Banking and Finance Law Daily Wrap Up, CONSUMER CREDIT—CFPB scrutinizes 'buy now, pay later' credit practices, (Dec. 17, 2021)

Banking and Finance Law Daily Wrap Up

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By Jonathan Anderson

The Bureau is seeking a wide range of information about the business practices of companies offering "buy now, pay later" credit amid concerns about consumer debt accumulation, government regulation, and data harvesting.

The Consumer Financial Protection Bureau has ordered companies offering "buy now, pay later" (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. The CFPB expects to publish aggregated findings based on the information it obtains.

The orders come one day after Democratic members of the Senate Banking Committee called on the CFPB to strengthen oversight of BNPL products. The senators wrote, in part: "While the emergence of BNPL as affordable small-dollar credit has potentially provided an alternative to more costly forms of credit, these products also have the potential to cause consumer harm" (see *Banking and Finance Law Daily*, Dec. 16, 2021).

Background. 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 of 25 percent 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.

Information sought. The orders request information about BNPL products, transaction usage metrics and use cases, user and merchant fees, and user experiences. The inquiries further seek information about servicing, credit reporting, returns and refunds, delinquencies, defaults, debt collection, and charge-offs. Companies are also asked about user disclosures, state licensing, user contacts, user demographics, data harvesting, and data monetization.

Accumulating debt. The information the CFPB is seeking tends to revolve around three chief concerns. The first is about debt. Users may find it difficult to keep track of when payments are scheduled if using BNPL from multiple companies, according to the agency. When a consumer's bank account lacks sufficient funds for BNPL payments, multiple fees could be charged by both the consumer's bank and the BNPL company.

Regulatory arbitrage. Second, the agency is concerned that some BNPL companies may not be adequately evaluating what consumer protection laws apply to their products, or that BNPL products may not be subject to the same requirements as credit cards. This concern encompasses issues like required disclosures, dispute resolution practices, and late fees.

Data harvesting. Third, the agency notes that BNPL lenders have access to customer payment histories and have used these data to promote products and brands. The CFPB writes that it would like to better understand the companies' practices around data collection, behavioral targeting, data monetization, and attendant risks.

As part of the inquiry, the CFPB is collaborating with equivalent partners in Australia, Germany, Sweden, and the UK, as well as with the Federal Reserve System and U.S. states.

Companies: Affirm; Afterpay; Klarna; PayPal; Zip

RegulatoryActivity: CFPB ConsumerCredit DebtCollection Loans OversightInvestigations TruthInLending

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