Overview: CFPB's Repeal of its 2017 Ability-to-Repay Standard for Payday & Car Title Loans

Center for Responsible Lending

The Consumer Financial Protection Bureau (CFPB), under Director Kathy Kraninger, gutted a 2017 CFPB rule aimed at stopping the debt trap caused by payday and car title loans. This action will have a harmful impact on American consumers and their families, including a disproportionate number of people of color.

Arrival to the 2020 Final Rule

- Prior to the 2017 Rule, the CFPB conducted more than five years of research on the payday and car title loan market and held field hearings with consumers and experts. This extensive work contributed to the creation of the 2017 Final Rule that would have save borrowers billions of dollars annually.
- Since leadership of CFPB shifted in late 2017 from Richard Cordray to Mick Mulvaney, the agency's politically appointed leadership has signaled a determination to undo the 2017 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 delay the Rule indefinitely. Finally, under Mulvaney's successor Kathy Kraninger, the CFPB repealed the Rule's central protection against abusive payday loans, without evidence to justify this action.
- On July 7, 2020, CFPB Director Kraninger issued a final rule that guts the agency's 2017 payday and car title loan rule. The heart of the 2017 Rule was the requirement that lenders generally determine a borrower's ability to repay a payday or car title loan before making that loan.
- On July 22, 2020, Kraninger's new, hollow rule was recorded in the Federal Register, marking it as law in 90 days following that publication. Because of prior agency action, the 2017 Rule's core ability-to-repay provision was never permitted to go into effect.

What did the 2020 Final Rule Do?

1. **Eliminated the foundational Ability-to-Repay provision of the 2017 Rule.** This provision of the 2017 Rule would have established specific underwriting requirements for short-term payday and car title loans, as well as longer term balloon payment payday and car title loans. The 2017 Final Rule would have required a lender to determine whether a borrower could repay the loan while still meeting basic living expenses and major financial obligations. With the removal of this piece of the 2017 Rule, the CFPB has allowed payday lenders to continue to financially drain consumers across America to the tune of $8 billion dollars annually in fees. Now, at a time when so many people are financially vulnerable due to the impacts of the COVID-19 economic downturn, the CFPB has chosen to turn its back on protecting American consumers.

2. **Dismissed research showing the harms of payday lending yet failed to conduct its own research.** The 2017 Rule was the result of over five years of extensive CFPB research, analysis, and stakeholder input. In fact, the CFPB found that more than 80% of payday loans are re-borrowed within two weeks 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, recognizing its detrimental impacts to low-income, low-wealth individuals and communities of color. These communities consistently have a disproportionate number of payday lenders as compared to predominantly white and/or higher-income areas.

The CFPB does not dispute that the cycle of debt caused by payday loans results in substantial harm, yet without adequate explanation, in its proposed repeal of the ability-to-repay provision, the CFPB said 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, without basis it attacks the 2017 Rule for insufficient evidence but does not conduct further research itself.

3. **Retained Payment Protections.** The CFPB retained the payment protections provision of the 2017 Rule, which requires payday and other high-cost lenders, after two consecutive failed attempts to collect payment from a bank account due to insufficient funds, to obtain the consumer's authorization before debiting the account again, as well as requiring notice of upcoming withdrawals. While this is helpful, it does very little to protect consumers from the well-documented cycle of payday lending debt.

4. **Ignored the consensus among the American public.** Kraninger's move to gut the 2017 Rule goes against an overwhelming bipartisan consensus among the American public for reining in payday lenders. Polling shows that more than 75% of Republican, independent, and Democratic voters support the 2017 Rule. Also, in recent years, strong majorities of voters in South Dakota, Colorado, Montana, Ohio, and Arizona have voted to go a step further by capping annual interest rates at 36% or less. A 36% interest rate cap has the support of more than two-thirds of voters nationally.

How Does the 2020 Rule Put Consumers at Risk?

1. **Beyond allowing payday lenders to keep consumers trapped in debt cycles, the CFPB did so using unjustified rationales about business "competition" and "access to credit".** Real world experience shows payday lenders do not compete amongst themselves based on price, with the typical payday loan coming with an annual interest rate around 400%. The CFPB said that it encourages competition for payday lenders from banks, and banking regulators (OCC, FDIC, Federal Reserve, and National Credit Union Administration) have recently taken unfortunate steps that could encourage payday or other higher-cost loans from banks. But there is no evidence that high-cost loans from banks will compete with payday lenders, rather than pile on unaffordable high-cost debt. Furthermore, the record shows that payday loans provide access to crippling debt – **not** access to credit in a beneficial, sustainable way.

2. **CFPB political appointees put the interests of predatory lenders ahead of financially distressed consumers.** The federal banking regulators have a critical role to play in keeping banks out of predatory, high-cost lending. In addition to replacing very strong small dollar loan guidelines with far weaker ones, the agencies also opened the door for growth in rent-a-bank schemes through recently finalized rules and a proposed rule to gut the longstanding "True Lender" doctrine.

Consumers need adequate protection against high-cost predatory lending.

The CFPB should withdraw the 2020 payday final Rule and Congress should move to enact a 36% rate cap. Failure to provide these protections will exacerbate the racial wealth gap and further entrench economic injustice.