

CFPB Updates on Buy Now, Pay Later Lending

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On August 16th, the Consumer Financial Protection Bureau ("CFPB") Director, Rohit Chopra, published a blog post entitled "What Buy Now, Pay Later lenders are doing to be upfront with borrowers" that follows up on its proposed so-called "Interpretive Rule" addressing the ["Use of Digital User Accounts to Access Buy Now, Pay Later Loans"](#), issued in May. The proposed Interpretive Rule provided guidance to the Buy Now, Pay Later ("BNPL") industry regarding how to apply Regulation Z-style disclosures and consumer rights to BNPL transactions, but also extended the definitions of "card issuer" and "creditor" to BNPL providers.

The comment period for this rule ended August 1st, but the CFPB stated that the rule became effective on July 30th, thereby signaling that the request for comments on the rule was effectively pro forma. The CFPB's rule joins [guidance published by the Office of the Comptroller of the Currency this past December](#) that provided guidance to its banks regarding managing risks related to BNPL in a safe and sound manner. The OCC was concerned that borrowers could over-extend themselves or not fully understand BNPL repayment obligations and that there was a lack of clear, standardized language so that consumers could understand the true nature of the transaction. They also highlighted concerns regarding merchandise returns and merchant disputes, because BNPL transactions are not covered by the same error resolution and dispute rights that consumers have with respect to their debit card and credit card transactions. Please see our coverage of these BNPL developments [here](#). Given the Supreme Court decision overruling Chevron, it will be interesting to see the extent to which any court gives deference to the CFPB's enforcement of its Interpretive Rule, especially in its original, pre-comment period form.

In an unusually ingratiating tone, Director Chopra comments in the blog that the BNPL industry is "responding favorably and constructively" to the Interpretive Rule and that the participants "are working diligently and in good faith to come into compliance." Accordingly, the post announces that the CFPB will be publishing a set of Frequently Asked Questions and states that "the CFPB does not intend to seek penalties for violations of the rules [while a BNPL lender] is transitioning into compliance in a good faith and expeditious manner" and that they "expect that other federal and state regulators will follow the same path."