

CFPB Sets June 2022 Compliance Date for Payday Rule

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Nearly four years after the Consumer Financial Protection Bureau (CFPB) issued its final November 2017 “Payday, Vehicle Title, and Certain High-Cost Installment Loans” Rule (Payday Rule), we at long last have a compliance date — June 2022.

What Is the Payday Rule?

The Payday Rule, as initially finalized, had two primary components. First, for most short- and long-term loans with balloon payments, the Payday Rule made it an unfair and abusive practice for a lender to make such loans without performing an ability-to-repay analysis (Mandatory Underwriting Provisions). Second, for the same set of loans and for longer-term loans with APRs that exceed 36% and repaid directly from the consumer’s account, the Payday Rule made it an unfair and abusive practice for a lender to attempt to withdraw funds from the account after two consecutive unsuccessful attempts without new and specific consumer authorization (Payments Provisions). These attempts also could include debit card payments, even though debit card payments do not carry the possibility of NSF fees.

What Happened to the Compliance Date?

In 2018, a Texas federal district court stayed the initial August 19, 2019 compliance date of the Mandatory Underwriting Provisions and the Payments Provisions pending litigation. In 2019, the CFPB issued a final rule, delaying the effective date of the Payments Provisions to November 2020. Notably, the CFPB did not delay the effective date for the Mandatory Underwriting Provisions, and in 2020, the CFPB issued a final rule revoking the Mandatory Underwriting Provisions. So, entering summer 2021, only the Payments Provisions of the Payday Rule survived, with their compliance date stayed, pending litigation.

What Litigation?

In April 2018, the Community Financial Services Association of America and the Consumer Service Alliance of Texas (collectively, the Trade Groups) sued the CFPB in the U.S. District Court for the Western District of Texas, challenging the Payday Rule. In its initial suit in April 2018, the Trade Groups, among other things, alleged that the Payday Rule exceeded the CFPB’s statutory authority and challenged the constitutionality of the CFPB’s

structure. After the Supreme Court's June 2020 ruling in *Seila Law v. CFPB* and the CFPB's subsequent ratification of the Payments Provisions, the Trade Groups amended its complaint to challenge the CFPB's ratification.

How Did the Litigation Conclude?

On August 31, 2021, the district court granted the CFPB's motion for summary judgment. The district court found that the Payment Provisions were not void simply because they were promulgated by an unconstitutionally structured CFPB. The district court also found that the CFPB did not overstep its authority in developing the Payday Rule's provisions and that the Payday Rule is not arbitrary and capricious.

Though the district court granted the CFPB's motion for summary judgment, it did extend an olive branch of sorts to industry. The CFPB had advocated for a compliance date of 30 days following resolution of the suit. The Trade Groups, on the other hand, advocated for 445 days (the original 21-month compliance period) or, at a minimum, 286 days (the number of days remaining in the compliance period when the compliance date was stayed). The district court sided with the Trade Groups and ordered the compliance date to be 286 days after final judgment. This adds up to a new compliance date of June 13, 2022. The Trade Groups have appealed the district court's ruling, and the agencies filed a separate motion to stay the 286-day compliance period until the appeal is resolved.

What Does It All Mean?

Well, in very simple terms, it means that the Payments Provisions are coming in June 2022. We caution that despite the name, the Payday Rule not only applies to traditional payday loans, but also the following loans:

- Closed-end, single disbursement loans to be substantially repaid within 45 days;
- Closed-end, multiple advance loans, where any advance is to be substantially repaid within 45 days;
- Closed-end, single disbursement loans with a balloon payment of more than twice any other installment amount;
- Closed-end, multiple advance loans structured such that paying the required minimum payments may not fully amortize the outstanding balance by a specified date or time, and the amount of the final payment to repay the outstanding balance at such time could be more than twice the amount of other minimum payments; and
- Loans with a 36% APR (closed-end and open-end) **and** a *leveraged payment mechanism*.
 - A lender or service provider obtains a *leveraged payment mechanism* if it has the right to initiate a transfer of money, through any means, from a consumer's account to satisfy an obligation on a loan.

This means that all types of lenders offering any of the above-listed products need to be ready for the Payment Provisions in June 2022.

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