Consumer Credit and & the Dodd-Frank Act

Prepared by the Office of Legislative Research and General Counsel (June 2015)

Today's Overview

Dodd Frank Act and Consumer Credit
- Consumer Financial Protection Bureau
- Examples of Preemption

Consumer Financial Protection Bureau

- Created in July 2010, by the Dodd-Frank Wall Street Reform and Consumer Protection Act. Formal transition date was July 21, 2011.
- The CFPB was established as an independent bureau within the Federal Reserve System.
- The CFPB does not oversee certain industries such as real estate brokers or agents unless they participate in specific financial activities.

cfpb Consumer Financial Protection Bureau

Sources: A Brief Overview of Actions Taken by the CFPB in Its First Year, Congressional Research Service (8/29/2012); http://www.consumerfinance.gov/the-bureau/creatingthebureau/ (6/2/2015); The CFPB strategic plan, budget, and performance plan and report (2/2015); 12 USC 5517

Consumer Financial Protection Bureau

The Dodd-Frank Act consolidated many of the consumer financial protection authorities previously shared by other federal agencies into the CFPB and provided the CFPB with additional authorities to:

- Conduct rulemaking, supervision, and enforcement with respect to the federal consumer financial laws;
- Handle consumer complaints and inquiries;
- Promote financial education;
- Research consumer behavior; and
- Monitor financial markets for risks to consumer

cfpb Consumer Financial Protection Bureau

Sources: Consumer Financial Protection Bureau Strategic Plan FY 2013 – FY 2017

Consumer Financial Protection Bureau

- Four Goals of CFPB:
  - Prevent financial harm to consumers while promoting good practices that benefit them
  - Empower consumers to live better financial lives
  - Inform the public, policy makers, and the CFPB's own policy making with data-driven analysis of consumer finance markets and consumer behavior
  - Advance the CFPB's performance by maximizing resource productivity and enhancing impact

Sources: Consumer Financial Protection Bureau Strategic Plan FY 2013 – FY 2017

Consumer Financial Protection Bureau

- Six Divisions of CFPB:
  - Consumer Education and Engagement
  - Supervision, Enforcement and Fair Lending
  - Research, Markets and Regulations
  - Legal Division
  - External Affairs
  - Operations

Sources: Consumer Financial Protection Bureau Strategic Plan FY 2013 – FY 2017

Consumer Financial Protection Bureau

"The CFPB's Supervision, Enforcement, and Fair Lending Offices collaborate to conduct supervisory activities at bank and nonbank institutions. The CFPB's supervisory authority includes banks, thrifts, and credit unions with over $10 billion in assets, and their affiliates, as well as certain nonbank consumer financial service providers, such as mortgage lenders, brokers, and servicers; private education lenders; payday lenders; and larger participants of the consumer reporting and debt collection markets. These supervisory activities will foster compliance with Federal consumer financial laws, promote a fair consumer financial marketplace, and prevent unlawful discrimination."

Sources: Consumer Financial Protection Bureau Strategic Plan FY 2013 – FY 2017

Consumer Financial Protection Bureau

- Examples of areas of focus of CFPB:
  - TILA-RESPA Integrated Disclosure Rule – New loan estimate and closing disclosure requirements effective August 1, 2015
  - Short-term and longer-term credit products that are often marketed to financially vulnerable consumers including: payday loans, deposit advance products, vehicle title loans, high-cost installment loans, open-end lines of credit and other loans.
  - Others

cfpb Consumer Financial Protection Bureau

Sources: http://www.consumerfinance.gov/regulatory-implementation/ (June 10, 2015); Factsheet: The CFPB Considers Proposal to End Payday Debt Traps (March 26, 2015)

Federal Preemption

- **May 12, 2011 OCC letter re Dodd-Frank Act:**
  - Eliminates preemption of state law for national bank subsidiaries and affiliates
  - Changes preemption standard under HOLA to conform to those applicable to national banks
  - State consumer financial laws are preempted only if:
    - Application of the state law would have a discriminatory effect on national banks
    - In accordance with *Barnett* the state law prevents or significantly interferes with the exercise of a national banks powers
    - The state law is preempted by a provision of a federal law other than Title LXII of the Revised Statutes
  - Preemption decided on case-by-case basis including a law of another state with substantively equivalent terms
    - When making a determination that a state consumer law has substantially equivalent terms, the OCC is to consult with CFPB
  - Determination requires substantial evidence made on the record
  - Periodic review of preemption determinations
  - Publish list of preemptions
  - Authority of state attorney generals to enforce applicable laws

Sources: OCC, Interpretive Letter No. 1132 (May 12, 2011)

Federal Preemption

Subject of discussion

Know Before You Owe

ON THIS PAGE

For most Americans, buying a home means taking out a mortgage loan. The Dodd-Frank Act requires us to combine the Truth in Lending Act and Real Estate Settlement Procedures Act disclosures. You receive these disclosures shortly after you apply for a mortgage and shortly before you close on the mortgage. We decided to involve the people who will actually use the new forms—consumers, lenders, mortgage brokers, settlement agents—in helping to combine and improve them.

These are the results.

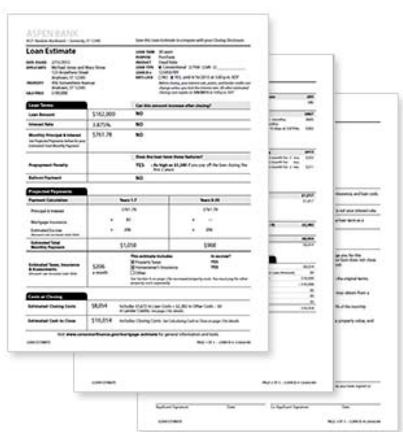
THE NEW DISCLOSURES

Our new disclosures are easier to understand and use than the existing disclosures. In addition, the Loan Estimate you get after you apply for a mortgage and the Closing Disclosure you get before you close are designed to work with each other. Take a look at them side by side to see how they're different.

COMPARE THE DISCLOSURES

The disclosure forms compared above are for common mortgage loan transactions. Here are new disclosures forms for other uses:

»Loan Estimate for a refinance with no seller
»Closing Disclosure for a refinance with no seller
»Closing Disclosure provided to the seller separately
»A blank Loan Estimate
»A blank Closing Disclosure



Our new initial disclosures. Compare them to the existing ones side by side.

WHAT MAKES THE NEW DISCLOSURES BETTER

To be sure the Loan Estimate and the Closing Disclosure are easier to use and understand than the existing forms, we tested them in a quantitative validation study. Participants provided more correct answers about a sample mortgage using the new forms than they did using the current forms.

We've annotated the front page of the new Loan Estimate below with a few examples of some of the differences. On the form itself, click on any of the sections from this list to learn more about how it helps consumers: what it means and/or what we learned about it from testing.

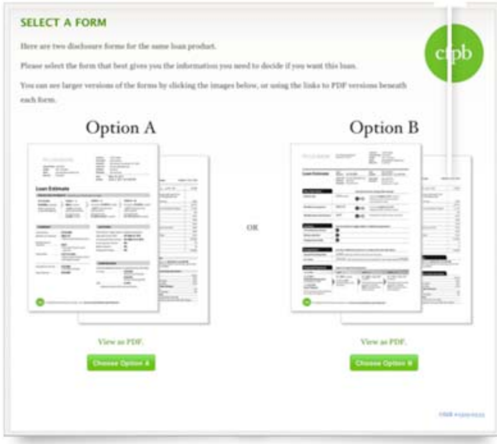
Loan Amount | Interest Rate | Estimated Total Monthly Payment | Estimated Closing Costs | Website URL

Download PDFs of the new disclosures:
Loan Estimate
Closing Disclosure

Find more about the specific changes to Regulations X and Z on our TILA-RESPA rule page. For more about the testing results and methods, see the bottom of this page.

HOW WE DID IT

The Dodd-Frank Act required the CFPB to integrate existing mortgage disclosure forms to improve compliance and help people understand their loans. We started the Know Before You Owe project for mortgage disclosures to get a wide array of feedback as we designed the prototypes for the new forms. Here's a timeline of how the project developed.



The original Know Before You Owe page, May 2011

Know Before You Owe: Mortgages

A look back at our effort to make mortgage disclosures simpler and more effective, with the input of the people who will actually use them.

JULY 21, 2010

The Dodd-Frank Wall Street Reform and Consumer Protection Act is signed into law.

SEE THE FULL TIMELINE

You can also read reports below on the testing and other related subjects.

MORE RESOURCES

The final rule

We issued the final rule on November 20, 2013. See the rule and learn more about what it means for industry.

Learn more about mortgages

»What the disclosures and the rest of the rule mean for consumers
»From our blog: more about how we got here
»Be part of the first group to try out new tools to help consumers shop for mortgages

Reports

»Testing disclosure prototypes before issuing the proposed rule
»Qualitative testing of the new disclosures for a refinancing loan, for both English- and Spanish-speakers
»A quantitative validation study of the new disclosures that are included in the final rule
»A report on our discussions with small businesses

Share

Consumer Financial Protection Bureau

Privacy policy and legal notices
Accessibility
Plain writing
No FEAR Act
FOIA
Whistleblower Act

USA.gov
Office of Inspector General
Ombudsman

Visite nuestro sitio web en español

ESPAÑOL

Contact us | Newsroom | Jobs | Open government

Mar 26 2015

CFPB Considers Proposal to End Payday Debt Traps

Proposal Would Cover Payday Loans, Vehicle Title Loans, and Certain High-Cost Installment and Open-End Loans

WASHINGTON, D.C. — Today the Consumer Financial Protection Bureau (CFPB) announced it is considering proposing rules that would end payday debt traps by requiring lenders to take steps to make sure consumers can repay their loans. The proposals under consideration would also restrict lenders from attempting to collect payment from consumers' bank accounts in ways that tend to rack up excessive fees. The strong consumer protections being considered would apply to payday loans, vehicle title loans, deposit advance products, and certain high-cost installment loans and open-end loans.

"Today we are taking an important step toward ending the debt traps that plague millions of consumers across the country," said CFPB Director Richard Cordray. "Too many short-term and longer-term loans are made based on a lender's ability to collect and not on a borrower's ability to repay. The proposals we are considering would require lenders to take steps to make sure consumers can pay back their loans. These common sense protections are aimed at ensuring that consumers have access to credit that helps, not harms them."

Today, the Bureau is publishing an outline of the proposals under consideration in preparation for convening a Small Business Review Panel to gather feedback from small lenders, which is the next step in the rulemaking process. The proposals under consideration cover both short-term and longer-term credit products that are often marketed heavily to financially vulnerable consumers. The CFPB recognizes consumers' need for affordable credit but is concerned that the practices often associated with these products – such as failure to underwrite for affordable payments, repeatedly rolling over or refinancing loans, holding a security interest in a vehicle as collateral, accessing the consumer's account for repayment, and performing costly withdrawal attempts – can trap consumers in debt. These debt traps also can leave consumers vulnerable to deposit account fees and closures, vehicle repossession, and other financial difficulties.

The proposals under consideration provide two different approaches to eliminating debt traps – prevention and protection. Under the prevention requirements, lenders would have to determine at the outset of each loan that the consumer is not taking on unaffordable debt. Under the protection requirements, lenders would have to comply with various restrictions designed to ensure that consumers can affordably repay their debt. Lenders could choose which set of requirements to follow.

Retrieved 6/16/2015
http://www.consumerfinance.gov/newsroom/cfpb-considers-proposal-to-end-payday-debt-traps/

Ending Debt Traps: Short-Term Loans

The proposals under consideration would cover short-term credit products that require consumers to pay back the loan in full within 45 days, such as payday loans, deposit advance products, certain open-end lines of credit, and some vehicle title loans. Vehicle title loans typically are expensive credit, backed by a security interest in a car. They may be short-term or longer-term and allow the lender to repossess the consumer's vehicle if the consumer defaults.

For consumers living paycheck to paycheck, the short timeframe of these loans can make it difficult to accumulate the necessary funds to pay off the loan principal and fees before the due date. Borrowers who cannot repay are often encouraged to roll over the loan – pay more fees to delay the due date or take out a new loan to replace the old one. The Bureau's research has found that four out of five payday loans are rolled over or renewed within two weeks. For many borrowers, what starts out as a short-term, emergency loan turns into an unaffordable, long-term debt trap.

The proposals under consideration would include two ways that lenders could extend short-term loans without causing borrowers to become trapped in debt. Lenders could either prevent debt traps at the outset of each loan, or they could protect against debt traps throughout the lending process. Specifically, all lenders making covered short-term loans would have to adhere to one of the following sets of requirements:

- **Debt trap prevention requirements:** This option would eliminate debt traps by requiring lenders to determine at the outset that the consumer can repay the loan when due – including interest, principal, and fees for add-on products – without defaulting or re-borrowing. For each loan, lenders would have to verify the consumer's income, major financial obligations, and borrowing history to determine whether there is enough money left to repay the loan after covering other major financial obligations and living expenses. Lenders would generally have to adhere to a 60-day cooling off period between loans. To make a second or third loan within the two-month window, lenders would have to document that the borrower's financial circumstances have improved enough to repay a new loan without re-borrowing. After three loans in a row, all lenders would be prohibited altogether from making a new short-term loan to the borrower for 60 days.
- **Debt trap protection requirements:** These requirements would eliminate debt traps by requiring lenders to provide affordable repayment options and by limiting the number of loans a borrower could take out in a row and over the course of a year. Lenders could not keep consumers in debt on short-term loans for more than 90 days in a 12-month period. Rollovers would be capped at two – three loans total – followed by a mandatory 60-day cooling-off period. The second and third consecutive loans would be permitted only if the lender offers an affordable way out of debt. The Bureau is considering two options for this: either by requiring that the principal decrease with each loan, so that it is repaid after the third loan, or by requiring that the lender provide a no-cost "off-ramp" after the third loan, to allow the consumer to pay the loan off over time without further fees. For each loan under these requirements, the debt could not exceed $500, carry more than one finance charge, or require the consumer's vehicle as collateral.

Ending Debt Traps: Longer-Term Loans

The proposals under consideration would also apply to high-cost, longer-term credit products of more than 45 days where the lender collects payments through access to the consumer's deposit account or paycheck, or holds a security interest in the consumer's vehicle, and the all-in (including add-on charges) annual percentage rate is more than 36 percent. This includes longer-term vehicle title loans and certain installment and open-end loans.

Installment loans typically stretch longer than a two-week or one-month payday loan, have loan amounts ranging from a hundred dollars to several thousand dollars, and may impose very high interest rates. The principal, interest, and other finance charges on these loans are typically repaid in installments. Some have balloon payments. The proposal would also apply to high-cost open-end lines of credit with account access or a security interest in a vehicle.

When lenders have the ability to access the consumer's account or have a security interest in a vehicle, consumers may lose control over their financial choices and these longer-term loans can turn into debt traps. The CFPB's proposals under consideration for longer-term loans would eliminate debt traps by requiring that lenders take steps to determine that borrowers can repay. Just as with short-term loans, lenders would have two alternative ways to extend credit and meet this requirement – prevent debt traps at the outset or protect against debt traps throughout the lending process. Specifically, lenders making covered longer-term loans would have to adhere to one of the following sets of requirements:

- **Debt trap prevention requirements:** Similar to short-term loans, this option would eliminate debt traps by requiring lenders to determine at the outset that the consumer can repay the loan when due – including interest, principal, and fees for add-on products – without defaulting or re-borrowing. For each loan, lenders would have to verify the consumer's income, major financial obligations, and borrowing history to determine whether there is enough money left to repay the loan after covering other major financial obligations and living expenses. Lenders would be required to determine if a consumer can repay the loan each time the consumer seeks to refinance or re-borrow. If the borrower is having difficulty affording the current loan, the lender would be prohibited from refinancing into another loan with similar terms without documentation that the consumer's financial circumstances have improved enough to be able to repay the loan.
- **Debt trap protection requirements:** The Bureau is considering two specific approaches to the debt trap protection requirements for longer-term products. Under either approach, loans would have a minimum duration of 45 days and a maximum duration of six months. With the first, the proposal being considered would require lenders to provide generally the same protections offered under the National Credit Union Administration program for "payday alternative loans." These loans have a 28 percent interest rate cap and an application fee of no more than $20. With the second, the lender could make a longer-term loan provided the amount the consumer is required to repay each month is no more than 5 percent of the consumer's gross monthly income; the lender couldn't make more than two of these loans within a 12-month period.

Restricting Harmful Payment Collection Practices

Lenders of both short-term and longer-term loans often obtain access to a consumer's checking, savings, or prepaid account to collect payment through a variety of methods, including post-dated checks, debit authorizations, or remotely created checks. However, this can lead to unanticipated withdrawals or debits and transaction fees. When lenders attempt to get repayment through repeated, unsuccessful withdrawal attempts, consumers are charged insufficient funds fees by their depository institution and returned payment fees by the lender, and may even face account closure. These fees add to the spiraling costs of falling behind on these loan products and make it even harder for a consumer to climb out of debt. To mitigate these problems, the Bureau is considering proposals that would:

- **Require borrower notification before accessing deposit accounts:** Under the proposals being considered, lenders would be required to provide consumers with three business days advance notice before submitting a transaction to the consumer's bank, credit union, or prepaid account for payment. The notice would include key information about the forthcoming payment collection attempt. This requirement would apply to payment collection attempts through any method and would help consumers better manage their accounts and overall finances.
- **Limit unsuccessful withdrawal attempts that lead to excessive deposit account fees:** Under the proposals being considered, if two consecutive attempts to collect money from the consumer's account were unsuccessful, the lender would not be allowed to make any further attempts to collect from the account unless the consumer provided a new authorization. This would limit fees incurred by multiple transactions that exacerbate a consumer's financial woes.

A factsheet summarizing the proposals under consideration is available at:
http://files.consumerfinance.gov/f/201503_cfpb-proposal-under-consideration.pdf

A factsheet summarizing the Small Business Review Panel process is available at:
http://files.consumerfinance.gov/f/201503_cfpb_factsheet-small-business-review-panel-process.pdf

An outline of the proposals under consideration will be available at:
http://files.consumerfinance.gov/f/201503_cfpb_outline-of-the-proposals-from-small-business-review-panel.pdf

A list of questions on which the Bureau will seek input from the small business representatives providing feedback to the Small Business Review Panel will be available at:
http://files.consumerfinance.gov/f/201503_cfpb_list-of-questions-from-small-business-review-panel.pdf

This is the first public step in the CFPB's efforts to reform the markets for these products. In addition to consulting with the Small Business Review Panel, the Bureau will continue to seek input from a wide range of stakeholders before continuing with the process of a rulemaking.

Once the Bureau issues its proposed regulations, the public will be invited to submit written comments which will be carefully considered before final regulations are issued.

###

The Consumer Financial Protection Bureau is a 21st century agency that helps consumer finance markets work by making rules more effective, by consistently and fairly enforcing those rules, and by empowering consumers to take more control over their economic lives. For more information, visit consumerfinance.gov.