Appendix B

List of Materials Provided to Small Entity Representatives

In advance of the Panel's Outreach Meeting with SERs, the Bureau provided each of the SERs with the materials listed below. Each of these items was also made available on the Bureau's website at www.consumerfinance.gov.

1. Small Business Advisory Review Panel for Potential Rulemakings for Payday, Vehicle Title, and Similar Loans: Outline of Proposals under Consideration and Alternatives Considered

2. Small Business Advisory Review Panel for Potential Rulemakings for Payday, Vehicle Title, and Similar Loans: Discussion Issues for Small Entity Representatives

3. Fact Sheet: Small Business Review Panel Process

<u>Appendix C</u>

Outline of Proposals under Consideration and Alternatives Considered

[See attached]

MARCH 26, 2015

SMALL BUSINESS ADVISORY REVIEW PANEL FOR POTENTIAL RULEMAKINGS FOR PAYDAY, VEHICLE TITLE, AND SIMILAR LOANS

OUTLINE OF PROPOSALS UNDER CONSIDERATION AND ALTERNATIVES CONSIDERED

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I. Introduction

Drawing on its research, market monitoring, supervisory, and enforcement experience, the Consumer Financial Protection Bureau (Bureau) has serious concerns that lender practices in the markets for payday, vehicle title, and similar loans are causing substantial harm to consumers. Chief among these 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, as used in this Outline of the Proposals Under Consideration and Alternatives Considered (Outline), includes reborrowing, rolling over, renewing, or refinancing a loan. Lenders typically do not determine whether a consumer can afford to repay a particular loan while meeting her other major financial obligations and her living expenses. The Bureau is concerned that too often in these markets lenders can create the conditions to succeed even where the consumer fails, upending notions of traditional lending based on mutual risk and aligned incentives. This failure to determine whether consumers can afford their loans creates risk of consumer harm because these lenders are extending what is often very expensive credit to consumers who may be experiencing significant financial difficulties.

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. To address this and other concerns, the Bureau is considering rulemaking proposals to require lenders to determine consumers' ability to repay and to limit certain practices that pose substantial risks to consumers in the markets for payday, vehicle title, and similar loans. The ability-to-repay concept has been employed by Congress and federal regulators in other markets to protect consumers from unaffordable loans.

The Bureau believes that these concerns are especially significant for two sets of products. The first set is short-term products that can be difficult for consumers to repay because of their balloon structure. Such loans include single-payment payday loans with one lump-sum payment typically due within a few weeks or a month; deposit-related credit products repayable within a short period of time (including deposit advance products); and some vehicle title loans where lenders place a non-purchase money lien on a consumer's vehicle.[1] Short-term products may also have multiple payments due within a short period of time. The second set of products is longer-term products for which the lender obtains a non-purchase money lien on the consumer's vehicle or the right to collect repayment from the consumer's account or paycheck, through a post-dated check or other payment authorization from the consumer. This set of products includes a variety of multiple-payment loans and lines of credit with longer durations, including regularly amortizing installment loans with substantially equal payments, some loans with a balloon payment or other unusual amortization features, and some vehicle title loans.

When lenders obtain non-purchase money liens on consumers' vehicles or the right to collect repayment from consumers' accounts or paychecks, lenders have less incentive to carefully underwrite the loans and consumers face a greater risk that they will lose their transportation to work, incur bounced check fees and other charges, or experience other bank account problems if

[1] Vehicle title loans are transactions where the lender takes, or purports to take, a security interest in the consumer's vehicle, or in the title or registration to the consumer's vehicle. In some states, these transactions proceed under the state pawn statutes and are referred to as title pawn loans. Throughout this Outline, any references to vehicle title loans also include title pawn transactions where the consumer's vehicle is the collateral.

they fall behind. Consumers may lose control of budgeting choices among financial obligations and experience substantial pressure to reborrow or to forgo paying other obligations or basic expenses in order to avoid defaulting on unaffordable payday, vehicle title, or similar loans. This loss of control over budgeting choices can further exacerbate consumers' other financial difficulties.

Markets for payday, vehicle title, and similar loans are regulated by a variety of state laws, as well as some tribal and municipal laws. Some jurisdictions have imposed usury limits that prohibit lenders from offering high-cost credit. In other jurisdictions, certain products are specifically authorized by state laws, often crafted as exceptions to general state credit regulation, including consumer loan laws and general usury limits. Some of the states authorizing these products have sought to regulate loan structures and lender practices in a variety of ways, including limiting permissible costs, restricting reborrowing in certain circumstances, or setting a maximum ratio for the amount of debt on such loans to gross monthly income. States, tribes, and local governments also impose a variety of licensure requirements on lenders engaged in payday and vehicle title lending.

The Bureau is concerned that even with the existing regulations, these products pose significant risks to consumers in the jurisdictions where payday, vehicle title, and similar lending are permitted. Accordingly, the Bureau is considering rulemaking proposals pursuant to its authority under sections 1031 and 1032 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act). The Bureau is considering proposals to prevent the types of consumer injuries that result from lenders extending short-term and longer-term loans with payments that a consumer cannot afford to repay. The Bureau is also considering proposals to address harms that may arise from certain lender practices in collecting repayment from a consumer's checking, savings, or prepaid account. The proposals under consideration, if implemented, would establish a federal floor for consumer protection for covered loans. The proposals would be intended to coexist with stricter state, local, and tribal consumer protection laws and regulations, including laws and regulations that prohibit the sale of such products or regulate the permissible cost of credit.[2]

Section 1031 of the Dodd-Frank Act authorizes the Bureau to issue rules to identify and prevent unfair, deceptive, or abusive acts or practices in the consumer financial markets.[3] An act or practice is unfair if it causes or is likely to cause substantial injury to consumers; the injury is not reasonably avoidable by consumers; and the injury is not outweighed by countervailing benefits to consumers or competition.[4] An act or practice is abusive if it: (1) materially interferes with a consumer's ability to understand a term or condition of a consumer financial product or service; or (2) takes unreasonable advantage of the consumer's: lack of understanding of the material risks, costs, or conditions of the product or service; inability to protect his or her interests in selecting or using a consumer financial product or service; or reasonable reliance on the lender to act in the interest of the consumer.[5]

The Dodd-Frank Act also authorizes the Bureau to require lenders to provide disclosures in connection with financial products or services. In particular, section 1032 of the Dodd-Frank Act authorizes the Bureau to prescribe rules to ensure that the features of a financial product or

[2] The proposals would also be intended to coexist with and not alter stricter federal law, such as the Military Lending Act's limitation on the cost and certain terms of credit extended to military servicemembers and their dependents.
[3] 12 U.S.C. 5531(b).
[4] 12 U.S.C. 5531(c).
[5] 12 U.S.C. 5531(d).

service are fully, accurately, and effectively disclosed to consumers both initially and over the term of the product or service in a manner that permits consumers to understand the costs, benefits, and risks associated with the product or service, in light of the facts and circumstances.[6]

The Bureau recognizes that, in the markets that would be covered by the proposals under consideration, practices other than those addressed in these proposals may also present substantial risk of harm to consumers. The Bureau will continue to monitor other aspects of these markets to determine whether additional action may be warranted. Additionally, in separate proceedings, the Bureau is currently considering potential regulations related to debt collection practices and whether to develop regulations related to deposit account overdraft services.

The Bureau anticipates that the impact of the proposals under consideration, if adopted, would vary in type and magnitude for each of the categories of loans covered by the proposals. The differential impact of the proposals under consideration likely would result from, among other things, variation in existing underwriting practices and product structures. The possible impacts of the proposals under consideration are addressed in Section IV.

II. The SBREFA Process

Pursuant to the consultation process prescribed in the Small Business Regulatory Enforcement Fairness Act (SBREFA),[7] the Bureau is seeking input about the rulemaking proposals it is considering. The SBREFA consultation process provides a mechanism for the Bureau to obtain input directly from small financial services providers early in the rulemaking process about new regulatory requirements it is contemplating. SBREFA directs the Bureau to convene a Small Business Review Panel (Panel) when it is considering a proposed rule that could have a significant economic impact on a substantial number of small entities. The Panel includes representatives from the Bureau, the Chief Counsel for Advocacy of the Small Business Administration, and the Office of Information and Regulatory Affairs in the Office of Management and Budget. SBREFA requires the Panel to meet with a selected group of small entity representatives (SERs), which can include representatives from small businesses and not-for-profits (collectively, the small entities) that are likely to be subject to the rules that the Bureau may issue.[8]

During the Panel outreach meeting, SERs will provide the Panel with important feedback on the potential economic impacts of complying with proposed regulations. They may also provide feedback on regulatory options under consideration and regulatory alternatives to minimize these impacts. In addition, the Dodd-Frank Act directs the Bureau to collect the advice and recommendations of the SERs concerning whether the proposals under consideration might

[6] 12 U.S.C. 5532(a).

[7] 5 U.S.C. 609(b), *available at* https://www.sba.gov/advocacy/regulatory-flexibility-act.

[8] Small entities affected by this rulemaking within the meaning of SBREFA include (1) commercial banks, savings associations, and credit unions with annual assets of $550 million or less; (2) nondepository institutions engaged in consumer lending or credit intermediation activities with annual revenues of $38.5 million or less; (3) nondepository institutions engaged in other activities related to credit intermediation with annual revenues of $20.5 million or less; and (4) mortgage and non-mortgage loan brokers with annual revenues of $7.5 million or less. The fourth category of small entities is included because covered loans are made in some jurisdictions under the state's laws for credit service organizations or mortgage brokers.

increase the cost of credit for small businesses and not-for-profits that themselves take out loans and on alternatives to minimize any such increase.[9]

Within 60 days of convening, the Panel is required to complete a report on the input received from the SERs during the Panel process. The Bureau will consider the SERs' feedback and the Panel's report as it prepares the proposed rule. Once the proposed rule is published, the Panel's final report will be placed in the public rulemaking record. The Bureau welcomes further feedback from the SERs during the public comment period on the proposed rule.

The Bureau is convening a Panel to obtain input from the selected SERs on proposals under consideration for payday, vehicle title, and similar loans. The Bureau has prepared this Outline for the SERs in order to provide the necessary background and facilitate the Panel process. However, the Panel process is only one step in the full rulemaking process. No lenders will be required to comply with new regulatory requirements before a proposed rule is published, public comment is received and reviewed by the Bureau, a final rule is issued, and the implementation period designated in the final rule expires. One of the specific questions on which the Bureau will seek input during the SBREFA process is how long small entities would need to implement the proposals under consideration.

The Bureau is also consulting with other federal agencies, as well as tribal governments, and is seeking feedback from a wide range of other stakeholders on the proposals under consideration.

III. Proposals under Consideration to Limit Certain Practices for Payday, Vehicle Title, and Similar Loans

As noted above, the Bureau is concerned that many consumers are taking out unaffordable loans because lenders are offering payday, vehicle title, and similar loans without determining whether consumers have the ability to repay the debt while meeting other major financial obligations and living expenses. Consumers who are unable to afford their loan payments may incur substantial harms from reborrowing, defaulting, or falling behind on other financial obligations in order to repay their loans. The Bureau is considering proposals that would require lenders to determine that a consumer has the ability to repay the loan. As discussed below, the Bureau is also concerned that certain practices that lenders use to collect payment from consumers' accounts may also cause substantial harm to consumers.

The proposals described below cover (a) short-term credit products with contractual durations of 45 days or less, and (b) longer-term credit products with an all-in annual percentage rate[10] in excess of 36 percent where the lender obtains a preferred repayment position by either obtaining (1) access to repayment through a consumer's account or paycheck, or (2) a non-purchase money security interest in the consumer's vehicle. Together, these short-term and longer-term credit products are referred to throughout this Outline as "covered loans." While the Bureau believes that practices in the markets for these products create risk of similar sorts of consumer injuries, those injuries may arise in somewhat different ways. Accordingly, these

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[9] 5 U.S.C. 603(d).

[10] The Bureau is considering using an annualized cost of credit measure that would include interest, fees, and the cost of ancillary products such as credit insurance, memberships, and other products sold along with the credit. One possible measure is the military annual percentage rate defined in 32 CFR 232.

markets are addressed separately below and in the proposals under consideration by the Bureau. Additionally, the Bureau is concerned about certain practices associated with collecting payment on covered loans from consumers' accounts; these practices are also addressed separately below.

The Bureau is not considering proposals that would impose regulatory requirements on certain categories of loans, including (1) bona fide non-recourse pawn loans with a contractual duration of 45 days or less where the lender takes possession of the collateral,[11] (2) credit card accounts, (3) real estate secured loans, and (4) student loans. The Bureau is also not considering proposals related to deposit account overdraft services as part of this rulemaking proceeding. The Bureau continues to consider the appropriate definitions for such general exclusions.

The Bureau seeks feedback on all aspects of the proposals under consideration.

A. Short-term loans

The Bureau is considering proposals that would generally cover consumer loans with a contractual duration of 45 days or less. This would include short-term payday loans with a single payment, short-term vehicle title loans, open-end lines of credit where the credit plan is to terminate within 45 days or the credit is repayable in full within 45 days, and multi-payment loans where the loan is due in full within 45 days. This Outline refers to these products as "covered short-term loans." By defining covered short-term loans as those loans with a contractual duration of 45 days or less, the Bureau seeks to distinguish loans with terms providing for repayment within one income and expense cycle from longer-term loans repaid over multiple income and expense cycles. While pay periods typically vary from one week to one month, the Bureau is considering 45 days as the upper bound for covered short-term loans in order to accommodate loans made shortly before a consumer is paid, which could result in loans that are slightly more than a month long. Unless expressly excluded, covered short-term loans would include consumer loans with a contractual duration of 45 days or less, regardless of how the lender characterizes the loans or the nature of the state statute authorizing the loans.[12]

To address the practices that result in many consumers taking out unaffordable loans, the Bureau is considering proposals to require lenders to determine a consumer's ability to repay covered short-term loans.

Specifically, the Bureau is considering proposals with the following elements:

- Ability-to-repay determination—Lenders would be required to make a good-faith, reasonable determination that the consumer has the ability to repay the loan without reborrowing or defaulting. The lender would have to determine that the consumer has sufficient income to repay the loan after satisfying major financial obligations and living

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[11] Longer-term pawn loans generally would not be covered by the proposals because the lender does not typically take account access or a security interest in the vehicle. However, the Bureau is aware that some vehicle title lenders characterize their loans as "title pawn" transactions; these loans would be covered. Similarly, the Bureau is considering covering loans for which the lender that take possession of documentation associated with a vehicle, such as a certificate of title or state vehicle registration document, where that possession facilitates or is otherwise associated with the right to repossess the vehicle to satisfy a consumer's obligation.

[12] For example, loans that meet the specifications for a covered short-term loan within the proposals under consideration would be covered regardless of whether the lender making the loans is licensed under a state statute that also authorizes or applies to loans not covered by the proposals under consideration.

expenses. In making the ability-to-repay determination, lenders would have to verify and consider the consumer's income, major financial obligations, and borrowing history.

- Presumption of inability to repay—Because reborrowing may indicate that the consumer lacks the ability to repay, the proposals would create a presumption that the consumer lacks the ability to repay additional covered short-term taken out within 60 days of a prior outstanding covered short-term loan. The Bureau is considering using 60 days for this period because it believes that repaying the covered short-term loan could impact multiple cycles of household expenses. The 60-day period under consideration is intended to allow the impacts of the prior covered short-term loan on the consumer's finances to subside before a lender could extend an additional covered short-term loan without verifying a change in circumstances (e.g., the consumer recently received a pay raise) that would show that the consumer has the ability to repay the loan.
  - Rebuttable presumption of inability to repay—For the second and third covered short-term loan in a sequence, the lender would need to determine that the consumer has the ability to repay each loan. In addition, these loans would be subject to a rebuttable presumption of inability to repay. To overcome the presumption, the lender would have to verify a change in circumstances.
  - Conclusive presumption of inability to repay—After three covered short-term loans in a sequence, there would be a conclusive presumption that the consumer lacks the ability to repay. Lenders would be prohibited from making covered short-term loans to that consumer until a 60-day cooling-off period had elapsed.
- Alternative requirements—The Bureau is considering a proposal that would allow lenders to make certain covered short-term loans without satisfying the ability-to-repay requirements, using alternative screening requirements and structural protections to ensure that consumers do not get trapped in long-term debt.
  - Screening requirements—Among other criteria, the lender would need to: (1) verify the consumer's income; (2) determine that the loan would not result in the consumer receiving more than three loans in a sequence and six covered short-term loans from all lenders in a rolling 12-month period; and (3) confirm that the contractual duration of the loan would not result in the consumer being in debt on covered short-term loans with all lenders for more than 90 days in aggregate during a rolling 12-month period.
  - Structural protections—If the consumer meets the screening criteria, a lender could extend a loan that: (1) is for no more than $500 with a duration of no more than 45 days; (2) does not take a security interest in a vehicle as collateral; and (3) is designed to taper off the consumer's indebtedness. To taper off indebtedness, the Bureau is considering requiring either that: (a) lenders provide a no-cost off-ramp for consumers unable to repay the debt after the third loan in a sequence or (b) lenders reduce the principal amount of subsequent loans so that the debt amortizes over three loans.

The Bureau's concerns about certain lender practices in the markets for payday loans, short-term vehicle title loans, and other short-term loans are discussed below, followed by a more detailed description of the proposals under consideration.

1. Why is the Bureau considering proposals to limit certain practices in the short-term credit market?

The Bureau is concerned that, for many consumers in the markets of concern, short-term credit turns into long-term debt. Covered short-term loans are often marketed as a quick solution for consumers in financial need. With a short initial duration, these credit products are portrayed as a bridge to cover short-term needs. Many consumers, though, wind up reborrowing many times, with successive finance charges eventually eclipsing the original loan amount, before they are able to retire their debt.

Despite the risk that consumers will not be able to repay their loans without reborrowing, many lenders that provide such products make little or no attempt to analyze consumers' financial conditions beyond confirming that they have some periodic income. For instance, in 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. As a result, many lenders in this market give little if any consideration to whether consumers are experiencing a short-term need for credit or a long-term income shortfall, already have a string of similar loans outstanding, or can afford to repay the loans while meeting their other major financial obligations and living expenses. The Bureau is concerned that this lack of consideration of the consumer's financial condition results in many consumers taking out unaffordable loans that cannot be repaid without repeated reborrowing and that worsen their financial situation.

The Bureau is concerned that the structure of short-term credit products contributes to the risk that consumers will not be able to afford their loans. These products are structured to be repaid in a short period of time, often in a single payment. Consumers who use these products are often already in severe financial distress and may lack access to traditional forms of credit. While some consumers may find the option of short-term credit appealing, many have little or no ability to repay the entire principal and associated fees when the payment is due while also meeting their other major financial obligations and living expenses. Lenders, in turn, make it easy for consumers to reborrow by permitting consumers to pay only the finance charge at the end of the contract period. As a result, many consumers end up reborrowing many times until they eventually repay—after incurring significant additional fees—or default.

The ability of lenders to collect payment from the consumer's bank account can create further pressure on the consumer to reborrow. In many instances, lenders have the ability to withdraw the loan payment from the consumer's account as soon as a paycheck or other funds are deposited into the account, resulting in consumer prioritizing the loan payment over payment of other financial obligations. Other lenders hold a security interest in the consumer's vehicle. Fear of repossession may cause the consumer to prioritize payment on that loan over fulfilling her other financial obligations, helping to ensure that lenders will be repaid even if the consumer lacks the ability to repay the loan while also meeting her other financial obligations. These practices, in conjunction with a loan payment that exceeds a consumer's ability to repay, leave the consumer unable to meet her other financial obligations and living expenses. These conditions may cause the consumer to feel extraordinary pressure to reborrow repeatedly, resulting in significant finance charges before the consumer eventually repays or defaults.

Other consumers may take costly measures to avoid reborrowing or defaulting on the loan. A consumer may default on other obligations or forgo basic needs. Where a lender obtains

payment from a bank account or paycheck, the consumer may be left without sufficient funds to meet subsequent expenses and obligations. A significant percentage of consumers default on these loans either when the first one comes due or after repeated reborrowing. Consumers who default on a loan can incur additional fees for insufficient funds (NSF) and returned payments, loss of a bank account, and the costs and burden of collections and legal action. For vehicle title loans, default may also result in repossession of the consumer's vehicle.

The Bureau's findings through its research and market monitoring underscore the risks to consumers from these various practices and features of short-term loans. In April 2013, the Bureau published initial findings on consumer use of short-term payday loans and deposit advance products; in March 2014, the Bureau published further analysis of the data on short-term payday loans. The analyses used a very conservative approach to measure repeat borrowing, looking only at loans made within 14 days of the previous loan because many, though not all, consumers are paid on a biweekly basis. Even with this approach, the Bureau found a substantial amount of reborrowing. Indeed, the Bureau's analysis found that 82 percent of payday loans are rolled over or followed by another loan within 14 days.[13] Loans taken shortly after the consumer has repaid a prior loan may indicate that the recently retired debt continues to impact the consumer's financial circumstances. This could happen over the course of a few weeks, or even longer as consumers juggle expenses to cover the ongoing shortfall.

Considering loans taken out within 14 days of a prior loan outstanding, the Bureau found that 55 percent of loan sequences are repaid within three loans.[14] In contrast, 15 percent of new short-term payday loans are followed by a loan sequence of at least 10 loans and half of all loans are in a loan sequence of 10 or more loans.[15] Additionally, for loans taken out by consumers paid monthly—58 percent of whom receive government benefits—40 percent of new short-term payday loans result in a loan sequence that continues for the remainder of the year.[16] This high level of repeat borrowing indicates that consumers experiencing high levels of financial distress often cannot afford to repay short-term loans without reborrowing. A pattern of sustained use of payday loans may indicate that a consumer is using payday loans to cover expenses that exceed income or that a consumer is unable to pay back a loan and meet her other major financial obligations and living expenses.

The Bureau's data also indicate that very few consumers with payday loan debt reduce the amount of the principal between the first and the last loan of a loan sequence. Instead, loan size is more likely to stay the same or increase in longer loan sequences with consumers taking on greater debt. These increases in principal are associated with higher default rates.[17]

The Bureau is concerned that the structure of these loans, often coupled with the preferential position of the lender resulting from the right to obtain repayment directly from the consumer's account or resulting from a security interest in the consumer's vehicle, creates a fundamental divergence between the interests of the consumer and the incentives of the lender. Lenders have incentives to engage in practices that lead to repeated reborrowing of short-term credit products, even if that continued borrowing exacerbates the consumer's long-term financial difficulties. With the proposals under consideration, the Bureau seeks to put in place protections that prevent short-term credit from turning into long-term debt.

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[13] March 2014 Data Point, *available at*: http://files.consumerfinance.gov/f/201403_cfpb_report_payday-lending.pdf.
[14] March 2014 Data Point.
[15] March 2014 Data Point.
[16] March 2014 Data Point.
[17] March 2014 Data Point.

2. Requirement to determine ability to repay covered short-term loans

The Bureau is considering proposals to require lenders to determine a consumer's ability to repay a covered short-term loan as a condition of making the loan. These proposals seek to address consumer harm caused by unaffordable loan payments due in a short period of time. The proposals under consideration would require a lender to make a good-faith, reasonable determination that the consumer has the ability to repay the covered short-term loan without reborrowing or defaulting. This determination would require the lender to find that a consumer is able to make payments under the covered loan as those payments are due, while still meeting her other major financial obligations and living expenses. Lenders would need to obtain and verify the required information and then consider that information in determining whether a consumer has the ability to repay each covered short-term loan. This obligation would apply to the initial loan and to any reborrowing. As described in Section II.A.3, the Bureau is also considering a proposal that would impose an alternative set of requirements on covered short-term loans that are structured to taper off the consumer's repayment obligation.

a. Financial information

The proposals being considered by the Bureau would require lenders to obtain and verify certain financial information about the consumer in order to make a good-faith, reasonable determination about the consumer's ability to repay the contemplated loan. This information would include three components: the consumer's (1) income, (2) major financial obligations, and (3) borrowing history on covered loans. As discussed in Section III.A.2.b below, the proposals under consideration would not limit lenders to considering only these enumerated components. Rather, lenders would have substantial flexibility to consider other information about a potential consumer to determine whether or not to extend credit.

i. INCOME

Under the proposals being considered by the Bureau, the lender would be required to verify the amount and timing of a consumer's income either through bank statements, benefit statements, or paystubs. Many lenders in the short-term credit markets already obtain a paystub or benefits award statement from consumers. However, despite this common practice, the Bureau understands that some lenders disregard income information because they rely heavily on their preferred repayment position extending from their right to obtain repayment directly from the consumer's account or their security interest in the consumer's vehicle.

ii. MAJOR FINANCIAL OBLIGATIONS

The proposals under consideration would require lenders to obtain and verify information about the amount and timing of the consumer's major financial obligations. Major financial obligations are those expenses that are significant in their amount and that cannot be readily eliminated or reduced in the short term. In the proposal being considered, major financial obligations would include housing payments (including mortgage or rent payments), required payments on debt obligations, child support, and other legally required payments. The Bureau has also considered an alternative proposal that would define major financial obligations more broadly to include utility payments, regular medical expenses, and potentially other obligations.

The proposals under consideration would require the lender to verify major financial obligations using third-party records or other appropriate methods of verification. For example, the Bureau is considering a proposal that would require lenders to obtain a credit report to verify debt obligations and to obtain receipts, cancelled checks, copies of the lease, or bank account records to verify housing payments. The Bureau is also evaluating whether monthly bank account records could be used to verify major financial obligations more generally. The Bureau believes that permitting the use of credit bureau data and bank account records (including electronic records, if available) to verify certain obligations could substantially reduce the burden of producing, checking, and storing documentation. However, the Bureau is considering whether bank account records would be sufficient for verifying major financial obligations, if the statement does not specifically delineate the purpose of the payment. The Bureau also recognizes that some consumers may pay certain major financial obligations in cash, making documentation more difficult.

iii. BORROWING HISTORY

The Bureau's data analysis suggests that borrowing history on other covered short-term loans, particularly history indicating that a consumer is already caught in a cycle of reborrowing, is an important factor in assessing whether a consumer is likely to repay a new covered short-term loan without reborrowing or defaulting. To protect consumers from getting trapped in long-term debt by unaffordable loans, the Bureau is considering several proposals that would require a lender to consider a consumer's borrowing history, both with that particular lender and its affiliates and with other lenders, as part of the ability-to-repay determination.

Under the proposals being considered, a covered short-term loan taken out by a consumer while another covered short-term loan[18] is outstanding with the same lender, its affiliate, or a non-affiliated lender would be considered part of the same loan sequence for purposes of the ability-to-repay requirement and the restrictions on sequential borrowing outlined in Section III.A.2.b.ii.

(1) Same lender and affiliates

The proposals under consideration would require a lender to check its own records to determine whether the consumer has any outstanding covered short-term loans with that lender or its affiliates. If so, the lender would need to ascertain the amount and timing of the payment(s) due on such loans. The lender would also need to determine whether the consumer had taken out any covered short-term loans with that lender or its affiliates at any time within the previous 18 months.

The lender would need to consider this information when making a reasonable determination about whether the consumer has the ability to repay a particular covered short-term loan, as described in Section III.A.2.b below. The consideration of the consumer's borrowing history would also be needed to determine whether, as discussed below in Section III.A.2.b.ii, either a rebuttable or conclusive presumption of inability to repay would apply to the loan. In addition,

[18] As discussed in Sections III.A.2.b.ii and III.B.2.b.iii, the assessment of borrowing history would treat covered longer-term loans with a balloon payment in the same manner as, and as part of a sequence of, covered short-term loans. Although longer-term loans provide consumers with more time to repay the debt than do short-term loans, certain covered longer-term loans, like covered short-term loans, include a substantial balloon payment that may be unaffordable and may create pressure for the consumer to reborrow. A loan has a balloon payment if any single payment on the loan is more than two times any regular periodic payment on the loan.

the Bureau is evaluating whether lenders should be required to consider, as part of the ability-to-repay determination, whether a consumer has recently defaulted or is currently delinquent on any covered loans with that lender or its affiliates. The Bureau believes that information sharing among affiliates for this purpose would require modest effort and that many lenders likely already engage in some form of information sharing to reduce their default risk.

(2) Other lenders

Because the loan sequence limitations discussed below in Section III.A.2.b.ii would apply to all covered short-term loans that the consumer takes out from all lenders, the Bureau is also considering a proposal that would require lenders to consider a consumer's borrowing history with non-affiliated lenders at any time within the past 18 months. Under that proposal, lenders would be required to obtain information about the consumer's borrowing history on covered loans across lenders.

Lenders would need to consider information about the consumer's borrowing history with other lenders, as well as its own information about the consumer's borrowing history, to determine whether the consumer has the ability to repay a particular loan and whether either a rebuttable or conclusive presumption of inability to repay applies to the particular loan. In addition, the Bureau is evaluating whether lenders should be required to consider, as part of the ability-to-repay determination, whether a consumer has recently defaulted on any covered loans with other lenders.

The Bureau anticipates that lenders would have to use a commercially available reporting system to obtain such information. As part of the proposals under consideration, the Bureau anticipates that it would specify criteria that would make a consumer reporting system eligible for lenders to use in verifying borrowing history. To facilitate consideration of borrowing history, lenders would be required to report the use of covered loans to commercially available reporting systems meeting the Bureau's eligibility criteria. Under this proposal, lenders would need to report to all applicable commercially available reporting systems, but would have to check only one such reporting system meeting the Bureau's eligibility criteria.

The Bureau understands that in the payday lending market, many states currently require lenders to check a state-recognized database prior to the extension of certain loans and to report consumer use of those loans to the same database. The Bureau also understands that, as part of their own risk analytics when making loans, many lenders voluntarily use a handful of credit reporting agencies that provide information about a consumer's loan history. The Bureau is not considering creating its own reporting system for borrowing on covered loans. The Bureau also is not considering administering or otherwise contracting with a third-party to create or administer a reporting system.

b. Reasonable determination

Under the proposals being considered, as noted above, a lender would be required to make a good-faith, reasonable determination that the consumer has the ability to repay the covered loan without reborrowing or defaulting. The proposals under consideration would require the lender to determine whether, given the amount and timing of the consumer's income and major financial obligations, the consumer will have enough remaining income to be able to repay the loan after paying these major financial obligations and necessary living expenses.

For the ability-to-repay determination, the lender would need to assess the consumer's income and major financial obligations during the contractual duration of the loan and an additional 60 days beyond the contractual duration. (The duration of the contract plus the additional 60 days are referred to below as the "underwriting period.") The Bureau is considering requiring lenders to assess income and major financial obligations for a period beyond the contractual duration of the loan to help ensure that consumers would have sufficient funds to satisfy major financial obligations and pay living expenses after they repay their loans. The Bureau is considering using 60 days for this period because it believes that making a payment on the covered short-term loan could impact multiple cycles of household expenses and the consumer's prioritization of financial obligations during the underwriting period.

As discussed in Section III.A.2.a.iii above, the lender would also be required to consider the consumer's borrowing history for covered loans—in particular if there is recent history of reborrowing multiple times within a loan sequence or of defaults. A history of reborrowing or defaulting indicates that a consumer may be more likely to reborrow or default on a new loan.

i. ANALYSIS OF INCOME AND MAJOR FINANCIAL OBLIGATIONS

Under the proposals being considered by the Bureau, a lender would be prohibited from making a covered loan unless the consumer's residual income (after considering major financial obligations) is sufficient to support a reasonable determination that the consumer will be able to repay the covered loan while meeting necessary living expenses without reborrowing.

In making a reasonable determination of ability to repay, a lender would need to consider the amount and timing of income and major financial obligations and assume that the consumer will make payments on other major financial obligations as those payments fall due throughout the 60-day underwriting period. The lender would need to consider all expenses to be paid by the consumer in connection with the loan; this would include the loan principal, all fees and finance charges, and the cost of any ancillary products such as credit insurance, memberships, and other products sold along with the credit. As part of the reasonable determination that the remaining income is sufficient for the contemplated loan repayment, lenders also would need to consider and provide for the fact that consumers typically have living expenses that are necessary, such as food and transportation costs, but that, under the proposal being considered, would not need to be itemized and verified.

The Bureau is considering proposals that would provide lenders significant flexibility in making the reasonable determination of ability to repay for a particular consumer and covered loan. For example, some lenders might employ a budgeting approach and require a minimum dollar amount or percentage cushion in remaining income for meeting other living expenses. Other lenders might develop a model that would look at other factors, such as a consumer's demonstrated financial stability and past and current ability to meet financial obligations, to estimate what cushion is likely to be sufficient for a particular consumer. Regardless of the type of assessment, a lender would have to determine that the consumer has the ability to repay the covered loan, fulfill her major financial obligations, and meet living expenses without reborrowing during the underwriting period. Extensive defaults or reborrowing may be an indication that the lender's methodology for determining ability to repay is not reasonable.

ii. PRESUMPTIONS OF INABILITY TO REPAY FOR REPEAT BORROWING

As part of the proposals under consideration, the Bureau is considering imposing a presumption that consumers who attempt to reborrow within a certain period of time after a prior covered short-term loan lack the ability to repay the new covered loan if the new loan has a similar payment structure. The Bureau believes that reborrowing before a loan payment is due or shortly after paying off a previous loan often indicates that the payments under the previous loan were unaffordable given the consumer's other major financial obligations and living expenses. Moreover, if a lender has repeatedly determined that a consumer has the ability to repay, but the consumer does not repay the loan, this may call into question the reasonableness of the lender's methodology. Accordingly, the Bureau believes that additional requirements may be necessary to limit the repeated reborrowing of covered short-term loans and of covered longer-term loans with a balloon payment.[19]

The Bureau is considering a proposal that would impose a rebuttable presumption that the consumer lacks the ability to repay a second or third covered short-term loan or covered longer-term loan with a balloon payment in a sequence. For the purpose of this requirement, the Bureau is considering treating a covered short-term loan as part of a loan sequence if, within the past 60 days, the consumer had another outstanding covered short-term loan or covered longer-term loan with balloon payment. Likewise, a covered longer-term loan with a balloon payment would be part of a loan sequence if, within the past 60 days, the consumer had either an outstanding covered short-term loan or another covered longer-term loan with a balloon payment. If a consumer who already has an outstanding covered short-term loan or covered longer-term loan with a balloon payment from any lender attempts to take out an additional covered short-term loan or covered longer-term loan with a balloon payment, those additional loans would be treated as loans in the same sequence and would be subject to the presumption.

To rebut this presumption, the lender would need to have evidence of a change in the consumer's circumstances—for example, documentation of a recent pay raise—indicating that the consumer has the ability to repay the new loan. Thus, in addition to conducting the ability-to-repay determination for each subsequent loan, the lender would need to verify change in circumstances between the first and second loan, and additional changes in circumstances between the second and third loan. The consumer would not be permitted to self-certify a change in circumstances. If the lender did not have verified evidence of changed circumstances, then, for a 60-day period after repayment of the prior loan, the lender would not be permitted to extend a covered short-term loan or covered longer-term loan with a balloon payment.

After the third loan in a sequence, the proposal under consideration would impose a conclusive presumption that the consumer lacks the ability to repay a loan with a similar repayment structure without reborrowing or defaulting. In other words, a sequence of covered short-term loans (or covered longer-term loans with a balloon payment, or a combination of these two types of loans) would be limited to no more than three loans. The Bureau believes that such a presumption is warranted if, despite the lender's making the standard ability-to-repay determination for each loan, a consumer is unable to repay an initial loan, then unable to repay a second loan despite evidence of changed circumstances, and then unable to repay a third loan despite evidence of additional changed circumstances relative to the second loan. The conclusive presumption would continue for a period of 60 days—the "cooling-off period"—

[19] Covered longer-term loans have a balloon payment if any single payment on the loan is more than two times any regular periodic payment on the loan.

during which time the lender would be prohibited from extending a covered short-term loan or covered longer-term loan with a balloon payment to the consumer.

In addition, the Bureau is concerned that lenders could, directly or through their affiliates, alternate between offering covered and non-covered loans to consumers to evade the rule's protections against reborrowing. The Bureau is concerned that lenders could make non-covered loans as a "bridge" between sequences of covered short-term loans or covered longer-term loans with a balloon payment, which would undermine the presumptions of inability to repay. The Bureau is continuing to assess options to address this evasion concern. One such proposal under consideration would toll the 60-day underwriting period (during the loan sequence) or the 60-day cooling-off period (after the loan sequence) if the lender or its affiliate extends certain non-covered bridging loans during either time period. The Bureau is considering options for defining the types of non-covered loans that would trigger such requirements.

iii. ASSUMPTIONS APPLICABLE TO OPEN-END LINES OF CREDIT

For open-end lines of credit where the credit plan is to terminate within 45 days or the credit is repayable in full within 45 days, the Bureau is considering requiring the lender to make certain assumptions about credit utilization and repayment in order to determine the consumer's ability to repay. The Bureau is considering a proposal specific to open-end lines of credit to require the lender to assume that a consumer fully utilizes the credit upon origination and makes only the minimum required payments until the end of the contract period, at which point the consumer is assumed to make a single payment in the amount of the remaining balance and any remaining finance charges. The Bureau is also considering a proposal to require the lender to assume full repayment on the loan by the payment date specified in the contract.

3. Alternative requirements for certain covered short-term loans

The Bureau is considering a proposal that would allow lenders to extend certain covered short-term loans without conducting the ability-to-repay determination outlined above. The Bureau is considering this proposal in tandem with the ability-to-repay requirements. Under this proposal, lenders would have the option of either satisfying the ability-to-repay requirements or satisfying the alternative requirements. The alternative approach would require that such loans satisfy certain screening requirements and contain certain structural protections to prevent short-term loans from becoming long-term debt.

The Bureau is considering whether offering such an alternative for lenders—including small lenders that may have difficulty conducting an ability-to-repay determination with a residual income analysis—may be helpful in providing access to credit to consumers who have a genuine short-term borrowing need while still protecting consumers from harms resulting from long-term cycles of debt. The Bureau believes that the alternative would also reduce the compliance costs for lenders.

The Bureau is considering whether the screening requirements and structural protections identified below would achieve the objectives of maintaining consumers' access to covered short-term loans, reducing compliance costs for lenders, and protecting consumers from the harms associated with a long-term cycle of indebtedness. Additionally, the Bureau is

considering whether to require lenders to provide a disclosure to consumers explaining the operation of the alternative requirements for covered short-term loans.

For a covered short-term loan that otherwise would be subject to the ability-to-repay requirements, lenders would be able to extend a loan without determining the consumer's ability to repay, if the lender applies the following screening requirements:[20]

1. The lender verifies the consumer's income;
2. The lender verifies the consumer's borrowing history and reports use of the loan to all applicable commercially available reporting systems, as described in Section III.A.2.a.iii;
3. The consumer does not currently have a covered loan outstanding with any lender;
4. The consumer takes out no more than three such alternative loans in a sequence (with a sequence including any loan taken out within 60 days of having a prior loan outstanding) and has not completed a three-loan sequence of alternative loans from any lender within the past 60 days;
5. After repayment of the third loan in a sequence, the lender or its affiliate extends no additional credit, whether or not a covered loan, to the consumer for a period of 60 days;
6. The loan would not result in the consumer receiving more than six covered short-term loans from any lender in a rolling 12-month period; and
7. Following completion of the contractual loan term, the consumer will not have been in debt on covered short-term loans for more than 90 days in the aggregate during a rolling 12-month period.

Additionally, the loan would need to include the following structural limitations:[21]

1. The amount financed does not exceed $500;[22]
2. The loan has a contractual duration of 45 days or less with no more than one finance charge for this period;
3. The consumer does not provide a security interest in a vehicle as collateral for the loan; and
4. The loan is structured to taper off the consumer from indebtedness on such loans, as discussed below.

For the alternative loans, the Bureau is considering two alternative options for tapering off the consumer's debt to help ensure that at the end of the loan sequence the consumer does not face an unaffordable financial obligation. The first option would require that lenders reduce the principal amount of each loan over the course of a three-loan sequence to create a sequence resembling an amortizing loan. For example, if a first loan had a principal of $300, a lender could extend a second loan under the alternative requirements within 60 days of the first loan only if the loan principal were no more than $200. A lender could extend a third loan within 60 days of the second loan only if the loan principal were no more than $100. The Bureau believes this approach would generally fit within existing laws in those states that permit short-term payday lending. The Bureau believes that requiring that lenders reduce the principal for successive loans to create an amortizing sequence would mitigate some of the risk that consumers would face an unaffordable lump-sum payment at the end of the sequence and, as a result, face either a default on the loan or hardship in meeting other major financial obligations and living expenses.

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[20] The conditions here would not preempt state laws with more stringent underwriting requirements or additional limitations on reborrowing.

[21] The conditions here would not preempt state laws with lower maximum loan amounts, shorter repayment periods, or other structural limitations.

[22] The Bureau is considering whether and in what manner this amount should adjust with inflation.

The second option under consideration would require that lenders provide a no-cost extension of the third loan—an "off-ramp"—if a consumer is unable to repay the loan according to its terms. Under the proposal being considered, the Bureau would require lenders to allow a consumer to repay the third loan over an additional four installments without incurring additional cost. Following the end of the off-ramp, the lender would be prohibited from extending any additional credit to the consumer for a period of 60 days. In considering this alternative, the Bureau recognizes that extended payment plans have been implemented by some states and are a feature of some trade association best practices. The Bureau has observed that use of these provisions has been limited because typically the consumer must affirmatively request the extended payment plan. The Bureau has also received a variety of reports regarding lender practices designed to discourage consumers from exercising their extended payment plan options—practices which would thwart the purpose of the alternative requirements being considered by the Bureau. Drawing from this experience, the Bureau is considering whether additional features would be needed to prevent such practices and facilitate access to the off-ramp, such as requiring lenders to notify consumers of their rights to take the off-ramp and prohibiting lenders from making false or misleading statements about use of the off-ramp. Additionally, the Bureau is considering whether to prohibit lenders from pursuing collections on the loan before offering the consumer an off-ramp.

The Bureau anticipates that it will select one of these two tapering mechanisms in its proposed rule.

4. Alternatives considered

The Bureau considered an alternative proposal that would prohibit a lender from making a covered short-term loan to a consumer who lacks a specific level of residual income. In rejecting this alternative, the Bureau determined that the flexible determination outlined above would be less burdensome for lenders and more likely to effectively facilitate a meaningful assessment of a consumer's ability to repay a contemplated loan.

The Bureau also considered an alternative proposal that would prohibit a lender from making covered short-term loans if the lender has portfolio-wide default and reborrowing rates in excess of a specified level. In rejecting this alternative, the Bureau determined that, at this time, a rule based on a portfolio benchmark applicable to the markets addressed in the proposals under consideration would be difficult to effectively implement and would be particularly burdensome for new entrants to the market.

The Bureau also considered a proposal that would limit loan sequences to a maximum of three covered short-term loans and impose a 60-day cooling-off period following the third covered short-term loan in a sequence, but would not impose any obligations on lenders to make a reasonable ability-to-repay determination. In rejecting this proposal, the Bureau determined that this proposal would not provide adequate protections for consumers lacking the ability to repay a covered short-term loan and also would not provide a mechanism to help ensure that consumers are able to retire their debt.

B. Longer-term loans with account access or non-purchase money security interest in a vehicle

The Bureau is considering a proposal that would generally cover longer-term credit products with a contractual duration longer than 45 days and an all-in annual percentage rate in excess of 36 percent where the lender holds either (1) access to repayment through a consumer's account or paycheck, or (2) a non-purchase money security interest in the consumer's vehicle. This Outline refers to these products as "covered longer-term loans."

Under the proposals being considered, account access would include a post-dated check, an automated clearing house (ACH) authorization, a remotely created check (RCC) authorization,[23] an authorization to debit a prepaid card account, a right of setoff or to sweep funds from a consumer's account(s), and other methods of collecting payment from a consumer's checking, savings, or prepaid account, as well as a payroll deduction. A particular loan would be subject to the proposals under consideration if a lender obtains account access before the first payment on the loan, imposes a contractual obligation to provide account access, or incentivizes account access, such as through rate discounts or expedited access to funds. Vehicle title loans longer than 45 days would be covered longer-term loans.[24]

The Bureau is considering applying the proposals under consideration 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. That is, using a cost threshold excludes certain products for which lenders may take account access or a non-purchase money security interest in a vehicle, but for which the Bureau is not currently considering regulation within the proposals under consideration for this rulemaking. For example, the cost threshold would exclude from the scope of the proposals low-cost signature loans extended by depository institutions and for which the lender takes authorization for repayment through access to a consumer's deposit account.

For the cost threshold, the Bureau is considering using an annualized cost of credit measure that would include interest, fees, and the cost of any add-on products such as credit insurance, memberships, and other products sold along with the credit. In general, the Bureau is considering using a threshold that relies on existing federal law in order to reduce compliance burden. One possible measure is the military annual percentage rate defined in 32 CFR 232, which generally includes all interest and fees for the extension of credit as well as fees for credit-related ancillary products and insurance or debt cancellation agreements. The Bureau believes that an all-in threshold would be more appropriate than the annual percentage rate required to be disclosed under Regulation Z because the latter measure does not include the cost of many add-on products that can substantially increase the actual cost associated with the extension of credit and that the Bureau has observed are used by some lenders in this market.

[23] An RCC is a paper check prepared by a payee (lender) or its agent and then presented to the payor's (consumer's) bank. It is similar to an ordinary signature check except that it is created by the payee, and, in place of the payor's signature, it contains a statement indicating that the check was authorized by the payor.

[24] The proposals would cover any consumer loan longer than 45 days that is secured or purportedly secured by a non-purchase money lien on the borrower's vehicle, irrespective of how the lender characterizes or perfects its security interest. For example, vehicle title loans characterized as title pawn transactions or loans with second or lower priority vehicle liens would be covered.

To address consumer harms caused by practices that result in many consumers taking out unaffordable loans when the lender is able to access repayment from the consumer's account or holds a security interest in the consumer's vehicle, the Bureau is considering proposals to require lenders to determine a consumer's ability to repay covered longer-term loans.

For covered longer-term loans, the Bureau is considering a proposal with the following elements:

- Ability-to-repay determination—As with covered short-term loans, lenders would be required to make a good-faith, reasonable determination that the consumer has the ability to repay the covered longer-term loan without reborrowing or defaulting. The lender would have to determine that the consumer has sufficient income to make payments on the loan after satisfying major financial obligations and living expenses. In making the ability-to-repay determination, lenders would have to verify and consider the consumer's income, major financial obligations, and borrowing history.
- Presumption of inability-to-repay—The proposals would create a presumption that the consumer lacks the ability to repay a covered longer-term loan for certain refinancing and reborrowing:
    - Rebuttable presumption of inability to repay refinanced loan—When a consumer seeks to refinance certain prior debts into a covered longer-term loan, the lender would be required to presume that the consumer lacks the ability to repay such a loan. To overcome the presumption, the lender would have to verify a change in circumstances such that the consumer would have the ability to repay the loan. This rebuttable presumption would be applicable to refinancing transactions in certain circumstances where there is an indication that the consumer has struggled to afford payments on the loan being refinanced.
    - Rebuttable presumption of inability to repay covered longer-term loan with balloon payment—The Bureau is considering treating covered longer-term loans with a balloon payment in the same manner as covered short-term loans. For covered longer-term loans with a balloon payment, there would be a rebuttable presumption of inability to repay for repeated borrowing in the same loan sequence. The presumptions would apply to the second and then third loans in a sequence. A loan sequence would include loans extended within 60 days of the consumer having a covered longer-term loan with a balloon payment outstanding. To overcome the presumption, the lender would have to verify a change in circumstances that would show that the consumer has the ability to repay the loan.
        - After three covered longer-term loans with a balloon payment (or covered short-term loans or a combination of both types of loans) in a sequence, there would be a conclusive presumption that the consumer lacks the ability to repay. Lenders would be prohibited from making covered loans until a 60-day cooling-off period had elapsed.
        - In determining a consumer's ability to repay covered longer-term loans with a balloon payment, lenders would need to consider income and major financial obligations for 60 days beyond the term of the loan.
- Alternative requirements—The Bureau is considering whether to propose allowing lenders to make two types of covered longer-term loans without following the procedure outlined above for determining the consumer's ability to repay, using alternative screening requirements and structural protections to prevent consumers from getting trapped in unaffordable long-term debt:
    - NCUA-type loans—A loan that generally satisfies the requirements of the *Payday Alternative Loan* program under the National Credit Union Administration

(NCUA) regulations, regardless of issuer, as well as some additional conditions. The proposals under consideration would require that such loans satisfy the following conditions:

  - Screening requirements—Among other criteria, the lender would need to verify the consumer's income and determine that the loan would not result in the consumer having more than two covered longer-term loans under the NCUA-type alternative requirement from any lender in a rolling six-month period.
  - Structural protections—If the consumer meets the screening criteria, a lender could extend a loan that: (1) is between $200 and $1,000 with a duration between 45 days and six months; (2) fully amortizes; and (3) meets NCUA cost criteria (charging no more than 28 percent interest and an application fee of no more than $20).

- Maximum PTI loans—A loan with payments below a 5 payment-to-income (PTI) ratio and satisfies other conditions:
  - Screening requirements—Among other criteria, the lender would need to verify the consumer's income and determine that the loan would not result in the consumer receiving more than two covered longer-term loans under the maximum PTI loan alternative requirements from any lender in a rolling 12-month period.
  - Structural protections—If the consumer meets the screening criteria, a lender could extend a loan that: (1) limits periodic payments to no more than 5 percent of the consumer's expected gross income during the same period; (2) has a duration between 45 days and six months; and (3) fully amortizes.

The Bureau's concerns about certain lender practices in the markets for payday loans, longer-term vehicle title loans, and other similar longer-term loans are discussed below, followed by a more detailed description of the proposals under consideration.

1. Why is the Bureau considering proposals to limit certain practices in the longer-term credit market?

The Bureau is concerned that, much like in the market for short-term credit, the failure to determine consumers' ability to repay results in consumers taking out unaffordable loans in certain segments of the markets for higher-cost longer-term loans. The Bureau is concerned that when lenders do not determine a consumer's ability to repay, the payments on the loan may be unaffordable. When a lender makes a loan with payments that are unaffordable and takes account access or a security interest in a vehicle, the consumer may ultimately be forced to default on other obligations or to reborrow or refinance the loan.

While some installment lenders may analyze a consumer's finances in some detail, the Bureau is concerned that lenders who take a preferred means of collecting on a loan through account access or a security interest in the vehicle have little incentive to go beyond confirming that the consumer has some periodic income. The failure to determine whether a consumer can afford to repay the loans while meeting other major financial obligations and living expenses heightens the risk that the consumer will end up with an unaffordable loan. Such loans carry a high risk of default or reborrowing, and of exacerbating the consumer's underlying financial problems.

Similar to short-term loans, the unaffordable structure of these longer-term loans can create substantial risk of consumer harm. For example, loans with several smaller payments followed by a single substantially larger payment may prompt consumers to reborrow in much the same manner as with short-term loans. Similarly, loans that negatively amortize cause the consumer's debt to increase, rendering the obligation more difficult to repay over time. For products with equally-sized amortizing payments, any single payment on its own may not be sufficiently unaffordable to prompt default or reborrowing; however, the consumer may still have difficulty sustaining payments on the debt over a period of weeks or months while meeting other obligations.

Authorization to obtain repayment from the consumer's bank account or wages gives lenders the ability to time and initiate payments to coincide with expected income flows into the consumer's account or, in the case of payroll deductions or allotments, the ability to obtain payments deducted from paychecks. This direct access to repayment means that the lender will obtain payment as long as the consumer continues to receive income and maintain her payment account.

With vehicle title loans, the lender's security interest in the consumer's vehicle provides a strong incentive for repayment (as well as providing the lender with a security interest in property with resale value). This security interest may induce a consumer to repeatedly reborrow or to default on other obligations in order to avoid putting her means of transportation at risk.

The markets for these products may also present additional harms through other practices. The Bureau is not seeking to identify all potentially unfair, deceptive, or abusive practices in these markets in the proposals under consideration for this rulemaking, and is continuing to consider whether additional regulatory interventions may be warranted. At a minimum, the Bureau expects to conduct a separate rulemaking under section 1024(a)(2) of the Dodd-Frank Act to identify larger participants in the installment lending market for purposes of its supervision program. The Bureau is also considering suggestions by a number of industry and consumer advocates that requiring registration of certain non-depository lenders would facilitate Bureau supervision and be helpful to the market. The Bureau would conduct separate SBREFA proceedings for any rulemakings that could have a significant economic impact on a substantial number of small entities.

2. Requirement to determine ability to repay certain longer-term loans

The Bureau is considering proposals to require lenders to determine a consumer's ability to repay covered longer-term loans. These proposals seek to address consumer harm caused by the failure to underwrite loans when the lender has a security interest in the consumer's vehicle or access to repayment from a consumer's account or wages. The proposals described below are similar in many regards to the proposals under consideration to require lenders to determine a consumer's ability to repay covered short-term loans. The proposal under consideration would require a lender, as a condition of making a covered longer-term loan, to first make a good-faith, reasonable determination that the consumer has the ability to repay the covered longer-term loan without reborrowing or defaulting. This determination would require the lender to find that a consumer is able to make all projected payments under the covered longer-term loan as those payments are due while still fulfilling her other major financial obligations and meeting living expenses.

Lenders would need to obtain and verify the required information and then consider that information in determining whether a consumer has the ability to repay each covered longer-term loan. This obligation would apply both to the first time a consumer seeks a loan from the lender and to any refinancing or subsequent loans. As part of this obligation the Bureau is evaluating whether lenders should be required to consider, as part of the ability-to-repay determination, whether a consumer has recently been delinquent on any covered loans with the lender or its affiliates or has recently defaulted on any covered loans with the lender, its affiliates, or other lenders. As described in Section III.B.3, the Bureau is also considering proposals that would permit covered longer-term loans that satisfy certain requirements to be offered without the ability-to-repay determination described below.

a. Financial information

As with covered short-term loans, the proposals being considered by the Bureau would require lenders to obtain and verify 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 on covered loans. These components are discussed in detail in Section III.A.2.a above.

b. Reasonable determination

Under the proposals being considered, whether a lender's determination would satisfy the reasonableness requirement would turn largely on how the lender reaches its conclusion that the remaining income shows (or does not show) a consumer has the ability to make payments under the loan as they fall due. As with the reasonable determination for covered short-term loans, consistent patterns of refinancing or extensive defaults may be an indication that the lender's methodology is not reasonable.

As discussed above, the proposals under consideration would impose an obligation to obtain information about the amount and timing of the consumer's income and major financial obligations, and information about the consumer's borrowing history on covered loans. The proposals under consideration would require the lender to use this information to assess whether the consumer would have enough residual income to support the reasonable ability-to-repay determination and to determine whether any of the presumptions for covered longer-term loans are triggered.

For a consumer who takes out a new covered longer-term loan shortly after repaying such a loan, a lender would, in general, not be required to presume that the consumer lacks the ability to repay the new loan. Under the proposals applicable to most covered longer-term loans, obtaining information about a consumer's borrowing history would be necessary to determine the consumer's debt obligation and reporting would be necessary to facilitate consideration of borrowing history. Presumptions about ability to repay based on borrowing history would attach only to covered longer-term loans with a balloon payment and to certain refinancing transactions. In general, for covered longer-term loans, the underwriting period for which a lender would need to consider income and obligations is the same as the contractual duration of the loan.

i. ANALYSIS OF INCOME AND MAJOR FINANCIAL OBLIGATIONS

Under the proposals being considered by the Bureau, a lender would be prohibited from making a covered longer-term loan unless the consumer's residual income (after considering major financial obligations) is sufficient to support a reasonable determination that the consumer will be able to repay the covered longer-term loan while meeting the consumer's other major financial obligations and living expenses without reborrowing. In making this reasonable determination of ability to repay, a lender would need to consider the timing of income and major financial obligations and assume that the consumer will make payments on other major financial obligations as those payments are due throughout the term of the loan. This analysis would largely track the proposal under consideration for covered short-term loans and is described in greater detail in Section III.A.2.b.i.

The residual income analysis would apply to each scheduled payment of the covered longer-term loan: a lender would be prohibited from making the loan if any of the payments did not satisfy the ability-to-repay determination. For example, for a loan with several small payments followed by a larger payment, a lender would need to consider the amount and timing of that larger payment to determine whether the consumer would be able to repay the covered longer-term loan.

ii. PRESUMPTIONS APPLICABLE TO REFINANCES OF PRIOR DEBT

The ability-to-repay determination being considered by the Bureau for covered longer-term loans would attach to each consideration of an extension of a covered longer-term loan, including a refinance of certain loans into a covered longer-term loan. Additionally, the Bureau believes that certain circumstances may indicate that the consumer lacked the ability to repay the loan being refinanced and that the consumer is therefore likely to lack the ability to repay a new loan with terms similar to the refinanced loan. The Bureau is considering whether to require lenders to presume that a consumer lacks the ability to repay a covered longer-term loan with terms similar to the loan being refinanced if such conditions are present. The presumption would not prohibit refinancing into covered longer-term loans, but would require that any refinancing yield a new loan that is within the consumer's ability to repay.

These presumptions would apply to any transactions where the new loan is a covered longer-term loan and the prior debt, whether covered or not covered, is from the same lender or its affiliates. The presumptions would also apply to any transaction where the new loan is a covered longer-term loan and the debt being refinanced is a covered loan from any lender.

The presumption would be triggered with respect to the extension of the term of any existing loan or the issuance of a new loan during the term of a preexisting loan if:

1. The consumer was, at the time of the refinancing, delinquent or had recently been delinquent on a payment under the loan being refinanced;
2. The consumer stated or otherwise indicated that she was unable to make a scheduled payment under the loan being refinanced or that the loan being refinanced was causing financial distress;
3. The refinancing provides for the consumer to skip (or pay a lesser amount than) a payment that otherwise would have been due under the loan being refinanced, unless the refinancing provides for a substantial amount of cash out to the consumer; or
4. The loan being refinanced is in default.

To rebut the presumption, the lender would need to have verified evidence that, despite the presence of the financial circumstances triggering the presumption, there had been a change in circumstances that indicate the consumer has the ability to repay the extended term loan or the new loan.

iii. PRESUMPTIONS APPLICABLE TO LOANS WITH BALLOON PAYMENTS

The Bureau is considering a proposal to impose certain presumptions on covered longer-term loans with a balloon payment. Under the proposal, a balloon payment would be any payment that is more than two times a regular periodic payment. Although longer-term loans provide consumers with more time to repay the debt than do short-term loans, covered longer-term loans that have a balloon payment may raise the same concerns as covered short-term loans—i.e., that the payment may be unaffordable and may create pressure for the consumer to reborrow. To address this issue, the Bureau is considering requiring lenders, in determining a consumers' ability to repay covered longer-term loans that have a balloon payment, to consider income and major financial obligations for an additional 60 days beyond the term of the loan.

Similarly, for these loans, the Bureau is considering imposing the same presumptions applicable to sequential borrowing on covered short-term loans. Under these presumptions, if a consumer seeks to reborrow within 60 days after being in debt on a covered longer-term loan with a balloon payment (or a covered short-term loan, or a mix of the two), the lender would need to make a reasonable determination of the consumer's ability to repay the loan and that the consumer lacks the ability to repay a covered loan with a similar repayment structure. If the lender did not have verified evidence of a change in circumstances, then, for a 60-day period after repayment of the prior loan, the lender would not be permitted to extend a covered short-term loan or covered longer-term loan with a balloon payment. After the third loan in a sequence, there would be a conclusive presumption that the consumer lacks the ability to repay a covered loan with a similar structure—i.e., the lender would be prohibited from extending to the consumer a covered short-term loan or a covered longer-term loan until a 60-day cooling-off period had elapsed. These presumptions are discussed in detail in Section III.A.2.b.ii.

iv. ASSUMPTIONS APPLICABLE TO OPEN-END LINES OF CREDIT

For covered longer-term loans structured as open-end lines of credit, the Bureau is considering requiring the lender to make certain assumptions about credit utilization and repayment in order to proceed with a determination of the consumer's ability-to-repay. The Bureau is considering a proposal specific to open-end lines of credit that would require the lender to assume that a consumer fully utilizes the credit upon origination and makes only minimum payments until the end of the contract period, at which point the consumer must make a single payment in the amount of the remaining balance. The Bureau is also considering a proposal to require the lender to assume full repayment on the credit by the end of the contract period or, if no termination date is specified, six months from the date of origination.

3. Alternative requirements for certain covered longer-term loans

The Bureau is considering a proposal that would allow lenders to extend certain covered longer-term loans without conducting the ability-to-repay determination outlined above. The Bureau is considering this proposal in tandem with the ability-to-repay requirements. Under this proposal, lenders would have the option of either satisfying the ability-to-repay requirements or satisfying the alternative requirements. The alternative approach would require that such loans satisfy certain screening requirements and contain certain structural protections to prevent consumers from getting trapped in unaffordable long-term debt.

The Bureau is considering whether offering such alternative requirements for lenders—including small lenders that may have difficulty conducting an ability-to-repay determination with a residual income analysis—may be helpful in preserving consumer access to credit while still protecting consumers from becoming caught in unaffordable debt that further worsens their financial problems. The Bureau also believes that the alternative requirements would reduce the compliance costs for lenders.

The Bureau is considering whether the screening requirements and structural protections identified below would achieve the objectives of maintaining access to credit, reducing compliance costs for lenders, and protecting consumers from the harms associated with unaffordable long-term debt. Additionally, the Bureau is considering whether to require lenders to provide a disclosure to consumers explaining the alternative requirements for covered longer-term loans.

a. Loans sharing certain features of a loan made pursuant to the NCUA *Payday Alternative Loan* program

The Bureau is considering a proposal to allow lenders to extend covered longer-term loans without satisfying the ability-to-repay requirements discussed above, provided that such loans, in general, comply with the terms of loans extended under the NCUA's program for Payday Alternative Loans.[25] The Bureau is considering a proposal to allow any lender—not only federal credit unions—to offer covered longer-term loans pursuant to this alternative approach. The Bureau is considering whether the conditions below provide sufficient protections for consumers on covered longer-term loans extended without conducting the ability-to-repay determination outlined above.

Under the proposal being considered, a lender could extend a covered loan under this alternative set of requirements after applying certain screening requirements if the loan contains certain structural protections.[26]

Most of the elements are drawn from the requirements for a *Payday Alternative Loan* under NCUA regulations,[27] namely:

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[25] Under federal law, the federal credit unions subject to the NCUA regulation are permitted to charge higher rates of interest than are permitted by the laws of some states. Although the proposal under consideration by the Bureau would share certain features of the NCUA regulation, the proposal would not preempt more protective state laws, including laws regulating the cost of credit.

[26] As with the other alternative requirements under consideration, the conditions here would not preempt more protective state laws.

1. Screening requirements: The lender applies minimum underwriting standards and verifies the consumer's income;.
2. Structural protections:
   a. The loan has a principal of not less than $200 and not more than $1,000;[28]
   b. The loan has a maximum term of six months;
   c. The lender charges no more than a 28 percent annualized interest rate and an application fee, reflecting the actual costs of processing the application, of no more than $20; and
   d. The lender fully amortizes the loan over no fewer than two payments.

In addition, the Bureau is also considering whether to propose additional conditions for these loans, namely:

1. Screening requirements:
   a. The lender verifies borrowing history and reports use of the loan to all applicable commercially available reporting systems, as described in Section III.A.2.a.iii;
   b. The consumer has no other covered loan outstanding; and
   c. The loan would result in the consumer having no more than two such loans during a rolling six-month period.
2. Structural protections: The loan has a minimum term of 45 days.[29]

The proposals under consideration would not permit a lender that holds a deposit account in the consumer's name to fully sweep the account to a negative balance, to set off from the consumer's account in order to collect on the loan in the event of delinquency, or to close the account in the event of delinquency or default.

b. Loans with periodic payments below a specified payment-to-income ratio

The Bureau is considering a proposal to allow lenders to offer covered longer-term loans without conducting the full ability-to-repay determination described above, as long as the loan has payments below a specified payment-to-income ratio and meets certain other requirements.[30] The Bureau is considering whether loans with payment-to-income ratios below 5 percent provide sufficient protections without the full ability-to-repay determination outlined above.

Under the proposal being considered, a lender could extend a covered longer-term loan without reaching a reasonable determination about a consumer's ability to repay the loan provided that the lender applies the following screening requirements:

1. The lender verifies the consumer's income;
2. The lender verifies borrowing history and reports use of the loan to all applicable commercially available reporting systems, as described in Section III.A.2.a.iii;
3. The consumer has no other covered loan outstanding and has not defaulted on a covered loan within the past 12 months; and
4. The loan would result in the consumer being in debt on no more than two such loans within a rolling 12-month period.

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[27] 12 CFR 701.21(c)(iii).
[28] The Bureau is considering whether and in what manner this amount should adjust with inflation.
[29] Loans made under the NCUA program with a contractual duration of 45 days or less would be subject to the proposals under consideration for covered short-term loans.
[30] As with the other alternative requirements under consideration, the conditions here would not preempt more protective state laws.

Additionally, the loan would need to include the following structural limitations:

1. The periodic payment due on the loan is no more than 5 percent of the consumer's expected gross income during this same period;
2. The loan is a closed-end loan repayable in at least two substantially equal payments over no fewer than 45 days;
3. The loan has a maximum duration of no more than six months; and
4. The lender charges no fees for prepayment of the loan.

4. Alternatives considered

As with the proposals under consideration for covered short-term loans, the Bureau considered an alternative proposal that would prohibit a lender from making a covered longer-term loan to a consumer who lacks a specific level of residual income. The Bureau also considered an alternative proposal that would prohibit a lender from making covered longer-term loans if the lender has portfolio-wide default and reborrowing rates in excess of a specified level. The Bureau rejected those alternatives for the same reasons noted above related to covered short-term loans.

C. Practices associated with collecting payment on loans from consumers' accounts

The Bureau is concerned about certain practices associated with collecting payment on all covered loans from consumers' checking, savings, and prepaid accounts. Lenders collect payments from a consumer's account through a variety of methods, including ACH entries, post-dated signature checks, RCCs, payments run through the debit networks, and other means of collecting payment from a consumer's account. The Bureau is concerned that certain lender practices associated with these payment collection methods create substantial risk of consumer harm, including substantial fees, and, in some cases, risk of account closure.

To address consumer harms from practices associated with collecting payment from consumer accounts, the Bureau is considering proposals to require lenders to provide certain notices to consumers and to limit repeated attempts to collect payment.

For collecting payment on all covered loans, the Bureau is considering proposals with the following elements:

- <u>Notice</u>—Lenders would be required to provide a written notice to consumers prior to each lender-initiated attempt to collect payment from a consumer's checking, savings, or prepaid account. The notice would need to be provided at least three business days in advance of the attempt to collect payment and include key information about the forthcoming payment collection attempt.
- <u>Limitations on attempts to collect payment</u>—Lenders would be prohibited from attempting to collect a payment from a consumer's account after two consecutive attempts have failed, unless the lender has obtained a new payment authorization from the consumer.

1. Why is the Bureau considering proposals regarding certain practices related to collecting payments from consumers' accounts?

The Bureau is concerned that when consumers authorize lenders to collect future payments on payday, vehicle title, or similar loans through some form of account access, they may not know when presentments will be made, in what amount, and for what reason. As a result, consumers may be unable to move money into the account to cover the presentment or, alternatively, to stop payment on the presentment if, for example, the consumer has revoked her authorization or believes the presentment or the amount of the presentment is erroneous.

Additionally, the Bureau has observed that in the markets of concern some lenders continue to present items for payment after multiple prior failed attempts. If a consumer's account lacks sufficient funds to cover a payment when the lender seeks to collect payment from the consumer's account, the consumer may incur substantial costs, including NSF fees, returned payment charges and, potentially, costs related to account closure. While the costs associated with one or two failed attempts may be a necessary risk of repaying a loan through account access, the Bureau is concerned about the harm to consumers from multiple failed attempts to collect payment in succession.

2. Required notice to consumers prior to attempting to collect payment from an account

The Bureau is considering a proposal that would require lenders to provide a written notice to consumers prior to each lender-initiated attempt to collect payment from a consumer's checking, savings, or prepaid account. This requirement would apply to attempts to collect payment from a consumer's account through any method, including ACH entries, post-dated signature checks, RCCs, and payments run through the debit networks. The Bureau believes that the payment information provided in the notice would help consumers better manage their accounts and overall finances.

Under the proposal being considered, lenders would be required to provide the notice at least three business days in advance of each payment collection attempt, including an attempt to re-present a failed payment. The Bureau is also considering proposing that the notice can be provided no more than seven business days before a payment is due.

The Bureau is considering a proposal to require that the notice contain the following information:

1. The exact amount and date of the upcoming payment collection attempt;
2. The payment channel through which the attempt will be made;
3. A break-down of the application of payment amount to principal, interest, and fees (if applicable);
4. The loan balance remaining if the payment collection attempt succeeds;
5. The name, address, and a toll-free phone number that the consumer can use to reach the lender; and
6. For payment collection attempts made by check, such as a post-dated signature check or RCC, the check number associated with the payment attempt.

The Bureau is considering permitting lenders to provide the notice either electronically or through the mail. Under the proposal being considered, the lender could provide the notice electronically to the email address that the lender has on file for the consumer. If the lender has received information indicating that the email address on file is no longer valid and the lender is unable to obtain a new email address for the consumer, the lender would be required to send the notice to the consumer's last-known mailing address and allow an additional three business days for delivery of the notice (for a total of six business days) prior to making the payment attempt. The Bureau is considering whether to propose that the lender would have the option to provide the notice through any electronic means to which the consumer consents, such as by phone call, text message, or mobile application.

The Bureau is also considering whether to require that the disclosure be made in languages other than English if the lender markets or services loans in those languages.

3. Limitation on attempts to collect payment from a consumer's account

The Bureau is considering a proposal to limit the number of times a lender may attempt to collect payment on a covered loan from a consumer's account, including a checking, savings, or prepaid account. The Bureau is concerned that some lenders make repeated unsuccessful attempts to collect from a consumer's account, thereby potentially causing the consumer to incur substantial costs, including NSF fees, returned payment fees charged by lenders, and, potentially, costs related to account closure.

The Bureau understands that, with respect to ACH payments, many lenders offering payday, vehicle title, and similar loans already agree to comply with the National Automated Clearing House Association (NACHA) Operating Rules, including the rule that permits a returned entry to be re-presented no more than twice.

The proposal under consideration would be both broader and more restrictive than the NACHA re-presentment rule. The NACHA rule applies only to payment attempts made through the ACH system and restricts lenders from making more than three attempts to collect a single payment. By comparison, the Bureau is considering a proposal that would apply to all payment channels and would prohibit lenders from attempting to collect a payment from a consumer's account after two consecutive attempts—made through any payment channel—have failed. A payment collection attempt would be deemed to have failed if it is returned for insufficient funds. The proposal would cover all payment collection methods that allow a lender to access a consumer's checking, savings, or prepaid account, including ACH entries, post-dated signature checks, RCCs, and payments run through the debit networks.

After two consecutive attempts to collect payment fail, the lender would be prohibited from using any authorization it has at the time to make additional payment attempts on the loan. The Bureau recognizes that this limitation also would be more restrictive than the NACHA rule, which permits lenders to continue using recurring payment authorizations to collect future payments, even after reaching the maximum number of presentments for a prior payment.

Under the proposal being considered, the lender could obtain a new authorization from the consumer after hitting the cap and use the subsequently granted authorization to collect future payments. The Bureau is considering whether to propose certain requirements to ensure that the new authorization was obtained freely. For example, the Bureau is considering a proposal to

require that the lender provide the consumer with a disclosure indicating that the prior payment attempts have failed and that, if the consumer provides a new authorization, the consumer may incur further NSF and other fees in the event that future payment attempts fail.

D. Compliance measures

In addition to the substantive consumer protections in the proposals under consideration described above, the Bureau is considering measures to facilitate compliance with the proposals under consideration. These compliance proposals would require lenders to maintain policies and procedures and to retain records related to covered loans.

1. Policies and procedures

The Bureau is considering a proposal to require lenders to maintain policies and procedures that are reasonably designed to achieve compliance with the proposals under consideration. These policies and procedures would cover the lender's process for determining ability to repay when originating covered loans; reporting to and checking covered loan information in commercially available reporting systems; maintaining the accuracy of loan information furnished to a commercially available reporting system; documenting the ability-to -repay determination in the consumer's loan file; overseeing third-party service providers; ensuring that payment notices are provided; and tracking the payment presentments on a loan.

2. Record-keeping requirements

The Bureau is considering a proposal to require lenders to retain records documenting actions taken with respect to a covered loan until 36 months after the last entry on the loan. These records would be retained to facilitate oversight by the Bureau and other regulators for compliance with the rule. The consumer loan file would include documentation of the ability-to-repay determination, verification of the consumer's history of covered loans, application of any of the alternative requirements for certain loans, history of payment presentments (including date of presentment, amount presented, payment channel used, and outcome), whether attempts to collect payment on the loan triggered the presentment limit, details of any new payment authorizations provided by the consumer, and notices sent prior to attempts to collect from consumers' accounts. These records would also include annual reports containing data sufficient to monitor performance of covered loans, including information on defaults and reborrowing with respect to covered short-term loans and covered longer-term loans made under the ability-to-repay requirements and under the alternative requirements.

IV. Potential Impacts on Small Entities

This section of the Outline reviews both the Bureau's preliminary assessments of the potential impacts of the regulatory proposals under consideration on small entities and the methods used to derive the assessments. The Bureau believes that this information will make it easier for SERs and others to offer the Bureau additional data and information regarding potential impacts and input on how the Bureau assesses those impacts.

The Bureau encourages contributions of data and other factual information that will help it to better understand the potential compliance costs and other impacts on small entities, and to develop proposals that achieve appropriate goals, as discussed in this Outline.

As described above, the Bureau is considering proposals that would impose requirements on lenders making loans with contractual duration of 45 days or less (i.e., covered short-term loans), as well as longer-term loans with an all-in annual percentage rate of 36 percent and where the consumer provides the lender with account access or for which the lender takes a non-purchase money security interest in a vehicle (i.e., covered longer-term loans). Many of the operational impacts of the proposals under consideration would be similar regardless of the type of loan being made, and therefore there is a single discussion of those impacts. The operational impacts of determining consumers' ability to repay a loan, however, may differ across loan types, especially in light of current business practices. Those impacts are therefore discussed separately for covered short-term loans and covered longer-term loans. The impacts of the proposals on revenue would also likely differ substantially for covered short-term loans and covered longer-term loans, and are discussed separately. Additionally, the analysis below identifies when impacts on small entities may differ according to whether the lender operates via storefronts or online. Finally, impacts on small entities of providing notices before collecting payment from consumers' accounts and restrictions on those collections are discussed jointly.

Any small entity that offers covered loans would be affected, with the size of impacts depending in part on how heavily the small entity relies on those particular loans as a percentage of its overall revenue and how the small entity determines whether to issue loans today. Entities in the impacted markets include the following:

- Storefront payday lenders;
- Storefront vehicle title lenders;
- Online payday lenders;
- Online vehicle title lenders;
- Non-depository lenders (operating out of storefronts or online) that make longer-term loans with an all-in annual percentage rate in excess of 36 percent and for which the lender obtains authorization to collect repayment from the consumer's account or paycheck;
- Credit unions that offer short-term loans or longer-term loans with an all-in annual percentage rate in excess of 36 percent and for which the lender obtains access to repayment through a consumer's account or paycheck. This includes federal credit unions extending payday alternative loans pursuant to NCUA regulations, though the impact on such entities will be affected by alternate requirements in the proposals under consideration for certain loans that fall within those regulations; and
- Other depository institutions that offer short-term loans or longer-term loans with an all-in annual percentage rate in excess of 36 percent and for which the lender obtains access to repayment through a consumer's account or paycheck.

For all covered loans, lenders would be required to:

- Collect and verify income information;
- Consult the records of the lender and its affiliates;
- Access a commercially available reporting system and report information on the covered loan to commercially available reporting systems; and
- Maintain records for 36 months demonstrating compliance with the requirements and calculate reborrowing and default rates of their loan portfolios.

For covered loans that are originated pursuant to an ability-to-repay determination, lenders would also be required to:

- Collect and verify information about the consumer's major financial obligations;
- Make a good-faith, reasonable determination that the consumer has the ability to repay the loan according to its terms while satisfying other major obligations and living expenses; and
- Document changed circumstances in the consumer's finances for transactions where the consumer is attempting to take out multiple covered short-term loans or covered longer-term loans with a balloon payment within specified time periods.

For covered loans originated pursuant to the alternative requirements, lenders would also be required to:

- Provide disclosures about the operation of the alternative requirements; and
- For covered short-term loans, administer the off-ramp or amortization requirements.

The impacts of these requirements on small entities that originate covered loans are discussed in the sections that follow, along with estimates of the impacts on the revenue of these lenders that would result from the restrictions that would be imposed by the proposals under consideration.

A. Common operational impacts on small entities making covered loans

Under the proposals being considered, small entities would have two ways of offering covered loans. They could obtain and verify information about an applicant's income and major financial obligations and make a good-faith, reasonable determination that the consumer has the ability to repay the loan. Or, the lender could satisfy the requirements of one of the alternatives to the requirements of the ability-to-repay determination. Some of the operational requirements of the proposals being considered would apply with respect to any covered loans. Other requirements would vary depending on whether the lender is making loans under the ability-to-repay requirement or under alternative requirements; the impacts of those requirements would likely vary by the type of loan.

The proposals being considered would require lenders making any type of covered loan to consult their own records and the records of their affiliates to determine whether the borrower had taken out any prior covered loans and, if so, the timing of those loans. Lenders would also be required to obtain and verify consumer income on all covered loans. Lenders would be required to consider borrowing history with other lenders and would have to use a commercially available reporting system to obtain information about the consumer's borrowing history across lenders. To facilitate consideration of borrowing history, lenders would be required to submit records of covered loans they originate to commercially available reporting systems.

Finally, the proposals under consideration would require lenders to establish policies and procedures to comply with the provisions of the rule, maintain records for each loan sufficient to demonstrate compliance with provisions of the rule, and, as part of the record-keeping requirement, calculate the reborrowing and default rates of their loan portfolios each year.

1. Consulting lender's own records

In order to consult its own records and those of any affiliates, a small entity would need a system for recording loans that can be identified as being made to a particular consumer and a method of reliably accessing those records. The Bureau believes that small entities would most likely comply with this requirement by using computerized recordkeeping. A small entity operating a single storefront would need a system of recording the loans made from that storefront and accessing those loans by consumer. A small entity operating multiple storefronts or multiple affiliates would need a centralized set of records or a way of accessing the records of all of the storefronts or affiliates. A small entity operating solely online would presumably maintain a single set of records; if the entity maintained multiple sets of records it would need a way to access each set of records.

The Bureau believes that most small entities already have the ability to comply with this provision, with the exception of small entities with affiliates that are run as separate operations. Lenders' own business needs likely lead them to have this capacity. Lenders need to be able to track loans in order to service the loans. In addition, lenders need to track the borrowing and repayment behavior of individual consumers to reduce their lending risk, such as by avoiding lending to a consumer who has defaulted on a prior loan. And, lenders in a number of states are required to maintain records that would be sufficient to comply with this proposal.

There may be some small entities, however, that currently do not have the capacity in place to comply with this requirement. Small entities that do not already have a records system in place would need to incur a one-time cost of developing such a system, which may require investment in information technology hardware and/or software, the development of policies and procedures for maintaining and using the system, and the training of existing staff in the use of the system. There would also be an ongoing cost associated with training new staff in the use of the system. Small entities may instead contract with a vendor to supply part or all of the systems and training needs. The Bureau seeks further information on whether small entities already have systems that would allow them to comply with the requirements of the proposals under consideration and the costs of developing or purchasing those systems, and the costs of obtaining these services from a vendor.

The Bureau believes that the initial investment in information technology hardware and software to comply with this requirement would be quite limited—a standard personal computer running spreadsheet software should be sufficient—and estimates that purchasing necessary hardware and software would cost approximately $2,000 for a small entity plus $1,000 for each additional storefront operated by the small entity. For small entities that already have standard personal computer hardware, but no electronic record keeping system, the Bureau estimates that the cost would be approximately $500 per storefront.

The Bureau notes that small entities operating multiple storefronts, or small entities with multiple affiliates offering covered loans, may find it more cost effective to rely on the records of a commercially available reporting system to determine the borrowing history of a prospective borrower, including that person's borrowing history at the small entity's other storefronts or affiliates.

2. Accessing a commercially available reporting system

Accessing a commercially available reporting system would require developing a relationship with a firm operating a reporting system that complies with the requirements of the proposals being considered. The Bureau believes that many small entities likely already work with firms that operate similar reporting systems, such as in states where a private third-party operates reporting systems on behalf of the state regulator, or for their own risk management purposes, such as fraud detection.

Based on the pricing practices of similar services available in the market today, the Bureau expects that access to the reporting system would be priced on a per-inquiry basis, where an inquiry is a request for information about a particular consumer at a particular point in time. Based on the cost of similar services offered in the market today, the Bureau believes that the cost per inquiry would be less than $1.

3. Providing information to commercially available reporting systems

Furnishing information to reporting systems would require small entities to incur one-time and ongoing costs. These include costs associated with establishing a relationship with each reporting system provider, developing procedures for furnishing the loan data, and for compliance with applicable laws, and to furnish loan data. There may be different ways of furnishing this data. For example, it may be feasible to develop systems that would automatically transmit loan data to reporting system providers. One approach may be for the operator of the reporting system to offer a web-based form for entering data manually, which would presumably take five to 10 minutes to fill out for each loan at the time of origination and repayment. Assuming that multiple reporting systems existed, it might be necessary to incur this cost multiple times. The Bureau notes that some lenders in states where a private third-party operates reporting systems on behalf of state regulators are already required to provide this information.

The Bureau seeks input on how lenders would provide information to reporting systems and the costs that such a process would impose on lenders.

4. Obtaining and verifying income information

Lenders originating covered loans would be required to obtain and verify information on the amount and timing of an applicant's income. The Bureau believes that many small entities that make covered loans, such as storefront lenders making payday loans, already obtain and verify information on consumers' income. Many of these lenders, however, only obtain and verify income the first time they make a loan to a consumer, or on the first loan following a substantial break in borrowing. Other small entities, such as some vehicle title lenders or some lenders operating online, may not currently obtain or verify income information on any loans. In each of these circumstances, the proposals under consideration would impose additional costs on some or all loans a lender makes. These costs would take the form of staff time spent obtaining and verifying income. The Bureau believes that the costs of obtaining and verifying income information will generally range from one to 15 minutes, depending on whether a consumer provides adequate written documentation or the lender has to follow up to verify the information, such as by calling an employer.

Lenders making loans online may face particular challenges verifying income information if the easiest way to do so is by obtaining documents. It may be feasible for online lenders to obtain scanned or photographed documents. The Bureau seeks information about how online lenders would comply with the requirements to obtain and verify information and the costs associated with doing so.

5. Establishing and following compliance procedures

The proposals under consideration would require lenders to take various steps to ensure that the loans they originate are permitted by the regulation and to ensure that they do not engage in prohibited collections practices. This would require an initial cost to develop appropriate procedures and train staff. It would also require ongoing costs on a per-loan basis and additional training of new staff. The per-loan costs are discussed in the relevant sections below. The Bureau seeks input on how time consuming and costly it would be for small entities to develop procedures to comply with the requirements of the different approaches to lending that would be permitted under the proposals.

6. Record keeping

Under the proposals under consideration, lenders would be required to maintain for 36 months records sufficient to demonstrate compliance with the rule. The Bureau believes that lenders would maintain these records in the ordinary course of business, but seeks input from SERs on business practices. In addition, lenders would be required to generate, on an annual basis, metrics on defaults and reborrowing on the loans they originate. The impact of this requirement would depend on how lenders store information about their lending and what reports and summaries they already prepare for their own business purposes. The Bureau believes that generating these summaries will be facilitated by the systems lenders would be required to maintain to track their own lending of covered loans. Vendors may also provide systems to facilitate the generation of these statistics. The Bureau seeks input on how lenders would comply with the requirement to track their own lending of covered loans and whether that would facilitate the production of these annual metrics.

B. Specific impacts on small entities making covered short-term loans

The proposals the Bureau is considering would impose a number of requirements on small entities that offer covered short-term loans, such as single-payment payday or vehicle title loans. This section first describes the operational costs of complying with the requirements of the proposals being considered that are specific to covered short-term loans and then the impact of lost revenue from certain loans that are currently made by small entities that could no longer be made under the proposals being considered.

1. Impacts of operational requirements on small entities determining ability to repay when making covered short-term loans

Under the proposals being considered, prior to making a covered short-term loan other than under the alternative requirements discussed in Section III.A.3, a lender would be required to obtain and verify information about the amount and timing of consumer income and major financial obligations and assess that information to determine whether a consumer has ability to repay the loan. In addition, a consumer who has had a covered short-term loan outstanding within the past 60 days would need to demonstrate a change in his or her financial circumstances such that he or she would have sufficient ability to repay a new covered short-term loan. The operational impacts of complying with these requirements are discussed here.

a. Obtaining and verifying information on income and major financial obligations and making ability-to-repay determination

The costs generally associated with obtaining and verifying income information are discussed above. In addition, many consumers likely have multiple income sources that are not all currently documented in the ordinary course of short-term lending. Consumers and lenders may have incentives to provide and gather more income information than they do currently in order to establish the borrower's ability to repay a given loan, adding to lenders' costs.

The Bureau believes that most small entities that originate short-term loans do not currently obtain or verify information on applicants' major financial obligations or determine consumers' ability to repay a loan, as would be required under the proposals under consideration. Lenders would be required to obtain a credit report to verify debt information, at an estimated cost of $1 to$2. This would likely be in addition to the cost of accessing a commercially available reporting system for information on other covered loans, since the credit reporting systems that specialize in reporting covered loans may not contain information regarding consumers' other major financial obligations. Obtaining and validating some information, such as mortgage or rent payments, could be done using hard copies of documents such as cancelled checks or bank statements.

Alternatively, the Bureau expects that services may emerge that allow lenders to obtain and verify the information through electronic means, such as through bank accounts. For consumers who have straightforward documentation, the Bureau estimates that verifying this information would take roughly 10 to 20 minutes per application. If a lender has access to electronic means of obtaining and verifying information, the Bureau believes this could be done in one or two minutes, and would cost roughly $1 to $2 (based on the cost of similar services currently offered). Some consumers may not have such electronic records and may visit a lender's storefront without the required documentation. This would require a second visit to the lender, imposing the costs on the lender of dealing with the consumer on multiple occasions prior to making a loan, and may lead to some consumers failing to complete the loan application process, reducing lender revenue.

Lenders making loans online may face particular challenges verifying information if the easiest way to do so is by obtaining documents. It may be feasible for online lenders to obtain scanned or photographed documents. The Bureau seeks information about how online lenders would comply with the requirements to obtain and verify information and the costs associated with doing so.

Once information on income and major financial obligations has been obtained and verified, the lender would need to determine whether the consumer has the ability to repay the contemplated loan. The Bureau estimates that this would take roughly 10 additional minutes. In total, the Bureau estimates that obtaining and verifying information about consumers' income and major financial obligations would take between 15 and 45 minutes; a credit report would cost between $1 and $2; and lenders relying on electronic services to gather and verify information about major financial obligations would pay between $1 and $2 per application for that information. The Bureau seeks information on all aspects of these estimates, and seeks information on the hourly wages of the staff that would spend time carrying out this work.

Lenders would also need to develop policies and procedures for carrying out these requirements. In particular, lenders would need to develop procedures for making a reasonable good-faith determination that a consumer has the ability to repay a loan without reborrowing or defaulting. The Bureau seeks information on how costly it would be for lenders to develop such procedures.

b. Documenting changed circumstances

Because of the impact of the presumption of ability to repay triggered after the first loan in a sequence, lenders would not be able to make another covered short-term loan to a consumer within 60 days of the consumer having a prior covered short-term loan outstanding unless the borrower's financial circumstances had changed.[31] A change in the consumer's circumstances would need to be such that while the consumer had not been able to repay the previous loan (i.e., without needing to reborrow), the lender could reach a reasonable determination that the applicant would have ability to repay the new loan. This change in circumstances would need to be documented. To comply with this requirement, lenders would incur per-loan costs for documenting the changed circumstances and evaluating whether the changed circumstances were sufficient to satisfy the requirement of the proposal under consideration. Lenders would be required, however, to determine that a consumer has an ability to repay these loans in any case, and the Bureau believes that documenting and evaluating the changed circumstances would not meaningfully increase the cost of the ability to repay determination relative to the cost of originating the initial loan. The Bureau seeks input on how lenders would comply with the requirement to document changed circumstances and whether it would impose additional costs beyond the general ability-to-repay determination.

[31] This restriction would not apply to transactions involving loans that comply with the alternative requirements.

2. Impacts of operational requirements on small entities of making covered short-term loans under alternative requirements

Lenders that make short-term loans that comply with the alternative requirements described in Section III.A.3 would not have to obtain or verify major financial obligation information, complete the ability to repay determination, or document changed circumstances prior to making loans that meet those requirements.

The Bureau believes that small entities and other lenders may find this approach more attractive in many circumstances because of the reduced burden associated with gathering less information from the consumer and because some loans that might otherwise be prohibited could be made under the alternative requirements.

As part of the alternative requirements, the Bureau is considering two different approaches, to protect consumers who may struggle to retire debt on covered short-term loans made under the alternative requirements. One, the amortization requirement, would require lenders to reduce the principal of subsequent loans in a sequence; the other would require lenders to provide a no-cost off-ramp if the consumer is unable to repay the third loan in a sequence. The amortization requirement would not have operational impacts on lenders beyond the general requirement of having to develop policies and procedures to ensure that the loans comply with the rule. The off-ramp requirement would have operational impacts.

The Bureau is also considering whether to require lenders to provide a disclosure to consumers explaining the operation of the alternative requirements for covered short-term loans.

a. Off-ramps

The Bureau believes that many of the requirements of administering off-ramps, such as tracking whether payments have been made and what the balance outstanding is, could be satisfied using lenders' existing loan management systems, but lenders would need to modify those systems and develop policies and procedures for managing off-ramps. The Bureau seeks input on whether existing systems would be sufficient to administer off-ramps, or whether new systems would be required. The systems and processes that small entities use when servicing short-term loans are fairly labor intensive, with employees often contacting consumers shortly before the due date of each payment. If lenders follow this model when servicing off-ramps, the multiple payments of off-ramps would be associated with increased servicing costs.

The Bureau understands that some lenders currently offer extended payment plans under state requirements or to comply with industry trade association best practices. For those lenders, the Bureau is seeking input on the marginal additional burdens associated with the off-ramp requirement under consideration.

Off-ramps would also impose costs on lenders in the form of a delay in the repayment of some loans and a period of time in which the lender would not be charging additional fees or interest on the loan. The Bureau seeks input on these costs.

b. Disclosures

The Bureau is considering whether to require lenders to provide a disclosure to consumers explaining the operation of the alternative requirements for covered short-term loans. If this disclosure is a standard form for all consumers, the cost of providing the disclosure would be quite small. If the disclosure requires lenders to provide customized information about the transaction this would impose additional costs. Lenders would need to develop policies and procedures for filling out and providing the disclosures, and lenders' employees would have to spend time preparing the disclosure for each borrower. This would likely be quite short, less than five minutes, given the limited number information that would be specific to a transaction.

3. Revenue impacts of lending on small entities making covered short-term loans

The proposals under consideration would restrict the circumstances in which lenders could make covered short-term loans. Given the current patterns of lending and borrowing in affected markets, such as storefront payday lending and short-term vehicle title lending, the Bureau believes that these restrictions would lead to a substantial reduction in the volume of covered short-term loans.[32] This, in turn, would have a substantial impact on the revenue of small entities that currently originate these types of loans, especially small entities that specialize in short-term lending. In some cases, lenders may be able to reduce the impacts of the proposals under consideration by moving to loan products that are less affected by the proposals, such as longer-term installment loans with smaller periodic payments.

This section presents extremely rough estimates of the magnitude of the effects on loan volume in the storefront balloon payday market from the proposals under consideration.

The estimates presented here were derived from simulations using loan-level data from a number of large storefront payday lenders. The Bureau obtained data from a number of storefront payday lenders through the supervisory process. These are the same data that formed the basis of the Bureau's April 2013 and March 2014 publications. The data provide information on all payday loans extended by each lender over a period of at least 12 months. The dataset contains an anonymous customer identification code that allows the Bureau to link all loans made to the same consumer by a given lender during the observed time period.

The simulations were carried out by attempting to identify which loans that were made in the storefront balloon payday market could still be made if the Bureau were to adopt the proposals under consideration, and estimating the total dollar amount of those loans and fees charged on those loans. In addition, for scenarios in which lenders would be required to provide consumers off-ramps in certain circumstances, the simulations produced estimates of the number of consumers that would be eligible for an off-ramp. The Bureau seeks input on the validity of this approach to estimating the impacts of the proposals under consideration, as well as on the following specific application of this approach.

[32] For example, in the March 2014 Data Point, the Bureau found that half of all loans are part of a sequence of loans at least 10 loans long. The Data Point analysis defined loan sequence as loans that were taken out with 14 days of the repayment of a prior loan. If loan sequences are defined using a wider window, such as the 60 days being considered in the proposals, the share of loans that are calculated to be taken out as part of a loan sequence at least 10 loans long would be even higher.

There are a number of sources of uncertainty in the estimates generated by the simulations. First, the data used to carry out these simulations are from large lenders. The behavior of large lenders and consumers at large lenders may differ in important ways from the behavior of small lenders and consumers at small lenders. Second, the loan data do not identify consumers taking out loans from multiple lenders, which will cause some understatement of the impact of the restrictions. Third, there is uncertainty about how consumers would react to the restrictions that would be imposed by the proposals under consideration and how the overall market for these loans would change. Consumers' behavior may change in response to the restrictions in a number of ways, including their decisions to take out a loan in the first place, how quickly to repay a loan, and whether and how quickly to borrow following a cooling-off period. In addition, there is uncertainty about whether and how consumers would use off-ramps, if the Bureau were to include an off-ramp requirement in a regulation.

The reaction of lenders is also uncertain. They may change their pricing (to the extent allowed by state law), may change the range of products they offer, may consolidate locations, or may cease operations entirely. With regard to the range of products offered, lenders and consumers may respond by shifting to longer-term, lower-payment installment loans, where these loans can be originated profitably given such factors as risk of default and other restrictions on making these loans—including the Bureau's proposal regarding covered longer-term loans. The flexibility of the simulations to address these different sources of uncertainty is limited. As discussed below, one source of uncertainty that is expressly incorporated into the simulations is the behavior of consumers subsequent to cooling-off periods and off-ramps.

The Bureau notes that publicly released preliminary analysis of online lending by an industry research group suggests that patterns in online lending may be very different than in storefront lending, and therefore the results of this analysis may not be as useful in evaluating the impact on small entities that originate covered short-term loans online.

Based on analysis of non-public information, the Bureau believes that the impact of an ability-to-repay requirement on short-term vehicle title lending would likely be similar to the impacts estimated here for short-term payday lending. However, vehicle title loans could not be originated pursuant to the alternative requirements. The estimates presented here on the impacts on lenders that make loans under the alternative requirements are therefore not relevant to evaluating the impacts on vehicle title lending.

a. Simulations of determination of ability to repay

The storefront payday loan data that is used in the simulations does not contain information about consumers' financial obligations and only has information on the income used to qualify for the loan (consumers may have additional income). Measures that can be calculated using the information in the data include a payment-to-income (PTI) ratio and a measure of residual income that considers only the payment on the loan. These approaches, however, do not capture the major financial obligations that a lender would need to consider and verify when making a determination of whether a consumer has the ability to repay a loan under the proposals being considered. Those obligations may vary substantially across consumer, and therefore a payment-to-income ratio or a measure of residual income minus the loan payment that leaves one consumer with sufficient ability to repay a loan may not be sufficient for another consumer.

With those limitations in mind, the median PTI ratio, where income is measured at the monthly level, is 22 percent. This means that half of all storefront payday consumers have a payment due on their loans that is more than 22 percent of their monthly income. Nine percent have a PTI ratio over 50 percent. The median monthly income remaining after repaying a loan is $1,506. Thus, half of payday borrowers have less than $1,506 in monthly income remaining after repaying the loan. Twenty percent of borrowers have less than $710 in monthly income after repaying their loan. The Bureau is conducting further analysis of the likely impacts on lenders that make loans by determining ability to repay under the proposal being considered. These results suggest that for a substantial number of consumers, the reasonable determination under the proposals under consideration would be that the consumer would not have the ability to repay the contemplated loan. The proposals under consideration would therefore likely have a significant impact on the volume of payday loans that could be made if lenders were to use the ability-to-repay approach.

The proposals under consideration also would impose a rebuttable presumption of inability to repay a covered short-term loan after the first loan in the sequence, and a conclusive presumption of inability to repay after the third loan in the sequence. Simulations of the impacts of these presumptions, apart from the impacts of the requirement to determine ability to repay for an initial loan, are presented here.

Lenders that determine ability to repay to make a loan could not lend to a consumer who had a covered short-term loan outstanding within the prior 60 days without a documented change in consumer circumstances. These simulations assumed that consumers would not have changed circumstances that would allow them to take out another loan prior to the end of the 60-day period. In actuality, some consumers would have verifiable changed circumstances and would borrow sooner than 60 days after repaying their last loan; to that extent, the total reduction in loan volume would not be as great as these simulations would indicate. However, the simulations did not account for the direct effects of a requirement to determine a borrower's ability to repay the initial loan.

There are many consumers in the data who took out a series of payday loans where each loan was closer than 60 days to the prior, often resulting in a large number of loans in a sequence. An important source of uncertainty with regard to the impact of the proposals being considered is whether consumers who cannot borrow again because of the restriction on lending during the 60-day cooling-off period would return to borrow after 60 days. For consumers who had multiple sequences separated by more than 60 days, this analysis assumed that consumers would have still taken out the first loan in each sequence. However, for those consumers who took out more than three loans in a sequence, the simulation cannot determine whether the consumer would have taken out any of the loans that were made after the third loan, if the lender had been required to impose a 60-day cooling-off period.

This uncertainty was addressed in the simulations in two ways. The first assumed that consumers would not return to borrow, and therefore only loans that were not taken out within 60 days of a prior loan (i.e., the first loan in a loan sequence) would have been made.[33] The second approach assumes that consumers would return to borrow again as soon as they were eligible. For example, consider a consumer taking out a series of loans that are 31 days long. The first approach eliminated every loan except the first loan in the sequence. The second approach assumed that the first, fourth, seventh, etc., loan in the sequence would have been made.

[33] This simulation assumed that a borrower's first observed loan was the first loan in a sequence.

These approaches represent the extremes of possible consumer behavior. The Bureau does not expect that many consumers who took out many loans in the data set would, in fact, borrow only once over a 12-month period or that many consumers would, in fact, return to borrow every 60 days. However, these two approaches give the lower and upper bounds with regard to this aspect of uncertainty in the simulations.

The simulations predict that storefront short-term payday loan volume would fall by 84 percent if consumers did not return. If consumers did return after the 60-day period had passed, loan volume would fall by 69 percent. These simulations show that the limitation on reborrowing within 60 days of a prior loan has a very substantial impact on the total volume of loans that could be made using the ability-to-repay approach. As noted above, it is more difficult to assess the impacts of the ability-to-repay requirements themselves, but layering those limitations on the 60-day cooling-off period would reduce the total allowable lending even further.

The Bureau emphasizes that these simulations do not reflect three important components of the proposals under consideration. First, the simulations do not reflect the fact that changed circumstances would justify some additional lending beyond the first loan in a sequence. Second, neither simulation incorporates the impact of the proposal to determine a consumer's ability to repay the initial loan in a sequence. Thus, these simulations do not reflect the combined effect of the initial ability-to-repay requirement and the limitation on reborrowing. Third, at the same time, these simulations do not reflect any possible change in lender behavior that might enable consumers to repay over a longer period of time, such as be offering fully amortizing installment loans. Therefore, these simulations should not be taken as lower or upper bounds on the impact of the proposals under consideration as a whole.

b. Simulations of short-term lending under the alternative requirements

Lenders may choose to originate covered short-term loans without determining that the consumer has the ability to repay the loan by following the alternative requirements described in Section III.A.3. This would limit the number of loans that could be made in a sequence to three, where a sequence consists of a series of loans where the time between any two loans is less than 60 days. The number of loans per year and the time in debt per year also would be limited; the number of loans would be capped at six and the time in debt at 90 days. Additionally, the maximum loan principal would be $500, and the lender could not take a security interest in a vehicle. One proposal being considered by the Bureau, the amortization requirement, would require that the principal of loans decline over the course of a loan sequence. The other proposal being considered would require that lenders provide consumers with a no-cost extension of the third loan (an off-ramp) if the consumer is unable to repay the third loan in full.

Using the data described above, Bureau staff simulated the impacts on payday lenders of making short-term loans under the alternative requirements. The impacts were simulated by applying the alternative requirements to the loans in the storefront payday data. It was assumed that any loan sequence that would have been allowed under the alternative requirements would not be affected. As with the simulations of the impact of the ability-to-repay requirements, the behavior of a consumer who took out loan sequences that were longer than would have been allowed had the proposals been in place was simulated in two different ways, leading to a range of estimates of the impact of the proposals under consideration.

The first approach, which led to the lowest estimate of total loan volume, was to assume that the consumer would not have returned to borrow again following a 60-day cooling-off period. The second approach, which led to a higher estimate of total borrowing, was to assume that the loan sequence would resume following the 60-day cooling-off period and extend for as long as it did, subject to additional 60-day cooling-off periods and the annual caps on loans and time in debt. For example, if the length of an actual loan sequence was 10 loans of 14 days each, under the first approach this was simulated to be only three loans. Under the second approach loans four through eight would not have been made, because of the 60-day cooling-off period, but it was assumed that loans nine and 10 would have been made. Thus, under the first approach the consumer goes from having one sequence of 10 loans to one sequence of three loans. Under the second approach the consumer goes from having one sequence of 10 loans to having two sequences totaling five loans (the first sequence having three loans and the other having two loans).

The impacts of the amortization requirements that the Bureau is considering proposing were simulated by changing the size of loans in a sequence, in addition to imposing the restrictions on the length of loan sequence and the limitations on total borrowing during the year.

The impacts of an off-ramp requirement were simulated by first assuming that loan sequences of three loans or shorter would be unaffected, and consumers taking out sequences of this length would not use off-ramps. Loan sequences longer than three loans were limited to three loans and it was assumed that consumers would then take off-ramps. If some consumers would not take off-ramps then more lending would be allowed, as off-ramps extend the period during which consumers could not take out additional loans.

Table 1 shows the results of the simulations under different versions of the proposals under consideration and making different assumptions about consumer behavior following cooling-off periods and off-ramps. It shows estimated impacts on the total number of loans originated, the total principal amount of those loans, and the total fees charged. Note that the estimated impact on principal and fees is greater than the estimated impact on total loans because one of the requirements of these alternatives is a maximum loan size of $500. The impact on total fees is slightly different than the impact on total loan principal because fees vary across loans in the data.

The two potential requirements, amortization and off-ramp, have similar estimated effects on the number of loans that could be made. Total loan volume is estimated to decline by between 55 percent and 62 percent, depending on how often consumers return after cooling-off periods. The impact of the off-ramp requirement on loan volume is estimated to be slightly larger when consumers are assumed to return as soon as they can after a cooling-off period because the off-ramp would itself extend the time during which the consumer could not take out another loan.

The amortization requirement is estimated to have a larger effect on principal and fees because the second and third loans in a sequence would be required to be smaller than the first loan. The impact on total fees of the amortization requirement is estimated to be between 71 percent and 76 percent, while the impact of the off-ramp requirement is estimated to be between 60 percent and 65 percent.

TABLE 1: DECLINE IN SHORT-TERM LOAN VOLUME, PRINCIPAL, AND FEE REVENUE FOR LENDERS USING THE ALTERNATIVES TO ABILITY-TO-REPAY DETERMINATION

	Assuming Consumers Do Not Return After Cooling-Off Period		Assuming Consumers Return After Cooling-Off Period	
	Amortization	Off-Ramp	Amortization	Off-Ramp
Number of Loans	-62.2%	-62.2%	-54.8%	-56.5%
Loan Principal	-76.2%	-67.1%	-71.2%	-61.7%
Loan Fees	-74.5%	-65.4%	-69.5%	-60.3%

The simulation used to generate Table 1 also produces estimates of the number of off-ramps consumers would be eligible to take relative to total loan volume. Based on these simulations, the number of loan sequences that would be long enough to lead to an off-ramp would be approximately 21 percent of total loan volume.

Because the alternatives being modeled do not require a determination of ability to repay for the first loan, these simulations are not subject to as many limitations as the prior set of simulations. Specifically, these simulations more closely approximate an upper bound estimate of the potential impact of the proposals. Here, again, the Bureau emphasizes that these simulations do not reflect other possible changes in lender or consumer behavior, such as shifting to longer-term loans with lower payments, which may mitigate some of the effects of the proposals under consideration and thus reduce the impacts below the lower bound estimate.

c. Summary

Given the results of the simulations described above and the greater costs of determining that a consumer has the ability to repay a loan, it is likely the case that lenders making covered short-term loans would primarily make loans that comply with the alternative requirements. Relatively few loans could be made under the ability-to-repay requirement, given the applicable presumptions of inability to repay which restrict the making of additional loans within 60 days of a prior loan unless the consumer had changed circumstances in her ability to repay that could be documented.

Making loans that comply with the alterative requirements being considered would also have substantial impacts on revenue. This may affect monoline lenders, those specializing in payday lending, particularly severely. Given those impacts, it is likely the case that the number of monoline stores that could operate profitably within a given geographic market would decrease. Some stores might diversify their product offerings, including offering other forms of covered loans, while others might close. The proposals under consideration could, therefore, lead to substantial consolidation in the short-term payday and vehicle title lending market. This would

be especially likely in areas with a preponderance of monoline lenders and in areas where diversification into other loan products is difficult, such as in states where other forms of high-cost lending are not permitted under state law. The Bureau is conducting further analysis of the potential for consolidation in these markets and evaluating the impact of state laws that have restricted payday or vehicle title lending on the lenders operating in those states.

C. Specific impacts on small entities making covered longer-term loans

The proposals the Bureau is considering would impose a number of requirements on small entities that offer covered longer-term loans, including high-cost installment loans with account access or high-cost vehicle title loans. This section first describes the operational costs of complying with the requirements of the proposals being considered that are specific to covered longer-term loans and then the impact of lost revenue from certain loans that are currently made by small entities that could no longer be made under the proposals being considered.

The Bureau believes that the range of products in the marketplace that would be covered as "longer-term loans" is more diverse than the range that would be covered as "short-term loans," which would consist primarily of single-payment payday and vehicle title loans. There is, therefore, less clarity about the impacts of the proposals under consideration on small entities that make covered longer-term loans.

Longer-term loans would only be covered by these requirements if the loans had an all-in APR above 36 percent. For loans with interest rates below 36 percent but with other costs that would be included in an all-in APR, lenders may need to calculate an all-in APR. For some lenders, doing this calculation may require new or modified software. The Bureau expects that vendors that offer existing software, such as software used to calculate APRs for making Truth in Lending Act disclosures, would likely offer modified software with the ability to calculate an all-in APR at little or no additional cost to lenders. The Bureau believes that determining whether a longer-term loan carries a cost above the established threshold is unlikely to be a substantial burden on small entities. The proposals being considered would not require lenders to disclose the precise all-in APR of a loan, but merely to determine whether a particular loan product carries a cost above the threshold.

1. Impacts of operational requirements on small entities determining ability to repay when making covered longer-term loans

This section assesses the impacts on small entities that determine consumers' ability to repay when making longer-term loans. Lenders originating covered longer-term loans, other than loans made under the alternative requirements, would be required to obtain, verify, and assess information on the applicant's income and major financial obligations, and borrowing, and determine whether the applicant has the ability to repay the loan.

The Bureau believes that some small entities making covered longer-term loans already have lending practices that would comply with the proposals under consideration. Many small entities' existing practices, however, would need to be augmented to comply with all aspects of the ability-to-repay requirement.

The costs generally associated with obtaining and verifying income information are discussed above. In addition, many consumers likely have multiple income sources that are not currently documented in the ordinary course of longer-term lending. Consumers and lenders may have incentives to provide and gather more income information than they do currently in order to establish the borrower's ability to repay a given loan, adding to lenders' costs.

The Bureau believes that many small entities that originate covered longer-term loans do not currently obtain or verify all of the information on applicants' major financial obligations that would be required by the proposals under consideration or determine consumers' ability to repay. Many lenders obtain credit scores when underwriting these loans, but may not obtain credit reports that would show required payment on some debts. The reports would cost an estimated $1 to $2 per applicant. This would be in addition to the cost of accessing a commercially available reporting system for information on other covered loans, since the credit reporting systems that specialize in reporting covered loans may not contain information regarding consumers' other major financial obligations. Obtaining and validating other information relating to major financial obligations could be done using documentation.

Alternatively, the Bureau expects that services may arise that allow lenders to obtain and verify the information through electronic means, such as through bank accounts or credit histories. For consumers that have straightforward documentation the Bureau estimates that verifying this information would take roughly 10 to 20 minutes per application. If a lender has access to electronic means of obtaining and verifying information, the Bureau believes this could be done in one or two minutes, and would cost roughly $1 to $2 (based on the cost of similar services currently offered). Some consumers may not have such electronic records and may visit a lender's storefront without the required documentation. This would require a second visit to the lender, imposing the costs on the lender of dealing with the consumer on multiple occasions prior to making a loan, and may lead to some consumers failing to complete the loan application process, reducing lender revenue.

Lenders making loans online may face particular challenges verifying information if the easiest way to do so is by obtaining documents. It may be feasible for online lenders to obtain scanned or photographed documents. The Bureau seeks information about how online lenders would comply with the requirements to obtain and verify information and the costs associated with doing so.

Once information on income and major financial obligations has been obtained and verified, the lender would need to determine that the consumer has the ability to repay the contemplated loan. The Bureau estimates that this would take roughly 10 additional minutes. In total, the Bureau estimates that obtaining and verifying information about consumers' income and major financial obligations would take between 15 and 45 minutes; a credit report would cost between $1 and $2; and lenders relying on electronic services to gather and verify information on major financial obligations would pay between $1 and $2 per application for that information. The Bureau seeks information on all aspects of these estimates.

Lenders would also need to develop policies and procedures for carrying out these requirements. In particular, lenders would need to develop procedures for making a good faith determination that a consumer has the ability to repay a loan without reborrowing or defaulting. The Bureau seeks information on how costly it would be for lenders to develop those procedures.

Finally, lenders making covered longer-term loans with a balloon payment would be subject to the same requirements to document changed circumstances for consumers that return within 60 days of paying off a covered longer-term loan with a balloon payment and wish to take out a covered short-term loan or a covered longer-term loan with a balloon payment. To comply with this requirement, lenders would incur per-loan costs for documenting the changed circumstances and evaluating whether the changed circumstances were sufficient to satisfy the requirement of the proposal under consideration. Lenders would be required, however, to determine that a consumer has an ability to repay these loans; the Bureau believes that documenting and evaluating the changed circumstances would not meaningfully increase the cost of the ability to repay assessment relative to the cost of originating the initial loan. The Bureau seeks input on how lenders would comply with the requirement to document changed circumstances and whether it would impose additional costs beyond the costs of the general ability to repay determination.

a. Impacts on federal credit unions making *Payday Alternative Loans* pursuant to NCUA regulations

The proposals under consideration would impose several requirements on federal credit unions that currently offer loans under the NCUA *Payday Alternative Loan* program. Federal credit unions would be required to access commercially available reporting systems and report covered loans to those systems; the costs associated with these requirements are discussed above. Lenders would also not be able to make these loans to consumers who have a covered loan outstanding. The Bureau seeks information on how often this would limit federal credit unions' ability to make these loans. The NCUA *Payday Alternative Loan* program allows federal credit unions to make up to three loans in a six-month period and allows loans that are at least 30 days in length. The proposals under consideration would limit lenders to two loans in a six-month period and require that loans be at least 45 days in length. The Bureau believes that it is not common for federal credit unions to make loans under the NCUA *Payday Alternative Loan* program with a duration of fewer than 45 days; federal credit unions making such loans would have to change to a 45-day minimum loan length, comply with the ATR requirements, or avail themselves of the alternative set of requirements for covered short-term loans. The restriction on the number of loans in a six-month period could have an impact on the revenue of federal credit unions that make these loans; the Bureau believes these impacts would not be substantial.

2. Revenue impacts of limitations on lending on small entities making covered longer-term loans

The proposals under consideration would restrict the circumstances in which lenders could make covered longer-term loans. Lender could either make loans for which they determine that the consumer has the ability to repay the loan, or make loans that satisfy the requirements of the alternative requirements. This section presents analysis of the potential for lending under these different approaches. In some cases, lenders may be able to reduce the impacts of the proposals under consideration by moving to loan products that are less restricted by the regulation, such as by changing loan structures to eliminate balloon payments.

The data used for this analysis were submitted to the Bureau voluntarily or in response to orders issued by the Bureau under Section 1022(c)(4) of the Dodd-Frank Act. The data come from several non-depository lenders that make installment loans, typically receive payments on those loans through pre-authorized ACH withdrawals, and charge all-in rates higher that 36 percent

APR. These loans would, therefore, be covered by the proposals under consideration. Some of the lenders originate loans online, while others originate loans through storefronts.

The Bureau believes that these lenders and their products are fairly typical for installment loans that would be covered by the proposals under consideration, but seeks further information about the share of the market for covered longer-term loans that consists of installment loans of this type or that is represented by these particular lenders. It is unclear how similar the results would be for installment vehicle title loans. Effects of the proposals under consideration may be quite different for other types of products, such as covered open-end credit or installment loans with a balloon payment. The Bureau also seeks information about whether these other types of loans are similar to covered longer-term loans originated by small entities.

The analysis presented here does not address the contemplated restrictions on refinancing of covered longer-term loans under certain circumstances. The Bureau is conducting analysis of the impacts of restrictions on refinancing.

There are a number of sources of uncertainty in this analysis. As with the short-term payday simulations, the data used to carry out this analysis are from large lenders. The behavior of large lenders and consumers at large lenders may differ in important ways from the behavior of small lenders and consumers at small lenders. In addition, there is uncertainty about how consumers and lenders would react to the restrictions that would be imposed by the proposals under consideration and how the overall market for these loans would change. Consumers' behavior may change in response to the restrictions in a number of ways, including their decisions of whether to take out a loan in the first place and decisions about repayment, prepayment, or refinancing. The reaction of lenders is also uncertain. They may change their pricing (to the extent allowed by state law), may change the range of products they offer, may consolidate locations, or may cease operations entirely. With regard to the range of products offered, lenders and consumers may respond by shifting to longer-term loans lacking one or more of the criteria that define covered longer-term loans, where these loans can be originated profitably.

a. Determination of ability to repay

As with the storefront payday loan data, the longer-term loan data does not contain information about consumers' financial obligations and has information only on the income used to qualify for the loan (consumers may have additional income). Measures that can be calculated using the information in the data include a PTI ratio and a measure of residual income that considers only the payment on the loan. These approaches do not capture the major financial obligations that a lender would need to consider when making a determination of whether a consumer has the ability to repay a loan under the proposals being considered. Those obligations may vary substantially across consumers, and therefore a PTI ratio or a measure of income minus the loan payment that leaves one consumer with sufficient ability to repay a loan may not be sufficient for another borrower.

With those limitations in mind, the median PTI ratio, where income and payments are measured at the monthly level, is 10 percent. The median monthly income remaining after repaying a loan is $2,665. Eighty percent of consumers have greater than $1,545 in remaining monthly income after repaying their loan. The large differences between these results and the results for the storefront payday loan data reflect both the lower payment amounts on these loans and the higher average income of the consumers taking out these longer-term loans. The Bureau is conducting further analysis of the likely impacts on lenders that make longer-term

loans by determining ability to repay. These results suggest that for a much larger share of consumers, lenders would be able to make a reasonable determination of ability to repay when making longer-term loans than when making shorter-term loans. The Bureau also notes that possible changes in lender or consumer behavior, such as shifting to loans that would be subject to the alternative requirements being considered, may mitigate some of the effects of the proposals under consideration.

b. Loans sharing certain features of the NCUA *Payday Alternative Loan* program

Section III.B.3.a describes loans sharing features of loans extended under the NCUA's program for Payday Alternative Loans. These features include price, size, and duration limits. The databases of longer-term installment loan data that the Bureau has analyzed come from lenders that offer loans that would not comply with this alternative requirement. The Bureau seeks further information about whether lenders would be willing to make such loans and what their revenue streams from such loans would be.

c. Loans with periodic payments below a specified payment-to-income ratio

Section III.B.3.b describes an alternative requirement under consideration to the ability-to-repay requirement that would allow lenders to make loans with a PTI ratio below 5 percent and duration no longer than six months. The Bureau believes that many consumers who would qualify for a PTI-based loan under the alternative requirements would also satisfy the requirements of an ability-to-repay determination, and that the PTI would be easier for lenders to calculate. Therefore, the Bureau believes that this alternative, in particular, would ease the operational costs associated with the proposals under consideration. Using data for the current lending market, 18 percent of the loans in the installment database have PTI ratios below 5 percent. Many of these loans have durations longer than six months; only 9 percent of all loans have a PTI ratio below 5 percent and are no longer than six months.

Lenders may respond to the proposals under consideration by increasing the duration of the loans to reduce the PTI ratio. In the installment dataset, however, the loan size and other terms are such that this would not be viable for many of these loans. That is, there are few loans shorter than six months with a PTI ratio above 5 percent that would have a PTI ratio below 5 percent if the terms were extended to six months. Similarly, there are few loans with a PTI ratio below 5 percent and terms longer than six months that would still have PTI ratios below 5 percent if the term were shortened to six months.

d. Summary

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 consideration or what their revenue streams from such loans would be. The Bureau is conducting further analysis of the share of covered loans that could be made if such lenders were to comply with the ability-to-repay provisions of the proposals under consideration. The Bureau also seeks input on the extent to which small entities would make loans complying with the alternative requirements for covered longer-term loans.

The Bureau does believe that the alternative requirements, in particular the PTI-based alternative, could reduce lenders' operational costs associated with determining a borrower's ability to repay a loan. Specifically, for the subset of consumers and loans that satisfy the requirements of the PTI-based alternative, lenders would not need to carry out all of the operational requirements of the ability-to-repay determination.

D. Impacts of provisions relating to practices associated with collecting payment

The proposals under consideration would impose a notice requirement on lenders collecting payment directly from a consumer's checking, savings, or prepaid account and would impose limitations on how lenders collect payments from a consumer's account. The impacts of these proposals are discussed here for all lenders making covered loans of any sort.

1. Required notice to consumers prior to attempting to collect payment from an account

The proposals under consideration would require lenders collecting payments from a consumer's account to provide consumers with a notice prior to attempting to collect payment through any method of accessing an account, including ACH entries, post-dated signature checks, RCCs, and payments run through the debit networks. The notice would be required to include the date of the payment request, the payment channel, the amount of the payment, the breakdown of that amount to principal, interest, and fees, the loan balance remaining if the payment succeeds, the check number if the payment request is a signature check or RCC, and contact information for the consumer to reach the lender.

The impact on small entities that use these approaches to collect payment would depend heavily on whether the entities are able to provide the notice via email or other electronic means or would have to send notices through paper mail. Sending email or other electronic messages would impose a one-time cost of developing or purchasing a system to send customized messages to consumers. The Bureau seeks information on the extent to which small entities already use such a system for communicating with consumers. For small entities that do not currently use such a system, the Bureau seeks information about the cost of developing such a system, or on purchasing such a system from a vendor. The Bureau believes that the ongoing costs of operating such an email system would be very low. For lenders that do not communicate with consumers via email, or for individual consumers with whom a lender is unable to communicate via email, the cost of the proposal under consideration would be higher. The Bureau estimates that printing and mailing notices would cost up to $2 per notice.

Small entities may also have to develop systems or procedures that enable them to collect the information needed and to prepare the notice itself. The Bureau seeks input on whether lenders' existing systems can produce the borrower-specific information that would be required and the costs associated with modifying or developing systems that could produce the information.

In addition to the costs associated with providing notices, this requirement may impact small entities' revenue. For example, to the extent that the notice leads to consumers taking steps to avoid having payments debited from their accounts, this requirement could reduce lenders' revenue from returned payment fees and, possibly, non-payment by consumers. Steps

consumers might take could include placing stop payment orders or paying other expenses or obligations prior to the posting of the payment request, leading to additional NSF transactions for lenders. Alternatively, notices may reduce delinquencies and related collections activities if consumers take steps to ensure that they have funds available to cover loan payments.

2. Limitation on payment collection attempts

The proposals under consideration would restrict lenders from attempting to collect payment from a consumer's bank or prepaid account if two consecutive prior payment attempts made through any channel are returned for insufficient funds, unless the lender obtains from the consumer a new authorization to collect payment from the borrower's account. This restriction would impact small entities by limiting their use of the payment methods in those situations and by imposing the cost of obtaining a renewed authorization from the consumer.

The impact of this restriction depends on how often small lenders attempt to collect from a consumers' account after more than two NSF transactions and how often they are successful in doing so. The Bureau believes that in many cases if a lender continues to attempt to collect after two consecutive NSF transactions the lender will be unsuccessful, and the primary effect of the continued collection efforts will be additional NSF fees imposed by the consumer's bank or credit union. The Bureau seeks information on the extent to which lenders attempt to collect from a consumer's account after two consecutive NSF transactions and on the success rates of such attempts. To the extent that lenders assess fees when an attempt to collect a payment results in an NSF transaction and lenders are subsequently able to collect on those fees, this proposal may reduce lenders' revenue from those fees.

If, after two consecutive NSF transactions, a lender chooses to seek a new authorization to collect payment from a consumer's account, the lender would have to contact the consumer. The Bureau believes that this would most often be done in conjunction with general collections efforts and would impose little additional cost on lenders. The Bureau seeks information on whether lenders would seek new authorizations and estimates of the costs of doing so.

E. Impacts on the availability of credit to small entities

Section 603(d) of the Regulatory Flexibility Act requires the Bureau to consult with small entities regarding the potential impact of the proposals under consideration on the cost of credit for small entities and related matters.[34]

The proposals under consideration would apply to loans obtained "by consumers primarily for personal, family, or household purposes."[35] The proposals would not apply to loans obtained primarily for business purposes, even if loans similar to those that would be covered, such as vehicle title loans, are also used by small entities for business purposes.[36]

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[34] 5 U.S.C. 603(d).

[35] 12 U.S.C. 5481(5) (defining "consumer financial products or service"); 12 U.S.C. 5531(b) (Bureau may issue rules to identify and prevent unfair, deceptive, and abusive acts and practices in connection with consumer financial products or services).

[36] Data from the 2013 Federal Deposit Insurance Corporation National Survey of Unbanked and Underbanked Households shows that individuals who are self-employed use "payday" loans at substantially lower rates than the general population, but that they use auto title loans at similar rates to

The Bureau believes that the proposals under consideration may have some limited impact on the availability of credit to small entities, but does not believe that the impact would be substantial. There are three ways that the proposals under consideration could affect the availability of credit to small entities. First, the proposals could impact the availability of credit to small entities if small businesses are using loans from lenders that also make loans covered by the proposals and the proposals lead to a contraction in the market, regardless of the loan purpose. Second, the proposals could impact the availability of credit to small entities if there are loans that are made primarily for personal, household, or family purposes but are partially used as funding for a small entity. This seems unlikely for many of these loans, given their small size. The Bureau seeks information, however, about whether such lending happens and what the impact of proposals under consideration would be. Finally, the proposals under consideration could potentially increase the cost of credit for small entities that make covered loans if a reduction in revenue prompts commercial lenders to charge higher rates. The Bureau is aware that larger lenders in the affected markets often use a rotating line of credit from a bank or private equity firm, but is unaware of the extent to which such credit facilities are used by small entities. The Bureau seeks feedback from small entities about the extent to which the businesses use rotating lines of credit to finance lending operations. The Bureau believes that these effects would be temporary, lasting until a new competitive equilibrium is achieved in the affected markets.

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the general population. The survey does not provide information on how those loans are used, whether they are used for commercial purposes or for personal, household, or family purposes.

Appendix A: Legal Authority

This appendix describes the statutory authority for the prohibition on unfair, deceptive, or abusive acts or practices, the requirement to provide certain disclosures, and the Bureau's authority to implement those provisions.

A. Bureau's Section 1031 Rulemaking Authority

Section 1031 of the Dodd-Frank Act authorizes the Bureau to issue rules to identify and prevent unfair, deceptive, or abusive acts or practices in the consumer financial markets.[37] An act or practice is unfair if it causes or is likely to cause substantial injury to consumers; the injury is not reasonably avoidable by consumers; and the injury is not outweighed by any countervailing benefits to consumers or competition.[38] An act or practice is abusive if it: (1) materially interferes with a consumer's ability to understand a term or condition of a consumer financial product or service; or (2) takes unreasonable advantage of the consumer's: lack of understanding of the material risks, costs, or conditions of the product or service; inability to protect his or her interests in selecting or using a consumer financial product or service; or reasonable reliance on the lender to act in the consumer's interest.[39]

B. Bureau's Section 1032 Rulemaking Authority

The Dodd-Frank Act also authorizes the Bureau to require lenders to provide disclosures in connection with financial products or services. In particular, § 1032 of the Dodd-Frank Act authorizes the Bureau to prescribe rules to ensure that the features of a financial product or service, both initially and over the term of the product or service, are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with the product or service, in light of the facts and circumstances.[40]

C. Dodd-Frank Statutory Provisions

Dodd-Frank Wall Street Reform and Consumer Protection Act,
Pub. L. 111-2013, 124 Stat. 1376 (approved July 21, 2010)

Sec. 1031. Prohibiting Unfair, Deceptive, or Abusive Acts or Practices.

(a) In General.—The Bureau may take any action authorized under subtitle E to prevent a covered person or service provider from committing or engaging in an unfair, deceptive, or abusive act or practice under Federal law in connection with any transaction with a consumer for a consumer financial product or service, or the offering of a consumer financial product or service.
(b) Rulemaking.—The Bureau may prescribe rules applicable to a covered person or service provider identifying as unlawful unfair, deceptive or abusive acts or practices in connection with any transaction with a consumer for a consumer financial product or service, or the offering of a consumer financial product or service. Rules under this section may include requirements for the purpose of preventing such acts or practices.

[37] 12 U.S.C. 5531(b).
[38] 12 U.S.C. 5531(c).
[39] 12 U.S.C. 5531(d).
[40] 12 U.S.C. 5532(a).

- (c) Unfairness.—
  - (1) In general.—The Bureau shall have no authority under this section to declare an act or practice in connection with a transaction with a consumer for a consumer financial products or service, or the offering of a consumer financial product or service, to be unlawful on the grounds that such act or practice is unfair, unless the Bureau has a reasonable basis to conclude that—
    - (A) the act or practice causes or is likely to cause substantial injury to consumers which is not reasonable avoidable by consumers; and
    - (B) such substantial injury is not outweighed by countervailing benefits to consumers or to competition.
- (d) Abusive.—The Bureau shall have no authority under this section to declare an act or practice abusive in connection with the provision of a consumer financial product or service, unless the act or practice—
  - (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 lack of understanding on the part of the consumer of the material risks, costs, or conditions of the product or service;
    - (B) the inability of the consumer to protect the interests of the consumer in selecting or using a consumer financial products or service; or
    - (C) the reasonable reliance by the consumer on a covered person to act in the interests of the consumer.
- (e) Consultation.—In prescribing rules under this section, the Bureau shall consult with the Federal banking agencies, or other Federal agencies, as appropriate concerning the consistency of the proposal rule with prudential, market, or systemic objectives administered by such agencies.
- (f) Consideration of Seasonal Income.—The rules of the Bureau under this section shall provide, with respect to an extension of credit secured by residential real estate or a dwelling, if documented income by the borrower, including income from a small business, is a repayment source for an extension of credit secured by residential real estate or a dwelling, the creditor may consider the seasonality and irregularity of such income in the underwriting of and scheduling of payments for such credit.

Sec. 1032. Disclosures.

- (a) In General.—The Bureau may prescribe rules to ensure that the features of any consumer financial product or service, both initially and over the term of the product or service, are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with the product or service, in light of the facts and circumstances.
- (b) Model Disclosures.—
  - (1) In General.—Any final rule prescribed by the Bureau under this section requiring disclosures may include a model form that may be used at the option of the covered person for provision of the required disclosures.
  - (2) Format.—A model form issued pursuant to paragraph (1) shall contain a clear and conspicuous disclosure that, at a minimum—
    - (A) uses plain language comprehensible to consumers;
    - (B) contains a clear format and design, such as an easily readable type font; and
    - (C) succinctly explains the information that must be communicated to the consumer.

(3) Consumer Testing.—Any model form issued pursuant to this subsection shall be validated through consumer testing.

(c) Basis for Rulemaking.—In prescribing rules under this section, the Bureau shall consider available evidence about consumer awareness, understanding of, and responses to disclosures or communications about the risks, costs, and benefits of consumer financial products or services.

(d) Safe Harbor.—Any covered person that uses a model form included with a rule issued under this section shall be deemed to be in compliance with the disclosure requirements of this section with respect to such model form.

(e) Trial Disclosure Programs.—

(1) In General.—The Bureau may permit a covered person to conduct a trial program that is limited in time and scope, subject to specified standards and procedures, for the purpose of providing trial disclosures to consumer that are designed to improve upon any model form issued pursuant to subsection (b)(1), or any other model form issued to implement an enumerated statute, as applicable.

(2) Safe Harbor.—The standards and procedures issued by the Bureau shall be designed to encourage covered persons to conduct trial disclosure programs. For the purposes of administering this subsection, the Bureau may establish a limited period during which a covered person conducting a trial disclosure program shall be deemed to be in compliance with, or may be exempted from, a requirement of a rule or an enumerated consumer law.

(3) Public Disclosure.—The rules of the Bureau shall provide for public disclosure of trial disclosure programs, which public disclosure may be limited, to the extent necessary to encourage covered persons to conduct effective trials.

(f) Combined Mortgage Loan Disclosure.—Not later than 1 year after the designated transfer date, the Bureau shall propose for public comment rules and model disclosures that combine the disclosures required under the Truth in Lending Act and sections 4 and 5 of the Real Estate Settlement Procedures Act of 1974, into a single, integrated disclosure for mortgage loan transactions covered by those laws, unless the Bureau determines that any proposal issued by the Board of Governors and the Secretary of Housing and Urban Development carries out the same purpose.

Appendix B: Glossary

Cost of Credit refers to the cost of a small entity obtaining credit.

Covered Loan means any loan subject to the proposals under consideration by the Bureau for the Rulemaking on Payday, Vehicle Title, and Similar Loans.

Covered Longer-Term Loan means a credit product, other than those explicitly excluded from the proposals under consideration, with a contractual duration longer than 45 days and an all-in annual percentage rate in excess of 36 percent where the lender obtains a preferred repayment position by either obtaining (1) access to repayment through a consumer's account or paycheck or (2) a non-purchase money security interest in the consumer's vehicle.

Covered Short-Term Loan means a credit product, other than those explicitly excluded from the proposals under consideration, with a contractual duration of 45 days or less.

Dodd-Frank Act or **DFA** means the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203 (July 21, 2010), sections 1031 and 1032 of which provide the Bureau with the authority to promulgate rules related to the proposals under consideration.

Small Business Regulatory Enforcement Fairness Act of 1996 or **SBREFA**, Pub. L. No. 104-121 (Mar. 29, 1996), refers to the statute that establishes the Small Business Review Panel process for certain Bureau, Environmental Protection Agency, and Occupational Health and Safety Administration rulemakings.

Small Business Review Panel or **Panel** means a panel formed of representatives from the Bureau, the Chief Counsel for Advocacy of the Small Business Administration, and the Office of Information and Regulatory Affairs in the Office of Management and Budget. A Panel is convened in accordance with SBREFA when a rule under development may have a significant economic impact on a substantial number of small entities. The Panel for the Bureau's Payday, Vehicle Title, and Similar Loans rulemaking will prepare a report of its recommendations after discussing with small entity representatives the Outline of Proposals Under Consideration and Alternatives Considered.

Small Entity means a small business, small organization, or a small government as defined by the Regulatory Flexibility Act. The size standards for determining a business as small vary by industry and are established by the Small Business Administration.

Small Entity Representative or **SER** means a representative of a small entity who participates in the SBREFA process to provide input on costs and benefits of the proposals under consideration in a rulemaking.

<u>Appendix D</u>

Discussion Issues for Small Entity Representatives

[See attached]

SMALL BUSINESS ADVISORY REVIEW PANEL FOR POTENTIAL RULEMAKINGS FOR PAYDAY, VEHICLE TITLE, AND SIMILAR LOANS

DISCUSSION ISSUES FOR SMALL ENTITY REPRESENTATIVES

To help frame the small entity representatives' discussion of issues and cost of credit matters during the upcoming Small Business Review Panel (Panel) meeting, we are providing a list of questions on which the Consumer Financial Protection Bureau (Bureau) seeks your advice, input, and recommendations. As you think about the questions below, it would be helpful to refer to the "Outline of Proposals Under Consideration and Alternatives Considered" (Outline) enclosed with this document.

Please note that the questions are designed to assist you in identifying the type of information you may need in order to participate effectively in the discussion with the Panel and other small entity representatives. We recognize that some of these questions may not apply to you or your business. When a topic is relevant to you, please discuss it based on your own experience or your knowledge of the experience of other small entities in your same line of business. It would also be useful to the discussion to provide specific examples of issues that have arisen in your lending activities.

The Panel would like to understand the potential economic impacts of the particular proposals under consideration by the Bureau which are discussed in the Outline. The Panel's understanding would be enhanced if you can provide a general sense of the type and amount of any costs of complying with existing requirements at the state and local levels, as well as estimates of costs for the proposals under consideration. Some of the questions suggest ways in which you might want to consider these costs as you prepare for the general discussion. The Bureau welcomes any quantitative information you may choose to provide in response to these questions, either during the meeting or afterward, but these questions should not be treated as data requests. While company-specific information would be helpful to the discussion, we understand that you may wish to frame your response in a manner that protects your company's proprietary information, as your responses may be included in a public report.

As you prepare for the discussion please consider the following general issues:

- The potential effects of the proposals and alternatives on your company's systems, operations, staff resources, and compliance costs.
- The amount of time you would need to make changes to your systems or operations, train your staff, or take other actions you believe would be required in order to comply with the proposals under consideration.
- The number or percentage of transactions conducted by your company that may be impacted by the proposals under consideration.
- The potential costs and benefits for your company.
- Based on any direct knowledge or experience you may have, how your or other small companies' anticipated compliance costs may differ from those of larger companies, and the characteristics of small companies compared with larger companies that may contribute to these differences.

I. COVERAGE AND SCOPE

The Bureau is considering proposals that would impose new regulations for two categories of loans. The first category would generally cover consumer credit products with a contractual duration of 45 days or less. The second category would cover consumer credit products with a contractual duration of longer than 45 days if:

- The credit product has an all-in annualized percentage rate in excess of 36 percent (using an annualized total cost of credit measure that would include interest, fees, and the cost of ancillary products, such as the military annual percentage rate under 32 CFR 232); and
- The lender holds either: (1) access to repayment through a consumer's account or paycheck (including a post-dated check, an automated clearing house (ACH) authorization, a remotely created check (RCC) authorization, an authorization to debit a prepaid card account, a right of setoff or to sweep funds from a consumer's account(s), and other methods of collecting payment from a consumer's checking, savings, or prepaid account; or a payroll deduction); or (2) a non-purchase money security interest in the consumer's vehicle (which would include vehicle registration loans and title pawn loans).

Here and in the Outline the two categories of loans are referred to as "covered short-term loans" and "covered longer-term loans," respectively, and the two categories are referred to collectively as "covered loans." The proposals under consideration would also exclude from coverage traditional pawn loans, credit cards, real estate secured loans, and student loans. The Bureau is also not considering proposals related to deposit account overdraft services as part of this rulemaking. Most of the proposals under consideration focus on how lenders underwrite the covered loans and in some cases would limit reborrowing within specified time periods. The proposals also focus on how lenders exercise their access to repayment through a consumer's account.

To get a better sense of how the proposals under consideration might affect you, it would be helpful to get a sense of your current business model and credit product mix.

1. What types of credit products—whether closed-end or open-end—do you offer that would be covered short-term loans, covered longer-term loans (both with and without balloon payments), or non-covered loans (including pawn loans)? Please describe the credit products' basic terms (size, pricing, length, repayment structure, etc.).
2. Roughly what percentage of your business (in loans or revenue) comes from products that would be covered short-term loans, covered longer-term loans (both with and without balloon payments), or non-covered loans?
3. Roughly what percentage of your business (in loans or revenue) involves access to repayment through a consumer's account?
4. Roughly what percentage of your business (in loans or revenue) involves vehicle title lending (i.e., taking a non-purchase money security interest in a consumer's vehicle)?
5. Do you offer covered loans to online consumers, through brick-and-mortar locations, or other channels? What percentage of your business comes through each channel?
6. What percentage of your consumers either had difficulty repaying or did not repay their loans? What percentage of these loans do you generally charge off?

7. What percentage of your business comes from repeat borrowers? How often do these consumers generally reborrow?[1]

II. ABILITY-TO-REPAY REQUIREMENTS FOR COVERED SHORT-TERM AND LONGER-TERM LOANS

For both covered short-term loans and covered longer-term loans, the Bureau is considering proposals to require lenders to make a good-faith, reasonable determination that a consumer has the ability to repay the loan according to its terms without reborrowing or defaulting while still meeting her major financial obligations and living expenses. While the Outline includes separate discussions of the proposals under consideration for ability-to-repay requirements that would apply to covered short-term loans and covered longer-term loans, the following section consolidates the discussion. Please consult the Outline for additional important details on the ability-to-repay requirements for different types of loans.

As part of the reasonable determination of ability to repay, the proposals under consideration would require the lender to obtain and verify information about the consumer's (1) income, (2) major financial obligations, and (3) borrowing history as follows:

- To verify the amount and timing of a consumer's income, the lender would be required to use bank statements, benefits statements, or paystubs.
- To verify the amount and timing of a consumer's major financial obligations, the proposals would require lenders to use third-party records or other appropriate methods of verification to ascertain the consumer's (1) housing payments, (2) required payments under debt obligations, (3) child support obligations, and (4) other legally required payments.
- To verify borrowing history, a lender would be required to review its records to ascertain the consumer's recent borrowing history on covered loans with that particular lender and its affiliates (including whether there is a current delinquency or there were any recent defaults on such loans). The Bureau is also considering requiring lenders to ascertain a consumer's recent borrowing history with other lenders (including whether there were any recent defaults on such loans). Lenders would have to check at least one commercially available reporting system meeting specified criteria to obtain such information. Lenders would be required to report the use of covered loans to all such commercially available reporting systems.

Specifically, the lender would be required to determine whether, given the amount and timing of the consumer's income and major financial obligations, the consumer will have enough remaining income to be able to repay the loan while still paying her major financial obligations and necessary living expenses (such as food and transportation). For all covered short-term loans and for covered longer-term loans with balloon payments, the lender would need to make this determination for the loan term and for an additional 60 days after the loan's contractual duration (the underwriting period).

For open-end credit products, the lender would be required to assume that a consumer fully utilizes the credit upon origination and makes only minimum payments until the end of the contract period, at which point the consumer must make a single payment in the amount of the remaining balance. The Bureau is also considering a proposal to require the lender to assume

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[1] The term "reborrowing" is defined the same as in Section I of the Outline (i.e., to include reborrowing as well as rollovers, renewals, or refinancings).

full repayment on the line of credit by the end date specified in the contract or in six months if no date is specified.

Current Practices

1. Do you currently underwrite loans that you extend? If so, please describe your process.
   a. What types of information do you gather and assess in making your underwriting decisions? Do you analyze major financial obligations or other living expenses, and if so, how? Do you analyze residual income?
   b. If you assess borrowing history, income, or other factors, how far back in time do you look? Do you verify this information through third-party records? If so, what types of third-party records and how do you obtain them?
   c. Do you automate any or all of your underwriting? If so, did you develop the system to do so in-house, hire a vendor to develop the system, or use a third-party commercially available product?
   d. Does your underwriting consider only the individual consumer's income and expenses, or does it also consider the consumer's household income and expenses if the consumer lives in a multi-person household?
2. What costs (fixed and variable) do you incur in performing any underwriting? Are ongoing costs passed on to the consumer?
3. What is the percentage of consumers who are deemed ineligible as a result of your current underwriting process? What are the most common reasons that consumers are rejected? How are rejections documented?
4. If a consumer reborrows from you, do you separately underwrite the new loan? If so, please describe that process and how it may differ from the initial underwriting process.
5. Do you currently check a consumer's loan history with other lenders before making a loan? If so, do you use a reporting system? If not, how do you check? Please describe the costs or burdens you incur in doing so.
6. Do you also report your loans to a reporting system? If so, how many reporting systems do you report to? What are the incremental costs and burdens associated with reporting to multiple reporting systems?

Potential Impacts of Proposals Under Consideration

A. Verification of Income

1. If you do not currently verify a consumer's income, what additional costs or burdens would you incur based on the proposal under consideration, both initially (in designing and implementing systems) and on a continuing basis?
2. If you would incur additional costs or burdens in verifying the amount and timing of a consumer's income, how would that affect your business? Would you adjust pricing, credit product mix, or other practices in response?
3. If you make loans online, how would you comply with this requirement? Would it be feasible for you to obtain scanned or photocopied documents? What would be the costs of doing so?

B. Verification of Major Financial Obligations

1. If you do not currently verify a consumer's major financial obligations (i.e., housing payments, payments on debt obligations, child support obligations, and other legally required payments), what additional costs or burdens would you incur to do so, both

initially (in designing and implementing systems) and on a continuing basis? Please discuss revenue impacts in addition to cost burdens.

   a. What methods would you elect to use (e.g., credit report, bank statements, copies of bills, cancelled checks)? How much time do you estimate the verification would take per transaction? What are the hourly wages of the staff that would do this work?

2. If you would incur additional costs or burdens in verifying a consumer's major financial obligations, how would that affect your business? Would you adjust pricing, credit product mix, or other practices in response?
3. Are there any particular major financial obligations that would be especially difficult to verify? If so, please describe why.
4. If you make loans online, how would you comply with this requirement? Would it be feasible for you to obtain scanned or photocopied documents? What would the costs be of doing so?
5. Are you aware of any third-party products (such as a specialty credit report) currently available that you could potentially use to verify a consumer's major financial obligations? If so, what are the costs or burdens associated with using that third-party product? Do you report your loans to such a third-party?
6. If the Bureau included additional categories of obligations to include in the verification requirement, such as utility payments and regular medical payments, what additional costs or burdens would you incur, both initially (in designing and implementing systems) and on a continuing basis, to verify these expenses?

C. Consideration of Borrowing History

1. If a final rule were to adopt the requirement to consider and verify the consumer's recent borrowing history on covered loans with the same lender, affiliates, and other lenders (including the requirement to check a commercially available reporting system and report use of covered loans to commercially available reporting systems), what specific actions would you need to take initially to comply with the requirement (in developing and implementing systems) and on a continuing basis? What do you expect the costs of those actions to be? How would those costs and burdens compare to the costs of implementing existing state or local regulatory requirements?
2. If the Bureau were to adopt the requirement that lenders check a consumer's borrowing history with the lender, its affiliates, or any other lenders, what would you expect to be the respective burdens for checking, for example, one year versus 18 months versus two years of borrowing history?

D. Reasonable Determination of Ability to Repay

1. If the ability-to-repay requirement described above were adopted in a final rule, what are the types and costs of specific actions that you would need to take both initially (in designing and implementing systems) and on a continuing basis to comply with the requirement?
   a. Would you anticipate using an automated model or models to comply with such a requirement, or would you more likely use manual processes?
   b. If you used an automated model, what other inputs would you consider in addition to the required criteria? How would you weigh those inputs compared with the information the rule would require you to obtain and verify?

2. If the ability-to-repay requirement described above were adopted in a final rule, what types of impacts would this have on your business? What marginal burdens and costs would such a final rule add to your existing underwriting processes?
    a. How would these impacts differ if you were required to consider only the individual consumer's income, major financial obligations, and living expenses rather than to consider the consumer's aggregate household income, major financial obligations, and living expenses?
3. How do you anticipate accounting for consumers' living expenses—such as food—that under the proposal would not have to be itemized and verified, to ensure that consumers have enough residual income to make the covered loan payments while still paying other living expenses as they come due?

III. LIMITATIONS ON SEQUENCES OF COVERED SHORT-TERM LOANS AND COVERED LONGER-TERM LOANS WITH BALLOON PAYMENTS

For covered short-term loans and covered longer-term loans with balloon payments, the proposals under consideration would impose a presumption of inability to repay for multiple loans in a sequence. (A covered short-term loan or covered longer-term loan with a balloon payment is part of a sequence if it is made within 60 days of the consumer's having an outstanding covered short-term loan or covered longer-term loan with a balloon payment.)

- If a consumer had taken out one previous covered short-term loan or covered longer-term loan with a balloon payment in a sequence, the proposals under consideration would impose a rebuttable presumption that the consumer lacks the ability to repay a second covered short-term loan or covered longer-term loan with a balloon payment. To rebut this presumption, the lender would need to conduct a new ability-to-repay determination and verify a change in the consumer's circumstances between the first and second loan (such as a pay raise).
- If a consumer had taken out two previous covered short-term loans or covered longer-term loans with a balloon payment in a sequence, the same rebuttable presumption would apply, and the lender would have to conduct a new ability-to-repay determination and verify that additional changed circumstances arose between the second and third loans in order to rebut the presumption.
- If a consumer had taken out three previous covered short-term loans or covered longer-term loans with a balloon payment in a sequence, there would be a conclusive presumption that the consumer lacks the ability to repay a new covered short-term loan or covered longer-term loan with a balloon payment, and the lender could not make the fourth loan. During a 60-day cooling-off period after the consumer repays the third loan, the lender would be prohibited from making another covered short-term loan or covered longer-term loan with a balloon payment to the consumer.

1. If a final rule adopts the limitations on sequences of covered short-term loans and covered longer-term loans with balloon payments described above, what are the types and costs of specific actions that you would need to take both initially (developing and implementing systems) and on a continuing basis to comply with the requirement? Please discuss revenue impacts in addition to cost burdens.
2. How would you expect to verify changed circumstances for consumers who are seeking additional loans in a sequence?
3. If these limitations would cause you to incur additional costs or burdens, how would that affect your business? Would you adjust pricing, credit product mix, or other practices in response?

IV. LIMITATIONS ON REBORROWING OF COVERED LONGER-TERM LOANS

The Bureau is considering a proposal that would require lenders to presume that a consumer lacks the ability to repay a covered longer-term loan with similar repayment terms under certain circumstances. The presumption would be triggered if:

- The consumer was, at the time of the refinancing, delinquent or had recently been delinquent on a payment under the loan being refinanced;
- The consumer stated or otherwise indicated that she was unable to make a scheduled payment under the loan being refinanced or that the loan being refinanced was causing financial distress;
- The refinancing provides for the consumer to skip (or pay a lesser amount than) a payment that otherwise would have been due under the loan being refinanced, unless the refinancing provides for a substantial amount of cash out to the consumer; or
- The loan being refinanced is in default.

The lender could rebut the presumption with verified evidence of changed circumstances indicating that the consumer has the ability to repay a loan with similar repayment terms as the previous loan. However, without verified evidence of changed consumer circumstances, the lender could only extend a new covered loan if the new loan had smaller payments within the consumer's ability to repay.

1. What are the types and costs of specific actions that you would need to take both initially (developing and implementing systems) and on a continuing basis to comply with the requirement? Please discuss revenue impacts in addition to cost burdens.
2. If these limitations would cause you to incur additional costs or burdens, how would that affect your business? Would you adjust pricing, credit product mix, or other practices in response?

V. ALTERNATIVE REQUIREMENTS FOR COVERED SHORT-TERM LOANS

The Bureau is considering whether to propose allowing lenders the option to satisfy alternative requirements on certain short-term covered loans that are structured to taper off the consumer's indebtedness. For a covered short-term loan that otherwise would be subject to the full set of ability-to-repay requirements, lenders would be able to extend an alternative loan without determining the consumer's ability to repay provided that the lender applies the following screening requirements:

- The lender verifies the consumer's income;
- The lender verifies the consumer's borrowing history and also reports use of covered loans to commercially available reporting systems;
- The consumer does not currently have a covered loan outstanding with any lender;
- The consumer takes out no more than three such alternative loans in a sequence (with a sequence including any loan taken out within 60 days having a prior loan outstanding) and has not completed a three-loan sequence of such loans from any lender within the past 60 days;
- After repayment of the third loan in a sequence, the lender or its affiliate extends no additional credit, whether or not a covered loan, to the consumer for a period of 60 days;

- The loan would not result in the consumer's receiving more than six covered short-term loans from any lender in a rolling 12-month period; and
- Following completion of the contractual loan term, the consumer will not have been in debt on covered short-term loans for more than 90 days in the aggregate during a rolling 12-month period.

Additionally, the loan would need to include the following structural limitations:

- The amount financed does not exceed $500;
- The loan has a contractual duration of 45 days or less with no more than one finance charge for this period;
- The consumer does not provide a security interest in a vehicle as collateral for the loan; and
- The loan is structured to taper off the consumer from indebtedness on such loans.

Additionally, the Bureau is considering whether to require lenders to provide a disclosure to consumers explaining the operation of the alternative requirements for covered short-term loans.

1. If these alternative requirements were adopted in the final rule, would you offer a significant number of these loans? What types of impacts would this have on your business? Would you be more inclined to make loans subject to the ability-to-repay requirements, loans subject to these alternative requirements, or a mixture of both?
2. What costs would you incur in making loans that comply with the alternative requirements? How do those costs compare to the costs you would incur in making loans that comply with the ability-to-repay requirement? How do the costs of satisfying the alternative requirements compare to the costs of complying with applicable state and local regulatory requirements? Please discuss revenue impacts in addition to cost burdens.
3. What specific impacts would the loans-per-year limit, the limit on total days of indebtedness, and the prohibition on multiple loans at a time have on your business? Please discuss revenue impacts in addition to cost burdens.
4. If a final rule adopts the ability-to-repay requirement and limitations on sequences of covered short-term loans, but the final rule does *not* adopt the alternative requirements described immediately above, what types of impacts would this have on your business? Please discuss revenue impacts in addition to cost burdens.
5. What specific impacts do you anticipate from the proposal under consideration that lenders disclose information about the alternative requirements?

Additional Structural Protections

As noted above, one of the conditions for a loan to be eligible for the alternative requirements is that the covered short-term loan has a feature that tapers off the consumer's indebtedness on such loans. One such feature that the Bureau is considering is to require a sequence of these covered short-term loans to reduce the principal owed over time so that the loan would be completely repaid within three loans. For example, if the first loan in a sequence had a principal of $300, the second loan could be for no more than $200, and the third loan could be no more than $100. As an alternative to this requirement, the Bureau is considering whether these excluded covered short-term loans should include a requirement that lenders provide a no-cost extension of the loan—an "off-ramp"—if a consumer is unable to repay the third loan according to its terms. The Bureau is also considering whether to propose additional features aimed at

preventing lender practices that discourage off-ramp usage such as notification of the consumer's rights to the off-ramp and a prohibition on collection before the off-ramp is made available.

1. What percentage of your consumers who take out covered short-term loans reduce the principal of their loans over the course of a loan sequence? Do you have any policies or practices to require or encourage consumers to reduce the principal their loan sequences?
2. What are your current practices, policies, and procedures for when consumers have difficulty making their required payments?
   a. Do you offer extended payment plans (EPPs)? If so, are they required under state law or do you offer them voluntarily, such as in accordance with industry best practices?
   b. If you offer EPPs, do you charge additional interest or fees? How do these EPPs differ from the proposals under consideration?
   c. What percentage of consumers use an EPP? What percentage of consumers are eligible for an EPP? What percentage of consumers repay through the EPP?
   d. If a consumer uses an EPP, does that impact whether you extend further loans to that consumer? Do you impose a cooling-off period after the EPP?
   e. What type of notice, if any, do you give your consumers about the EPP? Please describe the form, content, and timing of the notice.
3. If either of these additional structural protections were required for loans subject to the alternative requirements, what types of impacts would this have on your business? How would these impacts change if the proposal allowed four loans per sequence rather than three? How would these impacts change if the proposal required an off-ramp for each loan in the sequence rather than only the final loan in the sequence?
4. How would an off-ramp with six payments, rather than four, impact your business?
5. If the Bureau were to propose additional features aimed at preventing lender practices that discourage off-ramp usage, what would be the specific impacts of such proposals on your business?

VI. ALTERNATIVE REQUIREMENTS FOR CERTAIN LONGER-TERM LOANS

A. NCUA Short-Term, Small Amount Loan

Under the proposals being considered, a lender could extend a covered longer-term loan without making a full ability-to-repay determination if the loan shares the following features with NCUA's Payday Alternative Loan program:

- Screening requirements: The lender applies minimum underwriting standards and verifies the consumer's income.
- Structural protections:
  - The loan has a principal of not less than $200 and not more than $1,000;
  - The loan has a maximum term of six months;
  - The lender charges no more than 28 percent annualized interest rate and an application fee, reflecting the actual costs of processing the application, of no more than $20; and
  - The lender fully amortizes the loan over no fewer than two payments.

The Bureau is also considering proposing additional conditions for these loans, namely:

- Screening requirements:
  - The lender verifies borrowing history and also reports use of the loan to all applicable commercially available reporting systems;
  - The consumer has no other covered loan outstanding; and
  - The loan would result in the consumer's having no more than two such loans during a rolling six-month period.
- Structural protections: The loan has a minimum term of more than 45 days.

The proposals under consideration would also prohibit a lender that holds a deposit account in the consumer's name from fully sweeping the account to a negative balance in order to collect on the loan in the event of delinquency and from closing the account in the event of delinquency.

1. What percentage of your loans currently meet the criteria—other than the proposed additional conditions—for the alternative requirements?
2. If this alternative were adopted in the final rule, would you offer a significant number of these loans? What types of impacts would this have on your business? Would you be more inclined to make loans subject to the ability-to-repay requirements, loans subject to these alternative requirements, or a mixture of both?
3. What costs would you incur in making loans that comply with these criteria? How do those costs compare to the costs you would incur in making loans that comply with the ability-to-repay requirements described above in Section II? How do these costs compare to the costs you would incur in making loans with the criteria described in Section VI.B below?
4. If a final rule adopts the ability-to-repay requirements, but the final rule does *not* adopt the alternative requirements described immediately above, what types of impacts would this have on your business? Please discuss revenue impacts in addition to cost burdens.

B. Loans with Periodic Payments Below a 5 Percent Payment-to-Income Ratio

Under the proposals being considered, a lender could extend a covered loan without making a full ability-to-repay determination provided that the lender applies the following screening requirements:

- The lender verifies the consumer's income;
- The lender verifies borrowing history and also reports use of the loan to all applicable commercially available reporting systems;
- The consumer has no other covered loan outstanding and has not defaulted on a covered loan within the past 12 months; and
- The loan would result in the consumer's being in debt on no more than two such loans within a rolling 12-month period.

The loan would also need to include the following structural limitations:

- The periodic payment due on the loan is no more than 5 percent of the consumer's expected gross income during this same period;
- The loan is a closed-end loan repayable in at least two substantially equal payments over no fewer than 45 days;
- The loan has a maximum duration of no more than six months; and
- The lender charges no fees for prepayment of the loan.

1. What percentage of your loans currently meet the criteria listed above?
2. If this alternative were adopted in the final rule, would you offer a significant number of these loans? What types of impacts would this have on your business? Would you be more inclined to make loans subject to the ability-to-repay requirements, loans subject to these alternative requirements, or a mixture of both?
3. What costs would you incur in making loans that comply with the criteria above and how do those costs compare to the costs you would incur in making loans subject to the full ability-to-repay requirement? How do these costs compare to the costs you would incur in making loans with the criteria described in Section V above or loans with the criteria described in Section VI.A above?
4. If a final rule adopts the ability-to-repay requirements, but the final rule does *not* adopt the alternative requirements for covered longer-term loans described immediately above, what types of impacts would this have on your business? Please discuss revenue impacts in addition to cost burdens.

VII. PAYMENT COLLECTION PRACTICES LIMITATIONS FOR ALL COVERED LOANS

A. Notice to consumers prior to attempting to collect payment from an account

The Bureau is considering a proposal that would require lenders to provide a written notice to consumers prior to each attempt to collect payment from a consumer's account, including each attempt to re-present a failed payment. This requirement would apply to all methods of collecting payments from consumers' checking, savings, or prepaid accounts, including, but not necessarily limited to, ACH entries, post-dated signature checks, RCCs, and payments run through the debit networks. Under the proposal being considered, lenders would be required to provide the notice at least three business days in advance of each payment attempt, either electronically or through the mail. For notices provided through the mail, an additional three business days would be required for delivery. The Bureau is also considering requiring that the notice be provided no more than seven days before a payment is due. The notice would be required to contain the following information: (1) the exact amount and date of the upcoming payment attempt; (2) the payment channel through which the attempt will be made; (3) a breakdown of the application of payment amount to principal, interest, and other fees and charges; (4) the loan balance remaining if the payment attempt succeeds; (5) the name, address, and toll-free phone number that the consumer can use to reach the lender; and (6) for payment attempts made by signature check or RCC, the check number associated with the payment attempt.

1. What methods of communication do you use to contact your consumers concerning payments (e.g., phone, text message, mobile application, email, mail)?
   a. Why do you use these particular methods of communication (e.g., consumer preference, cost)?
   b. Do you communicate with your consumers before a payment is due? If so, when and how? Are any of these communications automated? What kinds of information do you communicate to them?
   c. If you use a third-party payment processor, does that processor communicate with your consumers before a payment is due? If so, when and how?
2. If the presentment notice were adopted in a final rule, what types of impacts would the requirement have on your business?

3. If the presentment notice were adopted in a final rule, what types of actions would you need to take, both initially and on a continuing basis, to comply with the requirement and what are the expected costs of those actions?
4. If you use a third-party payment processor, are there specific compliance challenges that this requirement would create for your business?
5. If you process payments as RCCs, are there specific compliance challenges that this requirement would create for your business?

B. Limitation on attempts to collect payment from a consumer's account

The Bureau is considering a proposal that would limit the number of times a lender may attempt to collect payment on a covered loan from a consumer's checking, savings, or prepaid card account. The proposals under consideration would prohibit lenders from attempting to collect a payment from a consumer's account after two consecutive payment attempts have failed, unless the lender subsequently obtains from the borrower a renewed authorization to use these payment methods. A presentment would be deemed to have failed if it is returned by the consumer's bank for insufficient funds. The requirement would apply to all methods of collecting payments from a consumer's account, including, but not necessarily limited to, ACH entries, post-dated signature checks, RCCs, and payments run through the debit networks. A failed payment collection attempt made through any payment channel would count toward the limit, such that two consecutive failed attempts made through a single channel or two separate channels would trigger a prohibition on further presentments.

1. What kinds of payment methods do you accept for your loans (cash, post-dated check, ACH, RCC, prepaid card, etc.)?
    a. For each payment method that you accept, what percentage of your payments are processed through that method?
    b. In what situations do you process a payment as an RCC?
    c. In what situations do you allow prepaid card payments? Through which payment network do you process these prepaid card payments?
2. How do you currently process payments for your loans? (Please answer for each type of payment method you accept, other than cash.)
    a. Do you process payments through a third-party payment processor, or directly through a bank? If so, please describe your practices, policies, and procedures for processing payments.
    b. Before using a payment method that involves pulling funds from a consumer's account, do you make efforts to determine whether there are sufficient funds in the account? If so, please describe these efforts. If you use a third-party payment processor, please describe the processor's involvement in any of these efforts.
3. Do you currently attempt to collect from a consumer's account after two consecutive failed attempts? If so, what are the success rates of those attempts?
4. How do you currently process payment returns for your loans? (Please answer for each type of payment method you accept, other than cash.)
    a. Are the returns received from a third-party payment processor, or directly through a bank?
    b. What are your policies for determining *whether* and *when* to present a payment after a return, if at all? Do these policies vary depending on payment method? If so, how and why do they vary?
    c. What systems do you currently have in place to comply with (i) the NACHA limit of two ACH re-presentments after a failed ACH entry or (ii) the NACHA limit on payments that have previously been presented through the check system?

d. What information do you note in a consumer's file if a payment has been returned? How is that information added to the file?
e. Do you try to contact a consumer after a payment is returned? If so, when and how do you try to make contact? If you make contact, what do you communicate to the consumer? Are any of these communications automated?

5. Do you charge a fee to the consumer's account for a returned payment? If so, how much is that fee? If a payment is presented and returned more than once, do you charge a fee for each return? If the limit on payment collection attempts were adopted in a final rule, what types of impacts would the requirement have on your business? If your payment collection attempts resulted in two consecutive failed attempts, do you anticipate that you would seek new authorizations from consumers to collect from their accounts? If so, how would you seek new authorizations and what costs would you expect to incur in doing so?
6. If the limit on payment collection attempts were adopted in a final rule, what types of actions would you need to take, both initially and on a continuing basis, to comply with the requirement and what are the expected costs of those actions? Please discuss revenue impacts in addition to cost burdens.
7. If you use a third-party payment processor, what types of specific compliance challenges would this requirement create for your business?

VIII. COMPLIANCE MEASURES

A. Other Regulations

1. Have you been required to make any changes in your lending activities in recent years in response to statutory or regulatory changes at the federal, state, or local level?
2. How did costs break down by legal, training, and compliance expenditures? Please discuss revenue impacts in addition to cost burdens.
3. Did you implement the changes in house or by working with vendors?
4. How do those costs compare to those that you anticipate incurring in connection with the proposals under consideration?

B. Policies and Procedures

The Bureau is considering a proposal to require lenders to maintain policies and procedures that are reasonably designed to achieve compliance with the proposals under consideration, including the ability-to-repay determination, eligibility for any covered loan subject to alternative requirements, and limitation on using payment authorizations.

1. If a final rule adopts this requirement, what are the types and costs of specific actions necessary, both initially and on a continuing basis, to comply with the requirement?

C. Record Keeping

The Bureau is considering a proposal to require lenders to retain records for each consumer that document actions taken with respect to a covered loan until 36 months after the last entry on the loan. The consumer loan file would include documentation of the determination of ability-to-repay, verification of the consumer's history of covered loans, consumer eligibility for any loan subject to alternative requirements, and history of payment presentments. These records would also include reports prepared annually for each type of covered loan with data sufficient to

monitor loan performance, including information on defaults and reborrowing, including refinancing.

1. If a final rule adopts this requirement, what are the types and costs of specific actions necessary, both initially and on a continuing basis, to comply with the requirement?

IX. ADDITIONAL FEEDBACK

1. Are there any feasible alternatives to the proposals under consideration that would minimize any significant economic impact on your business while accomplishing the objectives described in the Outline?
2. Are there any federal, state, or local rules that you believe may duplicate, overlap, or conflict with the proposals under consideration?
3. What do you expect would be the effects of these proposals on your decision whether to offer covered short-term versus covered longer-term loans, to offer a mix of both, to offer products subject to the alternative requirements, or to offer non-covered products?
4. How long do you anticipate that you would need to implement the proposals under consideration? Would you be able to effectively implement some proposals more quickly than others? If so, which ones and why?

X. COST OF CREDIT FOR SMALL BUSINESS BORROWERS

The proposals under consideration would apply to loans primarily for personal, family, or household purposes, and would not apply to loans made primarily for business purposes. Nevertheless, some consumers may take out loans that would be covered by the proposals under consideration and use the proceeds secondarily for business purposes. Moreover, some businesses may take out non-covered loans primarily for business purposes from lenders that also make covered loans. The proposals under consideration may indirectly impact the availability or cost of these non-covered loans if the proposals lead to a general market contraction.

1. Look back at the preceding proposals under consideration.
   a. Which proposals, if any, do you believe may impact the cost of credit for small entities? Why might this occur?
   b. Are there feasible alternatives to any of the proposals that may minimize the impact on the cost of credit for small entities while accomplishing the objectives addressed by the proposals under consideration?
2. Do you extend covered loans that are used secondarily to finance small businesses?
   a. If so, what percentage of your loans fall into that category (i.e., loans made to consumers but used secondarily for business purposes by a small business)? What is the average amount of the credit extended on such loans?
   b. Would the proposals under consideration cause you to increase the rates or fees you charge for such credit? If so, please describe the increase that you anticipate, your basis for anticipating that increase, and any feasible alternatives to the proposals under consideration you would recommend to minimize that increase.
3. Do you extend loans that would not be covered by the proposals under consideration but are used primarily to finance small businesses?
   a. If so, what percentage of your loans falls into that category (i.e., loans made to small businesses for business purposes)? What is the average amount of the credit extended on such loans?

b. Would the proposals under consideration cause you to increase the rates or fees you charge for such non-covered credit? If so, please describe the increase that you anticipate, your basis for anticipating that increase, and any feasible alternatives to the proposals under consideration you would recommend to minimize that increase.

XI. COST OF CREDIT FOR LENDERS

The proposals under consideration could potentially reduce the revenue of covered lenders. This could, in turn, impact the perceived creditworthiness of these lenders and thus increase their cost of credit.

1. Do you use lines of credit or other finance sources either to fund the loans you extend to consumers or for other business purposes?
    a. Do you anticipate that the proposals under consideration will affect the availability or cost of these funding sources to you? If so, please describe the effects that you anticipate, your basis for anticipating them, and any feasible alternatives to the proposals under consideration you would recommend to minimize the effects.
    b. How long do you anticipate these effects would last?

Appendix E

Panel Outreach Meeting Presentation Materials

[See attached]

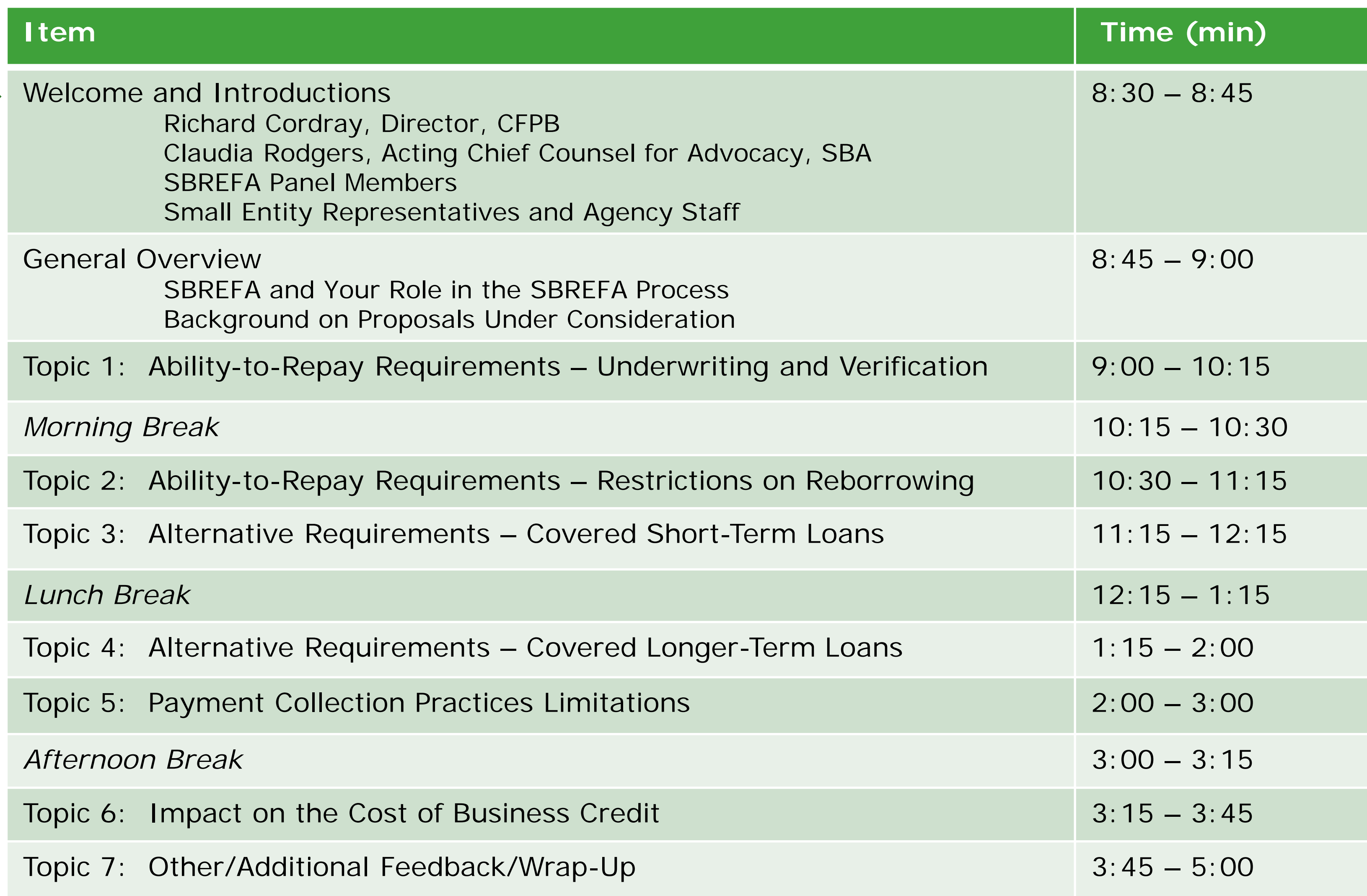
Payday, Vehicle Title, and Similar Loans Rulemaking

SBREFA Panel Outreach Meeting

April 29, 2015

Note: This document was used in support of a live discussion. As such, it does not necessarily express the entirety of that discussion nor the relative emphasis of topics therein.

Consumer Financial Protection Bureau



OUTREACH AGENDA/SCHEDULE

Item	Time (min)
Welcome and Introductions Richard Cordray, Director, CFPB Claudia Rodgers, Acting Chief Counsel for Advocacy, SBA SBREFA Panel Members Small Entity Representatives and Agency Staff	8:30 – 8:45
General Overview SBREFA and Your Role in the SBREFA Process Background on Proposals Under Consideration	8:45 – 9:00
Topic 1: Ability-to-Repay Requirements – Underwriting and Verification	9:00 – 10:15
Morning Break	10:15 – 10:30
Topic 2: Ability-to-Repay Requirements – Restrictions on Reborrowing	10:30 – 11:15
Topic 3: Alternative Requirements – Covered Short-Term Loans	11:15 – 12:15
Lunch Break	12:15 – 1:15
Topic 4: Alternative Requirements – Covered Longer-Term Loans	1:15 – 2:00
Topic 5: Payment Collection Practices Limitations	2:00 – 3:00
Afternoon Break	3:00 – 3:15
Topic 6: Impact on the Cost of Business Credit	3:15 – 3:45
Topic 7: Other/Additional Feedback/Wrap-Up	3:45 – 5:00

Welcome and Introductions

- CFPB Welcome and Opening Remarks
  - Remarks by Director Richard Cordray
- SBA Office of Advocacy Welcome and Opening Remarks
  - Remarks by Acting Chief Counsel Claudia Rodgers
- Introduction of SBREFA Panel
  - Dan Sokolov, CFPB (Panel Chair)
  - Jennifer Smith, SBA Office of Advocacy
  - Shagufta Ahmed, OMB Office of Information and Regulatory Affairs
- Introduction of Small Entity Representatives and Agency Staff

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Topic 7: Other/Additional Feedback/Wrap-Up	3:45 – 5:00

General Overview: SBREFA and Your Role in the Process

WHAT IS SBREFA?

- The Small Business Regulatory Enforcement Fairness Act of 1996 ("SBREFA") requires the CFPB to form a Small Business Review Panel to seek input directly from small entities for any proposed rule that may have a significant economic impact on a substantial number of small entities.

- A Small Business Review Panel consists of representatives from:
  - the CFPB;
  - the Chief Counsel for Advocacy of the Small Business Administration ("SBA"); and
  - the Office of Information and Regulatory Affairs of the Office of Management and Budget ("OMB").

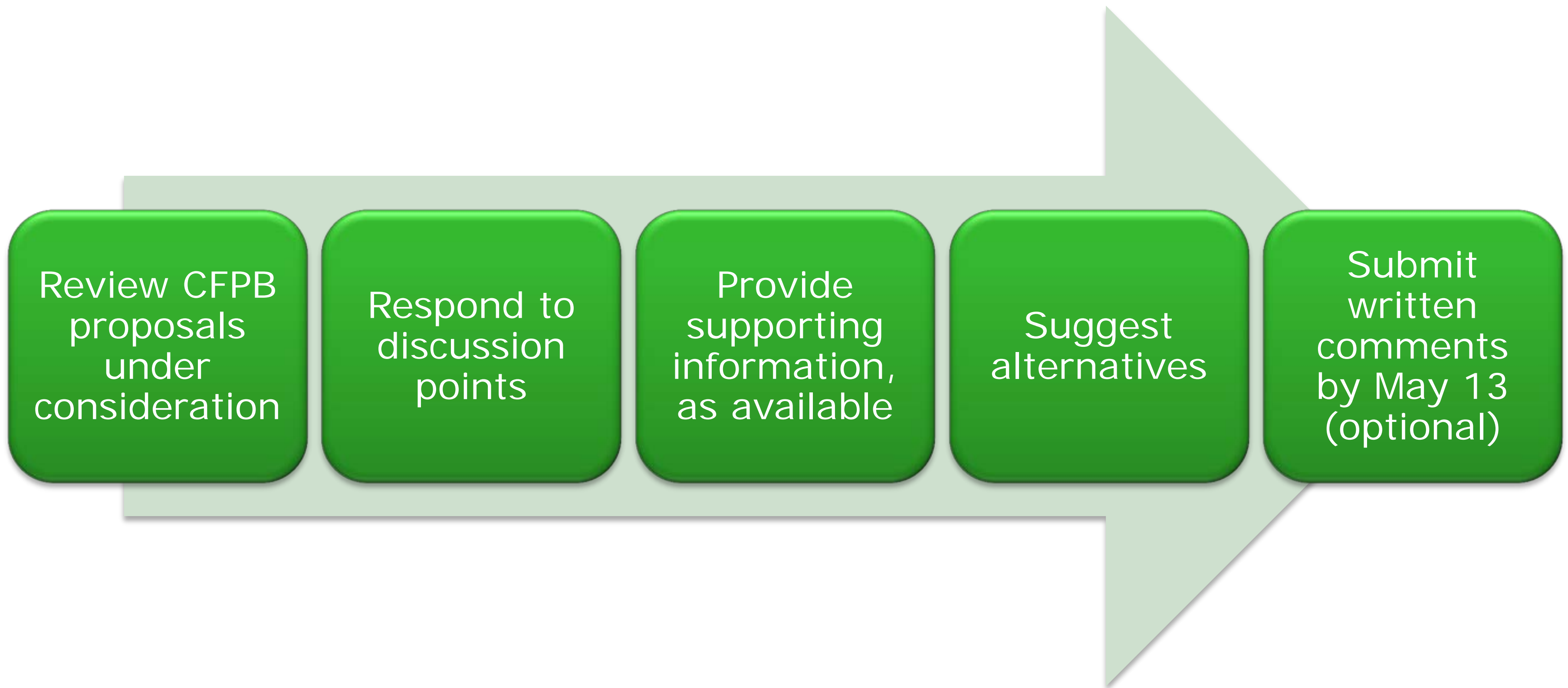
General Overview: SBREFA and Your Role in the Process

YOUR ROLE IN THE SBREFA PROCESS

You have been selected as a small entity representative (“SER”) for the Payday, Vehicle Title, and Similar Loans rulemaking.

- A SER is a representative of a small entity that will likely be subject to the requirements of a proposed rule under consideration by the CFPB.
- SERs' participation in the rulemaking process helps to ensure that the CFPB is made aware of the concerns and issues specific to small entities.
- The Panel (CFPB, SBA, and OMB) uses your input to prepare a report that includes your verbal feedback and written comments and the Panel's findings on alternatives to minimize costs and burden on small entities.
  - The report is made part of the public rulemaking record and is considered by the CFPB as it develops its proposed rule.

General Overview: SBREFA and Your Role in the Process



General Overview: Background on Proposals Under Consideration

- The proposals under consideration would address certain short-term credit products and longer-term, high-cost credit products.
  - Short-term products are those with a contract duration of 45 days or shorter, including payday loans, vehicle title loans, and deposit advance products.
  - Longer-term, high-cost products would include the following products if they: (1) have a contract duration of greater than 45 days; (2) an all-in APR of greater than 36 percent; and (3) are either
    - Vehicle title loans; or
    - Installment loans where the lender acts before the first loan payment is due to take a right to collect repayment from the consumer's account or paycheck
  - Both categories include open-end lines of credit that meet the parameters as to duration, cost of credit, and type of security taken by the lender.
- The proposals under consideration would <u>not</u> cover traditional pawn loans, credit cards, real estate secured loans, student loans, and deposit account overdraft services.

General Overview: Background on Proposals Under Consideration

- The CFPB has serious concerns that practices associated with these short-term and longer-term products are causing consumer harms.
  - *Ability to repay*: The primary concern is that lenders are failing to determine that consumers can repay their loans while meeting other obligations, leading to unaffordable loans.
    - Consumers who cannot afford their loans may incur substantial harms from reborrowing, defaulting, or falling behind on other financial obligations.
    - Balloon structures and short repayment periods are particularly likely to lead to repeated reborrowing.
    - Account access and security interests in vehicles increase the risk that consumers with unaffordable loans will incur NSF and other fees, lose control over their accounts, or lose transportation to work.
  - *Payment collection practices*: The CFPB also has concerns about certain payment collection practices that increase fees and the risk of losing control over consumer accounts.

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Topic 1: Ability-to-Repay Requirements – Underwriting and Verification

CFPB PROPOSALS UNDER CONSIDERATION

ATR requirement: Lenders would have to make a good-faith, reasonable determination that a consumer has the ability to repay (ATR) the loan according to its terms without reborrowing while still meeting her major financial obligations and living expenses.

- The lender would have to obtain and verify information about the consumer's:
  - Income, using bank statements, benefit statements, paystubs, etc.
  - Major financial obligations, defined as (1) housing payments, (2) debt obligations, (3) child support obligations, and (4) other legally required payments, using third-party records or other appropriate methods.
  - Borrowing history, both by checking (1) its own records (including those of affiliates), and (2) a commercially available reporting system meeting specified criteria.
- The lender would have to reasonably determine the consumer will have enough residual income to repay the loan and cover major financial obligations and other living expenses.
  - Lenders would have significant flexibility in how they make the ATR determination (e.g., set a budget for each consumer, develop a model to estimate what amount is sufficient for living expenses, such as food, for which the proposals would not require verification).

Topic 1: Ability-to-Repay Requirements – Underwriting and Verification

DISCUSSION TOPICS

1. For verification of the consumer's income and major financial obligations:
   a. What changes would you make to your current underwriting processes and systems? What additional costs (in time and money) would you incur to make those changes?
   b. What methods are most practicable for verifying income and major financial obligations? What items would be particularly challenging to verify? Is there additional flexibility that the CFPB could provide while ensuring reliable information for assessing ATR?
2. For verification of borrowing history:
   a. What changes would you make to your current underwriting processes and systems to check (1) your own records and those of your affiliates, and (2) a commercially available reporting system for other lenders' loans? What additional costs (in time and money) would you incur to make those changes?
   b. The proposals under consideration would also require lenders to report to all commercially available reporting systems. What additional costs would you incur from this requirement?
3. What underwriting criteria and processes would you use to determine whether consumers have enough residual income to make the loan payments and cover other major financial obligations and living expenses?
   a. How would this type of underwriting affect loan volume and revenues? Would you adjust pricing, credit product mix, or other practices in response?

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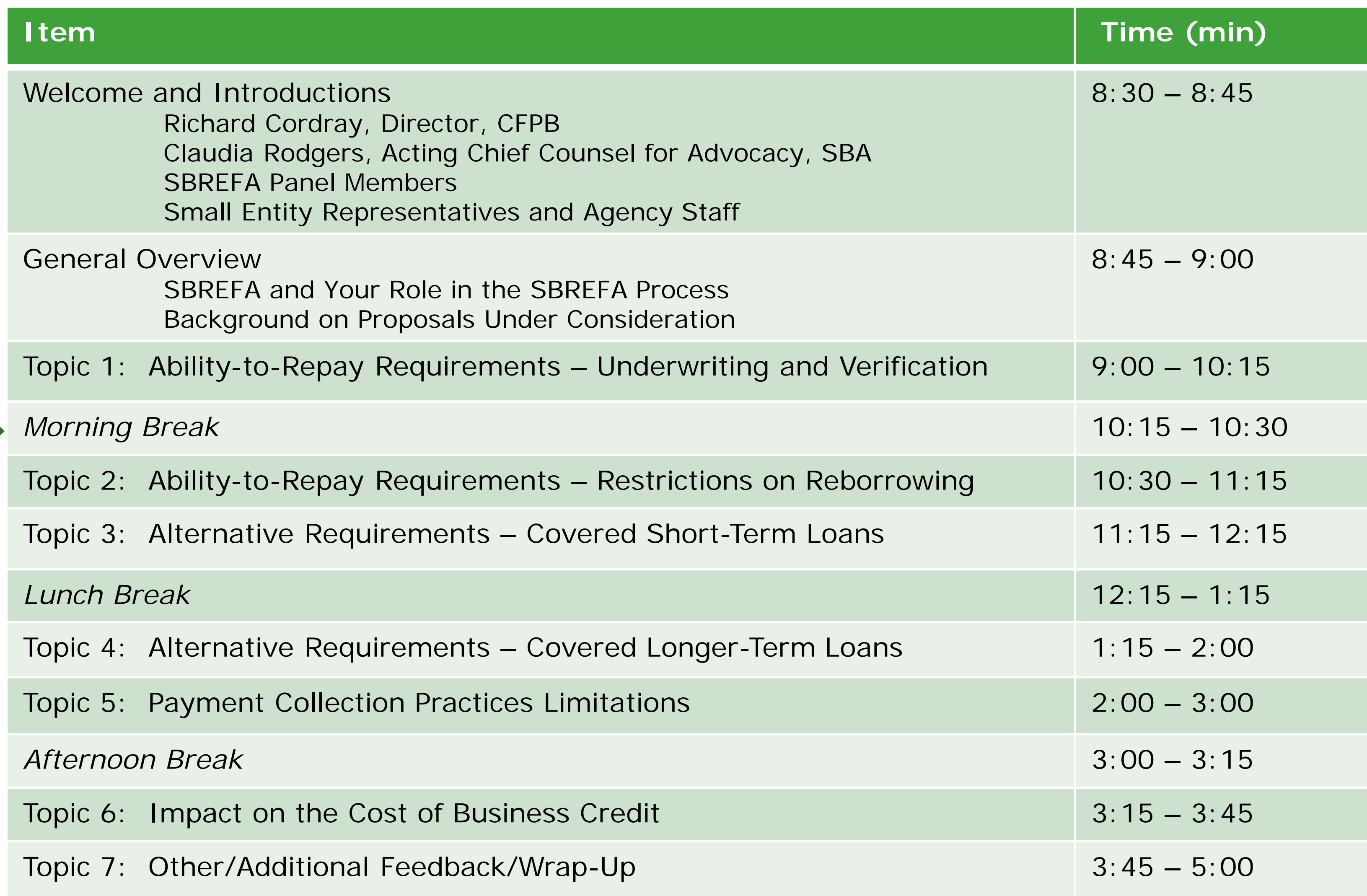

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Topic 2: Ability-to-Repay Requirements – Restrictions on Reborrowing

CFPB PROPOSALS UNDER CONSIDERATION

Restrictions on Loan Sequences for Short-Term and Balloon Loans

Certain restrictions would apply to "loan sequences," i.e., a series of short-term loans or longer-term loans with balloon payments. A loan is part of a loan sequence if it is made within 60 days of consumer being in debt on a prior loan.

- For the *second* and *third* loan in a sequence, there would be a *rebuttable presumption* that the consumer lacks the ability to repay.
  - To rebut the presumption, the lender would have to verify a change in consumer circumstances since the previous loan and make a new ATR determination.
- After three loans in a sequence, there would be a mandatory cooling-off period where lenders would be prohibited from making another short-term loan or longer-term loan with a balloon payment to the consumer.

Restrictions on Refinancing into Longer-Term Loans

A *rebuttable presumption* that the consumer lacks the ability to repay would also apply to attempts to refinance into longer-term loans that do not have balloon payments if the underlying loan is in default, the borrower is delinquent, the refinancing terms provide for a skipped payment, or there is other evidence that the borrower is struggling to repay the underlying debt.

- To rebut the presumption, the lender would have to verify a change in consumer circumstances since the previous loan.

Topic 2: Ability-to-Repay Requirements – Restrictions on Reborrowing

DISCUSSION TOPICS

1. What changes would you make to your current lending processes and systems to comply with the restrictions on (1) loan sequences for short-term and balloon loans, and (2) refinancing into longer-term loans?
   a. How often do you believe that consumers experience changed circumstances? When consumers are seeking additional loans, how would you verify that there are changed circumstances that would enable consumers to repay the new loans?
2. How would these restrictions on reborrowing affect loan volume and revenues? Would you adjust pricing, credit product mix, or other practices in response?

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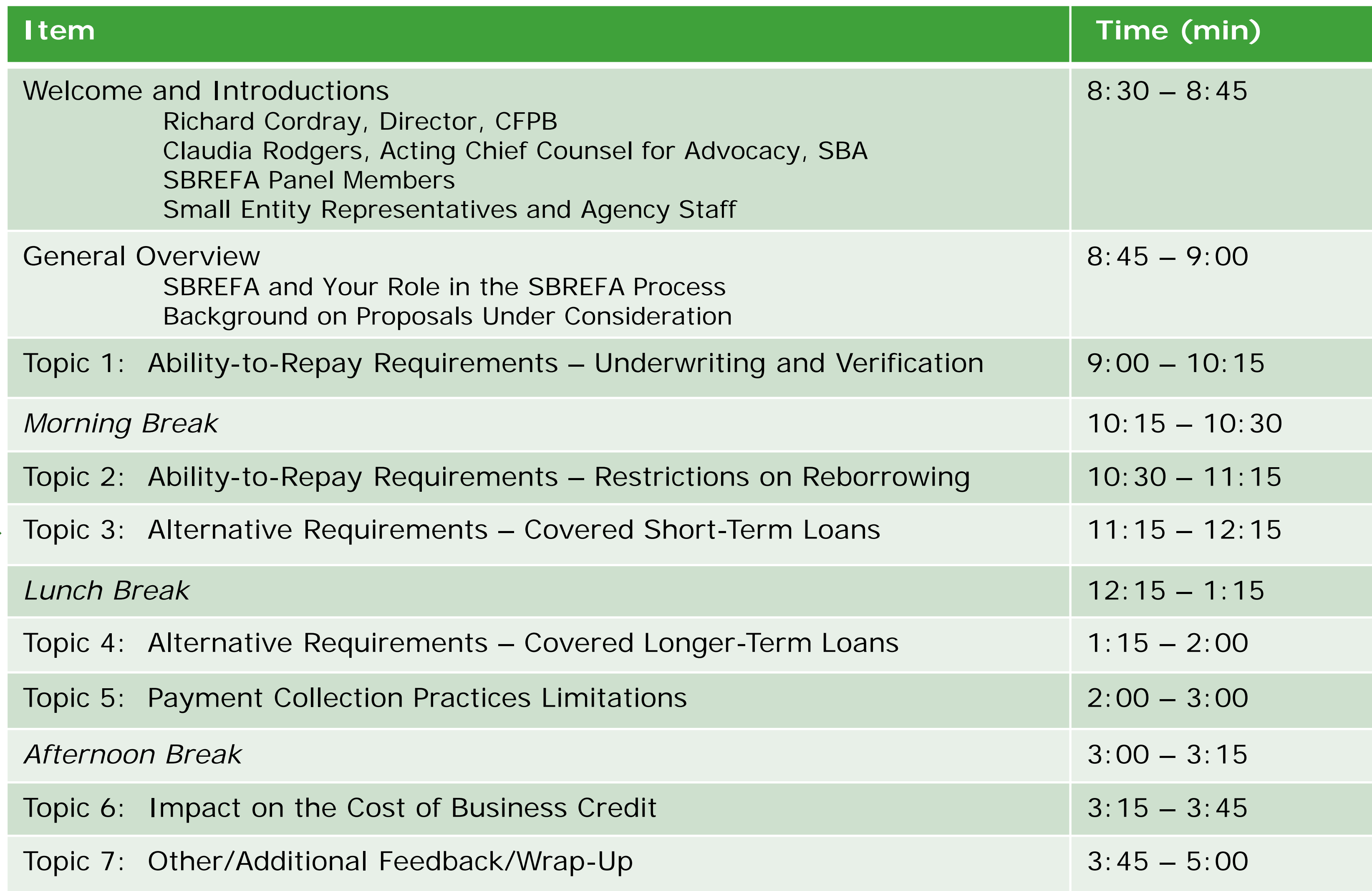

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CFPB PROPOSALS UNDER CONSIDERATION

Alternative Requirements for Short-Term Loans:

The CFPB is considering whether to allow lenders to make certain covered short-term loans without satisfying the ATR requirements, using alternative screening requirements and structural protections to ensure that consumers do not get caught in unaffordable long-term debt.

- Screening requirements—Among other criteria:
  1) The lender would have to verify the consumer's income and borrowing history;
  2) The loan could not lead to the consumer having more than three alternative short-term loans in a sequence; and
  3) The loan could not cause the consumer to (i) receive more than six covered short-term loans over a rolling 12-month period or (ii) be in debt on covered short-term loans with all lenders for more than 90 days in total over a rolling 12-month period.

CFPB PROPOSALS UNDER CONSIDERATION

Alternative Requirements for Short-Term Loans (Cont.):

- Structural protections—The alternative short-term loan's terms would include:
  1) A principal amount of no more than $500 with a duration of no more than 45 days;
  2) No taking of a security interest in a vehicle as collateral; and
  3) A "tapering off" feature to help consumers pay off the debt, either (i) an "off-ramp" (a no-cost extended payment plan) after the third loan, or (ii) principal reduction over a loan sequence (e.g., $300 first loan, no more than $200 second loan, no more than $100 third loan).
- The CFPB is also considering requiring lenders to provide mandatory disclosures and, if off-ramps are adopted, restricting lender practices that may discourage usage (i.e., prohibition on collection before the off-ramp is made available).

DISCUSSION TOPICS

1. Do you require or encourage consumers to reduce loan principal when they reborrow?
2. Do you offer extended payment plans (EPPs) or similar options to borrowers? How and when do your inform consumers about availability of EPPs? How often do your customers pursue either option?
3. If the alternative short-term loan option is adopted by the CFPB, what changes to your current processes and systems would be needed to provide such loans? What additional costs would you incur to make those changes?
4. If you were to offer loans using the alternative requirements, how would your loan volume and revenues be affected? Would you adjust pricing, credit product mix, or other practices in response?
   a. Are there certain criteria for the short-term loan alternative that would have greater impacts than others on your ability to offer these loans?
5. Would you be more inclined to make loans under the ATR requirements, loans under these alternative requirements, or a mixture of both?

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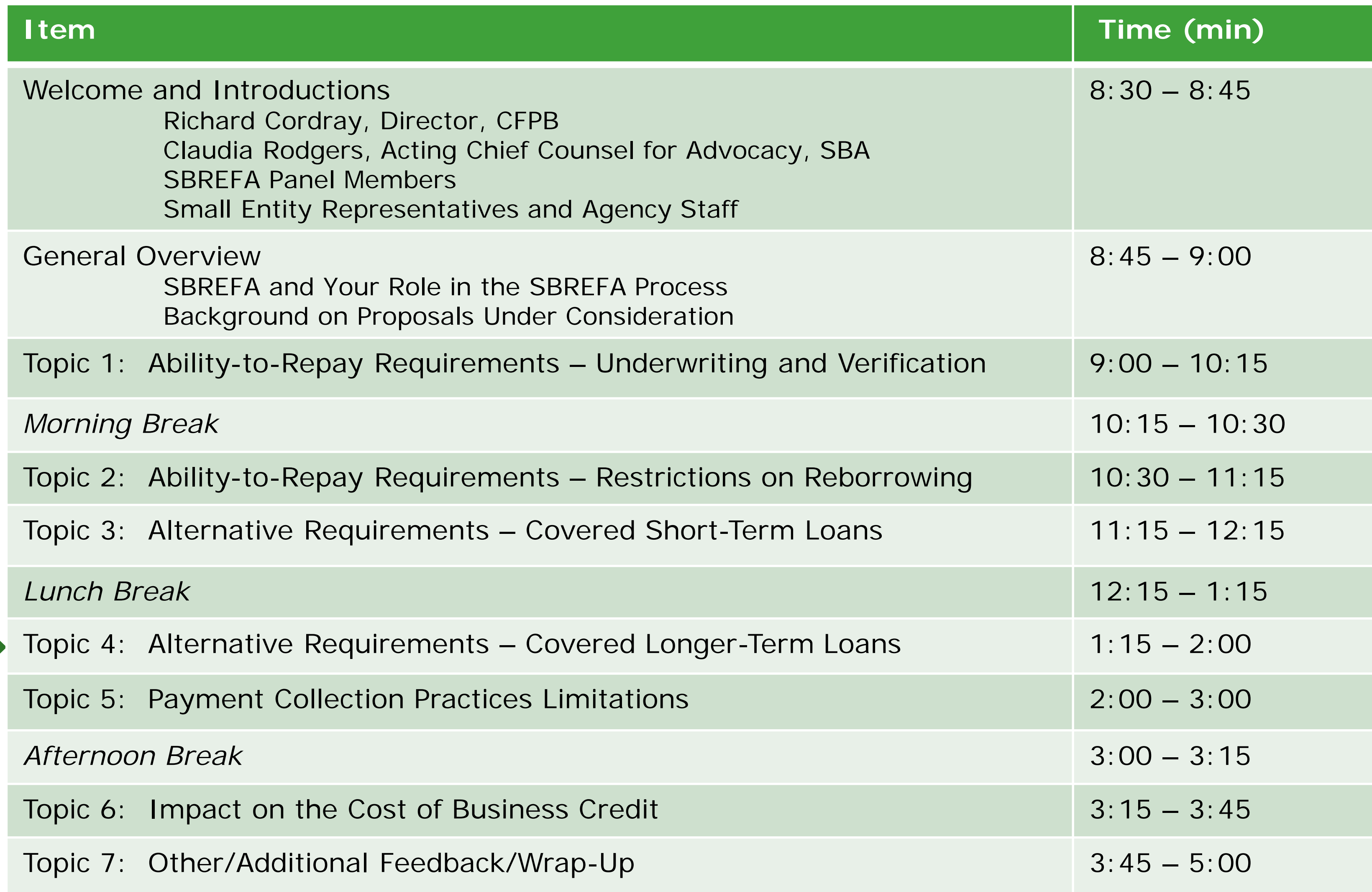

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CFPB PROPOSALS UNDER CONSIDERATION

Alternative Requirements for Covered Longer-Term Loans

The CFPB is considering a proposal that would allow lenders to make certain covered longer-term loans without a full ability-to-repay determination if the loan has screening requirements and structural protections to prevent consumers from getting caught in unaffordable long-term debt.

The CFPB is considering two approaches:

1) **NCUA-type loans**
2) **Loans with a maximum payment-to-income (PTI) ratio**

CFPB PROPOSALS UNDER CONSIDERATION

NCUA-type Loans

The CFPB is considering allowing lenders to extend a covered longer-term loan without satisfying the ATR requirements if the loan generally meets the requirements of the National Credit Union Administration (NCUA) Payday Alternative Loan program, regardless of issuer, and satisfies some additional conditions:

- Screening requirements—Among other criteria:
  1) The lender would have to verify a consumer's income and borrowing history; and
  2) A consumer can take out no more than two NCUA-type loans from all lenders over a rolling six-month period.
- Structural protections—The alternative loan's terms would include:
  1) A principal amount of between $200 and $1,000;
  2) A duration of between 45 days and six months;
  3) Full amortization; and
  4) Compliance with NCUA cost criteria (i.e., the lender charges no more than 28 percent interest and an application fee of no more than $20).

Topic 4: Alternative Requirements – Covered Longer-Term Loans

DISCUSSION TOPICS

1. If the NCUA-type loan alternative is adopted by the CFPB, what changes to your current processes and systems would be needed to provide such loans? What additional costs would you incur to make those changes?
2. Do you anticipate that you would offer loans that would comply with these requirements? How would offering these loans affect loan volume and revenues?
   a. Are there certain criteria for the NCUA-type loan alternative that would have greater impacts than others on your ability to offer these loans?
   b. How would your loan volume and revenue compare between complying with the ATR requirements and making NCUA-type loans?

Topic 4: Alternative Requirements – Covered Longer-Term Loans

CFPB PROPOSALS UNDER CONSIDERATION

Maximum PTI loans

The CFPB is considering allowing lenders to extend a covered longer-term loan without satisfying the ATR requirements if the loan has payments below a 5 percent payment-to-income (PTI) ratio and meets other conditions:

- Screening requirements—Among other criteria:
  1) The lender would need to verify the consumer's income and borrowing history; and
  2) The consumer can take out no more than two maximum PTI loans from all lenders over a rolling 12-month period.
- Structural protections—The alternative loan's terms would include:
  1) Periodic payments of no more than 5 percent of the consumer's expected gross income during the same period;
  2) A duration of between 45 days and six months; and
  3) Full amortization.

DISCUSSION TOPICS

1. If the maximum PTI loan alternative is adopted by the CFPB, what changes to your current processes and systems would be needed to provide such loans? What additional costs would you incur to make those changes?
2. Do you anticipate that you would offer loans that would comply with these requirements? How would offering these loans affect loan volume and revenues?
   a. Are there certain criteria for the maximum PTI loan alternative that would have greater impacts than others on your ability to offer these loans?
   b. How would your loan volume and revenue compare between complying with the ATR requirements and making maximum PTI loans?
   c. How would your loan volume and revenue compare between making maximum PTI loans and making NCUA-type loans?

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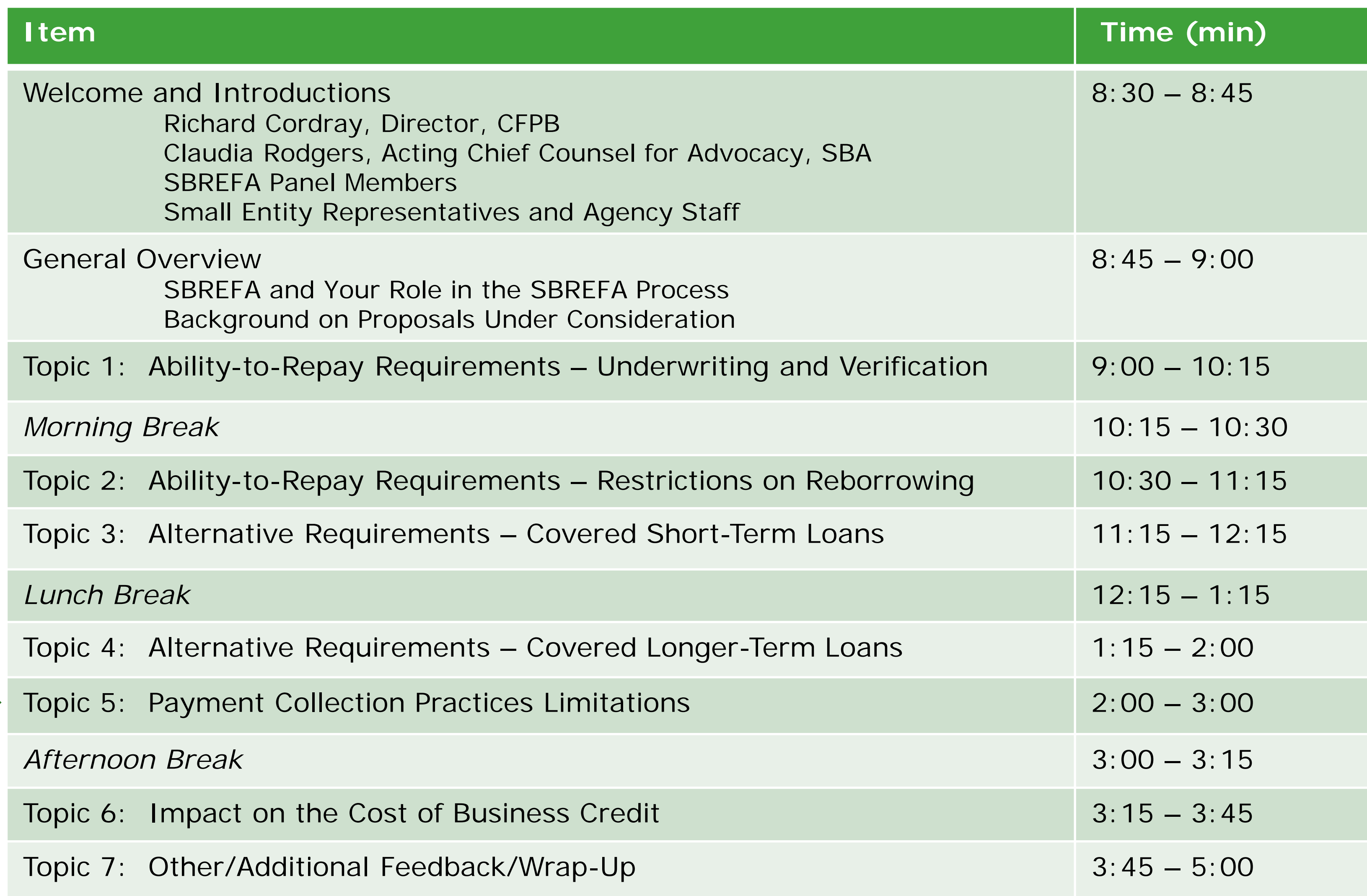

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Topic 5: Payment Collection Practices Limitations

CFPB PROPOSALS UNDER CONSIDERATION

The CFPB is concerned about certain practices associated with collecting payment on covered loans from consumers' checking, savings, and prepaid accounts.

- Lenders collect payments from a consumer's account through a variety of methods, including ACH entries, post-dated signature checks, RCCs, payments run through the debit networks, and other means.
- The CFPB is concerned that certain lender practices associated with these payment collection methods create substantial risk of consumer harm, including substantial fees, unanticipated collection attempts, and, in some cases, account closure.

The CFPB is considering proposals to require lenders to provide certain notices to consumers and to limit repeated attempts to collect payment.

Topic 5: Payment Collection Practices Limitations

CFPB PROPOSALS UNDER CONSIDERATION

Notice:

Lenders would be required to provide a written notice to consumers at least three business days prior to each lender-initiated attempt to collect payment from a consumer's checking, savings, or prepaid account. This requirement would apply to any method of collecting payment.

- The notice would include key information about the forthcoming payment collection attempt (e.g., the exact amount and date of the attempt, the payment channel, a break-down of the application of payment amount to principal).

Limitations on attempts to collect payment:

Lenders would be prohibited from attempting to collect a payment from a consumer's account after two consecutive attempts have failed, unless the lender has obtained a new payment authorization from the consumer.

- A failed payment collection attempt made through any payment channel would count toward the limit.

Topic 5: Payment Collection Practices Limitations

DISCUSSION TOPICS

1. What changes would you make to your current processes and systems to comply with (1) the presentment notice requirement and (2) the limit on the number of payment collection attempts?
   a. What costs (in time and money) would you incur to implement these changes? If you use a third-party payment processor, what types of specific compliance challenges would these requirements create for your business?
   b. How do you anticipate transmitting the notice? Are there particular challenges to electronic transmittal?
   c. If your payment collection attempts resulted in two consecutive failed attempts, do you anticipate that you would seek new authorizations from consumers to collect from their accounts? If so, what methods would you use to contact consumers when seeking these authorization?
2. How would these requirements affect loan volume and revenues? Would you adjust pricing, credit product mix, or other practices in response?

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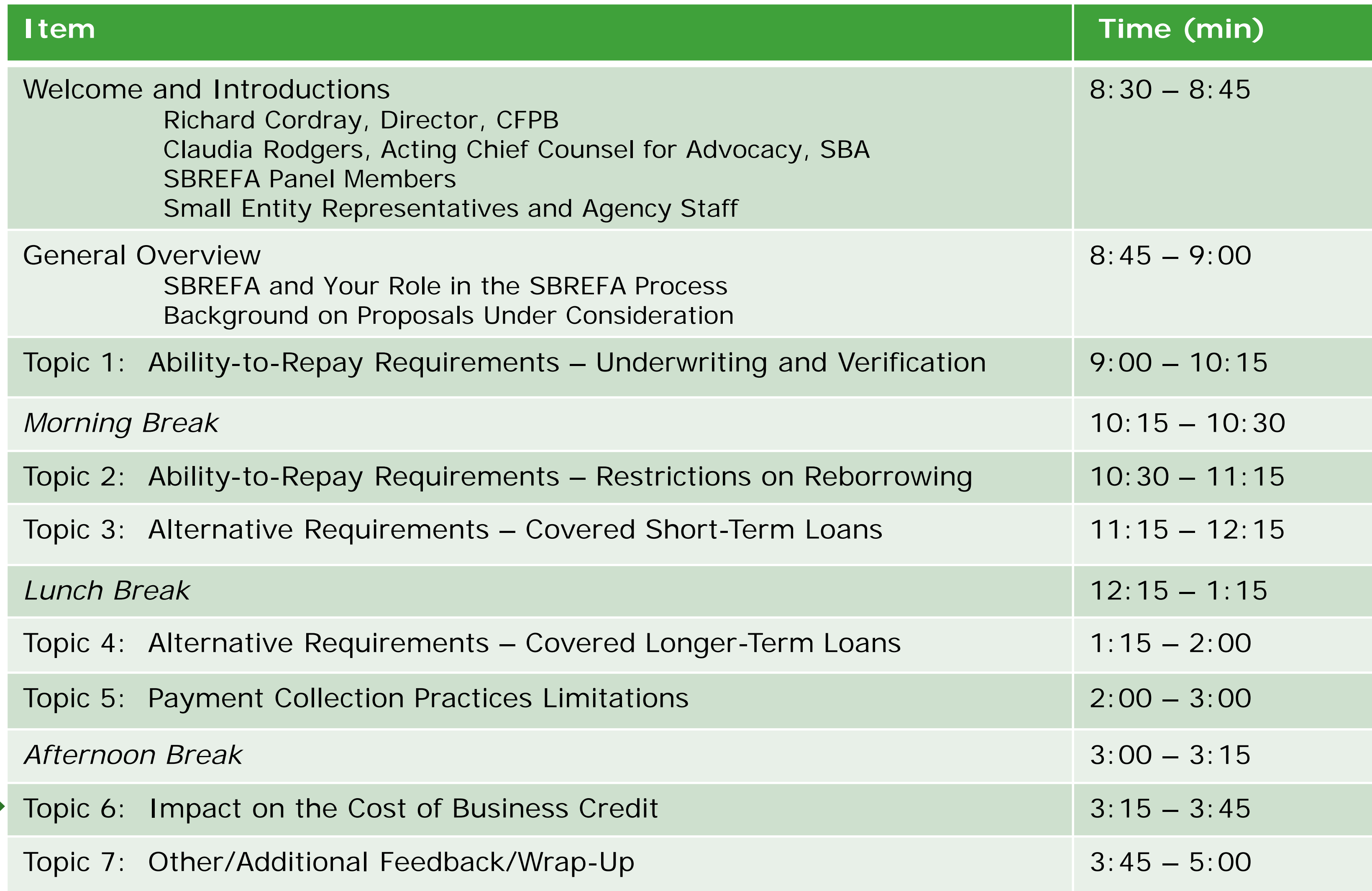

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Topic 6: Impact on the Cost of Business Credit

CFPB PROPOSAL UNDER CONSIDERATION

The Regulatory Flexibility Act requires the CFPB to consult with the SERs regarding any projected increase in the cost of credit for small entities that would result from the proposals under consideration, and on alternatives that minimize any such increase.

Cost of Credit for Small Business Owners:

- The proposals under consideration would apply to loans primarily for personal, family, or household purposes, and would not apply to loans made primarily for business purposes.
- Nevertheless, some consumers may take out covered loans but use the proceeds secondarily for business purposes.
- Moreover, some small businesses may take out loans that otherwise would be covered if they were not primarily for business purposes. The proposals may indirectly impact the availability or cost of these non-covered loans if the proposals lead to a general market contraction.

Cost of Credit for Small Lenders:

- The proposals under consideration could potentially reduce the revenue of covered lenders. This could, in turn, impact the perceived creditworthiness of these lenders and thus increase their cost of credit.

Topic 6: Impact on the Cost of Business Credit

DISCUSSION TOPICS

Cost of Credit for Small Business Owners

1. Do you extend covered loans that are used secondarily to finance small businesses?
   a. If so, what percentage of your loans fall into that category? What is the average amount of the credit extended on such loans?
   b. Would the proposals under consideration cause you to increase the rates or fees you charge for such credit? If so, please describe the anticipated increase and any feasible alternatives to the proposals that you would recommend to minimize that increase.
2. Do you extend loans that are used primarily to finance small businesses?
   a. If so, what percentage of your loans falls into that category (i.e., loans made to small businesses for business purposes)? What is the average amount of the credit extended on such loans?
3. Are there particular aspects of the proposals under consideration that may impact the cost of credit for small entities? Why?

Topic 6: Impact on the Cost of Business Credit

DISCUSSION TOPICS

Cost of Credit for Small Lenders

1. Do you use lines of credit or other finance sources either to fund the loans you extend to consumers or for other business purposes?
   a. Do you anticipate that the proposals under consideration will affect the availability or cost of these funding sources to you? If so, please describe the effects that you anticipate, your basis for anticipating them, and any feasible alternatives to the proposals under consideration you would recommend to minimize the effects.

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Topic 7: Other/Additional Feedback/Wrap-Up

PROPOSALS UNDER CONSIDERATION

Policies and Procedures: The CFPB is considering a proposal to require lenders to maintain policies and procedures that are reasonably designed to achieve compliance with the proposals under consideration, including the ability-to-repay determination, eligibility for any covered loan subject to alternative requirements, and the limitations on payment collection attempts.

Record Keeping: The CFPB is considering a proposal to require lenders to retain records for each consumer that document actions taken with respect to a covered loan until 36 months after the last entry on the loan.

- The consumer loan file would include documentation of the determination of ability-to-repay, verification of the consumer's history of covered loans, consumer eligibility for any loan subject to alternative requirements, and history of payment presentments.
- These records would also include reports prepared annually for each type of covered loan with data sufficient to monitor loan performance, including information on defaults and reborrowing, including refinancing.

Topic 7: Other/Additional Feedback/Wrap-Up

DISCUSSION TOPICS – COMPLIANCE PROCEDURES AND RECORD KEEPING

1. What changes would you have to make to your current processes and systems for record keeping and compliance?
   a. How long do you currently retain records of covered loans?
   b. What costs would you incur to make those changes?
   c. What are the specific anticipated impacts of the requirement to keep annual reports with data sufficient to monitor loan performance (including information on default and reborrowing rates)?

Topic 7: Other/Additional Feedback/Wrap-Up

DISCUSSION TOPICS – ADDITIONAL FEEDBACK

One of the purposes of SBREFA is to obtain feedback on alternatives to the proposals under consideration that could minimize burdens on small entities while still achieving the CFPB's objectives in the rulemaking of ensuring that consumers do not end up in a cycle of unaffordable debt or be exposed to harmful payment collection practices. The CFPB also seeks input on potential conflicts with other laws, the appropriate implementation period for the rule, and additional feedback on prior discussion topics.

1. Are there any feasible alternatives that we have not yet discussed that you believe would minimize any significant economic impact on your business while accomplishing the objectives of the proposals under consideration?
2. Are there any other federal, state, or local laws or rules that you believe may duplicate, overlap or conflict with the proposals under consideration?
3. How long do you anticipate that you would need to implement the proposals under consideration? Would you be able to effectively implement some proposals more quickly than others? If so, which ones and why?
4. Please provide any additional feedback on the prior discussion topics.

Topic 7: Other/Additional Feedback/Wrap-Up

CLOSING REMARKS **DAN SOKOLOV, CFPB**

- Written comments from small entity representatives (optional) are due no later than May 13, 2015.
- Please email any written comments to: CFPB_payday_SBREFA@cfpb.gov
- Your written comments will be attached to the Panel Report, which will be made part of the public rulemaking record.