Let Me Think: Facilitating Deliberation in a Frictionless Economy

Carrie L. Floyd†

"Frictionless financing" platforms promise consumers a simple, seamless, and instantaneous financing experience that allows them to finance any number of products through their preferred retailer. For many consumers, frictionless financing is a welcome development that eliminates irritating design barriers that hamper consumers' ability and desire to obtain financing at the point of sale. However, frictionless financing steers other consumers towards expensive, riskier, and more complicated borrowing options. It encourages them to make hasty financing decisions with limited information, exacerbating well-established consumer heuristics and biases.

To date, there has been little scholarly evaluation of whether frictionless financing truly benefits consumers in light of these competing vices and virtues. This Article fills that gap and questions whether faster, simpler, and more seamless is better. Frictionless financing often comes with costs to consumer financial health, including eliminating important points of deliberation and making high-cost, non-traditional financing dangerously and deceptively attractive. This Article suggests that by reintroducing friction and other consumer protections that encourage deliberation, consumers may be better able to understand their preferred financing products—and better protected even when they do not. So, this Article proposes regulations that reintroduce friction into the point-of-sale financing ecosystem by targeting third-party financing brokers. While this Article focuses on frictionless financing, it also offers potential regulatory principles for consumer protection and the frictionless economy beyond these products.

† Assistant Professor of Law and Director of the Civil Legal Assistance Clinic at the University of North Carolina. I am indebted to Kaytki Joshi, Anjali Purohit, Nicole Amaldoss, Temple Zyka, Conor Lundy, Carsen Masterton, Catherine Flournoy, Andrew Wisniewsky, Kerri-Ann Rowe, and the UNC LibRA-Faculty Research Service for their research support. I am grateful to Kathleen Thomas, Kate Elengold, Kara Bruce, Mark Weidemaier, Melissa Jacoby, Carissa Byrne Hessick, Nathan Oman, Jake Linford, Eisha Jain, Nathalie Martin, Shelmun Dashan, Shayak Sarkar and participants in the Clinical Law Review Workshop, the SEC Junior/Senior Faculty Workshop, the Duke/UNC/NCCU Clinical Workshop, the Georgia State University Faculty Exchange Workshop, the Consumer Law Scholars Conference, and the AALS Section on Financial Regulation's Annual Midyear Workshop for their helpful comments and feedback. I am also incredibly thankful to the *Yale Journal on Regulation* editorial team for their thoughtful feedback and editing support. Their suggestions were immensely helpful and greatly improved this piece. I am responsible for all errors.

Introduction

"Shop now. Pay later."[1] "Pay later where you want."[2] "No hassles, just highlights. Get an approval decision super fast."[3] "With a simple, secure online application and instant credit decision, the next step on your financial journey can start right away!"[4] With the maturation of online shopping, fast, easy, and stress-free financing is now ubiquitous.[5] Operating against the backdrop of instantaneous contracting, frictionless-financing platforms offer consumers multiple and varied financing products, often within seconds and with the click of a button.[6] These platforms purport to optimize user experience by embedding streamlined user interfaces in retailers' websites that eliminate "friction" in the lending process.[7] Yet in so doing, these platforms eliminate important opportunities for consumers to evaluate the true costs of these financing products and to deliberate on their purchases.[8] And because many of these products may not be considered "credit," they may not be subject to consumer protection statutes.[9] As a result, there is little protection if something goes wrong.

Frictionless financing is just one prominent aspect of an increasingly frictionless economy.[10] Consumers are now able to contract instantane-

1. SNAP FINANCE, https://snapfinance.com [https://perma.cc/8K8E-JEBU].
2. ZIP, https://zip.co/us [https://perma.cc/8PC4-4ATJ].
3. KATAPULT, https://katapult.com [https://perma.cc/S2DL-RPEF].
4. FORTIVA, https://www.myfortiva.com [https://perma.cc/4K7W-UYXS].
5. I refer to all financial products that allow consumers to defer payment as "financing," including credit cards, installment loans, buy now, pay later (BNPL) products, and virtual rent-to-own (VirTO) products. As discussed in Part II, however, the purveyors of these products often argue that they are not "credit" or "financing" subject to federal consumer protection regulations and state usury limits. *See* Nathalie Martin & David Lynn, *The Afterpay Hangover,* 34 LOY. CONSUMER L. REV. 529, 531-34 (2023) (outlining the debate over whether BNPL products should be considered credit); Spencer R. Mitchell, Note, *Buy Now, Pay Later: How This Fintech Consumer Credit Product Preys on Unwary Borrowers and Evades Regulation*, 49 J. CORP. L. 189, 197-98 (2023) ("This four-installment repayment structure is the key for BNPLs to provide a consumer credit product without subjecting themselves to the rigors of consumer credit regulation."); Carrie Floyd, *New Tech, Old Problem: The Rise of Virtual Rent-to-Own Agreements*, 65 B.C. L. REV. 763, 818-25 (2024) (arguing that VirTOs are disguised credit sales and should be subject to consumer protection statutes).
6. *See* Christopher K. Odinet, *Consumer Bitcredit and Fintech Lending,* 69 ALA. L. REV. 781, 783 (2018) ("'Click here' is the new 'sign on the dotted line.'").
7. I use "frictionless financing" broadly to refer to both platforms that allow consumers to obtain financing through an online retailer and the products offered through those platforms. Frictionless financing includes online "point-of-sale financing," "embedded finance," and integrated financial services and the products offered through those methods. *See infra* Part II.
8. *See infra* Part II.
9. *See* note 5, *supra*.
10. I focus on consumer financing; however, the challenges of the frictionless economy are not limited to consumer financing. *See, e.g.*, Brett Frischmann & Susan Benesch, *Friction-in-Design Regulation As 21st Century Time, Place, and Manner Restriction*, 25 YALE J.L. & TECH. 376, 388 (2023) ("The relentless pursuit of frictionless transactions in our modern digital networked environment is a driving factor behind surveillance capitalism—the extraction and monetization of personal data—and the creep of digital Taylorism—the use of such data to 'scientifically' manage most facets of our lives, in order to efficiently deliver cheap bliss and convenience.");

ously in nearly every electronic consumer transaction.[11] Across sectors, businesses are optimizing for convenience. Yet a frictionless economy is not without cost. Frictionless interfaces exacerbate well-known challenges with consumer contracting, including challenges posed by contracts of adhesion and clickwrap.[12] In the online economy, consumers have no ability to negotiate the terms of consumer contracts.[13] Companies require consumers to click through walls of text, almost always without reading, much less comprehending, the disclosed information.[14] Companies also strategically manipulate friction levels to direct customers' consumption habits.[15]

Chelsea Phillips, Rebekah Russell-Bennett & Marek Kowalkiewicz, *The Physical Frictionless Experience: A Slippery Slope for Experience Memorability of Retail Services?*, 44 SERV. INDUS. J. 919, 919-21 (2024) (describing the just-walk-out movement in the service industry to create physically frictionless experiences).

11. Historically, contracts, particularly financial documents, required laborious formalities to make them enforceable. Some contracts had to be written, notarized, or entered under a wax seal to ensure that the parties were not acting impulsively. *See, e.g.*, Lon L. Fuller, *Consideration and Form*, 41 COLUM. L. REV. 799, 800 (1941) ("The affixing and impressing of a wax wafer—symbol in the popular mind of legalism and weightiness—was an excellent device for inducing the circumspective frame of mind appropriate in one pledging his future."). The frictionless economy, however, dispenses with formalities beyond what is necessary to meet the statute of frauds.

12. While a full analysis of the benefits and costs of contracts of adhesion, consumer contracts, and electronic contracting is beyond the scope of this Article, it is important to note that a frictionless economy is not possible without contracts of adhesion, or standard form contracts in which consumers with less bargaining power must "take it or leave it." *See generally* Clayton P. Gillette, *Rolling Contracts as an Agency Problem*, 2004 WIS. L. REV. 679 (considering standard form contracts and rolling contracts); OREN BAR-GILL, SEDUCTION BY CONTRACT: LAW, ECONOMICS, AND PSYCHOLOGY IN CONSUMER MARKETS (2012) (arguing that consumer contracts are designed to exploit consumer biases); MARGARET JANE RADIN, BOILERPLATE: THE FINE PRINT, VANISHING RIGHTS, AND THE RULE OF LAW (2013) (describing various iterations of contracts of adhesion).

13. *Cf.* Andrew A. Schwartz, *Consumer Contract Exchanges and the Problem of Adhesion*, 28 YALE J. ON REGUL. 313, 347 (2011) ("The process of adhesion contracting 'is not one of haggle or cooperative process, but rather of a fly and flypaper,' so adherents cannot really be said to have voluntarily assented to the terms of that flypaper.").

14. *See, e.g.*, Yannis Bakos, Florencia Marotta-Wurgler & David R. Trossen, *Does Anyone Read the Fine Print? Consumer Attention to Standard-Form Contracts*, 43 J. LEGAL STUD. 1, 21-22 (2014) (concluding that most consumers do not read end-user license agreements of software products).

15. Many frictionless-financing platforms employ dark patterns, user interfaces that manipulate users to act against their preferences. These techniques have been labeled "sludge" in the dark-patterns literature. *See, e.g.*, Cameron Belton, Daniel Bogiatzis-Gibbons, Isaac Keeley, Gráinne Murphy, Cherryl Ng & Max Spohn, *Digital Design for Financial Products and Services: Consumer Impact of Sludge, Deceptive Design, Timeliness and Simplification*, FIN. CONDUCT AUTH. 6 (2025), https://www.fca.org.uk/publication/research-notes/digital-design-financial-products-services.pdf [https://perma.cc/2NYF-KFPX] (defining "sludge" as "excessive friction that hinders consumers from making decisions in their interests, by taking advantage of their behavioural biases"); Glenna Goldis, *The New Rent-to-Own: More Confusing, Still Expensive, and Offered at an NYC Store Near You*, N.Y.C. DEP'T CONSUMER & WORKER PROT. 1, 24 (2021), https://www.nyc.gov/assets/dca/downloads/pdf/partners/Lease-To-Own-Report.pdf [https://perma.cc/J9MY-8ACD] ("[VirTO] consumers who attempt to cancel leases and return merchandise often find themselves entangled in a Kafkaesque nightmare of endless telephone calls, hidden fees and undisclosed costs."); Jamie Luguri & Lior Jacob Strahilevitz, *Shining a Light on Dark Patterns*, 13 J. LEGAL ANALYSIS 43, 43 (2021) ("Dark patterns are user interfaces whose designers knowingly confuse users, make it difficult for users to express their actual preferences,

Against this backdrop, frictionless financing introduces new concerns.[16] Unlike one-click shopping, frictionless-financing contracts are long-term relationships with potentially broad implications for consumer financial health.[17] Consumers frequently purchase more than they originally intend to and incur significant debt, all while misunderstanding the true nature of their financing.[18] This debt can prompt collections proceedings and repossessions.[19] Consumers' credit may also suffer, affecting other areas of their lives, including housing, employment, and access to public benefits. Indeed, lenders themselves recognize that these financing agreements represent ongoing and individualized relationships, often engaging in proprietary processes to determine whether to lend to each individual consumer and, if so, on what terms.[20] Frictionless-financing products also have significant deferred costs.[21] For some, the speed, convenience, and simplicity of frictionless financing may outweigh these costs, yet for others, and perhaps for the economy as a whole, frictionless financing's merits are not so clear.[22]

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or manipulate users into taking certain actions."); *cf.* Ryan Calo, *Digital Market Manipulation*, 82 GEO. WASH. L. REV. 995, 999 (2014) (arguing that "the digitization of commerce dramatically alters the capacity of firms to influence consumers at a personal level"). *See generally* Colin M. Gray, Cristiana Teixeira Santos, Nataliia Bielova & Thomas Mildner, *An Ontology of Dark Patterns Knowledge: Foundations, Definitions, and a Pathway for Shared Knowledge-Building*, 2024 PROC. CHI CONF. ON HUM. FACTORS COMPUTING SYS. art. no. 289 (proposing nomenclature for dark patterns); Colin M. Gray, Thomas Mildner & Ritika Gairola, *Getting Trapped in Amazon's "Iliad Flow": A Foundation for the Temporal Analysis of Dark Patterns*, 2025 PROC. CHI CONF. ON HUM. FACTORS COMPUTING SYS. art. no. 225 (describing Amazon's Iliad Flow).

16. Frictionless financing is now offered across major retailers, and it is pervasive in the modern economy. Some financing products offered through frictionless-financing platforms produce billions of dollars in revenue. *See, e.g.*, Affirm Holdings, Inc., Annual Report (Form 10-K), at 62, 67 (Aug. 28, 2024) (reporting $2,322,999,000 in revenue and 18,713,000 active consumers with an average 4.9 transactions per consumer in 2024); FinWise Bancorp, Annual Report (Form 10-K), at 15 (Mar. 25, 2024) (reporting that it originated $8.4 million in point-of-sale loans in 2023); OppFi, Annual Report (Form 10-K), at 71 (Mar. 27, 2024) (reporting $747,839,000 in loan originations in 2023); *see also* HILARY J. ALLEN, DRIVERLESS FINANCE: FINTECH'S IMPACT ON FINANCIAL STABILITY 79 (2022) (discussing the potential impact of small fintech firms on the economy).

17. Much depends on whether the high interest and hidden fees that frictionless-financing products often entail instigate a debt spiral. In this Article, I focus on the challenges faced by consumers most burdened by frictionless-financing products.

18. As outlined in Part II, even those consumers aware of the risks of their financing may encounter difficulties when something goes wrong. That federal and/or state consumer-protection statutes do not reach many of these products exacerbates the danger. *See infra* Part II.

19. *See What Happens if I Can't Pay Back a Buy Now, Pay Later (BNPL) Loan?*, CONSUMER FIN. PROT. BUREAU (Aug. 30, 2024), https://www.consumerfinance.gov/ask-cfpb/what-happens-if-i-cant-pay-back-a-buy-now-pay-later-bnpl-loan-en-2116 [https://perma.cc/T74A-CM4Z] ("Your missed payments may lead to the lender freezing your account to stop further purchases, and your debt could be turned over to a debt collector.").

20. *See infra* Part II.

21. *Cf.* BAR-GILL, supra note 12, at 21-23 (discussing why consumer contracts feature deferred costs).

22. *See* ALLEN, *supra* note 16, at 74 ("Increased speed and complexity are a feature of many fintech innovations, not a bug. These innovations were designed to increase the efficiency of capital intermediation, allowing those that need capital to obtain it more quickly, more cheaply,

The frictionless-financing industry is a complicated network of companies with varying relationships, but the basic structure is legible. Platform companies aggregate financial products from multiple lenders to provide lending hubs.[23] The platform companies then partner with retailers and embed their platforms into retailers' online stores. These partnerships allow consumers to access multiple and varied financing products at the point of sale.[24] Consumers have flocked to these new financing tools, causing frictionless-financing platforms, and partnering frictionless-financing lenders, to grow exponentially.[25]

In many cases, friction should be eliminated. But targeted friction can be beneficial. Because friction slows down the financing process, it creates space for users to reflect on transactions rather than automatically entering

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and in more customized ways than ever before—these innovations are also allowing investors to profit in new ways."); *see also* Christopher K. Odinet, *Predatory Fintech and the Politics of Banking*, 106 IOWA L. REV. 1739, 1775-85 (2021) (characterizing certain forms of fintech lending as predatory); Nikita Aggarwal, *The Perils of Frictionless Finance*, ECGI BLOG (Dec. 6, 2022), https://www.ecgi.global/publications/blog/the-perils-of-frictionless-finance [https://perma.cc/K3Y6-MXFV] ("By reducing upfront frictions and shifting and shrouding costs, smooth finance both increases risk in the system and concentrates risk in younger, less financially sophisticated, lower-income consumers, who are less able to absorb the risk."); Martin & Lynn, *supra* note 5, at 552-56 (outlining how BNPL product use leads to overconsumption and distorted contract terms); *cf.* Todd H. Baker & Corey Stone, *Making Outcomes Matter: An Immodest Proposal for a New Consumer Financial Regulatory Paradigm*, 4 BUS. & FIN. L. REV. 1, 19 n.64 (2020) ("A growing distinction—in practice if not in regulatory structure—between the health care and consumer financial services concepts of disclosure and consent can be seen in the efforts by both traditional and fintech consumer financial services providers to reduce so-called 'friction' in financial transactions, often at the expense of careful deliberation or the time and capacity to digest the information contained in disclosures that is relevant to the purchase decision."); Juliet M. Moringiello & Christopher K. Odinet, *Blockchain Real Estate and NFTs*, 64 WM. & MARY L. REV. 1131, 1188 (2023) ("We also note that frictionless transactions are not always good. This is especially true when individuals enter into sales and financing transactions.").

23. There are innumerable ways that these companies organize their relationships and the services they offer. *See infra* Section II.B; *see also* Adam J. Levitin, *Rent-A-Bank: Bank Partnerships and the Evasion of Usury Laws*, 71 DUKE L.J. 329, 352-57 (2021) (describing the disaggregation of financial services between unaffiliated entities); Odinet, *supra* note 22, at 1758-65 (describing the fintech-bank partnership of Elevate Credit, Inc.). For ease of reading, I refer to the companies providing frictionless-financing platforms as "frictionless-financing platforms" and the products offered through these platforms as "frictionless-financing products." For an example of a frictionless-financing platform, see CHARGEAFTER: PLATFORM, https://chargeafter.com/platform [https://perma.cc/FW65-ZDTB]. I refer to the companies providing frictionless-financing products as "frictionless-financing lenders," meanwhile, and the point of sale as the "retailer's website." I refer to the entire ecosystem as "frictionless financing."

24. *See, e.g.*, CHARGEAFTER: PLATFORM, *supra* note 23.

25. Much of frictionless financing is made possible through third-party banking-as-a-service (BaaS) companies that use application programming interfaces (APIs) to link fintech companies' platforms (i.e., their software interfaces) to financing partners' financial services. These partnerships most commonly involve regulated banking entities, but in frictionless financing, the part--erships may be with alternative fintech financing partners. The third-party BaaS company often also links with the retailer to embed their software into the retailer's website. As outlined later, this provides another nontraditional entity to regulate. *See generally* Braeden Hodges, *Banking-as-a-Service: Fintechs Walking the Regulatory Perimeter*, 17 BROOK. J. CORP. FIN. & COM. L. 127 (2023) (discussing how nonbanking businesses have begun providing federally regulated products to consumers).

into them.[26] This deliberation, and the design elements that facilitate it, can be valuable.

There are robust bodies of literature related to emerging fintech products, consumer protection, and dark patterns, but this literature tends to be compartmentalized, focusing on specific issues or products one at a time.[27] There are fewer integrated accounts of how consumers interact with frictionless-financing platforms in general, the effects of those interactions on consumer behavior, and whether there are legal interventions that could address the issues arising from those interactions. Does consumers' increasing reliance on frictionless contracting affect their decision making? Does easy and quick access to financing improve consumers' financial position? Does it help them access the best financial devices for their needs? Or does the way that consumers interact with frictionless-financing platforms limit their ability to discern the differences between a seemingly endless assortment of varied financial vehicles? And, if so, are there legal or regulatory avenues to improve deliberation? Or to protect consumers if deliberation is not possible? This Article tries to answer some of these questions.

Frictionless-financing lenders often argue that they are democratizing credit by making the process to obtain financing faster and simpler,[28] but there has been less scholarly evaluation of whether frictionless-financing

26. Dual-process theory posits that humans engage in two types of thinking: (1) intuitive and automatic; and (2) reflective and rational. Automatic thinking is unconscious, effortless, and fast. Reflective thinking is slow, controlled, and deliberative. *See* Jonathan St. B.T. Evans & Keith E. Stanovich, *Dual-Process Theories of Higher Cognition: Advancing the Debate*, 8 PERSP. ON PSYCH. SCI. 223, 223-24, 235-37 (2013) (outlining and discussing the literature on dual process theories). *See generally* Aikaterini Voudouri, Bence Bago, Gregoire Borst & Wim De Neys, *Reasoning and Cognitive Control, Fast and Slow*, 18 JUDGMENT & DECISION MAKING art. no. e33 (2023) (exemplifying scholarly efforts to go beyond Kahneman's initial framework).

27. *See generally* Floyd, *supra* note 5 (considering VirTOs and the VirTO business model); Nakita Q. Cuttino, *The Rise of 'FringeTech': Regulatory Risks in Earned-Wage Access*, 115 NW. U. L. REV. 1505 (2021) (describing earned wage access products); Hilary J. Allen, *Payments Failure*, 62 B.C. L. REV. 453 (2021) (describing the potential risks with emerging payment technology); Nikita Aggarwal, D. Bondy Valdovinos Kaye & Christopher K. Odinet, *#Fintok and Financial Regulation*, 54 ARIZ. ST. L.J. 1035 (2022) (describing the role of TikTok in promoting new financial products); Gregory Day & Abbey Stemler, *Are Dark Patterns Anticompetitive?*, 72 ALA. L. REV. 1 (2020) (arguing that dark patterns are anticompetitive and that antitrust law can address their effect on consumer welfare); Gregory M. Dickinson, *The Patterns of Digital Deception*, 65 B.C. L. REV. 2457 (2024) (arguing that new levels of consumer data analysis have undermined consumer-protection efforts); Calo, *supra* note 15 (same); Johanna Gunawan, Woodrow Hartzog, Neil Richards, David Choffnes & Christo Wilson, *Dark Patterns as Disloyal Design*, 100 IND. L.J. 1389 (2025) (proposing a regulatory framework for dark patterns).

28. As noted in the final Part, however, there is a problem with this position: it assumes that credit, regardless of whether it is predatory, should be universally available to high-risk, low-income borrowers. In many instances, this argument whitewashes predatory lending. *See* Abbye Atkinson, *Rethinking Credit as Social Provision*, 71 STAN. L. REV. 1093, 1105 (2019) (describing how proponents and opponents of predatory credit frame credit as a social provision). *See generally* Odinet, *supra* note 22 (arguing that fintech is often proposed as democratizing credit, while it is really repackaging predatory lending).

platforms and the products they offer benefit consumers.[29] This Article draws on behavioral-economics and consumer-contract literature to understand (1) why one might be skeptical of frictionless financing's purported virtues and (2) why intentionally introducing inefficiencies into frictionless financing may be worthwhile. It builds on the emerging body of scholarship that argues that preserving friction in user experiences can help address the emerging social challenges technology causes.[30] This Article questions whether faster and simpler is always better for consumers, and it argues that—by facilitating consumer deliberation—friction can be a useful tool in regulating frictionless-financing providers.[31]

This Article proceeds in five parts. First, Part I describes the frictionless economy. Then, Part II focuses on frictionless financing in particular. It provides an architecture for understanding frictionless-financing products, and it maps existing federal regulations onto different product categories to clarify consumers' rights and responsibilities.

Part III critiques this system. It outlines how frictionless financing exploits well-established consumer heuristics and biases to push consumers towards complex, and sometimes unfavorable, financing options. It relies

29. Though there has been little direct exploration of the topic in the legal scholarship, there have been passing references to reintroducing friction into frictionless financing in popular culture, media coverage, and other scholarly works. *See, e.g.*, Aggarwal, *supra* note 22; Baker & Stone, *supra* note 22, at 19 n.64; Jayshree Venkatesan, Rafe Mazer & Colin Rice, *Positive Friction for Responsible Digital Lending: A Call to Action*, CTR. FOR FIN. INCLUSION 6-10 (Feb. 2024), https://www.centerforfinancialinclusion.org/wp-content/uploads/2024/03/cfi-positive-friction-for-reponsible-digital-lending-report-2024.pdf [https://perma.cc/9LV9-4VHX] (proposing introducing positive friction into the international digital credit environment).

30. *See, e.g.*, Paul Ohm & Jonathan Frankle, *Desirable Inefficiency*, 70 FLA. L. REV. 777, 782 (2018) (introducing the idea of "desirable inefficiencies"); Anne van Lieren, Giulia Calabretta & Jan Schoormans, *Rational Overrides: Influence Behaviour Beyond Nudging,* 2018 DESIGN RSCH. SOC'Y CONF. 2163, 2165, 2171-73 (outlining nine types of beneficial friction); Manjunath Padigar, Yi Li & Chandana N. Manjunath, *"Good" and "Bad" Frictions in Customer Experience: Conceptual Foundations and Implications*, 42 PSYCH. & MKTG. 21, 23-25 (2025) (challenging the narrative that consumers always abhor friction); William McGeveran, *The Law of Friction*, 2013 U. CHI. LEGAL F. 15, 49-54, 56-68 (discussing friction as it relates to sharing digital content); Zahra Takhshid, *Wearable AI, Bystander Notice, and the Question of Privacy Frictions*, 104 B.U. L. REV. 1087, 1092-94, 1097-1106 (2024) (applying "privacy frictions" to bystanders subjected to wearable AI devices); Neil M. Richards, *The Perils of Social Reading*, 101 GEO. L.J. 689, 712-15 (2013) (critiquing "frictionless sharing" of online reading activities); Ellen P. Goodman, *Digital Fidelity and Friction*, 21 NEV. L.J. 623, 624-51 (2021) (discussing "slow technology"); Ayelet Gordon-Tapiero, Paul Ohm & Ashwin Ramaswami, *Fact and Friction: A Case Study in the Fight Against False News*, 57 U.C. DAVIS L. REV. 171, 181 (2023) (arguing that creating friction in social media apps may limit the spread of false news); Paul Ohm & Nathaniel Kim*, Legacy Switches: A Proposal to Protect Privacy, Security, and the Environment from the Internet of Things*, 84 OHIO ST. L.J. 101, 124-25 (2023); Frischmann & Benesch, *supra* note 10, at 397 (describing the concept of friction-in-design); Leigh Osofsky, *Who's Naughty and Who's Nice? Frictions, Screening, and Tax Law Design,* 61 BUFF. L. REV. 1057, 1062-88 (2013) (proposing regulating to build frictions to prevent taxpayers from circumventing reforms curbing tax planning); sources cited *supra* note 29.

31. Adding friction is not the only way to address the problematic terms in frictionless-financing products, and this proposal does not suggest that friction should be imposed at the expense of other policy recommendations. But adding friction may be politically feasible even when substantive regulation, such as limiting interest rates or prohibiting specific products, is not—thus this Article's focus on friction.

heavily on the large body of behavioral-economics scholarship describing consumer-contracting behavior.

Part IV proposes a framework for thinking about consumer protection in a frictionless-financing environment—by adding friction to combat consumer biases while not overly burdening those who are actively seeking to take advantage of frictionless-financing products. It argues that some inefficiencies are important and that reintroducing friction may be a useful concept for regulating frictionless financing. It highlights how these concepts can be used to facilitate consumer deliberation when using frictionless-financing products. Finally, Part V briefly discusses counterarguments to Part IV's suggestions.

While this Article focuses on frictionless financing, it also suggests potential principles for consumer protection in the broader frictionless economy. Future consumer-protection regulation should focus not only on the financing products offered in a frictionless economy, but also on how consumers interact with the platforms providing such products, including through user interface and user experience design. By centering consumer deliberation, rather than just notice, such regulations will be better able to adapt to a frictionless future.

I. The Frictionless Economy

Technology companies have embraced efforts to eliminate friction, or "pain points," in user experience (UX).[32] Users increasingly encounter seamless experiences throughout their online lives.[33] To understand the frictionless economy, it is important to first understand what UX designers are attempting to eliminate: friction. This Part begins by explaining friction and tech companies' efforts to reduce it.

A. What Is Friction?

Across fields, "friction" describes some type of resistance.[34] For example, psychologists use it to describe relationship conflict,[35] tax scholars

32. *See, e.g.*, JAIME LEVY, UX STRATEGY: HOW TO DEVISE INNOVATIVE DIGITAL PRODUCTS THAT PEOPLE WANT 31 (2015) (noting that good UX designers create frictionless experiences).

33. *See* note 10, *supra*.

34. *See, e.g.*, McGeveran, *supra* note 30, at 52; Yadong Luo & Oded Shenkar, *Toward a Perspective of Cultural Friction in International Business,* 17 J. INT'L MGMT. 1, 1 (2011) ("the cultural friction lens captures the nature and magnitude of interaction between the cultural systems engaged in cross-border businesses."); Osofsky, *supra* note 30, at 1058.

35. *See, e.g.*, Meredith S. Sears, Rena L. Repetti, Bridget M. Reynolds, Theodore F. Robles & Jennifer L. Krull, *Spillover in the Home: The Effects of Family Conflict on Parents' Behavior*, 78 J. MARRIAGE & FAM. 127, 127-131 (2015) ("Friction is a normal part of everyday family life.").

use it to describe nontax costs in tax planning,[36] and economists use it to describe transactional costs.[37] The idea of friction, and efforts to eliminate it, are also prominent in Silicon Valley and in the UX field.[38] In UX, friction refers to technology design interfaces and interactions that prevent users from seamlessly achieving their goals.[39]

Friction, as used in this Article, refers to the effort, time, and design barriers consumers face in obtaining financing.[40] The term is capacious, encompassing every step in the process of obtaining and using financing, from design frictions (e.g., where a button is located on the web platform) to financing-company approval procedures. Friction can be both harmful for and beneficial to users. This Article employs a broad understanding of friction to assess its vices and virtues in as many aspects of the financing process as possible.

B. Why Eliminate Friction?

Most academic research on friction tries to identify it in order to eliminate it.[41] This is also true in the tech industry: UX and software designers want to create frictionless user interfaces (UIs).[42] Indeed, developers view "frictionless" design as a central tenet of UX strategy.[43] Removing friction, the argument goes, minimizes transaction costs and facilitates consumer access.

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36. *See, e.g.*, Osofsky, *supra* note 30, at 1058; *cf.* Kathleen Thomas, *Taxing Nudges*, 107 VA. L. REV. 571, 624-25 (2021) (noting that hassle factors or friction may prevent people from taking up tax incentives even when economically attractive).

37. *See, e.g.*, McGeveran, *supra* note 30, at 52 (citing Nobel Prize-winning work by economists to identify frictions preventing economic parties from locating one another).

38. *Id.* at 51; *see also* LARS WIEDENHOEFER, DIGITAL CUSTOMER EXPERIENCE ENGINEERING 8 (2021) (noting the concept includes "any friction the customer might experience with the software and their digital customer journey.").

39. *See, e.g.*, Anna L. Cox, Sandy Gould, Marta E. Cecchinato, Ioanna Iacovides & Ian Renfree, *Design Frictions for Mindful Interactions: The Case for Microboundaries*, 2016 PROC. CHI CONF. EXTENDED ABSTRACTS ON HUM. FACTORS IN COMPUTING SYS. 1389, 1390.

40. At a high level, this framing comports with understandings of friction in UX, behavioral economics, and psychology, some of which are noted above. *See* notes 34-39, *supra*; Ohm & Frankle, *supra* note 30, at 826 ("The friction to which these companies and the authors refer is the notice and affirmative button clicks that would typically accompany this information flow."); Frischmann & Benesch, *supra* note 10, at 397.

41. *See, e.g.*, Jo Bates, *The Politics of Data Friction*, 74 J. DOCUMENTATION 412, 415 (2018) (describing the literature regarding data friction); Padigar et al., *supra* note 30, at 24 ("[T]he dominant view in customer experience literature . . . is that friction must be eliminated to improve customer experience.").

42. *See* Thomas Mejtoft, Emma Parsjö, Ole Norberg & Ulrik Söderström, *Design Friction and Digital Nudging: Impact on the Human Decision-Making Process*, PROCS. 2023 5TH INT'L CONF. ON IMAGE, VIDEO & SIGNAL PROCESSING 183, 185 (2023) ("In general, the idea of UX is to remove frictions for the user to be able to easily use an interface").

43. *See, e.g.*, LEVY, *supra* note 32, at 31; Gordon-Tapiero et al., *supra* note 30, at 181; Ohm & Kim, *supra* note 30, at 124-25. One prominent web-design text proposes that the overriding principle of usability is "Don't make me think!" *See* STEVE KRUG, DON'T MAKE ME THINK, REVISITED: A COMMON SENSE APPROACH TO WEB USABILITY 11 (3d ed. 2014).

Definitionally, this argument might be correct: removing friction from UI makes consumer transactions more efficient.[44] Consumers increasingly expect online platforms to be convenient, efficient, and simple to navigate.[45] Businesses that make their platforms overly complex will lose customers; because friction frustrates consumers' tasks and goals, it increases the odds a consumer will, in the case of e-commerce, leave an item in their "cart," abandoning a sale. Firms that reduce friction, meanwhile, may be able to devote more time and resources to innovating, delivering additional products, and managing administrative tasks.[46] Removing friction, then, arguably maximizes the welfare of consumers and businesses both. UI designers, accordingly, are pressured by both customers and businesses to eliminate any friction in UX.

C. Why Preserve Friction?

Despite the conventional wisdom that friction is undesirable and inefficient, there is a growing movement towards understanding and differentiating desirable friction from frustrating friction.[47] While some sources of friction are certainly frustrating, frictionless technology may also be detrimental to consumers. Researchers suggest that frictionless technology invites "mindless" technology use, the distribution of harmful content, addiction, concerning data collection, and anticompetitive behavior, among other social ills.[48]

So, scholars and designers have begun to explore how reintroducing desirable or good friction may address these problems. These scholars ask

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44. Though one might question the fetishization of efficiency itself. *See* Frischmann & Benesch, *supra* note 10, at 386-87; David M. Driesen & Shubha Ghosh, *The Functions of Transaction Costs: Rethinking Transaction Cost Minimization in a World of Friction,* 47 ARIZ. L. REV. 61, 85 (2005); *cf.* RADIN, *supra* note 12, at 99-109 (arguing that the law-and-economics approach to boilerplate contracts fails to account for lack of information and information asymmetries). *But see* Omri Ben-Shahar, *Regulation Through Boilerplate: An Apologia*, 112 MICH. L. REV. 883, 885 (2014) (describing "boilerplate apologists," who argue that fine print language in contracts reduces transaction costs and prices and allows firms to focus on innovation, but ultimately critiquing the views of authors like Radin).

45. Baker & Stone, *supra* note 22, at 19 n.64 ("Today's consumer expects and demands convenience, speed, automation and simplicity that were not possible a few years ago."); *cf.* Chia-Ying Li, Chien-Hsiang Liao & Yu-Hui Fang, *A Dedication-Constraint Model of Omnichannel Shopping Journey,* 35 ELEC. MKTS. art. 26, at 21 (2025) (finding that omnichannel synergy correlates with customer-brand engagement).

46. *See* Bates, *supra* note 41, at 414 (arguing that friction is often framed as a barrier to innovation in the context of research-data sharing); Ben-Shahar, *supra* note 44, at 885 (noting how eliminating contractual transaction costs allows firms to focus on innovating).

47. UX and legal scholars have proposed varied frameworks for differentiating types of friction. Manjunath Padigar, Yi Li, and Chandana N. Manjunath have proposed a four-category framework for categorizing friction by high or low task value and by high or low task desirability. *See* Padigar et al., *supra* note 30, at 27. Brett Frischmann and Susan Benesch have divided friction into time delays, work, and geographic distance. *See* Frischmann & Benesch, *supra* note 10, at 435. Anne van Lieren, Jan P.L. Schoormans, and Giulia Calabretta have offered their own nine-category framework. *See* van Lieren et al., *supra* note 30, at 2172.

48. *See* Cox et al., *supra* note 39, at 1390; Frischmann & Benesch, *supra* note 10, at 384.

whether reintroducing friction may have positive effects, including slowing users down so they can deliberate on their actions.[49] UX design scholars have posited that desirable frictions might include those that disrupt mindless interactions, require active choices, clarify important information, or provide personalized or real-time feedback.[50]

There is also a growing body of legal scholarship proposing regulations that require companies to build friction into technology. Friction has been proposed to address the spread of false news on social media platforms,[51] to protect consumer privacy through social media and products connected to the internet,[52] and to address a variety of other issues.[53] As the impact of the internet on behavioral biases becomes more apparent, friction has emerged as a useful regulatory tool to address Silicon Valley's myopic focus on efficiency.[54]

49. *See, e.g.*, Richards, *supra* note 30, at 691 (discussing how frictionless sharing jeopardizes "intellectual privacy"); Goodman, *supra* note 30, at 646 (arguing that the frictionlessness of digital media is detrimental to "informational fidelity" and advocating for increased friction in response); Cox et al., *supra* note 39, at 1390 (proposing introducing microboundaries to promote mindfulness); *see also* Bart Hengeveld & Jordy Rooijakkers, *Adding Friction to Frictionless Payments: A Haptic Interface for Digital Transactions*, PROCS. 13TH INT'L CONF. ON TANGIBLE, EMBEDDED, & EMBODIED INTERACTION 243, 244-45, 248 (2019), https://dl.acm.org/doi/pdf/10.1145/3294109.3300999 [https://perma.cc/KRU7-A6JC] (experimenting with "re-physicalizing" payment transactions through a custom haptic interface). *See generally* McGeveran, *supra* note 30 (assessing the pros and cons of frictionless sharing and proposing principles for regulating it); Takhshid, *supra* note 30 (proposing that wearable AI products include design frictions); Gordon-Tapiero et al., *supra* note 30 (analyzing WhatsApp's use of friction in response to the spread of false news); Ohm & Frankle, *supra* note 30 (conceptualizing the idea of a "desirable inefficiency" approach in design and evaluating potential benefits).

50. *See* van Lieren et al., *supra* note 30, at 2165; *see* Padigar et al., *supra* note 30, at 24; Frischmann & Benesch, *supra* note 10, at 388.

51. *See* Gordon-Tapiero et al., *supra* note 30, at 171-72, 235-42 ; *see also* Goodman, *supra* note 30, at 625 (discussing how platforms could add friction for would-be misinformation-spreaders by querying "whether they really want to circulate hate and lies"); *cf.* Kyle Langvardt, *Regulating Habit-Forming Technology*, 88 FORDHAM L. REV. 129, 159 (2019) (proposing friction as a way to curb habit-forming behavior on social media).

52. *See, e.g.*, McGeveran, *supra* note 30, at 18-19 (describing principles for how friction can protect consumer privacy in the face of frictionless sharing); Richards, *supra* note 30, at 691-93 (outlining argument about how oversharing induced by frictionless sharing threatens intellectual privacy); Ohm & Kim, *supra* note 30, at 124-25 (mentioning privacy in a broader discussion of the importance of friction); Takhshid, *supra* note 30, at 1092 (explaining how privacy frictions can protect bystanders' privacy from wearable AI devices).

53. *See* Frischmann & Benesch, *supra* note 10, at 381.

54. *See, e.g.*, Ohm & Frankle, *supra* note 30, at 779-80; *see also* McGeveran, *supra* note 30, at 63 (suggesting a rule that sharing an action online should be no easier than taking that action); Takhshid, *supra* note 30, at 1100 (proposing that "privacy frictions" be mandated by law for wearable AI products); Richards, *supra* note 30, at 718 (introducing principles for "protecting reader privacy through law"); Goodman, *supra* note 30, at 624-25 (discussing the limits of mandating transparency alone and identifying other helpful friction-related interventions); Gordon-Tapiero et al., *supra* note 30, at 178-80 (outlining lessons for regulators on mandating friction); Ohm & Kim, *supra* note 30, at 126 (calling on scholars and policy advocates to research and recommend ways of mandating friction in design); Venkatesan et al., *supra* note 29, at 4. *But see* Ryan Calo, *Code, Nudge, or Notice?* 99 IOWA L. REV. 773, 777 (2014) (arguing that regulators should focus on facilitating individuals in making their decisions rather than creating barriers for individuals engaging in such conduct).

Practically, reintroducing friction is an appealing regulatory tool for many reasons. Friction can be calibrated to the needs of the situation, allowing policymakers to maximize the benefits of technology while instituting protective measures as necessary.[55] Friction also preserves consumer choice while providing some protections by forcing consumers to focus on specific contractual terms.[56] Friction may require users to slow down, but it does not necessarily prohibit them from using the technology in question.[57] Users who are heavily invested in accomplishing a task will make the effort to overcome friction, either by persisting through the design barriers or by circumventing them.[58] This Article adds to the growing body of legal scholarship considering reintroducing friction into digital platforms by proposing the reintroduction of inefficiencies to facilitate deliberation in frictionless financing.

II. Frictionless Financing

Frictionless financing is one prominent example of the increasingly frictionless economy. Frictionless financing, as used in this Article, refers to both the emerging financing ecosystem that delivers financing directly through retailers' websites and the varying financial products offered through those platforms.[59] Frictionless-financing platforms purport to create a seamless UX that eliminates pain points for consumers in obtaining financing for retail purchases. This Part attempts to categorize the financing products offered through these platforms. Doing so illuminates the complex regulatory structure governing these products and platforms, the

55. *See* McGeveran, *supra* note 30, at 61.

56. *See* Frischmann & Benesch*, supra* note 10, at 390.

57. For example, CAPTCHAs ("Completely Automated Public Turing test[s] to tell Computers and Humans Apart") can prevent bots from scrubbing data or accessing websites, but they do not prevent humans from accessing information. *See generally* Luis von Ahn, Manuel Blum, Nicholas J. Hopper & John Langford, *CAPTCHA: Using Hard AI Problems for Security*, *in* ADVANCES IN CRYPTOLOGY – EUROCRYPT 2003, at 294 (Eli Biham ed., 2003) (explaining CAPTCHAs).

58. Inevitably, there will be *some* users who would like to accomplish a task but are stymied by friction. That is ideal. The goal is to introduce enough friction to separate those users who are reflexively accomplishing a task from those who will persist to accomplish it.

59. Frictionless-financing options are often referred to as embedded finance. *See, e.g.*, *Unleash the Power of Embedded Finance: Here Are Some Use Cases,* CHARGEAFTER: BLOG (Feb. 28, 2023), https://chargeafter.com/unleash-the-power-of-embedded-finance-here-are-some-use-cases [https://perma.cc/CS7K-9KZ3] ("Embedded finance is a growing trend in the finance industry that involves integrating financial services into non-financial customer journeys and it is now becoming prevalent in both B2C and B2B contexts."); Andy Dresner, Brian Pike & Harry Schiff, *Embedded Finance: The Choices and Trade-Offs for US Banks,* MCKINSEY (Apr. 11, 2024), https://www.mckinsey.com/industries/financial-services/our-insights/embedded-finance-the-choices-and-trade-offs-for-us-banks [https://perma.cc/Q6BX-Y9GY] ("In an earlier article, we defined embedded finance (EF) as the delivery of financial products, such as loans, insurance, and payments, by nonfinancial entities within the context of a broader nonfinancial offering."); Aggarwal et al., *supra* note 27, at 1048 ("The frictionless integration of BNPL credit options into digital retail platforms, 'easy-to-use apps,' web browser plugins, and the seductive marketing used by BNPL lenders, collectively make it easier for consumers to take on unaffordable debt."). This Article uses these terms interchangeably.

unique harms that easy access to them entails, and potential points at which to add friction to address those harms. The following Section begins by describing the frictionless UX ecosystem and the consumer experience. This Part then describes the varied products these platforms offer.

A. Frictionless-Financing Ecosystem and Consumer Experience

Fintech platforms have blossomed in the age of seamless, frictionless, and easy UX,[60] and they have significantly changed point-of-sale financing (financing offered by a retailer at the time of sale) over the last several decades.[61]

For much of the twentieth century, consumers had to visit retailers in person, and purchases on credit involved layaway plans or store-branded credit cards.[62] Now, consumers are able to access a variety of products from anywhere, for nearly any type of product or service, with ease.[63] Consumers no longer have to wait until they can pay for their products to purchase them, nor do they have to go to specific brick-and-mortar stores to make purchases.[64] Instead, they have instantaneous access to credit through frictionless financing embedded in retailers' online platforms.[65]

Frictionless-financing companies developed their platforms with the aforementioned design principles in mind.[66] Some companies have intro-

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60. *See* Saule T. Omarova, *New Tech v. New Deal: FinTech as a Systemic Phenomenon*, 36 YALE J. ON REGUL. 735, 745 (2019).

61. Historically, point-of-sale financing was offered by a retailer at the retailer's storefront or by a door-to-door salesman. Vendors offered retail installment credit, allowing consumers to purchase items "on time" by paying a small amount down and then entering a payment plan for a couple of years. That system eventually evolved into our current system. *See* LENDOL CALDER, FINANCING THE AMERICAN DREAM: A CULTURAL HISTORY OF CONSUMER CREDIT 57-58, 144-48 (1999).

62. The modern credit card rose to prominence in the 1950s. The credit card offered a way for retailers to identify consumers in an increasingly mobile society and eliminated some of the administrative overhead. *See, e.g.*, Josh Lauer, *Plastic Surveillance: Payment Cards and the History of Transactional Data, 1888 to Present*, 7 BIG DATA & SOC'Y 1, 3 (2020) ("During the early 20th century, department stores began to issue credit tokens—engraved name plates, key fobs, and paper wallet cards—that linked individual shoppers with their store accounts."); Sahil Soni, Note, *Regulating Buy Now, Pay Later: Consumer Financial Protection in the Era of Fintech*, 123 COLUM. L. REV. 2035, 2045-46 (2023).

63. *See, e.g.*, Dresner et al., *supra* note 59, at 2; Aggarwal et al., *supra* note 27, at 1048.

64. *See* Floyd, *supra* note 5, at 789-95 (describing the VirTO business model).

65. This Article focuses on financing transactions that occur on retailers' web platforms. However, frictionless technology also facilitates instantaneous financing for in-store purchases. In these situations, consumers input their information into stores' kiosks, tablets, or self-checkout machines. Consumers can also apply through their phones. *See, e.g.*, CHARGEAFTER: MERCHANTS, https://chargeafter.com/merchants [https://perma.cc/HE6T-2XKD]; CHARGEAFTER: BLOG, *supra* note 59 ("Embedded finance options will eventually be the norm for [business-to-consumer] purchases, even for traditionally conducted offline transactions."); *Fully Integrated Financing*, WONDERSIGN, https://wondersign.com/finance [https://perma.cc/SS5P-255W] (offering furniture sales financing).

66. *See* Part I, *supra.* There are many different variations of the relationships between fintech lenders, frictionless-financing platforms, and retailers, and many companies have relationships that span the range. For the purposes of simplicity, I generally refer to the most prominent

duced "easy-to-use apps" to help consumers purchase and finance products from their phones, as well as web browser plugins that let consumers use the same financing product on more than one app.[67] Other companies have directly connected and/or embedded their financial products into partnering retailers' platforms.[68]

While seamless transactions purport to make it easy for the consumer, the true customers for frictionless-financing platforms are retailers. Frictionless-financing processes are often marketed to retailers as opportunities to increase sale conversion rates and revenue.[69] From the retailer's perspective, integrated point-of-sale financing minimizes the opportunity for the customer to "abandon the sale,"[70] and retailers seek out these platform partnerships accordingly.[71]

When using these technologies, consumers apply generally for "financing" without knowing the specific financial product for which they are applying.[72] The consumer can apply online, by phone, by text, or by email, and can even start an application online and complete it by text or in the

model, but the challenges and opportunities identified in this Article apply to all the iterations of the basic business model. *See, e.g.*, Dresner et al., *supra* note 59, at 2 ("At first glance, embedded finance offers banks an attractive opportunity to expand their distribution footprint with relatively low operating expenses.").

67. *See* Aggarwal et al., *supra* note 27, at 1048.

68. *See id*. at 1035.

69. *See, e.g.*, Martha Pierson, *Waterfall Financing: Is It Right for Your Business?* FINTURF: BLOG (Oct. 13, 2025), https://finturf.com/blog/waterfall-financing [https://perma.cc/KB48-J4NY].

70. While not a financing example, Amazon's "1-click shopping" demonstrates how frictionless platforms can increase sales. *See, e.g.*, Mitchell, *supra* note 5, at 203 ("Merchants, particularly e-commerce merchants, have reported decreases in their number of abandoned 'shopping carts . . . .'"); *see also* CHARGEAFTER: MERCHANTS, *supra* note 65 (selling the ability to "[s]eamlessly integrate multiple lenders into every point of sale to . . . boost sales.").

71. *See, e.g.*, Julian Alcazar & Terri Bradford, *The Appeal and Proliferation of Buy Now, Pay Later: Consumer and Merchant Perspectives*, FED. RSRV. BANK OF KAN. CITY 4 (Nov. 10, 2021), https://www.kansascityfed.org/documents/8504/psrb21alcazarbradford1110.pdf [https://perma.cc/Q6SC-RWF9] (citing a 2021 survey in which 46% of merchants not yet accepting BNPL indicated they were likely to accept BNPL in the next year); *see also* Morgan E. Johnson, *Regulate Now or Pay Later: A Late Start on Regulating the BNPL Industry Endangers Consumers*, 27 N.C. BANKING INST. 454, 459 (2023) ("This partnership with BNPL provider allows merchants to benefit from increased sales, fewer abandoned online shopping carts, and more repeat customers. In return, BNPL providers receive merchant fees from their merchant partners at a rate of 3-6% of the transaction price.").

72. Prominent techniques for frictionless financing include waterfall lending technology and simultaneous lender matching. *See* Lynn Wortmann & Kimberley-Celina Lippold, The Buy Now, Pay Later Model of the Fintech Industry in the Commercial Banking Sector 56 (May 15, 2023) (MSc thesis, Copenhagen Business School), https://research-api.cbs.dk/ws/portalfiles/portal/98728631/1585349_S150050_S150726_Masterthesis.pdf [https://perma.cc/2RY2-7GUA] ("With waterfall financing, the application is first checked against the prime lenders, and if they reject, the second and, if rejected again, the third lender option is checked for approval."); *see, e.g.*, Swati Bucha, *Waterfall Lending: What You Need to Know,* SKEPS: BLOG (Dec. 2, 2022), https://www.skeps.com/blog/waterfall-lending-what-you-need-to-know-skp [https://perma.cc/LSW3-RB77] (contrasting waterfall lending with "simultaneous lender matching," Skeps's chosen process for matching borrowers and lenders).

store.[73] The "application" is then submitted and reviewed through the platform algorithm or partnering fintech company, which allows the consumer to automatically procure financing from a wide number of lenders simultaneously.[74] In some cases, consumers are simply offered the "best" lending offer; in others, the consumer can choose from multiple "approved lenders."[75] Retailers offer these products because the ability to apply to multiple lenders increases the chances that a consumer will be approved for financing, and approval increases the chance that the merchant will make the sale. Most importantly, this entire process is seamless for the consumer—it allows the consumer to submit one quick application for myriad products within seconds, and without even realizing that they are applying broadly.

Companies' capacity to quickly process loans also facilitates access to financing.[76] Consumer applications can be approved or rejected automatically.[77] Algorithmic application processing has allowed fintech lenders to use nontraditional data to assess lending risk, but it has also made the underwriting process opaque and, at times, meaningless, as many consumers appear to be unable to repay their loans.[78]

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73. "Omnichannel lending" facilitates this flexibility. Omnichannel platforms are growing across retail and lending experiences. *See* Li et al., *supra* note 45, at 1-3 ("Omnichannel retailing, 'the synergetic management of the numerous available channels and customer touchpoints' has gained prominence in recent years because it enables retailers to confront the challenges of the emerging market environment, such as digital transformation and the COVID-19 pandemic."); *see, e.g.*, CHARGEAFTER: PLATFORM, *supra* note 23 ("The only platform you'll ever need to streamline the omnichannel lending journey, from application to approval to post-sale management."); *see also* Lin Liu, Yang Li, Hefu Liu & Zhengzhi Guan, *Influences of Omnichannel Integration and Value Congruence on Customer Patronage: The Flow Theory Perspective*, 40 J. MKTG. MGMT. 151, 152 (2024) ("It is widely acknowledge that the primary goal of omnichannel integration is to eliminate barriers across different channels and enable customers to fully immerse themselves in the shopping process."); Kim Flaherty, *Seamlessness in the Omnichannel User Experience*, NIELSEN NORMAN GRP. (Mar. 19, 2017), https://www.nngroup.com/articles/seamless-cross-channel [https://perma.cc/SMN3-4NPQ] (outlining the many channels through which consumers can apply for frictionless financing).

74. *See, e.g.*, *Waterfall Technology*, FINMKT, https://www.finmkt.io/saas-solutions/waterfall-technology [https://perma.cc/3HDR-MWU8] ("Unlike traditional lending approaches, FinMkt's elegant Waterfall Technology flows through a customized sequence of lenders and plans with one universal application ensuring a seamless customer experience while controlling costs."); Bucha, *supra* note 72; Pierson, *supra* note 69 ("Waterfall financing transforms the point-of-sale financing process by taking a single loan application and running it through a sequential check against multiple lenders.").

75. *See* Bucha, *supra* note 72.

76. *Cf.* Aggarwal et al., *supra* note 27, at 1048 (describing how easy access to BNPL products allows consumers to take on more debt).

77. *See, e.g.*, Alcazar & Bradford, *supra* note 71, at 4 ("BNPL products with direct API integration capabilities . . . enable merchants to offer consumers a seamless checkout experience: the consumer can apply for a loan, receive the loan approval, and pay for the first installment easily and quickly during checkout."); *cf.* Danielle Keats Citron & Frank Pasquale, *The Scored Society: Due Process for Automated Predictions,* 89 WASH. L. REV. 1, 8-16 (2014) (discussing credit-scoring algorithms); Aggarwal et al., *supra* note 27, at 1048 (noting that the integration of BNPL has made it easier for consumers to take on unaffordable debt).

78. *See* Aggarwal et al., *supra* note 27, at 1047; Floyd, *supra* note 5, at 817 n.315 (citing several VirTOs' proprietary underwriting processes); *cf.* Ari Ezra Waldman*, Power, Process, and*

Consumers who formerly sought financing beyond the point of sale or forwent purchases can now access financing instantaneously, and they seem to be taking advantage of the opportunity.[79] According to one survey by a frictionless-financing platform company, retailers anticipate increased demand for point-of-sale financing, especially from buyers with an "average order value" of less than $500.[80] And because there is significant demand from retailers and customers alike for these products, companies that do not implement frictionless-financing technology are likely to suffer.[81]

Yet, despite consumers' demand for easy credit, there are hidden costs to instantaneous and *facially* accessible financing. And because frictionless finance providers often focus on attracting retail partners rather than responding to consumers directly, the market is unlikely to illuminate these costs in a frictionless economy. Accordingly, it falls to regulators to implement changes that facilitate deliberation.

B. Frictionless-Financing Products

One of the biggest factors complicating consumer deliberation when interacting with frictionless-financing platforms is that the financing products available are diverse and often quite complicated. Each financing product is structured slightly differently. Some are true credit with interest rates; others do not charge interest but carry hidden costs.[82] For example, although virtual rent-to-own (VirTO) products purport not to carry credit charges, consumers using VirTOs will likely pay significantly more than the cash price.[83] Similarly, buy-now, pay-later (BNPL) products purport to

Automated Decision-Making, 88 FORDHAM L. REV. 613, 618-19 (2019) (discussing the challenges posed by algorithmic opacity in general); Alcazar & Bradford, *supra* note 71, at 3 (noting that BNPL products are not required to consider a consumer's ability to repay).

79. *See Navigating Consumer Financing in 2023: Retailers' Survey*, CHARGEAFTER 3 (2023), https://go.chargeafter.com/hubfs/Retailerssurvey.pdf [https://perma.cc/ZA7Q-5KYR] (reporting that consumer demand for financing is on the rise, and that merchants expect it will continue to grow).

80. *See id.*

81. *See* Alcazar & Bradford, *supra* note 71, at 4; *see also* Anna Irrera & Iain Withers, *Focus: Banks Beware, Amazon and Walmart Are Cracking the Code for Finance*, REUTERS (Sep. 20, 2021, 11:17 AM EDT), https://www.reuters.com/business/finance/banks-beware-outsiders-are-cracking-code-finance-2021-09-17 [https://perma.cc/5AN2-8VTE] (quoting Roland Folz, Chief Executive of Solarisbank: "Customers expect services, including financial services, to be directly integrated at the point of consumption, and to be convenient, digital, and immediately accessible . . . .").

82. Lenders and vendors may offer products across the spectrum. For example, Klarna, a BNPL provider, also offers high-cost installment loans when consumers do not qualify for BNPL financing. *See, e.g.*, Amy X. Wang, *They Got to Live a Life of Luxury. Then Came the Fine Print*, N.Y. TIMES MAG. (Oct. 7, 2025), https://www.nytimes.com/2025/10/07/magazine/buy-now-pay-later-klarna-affirm-shopping.html [https://perma.cc/VK96-7ZWC] (discussing how BNPL providers, like Affirm and Klarna, advertise interest-free financing but charge interest rates up to thirty-six percent on long-term plans).

83. *See* Floyd, *supra* note 5, at 783.

be interest-free installment payments, but they can carry significant late fees that increase their costs.[84]

Complicating this landscape is the fact that many of these products are offered by a range of financial providers, including traditional banks, emerging fintech companies, and nonbank lenders, through an embedded financing company aggregating these options.[85] And, in some cases, the different components of lending—underwriting, funding, servicing, and collecting—may be disaggregated across multiple entities for a single financial product.[86]

To fully understand the challenges consumers face when interacting with frictionless financing, it is important to understand these products' sprawl and the entities offering them.[87] This Section classifies frictionless-financing products into four groups: (1) store and second-look credit cards; (2) high-cost installment loans; (3) "buy now, pay later" products; and (4) "virtual rent-to-own" products.[88] It then clarifies the varying legal rights and responsibilities of each of these products' consumers.[89]

84. *See* Aggarwal et al., *supra* note 27, at 1045-46.

85. *See* Levitin, *supra* note 23, at 340 ("the upshot of the disaggregation of lending is that lending transactions often involve a mosaic of firms, some bank and some nonbank."); Odinet, *supra* note 22, at 1758-65 (describing the disaggregation of lending in the fintech industry).

86. *See id.* at 338 ("Over the past few decades, however, a new phenomenon has emerged in consumer lending: the different components of the lending cycle are split up and performed by multiple institutions, rather than by a single 'lender.'").

87. While the technology delivering these products is new, many of the products themselves are iterations of old, often predatory, financing arrangements. These products have always targeted consumers who are unable to access traditional, revolving credit (e.g., credit cards), creating a two-tiered financial-services system where lower-income consumers are forced to use riskier and less-forgiving credit products than middle-class consumers are. *See, e.g.*, Anne Fleming, *The Rise and Fall of Unconscionability as the "Law of the Poor"*, 102 GEO. L.J. 1383, 1392-95 (2014) (offering a historical account of financing arrangements for poor consumers who cannot access traditional credit). *See generally* Floyd, *supra* note 5 (describing new technology enabling virtual rent-to-own agreements); JOHN P. CASKEY, FRINGE BANKING (1994) (discussing how check-cashing outlets and pawnshops have historically targeted low-income communities).

There are longstanding debates about whether these products are beneficial or harmful to consumers. *Compare* CASKEY, *supra*, at 68-83 (discussing who uses fringe financing products, their negative impact on low-income communities, and why individuals still use them), *with* Andrew T. Hayashi, *Myopic Consumer Law*, 106 VA. L. REV. 689, 695-716 (2020) (arguing that credit products traditionally considered predatory often allow consumers to make purchases that benefit them in the long run), *and* Michael H. Anderson, *An Economic Investigation of Rent-to-Own Agreements*, 89 CHI.-KENT L. REV. 141, 166 (2014) (discussing how rent-to-own agreements benefit consumers). While I generally believe these products can have exploitative terms, a full analysis of these products and their benefits is beyond the scope of this Article. Rather, this Article attempts to outline the various rights and responsibilities associated with frictionless financing to demonstrate how difficult it can be for consumers to navigate the ecosystem.

88. These categories merit special attention because they represent the most prominent forms of frictionless financing, but frictionless UX is used broadly, including in payday loans, title loans, and traditional banks.

89. This Section primarily discusses federal law. There may be corresponding state laws governing some of these products, however. A full analysis of state laws governing these products is beyond the scope of this Article.

1. Store and Second-Look Credit Cards (Prime and Near-Prime Credit)

The most familiar type of frictionless consumer credit is the revolving credit that credit cards offer.[90] Frictionless-financing platforms typically encourage consumers to sign up for two types of credit cards: store- or co-branded credit cards and second-look credit cards. The companies providing these cards often offer credit independently of the frictionless-financing platforms that connect them to customers or retailers, and these financing products have the same characteristics when offered outside of friction--ess-financing platforms. This Article, however, focuses on the impact of these products when they are offered to facilitate a purchase at the point of sale.[91]

Financing Product Characteristics: Consumers with high credit ratings, "prime consumers," often have the option to obtain traditional, revolving credit (e.g., a credit card) through frictionless-financing platforms.[92] For example, a fintech company or bank may offer a "store-only" or a "store-branded" credit card featuring specific rewards that the consumer can use on future purchases with the retailer hosting the embedded financing platform.[93] These credit cards, typically issued by a traditional bank (even if serviced by a nonbank fintech partner), often offer interest rates slightly higher than traditional credit cards.[94] As with traditional credit cards, however, the credit is generally unsecured.[95]

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90. This Article focuses on revolving credit offered at the point of sale rather than on the independent, third-party credit cards consumers use across retailers. Traditional, general-purpose credit cards are frictionless—they represent the original frictionless payment system—but they are out of scope because they are not offered through retailers' platforms.

91. *See, e.g.*, CHARGEAFTER: PLATFORM, *supra* note 23; FORTIVA, *supra* note 4 (allowing consumers to apply directly to Fortiva for second-look financing and other credit cards).

92. Prime consumers are typically consumers with credit scores above 660. *See Borrower Risk Profiles*, CONSUMER FIN. PROT. BUREAU, https://www.consumerfinance.gov/data-research/consumer-credit-trends/student-loans/borrower-risk-profiles [https://perma.cc/QR8M-TNXL]; *see also* CHARGEAFTER: PLATFORM, *supra* note 23 (describing the various products offered through its point-of-sale platform).

93. "Store-only" credit cards are cards that consumers can only use at the issuing store. In contrast, consumers can use "store-branded" or "co-branded" cards at other retailers. *See* Samer Sarofim, Promothesh Chatterjee & Randall Rose, *When Store Credit Cards Hurt Retailers: The Differential Effect of Paying Credit Card Dues on Consumers' Purchasing Behavior,* 107 J. BUS. RSCH. 290, 290 (2020); Office of Markets, *The High Cost of Retail Credit Cards*, CONSUMER FIN. PROT. BUREAU (Dec. 18, 2024), https://www.consumerfinance.gov/data-research/research-reports/issue-spotlight-the-high-cost-of-retail-credit-cards [https://perma.cc/HC7L-BFSP] (describing retail credit cards and store credit cards).

94. Retail or store-branded cards are much more likely to charge interest rates above 30% APR compared to traditional, general-purpose cards. Office of Markets, *supra* note 93 (describing retail credit cards' interest rates).

95. *See* Todd Zywicki, *The Economics of Credit Cards*, 3 CHAP. L. REV. 79, 125-26 (2000) ("Although there has been some development of secured credit cards in recent years, most credit card debt is unsecured.").

"Second-look" credit cards are primarily available for "near prime" consumers.[96] "Second-look" credit cards also provide a revolving credit line like traditional, general-purpose credit cards, but they are often offered by emerging fintech companies that partner with out-of-state banks.[97] Just like general-purpose credit cards, consumers can use second-look credit cards at the relevant retailer and (usually though not always) beyond.[98] Second-look credit-card issuers, however, offer slightly higher interest rates than store-branded or prime credit cards, and they charge significant fees.[99] Because second-look credit cards are used by credit-constrained consumers, second-look credit cards are often marketed as opportunities to build credit when offered outside of frictionless-financing platforms.[100] On frictionless-financing platforms, however, consumers may not even know that they are being routed to these higher-cost second-look cards by the lenders and/or platforms.[101]

Regulatory Framework: Because store and second-look credit cards are issued by banks, which are highly regulated entities, the issuing banks (but not necessarily the associated fintech partners) may be subject to traditional bank regulations.[102] In other words, they may be supervised by the Federal Reserve, the Office of the Comptroller of the Currency (OCC), the Federal Deposit Insurance Corporation (FDIC), and/or the Consumer Financial Protection Bureau (CFPB) at the federal level, or a state regulatory entity governing the state-chartered bank depending on the bank's

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96. *See, e.g.*, *Who We Are*, CONCORA CREDIT, https://about.concoracredit.com/who-we-are [https://perma.cc/GFN6-XMQM] ("The private-label credit cards are through point-of-sale partnerships with hundreds of retailers and healthcare providers wishing to serve more customers and increase their sales by offering affordable and flexible financing."). Near-prime credit ratings are typically credit scores between 620 and 659. Second-look financing may also review nontraditional credit data, like bank-account cash-flow data. *See* CONSUMER FIN. PROT. BUREAU, *supra* note 92.

97. *See, e.g.*, Office of Markets, *supra* note 93 (describing second look products); Danielle Antosz, *What Is Second-Look Financing? How New Data Expands Lending,* PLAID (Jan. 31, 2024), https://plaid.com/resources/lending/second-look-financing [https://perma.cc/CTL4-WP2Q]. Just like store credit cards, second-look credit cards are generally unsecured credit. *See* Zywicki, *supra* note 95, at 125-26.

98. *See* Office of Markets, *supra* note 93 (describing how second look cards are serviced).

99. The Fortiva Credit Card provides one example. *See* Jess Ullrich, *Fortiva Mastercard Credit Card Review: A Credit-Builder Card with No Deposit Required but High Fees,* YAHOO! FIN. (Aug. 19, 2025), https://finance.yahoo.com/personal-finance/fortiva-credit-card-191757667.html [https://perma.cc/C6NW-2N7K]; Office of Markets, *supra* note 93.

100. *See, e.g.*, CONCORA CREDIT, *supra* note 96 ("Destiny is the partner you want on your journey toward building better credit.").

101. *See* Office of Markets, *supra* note 92 (describing consumers being involuntarily migrated to higher cost cards).

102. There is significant variation in bank regulation based on the bank size, location, and charter. While it is possible that an issuing bank will be supervised, it is not guaranteed. *See* Levitin, *supra* note 23, at 340-41 (outlining how issuing banks may be supervised under federal regulatory frameworks and explaining the limits of that system); *see also* Odinet, *supra* note 22, at 1766-68 (outlining the bank regulatory framework).

size.[103] Accordingly, at least the issuing bank may be subject to oversight from a federal or state entity even if the partnering nonbank fintech is not.[104]

Moreover, because store and second-look credit cards are revolving credit, providers (both the issuing bank and the nonbank partner) must adhere to the Truth in Lending Act (TILA)—including its Fair Credit Billing Act (FCBA) and Credit Card Accountability Responsibility and Disclosure Act (CARD Act) amendments—the Equal Credit Opportunity Act (ECOA), and the Military Lending Act (MLA).[105] Under the FCBA and TILA, issuers are required to provide periodic billing statements, disclose rate changes, help resolve billing disputes, and follow billing-error processes when the purchased goods are defective or when purchased services are found wanting.[106] Additionally, finance companies offering these products must disclose the APR in a statutorily prescribed format before the account is opened.[107] If the APR changes, the provider must notify the consumer in advance of the effective date.[108]

As Part IV notes, because store and second-look credit cards are regulated by several federal and state statutes, frictionless UX may not present the same dangers with these products as with other products. Accordingly, regulators should not reintroduce as much friction for these products as compared to the other product categories described in subsequent Sections.

2. High-Cost Installment Loans (Subprime Credit)

The second type of credit offered through frictionless-financing platforms is high-cost installment loans. Compared to store and second-look

103. *See, e.g.*, Levitin, *supra* note 23, at 340-41; Odinet, *supra* note 22, at 1766-68; 12 U.S.C. §§ 1, 248, 1811, 1813, 5515-5516 (2024); DEL. CODE ANN. tit. 5, §§ 121-122 (2025); UTAH CODE ANN. § 7-1-501 (West 2026).

104. The efficacy of that oversight is beyond the scope of this Article. However, there is a robust literature regarding shadow banking and the bank regulatory system. *See, e.g.*, Levitin, *supra* note 23, at 340-43.

105. *See, e.g.*, 10 U.S.C. § 987 (2024); 15 U.S.C. ch. 41 (2024).

106. *See, e.g.*, 15 U.S.C. §§ 1637, 1666-1666i (2024).

107. *See* 15 U.S.C. § 1637(c) (2024).

108. *See* 12 C.F.R. § 1026.9 (2025); 15 U.S.C. § 1637(i) (2024). Store and second-look credit cards are also subject to the antidiscrimination provisions of ECOA. *See* Odinet, *supra* note 22, at 1771. As a result, financing companies must notify consumers of any action they take on the application and are prohibited from discriminating on any aspect of the credit transaction. *See* 15 U.S.C. §§ 1691-1691f (2024). These products are subject to the MLA, limiting their interest rates to 36% for active-duty service members, and potentially state usury limits. *See* Levitin, *supra* note 23, at 340. Finally, because the credit offered through store and second-look credit cards is unsecured, it is generally dischargeable in bankruptcy without requiring the consumer to return the goods purchased with the card. In general, credit-card debt is considered unsecured debt and, in the ordinary case, is dischargeable in bankruptcy. *See* Zywicki, *supra* note 95, at 125-26 ("Given the debtor's relatively unfettered ability to file bankruptcy and discharge this debt by paying little or none of it, credit card issuers will have little ability to collect any judgment against the debtor."); CHARLES JORDAN TABB, KARA J. BRUCE & LAURA NAPOLI COORDES, THE LAW OF BANKRUPTCY § 10.1 (6th ed. 2025) (describing the scope of the discharge in bankruptcy).

credit cards, high-cost installment loans tend to be a more costly financing option targeted towards credit-constrained consumers.[109]

Financing Product Characteristics: High-cost installment loans are typically offered to consumers with low or no credit, or "subprime" credit.[110] These loans, like traditional retail installment loans, allow consumers to pay back what they borrow over a set number of installment payments.[111] High-cost installment loans typically offer interest rates well above 36% APR, and often between 100% and 200% APR.[112] High-cost installment loans offered through frictionless financing are typically unsecured loans.[113] The lenders, however, typically have access to the consumer's bank account and automatically withdraw payments.[114]

These loans are available and attractive to subprime consumers because they have few underwriting procedures.[115] But high-cost installment-loan terms often lead to unexpected consequences for borrowers, including hidden fees and harsh penalties, forcing consumers to refinance or incur additional debt.[116] Despite high default rates, lenders continue to report significant profits and industry growth.[117]

Like second-look credit card partnerships, many of the lenders offering high-cost installment loans are structured as "rent-a-bank" or "bank partnerships," in which a nonbank fintech company partners with a bank chartered in a state without a usury limit to issue such loans.[118] The nonbank fintech company contracts with the traditional, state-chartered bank

109. *See* Sunny Glottmann, Charla Rios & Pete Smith, *Unsafe Harbor: The Persistent Harms of High-Cost Installment Loans*, CTR. FOR RESPONSIBLE LENDING 4 (Sep. 1, 2022), https://www.responsiblelending.org/sites/default/files/nodes/files/research-publication/crl-safe-harbor-low-sep2022.pdf [https://perma.cc/TD2B-ARWW].

110. Subprime consumers typically have credit scores below 620. *See* Office of Markets, *supra* note 93.

111. *See* Glottmann et al., *supra* note 109, at 2.

112. *See id.* at 1; *see also High-Cost Rent-a-Bank Loan Watch List,* NAT'L CONSUMER L. CTR. (Sep. 2024), https://www.nclc.org/resources/high-cost-rent-a-bank-loan-watch-list [https://perma.cc/RJ63-9YMN] (outlining the interest rates associated with the biggest high-cost installment-loan lenders).

113. *See* Glottmann et al., *supra* note 109, at 1 ("We defined high-cost installment loans as follows for the purposes of this study: having terms of two months or more; having an all-in annual percentage rate (APR) greater than 36%; and being unsecured by any collateral, except access to the borrower's bank account or borrower's car title . . . ."). While some installment loans may be secured, the high-cost installment loans offered through frictionless financing are typically unsecured and can be discharged in bankruptcy proceedings without requiring the consumer to return the purchased product. TABB ET AL., *supra* note 108, § 10.1.

114. *See* Glottmann et al., *supra* note 109, at 2.

115. *See id.*

116. Sixty percent of borrowers indicated they have had to refinance their loans to extend the terms. Consumers also reported having their wages garnished, car repossessed, and other property repossessed. *See id.* at 6.

117. Many consumer-rights advocates argue these loans are predatory and designed to evade state usury limits. Industry advocates, however, argue they provide greater access to credit for subprime consumers. Regardless, they are a high-cost form of credit. *See id.* at 3-4.

118. *See id.* at 2-4; Levitin, *supra* note 23, at 359-60 (describing rent-a-bank arrangements).

to issue loans in accordance with the nonbank fintech company's selected terms.[119] The traditional bank then sells the loans to the nonbank fintech company.[120] Because the bank is located in a state or operated by a tribe not subject to usury limits, it can issue loans across state lines without being subject to the state interest rate caps or usury limits.[121] While the bank may issue the loan, the nonbank fintech company typically handles the remaining lending functions, such as servicing, underwriting, and marketing.[122]

Regulatory Framework: Because high-cost installment loans are nominally issued by banks, which are highly regulated entities, the issuing banks (but not necessarily the associated fintech partners) are subject to some of the same regulators and laws governing store-branded and second-look credit-card issuers.[123] Despite typically being issued by state-chartered banks, however, high-cost installment loans have fewer protections than store and second-look credit cards. In particular, they are generally not subject to the FCBA.[124] As a result, high-cost installment lenders are not required to warrant the products purchased with the loan or to follow other billing dispute resolution processes.[125]

3. Buy Now, Pay Later Products (Subprime or No Credit)

BNPL products are the newest and one of the fastest-growing products offered through frictionless-financing platforms.[126] Because BNPL products are new and not structured like traditional revolving credit or installment loans, they present more regulatory challenges.[127]

Financing Product Characteristics: BNPL financing allows consumers to purchase products but spread payment over four (or fewer) installments.[128] BNPL financing, while used by many different consumers, is typically targeted towards consumers with no credit or with subprime credit.

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119. *See* Levitin, *supra* note 23, at 359-60; *see* Glottmann et al., *supra* note 109, at 2.

120. *See* Levitin, *supra* note 23, at 360.

121. *See id.*

122. *See id*.

123. *See id.* at 340-41 (outlining how issuing banks may be supervised under federal regulatory frameworks and explaining the limits of that system); Odinet, *supra* note 22, at 1767-68; Section II.B.1, *supra*.

124. *See* 15 U.S.C. § 1666(a) (2024) (noting that the FCBA is only applicable to open-end credit accounts).

125. *See* 15 U.S.C. §§ 1666, 1666i (2024). High-cost installment loans are subject to TILA's disclosure requirements, ECOA's anti-discrimination provisions, and MLA's interest rate caps, however. They are also dischargeable in bankruptcy. See 15 U.S.C. §§ 1631-1632, 1691-1691f (2024); 10 U.S.C. § 987 (2024).

126. *See, e.g.*, Martin & Lynn, *supra* note 5, at 531; Johnson, *supra* note 71, at 458-59.

127. *See, e.g.*, Martin & Lynn, *supra* note 5, at 532-34 (outlining the debate over whether BNPL products are credit).

128. *See, e.g.*, Soni, *supra* note 62, at 2042-43 ("Consumers typically use four-payment plans to finance small-ticket purchases, and as a result, BNPL lenders direct their customer acquisition efforts to partnering merchants' point of sale . . . where BNPL is displayed alongside traditional payment options such as credit cards and debit cards.").

Consumers permit BNPL providers to make automatic withdrawals from their bank accounts or to charge a traditional credit card for each payment.[129]

While consumers are not explicitly charged interest on these purchases, BNPL financing is still quite lucrative for providers, who make most of their money from merchant fees and late fees.[130] BNPL providers charge retailers a merchant fee for each purchase, often 2% to 9% of the transaction.[131] And if consumers miss payments, they are charged fees, sometimes more than 40% of the purchase value.[132] BNPL can be cheaper than traditional credit cards, assuming it is not paid with a credit card and payments are made in accordance with the payment schedule.[133]

While BNPL products purport to be "no credit needed" products, BNPL credit providers often do perform soft credit checks or use proprietary algorithms to assess a consumer's creditworthiness.[134] These checks are typically less involved than the underwriting performed by traditional credit-card companies, and they are completed nearly instantaneously.[135] Historically, credit-scoring companies have not accounted for BNPL debt; however, starting in the fall of 2025, credit-scoring companies started incorporating BNPL debt into their models.[136]

BNPL products have experienced significant growth over the last several years, and they now represent a large segment of the fringe-financing industry.[137] One CFPB report indicated BNPL providers experienced 970% growth in loan origination from 2019 to 2021, translating to $24.2 billion spent on BNPL products in 2021.[138]

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129. *See id.*

130. *See, e.g.*, Martin & Lynn, *supra* note 5, at 529, 535-38.

131. *See* Wang, *supra* note 82; *see also* Martin & Lynn, *supra* note 5, at 538 (noting that companies typically charge 2% to 8% of the purchase price along with a transaction fee).

132. *See, e.g.*, Martin & Lynn, *supra* note 5, at 535 ("While no interest is charged, if a consumer is late on a payment, for each order below $40, a maximum of one $10 late fee may be applied plus an additional $7 if the payment is not made within 7 days.").

133. Yet, many consumers are charged late fees when they miss a payment or are switched to longer plans that may carry interest as high as thirty-six percent. *See* Wang, *supra* note 82.

134. *See* Soni, *supra* note 62, at 2043-44.

135. *See id.* at 2043 ("This represents a stark departure from credit cards, which typically require a more involved inquiry into an applicant's income and financial history and are subject to statutory requirements under the Fair Credit Reporting Act (FCRA).").

136. *See* Wang, *supra* note 82.

137. JOANNA STAVINS, FED. RSRV. BANK OF BOS., NO. 24-3, BUY NOW, PAY LATER: WHO USES IT AND WHY, CURRENT POL'Y PERSPS. 1 (2024), https://www.bostonfed.org/publications/current-policy-perspectives/2024/buy-now-pay-later-who-uses-it-why.aspx [https://perma.cc/8ZDP-AYX8] (finding that 9% of all consumers used BNPL in 2023, up 40% from two years earlier); Soni, *supra* note 62, at 2037 ("The number of BNPL users in the United States doubled to 50.6 million from 2020 to 2021, and global BNPL spending is estimated to increase nearly 300% from 2022 to 2027.").

138. *See Buy Now, Pay Later: Market Trends and Consumer Impacts*, CONSUMER FIN. PROT. BUREAU 4 (Sep. 2022), https://files.consumerfinance.gov/f/documents/cfpb_buy-now-pay-later-market-trends-consumer-impacts_report_2022-09.pdf [https://perma.cc/RHK2-S53M].

These statistics gain significance in light of BNPL-user demographics. While there is limited data on BNPL users, they tend to be financially vulnerable; BNPL users "often exhibit higher measures of financial distress compared to non-borrowers."[139] And the availability of BNPL products increases both consumer spending (across all income levels) and the likelihood that consumers incur additional costs, such as overdraft fees, or become overextended with debt.[140] Consumers report struggling to manage multiple payments and incurring significant debt.[141] BNPL users are also disproportionately female and Black or Latino.[142]

Regulatory Framework: BNPL providers argue that they are largely unregulated, with only limited relevant consumer-protection laws.[143] Because most BNPL providers are new fintech companies rather than traditional banks, they may not be subject to supervision by the Federal Reserve, OCC, and FDIC or state regulatory agencies governing chartered banks.[144] CFPB, however, does have supervisory authority over many BNPL providers, and it has treated them like credit card providers in the past.[145]

BNPL providers have also argued that they are not subject to the TILA, the FCBA, or the MLA, although consumer advocates have argued

139. *See CFPB Publishes New Findings on Financial Profiles of Buy Now, Pay Later Borrowers*, CONSUMER FIN. PROT. BUREAU (Mar. 2, 2023), https://www.consumerfinance.gov/about-us/newsroom/cfpb-publishes-new-findings-on-financial-profiles-of-buy-now-pay-later-borrowers [https://perma.cc/G4HX-CDY2].

140. A recent study suggests that although all consumers appear to increase their spending when using BNPL products, higher-income consumers appear to use BNPL differently from lower-income consumers. Higher-income consumers use BNPL for larger-ticket items, whereas lower-income consumers are more likely to use BNPL financing in lieu of credit cards. The authors also suggest that liquidity-constrained consumers are more likely to use BNPL products, and that these effects may last for months after initial product use. *See* Marco Di Maggio, Emily Williams & Justin Katz, *Buy Now, Pay Later Credit: User Characteristics and Effects on Spending Patterns* 2-3 (Nat'l Bureau of Econ. Rsch., Working Paper No. 30508, 2022), https://www.nber.org/system/files/working_papers/w30508/w30508.pdf [https://perma.cc/39NQ-DY2E].

141. *See, e.g.*, Wang, *supra* note 82.

142. *See* STAVINS, *supra* note 137.

143. Though there are significant debates over this claim. *See* Soni, *supra* note 62, at 2036; Martin & Lynn, *supra* note 5, at 532 ("Right now, because most BNPL companies do not charge consumers traditional interest, most of the companies offering these products claim that BNPL falls outside the global definition of credit and thus outside most existing consumer credit regulation. This, however, is not necessarily true.").

144. This could change, however. As traditional banks offer BNPL financing themselves and/or partner with BNPL providers in the fintech ecosystem, more BNPL provision may become subject to federal supervision from the Federal Reserve, OCC, and FDIC. *See, e.g.*, *Expanding our Merchant Services Offering with Klarna Agreement*, J.P.MORGAN (Apr. 3, 2025), https://www.jpmorgan.com/payments/newsroom/expanding-merchant-services-klarna-bnpl [https://perma.cc/LK73-8URD]; *see* Levitin, *supra* note 23, at 340-41 (outlining how issuing banks may be supervised under federal regulatory frameworks and explaining the limits of that system); *see also* Odinet, *supra* note 22, at 1766-68 (discussing how banks are regulated).

145. *See* Alec Klimowicz, Note, *Buy Now, but Pay for It Later: How BNPLs Allow Unsecured Consumer Debt to Accumulate Without Regulation*, 27 ILL. BUS. L.J. 39, 41 (2022) ("The CFPB is responsible for BNPL regulation.").

that they should be subject to these statutes.[146] BNPL providers claim that because they do not charge interest, their products are not "credit" subject to the TILA.[147] As a result, BNPL providers argue, they are not required to disclose interest rates or adhere to any of the requirements under the FCBA, like warranting goods or managing billing disputes.[148]

4. VirTO Products (Subprime or No Credit)

The final category of frictionless-financing products is virtual rent-to-own products.[149] VirTOs, unlike credit cards, installment loans, and BNPL products, are structured as rental agreements and thus are quite different from the other products offered through frictionless financing.

Financing Product Characteristics: In a VirTO arrangement, a third-party VirTO company purchases a product selected by a consumer from the retailer and rents it back to the consumer on a periodic basis.[150] VirTOs purport to allow the consumer to renew the rental on a weekly or monthly basis.[151] When the consumer's cumulative periodic payments reach a preset payoff amount—often significantly higher than the cash price—the consumer can make a final payment and purchase the product.[152] The key feature of a VirTO, as compared to an installment loan, is that the consumer can (in theory) return the product at any time without penalty.[153] In a

146. *See Wang*, *supra* note 82; Nat'l Consumer L. Ctr., Comments on Truth in Lending (Regulation Z): Use of Digital User Accounts to Access Buy Now, Pay Later Loans 1-5 (Aug. 1, 2024), https://www.regulations.gov/comment/CFPB-2024-0017-0028 [https://perma.cc/2TEL-443N] (addressing TILA's applicability to BNPL); Martin & Lynn, *supra* note 5, at 530-34 (outlining the debate over whether BNPL is considered credit). CFPB recently extended credit-card regulations under the CARD Act to BNPL products; however, the Trump administration has indicated it will not prioritize enforcement. *See CFPB Takes Action to Ensure Consumers Can Dispute Charges and Obtain Refunds on Buy Now, Pay Later Loans*, CONSUMER FIN. PROT. BUREAU (May 22, 2024), https://www.consumerfinance.gov/about-us/newsroom/cfpb-takes-action-to-ensure-consumers-can-dispute-charges-and-obtain-refunds-on-buy-now-pay-later-loans [https://perma.cc/L2BJ-ZZ7S]; Eamonn K. Moran & Ashley Feighery, *CFPB Provides Status Update Regarding Buy Now, Pay Later Interpretive Rule*, HOLLAND & KNIGHT (May 6, 2025), https://www.hklaw.com/en/insights/publications/2025/05/cfpb-provides-status-update-regarding-buy-now-pay-later [https://perma.cc/M3KT-XVTT] (explaining that the CFPB will not prioritize enforcement actions on its BNPL interpretive rule).

147. *See, e.g.*, Martin & Lynn, *supra* note 5, at 532.

148. *See supra* note 146. There is no dispute, however, that BNPL products are subject to the ECOA and must adhere to the requirements to inform consumers of the results of their applications and other anti-discrimination measures. See 12 C.F.R. § 1002.2(j) (2025). BNPL products are typically unsecured credit that is discharged in bankruptcy. The nature of BNPL is potentially challenging for bankruptcy courts. However, most treat BNPL as unsecured debt. *See* Aggarwal et al., *supra* note 27, at 1047 (comparing BNPL to other unsecured debt); Klimowicz, *supra* note 145, at 44; TABB ET AL., *supra* note 108, § 10.1.

149. *See* Floyd, *supra* note 5, at 791-93.

150. *See id.* at 789-95.

151. *See id*. at 775, 790.

152. *See id*. at 811.

153. *See id.* at 800-04.

VirTO, consumers do not hold "title" to the product; so, if they default on the rental agreement, they must return the product.[154]

VirTOs are an extremely expensive form of financing; they can charge the equivalent of 100% to 200% APR on purchases.[155] But because VirTOs are offered through frictionless-financing platforms for partner-retailers' products, some important differences between VirTOs and typical rental agreements exist.[156] In particular, consumers may find it very difficult to return products purchased with VirTOs, despite a central component of the agreement allowing consumers to return such products and terminate the agreements at any time.[157]

Regulatory Framework: Because VirTOs are purportedly not credit subject to TILA, the FCBA, the MLA, the ECOA, or state usury laws, there may be few limits on the "financing costs" associated with such products.[158] Yet because VirTO products, as compared to traditional rent-to-own agreements, are often expensive or impossible to return in practice (even if returns are nominally permitted), they should plausibly be subject to such statutes.[159] In fact, consumers often believe that they are purchasing

154. Traditional rent-to-own agreements are subject to repossession, but because third-party fintech companies offer VirTOs to far-flung customers, across state lines, and for many products and services, it is unclear whether the VirTO company would be able to repossess the property or whether the products must only be returned upon termination of the agreement. *See id.* at 783-84, 804. One study has found that very few products are surrendered. N.Y.C. DEP'T CONSUMER & WORKER PROT., *supra* note 15, at 24 ("[B]etween 2017 and February 2020, Snap initiated 39,000 New York City leases *but recorded only two merchandise surrenders*.").

155. *See* Floyd, *supra* note 5, at 782-83, 811 ("For those consumers intending to purchase their rental, most consumers will pay several times the cash value of the product or an effective interest rate that can be higher than two-hundred percent APR."). I have previously argued that VirTOs should be considered credit subject to federal consumer protection and state usury laws. However, the VirTO industry often argues that VirTOs are not credit subject to federal consumer protection and state usury laws because VirTOs are rental agreements with renewable rental periods, for which consumers may return the products at any time, as compared to loans in which consumers are obligated to pay the full amount of the loan. As a result, VirTOs, according to the VirTO industry, do not have an interest rate. *See id*. at 811.

156. While VirTOs have been offered for brick-and-mortar purchases ranging from pets to auto repairs, they are more frequently used for consumer goods sold on frictionless-financing platforms. VirTOs may still be used for products that are not typically associated with rentals (i.e., nondurable goods) or products that are impossible to return, however. *See id*. at 798-800.

157. *See id*. at 800-03; N.Y.C. DEP'T CONSUMER & WORKER PROT., *supra* note 15, at 24 ("[C]onsumers who attempt to cancel leases and return merchandise often find themselves entangled in a Kafkaesque nightmare of endless telephone calls, hidden fees, and undisclosed costs.").

158. *See* Floyd, *supra* note 5, at 775-77, 808; *see also* Dorton v. Kmart Corp., 229 F. Supp. 3d 612, 625 (E.D. Mich. 2017) (holding that an RTO agreement was not credit subject to ECOA); *cf.* 32 C.F.R. § 232.3(f) (2025) (defining consumer credit, as relevant for service members). VirTOs are typically governed by state rental-purchase statutes, however, which may have disclosure requirements. *See, e.g.*, MICH. COMP. LAWS § 445.953 (2026).

159. *See* Floyd, *supra* note 5, at 800-04 (outlining how difficult it is for consumers to return VirTOs); *see, e.g.*, Danger v. Nextep Funding, LLC, 355 F. Supp. 3d 796, 812-15 (D. Minn. 2019) (preliminarily exploring the applicability of TILA and usury laws).

their products with financing and are later surprised to learn that they do not actually "own" the products.[160]

* * *

The products offered through frictionless-financing platforms vary significantly in nature, costs, and applicable law. Yet they are presented, often all at once, through frictionless-financing platforms with little differentiation between them. The following tables offer a *generalized* summarize the product features and regulations discussed above; of course, exceptions abound.

160. *See* Floyd, *supra* note 5, at 805; Complaint—Class Action at 23, *Danger*, 355 F. Supp. 3d 796 (No. 18-cv-00567) ("Had Plaintiff been made aware of the true cost of Defendants' credit, she might have pursued alternative financing options such as purchasing [their pet dog] Bailey Rose with a credit card."). The nature of VirTOs also presents challenges for discharging the debt in bankruptcy should consumers become overextended—if VirTOs are treated as executory contracts or secured loans, the consumer must either reenter the agreement to retain the property or return the property; if they are treated as unsecured debt (because the product cannot be returned) then they are discharged. TABB ET AL., *supra* note 108, §§ 8.1-8.3.

Table 1: Product Characteristics

Product	Type of Credit	Typical Security Interest	Effective Interest Rate	Title to Property?	Credit Check?	Credit Issuer
Store and Second-Look Credit Cards	Revolving	Unsecured	~22-36%	Yes	Traditional	Bank
High-Cost Installment Loans	Installment loan	Unsecured	~100-200%	Yes	Proprietary or none	Bank
BNPL	Four installment payments	Likely unsecured	0%	Yes	Proprietary or none	Fintech
VirTOs	Rent-to-own	Likely secured or executory contract	Up to 200%	No	Proprietary or none	Fintech

Table 2: Applicable Regulations

Product	FCBA?	TILA?	MLA?	ECOA?	Fully Dischargeable?
Store and Second-Look Credit Cards	Yes	Yes	Yes	Yes	Yes
High-Cost Installment Loans	No	Yes	Yes	Yes	Yes
BNPL	Disputed	Disputed	Disputed	Yes	Likely
VirTOs	No	Disputed	Disputed	Disputed	Unclear

C. Emerging Problems with Frictionless Point-of-Sale Financing

Consumers are flocking towards frictionless financing, but they are also racking up debt at alarming rates.[161] Frictionless financing's purported virtue is accessibility. It is true that some consumers who may have previously lacked access to credit can now access it, even if on predatory terms. But other consumers are now using high-cost credit with limited protections when lower-cost or traditional credit may be accessible to them. As outlined above, these new products, unlike traditional financing options, are often offered by unregulated companies and with few consumer protections. That shifts costs to consumers.

While there is little data on how many retailers have embedded frictionless-financing options in their websites, there is little doubt that frictionless-financing platform use is growing.[162] This uptake makes sense; frictionless financing provides retailers an opportunity to increase sales that they would be loath to ignore.[163] But not every sale benefits the consumer. Due to the frictionless nature of these platforms, many consumers use these interfaces and financing options to make purchases—often without deliberating—that they later regret.[164] One study found that thirty percent of BNPL users between the ages of eighteen and thirty-four used BNPL products without fully considering the eventual repayment costs.[165] Indeed, in popular media, consumers have compared using BNPL products to a

161. *See* Patrick Jenkins, *Buy Now, Pain Later—The Looming Risks of BNPL*, FIN. TIMES (Oct. 21, 2024), https://www.ft.com/content/5bffe8b2-0d6e-4f42-9dd9-b5ba70a2a22f [https://perma.cc/54W4-A74J]; Floyd, *supra* note 5, at 813-17.

162. The embedded finance industry is now a multibillion-dollar industry. *See* Irrera & Withers, *supra* note 81; *see also* Michael J. Hsu, *Safeguarding Trust in Banking: Adapting to Digitalization*, 25 FINTECH L. REP., Sep./Oct. 2022, 25 No. 5 GLFTR-NL 4 ("[B]ank-fintech partnerships have been growing at exponential rates and have gotten more complicated. Banks and tech firms, in an effort to provide a 'seamless' customer experience, are teaming up in ways that make it more difficult for customers, regulators, and the industry to distinguish between where the bank stops and where the tech firm starts."); Affirm Holdings, Inc., Annual Report (Form 10-K), at 6 (Aug. 28, 2024) (reporting Affirm facilitated billions of dollars of customer transactions in fiscal year 2024). According to one frictionless-financing company, "66% of retailers [were] prioritizing implementing a consumer financing platform in 2023." *See* CHARGEAFTER, *supra* note 79, at 4.

163. The role of installment credit in increasing sales and growing retailers' footprint should not be overlooked as a key factor in the rise of credit. Many retailers historically viewed offering financing as a lucrative method to increase sales. *See* CALDER, *supra* note 61, at 211 ("The credit revolution had started with small loan lenders seeking a legal business and retailers looking to increase sales."); *see also* Timothy Wolters, *"Carry Your Credit in Your Pocket": The Early History of the Credit Card at Bank of America and Chase Manhattan*, 1 ENTER. & SOC'Y 315, 320 (2000) ("During the Great Depression, many retailers and banks adopted strategies that relied on installment lending for growth."). This trend has continued, as frictionless financing is marketed to retailers as a method to increase sales. *See supra* Section II.A.

164. *See* Johnson, *supra* note 71, at 467 n.75 ("The research also suggests that the frictionless nature of BNPL as a way to pay encourages shoppers to overspend with three in 10 (30 percent) BNPL users between 18 and 34 saying the availability of BNPL has made them shop without thinking, because it's so easy to buy something in the moment and worry about repayments later.").

165. *See id.*

drug addiction,[166] have indicated they used them without realizing how much they were spending,[167] and have suggested that they do not fully understand the details of the products.[168] The same phenomenon has occurred with VirTOs and high-cost installment loans offered through frictionless-financing platforms.[169] Consumers entering VirTO agreements have indicated they did not realize they were renting, rather than purchasing, their products.[170]

Frictionless financing has emerged against the backdrop and within the context of the increased reliance on adhesion contracts and new forms of contract formation. As electronic transactions have become the norm, the specific, and often complex, financing terms of frictionless-financing products are buried in clickwrap and walls of text.[171] Consumers are increasingly propelled through even more complex terms and financial choices at faster rates without an opportunity to contemplate their options or those options' costs.[172]

By taking on high-cost debt thoughtlessly, consumers jeopardize their financial health. While limited, the available data appears to indicate that

166. *See, e.g.*, Megan Liscomb, "*I Was Buying Things I'd Never Normally Splurge On": People Are Sharing Their Buy Now, Pay Later Regrets*, BUZZFEED (Feb. 2, 2023), https://www.buzzfeed.com/meganeliscomb/buy-now-pay-later-regrets-2023 [https://perma.cc/KT25-SYFW] ("'I've used just about every one of the apps . . . . Worst mistake, it was like a drug. I was buying things I'd never normally splurge on. I could've had tens of thousands dollars saved, but in the last two years, I've spent close to $20,000 using these apps. And once I couldn't keep up with the payments on one app, I used the next one, and it all just snowballed from there.'"); Maxwell Strachan, *"I Know I Have an Issue": Does "Buy Now, Pay Later" Convince People to Overspend?*, VICE MAG. (Aug. 25, 2022, 9:19 AM), https://www.vice.com/en/article/i-know-i-have-an-issue-does-buy-now-pay-later-convince-people-to-overspend [https://perma.cc/2SUA-4QM6] ("It's literally like having a bunch of drug dealers that are just there for you whenever you need it.").

167. *See* Strachan, *supra* note 166 ("You're still paying it, obviously. It's just you don't feel it as much . . . . It's easy to get sucked in."); Wang, *supra* note 82.

168. Consumer Reps. Surv. Rsch. Dep't, *Buy Now, Pay Later: Online Discussion Panel*, CONSUMER REPS. 11 (2023), https://advocacy.consumerreports.org/wp-content/uploads/2023/05/BNPL-Discussion-Board-Jan2023-Report.pdf [https://perma.cc/N2B4-A3VT] ("[I]t would have been nice if the exact details were more clearly stated as you go through the registration process because to me, it felt like they were keeping their cards close to their hand and not making it obvious to try and take advantage of someone not knowing exactly what they were getting into . . . . I think full transparency should be given maybe even with a disclaimer at the beginning that this service is much like taking a loan and can incur interest and tell how that will be determined and how it is received and paid.").

169. *See* Floyd, *supra* note 5, at 810 (describing how VirTOs increase consumerism and noting that consumers indicate they do not understand the products).

170. *See id.* at 805.

171. *See, e.g.*, RADIN, *supra* note 12, at 10-12; Mark E. Budnitz, *The Development of Consumer Protection Law, the Institutionalization of Consumerism, and Future Prospects and Perils*, 26 GA. ST. U. L. REV. 1147, 1170-71 (2010) (describing the increased use of clickwrap and "guerilla terms" in online transactions).

172. *Cf.* Consumer Reps. Surv. Rsch. Dep't, *supra* note 168, at 13 (noting some consumers purchase additional items through BNPL because it is easy and convenient); Alfredo Burlando, Michael A. Kuhn & Silvia Prina, *Too Fast, Too Furious? Digital Credit Delivery Speed and Repayment Rates*, 174 J. DEV. ECON., art. no. 103427, at 11 (2025) (noting that giving consumers the opportunity to access credit quickly might decrease the time those consumers spend deliberating on how or whether to use that credit).

many consumers of the products offered through frictionless-financing platforms have high rates of default and late payments.[173] In 2021, for example, 10.5% of BNPL users incurred at least one late fee (up from 7.8% the prior year), and 3.8% had a loan that was charged off.[174]

Consumers also report that frictionless-financing products cause them to fall behind on their other lines of credit.[175] Access to many lenders at once also can allow consumers to engage in "loan stacking"—that is, taking out several loans with different lenders at the same time.[176] "[B]ecause BNPL lenders are generally not subject to uniform reporting requirements under the FCRA," consumers can become overextended across accounts.[177] And the technology can cause credit challenges besides unmanageable debt. For example, waterfall financing—because it routes a single application to numerous lenders in sequence—can result in multiple hard pulls on consumers' credit reports.[178]

There is also growing evidence that the products offered through frictionless financing may distort consumer spending perceptions.[179] In fact, frictionless-financing providers may be intentionally manipulating consumers to take on more debt.[180] Retailers, for example, "have begun using AI-driven recommendations to target their communications to consumers with abandoned carts or who have previously used BNPL; they have also started pairing BNPL financing with price discounts to further lower consumers' psychological spending thresholds."[181] On one telling, this is just

173. Ana Staples, *A New CFPB Report Reveals the Credit Habits of 'Buy Now, Pay Later' Users—Here's What You Need to Know*, CNBC (May 16, 2023), https://www.cnbc.com/select/financial-profile-buy-now-pay-later-users-cfpb [https://perma.cc/KY38-BCGB].

174. *See* CONSUMER FIN. PROT. BUREAU, *supra* note 138, at 4; Paulina Cachero & Paige Smith, *Americans Are Racking Up 'Phantom Debt' that Wall Street Can't Track*, BLOOMBERG (May 8, 2024, 3:01 PM), https://www.bloomberg.com/news/articles/2024-05-07/-buy-now-pay-later-has-americans-racking-up-phantom-debt [https://perma.cc/4GKD-MKCC] (citing a poll finding that forty-three percent of respondents were behind on BNPL payments).

175. While consumers may be financing with BNPL, they are often making monthly payments with traditional credit cards, defeating the no-interest benefits of BNPL. As an example, more than half of respondents to a Bloomberg News poll reported that they spent more than they could afford, and twenty-eight percent reported they were falling behind on their other lines of credit because of BNPL. *See* Cachero & Smith, *supra* note 174; *see also* VALERIA ZEBALLOS DOUBINKO & TOM AKANA, FED. RSRV. BANK PHILA., DP 23-01, HOW DOES BUY NOW, PAY LATER AFFECT CUSTOMERS' CREDIT? 5 (2023), https://www.philadelphiafed.org/-/media/frbp/assets/consumer-finance/discussion-papers/dp23-01.pdf [https://perma.cc/3UBR-BGSK] (noting that BNPL users were more likely to have overdraft fees, lower checking balances, and decreases in savings balances).

176. *See* CONSUMER FIN. PROT. BUREAU, *supra* note 138, at 6.

177. Soni, *supra* note 62, at 2055; *see also* Calo, *supra* note 15, at 999.

178. *See* Bucha, *supra* note 72.

179. *See* Soni, *supra* note 62, at 2055 ("By dividing payments into a series of comparatively smaller installments, BNPL distorts consumers' perception of their spending power, thereby reducing their uncertainty before making purchases that they may otherwise ultimately forego."); *see, e.g.*, Calo, *supra* note 15, at 999 ("Firms will increasingly be able to trigger irrationality or vulnerability in consumers—leading to actual and perceived harms that challenge the limits of consumer protection law, but which regulators can scarcely ignore.").

180. *See* Soni, *supra* note 62, at 2067.

181. *See id.*

savvy business. But even when frictionless-financing products help fulfill the varied needs of a heterogeneous consumer population, there is significant evidence that having more choices, especially complicated choices, results in lower-quality decision making across consumer groups.[182] While many consumers desire the ease of access offered by frictionless financing, other consumers are bearing the costs of such access.

III. Consumer Decision-Making in a Frictionless Economy

The stereotypical economist might argue that consumers rationally consume the financial products that are the most beneficial to them by selecting for terms that meet their needs and minimize their costs.[183] But there is a large body of literature establishing that consumers do not always make rational choices. Instead, consumers can be influenced by behavioral biases and heuristics that lead them to select products that may not, in fact, be optimal.[184] Companies, aware of these biases, design their products to

182. BARRY SCHWARTZ, THE PARADOX OF CHOICE: WHY MORE IS LESS 131 (2004) ("The emotional cost of potential trade-offs does more than just diminish our sense of satisfaction with a decision. It also interferes with the quality of decisions themselves."); Alexander Chernev, Ulf Böckenholt & Joseph Goodman, *Choice Overload: A Conceptual Review and Meta-Analysis*, 25 J. CONSUMER PSYCH. 333, 335 (2015) ("The term choice overload—also referred to as over-choice—is typically used in reference to a scenario in which the complexity of the decision problem faced by an individual exceeds the individual's cognitive resources.").

183. *See supra* Section I.B; *see, e.g.*, Russell Korobkin, *Bounded Rationality, Standard Form Contracts, and Unconscionability*, 70 U. CHI. L. REV. 1203, 1218 (2003) ("The economic theory of form contracts . . . assumes a type of 'rational' behavior on the part of buyers, often referred to as 'expected utility theory,' according to which buyers are expected to use the marketplace to maximize their expected utility as they define it."). Frictionless financing purports to satisfy consumers' needs by reducing the time and energy required to obtain financing. As outlined here, however, consumers may be overvaluing the upfront time and energy at the expense of long-term deferred costs.

184. In their classic article, Christine Jolls, Cass R. Sunstein, and Richard Thaler argue that the law needs to be informed by behavioral economics, establishing the behavioral law-and-economics field. The field has grown and changed significantly over the last three decades, as has our underlying understanding of human behavior and decision making. This Article illustrates how the phenomena described by these theories may influence and explain consumer behavior in a frictionless environment. *See* Christine Jolls, Cass R. Sunstein & Richard Thaler, *A Behavioral Approach to Law and Economics*, 50 STAN. L. REV. 1471, 1476 (1998) ("The task of law and economics is to determine the implications of such rational maximizing behavior in and out of markets, and its legal implications for markets and other institutions."); Cass R. Sunstein, *Deciding by Default*, 162 U. PA. L. REV. 1, 11-24 (2013) (outlining the role default rules play in consumer decisions and the behavioral justifications for why consumers adhere to default rules); BAR-GILL, *supra* note 12, at 7-23 (arguing that consumer contracts are designed to exploit consumer biases); Oren Bar-Gill & Omri Ben-Shahar, *Rethinking* Nudge: *An Information-Costs Theory of Default Rules,* 88 U. CHI. L. REV. 531, 544-60 (2021) (proposing the information-costs theory as an explanation for why some defaults are slippery). *But see* Gregory Mitchell, *Why Law and Economics' Perfect Rationality Should Not Be Traded for Behavioral Law and Economics' Equal Incompetence,* 91 GEO. L.J. 67, 73-78 (2002) (arguing that behavioral law and economics relies on incomplete empirical data regarding human behavior); Terrance O'Reilly, *Illusory Policy Implications of Behavioral Law & Economics,* 106 MARQ. L. REV. 269, 310-20 (2022) (outlining the debates regarding the validity of behavioral law and economics); Lauren E. Willis, *When Nudges Fail: Slippery Defaults*, 80 U. CHI. L. REV. 1155, 1159 (2013) ("Evidence from other contexts indicates that policy defaults may not be as effective in increasing welfare as many have hoped, in at least

respond to consumer psychology in ways that maximize profits.[185] In so doing, however, companies may be influencing consumers' decisions in ways contrary to those consumers' financial and economic health.[186]

There are two key ways that frictionless financing exploits these consumer biases and heuristics.[187] First, frictionless-financing platforms propel consumers towards these financing products through UX designed to compromise thoughtful decision making.[188] Second, like many consumer-credit products, the products offered through frictionless financing typically exclude the cost of credit from the point of sale and hide it in other, and often less visible, parts of the transaction.[189] The interaction of these two factors exploits consumer biases and heuristics. It is important to note that consumers are not homogeneous; some consumers will be more impacted by these moves than others.

This Part describes how behavioral biases can lead consumers to make suboptimal choices. It then discusses how impulsivity and quick decision making exacerbate these biases. Finally, it argues that frictionless-financing platforms and the products they offer invite suboptimal consumption by encouraging speedy decision making.

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two respects. First, defaults created by the law are not always sticky and can even be slippery. Second, those those who opt out are not consistently the ones who are better off outside of the default."). The underlying behavioral literature is also vast. *See, e.g.*, Gabriel D. Carroll, James J. Choi, David Laibson, Brigitte C. Madrian & Andrew Metrick, *Optimal Defaults and Active Decisions*, 124 Q.J. ECON. 1639, 1670-71 (2009) (finding that employees who are forced to actively decide whether to enroll in a 401(k) plan are more likely to enroll than those who must opt-in to the enrollment plan); Daniel Kahneman & Amos Tversky, *Prospect Theory: An Analysis of Decision Under Risk*, 47 ECONOMETRICA 263, 274-84 (1979) (proposing "prospect theory," which posits that individuals make decisions based on potential losses more than potential gains). *See generally* Daniel Kahneman, Jack L. Knetsch & Richard H. Thaler, *Anomalies: The Endowment Effect, Loss Aversion, and Status Quo Bias*, 5 J. ECON. PERSPS. 193 (1991) (outlining the endowment-effect, loss-aversion and status-quo-bias theories of human behavior).

185. *See, e.g.*, BAR-GILL, *supra* note 12, at 8 ("The basic claim is that market forces demand that sellers be attentive to consumer psychology."); Willis, *supra* note 184, at 1160 ("Firms may design the opt-out process and surrounding frame not only to make a policy default slippery in general but specifically to encourage those who are worse off outside the default to opt out.").

186. *See* BAR-GILL, *supra* note 12, at 23-26 (outlining the features of consumer contracts that can exploit consumer biases and heuristics to the detriment of consumer welfare).

187. Financing companies have long exploited consumer heuristics and behavioral biases. As one early example, in *Williams v. Walker-Thomas Furniture Co.*, 350 F.2d 445, 449-50 (D.C. Cir. 1965), a leading case applying the doctrine of unconscionability, a furniture-company salesman took extreme efforts to conceal terms from Ms. Williams—folding over the contract to hide everything except for where to sign, not providing a copy of the contract, burying key language in the fine print, and even equivocating about the price itself. *See* Fleming, *supra* note 87, at 1396 (describing the context and terms of Ms. Williams's financing agreement). Frictionless financing also exploits these biases. *See* Aggarwal, *supra* note 22 ("There are three ways in which the zero-interest BNPL business model shifts and obfuscates the costs of credit to the consumer. First, it shifts costs from the front end to the back end of credit transactions. . . . The second, less familiar shift is from charging consumers to charging third-party merchants or wholesalers. . . . The third major shift is from monetizing the financial transaction . . . to monetizing the data transaction . . . .").

188. *See supra* Section II.A.

189. *See* Aggarwal, *supra* note 22; BAR-GILL, *supra* note 12, at 7-23.

A. Psychological Biases Influence Consumer Decision Making

There is a large body of behavioral law and economics literature analyzing both consumer decision making and the way companies design products to respond to consumers' decision-making processes.[190] Consumers often choose financial products that appear "irrational" given the costly terms associated with those products.[191] These products might lead to suboptimal long-term outcomes, because the products are more costly than other forms of credit.[192] Behavioral economics explains these choices by identifying psychological biases and heuristics that skew consumers' preferences.[193]

When consumers are presented with complex and varied contracts, consumers often resort to several common heuristics to decide between their options. For example, consumers often exhibit "bounded rationality" and "salience bias" when evaluating consumer contracts.[194] Consumers are only boundedly rational; instead of thinking through all of the pros and cons of a decision, they use only one or two key criteria.[195] Salience bias, meanwhile, describes individuals' inclination to overindex on contextually

190. Behavioral law and economics has grown as a response to conventional law and economics, which is just as varied as behavioral law and economics in its thought and analysis. *See, e.g.*, Mitchell, *supra* note 184, at 69-70 (describing law and economics' reliance on an assumption of perfect rationality); Richard A. Posner, *Rational Choice, Behavioral Economics, and the Law,* 50 STAN. L. REV. 1551, 1567 (1998) ("But the success of modern economists in enriching the simplest rational-choice models, not only with risk aversion and risk preference but also with altruism, time preference, positive information costs, and strategic and habitual behavior, without sacrificing falsifiability, furnishes a basis for optimism about the power and resilience of rational-choice economics."). *See generally* Catherine Herfeld, *The Diversity of Rational Choice Theory: A Review Note,* 39 TOPOI 329 (2020) (surveying rational choice theories across multiple disciplines, including economics and philosophy).

191. *See* BAR-GILL, *supra* note 12, at 7-23 (arguing that consumer contracts often rely on behavioral biases to offer short-term benefits while imposing long-term costs); *cf.* Lauren E. Willis, *Decisionmaking and the Limits of Disclosure: The Problem of Predatory Lending: Price*, 65 MD. L. REV. 707, 754-98 (2006) (arguing that mortgage lenders are able to take advantage of behavioral biases to sell consumers risky and high-cost mortgages).

192. *See* BAR-GILL, *supra* note 12, at 7-23; Willis, *supra* note 191, at 778-80 (providing high-cost and predatory home loans as an example).

193. *See generally* Amos Tversky & Daniel Kahneman, *Judgment Under Uncertainty: Heuristics and Biases*, *in* JUDGMENT UNDER UNCERTAINTY: HEURISTICS AND BIASES 3 (Daniel Kahneman, Paul Slovic & Amos Tversky eds., 1982) ("[P]eople rely on a limited number of heuristic principles which reduce the complex tasks of assessing probabilities and predicting values to simpler judgmental operations.").

194. *See* Jonathan Slowik, *Credit CARD Act II: Expanding Credit Card Reform by Targeting Behavioral Biases*, 59 UCLA L. REV. 1292, 1304 (2012); Jolls et al., *supra* note 184, at 1478-79 (describing how consumer heuristics are useful but may lead to errors in some circumstances); Willis, *supra* note 191, at 767-68 (arguing that consumers rely on a limited set of considerations when reviewing complex lending documents like home loans)

195. *See* Korobkin, *supra* note 183, at 1219, 1224. Herbert Simon first theorized the concept of bounded rationality, arguing that individuals often make decisions on a small number of attributes and select the first option that reaches the required attributes, thus challenging the conventional economic wisdom that consumers engage in a thorough cost-benefit analysis. *See generally* Herbert A. Simon, *A Behavioral Model of Rational Choice,* 69 Q.J. ECON. 99 (1955) (outlining this theory).

prominent attributes.[196] A boundedly rational consumer faced with many loan options with varied monthly payments, interest rates, financing costs, repayment terms, and fees—among many other complex terms—might (understandably) select their loan based on close-at-hand key criteria rather than through comprehensive consideration.[197] And overwhelming consumers with complex information may exacerbate the gap between purely rational decision making and boundedly rational decision making that overemphasizes salient features.[198] As an example, many consumers may focus on the monthly payment when choosing a loan, without considering the number of payments, interest rate, or other costs associated with it.[199] Even the cue that there is a sense of urgency to make a purchase can lead consumers to make decisions contrary to their interest.[200]

Complex consumer-credit products also exacerbate consumers' tendency to engage in optimistic overconfidence and hyperbolic discounting.[201] Optimistic overconfidence is the belief that one will escape adverse consequences, such as missing a payment or failing to make a payment on time.[202] Optimistic overconfidence often leads consumers to take on debt that they otherwise would not have if they had an accurate assessment of their likelihood to repay.[203] Optimistic overconfidence is related to hyperbolic discounting, consumers' tendency overvalue the immediate benefits of products while undervaluing the future costs. Consumers who engage in hyperbolic discounting will tend to borrow more than other consumers. And products that direct consumers' attention to the short-term benefits

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196. *See* BAR-GILL, *supra* note 12, at 91-96; *see also* Shelley E. Taylor, *The Availability Bias in Social Perception and Interaction*, *in* JUDGMENT UNDER UNCERTAINTY: HEURISTICS AND BIASES, *supra* note 193, at 190, 192-93.

197. *See, e.g.*, Willis, *supra* note 191, at 767-68 (noting that consumers may limit the criteria they consider when reviewing home loans); BAR-GILL, *supra* note 12, at 20 ("Searching for the right product among a complex maze of complex products is costly, even for rational consumers.").

198. *See* BAR-GILL, *supra* note 12, at 2-3 ("Complexity responds to bounded rationality, to the challenge of remembering and then aggregating multiple dimensions of costs and benefits."); Willis, *supra* note 191, at 780 ("Time and again, borrowers and sellers of subprime loans report that borrowers do not attempt to sort out the complicated structuring of their loans and instead focus exclusively on one dimension of the loan in making their decision: the monthly payment."); *see also* John W. Payne, *Contingent Decision Behavior,* 92 PSYCH. BULL. 382, 386-88 (1982) (outlining the literature demonstrating that task complexity leads to more likely use of choice strategies).

199. *See* Willis, *supra* note 191, at 780.

200. *See, e.g.*, Amelia Fletcher, Gregory S. Crawford, Jacques Crémer, David Dinielli, Paul Heidhues, Michael Luca, Tobias Salz, Monika Schnitzer, Fiona M. Scott Morton, Katja Seim & Michael Sinkinson, *Consumer Protection for Online Markets and Large Digital Platforms*, 40 YALE J. ON REGUL. 875, 901 (2023) ("[T]he creation of a false sense of urgency or scarcity . . . is likely to lead to their making worse decisions").

201. *See* Slowik, *supra* note 194, at 1311-13; Oren Bar-Gill & Elizabeth Warren, *Making Credit Safer*, 157 U. PA. L. REV. 1, 36 (2008); Jennifer Christie Siemens, *When Consumption Benefits Precede Costs: Towards an Understanding of "Buy Now, Pay Later" Transactions*, 20 J. BEHAV. DECISION MAKING 521, 522 (2007); David Laibson, *Golden Eggs and Hyperbolic Discounting*, 112 Q.J. ECON. 443, 445-46 (1997) (describing hyperbolic discounting with respect to savings).

202. *See* Slowik, *supra* note 194, at 1313-14.

203. *See* BAR-GILL, *supra* note 12, at 22.

while disguising or not disclosing the long-term costs may exacerbate consumers' tendency to engage in hyperbolic discounting.[204]

Complex consumer contracts trigger the biases and heuristics identified above regardless of whether the contracts are presented to consumers through frictionless-financing platforms, and regardless of whether the products are considered safe or not.[205] Traditional rent-to-own agreements, for example, arguably exploit consumers' prioritization of immediate rewards and costs over future rewards and costs (i.e., hyperbolic discounting).[206] However, as outlined in the next Section, frictionless-financing platforms introduce a new component—speed—that exacerbates these biases and heuristics.

B. Frictionless Financing Exploits Consumer Behavioral Biases

Frictionless-financing companies are aware of these consumer biases and heuristics, and the companies have developed platforms and products that respond to and exacerbate them.[207] Frictionless financing exploits these behavioral biases in two ways: (1) through UX designed to propel consumers to financial products; and (2) by offering financing products that are complex, varied, and defer costs, which compounds optimistic overconfidence and hyperbolic discounting biases.[208] The combination of UX design with complex and varied financial products creates the perfect storm to exacerbate these well-known heuristics and biases.

1. UX Design Features

Frictionless-financing platforms often attempt to activate behavioral characteristics and traits that lessen consumers' ability to make savvy financial decisions. Frictionless-financing platforms cue consumers to focus on "fast," "easy," and seemingly "cheap" financing rather than other terms

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204. *See* CHRISTOPHER L. PETERSON, TAMING THE SHARKS: TOWARDS A CURE FOR THE HIGH-COST CREDIT MARKET 171 (2004) ("Rather than considering the serious long-term consequences of their borrowing, high-cost debtors are often irrationally 'payment-myopic,' focusing on whether they can make monthly payments instead of whether the contract as a whole is a wise decision.").

205. *See, e.g.*, BAR-GILL, *supra* note 12, at 7-23 (arguing consumer contracts are designed to trigger behavioral biases); Willis, *supra* note 191, at 767-68; PETERSON, *supra* note 204, at 165-82 (applying behavioral-economics principles to high-cost credit).

206. *See* Brian J. Zikmund-Fisher & Andrew M. Parker, *Demand for Rent-to-Own Contracts: A Behavioral Economic Explanation*, 38 J. ECON. BEHAV. & ORG. 199, 214 (1999) ("Measures of both of risk preferences and myopic time preferences, as assessed in our surveys, were positive and significant predictors of demand for rental-purchase contracts despite this method's almost exorbitant cost.").

207. *Cf.* Calo, *supra* note 15, at 1002 ("The consumer of the future is a *mediated* consumer—she approaches the marketplace through technology designed by someone else."); BAR-GILL, *supra* note 12, at 8 ("Sellers who ignore consumer biases and misperceptions will lose business and forfeit revenue and profits.").

208. *See supra* Part II.

of financing in their advertisements for the associated products.[209] By highlighting these criteria, platforms can mask other illegible but important aspects of these agreements.

Frictionless-financing platforms also play upon behavioral biases by employing techniques like sale promotions, advertisements, and other stimuli designed to capitalize on impulsive consumers' instincts.[210] They use dark patterns (e.g., scarcity, urgency, and time deadlines) to entice consumers to use their products.[211] Even the mere signaling of the availability of financing on retailers' websites stimulates consumer spending.[212] Many retailers partnering with frictionless-financing platforms advertise financing's availability on their front webpages, when consumers add products to their carts, and at the point of check-out.[213]

It is common, and perhaps expected, for businesses to do what they can to boost sales.[214] But frictionless financing is different. The unique combination of these bias-targeting marketing techniques and the speed with which frictionless-financing-platform UX moves consumers through the purchasing process is an especially dangerous pairing, because accelerating consumer decision-making processes can exacerbate behavioral biases like those identified above.[215] So, when payment methods are fast and auto-

209. The advertising for the products offered through frictionless-financing platforms often focuses on the ease of application and the speed with which consumers can access credit. In contrast, traditional credit-card companies tend to focus on the terms of the credit in their advertisements. *Compare* ACIMA, https://www.acima.com/en [https://perma.cc/NJG5-D9SR] ("Shopping is easy."), *and What Are Frictionless Payments and How Do They Work?*, ZIP (Jan. 24, 2025), https://zip.co/us/for-business/resources/what-are-frictionless-payments [https://perma.cc/CHY6-TS4R] ("Frictionless payments [including BNPL] are fast, convenient payment methods that benefit both shoppers and businesses."), *with* CAPITAL ONE, https://www.capitalone.com/credit-cards [https://perma.cc/HT95-JVYN] (outlining the terms of their credit cards), *and* DISCOVER, https://www.discover.com/credit-cards [https://perma.cc/6LPZ-F265] (emphasizing "rewards like cash back or miles . . . [a]ll with no annual fee").

210. For a discussion of how impulsivity affects consumers' propensity to purchase on credit, see Cristina Ottaviani & Daniela Vandone, *Financial Literacy, Debt Burden and Impulsivity: A Mediation Analysis*, 47 ECON. NOTES 439, 441 (2018).

211. *See* Luguri & Strahilevitz, *supra* note 15, at 53, 83-84 (offering both a taxonomy of dark patterns and one recently litigated example of an online lender pushing exploitative products through UI).

212. The credit-card effect, or the increase in spending when paying with a credit card, is well documented in the psychological and economic literature. *See, e.g.*, Katherine Porter, *The Debt Dilemma*, 106 MICH. L. REV. 1167, 1174 (2008) (noting that psychologists and researchers have found a positive correlation between credit-card use and increased consumer debt); Michael McCall, Jessica Trombetta & Aimee Gipe, *Credit Cues and Impression Management: A Preliminary Attempt to Explain the Credit Card Effect*, 95 PSYCH. REP. 331, 331-37 (2004) (outlining the psychological research demonstrating that credit-card cues lead to higher spending).

213. *See, e.g.*, *Marketing Best Practices Guide: Step 1—Set the Stage*, AFFIRM, https://businesshub.affirm.com/hc/en-us/articles/5182985562900-Marketing-Best-Practices-Guide-Step-1-Set-the-Stage [https://perma.cc/84QZ-58A7].

214. For example, through dark patterns. *See supra* note 14 (outlining the dark-patterns literature).

215. Research connecting time pressure to the relative importance of reasoned deliberation and affect for decision making illustrates this point. *See* Melissa L. Finucane, Ali Alhakami, Paul Slovic & Stephen M. Johnson, *The Affect Heuristic in Judgments of Risks and Benefits*, 13 J.

matic, consumers are less likely to compare prices and more likely to impulsively overspend.[216] Consumers may tend to make poor consumption choices when deciding quickly for several reasons. First, researchers have theorized that when consumers make decisions too quickly they account for costs inaccurately, because speedier decisions rely on intuition rather than analysis.[217] Researchers have also theorized that frictionless platforms may eliminate the "pain of paying," or the negative emotional cues that mediate spending activity.[218] Absent this UX speed bump, there may be little to constrain consumers' bias-driven inclination to overspend. Accordingly, when consumers are making decisions quickly through technology that obscures those decisions' costs, they may be more likely to fall prey to bias-motivated consumption. While research on the association between automatic access to credit and default rates is limited, some evidence suggests that increased deliberation time can lead to better lending outcomes.[219] But frictionless platforms are, by definition, frictionless, so they inhibit deliberation and deprive consumers of its benefits.

And UX makes frictionless-financing products hard to escape. Frictionless-financing platforms minimize other financing options, such as general credit cards, by directing consumers towards their favored products, products which often exacerbate behavioral biases in their own right.[220] For example, a frictionless-financing platform may offer frictionless-finance

BEHAV. DECISION MAKING 1, 8 (2000) ("Reliance on the affect heuristic seems to be exposed more clearly when people's opportunity for analytic deliberation is reduced and an efficient mode of judgment is needed . . . . [T]ime pressure reduces people's use of data-driven, attribute-based processing strategies and increases reliance on a more holistically evaluative strategy . . . ."); Baba Shiv & Alexander Fedorikhin, *Heart and Mind in Conflict: The Interplay of Affect and Cognition in Consumer Decision Making*, 26 J. CONSUMER RSCH. 278, 288-89 (1999) (presenting evidence to support the general claim that "under conditions where the consumer does not allocate processing resources to a decision-making task, s/he is more likely to choose based on affect rather than on cognitions" when impulsive consumers are faced with real choices); *see also* Daniel Kahneman, *Maps of Bounded Rationality: Psychology for Behavioral Economics*, 93 AM. ECON. REV. 1449, 1463, 1467 (2003) (citing Finucane, Alhakami, Slovic and Johnson to make this point).

216. In an international study of digital credit, researchers demonstrated that reducing how long consumers have to wait to receive funds after applying for a digital loan can compromise consumers' ability to repay the loan and avoid default. *See* Burlando et al., *supra* note 172, at 1-2. Behavioral mechanisms provided one explanation for the results. *Id.* at 11-12.

217. *See* Finucane et al., *supra* note 215, at 8.

218. Pain of paying is an important roadblock in the way of overspending, and it is a function of payment medium. *See, e.g.*, Drazen Prelec & Duncan Simester, *Always Leave Home Without It: A Further Investigation of the Credit-Card Effect on Willingness to Pay*, 12 MKTG. LETTERS 5, 8 (2001) (finding that consumers were willing to pay more when instructed to pay with a credit card instead of cash); George Loewenstein & Ted O'Donoghue, "*We Can Do This the Easy Way or the Hard Way": Negative Emotions, Self-Regulation, and the Law*, 73 U. CHI. L. REV. 183, 194 (2006) ("In the realm of *consumer* behavior, perhaps the most important of these [negative emotions] is the pain that consumers experience when they spend money.").

219. *See* Burlando et al., *supra* note 172, at 1-2. *See generally* van Lieren et al., *supra* note 30 (arguing for rational overrides to implement small moments of reflection in the consumer experience).

220. *See infra* Section III.B.2.

products first on the checkout page, requiring a consumer who wants to pay with a credit card to scroll further down the page.[221]

2. Product Design

The products offered through frictionless financing also exhibit characteristics that magnify salience bias, optimistic overconfidence, and hyperbolic discounting. These products tend to vary widely, featuring complex and multidimensional benefits and prices.[222] Each financial product has significantly different terms, rights, responsibilities, costs, and statutory protections: some charge interest rates, while others charge hidden fees; some are loans, while others are mere rentals.[223]

Complex and multidimensional financing options can be beneficial to consumers, at least when they reflect companies' efforts to tailor contract terms to consumers' heterogeneous needs.[224] They also, however, hide the true nature and cost of the contract from the consumer.[225] As the above discussion of salience bias and bounded rationality suggested, consumers will focus only on the most salient terms whenever it is time-consuming, difficult, or costly to fully navigate the contract, so by presenting consumers with complex financing products, companies give unfavorable terms a place to hide.[226] In a frictionless environment, the most salient terms may not relate to the financing costs or to the type of financing vehicle, but rather to the monthly payment and to financing accessibility.[227] So, because these complex and multidimensional financing products are presented all at once and with little to clarify the costs of each, frictionless financing can amplify bounded-rationality and salience biases to the detriment of consumer financial health.[228]

221. The general credit card option may also be less inviting than the other financing options, presented with dull colors and images. *See, e.g.*, WAYFAIR: CHECKOUT, BILLING, https://secure.wayfair.com/v/checkout/onepage/view?express_checkout=1#billing [https://perma.cc/FZE8-FH3B].

222. The products offered through frictionless-financing platforms vary in the degree to which they trigger each of these biases, with the less traditional categories (high-cost installment loans, BNPL, and VirTOs) activating them most and with the fewest protections. *See supra* Section II.B.

223. *See supra* Section II.B.

224. *See* BAR-GILL, *supra* note 12, at 18 ("The complex card facilitates risk-based pricing and tailoring of optional services to heterogeneous consumer needs.").

225. *See id.* at 18 ("Complexity hides the true cost of the product from the imperfectly rational consumer.").

226. *See id.* at 19 ("In particular, they reduce the total price, as perceived by consumers, by decreasing salient prices and increasing non-salient prices.").

227. While most frictionless-financing products highlight their accessibility and low rates, high-cost installment loans, BNPL products, and VirTOs hide their costs and specifically target credit-constrained consumers. *See supra* Section II.B; Willis, *supra* note 191, at 767-68.

228. To demonstrate, installment loans are required under TILA to disclose APRs, while VirTOs are not, so a financing platform might present both products to consumers without meaningfully distinguishing them. *See supra* Section II.B.

Similarly, frictionless-financing products—like many consumer contracts—pair short-term benefits with long-term costs, capitalizing on optimistic-overconfidence and hyperbolic-discounting biases.[229] Platforms pitch products that let consumers "shop now and pay later, interest free"; they make claims like "90-days same as cash" and "no credit needed."[230] These companies highlight the low initial cost, ease of use, and availability to all consumers, making these the most salient terms for consumers and exacerbating consumers' myopic time preferences or desire to immediately purchase products.[231] Yet they do not highlight the fees or total cost of the contract, further aggravating consumers' optimism and tendency to underestimate future costs.[232]

IV. Sometimes It's Good to Go Slow: Regulating to Facilitate Deliberation

Counterintuitively, faster and simpler may not always be better for consumers.[233] Reintroducing desirable friction may ameliorate the emerging challenges of frictionless-financing products.[234] In particular, requiring frictionless-financing platforms and providers to reintroduce beneficial inefficiencies may facilitate deliberation by counteracting the consumer bi-

229. *See* BAR-GILL, *supra* note 12, at 21.

230. Illustratively. *See* notes 1-4, *supra*.

231. *See* BAR-GILL, *supra* note 12, at 21-22; Zikmund-Fisher & Parker, *supra* note 206, at 214.

232. Credit cards and high-cost installment loans likely do not trigger hyperbolic discounting to the same extent as BNPL and VirTOs because federal law requires credit cards and high-cost installment loans to disclose full financing costs and interest rates. BNPL and VirTOs have fewer disclosure requirements and often are not required to disclose hidden costs. *See supra* Section II.B.

233. As outlined below, consumer demand illustrates the importance of regulatory solutions. Because consumers demand frictionless UX yet typically do not perceive the costs in the moment, regulations requiring companies to reintroduce friction may be necessary to overcome countervailing market pressures. For example, many consumers dislike two-factor authentication, yet it is imperative for protecting consumers' accounts from cybersecurity threats. *See, e.g.*, Ohm & Frankle, *supra* note 30, at 805 (noting desirable inefficiencies, such as CAPTCHAs and other tools creating friction).

234. This is not an entirely new idea. At least three other legal scholars have advocated that some design friction or architecture-based intervention may provide consumers with the ability to reflect on risky financial decisions. *See* Aggarwal, *supra* note 22 ("Although it is inevitably a fine balance, some online friction that forces consumers to reflect more carefully on risky financial decisions is likely to be both economically and socially valuable."); Baker & Stone, *supra* note 22, at 19 n.64 (noting that "traditional and fintech consumer financial services providers' [efforts] to reduce so-called 'friction' in financial transactions" has come at the "expense of careful deliberation or the time and capacity to digest the information contained in disclosures that is relevant to the purchase decision"). Similarly, popular culture and debt management guides have long advised consumers to introduce "friction" to counteract impulse spending. *See, e.g.*, *Oprah's Debt Diet Step 8: Understand Your Spending Issues…and Save!*, OPRAH (June 17, 2009), https://www.oprah.com/money/oprahs-debt-diet-step-8/all [https://perma.cc/55VW-QECU]. ("Putting a little distance between yourself and the purchase will help you evaluate it more rationally."). This Article, however, provides additional and specific points of friction to consider in a frictionless-financing environment.

ases and heuristics that these platforms and their associated products magnify.

After a brief discussion of why regulating through friction, rather than through prohibitions, is advisable, this Part proposes two types of friction-based interventions: (1) point-of-sale UI- and UX-design frictions that users experience as they interact with frictionless-financing platforms; and (2) upstream, behind-the-scenes frictions that slow the financing-approval process itself. These proposals are not designed to prevent every user from accessing the aforementioned financial products; rather, they are meant to act like speed bumps, forcing consumers to slow down and be more deliberate in selecting financing options.[235]

A. Reintroducing Inefficiencies Through Regulation

As outlined earlier, this Article builds on the growing body of legal scholarship proposing regulations that reimpose friction in UX to address the challenges frictionless technology has raised and to regulate consumer behavior.[236]

Friction-focused regulators would require companies to "design systems to increase or reduce the impediments" to access a specific product.[237] Friction should not be introduced to present needless barriers, but rather to facilitate deliberation.[238] Towards this end, friction is an appealing regulatory tool because it is tunable; it can be calibrated based on the needs of the situation.[239] As William McGeveran has noted, "too much friction can impede movement or even start fires, but too little would cause objects to slide off tables and cars off roads."[240] Regulations based on friction allow policymakers to institute protective measures, but only to the extent necessary.[241] Highly regulated products, such as traditional credit cards, need less additional friction; existing rules already keep consumers relatively safe. In contrast, more predatory or exploitative financing options, like BNPL products and VirTOs, require more friction to ensure consumers make fully informed and considered choices. Friction's tunability is especially important given the varied and complex nature of frictionless-financing products and the laws governing them.[242]

235. Finance companies know how to introduce friction when it benefits them. *See, e.g.*, Floyd, *supra* note 5, at 801.

236. *See* McGeveran, *supra* note 30, at 15; Takhshid, *supra* note 30, at 1092; Richards, *supra* note 30, at 691; Goodman, *supra* note 30, at 648-52; Gordon-Tapiero et al., *supra* note 30, at 181; Ohm & Frankle, *supra* note 30, at 781; Ohm & Kim, *supra* note 30, at 107-08.

237. *See* McGeveran*, supra* note 30, at 61.

238. *See generally* van Lieren et al., *supra* note 30 (arguing for rational overrides, or small moments of friction, in human-computer interactions to disrupt mindless automatic interactions and decision making).

239. *See* Gordon-Tapiero et al., *supra* note 30, at 246.

240. *See* McGeveran*, supra* note 30, at 18.

241. *See id.* at 60.

242. *See* Section II.B, *supra*.

Moreover, adding friction preserves consumer choice because friction can be overcome with enough force. Certainly, some consumers' desires will be frustrated by the introduction of friction. However, users who are heavily invested in accomplishing a task will make the effort to overcome any added friction, either by persisting through the design barriers or by circumventing them.[243]

Granted, reintroducing tailored inefficiencies may not prove to be a panacea. Paternalist concerns aside, some of the products offered should be directly regulated or prohibited. Such regulation may be politically unfeasible, however. So, this Article focuses on pragmatic solutions without defending prohibitions. Even if friction-focused interventions are in some sense "second-best," they can help consumers consider their financing choices—or whether they want financing at all.

The following suggestions build on desirable frictions identified by UX-design scholars and on long-standing consumer-protection principles.[244] In general, desirable frictions include frictions that introduce time delays, that require consumers to make active choices, that clarify relevant information, that provide personalized or real-time feedback, or that otherwise disrupt mindless interactions.[245] This Part proposes potential opportunities to reintroduce desirable inefficiencies into the financing ecosystem along these lines. Because frictionless-financing platforms underpin the ecosystem, they are uniquely situated to address the emerging challenges in how consumers are interacting with financing. So, a number of the suggested regulations target these intermediaries. Others are targeted towards lenders and retailers. The suggested methods of regulation are not exhaustive, but they do highlight a few initial opportunities for friction to help consumers.[246] I do not prescribe specific methods that companies should use; rather, I argue that regulators should require product and interface

243. *See, e.g.*, Gordon-Tapiero et al., *supra* note 30, at 247-49. Inevitably, some users who would like to accomplish a task will be stymied by the friction; however, the goal is to introduce enough friction to separate users who are reflexively completing the task from those who will persist. Friction thus preserves consumer autonomy and access to a variety of products while protecting some consumers from the challenges posed by frictionless financing.

244. *See* van Lieren et al., *supra* note 30, at 2172-73; Padigar et al., *supra* note 30, at 27; Frischmann & Benesch, *supra* note 10, at 388. *See generally* Luke Herrine, *Unfairness, Reconstructed,* 42 YALE J. ON REGUL. 95 (2025) (outlining common consumer-protection policies of the last several decades).

245. "Desirable frictions" are frictions that enhance the user's experience, whereas "undesirable frictions" are frictions that compromise the user's experience and prevent the user from completing the desired behavior. *See* van Lieren et al., *supra* note 30, at 2172-73; Padigar et al., *supra* note 30, at 27; Frischmann & Benesch, *supra* note 10, at 388.

246. While CFPB is a natural agency to implement these regulations, the regulatory proposals outlined in this Article are not limited to CFPB or the federal government. Rather, state governments and other agencies (e.g., FTC), could implement some of these reforms. In fact, many state governments are already outlining requirements that address how these platforms interact with consumers. *See, e.g.*, MD. CODE ANN., COM. LAW § 14-1329 (West 2025) (limiting negative option marketing). To the extent the companies providing frictionless-financing products are not regulated entities like banks, states should not be preempted in regulating them.

design that facilitates deliberation.[247] Applying these principles to frictionless financing may provide a model for other regulations in the frictionless economy.

B. User-Interface and User-Experience Regulations

This Section explores potential UI and UX regulations that could reintroduce desirable friction and facilitate deliberation in an otherwise frictionless environment.[248] These proposals target consumers' interactions with frictionless-financing platforms—more specifically, the design choices that consumers will encounter when using these platforms.[249] They push these companies to do what they already know how to do—design good UX—but in a way that benefits consumers.[250] Not every category of frictionless-financing products warrants every proposed regulation. Rather, the type of financing product, existing regulations, and resulting harms should dictate the frictions imposed.

247. Many scholars have proposed requiring or incentivizing companies to design products and platforms with the consumer's welfare in mind. *See, e.g.*, Lauren Henry Scholz, *Fiduciary Boilerplate: Locating Fiduciary Relationships in Information Age Consumer Transactions*, 46 J. CORP. L. 143, 144-45 (2020) (arguing that consumer contracts should create a fiduciary relationship between companies and consumers); Christopher G. Bradley, *The Consumer Protection Ecosystem: Law, Norms, and Technology*, 97 DENV. L. REV. 35, 48-50 (2019) (describing technological constraints in consumer protection frameworks).

248. Some of these proposals might be challenged on First Amendment grounds on the basis that they require companies to engage in mandated "speech," but they could survive such challenges on the basis that they are time, place, and manner restrictions. *See* Frischmann & Benesch, *supra* note 10, at 381 (arguing that friction-in-design regulations should be considered time, place, and manner restrictions).

249. There is a long-standing debate over the benefits and costs of contracts of adhesion. This Article does not address the value of contracts of adhesion but rather argues that companies should be responsible for demonstrating and facilitating deliberation when using such contracts. *Cf.* 15 U.S.C. § 7001(c)(1) (2024) (describing the consent requirement in the federal E-Sign Act). *See generally* Friedrich Kessler, *Contracts of Adhesion—Some Thoughts About Freedom of Contract*, 43 COLUM. L. REV. 629 (1943) (describing contracts of adhesion); Scholz, *supra* note 247, at 171 ("Many scholars have argued that if consumer consent is not meaningful, it should not be able to support an enforceable contract."); Radin, *supra* note 12, at 10-12 (arguing that assent is not sufficiently given with clickwrap).

250. These proposals draw from Lauren Willis's performance-based regulatory proposals to institute more performance-based consumer law. *See* Lauren E. Willis, *Performance-Based Consumer Law*, 82 U. CHI. L. REV. 1309, 1335-44 (2015) (arguing for performance-based consumer regulations to promote consumer comprehension). They also draw on Ayres and Braithwaite's ideas on coregulation between government and companies to promote enforced self-regulation. *See* IAN AYRES & JOHN BRAITHWAITE, RESPONSIVE REGULATION: TRANSCENDING THE DEREGULATION DEBATE 101-32 (1992).

1. Require Simple and Easy-to-Understand Disclosures that Facilitate Deliberation

UX designers can help develop user-friendly disclosure methods that serve not only to inform, but also to promote consumer deliberation.[251] As things stand, disclosure requirements do not reach much of the frictionless-financing ecosystem. Store and second-look credit cards and high-cost installment loans are governed by TILA, which requires disclosure of key terms such as APR.[252] But such information is typically not presented in a way that allows consumers to comparison shop between the varied products offered through frictionless financing.[253] An ongoing dispute over whether BNPLs and VirTOs are covered by TILA also stymies comparison. Industry argues that these products fall outside TILA because they are not "credit" within the statute's meaning, but state Attorneys General have contested that claim.[254]

Whatever TILA's applicability, however, consumers consistently ignore disclosures even when they are required (for financial products and beyond).[255] Companies too often provide financial disclosures in wall-of-text clickwrap agreements that users mindlessly click through or, worse, in browsewrap agreements that users miss entirely. Because their goal is to shield their employers from liability, lawyers often draft these disclosures in language that consumers cannot read, let alone understand, in the few seconds it takes them to click through the text.[256] So, these disclosures do not effectively inform consumers of products' terms and conditions.

251. Indeed, the failure to provide such information in an easy-to-understand format could render a contract unconscionable. Because courts have retreated from unconscionability doctrine over the last several decades, and because the doctrine is less clear and defined than regulations could be, this Article focuses on regulations that could facilitate deliberation and friction. But courts could reverse course and determine that UX and design methods that obfuscate the true nature of these agreements render them unconscionable and unenforceable. *See* Fleming, *supra* note 87, at 1415.

252. *See supra* Section II.B.

253. For example, with respect to the cost of credit, high-cost installment loans are required to identify the APR, finance charge, amount financed, and total of payments, whereas VirTOs, depending on the applicable state statute, may only be required to disclose the initial payment, payment amounts and timing, and other charges. *See, e.g.*, 15 U.S.C. §§ 1601-1632, 1638(a) (2024); MICH. COMP. LAWS § 445.953 (2026).

254. *See* Martin & Lynn, *supra* note 5, at 532-34; Floyd, *supra* note 5, at 818-25.

255. *See* Bakos et al., *supra* note 14, at 31 (suggesting that consumers do not read end-user license agreements because of the high cost of finding the agreements and reading their terms); OMRI BEN-SHAHAR & CARL E. SCHNEIDER, MORE THAN YOU WANTED TO KNOW: THE FAILURE OF MANDATED DISCLOSURE 42-51 (2014) (outlining the empirical evidence showing that mandated disclosures fail to inform consumers); BAR-GILL, *supra* note 12, at 180 ("The APR disclosure has failed. It was often disclosed too late to help borrowers choose between different loan products.").

256. Indeed, this is often how requirements to provide clickwrap or browsewrap agreements are presented to web designers. *See, e.g.*, *Understanding the Difference: Clickwrap Agreement vs. Browsewrap Agreement, and Enforceability of Terms and Conditions*, SECURE PRIVACY (June 19, 2024), https://secureprivacy.ai/blog/clickwrap-vs-browsewrap-agreements-understanding-enforceability-legal-considerations [https://perma.cc/9XWS-LKHP].

This phenomenon is not isolated to complex and niche contracts. Even the most basic terms are often buried in fine print, in a manner that does not facilitate deliberation.[257] Many retailers offer a variety of financing products at the point of checkout, for example, but hide key terms until consumers have already applied for "pre-approval" or financing.[258] Only once consumers put personal information into their credit applications will vendors provide them detailed information on financing terms, frustrating consumers' ability to compare products.[259] And with technologies like waterfall financing, where consumers may not even know what type of financing they are ultimately applying for, they may not be able to comparison shop between financing options at all.

There are better ways to design disclosures. Regulators already have extensive experience in creating disclosure requirements that notify consumers of potential risks in easy-to-understand language.[260] Disclosures such as the Schumer Box, for example, impact consumer behavior because they clarify basic credit terms in a standardized manner.[261] Regulators could mandate a simple table for frictionless-financing platforms, akin to the Schumer Box, that clearly and succinctly allows consumers to compare

257. *See* Floyd, *supra* note 5, at 813 n.292 (citing Acima's fine print, which explains that the company's financing agreements are not loans but rather rentals).

258. For example, Wayfair, a popular online furniture provider, offers the following options and descriptions at checkout for a $440.74 purchase: "Wayfair Financing: Pay as low as $11.18 per month," "Afterpay: 4 interest-free payments of $110.19 every 2 weeks," "Affirm: As low as $15.28/mo or 0% APR," "Credit or Debit Card," "Klarna: 4 interest-free payments of $110.19 every 2 weeks," and "PayPal." Selecting "Wayfair Financing," however, reveals multiple financing products, including Affirm (an installment loan), Bread Financial (an installment loan), Katapult (VirTO), and Acima (VirTO). Critically, consumers cannot see the key terms of any of these products—such as whether it is a loan, BNPL product, or VirTO, or the associated interest rate, monthly payment, or potential fees—until they have already entered their financial information, including their Social Security number. *See, e.g.,* WAYFAIR: CHECKOUT, BILLING, *supra* note 221.

259. Wayfair similarly requires consumers to submit information before disclosing its financing plans. *See, e.g.,* WAYFAIR: CHECKOUT, REVIEW, https://secure.wayfair.com/v/checkout/onepage/view?express_checkout=1#review [https://perma.cc/2ATB-RG43].

260. Examples of successful uniform disclosure methods include hazard symbols on dangerous products, nutrition labels on food products, and TILA APR boxes. *See, e.g.*, Fletcher et al., *supra* note 200, at 885 (outlining several methods of regulating disclosures for easy product comparisons). *See generally* OSHA, HAZARD COMMUNICATION STANDARD: LABELS AND PICTOGRAMS (2013), https://www.osha.gov/sites/default/files/publications/OSHA3636.pdf [https://perma.cc/V4KB-M4XB] (explaining hazard-labeling requirements to regulated parties); *The Nutrition Facts Label*, FDA (Mar. 5, 2024), https://www.fda.gov/food/nutrition-education-resources-materials/nutrition-facts-label [https://perma.cc/R6DM-S24D] (discussing changes to and goals for nutrition labels).

261. *See, e.g.*, Bakos et al., *supra* note 14, at 31-32 ("Regulations that mandate the disclosure of basic credit terms in a standardized manner and large fonts, such as the Schumer box in the United States and the summary box in the United Kingdom, can reduce the cost of reading and comprehending contract terms."); Belton et al., *supra* note 15, at 4 (finding that "simplifying information and showing it in a timely way increased comprehension of . . . the borrowing amount of the product[,]" but that it "did not materially impact participants' likelihood of accepting the hypothetical credit offer or participants' requested borrowing amount"). *But cf.* BEN-SHAHAR & SCHNEIDER, *supra* note 255, at 49 (noting that some experimental studies of disclosures show some benefits in improving consumer knowledge).

salient terms across frictionless-financing products.[262] These terms could include the type of product (e.g., installment loan, revolving credit, rent-to-own), the effective APR, the monthly payment or minimum monthly payment, the total cost, the key fees (e.g., late fees and overdraft fees), the amount financed, and a comparison to the cash price. This information should be provided separately from other terms and conditions, which could be presented in a manner that allows consumers to seek more information on the products at their leisure (perhaps through a dropdown menu or box). While not all terms are comparable across every product, disclosures should align them as much as possible to allow consumers to effectively compare the cost of the credit.

Additional requirements could then vary based on the product and its riskiness. For example, it may be most important to alert potential VirTO consumers that they will not *own* their purchase.[263] Alternatively, it may be most important to alert potential BNPL consumers to hidden late fees. Defending tailoring does not justify long-windedness, however. Regulators should require companies to disclose only the most salient information in as standardized a format as possible.[264] Additionally, these key terms should be presented in a manner that allows consumers to comparison shop between financing vehicles *before* applying for financing.[265]

Providing information in a clear, easily accessible, and understandable manner may entice consumers to slow down on its own, but it only becomes positive friction when coupled with design choices to force deliberation.[266] These design choices can include adding alerts and active-decision

262. A Schumer Box refers to the table that credit card lenders are required to provide to applicants. It is depicted in the model forms to Regulation Z. *See* 12 C.F.R. § 1026 app. G-10(A) (2025).

263. For example, it may be important to alert VirTO users that they will not own the product, while installment loan consumers should be informed of the associated APR. *See supra* Section II.B.

264. There is research suggesting that even when contracts include unenforceable terms, consumers may fail to raise those concerns, instead conforming their behavior to the illegal contractual provisions. The authors suggest that displaying information in a salient format may help counteract these problems. *See* Meirav Furth-Matzkin, *On the Unexpected Use of Unenforceable Contract Terms: Evidence from the Residential Rental Market*, 9 J. LEGAL ANALYSIS 1, 41-44 (2017); *see also* Willis, *supra* note 250, at 1335-1344 (arguing that companies should be required to ensure consumers comprehend the contracts they enter)

265. Regulators need not prescribe the specific form of disclosure; rather, they could regulate the outcome and task companies with designing a UX that facilitates deliberation. Some embedded finance platforms are already providing this information in a format that allows consumers to compare products' key terms, but they often require consumers to seek out that comparison by clicking "learn more" buttons or by navigating to separate pages rather than presenting the information clearly and succinctly at the point of application. *See, e.g.*, *REEDS Jewelers Purchase Options*, REEDS, https://www.reeds.com/purchase-options.html [https://perma.cc/23AP-X5LN].

266. Scholars have advocated similar digital speed bumps in other contexts to facilitate deliberation. *See* Venkatesan et al., *supra* note 29, at 11; Frischmann & Benesch, *supra* note 10, at 414; van Lieren et al., *supra* note 30, at 2172; *cf.* Calo, *supra* note 54, at 777 (noting that architectural constraints, such as code, can be used in combination with nudges to improve notice requirements).

points.[267] Once consumers have been presented with clear disclosures, for example, they could be required to indicate their understanding of a product's most salient features through a series of questions.[268] "Are you sure you would like to rent-to-own your item?" "Do you agree to a 100-200% APR?" "Are you aware that your monthly payment is $X amount, due on X date, and that if you miss a payment due date you will be subject to a $X late fee?" Etc.[269] Companies could even mandate that consumers view the aforementioned disclosure tables for a set amount of time based on the number or type of products presented before allowing them to select financing.[270] Alternatively, consumers could be required to watch simple instructional videos, prepared by a regulatory agency, explaining the pros and cons of particular finance products. While additional frictions may not be necessary for traditional or high-cost credit cards, they would be particularly beneficial for frictionless-financing products with more predatory terms like VirTOs and high-cost installment loans.

Friction necessarily involves tradeoffs. Certainly, some consumers will be frustrated. But when they recognize its necessity and benefit to their financial health, consumers often appreciate it.[271] When frictionless-financ-

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267. *See* Frischmann & Benesch, *supra* note 10, at 414; van Lieren et al., *supra* note 30, at 2172.

268. Companies are already introducing some of these friction points. For example, to reduce consumer complaints, Uber required consumers to type in the surge multiplier during surge pricing periods to ensure consumers were aware of the increased price. *See* van Lieren et al., *supra* note 30, at 2171; Frischmann & Benesch*, supra* note 10, at 391, 414.

269. These simple prompts represent common design frictions that require users to pause and reconsider the choice they are making. For example, before moving an item to the trash, users are prompted with "are you sure you want to delete this file?" Similarly, email platforms warn users when the word "attachment" appears in the body of an email but no attachment is included. Consumer advocates have recently proposed similar quizzes to help consumers understand the risk of high-cost loans. Such questions, however, should be brief (i.e., not walls of text that consumers must scroll through before indicating their agreement). *See, e.g.*, Venkatesan et al., *supra* note 29, at 10 (proposing "requiring consumers to confirm . . . loan terms via a small quiz before they sign and receive . . . funds"). As a more satirical example, Matt Levine has proposed requiring accredited investors to sign a "Certificate of Dumb Investment" acknowledging that they want to make a dumb investment and will not complain when things go wrong. *See* Matt Levine, *Money Stuff: Earning the Right to Get Swindled*, BLOOMBERG (Sep. 24, 2018, 11:35 AM), https://www.bloomberg.com/opinion/newsletters/2018-09-24/money-stuff-earning-the-right-to-get-swindled [https://perma.cc/PF8A-9LDU].

270. As a suggestion, when presented with two products, a consumer could be required to stay on the page for at least fifteen seconds, when presented with three products, thirty seconds, and so on. *See* Frischmann & Benesch, *supra* note 10, at 437.

271. Users often express frustration with the time it takes to complete two-factor authentication, but are generally willing to spend the extra time and effort if the mechanisms are user friendly. *See* Karola Marky, Kirill Ragozin, George Chernyshov, Andrii Matviienko, Martin Schmitz, Max Mühlhäuser, Chloe Eghtebas & Kai Kunze,*"Nah, It's Just Annoying!" A Deep Dive into User Perceptions of Two-Factor Authentication*, 29 ACM TRANSACTIONS ON COMPUT.-HUM. INTERACTION art. no. 43, at 3 (2022) ("Our study confirms that both perceived usability and perceived security are crucial factors for accepting the usage of [two-factor authentication] schemes."). Indeed, per one popular source, some banks already slow account authentication down by a few seconds when using biometrics because the perception that the bank is carefully verifying consumers' credentials creates a sense of security. *See* Sally Whittle, *Is Frictionless Finance the Future?*, RACONTEUR (May 30, 2023), https://www.raconteur.net/customer-experi-

ing platforms push consumers to enter financing agreements that may cause harm, the benefits gained from targeted inefficiencies outweigh the irritation.

2. Introduce Waiting and Cooling-Off Periods

There is evidence that consumers are more likely to deliberate if required to wait before completing a transaction.[272] Waiting and cooling-off periods are common consumer-protection tools that facilitate thoughtful purchasing.[273] The following Section proposes applying these tools to frictionless financing.

i. Waiting Periods

Because of consumers' tendencies to click through disclosures without reading the relevant information, frictionless-financing platforms should be required to implement mandatory waiting periods to counteract the detrimental effects of frictionless UX.[274] Time delays have been shown to facilitate deliberation.[275] Waiting periods would introduce a necessary friction to mediate the harmful effects of frictionless-financing platforms that propel consumers towards predatory products.[276]

Waiting periods are common consumer-protection tools.[277] Consumers are required to wait for three days after receiving disclosures to consummate high-cost mortgage loans, for example.[278] Yet none of the products offered through frictionless financing currently have mandatory wait-

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ence/is-frictionless-finance-the-future [https://perma.cc/6TCP-N98G] (outlining examples of positive friction in the banking sector).

272. *See* Alycia Chin & Dustin H. Beckett, *Don't Watch Me Read: How Mere Presence and Mandatory Waiting Periods Affect Consumer Attention to Disclosures*, 5 BEHAV. PUB. POL'Y 202, 215-17 (2021).

273. *See* Jeff Sovern, *Written Notice of Cooling-Off Periods: A Forty-Year Natural Experiment in Illusory Consumer Protection and the Relative Effectiveness of Oral and Written Disclosures*, 75 U. PITT. L. REV. 333, 334 (2014); *see also* Adam Levitin, *The Fast and the Usurious: Putting the Brakes on Auto Lending Abuses*, 108 Geo. L.J. 1257, 1322 (2020) (outlining several existing mandatory waiting periods).

274. *See* Chin & Beckett, *supra* note 272, at 217 ("The effects of mandatory waiting periods are consistent with economic theory, suggesting that reducing the opportunity costs of reading disclosures will lead to increased attention.").

275. *See* Frischmann & Benesch, *supra* note 10, at 391.

276. *See supra* Section II.A.

277. For example, many states have waiting periods for purchasing firearms and obtaining marriage licenses, among other things. *See, e.g.*, *Which States Require a Waiting Period Before Gun Purchases?*, EVERYTOWN RSCH. & POL'Y (Jan. 14, 2026), https://everytownresearch.org/rankings/law/waiting-periods [https://perma.cc/9ZRR-CJCX] (outlining firearm purchase waiting periods); MICH. COMP. LAWS § 551.103a (2026) ("A marriage license shall not be delivered within a period of 3 days including the date of application."). At least one scholar has also proposed waiting periods to incentivize consumers to shop for auto financing. *See* Levitin, *supra* note 273, at 1267 ("[I]mposing a penalty default waiting period will incentivize consumers to shop for financing and thus create a market in auto financing that competes for consumers, not dealers.").

278. *See* 12 C.F.R. § 1026.31(c) (2025).

ing periods. To address the challenges with frictionless-financing platforms, waiting periods would not need to be long; a few seconds or a few minutes could facilitate deliberation. For larger purchases or when choosing from multiple frictionless-financing options, the consumer might have to wait longer. Waiting periods could also be minimal for traditional and high-cost credit cards (which are subject to existing regulations), but longer for more exploitative products, such as BNPLs and VirTOs (which have few statutory and regulatory protections and particularly onerous contractual terms).[279] Moreover, waiting periods could be targeted at specific points in the transaction—for example, just before the transaction is finalized—for maximum effect.[280] Those consumers willing to wait would still be able to access the product, but those unwilling to would have to pay with a traditional form of financing.

ii. Cooling-Off Periods

The prior proposal conceptualized friction at the front end of a transaction; however, friction can also be imposed after purchase to facilitate post-transaction deliberation. Through cooling-off periods, consumers can cancel agreements after the fact.[281] So, providing consumers who have made impulsive financing decisions with short cooling-off periods can counteract some of the problematic aspects of frictionless financing.[282] Cooling-off periods are common when the method of sale eliminates opportunities for consumer deliberation either through increased pressure or limited time to consider options.[283] For example, door-to-door salespeople must provide consumers with a three-day cooling-off period because con-

279. *See supra* Section II.B.

280. Many companies are already well-versed in how to deploy waiting periods effectively, as streaming platforms' paid, ad-free membership tiers demonstrate. *See, e.g.*, *YouTube Premium*, YOUTUBE, https://www.youtube.com/premium [https://perma.cc/F738-UBF7] (offering ad-free streaming for $7.99/month); *Spotify Premium*, SPOTIFY, https://www.spotify.com/us/premium [https://perma.cc/5AU6-YVKJ] (offering ad-free music streaming for $12.99/month).

281. *See* Sovern, *supra* note 273, at 334.

282. This is not an entirely new idea. *See, e.g.*, Martin & Lynn, *supra* note 5, at 555 (advocating for cooling-off periods for BNPLs). Existing cooling-off protections in many consumer-credit transactions already provide consumers with an opportunity to void contracts if they later regret their decisions. *See, e.g.*, Moringiello & Odinet, *supra* note 22, at 1188 ("The law recognizes the importance of friction by, as we described above, mandating a three-day 'cooling off' period in certain consumer credit transactions."); Christopher William Pappas, *Comparative U.S. & EU Approaches to E-Commerce Regulation: Jurisdiction, Electronic Contracts, Electronic Signatures and Taxation*, 31 DENVER J. INT'L L. & POL'Y 325, 340 (2002) (describing the EU's seven-day cooling-off period for contracts formed without face-to-face interaction between the seller and the consumer, and arguing that such regulations may enhance consumer confidence in e-commerce); *see* Jolls et al., *supra* note 184, at 1479. Similar cooldown periods have been considered by international betting platforms, where they function as a friction aimed at mitigating addiction and mental health harms. *See* Venkatesan et al., *supra* note 29, at 12.

283. *See* Sovern, *supra* note 273, at 334-35.

sumers cannot comparison shop and may feel pressured to make a purchase with a salesperson in their home.[284]

Frictionless-financing platforms similarly push consumers to move through the financing process as quickly as possible. So, mandatory cooling-off periods could ameliorate some of the challenges with frictionless financing by providing consumers the space to reflect and/or comparison shop.[285] As with waiting periods, cooling-off periods do not need to apply to every product. Store and second-look credit cards, for example, are already regulated and tend to be less costly than other frictionless-financing products, so cooling-off periods may not be appropriate for credit-card purchases.[286] But when consumers finance purchases with products like high-cost installment loans, BNPLs, or VirTOs—which have particularly onerous terms but are largely unregulated—cooling-off periods should provide consumers the opportunity to reconsider post hoc.[287]

C. Behind-the-Scenes Friction

In contrast to UI and UX design friction, behind-the-scenes frictions are inefficiencies that may be imperceptible to the consumer but that nevertheless slow transactions down. The following Sections offer two potential avenues to introduce such frictions: limiting consumer access to financial products when consumers enter into multiple products in a short pe- -iod of time and regulating the underwriting processes of frictionless-fi- -ancing providers.

1. Limit Consumer Access to Frictionless Financing After Sequential, Rapid Purchases

One challenge with frictionless financing is that it allows consumers to access many different forms of financing all at once. Confronted by this breadth, some consumers have indicated that they do not always realize how many financing products they are entering into or how much debt they are incurring.[288] Regulators could, accordingly, limit the number of frictionless-financing products that consumers can access in a given time period.

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284. *See id.* at 337-38. Consumer loans secured by a principal dwelling (e.g., home equity loans and lines of credit) may also be rescinded within three days of entering the loan or receiving disclosures. *See* 15 U.S.C. § 1635 (2024).

285. *See* Sovern, *supra* note 273, at 343-44; Martin & Lynn, *supra* note 5, at 555 (arguing that cooling-off periods for BNPL products could mitigate impulsive spending associated with their use).

286. *See supra* Part II.

287. VirTO providers would likely argue that VirTOs can be terminated at any time by simply returning the rental. However, there is little evidence that consumers treat VirTOs as rentals; in practice, very few consumers return VirTO products. *See* N.Y.C. DEP'T CONSUMER & WORKER PROT., *supra* note 15, at 24.

288. *See* Strachan, *supra* note 166.

Regulating the number of products simultaneously available to consumers is not a new concept. Indeed, credit-reporting agencies' credit-scoring metrics serve a similar purpose.[289] Consumers who take out a significant amount of debt in a short period of time receive lower credit scores, limiting their ability to access additional credit.[290] Credit scores can eventually improve, but the system is designed to flag to future creditors that a consumer might be under financial distress. Yet aside from store and second-look credit cards, most frictionless-financing products do not rely on traditional credit reporting to evaluate consumer creditworthiness.[291] Because high-cost installment loans, BNPLs, and VirTOs do not typically rely on traditional credit reporting—and in fact target consumers with little or poor credit—they escape the existing friction in the credit-reporting system.[292] To fix this gap, regulators could require financing platforms to throttle frequent users' access. "Throttling," controlling the speed of a process, is a frequently discussed design friction.[293] Internet companies often throttle internet speeds when users consume too much bandwidth.[294] API throttling is used to ensure all website users have equal experiences accessing a platform and to prevent malicious attacks.[295] Platforms could be required to use a similar technique when consumers enter into multiple financing agreements in a short period of time. When consumers quickly or rapidly use multiple frictionless-financing products, it may signal impulsive shopping or economic distress. So, limiting consumer access in those situations could ensure consumers do not spiral into debt.[296]

To return briefly to UX design: providing consumers with personalized, real-time feedback could also help them manage frictionless financing's myriad products when throttling is too severe an intervention.[297] Personalized feedback is often used to help customers track progress (e.g., when completing a lengthy application) or to encourage consumers to

289. Nakita Q. Cuttino, *Presumption of Creditworthiness*, 124 MICH. L. REV. 449, 460-67 (2025) (outlining the development of the modern credit scoring system).

290. *See id.* at 466 ("The more numerous and recent the credit openings and credit inquiries, the greater the negative effect on the FICO score.").

291. However, many companies rely on internal data or proprietary algorithms to determine whether to lend to a particular consumer. *See supra* Section II.B.

292. Because traditional and high-cost credit cards use traditional credit reporting and typically have credit limits, regulators may choose not to limit access to those products.

293. Timeouts, which developers already impose for addictive software (e.g., social-media screen-time limits), accomplish similar goals. *Cf.* Frischmann & Benesch, *supra* note 10, at 441 (discussing how timeouts could inhibit the spread of misinformation on social-media platforms).

294. Though the practice is subject to criticism; open-internet advocates and regulators are wary of ideologically motivated throttling. *See, e.g.*, FED. COMMC'NS COMM'N, DA 16-271, SMALL ENTITY COMPLIANCE GUIDE: PROTECTING AND PROMOTING THE OPEN INTERNET 1-2 (2016), https://docs.fcc.gov/public/attachments/DA-16-271A1.pdf [https://perma.cc/RUL6-YTPC].

295. *See id.* at 4-5 (noting that throttling is permissible for reasonable network management).

296. *See* Wang, *supra* note 82 (discussing a consumer who accumulated significant debt due to credit secured through frictionless platforms).

297. *See* van Lieren et al., *supra* note 30, at 2172.

spend more through loyalty programs (e.g., "add one more item to get free shipping" promotions).[298] Similar techniques could help consumers understand the amount of debt they are incurring across products. When consumers access a certain number of financing vehicles in a given period, the time and friction needed to apply for additional financing should be increased, and consumers should be notified of their total financing usage.[299]

2. Regulate the Underwriting Methods of Frictionless Lenders

One way to reintroduce desirable inefficiency is to regulate the underwriting methods of frictionless-financing lenders. There are a variety of different methods that fintech companies use to determine a consumer's creditworthiness (when those companies are conducting any ability-to-repay analysis). Regulating underwriting methods may ensure that consumers are only provided financing they can afford.

Requiring robust underwriting is a common consumer-protection tool.[300] Regulators already require lenders to engage in robust ability-to-repay analyses for risky loans, such as high-cost mortgages and loans that are secured by a primary dwelling, for example.[301] Although ability-to-repay analyses are standard in traditional lending industries, they are not often required for frictionless-financing products.[302] Providers offering products such as BNPL financing, high-cost installment loans, and VirTOs may only engage in limited creditworthiness checks, because these products target consumers with poor or limited credit.[303]

Although the underwriting process is often imperceptible to consumers, regulating it could reintroduce desirable friction in two important ways. First, regulators could require that consumers provide additional financial information when applying for financing. Reviewing and disclosing their savings, income, and debts would slow consumers down, force them to evaluate their financial positions, and enable personalized and real-time feedback.[304] Second, more robust underwriting methods will inevitably present insurmountable friction to those consumers whom lenders determine lack the ability to pay. Provided lenders' analyses are sufficiently ac-

298. *See, e.g.,* Padigar et al., *supra* note 30, at 29-30 (outlining progress monitoring and goal orientation design features).

299. Frictionless-financing platforms could also provide consumers with a frictionless-financing report, outlining their credit use and helping consumers to understand the true costs of their spending.

300. *See, e.g.,* 12 C.F.R. § 1026.43(c) (2025) (requiring lenders extending consumer credit secured by a dwelling to conduct an ability-to-repay analysis).

301. *See* 12 C.F.R. § 1026.34(a)(4) (2025) (detailing the factors lenders must consider when opening a high-cost mortgage); 12 C.F.R. § 1026.43(c) (2025) (outlining the ability-to-repay analysis required for credit secured by a dwelling).

302. *See supra* Section II.B.

303. *See supra* Section II.B.

304. *See* van Lieren et al., *supra* note 30, at 2172; Frischmann & Benesch, *supra* note 10, at 435.

curate, they may keep consumers from taking on loans they later regret. Introducing underwriting requirements could thus present helpful friction that facilitates deliberation and slows consumers who may be unable to pay for such products.

V. Counterarguments and Caveats

Requiring companies to reintroduce friction may seem counterintuitive, but—by facilitating deliberation—it may counteract some of the pressures frictionless financing places on consumers. Although there may be many different avenues to address the dangers of frictionless financing, regulations requiring the reintroduction of friction may mitigate the ecosystem's dangers *while preserving access* for consumers who really want to use its products.

A. Paternalism and Autonomy

Some may argue that reintroducing friction is paternalistic, and that it frustrates consumer autonomy by disregarding consumers' express desires. Under this line of reasoning, a better approach would be to focus on consumer education and on campaigns designed to facilitate behavioral change.[305] While education and financial literacy are valuable, they cannot address the challenges consumers face with frictionless financing on their own.

As outlined in Part III, frictionless financing is designed to frustrate consumer choice and autonomy because it intentionally obfuscates products' costs.[306] And even if consumers are educated about the risks, such platforms eliminate the space consumers need to contemplate and apply their knowledge. Friction, and the room to deliberate that it provides, are necessary precursors for education to be effective.

Consumers are also poorly positioned to recognize the subtle pressures of frictionless financing compared to regulators, so the latter are better equipped than the former to intervene.[307] Companies are constantly creating new products and methods to manipulate consumer behavior, often unbeknownst to the consumer.[308] But regulators have access to information, data, and expertise that consumers do not; that advantage helps

305. *See* Herrine, *supra* note 244, at 165.

306. *See supra* Section III.B.

307. Consumers are generally not well-positioned to educate themselves about ever-changing financial products. *See* Bar-Gill & Warren, *supra* note 201, at 11-17.

308. *See* Odinet, *supra* note 22, at 1758-65 (describing efforts to evade federal regulation through a rent-a-bank scheme); Herrine, *supra* note 244, at 120-21 (describing efforts to regulate dark patterns and companies' attempts to manipulate consumers).

them identify and analyze these manipulative techniques and propose potential interventions.[309]

Charges of paternalism also fall flat when one remembers that the alternative to regulating friction could be prohibition. Unlike simply banning products, regulating through friction ensures that motivated consumers may access frictionless financing, while also providing them space to think about their choices.

For some consumers, friction may be an annoyance—a few extra minutes spent watching a video or waiting to obtain a specific financial product. But that cost is outweighed by the potential benefits for those consumers who are vulnerable to the challenges presented by frictionless financing.[310] This proposal attempts to preserve consumer autonomy while ensuring consumers can engage in meaningful deliberation.

B. Democratizing Access to Credit

There is a long-running debate about whether offering low-income and subprime consumers high-cost credit helps those consumers or exploits them.[311] Proponents of democratizing credit argue that banks and fintech companies will only lend to such consumers if they are able to charge high interest rates and fees. The cost, they argue, allows lenders to recoup their losses when a large portion of high-risk consumers inevitably default.[312]

The democratizing credit argument is built on two fallacies, however. First, as Abbye Atkinson has argued, the idea that credit should be universally available to low-income consumers is fundamentally incompatible with the realities of entrenched intergenerational poverty.[313] The benefits of accessing credit turn on an assumption: that borrowers will be able to productively invest their borrowed capital and, accordingly, better their financial position.[314] But, as Atkinson explains, "both the high interest rates that low-income borrowers tend to pay and the fact that decades of data suggest that low-income Americans can consistently expect to be in worse

309. The fact that many harms caused by consumer-credit products are individually small but large in the aggregate was one of many justifications for creating CFPB. *See* Bar-Gill & Warren, *supra* note 201, at 11-17.

310. *See* Herrine, *supra* note 244, at 163 ("Sometimes, choice can be valued inherently: one wants to be able to make up one's mind and own one's mistakes even if doing so results in outcomes that are harmful and distasteful. Other times—perhaps more frequently—one wants to be able to choose successfully the option that works best for one.").

311. *See, e.g.*, Atkinson, *supra* note 28, at 1105 ("Both proponents and opponents of increased regulation of consumer credit for high-risk, low-income borrowers often base their arguments on a shared ambition of making credit available to individuals across the socioeconomic spectrum. They each take the position that credit can benefit the working poor, thus implicitly framing credit as a valid device of social provision.").

312. *Cf.* Odinet, *supra* note 22, at 1749 (noting that the payday lending model relies on consumers defaulting).

313. *See* Atkinson, *supra* note 28, at 1098-99.

314. *See id.*

economic shape as time passes" challenge this assumption.[315] The provision of high-cost credit, then, ensures that low-income consumers participate in a fundamentally regressive system—one in which they take out loans with the highest interest rates yet are highly unlikely to afford them in the future.[316]

By further democratizing high-cost credit, frictionless financing entrenches this system. Moreover, the role that frictionless-financing platforms play in exploiting consumer heuristics and biases lends Atkinson's argument particular weight in this context.[317] Because frictionless-financing products are designed to capitalize on consumers' irrationality, the claim that borrowers will reliably put credit secured through frictionless platforms to productive use is especially tenuous here. Frictionless financing was developed, designed, and marketed to retailers to increase sales; its primary purpose is not to increase consumers' access to financial products on affordable terms.[318]

Conclusion

Frictionless financing presents a new challenge for consumer protection. It propels consumers towards financing through UX design that eliminates "pain points." In doing so, frictionless financing eliminates important points for consumer deliberation and magnifies well-established consumer biases. As a result, consumers increasingly report overextending themselves through high-cost, fringe financing products. Reintroducing desirable friction with an eye towards facilitating deliberation, however, offers a solution. By centering deliberation, regulators may identify new tools that better ensure consumers are aware of the true costs and nature of their financing. Hopefully, the design frictions proposed in this Article also provide a model for addressing other challenges in the broader frictionless economy.

315. *See id.*
316. *See id.*
317. *See supra* Part III.
318. *Cf.* Odinet, *supra* note 22, at 1741 (telling a similarly skeptical story about fintech's role in the financing ecosystem).