

| The hidden costs of "Buy Now, Pay Later"

Complaints to CFPB show need for action

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U.S. PIRG Education Fund**

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A U.S. PIRG Education Fund Report

March 2022

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I Executive summary

Years ago, before credit cards were widespread, department stores offered layaway plans on some items. You paid in advance over a weekly or bi-weekly schedule and the store guaranteed that the item would be in stock after you'd paid the total cost (including some fees for the service). Variants included Christmas clubs and other "holiday club" plans.¹

Layaway has largely been supplanted, first by the ubiquity of credit cards and, largely in just the last three years, by the explosion of Buy Now, Pay Later (BNPL) plans.² Non-bank financial firms -- known as fintechs -- have innumerable new partnerships with retailers. Fintechs such as Affirm, Klarna, Sezzle and Afterpay have contracted with retailers that let you take it home now but pay over time, such as with the popular "pay in four installments" plans.³

The programs are often advertised as "free" to the consumer if all payments are made

on time.⁴ The service is primarily funded by fees paid by merchants to the providers. Merchants pay similar, but lower, merchant discount fees to Visa, Mastercard, AmEx and Discover to accept credit or debit cards.⁵ Although merchants are sharply critical of the fees, the motivation for merchants to participate in the higher fee BNPL programs may be to increase the size of the "shopping cart basket," earning greater profits to offset the higher fees.⁶

Our findings, based on a review of complaints to the Consumer Financial Protection Bureau (CFPB) and the Better Business Bureau (BBB), show that hidden

¹ Wikipedia, *Layaway*, accessed at <https://en.wikipedia.org/wiki/Layaway>, 2 March 2022.

² Wikipedia, *Buy now, pay later*, accessed at https://en.wikipedia.org/wiki/Buy_now,_pay_later, 2 March 2022.

³ Rebecca Lake, "Which Major Retailers Accept Buy Now, Pay Later?," *Investopedia*, 17 February 2022.

⁴ "While many BNPL companies don't charge interest, most do charge late fees if you miss a payment.[...]Also, be aware that your bank may charge you an overdraft or NSF fee if you sign up for automatic repayment through your debit card or bank account and don't have enough funds to cover the payment." See CFPB, *Should you buy now and pay later?*, 6 July 2021, <https://www.consumerfinance.gov/about-us/blog/should-you-buy-now-and-pay-later/>.

⁵ Elaine S. Povich, "Regulators Scrutinize Buy Now, Pay Later Plans," *Stateline*, 2 February 2022.

⁶ "Buy-now, pay-later providers, for their part, argue that their offerings entice customers to spend more with a retailer." See Jennifer Surane, "Credit-Card Giants Shrug Off Rising Buy-Now, Pay-Later Threat," *Bloomberg*, 22 October 2021.

fees, interest and debt collection problems can harm consumers. We also find that consumers also face problems with customer service.

California regulators have already classified BNPL plans as loans, after regulatory actions against several BNPL firms.⁷ Regulators in Europe, Australia and other parts of the world are also taking action.⁸

The CFPB has indicated increasing interest in the BNPL phenomenon. A July 2021 blog post full of “read between the lines” warnings to consumers and servicemembers was followed up by a December 2021 information request to five BNPL providers. In January 2022, the CFPB also sought comments from the general public for additional views on BNPL. Comments are due by March 25.⁹

⁷ “The Department has been a leader in the oversight of BNPL loan products, announcing settlements in late 2019 and early 2020 with Quadpay, Sezzle and Afterpay... Today, these firms are licensed lenders with the state and must consider consumers’ ability to repay loans, are subject to rate and fee caps, and must respond to consumer complaints.” See Department of Financial Protection and Innovation, *DFPI Report Shows Changes in Consumer Lending, Decrease in PACE Program* (press release), 7 October 2021, <https://dfpi.ca.gov/2021/10/07/dfpi-report-shows-changes-in-consumer-lending-decrease-in-pace-program>.

⁸ GlobeNewsWire Research and Markets, *Global Buy Now Pay Later Industry Report 2021 - BNPL Service Providers Proliferate, Challenging Established Global Brands* (press release), 20 April 2021, <https://www.globenewswire.com/en/news-release/2021/04/20/2213002/28124/en/Global-Buy-Now-Pay-Later-Industry-Report-2021-BNPL-Service-Providers-Proliferate-Challenging-Established-Global-Brands.html>.

⁹ CFPB, *Notice and Request for Comment Regarding the CFPB’s Inquiry Into Buy-Now-Pay-Later (BNPL) Providers*, 24

A review of Better Business Bureau (BBB) company profiles reveals that several large BNPL providers are “not accredited,” which also raises similar concerns. The BBB’s profile pages include thousands of consumer complaints and company responses that indicate that consumers who complain to the BBB are identifying similar problems as the consumers who complain to the CFPB.¹⁰

Based on the findings of this report, U.S. PIRG Education Fund is concerned that the general BNPL business model is non-transparent and may be an effort to evade existing consumer protection laws. Surveys also show that a successful BNPL demographic target is young people, who may not understand the business model.¹¹ In addition, increasing the size of the “basket” leads to consumers buying more stuff that they don’t need and can’t afford.¹²

January 2022, <https://www.federalregister.gov/documents/2022/01/24/2022-01278/notice-and-request-for-comment-regarding-the-cfpbs-inquiry-into-buy-now-pay-later-bnpl-providers>.

¹⁰ We examined and discuss below several Better Business Bureau BNPL company profiles, for example, this Affirm profile: Better Business Bureau, *Affirm*, accessed at <https://www.bbb.org/us/ca/san-francisco/profile/financial-services/affirmcom-1116-445613>, 2 March 2022.

¹¹ “The percentage of Gen Zers in the US using BNPL has grown six-fold from 6% in 2019 to 36% in 2021.” See Ron Shevlin, “Buy Now, Pay Later: The “New” Payments Trend Generating \$100 Billion In Sales,” *Forbes*, 7 September 2021.

¹² Ed Mierzwinski, U.S. PIRG, *Why Is Big Tech moving into payments? One reason: So you’ll buy more* (blog), December 2021, <https://uspig.org/blogs/eds-blog/usp/why-big-tech-moving-payments-one-reason-so-you’ll-buy-more>.

| What is BNPL and what are the concerns?

The CFPB's July 2021 blog post explains:

“If you’ve shopped online recently, you may have noticed new payment options at checkout, including buy-now-pay-later (BNPL) credit, for purchases like clothing, electronics, furniture, and exercise equipment. BNPL is a type of deferred payment option that generally allows you to purchase items with little to no money paid up front, followed by installment payments. Its use has spiked during the COVID-19 pandemic.”¹³

The post goes on to explain that: “Although features of BNPL sound similar to traditional layaway, credit cards or other loans, there are distinct differences.”¹⁴

A recent consumer group letter to the CFPB explained some of those “distinct differences” create major consumer problems:

“However, BNPL products do not underwrite for a consumer’s ability to repay, can rely on the expectation of late fees, can be difficult to manage, and can trigger punitive overdraft or non-sufficient fund fees if linked to a bank account. Further, these products can lead consumers into taking on unmanageable amounts of debt and lack the same dispute or refund rights that credit cards have should a consumer be unsatisfied with their purchase.”¹⁵

Both the CFPB blog and the consumer group letter point to myriad other problems with the BNPL business model. In its December announcement of an inquiry into the practices of five leading BNPL companies the CFPB said that:

“The CFPB is concerned about accumulating debt, regulatory arbitrage, and data harvesting in a consumer credit market already quickly changing with technology. ‘Buy now, pay later is the new version of the old layaway plan, but with modern, faster twists where the consumer gets the product immediately but gets the debt immediately too,’ said CFPB Director Rohit Chopra. “We have ordered Affirm, Afterpay, Klarna, PayPal,

¹³ Akeredolu et al, CFPB, *Should you buy now and pay later?* (blog), 6 July 2021, <https://www.consumerfinance.gov/about-us/blog/should-you-buy-now-and-pay-later>.

¹⁴ Ibid.

¹⁵ Letter from 89 consumer and civil rights groups (includes U.S. PIRG and several state PIRGs) to CFPB Director Rohit Chopra. Consumer Federation of America et al, *Re: Supervision and enforcement of fintech products and fee models that threaten to evade credit, consumer protection, and fair lending laws*, 21 December 2021, <https://consumerfed.org/wp-content/uploads/2021/12/Letter-Urging-CFPB-to-Examine-Fintech-Credit-Products-and-Fee-Models-12-21-21.pdf>.

and Zip to submit information so that we can report to the public about industry practices and risks.”¹⁶

Surveys have reported on growing consumer concerns with the BNPL business model.¹⁷ For example, Consumer Reports recently reported on a January 2022 survey of over 2,000 adult consumers:

“Of those who have used a BNPL service, 20 percent had issues with the provider, according to [a] January 2022 nationally representative Consumer Reports survey (PDF) of 2,174 adults. That includes 9 percent who bought on impulse and later regretted it.”¹⁸

A recent Student Beans survey found that “more than one-third (34%) of Gen Z consumers have a favorable view of BNPL because it helps young people afford what they want to buy. That compares to only 20% of Generation X consumers and 15% of Boomers,” although the survey went on to find that BNPL usage across ages was similar, with about one-third of each cohort having tried BNPL.¹⁹

A recent survey by Morning Consult also showed that BNPL users are “significantly” more likely to overdraft.²⁰

The exploding use of BNPL and its uncertain regulatory status suggest a need for further research. We discuss our findings below.

¹⁶ CFPB, *Consumer Financial Protection Bureau Opens Inquiry into “Buy Now, Pay Later” Credit Buy Now, Pay Later Expected to Set New Records for Lending this Holiday Season* (press release), 16 December 2021, <https://www.consumerfinance.gov/about-us/newsroom/consumer-financial-protection-bureau-opens-inquiry-into-buy-now-pay-later-credit/>.

¹⁷ “56% have fallen behind on making a payment.” See C&R Research, *Buy Now, Pay Later Statistics And User Habits*, https://www.crrresearch.com/blog/buy_now_pay_later_statistics.

¹⁸ Penelope Wang, “How COVID Has Turned Buy Now, Pay Later Upside Down More consumers are ending up paying for a product before they even get it—if they get it at all,” *Consumer Reports*, 18 February 2021.

¹⁹ Vince Cariaga, “Attitudes Toward BNPL Differ by Generation, But Use is Similar,” *AOL*, 21 February 2022.

²⁰ The survey also noted that “1 in 5 BNPL borrowers missed a payment in January. See Clair Williams, “Buy Now, Pay Later’ Users Significantly More Likely to Overdraft Than Nonusers,” *Morning Consult*, 2 March 2022.

BNPL complaints to CFPB are on the rise

We looked at the CFPB's searchable public consumer complaint database to find out more.²¹ Consumer complaint levels to the CFPB on BNPL are quite low, but trending sharply upward over the last three years.

Figure 1: Complaints to the CFPB have risen sharply from 2019 to the beginning of 2022



Figure 1 includes complaints about 5 BNPL companies:²² Affirm Holdings, Inc., Afterpay US Services, LLC, Klarna AB, QuadPay/[Zip]²³ and Sezzle Inc.

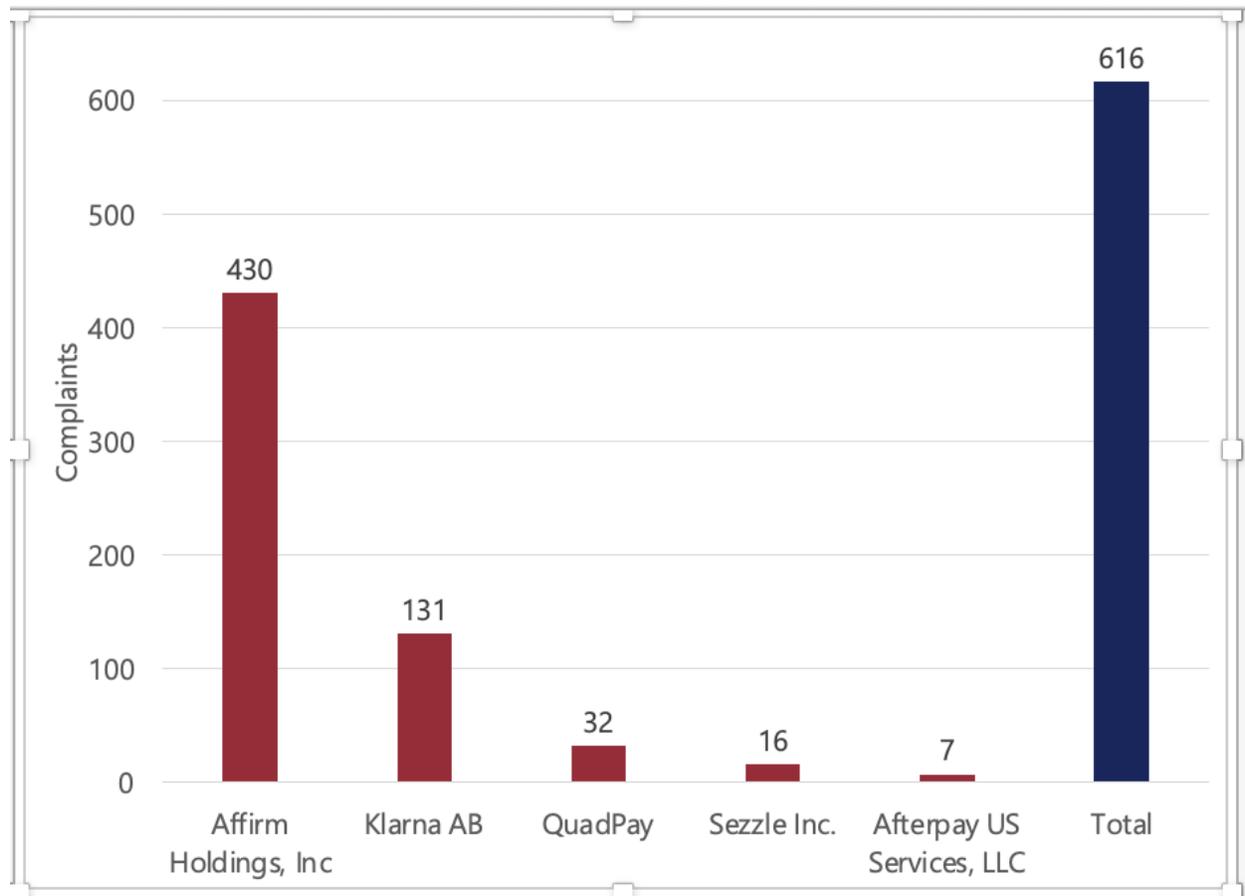
²¹ CFPB, *Consumer Complaint Database*, accessed at <https://www.consumerfinance.gov/data-research/consumer-complaints/>, 2 March 2022.

²² We selected the five most downloaded BNPL payment apps. See SensorTower, *The State of Payment Apps 2021*, 2021.

²³ PYMNTS.com, *Zip, Quadpay To Merge Into A Single BNPL Brand*, 22 July 2021, <https://www.pymnts.com/buy-now-pay-later/2021/zip-quadpay-to-merge-into-a-single-bnpl-brand>.

The CFPB's inquiry also requested information from five BNPL companies. The CFPB's request includes Affirm, Afterpay, Klarna, PayPal²⁴ and [Quadpay/]Zip but not Sezzle²⁵.

Figure 2: CFPB complaints for five most-downloaded BNPL apps



²⁴ We did not include Paypal in our analysis because it has multiple business lines and many of the complaints filed in the database are about problems other than BNPL. We did identify at least 7 Paypal complaints that mention its BNPL product in the database's consumer narrative field.

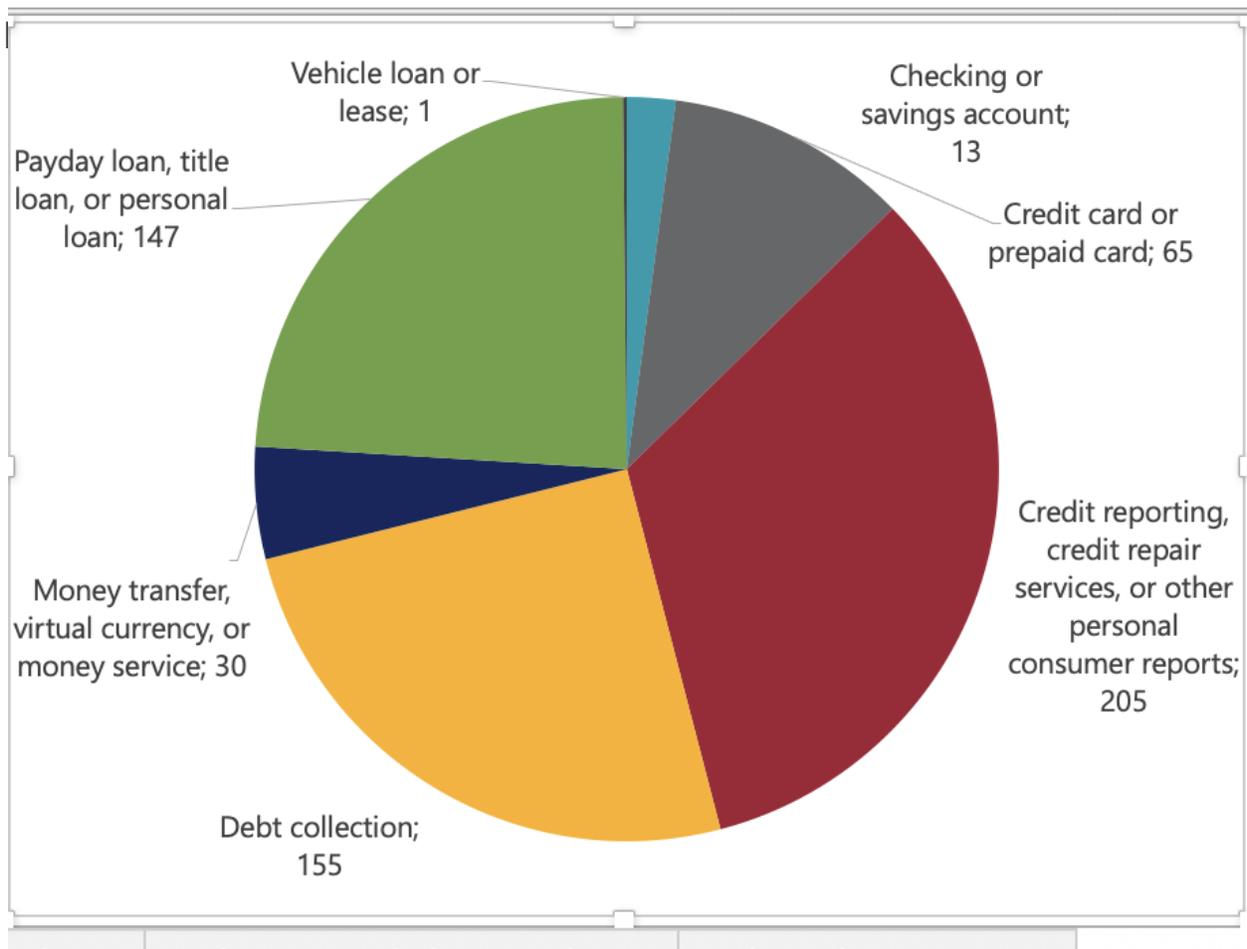
²⁵ See Note 16.

Distribution of CFPB complaints

The CFPB complaint database allows consumers to choose from nine topline “product” categories in their complaint filing. Some product categories have additional sub-products to select.²⁶

The wide distribution of complaints by product categories suggests that BNPL is affecting consumers in a variety of ways, led by credit reporting, debt collection and loan problems, which totalled 82.3% (507) of all complaints by product.

Thirteen percent of the complaints in the top three products were tagged with one or both of the optional Servicemember or Older American tags, led by 19% (66) of all payday loan, title loan or personal loan complaints.



When complaints were sorted by leading subproducts, over 60% were about credit reporting (33%), installment loans (18%) and other debt (10%).

²⁶ CFPB, *Consumer Complaint Form Product and Issue Options*, 24 April 2017.

Chart 1: Complaints by sub-product

COMPLAINTS BY SUB-PRODUCT

Credit reporting	201	33%
Installment loan	109	18%
Other debt	59	10%
I do not know	52	8%
General-purpose credit card or charge card	45	7%
Credit card debt	39	6%
Personal line of credit	31	5%
Mobile or digital wallet	25	4%
Store credit card	18	3%
Payday loan	7	1%
Other	30	5%

The CFPB's complaint database then allows consumers to further describe the issue (and optional subissue) that caused them to file their complaint. Again, the BNPL complaints cover a wide range of issues and sub-issue categories, suggesting that consumers face BNPL problems that run the gamut of the dozens of issues and sub-issue choices that the CFPB provides consumers to describe their complaint better.

Figure 4. Complaints to CFPB by issue



By issue, leading complaint categories were “incorrect information on your report,” “attempts to collect debt not owed” and “problem with a credit reporting company’s investigation into an existing problem.”

Consumers listed the issue “incorrect information on your report” in 126 complaints. Often, the sub-issue was “account information incorrect” or “account status incorrect.” In some cases, the consumer had attempted to place an order, which was never completed or canceled, but the consumer was billed anyway for the transaction.

From an Affirm complaint: “I booked a trip with XXXX and used Affirm to finance. Before taking the trip I canceled the trip with the travel insurance I purchased through XXXX. I have email confirmation. I submitted the information to Affirm and they opened a dispute in XX/XX/2021. I tried to have the account removed from my XXXX credit report but Affirm is saying the account is accurate and will not remove the account from my credit report.”²⁷

²⁷ CFPB, *Consumer Complaint #4512274*, accessed at

<https://www.consumerfinance.gov/data-research/consumer-complaints/search/detail/4512274>, 2 March 2022.

Consumers list the issue “attempts to collect debt not owed,” in 112 complaints. From the consumer narrative in a Klarna complaint:²⁸ “On XX/XX/2021, I first contacted this company to let them know that I did not know anything about this debt and needed information on the transaction. I was told that they were unable to provide proof of the debt at this time.”

Again, some of the “attempts to collect debt not owed” complaints refer to orders that were canceled after the consumer expressed frustration that shipment would be delayed or was back-ordered, but was billed by the BNPL firm anyway.

Excerpt from an Affirm complaint to CFPB²⁹:

“...I placed an order in XX/XX/2020 for two separate custom-made couches to XX. ...on XXXX the loan went onto my Affirm account for both couches...and I began the \$ XXXX payments for both couches plus interest from the beginning of the loan because Affirm had included the full amount for both couches plus interest into the loan and payments. I got another ETA, further delayed for one couch and got the one couch months delayed around XXXX or XXXX. I’ve paid off ... the couch I received plus an excess of over {\$1000.00}, not including interest or the fact that the delivery fee was for both couches, not just one. ...Two letters I have from XXXX XXXX Management and Accounting show the item production was cancelled at some point as product unavailable. They show that Affirm was never charged the \$ # XXXX for the second couch. Affirm has ignored my communications and the letters from XXXX XXXX and I have had to resend to them more than 5 times, getting a confirmation email that the item was disputed and a refund would be issued in 5-7 days. I kept calling back and they kept elevating to dispute department over and over each time, never moving it forward. Over the last few months I have had collections calls, texts, emails and notices of delinquent payment, after each rep said I should be getting a refund of the over {\$1000.00} I paid toward the second couch that was never produced, shipped or delivered.”

From an Afterpay complaint:³⁰

“I placed an order with Afterpay back in XXXX. It’s already paid for and fulfilled because of a glitch with Afterpay duplicated the order. I never placed a new order in XXXX but yet I was charged for a new order and it needs to be canceled.”

²⁸ CFPB, Consumer Complaint #4792040, accessed at <https://www.consumerfinance.gov/data-research/consumer-complaints/search/detail/4792040>, 2 March 2022.

²⁹ CFPB, Consumer Complaint #4727517, accessed at <https://www.consumerfinance.gov/data-research/consumer-complaints/search/detail/4727517>, 2 March 2022.

³⁰ CFPB, Consumer Complaint #4701117, accessed at <https://www.consumerfinance.gov/data-research/consumer-complaints/search/detail/4701117>, 2 March 2022.

From a Klarna complaint:³¹

"...Klarna then closed the dispute because I did not respond, "" as they assumed I was able to resolve it with XXXX " however I did resolve it with XXXX XXXX but Klarna is still showing that I owe the full amount."

³¹ CFPB, Consumer Complaint #5016961, accessed at <https://www.consumerfinance.gov/data-research/consumer-complaints/search/detail/5016961>, 2 March 2022.

I BNPL Complaints to the BBB

The Better Business Bureau is another source of information about the BNPL industry. We also examined a number of complaints listed on the Better Business Bureau's company profile websites. We looked at the Better Business Bureau profile pages for the same five Buy Now Pay Later companies as we did for the CFPB.³² The Better Business Bureau company profile pages include searchable consumer complaints.³³

According to the 5 company profiles, only Affirm³⁴ is currently accredited by the Better Business Bureau. On 4 March 2022, we found that the Afterpay,³⁵ Klarna,³⁶ Quadpay/Zip,³⁷ and Sezzle³⁸ profile pages are all topped with a "Not BBB Accredited" flag.

The BBB complaints appear to address similar customer service and billing problems as complaints to the CFPB.³⁹

From a recent Klarna complaint (2/19/2022) which echoes the CFPB complaints about being charged for canceled orders:

"I made a purchase from ***** in December using Klarna...A week later, I was told that the item was not in stock, so I decided to cancel the order. I received email confirmation of the cancellation and the order shows canceled when I track the order. Klarna did not issue me a refund, instead blaming *****. Klarna paused my payments at the time "pending their investigation". Now, three months later, the payments were reinstated without notice to me. When I asked about it, they told me to follow up with ***** about the return [...]"⁴⁰

³² We examined the same 5 firms in the BBB pages as we did in the CFPB database section above-- Affirm, Afterpay, Klarna, Quadpay/Zip and Sezzle.

³³ Total complaints on the BBB company profiles change daily.

³⁴ BBB *Affirm.com* accessed at <https://www.bbb.org/us/ca/san-francisco/profile/financial-services/affirmcom-1116-445613>, 4 March 2022.

³⁵ BBB, *Afterpay, Inc.*, accessed at <https://www.bbb.org/us/ca/san-francisco/profile/payment-processing-services/afterpay-inc-1116-897251/>, 4 March 2022.

³⁶ BBB, *Klarna, Inc.*, accessed at <https://www.bbb.org/us/oh/columbus/profile/payment-processing-services/klarna-inc-0302-70091034>, 4 March 2022.

³⁷ BBB, *Zip*, accessed at <https://www.bbb.org/us/ny/new-york/profile/payment-processing-services/zip-0121-177249>, 4 March 2022.

³⁸ BBB, *Sezzle, Inc.*, accessed at <https://www.bbb.org/us/mn/minneapolis/profile/financing/sezzle-inc-0704-1000027079>, 4 March 2022.

³⁹ While the Better Business Bureau complaints were searchable, we did not attempt to download and total them.

⁴⁰ See Note 36.

A positive feature of the BBB complaints pages is that the company's actual responses to the consumer are included in the complaint threads. Conversely, most companies in the CFPB complaint database select from a pull-down menu of generic "public responses." Nearly half of the over 1.2 million complaints posted by CFPB in the last 3 years have this company public response: "Company has responded to the consumer and the CFPB and chooses not to provide a public response."⁴¹

Reading the company responses on the BBB pages provides insight into how the firms view their responsibilities under, for example, the Fair Credit Billing Act, which "prohibits creditors from taking actions that adversely affect the consumer's credit standing until an investigation is completed, and affords other protection during disputes."⁴²

A recent (2/10/2022) response to a consumer's 2/6/2022 Afterpay complaint about an item returned due to a defect suggests that consumers do not have their full credit card disputes and errors rights with the firm:

"Thank you for contacting us regarding Ms. ***** order discrepancy with ****. Our customer support team has been in contact with her to properly address her concerns. Our Installment Agreement outlines that merchants are responsible for issuing any refunds owed back to the designated Afterpay account (in accordance with their policies). Merchants take full ownership over their shipment, return and refund policies and the timeframes associated with them."⁴³

⁴¹ Fully 543,086 of 1,267,443 complaints had that response. See CFPB, *Consumer Complaint Database*, accessed at https://www.consumerfinance.gov/data-research/consumer-complaints/search/?date_received_max=2022-02-24&date_received_min=2019-02-24&page=1&searchField=all&size=25&sort=created_date_desc&tab=List, 24 February 2022.

⁴² Federal Trade Commission, *Fair Credit Billing Act*, accessed at <https://www.ftc.gov/enforcement/statutes/fair-credit-billing-act>, 2 March 2022.

⁴³ See Note 35.

Figure 5: Sample Screenshot Showing Company Response from BBB's Afterpay Profile Page⁴⁴

Complaint Type: Problems with Product/Service **Status:** Answered 

 02/06/2022

I purchased a product from **** using Afterpay to process payment. I paid in full for the order as of December 23, 2021 a total of \$548.64. I returned the product due to defect to **** and **** issued a credit to Afterpay on 1/22/22. I have contacted Afterpay several times and they insist they don't have it. I have contacted **** as late as today and they insist they issued the credit. Meanwhile, I don't have a refund from either company.

 **Response** 02/10/2022

Thank you for contacting us regarding Ms. **** order discrepancy with ****. Our customer support team has been in contact with her to properly address her concerns.

Our Installment Agreement outlines that merchants are responsible for issuing any refunds owed back to the designated Afterpay account (in accordance with their policies). Merchants take full ownership over their shipment, return and refund policies and the timeframes associated with them.

Once the return is processed by the merchant and the refund is communicated by the merchant to Afterpay- it automatically drops through to us and the Afterpay payment plan is adjusted to reflect the new total order value starting with the last payment and working backward.

In reviewing Ms. **** account, Afterpay has not received a refund notice from **** to process Ms. **** refund. Our customer support team escalated Ms. **** concern to the **** support team who has confirmed her refund for \$548.64 will be processed on 2/15/22. They will be following up with her to provide her with the case number assigned to her refund discrepancy.

We appreciate her patience during this time and invite her to reply if she requires additional assistance.

Sincerely,
Afterpay Team

⁴⁴ Ibid.

| CFPB concerns and actions on BNPL

In July 2021, the CFPB blog “Should you buy now and pay later” raised significant concerns about BNPL.⁴⁵

“BNPL may seem straightforward and convenient; however, you should consider a few things before selecting this option to make a purchase.”⁴⁶

The blog went on to point out:

- “It’s important to know that most BNPL credit is not reported to the credit bureaus and won’t impact your credit score.
- While most BNPL companies don’t currently report to consumer reporting companies, there are some that do. If you make a late payment, and the BNPL company reports your late payment to a credit reporting company, this can harm your credit history.
- While many BNPL companies don’t charge interest, most do charge late fees if you miss a payment.[...]Also, be aware that your bank may charge you an overdraft or NSF fee if you sign up for automatic repayment through your debit card or bank account and don’t have enough funds to cover the payment.”⁴⁷

And then, the CFPB blog gave perhaps its most important warning:

“BNPL products don’t have the same protections as other types (of) credit: Like a credit card, you can use BNPL to make a purchase and pay for it later over time. However, BNPL loans currently lack the consumer protections that apply to credit cards.”⁴⁸

In December, the CFPB used authority under Section 1022 of the Consumer Financial Protection Act to issue orders seeking further information from leading BNPL companies. CFPB Director Rohit Chopra: “We have ordered Affirm, Afterpay, Klarna, PayPal, and Zip to submit information so that we can report to the public about industry practices and risks.”⁴⁹

In January, the CFPB followed up with a request for information (RFI) asking the public for views on BNPL.⁵⁰ Comments are due by March 25.⁵¹

⁴⁵ See Note 13.

⁴⁶ Ibid.

⁴⁷ Ibid.

⁴⁸ Ibid.

⁴⁹ See Note 16.

⁵⁰ Ashwin Vasani, CFPB, *Our public inquiry on buy now, pay later* (blog), 12 January 2022,

<https://www.consumerfinance.gov/about-us/blog/our-public-inquiry-buy-now-pay-later/>

⁵¹ See Note 9.

From the December release:

“But we are concerned there may be some systemic, underlying problems, particularly around accumulating debt, regulatory arbitrage, and data harvesting in a consumer credit market already quickly changing with technology. For some people, BNPL could look like a standard payment method when they are really taking on a new form of debt.”⁵²

⁵² See Note 16.

I Consumer and civil rights advocates echo and amplify CFPB concerns

Consumer advocates have amplified these concerns and also raised a number of other concerns about the BNPL business model, including the following:

Consumer Reports:⁵³ “Depending on the type of plan you use, you may be subject to fees and interest charges if you don't make the payments on time. You also may have trouble getting a refund for something you've purchased, even if it's defective or otherwise unsatisfactory. And there's the danger of getting carried away and buying much more than you can afford.”

Center for Responsible Lending:⁵⁴ “BNPL lenders typically require a debit card or credit card to be linked to the borrower's account, against which the lender applies payments. They likely encourage large portions of customers to enroll in autopay to avoid missing payments. Reliance on autopay reduces incentives to underwrite since the lender can expect to debit the account even when the borrower may not have sufficient funds. Notably, some BNPL providers also permit repayment via credit card. For those with revolving credit outstanding on their cards, these charges will begin to accrue interest from the day they post, and the so-called “free” BNPL loan will not, in fact, be free. This practice – essentially using a credit card to pay off other debt – is one that credit card issuers often don't permit with traditional credit card debt.”

National Consumer Law Center:⁵⁵ “However they are styled, products that provide funding or cash today and that are repaid later are credit. The use of new technologies or models does not make these products fundamentally different than forms of credit that have been around a long time. Shiny fintech garb does not remove the need for basic consumer protections to ensure that credit is affordable, responsible, transparent, and fair...Consumers have the right to contest credit card charges if they did not get what they paid for. Most consumers do not understand that the TILA chargeback and claims and defenses rights that apply to credit cards do not apply to BNPL products. They should.”

⁵³ Penelope Wang, “The Hidden Risks of Buy-Now, Pay-Later Plans Spreading out payments is convenient, but you don't get the same protections as credit cards,” *Consumer Reports*, 14 February 2021.

⁵⁴ Marisabel Torres, Center for Responsible Lending, *Testimony before the U.S. House Committee on Financial Services's Task Force On Financial Technology*, 2 November 2021.

⁵⁵ Lauren Saunders, National Consumer Law Center, *Testimony before the U.S. House Committee on Financial Services's Task Force On Financial Technology*, 2 November 2021.

⁵⁶ See Note 15.

Consumer and civil rights group coalition⁵⁶: “Each BNPL product presents different terms and installment plans, but the standard “pay-in-four” model appears designed to fall outside of the scope of the Truth in Lending Act (TILA). The Bureau should closely examine whether BNPL products are or should be covered by TILA and, either way, the Bureau should supervise this market to prevent unfair, deceptive or abusive acts and practices (UDAAPs) and compliance with fair lending laws. In addition, consumers who use credit at the point of sale should have the same chargeback rights as they do with credit cards, so that consumers have recourse should they run into a problem with their purchase. Further, loans should be structured in an affordable way and pricing should not be based on back-end penalty fees.”

U.S. PIRG⁵⁷: “Layaway has largely been supplanted, first by the ubiquity of credit cards and lately by the explosion of Buy Now, Pay Later (BNPL) plans. Fintechs such as Affirm, Klarna, Sezzle and Afterpay – a recent entrant from Australia—have contracted with retailers and e-tailers that let you take it home now but “pay in four.” The programs are advertised as “free” to the consumer if all payments are made on time. Hmm, that’s the same as a credit card’s grace period. And just as merchants pay “swipe fees” to Visa, Mastercard, AmEx and Discover to accept credit or debit cards, merchants pay fees for BNPL plans.”

Differing business models may not be transparent about when and whether the firm refers to debt collectors or reports to credit bureaus.⁵⁸

⁵⁷ Ed Mierzwinski, *U.S. PIRG, Should you buy now and pay later?* (blog), 2 November 2021, <https://uspig.org/blogs/eds-blog/usp/should-you-buy-now-and-pay-later>.

⁵⁸ Recent reports have shown that the major credit bureaus -- Equifax, Experian and TransUnion -- are now reporting or planning to report on BNPL firms, but may report differently. See Brian Riley, “BNPL CFPB Reports: Will Line Items Look like CCs or Installment Loans?”, *PaymentsJournal*, 28 February 2022.

I Recommendations

Buy Now, Pay Later plans may have some benefits to consumers who want to avoid running up credit card debt. Consumers need to understand the differences between BNPL and other forms of payment.

Based on this review of complaints to both the Consumer Financial Protection Bureau and the Better Business Bureau, consumer complaints indicate a need for CFPB action.

In addition, BNPL business models are changing rapidly. Professor Angela Littwin of the University of Texas School of Law has pointed out that:

“The entry of credit card issuers into the BNPL market has the potential to blur the line between installment and revolving credit, leaving consumers confused and paying more than they expect. Furthermore, competition from credit card issuers could cause BNPL apps to modify their pricing in the direction of less transparency.”⁵⁹

Recommendations to the CFPB:

Continue to monitor BNPL consumer complaints. Look for further changes in business models that may harm consumers. Consider greater regulation and enforcement. Consider adding a sub-product “Buy Now, Pay Later,” to the Consumer Complaint database.

Recommendations to consumers:

Do your homework before agreeing to a BNPL program. Be aware that some BNPL programs charge interest and others charge late fees. Be sure you always have adequate funds in your accounts to make BNPL payments, which may be at irregular intervals from regular credit card statements. Also, you may have agreed to autopay withdrawals, which may cause overdrafts on your account.

Tips from consumer groups:

“However, BNPL products do not underwrite for a consumer’s ability to repay, can rely on the expectation of late fees, can be difficult to manage, and can trigger punitive overdraft or non-sufficient fund fees if linked to a bank account. Further, these products can lead consumers into taking on unmanageable amounts of debt and lack the same dispute or refund rights that credit cards have should a consumer be unsatisfied with their purchase.”⁶⁰

⁵⁹ Angela Littwin, “The Entry of Credit Card Companies into the Buy Now Pay Later Market,” pgs 24-25 in Jonathan D. Glater et al, Center for Consumer Law and Economic Justice at Berkeley Law, “A Series of Brief Memoranda To CFPB Director Rohit Chopra On Consumer Financial Issues,” 17 February 2022, accessed at https://consumerlaw.berkeley.edu/sites/default/files/cfpb_memos_final_02.17.22.pdf.

⁶⁰ See Note 15.

Remember these tips from the CFPB:

“BNPL products don’t have the same protections as other types of credit

Like a credit card, you can use BNPL to make a purchase and pay for it later over time.

However, BNPL loans currently lack the consumer protections that apply to credit cards.

For example, BNPL companies don’t offer the same dispute protections as credit cards if

the item you purchase is faulty or a scam. Returning merchandise bought with BNPL can

sometimes be complicated. The BNPL company may hold you responsible for the total

cost of a purchase even after you’ve returned the product, so be sure to read and

understand the merchant’s specific return policies.”⁶¹

⁶¹ See Note 13.

| Conclusion

The exploding use of BNPL and its changing business models require constant re-assessment and evaluation of its impact on markets and consumers. As the CFPB wrote in announcing its BNPL inquiry: “The CFPB is concerned about accumulating debt, regulatory arbitrage, and data harvesting in a consumer credit market already quickly changing with technology.”⁶²

U.S. PIRG Education Fund will continue to monitor changes in the payments marketplace. We expect to see more changes as banks and credit card companies increase their own use of new payment models and force more changes by the new entrants. Consumers need full protection under the Electronic Funds Transfer Act, the Truth In Lending Act, the Fair Credit Billing Act and other laws, no matter how they choose to pay for or finance purchases.

Finally, we maintain our concerns that the vast data collection and monetization engines run by Big Tech firms are designed to fuel an explosion of buying and an increase in consumer debt for stuff we don’t need and can’t afford and, too often, end up throwing away.

⁶² See Note 16.

I Methodology

For the analysis of CFPB complaints, researchers narrowed their search to the top five most downloaded “payment solution apps” in 2020. “Payment solution apps” are exclusively BNPL companies.⁶³ Researchers conducted searches in the CFPB database by company name, including any relevant parent companies or subsidiaries for the 5 companies.

The data window for this analysis is for 1/1/2019 - 1/1/2022. Data was pulled from the CFPB complaints database on 2/15/2022.

⁶³ See Note 22.