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BUREAU OF CONSUMER FINANCIAL PROTECTION

[Docket No. CFPB-2016-0026]

RIN 3170–AA40

Request for Information on Payday Loans, Vehicle Title Loans, Installment Loans, and Open-End Lines of Credit

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Request for information.

SUMMARY: Congress established the Bureau of Consumer Financial Protection (Bureau or CFPB) in the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank Act). As set forth in section 1021 of the Dodd-Frank Act, the Bureau's purpose is to implement and, where applicable, enforce Federal consumer financial law consistently for the purpose of ensuring that all consumers have access to markets for consumer financial products and services and that markets for consumer financial products and services are fair, transparent, and competitive. In discharging this obligation, the CFPB seeks feedback on practices and products that are related to but may not be addressed in the Bureau's concurrently published Notice of Proposed Rulemaking on Payday, Vehicle Title, and Certain High-Cost Installment Loans (Concurrent Proposal). Specifically, in this Request for Information (RFI), the Bureau seeks comment on: (1) potential consumer protection concerns with loans that fall outside the scope of the Bureau's Concurrent Proposal but are designed to serve similar populations and needs as those loans covered by the proposal; and (2) business practices concerning loans falling within the Bureau's Concurrent Proposal's coverage that raise potential consumer protection concerns that are not addressed by the Concurrent Proposal. The Bureau seeks comment from

the public about these consumer lending practices to increase the Bureau's understanding of and support for potential future efforts, including but not limited to future rulemakings, supervision, enforcement, or consumer education initiatives. Where the Bureau requests evidence, data, or other information regarding a particularly concern about consumer protections, the Bureau does not seek information that directly identifies an individual consumer.

DATES: Comments must be received on or before October 14, 2016.

ADDRESSES: You may submit comments, identified by Docket No. CFPB-2016-0026 or RIN 3170-AA40, by any of the following methods:

- *Email*: FederalRegisterComments@cfpb.gov. Include Docket No. CFPB-2016-0026 or RIN 3170-AA40 in the subject line of the email.
- *Electronic*: http://www.regulations.gov. Follow the instructions for submitting comments.
- *Mail*: Monica Jackson, Office of the Executive Secretary, Consumer Financial Protection Bureau, 1700 G Street, NW., Washington, DC 20552.
- *Hand Delivery/Courier*: Monica Jackson, Office of the Executive Secretary, Consumer Financial Protection Bureau, 1275 First Street, NE., Washington, DC 20002.

Instructions: Because paper mail in the Washington, DC area and at the Bureau is subject to delay, commenters are encouraged to submit comments electronically. In general, all comments received will be posted without change to http://www.regulations.gov. In addition, comments will be available for public inspection and copying at 1275 First Street, NE., Washington, DC 20002, on official business days between the hours of 10 a.m. and 5 p.m. eastern time. You can make an appointment to inspect the documents by telephoning (202) 435-7275.

All comments, including attachments and other supporting materials, will become part of the public record and subject to public disclosure. Sensitive personal information, such as account numbers or Social Security numbers, should not be included. Comments will not be edited to remove any identifying or contact information.

FOR FURTHER INFORMATION CONTACT: For general inquiries, submission process questions, or any additional information, please contact Monica Jackson, Office of the Executive Secretary, at 202-435-7275.

AUTHORITY: 12 U.S.C. 5511(c).

SUPPLEMENTARY INFORMATION:

Pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) that established the Bureau, part of the Bureau's mission is to empower consumers to take control over their economic lives. Section 1021(c)(3) of the Dodd-Frank Act provides that one of the primary functions of the Bureau is collecting, researching, monitoring, and publishing information relevant to the function of markets for consumer financial products and services.[1] Specifically section 1022(c)(1) directs the Bureau to monitor for risks to consumers in the offering or provision of consumer financial products or services in order to support its rulemaking and other functions.[2] Moreover, the Bureau is charged with using its rulemaking, supervision, and enforcement authorities under Federal consumer financial law to prevent unfair, deceptive, or abusive acts or practices in the consumer financial services markets.[3] In discharging these obligations, the Bureau has studied certain types of loans made to consumers

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[1] 12 U.S.C. 5511(c)(3).
[2] 12 U.S.C. 5512(c)(1).
[3] 12 U.S.C. 5511(b)(2).

facing liquidity shortfalls, including payday loans, vehicle title loans, and certain types of installment loans. The Bureau also has conducted supervisory examinations of payday lenders and pursued public law enforcement actions against creditors making payday loans, vehicle title loans, and similar forms of credit.

The Bureau is concerned that lenders that make these loans have developed business models that deviate substantially from the practices in other credit markets by failing to assess consumers' ability to repay their loans and by engaging in harmful practices in the course of seeking to withdraw payments from consumers' accounts. The Bureau believes that there may be a high likelihood of consumer harm in connection with these covered loans because many consumers struggle to repay their loans. In particular, many consumers who take out covered loans appear to lack the ability to repay them and face one of three options when an unaffordable loan payment is due: take out additional covered loans, default on the covered loan, or make the payment on the covered loan and fail to meet other major financial obligations or basic living expenses. Many lenders may seek to obtain repayment of covered loans directly from consumers' accounts. The Bureau is concerned that consumers may be subject to multiple fees and other harms when lenders make repeated unsuccessful attempts to withdraw funds from consumers' accounts.

The Concurrent Proposal generally would cover two categories of loans. First, the proposal generally would cover loans with a term of 45 days or less or loans with multiple advances if each advance is required to be repaid within 45 days. Second, the proposal generally would cover loans with a term greater than 45 days, provided that they (1) have an all-in annual percentage rate greater than 36 percent; and (2) either are repaid directly from the consumer's account or income or are secured by the consumer's vehicle. For both categories of covered loans, the proposal would identify it as an abusive and unfair practice for a lender to make a covered loan without reasonably determining that the consumer has the ability to repay the loan. The proposal generally would require that, before making a covered loan, a lender must reasonably determine that the consumer has the ability to repay the loan. The proposal also would impose certain restrictions on making covered loans when a consumer has or recently had certain outstanding covered loans. The proposal would provide lenders with options to make covered loans without satisfying the ability-to-repay requirements, if those loans meet certain conditions. The proposal also would identify it as an unfair and abusive practice to attempt to withdraw payment from a consumer's account for a covered loan after two consecutive payment attempts have failed. The proposal would require lenders to provide certain notices to the consumer before attempting to withdraw payment for a covered loan from the consumer's account. The Bureau's Concurrent Proposal appears in a separate *Federal Register* notice concurrently published with this RFI. The Bureau is seeking comment on that proposal in the rulemaking docket, which is separate from the docket for this RFI.

The Bureau is also engaged in pre-rulemaking activity concerning debt collection practices generally and on checking account overdraft services, which some consumers may use in lieu of small-dollar loans. Those practices are not the focus of this RFI. Finally, the Bureau has also proposed to regulate certain credit products offered in conjunction with prepaid accounts, which is also not the focus of this RFI.

The Bureau is aware that the Concurrent Proposal may not address all potential concerns in these markets. Most particularly, while the Bureau has chosen to issue a proposed rule on payday loans and similar forms of credit for public comment, the Bureau is aware that the Concurrent Proposal does not cover all loans made to consumers facing liquidity shortfalls.

Such loans may include other high-cost products, where the risks to consumers from making unaffordable payments may be similar to the types of harms detailed in the Concurrent Proposal. The Bureau is specifically seeking to learn more about the scope, use, underwriting, and impact of such products for purposes of determining what types of Bureau action may be appropriate. To protect consumers from unfair, deceptive, or abusive acts or practices, the Bureau is expressly empowered to use all of its authorities, not just rulemaking. Therefore, in this RFI the Bureau is seeking information about certain consumer lending practices to increase the Bureau's understanding of whether there is a need and basis for potential future efforts, including but not limited to future rulemakings, supervisory examinations, or enforcement investigations.

Similarly, the Bureau is aware that the Concurrent Proposal may not address all potentially harmful practices with regard to products that would be covered by the Concurrent Proposal. Specifically, the proposal focuses on lenders' practices with regard to underwriting and attempts to withdraw loan payments from consumers' bank accounts. The Bureau is thus seeking information on other potentially problematic lender practices and consumer protection concerns regarding products that would be covered by the proposal, in order to determine whether additional Bureau actions are warranted.

Accordingly, the Bureau is interested in learning more about potential consumer protection concerns that may not be addressed by the Bureau's Concurrent Proposal. The Bureau encourages comments from the public, including:

- Borrowers and their families;
- Lenders and their investors or employees;
- Debt collectors, payment processors, and other service providers;
- Financial counselors and social workers;

- Pastors, priests, nuns, rabbis, imams, and other clergy or faith leaders;
- Accountants;
- Journalists;
- Consumer advocates;
- Banks, thrifts, and credit unions;
- State, local, and tribal governments;
- Academics including but not limited to psychologists, economists, sociologists, geographers, and historians; as well as
- Any other interested parties.

I. Background.

Throughout American history, the Federal government and the States have taken varied approaches to regulating payday and similar forms of credit. Early on, the 13 original American States adopted interest rate limits of between 5 percent and 12 percent per annum in the early years of the Republic.[4] Later entrants into the Union typically followed this pattern and most of these "general usury limits" remained in force throughout the United States during the 19th Century. Later, Congress passed legislation intended to provide protection to consumers in the Wheeler-Lea Act of 1938.[5] The Wheeler-Lea Act amended the Federal Trade Commission (FTC) Act of 1914 to provide the FTC with the authority to pursue unfair or deceptive acts or

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[4] These State price limits were based on English statutes. Ransom H. Tyler, *A Treatise on the Law of Usury, Pawns or Pledges and Maritime Loans*, at 49-55 (1891). American usury law drew upon an older legal tradition. For example, historians report that the Roman Empire capped interest rates at 12 percent per annum. And, the Code of Hammurabi (c.1750 BCE) includes an interest rate limit of 33.3 percent for loans payable in grain and a limit of 20 percent on loans payable in silver. Sydney Homer & Richard Sylla, *A History of Interest Rates*, at 30, 49 (3d. ed. 1996).

[5] Wheeler-Lea Act of 1938, Public Law 75-447, 52 Stat. 111 (1938).

practices in commerce to protect consumers against oppression that might not amount to common law or criminal fraud.[6]

In the 1960s, Congress began passing a wave of consumer protection laws focused on financial products, beginning with the Consumer Credit Protection Act (CCPA) in 1968.[7] The CCPA included the Truth in Lending Act (TILA), which imposed disclosure and other requirements on creditors.[8] Congress followed the enactment of TILA with several other consumer financial protection laws. For example, in 1970, Congress passed the Fair Credit Reporting Act (FCRA), which promotes the accuracy, fairness, and privacy of consumer information contained in the files of consumer reporting agencies, as well as providing consumers access to their own information.[9] In 1974, Congress passed the Equal Credit Opportunity Act (ECOA) to prohibit creditors from discriminating against applicants with respect to credit transactions.[10] In 1977, Congress passed the Fair Debt Collection Practices Act (FDCPA) to promote the fair treatment of consumers who are subject to debt collection activities.[11] Congress has placed limitations on the rates Federal credit unions may impose,

[6] Richard A. Posner, The Federal Trade Commission: A Retrospective, 72 Antitrust L.J. 761, 765 (2005).
[7] Consumer Credit Protection Act, Public Law 90-321, 82 Stat. 146 (1968).
[8] 15 U.S.C. 1601
[9] 15 U.S.C. 1681.
[10] 15 U.S.C. 1691.
[11] 15 U.S.C. 1692. Other such Federal consumer protection laws include those enumerated in the Dodd-Frank Act and made subject to the Bureau's rulemaking, supervision, and enforcement authority: Alternative Mortgage Transaction Parity Act of 1982, 12 U.S.C. 3801; Consumer Leasing Act of 1976, 15 U.S.C. 1667; Electronic Fund Transfer Act (EFTA), 15 U.S.C. 1693 (except with respect to § 920 of that Act); Fair Credit Billing Act, 15 U.S.C. 1666; Home Mortgage Disclosure Act of 1975, 12 U.S.C. 2801; Home Owners Protection Act of 1998, 12 U.S.C. 4901; Federal Deposit Insurance Act, 12 U.S.C. 1831t (b)-(f); Gramm-Leach-Bliley Act 15 U.S.C. 6802-09 (except with respect to § 505 as it applies to § 501(b) of that Act); Interstate Land Sales Full Disclosure Act, 15 U.S.C. 1701; section 626 of the Omnibus Appropriations Act, 2009, 12 U.S.C. 5338; Real Estate Settlement Procedures Act of 1974 (RESPA), 12 U.S.C. 2601; S.A.F.E. Mortgage Licensing Act of 2008, 12 U.S.C. 5101. Federal consumer protection law also includes the Bureau's authority to take action to prevent a covered person or service provider from committing or engaging in an unfair, deceptive, and abusive acts or practices, Dodd-Frank section 1031, and its disclosure authority, Dodd-Frank section 1032.

generally 15 percent with certain allowance for the NCUA to make adjustments.[12] Congress has established a usury limit for loans to servicemembers. In 2006 Congress established an all-in interest rate limit of 36 percent annual percentage rate (APR) on consumer credit extended to military servicemembers and their dependents and charged the Bureau with enforcing this limit in 2013.[13]

In addition, in the early 20th Century many States began to adopt small loan laws that allowed licensed lenders to make small consumer loans at interest rates of between 2 and 4 percent per month, or 24 to 48 percent per year.[14] A variety of "special" usury limits along these lines proliferated in most States throughout the 20th Century. By 1965, all States limited interest rates on small loans, with an annual rate of 36 percent per annum being the most common ceiling.[15]

In the 1960s, States began passing their own consumer protection statutes modeled on the FTC Act to prohibit unfair and deceptive practices. The FTC encouraged the adoption of consumer protection statutes at the State level and worked directly with the Council of State

[12] 12 U.S.C. 1757(5)(A)(vi).

[13] 10 U.S.C. 987(b), (f)(6). Moreover, Congress has also established criminal laws enforced by the Department of Justice that address some forms of payday and similar credit. First, Congress established a threshold of 45 percent per annum as a limitation in determining whether the government is entitled to a presumption that a debtor believed a creditor used extortionate collection methods in criminal loansharking prosecutions under the Consumer Credit Protection Act. 18 U.S.C. 892(b)(2). And second, the Racketeer Influenced and Corrupt Organizations Act established a federal crime for collecting an unenforceable debt with a price in excess of twice an applicable federal or state usury limit. 18 U.S.C. 1961(6)(B), 1962(c), 1963. *See, e.g.,* U.S. v. Scott Tucker and Timothy Muir, Sealed Indictment, No. 16 Crim 091 (S.D.N.Y. 2016); Press Release, Department of Justice, U.S. Attorney's Office, Southern District of New York, *Manhattan U.S. Attorney Announces Charges Against owner of, and Attorney For, $2 Billion Unlawful Internet Payday Lending Enterprise* |(February 10, 2016), https://www.justice.gov/usao-sdny/pr/manhattan-us-attorney-announces-charges-against-owner-and-attorney-2-billion-unlawful.

[14] Elizabeth Anderson, *Experts, Ideas, and Policy Change: The Russell Sage Foundation and Small Loan Reform, 1910-1940* (March 8, 2006), 16. *See also* David J. Gallert, Walter Stern, and Geoffrey May, *Small Loan Legislation: A History of the Regulation of the Business of Lending Small Sums*, at 89 (1932).

[15] Christopher L. Peterson, *Usury Law, Payday Loans, and Statutory Sleight of Hand: Salience Distortion in American Credit Pricing Limits*, 92 Minn. L. Rev. 1110, 1138-1142 (2008).

Governments to draft model legislation that influenced many state consumer protection statutes.[16] Currently, "[e]very state has a consumer protection law that prohibits deceptive practices, and many prohibit unfair or unconscionable practices as well."[17] At the same time that States have become more active in providing substantive consumer protection, there has been some movement away from State regulation of interest rates. In States with usury limits, a majority of State legislatures have created carve outs for payday loans, permitting licensed businesses to make payday loans with average effective interest rates of over 300 percent per annum.[18]

As discussed in greater detail in the Concurrent Proposal, some states and municipalities have set other limits on payday and similar lending. For example, Washington and Delaware have restricted repeat borrowing by imposing limits on the number of payday loans consumers may obtain. Through 2010 amendments to its payday loan law, Colorado no longer permits short-term single-payment payday loans. Instead, in order to charge fees in excess of the 36 percent APR cap for most other consumer loans, the minimum loan term must be six months.[19] The maximum payday loan amount remains capped at $500, and lenders are permitted to take a

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[16] Dee Pridgen and Richard M. Alderman, *Consumer Protection and the Law* § 2:10 (2015).

[17] *See* Carolyn L. Carter, Nat'l Consumer L. Ctr., *Consumer Protection in the States*, at 5 (2009), *available at* https://www.nclc.org/images/pdf/udap/report_50_states.pdf.

[18] As discussed in further detail within the Concurrent Proposal, there are now 36 States that either have created a carve-out from their general usury cap for payday loans or have no usury caps on consumer loans. The remaining 14 States and the District of Columbia either ban payday loans or have fee or interest rate caps that payday lenders apparently find too low to sustain their business models.

[19] Colo. Rev. Stat. sec. 5-3.1-103. Although loans may be structured in multiple installments of substantially equal payments or a single installment, almost all lenders contract for repayment in monthly or bi-weekly installments. 4 Colo. Code Regs. sec. 902-1, Rule 17(B)1, *available at* http://www.sos.state.co.us/CCR/GenerateRulePdf.do?ruleVersionId=3842; Adm'r of the Colo. Unif. Consumer Credit Code, *Colorado Payday Lending – Demographic and Statistical Information July 2000 Through December 2012*, at 15-16 (2014), *available at* http://www.coloradoattorneygeneral.gov/sites/default/files/contentuploads/cp/ConsumerCreditUnit/UCCC/AnnualReportComposites/DemoStatsInfo/ddlasummary2000-2012.pdf.

series of post-dated checks or payment authorizations to cover each payment under the loan, providing lenders with the same access to borrowers' accounts as a single-payment payday loan. At least 35 Texas municipalities have adopted local ordinances setting business regulations on payday lending (and vehicle title lending).[20]

In the wake of the financial crisis, Congress adopted the Dodd-Frank Act. Title X of the Dodd-Frank Act established the Consumer Financial Protection Bureau to regulate the offering and provision of consumer financial products and services under the Federal consumer financial laws.[21] The Dodd-Frank Act defines Federal consumer financial law to include certain enumerated federal consumer laws, including the TILA, FCRA, FDCPA, EFTA as well as Title X of the Dodd-Frank Act itself. Congress provided the Bureau with a range of enforcement and regulatory tools to fulfill its mission. For example, the Bureau has both supervisory and enforcement authority over all banks, savings associations, and credit unions with over 10 billion dollars in assets, as well as over a variety of nondepository financial companies including payday lenders.[22] Congress also provided the Bureau with a range of rulemaking authorities. Section 1022(b) of the Dodd-Frank Act provides that the Bureau's Director may prescribe rules and issue orders and guidance, as may be necessary or appropriate to enable the Bureau to administer and carry out the purposes and objectives of the Federal consumer financial laws, and to prevent evasion thereof.[23] Section 1031(b) of the Dodd-Frank Act also provides the Bureau with authority to prescribe rules to identify as unlawful unfair, deceptive, or abusive acts or practices

[20] A description of the municipalities is available at Texas Municipal League. An additional 15 Texas municipalities have adopted land use ordinances on payday or vehicle title lending. *City Regulation of Payday and Auto Title Lenders*, Texas Mun. League, http://www.tml.org/payday-updates (last visited May 6, 2016).
[21] 12 U.S.C. 5491(a).
[22] 12 U.S.C. 5514(a), 5515, 5516(a)
[23] 12. U.S.C. 5512(b)(1).

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.[24] Rules issued identifying as unlawful unfair, deceptive, or abusive acts or practices may include requirements for the purpose of preventing such acts or practices.[25] The Bureau also has the authority to prescribe rules to ensure that the features of any consumer financial product or service are fully, accurately, and effectively disclosed to consumers.[26] Finally, the Bureau is also charged with conducting financial education programs to assist consumers in making responsible decisions about financial transactions.[27]

In addition to establishing the Bureau, Title X of the Dodd-Frank Act also prohibits any unfair, deceptive or abusive act or practice in connection with any transaction with a consumer for a consumer financial product or service or the offering of such product or service.[28] The Bureau is charged with conducting examinations of institutions within its jurisdiction for the purpose, among others, of assessing compliance with the requirements of Federal consumer financial laws[29]; this includes assessing compliance with the prohibition on unfair, deceptive and abusive acts and practices. The Bureau is likewise charged with conducting investigations "for the purpose of ascertaining whether any person is or has been engaged in any conduct that is a … violation of any provision of Federal consumer finance law," again including the prohibition on unfair, deceptive, or abusive acts or practices in consumer finance markets. Congress

[24] 12 U.S.C. 5531(b).
[25] 12 U.S.C. 5531(b).
[26] 12 U.S.C. 5532(a).
[27] 12 U.S.C. 5511(b)(1), (c)(1).
[28] 12 U.S.C. 5536(a)(1)(B) ("It shall be unlawful" for any covered person or service provider "to engage in any unfair, deceptive, or abusive act or practice.").
[29] 12 U.S.C. 5515 (b)(1)(A).

specifically provided that "No provision of [Title X] shall be construed as conferring authority on the Bureau to establish a usury limit applicable to an extension of credit offered or made by a covered person to a consumer, unless explicitly authorized by law."[30]

The Bureau is aware that the Concurrent Proposal may not address all potential concerns relating to loans made to consumers facing liquidity shortfalls. Most particularly, while the Bureau has chosen to issue a proposed rule on payday, vehicle title, and certain high-cost installment loans, the Bureau is aware that the Concurrent Proposal does not cover all loans made to consumers facing liquidity shortfalls. Such loans may include other high-cost products, where the risks to consumers from making unaffordable payments may be similar to the types of harms detailed in the Concurrent Proposal. The Bureau is specifically seeking to learn more about the scope, use, underwriting, and impact of such products for purposes of determining what types of Bureau action may be appropriate. To protect consumers from unfair, deceptive, or abusive acts or practices, the Bureau is expressly empowered to use all of its authorities, not just rulemaking. Therefore, in this RFI the Bureau is seeking information about certain consumer lending practices to increase the Bureau's understanding of whether there is a need and basis for potential future efforts, including but not limited to future rulemakings, supervisory examinations, or enforcement investigations.

Similarly, the Bureau is aware that the Concurrent Proposal may not address all potentially harmful practices with regard to products that would be covered by the Concurrent Proposal. Specifically, the proposal focuses on lenders' practices with regard to underwriting

[30] 12 U.S.C. 5517(o). As discussed in greater detail in the Concurrent Proposal, the Bureau believes the prohibition in this section is reasonably interpreted not to prohibit differential regulation such as certain requirements contained in the Bureau's Concurrent Proposal.

and attempts to withdraw loan payments from consumers' bank accounts. The Bureau is thus seeking information on other potentially problematic lender practices and consumer protections concerns regarding products that would be covered by the proposal, in order to determine whether additional Bureau actions are warranted.

Accordingly, the Bureau is interested in learning more about potential consumer protection concerns that may not be addressed by the Bureau's Concurrent Proposal.

II. Potential Consumer Protection Concerns with High-Cost Installment Loans and Open-End Lines of Credit not Covered within the Bureau's Concurrent Proposal

As detailed in the Concurrent Proposal, the Bureau believes that there may be a high likelihood of consumer harm in connection with loans that would be covered by the Concurrent Proposal. As noted above, the Concurrent Proposal generally would cover loans with a term of 45 days or less or loans with multiple advances if each advance is required to be repaid within 45 days. Second, the Concurrent Proposal generally would cover loans with a term greater than 45 days, provided that they (1) have an all-in annual percentage rate greater than 36 percent; and (2) either are repaid directly from the consumer's account or income (*i.e.*, have a "leveraged payment mechanism"[31]) or are secured by the consumer's vehicle.

Thus, the Bureau's Concurrent Proposal would not cover either closed-end installment loans or open-end lines of credit with durations longer than 45 days with no vehicle title or

[31] In the Concurrent Proposal, the Bureau refers to methods by which the lender can obtain payment directly "leveraged payment mechanisms." As provided in proposed § 1041.3(c), in general, a lender or service provider would obtain a leveraged payment mechanism if it has the right to initiate a transfer of money, through any means, from a consumer's account to satisfy an obligation on a loan, except that the lender or service provider does not obtain a leverage payment mechanism by initiating a one-time electronic fund transfer immediately after the consumer authorizes the transfer, has the contractual right to obtain payment directly from the consumer's employer or other source of income, or requires the consumer to repay the loan through a payroll deduction or deduction from another source of income.

leveraged payment mechanisms, regardless of the total cost of credit. The Bureau's Concurrent Proposal also would not cover loans that fall within the proposed exceptions, including non-recourse pawn loans, certain money purchase loans, real-estate secured credit, student loans, and credit card loans. In this RFI, the Bureau refers to loans that fall outside the scope of the proposal as "non-covered products."

The Bureau believes that most loans made to consumers facing liquidity shortfalls would fall within the scope of the proposal. As discussed further in the Concurrent Proposal, these consumers tend to have low or non-existent credit scores and limited access to mainstream sources of credit. The loans that are made to them tend to be at a high interest rate and the Bureau believes that, with most of these loans, lenders generally obtain either a security interest in the borrower's vehicle or the ability to secure repayment directly from the consumer's deposit account or paycheck. On the other hand, the Bureau also has identified a limited number of lenders offering non-covered longer duration loans with high annual percentage rates that lack a vehicle security interest or leveraged payment mechanism and that may raise consumer protection concerns.[32]

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[32] For example, in New Mexico, Idaho, Utah, and Wisconsin The CashStore offers 140 day installment loans of $500 repayable in cash only with a 780 percent APR. *Cash Store APR And Rate Card Information*, Thecashstore.com, https://www.cashstore.com/apr-rate-card (last visited March 24, 2016). In Utah, Mountain Loan Centers, Inc. has offered seven month, 432 percent APR, "signature" loans of $800 with no post-dated check or account access. Mountain Loan Centers, Inc. v. Audra Crizer, Complaint, Fourth Judicial District Court, Utah (March 25, 2015). *See also* Mountain Loan Centers, Inc., *Mountain Loan Centers Get $5000! EZ Approval!*, YouTube (Nov. 7, 2011), https://www.youtube.com/watch?v=PtipWKKOoAo (advertisement stating "we don't hold a check and we don't even care if you have a bank account."). And in Missouri Capital Solutions Investments, Inc. (d/b/a Loan Express Co.) has made five month loans of $100 with no account access and an interest rate of 199 percent APR. Hollins v. Capital Solutions Investments, Inc. 477 S.W.3d 19, 21 (Mo. Ct. App. 2015); Defendant's Statement of Uncontroverted Material Facts Supporting Motion for Summary Judgment, Exhibit B-1, Case, Hollins v. Capital Solutions Investments, Inc., No. 11SL-CC04216 Div. 7, (Mo. Cir. Ct. St. Louis County, 21st Jud. Cir. Nov. 7, 2012).

The Bureau believes that some non-covered products may be different in significant ways from loans that would be covered under the Concurrent Proposal. For example, in bona fide pawn transactions, borrowers grant a possessory security interest in personal property in exchange for a non-recourse loan. Because these loans are non-recourse and because the consumer turns over physical possession of the collateral to the lender at the outset, the Bureau believes the consumer risks posed by these loans are somewhat different from the consumer risks posed by other high-cost products. In a bona fide pawn loan, the borrower has the option to either repay the loan or permit the pawnbroker to retain and sell the pledged collateral at the end of the loan term, relieving the borrower of any additional financial obligation, and the process of surrendering the item may reinforce to the consumer what the consequences will be if the consumer is later unable to repay the pawn loan.

The Bureau is seeking additional information about forms of non-covered credit offered to the types of consumers who use covered loans to deal with cash shortfalls, including the types and volume of installment and open-end credit products that would not be covered by the Concurrent Proposal and are offered in this market segment, their pricing structures, and lenders' practices with regard to marketing, underwriting, servicing and collections. For example, an installment loan or open-end line of credit without a leveraged payment mechanism or vehicle security interest would be beyond the scope of the Bureau's Concurrent Proposal even if the agreement calls for non-amortizing, interest-only payments and without regard to the cost. Such loans could raise substantial consumer protection concerns and might potentially be unfair, deceptive, or abusive depending on the circumstances, including instances where there are long-term financial hardships imposed by such loans or where consumers fail to understand the payment structure of the loans. Since such loans lack vehicle security or leveraged payment mechanisms, the Bureau is also particularly interested in any other mechanisms or practices that lenders may use with regard to such loans to mitigate the risk that consumers would be unable to repay their loans.

Because Congress has charged the Bureau with protecting consumers from unfair, deceptive, or abusive credit practices, the Bureau is interested in learning more about the potential consumer protection concerns that may arise in high-cost loans that are not covered by the Bureau's Concurrent Proposal. The Bureau is also looking ahead to anticipate potential changes in the consumer lending market in response to both the Concurrent Proposal and other regulatory and economic developments. Accordingly, the Bureau seeks public feedback to better understand the prevalence of problematic business practices in this market.

While the Bureau invites all comments relevant to this general topic, the Bureau specifically invites commenters to address the following questions. With respect to these non-covered, high-cost, longer-duration installment loans and open-end lines of credit that lack vehicle security or leveraged payment features:

1. Is there a viable business model in extending high-cost, non-covered loans for terms longer than 45 days without regard to the borrower's ability to repay the loan as scheduled? If so, what are the essential characteristics of this business model or models and what consumer protection concerns, if any, are associated with such practices? For example:
    a. Are there non-covered loan products with particular payment structures that make it viable for a lender to extend loans without regard to the consumer's ability to repay?

   b. Are there non-covered loan products with security or possessory interests in products or documents other than the consumer's vehicle (and without leveraged access to the consumer's transaction account) that make it viable for a lender to extend loans without regard to the consumer's ability to repay?
   c. Are there particular collection practices that make it viable for lenders to make high-cost, non-covered loans without regard to the consumer's ability to repay?
   d. Are there other loan features or practices that make it viable for lenders to extend loans without regard to the consumer's ability to repay?
   e. To the extent there are loans made in categories a through d, how prevalent are such practices? How easy is it for consumers to find and obtain such products? To what extent are these loans leading to injury to consumers? To what extent are consumers aware of the costs and risks of such loans?
   f. Are there changes in technology or the market that make such practices more likely to develop or spread in the future?

2. To the extent that certain business models enable lenders to extend non-covered loans to consumers facing liquidity shortfalls without regard to the consumer's ability to repay, what factors might limit or encourage growth of these business models going forward?
   a. What are the State and Federal regulations that affect their viability and growth?
   b. What effect, if any, would the Bureau's Concurrent Proposal, if finalized, have on their viability and growth?
   c. Are technology, investment, and other market factors affecting their viability and growth?

d. What factors affect competition in these markets, particularly the emergence of new market players and development of new product alternatives?

3. To what extent are consumers able to protect themselves in the selection or use of products identified in response to questions number 1(a) through 1(d)? For example:

   a. What evidence, data, or other information exists with respect to the ability of consumers to shop effectively for products of the type described above and for alternative products that may better serve consumers' needs? Are there currently websites or other digital tools that facilitate effective price comparison among lenders offering products designed to serve the needs of liquidity-constrained borrowers, including comparison of prices, prior to surrendering personal information such as names, email addresses, and bank account numbers? Are consumers in search of a loan to meet a liquidity shortfall able to avail themselves of common internet search engines to effectively shop for loans to meet their needs?

   b. Are new business entrants in the market for high-cost, non-covered loans able to offer loans at a lower cost than those offered by established lenders? What factors enhance or inhibit the ability of new market entrants to do so? Are new business entrants with lower pricing able to effectively raise customer awareness about the benefits of their products in comparison to established covered or non-covered loans?

   c. Are there cognitive, behavioral, or psychological limitations that make it more difficult for consumers facing a liquidity crisis to shop effectively for a non-covered loan to meet their needs?

d. Are there marketing practices or loan features that take advantage of these cognitive, behavioral, or psychological limitations?

e. What evidence, data, or other information exists with respect to the existence and prevalence of any such limitations, marketing practices, or loan features?

III. Potential Consumer Harm from Garnishment Orders, Judgment Liens, or Other Forms of Enhanced Collection

As discussed above, the Bureau's Concurrent Proposal would cover high-cost, longer-term loans that include a leveraged payment mechanism or a vehicle security interest and would generally require lenders making such loans to first reasonably determine whether the consumer has the ability to repay the loan.[33] The Bureau anticipates that, if the Concurrent Proposal is finalized, even where lenders do successfully determine a consumer's ability to repay, some consumers will nonetheless end up defaulting on their loans if, for example, the consumer becomes disabled and is unable to work for a prolonged period of time.

The Bureau's Concurrent Proposal does not address the collection practices of lenders making covered loans. The Bureau anticipates that at a future date it will be issuing a proposal to regulate debt collection practices that will apply to the collection of covered and non-covered loans alike. But the Bureau is concerned that there may be certain practices that are more prevalent with respect to high-cost loans made to consumers facing cash shortfalls and that pose serious risks for such consumers. The Bureau is concerned that these practices could become

[33] Under the Concurrent Proposal a lender with a leveraged payment mechanism generally includes a lender that has the right to initiate a transfer of money from a consumer's transaction account to satisfy an obligation, to obtain payment directly from the consumer's employer or other source of income, or to require the consumer to repay the loan through a payroll deduction or deduction from another source of income.

more prevalent with covered or non-covered high-cost loans if the Bureau finalizes the Concurrent Proposal.

In particular, the Bureau seeks information about possible alternatives to leveraged payment mechanisms and vehicle security interests that may exist currently or develop in response to the Bureau's Concurrent Proposal and market or technology changes. For example, the laws of some States allow creditors to sue borrowers over a debt, and subsequently obtain garnishment orders that permit lenders to seize borrowers' wages, bank account funds, or vehicles under some circumstances. The Federal CCPA and implementing regulations issued by the Department of Labor provide some protection for consumers by limiting the amount of wages that can be garnished during a pay period.[34] Moreover, State and Federal due process guarantees as well as debtor asset exemption statutes also provide borrowers with some protection. However, the Bureau's market monitoring and research suggests that State laws vary widely in this regard and may place burdens on consumers that they may not be prepared to meet and that the consumer financial services market has seen substantial and potentially problematic innovation and change in recent years. For example, a recent case in the Missouri Court of Appeals highlights a lender practice of allowing interest and fees to accrue post-default—as discussed further in part V of this RFI—and then suing and obtaining a garnishment order for

[34] Subject to certain exceptions, the Title III of the Consumer Credit Protection Act protects employees by limiting the amount of earnings that may be garnished in any workweek or pay period to the lesser of 25 percent of disposable earnings or the amount by which disposable earnings are greater than 30 times the federal minimum hourly wage prescribed by Section 6(a) (1) of the Fair Labor Standards Act of 1938. 15 U.S.C. 1673(a). This limit applies regardless of how many garnishment orders an employer receives. The Federal minimum wage is $7.25 per hour effective July 24, 2009. *Wages and Hours Worked: Wage Garnishment*, Department of Labor, https://www.dol.gov/compliance/guide/garnish.htm (last visited May 24, 2016).

amounts that a concurring opinion found “shocks the conscience” such as the following seven consumers that “exemplif[ied] the situation of the class action members in this case”:

> Class member, D.W., took out a $100 loan from CSI. A judgment was entered against him for $705.18; the garnishment is still pending. So far, $3.174.81 has been collected, and a balance of $4.105.77 remains
>
> Class member, S.S., took out an $80 loan from CSI. A judgment was entered against her for $2.137.68; the garnishment is still pending. So far, $5.346.41 has been collected, and a balance of $19,643.48 remains.
>
> Class member, C.R., took out a $155 loan from CSI. A judgment was entered against her for $1.686.93; the garnishment is still pending. So far, $9.566.15 has been collected, and a balance of $2.162.07 remains.
>
> Class member, C.N., took out a $155 loan from CSI. A judgment was entered against him for $1.627.44. There is now a lien on C.N.'s property.
>
> Class member, S.L., took out a $360 loan from CSI. A judgment was entered against her for $1.305.17; the garnishment is still pending. So far, $6.021.80 has been collected, and a balance of $2.182.90 remains.
>
> Class member, F.H., took out a $100 loan from CSI. A judgment was entered against her for $380.82; the garnishment is still pending. So far, $3.935.54 has been collected, and a balance of $707.98 remains.

Class member, B.D., took out a $200 loan from CSI. A judgment was entered against her for $853.05; the garnishment is still pending. So far, $4.692.31 has been collected, and a balance of $1.531.57 remains.[35]

The Bureau believes that business practices of this nature, which might be referred to as enhanced collections practices, may raise substantial consumer protection concerns. Therefore, the Bureau requests information about methods creditors may use in connection with loans covered under the Concurrent Proposal or with non-covered loans to seize wages, funds, vehicles or other forms of personal property from borrowers that face liquidity crisis and obtain loans outside mainstream credit systems.

4. Are there practices in obtaining or using wage garnishment orders to collect covered or non-covered loans that raise consumer protection concerns? If so, what data, evidence, or other information tends to show these concerns exist or are likely to emerge in the future?
5. Are there practices in obtaining or using attachment or garnishment orders to seize funds from deposit accounts, prepaid cards, or other consumer assets to collect covered or non-covered loans that raise consumer protection concerns? If so, what data, evidence, or other information tends to show these concerns exist or are likely to emerge in the future?
6. Are there practices in obtaining or using judgment liens on vehicles or other consumer goods that raise consumer protection concerns? If so, what data, evidence,

[35] *Hollins v. Capital Sols. Investments, Inc.*, 477 S.W.3d at 27.

or other information tends to show these concerns exist or are likely to emerge in the future?

7. With respect to each of these questions, what is the prevalence of these practices in the current market? And, can the Bureau reasonably anticipate that these practices would increase or decrease if the Bureau were to finalize a rule along the lines of the Bureau's Concurrent Proposal? If so, why?
8. Do particular Federal, State, or local laws affect consumer protection concerns associated with enhanced collection practices that would not be addressed by the Concurrent Proposal?

IV. Potential Consumer Harm from Loan Churning, Prepayment Penalties, and Slowly Amortizing Credit in Covered and Non-Covered High-Cost Credit

The Bureau's research into high-cost installment loans indicates that a substantial percentage of consumers refinance their loans during the term of their loans. Under the Concurrent Proposal, where consumers reborrow because their loan payments have proven to be unaffordable, a presumption would apply that a new loan with similar payment terms would likewise be unaffordable. However, that presumption would not apply in circumstances in which there is not an indication of financial distress or evidence that the refinancing was masking unaffordability of the outstanding loan.

The Bureau is concerned, however, that under certain circumstances lenders may have an incentive to encourage borrowers to refinance their loans in a way that creates extended patterns of payment that do not serve consumers' interests. These patterns of extended repayment may be caused or exacerbated by marketing or business practices that tend to frustrate the ability of borrowers to understand their loan terms. For example, some lenders may structure their loans such that a refinancing generates additional revenue for the lender, beyond the incremental finance charges, as a result of prepayment penalties, rebates calculated under the Rule of 78s, new origination fees, or new fees to purchase ancillary products associated with the refinancing. Moreover, because, in some high-cost loans, repayment of loan principal does not occur until the final few payments of the borrower's payment schedule, refinancing can deprive borrowers of the opportunity to make substantial progress in escaping their debts. The Bureau seeks to better understand the use of incentives and sales practices that might encourage borrowers to refinance high-cost loans, including practices that encourage refinancing after the consumer has made multiple payments allocated to interest and fees, but before making substantial progress reducing the loan principal.

The Bureau also requests information about the nature of consumer protection concerns associated with the imposition of prepayment penalties in longer-duration, high-cost covered loans and also whether comparable concerns exist in non-covered loan products. In the Concurrent Proposal, the Bureau has noted that penalizing consumers for prepaying loans with durations of less than 24 months is likely to be inconsistent with consumers' expectations for their loans and may prevent consumers from repaying debts that they otherwise would be able to retire. Accordingly the proposal would prohibit lenders from imposing a prepayment penalty in connection with certain covered longer duration loans that are made under a conditional exemption from the proposed ability-to-repay requirements. While the Bureau believes there is a basis for proposing to prohibit prepayment penalties from conditionally exempt covered loans, the Bureau requests further information about whether consumer protection concerns may exist more generally with respect to prepayment penalties incorporated into longer duration covered and non-covered loans marketed to consumers facing liquidity crises. In particular, the Bureau seeks to explore whether there may be informal methods of imposing prepayment penalties, such as denial of a promised rebate, which could make it more costly for borrowers in either covered or non-covered longer duration high-cost loans to repay those loans. The Bureau also seeks to obtain more information about the prevalence of prepayment penalties and potential consumer protection concerns associated with non-covered, longer duration, high-cost loans.

The Bureau is also concerned that, for borrowers facing cash shortfalls that lack access to the mainstream credit system, loans could be structured in such a way that even if borrowers have the ability to make their payments, doing so could cause borrowers to suffer undue, long-term hardships. These hardships could be caused or exacerbated by marketing, business practices, or contract terms that tend to frustrate the ability of borrowers to understand their payment obligations or otherwise interfere with their ability to protect their interests. For example, a lender might aggressively market a payment-option, adjustable-rate installment loan that allows borrowers to temporarily make negatively amortizing payments until a later recast date. After the recast date, borrowers facing larger, adjusted installment payment obligations could be vulnerable to payment shock because their income may be insufficient to cover the adjusted payment along with their other obligations and basic living expenses at that time.

Similarly, a lender might offer a fully amortizing loan with a sufficiently long term and high interest rate and apply most payments to interest for a large portion of the loan’s life. Consider, for example, a $500 consumer loan with a 450 percent APR and a two-year duration payable in equal monthly installments. This borrower would face 24 monthly payments of about $188 each. After the first three months, a successfully repaying borrower would have repaid more than the initial amount financed, but reduced that balance by less than 50 cents. After 18 of 24 payments, the successfully repaying borrower would still owe over $400 of the $500 originally borrowed. Under the Bureau's Concurrent Proposal, if the loan included a leveraged payment mechanism or vehicle security interest, the lender would be required to reach a reasonable determination of the borrower's ability to repay each $188 monthly payment. On the other hand, a lender making this loan without a leveraged payment mechanism or vehicle security interest would not be subject to the proposed ability-to-repay requirement. In either case, the Bureau requests information about whether loans along the lines of these or similar examples currently exist or could be anticipated to evolve if the Bureau finalizes the Concurrent Proposal.

With respect to these potential concerns:

9. Are there marketing or other business practices with respect to lender incentives or encouragement of loan refinancing that raise consumer protection concerns?
    a. If so, what specific business practices or contractual terms are associated with consumer harm?
    b. What data, evidence, or other information tends to show the current or likely future prevalence of consumer harm associated with these practices?
10. Are there circumstances in which the imposition of prepayment penalties raises consumer protection concerns in non-covered loans marketed to consumers facing a liquidity crisis?
    a. If so, what specific contractual terms or business activities are associated with consumer harm?
    b. What evidence, data, or other information tends to show the current or likely future prevalence of consumer harm associated with prepayment penalties in non-covered loans?

11. Are there methods of imposing informal penalties for prepayment, such as withholding a promised rebate, which raise consumer protection concerns in either covered or non-covered loans marketed to consumers facing liquidity crisis?
    a. If so, specifically what contractual terms or business activities are associated with consumer harm?
    b. What evidence, data, or other information tends to show the current or likely future prevalence of consumer harm associated with such informal penalties for prepayment.
12. Are there circumstances in which excessively slow amortization of high-cost installment loans or open-end lines of credit raise consumer protection concerns?
    a. If so, what specific contractual terms or business activities are associated with consumer harm?
    b. To what extent are consumers aware of the costs and risks of such loans? Are there other factors that might frustrate the ability of consumers to protect their interests in using such loans?
    c. Is there consumer harm from loan payment schedules where the bulk of repayment allocated to principal occurs in the final few payments of an even-payment loan? What specific criteria should the Bureau consider in identifying such consumer harm, if any?
    d. What data, evidence, or other information tends to show the current or likely future prevalence of consumer harm, if any, associated with payment schedules of this type?

e. What evidence exists that consumers who make an even-payment understand that the lower principal is not being evenly paid down?

13. With respect to each of these questions, what is the prevalence of these practices in the current market? And, can the Bureau reasonably anticipate that these practices would increase or decrease if the Bureau were to issue a final rule along the lines of the Bureau's notice of proposed rulemaking? If so, why?

V. Potential Consumer Harm From Default Interest Rates, Late Payment Penalties, Teaser Rate Loans, or Other Back-End Pricing Practices

In the Bureau's experience, post-delinquency or default revenue terms such as late fees, default interest rates, or other contractual remedies can lead to consumer protection concerns. For example, in 2009 Congress adopted the Credit Card Accountability, Responsibility, and Disclosure Act (CARD Act) to curb excessive or unfair late fees by generally requiring card issuers to refrain from imposing a late fee unless the creditor has adopted reasonable policies and procedures to ensure that consumers are given at least 21 days to pay their bill and by limiting late fees to an amount that is "reasonable and proportional" to the violation of the account terms in question.[36]

Unlike credit card markets, there are currently no broadly applicable Federal rules comparable to the CARD Act's late payment provisions for consumers of high-cost payday, vehicle title, installment loans, or open-end lines of credit. The Bureau seeks information about whether post-delinquency or default revenue terms such as late fees, default interest rates, or

[36] 15 U.S.C. 1665d, 1666b. To assist credit card issuers in complying with their CARD Act obligations Regulation Z establishes a safe harbor benchmark for reasonable and proportional penalty fees. 12 CFR 1026.52(b)(1)(ii).

other back-end pricing practices may create a mismatch between borrowers' expectations and their actual experiences with their loans over time. For example, some consumers may have the ability to repay at origination but changes in their circumstances such as illness, loss of employment, family disruptions such as divorce or separation, or unexpected expenses could nevertheless lead to delinquency or default. Similarly, some consumers may fall into arrears due to inattention to detail, miscommunication, payment system delay, or clerical error. The Bureau seeks to learn whether revenue generation provisions imposed on consumers in these and similar situations may raise consumer protection concerns.[37] The Bureau is not, however, soliciting information in this RFI on the examples of such practices that would constitute evasions of the Concurrent Proposal, as described in proposed § 1041.19 and its commentary.

The Bureau is also aware that teaser rate products can, under some circumstances, give rise to consumer protection concerns. With a teaser rate, the initial interest rate and payment may remain in effect for a limited period of time. For some such loans, the initial rate and payment can vary considerably from the rate and payment obligations later on. Teaser rate loans can lead to unexpected "payment shock" when borrowers face payments associated with a recast interest rate that increases borrower payments.[38] The Bureau seeks to learn whether covered or non-covered high-cost loans made to consumers facing liquidity crisis are being offered with teaser rate features. If so, the Bureau would like to obtain information about whether the use of teaser rate loan terms in this market may create risks to consumers.

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[37] For example, Mountain Loan Centers' seven-month, 432 percent APR "signature" loans of $800 include a default interest rate of 600 percent imposed when any installment payment is more than three days past due. Complaint, *Mountain Loan Centers, Inc. v. Audra Crizer*, No. 159401338.

[38] Federal Reserve Board of Governors, *Consumer Handbook on Adjustable-Rate Mortgages*, *available at* http://files.consumerfinance.gov/f/201204_CFPB_ARMs-brochure.pdf.

With respect to these issues:

14. Other than circumstances identified in the Concurrent Proposal, as discussed above, under what circumstances do lenders' use of post-delinquency or default revenue terms such as late fees, default interest rates, or other contractual provisions or remedies in either covered or non-covered loans marketed to consumers facing liquidity crisis raise consumer protection concerns?
    a. To what extent do lenders making covered loans or non-covered, high-cost loans to consumers facing cash shortfalls consider post-delinquency or default revenue generating terms such as late fees, default interest rates, or other contractual provisions or remedies when they perform underwriting? If they do so, how do they do it?
    b. If lenders' current underwriting practices do not include consideration of the borrower's ability to repay post-delinquency or default revenue generating terms, what would be a reasonable method of underwriting for this factor?
    c. What evidence, data, or other information shows the current or likely future prevalence of consumer harm, if any, associated with post-delinquency or default revenue terms in covered or non-covered high-cost consumer loans?
15. Are there circumstances in which the use of teaser rates which reset to high-cost loans made to consumers facing liquidity crisis raise consumer protection concerns?
    a. If so, what specific contractual terms or business activities are associated with consumer harm?

b. Do teaser rate products, to the extent any exist, create a mismatch between borrowers' repayment expectations and their actual experiences in either covered or non-covered loans?

c. If lenders offer teaser rate products in loans to consumers facing liquidity needs, do they consider recast interest rates in underwriting? If they do so, how do they do it?

d. What data, evidence, or other information tends to show the current or likely future prevalence of consumer harm, if any, associated with adjustable interest rates products in covered or non-covered high-cost loans?

16. Are there other circumstances in which "back-end" pricing impedes the ability of consumers to afford or to understand and compare credit options marketed to consumers facing liquidity crisis in a way that raises consumer protection concerns or impedes their ability to understand or anticipate the full cost of the loan to that consumer?

a. If so, what specific back-end pricing fees, contractual terms, or other business activities exist in the marketplace or are likely to evolve in the future?

b. If so, what back-end pricing fees, contractual terms, or other business activities are associated with consumer harm?

c. What data, evidence, or other information tends to show the current or likely future prevalence of consumer harm, if any, associated with such back-end pricing in covered or non-covered high-cost loans?

VI. Potential Consumer Harm from Ancillary Products

In the Bureau's experience, the marketing of ancillary products, sometimes called "add-ons," can lead to consumer protection concerns.[39] For instance, the Bureau is concerned that some creditors may engage in sales and marketing practices that raise consumer protection concerns with respect to the sale of credit insurance, debt suspension or debt cancellation agreements, and other credit related ancillary products. For example, in the past four years the Bureau has announced numerous different public enforcement actions associated with illegal marketing of add-ons that led to approximately $2.4 billion in consumer redress, refunds, and forgiven debts. In these ancillary product matters, the Bureau, in some instances working in cooperation with other Federal or State regulators, imposed over $128 million in civil money penalties. Among other practices and concerns, the Bureau has found or alleged that some companies offering ancillary products failed to accurately describe those products, offered products that provided little or no benefit to consumers without disclosing this fact, stated or implied that ancillary products were required as a condition of borrowing when they were not, and billed consumers for add-on products without permission.[40] For both covered and non-covered loans, the Bureau seeks to learn more about the marketing of ancillary products to consumers facing liquidity crisis and borrowing outside the mainstream credit system.

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[39] Examples of ancillary products include credit insurance, debt suspension or debt cancellation agreements, and identity theft protection plans.

[40] *See, e.g.*, Citibank, N.A., CFPB No. 2015-CFPB-0015 (July 21, 2015), *available at* http://files.consumerfinance.gov/f/201507_cfpb_consent-order-citibank-na-department-stores-national-bank-and-citicorp-credit-services-inc-usa.pdf; Am. Express Centurion Bank, CFPB No. 2012-CFPB-0002 (Oct. 1, 2012), *available at* http://files.consumerfinance.gov/f/2012-CFPB-0002-American-Express-Centurion-Consent-Order.pdf; Discover Bank, CFPB No. 2012-CFPB-0005 (Sept. 24, 2012), *available at* http://files.consumerfinance.gov/f/201209_cfpb_consent_order_0005.pdf.

Moreover, ancillary products can affect the affordability of consumer credit. The Bureau's Concurrent Proposal includes the cost of credit insurance, debt suspension agreements, and credit-related ancillary products sold in originating a loan in calculating the total cost of credit for purposes of determining whether a longer duration loan is covered by the proposed rule. The Bureau's Concurrent Proposal also would require that creditors consider the cost of these products in determining borrowers' ability to repay. Nevertheless, the Bureau seeks to obtain more information about the prevalence and affordability of add-on products in non-covered loans made to consumers facing liquidity crisis.

With respect to these potential issues:

17. Aside from affordability, are there consumer protection concerns arising out of the marketing of ancillary products in covered payday, vehicle title, or similar loans? If so, what evidence, data, or other information shows the current or likely future prevalence of these concerns?
18. To what extent do lenders making non-covered, high-cost loans consider the cost of ancillary products in determining whether borrowers have the ability to repay?
    a. If they do so, how do they do it?
    b. If lenders do not currently consider the affordability of such products, what would be a reasonable method of underwriting for this component of the loan?
    c. What evidence, data, or other information shows the current or likely future prevalence of unaffordable ancillary products in non-covered loans?
19. Are there other consumer protection concerns associated with the marketing or use of ancillary products in combination with covered or non-covered, high-cost credit? If so,

what evidence, data, or other information shows the current or likely future prevalence of such consumer protection concerns?

VII. Potential Market Evolution and Other Topics Not Identified

The market for high-cost consumer credit is currently in transition due to regulatory and technological change. Many lenders are developing new technological channels for delivering consumer financial products to the market place. State, local and tribal laws are continually evolving in response to these forces. The Bureau seeks to apprise itself of current and expected changes in the marketplace for high-cost loans that could present consumer protection concerns. Moreover, the Bureau is mindful that, in the past, markets supplying credit to borrowers facing cash shortfalls have evolved in response to regulatory action, thereby causing the government considerable difficulty in addressing some consumer protection issues.

Bearing in mind the potential for future evolution in this market and in lender practices:

20. Are there other marketing, origination, underwriting, or collection practices that currently exist or, if the Bureau issues a final rule along the lines of the Concurrent Proposal, are likely to emerge, that pose risk to consumers and may warrant Bureau regulatory, supervisory, enforcement, or consumer educational action?
21. Are there arrangements with brokers, credit service organizations, or other intermediaries in the marketing, origination, underwriting, collection or information-sharing practices associated with non-covered high-cost credit markets that pose risk to consumers and may warrant Bureau regulatory, supervisory, enforcement, or consumer educational action?
22. If so, what specific actions or policies should the Bureau consider in addressing such consumer harm? Other than usury limits applicable to an extension of credit, which

Congress has not authorized the Bureau to establish, are there examples of existing law, regulations, or other policy interventions that the Bureau should consider?

[THIS SIGNATURE PAGE PERTAINS TO THE REQUEST FOR INFORMATION TITLED "PAYDAY LOANS, VEHICLE TITLE LOANS, INSTALLMENT LOANS AND OPEN-END LINES OF CREDIT"]

Dated: June 1, 2016.

Richard Cordray

Richard Cordray,

Director, Bureau of Consumer Financial Protection.