

September 26, 2022

On September 15, 2022, the [Consumer Financial Protection Bureau](#) published a [report](#) analyzing trends in the buy now, pay later (BNPL) industry. In particular, the CFPB finds that the BNPL industry has experienced rapid growth since 2020 and that, while BNPL products offer certain benefits to consumers, the bureau believes that borrowers are receiving uneven disclosures and consumer protections when using those products.

CFPB reports trends in BNPL loans

Based on data collected between 2020 and 2021, the CFPB reports:

- A 4% increase in the percent of applicants who were approved for credit.
- A \$135 increase in the average purchase amount financed by a BNPL loan.
- A 2.6% increase in the percent of borrowers who were charged at least one late fee each year – with those late fees accounting for an additional 1.9% of lender revenue over such time and an overall 1.7% increase in lender revenues attributable to consumer fees.

CFPB identifies competitive benefits of BNPL loans

The report identifies potential benefits in two categories.

- **Ease of use:** BNPL products are easy to use and accessible, have a high credit approval rate, and provide an instantaneous credit decision. The repayment structure is straightforward and simple for consumers to understand.
- **Product discovery:** The app-driven acquisition model serves as a discovery engine that helps users browse many products and brands via a process that, over time, becomes tailored to the individual user's interests.

CFPB expresses concern over potential consumer risks of BNPL loans

The CFPB expresses concern over potential consumer risks in three broad categories, as outlined below.

Lack of consistent consumer protections

The CFPB states its belief that disclosures to consumers seeking to use BNPL products are inconsistent across providers, including with respect to loan terms, cost of credit, dispute resolution and the requirement to use autopay for loan repayment. Specifically, the CFPB concludes that dispute resolution, which is the top-ranking BNPL-related complaint category in the CFPB's Consumer Complaint Database, presents obstacles for consumers and can result in financial harm as consumers are required to pay remaining installments while the resolution of a dispute or product return is pending.

Data harvesting

The CFPB also states its belief that BNPL lenders often collect consumer data and monetize it, increasing the maximum lifetime value that can be extracted from a consumer through other product features and marketing campaigns. In particular, the CFPB expresses concern that data harvesting has been maximized by lenders' adoption of an app-driven acquisition model in which consumers complete their application on the lender's proprietary app – a development that is leading many executives to view BNPL products as shifting into marketing functions. In [his statement on the report](#), CFPB Director Rohit Chopra said the bureau will begin coordinating with the Federal Trade Commission on its [proposal to regulate data collection](#). Chopra believes the FTC's data harvesting rules, when finalized, will be enforced by the CFPB in the financial services arena.

Overextension

The CFPB report states that the BNPL business model may encourage consumers to overextend on debt by accumulating several loans within a short period of time and/or taking out loans over a sustained period, which may impact consumers' ability to meet non-BNPL obligations. Additionally, the report finds a significant increase in the purchase sizes enabled by BNPL products – with consumers often purchasing 50% to 80% more than they would if paying by other means. Thus, the CFPB sees potential overextension from two directions: Consumers not only making more purchases than normal but also spending more on each purchase.

Focus on regulatory landscape

Chopra also stated that the CFPB would work to ensure that borrowers have similar protections to credit card consumers, regardless of whether their purchases are made using a credit card or a BNPL loan. For example, the report refers to the following regulations currently applicable to credit card issuers that may be logically applied to BNPL loans:

- Regulation Z requires credit card issuers and creditors of open-end credit to give consumers resolution rights with respect to disputes, allowing consumers to withhold payment while an issue is being resolved. The CFPB states its belief that most BNPL lenders are not following these provisions, and consumers are often required to pay installments with respect to disputed amounts while the disputes are pending.
- The Electronic Fund Transfer Act prohibits creditors from requiring automatic withdrawal for the payment of loan installments (also known as autopay). The report finds that most BNPL lenders are requiring borrowers to use autopay, and some BNPL lenders make removing the autopay feature burdensome or impossible.
- Regulation Z prohibits credit card issuers from charging borrowers multiple late fees for the same missed payment. The report finds evidence of multiple late fees being charged on the same missed payment; however, it notes that this practice had changed by the time of publication.

The lack of an advance notice of proposed rulemaking from the CFPB would suggest a formal rule remains a ways off. In Congress, BNPL remains an area of interest, with frequent questions to Chopra from lawmakers and a hearing on the issue in November 2021. Lawmakers, broadly speaking, mirror Chopra's concerns over:

- Unsustainable debt.
- Lack of adequate consumer disclosure or notice.
- Consumer credit reporting.
- Consumer data privacy, control and security risks.

However, no notable BNPL bills were introduced in this Congress.

This content is provided for general informational purposes only, and your access or use of the content does not create an attorney-client relationship between you or your organization and Cooley LLP, Cooley (UK) LLP, or any other affiliated practice or entity (collectively referred to as "Cooley"). By accessing this content, you agree that the information provided does not constitute legal or other professional advice. This content is not a substitute for obtaining legal advice from a qualified attorney licensed in your jurisdiction, and you should not act or refrain from acting based on this content. This content may be changed without notice. It is not guaranteed to be complete, correct or up to date, and it may not reflect the most current legal developments. Prior results do not guarantee a similar outcome. Do not send any confidential information to Cooley, as we do not have any duty to keep any information you provide to us confidential. When advising companies, our attorney-client relationship is with the company, not with any individual. This content may have been generated with the assistance of artificial intelligence (AI) in accordance with our AI Principles, may be considered Attorney Advertising and is subject to our [legal notices](#).

Key Contacts

Obrea Poindexter Washington, DC	opoindexter@cooley.com +1 202 776 2997
Michelle L. Rogers Washington, DC	mrogers@cooley.com +1 202 776 2227

This information is a general description of the law; it is not intended to provide specific legal advice nor is it intended to create an attorney-client relationship with Cooley LLP. Before taking any action on this information you should seek professional counsel.

Copyright © 2023 Cooley LLP, 3175 Hanover Street, Palo Alto, CA 94304; Cooley (UK) LLP, 22 Bishopsgate, London, UK EC2N 4BQ. Permission is granted to make and redistribute, without charge, copies of this entire document provided that such copies are complete and unaltered and identify Cooley LLP as the author. All other rights reserved.