

March 25, 2022

ATTORNEY GENERAL RAOUL: CONSUMER FINANCIAL PROTECTION BUREAU SHOULD PRIORITIZE CONSUMERS PROTECTIONS DURING INQUIRY INTO BUY-NOW-PAY-LATER LENDING INDUSTRY

Chicago — Attorney General Kwame Raoul today led a coalition of 19 attorneys general in urging the Consumer Financial Protection Bureau (CFPB) to ensure that buy-now-pay-later (BNPL) lenders are not engaging in practices that trap consumers in a cycle of debt. BNPL loans are a form of point-of-sale financing that allow consumers to divide the cost of purchases into multiple installments. The CFPB launched an inquiry into BNPL lenders and practices in 2021 and directed BNPL lenders to provide data related to lending and financing services. As part of its inquiry, the CFPB is seeking input from attorneys general.

[In comments](#) submitted today, Attorney General Raoul and the attorneys general call on the CFPB to prioritize robust consumer protections during its review of the BNPL loan industry. Raoul and the coalition are concerned that by touting quick credit application approvals and convenient, flexible payment schedules, BNPL loans and services are particularly appealing to borrowers already struggling with debt or younger borrowers who lack experience with credit. Raoul and the attorneys general also point out that, similar to predatory lending products, BNPL loans may contain terms and features that are known to trap people in cycles of debt.

“Buy-now-pay-later loans can seem like an affordable option for consumers who wish to divide one purchase into multiple payments. While these loans may appear to make payments more manageable, they may also result in people accumulating debt and ultimately paying more,” Raoul said. “I appreciate the CFPB’s inquiry into this industry, and I encourage the agency to ensure companies are not utilizing practices that trap people into a cycle of debt.”

People use BNPL loans when purchasing a variety of goods and services, from clothing and household goods, to event tickets and electronics, to even online training courses. In recent years, the BNPL industry has experienced rapid and exponential growth, particularly during the COVID-19 pandemic as consumers have shopped online more frequently.

In their letter, Attorney General Raoul and the coalition express concern that some BNPL lenders may be designing their loans to evade federal and state consumer protection and credit laws, and may not adequately disclose lending and repayment terms. For instance, BNPL providers may not necessarily consider a borrower’s ability to repay loans before approving applications. In addition, while some BNPL providers do not charge regular fees or interest, most charge late fees and report late or missed payments to credit bureaus. As a result, borrowers may accumulate more debt and end up paying more when utilizing BNPL loans. In addition, Attorney General Raoul and the coalition recommend that the CFPB examine the means through which BNPL companies protect consumer privacy and collect, use and monetize consumer data.

Attorney General Raoul and the coalition also encourage the CFPB to look into apparent partnerships between BNPL companies and providers of unaccredited online courses. The attorneys general point to online courses, such as tech boot camps, that have established partnerships with non-bank lenders offering these new financial services. Raoul and the coalition point out that such services do not offer participants the same protections as those included in federal student loans, or even private student loans.

The Illinois Attorney General’s office has long been a national leader in investigating and enforcing consumer protection violations against predatory lenders. Raoul advocated for passage of the passage of the Predatory

Loan Prevention Act that sets a 36% interest rate cap on all consumer loans in Illinois. In November 2021, Raoul entered into a settlement with online payday lending lead generators Money Mutual, LLC, Partner Weekly, LLC and Selling Source, LLC permanently barring them from arranging or offering small-dollar loans to Illinois consumers without a license. The companies had argued throughout the litigation that they were not required to be licensed because they were merely generating leads for other lenders.

Joining Attorney General Raoul in the comments are the attorneys general of California, Colorado, Connecticut, Delaware, Hawaii, Iowa, Maine, Maryland, Michigan, Minnesota, Nevada, New Jersey, New York, North Carolina, Oregon, Pennsylvania, Vermont and Washington, as well as the Hawaii Office of Consumer Protection.

Attorney General Raoul encourages individuals who have experienced problems with a buy-now-pay-later loan or service to file a complaint on his office's website.



**OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS**

March 25, 2022

Submitted Electronically and Via E-mail

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

Re: Notice and Request for Comment Regarding the CFPB's Inquiry Into Buy-Now-Pay-Later Providers, Docket No. CFPB-2022-0002; 87 Fed. Reg. 3511

Dear Director Chopra:

The Attorneys General of Illinois, California, Colorado, Connecticut, Delaware, Hawaii, Iowa, Maine, Maryland, Massachusetts, Michigan, Minnesota, Nevada, New Jersey, New York, North Carolina, Oregon, Pennsylvania, Rhode Island, Vermont, and Washington, as well as the Hawaii Office of Consumer Protection submit this letter in response to the Consumer Financial Protection Bureau's ("CFPB") "Notice and Request for Comment Regarding the CFPB's Inquiry into Buy-Now-Pay-Later Providers," CFPB-2022-0002; 87 Fed. Reg. 3511.

I. State Attorneys General Enforcement against Predatory Lending

We commend the CFPB for opening its inquiry into Buy-Now-Pay-Later providers ("BNPL")¹ and hope it is the first step towards greater transparency and regulation of the industry. While we encourage access to safe and affordable credit, 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. We are particularly concerned when such products are popular among younger consumers unfamiliar with navigating credit products and consumers who may already be struggling to make ends meet and to cover their existing debt burdens.

¹ *Consumer Financial Protection Bureau Opens Inquiry into "Buy Now, Pay Later" Credit*, Consumer Financial Protection Bureau (Dec. 16, 2021) [hereinafter *CFPB Inquiry*], <https://www.consumerfinance.gov/about-us/newsroom/consumer-financial-protection-bureau-opens-inquiry-into-buy-now-pay-later-credit/>

As the chief law enforcement officers of our states, we have long held lenders to account for their efforts to prey on vulnerable borrowers through attempts to evade consumer credit laws.² Examples of such evasion include structuring loans to fall outside the scope of state lending laws, mischaracterizing fees or interest charges, and leveraging relationships with third-parties to take advantage of that third-party's ability to export higher interest rates than are allowed by state law. Our states have also enacted laws to protect consumers from abuses associated with high-cost, small-dollar credit offered by fringe lenders. These laws reflect the will of the people to encourage safe and affordable loans while restricting predatory lending practices.³ We are concerned that BNPL providers' claims of quick application approvals, no credit checks, no interest or fees, and convenient payment schedules are masking features that will contribute to long-term damage to consumers' financial health. We will continue to use all resources at our disposal to ensure the citizens of our states are protected from the potential harms of new financial products. We appreciate the opportunity to provide our views on BNPL providers and look forward to viewing the results of the CFPB's inquiry.

² *Illinois by Madigan v. CMK Invs., Inc.*, No. 14 C 2783, 2014 WL 6910519, at *2 (N.D. Ill. Dec. 9, 2014) (alleging installment lender's mandatory account protection fee that was charged on a sliding scale based on the amount financed was undisclosed interest in violation of the applicable 36% rate cap imposed by Illinois law); *Oasis Legal Fin. Grp., LLC v. Coffman*, 361 P.3d 400 (Colo. 2015) (finding litigation finance agreements were loans subject to Colorado's consumer credit regulations); *Commonwealth v. Credit Acceptance Corp.* (2084-CV-01954-BLS2, filed August 28, 2020) (alleging subprime loan financier engaged in unfair lending practices, including usury); *Minnesota by Ellison v. Future Income Payments, LLC*, No. 27-CV-1712579, 2018 WL 1512814, *13 (Minn. 4th Dist. Mar. 13, 2018) (finding that financial product is a "loan" and that courts look to the "substance and effect of transactions to ascertain that there is not shrift or device on the part of the lender to evade the law or conceal the real nature and object of the transaction"); *Oregon v. Future Income Payments, LLC et al*, Multnomah County Case No. 18CV18811 (judgment in State's favor declaring loans null and void, saving victims over \$5 million in principal, interest, and fees and fining defendants almost \$5.9 million in civil penalties)

³ See e.g. Illinois Predatory Loan Prevention Act, 815 ILCS 123/15-5-5 (lenders limited to 36% APR on unpaid balance of the amount financed for a loan); 815 ILCS 123/5-5-15 (prohibits any device, subterfuge, or pretense to evade the Act, including charging greater interest than allowed); Cal. Fin. Code §§ 22303, 22304, 22304.5, 22306 (establishing usury caps tied to amount of loan); Haw. Rev. Stat. § 480J-4(a) (lenders limited to 36% APR on the unpaid principal balance of an installment loan); Haw. Rev. Stat. § 480J-4(g) (prohibiting lenders from charging any further amounts on the loan other than permitted interest and loan charges); Maryland Consumer Loan Law, Md. Code Ann., Com. Law § 12-306 (interest rates on consumer loans limited to 33% or less); M.G.L. c. 255B, sec. 14 & M.G.L. c. 140D, secs 4-5 (setting usury cap for certain types of loans and requiring interest rate disclosures); Michigan Usury Law, MCL 438.31 (unsecured loans by unlicensed entities are limited to 5% without a written contract and 7% with a written contract); Minn. Stat. s 334.01 (limiting interest rates on loans by non-exempt lenders); Minn. Stat. s 47.60, 47.601 (providing for registration and rate limits for "consumer small loans" and "consumer short-terms loans"); N.J.S.A. 31:1-1(a) (imposing a maximum interest rate of 16% per annum when there is a written contract specifying a rate of interest, or 6% per annum in the absence of a written contract); N.C. Gen. Stat. § 24-2.1(g) ("It is the paramount public policy of North Carolina to protect North Carolina resident borrowers through the application of North Carolina interest laws.") and N.C. Gen. Stat. § 24-1.1(a), (c) (maximum interest rate that North Carolina's usury laws allow for contract loans of \$25,000 or less is 16% per annum unless another law provides for a higher rate); Nev. Rev. Stat. Ann. § 604A.010; Nev. Rev. Stat. Ann. Title 55, Ch. 675; Oregon Consumer Finance Act, ORS 725.010 – ORS 725.910; Payday and Title Loans and Student Loan Servicing, ORS 725A.010 – 725A.990.

II. The BNPL Industry

We acknowledge the potential benefits of BNPL financing when compared to certain forms of credit, such as high-cost payday and installment loans. For consumers who are able to afford BNPL payments, the ability to split the cost of goods or services into multiple installments without interest or fees can be helpful in paying for merchandise that would otherwise not fit into consumers' budgets. Additionally, we welcome lawful economic activity in our states, including that which benefits local businesses; BNPL products may help to spur economic development through increases in customer acquisition and overall sales.

The CFPB's inquiry comes while the BNPL sector has been experiencing rapid and exponential growth. Every year since 2018, there has been a 300% increase in the number of consumers who have taken out a BNPL loan.⁴ A December 2020 survey found that 42% of Americans had used a BNPL service.⁵ Loan volume in the BNPL sector jumped from an estimated \$3 billion in 2019 to over \$39 billion in 2020.⁶ The growth in the BNPL industry parallels the growth of online shopping in general during the COVID-19 pandemic.⁷ Consumers can find BNPL financing for an ever-growing number of products and services: electronics, clothing, household goods, and concert and travel tickets. Consumers can apply for BNPL financing at a merchant's online or in-store checkout, or directly through a BNPL provider's mobile app. Consumers who utilize BNPL tend to increase their spending. Merchants are willing to pay higher transaction fees than for credit card purchases because they see higher order volumes when purchases are made with BNPL financing.⁸

While BNPL has not overtaken the traditional credit card market share, this nascent yet developing stage is precisely when regulatory inquiry and investigation is necessary to root out potential harms and ensure that market actors are complying with existing laws.

III. Lack of Consumer Protections

We are concerned that some BNPL products are designed to evade certain consumer protection laws, including those loans that allow consumers to pay in four or fewer installments without

⁴ Jennifer Surane, Klarna Says Retailers Paying Less in Buy Now/Pay Later Frenzy, Bloomberg (Jan. 25, 2022), <https://www.bloomberg.com/news/articles/2022-01-25/klarna-says-retailers-paying-less-in-buy-now-pay-later-frenzy>.

⁵ Gaby Lapera, 72% of Americans Saw Their Credit Scores Drop After Missing a 'Buy Now, Pay Later' Payment, Survey Finds, Credit Karma (Feb. 8, 2021), <https://www.creditkarma.com/insights/i/buy-now-pay-later-missed-payments>.

⁶ Brian Riley, Buy Now, Pay Later: Gaining Scale And Disrupting Status Quo in Lending, Mercator Advisory Group (May 7, 2021), <https://www.mercatoradvisorygroup.com/product/Buy-Now-Pay-Later:-Gaining-Scale-and-the-Disrupting-Status-Quo-in-Lending/>.

⁷ Buy Now, Pay Later Statistics and User Habits, C+R Research, https://www.cresearch.com/blog/buy_now_pay_later_statistics (last accessed March 11, 2022) (51% of consumers say they used Buy Now, Pay Later services during the pandemic); see also Bureau of Consumer Financial Protection, *The Consumer Credit Card Market*, p. 165 (Sept. 2021), https://files.consumerfinance.gov/f/documents/cfpb_consumer-credit-card-market-report_2021.pdf.

⁸ Ed Mierzwinski & Mike Litt, U.S. PIRG, *The Hidden Costs of "Buy Now, Pay Later"* (March 2022), https://uspirg.org/sites/pirg/files/reports/BNPL%20REPORT%20USPIRG_0.pdf.

interest.⁹ For example, providers offering these products may opine that they are not required to provide consumers with the same disclosures of interest and fees, and are not subject to the same dispute resolution protections or return/refund procedures as other credit products.¹⁰ Some providers even claim that their products are not loans or credit products at all, but instead refer to them as payment plans.¹¹

Regardless of what some BNPL providers and advocates may claim, BNPL financing is credit. Credit is defined by law as “the right granted by a creditor to a debtor to defer payment of debt or to incur debt and defer its payment.”¹² While state laws vary as to the precise definition, terms, and allowable charges on various credit products,¹³ we are no less concerned that BNPL providers are frequently failing to provide consumers with clear and conspicuous disclosures, including total costs, payments, fees, and to fully describe available dispute resolution mechanisms. If some BNPL products were to fall outside the scope of certain federal laws or regulations, it would be even more important that the CFPB pay special attention to whether and how providers ensure the same levels of consumer rights and protections for their customers. **We urge the CFPB to analyze whether and how BNPL providers ensure consumer rights and protections, disclosure of fees, charges, and other essential terms to consumers, as well as how they comply with general requirements to refrain from unfair, deceptive, and abusive acts and practices.**

IV. Ability-to-Repay Analysis

We are also concerned that BNPL providers may not be considering a consumer’s ability-to-repay prior to extending loans.¹⁴ A lack of robust underwriting coupled with marketing that touts the ease of splitting the cost of goods or services into multiple payments without interest or fees, provides little protection against an unsustainable accumulation of debt – particularly for younger borrowers and consumers who already struggle to make ends meet or owe on other debts. There is also no guarantee that BNPL providers are able to track when consumers have BNPL loans from multiple providers.¹⁵ One analysis found a correlation between consumers that use BNPL loans

⁹ 15 U.S.C. §1602(g) (The Truth In Lending Act generally only covers creditors who regularly extend consumer credit subject to a finance charge or payable by written agreement in *more than* four installments); see Congressional Research Service, *Rapidly Growing “Buy Now, Pay Later” (BNPL) Financing: Market Development and Policy Issues* (Nov. 1, 2021), <https://crsreports.congress.gov/product/pdf/IN/IN11784/3>; see also CFPB Inquiry, *supra* note 1.

¹⁰ Nelson Akeredolu et al., *Should You Buy Now and Pay Later?*, Consumer Financial Protection Bureau (July 6, 2021), <https://www.consumerfinance.gov/about-us/blog/should-you-buy-now-and-pay-later/>.

¹¹ Elaine S. Povich, *Regulators Scrutinize Buy Now, Pay Later Plans*, Pew Charitable Trusts – Stateline (Feb. 2, 2022), <https://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2022/02/02/regulators-scrutinize-buy-now-pay-later-plans>; Tomio Geron, *‘Buy Now, Pay Later’ is Booking. But Companies are Facing Pressure to Change*, Protocol (Nov. 28, 2021), <https://www.protocol.com/fintech/buy-now-pay-later-holidays>.

¹² 15 U.S.C. §1602(f)

¹³ See 815 ILCS 123/15-1-10 (The Illinois Predatory Loan Prevention Act defines “loan” as money or credit provided to a consumer in exchange for the consumer’s agreement to a certain set of terms, including, but not limited to, any finance charges, interest, or other conditions, and includes transactions conducted over the internet.)

¹⁴ Julian Alcazar & Terri Bradford, *The Appeal and Proliferation of Buy Now, Pay Later: Consumer and Merchant Perspectives*, Federal Reserve Bank of Kansas City (Nov. 10, 2021), <https://www.kansascityfed.org/documents/8504/psrb21alcazarbradford1110.pdf>.

¹⁵ *Id.*

and consumers that incur overdraft fees.¹⁶ While this did not show causation, the findings underscore the need for BNPL providers to consider a consumer's ability to repay so that consumers do not overextend their finances. Customer surveys also show that a substantial percentage of borrowers have fallen behind on payments. A December 2020 study found that 38% of BNPL borrowers had fallen behind,¹⁷ and a 2021 survey found 56% of borrowers had fallen behind.¹⁸ Another study showed that more than half of BNPL users have seen their credit card limits decrease.¹⁹ For the young consumers and thin-credit file consumers that appear to use BNPL products often, early financial trouble risks hindering access to credit in the future. Some preliminary data indicates that these products are particularly attractive to consumers who have difficulty in managing their budgets.²⁰ It is this population that is most susceptible to harm from the use of BNPL. **We ask the CFPB to analyze what steps, if any, BNPL providers take in considering ability-to-repay and the types and sources of information they rely on. The CFPB should also consider specific rulemaking to clarify BNPL providers' obligations to conduct ability-to-repay analyses.**

V. Credit Reporting

The impact of BNPL products on consumer credit reports is also troubling. Some BNPL providers promote the lack of credit reporting as a central benefit of its products, as it allows for quicker approvals, but this leads to uneven outcomes for consumers. Many BNPL providers fail to report positive credit activity (such as on-time payments) and instead only report late payments or negative activity to credit bureaus.²¹ Moreover, there is much negative activity to report. A survey found that nearly three quarters of consumers with a BNPL loan that had a late payment saw their credit scores decrease.²²

In any event, how credit reporting is handled for BNPL is in flux. Since the CFPB opened its inquiry, the three leading credit bureaus announced plans to add BNPL payment activity to credit reports, including by establishing specific trade lines or independent divisions to handle BNPL payments.²³ Incorporating BNPL payment history into credit reports may help borrowers that make on-time payments build good credit and assist with underwriting to make sure borrowers can afford

¹⁶ Claire Williams, 'Buy Now, Pay Later' Users Significantly More Likely to Overdraft Than Nonusers, Morning Consult (Mar. 2, 2022), <https://morningconsult.com/2022/03/02/buy-now-pay-later-bnpl-overdraft-data/>.

¹⁷ Lopera, *supra* note 5.

¹⁸ Mierzewski, *supra* note 8.

¹⁹ Ron Shevlin, *PayPal is Winning the \$24 Billion Buy Now, Pay Later Battle – For Now*, Forbes (November 22, 2020), <https://www.forbes.com/sites/ronshevlin/2020/11/22/the-24-billion-buy-now-pay-later-battle/?sh=40e83c542f53>.

²⁰ *Id.*

²¹ Buy Now, Pay More Later? Investigating Risks and Benefits of BNPL and Other Emerging Fintech Cash Flow Products, Hearing on H.R. 4277 Before the Task Force on Financial Technology U.S. House Committee on Financial Services, 117th Congress (2021) [hereinafter *Hearings*] (statement of Lauren Saunders, Associate Director, National Consumer Law Center).

²² Lopera, *supra* note 5.

²³ Robin Saks Frankel, *TransUnion Follows Equifax's Move To Include Buy Now, Pay Later Data In Credit Reports*, Forbes (March 7, 2022), <https://www.forbes.com/advisor/personal-finance/transunion-equifax-buy-now-pay-later-credit-report/>; Greg Wright, *Introducing The Buy Now Pay Later Bureau™ from Experian*, Experian, (Jan. 26, 2022), <https://www.experian.com/blogs/news/2022/01/26/buy-now-pay-later-bureau/>.

payments. Reporting to credit bureaus can also help to mitigate or prevent identity theft; when BNPL payments are not reported to credit bureaus, consumers may be unaware that credit has been fraudulently established in their names, and alert and monitoring services may not capture this fraudulent activity.²⁴ Should the industry incorporate credit reporting on a broad scale, we hope that this will lead to BNPL providers conducting rigorous ability-to-repay analyses, including where consumers use BNPL loans through multiple providers at the same time.

However, complaints about inaccurate information in credit reports are too common, and the introduction of credit reporting to the BNPL industry may come with a host of other problems. In fact, one-third of complaints about BNPL loans submitted to the CFPB so far concern incorrect information on a consumer's credit report.²⁵ **We urge the CFPB to analyze BNPL policies and procedures for credit reporting and the information that BNPL providers furnish to credit bureaus. We further urge the CFPB to monitor the emerging role of credit bureaus in the BNPL marketplace, including to ensure that BNPL providers comply with obligations to furnish accurate information and that credit bureaus comply with validation and dispute resolution requirements. Given the number of complaints about credit reporting, BNPL providers that do report to credit bureaus should implement policies and procedures, and allocate sufficient resources and staff to timely and thoroughly handle consumers' credit reporting disputes.**

VI. Fees and Charges

We are concerned about the types and amounts of fees that BNPL providers charge consumers, as well as the clarity and adequacy of fee disclosures. While many BNPL products do not charge interest, most do charge several types of fees including late fees or activity fees.²⁶ We are concerned that when considered as interest, these fees may exceed state usury caps.²⁷ We are equally concerned that BNPL providers depend on late fees to drive revenue while not adequately disclosing late fees in advertisements and other statements to consumers.²⁸ We would be troubled to see BNPL loans become more expensive or complicated for consumers, including through the introduction of new or higher fees. As the industry continues to grow, merchants may seek to contract with BNPL providers for lower transaction fees.²⁹ And we are concerned that this will push BNPL providers to increase the fees they assess against consumers.

Additionally, some BNPL providers do charge interest, which may exceed state usury caps, as well as the average interest imposed on credit card users. Further, consumers who link their BNPL

²⁴ Alcazar, *supra* note 14.

²⁵ Mierzewski, *supra* note 8.

²⁶ Sasha Hupka, *Buy-Now-Pay-Later Apps: How They Work*, Los Angeles Times, (Aug. 11, 2021) <https://www.latimes.com/politics/story/2021-08-11/buy-now-pay-later-apps-how-they-work> (some providers, like Quadpay, charge a \$1 platform fee for each installment payment); see also Akeredolu, *supra* note 10.

²⁷ Student Borrower Protection Center, *Point of Fail: How a Flood of "Buy Now, Pay Later" Student Debt is Putting Millions at Risk*, p. 10, (March 2022) (citing analysis that certain BNPL late fees may equate to 68% APR interest charges), https://protectborrowers.org/wp-content/uploads/2022/03/SBPC_BNPL.pdf.

²⁸ Alcazar, *supra* note 14; see *Hearings*, *supra* note 21 (Saunders testimony).

²⁹ Surane, *supra* note 4; *Hearings*, *supra* note 21 (testimony of Marisabel Torres, Director of California Policy, Center for Responsible Lending).

accounts to bank accounts may also incur NSF fees and overdraft charges if they fail to make a timely payment. Those who link their BNPL accounts to their credit cards may also incur interest charges directly on their credit cards.³⁰ **We recommend that the CFPB study the state of BNPL providers' disclosures to consumers, and consider using its rulemaking authority to ensure, first, that BNPL providers are clearly and accurately disclosing all actual and potential fees and charges to consumers and, second, that any fees and charges are reasonable and proportional to the overall cost of the loan.**

VII. Dispute Resolution, Returns, Refunds

We are concerned that if some BNPL providers claim that they are not required to comply with consumer protections required by providers of other forms of credit, consumers will have difficulty returning merchandise and with dispute resolution.³¹ Consumers may continue to be on the hook to repay their loans even if they purchase faulty merchandise or merchandise from a scam company.³² **The CFPB should review the dispute resolution procedures and protections offered by BNPL providers, ensure that BNPL providers implement rigorous oversight policies, immediately take action to cancel loans associated with defective or returned merchandise or purchased through scam merchants, and end relationships with unscrupulous merchants.**

VIII. Debt Collection

We are further concerned that BNPL providers ask for minimal consumer information on applications, which may lead to harms throughout the life-cycle of the loan. In particular, debt buyers and debt collectors that purchase portfolios of debt may have difficulty verifying borrower identity and validating debts when BNPL providers collect limited borrower information in applications and do not rely on credit reports to underwrite loans.³³ Consumers have already submitted complaints to the CFPB about attempts to collect on debts the consumers do not owe or for which the consumers do not remember applying.³⁴ **We recommend that the CFPB look into BNPL provider policies, procedures, and practices related to debt collection to ensure that providers comply with all applicable consumer protections.**

IX. Collection and Use of Consumer Data

We also appreciate the CFPB's focus on BNPL providers' use and monetization of consumer data.³⁵ The BNPL industry is growing while longstanding concerns over the collection, use, sale, and protection of consumer data in the financial services industry remain. BNPL providers collect

³⁰ Mierzwinski, *supra* note 8; *citing* Akeredolu, *supra* note 10.

³¹ Andrew Braden, *Know Before You Buy (Now, Pay Later) This Holiday Season*, Consumer Financial Protection Bureau (Dec. 16, 2021), <https://www.consumerfinance.gov/about-us/blog/know-before-you-buy-now-pay-later-this-holiday-season/>.

³² Congressional Research Service, *supra* note 9.

³³ *Panel Discusses Viability of BNPL Loans for Buying, Selling*, AccountsRecovery.net, <https://www.accountsrecovery.net/2022/02/10/panel-discusses-viability-of-bnpl-loans-for-buying-selling/> (last accessed, March 14, 2022).

³⁴ Mierzwinski *supra* note 8.

³⁵ *CFPB Inquiry*, *supra* note 1.

consumer data that is valuable for other companies that want to understand shopping behavior in order to target consumers for new products.³⁶ Merchant partnerships, and merger and acquisition activity with banks and other financial service providers, may lead to consumer data being shared amongst a variety of companies in ways that consumers may not understand or expect. **We recommend the CFPB inquire into provider privacy policies, as well as into how BNPL providers collect, use, sell, and protect consumer data.**

X. BNPL Financing for Education

Finally, we are concerned about the apparent emerging relationships between BNPL providers and for-profit schools, including online bootcamps and credentialing programs.³⁷ Many of these types of schools make false or misleading promises that graduates will obtain substantial salary increases. Such claims, combined with few consumer protections from BNPL loans, may lead to students being saddled with unaffordable debts and little recourse. State Attorneys General have spent years cracking down on the consumer harms that result from predatory for-profit schools and the financial products that prop up their dubious and unsubstantiated claims of lucrative salaries and job security.³⁸ The proliferation of partnerships between BNPL providers and for-profit schools occurs while federal regulators pay close attention to the risks of other “innovative” education financing products. For example, only recently the CFPB entered into a consent judgment, and the Department of Education issued guidance, both of which found that “income share agreements,” are in fact “private education loans” under the Truth in Lending Act/Regulation Z and the Higher Education Act respectively.³⁹ While revenue from education financing may

³⁶ Congressional Research Service, *supra* note 9.

³⁷ Student Borrower Protection Center, *supra* note 27.


³⁸ Press Release, *Attorney General Raoul Announces Settlement With ITT Tech Private Student Loan Lender*, (June 18, 2019) (available at https://www.illinoisattorneygeneral.gov/pressroom/2019_06/20190618.html); Colorado Attorney General, *Denver District Court Judge Orders CollegeAmerica to Pay \$3 Million in Civil Penalties to State and Forgive Loans for Deceiving Students*, (Aug. 21, 2020), <https://coag.gov/press-releases/8-21-20/>; Maryland Attorney General, *Attorney General Frosh Announces Over \$2.6M in Debt Relief for Former Brightwood College Students in Maryland* (November 16, 2020) <https://www.marylandattorneygeneral.gov/Press/2020/11/1620.pdf>; Press Release, *AG Healey Reaches Settlement With U.S. Bank Securing Over \$230,000 in Debt Relief for Massachusetts Student Borrowers*, (May 28, 2021) (available at: <https://www.mass.gov/news/ag-healey-reaches-settlement-with-us-bank-securing-over-230000-in-debt-relief-for-massachusetts-student-borrowers>); New York Attorney General, *A.G. Schneiderman Obtains Settlement With DeVry University Providing \$2.25 Million in Restitution For New York Graduates Who Were Misled About Employment And Salary Prospects After Graduation*, (Jan. 31, 2017), <https://ag.ny.gov/press-release/ag-schneiderman-obtains-settlement-devry-university-providing-225-million-restitution>; *Minnesota by Swanson v. Minn. Sch. of Bus., Inc.*, 899 N.W.2d 467 (Minn. 2017) (holding that higher-education institution’s student lending operations were unlicensed and violated usury laws); Oregon Attorney General, *AG Rosenblum Announces 192 Million Aequitas Settlement* (August, 2017), <https://www.doj.state.or.us/media-home/news-media-releases/ag-rosenblum-announces-192-million-aequitas-settlement-2-1-million-oregon-students/>; Washington Attorney General, *AG Obtains \$7 Million in Debt Relief for Nearly 2,000 Washington Student Borrowers*, (Aug. 17, 2017), <https://www.atg.wa.gov/news/news-releases/ag-obtains-7-million-debt-relief-nearly-2000-washington-student-borrowers>;

³⁹ *In the Matter of: Better Future Forward, Inc., et al*, 2021-CFPB-005, Sept. 7, 2021, https://files.consumerfinance.gov/f/documents/cfpb_better-future-forward-inc_consent-order_2021-09.pdf; see Office of Postsecondary Education, U.S. Dep’t of Education, General 22-12, Comment on Income Share Agreements and Private Education Loan Requirements, (March 2, 2022) (discussing 2021-CFPB-005, and 34 C.F.R.

represent only a small fraction of the BNPL industry overall,⁴⁰ we believe the trend warrants further investigation and regulatory guidance. **We urge the CFPB to monitor partnerships between BNPL providers and for-profit schools and online course providers and consider issuing guidance and rulemaking clarifying regulations for BNPL credit to finance education.**

Thank you again for this opportunity, and thank you for taking the initiative to open an inquiry into Buy-Now-Pay-Later providers and the risks they may pose in the consumer financial marketplace.

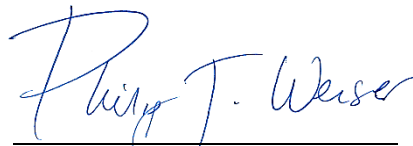
Respectfully Submitted,



Kwame Raoul
Illinois Attorney General



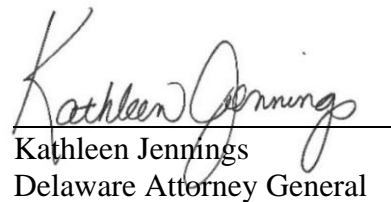
Rob Bonta
California Attorney General



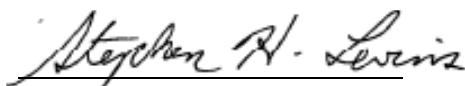
Philip J. Weiser
Colorado Attorney General



William Tong
Connecticut Attorney General



Kathleen Jennings
Delaware Attorney General



Stephen H. Levins
Executive Director, Hawaii Office of
Consumer Protection



Holly T. Shikada
Hawaii Attorney General

601) <https://fsapartners.ed.gov/knowledge-center/library/electronic-announcements/2022-03-02/income-share-agreements-and-private-education-loan-requirements>.

⁴⁰ Polo Rocha, *Buy Now/Pay Later is Latest Form of 'Shadow Student Debt'*: Report, American Banker (March 9, 2022), <https://www.americanbanker.com/news/buy-now-pay-later-is-latest-form-of-shadow-student-debt-report>.



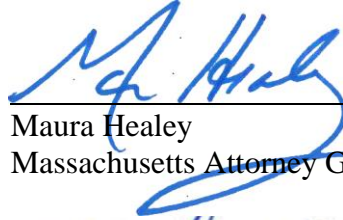
Tom Miller
Iowa Attorney General



Aaron M. Frey
Maine Attorney General



Brian E. Frosh
Maryland Attorney General



Maura Healey
Massachusetts Attorney General



Dana Nessel
Michigan Attorney General



Keith Ellison
Minnesota Attorney General



Aaron D. Ford
Nevada Attorney General



Matthew J. Platkin
Acting Attorney General of New Jersey



Letitia James
New York Attorney General



Josh Stein
North Carolina Attorney General



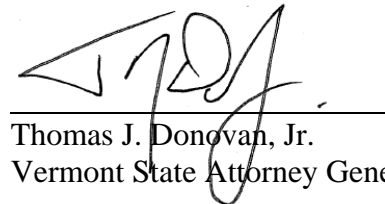
Ellen F. Rosenblum
Oregon Attorney General



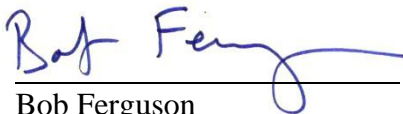
Josh Shapiro
Pennsylvania Attorney General



Peter F. Neronha
Rhode Island Attorney General



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Bob Ferguson
Washington State Attorney General