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Legal Update

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United States: Buy Now, Regulate Later No More

New York proposes a full licensing regime for BNPL

NYDFS proposes licensing, pricing, disclosure, and supervision rules that would bring BNPL—including pay in four—into consumer credit regulation.

In brief

New York's Department of Financial Services has proposed rules that would fundamentally reshape the regulatory treatment of Buy Now, Pay Later products in the state. By extending consumer credit licensing and supervisory requirements to BNPL – including interest free, pay in four structures – the proposal moves BNPL into a fully supervised framework. The rules would impose new obligations across the BNPL lifecycle, from product design and underwriting through disclosures, servicing, data use, and ongoing compliance, with meaningful implications for New York market participation.

Key takeaways

- New York would regulate BNPL, including interest-free, pay in four products, as fully supervised consumer credit.
- The proposal drives structural compliance changes across the full BNPL lifecycle, not incremental disclosure updates.
- Licensing, product level permissions, and pricing constraints materially affect BNPL economics and servicing models.
- BNPL providers must reassess product design, data practices, and commercial arrangements for New York exposure.

The New York State Department of Financial Services (DFS) has released proposed regulations – new 3 NYCRR Part 423 – that would bring Buy Now, Pay Later (BNPL) products squarely within New York's consumer credit regulatory purview – covering both interest-free and interest-bearing products ("**Proposed Rule**"). The Proposed Rule is designed to implement New York's BNPL legislation by establishing a BNPL-specific licensing and supervision framework, coupled with pricing and fee limitations, Truth in Lending Act (TILA) -like disclosures and periodic statements, dispute and refund rules, underwriting requirements, and data-consent obligations.

This is not an incremental compliance shift. DFS is effectively collapsing the traditional distinction between BNPL and mainstream consumer credit by regulating interest-free "pay-in-four" products and other structures that have historically relied on federal and state technical exemptions (e.g., no finance charge; four or fewer installments). If adopted, many BNPL market participants – including many that do not view themselves as "lenders" today – will face a strategic decision: build a DFS-compliant operating model (with licensing and supervision-style expectations) or limit/exit the New York market, with corresponding implications for product design, partnership structures, and national program consistency.

How we got here

The Proposed Rule is best understood as the culmination of a multi-year policy arc in Albany. It began as a consumer-protection priority in Governor Kathy Hochul's January 2024 State of the State agenda, gained concrete shape through subsequent executive-budget proposals and the Fiscal Year 2026 budget legislation establishing a BNPL licensing and supervisory framework (and directing DFS to issue implementing regulations to ensure BNPL products are offered on fair and transparent terms), and has now matured into DFS's February 2026 proposed rulemaking package.

DFS and the Governor's Office have been signaling, collecting data, and laying groundwork for a prescriptive BNPL regime for some time – and the timing is notable. The Proposed Rule arrives at a time when state regulators are increasingly positioning themselves to fill a perceived gap in federal consumer protection regulation and supervision. The Consumer Financial Protection Bureau (CFPB) had been studying BNPL for years and, in 2024, attempted to apply certain credit card style protections to some BNPL structures through a Regulation Z interpretive rule. But in 2025, the CFPB withdrew the interpretative rule as part of a broader withdrawal of guidance materials. New York's proposal adopts many of those credit card issuer style consumer protection concepts, but embeds them in a state licensing and supervision regime with examination authority, reporting obligations, and product level permissioning – that is, it is designed to regulate BNPL not merely through disclosure concepts, but through ongoing licensing and supervisory oversight.

Who is covered?

The Proposed Rule adopts an intentionally expansive definition of "**BNPL Lender**". A BNPL Lender includes:

- A person who makes BNPL Loans
- A person to whom ownership of a BNPL Loan is transferred
- A person who "offers" BNPL Loans, including by operating a platform, software, or system through which consumers interact, where a substantial purpose of that interaction is to obtain BNPL Loans from third parties

What products are covered?

A "**BNPL Loan**" is defined as closed-end credit provided to a New York consumer in connection with a particular purchase of goods and/or services (excluding motor vehicles). The definition generally excludes classic merchant credit sales – where the seller itself extends credit to the consumer – subject to a limited structure where a creditor purchases a specific good/service at the consumer's request and resells it to the consumer on closed-end credit. Business-purpose credit is also excluded.

Within the BNPL Loan scope, the Proposed Rule recognizes two core product categories:

- Interest-free BNPL Loans
- Interest-bearing BNPL Loans

This categorical approach is one of the most consequential features of the Proposed Rule. By expressly covering **interest-free, pay-in-four products**, the Proposed Rule brings within New York's consumer credit framework products that have historically relied on technical carveouts under federal and state law – most notably, the absence of a finance charge and repayment in four or fewer installments – to avoid traditional credit regulation.

Many mainstream BNPL offerings are structured around these exemptions. The Proposed Rule would largely eliminate their regulatory significance in New York, signaling DFS's view that BNPL has matured into a form of consumer credit warranting full-scale oversight regardless of pricing structure or installment count.

Summary of key requirements

1. Licensing, authorization, and permissions framework
   The Proposed Rule establishes a BNPL-specific licensing and permissions regime.
   - **BNPL license requirement**. Non-exempt BNPL Lenders must obtain a BNPL license from DFS to operate in New York.
     Although the Proposed Rule does not specify an application checklist, it contemplates submission of detailed information concerning the applicant and its affiliates, including ownership and control persons (directors, officers, 10% or more shareholders), business model and product descriptions, financial condition, and written policies and procedures.
   - **"Category permission" as a separate regulatory item**. In addition to licensure (or exemption from licensure), a BNPL Lender must obtain separate "category permission" to offer specific types of BNPL products. DFS can suspend or revoke category permission independently of the license, creating a product-level enforcement lever.
     A BNPL Lender must affirmatively notify DFS of the category or categories of BNPL Loans it seeks to offer (i.e., interest-free BNPL Loans, interest-bearing BNPL Loans, or both), and may not offer products outside the approved category. Category permission must also be disclosed in the lender's public-facing materials.
2. Pricing, interest, charges, and fees
   The Proposed Rule places meaningful constraints on BNPL economics, particularly for fee-based and interest-bearing models.
   - **Interest limitations**. For interest-bearing BNPL Loans, interest may not exceed the rate permitted under New York law (subject to limited exceptions). "Interest" is defined broadly to include origination charges, finance charges, and other amounts that function as interest, regardless of labeling.
   - **Penalty fees**. DFS would significantly limit penalty-fee practices, including:
     - A USD 8 safe harbor for fees imposed for violations of loan terms (e.g., late payment)
     - A requirement that any higher fee receive prior DFS approval supported by cost justification and subject to annual reevaluation
     - A prohibition on profiting from penalty fees (i.e., the fee cannot exceed the amount associated with the violation)
     - Restrictions on multiple fees for a single event, as well as caps on cumulative penalty fees.

- **Tips**. "Tip" solicitation is permitted only under narrow conditions (clear voluntariness, one solicitation per transaction, default tip set to zero), otherwise tips must be returned/applied as directed.
- **Payment practices**. Limits on fees tied to payment method, mandatory prepayment without penalty, and prescribed allocation rules for overpayments across a consumer's BNPL Loans.

3. Disclosures, confirmations, and periodic statements
   The Proposed Rule imposes a disclosure and servicing framework that closely tracks TILA and credit-card concepts, regardless of whether TILA would otherwise apply:
   - **Pre-transaction disclosures**. Prior to the consummation of any transaction, the BNPL Lender must provide the consumer with basic information about the BNPL Loan, including: (i) creditor's name, (ii) amount financed, (iii) finance charge information, (iv) payment schedule, (v) total sale price, (vi) any fees or charges that may be imposed, (vii) whether the lender will furnish information to the consumer reporting agencies, and (viii) dispute and refund rights.
   - **Post-transaction confirmations** within one business day that include everything in the pre-transaction disclosures, plus information on the consumer's identity and identification of the transaction.
   - **Periodic statements** each billing cycle (no longer than one month), with timing rules designed to prevent "late" treatment if statements are not provided on time.
4. Disputes, unauthorized use, refunds, and credits
   The Proposed Rule establishes a comprehensive servicing regime for consumer protections after origination:
   - **Billing error and dispute resolution process**, with acknowledgment within 30 days; resolution within two billing cycles, not more than 90 days; limits on collections and adverse credit reporting during disputes.
   - Rules for **refunds/credits** tied to merchant credit statements and prompt crediting of consumer accounts.
   - **Unauthorized use limitations** that mirror familiar consumer credit protections (including capped consumer liability in certain circumstances).
5. Underwriting and ability to repay
   Before providing a BNPL Loan, BNPL Lenders must conduct reasonable risk-based underwriting, including, at a minimum, an assessment of the consumer's income and indebtedness, supported by written policies and clear disclosure of underwriting factors.
6. Data privacy and consent
   The Proposed Rule creates a detailed consent regime limiting use, sale, or sharing of "covered data" beyond what is reasonably necessary to provide the BNPL transaction.
7. Ongoing supervision, reporting, and governance
   Licensees would be subject to supervisory expectations familiar from other DFS-regulated financial services – examinations; periodic financial reporting; a designated compliance officer; required documentation around pricing and credit; advertising rules; and change-of-control approval/notice requirements.
8. Timing and transition
   If finalized, the Proposed Rule would take effect 180 days after the Notice of Adoption is published. Existing BNPL providers would have a short window – generally 45 days after the effective date – to apply for licensure/category permission to continue operating while DFS reviews the application, subject to DFS's "good faith" assessment.

Bottom line

The Proposed Rule would move BNPL – particularly interest-free, pay-in-four products – into a full, consumer credit regulatory framework in New York, backed by licensing, examination, and prescriptive operational requirements. For BNPL providers, bank partners, and platforms, the near-term work is not merely interpretive, but fundamentally structural and operational: identifying which entities and activities fall within scope, determining an appropriate licensing and permissions posture, recalibrating product economics under new fee constraints, building compliant dispute resolution and periodic statement capabilities, and implementing underwriting and data consent controls. Successfully navigating this framework will require coordinated attention across regulatory compliance, product design, servicing operations, data governance, and commercial relationships. Stakeholders may also wish to consider engaging in the DFS rulemaking process by developing comment strategies and submitting formal feedback on the Proposed Rule.

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