



County of Fairfax, Virginia

MEMORANDUM

DATE: December 14, 2021

TO: Consumer Protection Commission

FROM: Michael S. Liberman, Director *MS*
Department of Cable and Consumer Services

SUBJECT: Consumer Protection Commission Meeting for December 21, 2021

Please find attached the Consumer Protection Commission meeting package. The next scheduled meeting is **Tuesday, December 21, 2021, 7:30 p.m. in Conference Room 11.**

Please RSVP with your attendance to Susan Jones by COB on Monday, December 20, 2021, at Susan.Jones@fairfaxcounty.gov or 703-324-5877.

Enclosures

cc: Rebecca L. Makely, Director
Consumer Services Division, DCCS

Ellicia Seard-McCormick, Deputy County Executive



**FAIRFAX COUNTY
CONSUMER PROTECTION COMMISSION
December 21, 2021 AGENDA**

Call to Order by the Chairman (7:30 PM)

Remote Participation Policy if needed

Minutes

- Draft of the November 16, 2021, meeting minutes attached.

Report of the Chairman

Report of the Director

Commission Matters

New Business

- Discussion of 2022 Nominations of Candidates
- 2022 Meeting Calendar

General Interest

- Consumer Protection Commission Calendar
- Consumer Protection Commission Membership
- Consumer Affairs Statistics
- Community Outreach
- Consumer Resources

Minutes of the Fairfax County Consumer Protection Commission

November 16, 2021

7:30 PM
Government Center, Conference 11
12000 Government Center Parkway
Fairfax, Virginia 22035
Chairperson Fee, presiding

Attendance:

Commissioners: Callender, Fee, Gulakowski,
Hargraves (8:35p.m.), Kratovil, Kirk, Springer

Remote:

Commissioners: Belkowitz, Rosier

Absent:

Commissioners: Roark

Staff:

Michael S. Liberman, Director
Cable and Consumer Services
Rebecca L. Makely, Director
Consumer Services Division
Susan C. Jones, Branch Chief
Consumer Affairs Branch
John W. Burton, Assistant County Attorney
Office of the County Attorney

The meeting was called to order at 7:39 PM by Chairperson Fee.

Chairperson Fee notified the Commission that Commissioner Belkowitz and Commissioner Rosier requested to participate in the meeting remotely.

Chairperson Fee made the motion to approve Commissioner Belkowitz's attendance remotely from Fairfax Station due to a medical condition. The motion was approved unanimously.

Chairperson Fee made the motion to approve Commissioner Rosier's attendance remotely from Great Falls due to a medical condition. The motion was approved unanimously.

Minutes

The minutes for the October 19, 2021, meeting were approved.

Report of the Chairman

Chairperson Fee introduced Dr. Maurice B. Springer, newest appointee to the Consumer Protection Commission.

Report of the Director

Michael S. Liberman, Director, Cable and Consumer Services, had no matters to bring before the Commission.

Commission Matters

Commissioner Kratovil noted that the meeting was taking place during International Fraud Awareness Week and shared some data about recent identity theft trends during the pandemic. This included noting that during the pandemic, the use of stolen identities to open checking accounts increased 186%, with much of this increase attributable to efforts to fraudulently obtain and launder government stimulus and unemployment benefit payments. He also noted that during the pandemic, the highest concentrations of identity theft victims resided in New York, Idaho, Nebraska, Missouri, and Rhode Island.

Commissioner Callender had no matters to bring before the Commission.

Commissioner Kirk had no matters to bring before the Commission.

Commissioner Gulakowski had no matters to bring before the Commission.

Commissioner Belkowitz stated continued issues with Identity Theft. He received notice of approved debit cards for checking accounts he did not apply for. He has put a credit freeze with credit bureaus.

Commissioner Rosier had no matters to bring before the Commission.

Commissioner Springer had no matters to bring before the Commission.

Chairperson Fee had no matters to bring before the Commission.

Introduction of the Commission Members to Dr. Springer.

Old Business

There was no old business before the Commission.

New Business

- 1. Annual Report Review.** Rebecca Makely, Director, Consumer Services Division provided an overview of the FY 2021 CPC Annual Report.

A discussion ensued on minor grammatical updates, the “other” in the complaint categories chart, and analysis of patterns and trends for future reports.

Chairperson Fee made the motion to adopt the FY 2021 CPC Annual Report to send to the Board of Supervisors. Commissioner Gulakowski seconded the motion. The motion passed unanimously.

- 2. 2021 Taxicab Biennial Determination.** Rebecca Makely, Director, Consumer Services Division presented the staff analysis and recommendation to the Consumer Protection Commission.

A discussion ensued on 2020 statistics, the change to overall numbers over the last several years, hacker’s licenses, and TNCs.

Chairperson Fee made the motion to recommend to the Board of Supervisors no increase or decrease in the number of authorized taxicab certificates in 2021. Commissioner Kirk seconded the motion. The motion passed unanimously.

3. Nominations of Candidates: Chairperson, Vice-Chairperson, Secretary

A discussion ensued on the updated Bylaws, nominating committee, and schedule for elections.

Chairperson Fee made the decision to discuss the slate of candidates at the December 21, 2021, CPC meeting.

Chairperson Fee made the motion to adjourn. Commissioner Gulakowski seconded the motion.

The meeting adjourned at 8:54 PM.

CPC Calendar

Fairfax County
Consumer Protection Commission
2021 Yearly Planning Calendar
December 21, 2021

January 19		Election of Officers
February 16		Bylaws COVID-19 Scams Presentation
March 16		Bylaws Approval Legislative Update
April 20		Appeal Hearing-Massage Therapist Permit Denial
May 18		Fairfax Area Agency on Aging
June 15		One Fairfax Policy Video (30:36) Appeal Process Discussion
July 20		Meeting Canceled (lack of quorum)
August 17		Staff Report on Trespass Towing Fees
September 21		Meeting Canceled
October 19		Appeal Process Discussion
November 16		FY 2021 CPC Annual Report Taxicab Biennial Determination
December 21	●	Discussion of 2022 Nomination of Candidates
	●	2022 Meeting Calendar

CPC Membership

Name

Staff

Harold G. Belkowitz
Appt. Expires 7/31/2024

Michael S. Liberman, Director
Department of Cable and Consumer Services
michael.liberman@fairfaxcounty.gov

Wes Callender
Appt. Expires 7/31/2024

Rebecca L. Makely, Director
Consumer Services Division
703-324-5947

John Fee (Chairperson)
Appt. Expires 7/31/2024

rebecca.makely@fairfaxcounty.gov

Denis Gulakowski
(Vice-Chairperson)
Appt. Expires 7/31/2024

Susan Jones, Chief
Consumer Affairs Branch
703-324-5877
susan.jones@fairfaxcounty.gov

Dirck A. Hargraves
Appt. Expires 7/31/2023

Main number: 703-222-8435
Fax number: 703-653-1310

Dennis D. Kirk
Appt. Expires 7/31/2022

Jason J. Kratovil
Appt. Expires: 7/31/2024

Michael J. Roark
Appt. Expires 7/31/2023

Jacqueline Rosier (Secretary)
Appt. Expires 7/31/2022

Dr. Maurice B. Springer
Appt. Expires 7/31/2024

Mr. Paul Svab
Appt. Expires 7/31/2024

CAB Statistics



Consumer Affairs Branch
Monthly Summary - All Activities
November 2021

	Current Month		Fiscal Year-to-Date		Prior Fiscal YTD	
Cases Received	78		463		421	
Cases Closed	69		316		342	
Favorable	46	67%	182	58%	196	57%
Unfavorable	6	9%	36	11%	28	8%
Invalid	2	3%	9	3%	13	4%
Other	15	22%	89	28%	105	31%
Total (Checks column totals)	69	100%	316	100%	342	100%
Advice Inquires (closed)	269		1617		2105	
Case Inquires over 90+ days (open)	21		91		71	
Amount Received	\$59,908.00		\$260,966.00		\$211,308.00	

CLOSED COMPLAINT CATEGORIES

FISCAL YEAR-TO-DATE	% FYTD	PRIOR FISCAL YTD	% PRIOR FYTD
Tenant Landlord	38%	Cable Television (Regulated)	30%
Housing - Service	9%	Tenant Landlord	17%
Retail	9%	Housing - Service	7%
Medical	7%	Automotive Towing	7%
Cable Television (Regulated)	4%	Communications Media	6%
Other	33%	Other	33%

Community Outreach

Outreach Event Calendar December 2021

DATE	EVENT	LOCATION	# of Guests	Event Time
12/6/2021	Holiday Shopping Tips	George Mason Library (Virtual) 7001 Little River Turnpike Annandale, VA		10:30 a.m. - 11:30 a.m.
12/7/2021	Consumer Knowledge	Westfield High School 4700 Stonecroft Blvd. Chantilly, VA		7:00 a.m. - 3:30 p.m.
12/8/2021	Consumer Knowledge	Westfield High School 4700 Stonecroft Blvd. Chantilly, VA		7:00 a.m. - 3:30 p.m.
12/8/2021	George Mason Virtual Off-Campus Housing Event	Fairfax County Government (Virtual) 120000 Government Center Parkway Fairfax, VA		11:00 a.m. - 4:00 p.m.
12/14/2021	Consumer Knowledge	Herndon High School 700 Bennett Street Herndon, VA		7:00 a.m. - 3:30 p.m.
12/15/2021	Consumer Knowledge	Herndon High School 700 Bennett Street Herndon, VA		7:00 a.m. - 3:30 p.m.
12/20/2021	Consumer Connection Financial Empowerment Center	Fairfax County Government 12000 Government Center Pkwy Fairfax, VA		11:00 a.m. - 11:20 a.m.

Consumer Resources

Resource Items

Fairfax County Department of Cable and Consumer Services

<https://www.fairfaxcounty.gov/cableconsumer>

Fairfax County Consumer Affairs

<https://www.fairfaxcounty.gov/cableconsumer/csd/consumer>

Fairfax County Consumer Affairs Facebook

<https://www.facebook.com/fairfaxcountyconsumer/>

Fairfax County Coronavirus (COVID-19) Updates

[Fairfaxcounty.gov/covid19/](https://www.fairfaxcounty.gov/covid19/)

Ways to Stay Informed About Coronavirus (COVID-19)

<https://fairfaxcountyemergency.wpcomstaging.com/>

Ways to Donate and Help During COVID-19

<https://fairfaxcountyemergency.wpcomstaging.com/2020/03/25/ways-to-donate-and-help-during-covid-19/>

What to Know About Tenant-Landlord Rights During COVID-19

<https://fairfaxcountyemergency.wpcomstaging.com/2020/11/17/what-to-know-about-tenant-landlord-rights-during-covid-19/>

DCCS Operating Status

<https://www.fairfaxcounty.gov/cableconsumer/status>

Your Community, You're Connected: Ombudsman Association Complaint Procedure (November 4, 2021)

<https://www.fairfaxcounty.gov/cableconsumer/channel-16/your-community-youre-connected>

Consumer Connection: Holiday Shopping Tips (November 22, 2021)

<https://fb.watch/9Cc17pMC6M/>

Information Items

The hidden costs of 'buy now, pay later' loans

While many shoppers rave about the ease of interest-free loan apps, some say they have been hit with surprise fees and a long slog to recoup money from refunded merchandise.

[\[More\]](#)

The hidden costs of 'buy now, pay later' loans

While many shoppers rave about the ease of interest-free loan apps, some say they have been hit with surprise fees and a long slog to recoup money from refunded merchandise.

Nov. 4, 2021, 4:07 PM EDT / Updated Nov. 5, 2021, 5:48 PM EDT

By Leticia Miranda

Turned off by the risky proposition of taking on more credit card debt during the pandemic, a skyrocketing number of shoppers have turned to a burgeoning industry of installment payment service apps to manage paying off new TVs or clothes. But while many customers rave about the ease and transparency of interest-free “buy now, pay later,” or BNPL, apps such as Affirm, Afterpay and Klarna, some shoppers have found that these services can come with surprise fees and a long slog to recoup money owed to them after a refund.

Hundreds of customers have filed complaints with agencies that report to the Consumer Financial Protection Bureau detailing frustrations with continued charges for returned items and surprise fees after using BNPL loans to make purchases. At the Better Business Bureau, hundreds of shoppers have complained they continued to be charged for purchases they returned or were hit with unexpected fees.

One shopper told NBC News they were slapped with an unexpected \$25 fee — doubling their monthly payment — after they were two days late paying their bill for a laptop. Another shopper told NBC News she continued to be charged for months for a \$1,000 Sears stove order she canceled and never received. Another customer told NBC News he paid off a faulty air conditioning unit he returned to Walmart because he was afraid of his account being sent to collections.

As the popularity of “buy now, pay later” loans grows, these emerging financial products have caught the eyes of regulators. The House Financial Services Committee’s Task Force on Financial Technology held a hearing Tuesday with industry leaders and consumer advocates to investigate the risks and benefits of these loans.

“It is difficult to shop online without seeing a ‘buy now, pay later’ option,” said Rep. Stephen Lynch, D-Mass., during the hearing. “However, these products also raise important questions about use of consumer data, the exploitation

around spending patterns, the application of lending laws and the potential for unsustainable levels of consumer debt.”

Before the pandemic, BNPL, which allows shoppers to split up their purchases over time, was already popular among younger, digitally native generations. But over the last year, these services have grown exponentially. Online revenue from BNPL services has been 10 percent higher this year than 2020 and 45 percent higher than 2019, according to Adobe Analytics. One-quarter of respondents in an Adobe survey reported they had used a BNPL loan in the last three months.

Over the last year, the top five payment installment services — Klarna, Afterpay, Affirm, Zip and Sezzle — have seen an overall 100 percent growth compared to the year before, with 26 million app downloads combined, according to the app analytics and app market data firm App Annie. Tara House, a Walmart spokesperson, told NBC News in an email that the retailer ditched its layaway program in favor of a BNPL financing option with Affirm because of changing customer needs and shopping habits. Target announced last month that it is partnering with Affirm and Sezzle to let shoppers break up their payments on purchases ahead of the holiday season.

Affirm “always shows the total amount of interest you’ll pay” at checkout, and does not charge any fees, according to its website. Afterpay charges late fees that can be \$8 or 25 percent of the order amount. Klarna markets itself as “No interests. No fees,” but has three options that come with varying terms around late fees and interest, according to the company’s website. In its two most commonly used programs, shoppers can expect up to a \$7 late fee capped at 25 percent of the installment amount if the company can’t collect payment twice.

“We’re seeing strong demand for ‘buy now, pay later’ for both merchants and consumers, and rapid adoption amongst both, especially among younger consumers,” said Jack Dorsey, CEO of the online payment service Square, in an August call with investors. Square acquired Afterpay in August for \$29 billion. “It’s a simple idea to enable our sellers’ customers to pay for purchases later, interest free, without having to use traditional credit sources,” Dorsey said.

Shoppers are also now using ‘buy now, pay later’ services for smaller purchases, putting them squarely in line with how people use credit cards, according to Salesforce data. The average order paid by a BNPL loan is \$149, compared to \$141 with a credit card, Salesforce said.

Big banks have certainly taken notice. Mastercard recently announced it is rolling out its own installment payment program called Mastercard Installments. In an earnings call with investors last month, JPMorgan Chase CEO Jamie Dimon said the company will “spend whatever we have to spend to compete with all these folks in our space.”

Unlike traditional credit cards, a big part of the draw to ‘buy now, pay later’ loans is the ability to pay off purchases over time with no interest. For shoppers like Jace Guyer, a 32-year-old parent of six in St. Joseph, Missouri, who uses gender neutral pronouns, that option helped them budget during a year of pandemic-driven unemployment.

Guyer, who was the family’s sole financial supporter, lost their job at the beginning of the pandemic. Guyer and their husband scraped by most of the pandemic borrowing money from friends to pay their utility bills and Guyer’s \$25 monthly bill with Klarna to pay off a Dell laptop. They were two days late in paying their October 2020 bill, resulting in a \$25 late fee on top of their balance.

“It was the first time I had ever been late, let alone two days late,” Guyer told NBC News. “When you look at it, \$25 isn’t that much — but \$50 in the middle of the pandemic is a lot.”

Guyer financed through Klarna’s “legacy financing solution,” which charges a late fee up to \$35, resulting in the assessment of a \$25 late fee, said Brendan Lewis, a spokesperson for Klarna, in an email to NBC News. Globally, the company’s delinquency rate is less than 1 percent, he added.

“As a matter of practice, Klarna works with our customers to ensure they make payments on time,” Lewis said. “This includes laying out a clear payment schedule at the time of purchase and contacting them if we are initially unable to collect payment.”

Klarna refunded Guyer’s \$25 late fee after they disputed the charge.

Jessica Bramble, a 28-year-old shopper in Rahway, New Jersey, told NBC News she used Affirm to buy a jumpsuit and a white turtleneck from Universal Standard in January for \$185. But when she received the order in the mail, she realized she had received the order twice and was charged twice. She returned the extra clothes to Universal Standard, but Affirm was responsible for the refund, according to a July email from a Universal Standard customer service

representative to Bramble that was reviewed by NBC News. Affirm, however, told Bramble in an email that refunds are the responsibility of the merchant.

“It’s just been ongoing nonsense,” said Bramble, who spent months resolving the returned purchase.

Bramble eventually received a refund through her bank for the duplicate purchase, and Affirm confirmed the debt had been resolved, in an email. But the process took months, and at the time Bramble worried about the disputed loan for the returned purchase

“I have been rebuilding my credit and I don’t need a company to stick me with almost \$200 in unpaid debt,” Bramble said.

Matt Gross, a spokesperson with Affirm, said the company does not comment on individual customer cases. But he said refunds “are subject to merchants’ policies,” adding that “Affirm will intervene on behalf of consumers if the merchant is unresponsive or unable to help.”

Unlike traditional credit cards, BNPL apps do not all report every loan to credit bureaus. Klarna runs a soft credit check before every purchase, which does not appear on credit reports, and does not report anything to any consumer agencies. Sezzle allows consumers to opt in to credit bureau reporting. Afterpay doesn’t report payment history to credit bureaus. With Affirm, loans that offer 0 percent APR and those that allow four biweekly payments are not reported to credit bureaus. But on other loans, Affirm may report consumer payment history to reporting agencies. Zip, formerly known as Quadpay, does not run hard credit checks and does not report payment history to credit bureaus.

Instead, Afterpay, Affirm and Klarna use proprietary risk models to assess a shopper’s ability to pay for each purchase, the companies each told NBC News. Zip uses a set of “customer assessment guidelines” to determine creditworthiness that it does not disclose.

This might be a draw for consumers with bad credit, but it also raises questions among consumer advocates who argue that this does not provide a full picture of a shopper’s ability to pay off their loan, Rebecca Borné, senior policy counsel with consumer advocacy group Center for Responsible Lending, told NBC News.

“There is a growing body of debt that is not reflected in credit reports,” she said.

The companies earn revenue by charging fees to businesses who use their services and consumer fees for late payments and transactions.

Kassondra Sturtevant, a shopper in Pueblo, Colorado, told NBC News she has paid \$50 to \$60 in transaction fees to Zip. The company told NBC News it charges a \$1 to \$4 transaction fee on payments with merchants outside of its partner network. A majority of transactions do not have fees, said Jinal Shah, chief marketing officer of Zip U.S.

“Their big thing is no hidden fees and no interest,” she said. “They say they charge a transaction fee in their terms and conditions but unless you really search for it, you can’t find it.”

Zip shows the total purchase cost including the fee at the top of the checkout page in a transaction and includes a photo of a mock checkout process on its website. Sturtevant used Quadpay before it merged with Zip in June, and the fee was not included in the total borrowed amount. It only appeared in her final bill, according to invoices reviewed by NBC News. Quadpay’s information about its fees only appear on its “how it works” page online, according to a chat between a customer service representative and Sturtevant.

Because BNPL apps earn revenue from merchant fees, their business model “tilts toward maximizing the amount of credit people take on,” Borné said. RBC Capital Markets estimates “buy now, pay” later loans increase retail purchase rates by 20 to 30 percent and increase the average ticket size by anywhere from 30 and 50 percent.

“That is a concern in and of itself, especially when there is no traditional underwriting to make sure borrowers can afford it,” Borné said.

For the most part, “buy now pay later” loans have a murky regulatory structure, Borné said. Providers are subject to the Dodd-Frank Act, a consumer protection regulation passed in 2010 after the subprime mortgage crisis to prevent unfair, deceptive and abusive lending practices — which means the CFPB can bring actions against lenders. But BNPL services fall outside of the Truth in Lending Act’s disclosure requirements, since they typically offer loans that must be paid in fewer than five installments.

California is the only state that treats BNPL loans as lines of credit. These services also don't come with the same dispute protections as credit cards and operators may hold consumers responsible for the total cost of a returned purchase, the CFPB warned in a July blog post.

Affirm CEO Max Levchin, who served on the CFPB advisory board for three years beginning in 2015, told investors in September that “regulatory attention is a positive thing so long as it is rooted in understanding of the product, understanding of what the intent is.”

“We tend to think of ourselves as sort of the one honest actor in the space, having chosen from the very beginning to charge no fees of any kind, including neither the late fees,” he said. “And I think that direct connectivity with a person’s well-being and the regulatory intent has served us really, really well and grounded our regulatory conversations just the right way for many years now.”

As federal lending regulators take a harder look at these types of loans, consumer advocates warn shoppers to keep a skeptical eye.

“It’s always important to look under the hood of big shiny vehicles,” Borné said. “Although ‘buy now, pay later’ has big promises, we need more data and oversight. Because it’s growing extremely quickly, whatever impact it has, it’s going to have on a wide scale.”

CLARIFICATION (Nov. 5, 2021, 5:38 p.m. ET): This article has been updated to more precisely describe an interaction one customer had with Affirm and to specify that BNPL services vary in their revenue structures, including whether they collect fees.