Payday Lending Rule FAQs

The questions and answers below pertain to compliance with the Payday Lending Rule and are a Compliance Aid issued by the Consumer Financial Protection Bureau. The Bureau published a Policy Statement on Compliance Aids, available at http://www.consumerfinance.gov/policy-compliance/rulemaking/final-rules/policy-statement-compliance-aids, that explains the Bureau's approach to Compliance Aids.

Covered Loans

QUESTION 1:

What loans are covered by the Payday Lending Rule?

ANSWER (UPDATED 7/7/2020)**:**

Generally, the Payday Lending Rule applies to three types of loans extended to a consumer for personal, family, or household purposes. These three types of loans are:

1. *Short-term loans*. Short-term loans are extensions of credit that require repayment within 45 days. Closed-end credit that provides for a single advance is a short-term loan if the consumer is required to repay substantially the entire amount of the loan within 45 days of consummation. Open-end credit or closed-end credit that does provide for multiple advances is a short-term loan if the consumer is required to repay substantially the entire amount of any advance within 45 days of the advance. 12 CFR §1041.3(b)(1).

2. *Longer-term balloon-payment loans*. Longer-term balloon-payment loans are extensions of credit that have certain balloon-payment features, as described below.

Closed-end credit that provides for a single advance is a longer-term balloon-payment loan if the consumer is required to repay the entire balance of the loan in a single payment more than

45 days after consummation, or if the consumer is required to repay the loan through at least one payment that is more than twice as large as any other payment.

Open-end credit or closed-end credit that provides for multiple advances is a longer-term balloon-payment loan if the consumer is required to repay substantially the entire amount of an advance in a single payment more than 45 days after the advance is made, or if the consumer is required to make at least one payment on an advance that is more than twice as large as any other payment(s).

Additionally, open-end credit or closed-end credit that provides for multiple advances is a longer-term balloon-payment loan if: (a) the loan is structured such that paying the required payments may not fully amortize the outstanding balance by a specified date or time; and (b) 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. 12 CFR §1041.3(b)(2).

3. *Longer-term loans*. Longer-term loans are extensions of credit that have a:

> (a) Cost of credit exceeding a 36 annual percentage rate (APR) (or, for open-end credit, the lender imposes a finance charge in any billing cycle in which the principal balance is $0); and
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> (b) Leveraged payment mechanism giving the lender the right to initiate transfers from the consumer's account without further action by the consumer. 12 CFR §1041.3(b)(3).

For more information on calculating the cost of credit for purposes of the Payday Lending Rule, see Payday Lending Rule Covered Loans Question 2. For more information on leveraged payment mechanisms, see Payday Lending Rule Covered Loans Question 3.

Certain accommodation loans and alternative loans are exempted from being covered loans. Additionally, eight other types of loans are excluded from being covered loans. If a loan satisfies the criteria for one or more of the exemptions or exclusions, the loan is not a covered loan and is not subject to the Payday Lending Rule. The exclusions and exemptions are discussed in Payday Lending Rule Covered Loans Questions 4 through 11.

More information on what loans are covered by the Payday Lending Rule is available in Section 2 of the Small Entity Compliance Guide.

QUESTION 2:

How is the cost of credit calculated for purposes of the Payday Lending Rule?

ANSWER (UPDATED 7/7/2020)**:**

The coverage criteria for longer-term loans, as discussed in Payday Lending Rule Covered Loans Question 1, include a cost of credit condition. Generally, if the cost of credit for a loan exceeds a 36 percent annual percentage rate (APR), the cost of credit condition for longer-term loans is satisfied.

For purposes of the Payday Lending Rule, the cost of credit includes all finance charges as set forth in Regulation Z, 12 CFR §1026.4. These amounts are included in the cost of credit without regard to whether the credit is extended to a consumer or is consumer credit as those terms are defined in Regulation Z, 12 CFR §1026.2(a)(11) and (12). 12 CFR §1041.2(a)(6)(i).

For closed-end credit, the cost of credit is calculated according to the requirements of Regulation Z, 12 CFR §1026.22, at the time of consummation. 12 CFR §1041.2(a)(6)(ii)(A). Thus, the cost of credit for closed-end credit exceeds 36 percent if the APR properly disclosed on the Truth-in Lending disclosure at consummation exceeds 36 percent.

For open-end credit, the cost of credit is calculated according to the requirements of Regulation Z, 12 CFR §1026.14(c) and (d). 12 CFR §1041.2(a)(6)(ii)(B). However, if there is a billing cycle in which there is no balance other than a finance charge imposed by the lender, the loan is deemed to satisfy the cost of credit condition for longer-term loans. 12 CFR §1041.3(b)(3)(i)(B)(*1*); comment 1041.3(b)(3)-2. For open-end credit, the cost of credit is determined at consummation as well as at the end of each billing cycle. Thus, a loan that does not satisfy the cost of credit condition at consummation may satisfy the condition and become a longer-term loan at a later time. Once open-end credit meets the cost of credit condition, it meets the condition for the duration of the plan. 12 CFR §1041.3(b)(3)(i)(B)(*2*).

QUESTION 3:

What is a leveraged payment mechanism?

ANSWER (UPDATED 7/7/2020)**:**

The coverage criteria for longer-term loans, as discussed in Payday Lending Rule Covered Loan Question 1, include a condition that a covered longer-term loan must have a leveraged payment mechanism.

A loan has a leveraged payment mechanism if the lender or a service provider has the right to initiate a transfer of money, through any means, from a consumer's account to satisfy an obligation on the loan. Comment 1041.3(c)-1. This includes, for example, the right to initiate a transfer from a consumer's account by means of a check, an electronic fund transfer (as defined in Regulation E, 12 CFR §1005.3(b)), a remotely created check or payment order, or a transfer by an account-holding institution. Comment 1041.3(c)-2.

A lender or service provider obtains the right to initiate a transfer from a consumer's account when it can collect payment or otherwise draw funds from a consumer's account (either on a single occasion or on a recurring basis) without the consumer taking further action. Generally, when a lender or service provider has the ability to "pull" funds or initiate a transfer from a consumer's account, that person has a leveraged payment mechanism. However, a "push" transaction from the consumer's account to the lender or service provider does not in itself give the lender or service provider a leveraged payment mechanism. Comment 1041.3(c)-1. An example of a push payment would be when a consumer uses her bank's online banking services to initiate a payment to the lender.

A lender or service provider does not obtain a leveraged payment mechanism by initiating a single immediate payment transfer at a consumer's request. 12 CFR §1041.3(c). A single immediate payment transfer at a consumer's request is generally a one-time transfer initiated within one business day after the lender obtains the consumer's authorization for an electronic fund transfer or the consumer provides a check to the lender. 12 CFR §1041.8(a)(2). The Payday Lending Rule Payment Transfers Questions below and Section 4.5 of the Small Entity Compliance Guide provide more information on single immediate payment transfers at a consumer's request.

The condition regarding a leveraged payment mechanism may be satisfied before, at the same time as, or after the consumer receives the entire amount of the loan proceeds and regardless of the means by which the lender or service provider obtains the leveraged payment mechanism. Comment 1041.3(b)(3)(ii)-1. The condition is satisfied if a loan agreement authorizes the lender to obtain a leveraged payment mechanism. For example, it is satisfied if the loan agreement provides that the consumer authorizes or must authorize the lender or service provider to debit the consumer's account on a recurring basis at some future date or on a one-time or recurring basis if the consumer becomes delinquent or defaults on the loan. Comment 1041.3(b)(3)(ii)-2.

QUESTION 4:

Are any loans excluded or exempted from coverage under the Payday Lending Rule?

ANSWER (UPDATED 7/7/2020)**:**

Yes. The Payday Lending Rule exempts two types of loans from coverage and excludes eight additional types of loans from coverage. The two exemptions are discussed in Payday Lending Rule Covered Loans Questions 5 through 8 and Section 2.5 of the Small Entity Compliance Guide. The exclusions are discussed in Payday Lending Rule Covered Loans Question 9 through 11 and Section 2.4 of the Small Entity Compliance Guide. If a loan satisfies the criteria for one or more of the exemptions or exclusions, it is not a covered loan and is not subject to the Payday Lending Rule.

The Payday Lending Rule also includes a partial exclusion from some of the payment-related requirements. 12 CFR §1041.8(a)(1)(ii). If the partial exclusion applies, certain payment withdrawals from consumers' accounts are not subject to certain payment-related requirements. However, the loan remains a covered loan and subject to some of the Payday Lending Rule's requirements. This partial exclusion is discussed in the Payday Lending Rule Payment Transfers Questions below and in Section 4.2 of the Small Entity Compliance Guide.

QUESTION 5:

What loans are exempted from coverage under the Payday Lending Rule?

ANSWER (UPDATED 7/7/2020)**:**

The Payday Lending Rule includes two exemptions: (1) an exemption for alternative loans; and (2) an exemption for accommodation loans. The exemption for alternative loans is discussed in Payday Lending Rule Covered Loans Question 6 and Question 7 as well as in Section 2.5.1 of the Small Entity Compliance Guide. The exemption for accommodation loans is discussed in Payday Lending Rule Covered Loans Question 8 and in Section 2.5.2 of the Small Entity Compliance Guide.

QUESTION 6:

What conditions must an otherwise covered loan meet in order to be exempted as an alternative loan?

ANSWER (UPDATED 7/7/2020)**:**

In order for a covered loan to be exempted as an alternative loan, certain loan term, borrower history, and income documentation conditions must be met.

An alternative loan must satisfy all of the following loan term conditions:

1. The loan is not structured as open-end credit.

2. The loan's term is not less than one month and not more than six months.

3. The loan's principal is not less than $200 and not more than $1000.

4. The loan is repayable in two or more payments.

5. All scheduled payments are substantially equal in amount and fall in substantially equal intervals.

6. The loan amortizes completely during its term.

7. The lender does not impose any charges other than the rate and the application fees permissible for federal credit unions under the NCUA's regulations at 12 CFR §701.21(c)(7)(iii).

12 CFR §1041.3(e)(1).

An alternative loan also must satisfy borrower history conditions. Before making the loan, the lender must review its own records to determine that the loan will not result in the borrower being indebted on more than three outstanding alternative loans within a period of 180 days. 12 CFR §1041.3(e)(2); comment 1041.3(e)(2)-3. If the lender determines that the loan will result in the borrower being indebted on more than three outstanding alternative loans within 180 days, the loan does not satisfy the borrower history condition and cannot be an alternative loan. 12 CFR §1041.3(e)(2). The lender is only required to review its own records to make this determination. Comment 1041.3(e)(2)-1. Additionally, a lender may not make more than one alternative loan at a time to a consumer. 12 CFR §1041.3(e)(2).

A lender also must satisfy an income documentation condition for an alternative loan. During the time period that the lender is making alternative loans, the lender must maintain and comply with policies and procedures for documenting proof of recurring income. 12 CFR §1041.3(e)(3). A lender may establish any procedure for documenting recurring income that satisfies the lender's own underwriting obligations. Comment 1041.3(e)(3)-1.

Alternative loans are loans that generally conform to the requirements created by the National Credit Union Administration (NCUA) for the Payday Alternative Loan (PAL) program pursuant to 12 CFR §701.21(c)(7)(iii). A loan made by a federal credit union in compliance with the NCUA's conditions for a PAL I as set forth in 12 CFR §701.21(c)(7)(iii) is deemed to be an alternative loan under the Payday Lending Rule. 12 CFR §1041.3(e)(4).

QUESTION 7:

Is a loan that a federal credit union originates pursuant to the NCUA's PAL I program a covered loan under the Payday Lending Rule?

ANSWER (UPDATED 8/11/2020)**:**

No. If a federal credit union originates a loan that complies with the conditions for the NCUA's PAL I program, as set forth in 12 CFR §701.21(c)(7)(iii), that loan is deemed to be in compliance with the conditions and requirements for an alternative loan and is exempted from the Payday Lending Rule. 12 CFR §1041.3(e)(4).

QUESTION 8:

Is a loan that a federal credit union originates pursuant to the NCUA's PAL II program a covered loan under the Payday Lending Rule?

ANSWER (UPDATED 8/11/2020)**:**

Maybe. The Payday Lending Rule does not include a specific exemption or exclusion for loans originated pursuant to the PAL II program, but such loans may be exempt or excluded depending on their terms.

On October 1, 2019, the NCUA published a rule expanding its original PAL program with a new program referred to as the "PAL II" program. That rule was effective December 2, 2019. Among other things, a loan originated under the PAL II program may have a larger loan amount and a longer loan term than a loan originated under the PAL I program. See 12 CFR §701.21(c)(7)(iv).

Although the Payday Lending Rule exempts loans that federal credit unions originate under the original PAL I program, the exemption is, by its terms, limited to the original PAL I program loans. 12 CFR §1041.3(e)(4). Thus, loans that a federal credit union originates pursuant to the PAL II program are not specifically exempted from coverage under the Payday Lending Rule.

If a federal credit union structures a PAL II loan to be substantially repaid within 45 days, it could be a covered loan under the Payday Lending Rule. However, federal credit unions are unlikely to structure PAL II loans to be repaid within 45 days because PAL II loans are generally designed for larger loan amounts of up to $2,000 and must fully amortize over the life of the loan. Consequently, it is highly unlikely that a loan originated pursuant to the PAL II program will be a covered short-term loan or a covered longer-term balloon loan under the Payday Lending Rule.

In addition, a loan originated pursuant to the PAL II program must comply with the program's 28 percent interest rate limitation. Thus, a loan made pursuant to the PAL II program. should not be a covered longer-term loan because the cost of credit should not exceed 36 percent per annum.

Additionally, a loan originated pursuant to the PAL II program may also meet an exclusion or exemption. For example, it might meet the conditional exemption for accommodation loans in 12 CFR §1041.3(f). For more information on accommodation loans, see Payday Lending Rule Coverage FAQs 4 to 11.

QUESTION 9:

Can all lenders rely on the exemption for alternative loans?

ANSWER (UPDATED 7/7/2020)**:**

Yes. All lenders, including but not limited to federal credit unions, may make an alternative loan that is exempt from the Payday Lending Rule, provided the loan is permissible under other applicable laws, including state laws. Comment 1041.3(e)-1.

QUESTION 10:

What conditions must an otherwise covered loan meet in order to be exempted as an accommodation loan?

ANSWER (UPDATED 7/7/2020)**:**

A covered loan must meet both a volume condition and a receipts condition to be exempted as an accommodation loan.

First, the lender and its affiliates collectively must have made 2500 or fewer covered loans in the current calendar year and made 2500 or fewer covered loans in the preceding calendar year. 12 CFR §1041.3(f)(1). Covered longer-term loans for which all transfers meet the conditions in 12 CFR §1041.8(a)(1)(ii) are not included for the purposes of determining whether this loan volume condition is met. 12 CFR §1041.3(f)(3).

Second, the lender and its affiliates that use the same tax year must have derived no more than 10 percent of their receipts from covered loans in the prior tax year. If the lender was not in operation in a prior tax year, the lender must reasonably anticipate that the lender and its affiliates will derive no more than 10 percent of their receipts from covered loans during the current tax year. 12 CFR §1041.3(f)(2). Covered longer-term loans for which all transfers meet the conditions in 12 CFR §1041.8(a)(1)(ii) are not included for the purposes of determining whether this receipts condition is met. 12 CFR §1041.3(f)(3).

Note that both conditions must be met in order for a lender to exempt loans as accommodation loans. In other words, if a lender and its affiliates make 2000 covered loans, but the lender's receipts for such loans exceed the 10 percent receipts threshold, the lender may not exempt any loans as accommodation loans.

For information on loans that are excluded from coverage under the Payday Lending Rule, see Payday Lending Rule Covered Loans Question 9.

QUESTION 11:

What loans are excluded from coverage under the Payday Lending Rule?

ANSWER (UPDATED 7/7/2020)**:**
The Payday Lending Rule excludes eight types of loans from coverage:

1. *Purchase money security interest loan*. Credit is excluded as a purchase money security interest loan if: (a) the credit is extended solely and expressly for the purpose of financing a consumer's initial purchase of a good (e.g., a motor vehicle, television, household appliance, furniture); and (b) the credit is secured by that good. 12 CFR §1041.3(d)(1).

2. *Real estate secured credit*. Credit is excluded as real estate secured credit if the credit is secured by any real property or by personal property (e.g., mobile home, boat, cooperative unit) to be used as a dwelling. 12 CFR §1041.3(d)(2). The exclusion applies only if the lender records or otherwise perfects the security interest within the term of the loan. Comment 1041.3(d)(2)-1.

3. *Credit card account*. Credit is excluded as a credit card account if it is a credit card account under an open-end (not home-secured) consumer credit plan, as defined in Regulation Z, 12 CFR §1026.2(a)(15)(ii). 12 CFR §1041.3(d)(3).

4. *Student loan.* Credit is excluded as a student loan if it is made, insured, or guaranteed pursuant to a program authorized by subchapter IV of the Higher Education Act of 1965, 20 U.S.C. 1070 through 1099d. Additionally, credit is excluded if it is a private education loan as defined in Regulation Z, 12 CFR §1026.46(b)(5). 12 CFR §1041.3(d)(4).

5. *Non-recourse pawn loan*. Credit is excluded as a non-recourse pawn loan if both of the following conditions are satisfied: (a) the lender has sole physical possession and use of the property securing the loan for the entire loan term; and (b) the lender's sole recourse is the retention of that property. 12 CFR §1041.3(d)(5).

6. *Overdraft service; overdraft line of credit*. Overdraft services under Regulation E, 12 CFR §1005.17(a), and overdraft lines of credit otherwise excluded from the definition of overdraft services under Regulation E, 12 CFR §1005.17(a)(1), are excluded from coverage under the Payday Lending Rule. 12 CFR §1041.3(d)(6).

7. *Wage advance program loans.* Advances by an employer (or its business partner) to the employer's employee of the value of accrued wages are excluded from the Payday Lending Rule if the entity advancing the funds makes certain warranties as set forth in the Payday Lending Rule. The entity must make the warranties before the funds are advanced and as part of the contract between the parties and on behalf of itself and any business partners. 12 CFR §1041.3(d)(7). More information on this exclusion is available in Payday Lending Rule Covered Loans Question 10 and Question 11.

8. *No cost advances*. If the consumer is not required to pay any charge or fee to be eligible to receive or in return for receiving a credit advance, the no-cost advance is excluded from the Payday Lending Rule if the entity advancing the funds warrants all of the following to the consumer (before any amounts are advanced and as part of the contract between the parties):

> (a) The entity does not have any legal or contractual claim or remedy against the consumer based on the consumer's failure to repay. This provision does not prevent the entity from obtaining a one-time authorization to seek repayment from the consumer's account. Comment 1041.3(d)(8)-1;
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> (b) With respect to the amounts advanced, the entity will not engage in any debt collection activities if the advance is not repaid on the scheduled date;

(c) The entity will not place the amount advanced as debt with a third party or sell it as debt to a third party; and

(d) The entity will not report information to a consumer reporting agency concerning the amount advanced.

12 CFR §1041.3(d)(8).

For information on loans that are exempted from coverage under the Payday Lending Rule, Payday Lending Rule Covered Loans Question 5.

QUESTION 12:

Are all wage advances (i.e., earned wage advances, salary advances, and payroll advances) excluded from coverage under the Payday Lending Rule?

ANSWER (UPDATED 7/7/2020)**:**

No. Advances of wages that constitute credit are excluded from the Payday Lending Rule only if all of the following are satisfied:

1. The advance is made by an employer, as defined in the Fair Labor Standards Act, 29 U.S.C. 203(d), or by the employer's business partner (e.g., a company that provides payroll card services or accounting services to the employer, or a company that provides consumer financial products and services as part of the employer's benefits program such that the company would have information regarding the employee's accrued wages).

2. The credit is extended to the employer's employee.

3. The advance is made only against the accrued cash value of any wages the employee has earned up to the date of the advance. The amount advanced must not exceed the employee's accrued wages. Accrued wages are unpaid wages that the employee is entitled to receive for work performed for the employer in the event of separation. A lender determines this amount under applicable state law. Comment 1041.3(d)(7)(i)-1.

4. Before funds are advanced, the entity advancing the funds warrants all of the following to the employee (as part of the contract between the parties and on behalf of itself and any business partners):

(a) The consumer (i.e., the employee) will not be required to pay any charges or fees in connection with the advance (other than a charge for participating in the wage advance program);
(b) The entity and its business partners do not have any legal or contractual claim or remedy against the consumer based on the consumer's failure to repay. This provision does not prevent the entity from obtaining a one-time authorization to seek repayment from the consumer's account. Comment 1041.3(d)(7)(ii)(B)-1;
(c) With respect to the amounts advanced, the entity and its business partners will not engage in any debt collection activities if the advance is not directly deducted from the consumer's wages or otherwise repaid on the scheduled due date;
(d) The entity and its business partners will not place the amount advanced as debt with a third party or sell it as debt to a third party; and
(e) The entity and its business partners will not report information to a consumer reporting agency concerning the amount advanced.

12 CFR §1041.3(d)(7).

Additionally, a wage advance or other transaction is not covered under the Payday Lending Rule unless it constitutes credit under the Rule. Thus, a wage advance that is not credit is not subject to the Payday Lending Rule. For this purpose, "credit" means the right to defer payment of debt or to incur debt and defer payment.

QUESTION 13:

Can any fees be charged in connection with a loan under the exclusion for wage advance program loans?

ANSWER (UPDATED 7/7/2020)**:**

In order for a loan to satisfy the exclusion for wage advance program loans, the entity making the advance must warrant that the consumer (i.e., the employee) will not be required to pay any charges or fees in connection with the advance, other than a charge for participating in the wage advance program. Thus, only a fee for participating in the program may be charged. The exclusion will not apply if any other fee, such as a per advance fee, is charged in connection with the advance.

QUESTION 14:

Does the Payday Lending Rule apply only to payday loans and vehicle title loans?

ANSWER (UPDATED 7/7/2020)**:**

No. The Payday Lending Rule can apply regardless of whether a loan is a vehicle title loan or a loan commonly identified as a payday loan. To determine whether a loan is subject to the Payday Lending Rule, one should carefully review the coverage criteria, the exclusions, and the exemptions set forth in the Rule. More information on what loans are covered by the Payday Lending Rule is available in Payday Lending Rule Covered Loans Questions 1 through 11 and in Section 2 of the Small Entity Compliance Guide.

QUESTION 15:

Does the Payday Lending Rule apply only to high-cost loans?

ANSWER (UPDATED 7/7/2020)**:**

No. Short-term loans and longer-term balloon-payment loans can each be covered loans regardless of the cost of credit. 12 CFR §1041.3(b)(1), (2). To determine whether a loan is subject to the Payday Lending Rule, one should carefully review the coverage criteria, the exclusions, and the exemptions set forth in the Rule. More information on what loans are covered by the Payday Lending Rule is available in Payday Lending Rule Covered Loans Questions 1 through 11 and in Section 2 of the Small Entity Compliance Guide.

QUESTION 16:

Does the Payday Lending Rule apply only to small dollar loans?

ANSWER (UPDATED 8/11/2020)**:**

As noted in the statement on supervisory and enforcement practices regarding certain large loans under the Payday Lending Rule released on July 7, 2020, while the Bureau monitors and assesses the effects of the Payment Provisions, it does not intend to take supervisory or enforcement action under the Payment Provisions with regard to covered loans that exceed the Regulation Z coverage threshold in 12 CFR §1026.3(b). From January 1, 2020, through December 31, 2020, the Regulation Z threshold amount is $58,300. See Comment 1026.3(b)-3.xi.

To determine whether a loan is subject to the Payday Lending Rule, one should carefully review the coverage criteria, the exclusions, and the exemptions set forth in the Rule. More information on what loans are covered by the Payday Lending Rule is available in Payday Lending Rule Covered Loans Questions 1 through 11 and in Section 2 of the [Small Entity Compliance Guide.]

QUESTION 17:

Is there a specific exemption or exclusion from coverage for banks and credit unions?

ANSWER (UPDATED 7/7/2020)**:**

No. The Payday Lending Rule does not specifically exclude or exempt banks or credit unions from coverage under the Rule, so it is possible that a bank or credit union could be required to comply with the Payday Lending Rule. Assuming that the bank or credit union regularly extends credit, a bank or a credit union has to comply with the Payday Lending Rule if it makes loans that satisfy the criteria for covered loans and that do not meet the conditions for exemptions or exclusions. See Payday Lending Rule Covered Loans Questions 1 through 11. In particular, banks and credit unions should review the exemptions for alternative loans and accommodation loans found in 12 CFR §1041.3(e) and (f). Additional information about the exemptions and exclusions is also available in Section 2 of the Small Entity Compliance Guide.

Also, as noted in the Payday Lending Rule Payment Transfers Questions below, and in Section 4.2 of the Small Entity Compliance Guide, the Rule also has a partial exclusion from some of the payment-related requirements for transfers initiated by lenders that are also account-holding institutions. 12 CFR §1041.8(a)(1)(ii). If a bank or credit union is both the lender for a covered loan and the institution that holds the consumer’s account, the bank or credit union may be able to rely on the partial exclusion from some of the payment-related requirements if the conditions set forth in 12 CFR §1041.8(a)(1)(ii) are met.

QUESTION 18:

Can a loan that is not a covered loan when it is made later become a covered loan?

ANSWER (UPDATED 7/7/2020)**:**

Yes, a loan that is not a covered loan when it is made can later become a covered loan. A loan may become a covered loan at any time during the loan’s term. Once the loan meets the requirements for coverage, it is a covered loan for the remainder of the loan’s term. See 12 CFR 1041.3(b)(3); comments 1041.3(b)(3)-3 and 1041.9(b)(1)(i)-2.

To illustrate, a lender may extend a closed-end loan that is not a longer-term balloon-payment loan and that is to be repaid within six months of consummation. At consummation, the cost of credit is above 36 percent, but the loan does not have a leveraged payment mechanism. Thus, the loan is not a covered loan at consummation. 12 CFR 1041.3(b). After two weeks, the lender adds a leveraged payment mechanism. The loan is now a covered loan because it meets both requirements in 12 CFR 1041.3(b)(3)(i) and (ii). 12 CFR 1041.3(b)(3); comment 1041.3(b)(3)-3. Note that a lender does not obtain a leveraged payment mechanism by initiating a single immediate payment transfer at the consumer's request. 12 CFR 1041.3(c).

Alternatively, a lender may extend an open-end credit plan with monthly billing cycles and a leveraged payment mechanism. At consummation and again at the end of the first billing cycle, the plan is not a covered longer-term loan because the cost of credit is below 36 percent. In the second billing cycle, the plan's cost of credit increases to 45 percent because several fees are triggered in addition to interest on the principal balance. The plan is now a covered longer-term loan because it meets both requirements in 12 CFR 1041.3(b)(3)(i) and (ii). 12 CFR 1041.3(b)(3)(i)(B); comment 1041.3(b)(3)-3.

Similarly, a lender extends an open-end credit plan with monthly billing cycles and a leveraged payment mechanism. At consummation and at the end of the first billing cycle, the plan is not a covered longer-term loan because the cost of credit is below 36 percent. In the second billing cycle, the principal balance is $0. The lender imposes a finance charge in the second billing cycle. The plan is now a covered longer-term loan because it meets both requirements in 12 CFR 1041.3(b)(3)(i) and (ii). 12 CFR 1041.3(b)(3)(i)(B)(1); comment 1041.3(b)(3)-3.

For additional information on the timing for providing the first withdrawal notice for a loan that becomes a covered loan after it is made, see comments 1041.3(b)(3)-3 and 1041.9(b)(1)(i)-2.

QUESTION 19:

If the cost of credit for a closed-end loan is not more than 36 percent per annum at consummation, can the closed-end loan later become a covered longer-term loan?

ANSWER (UPDATED 8/11/2020)**:**

No. A closed-end loan is only a covered longer-term loan if the cost of credit at consummation exceeds 36 percent per annum. 12 CFR §1041.3(b)(3)(i). If the cost of credit at consummation is not more than 36 percent per annum, a closed-end loan does not become a covered longer-term loan if the cost of credit later exceeds 36 percent per annum. For purposes of the Payday

Lending Rule, consummation means the time that a consumer becomes obligated on a new loan or a modification that increases the amount of an existing loan. 12 CFR §1041.2(a). See also comment 1041.2(a)(5)-1.

Lenders should keep in mind that the Payday Lending Rule prohibits lenders from taking any action with the intent of evading the prohibitions on certain payment transfer attempts. 12 CFR §1041.8(e). In determining whether a lender has acted with the intent of evading the requirements of the rule, the form, characterization, label, structure, or written documentation of the lender's action shall not be dispositive. Rather, the actual substance of the lender's action as well as other relevant facts and circumstances will determine whether the lender's action was taken with the intent of evading the requirements of the rule. Comment 1041.8(e).

QUESTION 20:

Does the exclusion for real estate secured credit apply to a refinance if the mortgage or other security instrument is not re-recorded during the term of the refinance?

ANSWER (UPDATED 8/11/2020)**:**

Maybe. The answer depends on whether the security interest in the real property or the personal property used as a dwelling is otherwise perfected during the term of the refinance. If the security interest is otherwise perfected during the term of the refinance, the exclusion for real estate secured credit applies even if the mortgage or other security instrument is not re-recorded during the term of the refinance. For example, depending on applicable state law, a lender may be able to perfect the refinance by referencing a previously recorded mortgage in the promissory note or another document.

The Payday Lending Rule includes an exclusion for real estate secured credit. Credit is excluded as real estate secured credit if the credit is secured by any real property or by personal property (e.g., mobile home, boat, cooperative unit) to be used as a dwelling. 12 CFR §1041.3(d)(2). The exclusion applies only if the lender records or otherwise perfects the security interest within the term of the loan. Comment 1041.3(d)(2)-1. It is not necessary to record the mortgage or other security interest during the term of the loan as long as the lender otherwise perfects the security interest during the term of loan. Thus, in a situation where a lender is refinancing a real estate secured loan, the lender may be able to record the mortgage or other security instrument during the term of the original loan and then perfect the refinance without re-recording the mortgage or other security interest, if permitted under applicable state law.

QUESTION 21:

Does the purchase money loan exclusion apply to an automobile loan that finances an extended warranty or service contract as well as the purchase price of the automobile?

ANSWER (UPDATED 8/11/2020)**:**

No, the purchase money exclusion does not apply to an automobile loan that finances an extended warranty or service contract as well as the purchase price of the automobile Under the Payday Lending Rule, credit is excluded as a purchase money security interest loan if: (a) the credit is extended *solely* and expressly for the purpose of financing a consumer's initial purchase of a good (e.g., television, household appliance, furniture) ("sole purpose" test); and (b) the credit is secured by that good. 12 CFR §1041.3(d)(1); comment 3(d)(1). Although the exclusion may apply if the credit finances certain mandatory and unavoidable expenses, such as taxes and government licensing fees, it does not apply if the credit finances an extended warranty or service contract.

The purchase money exclusion applies if an automobile loan finances solely the purchase of the automobile, or includes mandatory and largely unavoidable expenses, such as federal, state, or local taxes and amounts required to be paid under applicable state and federal licensing and registration requirements. 12 CFR §1041.3(d)(1); comment 1041.3(d)(1). However, if the automobile loan includes an extended warranty or service contract that is being sold along with an automobile, the loan does not meet the "sole purpose" test and the purchase money exclusion would not apply. Similarly, if the amount financed is greater than the cost of acquiring the good (i.e., the amount financed for an automobile loan exceeds the cost of the automobile because the loan also finances the cost of an ancillary good or service), the loan does not meet the "sole purpose" test and cannot be excluded as a purchase money security interest loan. 82 FR 54472, 54544.

QUESTION 22:

When does a lender need to start complying with the Payday Lending Rule if an open-end loan becomes a covered longer-term loan due to an increase in the cost of credit during the loan's term?

ANSWER (UPDATED 8/11/2020)**:**

If an open-end loan becomes a covered longer-term loan because the cost of credit exceeds 36 percent at the end of a billing cycle, the lender must begin complying with the Payday Lending

Rule at the beginning of the next billing cycle. 12 CFR §1041.3(b)(6)(ii)(B); comment 1041.3(b)(3)-3.ii. To illustrate, a lender may extend an open-end credit plan with monthly payments and a leveraged payment mechanism. At consummation and again at the end of the first billing cycle, the plan is not covered because the cost of credit is below 36 percent. At the end of the second billing cycle, the plan's cost of credit is 45 percent. Beginning on the first day of the third billing cycle and thereafter for the duration of the plan, the lender must comply with the Payday Lending Rule. Comment 1041.3(b)(3)-3.ii.

For more information on providing the first payment withdrawal notice for a loan that becomes a covered loan during its term, see 12 CFR §1041.3(b)(3); comment 1041.3(b)(3)-3.

Payment Transfers

QUESTION 1:

Under what circumstances does the Payday Lending Rule prohibit a lender from initiating payments in connection with a covered loan?

ANSWER (UPDATED 7/7/2020)**:**

Generally, the Payday Lending Rule prohibits a lender from attempting to initiate a payment transfer (as that term is defined in the Payday Lending Rule) in connection with a covered loan if the lender previously has made two consecutive failed payment transfers in connection with a covered loan, unless the lender obtains a new and specific authorization from the consumer. The Rule permits a lender to initiate one or more additional payment transfers without a new and specific authorization if the payment transfers are single immediate payment transfers at the consumer's request, as defined in the Rule. 12 CFR §1041.8.

Information on the Payday Lending Rule's definition of "payment transfer" is available in Payday Lending Rule Payment Transfers Questions 2 through 6 and in Section 4.1 of the Small Entity Compliance Guide. Information about single immediate payment transfers at the consumer's request is available in Payday Lending Rule Payment Transfers Question 7 and Section 4.5 of the Small Entity Compliance Guide. For information on failed payment transfers, see Payday Lending Rule Payment Transfers Question 8 and Section 4.3 of the Small Entity Compliance Guide.

Additional information about the Payday Lending Rule's prohibition on certain payment transfers is available in Section 4 of the Small Entity Compliance Guide.

QUESTION 2:

What is a "payment transfer" under the Payday Lending Rule?

ANSWER (UPDATED 7/7/2020)**:**

The Payday Lending Rule defines the term "payment transfer" as a debit or withdrawal of funds from a consumer's account that the lender initiates for the purpose of collecting any amount due or purported to be due in connection with a covered loan. A debit or withdrawal meeting this description is a payment transfer under the Payday Lending Rule regardless of the means the lender uses to initiate it. For example, a payment transfer as defined in the Rule includes but is not limited to a debit or withdrawal initiated by a debit card, prepaid card, ACH transfer, other electronic fund transfer, a signature check, a remotely created check, or a remotely created payment order. 12 CFR §1041.8(a)(1)(i).

Unless the conditional exclusion discussed in Payday Lending Rule Payment Transfers Questions 4 through 6 applies, a lender that is also the account-holding institution initiates a payment transfer if it does any of the following:

1. Initiates an internal transfer from a consumer's account to collect a payment on a covered loan;

2. Sweeps a consumer's account in response to a delinquency on a covered loan; or

3. Exercises a right to set off or offset in order to collect an outstanding balance on a covered loan.

Comment 1041.8(a)(1)(i)(E)-2.

A payment transfer is initiated for the purpose of collecting any amount due or purported to be due in connection with a covered loan if the transfer is for:

1. The amount of a scheduled payment due under a covered loan's loan agreement;

2. An amount smaller than the amount of a scheduled payment due under a covered loan's loan agreement;

3. The amount of the entire unpaid loan balance collected pursuant to an acceleration clause in a covered loan's loan agreement; or

4. The amount of a late fee or other penalty assessed pursuant to a covered loan's loan agreement.

Comment 1041.8(a)(1)-2.

QUESTION 3:

Is a payment transfer "initiated by a lender" if it is initiated by the lender's agent?

ANSWER (UPDATED 7/7/2020)**:**

Yes. A payment transfer is initiated by a lender if it is initiated by the lender or the lender's agent. The lender's agent may include a payment processor. Comment 1041.8(a)(1)-1.

QUESTION 4:

Are there any exclusions or exemptions from the definition of "payment transfer" under the Payday Lending Rule?

ANSWER (UPDATED 7/7/2020)**:**

Yes, there is a conditional exclusion for transfers initiated by a lender that is also the institution holding the consumer's account if certain conditions are met.

A transfer initiated by a lender for the purpose of collecting an amount due or purported to be due in connection with a covered loan is not a payment transfer if the lender is also the institution holding the consumer's account and both of the following conditions are met:

1. The lender does not charge the consumer any fee under the covered loan's agreement (other than a late payment fee) or any fee under the consumer's account agreement in the event that the lender initiates a transfer from the consumer's account in connection with the covered loan and the account lacks sufficient funds to cover the transfer. This condition does not restrict the lender's ability to charge a late payment fee on the covered loan, but does restrict the lender's ability to charge any other fee under the loan agreement or account agreement due to the lack of sufficient funds in the account to cover the transfer initiated in connection with the covered loan. The loan agreement or account agreement setting forth the fee restrictions must be in effect when the loan is made and for the duration of the loan. Examples of fees subject to this restriction include but are not limited to nonsufficient fund fees, overdraft fees, and returned item fees. Comments 1041.8(a)(1)(ii)(A)-1 and -2.

2. The lender does not close the consumer's account in response to a negative balance that results from a transfer initiated in connection with the covered loan. This condition is only met if the terms of the loan agreement or account agreement provide that the lender will not close the

account in such circumstances. The agreement must be in effect when the lender makes the covered loan and for the duration of the loan. Comment 1041.8(a)(1)(ii)(B)-2. A lender may close the account in response to events other than a transfer initiated in connection with the covered loan, such as at the consumer's request, to meet other regulatory requirements, or to protect the account from suspected fraud or unauthorized use. Comment 1041.8(a)(1)(ii)(B)-1.

12 CFR §1041.8(a)(1)(ii).

Additionally, certain requirements set forth in the Rule may apply differently to a payment transfer that is also a "single immediate payment transfer at the consumer's request." For more information on single immediate payment transfers at the consumer's request, see Payday Lending Rule Payment Transfers Question 7.

QUESTION 5:

Can a lender rely on the conditional exclusion for transfers initiated by a lender that is also the institution holding the consumer's deposit account if the loan agreement includes the fee and account closure restrictions set forth in 12 CFR §1041.8(a)(1)(ii), even though the deposit agreement does not?

ANSWER (UPDATED 7/7/2020)**:**

Yes, a lender that is also the institution holding the consumer's deposit account can rely on the conditional exclusion if the loan agreement includes the fee and account closure restrictions set forth in 12 CFR §1041.8(a)(1)(ii), even though the deposit agreement does not. However, the terms restricting the fees and account closure must be in effect at the time that the covered loan is made and remain in effect for the duration of the loan. 12 CFR §1041.8(a)(1)(ii); comments 1041.8(a)(1)(ii)(A)-1 and 1041.8(a)(1)(ii)(B)-2.

The conditional exclusion only applies if the conditions in 12 CFR §1041.8(a)(1)(ii) are met. To meet these conditions, the lender must not actually charge the consumer any fee in the event that the account lacks sufficient funds to cover a transfer the lender initiates in connection with the covered loan, and the lender must not actually close the consumer's account in response to a negative balance that results from a transfer the lender initiates in connection with the covered loan. 12 CFR §1041.8(a)(1)(ii); comment 1041.8(a)(1)(ii)(B)-1. Additionally, the lender must include these fee and account closure restrictions in either the terms of a consumer's loan agreement or the terms of a consumer's deposit account agreement. Although the restrictions do not need to be set forth in the consumer's deposit account agreement if they are set forth in the consumer's loan agreement, the restrictions must be in effect at the time that the covered loan is made and for the duration of the loan. Comments 1041.8(a)(1)(ii)(A)-1 and 1041.8(a)(1)(ii)(B)-2.

QUESTION 6:

Does the non-closure condition in 12 CFR §1041.8(a)(1)(ii)(B) limit a lender's ability to close a consumer's deposit account for events unrelated to lender-initiated transfers in connection with a covered loan?

ANSWER (UPDATED 7/7/2020)**:**

No. A lender seeking to meet the condition in 12 CFR §1041.8(a)(1)(ii)(B) may not close a consumer's account in response to a negative balance that results from a lender-initiated transfer in connection with the covered loan, but the lender is not restricted from closing the consumer's account in response to another event, even if the event occurs after a lender-initiated transfer has brought the account to a negative balance. For example, a lender may close the account at the consumer's request, for purposes of complying with other regulatory requirements (such as safety and soundness requirements), or to protect the account from suspected fraudulent use or unauthorized access and still meet the condition in 12 CFR §1041.8(a)(1)(ii)(B). Comment 1041.8(a)(1)(ii)(B)-1.

QUESTION 7:

What is a single immediate payment transfer at the consumer's request?

ANSWER (UPDATED 7/7/2020)**:**

A "single immediate payment transfer at the consumer's request" is:

1. 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, or

2. A payment transfer initiated by means of processing the consumer's signature check through the check system or the ACH system within one business day after the consumer provides the check to the lender (or if the consumer mails the check, within one business day after the lender receives the check). 12 CFR §1041.8(a)(2); comment 1041.8(a)(2)(ii)-2.

A payment transfer is "initiated" for this purpose at the time that the lender or its agent sends the transfer to a third party or the transfer is otherwise outside the lender's control. Comment 1041.8(a)(2)(ii)-1.

QUESTION 8:

When is a payment transfer a failed payment transfer?

ANSWER (UPDATED 7/7/2020)**:**
For purposes of the Payday Lending Rule's prohibition on certain payment transfers, a payment transfer is a failed payment transfer if it results in a return indicating that the consumer's account lacks sufficient funds (i.e., it is returned unpaid or is declined due to nonsufficient funds in the consumer's account). Comment 1041.8(b)(1)-1. If the lender is the institution that holds the consumer's account, a payment transfer is also a failed payment transfer if the account lacks sufficient funds to cover the amount of the transfer, regardless of how the result is classified or coded in the lender's internal systems or processes. A lender does not initiate a failed payment transfer if the lender merely defers or foregoes debiting or withdrawing payment based on the lender's observation that a consumer's account lacks sufficient funds to cover the payment. Comment 1041.8(b)(1)-4.

A failed payment transfer is a first failed payment transfer from the consumer's account if it meets any of the following conditions:

1. The lender has initiated no other payment transfers from the account in connection with the covered loan or any other covered loan that the consumer has with the lender;

2. The immediately preceding payment transfer was successful, regardless of whether the lender has previously initiated a first failed payment transfer; or

3. The payment transfer is the first payment transfer to fail after the lender obtains the consumer's new and specific authorization for additional payment transfers pursuant to 12 §1041.8(c).

12 CFR §1041.8(b)(2)(i).

A failed payment transfer is the second failed payment transfer from the consumer's account if the immediately preceding payment transfer (including a payment transfer initiated at the same time or on the same day) was a first failed payment transfer. 12 CFR §1041.8(b)(2)(ii).

QUESTION 9:

Does a failed single immediate payment transfer at the consumer's request count as one of the two failed payment transfers?

ANSWER (UPDATED 8/11/2020)**:**

Yes. A single immediate payment transfer at the consumers request that fails is a "failed payment transfer" and counts toward the two failed payment transfers permitted under the Payday Lending Rule. However, a single immediate payment transfer at the consumer's request that fails does not itself violate the Rule's prohibition, even if the lender has previously initiated two failed payment transfers in connection with the consumer's covered loan(s). 12 CFR §1041.8(c); comment 1041.8(c)-1; comment 8(b)(2)(ii)-3.

"Payment transfer" means a debit or withdrawal of funds from a consumer's account that the lender initiates for the purpose of collecting any amount due or purported to be due in connection with a covered loan. A debit or withdrawal meeting this description is a payment transfer regardless of the means the lender uses to initiate it. For example, a payment transfer includes but is not limited to a debit or withdrawal initiated by an electronic fund transfer (such as a debit card, prepaid card, or ACH transfer), a signature check, a remotely created check, and a remotely created payment order. 12 CFR §1041.8(a)(1)(i). A "single immediate payment transfer" at the consumer's request is a payment transfer initiated by a one-time electronic fund transfer or signature check within one business day after the lender obtains the consumer's authorization for the transfer or the consumer provides the check to the lender. 12 CFR §1041.8(a)(2). Thus, a single immediate payment transfer at the consumer's request is a "payment transfer" under the Rule.

The Payday Lending Rule prohibits a lender from initiating payment transfers in connection with covered loans in certain circumstances. Generally, a lender cannot initiate such a payment transfer from a consumer's account if the lender has previously initiated two consecutive failed payment transfers from that account. 12 CFR §1041.8. However, the Rule does allow a lender to initiate a single immediate payment transfer at the consumer's request from a consumer's account after the lender has initiated two consecutive failed payment transfers from that account. 12 CFR 1041.8(c); Comment 1041.8(c)-1; Comment 8(b)(2)(ii)-3. A lender might also choose to initiate a single immediate payment transfer at the consumer's request after a first failed payment transfer or before any payment transfers from an account have failed. If the lender does so and the single immediate payment transfer at the consumer's request fails, it is counted as a failed payment transfer.

To illustrate, a lender has extended two covered loans to a consumer. The consumer has one deposit account. On day 1, the lender initiates a payment transfer in connection with Loan 1. That payment transfer fails. The lender does not initiate any other payment transfers on day 1 or day 2. On day 3, the lender initiates a single immediate payment transfer at the consumer's request in connection with Loan 2. That payment transfer fails. The lender has now initiated two consecutive failed payment transfers. The lender cannot re-initiate the failed single immediate payment transfer at the consumer's request but can initiate a new single immediate payment transfer at the consumer's request. Comment 8(b)(2)(ii)-3. The lender cannot initiate any other payment transfers (i.e., payment transfers that are not single immediate payment transfers) from the consumer's account in connection with either loan unless the lender obtains the new and specific authorization pursuant to 12 CFR 1041.8(c). 12 CFR §1041.8(b)(1).

QUESTION 10:

Does the number of failed payment transfers reset to zero if the lender processes a successful transfer pursuant to the conditional exclusion for lenders that are also account-holding institutions?

ANSWER (UPDATED 8/11/2020)**:**

No. A transfer that qualifies for the Payday Lending Rule's conditional exclusion for certain transfers initiated by a lender that is also the account holding institution is not a "payment transfer" under the Payday Lending Rule. 12 CFR §1041.8(a)(ii) and Comment 1041.8(a)(1)(ii)-1. Under the Payday Lending Rule, only a successful "payment transfer" resets the prohibition on two consecutive failed payment transfers. 12 CFR §1041.8(b)(2)(i)(B).

The Payday Lending Rule prohibits a lender from initiating certain payment transfers after the lender has initiated two consecutive failed payment transfers from a consumer's account. As discussed in Payday Lending Rule Payment Transfers FAQ 8, a failed payment transfer is the second failed payment transfer if the immediately preceding payment transfer was a first failed payment transfer. 12 CFR §1041.8(b)(2)(ii). A failed payment transfer is a first failed payment transfer if it meets one of several conditions set out in 12 CFR §1041.8(b)(2)(i). One of these conditions is that the immediately preceding *payment transfer was successful*. In other words, if a lender initiates a successful payment transfer, the next payment transfer that fails is not a second failed payment transfer. It is a first failed payment transfer. 12 CFR §1041.8(b)(2).

The Payday Lending Rule excludes certain transfers from the definition of "payment transfer." As discussed in Payday Lending Rule Payment Transfers FAQs 4 through 6, there is a conditional exclusion from the definition of "payment transfer" for transfers initiated by a lender that is also the institution holding the consumer's account if certain conditions are met. If such a transfer satisfies both of the conditions in 12 CFR 1041.8(a)(1)(ii), the transfer is not a payment transfer. Thus, even if such a transfer is successful it is not a "payment transfer" and cannot satisfy the condition set out in 12 CFR §1041.8(b)(2)(i).

QUESTION 11:

What is a "business day" for purposes of the Payday Lending Rule?

ANSWER (UPDATED 8/11/2020)**:**

The Payday Lending Rule does not define the term "business day." A lender may use any reasonable definition of business day, including the definition of "business day" from another consumer finance regulation, such as Regulation E, as long as the lender uses the definition consistently when implementing the Rule's requirements.

Lenders should keep in mind that the Payday Lending Rule prohibits lenders from taking any action with the intent of evading the prohibitions on certain payment transfer attempts. 12 CFR §1041.8(e). In determining whether a lender has acted with the intent of evading the requirements of the rule, the form, characterization, label, structure, or written documentation of the lender's action shall not be dispositive. Rather, the actual substance of the lender's action as well as other relevant facts and circumstances will determine whether the lender's action was taken with the intent of evading the requirements of the rule. Comment 1041.8(e).

Payment Notices

QUESTION 1:

Is the unusual payment notice triggered for any difference in the payment amount, even if the difference is only a few dollars from the regular scheduled payment amount and is within a range authorized by the consumer?

ANSWER (UPDATED 8/11/2020)**:**

Yes. The Payday Lending Rule defines "unusual withdrawal" as a payment transfer that meets one or more of the following conditions: (1) varies in amount from the regularly scheduled payment amount or an amount that deviates from the scheduled minimum payment due in the periodic statement for open-end credit; (2) the payment transfer date is on a date other than the date of the regularly scheduled payment; (3) the payment channel will differ from the payment channel of the transfer directly preceding it; or (4) the transfer is for the purpose of re-initiating a returned transfer. 12 CFR §1041.9(b)(3)(ii)(C). If any of these conditions are met, a lender must provide an unusual payment withdrawal notice in advance of initiating the unusual payment withdrawal from the consumer's account. 12 CFR §1041.9(b)(1) and (3). The Payday Lending Rule does not provide an exception for small variations in the amount from the regularly scheduled payment amount. Thus, even if the payment amount differs by a few dollars, an unusual payment withdrawal notice must be provided.