The U.S. Public Interest Research Group (USPIRG)\(^1\) and the Center for Digital Democracy (CDD)\(^2\) respectfully submit these comments in connection with the Bureau’s 16 December 2021 request to five leading Buy Now, Pay Later providers, Affirm, Afterpay, Klarna, PayPal, and Zip, as well as its 24 January call for public comments. The Bureau has chosen the five BNPL companies for Section 1022 information requests wisely, as they are key leaders shaping the rapidly-growing BNPL sector, which comprises a key part of the “embedded finance” system promoted by these and other Big Tech platforms and key digital payment service providers.

Big Tech’s entry into the payments space must be seen as just one of its attempts to take over the broader finance system. Big Tech’s entry poses existential threats to the economy, including to the longtime separation of banking and commerce.

In its December submission to the Bureau, in the previous inquiry into Big Tech’s payment platforms, USPIRG and CDD identified a number of ways that younger consumers are being encouraged to engage with fintech related products, including BNPL.\(^3\) We incorporate that comment, by reference, in its entirety, into this comment.

Following a section on the implications of the BNPL business model and its role in the new financial “gold rush,” we discuss the findings of U.S. PIRG Education Fund’s new report, “The Hidden Costs of “Buy Now, Pay Later.” U.S. PIRG Education Fund, U.S. PIRG’s research arm, will also file that report as a separate comment in this docket. We conclude with recommendations to the CFPB to prevent or minimize the threat of negative outcomes for consumers from BNPL.

\(^1\) U.S. PIRG (https://uspirg.org) is an advocate for the public interest. We speak out for a healthier, safer world in which we’re freer to pursue our own individual well-being and the common good. As an organizational priority, U.S. PIRG seeks to protect consumers in the financial marketplace and digital world.

\(^2\) The mission of the Center for Digital Democracy (https://www.democraticmedia.org) is to ensure that digital technologies serve and strengthen democratic values, institutions and processes. CDD strives to safeguard privacy and civil and human rights, as well as to advance equity, fairness, and community.

\(^3\) Our joint Big Tech comment is available here: https://uspirg.org/sites/pirg/files/resources/BigTechPayments_Final_PIRG_CDD_21Dec21.pdf
The CFPB's press release announcing the orders to five BNPL companies specifically stated its concerns about data harvesting.

**Data harvesting:** BNPL lenders have access to the valuable payment histories of their customers. Some have used this collected data to create closed loop shopping apps with partner merchants, pushing specific brands and products, often geared toward younger audiences. As competitive forces pressure the merchant discount, lenders will need to find other sources of revenue to maintain growth and profitability. The Bureau would like to better understand practices around data collection, behavioral targeting, data monetization and the risks they may create for consumers.

The same “Big Data” driven “surveillance advertising” model that has eroded consumer privacy in most markets, including retail, ecommerce and entertainment, is now being placed within the foundations of the US financial services system. Consumers will be confronted with an “all-seeing” banking and payment system that has gathered and deeply analyzed their information so they can be micro-targeted everywhere online for financial services and applications.

This data harvesting can lead to numerous negative outcomes for consumers.

We discuss our concerns with the current “Pay in four” business model but also strongly agree with the CFPB that “As competitive forces pressure the merchant discount, lenders will need to find other sources of revenue to maintain growth and profitability.” The legacy credit card networks are already entering the market with their own versions of BNPL, as we discuss below. Changes are already occurring to the detriment of consumers.

Professor Angela Littwin has also outlined her concerns that credit card entry “has the potential to blur the line between installment and revolving credit, leaving consumers confused and paying more than they expect.”

Our previous BigTech comment explained the critical role of data harvesting and how it allows the surveillance advertising system to manipulate consumers into buying more:

“The firms have also unleashed a myriad of methods developed to trigger forms of a key online industry metric called “engagement,” which is operationalized in multiple ways but ultimately designed to influence a person’s behaviors and attitudes, including at an emotional and subconscious level. The primary operational mission is to direct a consumer to a process called the “path to purchase,” which integrates a host of applications, such as content, communications, social relationships, data analytics and more to drive a purchase or other goal. Most, if not all, of these online-platform-related practices are largely opaque in their operations, reflecting the rampant reliance on what are known as “dark patterns” to keep consumers and customers in the “dark” about terms, conditions and intent of the service.

We now describe how Buy Now, Pay Later is a successful exemplar of Big Tech’s efforts to drive consumers to a path to purchase products they don’t need and can’t afford.

**The BNPL business model is helping to drive a new “gold rush” in financial services**

Our previous Big Tech comment discussed what Google and others call the “embedded finance” system, as well as how content, marketing, online social media curation, data practices and payments were increasingly integrated online. Calling the role of technology and social media in finance the “new gold rush in financial services,” a Google “white paper” urged banks and related companies to invest in a “data infrastructure to generate revenues and monetize embedded finance opportunities, while getting to know your customers.” In other words: bringing the omnipresent and unaccountable “Big Data” “surveillance advertising” model it has pioneered to shape the future of the U.S. (and global) financial system. Data harvesting is at its core. In a reflection of the company’s hubris, the Google paper claimed that “regulators won’t stand in the way” and that “financial services regulators” will “favor, support and enable digital disruptors and embedded finance applications.”

We call on CFPB to demonstrate that Google’s predictions that there will be no critical regulatory oversight is incorrect.

BNPL companies are engaged in a range of data and digital media practices designed to especially target younger consumers and families, relying on a set of practices pioneered by

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5 Co-author U.S. PIRG is also part of a growing network of organizations seeking to reduce wasteful spending in other ways, including to guarantee a right to repair purchased goods and to “buy less, give more” during last winter’s holiday season. See, for example, U.S. PIRG, “Buy Less, Give More: Guide to a Different Type of Gift This Holiday,” https://uspirg.org/feature/usp/buy-less-give-more and U.S. PIRG, “Right to Repair,” https://uspirg.org/feature/usp/right-repair.
Google, Meta/Facebook and other online marketing companies. They are “relying heavily on social media” marketing, including purchasing ads generating millions of views, to “strategically target younger audiences who are more open” to BNPL payments. For example, leading BNPL companies have a presence on Instagram, YouTube, TikTok, Twitch and Facebook.

The BNPL model combines consumer surveillance, AI-driven data analytics, personalization, deep integration across platforms, retailers and applications, and real-time effects. We believe it will create an unfair and potentially costly environment for consumers, who are being lured—as BNPL companies openly claim—into spending more money at greater frequency.

For example:

**Afterpay**’s merchant analytics platform—**Afterpay IQ**—harvests “real-time data” and “AI-powered insights” to provide a “single source of truth” for brands, including for omnichannel and “store level” sales. Illustrating its focus on “Gen Z and Millennials,” Afterpay releases a quarterly “**Next Gen Index**” to document how this cohort --who are “driving change at the intersection of culture and commerce”-- are “key adopters” of its BNPL product. Afterpay also partners with Salesforce and its “commerce cloud” that relies on AI driven data analytics to tailor “each shopping experience,” “understand purchasing behavior,” and promotes products “based on every action a shopper makes — even in micro-moments on mobile devices.” The company has a number of other online data, marketing and processing partnerships, including with Adobe and Stripe.

**Affirm**’s data-driven business model touts its ability to enable merchants to “engage customers early in the shopping journey” leveraging its “digital network to deliver “pay-over-time messaging.” Through the use of its “broad network of influencers” and “content partnerships” offering “custom media campaigns” Affirm promises to help its clients “capture new customers.” It also has an extensive affiliation with leading ecommerce and data marketing companies, including Adobe, Oracle and Salesforce. Last year, it announced a partnership with Amazon, which has a sprawling data-enabled applications available for financial services, ecommerce and retail, including through its AWS, Amazon Advertising and related payment operations. In January 2022, a “Google Chrome browser extension” was introduced, enabling Affirm to offer “solutions at virtually any retailer’s website, even if Affirm isn’t listed as being available at checkout.” It also released a “super app” that delivers “shopping, payments and financial services” in an integrated Affirm created package.
As it explained in its 2020 S-1 for the SEC, a key focus of Affirm is to provide “effective commerce solutions that enhance demand generation and customer acquisition” while also providing “valuable product-level data and insights — information that merchants cannot easily get elsewhere.” By providing “merchants with valuable data they can use to offer more tailored promotions and offers to consumers,” such as “targeted offers” via its app, Affirm is focused on generating larger and more frequent BNPL sales. It is also focused on “Gen Z and Millennial” consumers, who they note are “early and frequent adopters of e-commerce.” The “rich data landscape” Affirm describes in its S-1, that is the backbone of a “flywheel that further drives incremental data capture,” should be investigated. In what ways, for example, does Affirm’s “credit, transaction, SKU-level, merchant, consumer and fraud” data—connected to “machine learning and decisioning,” “financial and economic models,” and the use of “200 data points” for credit decision-making—impact the kinds of offers and economic risks consumers may confront? As a recent Affirm “Consumer Spending Report” reflects, the company is highly focused on the financial behaviors of young consumers, including how Millennials “worry more about money than any other generation.”

Klarna leverages data and technology to drive its BNPL product. Its ecommerce, data marketing and other partners include Adobe, Attentive (“a personalized mobile messaging platform… can quickly become a top 3 revenue channel”), Justuno (“on-site Conversion Marketing Automation Platform that converts more of your visitors into leads and sales leveraging 1st party data”), Salesforce, SAP, Shopify and Stripe. Reflecting the role of data-generating loyalty programs play in today’s consumer financial landscape, in 2020 Klarna introduced “Vibe.” “Vibe members,” explains Klarna, “have access to exclusive online and offline sales and shopping experiences,” including “curated rewards benefits.” Klarna also promotes its capabilities to influence younger consumers, including through its online marketing services involving “email banners, in-app ads and push notifications.” Late last year it extended its service to “all online retailers” through a Google Chrome and Microsoft Edge browser extension. It’s designed to encourage consumers to “apply coupons and cashback rewards to their purchases” and “save their desired items in a personal folder.”

Klarna’s “AI-powered Dynamic Ads” application analyzes products from any merchant and makes images “high impact and instantly shoppable,” including through the addition of tailored “messaging and payment options.” The system refreshes every 30 minutes, enabling retailers to “update messaging, create, test, analyze, iterate, improve and then amplify at scale across Klarna or other channels,” leading to “dramatic increases in click-through and conversion rates.” The company has engaged in a series of acquisitions, including companies specializing in AI and
commerce. As USPIRG and CDD explained in December, we urge the CFPB to examine the role which consolidation and acquisitions are playing in the BNPL and related fintech marketplaces.

Credit card giants MasterCard and Visa are also in the process of finalizing their plans to offer BNPL loans. Already Mastercard is promoting its data driven BNPL capabilities to potential partners, explaining that they can “find new customers” and “offer a seamless BNPL… omnichannel experience,” all via an app. The data offered by Mastercard for its clients promises to provide effective ways to acquire new consumer customers, such as leveraging loyalty programs, and enable them to be subjected to intelligence-based targeting. Visa’s BNPL offering will likely utilize its proprietary “Analytics Platform” that enables the tracking of “cardholder behavior at the account level” to understand their “shopping patterns and spending trends.” Visa’s “Data and Analytics” APIs and its “Artificial Intelligence Platform,” which involves machine learning, already plays an important role in their credit and payment network. In its description of its forthcoming BNPL product, Visa highlights ways that their prospective partners can leverage its API to convert “a recent credit card transaction to installments.”

We also urge the Bureau to examine the implications of offering BNPL services to economically vulnerable consumers. For example, Dollar General is currently conducting a pilot BNPL with Sezzle in more than 1,700 stores in Texas. While based on a premise that BNPL can “provide low income consumers with short term liquidity to make needed purchases,” the CFPB should examine whether such products used for much needed essential items create new forms of debt and potential hardship. Of course, it is also another way for merchants to gain access to additional information, especially via mobile apps and devices.

One of this comment’s co-authors also recently examined consumer complaints to both the CFPB and Better Business Bureau about BNPL.

Key Findings of U.S. PIRG Education Fund’s “The Hidden Costs of Buy Now, Pay Later”

This U.S. PIRG Education Fund report is the organization’s 25th report in a series based on a review of consumer complaints in the CFPB’s important public consumer complaint database. For this report, we also looked at complaints and company ratings in the Better Business Bureau’s BNPL company profile pages.

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“Our findings, based on a review of complaints to the Consumer Financial Protection Bureau (CFPB) and the Better Business Bureau (BBB), show that hidden fees, interest and debt collection problems can harm consumers. We also find that consumers also face problems with customer service.”

Highlights from the CFPB database analysis included the finding that complaints are all over the map of the database’s taxonomy of complaint product and issue choices. Consumers are complaining about BNPL’s impact on their credit cards, their credit reports and their bank accounts.7

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

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.

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.”

The report notes that company public responses in the CFPB database are generally boilerplate responses selected from a pulldown menu, but that BBB company responses are often detailed in a complaint thread. For example, from the report:

7 The database taxonomy does not include a field where a consumer can easily choose whether their complaint concerns a BNPL lender’s “pay in 4” product or its other products. The BNPL companies appear to want a short term product that resembles revolving credit card lending, but appear to not want to comply with the Fair Credit Billing Act, nor with the full Truth In Lending Act if the product is seen as an installment loan with only 4 payments.
“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."

U.S. PIRG Education Fund’s analysis is that BNPL companies are asserting that they have no requirement to comply with the Truth In Lending Act, including the Fair Credit Billing Act. An overly clever legerdemain following from this interpretation is that “we can blame your problems on the merchant, so it’s not our job to investigate your problem, see our contract.”

As consumer group testimony and comment letters cited in the report assert, this is unacceptable.

The USPIRGEF report also quoted a recent consumer group letter to the CFPB, which explained that some “distinct differences” cited by the CFPB 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.”

Finally, the report concluded:

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.

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8 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
Summary of the findings of the U.S. PIRG Education Fund’s “The Hidden Costs of “Buy Now, Pay Later” report:

A review of complaints to the CFPB and the Better Business Bureau indicates significant problems with the BNPL market.

1) Consumers had complaints across the CFPB database’s product and issue categories. By issue, leading complaint categories to the CFPB 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.”

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

3) Complaint narratives to both the CFPB and the BBB indicated BNPL provider disdain toward compliance with the Fair Credit Billing Act’s requirements, which resulted in consumers being told that their problem was not with the BNPL provider, but the merchant.

4) Only one of the 5 BNPL providers U.S. PIRG Education Fund reviewed was accredited by the Better Business Bureau.

Conclusion

The BNPL business model results in significant negative outcomes for consumers.

1) The BNPL model combines consumer surveillance, AI-driven data analytics, personalization, deep integration across platforms, retailers and applications, and real-time effects. It will create an unfair and potentially costly environment for consumers, who are being lured—as BNPL companies openly claim—into spending more money at greater frequency.

2) Data harvesting is at the core of the model: its goal is to ease the path to purchase for consumers who will spend more on items they may not be able to afford.

3) Although surveys indicate that BNPL is used across age cohorts, the target demographics of BNPL marketing are unsophisticated youth cohorts who live on social media, as well as financially vulnerable lower income cohorts.

4) The overall system is fueled by targeted advertising and marketing driven by “complex algorithms” and “machine learning models.” The Bureau has recently called out these practices as potentially unfair and discriminatory.9

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5) Some BNPL programs appear designed to skirt the requirements of the Truth In Lending Act (as amended by the Fair Credit Billing Act and the Credit CARD Act).
6) Some BNPL programs may be in violation of the Electronic Fund Transfer Act’s ban on compulsory repayment of credit by preauthorized electronic fund transfer.
7) BNPL programs have inconsistent reporting under the Fair Credit Reporting Act, despite marketing claims that BNPL will help your credit.
8) Changes in the BNPL “pay in 4” model, now largely funded by merchant discount fees, are inevitable with the entry of legacy credit card networks and banks into the market, which will result in pressure to reduce consumer protection compliance, unless the CFPB acts.
9) But, of course, the model is also funded by non-transparent but significant use of penalty fees and hidden interest.
10) A U.S. PIRG Education Fund study found that consumer complaints about BNPL are rising, and trend across the entire taxonomy of the public consumer complaint database. Consumers are angry with BNPL’s impact on their credit and debit cards, credit reports and bank accounts, and frustrated with customer service problems.

The CFPB should take the following steps to prevent negative consumer outcomes
1) Continue to study the problems with Big Tech’s data harvesting model and its manipulation of consumers to buy more stuff they don’t need and can’t afford. The result of inaction will mean more consumers will plunge deeper into debt.
2) Continue to study the impact of all the integrated payment and other financial products of the Big Tech companies: the peer-to-peer (P2P) market, for one, is also riddled with efforts to avoid compliance with consumer protection laws, which has contributed to an epidemic of serious fraud and other consumer problems.
3) Apply the Truth In Lending Act’s full protections to the BNPL market, which has claimed exceptions to evade the law. Consumers need dispute and chargeback rights, greater clarity of costs, rules on reasonable penalty fees, underwriting of their ability to pay and other benefits of TILA.
4) Issue a larger participant rule to bring the BNPL market (along with other installment loan markets) within the CFPB’s supervision or examination authority.
5) Prevent or take action against unfair, deceptive or abusive acts and practices (UDAAPs) and ensure compliance with fair lending laws.
6) Enforce the Electronic Fund Transfer Act’s ban on compulsory repayment of credit by preauthorized electronic fund transfer.
7) Conduct further research on the impact of the BNPL market on consumers and on their credit reports.
Finally, the concluding paragraph of our Big Tech comment is still appropriate:

The U.S. is at a crucial juncture. The further integration of the country’s financial system into the monopolistic and concentrated digital media environment poses serious risks to the public. Decades of lack of oversight have led to the platform problems that are now continually the subject of scandal, headlines and congressional hearings. We believe the Bureau has the capabilities to place the role of digital payments and consumer online financial services on a correct path that benefits the public and our economy. We look forward to the Bureau’s engagement on this issue and its forthcoming report and proposals.¹⁰

Respectfully submitted,

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