

Banking Law

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CFPB's Buy Now, Pay Later Rule Hit With Fintech Group Lawsuit

By Evan Weinberger

Exclusive

- CFPB rule applies some credit card protections to products
- Fintech lenders say CFPB skipped necessary procedural steps

A financial technology trade group representing buy now, pay later providers such as Block Inc. and Klarna Bank AB is suing to stop the Consumer Financial Protection Bureau's rule that brings some credit card protections to the burgeoning market.

The CFPB didn't take the necessary procedural steps to issue its May interpretive rule requiring buy now, pay later companies to provide regular billing statements, investigate disputes, and offer refunds for returned products and canceled services, the Financial Technology Association argued in a lawsuit filed Friday in the US District Court for the District of Columbia.

"The CFPB is seeking to fundamentally change the regulatory treatment of pay-in-four BNPL products without adhering to required rulemaking procedures, in excess of its statutory authority, and in an unreasonable manner," FTA President and CEO Penny Lee said in a statement.

Buy now, pay later products, which exploded in popularity with the use of e-commerce during the Covid-19 pandemic, allow customers to split up purchases, typically into four equal payments.

The interpretive rule went into effect July 30, but the CFPB said in an August blog post it would give companies a grace period before enforcing it while the industry is "transitioning into compliance in a good faith and expeditious manner."

The CFPB said in its blog post that it expected other federal and state regulators to do the same—and that the industry was "responding favorably and constructively" to the rule.

The CFPB didn't immediately respond to a request for comment.

Credit Card Protections

The CFPB's interpretive rule sought to bring credit card protections required under the 1968 Truth in Lending Act to buy now, pay later.

"When Congress defined credit cards, it included devices both known and unknown," CFPB Director Rohit Chopra said on a call with reporters when the rule was announced.

But buy now, pay later providers say the CFPB is attempting to shoehorn their products—no-interest, closed-end loans payable in equal chunks—into rules for open-ended credit card loans that carry interest rates.

"We believe the CFPB's attempt to impose regulations designed for credit cards on the pay-in-four products offered by many of our members shows an underlying misunderstanding of BNPL," Lee said.

The agency overlooked key differences, for instance, between buy now, pay later and credit cards when it comes to billing statements, according to the FTA's complaint.

Regulation Z, the operating regulation for the Truth in Lending Act, requires credit card issuers to send billing statements at least 14 days before payment is due. That works for credit cards, since they are on a monthly repayment schedule and billing statements include all purchases made over the course of the month, the complaint said.

But since buy now, pay later transactions are individual, closed-end loans with payments due every two weeks, "it is impossible to send periodic statements for all loans collectively at least 14 days in advance of the next payment as required under Regulation Z," the complaint said.

Process Dispute

An FAQ from the CFPB suggests buy now, pay later companies treat each offering as a new credit card loan, or elect not to designate payments that come in after the contractually required date as "late payments."

That guidance wouldn't work because of the billing cycle and other differences between credit cards and buy now, pay later loans, the FTA said.

The problems with the rule are the result of the CFPB's shoddy process, the fintech trade group said, arguing the agency violated the Administrative Procedure Act.

Rather than going through the full notice-and-comment period before finalizing the policy, as required for a significant change under the Truth in Lending Act, the CFPB instead issued its interpretive rule and then accepted comments, the complaint said.

FTA members include other buy now, pay later providers such as PayPal Holdings Inc., Zip Co., and Zilch USA Inc.

Most companies in the market already provide refunds and dispute resolution processes among other consumer protections, and did so even before the rule took effect, the FTA says.

House Republicans filed a resolution (H. J. Res. 195) in August to repeal the CFPB's buy now, pay later rule using the Congressional Review Act. The measure has so far failed to move in the House and no parallel legislation has been filed in the Senate.

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