



CRL

Center for Responsible Lending

Proposed Repeal of Payday Loan Rule: Overview & Initial Reaction

February 14, 2019

The following provides an overview of Consumer Financial Protection Bureau (CFPB) Director Kathy Kraninger's proposal to repeal the CFPB's 2017 rule aimed at stopping the debt trap of payday and car title loans. This document includes the Center for Responsible Lending's (CRL's) initial analysis of the purported rationale for the repeal. As we further consider the proposal, our reactions may evolve. Undeniably, the proposal would result in a significant reversal of key consumer protections for the benefit of lenders who charge interest rates of more than 300% APR.

I. Overview

Current CFPB Director Kraninger has proposed to repeal the heart of the agency's 2017 payday and car title loan rule, which generally requires that lenders determine a borrower's ability to repay a loan before making it. This rule was the result of [over five years](#) of extensive CFPB research, analysis, and stakeholder input. For years, civil rights organizations, consumer advocates, faith groups, working families, and others across the country pushed for a rule to protect their communities from the destructive payday lending debt trap. This rule has represented a step forward in protecting the millions of people lenders intentionally trap in 300-plus percent interest loans. Compliance with the rule was to begin in August 2019.

Since leadership of CFPB shifted in late 2017 to Mick Mulvaney, its coziness with the payday lenders has been clear, and it has been determined to undo this rule. First, Mulvaney urged Congress to repeal the rule, which Congress did not do. Then, the CFPB responded to a lawsuit by payday lenders by joining with them in efforts to try to delay the rule indefinitely. Finally, under Mulvaney's successor Kathy Kraninger, CFPB has proposed to repeal key protections against abusive payday loans, without any new evidence and based on purported rationales that are wholly insufficient.

II. CRL Analysis of the Purported Rationale of the Repeal

A. Unwarranted attack on the factual findings of the payday rule.

1. CFPB now attacks the factual basis for the payday rule by claiming that the evidence relied on was insufficiently robust and reliable to support the finding that making short-term payday and car title loans without an ability-to-repay determination is "unfair" or "abusive." In particular, CFPB singles out two studies as inadequate to support its earlier finding that consumers cannot reasonably avoid harm or understand the harm and protect their own interests. CFPB exaggerates the importance of these two studies to the payday rule, while ignoring the significant amount of additional evidence and research that overwhelmingly supported the evidentiary basis for findings of "unfair" and "abusive." At the same time, CFPB does not offer new evidence to support its proposed repeal.
2. Without adequate explanation, CFPB says it cannot develop, in a "timely and cost-effective manner," evidence to further investigate whether lending without ability-to-repay is "unfair" or "abusive." Thus, it attacks the rule for insufficient evidence but shows no interest in conducting further research itself.
3. CFPB does not dispute that the cycle of debt caused by payday loans results in substantial harm.

B. Unwarranted attack on the rule's application of the "unfair" and "abusive" legal standards.

1. CFPB says that the payday rule applies the "unfair" and "abusive" standards in ways it should not have.

- “Unfair” standard: CFPB’s new proposed interpretation of “unfairness” could dramatically limit the circumstances under which a harmful practice could be determined to be “not reasonably avoidable” by the consumer or not outweighed by “countervailing benefits to consumers and competition.” As a result, far fewer harmful practices could be deemed “unfair.”
 - “Abusive” standard: CFPB’s new proposed interpretation would weaken this standard significantly, minimizing or eliminating its distinctness from the unfairness standard.
2. CFPB’s efforts to undermine these legal standards—based on undue overemphasis on the role of “disclosure” and “consumer choice”—would be a gift to predatory lenders and unscrupulous actors across the board, even beyond payday lending.

C. Unsubstantiated assertion that “competition” from bank-issued payday/high-cost loans will help consumers.

1. CFPB has said that it encourages competition for payday lenders from banks and has encouraged banking regulators to facilitate that. But there is no evidence that high-cost loans from banks will compete with payday lenders rather than pile on unaffordable, high-cost debt.
2. The federal banking regulators (OCC, FDIC, Federal Reserve, and National Credit Union Administration) all have a critical role to play in keeping banks out of predatory payday lending.
3. The OCC has rescinded its “deposit advance” guidance that had advised banks to determine customers’ ability to repay payday loans by banks, and it has applauded the CFPB’s recent proposed repeal of the payday rule. It has also permitted high-cost installment loans—e.g., U.S. Bank “Simple Loan” at 70% APR.
4. The FDIC and National Credit Union Administration are also considering making it easier for banks/credit unions to make high-cost payday and installment loans.
5. An environment of federal deregulation of high-cost lending prioritizes the interests of predatory payday lenders and banks over those of financially distressed consumers; risks an erosion of the norms of responsible lending and banking; and fuels a regulatory race to the bottom at the federal and state level.

III. Payment Protections. The Bureau retains the payment protections of the rule but signals that it may reconsider them with a future Request for Information or Advanced Notice of Proposed Rulemaking. Those protections require payday and other high-cost lenders, after two consecutive failed payment attempts, to obtain the consumer’s authorization before debiting the account again, as well as requiring notice of upcoming withdrawals.

IV. Proposed Delay of Compliance Date. While its repeal proposal is pending, CFPB proposes to delay the compliance date for the rule from Aug. 19, 2019 to Nov. 19, 2020 (15 months). CFPB says it needs to have an orderly process for reconsideration of the substantive rule; avoid compliance costs for lenders if the rule is ultimately repealed; and that lenders have “unanticipated” implementation challenges. In reality, lenders will have had nearly two years to comply with the rule, and their unaffordable loans are causing harm to consumers and communities, draining \$8 billion annually from low-income consumers in the form of payday and car title loan fees. Compliance with common-sense lending principles should not be delayed.

****Comments due: March 18, 2019 (proposed compliance date delay) & May 15, 2019 (proposed repeal of rule)****

For more information, contact:

Rebecca Borné, Senior Policy Counsel, RebeccaBo@responsiblelending.org, 202.349.1868

Diane Standaert, Executive V.P. and Director of State Policy, DianeS@responsiblelending.org, 919.313.8550

To arrange an interview, contact:

Matthew Kravitz, Communications Manager, Matthew.Kravitz@responsiblelending.org, 202.349.1859