

# **BUY NOW, PAY LATER PRODUCTS**

## **WHITE PAPER**

Iris Ikeda, Commissioner of Financial Institutions  
Hawai'i Division of Financial Institutions  
Department of Commerce and Consumer Affairs

Krystal Piceno, Researcher  
University of Hawai'i Richardson School of Law

### **EXECUTIVE SUMMARY**

The “buy now, pay later” product was made more popular during the COVID-19 pandemic which sent virtually all employees, students, and shoppers home for public safety. The structure of this product allowed shoppers to pay less now without having to pay interest for the remainder of the payments. Consumers received the products immediately without paying for the item(s) in full. It was an attractive option at the internet checkout, and had the potential to impact consumers to accumulate short-term debt.

This paper explores the history of “buy now, pay later” and the impacts and allure of this product for Gen Z and millennials. An analysis of the various concerns by regulators including accumulation of consumer debt, inadequate or insufficient disclosures, targeting customers, antitrust and consumer privacy is discussed. The paper also explores the impact on state laws and Hawai'i law to protect unsuspecting consumers from the accumulation of debt.

## I. INTRODUCTION

Popular “buy now, pay later” (“BNPL”) companies such as Affirm, Afterpay, Klarna, Paypal, and Zip are partnered with various retailers to allow consumers an alternative way to purchase their products.<sup>1</sup> Buy now, pay later (“BNPL”) is a payment method that provides the consumer the ability to make purchases and repay in the future in a series of installment payments.<sup>2</sup> Generally, BNPL operates by allowing the consumer to immediately purchase and receive an item by paying 25% of the cost and spreading the remaining payments in four or less installments.<sup>3</sup> “The BNPL provider makes money by charging the merchants both a fixed fee for the transaction and a variable fee based on several factors, including method of payment chosen by the customer. Payment approval relies on a soft credit check and is based on credit history, age, salary, etc.”<sup>4</sup> Consumers are using BNPL to purchase items ranging from the occasional big-ticket items to everyday household items.

Since the COVID-19 pandemic, BNPL has increased making deferring and splitting payments more popular. Because of its quick rise and ongoing popularity, regulators are concerned with its negative implications. Some concerns include accumulation in consumer debt, insufficient disclosures, targeting consumers, antitrust, and regulatory arbitrage. On December 16, 2021, the Consumer Financial Protection

---

<sup>1</sup> See Lee Huffman, *Best Buy Now, Pay Later Apps*, INVESTOPEDIA (Jun. 16, 2022), <https://www.investopedia.com/best-buy-now-pay-later-apps-5186864>; Consumer Financial Protection Bureau, *Consumer Financial Protection Bureau Opens Inquiry into “Buy Now, Pay Later” Credit*, CONSUMER FINANCIAL PROTECTION BUREAU (Dec. 16, 2021), <https://www.consumerfinance.gov/about-us/newsroom/consumer-financial-protection-bureau-opens-inquiry-into-buy-now-pay-later-credit/>.

<sup>2</sup> Consumer Financial Protection Bureau, *Consumer Financial Protection Bureau Opens Inquiry into “Buy Now, Pay Later” Credit*, CONSUMER FINANCIAL PROTECTION BUREAU (Dec. 16, 2021), <https://www.consumerfinance.gov/about-us/newsroom/consumer-financial-protection-bureau-opens-inquiry-into-buy-now-pay-later-credit/>.

<sup>3</sup> *Id.*

<sup>4</sup> Christine Daleiden, *The Buy Now, Pay Later Regulatory Dilemma*, Haw. B.J., May 2021, at 32.

Bureau (CFPB) opened an inquiry into the BNPL industry.<sup>5</sup> Recently, on September 15, 2022, the CFPB released a report (“CFPB Report”) detailing BNPL and its impact to consumers.<sup>6</sup> The CFPB Report raised similar issues discussed in this paper.

## II. BACKGROUND

### A. WHAT IS BUY NOT PAY LATER PRODUCT?

This product is referred to by several names. Essentially, this is type of short-term financing that allows consumers to make purchases and pay for them at a future date, often interest-free. These are also referred to as "point of sale installment loans." Buy now, pay later (“BNPL”) arrangements are becoming an increasingly popular payment option, especially when shopping online.

This can also be a longer-term product that can charge interest and up to a term of 36 months. The BNPL may charge convenience fees to consumers, charge late fees, but typically make their money by charging merchant fees. During the pandemic, BNPL flourished in the sales of electronics, health care and fashion. As the nation emerged from the pandemic, buying airline tickets with BNPL made it possible for families to visit one another. Consumers see the BNPL option at the online check out, where they have the option of paying in full with a credit card or paying with a BNPL

---

<sup>5</sup> Consumer Financial Protection Bureau, *Consumer Financial Protection Bureau Opens Inquiry into “Buy Now, Pay Later” Credit*, CONSUMER FINANCIAL PROTECTION BUREAU (Dec. 16, 2021), <https://www.consumerfinance.gov/about-us/newsroom/consumer-financial-protection-bureau-opens-inquiry-into-buy-now-pay-later-credit/>.

<sup>6</sup> Consumer Financial Protection Bureau, *Buy Now, Pay Later: Market trends and consumer impacts*, Consumer Financial Protection Bureau (Sep. 2022), [https://files.consumerfinance.gov/f/documents/cfpb\\_buy-now-pay-later-market-trends-consumer-impacts\\_report\\_2022-09.pdf](https://files.consumerfinance.gov/f/documents/cfpb_buy-now-pay-later-market-trends-consumer-impacts_report_2022-09.pdf).

company. Most recently, as consumers are using BNPL, they are being marketed directly via social media.

Products	Business Models	Industries	Social Media
Buy-in-Four	Merchant fees	Exercise equipment	Email ads
6 to 24 months	Convenience fees	Electronics	Video sharing apps
Pay-in-Four	Interest	Fashion	Photo sharing apps
	Late fees	Healthcare	Games
		Home remodel	Social networking
		Travel	Payment apps
		Custom furniture	

This is not a new business model. Consumers have seen this type of product in slightly different deferred payment models.

#### A. HISTORY OF DEFERRED PAYMENTS AND ITS COMPARISON TO BNPL PRODUCTS

Deferred payment methods dated back to the 1920s during the Great Depression.<sup>7</sup> The different types of deferred payment are layaway, credit cards, payday loans and BNPL. Layaway allowed for consumers to strategically spend their money by spreading payments into installments until the item was paid in full at which time

<sup>7</sup> James Surowiecki, *Delayed Gratification*, The New Yorker (Dec. 25, 2011), <https://www.newyorker.com/magazine/2012/01/02/delayed-gratification>.

consumers could receive the item.<sup>8</sup> Credit cards provided a line of credit that allowed consumers to purchase items and to pay off the loan in the future plus interest.<sup>9</sup>

During the Great Depression, consumers had insufficient cash to purchase household goods, so retailers allowed consumers to purchase items such as refrigerators, washing machine and furniture through layaway.<sup>10</sup> In the twenty-first century, former large retailers such as Sears and Kmart were especially known to permit layaway for its customers especially during the holidays.

BNPL is like layaway in many aspects such as zero interest, requiring a down payment (at least 20%), and it helps consumers purchase expensive household items while allowing them to budget and save.<sup>11</sup> The main difference between layaway and BNPL, is that layaway requires a consumer to pay the item in full before receiving it. Additionally, layaway allows the retailer to refund consumer's money if they canceled (less a cancellation fee). Similarly, BNPL is a consumer credit product that finances the transaction, but in contrast to layaway, it allows consumers to receive goods immediately when a consumer agrees to make a down payment and repay in three more payments. Receiving a refund from a BNPL can be more challenging due to the separate vendors (merchant and BNPL lender).

---

<sup>8</sup> *Id.*

<sup>9</sup> U.S. Bank, *How Credit Cards Work*, U.S. BANK (last viewed Aug. 15, 2022), <https://www.usbank.com/credit-cards/how-credit-cards-work.html>.

<sup>10</sup> James Surowiecki, *Delayed Gratification*, *The New Yorker* (Dec. 25, 2011), <https://www.newyorker.com/magazine/2012/01/02/delayed-gratification>. The Black's Law Dictionary defines the term layaway as "[a] method of buying goods by having the seller, usu. for a deposit, keep the goods until the full price can be paid by a predetermined date." LAYAWAY, *Black's Law Dictionary* (11th ed. 2019).

<sup>11</sup> See Consumer Financial Protection Bureau, *Consumer Financial Protection Bureau Opens Inquiry into "Buy Now, Pay Later" Credit*, CONSUMER FINANCIAL PROTECTION BUREAU (Dec. 16, 2021), <https://www.consumerfinance.gov/about-us/newsroom/consumer-financial-protection-bureau-opens-inquiry-into-buy-now-pay-later-credit/>.

Another popular deferred payment method is payday lending. Payday lending is typically a short-term, high-cost loan, typically due the next payday. These loans are usually repaid in full with interest as a single payment on the borrower's next payday or when income is received from another source. To repay the loan, the borrower writes a post-dated check for the full balance, including fees or provides the lender with an authorization to electronically debit the funds from a bank account. If the borrower does not repay on or before the due date, the lender can cash the check or electronically withdraw the money from the borrower's account. The high interest rates are derived from the structure of the payday loan to "rollover or "renew" causing the interest rate on the short-term loan to multiply. Hawai'i repealed the deferred check law with the enactment of Act 56 (SLH2021).

## B. THE RISE IN BNPL

BNPL products established in the United States in 2018 providing consumers another credit option to make interest-free purchases and receive their items without delay.<sup>12</sup> Two years later, the impact of the COVID-19 pandemic increased its popularity.<sup>13</sup> The popularity essentially stems from consumer behavior: (i) instant gratification; (ii) budgeting; and (iii) it is an alternative to credit cards.<sup>14</sup> Merchants and

---

<sup>12</sup> Dwight Young, *Buy Now, Pay Later Industry Is About to Meet Its First Big Test*, BLOOMBERG LAW (July 27, 2022), <https://news.bloomberglaw.com/banking-law/buy-now-pay-later-industry-is-about-to-meet-its-first-big-test>. Compared to the former layaway option where customers were required to pay the item in full before receiving it.

<sup>13</sup> See Dwight Young, *Buy Now, Pay Later Industry Is About to Meet Its First Big Test*, BLOOMBERG LAW (July 27, 2022), <https://news.bloomberglaw.com/banking-law/buy-now-pay-later-industry-is-about-to-meet-its-first-big-test>; Fortune Business Insights, *Buy Now Pay Later Market Size, Share and COVID-19 Impact Analysis*, FORTUNE BUSINESS INSIGHT (2022), <https://www.fortunebusinessinsights.com/buy-now-pay-later-market-106408>.

<sup>14</sup> See *id.*

retailers are also driving the use of BNPL.<sup>15</sup> For instance, “Amazon.com, Inc. collaborated with BNPL service provider Affirm, Inc. This partnership enabled customers to use the service via the Amazon portal when they check out.”<sup>16</sup>

According to Fortune Business Insights, since 2018, the BNPL industry has grown by 300% and, in 2021, was valued at nearly \$16 billion.

The increasing number of e-commerce platforms, and rising services adoption across millennials in developed countries, have propelled the global market growth. According to Accenture plc, BNPL users have increased by 300% in the U.S. since 2018, with 45 million users in 2021, and their spending was valued at around USD 20.8 billion.

Further, several e-commerce companies across retail, banking and healthcare insurance sectors are adopting these services to facilitate their customers around the globe. Also, leading players in the market are investing in developing advanced BNPL applications and services.<sup>17</sup>

A wide range of products are eligible for BNPL credit, which is generally available when a consumer checks out online or in a mobile app. If approved, the product is sent to the consumer and the consumer pays for the product in four fixed payments with no interest or finance charges.

---

<sup>15</sup> Dwight Young, *Buy Now, Pay Later Industry Is About to Meet Its First Big Test*, BLOOMBERG LAW (July 27, 2022), <https://news.bloomberglaw.com/banking-law/buy-now-pay-later-industry-is-about-to-meet-its-first-big-test>.

<sup>16</sup> Fortune Business Insights, *Buy Now Pay Later Market Size, Share and COVID-19 Impact Analysis*, FORTUNE BUSINESS INSIGHT (2022), <https://www.fortunebusinessinsights.com/buy-now-pay-later-market-106408>. Amazon, Inc., being one of the leading retailers, helped Affirm gain significant revenue.

Moreover, the revenue of the leading players has been increased during post pandemic which resulted in the rise in demand for services. For instance, in the last quarter of 2020, Affirm Holdings, Inc. recorded USD 2.70 billion revenue which was 55% additional as compared to 2019. This is primarily owing to surge in online active consumers. The huge shift towards online consumer resulted in high demand for the services.

*Id.*

<sup>17</sup> *Id.*

Due to this rise in BNPL users in the United States and its increase in demand, regulators have grown concerned with the debt accumulation by consumers.<sup>18</sup> BNPL's rise in demand from consumers can be explained by the impact of the pandemic. "[D]uring the pandemic, consumers' online shopping preferences have been increased worldwide. The pandemic has shifted the customers towards online e-commerce platforms, which has driven several organizations to enter the online market. Several leading players have completed investment during the pandemic by adopting various business strategies, product launches, and partnerships." In 2021, the United States was the leading country accounting for 30% of global sales in the BNPL market.<sup>19</sup> Detailed below is the increase in demand for BNPL products and services which can be explained by consumer behavior in the lens of behavioral economics and trends in consumer preferences.

### *1. BNPL satisfies the consumer through instant gratification*

Behavioral economists have explained that BNPL promotes "instant gratification."<sup>20</sup> Consumers use BNPL for everyday purchases of clothing, electronics, exercise equipment, and furniture. Some BNPL lenders allow for the purchase of items without a down payment. Consumers believe that BNPL serves as a helpful budgeting

---

<sup>18</sup> See Consumer Financial Protection Bureau, *Consumer Financial Protection Bureau Opens Inquiry into "Buy Now, Pay Later" Credit*, CONSUMER FINANCIAL PROTECTION BUREAU (Dec. 16, 2021), <https://www.consumerfinance.gov/about-us/newsroom/consumer-financial-protection-bureau-opens-inquiry-into-buy-now-pay-later-credit/>. More on BNPL concerns in section III(A) of this paper.

<sup>19</sup> Precedence Research, *Buy Now Pay Later Market: North America Accounting 30% of worldwide Sales*, YAHOO! (June 15, 2022), <https://www.yahoo.com/now/buy-now-pay-later-market-131500648.html>. "According to new report published by Precedence Research, the global buy now pay later market is registering growth at a CAGR of around 43.8% from 2022 to 2030. In 2021, North America dominated the market, accounting for over 30% of worldwide sales." *Id.*

<sup>20</sup> Dwight Young, *Buy Now, Pay Later Industry Is About to Meet Its First Big Test*, BLOOMBERG LAW (July 27, 2022), <https://news.bloomberglaw.com/banking-law/buy-now-pay-later-industry-is-about-to-meet-its-first-big-test>.



tool, allowing them to purchase items that they do not have full payment at the time of the purchase.

Generally, consumers are happy to use BNPL products to defer payments and immediately receive their purchases.<sup>21</sup> BNPL companies often express that their products are a helpful budgeting tool for consumers to create “financial freedom.”<sup>22</sup> For instance, Afterpay, a company founded in Sydney, Australia in 2014, claims that their services “empowers customers to access the things they want and need, while still allowing them to maintain financial wellness and control, by splitting payments in four, for both online and in-store purchases.”<sup>23</sup>

BNPL appears to be a helpful budgeting tool for consumers. Almost all consumers can qualify for BNPL credit if they meet minimum requirements.<sup>24</sup> However, it is easy for consumers to overextend their finances when consumers use several BNPL vendors. Generally, consumers can only have one BNPL plan with a vendor until it is paid off. But consumers can buy products from several BNPL vendors which can add up and exceed the ability for a consumer to repay.

## *2. Consumers no longer need a credit card to defer payments*

Another alternative credit option that consumers use are credit cards. Whether the purchase is for groceries, big-ticket items, or utility bills, credit cards are a useful

---

<sup>21</sup> Precedence Research, Buy Now Pay Later Market: North America Accounting 30% of worldwide Sales, YAHOO! (June 15, 2022), <https://www.yahoo.com/now/buy-now-pay-later-market-131500648.html>.

<sup>22</sup> Afterpay, *Our Story – Afterpay Corporate*, Afterpay (last visited: Aug. 19, 2022), <https://corporate.afterpay.com/our-story>.

<sup>23</sup> *Id.*

<sup>24</sup> [https://www.consumerfinance.gov/about-us/blog/should-you-buy-now-and-pay-later/?\\_gl=1\\*bshh0\\*\\_ga\\*MTEyNjAwNjM3Mi4xNjYxNDY2ODUy\\*\\_ga\\_DBYJL30CHS\\*MTY2MTQ2Njg1Mi4xLjEuMTY2MTQ2NzQxMy4wLjAuMA..](https://www.consumerfinance.gov/about-us/blog/should-you-buy-now-and-pay-later/?_gl=1*bshh0*_ga*MTEyNjAwNjM3Mi4xNjYxNDY2ODUy*_ga_DBYJL30CHS*MTY2MTQ2Njg1Mi4xLjEuMTY2MTQ2NzQxMy4wLjAuMA..)

instrument to make payments over time. Interest on unpaid balances is accrued monthly which may negatively impact a consumer's ability to receive further credit instruments. Further, not everyone is eligible to receive a credit card. Credit cards eligibility is based on a consumer's ability to repay. Credit card banks use credit scores and underwriting to determine a consumer's ability to repay, considering a review of an applicant's credit history. In contrast, consumers don't have to worry about their credit score with BNPL. Rather, "[c]onsumers benefit from instant liquidity availability, [and] merchants enjoy higher consumer engagement and impulsive shopping, while financial entities collect fees." Furthermore, "[c]redit cards can be considered restricted (by the merchants who accept them) and unrestricted (in case of sufficient coverage by credit card networks or cash withdrawals)." Although credit cards may be considered the dominant use of purchase, the demand for BNPL products and services are increasing. Younger generations already tend to avoid credit cards and like the ease and simplicity of BNPL, thus, BNPL's effect may negatively impact the credit card industry.<sup>25</sup>

Credit cards offer financial flexibility not found in the BNPL plans. Credit cards can be used widely worldwide. Credit card balances will accrue until the cardholder pays off the balance. Many credit cards offer benefits of rewards, purchase protection, extended warranties, and insurance, as well as reporting positive payment history to credit bureaus. Most importantly, credit cards offer "zero liability" for unauthorized transactions. BNPL plans do not offer any of these benefits or protections.

---

<sup>25</sup> See Julian Alcazar and Terri Bradford, *The Rise of Buy Now, Pay Later: Bank and Payment Network Perspectives and Regulatory Considerations*, FEDERAL RESERVE BANK OF KANSAS CITY (Dec. 1, 2021), [https://www.kansascityfed.org/Payments%20Systems%20Research%20Briefings/documents/8536/PaymentsSystemResearchBriefing21AlcazarBradford1201\\_gIx89QT.pdf](https://www.kansascityfed.org/Payments%20Systems%20Research%20Briefings/documents/8536/PaymentsSystemResearchBriefing21AlcazarBradford1201_gIx89QT.pdf).

### III. ANALYSIS

#### A. GROWING CONCERNS WITH THE BNPL INDUSTRY

Despite its benefits to consumers and merchants, regulators are concerned about the lack of regulation on the BNPL industry.<sup>26</sup> Some of the concerns include but are not limited to: (i) consumer debt accumulation; (ii) insufficient or inadequate disclosures; (iii) consumer privacy; and (iv) antitrust.<sup>27</sup> Given these concerns, the younger generation is at a higher risk of accumulating debt due to the marketing tactics and its easy accessibility.<sup>28</sup>

##### 1. *Consumer debt accumulation*

Due to BNPL's simplicity—generally no credit check required, interest-free, pay-in-four scheduled for consumers—this can promote unhealthy consumer behaviors including impulse shopping.<sup>29</sup> Unlike layaway where consumers purchase occasional expensive items, BNPL is flexible to where you can purchase almost anything, including groceries. There are no safeguards with BNPL, if consumers fall behind, BNPL companies send the debt to collectors. Although the same can be said about credit cards, the difference is that credit cards have a line of credit. Whereas BNPL requires consumers to repay by using a debit card, thus, theoretically limiting to what consumers

---

<sup>26</sup> Elaine S. Povich, *Regulators Scrutinize Buy Now, Pay Later Plans*, THE PEW CHARITABLE TRUST (Feb. 2, 2022), <https://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2022/02/02/regulators-scrutinize-buy-now-pay-later-plans>.

<sup>27</sup> *Id.*

<sup>28</sup> See Mark Sweney, *Buy now, pay later firms in UK warned over influencer ads on social media*, The Guardian (Aug. 19, 2022), <https://www.theguardian.com/business/2022/aug/19/buy-now-pay-later-firms-in-uk-warned-over-influencer-ads-on-social-media-klarna-clearpay>. Although this information is based in the United Kingdom, BNPL ads on social media are exposed to consumers all over the world.

<sup>29</sup> Artem Fedorov, *Buy Now, Pay Later – Vice or Virtue?*, 2022, Vysoká škola ekonomická v Praze, <https://vskp.vse.cz/86903> (last visited Aug. 20, 2022) at 8.

have available in their bank account. Consumers are subject to overdraft fees from their banks each time the payment is sent for representation. Regulators are also concerned of the younger generations accumulating debt with this product. The BNPL industry have shown to mainly market to the younger generation by partnering with trending retailers and advertising through social media.<sup>30</sup> As a result, the younger generation (Gen Z and millennials) dominate BNPL's user base.<sup>31</sup>

It is not clear whether there is a cap in the number of transactions when using BNPL products.<sup>32</sup> Consumers can fall into a "loan stacking" debt which can lead to autopay and representation problems with numerous overdraft fees. Although there are purchasing limits, consumers can make multiple separate transactions using the same or additional BNPL plans.<sup>33</sup> Consequently, consumers are generally able to open numerous BNPL plans without having to be approved and allowing them to freely use up to \$35,000 of credit.<sup>34</sup> Klarna is an exception where it states that "[t]here is no predefined spending limit. Instead, a new automated approval decision about how

---

<sup>30</sup> See Mark Sweney, *Buy now, pay later firms in UK warned over influencer ads on social media*, The Guardian (Aug. 19, 2022), <https://www.theguardian.com/business/2022/aug/19/buy-now-pay-later-firms-in-uk-warned-over-influencer-ads-on-social-media-klarna-clearpay>.

<sup>31</sup> Brigitte Hodge, *18 Buy Now, Pay Later (BNPL) Statistics for Businesses in 2022*, Fit Small Business (Jan. 31, 2022), <https://fitsmallbusiness.com/buy-now-pay-later-statistics/>. "Boomers and later generations are more prone to using traditional buying methods, showing some hesitation about BNPL services. This, paired with millennial and Gen-Z enthusiasm surrounding BNPL, has skewed usage toward mainly younger people. In fact, eMarketer found that 75% of BNPL users are from those younger generations." *Id.* (emphasis added).

<sup>32</sup> See Pallavi Kenkare, *Best 'Buy Now, Pay Later' Apps for August 2022*, CNET (July 30, 2022), <https://www.cnet.com/personal-finance/loans/best-buy-now-pay-later-apps/>.

<sup>33</sup> Consumer Finance Protection Bureau, *CFPB Study Details the Rapid Growth of "Buy Now, Pay Later" Lending*, Consumer Finance Protection Bureau (Sep. 15, 2022), <https://www.consumerfinance.gov/about-us/newsroom/cfpb-study-details-the-rapid-growth-of-buy-now-pay-later-lending/>; see Pallavi Kenkare, *Best 'Buy Now, Pay Later' Apps for August 2022*, CNET (July 30, 2022), <https://www.cnet.com/personal-finance/loans/best-buy-now-pay-later-apps/>. For example, Affirm's policy on purchasing limits "\$50 to \$17,500, maximum decided by credit score, payment history and ability to pay." Pallavi Kenkare, *Best 'Buy Now, Pay Later' Apps for August 2022*, CNET (July 30, 2022), <https://www.cnet.com/personal-finance/loans/best-buy-now-pay-later-apps/>.

<sup>34</sup> See Pallavi Kenkare, *Best 'Buy Now, Pay Later' Apps for August 2022*, CNET (July 30, 2022), <https://www.cnet.com/personal-finance/loans/best-buy-now-pay-later-apps/>. When comparing Affirm, PayPal, Afterpay, and Uplift, adding each of their purchasing limit amounts to \$34,500 in credit. *See Id.*

much you can spend with us is made each time you pay with Klarna.”<sup>35</sup> In other words, the purchase limit is determined by the maximum amount of spending by the customer’s “payment history and outstanding balance.”<sup>36</sup>

BNPL plans do not offer the same consumer protections offered by credit cards. These plans continue to hold the consumer responsible for the total cost of a purchase even if the product is defective, returned or was not delivered. Therefore, given the impulsive shopping, unlimited borrowing, and credit reporting, this results in consumers inevitably falling into debt. According to Precedence Research, “40% of buy now pay later customers in the U.S. have missed more than one payment, and 72% have seen their credit score drop.”<sup>37</sup>

BNPL companies are also feeling the squeeze with the rising interest rates and inflation. Recently BNPL companies have been posting losses for the first half of 2022 that were triple of what the losses for the same period last year.

## *2. Insufficient or inadequate disclosures*

Another problem that consumers face is understanding what happens if payments are missed. Generally, BNPL plans do not report positive payments to credit reporting bureaus. BNPL plans typically report negative actions, if the consumer fails to make a payment, this can negatively impact a consumer’s credit score.<sup>38</sup> BNPL,

---

<sup>35</sup> Klarna, *How much am I eligible to spend?*, KLARNA (last visited: Aug 21, 2022), <https://www.klarna.com/us/customer-service/how-much-am-i-eligible-to-spend/>.

<sup>36</sup> Pallavi Kenkare, Best 'Buy Now, Pay Later' Apps for August 2022, CNET (July 30, 2022), <https://www.cnet.com/personal-finance/loans/best-buy-now-pay-later-apps/>.

<sup>37</sup> Precedence Research, Buy Now Pay Later Market: North America Accounting 30% of worldwide Sales, YAHOO! (June 15, 2022), <https://www.yahoo.com/now/buy-now-pay-later-market-131500648.html>.

<sup>38</sup> Bev O’Shea, NerdWallet, Inc. (Mar. 3, 2022), <https://www.nerdwallet.com/article/finance/buy-now-pay-later-affect-credit-score>.

although interest free, most charge late fees if you miss a payment and consumers can be blocked from future purchases. Additionally, a consumer's bank may charge an overdraft or NSF fee if the consumer does not have sufficient funds to cover the payment further negatively impacting a consumer's credit score.

For example, Afterpay, states that their business "is *completely free for customers who pay on time* – helping people spend responsibly without incurring interest, fees or extended debt."<sup>39</sup> Conversely, customers that miss a payment, "won't be able to use Afterpay until the payments are up-to-date. Afterpay states late payment fees are charged but are fixed, capped, and do not accumulate over time. Customers are never entrapped in revolving debt and never incur interest. We are focused on supporting our community of shoppers."<sup>40</sup>




When the consumer is at the checkout page of an online retailer, there are multiple ways to pay. As of today, if you select to pay through a BNPL product, only the benefits are listed.

---


<sup>39</sup> Afterpay, *Our Story – Afterpay Corporate*, AFTERPAY (last visited: Aug. 19, 2022), <https://corporate.afterpay.com/our-story> (emphasis added).

<sup>40</sup> *Id.*

Forever 21 Cardholders, please use the Credit or Debit Card option below.

- Credit or debit card 
- PayPal 
- Shop now. Pay over time with Klarna. 
  - ✓ Pay now by card.
  - ✓ Pay in 4. Interest-free.
  - ✓ Pay over time with flexible financing.

[Learn more](#) about your payment options

By continuing, I accept the [Klarna Shopping Service](#) terms and confirm that I have read the [Privacy Policy](#).
- Amazon Pay 

Save my information with Bolt for a faster checkout

Forever 21's checkout is powered by Bolt. By continuing, you agree to Bolt's [Terms of Use](#) and [Privacy Policy](#).

**Pay with Klarna**

41

The issue is that the BNPL product instantly loans payment to the consumer even though they are not completely informed at face. After selecting the link to “Learn more” it restates the benefits with a few additional details without regard to the information about penalties of missed payments or credit reporting.

This year, Experian, a credit bureau, has announced that the company “will debut The Buy Now Pay Later Bureau™, a first-of-its kind specialty bureau which will provide visibility so lenders can help further financial inclusion and better assess risk while preventing negative impact to consumer credit scores.”<sup>42</sup> According to an article by Business Wire,

<sup>41</sup> This screenshot was made on September 8, 2022, while conducting a test of what the average customer would see when attempting to make a purchase using Klarna.

<sup>42</sup>

Experian's one-of-a-kind specialty bureau will provide real-time reporting of consumers' BNPL activity as well as Fair Credit Reporting Act (FCRA) regulated scores and attributes that BNPL providers and traditional lenders can use to make instant and accurate credit decisions. By gaining a more complete view of consumers' BNPL repayment behaviors, lenders can provide thin-file or subprime consumers who would otherwise be denied credit with first or second chances.<sup>43</sup>

In other words, lenders now have access to view consumers spending with BNPL products. On the other hand, Equifax, another credit bureau, "plans to add the information to regular credit reports."<sup>44</sup>

Another BNPL common consumer complaint is the lack of dispute resolutions. According to the CFPB report, when consumers need help with a return or refund, the process may take longer than the BNPL installment plan and there is an uncertainty of who should be responsible.

The return process may be complicated when the merchant declines to authorize a refund for a disputed item. In these cases, a borrower may contact the BNPL lender to file a dispute, either via the lender's app or by contacting customer support. The BNPL lender then generally begins an investigation and contacts both the borrower and merchant. Once the investigation is concluded, the lender assigns responsibility to one party and may issue a refund or credit. However, with the short-term, six-week nature of BNPL loans, a successful merchant dispute may not be resolved during the loan term. In these instances, the borrower may be required to make additional payments under the loan contract until the investigation is concluded.<sup>45</sup>

---

<sup>43</sup> Business Wire, *Experian's Industry-first Buy Now, Pay Later Bureau Will Protect Consumer Credit Scores and Provide Real-time Insights to Drive More Inclusive and Responsible Lending*, Business Wire (Jan. 27, 2022), <https://www.businesswire.com/news/home/20220127005299/en/Experian's-Industry-first-Buy-Now-Pay-Later-Bureau-Will-Protect-Consumer-Credit-Scores-and-Provide-Real-time-Insights-to-Drive-More-Inclusive-and-Responsible-Lending>.

<sup>44</sup> Bev O'Shea, NerdWallet, Inc. (Mar. 3, 2022), <https://www.nerdwallet.com/article/finance/buy-now-pay-later-affect-credit-score>.

<sup>45</sup> Consumer Financial Protection Bureau, *Buy Now, Pay Later: Market trends and consumer impacts*, Consumer Financial Protection Bureau (Sep. 2022), [https://files.consumerfinance.gov/f/documents/cfpb\\_buy-now-pay-later-market-trends-consumer-impacts\\_report\\_2022-09.pdf](https://files.consumerfinance.gov/f/documents/cfpb_buy-now-pay-later-market-trends-consumer-impacts_report_2022-09.pdf).



As a result, consumers are left paying the BNPL lender while attempting to contact the merchant or retailer.

### *3. Target consumers*

The increase of online shopping has opened the marketing door for BNPL companies. Check out options provide consumers with a convenient way to purchase high priced ticket items consumers would not ordinarily purchase. Younger consumers without a credit history are the main target for some BNPL companies as these companies entice these consumers with instant gratification on items. Other BNPL companies target high net worth consumers with disposable income to buy custom furniture, expensive appliances, high-end exercise equipment, and travel packages. Other BNPL companies use social media advertisements, calling their product “frictionless.”

BNPL companies have started to accept credit cards as a form of payment, in response to consumer complaints of overdraft fees. This payment form may cause increased longer-term debt for consumers.

### *4. Antitrust and consumer privacy concerns*

Finally, lawmakers are most concerned about the regulatory arbitrage. Regulatory arbitrage is the corporate practice of utilizing more favorable laws in one jurisdiction to avoid less favorable regulation in another jurisdiction or structure transactions to corporate advantage. The Truth in Lending Act (“TILA” or “Act”) of 1968

was created to protect consumers from predatory loan practices.<sup>46</sup> TILA requires lenders to provide complete disclosure of the terms in loan agreements.<sup>47</sup> It is of particular significance that TILA is only applied to loan installment payments of five or more.<sup>48</sup> Here, the regulatory arbitrage utilized by BNPL is able to avoid TILA, because the industry typically operates by pay-in-four installment plans.<sup>49</sup> The resulting lack in regulation in the BNPL industry consumer protection is at risk and subject to the issues mentioned above including, “minimal dispute resolution rights, a forced opt-in to autopay, and companies that assess multiple late fees on the same missed payment.”<sup>50</sup>

Moreover, antitrust concerns arise from data harvesting and monetization due to BNPL companies “shifting their business models toward propriety app usage.”<sup>51</sup> The harm in data harvesting and monetization may lead to a decrease in consumer privacy, strengthening large tech companies’ market power, and reduce competition and innovation.<sup>52</sup>

Recently Apple announced that their Apple Pay users can make four equal payments over six weeks at no extra cost. Apple is not using a bank partner, instead it

---

<sup>46</sup> Business Wire, *Experian’s Industry-first Buy Now, Pay Later Bureau Will Protect Consumer Credit Scores and Provide Real-time Insights to Drive More Inclusive and Responsible Lending*, Business Wire (Jan. 27, 2022), <https://www.businesswire.com/news/home/20220127005299/en/Experian’s-Industry-first-Buy-Now-Pay-Later-Bureau-Will-Protect-Consumer-Credit-Scores-and-Provide-Real-time-Insights-to-Drive-More-Inclusive-and-Responsible-Lending>. In *Jordan v. Paul Financial, LLC*, this class action lawsuit dealt with the issue of whether the terms of the agreement of the loan violated TILA.<sup>46</sup> The Court stated, “TILA preempts state law only to the extent state disclosure requirements are explicitly inconsistent with federal law.”<sup>46</sup> Further, that “Congress only intended to preempt state laws that conflict with provision of TILA.” *Alexiou v. Brad Benson Mitsubishi*, 127 F. Supp. 2d 557, 560 (D.N.J. 2000).

<sup>47</sup> See 15 U.S.C.A. § 1640 (West).

<sup>48</sup> Dwight Young, *Buy Now, Pay Later Industry Is About to Meet Its First Big Test*, BLOOMBERG LAW (July 27, 2022), <https://news.bloomberglaw.com/banking-law/buy-now-pay-later-industry-is-about-to-meet-its-first-big-test>.

<sup>49</sup> *Id.*

<sup>50</sup> Consumer Finance Protection Bureau, *CFPB Study Details the Rapid Growth of “Buy Now, Pay Later” Lending*, Consumer Finance Protection Bureau (Sep. 15, 2022), <https://www.consumerfinance.gov/about-us/newsroom/cfpb-study-details-the-rapid-growth-of-buy-now-pay-later-lending/>.

<sup>51</sup> *Id.*

<sup>52</sup> See *id.*

is using its consumers Apple ID history.<sup>53</sup> Apple has access to a lot of its customer data through Apple Pay, potentially giving itself an unfair advantage over other BNPL companies. Other online shops (Amazon, Meta) and payment processors (Google Pay, Paypal) may also be using its customer data, possibly in violation of privacy laws.

## B. STATE LAWS CONCERNING CONSUMER INSTALLMENT LOANS

Due to the issues surrounding BNPL products (consumer debt, inadequate disclosures, consumer privacy, and antitrust issues), lawmakers are concerned and working to improve consumer protection by amending or creating laws to regulate the BNPL industry. TILA, has been an essential preemption to state laws in consumer protection. This section analyzes installment loan laws in states such as Colorado, California, and West Virginia.

In 2001, the Colorado Supreme Court in *State v. The Cash Now Store, Inc.* dealt with the issue of whether the defendant was engaging in loan transactions subject to the state's consumer credit laws and TILA.<sup>54</sup> The defendant in that case involved providing customers money in advance "in exchange for a taxpayer's assigning his rights to an anticipated refund."<sup>55</sup> The court references the Colorado's Uniform Consumer Credit Code (UCCC) § 5-1-102 concerning retail installment sales and states that the statute "is intended to be liberally construed to promote its underlying purposes and policies, which include protecting consumer borrowers against unfair practices by

---

<sup>53</sup> Ron Shevlin, July 27, 2022, *Apple Accused of Potential Consumer Data Misuse With Its 'Buy Now, Pay Later' Service*, <https://www.forbes.com/sites/ronshevlin/2022/07/27/cfpb-accuses-apple-of-misusing-consumer-data-with-its-buy-now-pay-later-service/>

<sup>54</sup> *State ex rel. Salazar v. The Cash Now Store, Inc.*, 31 P.3d 161, 164 (Colo. 2001).

<sup>55</sup> *Id.*

some suppliers of consumer credit.”<sup>56</sup> Therefore, the court broadly defined the term “loan” to include transactions that require “an unconditional obligation to repay,” which is not explicitly stated in the statute.<sup>57</sup> Further, when a creditor advances money to someone it creates debt.<sup>58</sup> By using the court’s interpretation of a loan, the UCCC can also be extended to cover BNPL products. As mentioned above, BNPL products are loans because it involves lending money to consumers when they agree to make a down payment and repay in three more payments, thus, creating a debt. Although neither of the Colorado courts nor legislator have explicitly stated that BNPL is a loan subject to the UCCC and TILA, the courts could possibly expand its meaning to cover BNPL in order to accomplish its purpose—consumer protection.

Effective 2006, Ohio implemented the Retail Installment Sales Act (RISA). RISA defines “retail installment sales” to include

[E]very retail installment contract to sell specific goods, every consumer transaction in *which the cash price may be paid in installments over a period of time*, and every retail sale of specific goods to any person in which the cash price may be paid in installments over a period of time.<sup>59</sup>

Unlike TILA, this statute opens the door to BNPL products due to its broad language “paid in installments over a period of time.”<sup>60</sup> Additionally, specific goods (and services) mentioned in the statute include but are not limited to “health spa services; home

---

<sup>56</sup> *Id.* at 166.

<sup>57</sup> *Id.* at 166.

<sup>58</sup> *Id.* at 166.

<sup>59</sup> Ohio Rev. Code Ann. § 1317.01 (West) (emphasis added). “Cash price” is defined in the same statute to mean

[T]he price measured in dollars, agreed upon in good faith by the parties as the price at which the specific goods which are the subject matter of any retail installment sale would be sold if such sale were a sale for cash to be paid upon delivery instead of a retail installment sale. “Cash price” may include sales taxes.

*Id.*

<sup>60</sup> *See id.*

improvement services; automobiles; mobile homes; furniture; cemetery burial plots and swimming pools. Additional installment sales also may apply.”<sup>61</sup> Therefore, the language concerning “installments over a period of time” could possibly cover BNPL pay-in-four installment method.

In 2020, California was one of the first states that specifically dealt with BNPL. Senior Counsel for the California Department of Financial Protection and Innovation (CDFPI),<sup>62</sup> Adam Wright, determined that “these products are loans” and that “they should be regulated by someone like us, under a law that has more protections for consumers.” California defines “consumer loan” as “a loan, whether secured by either real or personal property, or both, or unsecured, the proceeds of which are intended by the borrower for use primarily for personal, family, or household purposes.”<sup>63</sup> In California, lenders need a loan license. Afterpay was operating and doing business in California without a loan license.<sup>64</sup> The CDFPI entered a Consent Order with Afterpay:

After an inquiry, the Commissioner determined that Afterpay had engaged in the business of a finance lender in California without obtaining a license in violation of Financial Code section 22100, subdivision (a) by making loans through the operation of “buy now, pay later” point of sale products (Transactions). Afterpay neither admits nor denies that it has engaged in the business of a finance lender or broker in California, but agrees to enter into this Consent Order to resolve this amicably and without the necessity of a hearing or litigation.<sup>65</sup>

---

<sup>61</sup> Ohio Attorney General, *Retail Installment Sales*, Ohio Attorney General (last visited: Sep. 19, 2022), <https://www.ohioattorneygeneral.gov/Business/Services-for-Business/Business-Guide/Retail-Installment-Sales>.

<sup>62</sup> Formerly known as the Department of Business Oversight. Elaine S. Povich, *Regulators Scrutinize Buy Now, Pay Later Plans*, THE PEW CHARITABLE TRUST (Feb. 2, 2022), <https://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2022/02/02/regulators-scrutinize-buy-now-pay-later-plans>.

<sup>63</sup> Cal. Fin. Code § 22203 (West).

<sup>64</sup> See *Afterpay Us, Inc.*, Respondent, 2020 WL 2263347 at 1.

<sup>65</sup> *Id.*

By classifying Afterpay as a lender, they are subject to loan regulations under California law. Therefore, furthering the citizens of California protection against regulatory arbitrage and predatory lending. CDFPI's decision was based on California's Financial Code section 22100, subdivision (a), stating "(a) No person shall engage in the business of a finance lender or broker without obtaining a license from the commissioner."<sup>66</sup> As a result, Afterpay was required to pay \$90,536 in administrative fee, ordered to refund the \$905,362.78 in late fees it collected, and was required desist and refrain from doing business until it obtained a loan license.<sup>67</sup>

### C. HAWAII'S CONSUMER LOAN LAWS

Whether purchases are made through online or in person at partnered retail stores, BNPL is already in effect in Hawai'i.<sup>68</sup> The State of Hawai'i Attorney General, and among other states, joined the Office of the Attorney General State of Illinois in a letter to the Director of the Consumer Financial Protection Bureau voicing its concern over the growing BNPL industry. The letter states, "we have concerns about new and supposedly innovative financial products that promise to disrupt and democratize the industry but push consumers into cycles of debt and carry some of the same terms and features as other expensive and predatory financial products."<sup>69</sup> The letter also discusses states' concern over BNPL's popularity "among younger consumers

---

<sup>66</sup> Cal. Fin. Code § 22100 (West).

<sup>67</sup> See Afterpay Us, Inc., Respondent, 2020 WL 2263347 at 1.

<sup>68</sup> For example, Afterpay allows customers to pay through the app. Afterpay, *Now available in stores!*, Afterpay US Services, LLC (last visited Sep. 21, 2022), <https://www.afterpay.com/en-US/irl>.

<sup>69</sup>

[https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&ved=2ahUKEwiB5\\_z436r6AhWXLEQIHbLMDi4QFnoECAkQAQ&url=https%3A%2F%2Fdownloads.regulations.gov%2FCFPB-2022-0002-0025%2Fattachment\\_1.pdf&usq=AOvVaw3rR6JI5\\_Ccw84AApIUv1\\_i](https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&ved=2ahUKEwiB5_z436r6AhWXLEQIHbLMDi4QFnoECAkQAQ&url=https%3A%2F%2Fdownloads.regulations.gov%2FCFPB-2022-0002-0025%2Fattachment_1.pdf&usq=AOvVaw3rR6JI5_Ccw84AApIUv1_i)

unfamiliar with navigating credit products and consumers who may already be struggling to make ends meet and to cover their existing debt burdens.”<sup>70</sup> The letter also references Hawai’i consumer loan laws Hawai’i Revised Statutes (HRS) §§480J-4 subsections (a) and (g) and states that “[t]hese laws reflect the will of the people to encourage safe and affordable loans while restricting predatory lending practices.”<sup>71</sup>

In the State of Hawai’i (State), HRS § 480J-1 defines the term “installment lender” or “lender” to mean “any person who is in the business of offering or making a consumer loan . . . .”<sup>72</sup> This definition may apply to BNPL companies because the business essentially operates by offering or making loans to consumers.

#### D. HAWAI’I’S FUTURE WITH BNPL – EXPAND CURRENT LAW OR CREATE NEW LAW?

The State of Hawai’i can address the issues surrounding BNPL by expanding on its installment loan law. Under HRS § 480J-2(a), the statute lists twelve requirements that each installment loan transaction must meet. Listed below are highlighted requirements that could possibly affect BNPL:

(a) Each installment loan transaction and renewal shall meet the following requirements:

(1) Any transaction and renewal shall be documented in a *written agreement* pursuant to section 480J-3;

(2) The total amount of the installment loan shall not be greater than \$1,500 pursuant to section 480J-5(a);

. . .

---

<sup>70</sup> *Id.*

<sup>71</sup> *Id.*

<sup>72</sup> Haw. Rev. Stat. Ann. § 480J-1 (West).

(4) Subject to paragraph (3), a monthly *maintenance fee may be charged* by the lender . . . ;

provided that the monthly maintenance fee shall not be added to the loan balance upon which the interest is charged; provided further that an installment lender *shall not charge, collect, or receive a monthly maintenance fee if the borrower is a person on active duty in the armed forces of the United States or a dependent of that person*;

(5) The *minimum contracted repayment term* of the installment loan shall be two months if the contracted loan amount is \$500 or less, or four months if the contracted loan amount is \$500.01 or more . . . ;

. . .

(7) An installment lender shall accept prepayment in full or in part from a consumer prior to the loan due date and shall not charge the consumer a fee or penalty if the consumer opts to prepay the loan; provided that to make a prepayment, all past due interest and fees shall be paid first;

(8) The loan amount shall be fully amortized over the term of the loan, and maintenance fees shall be applied in arrears on a monthly basis;

. . .

(10) An installment lender shall not charge a consumer any loan charges for an installment loan, other than the fees permitted by this chapter;

. . . . 73

Similar to Ohio, Hawai'i broadly defines loans, thus, allowing its laws to cover BNPL products. Should regulators decide to expand on Hawai'i's current consumer loan laws, it could possibly be efficient to focus on HRS § 480J-2 by specifying some of its requirements.

First, to resolve the issue of insufficient disclosure and regulatory arbitrage concerns, the first requirement regarding the requirement of a written document can be

---

<sup>73</sup> Haw. Rev. Stat. Ann. § 480J-2 (West).



expanded to explicitly require full disclosure within the meaning of TILA. By mentioning TILA, the State would subject BNPL companies to comply, not only with Hawai'i's laws, but also federal consumer laws. Using terms and definitions covered by TILA could possibly provide further coverage in efforts to protect consumers. If BNPL fully discloses information, potential borrowers could be more informed, thus, possibly preventing increasing debt.

Second, the fourth requirement, although pertaining to maintenance fees (which BNPL companies typically don't implement), it is important to include language limiting increasing debt for borrowers in the military and their dependents.<sup>74</sup> Lastly, to resolve the issue regarding privacy concerns, regulators could implement language requiring BNPL companies to limit data collection from consumers who use their product. For example, when visiting online retailer's websites, require the company to give consumers the option to opt-out of collecting information.

In contrast, if regulators decide to create laws specific to BNPL, the State could potentially fill the gaps where TILA lacks when protecting consumers. For example, the issues regarding antitrust and targeting consumers could be dealt with in detail.

Moreover, regulating BNPL could not only provide further protection to consumers, but also promote the BNPL industry in the State of Hawai'i.<sup>75</sup> On July 12, 2022, Forbes published an article regarding BNPL and the regulations potentially being a positive outcome for the industry.<sup>76</sup> Specifically, that "higher regulatory standards

---

<sup>74</sup> See 10 U.S.C.A. § 987 (West). The Military Lending Act enacted 2006 was implemented to protect active-duty military members and their family from inappropriate lending practices. *See id.*

<sup>75</sup> See Dylan Sloan, Why Regulation Will Help the Buy Now, Pay Later Giants, Forbes (Jul. 12, 2022), <https://www.forbes.com/sites/dylansloan/2022/07/12/why-regulation-will-help-the-buy-now-pay-later-giants/?sh=67d7dbb77f95>.

<sup>76</sup> *Id.*

could help to shut out smaller firms with more predatory lending practices and might boost the industry's reputation as a whole."<sup>77</sup>

#### **IV. CONCLUSION**

The BNPL industry is growing exponentially with no end in sight. Given the recent economic downturn, BNPL products couldn't be more attractive to consumers. Since its rise during the COVID-19 pandemic, regulators are concerned about consumer debt accumulation, insufficient disclosures, targeting consumers, antitrust, and regulatory arbitrage. The Consumer Financial Protection Bureau's recent report into the consumer impacts of BNPL validated this regulator's concerns. Since then, consumers continue to be affected by BNPL companies whether it is issues with returns, defects in products purchased. Additionally, a substantial amount of consumers has seen a decrease in their credit score due to BNPL companies reporting missed payments and not payments made on time. In efforts to protect consumers, States have previously applied their existing laws to new or similar transactions, like BNPL, as loans. By focusing on expanding existing laws, this allows the State of Hawai'i to regulate the BNPL industry efficiently and expeditiously in their state. Despite the regulatory scrutiny of the industry circumventing consumer loan laws, consumers enjoy the benefits of deferred payment. Therefore, expanding existing laws to more regulate BNPL will be a benefit to both consumers and the BNPL industry to promote consumer protection and trust.

---

<sup>77</sup> *Id.*

Hawai'i has a regulatory tool to assist consumers who use BNPL. Hawai'i Revised Statutes, 480J, Installment lending law, also recognized by the Attorney General, can be implemented to guide BNPL lenders in providing financing to consumers and also provide consumer protections.