

Practice Update

Federal Agencies Issue Joint Statement Encouraging Responsible Small-Dollar Lending

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On March 26, the Federal Reserve Board, CFPB, FDIC, OCC, and NCUA issued a joint statement encouraging regulated financial institutions to offer responsible small-dollar loans to consumers and small businesses who need assistance due to the coronavirus. The agencies note these loans can be open-end lines of credit, installment loans, or “appropriately structured” single payment loans.

The agencies state these loans should:

1. be fair to consumers,
2. comply with applicable laws and regulations (including applicable consumer finance laws such as the Truth in Lending Act and the Equal Credit Opportunity Act), and
3. be consistent with safe and sound banking practices.

If borrowers experience difficulty repaying the loan, the agencies encourage financial institutions to consider options designed to help borrowers to repay principal while mitigating the need to re-borrow. The agencies state that financial institutions may want to consult with their primary regulator regarding single payment loans they intend to offer. Recognizing that “responsible small-dollar loans can

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benefit financial institution customers in more normalized times,” the agencies state they are working on future guidance and lending principles for these types of loans.

This statement does not provide substantial clarity on the long term viability of small dollar credit products offered by banks and credit unions. Prior to the issuance of the statement, the agencies took different approaches to small dollar lending. In a September 2019 final rule, the NCUA established a new type of payday alternative loans that federal credit unions could offer to their members (*see* 12 CFR Part 701). In 2017, the OCC rescinded its 2013 guidance on deposit advance loans. The FDIC allowed its deposit advance guidance to remain in place while it considers how to allow banks it regulates to issue small dollar loans. The agencies’ guidance document also does not address the impact of the CFPB’s small dollar loan rule. The CFPB announced before the onset of the pandemic that it was planning to issue its revised small dollar lending rule in April 2020. The original rule, first issued in 2017, has yet to take effect.

In evaluating what types of small dollar loans to issue, if any, financial institutions should carefully evaluate the guidance from their prudential regulator and the CFPB and, where appropriate, seek the advice of their regulator.

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