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LEGAL ISSUE Q&A Series

Michael Cinelli
Director of Communications
T: 713-226-1278
mcinelli@lockelord.com
www.lockelord.com

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Joseph E. Silvia
Senior Counsel
Chicago
T: 312-443-0202
joseph.silvia@lockelord.com

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Joseph Silvia is a Senior Counsel in the Chicago office of Locke Lord LLP where he concentrates his practice on bank and consumer finance transactions and regulation. He has extensive experience with state and federal regulatory compliance matters related to the financial services industry.

Consumer Financial Protection Bureau (CFPB) Prepares Proposals to Add Repay Ability, Other Requirements to Small-Dollar Lending Market

Editor's Note: This is one in a continuing series of Q&As with Locke Lord lawyers on key legal issues confronting companies engaged in industries that have national and global impact.

How will the CFPB's attempts to put an end to payday debt traps impact financial institutions and consumers?

JS: If published as outlined, these proposals would impose all too familiar ability to repay requirements, similar to those applicable to mortgage lending, on the small-dollar lending market. However, an ability to repay analysis could present new challenges for this industry segment because, as the CFPB points out in its release, the products covered by these proposals "are often marketed heavily to financially vulnerable consumers." The safeguards being considered would apply to not only traditional payday loans, but also would apply to vehicle title loans, deposit advance products and many high-cost installment loans and open-end credit plans. This means new systems and compliance challenges for the institutions engaged in this type of lending. The impact on consumers could simply be that it will be substantially more difficult to get the kind of last resort type of credit that many rely on.

How would the CFPB impose these new requirements?

JS: The new requirements would apply to both short-term and longer-term credit products and fit into one of two buckets — prevention or protection. Prevention would require lenders to determine at the outset that the consumer has the ability to repay the loan. Protection requirements would impose restrictions for lenders that would protect against debt traps throughout the lending process to ensure that consumers can affordably repay their loan.

What would the proposals change about collections on these loans?

JS: The proposals also curb certain collection practices where the lenders have direct access to a consumer's bank or other account from which payments on the loan are made. The potential proposals include new requirements and limitations, such as requiring notification to be sent to a borrower at least three business days before submitting a transaction for payment and limiting unsuccessful withdrawal attempts that could lead to excessive deposit fees being assessed. Avoiding excessive deposit fees is certainly a worthwhile goal of the CFPB, but here again, new challenges for the lenders in the market will emerge on the collection side.

Where do you think this proposal goes from here?

JS: Since the CFPB has clearly put a lot of thought and resources into these proposal considerations, it appears that proposed rules are on the horizon. That said, the timeframe for the release of the proposed rules is less clear. When rules are proposed, I anticipate a robust discussion in the public about these proposals and perhaps even a more fundamental issue — financial literacy and education.