HUDSON COOK

New York Advances Buy-Now-Pay Later Regulation With Some Significant Changes

July 31, 2026 | Thomas P. Quinn, Jr.

As we reported in February, despite having a buy-now-pay-later (BNPL) statute on the books since May of 2025, the effective date of the law is tied to the adoption of an implementing regulation. Recently, that regulation took one step closer toward being finalized.

In mid-July, the New York Department of Financial Services (DFS) published the proposed version of its BNPL regulation (the "Proposed BNPL Regulation"). The Proposed BNPL Regulation follows on the heels of the "pre-proposed" version of this regulation issued by the DFS this winter. Comments on the Proposed BNPL Regulation are due no later than September 14, 2026.

So, what, if anything, material has changed between the pre-proposed and this more recent proposed version? While there are numerous fine-tuning updates to the regulation, in this article we'll focus on four operational issues for the industry's consideration: the scope of the rule, credit math, consumer payments and BNPL lender periodic statement disclosures.

As mentioned in our earlier article, a key question regarding the regulation is its scope, and its implications for point-of-sale finance. Although CFPB has traditionally viewed BNPL as a "zero interest, pay-in-four" product, both versions of the New York regulation take a broader view. Like its predecessor, the Proposed BNPL Regulation continues to define the product as a form of direct closed-end consumer credit for the purpose of purchasing goods (other than motor vehicles) and services. The definition remains agnostic as to the number of required payments, and it continues to include both non-interest and interest-bearing transactions. While the Proposed BNPL Regulation now carves out mortgage loans, as drafted the Proposed BNPL Regulation continues to cover a wide range of purchase money installment credit.

Regarding "interest-bearing BNPL loans," the Proposed BNPL Regulation also amends the calculus of what amounts should be included as components of interest in connection with an Interest-bearing BNPL loan. Unsurprisingly, an "interest-bearing BNPL loan" is defined to mean a BNPL loan that is subject to interest charges in accordance with the interest, fees and permissible charges provision of the rule.

Both the initial and Proposed BNPL Regulation would limit interest bearing BNPL loans to no more than the civil usury limit permissible under New York law. However, the regulatory recipe for determining what fees and charges should be considered "interest" for this purpose has changed. The "pre-proposed" version of the regulation generally defined interest to be "all amounts paid or payable, directly or indirectly, by any person, to or for the account of the lender which would be includible as interest under New York law as it existed prior to the enactment of chapter 349 of the Laws of 1968." This language, which is found in the New York DFS interest rate regulation, is not exceedingly clear. However, the pre-proposed regulation clarified what should be considered "interest" with several examples, including (a) any amount required to make or originate a BNPL loan, (b) any amount charges for making or originating an installment of a BNPL loan, (c) finance charges as defined under Reg Z and (d) and any charge included as interest pursuant to the state's interest rate regulation (3 N.Y.C.R.R. Part 4) regardless of how it may be characterized.

The Proposed BPNL Regulation largely retains this recipe but pares some of the examples of charges considered interest. In short, it drops the final two examples - Reg Z finance charges and charges considered to be interest under the interest rate regulation - and tweaks the second example by simply stating that charges for making an installment of a BNPL loan should be considered interest.

In addition to this clarification of the product's "credit math," the Proposed BPNL Regulation also makes major revisions to the regulation's payment allocation and prepayment rules. For starters, the Proposed BNPL Regulation would require a BNPL lender to provide consumers with a "reasonably accessible interface" to make payments on their BNPL loans. This interface would be required to permit consumers to allocate their payments across multiple BNPL loans should the consumer have more than one. It would also require the BNPL lender to provide clear and conspicuous disclosure of a wide variety of information regarding each BNPL loan the consumer may have, including the aggregate amount outstanding, the aggregate amount then due (including overdue amounts), the date and aggregate amount of the next payment due, the number of remaining payments, the APR (along with any "base rate" - presumably the index - for any variable rate transactions), whether the loan is secured, along with a catch all: "any other material terms that a consumer would reasonably need to know to make an informed decision about how to allocate the relevant payment." What operational challenges this type of self-directed payment interface might present is unclear.

Coupled with this new payment interface and payment allocation rule, the Proposed BNPL Regulation would also impose a specific payment application order in connection to payments allocated to a BNPL loan. It retains the application order found in the pre-proposed version of the regulation regarding underpayments: they must be applied first to the outstanding principal amount, then to interest and fees (in that order).

From there, the Proposed BNPL Regulation establishes payment application orders dependent on whether the consumer has allocated the payment amount. For payments allocated to a BNPL loan, the Proposed BNPL Regulation would require payments to be applied first to principal amounts due, followed by interest amounts due, then to due and payable fees and finally to any "other principal" (presumably meaning principal amounts not yet due), with any other amounts owed coming at the end of the payment application order.

For unallocated payments other than payments in dispute, the Proposed BNPL Regulation establishes a rank-ordered payment application hierarchy. First in line are principal amounts due and payable, then non-principal amounts due and payable, and rounding out with principal and non-principal amounts not due and payable in that order. Within each of those payment "buckets" there is a further stratification, with payments being applied in high to low fashion based on the interest rate, and for loans with the same interest rate in low to high order based on the installment payment due date.

Finally, the Proposed BNPL Regulation also would amend the periodic statement requirements applicable to BNPL lenders in several ways. First, the revised rule would change the timing requirement for the delivery of a periodic statement. Under the Proposed BNPL Regulation periodic statements would be required to be mailed or delivered promptly after the end of the previous billing cycle. Previously, BNPL lenders were required to send a statement at least one or two weeks before a payment must be received in order to avoid being treated as late, depending on whether the billing cycle was longer or shorter than 30 days.

The timing of the statement also drives changes to the payment due date requirements under the Proposed BNPL Regulation. As revised, the rule would prohibit a BNPL lender from deeming a payment late until seven days after the mailing or delivery to the consumer of notice of the required payment date of the applicable payment. The revised rule would also prohibit this notice from being mailed or delivered to the consumer more than a month prior to the applicable payment date.

Again, the Proposed BNPL Regulation has numerous technical changes other than those detailed here. However, if a BNPL lender were to focus on the operational aspects of their program, the four issues detailed above would likely be a good starting point. Providers should review the Proposed BNPL Regulation and, after review, if merited, submit a comment letter regarding the regulation - the summer is already flying by, the mid-September deadline for those comments will be here before you know it.

HUDSON
COOK

Hudson Cook, LLP is a national law firm representing the financial services industry in compliance, privacy, litigation, regulatory and enforcement matters.

7037 Ridge Road, Suite 300, Hanover, Maryland 21076
410.684.3200

hudsoncook.com