July 17, 2026

TK Keen
Administrator
Department of Consumer and Business Services
Division of Financial Regulation
350 Winter St. NE
P.O. Box 14480
Salem, OR 97309-0405

Re: Oregon Department of Consumer and Business Services' Proposed Bulletin Regarding Buy-Now-Pay-Later Lenders

Dear Mr. Keen,

On behalf of The American Fintech Council (AFC),[1] I am submitting this comment letter in response to the Oregon Department of Consumer and Business Services, Division of Financial Regulation's ("DCBS" or "the Division") Proposed Bulletin Regarding Oregon Consumer Finance and Payday Licensing Requirements for Buy-Now-Pay-Later (BNPL) products (Proposed Bulletin).[2]

On behalf of more than 150 member companies and partners, AFC promotes an innovative, transparent, inclusive, and customer-centric financial system by fostering responsible innovation in financial services and advancing sound public policy. AFC's membership includes innovative banks, nonbank lenders, payments companies, financial technology firms, Earned Wage Access providers, loan servicers, credit bureaus, personal financial management companies, and other financial services participants that operate across a broad range of financial services activities. Together, AFC's members are expanding responsible access to credit, increasing competition in financial services, lowering the cost of financial transactions, and developing high-quality, affordable financial products that better serve consumers and businesses throughout the United States.

Overall, the Proposed Bulletin suffers from fundamental issues in both substance and form. As will be detailed further below, the Proposed Bulletin's application of payday lending licensing framework is incongruent with the terms of BNPL products. In addition, the de facto rulemaking

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[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] Oregon Department of Consumer and Business Services, Division of Financial Regulation, *Bulletin No. DFR 2026-X: Oregon Consumer Finance and Payday Licensing Requirements* (June 2026).

quality that the Proposed Bulletin would have if finalized necessitates that DCBS pursue formal rulemaking procedures under Oregon's Administrative Procedures Act.[3] Therefore, AFC respectfully submits the following recommendations regarding the Proposed Bulletin.

I. AFC Respectfully Recommends that the Division Reconsider the Proposed Bulletin to Ensure Oregon's Licensing Framework Is Appropriately Tailored to Buy-Now-Pay-Later Products

AFC recognizes and appreciates the Division's continued engagement on issues involving consumer finance, responsible innovation, and consumer protection. However, the Proposed Bulletin would apply Oregon's payday and consumer finance licensing frameworks to BNPL products in a manner that does not adequately account for how responsible BNPL products operate. Unlike traditional payday lending products, responsible BNPL products facilitate point-of-sale purchases through fixed installment repayment schedules and present distinct operational characteristics and consumer protections. Applying a regulatory framework designed for high-cost payday lending to these products risks creating compliance obligations that are disconnected from the consumer harms those statutes were designed to address.

BNPL products have emerged as a transparent, lower-cost alternative to many traditional forms of consumer credit. 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.[4] 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."[5] 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.[6] Thus, the practices pursued by BNPL lenders ensure a safe and sound loan that offers consumers a low-cost alternative to higher-cost credit.

Furthermore, the applicable payday lending provisions presuppose interest-bearing credit. The disclosure requirements under OAC 441-735-0272(1)(a) and (c) are designed to ensure that consumers understand the true interest rate on payday loans, a requirement that has no practical application to 0% products. The debt-spiral protections under OAC 441-735-0272(4) and (6), which prohibits serial lending and require ability-to-repay determinations, addresses the risk that borrowers will become trapped in cycles of high-interest borrowing which invariably is not a risk that arises when no interest is charged. The rate and fee caps under ORS 725A.064 are similarly

[3] Oregon Administrative Procedures Act, Or. Rev. Stat. §§ 183.310–183.750 (2025).
[4] 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.
[5] Ibid., Page 15.
[6] 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.

inapplicable to products offered at zero percent interest. These requirements may be appropriate for products that present the risk of repeated high-cost borrowing, but they do not map cleanly onto BNPL products where the consumer is not charged interest and cannot be placed into a cycle of compounding payday debt.

Moreover, the Proposed Bulletin reflects the need for a regulatory framework that appropriately accounts for the distinct structure, operation, and consumer protections associated with BNPL products. As Oregon continues evaluating the appropriate treatment of these products, AFC believes that any resulting regulatory framework should remain grounded in the statutory framework enacted by the Legislature while recognizing the characteristics that distinguish BNPL products from traditional consumer lending. The recommendations that follow are intended to support that objective by promoting regulatory clarity, consumer protection, and continued responsible innovation.

II. AFC Respectfully Recommends that the Division Ensure the Proposed Bulletin Does not Apply Payday Lending Statutes to BNPL Products

The Proposed Bulletin adopts an interpretation of Oregon's consumer finance and payday lending statutes that materially expands their application to responsible BNPL products. AFC believes that such an interpretation warrants careful consideration to ensure that the Division's licensing framework remains consistent with the statutory text, established Oregon law, and the distinct characteristics of BNPL products. While BNPL products require consumers to repay the cost of a retail purchase over a fixed installment schedule, that characteristic alone should not be dispositive of whether Oregon's consumer finance and payday lending licensing statutes apply. The more pertinent inquiry is whether the Legislature intended those statutes to encompass products with the distinct structure, operation, and consumer protections that characterize BNPL offerings. Nothing in the Proposed Bulletin explains why the Legislature intended Oregon's consumer finance and payday lending statutes to extend to every transaction involving deferred repayment, regardless of the product's structure, economic function, or consumer protections.

BNPL products facilitate a consumer's purchase by enabling payment to the merchant at the point of sale in exchange for the consumer's agreement to repay the provider through a fixed installment schedule. However, that transactional structure differs in important respects from the traditional lending relationships historically addressed under Oregon's common law, consumer finance and payday lending statutes.[7] Unlike a conventional loan involving the extension of money for a borrower's general use, responsible BNPL products finance a single, identified retail purchase through a transaction that is fully disclosed to the consumer at the point of sale. These distinguishing characteristics warrant a more tailored analysis than one based solely upon the existence of a repayment obligation.

This distinction is reinforced by Oregon's established legal definition of a "loan." Oregon courts have consistently held that a loan requires repayment with interest. The Oregon Supreme Court defined lending as "let[ting] out (money) for temporary use on condition of return with interest."[8] The Court of Appeals later confirmed this in holding that a "loan of money" is "repaid

[7] *Carey v. Lincoln Loan Co.*, 165 Or. App. 399, 406–08, 995 P.2d 1210 (2000). ((holding that an installment land sale contract is not a "loan of money" and explaining that a loan ordinarily involves money lent for temporary use subject to an obligation to repay).
[8] *Gen. Elec. Credit Corp. v. Oregon State Tax Comm'n*, 231 Or. 570, 591 (1962).

with interest."[9] Because BNPL products offered at 0% interest do not meet this established legal definition, the Division's application of consumer finance and payday lending licensing statutes to these products lacks a sufficient statutory foundation.

Several additional characteristics further distinguish responsible BNPL products from the lending relationships historically regulated under Oregon's consumer finance and payday lending statutes. Many BNPL products are offered without interest or consumer finance charges, rely upon merchant compensation rather than borrower-paid finance charges, utilize transaction-specific underwriting, and are structured in a manner that allocates credit risk differently than many traditional lending products. Considered together, these characteristics distinguish BNPL products from the conventional lending arrangements historically regulated under Oregon's consumer finance and payday lending statutes.

The Proposed Bulletin's treatment of nonrecourse products further illustrates the need for a more tailored approach. BNPL products do not operate like traditional asset-backed lending arrangements in which a lender repossesses collateral following nonpayment. Rather, where BNPL products are offered without recourse to collateral, the provider generally bears the loss associated with nonpayment. Treating that structure as equivalent to traditional secured or repossession-based lending risks mischaracterizing how responsible BNPL products function. In asset-backed lending, nonrecourse status means the lender's sole remedy is repossession of collateral. In BNPL, the consumer has already received unsecured goods and the provider simply absorbs the loss on non-payment. The Proposed Bulletin's treatment of nonrecourse BNPL as equivalent to nonrecourse collateralized lending reflects a fundamental misunderstanding of the BNPL product structure and further demonstrates why Oregon's licensing framework should not be extended to these products without a clear statutory basis.

Collectively, these distinguishing characteristics underscore why interpreting Oregon's licensing statutes to encompass all BNPL products would substantially expand the reach of those statutes beyond the lending products they have historically governed. Such an interpretation also risks creating regulatory uncertainty for market participants who are seeking to offer innovative financial products while remaining compliant with Oregon law. AFC believes that any expansion of the licensing framework should rest upon a clear statutory basis rather than an interpretation that extends existing statutes to products with materially different structures, risk profiles, and consumer outcomes.

The Division's own prior guidance reflects this understanding. Until recently, the Division's consumer-facing website stated that it "regulates personal loans of $50,000 or less at an annual interest exceeding 12 percent."[10] This language was subsequently removed. In 2015, the Division's own representative testified before the Legislature that a license is required only "if the loan is above a certain interest rate."[11] The industry has relied on these representations in structuring its operations. The Proposed Bulletin's departure from this longstanding

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[9] *Haeger v. Johnson*, 25 Or. App. 131, 135 (1976).

[10] Oregon Department of Consumer and Business Services, Division of Financial Regulation, "Installment Loans," *Internet Archive Wayback Machine*, captured January 16, 2026, https://web.archive.org/web/20260116102949/https://dfr.oregon.gov/financial/loans/personal/pages/installment-loans.aspx.

[11] David Tatman, statement before the Oregon House Committee on Consumer Protection and Government Effectiveness, Work Session on S.B. 7A, May 5, 2015.

interpretation, without formal rulemaking or public process, raises additional concerns under Oregon's Administrative Procedures Act.

For these reasons, AFC encourages the Division to ensure that the application of Oregon's consumer finance and payday lending statutes remains closely aligned with the statutory text enacted by the Legislature while recognizing the unique transactional structure and consumer protections associated with responsible Buy Now, Pay Later products.

III. AFC Respectfully Recommends that the Division Distinguish Merchant Compensation from Consumer Finance Charges When Applying Oregon's Licensing Framework

Merchant compensation arrangements have long served as a fundamental component of modern payment systems and should not be conflated with the extension of consumer credit. Similar to the credit card industry, which has historically garnered revenue from separate and distinct streams of income such as interest, fees, and interchange, the BNPL ecosystem also establishes profitability through diverse channels. Within the BNPL market, merchants commonly compensate providers for delivering payment functionality, fraud prevention, customer acquisition, transaction processing, and other services that facilitate the underlying retail transaction. These commercial arrangements exist independently of the consumer's repayment obligation and reflect the value provided to merchants rather than compensation for extending credit to consumers.

Against this backdrop, the Proposed Bulletin concludes that nonbank lenders offering BNPL products and BNPL service providers are not eligible for the licensing exemption under ORS 725.045(2) where they "collect a fee in connection with a consumer finance loan or the consumer finance loan is supported by consideration," including circumstances in which a merchant pays a BNPL provider to make its payment solution available to consumers. AFC believes that this interpretation conflates two fundamentally distinct commercial relationships: the extension of consumer credit and the provision of payment and transaction facilitation services to merchants.

Merchant-paid fees are not consumer finance charges. They are borne exclusively by merchants, not consumers, and are analogous to merchant discount rates and interchange fees that have long existed within traditional credit and debit card payment systems. These fees neither increase the consumer's cost of credit nor compensate the provider for extending credit to the borrower. Rather, they represent compensation for services provided to merchants that enable efficient payment acceptance, reduce fraud, improve conversion rates, and expand consumer purchasing options.

Reading ORS Chapter 725 to treat merchant compensation as consideration sufficient to independently trigger licensing requirements would substantially broaden the reach of Oregon's consumer finance framework beyond its intended purpose. Virtually every commercial enterprise receives compensation in exchange for providing products or services. Interpreting ordinary commercial arrangements between merchants and BNPL providers as regulated lending activity risks diminishing the practical effect of the exemption contained in ORS 725.045(2) and would create unnecessary regulatory uncertainty for market participants.

Clarifying this distinction would more effectively align Oregon's licensing framework with the economic realities of BNPL products while preserving appropriate consumer protections. The Division should therefore make clear that merchant-paid compensation, standing alone, does not constitute a consumer finance charge or other consideration that independently subjects a BNPL provider to Oregon's consumer finance licensing requirements.

IV. AFC Respectfully Recommends that the Division Reconsider Its Interpretation of the Purchase Money Loan Exclusion to Better Reflect the Distinct Characteristics of Buy Now, Pay Later Products

One of the defining characteristics of responsible BNPL products is that they are extended for the sole purpose of financing a specific retail purchase at the point of sale. Unlike general purpose consumer loans or revolving lines of credit, BNPL financing is tied to an identified transaction, enabling consumers to acquire a particular good or service through a fixed installment repayment schedule. This transaction-specific structure has long distinguished purchase money financing from broader forms of unsecured consumer lending and should remain a central consideration when evaluating the applicability of Oregon's licensing statutes.

The Proposed Bulletin concludes that BNPL products generally do not qualify as "purchase money loans" because they are typically unsecured and therefore do not satisfy the Bulletin's interpretation that a purchase money loan must involve a debt secured by the property purchased.[12] AFC believes this interpretation places undue emphasis on whether the financing is secured rather than on the underlying purpose of the transaction itself. In doing so, the Bulletin risks treating BNPL products as ordinary unsecured consumer loans despite the very feature that distinguishes them in the marketplace: financing a single, identified purchase at the point of sale.

This interpretation is also difficult to reconcile with established commercial law principles. Oregon's Uniform Commercial Code expressly distinguishes between these concepts. Under ORS 79A.1030(1)(b), a "purchase -money obligation" is "an obligation of an obligor incurred as all or part of the price of the collateral or for value given to enable the debtor to acquire rights in the use of the collateral if the value is in fact so used." A "purchase-money security interest" arises only when the creditor also takes a security interest in the purchased goods.[13] If a purchase money loan inherently required a security interest, the separate concept of a "purchase money security interest" would be redundant, and the UCC's drafters would have had no reason to define both terms independently. The Proposed Bulletin's reading of the exclusion also renders it a practical nullity, because traditional secured purchase money loans such as auto loans and mortgages are already excluded from the payday statute by other provisions, including term length, loan amount, or lender type. The Legislature included the purchase money loan exclusion to ensure that credit extended for the purpose of financing a specific purchase would not be swept into the payday framework regardless of whether the lender takes a security interest.

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[12] Oregon Department of Consumer and Business Services, Division of Financial Regulation, *Bulletin No. DFR 2026-X: Oregon Consumer Finance and Payday Licensing Requirements* (proposed June 2026), 3 ("ORS chapter 725A does not contain a definition of 'purchase money loan'; Webster's defines 'purchase money loan' as 'involving or being a debt secured by the property purchased with the money borrowed.' ... 'As such, BNPL loans are not considered a "purchase money loan"'.

[13] Or. Rev. Stat. § 79A.1030(2) (2025).

Moreover, Oregon courts have consistently recognized that statutory terms carrying an established legal meaning should generally be interpreted according to that settled legal understanding. Under Oregon's statutory construction principles, when the Legislature uses a legal term of art without defining it, courts "look to its 'established legal meaning' as revealed by, for starters at least, legal dictionaries."[14] Here, the Bulletin principally relies upon a general dictionary definition of "purchase money" while giving comparatively little weight to the well-developed body of commercial law governing purchase money financing. "Purchase money" is a term with established legal meaning in both Oregon's Uniform Commercial Code and decades of case law. That established meaning, not a secondary dictionary entry, should control the Division's interpretation of the purchase money loan exclusion.

A more tailored interpretation would better reflect both the economic realities of BNPL products and the longstanding legal principles governing purchase money financing. Clarifying the scope of the purchase money loan exclusion would provide greater regulatory certainty for market participants while ensuring that Oregon's licensing framework continues to distinguish between traditional unsecured lending and financing that exists solely to facilitate a specific retail purchase.

V. AFC Respectfully Recommends that the Division Pursue a Rulemaking Process Under Oregon's Administrative Procedures Not De Facto Rulemaking Through Guidance

Effective regulation is best achieved through transparent processes that provide meaningful opportunities for stakeholder engagement while ensuring that regulatory expectations are grounded in a complete understanding of both the applicable legal framework and evolving market practices. AFC has consistently supported regulatory approaches that promote consumer protection while providing the certainty necessary for responsible innovation to flourish. Formal rulemaking serves this objective by allowing regulators, industry participants, consumer advocates, and other interested stakeholders to collectively evaluate the practical implications of significant policy decisions before they are implemented.

Viewed collectively, the interpretations advanced throughout the Proposed Bulletin extend beyond clarifying existing law. As discussed above, the Bulletin adopts expansive interpretations concerning the scope of Oregon's consumer finance and payday lending statutes, the meaning of a loan under Oregon law, the treatment of merchant-paid compensation, and the applicability of the purchase money loan exclusion to BNPL products. Together, these interpretations would materially expand the regulatory obligations applicable to BNPL providers operating in Oregon and establish new supervisory expectations for a rapidly evolving segment of the consumer finance market.

Given the significance of these policy determinations, AFC believes they warrant the transparency and procedural safeguards afforded through Oregon's formal rulemaking process. Notice-and-comment rulemaking would provide consumers, merchants, BNPL providers, financial institutions, and other interested stakeholders with a meaningful opportunity to evaluate

[14] *Comcast Corp. v. Dept. of Rev.*, 356 Or. 282, 296 (2014).

the Division's interpretations, offer practical perspectives regarding their implementation, and assist the Division in developing a comprehensive administrative record upon which any final regulatory framework may be based.

To shirk this duty of adherence to Oregon's Administrative Procedures Act in favor of finalizing the Proposed Bulletin would undermine the legitimacy of the Division's efforts and cause significant harm to offering BNPL products in the state. BNPL products differ in important respects from traditional payday lending and unsecured consumer lending products, and the application of Oregon's existing licensing statutes to these products presents novel legal and policy questions that merit careful consideration. Providing stakeholders with the opportunity to participate in a formal rulemaking process would enable the Division to further evaluate emerging market data, consumer outcomes, and evolving industry practices before establishing supervisory expectations that could materially influence the future development of Oregon's BNPL market.

As noted, pursuing this approach would strengthen both the legitimacy and durability of Oregon's regulatory framework. By developing any material expansion of its consumer finance and payday lending framework through formal rulemaking or legislative action, the Division can promote transparency, foster constructive stakeholder engagement, and establish a regulatory framework that appropriately balances consumer protection with continued responsible innovation in the BNPL marketplace.

AFC respectfully recommends that DCBS rescind the Proposed Bulletin in favor of a formal rulemaking process. Failing to rescind the Proposed Bulletin in favor of engagement in a formal rulemaking process would be a miscarriage of the principles of administrative law relied upon by both industry and consumers.

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The continued growth of responsible Buy Now, Pay Later products presents an important opportunity to expand consumer access to transparent, affordable, and innovative forms of credit. As Oregon considers the appropriate regulatory framework for these products, AFC encourages the Division to adopt an approach that reflects the distinct characteristics of BNPL offerings, remains grounded in the statutory framework established by the Legislature, and promotes regulatory certainty through transparent stakeholder engagement.

AFC believes the recommendations set forth in this letter will ensure that Oregon does not misapply existing payday lending laws to BNPL products. By reforming both the content of the Proposed Bulletin and the approach taken by DCBS, Oregon can ensure that it engages in a pragmatic regulatory process that advances consumer protection while preserving responsible innovation and competition in the marketplace. We welcome the opportunity to continue engaging with the Division as it evaluates the issues addressed in the Proposed Bulletin and develops its regulatory approach to BNPL products.

Sincerely,

Ian P. Moloney
Chief Policy Officer
American Fintech Council