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Bureau of Consumer Financial Protection
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Statement on Supervisory and Enforcement Practices Regarding Certain Large Loans Under the Regulations for Payday, Vehicle Title, and Certain High-Cost Installment Loans

In 2017, the Bureau issued a final rule (Rule) establishing consumer-protection regulations for payday loans, vehicle title loans, and certain high-cost installment loans.¹ As issued, the Rule had two primary parts – the “Mandatory Underwriting Provisions” and the “Payment Provisions.” On July 7, 2020, the Bureau amended the Rule by revoking the Mandatory Underwriting Provisions. The Bureau has not amended the Payment Provisions of the Rule, which establish certain requirements and limitations with respect to attempts to withdraw payments from consumers’ checking or other accounts, and related recordkeeping requirements.² As of the release of this Statement, the Rule, including the Payment Provisions, has been stayed by a federal district court.³

The Bureau has also indicated that it intends to continue to monitor and assess the efficacy and effects of the Payment Provisions, including the scope of those provisions, and to examine them

¹ Payday, Vehicle Title, and Certain High-Cost Installment Loans, 82 Fed. Reg. 54472, 82 FR 54472 (Nov. 17, 2017).

² 12 CFR 1041.7 through 1041.9, and portions of 1041.12.

³ A legal challenge to the Rule was filed on April 9, 2018 and is pending in the United States District Court for the Western District of Texas. *Cnty. Fin. Serv. Ass’n of Am. v. Consumer Fin. Prot. Bureau*, No. 1:18-cv-295 (W.D. Tex.). On November 6, 2018, the Court issued an order staying the August 19, 2019 compliance date of the rule pending further order of the Court. *See id.*, ECF No. 53. The litigation is currently stayed. *See id.*, ECF No. 29.

further at a later date.⁴ This Statement addresses the Bureau’s intentions and priorities regarding supervision and enforcement of certain aspects of the Payment Provisions of the Rule with respect to certain large loans.

The Payment Provisions of the Rule generally apply with respect to “payment transfers”⁵ that lenders initiate from consumers’ accounts to facilitate the consumers’ covered loan payments. Under the Payment Provisions of the Rule, a lender must provide certain notices to consumers before initiating payment transfers. For example, a lender must not initiate payment transfers from a consumer’s account with respect to a covered loan⁶ after two consecutive failed attempts unless the lender obtains a new authorization from the consumer.⁷ Additionally, lenders must provide certain notices to consumers before initiating payment transfers from consumers’ accounts.⁸

The Bureau has heard from industry stakeholders that there is uncertainty regarding how to comply with the Payment Provisions for certain large loans that are exempt from coverage under Regulation Z. The Rule incorporates aspects of several provisions from Regulation Z, including Regulation Z’s requirement that creditors must furnish periodic statements for certain types of credit.⁹ For example, a lender must provide an unusual payment withdrawal notice before initiating an unusual payment withdrawal – such as a withdrawal of “varying amount” – from the consumer’s account.¹⁰ For open-end credit,¹¹ a disclosure of “varying amount” is “required [under the Rule] only if the amount deviates from the scheduled minimum payment due as disclosed in the periodic statement required under Regulation Z, 12 CFR 1026.7(b).”¹²

⁴ See Payday, Vehicle Title, and Certain High-Cost Installment Loans, 84 Fed. Reg. 4252, 4253 (Feb. 14, 2019).

⁵ See generally 12 C.F.R. Part 1041 Subpart C.

⁶ A “covered loan” is defined, subject to certain exclusions, as “closed-end or open-end credit that is extended to a consumer primarily for personal, family, or household purposes.” 12 C.F.R. § 1041.3(b)(2).

⁷ 12 CFR 1041.8(c)(4).

⁸ See generally 12 C.F.R. 1041.9.

⁹ 12 C.F.R. § 1026.7(b).

¹⁰ 12 C.F.R. § 1041.9(b)(1) and (3).

¹¹ 12 C.F.R. § 1026.2(a)(20).

¹² 12 C.F.R. § 1041.9(b)(3)(ii)(C)(i)(ii).

Regulation Z exempts certain large loans. In particular, Regulation Z exempts certain consumer loans that are above a threshold amount, adjusted annually.¹³ In 2019, the threshold was adjusted to \$58,300, effective January 1, 2020.¹⁴ The Rule does not specifically address how its provisions apply to loans which are exempt from Regulation Z. The Rule does not specifically address, for example, how a disclosure of “varying amount” for open-end credit would be made for these large loans, given that a periodic statement is not required by Regulation Z.

In promulgating the 2017 Final Rule, the Bureau did not receive comments about and did not specifically consider how the Payment Provisions apply to these larger loans. The Bureau is continuing to monitor and assess the effects of the Payment Provisions, including their scope, and the agency may determine whether further action is needed in light of what it learns. While the Bureau is engaged in these activities, the Bureau does not intend to take supervisory or enforcement action under the Payment Provisions with regard to covered loans that exceed the Regulation Z coverage threshold.¹⁵

Implementation resources are available at <http://www.consumerfinance.gov/policy-compliance/guidance/payday-lending-rule/>.

¹³ 12 C.F.R. § 1026.3(b) and Comment 3(b)(1)(i), as required by the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, Public Law 111-203, section 1100E, 124 Stat. 1376, 2111 (2010).

¹⁴ 84 FR 58020, 58025.

¹⁵ The Bureau notes that it does not have exclusive authority to enforce the Rule. *See* 12 U.S.C. §§ 5516(d), 5552(a).