

***The Consumer Finance Podcast* x *Payments Pros* – Point-of-Sale Finance Series: Understanding the Development and Regulation of Buy Now, Pay Later Products**

**Host: Taylor Gess**

**Guests: Jason Cover and Jeremy Sairsingh**

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**Taylor Gess:**

Welcome to this special edition of [The Consumer Finance Podcast](#) and [Payments Pros](#). I'm Taylor Gess, an associate in Troutman Pepper Locke's Consumer Financial Services Regulatory Practice, and I'll be your guest host for today's episode. Today, we're going to be giving you another installment of our special highlight series on point-of-sale finance, where we will discuss buy now, pay later products and the shifting federal and state regulatory framework, along with some recent business trends in offering buy now, pay later products.

But before we jump into that topic, let me remind you to visit and subscribe to our blogs, [TroutmanFinancialServices.com](#) and [ConsumerFinancialServicesLawMonitor.com](#). And don't forget about all of our other podcasts. We have the [FCRA Focus](#) all about credit reporting, [The Crypto Exchange](#) about crypto and digital assets. We have [Unauthorized Access](#), which is our privacy and data security podcast, and of course, [Moving the Metal](#), our auto finance podcast. All of those are available on all popular podcast platforms. Speaking of those platforms, if you like this podcast, let us know. Leave us a review on your podcast platform of choice and tell us how we're doing.

Now, as I said, today's episode is another in our special highlight series on point-of-sale finance. Here I'm joined by my colleagues, Jason Cover and Jeremy Sairsingh, to talk about buy now, pay later products. Jason, Jeremy, welcome to the podcast.

**Jason Cover:**

Thanks, Taylor.

**Jeremy Sairsingh:**

Thanks.

**Taylor Gess:**

We are on our journey through discussing the basics of various point-of-sale finance products, and today we're going to highlight buy now, pay later. I think a lot of people hear of buy now, pay later and think of pay in four products. But Jeremy, you're going to help us better understand what buy now, pay later is, how the product is evolving, and how consumers are using buy now, pay later. Can you give us this primer on buy now, pay later product structure?

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**Jeremy Sairsingh:**

There's no single definition of what buy now, pay later is. To understand what products might fall under the buy now, pay later umbrella, it's helpful to think about what the products first looked like when they hit the market. I would peg that to around 2019, 2020, when consumers first started seeing checkout buttons in online shopping flows for a new payment and other than credit or debit cards.

At first, the products largely look the same that would be offered by different providers. Typically, the products were available on a shopping website or a merchant website at the point of sale in the checkout flow. Typically, it involves four payments and no finance charge, and the payment modal was integrated on the merchant's website, so no need to open a separate app or use some other payment card or other form of payment at checkout.

Since then, the products have matured considerably, making a single definition of buy now, pay later a little tricky to construct. Now, you have the use of one-time cards. Now the use of one-time cards is prevalent, so consumers are not limited to a merchant integration on a website anymore. With these products, buy now, pay later loans are accessible really anywhere that a credit or debit card can be used.

There's also a shift in fee models, whereas previously no interest or payments was basically the standard. We've seen an increase in fee structure such as origination fees. Late fees are more common. Providers are using different methods to monetize and offer these products. There's been an increase in subscription models where a customer might pay a fee either monthly or quarterly to a buy now, pay later provider, and that might allow access to awards programs or discounted uses of certain features within the mobile applications.

The early products involved four payments, typically two weeks apart. We've seen a shift to longer-term loan products. Some could be as long as six months to a year or extending that initial four payments to maybe eight payments that are two weeks apart. Likewise, in-store offerings have become more widely available where a customer might go into a store with an app and be able to access the buy now, pay later product in-store.

So, all that's to say, there's no single version of a buy now, pay later product. But I think there are some unifying trends that we can pull together to come up with a rough definition. It's still very much point-of-sale financing, but point-of-sale can mean either during the checkout process on a merchant website or access through a merchant app, or it could be in a shopping app issued or made available by a BNPL provider.

The repayment periods are still relatively short, but as I mentioned, some longer-term loan options are often available, sometimes using a one-time card or using a direct merchant integration. Similarly, the fee structure is not that different from the initial product offerings, but instead of no interest, it might be fixed finance charges or other fixed charges that don't involve interest accruing on an outstanding balance.

Another feature of BNPL is the absence of a firm credit check at the time of the application. Rather, the whole signup this goes through an app. Finally, there's almost always the involvement of a non-bank lender or facilitator.

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**Taylor Gess:**

Thanks, Jeremy, for explaining how those product models have shifted over time. I know federal regulation of buy now, pay later products has been in flux over the last year or two. Jason, so now that we understand the general product structure of buy now, pay later, can you help the audience understand what the federal law framework for these products looks like?

**Jason Cover:**

Yes, Taylor. I think Jeremy's points on the shifts in how these products have moved over the last years is informative. So, going back to the traditional pay in 4 or pay in 30 or something along those lines model where there's four or less payments and no finance charge, the kind of defining feature there is that the transactions of that nature are not subject to disclosure under Regulation Z. They're generally not governed by Regulation Z. And many of the state-level consumer credit laws have a similar trigger. So, there was a specific reason those products were designed that way, and it was to avoid disclosure and to avoid state entanglements.

I guess this didn't go unnoticed by the CFPB and consumer advocates. And just to editorialize quickly, I remain baffled. The consumer advocates have taken such a stance with a with a 0% product. It seems about as consumer-friendly to me as one could get, but I'll speak on that podium off the record if anyone wants to talk about it.

In any event, I think we saw these shifting trends start in 2021 at the initial stages of the Biden-led CFPB. That was when the CFPB released a mark monitoring order and a request for information regarding buy now, pay later products. You can still link to it. You can still find it. It was extremely broad, and that was, I think, when we in the industry observed that these products were going to be under scrutiny by the CFPB. I think the CFPB did its studies. It gathered data. I think if you were a BNPL provider, you probably received RFI directly from the CFPB during that time. And I would say that these requests weren't exactly un-intrusive. They really, I think, were quite broad and required a lot of information.

So, things kind of remained silent then for a couple years. And then out of the blue last year, the CFPB issued what they called an interpretive rule to ensure consumers can dispute charges and obtain refunds on buy now, pay later loans. And this really was a euphemism, somewhat like the payday loan rule that applies very broadly to lots of loans that aren't payday loans. This interpretive rule applied much more broadly than just disputing charges. What it effectively did is what they call a digital user credit card. When you make something a credit card under Regulation Z, it makes it subject to Regulation Z in lots of different ways. So, keep in mind, we went from a product that wasn't governed by Regulation Z at all to one that not only, by virtue of being a credit card, would have had to comply with all of the resolution procedures for credit cards, but then potentially subjected a closed-end product to open-end provisions of subpart B. It really created quite a mess.

I think this was, in my view at least, with the CFPB's way to subject BNPL providers to those dispute provisions of Regulation Z. I'm not sure they entirely thought about all the unintended consequences that go along with that when you make something a credit card under Reg Z.

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**Jeremy Sairsingh:**

And just to add to that, Jason, when those market moderate orders were issued in 2021 that you had mentioned, the focus there really was on the original pay in four no finance charge product that was not subject to TILA. My read is that when the interpretive rule came out, a big focus was on providing disclosures to consumers, but it didn't take into account that there were already many finance charges. It didn't take into account that there were many products on the market that already had finance charges, so closed-end TILA of disclosures were being provided.

So, in a sense it was trying to fill a gap that was already largely being addressed by the market.

**Jason Cover:**

Agreed, Jeremy, and I was just about to say the two of the other big problems with this rule where it didn't really define what a digital user account was, so nobody really knew what was and wasn't a digital user account. It provided some level of detail like that it's typically a form of a secure personal profile acted by the BNPL provider for the consumer that allows the consumer to act less and utilize buy now, pay later. But that wasn't super helpful in precisely defining everything.

Then it really didn't precisely define what it meant by BNPL or whether the rule applied exclusively to or limited to or broadly to things that are BNPL or not BNPL. So, this rule was really something that one could drive a truck through if they wanted in terms of regulating and making things credit cards that no one otherwise expected to be credit cards. So, I think there's multiple podcasts and blogs where we criticized the rule and pointed out all of its flaws. It really was something to behold.

And then to make matters worse, I think multiple folks from the industry asked for clarification on how this new rule worked or guidance, I should say, and the CFPB then issued a new FAQ on September 18<sup>th</sup> last year, giving clarification to these questions and unfortunately took mainly the most maximal position it could in basically every response. So, one example I think was that they said not only are digital user accounts credit cards, but they're also charge cards, which now meant that BNPL providers were subject to subpart G of Regulation Z as well. It took a very internally inconsistent approach to attempting to specify what parts of subpart B did or didn't apply to these closed-end card products.

It really was an FAQ that treated more questions or more problems than it answered or solved. I think directly as result of that, one of the financial fintech trade groups then filed a lawsuit seeking to overturn the rule in October of 2024. So, that suit correctly pointed out many of the flaws with the rule, including I think that it did not satisfy the Administrative Procedures Act or the Truth in Lending Act's own rulemaking requirements that TILA itself dictates what parts of subpart B should apply to a closed-end card and not interpretive guidance and a host of other errors.

So, that's been the lay of the land here for the last year. At the tail end of the Biden administration at the CFPB, they took one more swipe at the industry, issuing some research that they said reveals the heavy buy now, pay later use among borrowers with high credit

balances and multiple pay-in for loans. So, that was kind of one of the last official acts. Again, this sort of used the data it gathered, that Jeremy noted between 2020 and 2022 or so, and has been heavily criticized as well by the industry.

Then, most recently with many other rule makings and interpretive guidance, the CFPB noted on May 7<sup>th</sup> this year, that it did not intend to prioritize enforcement of the rule, the BNPL rule, rather, and then on May 12<sup>th</sup> formally rescinded it. As of right now, we are back to where we started, and buy now, pay later products with digital user accounts are not credit cards, but it has been an interesting and troublesome road to get there over the last year.

**Taylor Gess:**

With the CFPB taking a step back with respect to buy now, pay later regulation. I know some states like New York are making moves in this space. Jeremy, can you tell the audience what states have been doing on the buy now, pay later regulatory front?

**Jeremy Sairsingh:**

State law has always been an important part of buy now, pay later compliance even with the earlier products that we talked about. Some states have licensing requirements that apply to loans, irrespective of finance charge. So, already BNPL providers were focused on state lending laws in particular.

Last month, however, in May, New York enacted really the first of its kind, buy now, pay later specific legislation. A similar version of this law had been proposed in 2024, shortly before the CFPB came out with its now rescinded interpretive rule. So, I don't think it's an accident that the version of the law that just was enacted in New York came on the heels of the CFPB pulling back that earlier role.

The new law is really broad in scope. It defines a buy now, pay later loan to include essentially any closed-end credit provided to a consumer with such consumers' particular purchase of goods and/or services. And there are pretty limited exemptions. There's one for motor vehicles and also credit sales, where the merchant is the party extending the credit are generally exempt. However, it captures many other types of closed-end transactions that arguably would not fall within any of the BNPL categories that we discussed earlier. Those might catch financial institutions by surprise.

In particular, the law has an exemption for national banks and some other federal institutions, federal savings and loan institutions, federal credit unions. But curiously, there's no broad exemption for state-chartered banks, including New York chartered banks. So, even New York banks apparently have to comply with the law's requirements, while national banks are exempt. While many of the specific substantive requirements under the law remain to be outlined in Department of Financial Services regulations, one of the big-ticket items that's part of the legislation is a licensing requirement that would require BNPL lenders to be licensed as well as capture a number of types of companies that facilitate BNPL credit.

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**Taylor Gess:**

With that base understanding on buy now, pay later structure and the current federal and state regulatory framework, do you both want to give us some insight on where the industry seems to be heading in the future?

**Jason Cover:**

Taylor, I think one of the unfortunate parts of the current lack of stability at the federal level is that the whipsaw seems to be worse with every change in administration. So, who knows what will happen in the next four years at the federal level, but that seems to be the case is that we keep whipsawing back and forth. Then I think this exacerbates issues at the state level.

As Jeremy noted, I think states have increasingly had buy now, pay later on their radar as it's developed over the years, but query whether the New York legislation would have moved through if there wasn't such a visceral reaction to what's happened at the federal regulatory environment. I think the unfortunate happenstance here is that we're now left with legislation or rulemaking that just doesn't neatly fit these products. I mean, it is – I kind of rewind back to the reasoning behind the rule was purportedly to give dispute rights. But then in doing so, within a formal rulemaking or in reaction very quickly, in my view, to what a Republican administration did, you end up with rules or laws that have a bunch of things that don't make sense. I don't think it's very helpful, even if you want that dispute mechanism in place, to require closed-end products to give a bunch of disclosures that are intended for open-end products. And I worry and am concerned that state and federal regulators and legislatures are jumping into these things without really thinking them through.

So, I unfortunately kind of think that that's probably more of what we have in store for the future, at least, on the rulemaking and legislative front.

**Jeremy Sairsingh:**

I think the industry will continue to innovate. The products two years from today are going to look very different from the current landscape. And I suspect that regulators will continue to be playing catch-up. So in the short term, any kind of action at the state level is more likely to take the form of enforcement actions by state financial services regulators or AGs. It's possible we could see a state AG adopting views similar to what the CFPB had expressed and it's now-rescinded interpretive rule. Many state credit laws have provisions that make violations of federal law, violations of state law. So, I think we need to be on the lookout for those types of actions that try to essentially supplant the lower profile rule the CFPB is taking with respect to BNPL.

**Jason Cover:**

Just to quickly piggyback on Jeremy's thoughts about where the industry itself is going, I wholeheartedly agree that industry is going to continue to develop. I think what we're seeing is that providers that traditionally were the pay-in for or the traditional buy now, pay later now offer an array of products and services that maybe broadly fall under the guise of buy now, pay later,

and the pay-in for may still be the core product, but they have installment loans and maybe a credit card and all kinds of other products and services.

Then on the opposite end of things, I think we see clients that maybe were in a traditional installment lender, let's say, or a traditional card product that had those types of products largely focused on point-of-sale finance, but maybe now is incorporating a pay-in for a product or other buy now, pay later features that Jeremy noted at the beginning, like the ease of checkout access, into their products and services. So, that in some ways, buy now, pay later is eating traditional point-of-sale finance and vice versa, and that they're largely becoming incorporated. I think to Jeremy's original point, it's increasingly hard to say which one is which on some level.

### **Taylor Gess:**

Thank you, Jason and Jeremy, for being on the podcast today and introducing the audience to buy now, pay later, as a point-of-sale finance product.

We're going to leave the special point-of-sale finance series here for now. We'll pick back up with another very interesting topic on our next special joint episode for *The Consumer Finance Podcast* and *Payments Pros* on this topic.

In the meantime, thanks to our audience for listening today. Don't forget to visit and subscribe to our blogs, [TroutmanFinancialServices.com](http://TroutmanFinancialServices.com) and [ConsumerFinancialServicesLawMonitor.com](http://ConsumerFinancialServicesLawMonitor.com). While you're at it, why not visit us on the web at [troutman.com](http://troutman.com) and add yourself to our Consumer Financial Services email list? That way, we can send you copies of the alerts and advisories that we send out, as well as invitations to our industry-only webinars that we put on from time to time. Of course, stay tuned for a great new episode of this podcast every Thursday afternoon, and look forward to the remainder of our special highlight series on point-of-sale finance coming soon to your podcast feed. Thank you all for listening.

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