

Lawsuit Challenges CFPB's 'Buy Now, Pay Later' Rule

Article By:

Timothy A. Butler

Matthew M. White

Tessa L. Cierny

On Oct. 18, 2024, fintech trade group Financial Technology Association (FTA) filed a lawsuit challenging the Consumer Financial Protection Bureau's (CFPB) final interpretative rule on "Buy Now, Pay Later" (BNPL) products. Released in May 2024, the CFPB's interpretative rule [classifies](#) BNPL products as "credit cards" and their providers as "card issuers" and "creditors" for purposes of the Truth in Lending Act (TILA) and Regulation Z.

The FTA filed its [lawsuit](#) challenging the CFPB's interpretative rule in the U.S. District Court for the District of Columbia. The FTA alleges that the CFPB violated the Administrative Procedure Act's (APA) notice-and-comment requirements by imposing new obligations on BNPL providers under the label of an "interpretive rule." The FTA also alleges that the CFPB violated the APA's requirement that agencies act within their statutory authority by ignoring TILA's effective-date requirement for new disclosure requirements and imposing obligations beyond those permitted by TILA. The FTA also contends that the CFPB's interpretive rule is arbitrary and capricious because it is "a poor fit for BNPL products," grants "insufficient time for BNPL providers to come into compliance with the new obligations" imposed by the rule, and neglects "the serious reliance interests that [the CFPB's] prior policy on BNPL products engendered."

In a [press release](#) announcing its lawsuit, the FTA said the BNPL industry would welcome regulations that fit the unique characteristics of BNPL products, but that the CFPB's interpretive rule is a poor fit that risks creating confusion for consumers. "Unfortunately, the CFPB's rushed interpretive rule falls short on multiple counts, oversteps legal bounds, and risks creating confusion for consumers," FTA President and CEO Penny Lee said. "The CFPB is seeking to fundamentally change the regulatory treatment of pay-in-four BNPL products without adhering to required rulemaking procedures, in excess of its statutory authority, and in an unreasonable manner."

The FTA's pending lawsuit notwithstanding, BNPL providers may wish to consult with legal counsel regarding compliance with the CFPB's interpretive rule. Retailers marketing BNPL products should also consider working with legal counsel to implement third-party vendor oversight policies to enhance BNPL-partner compliance with the rule.

National Law Review, Volume XIV, Number 308

Source URL: <https://natlawreview.com/article/lawsuit-challenges-cfpbs-buy-now-pay-later-rule>