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The CFPB's Payday Lending Rule

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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
- October 2017: CFPB issues final rule; effective in 21 months

Stakeholders



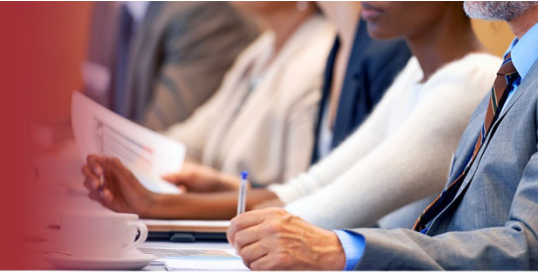
- Payday and similar lenders
- Certain installment and vehicle title lenders
- Loan servicers
- Consumer reporting agencies
- Other members of the consumer finance industry interested in the CFPB's approach to UDAAP rulemaking

UDAAPs in Underwriting and Payment Processing



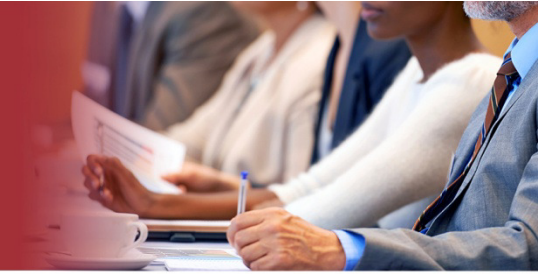
- Unfair and abusive to make covered short-term loan or covered longer-term balloon payment loan without first establishing ability to repay
- Unfair and abusive to attempt to withdraw payment from consumer's deposit account after second failed attempt, without first obtaining a new and specific authorization

Proposed Covered Products



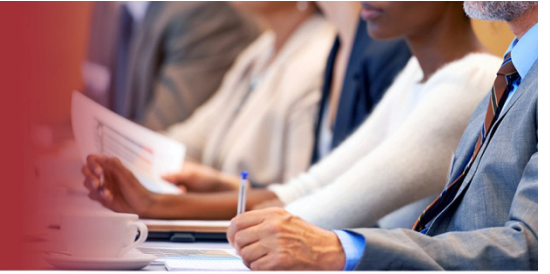
- Under the Proposed Rule:
- Covered Short-Term Loans—extensions of consumer credit (open- or closed-end) repayable within 45 days
- Covered Longer-Term Loans—extensions of consumer credit (open- or closed-end) repayable in more than 45 days and having:
 - An all-in annual cost of credit in excess of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

Covered Products Under Final Rule



- Under the Final Rule:
- For the ability to repay requirement:
 - Covered Short-Term Loans—extensions of consumer credit (open- or closed-end) repayable within 45 days
 - Covered Longer-Term Balloon Loans—extensions of consumer credit (open- or closed-end) repayable in more than 45 days and having a balloon payment feature
- For the payment processing restriction:
 - The same as above, plus:
 - Covered Longer-Term Loans—extensions of consumer credit (open- or closed-end) repayable in more than 45 days and having:
 - An APR in excess of 36%; and
 - A “leveraged payment mechanism”

Excluded Products



- Purchase-money loans secured by a purchased good
 - Excluded even if it includes taxes, licensing/registration fees
- 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)

Excluded Products




- Wage Advance Programs

- Provide access to accrued cash value of wages earned but unpaid
- If employee is not required to pay any charges or fees besides a charge for participating in the program; advance is limited to amount of accrued wages; and advancing entity warrants that it has no claim/remedy against the employee for failure to repay, will not engage in collection activities, will not sell the debt, and will not report the debt to a consumer reporting agency.
- May seek one-time authorization for repayment from consumer's transaction account

Excluded Products



- No Cost Advances
 - Regardless of whether offered by an employer, and not limited to the accrued cash value of employee’s wages.
 - Similar conditions as wage advance programs, but consumer must not be required to pay any charge or fee, even for participation.



UNDERWRITING: ABILITY TO REPAY ANALYSIS REQUIRED

Ability to Repay Determination



- Unfair and Abusive: Making covered short-term loan or covered longer-term balloon payment loan without establishing ability to repay
- For each covered short-term loan and covered longer-term balloon loan:
 - General ability to repay requirement involving obtaining, verifying, and analyzing information regarding a consumer's income, debt obligations, and borrowing history
 - Set of conditionally exempt and safe-harbor loans not subject to general ability to repay requirement

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, including payments for major financial obligations, and meet basic living expenses

“Circuit Breaker”: Mandatory Cooling Off Period



- Prohibition against the 4th in a series of covered short-term loans, covered longer-term balloon loans or a combination of each, without a 30-day cooling-off period

Conditional exemption for short-term loan up to \$500—the “principal-payoff” option



- Series of three closed-end loans in step-down balance structure
 - First loan not more than \$500
 - Second not more than 2/3 of first¹
 - Third not more than 1/3 of first
- Lender may not take auto title as collateral
- Not more than six short-term loans or loans outstanding for more than 90 days in any 12-month period
- Specific disclosures required for each loan in sequence



Conditional exemption for short-term loan up to \$500—the “principal-payoff” option (cont’d)

- The principal amount limitations apply regardless of whether any or all of the loans are made by the same lender, an affiliate or unaffiliated lenders.

“Conditionally Exempt” Loans



- Accommodation Loans

- (Proposed: Exempt loans with total cost of credit limited to 36%; origination fee refundable if portfolio default rate exceeds 5%)
- Final: Loans made by lenders/affiliates that made no more than 2,500 covered loans in the current calendar year, and no more than 2,500 such loans in the preceding calendar year; and if lender/affiliates generally derived no more than 10% of receipts from those loans.

“Conditionally Exempt” Loans



- Payday Alternative Loans

- Modeled after National Credit Union Administration’s program (federal credit unions making NCUA Payday Alternative Loans are exempt)

- Closed-end
- Term from one to six months
- Amount of \$200 to \$1,000
- Repayable in two or more substantially equal amortizing payments, due in substantially equal intervals
- No charges other than the rate and permissible application fees
- No more than three such loans within a 180-day period, and no more than one at a time.
- Lender must maintain/comply with policies & procedures for documenting proof of recurring income

- Safe harbor for loans made by federal credit unions making Payday Alternative Loans under NCUA rules



PAYMENT PROCESSING

Payment Processing



- Unfair and Abusive: An attempt to withdraw payment on covered loan after the second consecutive attempt failed due to insufficient funds, unless new consumer 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

Payment Processing



- Conditional Exclusion: Lender = Accountholder
 - Generally, a transfer of funds from the account held by the lender is a transfer/attempt that counts for these purposes.
 - Along with an electronic funds transfer, signature check, remotely created check, or remotely created payment
 - However, if lender/accountholder does not (pursuant to loan terms) charge NSF fee or close the account in response to a negative balance for these transfers, then transfers are excluded.

Payment Processing



- Consumer Authorization/Request

- Lender may initiate payment transfer after two consecutive failed attempts if authorized (signed, or recorded/oral) by consumer; or single immediate transfer at consumer's request
 - Consumer must authorize specific date, amount, payment channel
 - Lender also may initiate payment transfer solely to collect late fee or returned item fee, if consumer specifically authorizes such transfers
 - If the authorized payment is nonetheless returned, lender may re-present it, unless that falls after the second failed attempt described above

Payment Processing



- Consumer Rights Notice

- Must provide after two consecutive failed attempts, within 3 business days
- Must provide in order to request authorization or single immediate request
- Notice must state that lender is no longer permitted to withdraw payments from consumer's account, without consumer's permission, and otherwise disclose payment transfer terms
- Models in Appendix
- Start Over!

Payment Processing



- Payment Notice: “Upcoming Withdrawal Notice”
 - Must provide prior to initiating first payment withdrawal
 - Three business days prior, if electronic (consent) or in person
 - Six business days prior, if by mail
 - Must disclose date, amount, account, loan identification, payment channel, etc.
- Unusual Withdrawal Notice: “Alert: Unusual Withdrawal”
 - If varying amount, date other than regularly scheduled, different payment channel, reinitiating returned transfer
 - Three to seven business days prior, if electronic (consent) or in person
 - Six to ten business days prior, if by mail
 - In periodic statement, for open-end



ADDITIONAL REQUIREMENTS ON LENDERS AND SERVICERS

Information Furnishing



- Creditors making covered loans will be required to furnish various information to traditional credit bureaus and/or registered information systems
- Information furnishing will 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)

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

A blurred background image of a business meeting. Several people in professional attire are seated around a table. In the foreground, a person's hands are visible, holding a pen and writing on a document. A white coffee cup on a saucer is also on the table. The overall scene is professional and focused on business operations.

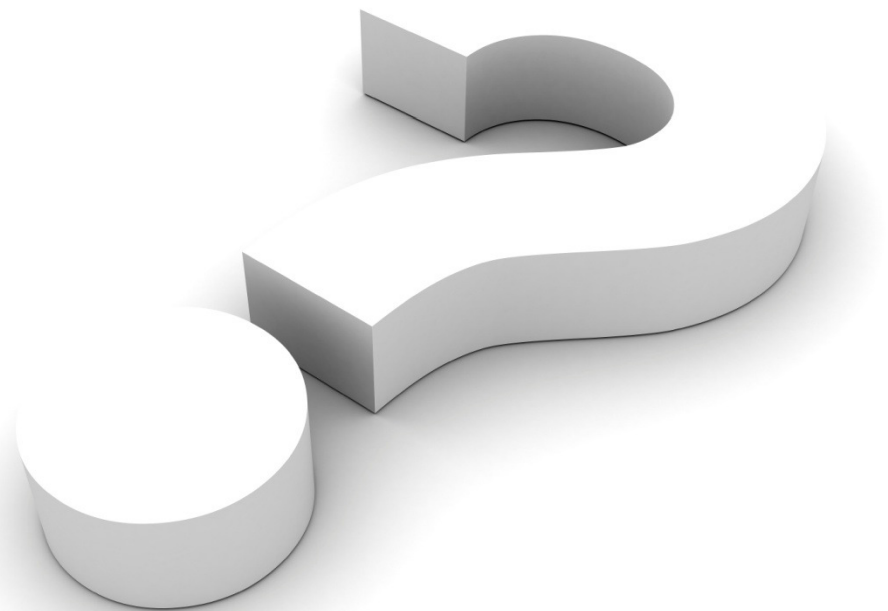
REGISTERED INFORMATION SYSTEMS

Establishment of Registered Information Systems



- Creates a structure for registering information systems that will provide specialized consumer reports regarding covered loans
- Registered information systems will:
 - 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

QUESTIONS?



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