different in particular regards from the other.

Yet another possibility, based on the increasing popularity of BNPL loans, is that consumers may object to state efforts to “fix” something they do not feel is “broken,” and in fact, they like.

Banking institutions and state-licensed lenders may also play a role in determining the future of BNPL lending. Banks and licensed lenders compete for business with BNPL lenders, and it seems fair to say, based on some of the indicators discussed earlier, that BNPL lenders may be succeeding in taking customers (or at least some of their business) away from such institutions. If true, one can expect those institutions to push for legislative (or regulatory) action to “level the playing field” by subjecting

32. OFFICE OF THE ATT’Y GEN. OF ILL., *Notice and Request for Comment Regarding the CFPB’s Inquiry Into Buy-Now Pay-Later Providers*, Docket No. CFPB-2022-0002; 87 Fed. Reg. 3511 (Mar. 25, 2025).

BNPL lenders to regulation and oversight equivalent to that with which they themselves must comply. Conversely, these institutions may decide it is better to join BNPL lenders than fight them by jumping on the BNPL bandwagon to make BNPL loans themselves. Easier said than done, however, as banks have learned in the past when they tried but failed in efforts to offer new and innovative products and services.

To conclude, the road ahead for BNPL providers, which so far has been relatively “smooth sailing,” appears likely to get bumpy, maybe a bit hazardous, and probably more congested. It will be interesting to see where it leads.