FINAL REPORT

of the

Small Business Review Panel on
CFPB's Rulemaking on Payday, Vehicle Title, and Similar Loans

June 25, 2015

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1. Introduction

Under the Regulatory Flexibility Act (RFA), the Consumer Financial Protection Bureau (Bureau) must convene and chair a Small Business Review Panel (Panel) when it is considering a proposed rule that could have a significant economic impact on a substantial number of small entities.[1] The Panel considers the impact of the proposals under consideration by the Bureau and obtains feedback from representatives of the small entities that would be subject to the rule. The Panel includes representatives from the Bureau, the Chief Counsel for Advocacy of the Small Business Administration, and the Office of Information and Regulatory Affairs in the Office of Management and Budget.

This Panel Report addresses the Bureau's rulemaking concerning payday, vehicle title, and similar loans. The Bureau is concerned that practices associated with these products pose significant risks to consumers. In particular, the Bureau is concerned that lenders in this market fail to determine whether consumers can afford to repay their loans without reborrowing, resulting in many consumers taking out unaffordable loans. Accordingly, the Bureau is considering a rulemaking addressing these practices pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) prohibition on unfair, deceptive, or abusive acts or practices,[2] including the Bureau's authority to promulgate rules identifying and preventing such practices, as well as the Bureau's authority to prescribe disclosures for consumer financial products and services.[3]

In accordance with the RFA, the Panel conducts its review at a preliminary stage of the Bureau's rulemaking process. The Panel's findings and discussion here are based on information available at the time the Panel Report was prepared and therefore may not reflect the final findings of the Bureau in the process of producing a proposed rule. As the Bureau proceeds in the rulemaking process, including taking actions responsive to the feedback received from small entity representatives (SERs) and the findings of this Panel, the agency may conduct additional analyses and obtain additional information.

This Panel Report reflects feedback provided by the SERs and identifies potential ways for the Bureau to shape the proposals under consideration to minimize the burden of the rule on small entities while achieving the purpose of the rulemaking. Options identified by the Panel for reducing the regulatory impact on small entities of the present rulemaking may require further consideration, information collection, and analysis by the Bureau to ensure that the options are practicable, enforceable, and consistent with the Dodd-Frank Act.

Pursuant to the RFA, the Bureau will consider the Panel's findings when preparing the initial regulatory flexibility analysis. This Panel Report will be included in the public record for the Bureau's rulemaking on payday, vehicle title, and similar loans.

[1] 5 U.S.C. 609(b).
[2] 12 U.S.C. 5531(b).
[3] 12 U.S.C. 5532(a).

This report includes the following:

a. A description of the proposals that are being considered by the Bureau and that were reviewed by the Panel;
b. Background information on small entities that would be subject to those proposals and on the particular SERs selected to advise the Panel;
c. A discussion of the comments and recommendations made by the SERs; and
d. A discussion of the findings and recommendations of the Panel.

In particular, the Panel's findings and recommendations address the following:

a. A description of and, where feasible, an estimate of the number and type of small entities impacted by the proposals under consideration;
b. A description of projected compliance requirements of all aspects of the proposals under consideration; and
c. A description of alternatives to the proposals under consideration which may accomplish the stated objectives of the Bureau's rulemaking and which may minimize any significant economic impact on small entities of the proposals under consideration.

2. Background

2.1 Market Background

The Bureau began this rulemaking in response to concerns identified in its supervision and enforcement experience, market monitoring, and feedback from consumers, other government agencies, and industry participants about practices common across the industry that pose significant risks of consumer harm. In the markets for payday, vehicle title, and similar loans, lenders often extend credit on the basis of their ability to collect payment on the loan rather than on the ability of the consumer to repay the loan without reborrowing. Loans frequently involve unaffordable payments and, in some instances, the full loan principal and finance charge are repayable within a very short period of time. Unaffordable loans may cause extended sequences of reborrowing on high-cost loans, bank account fees and closures, vehicle repossessions, collections, and loss of control over budgeting choices.

2.2 The Dodd-Frank Act

The Dodd-Frank Act authorizes the Bureau to issue rules to identify and prevent unfair, deceptive, or abusive acts or practices in the consumer financial markets.[4] Pursuant to § 1031 of the Dodd-Frank Act, an act or practice is unfair if it causes or is likely to cause substantial injury to consumers; the injury is not reasonably avoidable by consumers; and the injury is not outweighed by any countervailing benefits to consumers or competition.[5] An act or practice is abusive if it: (1) materially interferes with a consumer's ability to understand a term or condition of a consumer financial product or service; or (2) takes unreasonable advantage of the consumer's: lack of understanding of the material risks, costs, or conditions of the product or

[4] 12 U.S.C. 5531(b).
[5] 12 U.S.C. 5531(c).

service; inability to protect his or her interests in selecting or using a consumer financial product or service; or reasonable reliance on the lender to act in the consumer's interest.[6]

The Dodd-Frank Act also authorizes the Bureau to require lenders to provide disclosures in connection with financial products or services. In particular, § 1032 of the Dodd-Frank Act authorizes the Bureau to prescribe rules to ensure that the features of a financial product or service are fully, accurately, and effectively disclosed to consumers both initially and over the term of the product or service in a manner that permits consumers to understand the costs, benefits, and risks associated with the product or service, in light of the facts and circumstances.[7]

The Bureau intends to use the authorities provided by the Dodd-Frank Act to adopt regulations identifying and implementing requirements to prevent acts and practices that are unfair, deceptive, or abusive in the markets for payday, vehicle title, and similar loans. The Bureau also intends to use the authorities provided by the Dodd-Frank Act to adopt regulations related to the disclosure to consumers of features of covered loans. The proposals would be intended to coexist with stricter state, local, and tribal consumer protection laws and regulations, including laws and regulations that prohibit the sale of such products or regulate the permissible cost of credit.

2.2 Related Federal Rules

In addition to the Dodd-Frank Act, several other Federal laws regulate certain matters related to the extension and servicing of credit that would be covered by the proposals under consideration by the Bureau.

The Truth in Lending Act, implemented by the Bureau's Regulation Z, establishes, among other conditions on extensions of credit, disclosure requirements for credit extended primarily for personal, family, or household purposes.[8]

The Electronic Fund Transfer Act, implemented by the Bureau's Regulation E, establishes rights, liabilities, and responsibilities related to electronic funds transfers.[9] The requirements and protections of Regulation E apply to transfers of funds initiated through electronic means that authorize a financial institution to debit or credit a consumer's account.

The Military Lending Act limits certain terms on extensions of consumer credit, defined by the Department of Defense's regulation, to members of the active-duty military and their dependents.[10] Among other protections, the Military Lending Act limits the cost a lender may charge on an extension of credit to a servicemember or dependent to 36 percent military annual percentage rate (MAPR). The Department's regulation establishes the cost elements that must be included in the calculation of the MAPR.

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[6] 12 U.S.C. 5531(d).
[7] 12 U.S.C. 5532(a).
[8] 12 CFR part 1026.
[9] 12 CFR part 1005.
[10] 32 CFR part 232.

The Federal Credit Union Act, implemented by the National Credit Union Administration (NCUA), permits Federal credit unions to extend credit to members and establishes the maximum rate of interest that Federal credit unions may charge on such loans.[11] The NCUA's regulation permits Federal credit unions to charge a higher rate on certain specified "Payday Alternative Loans" and sets out the criteria for such loans.[12]

3. Overview of Proposals and Alternatives under Consideration

In general, the Bureau is considering proposals that would require lenders to determine that the consumer has the ability to repay the covered loan without reborrowing. The proposals under consideration would also permit lenders to extend loans meeting specified screening and structural requirements without making the ability-to-repay determination. Additionally, the proposals would require lenders to provide a notice to consumers before attempting to collect payment from a consumer's account and would limit the number of times a lender could use an authorization for payment after a prior payment collection attempt had failed. A more detailed description of the proposals under consideration is attached at Appendix C.

3.1 Scope of Coverage

The Bureau is considering proposals that would cover two categories of consumer loans. The first—covered short-term loans—are consumer loans with a contractual duration of 45 days or less. The second—covered longer-term loans—are consumer loans with a contractual duration longer than 45 days and an all-in annual percentage rate in excess of 36 percent where the lender holds either (1) access to repayment through a consumer's account or paycheck, or (2) a non-purchase money security interest in the consumer's vehicle. In general, products falling within the scope of coverage include payday loans, deposit advance products, vehicle title loans, and certain installment loans and lines of credit.

3.2 Requirement to Determine Ability to Repay

The Bureau is considering requiring lenders to obtain and verify certain financial information about the consumer in order to make a good-faith, reasonable determination about the consumer's ability to repay the contemplated loan. The proposals would also impose certain restrictions on reborrowing, with different limitations for covered short-term loans and covered longer-term loans.

3.2.1 Requirement to Determine Ability to Repay Covered Short-Term Loans

Reasonable Determination

Under the proposals being considered by the Bureau, lenders would have to determine whether a consumer is able to make payments on the covered short-term loan as those payments are due, while still meeting other major financial obligations and living expenses. Lenders

[11] 12 CFR 701.21.
[12] 12 CFR 701.21(c)(7)(iii).

would need to obtain, verify and consider information about the consumer's income, major financial obligations (including housing payments, required payments on other debt obligations, child support, and other legally required payments), and borrowing history on covered loans. For covered short-term loans, the proposals under consideration would require the lender to determine that consumer would be able to repay the loan without reborrowing for a period of 60 days beyond the term of the loan.

To facilitate consideration of borrowing history on covered loans, lenders would be required to report loan use to commercially available reporting systems and would also be required to obtain a report from such an entity to verify the consumer's borrowing history.

Restrictions on Reborrowing

As part of the required ability-to-repay determination, the proposals under consideration would impose several restrictions on reborrowing. If a consumer returns to reborrowing within 60 days of having a prior covered short-term loan outstanding, the proposals under consideration would impose a rebuttable presumption that the consumer lacks the ability to repay a loan with a similar repayment structure. To rebut this presumption, the lender would need to have verified evidence of a change in circumstances. After three loans in a sequence (where each is taken within 60 days of the prior covered short-term loan outstanding), there would be a conclusive presumption that the consumer lacks the ability to repay another covered short-term loan. The conclusive presumption would continue for a cooling-off period of 60 days, during which the consumer could not obtain additional covered short-term loans.

3.2.2 Requirement to Determine Ability to Repay Covered Longer-Term Loans

Reasonable Determination

For covered longer-term loans, the proposals under consideration would require the lender to determine whether a consumer is able to make payments on the covered longer-term loan as those payments are due, while still meeting other major financial obligations and living expenses. Lenders would need to obtain, verify, and consider information about the consumer's income, major financial obligations, and borrowing history on covered loans.

As with the proposals under consideration for covered short-term loans, lenders would be required to report loan use to commercially available reporting systems and would also be required to obtain a report from one such entity.

Restrictions on Reborrowing

The proposals under consideration would include restrictions on refinancing in certain circumstances indicating that the payment on the loan being refinanced is causing financial distress. In such circumstances, lenders would have to presume that a consumer refinancing into a covered longer-term loan lacks the ability to repay a loan with terms similar to the refinanced loan. The presumption would apply to transactions where the new loan is a covered longer-term loan and the prior debt, whether covered or not, is from the same lender or its affiliates. The presumption would also apply to any transaction where the new loan is a covered longer-term loan and the debt being refinanced is a covered loan from any lender. To rebut the presumption, the lender would need to have verified evidence of a change in circumstances tending to suggest that the consumer has the ability to repay the new loan.

3.3 Alternative Requirements for Covered Short-Term Loans

The proposals under consideration would permit lenders to make certain covered short-term loans without satisfying the ability-to-repay requirements. Lenders would need to apply certain screening criteria and then could extend a loan with specified structural features.

The proposal under consideration would require that the lender apply the following screening criteria:

a. The lender verifies the consumer's income;
b. The loan would not result in the consumer receiving more than three loans in a sequence and six covered short-term loans from all lenders in a rolling 12-month period; and
c. The contractual duration of the loan would not result in the consumer being in debt on covered short-term loans with all lenders for more than 90 days during a rolling 12-month period.

If the consumer satisfies the screening criteria, the lender could extend a loan with the following specified structural criteria:

a. A maximum loan amount of $500;
b. Maximum contractual duration of 45 days;
c. The lenders does not take a security interest in a vehicle as collateral for the loan; and
d. The loan is structured to taper off the consumer's indebtedness.

The proposals under consideration include two alternative requirements for tapering off the consumer's debt on loans made under these requirements. The Bureau is considering requiring either (1) that lenders provide a no-cost off-ramp for consumers unable to repay the debt after the third loan in a sequence; or (2) that lenders reduce the principal amount of subsequent loans so that the debt amortizes over three loans. Additionally, the Bureau is considering requiring that after the consumer repays the third loan in a sequence, the lender could extend no additional credit to the consumer for a period of 60 days.

3.4 Alternative Requirements for NCUA-Type Loans

The proposals under consideration would permit lenders to extend loans that generally satisfy the requirements of the NCUA Payday Alternative Loan program without undertaking the required ability to repay determination. The option would be available to all lenders, not only Federal credit unions.

Under this proposal, lenders would need to follow the requirements of the NCUA Payday Alternative Loan program, namely:

a. The lender applies minimum underwriting standards and verifies the consumer's income;

b. The loan has a principal of not less than $200 and not more than $1,000;
c. The loan has a maximum term of six months;
d. The lender charges no more than a 28 percent annualized interest rate and an application fee, reflecting the actual costs of processing the application, of no more than $20; and
e. The lender fully amortizes the loan over no fewer than two payments.

In addition to the NCUA requirements, the proposals under consideration by the Bureau would impose the following screening and structural requirements on such loans:

a. The consumer has no other covered loans outstanding;
b. The loan would result in the consumer having no more than two such loans in a rolling six-month period; and
c. The loan has a minimum term of 45 days.

3.5 Alternative Requirements for Maximum PTI Loans

The proposals under consideration also include an alternative for lenders to extend certain covered loans with a limited payment-to-income (PTI) ratio without satisfying the ability-to-repay requirements. The proposal would allow lenders to make a covered loan without determining whether the consumer has an ability to repay the loan provided that the lender satisfies screening and structural requirements. A lender would be required to verify a consumer's income and determine that the consumer is not already in a cycle of debt on covered loans. If the consumer meets these and other criteria, the lender could then extend a loan with periodic payments of no more than 5 percent of the consumer's expected gross income during the same period and that fully amortizes over a period of between 45 days and six months.

3.6 Limitations on Payment Collection Practices

The proposals under consideration include two limitations on practices associated with collection of payments directly from a consumer's account. The limitations would apply to all payment channels that allow a lender to collect payment from a consumer's checking, savings, or prepaid account.

3.6.1 Requirement to Provide Notice

The proposals under consideration would require lenders to provide consumers with a written notice prior to each lender-initiated attempt to collect payment from a consumer's checking, savings, or prepaid account. Lenders would be required to provide the notice at least three days and no more than seven days prior to the attempt to collect payment. The notice requirement would apply to each attempt to collect payment regardless of method, including, among others, automated clearinghouse (ACH) entries, post-dated signature check, and remotely created checks (RCC).

Under the proposals being considered, the notice would need to include the following items:

a. The exact amount and date of the upcoming payment collection attempt;
b. The payment channel through which the attempt will be made;
c. A break-down of the application of payment amount to principal, interest, and fees;

d. The loan balance remaining if the payment collection attempt succeeds;
e. The name, address, and a toll-free number that the consumer can use to reach the lender; and
f. For payment collection attempts made by check, such as a post-dated signature check or RCC, the check number associated with the payment attempt.

Some of the required information would be standard for the lender; other points of information would be tailored to the specific loan and particular payment. Lenders would be permitted to provide the notice either electronically or through the mail.

3.6.2 Limitation on Repeat Presentments

The proposals under consideration would prohibit lenders from attempting to collect a payment from a consumer’s account after two consecutive attempts have failed. Lenders would be permitted to obtain a new payment authorization from the consumer after reaching the limit. The limitation on attempts to collect payment would apply cumulatively across payment collection methods that allow a lender to access a consumer’s checking, savings, or prepaid account.

3.7 Requirement to Establish Policies and Procedures and Retain Records

In conjunction with the proposals under consideration related to the ability-to-repay determination and payment collections practices, the Bureau is considering a proposal to require lenders to maintain policies and procedures that are reasonably designed to achieve compliance with the other proposals under consideration. The proposal would also require lenders to retain records documenting actions taken with respect to a covered loan until 36 months after the last entry on the loan.

4. Applicable Small Entity Definitions

A “small entity” may be a small business, small nonprofit organization, or small government jurisdiction. The North American Industry Classification System (NAICS) classifies business types and the Small Business Administration (SBA) establishes size standards for a “small business.” To assess the impacts of the proposals under consideration, the Panel meets with small entities that may be impacted by those proposals and so, in this instance, sought feedback from nondepository lenders, commercial banks, credit unions, and loan brokers.

5. Small Entities That May Be Subject to the Proposals Under Consideration

The Panel identified four categories of small entities that may be subject to the proposals under consideration. The NAICS industry and SBA small entity thresholds for those categories are the following:

NAICS Industry	Threshold for "Small"
Commercial Banks, Savings Associations, and Credit Unions	$550 million in assets
Nondepository Institutions Engaged in Consumer Lending or Credit Intermediation Activities	$38.5 million in annual revenues
Nondepository Institutions Engaged in Other Activities Related to Credit Intermediation	$20.5 million in annual revenues
Mortgage and Non-Mortgage Loan Brokers[13]	$7.5 million in annual revenues

6. Summary of Small Entity Outreach

6.1 Summary of Panel's Outreach Meeting with Small Entity Representatives

The Bureau convened the Panel on April 27, 2015. The Panel held a full-day outreach meeting (Panel Outreach Meeting) in Washington, D.C. with SERs on April 29, 2015. In preparation for the Panel Outreach Meeting and to facilitate an informed and detailed discussion of the proposals under consideration, the Bureau provided each of the SERs with the materials listed in Appendix B. The Bureau also posted these materials on its website.

In advance of the Panel Outreach Meeting, the Bureau, SBA Office of Advocacy, and OMB held a series of telephone conferences to describe the Small Business Review Process, to obtain important background information about each SER's current business practices, and to discuss selected portions of the proposals under consideration. These telephone conferences preceding the Panel Outreach Meeting enabled the Panel members to obtain robust feedback from each of the SERs by helping the agencies to better understand business practices and by helping the SERs to understand the Small Business Review process and proposals under consideration. The conference calls also provided for additional discussion time.

Representatives from 27 small businesses were selected as SERs for this SBREFA process and participated in the Panel Outreach Meeting (either in person or by phone). Representatives from the Bureau, SBA Office of Advocacy, and OMB provided introductory remarks. The meeting was then organized around a discussion led by the Bureau's Office of Regulations and Office of Research about each of the proposals under consideration and the potential impact on small businesses. The PowerPoint slides framing this discussion are attached at Appendix E.

The Bureau also provided the SERs with an opportunity to submit written feedback until May 13, 2015. Twenty-four of the 27 SERs provided written comments. Copies of these written comments are attached at Appendix A.

[13] The category for mortgage and non-mortgage loan brokers is included within the Panel's review because covered loans are made in some jurisdictions under state laws related to credit service organizations or mortgage brokers.

6.2 Other Outreach Efforts, Including to Small Entities

In addition to the SBREFA process, the Bureau has conducted extensive outreach efforts to consumer, civil rights, and community-based groups, industry, representatives of tribal, state, and local governments, other federal agencies, and members of the public. Since January 2012, the Bureau has conducted three public field hearings on issues related to payday lending. The most recent of these public forums—held in Richmond, Virginia on March 26, 2015—coincided with the release of the Outline of Proposals under Consideration and Alternatives Considered.

7. List of Small Entity Representatives

The following 27 small entity representatives were selected to participate in the Panel's Small Business Review process:

NAME & TITLE	BUSINESS NAME	STATES OF OPERATION	BUSINESS TYPE & CHANNEL
Patrick Adams, Chief Executive Officer	St. Louis Community Credit Union	Missouri	Credit Union (storefront)
Tammy Adkins, Treasurer	EZ Loans, Inc.	Delaware, Virginia	Nondepository (storefront and online)
Scott Allen, President	Cash Time	Arizona	Nondepository (storefront and online)
Drew Carson, President	Bank of Commerce	Oklahoma	Bank (storefront)
Fred Evensen, President	CashSmart	Ohio	Nondepository (storefront)
Douglas Grimaldi, President	Grimaldi Corp. dba Cash Plus (franchise)	Florida	Nondepository (storefront)
James Gutierrez, Chief Executive Officer	Insikt	California	Nondepository (online)
Dan Gwaltney, Chief Financial Officer	Payday Loans LLC dba Payday Money Centers	California	Nondepository (storefront)
Paul Hoffer, Chief Financial Officer	Xpress Cash Management	Arizona, Idaho, Michigan, New Mexico, Utah, Wisconsin	Nondepository (storefront)
Jason Hutton, Chief Financial Officer	Sun Up Financial dba Balance Credit	California, Idaho, Missouri, South Carolina, Utah	Nondepository (online)
Brian Lynn, President	Speedy Cash Inc dba Lending Bear	Florida, Georgia, Alabama	Nondepository (storefront)
Sarah Marshall,	North Side Community	Illinois	Credit Union

Vice President of Operations	Federal Credit Union		
Mickey Mays, Managing Partner	Thrifty Loans	Louisiana, Texas	Nondepository (storefront)
Brent McFarland, Chief Operating Officer	Lac du Flambeau Holding Company/Ishwaaswi LLC dba Radiant Cash	Not disclosed	Nondepository (online)
Sasha Orloff, Chief Executive Officer	LendUp	California, Idaho, Kansas, Louisiana, Minnesota, Missouri, New Mexico, Oklahoma, Oregon, Texas, Washington, Wyoming	Nondepository (online)
Brandon Payne, Manager	Luxton Corp. dba Payne's Check Cashing and Payne's Title Loans LLC	Virginia	Nondepository (storefront)
Jennifer Robertson, Chief Financial Officer	Pacific Rim Alliance Corp dba Checkmate	Arizona, California, Colorado, New Mexico, Utah, Washington	Nondepository (storefront)
Jeffrey Silverman, President	M.S. Management Corp. dba USA Loans	California, Illinois, Missouri, Wisconsin	Nondepository (storefront)
Ed Sivak, Chief Policy Officer	Hope Credit Union	Arkansas, Louisiana, Mississippi, Tennessee	Credit Union
Jason Smith, Owner	Triple S Inc. dba Speedy Cash Washington	Washington	Nondepository (storefront)
Pat St. Charles, President and Chief Executive Officer	Citizens Savings & Loan	Tennessee, Georgia	Nondepository (storefront)
Judi Strong, Owner	Cash in a Dash LLC	Kentucky	Nondepository (storefront)
Stuart Tapper, Vice President	Unbank Company	Minnesota	Nondepository (storefront)
James Williams, Jr., Co-manager	Duck Creek Tribal Financial dba Peppercash	Alabama, Arkansas, Arizona, California, Connecticut, Delaware, District of Columbia, Florida, Georgia, Hawaii, Idaho, Illinois, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire,	Nondepository (online)

		New Jersey, New Mexico, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, Washington, Wisconsin, Wyoming	
McCall Wilson, President	Bank of Fayette County	Tennessee	Bank
Bob Zeitler, Chairman and Chief Executive Officer	PH Financial LLC	California, Illinois, Louisiana, Missouri, New Mexico, Virginia, Wisconsin	Nondepository (storefront)
Robert Zweig, Chief Operating Officer	Check Center Agencies of California Inc.	California	Nondepository (storefront)

These 27 SERs represented a mix of online and storefront lending operations from rural, suburban, and urban locations across the country and were selected from the four applicable NAICS codes. With this broad selection, the SERs participating in the Panel's process represented a diversity of primary business activities and operated under the laws of a variety of local, state, and tribal jurisdictions.

8. Summary of Small Entity Representative Comments

Through the SBREFA process, the Bureau solicits feedback from small businesses early in a rulemaking proceeding, prior to developing a proposed rule. In order to obtain specific information about the costs of complying with a potential rulemaking, the Bureau provided SERs with a list of questions to consider about the impact of the proposals under consideration. These discussion questions, included at Appendix D, along with the Outline of Proposals under Consideration (Appendix C), formed the basis of the Panel Outreach Meeting and the subsequent written comments.

During the Panel Outreach Meeting, as well as during the associated telephone conferences and in written materials submitted to the Bureau following the Panel Outreach Meeting, the SERs provided feedback on all aspects of the proposals under consideration. The SERs provided a substantial amount of information to the Panel about how the SERs conduct business, as well as specially-commissioned studies and other research on the markets covered by the proposals under consideration. The Panel appreciates the effort made by the SERs to provide meaningful comments and data.

In general, the SERs stated that the proposals under consideration by the Bureau were unnecessary and onerous. Many of the SERs rejected the premises of the Bureau's rulemaking and argued that they would be unable to continue operating profitably once the Bureau's rule went into effect. The SERs stated that their goal, as lenders, was to engage in successful transactions. The SERs expressed the belief that the Bureau, in considering these proposals, seemed to assume that the lenders were being unfair or abusive rather than simply being businesses operating lawfully within their jurisdictions and serving the financial needs of their communities. Numerous SERs recommended that the Bureau forgo the ability-to-repay requirements entirely and either defer to existing state regulation or model federal regulation on the laws or regulations of certain states. Several SERs recommended that, in lieu of the ability-to-repay requirements, the Bureau adopt new disclosures for covered loans; one SER also recommended that the Bureau require each lender to create an internal consumer protection program.

In contrast, three of the SERs indicated that their existing lending and payment collection practices generally already resemble the types of requirements being considered by the Bureau. One SER noted that the proposals under consideration also would result in a net benefit to the SER's credit union because the proposals would minimize injury to credit union consumers who currently take out payday, vehicle title, and similar loans and would reduce the credit union's rate of defaults and charge-offs on deposit accounts when consumers encounter financial difficulty using such loans.

8.1 Scope of Coverage

Some of the SERs raised concerns about the Bureau's cost threshold for regulation of longer-term loans. In particular, one SER stated that using an all-in APR as the threshold would be burdensome because, under regulations in place at the time of the Panel's process, lenders do not calculate this number. Noting that using the all-in APR would cause lenders to incur expenses associated with creating and programming a new calculation and with training employees, the SER recommended that the Bureau use the APR under Regulation Z, rather than an all-in APR, as the cost threshold.

One SER raised concerns about the compliance burden of having coverage of longer-term loans depend, in part, on when a lender obtains access to a consumer's account for repayment. The SER noted that if a consumer provides account access for repayment of a loan on the day before the first payment is due—and the loan meets the other conditions to be a covered longer-term loan—the loan would then become a covered longer-term loan and the lender would not be able to accept the authorization for payment without running afoul of the payment notification requirement.

The SERs also recommended exclusions from coverage. Some SERs argued that vehicle title loans or installment loans should not be covered at all. One SER recommended that the Bureau exclude installment loans with account access that is provided voluntarily by the consumer. Another SER recommended that the Bureau exclude from the ability-to-repay requirements any lender of short-term loans that has charge-off rates below market averages. The SERs representing tribal lenders stated that the proposals under consideration would not apply to their businesses. One SER representing a credit union recommended that the Bureau exempt Federal credit unions from the proposals because these entities are highly regulated by existing federal law.

8.2 Requirement to Determine Ability to Repay

In General

In general, the SERs stated that the proposals under consideration to require lenders to conduct an ability-to-repay determination are onerous. Many argued that such a requirement would be superfluous because lenders, particularly small lenders, are already familiar with their consumers' financial circumstances and know whether they can afford to repay their loans. The SERs suggested that a lengthy underwriting process was in conflict with what consumers expect for small dollar loans and that the costs associated with underwriting would undermine the profitability of such loans. In addition, some of the SERs suggested that the requirement that the determination of ability to repay be "reasonable" was ambiguous.

The SERs stated that they already collect some, but not all, of the information that would be used to make the contemplated ability-to-repay determination. In particular, the SERs reported that they collect and verify income information; however, most do not obtain and verify information about major financial obligations. Most of the SERs do not currently determine whether a consumer will have sufficient income remaining after satisfying major financial obligations and basic living expenses to make the payment on the covered loan without needing to reborrow within 60 days. However, several of the SERs consider numerous points of information about a consumer's financial condition and seek to determine whether a consumer has the means to repay the loan while still being able to meet living expenses and other financial obligations.

The SERs noted that each additional document that they need to collect to originate a loan would increase their compliance costs. The SERs operating out of storefronts that are not currently assessing the consumer's ability to repay a loan estimated that the ability-to-repay requirements under consideration by the Bureau would increase transaction time by between 15 and 45 minutes. The SERs operating online noted that lenders will incur costs for obtaining and verifying information under the various components of the ability-to-repay requirements for each loan application, even if that application does not lead to a loan.

One SER estimated that his business could incur a one-time cost of approximately $175,000 for programming required to comply with the ability-to-repay requirements; the SER estimated the ongoing cost of making an ability-to-repay determination to be $13.25 in employee costs per loan application, as well as $7.50 paid to third parties. Another SER estimated that the ability-to-repay requirements would increase his company's cost by $10 per application. One SER provided estimates of the additional time and cost that would be associated with training employees to comply with the Bureau's proposals under consideration, reporting that it would cost his business $16,380 to train all employees on the new regulations and would cost $5,720 to train new hires (up from $2,750 currently).

One of the SERs estimated that the underwriting process contemplated by the Bureau would take hours and expressed concern that the SER's business would not be able to pass along the increased cost of underwriting to consumers because of price restrictions under state law. In addition, SERs operating in several different states noted that because of state limits on the prices they can charge or the products they can offer, they would not be able to modify their product offerings in order to not be covered by the proposals under consideration.

A handful of SERs proposed amendments to the Bureau's ability-to-repay framework. One SER recommended that the Bureau replace the reasonable determination in the proposals under consideration with a maximum total debt payment to gross income ratio of 50 percent. Another SER recommended that, in place of the proposals under consideration, the Bureau adopt the same standards applicable to credit card accounts under Regulation Z, permitting lenders to use stated income to determine whether consumers can make the required minimum payment on a credit line.

Verification of Income

In general, the SERs stated that they currently obtain third-party records to verify a consumer's income prior to extending a loan and recommended that the Bureau not create new requirements related to verification of income.

The SERs use, among other documents, pay stubs, bank account statements, and W-2s to verify income. Occasionally, the SERs will also call employers to verify the employment status of a consumer. Several of the SERs stated that employers generally are not willing to disclose the amount of income consumers receive. The SERs operating online noted that consumers can easily fabricate income documents, such as a pay stub. One SER estimated that the cost to verify income for a single application would be $4.70. The SER stated that requiring income verification could lead to a drop-off in applications, so that the real cost of the requirement, because of lost revenue, could be substantially higher. One SER that currently obtains and verifies income information noted that this process is costly to set up and to maintain and requires an investment in personnel, infrastructure, and technology.

The SERs raised concerns about verification of income for consumers paid in cash. Currently, some of the SERs use W-2s or other tax documents to verify income in these circumstances. One SER reported that 10 percent of his customers operate entirely in cash and stated that his company tells these prospective cash-only borrowers to open a bank account and then return with bank statements after a month of depositing their earnings into their bank accounts.

Verification of Major Financial Obligations

The SERs reported a wide range of current business practices related to obtaining information about consumers' major financial obligations. In general, the SERs do not take into account a consumer's other outstanding debts, mortgage or rent obligations, or other legally required payments. Most of the SERs do not pull a consumer report from one of the nationwide consumer reporting agencies (CRAs); the SERs stated that they do not pull such a report because it would be costly and is not relevant to their loan origination process.

However, a few of the SERs stated that they would need to make only minor changes to comply with the requirement to obtain and verify information on major financial obligations.

One SER suggested that obtaining more information would be beneficial for the SER's credit union because doing so would assist the credit union in making better lending decisions, leading to fewer defaults and charge-offs.

In addition to the general concern with the appropriateness of considering major financial obligations in underwriting for payday, vehicle title, and similar loans, the SERs described compliance challenges associated with such a requirement. One SER explained that a requirement to verify information would cause the lender to incur numerous expenses, including

- Updating policies and procedures;
- Updating computer systems;
- Updating websites and marketing materials;
- Purchasing new equipment;
- Hiring new employees;
- Training new and existing employees; and
- Adding physical and electronic storage capacity.

In particular, the SERs explained that verifying rent payments could be very difficult for consumers who share rent obligations with others or make payments in cash. One SER that currently considers housing expenses in underwriting loans reported that only 1 percent of applicants use a signed lease as proof of address and that 40 percent of applicants have monthly housing expenses that are no more than $300. One SER estimated that the proposal under consideration to require lenders to verify housing costs would add approximately $5 to the cost of each application. The SERs also expressed particular concern with attempting to verify child support obligations or other legally required payments because of a lack of available information.

One SER that currently considers housing and requires various verification documents in the loan application process estimated that the direct cost of manual verification is approximately $12 per loan, representing the costs associated with a document review team and supporting infrastructure. The SER noted that there are also substantial indirect costs associated with verifying information because half of consumers must submit verification documents multiple times and verification can add time to the origination process. Another SER that operates entirely online estimated that the percentage of loan applicants that would actually complete the information verification process would drop from 72 percent to 35 percent.

As an alternative to the verification requirements in the proposals under consideration, one SER recommended that the Bureau require lenders to consider self-reported housing costs, subject to the lender's reasonable procedures to evaluate the reasonableness of the consumer's stated cost.

The SERs expressed a number of concerns about the use of a consumer report to obtain information about other debt obligations. In particular, the SERs noted concerns about the costs of obtaining a report (including for loan applications that are not ultimately approved), the lack of relevance that such a report would have to their credit transactions, and unwillingness on the part of nationwide CRAs to work with payday lenders. One credit union SER reported that it saw charge-off rates of between 1 and 3 percent, despite not pulling a consumer report; the SER also noted that the profit margin on the credit union's very small dollar loans is sufficiently thin that the cost of obtaining a consumer report could make extending these loans infeasible.

Because pricing for consumer reports is, in part, based on volume, the SERs predicted that the cost for small lenders of obtaining a report from a nationwide CRA would be substantial. For example, one SER stated that the cost to obtain a consumer report would be $4.25 per applicant and that this would be in addition to the $2 cost to obtain the report of a specialty CRA, as discussed below. Another SER estimated that a report from a nationwide CRA would cost $1.50 per application, in addition to the $1 cost to obtain the report of a specialty CRA. The SERs also provided estimates of up to $15 for the cost per funded loan of pulling a consumer report.

One SER recommended that the Bureau reduce the compliance burden of this component of the ability-to-repay determination by limiting the requirement to obtain and verify information to that information that is readily available in a loan application and traditional consumer report. Another SER recommended that the Bureau require that lenders consider less common major financial obligations (such as child support) only if the consumer reports such obligations or the obligations appear on a consumer report.

Borrowing History on Covered Loans

The SERs expressed little concern about the proposal under consideration to require the lender to check its own records to identify a consumer's borrowing history. One SER stated that lenders already undertake this check each time that a consumer takes out a new loan and that doing so is a simple process.

In contrast, the SERs shared a number of concerns about checking borrowing history for covered loans with other lenders, stating that this requirement would be time-consuming and costly. In particular, the SERs expressed concerns about the costs of obtaining a report from a commercially available reporting system and the compliance costs associated with furnishing information to all commercially available reporting systems (as discussed below). One SER noted that the trade lines on consumer reports do not indicate which loans are covered loans.

The SERs reported a variety of practices related to obtaining information from CRAs, including specialty CRAs. Many of the SERs stated that they currently obtain a report from a specialty CRA focused on the payday lending market, largely to detect fraud. Some SERs also pull a report from one of the nationwide CRAs as part of the loan origination process.

The SERs estimated that the cost of obtaining a specialty consumer report containing information about covered loans would be approximately $1 to $2 for a small lender. One SER estimated that the costs associated with complying with the Fair Credit Reporting Act would be approximately $0.80 for a single application. The SER estimated that the set-up cost to become a user of a single CRA's reports is approximately $10,000 in "upfront direct costs" and $58,333 in "legal, engineering, and business development salaries." The SER estimated that the ongoing costs would be approximately $25,000 per year, in addition to the costs of the consumer reports.

Reporting to Commercially Available Reporting Systems

The SERs also reported a variety of practices related to furnishing information to CRAs and expressed concerns about the proposal under consideration to require lenders to furnish to all applicable commercially available reporting systems. In general, the SERs stated that they do not furnish information to CRAs; however, the credit union SERs and a couple of the SERs extending longer-term loans do so. The SERs operating pursuant to state law in those states that require use of such a state-approved database for compliance with state law restrictions also submit information to (and obtain information from) that database as part of the loan origination process.

The SERs raised numerous issues about the requirement to report to all applicable commercially available reporting systems. The SERs noted that each reporting system or CRA is likely to have its own software systems and protocol, requiring lenders to set up distinct programming to furnish information to each one. The SERs also expressed concern about the lack of clarity about how many such reporting systems would be on the market. Mirroring the cost of obtaining information from a CRA noted above, one SER estimated that the set-up cost to become a furnisher to a single CRA's reports would be approximately $10,000 in "upfront direct costs" and $58,333 in "legal, engineering, and business development salaries." Another SER estimated that the cost to report to all applicable commercially available reporting systems would be $5 per loan.

As an alternative, SERs recommended several options for the Bureau to consider, including the following:

- Require lenders to report to one reporting company servicing the lender's trade area;
- Require the big three CRAs to accept payday and vehicle title loan history and require lenders to furnish covered loan information to one such CRA;
- Require all CRAs to use a standard electronic format and require lenders to report to no more than three CRAs;
- Limit reporting options for covered short-term loans to the reporting systems that exhibit the most capacity to cover the largest segments of the market; and
- Require the use of a single CRA for simplified underwriting.

In contrast, however, one SER expressed concern with the possibility that lenders could furnish consumer information to only one (or a limited number of) commercially available reporting systems. The SER noted that if lenders are able to select a single reporting system, the SER's credit union would not know which CRA to use for its own underwriting and would incur additional costs for each additional report it needed to pull.

Reasonable Determination

The SERs also commented on the Bureau's proposals under consideration with regard to the nature of the ability-to-repay determination that a lender would need to make, using the information on income and major financial obligations. One SER noted that lenders cannot determine how a consumer's income and major financial obligations may change over the contractual term of a longer-term loan. The SER recommended that the Bureau permit lenders to assume that income and expenses will not materially change and require lenders to determine ability-to-repay using the largest scheduled payment on the loan.

The SERs reported a variety of different ways in which they currently assess the creditworthiness of a consumer, while not making the sort of ability-to-repay determination under consideration by the Bureau. For example, one SER reported reviewing utility bills to determine residency and to identify delinquent or outstanding payments that are past due. Several SERs also stated that they examine bank statements for NSF fees and other indices of financial distress.

8.3 Restrictions on Reborrowing

In general, the SERs that extend short-term loans expressed concern about the restrictions on reborrowing covered short-term loans. The SERs stated that the limitation of three loans in a sequence before a conclusive presumption of inability to repay would cause a significant decrease in revenue and profit, and that such a requirement would make it difficult, if not impossible, for lenders to remain in business. Several SERs submitted a report from an external consultant finding that the lending patterns of small entities were very similar to the patterns by the large entities analyzed by the Bureau: currently, approximately 40 percent of loan sequences from the small entities included in the third-party analysis contained more than three loans. One SER noted that the limitations would pressure lenders to recoup the costs of origination through extending larger loan amounts or charging additional fees.

The SERs recommended that the Bureau address the problems associated with unaffordable loans through alternate mechanisms that would reduce the adverse impact on loan volume. One SER recommended that the Bureau adopt a provision similar to Washington State law that requires lenders to offer an installment plan to consumers who are unable to repay their loan. Another SER recommended the Bureau require lenders to provide to any consumer who is unable to repay a loan a disclosure with information about the availability of an off-ramp where the loan could be repaid in amortizing installments. Other SERs recommended that the Bureau prohibit lenders from extending a new loan to make a payment on the prior loan. One SER that makes longer-term installment loans stated that the conditions under which refinancing would be restricted were unclear.

In contrast, one SER noted that the restrictions on reborrowing would have a positive impact on the SER’s credit union by limiting the detrimental effect of sequential loans on account holders. Additionally, one SER representing a credit union recommended that the Bureau take steps to make sure that consumers retain the opportunity to refinance into lower-cost loans, regardless of how many payday loans they have out with other lenders.

8.4 Alternative Requirements for Covered Loans

In General

In general, the SERs expressed concern that the provisions in the proposals under consideration allowing lending without satisfying the ability-to-repay requirements were still too onerous to permit them to continue operating profitably.

Alternative Requirements for Covered Short-Term Loans

The SERs generally objected to the alternative requirement for covered short-term loans. The SERs extending short-term loans expressed the view that, even without the burdens associated with the ability-to-repay requirements, the alternative requirements did not provide for sufficient loan volume to sustain their profitability. Five of the SERs submitted to the Panel the findings of a report commissioned by a trade association representing six of the SERs. Examining store-level data from these small businesses that extend payday loans, the report found that the alternative requirements for covered short-term loans would cause lender revenues to decline by 82 percent. The report found that five of the six lenders considered would become unprofitable and that the sixth lender would experience a 70-percent decline in profitability.

Some SERs also noted that the proposal under consideration to require lenders to amortize the debt over the course of the loan sequence could present compliance challenges. For example, the SERs stated that both the amortization requirement and the off-ramp requirement could potentially conflict with state law requiring single payment transactions. As an alternative, one SER recommended that the Bureau adopt a provision in Washington State law that requires lenders to offer an installment plan to consumers who are unable to repay their loan.

Despite these concerns, the SERs representing lenders that extend vehicle title loans objected to their inability to use the alternative requirements for loans that use the consumer's vehicle as collateral.

Another SER expressed concern that the alternative requirements for covered short-term loans could increase costs to the SER's credit union and urged the Bureau to permit loans only if they satisfied the ability-to-repay requirements. The SER stated that lending without ability-to-repay standards hurts the credit union's balance sheet, noting that 25 percent of the charge-offs on checking accounts in 2014 with negative balances over $500 incurred a payday lending payment draft after the account had already been overdrawn.

Alternative Requirements for NCUA-Type Loans

In general, the SERs stated that the NCUA-type alternative requirements were not economically viable for their businesses because the loan amount was too small, the duration too short, and the permissible cost too low. As an alternative, one SER recommended that the Bureau permit larger loans with a duration of up to 36 months, allow multiple loans at one time, and permit an annual interest rate of 36 percent along with an application fee of 7 percent of the loan. One SER noted that the NCUA-type requirements were generally workable for the SER's credit union, but recommended that the Bureau generally exempt Federal credit unions from coverage by the rule.

Alternative Requirements for Maximum PTI Loans

In general, the SERs extending longer-term loans stated that the maximum PTI loans were also not viable because the loan duration was too short and many existing loans would exceed the 5 percent PTI threshold. As an alternative, one SER recommended that the Bureau extend the permissible loan term to 36 months, permit multiple covered loans at one time, and permit a PTI of up to 12 percent. Another SER speculated that a maximum PTI between 25 and 30 percent might make this alternative feasible for the industry.

8.5 Requirement to Provide Notice

In General

In general, the SERs took issue with the need for the lender to provide a notice to consumers before attempting to collect payment from consumers' accounts. Several SERs indicated that they already provide some form of notification to consumers prior to each payment and consumers at these lenders generally receive this notification electronically. For example, one SER that currently provides payment reminders reported that 40 percent of customers elect to receive the reminder by email or text message; another SER reported opt-in rates for receiving text messages of 80 percent. Some of the SERs did not object to providing a notice prior to attempting to collect payment, but did question whether such a notice would be applicable for one-time payments. The SERs also noted that consumers generally know when a payment is going to be debited from their accounts.

One-Time Payments

The SERs expressed concern that the proposals under consideration would cause consumers to become delinquent on their loans because the lender would not be able to process one-time payments authorized within three days of the payment being due. One SER reported that 25 percent of his customers pay by one-time ACH authorized over the phone.

The SERs recommended a number of alternatives including that the Bureau require lenders to provide the notice only when a payment collection attempt will access a consumer's account on a date other than the date authorized by the consumer, if access to the deposit account is required by the lender as a condition of credit, or if there is a material delay between an initial attempt to collect payment and a resubmission.

Method of Communication

The SERs also raised numerous practical and cost concerns about delivering the required notice. The lender's cost of providing the required notice would be higher for physical mail than for either text messages or email. One SER estimated that the cost per piece of mail for a small entity would be approximately $1 at low volume and $0.40 if a lender did more than 100,000 mailings each month. The SERs observed that in order to provide the notice by text message, legal requirements would make it necessary for lenders to obtain opt-in consent from the consumer to receive the message. Some lenders would also need to establish a system for sending text messages. To provide the notice by email, lenders would need to obtain an accurate and current email address from consumers. Several SERs noted that consumers do not keep updated mailing information on file with the lender; one SER reported that only 33 percent of his consumers report that they have an email address. However, one SER reported that he would need to make only minimal changes to his current operations to comply with the notice requirement generally.

One SER that currently provides a payment reminder two days prior to each payment due date, regardless of how that payment is made, estimated that his system for sending text messages cost approximately $50,000, including the software development costs. The SER estimated that the cost per text message is $0.0075. The SER reported that 80 percent of consumers opt-in to receive text messages. Another SER stated that predicting the cost associated with the notice requirement was difficult because there were so many variables, including whether consumers block lenders from sending text messages or change their email addresses.

The SERs also noted that receiving the notice could impose a cost on consumers. Several SERs observed that the information being considered by the Bureau for inclusion in the notice would not fit in a single text message. Every additional text message would cause both the lender and the consumer to incur additional fees. One SER questioned whether the notice requirement would cause the lender to violate state law in those jurisdictions that prohibit lenders from charging consumers any costs beyond those permitted by the state.

As an alternative, two SERs recommended that the payment notice be substantially streamlined to fit into one text message and that consumers should be permitted to select the form of notification, as well as to opt-out of receiving the notification. The SERs also recommended that the Bureau reduce paperwork burden by permitting the notice to be provided electronically.

8.6 Limitation on Repeat Presentments

In General

In general, the SERs did not raise substantial concerns about the proposals under consideration to limit the number of payment collection attempts after a prior attempt failed. However, the SERs noted that the proposals under consideration by the Bureau would overlap with the forthcoming revised requirements from NACHA and recommended that the Bureau delay imposing any requirements until it had observed the effects of the new NACHA rules. One SER recommended that the Bureau clarify the means through which a lender could obtain a new authorization to collect payment and permit lenders to use fax, email, or recorded telephone call, in addition to writing.

As an alternative, one SER recommended that lenders should be permitted to attempt to collect payment on a defaulted loan a maximum of four times per month.

The SERs representing credit unions noted that the limitation on presentments could lead to a cost savings. One reported that the credit union frequently has accounts go negative after multiple ACH withdrawals from payday lenders. Another stated that the SER's credit union incurs costs when payment collection attempts lead to a charge-off.

8.7 Impact on the Cost of Business Credit

In General

Some of the SERs expressed concern that the proposals under consideration would have a substantial impact on the cost of business credit, both by making their businesses less credit worthy and by reducing access to credit for their customers that are using loans to fund small business operations.

Impact on Cost of Credit for Small Lenders

In general, the SERs expressed concern that the proposals under consideration would make their businesses less profitable and therefore increase their cost of credit. One SER stated that banks already did not want to do business with his company because of the potential impact of the proposals under consideration. Another SER stated that the proposals under consideration would cause his business to violate covenants on the line of credit used to fund his business operations.

In contrast, one SER stated that the proposals under consideration would reduce the cost of credit for his small business. The SER noted that the promulgation of rules by the Bureau would clear up confusion about regulatory risk and eliminate legal uncertainty in the market.

Impact on Cost of Credit for Small Businesses Using Affected Lenders

Five of the SERs reported that some of their customers use loans to fund small business operations. One SER estimated that as many 15 percent of his customers are using vehicle title loans as business credit. Another noted that it is hard for the lender to determine the purpose of the loan. Four of the SERs that reported extending business credit stated that the proposals under consideration, by forcing lenders out of business, would have an adverse impact on the availability of credit for small businesses.

9. Panel Findings and Recommendations

9.1 Number and Type of Entities Affected

For purposes of assessing the impacts of the proposals under consideration on small entities, "small entities" are defined in the RFA to include small businesses, small nonprofit organizations, and small government jurisdictions. A “small business” is defined by the SBA Office of Size Standards for all industries in the NAICS.

During the Small Business Review Panel process, the Bureau identified four categories of small entities that may be subject to the proposals under consideration: nondepository lenders, commercial banks, credit unions, and loan brokers. According to the SBA Office of Size Standards, commercial banks, savings institutions, and credit unions are small businesses if they have $550 million or less in assets. Nondepository institutions engaged in consumer lending or credit intermediation activities are small businesses if they have $38.5 million or less in annual revenues. Nondepository institutions engaged in other activities related to credit intermediation are small entities if they have $20.5 million or less in annual revenues. Mortgage and non-mortgage loan brokers are small businesses if they have $7.5 million or less in annual revenues.

Table 9.1.1 provides information from the 2014 Call Report (Commercial Banks, Savings Institutions, and Credit Unions) and the Census Bureau’s Statistics of U.S. Businesses for 2012 (all other categories) on the total number of entities and the total number of small entities within each NAICS industry that may be subject to the proposals under consideration.

Table 9.1.1

NAICS Industry	NAICS Code	Small Entity Threshold	Estimated Number of Total Entities	Estimated Number of Small Entities
Commercial Banks, Savings Institutions, and Credit Unions	522110; 522120; 522130	$550 million in assets	13,348	11,676
Nondepository Institutions Engaged in Consumer Lending or Credit Intermediation Activities	522298	$38.5 million in annual revenues	5,523	5,403
Nondepository Institutions Engaged in Other Activities Related to Credit Intermediation	522390	$20.5 million in annual revenues	4,701	4,549
Mortgage and Non-Mortgage Loan Brokers	522310	$7.5 million in annual revenues	7,007	6,817
Consumer Lending	522291	$38.5 million in annual revenues	3,206	3,130

The NAICS categories are likely to include firms that do not extend credit that would be covered by the proposals under consideration. For example, category 522310 includes a wide range of mortgage brokers, many of which will not be engaged in lending covered by the proposals.

Table 9.1.2 provides the Bureau's estimate of the number and types of small entities within particular segments of primary industries that may be affected by the proposals under consideration:

Table 9.1.2

Industry Category	NAICS Code	Small Entity Threshold	Estimated Number of Small Entities
Storefront Payday Lenders	522390	$20.5 million in annual revenue	3,300
Storefront Payday Lenders Operating Primarily as Brokers	522310	$7.5 million in annual revenue	450
Storefront Installment Lenders	522291	$38.5 million in annual revenue	1,175
Storefront Vehicle Title Lenders	522298	$38.5 million in annual revenue	805
Online Lenders	522298; 522390	$20.5 million or 38.5 million in annual revenue	TBD[14]
Credit Unions	522130	$550 million in assets	6,622
Banks and Thrifts	522110; 522120	$550 million in assets	6,726

The Bureau estimated the number of affected small entities using the data described below.

Storefront Payday Lenders: The number of small storefront payday lenders is estimated using licensee information from state financial regulators, firm revenue information from public filings and non-public sources, and, for a small number of states, industry market research relying on telephone directory listings.[15] Based on these sources, there are approximately 3,760 storefront payday lenders in the United States. Based on the publicly-available revenue information, at least 10 of the firms have revenue above the small entity threshold. Most of the remaining firms operate a very small number of storefronts. Therefore, while some of the firms without publicly available information may have revenue above the small entity threshold, in the interest of being inclusive they are all assumed to be small entities.

Storefront Vehicle Title Lenders: The number of small storefront vehicle title lenders is estimated using licensee information from state financial regulators and revenue information

[14] The Bureau does not currently have a reliable estimate of the number of small entities in this industry category and continues to assess available information to make this determination.

[15] State reports supplemented with location information prepared by Steven Graves and Christopher Peterson, available at http://www.csun.edu/~sg4002/research/data/US_pdl_addr.xls.

from public filings and from non-public sources.[16] Based on these sources, there are approximately 810 storefront vehicle title lenders in the United States. Based on the revenue information, at least five of the firms have revenue above the small entity threshold. Most of the remaining firms operate a very small number of storefronts. Therefore, while some of the firms without publicly available information may have revenue above the small entity threshold, in the interest of being inclusive they are all assumed to be small entities.

Storefront Installment Lenders: The number of storefront installment lenders is estimated using industry estimates of the overall number of installment loan storefront locations and information on the number of locations of the largest storefront installment lenders.[17] A recent industry report estimated that there are between 8,000 and 10,000 storefront installment lender locations. Based on publicly-available information, approximately 20 of the largest firms have revenue above the small entity threshold. These larger firms operate approximately 7,085 storefronts, leaving, on the high end, approximately 3,000 storefronts operated by small entities. Assuming smaller storefront installment lenders have approximately the same distribution of number of stores per lender as smaller storefront payday lenders, this implies a total of approximately 1,175 small storefront installment lenders. This number likely is on the high end of potential estimates of the number of entities that would be affected by the proposals under consideration, as not all small storefront installment lenders originate covered loans.

Online Lenders: The panel is unaware of any reliable information on the number of online payday or installment lenders or on how many of these lenders are small. Note that lenders making loans online that also operate storefronts are included in prior estimates.

Depository Institutions: The estimate for banks, savings associations, and credit unions (collectively, depository institutions or "DIs") is on the high end of the possible number of small entities that would be subject to the Bureau's proposals, as not all small DIs originate covered loans. However, the Panel does not have complete information about how many small DIs originate covered loans. DIs would most likely be affected by the proposals if they originate small loans with substantial application or underwriting fees and take a non-purchase money security interest in a personal vehicle or have access to a consumer's account for repayment. In 2014, 533 Federal credit unions originated loans under the NCUA Payday Alternative Loan program and would likely be affected by the proposals under consideration. Not all of these 533 Federal credit unions are small entities and therefore, this figure is likely overstated for the purposes of establishing the number of small entities that would be affected by the proposals.

[16] State reports supplemented with estimates from Center for Responsible Lending, "Car-Title Lending: The State of Lending in America & its Impact on U.S. Households" (2013), available at http://www.responsiblelending.org/state-of-lending/reports/7-Car-Title-Loans.pdf.

[17] Stephens Inc., "Alternative Financial Services: Innovating to Meet Customer Needs in an Evolving Regulatory Framework" (2014) available at http://cfsaa.com/Portals/0/cfsa2014_conference/Presentations/CFSA2014_THURSDAY_GeneralSession_JohnHecht_Stephens.pdf.

9.2 Related Federal Rules

Credit that would be covered by the proposals under consideration by the Bureau is generally subject to the Federal consumer financial laws. Except for the overlaps discussed in section 2.3 above, the Panel is not aware of any other Federal regulations that currently duplicate, overlap, or conflict with the proposals under consideration.

9.3 Compliance Burden and Potential Alternatives

As discussed in section 8 above, the SERs generally stated that their companies did not engage in unfair or abusive acts or practices. Many of the SERs expressed concern that compliance with the proposals under consideration would have a substantial adverse effect on the profitability of their businesses. Some of the SERs also noted that certain operational components of the proposals under consideration could be costly and burdensome to implement. Many of the SERs urged the Bureau to broadly reconsider the proposals under consideration and defer to existing regulation of these markets by the states or to model federal regulation on the laws or regulations of certain states.

The Panel understands that the Bureau has been assessing the impact of existing state regulation of covered loans. The Panel recommends that the Bureau continue to consider whether regulations in place at the state level are sufficient to address concerns about unaffordable loan payments. The Panel also recommends that the Bureau consider whether existing state laws and regulations could provide a model for elements of the Federal regulation.

9.3.1 Requirement to Determine Ability to Repay Covered Short-Term Loans

In general, the SERs stated that the proposals under consideration to require that lenders determine whether a consumer has the ability to repay a covered short-term loan would prevent them from making covered short-term loans. The SERs argued that the general framework of the requirement would result in a dramatic revenue reduction and also that compliance with some of the specific operational features would be costly and burdensome relative to the Bureau's stated objective for the regulation.

Verification of Income and Major Financial Obligations

The SERs indicated that verifying certain information included in the ability-to-repay determination would be burdensome. In particular, the SERs expressed concern about verifying cash income, housing expenses, and child support and other legally required payments. The SERs noted that they would need to update their software systems for loan origination, policies and procedures, and employee training programs to reflect the new requirements. The SERs also suggested that reporting loan use to all applicable commercially available reporting systems could be burdensome.

Should the Bureau propose such restrictions, the Panel recommends that the Bureau request comment on ways to reduce the operational impact on small entities of the requirement to obtain and verify information about the consumer's income, major financial obligations, and borrowing history with other lenders. The Panel urges the Bureau to consider streamlining the requirements related to reporting the use of covered loans, including ways to standardize data submitted to consumer reporting agencies. The Panel also recommends that the Bureau request comment on the cost to small entities of obtaining information from consumer reporting agencies and the implementation process and period, including time needed for small entities to update loan origination systems, policies and procedures, and employee training programs.

Restrictions on Reborrowing Covered Short-Term Loans

The SERs stated that the restrictions on reborrowing for covered short-term loans would significantly decrease their revenue and profit, making it difficult, if not impossible, for small entities to remain in business. The SERs that extend covered short-term loans indicated that they rely on consumers who regularly take out loans, and that the limit of three loans in a sequence would have a substantial adverse impact on their businesses. The SERs urged the Bureau to consider modeling federal regulation of sequential borrowing on existing state laws, including laws that prohibit extending a new loan to a consumer until a prior loan has been repaid or establish a minimum period of time between loans.

The proposals under consideration included presumptions of inability to repay as a backstop to the ability-to-repay determinations to provide additional protections against repeated reborrowing. By imposing rebuttable and then conclusive presumptions after a certain number of loans in a sequence, the proposals under consideration would restrict repeat borrowing. However, limiting the length of loan sequences would substantially reduce the revenues for lenders, including small entities. Should the Bureau impose restrictions on reborrowing, the Panel recommends that the Bureau request comment on whether permitting a sequence of more than three loans under the ability-to-repay requirement for covered short-term loans would enable the Bureau to fulfill its stated objectives for the rulemaking while reducing the revenue impact on small entities.

The Panel understands that the proposals defined a loan sequence to include loans taken out within 60 days of a previous loan because of concerns that the very short cooling-off periods (e.g., 24 hours) imposed by states have not been effective in curbing reborrowing. The 60-day period would capture the potential effects of borrowing and repaying over at least two income and expense cycles. However, the Panel notes that it is possible that a shorter time period would capture most reborrowing that stems from previous loans. The Panel therefore recommends that the Bureau request comment on whether a loan sequence could be defined with reference to a period shorter than 60 days in order to reduce the impact of the proposals on small entities while addressing concerns about reborrowing from unaffordable loans.

9.3.2 <u>Requirement to Determine Ability to Repay Covered Longer-Term Loans</u>

Verification of Income and Major Financial Obligations

Similar to their feedback on the proposals related to covered short-term loans, the SERs indicated that verifying certain information included in the ability-to-repay determination for covered longer-term loans would be burdensome. In particular, the SERs expressed concern about verifying cash income, housing expenses, and child support and other legally required payments. The SERs also noted that they would need to update their software systems, policies and procedures, and employee training programs to reflect the new requirements.

Here, too, the Panel recommends that the Bureau request comment on ways to reduce the operational impact on small entities of the requirement to obtain and verify information about the consumer's income, major financial obligations, and borrowing history with other lenders. The Panel also recommends that the Bureau request comment on the implementation process and period, including time needed for small entities to update loan origination systems, policies and procedures, and employee training programs.

Restrictions on Reborrowing Covered Longer-Term Loans

The SERs expressed some confusion about the restrictions on reborrowing covered longer-term loans. While the proposals under consideration for covered longer-term loans would not limit reborrowing in the same manner as the proposals under consideration for covered short-term loans, the SERs indicated that the ambiguity in the proposals related to refinancing covered longer-term loans could make the proposals difficult to implement within the SERs' existing business operations. For example, one SER noted that the proposals would appear to make it difficult for a lender to refinance a loan for a consumer who had been delinquent for a short period of time long before the refinance.

The Panel recommends that the Bureau clarify the circumstances in which a lender would not be able to refinance a covered longer-term loan. In particular, the Panel recommends that the Bureau consider explicitly identifying and requesting comment on the circumstances in which a lender would have to find that there was a change in circumstances sufficient to overcome the presumption that the consumer lacks the ability to repay.

9.3.3 Alternative Requirements for Covered Loans

Alternative Requirements for Covered Short-Term Loans

The SERs offering covered short-term loans stated that the alternative requirements for covered short-term loans would not provide enough loan volume to enable them to stay in business. Several SERs provided information indicating that their revenues would decline substantially with the alternative requirements. In contrast, one SER indicated that the alternative requirements for covered short-term loans would be more burdensome than the ability-to-repay requirements for the SER's credit union because the alternative requirements would not do enough to prevent consumer injury from covered short-term loans, thereby increasing costs associated with consumers being unable to manage their debt.

The Panel understands that several different factors may be relevant for prescribing the number of loans in a sequence under the alternative requirements for covered short-term loans. The Panel recommends that the Bureau request comment on whether permitting more than three loans under these requirements would enable the Bureau to satisfy its stated objectives for this rulemaking while reducing the revenue impact on small entities extending covered short-term loans. Similarly, the Panel recommends that the Bureau request comment on whether a period of indebtedness longer than 90 days per year for these loans would permit the Bureau to fulfill its stated objectives while reducing the revenue impact on small entities.

Alternative Requirements for Covered Longer-Term Loans

The SERs offering covered longer-term loans indicated that most of their loans would not satisfy the requirements of the maximum PTI loans. The SERs stated that the 5 percent PTI ratio was too low and that six months was too short for a maximum loan duration. Similarly, the SERs offering covered longer-term loans indicated that the conditions of the NCUA-type alternative loans would not be economically feasible for their businesses.

The Panel recommends that the Bureau request comment on additional options for the alternative requirements for covered longer-term loans. In particular, the Panel recommends that, if the Bureau includes these alternatives, the Bureau consider whether a payment-to-income ratio higher than 5 percent would still address the Bureau's concern about unaffordable loans. The Panel also recommends that the Bureau continue to assess the impact of the provisions of existing state laws that limit the permissible loan amount or total debt on payday or similar loans relative to gross monthly income.

9.3.4 Requirement to Provide Notice

The SERs expressed concern about the proposals under consideration to require lenders to provide a written (or electronic) notice to consumers in advance of each attempt to access a consumer's account to collect payment on a covered loan. The SERs indicated that complying with the notice requirement would be costly, particularly in the event that the lender was unable to reach the consumer by text message or email. The SERs also reported that many of their consumers change residences regularly and do not update their mailing address with the lender. The SERs also noted that the proposals under consideration included so much information in the contemplated notice that lenders would have to send multiple text messages to each consumer prior to each attempt to collect payment.

The Panel recommends that the Bureau consider whether the notice needs to be provided prior to each payment and, if not, consider and request comment on the circumstances in which providing the notice would be necessary. In particular, the Panel recommends that the Bureau consider not requiring lenders to provide a written notice in advance of regular payments submitted at the time and in the amount that the consumer explicitly authorized. The Panel also recommends that the Bureau request comment on ways to streamline the information included in any required notice in a way that would reduce the burden on small entities. The Panel further recommends that the Bureau request comment on the appropriate methods of delivery for any required notice, including ways to minimize the burden on small entities of providing the notice.

9.3.5 Impact on Cost of Credit for Small Businesses

Although the Bureau's rule would apply only to consumer loans, some of the SERs indicated that they make loans to small businesses and would be unable to continue to do so if the proposals under consideration have the expected revenue impact on their consumer loan operations. In addition, most of the SERs stated that their cost of borrowing would increase if their revenues declined; in contrast, one SER stated that the proposals would relieve regulatory uncertainty, leading to a lower cost of credit for his business.

The Panel recommends that the Bureau cover only loans extended primarily for personal, family, or household purposes.

9.3.6 Additional Approaches to Regulation

The SERs indicated that the proposals under consideration would result in substantial changes to their business models, making it difficult, if not impossible, for small entities to remain in business. To reduce the burden of the Bureau's rulemaking in the affected markets, the Panel recommends that the Bureau consider additional approaches to regulation of payday, vehicle title, and similar loans.

Disclosures

The SERs suggested that consumers could benefit from additional disclosures during the loan origination process and that doing so would be a less burdensome alternative to the proposals under consideration by the Bureau. The SERs stated that disclosures required by certain states would be a good model for disclosures required by Federal regulation.

The Panel understands that the Bureau has been assessing the impact of state disclosure requirements on outcomes in the markets for covered loans. The Panel recommends that the Bureau continue this analysis and provide information about its findings during the rulemaking process. If the Bureau finds that disclosures are likely to prevent the consumer injury addressed by this rulemaking, the Panel recommends that the Bureau propose such disclosures as an alternative to other requirements of the regulation. The Panel also recommends, under this approach, that the Bureau produce a pamphlet that lenders would be required to provide to consumers.

Small Entities

The SERs stated that, as small businesses, they are already familiar with their consumers, know whether consumers can afford to repay their loans, and are not engaged in unfair or abusive acts or practices.

The Panel recommends that the Bureau determine, if possible, and continue to solicit input on whether small businesses in the markets covered by the proposals under consideration are engaged in meaningfully different lending practices than the larger businesses in these markets. In particular, the Panel urges the Bureau to seek information from small entities about how they determine whether a consumer will be able to repay a covered loan without reborrowing. Such information would include data that the entity has about loan performance—rates of repayment, reborrowing, and default—that could indicate whether the lenders are engaged in the same types of practices that are the focus of this rulemaking. The Panel also urges the Bureau to determine, if possible, and continue to solicit input on whether small entities engage in repeat attempts to collect payment from consumers' accounts after a prior attempt has failed or engage in other practices that would cause consumers to lose control over their payments accounts. If the Bureau finds that small entities are not engaged in the unfair or abusive acts or practices that are the focus of this rulemaking, the Panel urges the Bureau to consider excluding them from the scope of the proposals in order to relieve the regulatory burden on small entities. The Panel also recommends that the Bureau determine, if possible, the approximate number of small online lenders that would be affected by the proposals.

Vehicle Title Loans

The SERs stated that vehicle title loans are distinctly different products from payday loans.

The Panel recommends that the Bureau study the extent of the differences between these products and the extent to which the Bureau's concerns are present in the vehicle title lending market. In particular, the Panel recommends that the Bureau conduct outreach to the vehicle title lending industry and continue to evaluate existing state regulations to determine whether there are additional alternative approaches to regulation for vehicle title loans.

Rural Areas

The SERs stated that they are known to their customers in rural communities and that they know whether their consumers will be able to repay their loans. The SERs also stated that consumers in rural communities may have few options for accessing credit other than the covered loans offered by these lenders.

The Panel recommends that the Bureau determine, if possible, and continue to solicit input on the impact of the proposals under consideration in rural areas and consider ways to address the distinct concerns of rural areas. In particular, the Panel recommends that the Bureau determine, if possible, the impact of the proposals on small underserved communities. In addition, the Panel urges the Bureau to continue to solicit input from such communities throughout the rulemaking process, including engaging in outreach with rural areas.

List of Appendices

Appendix A: Written Comments Submitted by Small Entity Representatives
Appendix B: List of Materials Provided to Small Entity Representatives
Appendix C: Outline of Proposals under Consideration and Alternatives Considered
Appendix D: Discussion Issues for Small Entity Representatives
Appendix E: Panel Outreach Meeting Presentation Materials