

Alert | Financial Regulatory & Compliance



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CFPB Begins Scrutinizing Companies Using ‘Buy Now, Pay Later’ Credit

The Consumer Financial Protection Bureau (CFPB) **has begun information-gathering inquiries** into multiple companies that offer “buy now, pay later” (BNPL) credit to merchants and consumers, citing concerns about “accumulating debt, regulatory arbitrage, and data harvesting” affecting the consumer credit market.

BNPL is a form of deferred payment that allows consumers to purchase a product by paying an initial down payment, typically 25% of the cost, and spreading the remaining cost across approximately four or less installments. BNPL has rapidly grown in use during the COVID-19 pandemic and holiday shopping season because BNPL is easy to access, with minimal application processes requiring little information from the customer. Additionally, BNPL credit often carries no interest on purchases. The increase in BNPL use has caught the attention of venture capital investors and technology companies.

The CFPB will assess the risks and benefits of BNPL credit programs and publish its findings. The CFPB is concerned with the following:

- **Accumulating Debt:** Due to the ease of access to and of use of many app-based BNPL programs, consumers may accrue a larger amount of debt than originally anticipated. This may lead to fees by the BNPL providers as well as consumers’ banks if consumer accounts become over-drafted.
- **Regulatory Arbitrage:** The CFPB suspects that BNPL providers are not rigorously evaluating the regulatory implications of these programs, and therefore may miss important consumer disclosures

and other rules for consumer protection. BNPL may not fit into regulatory schemes governing credit cards and other credit resources, and therefore may be under-regulated.

- **Data Harvesting:** BNPL providers typically have access to customers' spending histories and may use this data to encourage certain purchases or merchants and engage in targeted behavior.

This CFPB inquiry may have a chilling effect on current or new BNPL providers, which could in turn present challenges to merchants that have grown accustomed to significant portions of sales to consumers using BNPL. Consumers that have become familiar with using BNPL to increase point-of-sale spending power may see that become limited due to the scrutiny over these programs.

The U.S. regulator's move to potentially regulate the BNPL market follows the European Commission's June 2021 proposal to bring BNPL products under consumer credit regulation and the UK government's February 2021 announcement of its intention to regulate the BNPL market.

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