

Emerging Markets and Trends in Lending: Personal Loans, Buy Now, Pay Later (BNPL), Small Business and More

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Today's Session

- Introduction
- Personal (Marketplace) Loans
- Buy Now, Pay Later (BNPL)
- Small Business Loans
- Q & A

Meet our Panelists

Andrew Duke

Andrew Duke serves as the Executive Director to the Online Lenders Alliance (OLA). Andrew comes to OLA with more than 22 years of experience in government with a decade in financial services policy – most recently leading the Consumer Education and External Affairs division at the Consumer Financial Protection Bureau (CFPB). Prior to the Bureau, Andrew served as Chief of Staff to three different members of Congress, including House Financial Services Committee Chairman Jeb Hensarling.

Jenn Wilson

Jenn Wilson, the President and Chief Compliance Officer of EverChain, has been with EverChain since April of 2014. Jenn is designated as a Certified Receivables Compliance Professional (CRCPP) by the Receivables Management Association International (RMAI, formally Debt Buyers Association (DBA)), a Certified Regulatory Vendor Program Manager (CRVPM III) by the Compliance Education Institute and as a Credit and Collection Compliance Officer (CCCO) by ACA International. Prior to joining EverChain, Jenn served in various compliance roles for large third-party collection agencies. Jenn also served on the Certification Council for RMAI and was the Chairperson of its Audit Committee. Jenn has a BA in Communication from Canisius College.

Jonathan Pompan

Jonathan L. Pompan is a Partner in Venable LLP's Washington, DC office and chair of the firm's consumer financial services practice group. Jonathan has extensive experience representing companies before the FTC, CFPB, state attorneys general, and state regulators. His experience includes several CFPB investigations and enforcement matters, examination preparation and appeals, conducting compliance audits, obtaining licenses, and assisting in the formation and development of new products and services. In addition, he provides ongoing compliance and general counseling advice to clients in the consumer financial services sector, including debt buyers and collectors, loan originators, fintech service providers, and advertisers and marketers, including lead generators. Jonathan is versatile and creative in addressing legal and business considerations, and in developing compliance programs and advice tailored to his client's unique needs and meeting government expectations.

Personal Lending

Personal Loans (Marketplace) Lending

Overview

- Blanket term covering an array of non-bank, online lending platforms
 - They're a type of "FinTech"
- Marketplace lenders either lend directly to borrowers through the internet or, more typically, help borrowers obtain credit from lenders or investors
 - Sometimes called "peer-to-peer" lending (the term "peer" is now misleading in this space given the involvement of private equity and hedge funds)
- Marketplace loans cover a wide array of asset classes that is expanding
 - Unsecured consumer lending (including student loans), small business lending, residential mortgage lending, commercial real estate lending, auto lending, etc.
- Reportedly, the sector saw steady growth in loan origination volume throughout 2010s with a brief drop-off in early 2020 due to the pandemic

Personal Lending

Common Marketplace Lending Lifecycle

- 1) Consumer or business seeks out a loan from a marketplace lending platform
- 2) Platform connects borrowers with investors willing to buy or invest in the loan
- 3) Borrower makes payments on the loans through the marketplace lending platform
- 4) Marketplace lending platform keeps certain fees and sends the balance of the payments to the investors

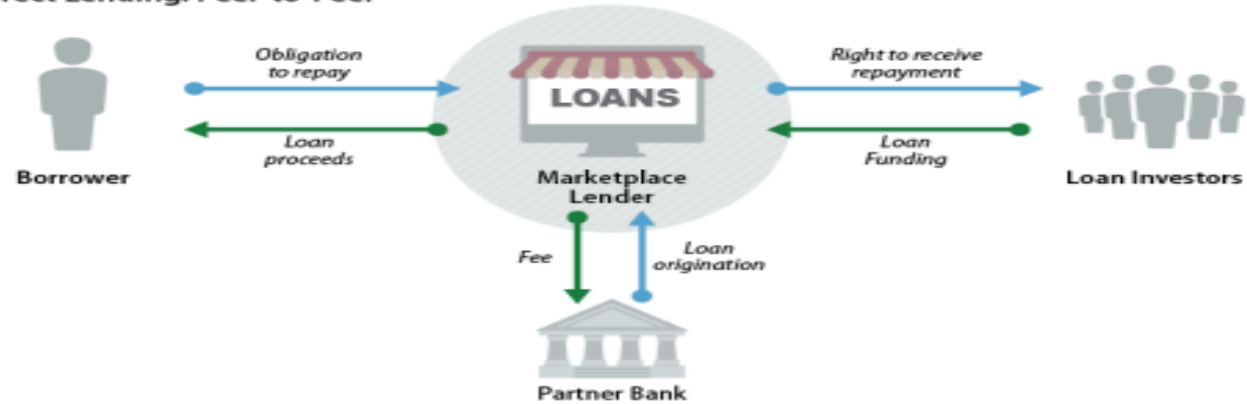
Note:

- Marketplace lending platforms also offers consumers an outlet to refinance existing debt through this process

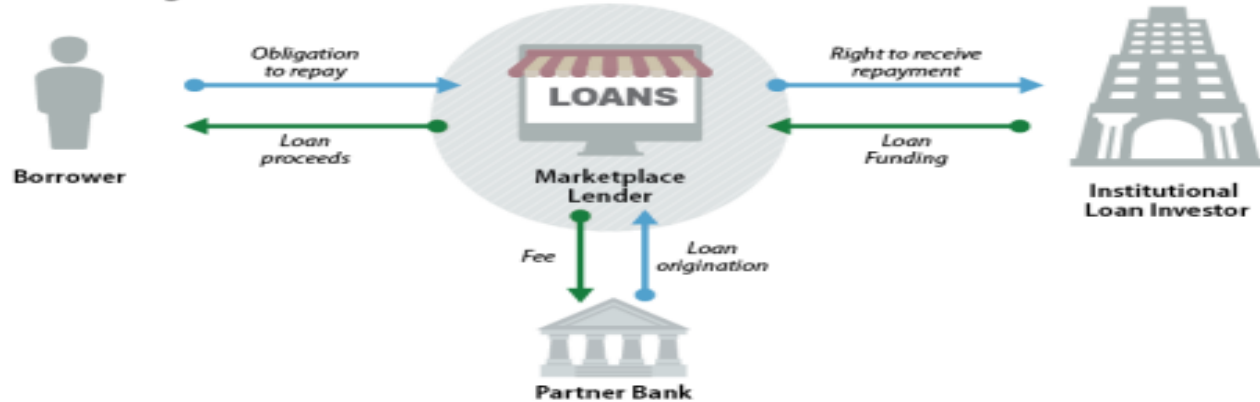
Examples of Personal Lending Business Models



Indirect Lending: Peer-to-Peer



Indirect Lending: Institutional Investor



Personal Lending: Marketplace Lending

Examples (among many)

- Prosper Marketplace
- Avant
- OnDeck Capital
- Peerform
- Upstart
- Funding Circle



Evolving Player

- LendingClub
- SoFi



Personal Lending: Regulatory Framework

- Securities registration and disclosure
- Consumer protection and fair lending compliance, examples:
 - UDAAP
 - Fair Lending/ECOA
 - TILA
 - EFTA/Regulation E
 - Federal Supervisory Authority? (i.e., Bank supervision)
- State-level regulatory requirements, examples
 - Lending Authority and Licensing
 - Application of Law to Secondary Buyers
 - Usury Law
- The future of marketplace lending regulation is uncertain
 - Inconsistent, uncertain, or burdensome state regulation
 - True Lender Risk / Originate-to-Sell Models
 - Potential lack of supervisory oversight
 - Risk-Retention requirements

Personal Lending: Potential Areas of Regulatory Concern and Action

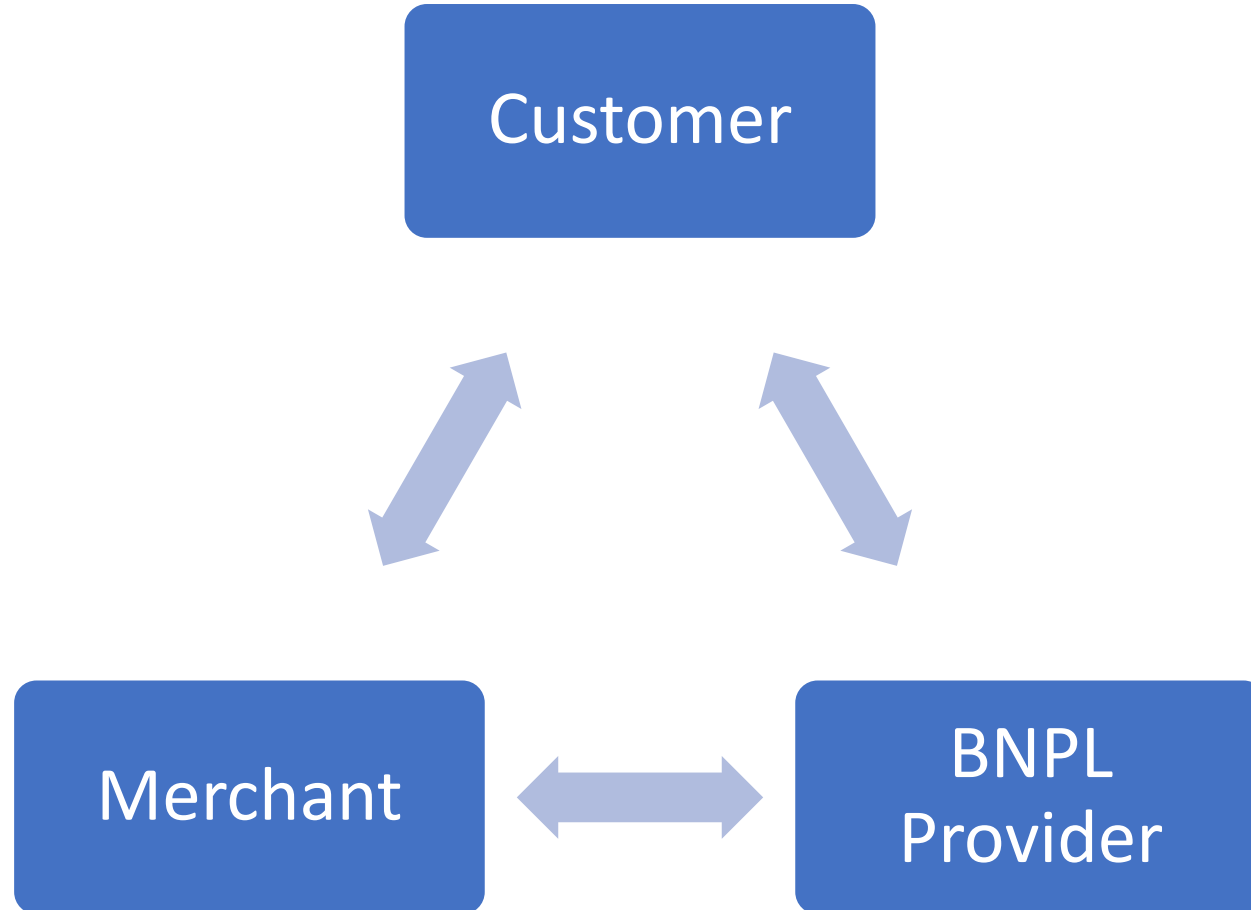
- Data collection and collectability
- Online lead generation and unfair and deceptive acts and practices
- Data privacy and usage
- Concerns about increasingly strong relationships between marketplace lending fintechs and traditional banks
- Compliance with state usury laws and regulations
- State licensing requirements

Buy Now, Pay Later (BNPL)

Buy Now, Pay Later (BNPL): Overview

- Point of Sale (POS) installment loan that
 - Often 4 installments, intervals will vary
- Non-credit card option to pay for products over time
- Modern layaway – consumers make purchases and pay later
 - Terms vary – weeks, months, etc.
- Eligible Products usually run in the low hundreds to low thousand-dollar range
- At present, often no hard inquiry—appealing to consumers with little-to-no credit history or poor credit history
 - Attracts young consumers
 - Attracts consumers of color—twice as popular with Black and Hispanic consumers as with white consumers (opposite of the trend among credit card users)
- Some direct lending, but also some bank partnerships

BNPL Business Model



Buy Now, Pay Later (BNPL)

Examples of Players

- Affirm
- Afterpay
- Klarna
- PayPal
- Zip



Buy Now, Pay Later (BNPL): Lifecycle

- 1) Merchant partners with a BNPL provider
 - Terms of merchant agreements vary (fees, commission, etc.)
- 2) Consumer decides to buy product from merchant and agrees to BNPL option
- 3) BNPL provider funds the purchase, satisfying the merchant
- 4) Consumer pays BNPL provider directly
 - Sometimes for no interest, low-interest, or small fee

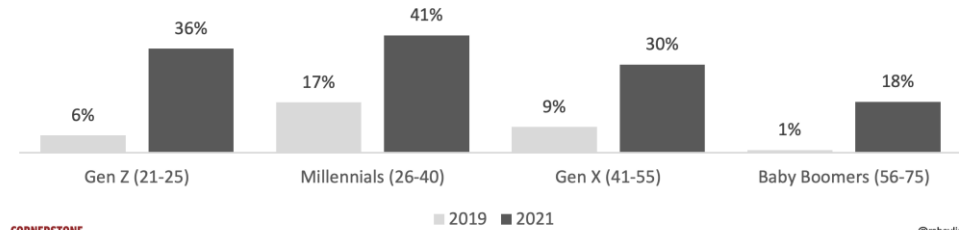
Buy Now, Pay Later (BNPL): Statistics

- BNPL fintechs have reportedly diverted \$8-\$10 billion away from traditional banks
- 42% of consumers have used BNPL at least once
- November 2021 CNBC poll: 7% of shoppers said they'd use BNPL for holiday purchases
- BNPL's exploded in popularity during pandemic as consumers moved online, but experts expect it to continue and possibly double or triple over the next few years
 - >50 million Americans don't have a credit score—attractive option for them

Buy Now, Pay Later (BNPL): Statistics (cont'd)

- Huge growth among younger generations, including 6-fold increase among Gen Z

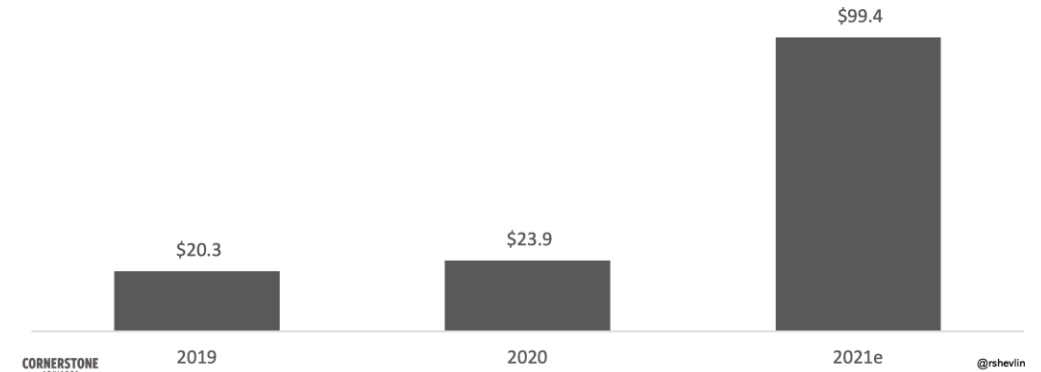
Buy Now, Pay Later Adoption by Generation, 2019-2021



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Buy Now, Pay Later Retail Purchases in the US (\$ in billions)



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Source: Cornerstone Advisors

Buy Now, Pay Later (BNPL)

Benefits:

- Quick and convenient
- No or low interest
- Available to consumers with thin credit profiles
- Helps consumers who need to make purchases with little cash on hand

Concerns:

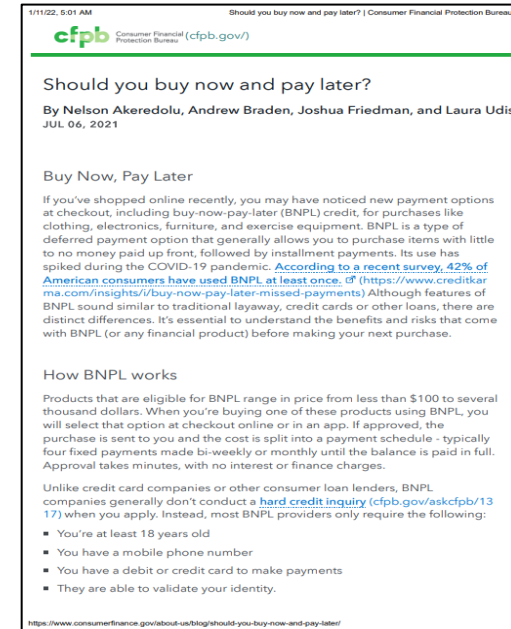
- Consumers may be taking on too much debt
- Credit Karma survey: 1/3 of BNPL consumers surveyed reported having missed a payment
- Late payments hurt credit rating, but on-time payments often not reported
- Don't offer same protections as credit cards

BNPL Regulatory Framework

- Federal Consumer Financial Protection Law
 - UDAAP
 - TILA
 - Small Dollar Rule (presently stayed by court)
 - ECOA (adverse action)
 - EFTA/Regulation E
 - GLBA
 - FCRA Credit Reporting (if furnishing to CRAs or using credit reports)
- State Law
 - Credit sale vs loan
 - Usury/retail installment sales act
 - State late, returned payment and deferral fee laws
 - Licensed lender laws
 - Small Dollar, Short term (Payday) Laws
 - Credit Services Organization / Broker Statutes

Where Is the CFPB Headed with Its Focus on BNPL?

- **Accumulating debt:** Concerns about multiple BNPLs; when there is not enough money in a consumer's bank account; with regard to the ease of getting BNPL, consumers can end up spending more than anticipated.
- **Regulatory arbitrage:** "Some BNPL companies may not be adequately evaluating what consumer protection laws apply to their products."
 - Some BNPL products do not provide certain disclosures, which could be required by some laws.
 - BNPL application may look similar to a standard checkout with a credit card; protections that apply to credit cards may not apply to BNPL products.
 - Many BNPL companies do not provide dispute resolution protections available to users of other forms of credit, like credit cards.
 - Depending on what rules the lender is following, different late fees and policies apply.
- **Data harvesting:** "The Bureau would like to better understand practices around data collection, behavioral targeting, data monetization and the risks they may create for consumers."



Small Business Lending

Small Business Lending: Overview

- Small businesses are an integral part of the American economy—there are more than 30 million
- More than 1/3 of American workers are employed by small businesses
- Small businesses need loans to start, operate, and grow
- Hit hard by the pandemic
 - 33% closed at the worst point
- Major players include big commercial banks, direct online lenders, and bank lenders backed by the SBA

Small Business Lending: Types of Small Business Loans

- Small Business Line of Credit
- Accounts receivable financing
- Working Capital Loans
- Small Business Term Loans
- SBA Small Business Loans
- Small Business Credit Cards
- SBA 7(a) loans

Small Business Lending

SBA 7(a) Loans

- Special kind of loan exclusively available to small businesses
- Borrowers need to meet certain requirements
 - Size requirements, demonstrate need, used funds for sound business purpose
- Maximum amount is \$5 million
- Loans can be used to purchase real estate, short or long term capital, refinance debt, make business purchases
- Better terms than What is typically available

Small Business Lending: Examples of Loan Types

- A/R Financing
- Business Lines of Credit
- SBA Loan 7(a), 504, and SBA Express
- Short Term Loan
- Business Term Loan – Lump sum repaid in intervals
- Merchant Cash Advance
- Equipment Financing
- Commercial Mortgage
- Startup Loan
- Business Credit Card
- Business Acquisition Loan

Small Business Lending

Regulatory Concerns

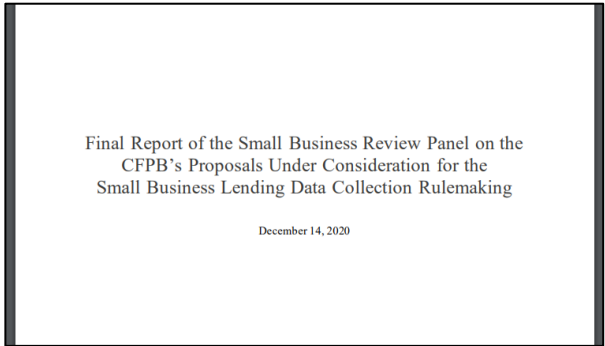
- Some small business owners struggle to obtain fair and affordable loans
- Discrimination and problems with equity
- High rates on loans to some borrowers
- Prior government programs intended to help small business (like the PPP) did not necessarily help the businesses most in need

Small Business Lending: Regulatory Landscape

- **Regulatory Landscape**
 - Older laws like Equal Credit Opportunity Act (ECOA)
 - Truth in Lending Act/Regulation Z: What is the “primary business purpose”?
 - Small Business Regulatory Enforcement Fairness Act
 - Licensing and usury laws
 - Limited number of state debt collection statutes
- **Recent Regulatory Action**
 - State Activity: NY DFS, CA DFPI
 - September 2021: CFPB 1071 rulemaking:
 - Require lenders to report amount of small business credit applied for and extended
 - Demographic information on accepted and rejected borrowers
 - Information regarding loan rates
- **Self Regulatory Efforts: Disclosures**

Section 1071 – Business Lending Data (Regulation B)

- Section 1071 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) amended the Equal Credit Opportunity Act (ECOA) to require, subject to rules prescribed by the Bureau, financial institutions to report information concerning credit applications made by women-owned, minority-owned, and small businesses.
<https://www.consumerfinance.gov/1071-rule/>
- May 15, 2017 – Request for Information
- September 15, 2020 – SBREFA Outline
- December 15, 2020 – SBREFA Report
- September 1, 2021 – NPRM issued
 - CFPB proposes to require covered financial institutions to collect and report to the Bureau data on applications for credit for small businesses, including those that are owned by women or minorities.
 - NPRM addresses CFPB’s approach to privacy interests and the publication of section 1071 data; shielding certain demographic data from underwriters and other persons; recordkeeping requirements; enforcement provisions; and the proposed rule’s effective and compliance dates.
 - Comments must be submitted by January 6, 2022.
- Final Rule?



Proposed data points for small business lending data collection

On September 1, 2021, the Consumer Financial Protection Bureau (Bureau) issued a notice of proposed rulemaking (NPRM) to implement the small business lending data collection requirements set forth in section 1071 of the Dodd-Frank Act. This chart summarizes the data points that covered financial institutions (FIs) would be required to collect and report with respect to small business applications for covered credit transactions pursuant to proposed § 1002.107 in the NPRM. For more information on the NPRM, visit <https://www.consumerfinance.gov/1071-rule/>.

Data point	NPRM section	Description	Data elements to be reported	Notes
Unique identifier	107(a)(1)	FI would report an alphanumeric application or loan identifier unique within the FI to the specific application.	Unique alphanumeric application or loan number not to exceed 45 characters. Must begin with the FI’s Legal Entity Identifier (LEI).	FIs would be permitted to use numbers generated solely for 1071 data reporting or other purposes as unique identifiers.
Application date	107(a)(2)	FI would report application date using either: (i) the date the application was received by the FI; or (ii) the date shown on a paper or electronic application form.	A complete calendar date (i.e., month, day, and year).	For an application that was not submitted directly to the FI or its affiliate, the FI would be permitted to report the application date as the date the application was received by the party that initially received the application, the date the application was received by the FI, or the date shown on the application form. The NPRM includes a proposed safe harbor so that an FI would not violate 1071 if it reports an application date that is within

1 CONSUMER FINANCIAL PROTECTION BUREAU | PROPOSED DATA POINTS FOR SMALL BUSINESS LENDING DATA COLLECTION

Focus on Protection of Small Businesses

- In recent years, federal law enforcement has expanded its traditional consumer protection focus to investigation of alleged UDAP violations that harmed small businesses. Expect this type of scrutiny to continue under an aggressive federal enforcement regime.
 - FTC has investigated payments companies for potential UDAP in business-to-business dealing.
 - On January 5, FTC executed settlement that permanently banned two defendants from participating in merchant cash advance and debt collection industries because of deceptive and unfair practices, including misrepresenting terms of cash advance products.
 - Enforcement agencies (including Congress) continue to explore potential claims against banks and other intermediaries that participating in Paycheck Protection Program lending activities.

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