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CLIENT ALERT

State Attorney Generals Call on CFPB to Protect Consumers in Buy-Now-Pay-Later Transactions

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On March 25, 2022, a multistate coalition of over twenty democratic attorneys general submitted a joint letter to the Consumer Financial Protection Bureau ("CFPB") asking the Bureau to create a rule regulating providers of Buy-Now-Pay-Later ("BNPL") financing. The joint letter was submitted in response to the CFPB's "Notice and Request for Comment Regarding the CFPB's Inquiry into Buy-Now-Pay-Later Providers."

To gain information about the BNPL market, the CFPB opened monitoring orders inquiring into BNPL products in the United States on December 16, 2021. Between January 24, 2022 and March 25, 2022, it invited comments to better understand how consumers interact with BNPL providers and how BNPL business models impact the broader e-commerce and consumer credit marketplaces.

As discussed in its letter, the AG coalition is concerned that BNPL financing could harm financially vulnerable consumers and that it is largely unregulated. Among other things, it is asking the CFPB to analyze whether providers clearly and correctly disclose fees and charges, how providers protect consumer rights, and what steps providers take to ensure consumers have the ability to repay loans.

Labeling BNPL loans as similar predatory lending products, the AG coalition notes that BNPL share some of the same terms and features which consequently "push consumers into cycles of debt." Given the popularity of these products among younger consumers, who the AG coalition claims lack experience with credit, the potential long-term harm of BNPL financing is significant.

In light of their own state-level efforts to hold lenders accountable for preying on vulnerable borrows, the attorneys general specifically identify the following BNPL features as concerning: "BNPL providers' claims of quick application approvals, no credit checks, no interest or fees, and convenient payment schedules." While acknowledging the potential benefits of BNPL financing such as the ability to split the cost of goods and services into multiple installments without interest or fees, the coalition's letter emphasizes the way in which certain products are designed to evade consumer protection laws. As BNPL financing increases in prominence, the AG coalition urges the need for transparency and further investigation.

Specifically, the AG coalition outlines the following concerns as issues that the CFPB needs to address:

- BNPL providers may capitalize on the purportedly distinct features of their products to avoid requirements about disclosure and dispute resolution. Given the design of BNPL financing, these providers "may opine that they are not required to provide consumers with the same disclosures […] and are not subject to the same dispute resolution protections or return/refund procedures."
- BNPL providers may not be considering a consumer's ability-to-repay prior to extending loans, as evidenced by their questionable marketing and lack of robust underwriting.

- BNPL providers frequently fail to report positive credit activity, and their products may adversely affect consumer credit reports.
- While they may not charge interest, many BNPL products charge late fees and activity fees which are not adequately disclosed.
- It remains unclear how BNPL providers use and monetize consumer data.

The AG coalition's letter sheds light on the multilayered ambiguity and lack of regulation that defines the current BNPL financing space. As BNPL financing becomes more popular, caution is warranted. The BNPL sector has been experiencing tremendous growth, with a 300% annual increase in the number of consumers who have taken out a BNPL loan since 2018. Crowell & Moring will continue to monitor developments and provide updates.

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