May 15, 2019

Kathy Kraninger, Director
Consumer Financial Protection Bureau
1700 G St. NW
Washington, DC 20552

RE: Payday, Vehicle Title, and Certain High Cost Installment Loan [Docket No. CFPB-2019-0006]

Dear Director Kraninger:

Consumer Reports appreciates the opportunity to comment on the Consumer Financial Protection Bureau's (Bureau) proposal to rescind the 2017 Final Rule's underwriting provisions for payday, auto-title and short-term installment loans.

We urge you to preserve the 2017 Final Rule, which was carefully developed after five years of research, market monitoring, input from small businesses, consumer complaint handling, and over one million public comments. There is simply no credible rationale for rescinding basic underwriting requirements designed to protect consumers from longstanding and well-documented abuses perpetrated by certain risky actors in the short-term lending industry.

The Bureau has not demonstrated a reasonable basis for this drastic reversal of policy - and if the proposal in this docket is implemented, it will gravely harm consumers.

General Comments

Today, all too many families struggle to make ends meet. According to recent U.S. Census data, 43 million people live in poverty – and one in five children are poor.[1] The Federal Reserve has found that four in ten U.S. households do not have $400 saved up for an emergency expense.[2]

Furthermore, communities of color continue to experience higher rates of poverty and scarcity. Approximately one in four Black households and one in five Latino households

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[1] U.S. DEP'T OF COMMERCE, U.S. CENSUS BUREAU, INCOME AND POVERTY IN THE UNITED STATES: 2015 12-14 (2016), *available at* http://www.census.gov/content/dam/Census/library/publications/2016/demo/p60-256.pdf (19.5% poverty rate for children).
[2] FED. RESERVE BD., REPORT ON THE ECONOMIC WELL-BEING OF U.S. HOUSEHOLDS IN 2017 2 (2018), *available at* https://www.federalreserve.gov/publications/files/2017-report-economic-well-being-us-households-201805.pdf.

are living in poverty, compared with just under one in ten White households.[3] In fact, racial and ethnic wealth gaps are at or about their highest levels observed in the 30 years for which we have data.[4]

For households barely making it from paycheck to paycheck, the most immediate need they have is for a little help: a safety net. Recent data shows that in 2015, over nine million people came out of poverty thanks to low-income tax credits; 4.5 million came out of poverty thanks to SNAP benefits for food; and 2.5 million came out of poverty thanks to housing subsidies.[5] Child support and school lunch programs also helped more than 2.5 million people combined avoid poverty in 2015.[6]

High-cost lenders may claim that they are providing a service or "safety net" to struggling families, but their business models rely on keeping people in debt, not helping them build assets. These lenders have made profits based on predatory business practices that endanger consumers' economic security.

Data on payday loan borrowers suggests that the typical borrower is working and has some baseline level of assets, but not enough to cover monthly expenses. According to past research from the Bureau, payday loan borrowers tend to have low or moderate incomes and most are working at least part-time.[7] One in four also have access to public assistance or retirement benefits.[8] Pew research has also found that payday loan borrowers are largely female, white, and between ages 25-44.[9] However, certain demographic traits are more predictive of loan usage. Renters are slightly more likely to turn to payday loans than homeowners; those who are separated or divorced are twice as likely as those with another marital status to have payday loans; and those who are Black are also twice as likely as people of other ethnicities to have payday loans.[10] Payday lenders tend to concentrate more in communities of color, even when controlling for income.[11]

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[3] *See* U.S. DEP'T OF COMMERCE, U.S. CENSUS BUREAU, INCOME AND POVERTY IN THE UNITED STATES: 2015 12-14 (2016), *available at* http://www.census.gov/content/dam/Census/library/publications/2016/demo/p60-256.pdf (24.1% rate for Black households; 21.4% rate for Hispanic households; 9.1% rate for White households).

[4] Pew Research Ctr., Wealth Inequality Has Widened Along Racial, Ethnic Lines Since End of Great Recession (Dec. 12, 2014), *available at* http://www.pewresearch.org/fact-tank/2014/12/12/racial-wealth-gaps-great-recession/ (fact sheet analyzing data from Survey of Consumer Finances).

[5] *See* U.S. DEP'T OF COMMERCE, U.S. CENSUS BUREAU, THE SUPPLEMENTAL POVERTY MEASURE: 2015 13 (2016), *available at* http://www.census.gov/content/dam/Census/library/publications/2016/demo/p60-258.pdf (Table 5b).

[6] *See id.* (1.38 million benefitted from child support, and 1.26 million benefitted from school lunch programs).

[7] *See* CONSUMER FIN. PROTECTION BUREAU, PAYDAY LOANS AND DEPOSIT ADVANCE PRODUCTS 18 (2013), *available at* http://files.consumerfinance.gov/f/201304_cfpb_payday-dap-whitepaper.pdf (finding median income of $22,476, with three quarters of all customers working full- or part-time).

[8] *See id.*

[9] PEW CHARITABLE TRUSTS, PAYDAY LENDING IN AMERICA: WHO BORROWS, WHERE THEY BORROW, AND WHY 8 (2012), *available at* http://www.pewtrusts.org/~/media/legacy/uploadedfiles/pcs_assets/2012/pewpaydaylendingreportpdf.pdf.

[10] *Id.* at 9.

[11] *See, e.g.*, CTR. FOR RESPONSIBLE LENDING, PERFECT STORM: PAYDAY LENDERS HARM FLORIDA CONSUMERS DESPITE STATE LAW 6-8 (2016), *available at* http://www.responsiblelending.org/sites/default/files/nodes/files/research-publication/crl_perfect_storm_florida_mar2016.pdf (Florida payday lenders are more highly concentrated in

Once a person takes out that first high-cost loan, odds are high they'll come up short and end up with more loans. Repeat lending is not an anomaly – it's a feature of the payday lending business model. The Center for Responsible Lending estimates that roughly three-quarters of all payday loan volume comes from "loan churn," defined as borrowing a loan and then having to borrow again within two weeks.[12] The Bureau's own research has uncovered high levels of repeat borrowing. Four out of every five payday loan borrowers – or 80% – have to reborrow from the same lender within 14 days, and almost 90% end up reborrowing within 60 days.[13] More likely than not, a person with a loan will end up taking out ten loans in a sequence.[14]

Many people may be forced to borrow money from friends or family to end the cycle. In a 2013 survey, Pew found that four in ten people with payday loans ended up using friends, family, tax credits – other methods they could have used in the first place – to get out of their payday borrowing cycle at least once.[15] Others without a support network may be forced into bankruptcy. If that first loan isn't affordable, more loans simply make the problem worse.

Short-term auto-title loans are equally troubling, and come with the added risk of losing one's car. The Bureau's research on auto-title lending from 2016 showed that approximately one in every five people who takes out an auto-title loan with a balloon payment ends up carless due to eventual repossession.[16] Losing a car could put many working Americans at risk of losing a job, or struggling to meet other obligations that require a car for transportation.

The Bureau has also found troubling trends with payday installment and auto-title installment loans. Though there are fewer car repossessions associated with auto-title

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communities of color, even when accounting for income); HOWARD UNIV., CTR., ON RACE & WEALTH, THE ECONOMIC IMPACT OF PAYDAY LENDING IN ECONOMICALLY VULNERABLE COMMUNITIES 4 (2014), *available at* https://consumermediallc.files.wordpress.com/2015/01/crw-report-on-payday-lending-in-the-srabc-states.pdf (examining trends in Alabama, Florida, Louisiana and Mississippi); CTR. FOR RESPONSIBLE LENDING, PREDATORY PROFILING: THE ROLE OF RACE AND ETHNICITY IN THE LOCATION OF PAYDAY LENDERS IN CALIFORNIA 2 (2009), *available at* http://www.responsiblelending.org/california/ca-payday/research-analysis/predatory-profiling.pdf (payday lenders nearly eight times as concentrated in Black and Latino neighborhoods compared with White neighborhoods).

[12] CTR. FOR RESPONSIBLE LENDING, THE STATE OF LENDING IN AMERICA AND ITS IMPACT ON U.S. HOUSEHOLDS: PAYDAY LENDING ABUSES AND PREDATORY PRACTICES 3 (2013), *available at* http://www.responsiblelending.org/sites/default/files/uploads/10-payday-loans.pdf.

[13] CONSUMER FIN. PROTECTION BUREAU, SUPPLEMENTAL FINDINGS ON PAYDAY, PAYDAY INSTALLMENT, AND VEHICLE TITLE LOANS, AND DEPOSIT ADVANCE PRODUCTS 111 (2016), *available at* http://www.consumerfinance.gov/data-research/research-reports/supplemental-findings-payday-payday-installment-and-vehicle-title-loans-and-deposit-advance-products/.

[14] *Id.* (55% of loans end up in a loan sequence of 10 or more).

[15] PEW CHARITABLE TRUSTS, PAYDAY LENDING IN AMERICA: HOW BORROWERS CHOOSE AND REPAY PAYDAY LOANS 36 (2013), *available at* http://www.pewtrusts.org/~/media/assets/2013/02/20/pew_choosing_borrowing_payday_feb2013-(1).pdf (41% of borrowers surveyed used some other method to get out of debt).

[16] CONSUMER FIN. PROTECTION BUREAU, SINGLE-PAYMENT VEHICLE TITLE LENDING 4 (2016), *available at* http://files.consumerfinance.gov/f/documents/201605_cfpb_single-payment-vehicle-title-lending.pdf.

installment loans compared with single-payment options, 22% still end up in default.[17] For payday installment loans, 24% end up in default – and for consumers stuck in a series of online payday installment loans, 55% end up in default.[18] A default rate of *more than half* should give anyone serious pause.

To date, high-cost lending practices have flourished wherever regulation is lax. However, 15 states and the District of Columbia have said no to high-cost loans – and their efforts have saved billions of dollars for their residents.[19] In New York, where state law has long imposed a 25% criminal usury rate cap, residents have been spared approximately $790 million in fees that lenders would have otherwise charged on high-cost loans.[20]

In states that do authorize high-cost payday, installment and auto-title loans, such as California, reform efforts are often undercut by industry pressure to keep high-cost lending only lightly regulated. Lawmakers in the state have attempted to encourage smarter installment lending through the Pilot Program for Increased Access to Responsible Small Dollar Loans, which requires ability-to-repay underwriting for all program loans, limits repeat refinancing, and sets tiered interest rate and fee caps resulting in approximate APRs of 40-70%.[21] However, because installment loans above $2500 have no rate caps[22] or meaningful underwriting requirements, most lenders feel no incentive to make loans under the pilot program.

This year, the California Legislature is considering legislation[23] to impose rate caps on loans above $2500 - in part due to a recent California Supreme Court decision which held that high-cost loans not otherwise subject to rate regulation in California can nonetheless be "unconscionable" and therefore voidable as a matter of state contract law.[24] The bill's authors have stated that "high default rates and unconscionable interest rates have caused turmoil in the regulatory environment."[25]

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[17] CONSUMER FIN. PROTECTION BUREAU, SUPPLEMENTAL FINDINGS, at 22.
[18] *Id.*
[19] CTR. FOR RESPONSIBLE LENDING, STATES WITHOUT PAYDAY AND CAR-TITLE LENDING SAVE $5 BILLION IN FEES ANNUALLY 1 (2016), *available at* http://www.responsiblelending.org/sites/default/files/nodes/files/research-publication/crl_payday_fee_savings_jun2016.pdf.
[20] *Id.* at 2.
[21] The first version of the pilot program, the Pilot Program for Affordable Credit-Building Opportunities (SB 1146, enacted in 2010), was later replaced with the current pilot (SB 318, enacted in 2013) (codified at CAL. FIN. CODE §§ 22365-22381). The pilot was most recently amended to allow program licensees to make loans of up to $7500 (AB 237, enacted 2018).
[22] CAL. FIN. CODE §§ 22303-04 (2016) (exempting loans above $2500 from rate regulation).
[23] Fair Access to Credit Act, AB 539, 2019-2020 Reg. Sess. (Cal. 2019).
[24] De La Torre v. CashCall, Inc., Op. No. S241434 (filed Aug. 13, 2018) (answering certified question from Ninth Circuit: "Can interest rates on consumer loans of $2500 or more governed by California Finance Code § 22303, render the loans unconscionable under California Finance Code § 22302?," De La Torre v. CashCall Inc., 854 F.3d 1082, 1085 (9th Cir. 2017)).
[25] Bill Analysis at 3, AB 539, Assem. Comm. on Banking & Finance, 2019-2020 Reg. Sess. (Cal. 2019), *available at* http://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=201920200AB539.

Specific Comments on the Bureau's Proposal

It is profoundly troubling that the Bureau's current proposal "reconsiders" its own prior rationale for the 2017 rule primarily on the basis that implementing the 2017 rule would result in fewer payday and auto-title storefronts, or that it would somehow be at odds with the existence of some states' laws that allow high-cost loans.[26] By framing the issue in terms of "consumer choice" and "access to credit," the Bureau effectively ignores the troves of research and data points the Bureau pointed to in for the 2017 final rule, showing that high-cost short-term lenders routinely put consumers into debts they cannot afford and which cause severe financial harms.

By the time the Bureau issued the original proposed rule in 2016, it had processed consumer complaints on payday loans;[27] taken enforcement actions against payday lenders;[28] held field hearings;[29] convened a small business panel to produce a rulemaking framework;[30] and conducted analyses of market trends to demonstrate that a rule was necessary to protect consumers from abuses in the high-cost payday, installment, and auto-title lending markets. In an analysis of over 2.5 million loan records, the Bureau found that roughly one-quarter of all payday and auto-title installment loans default, and the likelihood that a consumer will default increases as their payment-to-income ratio increases.[31] In another study of nearly 3.5 million auto-title loan records, the Bureau found that one in three consumers who took out a single-payment auto title loan experienced default and one in five had their vehicle repossessed because they were unable to pay.[32]

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[26] *See* 84 Feg. Reg. 4252, 4264 (proposed Feb. 14, 2019) ("In short, the Mandatory Underwriting Provisions of the Rule would impose substantial burdens on industry, significantly constrain lenders' offering of products, and substantially restrict consumer choice and access to credit. All this would occur notwithstanding the judgments that the various States has made to permit lenders to offer and consumers to choose such products subject to certain limitations.").

[27] *See, e.g.*, CONSUMER FIN. PROTECTION BUREAU, MONTHLY COMPLAINT REPORT: DECEMBER 2016 5 (2016), *available at* https://files.consumerfinance.gov/f/documents/201612_cfpb_MonthlyComplaintReport.pdf (showing approximately 16,000 payday loan complaints filed through 2016).

[28] *See, e.g.*, Press Release, CFPB Orders EZCORP to Pay $10 Million for Illegal Debt Collection Tactics (Dec. 15, 2015), https://www.consumerfinance.gov/about-us/newsroom/cfpb-orders-ezcorp-to-pay-10-million-for-illegal-debt-collection-tactics/; Press Release, CFPB Sues Offshore Payday Lender (Aug. 4, 2015), https://www.consumerfinance.gov/about-us/newsroom/cfpb-sues-offshore-payday-lender/; Press Release, CFPB Takes Action Against ACE Cash Express for Pushing Payday Borrowers Into Cycle of Debt (July 10, 2014), https://www.consumerfinance.gov/about-us/newsroom/cfpb-takes-action-against-ace-cash-express-for-pushing-payday-borrowers-into-cycle-of-debt/.

[29] *See, e.g.*, Consumer. Fin. Protection Bureau, Live from Richmond! (Mar. 26, 2015), https://www.consumerfinance.gov/about-us/blog/live-from-richmond/ (field hearing on payday loans); Consumer. Fin. Protection Bureau , Field hearing on payday loans in Nashville, TN (Mar. 26, 2013), https://www.consumerfinance.gov/about-us/events/archive-past-events/field-hearing-payday-loans-nashville-tn/.

[30] *See* FINAL REPORT OF THE SMALL BUSINESS REVIEW PANEL ON CFPB'S RULEMAKING PANEL ON PAYDAY, VEHICLE TITLE, AND SIMILAR LOANS (2015), *available at* https://files.consumerfinance.gov/f/documents/3a_-_SBREFA_Panel_-_CFPB_Payday_Rulemaking_-_Report.pdf.

[31] CONSUMER FIN. PROTECTION BUREAU, SUPPLEMENTAL FINDINGS, at 8-9.

[32] CONSUMER FIN. PROTECTION BUREAU, SINGLE-PAYMENT VEHICLE TITLE LENDING 4 (2016), *available at* https://files.consumerfinance.gov/f/documents/201605_cfpb_single-payment-vehicle-title-lending.pdf.

The Bureau based its 2017 final rule on data and analysis from a wide range of sources, including industry reports[33] as well as studies from the Federal Reserve,[34] FDIC,[35] and Pew Charitable Trusts[36] among others, to identify common practices in the high-cost short term lending markets and their impact on consumers. The Bureau also noted that by using its supervisory and market monitoring tools, it uncovered evidence that lenders often encourage consumers to immediately reborrow, even when consumers have demonstrated that they are unable to repay the loans they've already received.[37] The Bureau concluded that lenders that pushed their customers into repeat borrowing without regard to their ability to repay were engaging in unfair and abusive practices in violation of the Dodd-Frank Act, and thus created a final rule to generally require ability to repay underwriting for short-term, high-cost payday and auto title loans.[38]

In light of the strong evidence-based findings that undergirded the 2017 rule, it is baffling that the Bureau now claims "the evidence underlying the identification of the unfair and abusive practice in the Mandatory Underwriting Provisions of the 2017 Final Rule is not sufficiently robust to support that determination, in light of the impact these provisions will have on the market for covered…loans."[39] The Bureau also explicitly declines to comment as to whether the 2017 rule's evidence-based findings would be sufficient to withstand judicial scrutiny under the Administrative Procedure Act.[40]

The Bureau has broad and flexible statutory authority under Dodd-Frank to write rules that prohibit unfair, deceptive or abusive acts or practices committed by "covered persons," including high-cost lenders such as payday and auto-title lenders.[41] The Bureau used this authority judiciously and thoughtfully when it promulgated the 2017 rule. By contrast, the conclusory statements in this proposal claiming insufficient evidence, as well as "consumer choice" and "access to credit" as primary concerns, simply fail to demonstrate a reasonable basis for completely reversing course in this rulemaking.

Conclusion

The Bureau's primary mission is to protect consumers in the financial marketplace. To that end, the Bureau is tasked with setting reasonable minimum standards that ensure consumers can manage their financial lives without experiencing unfair, deceptive or abusive practices in the lending markets, among other things. By proposing to rescind commonsense ability-to-repay underwriting standards for loans that can come with

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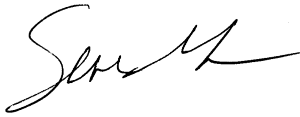
[33] *See, e.g.*, 82 Fed Reg. 54472, 54481 (Nov. 17, 2017) (quoting Advance America's statements in SEC filings about their business model).
[34] *See, e.g.*, 82 Fed. Reg. at 54480 n. 64.
[35] *See, e.g.*, 82 Fed. Reg at 54480 n. 57.
[36] *See, e.g.*, 82 Fed. Reg. at 54480 n. 66.
[37] *See* 82 Fed. Reg. at 54482.
[38] 82 Fed Reg. at 54473.
[39] 84 Fed. Reg. 4252, 4253.
[40] 84 Fed. Reg. at 4264.
[41] 12 U.S.C. § 5531(b) (2018 & Supp. I).

triple-digit interest rates, high defaults and related harms, the Bureau is turning its back on the very people it was created to protect.

Sincerely,



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