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March 25, 2022

Comment Intake—Statement into BNPL Providers
Consumer Financial Protection Bureau
1700 G Street, NW
Washington, DC 20552

Re: Notice and Request for Comment Regarding the CFPB's Inquiry Into Buy-Now-Pay-Later (BNPL) Providers; Docket No.: CFPB-2022-0002

Dear Sir or Madam:

The Credit Union National Association (CUNA) represents America's credit unions and their 130 million members. On behalf of our members, we are writing in response to the Consumer Financial Protection Bureau's (CFPB or Bureau) notice and request for information (RFI) on Buy-Now-Pay-Later (BNPL) products.¹

General Comment

CUNA appreciates the CFPB's interest in the growing influence of BNPL products and their impact on consumers. The Bureau's examination of BNPL is appropriate and timely. In 2021, consumers spent nearly \$100 billion in purchases using BNPL programs, up from \$24 billion in 2020.² Nevertheless, BNPL providers remain largely unregulated.

Credit unions are concerned that unregulated BNPL providers are increasingly engaged in financial activities by offering products intended to be glossy, tech-savvy alternatives to traditional loan products. These non-bank providers often strive to offer these products without being subject to robust consumer protection laws and regulations in place for banks and credit unions. We agree that there is value in the Bureau further exploring these products and the companies that offer them as they begin serving a larger segment of consumers' financing purchases.

While credit unions welcome innovation in the market, we are concerned the exponential growth of BNPL products has outpaced prudent regulatory oversight and could ultimately result in consumer harm. In addition, the absence of effective oversight creates an uneven playing field to the material disadvantage of traditional lenders. Credit unions and other well-established financial service providers are heavily regulated for safety and soundness and consumer protection regulatory compliance. This is not always the case for companies offering BNPL products.

¹ Notice and Request for Comment Regarding the CFPB's Inquiry Into Buy-Now-Pay-Later (BNPL) Providers, 87 Fed. Reg. 3511 (Jan. 24, 2022).

² CFPB's Probe of Buy Now Pay Later: What's the Risk to Consumers? Eamonn Moran & Robin Nunn; Morgan, Lewis & Bockius LLP. Feb. 15, 2022 available at <https://news.bloomberglaw.com/banking-law/cfpbs-probe-of-buy-now-pay-later-whats-the-risk-to-consumers>.

Background

In December 2021, the Bureau issued orders to five BNPL companies requiring them to provide information about their size, scope, and business practices.³ The Bureau listed six areas of specific interest: (1) Business Model and Transaction Metrics, (2) Loan Performance Metrics, (3) Consumer Protections, (4) User Contacts and Demographics, (5) Data Harvesting, and (6) Data Monetization. The information is intended to assist the Bureau in better understanding how consumers interact with BNPL providers, and how BNPL business models impact the broader e-commerce and consumer credit marketplaces. The Bureau subsequently expanded the orders to solicit comments from the public, including regulated stakeholders.

Application of consumer protection laws

We understand the attraction of BNPL and other similarly situated financial technology companies (fintech) to consumers as they seem to create novel products and services at a rapid pace. Some of these products and services are truly new while others may merely repackage traditional products and services wrapped in a thin veneer of technology and supported by venture capital that allows for pricing that undercuts traditional service providers in order to rapidly gain market share. While competition is a necessary component of properly functioning markets, we are concerned that some products offered by BNPL providers are intended to skirt state and federal consumer protection regulations by exploiting loopholes in regulatory coverage.

CUNA has long held the position that similar products and services should be regulated similarly so that consumer protections run with a product or service, not with the entity providing the products or service. Credit unions and banks are subject to most of the same consumer protection laws. While not perfect, these consumer protection laws are often intended to be in the best interest of consumers. The CFPB should continue to stay focused on BNPL providers as their business model and substantial growth could result in irreparable harm to consumers and cause consumers to lose trust in the financial services marketplace.

BNPL's impact on consumers

Credit unions are concerned the non-application of consumer protection laws to some BNPL products could leave consumers unprotected while also impacting the ability of credit unions to lend with full and complete credit information. A more evenhanded application of consumer financial protection laws could improve the role BNPL products play in the financial lives of consumers. In an ideal environment, BNPL products would be a tool for consumers use in coordination with traditional financial products like credit cards or personal loans.

In particular, the Bureau should evaluate the disclosures of terms and fees associated with BNPL and whether these disclosures are sufficient to inform consumers of their payment obligations, potential penalties associated with late payments, and the potential pitfalls of using BNPL. For example, some BNPL providers do not inform consumers that their purchases are not covered by the same dispute resolution protections as purchases made using traditional credit cards. In addition, consumers may be unaware that BNPL products may impact the information on their credit reports.

The lack of meaningful underwriting coupled with many easily accessed BNPL providers could lead consumers to take on too many installment payments at one time. This situation is especially concerning because survey data shows consumers are likely to substantially increase their non-essential spending in

³ CFPB press release and sample order can be found at <https://www.consumerfinance.gov/about-us/newsroom/consumer-financial-protection-bureau-opens-inquiry-into-buy-now-pay-later-credit/>.

response to the availability of BNPL options.⁴ Consumers may be put in a position where the minimum payments on multiple “low cost” BNPL loans are stacked in a manner that substantially impedes their cash flow and increases instances of late payments.

It may also be difficult for consumers to track their BNPL loans and make timely payments, even if they have sufficient funds available to make those payments. We encourage the Bureau to study how BNPL companies assist consumers in keeping track of their payment schedules, how they account for BNPL obligations from other providers, and how they are approaching the issue of credit reporting. While more BNPL obligations are likely to be reported to the credit bureaus in the future, credit unions are concerned about how these “shadow” obligations may impact consumers and the ability of other lenders to appropriately evaluate consumers’ credit profiles.

Consumers are often attracted to BNPL because of their ease of access and focus on digital channels. Often the first time consumers’ learn of BNPL is when they checkout an online cart on a merchant’s website or app. However, access to e-commerce is not uniform in the United States and often leaves certain groups behind. The CFPB should study digital-only BNPL providers and determine how their business model may impact consumers without access to the e-commerce solutions.

Access to credit from traditional providers

We believe credit unions often provide the safest and most affordable loan options for consumers in need of credit. When addressing emerging providers, the Bureau should carefully evaluate and consider the impact its policies may have on the availability of credit for consumers. It is important that the CFPB strike an appropriate balance between its consumer protection goals and the availability of products and services. This balance is critical whether the product is a credit card, installment loan, or emergency loan. Many consumers rely on access to credit to manage their everyday finances and the Bureau should ensure reputable providers, especially community-based providers, are able to meet those needs.

Innovation in consumer financial services

Innovation, through technology and other creative solutions, has the potential to enhance the delivery and quality of financial products and services to consumers. In recent years, credit unions have been at the vanguard of innovation as a byproduct of their cooperative nature, member-driven focus, and relatively small size. Consumers benefit from innovation that offers new delivery channels and products as well as innovations to traditional products. Credit unions want to ensure that financial products and services available from fintech companies or any company offer the same protections as those offered by regulated entities. Our members do not want to discourage innovation, they merely want to ensure that innovation does not allow new entrants to make an end run around regulation.

Protection of consumer data

CUNA is also troubled by how fintechs use, monetize, and protect data collected from consumers. Protecting data from misuse and theft in the current environment has become increasingly difficult. The CFPB should closely evaluate the BNPL companies’ data security and privacy practices to ensure that consumers are thoroughly protected. Everyone should be safeguarding consumer information, especially entities that house and use it the most. Any sharing of information that leads to less protection of credit union members’ valuable information - and that leads to members being less protected or at worst exploited - is not supported by CUNA and our member credit unions.

⁴ Buying the Holidays Now, Paying Later, Cardify (Nov. 22, 2021) *available at* <https://www.cardify.ai/reports/bnpl-holidays-2021>.

Conclusion

Currently, there are regulatory gaps that BNPL and other fintech companies exploit to provide financial services to consumers. This leads to less consumer protection and, at its worst, leads to the exploitation of consumers as their expectation of consumer protection is based on the regulation of traditional financial institutions and the products and services they offer. Consumer protection can be vastly different when a product or service is offered by non-financial institutions, and consumers do not always appreciate this difference. For the reasons detailed above, CUNA supports the CFPB's inquiry into the BNPL companies' practices and strongly encourages the CFPB to carefully examine and regulate these entities moving forward.

On behalf of America's credit unions and their 130 million members, thank you for your consideration. If you have questions or require additional information related to our comments, please do not hesitate to contact me at (202) 508-3629 or amonterrubio@cuna.coop.

Sincerely,

A handwritten signature in black ink, appearing to read 'Alexander Monterrubio', with a horizontal line extending to the right.

Alexander Monterrubio
Senior Director of Advocacy & Counsel for Consumer Protection