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New CFPB Rule Classifies “Buy Now, Pay Later” Lenders as Credit Card Issuers

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On May 22, 2024, the Consumer Financial Protection Bureau (CFPB) issued an interpretive rule that redefines the regulatory framework for Buy Now, Pay Later (BNPL) lenders, aligning them with traditional credit card providers subject to the Truth in Lending Act (TILA). This development represents a pivotal shift as most BNPL products had not previously been subject to the comprehensive requirements of TILA.

Background and Implications

BNPL financing is typically offered at the point of sale and allows consumers to spread out the cost of a purchase over several interest-free payments. For purposes of the interpretive rule, “BNPL refers to a consumer loan for a retail transaction that is repaid in four (or fewer) interest-free installments and does not otherwise impose a finance charge.” The use of BNPL financing skyrocketed during and after the pandemic and is now a multibillion-dollar market. The rapid growth of BNPL financing generated regulatory concern from the CFPB. In enacting its interpretative rule, the CFPB sought to ensure that BNPL financing programs were not gaining an advantage by avoiding certain Regulation Z requirements that traditional credit card issuers are subject to.

The CFPB's interpretive rule clarifies that lenders issuing digital user accounts that consumers use to access credit products – including products marketed as BNPL – are considered "card issuers" under Regulation Z, which implements TILA. Such lenders are “card issuers” because such digital user accounts are deemed “credit cards” under Regulation Z according to the interpretive rule. Additionally, “card issuers” are considered “creditors” for purposes of subpart B if they also extend “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.” BNPL products fall under the latter category, and therefore this classification subjects BNPL lenders to subpart B of Regulation Z, which mandates specific disclosures and provides mechanisms for billing dispute resolution.

The CFPB’s interpretive rule is effective 60 days post-publication in the Federal Register.

Key Provisions

- *Definition of Credit Card*: The BNPL interpretive rule effectively expands the definition of a credit card to include digital user accounts that allow consumers to access BNPL credit. This definition aligns with the broader statutory framework that includes any device, mechanism, or digital tool used to obtain credit.

Specifically, the CFPB interprets the terms “other credit device” and “other single credit device” found within the TILA and Regulation Z definitions of “credit card” to include a BNPL digital user account that a consumer can use to access BNPL credit. While the Bureau acknowledges that the “broad catch-all terms ‘other credit device’ and ‘other single credit device’ are not defined by TILA and Regulation Z,” it asserts that “this interpretation is consistent with the ordinary meaning and historical context of the words,” as well as with “Congress’ intent to define the terms ‘other credit device’ and ‘credit card’ broadly.”

- *Consumer Protections*: BNPL providers must now offer protections similar to those provided by credit card companies, including the right to dispute charges and the obligation to provide refunds for returned items. Additionally, BNPL providers must issue periodic billing statements that provide the information credit card issuers are required to disclose under Subpart B of Regulation Z. Consumers must also receive clear disclosures that outline the fees, pricing structures, and their rights when issuing a billing dispute or requesting a refund, further aligning BNPL transactions with traditional credit card frameworks.

Notably, the interpretive rule could significantly impact the operational and compliance strategies of BNPL providers as they must adapt to the enhanced disclosure requirements and develop robust systems for handling disputes and refund processes as stipulated by TILA and Regulation Z. The primary requirements applicable to BNPL lenders as described in the interpretive rule are outlined below:

- Dispute Investigation
  The CFPB’s guidance will require BNPL lenders to investigate consumer disputes. Consumers will be able to escalate billing disputes to the BNPL lender, which then require the lender to investigate the dispute subject to Regulation Z requirements. If necessary, the lender must provide a credit to the consumer. Further, lenders must pause payment requirements during investigations into consumer disputes, as is the current mandated practice among credit card issuers.

- Returns, Refunds, and Cancellations
  The CFPB’s interpretive rule also clarifies what responsibilities BNPL lenders must comply with when faced with returns, refunds, or cancelled services. The CFPB asserted that, prior to the interpretative rule, there was ambiguity surrounding refunds and whether BNPL lenders would be obligated to provide them. The CFPB interpretive rule provides that BNPL lenders must credit refunds to consumers’ accounts when consumers return products or wish to cancel a service for a refund

- Billing Statements

  To the extent BNPL lenders are now classified as creditors subject to subpart B of Regulation Z, such lenders must comply with the requirement to furnish consumers with a periodic statement that discloses information such as: account balances outstanding at the beginning of each billing cycle, identification of each credit transaction, any credit to the account during the billing cycle, any fees or charges imposed, certain repayment disclosures, and the other items required under 12 CFR § 1026.7.

Takeaways for BNPL Lenders

The CFPB's new interpretive rule marks a transformative step in regulating BNPL products, aligning them more closely with established credit card standards, though the standards applicable to BNPL products are not entirely the same. For example, traditional credit card issuers are subject to the regulations appearing in subpart G of Regulation Z, such as the requirement to assess a consumer's repayment ability prior to extending them a line of credit, and certain limits on penalty fees, but these requirements still do not apply to BNPL lenders.

BNPL firms are advised to closely review these changes and prepare for compliance with the new regulatory requirements as it is not likely that this is the only action the CFPB will take towards BNPL lenders. The agency is accepting public comments to gauge whether any further clarifications or revisions are necessary.

For further information, BNPL lenders can review the full text of the interpretive rule linked above and work with counsel to submit comments as outlined in the CFPB's public notice.