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## IT SAYS “PAYDAY” BUT THE CFPB’S NEW RULE APPLIES TO MORE THAN JUST HIGH-COST LOANS

Some lenders see “payday” or “high-cost loans” and assume a regulation does not apply to them. However, broadly-worded rules beget unintended consequences or reflect nefarious rulemaking, depending on your perspective.

The new Payday, Vehicle Title and High-Cost Loans rule issued by the Consumer Financial Protection Bureau (“CFPB”) applies to “covered short-term loans,” “covered longer-term balloon payment loans” and “longer term loans.” It is tempting to make assumptions regarding the scope of covered loans based on these descriptors. For example, it is reasonable to think that “covered longer-term balloon-payment loans” (“LTBP Loans”) should mean balloon payment loans, as traditionally defined. What if we told you that certain deferred interest products could be LTBP Loans?

The rule defines LTBP Loans to include single advance and multiple advance loans where a consumer “is required to make at least one payment on the advance that is more than twice as large as any other payment(s)” (“Trigger 1”). The CFPB’s rule and commentary does not specify which payment has to be “twice as large” or which payment should be used for the smallest payment comparison. If a deferred interest loan has a post-promotional payment that is twice as large as a required minimum promotional payment, the deferred interest loan could be a LTBP Loan.

The definition of LTBP Loans also covers multiple advance loans where “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 under the plan” (“Trigger 2”). If “by a specified date or time” is interpreted to include the end of a deferred interest period, then certain multiple advance loans with deferred interest could be deemed LTBP Loans depending on the calculation of the promotional minimum payment and promotional balance.

Unsurprisingly, the rule’s official commentary lacks specific guidance that could narrow the scope of LTBP Loan. The CFPB recognized its break with the tradition concept of a balloon-payment loan in its discussion on including a single-payment loan in the

definition of LTPB Loan. At the same time, the CFPB indicated its intent for Trigger 1 to be “generally consistent” with how balloon-payment loans are defined and treated under Regulation Z with one modification. That modification mattered and expanded the types of loans that could be deemed LTBP loans. Trigger 2 was not included in the proposed rule and the CFPB did not provide a substantive explanation for its last minute inclusion.

As the industry warned, broad rules have unintended consequences. Certain common deferred interest loans could be one of those unintended consequences. We can help you analyze the applicability of the rule to your products and develop strategies to approach the rule. □

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