March 5, 2026

Kaitlin Asrow
Acting Superintendent
New York State Department of Financial Services
1 State Street
New York, NY 10004

Re: New York Department of Financial Services' Proposed Regulation Regarding Buy-Now-Pay-Later Lenders

Dear Acting Superintendent Asrow,

On behalf of The American Fintech Council (AFC),[1] I am submitting this comment letter in response to the New York Department of Financial Services' (NYDFS or the Department) Proposed Regulations Regarding Buy-Now-Pay-Later Lenders (Proposed Regulation).[2]

AFC's mission is to promote an innovative, transparent, inclusive, and customer-centric financial system by fostering responsible innovation in financial services and encouraging sound public policy. AFC members are at the forefront of fostering competition in consumer finance and pioneering ways to better serve underserved consumer segments and geographies. Our members are also improving access to financial services and increasing overall competition in the financial services industry by supporting the responsible growth of lending and lowering the cost of financial transactions, allowing them to help meet demand for high-quality, affordable financial products.

AFC respectfully requests that the Department considers the following recommendations to amend its Proposed Regulations. However, given the nuance of the Proposed Regulations, AFC reserves the right to, and intends to, comment further during the 60-day comment period after the Proposed Regulations have been published.

I. AFC Respectfully Recommends NYDFS Pursue Additional Analysis to Ensure the Proposed Regulations Properly Address Consumer Harms without Unnecessarily Increasing the Costs of Providing Buy-Now-Pay Later Loans

[1] American Fintech Council's (AFC) membership spans EWA providers, BNPL and other lenders, banks, payments providers, loan servicers, credit bureaus, and personal financial management companies.
[2] New York Department of Financial Services, Addition of Part 423 of Title 3 NYCRR (preproposal comment period), (Feb. 23, 2026). Henceforth referred to as the Proposed Regulations.

AFC recognizes and appreciates the efforts already pursued by NYDFS to pragmatically engage in the regulation of the Buy-Now-Pay-Later (BNPL) market. NYDFS' earlier effort to capture relevant information via its 2025 request for information. However, as NYDFS pursues its implementation of the Proposed Regulations, AFC believes that it is necessary for the Department to ensure that it has identified actual consumer harms and engages in a fulsome analysis of the provisions in the Proposed Regulations and how they impact the BNPL market, via a cost-benefit analysis, to ensure that would remedy those harms or simply increase the cost of originating a BNPL loan.

BNPL is an emerging credit product that has been successful in offering consumers a low-cost alternative to traditional high-cost credit products. AFC members offer responsible BNPL loans that provide clear disclosures of terms in accordance with the principles of the Truth-in-Lending Act (TILA). AFC members offering BNPL loans work diligently to understand the risk profiles of the consumers they serve by underwriting each BNPL loan before making a credit decision. This dynamic, real-time approach helps ensure loans are manageable for the consumer and that payments are not set at levels that risk financial strain. As evidenced by a recent Consumer Financial Protection Bureau (CFPB) report, BNPL default rates from 2019 to 2022 remained at a rate 1.83 percent.[3] As further noted by this report, "even with the increase in defaults during the holiday season," which is historically a higher usage time for BNPL loans, "default rates on BNPL loans are lower than default rates on credit cards".[4] Building on this point, the CFPB's 2025 Consumer Credit Card Market report to Congress noted that delinquency rates were approximately 3 percent for general-purpose credit cards and approximately 3.8 percent for private-label cards by the end of 2024.[5]Thus, the practices pursued by BNPL lenders ensure a safe and sound loan that offers consumers a low-cost alternative to higher-cost credit.

AFC has long advocated for regulatory frameworks that properly reflect the nuances of an innovative product, service, or business model—encouraging responsible innovation while ensuring consumers remain protected. As NYDFS is the first to establish a distinct regulatory framework for the BNPL market, it has an important role in studying how the provisions in the Proposed Regulations may impact the BNPL market and the consumers BNPL lenders serve. Further, as noted above, the emerging nature of BNPL loans in the broader credit market, as well as the aforementioned data from the CFPB necessitate careful consideration on how to properly regulate this market. Thus, AFC respectfully recommends that NYDFS conduct a fulsome analysis of the provisions in the Proposed Regulations and how they impact the BNPL market, via a cost-benefit analysis, to ensure that would remedy those harms or simply increase the cost of originating a BNPL loan.

II. AFC Respectfully Recommends NYDFS Ensures BNPL Licensure is Properly Tailored to Only Capture BNPL Lenders

As evidenced by the Proposed Regulation's definition on "BNPL Lender" and "BNPL Loan" NYDFS did not pursue the necessary clarifications for what constitutes a BNPL loan under an

[3] Consumer Financial Protection Bureau, *Consumer Use of Buy Now, Pay Later and Other Unsecured Debt*, (Jan. 2025), Page 20, *available at* https://files.consumerfinance.gov/f/documents/cfpb_BNPL_Report_2025_01.pdf.
[4] Ibid., Page 15.
[5] Consumer Financial Protection Bureau, *The Consumer Credit Card Market: Report to Congress*, (Dec. 2025), *available at* https://files.consumerfinance.gov/f/documents/cfpb_consumer-credit-card-market-report_2025.pdf.

overly expansive definition of BNPL loans, which, under a plain language interpretation, would expand the scope and application of the regulatory framework to lending products that are not generally considered BNPL loans. In the Proposed Regulation, BNPL loans are defined as "closed-end credit provided to a consumer in connection with such consumer's particular purchase of goods and/or services" with limited exemptions for motor vehicle loans and "credit where the creditor is the seller of such goods and/or services, unless it is credit pursuant to an agreement whereby, at a consumer's request, the creditor purchases a specific good and/or service from a seller and resells such specific good and/or service to such consumer on closed-end credit".[6]

Crucially, the operative factor in what constitutes a BNPL loan is not found within the definition promulgated within the Proposed Regulation. Namely, the distinct payment structure and point-of-sale, merchant-based, mechanism that distinguishes BNPL loans from other forms of closed-end credit in the market, such as traditional term loans facilitated through an online platform offered by a fintech company. To disregard these operative factors when defining "BNPL Loans" and "BNPL Lender" within the Proposed Regulation will certainly cause confusion for those market participants seeking to offer BNPL loans, as well as those only offering closed-end, term-loans in New York. Specifically, the breadth of the Proposed Regulation's definition of "BNPL Loan" will result in the capture of closed-end lending products not generally considered BNPL loans in the market, such as home improvement loans, under the Proposed Regulation. In turn, the financial services companies that provide loans that would be considered other forms of closed-end credit, not BNPL loans, would be improperly subjected to the regulatory framework established specifically for BNPL loans, resulting in duplicative or redundant disclosure requirements.

Thus, AFC respectfully recommends that NYDFS further clarify what constitutes a "BNPL Loan" and a "BNPL Lender" in a manner that limits these definitions to those market participants offering lending services via the aforementioned operative factor that distinguish BNPL loans and BNPL lenders from other forms of closed-end credit, ensuring that New York's regulatory framework for BNPL only captures those lenders offering BNPL loans as generally understood in the market.

In addition, the current definition of BNPL Lender within the Proposed Regulations does not adequately clarify who would be captured as "a person to whom ownership of a BNPL loan is transferred" and could inadvertently ensnare investors or other secondary market participants in the definition as written.[7] In practice, BNPL Lenders who actually offer the loan to the consumer, as a business decision, may sell an originated BNPL loans into the secondary market as whole loan sales or as a securitized pool. In this sale, investors or other capital markets participants may purchase these whole BNPL loans or securitized pools, meaning the loan is "transferred and the secondary market participant takes "ownership" of the loans, to diversify their portfolios. However, given underlying qualities of this secondary market activity, it does not seem accurate for NYDFS to consider these secondary market participants as "BNPL Lenders." Thus, AFC respectfully recommends that NYDFS appropriately clarify that "a person to whom ownership of

[6] Ibid., Proposed Regulations § 423.1(f).
[7] Ibid., § 423.1(d).

a BNPL loan is transferred" does not mean that investors who buy securitized BNPL loans or other capital markets participants are "BNPL lenders."

III. AFC Respectfully Recommends that NYDFS Maintains a Consistent Approach for State- and Federally-Chartered Banks in Accordance with Section 12-A of New York's Banking Law

In addition, within the BNPL Act, while nationally chartered banks, credit unions, and trusts were explicitly exempted from the Act's provisions, state-chartered financial institutions were not. AFC consistently advocates for parity between financial institutions to ensure that both nationally chartered and state-chartered financial institutions are able to partner effectively with fintech companies and operate in a fair, competitive market. The State of New York recognizes this fact within its statute and explicitly grants state-chartered banking institutions the ability to "exercise any federally permitted power of its counterpart federally chartered banking institution" as enumerated under the statute.[8]

Further, the statute establishing parity for federally-chartered and state-chartered financial institutions grants discretionary authority for the superintendent to "authorize one or more state chartered banking institutions to exercise a federally permitted power".[9] Per the statutory definition, this "federally permitted power" includes "any right, power, **privilege or benefit**, any activity, or any loan, investment or transaction which a federally chartered banking institution directly or through a subsidiary or subsidiaries, may lawfully exercise or into which it may lawfully engage or enter"[10]. A plain language reading of the "privilege or benefit" clause noted above naturally includes ensuring that a state-chartered bank does not need to receive any additional authorizations through NYDFS that would not be required of their federally-chartered counterpart. While it is important to recognize that BNPL loans have generally been offered by nonbank fintech companies, AFC respectfully recommends that NYDFS revises the Proposed Regulation avoids conflicting with well-established banking law found in Section 12-A of New York's Banking Law and not improperly disadvantage state-chartered financial institutions in their engagement with BNPL lending operations by requiring state-chartered banks to receive authorization to engage in or facilitate activities covered under the Proposed Regulation.

IV. AFC Respectfully Recommends NYDFS Allow BNPL Lenders the Ability to Operate Up to the Maximum Interest Rate Permitted in the State

AFC member companies have been crucial to expanding access to responsible credit, especially to communities that have been historically underserved in the financial services industry. Expanding access to credit has been made possible by leveraging technological innovations, as well as ensuring that a prudent regulatory framework for credit offerings exists. Notably, AFC fundamentally believes that credit regimes operate most effectively for consumers and industry participants who serve them when the permissible interest rate on a consumer loan is capped at 36 percent.

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[8] New York Banking Law § 12-A(2) [emphasis added].
[9] Ibid., (4).
[10] Ibid., (1)(d).

Under section 745 of the BNPL Act, NYDFS was granted authority to determine the maximum allowable interest rate for licensed BNPL lenders.[11] AFC recognizes and appreciates the various considerations that NYDFS must review when determining the interest rate that should be set for BNPL Loans. Specifically, while New York State's civil usury rate is capped at 16 percent for many of its consumer loans, New York State's law allows for a maximum interest rate permitted in the state of 25 percent.[12] Further, NYDFS previously issued a banking interpretation that specifically allowed licensed lenders of "small loans" the ability to offer loans not in excess of 25 percent interest.[13]

In addition, licensure, and the regulatory oversight that accompanies it, provide regulators with the ability to ensure that licensees adhere to crucial consumer protections and are operating in a safe and sound manner. With the regulatory oversight and assurances of prudent practices afforded to regulators through licensure, licensees should be afforded some benefits, generally withheld from unlicensed entities, as a means of recognizing the inherent diminishing of risk that comes with oversight. Therefore, as NYDFS works to determine the maximum allowable interest rate for licensed BNPL lenders, AFC respectfully recommends that the Department consider allowing BNPL lenders the ability to operate up to 25 percent interest, the maximum interest rate permitted in the state, to enable the responsible extension of credit to as many consumers as possible.

V. AFC Respectfully Recommends that NYDFS Remove the "Ability to Repay" Requirement from Its Proposed Regulations to Align with The Legislative Intent of the BNPL Act and Encourage Consumer-Focused Innovation

As written, the Proposed Regulations require that BNPL lenders "before providing or causing to be provided a BNPL loan to a consumer, perform, or cause to be performed, reasonable risk-based underwriting which includes, **at a minimum, assessing a consumer's income and indebtedness**".[14] The explicit requirement to check a consumer's income and indebtedness reflects the elements of an "ability to repay" test within underwriting. Importantly, the New York legislature considered an "ability to repay" requirement when crafting the BNPL Act underpinning the Proposed Regulations, and instead pursued a requirement that lenders conduct "reasonable risk-based underwriting".[15] The Proposal Regulations improperly overrule this decision by the legislature by purporting to define "reasonable risk-based underwriting" as checking the consumer's income and indebtedness, the elements of an ability to repay test.

In the BNPL market, many BNPL lenders use cash flow underwriting, which is a better form of reasonable risk-based underwriting for BNPL loans. Per the low default rates of BNPL loans discussed above, this cash flow underwriting process has proved more successful than traditional methods of underwriting, such as a strict "ability to repay test." Further, as evidenced by the

[11] New York Banking Law Art. 14-B, § 745.
[12] New York Gen. Oblig. Law § 5-501
[13] Classified as a loan "that does not exceed a principal amount of $25,000 for an individual or $50,000 for a business." See New York State Department of Financial Services, "Banking Interpretations - Banking Law: Letter of February 7, 2006," *available at*, https://www.dfs.ny.gov/legal/interpret/lo060207.htm.
[14] Proposed Regulations, § 423.12 (b) [emphasis added].
[15] Assembly Bill 9588A, a bill introduced in March 2024 as part of the 2023-2024 legislative session, sought to regulate the BNPL industry. This bill explicitly included an "ability to repay" requirement. However, the explicit reference to an "ability to repay" was removed in the BNPL Act, passed into law in May 2025. See, N.Y. A.B. 9588A, 2023-2024 Reg. Sess. (2024) and Buy-Now-Pay-Later Act, New York Banking Law Art. 14-B (2025).

efforts by BNPL lenders to improve their underwriting beyond traditional practices, being overly prescriptive or placing an outmoded underwriting criterion, such as an "ability to repay" test, may unnecessarily limit innovation in this space that could ultimately help consumers gain access to credit. Thus, AFC respectfully recommends that NYDFS remove the explicit requirements that reflect an "ability to repay" test, to align more closely with the legislative intent of the BNPL Act and ensure that New York's BNPL regulatory framework encourages underwriting innovations that serves consumers.

VI. AFC Respectfully Requests that NYDFS Reconsider Its Approach to Billing Statements to Ensure They are Operationally Feasible and Do Not Confuse Consumers

The billing statement requirements in Section 423.12(a)(4) are ill-suited to BNPL products. The Regulation requires that every statement include all of a consumer's existing BNPL loans and be delivered at least 14 days (or 7 days for shorter billing cycles) before each payment is due. Applied to a consumer with multiple loans originated at different times, these requirements will result in customers receiving multiple redundant statements in a short period of time. This approach is counterproductive to the regulation's consumer protection goals, increasing the likelihood that consumers ignore or overlook important information. The problem is compounded by the fact that consumers access loan information through the same digital apps and websites they used to obtain the loans in the first place. Thus, NYDFS should adopt an approach modeled on the CFPB's Regulation E prepaid account rule, which gives providers an alternative method to comply with the billing statement requirement by allowing them to give consumers an electronic history. This framework would preserve transparency, align with actual consumer behavior, and avoid the statement overload that the current rule would create.

First, the Regulation requires that billing statements include "all existing BNPL loans made between a BNPL lender and a consumer in a single periodic statement"[16] and be delivered at least 14 days before payment is due for monthly billing cycles or at least 7 days before payment for billing cycles under 30 days.[17] Because each loan has its own billing cycle (based on when the consumer chooses to take out the loan), and BNPL lenders may offer both pay-in-4 products (with biweekly payments) and longer-term monthly installment loans, a consumer with multiple staggered loans will have payment due dates that rarely align. Each upcoming payment triggers a new statement obligation, and each statement must include all of the consumer's loans, regardless of whether those other loans have any activity or upcoming payments, resulting in potentially customers receiving multiple statements in one month that shows all of their loans.

Second, the billing statement requirement also fails to account for how BNPL consumers actually access information about their loans. Unlike traditional credit cards, where consumers may have obtained an account through a mailed offer or in-branch application, BNPL customers must create accounts through websites or mobile apps to use the product at all. This means BNPL consumers already have immediate, on-demand access to their transaction data and loan information through the same digital interface they used to obtain the loan. Credit card billing statements were designed for a pre-Internet world; BNPL customers have internet and mobile

[16] Ibid., Proposed Regulations § 423.12(a)(4)(iv).
[17] Ibid., § 423.12(a)(4)(iii).

access to account information. Mandating billing statements that consumers neither need nor use adds compliance cost without corresponding consumer benefit.

Finally, to ensure consumers can identify potential billing errors and understand dispute timeframes, NYDFS should consider an alternative disclosure framework modeled on the CFPB's prepaid account rule under Regulation E. That rule presents an alternative to billing statements by allowing providers to instead give consumers "[a]n electronic history of the consumer's account transactions" rather than mandating billing statements on a fixed schedule.[18] A similar approach for BNPL would preserve full transparency while aligning with actual consumer behavior—providing real-time account information instead of generating multiple overlapping billing statements. This framework would reduce consumer confusion, eliminate statement overload, and maintain substantive consumer protections without imposing unnecessary operational burden.

VII. AFC Respectfully Recommends NYDFS Align Consumer Data Use Standards

The Proposed Regulation requires that consumers provide consent before their data may be used or shared by lenders. AFC supports the principle of transparency and accountability in the use of consumer data. At the same time, AFC recognizes the issues stemming from the specific "opt-in" provisions related to the use of consumer data detailed in the Proposed Regulation.[19] AFC has long advocated for a unified approach to consumer data that provides necessary protections to consumers while ensuring that financial services companies can use this data to effectively serve consumers. The establishment of requirements for consumers to "opt-in" to data sharing would create unnecessary barriers to financial services companies seeking to serve these consumers through additional products and services. Thus, AFC urges NYDFS to adopt a framework that is both protective of consumers and practical in implementation. Specifically, AFC recommends an opt-out standard, consistent with Gramm-Leach-Biley Act and other existing federal frameworks, rather than an "opt-in" model.

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AFC appreciates the opportunity to comment on the NYDFS's Request for Information Regarding Buy-Now-Pay-Later Activities. Again, we deeply appreciate the efforts that NYDFS to foster responsible innovation in the State of New York and have productive conversations about the regulation of BNPL. We welcome continued engagement with NYDFS on how to implement regulations and guidance that encourage a robust, consumer protected BNPL lending ecosystem in New York.

Sincerely,

Ian P. Moloney

[18] 12 CFR § 1005.18(c)(1)(ii).
[19] Ibid., Proposed Regulations § 423.12(d).

Chief Policy Officer
American Fintech Council