Banking and Finance Law Daily Wrap Up, CONSUMER CREDIT—CFPB expands 'buy now pay later' inquiry, invites public comment, (Jan. 13, 2022)

Banking and Finance Law Daily Wrap Up

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The Bureau has invited comments from any interested party on BNPL products and business practices.

The Consumer Financial Protection Bureau has expanded its inquiry into "buy now pay later" (BNPL) products and business practices, inviting anyone interested in this market to submit comments, including families, small businesses, and international regulators. The Bureau stated in a blog post that it will soon be accepting comments through FederalRegister.gov.

The CFPB had previously ordered several companies offering BNPL credit to produce information about their business practices. The agency issued the orders to five companies—Affirm, Afterpay, Klarna, PayPal, and Zip—to address concerns about accumulating debt, regulatory arbitrage, and data harvesting in the consumer credit market (see *Banking and Finance Law Daily*, Dec. 17, 2021.

BNPL credit is a type of deferred payment option that generally allows consumers to split a purchase into smaller installments, often with a down payment due at checkout. Consumers generally must provide little information to a merchant, and there is often no interest. Merchants typically pay 3 to 6 percent of the purchase price to BNPL companies because consumers often purchase more and spend more when using BNPL credit, according to the CFPB.

"People encounter BNPL credit at the point of sale either online or at traditional retail stores," the Bureau stated in a blog post. These types of loans are "presented as a type of deferred payment option that generally allows someone to split a purchase into smaller installment payments, often with a down payment of 25 percent. The application process is quick, involving relatively little information from the buyer, and the buyer usually pays no interest."

In December 2021, members of the Senate Banking Committee Companies asked the Bureau to review the BNPL market and take action to protect consumers against products that pose risks, expressing concern that companies that are not subject to banking oversight can offer products with hidden fees and encourage consumers to take on debt they can't afford (see *Banking and Finance Law Daily*, Dec. 16, 2021).

The Bureau is concerned that "there may be some systemic, underlying problems, particularly around accumulating debt, regulatory arbitrage, and data harvesting in a consumer credit market already quickly changing with technology."

Information sought. The Bureau is interested in the following information to help the Bureau understand how people interact with these providers, and how the providers' business models impact the broader e-commerce and consumer credit marketplaces.

- What is the buyer experience with BNPL?
- What are the benefits and risks?
- What is the merchant experience?
- What perspectives do regulators and attorneys general have with respect to BNPL products?
- Are there ways in which the BNPL market can be improved?

Companies: Affirm; Afterpay; Klarna; PayPal; Zip

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RegulatoryActivity: CFPB ConsumerCredit DebtCollection Loans OversightInvestigations TruthInLending

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