



1700 G Street NW, Washington, DC 20552

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Executive Summary of the Payday, Vehicle Title, and Certain High-Cost Installment Loans Rule

The Consumer Financial Protection Bureau (Bureau) has issued a final rule governing the underwriting of certain personal loans with short term or balloon-payment structures, as well as lenders' payment withdrawal practices for those loans and certain additional installment loan products (Payday, Vehicle Title, and Certain High-Cost Installment Loans Rule or Rule). For such short-term and balloon structure personal loans, the Rule requires lenders to choose between two ability-to-repay underwriting methodologies and requires lenders to report and obtain information about a consumer's financial obligations and borrowing history from certain consumer reporting agencies that are required to register with the Bureau. For all covered loans, the Rule limits certain repeated payment withdrawal attempts from a consumer's transaction account and requires lenders to provide disclosures related to certain withdrawal attempts.

Generally, the Rule is effective 21 months after publication in the *Federal Register*. However, certain provisions related to the registration of information systems are effective 60 days after publication of the Rule in the *Federal Register*.

Although this executive summary provides a high-level overview of the Payday, Vehicle Title, and Certain High-Cost Installment Loans Rule, it is not a substitute for reviewing the Rule. The Rule, available at <https://www.consumerfinance.gov/policy-compliance/rulemaking/final-rules/payday-vehicle-title-and-certain-high-cost-installment-loans/>, is the definitive source regarding its requirements.

Coverage

The Rule applies to lenders who regularly extend credit to consumers primarily for personal, family, or household purposes. Such lenders are required to comply with the Rule only for loans that are covered by the Rule.

The Rule applies in its entirety to two types of open-end and closed-end loans:

1. Short-term loans that have terms of 45 days or less. Closed-end loans are covered short-term loans if the consumer is required to repay substantially the entire amount of the loan within 45 days of consummation. Open-end loans are covered short-term loans if the consumer is required to repay substantially the entire amount of any advance within 45 days of the advance.
2. Longer-term balloon-payment loans. Closed-end loans and open-end loans are covered longer term balloon-payment loans if the consumer is required to repay substantially the entire balance or substantially the entire amount of a single advance more than 45 days after consummation in either a single payment or through at least one payment that is more than twice as large as any other payment. A loan is also a covered longer-term balloon-payment loan if: 1) it is structured as a loan with multiple advances where paying the required minimum payments may not fully amortize the outstanding balance by a specified date or time; and 2) the amount of the final payment to repay the outstanding balance at such time could be more than twice the amount of other minimum payments under the plan.

A third type of loan, which the Rule refers to as a covered longer-term loan, is subject only to the Rule's requirements concerning payment withdrawal practices, related disclosures, and recordkeeping. Loans are considered covered longer-term loans under the Rule if they have: (1) a cost of credit that exceeds 36 percent annual percentage rate; and (2) a form of leveraged payment mechanism that gives the lender a right to initiate transfers from the consumer's account without further action by the consumer.¹

Certain types of credit are excluded or exempted under the Rule. The excluded loans are described in more detail in the Rule, but generally include: loans extended solely to finance the purchase of an automobile or other consumer good in which the automobile or other good secures the loan; home mortgages and other loans secured by real property or a dwelling if

¹ A leveraged payment mechanism under the Rule does not include initiating a one-time transfer immediately after the consumer proffers a check or authorizes an electronic transfer.

recorded or perfected within the term of the loan; credit cards; student loans; non-recourse pawn loans; overdraft services and overdraft lines of credit; wage advance programs; and certain no-cost advances. The Rule also exempts two categories of loans:

1. Alternative loans, which are loans that generally conform to the National Credit Union Administration's (NCUA) requirements for the Payday Alternative Loan (PAL) program but may be offered by any type of lender. In order to be alternative loans under the Rule, such loans must be amortizing closed-end loans with terms of 1 to 6 months that do not carry any charges other than the rate and application fees permissible under the NCUA PAL program and meet certain other requirements.
2. Accommodation loans, provided that lenders together with their affiliates do not originate more than 2500 covered loans in a calendar year and did not derive more than 10 percent of their receipts from covered loans during the previous tax year.

ABILITY-TO-REPAY

The Rule identifies as unfair and abusive the practice of making or increasing the credit available under covered short-term loans or covered longer-term balloon payment loans without reasonably determining that consumers have the ability-to-repay the loans according to their terms. The Rule generally requires that, before making such a loan or advance, a lender must reasonably determine that the consumer will be able to make the payments² on the loan while also meeting major financial obligations³ and basic living expenses⁴ without needing to re-borrow over the next 30 days. A lender is also required to make this determination for an open-end line of credit if a consumer seeks an advance more than 90 days after the lender's last determination that the consumer has the ability to repay the loan according to its terms.

To make an ability-to-repay determination, a lender is required to:

² For a line of credit, a payment is calculated using the assumption that the consumer will utilize the full amount of credit under the covered loan as soon as the credit is available; and that the consumer will make only minimum required payments under the covered loan for as long as permitted under the loan agreement.

³ The Rule defines major financial obligations as a consumer's housing expense, minimum payments under debt obligations (including outstanding covered loans), child support obligations, and alimony obligations.

⁴ The Rule defines basic living expenses as expenditures, other than payments for major financial obligations, that a consumer makes for goods and services that are necessary to maintain the consumer's health, welfare, and ability to produce income, and the health and welfare of the members of the consumer's household who are financially dependent on the consumer.

1. Obtain a consumer's written statement of the consumer's net income and the amount of payments required to meet the consumer's major financial obligations.
2. Verify the consumer's net monthly income⁵ (unless a reliable record of such income is not reasonably available), and the amount of payments required for the consumer's major debt obligations using a national consumer report, a report from a registered information system, and the records of the lender and its affiliates.
3. Determine the consumer's ability-to-repay the loan based on the lender's projections of either the consumer's residual income or debt-to-income ratio during the calendar month with the highest payment(s) under the loan.
4. Ensure that making the loan will not result in the consumer having a sequence of more than three covered short-term or balloon-payment loans taken out within 30 days of each other. Once a consumer has had a three-loan sequence, there is a mandatory 30-day cooling off period under the Rule before the consumer can take out additional covered short-term or balloon-payment loans. A consumer cannot take out a covered short-term loan or a covered longer-term balloon-payment loan under the ability-to-repay requirements for 30 days after an outstanding loan under the principal step-down option described below.

Principal Step-Down Option for Certain Covered Short-Term Loans

A lender may make a series of covered short-term loans that help the consumer step down the amount of principal over time without meeting all the specific ability-to-repay requirements set forth above, so long as the loans do not involve taking a security interest in the consumer's motor vehicle, the consumer is provided with certain disclosures, and certain other requirements are met.

⁵ The Rule defines net income as the total amount that a consumer receives after the payer deducts amounts for taxes, other obligations, and voluntary contributions, but before deductions of any payments made under a prospective covered short-term loan or covered longer-term balloon payment loan or for any major financial obligation. A lender may include in the consumer's net income the amount of any income of another person to which the consumer has a reasonable expectation of access if such access is verified.

Generally, this principal step-down option for covered short-term loans must have the following features:

1. The loan is not open-end credit;
2. The first loan has a principal amount no larger than \$500, and second and third loans made within 30 days of a prior loan reduce the principal amount by at least one-third from the prior loan. Once a consumer has had a sequence of three covered short-term loans under the principal step-down option, there is a mandatory 30-day cooling off period before the consumer can take out additional covered short-term loans under the principal step-down option.
3. The lender and any service provider do not take security interest in the consumer's motor vehicle; and
4. The consumer has not in the past 30 days had an outstanding covered short-term loan or covered longer term balloon-payment loan.

The principal step-down option cannot be used in certain circumstances, such as where a consumer has already been in debt on covered short-term loans for more than 90 days or has had six such loans in the last 6 months. Where such limitations apply, lenders would have to use the general ability-to-repay analysis to determine whether the consumer could afford another covered short-term loan. After making a covered short-term loan under the principal step-down option, a lender and its affiliates cannot make any other type of loan to that consumer while the principal step-down is outstanding and for 30 days thereafter.

A lender that provides the principal step-down option must provide certain disclosures to the consumer. The disclosures required for these step-down covered short-term loans must be substantially similar to those provided as the model forms in Appendix A of the Rule and must be provided in writing or through electronic delivery and in a retainable form. These required disclosures must be separate from all other written materials provided to the consumer in connection with the loan. For these alternative short-term loans, the lender must provide the consumer certain disclosures at two points in time:

1. When a lender makes a first loan in a sequence of loans. This disclosures provide a consumer with notice that, among other things, the consumer should not take out the loan if the consumer is unsure of being able to repay the total amount of principal and finance charges on the loan by the contractual due date and contains a statement that informs the consumer that Federal law requires a similar loan taken out within the next 30 days to be for a smaller amount. This disclosure also informs the consumer of the principal step-down requirements for additional loans.

2. When a lender makes a third loan in a sequence. This disclosure provides a consumer with notice that, among other things, the lender's records show that the consumer has had two similar loans without taking at least a 30-day break between them and a statement that informs the consumer that Federal law requires the loan to be smaller in amount than previous loans in the loan sequence. This disclosure also contains a statement that informs the consumer that the consumer cannot take out a similar loan for at least 30 days after repaying this loan.

PAYMENT WITHDRAWALS

The Rule also imposes two types of requirements regarding lenders' repeated attempts to withdraw payments from consumers' transaction accounts after prior attempts have failed due to insufficient funds.

First, a lender is required to provide a written notice before its first attempt to withdraw payment for a covered loan from a consumer's account and before subsequent attempts that deviate from scheduled amounts or dates or involve a different payment channel than the prior attempt.⁶ The notice must contain key information about the upcoming payment attempt and, if applicable, alert the consumer to such payment attempts. A lender is permitted to provide electronic notices as long as the consumer consents to electronic communications. The Rule also defines certain requirements and conditions for payment transfers to collect a late fee or returned item fee.

Second, where two consecutive withdrawal attempts have failed due to insufficient funds, the Rule prohibits a lender from attempting another withdrawal from the same account unless the lender obtains the consumer's new and specific authorization to make further withdrawals from the account. This prohibition on further withdrawal attempts applies whether the two failed attempts are initiated through a single payment channel or different channels, such as the automated clearinghouse system and the check network.

REGISTERED INFORMATION SYSTEMS

For lenders who are making loans under the ability-to-repay requirements or under the principal step-down option, the Rule generally requires them to furnish certain loan data

⁶ Under the Rule, payment channel refers to the specific payment method, including the network that the transfer will travel through and the form of the transfer. For example, ACH transfers, checks, remotely created checks, remotely created payment orders, internal transfers, PIN debit card payments, and signature debit card network payments.

covered under this Rule to information systems that are registered with the Bureau and to pull a consumer report from one such system in the course of making a covered short-term or longer-term balloon payment loan. Specifically, lenders are required to report certain information to all registered information systems at origination, to update the information if it changes over time, and to report certain information when the loan ceases to be outstanding.

The Rule prescribes processes and criteria for entities to apply to the Bureau to become registered information systems and their obligations as registered information systems, including the receipt of furnished information from lenders and their provision of consumer reports to lenders under the Rule. Registered information systems under the Rule must meet certain eligibility criteria which include having: (1) the capability to receive furnished information and to generate consumer reports; (2) a Federal consumer financial law compliance program (as demonstrated by an independent assessment); (3) a comprehensive information security program (as demonstrated by an independent assessment); and (4) the ability to facilitate compliance with the Rule. Entities that apply to the Bureau to become registered information systems must either be subject to or consent to the Bureau's supervisory authority.

RECORD RETENTION AND COMPLIANCE PROGRAM REQUIREMENTS

Lenders must develop and follow policies and procedures designed to ensure compliance with the Rule. Lenders must also retain evidence of compliance for 36 months. The Rule outlines the types and format of information that lenders must retain.