On January 24, the CFPB issued a notice and request for comment in the Federal Register regarding the Bureau’s inquiry into “buy now, pay later” or BNPL providers. As discussed in a Consumer Finance and Fintech post last month, the CFPB issued a series of “market monitoring” orders to five companies offering BNPL credit in order to collect information on the risks and benefits of these fast-growing loans. According to the notice, the information obtained through this latest request will “help the Bureau better understand how consumers interact with BNPL providers, and how BNPL business models impact the broader e-commerce and consumer credit marketplaces.”

Putting it Into Practice: The Bureau’s latest inquiry appears to signal another step, or at least an intent, to regulate BNPL directly through rulemaking or through enforcement. As with market monitoring activity, the CFPB can use the information gathered from this request for any purpose, such as the development of UDAAP
enforcement road maps. The CFPB also has the authority to supervise nonbank “larger participants” they identify in other consumer financial markets, as they have done in the past for consumer reporting, consumer debt collection, student loan servicing, international money transfer, and automobile financing. As a result, defining a group of larger BNPL participants for supervision may also be an outgrowth of the Bureau’s current discovery efforts. As the rapid growth of BNPL draws the CFPB’s attention and while the regulatory climate continues to evolve, BNPL providers should continue to develop compliance policies and procedures to structure and implement a BNPL program consistent with consumer protection laws and regulatory standards.

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National Law Review, Volume XII, Number 27

Source URL: https://www.natlawreview.com/article/cfpb-requests-comments-buy-now-pay-later