

## Client Alert

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# CFPB Signals No Change in Course Is Likely on Its Short-Term Lending Proposal

By **Obrea O. Poindexter, Joe Rodriguez, and Meredith M. Cipriano**

On February 23, 2016, Consumer Financial Protection Bureau (“CFPB”) Director Richard Cordray signaled that the Bureau’s anticipated rulemaking on short-term lending is likely to closely resemble its March 2015 [“Outline of Proposals Under Consideration and Alternatives Considered”](#) for regulating the payday, or short-term lending market.

[During remarks before the Credit Union National Association](#), Director Cordray stressed that new entrants to the banking system must “be able [to] repay their loans and still meet financial obligations, such as rent or a mortgage payment, while covering living expenses such as food, transportation, and child care.”

Director Cordray affirmed that the Bureau is still considering requiring short-term lenders to make an “ability-to-repay” determination, which would involve evaluating a prospective borrower’s ability to repay an obligation based on his or her income, major financial obligations, and borrowing history before making a loan. His remarks also confirm that the Bureau is still contemplating allowing short-term lenders to avoid the ability-to-repay determination by offering products with certain structural and screening protections, which could function similar to the qualified mortgage safe harbor set forth in recent amendments to Regulation Z.

In March 2015, the CFPB released an outline of proposals to regulate short-term lending products such as payday loans, vehicle title loans, installment loans, and certain lines of credit. Categorizing provisions for “short-term loans” and “longer-term loans,” the outline considers two different approaches that a lender would be able to choose from: “debt trap prevention” and “debt trap protection.”

Director Cordray’s recent remarks suggest that despite the feedback received from the industry, the CFPB is unlikely to significantly modify its March 2015 proposal.

A proposed rule is anticipated from the CFPB in March 2016. We will continue to monitor developments relating to the CFPB’s short-term lending proposal.

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