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State Attorneys General Launch New BNPL Inquiry

On December 1, Attorneys General from Connecticut, North Carolina, California, Colorado, Illinois, Minnesota, and Wisconsin sent letters to certain buy now pay later (BNPL) providers requesting information related to their loan products. The Attorneys General are seeking to understand issues related to BNPL and whether BNPL providers may be violating applicable consumer protection laws.

The letters ask for responses to a series of questions focused on consumer disputes for purchases and billings, customer service channels (including wait times and response times), ability-to-repay determinations, accepted repayment methods, credit reporting, delinquencies, merchant relationships, and how policies and procedures in the U.S. market compare to those in non-U.S. markets. The questions prompt BNPL providers to not only provide descriptions and procedures, but also internal analyses performed by the BNPL providers. The Attorneys General are interested in data for loan products offered from January 2023 to present.

The inquiry by the Attorneys General is not limited to pay-in-4 BNPL loans. The letters are directed at BNPL providers, but ask about each of the provider's loan products, which could include a broader range of installment financing products. While the Attorneys General are currently in an information gathering stage, these letters signal that BNPL and similar installment financing products may be a focus of state attorneys general in the coming years.

Another interesting aspect of the BNPL market inquiry is that the Attorneys General asked about efforts by the BNPL providers to comply with Subpart B (open-end credit provisions) of the federal Truth in Lending Act (TILA). This inquiry suggests that the attorneys general may be aligned with the position advanced by the Consumer Financial Protection Bureau (CFPB) under

Director Rohit Chopra in a May 2024 interpretive rule that certain pay-in-4 BNPL loans involve “credit cards” under TILA and are subject to open-end credit provisions, including the billing error dispute requirements.

This BNPL inquiry shows the potential trailing influence of non-rulemaking guidance issued by the CFPB under Director Chopra. Earlier this year, the CFPB announced that it would not prioritize enforcement actions alleging TILA violations based on the 2024 BNPL interpretive rule. A few days later, the CFPB formally withdrew the 2024 BNPL interpretive rule. Notwithstanding, the state Attorneys General asked about the BNPL providers' efforts to comply with Regulation Z open-end credit provisions based on the position set forth in the withdrawn interpretive rule. These letters show the risk that some withdrawn, non-rulemaking CFPB guidance could still influence to other regulators, including state attorneys general and bank regulators.

Contact us

We have advised clients on a variety of point-of-sale installment financing products and understand the interplay between federal and state credit regulations for these products. If you have any questions regarding your potential or existing point-of-sale credit offerings, please contact Susan Seaman, Catherine Albrecht-Wiese, or your Husch Blackwell attorney.