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CFPB's Proposals Under Consideration for Payday, Vehicle Title, and Similar Loans



CFPB's Rulemaking Process To Date

- The CFPB is considering rulemaking proposals addressing payday, vehicle title, and similar lending.
 - ⇒ The proposals focus on consumer harm related to unaffordability and certain collection practices with respect to this lending market and do not foreclose the possibility of additional rulemaking by the Bureau in this area.
- The Bureau published an outline of the proposals in March 2015 as part of the small business review process required under SBREFA.
 - ⇒ Bureau officials are continuing to gather information and feedback on the proposals from all types of stakeholders.
- The Bureau anticipates that a formal notice of proposed rulemaking (NPRM) will be published later this year.

Rulemaking on Payday, Vehicle Title, and Similar Loans

Coverage

- ⇒ Short-term loans (45-days or less)
- ⇒ Certain longer-term loans (cost over 36% and account access or vehicle title)
- ⇒ All creditors, including banks, credit unions, non-depository lenders (online and storefront)
- ⇒ The proposals would not cover overdraft services, real-estate secured loans, credit cards, student loans, and most pawn loans.

The proposals

- ⇒ Lenders would be required to take steps to make sure that consumers can repay their loans
- ⇒ Lenders would be subject to certain limitations on practices associated with collecting payment on these loans

SHORT-TERM LOANS

Requirements for Short-Term Loans

For loans with a duration of 45 days or less, lenders would have two options:

- 1) determine that the consumer has the ability to repay without reborrowing; or
- 2) adopt certain protections to help make sure that consumers can repay the debt over multiple loans.

Ability-to-Repay Determination

Lenders would need to consider and verify consumer financial information:

- Consumer income
- Major financial obligations
 - ⇒ Housing
 - ⇒ Debt payments
 - ⇒ Other legally-obligated payments (e.g., child support)
- Borrowing history on covered loans
 - ⇒ With the same lender and affiliates
 - ⇒ With other lenders by checking commercially available reporting system

Lenders would need to reach a determination that the consumer has the ability to repay the loan:

- The consumer has enough residual income to make payments on the loan and meet living expenses.
- The consumer can repay without reborrowing in 60 days past the duration of the loan.

ATR Determination: Presumptions

Restrictions on Sequential Borrowing of Short-Term Loans

- “Sequence” of loans is a series of loans in which each is taken within 60 days of the preceding loan

Presumption of Inability to Repay

- Applies when borrower seeks second and third covered short-term / longer-term loan with balloon from any lender within 60 days of the prior loan
- Presumption of inability to repay a similarly structured loan if the borrower had a short-term loan outstanding within the past 60 days
 - ⇒ Lenders cannot extend another short-term loan for 60 days unless the consumer can verify a change in circumstances.

Conclusive Presumption of Inability to Repay

- Conclusive presumption of inability to repay after the third loan in a sequence
 - ⇒ Lenders cannot extend another short-term for 60 days after the third loan in a sequence, regardless of circumstances.

Alternative Requirements

Screening Requirements

- Verify consumer income
- Determine that the consumer is not already in a cycle of debt:
 - ⇒ No other covered loans outstanding
 - ⇒ Within a rolling 12-month period no more than 90 days indebtedness on covered short-term loans and no more than six covered short-term loans

Structural Conditions

- Maximum \$500 principal
- Duration of no more than 45 days
- No security interest in a vehicle title
- 60-day cooling off period after the 3rd loan in a sequence
- The CFPB is considering two options to taper off indebtedness:
 - ⇒ Lenders offer consumers an off-ramp at the end of 3 loans, if the consumer is unable to repay; or
 - ⇒ Lenders reduce the principal of each subsequent loan so that the debt amortizes over three loans.

LONGER-TERM LOANS

Requirements for Longer-Term Loans

Longer-term loans covered by the CFPB's proposals are those loans and lines of credit with a contractual duration longer than 45 days

- a) With an all-in APR greater than 36 percent; and
- b) Where the lender obtains repayment through access to the consumer's account or takes a security interest in the consumer's vehicle.

Lenders would have two options for extending covered longer-term loans:

- 1) determine that the consumer has the ability-to-repay without reborrowing; or
- 2) adopt certain protections to help make sure that consumers can repay the debt.

Ability-to-Repay Determination

Lenders would need to consider and verify consumer financial information:

- Consumer income
- Major financial obligations
 - ⇒ Housing
 - ⇒ Debt payments
 - ⇒ Other legally-obligated payments (e.g., child support)
- Borrowing history on covered loans
 - ⇒ With the same lender
 - ⇒ With other lenders

Lenders would need to reach a determination that the consumer has the ability to repay the loan, meaning:

- The consumer has enough residual income to make each payment on the loan and meet living expenses.

ATR Determination: Presumptions

Presumption of Inability to Repay for Refinanced Loans

- Lenders would be required to presume that a consumer lacks the ability to repay a covered longer-term loan with terms similar to the loan being refinanced, if
 - ⇒ The consumer was, at the time of refinancing, delinquent or had recently been delinquent on the loan being refinanced
 - ⇒ The consumer indicated that she was unable to make a scheduled payment or that the loan being refinanced was causing financial distress
 - ⇒ The refinancing permitted the consumer to skip or pay a lesser amount than a payment that otherwise would have been due
 - ⇒ The loan being refinanced is in default
- To rebut the presumption, lenders would need verified evidence of a change in circumstances indicating that the consumer has the ability to repay the new loan.

Alternative Requirements: NCUA-type Loans

Screening Requirements

- Verify consumer income
- Determine that the consumer is not already in a cycle of debt:
 - ⇒ No other covered loans outstanding
 - ⇒ No more than 2 NCUA-type loans over a rolling 6-month period.

Structural Conditions

- Maximum \$1,000 principal
- Repayable in at least 2 payments
- Duration of between 45 days and 6 months
- Cost no more than 28% interest and maximum \$20 application fee

Alternative Requirements: Max. PTI Loans

Screening Requirements

- Verify consumer income
- Determine that the consumer is not already in a cycle of debt:
 - ⇒ No other covered loans outstanding
 - ⇒ No more than 2 maximum PTI loans over a rolling 12-month period

Structural Conditions

- Periodic payment is no more than 5% of the consumer's expected gross income during the same period
- Repayable in at least 2 payments
- Duration of between 45 days and 6 months
- No fees for prepayment of the loan

PAYMENT COLLECTION PRACTICES

Notice Requirement

Notice Prior to Attempting to Collect Payment

- Lender would need to give notice 3 days prior to attempt to collect payment from a consumer's checking, savings, or prepaid account
- Information that would be contained in the notice:
 - ⇒ Exact amount and date of upcoming payment attempt
 - ⇒ Payment channel
 - ⇒ Breakdown of the application of payment amount to principal, interest, and fees
 - ⇒ Loan balance remaining if payment attempt succeeds
 - ⇒ Name, address, and toll-free number for the lender
 - ⇒ For signature checks and RCCs, the check number associated with the payment attempt

Limitation on Attempts to Collect Payment

Maximum 2 Attempts

- Lenders would be prohibited from attempting to collect payment from a consumer's account after two consecutive attempts have failed.
- After hitting the limit, a lender would be permitted to obtain a new payment authorization from the consumer.

Applicability

- All methods of attempting to collection payment from a consumer's checking, savings, or prepaid account, including
 - ⇒ Post-dated signature check
 - ⇒ ACH entry
 - ⇒ Remotely created checks
 - ⇒ Payments run through the debit network
 - ⇒ Any other means of collecting payment

NEXT STEPS
