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The CFPB's Payday Lending Proposal

Stephanie C. Robinson
srobinson@mayerbrown.com

Kris D. Kully
kkully@mayerbrown.com

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Consumer Finance
MONTHLY BREAKFAST BRIEFING

INTRODUCTION

Background



- Long-term effort by the CFPB to gather and analyze information regarding payday lending and “similar” credit products used primarily as last resort credit
- Stated goal of CFPB and consumer advocates included substantial curtailment of payday lending industry
- March 2015: CFPB issues detailed outline of potential rulemaking for use in small business review panel
- June 2016: CFPB issues proposed rule for comment by September 14, 2016

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Covered Products



- Covered Short-Term Loans—extensions of consumer credit (open- or closed-end) repayable within 45 days
- Covered Longer-Term Loans—extensions of consumer credit (open- or closed-end) repayable in more than 45 days and having:
 - An all-in annual cost of credit in excess of 36%; and
 - Either a “leveraged payment mechanism” or a non-purchase-money security interest in the consumer’s vehicle

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Excluded Products



- Purchase-money loans secured by a purchased good
- Residential mortgage loans
- Credit card accounts subject to the CARD Act
- Student loans
- Non-recourse pawn transactions
- Overdraft services and lines of credit (including when offered in connection with prepaid cards)

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Stakeholders



- Payday and “similar” lenders
- Certain installment and vehicle title lenders
- Loan servicers
- Consumer reporting agencies
- Other members of the consumer finance industry interested in the CFPB’s approach to UDAAP rulemaking

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Authorities

- First CFPB UDAAP Rulemaking
- Relies on several authorities, including:
 - Dodd-Frank authority to prescribe rules identifying UDAAPs and enforcing the prohibition on UDAAPs
 - Derivative authority to prescribe rules to prevent UDAAPs when such rules bear a reasonable relation to identified UDAAPs
 - Dodd-Frank authority to conditionally exempt classes of products and services from a rule
 - Dodd-Frank authority to prescribe rules to prevent evasion of federal Consumer Financial Laws (including the UDAAP prohibition)

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ABILITY TO REPAY

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Structure



- For each of covered short-term loans and covered longer-term loans:
 - General ability to repay requirement involving obtaining, verifying, and analyzing information regarding a consumer’s income, debt obligations, and borrowing history
 - Set of rebuttable and conclusive presumptions of inability to repay
 - Set of safe-harbor products not subject to general ability to repay requirement

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General Ability to Repay Analysis



- In general, creditors will be required to:
 - Obtain information regarding the amount and timing of the consumer’s income and financial obligations, as well as the consumer’s borrowing history
 - Verify information obtained with reasonably reliable records, including third-party records, traditional credit reports, and consumer reports from “registered information systems”
 - Determine that the consumer will have sufficient residual income to make all loan payments as they come due and meet basic living expenses

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Covered Short-Term Loans: Presumptions



- Conclusive presumption of inability to repay the 4th in a series of covered short-term loans without a 30-day cooling-off period
- Rebuttable presumption of inability to repay in circumstances including:
 - Most instances in which two covered short-term loans follow in sequence
 - Covered short-term loans following covered longer-term loans
 - Covered short-term loans applied for while the consumer shows financial distress on a same-creditor/servicer loan

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Covered Short-Term Loans: Safe-Harbor Products



- Series of three loans in step-down balance structure
 - First loan not more than \$500
 - Second not more than 2/3 of first
 - Third not more than 1/3 of first
- Not more than six loans or loans outstanding for more than 90 days in any 12-month period
- Specific disclosures required for each loan in sequence

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Covered Longer-Term Loans: Presumptions



- Conclusive presumption of inability to repay during the term of a safe-harbor covered short-term loan and 30 days after
- Rebuttable presumption of inability to repay in circumstances including:
 - Most instances in which a covered short-term loan or covered longer-term balloon loan is outstanding (and 30 days after)
 - Covered longer-term loans applied for while the consumer shows financial distress on a same-creditor/servicer loan

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Covered Longer-Term Loans: Safe-Harbor Product #1



- NCUA Payday Alternative Loan
 - \$200 to \$1000
 - Not more than six months in duration
 - Two or more fully-amortizing payments due not less frequently than monthly
 - Total cost of credit not more than 28% plus an application fee
 - No prepayment penalty
 - No deposit of funds, sweep of deposit account, right of set-off, or ability to take adverse action on a deposit account for a default on the covered loan

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Covered Longer-Term Loans: Safe-harbor Product #2



- Low Portfolio Default Loan

- Not more than 24 months in duration
- Two or more fully-amortizing payments due not less frequently than monthly
- Total cost of credit not more than 36% plus an origination fee (refundable if the creditor's portfolio has a default rate in excess of 5% on a dollar-weighted basis in a 12-month period)
- No prepayment penalty
- No deposit of funds, sweep of deposit account, right of set-off, or ability to take adverse action on a deposit account for a default on the covered loan

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ADDITIONAL REQUIREMENTS ON LENDERS AND SERVICERS



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Payment Processing



- Servicers limited, in most cases, to two failed attempts to withdraw payment from a consumer's deposit account before being required to obtain a new authorization
- Applies to recurring payment authorizations, but not one-time transfers initiated within one business-day after obtaining the consumer's authorization
- Specific disclosures required for payment processing

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Information Furnishing



- Creditors making covered loans would be required to furnish various information to traditional credit bureaus and/or registered information systems
- Information furnishing would take place:
 - At or before consummation;
 - While a covered loan is outstanding; and
 - When a covered loan ceases to be outstanding (i.e., at satisfaction or charge-off)

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Compliance System and Recordkeeping

- Creditors making covered loans must develop and follow a compliance program, including written policies and procedures, reasonably designed to ensure compliance with the requirements of the proposal
- Various records must be kept for a period of 36 months, including loan agreements, underwriting and verification information, payment history and loan performance information, and payment authorizations

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REGISTERED INFORMATION SYSTEMS

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Establishment of Registered Information Systems

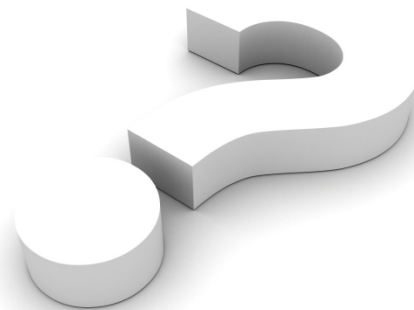


- The proposal would create a structure for registering information systems that would provide specialized consumer reports regarding covered loans
- Registered information systems would have to:
 - Have the ability to receive furnished information and generate reports in real-time;
 - Meet compliance standards, including having third-party audits of compliance management and information security systems; and
 - Acknowledge it is, or consent to being, subject to the CFPB’s supervisory authority

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QUESTIONS?



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