

VII. Phantom Debt: Growing Concerns with Increased Use of Buy Now Pay Later

A. Introduction

Purchasing on credit has steadily become more accessible to the average consumer over the past century.¹ The concept of receiving a good now and delaying payment is alluring both psychologically and economically.² The form of credit, or loan agreements, has shifted drastically, with a variety of different financial institutions, or a retailer themselves, providing payment options.³ Retailers use these methods to entice more customers who may not be able or willing to purchase their products by paying the full amount up front.⁴

So called “Buy Now, Pay Later” (“BNPL”) arrangements arose as the next iteration of credit purchases during the mid 2010s.⁵ Over the past five years, BNPL arrangements have taken off in popularity.⁶ Typically, BNPL allows a customer purchasing goods online to split the payment into four payments due biweekly over six weeks.⁷ BNPL is deceptively simple on its face, hiding variations in late fees, approval terms, and return policies.⁸

The accessibility of BNPL comes with added risk to less informed consumers.⁹ Additionally, the psychology of BNPL may detrimentally alter a consumer's spending habits.¹⁰ This paper will analyze

¹ CFPB, BUY NOW, PAY LATER: MARKET TRENDS AND CONSUMER IMPACTS, (2022), https://files.consumerfinance.gov/f/documents/cfpb_buy-now-pay-later-market-trends-consumer-impacts_report_2022-09.pdf. (“Consumers have long used credit instruments to purchase goods and services.”).

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ *Id.* (“BNPL rose to prominence in the mid-2010s as an alternative form of short-term credit for online retail purchases.”).

⁶ *Id.*

⁷ *Id.* (“The typical BNPL structure divides a \$50 to \$1,000 purchase into four equal installments, with the first installment paid as a down payment due at checkout, and the next three due in two-week intervals over six weeks.”).

⁸ *Id.*

⁹ *Id.*

¹⁰ Jennifer Christine Siemens, *When Consumption Benefits Precede Costs: Towards an Understanding of ‘Buy Now, Pay Later’ Transactions*, 20 J. OF BEHAVIORAL DECISION MAKING 521, (2007)

the benefits and risks of BNPL, the current law governing BNPL, and potential avenues for further regulations of the practice.

B. The Rise of BNPL

With the proliferation of credit cards in the latter half of the 20th century, it became clear that consumers were excited about the prospect of delaying payments and receiving goods up front.¹¹ Consumers were willing to pay annual fees and high interest rates for the convenience of accessing their future paycheck early.¹² Similarly, merchants were willing to pay transaction fees to keep up with a population that was increasingly reliant on credit card payments.¹³

BNPL shares some characteristics with traditional credit cards.¹⁴ Namely, BNPL is well adapted to smaller purchases where structuring the debt is less significant for either party.¹⁵ Both methods can rely on fees from both the consumer and merchant.¹⁶ Both typically have credit maximums that replenish upon the consumer's repayment and increase for customers with a history with the provider.¹⁷ Yet BNPL generally does not rely on the accrual of interest on outstanding balances as much as credit cards, and BNPL companies rarely rely on credit checks to vet users.¹⁸

BNPL should not be confused with “layaway” programs, where retailers keep an item on reserve for a customer while they make payments.¹⁹ Unlike BNPL, the customer only receives the product upon payment in full.²⁰ While both programs are a form of low or no-interest

¹¹ Holly Johnson, HISTORY OF CREDIT CARDS: A BRIEF OVERVIEW, TIME, (Jan. 8, 2024), <https://time.com/personal-finance/article/history-of-credit-cards/>.

¹² *Id.*

¹³ CFPB *supra* note 1, at 6.

¹⁴ *Id.*

¹⁵ *See* CFPB *supra* note 1, at 3.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ TOM AKANA, BUY NOW, PAY LATER: SURVEY EVIDENCE OF CONSUMER ADOPTION AND ATTITUDES, FED. RES. BANK OF PHILA., (June 2022) <https://www.philadelphiafed.org/-/media/frbp/assets/consumer-finance/discussion-papers/dp22-02.pdf>.

¹⁹ Will Kenton, *What Is a Layaway Plan? History, and Which Companies Offer Them*, INVESTOPEDIA (Jan 30, 2023), <https://www.investopedia.com/terms/l/layaway.asp>.

²⁰ *Id.*

financing for those who cannot afford the entire cost at once, the psychology of receiving the product immediately from a BNPL is drastically different.²¹ Regardless, some retailers like Walmart have been replacing their layaway programs with BNPL programs.²²

The modern rise of BNPL began in the apparel and beauty industries in the late 2010s.²³ Coinciding with the explosion of online retail during the COVID-19 pandemic, more third party financial companies entered the space on a broader variety of products.²⁴ In a study of the leading BNPL providers by the Consumer Financial Protection Bureau found that “[f]rom 2019 to 2021, the number of BNPL loans originated in the U.S. by the five lenders surveyed grew by 970 percent, from 16.8 to 180 million.”²⁵ In 2021, the average order value for BNPL transactions was \$135²⁶

In reaction to losing their credit card market share to BNPL, consumer banks probed purchasing the emerging leaders in the BNPL space, namely Klarna, Afterpay, and Affirm.²⁷ Ultimately, payment processing companies had more to gain by associating with BNPL companies, with Square acquiring Afterpay in 2021 to access their large customer base.²⁸ Later that same year, Stripe partnered with Klarna to integrate BNPL options to its existing payment processing software.²⁹

Users of BNPL skew relatively young, with 25–33-year-olds being the most overrepresented age group, followed by 34–40-year-olds, then finally 18–24-year-olds (or “Gen Z”).³⁰ A survey by The Federal Reserve Bank of Philadelphia (“Fed Study”) found that “BNPL users

²¹ SIEMENS *supra* note 10.

²² *Pay Over Time With Affirm*, WALMART, <https://www.walmart.com/cp/installment-financing/3302057>.

²³ CFPB *supra* note 1, at 3.

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

²⁷ Paulina Duran et. al., *The \$29 billion deal in 11 weeks: how Square bought Afterpay*, REUTERS, (Aug 3, 2021), <https://www.reuters.com/business/finance/29-billion-deal-11-weeks-how-square-bought-afterpay-2021-08-03/>.

²⁸ *Id.*; Ron Shevlin, *Why Square Acquired Afterpay For \$29 Billion: Merchant And CashApp User Acquisition*, FORBES (Aug 2, 2021) <https://www.forbes.com/sites/ronshevlin/2021/08/02/why-square-acquired-afterpay-for-29-billion-merchant-and-cashapp-user-acquisition/?sh=5ca1d81b281d>.

²⁹ *Klarna partners with Stripe to help online businesses grow their revenue*, STRIPE (Oct 26, 2021), <https://stripe.com/newsroom/news/klarna-partnership>.

³⁰ CFPB *supra* note 1, at 70.

are generally lower earning, younger, non-White, and more likely to be employed” relative to other payment tools.³¹

C. Benefits of BNPL

BNPL companies have to sell their services both to merchants and customers to act as a mediator for the transaction.³² For a small fee, Merchants can show a BNPL option from a third-party on the checkout screen for customer to opt into their service.³³ Alternatively, BNPL providers host a variety of merchant’s goods on their native app (the “app-driven acquisition model” as coined by the CFPB).³⁴ Thus, BNPL companies try to offer value adds for both consumers and merchants.

AfterPay boasts a 40% increase in spending by shoppers using AfterPay, citing a study carried out by MasterCard.³⁵ Their internal metrics, from the same year, cite a 17% increase in “basket size.”³⁶ Affirm quotes a 60% increase in order values.³⁷ AfterPay and Affirm also quote an increase in shopper frequency.³⁸ BNPL providers actively try to differentiate themselves from their competition, suggesting switching to their service results in higher sales relative to their competitors.³⁹

Along with the promise of boosting the order values and purchasing frequency of customers already on a retailer’s site, BNPL providers offer lead generation for their merchants.⁴⁰ As mentioned above, BNPL providers host merchants on their own apps, with monthly users

³¹ AKANA, *supra* note 18, at 6.

³² CFPB *supra* note 1, at 3.

³³ See e.g. *Men’s Tree Dasher 2*, ALLBIRDS, <https://www.allbirds.com/products/mens-tree-dashers-blizzard-hazy-cobalt?price-tiers=msrp%2Ctier-1%2Ctier-2> [<https://perma.cc/7M36-8EU4>].

³⁴ CFPB *supra* note 1, at 70.

³⁵ AFTERPAY FOR RETAILERS, <https://www.afterpay.com/en-US/for-retailers> [<https://perma.cc/VGJ5-B976>].

³⁶ ACCENTURE, THE ECONOMIC IMPACT OF BUY NOW, PAY LATER IN THE US, (2021), <https://www.afterpay-corporate.yourcreative.com.au/wp-content/uploads/2021/10/Economic-Impact-of-BNPL-in-the-US-vF.pdf>.

³⁷ Affirm, *Affirm Business Solutions*, <https://www.affirm.com/businesssolutions>.

³⁸ AFTERPAY FOR RETAILERS, *supra* note 25; *Affirm Business Solutions*, *supra* note 27.

³⁹ See Tom Musbach, *Switching from Klarna to Affirm drives sales surge for iSense*, AFFIRM, (Nov 2, 2020), <https://www.affirm.com/business/blog/isense-affirm-case-study>.

⁴⁰ CFPB *supra* note 1, at 49.

across three of the leading BNPL apps peaking over 12 million users.⁴¹ These referral services typically exact a higher fee from the merchant relative to purchases made on the merchant's site.⁴²

Consumers benefit by using the BNPL option since they can receive a good before they have the cash on hand to make the purchase. The Fed Study found that 52% of BNPL users cite convenience as a reason they used it.⁴³ 43% of users cited "ability to better manage finances" as a reason they chose to use BNPL.⁴⁴ The study found that 13.6% of users cited an "inability to get approved for credit" as a reason for use, although the percentage was higher for frequent, lower income users of BNPL.⁴⁵ A more recent study by Bankrate.com found that 33% of BNPL users cited "credit cards are maxed out" as a reason for using BNPL.⁴⁶

The high incidence of convenience as a factor of using BNPL is a commendation of the design of the at-checkout BNPL option.⁴⁷ While customers have to create an account with the BNPL provider, they receive an instant approval decision and the BNPL provider will automatically charge the customer's payment method every two weeks for each installment ("Autopay").⁴⁸

While only a minority of BNPL users cite the lack of access to other credit sources, BNPL may be a significant financial tool for those users. BNPL loans do not require a traditional credit inquiry and are thus available to a broader base of users compares to traditional credit cards.⁴⁹ Even if a consumer with bad credit could obtain a credit card,

⁴¹ *Id.* at 44.

⁴² McKinsey and Company, *Buy now, pay later: Five business models to compete* (July 29, 2021), <https://www.mckinsey.com/industries/financial-services/our-insights/buy-now-pay-later-five-business-models-to-compete>.

⁴³ AKANA, *supra* note 18 at 8.

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ Heidi Rivera & Hannah Smith, *Buy now, pay later statistics*, BANKRATE (Oct 12, 2023), <https://www.bankrate.com/loans/personal-loans/buy-now-pay-later-statistics/>.

⁴⁷ See e.g. *Men's Tree Dasher 2*, *supra* note 33.

⁴⁸ *Id.*

⁴⁹ TOM AKANA, *supra* note 18, at 12.

those cards often have oppressively high interest rates and fees to compensate for the increased risk of non-payment.⁵⁰

BNPL providers typically default to the Autopay regime. For users who keep an adequate balance in that account, delaying the payments allows them to accrue interest on that balance for longer. At the time of writing, the highest yield savings accounts offer annual interest rates of around 5%.⁵¹ Meaning that for a \$400 product, using BNPL over paying up front can earn you around \$1. Given the small size of most BNPL loans, the opportunity cost of capital is unlikely to be a significant factor in using BNPL. Regardless, autopay makes it less likely a customer misses a payment when they have the money earmarked for the purchase.⁵²

D. Risks of BNPL

All forms of credit create a risk for consumers who may be unable to pay their agreed upon obligations.⁵³ The accessibility and convenience of BNPL loans can exacerbate this risk by encouraging its repeated use.⁵⁴

Even for consumers who ultimately do make their payments in full and on time, they may be hurt by an increase in unnecessary expenditures.⁵⁵ Quoting CEO Derrick Fund, Alexandra Pastore writes “a [2021] study by Cardify.ai, the consumer spending data firm, more than 49 percent of people are spending more when using a BNPL service than they would spend on a credit card. [...] [BNPL loans are typically]

⁵⁰ See e.g. JOHN KIERNAN & ALINA COMOREANU, *The Worst Credit Cards of 2024*, WALLETHUB (Feb 23, 2024) <https://wallethub.com/worst-credit-cards> [https://perma.cc/JBU4-2R4F] (Reviewing and critiquing obscure credit cards).

⁵¹ KEVIN PAYNE & EMILY BATDORF, *Best High-Yield Savings Accounts For February 2024*, FORBES (Feb 2024), <https://www.forbes.com/advisor/banking/savings/best-high-yield-savings-accounts/> [https://perma.cc/YHC4-4XRP].

⁵² CFPB *supra* note 1, at 74.

⁵³ See e.g. *Williams v. Walker-Thomas Furniture Co.*, 350 F.2d 445 (D.C. Cir. 1965) (Finding a cross-collateral clause allowing for repossession of all previously purchased goods upon a missed payment unconscionable).

⁵⁴ CFPB *supra* note 1, at 76.

⁵⁵ Alexandria Pastore, *Consumer Survey Reveals Buy Now, Pay Later Is Serving as Introduction to Luxury*, WWD (January 25, 2021, 9:55am) <https://wwd.com/feature/cardifyai-consumer-survey-bnpl-introduction-to-luxury-1234709922/>.

used to by luxury items you otherwise would not purchase.”⁵⁶ Generally, consumers spend more when they can delay payment.⁵⁷ This risk is difficult to quantify, but increased impulsive expenditures on luxuries can stress a household’s financial situation even if they can technically afford it.

The CFPB identified a unique risk for serial BNPL users.⁵⁸ In 2024, 11% of Americans expect to apply for three or more BNPL loans within the next six months.⁵⁹ Consumers are able to circumvent credit limits from one BNPL lender by taking out loans from multiple lenders.⁶⁰ Given that BNPL providers encourage autopay, it may be difficult to track how much will be coming out of a user’s account each week from their BNPL, risking overdraft fees from their payment method.⁶¹

For consumers who can’t afford to make their payments, they may be faced with late fees depending on the provider.⁶² In 2021, roughly 10.5% of users were charged with a late fee.⁶³ These fees are typically capped around \$10 or a percentage of the total purchase price.⁶⁴ Some providers will charge an additional fee if the user does not pay the late fee within seven days.⁶⁵ Other providers eschew late fees entirely.⁶⁶ Similarly, whether a BNPL provider sends their user’s information to a credit reporting agency on late or missed payment varies by provider.⁶⁷ The variability in these terms creates risk in itself. Users familiar with the terms of one BNPL provider could easily assume

⁵⁶ *Id.*

⁵⁷ AHMAD TANEHKAR, *Delaying Payment and Consumer Behavior*, UNIVERSITY OF WATERLOO (2018).

⁵⁸ CFPB *supra* note 1, at 76 (“The first type of overextension risk is loan stacking, which can occur when a borrower takes out two or more concurrent BNPL loans from different lenders”).

⁵⁹ Matt Schulz & Dan Shepard, *BNPL Tracker: 31% of Americans Considering Buy Now, Pay Later Loans This Month*, (Feb 9, 2024) <https://www.lendintree.com/personal/buy-now-pay-later-loan-statistics/>.

⁶⁰ CFPB *supra* note 1, at 65.

⁶¹ CFPB *supra* note 1, at 22.

⁶² TOM AKANA, *supra* note 18, at 27.

⁶³ CFPB *supra* note 1, at 4.

⁶⁴ TOM AKANA, *supra* note 18, at 27.

⁶⁵ Lee Huffman, *Afterpay Review 2023*, INVESTOPEDIA (Oct 19, 2022) <https://www.investopedia.com/afterpay-review-5189707>.

⁶⁶ AFFIRM Terms of Service (“You will never be charged any late fees when you buy with Affirm”) <https://www.affirm.com/terms>.

⁶⁷ TOM AKANA, *supra* note 18, at 27.

that terms are universal, experiencing unexpected late fees and credit score drops if one of their payments doesn't post.

Adding the BNPL provider as a middleperson between the merchant and customer can complicate the return and dispute process.⁶⁸ Enrollment in autopay often means the customer is still charged for a product even after initiating a return.⁶⁹ In 2021, 60.3% of returns or disputes were ultimately refunded, by dollar amount, an increase from previous years.⁷⁰ However, if a dispute arises between the BNPL provider and the user, the provider's terms of service dictate the resolution process, often requiring the continuation of disputed payments.⁷¹

E. Regulatory Oversight

A variety of federal regulators have turned their eyes on to the rise of BNPL loans. In 2021 the Consumer Financial Protection Bureau ("CFPB") issued market monitoring orders to industry leaders in the BNPL space.⁷² In 2022 they released a report on their findings, cited heavily *supra*.⁷³ In tandem with the release of the report, CFPB director outlined the agencies goals to release guidance for BNPL companies to comply with established consumer protection laws established by congress.⁷⁴ The 2022 CFPB report suggests that BNPL providers fall under Regulation Z, but does not clarify whether they are open-end or closed-end creditors.⁷⁵ Regulation Z provides detailed consumer protection rules regarding lending practices, rates, and advertising, with generally more stringent rules for open-end creditors.⁷⁶

⁶⁸ Penelope Wang, *The Hidden Risks of Buy-Now, Pay-Later Plans*, Consumer Reports (February 14, 2021), <https://www.consumerreports.org/money/shopping-retail/hidden-risks-of-buy-now-pay-later-plans-a7495893275/>.

⁶⁹ *Id.*

⁷⁰ CFPB *supra* note 1, at 25.

⁷¹ *Id.*

⁷² Eamonn Moran, *All signs point to increased US regulation of Buy Now, Pay Later*, NORTON ROSE FULBRIGHT, (September 2022) <https://www.nortonrosefulbright.com/en-us/knowledge/publications/a61f6301/all-signs-point-to-increased-us-regulation-of-buy-now-pay-later>.

⁷³ *Federal Funds Effective Rate*, ST LOUIS FED, <https://fred.stlouisfed.org/series/fedfunds>.

⁷⁴ MORAN, *supra* note 72.

⁷⁵ See CFPB *supra* note 1, at 73 ("BNPL lenders do not currently provide the standard cost-of-credit disclosures required by Regulation").

⁷⁶ See Reg. Z, 12 C.F.R. 1026.17.

The Federal Trade Commission (“FTC”) has also written guidance on the marketing practice of BNPL companies.⁷⁷ They advise BNPL providers to make terms clear and accurate for the typical consumer.⁷⁸ Similarly, the Office of the Comptroller of the Currency (“OCC”) issued a bulletin addressed to leaders of the nation’s banks on the increased risk in underwriting or offering BNPL loans.⁷⁹ The OCC cautioned that BNPL loans have little inquiry into the buyer’s creditworthiness and background, creating increased risk of non-payment and fraud.⁸⁰

State regulators have established varying procedures to track BNPL lenders.⁸¹ For example, Massachusetts and California require BNPL providers to obtain a license with the state to operate.⁸² Additionally, BNPL lenders are subject to the California Financing Law, setting monitoring requirements, interest rate caps, and maximum late fees.⁸³ Other states have yet to address the BNPL rise with any specific guidelines or legislation.⁸⁴

F. Synopsis

By the time of the CFPB report in 2022, they identified that BNPL provider’s margins were dropping.⁸⁵ This prompted BNPL provider to shift their focus on bringing customers to merchants.⁸⁶ In a 2021 earnings call Max Levchin, Affirm CEO, stated “we are not just a

⁷⁷ Helen Clark, *Buy now, pay later – and comply with the FTC Act immediately*, FED. TRADE COMM., (September 26, 2022) <https://www.ftc.gov/business-guidance/blog/2022/09/buy-now-pay-later-and-comply-ftc-act-immediately>.

⁷⁸ *Id.*

⁷⁹ OCC Bulletin, *Retail Lending: Risk Management of ‘Buy Now, Pay Later’ Lending*, OCC (2023) <https://www.occ.gov/news-issuances/bulletins/2023/bulletin-2023-37.html#ftn1>.

⁸⁰ *Id.*

⁸¹ Gregory T. Parks et al., *Regulatory Scrutiny of the Buy Now, Pay Later Industry*, MORGAN LEWIS, (March 20, 2023) <https://www.morganlewis.com/pubs/2023/03/retail-lending-regulatory-scrutiny-of-the-buy-now-pay-later-industry> (“Other states are taking a cue from California and examining their own regulations (or lack thereof) of the BNPL market”).

⁸² *Id.*

⁸³ CAL. FIN. CODE § 22300-22320.5 et seq.

⁸⁴ PARKS, *supra* note 81.

⁸⁵ CFPB *supra* note 1, at 37.

⁸⁶ *Id.* at 47.

payment provider. We are fundamentally a marketing device for merchants [...] The 0% transactions are really powerful converters of consumers that are on the fence.”⁸⁷ Using financing tools as a marketing product has been a common practice since the 20th century.

The key difference from BNPL to previous forms of credit is its accessibility. Its presented to all users at a checkout screen and takes little more than creating an account to receive a loan.⁸⁸ The relatively small amount for BNPL loans makes them an enticing option for consumers to try once to see if the option works for them. With smaller loan amounts, the risk for a consumer is minimal, especially where late fees are capped either by company policy or state law.⁸⁹

The reduction in overall risk and low barrier to entry makes BNPL loans a good prospect for consumers to learn about basic loan terms and how to manage their cash flows. Since BNPL terms are universal and not based on a user’s credit score, new entrants to the financing world get the same terms as a more experienced user of financial instruments. This contrasts with the world of credit cards and traditional loans where users deemed uncreditworthy are either barred from participating or receive unfavorable terms.⁹⁰

The educational benefits of BNPL loans are at their best where the key terms are apparent to consumers at the start. Interest rate (or lack thereof), late fees, potential impact on credit score, and the autopay function are all core to the understanding on the BNPL arrangement.

Regulation Z already mandates that these provisions are provided to the consumer clearly and conspicuously.⁹¹ The CFPB must clarify that Regulation Z does apply to BNPL lenders, as they only imply in their 2022 report.⁹² Furthermore, the CFPB should modify the definition of Open-End Credit to clearly include BNPL, given the expectation that a user will enter repeated transactions borrowing against a credit limit with the provider.⁹³ This would mitigate the problem of disputes involving BNPL, since open-end credit issuers are

⁸⁷ FACTSET CALLSTREET, LLC, *Affirm Holdings, Inc. (AFRM) Q3 2021 Earnings Call*, (May 10, 2021) <https://investors.affirm.com/static-files/8ea5ff32-0699-44fb-92fe-5cbd1c3e20ff>.

⁸⁸ See *Men’s Tree Dasher 2*, *supra* note 33.

⁸⁹ See CAL. FIN. CODE § 22320.5.

⁹⁰ See *e.g.* KIERNAN, *supra* note 50.

⁹¹ See Reg. Z, 12 C.F.R. 1026.17.

⁹² CFPB *supra* note 1, at 72 (“most BNPL lenders do not currently provide the standard cost-of-credit disclosures required by Regulation Z or periodic statements”).

⁹³ See Reg. Z, 12 C.F.R. 1026.2(a)(20).

required to “provide consumers with the right to withhold payment while a billing dispute is being resolved.”⁹⁴

These solutions still leave the risk of users taking out a series of BNPL loans with multiple providers. Users may still inadvertently prioritize BNPL payments over higher-consequence payments like an auto-loan due to the autopay function. However, those risks derive from a consumer who already has other fee-bearing loan arrangements and are not specific to BNPL loans. Risk of overuse of BNPL is shared by most other credit arrangements. Credit cards for low credit consumers have APRs of up to 32% with credit limits around \$300.⁹⁵ Leading BNPL lenders however offer credit limits of \$1000-\$1500, with Affirm offering customers \$1500 in purchasing power with a \$5000 reported yearly income.⁹⁶

More abstractly, BNPL arrangements would still encourage consumers to make more expenditures on luxuries.⁹⁷ There is an aggregate positive effect on economic measurements like GDP from increased spending. Consumer goods companies can generate a higher return from greater volumes of sales, and thus their stock may increase. Companies may be able to save money on marketing by outsourcing it to BNPL platforms and referral services. However, more of our limited productive capacity is attributed to luxury goods. These goods may have negative externalities like increased energy consumption from their manufacture, use of slave labor, and use of rare earth metals for technology products.⁹⁸ Many of these arguments are better fleshed out in philosophy and economics works.⁹⁹

⁹⁴ CFPB *supra* note 1, at 73.

⁹⁵ *Id.*

⁹⁶ Affirm Purchasing Power Estimator, <https://www.affirm.com/> (create account or login; then wait for popup; put in seemingly any income; get an estimated purchasing power of \$1500).

⁹⁷ PASTORE, *supra* note 45.

⁹⁸ Jacob Zinkula, *23 major brands suspected of illegally sourcing products made by forced labor in China*, (July 14, 2021) <https://www.aljazeera.com/economy/2021/7/14/are-your-favourite-fashion-brands-using-forced-labour> (“The global fashion and retail industry’s reliance on producing quick-turnaround goods at a low cost through outsourcing and complex, globalised supply chains has allowed forced labour to thrive”).

⁹⁹ See JOSEPH E. STIGLITZ ET. AL., REPORT BY THE COMMISSION ON THE MEASUREMENT OF ECONOMIC PERFORMANCE AND SOCIAL PROGRESS, 8 (2009) (“The commonly used statistics may not be capturing some phenomena [...] For example, traffic jams may increase GDP as a result of the increased use of

G. Conclusion

BNPL is at its best as an introductory tool into debt finance. To best implement BNPL as a tool for learning in a low-risk setting, the CFPB should bring BNPL under the purview of Regulation Z requiring clear disclosure of key terms. Deeming BNPL as an open-end credit line would further protect its users especially during returns and disputes. Last, credit maximums should be reduced for first time and high-risk users. Thus, BNPL would be able to aid consumers who are on the fence in purchasing a product by giving them more optionality for payment, without the risks and barriers of traditional credit.

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gasoline, but obviously not quality of life”); *But See* Martin Feldstein, *Underestimating the Real Growth of GDP, Personal Income, and Productivity*, 31, No. 2 J. ECON. PERSP. 145, 145 (“The official measures provide at best a lower bound on the true real growth rate with no indication of the size of the underestimation”).

¹⁰⁰ Student, Boston University School of Law (J.D. 2025).