

**Center for Responsible Lending
Public Citizen
National Consumer Law Center (on behalf of its low income clients)
Consumer Federation of America
American Federation of Labor and Congress of Industrial Organizations (AFL-CIO)
Americans for Financial Reform Education Fund
Leadership Conference on Civil and Human Rights
League of United Latin American Citizens (LULAC)
NAACP
National Association for Latino Community Asset Builders
National Coalition for Asian Pacific American Community Development (National CAPACD)
U.S. PIRG**

**Comments to the Consumer Financial Protection Bureau
Notice of Proposed Rulemaking
Payday, Vehicle Title, and Certain High-Cost Installment Loans
Proposed Rescission of Ability-to-Repay Rule
12 CFR Part 1041
Docket No. CFPB-2019-0006
RIN 3170-AA80**

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Comment Intake
Consumer Financial Protection Bureau
1700 G Street NW
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The **Center for Responsible Lending (CRL)** is a nonprofit, non-partisan research and policy organization dedicated to protecting homeownership and family wealth by working to eliminate abusive financial practices. CRL is an affiliate of Self-Help, one of the nation's largest nonprofit community development financial institutions. Over 37 years, Self-Help has provided over \$7 billion in financing through 146,000 loans to homebuyers, small businesses, and nonprofits. It serves more than 145,000 mostly low-income members through 45 retail credit union locations in North Carolina, California, Florida, Greater Chicago, and Milwaukee.

Public Citizen, Inc., is a consumer-advocacy organization founded in 1971, with members in all 50 states. Public Citizen advocates before Congress, administrative agencies, and the courts for the enactment and enforcement of laws protecting consumers, workers, and the general public. Of particular relevance here, Public Citizen advocates for strong consumer-protection laws to bring fairness to consumer finance and accountability to the financial sector. Public Citizen actively supported establishment of the CFPB to serve as the first federal agency devoted to protecting the financial interests of consumers.

Since 1969, the nonprofit **National Consumer Law Center® (NCLC®)** has used its expertise in consumer law and energy policy to work for consumer justice and economic security for low-income and other disadvantaged people, including older adults, in the United States. NCLC's expertise includes policy analysis and advocacy; consumer law and energy publications; litigation; expert witness services, and training and advice for advocates. NCLC works with nonprofit and legal services organizations, private attorneys, policymakers, and federal and state government and courts across the nation to stop exploitive practices, help financially stressed families build and retain wealth, and advance economic fairness.

The Consumer Federation of America is a nonprofit association of more than 250 national, state and local consumer groups that was founded in 1968 to advance the consumer interest through research, advocacy, and education. For over 50 years CFA has been at the forefront of consumer protection with a broad portfolio of issues including product safety, banking, telecommunications, investor protection, energy, housing, insurance, privacy and saving. CFA's non-profit members range from large organizations such as Consumer Reports and AARP, to small state and local advocacy groups and include unions, co-ops, and public power companies

The **American Federation of Labor and Congress of Industrial Organizations (AFL-CIO)** works tirelessly to improve the lives of working people. It is the democratic, voluntary federation of 55 national and international labor unions that represent 12.5 million working men and women. The AFL-CIO strives to ensure all working people are treated fairly, with decent paychecks and benefits, safe jobs, dignity, and equal opportunities. The AFL-CIO fights for social and economic justice and strives to vanquish oppression in all its forms.

Americans for Financial Reform Education Fund (AFREF) works in concert with a coalition of more than 200 consumer, investor, labor, civil rights, business, faith-based, and community groups to lay the foundation for a strong, stable, and ethical financial system. Through policy analysis, public education, and outreach, AFREF works for stronger consumer financial protections and against predatory practices.

The **Leadership Conference on Civil and Human Rights** is a coalition charged by its diverse membership of more than 200 national organizations to promote and protect the civil and human rights of all persons in the United States. Through advocacy and outreach to targeted constituencies, The Leadership Conference works toward the goal of a more open and just society - an America as good as its ideals. The Leadership Conference is a 501(c)(4) organization that engages in legislative advocacy. It was founded in 1950 and has coordinated national lobbying efforts on behalf of every major civil rights law since 1957.

The Mission of the **League of United Latin American Citizens (LULAC)** is to advance the economic condition, educational attainment, political influence, housing, health and civil rights of the Hispanic population of the United States.

Founded in 1909, the **National Association for the Advancement of Colored People** (hereinafter **NAACP**) is our nation's oldest, largest and most widely known grassroots civil rights organization. The principal objectives of NAACP are to ensure the political, educational, social and economic equality of all citizens; to achieve equality of rights and eliminate racial prejudice among the citizens of the United States; to remove all barriers of racial discrimination through democratic processes; to seek enactment and enforcement of federal, state and local laws securing civil rights; to inform the public of the adverse effects of racial discrimination and to seek its elimination; to educate persons as to their constitutional rights and to take all lawful action to secure the exercise thereof.

National Association for Latino Community Asset Builders (NALCAB) represents and serves a geographically and ethnically diverse group of more than 120 non-profit community development and asset-building organizations that are anchor institutions in our nation's Latino communities. Members of the NALCAB Network are real estate developers, business lenders, economic development corporations, credit unions, and consumer counseling agencies, operating in 40 states and DC.

National Coalition for Asian Pacific American Community Development (National CAPACD) is a progressive coalition of local organizations that advocate for and organize in low-income AAPI communities and neighborhoods. We strengthen and mobilize our members to build power nationally and further our vision of economic and social justice for all. Our members include more than 100 community-based organizations in 21 states and the Pacific Islands. They implement innovative affordable housing, community development and community organizing strategies to improve the quality of life for low-income AAPI communities.

The United States Public Interest Research Group, Inc. (U.S. PIRG) is an independent, non-partisan organization that works on behalf of consumers and the public interest. Through research, public education, outreach, and litigation, it serves as a counterweight to the influence of powerful special interests that threaten the public's health, safety, or well-being.

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1. INTRODUCTION AND EXECUTIVE SUMMARY

Arthur, a 69-year-old warehouse worker and grandfather of seven, started with a loan of \$200 from Advance America. The loan eventually increased to \$300. Every payday, rather than defaulting or coming up short on bill money, Arthur went into the Advance America store and paid a fee of \$52.50 so Advance America would not deposit his check for the full loan amount. Advance America flipped the loan over a hundred times, until his total interest paid was an estimated \$5,000. The clerks knew him by name and often had his paperwork ready for him when he came in.

Payday lenders have a name for consumers they see every payday: “26ers”—because they pay up every two weeks, 26 times a year. In Arthur’s case, they saw him once a month rather than every two weeks, but only because his repayment came from his monthly Social Security check.¹

Alicia and Clinton Lummus of Conyers, Georgia, took out a \$525 car title loan after injuries forced them both to stop working. Over eight months, they made payments totaling \$1,056—more than twice the amount borrowed—but ultimately fell behind on payments. The lender then repossessed the vehicle, worth \$14,000—and was able to keep any excess money from the sale of the vehicle, since Georgia law allows the lender to do so.²

We, the consumer and civil rights groups named above, write to strongly oppose the proposed rescission (“Proposal”)³ of the Consumer Financial Protection Bureau’s (“CFPB” or “Bureau”) rule to establish ability-to-repay (“ATR”) requirements for payday and vehicle title loans (“Ability-to-Repay (ATR) provisions” or “Rule”).⁴ We urge the Bureau to withdraw this Proposal and ensure on-time implementation of the ATR provisions.⁵

The Bureau spent over five years engaging in extensive information gathering, public input and analysis before finalizing a rule to address the unfair and abusive practice by payday and vehicle title lenders of making loans without considering ability to repay.⁶ The Bureau identified that practice as unfair and

¹ Appendix A, #1. Loan documents and notes from conversation with borrower on file with the Center for Responsible Lending (CRL).

² Appendix A, #102. See S. Kirchhoff, *Some consumers run into big problems with auto title lending*, USA Today, available at <http://usat.ly/124EbDR>.

³ CFPB, Payday, Vehicle Title, and Certain High-Cost Installment Loans, Notice of Proposed Rulemaking, 84 Fed. Reg. 4252 (Feb. 14, 2019) (“Proposal”).

⁴ CFPB, Payday, Vehicle Title, and Certain High-Cost Installment Loans, Final Rule, 82 Fed. Reg. 54472 (Nov. 17, 2017) (“Final Rule”).

⁵ Throughout these comments, “Rule” generally refers to the ATR provisions, while, “2017 Rule” refers more broadly to the entire rule, including both the ATR provisions and the payment protections.

⁶ The Bureau issued the 2017 Rule primarily pursuant to its authority under section 1031 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the “Dodd-Frank Act” or the “Act”) to identify and prevent unfair, deceptive, or abusive acts or practices. It also used authorities under section 1022 of the Act to prescribe rules

abusive based on an extraordinarily robust record and crafted a Rule that will benefit consumers by reducing the harm that the unfair and abusive practice causes, while preserving access to credit less likely to be harmful.

The Proposal—a plainly outcome-driven, 47-page exercise in grasping for straws—has offered no reasonable basis to rescind that Rule. Based on a distorted focus on the Rule’s “dramatic impacts” on lenders’ ability to engage in a predatory practice, rather than on the need to protect consumers, the Proposal claims that the evidence must somehow be “more robust.” If the Rule requires significant changes for payday and vehicle title lenders, it is because the harm to consumers is dramatic. The Bureau’s new approach would ignore its consumer protection mandate and require the agency to hesitate when consumer harm is the most severe.

The Proposal does not dispute the substantial injury to consumers from lenders’ practices. But the Bureau repeatedly ignores and minimizes the enormous evidence of that injury, and fails to account for that injury in its analysis. The Proposal prioritizes preserving lenders’ revenues over protecting consumers, abandoning its statutory purpose.

The Proposal improperly discounts the extensive research and analysis that supported the Rule and wrongly claims that the Rule’s finding rests primarily on two studies, which it then attacks with specious arguments. The Proposal then summarily rejects the alternative of conducting more research to address its purported concern that more evidence is needed—in favor of simply ignoring the undisputed harm to consumers and rescinding the core of the 2017 Rule.

The Proposal falsely claims that the Rule improperly interpreted the standards for unfair and abusive to require that consumers be able to make an individualized, specific projection of their personal risk from lenders’ practices. The Proposal then unreasonably narrows the inquiry for unfair and abusive and ignores that the Rule’s record satisfies even the proposed new standards.

At every turn, the Proposal is based on speculation, summary and unreasoned rejections of the Rule’s findings, and ludicrous counterarguments. The Proposal is arbitrary and capricious and should be withdrawn.

We summarize the sections of our comments below.

Section 2: Lenders take advantage of consumers and harm them by making loans without ability-to-repay determinations; the Bureau crafted a tailored rule that would help consumer by limiting that harm.

The Proposal never disputes the harms of the debt trap. But the Proposal, without basis, would permit those harms to continue. Payday and title lenders’ practice of making loans without considering ability to repay causes serious and widespread harm. Payday and vehicle title lenders turn responsible lending on its head, creating a debt trap by design that is the core element of their business model. The overwhelming majority of payday and auto vehicle loans are made to borrowers caught in a debt trap

and make exemptions from such rules as is necessary and appropriate to carry out the purposes and objectives of the Federal consumer financial laws, as well as section 1024 authority (to facilitate supervision of certain non-bank financial service providers) and section 1032 (to require disclosures). See 82 Fed. Reg. at 54472.

because they cannot afford to repay their loans on their initial terms. And the practice of making loans without determining borrowers' ability to repay inflicts multiple kinds of harm on consumers. Consumers are injured by being forced to choose between three options, all harmful: long-term indebtedness without any reduction in principal, delinquency and default, or default avoidance, including foregoing basic living expenses and financial obligations. The injury occurs both from non-bank- and bank-issued payday loans. And lenders' unfair and abusive practice causes particular harm to financially vulnerable communities, including older Americans, those on a fixed income, and communities of color. The Rule is carefully tailored to address these harms while providing several avenues through which payday, vehicle title, and other short-term lending can continue.

Section 3: The Proposal is an unreasoned betrayal of the Bureau's statutory mission.

The Proposal abandons the Bureau's core statutory mission of protecting consumers and shows an almost exclusive focus on the interests of payday and vehicle title lenders. The Proposal couches its concerns as a desire to preserve access to credit, consumer choice and competition, and state authority, and to respond to a distorted notion of the Rule's "dramatic impacts," but none of these rationales stands up:

- The Bureau's mission is not to preserve access to harmful, unaffordable credit, especially when over 80% of covered loans do not meet consumer needs and are made merely to repay a prior unaffordable loan.
- "Innovation" and "competition" have not alleviated the harms in this market; repealing the ability-to-repay protections and giving consumers the "choice" of unaffordable loans will merely abandon guardrails that steer the market and innovation in the right direction.
- If state laws alone adequately protected consumers, Congress would not have created the CFPB; it is the Bureau's duty to create federal consumer protection standards that provide minimum standards for residents across the nation. The Rule will co-exist with state laws.
- In its claim that the Rule should be revisited in light of its purportedly "dramatic impacts," the Proposal turns the Dodd-Frank mandate on its head. By suggesting a Rule with "dramatic impacts" should be held to some invented new standard for evidence, the Proposal would require the Bureau to hesitate before addressing practices that impose the most dramatic and widespread harm on consumers and thus most require significant change.
- The Proposal's claim that making payday and vehicle title loans without ability-to-repay determinations is not unfair and abusive is illogical and unsupported. The Proposal's analysis fails dismally to meet the Proposal's own invented standard for "more robust" evidence for a rule with "dramatic impacts," as it does not present data that support its conclusions. Yet its unjustified applications of these legal standards risk weakening the protections the standards are intended to provide across all consumer financial markets.

Section 4: Making payday and vehicle title loans without ability-to-repay determinations is an unfair practice.

Starting from the flawed premises above, the Proposal embarks on an equally flawed approach to reassessing the unfairness of covered lenders' practice of lending without regard to ability to repay.

The Proposal all but ignores the substantial injury posed by covered lenders' practices, while arguing that the injury is reasonably avoidable. But the severe and widespread injury cannot be ignored, as the pervasiveness of harm is itself powerful evidence that the harm is not "reasonably" avoidable. The

Proposal's theoretical argument has no basis in the real world where consumers, in large numbers, are not in fact avoiding, and cannot reasonably avoid, the harm from a market that is designed to create debt traps.

The Rule also relied on a host of other data that shows that the harms are not reasonably avoidable. This data includes the way the products are structured to encourage a debt trap, various studies and other information about consumers' lack of understanding about the likelihood and extent of the harm they will experience, and the difficulty of avoiding harm once caught in the debt trap. Indeed, once the consumer takes out the first unaffordable loan, the consumer is limited to only harmful options, and harm is not reasonably avoidable.

The Proposal's claim that that Rule's reasonably avoidable analysis rests almost exclusively and improperly on a study by Professor Ronald Mann is absurd and wholly unsupported. That study was only one piece of a powerful record of research and analysis. The Proposal criticizes the study's sample, but offers no analysis suggesting it is not representative—and then decides to use the study when it sees fit. Thus, the Proposal is simply cherry picking the research it does not like, in the instances where it disagrees with its conclusion. The proposal also refuses to do its own research to address whatever deficiencies it claims should be addressed.

The Proposal also mischaracterizes the Rule's legal analysis of the reasonably avoidable standard, and then proposes a purportedly new approach, which it utterly fails to explain or justify. The Rule never came close to saying that borrowers must have a specific understanding of their individualized, personal risks. Rather, it found, based on ample evidence, that for many borrowers, the likelihood and severity of harm were far greater than people had reason to anticipate or the means to avoid. Even applying what appears to be the Proposal's application of the standard, the record supporting the Rule clearly shows that borrowers cannot reasonably avoid the harm from lenders' making loans without ability-to-repay determinations.

The Proposal attempts to anchor its purportedly new standard in Federal Trade Commission ("FTC") and other authority. But it presents a dishonest portrayal of that authority in making the claim that a disclosure about the possibility of harm is enough to show that harm is reasonably avoidable. The Proposal ignores the many unfairness rules that imposed substantive requirements precisely because general disclosures are ineffective.

The Proposal also concludes that the harm consumers experience is outweighed by countervailing benefits. But the Proposal erroneously claims that the Rule's step-down exemption to the ability-to-repay determination should be irrelevant to the assessment of countervailing benefits. This approach ignores the reality of how the Rule remedies the identified unfair practice and weighs the countervailing benefits based on harm against the benefits, including the costs of the actual remedy. Instead, the Proposal assumes a hypothetical, more severe version of the remedy than what was adopted. In analyzing the potential countervailing benefits, the Proposal also ignores the Rule's findings, speculates about unlikely benefits, and overstates the benefits for borrowers caught in long strings of unaffordable loans and borrowers who default. After stretching to find these implausible benefits, the Proposal then fails to weigh those benefits against the severe harm caused by lenders' practices – yet again failing to account for the harm that motivated this Rule.

Finally, the Proposal also ignores the Rule's finding that public policy overwhelmingly supports a finding that it is unfair for payday and vehicle title lenders to make loans without considering ability to repay.

Section 5: Making payday and vehicle title loans without ability-to-repay determinations is an abusive practice.

The Proposal's flawed analysis of unfairness is echoed in its revisionist, cursory and unsupported rejection of the finding that it is an abusive practice for payday and vehicle title lenders to make loans without considering ability to repay.

The Rule was well justified in finding that consumers lack understanding of the material risks and costs of these loans. Looking well beyond the Mann study on which the Proposal fixates, the Rule outlined a host of other evidence and factors to support this finding, including the fact that loans are marketed very differently from the way they perform and that the financial distress and immediate problems consumers face leaves them vulnerable to a short-term focus that impedes their understanding of long-term risks.

The Proposal erroneously claims that the Rule required that people have an understanding of their specific, individualized and personal risks, when instead the Rule found that, in this market as a whole, borrowers do not understand their likelihood of being exposed to significant risks or the severity of resulting costs and harm.

The Proposal fails to proffer more than one conclusory sentence, with no evidence, to explain why it believes that consumer understanding *does* meet the Bureau's new proffered standard that consumers must understand the general risks of harm sufficient for them to consider taking reasonable steps to avoid that harm. To the extent that the Bureau is claiming that consumers merely need understand that loans have risks if not repaid, the Bureau is re-writing the Dodd-Frank Act, which it lacks the authority to do.

The Proposal also fails to rebut the Rule's extensive record showing that consumers are unable to protect their interests in this market. That evidence, from a variety of sources, included the financial vulnerability of payday and vehicle title borrowers; the impact of the mismatch between how loans are marketed and how they perform; the activities of lenders in refusing or actively discouraging prepayments and options to pay down loans over time; the choices—all harmful—that confront a borrower once they are caught in an unaffordable loan; and the evidence that large numbers of consumers are not protecting their interests, including that many borrowers experience extended loan sequences that end in default.

The Proposal instead criticizes one finding from one study by the Pew Charitable Trusts: that many payday borrowers have found themselves in so difficult a situation that they would take out a payday loan on any terms. The Proposal claims without basis that a survey of actual payday borrowers about an actual point in time was only about their abstract feelings, not about an actual borrowing experience. The Proposal also fails to consider doing more research to bolster this point. The Proposal points to the large number of consumers who have trouble paying regular bills as almost a positive thing, inexplicably suggesting this fact shows that people could protect their interests because they were accustomed to exploring alternatives. And it points to the difficult alternatives that cash-strapped consumers use to manage shortfalls when payday loans are not available – or to eventually extract themselves from debt trap loans – to minimize the desperation that makes it hard for people to avoid debt trap loans.

The Proposal also blithely rejects the finding that covered lenders take unreasonable advantage of borrowers. The Proposal claims that lending without considering ability-to-repay is common, not atypical, pointing to loans to those with little to no credit history; student loans; and reverse mortgages. But each of these three markets, unique and different from payday and vehicle title loans in their own way, involves assessments and expectations of ability to repay. The Proposal nonsensically argues that, because loans are made on standard terms to the general public, they do not target or take advantage of the vulnerable borrowers who respond to ads for quick loans to those with bad credit. The finding that lenders take advantage of consumers by marketing loans in a manner very different from the risks and costs they pose does not mean that the Rule required borrowers to understand lenders' business model. And the fact that lenders cannot charge exploitative rates for longer term loans in every state, or that it would be risky to make longer-term loans to people who cannot afford to repay them, does not justify eliminating protections against the debt trap of short-term, balloon payment loans.

Section 6: The Proposal ignores obvious alternatives that would preserve protections.

The Proposal's consideration of alternatives to complete repeal of the ability-to-repay provisions is wholly inadequate. Even if one accepts the Proposal's mistaken view that the support and analysis for the Rule falls short, the Bureau fails to adequately consider alternatives to remedy any shortcomings.

The Proposal claims that "more robust and reliable evidence" is needed to support the Rule, yet blithely dismisses the possibility that the Bureau could seek out that evidence. The Bureau could conduct further research itself, look to own supervisory, complaint, enforcement, or market monitoring data, or ask outside researchers to fill in any gaps.

The Bureau's cursory dismissal of these possibilities as too expensive, complex or time-consuming is absurd and hardly qualifies as consideration of this alternative. The Bureau has a particular responsibility to address harmful practices in the market for payday loans, which is one of the few markets that Congress specifically directed the Bureau to examine without doing a larger participant rule. In light of the ample evidence of harm from payday and vehicle-title loans made without ability-to-repay determinations, if the Proposal claims there are gaps in knowledge to support a rule, the Bureau should fill those gaps rather than throw up its hands and say it cannot do anything at all.

The Bureau also fails to consider the alternative of allowing implementation of the Rule to proceed and then analyzing its impacts. The Dodd-Frank Act requires such a look-back, and the Bureau could assess the impact of the Rule in the real world rather than in theory.

Section 7: The section 1022 analysis exposes the arbitrariness of the Proposal's rescission reasoning but also minimizes its extraordinarily harmful consequences.

The Bureau's analysis of the potential benefits and costs of the Proposal under Section 1022 of the Dodd-Frank Act distorts the Proposal's impacts to attempt to make an extraordinarily harmful proposal appear positive. The Bureau minimizes the harm the Proposal will cause consumers and exaggerates the benefits for industry. Among other problems, the Section 1022 analysis fails to discuss the cost to consumers of strings of unaffordable payments that make it difficult to handle other household expenses and that result in multiple fees several times higher than what borrowers expect to pay. The analysis also minimizes the harmful nature of default by suggesting that the harm is "unclear" and only "perceived."

Section 8: The Proposal suggests a pre-judged result and shortcuts other legal requirements.

Throughout the Proposal, it is crystal clear that the Bureau is aiming for a pre-judged result. That is apparent not only from the Proposal itself but also from the statements and actions of the new Bureau leadership since December 2017.

This bias also leads the Bureau to shortcut other legal requirements. Beyond the fundamental flaws at the core of the Proposal, there are a number of other flaws in the Proposal. The Proposal provides an inadequate description of the relevant market dynamics, especially re-borrowing patterns; of federal laws and regulator guidance, including those that address the harms of payday loans; and of its own consumer complaints. The Paperwork Reduction Act analysis improperly focuses on the information collections associated with the Rule's Payment Protections, which are not at issue in this proposal, rather than focusing on the elimination of the ability-to-repay provisions. The Proposal also evades Regulatory Flexibility Act requirements by inexplicably suggesting that lenders might retain their systems to comply with the ability-to-repay requirements, while the Proposal rests on a conflicting premise: that regulatory action is needed to ensure that lenders can retain current lending patterns.

Section 9: The Rule's Payment Protections are warranted, and the Bureau should ensure on-time implementation.

Although the Bureau has not proposed to change the Rule's Payment Protections, the Proposal notes that it has received requests to do so that it is evaluating. For completeness, we emphasize that the Bureau appropriately has not sought to rescind or change the Payment Provisions and that it should take all action necessary to ensure that they are fully implemented by the August 19, 2019 compliance date.

Consumers suffer significant harm from payday lenders' use of leveraged payment mechanisms. These harms are especially acute in a market plagued with the unfair and abusive practice of making high-cost loans without consideration of ability to repay. The finding of harm is well supported by the Bureau's research and data, supervisory and enforcement experience, reports issued by consumer advocacy or research organizations, and public comments. The limits on payment transfers after two consecutive failures and the required notices are necessary to address the harm from use of leveraged payment mechanisms and to help consumers understand and mitigate the costs and risks of payment attempts. The payment provisions balance protection of consumers and industry rights and are also appropriate from a Paperwork Reduction Act perspective. The attacks on the payment provisions rehash old arguments that the Bureau considered and appropriately rejected when finalizing the Rule.

2. LENDERS TAKE ADVANTAGE OF CONSUMERS AND HARM THEM BY MAKING LOANS WITHOUT ABILITY-TO-REPAY DETERMINATIONS; THE BUREAU CRAFTED A TAILORED RULE THAT WOULD HELP CONSUMERS BY LIMITING THAT HARM.

2.1. When payday and vehicle title lenders fail to determine ability to repay, their products are a debt trap by design.

The Proposal never disputes the harms of the debt trap.⁷ But the Proposal, without basis, would permit those harms to continue.

When payday and title lenders make loans without assessing ability to repay, the loans are debt traps by design. Borrowers are typically low-income, earning \$25,000-\$30,000 per year, and already financially distressed.⁸ The lender has the borrower hand over a post-dated check, sign over access to their bank account or some similar payment device, or provide the title to their car.⁹ Because the lender makes the loan without determining that the borrower has the ability to repay it, it is often unaffordable.¹⁰ For the short-term loans governed by the ATR Rule, the payment is typically due in full, usually on the borrower's next payday or, for vehicle title loans, after 30 days.¹¹ As a result, as the Rule explained in detail, when the borrower is unable to afford the loan, the borrower is left with three options: take out a new (unaffordable) loan to repay the loan,¹² default on the loan, or repay the loan and default on other obligations or expenses.¹³ All the while, the lender holds extraordinary leverage over the borrower because it is able to debit the borrower's account for the full loan amount or repossess his or her car upon nonpayment.

The vast majority of the loans payday and vehicle title lenders make—more than four out of five—are reborrowed within one month,¹⁴ indicating they were unaffordable from the start.¹⁵

⁷ See 84 Fed. Reg. 4264 (noting the Proposal “need not reconsider” that the Rule found substantial injury).

⁸ See 82 Fed. Reg. at 54556-58.

⁹ 82 Fed. Reg. at 54481, 54489, 54499-501, 54489

¹⁰ See 82 Fed. Reg. at 54472, 54508, 54547.

¹¹ 82 Fed. Reg. at 54475. For further discussion of how unaffordable longer-term payday and vehicle title loans can trap people in larger and longer cycles of debt, see Comments of CRL, NCLC, and additional consumer and civil rights groups on CFPB, Payday, Vehicle Title, and Certain High-Cost Installment Loans, Proposed Rule at 165-248 (Oct. 7 2016), <https://www.responsiblelending.org/research-publication/comment-cfpbs-proposed-rule-payday-and-car-title-lending> (“CRL, NCLC, et al. Comments on 2016 Proposed Rule”).

¹² The borrower may also pay a “rollover fee” to extend the term of the loan. *Id.* at 54478.

¹³ *Id.* at 54512.

¹⁴ See *id.* at 54554-55 (noting 85% of payday loans and 85% of car title loans are reborrowed within one month).

¹⁵ See *id.* at 54531-32, 54685-86.

As the extensive research and data cited in the Rule show, then, the business model of making payday and vehicle title loans without assessing ability to repay is not about providing access to productive credit or bridging a short-term financial shortfall. It is about flipping a borrower from one unaffordable loan to another for, the lenders hope, a very long time.¹⁶

The lenders are good at this: “90 percent of all [storefront payday] loan fees comes from consumers who borrowed seven or more times and 75 percent comes from consumers who borrowed 10 or more times.”¹⁷ Title lenders appear to derive an even greater portion of their revenue from reborrowing activity.¹⁸ In “virtually every other credit market,” lenders succeed when their borrowers do.¹⁹ But payday and vehicle title lenders have built business models based on consumers’ *inability* to repay their loans.

The following graphic from the Bureau’s enforcement action against ACE Cash Express illustrates the business model—a literal cycle of borrowing and reborrowing. The lender makes the so-called “short-term” loan, the customer “does not have the ability to pay,” the lender “contacts the customer for payment or offers the option to refinance or extend the loan,” and the borrower remains indebted until the next time around. Repeat. And repeat again.

(see graphic on following page)

¹⁶ See *id.* at 54484 (noting payday lending business model is dependent upon a large volume of re-borrowing), 54489 (noting same for online lenders), 54606 (noting the core business model of lenders of covered short-term loans relies on only a relatively small number of borrowers being able to repay without re-borrowing).

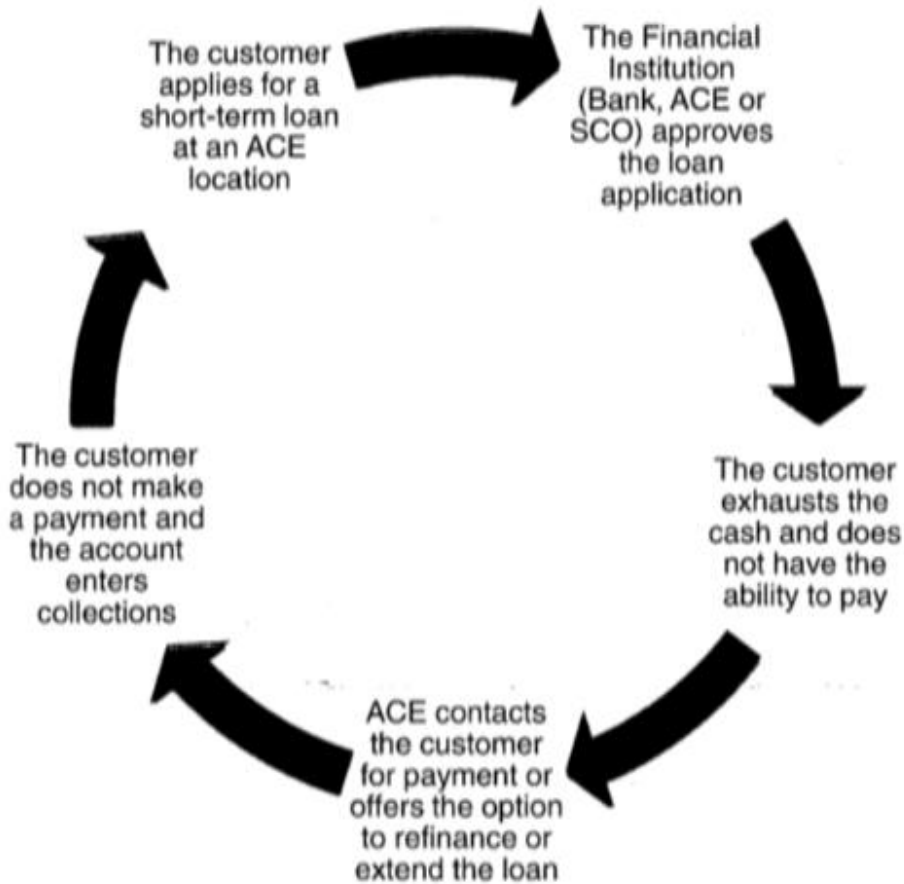
¹⁷ *Id.* at 54484; see also *id.* at 54489 (regarding online lenders).

¹⁸ See *id.* at 54494.

¹⁹ See *id.* at 54621, 23.

Figure 1: The Debt Trap

The Loan Process, Continued



The Proposal cloaks itself in concern about access to credit. In so doing, it echoes the song of payday and vehicle title lenders, who have long claimed to be filling an unmet credit need. But both the Proposal and the lenders ignore the reality that this graphic shows: *most of the credit these lenders claim to provide is the result of one original unaffordable loan, churned over and over again.* It is not new credit to the borrower or new money funneled into the economy. Put another way, payday and

vehicle title loans create their own demand for “credit”: *by far the most common reason a borrower takes out a payday or vehicle title loan is to repay the prior unaffordable loan.*²⁰

The data demonstrating the extremely high reborrowing and default patterns caused by lenders’ failure to determine ability to repay are clearly laid out in the Rule. These data were collected through the Bureau’s supervision function,²¹ analyzed extensively, published via at least five major Bureau reports (the fifth report a collection of several individual studies).²² The Rule cites to corroborating findings for all the data points: repeat short-term payday loans;²³ repeat short-term vehicle title loans;²⁴ loan-sequence default rates for each type of loan;²⁵ and repossession rates.²⁶

(see chart on following page)

²⁰ Susanna Montezemolo, *The State of Lending in America & its Impact on U.S. Households: Payday Lending Abuses and Predatory Lending Practices*, Center for Responsible Lending at 3 (82% of payday loans are taken within 30 days of a prior loan), <http://www.responsiblelending.org/state-of-lending/reports/10-Payday-Loans.pdf>; see also 82 Fed. Reg. at 54554-55 (noting the Rule’s finding that 85% of payday loans and 85% of car title loans are reborrowed within one month).

²¹ 82 Fed. Reg. at 54722, 54804 & n. 1095

²² See CFPB, White Paper, Payday Loans and Deposit Advance Products (2013); CFPB, Data Point: Payday Lending (2014); CFPB, Online Payday Loan Payments (2016), CFPB, Single-Payment Vehicle Title Lending (2016); and CFPB Supplemental Findings on payday, payday installment, and vehicle title loans, and deposit advance products (June 2016) (“CFPB Supplemental Findings”).

²³ See 82 Fed. Reg. at 54484.

²⁴ See *id.* at 54556.

²⁵ See *id.* at 54573 (short-term payday); see *id.* 54494 (short-term vehicle title).

²⁶ The Rule explains that at the loan level, the Bureau’s repossession rates are fairly similar to those reported by the industry or state regulators. It explains that reporting repossessions at the loan sequence level is the appropriate indicator of harm because it reflects the borrower’s experience. See 82 Fed. Reg. at 54574.

Summary Data Demonstrating Lending Without Regard to Ability-to-Repay²⁷

	Short-term Payday	Short-term Vehicle Title
Repeat loans:		
-% of loans reborrowed within 30 days	85% ²⁸	85% ²⁹
-loan sequence length	33% are 7+ loans; 24% are 10+ loans; ³⁰	56% are 4+ loans; 23% are 10+ loans ³¹
Default rates, loan sequence (proxy for per borrower)	20% ³²	33% ³³
Repossession, loan sequence (proxy for per borrower)	n/a	20% ³⁴

Delinquency and default are often the final visible sign of a borrower’s inability to repay a loan. Often, before delinquency or default, a borrower’s inability to repay a loan is evidenced by long sequences of loans or collateral harms, including inability to afford other obligations and expenses. This pattern is due to the combination of three circumstances the Rule identified: (1) the lender’s ability to extract repayment;³⁵ (2) the typical timing of the payment to coincide with the borrower’s payday, ahead of the borrower’s other obligations and expenses and when a borrower’s funds are likely at their

²⁷ These data are all noted in the Rule and, as noted there, derived from the Bureau’s research reports.

²⁸ *Id.* at 54554.

²⁹ *Id.* at 54555, 54615.

³⁰ *Id.* at 54565 (using 30-day definition of loan sequence).

³¹ *Id.* at 54566 (using 30-day definition loan sequence).

³² *Id.* at 54573, 54616 (using 30-day definition of loan sequence, with 69% of these defaults occurring in loan sequences where the borrower has reborrowed at least once).

³³ *Id.* at 54555 (using 30-day definition of loan sequence).

³⁴ *Id.* at 54555 (using 30-day definition of loan sequence).

³⁵ *See id.* at 54580, 82.

highest;³⁶ and (3) the significant chance that the bank will pay the transaction, through overdraft, despite nonsufficient funds.³⁷

2.2. The practice of making payday and vehicle title loans without assessing ability to repay causes consumers to suffer substantial harm.

Making payday and vehicle title without assessing ability to repay severely harms the communities we represent.³⁸ “Debt trap” has become a common way to describe these practices, and appropriately so. But that the label does not fully capture the profound pain—financial, psychological, emotional, physical—that the debt trap often inflicts upon those stuck in its grip. This harm can pervade every aspect of a person’s finances, every facet of a person’s life. Often, the person’s family members experience the harm, too. The debt trap, in the words of those who have been there, is a “living hell.”³⁹

Making payday and vehicle title loans without ATR determinations leads to unaffordable loans. And all three of the options available to borrowers faced with loans they cannot afford can cause injury. Consumers are harmed if they “[t]ake out additional covered loans (‘re-borrow’), default on the covered loan, or make the payment on the covered loan and fail to meet basic living expenses or other major financial obligations.”⁴⁰ The magnitude of harm that consumers experience, the Rule noted, is alone powerful evidence of unfair and abusive practices.⁴¹

The Rule identified and described these harms at length, finding that many borrowers are harmed severely.⁴² It supported its conclusion with an extensive record.⁴³ In addition to citing its own and others’ quantitative research, the Rule recognized the thousands of comments submitted to the record

³⁶ See *id.* at 54582.

³⁷ See *id.* at 54500 (noting that after an initial failed payment, roughly one third of successful second and third attempts succeed only because they result in an overdraft).

³⁸ See *id.* at 54588-94 (discussing substantial injury); see also *id.* at 54554-83 (discussing Market Concerns--Underwriting”); see also *id.* at 54556-57 (noting African American and Hispanic borrowers are overrepresented among payday and vehicle title loan borrowers).

³⁹ See, e.g., Diane S. Williams, *Getting Out of the Debt: Part 2 of a series*, Public Employee Press, District Council 37 (quoting a payday loan borrower who asked not to be identified), http://www.dc37pep.net/news/PEP/3_2012/420_payday_loan.html. Additional examples on file with CRL.

⁴⁰ See *id.* at 54472; see also *id.* at 54592 (“Each instance of re-borrowing was the result of a new choice between re-borrowing, default, or forgoing expenses, and each of those decisions was forced upon the consumer because the original loan was made without assessing the borrower’s ability to repay the loan according to its terms.”).

⁴¹ See 82 Fed. Reg. at 54598.

⁴² See 82 Fed. Reg. at 54554-83 (discussing Market Concerns—Underwriting); 82 Fed Reg. at 54583-624 (discussing the application of “unfair” and “abusive”).

⁴³ *Id.*

describing borrowers' experiences that reflected, in human terms, what the data showed.⁴⁴ A selection of approximately 350 comments submitted in support of the 2016 proposed rule, is indexed and referenced at **Appendix C**.

The Rule also noted that even commenters who opposed the proposed rule in 2016 did not dispute these findings.⁴⁵

We discuss below each of these categories of harm: (1) harms caused by reborrowing—long-term indebtedness in unaffordable loans; (2) harms stemming from delinquency and default, including bank overdraft and non-sufficient funds fees, account closure, and repossessed vehicles; and (3) harms stemming from default avoidance, including foregoing basic living expenses and major financial obligations.⁴⁶

In addition, **Appendix A** to these comments describes more than 150 borrower experiences with payday or vehicle title loans. Each is coded according to the categories of harm the loan has caused; in most cases, a single loan or loan sequence causes harms in more than one category. As noted in Appendix A, many of these borrowers' experiences have been added to this collection of accounts since the publication of the Rule.

Further, we explain that a growing body of research, including studies released since the Rule was issued, shows links between payday loans and negative health impacts. The Proposal acknowledges several such studies. One finds that access to payday loans substantially increased suicide risk—including by over 16% for those ages 25-44.⁴⁷ Another finds that short-term loans, including payday loans, are associated with a range of negative health outcomes, even when controlling for potential confounders.⁴⁸ These outcomes include symptoms of physical health, sexual health, and anxiety, as well as higher levels of C-reactive protein, which is an indicator of many long-term diseases, including cardiovascular disease, and an indicator of psychological stress.⁴⁹ Another study finds that restrictions on payday lending reduced liquor sales.⁵⁰ And another finds that “fringe loan” use is associated with a

⁴⁴ See 82 Fed. Reg. at 54514, 54559-60.

⁴⁵ See 82 Fed. Reg. at 54567 (noting industry commenters offered little evidence inconsistent with the Bureau's data on reborrowing).

⁴⁶ See 82 Fed. Reg. at 54591.

⁴⁷ Jaeyoon Lee, *Credit Access and Household Welfare: Evidence From Payday Lending* (SSRN Working Paper, 2017).

⁴⁸ Elizabeth Sweet et al., *Short-term lending: Payday loans as risk factors for anxiety, inflammation and poor health*, 5 SSM—Population Health, 114–121 (2018), <https://doi.org/10.1016/j.ssmph.2018.05.009>.

⁴⁹ *Id.*

⁵⁰ Harold E. Cuffe & Christopher G. Gibbs, *The Effect of Payday Lending Restrictions on Liquor Sales*, 85(1) J. Banking & Fin. 132–45 (2017).

38% higher prevalence of poor or fair health.⁵¹ (The Proposal attempts to paint these studies in a light unduly favorable to its position, as discussed in section 7.1 below.)

Additional studies released since the Rule that the Proposal does not note further amplify the conclusion that payday loans, as offered in the current market, without ATR determinations, negatively affect individuals' health. In one study of qualitative data, respondents with short-term loans revealed symptoms of "allostatic load," a health psychology term that describes how compounding stress can lead to wear and tear on the body.⁵² The authors describe the respondents as having "embodied" the debt through idioms like "drowning in debt" and "keeping [their] head above water," which illustrated that the participants "experienced debt as a bodily sensation, not only a socioeconomic position or emotional stressor."⁵³ A Missouri-based white paper also includes accounts from borrowers who experienced negative health effects from payday loans. One borrower, after being a "a pretty healthy young person," "became physically sick, broke out in hives . . . [and] had to go to urgent care" as a result of her unaffordable short-term loans.⁵⁴ Another expressed feeling, "[i]f I died, my debt would die with me. At least I could give my family that."⁵⁵

The undersigned organizations have also produced research since publication of the Rule that further documents the harms of unaffordable payday and vehicle title loans. **Appendix B** references and summarizes the relevant research of CRL and NCLC since the Rule was published.

The Proposal ventured to quantify the financial costs for lenders of the ATR provisions, and used the same figures to estimate the benefit for lenders of rescinding those provisions. It estimated the Rule would result in an annual reduction in revenue of \$3.4-\$3.6 billion for payday lenders and \$3.9-\$4.1 billion for vehicle title lenders, or about \$7.5 billion total.⁵⁶ This revenue, of course, also represents the estimated fees borrowers pay on loans that would not be permitted under the Rule because of the harms they present. This tremendous cost to borrowers—\$7.5 billion annually, borne by some of the nation's poorest Americans—generated by loans made without ATR determinations is *merely one component* of the vast, spiraling harms caused by unaffordable payday and vehicle title loans.

2.2.1. Lending without ATR determinations causes harm from long-term indebtedness in unaffordable payday and vehicle title loans.

⁵¹ Jerzy Eisenberg-Guyot et al., *From Payday Loans To Pawnshops: Fringe Banking, The Unbanked, And Health*, 37(3) Health Aff. 429 (2018).

⁵² Elizabeth Sweet et al., *Embodied Neoliberalism: Epidemiology and the Lived Experience of Consumer Debt*, 48(3) International Journal of Health Services (2018).

⁵³ *Id.*

⁵⁴ Health Impact Partners and Missouri Faith Voices, *When Poverty Makes You Sick: The intersection of health and predatory lending in Missouri* (Feb. 2019), https://humanimpact.org/wp-content/uploads/2019/02/HIP-MFV_PayDayLending_2019.02fin1.pdf.

⁵⁵ *Id.*

⁵⁶ 84 Fed. Reg. at 4287.

The Rule identified the harm of long-term indebtedness in high-cost loans, even when those loan sequences do not result in default. Reborrowing frequently drives consumers into expensive, lengthy cycles of debt,⁵⁷ where the borrowers effectively pays fee after fee with no meaningful reduction in principal.⁵⁸ This often inescapable debt cycle, powered by the lender’s control of a coercive payment device (i.e. access to account or postdated check, or the threat to seize a car),⁵⁹ drains significant funds from every paycheck or public benefits check, often hundreds or thousands of dollars over time.⁶⁰ Re-borrowing can turn a short-term, small-dollar loan into a months-long loan with no clear path to repayment and fees that quickly surpass the amount borrowed.⁶¹

Trapped in debt, consumers also experience financial distress and often negative health impacts, including severe psychological and emotional distress and the physical consequences associated with stress and anxiety.⁶² The studies of health impact discussed above shine a light on the health impacts of long-term indebtedness in payday loans.

The Rule found that those who suffer the greatest injury are those who “re-borrow repeatedly and end up in exceedingly long loan sequences.”⁶³ It cited one example of a consumer “who paid \$12,960 to borrow \$1,020 in principal because the borrower continued to re-borrow the original principal.”⁶⁴ The Rule also found harm from loan sequences that are relatively shorter.⁶⁵

Below are two of the borrower experiences from Appendix A that illustrate harm from long-term indebtedness in unaffordable payday and vehicle title loans:

A San Antonio family requested assistance from their church in developing a household budget and becoming financially independent. In the course of developing a budget, the church deacon discovered that the family would be able to live within their means except for one item of debt

⁵⁷ As the Proposal acknowledges, approximately 65% of re-borrowers are in loan sequences of more than four loans. 84 Fed. Reg. at 4273 (noting 35% had between one and three additional loans).

⁵⁸ See 82 Fed. Reg. at 54565, 54592.

⁵⁹ See *id.* at 54839.

⁶⁰ See *id.* at 54615, 54592; see also Appendix A.

⁶¹ See generally 82 Fed. Reg. at 54578, 54563.

⁶² Borrower accounts frequently describe the emotional distress their long loan cycles have caused, which often involve demonstrable physical effects as well. See, e.g., Appendix A at #19 (“Robin has been brought to tears several times and feels sick from the stress”). For example, a state law restricting the annual number of payday loans per borrower to eight—thus specifically limiting the cycle of reborrowing—was found to decrease liquor sales, particularly at stores located near payday storefronts. Harold E. Cuffe & Christopher G. Gibbs, *The Effect of Payday Lending Restrictions on Liquor Sales*, 85(1) J. Banking & Fin. 132–45 (2017).

⁶³ 82 Fed. Reg. at 54589.

⁶⁴ See *id.* at 54592.

⁶⁵ *Id.*

*that was dragging them down: a \$700 payday loan they had taken out roughly four months earlier to help with a rent payment on their home. The terms of the loan: \$200 every two weeks was automatically deducted from the husband's bank account and timed with the deposit of his paycheck. This \$200 did not reduce the original amount of the loan. It merely allowed for the \$700 principal to roll-over until the next pay-period. In the course of the four months the family had maintained this loan, they had rolled the principal over nine times—at a cost of \$1,800. Now, as they approached the church again for help, they needed help to pay their rent or face eviction.*⁶⁶

Wilma A. Ruby entered into a total of 33 payday-loan agreements with Cashnet, Inc., d/b/a Cash Advance Centers, beginning in March 2005. The amount of the loan increased over time, starting at \$200 and reaching \$500. Typically, Wilma paid \$575.00 (interest of \$15 per \$100) in cash to Cashnet and then would immediately enter into another payday loan agreement with Cashnet for \$500. This cycle continued until November 2007, when Ruby entered into her final loan agreement with Cashnet for \$500, which she could not repay. The Virginia Supreme Court noted: “With a fixed income of only \$624.00 per month, Ruby could not afford to repay in full her loan with Cashnet and meet her monthly expenses. Thus, each time she repaid in full one loan, she immediately had to obtain another, usually for the same or a greater amount.” In Ms. Ruby’s words: “After I did it I had to because I couldn’t — I had to keep paying it because I couldn’t get away. I had my rent to pay and my lights and my phone and if I didn’t, if I didn’t, if I didn’t, I wouldn’t be able to pay my rent and stuff.”⁶⁷

2.2.2. The practice causes harm from delinquency and default.

The Rule also identified the harm stemming from delinquency and default.

Visible delinquency and default are two concrete ways to measure the unaffordability of payday loans, and, as discussed below, the harm they cause is clear. Direct harms from delinquency and default include (1) lender fees for bounced and late payments;⁶⁸ (2) bank fees for bounced payments;⁶⁹ (3) loss

⁶⁶ Appendix A, #21. Catherine Parks, *Texas Pastor: Payday Loan Reform Isn’t a Distraction. It’s a Christian Duty*, Christianity Today, <http://www.christianitytoday.com/local-church/2016/july/texas-pastor-payday-loan-reform-isnt-distraction-its-christ.html>.

⁶⁷ Appendix A, #64. *Ruby v. Cashnet, Inc.*, 281 Va. 604, 607, 708 S.E.2d 871 (2011), <https://www.consumeradvocates.org/sites/default/files/CashnetVRuby.pdf>.

⁶⁸ 82 Fed. Reg. at 54589.

⁶⁹ *Id.*

of one's checking account;⁷⁰ (4) aggressive debt collection tactics;⁷¹ and (5) for vehicle title loans, repossession of one's car.⁷² As discussed in the next section, there are also a number of indirect harms.

The Rule described the Bureau's quantification of bank fees triggered when funds were insufficient as well as subsequent lost bank accounts. It found that about half of borrowers paid a nonsufficient funds (NSF) or overdraft fee.⁷³ These borrowers paid an average of \$185 in such fees,⁷⁴ while 10% paid at least \$432.⁷⁵ It further found that 36% of borrowers with a bounced payday payment later had their checking accounts closed involuntarily by the bank.⁷⁶ The Rule noted that other borrowers close their accounts themselves as it seems to be the only way to stop the payday lender's collection attempts.⁷⁷

CRL's 2015 study of checking account activity supports the Bureau's findings. One-third of borrowers experienced at least one incident in which their account was overdrawn on the same day that the payday lender withdrew a payment, even though the payment itself did not bounce.⁷⁸ For these borrowers, their banks honored the payday lender's debit, but the bank charged an overdraft fee for that payment and/or other debits paid during the day. CRL terms these overdrafts "invisible defaults" because, from the payday lender's perspective, they are a successful payment, even while they signal distress for the borrower. CRL's study further found that nearly half of payday borrowers incurred an overdraft or NSF fee in the two weeks after a payday loan transaction, and 64% paid overdraft or NSF fees at some point.⁷⁹

As the Rule also found, payday and vehicle title loan borrowers who default can become subject to "often aggressive and psychologically harmful"⁸⁰ debt collection practices, which can jeopardize employment and future earnings and "cause psychological distress and anxiety for borrowers who are already under the strain of financial pressure."⁸¹ The Rule cited as examples "harmful and harassing

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² *Id.*

⁷³ *Id.* at 54725.

⁷⁴ *Id.*

⁷⁵ *Id.* at 54726.

⁷⁶ *Id.*

⁷⁷ *Id.* at 54573.

⁷⁸ Susanna Montezemolo & Sarah Wolff, *Payday Mayday: Visible and Invisible Payday Lending Defaults*, Center for Responsible Lending at 7 (2015), <http://www.responsiblelending.org/research-publication/payday-mayday-visible-and-invisible-and>.

⁷⁹ *Id.* at 10; *see also* 82 Fed. Reg. at 54838, & n.1200.

⁸⁰ 82 Fed. Reg. at 54555.

⁸¹ *Id.* at 54574.

conduct, such as repeated phone calls from collectors to the borrower's home or place of work, the harassment of family and friends, and in-person visits to consumers' homes and worksites."⁸² The Rule noted that more than 11% of all debt collection-related complaints the Bureau had received were related to payday loans. When adjusted for the number of borrowers with payday loans annually versus those who use credit cards, the Bureau received more than twice as many complaints related to payday loans as credit cards.⁸³

One borrower, Joylynn, whose experience is included in Appendix A, describes it this way:

"It was either [default on the loan] or not pay my rent that month," she says. "It was horrifying. They tell you any and everything to get you to come in and pay for the check that didn't clear. They'll tell you, 'You're a criminal, you wrote a bad check. That's against the law, it's a felony, you're going to jail.' They call all of your references and your job. It's horrifying. I felt so suffocated. It felt as if I was in this black hole that I just couldn't get out of . . . Every time the phone rang [at work], I'd jump like I was the next one in a horror movie to be taken out. I'd fear they'd come to my house because I'd known them to go to people's houses before. I felt guilty just putting gas in my tank. I felt guilty buying food. I felt as though any money I got should be going to the payday lenders and collection agencies to get them off my back."⁸⁴

The Bureau's enforcement actions taken before the Rule illustrated the harmful debt collection practices of many payday and vehicle title lenders,⁸⁵ and more recent enforcement actions show that the trend continues.⁸⁶ (Bureau supervisory data may show similar patterns, though that information is not available to the public.) Though enforcement actions may continue to address some tactics, and

⁸² *Id.*

⁸³ 82 Fed. Reg. 54483.

⁸⁴ Appendix A, #81. Geoff Williams, *Payday loans: How one woman got caught in a vicious cycle*, AOL.com (Nov. 2, 2010), <http://www.aol.com/article/2010/11/02/payday-loans-how-one-woman-got-caught-in-a-vicious-cycle/19674757/>.

⁸⁵ See *In the Matter of ACE Cash Express, Inc.*, Consent Order 2014-CFPB-0008 (July 10, 2014), http://files.consumerfinance.gov/f/201407_cfpb_consent-order_ace-cash-express.pdf; *In the Matter of EZCOProposalEZCOProposal, Inc.*, Consent Order 2015-CFPB-0031 (Dec. 16, 2015), http://files.consumerfinance.gov/f/201512_cfpb_ezcorp-inc-consent-order.pdf; *In the Matter of TMX Finance LLC*, Consent Order, 2016-CFPB-0022 (Sept. 26, 2016), http://files.consumerfinance.gov/f/documents/092016_cfpb_TitleMaxConsentOrder.pdf.

⁸⁶ See *In the Matter of National Credit Adjusters, LLC and Bradley Hochstein*, Consent Order 2018-BCFP-0004 (July 13, 2018), https://files.consumerfinance.gov/f/documents/bcfp_national-credit-adjusters_consent-order_2018-07.pdf; *In the Matter of Cash Express, LLC*, Consent Order 2018-BCFP-0007 (October 24, 2018), https://files.consumerfinance.gov/f/documents/bcfp_cash-express-llc_consent-order_2018-10.pdf; *In the Matter of Enova, International, Inc.*, Consent Order 2019-BCFP-0003 (January 22, 2019), https://files.consumerfinance.gov/f/documents/cfpb_enova-international_consent-order_2019-01.pdf; *In the Matter of CMM, LLC, CMM of Indiana, LLC, CMM of Alabama, LLC, Cash Mart Express of Florida, LLC, CMM of Kentucky, LLC, CMM of Louisiana, LLC, CMM of Mississippi, LLC, and CMM of Tennessee, LLC*, each and collectively d/b/a Cash Tyme, Consent Order 2019-BCFP-0004 (February 1, 2019), https://files.consumerfinance.gov/f/documents/cfpb_cash-tyme-consent-order_2019-02.pdf.

future rulemakings may address debt collection practices as well,⁸⁷ the Rule described aggressive collection practices as “a natural consequence of the harms that consumers experience from receiving unaffordable loans that they are unable to repay.”⁸⁸ These harms would continue largely unabated if the ATR provisions were repealed.

In addition, vehicle title borrowers have their cars repossessed at astounding rates. The Bureau’s data show approximately one in five borrowers experience a repossession. The Rule described the harm from losing one’s car as “dire,” noting that it “not only leads to the loss of a valuable asset” but can also “seriously disrupt people’s lives and put at risk their ability to remain employed or to manage their ordinary affairs as a practical matter.”⁸⁹

CRL estimates that rescission of the rule will permit approximately 340,000 repossessions annually to continue unabated.⁹⁰ That well exceeds the population of St. Louis.⁹¹

Below are borrower experiences from Appendix A that illustrate harm from delinquency and default on unaffordable payday and vehicle title loans:

Patricia Turner, 47, went to E-Z Check Cashing of Cookeville, Tennessee, when her job sorting jeans at a garment factory didn't pay the bills. E-Z loaned her \$300 for 30 days. At the end of 30 days, Turner was unable to repay the loan. She could have defaulted, but instead chose to extend the loan by paying a cash extension fee of \$105. After she extended the loan eight times,

⁸⁷ However, the Bureau’s current proposed debt collection rule does not cover payday or vehicle title lenders who collect their own debts, and the Bureau seems to have abandoned plans to propose a rulemaking governing debt collection practices by original creditors.

⁸⁸ See 82 Fed. Reg. at 54593, & n.652.

⁸⁹ *Id.* at 54573. See also *id.* at 54593 (citing two surveys finding that 15% of borrowers said they would have no way to get to work or school if they lost their vehicle, and a survey finding that more than 35% of borrowers were pledging the only working vehicle in the household).

⁹⁰ The Rule cited an FDIC survey in which 1.7 million households reported taking out a vehicle title loan during the twelve months preceding the June 2015 survey. 82 Fed. Reg. at 54491 (citing FDIC, 2016 Unbanked and Underbanked Survey). CFPB research found that one of every five single-payment vehicle title loan sequences, or 20%, includes a repossession. 82 Fed. Reg. at 54555; CFPB Single-Payment Vehicle Title Lending at 23 (using 30-day definition of loan sequence). Using a conservative assumption of one loan sequence per household, we arrive at 340,000 repossessions over 12 months (1.7 million * 20%).

Note: The FDIC survey did not specify short-term vehicle title loans versus longer-term installment vehicle title loans. 82 Fed. Reg. 54491, n.195. The majority of vehicle title loans have a 30-day term. The Pew Charitable Trusts, Auto Title Loans at 11 (2015). Others are longer-term with balloon payments that would make them subject to the Rule. See 82 Fed. Reg. 54490, n.179. Even assuming that a full half of the 1.7 million households had longer-term vehicle title loans without balloon payments, and did not have loans subject to the Rule—an extremely conservative assumption—repealing the rule would permit 170,000 repossessions annually to continue unabated.

⁹¹ U.S. Census Bureau (showing estimated population for St. Louis of 309,000 in 2017), <https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?src=bkmmk>.

*paying \$840 over an eight-month period without reducing the principal of the loan, she was unable to pay either the balance of the loan or an additional extension fee. Despite insufficient funds in her account to cover it, E-Z deposited Turner's eight-month-old check. When the check bounced, Turner declared bankruptcy.*⁹²

*Shirley, an elderly woman on a fixed income, received a car title loan from TitleMax for \$2,453. She did not understand that the loan had to be repaid in one lump sum or it would be flipped each month and she would accrue new finance charges. Because she was unable to pay the full amount of the loan at once, TitleMax flipped the loan six times. Shirley paid over twice the principal amount of the loan to the company, including \$1326 for the company's auto insurance. When she was ultimately unable to make a monthly payment, TitleMax repossessed her vehicle.*⁹³

*Caroline O'Connor, a 30-year-old hospital lab technician, was in need of \$1,000 to cover her rent and electricity bills. When she saw a television commercial advertising how to get cash from your car in the form of a short-term loan, she believed she had found relief. The loan carried a 171% APR. After two years stuck in the debt cycle, the lender seized her car. "These companies put people in a hole that they can't get out of," Ms. O'Connor said.*⁹⁴

Maxine tells her story in the documentary film about payday and car title lending, Let My People Go:

I was like, "Collateral? Isn't my paychecks enough?" They said, "Sometimes, if you lose your job, we'll lose our money. So, we need something more." So, that's whenever my husband said, "Well, we have our vehicle." He was working, so my check paid for the loan and then we kind of lived off of his. So, I was a day late, 243.60, and I paid it anyways. I thought everything was okay, came up to Rapid to the celebration for Black Hills Powwow. My son . . . and his cousin were outside, and they said, "Mom, there's some men by the Suburban." And I said, "For what?" "I don't know. They want to see you and dad." . . . So, we went out there and, here it was, a tow truck, and they came and they said, "Your car is being repossessed." I said, "For what? I paid down." And the man said, "Apparently to us [] you didn't pay them." And I said, "But all of our things

⁹² Appendix A, #163. Charles A. Bruch, *Taking the Pay Out of Payday Loans: Putting an End to the Usurious and Unconscionable Interest Rates Charged by Payday Lenders*, 69 U. Cin. L. Rev. 1257 (2001).

⁹³ Appendix A, #42. Florida Office of Financial Regulation, 2014.

⁹⁴ Appendix A, #104. Jessica Silver-Greenberg and Michael Corkery, *Rise in Loans Linked to Cars Is Hurting Poor*, N.Y. Times (Dec. 25, 2014), <http://dealbook.nytimes.com/2014/12/25/dipping-into-auto-equity-devastates-many-borrowers/>.

are here. My whole family, I brought my whole family,” and he said, “That’s not our problem. You people should pay your bills.”
Maxine’s family witnessed around 30 vehicle repossessions at the powwow.⁹⁵

2.2.3. The practice causes harm from default avoidance, including foregoing basic living expenses and major financial obligations.

The collateral consequences of sustained unaffordable payments on payday and vehicle title loans are sweeping. The lender’s coercive payment device—access to the borrower’s checking account or vehicle title—make borrowers particularly susceptible to harm caused by efforts to avoid default, even when payments are unaffordable.⁹⁶ Borrowers who “feel[] compelled to prioritize payment” on unaffordable loans, to avoid repossession of their cars or for other reasons, may end up “defaulting on other obligations or forgoing basic living expenses.”⁹⁷

The Bureau identified this harm and included it throughout its analyses, even while noting that such harms “are not subject to being quantified as a practical matter.”⁹⁸ Indeed, to the extent these collateral harms do not lend themselves to ready quantification, it is in large part because they are so far-reaching. They are cascading, spiraling harms. Unaffordable payments, made nonetheless because of a coercive payment device or vehicle title, can lead to overdraft fees or late bill payments. Those can lead to additional overdraft and late fees, and perhaps a penalty rate on a credit card balance, which will likely lead to a reduced credit score. Late rent payments can lead to eviction.

Numerous studies have aimed to measure the impact of payday loans and provide insight into the effects these loans, typically unaffordable as currently offered, on borrower’s broader finances. These measured impacts have included increased difficulty paying mortgages, rent, and utility bills,⁹⁹

⁹⁵ *Source: Let My People Go*, a 30-minute documentary illuminating the harms that payday and vehicle title borrowers experienced in South Dakota and the 2016 ballot initiative that led to these lenders’ exit from the state. A full transcript of the documentary is expected to be submitted to this Proposal’s docket; it is also available on file with CRL.

⁹⁶ 82 Fed. Reg. at 54839.

⁹⁷ *Id.* at 54575.

⁹⁸ *Id.* at 54603.

⁹⁹ B. Melzer, *The Real Costs of Credit Access: Evidence from the Payday Lending Market* (2011), Oxford University Press, available at <https://academic.oup.com/qje/article-abstract/126/1/517/1902774?redirectedFrom=PDF>.

delinquency on child support payments,¹⁰⁰ delinquency on credit card debt,¹⁰¹ delaying medical care,¹⁰² loss of checking accounts,¹⁰³ and bankruptcy.¹⁰⁴

In addition to the quantifiable evidence, these types of harms are also shown by the qualitative data the Bureau has from its complaints database, other borrower accounts, market monitoring and other outreach, and information obtained through the 2016 comment period. In the comment process for the Rule alone, the Bureau received individuals' "first-hand experiences with extended loan sequences and the financial harms that had resulted either to themselves or to friends and family members."¹⁰⁵ These included "accounts ... of how consumers who took out [payday and title] loans became trapped in long cycles of repeated re-borrowing that led to financial distress, marked by problems such as budgetary distortions, high collateral costs, the loss of depository accounts and other services, ultimate default on the loans, and the loss of other assets such as people's homes and their vehicles."¹⁰⁶ This qualitative evidence speaks strongly to the extent to which unaffordable payments on payday and vehicle title loans cause collateral harm.¹⁰⁷

Below are borrower experiences from Appendix A that illustrate collateral harms from long-term indebtedness in unaffordable payday and vehicle title loans:

Edith, a single mother, cut down on her family's groceries, stopped driving her car, and kept her lights off to save electricity as she scrambled to pay the fees on her payday loans. She took out her first \$300 payday loan, and then a second and third, trying to repay the first. Edith borrowed a total of \$900. She paid \$135 in interest twice a month because she could not afford

¹⁰⁰ B. Melzer, *Spillovers from Costly Credit*, The Review of Financial Studies (2018), available at <https://academic.oup.com/rfs/article-abstract/31/9/3568/4760436?redirectedFrom=fulltext>.

¹⁰¹ Agarwal, S., Skiba, P. M., & Tobacman, J., *Payday loans and credit cards: New liquidity and credit scoring puzzles?* NBER Working Paper (2009), available at <https://www.nber.org/papers/w14659>.

¹⁰² Melzer, 2011.

¹⁰³ Research has shown that payday lending is linked with increased rates of involuntary bank account closures, which can make routine financial transactions more expensive and risky. See D. Campbell, A.S. Jerez, & P. Tufano, *Bouncing Out of the Banking System: An empirical analysis of involuntary bank account closures*, Harvard Business School (2011), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1335873.

¹⁰⁴ One study found that payday borrowers nearly doubled their chances of filing for bankruptcy compared with households of similar financial status who were denied a payday loan. P.M. Skiba & J. Tobacman, *Do Payday Loans Cause Bankruptcy?* (2008) SSRN working paper, available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1266215.

¹⁰⁵ 82 Fed. Reg at 54517.

¹⁰⁶ *Id.* at 54559.

¹⁰⁷ *Id.* at 54575-76, 54591.

to repay the \$900 principal owed. During the next year, she paid over \$3,500 in fees alone, and still owed the original \$900.¹⁰⁸

Raymond Chaney, now 66, is a veteran who became homeless after he took out a payday loan and spiraled into the debt trap. He took out a \$400 loan to have his car repaired. The \$400 loan led to \$3,000 in additional loans, and he eventually owed \$12,000 to many different lenders. He was struggling to stave off overdraft fees to banks and also make his rent. The payday lenders had full access to his account and eventually took all of his Social Security check. Chaney lost his apartment as a result. He now lives in a rescue mission located in Boise, and is working with the Idaho Consumer Finance Bureau to pay off his debt. His advice to anyone considering taking out a payday loan is as follows: "I had a friend who had back surgery, and it was so painful. . . If the choice is between back surgery and dying, consider dying. Well, I give people the same advice about payday loans. If the alternative to a payday loan is dying, think long and hard about dying."¹⁰⁹

Sandra, a successful professional, worked diligently to keep up with her bills. In a tough time, she turned to payday lending. After several rollovers, Sandra's first loan was due in full. She couldn't pay it off, so she took a loan from a second lender. Frantically trying to manage her bills, she eventually found herself with loans from six payday lenders including Advance America, Check Into Cash, Check 'n Go, Urgent Money Express and two on-line lenders. She paid over \$600 per month in fees, none going to pay down her debt. After writing checks to payday lenders totaling \$9,200, she was evicted and her car was repossessed. "At the time it seems like the way out, but this is not a quick fix. It's like a ton of bricks," said Sandra.¹¹⁰

Lenny, who made about \$600 a week, went to Advance America thinking a payday loan would help him catch up on an overdue bill. Over a year later, he had renewed his Advance America loan every two weeks, fallen deeper into debt, and taken a second payday loan to stay afloat. Lenny lost his apartment and ended up in a homeless shelter. While he lived there, Advance America continued to flip his loan, charging \$20 per \$100 every two weeks, 521% APR.¹¹¹

¹⁰⁸ Appendix A, #4. CRL, *The Victims of Payday Lending*, <http://www.responsiblelending.org/issues/victims-payday>.

¹⁰⁹ Appendix A, #78. Bob Sullivan, 'Like a drug': Payday loan users hooked on quick-cash cycle, NBC News (May 11, 2013), <http://www.nbcnews.com/feature/in-plain-sight/drug-payday-loan-users-hooked-quick-cash-cycle-v18088751>.

¹¹⁰ Appendix A, #3. CRL, *Caught in the Trap: The real story from payday lending borrowers* (June 2010).

¹¹¹ Appendix A, #24. CRL, *Caught in the Trap: The real story from payday lending borrowers* (June 2010).

2.2.4. Payday loans by banks made without an ability-to-repay determination also cause substantial injury.

Payday loans made without an ability-to-repay determination cause harm whether by a non-bank lender or a bank. In 2013, a handful of banks¹¹² were making payday “deposit advance” loans, structured like loans made by nonbank payday lenders.¹¹³ The bank repaid itself the loan in full directly from the borrower’s next incoming direct deposit, typically wages or Social Security,¹¹⁴ along with annual interest averaging 225% to 300%.¹¹⁵ These loans were made without ability-to-repay determinations. And the data show they led to the same cycle of debt as payday loans made by nonbank lenders.¹¹⁶

The Bureau’s analysis of thousands of bank payday loans found a median number of advances per borrower of 14.¹¹⁷ Further, 14% of borrowers spent a median of 254 days in debt over the course of a year.¹¹⁸ These findings were consistent with CRL’s prior analysis of bank payday loans, which found that the median bank payday borrower had 13.5 loans in 2011 and was in bank payday loan debt at least part of six months during the year; over a third of borrowers had more than 20 loans during the year.¹¹⁹ Bank payday loans created this debt trap despite so-called protections the banks touted, like installment repayment options.

What’s more, while deposit advance borrowers represented 8% of eligible account holders, they incurred 33% of overdraft items, 36% of NSF items, and 40% of debits by likely payday lenders.¹²⁰ When deposit advance products were discontinued, borrower overdraft activity did not increase—an indication they were not helping people avoid overdraft fees.¹²¹ These data all suggest that bank payday loans piled on top of other high-cost unaffordable credit rather than substituted for it.

¹¹² Wells Fargo, US Bank, Fifth Third, Regions, Bank of Oklahoma and its related banking divisions, and Guaranty Bank.

¹¹³ 82 Fed. Reg. at 54495.

¹¹⁴ *Id.*

¹¹⁵ See Center for Responsible Lending, *Been There, Done That: Banks Should Stay Out of Payday Lending* (July 2017), <http://www.responsiblelending.org/research-publication/been-there-done-banks-should-stay-out-payday-lending>.

¹¹⁶ See 82 Fed. Reg. at 54495-96.

¹¹⁷ *Id.* at 54495.

¹¹⁸ *Id.* See also CFPB, *Payday Loans and Deposit Advance Products: A White Paper of Initial Data Findings* at 33-34, (2013), http://files.consumerfinance.gov/f/201304_cfpb_payday-dap-whitepaper.pdf.

¹¹⁹ Rebecca Borné and Peter Smith, *Triple Digit Danger: Bank Payday Lending Persists* (March 21, 2013), Center for Responsible Lending, <http://www.responsiblelending.org/payday-lending/research-analysis/Triple-Digit-Bank-Payday-Loans.pdf>.

¹²⁰ CFPB Supplemental Findings at 38-39.

¹²¹ See 82 Fed. Reg. at 54610.

Moreover, deposit advance borrowers were seven times more likely to have their accounts charged off than non-borrowers.¹²²

Bank payday loans were the subject of a 2013 Senate Aging Committee hearing, where Annette Smith, a widow who relied on Social Security for her income, testified.¹²³ Annette's "direct deposit advance" for \$500 from Wells Fargo cost her nearly \$3,000.¹²⁴ As the data above show, her experience was hardly an aberration.

At their peak, these loans—even with only six banks making them—drained roughly half a billion dollars from bank customers annually.¹²⁵ Payday lending by banks was met by fierce opposition from virtually every sphere—the military community,¹²⁶ community organizations,¹²⁷ civil rights leaders,¹²⁸

¹²² CFPB Supplemental Findings at 39.

¹²³ Testimony of Annette Smith before the Senate Special Committee on Aging, U.S. Senate, July 24, 2013, available at https://www.aging.senate.gov/imo/media/doc/04_Smith_7_24_13.pdf; video available at https://www.youtube.com/watch?time_continue=50&v=UG7B3L3oDN8.

¹²⁴ *Id.*

¹²⁵ The Rule estimated that the market was roughly \$6.5 billion in advances at its peak in 2013. 82 Fed. Reg. at 54495. Banks charged from \$7.50 to \$10.00 per \$100 borrowed, computing to a range of \$487.5 million (if every customer were charged \$7.50) to \$650 million (if every customer were charged \$10.00).

¹²⁶ See, e.g., Testimony of Steve Abbot, former President of the Navy-Marine Corps Relief Society, Before the U.S. Committee on Banking, Housing and Urban Affairs (Nov. 3, 2011) (noting bank payday loans among the "most egregious trends"); Comments of Michael Archer, Director of Military Legal Assistance, Marine Corps Installations East, to CFPB (April 4, 2012): "Most ominously, a few large banks have gotten into the business of payday loans through the artifice of calling the loans open ended credit," <http://www.regulations.gov/#!documentDetail;D=CFPB-2012-0009-0056>.

¹²⁷ Hundreds of groups urged the prudential regulators to stop banks from trapping borrowers in payday loans. Letters from approximately 250 groups to FDIC, OCC, FRB and CFPB, March 13, 2013 (<http://ourfinancialsecurity.org/blogs/wp-content/ourfinancialsecurity.org/uploads/2013/03/Bank-Payday-Sign-On-Letter-3-13-13-Final.pdf>) and February 22, 2012 (<http://www.responsiblelending.org/payday-lending/policy-legislation/regulators/Dear-Regulators.pdf>). Thousands of individuals and many community groups filed comments with the OCC urging that Wells Fargo's Community Reinvestment Act rating be negatively impacted because it makes payday loans, including CRL and NCLC (http://www.responsiblelending.org/payday-lending/policy-legislation/regulators/cra-comment_wells-nov-29-2012_final.pdf).

¹²⁸ See, e.g., Letter from Benjamin Todd Jealous, President and Chief Executive Officer, NAACP, to FDIC, OCC, FRB, and CFPB opposing bank payday lending (Feb. 21, 2013), <http://www.responsiblelending.org/payday-lending/policy-legislation/regulators/NAACP-redatory-Pay-Day-Loans-to-regulators-BTJ.pdf>.

faith leaders,¹²⁹ socially responsible investors,¹³⁰ state legislators,¹³¹ and members of Congress.¹³² Bank payday lending also motivated “move-your-money” campaigns.¹³³ It led groups managing programs aiming to bring people into the banking mainstream to establish policies that excluded banks making

¹²⁹ See, e.g., Elaina Ramsey, Faith Groups Take On Payday Lenders, Sojourners, <https://sojo.net/magazine/stub/faith-groups-take-payday-lenders> (discussing a National Day of Action among faith leaders in early 2013 to address payday lending). In connection with this National Day of Action, Rev. DeForest B. Soaries, jointly with other nationally prominent African American ministers, called for “an end to enslavement to both payday lenders and the banks now offering equally dangerous products” in *An Emancipation Proclamation from Payday Lending*. Center for Responsible Lending, *Bank Payday Lending: Overview of Media Coverage and Public Concerns*, CRL Issue Brief, March 7, 2013, <http://www.responsiblelending.org/payday-lending/tools-resources/BPD-media-coverage-3-7-13.pdf>

¹³⁰ For proxy year 2013, investors filed shareholder resolutions with the four largest banks making payday loans expressing concern about the product and requesting data, which none of the banks agreed to provide. Wells Fargo (<https://trilliuminvest.com/shareholder-proposal/payday-lending-wells-fargo-2013/>); Fifth Third Bank (<http://www.trilliuminvest.com/resolutions/payday-lending-fifth-third-bancorp-2013/>); U.S. Bank; (<https://www.sec.gov/divisions/corpfm/cf-noaction/14a-8/2013/dominisocial012513-14a8.pdf>); and Regions (<https://www.sec.gov/divisions/corpfm/cf-noaction/14a-8/2013/congregationsisters011413-14a8.pdf>).

¹³¹ See, e.g., “Legislative Black Caucus slams Regions Bank over payday-style loans,” Raleigh News and Observer “Under the Dome,” Oct. 11, 2012, <http://www.cashcowadvances.com/paydayblog/legislative-black-caucus-slams-regions-bank-over-payday-style-loans.html> (quoting letter from N.C. Senator Floyd McKissick, Jr., chairman of the N.C. Legislative Black Caucus, to Regions Bank, which stated: “We are deeply concerned about recent reports of Regions Bank offering its ‘Ready Advance’ payday loans in North Carolina High-cost, short-term balloon loans like these sharply increase the financial distress of families under economic strain”); Letter from Arizona Democratic Caucus to the prudential banking regulators, February 2012 (noting that Arizona “has spent countless state resources to study and understand the effects of [payday lending], and ultimately outlaw payday lending entirely” and calling on federal regulators to “take immediate action so that meaningful reforms taking place in Arizona and throughout the country in the name of consumer protection will not be undermined.”).

¹³² In January 2013, several Senators wrote the FRB, OCC, and FDIC urging action to address bank payday lending (<http://www.blumenthal.senate.gov/newsroom/press/release/blumenthal-calls-on-regulators-to-act-to-stop-abusive-bank-payday-lending>). In April 2013, House members did the same. For further documentation of opposition to bank payday lending, see Center for Responsible Lending, *Bank Payday Lending: Overview of Media Coverage and Public Concerns* at 10, CRL Issue Brief, March 7, 2013, <http://www.responsiblelending.org/payday-lending/tools-resources/BPD-media-coverage-3-7-13.pdf>.

¹³³ Green America’s “Break up with your mega bank” campaign (<http://breakupwithyourmegabank.org/>) focused on bank payday lending. In addition, a 2012 North Carolina poll found that 93 percent of respondents were less likely to use a bank that makes payday loans that violate North Carolina law. North Carolina Justice Center, *Regions Bank Halts Illegal Payday Lending in North Carolina* (Jan. 16, 2013) (citing Public Policy Polling poll conducted on behalf of CRL, Sept. 2012), <http://www.ncjustice-mail.org/?q=consumer-and-housing/media-release-regions-bank-halts-illegal-payday-lending-north-carolina>.

high-cost payday loans from the program.¹³⁴ And multiple lawsuits involving bank payday loans were filed.¹³⁵

Recognizing the harm to consumers, regulators took action in 2013 to protect bank customers—the OCC and FDIC with their 2013 deposit advance guidance requiring an income-and-expense-based ability-to-repay determination,¹³⁶ and the Federal Reserve Board (FRB) with its supervisory statement, emphasizing the “significant consumer risks” bank payday lending poses.¹³⁷ For the most part, the banks responded by suspending their payday loan products. The day the Rule was issued, the OCC rescinded its deposit advance guidance.¹³⁸ Rescinding the Rule now would leave borrowers entirely unprotected from unaffordable debt-trap lending by OCC-supervised banks. The FDIC is reconsidering its deposit advance guidance and could rescind it as well.¹³⁹

2.2.5. Payday and vehicle title loans cause particular harm to financially vulnerable communities.

Payday and vehicle title loans typically prey upon those with few resources struggling to make ends meet. As discussed in the Rule, median incomes for these borrowers are in the \$25,000-\$30,000

¹³⁴ In 2012, “Bank On” Savannah (Ga.) adopted as policy that participating banks may not make high-cost deposit advance products. Relatedly, Cities for Financial Empowerment, the organization that supports cities in implementing “Bank On” programs to bring people into the banking mainstream, wrote to the prudential regulators expressing serious concerns about bank deposit advance programs (https://www.fdic.gov/regulations/laws/federal/2013/2013-deposit_advance_products-c_61.pdf).

¹³⁵ For example, the following class action lawsuits were filed against Fifth Third Bank: *Klopfenstein v. Fifth Third Bank*, S.D. Ohio (Aug. 3, 2012); *Laskaris v. Fifth Third Bank*, S.D.Ca. (Feb. 12, 2013); *Jesse McQuillen v. Fifth Third Bank*, W.D. Ky. (May 7, 2013). Another was filed against Bank of Oklahoma and its affiliates (*Leland Small v. BOKF, N.A.*, 13-cv-01125), which resulted in a \$1.8 million settlement.

¹³⁶ OCC, Guidance on Supervisory Concerns and Expectations Regarding Deposit Advance Products (Nov. 26, 2013), available at <https://www.occ.gov/news-issuances/federal-register/78fr70624.pdf> (rescinded); FDIC, Guidance on Supervisory Concerns and Expectations Regarding Deposit Advance Products (Nov. 26, 2013), available at <https://www.gpo.gov/fdsys/pkg/FR-2013-11-26/pdf/2013-28306.pdf> [OCC/FDIC Deposit Advance Guidance].

¹³⁷ FRB, Statement on Deposit Advance Products (2013), <https://www.federalreserve.gov/supervisionreg/caletters/CA13-07attachment.pdf>.

¹³⁸ 82 Fed. Reg. 47602 (Oct. 12, 2017).

¹³⁹ FDIC, Request for Information on Small-Dollar Lending, 83 Fed. Reg. at 58566 (Nov. 20, 2018); see also Comments of CRL and several undersigned groups to the FDIC on this RFI, <https://www.responsiblelending.org/sites/default/files/nodes/files/research-publication/crl-fdic-small-dollar-rfi-22jan2019.pdf>. In light of the data available demonstrating consumers’ lack of ability to repay these loans, rescinding the 2013 guidance is an abrogation of the prudential regulator’s responsibilities to ensure the safety and soundness of our nation’s banks.

range.¹⁴⁰ Median credit scores are deep subprime or subprime, averaging 525-530,¹⁴¹ with about 85% of borrowers with scores below 600.¹⁴²

These loans have a particularly harsh impact on communities of color, as well as on older Americans and others receiving public benefits, as discussed below. Loans made without complying with the Rule's ability-to-repay and other requirements are particularly likely to harm these communities.

2.2.5.1. Payday and vehicle title lending disproportionately harm communities of color, exploiting and perpetuating the racial wealth gap.

A legacy of racial discrimination in housing, lending, banking, policing, employment, and otherwise, has produced dramatically inequitable outcomes that persist today. Communities of color, often largely segregated due to the history of redlining and other racially exclusionary housing policy, experience higher rates of poverty, lower wages, and higher cost burdens to pay for basic living expenses. Payday lenders peddling loans with no ability-to-repay determinations cause particular harm to these communities,¹⁴³ which several of the undersigned groups represent.

Payday lenders target borrowers of color, in part by concentrating their locations in communities of color.¹⁴⁴ Indeed, the communities most affected by redlining are the same who are saturated by payday lenders today. Payday lenders in California were found 2.4 times more concentrated in African American and Latino communities, *even after controlling for income and a variety of other factors*.¹⁴⁵ Payday lenders in Florida were also more concentrated in majority black and Latino communities, even after controlling for income, as shown in the following chart.

¹⁴⁰ 82 Fed. Reg. at 54581.

¹⁴¹ See 82 Fed. Reg. at 54557.

¹⁴² *Id.*

¹⁴³ See *id.* at 54556-57

¹⁴⁴ See, e.g., Delvin Davis, et al., *Race Matters: The Concentration of Payday Lenders in African-American Communities in North Carolina*, Center for Responsible Lending (2005), http://www.responsiblelending.org/north-carolina/nc-payday/research-analysis/racematters/rr006-Race_Matters_Payday_in_NC-0305.pdf (finding that, even when controlling for a variety of other factors, African-American neighborhoods had three times as many payday lending stores per capita as white neighborhoods in North Carolina in 2005); Assaf Oron, *Easy Prey: Evidence for Race and Military Related Targeting in the Distribution of Payday Loan Branches in Washington State*, Department of Statistics, University of Washington (2006) (concluding based on a study of Washington State payday lenders that "payday businesses do intentionally target localities with a high percentage of African Americans.").

¹⁴⁵ Li, et al., *Predatory Profiling: The Role of Race and Ethnicity in the Location of Payday Lenders in California*, Center for Responsible Lending (2009), <http://www.responsiblelending.org/payday-lending/research-analysis/predatory-profiling.pdf>.

Florida Payday Store Concentrations By Race and Income, Combined:¹⁴⁶



Recent studies have also found concentration of payday lenders in communities of color in Michigan¹⁴⁷ and, prior to its new law capping interest rates at 36%, Colorado.¹⁴⁸ Both studies found that more affluent communities of color were more likely to have payday loan stores than less affluent predominantly white communities.¹⁴⁹

In light of this targeting, it is unsurprising that a disproportionate share of payday borrowers come from communities of color, even after controlling for income.¹⁵⁰ African-Americans are payday borrowers at

¹⁴⁶ Replicated from Brandon Coleman and Delvin Davis, *Perfect Storm: Payday Lenders Harm Florida Consumers Despite State Law*, Center for Responsible Lending at 7, Chart 2 (March 2016). The analysis is based on payday loan locations provided by the Florida Office of Financial Regulation, as of January 2016, reflecting more than 1,100 stores. Two payday lenders—Amscot and Advance America—own nearly 500 of these stores. By comparison, Starbucks has 642 Florida locations.

¹⁴⁷ Delvin Davis and Lisa Stifler, *Power Steering: Payday Lenders Targeting Vulnerable Michigan Communities*, Center for Responsible Lending (Aug. 2018), <https://www.responsiblelending.org/research-publication/power-steering-payday-lenders-targeting-vulnerable-michigan-communities>.

¹⁴⁸ Delvin Davis, *Mile High Money: Payday Stores Target Colorado Communities of Color*, Center for Responsible Lending (Aug. 2017; amended Feb. 2018), <https://www.responsiblelending.org/research-publication/mile-high-money-payday-stores-target-colorado-communities-color>.

¹⁴⁹ *Id.*

¹⁵⁰ 82 Fed. Reg. at 54556 (citing FDIC The Pew Charitable Trusts, Safe Small-Dollar Loans Research Project, *Payday Lending in America: Who Borrows, Where They Borrow, and Why* at 9 (July 2012) (finding that, after controlling for other characteristics including income, payday loan usage was 105% higher for African Americans than for other races/ethnicities). Other studies that do not control for income also show disproportionalities. Amanda Logan and Christian E. Weller, *EZ Payday Loans: Who Borrows From Payday Lenders? An Analysis of Newly Available Data*, Center for American Progress (March 2009), summary of findings at page 1 (finding, based on the FRB's Survey of Consumer Finances conducted in 2007 and released in 2009 payday borrowers are more likely to be minorities); California Department of Corporations, *Payday Loan Study* (updated June 2008), available at

three times the rate, and Hispanics at twice the rate, of non-Hispanic whites.¹⁵¹ Vehicle title borrowers are also disproportionately African-American and Hispanic.¹⁵²

The disparity in payday loans is especially significant given that African Americans and Latinos are much less likely to have checking accounts than whites.¹⁵³ Since a checking account is typically required to get a payday loan, one might expect the concentration of payday lenders to be lower than in neighborhoods of color than in white neighborhoods, but that's not the case.

Communities of color have historically been disproportionately left out of the traditional banking system, a disparity that persists today. About 17 percent of African American and 14 percent of Latino households are unbanked, compared to 3 percent of white households.¹⁵⁴ Payday and vehicle title loans, with their high association with lost bank accounts,¹⁵⁵ drive borrowers out of the banking system and exacerbate this disparity.

Payday and vehicle title lenders claim their products provide access to credit in communities that have few other options. Subprime mortgage lenders did the same leading up to the 2008 foreclosure crisis, before their practices led to the erasure of three decades of economic progress for households of color.¹⁵⁶

The Proposal, too, as discussed in section 3.2 below, cites access to credit as a benefit of repealing the Rule.¹⁵⁷ In reality, payday and vehicle title lenders' practice of lending without regard to ability-to-repay strips borrowers of income and assets, leaving them worse off, while stifling the development of responsible products—a double-edged sword. Permitting their unfair and abusive practices to continue unfettered entrenches a two-tier financial system. One group of consumers has access to the

http://www.dbo.ca.gov/Licensees/Payday_Lenders/Archives/pdfs/PDLStudy07.pdf (finding that, although they represent about one-third of the overall state population, over half of California payday borrowers are African American and Latino); Skiba and Tobacman, Do Payday Loans Cause Bankruptcy?, *supra* (analysis of a database of a large Texas-based payday lender finding that African Americans (who make up approximately 11 percent of the total adult population) made up 43 percent of payday borrowers and Latinos (who make up approximately 29 percent of the total adult population) made up 34 percent of payday borrowers).

¹⁵¹ 82 Fed. Reg. at 54556-57 (citing 2015 FDIC National Survey of Unbanked and Underbanked Households (calculations using custom data tool)).

¹⁵² 82 Fed. Reg. at 54557 (citing FDIC National Survey of Unbanked and Underbanked Households) (calculations using custom data tool).

¹⁵³ 2017 FDIC National Survey of Unbanked and Underbanked Households, at 3, *available at* https://www.economicinclusion.gov/downloads/2017_FDIC_Unbanked_HH_Survey_Report.pdf.

¹⁵⁴ *Id.*

¹⁵⁵ See section 2.2 above.

¹⁵⁶ See Prosperity Now and the Institute for Policy Studies, *The Road to Zero Wealth* at 8 (September 2017), https://prosperitynow.org/sites/default/files/PDFs/road_to_zero_wealth.pdf.

¹⁵⁷ See 84 Fed. Reg. at 4274.

mainstream financial system, while another is further marginalized, relegated to predatory lenders pushing debt traps. By sustaining and exacerbating an existing precarious financial situation, the debt trap reinforces and magnifies existing income and wealth gaps—legacies of continuing discrimination—and perpetuates discrimination today.¹⁵⁸

2.2.5.2. Older Americans and others receiving public benefits are particularly attractive to high-cost lenders, and especially vulnerable to the harms the loans cause.

Older Americans show greater signs of financial hardship than other age groups and are often less able to recover from financial distress. As a result of the Great Recession, many older Americans experienced dramatic declines in the value of their largest assets—homes and retirement assets. Many older Americans also struggle with limited incomes. Nearly half of all older Americans are considered economically insecure, living on \$29,425 per year or less.¹⁵⁹ Forty-seven percent of single recipients of Social Security depend on it for 90% or more of their income.¹⁶⁰ Senior women in particular face diminished incomes because of lower lifetime earnings and Social Security and pension benefits. Not only are these incomes limited, but they are also fixed, meaning seniors are particularly unlikely to be able to address financial shortfalls by working extra hours or otherwise earning extra income. Facing these financial hardships, older Americans are particularly vulnerable to payday and vehicle title lenders' claims of quick cash.

Older Americans and other federal benefits recipients are particularly attractive to lenders because their benefits provide a steady source of repayment. As one payday lender described federal benefits recipients:

"These people always get paid, rain or shine . . . [They] will always have money, every 30 days."—former manager of payday loan stores¹⁶¹

As another put it:

¹⁵⁸ For further on the undersigned groups' concerns about the harm payday and vehicle title loans cause communities of color, and the efforts we have long made to stop that harm, see the sampling of references cited here: <http://stopthedebttrap.org/wp-content/uploads/2014/11/PayDay-loans.7-2016.pdf>; http://stopthedebttrap.org/wp-content/uploads/2015/08/lcchr_resolution_payday_deposit_advance_lending_12dec2015.pdf; <http://lulac.org/news/pr/dont-get-caught-in-a-debt-trap/>; http://lulac.org/assets/pdfs/10_Financial_Literacy_Payday_loan_case.pdf; http://stopthedebttrap.org/wp-content/uploads/2015/08/naacp_letter_obama_payday_15december2014.pdf; <http://ourfinancialsecurity.org/2011/04/hilary-shelton-cfpb-testimony/>; http://www.responsiblelending.org/payday-lending/policy-legislation/states/Letter-JBond_Rendell-012306.pdf.

¹⁵⁹ National Council on Aging (at age 60+, 25 million out of 53 million are economically insecure), <https://www.ncoa.org/news/resources-for-reporters/get-the-facts/economic-security-facts/>.

¹⁶⁰ *Id.*

¹⁶¹ Ellen E. Schultz and Theo Francis, *High-Interest Lenders Tap Elderly, Disabled*, Wall Street Journal (Feb. 12, 2008), available at <http://online.wsj.com/article/SB120277630957260703.html> ("Wall Street Journal, 2008").

“[Borrowers receiving Social Security or disability] payments would come in for a small loan and write a check to the company dated the 3rd of the month, when their government checks would arrive. All the Advance America employees were required to come in early on that day, so we could quickly cash their checks and wipe out their checking accounts.”—former Advance America employee¹⁶²

Indeed, an analysis by one researcher found that payday lender storefronts cluster around government-subsidized housing for seniors and individuals with disabilities in a number of states across the country.¹⁶³

The Rule found that nearly one-fifth of payday borrowers reported some form of public assistance or other benefits as an income source.¹⁶⁴ It found that a full 58% of payday borrowers with loans due monthly were recipients of government benefits.¹⁶⁵ The Rule noted that borrowers paid monthly are particularly financially vulnerable, concentrated at the lower end of the income range.¹⁶⁶ And the debt trap for these borrowers appears to be particularly deep. The Bureau found that borrowers paid monthly have more repeat loans than those paid more frequently: approximately 20% of such borrowers averaged at least one loan per pay period over the course of a year,¹⁶⁷ and over 40% of all monthly loans were in sequences that persisted for the rest of the year studied.¹⁶⁸

In recent years, trends have suggested that older Americans have comprised a growing share of payday borrowers. The share of payday borrowers in Florida age 65 and older more than doubled over the past decade—increasing from 3.4% of borrowers in 2005 to 8.6% in 2015 (a 152.9% increase),¹⁶⁹ while the

¹⁶² *Bailed-Out Banks Finance Predatory Payday Lenders*, Center for Media and Democracy (Sept 16, 2010) (reporting from a GRO-MO action, September 16, St. Louis, MO, and quoting a former Advance America employee who remained anonymous because he was reportedly forced to sign a confidentiality agreement upon leaving the firm), available at <http://www.prwatch.org/node/9456>.

¹⁶³ Wall Street Journal, 2008. An analysis of data from the U.S. Department of Housing and Urban Development showed that many payday lenders are clustered around government-subsidized housing for seniors and the disabled. The research was done by Steven Graves, a geographer at California State University at Northridge, at The Wall Street Journal’s request.

¹⁶⁴ 82 Fed. Reg. at 54556, & n. 469. See also *id.* at 54711, n.903.

¹⁶⁵ *Id.* at 54711.

¹⁶⁶ See *id.*

¹⁶⁷ *Id.* at 54711-12.

¹⁶⁸ *Id.*

¹⁶⁹ Brandon Coleman and Delvin Davis, *Perfect Storm: Payday Lenders Harm Florida Consumers Despite State Law*, Center for Responsible Lending, at 8 (March 2016) (analyzing data from Veritec Solutions, *Florida Trends in Deferred Presentment* (May 2015) (“CRL, *Perfect Storm*”), https://www.responsiblelending.org/sites/default/files/nodes/files/research-publication/crl_perfect_storm_florida_mar2016_0.pdf).

share of Florida's overall population comprised of that age group grew by only 9.7%.¹⁷⁰ Borrowers 65 and older were the fastest growing age group of borrowers over this period.¹⁷¹ In California in 2015, nearly a third of borrowers were age 52 and over;¹⁷² the portion of borrowers age 62 and over grew steadily from 12.8% in 2013, to 13.2% in 2014, to 13.9% in 2015.¹⁷³ The senior program manager at a community organization that aids lower-income people in Nevada has stated: "I see about 80 to 100 seniors per week . . . at least half have taken out a payday loan."¹⁷⁴ Many go on to default and become victim to harassing phone calls.¹⁷⁵

CRL's research on bank payday loans found that over one-quarter of bank payday borrowers were Social Security recipients, making these borrowers 2.2 times as likely to have had a bank payday loan as bank customers as a whole.¹⁷⁶ One widow who relied on Social Security for her income testified before the Senate Committee on Aging that her \$500 bank payday loan from Wells Fargo got her trapped for five years and ended up costing her nearly \$3,000.¹⁷⁷

Unaffordable payday loans made to Social Security recipients without an ability-to-repay determination are particularly troubling because the Social Security funds the lenders routinely seize are protected from creditors in other contexts. Congress has long sought to protect Social Security funds and other public benefits intended for necessities from the unilateral reach of creditors.¹⁷⁸ The Social Security Act

¹⁷⁰ Florida's senior population increased from 16.6% of the population in 2005 to 18.2% of the population in 2014. CRL, *Perfect Storm* at 8 (based on data from American Fact Finder, United States Census Bureau, available at <http://factfinder.census.gov/faces/nav/jsf/pages/index.xhtml>).

¹⁷¹ CRL, *Perfect Storm* at 8.

¹⁷² In 2015, the figure was 31.1%. California Department of Business Oversight, "Summary Report: California Deferred Deposit Transaction Law – Annual Report and Industry Survey" (2014-2016). http://www.dbo.ca.gov/Licensees/Payday_Lenders/Publications.asp.

¹⁷³ *Id.*

¹⁷⁴ Michael Lyle, *Seniors often pay hefty price for relying on payday loans*, Las Vegas Review Journal (Sept. 1, 2016) (quoting Don Miller, seniors program manager for Hopelink, 178 Westminster Way, which provides assistance and resources to low-income people and families in the Las Vegas area), available at <http://www.reviewjournal.com/view/seniors-often-pay-hefty-price-relying-payday-loans>.

¹⁷⁵ *Id.*

¹⁷⁶ Analysis of 2011 checking account data on file with CRL. These data are consistent with our analysis of 2010 data, which found that nearly one-quarter of all bank payday borrowers were Social Security recipients, who were 2.6 times as likely to have a bank payday loan as bank customers as a whole. R. Borné, J. Frank, P. Smith, and E. Schloemer, *Big Bank Payday Loans: High interest loans through checking accounts keep customers in long-term debt*, Center for Responsible Lending (2011), at 8, <http://www.responsiblelending.org/payday-lending/research-analysis/big-bank-payday-loans.pdf> ("CRL, *Big Bank Payday Loans*").

¹⁷⁷ Testimony of Annette Smith before the Senate Special Committee on Aging, U.S. Senate, July 24, 2013, available at https://www.aging.senate.gov/imo/media/doc/04_Smith_7_24_13.pdf; video available at https://www.youtube.com/watch?time_continue=50&v=UG7B3L3oDN8.

¹⁷⁸ See, e.g., Social Security Act, at 42 U.S.C. § 407(a).

prohibits collection of Social Security benefits through assignment, garnishment, or other legal process. The policy underlying this legal protection is to ensure the debtor a minimum subsistence income—for essential needs like food, shelter, and medicine—and courts have repeatedly upheld it.¹⁷⁹

Payday lenders making loans to Social Security recipients who cannot afford to repay the loans grossly undermine this critical protection by requiring the borrowers to provide direct access to their bank accounts and immediately taking the Social Security income for repayment—even if that means that the borrower is left with no funds for essentials. CRL research found that bank payday lenders took an average of 33% of the recipient’s next Social Security check to repay a bank payday loan.¹⁸⁰ For Annette Smith, the borrower described above, they took more than half.¹⁸¹

2.2.6. The harm spills over to borrowers’ communities.

The harms caused by unaffordable covered loans spill over to borrowers’ communities.¹⁸² Public Citizen Litigation Group’s client, Cooperative Baptist Fellowship, provided one example in litigation. A Cooperative Baptist missionary, Scarlett Jasper, promotes economic development in low-income, rural Kentucky communities where payday loans are prevalent. Her work involves providing financial education to individuals in financial crises. And because providing this help to people caught in unaffordable payday loans takes so much extra time, Ms. Jasper cannot help Kentucky communities in other ways. If less of her time were needed to help payday borrowers in distress, Ms. Jasper would be

¹⁷⁹ For further discussion and detail, see Testimony of Margot Saunders, National Consumer Law Center (on behalf of its low income clients) before the Subcommittee on Social Security, Committee on Ways and Means, U.S. House of Representatives, June 24, 2008, *available at* http://www.nclc.org/images/pdf/other_consumer_issues/exempt_public_benefits/NCLC_exemptBenefitsTestimony_House_June2008.pdf.

¹⁸⁰ CRL, *Big Bank Payday Loans*, at 8.

¹⁸¹ The Treasury Department has made significant strides in protecting Social Security funds in checking accounts from bank freezes in response to garnishment orders. 31 C.F.R. § 212.1. But these rules do not address the informal wage assignment that is routine to the payday lending model. They also do not apply to the practice whereby a depository institution repays itself as creditor, as with bank payday loans. 76 Fed. Reg. 9947

The threat that unaffordable payday loans pose to Social Security recipients became more pronounced in 2013, when electronic distribution of government benefits mandatory. U.S. Department of the Treasury, Interim Final Rule, Federal Government Participation in the Automated Clearing House, 75 Fed. Reg. 80335, amending 31 CFR Part 208 (2010).

¹⁸² See, generally, Sarah D. Wolff, *State of Lending in America & Its Impact on U.S. Households: The Cumulative Costs of Predatory Practices*, Center for Responsible Lending (June 2015), <http://www.responsiblelending.org/state-of-lending/reports/13-Cumulative-Impact.pdf> (“CRL, *Cumulative Costs*”).

able to pursue other efforts in Kentucky communities, such as helping domestic abuse victims who are illiterate become self-sufficient.¹⁸³

When borrowers cannot afford to repay payday and vehicle title loans, others may step in to settle the debt. Payday and car-title lending are associated with increased reliance on charity or government support. Texas Catholic Charities estimated that it spent \$1 million in 2010 to help individuals who had payday or car-title debt.¹⁸⁴ It estimated that nearly half of payday borrowers that received their charitable assistance identified the loans as contributing to their need to ask for help.¹⁸⁵ In addition, a study has found that households who lived within easy access to payday loan stores were more likely to use food stamps and less likely to make required child support payments than similar households that did not have access to these stores.¹⁸⁶ Other data show that when borrowers cannot afford to repay, they often—one study found nearly 20% of the time—turn to friends or family for the funds.¹⁸⁷

Research from the Insight Center for Community Economic Development has estimated the broader cost that payday lending imposes on local economies. During 2011, payday lending resulted in a net loss in U.S. economic activity of \$774 million nationwide and a net loss of 14,094 jobs.¹⁸⁸ Thus counter to payday lenders' narratives that their product promotes a healthy economy and jobs, communities would be better off without the drain payday and vehicle title loans made without ability-to-repay determinations.

2.3. The Bureau crafted a tailored Rule that would protect consumers from these harms.

The Bureau studied the payday loan, title loan, and other loan markets covered by the Rule for over five years, including through its critical supervisory and enforcement functions.¹⁸⁹ It collected vast amounts of data, analyzed that data, and published several major reports.¹⁹⁰ It also studied the body of

¹⁸³ See Declaration of Scarlett Jasper, *CFSA v. CFPB*, No. 18-cv-00295 (W.D. Tex. Sept. 19, 2018), ECF No. 45-1 at App. 7- App. 9.

¹⁸⁴ CRL, *Cumulative Costs* at 16 (citing Texas Catholic Conference, *Texas faith for fair lending: Religious leaders call for reform in payday lending regulation*).

¹⁸⁵ *Id.*

¹⁸⁶ B. Melzer, *Spillovers from Costly Credit*, *The Review of Financial Studies* (2018), <https://academic.oup.com/rfs/article-abstract/31/9/3568/4760436?redirectedFrom=fulltext>.

¹⁸⁷ Pew Charitable Trusts, *Payday Lending in America: How Borrowers Choose and Repay Payday Loans*, at 36 (2013), [https://www.pewtrusts.org/-/media/assets/2013/02/20/pew_choosing_borrowing_payday_feb2013-\(1\).pdf](https://www.pewtrusts.org/-/media/assets/2013/02/20/pew_choosing_borrowing_payday_feb2013-(1).pdf).

¹⁸⁸ Tim Lohrentz, *The Net Economic Impact of Payday Lending in the U.S.*, Insight Center for Community Economic Development (March 2013), <http://ww1.insightccd.org/uploads/assets/Net%20Economic%20Impact%20of%20Payday%20Lending.pdf>.

¹⁸⁹ See 82 Fed. Reg. at 54503-19 (“Summary of the Rulemaking Process”).

¹⁹⁰ *Id.* at 54503.

external research that has been conducted on these markets.¹⁹¹ It conducted multiple field hearings and met with a wide range of stakeholders, including lenders, trade associations, consumer groups, civil rights groups, religious groups, Tribal entities, and regulators.¹⁹² It received thousands of consumer complaints, and through the comment process on the 2016 Proposal, received 1.4 million comments, over a million of which were from individuals.¹⁹³

Based on this extraordinarily robust record, the Bureau determined that lenders' practice of making loans without an ability-to-repay determination is an unfair practice: It causes borrowers substantial injury that they cannot reasonably avoid, and that harm outweighs any benefits to consumers or competition from making these loans without ability-to-repay determinations. The Bureau also found that making payday and vehicle title loans without an ability-to-repay determination is an abusive practice: It takes unreasonable advantage of the consumer's lack of understanding of the material risks, costs, and conditions of these loans, and also takes advantage of their inability to protect their own interests in selecting or using those loans.¹⁹⁴

The Bureau carefully crafted a narrow rule designed to address this unfair and abusive practice and the harms stemming from it.¹⁹⁵ For certain loans, the Rule requires lenders to reasonably determine that the consumer will have the ability to repay the loan according to its terms, generally verifying income and debt obligations, while reasonably forecasting basic living expenses.¹⁹⁶ Of note, the details of these requirements were significantly streamlined from the proposed rule to the final rule in response to public comment.¹⁹⁷ The Rule also prohibits a lender from making more than three loans within 30 days of each other, which limits the length of loan sequences and the harm that stems from extended loan sequences.¹⁹⁸

The Rule also includes significant provisions that, the Rule explained, were designed to facilitate continued access to loans under certain conditions.¹⁹⁹ The Rule permits lenders to make a payday loan without an ability-to-repay determination under prescribed terms: no more than three loans in short succession, with the principal of each loan smaller than the prior loan by one-third of the original loan

¹⁹¹ *Id.* at 54503, & n.324.

¹⁹² *Id.* at 54475, 54503.

¹⁹³ *See id.* at 54514-19.

¹⁹⁴ 12 CFR § 1041.4; *see also* 82 Fed. Reg. at 54622.

¹⁹⁵ *See id.* at 54591.

¹⁹⁶ 12 CFR § 1041.5; *see also* 82 Fed. Reg. at 54624-95.

¹⁹⁷ *See* 82 Fed. Reg. at 54624-95.

¹⁹⁸ 12 CFR § 1041.5(d).

¹⁹⁹ 12 CFR § 1041.6; *see also* 82 Fed. Reg. at 54695-720. This exemption was strongly opposed by over 700 consumer, civil rights, faith, and other community organizations, including the undersigned.

amount (“step-down”), among other limitations.²⁰⁰ This alternative, the Rule explained, was designed to minimize the harms caused by lending without an ability-to-repay determination while facilitating continued access.²⁰¹ In addition, the Rule carefully designed conditional exemptions or exclusions for certain depository loans less likely to cause consumers substantial harm,²⁰² as well as for certain wage advance products.²⁰³

3. THE PROPOSAL IS AN UNREASONED BETRAYAL OF THE BUREAU’S STATUTORY MISSION.

After a change in leadership, the Bureau now tries to walk away from its Rule and the extensive record supporting it, abandoning its mission by focusing on protecting lenders’ profits rather than protecting consumers from harm. It frames this effort in terms of preserving consumer access to credit,²⁰⁴ consumer choice and competition,²⁰⁵ and state authority,²⁰⁶ and a distorted notion of the Rule’s “dramatic impacts.”²⁰⁷ But on all counts, as discussed in sections 3.1 through 3.6 below, the Proposal’s framing is plainly irrational. It fails to consider factors necessary to make an informed decision, rests on unsupported hypotheses, inexplicably ignores or contradicts information before the agency, or is based in faulty or internally contradictory logic.

3.1. The Proposal is an “industry protection” measure—not a “consumer protection” one.

Fundamentally, the Proposal conflicts with the Bureau’s purpose: to protect consumers from harm at the hands of financial companies. It’s not clear that section 1031 of the Dodd-Frank Act, on which this Proposal rests,²⁰⁸ gives the Bureau authority to withdraw its earlier determination that lenders’ practice is unfair and abusive, particularly based on the policy reasons that the Bureau now cites.²⁰⁹ Moreover,

²⁰⁰ 12 CFR § 1041.6.

²⁰¹ 82 Fed. Reg. at 54695-720; *see also, e.g., id.* at 54696, 97.

²⁰² 12 CFR § 1041.3(e), (f); *see also* 82 Fed. Reg. at 54548-54554.

²⁰³ 12 CFR § 1041.3(d)(7), discussed at 82 Fed. Reg. at 54547; 12 CFR § 1041.3(d)(8) (excluding certain no-cost advances), discussed at 82 Fed. Reg. 54547-48. *See also* broader discussion of exclusions and conditional exemptions, 82 Fed. Reg. at 54536-54554.

²⁰⁴ 84 Fed. Reg. at 4264.

²⁰⁵ *Id.* at 4262, 64.

²⁰⁶ *See id.* at 4254, 56, 64.

²⁰⁷ *See id.* at 4264, 66, 77.

²⁰⁸ *See* 84 Fed. Reg. at 4260-61.

²⁰⁹ *Cf. League of Conservation Voters v. Trump*, 363 F. Supp. 3d 1013, 1021-26 (D. Alaska 2019) (concluding that statute providing President authority to withdraw lands from oil and gas leasing did not also provide the President authority to revoke prior withdrawals).

as an “industry protection” measure, rather than a “consumer protection” one, the Proposal “makes a mockery of”²¹⁰ the agency’s mission and objectives.

The Rule, with the ATR provisions that the Proposal now seeks to revoke, is precisely the type of measure that Congress designed the Bureau to create. When Congress enacted the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act or Act) in 2010,²¹¹ the 2008 financial crisis had “destabilized the economy and left millions of Americans economically devastated.”²¹² “Congress studied the causes of the recession to craft solutions; it determined that the financial services industry had pushed consumers into unsustainable forms of debt and that federal regulators had failed to prevent mounting risks to the economy, in part because those regulators were overly responsive to the industry they purported to police.”²¹³ It established the Bureau because it “saw a need for an agency to help restore public confidence in markets: a regulator attentive to individuals and families.”²¹⁴

Of particular concern to Congress at the time was regulators’ failure to address lenders’ weak underwriting of loans. The financial crisis “‘was precipitated by the proliferation of poorly underwritten mortgages with abusive terms,’ issued ‘with little or no regard for a borrower’s understanding of the terms of, or their ability to repay, the loans.’”²¹⁵ Congress concluded that the regulators charged with overseeing the lenders “helped bring the financial system down” by “fail[ing] ... to give sufficient consideration to consumer protection.”²¹⁶ They “allowed [the] deterioration in underwriting standards to take place in part to prevent the institutions they regulate from getting priced out of the market.”²¹⁷

Seeking an end to the market abuses and regulatory failures that led to the crisis, Congress created the Bureau as an independent agency focused on consumer protection.²¹⁸ It required mortgage lenders “to establish that consumers have a reasonable ability to repay at the time the mortgage is consummated,” enacted other mortgage market reforms, and charged the new agency with implementing the new measures.²¹⁹ More broadly, Congress assigned the new agency authority to protect consumers against

²¹⁰ *Air All. Houston v. EPA*, 906 F.3d 1049, 1064 (D.C. Cir. 2018) (concluding that EPA rule delaying compliance with an earlier rule is not permitted under a statute requiring the agency to set an effective date that will “assur[e] compliance as expeditiously as practicable,” 906 F.3d at 1603-64).

²¹¹ Pub. L. No. 111-203, 124 Stat. 1376 (2010).

²¹² *PHH Corp. v. CFPB*, 881 F.3d 75, 77 (D.C. Cir. 2018) (en banc).

²¹³ *Id.*

²¹⁴ *Id.*

²¹⁵ *Id.* at 80 (quoting S. Rep. No. 111-176 at 11-12 (2010)).

²¹⁶ *Id.* (quoting S. Rep. No. 111-176 at 166).

²¹⁷ S. Rep. No. 111-176 at 14.

²¹⁸ *See id.* at 11; *see also PHH Corp.*, 881 F.3d at 80-81.

²¹⁹ H.R. Conf. Rep. No. 111-517, at 876 (2010); *see also id.* at 877-78; *see generally* Dodd Frank Act, tit. XIV & § 1400.

a wide range of other unfair, deceptive, or abusive acts and practices. The Dodd-Frank Act identifies protecting consumers from such acts and practices as one of the agency’s core objectives, and enables the CFPB to address unfair, deceptive, or abusive acts and practices through rulemaking, as well as other action.²²⁰

In giving the Bureau this and other authority, Congress recognized the need for consumer protection measures that address products other than mortgages. And it singled out payday loans for special attention. Congress designated payday lenders as one of just a handful of types of non-bank entities for which the CFPB generally has “exclusive authority” to conduct supervisory examinations, write rules, or “enforce Federal consumer financial law.”²²¹ The Senate Report on the Dodd-Frank Act suggests why. It explains that “[a]busive lending, high and hidden fees, unfair and deceptive practices, confusing disclosures, and other anti-consumer practices have been a widespread feature in commonly available consumer financial products.”²²² It then goes to discuss payday loans as one of five areas of concern.²²³ These loans, the Senate found, are generally used by “[c]ash-strapped consumers who ... are usually in significant debt or living on the financial edge,” and they “put[] many consumers on a perpetual debt treadmill where they extend the loan several times over”; further, the Senate report notes, “[i]f the borrower defaults on the loan, serious financial consequences can occur.”²²⁴

The Proposal would abandon this important history and conflict with the Bureau’s mission and objectives. Rather than “ensuring that ... consumers are protected from unfair, deceptive, or abusive acts and practices,”²²⁵ it would do the opposite: protecting *lenders’* ability to continue making loans without a determination that a borrower is able to repay. It endorses this lending practice even in light of overwhelming evidence that it causes significant, often severe, injury to many consumers—a finding that the Proposal does not reconsider. And it does so without any suggestion that the Rule’s earlier UDAAP identification was legally wrong, or any research-based determination that the practice is *not* unfair or abusive under the revised standards that the Bureau now proposes.²²⁶

3.2. The Proposal’s approach to access to credit is void of reasoning, lacks evidence, and perverts the Bureau’s statutory mission.

The Proposal’s purported concern about “access to credit,” in particular, distorts Congressional intent and turns the statutory purpose of the Bureau upside down. Without explanation or justification, the Proposal seems to suggest that any restriction on lenders’ ability to offer loans *on any terms*

²²⁰ See 12 U.S.C. §§ 5511(b)(2), 5531, 5536(a)(1).

²²¹ 12 U.S.C. § 5514(a)(1)(E), (c), (d).

²²² S. Rep. No. 111-176 at 17.

²²³ See *id.* at 17-23.

²²⁴ *Id.* at 20, 21.

²²⁵ 12 U.S.C. § 5511(b).

²²⁶ See 84 Fed. Reg. at 4253, 4277 (refusing to explore alternative UDAAP theories or conduct research), 4290-93 (regarding harm).

constitutes a harmful reduction in the access to credit.²²⁷ But if this were true, the Bureau would be putting itself in the regulatory trap that Congress sought to avoid when it passed the Dodd-Frank Act.

Ignoring the unfair and abusive terms of loans to consumers is what regulators did leading up to the financial crisis.²²⁸ The Dodd-Frank Act requires the Bureau be different. Congress made this intent clear by creating the Bureau “for the purpose of ensuring . . . access to markets for consumer financial products and services and that markets for consumer financial products and services are fair, transparent, and competitive.”²²⁹ Fair markets, then, are the markets to which the Bureau must ensure access. For one of the Bureau’s five statutory objectives is “ensuring that . . . consumers are protected from unfair, deceptive, or abusive” practices and “from discrimination.”²³⁰

The Bureau thus should not be promoting access to unfair and abusive forms of credit that cause severe consumer harm. Indeed, if promoting “access to credit,” on any terms, were a Bureau goal, it would mean the Bureau could hardly regulate. Virtually any rulemaking “identifying as unlawful”²³¹ an unfair and abusive practice could impact access to some loans, by restricting lenders’ ability to continue the unfair and abusive practice. Congress clearly expected this when it included consideration of this impact in the Bureau’s “standards for rulemaking”;²³² if no impact were anticipated, impact would not need to be considered.

The Proposal’s repeated reference to access-to-credit also gives short shrift to the Bureau’s earlier work, in adopting the ATR provisions. Consistent with statutory requirements, the Rule considered the impact of the ATR provisions on individuals’ access to credit, estimating that 94% of payday loan borrowers and 85% of current vehicle title borrowers would continue to be able to access a payday or vehicle title loan.²³³ The Proposal does not suggest any change to the Rule’s earlier analysis.

Moreover, when the Proposal claims the rule will “eliminate most covered . . . loans” from the marketplace,²³⁴ it ignores that over 80% of covered loans are not new credit, but rather an

²²⁷ See *id.* 4262.

²²⁸ See Financial Crisis Inquiry Commission, *The Financial Crisis Inquiry Report*, Chapter 5 (Subprime Lending) (discussing federal regulators’ failure to take action to prevent unfair and abusive lending practices) (2011), https://fcic-static.law.stanford.edu/cdn_media/fcic-reports/fcic_final_report_full.pdf; See also Testimony of Eric Stein, Center for Responsible Lending, Before the U.S. Senate Committee on Banking, Housing and Urban Affairs, ““Turmoil in the U.S. Credit Markets: The Genesis of the Current Economic Crisis” (Oct. 16, 2018), <https://www.banking.senate.gov/imo/media/doc/STEINTestimony101608Final.pdf>.

²²⁹ 12 U.S.C. § 5511(a).

²³⁰ 12 U.S.C. § 5511(b)(2).

²³¹ 12 U.S.C. § 5531(b)

²³² 12 U.S.C. §5512(2)(A)(i); Dodd-Frank Act § 1022(b)(2).

²³³ 82 Fed. Reg. at 54840. The Rule describes initial loans—meaning those not part of an existing sequence—as “those most likely to reflect a new need for credit.” *Id.*

²³⁴ 84 Fed. Reg. at 4264.

unaffordable loan recycled, likely unfair and abusive from the start.²³⁵ Thus, even if the Rule eliminated that portion of loans—which it does not—it would only be eliminating access to credit whose only purpose is to cover a prior unaffordable loan.

Further, as discussed further in section 7.2 below, the Proposal fails to consider the Rule’s expectation that lenders would shift consumers to products not covered by the Rule, and indeed that some shifting is already underway.²³⁶

The Proposal also fails to consider or analyze the experience in the states where laws far more restrictive than the Rule have been enacted: consumers turn to options better than unaffordable

²³⁵ Susanna Montezemolo, *The State of Lending in America & its Impact on U.S. Households: Payday Lending Abuses and Predatory Lending Practices*, Center for Responsible Lending at 3 (82% of payday loans are taken within 30 days of a prior loan), <http://www.responsiblelending.org/state-of-lending/reports/10-Payday-Loans.pdf>; see also 82 Fed. Reg. at 54554-55 (noting the Rule’s finding that 85% of payday loans and 85% of vehicle title loans are reborrowed within one month).

²³⁶ The Proposal ignores this plainly expected shift—even as this Bureau attempts to delay of the Rule in part on the basis that lenders in Ohio and Florida are busy shifting to longer-term installment loans.

payday and vehicle title loans, including credit cards and pawn.²³⁷ The Rule did consider the experience in other states;²³⁸ the Proposal entirely ignores that analysis.

Importantly, history tells us that when lenders have opposed addressing unfair credit practices—whether through the FTC Credit Practices Rule, FRB unfairness rules addressing credit cards and HOEPA loans, the Credit Card Act, or the Dodd-Frank Act mortgage provisions—on “access to credit”

²³⁷ As the Rule noted, a recent study on consumer borrowing after payday lending was prohibited in several states “suggested a large share of households that would otherwise have taken out payday loans took out pawn loans, instead.” 82 Fed. Reg. at 54841 (citing Neil Bhutta et al., *Consumer Borrowing After Payday Loan Bans*, 59 J. of L. and Econ. 225 (2016)). For further discussion of this paper, see Robin Howarth, Delvin Davis, & Sarah Wolff, *Shark-Free Waters: States Are Better Off without Payday Lending*, Center for Responsible Lending, at 4 (Aug. 2016), available at http://www.responsiblelending.org/sites/default/files/nodes/files/research-publication/crl_shark_free_waters_aug2016.pdf [CRL, *Shark-Free Waters*].

Moreover, a recent paper examines the substitution of fringe (payday) loans with less costly mainstream credit after the passage of the Military Lending Act (MLA), which made certain loans to the military over 36% illegal. The paper showed that likely military borrowers showed *increased* access to credit card borrowing after the restrictions placed on payday lending by the MLA. Credit limits increased by an average of 17-25% on total credit card accounts following passage of the MLA. Roman Galperin and Kaili Maricio, *Tough Times Borrowing: Effects of Fringe Lending Regulation on Credit Standing, Search, and Access* (April 2016).

Former payday borrowers living in states where payday lending is now illegal report using a range of credit options following the exit of payday loans. A North Carolina Commissioner of Banks study, following the exit of payday lenders from that state, studied how low- and moderate-income consumers in the state dealt with financial hardships. It found that the absence of payday lending had no significant impact on the availability of credit in North Carolina and identified an array of financial options that low- and moderate-income consumers used, including credit cards and/or cash advances, which 62% used. Center for Community Capital, University of North Carolina at Chapel Hill, *North Carolina Consumers after Payday Lending: Attitudes and Experiences with Credit Options*, Prepared for the North Carolina Commissioner of Banks, Nov 2007. http://ccc.sites.unc.edu/files/2013/08/NC_After_Payday.pdf.

Seven years after payday lending ended in Arkansas, when the state began enforcing its usury cap of 17%, former borrowers reported that they use credit cards (21%), pawn (19%), and loans from banks or credit unions (12%) (as well as build savings (14%), increase income (12%), and use financial assistance from friends and family (36%)) to deal with shortfalls. See Covington, Johnson, Southern Bancorp Community Partners, *Into the Light: A Survey of Arkansas Borrowers Seven Years after State Supreme Court Bans Usurious Payday Lending rates*, Southern Bancorp at 4 (April 2016) (“Into the Light”), <https://banksouthern.com/sbcp/into-the-light/>.

For further discussion of these and other studies and data, see CRL, *Shark-Free Waters*; NCLC, *After Payday Loans: How do Consumers Fare When States Restrict High-Cost Loans?* (October 2018), https://www.nclc.org/images/pdf/high_cost_small_loans/payday_loans/ib_how-consumers-fare-restrict-high-cost-loans-oct2018.pdf.

²³⁸ See 82 Fed. Reg. at 54841.

grounds,²³⁹ time after time the credit “sky” has not fallen.²⁴⁰ Rather, these reforms result in a more fair, more transparent, more competitive market—consistent with the Bureau’s purpose.²⁴¹ The Proposal, despite its own claims of “dramatic impacts” on access to credit, does not consider this relevant history.

3.3. The Bureau’s attempt to encourage “competition” and “innovation” without the Rule’s protections is reckless.

The Proposal offers bromides and conjecture about the prospect that competition or innovation will relieve consumers of the undeniable harms caused by payday and vehicle title loans made without ability-to-repay determinations. But it offers no evidence to support its assertion that this Proposal would encourage competition or innovation by rescinding the ATR provisions—or that any new business fostered by the Proposal would benefit consumers.

²³⁹ See, e.g., FTC Credit Practices Rule, 49 Fed. Reg. 7740, 7759 (Mar. 1, 1984); *Am. Fin. Servs. Ass’n v. F.T.C.*, 767 F.2d 957, 976 (D.C. Cir. 1985) (noting that “the crucial issue before the Commission was whether prohibiting . . . security interests [in household goods] and wage assignments would decrease availability and increase the cost of credit to consumers”); FRB Final HOEPA Rule, 73 Fed. Reg. 44522, 44428 (July 30, 2008) (industry claiming that substantive restrictions risk reducing access to credit); Credit Cards Rule, Federal Reserve System, Office of Thrift Supervision, and National Credit Union Administration, Final Rule, 74 Fed. Reg. 5498, 5500, 5539, 5540 (Jan. 29, 2009) (industry opposing substantive protections on access to credit grounds); Binyamin Appelbaum and Brady Dennis, *Legislation by Senator Dodd would overhaul banking regulators*, Washington Post (Nov. 11, 2009), <http://www.washingtonpost.com/wp-dyn/content/article/2009/11/09/AR2009110901935.html?hpid=topnews> (American Bankers Association president reacting to the Frank-Dodd Act proposal with outrage in 2009: “If this were to happen, the regulatory system would be in chaos for years. You have to look at the real-world impact of this.”).

²⁴⁰ See Margot Saunders, National Consumer Law Center, *Time to Update the Credit Practices Rule: CFPB Should Modernize FTC Rule Addressing Abusive Creditor Collection Practices*, at 6 (Dec 2010), https://www.nclc.org/images/pdf/debt_collection/credit-practices-rule-update.pdf [NCLC, *Time to Update the Credit Practices Rule*].

²⁴¹ See, e.g., CFPB, *CARD Act Report* at 5 (2013), https://files.consumerfinance.gov/f/201309_cfpb_card-act-report.pdf (indicating that “shopping for a credit card and comparing costs is far more straightforward than it was prior to enactment of the Act[,]” and that the total cost of credit *declined* between Q4 2008 to Q4 2012”); CFPB, *The Consumer Credit Card Market Report*, 2015, pages 9-10, https://files.consumerfinance.gov/f/201512_cfpb_report-the-consumer-credit-card-market.pdf (reporting that relative to before the implementation of the Act, all-in costs of using credit cards have remained steady, fees remain lower, costs are more predictable and transparent, and that “[t]here are indications that card credit is increasingly available to consumers[,]” including yearly account volume increases, growing credit lines for consumers with lower credit scores, and increasing rate of credit line); Comments of CRL and additional consumer and civil rights groups to CFPB, *Look Back at Mortgage Rules Under the Truth in Lending Act, Qualified Mortgage Rule*, Docket No. CFPB-2017-0014, at 3-10 (July 31, 2017), available at <https://www.responsiblelending.org/sites/default/files/nodes/files/research-publication/crl-qm-lookback-coalition-comment-31jul2017.pdf>; NCLC, *Time to Update the Credit Practices Rule* at 6

In particular, the Proposal’s suggestion that new bank and “technology” entrants will promote competition in any way that benefits consumers is contradicted by the Rule’s own findings, which suggest that rather than substitute for harmful products, additional high-cost, poorly underwritten loans push borrowers deeper into unsustainable debt. The Rule found, first, that bank payday (deposit advance) loans caused cycles of debt and harms similar to those caused by nonbank payday loans (see also 2.2.4 above). It also found that bank payday loan borrowers represented 8% of all eligible account holders but incurred 40% of debits by likely payday lenders²⁴²—showing that bank payday loans were not rescuing bank customers from nonbank payday loans. More globally, bank payday lending was not shown to have reduced nonbank payday lending. When six banks were making deposit advance loans at one-half to two-thirds the price of nonbank payday loans, their annual volume was about \$6.5 billion.²⁴³ The Proposal offers no evidence (and indeed, we know of none) that this volume drove down the cost or volume of nonbank payday lending, rather than adding to already unsustainable debt burdens and compounding substantial injury.

The Rule contemplated that, with guardrails in place, new, safer lending models might emerge. The Rule provided carefully crafted exemptions from the Rule’s scope designed to minimize potential harm of loans left uncovered.²⁴⁴ The Proposal, by contrast, would let the new types of business models loose on consumers, with no protections of the Rule itself and none derived from the conditions on which the careful exemptions were based.

3.4. Suggesting the Bureau should defer to less protective State laws is insupportable.

Congress designed the Bureau to create national, minimum consumer protection standards.²⁴⁵ The Proposal implies a different goal: deferring to states with weaker consumer protection laws.²⁴⁶

Just two years ago, the Bureau explained that “there [was] a need to adopt minimum Federal standards that apply consistently across all ... States” because state law had failed to prevent the harms from loans made without ATR determinations.²⁴⁷ In the Rule, the Bureau expressly rejected the suggestion that it should “exempt entities operating in any given State on the basis of the given State’s laws.”²⁴⁸

Here, the Bureau suggests it is taking the opposite approach, with the way that it frames its discussion of state laws. Without acknowledging any change in perspective or providing a reasoned justification

²⁴² CFPB, Supplemental Findings at 38-39.

²⁴³ 82 Fed. Reg. at 54495.

²⁴⁴ See, e.g., exclusions for wage advances, 12 CFR § 1041.3(d)(7), discussed at 82 Fed. Reg. at 54547; see also broader discussion of exclusions and conditional exemptions, 82 Fed. Reg. at 54536-54554.

²⁴⁵ See generally 12 U.S.C. § 5551(a) (regarding preemption principles applicable to the Bureau); see also 82 Fed. Reg. at 54522 (explaining that the Rule would operate as a floor, not a ceiling, on consumer protection).

²⁴⁶ See 84 Fed. Reg. at 4264.

²⁴⁷ 82 Fed. Reg. at 54639.

²⁴⁸ *Id.*

for the change, the Proposal implies that the Bureau seeks, in part, to defer to state laws that are less protective of consumers because it believes that states have determined that using payday loans “is in their citizens’ interest.”²⁴⁹

Any such change in position is unexplained and insupportable. The Bureau was formed precisely so that a federal regulator would address problems that have not been adequately addressed by other regulators, including states regulators.²⁵⁰ Consistent with basic constitutional preemption principles, Congress in passing the Dodd-Frank Act made clear that the Bureau could and should preempt state law when necessary to protect consumers, but that states were free to pass laws that were more protective of consumers.²⁵¹

It is important to note that state laws allowing payday lending do not necessarily reflect *any* determination that current lending practices benefit consumers; state lending laws may reflect *lenders’* interest, without any conclusion about *consumers’* interest.²⁵² Moreover, in most states, payday loans were legalized before the abundant evidence of their harm was available, and since then, the power and money of payday industry lobby has kept reforms at bay.

Additionally, the Rule is clear that its requirements will “coexist with State laws,”²⁵³ and this approach is not unique among federal laws; it’s the norm. Payday lenders are already subject to other federal lending laws (the Truth In Lending Act, for example, even where state laws require their own additional disclosures). Bureau rules apply to other state-regulated industries.²⁵⁴ And in the context of federal

²⁴⁹ 84 Fed. Reg. at 4262; *see also id.* at 4264.

²⁵⁰ Indeed, in the case of payday loans issued by banks, federal preemption and related laws limit States’ ability to address them.

²⁵¹ *See generally* 12 U.S.C. § 5551(a) (regarding preemption principles applicable to the Bureau); U.S.C. § 5551(a)(2) (providing that Bureau rules would operate as a floor, not a ceiling, on consumer protection); *see also* 82 Fed. Reg. at 54522.

²⁵² Indeed, since 2008, when the issue has been put before consumers themselves through ballot initiatives, voters in five of five state ballot referenda (Arizona, Ohio, Montana, South Dakota, and Colorado) have voted overwhelmingly in favor of restricting payday lending (results on file with CRL). A number of the 2016 comments included at Appendix C describe challenges state-based organizations have had in reforming state law, despite overwhelming evidence of harm to consumers, including Kentucky Coalition for Responsible Lending (“efforts so far have been unsuccessful, largely due to an influential payday industry and its large cadre of lobbyists. This is why a strong federal rule would be so beneficial to Kentucky borrowers”) <https://www.regulations.gov/document?D=CFPB-2016-0025-141498>, Kentucky Equal Justice at 3 (in describing history of advocacy efforts), <https://www.regulations.gov/document?D=CFPB-2016-0025-35088>; Florida Alliance for Consumer Protection (describing advocacy efforts at state legislative level), <https://www.regulations.gov/document?D=CFPB-2016-0025-141597>; *see also, e.g.* Comments of Texas Appleseed, Virginia Poverty Law Center’s, Legal Services of Minnesota, South Carolina Appleseed, Hope Credit Union, among others, at Appendix C.

²⁵³ 82 Fed. Reg. at 54523.

²⁵⁴ E.g., the Bureau’s mortgage regulations under the Dodd-Frank Act and the Bureau’s remittance rules, among other examples.

unfairness law in particular, the FTC Credit Practices Rule prohibited several practices—including taking a nonpossessory security interest in household goods, confessions of judgment (waiving of due process rights), waivers of exemptions of property from judicial seizure, and irrevocable wage assignments—that were permitted “subject to certain limitations” in some states, while prohibited in others.²⁵⁵

Boiled down to its core, any suggestion by the Bureau that state laws justify the proposed repeal amounts to an argument that repeal is justified by the mere existence of state governments. Such a reasoning is clearly contrary to the Bureau’s statutory *responsibility* to ensure that “consumers are protected from unfair, deceptive, or abusive acts and practices.”²⁵⁶

3.5. The Proposal’s premise about “dramatic impacts” is distorted and does not support an invented standard of “more robust and reliable evidence.”

The Proposal rests on highly skewed presentations of the Rule’s impact. For starters, where the Proposal describes what it deems the “most relevant” aspects of the Rule’s 2017 analysis, it tellingly devotes one sentence to the Rule’s *raison d’être*, its “positive effect on consumer welfare.”²⁵⁷ The remainder of the Proposal’s so-called summary of the Rule’s impacts focuses on its effects on lenders and consumers’ access to credit, using word tricks and selective citation of data to further distort the picture.²⁵⁸

The Proposal’s approach to unfairness and abusiveness takes a similar approach. Barely discussing the Rule’s consumer protection benefits, the analysis is premised on a key assumption: that the ATR provisions will have a “dramatic” effect on lending revenue and volume.²⁵⁹ The Proposal equates this effect with a similarly “dramatic” effect on consumer “choice” and “access to credit,” lenders’ ability even to “offer ... credit,” the industry’s “viability,” and “competition.”²⁶⁰ (As another matter, it

²⁵⁵ See 16 Fed. Reg. 7761-67 (security interests in household goods); 16 Fed. Reg. 7755-57 (wage assignments); 16 Fed. Reg. 7768-70 (waivers of exemptions); 16 Fed. Reg. 7748-50. The FTC Act authorizes the FTC to prohibit unfair or deceptive trade practices, “only when state regulations are inadequate or counterproductive to commission’s regulations.” Federal Trade Commission Act, § 5(a)(1), 15 U.S.C.A. § 45(a)(1).

²⁵⁶ Dodd-Frank Act § 1021(b)(2).

²⁵⁷ 84 Fed. Reg. at 4260.

²⁵⁸ For instance, its single mention of the Rule’s benefits for consumers only references re-borrowing and does not mention the other consumer harms that the Rule would limit. 84 Fed. Reg. at 4260. It describes the Rule’s restrictions on *lenders’ practices* as “restrictions on who could obtain” loans. 84 Fed. Reg. at 4259. Regarding borrowers’ access to stores, it cites only to the worst of several sets of data pulled from a Bureau study. *Id.* & n.111. Regarding the Rule’s modeling assumptions, it fails to reflect the Rule’s explanations of the figures it chose and the ways in which they are conservative. See 82 Fed. Reg. at 54826.

²⁵⁹ See, e.g., 84 Fed. Reg. at 4264, 4266, 4277.

²⁶⁰ See 84 Fed. Reg. at 4264, 4277. As another matter, the Proposal embellishes the Rule’s projected impacts on lending volume, competition, and lenders, which is discussed in section 7.2 below.

embellishes these impacts in ways that misrepresent the Rule.²⁶¹) The Proposal then cites these effects as reasons the Bureau should heighten the standard it applies in assessing information.²⁶²

The Proposal's premise here misses the entire purpose of the Rule, and indeed the entire purpose of the Bureau. As discussed in section 2 above, the regulated practice—lending without ATR determinations—causes dramatic *harm*. The Rule is necessary to address that dramatic harm and thus provide significant benefits for consumers. In so doing, the Rule will also have a significant impact on lenders because they so widely use the lending practice the Rule restricts: loans made without ATR determinations. 85% of loans are currently reborrowed within 30 days, suggesting they were unaffordable from the start. But the impact on lenders is not new information; the Rule fully considered the impacts the Rule would have and concluded that the benefits for consumers were worth the Rule's negative effects on industry.²⁶³

In seeking to undo the Rule's consumer protections, the Proposal ignores this assessment, generally avoiding discussion of the "dramatic" harms to consumers that the Rule restricts and that the Proposed repeal would propagate. Instead, it focuses on other side of the equation—the Rule's impact on lenders (even while cloaking this focus on lender revenues in purported concern for "competition," "choice," and "access" to (harmful) credit). And with this one-side focus, the Proposal invents a standard requiring "more robust and reliable evidence."²⁶⁴

The Proposal never makes clear what this new standard means. It merely claims that its invented standard is "prudent as a policy matter"²⁶⁵ in light of the Proposal's distorted portrayal of the Rule's "dramatic impacts on consumer choice and access to credit." Yet it uses this concocted standard to propose measures that would have dramatic, negative effects on *consumers*—the individuals the Bureau was designed to protect.

²⁶¹ For instance, as discussed in section 3.2 above, the Proposal exaggerates the Rule's impact by equating lenders' loan volumes with consumers' access to credit and identifying all such access as a benefit. The Rule concluded that the ATR provisions' impact on consumer access to covered short-term loans would be limited and found that its *restrictions* can benefit consumers because unaffordable loans *harm* consumers. See 82 Fed. Reg. at 54835-46.

The Proposal similarly embellishes the Rule's and its own impacts on lenders by improperly equating lending volume with competition. In 2017, the Bureau concluded that the ATR provisions' effect on competition would be less than their effect on lending volume because lenders in the relevant markets tend *not* to compete on prices and because even with some market consolidation, consumers would generally retain access to lenders. See 82 Fed. Reg. at 54480, 54493, 54601. Without any explanation or support, the Proposal reverses this analysis, characterizing the ATR provision's effect on competition as "dramatic." 84 Fed. Reg. at 4277.

The Proposal goes so far as to suggest that the Proposal will "eliminate most ... providers." See 84 Fed. Reg. at 4264. But this suggestion appears to be pure speculation; the Proposal cites no supporting data.

²⁶² See 84 Fed. Reg. at 4264.

²⁶³ See 82 Fed. Reg. at 54814-53.

²⁶⁴ 84 Fed. Reg. at 4264.

²⁶⁵ *Id.*

The Proposal’s application of the new standard is equally one-sided and senseless. Based on this standard, the Proposal attacks two studies, while ignoring the abundant other sources of evidence the Rule noted. But the Proposal doesn’t explain the standard and effectively disclaims any curiosity about whether the standard *could* be met. Moreover, in light of the extraordinary record the Rule relied on, whatever the standard might entail, it is hard to imagine how the Rule would not satisfy it.

Finally, as made clear throughout its unfairness and abusiveness discussions, the Proposal consistently flouts its own suggested standard, reaching conclusions that harm consumers and help lenders, with no new data, and indeed hardly any supporting data at all—much less “more robust and reliable evidence.”

3.6. The Proposal’s attempts to suggest that making payday and vehicle title loans without determining ATR is not unfair and abusive are illogical and unsupported.

As described in Sections _ (unfairness) and _ (abusiveness) that follow, the Bureau comprehensively fails to justify its rescission effort. The Proposal seeks to move the goal posts for identifying a practice as unfair or abusive, suggesting its fact base must satisfy (1) some invented, heightened standard,²⁶⁶ and (2) purportedly new interpretations of the legal standards.²⁶⁷ But both in inventing new standards and attempting to apply them, at bottom, this Proposal rests on supposition and speculation, not sound reasoning or facts. Indeed, in attempting to apply its new standards, the Bureau expressly chooses *not* to research the very questions it suggests its earlier work left unanswered, or any other questions that would support the Rule.²⁶⁸ Further, the Proposal’s analysis fails even to address the full breadth of information already before the Bureau or in ready reach. As described throughout this comment letter, the Proposal repeatedly ignores or distorts the Bureau’s prior research and the extensive record developed in the 2017 rulemaking,²⁶⁹ and appears to make no meaningful effort to consider the Bureau’s more the recent supervisory, enforcement, or complaint data.

The Proposal’s justifications are particularly weak because the Proposal recognizes the dramatic harm caused by loans made without ATR determinations,²⁷⁰ continues to accept and apply the Rule’s analysis of its own costs and benefits,²⁷¹ and never contests that the ATR provisions, as written, further the Bureau’s statutory mission and satisfy rulemaking requirements.²⁷²

²⁶⁶ *Id.*

²⁶⁷ 84 Fed. Reg. 4268-76.

²⁶⁸ *See* 84 Fed. Reg. at 4277, 4253.

²⁶⁹ *See generally* 84 Fed. Reg. at 4253-60 (recognizing only aspects of the Bureau’s extensive analysis).

²⁷⁰ 84 Fed. Reg. at 4264 (noting Bureau “need not reconsider” the harm the Rule found); 84 Fed. Reg. 4285-95 (section 1022(b) analysis).

²⁷¹ *See* 84 Fed. Reg. at 4277, 4253.

²⁷² *Cf. Pub. Citizen v. Steed*, 733 F.2d 93, 102 (D.C. Cir. 1984) (holding that agency suspension of an earlier rule is arbitrary and capricious because “[w]ithout showing that the old policy is unreasonable, for [the agency] to say

Because of its weakness, the Proposal falls short of both minimum Administrative Procedure Act (APA) standards and some invented higher standard that the Proposal purports should apply to a rule with effects of this magnitude. The APA provides that a final rule may be set aside by the courts if found to be “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.”²⁷³ An agency rule is arbitrary and capricious “if the agency has relied on factors which Congress has not intended it to consider, entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise.”²⁷⁴ For the reasons discussed throughout this comment letter, a final rule based on this Proposal would be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law, for multiple reasons.

These unjustified applications threaten not only the financial protection of the borrowers impacted by payday loans made without ability-to-repay determinations. They also risk weakening the protections the standards are intended to provide across all consumer financial markets

4. MAKING PAYDAY AND VEHICLE TITLE LOANS WITHOUT ABILITY TO REPAY DETERMINATIONS IS AN UNFAIR PRACTICE.

Making payday and vehicle title loans without an ability-to-repay determination is an unfair practice because it causes or is likely to cause consumers substantial injury that they cannot reasonably avoid, which is not outweighed by benefits to consumers or competition.²⁷⁵

4.1. The practice causes substantial harm that the Proposal does not reconsider; therefore, the Proposal may not properly disregard or minimize it.

The Proposal notes it “need not reconsider” that the Rule found that the identified practice causes or is likely to cause substantial injury.²⁷⁶ That is true. As discussed above, making covered loans without assessing borrowers’ ability to repay causes substantial, significant, and sometimes severe harm to consumers. The Rule’s conclusion was rooted in extensive research and data. That harm is harm the Proposal would *inflict*—harm for which the Proposal must account.

that no policy is better than the old policy solely because a new policy *might* be put into place in the indefinite future is as silly as it sounds”).

²⁷³ 5 U.S.C. § 706(2)(A).

²⁷⁴ *Motor Vehicle Mfrs. Ass’n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983).

²⁷⁵ 12 CFR § 1041.4; *see also* 82 Fed. Reg. at 54583-54614.

²⁷⁶ 84 Fed. Reg. at 4264.

4.2. Consumers cannot reasonably avoid the substantial injury they suffer from lenders making loans without assessing consumers' ability to repay.

Consumers cannot reasonably avoid the substantial injury caused by making loans without an ability-to-repay determination is because consumers do not “have reason generally to anticipate the likelihood and severity of the injury, and the practical means to avoid” it.²⁷⁷ As the Bureau concluded in 2017 based on the extensive record before it, “[m]any consumers do not understand or perceive the probability that certain harms will occur, including the substantial injury that can flow from default, re-borrowing, and the negative collateral consequences.”²⁷⁸ Even if borrowers have some information on the harms they will suffer from unaffordable loans, as the Rule explained, they are not likely to understand the frequency or severity of the consequences.²⁷⁹

The Rule based this determination on the vast record before it. The Proposal makes unsupported assertions that the evidence was not sufficient. And it offers a purportedly new legal standard, which is virtually indistinguishable from the Rule’s legal standard, and then applies that new standard in a distorted, unsupported way. While it claims the Rule had insufficient evidence to reach a conclusion about reasonable avoidability, the Proposal purports to have sufficient evidence to reach the *opposite conclusion* based on the *very same evidence*. This contorted attempt to undermine the Rule fails, however: Even under the Proposal’s purportedly new legal standard, the record clearly shows that consumers cannot reasonably avoid harm caused by lenders’ failure to make ability-to-repay determinations.

4.2.1. Data, information, and reasoning overwhelmingly show that consumers cannot reasonably avoid the harm they suffer.

Multiple sources of data, information, and reasoning support the Rule’s conclusion that consumers cannot reasonably avoid the harm from loans made without ATR determinations. First, the Rule noted that a “market failure or imperfection is highly relevant to the ‘reasonably avoidable’ inquiry, as it may hinder consumers’ free-market decisions”²⁸⁰ It is “demonstrably true” that consumers who lack ability to repay take out loans and suffer “actually observed” substantial injury, as a result of lenders’ failure to make ability-to-repay determinations.²⁸¹ As consumers *are not avoiding harm* by “normal consumer decision-making,” “[t]he market does not appear to be self-correcting.”²⁸²

Moreover, the manner in which lenders structure the loan—very short term, balloon payment, and leveraged payment mechanisms or vehicle security—“likely contributes significantly to the market

²⁷⁷ 82 Fed. Reg. at 54596.

²⁷⁸ *Id.* at 54597.

²⁷⁹ *Id.* at 54594.

²⁸⁰ *See id.* at 54596.

²⁸¹ *Id.* at 54598.

²⁸² *Id.*

failure and imperfections that the Bureau has observed.”²⁸³ Further, “the way the product is marketed and presented to [borrowers] is calculated to obscure the risks.”²⁸⁴ “Framing” the loan as a short-term obligation, even though lenders know they expect and depend on “long-term cycles of debt for many consumers, likely exacerbates these misimpressions.”²⁸⁵ At the same time, a lender does not have to “create[] all the reasons why that injury a harm is not reasonably avoidable, given the ordinary circumstances of typical consumers, including their general understanding of the likelihood and severity of the risks posed.”²⁸⁶

The Rule appropriately rejected the notion that a consumer could reasonably avoid harm “just because a consumer has a right not to enter the market in the first place.”²⁸⁷ As the Bureau noted, consumers can generally decline a product or service, and “if the mere existence of that right” were the end of the inquiry, then no practice would ever be subject to unfairness regulation.²⁸⁸ The Bureau also noted that “[n]o precedent supports” that this right is “by itself an answer to the ‘reasonably avoidable’ issue.”²⁸⁹

Once a borrower has an unaffordable covered loan, the harm is generally not reasonably avoidable “at any point thereafter.”²⁹⁰ Reborrowing, “the most common injury,” is not an “escape from injury” but a “mechanism that is intended (though often unsuccessfully) to manage the potential injuries,” an “unsatisfactory choice among injuries . . . rather than an unfettered choice among various alternatives.”²⁹¹ But “a choice between types of injury is not a mechanism for reasonably avoiding all injury.”²⁹²

Consistent with the FTC and other agencies’ approach in applying its unfairness standard, the Rule recognized that factors such as “the vulnerability of affected consumers” and “consumers’ perception of the availability of alternative products” affect their ability to avoid the harm from loans made without ATR determinations.²⁹³ Payday and vehicle title borrowers “may reasonably perceive alternative options would not be available” or that “their situation is so dire that they do not have time

²⁸³ 82 Fed. Reg. at 54597.

²⁸⁴ *Id.* at 54598.

²⁸⁵ *Id.*

²⁸⁶ *Id.* at 54596-7.

²⁸⁷ *Id.* at 54596.

²⁸⁸ *Id.*

²⁸⁹ *Id.*; *see also* Am. Fin. Servs. Ass'n v. F.T.C., 767 F.2d 957, 976-77 (D.C. Cir. 1985).

²⁹⁰ 82 Fed. Reg. at 54598.

²⁹¹ *Id.*

²⁹² *Id.*

²⁹³ 82 Fed. Reg. at 54594-95, & n.656, 657 (citing numerous examples including the FTC Policy Statement on Unfairness; FRB, OTS & NCUA credit card rulemaking; and the FRB higher-priced mortgage loan rulemakings as examples).

to shop for alternatives.”²⁹⁴ Borrowers, particularly those who lack the ability to repay, may also be overly optimistic.²⁹⁵

“Reasonably avoidable” does not mean that “every consumer must understand everything about the potential risks or must be able to anticipate these risks with mathematical precision.”²⁹⁶ Still, the Rule concluded that “a large number of consumers do not understand *even generally* the likelihood and severity of these risks.”²⁹⁷ It based this determination on “[the Bureau’s] experience and expertise in addressing consumer financial behavior, and the observed evidence.”²⁹⁸

This information before the Bureau included, first, the severely harmful outcomes themselves—described in section 2 above—which suggest the market is not self-correcting and, instead, there is market failure or imperfection.²⁹⁹

Concern about the payday and vehicle title loan market is “exacerbated by” empirical evidence of consumer understanding of covered loans.³⁰⁰ An “especially compelling” indicator of how consumers do not reasonably anticipate the injuries to which they are exposed is “the substantial number of consumers who re-borrow, many of them repeatedly, prior to eventually defaulting on these loans.”³⁰¹ This “especially compelling” finding is based on outcomes alone.

Other support informing the Bureau’s finding that consumers cannot reasonably avoid harm included (i) multiple studies, including academic and other studies, indicating that borrowers do not realistically anticipate how long they would be in debt, and that this is more true of payday and vehicle title borrowers than for other products like pawn and short-term installment loans;³⁰² (ii) market analysis – which, among other findings, shows that lenders design and intend loans to function differently than

²⁹⁴ 82 Fed. Reg. at 54595.

²⁹⁵ *Id.* at 54595.

²⁹⁶ *Id.* at 54594.

²⁹⁷ *Id.* at 54594-95 (emphasis added).

²⁹⁸ *Id.* at 54594 (referencing discussion of Market Concerns & section 1022(b)(2) analysis).

²⁹⁹ See 82 Fed. Reg. at 54598.

³⁰⁰ *Id.*

³⁰¹ *Id.* at 54594.

³⁰² See 82 Fed. Reg. at 54568-71. These studies included Bertrand (borrowers tend to be somewhat optimistic about their reborrowing behavior); Fritzdixon (borrowers were slightly optimistic, on average); Mann (there was no correlation between borrowers’ prediction and their actual borrowing; many fewer borrowers expected to experience long sequences than actually did; “heavy users of the product tend to be those that understand least what is likely to happen to them”; past borrowing experience was not indicative of increased understanding of product use); and Center for Financial Services Innovation (40% of payday and 43% of vehicle title borrowers paid more than expected; 32% of each took longer to repay than expected; and these rates were all higher than for pawn or short-term installment).

how they appear,³⁰³ that lenders have a practice of encouraging reborrowing;³⁰⁴ and that lenders do not evaluate ability-to-repay despite consumer expectations that a lender would be unlikely to intentionally offer them an unaffordable loan;³⁰⁵ (iii) evidence gleaned through the Bureau’s supervision, enforcement, and market monitoring activities, which have “given the Bureau insights into the business models and practices” of lenders;³⁰⁶ (iv) extensive outreach with a wide range of stakeholders, including several field hearings across the country and meetings with the Bureau’s standing advisory groups, State and Federal regulators, consumer advocates, religious groups, industry trade associations, Tribal consultations, and through the Small Business Review Panel;³⁰⁷ (v) consumer complaints to the Bureau, which payday borrowers submit at a high rate relative to other products like credit cards;³⁰⁸ (vi) 1.4 million comments submitted on the 2016 Proposal; (vii) the Bureau’s expertise generally;³⁰⁹ and (viii) though the Bureau does not rely on this dynamic to reach its conclusion that harm was not reasonably avoidable, consideration of the effects of financial distress on decision-making.³¹⁰

The above tome of evidence included the Mann study the Proposal now criticizes. That study found that borrowers who experienced very long sequences did not anticipate those sequences and that, more generally, borrowers’ predictions of their outcomes were uncorrelated with their actual outcomes.³¹¹ As discussed in sections , the record included other evidence consistent with the Mann study and the Rule determined that no other evidence undermined the Rule’s findings based on the study.

³⁰³ See 82 Fed. Reg. at 54595.

³⁰⁴ *Id.*

³⁰⁵ See *id.* at 54594.

³⁰⁶ See *id.* at 54475, & n. 14.

³⁰⁷ See *id.* at 54475.

³⁰⁸ See *id.* at 54475, & n. 14; see also *id.* at 54414-19, 54559, 54483.

³⁰⁹ See *id.* at 54475, & n. 14.

³¹⁰ See *id.* at 54555, 54570-72.

³¹¹ See *id.* at 54570 (no correlation between a borrower’s expectations and outcomes); see also *id.* at 54569 (many fewer borrowers expected long sequences than actually experienced them); *id.* at 54597 (of borrowers who remained in debt at least 140 days (10 bi-weekly loans), 100% had underestimated their times in debt, with an average underestimation of 119 days (equivalent to 8.5 unanticipated rollovers).

4.2.2. The Proposal’s claim that the Rule’s “not reasonably avoidable” finding “rest[s] on” the Mann study is absurd.

The Proposal’s claim that the Rule’s “not reasonably avoidable” finding “rest[s] on” the Mann study is absurd.³¹² The administrative record is vast, and the Proposal’s effort to subordinate that vast record to a single study fails. Its effort to discredit other evidence in the record broadly consistent with the Mann study also fails.

The Mann study is but one source of information the Rule considered when determining that consumers could not reasonably avoid harm. As discussed immediately above, the Bureau relied on an vast range of sources in concluding that consumers cannot reasonably avoid the harm they suffer from lenders making loans without ATR determinations: the outcomes themselves, which suggest market failure; multiple studies; market analysis finding a mismatch between design and function; lenders’ practice of encouraging reborrowing,; supervision, enforcement, and market monitoring information; extensive outreach; consumer complaints; consideration of the effects of financial distress on decision-making;³¹³ comments on the 2016 Proposal; and the Bureau’s experience and expertise generally.

Again, this information included, significantly, the injury that borrowers incur, but also that a consumer would clearly avoid such injury if it were reasonably avoidable, shown by the “substantial number of consumers who reborrow, many of them repeatedly, prior to eventually defaulting on these loans.”³¹⁴ The finding that injury was not reasonably avoidable is based on data that the Rule noted wasn’t generally disputed,³¹⁵ and the Proposal does not dispute now. Instead, the proposal creates a strawman argument that the Mann study, alone, supported the reasonable avoidability conclusion so that it could claim that the sampling approach was too limited. In the process, it fails to grapple with this most significant source of support in the Rule’s record—as well as the multiple other data points discussed in the preceding section.

In light of this immense collection of research, data, and other information, the Proposal’s assertion that the Mann study was the “linchpin” to the Rule’s assessment of consumers’ understanding of risk is a baseless misportrayal of the Rule. Far from being “supplement[al]” and “ultimately subordinate to” the Mann study, as the Proposal suggests,³¹⁶ the other sources were fundamental to the Bureau’s analysis and all supported that consumers could not reasonably avoid the harm.

Without basis, the Proposal relegates, as “subordinate” to consumer understanding of risk, fundamental elements of this market: loan structure, marketing, and lenders’ practices to encourage

³¹² See 84 Fed. Reg. at 4264-67 (also claiming that the Mann study was the “main basis” and the “linchpin” for the Rule’s conclusion of consumer awareness of outcomes).

³¹³ The Bureau considered but did not rely on this evidence to reach its conclusion that consumers cannot reasonably avoid harm. See 82 Fed. Reg. at 54572.

³¹⁴ 82 Fed. Reg. at 54594.

³¹⁵ *Id.* at 54567

³¹⁶ 84 Fed. Reg. at 4267.

reborrowing.³¹⁷ For instance, the Proposal attempts to diminish the value of the Bureau’s expertise and experience in supervisory and enforcement matters, claiming that this expertise and experience served primarily to corroborate its interpretation of the Mann study.³¹⁸ But this misstates what the Rule said: that its experience and expertise reinforced *all of* the “observed evidence described more fully in the Section 1022(b)(2) Analysis and Market Concerns—Underwriting [discussion]”, which encompassed virtually *the entire record*, and which indicated that “a large number of consumers do not understand even generally the likelihood and severity of these risks.”³¹⁹ The Proposal’s mischaracterization also portrays a profoundly narrow view of the value of supervision and enforcement expertise and experience, through which the Bureau learns directly about lender practices and their impact.

The Proposal also attempts to dismiss additional studies and data that speak to consumer understanding about risk, but its rationales do not pass muster. A study by the Center for Financial Services Innovation (CFSI) found that a full 40% of payday borrowers and 43% of auto title borrowers paid more than expected, versus 19% for pawn loans and 26% for short-term installment loans.³²⁰ It further found that 32% of both payday and auto title loan borrowers took more time to repay than expected, versus 15% for pawn loans and 17% for installment loans.³²¹ The Proposal’s notion that this evidence is “out of context” and should be dismissed because the study did not also include credit cards is without merit.³²² The Rule is about whether the covered lenders’ practices are unfair and abusive.

The Proposal’s suggestion that the Rule “did not address” that “many users” found the loans less costly, or repaid more quickly, than expected,³²³ is factually incorrect—the Rule does acknowledge the portion of borrowers who correctly anticipated costs—and a misguided view of the study’s findings. The study indicates that the portion of payday and auto title loan borrowers who pay less than expected is typically two-to-four times smaller than those who paid more, or took longer to repay, than expected.³²⁴

³¹⁷ *Id.* at 4266.

³¹⁸ *Id.*

³¹⁹ See 82 Fed. Reg. at 54597-98.

³²⁰ Rob Levy & Joshua Sledge, *A Complex Portrait: An Examination of Small-Dollar Credit Consumers*, Center for Financial Services Innovation (2012), <https://www.fdic.gov/news/conferences/consumersymposium/2012/A%20Complex%20Portrait.pdf>. The Rule discusses this study at 82 Fed. Reg. at 54571, & n. 566.

³²¹ *Id.*

³²² See 84 Fed. Reg. at 4267, & n. 201.

³²³ See 84 Fed. Reg. at 4267, & n. 201.

³²⁴ 10% of payday loan borrowers and 17% of auto title borrowers repaid loans in less time than expected; 13% and 19% of auto title borrowers repaid in less time than expected. Rob Levy & Joshua Sledge, “A Complex Portrait: An Examination of Small-Dollar Credit Consumers,” (Ctr. for Fin. Servs. Innovation, 2012), <https://www.fdic.gov/news/conferences/consumersymposium/2012/A%20Complex%20Portrait.pdf>

The Proposal also suggests the Rule erred in its interpretation of a study the Rule found to suggest borrowers were “somewhat optimistic” about reborrowing.³²⁵ It claims the Rule should have considered the mean of the study, which, “though responses varied widely,” was “close to [the] range’ of other data indicating how long borrowers actually took to pay back their loans.” It fails to explain, though, whether or how the mean is more appropriate or would contradict the Rule’s interpretation. As such, it provides no basis for discounting the study.

Thus, the finding that borrowers do not anticipate the harm of reborrowing does not, by any stretch, rest on the Mann study alone. In seeking, therefore, information on “types or sources of information with respect to consumer understanding,”³²⁶ the Bureau needs only to consult its own extensive record for the Rule.

4.2.3. Criticism of the Mann study’s sampling approaching approach is unsupported and hypocritical.

The Proposal’s criticism of the Mann study itself is based on mere hypothesis. Primarily, the Proposal criticizes the study’s sampling approach. Yet it offers no reason that due to the sampling approach, the study would not be informative about consumers’ inability to avoid the harms caused by loans made without ATR determinations, especially in light of the fact that it is just one part of a broader set of data and research, including the copious amounts of data showing that the substantial injury *is not* avoided. It provides no evidence suggesting that due to the sample approach in the Mann study, the findings are not useful and generalizable. The Proposal makes additional, vague efforts to discredit the study’s reliability that also fail.

For instance, the Proposal questions the reliability and probative value of the study because it involved a single payday lender, at a limited number of locations, across five states. But it makes no effort to determine the size of the market in the states included, or the number of borrowers or the share of the market possessed by the lender included in the study—even as it acknowledges that the survey may provide useful insights.³²⁷ And it does not inform the public what it believes would be a representative sample. All it offers is speculation.

The Proposal notes that one lender “may not necessarily be representative of the variety of payday lenders.”³²⁸ But this is pure conjecture and the Bureau does no probing at all. In reality, lenders tend to be uniform in relevant ways: loan structure, marketing, encouragement of rollovers, and concentration

³²⁵ 84 Fed. Reg. at 4266, & n.200 (citing Marianne Bertrand & Adair Morse, *Information Disclosures Cognitive Biases and Payday Borrowing*, 66 J. of Fin. 1865 (2011)).

³²⁶ 84 Fed. Reg. at 4271.

³²⁷ 84 Fed. Reg. at 4265. (“Thus, the Mann Study’s findings and the Bureau’s interpretation of limited data from that study are most informative about what prospective customers of this single lender at these locations in these States understood about how long they would need to borrow.”)

³²⁸ 84 Fed. Reg. at 4265.

of revenue among borrowers in extended loan sequences.³²⁹ Indeed, the Mann study notes that this lender’s products are typical of large storefront lenders.³³⁰

The Proposal also suggests that varying laws or practices across states and locations—in particular, rollover laws and the information that borrowers receive—may make the sample unrepresentative, by differently shaping “consumer understandings and expectations.”³³¹

As a starting matter, the Proposal fails to consider the five states included are estimated to comprise over a quarter of the overall payday loan market. Previous research by the Center for Responsible Lending finds that these five states account for over \$1 billion in payday fees annually or roughly 27 percent of total fees collected by payday lenders each year.³³² The population of these five states also represents 32 percent of the population of the states that authorize payday lending.³³³

Similarly, the Proposal suggests that the Mann study states are not representative of the United States because half the study’s participants resided in two of the five study states: Florida and Louisiana.³³⁴ The Proposal provides no further analysis to support this claim. Previous research conducted by CRL finds that these two states alone account for approximately \$456 million in payday fees annually, or roughly 42 percent of the fees generated each year, by the five Mann study states.³³⁵ Further, the population of these two states represents 35 percent of the total population of the Mann study states.³³⁶

With respect to rollovers, the Proposal notes that they were technically prohibited in Mann’s sample states. But it does not explain why rollover bans may make the sample unrepresentative with regard to consumer understanding and expectations. In fact, Mann discussed these states’ rollover bans and

³²⁹ See generally 82 Fed. Reg. at 54554-83 (discussing Market Concerns--Underwriting).

³³⁰ Ronald Mann, *Assessing the Optimism of Payday Loan Borrowers*, 21 Supreme Court Econ. Rev. at 117, & n.1 (2013) (“Mann study”).

³³¹ See 84 Fed. Reg. at 4265.

³³² Per CRL’s Fee Drain estimates, these five states total \$108.2 million of \$414.3 million today (CA: \$507.9 million; FL: \$311.0 million; LA: \$145.7 million; KA: \$65.4 million; OK: \$52.7 million, totaling \$1.0827 billion out of \$4 billion total, or 27%. CRL, Diane Standaert, Delvin Davis, & Charla Rios, *Payday and Car-Title Lenders Drain Nearly \$8 Billion in Fees Every Year*, CRL, at 4, Table 2 (updated April 2019), <https://www.responsiblelending.org/sites/default/files/nodes/files/research-publication/crl-statebystate-fee-drain-apr2019.pdf>.

³³³ U.S. Census Bureau; American Community Survey, 2017 American Community Survey 5-Year Estimates, Table B01003; generated using American FactFinder; <<http://factfinder.census.gov>>; (10 May 2019).

³³⁴ 84 Fed. Reg at 4265.

³³⁵ CRL, FEE DRAIN.

³³⁶ U.S. Census Bureau, *supra*.

crafted his survey question to control for the fact that the states prohibited rollovers; the Proposal omits this relevant fact.³³⁷

As the Proposal fails to recognize, rollover bans are common in payday loan states. Further, because rollover laws don't change consumer behavior, it seems unlikely that they would affect the accuracy of a consumer's prediction. Approximately 16 states ban rollovers (approximately half of states with short-term payday lending) while approximately another 10 limit rollovers or have similar restrictions.³³⁸ The Rule found, and evidence has long shown, that rollover bans, as well as very short cooling-off periods between loans, demonstrably have "very little impact on re-borrowing rates."³³⁹ Encouraged by lenders, reborrowing occurs anyway, to cover the unaffordable loan payment just made. The Proposal ignores this as well. Rollover bans are particularly irrelevant in the states that Mann studied: None of those five states has a meaningful cooling-off period, meaning that their ban on rollovers has particularly little effect limiting long loan sequences.³⁴⁰ This, too, the Proposal fails to consider.

With respect to disclosures, the Proposal notes that some states have disclosures that alert borrowers of potential risks.³⁴¹ The Proposal ignores the Rule's conclusion that its study of Texas disclosures, as well as a field trial of disclosures designed specifically to warn of the risks and costs of reborrowing, suggest that disclosures have "negligible impacts on whether consumers re-borrow."³⁴² And the Proposal ignores Mann's own statement that he is "generally skeptical of the utility of such [Texas-like] disclosures."³⁴³

³³⁷ Mann study at 114-15.

³³⁸ See 84 Fed. Reg. 4254, & n.32.

³³⁹ 54577; see also *Springing the Debt Trap*. Moreover, the Proposal doesn't address that if rollover bans were effective at limiting loan sequences (though they're not), the states that have rollover bans would seem to make reliance on the Mann study findings more conservative by closing the gap between consumer expectations and reality.

³⁴⁰ Three states in the Mann study--Louisiana, Kansas, and California--permit same-day reborrowing. The Rule found that even where rollovers are prohibited, "back-to-back" loans "effectively replicate a rollover because the borrower remains in debt to the lender on the borrower's next payday." 82 Fed. Reg. at 54478. Florida's cooling-off period is 24 hours, and Oklahoma's is 48 hours after five consecutive loans; both have been shown to have no significant impact on reborrowing. See CRL, *Springing the Debt Trap* at 9-13 (2007) (showing that in Florida, 89% of loans went to borrowers with 5+ loans per year, 58% of loans went to borrowers in 12+ loans per year, and 88% of repeat loans are taken out before the end of the borrower's pay period; in Oklahoma, 91% of loans went to borrowers with 5+ loans per year, 64% of loans went to borrowers in 12+ loans per year, and 88% of repeat loans are taken out before the end of the borrower's pay period).

³⁴¹ 84 Fed. Reg. at 4265, n. 193 & 194.

³⁴² See 82 Fed. Reg. 54577.

³⁴³ Mann study at 131. Mann acknowledges that "data on their effectiveness in this context is admittedly limited." Mann's study, published in 2013, pre-dates the Bureau's study, published in 2016, finding that these disclosures have negligible impacts on whether consumers re-borrow.

Regardless of the effect of disclosures, the Proposal does not bother to analyze the disclosures required in the included states or suggest any way in which those disclosures would undermine the Rule's use of the Mann study. It simply says that information provided to borrowers in other states may be different, citing the Rule's discussion of Texas disclosures.³⁴⁴ The Proposal suggests, then, that the heterogeneity of the disclosure elements provided to a consumer when a loan is originated means that the findings in Mann are not generalizable. But the Proposal does not support this assertion.

In reality, the disclosures in the five represented states' disclosure regimes are largely similar to those in the remaining states where payday loans are made. An analysis of disclosure elements in payday authorizing states conducted by the Center for Responsible Lending suggests that the disclosures required in payday authorizing states are more similar than dissimilar to those required in the set of five states included in the Mann study.

CRL's analysis considered disclosure elements mandated by the state authorizing statutes, rules or regulations. The analysis did not consider any voluntary, company-level disclosures, or trade association recommended disclosures.³⁴⁵ Disclosure elements were determined based on a review of the state statutes in each state included in the Mann study and were coded as present or absent based on a review of each state statute.³⁴⁶

³⁴⁴ *Id.* at n. 194.

³⁴⁵ For example, a notice of the cost of long-term use of small-dollar loans is included in the Consumer Financial Association of America's Best Practices for the Small-Dollar Loan Industry. Including this element for every state would increase the index for comparison states. See BEST PRACTICES FOR THE SMALL-DOLLAR LOAN INDUSTRY, <https://www.cfsaa.com/files/files/CFSA-BestPractices.pdf>.

³⁴⁶ If a disclosure element was identified in a state that was not included in any of the five Mann states, that element variable was included for all states, including Mann study states. Disclosure element coding was reviewed by a second coder to determine agreement on whether an element was present or absent. In all, state statutes contained fifteen types of disclosure elements in two categories: disclosure elements that specified the form of the disclosure and disclosure elements that specified the content of the disclosure. Disclosure elements related to the form of the disclosure include requirements that a written agreement be provided to the borrower; the disclosure be provided prominently or conspicuously; the disclosure be printed in a sufficiently large/bold font; the checks used for deferred deposit be stamped to identify them; the disclosure be provided in multiple languages; receipts be provided for some or all payments; and, in-store disclosures be made available online. Disclosure elements related to the content of the disclosure include requirements that a description of the transaction fees/credit terms be provided to the borrower; lenders make available their license or certification; notification of the contact information for the regulating agency be provided; notification that the associated loan could present a risk to the borrower be provided; a notice of a right to installment repayment or grace period be provided; a notification that counseling resources be provided; a notification of acceptable identification requirements to enter into the transaction; and, a notice of the right to rescind the loan be provided.

After coding the twenty-nine states for the presence or absence of these fifteen disclosure elements, several factors were eliminated due to low incidence, redundancy with other factors, or a lesser conceptual relevance (for example, the practice of requiring that deferred deposit checks be stamped to document their involvement in an authorized transaction may not have the same connection to the borrower's experience as the disclosure of fees and credit terms). The resulting reduced model consists of the following seven factors, requiring that: a written agreement be provided to the borrower; the disclosure be provided prominently or conspicuously; a description of the transaction fees/credit terms be provided to the borrower; notification of the contact information for the regulating agency be provided; notification that the associated loan could present a risk to the

To determine whether the disclosures in the five states included in Mann contained similar disclosure elements to other states, a simple matching index was constructed to compare the similarity between the disclosures required in each state with the disclosure elements required in the set of states included in the Mann study.³⁴⁷ The results of this analysis suggest that 25 out of 29 states that authorize payday lending were more similar than dissimilar (index values greater than 50) to the set of five Mann study states.

Index values for each payday authorizing state ranged from 31.43 to 74.29, with a mean value of 59.61. The six states that had index values that exceeded 70 represent a population of 22.8 million, or 10.3 percent of the population of payday authorizing states, and 8.4 percent of the total fees paid by payday borrowers. (As noted above, the Mann study states themselves represent 32 percent of the population and 27 percent of the fees in payday authorizing states.) A total of 15 states had index values that exceeded 60, representing a population of 59.4 million or 26.8 percent of the population of payday authorizing states and 24.4 percent of the total fees paid by payday borrowers. A total of 25 states had index values that exceeded 50.0, representing a population of 140.9 million, or 63.7 percent of the population of payday authorizing states and 69.7 percent of the total fees paid by payday borrowers.³⁴⁸

These findings suggest that the heterogeneity of the disclosure elements across states does not support rejecting the findings of the Mann study. The disclosure elements in the five Mann states are, in fact, more similar than dissimilar to the remaining states that authorize payday lending.³⁴⁹

Though the Proposal does not note it, the Mann study itself found that the nature of state regulation led to substantial variation in the quality of borrower predictions, which Mann attributed to the “differences in the pool of borrowers.”³⁵⁰ This underscores the weakness of the Proposal’s position: Even where regulations, quality of predictions, or pools of borrowers varied across these five states, the inability of borrowers in extended loan sequences to predict them was uniform across them all.

The Proposal’s additional criticisms of the Rule’s use of the Mann study are overly vague and seemingly irrelevant. The Proposal repeatedly describes the Mann data the Rule considered as “limited data” from the study, but it never explains how that presents any deficiency.³⁵¹ It specifically notes that the

borrower be provided; a notification that counseling resources must be provided; and, a notice of the right to rescind the loan be provided.

³⁴⁷ The index measures the joint presence or joint absence of each disclosure factor between each of the twenty-nine authorizing states not included in Mann with each Mann study state, and aggregates the measure for each comparison state, functionally comparing each non-Mann state with the entire set of Mann states, on a scale of 0 (totally dissimilar) to 100 (totally similar).

³⁴⁸ FEE DRAIN; CENSUS BUREAU, SUPRA.

³⁴⁹ An additional test of the full set of 15 disclosure element variable was conducted, and found similar results, returning simple matching index values ranging from 48 to 70.67, with a mean value of 61.7.

³⁵⁰ Mann study at 118.

³⁵¹ See, e.g. 84 Fed. Reg. at 4262, 63, 65.

Rule lacks “individual-level survey responses that would allow the data provided in the figures to be linked to the other information collected in the Mann study.”³⁵² But it provides no explanation of why that might matter. Indeed, Mann provided the Bureau data that answered the Bureau’s key inquiry: the joint distribution of expected outcome versus actual outcome, which showed no relationship between the two—that people had no idea how long they’d be in debt.³⁵³ Additional data would not change that joint distribution, including its showing that zero borrowers in extended loan sequences predicted they would be. The Proposal here, as throughout, grasps at straws.

The Proposal claims without basis that additional studies “corroborate” or “add to” its concerns about the Mann study sampling approach. In some cases, the Proposal takes positions on these studies that are reversals of the Rule’s position but does not even attempt to justify the change. In every case, the studies carry their own limited samples or other methodical issues that the Proposal makes no effort to address.

The Proposal points to two unrepresentative industry-sponsored surveys,³⁵⁴ yet fails to explain why the Bureau now views those studies as significant when it previously found they did not undermine other evidence due to sampling bias and survey design. The Proposal demotes those concerns to a footnote, without elaboration.³⁵⁵ Notably, the sampling bias in these studies is a clear fundamental deficiency: The surveys only included “successful” repayers, thus tending to under-sample those in extended loan sequences, and omitting all who defaulted.³⁵⁶ As the Rule noted, “light users of payday loans” are likely to experience loans very differently from the significant subset in extended loan sequences.³⁵⁷ The surveys also asked the questions ex-post, which, the Rule noted, may lead to recall problems.³⁵⁸ The Rule determined that, in light of the sampling bias and the ex post design challenge, that these findings did not undermine the evidence indicating that especially those in extended loan sequences generally do not predict them.³⁵⁹ The Proposal fails to acknowledge these concerns and fails to provide reasons for the Bureau’s having changed course.

³⁵² 84 Fed. Reg. at 4265, & n. 184.

³⁵³ See 82 Fed. Reg. 54836-38, & n. 1186, 1196 and the emails between Bureau staff and Mann referenced therein, including document #s CFPB-2016-0025-0024 and CFPB-2016-0025-0024, <https://www.regulations.gov/document?D=CFPB-2016-0025-0025>, <https://www.regulations.gov/document?D=CFPB-2016-0025-0024>.

³⁵⁴ 84 Fed. Reg. at 4266 & n.195.

³⁵⁵ *Id.*

³⁵⁶ 82 Fed. Reg. 54570.

³⁵⁷ *Id.*

³⁵⁸ *Id.*

³⁵⁹ *Id.*

The Proposal's claims that two additional customer satisfaction surveys corroborate its concerns are also unsupported.³⁶⁰ The Proposal notes concern about the representativeness of the samples surveyed, yet it does not explain its concerns whatsoever³⁶¹—even as it makes the same critique of the Mann study and dismisses it on that basis. The Proposal even cites here, without elaboration, one additional study with a sample size of 48 borrowers,³⁶² despite noting elsewhere that it is based on a “self-selected, likely non-representative sample of respondents,” which “limit[s] [its] usefulness” for informing the section 1022(b)(2) analysis.³⁶³

Thus, the Proposal's outcome-driven pattern is clear: It discredits evidence it does not now like and ignores flaws in evidence that supports its preferred result. And its criticism of the Mann study is also internally inconsistent. The Proposal elsewhere conveniently *relies* on the Mann study to argue it supports that the Proposal's own conclusion that consumers *can* reasonably avoid injury.³⁶⁴ The Proposal's 1022(b)(2) analysis also continues to use the Mann study.³⁶⁵ The Bureau's conclusory assertion that “[t]he same evidence may be evaluated differently for purposes of legal and economic analysis”³⁶⁶ does not explain this conflict between the two parts of the Proposal. Fundamentally, if data from the Mann study about consumers' ability to predict their re-borrowing shapes the Proposal's consideration of the Rule's impact in 1022(b)(2), the Proposal cannot walk away from that study and the very same data in consideration of whether harm is reasonably avoidable.

Despite its purported concern with the Mann study, the Proposal refuses to engage in more research, as discussed in 6 below. With respect to the Mann study in particular, the Proposal states that it “cannot, in a timely and cost-effective manner for itself and for lenders and borrowers, develop evidence that might or might not corroborate the Mann Study results.”³⁶⁷ The Proposal attempts to bolster this excuse with a statement from the Rule, which noted that “[m]easuring consumers' expectations about re-borrowing is inherently challenging.”³⁶⁸ But finding creative ways to address challenging questions is the job of researchers. And the Proposal does not question other aspects of Mann's methodology; it simply claims that the Mann study did not reach enough lenders in enough states—and solving that problem is feasible if the Bureau wished to spend the resources.

³⁶⁰ 84 Fed. Reg. 4266.

³⁶¹ *Id.*

³⁶² *Id.* at 4266, n.196.

³⁶³ 84 Fed. Reg. at 4292.

³⁶⁴ See 84 Fed. Reg. at 4271 (invoking the Mann study to support that most borrowers expected some repeated sequences of loans).

³⁶⁵ Citing the Mann study, the Bureau recognizes that the Rule concluded that consumers in long loan sequences “generally do not anticipate those outcomes,” and concluded that the Proposal would harm consumers by allowing “those outcomes” and their negative “welfare impacts” to continue. See 84 Fed. Reg. at 4291 & n.353.

³⁶⁶ See 84 Fed. Reg. at 4281 n.300.

³⁶⁷ 84 Fed. Reg. at 4266.

³⁶⁸ 84 Fed. Reg. at 4266, n.197.

Notably, in addition to all the other evidence the Proposal ignores that shows borrowers cannot reasonably avoid harm, it ignores an academic study submitted during the 2016 comment period that spoke to this very issue, finding that borrowers generally expect to pay back their loans in a short time.³⁶⁹

4.2.4. The Proposal’s assertion that the Rule’s application of “not reasonably avoidable” was “problematic” is wholly unsupported.

The Proposal proceeds to claim that even if the evidence were sufficiently robust and reliable, the practice of making loans without determining ability to repay is not unfair because the Rule’s application of the standard for unfairness was “problematic.”³⁷⁰ The Proposal now proposes “a better approach,” which the Proposal utterly fails to explain or justify.³⁷¹

As a fundamental matter, the Proposal inaccurately characterizes the Rule’s approach. The Proposal characterizes the Rule as concluding that consumers could not reasonably avoid the harm “without a specific understanding of their individualized risk.” Such an “interpretation” of the “not reasonably avoidable” criterion is nowhere to be found in the Rule. Instead, the Rule states “the Bureau interprets this criterion to mean that unless consumers have reason *generally* to anticipate the likelihood and severity of the injury, and the practical means to avoid it, the injury is not reasonably avoidable.”³⁷² It is telling that, rather than confront the actual words of the Rule, the Proposal conjures up a straw man.

The Proposal’s supposedly “better” approach also lacks clarity. Ultimately, as discussed below, what the Proposal means by “problematic” is never made clear, and its attack on the Rule’s *application* of this so-called “problematic” standard is illogical on its face. Moreover, as discussed in the final subsection below, the Proposal’s attempt to anchor its attack in FTC authority involves a gross mischaracterization of that precedent. Ultimately, as discussed in section 4.2.4.4 below, whatever the precise standard the Proposal seeks to apply, the Rule plainly satisfies it.

4.2.4.1. The Proposal’s so-called “better” standard appears no different from the Rule’s standard.

The Proposal’s purportedly “better” standard provides that injury is reasonably avoidable if borrowers “have an understanding of the likelihood and magnitude of risks of harm associated with payday loans sufficient for them to anticipate those harms and understand the necessity of taking reasonable steps to prevent resulting injury.”³⁷³

³⁶⁹ Nathalie Martin, *1,000% Interest—Good While Supplies Last: A Study of Payday Loan Practices and Solutions*, Arizona Law Review, Vol. 52:3, at 7 (2009). <https://www.regulations.gov/document?D=CFPB-2016-0025-161909>.

³⁷⁰ 84 Fed. Reg. at 4269.

³⁷¹ *Id.*

³⁷² 82 Fed. Reg. at 54596.

³⁷³ 84 Fed. Reg. at 4270.

The Proposal fails to explain how this standard differs from the standard it describes that the Rule used: if borrowers “have reason generally to anticipate the likelihood and severity of the injury and the practical means to avoid it.”³⁷⁴

In fact, the Proposal itself explains that under the FTC guidance and related case law the Proposal has used as guidance, “know[ing]” how to prevent injury and “understand[ing] the necessity of actually taking ... steps” to prevent injury is equivalent to the phrasing the Rule uses that focuses on whether “consumers have reason to anticipate the impending harm and the means to avoid it.”³⁷⁵ Thus, in purporting to establish a “better” standard, the Proposal essentially restates the Rule’s standard with words it has already concluded are equivalent to the Rule’s standard.

4.2.4.2. The Proposal’s assertion that the Rule required a “specific” understanding of “personal” risks is incorrect and improperly introduces remedy into the not-reasonably-avoidable question.

The “problem” the Proposal claims to find with the Rule’s standard of “not reasonably avoidable” is entirely invented. It first alleges that the Rule interpreted the standard in a way the Rule clearly did not. It then twists the Rule’s discussion of the legal standard into a separate question: the appropriate *remedies* for lenders’ unfair practices. But this replaces diagnosis of an unfair practice with criticism of the solution to that problem. An assessment of remedies does not answer the prerequisite question of whether harm is reasonably avoidable. That is particularly true here, where the Bureau has flexibility over the remedy to apply to address an unfair practice.³⁷⁶

As noted above, the Proposal begins its discussion of the Rule’s standard describing a *general* standard and not suggesting any change to it. Then, the Proposal leaps to an invented characterization of how the Rule interpreted this *general* standard: as “requiring consumers to have a *specific* understanding of the magnitude and severity of their *personal* risks such that they could accurately predict how long they would be in debt after taking out a . . . loan.”³⁷⁷ This assertion is not supported anywhere in the string of points from the Rule the Proposal repeats,³⁷⁸ nor the pages of the Rule the Proposal cites,³⁷⁹

³⁷⁴ 84 Fed. Reg. at 4262 (citing 82 Fed. Reg. at 54594).

³⁷⁵ 84 Fed. Reg. at 4270 (discussing FTC Act precedent, noting: “When analyzing unfairness under the FTC Act, the FTC and courts have held that “an injury is reasonably avoidable if consumers have reason to anticipate the impending harm and the means to avoid it,” *meaning that* “people know the physical steps to take in order to prevent” injury, but “also . . . understand the necessity of actually taking those steps.”) (emphasis added)).

³⁷⁶ See *generally* 12 U.S.C. § 5531(b); 82 Fed. Reg. at 54626.

³⁷⁷ 84 Fed. Reg. at 4269, & n. 220 (citing 82 Fed. Reg. 54594-96) (emphasis added); see *also id.* at n. 229 (citing 82 FR 54472, 54597-98).

³⁷⁸ See 84 Fed. Reg. at 4269, text accompanying notes 221-24; see *also, generally*, 84 Fed. Reg. at 4269-71.

³⁷⁹ 84 Fed. Reg. at 4269, & n. 220 (citing 82 Fed. Reg. 54594-96) (emphasis added); see *also id.* at n. 229 (citing 82 FR 54472, 54597-98).

nor elsewhere in the Proposal or the Rule.³⁸⁰ The Rule also never suggests that borrowers could not reasonably avoid injury if they are “uncertain as to precisely how long” it will take to repay.³⁸¹ The Rule explicitly said that it assessed whether consumers had a “general” understanding.³⁸² The Proposal simply makes up this application of the standard.

The Proposal then asserts that this so-called “specific” requirement is “problematic” because, essentially, it does not like the Bureau’s chosen remedy: “shift[ing] the burden to lenders” to make individualized determinations, which the Proposal claims will “deter[] lenders from offering products or product features . . . [and] suppress[] . . . choice.”³⁸³ To “illustrate[]” the made-up “specific” requirement, the Proposal turns to another remedy: a hypothetical disclosure remedy the Rule considered but then rejected.³⁸⁴ In response to comments urging mandated disclosures in lieu of underwriting, the Rule concluded that only an “individualized forecast” “could come close to positioning consumers to mitigate the unfair and abusive practices.”³⁸⁵

The Proposal’s reasoning is senseless and contrary to Congressional intent. As this language would suggest, remedies involve mitigating the harm of a practice the Rule has *already* determined is unfair. Virtually any finding of unfairness will limit lenders’ product features; to suggest otherwise would eviscerate the Bureau’s authority to address unfair practices altogether. In its rejection of this forecasting approach, the Rule is not comparing a “general” legal standard of “not reasonably avoidable” to a “specific” one. Rather, the Rule is comparing two remedies—a hypothetical individualized disclosure remedy, which the Rule notes would be “unprecedented as a matter of mandatory disclosures under federal consumer financial law,”³⁸⁶ versus underwriting, an inherently individualized remedy, which is a fundamental practice most lenders engage in and which federal law requires in other lending markets.

Moreover, the argument that to remedy an unfair practice would restrict consumer choice is circular—consumers would only have a choice if the injury is reasonably avoidable in the first place.³⁸⁷ If not,

³⁸⁰The Rule notes that “there appears to be no discernable relationship between borrowers’ individual expectations, and their ultimate outcomes.” 82 Fed. Reg. at 54597. But that statement is in support of the finding that payday loan borrowers generally are unable to anticipate or avoid the harms of taking out a payday loan, particularly extended loan sequences. Nowhere does the Bureau suggest that each individual consumer must make an accurate individualized assessment of their own risk in order for harm to be reasonably avoidable.

³⁸¹ 84 Fed. Reg. at 4270.

³⁸² 82 Fed. Reg. at 54594.

³⁸³ 84 Fed. Reg. 4269.

³⁸⁴ 84 Fed. Reg. at 4269.

³⁸⁵ 84 Fed. Reg. at 4269 (citing 82 Fed. Reg. at 54637).

³⁸⁶ 82 Fed. Reg. at 54637.

³⁸⁷ *International Harvester*, 104 F.T.C. 949, at *97 (1984) (“[I]t has long been recognized that certain types of sales techniques *may prevent consumers from effectively making their own decisions*, and that corrective action may then become necessary. Most of the Commission’s unfairness matters are brought under these circumstances” (emphasis added); *See also Am. Fin. Svcs. Ass’n*, 767 F.2d at 978, 982 (as “factors [can] result[] in an obstacle to

consumers do not have a meaningful choice. Therefore, that remedying the practice would restrict consumer choice is not a valid justification for concluding that the injury is reasonably avoidable.

4.2.4.3. The Proposal invents an application of its “better” standard that is illogical and clearly outcome-driven.

The Proposal purports to add specificity to its “better” standard, but instead appears to propose an application of the standard that bears little resemblance to the standard itself: for harm to be reasonably avoidable, “[s]pecifically, ... consumers need only to understand that a significant portion of payday borrowers experience difficulty repaying and that if such borrowers do not make other arrangements they either end up in long loan sequences, default, or struggle to pay other bills after repaying their payday loan.”³⁸⁸

This application of the Proposal’s purportedly different standard ignores that standard’s own wording. It appears to drop the “likelihood and magnitude of risks of harm” from the standard itself, as well as whether consumers have the “means to avoid” the harm. If indeed the Proposal’s standard ignores these elements, it contradicts its own explanation of this FTC-related authority, as well the plain language of the standard, “reasonably avoidable.” In any event, these linguistic gymnastics not only render the Proposal so confusing as to provide inadequate notice, but also further evidence the Bureau’s Proposal is outcome-driven, designed only to undermine the Rule.

The Proposal seems to reach the conclusion that consumers “understand that a significant portion of payday borrowers experience difficulty repaying and that if such borrowers do not make other arrangements they either end up in long loan sequences, default, or struggle to pay other bills after repaying their payday loan,”³⁸⁹ without presenting any data that supports this assertion.

4.2.4.4. Even applying the Proposal’s unsupported application of its purportedly different standard, it is clear that consumers cannot reasonably avoid the harm they suffer from lenders making loans without ATR determinations.

Consumers cannot reasonably avoid the harm they suffer from loans made without ATR determinations under the Proposal’s standard. The Proposal’s application of this phrasing, again, would mean that “consumers need only to understand that a significant portion of payday borrowers experience difficulty repaying *and that* if such borrowers do not make other arrangements they either end up in long loan sequences, default, or struggle to pay other bills after repaying their payday loan.”³⁹⁰ Contrary to the Proposal’s string of unsupported hypotheses described below, the record in support of

free consumer decisionmaking which is being exploited by creditors,” the court explained that it “would be overstepping its authority if [it] were to mandate . . . that the [FTC’s] unfairness authority is limited solely to the regulation of conduct involving deception, coercion or the withholding of material information.”)

³⁸⁸ 84 Fed. Reg. at 4270.

³⁸⁹ *Id.*

³⁹⁰ 84 Fed. Reg. at 4270 (emphasis added).

the Rule shows that neither of these circumstances exist, much less both, as the Proposal's standard would require. Again, the Rule found that "reasonably avoidable" does not mean that "every consumer must understand everything about the potential risks or must be able to anticipate those risks with mathematical precision,"³⁹¹ while concluding that "*a large number of consumers do not understand even generally the likelihood and severity of these risks.*"³⁹² This conclusion was based on all the information before the Bureau: it's experience and expertise, the observed evidence, including reborrowing and default outcomes, and all the market concerns the Rule identified.³⁹³

The Proposal makes no findings nor offers any new data of its own. Yet it replaces the Rule's findings, which were based on data showing consumers *did not* understand risks and anticipate harm, with plainly implausible speculation that the very same data show the opposite. Unlike the Rule's findings, which were rational and well supported by the entire record before it, the Proposal's findings are plainly inconsistent with its record.

Tellingly, the Proposal's discussion of whether consumers can avoid harm neglects to describe that harm at all. It notes only that those who are unable to repay will "suffer adverse consequences," with no mention of severe harms at issue, including extended periods of indebtedness in short-term loans; delinquency- and default-related harms, including bank fees, closed bank accounts, and vehicle repossession; and a range of collateral harms resulting from failure to meet other major financial obligations and basic living expenses while repaying unaffordable loans.³⁹⁴

At bottom, the Proposal's conclusion is that the Bureau has "indications" that consumers "potentially" have an understanding of the risks involved;³⁹⁵ put another way, the Proposal makes up a conclusion that consumers are well informed. This is preposterous in no small part because the Proposal fails so completely to apply its own invented standard for evidence. Not only does it fail to meet some unexplained higher standard, but it also fails to meet even basic standards of reasoning and rationality. Moreover, the Proposal appears to entirely disregard that its own application of the reasonably avoidable standard would require that consumers understand the *magnitude and severity* of the harm in order to reasonably avoid it.

The Proposal offers absolutely no factual support for its hypothesis that borrowers *may* have a "general awareness" of the risks of payday loans since the products are designed for the financially distressed.³⁹⁶ Moreover, this invented possibility runs counter to the Rule's position, consistent with the FTC's application of the unfairness standard, which recognizes that when consumers are in vulnerable circumstances, such vulnerability contributes to the conclusion that the harm they suffer from a

³⁹¹ 82 Fed. Reg. at 54594.

³⁹² 82 Fed. Reg. at 54597-98 (emphasis added).

³⁹³ See 82 Fed. Reg. at 54598-99.

³⁹⁴ See section 2.2 above.

³⁹⁵ 84 Fed. Reg. at 4277.

³⁹⁶ 84 Fed. Reg. at 4271.

lending practice is not reasonably avoidable, rather than the opposite.³⁹⁷ The Proposal does not acknowledge or explain the Bureau’s change in position. Further, the implication of the Proposal’s position is that any product aimed at the financially distressed may not be unfair because the very fact that it’s aimed at the financially distressed could make the harm reasonably avoidable. Yet it is impossible that the unfairness standard intends this outcome.

The Proposal also fails to address the evidence of consumers not avoiding the harm. The Proposal proffers no evidence or reasoning to explain how the injury can be reasonably avoidable if so many consumers are not avoiding it.³⁹⁸

The Proposal further claims that those who have reborrowed in the past “would seem particularly likely to have an understanding that such reborrowing is relatively common even if they cannot predict specifically how long they will need to borrow.”³⁹⁹ But Mann’s study found that “heavy users of the product tend to be those that understand least what is likely to happen to them”;⁴⁰⁰ and the Proposal offers no data that shows otherwise. Indeed, even if the Proposal claims the evidence from Mann is not *sufficiently* reliable, it has offered no grounds on which to conclude *the opposite* of what Mann’s study found.

In addition, the Proposal flips the Bureau’s view of its study of Texas disclosures on its head. The Rule reasonably concluded, based on all the information before it, that the disclosures’ limited impact on reborrowing indicated that disclosures would not adequately reduce harm in the market.⁴⁰¹ The Proposal instead claims that a “plausible explanation” for the limited impact is that borrowers were already aware that extended loan sequences can result.⁴⁰² The Proposal offers no support for this imagined possibility—far from satisfying its own standard for “more robust” evidence. In fact, in light of all the evidence the Rule considered, showing that extended loan sequences were not anticipated (see section 4.2.1 above), it is highly implausible.

Finally, as mentioned just above, the Proposal appears to ignore the element of its own purportedly “better” standard that (like the Rule’s essentially same standard) requires consideration of the *magnitude and severity* of risk. It points to the Rule’s acknowledgement that borrowers “typically understand . . . if they are unable to [repay debt on time], they will either have to make other

³⁹⁷ See 82 Fed. Reg. at 54594 & n.656.

³⁹⁸ Again, the Rule found it was “demonstrably true” that consumers who lack ability to repay take out loans and suffer “actually observed” substantial injury as a result of lenders not making ability-to-repay determinations. 82 Fed. Reg. at 54598. As consumers *are not avoiding* harm by “normal consumer decision-making,” “[t]he market does not appear to be self-correcting.” *Id.*

³⁹⁹ 84 Fed. Reg. at 4271.

⁴⁰⁰ 82 Fed. Reg. at 54569 (citing Mann study).

⁴⁰¹ 82 Fed. Reg. at 54577-78.

⁴⁰² 84 Fed. Reg. at 4271.

arrangements or suffer adverse consequences.”⁴⁰³ But the Proposal ignores that the Rule found that this fact does not “suffice[] to establish that consumers actually understand the material risks and costs of these products, and in particular the *magnitude and severity* of the risks and harms.”⁴⁰⁴ Rather, the Rule noted, “understanding” in this context means more than “within the realm of possibility” and consumers “may not understand that a certain risk is very likely to materialize or that—even though relatively rare—the impact of a particular risk would be severe.”⁴⁰⁵ The Proposal does not acknowledge these conclusions from the Rule, and they cannot be reconciled with the Proposal’s conclusion that consumers can reasonably avoid harm.

Finally, the Proposal points to the Rule’s expectation that consumers not offered payday loans would have alternatives,⁴⁰⁶ suggesting that this contributes to harm being reasonably avoidable. But the Rule found that limited alternatives, along with borrowers’ *perception* that alternatives are limited, supported that the harm was *not* reasonably avoidable, consistent with unfairness precedent.⁴⁰⁷ The Proposal does not identify, explain, or support any change of position on this.

4.2.4.5. The Proposal’s attack on the Rule’s application of “not reasonably avoidable” involves a dishonest characterization of unfairness precedent.

The Proposal attempts to anchor its attack on the Rule’s finding of “not reasonably avoidable” in FTC Act precedent.⁴⁰⁸ It argues that “[the Proposal’s] approach, consistent with the FTC’s longstanding approach on informed consumer decision-making in its interpretation of the unfairness standard, is the best interpretation” of the “not reasonably avoidable” standard.⁴⁰⁹ The Proposal muses that because, in other certain contexts, disclosures that “generally alert[] consumers” to harm have been “sufficient” to avoid a finding of not reasonably avoidable, the Proposal’s application of this prong is correct.⁴¹⁰ This assertion, however, is not clearly explained or supported.

As a first matter, if the FTC has found that disclosures made harm reasonably avoidable in certain circumstances, this does not mean that harm is reasonably avoidable in this circumstance. Whether harm is reasonably avoidable is an inquiry specific to the harm, the market conditions, and other circumstances involved.

⁴⁰³ 84 Fed. Reg. at 4271 (citing 82 Fed. Reg. at 54472, 54615).

⁴⁰⁴ 82 Fed. Reg. at 54615.

⁴⁰⁵ 82 Fed. Reg. at 54516 (discussing the 2016 proposed rule).

⁴⁰⁶ 84 Fed. Reg. at 4271 (citing 82 Fed. Reg. at 54840-41).

⁴⁰⁷ 82 Fed. Reg. at 54595 & n. 657.

⁴⁰⁸ See 84 Fed. Reg. at 4270.

⁴⁰⁹ *Id.* at 4270-71.

⁴¹⁰ *Id.* at 4270.

Moreover, the Proposal's inexplicable focus on disclosures ignores the Bureau's own authority. Taken to its logical conclusion, the Proposal's reasoning suggests that disclosures can remedy any unfair practice. But the Dodd-Frank Act gave the Bureau authority to identify and remedy unfair practices that is in *addition to* its authority to require disclosures.⁴¹¹ In so doing, Congress recognized that disclosures alone do not convert every unfair practice into a fair one.

As another matter, the Proposal profoundly distorts the manner in which FTC Act precedent considers consumer decision-making and overblows the extent to which disclosures have been found to enable consumers to reasonably avoid harm. At the same time, it misleadingly ignores multiple examples where the FTC and other agencies concluded disclosure was *not* considered adequate to make harm reasonably avoidable.

Of course, the Rule found that neither current disclosures nor potential ones would enable consumers to reasonably avoid harm from loans made without ability-to-repay determinations, something the Proposal does not offer evidence to prove or disprove. The Proposal does not proffer evidence for, or affirmatively conclude that, disclosures currently occurring in the market are sufficient to make the injury reasonably avoidable. It also does not proffer evidence for, or affirmatively conclude that, disclosures *would* be sufficient to make the injury reasonably avoidable. And tellingly, the Proposal conveys no intention to propose or implement any such disclosure regime.

4.2.4.5.1. The Proposal wrongly suggests that FTC precedent shows that disclosure enables consumers to reasonably avoid harm.

The Proposal purports to rely heavily on an FTC policy statement issued in 1980 as a restatement of the unfairness test in a letter to two Senators ("the Policy Statement").⁴¹² In that Policy Statement, the FTC provided some detail about its interpretation of the "not reasonably avoidable" prong of unfairness under its own statute. The Proposal notes, correctly, that "[t]he FTC Policy Statement explained that reasonable avoidability for purposes of unfairness analysis is premised on the fact that '[n]ormally we expect the marketplace to be self-correcting, and we rely on consumer choice—the ability of individual consumers to make their own private purchasing decisions without regulatory intervention—to govern the market.'"⁴¹³

What the Proposal misleadingly omits is that the Policy Statement goes on to note: "*However, it has long been recognized that certain types of sales techniques may prevent consumers from effectively making their own decisions, and that corrective action may then become necessary. Most of the Commission's unfairness matters are brought under these circumstances.*"⁴¹⁴ Thus, the FTC Policy

⁴¹¹ See 12 U.S.C. §§ 5531, 5532.

⁴¹² The letter, dated Dec. 17, 1980, is reproduced as an appendix to *International Harvester*, 104 F.T.C.949 (1984).

⁴¹³ 84 Fed. Reg. at 4264; see also *id.* at 4271 n.242.

⁴¹⁴ *International Harvester*, 104 F.T.C. 949, at *97 (1984) (emphasis added). See also *Am. Fin. Svcs. Ass'n*, 767 F.2d at 978, 982 "factors [can] result[] in an obstacle to free consumer decisionmaking which is being exploited by creditors," the court explained that it "would be overstepping its authority if [it] were to mandate . . . that the

Statement, contrary to the Proposal’s characterization, supports that a finding of unfairness may be appropriate where consumer decision-making is impeded by practices in the market.

Further, in arguing that the injury here was reasonably avoidable, the Proposal asserts that “[a] disclosure that generally alerts consumers to the likelihood and magnitude of harm generally has been sufficient to avoid a finding that consumers did not appreciate the value of taking steps to avoid that harm.”⁴¹⁵ In support of this assertion, the proposal cites only *International Harvester*, quoting a general disclosure that the FTC specifically held *not* to be sufficient.⁴¹⁶ *International Harvester* in no way endorses a categorical rule that disclosures enable consumers to reasonably avoid harm.

The Proposal also claims that the FTC routinely mandates general disclosures about material terms, conditions, or risks, and that this shows that general disclosures make a harm reasonably avoidable.⁴¹⁷ However, the Proposal selectively cites from those FTC rules, omitting the elements of the rules that show disclosure alone would not make harm reasonably avoidable. And again, the mere fact that FTC has required disclosures in some other markets does not inform the market-specific judgment about whether payday- and title-lending practices are unfair (or the question of the appropriate remedy for such unfairness).

The FTC’s Credit Practices Rule⁴¹⁸ provides the most potent example of the Proposal’s misrepresentation. The Proposal accurately describes that rule as “prohibiting certain practices and requiring disclosures about cosigner liability.”⁴¹⁹ However, in a plainly outrageous omission, the Proposal fails to note that of the six unfair practices addressed by that rule, only for *one*, unfair or deceptive cosigner practices, was harm remedied by disclosure. For *every other* unfair practice the rule identifies—confession of judgment clauses, waiver of exemptions, wage assignments, non-purchase money security interests in household goods, and pyramiding of late charges—the rule imposes substantive requirements and prohibitions because *the FTC determined that disclosures would not allow consumers to reasonably avoid harm*.⁴²⁰ Significantly, the FTC’s Credit Practices Rule was the very rule that the D.C. Circuit upheld in its

[FTC’s] unfairness authority is limited solely to the regulation of conduct involving deception, coercion or the withholding of material information.”

⁴¹⁵ 84 Fed. Reg. at 4270.

⁴¹⁶ 84 Fed. Reg. at 4270, n. 238 (inaccurately citing *International Harvester*, 104 F.T.C. 949, at *46, as “noting that the dissemination of the disclosure —‘AVOID FIRES. TIGHTEN cap securely, Do not open when engine is RUNNING or HOT’—would have made the injury from fuel geysering reasonably avoidable”).

⁴¹⁷ 84 Fed. Reg. at 4270.

⁴¹⁸ 16 C.F.R. Part 444.

⁴¹⁹ 84 Fed. Reg. at 4270, n.240.

⁴²⁰ 16 C.F.R. §§ 444.2, 444.4. The FTC did not even require disclosures as an ancillary measure because it determined they would not be effective.

influential *AFSA v. FTC* case, a case that specifically affirmed the FTC’s non-disclosure-based remedies.⁴²¹

The Proposal cherry picks disclosure provisions from other FTC rules that primarily impose substantive restrictions in a similar fashion—not advancing the proposition that the FTC has routinely found that disclosures make harm reasonably avoidable.⁴²²

4.2.4.5.2. The Proposal ignores examples from other rulemakings where disclosures did not make harm reasonably avoidable.

The Proposal also ignores multiple examples from the consumer financial markets where agencies concluded that disclosures did not make harm reasonably avoidable. The FTC and other agencies have often stressed why consumers cannot reasonably avoid harm from creditor practices, even when those practices are laid out in contract documents or otherwise disclosed.

The FTC’s Credit Practices Rule,⁴²³ discussed in the preceding section, is a prime example. The FTC explicitly rejected an alternative rule that would have required plain English disclosure of contractual remedies.⁴²⁴ The FTC’s rule was challenged in the D.C. Circuit under the APA with respect to two of the unfair practices that the rule prohibited—non-purchase money security interests and wage assignments.⁴²⁵ The D.C. Circuit upheld the FTC’s rejection of disclosure alternatives,⁴²⁶ rebuffing AFSA’s assertion that the Rule “sweep[s] too broadly and that the Commission could have chosen alternate means more narrowly tailored to preventing the specific abuses identified”).⁴²⁷

The Proposal also fails to acknowledge other agencies’ conclusions, when applying the FTC’s unfairness standard, that disclosures would be ineffective at enabling consumers to reasonably avoid harm. In 2009, the FRB, the Office of Thrift Supervision, and the National Credit Union Administration jointly

⁴²¹ *American Financial Services Ass’n v. FTC*, 767 F.2d 957, 998 (D.C. Cir. 1985); see also text accompanying note 239 below.

⁴²² The FTC’s negative option plan rule, 16 C.F.R. Part 425, includes specific substantive requirements regarding refunds and shipping deadlines, which the Proposal omits. 16 C.F.R. § 425.1(b)(1), (3). The FTC’s Funeral Industry Practices Rule, 16 C.F.R. Part 453, includes substantive prohibitions against requiring the purchase of particular goods or services, conditioning the furnishing of funeral goods or services upon the purchase of other funeral goods or services, or charging any fee for handling a casket or other goods purchased by the consumer from a third party, 16 C.F.R. § 453.4(a), (b). See also *Pa. Funeral Directors Ass’n, Inc. v. Fed. Trade Comm’n*, 41 F.3d 81 (3d Cir. 1994) (describing the “casket handling” fee provision). The Proposal omits these as well.

⁴²³ 16 C.F.R. Part 444.

⁴²⁴ 49 Fed. Reg. 7740, 7754 (Mar. 1, 1984) (footnote omitted).

⁴²⁵ *American Financial Services Ass’n v. FTC*, 767 F.2d 957 (D.C. Cir. 1985).

⁴²⁶ *Id.* at 998.

⁴²⁷ *Id.*

used their FTC Act-defined unfairness authority to make major reforms to credit card lending.⁴²⁸ In opposing the proposed rules, several industry commenters had argued that injuries resulting from contractual provisions were always reasonably avoidable.⁴²⁹ The agencies rejected this argument, determining them “inconsistent with the FTC’s [analysis in] the Credit Practices Rule, where the FTC determined that consumers could not reasonably avoid injuries caused by otherwise valid contractual provisions.”⁴³⁰ The agencies’ analysis repeatedly echoed their conclusion that the harm was not reasonably avoidable, and that disclosures could not make it so. This conclusion supported the agencies’ decision to impose substantive limits on the practices of allocating payments in a manner that maximized the interest charged,⁴³¹ increasing the annual percentage rate applicable to an outstanding balance except in certain limited circumstances;⁴³² two-cycle billing;⁴³³ and upfront fees on subprime credit cards.⁴³⁴

The FRB’s 2008 subprime mortgage rule⁴³⁵ is another example, particularly relevant because it found that making higher-priced mortgage loans without regard to consumers’ ability to repay was an unfair practice.⁴³⁶ Yet the Proposal completely ignores this conspicuously strong parallel. The agency

⁴²⁸ 74 Fed. Reg. 5498 (Jan. 29, 2009).

⁴²⁹ These commenters argued “that institutions could not be held responsible for consumers’ failure to read or understand the contract or the disclosures provided by the institution.” *Id.* at 5502.

⁴³⁰ *Id.* (emphasis added).

⁴³¹ The agencies conducted extensive consumer testing in an effort to develop disclosures that would enable consumers to understand the issue. This testing showed that “disclosure was not effective in allowing consumers to avoid the common practice of allocating payments first to the balance with the lowest rate.” *Id.* at 5514. The agencies’ rules therefore placed substantive limits on allocation of payments.

⁴³² *Id.* at 5528-5529 (“Commenters first argued that disclosure in solicitations and at account opening of the circumstances in which a penalty rate will be applied to a consumer credit card account will enable consumers to avoid those circumstances and therefore any injury. Although these disclosures are necessary and appropriate for the informed use of credit, the Agencies do not believe that, by themselves, they would be effective in preventing the harm caused by application of increased rates.” (detailing this analysis as part of a discussion of public policy issues)); *See also* at 5523 n.107 (discussing reasonable avoidability and cross-referencing the public policy discussion for detail about the ineffectiveness of a disclosure approach).

⁴³³ *Id.* at 5535-36 (“[B]ecause the Board’s consumer testing indicates that disclosures are not successful in helping consumers understand balance computation methods, a disclosure would not enable consumers to avoid the two-cycle method when comparing credit card accounts or to avoid the effects of the two-cycle method when using a credit card.”)

⁴³⁴ *Id.* at 5539 (“Although several industry commenters asserted that the disclosures in Regulation Z were sufficient to enable consumers to avoid any injury, the Agencies conclude, for the reasons discussed below, that consumers cannot, as a general matter, reasonably avoid the injury caused by high-fee subprime credit cards.”)

⁴³⁵ Federal Reserve System, Final rule, 73 Fed. Reg. 44522 (July 30, 2008).

⁴³⁶ *Id.* at 44540. As directed by a Conference Report, the FRB applied the standards developed by the FTC to determine whether a practice is unfair. Federal Reserve System, Final rule, 73 Fed. Reg. 44522, 44529 (July 30, 2008).

specifically rejected the notion that the harm from this practice was reasonably avoidable by borrowers because they could avoid unsustainable loans by comparing their incomes to the loan payment schedule disclosed by the lender.⁴³⁷ Two years after the FRB promulgated this rule, Congress emphatically endorsed it by not only codifying the FRB’s prohibition against making subprime mortgage loans without evaluating the borrower’s ability to repay, but also expanding the prohibition to the mortgage market generally.⁴³⁸

In this rule, the FRB also rejected the idea that disclosure would enable borrowers to reasonably avoid harm caused by a number of other subprime mortgage practices, including prepayment penalties and yield spread premiums. Significantly, its consumer testing showed that consumer understanding was not improved by the disclosures, and in some cases the disclosures had the opposite effect, leaving consumers confused or mistaken.⁴³⁹ Two years later, the FRB returned to the question of yield spread premiums. Once again noting the inadequacy of disclosures to enable consumers to avoid the harm, the FRB imposed substantive prohibitions on loan originator compensation.⁴⁴⁰ A federal district court found that the FRB had “adequately reasoned” that the injury was not reasonably avoidable and that relying on increased disclosures would not be sufficient to protect consumers.⁴⁴¹ While the FRB was finalizing its yield spread premium prohibition, Congress emphatically indicated its agreement with the FRB’s reasoning by including in the Dodd-Frank Act an industry-wide prohibition similar to that which the FRB was finalizing.⁴⁴² The FRB responded by finalizing the rule it had proposed, concluding that “Congress was aware of the Board’s Proposal” and that “in enacting TILA Section 129B(c), Congress

⁴³⁷ *Id.* at 4454 (noting, *inter alia*, that “many consumers in the subprime market will accept loans knowing they may have difficulty affording the payments because they reasonably believe a more affordable loan will not be available to them . . . limited transparency of prices, products, and originator incentives reduces a borrower’s expected benefit from shopping further for a better option. Moreover, taking more time to shop can be costly, especially for the borrower in a financial pinch.”; “borrowers’ own assessment of their repayment ability may be influenced by their belief that a lender would not provide credit to a consumer who did not have the capacity to repay” . . . “Borrowers are likely unaware of market imperfections that may reduce lenders’ incentives to fully assess repayment ability.”)

⁴³⁸ 15 U.S.C. § 1639c.

⁴³⁹ 73 Fed. Reg. at 44557 (“For reasons discussed above, the Board does not believe that disclosure alone is sufficient to enable consumers to avoid injury from a prepayment penalty.”), 44564 (“Based on the Board’s analysis of the comments, consumer testing, and other information, the Board is withdrawing the Proposal [regarding yield spread premiums]. The Board is concerned that the proposed agreement and disclosures [regarding payments to mortgage brokers] would confuse consumers and undermine their decision-making rather than improve it.”).

⁴⁴⁰ Federal Reserve Board, Final rule, 75 Fed. Reg. 58,509, 58,515, 58526-58,527 (Sept. 24, 2010).

⁴⁴¹ Nat’l Ass’n of Mortg. Brokers v. Board of Governors of the Fed. Reserve Sys., 773 F. Supp. 2d 151, 172 (D.D.C. 2011).

⁴⁴² 15 U.S.C. § 1639b(c), enacted by Pub. L. No. 111-203, §§ 1100A, 1402-1405, 124 Stat. 1376, 2107, 2139, 2141 (July 21, 2010).

sought to codify the Board's proposed prohibitions while expanding them in some respects and making other adjustments."⁴⁴³

Recently, the FTC applied its unfairness standard when it banned telemarketers from taking payment from consumers by certain payment methods that are vulnerable to fraud.⁴⁴⁴ The FTC rejected the argument that generalized warnings posted by money transfer providers in storefronts and on money transfer forms would be sufficient to enable consumers to avoid this harm.⁴⁴⁵

The above examples make patently clear that even when accompanied by disclosures, a practice can cause harm that is not reasonably avoidable, and that agencies have reached this conclusion time and again. The Proposal's attempt to assert otherwise is disingenuous and misleading.

4.3. The harm consumers suffer is not outweighed by countervailing benefits to consumers or competition.

The injury consumers suffer from loans made without ability-to-repay determinations is not outweighed by countervailing benefits to consumers or competition, as the Rule's extensive record demonstrates. The Proposal's attack on the Rule's application of this standard is plainly outcome-driven and unreasoned. The Proposal asserts without justification that the Rule should not have included the step-down approach in its analysis, promoting a fictional analysis instead. The Proposal also fails to consider that the Rule did not rely on the step-down approach to conclude that harms outweighed benefits—which is never more clear than in the Rule's determination that harm outweighed benefits for vehicle title loans, which are not even permitted the step-down loan alternative. Thus, even assuming the Proposal's distorted approach, harm is not outweighed by benefits. The Proposal's attempt to show otherwise does not even amount to a genuine comparison of harms and benefits; it also fails to consider recent evidence of harm in the form of negative health impacts and suicide risk.

4.3.1. The harm consumers suffer is not outweighed by countervailing benefits to consumers or competition.

The Rule's extensive analysis determined that the harm caused by making loans without an ability-to-repay determination was not outweighed by countervailing benefits to consumers or competition, and it was not a close call.⁴⁴⁶ Consistent with FTC and other Federal agency rulemakings and related case law, the Rule's "countervailing benefits" analysis considered both any benefits that consumers receive

⁴⁴³ 75 Fed. Reg. 58509, 58509 (Sept. 24, 2010).

⁴⁴⁴ Federal Trade Commission, Final rule, 80 Fed. Reg. 77,520 (Dec. 14, 2015). *See id.* at 77,524 ("In reaching this conclusion, the Commission has applied the unfairness analysis set forth in Section 5(n) of the FTC Act, finding that this practice causes or is likely to cause substantial injury to consumers that is not outweighed by countervailing benefits to consumers or competition and is not reasonably avoidable." (footnote deleted)).

⁴⁴⁵ Federal Trade Commission, Final rule, 80 Fed. Reg. 77,520, 77,550 (Dec. 14, 2015) (footnotes deleted).

⁴⁴⁶ The Rule weighed the substantial injury in the aggregate, and the countervailing benefits in the aggregate, and then assesses which predominates. 82 Fed. Reg. at 54602. It found that aggregate injury "clearly outweighs" aggregate benefits. 82 Fed. Reg. at 54606.

from lending without ATR determinations and “the various costs that a remedy would entail.”⁴⁴⁷ The costs of the remedy increased the weight attributed to the countervailing benefits side of the scale. A countervailing benefits analysis does not, the Rule concluded, “require a precise quantitative analysis of the benefits and the costs.”⁴⁴⁸

Applying this framework, the Rule weighed the “very significant amount of harm” caused by making loans without ATR determinations against the countervailing benefits as experienced by three groups of borrowers—repayers, defaulters, and re-borrowers.⁴⁴⁹ It concluded that the aggregate injury “clearly outweighs” the aggregate benefits.⁴⁵⁰

The first category, repayers, comprise a relatively small portion of borrowers as approximated by loan sequences (22% of payday sequences, 12% of vehicle title sequences).⁴⁵¹ Whether or not these borrowers actually benefit from payday loans generally, many may satisfy ability-to-repay determinations and thus gain little countervailing benefit from the unfair practice, except for the cost of the remedy.⁴⁵² The Rule also considered benefits to “false negative” borrowers—those who may have the ability to repay but would not satisfy an ability-to-repay determination—and determined that the size of this group would be small.⁴⁵³

The second category, defaulters (20% of payday sequences, 33% of vehicle title sequences), suffer substantial harm from lenders making loans without ATR determinations and receive limited offsetting benefits. Non-underwritten credit may benefit these defaulters by providing a “temporary ‘reprieve’ from their current situation,” but for more than half (55%-58%) of defaulters, this “reprieve” is for the term of three or fewer loans before the ultimate default.⁴⁵⁴ This benefit is weighed against “the forgone injury” of defaulting, which includes late fees, bank overdraft fees, and potentially loss of bank account and/or car.⁴⁵⁵ The remaining defaulters endure even more injury as a result of lenders’ failure to make ATR determinations when offering loans: because they receive unaffordable loans, they suffer the “adverse economic effect of the unsuccessful struggle to repay,” and *then* default, making it “quite implausible” that they have obtained any significant benefit at all.⁴⁵⁶

⁴⁴⁷ FTC Policy Statement on Unfairness; 82 Fed. Reg. at 54599, 54603. The Bureau accounts for costs of the remedy to the extent they are passed onto consumers. 82 Fed. Reg. at 54603.

⁴⁴⁸ *Id.* at 54599.

⁴⁴⁹ *Id.* at 54599.

⁴⁵⁰ *Id.* at 54606.

⁴⁵¹ 82 Fed. Reg. at 54599-54600

⁴⁵² *See* 82 Fed. Reg. at 54604.

⁴⁵³ 82 Fed. Reg. at 54604.

⁴⁵⁴ 82 Fed. Reg. at 54604.

⁴⁵⁵ *See* section 2.2 above.

⁴⁵⁶ 82 Fed. Reg. at 54604-05.

The third category, re-borrowers, account for 58% of payday and 56% of vehicle title loan sequences. These individuals suffer severe harm from lenders making loans without ATR determinations in the form of extended indebtedness in high cost loans and collateral consequences from making unaffordable payments.⁴⁵⁷ They may receive some benefit from receiving loans without an ability-to-repay determination,⁴⁵⁸ but the injury to re-borrowers who do not anticipate the length of their reborrowing, “many who find themselves unexpectedly trapped in extended loan sequences, *is so substantial*” that it outweighs these benefits.⁴⁵⁹ Indeed, “any ... reprieve” can come at a “much higher likelihood of risk and a substantially greater cost” for a “substantial population of re-borrowers” because once in an unaffordable loan, the borrower cannot make “an unencumbered choice among competing alternatives.”⁴⁶⁰ Notably, the Bureau did not find that “any significant number of consumers anticipated” loan sequences of 10 or more loans, which comprise about a quarter of both payday and vehicle title loan sequences.⁴⁶¹

The Rule concluded that for defaulters and re-borrowers—who comprise the vast majority of borrowers—the harm “dwarfs any benefits,”⁴⁶² and that the aggregate injury among all borrowers clearly outweighs the aggregate benefits.⁴⁶³

The Rule also found that it would not have a significant impact on competition. Though it predicted the Rule would result in consolidation in the market, it made clear that a reduction in lenders or storefronts would not materially reduce the competitiveness of the market.⁴⁶⁴ In this case, the Rule explained, the market consolidation would not significantly affect loan pricing because “there is generally no meaningful price competition;” rather, lenders charge the maximum permitted by state law.⁴⁶⁵ The Rule further found that lenders would likely remain in relatively close proximity to the vast majority of borrowers.⁴⁶⁶

⁴⁵⁷ See section 2.2 above.

⁴⁵⁸ See Fed. Reg. at 54605.

⁴⁵⁹ 82 Fed. Reg. at 54605.

⁴⁶⁰ 82 Fed. Reg. at 54605.

⁴⁶¹ 82 Fed. Reg. at 54600.

⁴⁶² 82 Fed. Reg. at 54600; *see also* 82 Fed. Reg. at 54603 (affirming that the proposed rule’s assessment that injury outweighs benefits to consumers or competition was correct).

⁴⁶³ 82 Fed. Reg. at 54606. (The Rule proceeds to discuss a number of academic and other studies assessing the impact of payday lending, as well as respond to comments addressing potential “substitution products.” See 82 Fed. Reg. at 54606-11.)

⁴⁶⁴ 82 Fed. Reg. at 54601.

⁴⁶⁵ 82 Fed. Reg. at 54601.

⁴⁶⁶ See 82 Fed. Reg. at 54601, 54612.

Notably, as the Rule explained, the harm of lending without ability-to-repay outweighs its benefits by “even more” than the Bureau’s 2016 proposal anticipated, in light of the ways in which the Rule simplified and streamlined underwriting criteria (and thus the costs of any remedy) versus those in that Proposal.⁴⁶⁷ Permitting step-down loans without an ability-to-repay determination serves only to “further reduce the weight” on the countervailing benefits side of the scale.⁴⁶⁸ In other words, as the Rule made clear, the substantial injury that lenders cause when they make loans without ATR determinations would outweigh the benefits of that practice even if the remedy imposed greater costs than it does.

4.3.2. The Proposal provides no reasonable justification for its claim that the Rule’s application of the countervailing benefits prong was problematic.

The Proposal claims that the Rule erred in its application of the countervailing benefits prong because the Rule considered the step-down approach as part of the analysis.⁴⁶⁹ This suggestion is illogical. The step-down approach is part of the remedy for lenders’ unfair practice that the Bureau carefully crafted to preserve the benefits of covered loans while reducing the harms that result from lenders offering them without ATR determinations. The Rule also specifically stated that its determination in § 1041.4 of the unfair and abusive practice of lending without an ability-to-repay determination did not apply to step-down loans.⁴⁷⁰

The Proposal’s approach would have the Bureau ignore the real-world effects of its own remedy and base the analysis instead on a fictional universe in which there is no step-down approach.

The Rule left no doubt that the ability-to-repay determination and the step-down approach are, together, the remedy to protect consumers from lenders’ unfair and abusive lending practice. One part directly prohibits the practice; the other addresses the practice by imposing limitations that minimize the harm consumers suffer from it. The Official Commentary explains, “the combination of §§ 1041.5 and 1041.6 are the Bureau’s intended method for preventing the practice in § 1041.4.”⁴⁷¹ Moreover, the Rule’s discussion repeatedly emphasizes that section 1041.6 is intended to address the unfair and abusive practice.⁴⁷² That the Bureau relied, in part, on its exemption authority in crafting a nuanced

⁴⁶⁷ See 82 Fed. Reg. at 54603.

⁴⁶⁸ See 82 Fed. Reg. at 54603. The Rule first noted that the simplification and streamlining of underwriting requirements reduced the weight on the countervailing benefits of the scale.

⁴⁶⁹ See 84 Fed. Reg. at 4272.

⁴⁷⁰ See 12 C.F.R. § 1041.6(a) (exempting step-down loans from the unfair and abusive determination of § 1041.4); Comment 1 to Section 1041.4 (“A lender who complies with § 1041.6 in making a covered short-term loan has not committed the unfair and abusive practice under § 1041.4 and is not subject to § 1041.5).

⁴⁷¹ 82 Fed. Reg. at 54588.

⁴⁷² See 82 Fed. Reg. at 54698 (noting that the step-down approach is intended to “prevent extended re-borrowing” and “prevent or reduce the risks and harms associated with default, delinquency, and forgoing basic living expenses or major financial obligations”—the same harms the ability-to-repay determination is designed to prevent); *id.* at 54699 (“Because loans made under § 1041.6 would not be required to meet the specific underwriting criteria in § 1041.5, the specific features of this conditional exemption are designed to mitigate

remedy is not a meaningful distinction here. This authority is one way in which the Bureau “carr[ies] out the purposes and objectives” of Title X of the Dodd-Frank Act;⁴⁷³ as the Rule explains, the section 1014.6 conditional exemption carries out the Bureau’s purpose of protecting consumers from unfair, deceptive, and abusive practices, while also reflecting other Bureau objectives.⁴⁷⁴

As the Rule noted, the FTC Statement on Unfairness supports that an unfair practice must be “injurious in its net effects” and that an agency must “take[] account of the various costs that a remedy would entail.”⁴⁷⁵ Myriad examples of FTC and FRB application of the unfairness standard show the agencies assessing the real-world benefits and costs of the rules. These rules’ countervailing benefits analyses do not, as the Proposal would suggest, assess the prohibition they design in isolation without carefully considering what conduct the rules continue to permit. Rather, the countervailing benefit analyses emphasizes the targeted nature of rules carefully designed to address harm while minimizing reduction of benefit. Examples include the FTC’s ban on non-purchase money security interests in household goods, whose cost-benefit analysis noted that the rule left “untouched” this same practice on purchase money loans;⁴⁷⁶ the FTC’s ban on wage assignments, whose analysis considered that payroll deduction loans would continue to be permitted;⁴⁷⁷ and the FRB’s credit cards rule, whose analysis emphasized that provisions (e.g., those addressing allocation of payments and APR increases) were carefully crafted to allow “considerable flexibility” for financial institutions.⁴⁷⁸

those harms.); *id.* at 54700-01 “[T]he conditional exemption for covered short-term loans is consistent with the Bureau’s statutory objective under section 1021(b)(2) of the Dodd-Frank Act, which is to ensure that consumers are protected from unfair or abusive acts and practices. In § 1041.4, the Bureau has stated that it is an unfair and abusive practice for a lender to make covered short-term loans without making a reasonable determination that consumers have the ability to repay the loans according to their terms. In § 1041.5, the Bureau prevents this unfair and abusive practice by prescribing specific underwriting criteria for lenders making certain covered loans. Although lenders making conditionally exempt loans are not required to satisfy these same requirements, they will be required to satisfy the alternative requirements for the conditional exemption under § 1041.6. These alternative requirements are designed to protect consumers from the harms that result from lenders making covered short-term loans that are unaffordable— namely, default, delinquency, repeat borrowing, and collateral harms from making unaffordable loan payments. These are the same kinds of harms that the requirements in § 1041.5 were designed to address.”).

⁴⁷³ 12 U.S.C. § 552(b)(3)(A).

⁴⁷⁴ See 82 Fed. Reg. at 54700.

⁴⁷⁵ 82 Fed. Reg. 54520 & n.385 (and noting that these costs “include not only the costs to the parties directly before the agency, but also the burdens on society in general in the form of increased paperwork, increased regulatory burdens on the flow of information, reduced incentives to innovation and capital formation, and similar matters.”); see also 82 Fed. Reg. 54603.

⁴⁷⁶ Federal Trade Commission, Final trade regulation rule, 49 Fed. Reg. 7740, 7766 (Mar. 1, 1984).

⁴⁷⁷ *Id.* at 7759.

⁴⁷⁸ Federal Reserve System, Office of Thrift Supervision, and National Credit Union Administration, Final Rule, 74 Fed. Reg. 5498, 5515, 5524 (Jan. 29, 2009). The rule prohibited allocation of payments above the minimum payment to the balance with the lowest rates first. It did not prohibit allocation of those payments pro rata, and it

4.3.3. Even by the Proposal’s approach, the harm of not considering ability to repay is not outweighed by countervailing benefits or competition.

The Proposal (“preliminarily”) concludes that, under its fictional-world analysis, “any aggregate injury” lenders cause consumers by making loans without ATR determinations (which is the severe injury the Rule found and the Proposal does not reconsider) is outweighed by countervailing benefits to consumers and competition.⁴⁷⁹

But this conclusion ignores the Rule’s actual analysis. The Rule never comes close to suggesting that lost benefits would outweigh harm *but for* the step-down loans. Rather, as described below, it indicates the opposite. Indeed, had the Rule’s weighing of harm versus countervailing benefits relied on minimizing those benefits as a result of the step-down, the Rule could not have concluded this prong satisfied for vehicle title loans, for which no step-down alternative is available.

As explained above, the Rule assesses, in detail, the ways lenders harm consumers by leaving them to choose between re-borrowing, default, and injurious strategies to avoid default. In assessing countervailing benefits, the Rule then makes clear that, even if the step-down approach were excluded from the analysis, this injury that consumers suffer clearly outweighs the benefits of lending without ATR determinations. The final Rule first affirms that its determination in the 2016 proposed rule concluding that the injury outweighed the benefits “was correct”—and that analysis did not take into account the step-down loans.⁴⁸⁰ The Rule then describes the *reduction* of the weight assigned to the benefits side of the scale resulting from the simplification of the underwriting requirements between the proposed and final rules.⁴⁸¹ And finally, it notes the “allowance of [step-down loans] *further reduces* the weight on this side of the scale.”⁴⁸² In all, these adjustments result in injury outweighing the countervailing benefits to consumers by “*even more* than it did at the proposal stage.”⁴⁸³ Thus, the Proposal’s claim that the Rule “did not address the benefits to consumers or competition from lenders making loans without an ability to repay determination”⁴⁸⁴—i.e., without consideration of the step-down loans—is patently false.

The Proposal attempts to escape the Rule’s conclusion that harm outweighs benefits even without the step-down approach, as it claims to perform its own countervailing benefits analysis excluding the step-down approach. But this effort to undermine the Rule is also defective.

did not prohibit allocation of the minimum payment in any manner. The rule prohibited rate increases under certain circumstances and permitted them in others.

⁴⁷⁹ 84 Fed. Reg. at 4272.

⁴⁸⁰ 82 Fed. Reg. at 54603.

⁴⁸¹ *Id.*

⁴⁸² *Id.* (emphasis added).

⁴⁸³ *Id.* (emphasis added).

⁴⁸⁴ 84 Fed. Reg. at 4272.

First, the Proposal comes nowhere close to *weighing* harm against countervailing benefits, even under the approach it purports to use. Instead, the Proposal focuses on only half of the equation: the benefits of lenders making loans without ATR determination. It mentions in passing the significant costs to consumers of extended loan sequences.⁴⁸⁵ But the Proposal generally omits any discussion of the aggregate *injury* that practice causes that is not reasonably avoidable. And its weighing of harms and benefits fails to account for the post-Rule studies that suggest that lending without ATR determinations is even *more harmful* than the Bureau predicted in 2017; as explained in 2.2 above, these studies indicate a range of negative health impacts and suicide risk associated with payday loans, as offered in the current market. Thus, with only a conclusory assertion about that injury being outweighed,⁴⁸⁶ the Proposal hardly can be considered to have reached *any* conclusion about whether or not the injury consumers suffer from lenders' practice of offering loans without ATR determinations causes is outweighed by benefits.

Even regarding the purported benefits of this practice, the Proposal's analysis is inadequate. The Proposal addresses the Rule's three categories of borrowers in turn. But with each, the Proposal fails to provide any information or data to dispute the Rule's findings. It merely strings together hypothesized alternative scenarios and differences in weight to benefits than, it claims, the Rule applied. This spurious exercise does not meet basic standards of reason and rationality—directly contradicting the Proposal's invented standard for “more robust and reliable” evidence it claims warranted for a rule with such “dramatic effect.”

As to repayers, the Proposal claims the Rule “understated the risk” that some who would benefit from a loan would be denied, specifying two reasons in particular.⁴⁸⁷ First, it noted that some borrowers may have difficulty proving their ability to repay.⁴⁸⁸ The Rule, however, as noted above, considered these “false negatives” and concluded the “population would be small,” especially in light of the adjustments made to streamline underwriting criteria in the final Rule.⁴⁸⁹ The Proposal does not cite any data or even provide a rationale for questioning that conclusion.⁴⁹⁰ The Rule also noted that “many borrowers could be led to find more sustainable loan options, such as underwritten credit on terms that are more affordable or better tailored to meet their budget needs.”⁴⁹¹ The Proposal fails to consider this finding.⁴⁹²

⁴⁸⁵ See 84 Fed. Reg. at 4273.

⁴⁸⁶ See 84 Fed. Reg. at 4274.

⁴⁸⁷ 84 Fed. Reg. at 4273.

⁴⁸⁸ *Id.*

⁴⁸⁹ See 82 Fed. Reg. at 54604.

⁴⁹⁰ See 84 Fed. Reg. at 4273.

⁴⁹¹ 82 Fed. Reg. at 54600.

⁴⁹² 82 Fed. Reg. at 54601.

Second, the Proposal asserts that some lenders may choose to “over-comply” to reduce their legal exposure.⁴⁹³ Again, the Rule considered this possibility, noting it would be an “unfounded and imprecise reaction to the rule,” yet possible, and that its effects on countervailing benefits “should be marginal at best.”⁴⁹⁴ Moreover, the Rule’s streamlined underwriting criteria would reduce this likelihood.⁴⁹⁵ For its part, the Proposal’s only support for its hand-waving claim that “somewhat greater weight should be placed on this risk” is laughable: “The Bureau’s experience in other markets indicates that some lenders generally seek to take steps to avoid pressing the limits of the law.”⁴⁹⁶ The Bureau has extensive experience in *this market*, but does not cite that experience here. In fact, *this market* has a problem closer to the opposite of over-compliance, as the Rule describes at length in its discussion of the Rule’s anti-evasion clause and elsewhere.⁴⁹⁷

Additionally as to repayers, the Proposal references “system effects,” claiming that lenders’ revenue reduction from the ability-to-repay requirements would “lead to a vast constriction of supply.”⁴⁹⁸ The Proposal fails to consider other products that the Rule found,⁴⁹⁹ and the Proposal itself notes elsewhere,⁵⁰⁰ could fill a shortfall in supply in this market. These other products include longer-term high-cost loans where state law permits, a shift that is fully expected to occur and, in some cases, already has,⁵⁰¹ which the Proposal fails to address. Relatedly, the Proposal fails to present any evidence to indicate whether such a constriction in supply is actually occurring in anticipation of the Rule.

As to re-borrowers, the Proposal glosses over harm and overstates benefits of loans made without an ability-to-repay determination, veering from the Rule’s findings without explanation or support.⁵⁰²

⁴⁹³ See 84 Fed. Reg. at 4273.

⁴⁹⁴ 82 Fed. Reg. at 54603.

⁴⁹⁵ 82 Fed. Reg. at 54603-04.

⁴⁹⁶ 84 Fed. Reg. at 4273.

⁴⁹⁷ See 82 Fed. Reg. at 54806-13 (discussing 12 CFR 1041.13); see also 82 Fed. Reg. at 54695 (discussing 12 CFR 1041.5(e)).

⁴⁹⁸ 84 Fed. Reg. at 4273. The Proposal fails to note that payday loans are not “supply” in the conventional sense. Rather, of the “90 percent of loans” it claims will not be made in this fictional scenario, the vast majority are not meeting a productive credit need. They are the result of one unaffordable loan being flipped some significant number of times—debt traps in which re-borrowers and defaulters are stuck and suffering substantial harm as a result. See section 2.1 above.

⁴⁹⁹ 82 Fed. Reg. at 54609, 54835.

⁵⁰⁰ See 84 Fed. Reg. at 4268 (acknowledging these other products when doing so suits the Proposal’s attempt to undermine the Pew study).

⁵⁰¹ See, e.g., American Banker, *Payday lenders are making bank on new, high-interest products* (June 5, 2018) (including noting that Enova, one of the nation’s largest subprime consumer lenders, has “spread out regulatory exposure” by shifting to installment products, shrinking the portion of its portfolio comprised of short-term payday loans from 98% in 2008 to 20% in 2018).

⁵⁰² The Proposal refers to re-borrowers as those who are “unable to repay in a single installment.” 84 Fed. Reg. at 4273. The Rule determined that the only ability-to-repay determination is whether a borrower can repay the loan

For re-borrowers in relatively short loan sequences, the Proposal fails, without explanation, to consider any harm at all, despite the Rule’s finding that these borrowers’ injuries “can nonetheless be substantial, particularly in light of these borrowers’ already precarious circumstances”⁵⁰³ and that “even among this group, many consumers do not anticipate . . . that they will need to re-borrow at all.”⁵⁰⁴ The Proposal identifies only benefit, which it overstates, failing to consider the Rule’s finding that any temporary “reprieve” these loan sequences provide would be “exceedingly brief.”⁵⁰⁵ The Proposal again, without explanation, ignores the evidence the Rule identified that the market will shift toward uncovered installment loans and other credit offerings like pawn.⁵⁰⁶

For re-borrowers in longer loan sequences, the Proposal’s discussion of harm is a mere statement that these borrowers “incur significant costs” while positing that there is “some countervailing benefit.”⁵⁰⁷ The Proposal lacks any basis to dismiss harm to these borrowers so flippantly, particularly when the Rule concluded, based on the body of evidence considered, that the harm to re-borrowers unexpectedly trapped in extended loan sequences “is *so substantial* as to outweigh the benefits” to some borrowers who may gain an overall benefit from payday loans.⁵⁰⁸

Additionally, even in the context of longer loan sequences, the Proposal emphasizes the 55 percent of re-borrowers who are in series of seven loans or fewer.⁵⁰⁹ It disregards harm to these borrowers—

at the end of its stated loan term, without reborrowing. See 82 Fed. Reg. at 54588 (noting that “[m]any commenters claimed that borrowers who cannot pay an originated loan nonetheless do have an ability to repay because they can repay after some amount of re-borrowing. To further reflect the Bureau’s intent, both now and at the stage of the proposal, that lenders should assess the borrower’s ability to repay without reborrowing, the Bureau has added the phrase “according to its terms.”). This approach was consistent with longstanding ability-to-repay precedent, where ability to repay fundamentally means ability to repay, on the loans terms, without reborrowing. See Comments of CRL, NCLC *et al.* on 2016 Proposed Rule at 79-81. By referring to whether borrowers have “ability to repay [a short-term, balloon payment loan] in a single installment,” 84 Fed. Reg. at 4273, the Proposal suggests, with explanation for a change in course, that ability-to-repay means something other than ability-to-repay on a loan’s actual terms.

⁵⁰³ 82 Fed. Reg. at 54600.

⁵⁰⁴ *Id.*

⁵⁰⁵ 82 Fed. Reg. at 54604.

⁵⁰⁶ 82 Fed. Reg. at 54609, 54835; 84 Fed. Reg. at 4268 (acknowledging these other products when doing so suits the Proposal’s attempt to undermine the Pew study).

⁵⁰⁷ 84 Fed. Reg. at 4273.

⁵⁰⁸ 82 Fed. Reg. at 54605 (emphasis added).

⁵⁰⁹ See 84 Fed. Reg. at 4273-74 (noting 35% of borrowers are in sequences of four loans or less, while an additional 20% are in sequences of five-to-seven loans).

when the Rule did not⁵¹⁰—while failing to consider that a full 45 percent of re-borrowers are in series of more than seven loans (or that 65% of borrowers are in series of more than four loans).⁵¹¹

As to defaulters, the Proposal’s claims are similarly unsupported. It claims the Rule “may have minimized the value” of substituting a payday lender for other creditors.⁵¹² But there is zero evidence that the Rule minimized this issue: To the contrary, the Rule concluded this benefit was “not an insignificant countervailing benefit.”⁵¹³ The Proposal offers no new evidence that this benefit should be more significant than the Rule already considered. Similarly, the Proposal claims that the Rule “may have minimized the value of a ‘temporary reprieve.’”⁵¹⁴ Yet here again, the Rule fully considered this issue, finding that many reprieves are very short-lived, and when not short-lived, the borrower has incurred the harms of both re-borrowing *and* defaulting.⁵¹⁵

As to competition, the Proposal asserts that the Rule “analyzed the countervailing benefits to competition through the lens of the principal step-down exemption.”⁵¹⁶ It then claims that “at least a 90 percent reduction in revenue and supply would occur” and “materially impact . . . competition.”⁵¹⁷ But it presents no evidence to support this conclusion. In fact, the Rule’s analysis of its impact on competition emphasized that a significant reduction in loan volume would not translate to anywhere near a commensurate reduction in competition.⁵¹⁸ The Proposal does not explain its change in position. In addition, the Rule found, and the Proposal acknowledges, that a reduction in revenue and supply will not likely impact price, in a market where lenders virtually uniformly already charge the maximum permitted by law.⁵¹⁹

The Proposal’s discussion of “innovation” once again turns the Rule on its head. It cites the Rule’s *exclusions* for products like wage advances as *evidence* that the Rule would constrain innovation. But these exclusions from scope, carefully drawn to minimize any harm caused by a lack of an ability-to-repay determination,⁵²⁰ are evidence of the care the Rule took to *preserve* innovation—without allowing for unfair or abusive practices. Innovation involving unfair and abusive practices is not a goal the Bureau’s statutory purpose allows.

⁵¹⁰ See 82 Fed. Reg. at 54592.

⁵¹¹ See 84 Fed. Reg. at 4273-74.

⁵¹² 84 Fed. Reg. at 4274.

⁵¹³ 82 Fed. Reg. at 56404.

⁵¹⁴ 84 Fed. Reg. at 4274.

⁵¹⁵ 82 Fed. Reg. at 54600.

⁵¹⁶ 84 Fed. Reg. at 4274 (citing 82 Fed. Reg. at 54611-12).

⁵¹⁷ 84 Fed. Reg. at 4274.

⁵¹⁸ See section 4.3.1 above.

⁵¹⁹ See 82 Fed. Reg. at 54601; 84 Fed. Reg. at 4274.

⁵²⁰ See n. 202, 203 above and accompanying text.

As a final matter, the Proposal acknowledges that “[o]n its own terms, [considering the step-down approach in the analysis] has no applicability with respect to vehicle title loans.”⁵²¹ As discussed above, the Rule did not rely on the step-down approach in order to determine that harm outweighed benefits—a point that the inapplicability of the step-down approach to vehicle title loans only underscores.

4.4. Public policy overwhelmingly supports the finding of unfairness.

The Proposal disregards entirely the Rule’s finding that public policy supported its finding of unfairness.⁵²² As the Rule noted, “several consumer financial statutes, regulations, and guidance documents require or recommend” that lenders assess ability to repay before extending credit.⁵²³ These include the Dodd-Frank Act provisions on closed-end mortgages, the CARD Act provisions on credit cards, OCC guidance on abusive lending practices, FDIC guidance on small dollar lending, and guidance from the FDIC on deposit advance products. (The Rule also noted the OCC’s guidance on deposit advance products, which was rescinded the day the Rule was finalized.) In addition, the Rule noted, the FRB finalized (using its unfairness authority) ability-to-repay requirements for higher-cost mortgages, which were later superseded by the Dodd-Frank Act’s ability-to-repay requirements that apply generally to mortgages regardless of price.

“In short,” the Rule found that “Congress, State legislatures, and other agencies have found consumer harm” from lending without an ability-to-repay determination and that “established policies” provide support for its finding of unfairness.⁵²⁴

5. MAKING PAYDAY AND VEHICLE TITLE LOANS WITHOUT AN ABILITY-TO-REPAY DETERMINATION IS AN ABUSIVE PRACTICE.

The Dodd-Frank Act gives the Bureau authority to promulgate rules to prevent a practice that “takes unreasonable advantage of” either “a lack of understanding on the part of the consumer of the material risks, costs, or conditions of the product or service” or “the inability of the consumer to protect the interests of the consumer in selecting or using a consumer financial product or service. . . .”⁵²⁵

Making payday and vehicle title loans without an ability-to-repay determination is an abusive practice because it takes unreasonable advantage of both consumers’ lack of understanding of the material

⁵²¹ 84 Fed. Reg. at 4273.

⁵²² See 82 Fed. Reg. at 54612-14.

⁵²³ 82 Fed. Reg. at 54612.

⁵²⁴ 82 Fed. Reg. at 54612. The Rule was clear that public policy supported its finding of unfairness, which itself was based on the three legal elements of unfairness (substantial injury, not reasonably avoidable, not outweighed by countervailing benefits to consumers or competition). *Id.*

⁵²⁵ 12 U.S.C. § 5531(a)(d)(2)(A), (B).

risks, costs, or conditions of the payday and title loans, as offered without ability-to-repay determinations, and their inability to protect their interests in selecting or using such loans.⁵²⁶

As to unfairness, the Proposal does not claim that the factual record underpinning the Rule’s abusiveness determination is insufficient to withstand APA review.⁵²⁷ The Proposal claims instead that “it is prudent as a policy matter to require a more robust and reliable evidentiary basis ...”⁵²⁸

However, the evidence of abusiveness was not just barely sufficient; it was quite robust. In an effort to counter this substantial record, the Proposal mischaracterizes and minimizes the evidence, invents speculative counter-evidence, and distorts the Dodd-Frank statutory standard for finding abusiveness. These efforts are unavailing.

5.1. Consumers lack understanding of the material risks or costs of payday and vehicle title loans made without consideration of ability to repay.

5.1.1. Introduction

Many payday and vehicle title loan borrowers do not appreciate the risk and costs of their loans when they first borrow. As the Bureau concluded in 2017 based on the extensive record before it, “a significant population of consumers does not understand the material risks and cost of unaffordable loans that are made without reasonably assessing the borrower’s ability to repay the loan according to its terms.”⁵²⁹ Specifically, the Bureau found “evidence showing that a significant proportion of consumers do not understand the kinds of harms that flow from unaffordable borrowing including those imposed by default, delinquency, re-borrowing, and the collateral consequences of making unaffordable payments to attempt to avoid these other injuries.”⁵³⁰ Many borrowers do not understand “how long they are likely to remain in debt and how costly and harmful that situation could be for them.”⁵³¹

The Rule’s analysis recognized its research showing that “a large segment of borrowers” “ends up in extended loan sequences,” and the fact that consumers “are also exposed to other material risks and costs in connection with ”the covered loans.⁵³² It also recognized that “empirical evidence shows that a substantial population of borrowers, and especially those who end up in extended loan sequences, are not able to predict accurately how likely they are to re-borrow.”⁵³³

⁵²⁶ 82 Fed. Reg. at 54624.

⁵²⁷ 82 Fed. Reg. at 4264.

⁵²⁸ 82 Fed. Reg. at 4264.

⁵²⁹ 82 Fed. Reg. at 54617.

⁵³⁰ 82 Fed. Reg. at 54617.

⁵³¹ 82 Fed. Reg. at 54615.

⁵³² See 82 Fed. Reg. at 54615-16.

⁵³³ 82 Fed. Reg. at 54615; see also 82 Fed. Reg. at 54571.

The Rule then used a multifaceted inquiry to conclude that consumers lack an understanding of the material risks and costs of payday and vehicle title loans. As explained below, each part of the Rule’s inquiry rests on multiple sources of data, information, and reasoning, based on the extensive record it compiled through enforcement matters, supervisory exams, consumer complaints, field hearings, a small business review panel, research and studies, and analysis of others’ research and studies.⁵³⁴ The Rule also collected evidence of borrowers’ lack of understanding through comments. For instance, the Rule described that a commenter “noted that their experiences with legal assistance clients showed *consistent confusion* about the risks, costs, and conditions of these loans, as well as the excessive optimism many consumers have about their expected ability to pay off the loans as they come due.”⁵³⁵ The Rule also noted that “consumer groups agreed with the Bureau’s assessment in the proposal that many consumers *do not understand the material risks and costs* associated with these kinds of loans.”⁵³⁶ The Rule observed that this perspective regarding “consistent confusion” and “excessive optimism” was supported by many comments by and about individual users of such loans.”⁵³⁷

The Proposal dismisses this evidence, portraying the Mann study as a “linchpin”⁵³⁸ of the Bureau’s abusiveness determination and its years of work. As with the Proposal’s similar statement regarding the Rule’s unfairness analysis, this is a gross mischaracterization of the basis for the Rule’s finding. The Mann study’s finding about consumers’ inability to predict their long loan sequences was just one study addressing one part of the Rule’s analysis regarding *one* of the material risks at issue. The Proposal offers no more than speculation in its effort to undermine the Mann study, as discussed in section 4.2.3 above. But even without the study, the Rule amply supports its own conclusion about consumers’ lack of understanding.

5.1.2. Substantial evidence shows that payday- and vehicle-title-borrower misunderstanding arises from the “mismatch” between loan marketing and performance.

The Rule’s multifaceted inquiry found there is a “mismatch” between the marketing and actual performance of payday and vehicle title loans that “impedes consumers’ understanding of the material risks and costs of these loans.”⁵³⁹ “Although the loans are presented and marketed as stand-alone short-term products, lenders know and rely on the fact that only a minority of payday loans are repaid without any re-borrowing.”⁵⁴⁰ This mismatch, the Rule concluded, “can impede consumers’ understanding of the material risks and costs of these loans.”⁵⁴¹

⁵³⁴ See 82 Fed. Reg. at 54503-12.

⁵³⁵ 82 Fed. Reg. at 54617 (emphasis added).

⁵³⁶ 82 Fed. Reg. at 54617 (emphasis added).

⁵³⁷ 82 Fed. Reg. at 54617 (emphasis added).

⁵³⁸ 84 Fed. Reg. at 4267.

⁵³⁹ 82 Fed. Reg. at 54616.

⁵⁴⁰ 82 Fed. Reg. at 54616.

⁵⁴¹ 82 Fed. Reg. at 5416.

The Bureau was in an excellent position to identify this marketing vs. performance mismatch as a source of consumer misunderstanding based on the work of a variety of the Bureau’s divisions, offices, legal tools, outreach, and analysis of empirical data. First, the CFPB’s law enforcement investigations and cases provided a source of data demonstrating a marketing-performance mismatch that confuses many consumers. At the time the Rule was issued, the Bureau had engaged in enforcement actions against “more than 20 small-dollar lenders, including brick-and-mortar storefront lenders, online lenders, and vehicle title lenders” many of which involved “misleading and deceptive marketing practices.”⁵⁴² The Rule explained that “[t]he information and insights that the Bureau has gleaned from these investigations and enforcement actions has further advanced its understanding of this market and of the factual foundations for the policy interventions contained in this final rule.”⁵⁴³ For example, the Bureau successfully sued one of the largest payday lending chains in America for, among other illegal actions, engaging in an abusive practice of “creation of a *false sense of urgency* to get delinquent borrowers to take out more payday loans—all while charging new fees each time.”⁵⁴⁴ This investigation provided an important source of data for the Rule. The case showed that borrowers trapped in a literal debt cycle (see Figure 1 above) may have a false sense of urgency and thereby lack understanding of the material risks and costs of their loans.⁵⁴⁵

The Bureau also had evidence of lenders’ marketing practices as a result of conducting supervisory exams that included audits of the lenders’ marketing materials, policies and procedures, and compliance management systems.⁵⁴⁶ The Bureau’s examination manual contains a detailed “marketing” module directing that in every small-dollar lender exam, Bureau examiners must “develop a detailed understanding of the lender’s marketing program to determine whether its marketing policies, procedures, and practices are consistent with the requirements of applicable federal consumer financial laws and regulations.”⁵⁴⁷ Arriving at the requisite “detailed understanding” in exam after exam would have allowed the Bureau to develop extensive experience and background knowledge about how payday and vehicle title lenders shape consumer expectations and understanding through TV ads, radio ads, online ads, email, text messages, telephone sales scripts, signs or other displays, and prescreened direct-to-consumer solicitations.⁵⁴⁸

⁵⁴² 82 Fed. Reg. at 54506.

⁵⁴³ 82 Fed. Reg. at 54506.

⁵⁴⁴ 82 Fed. Reg. at 54507 (citing See Press Release, Bureau of Consumer Fin. Prot., “CFPB Takes Action Against Ace Cash Express for Pushing Payday Borrowers Into Cycle of Debt” (July 10, 2014), available at <https://www.consumerfinance.gov/about-us/newsroom/cfpb-takes-action-against-ace-cash-express-forpushing-payday-borrowers-into-cycle-of-debt/>) (emphasis added).

⁵⁴⁵ *Id.*

⁵⁴⁶ See generally 82 Fed. Reg. at 54,503, 54,505-06.

⁵⁴⁷ Bureau of Consumer Fin. Prot., Examination Procedures: Short-Term, Small-Dollar Lending at 6 (March 2019), https://files.consumerfinance.gov/f/documents/cfpb_payday_manual_revisions.pdf.

⁵⁴⁸ Bureau of Consumer Fin. Prot., Examination Procedures: Short-Term, Small-Dollar Lending at 6-7 (March 2019), https://files.consumerfinance.gov/f/documents/cfpb_payday_manual_revisions.pdf.

The Bureau’s enforcement and supervisory programs were one part of the wealth of knowledge that the Rule drew on in pointing out, that payday and vehicle title lenders market their products as “short-term” loans for use “until next payday” or to “tide over” the consumer until she receives her next paycheck.”⁵⁴⁹ Indeed, the payday and vehicle title lenders’ own trade association has for many years inaccurately described payday loans as short-term products equivalent to a “financial taxi.”⁵⁵⁰ As the Bureau’s most recent version of the examination manual notes, payday and vehicle title lenders “typically market payday loans to consumers as a means of bridging a cash-flow shortage between pay or benefits checks.”⁵⁵¹

Further, the Bureau’s own empirical studies showed that payday and title loans do not operate as these marketing messages suggest – which supports the conclusion that they are likely to create confusion and misapprehension of risk among consumers. As discussed above, most payday loans are part of extended sequences.⁵⁵² The Bureau’s research on payday and vehicle title lenders’ protracted debt cycles confirmed findings from studies by industry-sponsored think tanks,⁵⁵³ federal regulators,⁵⁵⁴ state

⁵⁴⁹ 82 Fed. Reg. 54561-62; *see also id.* at n.504 (providing examples from typical payday and vehicle title lender marketing materials”).

⁵⁵⁰ *See* 84 Fed. Reg. at 54562 n.504.

⁵⁵¹ Bureau of Consumer Fin. Prot., Examination Procedures: Short-Term, Small-Dollar Lending at 2 (March 2019), https://files.consumerfinance.gov/f/documents/cfpb_payday_manual_revisions.pdf.

⁵⁵² 82 Fed. Reg. at 54554-55.

⁵⁵³ Gregory Elliehausen and Edward C. Lawrence, Georgetown University McDonough School of Business Credit Research Center, *Payday Advance Credit in America: An Analysis of Demand* (2001) 39 (about 40 percent of borrowers rolled over more than five times in preceding year, about 20 percent of borrowers who renewed existing loans nine times or more, 10 percent renewed 14 times or more).

⁵⁵⁴ United States Office of the Comptroller of the Currency, Fact Sheet: Eagle National Bank Consent Order, January 3, 2002, at 2 (discovering payday loan employee compensation incentives for promoting repeat borrowing); Mark Flannery & Katherine Samolyk, Payday Lending: Do the Costs Justify the Price?, FDIC Center for Financial Research Working Paper No. 2005–09, 16–17 (2005) (high frequency borrowers are more profitable because they generate lower loss ratios and lower operating costs).

regulators,⁵⁵⁵ private contractors hired by state governments,⁵⁵⁶ consumer advocacy organizations,⁵⁵⁷ and academics.⁵⁵⁸ These studies show that borrowers of single-payment payday and vehicle title loans tend to fall into the debt traps described above in section 2.1, which are very different from the short-term nature of the loans conveyed in marketing messages.

The Bureau's work also uncovered evidence that business practices and loan terms exacerbate borrower confusion created by the mismatch between loan marketing and performance.⁵⁵⁹ For instance, the Bureau's supervisory exams showed that payday and vehicle title lenders explicitly create financial incentives on their employees to maximize loan volume "and the data suggest that re-borrowing is a crucial means of achieving this goal"⁵⁶⁰— even though this pattern of re-borrowing is at odds with lenders' own false caricature of their products in marketing materials. The Rule noted that payday and vehicle title lenders formally and informally give borrowers only two choices: repay in full or reborrow their entire loan principal.⁵⁶¹ For the substantial portion of borrowers that cannot afford to repay in full, this practice forces consumers into protracted re-borrowing patterns that are at odds with

⁵⁵⁵ Report of the Uniform Consumer Credit Code Rev. Comm. And Action of the Colorado Commission on Consumer Credit 16 (Nov. 4, 1999) (reporting instances of as many as thirteen or more refinances); Chessin, *Borrowing from Peter to Pay Paul: A Statistical Analysis of Colorado's Deferred Deposit Loan Act*, 83 DENVER U. L. REV. 387 (2005) (discussing official Colorado statistics); Ill. Dept. of Fin. Inst., *Short Term Lending: Final Report 30* (1999) (average payday loan customer borrows thirteen times per year and remains indebted for at least six months); Indiana Department of Financial Institutions, *Summary of Payday Lender Examination*, 1–2 (77% of payday loans are extensions of previously existing contracts); Survey Iowa Division of Banking (2000) (finding an average of 12.5 loans per customer per year); North Carolina Office of the Commissioner of Banks, Report to the General Assembly on Payday Lending, (87% of borrowers roll over payday loans more than once with each individual lender); Washington State Department of Financial Institution, *Payday Lending Report 3* (2003) (over thirty percent of borrowers borrow more than ten times per year, almost ten percent borrow twenty times or more per year).

⁵⁵⁶ Veritec Solutions, *Florida Trends in Deferred Presentment: State of Florida Deferred Presentment Program*, http://www.veritecs.com/FL_trends_sep_2005.pdf (2005) (average Florida customer borrows 7.9 times per year, 25% of borrowers borrow 12 or more times per year); Veritec Solutions, *Oklahoma Trends in Deferred Deposit Lending: Oklahoma Deferred Deposit Program*, http://www.veritecs.com/OK_trends_11_2005.pdf (2005) (average Oklahoma borrower borrows 9.4 times per year and 26.8 percent of borrowers borrowing 12 times or more per year, accounting for about 62 percent of all transactions).

⁵⁵⁷ Jean Ann Fox and Ed Mierzwinski, Consumer Federation of America & U.S. Public Interest Research Group, *Show Me the Money: A Survey of Payday Lenders and Review of Payday Lender Lobbying in State Legislatures* 8 (2000); Oregon State Public Interest Research Group, *Preying on Portlanders: Payday Lending in the City of Portland* (2005) (three out of four payday loan borrowers are unable to pay their loan when it comes due).

⁵⁵⁸ Creola Johnson, *Payday Loans: Shrewd Business or Predatory Lending*, 87 MINN. L. REV. 1, 55–76 (2002); Michael A. Stegman & Robert Faris, *Payday Lending a Business Model that Encourages Chronic Borrowing*, 17 ECON. DEV. Q. 8 (2003).

⁵⁵⁹ See 82 Fed. Reg. at 54,616.

⁵⁶⁰ 82 Fed. Reg. at 54563.

⁵⁶¹ See 82 Fed. Reg. at 54563 ("When the borrowers return, they are typically presented by lender employees with two salient options: Repay the loan in full, or simply pay a fee to roll over the loan (where permitted under State law)."); see also *id.* at 54,616.

lenders' inaccurate portrayal of their products as a short-term method to tide the borrower over until payday.

5.1.3. Borrowers' financial distress and immediate challenges leave them vulnerable and impedes their understanding of the loans' material risks and costs.

As noted in the Rule, there is extensive evidence that payday and vehicle-title borrowers frequently suffer from financial distress.⁵⁶² Fewer than half of borrowers report having any savings or reserve funds.⁵⁶³ Over 80 percent of borrowers report making at least one late payment on a bill in the preceding three months and roughly 25 percent report frequently paying bills late.⁵⁶⁴ Half report bouncing a check in the preceding three months and 58 percent report struggling to repay their bills on time.⁵⁶⁵

The Rule concluded that this financial distress is another factor that "can impede consumers' understanding," because "consumers in extreme financial distress tend to focus on their immediate liquidity needs, rather than potential future costs, in a way that makes them highly susceptible to lender marketing."⁵⁶⁶ This tendency is referred to as "tunneling," as people exhibit tunnel-vision decision-making when they confront such situations.⁵⁶⁷ Consumers that are facing scarcity and desperation may have decision fatigue where they have great difficulty resisting quick fix purported solutions that temporarily relieve stress.⁵⁶⁸ The Rule considered the extensive academic literature showing that "when people are under pressure they tend to focus on the immediate problem they are confronting and discount other problems"⁵⁶⁹ and explained how this pattern can make it challenging for many consumers to determine whether they have the ability to repay their payday and vehicle-title

⁵⁶² 82 Fed. Reg. at 54558.

⁵⁶³ 82 Fed. Reg. at 54558 (citing Gregory Elliehausen, "An Analysis of Consumers' Use of Payday Loans," at 29 (Geo. Wash. Sch. of Bus., Monograph No. 41, 2009), available at https://www.researchgate.net/publication/237554300_AN_ANALYSIS_OF_CONSUMERS%27_USE_OF_PAYDAY_LOANS).

⁵⁶⁴ 82 Fed. Reg. at 54558 (citing Jonathan Zinman, "Restricting Consumer Credit Access: Household Survey Evidence on Effects Around the Oregon Rate Cap," at 20 tbl. 1 (Dartmouth College, 2008), available at http://www.dartmouth.edu/~jzinman/Papers/Zinman_RestrictingAccess_oct08.pdf).

⁵⁶⁵ *Id.*

⁵⁶⁶ 84 Fed. Reg. at 54,616.

⁵⁶⁷ 82 Fed. Reg. at 54570 (citing *See generally* Sendhil Mullainathan & Eldar Shafir, "Scarcity: The New Science of Having Less and How It Defines Our Lives," (Picador, 2014). See also A Mechele Dickerson, Financial Scarcity and Financial Decision-Making, 58 Az. L. Rev. 137 (2016)); *see also id.* at 54616, 54617.

⁵⁶⁸ Roy F. Baumeister & John Tierney, *Willpower: Rediscovering The Greatest Human Strength* 90 (2012).

⁵⁶⁹ 82 Fed. Reg. at 54570-71.

loans.⁵⁷⁰ It noted that lenders' advertisement of the speed at which funds will be available can exacerbate the problem.⁵⁷¹

Additionally, the Rule pointed to academic research suggesting that consumers tend to overestimate their ability to repay debts and their capacity to control financial situations.⁵⁷² Or, in the words of the New Mexico Supreme Court, payday loan borrowers are vulnerable because, "[t]hey exhibit unrealistic optimism, or fundamental attribution error, meaning that they overestimate their ability to control future circumstances and underestimate their exposure to risk."⁵⁷³ Thus, these borrowers have unrealistic expectations about their ability to repay these loans."⁵⁷⁴

5.1.4. The Proposal distorts the Rule's interpretation of lack of understanding, but even the re-phrased standard is satisfied here.

In this context, as under the unfairness standard, the Proposal attempts to dismiss the Rule's thorough analysis by shifting the goal posts and changing this standard. But here too, the Proposal distorts the Rule's interpretation and application of the abusiveness standard, provides a new standard with no justification—and, in any case, proposes a new standard that the Rule easily satisfies.

The Proposal suggests that the Rule required that "payday borrowers ... have a specific understanding of their personal risks such that they can accurately predict how long they will be in debt."⁵⁷⁵ As we similarly address in section 4.2.4 above regarding unfairness, the Rule never requires such an individualized risk assessment.

Instead, the Rule recognized that "understanding" in this context should "mean more than a mere awareness" that a harmful consequence "was within the realm of possibility."⁵⁷⁶ It explained, "[f]or example, consumers may not understand that a certain risk is very likely to materialize or that ... the impact of a particular risk would be particularly severe."⁵⁷⁷ Thus, the Rule stated, in this market, where "borrowers do not understand either their likelihood of being exposed to the risks of these loans or the severity of these kinds of costs and harms that may occur, then it is quite difficult to maintain the

⁵⁷⁰ Cf. Jonathan Z. Berman et al., "Expense Neglect in Forecasting Personal Finances," at 5–6 (2014) (*forthcoming* publication in *J. of Marketing Res.*), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2542805.

⁵⁷¹ See 82 Fed. Reg. at 54616.

⁵⁷² 82 Fed. Reg. at 54571, 54617.

⁵⁷³ *State v. B&B Investment Group*, 329 P.2d 658, 666 (N.M. 2014) (affirming unconscionability trial verdict based on substantial evidence of procedural and substantive unconscionability).

⁵⁷⁴ *Id.*

⁵⁷⁵ 82 Fed. Reg. at 4275.

⁵⁷⁶ 82 Fed. Reg. at 54615

⁵⁷⁷ 82 Fed. Reg. at 54615.

position that those same borrowers in fact understand the material risks and costs associated with unaffordable short-term loans.”⁵⁷⁸

Furthermore, the Proposal offers no reasonable justification for stepping away from the Rule’s application of the abusiveness standard. It states only in conclusory fashion that the Rule’s approach was “problematic” for the same reasons that the Rule’s application of the “reasonable avoidability” standard purportedly was.⁵⁷⁹ But for all the reasons explained above in section 4.2.4, the Proposal’s mischaracterization of the Rule as requiring consumers to be able to understand and forecast their unique personal outcome, as well as the Proposal’s substitute standard that consumers need only “appreciate the general risks of harm”⁵⁸⁰ are both unavailing.⁵⁸¹

In any case, the Proposal’s effort to change the “lack of understanding” standard appears largely for naught, as the Proposal makes no effort to apply it. The Proposal states that consumers have the requisite understanding “if they appreciate the general risks of harms associated with the products sufficient for them to consider taking reasonable steps to avoid that harm.”⁵⁸² But then the Proposal goes on to state only in conclusory fashion that the Rule “did not offer evidence” that the Proposal’s re-framed standard was satisfied.⁵⁸³

This single sentence falls far short of the type of reasoned judgment that the Bureau must make in rulemaking. And notably, the Proposal makes no effort to consult internal or external data sources to make an independent determination of whether its re-phrased standard is satisfied.

Moreover, the Rule’s record makes clear that even under the Proposal’s re-phrased standard, consumers lack understanding of the risks of payday or vehicle title loans made without assessment of borrowers’ ability to repay. Importantly, we do not read the Proposal to suggest that the abusiveness standard equates to the understanding the Rule says borrowers typically do have: “that they are incurring a debt which must be repaid within a prescribed period of time and that if they are unable to

⁵⁷⁸ 82 Fed. Reg. at 54617.

⁵⁷⁹ 82 Fed. Reg. at 4275.

⁵⁸⁰ 82 Fed. Reg. at 4275.

⁵⁸¹ The Proposal also does not explain its suggestion that the “lack of understanding” standard should be so similar, as a legal matter, to the “reasonably avoidable” standard, when these two phrases are parts of different statutory standards that use different language. The Rule did not simply equate the “lack of understanding” prong of abusiveness with “reasonably avoidable” prong of unfairness. While in each analysis, the Rule referred to the wealth of evidence the Bureau had gathered, the Rule addressed the different prongs and prohibitions based on the specific statutory language. This is consistent with the clear intention of Congress in establishing abusive as a separate and distinct prohibition in the Dodd-Frank Act. To the extent the Proposal now articulates a view that this aspect of the abusiveness standard is simply identical (or nearly identical) to a prong to the unfairness standard, the Bureau disregards that intent. The Dodd-Frank Act added the prohibition against abusive acts or practices to address inadequacies in the existing regime of unfairness and deception prohibitions. Moreover, separate text in the standards requires separate and distinct analysis of whether they are met.

⁵⁸² 82 Fed. Reg. at 4275.

⁵⁸³ 82 Fed. Reg. at 4275.

do so, they will either have to make other arrangements or suffer adverse consequences.”⁵⁸⁴ If this were the Proposal’s standard for “understanding,” it would be unreasonable. The statutory standard requires understanding of “material risks, costs, or condition” of a particular product—not simply this basic knowledge of lending generally. Indeed, if the awareness the Rule notes, which the Proposal identifies, was sufficient to *avoid* a finding of abusiveness, it is difficult to imagine *any* loan product falling under this aspect of the abusiveness standard.

With respect to the lending at issue in *this Rule*—payday and vehicle title lenders who fail to make an ability-to-repay determination— the Rule’s record shows that consumers do *not* “appreciate the general risks of harms associated with the products sufficient for them to consider taking reasonable steps to avoid that harm.”⁵⁸⁵ In particular, consumers’ financial vulnerability, constrained short-term focus in times of stress, and generally, the mismatch between lenders’ marketing and actual practice—the “factors [that] can impede consumers’ understanding”—are circumstances that can make consumers unable to “appreciate the general risks of harms” associated with payday and title loans as offered without ATR determinations.⁵⁸⁶ In describing these factors, the Rule centered on dynamics that cloud borrowers’ ability to understand the real risk of nonpayment and the severity of the associated consequences in any meaningful way. As the Rule describes, borrowers are led to think covered loans are simply short-term products. And due to their financial distress, borrowers “focus on their immediate liquidity needs” rather than any “potential future costs.”⁵⁸⁷

For all of these reasons, the Proposal does not justify abandoning the Rule’s conclusion that in the relevant markets, consumers lack an understanding of the material risks and costs. The Proposal’s one-sentence conclusion that consumers do have a general understanding is an arbitrary and capricious basis for reversing the Rule’s contrary conclusion that was based on extensive data, input and evaluation.

5.2. Consumers are unable to protect their interests in using payday and vehicle title loans made without an ability-to-repay determination.

5.2.1. The Rule relied on substantial evidence to show consumers’ inability to protect their interests.

The Rule determined that, in addition to lacking an understanding of the risks and costs of covered loans, 12 U.S.C. § 5531(d)(2)(A), consumers also exhibit an inability to protect their interests in selecting or using these loans under the second prong of the abusiveness standard in § 5531(d)(2)(B). Lack of understanding itself can prevent consumers from protecting their interests,⁵⁸⁸ but the Rule also explained that there were “further reasons why consumers may be unable to protect their interests in

⁵⁸⁴ 82 Fed. Reg. at 54615.

⁵⁸⁵ 84 Fed. Reg. at 4275.

⁵⁸⁶ See 82 Fed. Reg. at 54616.

⁵⁸⁷ 82 Fed. Reg. at 54616.

⁵⁸⁸ 82 Fed. Reg. at 54619.

using these loan products even if they largely understand the risks and costs involved.”⁵⁸⁹ Many borrowers of these loans are financially vulnerable and have very limited sources of credit or other liquidity for dealing with financial emergencies.⁵⁹⁰ Moreover, many consumers do not perceive other options that might be available and more appropriate for their circumstances.⁵⁹¹

Additionally, the Bureau’s supervisory exams, market monitoring, and other sources produced evidence showing that consumers’ inability to protect their interests is exacerbated by the mismatch between how the covered loans are marketed (as short-term loans) and how they operate (as long sequences of re-borrowing).⁵⁹² The term and balloon-payment structure, along with the common use of leveraged payment mechanisms or vehicle security, tend to magnify the risk that consumers will be unable to protect themselves from avoiding the injuries that occur with extended loan sequences or defaulting.⁵⁹³

Further, borrowers are unable to protect their interests because many payday and vehicle title lenders refuse to provide or actively discourage consumers from using low-cost prepayment or amortization options. Being rigidly confined to the limited options of either repaying in full an unaffordable balloon-payment loan or reborrowing contributes to consumers’ inability to protect their interests, as they are left only to choose “among the competing harms of default, delinquency, re-borrowing,” or making the unaffordable payment.⁵⁹⁴

Moreover, once borrowers take on an unaffordable first loan, this financial product can “ensnare consumers in a cycle of debt with no reasonable means to extricate themselves without incurring further harm, rendering them unable to protect their interests in selecting or using these kinds of loans.”⁵⁹⁵ Because the borrower “is legally obligated to repay the debt,” “[c]onsumers who lack the ability to repay that initial loan are faced with making a choice among competing injuries: default, delinquency, re-borrowing, or making unaffordable payments in an effort to avoid these other injuries.”⁵⁹⁶ When consumers with unaffordable loans are left only to choose among competing injuries, those consumers have no ability to protect their interests no matter what their circumstances at the outset.⁵⁹⁷

⁵⁸⁹ 82 Fed. Reg. at 54619.

⁵⁹⁰ 82 Fed. Reg. at 54619.

⁵⁹¹ 82 Fed. Reg. at 54619.

⁵⁹² 82 Fed. Reg. at 54620.

⁵⁹³ 82 Fed. Reg. at 54620.

⁵⁹⁴ 82 Fed. Reg. at 54620.

⁵⁹⁵ 82 Fed. Reg. at 54620.

⁵⁹⁶ 82 Fed. Reg. at 54619.

⁵⁹⁷ 82 Fed. Reg. at 54619.

The Rule’s findings on consumers’ inability to protect their interests were not merely theoretical. It was substantiated by the powerful evidence of harm, showing that consumers are not in fact protecting their interests. Here again, as discussed in section 4.2, the Proposal’s refusal to discuss or refute this harm is a strong rebuttal to the Proposal’s hypothetical arguments about how consumers can avoid harm. One example illustrates the problem: the Rule recognized that “a substantial number of consumers ... reborrow—many of them repeatedly, and then eventually default—an outcome that is not in the interest of such consumers and thus one from which they would protect themselves if they were able.”⁵⁹⁸ The Proposal fails to grapple with the contradiction between its claim that borrowers can protect themselves with the reality that many do not.

A simple example can illustrate how making payday and vehicle title loans without an ability-to-repay determination can take advantage of a consumer’s inability to protect herself causing severe harm. Figure X is a screenshot from the computer records of a national auto title lending chain. The borrower, whose name we have changed for her privacy, works as a receptionist for \$11.00 per hour in Albuquerque, NM and is a proud, enrolled member of the Navajo Nation. When her partner did not receive as many hours at his place of employment, the couple fell behind on their bills. Ms. Begay took out a \$1,971.05 vehicle title loan with a 300% APR, due in full 30 days later, secured by her lien on her truck. Over the next eight months, Ms. Begay made \$4,635 in payments on her loan. Because she was only making \$11.00 per hour, coming up with these payments was extraordinarily difficult for Ms. Begay and represented a daily struggle. Yet despite all her efforts, after all these months, the lender claimed Ms. Begay still owed \$2,422.05—more than the original principal of her loan. When Ms. Begay eventually gave up and stopped paying, the lender engaged in harassing debt collection calls including calls to her place of employment, which interfered with her job. For Ms. Begay, this 300 percent interest rate loan was a debt trap.⁵⁹⁹ And, the CFPB’s enforcement, supervisory, market monitoring and rulemaking work uncovered substantial evidence that many payday and vehicle title borrowers face circumstances similar to Ms. Begay.

⁵⁹⁸ 82 Fed. Reg. at 54620.

⁵⁹⁹ See Ending Debt Traps in the Payday and Small Dollar Credit Industry: Hearing before Committee on Financial Services, Subcommittee on Consumer Protection and Financial Institutions, United States House of Representatives at 8 (April 30, 2019) (Prepared statement of Christopher L. Peterson).

Figure 2. Vehicle Title Lender Account Record Screenshot for Raedell Begay⁶⁰⁰

Date	Transaction	Funds amount	Days late	Principal (before)	Balance (before)	Principal (applied)	Interest (applied)	Fees (applied)	Principal (after)	Balance (after)
04/23/2015	Payment received	\$100.00	4	1,971.05	2,538.06	(0.00)	(100.00)	0.00	1,971.05	2,438.06
04/30/2015	Payment received (renewal)	\$405.00	11	1,971.05	2,551.46	(0.00)	(405.00)	0.00	1,971.05	2,146.46
05/28/2015	Payment received (renewal)	\$500.00	9	1,971.05	2,600.07	(0.00)	(500.00)	0.00	1,971.05	2,100.07
06/23/2015	Payment received (renewal)	\$500.00	4	1,971.05	2,521.27	(0.00)	(500.00)	0.00	1,971.05	2,021.27
07/23/2015	Payment received (renewal)	\$500.00	4	1,971.05	2,507.28	(0.00)	(500.00)	0.00	1,971.05	2,007.28
09/01/2015	Payment received (renewal)	\$480.00	13	1,971.05	2,655.28	(0.00)	(480.00)	0.00	1,971.05	2,175.28
09/22/2015	Payment received	\$300.00	3	1,971.05	2,515.49	(0.00)	(300.00)	0.00	1,971.05	2,215.49
09/25/2015	Payment received (renewal)	\$200.00	6	1,971.05	2,264.09	(0.00)	(200.00)	0.00	1,971.05	2,064.09
10/22/2015	Payment received	\$200.00	3	1,971.05	2,501.50	(0.00)	(200.00)	0.00	1,971.05	2,301.50
10/29/2015	Payment received (renewal)	\$445.00	10	1,971.05	2,414.89	(1.16)	(443.84)	0.00	1,969.89	1,969.89
12/14/2015	Payment received (renewal)	\$500.00	25	1,969.89	2,714.67	(0.00)	(500.00)	0.00	1,969.89	2,214.66
01/27/2016	Payment received (renewal)	\$505.00	39	1,969.89	2,927.05	(0.00)	(505.00)	0.00	1,969.89	2,422.05
Total		\$4,635.00				(1.16)	(4,633.84)	0.00		

5.2.2. The Proposal provides no reasonable justification for its rejection of the Pew study or other evidence that consumers are unable to protect their interests.

The Proposal does not challenge the Rule’s legal reasoning under the inability-to-protect prong. Instead, the Proposal asserts that the Rule “relied heavily” on a study by Pew Charitable Trusts, and that the Bureau now believes this is “an inadequate basis for the [Rule] to have drawn broad conclusions about consumers’ ability to take actions to protect their own interests.”⁶⁰¹

As elsewhere in the Proposal, the Bureau now elevates one aspect of the Rule’s reasoning as essential and then raises specious arguments against it. Here again, the Proposal’s pose of cautious uncertainty and categorical refusal to make further inquiry are totally inappropriate in light of the Bureau’s consumer protection mission and the severe harm facing borrowers.

In reaching its finding on the inability-to-protect prong of abusive, the Rule considered abundant information and data, well beyond just one study. The Rule pointed to its discussion of unfairness, and the evidence that supported the finding of unfairness, in support of its finding that “consumers who take out covered short-term loans may be unable to protect their interests in selecting or using such loans because many of them typically have an immediate need for credit and they cannot, in the moment, effectively identify or develop alternatives that would vitiate the need to borrow, allow them to borrow on terms within their ability to repay, or even allow them to borrow on terms not within

⁶⁰⁰ Name changed for consumer’s privacy. Source: Ending Debt Traps in the Payday and Small Dollar Credit Industry: Hearing before Committee on Financial Services, Subcommittee on Consumer Protection and Financial Institutions, United States House of Representatives at 8 (April 30, 2019) (Prepared statement of Christopher L. Peterson).

⁶⁰¹ 84 Fed. Reg. at 4267.

their ability to repay but nonetheless on terms more favorable than those of a covered short-term loan.”⁶⁰² The Rule also pointed to its analysis and findings of Market Concerns to illustrate that “borrowers of these loans are financially vulnerable and have very limited access to other sources of credit.”⁶⁰³

The Rule cited the Pew Study as partial support for the notion that payday borrowers come to the transaction in a financially vulnerable state so that “when they are deciding whether to take out an initial covered short-term loan, they are unable, as a practical matter, to protect their interests.”⁶⁰⁴ But it is a gross mischaracterization to say that the study was the entire basis for the “broad conclusion about consumers’ ability to take actions to protect their own interest.”⁶⁰⁵

The Proposal’s attempt to discredit the Rule’s inference from the Pew Study, in its critique of the study’s methodology, lacks reason. The Proposal claims that the Pew Study only assessed respondents’ “feelings” and not their “actions,” because the particular survey question asked whether respondents had “ever felt you were in such a difficult situation that you would take a [payday loan] on pretty much any terms offered, or have you never felt that way.”⁶⁰⁶ The Proposal speculates that the 37% of borrowers who answered in the affirmative may not have actually been referring to a situation where they took out a payday loan.

Given that Pew’s study was limited to payday loans borrowers,⁶⁰⁷ the notion that any of the respondents who answered in the affirmative were not speaking about an actual payday loan is laughable pro-industry spin. Moreover, a reasonable reading of the survey question is not that it asks for abstract feelings, but rather asks respondents to recall a situation in the past that the respondents “were in” and when, in response to that situation, they likely took out a payday loan. The Proposal provides no basis for assuming that respondents were not answering in the affirmative based on an actual experience with payday loans.

The Proposal also does not explain why the Bureau believes *these* borrowers were somehow able to protect themselves when they did take out a payday loan. In doing so, the Bureau disregards their stated experience and begs the question what the Bureau believes would be an acceptable percentage of payday borrowers who feel compelled to take out loans, made without determination of their ability to repay, and end up falling into debt traps.

As with many other aspects of the Proposal’s evidentiary critique of the Rule, if the Bureau were truly concerned about whether the “feeling” represents actual circumstances of the borrower and ability to

⁶⁰² 82 Fed. Reg. at 54619.

⁶⁰³ 82 Fed. Reg. at 54619.

⁶⁰⁴ 82 Fed. Reg. at 54619.

⁶⁰⁵ 84 Fed. Reg. at 4267.

⁶⁰⁶ 84 Fed. Reg. at 4267.

⁶⁰⁷ 2013 Pew Study at 54.

protect their interests at the origination of a payday loan, the Bureau could undertake to answer that question by conducting surveys of its own. The Bureau does not propose to do any such research.

Instead, the Proposal speculates from other research in an attempt to discredit the Pew finding that 37% of payday borrowers would have felt compelled to take a payday loan on any terms. First, the Proposal points to the same 2013 Pew study's finding that 58% of respondents said they had trouble meeting regular bills.⁶⁰⁸ This finding illustrates a basic aspect of financial vulnerability typical of payday borrowers. It provides no basis for the Proposal's suggested inference that "these borrowers are, in fact, accustomed to exploring alternatives"⁶⁰⁹— or that they were able to do so in the face of the perception that they were so desperate that they would take a payday loan on any terms. The Proposal does not provide any further evidentiary basis or reasoning to support this conclusion from a survey question that did not actually ask whether the respondents are or even feel "accustomed to exploring alternatives." The more logical conclusion from these two data points is that while most payday borrowers have to navigate challenges in paying regular bills, a sizable portion of payday borrowers find themselves in situations where payday loans appear to be the only alternative, and they have no control over the terms of payday loans or the debt trap to which they lead.

The Proposal also cites a finding from an earlier 2012 Pew study about a hypothetical scenario "if payday loans were not available."⁶¹⁰ The Proposal claims that the fact that borrowers would cut back on expenses or use other options in that situation "cast[s] doubt on whether, as the Bureau found, payday borrowers cannot explore available alternatives that would protect their interest."⁶¹¹

The Proposal is simply speculating that this earlier Pew study negates the answers to the 2013 Study that 37% of respondents were in situations where there was no perceivable alternative to a payday loan. There is no basis for such speculation, especially given that sizable minorities, all tellingly over 38%, did not list three of the four alternatives with which the proposal presumes "consumers are familiar."⁶¹²

The Proposal also notes the finding of the 2013 Pew study that many borrowers eventually extricate themselves from payday loans using alternatives that they could have used to avoid taking out a payday loan in the first place— suggesting that this means "borrowers may have had other alternatives at the time they took out a loan."⁶¹³ Similarly, the Proposal notes that consumers in states where payday loans are prohibited rely on other options, "raising questions about the Bureau's finding that consumers in States in which payday loans are not prohibited cannot do so."⁶¹⁴ Here again, the

⁶⁰⁸ 84 Fed. Reg. at 4267.

⁶⁰⁹ 84 Fed. Reg. at 4267.

⁶¹⁰ 84 Fed. Reg. at 4267.

⁶¹¹ 84 Fed. Reg. at 4267.

⁶¹² 84 Fed. Reg. at 4267.

⁶¹³ 84 Fed. Reg. at 4267-68.

⁶¹⁴ 84 Fed. Reg. at 4268.

Proposal fails to rebut the evidence that consumers are unable to protect their interests— notwithstanding the availability of other alternatives—due to the marketing techniques, loan structure issues, lender behavior, consumer over-optimism and tunneling behavior, and other factors that the Rule outlined.

Similarly, the other research that, the Proposal argues, should lead it to “doubt . . . the weight” the Rule placed on the Bureau’s finding of consumer desperation does little to refute that finding. The Proposal suggests that “one study” shows payday borrowers are accustomed to financial shortfalls and use a variety of ways of dealing with situations. The actual study is not disclosed or cited. In any event, that some payday borrowers may have other means of dealing with their situation, and thus protecting their own interests, does not demonstrate that many do not, which is the Bureau’s finding.⁶¹⁵ The Fed Study cited by the Proposal is a report covering economic well-being of consumers generally and does not specifically focus on payday borrowers. But again, that a small percentage of respondents indicated alternatives might be available does not refute a finding that many respondents do not have alternatives or do not perceive that they do. To the extent the Bureau thinks that the Fed Study “raises significant questions” about the Rule’s findings, the appropriate response would be more targeted research by the Bureau.

The Proposal notes that the Rule relied on a variety of other evidence beyond the Pew study, including the structure of loans themselves and “a host of lender practices before, during, and after origination that the Bureau said tend to diminish consumers’ ability to avoid or mitigate the harms and protect their own interests in selecting or using covered products.”⁶¹⁶ Yet the Proposal dismisses this extensive evidence with a waive of the hand, merely pointing out that “many consumers nevertheless avoid long reborrowing sequences . . . with no or minimal renewals.”⁶¹⁷ However, this misses the point and is not responsive to the evidence outlined by the Rule or the Rule’s identification of abusive practice under 12 U.S.C. § 5531(d)(2)(B). There is no requirement in the Dodd-Frank Act that a financial product or service must harm every consumer in order to rise to the level of an illegal abusive practice. It does not follow that simply because some consumers manage to escape from a debt trap, that there is no trap. As the Rule explained, “the key point is not that all consumers are unable to protect their interests, but that a substantial population of borrowers is unable to protect their interests in these circumstances.”⁶¹⁸

5.3. Lenders take *unreasonable* advantage of certain consumer vulnerabilities.

5.3.1. Introduction

The Rule provided overwhelming support for its determination that lenders who make loans without an ability to repay determination take unreasonable advantage of consumers. The Rule identified four factors that “at a minimum” constitute unreasonable advantage taking:

⁶¹⁵ See 82 Fed. Reg. at 54621.

⁶¹⁶ 82 Fed. Reg. at 4268.

⁶¹⁷ 84 Fed. Reg. at 4268.

⁶¹⁸ 82 Fed. Reg. at 54620.

At a minimum, lenders take unreasonable advantage of borrowers when they [1] develop lending practices that are atypical in the broader consumer financial marketplace, [2] take advantage of particular consumer vulnerabilities, [3] rely on a business model that is directly inconsistent with the manner in which the product is marketed to consumers, and [4] eliminate or sharply limit feasible conditions on the offering of the product (such as underwriting and amortization, for example) that would reduce or mitigate harm for a substantial population of consumers.⁶¹⁹

Appropriately, the Rule concluded “that the ways lenders have structured their lending practices here fall well within any reasonable definition of” the concept of “taking unreasonable advantage.”⁶²⁰

The Proposal attempts to dismiss the Rule’s findings on all four counts but, in every case, the Proposal’s arguments are misplaced, inaccurate, or misleading. Further, while the Proposal attempts to criticize the Rule’s analysis, it does not suggest the lenders’ practices fall *outside* the concept of “taking unreasonable advantage.”

5.3.2. The practices in the credit invisible, student loan and reverse mortgage markets do not show that it is typical or reasonable for covered lenders to make loans without determining ability to repay.

The Rule correctly points out that the failure of payday and vehicle title lenders to make ability-to-repay determinations stands in stark contrast to virtually every other form of consumer finance.⁶²¹ The Proposal takes exception to this claim, arguing that lending without a determination of the borrower’s ability to repay is “actually common with regard to credit products for consumers who lack traditional indicia of creditworthiness.”⁶²² The Proposal cites “credit products for consumers with little or no credit history, loans for students or reverse mortgages for the elderly” to justify this assertion.⁶²³

However, all three examples are inaccurate or misleading. As an initial matter, the Proposal does not cite any data suggesting that payday and title-loan borrowers are generally similar to students, elderly consumers, or those with little or no credit history.⁶²⁴ Those three groups are quite different from each other and from payday and vehicle title borrowers, and those differences are reflected in the unique characteristics of those markets. Moreover, in all three of those markets, lenders do make assessments about the borrowers’ likelihood of being able to repay the loans. They certainly do not, as payday and vehicle title lenders do, advertise to, seek out and lend to borrowers with thick indicia of *inability* to repay while making no effort to determine which borrowers nonetheless can afford their loans.

⁶¹⁹ 82 Fed. Reg. at 54623 (bracketed numbers added).

⁶²⁰ 82 Fed. Reg. at 54623.

⁶²¹ 82 Fed. Reg. at 54621.

⁶²² 84 Fed. Reg. at 4275.

⁶²³ *Id.*

⁶²⁴ *See* 82 Fed. Reg. at 54557 (borrowers typically have poor credit histories).

With respect to “credit products for consumer with little or no credit history,” the proposal cites no evidence or even a particular type of loan to justify its assertion that responsible lenders in this market do not consider ability to repay. This vague caricature of market practices is particularly unpersuasive in response to the Rule, which was the product of extensive, years-long research and SBREFA review.

In fact, it is precisely because most lenders require credit history in order to determine ability to repay that credit invisibility poses a problem—as the Bureau itself has highlighted.⁶²⁵ Thus, to the extent that thin- or no-file consumers seek credit, they must find other ways to show their ability to repay.

Secured credit cards are one of the most common forms of credit for consumers who lack a credit history.⁶²⁶ The secured deposit ensures the ability to repay the initial credit line. In addition, even secured credit cards are subject to the ability-to-repay provisions of the Credit CARD Act.⁶²⁷ Once the consumer builds a credit history, she can apply for a traditional credit card using traditional underwriting criteria.

Finding a co-signer with the ability to repay a loan is another way that thin- or no-file consumers get credit. Under the Credit CARD Act, for example, lenders may not give credit cards to consumers under 21 who lack sufficient income of their own.⁶²⁸ Consequently, many students have a parent co-sign their credit card application.⁶²⁹

More recently, lenders and the credit bureaus have begun using bank account transaction data to conduct cash flow underwriting for thin- and no-file consumers.⁶³⁰ Lenders look at income and expenses as reflected in the bank account and whether there is sufficient residual income so that the applicant can afford to repay the credit. Again, this is traditional ability-to-repay underwriting; it just uses alternative forms of data.

The example of student loans is also misplaced and misleading. The overwhelming majority of the student loans are extended by the federal government pursuant to the country’s higher education

⁶²⁵ CFPB, Data Point: Credit Invisibles at 4 (May 2015) (“If a consumer does not have a credit record with one of the NCRAs or if the record contains insufficient information to assess her creditworthiness, lenders are much less likely to extend credit. As a result, consumers with limited credit histories can face substantially reduced access to credit.”), https://files.consumerfinance.gov/f/201505_cfpb_data-point-credit-invisibles.pdf.

⁶²⁶ See, e.g., Center for Financial Services Innovation, The Secured Credit Card Pathway: Opportunities in Serving Key Demographic (July 2017), https://s3.amazonaws.com/cfsi-innovation-files-2018/wp-content/uploads/2017/07/06210343/2017_Secured-Credit-Card-Pathway_Serving-Key-Demographics_Full.pdf.

⁶²⁷ 15 U.S.C. § 1665e.

⁶²⁸ 15 U.S.C. § 1637(c)(8).

⁶²⁹ See Brendan Harkness, Credit Card Insider, “Cosigning for a Credit Card” (Mar. 13, 2019), <https://www.creditcardinsider.com/learn/cosigning-for-a-card/>.

⁶³⁰ See, e.g., Petal, “Why this credit card startup wants to look out for your financial future,” <https://www.petalcard.com/advertorial/no-one-wants-credit-card-debt> (“Instead of solely relying on credit history to make a decision, Petal also takes into consideration the money you make and the bills you pay, with a machine-learning process called cash-flow underwriting.”).

goals. The federal government subsidizes this lending market in order to enable all students, regardless of background, to have the opportunity to attend college. Student loans are extended to consumers who are enhancing their education and are expected to have higher incomes as a result that will support repayment, making the students' current financial status less relevant. This is very different from a payday or vehicle title loan, which will make the consumer's future financial position worse, not better. The federal government limits the schools that federal student loans may be used to attend and has taken steps to limit lending to students who attend schools where graduates have poor debt-to-income ratios through the "gainful employment" rules.⁶³¹ The federal government also uses "back end" underwriting by offering income-based repayment and forgiveness programs for students whose income proves insufficient to manage their payments.⁶³²

In the private student loan market, creditors typically *do* evaluate borrowers' ability to repay. They check credit history, expected student debt levels, consumers' likely future income, and the loan applicant's debt-to-income ratio.⁶³³ Private student lenders, like credit card lenders, also often require a co-signer who can demonstrate ability to repay.⁶³⁴

Reverse mortgages lenders also *do* evaluate the borrower's ability to repay. The borrower's accrued home equity, which lenders evaluate, is used as the source of funds for repaying the mortgage. Borrowers have no immediate payment obligation that they need to be concerned about being able to repay. But as with traditional forward mortgages, borrowers must pay property-related charges including real estate taxes and hazard insurance premiums. Concerns about borrower's inability to pay property charges and the high rate of default for FHA-insured reverse mortgages led to an overhaul of reverse mortgage underwriting which now evaluates the borrower's credit history and cash flow to assess their ability to pay property charges.⁶³⁵ Based on this assessment, the reverse mortgage lender must set aside a portion of the principal limit to pay taxes and insurance, ensuring that these charges will be paid and that inability to repay them will likely not result in default of the reverse mortgage.⁶³⁶

Thus, all three of these markets are quite different from the market for covered loans, and each has its own unique way considering borrowers' ability-to-repay. The absurd lengths that the Proposal stretches in its unsuccessful attempt to find responsible markets that are cavalier about ability to repay merely proves the point about how covered lenders take *unreasonable* advantage of borrowers.

⁶³¹ 34 C.F.R. § 668.403.

⁶³² Adam Levitin, Credit Slips, "About the Student Loan Forgiveness Price Tag..." (Apr. 23, 2019) ("Put another way, instead of having a front-end ability-to-repay requirement for student loans, we have it on the back-end with income-driven repayment and debt forgiveness.").

⁶³³ See, e.g., Miranda Marquit, Student Loan Underwriting Process, Lendedu, (Jan. 9, 2019), <https://lendedu.com/blog/student-loan-underwriting-processes> ("When getting private student loans, you'll be subject to the underwriting process, much like you would be if you wanted to borrow using other types of debt.")

⁶³⁴ NerdWallet, "Private Student Loans: 6 Best Lenders for May 2019" (May 11, 2019), <https://www.nerdwallet.com/blog/loans/student-loans/private-student-loans/>.

⁶³⁵ 24 C.F.R. § 206.205.

⁶³⁶ See *id.*

5.3.3. The Rule adequately explained the connection between unreasonable advantage-taking and certain consumer vulnerabilities.

The Proposal also asserts that the Rule “did not adequately explain how the practice of not reasonably assessing a consumer’s ability-to-repay a loan according to its terms leveraged particular consumer vulnerabilities.”⁶³⁷ The proposal suggests that the Rule “did not conclude, for example, that lenders had the ability to identify consumers with particular vulnerabilities prior to lending and use that information to treat some consumers differently.”⁶³⁸

The Proposal’s assertion is wholly unpersuasive. The Rule noted that one study that found that 97 percent of advertisements included “no credit check/bad credit.”⁶³⁹ The Rule also explained how lender advertising focuses on “immediacy and speed” and “capitalizes on the sense of urgency borrowers feel when facing a cash shortfall.”⁶⁴⁰ Conscious lending to consumers who have damaged credit and are unlikely to be able to repay the loans, without making efforts to ensure that these consumers are able to repay, clearly targets their vulnerabilities.

Responsible lenders, on the other hand, *do* attempt to avoid exploiting the vulnerabilities of loan applicants—to better match the product with borrowers who can repay. Traditionally, a creditor would evaluate the three “Cs” of lending: creditworthiness, capacity, and collateral.⁶⁴¹ In contrast, payday lenders dispense with all three Cs and instead offer loans that trap a substantial proportion of borrowers in high-cost repeat borrowing cycles. In vehicle title lending the first two Cs are ignored with much the same results, and the collateral relied upon is a vehicle that the borrower cannot afford to lose.

The Rule reached the sensible conclusion that such a radical departure from traditional, mainstream lending practices was unreasonable advantage taking that rises to the level of abusiveness when combined with certain consumer vulnerabilities such as misunderstanding of risks or cost or the consumers’ inability to protect their interests.

5.3.4. The Rule did not conflate consumers understanding of lenders’ business model with the consumers understanding of the company’s loan products in concluding that lenders take advantage of consumers.

The Proposal asserts that “the Rule conflated the significance of a consumer’s understanding of a company’s business model with the consumer’s understanding of that company’s products or services.”⁶⁴² The Proposal argues that consumers do not need to understand a lenders’ revenue structure, and that an inconsistency between a company’s business model and its marketing of a

⁶³⁷ 84 Fed. Reg. at 4275.

⁶³⁸ 84 Fed. Reg. at 4275.

⁶³⁹ 82 Fed. Reg. at 54562 n.506.

⁶⁴⁰ 82 Fed. Reg. at 54562.

⁶⁴¹ See generally 82 Fed. Reg. at 54621.

⁶⁴² 84 Fed. Reg. at 4276.

product or service is not a pertinent factor in assessing whether the method of deciding to extend credit constitutes unreasonable advantage-taking.

But the Rule did not require consumers to understand the company's business model or revenue structure. Rather, the Rule stated that an element of unreasonable advantage-taking was relying on "a business model that is directly inconsistent with the manner in which the product is marketed to consumers."⁶⁴³ In other words, the mismatch between the business model and the consumer marketing is relevant to whether lenders are taking advantage of a lack of understanding about the risks and costs to consumers associated with a loan, and the inability of the borrower to protect their own interests. When the Rule stated that lenders' "business model—unbeknownst to borrowers—depends on repeated re-borrowing,"⁶⁴⁴ the point was that lenders were taking advantage of the mismatch – not apparent to borrowers – between how payday and vehicle title lenders market their loans and the longer-term, patterns of entrapment suffered by a substantial number of borrowers. Lenders who exploit this mismatch, taking advantage of consumers' lack of understanding or of consumers' inability to protect themselves from the harms of the long debt trap, are acting unreasonably.

Moreover, even if one were to implausibly agree that the Rule does conflate these two types of consumer understanding, the Bureau's finding that a substantial number of consumers are unable to protect their own interests in the selection or use of their loans is a vulnerability that is independent of consumers' understanding. This finding, and its relation to the Rule's position on unreasonable advantage-taking, is unaffected by the proposal's misplaced argument that the Rule conflated two types of consumer understanding.

5.3.5. The Rule was justified in determining that payday and vehicle title lenders' "all or nothing" repayment requirements were indicative of unreasonable advantage-taking.

The Rule concluded that payday and vehicle title lenders' practice of eliminating or sharply limiting feasible conditions on the offering of their loans (such as underwriting and amortization, for example) was indicative of unreasonable advantage-taking.⁶⁴⁵ The Rule reached this conclusion based on information showing that allowing more flexible, lower-cost, amortizing repayments would reduce harm to a substantial portion of borrowers because the all-or-nothing repayment terms of many payday and vehicle title lenders prevent borrowers from gradually working their way out of debt.⁶⁴⁶ In contrast, the Proposal mischaracterizes the Rule as simply taking exception to the "atypicality" of this type of repayment restriction. The Proposal explains that lending with such conditions "may be reasonable given that some states constrain the offering of longer-term products and even if State law

⁶⁴³ 82. Fed. Reg. at 54623.

⁶⁴⁴ 82 Fed. Reg. at 55572, 54621.

⁶⁴⁵ 82 Fed. Reg. at 54623.

⁶⁴⁶ *Id.*

were not a constraint, longer-term amortizing products would require lenders to assume credit risk over a longer period of time.”⁶⁴⁷

Despite characterizing state law, the Proposal does not actually cite any state statutes as evidence for its claim. Every state allows some form of responsibly underwritten, longer-term loans with reasonable ability-to-repay underwriting. Many states do prohibit triple-digit interest rates on longer term loans. But that does not justify payday lenders in evading that restriction by offering longer-term loans at high rates not otherwise allowed in the guise of a short-term loan. Payday lenders have justified the high rate on their loans on the grounds that they are only two-week loans and that a high APR does not matter for short-term loans.⁶⁴⁸ A state’s decision to limit the rates on longer-term loans does not make it reasonable to take advantage of consumers’ lack of understand or inability to protect their interests by offering a high-cost, short-term loan that is in fact designed to become a high-cost, long-term debt trap.

Similarly, the “credit risk” that the Proposal complains about in the longer-term market is actually a healthy mechanism to ensure that incentives are aligned, that lenders do not take advantage of borrowers, and that lenders and borrowers rise and fall together. The Proposal’s complaint that longer-term amortizing products would require lenders to assume credit risk over a longer period of time is merely another way of pointing out how, in the short-term loan market, covered lenders are able to take advantage of consumers by offering loans that are destructive for borrowers but profitable for lenders. In the mainstream market, lenders have an incentive to conduct responsible underwriting in order to ensure that they will be repaid. But in the payday and vehicle title market, lenders have learned how to take advantage of the combination of high rates, leveraged payment mechanism, and aggressive debt collection tactics to create a profitable business model based on ability to collect, not ability to repay.⁶⁴⁹ The fact that it is harder to take advantage of borrowers in the longer-term market by making profits on unaffordable loans does not make it reasonable to do so in the short-term market.

6. THE PROPOSAL IGNORES OBVIOUS ALTERNATIVES THAT WOULD PRESERVE PROTECTIONS.

Even accepting the Proposal’s unsupported claims of inadequacies in the Rule’s analysis, there are significant and obvious alternatives to repealing the ATR provisions that would better protect consumers, while permitting the Bureau to consider the questions it now raises. But the Bureau has ignored its duty to consider these alternatives.⁶⁵⁰ Indeed, rather than applying its “expertise in a

⁶⁴⁷ 84 Fed. Reg. at 4276.

⁶⁴⁸ See, e.g., Isaac Juarez, loans.org, Why the APR of Payday Loans Doesn't Matter (June 26, 2013), http://loans.org/payday/articles/why-apr-doesnt-matter?utm_source=CFSA:+Membership+Updates&utm_campaign=289901e00e-20130618_Membership_TheTicker06_18_2013&utm_medium=email&utm_term=0_cdf18bb939-289901e00e-215805805.

⁶⁴⁹ See generally 82 Fed. Reg. at 54554-83 (discussing Market Concerns--Underwriting”).

⁶⁵⁰ See generally *Nat'l Shooting Sports Found., Inc. v. Jones*, 716 F.3d 200, 215 (D.C. Cir. 2013) (recognizing that agencies must consider “significant and viable” and “obvious” alternatives).

reasoned manner” to address what its new leadership has identified as concerns, the Bureau has now decided to *avoid* developing and applying expertise altogether.⁶⁵¹

Research is the most obvious alternative to the Proposal, based on its suggestion that the Bureau needs “a more robust and reliable evidentiary record” to support the ATR provisions.⁶⁵² Before issuing this Proposal, the Bureau should have considered conducting its own research—or encouraging others’—to address any concerns about the Mann and Pew studies or the extent to which the Bureau’s 2017 record could satisfy its reframing of the definitions of unfair and abusive. With respect to the Mann study, the Proposal’s lone claim is that the study does not include more lenders in more states; additional states and lenders could easily be studied. With the Pew study, the Proposal takes issue with the wording of a survey question. Internally, the Bureau could have conducted new studies or looked to its own supervisory, complaint, enforcement, or market monitoring data to triangulate around any perceived weaknesses in the Bureau’s data so that it had the data and information it claims it needs to make a determination one way or the other. The Bureau could also have contracted external researchers to fill research gaps.

A second alternative is to withdraw this Proposal, allow implementation to proceed, and analyze the ATR provisions’ effects after implementation. Congress contemplated exactly such an approach when it created the Bureau.⁶⁵³ The Dodd-Frank Act requires that within five years of each significant rule’s effective date, the Bureau should conduct a “look back” on that rule, inviting public comment and releasing a report with its findings.⁶⁵⁴ Relying on the agency’s “look back” analysis, instead of rushing to rescission now, would allow the Bureau to assess its 2017 predictions about consumer and lender behavior in a way that serves, rather than contradicts, the Bureau’s consumer protection mission. Assessing the Rule’s impact later would also save the cost and uncertainty associated with the regulatory flip-flop that the Proposal would cause and enable the Bureau to assess its 2017 conclusions based on a record of actual facts about implementation, rather than the exaggerated estimates of impact and thinly supported hypotheses on which the Proposal rests.

The Bureau’s cursory dismissal of any new research as too expensive is absurd and hardly qualifies as “consideration” of this alternative. The Bureau has a Congressionally-mandated Office of Research with extensive research capabilities, as well as a new office focused on cost-benefit analysis, and available budget authority that it is not using.⁶⁵⁵ Thus, the Bureau’s excuse that new research is “not cost-

⁶⁵¹ See *Cape Cod Hosp. v. Sebelius*, 630 F.3d 203, 216 (D.C. Cir. 2011)

⁶⁵² 84 Fed. Reg. at 4277.

⁶⁵³ Cf. *Pub. Citizen v. Steed*, 733 F.2d 93, 105 (D.C. Cir. 1984) (holding agency suspension of an earlier rule to be arbitrary and capricious where “agency did not ‘cogently explain’ why suspension was necessary when the old system could have been retained while improvements were developed”).

⁶⁵⁴ See 12 U.S.C. § 5512(d).

⁶⁵⁵ See 12 U.S.C. § 5493(b)(1); CFPB Researchers, <https://www.consumerfinance.gov/data-research/cfpb-researchers/> (listing 24 researchers); Ryan Rainey, *CFPB’s Cost-Benefit Analysis Office to Be Modeled After FTC’s Bureau of Economics* (May 10, 2018), <https://morningconsult.com/2018/05/10/cfpbs-cost-benefit-analysis-office-to-be-modeled-after-ftcs-bureau-of-economics/> (regarding cost-benefit office); Bureau, *Fiscal Year 2019: Annual*

effective,”⁶⁵⁶ when a purported lack of conclusive information is the problem the Bureau identifies, appears to be nothing more than a pre-text to justify its chosen result.

To the extent the Proposal is suggesting that such research would not be “cost-effective” for industry or consumers, that is just a short-hand for the Bureau’s desire to get rid of the ATR provisions.⁶⁵⁷ For all the reasons discussed in the Rule and this comment letter, consumers would benefit—in aggregate and in net—from the Bureau maintaining the ATR provisions, even while the Bureau conducts any research it deems necessary, and the costs to industry of complying with the ATR provisions are justified. Moreover, any number of outside groups have resources they could use to conduct relevant research. And when both the Rule and this Proposal cite numerous outside studies about payday loans, it is impossible to imagine how the Bureau could have concluded that no one would want to conduct further research in this space.

The Bureau also refers to a concern about research being “timely.”⁶⁵⁸ But timeliness is not a concern here; there is no deadline or requirement for the Bureau to reconsider its own rule, and the Bureau cannot point to its own desire to reverse course as reason to avoid the effort involved in a reconsideration of its Rule that it has voluntarily undertaken.

The Bureau’s failure to consider these alternatives is particularly concerning because its chosen alternative conflicts with its own goals. The agency asserts that it is committed to encouraging savings and ensuring that the market for “liquidity loan products” is fair, including by monitoring risks to consumers.⁶⁵⁹ But unlike the alternatives described above, rescission of the ATR protections would conflict with these consumer protection goals by allowing unaffordable loans that make it harder to save, cause “substantial injury,” and lead consumers into (rather than away from) long and expensive cycles of debt.⁶⁶⁰ Similarly, while the Proposal suggests its principal concern is with the strength of the Bureau’s “factual predicates and legal conclusions,”⁶⁶¹ it abandons any effort to strengthen those and instead proposes reversing critical consumer protections based on thin-to-non-existent factual premises and unclear and unsupported legal reasoning. “[T]he agency simply cannot employ means that actually undercut its own purported goals.”⁶⁶²

The Proposal’s mention of other purported alternatives does not make up for the Bureau’s failure to consider the obvious and important ones described above. Illogically, these alternatives are generally

Performance Plan and Report, and Budget Overview 13-14 (Feb. 2019),
https://files.consumerfinance.gov/f/documents/cfpb_performance-plan-and-report_fy19.pdf.

⁶⁵⁶ 84 Fed. Reg. at 4253, 4266.

⁶⁵⁷ 84 Fed. Reg. at 4253.

⁶⁵⁸ 84 Fed. Reg. at 4266.

⁶⁵⁹ See 84 Fed. Reg. at 4261-62.

⁶⁶⁰ See 82 Fed. Reg. at 54590-94.

⁶⁶¹ 84 Fed. Reg. at 4261.

⁶⁶² *Office of Commc’n of United Church of Christ v. FCC*, 779 F.2d 702, 707-08 (D.C. Cir. 1985).

unrelated to the purported problems that the Proposal identifies: research that does not meet its invented standard, and a “problematic” application of the legal standards.⁶⁶³ Moreover, the discussion that the Proposal terms “consideration of alternatives” does not even constitute consideration of the options it names. The Proposal states that the Bureau does not want to spend the resources to decide whether other remedies or UDAAP theories are appropriate “given the likely complexity of such an endeavor;” similarly, the Proposal avoids fully considering whether disclosures would aid consumers because the Bureau is concerned that doing so “would be challenging ... and require the dedication of resources.”⁶⁶⁴ Like the Proposal’s suggestion that conducting more research is not “cost effective,” these excuses are senseless. Congress created the Bureau with the resources and capabilities to perform exactly the type of analysis it now seeks to avoid. The Proposal’s suggestion that doing so is too expensive only emphasizes that the Bureau seeks a pre-determined result.

With respect to disclosure, we emphasize that the Rule’s record overwhelmingly shows that disclosure would not address the harms lenders cause by making loans without ATR determinations.⁶⁶⁵ At the same time, to the extent the Proposal is attempting to craft a legal standard that essentially supposes equivalence of disclosure and a consumer’s ability to reasonably avoid harm or protect their own interests, the Proposal’s blithe dismissal of a disclosure alternative is significant because it shows how outcome-driven the Proposal is. Reversing the Rule’s conclusion,⁶⁶⁶ the Proposal hypothesizes that consumers already understand the risks of loans made without ATR determinations, offering no support, merely twisting a study of Texas disclosures, guessing that it might show something entirely different than what the Rule determined it found in 2017 (see section 4.2.4.4 above for more). It then offers no support for its assertion that, because “developing the evidentiary basis for disclosures requirements would be challenging,” resources are better spent on enforcement.⁶⁶⁷ Given the Proposal’s attack on the Rule’s unfairness and abusive standards, this unsupported dismissal of a disclosure alternative renders the Proposal’s attack on those standards arbitrary and capricious.

7. THE SECTION 1022 ANALYSIS EXPOSES THE ARBITRARINESS OF THE PROPOSAL’S RESCISSION REASONING BUT ALSO MINIMIZES ITS EXTRAORDINARILY HARMFUL CONSEQUENCES.

The Proposal’s section 1022 analysis “consider[s] the same information” and uses the “specific methodologies in [the Rule’s] analysis.”⁶⁶⁸ By expressly adopting these aspects of the Rule, the section 1022 analysis exposes the arbitrariness of its own reasoning for rescinding the ATR provisions, which takes a conflicting approach by attempting to undermine the Rule’s data sources and analysis. Indeed, while the Proposal’s discussion of rescission suggests that the Mann study is not robust enough to support the legal conclusion that lending with ATR determinations are unfair, the section 1022 analysis

⁶⁶³ See 84 Fed. Reg. at 4277.

⁶⁶⁴ 84 Fed. Reg. at 4277.

⁶⁶⁵ See 82 Fed. Reg. at 54577, 54625-26, 54636-37.

⁶⁶⁶ See 84 Fed. Reg at 54740-42.

⁶⁶⁷ 84 Fed. Reg. at 4277.

⁶⁶⁸ 84 Fed. Reg. at 4283.

uses that very study to support its economic conclusions.⁶⁶⁹ Similarly, while the Proposal attempts to support rescission by reassessing whether payday borrowers predict their long loan sequences and reweigh the impact of lenders making loans without ATR determinations, its section 1022 analysis—appropriately—adopts the Rule’s conclusions that consumers are unable to predict their long loan sequences and concludes the Rule’s analysis of its impacts remains valid.⁶⁷⁰ These contradictions are untenable; the Proposal’s conclusory attempt to explain them away is unreasoned and unavailing.⁶⁷¹

At the same time, the section 1022 analysis contains its own flaws. Without any explanation, it reshapes the Bureau’s presentation of the 2017 data and analysis that it expressly adopts and downplays recent research, to present an insupportably rosy picture of what, in fact, would be an extraordinarily harmful measure. Especially since the Proposal does not suggest that the Bureau’s data or analysis have changed, this re-framing is inaccurate and unjustified.

7.1. The section 1022 analysis inappropriately minimizes the harm the Proposal will cause consumers.

This Proposal would substantially and severely harm consumers by *increasing* “the harm they suffer from the costs of extended sequences of payday loans and single-payment auto-title loans, from the costs of delinquency and default on these loans, from the costs of defaulting on other major financial obligations, and/or from being unable to cover basic living expenses in order to pay off covered short-term and longer-term balloon-payment loans.”⁶⁷² In other words, the Proposal would cost consumers by rescinding the key benefits they will receive from the ATR provisions.

The Proposal’s section 1022 recognizes this dynamic. It expressly adopts the Rule’s data and analysis about how the ATR provisions will benefit consumers, and in general, assumes the Proposal will harm consumers in the reverse ways.⁶⁷³ Its presentation of these conclusions, however, is flawed.

First, the section 1022 analysis unreasonably dismisses the new academic literature that it cites as “not affect[ing]” its analysis.⁶⁷⁴ The new studies are quite relevant. Collectively, they suggest that, if anything, the harms caused by lenders making loans without ATR determinations are even greater than what the Bureau would have expected in 2017. The Proposal attempts to downplay the studies on health impacts discussed in section 2.2 above by emphasizing certain limitations of the studies, all of which the authors themselves generally acknowledge, which are in no way extraordinary, and which do not call into question the findings themselves; in some cases, the Proposal’s criticisms are unsupported,

⁶⁶⁹ See 84 Fed. Reg. at 4291 n.353.

⁶⁷⁰ See 84 Fed. Reg. at 4283, 4921.

⁶⁷¹ 84 Fed. Reg. at 4281 n.300.

⁶⁷² 82 Fed. Reg. at 54835.

⁶⁷³ 84 Fed. Reg. at 4283, 4285; *see also id.* at 4291 (stating that Bureau “assume[s] a return to [pre-Rule] market conditions under the Proposal”).

⁶⁷⁴ 84 Fed. Reg. at 4285.

incorrect, or illogical.⁶⁷⁵ Taking these new studies into account, the section 1022 analysis should have concluded that this Proposal will cost consumers even *more* than what the reverse of the Rule’s 2017 analysis would suggest. The Proposal’s portrayals of additional recent studies of the impact of state restrictions on payday lending⁶⁷⁶ and financial education⁶⁷⁷ are also mischaracterized or unreasonably distorted in the Proposal’s favor.

⁶⁷⁵ For example, the Proposal claims the Eisenberg-Guyot (*see* n. 51 and accompanying text above) study, finding association between fringe banking and poor health, does not “compellingly address the possibility of reverse causality.” 84 Fed. Reg. at 4293. Yet the authors clearly do address reverse causality, addressing 17 confounding factors, which they explain in detail, Eisenberg-Guyot at 432-33, and the Proposal offers no explanation for why the study’s approach is not “compelling.” Moreover, the Proposal claims that “if” payday borrowers would shift to other fringe loans absent the Proposal, “the Proposal . . . would have no effect on their health.” 84 Fed. Reg. at 4293. This is illogical, particularly in light of the demonstrative harms of the debt trap caused by payday and vehicle title loans *in particular* that the Proposal does not reconsider, as well as the fact that over 80% of payday and vehicle title use is the result of a prior loan the borrower cannot repay.

As another example, the Proposal attempts to minimize the significance of the study on liquor sales by stating that, “[i]mportantly, the authors . . . find no corresponding decline in overall expenditures from the restricted access to payday loans.” 84 Fed. Reg. at 4293. The Proposal seems to suggest that it is not clear, then, whether there are “overall welfare impacts.” *Id.* But these criticisms do not call into question the study’s key finding, which is that the reduction in payday lending reduced liquor sales, or the clear negative impact of over-consumption of alcohol on public health the study describes. *See* Harold E. Cuffe & Christopher G. Gibbs, *The Effect of Payday Lending Restrictions on Liquor Sales*, 85(1) *J. Banking & Fin.* 132–45 (2017).

⁶⁷⁶ The Proposal notes a study of installment loan use in Arkansas, which has a 17% constitutional interest rate cap. 84 Fed. Reg. at 4292-93 & n. 371. The Proposal first mischaracterizes the study, stating it found that the cap “did not decrease demand” for installment loans. The study does not even purport to assess demand before and after the cap was enforced. The study also acknowledges that it does not study whether residents are replacing installment loan credit with credit from other sources. Moreover, both the study and the Proposal ignore a recent study of the impact of the Arkansas cap on payday loans specifically, which was part of the record before the Bureau when it promulgated the Rule, finding that borrowers used a range of options instead of payday loans and were better off without them. *See* Covington, Johnson, Southern Bancorp Community Partners, *Into the Light: A Survey of Arkansas Borrowers Seven Years after State Supreme Court Bans Usurious Payday Lending rates*, Southern Bancorp at 4 (April 2016) (“*Into the Light*”), <https://banksouthern.com/sbcp/into-the-light/>. *See also* n. 247 above.

The Proposal also discusses an Ohio study of the impact of a 2008 law, while failing to consider that the dominant response to that law was that payday lenders circumvented it by simply shifting licenses and continued business as usual. 84 Fed. Reg. at 4293 & n. 372. The Proposal then suggests it has no information to assess to what extent alternatives like “borrowing from relatives, decreasing expenses, [or] borrowing from an unlicensed lender are available for payday loan borrowers,” *id.*, when the Bureau already has a variety of information that speaks to these options. *See, e.g.*, 82 Fed. Reg. at 54841.

⁶⁷⁷ The Proposal cites a few studies of the impact of financial education and concludes that “improved financial education programs and opportunities could be a viable alternative to more direct market interventions such as issuing regulations.” 84 Fed. Reg. at 4294. This conclusion ignores the Rule’s consideration of financial education and its conclusion, based on the vast record before it, that financial education would not be a “viable option for significantly reducing the observed harms.” Indeed, a number of lenders proudly offer financial education while continuing the current payday loan business model built on making loans borrowers cannot afford to repay. *See, e.g.*, [Lendup](https://www.lendup.com/education) (“Get Educated!,” offering educational videos) <https://www.lendup.com/education>, Cash Net USA <https://www.cashnetusa.com/what-we-offer.html>, Check ‘n Go (offering Finance 101) <https://www.checkngo.com/finance-101/>. Moreover, across disciplines, approaches rooted in education and counseling are well understood to have the least impact in effecting change, while policy change has the greatest.

Second, the section 1022 analysis distorts and ignores aspects of the 2017 data and analysis it expressly adopts. For starters, while the Rule recognizes four major ways in which the ATR provisions will benefit consumers, the Proposal inexplicably addresses the costs associated with reversing only two of these effects. Most significantly, the Proposal recognizes that the Proposal would increase re-borrowing and default and delinquency, but does not mention that the Proposal would also cost consumers by causing them to make more unaffordable payments on loans that make it more difficult to handle other household expenses.

For the consumer costs that it does address, the Proposal omits key details and inappropriately minimizes the harm the Proposal would cause. Importantly, unlike the Proposal's reasons for rescission, the section 1022 analysis maintains the Rule's earlier conclusion that re-borrowing creates "long durations of indebtedness" with impacts that are "not accurately anticipated" and that have negative welfare effects on consumers.⁶⁷⁸ But the section 1022 analysis fails to identify or analyze the most direct cost of re-borrowing: the new loan fee that a consumer must pay with each re-borrowing, such that borrowers stuck in long loan sequences can "incur borrowing costs that are several times higher than what [borrowers] expected to pay."⁶⁷⁹

The proposal also nonsensically limits its own analysis by suggesting that the Bureau cannot assess how consumers would be harmed, vis-à-vis re-borrowing, by eliminating the Rule's principal step-down approach (as compared to the underwriting requirements) because it "is not aware of any studies that address this possibility."⁶⁸⁰ Certainly, *no* studies yet exist about the impact of the Rule—which has not yet been implemented. And none yet existed about the potential impact of this Proposal before it was released. But the Bureau's job is to estimate impacts even without on-point academic studies, and it readily can do so here. By capping re-borrowing, limiting indebtedness over a 12-month period, and imposing a cooling off period, the principal step-down provisions will benefit borrowers by "prevent[ing] extended re-borrowing."⁶⁸¹ Thus, reversing the principal step-down requirements, would cost borrowers by causing them to incur extra borrowing fees, sometimes over an extraordinarily long period of time.

See, e.g., the socioecological framework: <https://www.thinglink.com/scene/873255747264184322>; the Health Impact Pyramid, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2836340/>.

⁶⁷⁸ 84 Fed. Reg. at 4290, 4291; *see also* 82 Fed. Reg. at 54818.

⁶⁷⁹ 82 Fed. Reg. at 54835; *see generally id.* at 54565-72 (discussing patterns of lending and extended loan sequences), 54588-94 (describing consumer injury from loans made without ATR determinations). The section 1022 analysis further clouds its discussion of re-borrowing by failing to describe the lender practices that lead to re-borrowing, including lenders' failure to assess borrowers' ability to re-pay loans, lenders' encouragement of consumers *not* to amortize their payments, and the many other ways in which lenders encourage borrowers to re-borrow (rather than default) on unaffordable loans. *See generally* 82 Fed. Reg. at 54560-72.

⁶⁸⁰ 84 Fed. Reg. at 4290.

⁶⁸¹ 82 Fed. Reg. at 54698. Other aspects of the principal step-down approach are designed to "prevent or reduce the risks and harms associated with default, delinquency, and forgoing basic living expenses of major financial obligations to avoid default." *Id.*; *see also id.* at 54701.

Similarly deficient is the Proposal’s discussion of the harm it would cause to consumers by increasing defaults and delinquencies. Again, the Proposal does not acknowledge or describe the Bureau’s detailed knowledge of the relevant market and consumer dynamics and practices that lead to default.⁶⁸² The Proposal notes only that “[i]t is reasonable to assume a return to [pre-Rule] market conditions under the Proposal.”⁶⁸³ Indeed, the Proposal does not even explain why it would lead consumers to experience more defaults and the resulting harm (by leading consumers into loans they simply cannot afford to repay). Instead, the section 1022 analysis focuses first on emphasizing the outside scenarios in which the Proposal might give consumers a way to avoid or delay delinquency.⁶⁸⁴ It then inexplicably minimizes the harmful nature of default by suggesting that the harm is “unclear” and only “perceived.”⁶⁸⁵ This statement ignores the fact that the Bureau has studied and documented, in detail, how consumers are harmed by delinquency and default in these markets, including by losing their cars and bank accounts and suffering harmful and harassing collection efforts.⁶⁸⁶

The Proposal further minimizes its harmful nature by overplaying the minimal benefits it would offer consumers. Here, the Proposal’s harm to consumers far outweighs whatever benefits it would provide. Yet, in many ways, the section 1022 analysis reads like an attempt to cloud that conclusion. Through a multitude of small shifts between how the Rule described its impact and how this Proposal describes the reverse effects, the Proposal’s section 1022 discussion paints a consistent picture: of an agency attempting to re-frame earlier analysis simply to make it appear more favorable to its new, insupportable policy position.

For instance, the Proposal’s section 1022 analysis exaggerates the importance of any re-opening or preservation of lender storefronts by re-framing the Rule’s data and analysis. The Rule’s analysis predicted it would likely result in fewer storefronts, but recognized that the data showed that such reductions in storefronts “ha[ve] had *much less impact* on the geographic availability of payday loans” “[b]ecause of the way payday stores locate.”⁶⁸⁷ Here, the Proposal’s take is different: it describes the reverse effect—an increase in storefronts—as a “benefit” to consumers that is only “*somewhat*

⁶⁸² See 82 Fed. Reg. at 54555-63 (discussing borrower circumstances and characteristics and key lending practices), 54564-65 (discussing payment mechanisms and vehicle title), 54572-75 (discussing default and delinquency); see also *id.* 54580-84, 54488-89, 54593-94 (discussing industry collection practices).

⁶⁸³ 84 Fed. Reg. at 4291.

⁶⁸⁴ See 84 Fed. Reg. at 4291.

⁶⁸⁵ 84 Fed. Reg. at 4291. The Proposal’s discussion of defaults in this context even contradicts its own analysis of the issue in other parts of the Proposal. In discussing ways in which default harms consumers, the Proposal characterizes the potential of losing access to one’s preferred lender as simply a matter of “the consumer’s perception of the cost of default.” 84 Fed. Reg. at 4291. When discussing the Proposal’s purported benefits, it suggests that if the Proposal reduced defaults, it would *definitively* give consumers “the benefit of remaining in good standing with their lender.” 84 Fed. Reg. at 4290.

⁶⁸⁶ See 82 Fed. Reg. at 54572-75, 54589—93, 54838. Without explanation, in discussing the Bureau’s method for counting default rates, what the Rule describes as a “more meaningful measure” of defaults, the Proposal only allows is “a potentially more meaningful measure.” Compare 82 Fed. Reg. at 54573 with 84 Fed. Reg. at 4291.

⁶⁸⁷ 82 Fed. Reg. at 54842 (emphasis added).

mitigated” by “the way payday stores locate.”⁶⁸⁸ Similarly, in 2017, the Rule concluded that rural consumers would generally retain “reasonable access” to online loans, even though high-speed internet is less prevalent in rural areas.⁶⁸⁹ Here, the Proposal relegates the Bureau’s earlier discussion of internet access to a footnote, and instead emphasizes that “not all of these would-be [rural] borrowers necessarily have access to the internet.”⁶⁹⁰

The Proposal similarly exaggerates the time it would save consumers, by emphasizing an unlikely scenario. The Proposal asserts that revoking the ATR provisions will save consumers time and cites an estimate of 15 to 45 minutes in the borrowing process. This estimate, however, represents only the Rule’s high-end estimate, of the extra time required for a consumer to receive a loan that is *underwritten* and made by a lender *that does not automate its processes*.⁶⁹¹ The Proposal notes only in a footnote that this result is unlikely, as lenders are likely to automate the Rule’s underwriting procedures and thus *not* need to add so much time to their lending process.⁶⁹² It nowhere recognizes that for principal step-down loans, the Rule’s ATR requirements will have virtually no impact on the time required to take out a loan, and that thus rescission of those requirements would provide virtually no time-saving benefit.⁶⁹³

The section 1022 analysis also uses other unexplained wording twists. In a hypothetical regarding a consumer who would suffer costs from a limit on re-borrowing and benefit from the lifting of such restriction, the Proposal relegates qualifications to a footnote and adds to the Rule’s 2017 analysis the unsupported suggestion that the benefits from re-borrowing are “numerous.”⁶⁹⁴ In recognizing, as the Rule did in 2017, that more re-borrowing does not necessarily mean fewer defaults, the Proposal repeats a scenario that the Rule recognizes as a possibility but, absurdly, adds the description “necessarily true” to the Rule’s description of what “some borrowers” “may” experience.⁶⁹⁵ Similarly, while the Rule lists effects that consumers “may” experience from not being able to take out another payday or title loan, the Proposal now lists those as “the effects of the 2017 Final Rule,” without qualification or a suggestion of uncertainty.⁶⁹⁶

⁶⁸⁸ 84 Fed. Reg. at 4290 (emphasis added).

⁶⁸⁹ 82 Fed. Reg. at 54583.

⁶⁹⁰ 84 Fed. Reg. at 4295 & n.386.

⁶⁹¹ See 82 Fed. Reg. at 54840.

⁶⁹² See 84 Fed. Reg. at 4288 n.343.

⁶⁹³ See 82 Fed. Reg. at 54580.

⁶⁹⁴ See 84 Fed. Reg. at 4289 & n.347.

⁶⁹⁵ 84 Fed. Reg. at 4290 (describing possibility that consumer able to re-borrow more could avoid default that would have occurred under the ATR provisions); see also 82 Fed. Reg. at 54842.

⁶⁹⁶ Compare 82 Fed. Reg. at 54841 with 84 Fed. Reg. at 4289 (regarding “costs from delayed payments” and other potential effects).

7.2. The Proposal is designed for the benefit of payday and vehicle title lenders and the section 1022 analysis exaggerates those benefits even further.

Unquestionably, this Proposal would benefit payday and vehicle title lenders by providing significant revenue opportunities. Indeed, providing these revenue opportunities to lenders, at the expense of vulnerable consumers, appears to be a principal goal of the Proposal.

The section 1022 analysis recognizes the significant revenue gains that this Proposal will generate and goes even further. Both the section 1022 analysis and the Proposal's earlier sections overstate the Proposal's benefits by using 2017 figures that overestimate the Rule's effects in ways the Proposal does not recognize.⁶⁹⁷ The underlying figures, regarding the Rule's negative effects on lenders, are central to the section 1022 analysis, which assesses how the Proposal will reverse these effects,⁶⁹⁸ and the Proposal's attempt to justify rescission, which repeatedly cites the Rule's impacts on lenders, characterizing them as "dramatic."⁶⁹⁹

Appropriately, the Proposal's figures come from the Rule, in which the Bureau used a model to estimate how the ATR provisions would affect industry loan volume and revenues. But in reusing these figures, the Proposal ignores the Rule's qualifications on those figures. Relying only on the 2017 figures, without qualification, overstates the Rule's and this Proposal's impacts because, as the Rule explained, the agency modeled what would happen if lenders implemented the ATR provisions *but made no other changes to their practices*. The resulting estimates of lost loan volume and revenue thus did "not account for lenders making changes to the terms of their loans to better fit the regulatory structure or offering other products, for instance by offering a longer-term vehicle title loan with a series of smaller periodic payments instead of offering a short-term vehicle title loan."⁷⁰⁰

Such efforts to adjust their businesses around the Rule's ATR provisions are difficult to model, but nevertheless "quite likely"⁷⁰¹ and thus very relevant to the Proposal, which appears to respond to industry's revenue concerns, with little consideration of consumers' interests in avoiding harmful loans. Indeed, a large payday- and title-lender has explained through a declaration of its CEO that it is

⁶⁹⁷ Confusingly, the Proposal's section 1022 analysis names two baselines. The analysis begins by suggesting it is adopting a pre-Rule baseline: "the market that would exist if, before reaching the compliance date," the Bureau rescinds the ATR provisions. 84 Fed. Reg. at 4282. But then, the section 1022 discussion generally applies a baseline of full implementation of the Rule. The latter would be the only appropriate baseline for this Proposal, since its suggestion that the Bureau should rescind the ATR provisions is premised on reversing their estimated steady-state impacts on lenders. See 84 Fed. Reg. at 4264 (citing numeric estimates from the Rule's section 1022 analysis of its potential benefits and costs); 82 Fed. Reg. at 54827 n.1159 (describing 2017 estimates as "steady state").

⁶⁹⁸ 84 Fed. Reg. at 4284, 4287.

⁶⁹⁹ 84 Fed. Reg. at 4259, 4264.

⁷⁰⁰ 82 Fed. Reg. at 54835.

⁷⁰¹ 82 Fed. Reg. at 54835.

responding to the Rule by trying to migrate customers to “alternative loan products.”⁷⁰² Unlike the Rule, however, the Proposal does not explain these “likely” industry dynamics or their impact: that they would reduce the estimated industry losses from the Rule—and the corresponding benefits predicted from the Proposal. To the contrary, the Proposal’s discussion of rescission repeatedly cites the 2017 estimates with no qualification. The Proposal’s section 1022 analysis, at most, recognizes just one narrow subset of such “likely” effects: lenders’ decision *already* to shift to long-term loans, which would blunt the Proposal’s impact.⁷⁰³

The Proposal’s failure to fully acknowledge or explain the ways in which its analysis overstates the Rule’s effect on lenders is particularly problematic, given the context: an effort to justify eliminating consumer protections. When the Bureau issued the Rule, the agency developed estimates of its negative impact on industry in explaining the costs of measures whose purpose was to *protect consumers*. These estimates were the result of a conservative approach to identifying potential negative impacts.⁷⁰⁴ The Proposal, by contrast, is relying on this overstatement of the Rule’s effects to claim the reverse effect as a “benefit” supporting *reducing consumer protections* in favor of industry. Offering these overestimates, without qualification, distorts the Bureau’s analysis in the Proposal’s favor.

7.3. The Proposal’s recitation of unquantified and unexplained effects further flouts the agency’s rulemaking responsibilities and skews the Proposal’s section 1022 analysis.

Under the heading “other unquantified benefits and costs,” the Proposal’s section 1022 analysis recites a host of unexplained effects. It uses imprecise and unclear terms, such as “innovative regulatory approaches” and “public and private health costs that may (or may not) result from payday loan use,” that give the public little indication of what some of the listed effects would be, let alone the Bureau’s conclusion about the importance of the purported impact, or the agency’s reasoning for associating each impact with the proposed rescission.⁷⁰⁵ This mish-mash of unexplained concepts hardly suffices for notice of the Bureau’s data and thinking. Even in the absence of quantitative data or existing academic studies, the Bureau’s responsibility, under the APA and the Dodd-Frank Act, is to explain and consider relevant impacts.

This catch-all section also skews the Proposal’s section 1022 analysis in multiples ways:

- It exaggerates the Proposal’s benefits by suggesting (without support) that consumers gain a “warm glow” from the mere access to loans;⁷⁰⁶ as an economic matter, any such benefit would

⁷⁰² Declaration of J. Patrick O’Shaughnessy in Support of Plaintiffs’ Motion for Preliminary Injunction 2-3, *CFSA v. CFPB*, No. 18-cv-295 (W.D. Tex. Sept. 17, 2018), ECF No. 42-3.

⁷⁰³ 84 Fed. Reg. at 4288. Otherwise, the section 1022 analysis recasts what the Rule described as market “evolution” with the term “de-evolution,” states only that the market is “sensitive” to changes in loan products, and does not explain that these non-modeled effects means its calculated revenue figures are too large. *Compare* 82 Fed. Reg. at 54835 *with* 84 Fed. Reg. at 4285, 4287.

⁷⁰⁴ *See* 82 Fed. Reg. at 54826, 54833.

⁷⁰⁵ *See* 84 Fed. Reg. at 4294.

⁷⁰⁶ *See* 84 Fed. Reg. at 4294.

be a double-counting of the benefits associated with actual loans, which the section 1022 analysis describes elsewhere.

- It minimizes the Proposal's costs, by suggesting that the Bureau has no idea whether this Proposal would increase or decrease health and suicide risks and costs;⁷⁰⁷ in fact, as discussed in 2.2 above, the research on these topics that the Proposal cites all point in the same direction, suggesting that payday loans offered in the current market, without an ATR determination, harm consumers by increasing health and suicide risks.⁷⁰⁸
- By suggesting the Bureau has no information on the indirect costs of automobile repossession, the Proposal ignores the Bureau's own prior analyses, consumer complaints submitted since the Rule was finalized that can further illuminate those costs, and what common sense teaches about how losing a vehicle, fearing losing a vehicle, or facing unaffordable bills can disrupt individuals' lives.⁷⁰⁹
- In suggesting that absent a "direct stud[y]," the Bureau cannot assess how vehicle title loans made without ATR determinations harm consumers,⁷¹⁰ the Proposal ignores the Rule's extensive data and reasoning regarding vehicle title loans: data and reasoning that the section 1022 analysis, on an earlier page, stated that it adopts.⁷¹¹

The Bureau also makes the laughable and purely conjectural suggestion that the risk of severe harm from losing a vehicle actually "provides consumers with greater incentives to become more fully informed before initiating loans" which "would result in relatively more positive welfare effects relative to payday loans."⁷¹² Of course, the risk of vehicle title loans is not merely theoretical. This statement ignores the Bureau research showing that vehicle title loan borrowers default at higher rates than payday borrowers and that people lose their cars in high numbers, with consequences that can be even more devastating than default on a payday loan.⁷¹³

Also troubling is another entirely unsupported hypothesis: that title loan borrowers could limit the harm they would suffer from the Proposal by seeking longer-term title loans.⁷¹⁴ The Proposal does not identify any supporting data or otherwise explain this assertion, or provide any reason longer-term title loans would be less harmful than short-term ones. Indeed, the Proposal notes two pages prior that

⁷⁰⁷ See 84 Fed. Reg. at 4295.

⁷⁰⁸ See 84 Fed. Reg. at 4293-94.

⁷⁰⁹ See 82 Fed. Reg. at 54518, 54563, 54564, 54573-75, 54592-93; CFPB, *Consumer Response Annual Report, January 1-December 31, 2018*, at 68-69 (2019), https://files.consumerfinance.gov/f/documents/cfpb_consumer-response-annual-report_2018.pdf The associated narratives give additional detail. See <https://www.consumerfinance.gov/data-research/consumer-complaints/search/>.

⁷¹⁰ 84 Fed. Reg. at 4294.

⁷¹¹ 84 Fed. Reg. at 4292.

⁷¹² 84 Fed. Reg. at 4294.

⁷¹³ See 82 Fed. Reg. at 54564, 54573-75.

⁷¹⁴ 84 Fed. Reg. at 4294.

default rates on balloon payment installment title loans are high,⁷¹⁵ and the Bureau has previously described at length the harms in the longer-term vehicle title loan market as a whole.⁷¹⁶ Moreover, this assertion simply does not make sense. At issue in this Proposal is the harm suffered by individuals who receive title loans, made with current lending practices, in the current market—whether or not longer-term title loans are also available. Indeed, it is this harm that the ATR provisions address and that the Proposal would foster.

The Bureau’s decision to raise the possibility of product substitutions in this context is especially troubling because the Proposal ignores the possibility of product substitutions in a context where it would be relevant. As described above in section 7.2 above, the likelihood that lenders would comply with the ATR provisions by substituting new products for payday and title loans is relevant to the Proposal’s estimates of the Rule’s costs to lenders and the Proposal’s corresponding benefits. But in that context, the Bureau ignores this possibility and thus overstates those impacts.

8. THE PROPOSAL SUGGESTS A PRE-JUDGED RESULT AND SHORTCUTS OTHER LEGAL REQUIREMENTS.

In this rulemaking, as in any, the Bureau must comply with procedural requirements “intended to ... provide fair treatment for persons affected by” the Proposal,⁷¹⁷ including by “disclos[ing] in detail the thinking that has animated the ... proposed rule,” seeking comment, “respon[ding] to significant points,” and doing so with an open mind.⁷¹⁸ The Bureau’s rushed effort to delay and then repeal the ATR provisions raises serious questions about the extent to which the Bureau will consider relevant information. The Proposal also fails to follow other rulemaking requirements.

8.1. The Bureau's efforts to undermine the Rule suggest it lacks an open mind.

Since its leadership changed in late 2017, the Bureau has consistently and forcefully sought to undermine the Rule. The history of the Bureau’s actions against its own rule strongly suggests that the agency has pre-judged the Proposal’s outcome.

Mick Mulvaney showed his opposition to the Rule within days of becoming the Bureau’s acting director. In a December 4, 2017 press conference, he explained that he had asked his staff for options to “deal with” the Rule and expressed support for a Congressional Review Act resolution to void it.⁷¹⁹

⁷¹⁵ 84 Fed. Reg. at 4292 & n.361.

⁷¹⁶ 81 Fed. Reg. 47864, 47986-47994 (July 22, 2016).

⁷¹⁷ *Home Box Office, Inc. v. FCC*, 567 F.2d 9, 35 (D.C. Cir. 1977).

⁷¹⁸ *Id.*; see also *McLouth Steel Prods. Corp. v. Thomas*, 838 F.2d 1317, 1323, 1325 (D.C. Cir. 1988).

⁷¹⁹ See Exhibit 5, CFPB Press Roundtable 3-4 (December 4, 2017), *English v. Trump*, No. 17-cv-02534-TJK (D.D.C. Dec. 18, 2017), ECF No. 41-5.

Weeks later, Mr. Mulvaney began to take action against the Rule. On January 16, 2018, two important deadlines arrived for the Rule. First, the Rule became effective.⁷²⁰ Second, the Office of Management and Budget (OMB) was due to decide on the Paperwork Reduction Act (PRA) request incorporated into the Rule, which was necessary for full implementation of the ATR provisions and the Rule's Payment Protections.⁷²¹ On that day, instead of advancing implementation of the Rule, Mr. Mulvaney, in his role as OMB Director, *declined* to make a decision on the PRA request.⁷²² Also on January 16, 2018, the Bureau announced its intent to "reconsider" the Rule through rulemaking; rather than encouraging entities to take advantage of the Rule's provisions for registered information systems that became effective that day, the Bureau invited entities to seek a waiver of an early deadline under the Rule.⁷²³

Several months later, after Congress did *not* void the Rule under the Congressional Review Act, the Bureau turned to the court for action.⁷²⁴ In April, two payday-lending-industry trade-associations had sued the Bureau seeking to overturn the Rule.⁷²⁵ On May 31, 2018, the Bureau joined with the payday-industry plaintiffs and asked the court to stay the Rule until long after the Bureau finished any new rulemaking to change it.⁷²⁶ In effect, the requested stay could have ensured that lenders would never have had to implement the Rule as originally written.

⁷²⁰ Although lenders are not required to implement the Rule's principal requirements until August 19, 2019, the extended compliance period did not apply to section 1041.11, the provision that allows entities to apply to become registered information systems. See 82 Fed. Reg. at 54472.

⁷²¹ See 5 C.F.R. § 1320.11(h) (setting 60-day deadline after Federal Register publication for the OMB to decide upon a PRA request submitted with an agency rule); 82 Fed. Reg. at 54871 (describing Paperwork Reduction Act request incorporated into the Rule).

⁷²² See generally 84 Fed. Reg. at 4296.

⁷²³ CFPB, *CFPB Statement on Payday Rule* (Jan. 16, 2018), <https://www.consumerfinance.gov/about-us/newsroom/cfpb-statement-payday-rule/>. The CFPB subsequently issued waivers of the pertinent deadline that are indefinite and has never since given entities seeking to become registered information systems a date by which to apply. See CFPB, *Payday, Vehicle Title, and Certain High-Cost Installment Loans Registered Information Systems Registration Program*, <https://www.consumerfinance.gov/policy-compliance/guidance/payday-loans-registered-information-systems-registration-program/registered-information-systems/> (including waiver letters posted on this website).

⁷²⁴ See Sarah O'Brien, *Time Runs Out for Congress to Upend Payday Lending Rule*, (May 17, 2018), <https://www.cnbc.com/2018/05/17/time-runs-out-for-congress-to-overturn-consumer-bureaus-payday-lending-rule.html>.

⁷²⁵ Americans for Financial Reform Education Fund, Center for Responsible Lending, National Consumer Law Center, and Public Citizen, Inc. have appeared as amici in this litigation. Public Citizen Litigation Group is representing Cooperative Baptist Fellowship, which is seeking to intervene in this litigation to defend the Rule.

⁷²⁶ See Joint Motion for Stay of Litigation and Stay of Agency Action Pending Review 4, *CFSA v. CFPB*, No. 18-cv-295 (W.D. Tex. May 31, 2018), ECF No. 16. The request asked the court to delay the litigation until after the CFPB finished a new rule, and then to delay the current Rule until 445 days after the end of the *litigation*. See *id.* at 1.

The court denied the Bureau’s May 2018 request, but in August 2018, the Bureau renewed its argument to the court.⁷²⁷ In support of a motion for reconsideration by the industry plaintiffs, the Bureau filed a lengthy memorandum that (a) expressed support for industry’s arguments *against* the agency’s rule, contending that the industry plaintiffs had a “substantial case on the merits,” (b) complained of the costs that *industry* would bear from the new consumer-protection requirements, (c) stated that it, as an agency, would not be harmed by its own rule being delayed because it intended to “reconsider” it, and (d) dismissed the harm that consumers would suffer from delayed implementation as “uncertain” due to the agency’s own intent to reconsider the Rule.⁷²⁸

Like the June motion, the August request to stay the Rule’s compliance date was denied.⁷²⁹ After the court twice refused to delay the Rule, the Bureau announced that it intended to issue rulemaking Proposals regarding the ATR provisions and the Rule’s compliance date.⁷³⁰ In light of that announcement, the court decided to stay that date.⁷³¹

In February 2019, the Bureau issued this Proposal, a separate proposal to delay the compliance date, and its statutorily-required small-entity compliance guide for the Rule. The combination of those documents further suggests that the Bureau has already made up its mind to rescind the ATR provisions. First, the Bureau published a small-entity compliance guide that addresses only the Rule’s other provisions.⁷³² Second, the Bureau framed its delay proposal as a way to ensure that industry never had to implement the ATR provisions at all. It argued that delay would allow industry to “avoid” negative effects of the Rule—a fact that would be true only if the Bureau also rescinds those protections.⁷³³ It also sought to rewind section 1041.11 of the Rule, the provision regarding registered information systems that could only help *facilitate* lenders’ implementation of the ATR provisions, if the Bureau ever intended the Rule to be fully applied.⁷³⁴

This background strongly suggests that the Bureau decided to rescind the ATR provisions long before it issued its Proposal. The weaknesses in this Proposal’s analysis, combined with the Bureau’s refusal to

⁷²⁷ See Order, *CFSA v. CFPB*, No. 18-cv-295 (W.D. Tex. June 12, 2018), ECF No. 29.

⁷²⁸ Response in Support of Plaintiffs’ Motion for Reconsideration 10-19, *CFSA v. CFPB*, No. 18-cv-295 (W.D. Tex. June 22, 2018), ECF No. 34.

⁷²⁹ See Order, *CFSA v. CFPB*, No. 18-cv-295 (W.D. Tex. Aug. 28, 2018), ECF No. 39.

⁷³⁰ See CFPB, *Public Statement Regarding Payday Rule Reconsideration and Delay of Compliance Date* (Oct. 26, 2018), <https://www.consumerfinance.gov/about-us/newsroom/public-statement-regarding-payday-rule-reconsideration-and-delay-compliance-date/>.

⁷³¹ See Order 2-3, *CFSA v. CFPB*, No. 18-cv-295 (W.D. Tex. Nov. 6, 2018), ECF No. 53.

⁷³² CFPB, *Payday, Vehicle Title, and High-Cost Installment Lending Rule: Payment-Related Requirements, Small Entity Compliance Guide* (Feb. 2019), https://files.consumerfinance.gov/f/documents/cfpb_payday_small-entity-compliance-guide.pdf. Under statute, the Bureau was required to release this guide far earlier, by the Rule’s January 16, 2018 effective date. See 5 U.S.C. § 601 note (discussing section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996).

⁷³³ 84 Fed. Reg. at 4300.

⁷³⁴ See 84 Fed. Reg. at 4300.

conduct any research to address to its concerns, only strengthen the impression that the Bureau has already decided on a course of action and done so based on ideology, not data.

8.2. The Proposal distorts the market context and fails to give notice of relevant context.

The Proposal omits and distorts critical facts and details of the agency's thinking and analysis, and thus does not provide sufficient notice and an opportunity to comment.

As explained throughout this comment letter, the Proposal repeatedly distorts the Rule's analysis and the data sources on which it rests. In particular, though the Proposal focuses on certain elements of unfairness and abusiveness, it distorts or omits the relevant context. It discusses whether consumers can reasonably avoid the harm caused by unaffordable loans, whether they have a material understanding of the risks, costs, and conditions of the product, and whether they are able to protect their interests. But as explained more fully in sections __, __, and __ above, its discussion of these standards cherry-picks from the Bureau's extensive 2017 analysis, without meaningfully explaining the dynamics between lenders and borrowers that are relevant to understanding the inquiries, and unjustifiably minimizes the substantial injury consumers suffer.

More generally, the Proposal's barebones description of the relevant markets does not explain the relevant market dynamics. In 2017, the Bureau devoted dozens of pages of Federal Register text to describing the sizes and structures of the relevant loan markets; product features; lenders' marketing, underwriting, and collection practices; the regulatory environment and recent market trends; borrowers' characteristics and their circumstances of borrowing; extensive data regarding re-borrowing, default, and delinquency; and the federal and state laws that exist in the relevant markets.⁷³⁵ The Rule grounded its identification of the unfair and abusive practice, its shaping of a remedy, and its consideration of the ATR provisions' benefits and costs in this detailed synthesis of the relevant markets and the data that supported it.⁷³⁶

The Proposal, by contrast, ignores most of this information and analysis; its limited references to the Bureau's extensive prior research omit and distort critical details. For starters, even though the Proposal's central purpose is revoking the Bureau's identification of lending without an ATR determination as an unfair and deceptive practice, its "background" section never once describes that practice or its impact. It does not describe how or why lenders make covered short-term loans or covered longer-term balloon-payment loans without ATR determinations. Nor does its discussion of its reasons to rescind the ATR provisions expressly acknowledge the impact of that practice: that making loans without ATR determinations lead to unaffordable loans, which leave consumers to choose between re-borrowing, delinquency or default, or making unaffordable payments and suffering other harms. Indeed, the Proposal's "background" on payday and title loans does not meaningfully address how lenders operate or even how payday loans are structured, based on repayment directly from consumers' bank accounts on payday.⁷³⁷

⁷³⁵ See 82 Fed. Reg. at 54474-503, 54554-83.

⁷³⁶ See *e.g.*, 82 Fed. Reg. at 54583-624 (regarding identification of unfair and abusive practice, repeatedly citing "Market Concerns" discussion in Federal Register notice).

⁷³⁷ See *generally* 84 Fed. Reg. at 4253-58.

Further, though the Proposal critiques the Rule's 2017 data and analysis regarding re-borrowing, the background section barely discusses the concept. It does not define re-borrowing, describe the lending dynamics that lead to re-borrowing, recognize lenders' dependence on re-borrowing revenue, or show how consumers incur expensive fees when they are forced to re-borrow unaffordable loans. Further, it arbitrarily distorts the Rule's analysis of data regarding re-borrowing. The Rule cites multiple studies to describe the frequency with which consumers re-borrow and the length of their loan sequences. The Proposal only discusses some of these studies and re-frames the data by emphasizing first the minority of borrowers who repay or default without re-borrowing, rather than the significant majority of individuals who re-borrow, often many times in a row.⁷³⁸ The discussion of title lending is similarly deficient. For instance, though unaffordable title loans injure consumers severely by leading to the loss of their cars, the Proposal's "background" section does not mention re-possession as a consequence of defaults or acknowledge that the title-loan industry is structured around lenders' right to pursue re-possession from consumers who default.⁷³⁹

Equally inadequate is the Proposal's discussion of the existing regulatory landscape, in introducing its reasoning for rescinding the ATR provisions. The Proposal implies that this landscape is important; it repeatedly suggests that the Bureau seeks to defer in some way to states' judgments about covered short-term loans. But the Proposal's summary of the regulatory landscape in this context fails to mention *federal* laws and action that are consistent with the ATR provisions (or even to acknowledge that payday lenders are already regulated federally in multiple other ways). In particular, the Proposal's background section does not mention recent or current bank-regulator guidance that (a) raised safety-and-soundness, consumer, and compliance concerns about payday lending and payday lenders, including by expressing concern about re-borrowing and "indicat[ing] that banks should ensure borrowers exhibit both a willingness and ability to repay when rolling over a loan;"⁷⁴⁰ or (b) stated that banks offering payday-like products should "apply more scrutiny in underwriting ... and discouraging repetitive re-borrowing."⁷⁴¹ Nor does it mention Congress's decision to impose an interest rate cap on such lending to military personnel,⁷⁴² or the multiple other contexts in which Congress, federal regulators, and states have required or recommended that lenders make ATR determinations before extending credit.⁷⁴³

The Proposal's background section also distorts the Bureau's own consumer complaint data. In 2017, the Rule extensively analyzed the complaints it had received from consumers about payday loans, including both those tagged as "payday loan" complaints and those tagged as "debt collection"

⁷³⁸ Compare 82 Fed. Reg. at 54565-68, 54572-73 with 84 Fed. Reg. at 4256.

⁷³⁹ Compare 82 Fed. Reg. at 54489-90 with 84 Fed. Reg. 4256.

⁷⁴⁰ See 82 Fed. Reg. at 54495

⁷⁴¹ See 82 Fed. Reg. at 54496.

⁷⁴² See 82 Fed. Reg. at 54484-85 (discussing Military Lending Act). The Proposal's section 1022 analysis does acknowledge the Military Lending Act.

⁷⁴³ See 82 Fed. Reg. at 54612.

complaints.⁷⁴⁴ Here, the Proposal makes only the passing reference to its consumer complaint figures described above, in relation to state law. In doing so, the Proposal does not address complaints tagged as “debt collection” complaints.⁷⁴⁵ And though it recognizes that the data show that “consumers complained most frequently about unexpected fees associated with payday loans,” the Proposal misleadingly states that consumers complained “less frequent[ly]” “about receiving a loan for which payday lenders had not determined their ability to repay loans.” The Bureau’s consumer complaint system asks consumers to identify their problems from a pre-set list. In the form for filing payday loan complaints, the pre-set list of problems does not include “receiving a loan for which payday lenders had not determined their ability to repay;”⁷⁴⁶ further, “unexpected fees” clearly can be a symptom of unaffordable loans made without an ATR determination.⁷⁴⁷

The Proposal additionally short-cuts notice-and-comment requirements by failing to explain its data sources and idiosyncratically limiting its use of post-2017 input. For instance, the Proposal suggests the Bureau has relied on responses to 2018 requests-for-information, prior comments, and input received from implementation-monitoring.⁷⁴⁸ But the Proposal does not identify any information received from those sources or explain why it decided to return to some (if not all) prior comment letters. Nor does the Proposal reconcile its use of responses to requests-for-information with its apparent reluctance to consult other new information. Elsewhere, the Proposal emphasizes that the Bureau has decided *not* to conduct new research related to its concerns.⁷⁴⁹ The Proposal does not even discuss the Bureau’s own supervisory, enforcement, or other market monitoring information—though in 2017, the Bureau found those sources highly pertinent to its understanding of market dynamics.⁷⁵⁰

The Proposal also fails to explain related decisions by the agency that could inform commenters’ reaction. It mentions the pending litigation over the 2017 Rule, but even in discussing the Proposal’s impacts, does not inform the public that the Bureau itself asked the court to stay the Rule’s compliance date or explain the Bureau’s assumptions about the relationship between that litigation, the Bureau’s separate proposal to delay the Rule’s compliance date, and this Proposal.⁷⁵¹

⁷⁴⁴ See 82 Fed. Reg. at 54483, 54494, 54503, 54508-09, 54571-72, 54574.

⁷⁴⁵ See 84 Fed. Reg. at 4254-55.

⁷⁴⁶ See Bureau, *CFPB Consumer Response Consumer Complaint Form Product and Issue Options 10* (Eff. Apr. 24, 2017), https://files.consumerfinance.gov/f/documents/201704_cfpb_Consumer_Complaint_Form_Product_and_Issue_Options.pdf.

⁷⁴⁷ See 82 Fed. Reg. at 54591-92, 54835.

⁷⁴⁸ See 84 Fed. Reg. at 4260, 4281.

⁷⁴⁹ See, e.g., 84 Fed. Reg. at 4253.

⁷⁵⁰ See 82 Fed. Reg. at 54575 n.14.

⁷⁵¹ See 84 Fed. Reg. at 4298.

8.3. The Paperwork Reduction Act analysis is improper because the Rule already has OMB approval and this analysis focuses on the 2017 Rule’s Payment Protections, which are not at issue in the Proposal.

Citing the Paperwork Reduction Act, the Proposal seeks comment on a revised Supporting Statement that details the information collections associated with the Rule’s Payment Provisions: aspects of the Rule that are final and not at issue in this Proposal.⁷⁵² This section of the Proposal is improper.

As an initial matter, it is not clear the PRA analysis is necessary because proposed rules only require PRA analyses if they “contain[]” collections of information.⁷⁵³ This Proposal does not; it proposes only to eliminate such collections. OMB regulations allow a different process for changes to information collections in existing rules.⁷⁵⁴

Moreover, the Proposal’s PRA analysis and the related OMB submission are highly misleading. The Proposal asserts that the Rule’s OMB control number is “not yet active,” but that is simply wrong.⁷⁵⁵ Under the PRA, OMB’s approval became inferred when OMB did not take action on the Rule by 60 days after the Rule was published in the Federal Register.⁷⁵⁶ Thus, neither the Bureau nor OMB is required to take further action for the Rule, in its entirety, to take full effect.

Equally distorted is the Supporting Statement submitted to OMB with this Proposal. It suggests that the Bureau requires a new OMB control number and that without it, the Rule’s Payment Protections will not be adopted.⁷⁵⁷ But again, there is no basis to dispute that the existing OMB control number suffices. Moreover, based on OMB’s earlier inferred approval of the Rule’s information collections, OMB cannot reconsider whether those associated with the Payment Protections satisfy the PRA standard—even if the Bureau decides to rescind the ATR provisions and their separate information-collection requirements.⁷⁵⁸

⁷⁵² See 84 Fed. Reg. at 4296; CFPB, *Bureau Of Consumer Financial Protection Paperwork Reduction Act Submission Information Collection Request, Supporting Statement Part A, Payday, Vehicle Title, And Certain High-Cost Installment Loans (12 Cfr Part 1041)*, (OMB Control Number: 3170-00xx), <https://www.regulations.gov/document?D=CFPB-2019-0006-0002>.

⁷⁵³ See 44 U.S.C. § 3507(d); 5 C.F.R. § 1320.11.

⁷⁵⁴ 5 C.F.R. § 1320.12.

⁷⁵⁵ 84 Fed. Reg. at 4296.

⁷⁵⁶ See 5 C.F.R. §§ 1320.5(a)(2), 1320.11(c), (i).

⁷⁵⁷ See *Bureau Of Consumer Financial Protection Paperwork Reduction Act Submission Information Collection Request, Supporting Statement Part A, Payday, Vehicle Title, And Certain High-Cost Installment Loans (12 Cfr Part 1041)*, (OMB Control Number: 3170-00xx), at 1, <https://www.regulations.gov/document?D=CFPB-2019-0006-0002>.

⁷⁵⁸ See 5 C.F.R. § 1320.5(e)(2) (stating that “OMB will consider necessary any collection of information specifically required by an agency rule approved or not acted upon by OMB under § 1320.11 or § 1320.12, but will independently assess any such collection of information to the extent that it deviates from the specifications of the rule”).

The Bureau's request for comment could confuse potential commenters in other ways as well. The PRA discussion in the Proposal focuses on the changes caused by the proposed rescission of the ATR provisions. But the Supporting Statement takes an entirely different approach. Rather than discussing the proposed *elimination* of information-collection requirements tied to the ATR provisions, it only describes the information-collection requirements tied to the Rule's Payment Protections. Further, it is phrased as if this Proposal (rather than the Rule) requires those payment-related collections.⁷⁵⁹

This mis-framed PRA analysis raises serious concerns about the Bureau's intent. It suggests that despite the Bureau's repeated assertion that it is not proposing to change the Payment Protections,⁷⁶⁰ the Bureau is looking to the PRA and OMB to delay, reopen, or otherwise weaken those provisions. Any such effort would be an inappropriate and unjustified end-run around the requirements for notice-and-comment rulemaking. If the Bureau wishes to propose a revision to the Payment Protections, it can only do so in a notice of proposed rulemaking addressing those provisions directly.

If the Bureau is required to make any PRA submission to account for the proposed elimination of information-collection requirements related to the ATR provisions, it should do so with the appropriate process and focus. Most importantly, the Bureau must make clear, in any request for comment, that it already has inferred OMB approval for the Rule's information collections; the focus of this Proposal is only the *elimination* of ATR-related collections.

For all of the reasons described in this comment letter, we oppose the rescission of the ATR provisions, including their associated information collections, which are appropriate to implement those requirements. Moreover, as discussed in section 9.1 below, the Rule's Payment Protections were appropriate from a PRA perspective.

8.4. The Proposal evades Regulatory Flexibility Act requirements.

The Bureau certified that the Proposal would not have a significant economic impact on a substantial number of small entities, and thus falls into an exception to the Regulatory Flexibility Act (RFA).⁷⁶¹ This certification is inconsistent with the Proposal's other analysis and is legally unsupportable.

For starters, the Proposal rests on the opposite premise: that it would benefit lenders generally by causing "a substantial increase in the volume of short-term payday and vehicle title loans . . . and a corresponding increase in the revenues lenders realize."⁷⁶²

⁷⁵⁹ See Bureau Of Consumer Financial Protection Paperwork Reduction Act Submission Information Collection Request, Supporting Statement Part A, Payday, Vehicle Title, And Certain High-Cost Installment Loans (12 Cfr Part 1041), (OMB Control Number: 3170-00xx), at 1, 3, <https://www.regulations.gov/document?D=CFPB-2019-0006-0002>.

⁷⁶⁰ See, e.g., 84 Fed. Reg. at 4253.

⁷⁶¹ See 84 Fed. Reg. at 4296.

⁷⁶² 84 Fed. Reg. at 4284; see also *id.* at 4264 (tying the Bureau's reconsideration of the ATR provisions to their dramatic effects—which this Proposal generally would reverse).

Moreover, the Proposal elsewhere recognizes that it would create costs, as well as benefits, for covered persons. Lenders could incur costs to change their product features and other aspects of their operations back to pre-Rule systems.⁷⁶³ Lenders would also lose the fraud-reduction and transparency benefits that they will acquire under the Rule by using registered information systems to obtain insight into customers' borrowing history, as well as the benefit of a decrease in defaults.⁷⁶⁴ Any registered information systems that are small entities could lose the entire line of business that the ATR provisions creates.⁷⁶⁵

The Proposal's RFA certification attempts to ignore these effects with what amounts to a regulatory sleight-of-hand. It implicitly recognizes that the Proposal would benefit lenders, framing those benefits as a "reduc[tion] of costs and burden,"⁷⁶⁶ but does not mention the Proposal's costs. It then concludes that the Proposal's impact would not be significant because companies would have the option to maintain their "operations" in use at the time when the Bureau might finalize any rule, including those operations that companies adopt to implement the ATR provisions.⁷⁶⁷

The certification thus rests on an entirely hypothetical scenario, in which lenders voluntarily retain their implementation of the ATR provisions. Absent any suggestion that this hypothetical will generally come to pass, it cannot support the Bureau's RFA certification. Critically, it conflicts with the central premise of the Proposal: that regulatory action is needed to *avoid* the Rule's impact and help lenders revert to pre-Rule lending operations. Indeed, the Proposal's section 1022 analysis expressly assumes that lenders will reverse their compliance efforts to re-capture their current lending volumes and revenues, based on loans made without ATR determinations.⁷⁶⁸ Similarly, the Bureau has repeatedly concluded that entities are unlikely to adopt the ATR provisions if not required by law.⁷⁶⁹ The hypothetical is also at odds with basic economics, which suggest that lenders who make money now from the unfair

⁷⁶³ See 84 Fed. Reg. at 4282 (stating that Bureau assumes that compliance activities already undertaken will be reversed), 4286 (recognizing that reversal can incur costs). Indeed, declarations filed by lenders in the federal court litigation over the Rule show that lenders have already undertaken efforts in anticipation of the Rule's implementation date, and the Proposal recognizes that compliance efforts may continue. 84 Fed. Reg. at 4283 n.308.

⁷⁶⁴ See 84 Fed. Reg. at 4285, 4294, 4295.

⁷⁶⁵ See 84 Fed. Reg. at 4294.

⁷⁶⁶ See 84 Fed. Reg. at 4296.

⁷⁶⁷ 84 Fed. Reg. at 4296.

⁷⁶⁸ See 84 Fed. Reg. at 4282-83, 4287. The Proposal offers no support for its suggestion that reversing certain prior changes in processes and procedures would constitute only "small costs." *Id.* at 4286.

⁷⁶⁹ See 84 Fed. Reg. at 4284 (recognizing that lenders could have, but did not, voluntarily adopt provisions of the Rule); see also 82 Fed. Reg. at 54817 (Rule, recognizing that entities could have voluntarily adopted many aspects of the Rule's underwriting protections, but did not do so); 84 Fed. Reg. at 4304 (Proposal to delay the Rule's compliance date, recognizing the Bureau's expectation that if it delays the compliance date, most lenders will "simply delay" "coming into compliance").

practice of lending without ATR determinations⁷⁷⁰ would tend to return to the practice—and the revenue it generates—if the Bureau finalized this Proposal.⁷⁷¹

These differences between the Proposal’s RFA certification and its other analysis are irreconcilable. When the Proposal rests on one set of predictions about market circumstances, the Bureau cannot use a conflicting set of market assumptions to minimize the Proposal’s impact and avoid the RFA’s procedural requirements.⁷⁷²

9. THE RULE’S PAYMENT PROTECTIONS ARE WARRANTED AND THE BUREAU SHOULD ENSURE ON-TIME IMPLEMENTATION.

9.1. The Payment Protections are appropriate from a Paperwork Reduction Act perspective.

As explained in section 8.3 above, the Bureau should not use the PRA submission made in association with the Proposal as a venue to re-think, change, delay, or otherwise weaken the content or enforceability of the Payment Protections. The collections of information associated with the entire 2017 Rule, including the Payment Protections, have already received inferred OMB approval and no further PRA action is necessary for industry to fully implement the Payment Protections by August 19, 2019.

Moreover, the Bureau’s earlier determination regarding the information collections were correct; neither the Bureau nor OMB has any reason to reconsider earlier determinations regarding these collections. For completeness, we respond to the Bureau’s solicitation of comments related to its improper PRA submission.

The Payment Protections are appropriate from a PRA perspective. Under the PRA, the Bureau identified the aspects of the Payment Protections that require information collection and retention,⁷⁷³ specifically its requirements for consumer rights notices, notices regarding upcoming payment withdrawal

⁷⁷⁰ See 82 Fed. Reg. at 54484, 54489, 54494 (regarding lenders’ business model’s reliance on re-borrowing fees).

⁷⁷¹ Lenders’ opposition to the Rule and this Proposal’s apparent effort to restore lenders’ revenue suggests that generally, the revenue at issue outweighs the costs of generating that revenue. The hypothetical scenario also ignores the practical limits on companies’ abilities to voluntarily maintain compliance with the ATR provisions. Without section 1041.11 of the Rule, for example, companies seeking to become registered information systems would not have the option to seek certification from the Bureau and would not be able to take advantage of a legally-mandated market. Relatedly, individual lenders could no longer use registered information systems to seek market-wide insight into potential customers’ lending histories.

⁷⁷² Cf. *Air All. Houston*, 906 F.3d at 1068 (holding that EPA rule delaying an earlier rule does not rationally explain the attempted change in effective date when the agency “attempts to minimize the impact of the Delay Rule” and that assertion “is incompatible with the EPA’s statement” that a delay will allow the agency to reconsider the earlier rule without imposing “substantial compliance ... burden”); *State v. Bureau of Land Mgmt.*, 286 F. Supp. 3d 1054, 1066 (N.D. Cal. 2018) (in preliminarily enjoining agency’s effort to roll back an earlier rule, noting that the agency “does not explain how or why it could conclude that the calculated costs could be so insignificant as not to unnecessarily or disproportionately burden small entities within the meaning of the RFA, and simultaneously conclude that there would be a disproportionate effect for other purposes”).

⁷⁷³ 44 U.S.C. § 3501 *et seq.*

attempts, authorization for any withdrawal attempts after two consecutive failed payment transfer attempts, and recordkeeping.⁷⁷⁴ The Bureau determined that the Payment Protections notices and authorizations serve a legitimate regulatory purpose. The 2017 Rule applicable to Payment Protections “ensures that the features of those consumer credit transactions are fully, accurately, and effectively disclosed to consumers.”⁷⁷⁵ The 2017 Rule also provides model forms that could be used to comply with certain of its requirements, and lenders that use the model forms would be deemed to be in compliance with the disclosure requirement with respect to such model forms.

The Bureau also noted the use of technology and other automated means as a solution to limit and reduce information collection burdens associated with these provisions.⁷⁷⁶ Notably, most lenders today utilize some measure of computerization in their business, and the 2017 Rule would permit lenders to rely on computer support, among other alternatives, to meet their recordkeeping, reporting, and disclosure requirements. This flexibility presumably would yield reduced costs and burden. In line with lender practices and in compliance with PRA requirements, the 2017 Rule allows required disclosures to be made electronically, through various means, and recordkeeping responsibilities allow the use of available technology to maintain records.

The Bureau has appropriately determined that the 2017 Rule is consistent with the aims of the PRA. The Bureau has also determined that the 2017 Rule’s requirements are not duplicative of other federal requirements.⁷⁷⁷ The 2017 Rule summarizes the burden concerns raised regarding the payment protections and the Bureau has taken appropriate action, in response to comments, to minimize the burden and maximize the utility of the information required to be collected. The Bureau “is confident that each of the collections of information is worth the burden and serves an important purpose.”⁷⁷⁸ Moreover, without the recordkeeping and reporting requirements applicable to payment practices, the Bureau would not have a tangible mechanism to ensure that consumers are receiving the protections contained in the Final Rule and would be unable to fulfill its regulatory and enforcement functions.

9.2. The Payment Protections will protect consumers from an unfair and abusive practice that causes them to suffer substantial harm.

The payment provisions of the 2017 Rule (“Payment Protections”) provide important protections to consumers against an unfair and abusive lending practice. The Payment Protections “will reduce the fees [borrowers] are charged by the lender and the fees they are charged by their depository

⁷⁷⁴ See 12 C.F.R. §§ 1041.8, 1041.9, 1041.12(b)(4), (5).

⁷⁷⁵ Bureau of Consumer Financial Protection Paperwork Reduction Act Submission Information Collection Request, Supporting Statement Part A, NMPRM RIN 3170-AA80 OMB Review Version (OMB Control Number: 3170-00XX), at p. 2.

⁷⁷⁶ *Id.* at p. 3-4.

⁷⁷⁷ *Id.* at p. 4.

⁷⁷⁸ 82 Fed. Reg. at 54871.

institution,⁷⁷⁹ reduce bank account closures,⁷⁸⁰ and allow consumers to “better manage their overall finances.”⁷⁸¹

The undersigned groups understand that the Proposal is not a proposal to change the Payment Protections. For completeness, in sections 9.3 and following below, we emphasize that the Bureau appropriately has not sought to rescind or change those provisions.

We also urge the Bureau to take all action necessary to ensure that companies fully implement the Payment Protections by the August 19, 2019 compliance date.

In the pending litigation regarding the 2017 Rule, the Bureau should ask the court to lift the stay of the compliance date as applied to the Payment Protections. As the Bureau itself has recognized, the parties have provided no justification for staying the compliance date with regard to the Payment Protections while the Bureau completes this proposed rulemaking.⁷⁸²

9.3. The Payment Protections will protect consumers from substantial harm caused by an unfair and abusive practice.

The 2017 Rule determine it to be:

“an unfair and abusive practice for a [covered] lender to make attempts to withdraw payment from consumers’ accounts in connection with a covered loan after the lender’s second consecutive attempts to withdraw payments from the accounts from which the prior attempts were made have failed due to a lack of sufficient funds, unless the lender obtains the consumers’ new and specific authorization to make further withdrawals from the account.”⁷⁸³

To address this unfair and abusive practice, the Bureau prohibited covered lenders from making payment transfer attempts after two consecutive failed attempts unless the consumer provides a new authorization.⁷⁸⁴ In addition, in order to help ensure that consumers understand and can protect themselves from the consequences of covered lenders’ use of leveraged payment mechanisms, the Bureau adopted rules requiring specified notices before the first payment withdrawal and before an unusual withdrawal.⁷⁸⁵ Lenders also must give consumers a notice after two consecutive failed

⁷⁷⁹ 82 Fed. Reg. at 54847-48.

⁷⁸⁰ 82 Fed. Reg. at 54847-48.

⁷⁸¹ 82 Fed. Reg. at 54848.

⁷⁸² See Joint Status Report 5, 7, *CFSA v. CFPB*, No. 18-cv-295 (W.D. Tex. Mar. 8, 2019), ECF No. 57.

⁷⁸³ 82 Fed. Reg. 54877 (November 17, 2017), codified in 12 C.F. R. Part 1041.7.

⁷⁸⁴ 12 C.F.R. § 1041.8.

⁷⁸⁵ 12 C.F.R. § 1041.9(b).

attempts informing the consumer that the lender is no longer permitted to make withdrawals without the consumer's permission.⁷⁸⁶

While the Bureau is not proposing to reconsider Payment Protections, the Proposal notes that it has received a rulemaking petition to exempt debit card payments, along with informal requests related to other aspects of the Payment Protections. The Proposal notes that the Bureau intends to examine these issues, and that the Bureau has not ruled out changes to or delay of the Payment Protections, which are currently scheduled to take effect August 19, 2019.

We attempt here to respond to the requests that have been made, before the Bureau makes an initial decision about whether to revisit or delay the Payment Protections. In light of the Bureau's statement that the Payment Protections are not the subject of this rulemaking, we have addressed only some of the arguments that have been made against those provisions and request the opportunity to address this subject at greater length if the Bureau is considering revisiting them.

The Bureau should implement the Payment Protections without change or delay. Consumers suffer significant harm from payday lenders' use of leveraged payment mechanisms. These harms are especially acute in a market plagued with the unfair and abusive practice of making high-cost loans without consideration of ability to repay. The finding of harm is well supported by the Bureau's research and data, supervisory and enforcement experience, reports issued by consumer advocacy or research organizations and public comments. The limits on payment transfers after two consecutive failures and the required notices are necessary to address the harm from use of leveraged payment mechanisms and to help consumers understand and mitigate the costs and risks of payment attempts. The Payment Protections represent a reasoned effort to balance protection of consumers and industry rights and are also appropriate from a Paperwork Reduction Act perspective.

The attacks on the Payment Protections rehash old arguments that the Bureau considered and appropriately rejected when finalizing those protections. The Bureau's approach to the finding of unfairness and abusiveness was correct, and there was ample evidence that the harm from the payment practices is not reasonably avoidable; that consumers lack understanding of the material risks and costs of those practices; that consumers are not able to protect their interests; and that the practices take unreasonable advantage of consumer vulnerabilities. The industry claim that 2015 NACHA rules make the payment protections unnecessary, duplicative, or outdated is specious, and was considered and rejected by the Bureau in 2017. There is also no basis to subject consumers to three consecutive bounced payments. Lastly, implementation of the Payment Protections should not be delayed; lenders have been on notice for a year and a half and those provisions can stand alone regardless of any decision by the Bureau pertaining to other provisions of the 2017 Rule.

9.4. The limit on transfer attempts after two consecutive failures is necessary to address the harm caused by covered lenders' use of leveraged payment mechanisms.

The Payments Protections apply to several different types of covered lenders that use leveraged payment mechanisms. The provisions apply to the short-term or balloon-payment payday lenders covered by the ability-to-repay rule, and also to longer-term payday loans that charge more than 36% APR. The 2017 Rule determined that "at the time of loan origination, it is a common practice among

⁷⁸⁶ 12 C.F.R. § 1041.9(c).

many lenders to obtain authorization to initiate payment withdrawal attempts from the consumer's transaction account."⁷⁸⁷

These lenders rely on the power of leveraged payment mechanisms, instead of sufficient underwriting for ability to repay, to collect payments on loans that were likely unaffordable from the start. The sections above discuss the lack of ability to repay in the short-term and balloon-payment payday and vehicle title loan market.

The Bureau also relied on significant evidence of the unaffordability of high-cost longer-term payday loans. These longer-term payday lenders use the combination of the borrower's lack of ability to repay, a high rate, and a leveraged payment mechanism to extract payments on unaffordable loans. The Bureau discussed the problems in this market extensively in the 2016 proposed rule to require an ability-to-repay assessment for longer-term loans.⁷⁸⁸ Although the Bureau ultimately decided to focus, for now, on short-term and balloon-payment loans and not to finalize the ability-to-repay proposal for longer-term loans, the Bureau concluded that "such longer-term loans may still pose substantial risk to consumers with regard to certain lender payment practices...[for] loans involving the taking of a leveraged payment mechanism."⁷⁸⁹ Based on its "Online Payday Loan Payments" Study⁷⁹⁰ ("Payments Study"), the Bureau's enforcement experience, consumer complaints, and comments received, the Bureau determined that the use of leveraged payment mechanisms across these markets—short-term loans, high-cost longer-term loans, and longer-term balloon payment loans—was similar, that the risk and demonstrated harm to consumers was significant, and that the Payment Protections should cover these markets using a consistent, effective approach.⁷⁹¹

The Bureau found that covered lenders use broad, ambiguous payment authorizations that allow the lender to vary how they use the authorizations in timing of withdrawals, frequency of withdrawals and amount of payments withdrawn at a given time.⁷⁹² These authorizations, particularly when used in connection with unaffordable and high-cost loans, cause harm in a variety of ways.

Payments submitted even a single time can cause injury. A payment is often successful only because the process forces a payment to the lender before the borrower meets other debts or basic living expenses. Loan payments can make it difficult to meet these expenses. Successful payments can also trigger overdraft fees from either the loan payment itself or subsequent payments for expenses.

Even a single bounced payment is a particularly strong sign of distress. Payment attempts on covered loans typically happen on or near payday, when the consumer's funds should be highest. Banks are likely to cover most loan payments despite insufficient funds unless the consumer has a relatively

⁷⁸⁷ 82 Fed. Reg. at 54720

⁷⁸⁸ 81 Fed. Reg. 47864, 47986-47994 (July 22, 2016).

⁷⁸⁹ 82 Fed. Reg. at 54540.

⁷⁹⁰ 82 Fed. Reg. at 54721.

⁷⁹¹ 82 Fed. Reg. at 54731-32.

⁷⁹² 82 Fed. Reg. at 54720.

larger negative balance or a history of extensive overdrafts. Thus, failed payments likely happen only for the most distressed borrowers. In the event of failed payments, consumers are subject not only to NSF fees but also to additional fees charged by the lender itself, including return-item fees and late fees.⁷⁹³

Re-submitted payments cause even greater harm. The modest 2017 Final Rule on Payments is well-justified by the evidence of harm the leveraged payments mechanism inflicts in both the on-line and storefront lending markets. The Bureau found that the practices of both storefront and online lenders “have substantial cumulative impacts on consumers. Repeated attempts at re-presentation result in multiplying the fees imposed on consumers.”⁷⁹⁴

Industry analyses, outreach, and the Bureau research “suggest that the [payday] industry is an extreme outlier with regard to the rate of returned items. As a result of payment practices in these industries, consumers suffer significant NSF, overdraft, and lender fees”⁷⁹⁵ Covered lenders’ payment practices also “substantially increase consumers’ cost of borrowing, their overall financial difficulties, and the risk that they will lose their accounts.”⁷⁹⁶

The Bureau relied on extensive evidence to support these findings.

The Bureau’s Payments Study found that some payments were only successful due to overdraft. The report observed that many payment attempts succeed despite a lack of funds to cover the payment. In the study, the first time a payment was presented, 6% succeeded only because the payment overdraw the account and triggered an overdraft fee. On the second attempt, 10% went through only for this reason.⁷⁹⁷

The study also concluded that multiple payments presentments are common in the online payday and payday installment loan market.⁷⁹⁸ The study found that lenders:

“re-presented after one failed attempt 75 percent of the time, re-presented after the second failed attempt 66 percent of the time, re-presented after the third failed attempt 50 percent of the time, and re-presented after the fourth failed attempt 20 percent of the time.”⁷⁹⁹

⁷⁹³ 82 Fed. Reg. at 54722-23.

⁷⁹⁴ 82 Fed. Reg. at 54720.

⁷⁹⁵ 82 Fed. Reg. at 54724-25.

⁷⁹⁶ 82 Fed. Reg. at 54721.

⁷⁹⁷ CFPB, Online Payday Loan Payments, (April 2016).

⁷⁹⁸ 82 Fed. Reg. at 54489.

⁷⁹⁹ 82 Fed. Reg. at 54489.

Noting that a one-time overdraft fee is typically \$34, the Bureau found in the study that fifty percent of checking accounts “incurred at least one overdraft or NSF return in connection with their loans, with average fees for these consumers at \$185” and “10 percent were charged at least \$432.”⁸⁰⁰

The Payments Study also found that additional payments attempts were far more likely to bounce than to succeed. The more attempts online payday lenders made to debit a borrower’s bank account after an unsuccessful attempt, the less likely they were to succeed. For example, among the transactions examined, 88% of first payment transfer attempts succeeded without triggering an overdraft, with 12% resulting in either an NSF fee or an overdraft. On the second attempt, only 21% of payments went through with sufficient funds, with 70% and 10% of second attempts resulting in NSF fees or overdraft fees, respectively. Third attempts had similar results, with only 20% of attempts succeeding and 73% and 8% of third attempts resulting in NSF fees or overdraft fees, respectively.⁸⁰¹ These re-submitted payments caused significant harm to borrowers with little benefit for lenders.

The Payments Study also found that continued debits may well lead to closure of the consumer’s account. The Bureau found that 36% of borrowers who experienced a bounced payment had their checking account closed.⁸⁰² When a payment attempt fails, bank account closures typically occur within 90 days of the first observed failed transaction.⁸⁰³

Beyond the Payment Study, the Bureau also considered the payment mechanisms at use in the storefront payday loan market through publicly available data and the Bureau’s enforcement experience. The Bureau concluded that “returned payments likewise occur with great frequency in the storefront payday market. . .”⁸⁰⁴ The Bureau analyzed public data from lender reports, for example, of national companies which disclosed that its storefront loans are “collateralized by a check..., ACH authorization or a debit card.”⁸⁰⁵ While many storefronts encourage cash payments, they also use post-dated checks and secure authorizations to initiate an electronic fund transfer when needed. The Bureau reported evidence that for some large storefronts “60 to 80 percent of their electronic payment attempts are returned for non-sufficient funds.”⁸⁰⁶

The Bureau also supported its conclusions through several other studies and sources of data. Only a few of these are summarized here.

⁸⁰⁰ 82 Fed. Reg. at 54725.

⁸⁰¹ 82 Fed. Reg. at 54720-2524.

⁸⁰² 82 Fed. Reg. at 54726.

⁸⁰³ 82 Fed. Reg. at 54564.

⁸⁰⁴ 82 Fed. Reg. at 54720.

⁸⁰⁵ 82 Fed. Reg. at 54499, n. 283.

⁸⁰⁶ 82 Fed. Reg. at 54499 n. 283, 54573; 82 Fed. Reg. at 54724-25.

A study by the Center for Responsible Lending (CRL) found many “invisible defaults” —payments that were successful only because they overdrew the account.⁸⁰⁷ Many payday payments also left consumers with inadequate funds to cover other expenses, resulting in overdrafts fees shortly after the payday payment. One-third of payday borrowers experienced at least one invisible default in which their account was overdrawn on the same day that they made a payment to a payday lender. Nearly half of payday borrowers incurred an overdraft or NSF fee in the two weeks after a payday loan transaction, and 64% paid overdraft or NSF fees at some point.⁸⁰⁸

A 2013 study from an independent research organization found that, among storefront lenders, 23 percent of borrowers reported that a payday lender had made a withdrawal from their bank account that caused an overdraft.⁸⁰⁹

A 2014 analysis released by JP Morgan Chase looked at both storefront lenders and online lenders and found “an overall return rate of 25 percent for ACH payments.”⁸¹⁰ Chase’s data showed lender return rates with a range from five percent to almost fifty percent.⁸¹¹

The Bureau also observed that, “as a matter of course” storefront lenders “break payment attempts down into multiple attempts on the same day after an initial attempt fails.”⁸¹² Consistent with the Bureau’s market research, storefront lenders also reported in public filings that they “typically charge fees for these returned payments, sometime charging both a returned payment fee and a late fee”⁸¹³ in addition to any fees charged by the consumers’ financial institutions for the same failed transactions.

The harm from the use of leveraged payment mechanisms is also reflected in actions that Congress has taken in other contexts. As the Bureau noted, in the Electronic Fund Transfer Act (EFTA), Congress banned compulsory use of preauthorized payments out of recognition that “such authorizations can give lenders a special kind of leverage over borrowers.”⁸¹⁴ Yet lenders use a variety of means to evade the EFTA ban on compulsory use and to coerce automatic repayment.⁸¹⁵ The Bureau found that “in

⁸⁰⁷ Susanna Montezemolo & Sarah Wolff, Payday Mayday: Visible and Invisible Payday Lending Defaults, Center for Responsible Lending (2015), https://www.responsiblelending.org/sites/default/files/nodes/files/research-publication/finalpaydaymayday_defaults.pdf.

⁸⁰⁸ *Id.*

⁸⁰⁹ 82 Fed. Reg. at 54723, n.933.

⁸¹⁰ 82 Fed. Reg. at 54725.

⁸¹¹ 82 Fed. Reg. at 54725.

⁸¹² 82 Fed. Reg. at 54725.

⁸¹³ 82 Fed. Reg. at 54725.

⁸¹⁴ 82 Fed. Reg. at 54720.

⁸¹⁵ CRL, NCLC, et al. Comments on 2016 Proposed Rule at 62, 278.

practice online payday and payday installment lenders are able to obtain such authorizations from consumers for almost all loans.”⁸¹⁶

In 2006, in the Talent-Nelson amendment to the John Warner National Defense Authorization Act of 2007, also known as the Military Lending Act, Congress prohibited lenders making certain loans to servicemembers and their dependents from charging more than 36% and from using post-dated checks or other method of access to borrower financial accounts, among other restrictions.⁸¹⁷ This limitation on payment methods was included after a Department of Defense (“DoD”) found that leveraged payment mechanisms pose particular risk for military borrowers.⁸¹⁸ This finding was substantiated again in a 2014 report by the Department of Defense finding that 42 percent of servicemembers were required to make payments through a leverage payment mechanism, military allotments, and that investigations and enforcement actions demonstrated the harm caused by use of this leverage payment mechanism. Consequently, in 2014, the DoD also prohibited the use of the allotment system as a payment mechanism more generally.⁸¹⁹

Thus, there is ample evidence of the harm cause by the use of leveraged payment mechanisms by lenders that make unaffordable and high-cost loans.

9.5. The required payment notices help consumers understand and mitigate the costs and risks of payment attempts.

In addition to the limits on consecutive payment attempts, the Payment Protections also include new notices designed “to help consumers better understand and mitigate the costs and risks relating to payment attempt practices in connection with covered loans.”⁸²⁰ These notices were adopted pursuant to the Bureau’s broad authority to prescribe rules regarding the disclosure of the features of consumer financial products and services.⁸²¹ In promulgating these rules, the Bureau “considered consumer complaints, industry disclosure practices, and other evidence about consumer awareness, understanding of, and responses to disclosures or communications about the risks, costs, and benefits

⁸¹⁶ 81 Fed. Reg. at 47893.

⁸¹⁷ 10 U.S.C. § 987(e)5-6.

⁸¹⁸ U.S. Department of Defense. “Report On Predatory Lending Practices Directed at Members of the Armed Forces and Their Dependents” (Aug.=t 9, 2006), http://www.defense.gov/pubs/pdfs/report_to_congress_final.pdf.

⁸¹⁹ See “CFPB Takes Action Against Military Allotment Processor for Charging Servicemembers Hidden Fees.” *Consumer Financial Protection Bureau*, April 20, 2015. <http://www.consumerfinance.gov/newsroom/cfpb-takes-action-against-military-allotment-processor-for-charging-servicemembers-hidden-fees/> and “Statement by Secretary Hagel on Abuse of the Discretionary Allotment System by Financial Services Institutions.” Department of Defense, June 27, 2013. <http://www.defense.gov/Releases/Release.aspx?ReleaseID=16123>. “New DOD Policy on Allotments.” Washington, D. C.: Department of Defense, November 21, 2014. <http://www.defense.gov/Portals/1/Documents/pubs/Fact-Sheet-on-New-Dod-Policy-Change-to-Allotment-System.pdf>.

⁸²⁰ 82 Fed. Reg. at 54759.

⁸²¹ 82 Fed. Reg. at 54760 (citing Dodd-Frank Act § 1032(a)).

of consumer financial products and services”, as well as its own consumer testing results.⁸²² These interventions are “designed to protect consumers already experiencing financial distress. . . .”⁸²³

The Bureau noted that the rules would “incentivize lenders to stick to the payment schedule and would only impose costs ...if they deviate from the consumer’s authorization.”⁸²⁴ The Bureau also concluded that “consumers should be informed when a lender has triggered the threshold of two consecutive failed payment withdrawal attempts so that they are made aware ...of the fact....” The Bureau “made the judgment that requiring disclosure of information about prior failed payments and consumer rights . . . would help ensure that the costs, benefits, and risks of the loan and associated payments are effectively disclosed to the consumers. . . .”⁸²⁵ The Bureau determined that the notices would help consumers “better understand their repayment options and obligations in light of the severely distressed condition of their accounts.”⁸²⁶

The bulk of the industry objections to the notice requirements concerned alleged associated burdens. In response, the final Payment Protections included significant changes to §1041.9(b) “that will substantially reduce the total aggregate burden of the disclosures. . . .”⁸²⁷ The resulting burden on the lender is minimal since it requires a “payment notice . . . [to be] sent before the first payment withdrawal (and can be provided during the origination process) and thereafter notices only will have to be sent when there is an unusual withdrawal . . . or the payment attempt cap is met.”⁸²⁸ As noted, in the Bureau’s experience, the technology needed by lenders to implement much of the systems under §1041.9 is readily available on the market today, or could be developed for this specific market.⁸²⁹ Notably, the Payment Protections further limit “burden and allow[s] flexibility as consumer preferences and technologies change” by including additional ways to deliver the notices electronically.⁸³⁰

While payday lenders are now claiming that the notice requirements conflict with state law, the Bureau considered this issue and determined that it was “not aware of any State laws that would directly conflict with the notice requirements set forth” by the Payment Protections. Notably, Bureau affirmed the importance that “all consumers in all States receive these notices”⁸³¹

⁸²² 82 Fed. Reg. at 54760.

⁸²³ 82 Fed. Reg. at 54759.

⁸²⁴ 82 Fed. Reg. at 54770.

⁸²⁵ 82 Fed. Reg. at 54773.

⁸²⁶ 82 Fed. Reg. at 54720.

⁸²⁷ 82 Fed. Reg. at 54765.

⁸²⁸ 82 Fed. Reg. at 54765.

⁸²⁹ 82 Fed. Reg. at 54765.

⁸³⁰ 82 Fed. Reg. at 54770.

⁸³¹ 82 Fed. Reg. at 54772.

9.6. The Payment Protections appropriately consider covered lenders' interests.

The Payment Protections achieve important protections for consumers while appropriately considering covered lenders' interests. They allow lenders several vehicles for collecting payment. Lenders may contact borrowers and initiate one-time transfers immediately after the consumer authorizes the transfer—facilitating ease of payment and lender capacity to collect payments. Lenders may also resume future preauthorized payments with consumer authorization after the failed attempts.⁸³² The protections also do not interfere in any way with the lender's rights to seek other remedies for delinquencies or defaults, within the framework of federal and state laws.

The Payment Protections also noted that the required notices and authorization process “may reduce delinquencies and related collection activities”⁸³³ since they will better allow consumers to take steps to manage their finances and ensure that they have funds available to cover loan payments.⁸³⁴ “Receiving notices prior to an upcoming unusual payment will benefit consumers by allowing them ... to reduce the likelihood that they will run short of funds to cover either the upcoming payment or other obligations.”⁸³⁵ Thus, in this way, the Payment Protections have benefits for lenders as well.

9.7. There is no basis to revisit the Payment Protections.

The petition and other requests that the Bureau has received asking it to revisit or delay the Payment Protections have no merit. They rehash old arguments that were considered by the Bureau before and do not provide any basis that would not be arbitrary or capricious to change or delay the rule.

9.7.1. The Bureau appropriately found that the identified payment practices are unfair and abusive.

Payday lenders are asking the Bureau to revisit its finding that it is an unfair and abusive practice to make subsequent withdrawal attempts after two consecutive failures without obtaining additional authorization. The 2017 Rule notes that “commenters generally did not dispute that attempted withdrawals generate these kinds of fees to consumers”, including NFS fees, overdraft fees, and returned or declined payment fees.⁸³⁶ Rather, the lenders attack the Bureau's findings on other grounds.

The lenders claim that the purportedly new approach to unfairness and abusiveness that the Bureau is now using in its attempt to justify repeal of the ability-to-repay provisions also warrants reversal of the Payment Protections. In particular, the lenders wrongly claim that the Rule inappropriately required that consumers be able to project their individualized, specific risk of harm; that any harm should be addressed through disclosures and can be avoided simply by not using a product; and that the Rule

⁸³² 12 C.F.R. § 1041.8(a)(2).

⁸³³ 82 Fed. Reg. at 54541.

⁸³⁴ 82 Fed. Reg. at 54541.

⁸³⁵ 82 Fed. Reg. at 54541.

⁸³⁶ 82 Fed. Reg. at 54723.

underweighted the countervailing benefit of consumer choice. We address those arguments in sections _ above.

The lenders also claim that the harm from the payment practices is reasonably avoidable; that there is no evidence that consumers fail to understand the material risks and costs of those practices; that consumers are able to protect their interests; and that the practices do not take unreasonable advantage of consumer vulnerabilities. There is nothing new in these arguments, which were thoroughly considered and rejected when the Payment Protections were finalized.⁸³⁷

Consumers who live paycheck to paycheck and who take out payday or other small dollar loans often must struggle to sequence their bills, both in timing and amounts, to try to protect the availability of funds in their accounts to avoid overdraft or NSF fees. However, the online and storefront lenders routinely usurp the ability of the consumer to control their accounts.⁸³⁸

Consumers report that they are often surprised by the manner in which the lender executes the payment mechanism— including the use of varying amounts, changes in timing for attempted withdrawals and the use of multiple payment channels for the same payment due. The 2017 Rule details the difficulties faced by consumers trying to understand and prevent lender withdrawals from accounts and the associated harms. These difficulties include:

- (1) the nature of lenders’ practices themselves;
- (2) the costs consumers incur for a depository’s stop-payment fee;
- (3) the costs consumers incur for a lender’s return-item fee;
- (4) the difficulty consumers experience attempting to have charges refunded;
- (5) the fact that ACH payments are difficult to stop because of limited payment search functions and lack of standardization of payments;
- (6) the use of multiple merchant ID codes and different names by lenders for the same consumer;
- (7) the consumer-inaccessible and unknown check number for remotely created checks (RCCs) and remotely created payment orders (RCPOs) which make it impossible to stop payments; and,
- (8) procedural hurdles such as knowing the exact payment amount or the merchant identification code for a stop-payment.⁸³⁹

The Bureau noted that its complaint data supports these findings. Nearly “10 percent of the more than 16,600 payday loan complaints” filed with the Bureau since November 2013 included consumer identified problems stating the consumer “can’t stop lender from charging my bank account” or “lender charged my bank account on wrong day or for wrong amount.”⁸⁴⁰ “By the time consumers discover that lenders are using their authorizations [in the manner detailed above], it is often too late

⁸³⁷ 82 Fed. Reg. at 54730-54744.

⁸³⁸ 82 Fed. Reg. at 54575.

⁸³⁹ 82 Fed. Reg. at 54727.

⁸⁴⁰ 82 Fed. Reg. at 54727.

for them to take effective action.”⁸⁴¹ The Bureau found that many options—such as stop payment or revocation of authorizations—available to protect a consumer from the resulting harm of lender actions are not practical. Moreover, effectuating a stop-payment often involves considerable barriers.⁸⁴²

The 2017 Rule concluded that “[c]onsumers’ ability to protect their accounts from these types of payment attempt problems is limited....[because of] the nature of the lender practices themselves, lender revocation procedures (of lack thereof), costs imposed by depository institutions in connection with . . . stop-payment attempts, and the operational limits of individual payment methods.” In sum, it can be infeasible to stop payment or revoke authorization, and where feasible, it is “both difficult and costly.”⁸⁴³ The Final Rule also concluded that “consumers are therefore unable to protect their interests, specifically the interest of preventing the harms identified previously ... Evidence in the record supports the conclusion that consumers are, in fact, unable to protect their own interests in relation to payment re-presentments by initiating stop payments or revoking authorizations.”⁸⁴⁴ In other actions prior to finalizing the rule, the Bureau has also noted that consumers report having trouble stopping automatic charges.⁸⁴⁵

The difficulty consumers have in response to lenders’ payment practices is especially acute when lenders take authorizations for multiple payment methods. The Bureau found that lenders use a wide variety of payment mechanisms and often take authorizations for more than one mechanism to enhance their ability to access the consumer’s funds for a given loan.⁸⁴⁶ These mechanisms are used as back-up methods to collect both regular payments and accelerated balances after default. Notably, “commenters did not take issue with [the Bureau’s account] of the type of payment methods obtained by the lenders.”⁸⁴⁷

Generally, the lender controls the contract terms for payment authorizations as well as controlling the parameters of how these authorizations are used. Once obtained, the lender often uses these authorizations “in ways that consumers do not expect.”⁸⁴⁸

⁸⁴¹ 82 Fed. Reg. at 54742.

⁸⁴² 82 Fed. Reg. at 54742.

⁸⁴³ 82 Fed. Reg. at 54726.

⁸⁴⁴ 82 Fed. Reg. at 54743; *See generally*, Market Concerns – Payments subsection entitled “Consumers Have Difficulty Stopping Lenders’ Ability to Access Their Accounts,” 82 Fed. Reg. at 54726-54728.

⁸⁴⁵ CFPB, Press Release, “CFPB Alerts Companies About Obtaining Consumer Authorization For Recurring Auto Debits” (Nov. 23, 2015), <http://www.consumerfinance.gov/about-us/newsroom/cfpb-alerts-companies-about-obtaining-consumer-authorization-for-recurring-auto-debits/>.

⁸⁴⁶ 82 Fed. Reg. at 54723

⁸⁴⁷ 82 Fed. Reg. at 54721

⁸⁴⁸ 82 Fed. Reg. at 5472.

It is often unclear which mechanisms will in fact be used, and in what order, making it difficult to determine the steps a consumer would need to take to revoke authorization if necessary. RCCs and RCPOs are often used as back-up mechanisms if a consumer revokes or attempts to revoke authorization or stop payment of an ACH payment, evading Regulation E and NACHA rules. Lenders use the threat of an RCC for an accelerated amount to attempt to convince the consumer not to revoke ACH authorization.⁸⁴⁹

The Bureau's enforcement action against Integrity Advance, LLC and its CEO, James R. Carnes is one example of how use of multiple payment authorizations harms consumers. The Bureau found that the company routinely used multiple payment authorizations to continue debiting consumers' accounts using remotely created checks, even after consumers revoked authorization for the company to access their accounts using the ACH network.⁸⁵⁰

Numerous consumer accounts also illustrate their difficulty stopping lenders from debiting their account and hurdles persuading financial institutions to accept stop payment orders for recurring payments.⁸⁵¹ Some are discussed in the 2016 comments submitted by several of the undersigned groups,⁸⁵² and we continue to hear these accounts.

In conclusion, the Bureau's findings of unfair and abusive practices on which the Payment Protections are based are supported by an extensive record. Consumers are not able to reasonably avoid the harm caused by the practices identified or to protect their interests, and the Payment Protections are necessary to prevent lenders from imposing substantial injury on consumers and taking unreasonable advantage of them.

9.7.2. There is no basis to exempt debit cards.

The petition that the Bureau has received urges it to exclude debit cards from the Payment Protections. For reasons described below, the notion that debit cards should be exempted is absurd. Moreover, as the petition itself notes, this request was made, considered and rejected during the rulemaking that led up to the 2017 Rule. There is no basis to revisit it.

In adopting the Payment Protections, the Bureau detailed the public filings of several national companies which report that at loan origination the lender uses multiple payment mechanisms,

⁸⁴⁹ See, e.g., "The Extension of High-Cost Credit to Servicemembers and Their Families." Washington, DC: Consumer Financial Protection Bureau, December 2014. http://files.consumerfinance.gov/f/201412_cfpb_the-extension-of-high-cost-credit-to-servicemembers-and-their-families.pdf at page 6.

⁸⁵⁰ "CFPB Takes Action Against Online Lender for Deceiving Borrowers." Washington, D.C.: Consumer Financial Protection Bureau, November 18, 2015. <http://www.consumerfinance.gov/about-us/newsroom/cfpb-takes-action-against-online-lender-for-deceiving-borrowers/>.

⁸⁵¹ See, e.g., National Consumer Law Center and New Economy Project. "RDFIs' Responsibilities to Consumers Regarding Stop-Payment Orders, Unauthorized Charges, Related Fees, and Orders to Close Accounts," September 29, 2014. <http://www.neweconomy.org/wp-content/uploads/2014/11/letter.pdf>.

⁸⁵² See CRL, NCLC, et al. Comments on 2016 Proposed Rule, Appendix A; see also, generally, § 13 of those comments.

including debit cards, as collateral for the loan,⁸⁵³ and that some storefront lenders take payments by debit card.⁸⁵⁴ The 2016 comments of several of the undersigned groups included discussion of a market scan by Consumer Federation of America that found that 29% of lenders claiming affiliation with Native American Tribes accepted debit cards along with multiple other payment mechanisms.⁸⁵⁵

The payday lenders' petition spends over 30 pages to make one basic point: debit cards should not have been included because debit card transactions do not typically trigger NSF fees. But the Bureau appropriately concluded that it was appropriate to cover debit card transactions because the harm caused through leveraged payment mechanisms is not limited to NSF fees, and exempting debit card transactions would invite evasions of the Payment Protections.⁸⁵⁶ And in fact, some debit card transactions can trigger NSF fees.

As noted in 2016 comments to the Bureau,⁸⁵⁷ recurring debit card transactions – such as those used for payments on installment loans – can trigger NSF fees just as an ACH payment can and are not covered by the Regulation E opt-in rules.⁸⁵⁸ Consumers can also incur stop payment fees from their bank if they try to stop payment on recurring debit card transactions. In any event, the harm from two failed payment attempts is not limited to NSF fees; see section 9.3 above.

Moreover, two failed payment attempts are a sign that a borrower is in financial distress and is unable to afford the loan payment. This is equally true whether or not an NSF fee is charged upon the bounced payment. Two failed payment attempts are also a very strong indication that the third payment attempt will also be made against insufficient funds: As noted above, only 21% of second payments were successful against sufficient funds, while slightly less—only 20%—of third payments were. Allowing a third and possibly many additional attempts is likely to cause substantial injury even if processed as a non-recurring debit card transaction. Permitting the lender to continue to make unlimited payment attempts until the account gets back to positive increases the chances an unaffordable payment will be made to the lender while leaving the borrower short on funds for other major financial obligations or basic living expenses.

Moreover, non-recurring debit card transactions can trigger overdraft fees which, as discussed above, cause substantial harm, not only from the fee itself, but also by making it difficult to meet other expenses and by potentially triggering additional overdraft or NSF fees. The negative balance caused by an overdraft transaction can also cause bank account closures.⁸⁵⁹ That a financial institution is required

⁸⁵³ 82 Fed. Reg. at 54499, n. 283.

⁸⁵⁴ 82 Fed. Reg. at 54481, n. 72.

⁸⁵⁵ CRL, NCLC, et al. Comments on 2016 Proposed Rule at 272.

⁸⁵⁶ 82 Fed. Reg. at 54734, 54742, 54746-47, 54750.

⁸⁵⁷ CRL, NCLC, et al. Comments on 2016 Proposed Rule at 255-56.

⁸⁵⁸ 12 C.F.R. § 1005.17(b)(1).

⁸⁵⁹ Center for Responsible Lending, *Broken Banking: Overdraft Penalties Harm Consumers, Discourage Responsible Products* (2016), <https://www.responsiblelending.org/media/broken-banking-overdraft-penalties-harm-consumers-discourage-responsible-products>.

to obtain a consumer's "opt-in" before charging overdraft fees on non-recurring debit card transactions is hardly relevant. This requirement does not lessen the harms a consumer experiences when subject to these fees. Moreover, the Bureau's own research and other research it was aware of have illuminated aggressive and deceptive practices used to obtain "opt-ins," widespread consumer confusion about whether or not they have opted-in, and an overwhelming consumer preference to have debit card transactions declined rather than paid in exchange for an overdraft fee.⁸⁶⁰

Consumers can also incur overdraft fees on prepaid or debit cards sold by payday lenders. As we commented to the Bureau,⁸⁶¹ a July 2015 report released by the National Consumer Law Center found that some prepaid cards sold by payday lenders allow lenders to make payment transfers that exceed the borrower's available balance, triggering additional fees, including overdraft fees.⁸⁶² Although the Bureau's prepaid accounts rule, which went into effect April 1, 2019, contains significant limits on overdraft fees, some payday lenders are attempting to evade that rule by selling debit cards that have overdraft fees and do not comply with the prepaid accounts rule.⁸⁶³

The Bureau also found that debit card transactions can trigger other fees: "[E]ven when consumers' account-holding institutions may not charge a fee for returned or declined payment withdrawal attempts made using a particular payment methods, such as attempts made by debit cards and certain prepaid cards, consumers still incur lender charged fees from which they cannot protect themselves. In addition, consumers sometimes incur lender-charged fees for successfully stopping payment or revoking authorizations."⁸⁶⁴

Excluding debit cards would also enable lenders to evade the Rule's protections. Lenders could first use other payment mechanisms, and after one or two failures, then use the on-file debit card

⁸⁶⁰ A report that the CFPB released just a few days after the 2017 Rule also described considerable confusion about overdraft policies. CFPB, *Consumer voices on overdraft programs* at 14-15 (Nov. 2017), https://files.consumerfinance.gov/f/documents/cfpb_consumer-voices-on-overdraft-programs_report_112017.pdf. In particular, "many of the participants who did not recall opting in or who were not aware that they had a choice about being charged overdraft fees for debit card and ATM transactions described experiencing fees on these types of transactions." *Id.* at 15. *See also* Center for Responsible Lending, *Banks Target, Mislead Consumers As Overdraft Deadline Nears*, (Aug. 5, 2010), available at <http://www.responsiblelending.org/overdraft-loans/research-analysis/Banks-Target-And-Mislead-Consumers-As-Overdraft-Dateline-Nears.pdf>; Center for Responsible Lending, *Banks Collect Opt-Ins Through Misleading Marketing* (Apr. 2011), available at <http://www.responsiblelending.org/overdraft-loans/policy-legislation/regulators/banks-misleading-marketing.html>; Pew Charitable Trusts, *Overdrawn: Persistent Confusion and Concern About Bank Overdraft Practices* (June 2014), https://www.pewtrusts.org/-/media/assets/2014/06/26/safe_checking_overdraft_survey_report.pdf

⁸⁶¹ CRL, NCLC, et al. Comments on 2016 Proposed Rule at 255-56.

⁸⁶² "Payday Lender Prepaid Cards: Overdraft and Junk Fees Hit Cash-Strapped Families Coming and Going." Boston, MA: National Consumer Law Center, July 2015. https://www.nclc.org/images/pdf/high_cost_small_loans/payday_loans/Report_PaydayLendersPrepaid71515.pdf

⁸⁶³ *See, e.g.*, <https://www.acecashexpress.com/ace-flare-account> ("ACE Flare Account by MetaBank" offered through NetSpend).

⁸⁶⁴ 82 Fed. Reg. at 54747.

authorization, leading to the same harms of overdraft or NSF fees, inability to meet expenses for necessities, and potential account closures. As the Bureau concluded in the 2017 Rule, “it is essential for the rule to cover all payment methods in order to prevent harm to consumers from the practice identified as unfair and abusive.”⁸⁶⁵ As discussed in the previous section, these harms are especially likely given the confusing way in which lenders take authorization for multiple payment devices. Given the risk to consumers, the Bureau appropriately included debit cards in the scope of the Payment Practices protections.

9.7.3. The Payment Protections are not outdated, duplicative or unnecessary in light of private network rules.

Payday lenders claim that the payment protections are outdated, duplicative and unnecessary in light of NACHA rules adopted in 2015 to address high rates of returned ACH transactions. As a first matter, those rules were adopted before the Bureau even proposed the payday loan rule. These industry arguments were made, considered and rejected by the Bureau and there is no basis to revisit them.

While the 2015 rules went into effect after the Bureau gathered data for its payment study, the Bureau also relied on ample other evidence, discussed above.⁸⁶⁶ Moreover, the Bureau appropriately concluded that “[e]ven if the industry has stopped or lessened the prevalence of problematic payment practices since the report sample—a claim that the Bureau did not receive any evidence on and is purely speculative—consumer harm from the repeated re-presentments continues to be of concern”⁸⁶⁷ From the continuing experience of our organizations, we agree.

Payday lender representatives assert that NACHA rules provide sufficient protections in this market. But the Bureau correctly found that any protection available from private networks have limited reach and impact, and are subject to change.⁸⁶⁸ The NACHA rules apply to ACH transactions only, not all types of payments covered by the 2017 Final Rule. CFA’s study, for example, found that 55% of online tribal lenders took authorization to use a network not subject to NACHA rules.⁸⁶⁹ The NACHA re-presentment rules do not stop lenders from then switching to another mechanism that can trigger NSF or overdraft fees. NACHA has limited and weak monitoring and enforcement ability,⁸⁷⁰ and NACHA itself, in its 2016 comments on the proposed rule, “raised concerns that lenders are shifting towards other payment methods” and thereby evading whatever NACHA protections might apply.⁸⁷¹

⁸⁶⁵ 82 Fed. Reg. at 54746.

⁸⁶⁶ See generally 82 Fed. Reg. at 54721-22.

⁸⁶⁷ 82 Fed. Reg. at 54721-22.

⁸⁶⁸ 82 Fed. Reg. at 54721.

⁸⁶⁹ CRL, NCLC, et al. Comments on 2016 Proposed Rule at 254.

⁸⁷⁰ 82 Fed. Reg. at 54730.

⁸⁷¹ 82 Fed. Reg. at 54722.

Private network rules do not provide a clear, consistent and generally applicable limit to repeated attempts to access a borrower’s transaction account.⁸⁷² We agree with the Bureau’s assessment that, while network rules are helpful, they are limited in scope, are difficult for consumers to understand or enforce, and are subject to change. Even longstanding ACH rules are routinely violated by financial institutions, by mainstream merchants, and by payday lenders alike.⁸⁷³ NACHA rules are not privately enforceable, and some courts have rejected efforts to enforce them through contract laws as well.⁸⁷⁴

In light of the available evidence, the Bureau concluded that substantial risk to consumers remains. While private networks may improve lender practices in some respects, there are many gaps and existing rules impose limited consequences and remedies, necessitating Bureau regulatory action.⁸⁷⁵

9.7.4. The Bureau should not allow lenders to subject consumers to three consecutive payment failures.

Payday lenders are also urging the Bureau to raise the number of permissible consecutive payment failures from two to three. These arguments, as well, were made and rejected during the original rulemaking.⁸⁷⁶

In 2016, several of the undersigned organizations urged a limit of one payment failure, in light of the fact, that the covered lenders are making high-cost loans to consumers without adequately considering ability to repay, and that even one failed payment on covered loans is likely a sign of significant distress.⁸⁷⁷ The Bureau itself found that even a single re-presentment causes injury. The Bureau set the limit at two “in an abundance of caution, in an attempt to avoid regulating potentially more legitimate justifications for re-presentment. Nonetheless, the Bureau is aware of the harms that can occur even from a single re-presentment, and that the manner in which a lender engages in re-presentment activities more generally could be unfair, deceptive, or abusive.”⁸⁷⁸ The vast majority of second attempts harmed consumers—without, as noted above, providing payment to lenders. Even those attempts that succeeded by overdrawing the account inflict serious consumer harm. Thus, the strong evidence of consumer harm after the second consecutive failed transfer also could support a ban after the first failure.

The Bureau rejected the call for a limit of one failed transfer attempt and the lenders’ call for the right to subject consumers to fees from three consecutive failed transfers. The lenders have provided no basis for the Bureau to revisit that decision.

⁸⁷² 81 Fed. Reg. at 48054.

⁸⁷³ See Letter from consumer groups to CFPB et al (Sept. 29, 2014), http://www.nclc.org/images/pdf/banking_and_payment_systems/regulator_rdfi_issues_letter_9292014.pdf.

⁸⁷⁴ See NCLC, Consumer Banking and Payments Law § 5.15.6 (5th ed. 2013), updated at www.nclc.org/library.

⁸⁷⁵ 82 Fed. Reg. at 54730.

⁸⁷⁶ 82 Fed. Reg. at 54750-53.

⁸⁷⁷ CRL, NCLC, et al. Comments on 2016 Proposed Rule at 258-259.

⁸⁷⁸ 82 Fed. Reg. at 54753.

9.7.5. There is no basis to delay of the effective date of the Payment Protections.

Payday lender representatives are urging the Bureau to delay implementation of the Payment Protections. Lenders have been on notice of these new limitations and requirements since publication of the 2017 Rule. Lenders have had almost two years to prepare for implementation. Lenders either already use or have access to the technology that can ease any transition in payment practices.

The CEO of the Online Lenders Alliance has noted: “Most lenders do not go past that first presentment, they just don’t go for the second.”⁸⁷⁹ The modest Payment Protections impact only lenders who repeatedly submit bounced payments or use unusual withdrawal attempts to extract unaffordable payments or avoid stop payment orders. To the extent that NACHA rules have already reformed practices by some lenders, compliance is not a problem.

There is also no basis to arguments that there are significant crossover effects impacting both the ability-to-repay provisions and the Payment Protections necessitating a delay of the Payment Protections. The ability-to-repay provisions only impact the underwriting process for originating short-term or balloon payment loans. The only aspect of origination covered by the Payment Protections is the required notice to consumers, which can be provided independent of any changes related to underwriting.

The remaining aspects of the Payment Protections impact the servicing and collection of loans, not origination. The ability-to-repay provisions have nothing to do with the servicing of loans or the processes that impact when failed payments are re-submitted and what notices are given to consumers after origination.

Moreover, many of the loans covered by payment protections are longer-term payday loans that are not even covered by the ability-to-repay provisions. The status of the ability-to-repay provisions has no impact whatsoever on these loans and there is no basis to delay the Payment Provisions for these longer-term loans.

10. CONCLUSION

For all of the reasons discussed above, the undersigned groups urge the Bureau to withdraw its unreasoned Proposal and to ensure on-time implementation of the Rule: vital consumer protections that address the substantial harm caused by payday and vehicle title loans made without ability-to-repay determinations.

APPENDIX A: Individual Borrower Experiences with Unaffordable Short-Term Payday and Vehicle Title Loans

APPENDIX B: Summary of Research by on Payday and Car Title Lending, 1998-present, by Center for Responsible Lending, Consumer Federation of America, National Consumer Law Center

⁸⁷⁹ Kate Berry, “CFPB’s payday rollback plans don’t go far enough for some lenders,” American Banker (Oct. 30, 2018).

APPENDIX C: Index of Selection of Comments Submitted in Support of 2016 Proposed Rule

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Appendix A

Individual Borrower Experiences with Unaffordable Short-Term Payday and Car Title Loans

Introduction

Consumers across the country are devastated by the impacts of payday and car title loans they lack the ability to repay. The experiences are real borrowers' experiences and illustrate the harms associated with unaffordable payday and car title loans. These accounts were collected from a variety of sources. The Center for Responsible Lending (CRL) has an established relationship with some of the victims who recounted their experiences. Other experiences were obtained through Freedom of Information Requests for complaints and original loan contracts that were sent to the consumer protection agencies of certain states. Borrowers' experiences were also derived from news articles and other media sources.

Coding

Following each story, one or more code is applied, indicating the following:

Type of harm experienced, based on the categories of harm the Bureau identifies in its 2017 Final Rule.

- "1"** Borrower endures long loan sequences, including frequent loan renewals, loan flipping, or long cycles of taking out one loan to pay another.
- "2"** Borrower experiences delinquency and/or default, including lender and bank fees triggered by the loan itself, aggressive debt collection, and loss of a vehicle.
- "3"** Borrower suffers collateral harms from default avoidance—making unaffordable payments, including defaulting on other major financial obligations or basic living expenses.

Other loan features:

"CT" Car title loan

Asterisks following an annual percentage rate (APR) indicate approximate APR as calculated by CRL staff, based on the information provided by the borrower.

Borrower Experiences reported in the media since October 2016¹

- a. Ron, from Washington, D.C., took out payday loans before 2006 as he dealt with divorce and a special needs child. He got caught in a cycle that he felt he could not get out of and described it this way: "I am giving them more money, and it is actually exacerbating my problem." Now, he says, "I stay away from those things."

Source: <https://www.c-span.org/video/?457895-6/washington-journal-diane-standaert-discusses-potential-payday-lending-rules>

(1)

¹ CRL last prepared this document in October 2016 for submission with our comment on the CFPB 2016 proposed rule; stories included in that document are in the following section.

- b. Patricia Reynolds, a 73-year-old retired nurse from Missouri, took out a payday loan in 2010 and spent 8 years in a “horrible” cycle. “I was stressed. I had high blood pressure,” she said. “I can go to bed now and not worry about seeing dollar signs going by (and) worrying about that. I can sleep, whereas before I couldn't.”
Source: <https://www.news-leader.com/story/news/local/ozarks/2019/03/24/researchers-link-payday-car-title-loans-poor-health-study/3228125002/>
(1)
- c. Barbara Burgess, a paraprofessional for Springfield Public Schools of Missouri and a yoga teacher, has struggled with payday and title loans since 2011. “It's this vicious, horrible cycle.” She is down to one car title loan, but has had to pawn jewelry and donate plasma. She is behind on her mortgage on the home she’s lived in for 50 years.
Source: <https://www.news-leader.com/story/news/local/ozarks/2019/03/24/researchers-link-payday-car-title-loans-poor-health-study/3228125002/>
(1, 3, CT)
- d. Rakesha Hill of Meza, Arizona, took out a car title loan and was unable to pay it off. “I was already a year into paying” \$100 per month, Hill said, “and nothing was going into the principal.” She eventually escaped with a low-interest loan from a program designed to help borrower’s out of debt cycles.
Source: <https://www.azcentral.com/story/money/business/consumers/2019/02/28/marisol-credit-union-lend-hand-program-helps-maricopa-county-residents-pay-off-auto-title-loan-debt/2957257002/>
(1, CT)
- e. Darius Brown, a Mississippi father, earned less than \$6,000 the previous year and struggled to take care of his family with food stamps and help from friends. “I did do a car title loan, which was a big mistake because I had a Chrysler and they ended up taking it.”
Source: <https://www.wsj.com/video/series/financial-inclusion-in-america/a-portrait-of-poverty-in-america-job-insecurity-and-payday-lending/B5CF9324-E20F-463D-A306-44726B2B0695>
(1, 2, CT)
- f. David Howard, of Mississippi, describes his experience this way: “I knew the predatory lender was a bad deal, but I had family to take care of too. Car notes, taxes, bank bills. If I was to really sit down and put a pencil to it, \$200,000 worth of bills and stuff that I have to pay, in debt too. Now I'm farming and working, driving the school bus, working maintenance/janitorial at a school. And I just have to pay a little bit at a time. Just keep going. Because that's what I've been doing all these years just hoping for better days.”
Source: <https://www.wsj.com/video/series/financial-inclusion-in-america/a-portrait-of-poverty-in-america-job-insecurity-and-payday-lending/B5CF9324-E20F-463D-A306-44726B2B0695>
(1, 3)
- g. A South Carolina minister reports that one of his congregants, an 84-year-old from Lake City, came to him for help after she had taken out a \$250 loan and could not pay it off after almost

three years. She rolled it over each month for \$75.

Source: <http://mylifestylemax.com/entertainment/mick-mulvanneys-master-class-in-destroying-the-government-from-within/>

(1)

- h. Rhonda Patterson, a Savannah borrower, used her car for a \$1,200 title loan to cover medical expenses. The loan ended up costing her as much as \$3,000. “That's crazy -- I'll never do it again,” she said.

Source: <https://www.ajc.com/news/state--regional/payday-lenders-make-loans-georgia-despite-state-ban/FwXwq52Qrt9DA5vsjpaNDN/>

(1, CT)

- i. Steven Bramer, Jr., a veteran from Indiana, took out a payday loan thinking it would be a short-term fix. He struggled to keep up with the payments while caring for four daughters, and was still paying a year later. He said: “When I averaged it out, for a \$1,000 loan, if I paid it back in a year I'd be paying back \$3,600.”

Source: <https://indianapublicmedia.org/news/advocacy-groups-say-lending-bill-would-create-cycle-of-debt-for-hoosiers.php>

(1)

- j. Pastors at a Fort Worth church helped a congregant who had borrowed \$300 from a payday lender as well as a title loan. Eventually her debt came to \$10,000 and her car was scheduled to be seized by the lender until the church helped her.

Source: <https://www.christiancentury.org/article/news/churches-use-advocacy-small-loans-fight-predatory-lending>

(1, CT)

- k. Jennifer Williams, a high school teacher in Cleveland, Mississippi, got caught in a cycle of debt with multiple loans from payday stores. She paid an \$87 fee each payday for each \$400 loan she had taken out. “I was taking out payday loans to pay bills after I had spent the majority of the money (in my paycheck) on payday loan fees,” said Williams.

Source: <https://mississippitoday.org/2018/10/15/as-payday-loans-thrive-in-mississippi-neighboring-states-move-to-cap-high-interest-rates/>

(1, 3)

- l. Ronald Laster was the on-again off-again guitar player for James Brown until the legendary singer died in 2006. He went to Georgia Auto Pawn to try to catch up on bills, and ended up paying back \$6,200 for \$2,500 borrowed to reclaim title to his car.

Source: <https://www.mcclatchydc.com/news/nation-world/national/article216915485.html>

(1, CT)

- m. Stephanie White of Kansas City, Missouri has taken out payday loans and seen her daughter nearly lose her truck. "It's like legal robbery," she said.
Source: <https://www.kshb.com/news/local-news/community-leaders-think-of-options-other-than-payday-loans>
(1)
- n. Charles Cline of Dayton, Ohio took out a \$1,000 loan and ended up paying \$1,600, due to extensions, fees and interest. "Trying to help yourself get out of a bad situation, you end up hurting yourself more. They are preying on people that are poor, that are less fortunate, that need to get by throughout the week," said Cline, adding he won't be taking another payday loan.
Source: <https://www.wral.com/payday-lending-a-horrible-cycle-for-some-ohioans/17627801/>
(1)
- o. Denise Brooks, a 65-year-old home care worker from Springfield, Ohio borrowed about \$200 from a payday lender about a decade ago to pay off an overdue car insurance bill. She had to reborrow to pay other bills for nine months. The stress made her feel suicidal. Said Brooks: "I was digging a hole. I felt there was no way out."
Source: <https://www.wral.com/payday-lending-a-horrible-cycle-for-some-ohioans/17627801/>
(1)
- p. Wyatt, of Steubenville, Ohio, took out a car title loan: "When it comes down to it, it's payday and you're not quite making it on bills. Your car is all you have. The place I'm at now, they do well, but I've had two or three cars I've lost because I can't make the payments or they won't work with you, or you borrow \$1,000; they want \$1,800 back."
Source: <https://wtov9.com/news/local/ohio-house-passes-bill-on-payday-lending>
(1, 2, CT)
- q. Before North Carolina ended triple-digit interest lending, a former state trooper and Marine veteran, John Kucan, took out a payday loan. The lender, Advance America, renewed his loan 15 times at 450%. Eventually his \$850 loan cost him \$2,400.
Source: <http://businessnc.com/predatory-lenders-add-pressure-for-easier-credit/>
(1)
- r. Demetrius Johnson took out a \$500 loan from Speedy Cash in southeast Denver. Seven years later, he had not been able to pay it off. He said: "Something that is very easy to grab can also cut you," Johnson told The Colorado Independent. "There's always these asterisks and small print."
Source: <https://www.coloradoindependent.com/2018/05/15/payday-loans-cap-ballot/>
(1)

- s. Denise Brooks, of Cincinnati, Ohio took out a payday loan, to pay her car insurance bill. She said: “It just snowballed so bad and I couldn’t get out of that hole. I couldn’t pay my bills cause I owed them and I couldn’t borrow any more, I was maxed.”
Source: <https://radio.wosu.org/post/battle-brewing-over-ohio-payday-lending-bill#stream/0>
(1, 3)
- t. Wayne Wright of Jacksonville, Florida, an elder in his church, took out a payday loan. He said he had not realized “the danger in stepping in that water.” Payday loans eventually took hundreds from each paycheck. “You’re borrowing from the devil to pay the devil.”
Source: <http://floridapolitics.com/archives/255737-preachers-pillory-payday-lenders>
(1)
- u. Minnesota single mother Christina Thomas was making \$27,000 a year when she took out a \$400 payday loan. Over five years, Thomas paid \$30 to \$40 every two weeks for another advance of \$200 to \$400, paying effective annual interest rates of 250% or more. She said: “I was almost always short of the money to pay all the bills. I tried to work extra hours, and sometimes I would borrow [as little as \$200], but I could not get ahead. I felt like I was in a hole.”
Source: <http://www.startribune.com/st-anthony-common-ground-lacking-on-payday-lending-issue/459817213/>
(1, 3)
- v. Mike Webb of Indianapolis borrowed \$400 from a payday lender to make a car payment. He took out another loan to pay bills, starting a cycle that ended up putting him \$12,000 in debt. His checking account was closed because of overdraft fees, and he filed for bankruptcy.
Source: <https://www.theindychannel.com/news/call-6-investigators/cost-of-living-payday-loans-leave-some-hoosiers-bankrupt-attorney-says>
(1, 3)
- w. Single mom and nursing student Stephany Morales took out a payday loan for a nebulizer for her child, thinking it would be a one-time expense. She had to re-borrow for living expenses and eventually had to drop out of school. She lost her car and almost lost her apartment. Nearly four years later she had already paid over \$13,000. She moved in with family, takes a bus, and struggles to get a cell phone because of a poor credit profile.
Source: <https://truthout.org/articles/help-the-cfpb-stop-predatory-loans-from-ruining-lives/>
(1, 3)

- x. Billie Aschmeller, a 49-year-old woman on Social Security income from Springfield, Ill., took out a short-term car title loan two years ago, using her car as collateral, then found herself stuck "like a hamster on one of those wheels" in a cycle of debt. She had borrowed \$1,000 to buy baby supplies for her pregnant daughter, repaid \$150 a month, and a year later, still owed \$800. She said: "They loan you the money at these outrageous rates, and then they just bleed you."
Source: <http://www.tampabay.com/incoming/payday-lending-faces-tough-new-restrictions-by-consumer-agency/2340064>
(1, CT)

- y. A single mom in Toledo took out a \$500 payday loan. She said: "It took me two years to get out of that first loan. Every two weeks I had to borrow more. I had nearly \$800 in bills every month. It was a crazy cycle."
Source: <https://toledocitypaper.com/feature/predatory-payday-loan-lending-out-of-hand-in-ohio-and-toledo/>
(1)

- z. Glenda Wood of Nebraska took out a \$500 payday loan in 2006 that would take nearly a decade to get out from under. She said: "We estimate we spent close to \$10,000 paying back that original loan. We felt exploited, trapped, powerless and unable to find a way out of the cycle."
Source: https://www.omaha.com/news/legislature/overhaul-in-store-for-payday-loan-industry-if-bill-passes/article_8f00eb0c-4a6f-5a75-99ba-8aa5c5dc1c45.html
(1)

- aa. Elsa Ramon-Moody of Lincoln, Nebraska took out a \$500 payday loan. "One loan became two and two loans became three," she said. The loans resulted in a court judgment that further ruined her credit. "I don't want to play the victim and say, 'Oh, poor me.' I needed the money to not get evicted. But the thing is so usurious and so predatory that the Legislature has the responsibility to regulate this and not allow these sharks."
Source: <https://www.readingeagle.com/ap/article/lenders-low-income-advocates-face-off-on-payday-loan-bills>
(1, 3)

Borrower Experiences prior to October 2016

1. Arthur, a 69-year-old warehouse worker and grandfather of seven, started with a loan of \$200 from Advance America. The loan eventually increased to \$300. Every payday, rather than defaulting or coming up short on bill money, Arthur went into the Advance America store and paid a fee of \$52.50 so Advance America would not deposit his check for the full loan amount. Advance America flipped the loan over a hundred times, until his total interest paid was an estimated \$5,000. The clerks knew him by name and often had his paperwork ready for him when he came in. Payday lenders have a name for consumers they see every payday: “26ers” — because they pay up every two weeks, 26 times a year. In Arthur’s case, they saw him once a month rather than every two weeks, but only because his repayment came from his monthly Social Security check.
Source: *Caught in the Trap: The real story from payday lending borrowers* – CRL Issue Brief, June 2010
(1, 3)
2. Christopher received a \$500 payday loan from CashNetUSA, with a total repayment of \$625. He had to roll the loan over to the next month five subsequent times, meaning that he paid a \$125 fee each time with none of the fee going toward paying off the principal. As a result, he paid \$1250 total on his \$625 loan. A few months later, CashNetUSA told Christopher they had increased his credit line to \$1,500. He obtained the \$1,500 loan with a total repayment of \$1,875. When payment was due, Christopher did not have the money to repay the loan and contacted CashNetUSA prior to the due date to arrange a payment plan. The company debited a \$375 rollover fee from his checking account and then took the entire \$1,500 loan amount from his account anyway. Christopher did not have enough money in his account to pay the loan, so he accrued \$934.82 in NSF fees from his bank and was unable to pay any of his other bills, including child support and rent. In order to prevent eviction he faced as a result, he took out another payday loan from CashNetUSA for \$1,500 to pay his rent, further perpetuating the cycle of debt.
Source: Florida Attorney General’s Office, 2007
(1, 2, 3)
3. Sandra, a successful professional, worked diligently to keep up with her bills. In a tough time, she turned to payday lending. After several rollovers, Sandra’s first loan was due in full. She couldn’t pay it off, so she took a loan from a second lender. Frantically trying to manage her bills, she eventually found herself with loans from six payday lenders including Advance America, Check Into Cash, Check ‘n Go, Urgent Money Express and two on-line lenders. She paid over \$600 per month in fees, none going to pay down her debt. After writing checks to payday lenders totaling \$9,200, she was evicted and her car was repossessed. "At the time it seems like the way out, but this is not a quick fix. It’s like a ton of bricks," said Sandra.
Source: *Caught in the Trap: The real story from payday lending borrowers* – CRL Issue Brief, June 2010
(2, 3)
4. Edith, a single mother, cut down on her family’s groceries, stopped driving her car, and kept her lights off to save electricity as she scrambled to pay the fees on her payday loans. She took out her first \$300 payday loan, and then a second and third, trying to repay the first. Edith borrowed a total of \$900. She paid \$135 in interest twice a month because she could not afford to repay

the \$900 principal owed. During the next year, she paid over \$3,500 in fees alone, and still owed the original \$900. Source: CRL website: The Victims of Payday Lending.

<http://www.responsiblelending.org/issues/victims-payday>.

(1, 2, 3)

5. Delores, a 78-year-old retiree, borrowed \$730 at an APR of 300% from Wisconsin Auto Title Loans when she needed new tires for her 1992 Buick Park Avenue. The company required her to turn over the spare key and title to her vehicle. A month later on the due date, her loan had grown to \$1,027 and she couldn't afford to pay it. The amount due was more than her entire Social Security check. Because she couldn't imagine giving up her vehicle, she began to borrow money from other sources just to pay the interest on the car title loan, never making a dent in the principal. She eventually sold her car for \$1,000 to help pay the debt.

Source: Yeoman, Barry. "Sudden Debt." AARP Magazine September & October 2006: 108-113, 128. Print.

(1, 2, 3, CT)

6. Jane, a 79-year-old woman, obtained a \$380 payday loan from SpeedyCash with a 259% APR to help pay for her daughter's cancer medication. She earned \$922 in social security benefits and paid a rent of \$430; the lender did not ask her about her ability to repay the loan and simply required proof of income. Despite making 16 monthly payments of between \$65 and \$95, Jane still owes \$500 on the loan. She has never made a late payment although she owes other bills because that would allow the lender to take the full funds straight from her account. She reasons, "I would rather not pay my light bill than for the [payday loan company] to take all the money I need to pay my rent."

Source: Video on file with Texas Appleseed.

(1, 3)

7. Shortly after a heart attack forced her to retire, Sandra was short on cash. Her ex-husband had fallen behind on his alimony payments, and she didn't receive enough income from her monthly disability checks to cover all her bills. She received a payday loan for \$150 from First Southern Cash Advance to pay her overdue telephone bill. The next month, her husband still had not paid the alimony, so she was unable to repay the loan. As a result, she borrowed money from another payday lender, then from a third and fourth just to attempt to pay off one loan and the interest. By the time she sought help from a legal aid attorney, Sandra was forced to give up her apartment and move into a trailer in her brother's backyard.

Source: Yeoman, Barry. "Sudden Debt." AARP Magazine September & October 2006: 108-113, 128. Print.

(2, 3)

8. Amy Keaton of Spring Hill, MO said during a public comment session that desperation led her to take out a \$200 payday loan a year ago. "You get into that mindset when you are struggling that tomorrow will take care of tomorrow," Keaton said. "So I took out the loan, even though I knew that it wasn't a very good idea." Keaton said the lenders expected a payment of \$297, and in return she would receive \$250 for her bills. The amount she actually ended up paying escalated. "I was paying almost \$100 a month just to take my own paycheck home," she said. Keaton will have her debt paid off this September with the help of Catholic Charities.

Source: <http://www.kansascity.com/news/business/article81380962.html>

(1)

9. Terrence Wise, who supports tighter regulation of the industry, said a \$150 payday loan ended up costing him \$400. "They were calling my job and harassing me at work," Wise said. "My employer told me I could be disciplined if they didn't stop harassing me. I had papers brought to my home serving me to court. And all of these things, they make you feel degraded."
Source: <http://kcur.org/post/hundreds-rally-downtown-public-hearing-proposed-payday-loan-rules#stream/0>
(1, 2)
10. Maryann Olson's monthly Social Security check wasn't enough to cover the cost of orthopedic shoes that she desperately needed so she turned to a payday lender. However, her \$150 loan quickly turned into \$1,900 in debt.
Source: http://www.oregonlive.com/opinion/index.ssf/2015/03/congress_must_crack_down_on_pa.html
(1)
11. "We got a payday loan of about \$200," Lara said. By the time payday came around the lender wanted \$300. They were able to pay back the \$300, but they came up short on their next payment. "So we took out another loan," Lara explained. And just like that, the trap door slammed down. "It's just so easy to get. So easy! You just bring a paystub down and you tell them how much you need," Lara said. "I kid you not, we did that dance for close to six months," Lara said. "It was horrible. Just unbelievably horrible." Finally, Lara had to beg her parents to help get them out of the cycle for good.
Source: <http://www.tcdailyplanet.net/new-guidelines-nonprofits-help-curtail-predatory-payday-loans-in-minnesota/>
(1)
12. Christine obtained a payday loan from US Fast Cash for \$350 in May 2007. The contract stated that she would owe a total of \$455, which reflects an APR of 496.73%. When Christine discovered that payday loans were illegal in Kentucky, she repeatedly contacted US Fast Cash to inform the company that she would instead pay a total of \$411.61, the maximum amount allowed under State law for a \$350 loan. However, US Fast Cash insisted that she owed \$560 in payments and sent her a threatening and intimidating email accusing Christine of "unreasonable demands" and trying to "set the terms" of the loan and stating that no one "twisted [her] arm" to obtain the loan.
Source: Office of the Attorney General, Commonwealth of Kentucky, 2007
(2)
13. 500FastCash solicited Beverly via email to obtain a payday loan for \$300, and she accepted. She had an agreement with 500FastCash to debit her bank account on Fridays as she is paid on those days. Instead, the company debited her account on Thursdays before she was paid, which resulted in extensive bank overdraft fees. Beverly's bank closed her checking account, and she has hired a bankruptcy attorney. Moreover, 500FastCash has put her employment in jeopardy. The company has harassed her at work, calling her office despite her numerous emails to the company stating that she is not allowed to receive personal calls during work hours.
Source: Office of the Attorney General, Commonwealth of Kentucky, 2010
(2, 3)

14. Kenneth obtained a \$250 payday loan and paid a total of \$389 on the loan. Shortly thereafter, he took out another \$250 loan with an APR of 547.5%. He paid \$75 toward the new loan, but combined with the overdraft fees he had already been charged on the first loan, he had paid a total of \$500. Kenneth asked the company to mark his account paid in full as he had repaid the \$500 total principal amount of the two loans, but the company refused and continued to call him even though he requested that all correspondence be in writing.
Source: Office of the Attorney General, Commonwealth of Kentucky, 2010
(1, 2)
15. Carole received several payday loans in 2007 from different companies, including Ace Cash Express, Quik Cash, and Check 'N Go. She was on a fixed income consisting only of her disability payments, and she knew she could not afford to pay the balance of the loans. The companies never verified how many outstanding loans she had or whether she could actually pay the loans back. She notified each company that she wanted to pay the balance on her loans but could only pay \$10 a month because she needed to have enough money to purchase her medication. Carole's son received a call from a person claiming to be a lawyer who told him that his mother was engaging in check fraud due to the outstanding payday loan. The caller instructed him to tell his mother to buy a prepaid card with \$120 on it and to send her the routing number. She was collecting for a payday loan through Ace Express, which Carole could not to pay on, and the total loan price had ballooned up to \$839.93. Carole could not afford to buy the prepaid card and was concerned that she would be sued by the company.
Source: Office of the Attorney General, Commonwealth of Kentucky, 2010
(2, 3)
16. Dennis received a \$300 payday loan, and was under the impression that he would owe a total of \$390 on the loan. Every payday, \$90 was debited from his bank account. The company continued to withdraw money, and by the time he was forced to close his bank account, he had paid a total of \$990 on a \$300 loan. After his account was closed, the payday lender began calling his place of employment despite Dennis's requests that all correspondence be in writing, and the company has threatened to sue him and garnish his wages.
Source: Office of the Attorney General, Commonwealth of Kentucky, 2010
(2)
17. After Joe received a payday loan, he became unemployed. He owed CashNet a payment of \$332.22, so he explained the situation to a representative of the company. They said that they understood. He then received a call at his parents' home, stating that a collection agency needed to speak to him concerning check fraud. CashNet had sold his account to a third party without telling him, and the collection agency attempted to charge a bank account that had been closed. Although he had previously told CashNet he closed that bank account and would need to pay with a new debit card, the collections agency accused him of committing check fraud. The accusation of check fraud has caused unnecessary tension and stress between Joe and his parents.
Source: Alabama Attorney General's Office, 2011
(2, 3)
18. After receiving a \$250 payday loan from EZ Money, Terri was contacted by the company at her place of employment. Despite the fact that she informed EZ Money she could not receive personal correspondence at work, the company sent a letter to her job informing her that she

had an outstanding balance on her loan. The letter even included the name of Terri's supervisor, which Terri interpreted as a threat to contact her employer.

Source: Alabama Office of the Attorney General, Consumer Affairs Section, 2010
(2, 3)

19. Robyn received a payday loan from National Credit Consultants three years ago. After making three sizeable payments to the company, Robyn asked to have her due date pushed back just one day. The company refused, threatened to have her arrested, and insinuated that they would contact her place of employment. Robyn has been brought to tears several times and feels sick from the stress of the 4-5 calls she receives from National Credit Consultants each time a payment is due.

Source: Florida Attorney General's Office, 2011
(2, 3)

20. Justin received a payday loan for \$450 from CashNet USA. Shortly thereafter, he noticed there was an additional \$250 deposit in his bank account. He discovered that the credit was for a loan that he never applied for. He called the company and was told that CashNetUSA created a new loan on top of the one he already had because he had "shown interest." The company told him he should have declined the loan within three days if he did not want it, which he was unable to do because he had been out of town with no access to internet to check his bank account.

Justin's bank account has been debited repeatedly for payments for the two loans; as a result, he has accrued \$450 in bank overdraft fees and his bank has restricted the use of his debit card.
Source: Florida Attorney General's Office, 2008
(2)

21. A San Antonio family requested assistance from their church in developing a household budget and becoming financially independent. In the course of developing a budget, the church deacon discovered that the family would be able to live within their means except for one item of debt that was dragging them down: a \$700 payday loan they had taken out roughly four months earlier to help with a rent payment on their home. The terms of the loan: \$200 every two weeks was automatically deducted from the husband's bank account and timed with the deposit of his paycheck. This \$200 did not reduce the original amount of the loan. It merely allowed for the \$700 principal to roll-over until the next pay-period. In the course of the four months the family had maintained this loan, they had rolled the principal over nine times—at a cost of \$1,800.

Now, as they approached the church again for help, they needed help to pay their rent or face eviction.

Source: <http://www.christianitytoday.com/local-church/2016/july/texas-pastor-payday-loan-reform-isnt-distraction-its-christ.html>

(1, 2, 3)

22. Dodie received a \$500 payday loan from National Payday. The company now says that she owes over \$1,200 on the loan but will not explain the extra fees. National Payday has called her employer, her family, and her husband's employer and has threatened to file criminal charges against Dodie. Her mother had a heart attack after one of the company's harassing phone calls. Dodie informed National Payday that she has filed bankruptcy, but the calls continue.

Source: Florida Attorney General's Office, 2006
(2, 3)

23. Over a 17-month time period, Lisa, a single mom, received 35 payday loans from Urgent Money Service – roughly one loan every two weeks. She spent over \$1200 in fees for a \$255 cash loan that kept rolling over because she could never repay the loan within the two-week period. Each time, she would write a check for \$300 and receive \$255 back in cash. Urgent Money Service never took into account Lisa’s income and expenses. Each of her biweekly paychecks amounted to only \$600, so she was left with only \$300 for her other bills and expenses until her next paycheck. The debt trap cycle continued as she couldn’t afford to pay back the loan and couldn’t stretch her remaining \$300 to cover all her bills without obtaining yet another loan. The only way she could stop the withdrawals from her bank account was to close her account. It took her two years to finally pay off the \$255 loan.
Source: Commerce Committee meeting testimony, North Carolina General Assembly, 6/17/2003 (1, 2)
24. Lenny, who made about \$600 a week, went to Advance America thinking a payday loan would help him catch up on an overdue bill. Over a year later, he had renewed his Advance America loan every two weeks, fallen deeper into debt, and taken a second payday loan to stay afloat. Lenny lost his apartment and ended up in a homeless shelter. While he lived there, Advance America continued to flip his loan, charging \$20 per \$100 every two weeks, 521% APR.
Source: *Caught in the Trap: The real story from payday lending borrowers* – CRL Issue Brief, June 2010 (1, 2, 3)
25. Mr. & Mrs. Anderson were unable to cure the default on their home loan because of their payday loans. A construction worker, Mr. Anderson had taken out payday loans from Advance America to help them through a bout of bad weather that slowed his work. They paid \$200 every two weeks in fees to Advance America, for loans in both his and her names. This debt disqualified the couple for their loan modification.
Source: *Caught in the Trap: The real story from payday lending borrowers* – CRL Issue Brief, June 2010 (3)
26. Jason, a military service member who worked on a nuclear submarine in Kings Bay, Georgia, borrowed \$300 from Advance America to make ends meet after being in a car accident. He soon found himself taking out loans from other payday lenders as he fell further and further behind. "In five months, I spent about \$7,000 in interest, and didn't even pay on the principal \$1,900. I was having marital problems because of money and didn't know what to do for Christmas for my kid," Jason told an AP reporter. The base emergency relief office finally helped Jason by paying off his triple-digit payday loans, some as high as 780% APR, and letting him repay the charity’s interest-free loan over 18 months.
Source: *Caught in the Trap: The real story from payday lending borrowers* – CRL Issue Brief, June 2010 (1, 3)
27. Clarissa and her 15-year-old son put in more sweat equity hours than required on their Habitat for Humanity house, in joyful anticipation of living in their own home. Clarissa worked full time but received no child support and struggled to manage her expenses, sometimes taking on a second job. When the company she worked for shut down, Clarissa borrowed from Advance

America and Nationwide. Eventually, when she couldn't repay one of her loans, the payday company deposited the check they were holding as collateral. The check bounced and both her bank and the payday lender charged her additional fees for insufficient funds.

Source: *Caught in the Trap: The real story from payday lending borrowers* – CRL Issue Brief, June 2010
(2, 3)

28. Anita went to an Advance America store in hopes of finding a solution to a common problem -- how to delight her grandkids on Christmas. Unable to repay the loan, she had to renew her loan with Advance America every payday, paying \$45 to keep the same \$300 loan outstanding. She went to a second payday lender, Check 'n Go, to help repay Advance America. Anita could not afford the \$820 it would take to pay off the two loans in full and get out of the trap. After just four months, she had paid almost \$1,000 in fees, and still owed the \$820. "I got a promotion and a raise, but I never saw any of that money," said Anita. She finally went to her church to get help paying the rent, and to a consumer credit counseling agency to get help negotiating a repayment plan. It took her nine more months to complete these payments.

Source: *Caught in the Trap: The real story from payday lending borrowers* – CRL Issue Brief, June 2010
(1, 2)

29. Danny, a forklift operator from Kannapolis, was making \$9.00 per hour. He got behind on his bills after being hospitalized from a heart attack and stroke. He went to his first payday lender in March 2000 and borrowed \$300 for a 7-day term. This was about the same as his weekly pay, so he could not afford to pay back the loan, and got caught in the debt trap. Over the course of two years, Danny used eight different lenders including Advance America, Advance Internet, Check into Cash, and First Southern Cash Advance. He paid more than \$5,000 in fees over the next two years, with over 170 check stubs for payments to these payday lenders.

Source: *Caught in the Trap: The real story from payday lending borrowers* – CRL Issue Brief, June 2010
(1)

30. Stephanie paid her first payday loan back the first time when it was due on payday, but a few days later came up short again, so she took out another loan. "I was paying the fees, but still coming up short on bills. So I got a loan from another lender just to pay the fees on my other loans. I ended up with several loans from different payday lenders, struggling to pay the interest every two weeks so I wouldn't default, because if I did they would have passed my check to the bank." Stephanie had loans with Advance America, Check Into Cash, Check 'n Go and several others. Eventually she was paying \$800 every month just in interest fees, without paying down any principal. "The payday lenders were not willing to work with me, even after I talked to them about my situation following the advice of my credit counselor," she said. One payday lender threatened to send her check to the magistrate's office, and to take her to court for writing a bad check.

Source: *Caught in the Trap: The real story from payday lending borrowers* – CRL Issue Brief, June 2010
(1)

31. Betty, a senior, took out a small \$100 payday loan. She had no other debt at the time. When this loan came due a month later, she borrowed from a second payday lender to repay the first.

Then then she did this four more times. With six loans, she was paying over half of her \$564 monthly Social Security income in payday fees, never paying down a penny of principal on these loans. She lost her phone and got one-time emergency help from social services to avoid eviction. Some time later, we could no longer reach Betty at her apartment.

Source: CRL Issue Brief: *Why We Must Keep Payday Lenders Out of NC: North Carolinians Caught in the Debt Trap*, April 2016

(2, 3)

32. With retirement and disability income, Mary, a 62-year-old African American mother and grandmother, brought in about \$1,000 per month. She took out her first payday loan because she needed "a little extra" money to go out of town. Like many borrowers, she had to take out a second loan to pay off the first. She ended up with loans from four payday lenders. "When I get a little extra money, I'm going to pay them off and I'm through with them," said Mary. "It's a rip off. There's nothing cute about it. I'm supposed to get some money, but I lose money." The fees Mary paid to keep from defaulting on her payday loans added up to over 40 percent of her monthly income.

Source: CRL Issue Brief: *Why We Must Keep Payday Lenders Out of NC: North Carolinians Caught in the Debt Trap*, April 2016

(1)

33. After her husband was laid off, Pamela borrowed \$500 from a payday lender. But the Phoenix, Arizona, woman found that she could not manage to repay the \$588 she owed (\$500 plus \$88 in fees) when it was due in two weeks. She went to a second lender to pay the first, and a third to pay the second, getting in deeper until she had five loans of \$500. She was paying \$880 every month in payday fees, never paying down the principal owed. By June of 2004, she had paid \$10,560 in interest on these five loans. She was afraid of going to jail if she stopped paying the fees, and had no idea how to get out of the trap.

Source: CRL website: *The Victims of Payday Lending*.

<http://www.responsiblelending.org/issues/victims-payday>.

(1, 3)

34. Kym, a single mother working as a temp, took out a payday loan when a friend told her about how she could borrow money until her next payday. She quickly fell into the debt trap and had to pay a high fee every payday to renew the loan and avoid default. When she had trouble keeping up this cycle, she took out a second loan to pay fees on the first. She paid on both loans for about a year, finally convincing one of the lenders to let her pay off the loan in increments. It took Kym another eight months to shake free from the debt trap.

Source: CRL website: *The Victims of Payday Lending*.

<http://www.responsiblelending.org/issues/victims-payday>.

(1)

35. As a grad student, Allen found it very difficult to pay off the four payday loans he had accumulated. When he did manage to pay off one or two of the loans, he soon found himself strapped for cash and forced to renew the loan. Allen finally sought help from a credit counselor. He sent letters to the payday lenders asking for a payment plan he could afford. But instead of helping him work out payments, one of the lenders deposited his check upon receiving his letter, and it bounced twice before he could cancel the check. Two other lenders were internet-based companies who automatically drafted his checking account. He had to close

his account to stop them. When one of these lenders received Allen's payment plan letter, they called and threatened to send a sheriff to his house and serve him court papers. Allen now realizes he has technically repaid the debt several times over in rollover fees.

Source: CRL website: *The Victims of Payday Lending*.

<http://www.responsiblelending.org/issues/victims-payday>.

(2)

36. Rhonda and her two daughters experienced a financial crisis last summer that sent Rhonda looking for help from payday lenders. She found not the help she needed, but disaster. Rhonda fell into the payday lending debt trap - the terms of the loans she took out required her to either pay them off in less than two weeks or have \$90 fees automatically debited from her bank account repeatedly. Those loans, at triple-digit APR, have cost her much more than the exorbitant fees. Her family's finances are in ruins and she is planning to file bankruptcy.

Source: CRL website: *The Victims of Payday Lending*.

<http://www.responsiblelending.org/issues/victims-payday>.

(1, 3)

37. Like many borrowers, Janis went to one payday lender to get help paying the fees of another. She ended up borrowing from three different lenders. Since she could not pay the loans in installments, she paid the repeat fees until she got her tax returns. When she couldn't keep up with the fees one lender demanded, they called and left her a message saying that they would take her to court if her account was short. It was several months before Janis found her way out of the trap, and she needed help from social services during this time, once to pay her rent and twice to pay her light bill.

Source: CRL website: *The Victims of Payday Lending*.

<http://www.responsiblelending.org/issues/victims-payday>.

(1, 2, 3)

38. Sandy's first payday loan was for \$100, with an \$18 fee. She worked down the street from the payday shop, and since she was short on cash, she called to see what she needed to get a loan. All she needed was a source of income and a banking account, so she walked into the shop, and walked out 15 minutes later with the loan. Sandy got caught up in the payday lending debt trap, taking out multiple loans to pay the fees on each one as they became due. At one point, she was paying \$300 every two weeks for four different loans. Over a six-month period, this added up to \$3,600, but she was in the trap much longer, paying off one loan, then another, until she lost her job and could no longer keep up with the fees. She filed bankruptcy.

Source: CRL website: *The Victims of Payday Lending*.

<http://www.responsiblelending.org/issues/victims-payday>.

(1, 2, 3)

39. Betty, a senior citizen, paid over half of her \$564 monthly Social Security income in payday fees, never paying down her loans. She lost her phone and needed emergency help from social services to avoid eviction.

Source: CRL website: *The Victims of Payday Lending*.

<http://www.responsiblelending.org/issues/victims-payday>.

(2, 3)

40. Lauren received a car title loan from TitleMax for \$817.19, with an initial APR of 66.02%. (She was also charged monthly for automobile insurance coverage, which the company claimed was voluntary. However, TitleMax required certain stipulations if customers wanted to use their own auto insurance, including paying the policy through the maturity date of the transaction in advance, listing the company as a lien holder on the insurance policy, and carrying a deductible of no more than \$500. Lauren could not afford to pay her insurance premium in advance, and as a result had to pay TitleMax monthly for auto insurance in addition to the loan principal and interest.) As she could not afford to pay off her loan in full each month, Lauren was forced to refinance the loan 13 times. Each renewal resulted in an increase in the monthly auto insurance premium she was charged by TitleMax. She eventually surrendered her 2004 Chevy van to the company because she could not afford to repair it. At the time of surrender, her balance on the loan had ballooned to \$3,883.35 and she had been charged \$4,128.55 in fees and other charges over the course of the loan.

Source: Florida Office of Financial Regulation, 2014
(1, 2, CT)

41. Fearing she and her family would soon lose their home, Jessica obtained a \$1,900 car title loan from Instaloan in October of 2013. It was marketed as a no-credit-check collateral loan, but she did not understand what that meant. When she asked the company representative, he told her that it was a car title loan but he wasn't allowed to tell customers that. Jessica was also told that she was required to purchase their auto insurance even though the contract terms indicated the insurance was voluntary. Over the next 13 months, she paid more than \$4,000 for her \$1,900 loan, and none of her payments have been applied toward the principal of her loan. Recently, she moved from Florida to Arizona. She called Instaloan to ask for their address so she could send her payment via mail and was told she could not mail a payment because the company needed to receive the payment and a signature on the loan renewal on the same day. Instaloan told her the only option was to contact another title loan company and have them buy out the loan at the payoff amount. The company representative recommended that she contact TitleMax, which she realized was the same company as Instaloan. No one from TitleMax has returned Jessica's phone calls, and she is worried that her vehicle will be taken.

Source: Florida Office of Financial Regulation, 2014
(1, 2, CT)

42. Shirley, an elderly woman on a fixed income, received a car title loan from TitleMax for \$2,453. She did not understand that the loan had to be repaid in one lump sum or it would be flipped each month and she would accrue new finance charges. Because she was unable to pay the full amount of the loan at once, TitleMax flipped the loan six times. Shirley paid over twice the principal amount of the loan to the company, including \$1326 for the company's auto insurance. When she was ultimately unable to make a monthly payment, TitleMax repossessed her vehicle.

Source: Florida Office of Financial Regulation, 2014
(1, 2, CT)

43. James, a 67-year-old on a fixed income, obtained a \$500 car title loan from TitleMax in May 2013. He had hoped to be able to pay the loan off in three months; however, he has paid \$957 over the past year and still owes \$603.98 – over \$100 more than the original loan principal. His loan has been flipped 14 times, and he does not understand why he is also charged a monthly auto insurance premium. After paying almost twice the original principal amount, James is now in danger of losing his vehicle as TitleMax claims he is 15 days late in making a payment.
Source: Florida Office of Financial Regulation, 2014
(1, 2, CT)
44. Deborah received a \$2,000 car title loan from TitleMax in July 2014. Her loan has been flipped ten times and despite paying over \$4,000 to the company, she still owes \$1,785.73 – almost as much as the original amount of her loan. Over the course of the year that she's been paying on her loan, the APR has ranged from 43.33% to 46.48% and she has been forced to pay for costly auto insurance that she does not want and did not understand she would have to pay at the time she signed the contract. Representatives from the company have called her place of employment several times a day, putting her job at risk. When she was late on her payment to TitleMax, they sent a tow truck to her place of employment to repossess her vehicle.
Source: Florida Office of Financial Regulation, 2014
(1, 2, CT)
45. Sam received a \$604.31 car title loan from TitleMax in July 2013, which carried an APR of 78.7%. His loan was flipped three times and he was forced to pay for auto insurance that he did not need or want. Although the loan contract indicated that the company's auto insurance was voluntary, he was told that his existing car insurance did not meet the company's requirements. The loan contract stated that the policy through TitleMax does not insure the customer against liability for bodily injury or property damage caused to others and does not suffice under Florida's law requiring all resident motorists to have auto insurance for personal injury protection and property damage. As a result, Sam paid \$246.17 over four months for TitleMax's car insurance, in addition to the coverage he paid for under his existing insurance policy. Over four months Sam paid a total of \$1,186.00 for a \$604 loan.
Source: Florida Office of Financial Regulation, 2014
(1, 2, CT)
46. Betty was 78 years old and drove very infrequently when she decided to pursue a car title loan for \$2,217.29 from TitleMax. The company required her to buy their auto insurance unless her current policy met their criteria. After realizing that she had paid \$348.48 over three months for their additional auto insurance that she did not want or need, she decided to decline TitleMax's insurance and use her current coverage with Geico instead. She believed her insurance met TitleMax's requirements, but she received a call from the company telling her that she had to list them as the payee within fifteen minutes or be forced to pay \$175.00 per month for their policy. She believed she was being taken advantage of by TitleMax because she was elderly and did not understand what she was signing.
Source: Florida Office of Financial Regulation, 2014
(1, 2, CT)
47. Derek received a car title loan from TitleMax for \$1,541.06 in May 2014. After paying on his loan for three months, his fourth payment was late. As a result, the company required that he take out an auto insurance policy even though he already had full insurance coverage through

another provider and had listed TitleMax as the payee on that policy. He gave them documented proof of his current insurance policy but was told that he must purchase TitleMax's additional insurance although the form he was required to sign stated that the insurance was voluntary. When he attempted to make his payment of \$98.00, Derek was told that he owed an additional \$141.82 for the additional insurance. Derek could not afford the increased monthly payment and TitleMax is now threatening to repossess his car.

Source: Florida Office of Financial Regulation, 2014
(1, 2, CT)

48. Diego received a car title loan from TitleMax for \$654.77 with an APR of 76.4% in September 2013. Over the next year, his loan was flipped eleven times. During this time, he was charged \$334.30 extra for auto insurance financed through the company. Although he had a current auto insurance policy, TitleMax required that his policy be current through and including the next payment date. However, Diego found that the company would not accept his insurance policy because he paid his insurance premium each month on the day after his loan payment was due and therefore could not provide proof of insurance until the next business day after he had already renewed the loan.

Source: Florida Office of Financial Regulation, 2014
(1, CT)

49. Phyllis received a car title loan from TitleMax for \$643.73 that carried an APR as high as 115.6%. She has paid \$2,190 on the loan over 18 months and still owes \$261.64. Despite paying over three times the principal amount of the loan, the company has repossessed her vehicle twice, forcing her to pay an additional \$400 each time to receive access to her vehicle.

Source: Florida Office of Financial Regulation, 2014
(1, 2, CT)

50. Jane received a car title loan from TitleMax in November 2013 for \$4,335.86. Despite having paid \$3,245 over the past eight months, the company says she still owes \$3,686.73. She has paid \$272.50 for auto insurance through TitleMax even though she already possesses a current auto insurance policy.

Source: Florida Office of Financial Regulation, 2014
(1, CT)

51. After her husband passed away, Rachel was short on cash and decided to obtain a car title loan from TitleMax in August 2014 for \$3,000. After paying on the loan for a year, including over \$2,000 in auto insurance she did not need or want, she had to return to her previous residence in Wisconsin to handle an issue with her husband's estate. When she called TitleMax to let them know she'd be sending her payment by money order, she was told that she had to make all payments in person because she was also required to renew the loan at the time of payment. A company representative even told her that TitleMax sends an employee to the hospital to obtain payment and a signature on the loan renewal if a customer is hospitalized during the time a payment is due. She called several times after that to again see if she could make a payment over the phone or have a relative make a payment in person, but the company refused. Because she could not return to Florida to make a payment, TitleMax is in the process of repossessing Rachel's vehicle.

Source: Florida Office of Financial Regulation, 2014
(1, 2, CT)

52. Dan received a car title loan from TitleMax in October 2014 for \$1,500, with an APR ranging from 47.2% to 51.9%. Over the past year, he has paid a total of \$2,371.54, yet he still owes \$1,415.53—almost the entire original loan amount. Although Dan informed the company that he had AAA Plus coverage and did not want to purchase any additional towing services, he was told he must pay \$12.50 per month for a “tow package.” In addition, he has paid a total of \$1,357.80 in car insurance to the company.
Source: Florida Office of Financial Regulation, 2014
(1, CT)
53. Mr. R utilized payday loans for temporary help when he struggled to pay his bills. He ended up taking out at least 24 loans over the course of four years, becoming trapped in the payday debt cycle. His final loan was from a tribal payday lender who took \$250 out of his bank account every two weeks. Only \$50 of the payment applied to the principal of the loan, with the remaining \$200 going towards fees. Eventually Mr. R was forced to close his credit union account, and even though he had repaid the principal several times over, he was harassed with round-the-clock phone calls from the payday lender.
Source: Brief of *Amici Curae* Nine Advocacy Organizations in Support of Defendants-Appellees Urging Confirmance, *The Otoe-Missouria Tribe of Indians v. New York State Department of Financial Services*, No. 13-3769 (2nd Cir. Nov. 13, 2013).
(1, 2, 3)
54. Ms. B is a 71-year-old whose only income is her Social Security benefits and her pension. In November 2012, she received payday loans from three different lenders to help pay her bills. Immediately, she struggled with the payments, which caused her to fall further behind on her rent and other bills. As a result, she took out another payday loan in January 2013. She was able to stop the lenders’ withdrawals by closing her bank account, but they continue to harass her by phone and email, even threatening to sue her on the illegal loans.
Source: Brief of *Amici Curae* Nine Advocacy Organizations in Support of Defendants-Appellees Urging Confirmance, *The Otoe-Missouria Tribe of Indians v. New York State Department of Financial Services*, No. 13-3769 (2nd Cir. Nov. 13, 2013).
(2, 3)
55. Ivy, a retail worker from Brooklyn, took out six internet payday loans carrying APRs as high as 782%, to help pay her bills. The payday lenders continuously drained her bank account, often triggering overdraft fees. In a two-month period, the lenders tried to debit her account 55 times, and she was charged \$1,500 in overdraft fees as a result. Because she was unable to pay the overdraft fees, her bank closed her account and reported her to ChexSystems, a consumer reporting agency, which prevents her from opening accounts at other banks.
Source: Brief of *Amici Curae* Nine Advocacy Organizations in Support of Defendants-Appellees Urging Confirmance, *The Otoe-Missouria Tribe of Indians v. New York State Department of Financial Services*, No. 13-3769 (2nd Cir. Nov. 13, 2013).
(1, 2, 3)
56. Subrina’s exempt child support funds were seized by her bank after she took out three internet payday loans to help pay her bills. The lenders withdrew as much as \$168 in fees from her bank account biweekly, while her bank charged her \$800 in overdraft fees as a result of the repeated debits. Further, the bank illegally seized more than \$600 in child support funds to cover the fees.

The payday lenders refused to stop debiting her account. The bank eventually closed the account, but repeatedly called her to pay the overdraft fees and reported her to ChexSystems, a consumer reporting agency, to prevent her from opening accounts at other banks.

Source: Brief of *Amici Curae* Nine Advocacy Organizations in Support of Defendants-Appellees Urging Confirmation, *The Otoe-Missouria Tribe of Indians v. New York State Department of Financial Services*, No. 13-3769 (2nd Cir. Nov. 13, 2013).

(2, 3)

57. Cynthia, a New York City employee and single mother, borrowed eight payday loans over the course of several months when she fell behind on her rent. Soon, her entire paycheck was swallowed by the lenders. One company that debited money from her account never even made her a loan, but simply obtained personal and financial information from another lender and began electronically debiting her account. Cynthia's bank charged her \$1,390 in overdraft fees, seized \$721 in child support funds, closed her account, and reported her to ChexSystems so that she could not open an account at another bank. Two years later, debt collectors continue to harass Cynthia to repay the illegal loans.

Source: Brief of *Amici Curae* Nine Advocacy Organizations in Support of Defendants-Appellees Urging Confirmation, *The Otoe-Missouria Tribe of Indians v. New York State Department of Financial Services*, No. 13-3769 (2nd Cir. Nov. 13, 2013).

(2, 3)

58. Yesenia's mother was diagnosed with breast cancer and could no longer work. Yesenia borrowed \$510 (two loans of \$255 each) to help pay the rent. She was trapped in a cycle of debt for 5 months, where she paid \$90 every two weeks in fees alone. When she became late on a payment to the payday lenders, they debited her bank account for the full amount of the loan, wiping out all of her funds and causing her to incur overdraft fees. A non-profit charity called Season of Sharing helped her pay one month's rent and she was finally able to pay back the loans. She paid \$900 in fees to borrow \$510.

Source: <http://www.responsiblelending.org/issues/payday-loans-california-video>

(1, 2, 3)

59. George, an elderly man living in California, borrowed \$1,020 (4 payday loans of \$255 each). He was stuck in a debt trap for three years and paid \$180 in fees every two weeks. Dolores Street Community Services helped him find his way out of the debt trap. He paid \$12,960 in fees to borrow \$1,020.

Source: <http://www.responsiblelending.org/issues/payday-loans-california-video>

(1, 2)

60. Michael borrowed approximately \$1,530 (six payday loans of about \$255). He has been stuck in the debt trap for more than two years and pays \$270 per month in fees alone. Michael's monthly fees take a quarter of his Social Security benefits. He is working with a non-profit organization called Community Housing Works to help him get out of the debt trap. So far, he has paid more than \$6,000 in fees to borrow \$1,530.

Source: <http://www.responsiblelending.org/issues/payday-loans-california-video>

(1, 2)

61. Kimberly borrowed \$1,550 from three different payday loan companies: one store front, one online, and one bank payday loan. She was stuck in a cycle of debt for nearly six months. She

stopped paying her electric bill, went without power, and stopped buying groceries until she was able to pay back all her loans. She paid more than \$2,800 to borrow \$1,550.

Source: <http://www.responsiblelending.org/issues/payday-loans-california-video>

(1, 2, 3)

62. Realizing that her next payday was two weeks away, Leticia Ortega worried about how she was going to get enough cash to pay overdue telephone and electric bills. Then Ortega, a cashier in San Antonio, Texas, spotted an advertisement by National Money Service in a local weekly newspaper. National Money Service charged her a \$90 interest fee for a \$300 loan, due by her next payday. This fee amounts to an APR of 780%. When the loan's due date arrived, Ortega did not have sufficient cash to repay the entire loan. Consequently, for almost a year, National Money Service debited Ortega's bank account every two weeks in the amount of \$90 as interest to "roll over" the loan. Because none of the \$90 interest payments counted as principal, Ortega still owed National Money Service \$300 even though she had paid \$1,800 in interest charges.

Source: Creola Johnson, *Payday Loans: Shrewd Business or Predatory Lending?*, 87 Minn. L. Rev. 1, 2–3 (2002)

(1)

63. Patricia Turner, 47, went to E-Z Check Cashing of Cookeville, Tennessee, when her job sorting jeans at a garment factory didn't pay the bills. E-Z loaned her \$300 for 30 days. At the end of 30 days, Turner was unable to repay the loan. She could have defaulted, but instead chose to extend the loan by paying a cash extension fee of \$105. After she extended the loan eight times, paying \$840 over an eight-month period without reducing the principal of the loan, she was unable to pay either the balance of the loan or an additional extension fee. Despite insufficient funds in her account to cover it, E-Z deposited Turner's eight-month-old check. When the check bounced, Turner declared bankruptcy.

Source: Charles A. Bruch, *Taking the Pay Out of Payday Loans: Putting an End to the Usurious and Unconscionable Interest Rates Charged by Payday Lenders*, 69 U. Cin. L. Rev. 1257 (2001)

(1, 2, 3)

64. Wilma A. Ruby entered into a total of 33 payday-loan agreements with Cashnet, Inc., d/b/a Cash Advance Centers, beginning in March 2005. The amount of the loan increased over time, starting at \$200 and reaching \$500. Typically, Wilma paid \$575.00 (interest of \$15 per \$100) in cash to Cashnet and then would immediately enter into another payday loan agreement with Cashnet for \$500. This cycle continued until November 2007, when Ruby entered into her final loan agreement with Cashnet for \$500, which she could not repay. The Virginia Supreme Court noted: "With a fixed income of only \$624.00 per month, Ruby could not afford to repay in full her loan with Cashnet and meet her monthly expenses. Thus, each time she repaid in full one loan, she immediately had to obtain another, usually for the same or a greater amount." In Ms. Ruby's words: "After I did it I had to because I couldn't -- I had to keep paying it because I couldn't get away. I had my rent to pay and my lights and my phone and if I didn't, if I didn't, if I didn't, I wouldn't be able to pay my rent and stuff."

Source: *Ruby v. Cashnet, Inc.*, 281 Va. 604, 607, 708 S.E.2d 871 (2011),

<https://www.consumeradvocates.org/sites/default/files/CashnetVRuby.pdf>.

(1)

65. On December 14, 2010, Timothy Williams obtained a short-term personal loan from Valued Services. The loan was for \$550, and was due to be repaid approximately one month later. The APR was listed at 385.28%, with a total finance charge of \$156.75. On January 10, 2011, the day the December loan was due, Williams obtained another loan from Valued Services to repay the December loan. The January loan was for \$706, with APR of 246.51%, and a total finance charge of \$1,241.40. It required Williams to repay the loan in 12 monthly payments, beginning February 9, 2011. Valued Services made high-interest loans to Williams despite the fact that Valued Services' files showed Williams' sole source of income was a monthly social security payment of \$1,147. It also showed that in November 2010, Williams had an ending checking account balance of \$8.32.

Source: Williams v. Valued Servs. of Wisconsin LLC, No. 2012AP2115, 2013 WL 4016941 (Wis. Ct. App. Aug. 8, 2013)

(1)

66. In June 2008, Dominginho Powell obtained a car title loan from The Payday Loan Store of Illinois (PLS) using his 1972 Oldsmobile as collateral. The loan was for \$2,265 with an APR of 300% and called for two installments: one payment of \$558.49 in July and a balloon payment of \$2,842 in August. The finance charge was listed as \$1,135.60. PLS knew that Dominginho would not be able to make the balloon payment at the time of the loan but entered into the transaction anyway. When he went in to make the first payment in July, he was told that he had to refinance the loan. He went back to PLS in August to make his second payment, and PLS took a payment for the old loan and told Dominginho that he was required to refinance the remaining balance of \$2,263, which was not yet due. PLS flipped his loan seven more times, each with terms more unfavorable than the last. Dominginho was told this is the "way loans work." When he was told he had to refinance for the seventh time, Dominginho realized that he had paid almost \$5,000 in finance charges for a loan that was supposed to cost \$1,135. He still owes \$2,235—almost the original principal amount of the loan.

Source: Complaint, *Powell v. The Payday Loan Store of Illinois, Inc.*, No. 09 C 4146, 2010 WL 3893894, (N.D. Ill. Sept. 28, 2010)

(1, CT)

67. Peter Alfeche entered into 23 payday loans with CashNet over a 10-month period, paying the company approximately \$2,000 in fees. Being short on money and unable to meet all of his monthly expenses, Peter first obtained a loan from Cash America in November 2006. He agreed to borrow \$250 for nine days for a fee of \$62.50, representing an APR of 1,013.89%. Many of his subsequent 22 loans were obtained to pay off previous loans, as he often lacked enough money on the due date to pay off the loan and still pay his recurring expenses. Once Peter had established a personal account with CashNet, he also received email invitations to take out more payday loans from other internet payday lenders. Over the 10-month period in which Peter received the 23 loans from CashNet, he also obtained additional payday loans from some of these other lenders. In addition to paying \$2,000 in fees to the payday lenders, he incurred hundreds of dollars per month in overdraft charges from his bank.

Source: Class Action Complaint, *Alfeche v. Cash America International, Inc.*, No. CIV.A. 09-0953, 2011 WL 3565078 (E.D. Pa. Aug. 12, 2011)

(1, 2)

68. Cynthia Williams and her husband were facing financial difficulties, so she decided to apply for and received a payday loan of \$500 with an APR of 430% from Advance America. Over the next

year, she was trapped in a cycle of debt with the company. Although the payday loans consumed over half of her monthly income, Advance America never considered Cynthia's ability to repay. As a result, she fell behind in her mortgage payments. Cynthia and her husband were only able to save their home with the help of a nonprofit foreclosure prevention group by taking on second jobs and increasing their workload by 70 hours per week.

Source: Plaintiffs' Second Amended Complaint, *Williams v. Advance Am., Cash Advance Centers of Missouri, Inc.*, No. 07-04187-CV-C-NKL, 2007 WL 3326899 (W.D. Mo. Nov. 6, 2007) (1, 2, 3)

69. Jennifer Williams of Clarksdale, MS, teaches at a high school but remains in a debt trap due to payday lenders. She at one point owed thousands to nine different payday lenders in three separate towns. What started as a \$100 loan when she had just began teaching in 2006 and needed a small amount of money due to her credit cards defaulting in college, had accrued to \$4,000 in debt by 2009. She says, "It takes a toll on you, mentally. Those places are the devil. Once you get wrapped into it, it's hard to get out". After her son was born in 2011, she decided to enroll in a 5-week financial boot camp, which was sponsored by the community bank, Southern Bancorp. As a result of completing the boot camp, she qualified for a savings account, as well as an affordable loan, with which she could refinance her debt. Credit counselor Charlestien Harris from Southern Bancorp states that Jennifer's situation is not uncommon. Source: <http://www.csmonitor.com/Business/2016/0903/Payday-loans-a-scourge-but-still-a-need> (2)

70. Don Miller of HopeLink, a center that assists low-income families and people in Nevada, says that most seniors who he works with are living on \$700-900 per month for utilities and rent. Some may take out \$150 in payday loans to afford food in a crisis, not realizing that it will take them at least a year or two to pay off. Miller states that many of the seniors go into debt, with at least half of them having taken out payday loans. He also states that they often default on their loans and receive an influx of phone calls from the lenders, who usually threaten to send a lawyer to their homes. Source: <https://www.reviewjournal.com/local/local-las-vegas/downtown/seniors-often-pay-hefty-price-for-relying-on-payday-loans/> (1, 2, 3)

71. A man confided in pastor Wes Helm about his financial hardship with payday loans. Helm looked through the man's budget and discovered one major monthly expense: a payday loan fee three times more than the loan itself. When the church conducted a further investigation, they found that dozens other families at the church had been victimized by payday lenders as well, sometimes even losing their vehicles and homes. Source: <http://www.npr.org/2016/06/16/481558398/with-payday-loans-burying-borrowers-community-tries-alternatives> (2, 3)

72. J.F. from Fresno, California, stated, "About two years ago I used a payday loan to assist with monthly expenses. I thought it would be easy to pay off but then I noticed I could not afford to pay the loan without securing another! The lenders provide little to no other option to pay back the loan which lets you know they aren't concerned with helping you get through the hard spot

they are more concerned with keeping you in the endless cycle to pad their pockets! Payday loans are BAD business!!!”

Source: Collected by the California Reinvestment Coalition

(1)

73. S.F. from Oakland, California, shared, “In 2006 I was working full-time but when my boyfriend moved out I had to pay the entire rent myself and had trouble making ends meet. I started to use the payday loans and soon found myself in an endless cycle of debt, having to pay off two or more in cash every two weeks in order to get two more to cover my bills. The loan rates were outrageous and some of these franchises require you pay in cash instead of depositing your personal check. It took me a couple of years to get out of this cycle of debt and it kills me to think of all the money I lost on fees over those years. I will never use those services again. These companies are absolutely predatory and should be fully regulated and restricted since they profit from the people who can least spare the financial fleecing. Thank you.”

Source: Collected by the California Reinvestment Coalition

(1, 2)

74. J.J. from Lamont, California, stated that he had “[n]o work, needed money to keep afloat and the lender made it too easy to get loan, a car title loan and it has been a nightmare, do yourself a big favor don’t ever get a title loan!”

Source: Collected by the California Reinvestment Coalition

(CT)

75. M. from San Diego, California, lamented, “I have been caught up in payday loan for over a year now it’s taking all of my money and I don’t know how to get out help.”

Source: Collected by the California Reinvestment Coalition

(1)

76. D. D. from Los Angeles shared his story, explaining, “I was in a difficult financial time in my business and needed a \$2,500 loan to cover my rent that was due. I had exhausted all my other options and wasn’t expecting any checks for a few weeks. I own my car and decided to go to Loanmart to get a loan. I called them up, told them what I needed and what kind of car they had. They approved me for \$3,000, even though I asked them for only \$2,500. Considering I was desperate for money, I went ahead with it, not knowing about the interest cap over \$2,500. Which I am sure they were well aware of and is why they urged me to get a higher loan. So, after 2 years of paying, I have now given them over \$4,500, that’s \$1,500 more than the original loan. They say I still owe them \$3,000. For a total of \$7,500 due on a \$3000 loan. It’s highway robbery. These people are awful, they harass me all the time, lie to me about payment due dates and even on one occasion sent me to collections on a missed payment even though I had already paid it for that month from their 3rd party payment site (moneygram). I went and checked and the payment never went through. Which is very suspicious. Now they are threatening to repo my vehicle. I don’t know what to do, this whole experience has been horrible. I am self-employed and struggle enough getting by. I hope someone can sue them for these shady business practices. I will be more than happy to testify against them.”

Source: Collected by the California Reinvestment Coalition

(1, 2, CT)

77. An anonymous borrower reported the following story to the Pew Charitable Trusts, who shared the story with the LA Wave: "I had to come up with money [when] my husband was out of work, and I actually was up to \$900 [in storefront payday loan debt]. ... My entire check was gone the next two weeks, so that's when I went to the online ones. ... And then after I did the online ones, and got in that loop, and got stuck in there, I went back to the store again, and, yeah, it got bad. And my [checking] account ended up pretty negative. I had to close it out totally."
Source: <http://wavenewspapers.com/payday-lenders-may-face-new-regulations/>
(1, 3)
78. Raymond Chaney, now 66, is a veteran who became homeless after he took out a payday loan and spiraled into the debt trap. He took out a \$400 loan to have his car repaired. The \$400 loan led to \$3,000 in additional loans, and he eventually owed \$12,000 to many different lenders. He was struggling to stave off overdraft fees to banks and also make his rent. The payday lenders had full access to his account and eventually took all of his Social Security check. Chaney lost his apartment as a result. He now lives in a rescue mission located in Boise, and is working with the Idaho Consumer Finance Bureau to pay off his debt. His advice to anyone considering taking out a payday loan is as follows: "I had a friend who had back surgery, and it was so painful...If the choice is between back surgery and dying, consider dying. Well, I give people the same advice about payday loans. If the alternative to a payday loan is dying, think long and hard about dying."
Source: <http://www.nbcnews.com/feature/in-plain-sight/drug-payday-loan-users-hooked-quick-cash-cycle-v18088751>
(1, 2, 3)
79. Ann Baddour, Director of Fair Financial Services Project, spoke on behalf of an anonymous borrower at the United Way Leadership Breakfast. She said that the senior citizen, who was living on Social Security, had taken an auto title loan at a value of \$2,000 three years prior. She still owed the lender \$1,900 after paying off \$9,200 on the \$2,000 loan.
Source: http://www.tdtnews.com/news/article_fa7d0ea0-7f8f-11e6-9006-afc9a2e7f963.html
(1, CT)
80. As reported by the American Forces Press Service, one military borrower took out a \$300 loan when he was desperate for money to help him afford expenses necessary for his three children. He got trapped into the cycle of jumping from lender to lender in order to afford the original loan. The \$300 loan soon cost him \$15,000.
Source: <http://www.military.com/money/personal-finance/credit-debt-management/pay-day-loans-big-business-for-them-headache-for-you.html>
(1)
81. Joylynn M. Jossel from Columbus, OH, took out a loan of a couple hundred dollars. She could not pay off the first loan, so she took out a new loan from another payday lender, eventually owing money to four different lenders. Soon she was paying \$1,800 each month on payday loans alone. At one point, she had to let a \$600 loan she had taken out bounce to avoid dire circumstances. "It was either that or not pay my rent that month," she says. "It was horrifying. They tell you any and everything to get you to come in and pay for the check that didn't clear. They'll tell you, 'You're a criminal, you wrote a bad check. That's against the law, it's a felony, you're going to jail.' They call all of your references and your job. It's horrifying. I felt so suffocated. It felt as if I was in this black hole that I just couldn't get out of." Soon enough, the

other three loans bounced as well, as she had to afford basic living expenses as well. She faced embarrassment at work when the lender called her at work and the receptionist would say who the caller was in front of the office before turning the call over to Joylynn. "Every time the phone rang, I'd jump like I was the next one in a horror movie to be taken out. I'd fear they'd come to my house because I'd known them to go to people's houses before. I felt guilty just putting gas in my tank. I felt guilty buying food. I felt as though any money I got should be going to the payday lenders and collection agencies to get them off my back." Eventually, she was able to repay her loans after winning a civil lawsuit not affiliated with her payday loans.

Source: <http://www.aol.com/article/2010/11/02/payday-loans-how-one-woman-got-caught-in-a-vicious-cycle/19674757/>

(1, 2, 3)

82. Donald Garrett got behind on his bills, so he took out a \$100 loan from Advance Till Payday and repaid them \$200. "And I said, 'I appreciate you loaning me the \$100. I'm sorry that I was in this bind but you helped me and I appreciate it and you won't see me anymore.'" And I thought that was the end of it." Later on, he was receiving a dialysis treatment when he received another phone call from the company. "And he told me that I had a balance of \$260 outstanding because of the \$80 a month membership fee. Where did that come from? Nobody mentioned that when they gave me the \$100."

Source: <http://wvtf.org/post/federal-lawsuit-reveals-dark-underworld-payday-loans-virginia#stream/0>

(1)

83. Roger Tillman, 64, took out a \$500 payday loan from The Money Center when he was tight on cash and needed to pay his bills. He was earning \$9.00 an hour working as a late-night security guard. The Money Center's website states that they charge an APR of 650%, amounting to about \$150 in interest and fees on a 2-week loan. He could not pay the loan back before the first two weeks, and renewed it as the costs accrued. He took a loan out from another payday store, falling into a debt trap. He soon lost his job. He tried to contact The Money Store two days later, and got no response. The manager finally reached out to Tillman. He recalls of the manager, "His statement was that 'I hope you don't get stopped by the police, because I'm filing a theft by check charge against you.' I didn't say anything. I was floored, because I was expecting to work out a payment plan." The Money Center filed a criminal complaint against him in November of 2009. The district attorney told Tillman that he must pay Marpast of Texas, the company through which The Money Center operates, \$1,020 within 10 days, in addition to lawyers' fees of \$140 and \$90 in merchant fees. Otherwise, he would face 2 to 20 years in jail and would be fined as much as \$10,000. This shocked him, leaving him scared - too scared to even attend his daughter's graduation from Lackland Air Force Base in San Antonio, fearing that there could be a warrant out to arrest him. "I'm innocent here," he said, "other than losing my job and an inability to pay. I tried to get on a payment plan. If my intention was to duck and dodge, why would I even call them?" He continued to avoid his jail by writing letters to the DA, the state Office of the Consumer Credit Commissioner, and Marpast. He mentioned that the Texas Office of Credit Commissioner submitted his debt to the DA for "collection purposes".

Source: <https://www.texasobserver.org/cash-fast-how-taking-out-a-payday-loan-could-land-you-in-jail/>

(1, 2, 3)

84. Christina McHam took out a \$200 loan from Cash Biz, near Houston, but was unable to repay it. She was arrested in November 2012 and charged an additional \$305 for court costs and other fines. She "paid off" her debt with one night in jail.
Source: <https://www.texasobserver.org/cash-fast-how-taking-out-a-payday-loan-could-land-you-in-jail/>
(2, 3)
85. A veteran who had served in the military for 23 years was being charged by the Potter County Attorney for a payday loan he could not repay. His wife wrote to the state Office of Consumer Credit Commissioner, "My husband is a good man! He has never done anything wrong, he fought for this country for 23 years ... and now the Potty [sic] County Attorney wants to prosecute him for a payday loan."
Source: <https://www.texasobserver.org/cash-fast-how-taking-out-a-payday-loan-could-land-you-in-jail/>
(2, 3)
86. An anonymous borrower repaid \$800 on his \$400 payday loan after 70 days. However, he was still in dire need of money, and took out another \$500 loan the following day. Again, the next day he took out a \$1,000 loan, as he was still struggling to afford his basic living expenses. He paid \$2,051 back on that loan 70 days later. He took out another \$1,000 loan, and a \$600 loan from another store. By this time, he had paid \$3,000 interest on these loans, in addition to the \$2,500 principal amount.
Source: <http://www.standard.net/Guest-Commentary/2016/08/07/paydaylenders-Ponzischeme-fraud-loans-column-Winward>
(1)
87. "Perry Green, 30, took out a \$300 payday loan that soon cost him \$1,000 in interest and other fees. By taking out this one loan, he fell into a three-year debt trap. He took out multiple loans after the initial \$300 loan. Originally, he needed the loan to afford his rent, thinking a payday loan was the only option."
Source: <https://www.freep.com/story/money/personal-finance/susan-tompor/2016/06/04/payday-loans-target-those-no-cash/85288174/>
(1)

88. Leonard Abbot, a 53-year-old security officer at the Department of Public Safety at the Texas State Capitol, had been warned of the dangers of payday loans. But after he owed some unexpected medical bills, he felt his only choice was to take out a \$500 loan from a payday store. He says, "One thing that I didn't realize is, it doesn't matter how many payday loans you have, you still qualify for more." He adds, "I've always been against those things, the payday loans. I knew about them ahead of time and I knew it's easy to get caught up in their trap, but again, at the time I just felt like I didn't have any other alternative options." By May 2016, he had taken out four different payday loans totaling \$2,500 and costing him \$450 per month. He eventually converted his loans through the Predatory Loan Conversion Program, led by the Society of St. Vincent de Paul in Austin. "My favorite part about working at the Capitol is seeing the representatives coming in, and also just to see Texas law working at its best," he said. "I am hoping and will be praying that they will look at legislation to regulate this."

Source: <https://www.texastribune.org/2016/06/18/federal-rules-could-tame-wild-west-texas-payday-le/>

(1)

89. Jon Gomez of Hialeah, FL, received a \$400 payday loan at a Money Superstore location, due in 14 days and a \$41 service charge. "I paid back the \$441, but the next day, I took out another \$400 payday loan because I needed the money," Gomez told VICE. "I was in this vicious cycle for three months." Eventually, he didn't have enough money to cover one of his payday loan checks, and it bounced.

Source: <http://www.vice.com/read/inside-the-battle-over-floridas-rationally-charged-payday-loan-racket>

(1, 2)

90. Toniette Brown from Alabama needed her first payday loan to afford prescription medicine for her daughter. Working as a part-time librarian, she did not have health insurance coverage to cover her family, or even herself. The payday lender gave her a \$275 loan without any credit check. When she couldn't repay her loan by the next payday two weeks later, she took out another. This accrued to 12 loans across 4 different lenders, both in Alabama and online. She frequently had 3 to 5 loans at once. She was eventually in \$4,288.96 worth of debt. "I couldn't pay them because I was already living on an income that was paycheck to paycheck," she said. When the interest and fees began to grow several times the amount of the original loan, she sought help from Gateway Financial Freedom and landed a full-time job. She has since almost fully paid back her loans, interest and fees, and says that she will never make the same mistake again

Source: http://www.al.com/news/index.ssf/2015/03/lifeline_or_financial_anchor_u.html

(1, 2)

91. Yolanda Roth, of Robbinsdale, Minnesota, took out a payday loan when she lost her job. She had to accept a lower-paying job and needed some extra money to afford her rent. "My check wasn't quite enough to pay it off and still live, and I ended up racking up a lot of debt because of fees and so on," Roth said. "I eventually paid it off, but it took a very long time." Her original loan was for a couple hundred dollars, but ended up costing her a total of \$1,500 over the next six months. She describes this experience as "very unpleasant" and "extraordinarily stressful." However, she understands that there is risk associated with taking out these types of loans. "I felt like I understood what was expected and I could definitely do it," she said. "I was just in a desperate situation, or what I thought was a desperate situation."

Source: <http://post.mnsun.com/2015/10/12/faith-leaders-protest-payday-loan-practices-in-robbinsdale/>

(1, 2)

92. Reverend Stevie Wakes, a Baptist minister in Kansas City, Kansas, received a payday loan of \$500 that he thought he could pay back in two weeks. "We thought it was short-term," he said. He thought he would get a higher-paying job soon enough, but wasn't able to. He kept returning to the store to take out more loans every two weeks, and four months later had accumulated \$1,250 in debt. He says that he renewed his loans about ten times, with an APR of about 450%. As soon as he realized how quickly his debt he was racking up, he managed to save the money to pay off his debt. "I'd like to see them cap the rate so that no one has to experience that kind of robbery, which is why I support the campaign [for a 36% interest rate cap] 100 percent," he says of payday lenders. "It's a debt trap."

Source: <http://www.kansascity.com/news/local/article300576/Alternative-arises-as-payday-loan-industry-comes-under-scrutiny.html>

(1)

93. "Michael" of Verona, WI, had taken out payday loans from a dozen stores. He began taking out payday loans after a company mailed him an offer to take out a loan for no charge, directly after he had repaid his car title loan. Soon enough, his debt grew as he continued to take out loans to repay previous ones. He says he felt like a "gerbil on a treadmill". The payday lenders began aggressively calling his personal references, which he provided when he applied for the loans, causing him even deeper feelings of shame and desperation. "It got to be where I felt like my hair was on fire," he says. He eventually declared bankruptcy, halting the fees on the loans.

Source: http://host.madison.com/ct/news/local/govt_and_politics/wisconsin-is-one-of-few-states-with-no-ceiling-on/article_4e3585bc-cda8-5be9-8bf0-7d6b6a02dfdf.html

(1, 2, 3, CT)

94. Janet is a part-time security officer. She took out a \$300 payday loan to afford diabetes medicine, as well as her rent. She found herself in a debt cycle. She recalls, "I called and tried to set up a repayment plan with them. I was not aware that I could do that and when I found out that I could, I did talk with them. And the amount that they said I owe is \$425, and they said that I could repay in 2 payments which was over \$200. I asked them if they could stretch it out 2 more payments; something that would be a lot smaller. The lady told me that they could only stretch it out 4 for 4 payments, which a little over \$100 per payment, which is a payment I still cannot afford to pay at this time." She was still in debt 6 weeks later. "It's very frustrating because it's like I'm more on interest than the actual loan itself... it's like I'm actually paying double."
Source: Texas Fair Lending Alliance, <https://www.youtube.com/watch?v=HCOwaudHr3g>
(1, 2)
95. Trudy Robideau from California received an \$800 loan from a payday loan store. She wasn't able to repay her loan right away, and renewed it for a fee. "Ka-ching," Robideau said. "You're hooked. You can feel the hook right in your mouth. And you don't know it at the time, but it gets deeper and deeper." She soon turned to other payday lenders, racking up fees totaling thousands of dollars. "I was having to get one to pay another," she said. "It's a real nightmare."
Source: <http://www.npr.org/2015/03/26/395421117/payday-loans-and-endless-cycles-of-debt-targeted-by-federal-watchdog>
(1)
96. Elise Robillard, a teacher and single mother, said she fell into a cycle several years ago of taking short-term, high-interest loans that ultimately played a role in her decision to file for bankruptcy. "I spent the better part of 15 years stuck in a cycle of debt because of the initial payday loan that I took out," Robillard said.
Source: <http://www.koat.com/news/nm-supreme-court-exorbitant-payday-loans-violate-state-law/26688316>
(1, 2, 3)
97. In 2008, Joy Young and her newly immigrated husband were making only \$30,000, in Woonsocket, RI. She and her husband stretched their income to cover their living expenses and their monthly payments on a home equity loan that paid for house repairs and a used vehicle. She received \$450 from Advance America, which had to be paid back in two weeks, plus a fee of \$45. Two weeks later, she paid her \$495 debt, but was forced to borrow again to meet her monthly expenses. She was now caught in the debt trap, borrowing a third and fourth loan. Every two weeks, Young spent two hours on a Friday afternoon waiting in line to pay off her loans and borrow again. Advance America pocketed \$360 in fees each month from her alone. "Every time I got another loan, I thought it would help me in the short term," Young says. "But there was no way out. I felt like I was in prison. Any time I would talk about my story I would start to cry. It has been a horrible, horrible last few years." She was weeks away from foreclosure when she received a loan from Capital Good Fund, a microfinance institution that began extending small loans at 30% interest for a twelve-month term. She was able to pay off three of her payday loans with their help and is slowly paying off the fourth.
Source: <https://www.rimonthly.com/reporter-breaking-the-payday-loan-cycle/>
(1, 2, 3)

98. Christina Sarno in Warren, OH borrowed just \$200 from a payday lender, but she quickly realized she could not pay back the principal or the interest. "After receiving constant calls and having the store manager show up at my house to try to collect the money I owed, I gave up. At this point I had developed a lot of interest on the loan and owed more than I could possibly pay back on my income," she said during a meeting at the Warren YWCA. She lost her car, but the Beatitude House of Warren helped her with housing and education to avoid falling into the payday lending trap again.
Source: Reprinted verbatim from <http://www.vindy.com/news/2016/jun/28/women-tell-of-troubles-with-payday-lendi/>
(2, 3)
99. Tiffany Richardson, a resident of Houston, Texas, received a \$5,000 car title loan, using the title to the 2005 Nissan Altima she bought for her mother as collateral. She fell behind on repaying the loan. She took out another car title loan for \$2,400 using her 1999 Toyota 4Runner as collateral this time. The amount she owed skyrocketed to several times the original principal amount. "You're like a hamster on a wheel," Ms. Richardson, 43, said of repaying her ballooning debt, adding that she was "looking out the window every night" to make sure her cars had not been repossessed. One night, however, Ms. Richardson woke to see both cars being towed away.
Source: http://www.nytimes.com/2014/08/24/us/thousands-in-texas-lose-cars-amid-calls-for-loan-restrictions.html?_r=0
(1, 2, 3, CT)
100. Maranda Brooks, a records coordinator at a Cleveland college in OH, took out a \$500 loan to help pay an electricity bill. Two weeks later, the full amount of the loan plus a \$50 fee were deducted from her usual \$800 paycheck. To cover expenses for herself and her four children, she took out another loan, falling into a debt trap that lasted almost a year. "It was a nightmare of going around and around," said Brooks.
Source: <http://www.chicagotribune.com/chi-payday-loans-rules-20150202-story.html>
(1, 2)
101. After his daughter returned from serving in Iraq and asked for financial help to relocate her family, Preston White, 63, took out a title loan on his pickup truck from a store in Killeen, Texas. The 30-day, \$4,000 loan carried a 375% APR. White had already spent his life savings on paying for treatment for his wife's pancreatic cancer and soon realized that his fixed income left him only enough money to cover the fees, not the principal. He recognized the cycle of debt: "In four months, I could have paid more than what I went to the store for in the first place, and still owe the original loan amount," he said. "Never in my wildest imagination did I think that such a loan product could even exist. You assume the system will have usury laws and protect you from such things...Everybody's got to make a profit but there should be no place for usury in the 21st century." He was ultimately able to retire the debt by taking out a loan at 16% APR through a credit union.
Source: Gogoi, P. (2010). "Costly cash: How a retiree wound up with a 375% loan." *Daily Finance*. Available at <https://www.aol.com/2010/03/09/costly-cash-how-a-retiree-wound-up-with-a-375-loan/>.
(1, 2, CT)

102. Alicia and Clinton Lummus of Conyers, Georgia, took out a \$525 car title loan after injuries forced them both to stop working. Over eight months, they made payments totaling \$1,056—more than twice the amount borrowed—but ultimately fell behind on payments. The lender then repossessed the vehicle, worth \$14,000—and was able to keep any excess money from the sale of the vehicle, since Georgia law allows the lender to do so.
Source: Kirchhoff, S. (2006). “Some consumers run into big problems with auto title lending.” *USA Today*. Available at <http://usat.ly/124EbDR>.
(2, CT)
103. Sean received a \$1,500 car title loan, which he renewed over 40 times—paying over \$11,500 in interest—before receiving help from family to pay off the principal. He said, “I was too embarrassed to ask my parents for the initial loan money, [but] ended up borrowing money from them to make some of the payments and ultimately had to ask them to pay off the whole loan, after losing tons of money along the way.”
Source: Martin, N. & Adams, O. (2012). “Grand theft auto: Repossession and demographic realities in title lending.” *Missouri Law Review*. Available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2391411.
(1, 2, CT)
104. Caroline O’Connor, a 30-year-old hospital lab technician, was in need of \$1,000 to cover her rent and electricity bills. When she saw a television commercial advertising how to get cash from your car in the form of a short-term loan, she believed she had found relief. The loan carried a 171% APR. After two years stuck in the debt cycle, the lender seized her car. “These companies put people in a hole that they can’t get out of,” Ms. O’Connor said.
Source: <http://dealbook.nytimes.com/2014/12/25/dipping-into-auto-equity-devastates-many-borrowers/>
(1, 2, CT)
105. Derek Drewery was caught in the debt trap beginning in 1996, when he was stationed at Wright-Patterson Air Force Base in Ohio. He received a payday loan of a few hundred dollars at a payday lender near the base. When he returned to the store to repay the loan, he realized that with interest and fees, he owed a lot more than he had borrowed. “I had to borrow again to pay that back, and had to borrow again to pay that back,” Drewery says of getting trapped in the debt cycle. “I got into the real churning situation to borrow this week to pay for last week.” To help pay off the loan, Drewery cut back on food, even sharing his last box of Cheerios with his Jack Russell terrier until his father found out and sent him grocery store gift cards. He now works as an electrician and is the pastor of a church which has joined a coalition of Christians to oppose predatory lending.
Source: <http://www.nytimes.com/2016/06/11/us/full-faith-and-credit-christian-groups-unite-against-predatory-lending.html>
(1, 2, 3)
106. Mr. Sanchez, a veteran who served in Iraq as an infantryman in 2004, returned home to his wife and two daughters but suffers from Post-Traumatic Stress Disorder. When he needed a bit more cash to make ends meet, he took out a car title loan to pay for his family’s monthly bills. He had already taken out a \$2,500 car title loan earlier in the year, paying \$350 per month on the loan. After 10 months of paying a total of \$3,500 in fees, he could no longer afford the loan and sold his family’s second vehicle in order to continue paying on the original title loan.

Unfortunately, a few months later the Sanchez family was in a similar situation, unable to make the regular monthly payment of \$350 in interest-only payments while still owing the original \$2,500 principal. He couldn't lose his second car to the predatory lenders as it was the only way his wife could get to her job. Desperate for a solution, Mr. Sanchez turned to Helping Hands Ministry, a Texas social service organization that provides opportunities for financial empowerment to veterans and working class families. The organization was able to help the Sanchez family pay off their debt.

Source: <https://medium.com/@stop paydaypreds/payday-lenders-target-veterans-fcfe91b92c86#.wl764nkqu>

(1, 2, CT)

107. Elaine is 74 years old and lives independently in a small, one-bedroom apartment. She receives social security and a small monthly pension totaling \$1,278. She was struggling with her bills. Elaine came to one of the Catholic Charities of Northeastern Kansas' Emergency Assistance Center (EAC) for help with an electric bill. During her meeting she shared that she had payday loans totaling \$1,725. She had these payday loans for years and, unfortunately, her low income just would not cover the loans to be paid off while still trying to take care of her daily living expenses and housing. Because of the high rate, Elaine was paying \$275 per month just in interest on all of her payday loans. Elaine shared that she had not told her grown children because she was ashamed to let them know she had gotten into this situation in the first place. Catholic Charities was able to assist Elaine through its Kansas Loan Pool Project (KLPP). By converting her high-interest payday loan into a new, low-interest fixed loan, Elaine now has a manageable payment with an actual payoff date. Elaine participates in monthly financial coaching through the KLPP program. Her bills are now up to date and she has set some realistic financial goals. Elaine has newfound hope through the help of Catholic Charities and the KLPP program. "It's a relief to know that I now have enough money to pay my bills AND go to the grocery store." Elaine shared.

Source: Catholic Charities of Northeastern Kansas

(1)

108. Tiemeyer White, a 33-year-old Navy veteran from Texas, full-time electrical engineering college student, and father, took out a car title loan more than a year ago. When the federal government shut down due to a budget impasse in October 2013, White didn't get his Post-9/11 benefits or work-study pay for his Department of Veterans Affairs job for almost two months. As a result, he fell behind on his bills, and the car title lender began calling him several times a day both at work and at home, demanding loan payments. "I tell them, I understand you're doing your job, but I also understand that your job – you make your living off of making my life worse," White says. "That's how I felt that moment." Two weeks later, his 2003 Dodge pickup truck was repossessed from his school's parking lot.

Source: <https://www.nerdwallet.com/blog/banking/banking-news/car-title-payday-loans-trap-unwary-veterans/>

(2, CT)

109. Homeless veteran Mel Hair hitchhiked to Sioux Falls, South Dakota, from Minnesota a few years ago. He stayed at a shelter to get back on his feet. When Hair and his girlfriend were able to get their own apartment, he received a car title loan for \$200. One title loan turned into three loans amounting to more than \$2,000. He has been making monthly payments of \$430 per month for the past two years.

Source: Ben Dunsmore, *The High Price for Small Loans*, Keloland (Feb. 18, 2015). Available at <https://stopthedebttrap.wordpress.com/>.
(1, 2, CT)

110. Kim Brust of South Dakota started taking out payday loans three years ago. At the time, her social security and disability checks were not enough to cover her monthly expenses for the children and other family members who had moved in with her. She fell into a cycle of debt, taking out a total of eight loans from four different lenders in Sioux Falls. The interest rates range from 247 percent to as much as 608 percent over the course of a year. "I fell into that same trap and I know better. I'm not stupid, but I was stressing about money. I was wondering sometimes where the next meal was coming from," Brust said. "It just sneaks up on you and one day I just laid out all the papers and I go, 'Oh, my Lord what have I done.'"

Source: Ben Dunsmore, *The High Price for Small Loans*, Keloland (Feb. 18, 2015). Available at <https://stopthedebttrap.wordpress.com/>.
(1)

111. Eddie Dorman of Duval County, Florida, has been caught in a vicious debt trap for years. He uses one payday loan to pay for another, and is currently fighting with a car title loan company in Gainesville that is trying to repossess his truck. "I would never do it again, if I ever get out from under this one." Dorman said. "Everyone has problems. I got behind on a payment, the next thing you know there is a wrecker in the front yard at 3 in the morning." With his truck title loan, the company made him take out a \$700 insurance policy to cover the company. "It covers them and yet it does not cover you," Dorman explained.

Source: <http://www.news4jax.com/news/borrower-beware-title-payday-lenders-are-back>
(1, 2, CT)

112. Lara was a young mother who stayed home to raise three children while her military husband worked full time. She worked jobs when she could, but the family still found themselves strapped for cash. They reluctantly took out a payday loan of \$200 to manage the bills until their next paycheck. When payday arrived, the lender wanted \$300. They paid the \$300 but came up short on their next payment, so they took out another loan and quickly found themselves caught in the debt trap. "I kid you not, we did that dance for close to six months," Lara said. "It was horrible. Just unbelievably horrible." Ultimately, Lara had to beg her parents to help get them out of the cycle, but she knows not everyone has a safety net to fall back on.

Source: <http://www.tcdailyplanet.net/new-guidelines-nonprofits-help-curtailed-predatory-payday-loans-in-minnesota/>
(1, 2)

113. Diana LaCroix, a 63-year-old widow living off of her husband's Social Security survivor's benefits, received a \$300 payday loan. It took her three or four months to pay off the small \$300 loan. Then, she found herself caught in the debt trap, borrowing \$50, \$75, or \$100 at a time. She is still borrowing money to make up for the loan payments that are eating into her fixed monthly budget, explaining, "I'll probably have to borrow a little more next month to get caught up on bills."

Source: http://www.omaha.com/money/days-of-the-payday-loan-could-be-numbered-with-new/article_0565b988-8356-5fb5-acf9-d3a076e250a0.html
(2)

114. John Miller, an attorney in Missouri, tells the story of his friend who had been struggling financially and turned to a payday loan store as a last resort before taking his own life.
Source: <https://www.youtube.com/watch?v=t2-Ullrs95A>
(3)
115. Richard Kitterman, a retired Master Sergeant and former Chief of Consumer Affairs Office, tells the story of a soldier: "I remember one particular story, I'll never forget it. She was a young soldier, and she was a good soldier. She was a single mother, she was doing her best to meet her obligations to the Army, and to raise her child. But she was facing in some cases, some nearly insurmountable obstacles: she had to have daycare, she had to have babysitting for her kids when she worked late. And she found herself getting her first payday loan and then another, and then another... and it got down to where on payday, her entire check disappeared. It was gone to pay back payday loans. And so her payday was spent standing in line at several different payday loan offices to get new loans or to renew existing loans. And each time paying healthy loan fees to get that money. And she eventually...and she was a responsible soldier. Most of the soldiers that get involved in this are really good, decent soldiers, good people who want to pay their bills, understand their obligations, but they just have more month left at the end of a paycheck. So they just see this as a quick fix; something they only have to do once, and that was the case with this young lady. She just got in over her head. And I remember after she got straightened out and things were going good and she continued to work to pay off those loans, even though she could have walked away and there wasn't really much the payday lender could have done, but that's not the kind of person she was. And I remember her telling me, 'Sergeant Kitterman, I felt like I was in a black hole. Every morning I woke up, every night I went to sleep, I was sick to my stomach over what am I going to do? How am I going to work this out?'"
Source: <https://vimeo.com/143323466>
(1, 3)
116. Paula, who lives in Texas with her husband and 3 children, took out some payday loans through lenders on the Internet after her husband lost his job. After he started working again, they were never able to get out of the debt trap due to excessive rollover fees. At one point, \$800 a month of the family's money was going towards payday loans.
Source: Fact Sheet: *The Victims of Payday Lending*,
<http://www.responsiblelending.org/issues/victims-payday>
(2)
117. Tennessee resident Natalie has paid over \$4,000 in fees for \$800 worth of loans. Each time that she thinks she is has paid down the principal, the lender informs her of more fees that have been piled onto her already steep debt. Additional fees are added every time that she pays late.
Source: Fact Sheet: *The Victims of Payday Lending*,
<http://www.responsiblelending.org/issues/victims-payday>
(1, 2)
118. Maria took out one payday loan three years ago. Now, she is struggling to handle five payday loans and is over \$3,000 in debt. Most of her budget goes to paying fees to rollover her loans, leaving little money for her to live on the rest of the month. She cannot afford to pay them off.

Source: Fact Sheet: *The Victims of Payday Lending*,
<http://www.responsiblelending.org/issues/victims-payday>
(1, 2)

119. According to a 2013 *New York Times* investigation, “Johanna Pimentel said she and both of her brothers had taken out multiple title loans. They are everywhere, like liquor stores,” she said. Ms. Pimentel, 32, had moved her family out of Ferguson, Mo., to a higher-priced suburb of St. Louis that promised better schools. But after a divorce, her former husband moved out, and she had trouble paying her rent. Ms. Pimentel took out a \$3,461 title loan using her 2002 Suburban as collateral. After falling behind, she woke up one morning last March to find that the car had been repossessed. Without it, she could not continue to run her day care business.”

Source: <http://dealbook.nytimes.com/2014/12/25/dipping-into-auto-equity-devastates-many-borrowers/>
(2, CT)

120. Jamela Lott, a single mother of five, was falling behind on her rent and borrowed \$900 from Loan Max in Akron, Ohio. She used her 2001 Oldsmobile as collateral for the loan. After paying \$938 on the original \$900 loan, she was unable to keep up. Lott was told she still owed more than \$1,600 or had to face repossession of her car. Shortly thereafter, she and her children became homeless and entered the program of Family Promise of Summit County, which provides temporary shelter to homeless families and offers assistance. Harry McKeen, a local attorney, accepted Lott’s case via Legal Aid, and settled with LoanMax to write off Lott’s debt. Meanwhile, readers donated more than \$1,160 to help Lott get into a rental house in West Akron.

Source: <https://www.ohio.com/article/20140302/NEWS/303029574>
(2, 3, CT)

121. Norma Poalson, 68, of Akron, Ohio, took out a \$600 car title loan from LoanMax for a now-deceased friend who needed money for a chair lift. When she fell behind on her payments, the company rolled over her loan for the same amount. Poalson says she has paid about \$2,200 on the loan and still owes another \$1,690 or faces repossession.

Source: <https://www.ohio.com/article/20140302/NEWS/303029574>
(1, CT)

122. Rasheeda Jackson of Akron, Ohio, took out a \$600 car title loan. She fell behind on the payments, and her car was repossessed a few months later. To get her car back, Jackson had to pay \$890, including \$600 to a repossession company. The company charged her storage fees and tried to ask for money to get things out of her car if she didn’t pay the full fees.

Source: <https://www.ohio.com/article/20140302/NEWS/303029574>
(2, CT)

123. Roger Irby of North Akron, Ohio, faced financial difficulty when he broke a bone in his neck which hindered his ability to work full time. He turned to Loan Max for a \$500 car title loan, using his 13-year-old truck as collateral. Loan Max required him to pay the loan back in 30 days, along with \$200 in interest. A month later, the only way he could pay the loan off in time and have enough money to pay his family’s bills was to take out another loan—this time, for \$1,000. The loan is due in 30 days, plus \$295 in interest. Irby has paid almost \$500 to borrow \$1,500 for

two months. “They are modern day loan sharks,” Irby said. “Me and my wife are trying to pay this bill off and we don’t ever want to mess with them again. Ever.”

Source: <https://www.ohio.com/akron/news/need-emergency-cash-cuyahoga-falls-group-considering-an-alternative-to-payday-lenders>

(1, CT)

124. In July 2010, Army Staff Sergeant Jason Cox of Columbus, Georgia, faced a family emergency. He obtained a \$3,000 loan with his car title as collateral from Alabama Title Loans in Phenix City, Alabama. The loan carried an APR of 146% and was required to be paid off in 30 days, or Cox would have to pay the interest portion and renew the loan to set the due date back another 30 days. Unable to pay what eventually grew to approximately \$4,500, Cox paid between \$330 and \$417 each month. After nearly a year of monthly payments, Cox could no longer afford to pay the monthly fee, none of which went to pay down the principal of the loan. He stopped making payments and his vehicle was repossessed at his home on the Fort Benning military base. That’s when Cox felt something was amiss, and visited Columbus attorney Kyle Fischer of the law firm Day Crowley. As a former JAG lieutenant in the Army, Fischer knew many of the laws pertaining to military active duty personnel and soon realized that it appeared Cox’s loan was in violation of the 2007 Military Lending Act, implemented by Congress to protect active duty personnel from predatory lending. Barnes and Bevis agreed with Fischer, and in November, they filed a class-action lawsuit against Community Loans of America and Alabama Title Loans. “I definitely feel like I was taken advantage of,” said Cox, who has served three tours in Iraq during his 11 years of service and earned the Purple Heart for a foot injury he received during enemy gunfire. “I had no clue this law was in place, and nothing was explained to me.”

Source: <https://barneslawgroup.com/veteran-challenges-title-loan-company-in-court/>

(2, CT)

Appendix B

Summary of Research on Payday and Car Title Lending, 1998-present, by Center for Responsible Lending National Consumer Law Center Consumer Federation of America

Post-October 2017

A. Center for Responsible Lending

1. [States without Payday and Car-title Lending Save \\$5 Billion in Fees Annually](#) (Delvin Davis and Susan Lupton, Jan 2017)
 - States without payday and car title have saved nearly \$5 billion a year in fees annually – \$2.2 billion from payday lending, plus another \$2.8 from car title lending.
2. [Been There; Done That: Banks Should Stay Out of Payday Lending](#) (Rebecca Borné, Jul 2017)
 - Payday loans by banks made before 2013 caused substantial harm to vulnerable customers.
3. [Mile High Money: Payday Stores Target Colorado Communities of Color](#) (Delvin Davis, Aug 2017)
 - Majority-minority areas in Colorado (over 50% African-American and Latino) are nearly twice as likely to have a payday store than all other areas, and 7 times more likely to have a store than predominately white areas (below 10% African-American and Latino).
 - Affluent communities of color have a higher likelihood of containing a payday store, when compared to low-income, predominately white areas.
 - In 2016, payday loans drained nearly \$50 million in fees from Colorado consumers. The average Colorado consumer took out two longer-term loans over the course of the year, while one in four payday loans went into delinquency or default.
4. [Payday Lenders Continue to Put Coloradans Into High-Cost Debt](#) (Ellen Harnick and Delvin Davis, Feb 2018)
 - Colorado payday loan customers in 2016 paid an average annual percentage rate (APR) of 129%. The average loan was for \$392, cost \$119 in interest and fees, and was repaid in 97 days. Payday loan customers took out an average of two loans per year. In some cases, customers likely took out two or more loans simultaneously from two or more lenders. Customers borrowing sequentially ended up paying an average of \$238 to borrow \$392 for 194 days. The majority of all payday loans in Colorado were at an APR over 100%. Some loans were at an APR over 200%.
 - Default occurred in 23% of all loans taken in 2016.
 - Payday loans continue to drain nearly \$50 million per year from struggling Coloradans.

5. [North Carolina State, County, and Congressional District Annual Fees Savings without Payday and Car Title Lending](#) (Delvin Davis and Susan Lupton, May 2018)
 - Estimates North Carolina fee savings break out by county and congressional district.
6. [Sinking Feeling: Colorado Borrowers Describe their Experiences with Payday Loans](#) (Tom Feltner, Diane Standaert, and Ellen Harnick, Jul 2018)
 - In many cases, unaffordable loan payments triggered significant additional financial hardships, either immediately or down the road, such as not having enough money remaining to meet other basic expenses, aggressive debt collection, and damaged credit reports.
 - Payday lenders made back-to-back loans to borrowers and made payday loans to borrowers who already had outstanding loans from other payday lenders, both of which indicate payday lenders' failure to assess whether the loan can be paid without re-borrowing or in light of a borrower's existing debt load.
 - Payday borrowers faced frequent financial challenges and elevated levels of debt from a wide range of sources, such as student loans and medical debt that pushed them to seek other, often high-cost debt and made the repayment of their total debt load difficult.
 - While many payday borrowers looked to payday loans to avoid other credit options, many viewed borrowing from credit cards and family and friends as an available option for them.
7. [Power Steering: Payday Lenders Targeting Vulnerable Michigan Communities](#) (Delvin Davis and Lisa Stifler, Aug 2018)
 - In recent years, payday lenders have drained over half a billion dollars in fees from Michigan consumers to out-of-state companies.
 - Michigan payday lenders disproportionately locate their stores in communities of color.
 - Michigan payday lenders disproportionately locate their stores in rural and low-income areas.
8. [Low-Income Oregonians Report Heavy Debt Levels with Long-Term Consequences](#) (Ezekiel Gorrocino, on behalf of the Stop the Debt Trap Alliance, Jan 2019)
 - The surveyed households are very low-income, with a median income of \$20,000 to \$30,000. A third of them are earning \$20,000 or less in a given year. Most of the people surveyed identified as White, female, employed, and in their 30s, but there was also a significant number of people of color, as well as part-time and/or occasional workers.
 - One out of every four people surveyed have used a payday or car-title loan in the past year. A full quarter took out more than one payday loan at a time, putting themselves at risk of getting trapped in a cycle of debt and highlighting payday lenders' evasion of a requirement in Oregon law to provide a seven-day cooling-off period between each loan.
9. [Payday and Car Title Lenders Drain Nearly \\$8 Billion in Fees Every Year](#) (Diane Standaert, Delvin Davis, and Charla Rios, Apr 2019)
 - Payday loans drain more than \$4 billion in fees each year from people in the 34 states that allow triple-digit interest rate payday loans. Car-title loans drain more than \$3.8 billion in

fees annually from people in 22 states. Together, these loans drain nearly \$8 billion in fees every year.

10. [Map of U.S. Payday Interest Rates](#) (CRL, Feb 2019)

- Shows the interest rates on typical payday loans in each of the 50 states, drawing distinctions among states with rate caps or other rate protections.

B. National Consumer Law Center

1. [A Larger and Longer Debt Trap? Analysis of States' APR Caps for a \\$10,000 Five-Year Installment Loan](#) (Carolyn Carter, Lauren Saunders, Margot Saunders, Oct. 2018)

- For a \$10,000 five-year loan, 39 states have APR limits in place, at a median rate of 25%, protecting 236 million people. However, some of those caps are excessively high. 12 states place no numerical cap on the APR, leaving 90 million people unprotected.
- Among states with rate caps for a \$10,000 loan, over half have an APR limit of 25% or less, and nearly 70% (27 jurisdictions) cap APRs at 27% or less. This finding reflects a consensus that, while an APR cap of 36% may be appropriate for smaller, shorter-term loans, the cap should decrease to well below 36% for larger loans.
- Most states impose rate caps on a \$10,000 loan, five-year loan, at a median APR of 25%.
- Of the 39 jurisdictions that have rate caps, more than two-thirds (27) limit the rate to 27% or less and 20 jurisdictions—Alaska, Arkansas, Colorado, Connecticut, the District of Columbia, Florida, Hawaii, Indiana, Kansas, Kentucky, Maine, Maryland, Massachusetts, Minnesota, Nebraska, New York, Oklahoma, Rhode Island, Vermont, and Wyoming—limit the maximum APR for a \$10,000 five-year loan to 25% or less. Arkansas, Maine, and Vermont are particularly protective of consumers, with APR limits of 17%, 18%, and 18%, respectively.
- Eleven states (Arizona, Louisiana, Michigan, Mississippi, New Jersey, North Carolina, Pennsylvania, Tennessee, Texas, Washington, and West Virginia) have an APR limit between 26% and 30%. Most of these states—seven of them—are at the low end of this range, capping APRs at 26% or 27%.
- One state, Iowa, permits a 32% APR, and five states (Illinois, Montana, New Hampshire, Oregon, and South Dakota) allow 36%.
- Two states have APR limits above 36%: Nevada allows APRs as high as 40%, and Georgia allows a 60% APR.
- Twelve states impose no numerical rate cap. Alabama, California, Idaho, New Mexico, South Carolina, Utah, and Wisconsin impose no limit other than a prohibition of rates that shock the conscience. The lending laws in Delaware, Missouri, North Dakota, Ohio, and Virginia impose no limit at all for a \$10,000 five-year loan.

2. [After Payday Loans: How do Consumers Fare When States Restrict High-Cost Loans?](#) (Oct. 2018)

- Research from states that eliminated payday loans is clear: consumers are better off without payday loans and find better ways to cope with financial challenges:
 - Former borrowers generally agree that they are better off without payday loans and express relief that the loans are no longer available.

- People use a variety of strategies to manage their finances, including borrowing from family and friends, negotiating payment plans with utility companies, and using pawn shops or traditional credit products like credit cards.
 - Consumers do not turn to illegal internet loans in large numbers.
 - In Arkansas, borrowers adapted to less risky credit sources, did not generally turn to illegal internet or border state loans, and overall debt loads remained stable.
 - In Georgia, involuntary bank account closures declined.
 - In Montana, usage of low-cost credit union loans increased and, after a temporary adjustment, consumers avoided online lenders.
 - In New Hampshire, former payday borrowers are glad they are gone and developed new strategies.
 - In North Carolina, people reported a positive impact from the end of payday lending and developed new strategies. Credit unions stepped in with lower cost options and other products also supplied credit.
3. [Fact Sheet: State Annual Percentage Rate \(APR\) Caps for \\$500, \\$2,000, and \\$10,000 Installment Loans](#) (March 2019)
- Among states that cap rates, the median APR cap for a \$500, 6-month loan is 36.5%, for a \$2,000 2-year loan it is 31% and for a \$10,000 5-year loan it is 25%.

Pre-October 2017

A. Center for Responsible Lending

1. [Quantifying the Economic Cost of Predatory Payday Lending](#) (Keith Ernst, John Farris and Uriah King, Dec 2003)
- 91% of all payday loans are made to borrowers with five or more payday loans per year;
 - Two in three borrowers (66%) incur five or more payday loans per year, while nearly one in three (31%) receive twelve or more loans per year;
 - Borrowers, on average, receive 8 to 13 payday loans per year; and
 - 5 million payday borrowers are caught in this debt trap each year.
2. [Race Matters: The Concentration of Payday Lenders in African-American Neighborhoods in North Carolina](#) (Uriah King, Wei Li, Delvin Davis and Keith Ernst, Mar 2005)
- African-American neighborhoods have three times as many stores per capita as white neighborhoods. This disparity increases as the proportion of African-Americans in a neighborhood increases.
 - This three-fold disparity remains unchanged even when we control for the neighborhood characteristics of income, homeownership, poverty, unemployment rate, urban location, age, education, share of households with children, and gender.
3. [Car Title Lending Driving Borrowers to Financial Ruin](#) (Amy Quester, CRL; Jean Ann Fox, CFA, Apr 2005)
- General description of the car title lending model, recommending the following:
 - i. Establishing fair and affordable loan terms.
 - ii. Protecting borrowers after default.
 - iii. Closing loopholes to ensure consistent regulation.

- iv. Monitoring lenders through licensing, bonding, reporting, and examination requirements.
 - v. Ensuring borrowers can exercise their rights.
4. [Payday Lenders Target the Military](#) (Ozlem Tanik, Sep 2005)
- Active-duty military personnel are three times more likely than civilians to have taken out a payday loan.
 - One in five active-duty military personnel were payday borrowers last year.
 - Predatory payday lending costs military families over \$80 million in abusive fees every year.
5. [Financial Quicksand: Payday lending sinks borrowers in debt with \\$4.2 billion in predatory fees every year](#) (Uriah King, Leslie Parrish and Ozlem Tanik, Nov 2006)
- Ninety percent (90%) of payday lending revenues are based on fees stripped from trapped borrowers, virtually unchanged from our 2003 findings. The typical payday borrower pays back \$793 for a \$325 loan.
 - Predatory payday lending now costs American families \$4.2 billion per year in excessive fees.
 - States that ban payday lending save their citizens an estimated \$1.4 billion in predatory payday lending fees every year.
6. [Springing the Debt Trap: Rate caps are only proven payday lending reform](#) (Uriah King and Leslie Parrish, Dec 2007)
- The debt trap of payday lending persists even in states that have attempted to reform the practice. In these states, 90 percent of payday lending business is generated by trapped borrowers with five or more loans per year. More evidence that the debt trap persists:
 - i. Over 60 percent of loans go to borrowers with 12 or more transactions per year;
 - ii. 24 percent of loans go to borrowers with 21 or more transactions per year;
 - iii. One of every seven Colorado borrowers have been in payday debt every day of the past six months;
 - iv. Nearly 90 percent of repeat payday loans are made shortly after a previous loan was paid off. 4 Springing the Debt Trap: Rate caps are only proven payday lending reform
 - As implemented in any state, none of these restrictions have stopped payday lending from trapping borrowers in long-term debt:
 - i. Renewal bans/cooling-off periods
 - ii. Limits on number of loans outstanding at any one time
 - iii. Payment plans
 - iv. Loan amount caps based on a borrower's income
 - v. Databases which enforce ineffective provisions
 - vi. Regulations that narrowly target payday loans
 - Those states which enforce a comprehensive interest rate cap at or around 36 percent for small loans have solved their debt trap problem; realizing a savings of \$1.5 billion for their citizens while preserving a more responsible small loan market.

7. [High-Cost Payday Lending Traps Arizona Borrowers](#) (Leslie Parrish, Sep 2008)
 - Over 700 payday lenders charging up to 459% annual percentage rate (APR) for a two-week loan are located throughout Arizona; with the highest concentrations per capita in Pinal, Mohave, and Maricopa Counties.
 - A typical Arizona borrower pays an estimated \$516 in fees for a \$325 payday loan and still owes the \$325 in principal. Overall, payday lending costs Arizona families nearly \$149 million each year. Payday lending drains \$91 million and \$23 million from Maricopa and Pima County households, respectively.

8. [Wealth-stripping payday loans trouble communities of color](#) (Aracely Panameno and Keith Corbett, Oct 2008)
 - People of color have less wealth than their white counterparts, making them more vulnerable to predatory lending. This, in turn, threatens to further widen the wealth gap.
 - Research from several states suggests that people of color are disproportionately impacted by 400 percent APR payday lending. An examination of payday lending storefront locations in Maricopa and Pima Counties—in which over three-quarters of Arizona payday lenders are located—reveals a pattern of these stores clustering in communities of color.

9. [Predatory Profiling: The Role of Race and Ethnicity in the Location of Payday Lenders in California](#) (Wei Li, Leslie Parrish, Keith Ernst, and Delvin Davis, Mar 2009)
 - Payday lenders are nearly eight times as concentrated in neighborhoods with the largest shares of African Americans and Latinos as compared to white neighborhoods, draining nearly \$247 million in fees per year from these communities.
 - Even after controlling for income and a variety of other factors, payday lenders are 2.4 times more concentrated in African American and Latino communities. On average, controlling for a variety of relevant factors, the nearest payday lender is almost twice as close to the center of an African American or Latino neighborhood as a largely white neighborhood.
 - Race and ethnicity play a far less prominent role in the location of mainstream financial institutions, such as bank branches. While race and ethnicity account for over half of the variation in payday lender location explained by neighborhood factors, they explain only one percent of the variation in bank branch locations.

10. [Phantom Demand: Short-term Due Date Generates Need for Repeats Payday Loans](#) (Leslie Parrish and Uriah King, Jul 2009)
 - The great majority of payday loans are originated shortly after a previous loan is paid back, with half of new loans opened at the borrower's first opportunity, and 87 percent opened within two weeks.
 - Borrower churn inflates payday loan volume by over \$20 billion each year, with three of every four loans generated by the debt trap.
 - This churning of loans to borrowers each pay period costs these households \$3.5 billion in extra fees each year.

11. [High-Cost Payday Lending Traps Mississippi Borrowers](#) (Jennifer Johnson, Jul 2010)
 - Over 900 payday lenders charging up to 572% annual percentage rate (APR) for a two-week loan are located throughout Mississippi; with the highest concentrations per household in Tunica, Attala, and Leake Counties.
 - A typical Mississippi borrower pays an estimated \$691 in fees for a \$350 payday loan and still owes the \$350 in principal. Overall, payday lending costs Mississippi families over \$270 million each year. Payday lending drains \$2.2 million and \$3.9 million from Tunica and Attala County households, respectively.

12. [Payday Lenders Pose as Brokers to Evade Interest Rate Caps: The next chapter in payday lender subterfuge](#) (Diane Standaert and Sara Weed, Jul 2010)
 - Payday lenders repeatedly attempt to dodge reforms
 - Payday loans brokered through credit repair laws perpetuate the debt trap

13. [Payday Loans, Inc.: Short on Credit, Long on Debt](#) (Uriah King and Leslie Parrish, Mar 2011)
 - The typical payday borrower remains in payday loan debt for much of the year, and many borrowers remain indebted in payday loans for extended periods of time.
 - i. In their first year of payday loan use, borrowers are indebted an average of 212 days. Over the full two-year period, borrowers are indebted a total of 372 days on average.
 - Payday borrowers' loans increase in size and frequency as they continue to borrow.
 - i. Those payday borrowers who continue to take out loans over a two year period have 12 payday transactions in their second year of borrowing, up from 9 transactions in the first year.
 - A significant share of borrowers become late or default on their payday loan, triggering more fees and placing their bank account at risk.
 - i. Over the first two years of payday loan use, 44 percent of borrowers will experience a "return event" or default in which they are cannot service their payday loan debt in a timely manner.

14. [Big Bank Payday Loans: High-interest loans through checking accounts keep customers in long-term debt](#) (Rebecca Borné, Joshua Frank, Peter Smith and Ellen Schloemer, Jul 2011)
 - Bank payday loans are very expensive, carrying an annual percentage rate (APR) of 365 percent based on the typical loan term of 10 days.
 - "Short-term" bank payday loans often lead to a cycle of long-term indebtedness—on average, bank payday borrowers are in debt for 175 days per year (twice as long as the maximum length of time the FDIC has advised).
 - Nearly one-quarter of all bank payday borrowers are Social Security recipients, who are 2.6 times as likely to have used a bank payday loan as bank customers as a whole.

15. [Driven to Disaster: Car-Title Lending and Its Impact on Consumers](#) (Delvin Davis and Uriah King, CRL; Jean Ann Fox and Tom Feltner, CFA, Feb 2013)
 - • Approximately 7,730 car-title lenders operate in at least 21 states costing borrowers \$3.6 billion each year in interest on \$1.6 billion in loans.
 - The average car-title borrower renews their loan eight times, paying \$2,142 in interest for \$951 in credit.

- Car-title loans' annualized percentage rates (APR) are especially excessive considering the value of the collateral and the relatively low amount of the loan. In our borrower-level data set, the median loan-to-value ratio was 26 percent, yet the APR was 300 percent.
 - One in six borrowers in our data set also faced repossession, with repossession fees averaging half of the borrower's outstanding loan balance.
16. [Triple-Digit Danger: Bank Payday Lending Persists](#) (Rebecca Borné and Peter Smith, Mar 2013)
- Bank payday loans carry an annual percentage rate (APR) that averages 225 to 300 percent.
 - The median bank payday borrower took out 13.5 loans in 2011 and spent at least part of six months during the year in bank payday debt. Over a third of borrowers took out more than 20 loans, bringing the mean number of loans per borrower to 19.
 - Bank payday borrowers are two times more likely to incur overdraft fees than bank customers as a whole.
 - Over one-quarter of all bank payday borrowers are Social Security recipients.
17. [State of Lending: Car-Title Lending](#) (Susanna Montezemolo, Jul 2013)
- Balloon payment car title loans lead to repeat borrowing, enforced by the threat of repossession.
 - i. The typical TitleMax loan is refinanced 8 times.
 - Borrowers who take out the typical nine title loans in a year pay back over three times the amount borrowed: \$3,391 in payments for a \$1,042 loan.
 - Car-title lenders originate an estimated 2.0 million car-title loans each year worth \$1.9 billion in annual loan dollar volume, not including churn. Borrowers pay \$4.3 billion in fees alone on these loans.
18. [State of Lending: Payday Lending](#) (Susanna Montezemolo, Sep 2013)
- Loan churn in states with no restrictions on payday lending costs borrowers at least \$2.6 billion in excess fees annually.
 - 16,341 payday stores are located in states without substantive restrictions on payday lending, with total loan dollar volume (including churn) of \$19.9 billion and total fees collected of \$3.4 billion.
 - The evidence shows that the majority of payday borrowers are trying to address budget gaps caused by recurring, everyday expenses; they are not trying to address the occasional emergencies payday lenders claim are the key reasons borrowers to take out loans.
 - 85% of loans go to borrowers with seven or more loans in a year, more than the maximum level of indebtedness recommended by the FDIC.
19. [State of Lending: Bank Payday Lending](#) (Rebecca Borné and Peter Smith, Sep 2013)
- Bank payday costs and loan term translate to an annual percentage rate (APR) ranging from 225% to 300%.
 - The median bank payday borrower took out 13.5 loans in 2011 and was in bank payday loan debt at least part of six months annually. The mean number of loans was 19.

- Nearly two-thirds of bank payday borrowers incurred overdraft fees, and these borrowers were three times as likely to incur overdraft fees as bank customers as a whole.
 - Banks that permit installment repayment plans make these plans difficult to qualify for or obtain.
 - Banks' cooling-off periods allow borrowers to become mired in a cycle of debt before the cooling-off period is triggered.
 - More than one-quarter of bank payday borrowers are Social Security recipients.
20. [Car Title Lending: Disregard for Borrowers' Ability to Repay](#) (May 2014)
- Car title advertisements emphasize their lack of underwriting standards.
 - Car title lending leads to repeat refinancing and repossessions.
21. [Analysis: New State Data Show California Payday Lenders Continue to Rely on Trapping Borrowers in Debt](#) (Paul Leonard and Graciela Aponte, Oct 2014)
- Payday lenders rely on borrowers who get stuck in a cycle of repeat borrowing.
 - i. 76% percent of all payday loan fees are due to borrowers stuck in 7 or more payday loans per year.
 - ii. 60% of payday loan fees are from borrowers with 10 or more loans in a year.
 - The long-term debt trap is the most typical borrower experience.
 - i. Borrowers taking out 7 or more loans per year accounted for 45% of borrowers.
 - ii. The "10 or more" loan category was the single largest, accounting for 29% of all borrowers. Conservatively, borrowers in this category received an average of 13 loans annually, or more than one loan per month.
 - The debt trap in California is growing deeper: The number of borrowers with 10 or more loans in 2013 increased by 11 percent over 2012, even as the total number of payday loans declined slightly over the same period.
 - Payday loans that are used only occasionally – as they are advertised – account for only a small portion of payday lending business.
 - i. Only 4 percent of all payday loan activity in 2013 was from borrowers with just one loan in 2013. These borrowers accounted for 22% of all borrowers.
 - ii. Only 15 percent of all payday loan activity in 2013 was from borrowers with 4 or fewer loans.
22. [Payday Mayday: Visible and Invisible Payday Lending Defaults](#) (Susanna Montezemolo and Sarah Wolff, Mar 2015)
- Nearly half of all payday borrowers defaulted within two years of their first loan.
 - Of borrowers who defaulted, nearly half did so within the first two payday loans.
 - Default does not necessarily signal the end of payday borrowing, with many defaulters going on to repay their loan and even borrow (and possibly default) again at a later date.
 - Nearly one in five borrowers had a loan charged off by the lender.
 - One-third of payday borrowers experienced at least one invisible default in which their account was overdrawn on the same day that they made a payment to a payday lender.
 - For payday borrowers, overdrafts and bounced transactions frequently occurred close in time to the use of payday loans. Nearly half of payday borrowers incurred an overdraft

or NSF fee in the two weeks after a payday loan transaction, and 64% paid overdraft or NSF fees at some point.

23. [Payday and Car Title Lenders' Migration to Unsafe Installment Loans](#) (Diane Standaert and Peter Smith, Oct 2015)
 - Evidence of payday and car title lenders offering more installment loan products.
 - Installment loans show evidence of unaffordability: repeat borrowing, delinquencies, and defaults.

24. [The Buckeye Burden: An Analysis of Payday and Car Title Lending in Ohio](#) (Diane Standaert and Delvin Davis, Nov 2015)
 - There are 836 storefronts in Ohio that make payday or car title loans, the majority of which (59%) offer both forms of high-cost loans.
 - Payday and car title loans drain more than \$502 million in predatory loan fees from Ohioans annually, twice as much as what payday loans drained in 2005.
 - Larger, longer-term payday and car title loans with triple-digit interest rates further expose Ohioans to the harms of unaffordable loans secured by their bank accounts and cars.

25. [Predatory Payday and Larger Installment Loans Overshadow Emerging Market for Smaller, Less Expensive Installment Loans in California](#) (Paul Leonard, Dec 2015)
 - Payday lenders rely on borrowers who get stuck in a cycle of repeat borrowing. 76% percent of all payday loan fees are due to borrowers stuck in 7 or more payday loans per year. 60% of payday loan fees are from borrowers with 10 or more loans in a year.
 - Not only do these high-cost lenders charge triple-digit rates, but several of them report high charge-off rates.
 - Surge of small loans between \$250 and \$2,500 shows promising possibilities for California's small dollar loan pilot programs, increasing 116% from 2009 to 2014.

26. [Perfect Storm: Payday Lenders Harm Florida Consumers Despite State Law](#) (Brandon Coleman and Delvin Davis, Mar 2016)
 - Florida's payday loan law – passed in 2001 and sold as a measure to prevent the debt trap – fails to stop the wealth stripping effects of payday loans with APRs averaging 278%.
 - With more payday loan stores than Starbucks, payday lenders have stripped over \$2.5 billion in fees from Floridians since 2005, with over \$311 million collected last year alone.
 - Payday loans to trapped borrowers generate the majority of payday loan volume. Last year, over 83% Florida payday loans were to Floridians stuck in 7 or more loans.
 - The economic drain of payday lending is disproportionately concentrated in Florida's black and Latino communities, and has seen significant growth among senior citizens

27. [Payday and Car Title Lenders Drain \\$8 Billion in Fees Every Year](#) (Diane Standaert and Delvin Davis, May 2016)
 - Payday loans drain over \$4.1 billion in fees a year from people in the 36 states that allow triple-digit interest rate payday loans.
 - Car title loans drain approximately \$3.9 billion in fees annually from people in 23 states.

28. [States without Payday and Car-title Lending Save \\$5 Billion in Fees Annually](#) (Delvin Davis and Susan Lupton, Jun 2016)
- Estimates that states without payday and car title have saved nearly \$5 billion a year in fees annually – \$2.2 billion from payday lending, plus another \$2.8 from car title lending.
29. [Shark-Free Waters: States are Better Off without Payday Lending](#) (Robin Howarth, Delvin Davis and Sarah Wolff, Aug 2016)
- State payday loan bans save consumers more than \$2.2 billion annually in fees that would otherwise be paid to payday lenders.
 - Payday loan restrictions do not force consumers to use products that cause greater harm than payday loans. Borrowers in states without payday loans employ a variety of strategies to address a cash flow shortfall at a fraction of the cost of payday loans.
 - In addition to protecting consumers from the high costs of payday loans, state payday lending restrictions also help borrowers by preventing the long-term harms associated with these loans. These harms include: increased difficulty paying bills, delayed medical spending, involuntary bank account closure, higher likelihood of filing for bankruptcy, and decreased job performance.
 - Finally, there is broad public support for maintaining the rate caps in states that prevent the harms of the typical 400% payday loan, both from citizens at large and from former payday borrowers.

B. National Consumer Law Center

1. [Stopping the Payday Loan Trap: Alternatives that Work, Ones that Don't](#) (Lauren Saunders, Leah Plunkett, Carolyn Carter, June 2010)
- Several myths surround payday loan alternatives:
 - The myth that any alternative that is slightly cheaper than a traditional payday loan is a good alternative.* An affordable alternative must be just that: affordable.
 - The myth that any loan that does not give the lender excessive profits is a responsible loan.* Loans should be judged by their impact on the borrower, not on the lender's bottom line.
 - The myth that a payday loan alternative needs to look like a payday loan.* That claim is a self-serving justification for offering a loan with such a high fee structure and short repayment period that it is unaffordable.
 - The myth that expensive loans must be tolerated because there is demand for them and we should not restrict access to credit.* Harmful forms of credit should be restricted.
 - To be truly affordable and avoid the pitfalls of traditional payday loans, an alternative product must:
 - Have an annual percentage rate (APR), including fees, of 36% or less;
 - Have a term of at least 90 days, or one month per \$100 borrowed;
 - Require multiple installment payments rather than a single balloon payment;
 - Not require that the borrower turn over a post-dated check or electronic access to a bank account.

2. [Why 36%?: The History, Use, and Purpose of the 36% Interest Rate Cap](#) (Lauren Saunders, Apr 2013)
 - History behind the 36% usury rate cap, and its impact on loan affordability.
 - Records states that cap payday loans at 36% or less.

3. [Big Data A Big Disappointment For Scoring Consumer Credit Risk](#) (Persis Yu and Jillian McLaughlan, March 2014)
 - Conducted survey of data brokers, finding concerning amounts of inaccuracies and incomplete information. This would impact assessments of income and credit based on this data.
 - We should consider big data brokers as subject to regulation under the Fair Credit Reporting Act.
 - Also, regulators should examine how the impacts of big data collection could disproportionately impact groups protected under the Equal Credit Opportunity Act.

4. [Payday Lender Prepaid Cards: Overdraft and Junk Fees Hit Cash-Strapped Families Coming and Going](#) (Lauren Saunders, Jul 2015)
 - Payday lender prepaid cards allow payday lenders to take advance authorization to debit the card on the consumer's payday.
 - Payday lender prepaid cards can overdraft and charge overdraft fees.
 - NetSpend made \$50 million or more in overdraft fees last year.
 - Payday lender prepaid cards have unusual fees triggered by payday loans. These fees are generally not found on mainstream prepaid cards:
 - i. \$1 to \$14.95 for declined automated clearinghouse (ACH) payments.
 - ii. \$10 to \$25 to stop recurring payments.
 - iii. On one card, \$4.95 for a successful payday loan payment.

5. [Installment Loans: Will States Protect Borrowers from a New Wave of Predatory Lending?](#) (Lauren Saunders, Margot Saunders, Carolyn Carter and Andrew Pizor, Jul 2015)
 - For a \$500 closed-end installment loan, with all fees included:
 - i. In 19 states and the District of Columbia, the full APR is 16% to 36%,
 - ii. 13 states allow interest and fees that can bring the full APR as high as 54%,
 - iii. 10 states allow fees that can potentially bring the full APR for a \$500 loan up to between 61% and 116%,
 - iv. 4 states place no cap on the interest rate except that it cannot be unconscionable—so one-sided that it shocks the conscience, and
 - v. 4 states have no rate cap or ban on unconscionability at all.
 - For a \$2,000 closed-end installment loan:
 - i. 31 states and the District of Columbia cap the full APR at 17% to 36%,
 - ii. 6 states allow just a bit more (38% to 41%)
 - iii. 2 states allow rates and fees that can bring the full APR as high as 82%,
 - iv. 6 states place no cap on the interest rate except that it cannot be unconscionable,
 - v. 5 states have no rate cap at all.
 - Of the 44 states whose non-bank lending statutes specifically allow open-end credit:

- i. 14 states fail to cap rates for a \$500 cash advance and 16 fail to cap rates for a \$2000 advance.
 - ii. 14 states have rate caps but do not have unambiguous, airtight caps on the fees that lenders can impose for a \$500 cash advance, and 13 fall into this category for a \$2000 advance.
 - iii. For a \$500 cash advance, 7 states cap it between 39% and 54%, 4 cap it at 59% to 89%, and Tennessee caps it at 279%.
 - iv. For a \$2,000 cash advance, 11 states cap the full APR at 36% or less, 3 states cap it between 39% and 42%, and Tennessee caps it at 279%.
6. [Misaligned Incentives: Why High Rate Installment Lenders Want Borrowers Who Will Default](#) (Lauren Saunders, Margot Saunders and Carolyn Carter, Jul 2016)
- As long as the borrower pays long enough before defaulting, a high-rate installment loan will be profitable. If the borrower makes even half the payments on a longer term high-rate installment loan, the lender may receive sufficient cash flow to recover the amount loaned and another 50% or more, likely more than enough to turn a profit.
 - A borrower who defaults later can be a more profitable customer than one who prepays the loan in full too early. Tighter underwriting can lead to borrowers who are able to repay early, generating less revenue than a consumer who struggles for months or years to make payments and then ultimately defaults.
 - While the lender may have a successful experience, default causes a cascade of devastating consequences that are likely to plague the consumer for a lifetime.
 - After 20 months of payments, less than halfway through the loan, the consumer has paid over \$4,331 yet reduced the loan balance by only \$391.

C. Consumer Federation of America

1. [The Growth of Legal Loan Sharking: A Report on the Payday Loan Industry](#) (Jean Ann Fox, Nov 1998)
 - Explains the different aspects of the payday loan industry, and the debt treadmill.
 - Recommends states enforce usury laws, forbid rollovers, and that Congress close any legal loopholes.
2. [Safe Harbor for Usury: Recent Developments in Payday Lending](#) (Jean Ann Fox, Sep 1999)
 - Overview of payday lending, and its growth on a state level, recommending:
 - i. Congress should close the national bank exportation loophole and protect consumers.
 - ii. States should maintain and enforce interest rate caps for small loans.
 - iii. States should strengthen existing state payday loan laws.
3. [Show Me The Money!: A Survey of Payday Lenders and Review of Payday Lender Lobbying in State Legislatures](#) (Jean Ann Fox, CFA, and Edmund Mierzwinski, US PIRG, Feb 2000)
 - Payday loans are being made in states despite usury ceilings.
 - Payday lenders using national bank charters to avoid state regulation.
 - Stores did not quote APR on payday loans.
 - Payday lenders appear to exceed fee limits.
 - Danger of additional bounced check (NSF) fees.

- Cost of loan often confused by fees based on total check or total loan.
4. [Rent-A-Bank Payday Lending: How Banks Help Payday Lenders Evade State Consumer Protections](#) (Jean Ann Fox, CFA, and Edmund Mierzewski, US PIRG, Nov 2001)
- Payday lending continues its rapid growth and expansion into more states.
 - State lawmakers and regulators are showing increasing resistance to legalizing triple digit interest loans based on checks held for future deposit.
 - The payday loan industry is attempting to avoid state consumer protection laws by partnering with banks, while states step up efforts to enforce state laws.
 - CFA and PIRG staff and volunteers surveyed 235 payday lenders doing business in 20 states and the District of Columbia. The survey included stores in six states that effectively prohibit payday lending through usury regulation (Category 1 states), in two states with no law (Category 2 states) and 12 states where payday lending is authorized and regulated (Category 3 states).
 - Payday lenders surveyed charge consumers an average Annual Percentage Rate (APR) of 470% and an average fee of \$18.28 to borrow \$100 for two weeks. APRs ranged from 182%-910% and fees ranged between \$10-\$35 per \$100 borrowed.
 - Fifteen percent (15%) of payday lenders in states that cap fees quoted rates higher than allowed by law in that state and an additional 38% of payday lenders quoted rates exactly at the allowable APR.
 - The most common APR found was 390% APR, imposed by 30% of all stores. The next most common APR found was 520%, imposed by 18% of all stores. An additional 21% of stores charged APRs clustered narrowly between 442-459%.
 - One-third (33%) of all stores imposed APRs greater than 500%. The following chart shows the range of APRs found for the 233 of 235 stores where enough information was provided to calculate an APR.
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 - One-third (33%) of all stores imposed APRs greater than 500%. The following chart shows the range of APRs found for the 233 of 235 stores where enough information was provided to calculate an APR.
5. [Unsafe and Unsound: Payday Lenders Hide Behind FDIC Bank Charters to Peddle Usury](#) (Jean Ann Fox, Mar 2004)
- Banks continue to play a major role in enabling payday loan chains to evade state usury, small loan and payday loan laws. Ten state-chartered FDIC supervised banks are the only financial institutions known to be partnering with pawn chains, check cashers, and payday lenders, following regulatory action by the Comptroller of the Currency, Office of Thrift Supervision, and Federal Reserve.
 - The Federal Deposit Insurance Corporation, the last bank regulator to issue payday loan enforcement guidelines for banks that partner with payday lenders, has taken no payday loan guideline enforcement action involving state-chartered FDIC supervised banks. Since the FDIC guidelines were issued in July 2003, three more FDIC regulated

banks have entered into partnerships with payday lenders. The FDIC permitted a Federal Reserve-member bank to switch regulators in order to continue its lucrative payday loan business.

- The payday loan industry's goal is safe harbor legislation in every state. Currently 33 states and the District of Columbia authorize payday loans by law or regulation, and two additional states have no usury limits for small loans by licensed lenders. Fifteen states prohibit payday lending through operation of usury or loan laws and a growing number of states prohibit retailers from brokering loans for out-of-state banks.
- Payday lenders face growing resistance from state legislatures, especially in states where loans are not legal. In 2004 the Michigan Governor vetoed a safe harbor bill and Georgia legislators passed a tough anti-payday loan enforcement bill.
- Industry analysts in early 2003 reported a 50 percent increase in the number of payday loan outlets as of since year-end 2000 and double the fee revenue. Growth in industry size is fed by additional states authorizing payday lending, expansion of lending into states through rent-a-bank arrangements and other devices as well as repeat borrowing by current customers.

6. [Internet Payday Lending: How High-Priced Lenders Use the Internet to Mire Borrowers in Debt and Evade State Consumer Protections](#) (Jean Ann Fox and Anna Petrini, Nov 2004)

- Payday lending has expanded from check cashing outlets, pawn shops and payday loan outlets to the Internet. Loans are marketed, delivered and collected online at rates and terms that mire cash-strapped consumers in repeat borrowing at extremely high costs. Finance charges are in the \$25 (650% APR) to \$30 (780% APR) per \$100 borrowed range, with built in loan flipping in many contracts.
- Web sites marketing and/or delivering small loans are growing rapidly, with numerous referral sites feeding applications to actual lenders. Lenders are hard to locate, identify or contact. Some are licensed in their home states, while others hide behind anonymous domain registrations or are located outside the United States.
- Banks are involved in Internet payday loans through the Automated Clearing House System (ACH) used to electronically deliver loans to consumers' bank accounts and to withdraw payments. County Bank of Rehoboth Beach, DE, participates directly in Internet payday lending.
- Internet payday lenders bypass state usury laws and consumer protections by locating in lax regulatory states and making loans without complying with licensing requirements or state protections in the borrower's home state. State regulators, notably in Kansas, New York and Colorado, are beginning to enforce state usury and small loan laws against lenders making loans online to state consumers.
- Payday loan applications made online expose consumers to privacy and security risks as bank account numbers, Social Security numbers, and other personal financial information are transmitted to lenders, often over unsecure web links. Privacy policies do not protect privacy.
- Federal electronic banking laws and industry self-regulatory rules for use of the Automated Clearing House (ACH) system do not adequately protect consumers who use electronic fund transfers to borrow and repay loans from bank accounts.

7. [Car Title Lending Driving Borrowers to Financial Ruin](#) (Amy Quester, CRL; Jean Ann Fox, CFA, Apr 2005)
 - General description of the car title lending model, recommending the following:
 - i. Establishing fair and affordable loan terms.
 - ii. Protecting borrowers after default.
 - iii. Closing loopholes to ensure consistent regulation.
 - iv. Monitoring lenders through licensing, bonding, reporting, and examination requirements.
 - v. Ensuring borrowers can exercise their rights.

8. [Driven into Debt: CFA Car Title Loan Store and Online Survey](#) (Jean Ann Fox and Elizabeth Guy, Nov 2005)
 - Title loans are extremely expensive. Title loan stores charge a median 25 percent per month finance charge, which translates to 300 percent annual interest, plus additional fees averaging \$25 per loan. Online title lenders quote rates of 24 to 651.79 percent APR for loans fully secured by the title to the borrower's paid for car, but the low rate is charged by a lender that charges high fees for additional products.
 - Title loans trap borrowers in perpetual debt. Lenders don't run credit checks or base loans on the borrower's ability to repay. Loans are generally due in one month, with interest only renewals available. Since most lenders hold a duplicate set of car keys, non-judicial repossession is easy.
 - Title lenders structure their loans to evade state usury or small loan rate caps. In California and South Carolina, loans start at dollar amounts just above the cut-off for small loan rate caps. In Virginia, Iowa and Kansas, title loans are claimed to be open-ended credit to benefit from the deregulation of credit cards in those states. Title lenders making loans via the Internet export high cost loans to consumers in protected states by using dubious choice of law claims from states with no rate caps.
 - Title loans are over-secured. Title lenders loan a fraction of the value of the car used to secure the loan, with the most frequent loan-to-value set at 50 to 55 percent of the car's value, a higher percentage than we expected. In Virginia, many title lenders will loan up to 100 percent of the value of the car.
 - Information necessary to make an informed credit decision is hard to come by. Only four title loan websites disclosed an annual percentage rate prior to applications being submitted. Store personnel often quoted monthly finance charges as an interest rate instead of the federally required annual percentage rate. Store clerks gave confusing and contradictory cost information. Consumers were only able to obtain reliable pre-loan information in states that require licensees to post rates and fees or to provide brochures on consumer rights.
 - Rate regulation is necessary to reduce the price of loans. Store surveys found the lowest rates in Arizona, where rates are capped at no more than 17 percent per month on loans up to \$500, and at lower levels for larger loans. In states with high rate caps, title lenders with few exceptions charged the legal maximum. Rates were highest in states with no rate caps, such as Illinois, where the annualized rates ranged from 300 to 470 percent or New Hampshire where title loans cost 300 to 366.9 percent.
 - Permissive state laws and lender exploitation of loopholes and gaps in protections leave vulnerable consumers exposed to high risk title loans. Title lending passes for pawn transactions in Georgia and Alabama as a result of court decisions that have not led to

corrective state laws. Almost half the states permit predatory title lending, either through weak authorizing laws or failure to close loopholes.

- State laws set the stage for title loan debt traps by setting high maximum loan ceilings and permitting one-month balloon payments. For example, Tennessee and Mississippi permit loans as large as \$2,500 to be due in 30 days. New Hampshire caps its title loans at \$10,000 with no rate cap and permits 11 loan renewals with only five percent reductions in the original principle each time, resulting in a balloon payment at the end. Georgia sets a 30 day loan but fails to limit loan size.
- Internet title loans may deprive consumers of home state law protections. Some online lenders claim choice of law contract terms from states, such as New Mexico and Delaware, with lax credit laws. Consumers who live in states with protective credit and pawn laws are exposed to online title loan abuses.

9. [Cashed Out: Consumers Pay Steep Premium to 'Bank' at Check Cashing Outlets](#) (Jean Ann Fox and Patrick Woodall, Nov 2006)

- Cost to Cash Benefit Checks Increased: In 2006, the 2.44 percent charged by average check cashing outlets to cash Social Security checks was 15.6 percent more expensive than the 2.11 percent charged a decade earlier. The 2006 rate was significantly (53 percent) higher than the 1.59 percent charged in 1987.2 On average, it costs \$24.45 on average to cash a \$1,002 Social Security check in 2006.
- Cost to Cash Paychecks Grows: The cost to cash hand-written paper checks has grown steadily over the past two decades. In 2006, the 4.11 percent charge to cash a paper payroll check was 75.6 percent higher than the 2.34 percent charged in 1997 and 152.7 percent higher than the 1.62 percent charged to cash a paycheck in 1987. A blue-collar worker using check cashing outlets to cash their paycheck pays an average \$19.66 every week to cash a \$478.41 check.
- Payday Loans at Check Cashing Outlets are Expensive: Two-thirds of check cashers in states that authorize them also make payday loans, cash loans based on the borrower's personal check held for future deposit by the lender. Typical loans are for over \$300, due on the borrower's next payday, and cost \$15 to \$30 per \$100 loaned or 390 to 780 percent annual percentage rate. Average payday loans at check cashing outlets were offered with more than 400 percent annual percentage rate. To qualify for a payday loan, a consumer only needs a bank account and a source of income.

10. [CFA Survey of Online Payday Loan Websites](#) (Jean Ann Fox and Catherine B. Bourke, Aug 2011)

- Lenders require electronic access to borrowers' bank accounts. Instead of holding a paper check to secure payment of loans made at payday loan stores, Internet lenders gain authorization to electronically deposit loan proceeds and withdrawn payments directly from borrowers' bank accounts.
- Borrowers complete online applications and provide Social Security numbers, bank account and bank routing numbers in online applications.
- Surveyed loan size ranges from \$100 to \$1500, with payment/s due on the borrower's next payday with loan terms ranging from five to thirty days.
- Typical cost of a \$500 loan is \$125 or 652% APR for a two-week loan. Surveyed loan cost ranged from a low of 378% in Kansas to 780% charged by six lenders.

- The default payment plan for most sites is to pay the finance charge only, with no reduction in loan principal for several paydays. To initiate payment in full, a borrower has to notify the lender days before the due date to request the lender to withdraw the full amount.
 - While some lenders purport to be state-licensed and to comply with state rate caps and loan terms, many online lenders claim choice of law from states with no rate caps or from foreign countries. A growing number of online lenders claim to be exempt from state law enforcement due to tribal sovereign immunity.
 - Online lenders pay up to \$110 for referrals of qualified loan applications from lead generators or affiliate marketers and some lenders encourage borrowing by offering discounts on the initial loan. Online lenders that make loans in states where licensed typically also link applicants to lead generators when applications come from states they do not serve.
11. [The Military Lending Act Five Years Later: Impact on Servicemembers, the High-Cost Small Dollar Loan Market, and the Campaign against Predatory Lending](#) (Jean Ann Fox, May 2012)
- MLA largely successful in curbing abusive lending as defined by DOD.
 - Restrictive definitions of “consumer credit” in DOD rules left loopholes to be exploited.
 - Problematic credit products not included in covered credit definitions.
 - Bank credit products similar to payday lending excluded by DOD rule.
 - MLA ban on state discrimination against non-resident military borrowers not effective.
 - Enforcement tools need to be updated to uniformly deliver MLA protections.
 - Ban on securing loans with allotments does not apply to all forms of credit.
 - The MLA has had a major impact on the policy debate about predatory small dollar lending and was a major factor in the reversed trend in states legalizing payday loans.
12. [Driven to Disaster: Car-Title Lending and Its Impact on Consumers](#) (Delvin Davis and Uriah King, CRL; Jean Ann Fox and Tom Feltner, CFA, Feb 2013)
- Approximately 7,730 car-title lenders operate in at least 21 states costing borrowers \$3.6 billion each year in interest on \$1.6 billion in loans.
 - The average car-title borrower renews their loan eight times, paying \$2,142 in interest for \$951 in credit.
 - Car-title loans’ annualized percentage rates (APR) are especially excessive considering the value of the collateral and the relatively low amount of the loan. In our borrower-level data set, the median loan-to-value ratio was 26 percent, yet the APR was 300 percent.
 - One in six borrowers in our data set also faced repossession, with repossession fees averaging half of the borrower’s outstanding loan balance.
13. [Wrong Way: Wrecked by Debt – Auto Title Lending in Arizona](#) (Jean Ann Fox, CFA, and Kelly Griffith, Southwest Center for Economic Integrity, Jan 2016)
- One hundred companies operated 633 licensed title lender locations in Arizona mid-2015. This is a conservative count since we identified several unlicensed title lenders that have Electronic Lien and Title numbers to access records at the Arizona Motor Vehicle Department or that advertise in Arizona.
 - Arizona has the seventh most concentrated title loan market in the country, with one outlet for every 8,072 adults. The number of title loan outlets grew from just 159

locations for current companies in 2008 to over 630 in 2015 and now exceeds the number of payday lenders that surrendered their licenses in 2010.

- Mapping of title lender locations in Phoenix and Tucson illustrate that title lenders are concentrated in vulnerable communities and overlap former payday lender outlets.
- If Arizona is typical of the other 24 states where title lending operates legally, 190,000 to 285,000 Arizona consumers use title loans per year, or 4 to 5.5 percent of adults.
- If Arizona is similar to Virginia, title lenders take in \$316.5 million in revenue per year.
- Lenders make both title-secured loans to consumers who own their vehicles free and clear and “registration” loans to borrowers who do not hold clear titles. These loans have many similarities to now-defunct payday loans.
- Risks to title loan borrowers include repossession of vehicles, deficiency judgments when sale of repossessed property does not cover the amount owed plus costs, and lawsuits when borrowers default and lenders sue instead of repossess vehicles.
- If Arizona repossession rates are similar to those reported by regulators in Virginia, it is likely that 25,320 borrowers lost their vehicles to repossession last year, based on 633 title loan locations in Arizona and 40 repossessions per store. Currently, the AZDFI does not report repossession data.
- Several lenders require borrowers to provide access to their bank accounts as back-up payment, a feature of payday lending.

Appendix C: Index of Selection of Comments Submitted in Support of 2016 Proposed Rule

Organization	Link at regulations.gov
1 Alabama Appleseed Center for Law and Justice Inc.	https://www.regulations.gov/document?D=CFPB-2016-0025-143319
2 Southern Poverty Law Center	https://www.regulations.gov/document?D=CFPB-2016-0025-144048
3 Alabama Arise	On file with CRL
4 Tuscaloosa Citizens Against Predatory Practices	https://www.regulations.gov/document?D=CFPB-2016-0025-143217
5 Greater Birmingham Ministries	https://www.regulations.gov/document?D=CFPB-2016-0025-139455
6 Faith in Action Alabama	https://www.regulations.gov/document?D=CFPB-2016-0025-142415
7 Arkansans Against Abusive Payday Lending (40 groups)	https://www.regulations.gov/document?D=CFPB-2016-0025-142407
8 Tuscon City Resolution	https://www.regulations.gov/document?D=CFPB-2016-0025-156553
9 Arizona State Legislative Letter	On file with CRL
10 UFCW Local 99	https://www.regulations.gov/document?D=CFPB-2016-0025-5364
11 Arizona Sign On Letter (11 groups)	https://www.regulations.gov/document?D=CFPB-2016-0025-135236
12 Southwest Center for Economic Integrity	https://www.regulations.gov/document?D=CFPB-2016-0025-136071
13 Children's Action Alliance	https://www.regulations.gov/document?D=CFPB-2016-0025-199232
14 Arizona Coalition to End Sexual and Domestic Violence	https://www.regulations.gov/document?D=CFPB-2016-0025-170694
15 The Society of St. Vincent De Paul	https://www.regulations.gov/document?D=CFPB-2016-0025-148827
16 United Way of Tucson	https://www.regulations.gov/document?D=CFPB-2016-0025-9448
17 The Primavera Foundation	https://www.regulations.gov/document?D=CFPB-2016-0025-135236
18 Delores Huerta Foundation	On file with CRL
19 Berkley City Council Memeber, Jesse Arreguin	https://www.regulations.gov/document?D=CFPB-2016-0025-170615
20 Los Angeles County Supervisors Resolution	https://www.regulations.gov/document?D=CFPB-2016-0025-144774
21 County of Los Angeles Board of Supervisors	https://www.regulations.gov/document?D=CFPB-2016-0025-144774
22 Joe Goethals, Mayor of San Mateo	https://www.regulations.gov/document?D=CFPB-2016-0025-144107
23 Supervisor Ken Yeager	https://www.regulations.gov/document?D=CFPB-2016-0025-156197
24 California State Legislative Sign on Letter	https://www.regulations.gov/document?D=CFPB-2016-0025-142902
25 Attorney General Kamala Harris	https://www.regulations.gov/document?D=CFPB-2016-0025-143126
26 LULAC	https://www.regulations.gov/document?D=CFPB-2016-0025-199555
27 California Reinvestment Coalition	https://www.regulations.gov/document?D=CFPB-2016-0025-143504
28 New Economies for Women	https://www.regulations.gov/document?D=CFPB-2016-0025-145098
29 Oportun	https://www.regulations.gov/document?D=CFPB-2016-0025-148377
30 Insikt	https://www.regulations.gov/document?D=CFPB-2016-0025-143938
31 LendUp	https://www.regulations.gov/document?D=CFPB-2016-0025-186568
32 Housing Equality Law Project (HELP)	https://www.regulations.gov/document?D=CFPB-2016-0025-157719
33 San Mateo Labor Leadership Council	https://www.regulations.gov/document?D=CFPB-2016-0025-80300
34 Game Theory	https://www.regulations.gov/document?D=CFPB-2016-0025-72530
35 Project Sentinel	https://www.regulations.gov/document?D=CFPB-2016-0025-72526
36 Silicon Valley Community Foundation	https://www.regulations.gov/document?D=CFPB-2016-0025-34778

37 United Ways of California	https://www.regulations.gov/document?D=CFPB-2016-0025-141828
38 MAAC	https://www.regulations.gov/document?D=CFPB-2016-0025-123255
39 Mission Economic Development Agency	https://www.regulations.gov/document?D=CFPB-2016-0025-137741
40 Montebello Housing Development Corporation	https://www.regulations.gov/document?D=CFPB-2016-0025-141564
41 Neighborhood Legal Services of Los Angeles County	https://www.regulations.gov/document?D=CFPB-2016-0025-170129
42 NeighborWorks Homeownership Center, Sacramento Region	https://www.regulations.gov/document?D=CFPB-2016-0025-135256
43 New Capital	https://www.regulations.gov/document?D=CFPB-2016-0025-157935
44 Nuestra Casa de East Palo Alto	https://www.regulations.gov/document?D=CFPB-2016-0025-151651
45 Rural Community Assistance Corporation (RCAC)	https://www.regulations.gov/document?D=CFPB-2016-0025-57657
46 Fair Lending for A Thriving Colorado (16 groups)	https://www.regulations.gov/document?D=CFPB-2016-0025-142093
47 Bell Policy Center	https://www.regulations.gov/document?D=CFPB-2016-0025-142745
48 Connecticut State Legislative Letter	https://www.regulations.gov/document?D=CFPB-2016-0025-148805
49 Connecticut Sign On Letter + Substantive Comment (14 groups)	https://www.regulations.gov/document?D=CFPB-2016-0025-142927
50 Connecticut Association for Human Services (14 groups)	https://www.regulations.gov/document?D=CFPB-2016-0025-185071
51 William Lucy	On file with CRL
52 Patriotic Millionaires	https://www.regulations.gov/document?D=CFPB-2016-0025-89995
53 Mary's Center	https://www.regulations.gov/document?D=CFPB-2016-0025-143086
54 Delaware State Legislative Letter	https://www.regulations.gov/document?D=CFPB-2016-0025-21345
55 Delaware Community Reinvestment Action Council, Inc.	https://www.regulations.gov/document?D=CFPB-2016-0025-125571
56 Mayor Gillum of Tallahassee	https://www.regulations.gov/document?D=CFPB-2016-0025-140859
57 St. Petersburg City Council Resolution	https://www.regulations.gov/document?D=CFPB-2016-0025-136042
58 Florida Legislative Letter	https://www.regulations.gov/document?D=CFPB-2016-0025-141934
59 Florida Statewide Coalition (32 groups)	https://www.regulations.gov/document?D=CFPB-2016-0025-141936
60 Faith in Florida	https://www.regulations.gov/document?D=CFPB-2016-0025-143217
61 Florida Alliance for Consumer Protection Substantive Comment	https://www.regulations.gov/document?D=CFPB-2016-0025-141597
62 Clarity Services, Inc	https://www.regulations.gov/document?D=CFPB-2016-0025-137397
63 Florida Alliance for Retired Americans, Inc.	https://www.regulations.gov/document?D=CFPB-2016-0025-72525
64 Public Interest Law Section - Florida Bar	https://www.regulations.gov/document?D=CFPB-2016-0025-158011
65 Main Street Alliance of Florida	https://www.regulations.gov/document?D=CFPB-2016-0025-168264
66 Central Florida Jobs With Justice	https://www.regulations.gov/document?D=CFPB-2016-0025-170393
67 SEIU Florida	https://www.regulations.gov/document?D=CFPB-2016-0025-170561
68 Hispanic Unity of Florida	https://www.regulations.gov/document?D=CFPB-2016-0025-143413
69 Georgia Watch Sign on Letter	https://www.regulations.gov/document?D=CFPB-2016-0025-142719
70 Georgia Watch	https://www.regulations.gov/document?D=CFPB-2016-0025-158006
71 Faith Action for Community Equity (HI)	https://www.regulations.gov/document?D=CFPB-2016-0025-143217
72 Iowa Sign On Letter (10 groups)	https://www.regulations.gov/document?D=CFPB-2016-0025-154430
73 Main Street Alliance of Iowa	https://www.regulations.gov/document?D=CFPB-2016-0025-168622
74 Attorney General Lisa Madigan	https://www.regulations.gov/document?D=CFPB-2016-0025-185185
75 Illinois Statewide Sign On Letter (25 groups)	https://www.regulations.gov/document?D=CFPB-2016-0025-154385

76 Chicago Federation of Labor	https://www.regulations.gov/document?D=CFPB-2016-0025-90027
77 SEIU Healthcare Illinois Indiana	https://www.regulations.gov/document?D=CFPB-2016-0025-185083
78 UAW Region 4	https://www.regulations.gov/document?D=CFPB-2016-0025-57681
79 Communications Workers of America District 4	https://www.regulations.gov/document?D=CFPB-2016-0025-154540
80 Illinois Citizen Action and Illinois People's Action	https://www.regulations.gov/document?D=CFPB-2016-0025-154385
81 Cincinnati City Council Resolution	https://www.regulations.gov/document?D=CFPB-2016-0025-141704
82 Indiana Statewide Sign On Letter (24 groups)	https://www.regulations.gov/document?D=CFPB-2016-0025-142806
83 Indiana Association of United Ways	https://www.regulations.gov/document?D=CFPB-2016-0025-142776
84 Indiana Institute for Working Families	https://www.regulations.gov/document?D=CFPB-2016-0025-211879
85 Indiana-Kentucky Synod of the ECLA - Core Team	https://www.regulations.gov/document?D=CFPB-2016-0025-155881
86 Indiana-Kentucky Synod of the ECLA - Payday Strategy Team	https://www.regulations.gov/document?D=CFPB-2016-0025-158273
87 Indiana Legal Services	https://www.regulations.gov/document?D=CFPB-2016-0025-141713
88 Brightpoint Credit Counseling	https://www.regulations.gov/document?D=CFPB-2016-0025-154543
89 SEIU Healthcare Illinois Indiana	https://www.regulations.gov/document?D=CFPB-2016-0025-185083
90 Indiana Association for Community Economic Development	https://www.regulations.gov/document?D=CFPB-2016-0025-143119
91 Senator Alice Forgy Kerr	https://www.regulations.gov/document?D=CFPB-2016-0025-142896
92 Kentucky Statewide Coalition (25 groups)	https://www.regulations.gov/document?D=CFPB-2016-0025-140883
93 Kentucky Coalition for Responsible Lending (88 groups)	https://www.regulations.gov/document?D=CFPB-2016-0025-141498
94 Kentucky Equal Justice	https://www.regulations.gov/document?D=CFPB-2016-0025-35088
95 Kentucky Center for Economic Policy	https://www.regulations.gov/document?D=CFPB-2016-0025-142926
96 Homeless and Housing Coalition of Kentucky	https://www.regulations.gov/document?D=CFPB-2016-0025-62912
97 Citizens of Louisville Organized and United Together (CLOUT)	https://www.regulations.gov/document?D=CFPB-2016-0025-157025
98 Kentucky Youth Advocates	https://www.regulations.gov/document?D=CFPB-2016-0025-137820
99 The Kentucky Council of Churches	https://www.regulations.gov/document?D=CFPB-2016-0025-89966
100 Jesuit Social Research Institute	https://www.regulations.gov/document?D=CFPB-2016-0025-169266
101 The Middleburg Institute	https://www.regulations.gov/document?D=CFPB-2016-0025-5217
102 United Way of Southeast Louisiana	https://www.regulations.gov/document?D=CFPB-2016-0025-170689
103 Massachusetts Sign On Letter (12 groups)	https://www.regulations.gov/document?D=CFPB-2016-0025-143101
104 Massachusetts Communities Action Network	https://www.regulations.gov/document?D=CFPB-2016-0025-143101
105 MIDAS Collaborative	https://www.regulations.gov/document?D=CFPB-2016-0025-142790
106 Economic Mobility Pathways	https://www.regulations.gov/document?D=CFPB-2016-0025-152634
107 Dana M. Stein, Maryland House of Delegates District 11	https://www.regulations.gov/document?D=CFPB-2016-0025-144397
108 William C. Smith, Jr, Maryland House of Delegates District 20	https://www.regulations.gov/document?D=CFPB-2016-0025-186562
109 Ana Sol Gutierrez, Maryland House of Delegates District 18	https://www.regulations.gov/document?D=CFPB-2016-0025-199564
110 Associated Black Charities	https://www.regulations.gov/document?D=CFPB-2016-0025-143839
111 Neighborhood Housing Services of Baltimore	https://www.regulations.gov/document?D=CFPB-2016-0025-185180
112 Gina Melaragno, Maine House of Representatives	https://www.regulations.gov/document?D=CFPB-2016-0025-42498
113 Maine Statewide Coalition (12 groups)	https://www.regulations.gov/document?D=CFPB-2016-0025-142859
114 MECEP	https://www.regulations.gov/document?D=CFPB-2016-0025-78577

115 Maine Women's Lobby	https://www.regulations.gov/document?D=CFPB-2016-0025-7275
116 New Ventures Maine	https://www.regulations.gov/document?D=CFPB-2016-0025-62365
117 Maine Equal Justice Partners	https://www.regulations.gov/document?D=CFPB-2016-0025-143948
118 Michigan Sign On Letter (27 groups)	https://www.regulations.gov/document?D=CFPB-2016-0025-142469
119 CEDAM	https://www.regulations.gov/document?D=CFPB-2016-0025-142070
120 ISIAIAH (MN)	https://www.regulations.gov/document?D=CFPB-2016-0025-20960
121 Minnesota Legal Services Advocacy Project	https://www.regulations.gov/document?D=CFPB-2016-0025-109324
122 Jewish Community Action	https://www.regulations.gov/document?D=CFPB-2016-0025-90030
123 Main Street Alliance of Minnesota	https://www.regulations.gov/document?D=CFPB-2016-0025-168619
124 Springfield City Council Resolution	https://www.regulations.gov/document?D=CFPB-2016-0025-130427
125 Missouri Faith Voices	https://www.regulations.gov/document?D=CFPB-2016-0025-199566
126 Communities Creating Opportunity	https://www.regulations.gov/document?D=CFPB-2016-0025-142492
127 Dale Irwin (Consumer Attorney)	https://www.regulations.gov/document?D=CFPB-2013-0033-0243
128 St. Louis Diaper Bank and Happy Bottoms	https://www.regulations.gov/document?D=CFPB-2016-0025-144028
129 Kansas City Health Commission	https://www.regulations.gov/document?D=CFPB-2016-0025-42115
130 Mississippi Center for Justice	https://www.regulations.gov/document?D=CFPB-2016-0025-185087
131 First English Lutheran Church	https://www.regulations.gov/document?D=CFPB-2016-0025-86870
132 Billings First Congregational UCC	https://www.regulations.gov/document?D=CFPB-2016-0025-5396
133 Har Shalom	https://www.regulations.gov/document?D=CFPB-2016-0025-141772
134 Rev. Tracy Heilmann	https://www.regulations.gov/document?D=CFPB-2016-0025-168589
135 Montana-Northern Wyoming Conference - United Church of Christ	https://www.regulations.gov/document?D=CFPB-2016-0025-163170
136 Montana State Legislature	https://www.regulations.gov/document?D=CFPB-2016-0025-169855
137 Rep. Jenny Eck, Montana House of Representatives	https://www.regulations.gov/document?D=CFPB-2016-0025-169533
138 Rep. Mary Ann Dunwell, Montana House of Representatives	https://www.regulations.gov/document?D=CFPB-2016-0025-84649
139 Rep. Ryan Lynch, Montana House of Representatives	https://www.regulations.gov/document?D=CFPB-2016-0025-90402
140 Senator Mary Caferro, Montana Senate	https://www.regulations.gov/document?D=CFPB-2016-0025-168643
141 Senator Kaufmann, Montana Senate	https://www.regulations.gov/document?D=CFPB-2016-0025-115877
142 Native American Race Relations and Healing Lecture Series	https://www.regulations.gov/document?D=CFPB-2016-0025-163549
143 Montana Statewide Community Organizations (11 groups)	https://www.regulations.gov/document?D=CFPB-2016-0025-169859
144 Montana Statewide Faith Coalition	https://www.regulations.gov/document?D=CFPB-2016-0025-169856
145 Montana Statewide Labor Coalition (14 groups)	https://www.regulations.gov/document?D=CFPB-2016-0025-169857
146 Montana Organizing Project	https://www.regulations.gov/document?D=CFPB-2016-0025-141781
147 Montana State AFL-CIO	https://www.regulations.gov/document?D=CFPB-2016-0025-140997
148 AFSCME Montana Council 9	https://www.regulations.gov/document?D=CFPB-2016-0025-17037
149 Southwestern Montana Central Labor Council	https://www.regulations.gov/document?D=CFPB-2016-0025-169857
150 SEIU Local 775	https://www.regulations.gov/document?D=CFPB-2016-0025-142775
151 Homeward, Inc.	https://www.regulations.gov/document?D=CFPB-2016-0025-168136
152 Senator Tim Kaine, U.S. Senate	https://www.regulations.gov/document?D=CFPB-2016-0025-90004
153 People's Action Institute	https://www.regulations.gov/document?D=CFPB-2016-0025-142707

154 National Hispanic Leadership Agenda	https://www.regulations.gov/document?D=CFPB-2016-0025-142490
155 Appleseed Network (12 groups)	https://www.regulations.gov/document?D=CFPB-2016-0025-143400
156 Coalition for Safe Loan Alternatives (18 groups)	https://www.regulations.gov/document?D=CFPB-2016-0025-143319
157 Center for Survivor Agency and Justice (26 groups)	https://www.regulations.gov/document?D=CFPB-2016-0025-143501
158 Legal Impact Network (26 groups)	https://www.regulations.gov/document?D=CFPB-2016-0025-143584
159 PaydayFreeLandia (30 groups)	https://www.regulations.gov/document?D=CFPB-2016-0025-143432
160 Stop the Debt Trap Campaign Letter (763 groups)	https://www.regulations.gov/document?D=CFPB-2016-0025-144048
161 Faith for Just Lending	https://www.regulations.gov/document?D=CFPB-2016-0025-143950
162 The RAC + Jewish Organizations (20 groups)	https://www.regulations.gov/document?D=CFPB-2016-0025-4971
163 U.S. House Congressional Letter with 104 Members	https://www.regulations.gov/document?D=CFPB-2016-0025-89947
164 U.S. Senate Congressional Letter with 28 Members	https://www.regulations.gov/document?D=CFPB-2016-0025-0003
165 CFED (Prosperity Now) Sign On Letter (91 groups)	https://www.regulations.gov/document?D=CFPB-2016-0025-142099
166 Habitat for Humanity Affiliate Sign on Letter (168 groups)	https://www.regulations.gov/document?D=CFPB-2016-0025-143156
167 AARP	https://www.regulations.gov/document?D=CFPB-2016-0025-185192
168 Progressive Congress Action Fund	https://www.regulations.gov/document?D=CFPB-2016-0025-143242
169 U.S. PIRG	https://www.regulations.gov/document?D=CFPB-2016-0025-142822
170 Center for American Progress	https://www.regulations.gov/document?D=CFPB-2016-0025-143564
171 Allied Progress	https://www.regulations.gov/document?D=CFPB-2016-0025-134976
172 NETWORK Lobby for Catholic Social Justice	https://www.regulations.gov/document?D=CFPB-2016-0025-144776
173 NAACP	https://www.regulations.gov/document?D=CFPB-2016-0025-142042
174 National Consumer and Civil Rights Organizations Detailed Comment	https://www.regulations.gov/document?D=CFPB-2016-0025-115877
175 National Community Reinvestment Coalition (13 groups)	https://www.regulations.gov/document?D=CFPB-2016-0025-185158
176 Catholic Charities USA	https://www.regulations.gov/document?D=CFPB-2016-0025-144903
177 Law Professor Sign On Letter (38 groups)	https://www.regulations.gov/document?D=CFPB-2016-0025-154506
178 Experts of Color Network	https://www.regulations.gov/document?D=CFPB-2016-0025-186560
179 First Nations Development Institute	https://www.regulations.gov/document?D=CFPB-2016-0025-141788
180 Goodwill Comment Letter	https://www.regulations.gov/document?D=CFPB-2016-0025-142439
181 Habitat for Humanity International Task Force letter	https://www.regulations.gov/document?D=CFPB-2016-0025-143080
182 Hope Credit Union Enterprise Corporation	https://www.regulations.gov/document?D=CFPB-2016-0025-143936
183 Center for Survivor Agency and Justice (26 groups)	https://www.regulations.gov/document?D=CFPB-2016-0025-143501
184 National Housing Law Project	https://www.regulations.gov/document?D=CFPB-2016-0025-152730
185 Coalition for Human Needs	https://www.regulations.gov/document?D=CFPB-2016-0025-142871
186 Presbyterian Church USA	https://www.regulations.gov/document?D=CFPB-2016-0025-158258
187 St. Vincent De Paul Society	https://www.regulations.gov/document?D=CFPB-2016-0025-142881
188 Sojourners Ex Parte Memo Meeting with CFPB	https://www.regulations.gov/document?D=CFPB-2016-0025-20961
189 Franciscan Action Network	https://www.regulations.gov/document?D=CFPB-2016-0025-168414
190 Jubilee USA Network	https://www.regulations.gov/document?D=CFPB-2016-0025-142493
191 Service Employees Internatinal Union (SEIU)	https://www.regulations.gov/document?D=CFPB-2016-0025-142851
192 Retail, Wholesale and Department Store Union	https://www.regulations.gov/document?D=CFPB-2016-0025-144116

193 Rev. William Barber, NC NAACP	https://www.regulations.gov/document?D=CFPB-2016-0025-148802
194 United Methodist Church - North Carolina Conference, Raleigh Area	https://www.regulations.gov/document?D=CFPB-2016-0025-17040
195 Durham City Council Member Don Moffit	https://www.regulations.gov/document?D=CFPB-2016-0025-141603
196 North Carolina Attorney General	https://www.regulations.gov/document?D=CFPB-2016-0025-185051
197 Rep. Larry Hall, North Carolina House of Representatives	https://www.regulations.gov/document?D=CFPB-2016-0025-144392
198 Democratic Caucus of the North Carolina House of Representatives	https://www.regulations.gov/document?D=CFPB-2016-0025-199560
199 Gene Nichol	https://www.regulations.gov/document?D=CFPB-2016-0025-72528
200 Michael Archer	On file with CRL
201 North Carolina Sign on Letter (171 groups)	https://www.regulations.gov/document?D=CFPB-2016-0025-142828
202 North Carolina Council of Churches (20 groups)	https://www.regulations.gov/document?D=CFPB-2016-0025-148777
203 Financial Protection Law Center	https://www.regulations.gov/document?D=CFPB-2016-0025-147183
204 Reinvestment Partners	https://www.regulations.gov/document?D=CFPB-2016-0025-143184
205 State Employees' Credit Union	https://www.regulations.gov/document?D=CFPB-2016-0025-141888
206 North Carolina Justice Center	https://www.regulations.gov/document?D=CFPB-2016-0025-143326
207 Gateway Community Development Corporation	https://www.regulations.gov/document?D=CFPB-2016-0025-186583
208 Attorney J. Jerome Hartzell	On file with CRL
209 N.C. Community Action Center	https://www.regulations.gov/document?D=CFPB-2016-0025-170691
210 Choanoke Area Development Association	https://www.regulations.gov/document?D=CFPB-2016-0025-186595
211 The Institute	https://www.regulations.gov/document?D=CFPB-2016-0025-140567
212 North Carolina Assets Alliance	https://www.regulations.gov/document?D=CFPB-2016-0025-148831
213 North Carolina Housing Coalition	https://www.regulations.gov/document?D=CFPB-2016-0025-170484
214 Greensboro Asset Building Company	https://www.regulations.gov/document?D=CFPB-2016-0025-153947
215 Winston Salem Forsyth County Asset Building Coalition	https://www.regulations.gov/document?D=CFPB-2016-0025-153947
216 Carolina Jews for Justice	https://www.regulations.gov/document?D=CFPB-2016-0025-142152
217 Social Justice Ministry of Community United Church of Christ	https://www.regulations.gov/document?D=CFPB-2016-0025-89964
218 NC AFL CIO Letter	https://www.regulations.gov/document?D=CFPB-2016-0025-8832
219 The Rural Center	https://www.regulations.gov/document?D=CFPB-2016-0025-185155
220 North Carolina Community Development Initiative and Initiative Capital	https://www.regulations.gov/document?D=CFPB-2016-0025-158009
221 Consumer Credit Counseling Service of Greater Greensboro	https://www.regulations.gov/document?D=CFPB-2016-0025-144201
222 Consumer Credit Counseling Service of Forsyth County	https://www.regulations.gov/document?D=CFPB-2016-0025-154339
223 OnTrack Financial Education and Counseling	https://www.regulations.gov/document?D=CFPB-2016-0025-136467
224 Financial Pathways of the Piedmont	https://www.regulations.gov/document?D=CFPB-2016-0025-144200
225 HandUp Homeownership Initiative	https://www.regulations.gov/document?D=CFPB-2016-0025-199229
226 Habitat for Humanity of Charlotte	https://www.regulations.gov/document?D=CFPB-2016-0025-137400
227 Habitat for Humanity of Charlotte	https://www.regulations.gov/document?D=CFPB-2016-0025-185074
228 MDC	https://www.regulations.gov/document?D=CFPB-2016-0025-147287
229 National Association of Consumer Bankruptcy Attorneys - North Carolina Ch	https://www.regulations.gov/document?D=CFPB-2016-0025-169676
230 Triangle Family Services	https://www.regulations.gov/document?D=CFPB-2016-0025-139459
231 The Power of the Dream	https://www.regulations.gov/document?D=CFPB-2016-0025-154538

232 Prosperity Unlimited, Inc.	https://www.regulations.gov/document?D=CFPB-2016-0025-142534
233 North Carolina Veterans Council	https://www.regulations.gov/document?D=CFPB-2016-0025-142802
234 Navy-Marine Corps Relief Society - Camp Lejeune	https://www.regulations.gov/document?D=CFPB-2016-0025-137732
235 Navy-Marine Corps Relief Society - New River	On file with CRL
236 The Support Center	https://www.regulations.gov/document?D=CFPB-2016-0025-154542
237 Representative Andrew G. Maragos	https://www.regulations.gov/document?D=CFPB-2016-0025-154111
238 North Dakota Statewide Sign On Letter (19 groups)	https://www.regulations.gov/document?D=CFPB-2016-0025-154111
239 North Dakota State Legislature	https://www.regulations.gov/document?D=CFPB-2016-0025-141794
240 Rev. Pamela Power, Good Sheperd Lutheran Church	https://www.regulations.gov/document?D=CFPB-2016-0025-142819
241 Nebraska Statewide Sign On Letter (8 groups)	https://www.regulations.gov/document?D=CFPB-2016-0025-185181
242 Granite State Organizing Project (NH)	https://www.regulations.gov/document?D=CFPB-2016-0025-143432
243 United Valley Interfaith Project (NH)	https://www.regulations.gov/document?D=CFPB-2016-0025-144155
244 New Hampshire Legal Assistance	https://www.regulations.gov/document?D=CFPB-2016-0025-146893
245 Hudson County Resolution	On file with CRL
246 Jersey City Resolution	On file with CRL
247 Maplewood Resolution	On file with CRL
248 Steven Fulop, Mayor of Jersey City	https://www.regulations.gov/document?D=CFPB-2016-0025-144387
249 New Jersey Citizen Action	https://www.regulations.gov/document?D=CFPB-2016-0025-168917
250 Legal Services of New Jersey, Inc	https://www.regulations.gov/document?D=CFPB-2016-0025-143023
251 Housing and Community Development Network of New Jersey	On file with CRL
252 New Jersey Tenants Organization	On file with CRL
253 Main Street Alliance of New Jersey	https://www.regulations.gov/document?D=CFPB-2016-0025-168617
254 AFSCME	https://www.regulations.gov/document?D=CFPB-2016-0025-147000
255 CWA Local 1081	https://www.regulations.gov/document?D=CFPB-2016-0025-143217
256 New Jersey Community Capital	https://www.regulations.gov/document?D=CFPB-2016-0025-1787
257 Paterson Habitat for Humanity	https://www.regulations.gov/document?D=CFPB-2016-0025-4123
258 Isles, Inc.	https://www.regulations.gov/document?D=CFPB-2016-0025-8592
259 La Casa de Don Pedro	On file with CRL
260 New Mexico Fair Lending Coalition	https://www.regulations.gov/document?D=CFPB-2016-0025-170697
261 Lutheran Advocacy Ministry - New Mexico	https://www.regulations.gov/document?D=CFPB-2016-0025-154282
262 Nevada Sign On Letter	https://www.regulations.gov/document?D=CFPB-2016-0025-154470
263 Legal Aid Center of Southern Nevada	https://www.regulations.gov/document?D=CFPB-2016-0025-154028
264 New York Department of Financial Services (DFS)	https://www.regulations.gov/document?D=CFPB-2016-0025-186559
265 New York Sign on Letter (131 groups)	https://www.regulations.gov/document?D=CFPB-2016-0025-143661
266 New Economy Project	https://www.regulations.gov/document?D=CFPB-2016-0025-143927
267 Main Street Alliance of New York	https://www.regulations.gov/document?D=CFPB-2016-0025-168263
268 Hebrew Free Loan Society	https://www.regulations.gov/document?D=CFPB-2016-0025-144320
269 NYC Department of Consumer Affairs	https://www.regulations.gov/document?D=CFPB-2016-0025-141935
270 AFSCME DC 37	https://www.regulations.gov/document?D=CFPB-2016-0025-146666

271 MFY Legal Services, Inc	https://www.regulations.gov/document?D=CFPB-2016-0025-199237
272 NYPIRG	https://www.regulations.gov/document?D=CFPB-2016-0025-148792
273 Western New York Law Center	https://www.regulations.gov/document?D=CFPB-2016-0025-170024
274 Cincinatti Council Member Seelbach	https://www.regulations.gov/document?D=CFPB-2016-0025-4953
275 Cincinatti Council Member Simpson	https://www.regulations.gov/document?D=CFPB-2016-0025-154293
276 Cincinatti Council Member Sittenfeld	https://www.regulations.gov/document?D=CFPB-2016-0025-169887
277 Cincinatti Council Member Young	https://www.regulations.gov/document?D=CFPB-2016-0025-1873
278 Ohio Sign on Letter (93 groups)	https://www.regulations.gov/document?D=CFPB-2016-0025-139480
279 COHHIO (Coalition of Housing and Homelessness in Ohio)	https://www.regulations.gov/document?D=CFPB-2016-0025-144134
280 CommunityChoice Financial, Inc (CCFI)	https://www.regulations.gov/document?D=CFPB-2016-0025-148842
281 Ohio Legal Services	https://www.regulations.gov/document?D=CFPB-2016-0025-141790
282 Advocates for Ohio's Future	https://www.regulations.gov/document?D=CFPB-2016-0025-137828
283 St. Vincent De Paul Society of Ohio	https://www.regulations.gov/document?D=CFPB-2016-0025-7325
284 Policy Matters Ohio	https://www.regulations.gov/document?D=CFPB-2016-0025-142718
285 Oklahoma Statewide Sign On (12 groups)	https://www.regulations.gov/document?D=CFPB-2016-0025-170593
286 Main Street Alliance of Oregon	https://www.regulations.gov/document?D=CFPB-2016-0025-168620
287 Neighborhood Partnerships	https://www.regulations.gov/document?D=CFPB-2016-0025-170585
288 Oregon Food Bank	https://www.regulations.gov/document?D=CFPB-2016-0025-142016
289 Philadelphia City Council Resolution	https://www.regulations.gov/document?D=CFPB-2016-0025-144000
290 Philadelphia City Council Letter	https://www.regulations.gov/document?D=CFPB-2016-0025-144000
291 Pennsylvania Statewide Sign On Letter (50 groups)	https://www.regulations.gov/document?D=CFPB-2016-0025-143989
292 Philadelphians Organized to Witness	https://www.regulations.gov/document?D=CFPB-2016-0025-143989
293 Empower & Rebuild (PA)	https://www.regulations.gov/document?D=CFPB-2016-0025-143989
294 Community Legal Services of Philadelphia	https://www.regulations.gov/document?D=CFPB-2016-0025-143933
295 Pennsylvania Council of Churches	https://www.regulations.gov/document?D=CFPB-2016-0025-141917
296 Southwest CDC	https://www.regulations.gov/document?D=CFPB-2016-0025-142791
297 Pennsylvania War Veterans Council	https://www.regulations.gov/document?D=CFPB-2016-0025-141774
298 Pennsylvania PIRG	https://www.regulations.gov/document?D=CFPB-2016-0025-144053
299 Capital Good Fund CDFI	https://www.regulations.gov/document?D=CFPB-2016-0025-57370
300 Comments from three RI Residents	https://www.regulations.gov/document?D=CFPB-2016-0025-170250
301 Rev. Ebony Gissom, First Baptist Church, East Greenwich	https://www.regulations.gov/document?D=CFPB-2016-0025-154417
302 Warkwick Central Baptist Church	https://www.regulations.gov/document?D=CFPB-2016-0025-144805
303 Rhode Island Council of Churches	https://www.regulations.gov/document?D=CFPB-2016-0025-208913
304 South Carolina Black Methodist for Church Renewal	https://www.regulations.gov/document?D=CFPB-2016-0025-143975
305 South Carolina Department of Consumer Affairs	https://www.regulations.gov/document?D=CFPB-2016-0025-147329
306 South Carolina Appleseed Substantive Comment Letter	https://www.regulations.gov/document?D=CFPB-2016-0025-144228
307 Catholic Charities of West Tennessee	https://www.regulations.gov/document?D=CFPB-2016-0025-9447
308 Bishop Olson - Diocese of Fort Worth	https://www.regulations.gov/document?D=CFPB-2016-0025-141922
309 Nelda Martinez, Mayor of Corpus Christi	https://www.regulations.gov/document?D=CFPB-2016-0025-89996

310 Midland City Council	https://www.regulations.gov/document?D=CFPB-2016-0025-145319
311 Texas State Legislature	https://www.regulations.gov/document?D=CFPB-2016-0025-142934
312 Texas Fair Lending Alliance and Texas Faith in Lending Sign on Letter (50 gro	https://www.regulations.gov/document?D=CFPB-2016-0025-140720
313 Faith in Texas Clergy (15 groups)	https://www.regulations.gov/document?D=CFPB-2016-0025-190999
314 Texas Appleseed Substantive Comment Letter	https://www.regulations.gov/document?D=CFPB-2016-0025-140747
315 Garland Opportunity and Development	https://www.regulations.gov/document?D=CFPB-2016-0025-191000
316 Texas Catholic Conference	https://www.regulations.gov/document?D=CFPB-2016-0025-43018
317 Texas Catholic Conference	https://www.regulations.gov/document?D=CFPB-2016-0025-141779
318 Catholic Charities of Southeast Texas	https://www.regulations.gov/document?D=CFPB-2016-0025-143907
319 Doug Athas, Mayor of Garland	https://www.regulations.gov/document?D=CFPB-2016-0025-185161
320 United Way of Metropolitan Dallas	https://www.regulations.gov/document?D=CFPB-2016-0025-142897
321 United Way of Greater Houston	https://www.regulations.gov/document?D=CFPB-2016-0025-131278
322 Virginia Poverty Law Center	https://www.regulations.gov/document?D=CFPB-2016-0025-140779
323 Virginia Organizing Project	https://www.regulations.gov/document?D=CFPB-2016-0025-142488
324 VaPERL	https://www.regulations.gov/document?D=CFPB-2016-0025-139488
325 Seattle City Council Letter	https://www.regulations.gov/document?D=CFPB-2016-0025-1915
326 Mayor and City Council of Seattle	https://www.regulations.gov/document?D=CFPB-2016-0025-1915
327 Washington Attorney General	https://www.regulations.gov/document?D=CFPB-2016-0025-142685
328 Washington State Legislative Letter	https://www.regulations.gov/document?D=CFPB-2016-0025-169526
329 Washington Statewide Poverty Action Network	https://www.regulations.gov/document?D=CFPB-2016-0025-125995
330 Wisconsin Legislative Letter	https://www.regulations.gov/document?D=CFPB-2016-0025-140709
331 Rep. Gordon Hintz, Wisconsin House of Representatives	https://www.regulations.gov/document?D=CFPB-2016-0025-140709
332 Wisconsin Sign On Letter (25 groups)	https://www.regulations.gov/document?D=CFPB-2016-0025-170651
333 Legal Action of Wisconsin	https://www.regulations.gov/document?D=CFPB-2016-0025-147157
334 Wisconsin Catholic Conference + 5 Catholic Charities	https://www.regulations.gov/document?D=CFPB-2016-0025-170651
335 Wisconsin Council of Churches	https://www.regulations.gov/document?D=CFPB-2016-0025-143485
336 West Virginia Center on Budget and Policy	https://www.regulations.gov/document?D=CFPB-2016-0025-121289
337 Partnership of African American Churches	https://www.regulations.gov/document?D=CFPB-2016-0025-167822
338 National Association of Social Workers, West Virginia Chapter	https://www.regulations.gov/document?D=CFPB-2016-0025-158412
339 United Way of the River Cities	https://www.regulations.gov/document?D=CFPB-2016-0025-155516
340 West Virginia Alliance for Sustainable Families	https://www.regulations.gov/document?D=CFPB-2016-0025-90156
341 West Virginia Covenant House	https://www.regulations.gov/document?D=CFPB-2016-0025-151444
342 Mountain State Justice	https://www.regulations.gov/document?D=CFPB-2016-0025-161860
343 West Virginia Council of Churches	https://www.regulations.gov/document?D=CFPB-2016-0025-145776
344 Catholic Labor Leader	https://www.regulations.gov/document?D=CFPB-2016-0025-85141
345 Legal Services of Southern Piedmont	https://www.regulations.gov/document?D=CFPB-2016-0025-156284
346 State and Local Committee of the Fairfax County Democratic Committee	https://www.regulations.gov/document?D=CFPB-2016-0025-208531
347 Attorney General Sign On Letter (CT, DC, MA, MD, NH, NY, PA, VT)	https://www.regulations.gov/document?D=CFPB-2016-0025-185164