



# Final Regulation

## **Consumer Financial Protection Bureau: Payday, Vehicle Title, and Certain High-Cost Installment Loans**

**17-EF-10**

**NAFCU would like to highlight the following:**

- The final rule requires lenders to reasonably assess a consumer's reasonable ability-to-repay (ATR) two types of consumer loan products: "short-term loans" and "longer-term balloon-payment loans."
- A higher rate, longer-term product is also a covered loan, but the lender is only required to comply with payment withdrawal restrictions and disclosure and record retention requirements.
- The final rule did not incorporate the proposed requirements that would have infringed upon NCUA's PAL program.
- Federal credit unions' statutory right of offset to collect against an outstanding balance on a covered loan is explicitly permitted in the final rule.
- Certain loan products, such as purchase money security interests in vehicles, home mortgages, credit cards, student debt, and overdraft services are excluded from coverage in the final rule.
- The final rule also exempts "accommodation loans," so long as the lender does not originate more than 2,500 covered loans in a calendar year or did not derive more than 10 percent of its receipts from covered loans.

**Implementation Date: 21 months after publication in Federal Register; Section 1041.11 will be effective 60-days after publication.**

This Document is a dues supported service provided as a part of NAFCU's Regulatory Compliance Assistance Program.

## Summary of the Final Rule

The Consumer Financial Protection Bureau (CFPB) finalized its Payday, Vehicle Title, and Certain High-Cost Installment Loan rule (Payday Rule). In general, the final rule requires lenders to reasonably assess a consumer's reasonable ability-to-repay (ATR) two types of consumer loan products: "short-term loans" and "longer-term balloon-payment loans."

Short-term loans are those that have terms of 45 days or less, or where the consumer is required to repay substantially the entire amount of the loan or advance in less than 45 days. Longer-term balloon payment loans are those close-end or open-end loans that have a longer than 45 day term, but require the consumer to repay substantially the entire amount of the loan or advance more than 45 days after consummation in either a single payment or at least one payment that is more than twice as large as any other payment.

In addition to the two covered loans discussed above, the final rule also covers a third loan product: "covered longer-term loans." These loans are those that have a cost of credit that exceeds 36 percent APR and have a leveraged payment mechanism that gives the lender a right to initiate transfers from the consumer's account without further action by the consumer.

All three loan types (short-term, longer-term balloon-payment, and covered longer-term loans) are subject to the rule's requirements concerning withdrawal practices, related disclosures and recordkeeping. However, the covered longer-term loans do not require an ATR assessment. Additionally, certain short-term loans that meet "principal step-down" requirements do not need to meet all specific ATR requirements, so long as the principal step-down loan provides disclosures and does not involve taking a security interest in a consumer's vehicle.

Aside from the three covered loan types, the rule sets out safe harbors, exemptions and exceptions. First, among other types of products, vehicle purchase loans, home mortgages, credit cards, student loans, overdraft services, and wage advance programs are not covered by the final rule. Second, alternative loans that meet the National Credit Union Administration's (NCUA) Payday Alternative Loan (PAL) program parameters are provided with a safe harbor from being covered. Third, accommodation loans are conditionally exempt so long as lenders did not originate more than 2,500 covered loans in a calendar year or did not derive more than 10 percent of their receipt from covered loans during the previous tax year.

The full text of the final revision can be found [here](#).

This Final Regulation includes this brief summary, background, and discussion of the final rule. We urge you to read the materials carefully. Should you have any questions or require additional information, please contact Michael Emancipator, Senior Regulatory Affairs Counsel, at (703) 842-2249, or [memancipator@nafcu.org](mailto:memancipator@nafcu.org).

## **Background**

The CFPB has issued a final rule to address payday, vehicle title, and similar loans pursuant to the authority given to the Bureau by the Dodd-Frank Act. Since its creation, the CFPB has studied payday lending with an eye toward a future rulemaking. Their efforts have included releasing two white papers on the topic, an “Outline of the Proposals under Consideration,” a Small Business Review Panel to study the economic impact that any rule would have on small entities, and a proposed rule, published in June 2016.

The proposed rule contained many provisions that concerned NAFCU, including its proposed limitations on the National Credit Union Administration's (NCUA) Payday Alternative Loan (PAL) program, federal credit union's statutory right of offset, and the number of loans that credit unions could offer to members.

Since the rule was first outlined in 2015, NAFCU has met with CFPB Director and staff on numerous occasions, written dozens of letters, advocated with members of Congress, discussed the ramifications with the NCUA Board, and relayed the concerns of hundreds of members whose small dollar loan programs would be jeopardized if the Bureau finalized the rule as proposed.

After a successful advocacy campaign, the CFPB's final rule recognizes the value that credit unions deliver to nearly 110 million American consumers, and effectively exempts many, if not all, the products that credit unions offer, while simultaneously stamping out unscrupulous and usurious predatory lenders that trap consumers in a cycle of debt.

## **Main Provisions: Section-by-Section Analysis**

### **Subpart A - General**

#### Short-term loan – 1401.3(b)(1):

A closed-end consumer credit that does not provide multiple advances, and which the consumer is required to substantially repay within 45 days of the advance. For open-end credit, loans that the consumer is required to repay substantially the entire amount of any advance.

#### Longer-term balloon-payment loans - 1041.3(b)(2):

(i) a closed-end consumer credit that does not provide multiple advances, and which the consumer is required to pay the entire balance of the loan in a single payment more than 45 days after consummation, or to repay through at least one payment that is more than twice as large as any other payment.

(ii) a closed- or open-end consumer credit that either:

(A) requires the consumer to repay substantially the entire amount of an advance in a single payment more than 45 days after the advance is made (or is required to make at least one payment on the advance that is more than twice as large as any other payment(s)); or

(B) has multiple advances, structured so that paying the required minimum payments

may not fully amortize the outstanding balance by a specified date, and the amount of final payment is could be more than twice the amount of other minimum payments under the plan.

**High-cost loans with leveraged payment – 1041.3(b)(3):**

A closed- or open-end consumer credit that (i) exceeds 36 percent APR (subject to certain calculation requirements) *and* (ii) the lender obtains a leveraged payment mechanism. Under section 1041.2(a)(6), CFPB calculates cost of credit by including all finance charges as set forth in Regulation Z, without regard as to whether it's consumer credit or extended to a consumer.

**Exclusions for certain types of credit – 1041.3(d):** Certain types of credit are excluded from being classified as "covered loans."

(1) Certain purchase money security interest loans: credit extended for the sole and explicit purpose of financing a consumer's initial purchase of a good when the credit is secured by the property being purchased.

(2) Real estate secured credit: credit that is secured by any real property and the lender records or perfects the security interest within the term of the loan.

(3) Credit cards: any credit card account under an open-end consumer credit plan as defined in Regulation Z.

(4) Student loan: credit made, insured, or guaranteed pursuant to a program authorized under the Higher Education Act, or a private education loan as defined in Regulation Z.

(5) Non-recourse pawn loans: credit in which the lender has sole physical possession and use of the property securing the credit for the entire term of the loan, and for which lender's sole recourse is retention of secured property.

(6) Overdraft services and lines of credit: overdraft services defined in 12 CFR 1005.17(a) and overdraft lines otherwise excluded under section 1005.17(a)(1).

(7) Wage advance programs: advances of wages that constitute credit if made by an employer, with certain limitations included and detailed in section 1041.3(d)(7).

(8) No-cost advances: advances of funds that constitute credit if the consumer is not required to pay any charge or fee to be eligible to receive the advance, subject to certain conditions more fully explained in section 1041.3(d)(8).

**Alternative loan – 1041.3(e):** Alternative loans are conditionally exempt from section 1041. An "alternative loan" is a covered loan that satisfies certain conditions and requirements (e)(1)-(3), or NCUA's PAL parameters.

Loan term conditions – 1041.3(e)(1): alternative loans must meet certain conditions, including that the loan must: (i) not be structured as open-end credit; (ii) have a term of

between one and six months; (iii) have a principal of between \$200 and \$1,000; (iv) be repayable in two or more payments, in equal amounts, in equal intervals, that amortizes completely during the term; and (v) not be conditioned upon charges other than the rate and application fees permissible for FCUs under NCUA regulations, 12 CFR 701.21(c)(7)(iii).

Borrowing history condition – 1041.3(e)(2): prior to making an alternative loan, the lender must use its records to determine that the borrower would not be indebted on more than three outstanding "alternative loans" within a period of 180 days. The lender must also not make more than one alternative loan at a time to a consumer.

Income documentation condition – 1041.3(e)(3): the lender must comply with policies and procedures for documenting proof of recurring income.

PAL Safe harbor – 1041.3(e)(4): PAL loans made by FCUs in compliance with the conditions set forth by NCUA regulations 12 CFR 701.21(c)(7)(iii) are deemed to be in compliance with (e)(1), (2) and (3).

**Accommodation loans – 1041.3(f)**: Similar to alternative loans, accommodation loans are conditionally exempt from section 1041. Rather than being based on the loan characteristics, accommodation loans hinge on the lender's profile and activity. To achieve this conditional exemption, a lender and its affiliates collectively must:

(1) have made 2,500 or fewer covered loans in the current calendar year, as well as in the preceding calendar year; and

(2) not derive more than 10 percent of their receipts from covered loans during the most recent tax year (or if the lender was not in operation in a prior tax year, the lender reasonably anticipates that the lender and any of its affiliates that use the same tax year will derive no more than 10 percent of their receipts from covered loans during the current tax year).

Under paragraph (f)(3) of this section, the 2,500 covered loan and 10 percent of receipt threshold do not include longer-term loans that meet the conditions set forth in section 1041.8(a)(1)(ii) (i.e., when the lender is also the account holder, among other conditions).

## **Subpart B - Underwriting**

### **Identification of unfair and abusive practice – 1041.4**

Lenders are required to reasonably determine a borrower's ability-to-repay before making a covered short-term or longer-term balloon-payment loan. A lender's failure to reasonably assess a consumer's ATR is considered an unfair and abusive practice.

### **Ability-to-repay determination required – 1041.5(b)**

Reasonable determination required – 1041.5(b)(1): A lender must first make a reasonable determination that the consumer will have the ability to repay the loan according to its terms before making a covered short-term or longer-term balloon-payment loan, or increasing the credit available under a covered short-term or longer-term balloon-payment loan.

Similarly, for a covered short-term or longer-term balloon-payment loan that is a line of credit, a lender must not permit a consumer to obtain an advance more than 90-days after the date of the ATR determination. Otherwise, the lender will need to make a new ATR determination.

"Reasonableness" standard – 1041.5(b)(2): A lender's determination of ATR is reasonable only if based on either the calculation of a consumer's (i) debt-to-income ratio (DTI) or (ii) residual income. In both calculations, the lender must reasonably conclude that the consumer can make all loan payments and still make payments for major financial obligations and meet basic living expenses. The term upon which a lender must assess a consumer's ATR depends on the covered loan product.

(i) *DTI calculation*: For covered short-term loans, the lender must consider the borrower's DTI and basic living expenses during the loan term or the period ending 45 days after consummation of the loan (whichever is shorter), and for 30 days after having made the highest payment under the loan.

For covered longer-term balloon-payment loans, the lender must evaluate the borrower's DTI and basic living expenses during the relevant monthly period, and for 30 days after having made the highest payment under the loan.

(ii) *Residual income calculation*: For covered short-term loans, the lender must consider the borrower's residual income and basic living expenses during the loan term or the period ending 45 days after consummation of the loan (whichever is shorter), and for 30 days after having made the highest payment under the loan.

For covered longer-term balloon-payment loans, the lender must consider the borrower's residual income and basic living expenses during the relevant monthly period, and for 30 days after having made the highest payment under the loan.

### **Projecting consumer net income and payments for major financial obligations – 1041.5(c)**

To make a reasonable ATR determination, a lender must: (i) obtain the consumer's written statement containing evidence of the consumer's net income and payments for major obligations; (ii) obtain verification of the consumer's written statement; and (iii) assess information about rental housing expense. Obtaining verification of the consumer's written statement entails the most requirements, such as using a national consumer report to verify a consumer's debt obligations.

The lender must use this information to make a reasonable projection of the amount of a consumer's net income and payments for major financial obligations during the relevant monthly period.

### **Additional limitations on lending – 1041.5(d)**

Borrowing history review - 1041.5(d)(1): A lender is required to obtain and review the consumer's borrowing history before making a covered short-term or longer-term balloon-payment loan.

Prohibition on loan sequences of more than three covered short-term or longer-term balloon-payment loans - 1041.5(d)(2): Further, a lender must not make a covered short-term or longer-term balloon-payment loan during the period in which the consumer has a covered short-term or longer-term balloon-payment loan outstanding, and for 30 days thereafter if the new covered short-term or longer-term balloon-payment loan would be the fourth in a sequence of covered loans.

Prohibition on making a covered short-term or longer-term balloon-payment loan following a conditional short-term loan - 1041.5(d)(3): Referencing a conditional exemption for certain covered short-term loans that meet the requirements of section 1041.6, a lender must not make a covered short-term or longer-term balloon-payment loan during the period in which the consumer has a covered short-term loan made under section 1041.6 and for 30 days thereafter.

### **Principal step-down option; Conditional exemption for certain covered short-term loans – 1041.6**

Loan term requirements - 1041.6(b): A lender may make a covered short-term loan irrespective of the requirements set out in section 1041.4 and 1041.5, so long as certain conditions are met. The covered short-term loan must:

- (1) Meet the following principal amount limitations:
  - (i) The first loan in the sequence of covered short-term loans made under section 1041.6 may not have a principal greater than \$500;
  - (ii) The second loan in a loan sequence of loans made under this section must not have a principal amount that is greater than two-thirds of the first loan's principal amount;
  - (iii) The third loan in the sequence of loans made under this section must not have a principal amount greater than one-third of the first loan's principal amount.
- (2) Amortize completely during the term of the loan, and the payment schedule provides for the lender allocating a consumer's payments to the outstanding principal and interest and fees as they accrue only by applying a fixed periodic rate of interest to the outstanding principal during every scheduled repayment period for the term of the loan.
- (3) Not be secured by a vehicle as a condition.
- (4) Not be structured as open-end.

Borrowing history requirements - 1041.6(c): Prior to making a covered loan under this section, the lender must determine that the following requirements are satisfied:

- (1) The consumer has not had in the past 30 days an outstanding covered short-term or longer-term balloon-payment loan;

- (2) The loan would not result in the consumer having a loan sequence of more than three covered short-term loans under this section; and
- (3) During any consecutive 12-month period, the loan would not result in the consumer having either (i) more than six covered short-term loans outstanding or (ii) covered short-term loans outstanding for an aggregate period of 90 days.

Restrictions on making certain covered loans and non-covered loans following a covered short-term loan made under the conditional exemption – 1041.6(d): So long as a principal step-down loan is outstanding, and for 30 days thereafter, a lender must not subsequently make a covered loan, except for a principal step-down loan made in conformance with section 1041.6.

Form of principal step-down disclosures – 1041.6(e)(1): In general, principal step-down loan disclosures must meet the following form requirements:

- (i) clear and conspicuous;
- (ii) provided in writing or through electronic delivery;
- (iii) retainable;
- (iv) segregated from all other written or provided materials, containing only the information required by this section;
- (v) modeled on forms provided in the appendix of 1041 (depending on the sequence of covered loan); and
- (vi) made in a language other than English, provided the disclosures are made available in English upon the consumer's request.

Principal step-down notice requirements – 1041.6(e)(2): The first loan in a sequence of principal step-down loans must include the information and statements set forth in Model Form A-1 in appendix A. A lender that makes a third principal step-down loan in a sequence of loans must provide to a consumer a notice that include the information and statements set forth in Model Form A-2.

## **Subpart C – Payments**

### **Identification of unfair and abusive practices – 1041.7**

It is an unfair and abusive practice for a lender to make attempts to withdraw payments from a consumer's accounts in connection with a covered loan after the lender's second consecutive attempts to withdraw payments from the accounts from the which the prior attempts failed due to lack of sufficient funds, unless the lender obtains a consumer's new and specific authorization to make further withdrawals from the account.

### **Prohibited payment transfer attempts – 1041.8**

Definition of "payment transfer" – 1041.8(a)(1)(i): Means any lender-initiated debit or withdrawal of funds from a consumer's account for the purpose of collecting any amount due or purported to be due in connection with a covered loan, regardless of the means, including debits or withdrawals that are: (A) electronic funds transfers; (B) signature checks; (C) remotely created checks; (D) remotely created payment orders; or (E) account-holder transfer of funds



(except for the conditional exclusion proscribed in section 1041.8((a)(1)(ii)).

Conditional exclusion for certain transfers by account-holding institutions – 1041.8(a)(1)(ii): When the lender is also the account-holder, an account-holding institution's transfer of funds from a consumer's account held at the same institution is not a "payment transfer" so long as the lender:

(A) Does not charge the consumer any fee if the consumer's account lacks sufficient funds to when the lender initiates a transfer of funds (other than a late fee under the loan agreement); *and*

(B) The lender does not close the consumer's account in response to a negative balance that results from a transfer of funds initiated in connection with the covered loan.

Single immediate payment transfer at the consumer's request – 1041.8(a)(2): Means a payment transfer initiated by a one-time electronic fund transfer within one business day after the lender obtains the consumer's authorization for the one-time electronic fund transfer. It also means a payment transfer initiated by means of processing the consumer's signature check through the check system or through the ACH system within one business day after the consumer provides the check to the lender.

**Prohibition on initiating payment transfers from a consumer's account after two consecutive failed payment transfers – 1041.8(b)**

A lender must not initiate a payment transfer from a consumer's account after the lender has attempted to initiate two consecutive failed payment transfers from that account.

First failed payment transfer – 1041.8(b)(2)(i): A failed payment transfer is considered the first failed payment transfer if: (A) the lender has initiated no other payment transfer from the account in connection with the covered loan, (B) the immediately preceding payment transfer was successful, regardless of whether the lender has previously initiated a first failed payment transfer, *or* (C) the payment transfer is the first payment transfer to fail after the lender obtains the consumer's authorization for additional payment transfers.

Second failed payment transfer – 1041.8(b)(2)(ii): A failed payment transfer is considered the second failed payment transfer if the immediately preceding payment transfer was a first failed payment transfer. Of note, this proscription still applies despite differing payment channels.

**Exception for additional payment transfers authorized by the consumer – 1041.8(c)**

A lender may initiate additional payment transfers from a consumer's account after two consecutive failed payment transfers if the additional payment transfers are authorized by the consumer in accordance with certain requirements and conditions *or* if the lender executes a single immediate transfer at the consumer's request.

General authorization requirements and conditions – 1041.8(c)(2): If a payment transfer authorized by the consumer is returned for nonsufficient funds, the lender may re-initiate the payment transfer on or after the date authorized by the consumer, provided that the returned

payment transfer is not made after two consecutive failed payment transfers (as outlined in section 1041.8(b)). The specific date, amount, and payment channel of each additional payment transfer must be authorized by the consumer.

Of note, a lender may initiate a payment transfer solely to collect a late fee or returned item without obtaining the consumer's authorization for the specific date and amount of the payment transfer, only if the consumer has authorized the lender to initiate such payment transfers in advance of the withdrawal attempt. Such an authorization must include a statement that payment transfers may be initiated solely to collect a late fee or returned item fee, and specifies the highest amount for such fees that may be charged and the payment channel to be used.

Requirements and conditions for obtaining consumer's authorization – 1041.8(c)(3): Under subparagraph (ii), the lender may request the consumer's authorization for additional payment transfers no earlier than the date on which the lender provides to the consumer rights notice (*see* section 1041.9(c)). The request must include the payment transfer terms, such as the specific date, amount, and payment channel of each additional payment transfer. The lender may provide the terms and statements to the consumer either:

- (A) in writing, by mail, or in person, or in a retainable form by email, subject to restrictions in section 1041.9; or
- (B) by oral telephone communication, of the consumer affirmatively contacts the lender in that manner in response to the consumer rights notice and agrees to receive the terms and statements in that manner in the course of the same communication.

For a consumer authorization to be valid under this section, it must be signed in writing and be in a retainable format that memorializes the payment transfer terms. The signed authorization must be obtained from the consumer no earlier than when the consumer receives the consumer rights notice. Of note, a telephonic authorization must be recorded, retained, and be provided to the consumer.

Expiration of authorization – 1041.8(c)(4): An authorization becomes null and void if (i) the lender subsequently obtains a new authorization or (ii) two consecutive payment transfers initiated pursuant to the authorization fail.

**Exception for initiating a single immediate payment transfer at the consumer's request – 1041.8(d)**

After a lender's second consecutive payment transfer has failed, the lender may initiate a payment transfer without the consumer's authorization if (1) the payment transfer is a single immediate payment at the consumer's request, and (2) the consumer authorizes the one-time payment transfer no earlier than the lender provides the consumer rights notice or on the date that the consumer affirmatively contacts the lender to discuss repayment options, whichever is earlier.

**Disclosure of payment transfer attempts – 1041.9(a)**: Disclosures of payment transfer attempts must be generally: (1) clear and conspicuous; (2) in writing; (3) retainable; (4) consent for electronic delivery; (5) segregated from other notices; (6) machine readable if provided

through electronic delivery; (7) modeled on forms provided in Appendix A; and (8) be made available in a language other than English.

**Payment notice – 1041.9(b)(1):** Prior to initiating the first payment withdrawal or an unusual withdrawal from a consumer's account, a lender must provide the consumer a payment notice. However, a payment notice is not required when the lender initiates the initial payment after obtaining consumer authorization or a single immediate payment transfer initiated at the consumer's request.

**First payment withdrawal notice – 1041.9(b)(2)**

Timing – 1041.9(b)(2)(i):

(A) Mail – lender must mail the notice no earlier than when the lender obtains payment authorization and no later than six business days prior to initiating the transfer.

(B) Electronic delivery – lender must send the notice no earlier than when the lender obtains payment authorization and no later than three business days prior to initiating the transfer. If the lender loses the consumer's consent to receive notice through a particular electronic delivery after the first payment withdrawal notice, the lender must provide notice of any future unusual withdrawal through alternate means.

(C) In person – the lender must provide the notice no earlier than when the lender obtains payment authorization and no later than three business days prior to initiating the transfer.

Content requirements – 1041.9(b)(2)(ii): The notice must contain the information and provide language substantially similar to the language set forth in Model Form A-3 in Appendix A.

**Unusual withdrawal notice – 1041.9(b)(3)**

Timing – 1041.9(b)(3)(i):

(A) Mail – the lender must mail notice no earlier than 10 days, but no later than six business days, prior to initiating the transfer.

(B) Electronic delivery – the lender must send the notice no earlier than seven business days, and no later than three business days prior to initiating the transfer. If the lender loses the consumer's consent to receive notice through a particular electronic delivery, the lender must provide notice of any future unusual withdrawal through alternate means.

(C) In person – the lender must provide the notice no earlier than seven business days and no later than three business days prior to initiating the transfer.

Of note, if the unusual withdrawal notice is for an open-end credit plan, the lender may provide the unusual withdrawal notice in conjunction with the periodic statement required under Regulation Z.

Content requirements – 1041.9(b)(3)(ii): The unusual withdrawal notice must contain the information and provide language substantially similar to the language set forth in Model Form A-4 in Appendix A. If the amount of the transfer will vary in amount from the regularly

scheduled payment amount, the lender shall provide a statement that the transfer will be for a larger or smaller amount than the regularly scheduled payment amount.

However, if the payment transfer is for an open-end credit plan, the varying amount content is required only if the amount deviates from the scheduled minimum payment due as disclosed in the periodic statement required under Regulation Z.

If the payment transfer date or payment channel will differ from the date of the loan agreement or channel of transfer directly preceding it, the lender shall provide a statement that the transfer will be initiated on a different date, or through a different payment channel, as applicable.

Finally, if the transfer is for the purpose of reinitiating a returned transfer, the lender shall provide a statement that it is reinitiating a returned transfer, along with a statement of the date and amount of previous unsuccessful attempt and a statement of the reason for the return.

Electronic delivery – 1041.9(b)(4): When the consumer has consented to receive disclosures through electronic delivery, the lender may provide the applicable payment notice through electronic delivery only if it also provides an electronic short notice. The electronic short notice must contain substantially the same information and language as Model Clause A-6 in Appendix A.

When the consumer has consented to receive disclosures through electronic delivery, and the method is email, the lender may either deliver the full notice in the body of the email, or deliver the full notice as a linked URL webpage or PDF attachment, along with the electronic short notice.

#### **Consumer rights notice – 1041.9(c)**

After a lender initiates two consecutive failed payment transfers from a consumer's account, the lender must send a consumer rights notice no later than three business days after it receives information that the second consecutive attempt has failed.

The content of the notice must substantially mirror the form and information set forth in Model Form A-5 in Appendix A. Among other requirements, the content must state that the lender's last two attempts to withdraw payment were returned due to non-sufficient funds, inform the borrower that the lender is prohibited from initiating further payment transfers without the consumer's permission, and a statement that the lender may be in contact with the consumer about payment choices.

#### **Subpart D – Information furnishing, recordkeeping, anti-evasion, and severability**

##### **Information furnishing requirements – 1041.10**

Lenders must furnish loan information to each registered information system for each covered short-term and longer-term balloon payment loan. Regarding acceptable information systems, the Bureau will publish a current list of information systems that are provisionally registered on

its website.

A lender must furnish the following information:

- (i) Information necessary to uniquely identify the loan;
- (ii) Information necessary to allow the information system to identify the specific consumer(s) responsible for the loan;
- (iii) Whether the loan is a covered short-term loan or a covered longer-term balloon payment loan;
- (iv) Whether the loan was made under section 1041.5 or 1041.6;
- (v) The loan consummation date;
- (vi) The principal amount borrowed for principal step-down loans;
- (vii) For a loan that is closed-end credit: (A) the fact that the loan is closed-end, (B) the date that each payment is due, and (C) the amount due on each payment date;
- (viii) For a loan that is open-end credit: (A) the fact that the loan is open-end, (B) the credit limit on the loan, (C) the date that each payment on loan is due, and (D) the minimum amount due on each payment.

While the loan is outstanding, the lender must furnish updated information within a reasonable period of time. When the loan ceases to be outstanding, the lender must furnish that information as close in time as feasible to that date. Such information shall include the date as of which the loan ceased to be outstanding, as well as whether all amounts owed were paid in full, such as the amount financed, the cost of credit, and charges excluded from the cost of credit.

### **Registered information systems – 1041.11**

This section covers the eligibility requirements of credit reporting agencies, or other entities, to be considered a registered information system, as well as the application and appeals procedure. It requires certain receiving and reporting capabilities, as well as performance requirements.

### **Compliance program and record retention – 1041.12**

A lender making a covered loan must develop and follow written policies and procedures that are appropriate to the size, complexity, and nature and scope of the lender that are reasonably designed to ensure compliance with section 1041. A lender must retain evidence of this compliance for 36 months after the date on which a covered loan ceases to be outstanding.

Evidence of compliance must include a copy of the loan agreement and documentation obtained in connection with a covered short-term or covered longer-term balloon payment loan. This material must also include a consumer report from a properly registered information system, verification evidence, and a written statement from the consumer.

The electronic records that evidence compliance with section 1041 must be in a tabular format that include information such as the lender's projection of a consumer's net income, the consumer's major financial obligations, calculated residual income or DTI, and other consumer-specific information used to determine a consumer's ability-to-repay.

Records must also indicate whether the lender obtained a vehicle security from the consumer, whether the vehicle was repossessed, the number in a loan sequence of covered short-term and longer-term balloon-payment loans, and the date of last or final payment received.

Finally, lenders must retain evidence of compliance with payment practices prescribed in section 1041.8.

**Prohibition against evasion – 1041.13**

A lender must not take any action with the intent of evading the requirements of section 1041.

**Severability – 1041.14**

If any provision of section 1041 is stayed or determined to be invalid, the remaining provisions shall continue in effect.

*This document is intended for informational purposes only. It does not constitute legal advice. If such advice or a legal opinion is required, please consult with competent local counsel.*

## NAFCU's Regulatory Committee 2017

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**Wayne P. Schulman**, Logix FCU  
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## NAFCU'S 2017 REGULATORY ALERTS

<b>Number</b>	<b>Topic</b>	<b>Date Issued</b>
17-EA-01	Treasury: Participation in the Automated Clearing House	1/3/2017
17-EA-02	CDFI Fund: RFI Regarding Policies and Procedures	1/18/2017
17-EA-03	NCUA: Alternative Capital ANPR	2/8/2017
17-EA-04	CFPB: Alternative Data	3/22/2017
17-EA-05	CFPB: Remittance Rule Assessment	4/5/2017
17-EA-06	CFPB: Amendments to HMDA Final Rule	5/2/2017
17-EA-07	CFPB: CARD Act Review	5/9/2017
17-EA-08	CFPB: Small Business Lending Information Collection RFI	5/17/2017
17-EA-09	NCUA: 2017 Regulation Review	5/19/2017
17-EA-10	NCUA: Exam Appeals	6/6/2017
17-EA-11	NCUA: Supervisory Review Committee	6/6/2017
17-EA-12	NCUA: Mergers	6/7/2017
17-EA-13	CFPB: Improving Language Access	6/9/2017
17-EA-14	CFPB: Mortgage Servicing Rules Assessment	6/9/2017
17-EA-15	Federal Reserve: Regulation CC – Forged or Altered Checks	6/28/2017
17-EA-16	CFPB: Amendments to Rules Concerning Prepaid Accounts	6/29/2017
17-EA-17	CFPB: ATR/QM Rule Assessment	6/30/2017
17-EA-18	NCUA: OTR Methodology	7/10/2017
17-EA-19	DOL: Fiduciary Rule and Prohibited Transaction Exemptions	7/10/2017
17-EA-20	NCUA: Corporate Credit Unions	7/14/2017
17-EA-21	NCUA: Merger of Stabilization Fund and SIF	7/28/2017
17-EA-22	NCUA: Share Insurance Fund Equity Distributions	7/28/2017
17-EA-23	NCUA: Emergency Mergers	8/28/2017
17-EA-24	NCUA: Regulatory Reform Agenda	8/29/2017
17-EA-25	DOL: Overtime	8/30/2017
17-EA-26	CFPB: TRID	9/11/2017

## NAFCU'S 2017 FINAL REGULATIONS

<b>Number</b>	<b>Topic</b>	<b>Date Issued</b>
17-EF-01	FHFA: Acquired Member Assets	1/12/2017
17-EF-02	FHFA: Duty to Serve Underserved Markets	1/18/2017
17-EF-03	FFIEC: CC Rating System	2/3/2017
17-EF-04	Federal Reserve: Availability of Funds and Collection of Checks	6/28/2017
17-EF-05	NCUA: Safe Harbor	7/13/2017
17-EF-06	CFPB: Arbitration Agreements	8/7/2017
17-EF-07	CFPB: TRID "Fix"	8/25/2017
17-EF-08	CFPB: Amendments to the 2015 HMDA Final Rule	9/29/2017
17-EF-09	Treasury: Federal Participation in Automated Clearing House	10/5/2017
17-EF-10	CFPB: Payday, Vehicle Title, and Certain High Cost Installment Loans	10/10/2017