

# Regulatory Alert

## Regulatory Insights for Financial Services

May 2024

### Buy Now, Pay Later (BNPL): CFPB Rule on Consumer Protections

#### KPMG Insights:

- **Expansion of BNPL:** As reason for this interpretive rule, CFPB analysis shows a tenfold increase in BNPL lending, with loans across merchant categories and ranging in purchase amounts.
- **It's a "Credit Card":** The interpretive rule considers BNPL loans to fall under the same existing rules/regulations (including rights and protections of the Truth in Lending Act) that apply to traditional credit cards.
- **"Firing on All Cylinders":** Expect continued CFPB actions to quickly be issued (including enforcement actions) given the recent SCOTUS CFPB decision.

The Consumer Financial Protection Bureau (CFPB) issues an [interpretive rule](#) affirming that "Buy Now, Pay Later" (BNPL) lenders are subject to some of the same consumer protection requirements as traditional credit card companies. The rule, which becomes effective sixty (60) days after publication in the Federal Register, will require BNPL lenders to:

- Investigate disputes.
- Provide refunds for voided services and returned products.
- Issue billing statements that disclose any applicable fees and pricing structures.

Details of the interpretive rule are highlighted below.

**Overview of Interpretive Rule.** The rule affirms the applicability of Regulation Z (Reg Z – which implements the Truth-in-Lending Act) to lenders that issue "digital user accounts" for accessing credit (as defined in Reg Z), including BNPL lenders. The interpretive rule clarifies that such lenders meet the criteria of being "card issuers" and "creditors" under Reg Z, and are:

- Subject to Subpart B (under Reg Z), which requires lenders to provide legal protections and rights to consumers, including:

- A right to dispute charges (and an obligation for BNPL lenders to investigate the dispute).
- A right to a refund for returned products or cancelled services.
- A right to receive periodic billing statements that disclose any applicable fees and pricing structure.
- Not generally subject to Subpart G (e.g., penalty fee limits, ability-to-repay requirements).

In support of the interpretive rule, the CFPB states that:

- Reg Z defines "credit card" as "any card, plate, or other single credit device that may be used from time to time to obtain credit."
- The CFPB interprets "other single credit device" to include "a BNPL digital user account that a consumer can use through websites, mobile apps, browser extensions, or integrations with merchant websites or mobile apps to access BNPL credit for the purchase of goods and services."
- BNPL lenders are deemed "card issuers" under Reg Z because the digital user accounts they issue constitute "credit cards" under Reg Z.
- "Traditional BNPL products are closed-end loans payable in four or fewer installments without a finance charge, used to make purchases on credit."

- Subpart B applies to credit that is not open end if, as with BNPL, the credit is not subject to a finance charge and is not payable by written agreement in more than four installments.

**Effective Date and Comment Period.** The interpretive rule has an effective date of sixty (60) days after its publication in the Federal Register. The CFPB indicates it is also accepting comments on the interpretive rule and may make revisions “at a later time”, as appropriate. Comments are requested no later than August 1, 2024.

**CFPB Study of BNPL.** The CFPB states the rule is a result of observations and extensive analysis by the CFPB on the BNPL market.

- In 2021, CFPB opened an [inquiry](#) into BNPL focused on debt accumulation, regulatory arbitrage, and data harvesting. [Results](#) were published in 2022 and highlighted rapid expansion of the BNPL industry and growing consumer risks.
- In 2023, CFPB published [findings](#) on the financial profiles of BNPL borrowers.

**For more information,** contact [Mike Lamberth](#) or [Todd Semanco](#).

## Contact the author:



**Amy Matsuo**  
**Principal and National Leader**  
Regulatory Insights  
[amatsuo@kpmg.com](mailto:amatsuo@kpmg.com)

[kpmg.com/socialme](https://kpmg.com/socialme)



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