October 26, 2026

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

Re: Supplemental Comments on New York Buy Now Pay Later Rulemaking and Recent FDIC State Bank Parity Proposal

Dear Acting Superintendent Asrow,

On behalf of The American Fintech Council (AFC),[1] I am submitting this supplemental comment letter regarding the New York State Department of Financial Services' (NYDFS or the Department) proposed addition of Part 423 to Title 3 of the New York Codes, Rules and Regulations and amendment to Part 101 of Title 23 concerning Buy-Now-Pay-Later (BNPL) lenders (Proposed Regulation). These supplemental comments follow AFC's September 14, 2026, submission and address significant developments arising from the Federal Deposit Insurance Corporation's (FDIC) recently proposed rulemaking concerning State Bank Parity—which was published after the comment period for the Department's Proposed Regulation had closed.[2]

I. The FDIC's State Bank Parity Proposal Raises Additional Considerations for the Department's Rulemaking

On September 22, 2026, the FDIC published its proposed State Bank Parity rule to clarify the if and when host-state laws would apply to out-of-state state-chartered banks providing financial services across state lines, and when home-state laws would apply. Per the FDIC's proposal, Section 24(j) of the Federal Deposit Insurance Act does not expressly address services provided without establishing a physical branch. However, the FDIC interprets its structure and purpose as supporting equivalent treatment for non-branch activities. Accordingly, under the proposal, where a host-state law is preempted and does not apply to an out-of-state national bank, that law would similarly not apply to an out-of-state state bank providing services in the host state, regardless of whether it maintains a physical branch. Instead, the law of the state bank's chartering state would apply.[3]

[1] American Fintech Council's (AFC) membership spans banks, non-bank lenders, payments providers, EWA providers, loan servicers, credit bureaus, and personal financial management companies.
[2] American Fintech Council, *Response to New York Buy Now Pay Later Rulemaking*, September 14, 2026.
[3] Federal Deposit Insurance Corporation, "State Bank Parity," 91 Fed. Reg. 60018 (September 22, 2026) (proposed rule), RIN 3064-AG34.

The FDIC's proposal raises important considerations for the Department's rulemaking. In particular, the proposal highlights the need for clarity regarding the application of state regulatory requirements to out-of-state state banks providing financial services to New York consumers without maintaining a physical branch in the State. For purposes of the Department's BNPL regulatory framework, AFC encourages the Department to clarify what constitutes providing financial services to New York consumers, including through illustrative examples addressing products offered through online and mobile channels and bank-fintech partnerships. Such clarification should also address the circumstances under which activities performed by third-party service providers may be attributed to the bank, while distinguishing those activities from conduct that independently constitutes BNPL lending. Providing greater specificity regarding these distinctions would help promote consistent regulatory treatment and avoid inadvertently extending authorization requirements to entities whose activities fall outside the intended scope of the Proposed Regulation. These considerations further underscore the importance of ensuring that the Proposed Regulation operates consistently with the federal statutory framework governing interstate banking activities and preserves appropriate distinctions among the institutions and service providers participating in those activities.

II. AFC Urges the Department to Consider the Potential Implications of Recent Federal Regulatory Developments

The potential competitive implications of the Proposed Regulation may be particularly relevant for state-chartered institutions that already operate under comprehensive prudential and consumer protection supervision. Additional authorization, reporting, examination, and operational requirements for these institutions could create overlapping compliance obligations and introduce additional considerations for established bank-fintech partnerships. AFC recognizes the Department's important consumer protection objectives and respectfully encourages consideration of whether the proposed requirements can be implemented in a manner that minimizes unnecessary duplication while maintaining appropriate regulatory oversight.

These considerations are particularly relevant to state-chartered institutions providing BNPL products through digital platforms and bank-fintech partnerships without maintaining physical branches in New York. Uncertainty regarding the application of the Department's authorization requirements to these arrangements could introduce additional compliance complexities for institutions operating across state lines. Clear guidance distinguishing the requirements applicable to New York-chartered institutions, out-of-state state banks, and nonbank service providers acting on behalf of these institutions would help promote regulatory certainty while preserving the Department's consumer protection objectives.

Consistent with AFC's September 14, 2026, comment letter, any clarification regarding the application of the Proposed Regulation to out-of-state state banks should also preserve appropriate distinctions between BNPL lenders and nonbank entities performing services on their behalf. Specifically, AFC encourages the Department to clarify that nonbank service providers are not considered BNPL lenders solely by virtue of marketing or servicing BNPL products originated by a bank, and that passive transferees of BNPL loans are similarly excluded where they do not otherwise engage in covered lending activities. Absent these distinctions, efforts to clarify the regulatory treatment of out-of-state state banks could inadvertently shift

authorization and compliance obligations to nonbank partners whose activities do not independently constitute BNPL lending. Maintaining these distinctions would promote regulatory certainty, preserve established bank-fintech arrangements, and ensure that the Proposed Regulation appropriately targets entities engaged in covered lending activities.

In light of these developments, AFC respectfully encourages the Department to consider whether the FDIC's State Bank Parity proposal presents any additional considerations relevant to the implementation of New York's BNPL regulatory framework, including whether an additional proposed rule and notice and comment period are warranted. In particular, AFC believes it may be helpful to seek comment and further evaluate the potential competitive implications for national and state-chartered institutions, clarify the framework's application to out-of-state state banks and the treatment of nonbank service providers and passive loan transferees, and consider opportunities to minimize overlapping supervisory requirements and unintended compliance obligations for entities already operating within established regulatory frameworks. AFC would welcome the opportunity to engage with the Department on these considerations and explore whether additional clarification or guidance may be beneficial as the rulemaking process moves forward.

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AFC appreciates the Department's continued engagement on this important rulemaking and its commitment to establishing appropriate consumer protections for BNPL products. AFC hopes these supplemental comments provide a helpful perspective on recent federal regulatory developments and their potential relevance to the Department's ongoing efforts. It is our desire to ensure that parity within the dual banking system is preserved in full and that harmony between state and federal laws within financial services is pursued within NYDFS' BNPL regulations. We look forward to continued engagement with the Department and remain available to discuss these considerations further as it works toward finalizing an effective and balanced regulatory framework.

Sincerely,

Ian P. Moloney
Chief Policy Officer
American Fintech Council