WOODSTOCK INSTITUTE

Advancing Economic Security and Community Prosperity

March 25, 2022

Director Rohit Chopra
Consumer Financial Protection Bureau
Washington, DC 20552

RE: Docket No. CFPB-2022-0002; Request for Comment Regarding the CFPB's Inquiry into Buy-Now-Pay-Later (BNPL) Providers

Dear Director Chopra,

Woodstock Institute thanks the Consumer Financial Protection Bureau (CFPB) for examining the Buy Now, Pay Later (BNPL) industry and soliciting information on these products from stakeholders. Woodstock conducts research on and advocates for consumer financial protection and community economic development. Our work seeks to combat structural inequities and improve the quality of life in lower-income neighborhoods and communities of color in Chicago, in Illinois, and across the United States.

One of our focus areas is predatory lending and short-term, small-dollar loans, and Woodstock played a leading role in creating the Predatory Loan Prevention Act (PLPA), our state's 36% APR cap on consumer loans. Predatory lenders have shut their doors en masse in Illinois, but the financial need remains in low-income neighborhoods and communities of color. As such, our efforts to protect the PLPA include connecting consumers to safe and affordable alternatives to predatory loans. While the interest-free model of BNPL credit products *can* be an affordable alternative to other short-term credit options, the payment structure of the six-week, pay-in-four plans and lack of clarity around these products raise serious consumer protection concerns.

Payment Structure & Multiple Active Plans

Many BNPL loans on the market today are structured to be paid in four installments over six weeks. The payment schedule is tied to when the consumer made the purchase, not the consumer's cash flow. In contrast to many other common, regularly-occurring bills, such as utilities and credit cards, many BNPL providers charge rescheduling fees or do not offer options to adjust payment dates in the event of financial hardship. This is particularly problematic given that under the six-week model, payments come due every two weeks, which may be unfamiliar, confusing, and surprising to consumers who are accustomed to budgeting for monthly bills.

This payment schedule tied to the purchase date also presents problems if a consumer has multiple BNPL plans at one time. Credit reporting and credit check practices are inconsistent across different BNPL providers, so a provider may approve a plan for a consumer without knowing if the consumer already has other plans active.[1] A consumer survey recently found that over half of BNPL users have at some point been paying off multiple plans at once.[2] Between keeping track of the biweekly due dates on multiple plans and having their account charged multiple times per month, a consumer can end up underwater.

Beyond any late fees or returned charge fees that the BNPL company might charge for an attempt to collect a payment, a consumer's bank may charge non-sufficient funds (NSF) or overdraft fees, compounding the consumer's financial stress. A Morning Consult survey found that BNPL users were significantly more likely to overdraft than nonusers, and respondents who overdrafted were significantly more likely to have used BNPL than the general population.[3] It is easy to imagine how a BNPL loan can create chaos in a person's finances. If a person has $50 left in their checking account and their BNPL payment and electric bill are scheduled to debit their account at the same time, one or both of these transactions will likely create an overdraft situation. As is well known, an overdraft situation with its accompanying fees can cause a future transaction to overdraft and so on. We encourage the CFPB to examine this relationship further.

Lack of Data

The BNPL industry has exploded in growth in the United States over the past couple of years, and there is still much we do not know about it. The data that does exist on BNPL is often based on surveys and, although that is useful, more comprehensive and detailed data is necessary. The public should be well informed about these products, and consumer advocates like Woodstock draw power from strong, publicly available data. We were glad to see the CFPB exercise its market monitoring authority to request data from five of the biggest players in BNPL, and we hope to see increased transparency in the industry moving forward. The following are some of our most pressing data questions regarding BNPL:

1. **How prevalent are these products?** In general, we know that use of these products grew exponentially over the last couple of years, perhaps accelerated further by the move to online

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[1] Leticia Miranda, *NBC News*, "The hidden costs of 'buy now, pay later' loans" (Nov. 4, 2021). https://www.nbcnews.com/business/consumer/hidden-costs-buy-now-pay-later-loans-rcna4367

[2] *DebtHammer*, "Survey: Buy Now, Pay Later Plans Fuel Debt Struggles" (Feb. 27, 2022). https://debthammer.org/buy-now-pay-later-survey/?utm_source=rss&utm_medium=rss&utm_campaign=buy-now-pay-later-survey

[3] Claire Williams, *Morning Consult*, "'Buy Now, Pay Later' Users Significantly More Likely to Overdraft than Nonusers" (March 2, 2022). https://morningconsult.com/2022/03/02/buy-now-pay-later-bnpl-overdraft-data/

shopping necessitated by the COVID-19 pandemic.[4] More data is needed on how these products are being used (e.g., repeat borrowers, multiple ongoing plans, one-time or infrequent users) and who is using them, broken down by race, gender, age, socioeconomic status, and location. For example, the California regulator has published data on BNPL use in their state, but we do not know how these products are affecting Illinois consumers or consumers nationwide.[5]

2. **What kinds of items are they being used to purchase?** Anecdotally, we have heard that these products are frequently offered on non-necessities or extravagances, which raises concerns that consumers are being pushed to spend beyond their means in a way they otherwise would not. Survey data supports this concern: in one survey[6] 42% of BNPL users said they used it because they otherwise could not afford the item, and a previous survey[7] found that 38% of BNPL users used the product because the purchase otherwise would not fit in their budget. Similarly, BNPL providers market their product to merchants as a way to increase how much customers spend and how often.[8]
3. **How often do consumers complete the BNPL plan on time with no extra fees?** Perhaps most importantly, how often are the BNPL products marketed as "interest-free" actually interest- and fee-free as used under real world conditions? How frequent are defaults? As more traditional financial institutions move away from business models that rely heavily on fee revenue like overdraft fees, regulators and consumer advocates must ensure that a new industry does not fill that space in the market.

Lack of Clarity and Consistency in Business Practices

Many consumer protection advocates have raised concerns over the lack of clarity and consistency in business practices across different BNPL providers. One concern involves underwriting and credit reporting. Earlier in this letter, we discussed how inconsistent credit reporting and credit check practices make it easy for a consumer to have multiple BNPL plans at the same time; however, this phenomenon also raises questions about underwriting. BNPL plans are a form of credit, and it is Woodstock's position that any responsible extension of credit should involve a meaningful assessment of a consumer's ability to repay the credit. Credit check practices vary between providers

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[4] CB Insights, *Disrupting the $8T Payment Card Business: The Outlook on 'Buy Now, Pay Later'* (March 2, 2021). https://www.cbinsights.com/research/report/buy-now-pay-later-outlook/

[5] California Department of Financial Protection and Innovation, *2020 Annual Report of Finance Lenders, Brokers, and PACE Administrators Licensed Under the California Financing Law* (Oct. 2021, rev. Jan. 2022). https://dfpi.ca.gov/wp-content/uploads/sites/337/2021/10/2020-CFL-Aggregated-Annual-Report.pdf

[6] *DebtHammer*, "Survey."

[7] *Insider Intelligence*, "Buy Now Pay Later Report: Market trends in the ecommerce financing, consumer credit, and BNPL industry" (Feb. 3, 2022). https://www.insiderintelligence.com/insights/buy-now-pay-later-ecommerce-financing-consumer-credit/

[8] CB Insights, *Disrupting the $8T Payment Card Business.*

– some run a soft credit check, others run a hard credit check, and still others do not run a credit check at all before approving a consumer for a BNPL plan.[9]

Credit scores and credit reports are an imperfect measure of creditworthiness at best, and they raise serious concerns regarding racial and ethnic disparities. However, a BNPL provider choosing not to use them begs the question of what they are doing, if anything, as an underwriting process. NBC News reports that BNPL providers claim to use "proprietary risk models" to assess a consumer's ability to repay.[10] We urge the CFPB to examine BNPL providers' underwriting practices closely, with an eye towards ensuring strong consumer protections are in place, just as they are in other credit products.

Similarly, processes for reporting out to credit bureaus on BNPL users' active plans and payment history vary between providers and even between products from the same provider.[11] Reporting of missed payments from BNPL providers have already taken a toll on some consumers' credit scores. A recent survey found that 72% of respondents who had missed a payment during a BNPL plan believed their credit score dropped as a result of the missed payment – within that group, 31% said their score dropped significantly.[12] While there has been more recent attention from the credit bureaus on BNPL products and how they could be incorporated into credit reports,[13] we have concerns over how these products will fit into existing credit reporting and scoring structures. For example, since BNPL plans are very short accounts, we have heard concerns that a frequent user of BNPL loans could see their credit score drop as their average age of accounts drops because they make all of their payments on time and are in good standing with their BNPL providers. Additional regulatory guidance and oversight is needed as credit reporting and scoring practices around BNPL continue to develop.

The lack of clear and consistent business practices across the industry also creates tangible and immediate problems for consumers as part of the user experience. As the CFPB pointed out in its blog post last year, BNPL products do not have the same consumer protections that other forms of credit, like credit cards, do.[14] If the consumer receives a defective item or the purchase financed with

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[9] Miranda, "The hidden costs."
[10] Ibid.
[11] For example, Affirm says that they do not report payment history to credit bureaus for their 0% APR products and those paid in four biweekly installments, but they may report for other consumer credit products.
[12] Credit Karma, Press Release, *Buy now pay later surges throughout pandemic, consumers' credit takes a hit* (Sept. 9, 2021). https://www.creditkarma.com/about/commentary/buy-now-pay-later-surges-throughout-pandemic-consumers-credit-takes-a-hit
[13] Robin Saks Frankel, *Forbes*, "How The Big Three Credit Bureaus Are Using Buy Now Pay Later Data" (March 22, 2022). https://www.forbes.com/advisor/personal-finance/transunion-equifax-experian-buy-now-pay-later-credit-report/
[14] Nelson Akeredolu, Andrew Braden, Joshua Friedman, and Laura Udis, *Consumer Financial Protection Bureau*, "Should you buy now and pay later?" (July 6, 2021). https://www.consumerfinance.gov/about-us/blog/should-you-buy-now-and-pay-later/

a BNPL loan turns out to be a scam, there is no clear path to redress. Similarly, consumers report numerous obstacles when trying to cancel an order paid for with a BNPL loan or return an item for reasons other than defect or damage.

An analysis of consumer complaints in the CFPB database and Better Business Bureau (BBB) database revealed that many consumers continued to be charged by the BNPL company even after receiving confirmation from the merchant of their order cancellation or return.[15] Complaints in the BBB database, where the company's response is visible, reveal that consumers in this situation often end up stuck between the two parties – the merchant says the issue is resolved and the consumer must contact the BNPL company, while the BNPL company says the issue is not resolved and the consumer must contact the merchant. These obstacles suggest that BNPL providers and merchants need regulatory guidance on how to communicate with one another to resolve consumer disputes, order cancellations, or returns. More importantly, consumers need a clearly defined course of action to take when these situations occur.

Conclusion

As new financial products arise, regulators and community stakeholders must carefully consider their potential to further financial inclusion as well as the potential harms to consumers. This is especially true of a product as fast-growing as BNPL. A number of concerns have already become apparent, some of which we've outlined in this comment letter, but more data is necessary to fully assess the possible benefits and harms to consumers. Above all, BNPL products should be subject to robust consumer protection standards so consumers can make well-informed spending choices and feel safe using these products.

Woodstock Institute is thankful that the CFPB is examining the BNPL industry more closely, and we remain supportive of the agency's ongoing work to protect consumers. Thank you for the opportunity to comment on this important matter.

Sincerely,

Jane B. Doyle
Policy & Communication Associate, Woodstock Institute

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[15] Ed Mierzwinski and Mike Litt, *U.S. PIRG Education Fund*, "The hidden costs of 'Buy Now, Pay Later': Complaints to CFPB show need for action" (March 2022). https://uspirgedfund.org/reports/usf/hidden-costs-buy-now-pay-later