

## Bur. of Consumer Financial Protection

## § 1041.6

of covered short-term loans, covered longer-term balloon-payment loans, or a combination of covered short-term loans and covered longer-term balloon-payment loans made under this section.

(3) *Prohibition on making a covered short-term loan or covered longer-term balloon-payment loan under this section following a covered short-term loan made under §1041.6.* A lender must not make a covered short-term loan or covered longer-term balloon-payment loan under this section during the period in which the consumer has a covered short-term loan made under §1041.6 outstanding and for 30 days thereafter.

(e) *Prohibition against evasion.* A lender must not take any action with the intent of evading the requirements of this section.

### § 1041.6 Conditional exemption for certain covered short-term loans.

(a) *Conditional exemption for certain covered short-term loans.* Sections 1041.4 and 1041.5 do not apply to a covered short-term loan that satisfies the requirements set forth in paragraphs (b) through (e) of this section. Prior to making a covered short-term loan under this section, a lender must review the consumer's borrowing history in its own records, the records of the lender's affiliates, and a consumer report from an information system that has been registered for 180 days or more pursuant to §1041.11(c)(2) or is registered with the Bureau pursuant to §1041.11(d)(2). The lender must use this borrowing history information to determine a potential loan's compliance with the requirements in paragraphs (b) and (c) of this section.

(b) *Loan term requirements.* A covered short-term loan that is made under this section must satisfy the following requirements:

(1) The loan satisfies the following principal amount limitations, as applicable:

(i) For the first loan in a loan sequence of covered short-term loans made under this section, the principal amount is no greater than \$500.

(ii) For the second loan in a loan sequence of covered short-term loans made under this section, the principal amount is no greater than two-thirds

of the principal amount of the first loan in the loan sequence.

(iii) For the third loan in a loan sequence of covered short-term loans made under this section, the principal amount is no greater than one-third of the principal amount of the first loan in the loan sequence.

(2) The loan amortizes 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 balance of the unpaid loan principal during every scheduled repayment period for the term of the loan.

(3) The lender and any service provider do not take vehicle security as a condition of the loan, as defined in §1041.2(a)(19).

(4) The loan is not structured as open-end credit, as defined in §1041.2(a)(16).

(c) *Borrowing history requirements.* Prior to making a covered short-term 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 loan under §1041.5 or covered longer-term balloon-payment loan under §1041.5;

(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) The loan would not result in the consumer having during any consecutive 12-month period:

(i) More than six covered short-term loans outstanding; or

(ii) Covered short-term loans outstanding for an aggregate period of more than 90 days.

(d) *Restrictions on making certain covered loans and non-covered loans following a covered short-term loan made under the conditional exemption.* If a lender makes a covered short-term loan under this section to a consumer, the lender or its affiliate must not subsequently make a covered loan, except a covered short-term loan made in accordance with the requirements in this section, or a non-covered loan to the

consumer while the covered short-term loan made under this section is outstanding and for 30 days thereafter.

(e) *Disclosures*—(1) *General form of disclosures*—(i) *Clear and conspicuous*. Disclosures required by this paragraph (e) must be clear and conspicuous. Disclosures required by this section may contain commonly accepted or readily understandable abbreviations.

(ii) *In writing or electronic delivery*. Disclosures required by this paragraph (e) must be provided in writing or through electronic delivery. The disclosures must be provided in a form that can be viewed on paper or a screen, as applicable. This paragraph (e)(1)(ii) is not satisfied by a disclosure provided orally or through a recorded message.

(iii) *Retainable*. Disclosures required by this paragraph (e) must be provided in a retainable form.

(iv) *Segregation requirements for notices*. Notices required by this paragraph (e) must be segregated from all other written or provided materials and contain only the information required by this section, other than information necessary for product identification, branding, and navigation. Segregated additional content that is not required by this paragraph (e) must not be displayed above, below, or around the required content.

(v) *Machine readable text in notices provided through electronic delivery*. If provided through electronic delivery, the notices required by paragraphs (e)(2)(i) and (ii) of this section must use machine readable text that is accessible via both web browsers and screen readers.

(vi) *Model forms*—(A) *First loan notice*. The content, order, and format of the notice required by paragraph (e)(2)(i) of this section must be substantially similar to Model Form A-1 in appendix A to this part.

(B) *Third loan notice*. The content, order, and format of the notice required by paragraph (e)(2)(ii) of this section must be substantially similar to Model Form A-2 in appendix A to this part.

(vii) *Foreign language disclosures*. Disclosures required under this paragraph (e) may be made in a language other than English, provided that the disclo-

tures are made available in English upon the consumer's request.

(2) *Notice requirements*—(i) *First loan notice*. A lender that makes a first loan in a sequence of loans made under this section must provide to a consumer a notice that includes, as applicable, the following information and statements, using language substantially similar to the language set forth in Model Form A-1 in appendix A to this part:

(A) *Identifying statement*. The statement “Notice of restrictions on future loans,” using that phrase.

(B) *Warning for loan made under this section*—(1) *Possible inability to repay*. A statement that warns the consumer not to take out the loan if the consumer is unsure of being able to repay the total amount of principal and finance charges on the loan by the contractual due date.

(2) *Contractual due date*. Contractual due date of the loan made under this section.

(3) *Total amount due*. Total amount due on the contractual due date.

(C) *Restriction on a subsequent loan required by Federal law*. A statement that informs a consumer that Federal law requires a similar loan taken out within the next 30 days to be smaller.

(D) *Borrowing limits*. In a tabular form:

(1) Maximum principal amount on loan 1 in a sequence of loans made under this section.

(2) Maximum principal amount on loan 2 in a sequence of loans made under this section.

(3) Maximum principal amount on loan 3 in a sequence of loans made under this section.

(4) Loan 4 in a sequence of loans made under this section is not allowed.

(E) *Lender name and contact information*. Name of the lender and a telephone number for the lender and, if applicable, a URL of the Web site for the lender.

(ii) *Third loan notice*. A lender that makes a third loan in a sequence of loans made under this section must provide to a consumer a notice that includes the following information and statements, using language substantially similar to the language set forth in Model Form A-2 in appendix A to this part:

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(A) *Identifying statement.* The statement “Notice of borrowing limits on this loan and future loans,” using that phrase.

(B) *Two similar loans without 30-day break.* A statement that informs a consumer that the lender’s records show that the consumer has had two similar loans without taking at least a 30-day break between them.

(C) *Restriction on loan amount required by Federal law.* A statement that informs a consumer that Federal law requires the third loan to be smaller than previous loans in the loan sequence.

(D) *Prohibition on subsequent loan.* A statement that informs a consumer that the consumer cannot take out a similar loan for at least 30 days after repaying the loan.

(E) *Lender name and contact information.* Name of the lender and a telephone number for the lender and, if applicable, a URL of the Web site for the lender.

(3) *Timing.* A lender must provide the notices required in paragraphs (e)(2)(i) and (ii) of this section to the consumer before the applicable loan under this section is consummated.

### Subpart C—Payments

#### § 1041.7 Identification of unfair and abusive practice.

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

#### § 1041.8 Prohibited payment transfer attempts.

(a) *Definitions.* For purposes of this section and § 1041.9:

(1) *Payment transfer* 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.

(i) *Means of transfer.* A debit or withdrawal meeting the description in paragraph (a)(1) of this section is a payment transfer regardless of the means through which the lender initiates it, including but not limited to a debit or withdrawal initiated through any of the following means:

(A) Electronic fund transfer, including a preauthorized electronic fund transfer as defined in Regulation E, 12 CFR 1005.2(k).

(B) Signature check, regardless of whether the transaction is processed through the check network or another network, such as the automated clearing house (ACH) network.

(C) Remotely created check as defined in Regulation CC, 12 CFR 229.2(ff).

(D) Remotely created payment order as defined in 16 CFR 310.2(cc).

(E) 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, other than such a transfer meeting the description in paragraph (a)(1)(ii) of this section.

(ii) *Conditional exclusion for certain transfers by account-holding institutions.* 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 if all of the conditions in this paragraph (a)(1)(ii) are met, notwithstanding that the transfer otherwise meets the description in paragraph (a)(1) of this section.

(A) The lender, pursuant to the terms of the loan agreement or account agreement, does not charge the consumer any fee, other than a late fee under the loan agreement, in the event that the lender initiates a transfer of funds from the consumer’s account in connection with the covered loan for an amount that the account lacks sufficient funds to cover.

(B) The lender, pursuant to the terms of the loan agreement or account agreement, 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.