

New CFPB Interpretive Rule to Regulate BNPL

Alert

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The Consumer Financial Protection Bureau (CFPB) has issued an [interpretive rule](#) stating that Buy Now, Pay Later (BNPL) loan providers are “card issuers” under Subpart B of Regulation Z and are thus subject to certain consumer protection measures that apply to open-end credit providers. The [re-energized CFPB](#) had previously conducted a years-long study on BNPL credit, highlighting the market’s post-Covid boom and perceived gaps in consumer protection regulation.

The interpretive rule is applicable as of July 30, 2024. The CFPB is voluntarily soliciting comments on the interpretive rule until August 1, 2024, at which point the CFPB may change the rule based on the feedback received. There is a safe harbor for good faith compliance with the interpretive rule as issued.

CFPB'S INTERPRETIVE RULE

The interpretive rule lays out the CFPB’s position that BNPL lenders are “card issuers” under Regulation Z because the device they issue to access credit – generally digital user account credentials – meets the regulation’s definition of “credit card.” The term “credit card” under the Truth in Lending Act (TILA), as implemented by Regulation Z, encompasses physical cards and any “other credit device” or “other single credit device” for the purpose of obtaining credit from time to time. According to the CFPB, this demonstrates congressional intent for certain provisions in Regulation Z to be flexible and apply to the digital user accounts that BNPL providers provide to consumers to access BNPL credit.

Under the interpretive rule, the CFPB states that 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.”¹ The CFPB therefore views BNPL lenders as “creditors” under Subpart B of Regulation Z² and “card issuers” under Regulation Z’s definition.

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While the interpretive rule refers to the consumer-facing FinTechs as the “BNPL lenders,” banks typically are the issuers of BNPL loans. Thus, banks issuing BNPL loans need to monitor how regulators with supervisory authority over those banks issuing BNPL loans, such as the Federal Deposit Insurance Corporation, respond to this interpretive rule from the CFPB.

The CFPB’s interpretive rule also states that BNPL lenders are generally not subject to Subpart G of Regulation Z, which contains additional rules applicable to credit card accounts, including ability-to-repay requirements and fee limitations.

With this interpretive rule, the CFPB does not seek to amend Regulation Z through the Administrative Procedure Act rulemaking process, but rather purports to interpret how Regulation Z applies to BNPL credit. Accordingly, the interpretive rule was issued pursuant to the CFPB’s authority to interpret Regulation Z and TILA to carry out the purposes of consumer financial laws.

EFFECT ON MARKET

Merchants and consumers will be impacted by this interpretive rule’s triggering of the billing error dispute resolution requirements in Subpart B of Regulation Z.

BNPL lenders will be required to investigate billing error disputes initiated by consumers and pause disputed payments during the BNPL lender’s investigation and dispute resolution process, which may result in a chargeback to the merchant depending on how the dispute is resolved. In the current system, BNPL lenders were not obligated by law to investigate consumer disputes and could require consumers to raise the dispute directly with the merchant, all while consumers’ repayment obligations continued during the dispute resolution process.

Under the interpretive rule, lenders also will be required to credit a consumer’s account with the disputed amount (likely resulting in a chargeback to the merchant) if they determine a billing error occurred. Subpart B of Regulation Z includes in its definition of “billing error” alleged unauthorized payments, alleged failures of the merchant to deliver goods or services as agreed, and alleged rejections of goods or services by the consumer. This investigation/dispute resolution requirement is likely to increase the costs of the BNPL service, which to date, have usually been provided interest-free.

The CFPB’s interpretive rule regulating the BNPL market will have significant impacts in the lending market for consumers, financial institutions, and merchants alike.

For more information on the new CFPB regulation, please contact [Matthew Grimaldi](#), [Heidi Wicker](#), [Tom Witherspoon](#) or the Stinson LLP contact with whom you regularly work.

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