



BUY NOW, PAY LATER

Overview

As online shopping has exploded in popularity, so has the “buy now, pay later” (BNPL) services. These services are often available at the point-of-sale (i.e. an online shopping cart) and give consumers the option to borrow the exact amount of money required to purchase the goods. With BNPL services, consumers can make purchases while spreading the cost out over multiple payments, typically four installments. While the industry itself is new, the underlying principle is not.¹ For years, consumers have been able to finance the purchase of high-cost items, such as home appliances and furniture; however, BNPL differs from that model in its online-focused approach. In addition, consumers can use BNPL services to purchase smaller items, such as clothing and shoes, or even food delivery.²

As a relatively new industry, BNPL companies do not have uniform practices around credit reporting. Some BNPL companies claim they don't make “hard” inquiries with credit bureaus,³ while one BNPL company states that it does not check a consumer’s credit history at all.⁴ Some BNPL companies report information to some credit bureaus, but not to other bureaus, which means consumers may not be building a credit history through BNPL. Credit bureaus are evolving their practices to include this new industry.⁵

Most BNPL extensions of credit do not collect interest but do have late fees for missed payments. Since they do not accrue interest, BNPL services are often marketed as an alternative to credit cards. These services are especially popular among younger consumers who may be

¹ Consumer Financial Protection Bureau, *What is a Buy Now, Pay Later (BNPL) Loan?*, at <https://www.consumerfinance.gov/ask-cfpb/what-is-a-buy-now-pay-later-bnpl-loan-en-2119/> (May 21, 2024).

² PYMNTS, *London-Based Zilch Blasted for Promoting BNPL to Buy Pizza*, at <https://www.pymnts.com/buy-now-pay-later/2022/london-based-zilch-blasted-promoting-bnpl-buy-pizza/> (January 20, 2022).

³ Klarna, *Does Klarna affect my credit score?*, at <https://www.klarna.com/us/customer-service/does-klarna-affect-my-credit-score/> (accessed September 24, 2024).

Zip, *Is my Credit affected by using Zip?*, at <https://help.us.zip.co/hc/en-us/articles/4402385787035-Zip-Visa-CardDo-you-check-my-credit-> (accessed September 24, 2024).

⁴ Afterpay, *Is using Afterpay bad for my credit score?*, at <https://help.afterpay.com/hc/en-au/articles/900003970646-Is-using-Afterpay-bad-for-my-credit-score-> (accessed September 24, 2024).

⁵ CNBC, *Equifax is adding buy now, pay later payments to credit reports. Here's how it could affect your score*, at <https://www.cnbc.com/2021/12/31/equifax-is-adding-buy-now-pay-later-payments-to-credit-reports.html> (December 31, 2021).

inexperienced with traditional forms of credit and attracted to the ease of accessing BNPL services.⁶

The exact point at which buy now, pay later services began to be popular is hard to pin down, with the Federal Reserve Bank of Boston finding that nine percent of all consumers used BNPL in 2023, while surveys from NerdWallet and the Motley Fool found that 25 and 49 percent of respondents had used BNPL services, respectively.⁷ What is clear, however, is that usage is growing. The Boston Fed saw an increase of 40 percent in usage between 2021 and 2023.⁸ Similarly, the Federal Reserve Bank of Philadelphia found an increase in the percentage of respondents using the products between the 2022 and 2023 holiday seasons.⁹ There is evidence to suggest, however, that the services' rapid growth has begun to slow. Bank of America reports that the share of their customers with a BNPL payment rose half a percentage point in March 2024, compared to a full percentage point increase in March 2023 and a two and a half percentage point increase in March 2021.¹⁰ As we get further and further from the COVID-19 pandemic, BNPL usage has slowed since its meteoric rise. Its popularity continues to grow, however, with noticeable spikes around the winter holidays.

With this initial explosion of growth and projections for continued popularity, regulators are increasingly scrutinizing BNPL companies. Currently, the industry is lightly regulated since many BNPL products are exempt from major federal and state consumer protection laws. For example, because they charge no interest and are repayable in four or fewer installments, BNPL companies are exempt from the Truth in Lending Act (TILA). These unique qualities have allowed BNPL products to straddle the regulatory line and often avoid things like licensure requirements.¹¹ This may soon change, however, as the Consumer Financial Protection Bureau (CFPB) has recently taken action to regulate the BNPL industry, and states such as **Massachusetts** and **New York** have considered legislation on the topic. With popularity still growing and increasing interest from regulators, the light regulatory touch the BNPL industry has enjoyed the past few years may be coming to an end.

⁶ CNBC, *Why millennials and gen-Zs are jumping on the buy now, pay later trend*, at <https://www.cnbc.com/2021/08/07/why-millennials-and-gen-zs-are-jumping-on-the-buy-now-pay-later-trend.html> (August 7, 2021).

⁷ Federal Reserve Bank of Boston, *Buy Now, Pay Later: Who Uses It and Why*, at <https://www.bostonfed.org/publications/current-policy-perspectives/2024/buy-now-pay-later-who-uses-it-why.aspx> (May 23, 2024).

NerdWallet, *2024 State of Consumer Credit Report*, at <https://www.nerdwallet.com/article/credit-cards/2024-consumer-credit-report> (May 28, 2024).

Motley Fool, *2024 Buy Now, Pay Later Trends Study*, at <https://www.fool.com/the-ascent/research/buy-now-pay-later-statistics/> (August 26, 2024).

⁸ Federal Reserve Bank of Boston, *Buy Now, Pay Later: Who Uses It and Why*.

⁹ Federal Reserve Bank of Philadelphia, *4-in-6 Payment Products - Buy Now, Pay Later: Insights from New Survey Data*, at <https://www.philadelphiafed.org/-/media/frbp/assets/consumer-finance/reports/bnpl-survey-insights.pdf> (February 22, 2024).

¹⁰ Bank of America, *Buy now, pay later: Spreading the pay(n)?*, at <https://institute.bankofamerica.com/content/dam/economic-insights/buy-now-pay-later.pdf> (May 2, 2024).

¹¹ Eversheds Sutherland, *Focus on Fintech: The CFPB is Scrutinizing Buy Now Pay Later Products - is Rulemaking Next*, at <https://www.jdsupra.com/legalnews/focus-on-fintech-the-cfpb-is-6337792/> (January 25, 2022).

Federal Attention

On May 22, 2024, the CFPB issued a [rule](#) that reclassifies buy now, pay later lenders as credit card providers.¹² The rule came after the bureau began studying the industry in 2021, researching the size and scale of BNPL practices around the country. The bureau has been concerned about the level of consumer debt that BNPL products allow individuals to take on while seeming like a cheaper option to a regular purchase. This new designation means that BNPL providers must now provide consumers with certain protections and rights. BNPL providers are now required to:

- Investigate disputes that consumers initiate;
- Refund returned products or cancelled services;
- Provide periodic billing statements to consumers.

There has been some interest at the congressional level also, with Representative Byron Donalds, R-Florida, introducing [HR 8628](#), which would direct the CFPB to withdraw its rule and would prohibit the bureau from issuing new rules or guidance relating to buy now pay later services until the bureau and the United States Comptroller each conduct a study on the issue. The bill was introduced and referred to the House Financial Services Committee on June 5. In a letter sent to CFPB director Rohit Chopra, Donalds touted BNPL as “an easily accessible, inexpensive, and flexible form of financing” and criticized the bureau for overregulating an emerging industry.¹³

State Attention

Buy now, pay later lending remains an issue largely regulated by federal agencies, though some states have begun to take measures to study and regulate the practice. Most commonly, states are introducing legislation that would classify BNPL providers as loan providers and servicers.

Massachusetts is one state leading the charge on this issue. One bill from this past session, [SB 692](#), would have made entities that provide BNPL options adhere to sections 96 through 114 of [Chapter 140](#) of the General Laws, related to small loan businesses, by identifying providers as third-party loan servicers. This, in turn, would have allowed for consumer protections, such as disclosure of rates and fees and requiring small loan business licenses to operate, to be applied to actions taken by BNPL providers. Additionally, Massachusetts [HB 4804](#) would have created a special commission to study the impact of credit card transactions on small businesses, including how buy-now-pay-later financing affects aspects of the payment industry.

This past session, the **New York** legislature introduced bills related to BNPL, in accordance with Democratic Governor Kathy Hochul’s intention to lead the nation in BNPL regulation, as shared in her State of the State address.¹⁴ Legislation such as [AB 9588](#), [SB 9275](#) and [SB 9689](#) would

¹² Consumer Financial Protection Bureau, *CFPB Takes Action to Ensure Consumers Can Dispute Charges and Obtain Refunds on Buy Now, Pay Later Loan*, at <https://www.consumerfinance.gov/about-us/newsroom/cfpb-takes-action-to-ensure-consumers-can-dispute-charges-and-obtain-refunds-on-buy-now-pay-later-loans/> (May 22, 2024).

¹³ Congressman Byron Donalds, *Donalds Takes on CFPB with Two-Part Summer Initiative*, at <https://donalds.house.gov/news/documentsingle.aspx?DocumentID=1656> (August 2, 2024).

¹⁴ New York State Governor’s Office, *Governor Hochul Unveils First Proposal of 2024 State of the State: the Consumer Protection & Affordability Agenda*, at <https://www.governor.ny.gov/news/governor-hochul-unveils-first-proposal-2024-state-state-consumer-protection-affordability> (January 2, 2024).

have enumerated consumer protections against unfair BNPL loans, regulated interest rates in connection with BNPL loans, and required lending entities to obtain a license prior to making BNPL loans, respectively.

Notably, none of the legislation referenced was enacted prior to the adjournment of the Massachusetts and New York legislatures and the bills are dead. They could be reintroduced in the coming session, however. According to Phil Goldfeder of the American Fintech Council, New York legislators are eager to pick up where they left off with buy now, pay later.¹⁵

These state actions have caused some to fear that aggressive BNPL regulation could lead to smaller providers leaving their state, as “it may not be economical for them to continue, given the potential compliance costs.”¹⁶ For example, Zip, an Australian BNPL company, announced in August that they are no longer operating in the state of **Maryland** after they were found to be operating without a proper license by Maryland’s Office of Financial Regulation.¹⁷

Criticisms

Concerns associated with the growth of BNPL tend to center around security for borrowers, especially considering the potential for misuse. Bank of America reports that nearly half of the households that used this payment method tend to be younger and lean towards the lower end of earners.¹⁸ A PYMNTS survey provides further data on the economic composition of BNPL users, reporting that roughly two-thirds (62.6 percent) of users describe themselves as living “paycheck to paycheck.”¹⁹ The allure of paying for items in smaller installments is especially appealing to these groups but comes with serious risks of financial overextension. The CFPB found that 13 percent of BNPL transactions involved a return or a dispute, with consumers returning \$1.8 billion in transactions at the five firms surveyed in 2021.²⁰

A Bankrate survey found that most U.S. adults who have used BNPL have experienced problems related to overspending, missing a payment, and difficulty returning items or getting a refund.²¹ Predictably, this has led to BNPL borrowers being significantly more likely to be delinquent on

¹⁵ Payments Dive, *New York BNPL bill is dead, for now*, at <https://www.paymentsdive.com/news/new-york-bnpl-license-legislation-governor-lawmakers/720448/> (July 2, 2024).

¹⁶ Payments Dive, *NY May Drive Out BNPL Firms: Attorneys*, at <https://www.paymentsdive.com/news/new-york-bnpl-bill-buy-now-pay-later-regulation-cfpb/705916/> (January 30, 2024).

¹⁷ Payments Dive, *Maryland Gets Tough on BNPL*, at <https://www.paymentsdive.com/news/maryland-buy-now-pay-later-bnpl-payments/725855/> (September 3, 2024).

¹⁸ Bank of America, *Buy Now, Pay Later: Spreading the Pay(n)?*, May 2024, <https://institute.bankofamerica.com/content/dam/economic-insights/buy-now-pay-later.pdf>.

¹⁹ PYMNTS, “BNPL’s Surge in 2023: Impact, Adoption and Regulatory Crossroads,” *PYMNTS.com*, December 28, 2023, <https://www.pymnts.com/buy-now-pay-later/2023/bnpls-surge-in-2023-impact-adoption-and-regulatory-crossroads/>.

²⁰ Consumer Financial Protection Bureau, *CFPB Takes Action to Ensure Consumers Can Dispute Charges and Obtain Refunds on Buy Now, Pay Later Loan*, at <https://www.consumerfinance.gov/about-us/newsroom/cfpb-takes-action-to-ensure-consumers-can-dispute-charges-and-obtain-refunds-on-buy-now-pay-later-loans/> (May 22, 2024).

²¹ Bankrate, *Survey: 56% of buy now, pay later users have experienced issues like overspending and missing payments*, at <https://www.bankrate.com/loans/personal-loans/buy-now-pay-later-survey/#americans> (April 11, 2024).

loans compared to non-borrowers, according to a CFPB report.²² And, with credit reporting not generally done by BNPL companies, the potential to build credit is not guaranteed with on-time payments. In fact, because most BNPL plans are short-term loans, reporting the payments to credit bureaus could lower the average age of one's credit history.

Beyond the risks posed to consumers, the growing number of merchants accepting BNPL payment options may not find the practice entirely beneficial. The Federal Reserve Bank of Kansas City reports that the cost for merchants using a BNPL card transaction may be higher than that of a typical debit or credit card transaction.²³ Merchants may also be affected by a more complicated return process, thereby harming the satisfaction of the customer. If merchants continue to adopt BNPL, it may become increasingly difficult to move away from that system and still retain customers—even if the costs ultimately outweigh the benefits.

According to an article published by the *Stanford Graduate School of Business*, BNPL is here to stay, and there are a few actions to mitigate the issues associated with the practice, such as:

- Requiring BNPL providers to report to the credit bureaus to provide transparency;
- Fraud protection;
- Regulating the dispute resolution process;
- Including standard disclosures detailing users' obligations plainly.²⁴

Conclusion

The boom of the BNPL industry over the last several years has brought this once overlooked industry into the eyes of regulators. With the CFPB's recent actions as a first shot, and states like Massachusetts and New York introducing legislation, BNPL may become a bigger target for legislators and regulators in the coming years. AFSA will continue to monitor this issue as new developments arise.

²² Consumer Financial Protection Bureau, *CFPB Publishes New Findings on Financial Profiles of Buy Now, Pay Later Borrowers*, at <https://www.consumerfinance.gov/about-us/newsroom/cfpb-publishes-new-findings-on-financial-profiles-of-buy-now-pay-later-borrowers/> (March 2, 2023).

²³ Federal Reserve Bank of Kansas City, *The Appeal and Proliferation of Buy Now, Pay Later: Consumer and Merchant Perspectives*, at <https://www.kansascityfed.org/Payments%20Systems%20Research%20Briefings/documents/8504/psrb21alcazarbraford1110.pdf> (November 10, 2021).

²⁴ Stanford Graduate School of Business, *The Hidden Costs of Clicking the Buy Now, Pay Later Button*, at <https://www.gsb.stanford.edu/insights/hidden-costs-clicking-buy-now-pay-later-button> (February 2, 2024).