

November 1, 2021

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**Statement for the Record**

*On behalf of the*

**American Bankers Association**

*before the*

**Task Force on Financial Technology**

*of the*

**House Financial Services Committee**

**November 2, 2021**



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The American Bankers Association<sup>1</sup> (ABA) appreciates the opportunity to submit a statement for the record for the hearing titled “Buy Now, Pay More Later? Investigating Risks and Benefits of BNPL and Other Emerging Fintech Cash Flow Products.”

Today’s topic is an important and timely one, given that the surge of Buy Now Pay Later (BNPL) products that has been documented abroad appears to have reached the United States. While innovation in the point-of-sale credit space is important, it is imperative that consumers be protected and that underappreciated risks not be introduced into the payments and credit systems. Regulators in both the United Kingdom<sup>2</sup> and the European Union<sup>3</sup> are working toward implementing BNPL regulations intended to mitigate the potential for consumer confusion and inadvertent indebtedness.

We do not endorse directly transposing these jurisdictions’ solutions into the unique regulatory landscape of the United States. Nonetheless, the concerns raised by other governments may be a harbinger of ones to be addressed in this country. Choosing to use BNPL is a serious financial decision, and BNPL is not a riskless product. Today, BNPL offerings from banks provide the most legal protections for consumers, and we urge the Task Force to examine whether there is a need for nonbank BNPL providers to be subject to the same level of oversight. ABA favors a credit and payments marketplace that is transparent and fair.

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<sup>1</sup> The American Bankers Association is the voice of the nation’s \$22.8 trillion banking industry, which is composed of small, regional and large banks that together employ more than 2 million people, safeguard nearly \$19 trillion in deposits and extend \$11 trillion in loans. Learn more at [www.aba.com](http://www.aba.com).

<sup>2</sup> The United Kingdom Financial Conduct Authority’s [Woolard Report](#) recommended that “BNPL products which are currently exempt from regulation should be brought within the regulatory perimeter as a matter of urgency... Regulation would protect people who use BNPL products and make the market sustainable.”

<sup>3</sup> Samman (2021), [“Consumer Protection: EU consumer credit rules are going through overhaul”](#); European Commission (2021), [“Consumer protection: Commission revises EU rules on product safety and consumer credit.”](#)

## **Background**

BNPL<sup>4</sup> is not a new concept – merchants have offered their customers short-term store credit or “same as cash” for centuries. Historically, clerks relied upon ledgers of ink signatures to verify purchasers against their lists of approved credit risks. As cities grew and the multi-location merchant model emerged, merchants transitioned to issuing paper cards indicating membership in their credit program. However, the advent of open-loop credit cards dramatically changed the credit landscape by allowing consumers to buy on credit at virtually any store, with their bank taking the risk. In time, many merchants recognized the value of outsourcing some or all of their in-house financing operations to a bank partner, which could provide more sophisticated capabilities such as revolving store credit cards and loyalty programs that attract new customers and improve sales revenues.

Mass communications technology revived BNPL and brought it national, with TV shopping networks splitting the price of products into a certain number of “easy payments.” Today, online shopping and advanced point-of-sale technology allow more and more merchants to engage with third-party providers to offer BNPL as an option. The data indicate that we are living through a time of rapid BNPL expansion. In August of 2021, a leading nonbank BNPL firm announced that it had doubled its U.S. customer base – to 20 million customers – since the prior summer.<sup>5</sup> And as of July 2021, there were estimates that 42% of Americans had used BNPL at least once.<sup>6</sup> The growth of BNPL is particularly robust among younger consumers and for purchases in the hundreds of dollars range, with purchase sizes trending higher with age.

As BNPL has risen in popularity with consumers, merchants have found value in partnerships with BNPL platforms. According to a leading consumer advocacy group, a key benefit that BNPL provides to merchants is bringing the BNPL company’s users to merchants that the consumer might not otherwise visit. This sales lead-generation often takes place through the BNPL company’s app.<sup>7</sup> Increased sales potential is a key reason why merchants using BNPL are willing to pay higher costs to accept BNPL than for accepting other payments. BNPL often costs merchants twice as much as credit card transaction fees for the same purchase.<sup>8</sup>

Banks also provide services that allow consumers to split up their payments, typically offered following a purchase on a credit card.

## **Importance of consistent consumer protection**

ABA believes that appropriately regulated, short-term point-of-transaction lending is valuable for consumers and merchants alike. While lightly regulated BNPL fintechs are expanding their presence in the United States, banks are responsibly offering products that allow consumers to defer payments. Regulation

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<sup>4</sup> BNPL is a “deferred payment” product whereby credit is provided to customers to purchase a product or service, to be repaid within a short period of time (usually without interest but sometimes with fees for missed payments). BNPL is offered at a wide range of merchants, from retail stores to airlines. Repayment is through an electronic funds transfer, often conveyed to the lender through use of a consumer’s payment card.

<sup>5</sup> Klarna (2021), “[Klarna hits record 20 million US customers as demand for flexible payment options soars.](#)”

<sup>6</sup> CFPB (2021), “[Should you buy now and pay later?](#)”

<sup>7</sup> Doves, H (2021), “[More than 170 online retailers flouting refund rules.](#)”

<sup>8</sup> Riley, B (2021), “[The BNPL Merchant Proposition: Credit Card Interchange is Cheaper.](#)”

in this space should be guided by facts and objective assessments of the risks that under-regulated BNPL providers present to consumers, credit markets, and the broader economy.

It is important that lenders are not permitted to use misleading marketing tactics or entrap consumers in stealth debt through lax underwriting standards. Loan terms should be clear and understandable, and loans should be subject to prudent underwriting to evaluate a consumer's likelihood to repay before a loan is made.

BNPL should be presented to consumers transparently and in a manner that allows consumers to comparison shop. Furthermore, there should be a wary regulatory eye toward deception and abuse regarding lenders' claims and positioning relative to payment products that offer stronger consumer protections. Nonbank BNPL providers are largely unregulated (not subject to federal supervisory authority). Yet the consumer experience at checkout can resemble that of a regulated loan. The opportunity to lend to consumers must come with an acceptance of responsibility to protect consumers.

ABA supports the consumer education work undertaken by the Consumer Financial Protection Bureau (CFPB), whose blog has highlighted potential differences in rights and protections that consumers should consider before choosing to pay with BNPL.<sup>9</sup> For instance, fintechs advertise BNPLs as a substitute for credit cards, but consumers have none of the protections that apply to credit card transactions, such as dispute rights, fraud protections, and other claims and defenses provided under the Truth in Lending Act.<sup>10</sup> Commentators point out that some BNPL providers do not furnish credit information to credit reporting agencies, which may limit some consumers' opportunity to build a credit history.

Safely expanding access to credit means recognizing when lenders are creating unacceptable risks for their consumer customers. We are concerned by a recent Credit Karma/Qualtrics survey that found that while nearly a quarter of Gen X BNPL users have missed a payment, over half of Gen Z and Millennial respondents have done so.<sup>11</sup> Overall, a third of BNPL users surveyed reported missing a payment and 72% of users stated that their credit scores declined after using the service.<sup>12</sup> The truth of the matter is that it is unclear whether these loans are performing,<sup>13</sup> and nonbank providers seem to be focused<sup>13</sup> on growth and establishing their presence in this nascent market.

Fitch Ratings analysts recently suggested that the quality of BNPL loans is "opaque" and that a lack of engagement with the traditional credit reporting system means that lenders could inadvertently approve multiple new loans to consumers who are struggling with existing ones, observing that "[o]ne common feature of BNPL products is that they typically avoid the level of regulation applied to traditional consumer lending, and appear to be specifically designed to achieve this."<sup>14</sup> It is not clear whether these loans benefit

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<sup>9</sup> CFPB (2021), "[Should you buy now and pay later?](#)"

<sup>10</sup> Wang, P (2021), "[The Hidden Risks of Buy-Now, Pay-Later Plans.](#)"

<sup>11</sup> Credit Karma (2021), "[Buy now pay later surges throughout pandemic, consumers' credit takes a hit.](#)" (In general, Generation X is individuals born from 1965 to 1980, Millennials are individuals born from 1981 to 1996, and Generation Z is individuals born from 1997 to 2012.)

<sup>12</sup> Nesbit, J (2021), "[Has BNPL Backfired? One-third of US Consumers Fall Behind on Payments.](#)"

<sup>13</sup> Tan, W (2021), "[The BNPL trend could be the next hidden source of consumer debt, analysts warn.](#)"

<sup>14</sup> Fitch Ratings. (2021), "[The Rise of Buy Now Pay Later.](#)"

borrowers and, with no federal supervision, no federal agency examines the underwriting on BNPL products.

Above all, it is crucial that BNPL providers be required to be transparent with consumers about the financial commitment they are making. According to a co-founder of Laybuy, “research shows that consumers think BNPL is a credit product and overwhelmingly believe that providers should be conducting effective creditworthiness checks... BNPL is becoming increasingly popular and I think it is only right we seek the highest standards across the industry.”<sup>15</sup>

### ***Conclusion***

America’s banks are committed to providing safe credit to our consumer and commercial partners, including through BNPL products that have appropriate consumer protections. We appreciate your decision to examine these issues and make ourselves available to you as a resource as your work on Buy Now Pay Later continues.

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<sup>15</sup> Curran, N. (2021), [“The fintech sentiment: BNPL regulation welcomed by fintech firms.”](#)