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February 6, 2019

Summary of Proposed Rulemakings: 2019 Proposals to Amend the Payday Lending Rule

On February 6, 2019, the Consumer Financial Protection Bureau (Bureau) issued two notices of proposed rulemaking (NPRMs) inviting the public to comment on potential amendments to the Bureau's 2017 rule governing Payday, Vehicle Title, and Certain High-Cost Installment Loans (Payday Lending Rule).¹ These two NPRMs are as follows:

- Reconsideration NPRM: In the first NPRM, the Bureau is proposing to rescind the provisions of the Payday Lending Rule governing underwriting of certain loans (mandatory underwriting provisions) (specifically, 12 CFR 1041.4 through 1041.6, 1041.10, 1041.11, and portions of 1041.12).² The Reconsideration NPRM has a comment period of 90 days following publication in the *Federal Register*.
- Compliance Date Delay NPRM: In the second NPRM, the Bureau is proposing to delay the August 19, 2019 compliance date for the mandatory underwriting provisions of the Payday Lending Rule.³ The Compliance Date Delay NPRM has a comment period of 30 days following publication in the *Federal Register*.

¹ <https://www.consumerfinance.gov/policy-compliance/rulemaking/final-rules/payday-vehicle-title-and-certain-high-cost-installment-loans/>.

² <https://www.consumerfinance.gov/policy-compliance/rulemaking/rules-under-development/payday-vehicle-title-and-certain-high-cost-installment-loans/>.

³ <https://www.consumerfinance.gov/policy-compliance/rulemaking/rules-under-development/payday-vehicle-title-and-certain-high-cost-installment-loans-delay-of-compliance-date/>.

This summary provides an overview of both NPRMs, but does not contain all information included in the NPRMs. Readers are encouraged to review the NPRMs in their entirety.

Background

On October 5, 2017, the Bureau issued the Payday Lending Rule to establish consumer protection regulations for payday loans, vehicle title loans, and certain high-cost installment loans.⁴ The Payday Lending Rule was published in the *Federal Register* on November 17, 2017. It became effective on January 16, 2018, although most provisions (12 CFR 1041.2 through 1041.10, 1041.12, and 1041.13) have a compliance date of August 19, 2019.

The Payday Lending Rule addresses two discrete topics: (1) mandatory underwriting requirements; and (2) requirements and limitations with respect to attempts to withdraw loan payments from consumers' checking or other accounts.

First, the Payday Lending Rule contains a set of provisions with respect to the underwriting of covered short-term and longer-term balloon-payment loans, including payday and vehicle title loans, and related reporting and recordkeeping requirements. The mandatory underwriting provisions identify as an unfair and abusive practice the making of certain short-term and longer-term balloon-payment loans without reasonably determining that consumers will have the ability to repay the loans according to their terms.

The mandatory underwriting provisions include two methods for compliance. Under one method, lenders making covered short-term and longer-term balloon-payment loans are required to, among other things, make a reasonable determination that the consumer would be able to repay the loan and be able to meet the consumer's basic living expenses and other major financial obligations without needing to re-borrow over the ensuing 30 days. The Payday Lending Rule sets forth a number of specific requirements that a lender must satisfy in this regard.

Under the other method, lenders are allowed to make certain covered short-term loans without meeting all the specific underwriting criteria as long as the loan satisfies certain prescribed terms, the lender confirms that the consumer meets specified borrowing history conditions, and the lender provides required disclosures to the consumer. In general, under either approach, a lender must obtain and consider a consumer report from an information system registered with the Bureau before making a covered short-term or longer-term balloon-payment loan. In

⁴ Public Law 111-203, 124 Stat. 1376 (2010).

addition, other portions of the Payday Lending Rule require lenders to furnish to provisionally registered and registered information systems certain information concerning covered short-term and longer-term balloon-payment loans at loan consummation, during the period that the loan is an outstanding loan, and when the loan ceases to be an outstanding loan.

Second, the Payday Lending Rule contains a set of provisions, applicable to a broader group of covered loans (*i.e.*, covered short-term and longer-term balloon-payment loans, as well as certain high-cost installment loans), establishing certain requirements and limitations with respect to attempts to withdraw payments from consumers' checking or other accounts (payment provisions) (12 CFR 1041.7 through 1041.9, and portions of 1041.12). The Payday Lending Rule identifies as an unfair and abusive practice lenders' attempts to withdraw payment on these loans from a consumer's account after two consecutive payment attempts have failed, unless the consumer provides a new and specific authorization to do so. The Payday Lending Rule also prescribes notices lenders must provide to consumers before attempting to withdraw payments from their accounts.

Proposed changes to the Payday Lending Rule

The Bureau is proposing to rescind the mandatory underwriting provisions of the Payday Lending Rule in the Reconsideration NPRM. In addition, the Bureau is proposing in the Compliance Date Delay NPRM to delay the August 19, 2019 compliance date to November 19, 2020 for the mandatory underwriting provisions it is proposing to rescind. The chart below summarizes the specific provisions the Bureau is proposing to rescind or delay.

Sections of the Payday Lending Rule	The Bureau is proposing to
<i>General</i> §§ 1041.1 to 1041.3 and its Official Interpretations	<ul style="list-style-type: none">Remove or revise certain provisions that relate to the underwriting requirements in §§ 1041.4 to 1041.6 (Reconsideration NPRM).
<i>Underwriting</i> §§ 1041.4 to 1041.6 and its Official Interpretations	<ul style="list-style-type: none">Remove these sections entirely (Reconsideration NPRM).Delay the August 19, 2019 compliance for these sections to November 19, 2020 (Compliance Date Delay NPRM).
<i>Payments</i> §§ 1041.7 to 1041.9 and its Official Interpretations	<ul style="list-style-type: none">The Bureau is <i>not</i> proposing to revise or remove these sections.The Bureau is <i>not</i> proposing to delay the August 19, 2019 compliance date for these sections.

Sections of the Payday Lending Rule	The Bureau is proposing to
<i>Information Furnishing, Recordkeeping, Anti-Evasion, and Severability</i> §§ 1041.10 to 1041.14 and its Official Interpretations	<ul style="list-style-type: none"> Remove the sections governing information furnishing and registered information systems (Reconsideration NPRM). Remove or revise recordkeeping provisions that relate to the underwriting requirements in §§ 1041.4 to 1041.6 or to the information furnishing and registered information systems requirements (Reconsideration NPRM). Delay the August 19, 2019 compliance date for the provisions it is proposing to remove to November 19, 2020 (Compliance Date Delay NPRM).
<i>Appendix A to Part 1041</i> Model Forms and Clauses	<ul style="list-style-type: none"> Remove model forms A-1 and A-2, which relate to the underwriting requirements in §§ 1041.4 to 1041.6 (Reconsideration NPRM).

Additional resources and regulatory implementation support

The Bureau has released a table of contents for the Reconsideration NPRM as well as an unofficial, informal redline to assist industry and other stakeholders in reviewing the changes that the Reconsideration NPRM would make to the regulatory text and commentary of the Payday Lending Rule.⁵

In the near future, the Bureau expects to release a small entity compliance guide to aid compliance with the Payday Lending Rule's payment provisions. The guide will be published on the Bureau's regulatory implementation website for the Payday Lending Rule.⁶

Submitting comments

The Compliance Date Delay NPRM has a comment period of 30 days following publication in the *Federal Register*, and the Reconsideration NPRM has a comment period of 90 days following publication in the *Federal Register*. Detailed information on how to submit comments can be found in the NPRMs themselves.

⁵ See <https://www.consumerfinance.gov/policy-compliance/rulemaking/rules-under-development/payday-vehicle-title-and-certain-high-cost-installment-loans/>.

⁶ <https://www.consumerfinance.gov/policy-compliance/guidance/payday-lending-rule/>.