Via electronic submission

July 31, 2024

The Honorable Rohit Chopra
Director
Consumer Financial Protection Bureau
1700 G Street NW
Washington, DC 20552

RE: Truth in Lending (Regulation Z); Use of Digital User Accounts To Access Buy Now, Pay Later Loans [Docket No. CFPB-2024-0017]

Dear Director Chopra:

The Independent Community Bankers of America ("ICBA")[1] appreciates the opportunity to comment on the Consumer Financial Protection Bureau's ("CFPB") interpretive rule on Truth in Lending ("Regulation Z"); Use of Digital User Accounts To Access Buy Now, Pay Later Loans, published May 31, 2024. The interpretive rule clarifies that buy now, pay later ("BNPL") market participants who offer digital user accounts, specifically those provided via a consumer facing app or tool, are "card issuers"[2] and are subject to the Truth in Lending Act's billing error resolutions process that is codified in Regulation Z.[3]

ICBA maintains that nonbank providers of consumer financial products should be subject to federal consumer protection regulations when similar products offered by banks are regulated. ICBA generally supports the CFPB's interpretation: that BNPL digital user accounts are considered credit card products and should offer consumers billing error resolution protections as outlined in Regulation Z. This interpretative rule on digital user accounts gives the public confidence that the CFPB is protecting consumers by ensuring that BNPL products provide the same billing error resolutions protections as comparable credit card products.

[1]The Independent Community Bankers of America® has one mission: to create and promote an environment where community banks flourish. We power the potential of the nation's community banks through effective advocacy, education, and innovation. As local and trusted sources of credit, America's community banks leverage their relationship-based business model and innovative offerings to channel deposits into the neighborhoods they serve, creating jobs, fostering economic prosperity, and fueling their customers' financial goals and dreams. For more information, visit ICBA's website at www.icba.org.

[2] Truth in Lending Act, 15 U.S.C. § 1602(g).

[3] 12 C.F.R. § 1026.13 (2024).

Overview

Digital user accounts function much like credit cards and are perceived by consumers as similar products, as both can be used interchangeably. Without clear guidance from the CFPB confirming BNPL digital user accounts qualify as credit cards, consumers may not receive the same protections as credit cardholders.

Bringing digital user accounts under Regulation Z for billing error resolution reduces confusion for consumers. When a consumer has a billing dispute on a BNPL purchase, they contact their community bank even though the error lies with the BNPL provider. The CFPB requiring BNPL digital user accounts to comply with the billing error resolution process in Regulation Z would provide consumers the ability to contact the BNPL provider in a billing dispute. Similar transactions should have consistent billing error resolutions, equal consumer protections, and a level playing field for financial institutions.

Background

BNPL Products and Model Overview

BNPL products typically refer to interest-free payment plans split into four equal payments automatically withdrawn from the consumer's deposit account every two weeks and fully paid off in six weeks. These products are considered outside the scope of most lending regulations since the loans must be paid in no more than four payments and do not charge interest.[4] Most popular providers in BNPL are technology companies, not regulated financial institutions.

The interpretive rule outlines two models of BNPL:[5] (1) the merchant partner acquisition model and (2) the application-driven model. In the merchant partner acquisition model, the merchant and the BNPL provider have a contractual relationship. At the point of purchase, the consumer selects a branded BNPL button on the merchant site and follows the prompts to pay by BNPL. This common BNPL model is not covered by the interpretive rule.

The interpretive rule covers the application-driven model. In the app-driven model, consumers use the BNPL lender's mobile app directly to create a digital user account to access the BNPL product. Unlike the merchant partner acquisition model, there is no direct relationship between the merchant and the BNPL lender. The consumer experience for a purchase involves the BNPL lender providing a virtual card with a 16-digit account number which the consumer uses at checkout just like a credit card. The consumer can shop at any retailer that accepts cards or the BNPL company store.

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[4] 12 C.F.R. § 1026.2(a)(17) (2024).

[5] We note that there is a third model not mentioned in the interpretive ruling. This model of BNPL is offered by some credit card issuers post purchase by creating a "bucket" within the account.

Credit Card Product Overview

Traditional credit cards have evolved from being physical devices made of materials like paper, plastic, metal, and wood to include forms such as bracelets, key tags, virtual cards, and phone-integrated payment apps. This versatility allows credit card issuers to offer consumers a unified payment mechanism and borrowing option, regardless of the virtual or physical form of the payment access device. Regulation Z has been designed to encompass all these types of account access devices.[6]

The payment function of a credit card works through a four-party payment model. The participants include the cardholder, the issuing bank, the merchant, and the acquirer with the payment networks (e.g. Visa and Mastercard) facilitating the process. The first step in the payment process is the merchant receiving the 16-digit information from the cardholder and passing it to the acquirer. The acquirer then requests approval from the issuing bank and the acquirer provides funds to the merchant once approval is granted. The cardholder will subsequently pay the issuing bank, either within a grace period or through monthly payments. Credit card issuers provide consumers with multiple options to pay their debts. Consumers can repay their credit card purchases in biweekly segments if they choose, in the same manner as a BNPL purchase.

Regulation Z defines the term “grace period” as “a period within which any credit extended may be repaid without incurring a finance charge due to a periodic interest rate.”[7] Although they are not required to offer grace periods to cardholders, if they choose to do so, they must deliver periodic statements to its customers at least 21 days before the grace period expires.[8] Thus, if a bank provides a cardholder with a monthly billing cycle with a grace period, there is another 21 days of interest free grace after the cycle closes. Modern credit cards can provide a consumer with nearly eight weeks of interest free credit for purchases made at the start of the billing cycle, but at least four weeks for purchases made before the cycle closes. Similar to the BNPL model, this averages six weeks of interest free credit.

Digital User Accounts Are Similar to Credit Cards and Should be Regulated Similarly

BNPL digital user accounts are similar to credit cards in their transaction model, access devices, credit line and expected repeated purchases. The differences between a digital user account and a credit card account are minimal. The main distinctions are that a digital user account lacks a physical card and has a much shorter repayment period.

[6] 12 C.F.R. § 1026.5(a)15(i) (2024).
[7] 12 C.F.R. § 1026.5(b)(2)(ii)(B)(3) (2024).
[8] 12 C.F.R. § 1026.5(b)(2)(ii)(B)(1)(i) (2024).

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ICBA agrees with the CFPB that BNPL digital user accounts meet the regulatory definitions of "credit cards"[9] and that providers of BNPL digital accounts are "card issuers"[10] and "creditors."[11] When a consumer uses a BNPL digital user account, the BNPL issuer enables that consumer to receive a good from a merchant and defer payment. The purchasing of an item and the right to defer payment is credit.[12] The BNPL digital user account is the same deferred payment function as the credit card four-party model.

BNPL digital user account providers state that each transaction is individually reviewed[13] and thus is not credit under Regulation Z. However, similar to BNPL, credit card issuers review each purchase before approval. A credit card issuer is not required to approve a transaction even if a consumer is in good standing and has available line. Credit cards do not have 100% transaction authorization rates, even when controlling for good standing, available credit and suspected fraudulent transactions.

BNPL providers are extending credit – credit that is not being assessed interest and is payable in less than four installments and fully paid in six weeks. In the BNPL digital user account model, the BNPL issuer expects the cardholder to make repeated transactions. Additionally, similar to the credit card model, the amount of credit available for spending is replenished as the outstanding balance is repaid.[14] Both of these items are part of the definitions and rules of construction for Regulation Z credit products.

ICBA agrees with the CFPB that the BNPL digital user account appears to be the extension of credit and the digital user account a device that may be used from time to time to obtain credit.[15] The consumer's purchase experience is practically identical to the credit card experience.

<u>Bringing BNPL under Reg Z Error Resolution will Reduce Confusion with Consumers</u>

Without clear guidance from the CFPB confirming that BNPL digital user accounts are considered credit cards, consumers using these products may not benefit from the same protections that credit cardholders enjoy.

When a consumer has a billing dispute on a BNPL purchase, they contact their community bank, even though the error lies with the BNPL provider. This situation confuses and harms customers because community banks are not in the best position to resolve BNPL billing errors. In the credit card model, the transaction is contained between the issuer and the cardholder. However, many consumers

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[9] 12 C.F.R. 1026.2(a)(15)(i) (2024).
[10] 12 C.F.R. 1026.2(a)(7) (2024).
[11] 12 C.F.R. 1026.2(a)(17)(iii) (2024).
[12] 12 C.F.R. § 1026.5(a)14 (2024).
[13] Docket No. CFPB-2024-0017.
[14] 12 C.F.R. § 1026.5(a)(20) (2024).
[15] 12 C.F.R. § 1026.5 (a) (2024).

provide BNPL issuers with their debit or credit card numbers, introducing an additional party into the payment model. As a result, when a billing error occurs with a BNPL purchase, the community bank must interact with the BNPL issuer, the merchant, and the consumer to address the issue, despite not being at fault for the error.

Consumer driven debit and credit card disputes and chargebacks are at record levels. Since the pandemic, community banks and card issuers are overwhelmed with disputes and chargebacks.[16] The CFPB requiring BNPL digital user accounts to comply with the billing error resolution process in Regulation Z could provide consumers and community banks relief in billing error resolutions.

Conclusion

Without the CFPB clarifying that Regulation Z consumer protection rules apply, these products operate in a space where a consumer's main avenue of error resolution with the BNPL provider is through their bank. This interpretive ruling should properly assign consumer protection responsibility to the BNPL providers and prevent disputes between consumers and their community banks regarding payments to BNPL providers.

ICBA appreciates the opportunity to provide comments. If you need any further information about BNPL impact on community banks and their customers, please contact Kari Mitchum at kari.mitchum@icba.org.

Sincerely,

/s/ Kari Mitchum
Vice President, Payments Policy

[16] [16] Imani Moise, *Reversing a Credit-Card Charge Has Never Been Easier – or More Abused*, WALL STREET JOURNAL (June 19, 2024), https://www.wsj.com/personal-finance/credit-card-dispute-chargeback-costs-b37ff892?page=1.