



March 25th, 2022

Director Rohit Chopra  
Consumer Financial Protection Bureau  
1700 “G” St. NW  
Washington, DC 20552

**Regarding Docket CFPB-2022-0002: Notice and Request for Comment Regarding the CFPB’s Inquiry into Buy-Now-Pay-Later**

Honorable Director Chopra:

Thank you for the opportunity to respond to the Bureau’s request for comments on buy-now-pay-later (BNPL) products.

NCRC is a national organization with a mission to increase the flow of private capital into traditionally underserved communities through advocacy for the Community Reinvestment Act. Our members include more than 600 community reinvestment organizations; community development corporations; local and state government agencies; faith-based institutions; community organizing and civil rights groups; minority and women-owned business associations, as well as local and social service providers from across the nation.

We have strong concerns that Buy Now Pay Later (BNPL) services have gained widespread acceptance among consumers even though the regulatory framework surrounding their use is still nascent. We commend the Bureau for initiating a process of discerning the proper treatment and call on the Bureau to move swiftly to bring BNPL under rules that will protect consumers. Since the evidence shows that consumers use BNPL as a form of revolving credit and BNPL firms meet the definition of “card issuers,” the Bureau should treat BNPL in a manner consistent with how it already regulates credit cards.

BNPL services have gained substantial adoption among consumers and are now a commonplace alternative in online shopping carts. While fewer than 1 million households used a BNPL service in 2018, more than 45 million consumers were active users by the end of 2021.<sup>1</sup> BNPL services now facilitate

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<sup>1</sup> Accenture. (2021). *The Economic Impact of Buy Now Pay Later in the US*. <https://afterpay-corporate.yourcreative.com.au/wp-content/uploads/2021/10/Economic-Impact-of-BNPL-in-the-US-vF.pdf>

approximately two percent of all online retail sales.<sup>2</sup> One consulting firm has estimated that usage of BNPL will grow at least tenfold by 2025.<sup>3</sup> Most large banks have or are developing a BNPL service. Among consumers aged 18 to 24, use and frequency of use are higher. The top purchase categories for BNPL include furniture, electronics, and apparel, but niche markets have emerged, such as for medical debt<sup>4</sup> or music festivals.

Below, we provide a summary outline of our recommendations, followed by a detailed discussion of each in the body of this letter.

### **I. Buy-Now-Pay-Later providers must be classified as “card issuers” covered under the Truth-in-Lending-Act (TILA) and Regulation Z.<sup>5</sup>**

- i. Consumers use BNPL as a form of revolving credit and as a device to purchase goods and services. Merchants choose to offer BNPL for reasons similar to the decision to offer a network-branded card as a payment choice.
- ii. The CFPB should clearly state that BNPL providers are “card issuers” covered by TILA. For definitional purposes, the Bureau should consider BNPL products as a form of charge card.
- iii. If defined as charge cards, additional protections would be accorded to consumers as well as more likely potential positive impacts to credit scores.
- iv. The Bureau should initiate the process of defining the “large participants” in the BNPL market.
- v. Unless TILA applies, consumers forfeit important dispute resolution rights and fraud protections when they use BNPL in lieu of credit cards. The Bureau must clarify that BNPL products are charge cards in order to confer consumers with charge-back and dispute rights.
- vi. Because they are not currently complying with the TILA requirements for open end credit, providers are not providing statements.
- vii. The Bureau will not reduce access to credit if it clarifies that these products are covered by the TILA credit card protections.

### **II. Buy Now Pay Later Products use deceptive structures to hide their true cost. Providers should be held accountable to underwrite consumers for their ability-to-repay their BNPL loans**

- i. As structured, repayment sequences will confuse consumers and may set them up to receive penalty fees for missed payments. The structure of BNPL creates uncertainty about when payments are due.
- ii. The fee structure is opaque. Fees should be “reasonable and proportional” and be clearly disclosed
- iii. Providers should be held accountable to underwrite consumers for their ability-to-repay their BNPL loans.

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<sup>2</sup> Julian Alcazar & Terri Bradford. (2021). *The Appeal and Proliferation of Buy Now, Pay Later: Consumer and Merchant Perspectives* [Payment Systems Research Briefing]. Federal Reserve Bank of Kansas City. <https://www.kansascityfed.org/research/payments-system-research-briefings/the-appeal-and-proliferation-of-buy-now-pay-later-consumer-and-merchant-perspectives/>

<sup>3</sup> CB Insights Research. (2021, March 2). *Disrupting The \$8T Payment Card Business: The Outlook On “Buy Now, Pay Later.”* *Banking and Payments*. <https://www.cbinsights.com/research/report/buy-now-pay-later-outlook/>

<sup>4</sup> Scratchpay. (n.d.). *Simple & friendly, payment plans for medical financing*. Scratchpay. Retrieved March 17, 2022, from <https://scratchpay.com/>

<sup>5</sup> 12 CFR Part 1026

**III. Exclusive relationships with merchants are commonplace in BNPL. The existence of these relationships undermines competition. When applied in the context of purchases made at the point of sale or during the checkout stage of online commerce, the impact of narrowed choices may be especially significant.**

i. BNPL services are being embedded inside financial services platforms that serve small businesses.

ii. Data sharing across vertically-integrated platforms pose concentration concerns.

## DISCUSSION

### **I. Buy-Now-Pay-Later providers must be classified as “card issuers” covered under the Truth-in-Lending-Act (TILA) and Regulation Z.<sup>6</sup>**

In most cases, BNPL services appear to believe that they are not covered under TILA because they do not charge interest and structure repayment in four or fewer periods. However, the definitions of “card issuer” and “charge card” in Regulation Z provide a basis for coverage.<sup>7</sup>

i. *Consumers use BNPL as a form of revolving credit. Merchants choose to offer BNPL for reasons similar to the decision to offer a network-branded card as a payment choice.*

Most BNPL services, with the exception of those offered inside a credit card account, use a “pay-in four” structure. If the borrower makes timely payments, they do not pay a finance charge.

First, consumers perceive BNPL as a form of credit and use it as an alternative to network-branded credit cards. In online settings, web page designs place the BNPL option side-by-side with card network choices. Several large BNPL providers, including Klarna and Zip, use terms such as “available to spend” or “spending power” to describe unutilized but available credit. Sezzle says “you are pre-approved to spend up to,” and the form includes a picture of a network-branded card.

Similarly, merchants perceive BNPL as an alternative to receiving payments via a network-branded card. Under the terms of most agreements, a retailer’s experience is similar with either service. Retailers usually receive funds from the card network within one day, minus a discount charge. Through arrangements where BNPL providers deposit funds in an escrow account with retailers, proceeds of a BNPL-financed sale are transferred to a retailer, minus a service fee, within the same time. While merchant fees are higher for BNPL, often between two and eight percent, the relationship is otherwise similar.

The choice to offer BNPL also serves to meet priorities of merchants that may be contradictory to the best interests of consumers. First, the availability of BNPL increases spending. Its providers claim that the availability of the option reduces rates of online “cart abandonment” and increases average order value.<sup>8</sup> As well, the lower-tier credit profile of most BNPL users supports the hypothesis that BNPL may give the benefit of credit cards to consumers who would otherwise not qualify for a revolving line of credit

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<sup>6</sup> 12 CFR Part 1026

<sup>7</sup> 15 U.S.C. §§ 1602(g), 1637(c)(4)(E); Reg. Z, 12 C.F.R. §§ 1026.2(a)(7), 1026.2(a)(15)(iii), 1026.2(a)(17)(iii).

<sup>8</sup> Mike Eckler. (2020, August 24). What Merchants Should Know about “Buy Now, Pay Later.” *Practical Ecommerce*. <https://www.practicalecommerce.com/what-merchants-should-know-about-buy-now-pay-later>

because they do not have the ability to repay. Absent BNPL, many of those consumers would have to spend within their means or forego the purchase entirely.

The Bureau should clarify BNPL products as “charge cards” and BNPL companies are “card issuers” under the meaning in TILA.

*ii. The CFPB should clearly state that BNPL providers are “card issuers” covered by TILA. For definitional purposes, the Bureau should consider BNPL products as a form of charge card.*

When BNPL services are characterized as interest free (without a finance charge) and payable in four or fewer installments, they fall outside of the general definition of “creditor” within the scope of coverage under TILA.<sup>9</sup> However, the Bureau should clarify that neither a finance charge nor more than four installments are necessary for TILA coverage as a charge card.

The Bureau should acknowledge that BNPL still meets the definition of credit and that its service providers are defined as creditors. Under Regulation Z, credit “means the right granted by a creditor to a debtor to defer payment of debt or to incur debt and defer its payment.”<sup>10</sup> In general, “creditor” refers only to a person who both (1) regularly extends, whether in connection with loans, sales of property or services, or otherwise, consumer credit which is payable by agreement in more than four installments or for which the payment of a finance charge is or may be required, and (2) is the person to whom the debt arising from the consumer credit transaction is initially payable on the face of the evidence of indebtedness or, if there is no such evidence of indebtedness, by agreement.”<sup>11</sup> However, those requirements do not apply to credit cards, which are “any card, plate, coupon book or other credit device existing for the purpose of obtaining money, property, labor, or services on credit.” Regulation Z clarifies that a credit card could be a device that is “used from time to time” to borrow funds.<sup>12</sup>

Charge cards are a form of a credit card.<sup>13</sup> They need not have a finance charge, but under Regulation Z, their issuers are defined as creditors.<sup>14</sup> A charge card allows a consumer to delay paying for a purchase and without the condition that the privilege will necessarily result in a finance charge or a periodic rate, and inside a ruleset that may require repayment in fewer than four cycles. BNPL services operate similarly, and should be subject to similar oversight.

Lastly, consumers under 21 would receive additional protections if BNPL products and their issuers were covered by TILA. This is important, as one the cohorts most likely to use BNPL are individuals between the ages of 18 and 21.<sup>15</sup>

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<sup>9</sup> 15 U.S.C. § 1602(g); Reg. Z § 1026.2(a)(17)(i)

<sup>10</sup> 15 U.S. Code § 1602 part (f)

<sup>11</sup> 15 U.S. Code § 1602 part (g)

<sup>12</sup> Regulation. Z, Section 1026.2(a)(15)(i)

<sup>13</sup> 15 U.S.C. § 1637(c)(4)(E)

<sup>14</sup> 15 U.S. Code § 1602 - Definitions and rules of construction. Part D and sections 1637(a)(5), 1637(a)(6), 1637(a)(7), 1637(b)(1), 1637(b)(2), 1637(b)(3), 1637(b)(8), and 1637(b)(10)

<sup>15</sup> Claire Williams. (2022). ‘Buy Now, Pay Later’ Users Significantly More Likely to Overdraft Than Nonusers. Morning Consult. <https://morningconsult.com/2022/03/02/buy-now-pay-later-bnpl-overdraft-data/>

*iii. If defined as charge cards, additional protections would be accorded to consumers as well as more likely potential positive impacts to credit scores.*

If BNPL services were defined as open-ended credit, they would likely have more potential to improve credit scores. Many BNPL services tout such a possibility, but even if providers report to the credit bureaus and even if consumers pay on time, their treatment could actually result in a decrease in the credit score under traditional reporting algorithms if they are reported as series of individual short-term loans that are opened and closed. While there is a recent Equifax study that reports that BNPL consumers were able to improve their scores by 13 points, the results obscure a significant detail. The consumers surveyed in the Equifax report had their accounts defined as revolving open-ended lines of credit.<sup>16</sup> If the CFPB requires BNPL providers to comply with credit card rules, they are also more likely to report to the credit bureaus as open-end credit.

The current status quo has led to an unfair playing field. While few BNPL do report when payments are made on time, most if not all will file negative information and send bad debt to debt collection firms. Seventy-two percent said their credit score declined as a result of a missed payment and 31 percent said their score declined significantly.<sup>17</sup>

The Bureau could align consumer expectations with actual benefits if it defined BNPL as a form of revolving credit because that would increase the possibility that the information would be reported to the bureaus in that fashion and treated appropriately. Absent such action, the inconsistency creates a deception in the marketplace.

*iv. The Bureau should initiate the process of defining the “large participants” in the BNPL market.*

Given the velocity of growth of BNPL, there is a need for supervision. Currently, unless a BNPL provider is a bank or a credit union, they operate without federal supervision. Absent a change, there will be a two tier regulatory ecosystem where chartered financial institutions who offer BNPL play by one set of rules and non-bank BNPL providers by another. Absent a change, the Bureau could research activities of providers piecemeal by 1022 orders,<sup>18</sup> but it will not be able to conduct the full range of ongoing market monitoring that can protect consumers from unfair and deceptive practices.

The Bureau must establish the grounds for when companies who offer BNPL services fall under its supervisory authority. Defining a larger participant in the BNPL market is a critical first step.

*v. Unless TILA applies, consumers forfeit important dispute resolution rights and fraud protections when they use BNPL in lieu of credit cards. The Bureau must clarify that BNPL products are charge cards in order to confer consumers with charge-back and dispute rights.*

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<sup>16</sup> Sharla Godbehere. (2022, February 14). Expand Credit Access with Buy Now, Pay Later. *Credit Risk*. <https://www.equifax.com/business/blog/-/insight/article/expand-credit-access-with-buy-now-pay-later/>

<sup>17</sup> Qualtrics. (2021, September 9). Buy now pay later surges throughout pandemic, consumers’ credit takes a hit [Credit Karma]. *Press Room*. <https://www.creditkarma.com/about/commentary/buy-now-pay-later-surges-throughout-pandemic-consumers-credit-takes-a-hit>

<sup>18</sup> Consumer Financial Protection Bureau. (2021, December 16). *Consumer Financial Protection Bureau Opens Inquiry Into “Buy Now, Pay Later” Credit*. <https://www.consumerfinance.gov/about-us/newsroom/consumer-financial-protection-bureau-opens-inquiry-into-buy-now-pay-later-credit/>

BNPL providers do not give consumers the same dispute rights that consumers have come to expect when they use network-branded credit cards. The rules contradict the expectations that consumers would have when they initiate a dispute with a credit card. Those who pay with credit cards have stronger protections under TILA. With those instruments, their funds would be returned when the consumer registered a dispute and the responsibility to research the incident would fall to the issuer.

When lenders have “skin in the game” to protect consumers from fraud, they invest in the mechanisms needed to minimize its occurrence. A structure that aligns the profit motive of issuers with the safety of consumers naturally creates the infrastructure to reduce fraud.

The evasive structure, coupled with the presence of opportunistic actors intent on finding vectors for fraud, underscore why the Bureau must clarify that BNPL products confer consumers with charge-back and dispute rights.

*vi. Because they are not currently complying with the TILA requirements for open end credit, providers are not providing statements.*

While not all consumers prefer to receive paper statements, there are some that do. A 2019 report found that 61 percent of consumers prefer a paper statement for their credit card account.<sup>19</sup> But whereas the CARD Act created uniform and sensible rules for the cadence of statements, similar protections do not yet exist for active BNPL accounts.

As mentioned earlier, obligations for repayment when an item is returned vary across providers. Stacking purchases could further complicate the process.

A stronger and consistent disclosure regime could address confusion. Part of the problem is the lack of clear disclosures regarding policies on returned items; but equally concerning, a second problem stems from the fact that the policies vary across different firms within the industry.<sup>20</sup>

The Bureau could address this inconsistency by requiring compliance with the TILA credit card requirements for statements. The Bureau would require all BNPL programs to present information in the same form, with specific data points for fees, payment due dates, interest if applicable, outstanding balances, and other relevant descriptors.

*vii. The Bureau will not reduce access to credit if it clarifies that these products are covered by the TILA credit card protections.*

A number of credit card issuers offer BNPL services or services that are nearly the same as the standard “Pay in Four” model. Reports suggest that more banks plan to integrate BNPL products inside their credit card platforms.

These should serve as indicators that strong consumer protections can exist inside this market sector. By making treatment of BNPL similar to credit and charge cards, the Bureau could quickly catch up to these

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<sup>20</sup> Penelope Wang. (2021, February 21). The Hidden Risks of Buy-Now, Pay-Later Plans. *Consumer Reports*. <https://www.consumerreports.org/shopping-retail/hidden-risks-of-buy-now-pay-later-plans-a7495893275/>

<sup>20</sup> Penelope Wang. (2021, February 21). The Hidden Risks of Buy-Now, Pay-Later Plans. *Consumer Reports*. <https://www.consumerreports.org/shopping-retail/hidden-risks-of-buy-now-pay-later-plans-a7495893275/>

innovative products. With that change, consumers would immediately benefit from rules for penalty fees, disclosures, how solicitations for credit are offered,<sup>21</sup> as well as other benefits stated earlier in this section.

## **II. Buy Now Pay Later Products use deceptive structures to hide their true cost. Evidence shows that many consumers miss payments. Account holders frequently miss payments and often incur overdraft fees on their bank accounts.**

While most BNPL companies do not charge interest, they do apply heavy fees for missed payments. Consumers frequently miss payments, possibly because the biweekly repayment schedule is different than that of almost any other credit product. To illustrate that concern, more than one in three BNPL users report that they have missed a payment at some point in time. In 2021, twenty-six percent of surveyed BNPL users missed at least one payment.<sup>22</sup> More than one in three active users of a BNPL product received an overdraft fee in January 2022.<sup>23</sup>

- i. As structured, repayment sequences will confuse consumers and may set them up to receive penalty fees for missed payments. The structure of BNPL creates uncertainty about when payments are due.*

Regardless of when a consumer uses a credit card to make a purchase – be it on the first day of the statement cycle – repayment is due at the same time in the following cycle. The structure of BNPL differs fundamentally. Repayment structures require an initial payment and then three subsequent repayments every two weeks.

BNPL services are the rare example of a credit product that requires two repayments per month. Consumers have come to expect to make monthly payments for their mortgage, their auto loan, their credit card, their cell phone bill, their utility bills, and almost every other form of post-purchase debt obligation. While only twelve percent of full-time employees of private businesses are paid monthly,<sup>24</sup> more than 59 million workers now earn at least a portion of their income through freelance work.<sup>25</sup> Distributions of government benefits occurs on a monthly basis.

The high rates of missed payments underscore how a product that is marketed as simple to understand<sup>26</sup> is actually structured in a way that confuses consumers. In contrast, rules applied under Regulation Z to credit and charge cards create expectations that are consistent with other forms of credit.

Perhaps the most confusing scenario occurs when a consumer has multiple BNPL loans from the same provider or loans with more than one BNPL company. If a consumer has “stacked” multiple purchases, sequences of repayment will occur on different times. For example, a consumer who used BNPL to

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<sup>21</sup> 12 CFR Part 1026.60

<sup>22</sup> Pipsley Research. (2021, October 4). ‘Buy now, pay later’ programs How interested are US shoppers? *Business and Finance*. <https://pipsley.com/buy-now-pay-later-programs-how-interested-are-us-shoppers/>

<sup>23</sup> Claire Williams. (2022). ‘Buy Now, Pay Later’ Users Significantly More Likely to Overdraft Than Nonusers. Morning Consult. <https://morningconsult.com/2022/03/02/buy-now-pay-later-bnpl-overdraft-data/>

<sup>24</sup> Burgess, M. (2014). *How frequently do private businesses pay workers? : Beyond the Numbers: (Pay & Benefits)*. U.S. Bureau of Labor Statistics. <https://www.bls.gov/opub/btn/volume-3/how-frequently-do-private-businesses-pay-workers.htm>

<sup>25</sup> Statista. (2022). *Amount of people freelancing U.S. 2020*. Statista Research Department. <https://www.statista.com/statistics/685468/amount-of-people-freelancing-us/>

<sup>26</sup> Frankel, R. S. (2021, October 11). *Buy Now, Pay Later: Here’s What You Should Know About Offers From Affirm, Klarna, AfterPay And Other Installment Purchases*. Forbes Advisor. <https://www.forbes.com/advisor/credit-cards/buy-now-pay-later/>

purchase goods on the 2<sup>nd</sup>, 5<sup>th</sup>, and 10<sup>th</sup> day of a month would be held to the expectation to make repayments on the 16<sup>th</sup>, the 19<sup>th</sup>, the 24<sup>th</sup>, and the 30<sup>th</sup> days of that month and then again on 3<sup>rd</sup>, 8<sup>th</sup>, and the 14<sup>th</sup>...and then again on the 17<sup>th</sup>. The same effect could occur if a consumer has obligations with several different providers.

The Bureau should require BNPL firms to allow consumers to have the right to consolidate the repayment dates of all of their loans to fall on the same day. Doing so will help some consumers to understand the proportionality of their debt load relative to their incomes, reduce the amount of cognitive bandwidth needed to manage repayment, and generally reduce the complexity of using these services.

- ii. *Any fee structure that relies on late charges is opaque and deceptive. Fees should be “reasonable and proportional” and be clearly disclosed*

Most BNPL services use late fees in lieu of interest to derive revenue.<sup>27</sup>

The CARD Act includes a principle that fees should be “reasonable and proportional.” Such a principle would have value in this market as well. Late fees should be considered finance charges, as they are not “unanticipated” and thus do not qualify for exemptions from the definition of finance charges in TILA. As well, TILA provisions that require all fees to be disclosed “clearly and conspicuously” at account-opening. The CARD Act’s framework to protect consumers from penalty fees is applicable to open-ended consumer credit plans. As discussed earlier, BNPL products and BNPL providers are analogous to credit card and charge cards and their providers. As a result, the same protections from penalty fees should apply here.

The Bureau should conduct surveys and applied research regarding the consumer experience. Important questions for consideration include: frequency of stacking, demographic characteristics of BNPL consumers, impacts on credit scores, if consumers have alternative forms of credit, and the frequency that consumers experience overdraft fees. Additionally, the Bureau should determine if the lack of underwriting is disproportionately harming consumers of color and other traditionally underserved constituencies.

- iii. *Providers should be held accountable to underwrite consumers for their ability-to-repay their BNPL loans.*

In a recent survey, 24.7 percent of BNPL users said that the ability “to borrow money without a credit check,” was a reason to choose to use the service. Fourteen percent said they could not qualify for a credit card and another 17 percent said their credit cards were “maxed out.”<sup>28</sup>

Some BNPL providers make little effort to determine the ability of an applicant to repay a debt. For example, Afterpay does not check an applicant’s credit score.<sup>29</sup> Most providers do not make a hard credit pull. The standard query asks for age (at least 18), mobile phone number, and details for a credit cards or

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<sup>27</sup> Affirm does not charge late fees. Affirm BNPL products have interest rates of between zero and 30 percent.

<sup>28</sup> Jamie Bassaline. (2022, March 1). Analysis: How Buy Now, Pay Later can Impact Consumer Credit Scores. *Equifax Credit Risk*. <https://www.equifax.com/business/blog/-/insight/article/analysis-how-buy-now-pay-later-can-impact-consumer-credit-scores//>

<sup>29</sup> AfterPay Help Center. (2021, April). *Is using Afterpay bad for my credit score?* Afterpay. <https://help.afterpay.com/hc/en-au/articles/900003970646-Is-using-Afterpay-bad-for-my-credit-score->

debit card that can be used to make repayments.<sup>30</sup> These protocols may satisfy know-your-customer protocols, they represent an “ability-to-collect” approach to credit qualifications.

To further illustrate how the BNPL permits unaffordable debt, some BNPL services accept credit cards as a means of repayment. According to a recent survey, twenty-two percent of account holders at one of the largest BNPL firms has repaid with a credit card.<sup>31</sup> It should trigger concerns whenever a consumer uses one credit line to pay off another line, especially in this case as BNPL firms market their service as a “free” alternative to credit cards and because credit cards will bear interest. Again, this is evidence of regulatory arbitrage because it permits a shifting of protections away from BNPL and to other providers of credit (and without fully protecting consumers).

BNPL companies collect bank account information – and the rights to seek repayment from that account – as a part of the initial application as a condition of approval of the account. Under EFTA, a company cannot condition credit on repayment by a preauthorized electronic fund transfer from a bank account. EFTA covers debit cards. An authorization to approve three bi-weekly debit card payments is a “pre-authorized electronic funds transfer.” Even if a BNPL gives a consumer the right to choose to repay through a preauthorized debit card or credit card, the structure is not a real choice for the substantial portion of BNPL customers who do not have credit cards. Additionally, place a ban on compulsory use for future payments (beyond the upfront payment) would have the beneficial effect of incentivizing BNPL to improve their underwriting and ability-to-repay standards.

The Bureau should require BNPL providers to give consumers the option to preauthorize payments and the right to revoke a previously authorized payment.

**III. Exclusive relationships with merchants are commonplace in BNPL. The existence of these relationships undermines competition. When applied in the context of purchases made at the point of sale or during the checkout stage of online commerce, the impact of narrowed choices may be especially significant on competition.**

*i. BNPL services are being embedded inside financial services platforms that serve small businesses.*

When service providers integrate their BNPL services to an existing set of small business services, it advances a disturbing trend in how small and new businesses access financial services. For example, the BNPL service Afterpay was recently acquired by Block, the corporate parent that operates the Square suite of services. Block says that it will offer Afterpay to its small business partners as an alternative point-of-sale installment financing option, and as a source of credit for the consumers who use Cash App.<sup>32</sup> Already, Block offers point-of-sale payment processing and merchant acquiring for small businesses. Processing costs between 2.9 and 3.6 percent of sales derived from card swipes. It has a merchant cash advance service that uses data collected from those point-of-sale services. Only businesses that use Square payment processing can qualify for a Square merchant cash advance. Square applies five

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<sup>30</sup> Consumer Financial Protection Bureau. (2021, December 2). *What is a Buy Now, Pay Later (BNPL) loan?* <https://www.consumerfinance.gov/ask-cfpb/what-is-a-buy-now-pay-later-bnpl-loan-en-2119/>

<sup>31</sup> Claire Ballentine. (2022, March 17). How buy now/pay later services are boosting American credit card debt. *American Banker*. <https://www.americanbanker.com/articles/how-buy-now-pay-later-services-are-boosting-american-credit-card-debt>

<sup>32</sup> Square Investor Relations. (2021, August 1). Square, Inc. Announces Plans to Acquire Afterpay, Strengthening and Enabling Further Integration Between its Seller and Cash App Ecosystems [8-K]. <https://squareup.com/us/en/press/square-announces-plans-to-acquire-afterpay>

to fifteen percent of card swipes against outstanding MCA balances. By collecting email addresses and phone numbers of customers through the same point-of-sale software, Square enables small businesses to develop customer marketing programs. There are additional fixed costs for appointment booking and point-of-sale software. Square has niche-specific platforms for musicians, restaurants, and retail stores.

As evidence of how Square has leverage over its small businesses, consider that it can charge 1 percent for ACH payments even though most banks typically charge only 3 to 5 cents for an ACH. Square's customer base biases toward smaller firms.

Similar competitive concerns may exist for businesses that use Shopify's platform and its partnership with Affirm.

During its process of reviewing the impact of big tech payment platforms, the Bureau should research the effects that occur when BNPL services are embedded inside small business merchant service suites.

*ii. Data sharing across vertically-integrated platforms pose concentration concerns.*

A critical problem that arises from these vertical integrations is the ability of firms to gain uncompetitive advantages in the marketplace. In Gramm-Leach-Bliley and Regulation P, firms are under fewer restrictions when they share information with subsidiaries and other related entities. Platforms that can integrate BNPL into services on both the consumer side (debit cards) and the business side (merchant acquiring, merchant cash advances, marketing software) will have insight that unaffiliated groups cannot. A second concern relates to the impact on entrepreneurship. Most of the businesses that use a vertically-integrated platform are smaller in size, and their usage is not evenly distributed across all industry sectors. These firms can exert pricing power on small businesses and in markets such as retail shops, restaurants, and on independent contractors.

The Bureau should research the scope of data sharing that occurs within these platforms.

## **CLOSING**

In conclusion, the National Community Reinvestment Coalition would like to express its thanks for the opportunity to comment on this inquiry. For the reasons expressed above, NCRC is concerned about the impact of these relatively unregulated services. We commend the Bureau for initiating this process and encourage it to bring these products inside the framework of consumer credit.

Please reach out to us with additional questions. You may contact Adam Rust, Senior Policy Advisor ([arust@ncrc.org](mailto:arust@ncrc.org)) or me at your convenience.

Sincerely,



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CEO  
National Community Reinvestment Coalition  
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