

CFPB Small Dollar and Other Covered Loans Proposed Rule Summary

Background:

On June 2, in conjunction with a field hearing in Kansas City, Missouri, the Consumer Financial Protection Bureau (CFPB) released a more than 1300-page rule for [Payday, Vehicle Title, and Certain High-Cost Installment Loans](#). CUNA has been closely following this rulemaking since the CFPB released the Small Business Regulatory Enforcement Fairness Act (SBREFA) proposals, prior to a Small Businesses Review Panel, for this rule more than a year ago. During the SBREFA process and in the months leading up to the proposed rule's release, CUNA expressed concerns to the CFPB that the rule should target predatory lending practices but not sweep in consumer friendly credit union small dollar loan products. In Director Cordray's remarks at the field hearing on the proposed rule he stated, "In particular, we are not intending to disrupt existing lending by community banks and credit unions that have found efficient and effective ways to make small-dollar loans to consumers that do not lead to debt traps or high rates of failure. Indeed, we want to encourage other lenders to follow their model."

While the CFPB's proposed rule addresses some of the concerns CUNA raised prior to its release, and purports to exempt the National Credit Unions Administration's (NCUA) Payday Alternative Loan (PAL) program as requested, in actuality it adds many new regulatory and compliance burdens for federal and state-chartered credit unions working to underwrite consumer friendly small dollar options as outlined below. The added requirements and changes to the PAL program eliminate flexibility in offering these loans, and will likely make many credit unions reevaluate their participation in the program. The proposed rule also does not account for the diverse and unique structure of consumer friendly small dollar loans offered at state-chartered credit unions.

Additionally, the overly broad scope of the proposed rule sweeps in products and services offered by financial institutions that are not even similar to a payday or small dollar loan, including auto refinance loans if they exceed an all-in annual percentage rate (APR) of 36 percent when other products are included with the loan. The proposed rule also includes significant changes for reporting and payment transfer/collection efforts for loans.

Why is CFPB proposing this rule?

The CFPB states that the purpose of the rule is to eliminate payday debt traps. The CFPB has [studied](#) payday loan, title loans, and deposit advance products, and released research prior to the proposal of this rule. The CFPB also released supplemental research in conjunction with this rule. Much of this research focuses on storefront and online payday and title loans offered by nonbank lenders. However, it remains unclear what harm the CFPB is seeking to address when sweeping in consumer friendly credit union products, since credit unions have no history of bad behavior when offering small dollar loans. And, in fact, credit unions often offer these products as a courtesy or service to members for little or no profit.

What credit unions are impacted by this proposed rule?

- Credit unions who participate in the NCUA PAL program or offer small dollar or short-term loans at state-chartered credit unions.
- Credit unions who offer auto refinance loans.
- Credit unions who offer multi-feature open-end lending plans, unsecured loans, or shared-secured loans should also examine the proposal for any impact it could have.

When will credit unions be required to comply with this regulation?

- The proposed rule states that it would become effective 15 months after publication of the final rule in the Federal Register.

How does this rule impact state law?

Credit unions subject to the proposed rule would be required to comply with both the requirements of the CFPB's rule and applicable state laws. The rule would set a federal standard that must be complied with at a minimum, but if state law has additional requirements credit unions would be subject to both.

What does this proposed rule include?

SHORT-TERM LOANS (Subpart B)

What is covered?

- Loans that are 45 days or less

If a credit union offers a loan that falls into this category what should they consider next?

- Under the proposal, lenders would have two options for making short-term loans. The first option would require the lender to determine the borrower's ability to repay the loan.

Ability-to-Repay Requirements

In general, the rule would restrict short-term lending by making it an abusive and unfair practice for a lender to make a covered short-term loan without reasonably determining the consumer's ability to repay the loan.

- Ability to repay in the context of a short-term loan means the consumer has sufficient income to make payments on the loan, pay "major financial obligations," and cover "basic living expenses" without needing to re-borrow within the 30 days after the loan has been repaid. Major financial obligations include housing expenses, child support, court ordered payments, and debt obligations, which would include items such as student loan, auto, and credit card payments. Basic living expenses are those expenses, other than payments for major financial obligations, that are *necessary* to maintain the health and welfare of the consumer and the consumer's family as well as the consumer's ability to produce income, which could include transportation costs.
- In determining a consumer's basic living expenses, a lender would not need to base its conclusion on the individual borrower's expenses, but could instead use an appropriate alternative method such as relying on a relevant consumer survey.

In order to make a reasonable determination of a consumer's ability to repay a covered short-term loan, a lender must obtain:

- A written statement from the consumer that addresses the amount and timing of income, and amount and timing of major financial obligations.
- Verification evidence for the amounts and timing of the consumer's income (such as paystubs) and payments for court-ordered obligations and major financial obligations (such as a national consumer report, records of the lender and its affiliates, and a consumer report obtained from a currently registered information system).
- Verification evidence for the consumer's housing expenses (such as a reliable transaction record or a reasonable estimate).

Presumptions Against Ability to Repay

The proposal includes several presumptions against a consumer's ability to repay a covered short-term loan, such as if:

- The consumer has another short-term loan outstanding or had one within 30 days following that loan. Unless, (1) the consumer paid the prior covered loan and would not owe on the new loan more than 50 percent of the amount paid on the prior loan, or the consumer is rolling over the remaining balance of the prior loan and would not owe more on the new loan than paid on the prior loan that is being rolled over; or (2) the new loan term is at least as long as the prior loan term.
- The consumer has a covered longer-term balloon-payment loan outstanding or had one within 30 days following that loan.

A lender would be able to overcome a presumption of unaffordability for a new covered short-term loan only if it could document a sufficient improvement in the consumer's financial capacity.

The proposal would also prohibit a lender from making a covered short-term loan to a consumer who has already taken out three covered short-term loans within 30 days of each other.

If a credit union does not want to go through these extensive underwriting requirements to offer a short-term loan, what are their other options?

- The second option would not require an ability to repay determination if certain criteria are met.

Alternative to Ability to Repay Assessment

The proposal would provide an alternative option for a lender to make a covered short-term loan that would not require an ability-to-repay determination. The alternative option would require that the loan satisfy certain prescribed terms and the lender confirm that the consumer met specified borrowing history conditions and provide required disclosures to the consumer.

The loan term would be subject to the following requirements:

- The loan must amortize completely during the term of the loan.
- The lender must not take a security interest on the consumer's motor vehicle.
- The loan must not be structured as open-end credit.

- The loan satisfies the following principal amount limitations:
 1. The first loan in a loan sequence is no greater than \$500.
 2. The second loan in a loan sequence is no greater than two-thirds of the first loan; and
 3. The third loan in a loan sequence is no greater than one-third of the first loan.

In addition, a lender can only make a short-term loan under the alternative method if:

- The consumer does not have a covered short-term or longer-term loan outstanding.
- The consumer has not had within the past 30 days a covered short-term loan (made under the ability to repay option) or a covered longer-term balloon-payment loan.
- The loan would not result in the consumer having a loan sequence of more than three covered short-term loans (made under the alternative option).
- The loan would not result in the consumer having, during the prior 12 consecutive months, more than 6 covered short-term loans or being in debt for more than 90 days on covered short-term loans.

A lender making a covered short-term loan using the alternative method would also be required to make certain disclosures to the consumer. The disclosures are designed to provide consumers with key information about how the principal amounts and the number of loans in a loan sequence would be limited for covered short-term loans (made under the alternative method).

LONGER TERM LOANS (Subpart C)

Note: We believe the majority, but not all, credit union loans would fall under this section

What loans are covered?

- Longer than 45 days
- Have an all-in (APR) greater than 36 percent; and
- Either are repaid directly from the consumer's account, or income, or are secured by the consumer's vehicle. This would include vehicle title loans, installment loans, and open-end (*see definition below*) products.

Definition of Open-end Credit

Open-end credit is defined in the proposed rule under § 1041.2(14). Under the rule, it says an extension of credit to a consumer as defined in Regulation Z is where the creditor reasonably contemplates repeated transactions; the creditor may impose a finance charge from time to time on an outstanding unpaid balance; and the amount of credit that may be extended to the consumer during the term of the plan (up to any limit set by the creditor) is generally made available to the extent that any outstanding balance is repaid.

- But under this proposed rule – WITHOUT regard to whether the credit is consumer credit, as defined as or extended to a consumer primarily for personal, family, or household purposes. So it does not have to be consumer credit.
- Also under this proposed rule – WITHOUT regard to whether it is extended by a creditor, as defined as a person who regularly extends consumer credit that is subject to a finance charge or is payable by written agreement in more than four

installments (not including a down payment), and to whom the obligation is initially payable, either on the face of the note or contract, or by agreement when there is no note or contract.

- Also under this proposed rule – WITHOUT regard to whether it is extended to a consumer, as defined as a cardholder or natural person to whom consumer credit is offered or extended. However, for purposes of rescission under §§ 1026.15 and 1026.23, the term also includes a natural person in whose principal dwelling a security interest is or will be retained or acquired, if that person’s ownership interest in the dwelling is or will be subject to the security interest.

Definition of “all-in”

This would be the total amount of charges imposed in connection with the loan, including charges for credit insurance, ancillary products, finance charges as set forth in Regulation Z (and potentially expanded in some circumstances), application fees, and fees for “participation in any plan or arrangement for a covered loan.”

If a credit union offers a loan that falls into this category, what should they look at next?

The CFPB’s proposed rule would make it an abusive and unfair practice for a lender to make a covered longer-term loan without determining upfront that the consumer will have the ability to repay the loan. It labels this the “full payment” test. This would require credit unions, prior to making a covered-loan, to:

- Verify a consumer’s residual income – this includes the amount and timing of the consumer’s net income receipts; and the amount and timing of payments required for categories of the consumer’s major financial obligations
- Verify debt obligations (using a national consumer report from a reporting agency registered with the bureau for at least 120 days)
- Project a consumer’s basic living expenses, net income, debt obligations, and housing costs for the term of the loan, and, in some cases, for 30 days
- Providers of high-cost installment loans with balloon payments would also have to determine that a borrower can pay all of the installment payments when due

If a credit union does not want to go through these extensive underwriting requirements to offer a loan, are there any exemptions?

Yes, there are two alternatives to the ability to repay requirements for longer-term loans. However, these alternatives also have several conditions as outlined below.

Alternative 1 – NCUA PAL APPROACH – similar but with added requirements

A covered longer-term loan that is made under this section must satisfy the following conditions:

- The loan is not structured as open-end credit;
- The loan has a term of not more than six months;
- The principal of the loan is not less than \$200 and not more than \$1,000;
- The loan is repayable in two or more payments due no less frequently than monthly, all of which payments are substantially equal in amount and fall due in substantially equal intervals;

- The loan amortizes completely during the term of the loan and the payment schedule provides for the credit union allocating a consumer's payments to the outstanding principal and interest and fees as they accrue only by applying a fixed periodic rate of interest to the outstanding balance of the unpaid loan principal every repayment period for the term of the loan;
- And, the loan has an interest rate of no more than allowed under the PAL program (28 percent) allowing a \$20 application fee.

Underwriting

- The credit union must maintain and comply with policies and procedures for documenting proof of recurring income – can do this by obtaining two recent paycheck stubs or other procedure for documenting recurring income that satisfies the lender's own underwriting obligations.
- The credit union must assume that the consumer will utilize the full amount of credit as soon as it is available.
- Specific to lines of credit – the credit union must not permit a consumer to obtain an advance under the line of credit more than 180 days after the initial ability to repay determination. After 180 days, there would have to be a new assessment of the ability to repay.
- The credit union may not make a covered loan subject to the ability-to-repay determination if the consumer has a covered short-term loan made under the conditional exemption.
- The credit union must determine that affiliates have not also offered loans under this section, so there are not more than three outstanding loans within a period of 180 days. This will require pulling a credit report or using the new tracking system under the rule.

Collection

- The credit union cannot impose a prepayment penalty; or
- If the credit union holds funds on deposit in the consumer's name, in response to an actual or expected delinquency or default on the loan it cannot: sweep the account to a negative balance, exercise a right of set-off to collect on the loan, including placing a hold on funds in the consumer's account, or close the account.

Reporting

- Must report the loan in the next regularly scheduled furnishing, or within 30 days, to a nationwide consumer reporting agency or to the information systems for tracking covered loans registered in accordance with the new rule.

How are these proposed requirements different from NCUA PAL loans?

- The NCUA PAL loan minimum length is 30 days, the proposed rule is a minimum of 45 days.
- Under the PAL program, credit unions may make only one loan at a time to a member and no more than three loans in any rolling six-month period. Under the proposed rule, they would additionally have to check with a credit reporting agency or the new tracking system to see what other loans borrowers have. Under the new rule, credit unions can only make three outstanding loans, including the loans of its affiliates, within a period of 180 days. So, if a borrower has other outstanding loans,

the credit union cannot offer the 6 PAL loans allowed under the NCUA program in a year.

- PAL loans do not require specific debt collection requirements. The proposed rule provides some exemptions for collection of loans made under this section, but also adds that credit unions cannot exercise the right to set-off to collect from a consumer's deposit account.
- PAL loans must be fully amortized and must be underwritten. However, the NCUA does not set underwriting standards. It also does not require as specific amortization requirements as found in the CFPB's proposed rule.
- The proposed rule also has specific requirements for lines of credit.
- The proposed rule also has new requirements for reporting to credit reporting agencies or the new tracking system.

Alternative 2 – PORTFOLIO APPROACH – default rate less than 5 percent

What conditions must be satisfied?

- The loan is not structured as open-end credit;
- The loan has a term of not more than 24 months;
- The loan is repayable in two or more payments due no less frequently than monthly, all of which payments are substantially equal in amount and fall due in substantially equal intervals;
- The loan amortizes completely during the term of the loan and the payment schedule provides for the credit union allocating a consumer's payments to the outstanding principal and interest and fees as they accrue only by applying a fixed periodic rate of interest to the outstanding balance of the unpaid loan principal every repayment period for the term of the loan; and
- The loan carries a modified total cost of credit of less than or equal to an annual rate of 36 percent. Modified total cost of credit is calculated in the manner set forth in the proposed rule - the credit union may exclude from the calculation a single origination fee – must be less than \$50

Underwriting

- For this loan, the credit union would be required to maintain and comply with policies and procedures for effectuating an underwriting method designed to result in a portfolio default rate that will be less than or equal to 5 percent per year.
- Credit union must determine from its records and the records of its affiliates that the loan would not result in the consumer being indebted on more than two outstanding loans under this exception from the credit union or its affiliates. This will likely require pulling a credit report.

Collection

- Credit unions may not impose a prepayment penalty.
- If the credit union holds funds on deposit in the consumer's name, it cannot in response to an actual or expected delinquency or default on the loan: sweep the account to a negative balance, exercise a right of set-off to collect on the loan, including placing a hold on funds in the consumer's account, or close the account.

Reporting

- Must report the loan in the next regularly scheduled furnishing, or within 30 days, to a nationwide consumer reporting agency or to the information systems for tracking covered loans registered in accordance with the rule.

Other Requirements

- Once every 12-months, credit unions would have to calculate the portfolio default rate for covered longer-term loans made under this exclusion.
- If default rates exceed 5 percent within 30 calendar days, the credit union would have to refund to each consumer any origination fee imposed in connection with the covered longer-term loan and excluded from the modified total cost of credit.

How are default rates measured?

- The sum of the dollar amounts owed on any covered longer-term loans must be calculated as a gross sum using all covered longer term loans made under this section that were outstanding at any point during the 12-month period for which the portfolio default rate is calculated;
- A loan is considered 120 days delinquent even if it is re-aged by the lender prior to the 120th day, unless the consumer has made at least one full payment and the re-aging is for a period equivalent to the period for which the consumer has made a payment; and
- A lender must calculate the portfolio default rate within 90 days following the last day of the applicable 12-month period.

How could auto refinance loans be swept into this rule?

Although the rule contains an exclusion for credit extended to finance the initial purchase of a good when the credit is secured by the property being purchased (such as an auto loan), this exclusion does not extend to a transaction that occurs after the purchase of an automobile. So a refinance of an automobile, or an “equity out” on an automobile might be subject to the rule if the “all-in-APR” exceeds 36 percent.

Since the “all-in APR” includes items such as credit life, GAP, and other products that might be sold ancillary to the financing, credit unions would need to perform the “all-in-APR” calculation to determine if the threshold triggers compliance with the rule. A further issue is that the proposed rule states that “any charge for a credit-related ancillary product, service, or membership sold in connection” also needs to be included. It is unclear if this language captures products such as extended warranties, mechanical repair, Dent & Ding protection, Key Lock services that relate to the automobile and not necessarily the financing or credit transaction. The rule specifically includes credit insurance plans and debt cancellation or debt suspension. Therefore, a short term, low dollar loan where a credit union also sells a product might trigger compliance with the rule.

PAYMENTS (1041.14) (Applies to All Loans)

The Proposed Rule defines it as an unfair and abusive act or practice to withdraw payment from a consumer’s account after the lender’s second consecutive attempt to withdraw payment has failed due to non-sufficient funds (NSF), unless the lender obtains the consumer’s new and specific authorization to make further withdrawals.

Definition of Payment Transfer “Any lender initiated debit or withdrawal”

This Includes: electronic funds transfer (EFT), check, automated clearing house (ACH), remotely created check, remotely created payment, transfer from another account held at the same institution (Note: It does not matter which channel is used, the counter for the two consecutive attempts runs regardless)

Definition of “Lender-initiated”

Includes a lender’s agents, such as payment processors. It excludes payments pursuant to a court order authorizing garnishment of accounts.

Definition of “deemed to fail”

When payment results in a return indicating that a consumer’s account lacks sufficient funds or, for a lender that is the consumer’s account-holding institution, it results in the collection of less than the amount for which the payment transfer is initiated because the account lacks sufficient funds.

Procedure for Additional Payment Transfers after two consecutive failed payment transfers:

The additional payment must be authorized by the consumer and contain:

- The specific date;
- Amount; and
- Payment Channel of each additional payment transfer

What happens if this payment is returned for NSF?

The lender may re-initiate the payment transfer by representing it once through the ACH system on or after the date authorized by the consumer, provided that the returned payment does not trigger the two consecutive payment attempt prohibition.

What are the requirements for obtaining authorization for additional payment transfers?

- May request authorization for additional payment transfers no earlier than the date on which the lender provides to the consumer the Consumer Rights Notice (See Below);
- Must include the payment transfer terms and, if applicable, the statements required under the rule (See Consumer Rights Notice below);
- May be in writing, by mail or in person, or in a retainable form by email if the consumer has consented to receive electronic disclosures (pursuant to the rule, or agrees to receive the terms and statements by email in the course of a communication initiated by the consumer in response to the consumer rights notice)
- Consent by telephone requires:
 1. Affirmative contact by the consumer by phone in response to the consumer rights notice;
 2. Agreement to receive the terms and statements in that manner; and
 3. It must be done as part of the same communication.
- Authorization must be signed or otherwise agreed to by the consumer in writing or electronically in a retainable format that memorializes the payment transfer terms

1. Obtained from the consumer no earlier than receipt of the Consumer Rights Notice in person or electronically or the date the consumer receives the notice by mail;
 2. If authorization is provided by phone, the lender must record the call and retain the recording (**CUNA Note:** This may not be legal in some states). If memorialization is not immediately retainable by the consumer at the time of signature, lender must provide memorialization by no later than the date on which the first payment transfer is initiated.
- Authorization becomes null and void if the lender subsequently obtains a new authorization or if two consecutive payment transfers fail pursuant to an authorization.

Procedures for Late Fee or Returned Item Fee:

- A credit union may initiate a payment to collect a late fee or returned item fee without the consumer's authorization only if the consumer authorizes the lender to initiate such payment transfers. [**CUNA Note:** This is the way the proposed rule language reads - that you may do a transfer without authorization, however, it must be authorized. It is likely, although unclear from the proposed rule text, that this means that transfers of a late fee or returned item fee must be pre-authorized by the consumer in the initial loan agreement, but at the time of initiating the transfer, you don't need a new authorization to initiate the transfer for a late fee or returned item fee]
- Authorization for Late Fee or Returned Item Fee requires a statement:
 1. In terms that are clear and readily understandable to the consumer that payment transfers may be initiated solely to collect a late fee or returned item fee;
 2. Specifies the highest amount for such fees that may be charged; and
 3. Specifies the payment channel to be used.

Consumer Rights Notice (1041.15) (Applies to All Loans)

If two consecutive failed payment transfers from a consumer's account occurs, lender would have to provide the Consumer Rights Notice:

- *Timing:* Notice must be sent no later than three (3) business days after lender receives information that the second consecutive attempt failed
- *Content:*
 1. Language similar to Model Form A-5;
 2. Identifying statement that lender is no longer permitted to make withdrawals;
 3. Statement that the last two attempts were returned;
 4. Account Number;
 5. Loan Number;
 6. Statement of federal law prohibition;
 7. Statement that lender may be in contact about payment choices going forward;
 8. Previous unsuccessful payment attempts (in tabular format): Previous payment attempts; Payment due date; Date of attempt; Amount; and Fees;

10. CFPB information (that they created this form and URL to CFPB website);
11. Electronic version available.

DISCLOSURE OF PAYMENT TRANSFER ATTEMPTS (1041.15) (Would not apply to PAL or less than 5 percent default rate exemption loans)

Note: This would **not** apply to loans made pursuant to the PAL exemption for small loans (Between \$200 - \$1,000) (1041.11) or the 5 percent delinquency exemption (closed-end under 24 months), under 36 percent All-in-APR (1041.12).

Prior to initiating a payment transfer from a consumer's account for a covered loan, a lender must provide to the consumer a payment notice. The requirements for the notice are as follows:

- Timing:
 1. *By Mail*: Mailed no earlier than 10 business days and no later than six (6) business days prior to the transfer;
 2. *Electronic Delivery*: no earlier than seven (7) business days and no later than three (3) business days;
 3. *In Person*: no earlier than seven (7) business days and no later than three (3) business days.
- Content:
 1. Identifying Statement either "Upcoming Withdrawal Notice" or "Alert. Unusual Withdrawal" as applicable;
 2. Name of the Lender;
 3. Transfer Terms: date, amount, account number, loan ID information, payment channel, check number, annual percentage rate, payment breakdown (in tabular form:
 - a. Payment breakdown heading;
 - b. Principal;
 - c. Interest;
 - d. Fees;
 - e. Other charges
 - f. Total payment amount;
 - g. Explanation of interest-only or negative amortizing if applicable;
 - h. Lender name and contact information;
 - i. Any additional information for unusual attempts (varying amount, date other than date of regularly scheduled payment, different payment channel); and
 - j. Other requirements for electronic short notice.

INFORMATION FURNISHING (1041.16) (Would not apply to PAL or 5 Percent Exemption Loans):

Other than loans issued under the PAL or 5 percent exemption, every covered loan would have to furnish information to an "information system" (one that has been registered with the Bureau

for 120 days or more or provisionally registered with the Bureau for 120 days or more - i.e. credit bureau)

Information to be furnished at consummation:

- Unique identifier of the loan;
- Information to allow the system to identify the specific consumer responsible for the loan;
- Type of loan (under which rule section);
- Consummation date;
- Principal amount borrowed;
- For closed-end: date each payment is due; payment amount; and
- For open-end: credit limit; date each payment is due; minimum amount due each payment.

Information to be furnished while the loan is outstanding:

- Any update to information previously provided;
- Must be updated within a reasonable period of the event that causes the information previously furnished to be out of date.

Information to be furnished when loan ceases to be an outstanding loan:

- Must be furnished no later than the date the loan ceases to be an outstanding loan or as close in time as feasible to the date the loan ceases to be an outstanding loan;
- Date the loan ceased to be outstanding;
- For short-term loans: Whether all amounts owed in connection with the loan were paid in full, including amount financed and charges included in All-In APR

Compliance Program (1041.18) (Would apply to all loans)

- Must have written policies and procedures reasonably designed to ensure compliance with the rule;
- Must be appropriate to the size and complexity of the lender and the nature and scope of the covered loan lending activities of the lender and its affiliates.

Record Retention (1041.18) (Would apply to all loans)

- Retained for 36 months after the date the loan ceases to be an outstanding loan;
- Must retain the following:
 1. Loan agreement;
 2. Credit report pulled for the loan;
 3. Verification evidence;
 4. Any written statement obtained from the consumer;
 5. Authorization of additional payment transfer;
 6. Underlying one-time electronic transfer authorization or underlying signature check.

ELECTRONIC RECORDS IN TABULAR FORMAT:

- Covered short-term loans (PAL exemption loans are excluded):
 1. Projection made by lender of the amount and timing of net income;
 2. Projections made by lender of the consumer's major financial obligations;
 3. Calculated residual income.

- Covered longer-term loans (5% exemption loans are excluded)
 1. Projection made by lender of the amount and timing of net income;
 2. Projections made by lender of amounts and timing of major financial obligations;
 3. Calculated residual income;
 4. Estimated basic living expenses for the consumer
- Whether a non-covered bridge loan was outstanding in the preceding 30 days
- Other record requirements for those who qualify for an exception to or overcome a presumption of unaffordability for a covered loan (extensive)

- Electronic records in tabular format for Loan Type and Terms (all loans):
 1. All the Information Furnishing Information (PAL and 5 percent excluded) (See Above for Information Furnishing data under 1041.16);
 2. Under what section the loan is made (*i.e.* 1041.5, .7, .9, .11, or .12);
 3. Leveraged payment mechanism obtained by the lender;
 4. Whether the lender obtained vehicle security from the consumer;
 5. For loans under 1041.5 or 1041.7, the loan number in loan sequence.

- Electronic Records in tabular format for Payment History and Loan Performance (all loans)
 1. History of payments received and attempted payment transfers;
 2. Date of receipt of payment or attempted payment transfer;
 3. Amount of payment due;
 4. Amount of attempted payment transfer; and
 5. Amount of payment received or transferred.
 6. Payment channel used for attempted payment transfer
 7. If transfer was subject to a prohibition, whether the authorization to initiate a payment was obtained;
 8. If a full payment, including the amount financed was not received or transferred, the maximum number of days up to 180 days any full payment was past due;
 9. For 5 percent delinquency loans, whether the loan was charged off;
 10. For a loan with auto title, whether repossession was initiated;
 11. Date of last or final payment received; and
 12. Information from Information Furnishing (See Above).

Evasion Provisions (1041.19) (applies to all loans):

Intentionally structuring products to evade compliance with the Rule is prohibited.

REGISTERED INFORMATION SYSTEMS (1041.17):

An entity may register to be an information system to furnish information to the CFPB as required under the rule. Likely this will be the credit bureaus or other reporting agencies. There are requirements to become a Registered Information System as follows:

- Receiving Capability;
- Reporting Capability;
- Performance;
- Federal Consumer Financial Law Compliance Program;
- Independent assessment of Compliance Program;
- IT Security Program;
- Independent Assessment of IT Security Program;
- Agree to be subject to CFPB's supervisory authority;
- Registration of IT systems and approval by CFPB; and
- Registration with CFPB.

What are some of the issues on which the CFPB should receive feedback?

- Does this rule impact your ability to provide consumer friendly short-term and small dollar loans?
- Are the underwriting standards in line with how credit unions are currently underwriting small dollar loans?
- Are there elements of the proposed "full-payment" or ability to repay test that you believe are unnecessary for credit unions? Or, too onerous to comply with?
- Do you have concerns that the NCUA PAL program has new and additional requirements?
- Will these new requirements impact your participation in this program?
- Do you believe you could offer a loan that fits into the portfolio approach (less than 5 percent default rate) exemption?
- Do you think the conditions associated with the exemptions are reasonable for a credit union to comply with?
- Do you offer any loans under 45 days that could be impacted by the shorter-term loan requirements?
- Do you have concerns that an all-in APR calculation of a refinanced auto loan could sweep your loans into this rule if they are above 36 percent?
- Do you think this could be problematic for consumers if it becomes harder to refinance auto loans?
- What are some of the consumer benefits of refinancing auto loans, and are there consumer benefits to the products associated with them (that presumably would be included in the all-in APR)?
- Are there key differences the CFPB should be considering in the way depository institutions offer small dollar loans, compared to nonbanks?
- For example, if you are transferring payments, do you charge fees for this?

- Do you have concerns with the enhanced payment transfer/collection requirements? Do you think these are necessary for first-party creditors?
- Is it reasonable to require a lender to provide three business days' notice before each attempt to withdraw payment?
- Do you have concerns about the impact on a consumer's credit score, or increased costs for the credit union associated with requirements to pull credit reports regularly on borrowers?
- Do you have any concerns about record retention requirements?
- Do you think the CFPB has attempted to set a *de facto* 36 percent rate cap?
- How costly will it be to comply with the tracking and reporting requirements? Will your core systems need to be modified to track for the newly required tracking fields?
- Will you have the ability to provide the required loan data tracking information in a tabular format?
- Will 15 months be sufficient time to comply with the new rule?
- Would this proposed rule affect the availability of credit to consumers?
- Would you be less likely to consider new products or ways to innovate in the small dollar loan market as a result of this proposed rule?
- Are there any parts of this proposed rule that you believe would be effective in curtailing predatory lending? Should these parts be tailored to focus only on predatory lenders?

RFI FOR OTHER PRODUCTS

In conjunction with this rulemaking, the CFPB also is seeking information about other potentially high-risk loan products and practices that are not specifically covered by the proposed rule. The Request for Information (RFI) is focused on:

- Concerns about risky products not covered
- Concerns about risky practices not covered

Comments for this RFI must be received on or before October 14, 2016.

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