

[Banking and Finance Law Daily Wrap Up, TOP STORY—CFPB revokes payday lending rule's ability-to-pay requirement, \(Jul. 7, 2020\)](#)

Banking and Finance Law Daily Wrap Up

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After considering 197,000 comments, the CFPB has revoked the ability-to-pay requirement contained in its payday lending rule that is codified at 12 CFR Part 1041. The CFPB's action relieves lenders of any regulatory obligation to consider whether a consumer will be able to make required payments before they extend credit.

The Consumer Financial Protection Bureau has issued a [final rule](#) that rescinds the mandatory underwriting or "ability-to-pay" provisions of its 2017 payday lending regulation codified at 12 CFR Part 1041. The rescission relieves lenders of any regulatory obligation to consider whether a consumer will be able to make required payments before they extend credit. The CFPB proposed eliminating the underwriting requirements in February 2019 (see [Banking and Finance Law Daily](#), Feb. 6, 2019).

The [2017 payday lending regulation](#) requires full or nearly full repayment at one time, such as payday loans, vehicle title loans, and deposit advance products. The underwriting provisions established a full-payment test for installment loans to ensure that consumers can afford their payments and still meet their basic living expenses and major financial obligations (see [Banking and Finance Law Daily](#), Oct. 5, 2017).

Insufficient bases. The CFPB revoked the underwriting provisions based a finding that the legal and evidentiary bases for the underwriting provisions were "insufficient."

In May 2020, Sen. Sherrod Brown (D-Ohio), the Ranking Member Senate Banking Committee, and 11 other Democratic senators raised concerns with the rulemaking process after a leaked memorandum in the [New York Times](#) alleged specific incident of criminal misconduct. In a letter to CFPB Director Kathleen L. Kraninger, the senators wrote, "The memorandum provides details of a CFPB rulemaking process that, if true, flagrantly violates the Administrative Procedure Act's requirements in which political appointees exerted improper influence, manipulated or misinterpreted economic research, and overruled career staff to support a predetermined outcome. In light of these disturbing allegations, we urge you to halt work on the Payday Rule immediately and begin the rulemaking process anew" (see [Banking and Finance Law Daily](#), May. 5, 2020).

Key protections remain. Commenting on the final rule, Kraninger [stated](#), "Our actions today ensure that consumers have access to credit from a competitive marketplace, have the best information to make informed financial decisions, and retain key protections without hindering that access." She added, "The Bureau protects consumers from unfair, deceptive, or abusive practices and takes action against companies that break the law. We will continue to monitor the small dollar lending industry and enforce the law against bad actors."

Ratification. Finally, in light of the Supreme Court's June 29, 2020, decision in [Seila Law. LLC v. CFPB](#), the Bureau released a [ratification](#) of the payment provisions found in the 2017 final rule.

The Court held in *Seila Law* that the CFPB Director's removal provision found in Section 1011(c)(3) of the Dodd-Frank Act violated the separation of powers provisions of the U.S. Constitution (see [Banking and Finance Law Daily](#), June 29, 2020).

The ratification provided, "The Bureau's Director is familiar with the payment provisions and has also conducted a further evaluation of them for purposes of this ratification. Based on the Director's evaluation of the payment provisions, it is the Director's considered judgment that they should be ratified."

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