No Real Surprises in CFPB's Final Rule for the Small Dollar Loan Industry

By Joann Needleman, Jane C. Luxton, Thomas A. Brooks / Oct 06, 2017

On October 5, 2017, the Consumer Financial Protection Bureau (CFPB or Bureau) issued its Final Rule for Payday, Vehicle Title and Certain High-Cost Installment Loans. A link to the Rule can be found here. Below are the main highlights of the Rule.

Covered Loans

The Final Rule follows for the most part the Notice of Proposed Rule issued in June of 2016, with the exception that not all installment loans are covered under the Final Rule. (See Clark Hill Alert, June 3, 2016). As widely predicted in the last several weeks, the Final Rule covers closed end loans that require repayments of all or most of the debt at once, including payday loans, auto title loans, deposit advance products, longer-term loans with balloon payments, and any loan with an annual percentage rate over 36 percent that gives the lender access to a consumer's bank account.

Determination of Affordability

The CFPB did not depart from its plan to include an "Ability to Repay" standard in the Final Rule. Much like the Bureau's initial proposal, the "full payment test" would require lenders to determine whether a borrower can repay the loan and still meet basic living expenses both during the life of the loan and for 30 days after the highest payment on the loan. For loans that are due in one lump sum, full payment means being able to afford the total loan amount, plus fees and finance charges within two weeks or a month. For longer-term loans with a balloon payment, full payment means being able to afford the payments in the month with the highest total payments on the loan. Lenders must verify income and major financial obligations and estimate basic living expenses for a one-month period--the month in which the highest sum of payments is due. The rule also caps the number of successive short-term loans to three, with a cooling off period of 30 days thereafter. It appears that the Bureau abandoned the requirement that the borrower demonstrate significant financial improvement in order to obtain refinancing of any current loan.

Principal Payoff-Options for Short-Term Loans, Less Risky Long-Term Loan Alternatives, Reporting Requirements and Penalty Free Prevention all Remain as Proposed

The remaining aspects of the Final Rule did not deviate from what was initially proposed.

Principal Payoff Options. The lender could forego the "Ability to Repay" requirements on shorter term closed-end loans up to $500 if (1) the loan was restricted to lower-risk situations; (2) the lender offered the borrower up to two additional loans but only if the borrower pays off at least one-third of the original principal with each extension; and (3) the lender provides mandatory disclosures before making the loan under the principal pay off option.

Less Risky Long-Term Loan Alternatives. Lenders that make 2,500 or fewer covered loans per year and who derive less than 10% of their revenue from these loans are excluded from the Final Rule. Further, loans that meet the parameters of the "payday alternative loans" authorized by the National Credit Union Administration are also exempt.

Reporting Requirements. Lenders will be required to use credit reporting systems registered by the Bureau to report and obtain information about loans made under the full-payment test or the principal pay off option as well as being required to report basic loan information and updates to that information.

Penalty Free Prevention. Lenders will be prohibited from accessing, transferring or collecting any payment from a consumer's bank account without prior written authorization. If there are two unsuccessful debit attempts, the lender is prohibited from debiting the account again unless a new and specific authorization is obtained

Clark Hill is currently digesting the 1,690-page rule and will provide a more detailed analysis including the impact on the small-dollar lending industry in the coming days.

If you have any questions, please contact Tommy Brooks, Jane Luxton, or Joann Needleman.

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