



May 15, 2019

The Honorable Kathy Kraninger
Director
Bureau of Consumer Financial Protection
1700 G Street NW
Washington, DC 20552

Re: Notice of Proposed Rulemaking on Payday, Vehicle Title, and Certain High-Cost Installment Loans RIN 3170-AA80 Docket No. CFPB-2019-0006

Dear Director Kraninger:

The Office of Advocacy of the U.S. Small Business Administration (Advocacy) submits these comments on the Bureau of Consumer Financial Protection's (Bureau) proposed rule on *Payday, Vehicle Title, and Certain High-Cost Installment Loans*.¹ The Bureau is proposing to rescind certain provisions of the regulation promulgated by the Bureau in November 2017 governing Payday, Vehicle Title, and Certain High-cost Installment Loans (2017 Final Rule). Advocacy commends the Bureau for proposing to rescind the 2017 Final Rule.

Advocacy Background

Advocacy was established pursuant to Pub. L. 94-305 to represent the views of small entities before federal agencies and Congress. Advocacy is an independent office within the U.S. Small Business Administration (SBA), so the views expressed by Advocacy do not necessarily reflect the views of the SBA or the Administration. The Regulatory Flexibility Act (RFA),² as amended by the Small Business Regulatory Enforcement Fairness Act,³ gives small entities a voice in the rulemaking process. For all rules that are expected to have a significant economic impact on a

¹ 84 *Federal Register* 4252, February 14, 2019.

² 5 U.S.C. § 601 et seq.

³ Pub. L. 104-121, Title II, 110 Stat. 857 (1996) (codified in various sections of 5 U.S.C. § 601 et seq.).



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substantial number of small entities, federal agencies are required by the RFA to assess the impact of the proposed rule on small business and to consider less burdensome alternatives.

The Small Business Jobs Act of 2010 requires agencies to give every appropriate consideration to comments provided by Advocacy.⁴ The agency must include, in any explanation or discussion accompanying the final rule's publication in the Federal Register, the agency's response to written comments submitted by Advocacy on the proposed rule, unless the agency certifies that the public interest is not served by doing so.⁵

The Office of Advocacy performs outreach through roundtables, conference calls and other means to develop its position on important issues such as this one. Advocacy held a number of roundtables on the issue of payday lending. Advocacy also contacted trade associations to discuss the proposed rule.

The Proposed Rule

In November 2017, the Bureau issued a final rule governing Payday, Vehicle Title, and Certain High-Cost Installment Loans. On February 14, 2019, the Bureau published a proposed rule to rescind certain provisions of the 2017 Final Rule. Specifically, the Bureau is proposing to rescind (1) the "identification" provision which states that it is an unfair and abusive practice for a lender to make covered short-term loans or covered longer-term balloon-payment loans without reasonably determining that consumers will have the ability to repay the loans according to their terms; (2) the "prevention" provision which establishes specific underwriting requirements for these loans to prevent the unfair and abusive practice; (3) the "conditional exemption" provision for certain covered short-term loans; (4) the "furnishing" provisions which require lenders making covered short-term or longer-term balloon-payment loans to furnish certain information regarding such loans to registered information systems (RISes) and create a process for registering such information systems; and (5) those portions of the recordkeeping provisions related to the mandatory underwriting requirements.⁶ The Bureau also is proposing to rescind the Official Interpretations relating to these provisions.⁷

The Underwriting Provisions Should Be Rescinded

Advocacy commends the Bureau for proposing to rescind the mandatory underwriting provisions of the 2017 Final Rule. As stated in Advocacy's October 17, 2016 comment letter on the proposed rule on payday lending, the ability to repay/underwriting provisions are burdensome to small entities.⁸ In addition, as noted in Advocacy's letter and the preamble to the proposed rule, many states have implemented laws to address payday lending that protect consumers while maintaining access to credit.

⁴ Small Business Jobs Act of 2010 (PL 111-240) § 1601.

⁵ Id.

⁶ 84 Fed. Reg. 4253.

⁷ Id.

⁸ See, <https://www.sba.gov/advocacy/10-07-2016-payday-vehicle-title-and-certain-high-cost-installment-loans>. Advocacy incorporates its October 2016 comment into this comment letter by reference.

Payday lenders provide access to credit for people who have limited options. In some rural communities, the payday lender may be the only option for consumers. As noted in Advocacy's 2016 comment letter, imposing strict regulations may deprive these consumers of the only means of addressing an immediate and dire financial situation. Advocacy encourages the Bureau to rescind the harmful 2017 Final Rule.

The RISEs Provisions Are Unnecessary and Potentially Costly

As noted above, the Bureau is also proposing to rescind the RISEs provisions. The RISEs provisions in the 2017 Final Rule requires lenders to submit information about borrowers to a registered information system at origination, over the life of the loan, and when the loan is no longer outstanding. The provisions could cause small businesses to incur significant paperwork burden. In addition, small entities may also incur costs by connecting with a registered information system. Advocacy encourages the CFPB to rescind this costly provision.

The Bureau's Rule Should Be Consistent with Recent Changes to NCUA's PAL Program

National Credit Union Administration (NCUA) Payday Alternative Loan (PALs) program allows credit unions to provide short-term, small dollar loans to their members. When the 2017 Final Rule was finalized, the National Credit Union Administration (NCUA) Payday Alternative Loan (PALs) program had one version. The 2017 Final Rule addressed the NCUA's PAL program by allowing certain exemptions.

In 2018, NCUA proposed additional versions of the program. If the Bureau rescinds the payday lending rule as proposed, the issue of whether the rule is consistent with the PAL program is moot. However, if the Bureau does not rescind the mandatory underwriting provisions of the rule, Advocacy encourages the Bureau to take the necessary steps to identify inconsistencies and resolve problems that were not considered in 2017. Doing so may ensure that the Bureau's actions are consistent with the NCUA's PALs program and minimize industry confusion.

The Bureau Should Rescind the Payment Provisions Also

Advocacy further asserts that the Bureau should also rescind the payment provisions of the 2017 Final Rule. The 2017 Final Rule payment provisions require small entities to provide notice prior to initiating the first payment transfer from a customer's account. A small entity must also ensure that no more than two unsuccessful payments attempts are made to the customer's account without obtaining a new authorization from the customer. In addition, it must provide a consumer rights notice after two consecutive failed payment withdrawals stating that the lender is no longer permitted to make withdrawals.⁹ The provisions require lenders to design and implement a payment system that complies with the regulation by August 19, 2019.

Designing and implementing a system that complies with the Payment Provisions is costly and time consuming for small entities. Advocacy encourages the Bureau to rescind the payment provisions of the rule.

⁹ See, *Payday, Vehicle Title, and Certain High-Cost Installment Loans; Delay of Compliance Date*, 84 Federal Register 4299, February 14, 2019.

Conclusion

Small dollar lenders provide an important source of funding for consumers with limited access to credit. The 2017 Final Rule is extremely burdensome to small entities. It could force some small entities to exit the market and potentially eliminate this form of credit for consumers. Advocacy encourages the Bureau to rescind the 2017 Final Rule and allow small dollar lenders to continue to serve their communities.

Thank you for the opportunity to comment on this important proposal and for your consideration of Advocacy's comments. If you have any questions regarding these comments or if Advocacy can be of any assistance, please do not hesitate to contact me or Jennifer Smith at (202) 205-6943.

Sincerely,

/s/

Major L. Clark, III
Acting Chief Counsel
Office of Advocacy
U.S. Small Business Administration

/s/

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