Buy Now Pay Later *Issue Brief*

AFSA
AMERICAN FINANCIAL SERVICES ASSOCIATION

Buy Now Pay Later (BNPL) products are increasingly popular with younger consumers and those with weak credit scores.

According to research from Grand View and TransUnion, 52 percent of Americans aged 18 to 24 have used BNPL, and 70 percent of BNPL users have subprime or near prime credit scores. The market for BNPL has grown rapidly in recent years, with one report suggesting that BNPL use has increased 230 percent since early 2020. BNPL is estimated to exceed $7.2 trillion in e-commerce transaction value by 2025.

BNPL utilizes flexible short-term loans with high levels of access and inclusion. Through targeted access, BNPL products claim to reduce costs and increase choice and opportunities for consumers and businesses. The relevancy of BNPL is recognized by leading credit bureaus, which include some BNPL loans in consumer credit reports.

The growth of BNPL within certain demographics is impinging on the market share of other financial services products. BNPL firms often position their products as alternatives to bank and non-bank loans, providing easy access to credit with greater flexibility for underserved consumers. Apple's June 2022 announcement of their "Apple Pay Later" BNPL product further accelerated the growth of this market and disrupted established BNPL players, such as Affirm, Afterpay, Klarna, PayPal, and Zip—and Apple ultimately partnered with Klarna

Policy and Regulatory Developments

Critics of BNPL products point to the lack of standard consumer protections akin to those required of regulated non-bank lenders, and the products' opaque information regarding fees and repayment terms. Consumer advocates are pushing policymakers to examine the risks involved with BNPL, which, they believe, could harm the financial security of lower-income, debt burdened consumers. The expectation is that nonbank BNPL providers will ultimately be expected to align with the requirements financial institutions have been following for years.

On the federal side, an array of existing laws may apply to Buy Now, Pay Later (BNPL) offerings, ranging from consumer credit and fair lending requirements to credit reporting and data privacy laws. As a form of consumer credit, BNPL products may be subject to anti-discrimination provisions under the Equal Credit Opportunity Act (ECOA). To the extent BNPL providers obtain or furnish consumer information to credit reporting agencies, the consumer protections of the Fair Credit Reporting Act (FCRA) may apply. In recent years, major BNPL providers have increasingly begun furnishing repayment information to credit bureaus, bringing greater attention to issues surrounding credit reporting accuracy, dispute resolution, and the treatment of BNPL obligations in consumer credit files.

BNPL providers may also be subject to requirements under the Truth in Lending Act (TILA) and Regulation Z. In 2024, the Consumer Financial Protection Bureau (CFPB) issued an interpretive rule stating that many pay-in-four BNPL products should be treated similarly to credit cards for certain purposes under Regulation Z, including requirements related to consumer billing disputes and refunds. Although the legal status and future direction of CFPB regulation has remained the subject of litigation and policy debate, the Bureau's actions reflect increasing federal scrutiny of BNPL products and their consumer protections. Depending on product structure, other federal laws—including the Military Lending Act

(MLA), Electronic Fund Transfer Act (EFTA), and unfair, deceptive, or abusive acts or practices (UDAAP) authorities under the Consumer Financial Protection Act—may also apply. Financial institutions and other entities that receive nonpublic personal information from consumers remain subject to the privacy and safeguarding requirements of the Gramm-Leach-Bliley Act (GLBA).

At the state level, most laws were not originally written with BNPL products in mind, but regulators and legislatures have increasingly sought to clarify their application. BNPL providers may fall within state lending, financing, installment sales, or consumer credit licensing regimes and may be subject to state unfair or deceptive acts and practices laws. California has been particularly active in this area. In 2020, the California Department of Financial Protection and Innovation (DFPI) reached settlements with several BNPL providers, including Sezzle, Zip, Klarna, and Afterpay, alleging that they were offering loans without the licenses required under California law. Since then, California and several other states have continued to examine BNPL products through supervisory, licensing, and enforcement frameworks. In addition, a growing number of states have considered legislation addressing BNPL disclosures, reporting practices, licensing requirements, consumer protections, and the treatment of BNPL transactions under existing lending laws.

AFSA's Position

The prevalence of Buy-Now-Pay-Later financing, sometimes known as point-of-sale installment lending, has increased significantly in recent years, raising questions about its regulation and implications for competition with state-licensed installment lenders.

AFSA and its members welcome competition in the marketplace as beneficial for the consumers that they serve and are confident in its members' ability to be the lender of choice for qualifying borrowers. However, this competition should be on a level playing ground.

Though AFSA believes that light-touch regulation of financial services generally works best, we welcome the interest of policymakers and regulators in BNPL providers as a move toward leveling the playing field for non-bank consumer finance.