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March 25, 2022

Via Electronic Submission

Comment Intake – Statement into BNPL Providers
 Bureau of Consumer Financial Protection
 1700 G Street NW
 Washington, DC 20552

RE: Buy-Now-Pay-Later (BNPL) Providers
Docket No. CFPB-2022-0002

The South Carolina Department of Consumer Affairs (“SCDCA”/“Department”) is pleased to offer comments in response to the Consumer Financial Protection Bureau’s (“CFPB”/“Bureau”) request for comment regarding the CFPB’s inquiry into buy-now-pay-later (“BNPL”) providers. SCDCA is the state’s consumer protection agency. Established in 1974, SCDCA helps formulate and modify consumer laws, policies, and regulations; resolves complaints arising out of the production, promotion, or sale of consumer goods or services in South Carolina, whether or not credit is involved; and promotes a healthy competitive business climate with mutual confidence between buyers and sellers. The Department administers and enforces over 120 laws including Title 37 of the South Carolina Code of Laws (“the Code”), the law governing consumer credit transactions.

The purposes of the Code are similar to those of federal consumer protections statutes and include: (1) to further consumer understanding of the terms of credit transactions; (2) to foster competition among suppliers of consumer credit so consumers may obtain credit at a reasonable cost; and (3) to permit and encourage the development of fair and economically sound credit practices¹.

¹ S.C. Code Ann. § 37-1-102(b)–(c), (e) (2015).

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BNPL Transactions as Consumer Loans

The Department's position is that BNPL transactions constitute consumer loans for the purposes of South Carolina law. Over the past couple years, our office has seen a variety of "new" consumer credit products enter the marketplace. While business models vary, even amongst those within a particular industry, the bottom line often is that the underlying transaction falls within the definition of a consumer loan². As set forth in the Code, a "consumer loan" is defined as:

a loan made by a person regularly engaged in the business of making loans in which:

- (a) the debtor is a person other than an organization;
- (b) the debt is incurred primarily for a personal, family, or household purpose;
- (c) either the debt is payable in installments or a loan finance charge is made; and
- (d) either the principal does not exceed twenty-five thousand dollars [one hundred five thousand as adjusted] or the debt is secured by an interest in land.

See § 37-3-104; § 37-1-109.

The Code defines a loan as including, among other activities, "[t]he creation of debt by the lender's payment of or agreement to pay money to the debtor or to a third party for the account of the debtor" and "[t]he forbearance of debt arising from a loan."³

The Department views certain fees imposed by a BNPL vendor as interest. However, even if a BNPL transaction has no interest the debt being payable in installments triggers the loan provisions. To this end, the Code delineates the fees and charges a creditor may impose in a consumer credit transaction and provides requirements and restrictions for persons engaging in those transactions with South Carolina consumers.⁴ One such applicable provision is the requirement to file a consumer credit grantor notification with the Department pursuant to Sections 37-6-201 through -203.⁵ The filing assists the Department with tracking the offering and use of

² See *Administrative Interpretation 3.104,106-1403* (November 14, 2014), accessible at <https://consumer.sc.gov/sites/default/files/Documents/Business%20Resources%20Laws/Administrative%20Interpretations/Chapter%203/3.104%2C106-1403%20Litigation%20FundingTransactions.pdf>;

Administrative Interpretation 3.104,106, 403-1701 (April 6, 2017), accessible at <https://consumer.sc.gov/sites/default/files/Documents/Business%20Resources%20Laws/Administrative%20Interpretations/Chapter%203/3.104%2C106%2C403-1701%20Future%20Income%20Investment%20Agreement.pdf>.

³ S.C. Code Ann. § 37-3-106(1) & (4) (2015).

⁴ S.C. Code Ann. § 37-1-301(19).

⁵ Persons who make consumer credit sales, leases, loans, rent-to-own transactions—or take assignments of rights against debtors arising from such transactions—are required to file a notification form and pay a notification fee to the Department for each location at which such transactions are made.



consumer credit, including existing and emerging trends, in South Carolina. The filing also serves as notification to businesses of who operates in a certain space.

The Department has confirmed the companies listed in the Bureau's January 12, 2022, blog post, "Our public inquiry on buy now, pay later," each registered a consumer credit grantor notification with the Department. Therefore, it seems these companies operating in South Carolina recognize that they are engaged in consumer lending. It is the Department's position, the CFPB should take a similar position. Failing to include BNPL transactions in the regulated bucket of consumer credit could create an unlevel playing field with businesses offering similar products being held to differing standards. Further, disagreement between state and federal agencies could lend itself to confusion within an industry.

Conclusion

The rapid growth of BNPL transactions in recent years highlights both the consumer desire to have easily attainable deferred payment options and the industry's evolving approaches in the credit marketplace. SCDCA recognizes the needed balance between industry burden and consumer protection and appreciates the opportunity to comment on the Inquiry into Buy-Now-Pay-Later Providers. We commend the CFPB for its work to stay abreast of changes in the consumer credit marketplace, encouraging practices that protect consumers and allowing creditors who operate lawfully to continue doing so. We hope the information provided assists with this effort. Should you have any questions pertaining to our comments, please feel free to contact me at 803-734-4233.

Best Regards,

A handwritten signature in blue ink that reads "Carri Grube Lybarker".

Carri Grube Lybarker, Esq.