Consumer Finance Monitor Podcast (Season 8, Episode 40): New Consumer Financial Services Fintech Business Opportunities Arising from Deregulation at the CFPB during Trump 2.0 – Part 2

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Alan Kaplinsky:

Welcome to the award-winning Consumer Finance Monitor podcast, where we explore important new developments in the world of consumer financial services and what they mean for your business, your customers, and the industry. This is a weekly show brought to you by the Consumer Financial Services Group at the Ballard Spahr law firm.

I'm your host, Alan Kaplinsky, the former practice group leader for 25 years, and now senior counsel of the Consumer Financial Services Group at Ballard Spahr, and I'll be moderating today's program. For those of you who want even more information, don't forget about our blog, consumerfinancemonitor.com. Yes, it goes by the same name as our weekly podcast show.

We've hosted our blog since 2011. So there is a lot of relevant industry content there, including the topics that we're going to be talking about today. We also regularly host webinars on subjects of interest to those in the industry. So to subscribe to our blog or to get on the list for our webinars, please visit us at ballardspahr.com. And if you like our podcast, please let us know about it. You can leave us a review on Apple Podcasts, YouTube, Spotify, or wherever you obtain your podcasts.

Also, please let us know if you have any ideas for other topics that we should consider covering or speakers that we should consider inviting as guests on our show. Today, we're going to be presenting the second half of the webinar that we presented on August 12th, a repurposed version of the webinar. Last Thursday, we released part one of the webinar. And if you haven't already listened to part one, you can go on our website or any of the podcast platforms you use to access part one.

In part one, we covered the GENIUS Act, crypto-backed loans and credit products, credit builder loans, earned wage access, income share agreements, rent-to-own financing, and consumer leasing. Today, in part two, we're going to be leading off with open banking, then we go to home equity investment products; home equity loans; buy now, pay later; large installment loans at point of sale; payday loans; and digital wallets to access credit-like features.

Kristen Larson:

Thanks, Alan. So we're going to talk about the open banking rule. And so, Section 1033 of the Dodd-Frank Act granted consumers greater access to their data, and that section required the CFPB to issue rules that would allow consumers to obtain transaction data and other information concerning the consumer financial product or services that the consumer obtained from the entity.

And what the final rule did is it applied to data providers, third parties, and data aggregators, and data providers were financial institutions under Reg E, card issuers under Reg Z, and any other person that controls or possesses information concerning a consumer financial product or service that the consumer obtained from that entity or person, and digital wallet providers were a specifically listed example.

The final rule had a definition for covered data to mean transaction information, account balance information, information to initiate payments to or from a Reg E account, terms and conditions, upcoming bill information, basic account verification information. It also included some examples for data in the categories, but there was no express exclusion for either de-identified or anonymized data.

And it also would have required data providers to provide a right of access to authenticated consumers and authenticated third parties, including data aggregators acting on behalf of authorized third party to the most recently updated covered data that

that entity or person maintained. Access had to be in electronic format that is transferable to the consumers and third parties, and usable in a separate system, essentially portable electronic data under privacy laws.

And you couldn't charge any fees to the consumer or the third parties for providing this information, which is also a change, because there's other situations where you're verifying accounts, let's say, for a mortgage where the financial institutions will routinely charge for performing that service. And then additionally, the data providers had to establish two different interfaces on their systems, one for consumers and one for developers.

The developer interface was essentially an interface where the data provider receives requests for covered data and makes available covered data to authorized third parties, and it'd have to satisfy several different requires related to format, performance, and security, and adhere to a list of standards as well. And then data providers also had to make certain information publicly available in both human- and machine-readable formats.

Again, going well beyond anything that entities were currently maintaining, and they have to maintain policies and procedures related to the data's availability and accuracy, retention, and also records related to requests from people to get access. And so, the final rule was really going to impose huge limitations on the third party's uses of the data, but again, it's had far-reaching implications for the financial institution, fintech companies, and the consumers, and it would tackle some of the concerns that people have addressed with the secondary uses of data, but it was also something that was problematic.

When it first came out, we had a podcast that talked about it. The rule was issued on October 22nd, 2025, and the industry reacted very quickly. So on the same day that the rule was issued, the Banking Policy Institute and the Kentucky Bankers Association filed a lawsuit to challenge the rule. And what happened is, with the change of administration, we saw some shifting in the litigation.

And in a May 2025 status report that was filed in the lawsuit, the CFPB stated that after really reviewing the rule and considering the issues in the case, they've determined that the rule is unlawful and should be set aside. Essentially, what they were looking at is, the Dodd-Frank Act says that the consumers are entitled to access of the data, but when you look at the rule, it required that the data be shared with third parties, which the CFPB was now saying was beyond the scope of their authority under Section 1033.

And so, in their motion for summary judgment, the CFPB said that it had concluded that the Section 1033 rule really exceeded the CFPB's statutory authority, because of that fact that they were requiring the consumer data to be shared with those third parties, not just the consumers, as was required. But surprisingly, what happened is we thought, "Okay. Well, there might be another rule." And we recently learned that they plan to issue a revised rule on accelerated basis rather than just killing the Biden administration rule, and they said they plan to do that within the next three weeks.

And so, we'll continue to monitor this and look for the new rule. What we expect with the new rule is that it will substantially scale back the obligations of the persons and entities and financial institutions to provide data to third parties that are more focused on giving the consumers the access that they need. So this is something that we're going to continue to monitor and follow, but it is something that I think is good for the industry just based on all of the cost of complying with this rule and sharing the data with third parties, not to mention some of the competition issues that you come across when you are sharing your data about your customers with third parties, who might have competitive products to you. With that, I'm going to turn it over to John Socknat, who's going to talk to you about home equity investment products.

John Socknat:

Thanks, Kristen. So home equity investment products are a category of products that I call mortgage lending-adjacent, and we'll talk about why I call them adjacent. These products are becoming more prevalent in the industry, and therefore, not surprisingly, becoming a bigger focus of the regulators. There's lots of names for these products. We'll talk about some of the variations in a bit, because there certainly are differences.

On this slide, I've listed a few of the names that are generally used to describe these products, whose core feature really is sharing in the appreciation of a home between the homeowner and a third party. This list of names doesn't, of course, include the proprietary names that certain companies use for their products. It's also important to note that just because it's named something, doesn't necessarily mean it's a loan or not a loan. And again, we'll dive into that in a little bit.

So at the core, these products involve a consumer, who may or may not currently own a home, who enters into a contract with a third party, who may or may not be a lender, again, depending on how the product is constructed and construed by the regulators, importantly. The third party advances funds to or on behalf of the consumer or forgoes the payment by the consumer in exchange for a share in the appreciation in the equity of the home.

Consumer doesn't make any monthly payments under the contract. A lien is typically recorded against the real property. And then upon the occurrence of various events, sale of the home, a maturity date, death of the homeowner, a refinance of any of the loans that have lien priority, et cetera, the homeowner and the third party share in the economics that result pursuant to the terms of the contract.

So what are these products? Are they loans or debt? Sometimes they are. Are they securities? Hopefully not for the originators of these products. There's been a lot of focus on those that offer these products to make sure to try to construct these so they're not considered securities. Are they sometimes or something other than loans? Yeah. Sometimes they're not loans. They're not constructed as loans. As I mentioned, sometimes they involve existing homeowners. Sometimes the products are pitched to prospective homeowners.

All right. So how can you construct or treat these products to be something other than loans? And put another way, how can companies that make these products argue that their product isn't a loan? A bit of an oversimplification, but the following are critical issues to be looked at when determining if the product is a loan or debt or something else.

So our funds advance to the consumer. A loan always involves the advance of funds or the foregoing of payment. Non-loan products can include an advance of funds. So that's obviously not going to be dispositive. Does the consumer have an absolute obligation to repay the funds that are advanced, or some portion of the value of the funds advanced? If the answer is yes, then we're definitely in the loan camp. If there's no absolute obligation to repay, then you're likely in the it's-not-a-loan category.

Is the entity that advances the funds guaranteed a return? Lender, of course, is generally guaranteed a return. Either the borrower repays the funds plus interest or forfeits the collateral that was pledged. If funds that are advanced are 100% at risk, which is how some of the non-loan products, often called option products, are designed, then the product isn't considered credit under TILA. And if it isn't credit, then it can't be a loan.

The other question to ask is, who bears the risk of loss? In a loan, the borrower has an obligation to repay regardless of any change in the value of the underlying collateral of their home. In some non-loan products, if the value of the home doesn't increase, the third party gets nothing at all. So the capital advance is 100% at risk.

So as I mentioned, what's clear is you can't tell whether our product is a loan or a non-loan just by its name. You really have to dig into the relevant agreements to figure out how they work. And even then, you're likely to get differing opinions as to what it is, particularly from state regulators, and we'll talk about that in a minute here.

So, again, I've listed here a few variations of this broad range of products. We're not going to get into a deep dive of all these different products, but I want to touch on the different buckets generally here. So in the loan bucket, as I said, we have both new homebuyers and existing homeowners. One option or one variation of the product is a shared appreciation mortgage. These aren't new. They've been around a long time.

One variation or version of this is where a lender gives a borrower a lower rate, a lower down payment, et cetera, on the first lien loan, and then enters into a second, a shared appreciation mortgage, where they share in equity upside. These products may or may not include the borrower making monthly payments on the second, on the shared appreciation mortgage.

Another version of this is a silent second that's made by, for example, a community housing agency, and these products often are offered in connection with a first lien loan that's made by the agency or as part of a broader program. The agency provides funds towards the purchase of the home in exchange for a share in any equity, plus repayment of the amount advanced.

Yet another version is an equity loan where a lender provides funding to an existing homeowner, similar to a home equity loan, but forgoes monthly repayment and gets repaid the amount advanced, plus a share in the increased equity upon the sale or refinance of the home. And again, lots of variations and versions of these both through traditional shared appreciation mortgage and then newer variations.

In the other bucket, we also have new homebuyers and existing homebuyer products. These products are specifically designed to not be loans or treated as loans, although just because they're designed that way, doesn't mean that the states take the same view. So one version is the down payment product. These can be offered both by the lender that's making the first lien loan or by a third party. For example, as a program sponsored by an employer, the product works this way. The third party provides funds for down payment.

The homeowner enters into an equity sharing agreement pursuant to which the homeowner and the third party share in the increased equity, if any, in the home. There's no monthly payments. Again, it's not a loan, and there shouldn't be. Again, if there are multi-payments, it's hard to argue that it's not a loan. And if there's no increase in the value of the loan, there's nothing to share.

So we talked about some of the indicia of a loan or not. If the credit funds advanced truly are at risk, that's more likely to be viewed as something other than a loan. Another version that we've seen is where, as part of a foreclosure rescue program, an entity will purchase a home as a short sale. They then resell the property to the homeowner at the current fair market value, which is typically significantly less than the amount owed on the original mortgage.

An affiliate of the nonprofit extends the loan for the purchase of the home, and then the seller enters into a shared appreciation agreement with the homeowner for some portion of the delta between the original value of the home and then the revised value of the home that's secured by the person loaning. And then another version that we've seen is where an existing homeowner enters into an equity sharing agreement with a third party in exchange for a sum of money.

And like the other non-loan products, there's no monthly payments. If there's appreciation, there's a formula as to how the parties share in the appreciation of the home. And if there's no appreciation, then depending on how it's structured, either there's no sharing of any equity or there's the formula that requires some portion of the funds that were eventually advanced to be returned to the third party.

All right. So what does the CFPB, or what did the CFPB think about these products? As you all likely remember, in the lead-up to January 20, the Bureau fired a number of parting shots at the CF industry in the form of enforcement actions, litigation, informal guidance espousing their view of particular products. This activity included the CFPB taking aim at home equity contracts.

They did sort of three things. The first was the issuance of a consumer advisory that warned consumers about the risks of these types of agreements. They issued an issue spotlight, which similarly addressed potential risks to homeowners, and provided a summary of how home equity investment products typically work and how their features are different than traditional home equity products, and they also filed an amicus brief in Roberts v. Unlock where, essentially, the CFPB argued that the particular product at issue should be treated as a residential mortgage loan subject to Truth in Lending, because the borrower had the right to defer payments and because the product was not an investment plan.

And you all may know that the commentary to Reg Z excludes investment contracts from the definition of credit, because the issuer of the contract does not have meaningful risk of loss. A couple of comments about the consumer advisory and the issue spotlight. Interestingly, neither of those documents took on the issue of whether these products are or should be treated as loans, although the CFPB, under its then-leadership, clearly signaled that in its amicus filing.

Beyond what the CFPB has done, and we'll talk about this briefly in a minute, a number of states, Connecticut, Illinois, Maryland, and Washington, among others, have already amended their statutes and/or issued regulations making clear that these types of products are considered residential mortgage loans, even if they're constructed in a way that is not consistent with how a loan typically works.

Again, regardless of how the CFPB ultimately comes out on the treatment of these products, we should expect to see states continue to treat these products like residential mortgage loans and take the lead of some states like Connecticut, Maryland, and Washington. All right. So then post-January 20. Since then, the CFPB has pretty clearly signaled a retreat from the position of the former administration.

The link to the consumer advisory no longer works. Right? You get the 404 page not found error. Interestingly, the issue spotlight is still there on the website, but it arguably didn't put the same negative spin on these products as the advisory or, of course, the amicus. With regard to the amicus, the CFPB filed a motion to withdraw its amicus. It very clearly in this motion signaled that it doesn't agree with the prior administration.

In the motion to withdraw, the CFPB stated that it wants to engage in further consideration before taking any position that the contracts at issue in that case or home equity contracts, more broadly, are residential mortgage loans or some other form of credit subject to TILA, and they also say they want to engage in further consideration before taking any position as to whether home equity contracts in general qualify for the TILA exception applicable to investment plans.

So, again, yet another example of how the current administration is dialing back on the prior administration's position on a financial product. So how are these products regulated, or how should they be regulated? Well, we talked about lots of different versions of these products. Some are designed as and shouldn't be viewed as loans, but others are.

True home equity investments are not subject to TILA. That's something that originators of these products like to argue, particularly with state regulators, but that clearly has been rejected by a number of state regulators. They do not care that a product may not be considered credit or subject to TILA or Reg Z. They still have taken the position that they should be treated as a mortgage loan.

All right. As I mentioned, we're starting to see states expressly regulate these types of products as residential mortgage loans. Four states, for example, Connecticut, Georgia, Illinois, and Maryland, all have either amended statutes or regulations or issued guidance that takes a position that regardless of how these are constructed, if it involves essentially a lien against real property, it should be treated as a residential mortgage loan.

It raises a bunch of operational issues and questions about, "Well, if it's not a residential mortgage loan for purpose of the SAFE Act, does the person that's taking the application and interacting with the consumer need to be licensed as a mortgage loan originator? If it's not subject to TILA, and you don't have to provide trade disclosure, how do you otherwise comply with state law that requires compliance with federal law?"

Oh, and, sorry, missing from this list here is the state of Washington. They've passed a law, effective July 1 of '26, which is going to impose a licensing obligations on companies that offer home equity agreements. So they're making a distinction in Washington between home equity contracts and agreements versus home equity loans. More to come on that.

The other issue is, beyond amending these laws, we're starting to see states bring enforcement actions, again, signaling how they view these products. An example, in February of this year, the Massachusetts AG sued Hometap, saying that the company product really is as a reverse mortgage. I'm not going to get into the details on that, but this action by the Massachusetts AG is consistent with what we see and, I believe, we're going to continue to see regarding increased focus and scrutiny from state regulators on these products.

And very quickly, I want to touch on home equity loans. Home equity loans obviously aren't new products, but everyone in the industry is well aware of the renewed interest in these products by lenders and borrowers, and that necessarily means that state regulators are going to focus on these more. And perhaps not surprisingly, California has stepped up and enacted very quickly a bill that was effective June 30. So it was effective as soon as Governor Newsom signed it into law.

It does a number of things that makes it unlawful for a servicer to engage in a variety of acts or practices. It also imposes several obligations on a servicer before it can conduct a nonjudicial foreclosure, which can definitely create some real issues for subordinate-lien loans that have been dormant, because it requires a certification that throughout the history of the loan, no servicer has engaged in any unlawful practices.

For example, failing to communicate in writing for at least three years. You could have a subordinate-lien loan that had no repayment obligations or terms for a period of time. You could go three years, five years without any communication. Failing to do that makes it a violation, which would preclude anyone from being able to make that certification, which would be an impediment, and a borrower could raise that as a defense to the foreclosure.

And with regard to that defense to the foreclosure, the bill also requires servicers to provide a notice to borrowers that they believe any servicer has committed any unlawful practice. Again, they're listed here on this slide, that the borrower can petition a California court for relief from the foreclosure sale. With that, I'll kick it back to Kristen to talk about buy now, pay later products.

Kristen Larson:

Thanks, John. So for buy now, pay later, we do have some regulatory issuance that apply. In 2023, the OCC came out with a bulletin cautioning banks about buy now, pay later risks, and they were concerned about the disclosures and the fact that there weren't clear or standardized disclosures that people could do, and that could really obscure the true nature of the loan and result in consumer harm or UDAAP violations.

The automated nature of the lending with the instant credit decisioning and the strong reliance on third parties could also elevate operational risk, including default risk from fraud. And they also addressed the concern that lenders have no information about the applicants' borrow activity on these platforms because of the limited capture of this activity in credit reports, and that this incomplete information can really make it difficult for lenders to know the total dollar amount of the debts and obligations that are outstanding and whether they really should approve them for new credit.

The three major credit bureaus announced that they would begin including that in their reporting. But again, you're not required to furnish the information to the credit reporting agencies. And then the bulletin just reminded banks of their obligations to look at the different risks in terms of credit risk, credit reporting, operational risk, third-party risk management, and compliance risk management.

The one thing that has changed, they haven't redacted this bulletin, but they said, along with everything else they had, is they've removed all references to reputational risk in the bulletin as of the change in administration from March. CFPB has done a lot with buy now, pay later. They had a multiyear study of buy now, pay later, first started in September of '22.

In that report, a lot of it was similar to what we heard from the OCC. They were concerned about lack of standardized disclosures; dispute resolution challenges; compulsory use of auto-payments, which is prohibited by Regulation E; multiple payment presentments; late fees; harvesting of data, where they are worried that these providers were monetizing the consumer data; and overextension because of the loan stacking that was going on, because it wasn't reported.

And then in the next report in March, the insights from the CFPB Making Ends Meet survey, what they said is buy now, pay later borrowers had higher credit utilization rates and lower credit scores, that the differences between the buy now, pay later borrowers and the non-borrowers really predate the buy now, pay later use, and that the buy now, pay later borrowers generally had access to other traditional forms of credit, and they were more likely to borrow using retail credit cards, personal loans, student debt, and auto loans compared to the non-buy now, pay later users, and that they were seeing an increase in the users' use of this product since their prior survey.

And then finally, in January of '25, they issued another report on buy now, pay later and other unsecured debt, and what this study was looking at is they were looking at the data from the six large buy now, pay later firms. And so, that would be Affirm, Afterpay, Klarna, PayPal, Sezzle, and Zip. And they obviously de-identified their data, but they wanted to see what they could learn from looking at that data, and what they learned is 21% of consumers with credit records financed at least one purchase by buy now, pay later from one of the six firms in 2022, and that consumers took out more buy now, pay later loans on average in 2021.

And that from 2020 to 2022, credit approval rates increased for buy now, pay later loans, because at that time, they were using much more counteroffers as a part of the platforms, and that majority of the buy now, pay later users are subprime or deep subprime credit scores. The interesting thing is that the defaults remain lower than credit cards, likely it's because of the automatic repayment requirements, but they are trending much lower, as I'll show on another slide.

And then consumers with at least one buy now, pay later loan in a month were more likely to hold higher balances on other types of credit. So that means they're paying back the buy now, pay later loans before they're paying back their other loans. The CFPB had issued an interpretive rule, and that was effective on July 30th of 2024, and that was the rule where they said that, "We're going to treat these types of accounts as credit cards under Reg Z, and that the buy now, pay later providers are card issuers."

And so, what this interpretive rule would do is it would subject these types of accounts that were historically set up to avoid the requirements of Reg Z. It would subject them to Reg Z and impose all these additional requirements, like account opening disclosures, billing statements, change-in-term notices, payment processing disclosures, how you would issue cards, your liability for unauthorized purchases and the like, and that was a big change in the industry.

And while a lot of the buy now, pay later providers were already giving these protections similar to Reg Z, it was imposing significantly more obligations. And then with the change in administration, we saw that the CFPB was not going to prioritize enforcement, and they were contemplating rescinding the rule. We got this in May. And then later in May, they formally rescinded the rule.

However, as I said previously, the OCC's bulletin is still in effect. And this is what I said I was going to talk about in terms of the 2025 report. This just shows kind of the default rates for buy now, pay later loans compared to credit cards. So it shows that they have a preference to paying these. There's way fewer defaults than you see in the credit cards. And so, this is just something to consider as you're exploring, looking at some of these other products. This might be a good credit opportunity.

Next, what we have is New York, of course. They beat California to it. They issued a Buy-Now-Pay-Later Act, which relates to licensing and consumer protection laws to these buy now, pay later products. And the act isn't effective. It takes effect six months after the New York DFS issues the regulations under the act. And essentially, what it does is it defines buy now, pay later loan as any closed-end product to a consumer with the consumer's purchase of goods and services, and it excludes motor vehicles and certain credit card sales.

The concern with this is it really has broad application. It applies to point-of-sale installment loans regardless of whether there's interest or finance charges, and irrespective of the number of installments required to repay the loan. The act also grants broad authority to the DFS to identify by regulation what other types of point-of-sale installment loans should be governed by the act. And so, that means that the regulation, what we consider already a broad act, could get broader.

The other thing that they did is they created an exemption, but the exemption doesn't apply to state-chartered banks, including New York state-chartered banks. And so, they're kind of putting New York state-chartered banks at a disadvantage to their national competitors. So that's kind of interesting. We'll see where this goes, but it will be significant for people.

Essentially, what it's going to do is it's going to require licensing and supervision. And essentially, if you don't get your license, they're saying your loan is void. It will limit interest rates to the 16%. It'll require disclosures of certain terms, like costs, interest fees, repayment schedule, credit bureau reporting, and other different types of disclosures. You'll have to make an ability-to-repay determination and provide Reg Z, like dispute rights, and then there's also a provision in here that prohibits the assessment of any unfair, abusive, or excessive penalty or fee.

I included in here how they've determined that from the statute or from the act. So, I mean, it's just going to be a big lift for people, and it's broader than just what you've historically thought of as these types of loans are buy now, pay later loans. The other concern is that other states may follow New York's lead. And especially with the demise of the CFPB, we can expect other states to look at enacting similar legislation.

This will benefit, obviously, New York consumers, because they're going to see clearer terms, have stronger consumer protections for these products, or if a global approach is adopted by these providers, it may also apply to other residents living in other states as well. And with that, I do want to have John Socknat jump in and talk a little bit about... So this is an express state that says, "There's these buy now, pay later licenses, but that doesn't mean other state laws aren't on the table." John?

John Socknat:

Sure, and I'll do this quick. So Kristen's absolutely right. There are a number of states that have always required a license for BNPL, and that's because their definition of a loan isn't tied to TILA. So it doesn't matter whether there's a finance charge or not. It doesn't matter whether they're the number of installments. If you extend credit to someone and they're obligated to repay, that's a loan, and you need a license.

The other thing is, the first state to really focus on this was New Mexico back in '23, and they amended their law to expressly allow BNPL. And the reason they had to do that is, under New Mexico law, any loan that was 10,000 or less had to be repayable in a minimum of four installments for a period no less than 120 days. In a typical, paying for BNPL obviously happens more quickly than that.

They amended their law to allow BNPL, but no interest rate, no finance charge, and no fees at any time. So it really technically allows BNPL, but as a practical matter, why would you do it if you can't impose even late fees or other things?

Kristen Larson:

And with that, I'm going to turn it over to John Culhane to talk about larger installment loans at point of sale.

John Culhane Jr.:

Thanks, Kristen. I think at this point, we can probably have just a brief discussion here. Larger installment loans at point of sale sort of hovered on the periphery of buy now, pay later inquiries on the part of the CFPB. Kristen did a nice job of walking through the various reports the CFPB did on buy now, pay later products. And at the start, buy now, pay later products really didn't include point-of-sale installment loans.

They were sort of expressly ruled out in the initial report, and then they started to creep back in a little bit as the CFPB moved along. First, they surfaced in the annual report on consumer complaints, where they were sort of lumped in with buy now, pay later on solar loans, possibly to just come up with a bigger number.

Concerns expressed had to do with some of the issues Kristen had discussed, inability to really resolve complaints about items that were purchased or to cancel obligations. Interestingly, in the complaint reports, I guess this is sort of typical of the complaint reports, there's no mention of potential application of the FTC Holder in Due Course Rule or other consumer protections that might apply, just strictly reporting on the outcomes in the situations where consumers complain.

And then when you had the BNPL interpretive rule, they sort of crept in by way of footnotes where the CFPB is sort of saying, with the back of its hand, "Yeah. We're raising these issues with buy now, pay later products, but the same issues could exist or would exist with products where interest or finance charges are assessed or the obligations are repayable in more than four installments," meaning that even these products could be deemed to have digital user accounts and could be deemed to require credit card disclosures and compliance with credit card protections.

Fortunately, the rescission of the BNPL interpretive rule, at least now, will have a similar liberating impact for point-of-sale installment loans. And so, we see what happens at the state level. Kristen talked about the fact that the New York BNPL law has a very broad scope. The only thing I'll add to this is there don't seem to be any special statutory provisions adding additional unique requirements for buy now, pay later or point-of-sale installment loans, but whether there'll be separate regulatory provisions remains to be seen.

The Department of Financial Services did send out a letter to the public on July 31st, asking about buy now, pay later products and how they should be regulated, and there were a number of questions on an Excel spreadsheet that they sent around, but none of those questions specifically mentioned buy now, pay later or point-of-sale installment loans.

This is an area we need to watch closely. There are a lot of products in the marketplace, particularly with home improvement type products, where the product is either a multiple-advance, closed-end loan or it's a open-end line of credit, and these issues could surface. John, you want to jump in here with a few comments about what's going on in the mortgage world?

John Socknat:

Yeah. Sure. I'll do this very quickly. HUD recently issued a request for information seeking input on the impact of BNPL products on housing affordability. And not surprisingly, the RFI referenced the CFPB's January 2025 report on BNPL, and the focus of the RFI is trying to determine what impact buy now, pay later products have, and not just buy now, pay later, but they referred to similar emerging financial products, have on a borrower's ability to repay.

Kristen mentioned earlier that in some instances, default rates for BNPL are lower than others, and the question is, how does that impact the borrower's ability to repay? Are they going to focus more on repaying their BNPL loan versus their mortgage? Comments are due by August 25. Of course, it's unclear what, if anything, HUD is going to do with this information, given the broader drawback or pullback on regulating BNPL loans. But not surprisingly, BNPL is seeming to touching on lots of different industries.

John Culhane Jr.:

Thanks, John. Just a few comments then about payday loans. The payday loan rule is in effect. We've had some fairly extensive blog posts and webinars about exactly what it requires. It does place limitations on withdrawing funds through debiting accounts. It does require three different types of disclosures. The CFPB said on March 28th, right before the rule is going to take effect, that it would not prioritize enforcement or supervision, and that it's contemplating issuing a notice of proposed rulemaking to narrow the scope of the rule, but nothing has happened as of yesterday, I guess, or as of today even.

So this is an area to watch for further developments and also an area to be careful about, because the rule is technically on the books, meaning that there's the possibility for state attorney general enforcement and even private litigation. We're getting to the end. So let me turn it over to Dan to talk about digital wallets. Dan?

Dan Wilkinson:

Thanks, John. Just a quick overview of digital wallets. These are a way for consumers to engage in transactions through a digital device, usually just your phone. You should be able to use the digital wallet to access credit with either a credit card or a line of credit at the point of sale, also including BNPL, and it allows the user to access their debit card as well.

In 2023, the CFPB, under the Biden administration. And so, they wanted to propose federal oversight of the digital wallet providers to crack down on the regulatory arbitrage by ensuring large technology firms and other nonbank payment companies are subject to oversight. So this final rule was published in December of 2024.

And then in April, this past April, Congress overturned this rule with the Congressional Review Act. So moving forward, it seems like the Trump administration will likely allow for some space for digital wallets providers to continue innovating, making new products, and making it easier to access financial products via digital wallets. And with that, I will turn it back to Alan.

Alan Kaplinsky:

Okay. Well, first of all, I want to thank all of our presenters, Dan Wilkinson, who you just heard from, Kristen Larson, John Socknat, John Culhane, and Ron Vaske. And even more importantly, I want to thank all of our listeners for taking the time to log in today and to hear what we have to say about these new opportunities that are out there.

We've been hearing from a lot of clients, and both old and new, who are very anxious to take advantage of the regulatory environment, at least at the federal level. So if we can be of any help to you, please let us know. And with that, I hope everybody enjoys the rest of their day.