

NEW 3 NYCRR 423

Buy-Now-Pay-Later (BNPL) Lenders

I, Kaitlin Asrow, Acting Superintendent of Financial Services, pursuant to the authority granted by Banking Law sections 10, 14, 14-a, 37, and 736 through 747; Financial Services Law sections 202, 301, and 302, do hereby promulgate the addition of new Part 423 to, Title 3 of the Official Compilation of Codes, Rules and Regulations of the State of New York, to take effect 180 days after publication of the Notice of Adoption in the State Register, to read as follows:

(All of the following material is new)

A new Part 423 is added as follows:

Section 423.1 Definitions

For purposes of article 14-B of the Banking Law and this Part, the following definitions shall apply.

(a) “Affiliate” means any person that directly or indirectly controls, is controlled by, or is under common control with, another person.

(b) “Authorized BNPL lender” means a BNPL lender authorized by the superintendent pursuant to section 423.3 of this Part.

(c) “Banking Law entity” means any banking organization as defined in section 2 of the Banking Law, any foreign banking corporation licensed by the superintendent to transact business in this State under section 26 of the Banking Law or originating BNPL loans from a branch in this State subject to article V-C of the Banking Law, or any licensed lender licensed by the superintendent under article IX of the Banking Law, but does not include any exempt organization.

(d) “BNPL lender” means a person who offers BNPL loans in this State, including (1) a person who makes BNPL loans, and (2) a person to whom ownership of a BNPL loan is transferred. For purposes of the preceding sentence, “offer” means offering to make a BNPL loan by extending credit directly to a consumer or operating a platform, software or system with which a consumer interacts directly or indirectly and a substantial purpose of the consumer’s interaction with such platform, software or system is to obtain buy-now-pay-later loans from third parties, or both. A person shall not be considered a BNPL lender on the basis of isolated, incidental or occasional transactions which otherwise meet the definitions of this section.

(e) “BNPL license” means a license issued pursuant to Banking Law article 14-B and in accordance with this Part.

(f) “BNPL loan” means closed-end credit provided to a consumer in connection with such consumer’s particular purchase of goods and/or services, other than a motor vehicle as defined under section 125 of the Vehicle and Traffic Law.

A “BNPL loan” does not include:

(1) credit extended where the creditor is the seller of such goods and/or services, unless it is credit pursuant to an agreement whereby, at a consumer’s request, the creditor purchases a specific good and/or service from a seller and resells such specific good and/or service to such consumer on closed-end credit; or

(2)) credit extended other than for personal, family, or household use.

(g) “Category” means a category of BNPL loan as defined by paragraph (a) or (b) of subdivision 3 of section 736 of the Banking Law, or established by the superintendent pursuant to paragraph (c) of subdivision 3 of section 736 of the Banking Law and includes the categories comprising interest-free BNPL loans and interest-bearing BNPL loans.

(h) “Category permission” means permission granted by the superintendent in accordance with subdivision 2 of Banking Law section 737 and section 423.3 of this Part.

(i) “Consumer” means a natural person who is a resident of the State of New York.

(j) “Control” means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a person whether through the ownership of stock of such person, the stock of any person that possesses such power, or otherwise. “Control” shall be presumed to exist if a person, directly or indirectly, owns, controls, or holds with power to vote 10 percent or more of the voting stock of another person or of any person that owns, controls, or holds with power to vote 10 percent or more of the voting stock of such other person. No person shall be deemed to control another person solely by reason of their being an officer or director of such other person.

(k) “Department” means the Department of Financial Services.

(l) “Exempt organization” shall have the meaning given to that term in subdivision 5 of section 736 of the Banking Law.

(m) “Interest-free BNPL loan” means a BNPL loan that is not subject to interest charges. Interest-free BNPL loans shall belong to the category of buy-now-pay-later zero-interest loans as defined by paragraph (a) of subdivision 3 of section 736 of the Banking Law.

(n) “Interest-bearing BNPL loan” means a BNPL loan that is subject to interest charges in accordance with section 423.9(a) of this Part. Any interest-bearing BNPL loan shall belong to the category of buy-now-pay-later installment loans as defined by paragraph (b) of subdivision 3 of section 736 of the Banking Law.

(o) “Licensee” means a person who has been issued a license under this Part.

(p) “Payment delay transaction” means a transaction in which a BNPL lender agrees with a consumer to delay or forbear the payment date for one or more installments of an outstanding BNPL loan in exchange for a fee.

(q) “Person” means an individual, partnership, corporation, association, joint stock association, trust, limited liability company, or other entity, however organized.

(r) “Principal officer” means an executive officer or manager of an entity, including, but not limited to, the chief executive, financial, operating, and compliance officers, president, general counsel, managing partner, general partner, controlling partner, and trustee, as applicable.

(s) “Principal stockholder” means any person that directly or indirectly owns, controls, or holds with power to vote 10 percent or more of any class of outstanding capital stock or other equity interest of an entity or possesses the power to direct or cause the direction of the management or policies of the entity.

(t) “Retail seller” means a person who sells goods or furnishes or renders or agrees to furnish or render services to a consumer.

Section 423.2 License and application

(a) License required. Other than an exempt organization or an authorized BNPL lender, no person shall, without a license obtained from the superintendent in accordance with this Part, act as a BNPL lender.

(b) Application procedure. Application for a BNPL license shall be made in such form as may be prescribed by the superintendent and which form may be obtained either by written request addressed to the department, Attn: Buy-Now-Pay-Later Unit, at the address set forth in section 1.1 of Supervisory Policy G 1 of this Title or by accessing the department’s website, the address of which is also provided in such section.

(1) A completed BNPL license application must be accompanied by payment of the fee specified in section 18-a of the Banking Law.

(2) The application for a BNPL license shall be in writing, subscribed by the applicant under penalty of perjury.

(c) The application for a BNPL license, or any other submission required by Banking Law article 14-B or this Part, shall be made or executed by electronic means, in accordance with instructions provided by the superintendent.

(d) A BNPL license shall:

(1) state the name and address of the licensee;

(2) if the licensee is a corporation, limited liability company, limited partnership, or other similar form of business organization, state the date and jurisdiction of its incorporation or formation;

(3) if the licensee is a general partnership or other similar form of unincorporated association, state the names of its partners or members;

(4) state that it permits the licensee to make only BNPL loans of the category the superintendent has permitted the licensee to make, pursuant to section 423.3 of this Part; and

(5) not be transferable or assignable.

(e) License posting. A licensee shall post its license clearly and conspicuously on all of its mobile applications, websites and other consumer interfaces and list the license information set forth in subdivision (d)(1) through (4) of this section, in the terms and conditions of all BNPL loans it enters into.

Section 423.3 Authorization; category permission for non-exempt organizations.

(a) No person, other than an exempt organization, shall offer a BNPL loan without a category permission applicable to that category of BNPL loan pursuant to this section.

(b) Any category permission shall be set forth:

(1) in the BNPL license, if the person is a licensee; or

(2) in a written authorization (for purposes of this section, an “authorization”) of the superintendent, if the person is a Banking Law entity.

(c) A BNPL license or authorization shall specify if the BNPL lender has received permission to offer interest-free BNPL loans, interest-bearing BNPL loans or both.

(d) Application procedure. Application for any category permission shall be made in such form as may be prescribed by the superintendent and which form may be obtained either by written request addressed to the department, Attn: Buy-Now-Pay-Later Unit, at the address set forth in section 1.1 of Supervisory Policy G 1 of this Title or by accessing the department’s website, the address of which is also provided in such section.

(1) A completed application must be accompanied by payment of the fee specified in section 18-a of the Banking Law.

(2) The application for category permission shall be in writing, subscribed by the applicant under penalty of perjury.

(3) Permission granted by the superintendent to a Banking Law entity pursuant to this Part shall constitute authorization.

(e) The superintendent may revoke or suspend a category permission in the same manner and according to the same procedures established for the suspension or revocation of a license by section 741 of the Banking Law, and such revocation or suspension shall be effective in the same manner as the revocation or suspension of such a license.

(f) A licensee or authorized BNPL lender may surrender a category permission in the same manner and according to the same procedures established for surrender of a license by section 741 of the Banking Law, and such surrender shall be effective in the same manner as the surrender of such a license. A person who has surrendered all of its category permissions shall not offer BNPL loans.

(g) A category permission shall remain in full force and effect until it is surrendered by the relevant BNPL lender and accepted by the superintendent, is revoked or suspended, or, if it is provisional, the relevant application is rejected.

(h) Disclosure of authorization and category permissions. An authorized BNPL lender shall post clearly and conspicuously on all of its mobile applications, websites and other consumer interfaces on which BNPL loans are offered or advertised that it is an authorized BNPL lender, its BNPL loan category permissions, and its name and address.

Section 423.4 Action by superintendent.

(a) Generally. Upon an applicant's filing of an application for licensing under this Part and payment of the required fee, the superintendent shall investigate the applicant in accordance with Banking Law sections 737 and 738.

(b) Approval or denial of application. The superintendent shall approve or deny an application for a BNPL license in accordance with sections 737 and 738 of Banking Law article 14-B. A BNPL license shall remain in full force and effect until it is surrendered by the licensee, is revoked or suspended, or, if it is provisional, the relevant application is rejected.

Section 423.5 Change of control of a licensee; changes in directors or officers.

(a) Change of Control. No action shall be taken, except with the prior written approval of the superintendent, that results in a change of control of a licensee.

(1) Applications for change of control of a licensee shall be in writing, subscribed by the applicant under penalty of perjury, and shall contain the information and documents as the superintendent may require.

(2) A change in control shall be evaluated according to the same standards as an application for a BNPL license.

(b) Changes in directors or officers. Within 30 days after a change of any of the principal officers or directors, a licensee shall submit to the superintendent, in writing:

(1) the name, address and occupation of each new principal officer or director; and

(2) provide such other information as the superintendent may require.

Section 423.6 Loans, books and records; examinations.

This section applies to any BNPL lender that is not an exempt organization.

(a) When payment is received on any BNPL loan, entry shall be made in the BNPL lender's record of the consumer's account expressing the date of payment, the amount applied to interest, the amount applied to any fee or charge, the amount credited to principal, and the unpaid principal balance.

(b) Each application for a BNPL loan and copies of all records relating to it shall be filed so as to be readily available for review and examination at any time. All such papers, instruments, and electronic records shall bear the number or other unique identifier of the BNPL loan to which they relate.

(c) With respect to any BNPL loan, the BNPL lender shall record all information relating to the consumer's account including:

(1) the information required to be submitted in quarterly or annual reports to the superintendent pursuant to section 423.7 of this Part;

(2) the date upon which an attorney has been asked to commence legal action;

(3) the date upon which any legal action (including steps to collect by means of garnishment or attachments of salary) or summary action is taken for or against the BNPL lender, and its nature;

(4) the date upon which judgment is obtained with respect to any signer or endorser (whether signed or endorsed in original or electronically);

(5) the date and terms of any settlement agreed upon as a result of any legal or summary action taken for or against the BNPL lender;

(6) the nature of any collection or similar expense incurred by the BNPL lender in connection with litigation, charged to or paid by any obligor; and

(7) the date upon which the BNPL lender's attorney discontinues efforts to collect by legal action.

All information required to be maintained pursuant to this subdivision shall be readily accessible for review and examination by the superintendent.

Section 423.7 Reports and financial disclosures.

(a) Financial statements. At the end of each fiscal quarter, each licensee shall have prepared an unaudited financial statement that, at a minimum, includes a balance sheet, income statement, cash flow statement, and statement of adjusted net worth which must be filed with the department within 45 days of the end of each fiscal quarter.

(b) Audited financial statements. Within 90 days of the close of the licensee's fiscal year, each licensee shall have prepared an annual audited financial statement of its fiscal year which must be filed with the department within 90 days of the close of the fiscal year. The financial statement shall be prepared in accordance with generally accepted accounting principles and audited by an independent certified public accountant. Such audit shall be performed in accordance with generally accepted auditing standards. Any licensee which is a consolidated subsidiary may comply with this provision by annually providing a consolidated audited financial statement of its parent company and a financial statement, which may be unaudited, of the licensee which is prepared in accordance with generally accepted accounting principles. All such audited annual financial statements shall include:

(1) a statement of management's responsibilities for preparing the licensee's annual financial statements, establishing and maintaining adequate internal controls and procedures for financial reporting, and complying with all applicable laws, rules, and regulations;

(2) an assessment by management of the licensee's compliance with such applicable laws, rules, and regulations during the fiscal year covered by the financial statements; and

(3) certification of the financial statements by a principal officer of the BNPL lender attesting to the truth and correctness of those statements.

(c) Quarterly reports. Each licensee shall submit a report to the superintendent within 45 days following the close of each calendar quarter in such form as the superintendent shall prescribe.

(d) Special reports. Each licensee shall make additional special reports to the superintendent, at such times and in such form, as the superintendent may require, and subscribed and affirmed as true under the penalties of perjury.

(e) Criminal action or insolvency proceeding. Each licensee shall notify the superintendent in writing of any criminal action or insolvency proceeding against the BNPL lender or any of its affiliates, directors, principal stockholders, and principal officers, as applicable, immediately after the commencement of any such action or proceeding.

(f) Compliance officer. Each licensee shall designate a qualified individual or individuals responsible for coordinating and monitoring compliance with Banking Law article 14-B and this Part and all other applicable Federal and State laws, rules, and regulations.

(g) Required documentation relating to pricing and credit. Each licensee shall establish and maintain the following documents for all BNPL loans:

(1) the lending policies and procedures pertaining to loan pricing and the conditions under which exceptions to such loan pricing policies and procedures can be made and by whom;

(2) documents reflecting pricing matrices; and

(3) documents reflecting the establishment of credit grades.

(h) Third-party audit reports. Within 10 days of receipt, each licensee shall provide the department with a certified copy of any report of an audit of the licensee and/or its affiliates by any lender extending a line of credit to the licensee, investor or party to a loan purchase agreement.

(i) Application to authorized BNPL lenders; non-duplication. An authorized BNPL lender shall make reports as required of licensees by this section, except that the superintendent may exempt authorized BNPL lender from any part of any report that is duplicative of any other report that the authorized BNPL lender makes to the superintendent in connection with obligations imposed by another article of the Banking Law.

Section 423.8 Advertising and marketing

(a) No licensee shall advertise its BNPL loans in New York or to New York residents without including the name of the licensee and the legend that such licensee is "Licensed to offer BNPL loans by the New York State Department of Financial Services."

(b) Each licensee and authorized BNPL lender shall maintain, for review and examination by the superintendent, all advertising and marketing materials for a period of at least seven years from

the date of their creation, including but not limited to print media, internet media (including websites), radio and television advertising, road show materials, presentations, and brochures. Each licensee and authorized BNPL lender shall maintain website captures of material changes to internet advertising and marketing, and audio and video scripts of its advertising and marketing materials, as applicable.

(c) In all advertising and marketing materials, no BNPL lender nor any person or entity acting on its behalf shall, directly or by implication, make any false, misleading, or deceptive representations or omissions.

(d) If an advertisement for a BNPL loan states a periodic payment amount, the advertisement shall also state the total of payments and the time period to repay the obligation, assuming that the consumer pays only the periodic payment amount advertised. The disclosure of the total of payments and the time period to repay the obligation must be equally prominent to the statement of the periodic payment amount.

(e) It shall be a deceptive practice to advertise specific credit terms including using language such as “as low as” or “from” without prominently and contemporaneously disclosing meaningful information with respect to the likelihood of obtaining the advertised credit terms. Even if qualifying information is subsequently disclosed to the consumer, the law is violated if the first contact or interview is secured by deception.

Section 423.9 Interest, charges and fees; maximum cumulative amounts.

(a) Interest-bearing BNPL loans.

(1) General. No BNPL lender shall charge any interest on any BNPL loan in excess of the interest rate permitted by General Obligations Law section 5-501.

(2) Amounts included as interest. Amounts that are interest under section 4.2(b) of this Title shall be interest for the purposes of this Part.

(3) Examples of Interest. Interest includes, but is not limited to, the following:

- (i) any amount charged as a condition of making or originating a BNPL loan;
- (ii) any amount charged for the making or originating of an installment of a BNPL loan;
- (iii) any finance charge as defined in 12 C.F.R. § 1026.4¹; and

¹ 12 C.F.R. § 1026.4 as in effect on the date of adoption of this Part. The Code of Federal Regulations (C.F.R.) is published jointly by the National Archives and Records Administration’s Office of the Federal Register, 7 G Street NW, Suite A-734, Washington, D.C. 20401 and the Government Publishing Office, 732 N. Capitol Street NW, Washington, D.C. 20401. The C.F.R. is available online at <https://www.ecfr.gov>. Copies of the C.F.R. sections referenced in this Part may be obtained from this department by writing to: New York State Department of Financial Services, Office of General Counsel, One State Street, 20th floor, New York, NY 10004, or by sending an email to regnotification@dfs.ny.gov.

(iv) any charge included as interest pursuant to Part 4 of this Title notwithstanding its characterization as a fee, charge or otherwise.

(4) Fees described by subdivision (b) of this section are not interest for the purposes of this Part.

(5) Payment delay transaction. A payment delay transaction shall not violate paragraph (b) of subdivision (1) of section 745 of the Banking Law provided that:

(i) the BNPL loan that is modified by the payment delay transaction would have been permissible under subdivision (a)(1) of this section if it had originally been made on the modified terms; and

(ii) any fee assessed by a BNPL lender as part of a payment delay transaction shall be included as interest in determining permissibility under subdivision (a)(1) of this section.

(6) Other. No BNPL lender shall enter into any payment delay transaction with respect to an interest-free BNPL loan unless:

(i) the BNPL lender is authorized to make interest-bearing BNPL loans; and

(ii) the BNPL lender shall have delivered to the consumer revised disclosures under section 423.12(a)(2) of this Part on a Model Form provided by the department expressing the BNPL loan terms as varied by the payment delay transaction.

(b) Limitations on penalty fees. A BNPL lender may impose a fee for violating the terms or other requirements of a BNPL loan agreement only if the dollar amount of the fee is consistent with subdivisions (b)(1) and (b)(2) of this section.

(1) General rule. Except as provided in subdivision (b)(2) of this section, a BNPL lender may impose a fee for violating the terms or requirements of a BNPL loan agreement if the BNPL lender has determined that the dollar amount of the fee is consistent with subdivision (b)(1)(i) or (b)(1)(ii) of this section.

(i) Safe harbor. A BNPL lender may impose a fee for violating the terms or other requirements of a BNPL loan agreement if the dollar amount of the fee does not exceed \$8.

(ii) Fees based on costs. Subject to subparagraphs (iii) through (v) of this paragraph, a BNPL lender may impose a fee greater than that permitted by subparagraph (i) of this paragraph for violating the terms or other requirements of a BNPL loan agreement if the BNPL lender has determined that the dollar amount of the fee represents a reasonable proportion of the total costs incurred by the BNPL lender as a result of that type of violation.

(iii) Approval Required. Prior to imposing any fee pursuant to subparagraph (ii) of this paragraph, a BNPL lender must apply to the superintendent for approval of the fee amount. Such application shall include sufficient information to allow the

superintendent to evaluate whether the fee amount represents a reasonable proportion of the total costs incurred by the BNPL lender as a result of that type of violation. If the superintendent approves the application, the BNPL lender may begin imposing the approved fee on any new BNPL loans subject to any terms or conditions that the superintendent may have required in connection with such approval.

(iv) *Reevaluation.* A BNPL lender shall reevaluate every 12 months whether a fee approved pursuant to subparagraph (iii) of this paragraph represents a reasonable proportion of the total costs incurred by the BNPL lender as a result of the applicable violation. If the BNPL lender determines that a lower fee represents a reasonable proportion of the total costs incurred by the BNPL lenders as a result of that violation, the BNPL lender must begin imposing the lower fee within 30 days after completing the reevaluation. Any increase in the fee amount must be approved by the superintendent in accordance with subparagraph (iii) of this paragraph.

(v) *Late fee cost analysis.* For purposes of subparagraphs (ii) through (iv) of this paragraph, with respect to any late payment fee, losses and associated costs (including the cost of holding reserves against potential losses and the cost of funding delinquent loans) and any collection costs that are incurred after a BNPL loan is charged off pursuant to loan loss provisions shall not be included.

(2) Prohibited penalty fees.

(i) Fees that exceed dollar amount associated with violation

(a) *Generally.* A BNPL lender may not impose a fee for violating the terms or other requirements of a BNPL loan agreement that exceeds the dollar amount associated with the violation.

(b) *No dollar amount associated with violation.* A BNPL lender may not impose a fee for violating the terms or other requirements of a BNPL loan agreement when there is no dollar amount associated with the violation.

(ii) *Multiple fees based on a single event or transaction.* A BNPL lender may not impose more than one fee for violating the terms or other requirements of a BNPL loan agreement based on a single event or transaction.

(iii) *Maximum cumulative amount of penalty fees.* The aggregate dollar amount of all fees charged for violating the terms or other requirements of a BNPL loan agreement shall not exceed the original amount financed through such BNPL loan.

(iv) *Timing for late fees.* No BNPL lender may impose any late fee for a borrower's failure to make a payment by the date on which any required payment

is due if a consumer did not receive a periodic statement at least within the timeframe described in section 423.12(a)(4)(iii) of this Part.

(c) Payments.

(1) Limitation on fees related to method of payment. A BNPL lender may not impose a separate fee to allow a consumer to make a payment by any method, such as mail, electronic, or telephone payments, unless such payment method involves an expedited service by a customer service representative of the BNPL lender.

(2) Prepayment. A BNPL lender shall permit a consumer to prepay any amount of the principal and accrued interest of a BNPL loan at any time and shall not charge any additional amount for such prepayment.

(3) Allocation of payments.

(i) Except as provided in subparagraph (ii) of this paragraph, when a consumer makes a payment in excess of the amount due and payable on any BNPL loan, the BNPL lender shall apply the excess first, to the outstanding principal amount of such consumer's BNPL loan bearing the highest interest rate, and thereafter, to the outstanding principal amount of any other of such consumer's BNPL loans in descending order based on the applicable interest rate.

(ii) A BNPL lender shall, if requested by the consumer, apply any excess payment to the principal amount of any secured BNPL loan.

(iii) When a consumer makes a payment less than the amount due and payable on any BNPL loan, the BNPL lender shall apply the payment to the outstanding principal amount of such borrower's BNPL loan for which the payment was due and payable.

(4) Tips. A BNPL lender may not solicit any tip or other gratuitous payment from any consumer, unless:

(i) the BNPL lender clearly and conspicuously discloses at the time that the payment is solicited that the payment is entirely voluntary and the payment or non-payment of any amount will not affect the terms and conditions upon which the BNPL lender makes BNPL loans;

(ii) the BNPL lender solicits such a payment no more than once in connection with a single transaction; and

(iii) the BNPL lender does not set any default payment amount greater than zero or otherwise make it practically difficult for the consumer to avoid making a payment.

Any tip or gratuitous payment made by a consumer in connection with a solicitation made other than in accordance with this paragraph shall be returned to the consumer or, if

requested in writing by the consumer, applied in accordance with paragraph (3) of this subdivision.

Section 423.10 Capital requirements

- (a) Each licensee shall maintain at all times capital in an amount sufficient to cover outstanding obligations to consumers (e.g., refunded amounts).
- (b) If the superintendent determines that the amount of capital prescribed by paragraph (a) of this section is insufficient to ensure the solvency and financial integrity of a licensee and its ongoing operations, taking into account the risks, volume of business, complexity, and other relevant factors, the superintendent may require a licensee to maintain an additional amount of capital.
- (c) Each licensee shall hold capital required to be maintained in accordance with this section in the form of a corporate surety bond in such form as is acceptable to the superintendent.
- (d) In lieu of posting a surety bond pursuant to subdivision (c) of this section, a licensee may elect to deposit assets in a depository that is acceptable to the superintendent. Any licensee that elects to deposit assets pursuant to this subdivision shall execute with the depository a deposit agreement on a form obtained from the department or such other form as is satisfactory to the superintendent. Assets eligible for deposit shall be those eligible for deposit under Part 410 of this Title, and such assets shall be valued in accordance therewith, unless the superintendent determines that alternative rules for asset eligibility or valuation are appropriate in the circumstances.

Section 423.11 Acts prohibited.

- (a) Multiple loans; protections. A consumer's violation of a BNPL loan agreement shall neither be a violation of any other existing BNPL loan agreement nor subject the consumer to penalty under the terms of any other existing BNPL loan agreement because of such violation.
- (b) Failed payments. A BNPL lender shall not make more than two attempts to obtain payment via the consumer's same payment method in connection with any one due and payable amount, unless the BNPL lender obtains a new and specific authorization to make further attempts from the consumer.
- (c) Deceptive or unfair practices. For purposes of paragraph (b) of subdivision 2 of Banking Law section 744, a practice shall be deceptive or unfair if it would be deceptive or unfair, respectively, under General Business Law section 349.

Section 423.12 Consumer protection

- (a) Disclosures. For the purposes of this subdivision, terms used herein that are defined by Regulation Z, 12 C.F.R. §§ 1026.2 and 1026.4,² shall have the same meaning provided therein.

- (1) General disclosure requirements.

² 12 C.F.R. §§ 1026.2 and 1026.4 as in effect on the date of adoption of this Part. See footnote 1.

(i) The BNPL lender shall make the disclosures required by this section in clear, conspicuous, and legible writing in the English language and in a form that the consumer may keep. The disclosures required by this section may be provided to the consumer in electronic form, subject to compliance with the consumer-consent and other applicable provisions of the Electronic Signatures in Global and National Commerce Act (E-Sign Act), 15 U.S.C. 7001 *et seq.*,³ and the New York Electronic Signatures and Records Act, State Technology Law Art. III. The disclosures shall be grouped together, shall be segregated from everything else, and shall not contain any information not directly related to the disclosures required under subdivision (a)(2) and (3) of this section.

(ii) The BNPL lender shall accurately translate the disclosures required by this section into the Spanish language and into any language principally used in any advertisements of the BNPL lender in the State of New York. Disclosures in languages other than English shall be available contemporaneously with the English language disclosures required by this section.

(iii) English language disclosures required by this section shall include a brief statement, accurately translated into all the languages other than English in which disclosures are available as required by subparagraph (ii) of this paragraph, that identifies the availability of translated versions of the specified disclosure.

(2) Pre-transaction disclosures.

(i) Timing. A BNPL lender shall furnish a consumer with a disclosure before consummation of each transaction (a “pre-transaction disclosure”).

(ii) Format. A pre-transaction disclosure that is presented electronically must be unavoidable. For each interest-free BNPL loan, the pre-transaction disclosure shall be provided in a form substantially similar to a Model Form provided by the department. For each interest-bearing BNPL loan, the pre-transaction disclosure shall be provided in a form substantially similar to a Model Form provided by the department.

(iii) Acknowledgement of disclosures. A BNPL lender shall ensure that each pre-transaction disclosure is acknowledged as received by a consumer.

(iv) Content. A pre-transaction disclosure shall disclose the following items, to the extent applicable:

(a) Creditor. The identity of the BNPL lender making the disclosure.

(b) Amount financed. The *amount financed*, using that term, and a brief description such as *the amount of credit provided to you or on your behalf*. The amount financed is calculated by:

³ 15 U.S.C. 7001 *et seq.* as in effect on the date of adoption of this Part. The United States Code (U.S.C.) is published jointly by Office of the Law Revision Counsel, U.S. House of Representatives, H2-308 Ford House Office Building, Washington, D.C. 20515. The U.S.C. is available online at <https://uscode.house.gov/>. Copies of the U.S.C. sections referenced in this Part may be obtained from this department by writing to: New York State Department of Financial Services, Office of General Counsel, One State Street, 20th floor, New York, NY 10004, or by sending an email to regnotification@dfs.ny.gov.

- (1) determining the original principal BNPL loan amount;
 - (2) adding any other amounts that are financed by the BNPL lender and are not part of the finance charge; and
 - (3) subtracting any prepaid finance charge.
- (c) Finance charge. The finance charge, using that term, and a brief description such as “the dollar amount the credit will cost you.”
- (d) Itemization of finance charge. An itemization of the finance charge.
- (e) Annual percentage rate. The annual percentage rate, using that term, and a brief description such as “the cost of your credit as a yearly rate.” The annual percentage rate need not be disclosed for any transaction without a finance charge.
- (f) Payment schedule. The number, amounts, and timing of payments scheduled to repay the obligation.
- (g) Total sale price. The total sale price, using that term, and a descriptive explanation (including the amount of any down payment) such as “the total price of your purchase on credit, including your down payment of \$__.” The total sale price is the sum of the cash price, the items described in subdivision (a)(2)(iv)(b)(2) of this section, and the finance charge disclosed under subdivision (a)(2)(iv)(c) of this section.
- (h) Fees. A description of and the amount of any fees or charges that may be imposed, excluding any fees disclosed under clause (d) of this subparagraph.
- (i) Default. A statement that outlines the material consequences of a consumer defaulting on the BNPL loan. Material consequences include but are not limited to reporting the BNPL loan as delinquent to consumer reporting agencies and referring the BNPL loan to a debt collector.
- (j) Consumer reporting. A statement describing the circumstances under which the BNPL lender would furnish information regarding the BNPL loan to any consumer reporting agency, or, if applicable, a statement that the BNPL lender will not furnish information regarding the BNPL loan to any consumer reporting agency, in either case together with a statement that a future transferee of the BNPL loan may not be bound by that foregoing statement.
- (k) Dispute rights. A statement that outlines the consumer’s rights and the BNPL lender’s responsibilities under subdivision (d)(1) through (9) of this section.
- (l) Refund rights. A statement that outlines the consumer’s rights and the BNPL lender’s responsibilities under subdivision (c) of this section.
- (m) Unauthorized use. A statement that outlines the consumer’s rights and the BNPL lender’s responsibilities under subdivision (d)(10) of this section.
- (n) Contract reference. A statement that the consumer should refer to the appropriate contract document for further information.

(o) Additional information. Any other information required to be disclosed pursuant to 12 C.F.R. § 1026.18,⁴ to the extent applicable.

(3) Post-transaction confirmations.

(i) Confirmation required. The BNPL lender shall mail or deliver a confirmation for each consummated transaction (a “post-transaction confirmation”).

(ii) Timing. The BNPL lender shall mail or deliver a post-transaction confirmation within one business day following the consummation of a transaction.

(iii) Content. A post-transaction confirmation shall contain the following items, to the extent applicable:

(a) Pre-transaction disclosure content. All applicable content under paragraph (a)(2)(iv) of this subdivision.

(b) Consumer identity. Consumer name and address.

(c) Identification of transaction. Date of the transaction, and the retail seller’s name.

(4) Periodic statements.

(i) Definition of billing cycle. “Billing cycle” means the interval between the days or dates of regular periodic statements. These intervals shall be equal and no longer than a month. An interval will be considered equal if the number of days in the cycle does not vary more than four days from the regular day or date of the periodic statement.

(ii) Statement required. A BNPL lender shall mail or deliver a periodic statement for each billing cycle at the end of which an account has a debit or credit balance of more than \$0 or on which a finance charge has been imposed. A periodic statement need not be sent for an account if the BNPL lender deems it uncollectible, if delinquency collection proceedings have been instituted, if the BNPL lender has charged off the account in accordance with loan-loss provisions and will not charge any additional fees or interest on the account, or if furnishing the statement would violate New York or Federal law.

(iii) Timing.

(a) A BNPL lender shall adopt reasonable procedures designed to ensure that periodic statements are mailed or delivered at least 14 days prior to the date on which the required payment must be received in order to avoid being treated as late for any purpose when the billing cycle is 30 days or more and at least seven days prior to the date on which the required payment must be received in order to avoid being treated as late for any purpose when the billing cycle is fewer than 30 days. Treating a payment as late includes but is not limited to assessing late fees, delinquent consumer reporting, initiating collection activities, and terminating benefits.

⁴ 12 C.F.R. § 1026.18 as in effect on the date of adoption of this Part. See footnote 1.

(b) A BNPL lender shall not treat as late for any purpose a required payment received by the BNPL lender within seven days after mailing or delivery of the periodic statement.

(iv) Format. Periodic statements shall include all existing BNPL loans made between a BNPL lender and a consumer in a single periodic statement.

(v) Content. A BNPL lender shall furnish the consumer with a periodic statement that discloses the following items, to the extent applicable:

(a) Previous balance. The account balance outstanding at the beginning of the billing cycle.

(b) Identification of transactions. An identification of each BNPL loan that includes at a minimum the amount financed, date of the transaction, and the retail seller's name.

(c) Credits. Any credit to the account during the billing cycle, including the amount and the date of crediting. The date need not be provided if a delay in crediting does not result in any finance charge or other charge.

(d) Periodic rates. Each periodic rate that may be used to compute the interest charge expressed as an annual percentage rate and using the term annual percentage rate.

(e) Balance on which finance charge computed. The amount of the balance to which a periodic rate was applied and an explanation of how that balance was determined, using the term balance subject to interest rate.

(f) Charges imposed.

(1) Interest. Finance charges attributable to periodic interest rates, using the term interest charge, must be grouped together under the heading "Interest Charged," itemized and totaled by BNPL loan, and a total of finance charges attributable to periodic interest rates, using the term total interest, must be disclosed for the statement period and calendar year to date.

(2) Fees. Charges other than charges attributable to periodic interest rates must be grouped together under the heading "Fees," identified consistent with the feature or type, and itemized, and a total of charges, using the term fees, must be disclosed for the statement period and calendar year to date.

(g) Telephone number and address for notice of billing errors. The telephone number and address to be used for notice of billing errors. At least one address must allow consumers to submit notices digitally.

(h) Closing date of billing cycle; new balance. The closing date of the billing cycle and the account balance outstanding on that date.

(i) Due date; late payment costs.

(1) Any due date in the next billing cycle.

(2) The amount of any late payment fee and any increased periodic rate(s) (expressed as an annual percentage rate(s)) that may be imposed on the BNPL loan as a result of a late payment. If a range of late payment fees may be assessed, the BNPL lender may state the range of fees, or the highest fee and an indication that the fee imposed could be lower.

(j) Dispute rights. A statement that outlines the consumer's rights and the BNPL lender's responsibilities under subdivision (d)(1) through (9) of this section.

(k) Refund rights. A statement that outlines the consumer's rights and the BNPL lender's responsibilities under subdivision (c) of this section.

(l) Unauthorized use. A statement that outlines the consumer's rights and the BNPL lender's responsibilities under subdivision (d)(10) of this section.

(b) Underwriting. A BNPL lender shall, before providing or causing to be provided a BNPL loan to a consumer, perform, or cause to be performed, reasonable risk-based underwriting which includes, at a minimum, assessing a consumer's income and indebtedness. A BNPL lender shall maintain or cause to be maintained written policies and procedures for underwriting BNPL loans, and shall disclose factors considered in such underwriting process, in a clear and conspicuous manner to the consumer. No BNPL lender shall use the credit worthiness, credit standing, or credit capacity of any member of the consumer's social network for purposes of determining the availability or price of credit that may be issued to the consumer.

(c) Refunds and credits.

(1) A BNPL lender shall make reasonable efforts to cause a retail seller to transmit a credit statement to the BNPL lender through the BNPL lender's normal channels for credit statements within seven business days from the retail seller's agreement to refund a consumer.

(2) A BNPL lender shall, within three business days of receipt of a credit statement, credit the consumer's account with the amount of the refund.

(3) When a credit balance is created on a BNPL loan account, the BNPL lender shall:

(i) refund the credit balance within three business days; or

(ii) prior to the issuance of a refund, if requested by a consumer, credit the amount of the credit balance to the consumer's account.

Such BNPL lender shall make a good faith effort to refund to the consumer by cash, check, money order, credit to a deposit account of the consumer, or credit to a credit card account of the consumer, any part of the credit balance remaining in the BNPL loan account for more than six months. No further action is required if the consumer's current location is not known to the BNPL lender and cannot be traced through the consumer's last known address or telephone number.

(4) A BNPL lender shall maintain written policies and procedures, consistent with the provisions of this subdivision, to provide refunds and credits. Such policies and procedures shall be fair, transparent, and not unduly burdensome to the consumer.

(5) A BNPL lender shall disclose to consumers, in a clear and conspicuous manner, the process by which they can obtain refunds or credits for goods or services they have purchased in connection with a BNPL loan.

(d) Disputes and unauthorized use.

(1) Definition of billing error. For the purposes of this section, “billing error” means:

(i) A reflection on or with a periodic statement or post-transaction confirmation of an extension of credit that is not made to the consumer or to a person who has actual, implied, or apparent authority to use the consumer’s BNPL loan.

(ii) A reflection on or with a periodic statement or post-transaction confirmation of an extension of credit that is not identified in accordance with the requirements of subdivision (a)(3)(iii)(c) or (a)(4)(v)(b) of this section.

(iii) A reflection on or with a periodic statement or post-transaction confirmation of an extension of credit for property or services not accepted by the consumer or the consumer’s designee, or not delivered to the consumer or the consumer’s designee as agreed.

(iv) A reflection on a periodic statement or post-transaction confirmation of the BNPL lender’s failure to credit properly a payment or other credit issued to the consumer’s account.

(v) A reflection on a periodic statement or post-transaction confirmation of a computational or similar error of an accounting nature that is made by the BNPL lender.

(vi) A reflection on a periodic statement or post-transaction confirmation of an extension of credit for which the consumer requests additional clarification, including documentary evidence.

(vii) The BNPL lender’s failure to mail or deliver a periodic statement to the consumer’s last known address if that address was received by the BNPL lender, electronically or in writing, at least 20 days before the end of the billing cycle for which the statement was required.

(viii) The BNPL lender’s failure to mail or deliver a post-transaction confirmation to the consumer’s last known address if that address was received by the BNPL lender electronically or in writing, at the time of the transaction for which the confirmation was required.

(ix) A reflection on or with a periodic statement or post-transaction confirmation of a payment that was not authorized by the consumer.

(2) Billing error notice. A billing error notice is an electronic, oral, or written notice from a consumer that:

(i) is received by a BNPL lender at the telephone number or address disclosed under subdivision (a)(3)(v)(g) of this section no later than 60 days after the BNPL lender transmitted the post-transaction confirmation or the first periodic statement that reflects the alleged billing error, as applicable;

(ii) enables the BNPL lender to identify the consumer's name and account number; and

(iii) to the extent possible, indicates the consumer's belief and the reasons for the belief that a billing error exists, and the type, date, and amount of the error.

(3) Time for resolution; general procedures.

(i) The BNPL lender shall mail or deliver electronic or written acknowledgment to the consumer within 30 days of receiving a billing error notice, unless the BNPL lender has complied with the appropriate resolution procedures of paragraphs (5) and (6) of this subdivision, as applicable, within the 30-day period;

(ii) the BNPL lender shall comply with the appropriate resolution procedures of paragraphs (5) and (6) of this subdivision, as applicable, within two complete billing cycles but in no event later than 90 days after receiving a billing error notice; and

(iii) a BNPL lender shall maintain written policies and procedures with standardized criteria for resolving billing errors. Such policies and procedures shall be applied to all billing errors.

(4) Rules pending resolution. Until a billing error is resolved under paragraphs (5) and (6) of this subdivision, the following rules apply:

(i) Collection action prohibited. A BNPL lender shall not attempt to collect any portion of any required payment that the consumer believes is related to the disputed amount (including related finance or other charges).

(a) If the consumer has enrolled in an automatic payment plan, the BNPL lender shall not deduct any part of the disputed amount or related finance or other charges if a billing error notice is received any time up to three business days before the scheduled payment date.

(b) If a BNPL lender receives payment in excess of any undisputed portion of the item or bill, the BNPL lender shall notify the consumer within three business days after receipt of the payment. If within five business days of notification, the consumer does not affirmatively request that the BNPL lender retain the full payment, the BNPL lender shall refund the amount of the payment in excess of any undisputed portion of the item or bill to the consumer's original payment method.

(ii) Adverse consumer reports prohibited. The BNPL lender or its agent shall not (directly or indirectly) make or threaten to make an adverse report to any person about the consumer's credit standing, or report that an amount or account is delinquent, because the consumer failed to pay the disputed amount or related finance or other charges.

(iii) Acceleration of debt and restriction of account prohibited. A BNPL lender shall not accelerate any part of the consumer's indebtedness or restrict or close a consumer's

BNPL loan account solely because the consumer has exercised in good faith rights provided by this section.

(iv) Permitted BNPL lender actions. A BNPL lender is not prohibited from taking action to collect any undisputed portion of the item or bill; from deducting any disputed amount and related finance or other charges from the consumer's BNPL loan account; or from reflecting a disputed amount and related finance or other charges on a periodic statement, provided that the BNPL lender indicates on or with the periodic statement that payment of any disputed amount and related finance or other charges is not required pending the BNPL lender's compliance with this section.

(5) Procedures if billing error occurred as asserted. If a BNPL lender determines that a billing error occurred as asserted, it shall within the time limits in paragraph (3)(ii) of this subdivision:

(i) correct the billing error and credit the consumer's account with any disputed amount and related finance or other charges, as applicable; and

(ii) mail or deliver a correction notice to the consumer.

(6) Procedures if different billing error or no billing error occurred. If, after conducting a reasonable investigation, a BNPL lender determines that no billing error occurred or that a different billing error occurred from that asserted, the BNPL lender shall within the time limits in paragraph (3)(ii) of this subdivision:

(i) mail or deliver to the consumer an explanation that sets forth the reasons for the BNPL lender's belief that the billing error alleged by the consumer is incorrect in whole or in part;

(ii) provide with the explanation in subparagraph (i) of this paragraph, in a clear and conspicuous manner, the following disclosures:

(a) a statement that the consumer may file a complaint with the department; and

(b) the department's mailing address, website and telephone number for submitting complaints.

(iii) furnish copies of documentary evidence of the consumer's indebtedness, if the consumer so requests; and

(iv) if a different billing error occurred, correct the billing error and credit the consumer's account with any disputed amount and related finance or other charges, as applicable.

(7) BNPL lender's rights and duties after resolution. If a BNPL lender, after complying with all of the requirements of this section, determines that a consumer owes all or part of the disputed amount and related finance or other charges, the BNPL lender:

(i) shall promptly notify the consumer in writing of the time when payment is due and the portion of the disputed amount and related finance or other charges that the consumer still owes;

(ii) may report an account or amount as delinquent because the amount due under subparagraph (i) of this paragraph remains unpaid starting 10 days after delivery of the notification due under subparagraph (i) of this paragraph;

(iii) may not report that an amount or account is delinquent because the amount due under subparagraph (i) of this paragraph remains unpaid, if the BNPL lender receives (within the time allowed for payment in subparagraph (ii) of this paragraph) further electronic or written notice from the consumer that any portion of the billing error is still in dispute, unless the BNPL lender also:

(a) promptly reports that the amount or account is in dispute;

(b) mails or delivers to the consumer (at the same time the report is made) an electronic or written notice of the name and address of each person to whom the BNPL lender makes a report; and

(c) promptly reports any subsequent resolution of the reported delinquency to all persons to whom the BNPL lender has made a report.

(8) Reassertion of billing error. A BNPL lender that has fully complied with the requirements of this section has no further responsibilities under this section (other than as provided in paragraph (7)(iii) of this subdivision) if a consumer reasserts substantially the same billing error regarding the same transaction.

(9) Effect of noncompliance with requirements by BNPL lender. Any BNPL lender who fails to comply with the requirements of paragraphs (3) through (8) of this subdivision forfeits any right to collect from the consumer the amount indicated by the consumer under paragraph (2)(iii) of this subdivision, and any finance charges thereon, except that the amount required to be forfeited may not exceed \$50.

(10) Liability of consumer for unauthorized use.

(i) Definition of unauthorized use. For purposes of this section, “unauthorized use” means the use of a BNPL loan by a person, other than the consumer, who does not have actual, implied, or apparent authority for such use, and from which the consumer receives no benefit.

(ii) Definition of access device. For the purposes of this section, “access device” means a card (whether physical or virtual), code, login credential, card number, account number, or other means of access to a consumer’s account, or any combination thereof, that may be used by the consumer to obtain or use funds from a BNPL loan.

(iii) Definition of accepted access device. An access device becomes an “accepted access device” when the consumer requests and receives, or uses (or authorizes another to use) the access device to obtain or use funds from a BNPL loan.

(iv) Limitation on amount. The liability of a consumer for unauthorized use of a BNPL loan shall not exceed the lesser of \$50 (including any down payment) or the amount of property or services obtained by the unauthorized use before notification to the BNPL lender under subparagraph (vi) of this paragraph.

(v) Conditions of liability. A consumer shall be liable for unauthorized use of a BNPL loan or account only if:

(a) the access device is an accepted access device;

(b) the BNPL lender has provided adequate notice of the consumer's maximum potential liability and of means by which the BNPL lender may be notified of loss or theft of the access device. The notice shall state that the consumer's liability shall not exceed \$50 (or any lesser amount) and that the consumer may give electronic, oral, or written notification, and shall describe a means of notification (for example, a telephone number, an address, or both), one of which must be digital; and

(c) the BNPL lender conducted effective and appropriate measures for authenticating and verifying the identity of the user of the access device immediately prior to the extension of credit for the BNPL loan.

(vi) Notification to BNPL lender. Notification to a BNPL lender is given when steps have been taken as may be reasonably required in the ordinary course of business to provide the BNPL lender with the pertinent information about the loss, theft, or possible unauthorized use of a BNPL loan access device, regardless of whether any particular officer, employee, or agent of the BNPL lender does, in fact, receive the information. Notification may be given, at the option of the person giving it, electronically, in person, by telephone, or in writing. Notification in writing is considered given at the time of receipt or, whether or not received, at the expiration of the time ordinarily required for transmission, whichever is earlier.

(e) Data privacy.

(1) Definitions. For the purposes of this subdivision only, the following definitions shall apply:

(i) "consumer's consent" means the consumer's affirmative expression of informed consent to use, sell or share the covered data of a consumer, other than in connection with the making of a particular BNPL loan, on behalf of the consumer by obtaining an affirmative consent disclosure that is signed by the consumer electronically or in writing. Such consent disclosure must comply with the requirements of paragraph (3) of this subdivision;

(ii) "covered data" means any non-public information of a consumer including any personally identifiable information, transaction or account-level consumer information, and any consumer metadata collected or maintained. Such term does not include any "publicly available information" as defined by 15 U.S.C. § 6809(4)(B)⁵ and 12 C.F.R. § 1016.3(r).⁶ Such term shall include any list, description, or other grouping of consumers, and publicly available information pertaining to them, that is derived using any nonpublic information. Such terms shall not include any list, description, or other grouping of

⁵ 15 U.S.C. § 6809(4)(B) as in effect on the date of adoption of this Part. See footnote 3.

⁶ 12 C.F.R. § 1016.3(r) as in effect on the date of adoption of this Part. See footnote 1.

consumers, and publicly available information pertaining to them, that is derived without using any nonpublic information;

(iii) “in connection with the making of a particular BNPL loan” means any use of covered data that is reasonably necessary to provide the consumer’s requested product or service. Targeted advertising of non-requested products or services, determining individualized pricing of non-requested products or services, cross-selling of non-requested products or services, or the sale, of covered data are not reasonably necessary to provide the consumer’s requested product or service. Examples of uses of covered data that are reasonably necessary to provide the consumer’s requested product or service include:

(a) uses that are specifically required under other provisions of law, including to comply with a properly authorized subpoena or summons or to respond to a judicial process or government regulatory authority;

(b) uses that are reasonably necessary to protect against or prevent actual or potential fraud, unauthorized transactions, claims, or other liability;

(c) servicing or processing the product or service the consumer requested; and

(d) uses that are reasonably necessary to improve the product or service the consumer requested.

(2) Consumer Consent; Duration.

(i) A BNPL lender may use, sell or share covered data, other than in connection with the making of a particular BNPL loan to the consumer, only with the consumer’s consent, separately, for each specific use case disclosed in accordance with paragraph (3)(ii)(d) of this subdivision.

(ii) A consumer’s consent under this subdivision shall be effective for no longer than one year after the consumer’s most recent authorization.

(iii) To continue to use, sell or share the covered data of a consumer, other than in connection with the making of a particular BNPL loan to the consumer, the BNPL lender shall obtain a new consent from the consumer no later than the one-year anniversary of the most recent consent from the consumer. Such requests for renewed consent shall comply with paragraph (3) of this subdivision.

(3) Disclosures.

(i) In general. Requests for consent under paragraph (2) of this subdivision, shall include a consent disclosure electronically or in writing. The disclosure described in subparagraph (ii) of this paragraph shall be provided in a clear and conspicuous manner and shall be equally prominent as the request for consent. Such disclosure shall be provided on the same interface on which the consumer’s consent is being sought.

(ii) Content. The consent disclosure must include the following:

(a) a statement that the consumer's consent is being requested to use, sell and/or share covered data, including;

(b) a statement that the consumer's consent is optional and not a condition or requirement for the consumer to obtain a BNPL loan pursuant to paragraph (4)(i) of this subdivision; and

(c) for each individual use or sharing purpose (other than sales), a clear, detailed and accurate description of the type of information to be used and each specific use or purpose for which the consumer's consent is being requested, for example:

(1) account or transaction-level information;

(2) to influence the individualized targeted advertising decision of non-requested products or services;

(3) to influence the individualized marketing of non-requested products or services;

(4) to influence the individualized pricing of non-requested products or services; or

(5) disclosure to affiliates of the BNPL lender.

(d) Consumers must be able to separately affirmatively consent or refuse such consent:

(1) to the sale of any covered data;

(2) to each individual use or sharing purpose disclosed pursuant to subparagraph (ii)(c) of this paragraph; and

(3) for any sale of covered data and for each use or sharing purpose in subparagraph (ii)(c)(2) of this paragraph, to limit the use, sale or sharing of covered data beginning only on the date affirmative consent was obtained (*i.e.*, future data only), or instead, to allow the use, sale or sharing of all covered data regardless of when collected (*i.e.*, past and future data).

A BNPL lender that seeks consumer consent shall not set affirmative consent as the default option, and the options to provide consent or refuse consent shall be presented equally prominently. A BNPL lender shall provide the option to decline all requests for consent collectively, and a BNPL lender shall not provide any option to accept more than one request for consent at one time.

(e) the names of any third parties that will have access to the consumer's covered data if the consumer provides the consumer's consent;

(f) a brief description of the expected duration of the lender's use, sale or sharing of the covered data and a statement that the use, sale or sharing will not last longer than one year after the consumer's most recent consent; and

(g) a description of the consent withdrawal method described in paragraph (5) of this subdivision.

(iii) Uses Not Disclosed Prohibited. No BNPL lender shall use, sell, or share covered data for any purpose, other than in connection with the making of a particular BNPL loan, if a consumer's consent is not obtained pursuant to paragraph (2) of this subdivision.

(4) Tying Prohibited.

(i) A BNPL lender shall not in any manner provide any BNPL loan, furnish any related service or fix or vary the consideration for any of the foregoing, on the condition or requirement that the consumer provide such consumer's consent to permit such lender to use, sell or share a consumer's covered data for any purpose other than in connection with the making of a particular BNPL loan.

(ii) If a BNPL lender seeks a consumer's consent to use, sell or share the covered data of a consumer other than in connection with the making of a particular BNPL loan, such lender must provide a clear and conspicuous notice that the consumer's consent is not a condition or requirement for the consumer to obtain a BNPL loan.

(5) Withdrawal of Consent; Deletion.

(i) A BNPL lender shall provide the consumer with a method to withdraw their affirmative consent provided pursuant to paragraph (2) of this subdivision. Such method shall be as easy to access and operate as the initial consent. The BNPL lender shall also ensure the consumer is not subject to costs or penalties for revoking consent.

(ii) A BNPL lender shall promptly notify any third party to whom it has provided access to the consumer's covered data when the BNPL lender receives a withdrawal request from the consumer.

(iii) If, with respect to the sale of covered data, or any specific use or sharing purpose, a consumer consent expires, or if a BNPL lender receives a withdrawal request as described in subparagraph (i) of this paragraph, a BNPL lender shall: (a) no longer use, sell or share a consumer's covered data as applicable, and (b) delete any covered data, and cause the deletion by any third party with whom such covered data may have been sold or shared, that is not required in connection with the making of a particular BNPL loan, within 30 days of the expiration of any consumer consent or the receipt of a withdrawal request.

(6) Policies and Procedures. Each BNPL lender shall maintain written policies and procedures regarding its use, sale and sharing of covered data.

(f) Additional Consumer Protections

(1) Language Requirements. A BNPL lender must accept and respond to billing error notices, notices of unauthorized use, and requests for forbearance completely and accurately in the English language, in the Spanish language, and in any language principally used in any advertisements of the BNPL lender in the State of New York.

(2) Customer Service.

(i) A BNPL lender shall prominently display on all of its mobile applications, websites and other consumer interfaces a toll-free telephone number through which a consumer may contact the BNPL lender for customer service issues, including but not limited to potential billing errors, potential unauthorized use, and requests for forbearance, and receive live customer assistance.

(ii) The telephone line in subparagraph (i) of this paragraph shall be operative at least 10 hours per day, Monday through Friday, excluding Federal holidays.

(iii) A BNPL lender shall prominently display on all of its mobile applications, websites and other consumer interfaces an electronic mail address through which a consumer may contact the BNPL lender for customer service issues, including but not limited to potential billing errors, potential unauthorized use, and requests for forbearance, and receive assistance.

Section 423.13 Complaints

(a) Each BNPL lender shall establish and maintain written policies and procedures to fairly and timely resolve complaints.

(b) Each BNPL lender must provide, in a clear and conspicuous manner, on all of its mobile applications, websites and other consumer interfaces, and in all physical locations, and in any other location as the superintendent may prescribe, the following disclosures:

(1) the BNPL lender's mailing address, email address, and telephone number for the receipt of complaints;

(2) a statement that the complainant may also bring their complaint to the attention of the department;

(3) the department's mailing address, website, and telephone number; and

(4) such other information as the superintendent may require.

(c) Each BNPL lender shall report to the superintendent any change in the BNPL lender's complaint policies or procedures within seven days.

Section 423.14 Transitional period.

(a) License. A person already acting as a BNPL lender upon the effective date of this regulation, other than an exempt organization or a Banking Law entity, to continue doing business lawfully, shall apply for a license in accordance with this Part within 45 days of the effective date of this regulation. Such an applicant shall be a provisional licensee until it has been notified by the superintendent that its application has either been denied or approved. Acting as a BNPL lender

without having submitted an application for a license in accordance with this subdivision shall be a violation of Banking Law section 737 as of the date that is 45 days after the effective date of this regulation. The superintendent may determine that an application was not filed in good faith or with sufficient information to warrant such applicant being considered a transitional licensee. In this circumstance, the superintendent shall notify the applicant that such applicant shall not, and such applicant shall not as of the date of receipt of such notice, act as a BNPL lender unless their application is subsequently approved by the superintendent.

(b) Category permission. A person already acting as a BNPL lender upon the effective date of this regulation, other than an exempt organization, to continue doing business lawfully, shall apply for any applicable category permission within 45 days of the effective date of this regulation. Such an applicant shall be deemed provisionally authorized to offer the categories of BNPL loans for which it has sought permission until, as to each category, it has been notified by the superintendent that its application has either been denied or approved. Acting as a BNPL lender without having submitted an application as described in this subdivision shall constitute a violation of Banking Law section 737 as of the date that is 45 days after the effective date of this regulation. The superintendent may determine that an application was not filed in good faith or with sufficient information to warrant such applicant being considered provisionally authorized to offer the categories of BNPL loans for which it has sought permission. In such case, the superintendent shall notify the applicant that such applicant shall not, and such applicant shall not as of the date of receipt of such notice, offer the categories of BNPL loans for which it has sought permission unless their application is subsequently approved by the superintendent.

Section 423.15 Severability.

If any provision of this Part or the application thereof to any person or circumstance is adjudged invalid by a court of competent jurisdiction, such judgment shall not affect or impair the validity of the other provisions of this Part or the application thereof to other persons or circumstances.