

Will the CFPB's New Short-Term Loan Rules Limit Texans' Access to Consumer Credit?

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After much speculation and anticipation by consumer lenders, the Consumer Financial Protection Bureau (CFPB) released its final rules regulating short-term loans and some longer-term loans on October 5, 2017. These new rules address what the CFPB believes are unfair and abusive acts and practices in connection with certain types of consumer loan transactions.

The rules are relatively clear in their application to certain types of consumer credit, including payday loans, installment loans, open-end credit, and title loans. The rules have also specifically excluded other types of consumer credit, including financing offered to purchase a motor vehicle, mortgages, credit cards, and pawn loans. However, many consumer lenders in Texas are asking how the new rules will affect loans facilitated by credit access businesses (CABs) (which, in Texas, are defined as a subset of credit service organizations).

Many lenders in Texas offer loans to consumers at an annual interest rate up to 10%, but these lenders rely on third-party service providers (i.e., the CABs) to facilitate and provide a guaranty on these consumer loans. In return for facilitating and guaranteeing these loans, the CABs charge the borrowers a service fee. Because this service fee is generally deemed a cost of credit, the resulting federal APR disclosures are usually between 100%-400%. With the release of the new CFPB rules, these lenders and CABs are speculating how the rules will impact CAB transactions.

The new rules require stringent credit checks on each borrower, implement limits on consecutive loans, add cooling off periods, implement limitations and notices regarding loan repayment mechanisms, and require reporting loan activity to various "registered information systems" that become certified by the CFPB. The rules' various requirements and exceptions are all based on the type and duration of the covered loans, and add a layer of complexity. Loans with a term of 45 days or less and longer-term loans with balloon payments are subject to the most stringent requirements under the new rules, while longer-term installment loans (without balloon payments) are affected much less by the new rules.

The loan transactions facilitated by CABs will be similarly affected by the new rules. If these transactions have a term of 45 days or less, or have a payment that is twice as large as the other payments, called a "balloon," then the lenders will be required to

perform the new credit checks on borrowers and implement the many other requirements the CFPB has mandated. This would include reporting confidential information about Texans and their transactions to the registered information systems. But, if these transactions have a term greater than 45 days, and no balloon payment, then the parties would be freed from the new credit check requirements, the consecutive loan restrictions, and reporting confidential information to the registered information systems. These longer-term loans would generally still be subject to certain limitations and notices regarding loan repayment mechanisms.

The effects of these new rules will be far-reaching and damaging to many small-dollar consumer lenders, including lenders who write loans facilitated and guaranteed by CABs. But, we anticipate that consumers should still have some options in Texas when looking for a loan, although they may be forced into loans with much longer terms than in the past.

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