Appendix A

Written Comments from Small Entity Representatives

Twenty-four of the 27 SERs submitted written comments to the Panel. In addition to their written comments, the SERs provided appendices containing confidential information about their business operations. The SERs also provided the Panel with numerous other analyses, academic studies, and other reports: a list of these items is included below with a link to the full article, as available. The publicly-available studies and reports, other than the one public report that was commissioned by six of the SERs during the Small Business Review Process, have not been included in the attached. Where multiple SERs provided the same item, the item has only been included in the attached one time.

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RE: SBREFA Panel Discussion

To Whom It May Concern:

Thank you for the opportunity to sit on the SBREFA panel discussion regarding the CFPB's proposed rule-making specific to "payday, vehicle title, and similar loans." While we appreciate that a process for small business feedback exists, the existential nature of the proposed changes warrant the need for a longer response period. That said, here are our thoughts.

St. Louis Community Credit Union (SLCCU) is a low/moderate income (LMI) credit union holding a Community Development Financial Institution (CDFI) designation. Given our mission, we focus our products, services, risk-tolerance and pricing to help the historically disenfranchised populations of the stressed and severely distressed communities within our metropolitan area. Within these marginalized and underserved communities, best classified as financial services deserts, we set up shop and regularly compete with the alternative financial services (AFS) providers/lenders that are far and away more prevalent than mainstream banking intermediaries.

Yes, SLCCU generally agrees and advocates for any change instituted within the financial services industries to benefit the consumer. Unfortunately, we are afraid that the nuclear action(s) contained in the CFPB's proposals may go too far on many fronts: 36% APR for for-profit payday lenders may be too low to allow sustainability; its ATR proposals are arduous, cumbersome, ambiguous and costly; and collection practices must not be deterred to the point of creating the inability to garner repayment of funds loaned in good faith.

SUPPLY & DEMAND

By the nature of our credit union mission and social responsibility, our current product suite of "payday like", small dollar loans and their corresponding APR pricing is considered to be "not covered," i.e. exempt by the current proposed rule-making. Despite the exemption, we are worried that the CFPB's attempt at mitigating consumer abuse, could overreach the intent, and serve to cause even greater problems in the future.

As an example, while SLCCU is a devoted advocate for the consumer as evidenced by who we serve and how we do it, we are fearful that the approach taken by CFPB to gain social justice could lead to a larger than calculated impact to the market. Even with what we do as the most consumer-friendly option available, we are worried that the virtual elimination of the existing "payday, vehicle title and similar loan" solutions could lead to supply problems without corresponding reduction in demand. As an example, in our market, SLCCU's operating infrastructure and risk mitigation allows for us to help only so many. We need other participants in the marketplace. Consumers should be allowed to vote with their feet. When competitive options exist, the market naturally adjusts the number of participants to equilibrium.

With all due respect to my credit union peers, the CFPB would be naïve to think that the economic imbalance of limited supply with overwrought demand will be adjusted to equilibrium through wide-spread credit union involvement. This altruistic approach won't happen. Pragmatically speaking, many credit unions do not usually accommodate the loan risk(s) of the "lender of last resort" position held by the current payday lending industry. Arguably, that is why the payday lending industry exists, to meet the unfilled demand left alone by many credit unions and banks. We suggest further market analysis to assess the other financial intermediarie's capacity and appetite to assist in filling the void.

From a much more micro-economic perspective, we are concerned that the CFPB's planned obsolescence of the current St. Louis providers will drive our area residents to seek black market solutions. This could perhaps even lead to an increase in person to person crime. Also, the reality of the increased prospects of robberies to our facilities imbedded in these poverty-stricken areas becomes a major concern. The unintended consequences of the elimination of these types of lenders pose as a real threat to consumers from a safety perspective.

ECONOMIC IMPACT

When demand exceeds supply, prices increase. The lenders who can survive the rule-making because of the benefit of scale will do so by passing their "new regulatory" costs on to the consumer (if their respective state law allows). Short of the black market, and the lack of new entrants (i.e. banks and credit unions) alluded to in my aforementioned comments, the consumer will gravitate to the then current establishments, likely the largest companies, whose prices will be more. Sadly, this is another unintended consequence that serves to damage the consumer and the community.

Without short-term, small dollar lending, buying power will diminish. Utility payments will not be met. Housing payments will be late and eviction notices will rise. Credit histories will suffer. Unexpected costs occur in everyday life. Car repairs will go undone. Daycare costs will not be met. Job losses will occur in the community when loan providers are forced to close their businesses. Prescriptions will not be re-filled. Lest you think I am being a thespian for dramatic effect, know that these are real concerns of the consumers in the marketplace that use these types of loans. It is their equivalent of a credit card, which may not be an option for these borrowers. You should not discount their need at any APR. Granted, many of the current short-term loan costs conveyed in an annual APR are incomprehensible to those blessed with good credit ratings, but those with poor credit need solutions as well.

The CFPB's proposed 36% APR is probably not the sustainable solution, but neither is 440% which is the average rate for payday loans in Missouri. For the sake of precluding the many ills of an imbalanced supply and demand, and the negative economic impact at both the household and community level, we encourage much change before publishing a proposed rule.

SUPPORTING DATA

The CFPB, in an effort to understand credit building products, chose our credit union to be the subject of a study led by the Rand Corporation, using the administrative and operating resources of Innovations for Poverty Action to gather and analyze data. The study sampled over 2200 credit union members over a period of about 6 months.

For the benefit of understanding SLCCU's membership, take note of the information about our members below. We believe this to be a fair representation of the communities in which we serve as well.

- ***SLCCU predominantly serves African-American females, single household mothers earning less than $30,000 per year. Their FICO score is 583. Of those who attempted to get a loan in the past three years, approximately 2 out of 3 had difficulty in getting approved. A majority of respondents are purchasing lottery tickets with some frequency, and a smaller majority are visiting casinos at least once per year.***

- ***Approximately 38% of respondents consider their financial situation "not very good" or "bad," while just under 50% "agree" or "strongly agree" that their financial situation is a source of stress in their life.***

- ***This of course all leads to the fact that about 36% of the respondents find it difficult (in a typical month) to cover expenses and pay all bills. Additionally, almost 55% acknowledge that gaining access to $2000 to cover an unexpected need would be difficult.***

- ***We find it very interesting that 9 out of every 10 respondents recognize that their credit rating effects the interest rate (APR) they pay on a loan, yet when encouraged to use FREE budget tools provided by the credit union to help improve their credit rating only 1% did so by phone, and less than 3% did so on-line.***

While the data was gathered within the context of understanding credit building products within our urban market, it sheds a light on the many frustrations and issues facing LMI populations in rural areas, and highlights the difficulties that consumers face on a day-to-day basis. This hard data provides an understanding as to why "payday, vehicle title, and similar loan" providers have found a niche in the marketplace. Right or wrong, for or against---the reality is---that they fill a need.

To reiterate, our credit union exists to serve our members and our community. We do so with a keen eye on corporate shared value and social responsibility. Both of which manifest tremendous value to the consumer in household savings and subsequently positive economic impact to the communities we serve. As a not-for-profit CDFI, SLCCU takes our mission very seriously. Generally speaking, as evidenced through our actions in the hard-dollar return of value to our members, we find ourselves positioned at the opposite end of the "consumer-friendly" spectrum from those who are for-profit payday lenders.

SLCCU advocates for consumers in every regard and practice what we preach. We do, however believe that there is a large market that will be severely impacted without access to "payday, vehicle title, and similar loan" providers. Given that a lack of options in the marketplace could serve to create even greater economic problems in effected communities, we hope that much more equitable solutions are sought that allow for providers and consumers to both benefit.

Sincerely,

Patrick K. Adams
CEO, St. Louis Community Credit Union

EZ LOANS, INC.
CFPB SMALL BUSINESS REVIEW PRESENTATION
TAMMY A ADKINS – CORPORATE OPERATIONS MANAGER

With 17 years banking experience, I have witnessed many changes affecting consumers. For the past 15 years I have worked with Payday Loans to Installment Loans.

Banks discontinued lending small amounts to consumers. It was not profitable, and actually considered a loss to the Financial Institution. This left consumers who only needed a small loan and/or had less than perfect credit without financial assistance. Our businesses fill a major void for financial needs to consumers that have been locked out of the Bank lending processes.

Our companies provide what Banks cannot provide. Our companies are assuming the risks that Banks will not.

Although it is commendable the CFPB is trying to come up with ways to protect the consumer, restricting the consumer access to our companies loan products will only drive consumers to unregulated Internet loan companies, while bankrupting companies such as ours. This will also put well paid employees, with good benefits, out of work.

In Virginia, 2009, the Pay Day loan law was changed and hundreds of businesses closed down. Hundreds of employees were put out of work. We had to close one of our locations to increase the volume in our other two locations. The interest rate was lowered, a 24 hour cooling off period established and must use a State data base (Veritec). This is already extremely restricted.

Over the years in our Delaware Stores, the market has become very competitive, which naturally lowered our interest rates so we could compete.

Our customers are hardworking individuals who need financial assistance from time to time. They are smart, they manage their family budgets and know what they can and cannot afford. We have Teachers, Police officers, Nurses, State workers, Bank Representatives, Blue Collar, etc. as customers, all of whom I believe would be insulted that the CFPB or any other entity would try to control their finances or insinuate they are incapable to do so.

No major consumer/customer survey has ever been done to determine what the customers have to say about the Industry. With that being said, I am very concerned on laws being implemented that could ultimately "Harm" the consumer. These laws could ultimately put many of our companies out of business and again push the consumers into unregulated territory.

- WE ARE ALREADY HEAVILY REGULATED BY THE STATE AND HAVE ANNUAL STATE AUDITS

- ***CREATE A CREDIT EDUCATION PHAMPLET FOR CUSTOMERS OBTAINING A NEW LOAN. THEY CAN REVIEW AND SIGN THAT THEY HAVE RECEIVED THE INFORMATION.***

- CREDIT BUREAUS MAY NOT APPROVE OUR INDUSTRY TO USE THEIR SERVICES
- CREDIT BUREAUS CAN BE COSTLY ESPECIALLY FOR THE AMOUNT OF TURNED DOWN CUSTOMERS. THIS COST CANNOT BE RECOUPED.

- INQUIRIES ON CONSUMERS MAY LOWER THEIR CREDIT SCORE, IF THE CUSTOMER ALREADY HAS GOOD CREDIT WITH US, WE DO NOT SEE THE NEED TO DO AN INQUIRY.

- CONSUMER CHOICE
  Consumers should not be restricted with a cooling off period when they have a good pay history.
  FAIR LENDING PRACTICES: 60 DAY COOLING OFF PERIOD.........WHY WOULD YOU RESTRICT A CUSTOMER WHO ONLY NEEDS $500.00 FROM REBORROWING AFTER PAYOFF FOR 60 DAYS? WILL THE BANKS ALSO RESTRICT THEIR CUSTOMERS FOR 60 DAYS, WHO WOULD LIKE TO REBORROW $5000.00 IMMEDIATELY AFTER PAYING OFF A LOAN? THE BANK WILL IMMEDIATELY RE-LEND BASED ON THAT CUSTOMERS PAYMENT HISTORY AND APPLICATION INFORMATION.

  CUSTOMERS CANNOT PUT OFF EMERGENCIES;A BOUNCED CHECK WHICH WILL ACCRUE DAILY $3.00 OR $6.00 ON TOP OF A $35.00 CHARGE, PREVENT CUT OFF OF ELECTRIC OR GAS BECAUSE PAYMENT FALLS BETWEEN PAYDAYS, CAR REPAIRS, PERSONAL ITEMS THEY WANT TO GET NOW INSTEAD OF WAITING, ETC.
  THEY NEED THE MONEY WHEN THESE ISSUES ARISE, NOT WHEN THE LAW SAYS THEY MAY REBORROW.
  LAW OF ONE SIZE FITS ALL DOES NOT WORK.

- ***MAJOR CONSUMER SURVEYS NEED TO BE DONE.***
- ***CFPB CAN CREATE A SURVEY TO BE DISTRIBUTED TO ALL THE INDUSTRIES CUSTOMERS, NOT JUST A SELECT FEW.***
- ***EACH COMPANY CONDUCTS THEIR OWN SURVEYS.***

- 60 DAY COOLING OFF PERIOD.
  CUSTOMER WANTS TO CATCH THE BACK TO SCHOOL SALES – SEASONAL SALES AVAILABLE FOR LIMITED TIME, ETC.
  WHAT OTHER BUSINESSES ARE REQUIRED TO TURN A CUSTOMER AWAY FOR 60 DAYS, AFTER THEY HAVE PAID OFF AN ITEM.

- ***<u>UNDERWRITING CAN GET COSTLY, KEEP IT SIMPLIFIED, FOR EXAMPLE;</u>***
  GET COMPLETE DETAILED APPLICATION
  REVIEW BANK STATEMENTS FOR ADDITIONAL LOANS, NSF'S, ETC. LOOK TO SEE HOW THEY ARE HANDLING THEIR FUNDS.
  TELETRAC INQUIRIES AND REPORTING; IF THEY SHOW DELINQUENCIES, CHARGE-OFF'S, WE DO NOT DO THE LOAN.
  REVIEW REPEAT CUSTOMER HISTORYS WITH US.
  ******USE JUST ONE AGENCY, AS IN TELETRAC FOR SIMPLIFIED UNDERWRITING. WE WANT TO ENSURE WE WILL BE PAID, SO WE ARE ALREADY DOING OUR OWN EXTENSIVE UNDERWRITING*******

- <u>ABILITY TO REPAY</u>

  WE REVIEW ALL CUSTOMER INFORMATION TO MAKE THIS DETERMINATION ALREADY.
  WE REVIEW THE PAYMENTS WITH THE CUSTOMER. THEY HAVE THE OPTION TO CHOOSE THE NUMBER OF PAYMENTS THEMSELVES. WHETHER TO DO SHORTER TERM TO SAVE ON INTEREST OR LONGER TERM TO LOWER THE PAYMENT. OF COURSE ADDITIONAL PRINCIPAL MAY BE PAID ON THE LOAN AT ANY TIME.
  CUSTOMERS WANT TO KNOW THE PAYMENT AMOUNT TO DETERMINE WHAT WORKS FOR THEM, NOT THE APR, ALTHOUGH THIS STILL WILL BE REVIEWED AND DISCLOSED TO THE CUSTOMER.

******IF A CUSTOMER HAS ANY FINANCIAL HARDSHIP, WE SHUT DOWN THE ACCUMULATING INTEREST AND PLACE THEM ON WHAT WE CALL A PAY DOWN. THE CUSTOMER LETS US KNOW WHAT THEY CAN AFFORD TO PAY AND WE SET UP AN AGREEMENT TO THAT EFFECT. ******

OUR CONTRACTS ARE VERY CLEAR AS TO WHAT THE CUSTOMER WILL BE PAYING. ANY MORE CLARIFICATION FOR THE CONSUMER WOULD BE WELCOMED.
A 3 DAY RECISSION PERIOD WITH NO INTEREST CHARGED IF THE CUSTOMER DECIDES AGAINST IT. CURRENTLY IT IS 1 DAY.
ALL CONSUMERS GET AN OPTION TO STOP THE INTEREST AND GO ON A PAYDOWN. THEY DO NOT NEED TO HAVE A REASON; THEY CAN SIMPLY REQUEST IT AND THEY CAN PAY THE BALANCE OVER A 3 TO 6 MONTH PERIOD. THIS WOULD ALSO DELETE THE NECESSITY OF THE 60 DAY COOLING OFF PERIOD, WHICH AGAINS INSINUATES THE CONSUMER CANNOT HANDLE THEIR DEBT.

FOR COLLECTING A BAD DEBT, WE CAN USE A CFPB APPROVED COLLECTION PROCESS. AUTOMATICALLY OFFER A 3 MONTH INTEREST FREE COLLECTION PAYDOWN. CFPB CAN RESTRICT THE COLLECTION FEE. EXAMPLE; CHARGE ONLY WHAT OUR ACTUAL COST ARE; THE BANK CHARGE IS $20.00, WE CHARGE THE CUSTOMER $20.00.

- ***<u>PAYMENTS</u>***

OUR CUSTOMERS HAVE THE OPTION OF PAYING WITH; CASH, MONEY ORDER, ACH OR DEBIT CARD. WE DO NOT ACCEPT PERSONAL CHECKS IN DELAWARE DUE TO THE "CHOKE HOLD" BANKS DO NOT WANT US DEPOSITING CUSTOMER CHECKS.
ACH SHOULD NOT BE REMOVED AS AN OPTION FOR TAKING PAYMENTS. THE ACH RULES ARE VERY STRICT AND CONTROL ANY ABUSE. WITH OUR CUSTOMERS, ACH IS A PRIVILEGE. IF THEY GET RETURNED ONE TIME FOR ANY REASON, THEY MUST THEN COME INTO THE LOCATION AND PAY WITH CASH OR MONEY ORDER FROM THAT POINT ON. ALL CUSTOMERS SHOULD NOT BE PENALIZED FOR A FEW.

THE 3 DAY NOTICE OF PAYMENT CAN BE COSTLY. WE DO TEXTING FOR CUSTOMERS WHO OPT IN, PHONE CALLS FOR OTHERS. MANY CUSTOMERS DO NOT WANT ANYTHING MAILED TO THEIR HOMES.
****AN OPT-OUT FORM SIGNED BY THE CUSTOMER THAT THEY WANT TO OPT-OUT OF THE 3 DAY PAYMENT NOTIFICATION****

5% PAYMENTS WILL NOT WORK IN THE INDUSTRY

WE CAN SHOW CUSTOMERS HOW MUCH THEY WILL SAVE ON SHORTER TERM LOANS, IE; 3 TO 6 MONTHS OR A LOWER PAYMENT TO FIT THEIR BUDGET OF 9 – 15 MONTHS

ONLY 24% OF OUR LOANS WOULD MEET THE 5% TEST. SINCE NONE OF THESE LOANS ARE FOR 6 MONTHS, MOST ARE 9-12 MONTH LOANS
A LARGE PERCENAGE OF THE EXISTING 24% WOULD ALSO FAIL.
WE WOULD BE OUT OF BUSINESS.

THE CFPB RECOMMENDATIONS ON THE LAW CHANGES WILL CLOSE DOWN THE INDUSTRY. WE ARE ALREADY REGULATED AND DOING EVERYTHING TO ENSURE OUR CUSTOMERS ARE COMFORTABLE WITH THEIR PAYMENTS, HAVE THE ABILITY TO PAY THE LOAN AND ARE COMPETENT HANDLING THEIR OWN FUNDS.

May 13, 2015

SENT BY E-MAIL (cfpb_payday_sbrefa@cfpb.gov)

Consumer Financial Protection Bureau
1700 G Street, NW
Washington, D.C. 20552

Re: Small Entity Representative Written Comments for Payday, Vehicle Title, and Similar Loans Rulemaking

Dear Director Cordray and CFPB Staff:

Thank you for inviting me to serve as a small entity representative ("SER") on the Small Business Regulatory Enforcement Fairness Act ("SBREFA") Panel regarding the Consumer Financial Protection Bureau's ("CFPB" or "Bureau") upcoming rulemaking for Payday, Vehicle Title, and Similar Loans. I appreciate the opportunity to participate in the rulemaking process by providing feedback on the potential economic impacts of the proposed regulations on small businesses and offering regulatory alternatives to minimize the costs and burdens associated with the proposals under consideration.

I. Background

Cash Time Title Loans, Inc. ("Cash Time" or the "Company") was incorporated in Arizona in 1997 and commenced operations in early 1998 with just myself and two employees. The Company currently operates 23 retail loan centers in the State of Arizona with three processing centers and corporate offices in Scottsdale, Arizona. Over the past 17 years the Company has grown to over 200 employees with an annual payroll of approximately $7.5 million. Cash Time has been a member of the Better Business Bureau for over 14 years and is an A+ Rated business in good standing.

As Cash Time's president, I have always been eager to participate in industry matters such as public relations, legislation, and regulatory issues on both the state and federal levels. I was instrumental in forming the Arizona Title Loan Association ("ATLA") in late 2000 and have served as president since its inception. ATLA is an association of auto title loan providers that is dedicated to promoting responsible lending practices and responsible use of auto title loan services by consumers. ATLA consists of 24 members who operate 367 retail locations and employ approximately 1,800 people in the State of Arizona.

I am also a member of the American Association of Responsible Auto Lenders ("AARAL"). AARAL is a national association whose members operate in 32 states, employ thousands of people nationwide, and are subject to regulation and oversight under the laws of each state. AARAL's members support the CFPB's goals of ensuring that consumers are protected and agree that certain improvements could be made to standardize the auto title lending industry. AARAL has been active in its attempts to engage and work with the CFPB by offering comments and suggestions for the development of policies that ensure consumers receive consistent, fair, and compliant treatment with clear and transparent disclosures from auto title lenders.

II. Interactions with the CFPB

As a member of AARAL, I attended meetings with CFPB officials on August 19, 2014 and November 24, 2014. At those meetings, AARAL sought to initiate constructive dialogue with the CFPB regarding its regulatory objectives and offer input in an effort to address concerns that the Bureau might have about the auto title loan industry. AARAL also offered suggestions for lending practices and consumer protections.[1] Aside from the Bureau's indication that it intended to include auto title loans in future payday rulemaking, the CFPB offered little substantive information at or subsequent to these meetings.

III. The CFPB's Unfounded Assumptions Regarding Auto Title Loans

To this date and with the limited exception of the SBREFA process, the CFPB has not requested information from title lenders or the public regarding auto title loans, nor has it held any public hearings on auto title loans. Further, the CFPB only began accepting complaints on auto title loans in its complaint database in July 2014. Accordingly, we do not believe that the CFPB could have at this time a sufficient understanding of the auto title loan marketplace or any risks that title lending poses to consumers for the sweeping title loan rule-making it is pursuing.

In the Bureau's March 26, 2015 press release, announcing the anticipated rules, the CFPB characterized title and payday loans as "debt traps" and stated that its proposals are "common sense protections [that] are aimed at ensuring that consumers have access to credit that helps, not harms them." The Bureau's statement raises an obvious question: What studies, data or analysis does the Bureau rely upon to evidence its conclusion that the supposed consumer injury associated with sustained use of covered loans outweighs the benefits of covered loans?

When questioned during the SBREFA Panel about the CFPB's sources of data and analysis, Bureau representatives broadly referenced state databases, academic research, field hearings,

[1] AARAL's National Standards for Customer Rights in First Lien Auto Lending" are attached to this letter as Exhibit A.

Pew Reports, and CFPB-issued publications. To date, however, the CFPB has been unable or unwilling to provide reasonable explanations for how it has arrived at the assumptions and conclusions contained in the Outline of Proposals under Consideration and Alternatives Considered ("Outline of Proposals"). Moreover, the CFPB has not specifically identified its sources of information or made its data available to the public, either in the form of a white paper or otherwise.

In my view, the far-reaching nature of the rules under consideration can only be justified by a rigorous cost-benefit analysis that produces a strong showing of substantial consumer injury that is not outweighed by countervailing consumer benefits. *See* Section 1031(c) of the Dodd-Frank Act (even if an act or practice causes substantial injury to consumers, it is not "unfair" if such injury is outweighed by countervailing benefits to consumers or to competition); Section 1031(d)(2) of the Dodd-Frank Act (generally, to be "abusive," an act or practice must take "unreasonable" advantage of consumers). So far, there has been no indication whatsoever that the CFPB has conducted such an analysis, and the CFPB has never acknowledged, much less studied, the *benefits* of covered loans. Instead, the CFPB has *assumed* that repeated and/or sustained use of covered loans cause consumer injury or, in the words of its press release, that covered loans are "debt traps that plague millions of consumers across the country." To my mind, the CFPB has not sufficiently established that any consumer injury resulting from covered loans exceeds the benefits provided by covered loans.

The CFPB knows well that payday and title loans are remarkably popular with the public. This is reflected both by the volume of lending and by feedback from borrowers. The CFPB says that it wishes to *preserve* consumer choice and empower consumers to take control over their economic life. However, without adequate analysis, the CFPB has proposed rules which, if adopted as written, will lead to many if not most lenders exiting the business of making covered loans and to drastic restrictions on consumer access to covered loans.[2] Instead, to the extent that any regulation is warranted, such regulation should be narrowly tailored (1) to address consumer injuries reasonably identified by a thorough and objective analysis of relevant data and (2) to preserve well-informed consumer options, including access to covered loans.

IV. Differences between Auto Title Loans and Payday Loans

In his opening statement to the SBREFA panel on April 29, 2015, Director Cordray only mentioned the analysis of payday loan data in connection with the Outline of Proposals, with no reference to data relating to auto title loans. In the Outline of Proposals and accompanying information, the CFPB largely treats auto title loans and payday loans as identical products. The sole explicit distinction in the contemplated rules is the unexplained disqualification of title

[2] Clarity Analysis Confirms CFPB Simulation: Proposed Rule Reduces PayDay Loan Count by Over 70%, https://www.nonprime101.com/blog/clarity-analysis-confirms-cfpb-simulation/

lenders from exercising the limited alternative authority provided to payday lenders to make short-term covered loans without engaging in an ATR analysis.

While putatively treated the same as payday loans regarding longer-term loans, title loans are actually subject to greater restriction as a practical matter under the longer-term alternative approach as a result of a larger average loan amount. CFPB data shows that the average payday loan is $392.[3] Title loans, on the other hand, generally range in size from $300 to $10,000. Additionally, auto title loan borrowers are more likely to be (1) unbanked consumers who are unable to utilize other credit products because access to many of these products requires an active bank account and documented income, or (2) self-employed or small businesses who use auto title loans as a source of working capital to address shortfalls in revenue.

In light of the distinct differences in these products and the consumers who use them, it would be appropriate for the Bureau to conduct separate analyses of the products and markets to ensure that their proposals treat different categories of financial products appropriately. However, when questioned by SERs during the SBREFA process, the Bureau did not indicate that different covered loan products were analyzed separately. Further, the Bureau failed to acknowledge the disproportionate effect that the proposals would have on auto title lenders in the Outline of Proposals. We believe that the CFPB's failure to collect adequate data about the auto title lending industry and conduct a separate analysis of covered loan products is reflected in its one-size-fits-all approach, which overlooks the substantial differences between the loan products and disfavors auto title loans.

V. Analysis of the Loan Limitations Under Consideration

As part of the SBREFA process, SERs were asked to provide feedback on the potential economic and operational impacts associated with complying with the proposed regulations and options that might reduce adverse effects. As to the impact of the contemplated rules, the short answer is that, if adopted and sustained against legal attack, they will put my Company and most of the title loan industry out of business.

Below are our comments and recommendations for your consideration.

a. Short-Term Ability to Repay ("ATR")

Cash Time's average auto title loan is approximately $1,000 and is generally fully amortized over a period of six months or longer depending upon the size of the loan. Considering the average auto title loan size, only a small number of Cash Time's customer base would pass an ATR evaluation for short-term loans. Additionally, the burdens and costs of an ATR analysis would create substantial obstacles to short-term title loans under this authority. At the SBREFA

[3] See CFPB, "Payday Loans and Deposit Advance Products White Paper," p. 17 (Apr. 24, 2013).

Panel on April 29, 2015, CFPB officials generally acknowledged that this option was likely impractical for auto title loan consumers. I agree. We do not consider making short-term ATR-based loans to be a viable proposal for Cash Time.

b. Short-Term Alternative Loan Requirements

The non-ATR option the CFPB is considering for short-term loans is likely to have limited utility for payday lenders in light of the option's severe restrictions on loan amount and duration, as well as the additional requirements the CFPB is considering. Because auto title loans on average are larger than payday loans, this option would likely have even less utility for auto title loans. That being said, we do not understand why the CFPB plans to explicitly deny title lenders the opportunity, where circumstances warrant, to make title loans under this authority.

During the SBREFA Panel on April 29, 2015, CFPB officials stated that the CFPB anticipated denying this option for auto title loans because of concerns that it would result in an unacceptable volume of defaults. We do not know the basis for such concerns—or, indeed, whether there is any such basis. It seems to me that title lenders should be allowed to make the very limited amount of short-term loans permitted to payday lenders under the proposal. It would set a terrible precedent to treat title lenders even more harshly than payday lenders, without a substantial and clearly expressed justification for the distinction.

c. Longer-Term Ability to Repay ("ATR")

i. Costs and Fees

We determined that Cash Time would incur substantial operational costs and fees to comply with the requirements contained in this proposal for longer-term covered loans made pursuant to the ATR analysis contemplated by the CFPB.

The CFPB has acknowledged that "[f]urnishing information to reporting systems would require small entities to incur one-time and ongoing costs." Yet, remarkably, the CFPB has not included these one-time costs in its assessment of the consequences of its contemplated rules. Cash Time estimates that it would need to make an initial investment of approximately $175,000 for programming required to comply with the ATR requirements. Additionally, Cash Time will incur material ongoing annual expenditures for software development and updates, integration, and compliance related to the ATR requirements. These costs are extremely burdensome, if not insupportable by themselves, for a small business the size of Cash Time (and more so for even smaller businesses).

In addition to one-time costs of compliance, essentially ignored by the CFPB, ongoing costs related to the processing of individual loan applications will also be dramatically greater than the CFPB has estimated. For example, the following tasks in connection with each loan application would require substantial additional employee time, with attendant cost, to comply with ATR requirements:

1. ATR evaluation of loan application
2. Accessing a commercially available reporting system
3. Explanation of ATR requirements to consumer
4. Phone calls
5. Photocopying and scanning

Cash Time estimates that it would take an additional 45 minutes to complete these tasks for each application. At an average hourly rate for employees of slightly less than $18, we calculated the additional employee cost (general staff and management) to complete each application to be approximately $13.25.

While the CFPB recognizes the additional time that lenders will spend to process an application, the Outline of Proposals fails to appreciate that these costs would be incurred by lenders for all applications processed, whether or not a loan is actually made. We estimate that only one in four applications submitted to us would be approved under the burdensome ATR requirements the CFPB is considering. As a result, the Company would incur employee costs of approximately $53 ($13.25 x 4) for each approved loan application.

In addition to current internal per-application costs, we estimate that the following fees would need to be paid to third parties to comply with anticipated ATR requirements:

1. Verify major financial obligations using a standard credit bureau report (all loan applications): $1.50
2. Access a commercially available specialized reporting system (all loan applications): $1.00
3. Report to all commercially available specialized reporting systems (all closed loans):[4] $5.00

In the Outline of Proposals, the CFPB estimates the fees lenders will pay to obtain a credit bureau report and to access a commercially available reporting system. However, once again the Outline does not address the fact that these fees would be incurred for all applications processed regardless of whether a loan was actually made. As noted above, we estimate that only one in four applications submitted would be approved under the ATR requirements. As a result, the

[4] The cost estimates *assume*, as the CFPB has assumed, that one or more specialized reporting systems will be available in the radically transformed environment the CFPB threatens to create. This is not at all obvious, and it is unclear that any lender will be allowed to make covered loans in the absence of such systems. If a single company provides such a system, the effect of the proposed rule will be to allow it to set prices virtually wherever it wants, potentially far higher than we have estimated.

Company would incur additional out-of-pocket costs of approximately $15 for each accepted loan application—$10.00 to pull a standard credit bureau report and a specialty report for three rejected applications and a single accepted application plus an additional $5.00 for reporting to all specialty reporting systems for each consummated loan.

When internal costs per loan are added to external out-of-pocket costs, we estimate that the contemplated proposal would cost our Company fully $68 for each new completed loan.

ii. Additional Problems with ATR Requirements

The contemplated rule's verification requirements on income, financial obligations and borrowing history go well beyond the ATR rules applicable to credit cards. And ATR requirements for residential mortgage loans can by no means be used as an example of ATR requirements for covered loans since the dollar amounts and typical term to maturity for covered loans and residential mortgages differ radically. Worse, in many cases the CFPB's anticipated ATR verification requirements will flatly preclude consumers from obtaining needed credit.

1. Verification of Income

In many cases, it might not be unduly burdensome to verify the amount and timing of a consumer's income through a benefit statement, employee paystub or bank statement. However, many auto title loan consumers do not have bank accounts (and thus do not have bank statements) and have most or all of their compensation "off the books" from restaurant or taxi tips, caregiver income or another cash-paying job. Additionally, many self-employed small businesses operate with cash and/or do not have record-keeping sufficient to qualify for a loan under the proposed ATR requirements. These consumers would have *no access to credit* under the contemplated proposals. For these consumers, at least, Cash Time strongly believes that the Bureau should consider a safe harbor provision authorizing creditors to rely upon reasonable self-reported income. This authority would be consistent with the treatment of credit card issuers, which may satisfy applicable ATR requirements under Regulation Z by "rely[ing] without further inquiry" on information submitted on loan applications. *See* Comment 5i to Paragraph 51(a)(1)(i) of Regulation Z.

2. Verification of Housing Costs

Verification of housing costs will be impossible for many consumers (e.g., consumers living with family members or roommates or consumers sub-letting from third parties). These consumers, too, would have no access to credit under the contemplated proposals. Thus, any ATR rule proposed by the CFPB should allow creditors to rely upon self-reported applicant housing costs absent some basis for suspicion.

3. ECOA Implications

Requiring formal income, expense and borrowing verification will close off access to credit for many consumers. Undoubtedly, consumers who are members of groups protected under the ECOA will experience a disparate impact from the rules, as currently contemplated. While companies making covered loans will not be in violation of the ECOA for disparate impact resulting from compliance with CFPB rules, it strikes us as more than ironic that the CFPB would consider moving forward with a proposal that will foreseeably disadvantage the most necessitous consumers on a prohibited basis.

iii. Suppression of Loan Volume

In the Outline of Proposals, the Bureau suggests that some consumers may fail to complete the loan application process as a result of the imposition of ATR requirements, but fails to acknowledge the importance of this consequence. We believe that there will be a significant reduction in loan volume resulting from consumer frustration over the time-consuming and burdensome documentation requirements to satisfy the proposed ATR test. Critics of covered loans may claim that this consumer dropout from the application process suggests that such consumers really did not need the loan that badly in the first place. However, any such claim would disregard the fact that what is currently a smooth and simple method of obtaining needed credit would become a long and difficult process which often may require multiple trips to the lender and may even in many cases take more than one day to complete. If a consumer drops out of the process it would likely be because they do not believe that they can qualify for a loan, or have concluded that the ATR requirements are excessively burdensome and outweigh the benefits. We encourage the Bureau to conduct further analysis to ensure that their proposals do not create burdens that outweigh benefits for consumers.

iv. Summary

After considering the costs, inability of many consumers to provide proof of income and/or housing costs, and reduction in loan volume that would result from the contemplated ATR test for longer-term loans, the end result of this proposal would be the creation of a business model that loses a substantial amount of money every month. Accordingly, the longer-term ATR authority described by the Bureau is unviable for a small business such as Cash Time.

d. Longer-Term Alternative Loan Requirements

Unfortunately, the non-ATR longer-term covered loan option is equally if not more problematic than the ATR option for small title lenders such as Cash Time. The CFPB's own data suggests that less than 10% of longer-term covered loans in its database would have met the two principal limitations under consideration: (1) a payment limit equal to 5% of the consumer's gross income and (2) a term limit of six months. The CFPB has acknowledged that this data is from payday loans. Given that the average loan size for an auto title loan is markedly greater than the average payday loan, the proposal would be even more restrictive for auto title loans. We think it is self-evident that a lender deprived of well over 90% of its loan volume cannot survive.

In the Outline of Proposals, the CFPB states that the anticipated limits are to "prevent consumers from getting trapped in unaffordable long-term debt." However, we are not aware of any data or analysis supporting the contemplated 5% of income/six month term limitations. Indeed, a recent study found that a 5% payment-to-income limitation would sharply circumscribe access to credit and that payment-to-income ratios are a poor metric for predicting repayment.[5] Not even the Pew Charitable Trusts—a less than objective critic of auto title lending—recommended this draconian combination of restrictions. While Pew supports a 5% payment-to-income limit, it contemplates loan durations unconstrained by a six-month limit. Rather, Pew discussed at length a flexible formula for setting loan durations, based on loan size and borrower income. Under the Pew formula, the loan duration would essentially be set to produce a 5% payment-to-income ratio. Thus, for a large loan to a borrower with limited income, Pew contemplated a loan term exceeding 20 months, more than three times the term limit contemplated by the CFPB.[6]

Cash Time believes that there is merit in providing a safe harbor for longer-term loans based upon a relatively modest payment-to-income restriction. However, the restrictions described by the CFPB are completely unrealistic and unjustified. The 5% limit is unsupported by itself. And whatever limit is ultimately established, it should not be combined with a rigid (or any) term limit. Rather, as suggested by Pew, the permissible term of a loan should be sufficient to keep the payment-to-income ratio at the level required to qualify for the safe harbor. Additionally, any payment limitation based on gross income should be designed to ensure that consumers, including self-employed small businesses, have continued access to covered loans in a competitive marketplace.

VI. Alternative Approach to Contemplated Loan Limitations

None of the options currently contemplated by the CFPB will preserve the viability of the auto title loan industry or preserve consumer access to this badly needed credit product. And this radical rule-making is unsupported by any cost-benefit analysis published by the CFPB or any third party. Accordingly, we do not believe that substantive rule-making of this type, completely eliminating consumer autonomy, is warranted. *See* Section 1022(b)(2)(A) of the Dodd-Frank Act (requiring the CFPB to consider in its rule-making both "the potential reduction of access by

[5] *See* "Small-Dollar Installment Loans: An Empirical Analysis," a Navigant Economics study authored by Dr. Howard Beales, a professor in the George Washington School of Business and former Director of the FTC's Bureau of Consumer Protection, and Dr. Anand Goel of Navigant Economics. The Navigant study is available at http://www.cfpbmonitor.com/files/2015/03/Navigant-Economics-Report-3.pdf.

[6] *See* Auto Title Loans: Market Practices and Borrowers' Experiences, pp. 20-21.

consumers to consumer financial products or services" and "the impact of proposed rules on covered persons").

We do not know whether the CFPB has seriously considered disclosure requirements, coupled with narrowly tailored substantive protections, such as prohibitions against default penalties, limitations on post-repossession interest and charges, and requirements to pay surplus proceeds of disposition to defaulting borrowers—but it should.

As things now stand, proposed limitations on longer-term covered loans are triggered by an "all-in APR" exceeding 36%. This 36% substantive threshold is extremely problematic not only from a policy perspective but also legally. Section 1027(o) of the Dodd-Frank Act explicitly denies the CFPB authority to set usury limits, yet the contemplated proposal does just that. With the 36% rate trigger, the CFPB is effectively saying that specified longer-term loans (say, six-month loans with 10% payment-to-income ratios) are perfectly lawful if the all-in APR is 36% or less but these same loans are unlawful if the all-in APR is higher. Manifestly, the effect of the CFPB proposal is to set a 36% rate limit on loans of this type.

While we believe that a substantive rule premised on a 36% rate threshold is legally impermissible, the CFPB could consider a *disclosure* regimen triggered by a rate exceeding 36%. For example, for covered loans above this threshold, the CFPB could require the lender to make the following disclosures to loan applicants:

- You may prepay or refinance your loan at any time without penalty.
- Loans at lower rates may be available to you. Even if you agree to the loan we offer, you should look for a less costly option.
- If you could find a loan at a 36% interest rate, you could repay that loan in only ___ months and save $_____ in interest over the life of the loan *without* increasing your monthly payment.

Such a rule would allow consumers to obtain the credit they need and simultaneously nudge them to look for better options. Our industry is not afraid of competition from mainstream lenders. What troubles us is the threat that our industry will be regulated out of existence and consumers will be left with no options at all or far worse options than they currently have.

VII. Analysis of the Payment Limitations Under Consideration

The Bureau seeks to reduce overdraft and NSF fees charged consumers by imposing limits on the payment practices of covered lenders. We generally support the CFPB's desire to protect consumers from inordinate bank fees but think that the better approach would be to address bank overdraft and NSF practices directly rather than to indirectly constrain the payment practices of a small segment of the market. Any requirements that would materially impair the lender's ability to effectively collect a covered loan would lead to higher default rates and impede a lender's ability to offer the lowest cost covered loan possible.

Our comments and recommendations regarding the specific Bureau's proposals for collecting payment on covered loans are as follows:

a. Required Notice

The potential requirement to provide written notice of a payment attempt at least three business days in advance would apparently apply alike to: (1) regularly scheduled payments, prior to an unsuccessful submission, (2) a prompt re-submission, and (3) a delayed re-submission. We believe that this requirement should be limited to delayed re-submissions. The proposal to require notice before a covered lender makes its initial attempt to collect a scheduled payment is premised on the assumption that consumers are unaware of payment due dates for their covered loans. We seriously question that this is the case. The vast majority of covered loans have payment schedules that correspond with the consumer's pay schedule or the same day of each month. Thus, we are confident that consumers are already keenly aware of the due dates for their covered loans and that advance notice of regular paydays is generally unnecessary. Moreover, borrowers likely expect that lenders will promptly re-submit dishonored payments. Thus, borrowers are unlikely to be surprised by a new payment attempt unless there has been a material delay from the initial attempt and the re-submission. Certainly, any rule requiring a three-day delay from the initial submission to the second attempt will drive up costs by making it far more difficult to collect covered loans.

b. New Authorization

We propose that the CFPB clarify that lenders are permitted to obtain the new payment authorization required after two consecutive dishonored payments by fax, e-mail or a recorded telephone call and not just in writing.

c. Debit Cards

Currently, the CFPB contemplates treating dishonored debit card payments in the same manner as other types of dishonored payments. This ignores a fundamental distinction between debit card payments and other forms of payment: When debit card payments fail, it is at the time of authorization and not at the time of processing. Accordingly, a rejected debit card payment does not give rise to bank NSF fees. Due to this circumstance, we would submit that there is no compelling need to require three days' advance notice of a debit card re-submission or to limit re-submissions without new authorization to a single attempt. In short, any proposals should not restrict debit card re-submissions.

d. Multiple Re-Submission Attempts

We are generally supportive of the Bureau's intent to prohibit lenders from presenting items for payment, without a new authorization, after two prior failed attempts (the original submission and initial re-submission). However, as noted above, it is important that the CFPB clarify that the new authorization can be obtained by any verifiable means, including an e-mail or text message or recorded phone call.

e. Method of Notification

Cash Time believes that the Bureau has not considered the possibility that consumers might block e-mail notifications of impending payments in order to stop the flood of unwanted information. We believe that the Bureau should include a safe harbor for lenders who contractually require borrowers to update email addresses and have sent the proper notification to the consumer's most recent e-mail address on record as provided by the consumer.

f. Content of Notices

The notices contemplated by the CFPB contain a considerable amount of account information, which would need to be provided on a real-time basis. This information is not necessary to inform borrowers of impending payments and would be extremely burdensome and costly to produce, especially for small lenders such as Cash Time. We recommend that the CFPB eliminate any need to provide any information in its notices of impending payments other than the date, source (e.g., bank account or debit card) and amount of payment.

VIII. Alternative Products/Non-Covered Loans

As part of the SBREFA process, the Bureau has requested feedback from SERs on whether the effects of the proposals might cause a lender to consider offering non-covered loan products. Because Cash Time considers all of the proposals contained in the Outline of Proposals unviable, we have discussed possible alternatives. We have considered one such alternative—"traditional" auto pawn loans where Cash Time retains possession of the motor vehicle while the pawn transaction remains outstanding. However, we have concluded that this option is far less appealing to consumers who currently use auto title loans and unviable from Cash Time's current retail locations.

During the August 2014 meeting between AARAL and the CFPB, Bureau representatives indicated that the CFPB looks more favorably upon a traditional pawn loan than an auto title loan. (This attitude is reflected in the exclusion of standard pawn transactions from the contemplated rules.) The Bureau stated that consumers are likely less burdened by the loss of their motor vehicle as a result of a defaulted pawn loan than through an auto title loan that ends in default and repossession.

In a subsequent meeting in November 2014, I challenged the Bureau's rationale by advising that a traditional auto pawn loan is *less* consumer-friendly than an auto title loan in Arizona because: (1) the costs of the loan (interest and fees) can be more expensive for the consumer; (2) the pawnbroker is not accountable to the debtor for any surplus value in the event of default (for example, if the motor vehicle collateral used in a pawn transaction has a cash value of $5,000 and the borrower only owes $500 and defaults, the lender keeps the surplus value, as opposed to auto title lenders who are accountable to the debtor for any surplus in the event of default); and (3) the consumer must surrender their motor vehicle to the lender until the loan is repaid, unlike an auto title loan where the consumer retains possession and use of the vehicle. The Bureau thanked me for my analysis but did not offer any feedback.

In Arizona, the traditional pawn loan business using motor vehicles was vibrant before the regulatory framework permitting auto title loans took effect in July 2000. After that, the pawn business model using vehicles became obsolete, providing irrefutable evidence that consumers preferred auto title loans for their capital needs.

In light of the considerable consumer demand for these types of loans, we believe that there is some potential that offering traditional auto pawn loans in Arizona could be a profitable business if the proposals are enacted. However, this business would face obstacles under applicable zoning restrictions. Specifically, none of Cash Time's retail loan locations are appropriately designed or zoned for pawn loans.

Not only would the traditional auto pawn business face local zoning restrictions, it would be far less beneficial to consumers. Has the Bureau considered the shock and disbelief of consumers should they be told that auto title loans are no longer available but are offered a more expensive and less desirable pawn loan? Has the Bureau considered that if auto title loans are unattainable, consumers may simply choose to sell their vehicle to obtain the capital they need?

Cash Time believes that it is extremely unrealistic to expect that lenders whose businesses are no longer profitable as a result of the CFPB's proposals could offer substitute products to make up for the lost revenue. The Bureau's suggestion that lenders consider the possibility of offering other products or services ignores the reality that use of an existing store location is restricted by the building's design, size, location, lease restrictions, zoning restrictions, and consumer demographics in the area in which the store is located.

We question whether the Bureau has conducted adequate research to substantiate the conclusion that a lender can readily convert its store location to offer products or services that would be a substitute for their current products/services while remaining profitable.

IX. Consumer Demand

The Bureau has concluded that the proposals could lead to substantial consolidation in the covered loan marketplace and is conducting further analysis of the potential for consolidation.[7] This, of course, is the *best-case* analysis, with remnants of a once-thriving industry remaining. If a small number of covered lenders continue, consumers are likely to find covered loans to be less convenient and more costly. An equally likely result is that no lawful covered lenders will remain. The overwhelming demand for these products will persist, and consumers will probably be left with far less desirable options, with no real consumer protections when their need for capital arises.

X. Impacts of the Rulemaking Proposals on Small Businesses Using Auto Title Loans

Promoting a regulatory environment that allows small businesses to flourish is critical to the health of the overall economy. Auto title lenders are particularly well-suited to serve self-employed small business consumers who are seeking capital to help with a financial shortfall.

In the Outline of Proposals, the Bureau states that it does not believe that its proposals will have a substantial impact on small businesses. We believe that this conclusion is flatly incorrect. The Bureau may have arrived at this inaccurate assumption because it has conducted only two or three informal field visits to auto title loan stores and lacks sufficient, accurate data about the auto title loan industry.

Our experience is that between 10 and 15 percent of our customers are self-employed small businesses who use title loans as a convenient source of working capital. The small businesses that have used Cash Time's services over the past 16 years are remarkably diverse. Examples include handymen, landscapers, plumbers, house cleaners, contractors, taxi drivers, caregivers, photographers, hairstylists, painters, tile setters, auto detailers, mechanics, and even hot dog vendors.

Rural areas and small communities have an even higher concentration of self-employed small business owners that use auto title loans as source of working capital. During our phone calls with the CFPB and at the SBREFA Panel, SERs cited the reliance of small businesses on covered loans. A law professor at George Mason University conducted research on the subject and found that 25-30% of auto title lenders' customer bases are small businesses.[8]

Small businesses often experience periodic cash flow shortages and unexpected expenses. Many operate in the cash economy and would likely be unable to satisfy many of the requirements

[7] Outline of Proposals, p. 45

[8] See www.law.gmu.edu/assets/files/publications/working_papers/1012ConsumerUseandGovernmentRegulation.pdf

contained in the proposals to qualify for a loan. They also lack access to other sources of credit, making an auto title loan a critical source of immediate money when needed. Depriving or severely limiting these small businesses access to credit in the form of an auto title loan would likely cause them considerable harm.

XI. Conclusion

Auto title loans fill a legitimate need in the marketplace, assisting consumers and small businesses to meet their cash needs when other loan products are less desirable or are unattainable. The prospective rules, as described in the Outline of Proposals, are unviable and would ultimately result in Cash Time closing its business, terminating all of its employees, vacating 27 office locations, and discontinuing countless vendor relationships. The elimination of lenders such as Cash Time and the regulatory burdens on any remaining providers of covered loans will translate into very limited and less desirable options for consumers.

The CFPB has not established that any assumed injury to consumers resulting from covered loans exceeds the benefits provided by covered loans. Furthermore, the Bureau lacks adequate empirical data demonstrating that the restrictions on covered loans contained in the proposals are appropriately constructed to provide the consumer protections the Bureau seeks to promote. Before taking the extreme steps contemplated in the proposals the CFPB should engage in further consideration, analysis, and data collection to ensure that any proposals are practicable, enforceable, and consistent with the Dodd-Frank Act and its statutory purposes and objectives. The Bureau should consider proposals which require disclosures that clearly inform and educate consumers about covered loans and the options available to them, not proposals that will take these options away from them.

Before proceeding with the rulemaking process, the CFPB should: (1) identify and share all studies, data and/or analyses that the Bureau has relied upon during the rulemaking process thus far; (2) conduct additional studies, including fairly assembled and conducted focus groups of borrowers who have used covered loans both sporadically and on a regular basis; (3) work with industry members to better understand the auto title lending industry and how it differs from the payday loan industry; (4) study the *benefits* of each covered loan product, not just the costs to consumers; (5) conduct a rigorous cost-benefit analysis for each covered loan product; and (6) conduct research to better understand the current regulatory framework on a state-by-state basis. Only after the CFPB has done its homework, as outlined above, should the Bureau consider proposing far-reaching rules related to covered loans.

I appreciate the opportunity to participate as a SER and provide feedback and comments on the Bureau's Outline of Proposals. Cash Time would welcome the opportunity to work with the Bureau to craft proposals that contain the appropriate protections for consumers while preserving their access to credit in a competitive marketplace.

Sincerely,

Scott Allen, President
Cash Time Title Loans, Inc.

Cc: Dan Sokolov (Dan.Sokolov@cfpb.gov)
Claudia Rodgers (Claudia.rayford@sba.gov)
Shagufta Ahmed (Shagufta_Ahmed@omb.eop.gov)

EXHIBIT A

AARAL
American Association of
Responsible Auto Lenders

NATIONAL STANDARDS FOR CUSTOMER RIGHTS IN FIRST LIEN AUTO LENDING

Loan Characteristics

AARAL members agree that these standards should apply to non-purchase money loans that are secured by a perfected first lien on a vehicle.

AARAL members support providing customers with loan choices, including offering loan products that:

- ✓ are payable in substantially equal monthly installments, or
- ✓ include a mandatory scheduled repayment structure for single payment loans, as follows:
  - Mandatory 5% reduction of principal prior to refinance(s)
  - If 5% not paid, prohibition on charging for 5% going forward
  - Unpaid principal reduction becomes non-accruing and is paid at end of loan

Lending Characteristics

AARAL members support the following lending practices:

- ✓ Offer non-recourse loans, subject to limited exceptions when the customer is: (1) intentionally damaging the vehicle or the vehicle incurs physical damage and does not have the required physical damage insurance; (2) hiding or prohibiting access to the vehicle; or (3) selling the vehicle that serves as security for the loan.
- ✓ Limit collections to the collateral; if a loan balance exists after disposal of the collateral, no deficiency balance may be pursued.
- ✓ Provide loans that are free of "teaser-rate advertising."
- ✓ Offer loans with a 2-day right of recession.
- ✓ Remain in compliance with the Fair Debt Collection Practices Act (FDCPA).
- ✓ Provide all necessary disclosures, including a "Notice to Borrower" in English and Spanish (when applicable) outlining key disclosures and credit alternatives.
- ✓ Tie loans to vehicle valuations, based on values listed in a nationally recognized handbook, when possible.
- ✓ Evaluate a borrower and the collateral to make a responsible loan.

Backend Protections

AARAL members support providing backend protections, including:

- ✓ Accepting any payment at any time in excess of $5.00.
- ✓ Stopping accrual of interest/charges as of date of repossession.
- ✓ Providing 10 day notice of intent to repossess.
- ✓ Issuing a notice of opportunity to redeem vehicle.
- ✓ Providing a 10 day holding period before disposing of vehicle.
- ✓ Offering a means for borrowers to voluntarily surrender loan collateral without incurring any repossession expenses within the 10 day notice of intent to repossess.
- ✓ Charging only expenses actually incurred from 3rd parties for repossession and disposing of the vehicle (if the collateral is not surrendered voluntarily).
- ✓ Not charging storage fees; daily or otherwise.
- ✓ Accepting the highest cash offer for the vehicle, and refunding all surplus proceeds from sale.
- ✓ Releasing the title in a timely manner when loan is paid.
- ✓ Selling the vehicle in an arm's length commercially reasonable manner, with no retail sale of vehicle at or adjacent to licensed location by lender or affiliates of lender.

Loansmart Inc. Dba Cashsmart

May 13, 2015

Via Email to cfpb_payday_sbrefa@cfpb.gov
Richard Cordray, Director
Consumer Financial Protection Bureau
1275 1st Street, NE
Washington, DC

Re: Submitted by: Fred Evensen, President of Loansmart Inc. d/b/a CashSmart

Dear Director Cordray:

Thank you for this opportunity to submit written comments to the recent outline of the CFPB's proposal addressing payday loans, title loans, and similar installment loans. In this letter, I have outlined information about our small business, our customers, the impact of the CFPB's proposal, considerations related to current state and federal laws, the impact on credit to small businesses, mis-characterization of our business model as "unfair" and "abusive," information about published data, possible alternatives to consider, and our comments about the process.

I. My Small Business and Industry

My name is Fred Evensen, and I am the President of Loansmart Inc., doing business as "Cashsmart." My Small Business has 8 locations primarily located in suburban areas of larger cities in northern Ohio. We offer a full line of distinct financial services, including small dollar consumer loans, check cashing, money order sales, currency wire transmission, pre-paid card sales, bill payment services, and other miscellaneous products. State law (enacted by the citizens of Ohio) authorizes and regulates our loan and check cashing services.

My Small Business has operated for 15 years, and as part of this process, I'm being asked to share sensitive and confidential data about my operations, which I am doing in the enclosed. Our total gross fee revenue in 2014 was 2.9 million (2.6 million of that amount is derived from loan related fees, which represents 90% of total fees. With regard to revenue and the allocation of fee income, I submit for your review the data provided in the following 2009 study: *The Cost of Providing Payday Loans in a US Multiline Operator Environment*, pg. 1-2, Ernst & Young, September 2009. In this study, data indicated that typical "revenue per $100 of [payday loan advance] principal equaled $15.26," and that the "store-weighted average cost to [payday loan advance] providers per $100 of principal loaned equaled $13.89." The data from that study shows that on a "pre-tax (and pre-interest) basis, [payday advance] providers earned a store-weighted average profit equal to $1.37 per $100 of loan principal issued." I also submit for your review the data from following 2007 study: *Payday Lending: Do Outrageous Prices Necessarily Mean Outrageous Profits?* Fordham Journal of Corporate & Financial Law, pg. 227, Aaron Huckstep. This study found that "payday lender profit margins are less than half that of their mainstream lending counterparts."

With respect to annual receipts, again we submit for comment on the record the data and related information from *The Cost of Providing Payday Loans in a US Multiline Operator Environment,* Ernst & Young September 2009, http://bit.ly/1GMTm2k. The conclusions of this report were consistent with independent studies, including:

- Morgan, P., *Defining and Detecting Predatory Lending*, Federal Reserve Bank of New York, Staff Report no. 273, January 2007, http://nyfed.org/1EV14uk and

- Morgan, D. P. and Strain, M. R., *Payday Holiday: How Households Fare after Payday Credit Bans*, Federal Reserve Bank of New York - Staff Report no. 309, November 2007, http://nyfed.org/1EOm1pr.

To date the CFPB has neither refuted nor addressed these studies. We submit these studies in total for the CFPB's review and comment. Based on these studies, and contrary to some misconceptions about our industry, companies in our industry typically earn around $1.37 for a $100 loan, which yields profit margins that are less than half of the profit margins earned by mainstream lenders.

In addition to the general studies submitted for your review, I have also attached Exhibit A and Exhibit B providing confidential information from my specific Small Business. The directions I have received from the CFPB indicate that I should include in the body of this letter my general feedback without disclosing confidential information and that I should include an appendix that contains the confidential business information that I would like to provide to support the feedback included in the letter. Enclosed as Exhibit A is a presentation of confidential data prepared by a third party, Deloitte Financial Advisory Services LLP, about my Small Business and the likely impact the CFPB's proposal and its various elements will have on my Small Business. Enclosed as Exhibit B is a list of answers to questions presented by the CFPB. As requested, I am designating the information in Exhibit A and in Exhibit B as confidential business information. The information provided in the two exhibits is confidential, fact sensitive business information that I have not revealed and would not reveal to the public. I have also provided as Exhibit C, for inclusion in the public record, the data and research cited in this letter.

My Small Business has 40 employees. The average rate of pay for our employees is $16.25 per hour, and we provide excellent medical benefits. The majority of our employees have been with us for more than five years. Our employees earn an average of $4.40 per hour more than my state's minimum wage. We also offer our employees a company match IRA retirement account. All of our senior management and branch managers started with the company as customer service representatives and worked their way up to management positions. My Small Business and others like it provide a substantial number of high quality jobs. I submit for your review a 2009 study, *Economic Impact of the Payday Lending Industry*, pg. 3, HIS Global Insight (USA) Inc. Consulting Services Group, May 2009, illustrating our industry's economic impact at the time the study was conducted:

> The payday lending industry supports 155,000 jobs nationally and contributed over $10 billion to national GDP in 2007. The payday lending industry helped to generate over $2.6 billion in federal, state and local taxes; $775 million were taxes on production and the remainder were corporate and personal income taxes. The stores themselves, through direct employment, contributed $2.9 billion in labor income in 2007, which translated to approximately $37,689 per store employee. The overall total labor income impact from the payday lending industry is $6.4 billion."

Our Small Business and others like it are a part of that significant economic contribution. We have transacted with over 70,000 individual customers since we started business in 1990. In an average month, we process loans for 2,400 individual customers. We also cash checks pursuant to limitations under state law and provide other types of regulated financial transactions for hundreds of additional customers every month. Our research and calculations indicate that at least 95% of our customers experience no adverse effects from the business they do with us. They are satisfied with the open and transparent transaction process. They appreciate the financial choices they have when doing business with us and continue to look to us to help meet their short-term financial service needs. Our customers know us, and we know them by name. They live in the same communities that we do. They know we will be there to serve their needs when financial emergencies arise. The CFPB's calculations, prepared looking at large payday lending companies (not small businesses, not title lenders, and not installment lenders), indicate that the CFPB's proposed regulatory approach would reduce the industry's ability to offer payday loan products to consumers by 75 to 85%.

Contrary to some assumptions about our industry, we are regulated at the federal, state, and local levels. Federally we are governed by Title X of the Dodd-Frank Act, supervised by the CFPB, and we are required to comply with various federal laws, including those enumerated under the Consumer Credit Protection Act. At the state level, we are licensed and examined several times annually. Our activities are conducted openly, we submit to on-site state level examinations, and we follow policies and procedures to comply with federal and state lending laws, including numerous consumer protections. Municipal ordinances also apply, limiting our hours of operation, the distance between locations, the appearance of our locations, and other facets of our Small Business. Lending rates and charges are capped by legislation passed in our state, legislation that predates the CFPB's proposed expansive, expensive, and ultimately destructive regulatory overhaul. In assessing lending rate and charge limits, the legislature in my state never envisioned small dollar lenders being forced to engage in a more rigorous federal "ability to repay" analysis than mortgage lenders and credit card companies, and it never imagined structural caps designed to reduce credit access by the amounts anticipated by the CFPB. My Small Business simply cannot survive under these misaligned state and federal regulatory structures. We are regulated by state rate limitations and cannot pass on any additional cost of complying with CFPB rules or loss of income resulting from the rules.

If CFPB's current regulatory approach is adopted it is unlikely that my Small Business (and the industry as a whole) would survive. Thousands of satisfied customers would have no place to turn when a financial need arises. Thousands of employees who work in the industry and rely on it for their livelihood would suddenly become unemployed. In my own experience, I note that several years ago, the state of Ohio eliminated its Check Casher lending law, a law that had been on the books for years. Lenders opted to change to different lending regulation to continue to offer a small dollar product to consumers. After the change, we lost 40% of our loan revenue.. Our company had to close 5 locations because of that revenue loss, causing several employees to lose their job. Many small operators like us had to close their doors and lay off their employees. Many of these individual operators lost their life savings and their businesses. CFPB's approach would magnify the effect throughout the country by eliminating an entire industry.

There are many states that have regulation regarding small dollar loans, including the state we operate in. The CFPB's approach would override the regulation already in place, blocking credit allowed under those laws, essentially trumping the laws allowing credit to consumers and preventing loans that are lawful under state law. Passing this federal construct and limiting my state-authorized ability to offer credit to customers not only makes my Small Business untenable, but it impacts my ability - as an operator of my Small Business - to receive credit and banking services for my Small Business. As owner of my Small Business, I rely on my banking relationships to provide financing and services for our overall operations. The CFPB's proposal and the financial risk it would create would forestall my access credit to run my Small Business. Other small businesses like mine would suffer the same consequences. If this proposal is adopted, my Small Business and other businesses will close, and hundreds of thousands of customers who rely on us will no longer have a place to turn for their financial needs.

II. Customers of My Small Business and My Industry

Last year, my Small Business provided small dollar credit to thousands of customers, in 45,500 transactions. Like our industry as a whole, our customers are satisfied with our credit options. Contrary to the Bureau's assumptions, our consumers are happy with our services, and as noted below, far happier with our services than most other financial services in the marketplace. According to the CFPB's complaint data for 2014, published here http://1.usa.gov/1GnNDVG, payday lending complaints totaled only 2% of the annual complaints submitted to the CFPB, compared to 35% for debt collection, 20% for mortgage, 18% for credit reporting, 8% for bank accounts, 7% for credit cards, and 3% for student loans. With respect customer satisfaction, we further submit for comment on the record the data and related information from the following study addressing a comprehensive review of customer satisfaction by consumers of our Small Business and its industry generally: *Payday Loans and the Borrower Experience*, Harris Interactive, December 2013, http://bit.ly/1bvh7Df. To date the CFPB has neither refuted nor addressed this study.

Likewise, we further submit for comment on the record the data and related information from the following study addressing another comprehensive review of customer satisfaction by consumers of our Small Business and its industry generally: *An Analysis of Consumers' Use of Payday Loans*, Gregory Elliehausen (George Washington University) January 2009: http://bit.ly/1E5nKUN. The Elliehausen study shows that customers overwhelmingly appreciate the payday advance product. According to the study, 86 percent of customers believe it is a useful financial product, and 88 percent were satisfied with their last transaction. To date, the CFPB has neither refuted nor addressed this study.

In summary, we are key members of our community. The overwhelming majority of our consumers provide positive feedback regarding our transactions. Contrary to the assumptions used by the Bureau, comprehensive data shows that our consumers are happy with our services.

III. Issues Raised by the CFPB Proposal

Research and data related to the proposal's impact on my Small Business, conducted by Deloitte Financial Advisory Services LLP (attached as Exhibit A) indicates that the proposal as written would cause me to completely close my Small Business. While I feel the CFPB has not provided ample time to fully analyze the proposal, early studies - including at least one study that used more comprehensive data than the CFPB has used - indicate that the volume reduction attributable to the CFPB's proposal would be worse than the CFPB predicts: 71.66%, compared to the CFPB's projected 56.5%. *See* CLARITY ANALYSIS CONFIRMS CFPB SIMULATION: Proposed Rule Reduces Payday Loan Count by Over 70%, By: Rick Hackett (May 4, 2015): https://www.nonprime101.com/wp-content/uploads/2015/05/nonprime101-blog-post-25-rick-hackett-CFPB-Was-Right-05-04-151.pdf. The difference in data from that study, as compared to the CFPB's data, is likely attributable to the use of a bigger and longer dataset, involving lesser truncation effects, and also attributable to that study's application of the CFPB's proposed restrictions across activity by a single consumer at all lenders. The CFPB has only used data tracking consumers at a single lender and only has datasets limited to precisely 12 months per lender. One of the authors of the Clarity study once worked at the CFPB studying this industry and has described the Bureau's approach as "unplugging" the game on the industry. CLARITY ANALYSIS CONFIRMS CFPB SIMULATION: Proposed Rule Reduces Payday Loan Count by Over 70%, By: Rick Hackett (May 4, 2015): https://www.nonprime101.com/blog/clarity-analysis-confirms-cfpb-simulation/. Simply put, this proposal's impact, as demonstrated in Exhibit A and in the foregoing study, is even worse than the CFPB's projections, and my Small Business simply would not survive its impact.

In other industries, typically a new regulatory approach would force a business to raise consumer prices to cover the cost of complying with new regulations. But, in this industry, state laws passed before the existence of this new and expansive federal regulatory environment have limited the charges we can impose. Therefore, we cannot raise our prices. It is unlikely my Small Business would survive under CFPB's approach. As a result, the customers who frequented my Small Business last year will be unlikely to find credit. The landlords whose spaces I fill will have empty locations. The people I employ will be jobless.

When measures were adopted in Ohio that are somewhat similar to the alternatives in the CFPB proposal, with passage of a law called the Ohio Short-Term Lender Law in 2008, and the law imposed various limits on those seeking licensure under the law:

- $500 maximum loan amount
- 31 day minimum loan term

- 28% annual percentage rate cap
- Amount due cannot exceed 25% of a borrower's gross salary
- Sequential loan limitations
- Collection restrictions

To date, we are not aware of any lenders able to operate under the law given its financial restrictions on the business. Not even the groups who lobbied in favor of this law - claiming that this type of alternative loan would benefit consumers - have opened stores under this law. They have not offered the transactions that were purported to be better for consumers. If the loans lobbied for by those groups are better for consumers, and viable, then I question why proponents of this legal mandate did not open stores and win consumers away from those licensed under other state lending laws. Quite plainly, consumers don't want of the type of loans the Short Term Lender Law allows, businesses can't survive offering such loans, and those purporting to legislate "better" loans don't seem to understand the consumer's needs as well as the industry they seek to eliminate at the consumer's expense.

Likewise, in Colorado, a 2007 reform to the law governing our industry imposed a new law requiring several changes, summarized as follows:

- $500 maximum loan amount
- 6 month minimum term
- Limits on finance charges
- Prohibitively limits fee on renewal
- New loan application and evidence of income required (not more than 45 days old) and required at least once every 12 months
- If amount borrowed is not more than 25% of monthly income, lender not obligated to investigate further consumer's ability to repay

According to research from Pew Trusts (published here: http://bit.ly/1KJYjN7), the following adverse consequences occurred when the State of Colorado required lenders to follow such requirements. Credit availability dropped as at least 53% of industry locations closed (see Table 5). Small businesses, rural consumers, and underserved communities were the hardest hit by the contraction. As summarized in the following study, regulatory efforts to eliminate or curtail our industry do not support the debt trap hypothesis that payday loans exacerbate borrowers' financial difficulties: Desai, C. and Elliehausen, G. (2014) "The Effect of State Legislation Restricting Payday Lending on Consumer Credit Delinquencies: An Investigation of the Debt Trap Hypothesis," available at http://ssrn.com/abstract=2418608. Imposing loans based on regulatory conjecture and assumptions about lending, rather than consumer choice and consumer data about their preferences, is doomed to eliminate small businesses and eliminate credit availability for those who need credit the most.

IV. Conflict with State and Federal Requirements

The CFPB's proposal would impose federal requirements that conflict with current requirements imposed by state and federal law. These include, for example:

Ability to Repay

Residual of Income, Obligations, and Expenses

The "ability to repay" requirements in the CFPB's proposal conflicts with state law requirements by preventing access to credit for many consumers who would otherwise qualify for credit under state law. For example, most states do not impose an ability to repay requirement but rather trust that lenders have a vested interest in determining whether consumers can repay the money they lend. Some states do, however, impose a statutory ability to repay assessment, based on a "gross income" percentage limitation. These include, for example, Colorado, Illinois, Indiana, Nevada, Washington, and Wisconsin. Legislatures in states that chose to require an ability to repay assessment elected to refrain from the CFPB's approach (i.e. using a residual amount after subtracting obligations and expenses as an additional metric). The confidential data provided in Exhibit A shows that requiring subtraction of obligations and expenses would reduce or entirely eliminate credit availability for our consumers. For conflict purposes, we would be required to decide between offering credit in amounts authorized under state law or not offering credit to the same consumer due to these conflicting federal requirements, posing a true preemption conflict between these rules and state law.

In addition, regarding the ability to repay concept used by the CFPB in its proposal, I submit for review a recent Columbia Law and Economics Working Paper on the subject. Mann, Ronald J., Do Defaults on Payday Loans Matter? (December 1, 2014).Columbia Law and Economics Working Paper No. 509. Available at SSRN: http://ssrn.com/abstract=2560005 or http://dx.doi.org/10.2139/ssrn.2560005. I am concerned that the CFPB has not meaningfully considered this research and the actual benefits, if any, related to an ability to repay requirement like the one proposed.

Sequencing Limitations

The loan sequence limitations in the CFPB's proposal conflict with state law requirements by preventing access to credit for many consumers who would otherwise qualify for credit under state law. Almost all state laws governing the payday advance industry impose a limit on the number of transactions allowed at one time and the number of transactions in a sequence, but none require improved financial circumstances to re-borrow a second or third time. Likewise, none impose a 3-transaction limit requiring a cool-off. The confidential data provided in Exhibit A shows that requiring improved financial circumstances to re-borrow a second or third time, and then imposing a 3 transaction limit before a cool-off would reduce or entirely eliminate credit availability. For conflict purposes, we would be required to decide between offering credit as authorized under state law or not offering credit under these conflicting federal requirements, posing a true preemption conflict between these rules and state law.

60 Day Cool-Off

The 60 day cool-off limitation in the CFPB's proposal conflicts with state law requirements by preventing access to credit for many consumers who would otherwise qualify for credit under state law. Many state laws governing the payday advance industry impose a cooling-off period in between loans after a given amount of loans in a sequence, but none require a 60 day cool-off. The confidential data provided in Exhibit A shows that requiring a 60 day cool-off would reduce or entirely eliminate credit availability. For conflict purposes, we would be required to decide between offering credit as authorized under state law or not offering credit under these conflicting federal requirements, posing a true preemption conflict between these rules and state law.

Alternative Loan Structure Conflicts

Consumer Report History and Reporting Requirements.

The requirement to obtain a consumer report in the CFPB's proposal conflicts with state law requirements by preventing access to credit for many consumers who would otherwise qualify for credit under state law. Some state laws governing the payday advance industry require creditors to review a report from a third party database regarding the number of payday advance transactions, but none require a review of a consumer report. The confidential data provided in Exhibit A shows that requiring review of a consumer report would impose significant burdens on my Small Business. It may also reduce or entirely eliminate credit availability. For conflict purposes, we would be required to decide between offering credit as authorized under state law or under these conflicting federal requirements, posing a true preemption conflict between these rules and state law.

I am also concerned about some key findings included in the CFPB's own study, "Data Points: Credit Invisibles." In that study's key findings, the CFPB stated: "Blacks and Hispanics are more likely than Whites or Asians to be credit invisible or to have unscored credit records." Given that certain consumers don't have credit reports, I am concerned that the requirement to obtain and use information in a consumer report could have a disparate impact on consumers who don't have a consumer report. I am also concerned generally that many of the requirements limiting credit availability in the CFPB's proposal could have a disparate impact on consumers of certain races, colors, religions, national origins, genders, marital statuses, ages, or the fact income derives from public assistance. All portions of the proposal should be reviewed by the CFPB to ensure that they do not have a disparate impact on such consumers, requiring us by law to deny such consumers at higher rates than the general population. I'm quite concerned that the CFPB has made no effort to review this critical issue before developing this proposal, and even if my business could survive this proposal, which it cannot, that I would be required to deny credit to "credit invisible" consumers at higher rates than the general population, in violation of the Equal Credit Opportunity Act.

Outstanding Loan Limitations

The limitation on providing transactions to consumers with other payday advances currently outstanding conflicts with state law requirements by preventing access to credit for many consumers who would otherwise qualify for credit under state law. Some state laws governing the payday advance industry impose limits on new payday advances to those who have payday advances outstanding, and some require use of a third-party database to verify such eligibility. My Small Business does not currently operate under a state statute that imposes such limitations, and therefore the CFPB appears to take the position that it can preempt our state's decision on credit availability. Our confidential data provided in Exhibit A shows that refraining from lending to consumers with an outstanding loan from a competitor would reduce or entirely eliminate credit availability for consumers. For conflict purposes, we would be required to decide between offering credit as authorized under state law or under these conflicting federal requirements, posing a true preemption conflict between these rules and state law.

Sequence Limits

The limitation on providing transactions over a certain time sequence to consumers with other payday advances conflicts with various state law requirements by preventing access to credit for many consumers who would otherwise qualify for credit under state law. Where sequence limitations exist under state law, they are counted as actual sequential transactions (back to back), rather than transactions that occur after numerous days without credit. My Small Business does not currently operate under a state statute that imposes such limitations, and therefore the CFPB appears to take the position that it can preempt our state's decision on credit availability. Our confidential data provided in Exhibit A shows that this portion of the proposal would reduce or entirely eliminate credit availability. For conflict purposes, we would be required to decide between offering credit as authorized under state law or under these conflicting federal requirements, posing a true preemption conflict between these rules and state law.

Cool Off Periods

The limitation on providing transactions to a consumer unless the consumer hasn't had a loan in the prior 60 days conflicts with various state law requirements by preventing access to credit for many consumers who would otherwise qualify for credit under state law. Where state cooling off periods exist under state law, they are shorter periods, allowing consumers the ability to re-access short term credit sooner. My Small Business does not currently operate under a state statute that imposes such limitations, and therefore the CFPB appears to take the position that it can preempt our state's decision on credit availability. Our confidential data provided in Exhibit A shows that this portion of the proposal would reduce or entirely eliminate credit availability. For conflict purposes, we would be required to decide between offering credit as authorized under state law or under these conflicting federal requirements, posing a true preemption conflict between these rules and state law.

Loan Limits Per Year and On a Rolling Basis

The limitation on providing transactions to consumers who have already had the stated number of loans per year or on a rolling basis conflicts with various state law requirements by preventing access to credit for many consumers who would otherwise qualify for credit under state law. Where loan count limitations apply under state law, they are almost never on an annual basis but rather typically prohibit multiple loans at the same time. My Small Business does not currently operate under a state statute that imposes such limitations, and therefore the CFPB appears to take the position that it can preempt our state's decision on credit availability. Our confidential data provided in Exhibit A shows that this portion of the proposal would reduce or entirely eliminate credit availability. For conflict purposes, we would be required to decide between offering credit as authorized under state law or under these conflicting federal requirements, posing a true preemption conflict between these rules and state law.

I am also concerned that having this requirement, as worded, could have a disparate impact on recipients of government assistance. Such consumers typically receive income on a monthly basis, and if these limitations are tied to days rather than number of loans, these consumers would be eligible for fewer loans than their counterparts who don't receive government assistance. Thus, if our business could survive this proposal, which it cannot, then it would be required to impose credit criteria allowing government assistance recipients to receive fewer loans than others, creating a disparate impact on such applicants.

Amortization or Off Ramp Choice

A limitation that requires amortizing transactions conflicts with various state law requirements by preventing access to credit for many consumers who would otherwise qualify for credit under state law. Moreover, required amortization would contradict state laws that require single payment transactions. The requirement could also contradict state laws that limit the loan payment amount to a certain percentage of the consumer's gross income.

The requirement could also create a Federal Truth in Lending Act violation. Currently TILA requires creditors to disclose calculations based on the payment obligation, as defined by applicable law. If state law imposes a single payment requirement on the transaction, but this federal regulation purports to require a 3 payment amortizing transaction, then it is not clear whether the payment schedule and other disclosures should be based on a single payment obligation or a 3 payment amortizing obligation. A 3 payment amortizing obligation would likely violate state laws requiring a single payment.

My Small Business does not currently operate under a state statute that imposes such limitations, and therefore the CFPB appears to take the position that it can preempt our state's decision on credit availability. Our confidential data provided in Exhibit A shows that this portion of the proposal would reduce or entirely eliminate credit availability. For conflict purposes, we would be required to decide between offering credit as authorized under state law or under these conflicting federal requirements, posing a true preemption conflict between these rules and state law.

A limitation that requires a payment-plan conflicts with various state law requirements that require single payment transactions. While a payment plan option (rather than requirement) elected by the consumer after entering a transaction could be viable under many state laws, a mandatory payment plan would contradict state laws that require single payment transactions. The requirement could also create a Federal Truth in Lending Act violation. Currently TILA requires creditors to disclose calculations based on the payment obligation, as defined by applicable law. If state law imposes a single payment requirement on the transaction, but this federal regulation purports to require a 5 payment transaction (the agreed payment and four payment plan payments), then it is not clear whether the payment schedule and other disclosures should be based on a single payment obligation or a 5 payment obligation.

My Small Business does not currently operate under a state statute that imposes such limitations, and therefore the CFPB appears to take the position that it can preempt our state's decision on credit availability. Our confidential data provided in Exhibit A shows that this portion of the proposal would reduce or entirely eliminate credit availability. For conflict purposes, we would be required to decide between offering credit as authorized under state law or under these conflicting federal requirements, posing a true preemption conflict between these rules and state law.

Payment Processing Notice

The requirement to send advanced notice before processing a payment requires additional paperwork that federal and state law do not currently require. The Federal Trade Commission and Congress under the Paperwork Reduction Act have both made efforts to reduce the amount of paper used. The goals behind these efforts include reducing the amount of sensitive consumer information circulating for safeguarding purposes and also to reduce the overall costs related to paper use. Certain states require notices, and we recognize that in some circumstances more information can be helpful to consumers. In an effort to assist in complying with any such requirement, I request that the an electronic notice should be permitted with appropriate consent under the E-Sign Act and state law and that the notice should not include any sensitive consumer information. Where a bank account is referenced, I urge the CFPB to allow a generic statement regarding the bank account rather than recital of actual banking information. Our confidential data provided in Exhibit A outlines anticipated burdens related to this portion of the proposal.

Payment Processing Limitations

The limitations on the total number of payments processed based on a consumer's payment method conflicts with various state law requirements by preventing consumers from paying for in a way that would otherwise be allowed under state and federal law. This limitation would curtail payment availability under the Electronic Funds Transfer Act, Regulation E, the NACHA Rules, the Uniform Commercial Code, and other processing rules. If this portion of the proposal is good for consumers, then I question why it wouldn't apply to all payments across the entire marketplace, not just payments by our consumers. Likewise, if the structural protections imposed on our loans under this proposal would render our loans safer for consumers under the CFPB's assumptions, then why would our industry still be subjected to payment options that are more narrow than payments' laws generally allow?

Our confidential data provided in Exhibit A outlines the costs of this portion of the proposal on my Small Business. For conflict purposes, we would be required to decide between offering credit with payment options as authorized under state law or under these conflicting federal requirements, posing a true preemption conflict between these rules and state law.

V. The CFPB Proposal's Impact on the Cost of Credit for Small Businesses

I am a small business and I rely on a line of credit for financing, business upgrades, technology, store maintenance, modernization, etc. The CFPB's proposal would make it more risky for any bank to lend to me, which would make it harder for me to obtain credit. More broadly, we suspect that almost all lenders like us will be similarly impacted by the proposal. Based on current business structure and the prediction by the CFPB regarding the decline in volume and fees from the limitations on sequence of loans, the CFPB rules would create likely cause me to fall into violation of covenants included as part of on my line of credit, essentially eliminating access to credit for my Small Business.

Customers rely on our transactions for various purposes, including for small business credit. One study shows that "[s]mall businesses are finding it difficult to obtain bank loans and credit cards. In light of the continued problems of consumers and small business getting access to credit, wiping out a type of credit that provides a useful option for consumers and small businesses at the present time would be especially harmful to consumers and the economy." (*Consumer Use and Government Regulation of Title Pledge Lending*, pg. 4, Todd J. Zywicki, October 2012). According to title pledge industry members, "Small independent businesses constitute approximately 25-30% of their customer base." (*Consumer Use and Government Regulation of Title Pledge Lending*, pg. 32, Todd J. Zywicki, October 2012). Studies show that "[d]epriving consumers and small businesses who already have limited credit options of title lending as a credit option would likely result in substantial harm for many consumers and small businesses." (*Consumer Use and Government Regulation of Title Pledge Lending*, pg. 17, Todd J. Zywicki, October 2012). In short, not only will my Small Business be eliminated by the proposal, but also those small businesses that rely on this industry to provide credit for their small business will suffer from further reductions in credit availability.

VI. Our Transactions Are Not Unfair and Are Not Abusive

The CFPB's limited research and the Pew research begin with an unsubstantiated assumption that our transactions are unfair and abusive. The limited research begins by assuming that we offer something "bad" and analyzing how much of our "bad" product is too much, largely focusing in on the duration of the relationship with lenders. But, neither the CFPB nor Pew have engaged in a simple analysis regarding whether the products align with the factors to determine whether an act or practice is actually unfair or actually abusive under federal law.

a. Unfairness

The Dodd-Frank Act prohibits an act or practice, as "unfair" when (1) it causes or is likely to cause substantial injury to consumers; (2) the injury is not reasonably avoidable by consumers; and (3) the injury is not outweighed by countervailing benefits to consumers or to competition. Despite the long history of this standard and the long history of our credit products, no federal precedent indicates that our credit transactions cause a "substantial injury." Quite to the contrary, consumers who face the expense of rental eviction, unexpected car repairs, utility shut-off and the costly fees related to re-starting utilities, overdraft fees, and other expenses all greatly value our services. They use our services to overcome difficult financial circumstances. While the CFPB may believe that our APRs make our services "predatory," the costs are far less than the costs related to rental eviction, unexpected car repairs, wintertime utility shut-off, failing to acquire needed medicine, and overdraft. To date, the CFPB has published no study comparing the real world costs of these alternatives to the costs of our services. To date, the CFPB has published no study showing that these transactions are inherently injurious to consumers. My Small Business helps people when they face more costly circumstances, and my consumers make a rational choice.

Not only does my Small Business not injure consumers, our transactions are completely avoidable by consumers in several respects that I have not seen the CFPB reference. First, we provide a disclosure of the cost of our transactions on an annual basis. In case consumers don't understand the cost of the sequential transactions at the outset, the most prominent federal disclosure they receive actually annualizes the cost, multiplying the amount of the finance charge on a two week loan by a multiple of 26 – thereby annualizing the cost. So, the consumer sees how expensive the loan would be, if they entered back to back transactions throughout the entire year – which they cannot even do. So, to assist the consumer in understanding how expensive several sequential transactions could hypothetically be, we prominently disclose that information as an

Annual Percentage Rate, as required by federal law, before the consumer enters an agreement, so they can decide whether to sign or not. We also post the APR and related information conspicuously at our locations. Our costs are not hidden.

Even more importantly, our trade association membership requires that we provide the opportunity for consumers to rescind or cancel the transaction by the time we close on the next business day after the transaction. So, every consumer has a chance to leave our location, consider the expenses and alternatives, and return the money without paying any charges whatsoever. They can cancel after the fact. Trade association members disclose this right contractually and post notices regarding this right to rescind / cancel. So, not only do we show the consumer the cost on an annualized basis before they decide to receive credit, but we also give the consumer the right to cancel / rescind the transaction. Therefore, the transaction is absolutely avoidable. To date, the CFPB has published no study showing that consumers cannot avoid our transactions.

The fact that consumers understand our transactions is not merely a hypothetical assertion. I submit for review a recent study presenting direct evidence of the accuracy of payday loan borrowers' understanding about product use. The evidence directly contradicts the oft-stated view that substantially all extended use of payday loans is the product of lender misrepresentation or borrower self-deception about how the product will be used. See: Mann, Ronald J., Assessing the Optimism of Payday Loan Borrowers (March 12, 2013), Columbia Law and Economics Working Paper No. 443, Available at SSRN: http://ssrn.com/abstract=2232954.

There are significant benefits to consumers because this transaction is available. A large majority of our consumers come to us in financial need with which no one else will help and end up preventing eviction, fixing their car so they can get to work, keeping the utilities on in the winter, getting medicine, and avoiding overdraft fees. A slim percentage of consumers with emergency credit needs come to us, and their financial circumstances don't improve. Again, these are not merely hypothetical assertions, but rather data-tested facts. I submit for your review the following studies in full:

- Laboratory experiment examining what effect, if any, the existence of payday loans had on individuals' abilities to manage and to survive financial setbacks, to determine whether access to payday loans improved or worsened the likelihood of survival. The experiment also tested the degree to which people's use of payday loans affects their ability to survive financial shocks. Among many findings, the experiment found that payday loans help the subjects to absorb expenditure shocks and, therefore, survive. Wilson, Bart J. and Findlay, David W. and Meehan, James W. and Wellford, Charissa P. and Schurter, Karl, An Experimental Analysis of the Demand for Payday Loans (April 28, 2010). Available at SSRN: http://ssrn.com/abstract=1083796 or http://dx.doi.org/10.2139/ssrn.1083796.

- Employing individual credit record data and Census data on payday lender store locations, the study shows little to no effect of payday loans on credit scores, new delinquencies, or the likelihood of overdrawing credit lines. The analysis also indicates that neighborhood racial composition has little influence on payday lender store locations conditional on income, wealth and demographic characteristics. Bhutta, Neil, Payday Loans and Consumer Financial Health (April 27, 2014). Journal of Banking and Finance, Vol. 47, No. 1, 2014. Available at SSRN: http://ssrn.com/abstract=1941914 or http://dx.doi.org/10.2139/ssrn.1941914.

- Borrowers who engage in protracted refinancing activity have better financial outcomes (measured by changes in credit scores) than consumers whose borrowing is limited to shorter periods. Priestley, Jennifer, Payday Loan Rollovers and Consumer Welfare (December 5, 2014). Available at SSRN: http://ssrn.com/abstract=2534628 or http://dx.doi.org/10.2139/ssrn.2534628.

Study after study concludes that consumers and the marketplace benefit from this opportunity to get credit and prevent the impact of a major expense leading to great turmoil. To date, the CFPB has published no study showing that consumers or the marketplace do not benefit from our transactions. The concept of "unfairness" predates the payday lending industry, with ongoing regulation of "unfairness" today. The Federal Trade Commission has taken numerous actions to remedy situations where a given practice or industry is inherently "unfair." I'm not aware of a single decision or regulatory action applying the unfairness factors articulated under federal law and concluding that our transactions, as currently structured, are "unfair." It is interesting that to date, the CFPB has not articulated how elements of our transaction, which are largely sanctioned in similar form under almost 70% of state laws, and allowed for at least the last 25 years, is somehow nonetheless suddenly going to be deemed an "unfair" transaction. There are good reasons that no federal agency or court has ever found our transaction to be unfair, and it's because (1) our transaction doesn't injure consumers, (2) consumers can avoid the transaction, and (3) the marketplace benefits from our transactions.

b. Abuse

The Dodd-Frank Act now prohibits conduct that constitutes an abusive act or practice, which is an act or practice that (1) Materially interferes with the ability of a consumer to understand a term or condition of a consumer financial product or service; or (2) Takes unreasonable advantage of – (A) a consumer's lack of understanding of the material risks, costs, or conditions of the product or service; (B) a consumer's inability to protect his or her interests in selecting or using a consumer financial product or service; or (C) a consumer's reasonable reliance on a covered person to act in his or her interests. Our transactions are not abusive.

To date, the CFPB has not published a study indicating that our lending materially interferes with the ability of a consumer to understand a term or condition of our financial product or service. As noted in the studies cited in the preceding section and in the sections below, un-refuted data shows that our consumers do understand the transactions. But, to the extent consumer understanding is an issue, the most effective solution from a consumer benefit perspective, and a small business cost perspective, would be to require an oral and written disclosure to eliminate any interference with understanding. In other words, help consumers understand the product rather than eliminate the product.

Likewise, the CFPB has not published any study indicating that our transactions take advantage of consumers in any way, whether it is the consumer understanding, the consumer's ability to protect his or her own interests, or the consumer's reliance on financial service providers. Again, if consumer understanding, ability, or reliance are issues, a mandatory federal oral and written disclosure to consumers is a remedy that does not eliminate my Small Business and can help prevent any of the three types of perceived harms.

If the CFPB believes that our credit transactions unreasonably "take advantage of a consumer's lack of understanding of the material risks, costs, or conditions of the product or service," then the CFPB should require us to read consumers a disclosure stating those risks, costs, and conditions, and require us to ask the consumer to demonstrate their understanding in order to receive our product. If the CFPB believes we unreasonably take "advantage of a consumer's inability to protect his or her interests in selecting or using a consumer financial product or service," then the CFPB should require us to read a disclosure regarding the consumer's interest and alternatives, and then ask the consumer to confirm their ability to protect their own interests in writing. Finally, if the CFPB believes we unreasonably take advantage of a consumer's reasonable reliance on us to act in his or her interests, then the CFPB should require us to clearly disclose to the consumer that we are acting in our interest, not their interest, and ask the consumer to confirm their understanding in writing. I'm not aware of the CFPB attempting to apply these standards to our transaction, or attempting to test these less costly alternatives. No portion of the CFPB's outline, prior research, or the research published by Pew shows how the CFPB's alternatives make our transaction align with these legal standards.

The CFPB's approach does not identify why our credit options are unfair or abusive, and its approach does not solve the "problem," even as the CFPB has defined it, unless the CFPB acknowledges that elimination of the product is its "solution." The proposal is antithetical to the purpose of the CFPB, and antithetical to Congress's inclusion of a requirement to regulate payday lending, not eliminate payday lending. The CFPB should implement the Dodd-Frank Act in a manner that ensures that consumers have access to fair, transparent, and competitive markets for products and services. By eliminating a category of products, the CFPB is eviscerating small business competition in this industry.

VII. The CFPB's Information is Flawed and Does Not Consider Published Data

In addition the data and studies noted throughout the body of this letter, I submit for review and comment each of studies noted in this section of my letter, in total. In summary, there are many academic and third-party studies and research that demonstrate the benefits of payday lending and the corresponding harm that results when this form of credit is severely restricted or eliminated.

a. Cost/Benefit of the Products

The CFPB has not, either in the proposal or in publicly available documents, established harm or substantial injury to consumers from the products it proposes to cover in this rule. The proposal presumes positive impacts on consumers without any analysis of consumers' cost of, or access to, credit. There is simply no evidence that consumers are "duped." Our disclosures foster consumer awareness of risks, cost, and benefits. To argue from the assumption that our products are unfair and abusive, rather than prove such as a conclusion, the CFPB relies on studies that lack empirical objective rigor, causing it to draw subjective conclusions. Regarding this point, my Small Business submits for review the cited studies quoted below, providing quantifiable data that refutes the CFPB's assumptions.

- "Interviews and industry survey data indicate that payday loan customers do make a cost analysis in comparing the price of a payday loan with the alternative costs of bouncing a check and/or incurring late fees. For instance, 73 percent of respondents in the industry's 2004 customer survey ranked avoiding late charges on bills as a personal benefit of the payday advance; 66 percent ranked avoiding bounced checks as a benefit." (*Low-Cost Payday Loans: Opportunities and Obstacles*, pg. 29, Sheila Bair, June 2005)

- "Much of the current and proposed restrictions on payday lending rest on a characterization of widespread abuses and a common pattern in which payday loans compound the financial distress of borrowers. A careful review of the existing research does not support this characterization." (*The Consumer and Social Welfare Benefits and Costs of Payday Loans: A Review of the Evidence*, pg. 19, Robert Shapiro, March 2011)

- Administrative data was matched with nationally representative credit bureau files to examine the choices of payday loan applicants and assess whether payday loans help or harm borrowers. The data shows that consumers apply for payday loans when they have limited access to mainstream credit, the weakness of payday applicants' credit histories is severe and longstanding. BHUTTA, N., SKIBA, P. M. and TOBACMAN, J. (2015), Payday Loan Choices and Consequences. Journal of Money, Credit and Banking, 47: 223–260. doi: 10.1111/jmcb.12175.

- "In this paper, I ask whether [payday loans] mitigate or exacerbate the effect of financial distress on individuals' welfare as measured by foreclosures and small property crimes….The results indicate that payday lenders offer a positive service to individuals in unexpected financial distress. Natural disasters induce an increase in foreclosures by 72%, but the existence of payday lenders significantly offsets half of this increase. In particular, I find that access to credit in distress times prevents 1.22 foreclosures per 1,000 homes. The results also indicate that payday lenders alleviate individuals' need to resort to small property crimes in times of financial distress. I find significant and robust results, however, only for larceny, the crime which carries the least sentencing of all property crimes. Natural disasters increase larcenies by 13% (nearly 9 larcenies per 1,000 households). Access to credit, however, mitigates 2.67 larcenies per 1,000 households, or 30% of the effect of the natural disaster." (*Payday Lenders: Heroes or Villains*, pg. 1, 3, Adair Morse, January 2009)

- "Another, more recent study examined bankruptcy rates before and after eight states that banned payday loans, and before and after 11 other states had passed legislation permitting payday loans. This study found higher bankruptcy rates in the eight states that banned the loans, after those bans took effect, but these results as well were not robust: The results held up only when the analysis ignored state-specific economic conditions. They also found that bans on payday loans correlated with increased use of bank overdrafts and increased complaints about bill collectors, suggesting that the bans did not improve people's economic conditions." (*The Consumer and Social Welfare Benefits and Costs of Payday Loans: A Review of the Evidence*, pg. 12, Robert Shapiro, March 2011)

- "Researchers have found that payday loans enable many moderate-income working households to obtain short-term credit otherwise unavailable from traditional financial institutions, and these loans may enable those households to weather emergencies and period s of acute financial distress." (*The Consumer and Social Welfare Benefits and Costs of Payday Loans: A Review of the Evidence*, pg. 17, Robert Shapiro, March 2011)

- "The rapid expansion of the payday loan business does provide evidence of strong demand for short-term emergency loans by otherwise credit-constrained Americans." (*The Consumer and Social Welfare Benefits and Costs of Payday Loans: A Review of the Evidence*, pg. 5, Robert Shapiro, March 2011)

- "[T]he data suggest that borrowers subsequently forced to file for bankruptcy faced unmanageable debts before they obtained their payday loans, and very recent research suggests that the interest rates charged on payday loans do not affect the likelihood of borrowers taking out serial payday loans." (*The Consumer and Social Welfare Benefits and Costs of Payday Loans: A Review of the Evidence*, pg. 2, Robert Shapiro, March 2011 *citing Do Payday Loans Trap Consumers in a Cycle of Debt?* Pg. 30, Marc Anthony Fusaro, Patricia J. Cirillo)

- "With the current state of evidence, research and analysis, there are no certain or confident grounds to conclude that payday loans diminish or increase consumer or social welfare. Additional research should be conducted to provide more definitive answers, hopefully before regulators bar or sharply limit access to short-term credit for working people unable to qualify for conventional credit form larger financial institutions." (*The Consumer and Social Welfare Benefits and Costs of Payday Loans: A Review of the Evidence*, pg. 3, Robert Shapiro, March 2011)

- "[A] number of researchers have tried to answer the basic question of the net consumer and social welfare of payday lending by focusing on a possible relationship between payday loans and personal bankruptcies. The logic behind these studies is that if the use of payday loans tends to increase the long-term financial problems of those borrowers, access to the loans should be associated with higher personal bankruptcy rates. Unfortunately, these analyses do not provide definitive answers, and the evidence remains inconclusive." (*The Consumer and Social Welfare Benefits and Costs of Payday Loans: A Review of the Evidence*, pg. 9, Robert Shapiro, March 2011)

- “The analysis found that after Georgia and North Carolina banned payday loans, rates of chapter 7 bankruptcies where debts are written off increased, as did the incidence of bounced checks and complaints to the Federal Trade Commission about lenders and debt collectors. .” (*The Consumer and Social Welfare Benefits and Costs of Payday Loans: A Review of the Evidence*, pg. 12, Robert Shapiro, March 2011)

- “Our review of the current research and analysis regarding payday loans has established, in our judgment, that additional research and analysis would be required to settle questions about the consumer and social utility of payday loans.” (*The Consumer and Social Welfare Benefits and Costs of Payday Loans: A Review of the Evidence*, pg. 17, Robert Shapiro, March 2011)

- “It seems likely that some borrowers derive welfare benefits from payday loans and others do not, but we do not know the characteristics or conditions which affect their different outcomes or their distribution. Legislators and regulators, therefore, cannot know whether existing or additional restrictions on the industry would be beneficial or harmful to households in financial distress and for American society at large. If such restrictions have detrimental effects, they could harm one of the most vulnerable segments of the American population, moderate-income working households already in financial distress.” (*The Consumer and Social Welfare Benefits and Costs of Payday Loans: A Review of the Evidence*, pg. 19, Robert Shapiro, March 2011)

- “The most obvious and important cost of restricting payday lending would be the potential *loss of credit* for consumers who may not have other sources of credit. Fully 50 percent of respondents to the 2007 payday loan customer survey responded that, when they secured their most recent payday loan, it was their only choice for short-term funds.” (*Could Restrictions on Payday Lending Hurt Consumers?* Federal Reserve Bank of Kansas City *Economic Review*, Pg. 37, Kelly D. Edmiston, First Quarter 2011)

- “Restricting payday lending might also damage a would-be borrower’s *credit standing* with traditional lenders.” (*Could Restrictions on Payday Lending Hurt Consumers?* Federal Reserve Bank of Kansas City *Economic Review*, Pg. 38, Kelly D. Edmiston, First Quarter 2011)

- “[R]estricting payday lending might force borrowers to seek *more costly credit alternatives*.” (*Could Restrictions on Payday Lending Hurt Consumers?* Federal Reserve Bank of Kansas City *Economic Review*, Pg. 38, Kelly D. Edmiston, First Quarter 2011)

- “[A]ccording to the 2007 payday loan customer survey, almost half of payday loan borrowers do not have access to a credit card.” (*Could Restrictions on Payday Lending Hurt Consumers?* Federal Reserve Bank of Kansas City *Economic Review*, Pg. 37, Kelly D. Edmiston, First Quarter 2011)

- “In another study, researchers conducted a laboratory experiment to gauge the degree to which access to payday loans would hinder or help consumers weather personal expenditure shocks. They found that payday loans helped subjects absorb expenditure shocks relative to a comparison group without access to payday loans (although those who demanded more than a threshold level of payday loans did worse than the comparison group).” (*Could Restrictions on Payday Lending hurt Consumers?* Federal Reserve Bank of Kansas City *Economic Review*, Pg. 43, Kelly D. Edmiston, First Quarter 2011)

- “The FDIC’s research shows that the median overdraft amount is $36. If the median overdraft penalty fee of #35 is applied to a $36 overdraft with a repayment period of seven days, the APR, or annual percentage rate, on the typical overdraft would be over 5,000 percent – a costly way to address credit needs.” (*Hidden Risks: The Case for Safe and*

Transparent Checking Accounts, pg. 12, The Pew Health Group, April 2011)

- "Our most robust finding is that returned check numbers and overdraft fee income at banks decrease when payday credit supply expands. At $50 per returned check ($25 to the merchant and $25 to the bank), a $100 payday loan for $15 is cheaper than overdrafting, so using payday loans to avoid overdrafts could save households money. In fact, our estimates suggest that households served by a given Federal Reserve Regional Check Processing Center save about $43 million per year in returned check fees after states pass enabling legislation." (*How Payday Credit Access Affects Overdrafts and Other Outcomes*, pg. 4, Donald P. Morgan, Michael R. Strain, and Ihab Seblani)

- "We see no evidence that increased payday supply is associated with more returned checks. On the contrary, β is positive in all models and η is negative. Furthermore, one or the other coefficient is significant at the five percent or one percent level, even in the model with state-specific rends. The implied magnitudes are substantial. The estimate of η in model (5) implies that after enabling legislation the number of returned checks increases by 17 percent relative to the average. The dollar magnitudes are also large; the number of returned checks decreases by 215,000 per quarter after enabling legislation." (*How Payday Credit Access Affects Overdrafts and Other Outcomes*, pg. 13-14, Donald P. Morgan, Michael R. Strain, and Ihab Seblani)

- "I find that the [payday loan restrictions imposed by the state of Oregon in 2007] dramatically reduced access to payday loans in Oregon, and that former payday borrowers responded by shifting into incomplete and plausibly inferior substitutes. Most substitution seems to occur through checking account overdrafts of various types and/or late bills. These alternative sources of liquidity can be quite costly in both direct terms (overdraft and late fees) and indirect terms (eventual loss of checking account, criminal charges, utility shutoff)." (*Restricting Consumer Credit Access: Household Survey Evidence on Effects Around the Oregon Rate Cap*, pg. 3, Jonathan Zinman, October 2008)

- "The results suggest that restricting access harmed Oregon respondents, at least over the short term, by hindering productive investment and/or consumption smoothing." (*Restricting Consumer Credit Access: Household Survey Evidence on Effects Around the Oregon Rate Cap*, pg. 4, Jonathan Zinman, October 2008)

- "I examine some effects of restricting access to expensive consumer credit on payday loan users, using household survey data collected around the imposition of binding restrictions on loan terms in Oregon but not in Washington. The results suggest that the policy change decreased expensive short-term borrowing in Oregon relative to Washington, with many Oregon payday borrowers shifting into plausibly inferior substitutes. Oregon respondents were also significantly more likely to experience an adverse change in financial condition (where an adverse outcome is defined as being unemployed, or having a negative subjective assessment about one's overall recent or future financial situation). The results suggest that restricting access to consumer credit hinders productive investment and/or consumption smoothing, at least over the short term." (*Restricting Consumer Credit Access: Household Survey Evidence on Effects Around the Oregon Rate Cap*, pg. 17, Jonathan Zinman, October 2008)

- "[T]he predominant users of payday loans are consumers that economic theory predicts are most likely to benefit from high-price consumer credit." (*An Analysis of Consumers' Use of Payday Loans*, pg. 61, Gregory Elliehousen, January 2009)

- "The survey evidence indicates that most customers used payday loans as a short-term source of financing. They used payday advances a small or moderate number of times during the year, typically for less than a month at a time. Frequent use is not in itself evidence that payday loans trap consumers into ever increasing indebtedness and eventual default. Studies have found that access to payday loans may increase communities' resiliency to financial difficulties, relax credit constraints without increasing delinquency, and reduce the incidence of financial problems. These findings do not preclude that some consumers do have difficulty getting out of debt, but such consumers typically also have substantial amounts of other unsecured debt. In giving consumers access to additional credit for unexpected expenses or shortfalls in income, payday loans given the consumers a little control over their financial situations that they otherwise would not have." (*An Analysis of Consumers' Use of Payday Loans*, pg. 64, Gregory Elliehousen, January 2009)

- "Unfortunately, there are not many viable alternatives to payday lending." (*Payday Lending: Do Outrageous Prices Necessarily Mean Outrageous Profits?* Fordham Journal of Corporate & Financial Law, pg. 209, Aaron Huckstep)

- "The provision of credit to high-risk borrowers has generated heated debate largely because of the high APR of loans, which, critics contends, lures borrowers into a 'debt trap' that exacerbates their already marginal economic circumstances. Evidence from payday lending in Oklahoma, however, shows not only that this caricature of payday loans is inaccurate, but also that CRL has misinterpreted data in constructing a narrative that vilifies payday lenders. In context, payday lending responds to the increasingly fragile financial circumstances of many households during the past three decades as well as their inability to access credit from mainstream financial institutions. Two factors loom large in the evolution of payday lending: first, consumers of payday loans have a relationship with a bank or credit union, yet choose not to borrow from these mainstream institutions; second, in response to a burgeoning SDL market, banks and credit unions have begun to evolve products similar to payday loans, yet these have not been profitable, leaving a substantial number of high risk consumers unserved by institutions of the financial mainstream." (*Payday Loans and the Secondary Financial Market*, David Stoesc, policyAmerica)

b. **Results of Other Legal Efforts**

When states have imposed measures in this area, it has become clear that approaches intended to reduce consumer borrower frequency and intensity have widespread adverse effects. Regarding this point, my Small Business submits for review the cited studies quoted below, providing quantifiable data that refutes the CFPB's assumptions.

- "A look at Georgia data around the time of its payday lending ban provides some fairly strong evidence that bans of payday lending do not send borrowers to traditional lenders. Indeed, the opposite is observed. The growth in traditional lending fell off in Georgia relative to the nation following the ban. Specifically, by the fourth quarter of 2007, the average outstanding (traditional) debt in the nation had increased 36 percent, while increasing only 25 percent in Georgia. The divergence began around the time payday loans were banned in Georgia in 2004. If consumers shifted to traditional lending following the payday loan ban, one would expect growth in traditional lending to have at least kept pace with U.S. growth." (*Could Restrictions on Payday Lending Hurt Consumers?* Federal Reserve Bank of Kansas City *Economic Review*, Pg. 41, Kelly D. Edmiston, First Quarter 2011)

- "More-recent studies have focused on consumer outcomes of payday lending. One study similar to the analysis in this article found that after payday loans were banned in Georgia and North Carolina, households bounced more checks, complained more to the Federal Trade Commission about lenders and debt collectors, and filed for Chapter 7 bankruptcy more often than households in states where payday lending was permitted. Specifically, they found that following the payday loan ban in Georgia, the returned check rate in the Federal Reserve's Atlanta check processing center increased 13 percent. In comparison, returned check rates declined at other check processing centers. Results for the Charlotte center following north Carolina's payday loan ban told a similar story. Complaints against debt collectors increased 64 percent in Georgia and more than one-third in North Carolina. Again, these patterns were significantly different than those found in comparison states." (*Could Restrictions on Payday Lending Hurt Consumers?* Federal Reserve Bank of Kansas City *Economic Review*, Pg. 43, Kelly D. Edmiston, First Quarter 2011)

- "Using survey data in Oregon and Washington, another study found that the imposition of an interest rate cap in Oregon led to a sharp reduction in access to payday lending and that former payday borrowers shifted into 'incomplete and plausibly inferior substitutes,' such as bank overdrafts and late bill payments." (*Could Restrictions on Payday Lending Hurt Consumers?* Federal Reserve Bank of Kansas City *Economic Review*, Pg. 43, Kelly D. Edmiston, First Quarter 2011)

- "[A] lack of access to payday lending is associated with lower credit scores." (*Could Restrictions on Payday Lending Hurt Consumers?* Federal Reserve Bank of Kansas City *Economic Review*, Pg. 45, Kelly D. Edmiston, First Quarter 2011)

- "The shares of consumers [with credit scores] in the 10th and 25th percentile groups were .89 and 1.08 percentage points lower, respectively, in counties with access to payday lending than in counties where payday lending was restricted." (*Could Restrictions on Payday Lending Hurt Consumers?* Federal Reserve Bank of Kansas City *Economic Review*, Pg. 45, Kelly D. Edmiston, First Quarter 2011)

- "[C]onsumers living in counties where payday lending is legally accessible were less likely to have late bill payments than consumers in counties under restrictive state payday lending laws and regulations….[A]bout 4.9 percent of the population had late bill payments in any given quarter in counties where payday lending was accessible, compared to 5.3 percent in counties where payday lending was not accessible." (*Could Restrictions on Payday Lending Hurt Consumers?* Federal Reserve Bank of Kansas City *Economic Review*, Pg. 45-46, Kelly D. Edmiston, First Quarter 2011)

- "The lack of evidence for substitution between payday lending and traditional forms of credit in low-income counties is not surprising, given that many consumers in those communities have little or no access to traditional credit. These results suggest that in low-income counties, restrictions on payday lending may leave consumers without access to credit or access only to potentially more costly lenders." (*Could Restrictions on Payday Lending Hurt Consumers?* Federal Reserve Bank of Kansas City *Economic Review*, Pg. 50, Kelly D. Edmiston, First Quarter 2011)

- "Overall, the evidence on credit use is mixed. While some consumers living in higher-income communities with payday lending restrictions may tap traditional credit more frequently, they do not acquire additional accounts to do so. The numbers do not reveal a great deal of substitution, as the difference for total debt is less than 6 percent. Moreover, in Georgia, there was no evidence that traditional lending increased following the state's payday loan ban in 2004. Finally, the option to substitute payday credit with traditional credit does not appear to exist in low-income communities, where many consumers lack access to traditional credit." (*Could Restrictions on Payday Lending Hurt Consumers?* Federal Reserve Bank of Kansas City *Economic Review*, Pg. 50, Kelly D. Edmiston, First Quarter 2011)

- "[T]here is no evidence that traditional credit and payday loan credit are substitutes. In states with greater restrictions on payday lending, consumers do not use more traditional credit." (*Could Restrictions on Payday Lending Hurt Consumers?* Federal Reserve Bank of Kansas City *Economic Review*, Pg. 50, Kelly D. Edmiston, First Quarter 2011)

- "The results of [this article's] empirical analysis support the idea that restricting payday lending may indeed have costs. The evidence showed that consumers in low-income counties may have limited access to credit in the absence of payday loan options. As a result, they may be forced to seek more costly sources of credit. The evidence also showed that, in counties without access to payday lending, consumers have a lower credit standing than consumers in counties with access." (*Could Restrictions on Payday Lending Hurt Consumers?* Federal Reserve Bank of Kansas City *Economic Review*, Pg. 51, Kelly D. Edmiston, First Quarter 2011)

- "[E]fforts by legislators to regulate the terms of small consumer loans (such as by imposing price caps on interest rates and fees, or limitations on repeated use "rollovers") almost invariably produce negative unintended consequences that vastly exceed any social benefits gained from the legislation. Moreover, prior studies of price caps on lending have found that low-income and minority borrowers are most negatively affected by the regulations and the adjustments that they produce. Volumes of economic theory and empirical analysis indicate that further restrictions on title lending likely would prove counterproductive and harmful to the very people such restrictions would be intended to help." (*Consumer Use and Government Regulation of Title Pledge Lending*, pg. 6, Todd J. Zywicki, October 2012)

- "[R]egulation may result in rationing of credit to particular borrowers if it is impossible for them to obtain any formal credit on affordable terms. Such rationing could force borrowers to turn to the informal sector (friends and family or illegal loan sharks) or to do without credit. Deprivation of access to credit could cause substantial economic and personal harm if it forces the consumer to go without the means to meet necessary expenses such as medical care, car repairs, living expenses, rent, or work-related expenses such as transportation or appropriate work clothing. Put simply, foreclosing viable options for credit because those options are thought to be too expensive does not make the need for credit go away nor does it make less-expensive credit cheaper or more available. If a low-income person needs $500 for a home repair, eliminating title lending as a credit option does not eliminate the need to make the repair. It simply forces the borrower to find funds elsewhere or live with a leaky roof or a broken furnace, which could have other undesirable consequences." (*Consumer Use and Government Regulation of Title Pledge Lending*, pg. 11, Todd J. Zywicki, October 2012)

- "This research suggests that eliminating nontraditional lending products could force low-income consumers to make decisions that would be more harmful and expensive than the use of nontraditional lending products. Research by Federal Reserve economists Donald Morgan and Michael Strain found that when Georgia and North Carolina outlawed payday lending, the incidence of bounced checks, consumer complaints about debt collectors, and chapter 7 bankruptcy filings rose. Direct fees imposed for checks returned for insufficient funds can be quite significant." (*Consumer Use and Government Regulation of Title Pledge Lending*, pg. 36, Todd J. Zywicki, October 2012)

- "Economist Jonathan Zinman found that when Oregon imposed a cap on the finance charge that could be assessed on payday loans, there was a dramatic drop in the number of licensed payday lenders, a short-run deterioration in the overall financial condition of Oregon households, and some evidence that the ban led to an increase in late bill payments and greater use of overdraft protection by consumers as a substitute." (*Consumer Use and Government Regulation of Title Pledge Lending*, pg. 37, Todd J. Zywicki, October 2012)

- "In the United States, illegal loan sharking originally arose as an outgrowth of early twentieth century small loan laws that capped the fees and interest rates for small consumer loans at a level that was unprofitable, causing legitimate lenders to raise their minimum loan amounts or to exit the market. Organized crime syndicates looking for new economic enterprises following the repeal of Prohibition entered the market in the 1930s and by the 1950s and 1960s controlled much of the small-loan market in many major American cities." (*Consumer*

Use and Government Regulation of Title Pledge Lending, pg. 40, Todd J. Zywicki, October 2012)

- "A recent comparison of France, Germany, and the United Kingdom indicates that stricter regulation of consumer credit, and thus reduced access by higher-risk borrowers to legal credit, is correlated with higher rates of illegal lending activity. In German, where credit regulations are among the strictest in Europe, 60 percent of low-income Germans have had credit applications refused, and almost 10 percent have resorted to illegal lenders. Rates of illegal lending in France and Germany are two-and-a-half ot three times higher than in the United Kingdom, where interest rate caps are less strict and exclusion from credit markets less severe and widespread. News reports indicate that in Italy the turmoil in consumer credit markets during the past year led to an increase in lending by illegal loan sharks to consumers and small businesses." (*Consumer Use and Government Regulation of Title Pledge Lending*, pg. 40, Todd J. Zywicki, October 2012)

- "In 2006, Japan severely tightened its rate ceiling on consumer loans (as in the United States, many consumer loans were also small business loans), resulting in a two-thirds drop in the acceptance of consumer loan applications in the two years following the enactment of the law. During that period there has been a dramatic growth in illegal loan sharking in Japan, primarily run by organized crime ("Yamaken" lenders). Research indicates that use of illegal lenders 'has risen rapidly among borrowers who have become shut out of the market as the result of the changes in the regulatory environment.' Japanese consumers who admit to having contacted a loan shark during a twelve-month period were twice as numerous among those who were unable to borrower as much as they wanted from a legitimate consumer finance lender (26 percent) as among those who were able to obtain the amount that they wanted (13 percent). Those declined by legitimate lenders were also more likely to contact loan sharks (27 percent) and even more likely among those who had been asked to provide guarantors or collateral for a loan (42 percent)." (*Consumer Use and Government Regulation of Title Pledge Lending*, pg. 40-41, Todd J. Zywicki, October 2012)

c. **Small Business Credit Cost/Availability**

The CFPB's outline does not analyze the impacts on the cost or on the availability of credit to small business. Regarding this point, my Small Business submits for review the cited studies quoted below, providing quantifiable data that refutes the CFPB's assumptions.

- "Small businesses are finding it difficult to obtain bank loans and credit cards. In light of the continued problems of consumers and small business getting access to credit, wiping out a type of credit that provides a useful option for consumers and small businesses at the present time would be especially harmful to consumers and the economy." (*Consumer Use and Government Regulation of Title Pledge Lending*, pg. 4, Todd J. Zywicki, October 2012)

- "According to [title pledge] industry members, small independent businesses constitute approximately 25-30% of their customer base." (*Consumer Use and Government Regulation of Title Pledge Lending*, pg. 32, Todd J. Zywicki, October 2012)

d. **Less Burdensome Alternatives**

The CFPB has failed to consider alternatives that are less burdensome to small businesses and that achieve comparable or superior consumer protection. Regarding this point, my Small Business submits for review the cited studies quoted below, providing quantifiable data that refutes the CFPB's assumptions.

- "Other research has focused on whether payday lenders take advantage of borrowers who suffer from 'cognitive limitations' or biases that lead them to ignore the actual costs of the loans and the potentially adverse financial consequences of taking out successive payday loans….In support of their conclusions about the 'cognitive limitations' of payday loan borrowers, they also report that those who were told how much it would cost in dollars to renew their payday loans for three months – a total of six loan in succession – were about 10 percent less likely to renew the loans that brought them into the survey compared to a control group. The researchers concluded that this information bridged a 'cognitive gap' common to payday loan borrowers and urged policymakers to post such warnings at payday loan sites." (*The Consumer and Social Welfare Benefits and Costs of Payday Loans: A Review of the Evidence*, pg. 8, Robert Shapiro, March 2011)

In other words, studies show that simple disclosures can reduce the frequency of successive loans. If successive loans are a problem, then disclosures would provide a less burdensome alternative. A set of disclosure requirements should be a first step in rulemaking to see if such less burdensome alternative accomplishes regulatory objectives. Other studies suggest the same. For example, one study makes the following policy recommendation, among others: "Regulate standard, clear, and timely disclosures of the total loan cost so consumers know their full obligation and can easily compare what various lenders charge for loans." (*Enabling Families to Weather Emergencies and Develop: The Role of Assets*, pg. 5, Signe-Mary McKernan and Caroline Ratcliffe, July 2008). Further, "[P]olicies should make small short-term loan options more transparent and less costly but still available for consumers with few other alternatives. We do not recommend eliminating these loans, which could be replaced by alternatives that make families even worse off." (*Enabling Families to Weather Emergencies and Develop: The Role of Assets*, pg. 6, Signe-Mary McKernan and Caroline Ratcliffe, July 2008).

h. Other Data the CFPB Has Failed to Consider

The CFPB has also failed to consider other data critical to appropriate rulemaking. For example, measures on long-term loans, payment collection, and our competitors' economic incentives to support measures that would disproportionately attack payday or other products. Regarding this point, my Small Business submits for the CFPB's review the cited studies quoted below, for the CFPB's review in total, providing quantifiable data that refutes the CFPB's assumptions.

- [The FDIC study] and others have found that the average operating profits of payday lenders are close to the typical returns of other financial companies, locating the payday loan business within the broad parameters of American finance." (*The Consumer and Social Welfare Benefits and Costs of Payday Loans: A Review of the Evidence*, pg. 4, Robert Shapiro, March 2011)

- "[Payday] loans are provided to employed adults, and research has found that they are generally aware of and accept the terms, including the fees." *The Consumer and Social Welfare Benefits and Costs of Payday Loans: A Review of the Evidence*, pg. 4-5, Robert Shapiro, March 2011)

- "One recent study found that two-thirds of nearly 4,600 payday loan applicants surveyed had more than $1,000 in available liquidity, suggesting that they chose payday loans over drawing on those resources." "The rapid expansion of the payday loan business does provide evidence of strong demand for short-term emergency loans by otherwise credit-constrained Americans." *The Consumer and Social Welfare Benefits and Costs of Payday Loans: A Review of the Evidence*, pg. 5, Robert Shapiro, March 2011 *citing* Agarwal, Skiba and Tobacman (2009))

- "Much of the current and proposed restrictions on payday lending rest on a characterization of widespread abuses and a common pattern in which payday loans compound the financial distress of borrowers. A careful review of the existing research does not support this characterization." *The Consumer and Social Welfare Benefits and Costs of Payday Loans: A Review of the Evidence*, pg. 19, Robert Shapiro, March 2011)

- "To promote competition and help consumers identify the lowest-cost credit product, the report recommends that the Federal Reserve Board impose homogenous disclosure requirements on all functionally equivalent forms of small dollar credit. Specifically, the report recommends imposition of the same APR disclosure requirements on fee-based bounce protection programs that are applicable to payday loans and lower-cost alternatives such as checking account linked lines of credit (LOCs)." (*Low-Cost Payday Loans: Opportunities and Obstacles*, pg. 4, Sheila Bair, June 2005)

We note that to date the CFPB has not presented a review of the data and research concerning our industry as part of this process.

VIII. Alternatives

Various possible alternatives to the CFPB's proposal should be considered and analyzed. Each of the following, for example, would likely be less costly for my Small Business and would tend to provide consumer protections reducing the likelihood of unfair or abusive transactions.

a. Use Rulemaking to Resolve the Types of Complaints that Have Been Raised

One consumer oriented approach to rulemaking would be to make rules designed to create more satisfying customer experiences across the credit marketplace, using the CFPB complaint database as the basis of rulemaking. For example, Table 8 of the CFPB's complaint data for 2014, published here http://files.consumerfinance.gov/f/201503_cfpb_consumer-response-annual-report-2014.pdf addresses the seven types of complaints a small percentage of overall credit consumers did raise about our industry, as follows:

TABLE 8: TYPES OF PAYDAY LOAN COMPLAINTS REPORTED BY CONSUMERS BY SOURCE OF LOAN

Types of payday loan complaints	In person / at a store	Online	Not stated	Total
Charged fees or interest I did not expect	14%	72%	14%	34%
Cannot contact lender	15%	56%	29%	22%
Applied for a loan, but didn't receive money	6%	73%	21%	16%
Received a loan I did not apply for	5%	48%	46%	12%
Payment to account not credited	15%	68%	18%	7%
Can't stop lender from charging my bank account	20%	72%	9%	6%
Lender charged my bank account on wrong day or for wrong amount	17%	73%	11%	3%

I think the CFPB should consider indefinitely tabling the current proposal and instead analyze the costs and benefits of 7 cost effective alternatives to the current proposal, which would all remedy the most common complaints the CFP has received about our industry. Those alternative remedies to actual reported consumer complaints are:

i. Provide a model disclosure clearly disclosing the costs imposed on a given transaction and sequence of transactions, similar to the following disclosures mandated in the transaction in the State of Texas:

   a. Payday Loan: Single Payment
      http://occc.texas.gov/sites/default/files/uploads/disclosures/cab-disclosure-payday-single-011012.pdf
   b. Payday Loan: Multi-Payment
      http://occc.texas.gov/sites/default/files/uploads/disclosures/cab-disclosure-payday-multi-011012.pdf
   c. Title Loan: Single Payment
      http://occc.texas.gov/sites/default/files/uploads/disclosures/cab-disclosure-title-single-011012.pdf
   d. Title Loan: Multi-Payment
      http://occc.texas.gov/sites/default/files/uploads/disclosures/cab-disclosure-title-multi-011012.pdf

   By requiring these plain language, consumer tested disclosures, the CFPB would reduce the likelihood that consumer's don't understand the cost of transactions. This could be paired with a mandatory scripted oral disclosure to better aid in consumer understanding.

ii. Require conspicuous contact information in an easily accessible disclosure. By requiring lenders to disclose such information, the CFPB would reduce the likelihood that consumer's would not be able to reach a lender.

iii. Require through enforcement appropriate compliance with denial notice requirements under the Equal Credit Opportunity Act and Regulation B, particularly for online transactions, which appear to be the source of the third complaint.

iv. Require through enforcement appropriate compliance with the 25 month application retention requirements under the Equal Credit Opportunity Act and Regulation B, particularly for online transactions, which appear to be the source of the fourth complaint.

v. Require lenders to promptly post payments and send notice of nonpayment to consumers with conspicuous contact information for the lenders in order to resolve questions regarding whether the consumer sent the payment.

vi. Require conspicuous notice of the consumer's rights to rescind the transaction, stop payments, and cease debiting of the consumer's account.

vii. Require conspicuous notice of the consumer's payment amount and date.

These seven cost-effective solutions would largely resolve all complaints submitted about the payday industry, which, again, are only 3% of the total complaints received by the Bureau in the entire consumer marketplace. These should be considered instead of the host of onerous and industry-killing requirements proposed by the CFPB.

b. Resolve with Disclosures

As outlined above regarding unfairness and abuse, the CFPB could resolve the purported unfair and abusive elements by simply requiring clear oral and written disclosures so that consumers can better decide whether to proceed with our services. This could include calling attention to consumer understanding, consumer interests, grace periods, and rescission rights. To date, the CFPB has published no data regarding the benefits and costs of simply using new disclosures to resolve these issues.

c. Follow a Given State Model: Michigan, Illinois, Florida, etc.

As outlined above, approximately 70% of states authorize and regulate our transactions. Almost all of those states compile annual data on our transactions, revenue, complaints, and compliance. The CFPB has not presented any information suggesting a review of that information. I think the CFPB should consider indefinitely tabling the current proposal and instead analyze the costs and benefits of apply a current state model on a national basis. This could provide the same benefits sought, but with less cost to small businesses. States such as Illinois, Michigan, and Florida all have expansive regulatory structures that provide significant consumer protections as compared to other states, but nonetheless preserve consumer choices and opportunities for small businesses to survive.

IX. Comments Regarding the Process

As a participant in this process, I was asked for any comments and considerations about how this process could be improved. I have discussed this process with many other SERs, some of them were concerned that a candid reflection on this process could result in enhanced regulatory scrutiny against their company. We trust that the CFPB will not enhance regulatory scrutiny towards my Small Business as a result of my candor. With that said, we respectfully submit our great consternation about numerous facets of this process. I feel as if the CFPB should have hosted SER meetings before developing this extensive proposal. I feel that the makeup of the SER panel itself was mysterious and diluted. It isn't clear how and why certain panelists were chosen and certain panelists were excluded. Given that the CFPB is on the verge of eliminating three classes of lenders (payday, title, and similar installment lenders) who operate in 70% of states across the country, I recognize that it is difficult to compile a representative panel, but this suggests to me that each industry should be subjected to its own SBREFA process and its own rulemaking.

The panel appeared to include organizations that were not going to be eliminated as a result of the proposal. With no meaningful chairmanship by the CFPB to drive an agenda, one panelist in such situation took significant time away from other panelists to spend time deriding the other panelists' businesses during one of the early SBREFA phone calls. This panelist's business will benefit from the elimination of my Small Business and others actually in the payday and title lending industry under these rules. Quite frankly, it felt as if some panelists were included simply to dilute the impact of the comments by the actual industry the CFPB seeks to destroy. The phone calls seemed intentionally disorganized. There did not appear to be a genuine goal to seek data from all participants, but rather the organizers appeared content to allow for a few participants to dominate the phone call process. Various polling technologies or even simple rules of order could have allowed for true polling regarding the important questions raised. The CFPB elected to facilitate disorder instead of acquiring true data and using polling regarding important issues. The procedures lacked meaningful and orderly collection of input.

In addition, the process of notifying SER panelists with true agenda topics for the phone calls was non-existent. After publication of the proposal and questions, we were requested to appear on calls that involved no discernible rules of order, no discernible agenda, and no discernible means of surveying the participants. It was essentially an unpredictable open-season begging for the most noisy participants to dominate the conversation but not for the collection of meaningful data. The process felt as if the CFPB simply wanted to tabulate the fact that the CFPB held phone calls with panelists, not to genuinely gather useful data or considerations. The calls felt as if they were designed to later say the CFPB gave an opportunity to comment when it did not actually organize meaningful discussion. The panelists had no ability to establish or influence a pre-call or pre-meeting agenda, no influence on the agenda or order, and no knowledge about whether any agenda ever existed. This collectively produced a few calls and an all-day meeting that yielded unscientific and scattershot question and answer sessions. The process didn't allow for the CFPB to show due regard for the voluminous data that favor's the industry's perspective. Moreover, the entire process felt as if had been tainted by the Director's statements through the years showing a predisposition against the industry rather than a well-intentioned and objective regulator. Altogether, this process appeared to me to be designed as a charade to drive through a foregone conclusion that the CFPB would eliminate an industry that Congress directed the CFPB to regulate, not eliminate. For tabulation purposes, to the extent the final report will tabulate which portions of the proposal were objected to, I formally object to each and every portion of the proposal, and I object to the process as well. I have further objections about this process and reserve the right to raise them at a later date.

Given the serious concerns about the process and the lack of specific research presented to us based on a review of small businesses like my Small Business, I request that that CFPB reconvene another SBREFA panel to allow further comment and that the CFPB conduct and present actual small entity research to a group of panelists that reflect the industry the CFPB intends to curtail. I also ask that the CFPB differentiate between products in its rulemaking, with a specific process for any payday lending rule, a distinct rule and process for title lending, and a distinct rule and process for installment lending.

X. Conclusion

I appreciate that this process has allowed me the opportunity to submit these written comments, thank you. We hope the CFPB ultimately recognizes that our customers want and need our services as we currently offer them. Most states allow and regulate our services for that reason. The research and data on our industry from various parts of the Federal Reserve, FDIC, and academia all show that our services are not unfair and not abusive. But, this proposal would eliminate my small business, eliminate the jobs we offer, and require closing our storefronts. We have suggested reasonable alternatives, and despite our objections about the process so far, we hope you will use these written comments to modify the proposal, improve the process, and if needed, ultimately develop a rule proposal that is viable for our consumers and our small businesses. I believe the Dodd-Frank Act instructs the CFPB to pass a "payday lending" rule, and eliminating our industry through rulemaking, before implementing a payday lending rule, is incompatible with the Congressional mandate to regulate us.

Sincerely,

[Electronically Signed]

Fred Evensen, President of Loansmart Inc. d/b/a CashSmart

From: Hosie, Justin
To: CFPB payday SBREFA
Cc: Fred Evensen
Subject: Loansmart Inc. d/b/a CashSmart SER Statement
Date: Wednesday, May 13, 2015 5:03:48 PM
Attachments: SER Statement CashSmart Fred Evensen.pdf
SER CONFIDENTIAL EXHIBIT A Cashsmart Fred Evensen.pdf
SER CONFIDENTIAL EXHIBIT B Cashsmart Fred Evensen.pdf
SER EXHIBIT C Cover Sheet Cashsmart Fred Evensen.pdf
SER EXHIBIT C Data Studies Cashsmart Fred Evensen.zip

Dear CFPB SBREFA Panel,

Attached is the Small Entity Representative (SER) statement on behalf of Loansmart Inc. d/b/a CashSmart along with separate exhibits.

The following exhibits are attached:

1. Exhibit A is a report from Deloitte Financial Advisory Services, LLP reflecting its analysis with respect to CashSmart. This exhibit includes **confidential** business information and is designated as confidential in this email, in the SER Statement, and in the exhibit.
2. Exhibit B is a list of CashSmart's answers to the CFPB's list of questions. This exhibit includes **confidential** business information and is designated as confidential in this email, in the SER Statement, and in the exhibit.
3. Exhibit C includes a cover sheet and documents addressing data for consideration. This exhibit does **not include confidential** information and unlike the first two exhibits, is intended for inclusion in the materials available publicly as part of the report process.

Given the importance of this communication to CashSmart, and the timing deadline, we request that you kindly acknowledge your receipt of the enclosed.

Best regards,

Justin Hosie | **Hudson Cook** | Phone: 423.490.7564 | Fax: 423.490.7558 | jhosie@hudco.com | **Twitter:** @ConsumerFinance

EXHIBIT C

STUDIES, REPORTS, AND ARTICLES CITED

1. **THE COST OF PROVIDING PAYDAY LOANS IN A U.S. MULTILINE OPERATOR ENVIRONMENT** Ernst & Young, September 2009
2. **PAYDAY LENDING: DO OUTRAGEOUS PRICES NECESSARILY MEAN OUTRAGEOUS PROFITS?** Aaron Huckstep (Fordham Journal of Corporate & Financial Law) January 2007
3. **DEFINING AND DETECTING PREDATORY LENDING**, Federal Reserve Bank of New York, P. Morgan, Staff Report no. 273, January 2007
4. **PAYDAY HOLIDAY: HOW HOUSEHOLDS FARE AFTER PAYDAY CREDIT BANS** D. P. Morgan and M. R. Strain, Federal Reserve Bank of New York - Staff Report no. 309, November 2007
5. **ECONOMIC IMPACT OF THE PAYDAY LENDING INDUSTRY** IHS Global Insight (USA) Inc., May 2009
6. **PAYDAY LOANS AND THE BORROWER EXPERIENCE** Harris Interactive, December 2013
7. **AN ANALYSIS OF CONSUMERS' USE OF PAYDAY LOANS** Gregory Elliehausen (George Washington University) January 2009
8. **CLARITY ANALYSIS CONFIRMS CFPB SIMULATION: PROPOSED RULE REDUCES PAYDAY LOAN COUNT BY OVER 70%** Rick Hackett (May 4, 2015)
9. **THE EFFECT OF STATE LEGISLATION RESTRICTING PAYDAY LENDING ON CONSUMER CREDIT DELINQUENCIES: AN INVESTIGATION OF THE DEBT TRAP HYPOTHESIS**, C. Desai and G. Elliehausen (2014)
10. **DO DEFAULTS ON PAYDAY LOANS MATTER?** Ronald J. Mann, December 1, 2014, Columbia Law and Economics Working Paper No. 509.
11. **CONSUMER USE AND GOVERNMENT REGULATION OF TITLE PLEDGE LENDING** Todd J. Zywicki, October 2012
12. **ASSESSING THE OPTIMISM OF PAYDAY LOAN BORROWERS** Ronald J. Mann, March 12, 2013, Columbia Law and Economics Working Paper No. 443
13. **AN EXPERIMENTAL ANALYSIS OF THE DEMAND FOR PAYDAY LOANS**, Wilson, Bart J. and Findlay, David W. and Meehan, James W. and Wellford, Charissa P. and Schurter, Karl (April 28, 2010).
14. **PAYDAY LOANS AND CONSUMER FINANCIAL HEALTH** Neil Bhutta (April 27, 2014). Journal of Banking and Finance, Vol. 47, No. 1, 2014.
15. **PAYDAY LOAN ROLLOVERS AND CONSUMER WELFARE** Jennifer Priestley (December 5, 2014).
16. **LOW-COST PAYDAY LOANS: OPPORTUNITIES AND OBSTACLES** Sheila Bair, June 2005
17. **THE CONSUMER AND SOCIAL WELFARE BENEFITS AND COSTS OF PAYDAY LOANS: A REVIEW OF THE EVIDENCE** Robert Shapiro (Sonecon) March 2011
18. **PAYDAY LOAN CHOICES AND CONSEQUENCES** BHUTTA, N., SKIBA, P. M. and TOBACMAN, J. (2015) Journal of Money, Credit and Banking
19. **COULD RESTRICTIONS ON PAYDAY LENDING HURT CONSUMERS?** Kelly Edmiston (Federal Reserve Bank of Kansas City) May 2011
20. **HIDDEN RISKS: THE CASE FOR TRANSPARENT CHECKING ACCOUNTS** PEW Health Group April 2011
21. **HOW PAYDAY CREDIT ACCESS AFFECTS OVERDRAFTS AND OTHER OUTCOMES** Donald P. Morgan, Michael R. Strain, and Ihab Seblani
22. **RESTRICTING CONSUMER CREDIT ACCESS: HOUSEHOLD SURVEY EVIDENCE ON EFFECTS AROUND THE OREGON RATE CAP** Jonathan Zinman (Dartmouth College) October 2008
23. **PAYDAY LOANS AND THE SECONDARY FINANCIAL MARKETPLACE** David Stoesz (VCU, Policy America) June 2012
24. **ENABLING FAMILIES TO WEATHER EMERGENCIES AND DEVELOP THE ROLE OF ASSETS** Signe-Mary McKernan and Caroline Ratcliffe (Urban Institute) July 2008
25. **CONSUMER RESPONSE ANNUAL REPORT** (CFPB) 2014

In addition to the studies, reports, and articles listed above, Mr. Evensen included the following items in his written feedback to the Panel:

1. Deloitte Financial Advisory Services, Analysis for FiSCA (May 2015).
2. Responses to *"Discussion Issues for Small Entity Representatives."*

CASH PLUS

Grimaldi Corporation
10230 Atlantic Blvd. Ste. 3
Jacksonville, FL 32225

Written Response for the CFPB's Proposed Rules on Payday Loans and Access to Short Term Credit

"The goals of the new rules are simple: requiring payday loan businesses to make sure that the borrower can afford to pay it back." President Obama

***"The need for consumers to access short term credit is undeniable"* Director Cordray**

My Company

I own and operate two Cash Plus franchises in Jacksonville, Florida. I opened my first store in 2005, and the second store in 2010. We offer payday loans, check cashing, Western Union services, free Money Orders and free Notary. Payday loans represent 77% of our total revenues. Our annual revenue is approximately $470,000, and our annual profit is around $45,000.

Cash Plus is a franchise. When my wife wanted to move closer to her parents in Jacksonville, Florida, when we had our first child, my current job was trying to promote me to Rhode Island. I had to make a choice. I had $57,000 saved in my 401K, and $110,000 in equity in our house. I looked for options to own a business, since I grew up seeing the benefits that my father had when owning his small business. Based on data of how small businesses fail and succeed, I felt that buying into a franchise would be safer. I worked with a 'Franchise Agent' and based on what I could afford, considered options between Cottman Transmission, Handyman Matters, Cash Plus and Quizno's. Based on my past work experience at Enterprise Rent-A-Car where we were promoted on customer service scores and rented on a cash basis, Cash Plus was the best fit. In 2002, Florida had implemented their Deferred Presentment Program, which gave me comfort in knowing that I would be following a state approved program.

We moved to Jacksonville in 2004, purchased the franchise, and opened up. Since then, I have spent $600,000 to keep my offices running. I still owe $15,000 on my credit cards, $80,000 in a home equity loan, $57,000 to my 401K, and another $230,000 in money I have personally put in through borrowing money from my relatives or myself. Among other things, these funds have been used to outfit and update our stores, modernize our technology and systems, and for working capital. If the CFPB rule proposals become final, and have the impact that is projected, I will likely close my business and lose all of these investments, along with my career.

We have 4 part time employees, and from a diversity standpoint, one is Caucasian, two are African-American/Hispanic and one is French-American. These employees make an average of $12.25/hour, over $4.00/hour higher than our current minimum wage of $8.05. Annualized, these employees make between $20,000 and $30,000. Every one of my employees is a payday loan customer, and every one of them promotes safe use of our product. Three out of four employees have worked for me for over 3 years. One is the marketing director, internal auditor and branch manager, another is a senior Teller. I give my employees cash bonuses to cover their extra expenses and also give bonuses for Christmas.

We abide by all Federal, State and Local rules and regulations. The State of Florida provides a program for businesses to offer payday loans called the Deferred Presentment Program (I outlined the rules below). This program is based on a business being a licensed 'check casher' first, and then apply for a license to be a Deferred Presentment Provider, in which the business can accept a bad check from a consumer, give the consumer money for that check for a fee, and agree to 'defer' presenting the check to the consumer's bank account for a period of time.

I am a St. Johns County athletic volunteer where I teach 7-8 year olds how to play baseball and football. I have also been active in the Boy Scouts of America, have been a Webelos II Den leader, wrote and carried out the Arrow of Light ceremony and now I am the Committee Chairman for Troop 321, in which I help rank up and promote our youth from boyhood to manhood through the process of earning their Eagle Scout rank. I am a Duval County School Board volunteer, in which I have sat in classrooms with 'under-parented' children who have fallen behind on their grade class levels and helped them get back to their own grades. There is no way I'd be able to do this stuff if I didn't have the flexible hours associated with owning my own business. My wife plays the piano in our local church, and she teaches health and fitness at the local YMCAs. I give over $2000 in charity donations each year, and one year, through our Franchise, we handed a $5000 check to a payday loan customer who's family member's son died, and they couldn't afford the casket. We also gave $2500 to another payday loan customer who had breast cancer and wanted a donation for her charity, Breast Cancer awareness. I am happy to help verify any and all of the information I offer in this letter.

When the rule proposals were announced, the CFPB alleged that the payday loan product I offer under Florida law was a "debt trap." I am advised that the rule proposals are being issued under the CFPB's UDAAP authority. In simple language, I am being called a predator. What is not being said is that these rule proposals threaten my life savings, my family's financial well being and my kids' college and future because I have invested in a legal business that people who have power have decided is wrong, even though they can't show me proof that it's wrong. Every time I ask my customers if they want the government to take away their choice to get a loan, they say "NO!" My customers want the government to leave their financial choices alone and allow them to make their own choices. I have proof of this on video interviews that I have done with my customers. There is clear evidence that the CFPB has made just general assumptions, without truly understanding the business or the consumers who enjoy the product we provide.

Before I go further I want you to know that if you want me to get better at providing a short term credit, all you have to do is ask. I like solving problems and I like making as many people happy as I can, including you. You've told us that you see the need for short term credit, and that you want the product to exist. Why then, would you make rules that clearly snuff out all of the lenders who provide this product? If you remove 75% of our book of business, the only way for the product to exist is to increase the cost of providing this product, which is illegal in Florida.

In my opinion, we should just lay the concerns on the table, and work together to find solutions that allow the product to exist, while properly addressing everyone's concerns. This is how businesses solve problems.

We do over 9200 individual Florida Deferred Presentments per year, and have a customer base of over 11,000. We give out free Money Orders for anyone off the street, and also give free Notary services to any of our current members. Membership is also free, as long as the customer has cashed at least one Negotiable Instrument or received at least one Deferred Presentment from us.

My customers are my friends now. We play golf together, we watch football games together, we laugh and cry when discussing our lives with each other, we text each other, and we talk about each other's families. My customers know my children and I know their children. I hire and pay my customers to do work for my stores and home, such as carpet cleaning, air conditioner repair, painting, electrical, plumbing and signage. If I were closed, they would not get the work that I give them. My employees also have extremely close relationships with the customers. If a customer tells us they are not going to do any more loans with us, we simply tell them to stop in and say hi because our relationship with them is not based on them taking out loans, it's based on their personal relationship with us.

Key Underlying Points:

- Each product covered under the rule proposals is unique and requires its own separate rules. Surely a transaction in which someone puts up their vehicle for collateral is a much different product model than a transaction in which someone uses a deferred presentment transaction, as in the case of payday loans in Florida.

- The public 'on record' quotes from President Obama and Director Cordray (quoted above) do not align with the actions of the CFPB in introducing rules that would 'snuff out' the payday loan industry all together. The rules clearly indicate that they expect us to lose 69%-84% of our loan revenue. I assume the CFPB is aware of the obvious fact that if you purposely remove this much of an industry's revenues they will go out of business. This suggests that CFPB is purposely and intentionally putting us out of business. When referring to the Payday loan industry recently, the President has recently said "they will have to find another business model". Although I have tremendous respect for a US President, and any government agency initiatives, it is <u>illegal</u>, and certainly unfair, for them to simply put us out of business.

- The current CFPB rules remove credit options to consumers by putting a disproportionate number of small business lenders out of business, forcing consumers to find access to credit from only large businesses, black markets and/or unregulated areas. The Pew Study (attached) that the CFPB points to, and makes their assumptions based on, is generally biased. Someone can come to that conclusion by simply reading the first couple paragraphs, where they will see that Pew is asking for regulators to make rules ("The findings provide policy makers with research <u>to address concerns</u> about small dollar loans and to promote a safe and transparent marketplace."), which is not the point of an unbiased study. An unbiased study does not state opinions or ask for government or regulatory action. This Pew study suggests that the Payday Loan product has results that are 'not as advertised', but then 'assumes' that the reason that people re-borrow is because they are stuck. The study does not consider a more obvious fact that the consumers can afford to pay the loan, and then make choices on spending their money instead of just not re-borrowing. (This was highlighted in a recent study by Clarity Services, Inc., entitled "A Look at Subprime Consumer Trends in 2014"). The Pew study misses another major point in that every single consumer also has the 'choice' to borrow less money each time they re-borrow, effectively allowing them to reduce their payments, and quite easily stop borrowing if they choose. The real data suggests, and Pew misses this point, that the consumer found the first loan was easy and affordable, and decided to continue using their credit option. There is no false 'advertisement' that is evident from the consumers' actions, just false assumptions from those who don't need short term access to cash. In other words, these "researchers" are out of touch with this consumer base.

- The CFPB offers no alternatives or options for the consumer, even though they have found that the consumer's need for access to short term credit is "undeniable". The CFPB may say that they are allowing 6 transactions per year, which not only <u>reduces the consumers access to credit</u>, but the fact is, the CFPB will completely kill the payday loan industry with these rules and there will be NO MORE SMALL BUSINESS LENDERS left to service the consumer in their community. The only 'legal' options left will be on-line, big companies or big banks. And the big banks want us to go out of business, because the fact is, their NSF fees go up when payday loans are not around - please see attachments for Overdraft vs. Deferred Deposit Credit by the Federal Reserve Bank of New York.

- Any industry will have unhappy customers, customers who feel they have been cheated and customers that want that same product cheaper. First, please see the Cypress Research Group / Cirillo surveys that were done on payday loan industry customer satisfaction scores, which indicate extremely high customer satisfaction scores. My company alone does around 9200 loans per year, so surely there will be issues that we have to work with the customer on. That said, we can and will get better at what we do. At NO TIME will I ever tell anyone that we cannot get better, or provide a better experience to the customer, through hard work and sensible process changes. If you interviewed my customers and even one of them told you that they felt trapped, felt like our loans were unaffordable or any other negative experience, I would want to address those issues and try to make sure we don't have those kinds of issues again. My nature is to keep people happy, and you can't keep people happy if they feel trapped. Second, in my experience, the customers that have had problems, that we have addressed and solved in the past, fall into the following categories:
    - Uneducated on the product, their choices & their options if there is an issue paying it back (lack of Education on front end of transaction)
    - Not able to, or they don't feel like they're able to, properly Communicate with us, the lender, if they need help (lack of Communication on front end)
    - Using unregulated lenders, especially on-line offshore lenders who are not regulated.

- Disclosures/general suggestion:
  - Maybe others in the industry need to modify the way their disclosures are done - instead of just 'sign here & here', they need to also verbally disclose certain key facets related to Education, Communication, 'backend' Protections and payment Options. My employees do this and I find that our customers are quite happy.

- Once the payday loan option is removed, the consumer will be forced to make decisions about how and where they can quickly and easily access money. The CFPB incorrectly and 'naively' claims that the consumer's option is to borrow money from friends or relatives. Our customers don't have this as a realistic option. It would be simple for CFPB to verify if this is true by simply surveying our customers. It is what they tell us all the time (try to find that in the Pew study!). Some of our customers' options include, but are not limited to:
  - Writing bad checks and trying to pay off the bad check before the State Attorney's office prosecutes them criminally. They have about 15-30 days to comply, which is a similar time frame as payday loans. This burdens the city and other vendors. Payday loans that are not paid back are not criminal, does not burden the city or state attorney office and has less fees than a bounced check. This also doesn't burden the consumer since the consumer kept the money they borrowed.
  - Using their debit cards or writing bad checks and then paying their banks the NSF fees associated. This is a terrible situation since the banks often do not even pay the bad check or do not pay the overdraft item, but still charge the consumer multiple NSF fees which can often range in the 1200% APR range. See FDIC studies attached. In this example the consumer has harm but no benefit!

- Short term credit: by definition, the payments must be short term as well. If the CFPB has found that short term access to credit need is undeniable, then the payment terms cannot be anything other than short term payments. Why then, has the CFPB stated this, and then said the payment terms are 'structured' so lenders can win and borrowers lose?

- The CFPB suggests that there might be an increase in our prices to offset their limitation rules, but in the state of Florida we cannot charge any more than the 10% plus $5.00 fee. I cannot legally raise prices.

- The risk faced by customers defaulting on their payday loan is greatly outweighed by defaulting on any of their current obligations (potential repossession of property, household eviction, disconnection of utilities, etc). Payday loan proceeds allow customers to make these crucial payments timely and avoid negative consequences. If the payday loan is defaulted on, only limited and regulated actions are taken.

Effects & Evaluation of the Proposed Rules

1. The CFPB proposed rules will indeed put me out of business:

a. The proposed rules give an estimate of lost loan business of 69%-84%. This figure is misleading when analyzing small businesses though, since when you remove this much revenue, which represents 77% of my total revenues, the remaining 23% of revenue does not exceed the amount of my fixed costs or expenses which will remain even if I do not have loans available. So the actual loss in business is then 100%. We have a completed business assessment done by Deloitte Financial Advisory Services (attached) showing the real numbers and the mathematical effects of these rules on my particular stores. The results are simply that we would go out of business immediately, I would have no way to support my family, my career would be lost and our customers would have no where to turn.

b. There is no other product or business model that I can offer. This is the only product that my business has that can produce enough revenue to pay for the costs associated with keeping a Money Service retail shop open. This product is LEGAL in the State of Florida, where I own and operate my business. How can a government bureau then simply make decisions to remove a consumer's access to a LEGAL product based on an opinion that is unsupported by valid research? The answer is that the CFPB has fabricated a problem and has developed these rules to say they are protecting people from a problem that doesn't exist in the large majority of the industry. The result will really be that the product will cease to exist. The CFPB has ignored the experience of the Florida Deferred Presentment Program. The CFPB will tell you that they considered all of the current State rules, including the Florida rules, and found that there are shortfalls and that the Florida rules do not properly address or manage their concerns, but at the same time, they cannot pinpoint or accurately describe why they come to their conclusion of the States rules being inadequate for their initiatives. Even the House Representatives for Florida have written a letter urging the CFPB to consider the Florida Program as an alternative which has proven to offer the consumer protections while still allowing consumers access to short term credit, which has been deemed "undeniably needed' by the CFPB itself. (letter attached). So if this service is needed, and it was so easy and profitable to provide this short term credit to this consumer, why has no other company or agency been able to provide this 'undeniably needed' service? Why doesn't the CFPB provide this service to the consumer at their own expense? Why doesn't the CFPB see this as a choice for the America consumer?

Put it this way. How is this much different than selling beer? Drinking too much beer is a danger to someone's health, is physically addictive and *can lead to incredible harm and substantial injury by spurring extended sequences of drinking, loss of self worth, depression and other various harms.* Sound familiar? Yet, selling beer is LEGAL and there are no restrictions out on how much beer Budweiser can sell to an individual consumer. Why is this? It's because adults in this country have the right to make informed choices with their lives. For beer, the answer is to Educate and Communicate the pitfalls of drinking to the consumer so the consumer can then make an educated and informed decision based on their freedom of choice. It's also because the folks who make the rules drink beer, accept it as part of our social lives, and personally see a value to their own freedom of choice to access beer. But the CFPB doesn't need a payday loan, nor do they need access to short term emergency credit, so the approach has not been about Education or Communication, but rather an approach of restriction of freedom and choice, possibly because the CFPB's decisions don't directly affect their own personal lives.

<u>*The CFPB says: "unaffordable loans cause substantial injury to consumers by spurring extended sequences of re-borrowing, bank account fees and closures, vehicle repossessions, collections, and various other harms"*</u>

As a solution to protect consumers, a more effective approach for the CFPB would be to work with the businesses that offer this product in educating the consumer of the CFPB's concerns so that the consumer can then make educated and well-informed decisions. The CFPB will then have you believe that even though we can make sure that the consumer makes educated and well-informed decisions, that the consumer makes those decisions in haste or because they are under pressure from their concerns with paying bills or getting the money for something important, and then that consumer is then stuck in a cycle. The reality is that in Florida, there are ALREADY RULES to protect the consumer and address this very issue.

- The consumer must pay back the entire loan, and cannot simply pay the interest and 'rollover' the loan. This ensures that the consumer can indeed pay the entire loan off.

- The consumer must have a 24 hour 'cooling off' period so that they do not re-borrow based on feeling pressure or their concern with paying a bill or getting money for something important in the heat of the moment.

- The consumer ALWAYS has the ability (in any state) to make a decision about how much they want to re-borrow, if they choose to re-borrow. For example, a consumer who gets a $300 loan, can then choose to re-borrow for only $250 the next time, which gives the consumer total and complete flexibility and decision making ability based on affordability and their own personal situation at that time. This very option shows that the CFPB's theory that people are stuck is fundamentally incorrect. The obvious reality is that people choose the amounts they borrow, each and every time they get a loan. No matter what income bracket someone is in, having that extra $50.00 for a pay period is not required in order for someone to pay their living expenses, so reducing their loans for that $50.00 is an easy and obvious choice a consumer can make if they wanted to get out of a so-called 'debt trap'. The reality is, people use this choice all the time, and they also make choices about the credit that they have access to, based on their personal situation at that time. The CFPB would like everyone to believe that a consumer is stuck, but they won't admit that this very simple choice, solution and basic option for every consumer exists on every loan transaction.

- Backend protections exist if a consumer can't pay it back.
    - Lenders give free days if a borrower needs more time
    - Lenders can't pursue bad checks criminally, and taking people to court is simply not economically feasible for a lender, so I have NEVER done this. Lenders have no legal recourse so we work very hard to create relationships with the consumer so they have a happy and successful experience. All we ask from the borrower is to stay in communication with us.
    - In my stores, we have a policy to give the borrower a free 7 days for every 4th loan. This provides the borrower with flexibility for situations in which they may experience payment issues or unforeseen changes in their lives.
    - In Florida, the consumer has an option to sign up for Credit Counseling and receive a free 60 day grace period in which the lender doesn't deposit the check. Because of this, in Florida, there is NO such thing as debt traps because the consumer is not trapped to pay if they can't pay.
    - Payplans are always welcome - lenders do not want the payday loan checks to bounce. This leads to lost customers, lack of communication, hard feelings, unhappy employees, and lots of other inefficient business practices.

c. The CFPB's forecast doesn't consider the high risk associated with prohibiting and forcing consumers to change their spending or buying habits. Any business struggles greatly in its first 1-3 years. Any changes in the market, such as competition, can send a business spiraling and struggling to stay in business, even at low percentages of loss in revenue. Losing such high percentages of revenue is a danger that no business can endure. In addition, when removing the ability for a consumer to do business with a store, a consumer may experience changes in their life that are impossible for a small business to predict, ultimately putting any future business at severe risk. For example, if I was not allowed to shop at a grocery store for more than 3 months out of a year, and I started to simply use Amazon.com to buy food instead, I may change my habits and never go back to a grocery store in the future. We are creatures of habit.

2. Analysis of the CFPB's concerns compared to reality of what takes place in my stores.

a. *The CFPB says: Chief among their concerns is that lenders structure loans with payments that are often beyond a consumer's ability to repay, forcing the consumer to choose between default and repeated reborrowing—which, includes reborrowing, rolling over, renewing, or refinancing a loan.*

- How much is 'often', and who decides what percentage is not often? In Florida, 95% of our customers have the ability to repay, as indicated by our payback data. Based on this data, the CFPB is making their decision based on 5% of our transactions. Further, 100% of our customers have the ability to repay at the time the transaction is done, since the loan is underwritten to verify that the lender can get paid back. The CFPB incorrectly and 'naively' claims that if the consumer pays us back, in full as Florida's law dictates, but then takes out another loan within 14 days of paying us back, that this indicates that the lender has also structured the first loan with payments that are beyond the consumer's ability to repay, even though in Florida, the consumer must pay back the entire loan, including the principal and interest, clearly indicating that the consumer can in fact pay the loan. As I stated earlier, if Short Term Credit needs are undeniable, per Richard Cordray, then the payments will also be short term payments, because someone would need to payback the short term loan in a short amount of time, so questioning the payment structure doesn't make economic sense. The remaining question then, is, why does the consumer come back to re-borrow, sometimes often? The CFPB again incorrectly claims that the consumer needs to come back to re-borrow since they couldn't repay the first loan in the first place, which of course completely disregards the more obvious reality which is the consumer is making a choice to come back and re-borrow, as they see fit for their life, their credit choices and their finances. What if the consumer has already paid their major financial obligations, and now wants to re-borrow again because they are enjoying their choices and their access to credit. The CFPB is simply trying to imply that these consumers are making bad decisions, and that their decision making ability should be removed from them. The CFPB goes on further to then decide that in order to remove the consumer's choices from them, they must create rules to stop the lender from doing repeat business with that consumer. In addition, the CFPB offers no choice for these consumers, thereby inducing harm to the consumers since they have no choice! Please see the attachment related to 'Consumers Fair Worse Under Payday Loan Bans', indicating the facts about what happens when the consumer doesn't have a 'Deferred Check' credit option, such as payday loans. Multiple studies show that bankruptcy numbers go up, NSF fees go up and customer complaints related to collections go up, all burdening both the consumer and the state's support system.

- The CFPB makes an assumption that repeat borrowing is bad for the consumer. Not only is this not based on data or evidence, but in fact there is data and evidence that repeat borrowing is good for the consumer. Studies attached - related to the effects of credit done by the Federal Reserve of the Bank of NY. If repeat borrowing was so bad, how is it that our customers like us so much and we have such high customer satisfaction scores? See the study done by Cypress Research that found that the payday loan industry's customer satisfaction scores were among the highest for any industry in the country! Why is it that my repeat borrowers have nice vehicles, the most recent smart phones, and value our services so much? This is why we are begging the CFPB to interview our customers, because the customer tells us this all the time. The truth is, when a consumer values and enjoys a service, they are not also caught in a trap using those services at the same time. That goes against human nature in general. If someone feels they are trapped, they simply stop paying, and the lender loses. In Florida, one unpaid loan of $445 equals the fees collected on 10 successful loans ($45 x 10 loans = $450). Access to credit is good for the consumer. In addition, the consumer spends it in the US economy, and this is a $7.5 Billion industry, which means there are billions that the consumers are borrowing and then immediately spending in the US economy. ASK THE CONSUMER! They constantly tell us that they value that we're there, they enjoy the product and that the government should allow them to make their own decisions based on the choices they have.

b. <u>*The CFPB says: The Bureau believes that the failure to make an ability-to-repay determination results in many consumers taking out unaffordable loans. The Bureau is concerned that unaffordable loans cause substantial injury to consumers by spurring extended sequences of reborrowing, bank account fees and closures, vehicle repossessions, collections, and various other harms.*</u>

- The definition of 'unaffordable' is: "To not have the financial means for; not able to bear the cost of." The CFPB claims that there are too many consumers taking out unaffordable loans, but in the State of Florida, since the consumer must pay back the loan in its entirety before getting any future loans, by definition, the consumer could afford the loan. 95% of payday loan transactions in my stores are paid back entirely within the terms of the agreement, even repeat borrowers. In addition, if you want to look at it from a negative standpoint, as the CFPB does, the fact remains that the only harm that can be caused to the consumer in the State of Florida is a 10% fee, plus a $5.00 verification fee. The absolute most amount a consumer can spend if that consumer re-borrowed (for my average loan of $400) for every 2 weeks, for an entire year straight is $45 x 24 = $1080 in fees, upon which that consumer received a total of $9,600 in cash. Surely the consumer sees great value in accessing $9,600 in a year. The CFPB fails to recognize that the consumer gained any benefit, the $9600, in this example. This example is also very rare, and represents less than 5.72% of my business (see supporting document 'loan frequency report'), since the very large majority of re-borrowings have less frequency than this. In addition, the CFPB hasn't, and simply can't, show where there is 'substantial harm' from a consumer <u>choosing</u> to engage in extended sequences of borrowing. The consumer would claim the opposite actually, since they received an enormous amount of spending cash in turn. Again, the CFPB would actually 'cause' harm if they reduce access to this credit option, since the consumer does not have any other options left. The CFPB offers no alternatives and no other options. Bankruptcy, NSF fees and Financial Complaints will go up for the entire country, as evidenced by the studies attached.

-Suggested Solutions-

1. Prevention & Protection

a. Education: written and verbal explanation of fees, payback amount, dates, what they're doing, pitfalls, responsible use of loans

b. Communication: written and verbal encouragement to communicate with the lender, ways to communicate, benefits of communication

c. Explanation: written and verbal explanation of consumer responsibilities, and 'promoting' the results of both meeting their responsibilities and not meeting their responsibilities. Consumer must sign something in large font stating they are fully aware of their actions, the possible results of those actions, their options if they cannot meet their responsibilities, how to communicate with the lenders Consumer Protection Officer (see #10 below), the state consumer protection officers and/or the CFPB.

d. 100% customer satisfaction goal: lenders must strive to obtain 100% Completely Satisfied customers and offer a robust and verifiable customer satisfaction scoring program, including complaint handling, surveys and documented complaint resolutions.

e. Protection: In-ability to pay options: (written and verbal):

- 7 days every 4th transaction at no fee (consumer request)
- 60 day grace period if Credit Counseling obtained-check not deposited, payplans accepted during this period. Borrower may not re-loan within 60 days of using this grace period and lender has option to decline re-loan or reduce amount of loan if borrower wants to re-borrow again in future. Credit Counseling agencies provided by Lender. Borrower has 7 days to sign up for counseling. Must come into office in person to receive list of Credit Counseling agencies.
- Option of letting check bounce: borrower can choose to let the check bounce and work out a payment plan with the lender

(maximum $25 NSF fee / maximum of 3 total deposits including the original deposit). This option is chosen automatically if the borrower chooses to not communicate with the lender.

2. Ability to Pay - Lender decides credit based on:

a. Borrower bank statement

- Overall health of bank statement (if they use it), # of deposits, amounts of deposits, # of NSF fees, # of negative account balances, indications of other online/unregulated loans

b. Income & Expense statement:

- Consumer fills out their income and expenses per month as part of the application.

- Income can be verified by the lender

- Expenses may not be able to be verified, since the consumer often is 'cash-pay' for many of their living expenses. Example is that someone may pay their friend rent, when the apartment is in someone else's name.

c. Borrower proof of income

- Time on job, amount of income, income verification, type of job (full time vs. part time)

d. Amount of Loan - based on a checklist & ability to pay related to the Income & Expense statement (sample attached)

e. Application - provides employment info, social security #, references. Lender must verify the customers Social by using the customers original copy of their social security card or an electronic social security verification program.

3. No court / no criminal charges

4. Mandatory Consumer Protection Program:

In the same way a Money Service Business (MSB) must create and maintain it's own internal Anti-Money Laundering program, along with an assigned Compliance Officer and Responsible Person, I suggest that the Payday Lenders must also create and maintain it's own internal Consumer Protection Program, along with an assigned Consumer Protection Officer and Responsible Person. The program will be based on the final rules, will be part of the audits performed on the lenders, and will help ingratiate the rules and the spirit of the program into the daily operations of the lenders.

5. Collections:

a. All collection practices must comply with Federal/State collection practices (Fair Debt Collection Act)

b. Standard Payplan - attached

6. CFPB Involvement:

I suggest that the lenders must pay $1 per transaction directly to the CFPB to help pay for the cost of their oversight of this program. CFPB will no doubt incur costs associated with management, complaint handling & regulation.

7. Only report good paying customers to Credit Bureaus:

Payday loan clients who have a history of paying their loans on time and without default should benefit in a reporting program that could help improve and build their current personal credit score. All clients who default should not receive a negative effect on their score, but risk losing access to deferred presentment market in the future or see a reduction in available line of credit offered by a deferred presentment provider.

Basics of the Florida rules:

1. Loan period is 7-31 days
2. Only one loan at a time
3. 24 hour cooling off period between loans
4. Consumer must pay back the entire loan with the fee before getting another loan
5. Maximum loan amount is $500
6. Maximum fee/interest is 10%, plus a $5 verification fee
7. Lender must provide disclosures to the borrower, including a TILA
8. Borrower must provide a personal check to the lender for each loan
9. Lender cannot pursue criminal charges for the check if it bounces
10. State database is provided by Veritec - all lenders must participate so that a consumer cannot go to another lender in Florida to get another loan until the first loan is paid in full - lenders pay Veritec for this service.
11. 60 Day Grace Period - provided if the consumer cannot pay. Consumer must sign up for state approved credit counseling within 7 days of informing the lender they cannot pay and lender must provide the list of credit counseling agencies.
12. Lender pays the Florida Office of Financial Regulation to perform audits on the lenders along with all costs associated with that audit.

Sincerely,

Douglas Grimaldi
President
(scanned signature page attached)

Attachments:

1. Deloitte Report – Effects of rules on Grimaldi Corporation
2. Deloitte Report – Summary of effects on all SER's
3. Pew - Payday Lending Report
4. Overdraft vs. Deferred Deposit Credit by the Federal Reserve Bank of New York
5. Consumers Fair Worse Under Payday Loan Ban (based on Fed Reserve NY report)
6. FDIC - Bank overdraft fee APR / Studies
7. Cypress Research Group / Cirillo - Customer Satisfaction reports
8. CFSA – Expanding Credit Access report
9. Grimaldi -Loan Frequency Data (actual)
10. Suggested Transaction Docs - Income & Expense Statement-Ability to Pay
11. Suggested Transaction Docs - Payplan Guidelines
12. Suggested Transaction Docs - PRA Checklist

From:	dougG@gcprocess.com
To:	CFPB payday SBREFA
Cc:	jennifer smith; charles.maresca@sba.gov
Subject:	Grimaldi Corporation - Written Response & backup docs
Date:	Wednesday, May 13, 2015 3:52:32 PM
Attachments:	Grimaldi.response.FINAL.unsigned.pdf loan frequency report.grimaldi.2014.xlsx abilitytopayFORM.xls PRA Checklist.3.xlsx PEW Payday Lending Report 07-12.pdf NSF FeesvsPaydayLoans 0605.pdf FDIC-NSF Study MicroDataAnalysis 1108.pdf FDIC-NSF Study FinalReport 1108.pdf CFSA ExpandingCreditAccess Jun2007.pdf 4-CustWorseOff PRA Bans 0209.pdf 1-FDIC OD and PRA Comparison 0109.pdf 2-FDIC Fed CostComparison 0209.pdf 3-Late Fees vs PRA Fees 0209.pdf FedReserveNY ODvsPRA Fees 09-09.pdf Grimaldi.response.final.signaturepageonly.pdf Deloitte.SERS Report - Grimaldi.pdf

Hello CFPB Payday Panel and the SBA,

Attached to this email is:

1. A PDF version of my written response.
2. A scanned signature page for my written response along with the Florida Deferred Presentment Program basic bullet point rules & Webster dictionary's definition of 'harm'
3. Deloitte's Analysis of the Proposed Rules; Effects on the SER's and my company directly.
4. Federal Reserve Bank of New York report - comparison of NSF fees vs. Deferred Presentment Deposits
5. Late Fees (Overdraft) vs. PRA fees
6. FDIC reports - NSF fees
7. Analysis of FDIC reports comparing the costs of NSF fees vs. Payday loans
8. Analysis of how consumers are worse off in states that ban Deferred Presentments - based on the Federal Reserve Bank of NY report
9. Expending Credit Access report
10. Cypress Research Group - Payday Loan Customer Survey reports
11. Florida Delegation letter to the CFPB urging them to consider the Florida Deferred Presentment Program as an option to the CFPB Proposed Rules
12. Consumer Credit Research Foundation - report on comparison of Payday loans vs. NSF fees
13. PEW - payday lending report
14. Suggested Transaction Documents - Income and Expense Ability to Pay Form & Payday Loan Determination checklist
15. *Confidential - Grimaldi loan frequency report

Thank You-

Doug Grimaldi
President - **Grimaldi Corporation**
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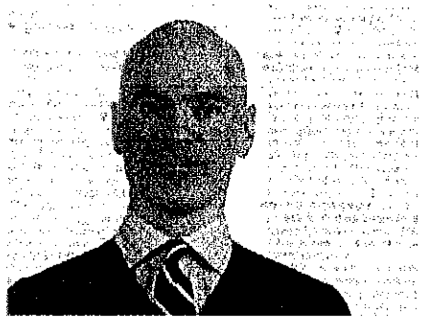
www.cashplusinc.com
904-305-3601 direct
904-551-0391 fax

Basics of the Florida rules:

1. Loan period is 7-31 days
2. Only one loan at a time
3. 24 hour cooling off period between loans
4. Consumer must pay back the entire loan with the fee before getting another loan
5. Maximum loan amount is $500
6. Maximum fee/interest is 10%, plus a $5 verification fee
7. Lender must provide disclosures to the borrower, including a TILA
8. Borrower must provide a personal check to the lender for each loan
9. Lender cannot pursue criminal charges for the check if it bounces
10. State database is provided by Veritec - all lenders must participate so that a consumer cannot go to another lender in Florida to get another loan until the first loan is paid in full - lenders pay Veritec for this service.
11. 60 Day Grace Period - provided if the consumer cannot pay. Consumer must sign up for state approved credit counseling within 7 days of informing the lender they cannot pay and lender must provide the list of credit counseling agencies.
12. Lender pays the Florida Office of Financial Regulation to perform audits on the lenders along with all costs associated with that audit.

Sincerely,

Douglas Grimaldi
President



2 ENTRIES FOUND:

- harm
- harm's way

Dictionary

SAVE POPULARITY

[1]harm

noun \ˈhärm\

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: physical or mental damage or injury : something that causes someone or something to be hurt, broken, made less valuable or successful, etc.

Full Definition of HARM

1 : physical or mental damage : injury

2 : mischief, hurt

See harm defined for English-language learners »

See harm defined for kids »

Examples of HARM

They threatened him with bodily *harm*.

The scandal has done irreparable *harm* to his reputation.

She'll do anything to protect her children from *harm*.

They have suffered serious physical *harm*.

These new regulations could cause lasting *harm* to small businesses.

Origin of HARM

Middle English, from Old English *hearm;* akin to Old High German *harm* injury, Old Church Slavic *sramŭ* shame

First Known Use: before 12th century

Related to HARM

Synonyms

affliction, damage, detriment, injury, hurt

Consumers Fare Worse Under Payday Loan Bans: Research from Georgia, North Carolina and Oregon Shows Harm

Research finds bans on payday lending leave consumers in greater financial distress. Three studies have looked at what happened to consumers in states where payday lending was eliminated and discovered the true cost to consumers of this misguided approach.

"*Payday Holiday: How Households Fare Under Payday Bans,*" by Federal Reserve Bank of New York Research Officer Donald P. Morgan and Cornell University graduate student Michael R. Strain, found that consumers in Georgia and North Carolina were not better off since their states eliminated payday lending.[1]

- *"They [consumers in Georgia and North Carolina] have bounced more checks, complained more about lenders and debt collectors, and have filed for Chapter 7 ("no asset") bankruptcy at a higher rate."*
- *"On average, the Federal Reserve check processing center in Atlanta returned 1.2 million more checks per year after the ban. At $30 per item, depositors paid an extra $36 million per year in bounced check fees after the ban."*
- *"Total complaints against lenders and debt collectors [in North Carolina] rose by over a third relative to other states…."*
- *"Banning payday loans did not save Georgian households $154 million per year, as CRL projected, it cost them millions per year in returned check fees."*

"Restricting Consumer Credit Access: Household Survey Evidence on Effects Around the Oregon Rate Cap," by Dartmouth College Professor Jonathan Zinman, found that restricting access to payday loans "caused deterioration in the overall financial condition of Oregon households."[2]

- *"Former payday borrowers responded by shifting into incomplete and plausibly inferior substitutes…Most substitution seems to occur through checking account overdrafts of various types and/or late bills. These alternative sources of liquidity can be quite costly in both direct terms (overdraft and late fees) and indirect terms (eventual loss of checking account, criminal charges, utility shutoff)."*
- *"Reducing payday loan access in Oregon hindered productive investments or consumption smoothing that facilitated job retention (or search)."*

"*North Carolina Consumers After Payday: Attitudes and Experiences with Credit Options,*" by the University of North Carolina Center for Community Capital, highlights the choices consumers are forced to make when payday loans are eliminated. The study's conclusion stands in stark contradiction to its actual findings, as the findings clearly show that former payday lending consumers have replaced payday loans with costly, less desirable and potentially dangerous options.[3]

- *"The most common option [for dealing with their most recent financial crisis]… was to pay the expense late or not to pay."*
- *"Ten percent [of those who did not pay or paid late] had utilities disconnected, went without a prescription medication, or had a damaged credit rating…[Fifty percent of those who did not pay or paid late] incurred late fees on charges, including [some] who said their bill was turned over to a collection agency or that they faced repossession or bankruptcy."*

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[1] http://www.cfsa.net/FedReserve.html
[2] http://www.dartmouth.edu/~jzinman/Papers/Zinman_RestrictingAccess_oct08.pdf
[3] http://www.cfsa.net/UNC.html

Prepared by:

CFSA

www.cfsa.net

Consumers Paying More in Late Fees and Payment Penalties

In his working paper *"Late Charges, Regular Billing, and Reasonable Consumers: A Rationale for Late Payment Act,"* Hofstra University Law Professor Norman I. Silber analyzes late fees paid by consumers for credit card and wireless telecommunication bills and finds that fees have increased and consumers are paying more.

Full working paper available online at http://ssrn.com/abstract=1152286

Noted in the report:

- **Late fees have increased substantially, hurting consumers and generating corporate profit**

  "From 1996 to 2002, revenue generated by consumer credit card late fees alone skyrocketed from $1.7 billion to $7.3 billion."

  "Late fee revenues have risen to $29 per consumer in 2002, up from $13 per consumer in 1996."

  "On a per-capita basis, the number of late fee assessments and the dollar cost to consumers…is increasing."

- **Creditors have made the penalties for late payment more severe, increasing their profits**

  "In addition to the increase in aggregate credit card late fee penalty amounts, the willingness to waive or forgive late payments has summarily decreased."

  "As a result of 'universal default provisions' and other contractual rights to revise initial rates, late payments are increasingly triggering interest rate hikes of upwards of 29% by card issuers."

  "Since 2000, over two-thirds of card companies raised a consumer's rates after one late payment."

  "Most major issuers have no grace period whatsoever with respect to late payment fees themselves."

- **One-quarter of Americans pay at least one bill late per month**

  "A recent Western Union/Opinion Research Corporation International study found…that one-quarter of Americans pay at least one bill late per month."

  "As of 2005, 35% of all U.S. households have been assessed a late fee at least once."

Prepared by:

CFSA

www.cfsa.net

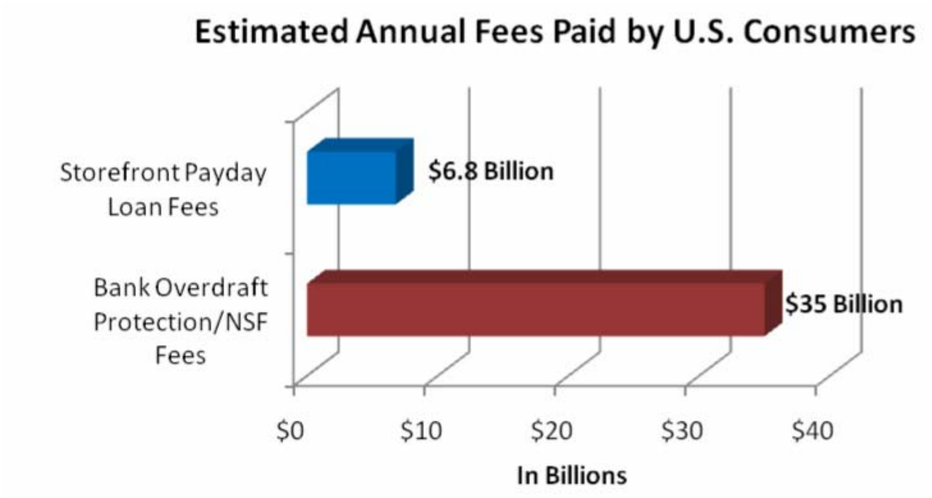
Overdraft Protection and Payday Advance Loans

Short-term credit providers play a critical role in the U.S. financial services market by extending capital to a population in need of small-dollar loans. The demand to meet the need for immediate, unsecured, short-term credit has grown in the past decade with the market now exceeding $115 billion[1], including bounced check fees, late bill payment fees and payday loans. Bank overdraft protection and salary or payday advances are among a number of options available to consumers facing unexpected and unbudgeted expenses.

Confronting a budget shortfall, a consumer may overdraw their checking account, triggering a "bounced loan" through overdraft protection or choose an advance through a payday lender. While both options provide consumers with short-term access to funds, there are important differences between the two.

Payday advance fees paid by consumers pale in comparison to those paid in overdraft fees

- In 2007, storefront payday lenders provided 154 million loan transactions and collected roughly $6.8 billion in fees.[2]
- In comparison, it is estimated that consumers will overdraw their accounts 1.22 billion times this year, allowing banks and credit unions to collect more than $35 billion in overdraft fees.[3]



Payday advances are highly regulated

- State laws heavily regulate all aspects of payday lending, including limiting the number of loan transactions, placing caps on loan transaction amounts and the fees that can be charged. Payday loans are also subject to a number of federal laws that protect consumer credit borrowers, including full disclosure of the fees expressed both as a dollar amount and an annual percentage rate.[4]
- Bank and credit union overdraft transactions have no such regulations.

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[1] http://www.cfsa.net/policymakers/market_demand.html
[2] Present and Future of the Payday Advance Industry, Dennis Telzrow, CFA, Managing Director, Research, Stephens Inc., March 6, 2008
[3] *Overview NSF/OD National Analysis*, Bretton Woods, December 2008
[4] http://www.cfsa.net/knowyourfee/index.html

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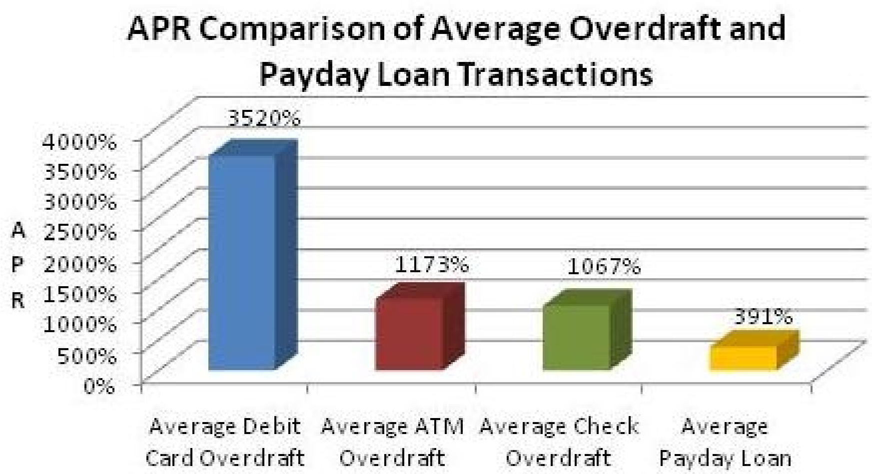
Payday advances can be a less costly alternative to overdrawing a bank account

- Payday lenders typically charge a flat fee of $15 per $100 borrowed, or 391% if quoted as an annual percentage rate.[5]
- FDIC reports that the average bank customer pays $27 (median overdraft fee) to cover a transaction of $36 (median transaction size), with annual percentage rates ranging from 1067% to 3520%.[6]



Payday advance fees are fully disclosed before customers enter into the transaction

- Payday lending customers must make a conscious decision to apply for a payday advance, and take proactive action to do so. Before entering into the transaction, the fee and terms of the advance are fully disclosed. In addition to the information found in brochures and loan agreement forms, payday lenders post the fees, in both dollar amount and APR, in large type on poster-size displays in all stores.
- The majority (75%) of bank customers are automatically enrolled in overdraft programs when they first open their bank account. Even when overdrawing their account using a debit card or withdrawing cash at an ATM, customers are not alerted to the pending overdraft or fees associated with the transaction. Many banks offer a tiered fee structure, where the fee increases based on the customer history with overdrafts. And making it even more confusing, banks tend to process the largest debits first - which can increase the number of overdrafts. [7]

Payday lenders offer substantial, self-imposed consumer protections

- Under Best Practices mandated by CFSA, the national trade association of payday lenders, any customer who cannot payback their loan when due has the option of entering into an extended payment plan, allowing them to repay the advance over a period of additional weeks. This option is provided to CFSA members' customers for any reason and at no additional cost.[8]
- Bank customers who have overdrawn their account risk being assessed additional fees daily or pay interest on accounts that remain in negative balance.[9] Other than depositing all of the funds necessary to cover the overdrawn balance, customers have no way to work out of their bounce-loan overdraft debt.

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[5] Community Financial Services Association of America, www.cfsa.net
[6] *FDIC Study of Bank Overdraft Programs*, December 2008, http://www.fdic.gov/bank/analytical/overdraft/.
[7] *FDIC Study of Bank Overdraft Programs*, December 2008, http://www.fdic.gov/bank/analytical/overdraft/.
[8] http://www.cfsa.net/public_education_campaign/extended_payment_plan.html
[9] *FDIC Study of Bank Overdraft Programs*, December 2008, http://www.fdic.gov/bank/analytical/overdraft/.

Prepared by:
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www.cfsa.net

CASH $ PLUS

Payday Loan Checklist

Documentation	
Valid ID	
Blank Check	
Bank Statement	
Current Pay Stub	

Payroll Information	
Weekly	
Bi-Weekly	
Monthly	
Direct Deposit	Yes No
Direct Deposit	Partial $

Verification	
Hire Date	
Work Verified With:	
New Job & New Bank Statement	decline
Can't verify Work	decline
Can't verify Income	decline

Minimum Income-No Direct Deposit	
Advance Amount	Monthly Take Home Income
$100.00	$800.00
$200.00	$1,100.00
$300.00	$1,600.00

Minimum Income with Direct Deposit	
Advance Amount	Monthly Take Home Income
$100.00	$550.00
$200.00	$800.00
$300.00	$1,200.00
$400.00	$1,500.00
$500.00	$1,800.00

Total Take Home Per Month:	$

Scoring Information (add points on right)

Time On The Job		
0-6 Months	10	
6-12 Months	20	
Over 1 Year	30	

Proof Of Income		
Pay Stubb no Direct Deposit	10	
	OR	
Pay Stubb with Direct Deposit	30	

Checking Account		
Bank Statement with NO Activity	20	
	OR	
Bank Statement with Activity	40	

Overdrawn $250+ Manager Approval:		initials:
Part Time Employment	-5	
More than 4 NSF fees	-10	
Excessive Obligations	-15	
Income-Expense under $200	-20	
Accnt Balance negative >4 times	-10	

References		
1 Verifiable Reference	10	
2 Verifiable References	20	
3 Verifiable References	30	

Total Points ____________________

Amount Requested ____________________

Amount Approved ____________________

Decline Letter Issued ____/____/________

Managers Initial (for declines) ____________________

0-60	Decline
61-90	up to $100
91-100	up to $200
101-110	up to $300
111-120	up to $400
121-Up	up to $500

1. If the right side total is at least 110 points, then take the average between the right side amount and the left side a
2. If the right side is below 110, the just use the right side amount for the loan

Ability to Re-Pay

name: ______________________________

Take Home Income		Living Expenses	
Source:	$	Rent / Mortgage:	$
Source:	$	Food:	$
Source:	$	Utilities:	$
Source:	$	Transportation:	$
Source:	$	Child Support:	$
Source:	$	Child Care:	$
Source:	$	Other:	$
		Other:	$
Total = $		**Total = $**	

Administrative Use Only

Income Exceeds | Equal(=) | Expenses Exceeds

In addition to the items included above, Mr. Grimaldi included the following items in his written feedback to the Panel:

1. Deloitte Financial Advisory Services, Analysis for FiSCA (May 2015).
2. The Pew Charitable Trusts, Payday Lending in America: Who Borrows, Where They Borrow, and Why (July 2012).
3. Brian Melzer and Donald Morgan, Price-Increasing Competition: The Curious Case of Overdraft versus Deferred Deposit Credit, Federal Reserve Staff Report No. 391 (September 2009).
4. Federal Deposit Insurance Corporation, Study of Bank Overdraft Programs (November 2008).
5. “Micro-Level Data-Complete Aggregated Analyses” (November 2008).
6. Cypress Research Group, Survey of Customers of FiSCA Member Organizations (September 2006).
7. Dean Karlan and Jonathan Zinman, Expanding Credit Access: Using Randomized Supply Decisions to Estimate the Impacts (June 25, 2007).
8. Thomas E. Lehman, Contrasting Payday Loans to Bounced-Check Fees, Consumer Credit Research Foundation.
9. Grimaldi, “Loan Frequency Report.”

MEMORANDUM

To: Consumer Financial Protection Bureau

From: Insikt, Inc.

Date: May 13, 2015

Re: Small Business Advisory Review Panel for Potential Rulemakings for Payday, Vehicle Title, and Similar Loans

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This memorandum summarizes Insikt's comments to proposals under consideration by the Consumer Financial Protection Bureau ("Bureau") to limit certain practices for payday, vehicle title and similar loans ("Proposals").

In this memorandum, we focus on the following aspects of the Proposals relating to covered longer-term loans[1] that we believe will have a potential economic, regulatory and operational impact on our business: (1) Ability to Repay Requirements, (2) Alternative Requirements—Covered Longer Term Loans, and (3) Payment Collection Practices Limitations. The memorandum follows the agenda discussion topics at the Panel meeting hosted by the Bureau on April 29, 2015, pursuant to the Small Business Regulatory Enforcement and Fairness Act ("SBREFA").

Insikt's loans will be covered longer-term loans under the Proposals to the extent that Insikt (i) charges an all-in annual percentage rate ("APR") in excess of 36% and (ii) obtains an ACH authorization from a borrower prior to the first payment on the loan. We estimate the Proposals will impact approximately 50% of our loans.

ABOUT INSIKT, ITS PRODUCTS AND CUSTOMERS

Insikt (pronounced "in-seekt") is a white label, loan origination and investing platform that enables any brand to lend to its customers and any accredited investor to invest in consumer loans. Founded by serial entrepreneur, James Gutierrez (founder Progreso Financiero, renamed to Oportun), Insikt is based in San Francisco and backed by leading venture funds and investors. Altogether, Insikt has raised over $26 million of venture capital to fund its business and over $100 million of debt capital to fund its loans. Insikt, through its subsidiary, Lendify Financial LLC, makes small dollar consumer loans to customers under the California Pilot Program for Increased Access to Responsible Small Dollar Loans ("Pilot Program") and will soon begin making loans as a regulated lender in Texas. Unlike a direct lender, Insikt employs a "Lending as a Service" (LaaS) model where it partners with banks, non-bank financial service companies, and

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1 This memorandum only addresses the Proposals on covered short-term loans to the extent they overlap with the Proposals on covered longer-term loans.

retailers who use Insikt's centralized underwriting and origination technology to offer small dollar loans to existing customers. Currently, Insikt's platform is making loans through its partners in 30 locations throughout California.

We make closed-end, fully amortizing, unsecured installment loans in amounts ranging from $300, payable in equal installments over 5 months, to $2,500, payable in equal installments over 2 years. All loan payments are tied to a borrower's paycheck cycle which makes it easier for our customers to budget. Loans are currently structured with a single upfront administrative fee between 5-7% of the total loan amount and ongoing simple interest accrued daily at an annualized rate of 34-36%. This corresponds to an APR (inclusive of fees as defined by Reg. Z) of between 36% and 59%.

A large proportion of Insikt's borrowers are underbanked customers, meaning that they are not adequately served by the traditional banking system in the United States. This is evidenced by the fact that approximately 50% of applicants report that they do not deposit their paychecks into a bank account and 30% report that they do not have a bank account at all. Furthermore, 45% of our applicants do not have a traditional credit score and, for those who do, the average FICO score is 570. The median gross income of our applicants is approximately $25,000 per year.

ABILITY-TO-REPAY ("ATR")

Insikt believes that incorporating ATR into underwriting is a key component of responsible lending. We apply a two-step process to assess a borrower's ATR. First, we collect and verify income, and also collect expenses that are self-reported by applicants and/or verified by one of the major credit bureaus. Second, we apply a quantitative framework that combines verified income, self-reported expenses, and expenses verified by a major credit bureau into an assessment of ATR. Based on our experience and shared belief in a rigorous assessment of ATR, we would like to comment on the Bureau's ATR proposals and recommend some needed modifications. We will also provide details of Insikt's current methodology and its management team's many years of experience making small dollar loans to underbanked borrowers who are largely "credit invisible".

1. Collecting and Substantiating Income and Expenses

Determining ATR must include an assessment and verification of income and certain major financial obligations. Accordingly, we support the Bureau's proposals on income verification for covered longer-term loans, through manual verification of bank statements, paystubs or other means, although we note that these processes are costly to set up and execute, and also require upfront investments in personnel, supporting infrastructure and technology. In our experience, building technology that accurately and easily captures information, such as pay stubs or utility bills (to prove address), from applicants at a retail location or via their mobile phone is costly (measured in upfront costs and resulting from fewer would-be borrowers finishing the process) and very difficult to execute.

We also support the Bureau's proposal that lenders verify the amount and timing of a consumer's existing debt obligations by obtaining a credit report from one of the three major credit bureaus. However, we would like to suggest modifications to the Bureau's proposals on manual verification of certain major financial obligations, including housing payments, child support, and other legally required obligations.

A. Housing Expenses Are Hard To Verify and Manual Verification is Costly.

We believe that it is essential to consider housing expenses in determining a consumer's ATR. But housing expenses are hard to verify for the following reasons. First, there are limited external data sources to draw upon in the marketplace to verify housing expenses, many such sources are unreliable and match rates obtained from these sources are low. Second, requiring a borrower to provide a lease agreement to verify housing expenses is impractical because underbanked borrowers often have informal or shared housing arrangements and are not a named party on a lease at the property where they reside. For example, only about 1% of our applicants use a signed lease as a proof of address and around 40% of applicants have monthly housing expenses that are less than or equal to $300. Third, bank statements or checks are not an effective means of verifying housing expenses because 30% of our customers report that they do not have a bank account, 50% report that they do not deposit their paycheck into a bank account, and 10% transact business exclusively in cash. Furthermore, transactions are often not clearly labeled in bank statements.

Manual verification is also costly because it requires a document review team and supporting infrastructure that is expensive to set up and implement. We estimate that the direct cost of manual verification is approximately $12 per loan, which we anticipate will reduce to $10 per loan at scale based on a fully-loaded headcount. The indirect cost is also high because (i) almost 50% of our current applicants must submit verification documents multiple times (10% for ID, 10% for address, 40% for income, and some for multiple reasons) and on average customers must submit documents 1.5 times; and (ii) verification takes a long time (only 36% are verified within 24 hours, 50% take longer than 2 days and 13% take longer than 1 week). Therefore, we anticipate that additional manual verification requirements will add a substantial amount of time to the application process and increase the number of trips a customer must make to a retail location during the application process. We estimate that this would result in a 30% loss of conversion from preapproved applicants to customers receiving a loan, thereby increasing the cost of acquisition by 40% which, depending on a lender's scale, is $40 to $80 per loan (corresponding to 7% to 15% in effective APR on a $1000, 12 month loan).

While we agree that housing expenses are an essential part of the ATR determination, for the reasons described above, we believe that housing expenses should be considered on a self-reported basis only and not manually verified. However, a lender should include in its ATR analysis the consumer's stated cost of housing, subject to the lender's reasonable procedures to evaluate the reasonableness of the consumer's statement.

B. Child Support and other Legally Required Payments are Hard to Verify and One Cannot Assume Everyone Has Them.

In our experience, one cannot uniformly assume that everyone has child support or other legally required payment obligations and it is extremely difficult to know that a consumer has such an obligation unless they self-report it. This is due to the fact that there are limited external data sources to obtain this information. Additionally, it is impossible to verify the nonexistence of an expense in the case of a borrower who truly does not have the expense. This applies broadly to any major expense that we cannot assume all borrowers incur, such as auto, housing and healthcare. For example, 10% of our customers report no housing expenses and 80% report no auto expenses. Therefore, we propose that all less common but major financial obligations, including child support and other legally required payments, be considered in the ATR determination on a self-reported basis only, unless those expenses (such as delinquent child support or an auto loan payment) appear in a credit report.

C. Anything verified by a Major Credit Bureau is Acceptable; All other Expenses Should be Self-Reported with no Verification Requirement.

For the reasons described in 1.A. and 1.B. above, major financial obligations (expenses) that are not available in a credit bureau report are extremely difficult to verify. We agree that expenses are important factors in one's ATR, but requiring them to be verified would result in a significant reduction of responsible credit in the market. As an alternative, we suggest that the Bureau focus on how ATR information is used to calculate certain ratios, such as the PTI ratio we describe in 2.A. below, to ensure that rigorous ATR standards are met. Any and all ATR calcuations would, as a result, factor in acceptable "residual income" and cash flow to cover household expenses.

2. Proposed ATR Framework

Although the Proposals do not specify an ATR framework, the Bureau indicates that it is considering various alternatives that would give lenders significant flexibility to make a reasonable determination of a borrower's ATR. Insikt currently utilizes a robust ATR framework that incorporates both a maximum total debt Payment to Gross Income Ratio ("PTI")[2] of 50% as well as a minimum free cash flow ("FCF") floor that varies by a borrower's unique financial situation.

A. ATR Assessment Should Require No Greater Than 50% PTI Ratio as Opposed to Any Frameworks Involving "Residual Income" or "FCF".

Since 2005, our management team has wrestled with many ways to properly assess ATR without declining applicants who due to their "credit invisible" nature would later prove to be strong credits. Initially, we relied only on a minimum FCF ratio (as a % of after-tax income) which considers the following: (i) verified borrower income, (ii) verified bureau-based debt obligations, (iii) self-reported housing expenses, (iv) self reported auto expenses, (v) self-reported phone expenses, (vi) self-reported utilities, (vii) self-reported number of dependants, and (viii) the maximum scheduled payment of the prospective loan. However, we found that based on geography, age, and number of dependents, establishing an appropriate FCF ratio (%) varied widely and that borrowers with higher income would be treated unfairly in this assessment due to lower FCF % (but higher absolute FCF). We have concluded that PTI is the best, net assessment of ATR and recommend a maximum 50% cut off in PTI as a requirement for covered loans (which is consistent with California's Pilot Program rules).

B. Assessing Periodic ATR v. Loan Life ATR: ATR Assessment Should Only be Based on Information Received and Verified at the Time of Underwriting, but using the Largest Installment Payment.

[2] PTI = (Payments on existing debt <u>plus</u> payments on the new loan) <u>divided by</u> gross income.

Insikt performs the aforementioned ATR assessment at the time of application considering the borrower's current financial situation. The Bureau has proposed that a lender should assess a consumer's income and major financial obligations throughout the entire contractual term of the loan. We respectfully submit that there is no reasonable way to determine how a borrower's current income and major financial obligations may change over the life of the loan. This is especially true for covered longer term loans where the contractual period may extend for multiple years. We therefore propose that lenders should be able to assume that a borrower's current income and expenses will not materially change over the life of the loan. The only exception to this assumption should be in the case of loans with a balloon payment where lenders should be required to calculate ATR using the largest scheduled payment on the loan.

The Bureau has also proposed that the lender reasonably determine that the consumer can make each payment without having difficulty paying other expenses occurring through the date of the next payment. Insikt's loans are payable on each payday, and the majority of consumers are paid biweekly. However, many expenses are payable monthly, and a cash flow analysis limited to two week periods will always show a shortfall, even without a small dollar loan payment. In our experience, our borrowers budget monthly and are able to make "lumpy" payments, such as rent, without financial distress, even though the borrower's cash flow in the two weeks when rent is due is technically negative. We propose that the Bureau permit ATR analysis for longer term loans to consider consumer cash flows on a monthly basis, so long as the lender's experience is that consumers are able to make more frequent payments without financial distress.

ALTERNATIVES TO ATR

1. NCUA Short-Term, Small Amount Loan

A. The NCUA is Not Economically Viable and Insikt Could Never Meet its Requirements.

The NCUA proposal is not a viable option for our business for the following reasons. First, a maximum term of 6 months is too short. Approximately 67% of our loans have a term longer than 6 months. Second, the maximum loan amount of $1,000 is too small. We expect more than 50% of our loans will be greater than $1,000. Third, the proposed maximum pricing of a $20 application fee plus a 28% interest rate is too low to be economically feasible. The economics for such a loan are as set forth in the chart below. The NCUA loan pricing results in a net loss of approximately $77 per loan. This is clearly not a viable option for any lender.

B. As an Alternative we Recommend this Proposal be Modified to Reflect the Terms set forth in the California Pilot Program.

We propose the following adjustments to the Bureau's proposal on NCUA short-term, small amount loans: (i) loan amount up to a maximum of $5,000, (ii) term up to 36 months, (iii) maximum simple annual interest rate of 36%, (iv) application fee of 7% of the loan amount up to $90 (similar to the Pilot Program in California), and (v) allowing more than one covered loan at a time. We believe (v) is important to help borrowers meet unexpected expenses and believe that adequate protections can be imposed by creating appropriate guard rails, such as instituting a maximum total PTI of 50%. Our proposals result in significantly improved economics as shown in the chart below.

Analysis of Loan Economics[3]

	Example NCUA Loan Economics		Insikt Proposed Loan Economics	
Loan Details				
Loan Amount	$1,000		$1,000	
Loan Term	6 months		12 months	
Application Fee	$20		$70	
Interest Rate	28%		36%	
Monthly Payment	$184		$107	
	Lifetime Total $	**Annualized %**	**Lifetime Total $**	**Annualized %**
Loan Revenue				
Application Fee	$20	7%	$70	13%
Billed Interest	$77	28%	$198	36%
Total Revenue	**$97**	**35%**	**$268**	**49%**
Loan Costs				
Gross Losses	($80)	-29%	($80)	-15%
Cost of Funds	($14)	-5%	($28)	-5%
Servicing	($30)	-11%	($60)	-11%
Acquisitions	($50)	-18%	($50)	-9%
Total Costs	**($174)**	**-63%**	**($218)**	**-40%**
Net Revenue	**($77)**	**-28%**	**$51**	**9%**

2. Loans with Periodic Payments Below a Specified Payment to Income Ratio

While preferable to the NCUA proposal, this option is also not viable for our business for the following reasons: (i) the 6-month term is too short (for reasons described above), (ii) the maximum loan amount of $1,000 is too small (for reasons stated above), (iii) 32% of our existing loans would not pass a 5% PTI threshold even though they meet our stringent and responsible underwriting standards, and (iv) underserved borrowers sometimes need more than one covered loan at a time to meet unexpected expenses.

Insikt proposes the following adjustments to the Bureau's proposal: (i) loans up to $5,000, (ii) terms up to 36 months, (iii) PTI threshold of up to 12%, and (iv) allowing more than one covered loan at a time. We believe (iv) is important for the reasons stated above.

PAYMENT COLLECTION PRACTICES

1. Notice to Consumers Prior to Attempting to Collect Payment

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[3] Billed Interest assumes an average loan balance of 55% of the original loan amount over the scheduled term of the loan. Gross Losses assumes an 8% static pool loss rate. Cost of Funds assumes a 5% annualized cost based on the aforementioned average balance. Servicing assumes a $5 cost per month over the scheduled term. Acquisitions assumes a fixed $50 cost per loan.

The Bureau has proposed that lenders provide consumers with a written notice by U.S. mail or email prior to each attempt to collect payment from a consumer's account, including each attempt to re-present a payment after a failed attempt. The Bureau also seeks comments on whether lenders currently provide notices by mail or email and other means by which such notices are provided, whether by phone or text message (SMS).

Insikt believes that advance payment notification is a key component of responsible collections. Insikt currently sends payment reminders to all customers regardless of payment method at least 2 days prior to each payment due date to inform the borrower of the amount due and payment due date. We also give customers the ability to opt out of receiving a reminder. However, we believe that *borrowers* should decide the means of notification; they should have the ability to select the form of notification that works best for them; and should be able to opt out of notifications at any time. We believe this has worked well in the Pilot Program in California.

The Bureau is considering requiring lenders to provide payment notices by U.S. mail or email. This may work for certain internet based lenders where an email address is required, however this does not work well for underbanked customers who seek financial services through retail locations. To highlight this, only 33% of our borrowers report having an email address. Under the current proposal our only alternative would be to provide notice by U.S. mail.

Providing notice by mail is operationally intensive and expensive, especially for small businesses that lack the operational scale and customer base to efficiently execute a mailing strategy. Furthermore, reaching scale is difficult because it involves significant investment in systems, staffing and operations. We estimate that each mailing costs $1.00 per letter at low scale and $0.40 per letter at high scale (based on 100,000+ mailings each month). In context, for a $1,000 loan payable over 12 months in semi-monthly installments the total cost of providing payment reminders by mail would be $24 (a 4% annualized cost basis at low scale) and $10 (2% at high scale). If notices were required to be provided by U.S. mail, this would result in higher APRs for customers to cover the additional costs.

In contrast, providing notices through an SMS reminder is far less operationally intensive and expensive. For example, an SMS costs approximately $0.0075 per message and a phone call costs approximately $0.025 per minute. Further, our capture rate for phone numbers is 100% and the SMS opt in rate is 80% which demonstrates that this is the preferred form of notification for our customers. We are currently executing payment reminders through these channels with great success. However, we acknowledge that this requires substantial investment in an open source platform and software to execute SMS and phone notifications, and involves substantial development costs.

The Bureau proposes a payment notice that contains extensive information about the borrower's upcoming payment. Insikt agrees that customers should have easy access to information about the payments due on their loan. This information can easily be provided by phone. It can also be provided by an SMS message that would effectively convey all of the information that a customer needs to manage their payment obligations and personal finances. For example, a series of 2 SMS messages that contain the following information would accomplish this:

> SMS-1: "Lender Payment Alert, $xxx.xx will be debited from your account ending in xxxx on xx/xx/xx. Reply 1 to stop payment reminders and 2 for additional information"

SMS-2 if customer replies “2”: “click https://lender.com/payments/xxxx for additional payment information”

We also believe that essential payment information should be accessible through other means such as by telephone, online customer portal, or by providing the customer with an amortization schedule at the time of loan consummation.

COST OF FUNDS

The CFPB rules will help Insikt achieve lower borrowing costs by eliminating uncertainty in the market about what is an “acceptable CFPB loan” or not. Our management team has experienced countless investor meetings where the terms “regulatory” and “reputational” risks are repeated over and over as reasons for not investing. The fact that the CFPB is publishing clear rules on what is acceptable and what is not will help to clear up any confusion about “regulatory risk” and “reputational risk” associated with small dollar lending. Insikt currently borrows at a 12% annual coupon and its management team has borrowered at 15% annual coupons in the past.

CREDIT CARD v. INSTALLMENT LOAN

We firmly believe that installment loans due to their fixed terms, payment amounts, and rates are better for underbanked borrowers to understand and be successful with than credit cards. However, given the relative ease of complying with the Credit Card Act’s ATR requirements, we are concerned that installment loans will be at a competitive disadvantage to credit cards in the market as a result of these new rules. Credit Cards offers are not required under Reg Z. to combine required fees and rates into their APR calculations. Now, they will not be required to meet the same ATR requirements as covered installment loans. Using an example from Capital One’s website, one of their “secured credit card” offers at a minimal utilization rate has an effective APR (inclusive of fees) of 200%+. Yet, this card would never have to quote its true APR in a marketing offer or be required to rigorously assess a consumer’s ATR in its underwriting. We are concerned that this creates a dangerous double standard in the rules that will result in credit cards being more readily available to underbanked borrowers (despite them having more demonstrable success with installment loans).

CONCLUSION

Thank you for allowing us the opportunity to submit our comments on the Bureau’s proposed rules. We believe in the Bureau’s push for higher ATR requirements and more rigorous federal standards, and with minor adjustments described in our memo, we will be able to comply with the proposed rules. We look forward to continuing our mission of providing responsible and affordable access to credit as a necessary stimulus to long term, positive change that improves whole communities.

LDF Business Development Corp.

LDF Business Development Corporation
Brent McFarland, Chief Operating Officer

WRITTEN SUBMISSION OF BRENT MCFARLAND TO THE SBREFA PANEL FOR POTENTIAL CFPB RULEMAKINGS FOR PAYDAY, VEHICLE, TITLE, AND SIMILAR LOANS

Submitted May 13, 2015 via email to cfpb_payday_sbrefa@cfpb.gov

I submit these written comments to supplement the oral statements I made during the meeting of the small business panel, which the Consumer Financial Protection Bureau ("CFPB") convened in Washington, D.C. on April 29, 2015, pursuant to the Small Business Regulatory Enforcement Fairness Act ("SBREFA"), to discuss the impact of the CFPB's proposal to regulate payday, vehicle title, and similar loans (the "Proposal").

I. Introduction

As a preface to my written comments, I note that the small-dollar installment lending business that I represent (the "Business") is wholly-owned by and subject exclusively to the laws, regulations, and jurisdiction of the Lac du Flambeau Band of Lake Superior Chippewa Indians (the "Tribe"). The CFPB's Proposal, should it come to pass, would not apply to, be binding upon, or be enforceable by the CFPB against the Business. Nevertheless, the CFPB's Proposal is relevant to the Business because the Tribe, in its sovereign discretion, generally chooses to apply the *principles* of federal consumer financial laws to the Business.

I also note that, insofar as the Business only provides installment loans that would qualify as "longer-term covered loans" under the Proposal, and does not presently provide or plan to provide in the future loans that would qualify as "short-term covered loans," my comments below are limited to those aspects of the Proposal that relate to longer-term covered loans.

With that said, my supplemental comments to the Proposal are as follows.

II. The Proposal Makes Unwarranted and Incorrect Assumptions

The CFPB regularly touts itself as a "data-driven" agency. A search of its website indicates that the CPFB and its officials have used that phrase almost 60 times in speeches, press releases, and reports to provide assurance that the CFPB exercises its expansive powers in a responsible and fair manner. And yet, it is apparent from reading the Proposal – at least as it concerns longer-term covered loans – that the Proposal does not reflect the CFPB's advertised approach to rulemaking.

If the CFPB was truly "driven" by data in this instance, then it would have first accumulated data about longer-term covered loans. Then, it would have analyzed that data to determine whether and to what extent problems existed with longer-term products. Only if the data indicated that problems actually existed would the CFPB have devised hypothetical solutions and tested those solutions to determine whether they would be effective as well as viable for the industry. And only after taking all of those steps would the CFPB have drafted a proposal comprising its solutions and published that proposal for comment by the SBREFA panel and the public.

Instead, the CFPB decided to regulate longer-term covered loans without first gathering any representative data about them. It simply made *assumptions* about how the products worked. It then *assumed* that the products are harmful to consumers. It did so largely based upon its analysis of data it accumulated about *short-term* covered loans. It *assumed* that longer-term products are harmful to consumers in the same ways that it concluded short-term covered loans are harmful to consumers. It then devised arbitrary solutions to the assumed problems and published those solutions in the Proposal without testing them first or assessing their impacts upon small businesses, larger lenders, or consumers. Only upon publishing the Proposal is the CFPB now seeking data about the costs, viability, efficacy, and impact of its solutions.

At best, the CFPB's backwards approach to regulating longer-term loan products is a hasty and misguided attempt to expand the scope of proposed regulation. We note that in the late stages of formulating its Proposal, the CFPB acknowledged that it had not previously understood that much of the small-dollar lending industry no longer offers short-term "payday" loans. At worst, the CFPB's approach is a calculated attempt to destroy the small-dollar consumer lending industry based upon pre-conceived notions and personal biases rather than sound data-driven analysis. Regardless, the Proposal rests precariously upon assumptions that are either unwarranted or fundamentally incorrect.

a. ***The CFPB Assumes that Small-Dollar Credit Harms Consumers***

The CFPB's baseline assumption seems to be that small-dollar credit is harmful to consumers simply because it is often more expensive than other types of credit. As a threshold matter, this assumption is inappropriate in that the Dodd-Frank Act expressly precludes the CFPB from setting a federal usury cap or otherwise taking regulatory action that is based upon the CFPB's own subjective policy view of what prices are "fair" for lenders to charge consumers. This assumption is also unwarranted in that it depends upon an unreasonably narrow and simplistic view of consumer welfare. That view considers only the extent to which the cost of loan products impact consumers' overall financial obligations. As we discuss in greater detail below, the CFPB fails to consider that our products provide important and unique benefits to consumers that offset their costs. It also fails to appreciate the fact that the prices of our products are a function of the heightened risks associated with providing unsecured loans to largely credit-impaired borrowers. In any event, the CFPB provides no basis for its arbitrary conclusion that longer-term loans with all-in annual percentage rates of 37 percent or higher are harmful, *per se*, such that they warrant stricter regulation than loans with 36 percent annual percentage rates or less.

b. ***The CFPB Assumes that All Consumers of Small-Dollar Loans are Victims***

The Proposal also assumes that consumers who utilize our products are "victims" who require the CFPB's protection because they are either unable to recognize that lenders are ensnaring them in "debt traps" or they are too weak to resist our "siren's song." The CFPB's assumption disrespects the choices of millions of consumers who use our products, time and again, and who rate them highly, notwithstanding their costs. This assumption also ignores the reality that our customers, by and large, are rational, well-informed, and financially-savvy individuals whose decisions to use our products reflect the premium they place on the benefits we provide to them. These benefits include the ability to apply for loans 24 hours a day, 7 days a week, and even when traditional banks and other financial service providers would otherwise be closed. These benefits also include the ability of consumers to apply for loans from the privacy, comfort, and dignity of their own

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homes as well as the ability to receive funding decisions within minutes and loan proceeds on the same or the next business day. Even when traditional or alternative loan products are available to consumers at lower costs, many consumers nevertheless choose to use our products because conventional loan products do not include these benefits.

The CFPB's dim view of consumers as being unable to appreciate or protect their own interests is also belied by the fact that our customers, on average, opt to take out substantially less money in loans than we offer them and they tend to pay back their loans substantially sooner than we require them to do so.

c. ***The Proposal Assumes that Longer-Term Loans Are Unaffordable Simply Because Certain Consumers Default on Them or Take Out Multiple Loans***

The CFPB makes another unwarranted assumption in its Proposal – that longer-term loans are unaffordable when consumers are delinquent in repaying them, take out more than one loan at a time, or take out multiple loans in sequence. In fact, many consumers who are delinquent in repaying their loans make strategic decisions to pay them back late or to not to pay them back at all. In other cases, consumers simply forget their repayment obligations and once reminded, they resume making timely repayments. Likewise, many consumers take out multiple loans or sequences of loans because their financial needs are unpredictable and they may increase or multiply over time. It is arbitrary and callous for the CFPB to decree that consumers are only entitled to experience two family medical emergencies or car breakdowns every six months or year before they are on their own in paying for the costs of such problems. We further note that by limiting the number of loans that consumers may receive during a year, the Proposal creates a perverse incentive for consumers to borrow more upfront than they would otherwise need at that time to ensure they have enough money on hand to address any need that arises after they reach their loan limits.

d. ***The Proposal Assumes that All Small-Dollar Lenders are Predatory in Nature***

The Proposal makes the unwarranted assumptions that all small-dollar lenders are predators – that we provide loans to any and all consumers who apply for them, that we do so without any regard for consumers' ability to repay these loans, and that we are aggressive and merciless when customers do not repay us on time. In actuality, we employ a robust and sophisticated automated underwriting process – comprising over 1,300 data points – through which we approve only a tiny fraction of all our loan applicants. This underwriting process not only assesses consumers' ability to repay us, but also, more importantly from our perspective, their willingness and commitment to do so. When our customers do have problems repaying us, we are extraordinarily patient and flexible in working with them to make alternative arrangements that they can afford. In many cases, we forgive fees, interest, and even some of the principal that our customers owe us. Contrary to the CFPB's assumptions, when our customers don't work with us regarding their failures to pay, we do not threaten, harass, cajole, or trick them into paying us. We also do not make repeated attempts to access consumers' bank accounts in excess of NACHA rules or cause consumers to incur multiple NSF fees. Instead, we simply write off many loans that are in default.

Quite simply, we conduct ourselves in this manner because it makes good business sense to do so. We make money when consumers pay us back. If we lend to consumers who cannot afford to pay us back, then we will lose our money without any recourse to get it back. If we are too aggressive in our repayment practices or our collection methods, then we also will tarnish our reputation and lose our customers.

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e. *The Proposal Assumes that Preauthorized Electronic Fund Transfers Give Lenders "Preferred" Repayment Positions Among Consumers' Creditors*

Contrary to the CFPB's assumption, we do not require consumers to preauthorize us to seek repayment of their loans through electronic fund transfers. In accordance with Regulation E, we permit our consumers to choose from among several repayment methods such as money orders, cashier's checks, and bank bill payment services. The significant number of our customers that choose to repay through automated electronic fund transfers do so because automatic repayment is convenient and reliable. Moreover, the CFPB is incorrect that preauthorized automated electronic fund transfers allow us to attain a "preferred" position among consumers' creditors. We are in no superior position to obtain repayment than we would be if we presented a check drawn on the consumer's bank account. Likewise, we are not in a superior position to any of the many companies, from cable providers to newspapers, which consumers increasingly authorize to debit their accounts on a recurring basis. Indeed, we have no ability to influence or control the order in which banks process ACH payments to ensure that we are paid before these other companies are paid. Furthermore, we note that consumers already have the right to, and regularly exercise their right to, revoke their ACH authorizations at any time.

f. *The Proposal Assumes that Misconduct by Some Lenders is Emblematic of the Industry*

Another unwarranted assumption that underlies the CFPB's Proposal is that *all* longer-term loan providers harm consumers simply because *some* providers have engaged in inappropriate or unscrupulous activities. Although we do not wish to diminish legitimate concerns about lender misconduct raised in consumer complaints and elsewhere, we nevertheless question the basis for the CFPB's conclusion that such misconduct is generally representative of the industry. We further question why the CFPB cannot address such concerns adequately through enforcement of existing regulations or by promulgating targeted regulations as opposed to a broad Proposal that would fundamentally reshape, and ultimately eviscerate, the industry. Indeed, the CFPB's actions are akin to those of a gardener who is hired to pluck a few weeds from an otherwise healthy garden but does so by dousing the entire yard with napalm.

III. <u>The Proposal is Conceptually Flawed and Impractical</u>

Even if the CFPB is correct in its assumptions that longer-term covered loans, in their present form, harm consumers, its proposed response to those problems is naïve, vague, costly, and burdensome.

a. *The Proposal is Naïve in Its Understanding of Consumers*

Conceptually, the CFPB's Proposal is simplistic and naïve. If an initiative like the Proposal leaves consumers unable to find the products they need, then they will have no choice but to find other means to sustain themselves. Although some may turn for help to family and friends or file for bankruptcy, many cannot or will not do so. Instead, they will be forced to pursue alternatives that are far less "desirable" as a matter of policy than are existing ones. If no other alternatives exist, then these people will be left to financially starve. Certainly, a Proposal cannot be said to "protect" consumers if it "saves" them from indebtedness but leaves them out on the streets when they can't pay their rents, leaves them shivering in the cold when they can't pay their heating bills, or leaves them unable to get to work when they can't afford to repair their cars.

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b. ***The Proposal is Excessively Vague***

The CFPB's Proposal is also grossly underdeveloped. Although we recognize that the Proposal is a mere outline, it lacks even basic details about key concepts and obligations. For example, the ability-to-repay requirement would require lenders to consider and verify consumers' incomes, major financial obligations, and borrowing histories, and provide a reasonable allowance for their necessary living expenses, but the Proposal provides little explanation as to what these concepts mean. Questions left unanswered include, but are not limited to, the following:

- What types and frequencies of payments would qualify as "income"?
- What does the CFPB mean when it refers to "major" financial obligations? Does the word "major" connote some threshold category, level, or frequency of obligations below which lenders need not worry? And how does the term "major" qualify, if at all, the CFPB's use of broadly-worded phrases like "required payments on debt obligations" and "other legally required payments" to describe the scope of lenders' responsibilities?
- When the CFPB states that it expects lenders to consider consumers' borrowing histories, what types of borrowing histories does the CFPB think should disqualify consumers from receiving loans? How many delinquencies or defaults should result in disqualification? What about defaults that are later paid or settled, or scenarios where a consumer defaults but continues to make additional scheduled payments after the default? What mitigating factors, if any, may lenders consider?
- What is a "living" expense and what is a "necessary" living expense? Is the cost of gas for driving to work a living expense and is it necessary if the consumer could take public transportation? Must lenders consider household living expenses or only those of individual applicants? What is a reasonable allowance for necessary living expenses? Should lenders consider actual expenses for housing and food or only average costs? Does the CFPB want us to vary these allowances by locality?
- How should lenders determine and consider debt obligations and living expenses that are shared by a consumer with his or her spouse, other household members or roommates?

Unfortunately, the failure of the CFPB to address these and other questions in the Proposal appears purposeful. Rather than specify what exactly lenders must do when making determinations of consumers' abilities-to-repay, the CFPB instead opted to provide lenders with "significant flexibility" in making those determinations, saying only that such determinations must be "reasonable" and made in "good faith." The CFPB suggests that a vague and flexible standard benefits lenders by affording them leeway in making their determinations. Although we might ordinarily prefer the CFPB's approach, we find it fraught with risk given the absence of a clear regulatory safe harbor and the CFPB's penchant for second-guessing the industry's actions and motivations in its law enforcement investigations.

c. ***The Proposal is Exceedingly Costly and Burdensome, Both for Lenders and Consumers***

In addition to being naïve and vague, the Proposal is also excessively costly and burdensome with respect its ability-to-repay requirement as well as unworkable with respect to the two so-called "alternatives" to the ability-to-repay requirement. Although the Proposal would not ban longer-term covered loans outright, its draconian measures would drive most lenders out of business and thereby have the same effect as a ban.

As noted above, the vagueness of the ability-to-repay requirement makes it difficult for us to assess exactly what its burdens and costs would be. We therefore decline the CFPB's invitation to provide a numerical estimate. Even without making precise calculations, it is abundantly clear that the ability-to-repay requirement

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– and in particular, the verification component of that requirement – would impose unreasonably high burdens and costs upon both lenders and consumers.

To comply with the verification component, at a minimum we would need to update our policies, procedures, and systems, update our websites and marketing materials, purchase new equipment, hire new employees, train new and existing employees, and add electronic and physical storage capacity to comply with the new recordkeeping requirement. We would also need to devote additional resources to testing and monitoring compliance. Particularly for small businesses like us, and for the small transactions in which we engage, these added steps would be difficult and exceedingly expensive.

Compliance would be made even more onerous by the practical complexities inherent in assessing and verifying income and major financial obligations. The CFPB asserts – again, either out of naiveté or disingenuousness – that verification would be a simple matter of checking bank statements, paystubs, and benefit statements. Even a casual glance at the lengthy and detailed Appendix Q to Regulation Z, which sets forth standards for mortgage lenders to determine mortgage applicants' monthly debts and income, reveals the CFPB's assertion to be false. Appendix Q provides ample evidence of the complexity of determining and verifying income and expenses, including with respect to part-time and seasonal employment, bonuses and commissions, self-employment, alimony, and child support income. Whereas mortgage lenders have ample time and resources to engage in this process, small-dollar lenders do not. The CFPB itself acknowledges that bank account statements and paystubs would not suffice to verify the income and obligations of consumers who conduct transactions primarily in cash. Likewise, it acknowledges that consideration and verification of household income and expenses would add an additional layer of complexity to the process.

To the extent that verification is complex, it also creates substantial burdens and costs for consumers. Consumers faced with these verification requirements would first need to try to discern what documentation they would need to provide to lenders. This would not necessarily be an easy task when they have non-traditional sources of income or transact business in cash. Then, they would need to track down the required documentation, which they may not retain as a matter of course or retain in readily accessible, well-organized, or complete files. If they do not have the required documentation available to them, then they would need to find a way to obtain it. We note that if the CFPB ultimately requires consumers to provide information about their household income and expenses, in addition to their individual income and expenses, then these tasks would be even more burdensome, as consumers may not have ready access to their spouses' or family members' accounts. Even after consumers compile the required documentation, they would then need to copy and transmit it to lenders, which again, may not be simple or cost-free if, say, lenders require consumers to copy and fax or scan their documents, and consumers lack access to photocopiers, scanners, or fax machines. And even after consumers transmit their documents to us, they may need to devote time out of their day to explain their documents to us or supplement them.

As a consequence of the verification process being burdensome and costly for consumers, we anticipate that many of them will likely either abandon their loan applications or avoid doing business with us altogether. After all, many consumers look to use our products primarily, if not exclusively, because they need money quickly. The verification requirement would impair, if not eliminate, our ability to serve consumers within a time frame that meets their needs.

In this respect, we note that the CFPB grossly underestimates the time it would take for lenders to verify consumers' income and financial obligations. The Proposal estimates that the entire process will take 15 to 45 minutes to complete. In fact, we estimate that the delays that arise from the process would, in many instances,

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last for hours, days, or even longer. Indeed, the CFPB's estimate does not appropriately account for the time that it would take consumers to search for, compile, and transmit the required documentation. It also does not account for the time that would often be needed for lenders to discuss documentation with consumers, including to clarify items or to address incomplete or inadequate items. Even if the CFPB is accurate in its estimate of the delays associated with the verification requirements, adding as little as 15 minutes to the application process would be enough to drive away substantial portions of our customers. Consumers who are accustomed to or need near-instantaneous approvals would likely turn elsewhere, including to underground or offshore lenders that would not require them to engage in this exercise.

In any event, the CFPB does not present any reason for its decision to require verification, let alone any reason that would justify the cost, burden, and destructive effects of the verification requirement upon the industry. The only conceivable purpose of this requirement would be to reduce the incidence of consumers misrepresenting their incomes and debts, but the CFPB has not presented any data showing that such fraud is likely to be widespread or that lenders need to be protected from this fraud. Even if fraud is expected to be a problem, there is no reason to believe that verification would be effective in reducing that fraud. Indeed, we note that forged bank statements and paystubs are readily available on the internet to those consumers who wish to "game" the income verification requirements.

It also seems incongruous for the CFPB to impose an income and debt verification requirement upon small-dollar lenders when this requirement is not imposed upon other creditors, such as credit card issuers. The official interpretation of the ability-to-repay rule for credit card issuers states that:

> card issuers may rely without further inquiry on information provided by applicants in response to a request for 'salary,' 'income,' 'assets,' 'available income,' 'accessible income,' or other language requesting that the applicant provide information regarding current or reasonably expected income or assets or any income or assets to which the applicant has a reasonable expectation of access.

Regulation Z Official Interpretation 51(a)(1)(i)-4(i). If it is not necessary for credit card issuers to verify consumers' representations of their incomes, we question why it is necessary for small-dollar lenders to verify such information.

d. ***The So-Called "Alternatives" to the Ability-to-Repay Requirement are Patently Infeasible***

Purportedly to allay concerns that the ability-to-repay requirement would be too onerous for many lenders, the Proposal presents lenders with two alternative approaches. Sadly, these so-called "alternatives" are nothing of the sort. Instead, they are false choices that no lender is likely to make.

One of these "alternatives" – the "NCUA-type" loan – would require lenders to extend credit on the same terms and prices as do credit unions. Of course, the vast majority of lenders in the small-dollar lending industry operate on a for-profit basis and cannot remotely afford to offer rates that credit unions offer on a non-profit basis. We understand that even most credit unions do not offer these products as it does not make economic sense for *them* to do so.[1]

[1] We note, as an aside, that the NCUA-type loan proposal is conceptually nonsensical. NCUA-type loans do not, by definition, qualify as longer-term covered loans. The Proposal defines longer-term covered loans as those that have an all-in annual percentage rate of more than 36 percent. By contrast, NCUA-type loans have an annual percentage rate of no more than 28 percent.

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Similarly, the so-called "PTI" loan would be economically infeasible in most instances. It would limit the amounts of money that lenders may require customers to pay to an arbitrary and unreasonably low rate of 5 percent of their expected gross income while also limiting the duration of these loans. Together, these requirements would amount to the imposition of a *de facto* maximum interest rate on longer-term loans – an action which the Dodd-Frank Act prohibits. In many instances, we would expect the *de facto* interest rate on these loans to be below that which would make business sense. Moreover, these PTI loans would be difficult, if not impossible, for us to market to consumers. In advance of obtaining and analyzing consumers' incomes, we would not be able to tell them, how much, if anything, we could lend to them or at what rates.

We find it both surprising and alarming that the CFPB is proposing that lenders adopt these two alternative loan options given that anyone who has even a basic grasp of the economics of the small-dollar lending industry would recognize that these alternatives are patently not feasible. It is even more shocking, perhaps, that the CFPB expressly acknowledges its own ignorance in the Proposal:

> The Bureau lacks sufficient data at this time to model how many lenders of the type from which the Bureau has obtained installment loan data would be willing to make loans under the alternative requirements under considerations or what their revenue streams from such loans would be.

Proposal at 50.

The CFPB is irresponsible and reckless in presenting alternatives to the public without first assessing their viability, especially when it is presenting these alternatives to a SBREFA panel that is expressly charged with discussing the impact of the Proposal on small businesses. The CFPB's failure to analyze the impact of its Proposal on longer-term lending is particularly frustrating given that the CFPB did assess the impact of the Proposal on short-term lending and it determined that impact to be catastrophic – a potential reduction in lending volume by more 80 percent for the ability-to-repay option and between 55 and 62 percent for the alternative options. If a similar outcome for longer-term loans is likely or even possible, the CFPB owes it to lenders to be transparent as to how it determined the impact upon longer-term lenders, particularly small business longer-term lenders.

IV. The Impact of the Proposal Would Be Devastating, Not Only to Small Lenders, But Also to Families, Communities, Tribes, and Minority-Owned Businesses

Simply put, if the CFPB adopts the Proposal in its present form, and if the Tribe decides to apply the principles of the Proposal to the Business, then the Business will cease to operate.

The loss of a small business like ours may seem inconsequential to regulators at the CFPB who live and work in gleaming offices within the booming metropolis of Washington, D.C. However, the impact of such a loss is far more profound to those of us who live and work in less affluent parts of America, including remote, rural areas where jobs are scarce and well-paying jobs are even scarcer. In these areas, businesses that SBREFA classifies as "small" are, in fact, "big." The loss of those businesses would be significant, not only to the employees of the businesses, but also to their family members and other members of their communities, each of whom are themselves consumers and worthy of protection.

For tribally-owned businesses like ours, the impact of the Proposal would be especially severe. The Tribe uses the revenue we generate from the Business to directly and substantially support our people, many of whom are unemployed and otherwise impoverished. E-commerce, and our installment-lending Business

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specifically, is a ray of hope for our community, which suffers from historically high unemployment (exceeding fifty percent). The Business employs the Tribe's citizens and members of the community, and the revenues it earns support additional employment opportunities with our other businesses. Furthermore, our e-commerce and installment-lending Business provides its employees with the opportunity to gain valuable skills and knowledge about an innovative business to which they otherwise would otherwise not be exposed. Given the remote rural location, not proximate to a major population center, the Tribe's citizens do not have other significant opportunities for employment and resources outside of the Tribe's reservation. The Tribe has made the most of its rural resources, but the Tribe must utilize commercial enterprises, as extensions of the Tribal government, to provide employment and growth opportunities for its people and its community. The revenues from the Business support the Tribe's economy, allowing us to diversify, support other economic growth (such as our IT and construction businesses, which I also oversee), provide cutting-edge employment opportunities to Tribal citizens, and, ultimately, relief to the Tribal government budget in order to enhance essential government services such as healthcare, policing, judicial, social and educational services to the Tribe's citizens.

In saying this, we do not mean to suggest that the plight of the Tribe provides it with a license to earn money by any means necessary, and even when doing so harms consumers. However, the CFPB does not have a license to protect consumers by any means necessary, particularly when doing so harms small businesses, their employees, their families, their communities, and their tribes.

In any event, we do not believe our Business harms consumers and we do believe that we have been very cautious and conservative in structuring the Business. Quite simply, we need the Business to last for a long time to meet the needs of the Tribe and we know the best way to achieve longevity for the Business is to treat our customers well and earn their repeat business and good references. We do this by employing rigorous consumer protection measures and by responding to customer inquiries and complaints in a manner that is favorable for the customer. We note that the Business receives a very small number of customer complaints, including through the CFPB Portal.

We also note that tribal lenders are among the most diverse providers of consumer financial services in an industry that is sorely lacking in diverse ownership and management. Indeed, Congress expressly charged the CFPB and other financial regulators with establishing Offices of Minority and Women Inclusion to promote diversity in their own ranks as well as among the ranks of the entities they regulate. The fact that the Proposal would have the effect of putting most, if not all, tribally-owned lenders out of business should be a cause of grave concern not only to the CFPB's management, but to its Office of Minority and Women Inclusion as well. The CFPB should be looking for ways to help tribal lenders flourish, not to destroy us.

V. The CFPB Should Withdraw the Proposal With Respect to Longer-Term Covered Loans

Finally, we wish to respond to the CFPB's solicitation for recommendations to less costly and burdensome alternatives to the Proposal. There are myriad ways to make this Frankenstein regulatory monster less grotesque and wantonly destructive than it is presently, including by eliminating the requirement to verify incomes and major financial obligations and by providing clear regulatory safe harbors for lenders. However, we think that the best approach to address the shortcomings of this Proposal is a simple one: the CFPB should honor its pledge to be a "data driven" agency. That is, we recommend that the CFPB withdraw this ill-founded and ill-conceived Proposal in its entirety – or at least with respect to longer-term covered loans – unless and until it accumulates enough data to: (1) competently understand how the longer-term lending industry works; (2) assess whether and to what extent longer-term loans objectively harm consumers; (3) devise appropriately

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tailored regulatory solutions that fairly address the interests of both consumers and lenders; and (4) test those solutions to ensure that they are likely to be both effective and viable.

VI. **Conclusion**

I sincerely hope that the CFPB will consider this recommendation and not succumb to political or policy pressures to act hastily in promulgating its rule. The stakes for both consumers and the industry are much too high for the CFPB to get issue this wrong.

I thank you again for the opportunity to participate in this SBREFA panel. I am available to further discuss any of my oral or written comments to the Proposal.

Respectfully submitted,

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Via email (cfpb_payday_sbrefa@cfpb.gov)

Richard Cordray
Director
Consumer Financial Protection Bureau
1700 G Street, NW
Washington, D.C. 20552

Dear Director Cordray:

Thank you for selecting me and LendUp to serve as a Small Entity Representative ("SER") before the Small Business Review Panel (the "Panel") on April 29, 2015 in connection with the Consumer Financial Protection Bureau's ("CFPB's") efforts to make rules regarding payday, vehicle title and similar loans. I am writing to elaborate on comments I made before the Panel.

There are two aspects of the proposals that are most troubling to me. The first relates to the frequency and timing limitations on consumer access to short-term loans, even for those consumers using the product responsibly and paying off their loans in full. These limitations seem without any academic or legal justification, and as a result would lead to higher cost of credit for consumers, would deprive consumers who use credit responsibly of an array of safe and regulated credit options and would disproportionately hurt the thousands of small businesses serving this market compared to the largest existing businesses. The second aspect relates to the ability to repay requirements proposed. As written these requirements would impose costs on the origination of short-term loans that likely could only be borne by very large lenders with significant scale. This requirement also presents a number of operational oversights or problems in practice.

Together, these two aspects of the proposals would harm consumers, stifle innovation, reduce access to credit and impose costs on small businesses that would force them to exit the market leaving only the large incumbent participates to *potentially* survive. In proposing regulations that would have this type of impact, it appears that the CFPB has completely ignored or not provided a rationale under its obligations under the Dodd-Frank Act to consider the benefits, costs and credit access implications of its rules. *See* 12 U.S.C. § 5512(b)(2).

While I offer my thoughts on how to improve the proposals below, I urge the CFPB to shelve these current proposals, specifically study the impacts to small and licensed-online lenders, consider additional independent academic studies which disagree with the effects of these proposals, and think creatively about ways to protect consumers without eliminating consumer choice, incentives to innovate, and openly eliminating an entire industry of small, state regulated, legal businesses.

The Frequency and Timing Limitations on Short-Term Loans are Overly Restrictive

Proposal

The short-term loan ability to repay ("ATR") proposal would prohibit a lender from making a loan to a consumer within 60 days of a prior loan absent documentation showing an improvement in the consumer's financial circumstances. For the vast majority of consumers who do not get regular pay increases this is effectively a 60-day cooling off period. The alternative proposal would prohibit a lender from making a short-term loan if the consumer has had short-term loans for more than 90 days over the past 365 days or has had more than six short-term loans over the past 12 months. The alternative rule would also require that the principal balance of each loan made within 60 days of a prior loan be reduced by one third.

Problems with proposal

These frequency and timing limitations would punish consumers using credit responsibly, deprive consumers of access to emergency credit, cause unintended harm to consumers, and drive small players out of the market by imposing unnecessary additional costs that could only be absorbed and implemented by large businesses, plus revenue restrictions for even responsible customers that would exceed any revenue potential, thus legislating small businesses, out of business.

Perversely, the timing and frequency limitations punish consumers who use credit responsibly. Consider a consumer who experiences a short-term emergency, borrows $200 for two-weeks, repays his or her loan in full and, three weeks later, experiences another short-term emergency for which $300 is needed. Under the ATR proposal, the consumer would be prohibited from obtaining a second loan unless he or she has received a raise. Under the alternative proposal, the consumer could get another loan, but he or she would be limited to borrowing $133 (or two-thirds of $200) pursuant to the "tapering" feature. This makes little practical sense. A consumer who borrows only what he or she needs (i.e., $200 for the first emergency) and pays back his or her loan successfully is either prevented form obtaining a subsequent loan or is eligible for a loan that is much smaller than then he or she previously repaid responsibly. This structure encourages consumers to either borrow more than they need (to preserve the ability to get a subsequent loan of a sufficient amount in the future) or to delay repaying a loan in order to have credit in case another emergency arises. This proposal seems to ignore the data CFPB itself published that shows a majority of short-term borrows successfully use two or fewer loans in a sequence (CFPB Data Point: Payday Lending, March, 2014) without such restrictions on verifying improvements in financial circumstances in place. For the 25% of households that use alternative financial services (FDIC National Survey of Unbanked and Underbanked Households, October, 2014) this proposal is not a protection, it is an unnecessary restriction and CFPB has not made it clear what solutions will be in place for those consumers. This proposal does not protect consumers.

The example above also illustrates a flawed assumption underlying the CFPB's proposal, i.e., that consumers experience liquidity shortages according to some preset schedule. The problems giving rise to the need for a short-term loan (e.g., a car repair, a medical bill, a new hot water heater) do not space themselves out evenly during the year. They are random occurrences that can happen in quick succession or not at all. The CFPB has presented no evidence that emergency expenses or household budgets operate on a 60-day cycle. Similarly, it is not clear why having a short-term loan for 120 days during the year is more harmful to consumers as compared to their having one for 90 days.

The timing and frequency limitations may also encourage lenders to make shorter-term loans at higher rates (at least where such loans are permissible). Under the ATR proposal, there is effectively a 60-day cool after each loan. As a result of the significant costs associated with verifying consumers' ability to repay (discussed below), lenders will be under pressure to recoup origination expenses by making multiple loans to consumers on whom they have already completed an ATR analysis. It is possible that a mandatory database, or CRA reporting and query requirement, would make this situation worse, since borrowers would not be able to work with a second lender if the initial lender is shown as having a loan out with the borrower. This is a situation that is reported to happen frequently in states where a dedicated, proprietary database is mandatory and the database is either not run in accordance with commercial standards or there is lack enforcement of lender reporting (the lenders "slow" reports to lock-up customers). Large lenders that have significant market presence have a marked advantage over smaller, upstart innovative lenders due to this situation. Finally, A lender making two-week loans with 60-day cooling intervals will be able to make roughly two more loans per year more than a lender making 45 day loans with 60-day cooling intervals. As a consequence, there will likely be fewer short-term loan products with terms in excess of two weeks (at least in the majority of states where rates are authorized on a per $100 basis for the term of the loan) and there will be more consumers borrowing beyond their needs in an effort to preserve credit options. Facing higher origination costs (and fewer competitors), any surviving lenders will also likely raise their prices. Needless to say, reduced flexibility and higher prices are not good for consumers.

Additionally, the utility of the exception for improved financial circumstances in the ATR analysis will likely be miniscule. Not only will such positive changes be rare, if the consumer's financial situation improves, it is less likely he or she would need a second or third loan at all.

Finally, the timing and frequency limitations disproportionately hurt small businesses. In general, smaller businesses have fewer product lines, operate in fewer states and, as discussed in more detail below, have a higher cost structure due to the inability to negotiate high-volume discounts and scale revenues against fixed costs. This means that such businesses have the ability to offer small dollar loans as "loss leaders", or products that are offered at an economic loss, in order qualify a consumer for, or induce a consumer to purchase, a more profitable product. The CFPB's own estimates show a 50% to 80% contraction in payday loan volume. *See* Outline of Proposals at 43. Small businesses simply cannot withstand such a reduction in sales of their core (or only) loan product. Any remaining volume will be insufficient to offset the high fixed costs of operation. The end result would be that larger lenders would gain more market share at the expense of small businesses shutting down.

An alternative approach that accomplishes the CFPB's stated goals

As noted above, my view is that there is insufficient data to justify *any* timing or frequency limits, or precedence that removing customer credit options and eliminating the small businesses that provide these services, will reduce customer harm. If pressed, however, for an alternative approach that would reduce the chances of consumers using short-term loans in an irresponsible manner and lessen the burden on small businesses, I would propose the following:

In the event a consumer obtains a loan and pays it back in full with his or her own income (i.e., not by way of a refinancing, rollover or another loan), there should be no subsequent substantive limitations on the consumer's ability to obtain another loan. If the consumer has trouble repaying, he or she would be provided a mandatory disclosure alerting him or her to the availability of an "off-ramp" under which the balance of the loan could be repaid in amortizing installments. If the consumer uses the off ramp, he or she would be prohibited from obtaining another similar loan for a certain length of time (determined by academic research), or until he or she completed a financial education course or received financial counseling. There is precedent for financial counseling in connection with higher-cost loans, as Regulation Z requires it before a consumer gets a high-cost mortgage. *See* 12 C.F.R. § 1026.34(a)(5). At LendUp we see that consumers who take credit education courses have a 20% higher repayment rate than those who do not.[1]

Research suggests that properly formulated disclosures can restrain potentially excessive payday loan usage to an extent. *See, e.g.,* Marianne Bertrand & Adair Morse, Information Disclosure, Cognitive Biases and Payday Borrowing[2] at 1 (2009)

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[1] *Available at* https://www.lendup.com/blog/category/Financial%20Education.html

[2] *Available at* http://bfi.uchicago.edu/RePEc/bfi/wpaper/BFI_2009-007.pdf.

("Overall, our results suggest that consumer information regulations based on a deeper understanding of cognitive biases might be an effective policy tool when it comes to regulating payday borrowing, and possibly other financial and non-financial products."). We understand of course, disclosures cannot take away the need for payday loans, but can provide a better understanding of the true cost for when continued non-repayment circumstances arise. Meanwhile, the FDIC requires state non-member banks under its supervision to provide notices to consumers who incur repeated overdraft fees. *See* FDIC Compliance Manual[3] at V-13.9 ("When evaluating meaningful and effective follow-up, examiners should consider the institution's overall process for providing notice to excessive use customers and the circumstances at that institution."). It seems to me that some form of carefully tailored and vetted disclosure to consumers who use payday loans repeatedly or over an extended period of time would be a much better course than arbitrary and pre-defined limits which do not change demand but instead forces customers to apply via less regulated options[5] and penalize those who responsibly use and need credit.

This approach encourages lenders to make loans only to those consumers who can repay them and would not discourage lenders from making longer-term loans (or, more importantly, loans with terms that meet consumers' needs). It also encourages consumers to repay their loans on time to preserve access to credit. Consumers who are unsuccessful are placed in a "penalty box," which they can exit by taking a financial education course or "cooling" for a prescribed period. As such, it encourages financial literacy and responsible use of credit. This approach is also much easier to understand and operationalize. (Another problem with the proposals is that they appear to be written by lawyers for lawyers. It is not clear how a small business could navigate or evaluate the proposals without sophisticated legal counsel and it is not clear how these complicated rules can be explained and disclosed to consumers – it almost seems to be setting up a Unfair, Deceptive or Abusive Acts and Practices (UDAAP) issue.)

The way to graduate consumers into less expensive forms of credit is to give them the ability to establish a history of continued successful loan repayments. According to Fair Isaac Corporation, a record of on-time payments is the single most important factor in a consumer's FICO score. *See* myFICO Website, What's In My FICO Scores[4] (explaining that 35% of a FICO score is driven by payment history). The CFPB's proposal makes it much more difficult for borrowers to establish a track record of consistent, on-time payments. In this way, it makes it harder for consumers to improve their credit and get access to lower cost credit. According to research conducted by the Aspen Institute Microenterprise Fund for Innovation, Effectiveness, Learning and Dissemination, a low credit score can cost working families more than $250,000 over the course of their lifetime. *See* Elaine Edgecomb, In Today's Economy, a Good credit Score May Be a Business Owner's Most Important Asset[5] ("People with a weak credit rating will pay

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[3] *Available at* https://www.fdic.gov/regulations/compliance/manual/pdf/V-13.1.pdf.

[4] *Available at* http://www.myfico.com/crediteducation/whatsinyourscore.aspx.

[5] *Available at* http://www.justinepetersen.org/support_us/why_justine_petersen/.

approximately $250,000 more in interest throughout their working lives than those with stronger scores.").

A history of on-time payments "de-risks" a borrower in the eyes of creditors. Creditors typically respond to this by offering such "de-risked" consumers lower rates and a wider variety of products. What little remains of these dynamics in the market for short-term loans would disappear under the CFPB's proposals. Not only would a borrower have no way of "de-risking" herself through consistent, on-time payments, but she would have fewer opportunities to pay back on time and would be more likely to miss payments on other obligations as a result of the dearth of credit options. In short, a lack of credit begets a lack of credit.

A simplified approach that focuses on improved disclosures, encourages responsible product use and includes protections, such as mandatory off-ramps and cooling periods or financial education for consumers who get into trouble, would be a viable option that preserves consumer access and choice while still allowing small businesses to compete.

The Income Verification and Ability to Repay Requirements are Excessively Burdensome on Small Businesses

Proposal

Under the proposals, regardless of which short-term loan alternative a lender chooses, it must gather information on and verify a consumer's income using bank statements, benefit statements or paystubs. Additionally, a lender must report loan information to "all applicable commercially available reporting systems." If a lender chooses the ATR option, it must additionally gather information on and verify the consumer's major financial obligations and borrowing history on covered loans and use this information to confirm that the consumer can make his or her loan payment. In connection with the ATR alternative, the CFPB has considered requiring the analysis of major financial obligations beyond other loans, including, for example, utility payments, medical expenses and other expenses. The CFPB believes the cost of these activities will be minimal (i.e., just a few dollars per consumer report) and that they will take just a few minutes of additional employee time.

Problems with proposal

As a preliminary matter, the assumption underlying the ATR scheme is that lenders making short-term loans do not evaluate an applicant's ability to repay. For an online lender, this could not be further from the truth. Online lenders do not have face-to-face interactions with their customers and do not have operations in the same town as their customers or their customers' employers. As such, online lenders generally perform

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[5] *Available at* https://www.nonprime101.com/wp-content/uploads/2013/10/Does-State-Regulation-of-Small-Dollar-Lending-Displace-Demand-to-Internet-Lenders-1.22.15.pdf

rigorous fraud screening and underwriting. The CFBP's proposals do not take into account this reality.

While there was some suggestion when the panel met that the CFPB might be willing to consider a less rigid income verification procedure, the Outline of Proposals provides (p. 11) that income must be verified by review of a bank statement, pay stub or benefit statement. This requirement is sure to lead many consumers to abandon applications, particularly for online loans and for consumers without ready access to equipment and software to facilitate the scanning or photographing and transmission of paper materials. This is a huge addition of direct costs, in addition to substantial upfront implementation costs, and ongoing technology, compliance, monitoring costs that have not been proven to add any additional protection from consumer harm. But does increase financial burden to small and licensed online lending companies unnecessarily.

Even if a consumer persists and submits the required information, there is no guaranty it will produce *any* consumer benefit or better underwriting. In a matter of minutes and at the cost of just a few dollars, a consumer with very little effort or technology savvy can create a fake a paystub online. *See, e.g.,* Check Stub Maker or Fake Pay Stub Websites.[6] As well, this materially impacts low income communities who are less likely to own scanners, fax machines or smart phones.

LendUp data scientists conducted an experiment to test which type of income information—self-reported vs multiple third party income verification services (i.e., from a consumer report). We found that self-reported income was the more accurate predicator of ability to repay. [See Exhibit A] This makes sense as a consumer knows their income, in which relying only on physical paystub income, will understate their actual income sources and thus deny them the ability to borrow what they can afford, need or want to borrow.

LendUp estimates that verifying the income of an applicant through a review of bank statements, pay stubs or benefit statements would add roughly $55.95 to the cost of processing each application. This estimate includes the cost savings of replacing our American employees with cheaper overseas call center employees, where the cost to review, call or verify income from employers is estimated to be $5 per application. If lenders could rely on third party income verification, the cost of such a service would be roughly $2 per application. Since coverage of third party income verification systems is limited to approximately 10% of applicants, we calculate a blended estimate of $4.70 for income verifications (i.e., $2 * 10% + $5 * 90%). If we take an online industry approval rate of 12%, we get to $29.38 per booked loan (i.e., $4.70 / .12). But, we expect to experience a drop-off or abandon rate of approximately 30% among consumers who are asked to verify their incomes, which means that approval rate would drop to 8.4% (i.e., 12% * (1-30%)). This 8.4% rate divided into the $4.70 would result in a total cost per booked loan for income verification of $41.96. (We are aware of small, state-licensed online lenders that cannot afford to invest in sophisticated underwriting

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[6] *Available at* http://www.checkstubmaker.com/; http://www.fakepaystub.com/.

systems. These players have approval rates of 6%. For them, income verification would cost as much as $111.90. We are also aware that a large online lender that can staff a full-time overseas call center could likely perform income verification for as low as $2 per application, which would equate to an income verification cost per booked loan of $23.81.) Our study clearly suggests that the expense associated with the CFPB's income verification proposal does not add any statistical value, which adds unnecessary costs which can greatly exceed the revenue, and are not proven to protect from any consumer harm. Going through the trouble and bearing the costs of verifying income will not improve (and may worsen) outcomes by forcing lenders to lend more money, at higher rates, for longer periods of time for consumers who might only need to borrow $100 to solve their emergency.

Importantly, credit card and insurance data we have seen suggests that approval rates, as suppressed by the new rules, will not improve over time as the market "adjusts" to their impact. That is, we do not expect that approval rates, after dropping immediately after the proposals take effect, will rebound to pre-proposal levels. The reason for this is that lenders will be forced to market their products to a wider range of consumers in an effort to make up for loans that cannot be made to consumers locked out of the market by the ATR rules and/or frequency limits. As lenders cast a wider marketing net, consumers who do not have prior experience with short-term loan products (or the CFPB's rules) will apply and these new applicants will be just as likely to fail the more stringent underwriting screens as the population of applicants who seek loans shortly after the rules take effect. Just as in the card and insurance markets, larger entities will have a significant advantage because of the lower per unit costs of marketing and underwriting. Such entities can also more affordably "prescreen" in an effort to boost approval rates since prescreening costs per unit decrease as scale increases.

The CFPB also misses the mark when it comes to the requirement to review credit bureau reports to verify debt obligations. The CFPB estimates that online lenders would be able to verify applicant's debt obligations by purchasing some type of consumer report that costs just a few dollars per applicant. As an initial matter, a report on a consumer's payday loans would be a "specialty consumer report." For a small online lender, the cost of such a specialty report would be approximately $2. (A larger online lender with greater scale could probably obtain such a report for an amount closer to the CFPB's estimate of $1.) In an ideal world, every applicant for an online loan would qualify for a loan. However, this is not the case. As noted above, ***without*** any onerous ATR or income verification requirements, state-licensed online approval rates range from 6% to 12%. As a consequence, a lender would need to order reports on applicants who are ultimately denied credit. This means that the cost to a small business of pulling a specialty bureau for each successful ***loan*** is equal to the cost of the report, times a fraction equal to the total number of applications divided by the number of approved applications. Assuming the better case scenario of approval rate of 12%, the cost per loan of just the specialty report would be **ten times the CFPB's estimate**, or approximately $23.81. This is on top of the costs associated with complying with the FCRA with respect to these reports. These costs are discussed in more detail below. (A larger state-licensed online lender's cost for the specialty bureau would likely be $0.80, which has a fully loaded cost per booked account of $9.52). If we added the required income verification, we expect costs for small business to increase to $30.95 ($23.81 * 130%), approximately 15 times the CFPB's estimate.

The CFPB has forgotten to take into account serious practical problems with its ATR verification requirements. Take, for example, the requirement to verify living expenses. Two-thirds of applicants for short-term loans do not have a mortgage. *See* CFSA Website, Customer Demographics[7] (explaining that 32% of payday loan applicants own a home). Some of these applicants live by themselves and have a formal rental arrangement. However, many applicants live with parents, friends or in some arrangement that is not documented by a formal agreement. As presently described, there is no way that a lender can verify housing costs for these applicants (or thus make a covered ATR loan to them). The CFPB has not even indicated that calling an applicant's parents or friends to verify rent would suffice, and such a measure is costly (a lender would need an autodialer to do this efficiently), may take a long time (there is no rental office with normal business hours to call) and might also intrude on the applicant's privacy. LendUp estimates that verifying housing costs would add roughly $5 to the cost of each application to small businesses. To calculate again at a 16% approval rate would $31.25 for a perfect conversion, $60 for small businesses including a 30% decrease in approval rate. Some specialty data services companies have indicated they might produce a product using government data to estimate likely housing costs, these reports will have an incremental cost to lenders and they are not likely to precisely measure an expense that is subject to significant variation even at the ZIP+4 level. Manual processing would likely be required for a large percentage of applicants. The Big Three CRAs are offering services for landlords to facilitate rent payments and allow consumers to report payment history, but the coverage is very limited and would require a lender like LendUp to establish a relationship and connection to additional CRAs adding fixed costs and incremental costs for each application. Some very large lenders may be able to construct a proprietary method for validating housing costs using government data, but it is not likely a small provider like LendUp could sustain the necessary investments to do that.

The ATR approach in CFPB's proposal under consideration would require verification of Major Financial Obligations (MFOs). These MFOs can be verified using a major credit bureau, but the CFPB once again significantly underestimates the costs and difficulties of procuring such data or reports because they fail to allocate costs properly. First, while mainstream credit reporting agencies ("CRAs") may charge a large lender $1 or $2 per report, they charge smaller scale operators a fee that is closer to $4.25 per applicant (they charge individual consumer $14.95 or more to make a credit report available to a business like a landlord). Calculated on an issued loan basis (allowing for the lowered approval rate from implementing ATR changes) the cost to a small lender for validating MFOs would be $35.42 per booked account, versus that for a large lender of $8.33 per issued loan. In addition, several CRAs offer estimates of individual income

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[7] *Available at* http://cfsaa.com/about-the-payday-advance-industry/customer-demographics.aspx.

based on self-reported income in prior applications as an additional data element in a consumer credit report. The incremental cost for this data would take the total CRA cost per issued loan to $50.60 for a small business and $11.90 for a large business.

To summarize the costs, these proposed rules have not proven to reduce consumer harm, but will prove to disproportionately increase costs to small businesses between 260-535% higher than larger incumbents.

More fundamentally, the CFPB overlooks the significant burdens placed on users of credit reports by the Fair Credit Reporting Act ("FCRA"), especially small businesses who don't have dedicated in-house legal and compliance teams. Users must certify their permissible purpose to the CRA, send out notices of adverse action with CRA disclosures when they deny a consumer credit based on information in a consumer report, put into place processes for dealing with fraud and active duty alerts, have procedures for proper data disposal and process notices from the CRA regarding address discrepancies. Before it even receives information from a CRA, a lender must negotiate an agreement with the CRA, perform regulatory diligence on the CRA, build information systems to communicate with the CRA and develop a compliance management system to ensure that the lender is complying with the FCRA's user obligations. LendUp estimates that the first year (set up) costs of becoming a user of a single CRA's reports, excluding the cost of any consumer reports purchased, is roughly $10,000 of upfront direct costs, along with 6 months of legal, engineering and business development salaries of $58,333, not including benefits or incentive employee costs. The ongoing costs of each such an arrangement after that is roughly $25,000 per year. If we account for fully loaded benefits for software developers in California who can successfully build the functionality, we should add a factor of 10 to each costs, adding approximately a half a million dollars in implementation costs for our business.

The CFPB's proposal also overlooks the costs of its contemplated requirement that a lender furnish credit data to "all applicable commercially available reporting systems." Outline of Proposals pp. 13, 27. Furnishers to CRAs have even more costly obligations than users under the FCRA. Furnishers must have procedures and processes in place to, among other things, (a) ensure that the information being furnished is accurate; (b) investigate and correct disputes lodged by consumers with the furnisher; (c) investigate and correct disputes lodged by consumers with the CRA; (d) block inaccurate information; (e) handle identity theft claims; and (f) provide advance notice of a negative report. Before it even begins to furnish information to a CRA, a lender must go through the same steps it must go through to use a consumer report, i.e., it must negotiate an agreement, perform regulatory diligence, build information systems to communicate with the CRA and develop a compliance management system to ensure FCRA compliance. The CFPB's proposal would not have a small lender do this with just one CRA, but "all applicable commercially available reporting systems." In my view, this requirement places a unnecessary and extreme burden on small businesses. LendUp estimates that the first year costs of becoming a furnisher to a ***single*** CRA are roughly equivalent to getting everything setup with a bureau, i.e., $10,000 of upfront costs plus $58,333 on employee salaries exclusive of benefits or incentives. Costs to furnish to multiple furnishers would be substantially higher.

Additionally, it does not appear that the CFPB has considered the fair lending implications of its ATR proposals. It seems at least plausible that consumers receiving hard-to-verify forms of income (e.g., non-wage income, stay at home moms, low income local labor that are not paid with paystubs) are disproportionately members of protected classes. Requiring such consumers to go through a more arduous income verification process is likely to have a disparate impact. Similarly, retired consumers who may not have access to scanning equipment or a fax machine may be discouraged from applying for credit by the requirements. Overall, low income consumers who could have less limited access to more sophisticated forms of technology, such a smart phones and scanners, seem to be inconvenienced or harmed by the proposals to a greater degree than more technologically-savvy consumers.

Finally, requiring a lender to consider obligations beyond housing expenses and those listed on a standard credit bureau is without precedent for an unsecured loan. Such a detailed analysis of household expenses would be exceptionally burdensome, particularly if the lender was required to verify these in any way.

Exhibit B includes a summary of the cost information set forth above.

An alternative approach that accomplishes the CFPB's states goals

As I note above, LendUp has evidence showing that stated income is a better predictor of ability to repay. Just as our borrowers provide good information about their income, we expect that they will provide accurate information about their debt and housing obligations. Accordingly, I would urge the CFPB to reconsider the verification requirements from its proposal altogether.

More generally, I think the ATR analysis is unnecessary given the underwriting guidelines we have in place. We do not permit rollovers and, as such, we underwrite with the aim of ensuring that the consumer can repay the entire loan amount, not just make an interest payment. In short, we already do an ATR analysis that is adequate because we have strong economic incentives to ensure that our customers repay us because LendUp only makes money when customers pay us back.

If the CFPB were to force me to implement some type of income verification and ATR analysis, I would strongly advocate that it adopt the standards applicable to credit cards. As you know, under Regulation Z, card issuers are required to consider whether a consumer will be able to make his or her required minimum payments based on his or her income or assets. *See* 12 C.F.R. § 1026.51. To complete this analysis, card issuers generally use the income that is provided by the consumer on his or her application. This method of obtaining a consumer's income is expressly permitted by the commentary to the regulation, *see id*. at § 1026.51(a)(1)(i)-5.i, and certain regulators **require** card issuers to use stated income. (The rules also allow the use of modeled third party income, although some prudential regulators discourage issuers from using it.) Credit card issuers generally obtain information relating to obligations by reviewing the trade lines set forth on a consumer's credit report, which satisfies their obligations under the regulation. *See id*. at § 1026.51(a)(1)(i)-7. Additionally, card issuers require consumers to provide any monthly rental payments that they make, as this (unlike a mortgage payment), is not included on a consumer report.

If this ATR analysis is sufficient for credit card loans, including subprime loans, with much higher balances than the typical payday or title loan, it should also be acceptable for short-term loans. There is no rational basis for the CFPB to impose an ATR requirement on a small business making a short-term $100 to $500 loan that is far more burdensome then the requirement applicable for a large bank making a $5,000 subprime credit card loan.

Another option would be for the CFPB to not impose any ATR or income verification requirements on a short-term lender with below-market-average charge-offs. This would create an ongoing incentive to encourage lenders to continuously improve their underwriting models. As average charge-offs rates drop, lenders seeking to avoid the burdens of the ATR analysis would be forced to fine tune their underwriting criteria to remain below the average.

Finally, I would strongly urge the CFPB to not require furnishing to “all applicable commercially available reporting systems.” The only beneficiary of a requirement to furnish to all CRAs is the credit reporting industry. For lenders, it substantially raises costs. For consumers, it increases the number of CRAs with which they need to lodge disputes when there is an inaccuracy. And, the CFPB has not explained how this particular requirement will help consumers avoid the supposed “debt traps” giving rise to this rule-making.

Reducing Burdens and Improving Consumer Protection Through Technology

My final comment is that the CFPB should take into account, when possible, for small businesses to comply with any rules it adopts by leveraging smart phones, computers and other widely-used technology for customers and business that have access. My understanding is that the Electronic Signatures in Global and National Commerce Act (“ESIGN Act”) erects barriers to the use of such technology by, for example, requiring a consumer to consent to an electronic disclosure in a manner that reasonably demonstrates that he or she can access the disclosure. Regulation Z currently waives requirements of the ESIGN Act in connection with certain types of disclosures, such as credit card solicitation disclosures. I urge the CFPB to do the same as to any new disclosures required by its proposals. This is particularly important in connection with any disclosure requirement regarding an upcoming payment.

Conclusion

The CFPB aspires to be a “data-driven agency” that seeks to harness the power of data “to enable informed decision-making….” *See* CFPB Strategic Plan.[8] The agency’s Office of Research is staffed with “an interdisciplinary group of economists and other behavioral researchers” who appreciate that “nudges” are far preferable to outright prohibitions. *See* Office of Research Website.[9] If the CFPB is held accountable to its strategic plan, it appears that it is contemplating a complex web of regulation that lacks empirical support. Instead of ending “debt traps”, the proposal cuts off what amounts to a credit lifeline for many consumers, including those who use short term loans responsibly, and push struggling customers to less safe options as opposed to educating and rehabilitating them.

We need to protect struggling consumers from financial harm and educate them instead of removing access and choice. We need to reward responsible borrowers with better terms, not worse. As written these regulations would turn short-term, small-dollar credit into the only segment of the financial services market where paying back on-time means you have fewer options instead of more.

The Dodd-Frank Act circumscribes the CFPB’s rulemaking authority, requiring the CFPB to “consider… the potential benefits and costs to consumers and covered persons, including the potential reduction of access by consumers to consumer financial products or services resulting from such rule; and…the impact of proposed rules on covered persons, as described in section 5516 of this title, and the impact on consumers in rural areas….” 12 U.S.C. § 5512(b)(2). It appears that the proposed rulings accomplishes the opposite of what its rules are required to accomplish while not studying the effects on small businesses, licensed online lending models, or even talking directly to consumers who have little to no other alternatives, and after this proposal, will have substantially less.

By rushing the proposals of these rules the CFPB has not had sufficient time to study the extensive academic literature in this area showing small dollar credit can improve financial outcomes and reduce family stress. *See, e.g.,* J. Howard Beales, III & Anand M. Goel, Small-Dollar Installment Loans: An Empirical Analysis[10] at 4-8 (2015) (reviewing academic literature and concluding as follows: “Those who borrow repeatedly are more likely to repay their loans on average and are offered lower interest rates, indicating that at least some of these repeat borrowers are utilizing the opportunity to borrow again based on their past track record of payments.”); Jennifer

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[8] *Available at* http://www.consumerfinance.gov/strategic-plan/.

[9] *Available at* http://www.consumerfinance.gov/jobs/office-research/.

[10] *Available at* http://www.cfpbmonitor.com/files/2015/03/Navigant-Economics-Report-3.pdf.

Lewis Priestley, Payday Loan Rollovers and Consumer Welfare[11] at 2 (2014) ("[E]xploiting interstate differences in rollover regulation, I find that, while regulation has a small effect on longer-term usage patterns, consumers whose borrowing is less restricted by regulation fare better than consumers in the most restrictive states, controlling for initial financial condition."); Adair Morse, Payday lenders: Heroes or Villains?, 102 J. of Fin. Econ. 28-44 (2011) (concluding that areas with payday lenders recovered more quickly from natural disasters, increasing welfare by "enabl[ing] individuals to smooth liquidity shocks without incurring the larger costs of bouncing checks, paying late fees or facing service suspensions, evictions or foreclosures"); *see also* Donald P. Morgan, Michael R. Strain, and Ihab Seblani, How Payday Credit Access Affects Overdrafts and Other Outcomes. Journal of Money, Credit, and Banking (2012) (finding robust evidence that the number of returned checks and overdraft fee income at banks increased in certain states after payday loan bans were enacted, as did complaints against lenders and debt collectors); Dean S. Karlan and Jonathan Zinman, Expanding Credit Access: Using Randomized Supply Decisions to Estimate Impacts, Review of Financial Studies (2010) summarizing results from an experimental study which granted small, short-term, high-rate installment loans to a random sample of marginal rejected applicants at a South African lender, and finding greater levels in various self-reported measures of well-being and longer-term improvements in credit scores among applicants who obtained those loans than among applicants who did not receive such loans.

The CFPB has not demonstrated he harm caused by charge-offs, bankruptcies or the costs imposed on society through externalities spike at any of these points. Nor has it done or shared a cost-benefit analysis that weighs the obvious consumer benefits of these products (e.g., avoidance of late charges, bank NSF fees or utility shutoffs) against the costs incurred by borrowers. The remarkable consumer value of payday loans, evidenced both by loan volume and by consumer studies and reports, suggests that payday borrowers, at least, believe that the costs of these loans are more than compensated by their benefits. In lieu of sweeping prohibitions and arbitrary cut-offs, I submit that any regulation should be narrowly tailored to address specific consumer injuries that are not outweighed by compensating benefits.

While we are in support of limitations to ACH returns to protect consumers from incurring repeated overdraft fees from banks (to which lenders make no money, and in fact traditionally pay a fee), these seem unnecessary to set an arbitrary number of times when on September 18, 2015, the NACHA Rules will be amended to include a 15% overall return rate cap. Since debit entries that have been returned once are more likely to be returned again if reinitiated, lenders will be forced to significantly modify their procedures for reinitiating entries to remain under the new 15% cap. This will have a significant impact on approval rates, as lenders seek to avoid making loans to consumers with a history of returned debit entries. The CFPB's proposals ignore this important development and do not even consider it in its simulations.

[11] *Available at* http://ssrn.com/abstract=2534628.

It seems while well intentioned, the current proposed rulings overlooked well respected economists and market developments when creating arbitrary cutoffs. **Before the CFPB adopts rules which will eliminate a whole category of consumer financial products and shuts down small, local businesses in communities for which there are little to no regulated alternatives, more time for more research should be required.** The CFPB's own simulations show that short-term loan volume would decrease by as much as 84% if the proposals are adopted. (*See* Outline of Proposals at 43). The anticipated contraction in the industry will disproportionately impact smaller lenders, which have much lower economies of scale and fewer product offerings over which to spread increased origination costs. If adopted, the CFPB's proposal will effectively legislate a monopoly. Very large lenders and lenders that operate without state licenses will come to dominate. A report on online lender by The Pew Charitable Trusts found that online loans made by entities not licensed by the states in which they operate are substantially more expensive than such loans made by licensed entities. *See* The Pew Charitable Trusts, Fraud and Abuse Online: Harmful Practices in Internet Payday Lending[12] at 2 (2014).

In sum, the proposals represent a clear and immediate threat to the viability of small businesses in the short-term lending industry, many small lenders who have been in local communities for decades, at times the only credit provider for miles. These rules will kill small, state-licensed online lenders that currently provide a safe and convenient source of credit in bank and credit "deserts" (i.e., places where banks and creditors no longer operate because it is not profitable to do so) to what the CFPB has termed "credit invisible" consumers. *See* CFPB Office of Research, Data Point: Credit Invisibles[13] at 1 (2015). I would hope that the CFPB does not re-create the situation businesses experienced following the Qualified Mortgage rule implementation where Congress found that "the new mortgage rules impair the ability of lenders to work with borrowers on an individual basis" ("How Prospective and Current Homeowners Will be Harmed by the CFPB's Qualified Mortgage Rule," U.S. House of Representatives Committee on Financial Services Hearing, Jan. 14, 2014) casting serious doubt on the CFPB's ability to predict the very "market dynamics" that members from CFPB assured the public would provide solutions for borrowers then, just as they have in meeting with industry on PayDay loan rules now.

Agencies that in the past have failed to modify their rules in response to highly negative feedback from their SBREFA panels (like the feedback the CFPB has received regarding its proposals) have invited Congressional resolutions of disapproval, which, in

[12] Available at http://www.pewtrusts.org/~/media/Assets/2014/10/Payday-Lending-Report/Fraud_and_Abuse_Online_Harmful_Practices_in_Internet_Payday_Lending.pdf.

[13] *Available at* http://files.consumerfinance.gov/f/201505_cfpb_data-point-credit-invisibles.pdf.

[13] *Available at* http://ssrn.com/abstract=590843.

turn, resulted in the complete invalidation of a finalized rule.. *See, e.g.,* Act of Mar. 20, 2001, Pub. L. No. 107-5, 115 Stat. 7 (invalidating the Occupational Safety and Health Administration's rule relating to ergonomics). *See also* Stuart Shapiro, The Role of Procedural Controls in the Ergonomics Rulemaking at 9 (2004)[13] (describing that the small business community was "nearly uniform in their opposition to the ergonomics standard" and explaining that OSHA did not make substantive changes following the SBREFA panel).

I respectfully urge the CFPB to reconsider its proposals in light of their fatal impact on small business and on the availability of consumer credit.

If you have any questions regarding my proposals or the data that I have supplied, please do not hesitate to contact me.

Sincerely,

Sasha Orloff
Chief Executive Officer
LendUp

Mr. Orloff included the following items in his written feedback to the Panel:

1. LendUp, “Results of Study of Self-Reported Income vs Third Party Income.”
2. LendUp, “Estimated Costs of Implementing Income Verification and ATR Proposal for a Small Lender.”

Citizens Savings & Loan Corporation's

Written Comments

for the

Small Business Advisory Review Panel for Potential Rulemaking for Payday, Vehicle Title, and Similar Loans

Submitted

May 8, 2015

Contents

Citizens Savings & Loan Corporation's written comments for the Small Business Advisory Review Panel for Potential Rulemaking for Payday, Vehicle Title, and Similar Loans

Introduction

The Consumer Financial Protection Bureau's (CFPB) stated objective of the proposed rules for payday, vehicle title loans, and similar loans is to protect consumers from the harmful characteristics of these types of loans. Payday, vehicle title loans, and similar loans all have repayment schedules that are typically three months or less consisting of one to three payments and may include a balloon payment. The reference in the proposed rules to high-cost installment loans states these loans "have multiple payments, often over several months". Other references, and alternative options in the proposed rules, refer to longer-term loans of $200 to $1,000 with loan terms from 45 days to 6 months. There is no reference in the proposed rules to a loan with a term greater than 6 months.

Citizens Savings and Loan Corporation ("Citizens") does not make payday, vehicle title, or "high cost" installment loans as referenced in the proposed rules. We make traditional installment loans (TILs) with terms of 12 to 60 months. The broad scope of these rules, though, will capture significant percentage (estimate of 25% to 35%) of our loans and the loans of other small business lenders that make TILs. The proposed rules will impose significant costs and burdens upon us, and all small businesses that make loans covered by these rules.

We understand the CFPB's concerns with payday, vehicle title, and similar loans. The following are our comments and suggestions of how to accomplish the primary objective of the rule in a manner that will reduce the cost and regulatory burden on small businesses that make longer-term covered loans as defined in the proposed rules. Our perspective is primarily from a TIL business model, rather than a payday or vehicle title loan business model, but several of our recommendations will lessen the compliance burden for all small business lenders covered under these proposed rules. We have provided a summary of our comments and recommendations followed by a more detailed description. We have also included background information on traditional installment loans and how they differ from payday and vehicle title loans.

Summary of Comments and Recommendations

Scope and Definition of Covered Loans:

The CFPB has proposed a definition of a longer-term covered loans as a loan that has an "All-in APR" in excess of 36%, and the lender either has access to the customer's deposit account or has a non-purchase lien on a vehicle to secure the loan.

The All-in APR is only being used as a threshold for this rule. Since its only purpose is a threshold, the use of the Truth in Lending (TILA) APR as a threshold would be much less of a burden than an All-in APR and will accomplish the same goal. The TILA APA is already used by all lenders. An All-in APR is not widely-used or incorporated in lending platforms and data systems. This would save us, and all small business lenders, the expense of creating and programming a new calculation in our data systems solely for the threshold definition. It will also reduce the amount of training associated with implementing the rule.

The proposed interest rate threshold of 36% will subject a substantial number of small business lenders to these rules who do not make payday, vehicle title, or similar loans. For the two-week term typical of a payday loan, their fees and interest equate to an APR ranging from 391% - 521%.[1] A threshold of 36% is too low for the scope of this rule. Options to limit the scope of the proposed rules are included in the Detailed Description section under the Scope and Definition of Covered Loans.

The inclusion of access to the customer deposit which is completely at the customer's option (especially one-time over the phone type ACH drafts) as a parameter for a covered loan causes an unneeded burden and a compliance issue. This burden and compliance issue can be lessened by excluding access to a deposit account which is at the customer's discretion from the definition of access to the customer's deposit account. An example of the compliance issue is in the Detailed Description under the Scope and Definition of Covered Loans.

Ability to Pay and Reporting Covered Loans:

We agree loans should be underwritten primarily on the customer's ability to pay. The ability to pay involves a variety of factors. Therefore, the ability to pay underwriting requirements need to be flexible, reasonable, and allow for the consideration of all related factors - the totality of the borrower's circumstances. If not, the ability to pay rule will create a significant unnecessary burden on all small businesses that make covered loans.

The proposed requirement to report covered loans to all applicable commercially available reporting systems has the potential to create a significant cost and burden to all small businesses who make covered loans. There is no approximate number of applicable companies stated. There could be hundreds of such companies. Each reporting company is likely to have their own computer protocol. This will require special programming and set-ups to interface with each company. The cost of programming our system to interface with all such companies would be substantial. This cost and burden can be reduced by changing the requirement in the proposed rules to report to one applicable reporting company servicing the lender's trade area, requiring the big three credit bureaus to accept payday and vehicle title loan history, or requiring all credit reporting agencies to use a standard electronic format and limiting the reporting to no more than three such companies.

Limitations on Re-borrowing:

The CFPB's objective of placing restrictions on refinancing of covered loans is to prevent a "cycle of debt" caused by multiple refinancing of payday and vehicle title loans. The refinancing of TILs with terms of 8 months or greater, that fully amortize over the loan term with a fixed rate, does not have the harmful characteristics of payday and vehicle title loans. TILs should be excluded from the proposed limitations on re-borrowing.

The CFPB did not define the meaning of delinquent, substantial cash, and default as they relate to the proposed rules. It will be very difficult to establish a definition of delinquency and default that works for payday and vehicle title loans, and TILs. They are too different. If TILs are not excluded from covered

[1] CFPB Short-Term, Examination Procedures Small-Dollar Lending. September 2013.

loans by narrowing the scope of the proposed rules, then the burden of the proposed rules should lessened by creating a separate limitation on re-borrowing provisions that are tailored to the type of loan. This will lessen the cost and burden of the application of the proposed rules on TILs, while maintaining the CFPS's objective. This rule, as written, will prevent refinancing that is to the customer's benefit. Examples are in the Detailed Description section under Limitations on Re-borrowing Covered Loans.

Payment Collection Practices:

The proposed three-day notice for payments made by access to a customer's deposit account creates a burden for both the small business lenders and their customers. This primary objective of this requirement can be accomplished by requiring the notice only when a deposit account is being accessed for payment on a date other than the date (or next business day) authorized by the customer; if the authorization provides for a blanket ability to access the deposit account; or access to the deposit account is required by the lender.

Effect of Compliance on Small Businesses:

New rules and regulations are more of a burden on small businesses than large businesses. Small businesses, like Citizens, do not have separate departments or designated staff who devote their full time to the process of complying with a new rule or requirement. Small business owners and officers must devote their time to train and implement the new compliance procedures. Upper management in larger companies can delegate these responsibilities to other employees and continue to focus their time on normal business issues.

Large companies obtain more favorable pricing due to their volume. Their size and economy of scale provide a cost advantage in comparison to a small business. Therefore, the cost of implementing new rules and regulations has a greater adverse effect on small businesses.

General Statement

The CFPB is proposing to reduce the harm caused by payday, vehicle title, and other similar loans by requiring the lenders who make these types of loans to consider the customer's ability to pay and credit history; by limiting unexpected withdrawals from the customer's deposit accounts; by restricting refinancing that contributes to a cycle of debt; and by requiring covered loans to be submitted to a credit reporting agency.

Citizens, and other small business traditional installment lenders, do not make these types of loans. We evaluate the customer's ability to pay and their credit history. We report the borrower's history to major credit bureaus. The refinancing of a traditional installment loan does not contribute to a cycle of debt. We do not require access to a deposit account for repayment. Our rates are not "high cost" in comparison to the rates of payday loans, vehicle title loans and similar loans which are the focus of the proposed rules.

The scope of the proposed rules, though, includes a significant percentage of our loans as covered loans and imposes a burden on our business, and other small businesses, to address problems that do not exist with our loans. The objective of the proposed rules can be accomplished, and the regulatory burden lessened on us and many small businesses making TILs, by narrowing the scope of the proposed rules to exclude loans that are not payday loans, vehicle title loans, or short term (6 months or less) installment loans.

I understand the CFPB's concern with the morphing of payday type loans into installment loans. All references in the proposed rules are to loans with terms of six months or less. Citizens, and other small business TILs do not make loans with terms of 6 months or less. By capturing such a large portion of the traditional installment loan market, this proposed rule exceeds its objective to address payday, vehicle title, and similar loans and becomes a traditional installment lending rule in addition to a payday and vehicle title rule. If CFPB has concerns and issues with traditional installment loans, the concerns and issues should be addressed under a separate traditional installment lending rule.

Detailed Description of Comments and Recommendations

Scope and Definition of Covered Loans:

The CFPB states that its proposed rules would cover payday loans, vehicle title loans, and certain high-cost installment and open-end loans. We understand that the CFPB wants to cover payday and vehicle title loans, as well as "morphed" payday and vehicle title loans. We agree that the CFPB's proposed rules should cover these morphed products. The definition of a short-term covered loan is clear and captures most payday and vehicle title loans. However, the proposed rules casts too broad a net for loner-term covered loans.

The CFPB's primary objective is to reduce the harm caused by payday, vehicle title, and other similar loans by requiring the lenders who make these types of loans to consider the customer's ability to pay and their credit history, to stop unexpected withdrawals from the customer's deposit accounts, to restrict refinancing that causes a cycle of debt, and to report the covered loans to a credit reporting agency.

The CFPB has not identified any of these problems with TILs. Citizens, and other traditional installment lenders, do not make these types of loans. We evaluate the customer's ability to pay and credit history. We report the borrower's history to major credit bureaus; our refinancing does not contribute to a cycle of debt; we do not require access to a deposit account for repayment; and our rates are not "high cost" in comparison to the rates of payday and vehicle title loans. TILs are a plain vanilla product that provide a roadmap out of debt. They are affordable loans, where the consumer makes equal payments of principal and interest that extinguishes the debt at the end of the term.

The CFPB has spent the last few years gathering massive amounts of data on payday loans and lenders. The Bureau has published a lengthy report on these loans. The Bureau does not yet supervise installment lenders. There has been no CFPB report on installment lending. The CFPB should not regulate a significant portion of traditional installment lending until it has studied the industry in-depth.

In order to truly apply these proposed rules to payday, vehicle title, and similar loans without placing unneeded burdens on TILs, the CFPB should redefine a covered loan. TILs like Citizens should be exempted from the proposed rule. We recommend the definition of a loan term covered loan excludes loans that:

1) are fully-amortizing and are repayable in substantially equal payments over a period in excess of 6 months, and
2) are underwritten primarily on the borrower's ability to pay, and
3) have no requirement or incentive for the customer to provide the lender with access to the customer's deposit account.

Alternatively, if the CFPB decides against redefining a covered loan as suggested above, the CFPB could narrow the scope by redefining a title loan. Instead of stating that loans with "a non-purchase money security interest in the consumer's vehicle" are covered loans, the CFPB should state the lenders can continue to take a lien on the vehicle, and not make covered loans, if: (1) the lender does not take the title as the exclusive means of underwriting the loan, (2) the term of the loan is six-months or longer, (3) there is no scheduled balloon payment, and (4) the loan is fully amortizing and repayable in substantially equal payments.

Access to Customer's Deposit Account

The definition of account access needs to be changed to prevent a compliance problem. The current proposed rules defines account access as having access to a consumer's deposit account before the first loan payment. This includes optional use of account access by a customer, even when it is advantageous and convenient to pay through such access. The proposed definition causes a significant compliance burden. The proposed rules should redefine account access as to required access to a customer's deposit account. It should not include account access that is clearly disclosed to the consumer as an optional method of payment, is easily cancelable, and for which no incentive is offered by the lender.

Example of compliance issue: If we make an unsecured loan with an All-in APR in excess of 36% without an authorization to access the customer's deposit account it is not a covered loan. If the customer chooses to go online and makes a payment (thereby authorizing account access) by debit card or ACH the night before their first payment is due, the loan becomes a covered loan. We then would be in violation of the three day notice provision since the payment was drafted by access to the borrower's deposit account without us having knowledge that the loan has become a covered loan.

Prohibiting customers from electing to pay by an optional ACH draft until after their first payment is illogical. Furthermore, it is impractical to think that our system could process ACH drafts for consumers of "covered loans" differently than they would treat consumers of "non-covered loans."

Lastly, this could be confusing to borrowers who have two loans with a company – a large auto loan that is not covered and a smaller loan that is covered by the proposed rules. How can we offer the customer the on-line ability to pay by a debit card or ACH payment for one loan without a notice and restrict the customer's option to pay on the other loan?

All-in APR

The use of the All-in APR or any other similar all in rate as a threshold places a significant burden and cost on almost all small businesses affected by the proposed rules. This cost can be easily reduced by using the Truth in Lending (TILA) APR as the threshold rather than the All-in APR. Very few small business lenders use the All-in APR and the All-in APR is not widely available on lending platforms used by most lenders, small or large. The cost of creating the calculation and reprogramming system only to comply with the threshold of this rule is not necessary. It will be a much greater burden on small business lenders who do not have the resources readily available to large business they are competeing with to effect this change. The TILA APR is universally used and will eliminate the burden of creating a new calculation solely for the purpose of compliance with these proposed rules. It will also eliminate the training that will be required to education employees about an “All-in APR”.

The CFPB cited a concern with the affordability of ancillary products as a reason to use an “All-in APR”. The requirement to underwrite the ability to pay will resolve the borrower’s ability to repay the cost of an ancillary product. The ability to pay requirement will address CFPB’s concern with the affordability of financing the premium and costs of ancillary products.

The purchase of ancillary products is completely optional for the customer. These products provide benefits that have value for the customer. An All-in APR assumes the products do not have value or offer a benefit to the customer. We provide a thirty day cancellation period on all of our ancillary products. The customer has the option to cancel the purchase of the product and receive a full refund of the premium or cost.

We agree with the non-disclosure of the All-in APR to the consumer. This would have a detrimental impact on our customers in that it would greatly reduce the ability of the consumer to compare interest rates and fees while shopping for credit. This would defeat one of the primary purposes of TILA – to allow consumers to do an “apples-to-apples” comparison of rates and fees related to credit among various creditors. The APR could be identical in two credit products, but the third-party services and products could be quite different. Because different creditors offer different voluntary or optional products in connection with their loans, the proposed MAPR definition will result in potentially misleading comparisons of products. It is important that consumers understand what costs the creditor is imposing in connection with the loan. The disclosure of a MAPR will confuse consumers; it could cloud consumers’ ability to understand what the creditor is charging and therefore would make it difficult to compare one creditor’s costs with another.

If the CFPB retains an APR threshold, it should be increased to reflect the typical rates for payday and vehicle tile loans. For the two-week term typical of a payday loan, the fees on a payday loan equate to an APR ranging from 391% - 521%.This is many times higher than the mean APR on TILs. There is a huge difference between 391% and 36%. The CFPB should not regulate lenders who are charging 391% in the same rule as lenders who are charging 36%. The CFPB should ensure that this rulemaking only covers products that are the primary objective of the proposed rules. By including loans that do not have the characteristics of payday, vehicle title, and “morphed” installment loans, the CFPB is placing an unnecessary burden on all small businesses that make TILs.

Ability to Pay and Reporting Covered Loans:

We agree loans should be underwritten primarily on the customer’s ability to pay. The ability to pay involves a variety of factors. The requirements for considering a customer’s ability to pay are not fully defined, but the process outlined in the proposed rules has the potential to create an unnecessary burden on all small businesses that make covered loans. The ability to pay underwriting requirement need to be flexible, reasonable, and allow for the consideration of all related factors.

Under a general ability to repay standard, creditors must make a reasonable, good-faith determination before or at consummation of a covered loan that the consumer has a reasonable ability to repay the minimum loan payment on an on-going basis. This ability to pay determination should be based on consideration of the applicant's income or assets (other than the value of the property that secures the loan), the applicant history with the lender and other lenders, and the applicant's current obligations at the time of the loan, using information reasonably available to the creditor at that time. A change in the consumer's financial circumstances after consummation does not constitute a violation of this provision.

The proposed rule being considered by the Bureau would require lenders to obtain certain financial information about the consumer in order to make a reasonable determination about the consumer's ability to repay the contemplated loan. This information would include three components: the consumer's (1) income, (2) major financial obligations, and (3) borrowing history.

It is fine to require lenders to obtain income information, major financial information, and borrowing history that is readily available to lenders, but not all of the information the CFPB proposes lenders obtain is available in a loan application and a credit report from one of the major credit bureaus. For example, loan applications and traditional credit reports do not provide "living expenses" such as food, transportation, utilities and telecom costs, nor do they identify "other lenders" covered loans. We cannot tell which trade lines on credit report are "covered loans" and which are not. The requirement to obtain information should be limited to information that is readily available in a loan application and traditional credit report.

Reasonable verification of income must be part of the ability to repay determination. The CFPB should allow income to be verified through the obtainment of any of the following: (1) most recent W-2, 1099, or tax returns; (2) most recent bank account information; (3) recent paycheck stubs or payroll statements including military Leave and Earnings Statements; (4) official record from a governmental agency stating the income or benefits to which the customer is entitled (including dates of entitlement); (5) receipts from the customer's use of check cashing or funds transfer services; (7) if offered by the customer, his or her income from alimony or child support and the consistency with which the same are actually paid to the customer; (8) for customers who have second or side jobs, obtain as much information as possible about the income there from although the same may or may not be documented by paycheck stubs or W-2s; or (9) customer's credit history.

We have borrowers whose ability to pay appears weak on paper but our history with the customer indicates the customer has no trouble making their loan payments. Many borrowers supplement their documented income with casual or cash income from activities such as baby sitting, alterations, yard work, cutting wood, etc. that is difficult to verify. The ability to pay requirements need to include a good payment history as a measure of ability to pay. This is one of the best indicators of a customer's ability to repay a similar debt.

Citizens understands the need to consider living expenses when evaluating a customer's ability to repay a loan. A lender's use of a maximum debt to income ratio with a minimum income or an overall estimate of the amount of residual funds needed to pay living expenses (based upon family size and other factors) is a less burdensome and easier method to address the effect of living expenses on the customer' ability to pay than attempting to identify, or estimate, specific living expenses such as food, clothes, utilities, auto, etc.. There are many factors, such as other household income, an adult child living with a parent, local cost of living, or a very frugal lifestyle that can affect living expenses. Any rules concerning the consideration of living expense must be reasonable, flexible, and allow for all potential factors to make sure deserving borrowers retain access to credit.

Requirement to Report to All Alternative Credit Companies: The proposed rules requires lenders to report covered loans to all commercially available reporting system meeting specified criteria. This presents the possibility of reporting to hundreds of commercial reporting systems. Small business lenders cannot reasonably estimate the cost or burden to comply with this rule without knowing how many commercial reporting system we will be sending account history to. Each reporting system will likely have a unique format for the data to be electronically submitted. The set up cost and ongoing cost of reporting to numerous reporting systems will be substantial for a small business.

The option with the least burden on most small business lenders is to require the big three credit bureaus to accept the covered loan data, and require the lender to submit covered loan history to one of the big three reporting agencies. A second option is to require covered loans to be reported to no more than three specialty commercial reporting systems in a standard universal format.

Limitations on Re-borrowing Covered Loans:

The CFPB's objective is to prevent a cycle of debt that can result from the refinancing of payday and vehicle title loans. The characteristics of refinancing a payday or vehicle title loan with a single payment or several payments with a balloon payment are entirely different from refinancing a fully amortizing loan. CFPB's reason for proposing a presumption of inability to pay on all refinancing is not applicable to the refinancing of a fully amortizing longer term loan with substantially equal payments. Payday and vehicle title loans require the repayment of all principal in a very short period of time. TIL spread the repayment of principal though out a longer term with a significant portion of the principal being repaid with each payment.

The CFPB's proposed rules to limit refinancing is too vague for us to estimate the burden and effect this could have on our business. The threshold terms of delinquency, default, substantial cash, and statements of inability to pay are not defined. The definition of these threshold terms is critical for us to evaluate the effect of the proposed rule on our business.

It will be difficult to establish a definition of delinquency and default that works for payday and title loans, and TILs. They are too different. Being delinquent on one payment out of 12 to 48 payments is not the same as being delinquent on the full loan balance. Over a 12 to 48 month term our customers may incur unexpected expenses, be out of work, sick, etc. which causes temporary inability to make one payment. This type of minor delinquency does not reflect a serious inability to repay the loan over its term. Refinancing is a beneficial option for our customers in this situation. A refinancing will resolve his delinquency, provide a break for a month on his payment to catch up and will have a positive effect on his credit score.

If a customer has substantially reduced the principal balance owed over the term of the loan and wants to refinance and skip a payment, why should there be a presumption of inability to pay? For example a customer with a 12 month loan of $2,000 has paid the loan down to a balance of $1,000. The customer wants to borrow an additional $200 for Christmas and to skip their December payment to provide more Christmas money. Their circumstance has not changed, but due to their desire to skip a payment the customer falls under the presumption of inability to pay. Unless $200 is defined as a substantial amount of cash, we would not be permitted to grant the customer's request even though the customer has the ability to pay.

Other examples of the problem with the proposed limitations are:

The customer qualified for a $4,000 loan but only wanted to borrow $2,000. Several months later the transmission on the customer's car quits working. The customer wants to borrow additional money to repair the car. The customer still qualifies for the additional money but since she was a few days late making her last monthly payment and her ability to pay circumstances have not changed we cannot refinance her loan to provide the additional money even though she still has the ability to pay the refinanced loan.

A customer missed a payment three months ago due to an unexpected expense. The customer has made the full monthly payment the past two months but is not in a position to pay two payments in one month to bring the account current. A refinance will allow the customer to catch up and will have a positive effect on the customer's credit score. The proposed limitations, though, will prohibit us from refinancing as there has been no significant change in the customer's circumstances.

Payment Collection Practices:

As proposed, this rule will make it more difficult for our customers to make timely payments on their loans. It will cause our customers to unnecessarily incur late fees and a delinquent reporting of their account to the credit bureau, in addition to placing a compliance burden on Citizens and other small business lenders.

We offer our customers the options to make same day payments with a one-time ACH draft or a debit card. About 25% of our customers use a one-time (over the phone) ACH draft to make their monthly payment. If a customer has a covered loan, he will no longer have the option of using an ACH draft or debit card payment on or within two days of the payment date due to the required three day notice. (Six days if we have to mail the notice).

Under the present proposed rules, if a customer asks us to take a one-time ACH payment over the phone today in order to avoid the payment being late or to avoid their account being reported to the credit bureau as a delinquent account, we would have to tell her, "I'm sorry, but we cannot take your payment today, We are required by law to send you a notice 3 days in advance of drafting your payment."

If a customer is traveling or cannot for any other reason deliver a payment to our office by the late fee date, the proposed rules will remove their option to pay with a phone call. The same is true if they need to make a payment by the end of the month to keep their account from being reported as delinquent to the credit bureau. This will have a negative on their credit report.

The proposed rules should allow consumers to make their payments using account access at any time as a customer convenience, as long as it is disclosed to the consumer that using account access for payments is optional and easily cancelable. Also, consumers do not need a disclosure if the money is being withdrawn at the same time each month (site Reg. E requirements).

Our customers, especially younger customers, expect lenders to offer payments options such as bank drafts, debit card, etc. that are commonly used in other industries. New technology like mobile payment and other forms of electronic payments that may be developed are likely to fall under the proposed definition. Our customers are asking, and expecting, us to offer payment options commonly used in the retail world. Any rule concerning the method of payment must be flexible enough to allow for future payment options. There should not be a penalty for offering payment options requested by customers if the options are voluntary and can be cancelled with adequate notice to stop the processing.

<u>Other Comments</u>

Effect of Compliance on Small Businesses

New rules and regulations are more of a burden on small business than large businesses for two basic reasons:

First, small businesses like Citizens, do not have separate departments or designated staff who devote their full time to the process of complying with a new rule or requirement. The process of gaining a understanding of the new rules; creating policies and procedures; implementing processes with third party vendors; training employees; auditing; etc., require the direct involvement of the owners/operators or upper management. The time and effort expended to implement, train, and comply with new rules takes away from the owners' and officers' ability to address the other aspects of running a business. Upper management in larger companies can delegate these responsibilities to other employees and continue to focus their time on normal business issues, such as marketing, staffing, improvement of services, cost reductions, strategic plans, etc. This presents a lost opportunity cost for upper management and owners of small businesses. Time that could have been spend improving the business for customers and staff is spent implementing changes for new regulatory requirements.

For example, Citizens had made small real estate loans for over 50 years. These loans were primarily first mortgage loans from $10,000 to $80,000. We retained all of the real estate loans in our portfolio. We ceased making small real estate loans due to the lack of resources available to us to implement the changes required under the Dodd Frank Act. The additional regulatory requirements and risks were too great for us to continue making these loans without hiring additional home office staff devoted exclusively to real estate lending. This had a negative effect on our customers, as well as our loans receivable and income.

Second, large companies obtain more favorable pricing for credit reports, vehicle valuation, office supplies, data processing, health insurance, funds, etc. than small businesses due to their volume. Their size and economy of scale provides them with a cost advantage. We do not have the ability to increase our pricing on most of our loans due to state regulatory caps on interest rates and fees. Therefore the costs of implementing new rules and regulations have a greater negative effect on our business and other small businesses. It is more difficult for a small business to absorb the additional cost of complying with new rules and regulations than a large business due to their higher operational costs and an inability to spread the cost over a larger number of accounts.

Access to Small Dollar Short-term Credit

Almost all of the payday and vehicle title lenders stated the proposed rules will put them out of business. The CFPB acknowledged the need for credit. The CFPB needs to consider the effect of the proposed rules on the customer's access to small dollar short-term credit (less than six months). We and other traditional installment lenders do not make small, short-term, payday type loans. The depository institutions have indicated they cannot feasibly make small payday type loans. Given the need for credit, and the lack of a regulated supply of small dollar short term credit if these proposed rules are adopted, borrowers will go to unregulated sources of small short-term loans. The unregulated sources will increase in availability to fill the demand with the elimination of a regulated source.

De Facto Rate Cap

By imposing these proposed regulations on loans over 36% all-in APR (with deposit account access or a security interest in a vehicle), the CFPB is setting a de facto rate cap. Lenders simply cannot make small-dollar loans, especially with the cost of underwriting the ability to pay, at 36% all-in APR. According to a study done by three academics using industry data, in order to make a break-even loan at 36% Annual Percentage Rate ("APR"), the loan would have to be made for at least $2,600. In a CFPB field hearing on military lending, almost all the panelists told CFPB staff that it was impossible to make such loans.[2] The FDIC pilot study on small-dollar loans also showed that the only way that banks could make these loans was as loss-leaders.

<u>Background Information</u>

Citizens' Loan Products

Citizens' primary business activity is to provide personal and automobile loans to individuals whose credit history or collateral limits their access to traditional bank credit. Our loan product includes both secured and unsecured traditional installment loans. Our loans generally range from $1,000 to $20,000 with terms of 12 to 60 months. All of our loan products are closed-end loans with equal monthly payments that fully amortize the loan. Our average loan is about $4,500 and our average term is approximately 30 months. About 80% of our loan dollars are secured with a vehicle title. Approximately 40% of our vehicle loans are purchase money loans. The remaining 60% are non-purchase money vehicle loans.

Traditional Installment Loans (TILs)

For more than a century, installment lending has proven to be the most affordable and responsible form of consumer credit for working Americans. Before the Internet, the local branch of an installment lender was often the only access to credit for many Americans. They are community-based lenders in cities and towns nationwide. Compared to other forms of small dollar credit, TILs are the best way for consumers to manage credit and build a positive payment history with the credit bureaus.

[2] The one example of a small-dollar loan that could be made under 36% was by a credit union who members where state employees. So, there was basically no risk of default.

What is are TILs? TILs are fixed-rate, fully-amortizing, small-dollar loans repaid in equal monthly payments or installments. The industry average loan is for $1,500. The average monthly payment is $120 and the average term is 15 months. The average loan amount, monthly payment, and average term vary by lender. TILs are affordable to each borrower's monthly budget. They are "plain vanilla" loans with transparent, easy-to-understand terms, due dates and payment amounts. Installment lenders underwrite loans based on consumers' ability to repay, credit history and other factors. At the time of origination, each and every loan is made with reasonable confidence and expectation that it will be paid back in full and on time.

Who do traditional installment lenders serve? Traditional installment lenders provide credit to individuals and families. Sometimes, our customers are unbanked or under-banked. They need access to credit to meet an immediate need. Other times, our customers are well-banked, but have very little or no savings. Seventy-six percent of Americans live paycheck to paycheck.[3] For people with poor credit or no or little home equity, credit cards or a home equity line of credit are not necessarily an option. When these people hit a bump in the road, they need access to credit. The uses for TILs include: vehicle repairs (transmission, tires); household appliances (washer, dryer, water heater); furniture; back to school expenses; debt consolidation; baby items (crib, car seat); funeral expenses; medical expenses; and other major obligations – generally, the everyday items and services essential to live productive and enjoyable lives. (Payday loans, however, are used as a means of bridging a cash-flow shortage between pay or benefits checks.[4])

The Difference Between TIL and Payday/Vehicle Title Loans

TILs are radically different from payday and title loans in the way they are structured, priced, and regulated. These differences are what make TILs a smarter option for borrowers, offering them better rates and significantly higher levels of safety and affordability. Unlike payday loans, TILs do not have prepayment penalties or large, one-time balloon payments. They are fully-amortizing loans with multiple installments paid over a longer period of time than a payday or vehicle title loan. Traditional installment loans are paid off through equal monthly payments of principal and interest that provide a clear roadmap out of debt.

Payday and title loans are repaid in single balloon payment at the end of the loan period. Because this payment is usually due in less than 30 days (frequently the term is as short as 14 days), this single lump-sum payment can lead to significant problems for the borrower. In contrast, TILs are fully-amortized and repaid in manageable monthly installments made up of both principal and interest.

Traditional installment lenders underwrite the loans they make. They check borrowers' credit reports and review their debt obligations and payment history before making loans. Payday lenders and title lenders do not underwrite their applicants using traditional credit criteria, relying instead on a postdated check or on similar access to a borrower's bank account or solely on the value of the collateral as their assurance that the loan will be repaid.

[3] http://money.cnn.com/2013/06/24/pf/emergency-savings/
[4] CFPB Short-Term, Examination Procedures Small-Dollar Lending. September 2013.

If a borrower cannot afford to repay a payday loan in full when it comes due, she is left with no option but to refinance that loan. This results in what the CFPB has called the "cycle of debt," in which the entire balance of an initial loan is refinanced multiple times, to the borrower's detriment. Traditional Installment Lenders avoid a cycle of debt by scheduling regular, manageable payments of principal and interest, giving the borrower a clear roadmap out of debt.

Traditional installment lenders have long operated within a legal framework; lenders are licensed and TILs are thoroughly regulated by State and Federal consumer protection agencies**.** Regulation of payday loans has a shorter history and is less robust, varying widely from state to state and being completely absent where current laws force consumers to use Internet and unregulated offshore or underground loans.

Traditional installment lenders report to credit bureaus, allowing borrowers to establish new creditworthiness or to rehabilitate damaged credit. This in turn allows borrowers access to more credit options, often at even lower interest rates. The major credit bureaus do not, and others may not, accept data from payday loan companies, so the successful repayment of a payday loan brings no benefits to a borrower's credit score. The major credit bureaus generally do not use payday or title lender data because the loans are not long enough to fit into a traditional credit reporting model and bureaus have stated that individual payday lenders are often too small to meet the requirement bureaus need for reliability / lower fraud risk. Even though some payday lenders may want to report to bureaus but cannot, the net effect is that payday loans paid on time do not help build a consumer's credit history and score—but traditional installment lenders do.

Acknowledgement

On behalf of Citizens Savings & Loan Corporation, I thank the Consumer Financial Protection Bureau and the Small Business Administration for the opportunity to participate in the Small Business Advisory Review Panel for Potential Rulemaking for Payday, Vehicle Title, and Similar Loans. I appreciate the option to submit these comments and recommendations in addition to the verbal comments made during the hearing.

Respectfully Submitted,

Pat St.Charles, III
President/CEO

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May 13, 2015

Via email to cfpb_payday_sbrefa@cfpb.gov
Richard Cordray, Director
Consumer Financial Protection Bureau
1275 1st Street, NE
Washington, DC

Dear Director Cordray:

Thank you for the opportunity to participate in the Consumer Financial Protection Bureau's (CFPB) recent SBREFA panel discussion on potential rulemaking for payday, vehicle title and similar loans on April 29.

In order to provide a comprehensive view of the Bureau's current proposals, I am writing to offer select observations and recommendations for your consideration in further development.

My comments will address: 1) our company's experience as a community financial service center, 2) anticipated requirements and costs of the proposed rules, and 3) recommendations to minimize negative economic impact of the proposals while providing adequate consumer protection.

The following pages of this document are organized to discuss several observations and recommendations:

Observations:

- Our community: we are a valued partner serving customers and the greater good
- CFPB concerns: our experience and practices are not consistent with the primary concerns
- Our customers: they exhibit a consistent ability and willingness to pay for access to credit
- The impact: the human and economic impact from the proposals will be devastating

Recommendations:

- Guiding principles for rulemaking
- Short-term covered loans
- Long-term covered loans
- Additional research and development to pursue

Feel free to contact me with any comments or questions you may have.

Sincerely,

Robert M. Zweig
Chief Operating Officer

Our community: we are a valued partner serving customers and the greater good

Check Center is a mission-based retail financial service company celebrating our 30th year as a family-owned business. At the close of 2014, we employed 136 team members (employees) and operated 20 stores while doing business exclusively in California.

During the 4th quarter of 2014, we served over 42,000 unique customers, over 17,000 of which were covered loan customers. We estimate our total number of unique customers to be almost 100,000 annually.

Our mission? To give the people in our communities the same benefits from financial services enjoyed by most everyone else in the United States.

Our difference from banks and other non-bank institutions? We're like the "Cheers" of financial services - we offer an outstanding customer experience and we know our customers by name. So naturally, they come back to visit regularly.

What do our customers and community appreciate most? We say 'Yes' - whether our customers need financial help or our communities need our time and resources.

In addition, the communities in which we work view Check Center as a valuable partner. Our team members give back to our communities. In 2014, we contributed ***1% of our revenue*** to help kids in our communities, such as:

- Supporting special needs kids through our partnership with Muscular Dystrophy Association (MDA), for which we earned recognition as MDA Partner of the Year for San Diego and Imperial Counties in California,
- Providing free school supplies to thousands of kids at the start of the school year,
- Feeding hungry families during the holidays, and
- Donating money to local school and club soccer programs.

We employ from the local community and our workforce is a model of diversity:

- 80% of team members at the close of 2014 were women,
- 70% of managers were women,
- 2/3 of the workforce represented ethnic minorities, and
- 45% of managers were Latino.

We trust the Bureau will consider the greater good of our team members and communities as well as the preferences of our customers in considering changes to the proposed rules.

For your reference, I have attached Exhibit A to provide a brief summary of our business as of year-end 2014. I hereby designate the information in Exhibit A as confidential business information. The information provided in the exhibit is confidential, fact sensitive business information that I have not revealed and would not reveal to the public.

CFPB concerns: our experience and practices not consistent with primary concerns

While we respect the work done by the CFPB to prepare the rule proposals, the concerns cited as primary justification are not consistent with our experience, our practices nor our governing California state laws and regulations. Below we contrast the CFPB concerns and our experience:

1. Failure to underwrite for affordable payments
   - We assess ability to repay for new payday loan customers.
   - This assessment requires the consumer to demonstrate sufficient positive cash flow after identifiable obligations to repay the loan and fees.
   - Credit is based on a percentage of income modified by a risk assessment from the available information.
   - For auto title loans, a comprehensive underwriting including the evaluation of reported credit history is performed.

2. Repeatedly rolling over or refinancing loans
   - Payday loan rollovers are not permitted in California.
   - A 2011 analysis of our transaction data indicated 64% of our payday loan customers borrowed an average of one time or less per month.
   - This issue is not relevant in our auto title loan business.

3. Holding a security interest in a vehicle as collateral
   - Payday loans in California are unsecured loans.
   - Defaults are rare in our auto title loan business – less than 1% of loans through 2014.

4. Accessing the consumer's deposit account for repayment and performing costly withdrawal attempts
   - In 2014, about 48% of payday loan payments were made when customers visited our stores and paid in cash. Therefore, this concern does not apply to nearly half of our payday loan customers.
   - For ACH transactions, we follow best practices that limit withdrawal attempts to a maximum total of three.
   - If the original authorized payment fails, the customer experience suffers and our costs increase. Accordingly, we attempt to coordinate the timing of any subsequent payment attempt with the customer.
   - Delinquent payments are rare in our auto title loan business – less than 1% of loans through 2014.

Our customers: exhibit a consistent ability and willingness to pay for access to credit

In general, the proposals presume that re-borrowing reflects a consumer's inability to repay an additional covered loan. This assumption does not square with the outstanding payment history demonstrated by our customers.

In California, a payday loan is essentially an IOU. The maximum loan is small - $255 – and state law does not provide legal recourse should a customer be unable or unwilling to pay.

Regardless, our customers are remarkably reliable payers according to our company data for 2014:

- Total charge-offs for our payday loan business was 3.2% of disbursements for the year.
- The default rate for our auto title loan loans was less than 1%.

Meanwhile, the Federal Reserve reported the average consumer credit card charge-off rate in the United States was 2.99% for the month ending March 2015.

Accordingly, by consistently demonstrating the ability and willingness to pay, our customers have earned the right to the same benefits of access to credit enjoyed by most consumers in the United States.

As previously noted, 48% of our customers prefer to visit our stores and pay their loans in cash.

Why do our customers maintain such an outstanding payment history, even taking the extra time and expense to visit a store and pay in cash? They value the benefits of access to reliable credit. They value the respect with which they are treated at our stores. They pay for the same reasons any other business is paid for its products or services - payment is the customer's endorsement of the experience and the value received.

Very high customer satisfaction scores confirm the quality of this customer experience. In 2014 we began using the well-known Net Promoter Score (NPS) system to measure customer satisfaction. During the fourth quarter of 2014, we achieved an NPS rating of 71% based on customer satisfaction ratings. This score compares very favorably with published references for NPS.

Customer comments were 9:1 "promoters" (a score of 10 or 9 on a 10-point scale) vs. detractors (any score from 0 to 6), such as:

- "They don't judge."
- "The employees are fantastic, caring and very knowledgeable. [I] Have been a customer over 9 years."
- "They didn't make me feel like I was getting my teeth pulled."
- "I'm treated with respect."
- "When I need the loan, I get the money."
- "They saved me so many times from overdraft fees!"
- "Your rates beat 800loanmart."
- "I like that my payday loan [is] taken automatically [out] of my account."

Finally, retail financial service operators offering payday loans do not have great incentive to invest time and money in collections. Our average fee per loan in 2014 was $37.79. This fee must cover the cost of the retail customer service team wages, bonuses and benefits; the cost of operating retail locations; as well as all other operating, compliance and overhead costs. Little margin is left to invest in wages and systems necessary to close a small obligation with no legal recourse for collection.

Perhaps the Bureau's concerns about collection activity are related to online operators whose business incentives are distinct. They operate anonymously, lacking a personal relationship with the customer. They depend on extensive collection activities because they don't offer the convenience of in-store payments. And their business model permits heavy investment in these activities because they do not carry the costs associated with retail operations.

Impact: the human and economic impact from the proposals will be devastating

Based on the CFPB's own analysis and a specific review of our company's business, the human and negative economic impact of the proposed rules would be indisputably devastating.

Consumer impact:
Rather than helping our customers, the proposed rules will deny them the benefits of credit available to most consumers in the United States.

The CFPB's analysis indicates available credit is expected decline by 55-62% (Table 1 CFPB Outline of the Proposals). By definition, consumers will enjoy significantly less access to the benefits of credit.

Our company alone disbursed over $50,000,000 in payday loans in 2014. The reduction in credit forecast by the CFPB would translate to between $28,000,000 - $31,000,000 in lost financial liquidity available to our loan customers. Another $1.3 million in auto title loans that we disbursed in 2014 could be affected.

There's also a practical impact of the CFPB projection: the proposed rules will effectively create ***greater financial insecurity*** for consumers.

Consumers will be less certain about their eligibility for credit because the rules include a variety of complex tests based on consumers' history of using small-dollar short-term credit. Even if consumers do the right thing and pay their obligations, they will be rewarded by a variety of new hurdles that must be cleared before eligibility can be determined.

Accordingly, the ***cost of searching for credit will also increase*** for consumers – it will be necessary to invest more time and resources just to understand if they are eligible for credit. In some cases, the cost will come without benefit because they will be rejected for reasons related only to these complex hurdles beyond their control.

<u>Jobs impact</u>:
The aforementioned CFPB analysis indicates loan fees are expected to decline by 60-75%.

We conducted a separate analysis specific to our business and determined the proposed rules will have a devastating economic impact on our company.

This analysis shows a volume reduction estimated to be between 55-84%. Furthermore, we estimate the potential rulemaking could result in an average reduction in profit per-store of between $173,041 and $265,246 annually, ***leaving 100% of our stores unprofitable***.

For your reference, I have attached Exhibit B that provides confidential information from my company. Specifically, Exhibit B provides confidential data prepared by a third party, Deloitte Financial Advisory Services LLP, about my company and the likely impact of the CFPB's proposal and its various elements will have on my company. I hereby designate the information in Exhibit B as confidential business information. The information provided in the exhibit is confidential, sensitive business information that I have not revealed and would not reveal to the public.

Check Center's financial viability will be jeopardized as a result of the dramatic reduction in short-term lending volume caused by the potential rulemaking. Assuming we close unprofitable stores resulting from the new rules, ***136 team members - 100% of our workforce - would lose their jobs***.

These are not just low-skill, low-pay, low-future jobs in our community either. Check Center retail jobs provide outstanding pay, benefits and career development for a diverse work force:

- Average retail base pay in 2014: over $38K
- Average additional retail bonus: 12% of base pay
- Generous health care: 80% employer contribution for both team member and family care in 2014
- Minimum wage: $12/hr. (33% higher than California law in 2014)
- 80% of all team members and 70% of managers were women

- 2/3 of the workforce represented ethnic minorities
- 45% of managers were Latino

Immediate impact:
In light of future prospects given the CFPB proposals, we decided last week to close one of our stores. We view this location as unviable in anticipation of the potentially devastating new rules. We disbursed over $6,000,000 in all cash transactions to an estimated 5,750 unique customers at this location in 2012.

Our company disbursed over $183,000,000 in all cash transactions in 2014. If the CFPB proposals do not undergo significant modification, this economic stimulus will effectively disappear from our local communities, many of which subsist with fragile economies. Of course, the loss of our business' economic stimulus will also trigger a negative economic multiplier effect for surrounding local businesses in which our customers currently use this cash to purchase other goods and services.

Recommendations:

Guiding principles for rulemaking:
We recommend establishing several guiding principles for all covered loans to ensure coherent and consistent rules that will adequate consumer protection while also minimizing negative economic impact:

1. Ensure rules permit the consumer-desired benefits of speed, transparency and simplicity in underwriting, disbursement and payment of covered loans
2. Adopt a simple "paid/unpaid" standard for "re-borrowing", replacing the presumption of inability to pay
    - If a loan is paid-off = confirmation of ability to pay
    - If a loan remains unpaid = assumption of inability to pay
3. Recognize that systemic changes are required in conjunction with new rules to ensure the success of new underwriting, disbursement and payment practices
    - Comprehensive database(s) must be created
    - Credit bureaus must provide comprehensive, efficient and cost-effective reporting
4. Recognize the value of non-depository institutions to consumers and support these alternative business models

Short-term covered loans:
The presumption of the inability to pay and the proposed re-borrowing restrictions are the primary cause of the projected devastating negative human and economic impact of the new rules under consideration.

Instead:
- Adopt a "paid/unpaid" standard to replace the proposed "re-borrowing" standards and presumption of inability to pay,
- Create a national database or state-by-state databases such as that successfully implemented in Florida,
- Align loan amounts and terms with current consumer needs, business risks and returns, e.g., unsecured loans: up to $1,000 with terms up to 6 mos.

The combination of these simple rules would ensure:
- Consumers receive access to credit and the desired benefits of speed, transparency and simplicity,
- Consumers possess only one covered loan obligation at any time,
- Consumers receive one loan that will better meet their financing needs, eliminating the uncertainty and costs associated with seeking additional credit from additional lenders,
- Consumers can successfully manage and close this single obligation, and
- Re-borrowing only occurs after consumers have demonstrated the ability to pay.

Accordingly, the following proposed re-borrowing restrictions would be redundant and costly and should be eliminated, dramatically reducing the negative economic impact of rule changes:
- Re-borrowing standard before loan is due or after pay-off
- 3 loans total in 60-days
- 60-day cool off period before re-borrowing
- 12-month tests

Finally, the following proposed rules should be eliminated because they are cost-prohibitive for lenders and offer little value for customers:
- Verification of major financial obligations "plus 60 days"

- Advance notice before processing EFT payments and new authorization after two payment attempts

Long-term covered loans:

- Adopt a "paid/unpaid" standard instead of the proposed "re-borrowing" standards and presumption of inability to pay, eliminating the need for the following proposed rules:
  - No default on a covered loan in the past 12 mos.
  - Maximum of two "long-term covered loans" in a 6 or 12-month period
- Align loan amounts and terms with current consumer needs, business risks and returns
  - Unsecured loans: up to $2,500 with terms from 6-36 mos.
  - Secured loans: from $1,500-$5,000 (e.g., secured by auto title) with terms between 6–36 mos.
  - Permit charges up to 60% APR and up to a $20 application fee
  - Payments can't exceed 15% of expected gross income during the period of the loan
- Eliminate proposed rules for advance notice before processing EFT payments and new authorization after two payment attempts

Additional research and development to pursue:

- The CFPB should examine successful state laws, rules and regulatory structures proven to balance adequate consumer protections and robust small business activity. States such as Illinois, Michigan, and Florida all have regulatory structures that provide significant consumer protections while preserving consumer choice and opportunities for small businesses.
- The CFPB should conduct small entity research as it has done with large payday loan companies to better understand our customers and business alike in consideration any rulemaking.
- The CFPB should initiate tests or pilot programs to assess the effectiveness of consumer protection as well as the impact of any rulemaking before unleashing devastating consequences upon consumers, small businesses and local economies.

Mr. Zweig included the following item in his written feedback to the Panel:

1. Check Agencies of California, Inc. (“Check Center”) Confidential Company Business Overview
2. Check Agencies of California, Inc. (“Check Center”) Confidential Summary of Financial Analysis
3. Deloitte Financial Advisory Services, Analysis for FiSCA (May 2015).

NORTH SIDE COMMUNITY FEDERAL CREDIT UNION

May 12, 2015

Dear Director Cordray and Officials of the Consumer Financial Protection Bureau, Small Business Administration, and the Office of Information and Regulatory Affairs of the Office of Management and Budget:

Thank you for allowing me, as a representative of North Side Community Federal Credit Union, to participate in this important SBREFA process on the Payday, Vehicle Title, and Similar Loans Rulemaking. North Side Community Federal Credit Union is a 41 year old, low income designated, CDFI credit that is federally insured and chartered by the NCUA. The credit union was founded with the mission of making products and services available to underserved individuals, typically who also fell victim to predatory lenders. North Side Community Federal Credit Union offers depository accounts and consumer financing products designed to be accessible for low-to-moderate income individuals. The credit union has $9.1 million in assets with 3300 members. The credit union also houses a housing counseling agency that is HUD-approved as a subsidiary of the National Federation of Community Development Credit Unions. Our expertise is in helping individuals gain financial stability through tools to build or repair credit, learn about managing their finances, purchase their first home, or avoid foreclosure. Because of our experience as a small financial institution that has twenty years of experience writing small dollar loans designed to provide an alternative to predatory products, we are pleased to see the CFPB taking the lead in creating reforms in the payday lending industry. It is well documented that predatory payday loans trap borrowers in a cycle of debt that is often difficult to escape. Loans with balloon payments, rollovers, and high APRs by design, are often made to borrowers that don't otherwise have savings or income to support the repayment. This creates severe negative consequences for the borrower. As a CDFI credit union, we often see members who need our help refinancing out of expensive debt. North Side Community Federal Credit Union strives to provide a safe, affordable alternative for low to moderate income individuals that need emergency access to small amounts of funds. Our products are designed to help members successfully repay while building credit.

North Side Community Federal Credit Union makes these loans with a very thin margin. The total borrower cost per $500 loan is less than $60, including all interest payments and fees. We offer these loans as amortizing, installment loans with a six month term. This is a lower interest rate and fee schedule than prescribed by the NCUA of 28% plus $20 fee. At the same time, the borrower is set up to successfully repay the loan, and all payments are reported to the credit bureaus. Many members take out these loans to rebuild credit, and the credit union has seen borrowers increase their credit scores over 50 points in one loan term. The product is truly a mission driven product, because we make extensive free credit counseling and financial education services available to each member. The return on each loan only marginally covers our costs to disburse each one. While our loans currently would not fall under a covered loan in the proposed Payday Lending, Vehicle Title, and Similar Loans Rulemaking currently, the credit union does have concerns about the flexibility of the proposed compliance requirements in the upcoming rule. We cannot guarantee that our circumstances would not change in such a manner that our lending practices would never fall under the guidelines of what is a covered loan. We are also in contact with multiple, mission driven small credit unions that would be concerned that the structure of the proposed rules would put them out of the small dollar lending.

Ability to Repay Requirements – Underwriting and Verification: North Side Community Federal Credit Union strongly believes that the Ability to Repay requirements is one of the most important components of the proposed Payday, Vehicle Title, and Similar Loans Rule. Affordability of short term, small dollar credit is an important protection for consumers, and without some certainty of ability to repay, it is hard to argue that short term loans are doing a service to the borrower over the long term. North Side Community Federal Credit Union currently follows and supports NCUA type guidelines. However, North Side Community Federal Credit Union also has a portfolio of unsecured consumer loans, available in dollar amounts up to $6000. These loans require full underwriting, including a verified credit pull, documentation of employment, statement of expenses, and Debt-to-Income ratio calculations. The number of applications received for these loans is significantly lower than for small dollar, $500-$1000 loans that require no underwriting. The number of applications received for unsecured personal loans is less than 10% than the rate of small dollar emergency loans, even though members are offered risk based interest rates that are either no higher or are lower than those of the small dollar loans. Members prefer the quick turnaround and lack of underwriting for the small dollar loans. The burden is on the consumer to provide access to all documentation required for full underwriting, and it is our belief that members may turn to other sources of funds to avoid lengthy underwriting processes. Additionally, the aforementioned margins on these loans are so slim that any additional cost of underwriting (eg., the cost of a credit pull) would likely create a situation in which North Side is unable to underwrite these loans. North Side Community Federal Credit Union is particularly interested in seeing strong ability-to-repay requirements around Short Term Covered Loans; those with dangerous balloon payments and expensive rollover fees. The credit union would be comfortable with a condition that requires underwriting when the "all-in" APR is above a pre-determined APR limit when the lender has access to an account at a financial institution, but urges the CFPB to maintain flexibility in these guidelines. An APR of 36% is feasible for North Side Community Federal Credit Union and other small institutions at this time, but could become unduly burdensome should some shift in the economy cause our cost of funds to rise significantly or interest rates to rise significantly without subsequent and immediate changes to this rule. North Side Community Federal Credit Union urges the CFPB to keep ability-to-repay requirements intact, but to exempt federally insured credit unions that are regulated and required to abide by NCUA guidelines from this rule.

Ability to Repay Requirements – Restrictions on Reborrowing: North Side Community Federal Credit Union appreciates the restrictions on reborrowing yet also believes that a strong ability-to-repay rule would eliminate the need for repeated loans that are caused by borrower indebtedness. Some borrowers manage their cash flow through small dollar loans and are able to successfully repay successive loans. The fact that borrowers have repaid is an indication of their ability to repay. However, North Side Community Federal Credit Union asks that the CFPB require small dollar lenders to offer an off-ramp opportunity should the borrower become trapped in a cycle of unwanted debt. North Side Community Federal Credit Union offers a pilot product named the "Borrow & Save" loan in partnership with the Filene Research Institution. The loan provides borrowers with small dollar funding but helps the borrowers build a small emergency fund at the same time they repay the loan. Borrowers have responded very positively and appreciate the opportunity to build an emergency fund. North Side Community Federal Credit Union asks the CFPB to consider alternative restrictions on reborrowing that are creative and supportive to the borrower. Additionally, the definition of reborrowing should focus on immediate rollovers rather than subsequent loan series in which the borrower has successfully repaid the prior loan.

Alternative Requirements – Covered Short Term Loans: The CFPB proposes alternative requirements for covered short term loans that include a Payment-to-Income calculation, the inability to take security interest in a vehicle, and/or a tapering off feature that is designed to help consumers pay off debt after the third loan through a principal reduction or inability to collect before off-ramps are enforced. North Side Community Federal Credit Union is in support of these requirements for Covered Short Term Loans, although still urges that the definition of apparent inability to repay be more flexibly defined in such a way that it provides safety for consumers but access to borrowers who truly use short term, small dollar credits to manage cash flow and are able to successfully repay. However, in the recommendation that a Payment-to-Income calculation be required, North Side Community Federal Credit Union feels this requirement should be strengthened toward a Debt-to-Income calculation or one that factors other regular expenses that the borrower must manage. Income only underwriting may not take into consideration a borrower's other debt obligations and does not necessarily indicate an ability to repay.

Alternative Requirements – Covered Longer Term Loans: North Side Community Federal Credit Union is in support of both screening requirements and structural protections for borrowers who seek to take out Covered Longer Term Loans. In this case, North Side Community Federal Credit Union defers to its above recommendations that federally insured credit unions subject to NCUA rules and regulations be exempted from this portion of the rule. North Side Community Federal Credit Union also request that the CFPB make clear in its rule that borrowers always have the opportunity to refinance expensive debt to lower cost debt, regardless of number of loans outstanding with other borrowers. It is important to ensure this protection for borrowers because any opportunity to reduce the cost of the loan is significant and a protection in and of itself. We also suggest that credit cards and pawn loans not be excluded from this rule.

Payment Collections Practices Limitations: North Side Community Federal Credit Union requests the CFPB to keep in place portions of the proposal that imposes restrictions that limit the ability of lenders to access funds from a bank account, particularly after the ACH has been rejected at a minimum of two times. The credit union frequently sees members who are hit with ACH withdrawals from payday lenders, causing the member's accounts to go into negative balances, creating another trap of financial debt. Account holders often become unable to repay the negative balances plus fees, leading to account closures and a subsequent inability to open an account at another financial institution in the future. This drives individuals to turn to cash-checking institutions that charge expensive check-cashing fees and limit the ability to build a savings fund that is protected and insured by regulator such as the FDIC or the NCUA.

North Side Community Federal Credit Union asks the CFPB to consider flexibility in presentment notice requirements. In every case, the credit union conforms by notifying borrowers when their loan is delinquent, and borrowers are informed if a withdrawal to cover a loan payment is taken from their account. However, as was noted by the participants in the April 29 SBREFA panel, many low-to-moderate income borrowers do not keep updated address records on file with their lender, either because of choice or because of frequency of relocation. Requiring a lender to send formal written notices would be unduly burdensome to the lender, and potentially ineffective. Instances of returned mail are very high in our institution, and would likely be similar with our lenders. North Side Community Federal Credit Union suggests rather that the CFPB require presentment notifications to borrowers, but gives lenders flexibility in delivery as long as their chosen method can be affirmatively documented and available to an auditor for review. Consumers should also be given the right to an opt-out option for these notices.

Impact on Cost of Business Credit : North Side Community Federal Credit Union currently does not have any concerns about the impact of these rules on business credit. To our knowledge, the majority of our borrowers are not accessing small dollar loans for business purposes. Members self report that these loans are used to cover regular expenses, unexpected expenses, to rebuild credit, or other costs of lending.

While North Side Community Federal Credit Union appreciates the spirit of the proposals submitted under the Payday, Vehicle Title, and Similar Loans Rulemaking process, we are concerned that some of the pieces of the proposals will negatively affect the ability of small community institutions such as CDFI credit unions that seek to provide small dollar loans in a non-predatory manner. We do ask the CFPB to preserve the spirit of the rule, while allowing flexibility for small, non-predatory institutions to design and develop new products that fairly meet the needs of the small dollar market. All credit unions are highly regulated institutions, and small credit unions such as North Side Community Federal Credit Union ($9.1 million in assets) already struggle to survive under regulatory and compliance burdens. While we are small, we have provided affordable, small dollar credit to hundreds of members on an annual basis and have written over 12,000 non-predatory small dollar loans. Our delinquency rate on these products has historically been less than 3%, and we charge off a very small percentage of these loans on an annual basis. As the CFPB develops these proposals, we ask that the Bureau be very cognizant of not eliminating safe alternatives with inflexible guidelines. We work on a daily basis with members that are in financial distress. We have helped members with no credit scores secure loans to apply for US citizenships, individuals with poor credit rebuild their credit and move up to purchase their first home, or simply to repay back a high-interest, predatory small dollar loan. We have a long time mission of supporting those individuals that are unable to get loans anywhere else (except predatory lenders) and we have realized over the course of our extensive experience in this field that we need to evaluate borrowers on a case by case. We would be doing a disservice to our members to make loan

NORTH SIDE COMMUNITY FEDERAL CREDIT UNION

decisions based on a blanket credit score requirement (although we do look very closely at the borrower's income, Debt-to-Income ratios and bankruptcy indicators). We have helped members with 550 credit scores refinance subprime loans and otherwise get out of predatory debt situations. We do this by being flexible and working with the borrower on a plan that will benefit them individually while not harming the credit union. North Side Community Federal Credit Union is in support of many of the proposals introduced by the CFPB in the Payday, Vehicle Title and Similar Loans Rulemaking process. In some cases, we ask for stronger protections for the borrowers and in others we ask for greater flexibility for the lender, being particularly cognizant of those small institutions that are working hard to affordably provide alternatives to high cost loans while maintaining small margins on this product.

Thank you for your consideration,

Sarah Marshall

Sarah Marshall
Vice President
North Side Community Federal Credit Union

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balance

May 13, 2015

VIA EMAIL

Mr. Richard Cordray
Director
Consumer Financial Protection Bureau
1801 L Street, NW
Washington, DC 20036
cfpb_payday_sbrefa@cfpb.gov

Re: Payday, Vehicle Title, and Similar Loans Rulemaking Small Business Regulatory Enforcement Fairness Act ("SBREFA") Panel

Dear Director Cordray:

Thank you for the opportunity to participate as a Small Entity Representative in the Small Business Regulatory Enforcement Fairness Act ("SBREFA") panel session on April 29, 2015 (the "Panel"), regarding the Consumer Financial Protection Bureau's ("CFPB" or the "Bureau") payday, vehicle title, and similar loans rulemaking. The purpose of this letter is to provide written comments and clarifications in addition to my statements before the Panel.

I am not opposed to regulation, but strongly believe the process of developing and implementing regulations should always be predicated on a thoughtful, transparent dialogue between those who are regulating and those being regulated (certainly the way the Panel was conducted was encouraging in this regard), and upon sound data and a very thorough understanding of the potential impacts – both intended and unintended (the latter is what we used to refer to in the military as "irresponsible and avoidable collateral damage").

Only after properly assessing all the costs and benefits to the industry and to the consumers whom these regulations are supposed to protect should these changes be imposed upon the American people. Furthermore I believe the net result of a truly transparent, inclusive, and collaborative SBREFA process should:

- Enable lenders to make loans in a sensible, risk-adjusted way,
- Not stifle innovation or discourage investment in the space,
- Not reduce choice or further constrain access to an important source of short-term liquidity for millions of Americans, many of whom struggle to make ends meet.

The CFPB's proposals, in their current form, are quite complicated and inspire significant fear and uncertainty throughout the industry, especially for small businesses. While we are still in the process of understanding what their true impact could be (all the while as we run our respective businesses), based upon my review, here are my immediate concerns:

Overall customer satisfaction in the payday industry is very high. And yet, the CFPB appears to be willing to remove 60-80%+ of capacity through these proposed rules.

That is a major problem with this overall process, and a concern I share with my fellow SERs. We believe empirical analysis does not, and could not, show that customer dissatisfaction levels justify the amount of small dollar credit that would be eliminated as a result of these new rules.

The CFPB needs to have empirical evidence that a similar proportion of customers (and other important stakeholders) are dissatisfied, or would be happy with such a result. Put differently, unless that analysis is performed – thoroughly and objectively enough to satisfy both regulators and those being regulated – showing that an appropriate amount of industry operators/capacity would be removed commensurate with overall dissatisfaction levels, then I believe the CFPB would create disproportionate harm and overly regulate and/or stifle (or even shut down) good actors for the sake of eradicating bad ones. And that, in my mind, would be a classic example of "irresponsible and avoidable collateral damage."

Empirical evidence, in fact, has been to the contrary. A poll conducted by Harris Interactive in December 2013[1] evidenced overwhelming customer satisfaction with the industry, specifically:

- 91% of borrowers were satisfied or very satisfied with their recent small dollar loan experience;
- 95% of borrowers value having the option to take out a small dollar loan;
- 88% of borrowers say the industry has a positive impact on their lives;
- 89% of borrowers say they feel more in control of their financial situation because of this option when they need it; and
- 68% of borrowers believe they would be in worse financial condition than they are now without the option of taking out a small dollar loan.

At Balance Credit, we are proud to make each customer satisfied, and we work daily to reduce the cost of credit, maximize access to credit, and improve the quality of the customer's experience. We provide credit to the 27% of the U.S. population that is unbanked or underbanked; that's equivalent to nearly 35 million households[2]. Our industry's average profit margin is 3.5%[3]. As a benchmark, Starbucks has a 9% profit margin, and traditional lenders, such as banks, can have profit margins of 13% or more.[4] Our rates and fees are as low as they can go to still allow us to be in business.

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[1] *Payday Loans and the Borrower Experience.* Harris Interactive Public Relations Research, December 4, 2013.

[2] *2013 FDIC Survey of Unbanked and Underbanked Households.* Federal Deposit Insurance Corporation, October 29, 2014.

[3] Huckstep, *Payday Lending: Do Outrageous Prices Necessarily Mean Outrageous Profits*, 12 Fordham Journal of Corporate and Financial Law 203, 227 (2007).

[4] *Id.* at 227-8.

As in any truly free market (even reasonably regulated ones), competitive forces will always end up favoring well-managed, well-intentioned, trustworthy participants who prove they deserve to exist.

We operate in a state-by-state licensed model that is already very heavily regulated.

How will new Federal rules reconcile with state rules? In my opinion, Federal rules should not be more strenuous – or preempt – already robust and perfectly acceptable rules that have been carefully developed, thoroughly implemented, and rigorously enforced by various state authorities. State legislatures and regulators have been more than willing to adopt strenuous regulations on our business as they deem appropriate for their populations. We don't need heavy, restrictive regulation on top of what is already heavy, restrictive regulation.

In this day of paperless transactions, online access to records, and mobile technology, requiring almost mortgage-like underwriting (complete with documenting an applicant's liabilities, paystubs, canceled checks, and/or court orders of child support) – all part of a more involved process to determine an applicant's ability to repay – in order to offer a $100 loan seems, at best, antiquated and expensive. At worst, this paperwork burden is so cost prohibitive and administratively cumbersome that it amounts to an effective prohibition.

I am concerned that the proposed document collection, verification, and retention requirements are outdated, too difficult and costly for consumers, highly susceptible to fraud and too costly for online small businesses. Imposing such requirements would be a major step backwards in a technology-driven online environment. Furthermore, I'm concerned that the types and quantity of data we would have to collect would not be statistically significant, nor would they give adequate lift to an already challenging business model. Put differently, we can accept sensible requirements to enhance of our underwriting processes, so long as the incremental costs are not too onerous and the incremental time to underwrite an application is measured in milliseconds, not minutes.

That being said, there are data systems and information sources out there that can help determine income and monthly obligations, but the availability, reliability and cost of each such system varies. In fact, we use many of these systems on a limited basis – whenever red flags or other underwriting concerns prompt us to do so – to determine fraud and ability for the customer to repay his or her loans. But the process of using these systems is very manual and expensive, and as such we naturally limit their use to those instances that present the highest risk of fraud or other loss, since the cost of funding a new loan in an online setting is already significant.

Here's an example of how proposed data collection and ability-to-repay requirements would affect consumers and a business like ours:

- The typical hourly wage (including benefits) of a call center employee in the industry is about $20 per hour. Full verifications (along the lines proposed by the CFPB) – even utilizing many online tools available today –would take several phone calls to landlords, employers, etc., driving overall processing time to ~ 30 minutes per application, inferring incremental cost of $10 per application.
- Considering that only 20-25% (or less) of applicants are approved, this increases

incremental costs to $40-50 *per funded loan*.

- Furthermore, bottlenecks created by all this manual processing add additional opportunity cost for *not* getting to (or fully processing) the applications of other potentially credit-worthy customers in the queue, many of whom would simply abandon the process. Maximum speed and efficiency are therefore imperative in an online setting where "abandonment" and other hurdles to customer conversion are already prevalent. As explained in more detail below, in the online market, consumers value speed and convenience – and, if we cannot approve their application instantly, we run the risk of their abandoning the process for a non-compliant lender that can provide instant approval.
- Increased costs and bottlenecks (leading to fewer funded loans) would significantly drive up costs to the consumer and unavoidably lead to a "chilling" effect on the real and nominal availability of credit. This would adversely affect people who already face limited choices in their lives and choke off the majority of small businesses in the space. It would also potentially create the unintended consequence of encouraging online borrowers (whose needs will not go away, regardless of the content of the CFPB's rule) to go to *less reputable and reliable* sources to meet their liquidity needs— to the kind of lenders who do not care about the issues being discussed here, and have not spent their own money and time to participate in the SBREFA process. These are the kind of lenders who should be the target of state and federal regulatory and enforcement resources.

My concerns are not only about getting documentation from an online customer who demands a decision in mere seconds (lest he or she abandon the process). My concerns are also about underwriting based on this documentation, securely storing it, producing it upon request for regulatory authorities, and monitoring and auditing our intake and storage processes for data security and privacy compliance (something we take VERY seriously).

Whether the "ability to repay" determination is manual or automated, it is in addition to a lender's existing underwriting processes. As such, each lender would need to build a new software platform or add significant new processes to ensure these determinations are consistent with the CFPB's expectations. And the cost to do so would be much lower (on a per unit basis) for larger lenders than they would be for smaller lenders, like us.

Again, our customers demand quick loans, but whenever we conduct manual underwriting, our conversion rates drop. That's the #1 reason why we established online operations in the first place – to conveniently and quickly offer credit without burdening ourselves or our customers with expensive storefronts, lengthy approvals or documentation processes. As a financial technology, or "FinTech" business, we leverage technology – complicated algorithms, machine learning and advanced "big data" techniques involving thousands of attributes and numerous inputs – in order to speed up access to credit and offer credit directly to consumers at a competitive, risk-adjusted cost.

The "prevention" option seems to confuse a borrower's <u>ability</u> to repay with a borrower's <u>willingness</u> to repay.

The proposal notes that extensive defaults or re-borrowing may be an indication that the lender's methodology in determining the ability to repay is not reasonable. There is also no safe harbor provision for an acceptable default rate in that proposal. If multiple borrowers with significant ability to repay and no willingness to repay get loans, the company's methodology for determining ability to repay will have been for naught – yet potentially subjecting us to heightened regulatory scrutiny or even found to be inadequate.

Further, consumers who are able to use small dollar credit responsibly who will not meet the underwriting standard of residual income will be harmed by this requirement. Consumers have shortfalls and usually are applying for credit because residual income is interrupted in the short term. We would like to work with the Bureau to explain how we root out problem borrowers and to develop consumer choice off-ramps. Loan limits and cooling off periods force some responsible consumers to use worse alternatives.

The "protection" options for Covered Longer Term Loans are not economically viable.

As currently proposed, the protection options for Covered Longer Term Loans (i.e., the NCUA's payday alternative product and the 5% payment to income (PTI) product) are financially untenable for my company. We would not offer either of the proposed protection options.

We would consider making a maximum PTI loan only if it made sense in terms of both customer demand and company economics. The NCUA payday alternative is completely unviable for us.

BalanceCredit.com is one of many online, small dollar lenders that made over $18 billion dollars in loans last year.

$18 billion is a lot of bridge money being used to pay for consumers' emergency auto repairs, rent, car payments, utility bills, childcare, medicine, emergency medical bills, medical insurance deductibles and other critical bills. If 60% to 80% of that credit goes away, where would needy people turn? One cannot always assume everyone has a friendly or "better off" relative or friend, nor that other sources of liquidity would be less expensive, safe to access, or even legal.

The proposed Ability to Repay requirement may require my company to violate the Equal Credit Opportunity Act ("ECOA") and data security rules.

The proposed regulations would seem to require us to ask about a loan applicant's marital status if the consumer applies for a separate, unsecured loan with us. Otherwise, how would be able to apportion household expenses)? Such an inquiry is illegal under ECOA, and we would be left with a Hobson's choice of either violating ECOA or violating the CFPB's rules.

Similarly, the CFPB's proposed information collection and retention requirements run counter to the spirit of privacy regulations like the FTC's GLBA Safeguards rule, which requires lenders to collect and retain the minimal amount of information necessary. In my opinion, it is simply not necessary to collect the amount of information the CFPB would require, nor to retain it for three years.

The CFPB should give careful thought to whether lenders can make ability to repay determinations consistently with other laws.

The proposed regulations set a *de facto* 36% rate cap.

The regulations, as proposed, would not apply to a loan with an all in APR of 35.99% but would apply to a loan with a 36.01% APR, and, by the Bureau's own admission, 60% to 80% of the small loan market, *with rates above 36% APR,* will be eliminated. This establishes a *de facto* rate cap...and I believe a rate cap would be inconsistent with the Dodd Frank Wall Street Reform and Consumer Protection Act.

The proposed regulations would unfairly disadvantage small dollar lenders compared to other types of lenders.

The proposed regulations would create disparity between small dollar loans and other forms of credit. For example, verification of debt obligations and major expenses is not required with other forms of unsecured credit (i.e., credit cards and overdrafts). This places an unfair burden on unsecured closed-end credit, as compared with other types of credit. The standard for cooling off periods, loan limits and subsequent loans are other examples of requirements that unfairly discriminate among competing product types. We would like to work with the Bureau to ensure fairness in the marketplace.

The proposed requirements regarding payments would deny consumers repayment methods that they increasingly expect and demand.

Consumers increasingly are choosing ACH options. NACHA rules for lenders are sound practices and are supported by OLA. We support reasonable disclosures relating to these repayment options. Consumers can be notified through technology prior to an ACH transaction. Lenders should disclose to consumers their right to revoke an ACH authorization and how to do so.

We note that new NACHA restrictions on returned payments – limiting overall returns to 15% and administrative returns to 3% – will be effective in September 2015. Before making any proposal in this area, the Bureau should consider the potential impact of these new requirements on consumer protection and payment processing. We would also like the Bureau to understand that the NACHA limits on return rates will impact the ability to repay calculations and consider this analysis in the final rule.

Before imposing punitive regulations like blanket underwriting standards and cooling off periods, the CFPB should assess whether disclosure requirements would solve the problems the CFPB perceives in the market.

We believe that reasonable, less costly, regulations might include requiring lenders to have consumers sign a "Know Before You Owe" disclosure, similar to those developed by the Bureau for mortgages, student loans and credit cards and by some states, like Texas, for small dollar loans.

Finally, in closing, I am happy to share that I am not only a voice on this panel and the CEO of my company, but also a former payday customer. You see, at one point in my life, following the collapse of the economy in 2008 and in the midst of several unexpected and significant hardships, I turned to the industry for help. My responses herein are therefore not theoretical or self-serving...I am also speaking from first-hand experience as a former borrower.

Again, I appreciate the opportunity to participate on the Panel, and look forward to working with the Bureau about ways to sensibly regulate, and not effectively eliminate, the industry. Thank you.

Very truly yours,

Jason Hutton
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CFPB Small Business Advisory review panel for potential rulemakings for payday, vehicle title, and similar loans.

Response to proposed rules by

Speedy Cash state of Washington

The CFPB has 3 main areas of concern as stated in the coverage and scope section of the materials provided to us by the CFPB. 1. "How lenders underwrite the covered loans". 2. "Limit reborrowing within specified time periods". 3. "How lenders exercise their access to repayment through a consumer's account". In the following paragraphs we will address each one of the CFPB rules and our recommendations on how these 3 main areas of concern can be addressed to give the consumer both protection and maximum flexibility in their lending options.

II. Page 3 Ability to repay requirements.

1. Income. Speedy Cash (as do all other payday loan stores I am aware of) require income verification in the form of a recent paystub, bank statement showing direct deposit, or calling the employer to get verbal verification of the customers employment and hourly wage.

2. Major financial obligations. Assessing a customer's major financial obligations in the way that the CFPB suggests is unnecessary and time consuming for both the customer and the lender. It would also incur costs for the lender that in the state of Washington we would not be able to pass on to the customer making it more difficult to keep our doors open. Also, being required to run credit checks on customers for every loan they do will adversely affect the customer's credit score. In the state of Washington we deal with the customer's ability to repay in relation to other financial obligations by limiting the amount the customer is allowed to borrow to 30% of their gross monthly income or $700.00 which ever is less. This rule insures that the customer cannot borrow too much against what they make per month. As an added protection the customer can at any time enter into an installment plan that ranges from 90 to 180 day to pay off their loan. This ensures that the customer does not get stuck in a repeating cycle of debt. In 16 years as a payday lender I have never found it necessary or helpful to gather this kind of detailed personal information on a customer for a small loan, and I believe that our customers would find it to be an invasion of their privacy.

3. Customers borrowing history. Assessing a customer's borrowing history within our own company is simple and is done every time a customer does a loan. If a customer has a delinquent loan they would not be allowed to borrow more money until the current loan was paid in full. Checking the borrowing history of customers with other payday lenders would time consuming and costly for the lender, by

forcing lenders to run credit checks for every loan, and would adversely affect the credit score of the borrower if the lender is required to run credit checks on the borrower for every loan they take out. In the state of Washington we have a state database run by Veritec Solutions that records every payday loan in the state. If a borrower has a loan on an installment plan, a loan in default, or a loan up to their maximum amount and attempts to get a loan from another lender, the database will inform the lender and not let the loan go through. I would not suggest this as a solution on a nationwide scale (i.e. Lenders report to a national data base), but it could work on a state by state basis. The data base is a invasion of the borrowers privacy (we don't have database's recording how many credit cards people have or how much debt they owe or how often they access their credit cards), but if your goal is to prevent borrowers from accessing more payday loans while they have an installment plan or defaulted loan this is an effective solution.

III. Page 6. Limitations on sequences of covered short-term loans and covered longer-term loans with balloon payments.

1. Impose a presumption of inability to repay for multiple loans in a sequence. (Loans in sequence being defined as loans take out within 60 days of each other). If the CFPB were to implement this rule as stated it would be devastating not only for the lender but for the borrower as well. For the lender this would represent a significant increase in costs as we would have to run the same credit checks for every loan we did for every customer. It would also represent a significant decrease in customer traffic and loss of profit. For the borrower they would have to bring in new documentation for every loan as if they were applying for a loan for the first time. It would also adversely affect the customer's credit score and limit their ability to access loan credit when they need it. For example if a customer were to borrow 3 times within a 60 day period, they would have to wait 60 more days before they could borrow again. If the water pump on their car went out in the 60 day period they would not be able to get a loan for the money to repair it.

The presumption of inability to repay is not fair to the borrower or the lender, it is also illogical. In the state of Washington a borrower is required by law to pay their loan in full before they can borrow again. Under this rule we as the lender are to presume that because the borrower wants to borrow again they are unable to repay the loan even though they have just paid their loan off demonstrating that they can in fact repay the loan. To put this in another way, if I use my credit card in May and when the bill comes in April and I pay the bill in full then in April I want to use my credit card again is the credit card company then to presume that I am unable to pay my credit card bill because I paid it off the month before and then not allow me to use my credit card? This of course is ridiculous. However, this is exactly what the proposed rule would do to both borrower and lender. The ability to pay a loan off on time is not a demonstration of a person's inability to pay a loan off the next time. I would also like to point out that no one tells people how often they can use their credit cards.

If the goal of the proposed rule is to keep the borrower from falling into a cycle of debt then I would recommend the installment plan I mentioned earlier. The installment plan would give the customer the option of making payments on their loan at any time during the loan process and at the same time allow for maximum flexibility for the borrower to decide when they access loans so they can deal with the things that happen to them as they happen.

V. page 7. Alternative requirements for covered short-term loans.

1. Short-term covered loans that are structured to taper off the consumer's indebtedness. This rule is wholly unnecessary. The ability for a customer to retire their loan over time can be addressed with the installment plan I have suggested earlier.   In the state of Washington the Installment is stated this way:

"At the time you repay this loan, you should have sufficient funds to meet your other financial obligations. If you cannot pay other bills because you are paying off this debt, you may enter an installment plan with us by notifying us on or before the loan's due date. If your loan amount is four hundred dollars or less, you many enter into an installment plan that allows you to pay off your loan in substantially equal payments over ninety days. If your loan amount is more than four hundred dollars, you may enter into an installment plan that allows you to pay off your loan in substantially equal payments over one hundred eighty days. In installment plan will allow you to pay all that you owe without having to pay any additional fees, interest charges or other charges for converting you small loan to an installment plan"

This is more than sufficient to keep borrowers out of a cycle of debt while still allowing them to access loans whenever they need them.

VII. Page 11. Payment collection practices limitations for all covered loans.

1. Notice to consumers prior to attempting to collect payment from an account. This would be a very costly and time-consuming rule. There are no such requirements for other lenders or service providers who may access a consumers account electronically or otherwise. This onerous regulation would be very discriminatory towards the small lender since no other service provider is required to provide this type of notice. Also, consumers may feel insulted and badgered by these constant reminders of when their loan will be collected. They are, after all, adults who are capable of handling the payment of their obligations and are already aware when their loans are due.

2. Limitation on attempts to collect payment from a consumer's account. Here again is a suggested regulation that is directed at the small lender while no other lender or service provider is subject to this discriminatory law. While there is understanding as to protecting the consumer from overdraft charges, this problem would be substantially reduced if the banks were able to share information with lenders as to whether or not funds were available in the consumer's account. This would allow the lender to collect on defaulted loans without overdrawing the borrowers account and would avoid the hit or miss method of collection on defaulted loans.

This regulation would also open the door to many more consumers being sent to collection agencies since that would be the only avenue for lenders to collect delinquent funds. Small lenders should have the right to collect funds owned to them.

It is also important to note that the borrower already has protection from electronic funds debiting. The borrower has 60 days to dispute any funds debited from their account and have the funds taken returned to them even if they have signed an agreement giving the lender permission to debit the funds.

If the goal of this rule is to prevent borrowers from accruing to many overdraft fees from the banks due to lenders attempting to collect bad debt, I would recommend that attempts to electronically collect funds on a defaulted loan be limited to 4 times in a month. This would allow the lender to continue to collect funds that are owed to them while limiting the overdraft fees for the borrower.

Conclusion:

If the CFPB implements the rules outlined it would make it impossible for me or any other payday lender remain in business. This is not an exaggeration, it is a simple truth. These rules would not only destroy my livelihood but the livelihood of the people who work for me, and tens of thousands of people across the country who work in the payday loan industry.

In reading the proposed rules it strikes me that the rules are designed not to provide consumers protection from the lenders but to try and protect the consumers from what CFPB considers to be bad choices or habits of the consumers themselves. I have always found that people are better off when they are allowed to make their own choices. If you are truly interested in protecting consumers from a repeating cycle of debt, I suggest that you seriously consider the recommendations I have made above. If you implement the rules that you have outlined as they are, there will be no payday lenders left and the consumer will have no access to the loans they both need and want.

In 2010 when Washington State implemented their new rules for payday loans there were seven payday loan stores in Centralia and Chehalis (where my store is located) now there are two. I was lucky. I thank God I was able to stay in business, most weren't so lucky. Even thought I was able to keep my doors open I saw my business cut in half. I had to lay off one of my workers. This was a good employee that had done nothing wrong and I had to tell her I couldn't afford to keep her any more. Her name was Ashley. I had to watch her cry as I handed her a letter of recommendation and her check which was all I could give her. The lawmakers in Olympia didn't have to do that, the governor didn't have to do that, I did. I tell you this story not to garner sympathy but to impress upon you that your actions have real consequences on real people's lives.

Thank you for your attention in this matter.

Sincerely : Jason & Doug Smith

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Written Submission of James Williams, Jr. to the SBREFA Panel for Potential CFPB Rulemaking for Payday, Vehicle, Title, and Similar Loans

Duck Creek Tribal Financial, LLC ("Duck Creek") was chosen as a small entity representative to participate in the Small Business Review Panel ("Panel") convened on April 29, 2015. Duck Creek is a wholly owned and operated economic arm and instrumentality of the Lac Vieux Desert Band of Lake Superior Chippewa Indians ("Tribe"), a federally recognized Indian tribe, who owns and operates online small-dollar consumer lending businesses, including Duck Creek, pursuant to the Tribe's laws (the "Business"). I have served as an elected tribal leader for the Tribe for the past 28 years and as Co-Manager of the Business for the last two years.

It is important to note at the outset that tribal lending businesses are unique in the respect that money generated is used for the purpose of furthering the goals of tribal self-sufficiency; thus providing economic stability to our people. For the first time –with the Internet as the great equalizer – it does not that my Tribe is located in a geographically isolated portion of the western Upper Peninsula of Michigan. For tribes like mine – income generated from the Business makes up a significant portion of the Tribe's general fund budget which funds essential governmental services such as education, social services programs, health care, senior services, housing, and law enforcement.

Contrary to the presumptions outlined within the Consumer Financial Protection Bureau ("CFPB") March 26, 2015 *Small Business Review Panel For Potential Rulemakings for Payday, Vehicle Title, and Similar Loans: Outline of Proposals under Consideration and Alternatives Considered* ("Proposal"), we take great pride in our ability to provide assistance to consumers in their time of need. The Tribe has invested significant resources in the Business to focus on being a leader in the offering of tribal online consumer financial services products that balances business needs and provide the highest level of protections for consumers through licensing, audits, and available dispute resolution. While the question of whether any final rule will apply to the Tribe's businesses is suspect, our commitment to consumer protection and above-board business operation inspires us to provide thoughts regarding any rules we may later consider adopting as our own.

Our tribal lending business offers only longer-term covered loans, therefore my comments only pertain to the longer-term covered loans as described in the Proposal.

As a basis for regulation of covered longer term loans, the Proposal states the CFPB is looking "only to those loans with a cost above a specific threshold in order to focus regulatory treatment on the segment of the longer-term credit market that poses the greatest risk of consumer harm." Proposal at 19. The presumption that starting at a 36% all-in APR, mirroring the Military Lending Act, is appropriate could not be further from the truth.

The CFPB provides no data to support this presumption or to demonstrate that the APR is an adequate measure of harm to consumers. For example, if a lender offered a loan that had a duration of more than 45 days and charged a 400% all-in APR, but did not have either (1) access to repayment through the consumer's bank account; or (2) have a non-purchase money security interest in the consumer's vehicle, this would not be considered a longer-term covered loan, yet a loan at 37% interest for which a consumer opts to pay via their bank account is treated as a covered longer term loan. It is this lack of rhyme or reason that spurred the Tribe's interest in participating in the Panel in order to witness for ourselves what happens when a government agency is motivated by politics and paternalism rather than on ferreting out the truth and proposing regulations based in fact rather than assumptions. We are hopeful that we, as a Tribe, will learn from this process as we continue to promulgate laws and regulations to govern the Business.

I. False Presumption 1: Businesses Engaged in the Offering of Longer-Term Covered Loans do not Underwrite or Assess the Consumer's Ability to Repay

a. Presumption

The CFPB makes the unfounded presumption that businesses in the small-dollar lending industry do not underwrite or assess consumers' ability to repay. The Proposal states, "[I]n contrast to common underwriting practices in many other markets for consumer credit, many lenders make no attempt to analyze consumers' other financial obligations or to check credit reports." Proposal at 9. This presumption is false and relies on data obtained from store-front lenders that offer short-term covered loans. Had the CFPB collected adequate data related to the longer-term covered loan product it seeks to regulate, it would be aware that those offering longer-term covered loans, similar to the Business, underwrite loans using sophisticated algorithms that analyze thousands of data points to determine whether the consumer has the ability to repay the loan as well as the consumers commitment to repay. Indeed, the ability to successfully underwrite loans and accurately screen for fraud is the only way to ensure profitability of the Business.

b. Data

Less than 10% of consumers who submit applications to the Business are approved for a loan. During the underwriting process, the Business looks at over 1,000 data points as part of a statistically sound and empirically derived formula that includes, but are not limited to: income, identity verification, employment or other source of income, bank account, financial obligations, repayment history, OFAC, DOD database, fraud indicators, and data from two of the "big three" traditional credit reporting agencies. This type of comprehensive underwriting requires the assistance of vendors to obtain certain data about applicants which includes traditional credit reporting agencies, non-traditional credit reporting agencies, fraud prevention technology and identity verifying services, and bank verification service providers.

Underwriting allows the Business to manage its risk and the risk to consumers appropriately and ensures that our customers pay back their loans. Moreover, major financial obligations are already considered during the underwriting process. Household obligations do not provide any statistical significance in the underwriting process because the loan is provided to a single individual, and even if such information proved statistically significant, this data is not available in any verifiable form. The CFPB's assumption that inclusion and verification of major financial and household obligations will somehow serve as a better indicator than the current sophisticated underwriting algorithms used to determine a consumer's ability to repay is unfounded and simply false.

c. Costs to Tribal Lending Business

Underwriting as well as marketing costs are sunk costs at the time a consumer applies for a loan. If the final rule requires additional underwriting criteria, those sunk costs will increase and have a detrimental effect on our business as well as the consumer in the form of increased overhead and an increased cost per loan which ultimately would be borne by the consumer.

It is clear that there are also many immeasurable costs to small businesses operating in this industry including tribal lending businesses, consumers, and the industry as a whole that the CFPB has not considered. First, access to capital needed to operate the small business would dry up due to the cost of capital often being tied to performance metrics of the business. If the business cannot perform, or afford the capital necessary to operate - it will close Furthermore, increased underwriting criteria and lower conversion rates (as discussed more fully in Section II) would result in less consumers qualifying for loans, leaving consumers less options to obtain cash during an emergency. Finally, the industry is harmed through the lack of innovation in the marketplace, decreased competition, and barriers to entry created by harsh unnecessary rules.

d. Alternatives

The CFPB should reconsider its presumption that the Business does not currently underwrite loans made to consumers and adopt a reasonable standard for determining the ability to repay that reflects the fact that the Business currently engages in extensive underwriting. Acceptance that a manual process is not better than an automated process is key. In order for the industry to survive, the Business must have the ability to determine a consumer's ability to repay through an automatic underwriting process that provides the consumer with a decision in seconds, anything longer will prove harmful to both the industry and consumers.

Before proposing any rule, the CFPB should also consider gathering and analyzing data specific to longer-term covered loan products to determine whether other lenders, like the Business, are already determining consumers' ability to repay and whether those methods are working.

II. False Presumption 2: Manual Verification Protects the Consumer Better than Self-Reporting and other Underwriting Tools Currently Used.

a. Presumption

The Proposal would require lenders to verify a consumer's income, major financial obligations, borrowing history on covered loans, and possibly other household expenses. The CFPB assumes that this will not unduly burden the Business and that costs to manually verify are insignificant. This assumption is false and based on the misguided notion that these criteria can actually be verified, that such verification of expenses would be more indicative of a consumer's ability to repay than the underwriting techniques currently being used by lenders in the industry, and that verification would be simple.

The Proposal also does not consider the fact that requiring the consumer to fax or scan copies of their pay stubs and other documents evidencing major financial obligations will likely increase fraud. Altering a statement or paystub is fairly easy and all that is needed is software or a pen and a scanner to insert, delete, or change the text. Anyone with a word processor and basic skills could create and print documents to look like a real pay stub. In fact, all someone needs to do is a quick Google search to find the steps on how to do it.[1] For example, see

http://www.freddiemac.com/news/blog/joan_ferenczy/20120123_looking_mortgage_fraud_in_the_face.html.

As indicated in Section I, the Business underwrites 100% of its loans. Part of this underwriting process may include manual verification when certain red flags or other data points trigger the need for manual verification. Data provided below reflects that when our Business requires manual verification of consumer information, a significant drop in conversion rates (accepted applications subsequently approved and originated) is experienced. This industry, for the consumer, is about urgency, customers need an immediate response to meet their financial needs. Manual verification requirements would severely hinder the speed and convenience of obtaining a loan for the consumer and many consumers would choose not to go through that process. If such verification were required for every applicant, the drop in conversion rates would drastically increase, thus creating higher costs for the business (and, in turn, the consumer) and significant losses in revenue for the Business.

b. Data

Consumers continue to apply for and receive loans from our Business because of its convenience and speed. When a consumer applies for a loan through the Business, underwriting

[1] http://www.checkstubmaker.com/ and
http://www.freddiemac.com/news/blog/joan_ferenczy/20120123_looking_mortgage_fraud_in_the_face.html

is performed in real-time, and an approval or denial is usually provided within seven (7) seconds or less.

If income, major financial obligations, and other expenses are required to be verified (as discussed in the Proposal), it would be impossible to provide consumers with the same real-time decisioning which would cause consumers to go elsewhere and result in a massive losses to the Business.

A data sample of 1,438 loan applications for which consumers in the sample group were similarly qualified for a loan, however, one or more underwriting indicators raised concerns as to the applicants' identity, ability or commitment to repay or both was taken and split into two groups. The first group of 142 applicants for which sufficient verification could be validated without manual verification went through our automatic underwriting process and the second group of 1,296 applicants went through our manual verification process. The first group had a 72% conversion rate – meaning that 72% of the 142 applicants received a loan from our tribal lending business. The second group had only a 35% conversion rate – meaning that only 35% of the 1,296 applicants received a loan from the tribal lending business. The primary reason for the drastic reduction in conversion rates is squarely based on manual verification and the time it takes for the consumer to provide additional information that may not be easily accessed or is simply unavailable.

To further demonstrate this effect, we took a data sample of loans originated this year and analyzed the conversion rate (accepted applications subsequently approved and originated) based on the time that had passed between application submission and origination. In the first three hours 64.13% were originated or converted. Between three and six hours after application submission only 6.42% of the remaining outstanding applications were originated or converted. After 24 hours, the conversion rate is even lower at 3.36% of applications remaining.

The data samples reflect the drastic effect of manual verification which prohibits the ability to provide real time decisioning to a consumer on the tribal lending business. If we cannot tell the consumer their loan is fully approved and funds are on the way immediately, they will go elsewhere. Therefore, if the final rule requires the Business to verify information for each and every applicant, and such verification entails manually gathering information, we expect our conversion rates to drop, our consumers to go elsewhere and our Business to close.

c. Costs

Manual verification of a consumer's income and expenses, leaving the Business without the ability to provide a real time decision - will have a chilling effect on our business. Decreased conversion rates and increased overhead will translate into higher costs per loan which will be ultimately be borne by the consumer.

d. Alternatives

The CFPB should consider providing a "safe harbor" within the final rule in which the consumer's income and major financial obligations are deemed verified, constituting a "reasonable determination" of the consumer's ability to repay, if that lender uses a credit reporting agency to cross reference information contained within the consumer's loan application.

III. False Presumption 3: Re-borrowing Traps Consumers in a Cycle of Debt.

a. Presumption

The CFPB presumes that re-borrowing is indicative of the consumer's inability to repay. This presumption is false, and again, is based on data from lenders who offer short-term covered loans. While those lenders may allow their customers to re-borrow before the loan is satisfied or re-borrow in order to pay off the first loan – this is not the case for our Business.

The Business does not allow a customer to take out a second loan until the first has been satisfied. A customer who re-borrows is a returning customer whose loan terms have been satisfied and makes a new application for a new loan with the Business. Our returning customers are some of our best customers and receive the best rates. Our Business offers returning customers a VIP rate, which is less than the standard rate, because we know from prior experience with that customer that they possess both the ability and commitment to repay. To be sure, returning customers have lower default rates, pay their loans off faster, and therefore incur less fees and interest.

Contrary to the CFPB's presumption, our data shows that only about 15% of our customers ever re-borrow and the number of customers who re-borrow drops dramatically for second, third, fourth, etc. loans. Re-borrowing is not the norm, does not harm consumers in the way the CFPB presumes, and re-borrowing in the longer-term covered loan context cannot be compared to the customer experience with the short term covered loan context.

b. Data

Although our returning customers are some of our most valuable customers, not every customer chooses to take out a new loan, and those that do, act responsibly and use the product as intended. We have analyzed data from our customers who took out their first loan with our tribal lending business between April and December of 2013.

During this time period, only 50% of first time customers were eligible for a new loan once the first loan had been satisfied. Of those that were eligible to take out a new loan only about 30% actually did – meaning that only about 15% of the data sample ever re-borrowed. There was an average of 77 days between the satisfaction of the customers' first loan and origination of the customers' second loan.

Of that 30% of customers who took out a second loan, 76% were eligible for a new loan once their second loan had been satisfied. Of the 76% who were eligible only 31.98% actually took out a third loan. There was an average of 56 days between the satisfaction of the customers' second loan and origination of the customers' third loan.

Of the original data sample of first time customers, only .36% took out 7 loans in a 24 month period, and even those customers averaged more than 30 days in between the sixth and seventh loans.

The CFPB's presumption that re-borrowing is indicative of the consumer's ability to repay is clearly false and without basis. The data sample above shows that only a small percentage of consumers *ever* re-borrow, those that do still undergo underwriting before approval and there is a statistically significant amount of time between consecutive loans.

c. <u>Alternatives</u>

Instead of limiting the number of loans a consumer can take out in a given timeframe, the CFPB could prohibit lenders from allowing the consumer to take out a new loan to pay off the prior loan, require lenders to underwrite the new loan, or some other workable measure that makes sense for both the consumer and the lender.

IV. False Presumption 4: Alternatives Proposed Allow for Continued Operation of the Industry

a. <u>Presumption</u>

The CFPB admitted during the April 29, 2015 Panel, that the proposed 5% PTI ratio was not based on any data, but rather an arbitrary number. Such arbitrary decision-making by a federal agency is astounding. The 5% PTI alternative would require the lender to shorten the duration of the loan which would require a drastic reduction in the APR to meet the ratio. Given the costs associated with serving a high risk credit market, such changes would be harmful to both the lender and the consumer. Any presumption that a 5% PTI would allow the industry to survive is false.

Moreover, the CFPB's presumption that the NCUA model is a viable alternative is equally ill-informed. Credit unions who offer these types of loans are non-profit institutions. Small businesses including tribal lending businesses engaged in this industry are for-profit. Even so, many credit unions do not offer these products because they do not make economic sense. The same is true for tribal lending businesses.

b. Data (related to 5% PTI)

The median gross annual income of the customers of the Business is $41,092.49, with a median gross monthly income of $3,424.37. The average new customer takes out a loan for approximately $640 with a fully amortized 24 month repayment term. The current cost per loan is $300 over and above principal with a very efficient real-time underwriting process. However, changes in underwriting, manual verification, and decreased conversion rates will likely drive the cost per loan to more than $600. If the Business was required to abide by the 5% PTI alternative, a customer with the median income could pay a maximum of $171.21 per payment and the most that could be collected from that customer over the maximum six month term would be $1,027.31. The Business would need to recover $1,240 from the customer just to break even – meaning that if the Business chose to follow this alternative each loan would be made at a $212.69 loss.

c. Costs

Both alternatives would destroy the industry. If the Business is required to take a loss on the loans it makes, there is no possibility of making a profit, and therefore no reason to remain in business.

Closing the business will also result in the loss of jobs for employees and reduce, if not eliminate, the consumers' ability to obtain money in emergencies.

d. Alternatives

The CFPB should consider gathering and analyzing data from lenders offering longer-term covered loans that reflects what is actually affordable for consumers and how much offering these products actually costs small businesses. A feasible alternative would be to increase the PTI ratio to reflect reality. A 25%-30% PTI and a longer term might be more palatable.

V. False Presumption 5: Consumers are Harmed by the Product

a. Presumption

The CFPB makes a presumption that all consumers are harmed by both short-term and longer-term covered loan products primarily because lenders do not take into consideration the consumer's ability to repay and do not perform any underwriting. As already discussed above, this is simply not true of the Business.

A glaring hole in the Proposal is that the CFPB has not included or analyzed any data regarding how the Proposal might negatively affect consumers nor does it appear to have considered data from consumers expressing whether any of the covered loan products provide benefits to them or measure their satisfaction with current products.

The CFPB, as an entity created specifically to protect consumers, would be undermining its own mission by putting regulations in place that would essentially terminate this industry. The Proposal, if adopted into a final rule, would eliminate the ability of consumers, who would generally be unable to qualify for a loan from a traditional lender, to receive a loan of any kind. Beyond that, recent studies have shown that these kinds of regulations have very limited benefits for consumers.

b. <u>Data</u>

We ask our customers to take a short four-question survey following each call with one of our customer service representatives. Our customers are asked the following questions and asked to measure their satisfaction on a scale of 1 to 4, 4 being very satisfied and 1 being very dissatisfied:

1. Please rate the professionalism of the customer service representative you just spoke with;
2. Please rate how well the customer service representative answered all of your questions;
3. Please rate your overall experience with our services; and
4. Please rate how likely you are to use our services in the future.

Out of a sample of over 50,000 calls, customers were asked to rate their experience with the Business. Results are overwhelmingly positive, the surveys reflect:

1. 3.785 out of 4 when asked about the professionalism of our customer service representatives.
2. 3.831 out of 4 when asked how well our customer service representatives answered all of their questions.
3. 3.699 out of 4 when rating their overall experience with our services
4. 3.480 out of 4 when asked how likely they would be to use our services in the future.

Furthermore, a series of recent studies have shown that taking out small-dollar loans does not inflict the kind of financial distress on borrowers presumed by the CFPB. One study suggests that, in the year of a default on a loan, a consumer's credit score will decrease by only an insignificant amount. In the following years, it will begin to rebound, making that credit drop even less significant.[2] In comparison to something like a "catastroph[ic]" loss that would occur in the face of a mortgage loan default, the effects of defaults on [small-dollar] loans are "trivial at best."[3]

The predictive and practical value of regulations imposing a payment-to-income ratio requirement have also had little benefit for consumers and lenders alike, while heavily reducing access to credit for consumers. Regulation that fails to consider the reality of the consumers' situation will stunt access to credit: capping the interest rate on loans, for example, can all but eliminate the small-dollar lending industry in a state.[4] One study found that regulations imposing a ceiling on payment-to-income ratio results in a reduction in access to credit for a typical consumer but do not provide a significant improvement in the rate at which a loan is paid off.[5] **With a payment-to-income limit of 5%, the loan payoff rate was only increased by 0.7% while the volume of credit was reduced between 55.1% and 92.6%.**[6] Another study found the same result: payment-to-income ratios are "non-predictive for the default of the average consumer who receives a loan."[7] Thus, while underwriting requirements and payment-to-income requirements greatly reduce access to small-dollar loans, they do not appear to increase the rate at which consumers pay off their loans or do a very good job of predicting if consumers have the ability to repay.

Using regulation to limit access to small-dollar loans may also have unintended effects on consumers. One study found that, after Georgia banned small-dollar lending, Georgia saw a decrease in creditworthiness and an increase in bankruptcy filings. The study reflects that "[r]elative to other states, households in Georgia bounced more checks after the ban, complained more about lenders and debt collectors, and were more likely to file for bankruptcy under Chapter 7."[8] Similar results have been seen in North Carolina.[9] The study suggests that this result occurs because the alternatives to small-dollar loans, such as bounced check protection fees, are still more expensive and detrimental to consumers than small-dollar loans are.[10]

These recent studies show that the Proposal may not really improve the current small-dollar lending system. At the same time, they indicate that consumers will clearly be harmed by reducing their access to credit. Consumers' credit scores have not been shown to be harmed in a

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[2] RONALD MANN, DO DEFAULTS ON PAYDAY LOANS MATTER?, 22 (2014). ("[T]he effect of a default on the borrower's overall financial health is trivial at best—associated with a trivial drop of 15 points or less . . . . Moreover, because of rebounds in credit scores in the years following the default, the regressions indicate that the "all-in" credit score decline associated with a default is considerably smaller, in the ranger of 5 – 7 points.").
[3] *Id.*
[4] For example, New York's criminal usury state caps interest rates at 25%, which has essentially criminalized short-term lending. Chris Cirillo, *Payday Loan Regulation: Any Interest?*, 11 DePaul Bus. & Com. L. J. 417, 433 (2013).
[5] J. HOWARD BEALES, III & ANAND M. GOEL, SMALL-DOLLAR INSTALLMENT LOANS: AN EMPIRICAL ANALYSIS, 58 (2015).
[6] *Id.*
[7] PETER TOTH, NONPRIME101, MEASURES OF REDUCED FORM RELATIONSHIP BETWEEN THE PAYMENT-INCOME RATIO AND THE DEFAULT PROBABILITY, 6 (2015).
[8] Donald P. Morgan and Michael R. Strain, *Payday Holiday: How Households Fare after Payday Credit Bans*, FED. RES. BANK OF N.Y. STAFF REPORTS, Nov. 2007, at 3.
[9] *Id.*
[10] *Id.* at 4.

non-trivial way by taking out a small-dollar loan. The CFPB, in its mission to protect consumers, should consider the negative effects of these restrictions before promulgating a rule.

VI. The Impact of the Proposal Would Be Devastating, Not Only to Small Lenders, But Also to Families, Communities, and Tribes

The Proposal in its present form, if adopted by the Tribe to be applied to the Business would almost surely lead to immediate closure.

While, the loss of a small business like ours may seem inconsequential to Washington DC regulators at the CFPB, the impact of such a loss is far more profound to those of us who live and work in geographically remote, rural areas where jobs are scarce and resources are limited. In these areas, businesses that SBREFA classifies as "small" are, in fact, "big." The loss of those businesses would be significant, not only to the employees of the businesses, but also to their family members and other members of their communities, each of whom are themselves consumers and worthy of protection.

For tribally-owned businesses like ours, the impact of the Proposal would be especially severe. The Tribe uses the revenue generated from its tribal lending business directly and substantially supports our citizens, many of whom are unemployed and otherwise impoverished. In a community that suffers from historically high unemployment (exceeding fifty percent) where the Tribe does not enjoy the same traditional revenue-generating tools available to other sovereigns, the tribal lending business offers opportunity and hope. The Tribe does not have any realistic ability to impose property, sales or income taxes to fund government services to citizens and nor is the Tribe proximate to a major population center that would afford significant recreation or tourism opportunities. The Tribe is geographically remote. The Tribe has made the most of its rural resources, but the Tribe must utilize commercial enterprises, as extensions of the Tribal government, to fund its governmental functions. The revenues from the tribal lending business supports the Tribe's economy, allowing us to diversify, and supplement a waning government budget in order to provide essential governmental services such as education, social services programs, health care, senior services, housing, and law enforcement.

In recounting the disadvantages of the Tribe, I do not mean to suggest that our struggles provide the Tribe with a license to earn money by any means necessary. Instead, and as stated previously, the Tribe has expended considerable resources to structure our tribal lending business in a way that protects the consumers. Indeed, my Tribe is a leader in the tribal consumer financial services industry in part because of our commitment to consumer protection by the tribal lending business and the independent regulatory body charged with regulation of the same. The Tribe's lending businesses operate under Tribal laws and regulation comparable to federal and state laws and regulation. An independent regulatory authority is tasked to implement Tribal consumer finance laws and to regulate all Tribal consumer financial services—everything from lender to vendor to consumer.

Given the immeasurable impact the Business has on my Tribal community, it is imperative that we be able to continue to operate in order to meet the needs of the Tribe. We know the best way to achieve such longevity is to treat our customers well and earn their repeat business and good references. We do this by employing rigorous consumer protection measures and by responding to customer inquiries and complaints in a manner that is favorable for the customer. For example, our tribal lending business on-boarded with the CFPB last year to provide its customers with another platform to submit complaints and inquiries to the Business through the CFPB Portal. The CFPB Portal has proved to be a beneficial mechanism for both the tribal lending business and its customers to resolve complaints. Quite frankly, customer complaints, including those received through the CFPB Portal, account for a very small percentage of loans originated – less than .0001%.

VII. Conclusion

I thank you again for the opportunity to participate in this Panel. I sincerely hope that the CFPB will reconsider its decision to create an all-encompassing rule to include longer-term covered loan products without a sufficient statistical or data driven basis to do so. The CFPB would do well to go back to the drawing board when it comes to longer-term covered loan products in order to first gain a better understanding of the industry and the product as a whole. Unintended consequences of hasty ideas and decision-making could be devastating for both small businesses and consumers.

I am available to further discuss any of my oral or written comments to the Proposal.

Regards,

James Williams, Jr.
Co-Manager

UN LOAN
UN BANK
SuperCash CheckCashing

May 12, 2015

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Via Email to cfpb_payday_sbrefa@cfpb.gov
Richard Cordray, Director
Consumer Financial Protection Bureau
1275 1st Street, NE
Washington, DC 20002

Re: **CFPB SBREFA Advisory Review Panel for Potential Rulemakings for Payday, Vehicle Title and Similar Loans**

Dear Director Cordray:

Thank you for the opportunity to participate as a Small Entity Representative in the Small Business Regulatory Enforcement Fairness Act (SBREFA) Panel session on April 29, 2015, regarding the Consumer Financial Protection Bureau's (CFPB) potential rulemaking for Payday, Vehicle Title and Similar Loans. The purpose of this letter is to memorialize and supplement my statements made during the Panel session.

My primary concern with the CFPB rule proposals is very basic. The costs of implementation of these rules, along with the attendant reduction in loan revenues caused by the restrictions contained in the proposals will destroy many, many small businesses, including mine. Destruction of these businesses will cause many small business owners to lose their investments, including in many cases their life savings. They will also result in widespread terminations of our hard-working employees. In turn, millions of Americans who have no other source of credit will be denied access to a reasonable form of legal, regulated credit, and will be forced to resort to illegal sources including loan sharks and offshore Internet providers.

I am also concerned that the CFPB's rule proposals suffer from other significant defects. These defects include:

(1) The CFPB's proposals are based upon a conclusion that consumers suffer harm as a result of using payday loans. That conclusion is contrary to the business model of my company, and to the experiences of my customers.
(2) By CFPB's own admission, the proposals are not based on research related to the business practices, or customer outcomes, within small entities.
(3) The CFPB's proposals have failed to adequately distinguish between the wide variety of products and services, and business models, encompassed within the proposals.
(4) The rule proposals exclude the most commonly abused forms of credit: bank overdraft and credit cards.
(5) The CFPB's proposals ignore the conflict they create with existing state laws and the restrictions those laws impose on lenders. The CFPB has also failed to consider as

alternatives the laws of many of the states that have found a balance between consumer protection and access to credit.

(6) The CFPB has failed to consider the significant academic and other credible research regarding payday lending that contradicts the conclusions reached by the CFPB.

These significant defects lead to the conclusion that the CFPB rule proposals are based on erroneous conclusions that are not supported by appropriate research. Therefore, there is no basis for the potential rulemaking with respect to payday loans offered by small entities. Furthermore, by excluding bank overdraft and credit cards, the CFPB will be creating an uneven playing field among financial service providers, and unfairly favoring one market over another. In light of its repeated recognition of the acute need for small dollar credit, and the certain devastating impact of the rule proposals on small businesses, the CFPB should delay any further action on the proposals, correct the serious defects therein, and allow the Small Entity Representatives another Panel meeting at an appropriate time.

Request for Confidentiality of Financial and Other Information

I have included in this statement and attach hereto certain confidential and proprietary information related to my business. Accordingly, I request that the CFPB not disclose the information designated as such and that the information be treated as confidential and proprietary.

Unbank Company, LLP

I am the Vice President of Unbank Company, LLP (Unbank)[1]. Unbank was initially formed in 1984, and has been in continuous operation since that time. We were formed by a single family and that family, including a second generation, still holds an interest in the company. Unbank currently operates 13 storefront financial services locations all of which are located in the State of Minnesota.[2] Unbank's stores are located in and around the Cities of Minneapolis and St. Paul. In several instances our stores are the only financial services locations in those service areas. We operate in many areas that were long ago abandoned by banks.

Unbank is representative of small businesses throughout the financial service center industry. The membership of our national trade association, Financial Service Centers of America (FiSCA), reflects the prevalence of small businesses in the market. Of FiSCA's 400 separate member companies, almost 90% operate fewer than 10 locations. Close to 80% operate a single location. Like Unbank, these small companies are locally based businesses serving the communities in which they are located, many of which are rural communities. Like Unbank, these are Main Street businesses.

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[1]Unbank operates its loan locations through a related entity known as Unloan Corp. In this submission I will refer to our operations collectively as "Unbank".

[2]Until April of this year, Unbank operated 14 locations, however, one location was substantially destroyed in a fire in early April. For the reasons I explain later in this statement, particularly the potential impact of the proposed rules, Unbank has determined not to rebuild and operate this location.

Unbank is Licensed and Regulated by the State of Minnesota

Unbank offers a variety of financial products and services, including payday loans, check cashing, money remittances, electronic bill payments, and prepaid cards. All of Unbank's products are authorized by the laws of the State of Minnesota. Unbank offers payday loans under our Minnesota Industrial Loan and Thrift License. Minnesota law currently requires Unbank to provide regular reports on loan activity, and Unbank is examined on an annual basis. During these examinations all of our business practices are scrutinized by our state regulators. Unbank's record of performance during these examinations is exemplary.

Unbank is a Responsible Employer Providing Quality Jobs

Unbank currently employs 42 people throughout the company. Based on research done of FiSCA members by Cypress Research Group (Cypress), the industry employs more than 50,000 employees. Our employee base, which is very diverse, is consistent with the industry as a whole. As reported by Cypress, approximately 80% of the employees in this industry are women. Many of these women are single mothers. More than two-thirds (69%) of the employees are minorities.

Unbank offers above minimum wage jobs, health and retirement benefits, and careers. Our average salary is approximately $30,000 per year, well above the state and federal minimum wage level. In addition, we offer health insurance coverage, retirement benefits, and paid time off. Most of our employees have been with Unbank for more than 7 years; many have advanced from entry level positions to become store managers. Several of our employees joined our company after having been customers. Unbank's employee compensation is also typical of FiSCA members. (Cypress Research Group). As currently constituted, the CFPB rule proposals will result in most of these companies having to go out of business and will result in the loss of tens of thousands of jobs.

Like most of the companies in the industry, Unbank is an active and dedicated member of the communities in which we do business. We support various community programs, including food pantries and summer camps. We are members of the Better Business Bureau, local chambers of commerce and neighborhood business groups. Thus, devastation of the industry will also have an impact on the communities in which our business operates.

The CFPB Proposals Will Have a Substantial Negative Impact on the Business of Unbank, Resulting in Store Closings, Lost Jobs, Lost Investment and Loss of Access to Licensed and Regulated Financial Services

Unbank has done an analysis of the impact of the CFPB proposals on our business. In addition to our analysis, we retained Deloitte Financial Advisory Services, LLP (Deloitte) to assist us in this project. A copy of the Deloitte report is attached to my submission. According to our analyses, the CFPB's ability to repay and increased underwriting requirements will increase transaction times by an estimated 15-45 minutes and will add additional costs for determination of ability to repay such as credit reports from credit reporting agencies (if these agencies even exist and if they even report the information CFPB is seeking to require).

The CFPB rule proposals ask repeatedly what lenders would do with respect to pricing? All of our lending takes place within the limits of state law regarding the type and amount of fees that can be charged. Accordingly, we will not be able to pass any of the increased costs through to borrowers and all of the increased costs will be absorbed by Unbank. As a result, it is unlikely Unbank would survive under CFPB's ability to repay approach.

As I explained above, Unbank operates under and in compliance with a detailed set of laws and regulations imposed by the State of Minnesota on Small Loan Licensees. These laws and regulations provide for reporting of all transactions, disclosures of fees, pricing, loan terms, and the frequency of use of our loans. As such, the proposals sought to be imposed by the CFPB are duplicative of many of the requirements imposed by the State of Minnesota.

More importantly, by virtue of the fact that we operate under a Minnesota Industrial Loan and Thrift License, we would be prohibited by state law from offering the type of longer-term loan contemplated by the CFPB proposals. The Minnesota law only allows us to offer shorter loans. Accordingly, without an amendment of Minnesota law, we would be completely unable to offer a loan product under the CFPB proposals. The impact on Unbank would be consistent with the impact on the other 34 licensed payday lenders in the state operating approximately 60 locations. Accordingly, the form of credit allowed under existing law would be eliminated, denying the millions of citizens of the State of Minnesota a critical form of credit.

Should the proposals be adopted as written, we have no reason to believe the impact on Unbank would be any different than is projected in the CFPB proposals. In other words, our loan revenues would decrease by between 69% and 84%. Deloitte has analyzed our financial reports and confirmed this result. Under Scenario 1 (Consumer Returns After 60 Day Cooling-Off Period), the impact on our business would be a decline in our profit margin of 54%. Under Scenario 2 (Consumer Does Not Return After 60 Day Cooling-Off Period), the decline in our profit margin would be 66%. Our likely response would be to close unprofitable stores and assess the economic sustainability for our remaining stores.

One example of the impact the CFPB proposals have already had is that Unbank has determined not to make the investment to reconstruct a store that was recently lost due to a fire. We deeply regret that we had to make this decision but we made it because of the probable impact of the rule proposals on the future economic viability of this store if it was reopened. We also regret the decision because this was the first store ever opened by Unbank. That store was a staple in the community. As a result of being forced not to rebuild the store, the surrounding community is being denied construction jobs, the availability of credit in that area, and Unbank employees may lose their jobs if we cannot accommodate or relocate them within the company.

In addition to the analysis provided for the ability to repay requirements, we, along with Deloitte, have analyzed the impact of the alternative to the ability to repay requirements. Based on an analysis of our financial information, we project the following impacts:

- Under Scenario 1 (Consumer Returns After Cooling-Off Period), we estimate a decline in our profit margin under the "amortization" scenario of 54%. The "off-ramp" scenario results in a similar decline of 47%.
- Under Scenario 2 (Consumer Does Not Return After Cooling-Off Period), the "amortization" scenario results in a 58% decline in profit margin, and the "off-ramp" scenario results in a profit margin decline of 51%.

Both of these results will lead to the closing of stores and the elimination of at least 6 jobs.

We also analyzed the impact on Unbank of the CFPB's proposed payment systems interventions. As noted previously, Unbank does require borrowers to authorize ACH payment access, however, almost 100% of our customers make payments via check or cash in our stores. When borrowers encounter difficulty in making timely payments, Unbank offers an alternate date without a penalty fee. We also make adjustments in payment dates when a customer makes an attempt to contact us prior to a payment due date. Approximately 10% of our customers utilize the flexible extensions offered.

Unbank also makes an effort to contact customers directly for repayment in order to avoid NSF and collection fees. Customer collection and court costs account for approximately 2% of expenses incurred by our locations offering payday loans. We anticipate, however, that implementation of the new proposals would accelerate transition to court collection processes given that the proposals would limit NSF fees. Currently, we make every effort to avoid this step and only use court collection as a last resort.

Finally, with respect to rollovers, they are prohibited by law in Minnesota. With respect to extended payment plans (EPPs), even though Minnesota does not address this mechanism, Unbank belongs to FiSCA, which has issued a Best Practice that addresses this issue. The FiSCA Best Practice that addresses EPPs provides that: "[a] Member will provide customers who are unable to repay a payday loan according to their original contract the option of an extended payment plan in compliance with any requirement in state law or, in the absence of such a requirement in state law, in compliance with FiSCA's 'Guidelines for Extended Payment Plans' (available at www.fisca.org), or the Guidelines for Extended Payment Plans of another established industry association that are consistent with the FiSCA Guidelines." The Guidelines for EPPs contain detailed guidance to members that mirror the strictest state laws on this issue. Every FiSCA member is required to review and sign a commitment that they will adhere to the FiSCA Best Practices every year upon renewal of membership.

Contrary to the CFPB's Conclusions, Unbank's Customers Do Not Suffer Harm, But Rather Enjoy a Significant Benefit From Our Products

The CFPB's proposals are based upon a conclusion that consumers suffer harm as a result of using payday loans. That conclusion is contrary to the experiences of my customers. At Unbank, we serve 53,000 customers per year, many of whom visit our stores multiple times per year. Our customers are typical of the industry customers as a whole. They have credit ratings that average 660. They are working class people, generally earning between $40,000 and $50,000 per year. They are government workers, teachers, healthcare workers, police and firefighters. Our customers use payday loans to cover non-recurring expenses such as car repairs and medical costs. Our customers are equally mixed between males and females. They tend to be younger, renters, and caring for children in their households. Significantly, all payday loan customers have bank accounts. (See Cypress Research Group).

Most of our customers utilize our payday loan services approximately 6 times per year. Importantly, most of our customers come to us because there is no other place for them to get a small loan. They do not have family members or friends who can or will loan money to them. Our customers also value the respect, dignity and privacy they receive from our company.

We also enjoy a high level of customer satisfaction. In surveys done by our industry, 95% of our customers rate our services as very good or excellent. (Cypress Research Group). One of the reasons we enjoy a high level of customer satisfaction is that our tellers interact directly with our customers. We have few if any complaints about our products or services. Our customers and our employees know each other because we hire from the communities in which our stores are located.

Our customers understand our products and services. As reflected in a national survey of payday loan customers, 95% of borrowers value the option to take out a payday loan. The same percentage of borrowers believe that payday loans provide a safety net during unexpected financial difficulties. Almost nine in ten borrowers feel that payday loans help customers bridge a gap in their finances. (Harris Interactive, *Payday Loans and the Borrower Experience*, December 2013).

Customers also utilize our services because we are convenient. Reflecting the days and hours that our customers work, all of our stores are open extended days and hours. This is true throughout our industry. (Cypress Research). If Unbank and other small businesses are put out of business by regulations that are unduly burdensome, our customers will be left to do business with unscrupulous lenders, or no lenders at all. However, their need for credit, and other financial services, will not go away. The CFPB proposals fail to provide legal, licensed businesses with a pathway forward to continue to operate. And, the rule proposals provide no alternatives to the millions of Americans that utilize our services.

By Its Own Admission, the CFPB Failed to Conduct Research on the Business Practices and Consumer Outcomes of Small Businesses

The rule proposals released by the CFPB, and on which we were asked to comment, are, by CFPB's own admission, <u>not</u> based on research related to the business practices, or customer outcomes within small entities. Therefore, the proposals cannot fairly or accurately provide the basis for rulemaking with respect to payday loans offered by small entities.

One of the assumptions of the proposed rules is that payday lenders do not engage in underwriting or an analysis of the borrowers' ability to repay. This is an assertion that ignores the reality that when a small business like Unbank makes a payday loan to a borrower, <u>the lender is making that loan with its own money</u>. It is illogical to assume that a business makes a loan with the expectation that the borrower will not repay. Furthermore, while the CFPB would impose on small payday lenders the obligation to engage in mortgage-type underwriting, such an exercise would defeat the very essence of a small, unsecured form of credit. Moreover, our customers need loan proceeds quickly. They understand the basic payday loan product and it is exactly what they want.

Unbank currently engages in an ability to repay and an underwriting process in connection with its payday loan business. Our ability to repay process requires that customers demonstrate their means of income. We do this by requiring: 1) a signed loan application that elicits from consumers their loan amount request, identifying information, mortgage, rent, bank, income information, and references; 2) presentment of a valid driver's license or other government issued identification; 3) verification of employment and income, including two to three paystubs; 4) current bank account statements no older than 30 days; and 5) utility bills. We use bank account statements in order to identify other loan payments and irregular transactions such as ATM withdrawals at locations, for example casinos, that may indicate behavior that will injure the borrower's financial health. We also review utility bills to determine residency and to identify delinquent or outstanding payments that are past due.

The type of relationship Unbank has with its customers also provides information regarding a borrower's ability to repay. Specifically, over time, we develop an understanding of our customer's behavior, including the types of regular and irregular (informal) income they receive, their recurring bills for utilities, rent, car payments and other obligations. Ultimately, the amount we will loan to customers is based on their net income. We will only loan up to 25% of a bi-weekly paycheck or 10% of a monthly paycheck. Our current underwriting process takes approximately five minutes, but it results in approximately 10% of loan applications being denied due to insufficient or unverifiable information.

We do require that our customers secure payment of their loans through bank account access, however, a large majority of our customers elect to make payments in cash in our store locations. This is a key distinction that has not been made by the CFPB in its proposals. While many lenders do obtain bank account access as a means of securing a loan, the percentage of instances in which repayment is effectuated through these means is very small. I also note that in my experience, banks and credit unions, as well as other lenders, including automobile finance companies, secure repayment through account access and in fact offer incentives to borrowers to elect that form of repayment.

Finally, Unbank does allow customers to re-borrow in accordance with state law. Our underwriting for re-borrowing requires that customers present a current paystub for each instance of re-borrowing. We also permit customers that meet payment obligations regularly to submit to lesser underwriting.

The CFPB's Rule Proposals Fail to Consider that Unbank's Lending Practices Are Dictated by State Law and That Minnesota's State Law Reflects a Balance Between Consumer Protection and Access to Credit

As explained above, all of Unbank's products and services are regulated by the laws of Minnesota. However, the CFPB's proposals ignore the conflict they create with existing state laws and the restrictions those laws impose on lenders, making it impossible to comply with both state and federal law at the same time, and would make it impossible for our business to survive. The CFPB rule proposals fail to recognize, or even to analyze, the impossible condition they would impose on small businesses. Our businesses cannot simply change our business model. The business model is dictated by state law. The rule proposals, and the outline of questions provided by CFPB for the SBREFA meeting, repeatedly ask whether lenders would change their pricing in reaction to the rule proposals. This question alone illustrates the CFPB's unfamiliarity with the industry. Minnesota, like all states permitting payday loans, caps the amount lenders can charge. The ultimate impact of the CFPB proposals would be to eliminate law abiding businesses like Unbank, leaving our customers with no alternatives other than loan sharks and illegal online offshore operators.

The CFPB's rule proposals are based upon the premise that payday lenders do not underwrite loans or do not sufficiently underwrite loans. In turn, the proposals conclude that borrowers become trapped in cycles of debt. The CFPB's conclusions are baseless and flawed. Initially, the rule proposals are admittedly not based on research related to small entities. Moreover, the rule proposals have reached a fallacious conclusion that borrowers suffer some harm due to re-borrowing.

In addition to the restrictions contained in state law that dictate the terms and conditions of our products, all of the states that permit payday lending have examined the precise issues being addressed by the CFPB proposals. Ignoring the work done by these states is simply substituting the judgment of the CFPB for the judgment of the states.

Cost of Credit for Small Businesses

Unbank has analyzed how the CFPB proposals will impact the cost of credit for small businesses in two respects. First, with respect to Unbank's own credit facilities, and second with respect to customers that utilize payday loans to as small business credit.

Unbank has a line of credit from a bank, however, it normally does not rely on the line to finance business operations. Unbank would have utilized the line of credit for the financing of the reconstruction of the store that was destroyed by fire. We would also potentially use the line for business upgrades, technology, store maintenance, modernization, etc. Since CFPB's rule proposals would make it more risky for a bank to lend to me, we anticipate our credit facility may be changed with respect to the rate of interest charged by our lender, or it is possible the lender will require more or different collateral to secure the loans. Overall, Unbank will be negatively impacted.

Another business impact we anticipate is that many of our customers rely on payday loans and other products we offer. While our current business model is more diverse that other operators, the diversity of our product offering is critical to drive traffic to our stores. The loss of business generated by the loss of loans will have a ripple effect on the balance of our products. Driving down the volume of these products will have a devastating impact on our profitability and potentially require other store closings.

The CFPB Has Failed to Consider Other Research That Contradicts Its Findings of Consumer Harm

For many years, academic and third party research has been conducted that contradicts the CFPBs conclusion that consumers who use payday loans suffer significant harm. Some of the more notable studies include: Jennifer Priestly, *Payday Loan Rollovers and Consumer Welfare*, Kennesaw State University (2014), Donald Morgan and Michael Strain, *Payday Holiday: How Households Fare After Payday Credit Bans*, Federal Reserve Bank of New York (2007, rev'd. 2008), and nonPRIME 101, *Profiling Nonprime Consumers and Insights Into the Possible Effects of "Ability to Repay" Proposed Regulation*, (2015). Much other research has been done on this topic. Moreover, the Bureau itself has never conducted research into the corresponding benefit of payday loans. This research should be completed before the CFPB engages in this rulemaking, particularly in light of the well-documented destruction of small businesses that will ensue.

In addition, the rule proposals mention at several places that the CFPB has conducted research, or is in the process of conducting research, and other analyses. If in fact additional research and analysis is being conducted, the CFPB should, before it promulgates rules, complete that research and make it available to the Small Entity Representatives so we can give constructive feedback.

Proposed Alternatives to the CFPB Proposals

According to the CFPB, its rule proposals are simply an outline of potential rules that will govern many different products. It is critical to note that the rule proposals do not exist as a regulatory structure anywhere in the country. They do not resemble the law of any state. Accordingly, no one knows whether these proposals will benefit a single consumer. We do know, from the simulations run by CFPB, that the rules will have a significant negative impact on small businesses.

Instead of the proposals put forth by the CFPB, I submit that the Bureau should undertake an extensive review of the laws of the states that currently permit small dollar lending. The laws of these states address many issues including loan size, underwriting, disclosures, number of loans, cooling off periods, extended payment plans, and other terms and conditions of these loans. The CFPB should examine state laws as alternatives to the rule proposals. Among the states whose laws have created stable small loan industries are Florida and Illinois.

Conclusion

In conclusion, the direct impact of the rule proposals will be to cause a decline in Unbank's profit margin between 47% and 66%. As a result, at least 3 of our stores will no longer be profitable and will be closed. Unbank will be required to shed approximately 14% to 21% of our workforce. This translates to 6 to 8 jobs, and perhaps more.

In addition, the most impactful cost of this proposal will be the loss of Unbank's customer base. Unbank's customers have come to rely on our locations for all of their financial services needs.

All of our products support each other. Removing one of our key product offerings, small loans, will have an impact across our product base. Furthermore, our customers will lose access to small dollar short term credit that is in great demand. It is unlikely that Unbank will survive the loss of covered payday loan volume as the costs of providing underwriting of non-covered products would exceed the limited fees available.

On behalf of Unbank, and all of the small businesses that will be devastated by the rule proposals, we ask that the CFPB: (1) conduct appropriate research on small entities offering payday loans and provide the results of that research to the Small Entity Representatives and other small businesses; (2) examine the various state laws and regulations with respect to whether those laws and regulations are already providing an adequate balance between access to credit and consumer protection, as well as to determine the ability of a small business to continue to operate under the rule proposals in light of existing state laws and regulations; (3) conduct further analysis and reissue proposals that distinguish between the various products and services encompassed in the proposals; and (4) revisit the rule proposals so as to adjust the onerous requirements contained therein and lessen the impact on small businesses. We also request that the CFPB reconvene the SBREFA panel and hold another Panel meeting with the Small Entity Representatives to allow further comment once these analyses are concluded.

Thank you for your consideration of this submission. I urge you to undertake a real, in depth analysis of the proposals in light of all of the evidence provided by the Small Entity Representatives at the April 29 meeting and all of the written submissions.

Very truly yours,

Stuart Tapper, VP
Unbank Company, LLP

Mr. Tapper included the following item in his written feedback to the Panel:

1. Deloitte Financial Advisory Services, Analysis for FiSCA (May 2015).