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July 7, 2020

Executive Summary of the July 2020 Amendments to the 2017 Payday Lending Rule

On July 7, 2020, the Consumer Financial Protection Bureau (Bureau) issued a final rule (Revocation Final Rule) revoking the Mandatory Underwriting Provisions of the Bureau’s 2017 rule governing Payday, Vehicle Title, and Certain High-Cost Installment Loans (2017 Payday Lending Rule). The Revocation Final Rule also amends other portions of regulatory text and commentary in the 2017 Payday Lending Rule that refer to the Mandatory Underwriting Provisions. The Revocation Final Rule is effective ninety days after its publication in the *Federal Register*.

Background

On November 17, 2017, the Bureau published the 2017 Payday Lending Rule to establish regulations for payday loans, vehicle title loans, and certain high-cost installment loans.¹ The 2017 Payday Lending Rule addressed two discrete topics. First, it contained a set of provisions with respect to the underwriting of certain covered loans and related reporting and recordkeeping requirements. These provisions are referred to as the “Mandatory Underwriting Provisions.” Second, it contained a set of provisions establishing certain requirements and limitations with respect to attempts to withdraw payments from consumers’ checking or other

This is a Compliance Aid issued by the Consumer Financial Protection Bureau. The Bureau published a Policy Statement on Compliance Aids, available at <http://www.consumerfinance.gov/policy-compliance/rulemaking/final-rules/policy-statement-compliance-aids/>, that explains the Bureau’s approach to Compliance Aids.

¹ 82 Fed. Reg. 54472 (Nov. 17, 2017).

accounts and related recordkeeping requirements. These provisions are referred to as the “Payment Provisions.”

The 2017 Payday Lending Rule became effective on January 16, 2018. However, most provisions of the 2017 Payday Lending Rule had a compliance date of August 19, 2019.

On February 14, 2019, the Bureau published a proposal to delay the August 19, 2019 compliance date for the Mandatory Underwriting Provisions and a separate proposal to revoke the Mandatory Underwriting Provisions.² On June 17, 2019, the Bureau published a final rule that delayed the compliance date for the Mandatory Underwriting Provisions to November 19, 2020.³ The Bureau has now issued a final rule to revoke the Mandatory Underwriting Provisions. As a result, lenders do not need to comply with the Mandatory Underwriting Provisions.

Revocation of the Mandatory Underwriting Provision and Related Amendments

The Revocation Final Rule revokes the Mandatory Underwriting Provisions. Specifically, it revokes the following sections of the 2017 Payday Lending Rule:

- § 1041.4 identifying an unfair and abusive practice;
- § 1041.5 governing the ability-to-repay determination;
- § 1041.6 providing a conditional exemption from §§ 1041.4 and 1041.5 for certain covered short-term loans;
- § 1041.10 governing information furnishing requirements;
- § 1041.11 regarding registered information systems;
- § 1041.12(b)(2) and (3) detailing record retention requirements that are specific to the Mandatory Underwriting Provisions; and
- § 1041.15(d) identifying November 19, 2020 as the compliance date for the Mandatory Underwriting Provisions.

The Revocation Final Rule amends § 1041.12(b)(1) to provide that lenders must retain or be able to reproduce an image of the loan agreement for all covered loans and revokes the remainder of the recordkeeping requirements set forth in that provision of the 2017 Payday Lending Rule.

² 84 Fed. Reg. 4298 (Feb. 14, 2019); 84 Fed. Reg. 4252 (Feb. 14, 2019).

³ 84 Fed. Reg. 27907 (June 17, 2019).

The Revocation Final Rule also amends other portions of regulatory text and commentary in the 2017 Payday Lending Rule that refer to the Mandatory Underwriting Provisions or their requirements.

The chart below provides a high-level summary of the Revocation Final Rule's amendments to the 2017 Payday Lending Rule.

Sections of the 2017 Payday Lending Rule	The Revocation Final Rule:
<i>General</i> §§ 1041.1 to 1041.3 and Official Interpretations	<ul style="list-style-type: none">▪ Removes the last sentence of § 1041.1(b), which refers to processes and criteria for registration of information systems.▪ Removes comment 2(a)(5)-2 discussing modifications that trigger underwriting requirements.▪ Removes § 1041.2(a)(14) defining “loan sequence” and § 1041.2(a)(19) defining “vehicle security” because these terms are only used in the Mandatory Underwriting Provisions. Removes related commentary.▪ Amends comment 3(e)(2)-1 to remove language that refers to consumer reports obtained from information systems registered with the Bureau, and revises comment 3(e)(3)-1, which distinguishes the income document condition for alternative loans from the income documentation procedures required under the Mandatory Underwriting Provisions.
<i>Underwriting</i> §§ 1041.4 to 1041.6 and Official Interpretations	<ul style="list-style-type: none">▪ Revokes §§ 1041.4 to 1041.6 and removes related commentary.
<i>Payments</i> §§ 1041.7 to 1041.9 and Official Interpretations	<ul style="list-style-type: none">▪ Does not amend these sections.

**Sections of the 2017
Payday Lending Rule**

The Revocation Final Rule:

*Information Furnishing,
Recordkeeping, Anti-Evasion,
Severability, and Dates
§§ 1041.10 to 1041.15 and
Official Interpretations*

- Revokes §§ 1041.10 and 1041.11 and removes related commentary.
- Amends comment 12(a)-1 regarding compliance programs to remove references to the requirements in § 1041.5, § 1041.6, and § 1041.10. Removes comment 12(a)-2.
- Amends § 1041.12(b)(1) to require a lender to retain or be able to reproduce an image of the loan agreement for each covered loan that the lender originates. Revises comment 12(b)-1 to be consistent with the revocation of the Mandatory Underwriting Provisions. Removes comment 12(b)(1)-1.
- Revokes § 1041.12(b)(2) and (3) and removes related commentary.
- Revises comment 12(b)(5)-1 to remove content related to compliance with § 1041.12(b)(2) and (3) and to incorporate the description of how a lender complies with the Payday Lending Rule's requirement to retain records in a tabular format.
- Revokes § 1041.15(d).
- Amends the heading for subpart D to be consistent with the revocation of the Mandatory Underwriting Provisions.

*Model Forms and Clauses
Appendix A to Part 1041*

- Removes Model Form A-1 for consistency with the revocation of § 1041.6.
- Removes Model Form A-2 for consistency with the revocation of § 1041.6.

Additional resources and implementation support

The Bureau has released an unofficial redline to assist industry and other stakeholders. It and other implementation resources are available at <http://www.consumerfinance.gov/policy-compliance/guidance/payday-lending-rule/>.