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Texas Federal Court Continues Stay of Trade Groups' Lawsuit Challenging CFPB Payday Loan Rule and Stay of Compliance Date

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The Texas federal district court hearing the lawsuit filed by two trade groups challenging the CFPB's final payday/auto title/high-rate installment loan rule (Payday Rule) [entered an order yesterday](#) continuing the stay of the lawsuit and the August 19, 2019 compliance date for both the Rule's ability-to-repay (ATR) provisions and its payment provisions. The order directs the parties to file a joint status report by May 17 "informing the court about proceedings related to the Rule and this litigation as the parties deem appropriate."

On March 8, the parties [filed a new status report](#) setting forth their views on whether the court should continue to stay the lawsuit and the Payday Rule's August 19 compliance date. The stays were entered in, respectively, June 2018 and November 2018 "pending further order of the court." Early last month, the CFPB issued proposals to rescind the Payday Rule's ability-to-repay (ATR) provisions in their entirety and delay the compliance date for the ATR provisions until November 19, 2020. The proposals would leave unchanged the Payday Rule's payment provisions and their August 19 compliance date.

In the new status report, the parties agreed that it would be appropriate for the stay of the ATR provisions to continue and for the litigation over the ATR provisions to remain stayed until the CFPB concludes its rulemaking. They disagreed, however, about the reasons for, or the appropriate duration of, the continuation of the stays of the compliance date for the payment provisions and the litigation to the extent it challenges the payment provisions. The trade groups sought a continuation of the stays until the Bureau completes its rulemaking on the ATR provisions.

While the CFPB did not seek to lift the stays of the litigation challenging the payment provisions and their compliance date, it did not agree that the stays should be continued until its rulemaking is completed. Instead, the Bureau stated that it would be appropriate to continue the stay of the litigation challenging the payment provisions until the Fifth Circuit issues its decision in *All American Check Cashing*, after which the parties would make a recommendation to the court for how such litigation should proceed. ([Oral argument](#) in *All American Check Cashing*, which involves a challenge to the CFPB's constitutionality, was held on March 12.) With regard to the stay of the payment provisions' compliance date, while telling the court it need not decide now on an expiration date, the CFPB indicated that continuation of the stay would only be warranted if the trade groups could show various factors, including at least a "substantial case on the merits."

In its order, the court recites the positions of the parties set forth above and applicable law as the basis for continuing the stay. While the continuation of the stays is a positive development, covered lenders still have no assurance that they will have a reasonable amount of time to bring themselves into compliance with the payment provisions should the stay be lifted before the compliance date. It is for that reason that we continue to urge those to take appropriate steps to bring themselves into compliance with the payment provisions well before August 19 of this year.

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