



U.S. Chamber of Commerce



American  
Bankers  
Association

August 1, 2024

Comment Intake—2024 BNPL Interpretive Rule  
Docket No. CFPB-2024-0017  
c/o Legal Division Docket Manager  
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***

To Whom It May Concern:

The Center for Capital Markets Competitiveness (“CCMC”) and the American Bankers Association (“ABA”) appreciates the opportunity to submit comments to the Consumer Financial Protection Bureau (“CFPB”) regarding its Interpretive Rule on Truth in Lending (Regulation Z); Use of Digital User Accounts To Access Buy Now, Pay Later Loans (the “Interpretive Rule”).<sup>1</sup>

The entrance of Buy Now, Pay Later (“BNPL”) products into the financial services market has benefitted consumers. BNPL products offer consumers an additional option in purchasing goods and services. In particular, BNPL products benefit those consumers who lack access to or do not want to use more traditional forms of credit. BNPL products have also introduced further innovation and competition into the marketplace for financial services. However, the novel structure of BNPL products has resulted in some regulatory uncertainty.

The CCMC and ABA accordingly would welcome additional regulatory transparency surrounding BNPL products. This would benefit consumers by clarifying applicable consumer protection requirements, which in turn would promote consistency in those protections across the available BNPL products on the market. Clarifying the regulatory scheme that applies to BNPL products also would help to

---

<sup>1</sup> See CFPB, *Interpretive Rule; Truth in Lending (Regulation Z); Use of Digital User Accounts To Access Buy Now, Pay Later Loans*, 89 Fed. Reg. 47,068 (May 31, 2024), <https://www.govinfo.gov/content/pkg/FR-2024-05-31/pdf/2024-11800.pdf> (hereinafter “*Interpretive Rule*”).

ensure that BNPL providers are held to standards similar to providers of other consumer financial products and services.

The CFPB pursues the present Interpretive Rule with that goal, seeking “to clarify existing obligations for market participants with specific business practices.”<sup>2</sup> To that end, the Interpretive Rule states that “digital user accounts used to access credit,” including BNPL products, are “credit cards” under Regulation Z and that providers offering digital user accounts used to access credit are “card issuers” under Regulation Z. As such, the Interpretive Rule states Subpart B of Regulation Z applies to BNPL products and their providers. Subpart B is titled “Open-End Credit,” however, consistent with the Truth in Lending Act (“TILA”), portions of Subpart B also apply to non-open-end credit for which no finance charge is imposed, or which is payable in four or fewer installments.<sup>3</sup> The Interpretive Rule specifically identifies that BNPL providers must comply with the Regulation Z provisions governing periodic statements, billing disputes, and consumer rights to refunds.

While the CCMC and ABA share the CFPB’s interest in providing regulatory clarity to BNPL products, the Interpretive Rule should have been promulgated as a proposed rule subject to Notice and Comment. Further, the Interpretive Rule is likely to increase regulatory uncertainty around BNPL products. In particular, the CFPB does not define key terms necessary for understanding the Interpretive Rule’s scope, including what accounts may be considered a “digital user account.” The CFPB also does not fully explain the reasoning behind the rule or its potential impacts. Further, the effective date of 60 days after publication in the Federal Register also does not provide sufficient opportunity to comment on the Interpretive Rule, much less actually comply with it.

We accordingly ask the CFPB to consider the following points:

- The CFPB should withdraw the Interpretive Rule and instead issue a Notice of Proposed Rulemaking subject to notice and comment.
- The CFPB should clearly define “digital user account” as used in the Interpretive Rule, clarify how the Regulation Z requirements apply to digital user accounts, and clarify that the Interpretive Rule does not apply to merchants.
- The CFPB should apply its upcoming Section 1033 rule to BNPL products without first providing notice.

---

<sup>2</sup> *Id.* at 47,069.

<sup>3</sup> 15 U.S.C. § 1602(g), 12 C.F.R. § 1026.2(a)(17)(iii).

- The CFPB should more comprehensively detail on why it is issuing the Interpretive Rule and better describe the impact the Interpretive Rule may have on the existing financial market.
- The CFPB should extend the effective date of the Interpretive Rule to provide a meaningful opportunity for comment before the Interpretive Rule becomes effective and a reasonable period for BNPL providers to comply.

**I. The CFPB should withdraw the Interpretive Rule and instead issue a Notice of Proposed Rulemaking subject to notice and comment.**

The CFPB did not properly promulgate this rulemaking by using an interpretive rule. The Interpretive Rule would impose new legal requirements and obligations on BNPL providers, meaning that the CFPB was required to issue a Notice of Proposed Rulemaking subject to notice and comment under the Administrative Procedure Act (“APA”).<sup>4</sup> Interpretive rules can only be issued “to advise the public of the agency’s construction of the statutes and rules which it administers.”<sup>5</sup> They cannot impose new, binding requirements under law, as the Interpretive Rule attempts to do. Under the Interpretive Rule, BNPL providers will now need to comply with a variety of new, complex requirements that did not apply to them prior to the effective date of the Interpretive Rule. The Interpretive Rule also opens BNPL providers up to additional obligations and civil liability under TILA by expanding the definition of “card issuers” to include entities that issue digital user accounts to consumers for the purpose of accessing credit products.<sup>6</sup> Accordingly, the CFPB must withdraw the Interpretive Rule and reissue it as a Notice of Proposed Rulemaking.

The effective date of the Interpretive Rule supports the fact that the rule must be withdrawn and re-issued as a Notice of Proposed Rulemaking. The CFPB itself recognizes the fact that the Interpretive Rule imposes new requirements on BNPL

---

<sup>4</sup> See 5 U.S.C. § 553(b)(A).

<sup>5</sup> *Shalala v. Guernsey Memorial Hospital*, 514 U.S. 87, 99 (1995) (finding that interpretive rules are “issued by an agency to advise the public of the agency’s construction of the statutes and rules which it administers” and “do not have the force and effect of law and are not accorded that weight in the adjudicatory process.”). See also Administrative Conference of the US, *Agency Guidance Through Interpretive Rules*, Recommendation 2017-5 (Aug. 8, 2019), <https://www.acus.gov/recommendation/agency-guidance-through-interpretive-rules> (“An agency should not use a policy statement to create a standard binding on the public, that is, as a standard with which noncompliance may form an independent basis for action in matters that determine the rights and obligations of any member of the public. . . . That is, noncompliance with an interpretive rule should not form an independent basis for action in matters that determine the rights and obligations of any member of the public.”).

<sup>6</sup> See 15 U.S.C. § 1640.

providers by making the Interpretive Rule effective 60 days after publication in the Federal Register, rather than immediately upon publication. An interpretive rule only interprets an existing provision of law and applies regardless of when the interpretive rule was promulgated by an agency. If the Interpretive Rule was truly an interpretive rule that is not subject to the APA's notice and comment requirements, the CFPB would not have given BNPL providers 60 days from the date of publication to comply. Further, even if the CFPB intends to only enforce the Interpretive Rule with respect to BNPL providers as of the effective date, state regulators are under no obligation to similarly limit any enforcement actions and plaintiffs similarly may not limit the application of claims under TILA's private right of action, under the argument that interpretive rules merely interpret existing provisions of law.

The CFPB has also missed an important opportunity by forgoing the traditional APA regulatory process. By issuing a Notice of Proposed Rulemaking, the CFPB could have fully benefited from the perspectives of relevant stakeholders, who are highly interested in regulatory clarity on BNPL products. Stakeholders would have been eager to engage with the CFPB on a proposed rule. Commenters could have provided insight with respect to, for example, whether the new requirements imposed on BNPL providers are consistent with TILA and reflect an appropriate cost-benefit analysis. Stakeholders could have also provided insight on how the CFPB could best clarify the new terms introduced in the Interpretive Rule, as well as how to mitigate any unintended impacts of the Interpretive Rule. Further, stakeholders and the CFPB could have worked together to determine how certain provisions of Subpart B of Regulation Z would apply to BNPL providers. The uncertainties in the Interpretive Rule would have been better addressed through the Notice and Comment process, whereby the CFPB could more thoroughly work with stakeholders to develop and clarify requirements specific to BNPL products, through amendments to Regulation Z and/or official commentary to the regulation.

A Notice of Proposed Rulemaking would also give BNPL providers adequate time to actually comply with the requirements imposed under the Interpretive Rule. TILA requires the effective date of any regulation requiring new disclosures to be no earlier than October 1 which follows by at least six months the date of promulgation of the final rule. BNPL providers will be required to provide new disclosures to consumers under the Interpretive Rule, and TILA accordingly requires the CFPB provide BNPL providers with a longer timeframe to implement the rule's requirements.

By issuing an Interpretive Rule, the CFPB also undermines its own stated goals to provide regulatory clarity around BNPL products. The Interpretive Rule can be rescinded without notice and comment in the future, unlike a rule that has undergone

notice and comment under the APA.<sup>7</sup> Further, the Supreme Court has held that interpretive rules “do not have the force and effect of law and are not accorded that weight in the adjudicatory process.”<sup>8</sup> If the CFPB attempts to enforce the Interpretive Rule against BNPL providers, courts will not give it the weight of law. As a result, there is a significant chance the Interpretive Rule will fail to accomplish the CFPB’s. A final regulation subject to the notice and comment process, fully developed with the input of consumers and industry participants, would provide greater certainty with longer lasting impacts.

**II. The CFPB should clearly define “digital user account” as used in the Interpretive Rule, clarify how the Regulation Z requirements apply to digital user accounts, and clarify that the Interpretive Rule does not apply to merchant credit sales.**

Nonetheless, if the CFPB decides to go forward with the Interpretive Rule as planned, the CFPB should clearly define “digital user account” and clarify whether the Interpretive Rule applies to the “digital user account” or the closed-end credit product offered via the digital user account. Further, the CFPB should clarify that the Interpretive Rule does not apply to merchant credit sales.

**a. The CFPB should clearly define “digital user account” as used in the Interpretive Rule.**

The Interpretive Rule specifically applies to “lenders that issue digital user accounts used to access credit.”<sup>9</sup> The CFPB’s impetus for issuing the Interpretive Rule appears to be to state that lenders that issue digital user accounts to consumers to access credit products are “card issuers” under Regulation Z, under the reasoning that such digital user accounts mimic conventional credit cards. Accordingly, “digital user account” is a key term necessary to understand the scope of the Interpretive Rule’s potential applicability. “Digital user account” is also an entirely new term in the context of Regulation Z, as it is not defined in TILA, Regulation Z, or any prior CFPB guidance.

However, the Interpretive Rule fails to define the term “digital user accounts” or concretely describe their features, making the Interpretive Rule’s applicability unclear. Notably, the Interpretive Rule is unclear whether “digital user accounts” could include credit products other than BNPL. It implies that there are “digital user accounts” other than BNPL products but does not clarify what other types of products could be considered “digital user accounts.” The lack of a clear definition of this term makes it

---

<sup>7</sup> See *Perez v. Mortgage Bankers Ass’n*, 575 U.S. 92, 101 (2015).

<sup>8</sup> *Shalala* at 99.

<sup>9</sup> *Interpretive Rule* at 47,068.

difficult to parse the scope of the Interpretive Rule. The CFPB should, at a minimum, define this term that is so critical to understanding the Interpretive Rule.

This definition of “digital user accounts” should clarify what kinds of “digital user accounts” are not credit cards. The Interpretive Rule provides that certain “digital user accounts” are not credit cards but does not fully explain the features that differ between “digital user accounts” that are credit cards and “digital user accounts” that are not credit cards. The Interpretive Rule should clearly state and provide specific guidance on how Regulation Z applies or does not apply to specific products. The most effective way to do so would be to clearly define “digital user accounts,” ideally via an amendment to Regulation Z subject to notice and comment.

This definition of “digital user accounts” also should make clear their exact connection to the defined terms and requirements of Regulation Z. The Interpretive Rule leaves unclear whether there are other types of “digital user accounts used to access credit” and if so, whether and how they are subject to the requirements of Regulation Z. The lack of clarity on this point is likely to be exacerbated in the future as technologies and forms of credit continue to evolve in unpredictable ways. Consequently, the CFPB should provide a clear definition that connects “digital user accounts” to the defined terms “credit card” and “card issuer” under Regulation Z.

Failure to define such a key term in the Interpretive Rule creates a situation ripe for regulatory uncertainty and compliance risk, which seems antithetical to the CFPB’s goal of clarifying Regulation Z. We urge the CFPB to provide this key definition and thereby avoid muddying the waters through an Interpretive Rule that is meant to provide regulatory clarity to the market.

**b. The CFPB should clarify how the Regulation Z requirements apply to digital user accounts.**

The CFPB should also clarify whether Subpart B of Regulation Z applies to the “digital user account” itself, the closed-end credit product offered under the digital user account, or both. As issued, the Interpretive Rule does not make clear whether the “digital user account” and/or the “BNPL product” must comply with the requirements of Subpart B of Regulation Z. Depending on whether the requirements apply to the “digital user account” or the closed-end credit product, certain products may fall within the requirements imposed under the Interpretive Rule. The CFPB accordingly must clarify the scope of the Interpretive Rule so as to put creditors on notice whether the Interpretive Rule applies to their products.

**c. The CFPB should clarify that the Interpretive Rule does not apply to merchant credit sales.**

The CFPB should also clarify that the Interpretive Rule does not apply to merchant credit sales. The Consumer Financial Protection Act (“CFPA”) generally exempts a merchant offering credit to a consumer to purchase a good sold by that merchant (i.e., “merchant credit sale”) from CFPB authority.<sup>10</sup> This exemption includes a merchant who offers BNPL or a similar payment structure. In light of this statutory exemption for merchant credit sales, the CFPB should clarify that the Interpretive Rule does not apply to merchant credit sales, and that a merchant credit sale would not constitute an open-end credit account under TILA. Alternatively, if the CFPB believes that merchant credit sales are in fact covered by the Interpretive Rule and the relevant provisions of TILA, then the CFPB should say this clearly and explain why the statutory exemption on merchant credit sales does not, in the CFPB’s view, apply.

### **III. The CFPB cannot apply its upcoming Section 1033 rule to BNPL products without first providing notice.**

The CFPB cannot apply its upcoming Section 1033 rule to BNPL products without first providing notice. The Interpretive Rule asserts that BNPL products are subject to the requirements of Subpart B of Regulation Z, but not to (most of) the open-end credit requirements under Subpart G. However, the Interpretive Rule does not provide any information on whether the CFPB is also considering that BNPL products could be subject to the requirements of the finalized Section 1033 rule. The CFPB was required to address this issue in the Interpretive Rule and must address it in its upcoming Section 1033 rule. In 2011, in *Portland Cement Association v. EPA*,<sup>11</sup> the US Court of Appeals for the D.C. Circuit held that agencies must “acknowledge and account for a changed regulatory posture the agency creates—especially when the change impacts a *contemporaneous and closely related* [emphasis added] rulemaking.”

As proposed, the CFPB’s Proposed Rule implementing Section 1033 of the CFPA would apply to “credit cards subject to the Truth in Lending Act and Regulation Z.”<sup>12</sup> Notably, though, neither the proposed Section 1033 rule, nor the CFPB’s Small Business Regulatory Enforcement Fairness Act (“SBREFA”) report on the proposed rule appear to contemplate that the Section 1033 rule could apply to BNPL providers. In particular, neither the proposed rule nor the SBREFA report study potential impacts to or implications for BNPL providers. For example, BNPL providers are not included among the small businesses identified in the Section 1033 SBREFA report.

---

<sup>10</sup> 12 U.S.C. § 5517(a)(2).

<sup>11</sup> 665 F.3d 177, 187 (D.C. Cir. 2011) (per curiam).

<sup>12</sup> See CFPB, *Proposed Rule; Required Rulemaking on Personal Financial Data Rights*, 88 Fed. Reg. 74,796 (Oct. 31, 2023), <https://www.govinfo.gov/content/pkg/FR-2023-10-31/pdf/2023-23576.pdf>.

The CFPB cannot impose the upcoming Section 1033 rule's requirements on BNPL providers once the rule is finalized. As explained above, the Interpretive Rule newly expands the definitions of "credit cards" to include digital user accounts used to access credit products. At the time the CFPB drafted the proposed Section 1033 rule, BNPL products were not "credit cards" under Regulation Z. As a result, the CFPB has not publicly addressed the potential impacts of the Section 1033 rule to BNPL providers.

Applying the Section 1033 rule to BNPL providers without appropriate notice would be procedurally unfair and contrary to the process protections of the APA and SBREFA. The Section 1033 rule cannot apply to BNPL providers given these providers were not put on notice that the Section 1033 rule could apply to them. BNPL providers have not been given notice or the opportunity to comment on the Section 1033 rule in the context that they might be subject to the rule's requirements. Failure to provide these companies notice and the opportunity to comment is a clear APA violation. Further, SBREFA requires that the CFPB must study potential impacts to BNPL providers under a SBREFA report before applying the Section 1033 rule, as the CFPB did with other providers that could be subject to the Section 1033 rule.

**IV. The CFPB should provide more detail on why it is issuing the Interpretive Rule and what impact the Interpretive Rule may have on the existing financial market.**

While the CCMC and ABA generally support the CFPB's efforts to provide regulatory clarity with respect to BNPL products, the Interpretive Rule does not explain why it is necessary for the CFPB to issue this rule. It is unclear what issues the CFPB is attempting to mitigate or resolve through the Interpretive Rule, calling into question whether the Interpretive Rule is necessary. We would ask the CFPB to detail its specific concerns and reasons for issuing the Interpretive Rule and thereby clarify the concerns the CFPB is attempting to address with the Interpretive Rule.

While the Interpretive Rule notes that the CFPB has extensively studied BNPL products within the past few years, the Interpretive Rule neither detailed the results of its studies nor explained why the CFPB has determined the Interpretive Rule is necessary. Notably, the Interpretive Rule does not articulate specific consumer protection concerns with BNPL products. If the CFPB has such specific consumer protection concerns, it should clearly highlight them for relevant businesses.

Further, the CFPB does not identify what impacts, if any, the Interpretive Rule could have on the existing BNPL market. For example, the CFPB does not provide any information in the Interpretive Rule with respect to whether and how many BNPL providers already comply with Subpart B of Regulation Z. Such information is



important to understanding the current regulatory landscape and justifying the need for an interpretive rule in the BNPL space. This information would also help to inform a reasonable timeline for BNPL providers to incorporate the CFPB's guidance in the Interpretive Rule into their compliance programs. The CFPB should provide additional information on these potential impacts to the market through a rulemaking subject to notice and comment.

**V. The CFPB should extend the effective date of the Interpretive Rule to provide a meaningful opportunity for comment before the Interpretive Rule becomes effective and a reasonable time period for BNPL providers to comply.**

If the CFPB proceeds with the Interpretive Rule, it should provide a meaningful opportunity for comment and more time for BNPL providers to comply with the rule's requirements. While the CCMC and ABA appreciate the opportunity to comment on the Interpretive Rule, it is unclear whether the CFPB will actually incorporate any feedback it receives on the Interpretive Rule, given the timing of the comment period deadline and the effective date of the rule. The comment period does not close until August 1, *after* the Interpretive Rule becomes effective on July 30, 2024. Accordingly, the CFPB will not incorporate any feedback on the Interpretive Rule before it actually becomes effective. If the CFPB actually sought meaningful feedback on this rule, it would have followed the longstanding notice and comment rulemaking process, or at least provided an effective date that gave the CFPB time to consider and incorporate comments before the rule became effective.

In addition, giving stakeholders a mere 60 days from publication in the *Federal Register* to comment has not allowed them to analyze the rule and implement the requirements of Subpart B of Regulation Z. As we have noted above, the Interpretive Rule newly applies the requirements of Subpart B of Regulation Z to BNPL providers and the rule is required under the APA to be subject to notice and comment. Although we maintain that the CFPB should withdraw this Interpretive Rule and instead issue a Notice of Proposed Rulemaking subject to notice and comment, if the CFPB does not do so, it should at least extend the effective date of the Interpretive Rule to a more reasonable date.

Extending the effective date of the Interpretive Rule would also allow the CFPB time to clarify several inconsistencies and points of confusion on how Subpart B of Regulation Z will practically apply to BNPL products. As described above, the Interpretive Rule contains vague provisions and does not define "digital user accounts," a key term. The CFPB should allow time for BNPL providers to comment on these uncertainties and similarly, allow time for the CFPB to clarify certain

requirements before the Interpretive Rule actually becomes effective. The CFPB should also allow time to provide guidance specific to the application of Subpart B to BNPL products, including through providing model forms for application and solicitation disclosures, account-opening disclosures, and periodic statement disclosures for BNPL creditors and revising the Official Staff Commentary to Appendix G to provide guidance on the use of model forms for BNPL products.

Providing such an extension would not just be good administrative procedure. It also is legally required. The Interpretive Rule requires BNPL providers to implement new disclosures. Under TILA, regulations imposing new disclosures must have an effective date of no earlier than October 1 which follows by at least six months the date of promulgation of the Interpretive Rule.<sup>13</sup> Accordingly, the CFPB should extend the effective date of the Interpretive Rule in compliance with TILA.

\* \* \* \* \*

We thank you for your consideration of these comments and would be happy to discuss these issues further.

Sincerely,

Bill Hulse

Tom Rosenkoetter



Senior Vice President  
Center for Capital Markets Competitiveness  
U.S. Chamber of Commerce

Senior Vice President,  
Executive Director ABA's Card Policy Council  
American Bankers Association

---

<sup>13</sup> 15 U.S.C. § 1604(d).