December 14, 2020

Comment Intake
Consumer Financial Protection Bureau
Attention: PRA Office
1700 G. Street NW
Washington, DC 20552

Submitted electronically via regulations.gov

Re: Payday loan disclosure testing

I. Introduction

The Center for Responsible Lending[1] and the undersigned consumer, civil rights, community and faith-based organizations oppose the Bureau's plans to engage in payday loan disclosure testing. We do so in the broader context of the Bureau's having repealed much-needed substantive ability-to-repay protections without basis[2] and in light of the overwhelming evidence that disclosures will not protect consumers from the harms associated with payday lenders' practice of making payday loans without reasonable ability-to-repay determinations. New disclosures would only provide a false veneer of protections that payday lenders would use to bolster their opposition to meaningful consumer protections against unaffordable loans.

II. Payday lenders' embrace of disclosures, while holding fast to their business model based on flipping unaffordable loans, demonstrates that disclosures will not disrupt that model or protect consumers from the harms caused by long loan sequences.

Payday lenders have long touted their disclosures. At the same time, they hold fast to a business model that is based on keeping borrowers in extended series of unaffordable loans.

An Advance America pamphlet for borrowers from 2001 makes the following disclosures advising against "long-term" "use" of the product:

> "A payday advance is a **short-term** financial management tool that can provide a sensible alternative to costly bounced checks, late payment charges and tarnished credit ratings. However, you should evaluate the costs and benefits of all alternatives before borrowing. Other forms of short-term credit that may be less expensive include a loan from another institution or

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[1] The Center for Responsible Lending's Litigation Unit is representing the National Association of Latino Community Asset Builders (NALCAB) in a challenge against the Bureau's 2020 rule repealing the 2017 ability-to-repay protections for payday and car title loans.

[2] *See* Comments of the Center for Responsible Lending, Public Citizen, and a number of additional consumer and civil rights organizations on the Bureau's proposed repeal of the ability-to-repay protections, May 15, 2019, https://www.responsiblelending.org/sites/default/files/nodes/files/research-publication/comment-cfpb-proposed-repeal-payday-rule-may2019.pdf.

from family or friends, a credit card cash advance, and accounts with overdraft protection, or a salary advance."[3]

> "[A] payday advance is **not** a long-term solution for ongoing budget management. Repeated or frequent use can create serious financial hardships."

In 2004, Advance America was reporting an average of 9 loans to a borrower per year.[4]

The trade association Community Financial Services Association of America (CFSA) has likewise long provided, and encouraged lenders to provide, disclosures cautioning against long sequences of loans.[5] Yet the reality of the business model, as it has always and continues to operate, is belied by these 2007 remarks by a large payday lender CEO: "And the theory in the business is you've got to get that customer in, work to turn him into a repetitive customer, long-term customer, because that's really where the profitability is."[6]

Every one of the six banks making payday loans, until 2013 regulator guidance led to most of those banks stopping the practice, made disclosures advising against long-term use of the product.[7] Yet the Bureau found that the typical bank payday loan borrower had 14 advances in a year; 14% of borrowers spent a median of 254 days in a year in bank payday loan debt.[8]

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[3] Advance America Pamphlet, "The Facts About Payday Advance Services," 2001, on file with CRL (emphasis in original).

[4] Advance America, Cash Advance Centers, Inc., 2004 Annual Report, at 5, http://getfilings.com/o0001047469-05-008577.html.

[5] Community Financial Services Association Brochure, The FACTS about payday advance services, 2005 ("Since a payday advance is a short-term solution to an immediate need, it is not intended for repeated use in carrying an individual from payday to payday. When an immediate need arises, we're here to help. But a payday advance is not a long-term solution for ongoing budget management. Repeated or frequent use can create serious financial hardships."); *see also* https://www.cash1loans.com/loan-rates-fees-financial-fundamentals.aspx (Cash 1, which makes title loans of up to 390%, discloses "financial fundamentals," noting they are consistent with its trade association CFSA, stating that its loans "are intended solely to cover emergency situations which arise between your paycheck. They are not intended as a long-term solution to money management.").

[6] Remarks of Dan Feehan, CEO of Cash America, at the Jefferies Financial Services Conference, June 20, 2007.

[7] Comments of CRL, et al., to the OCC and FDIC on their Proposed Guidance on Deposit Advance Product, Appendix at 36, 2013, http://www.responsiblelending.org/research-publication/advocates-support-proposed (quoting the disclosure of every bank making payday loans indicating that the loan was intended to meet short-term needs and was not intended for long-term use).

[8] CFPB, *Payday Loans and Deposit Advance Products*: *A White Paper of Initial Data Findings* at 33, 34, 37 (2013).

Payday lenders have also often been eager to include disclosure requirements in bills they have pushed to authorize payday lending in state legislatures.[9] As a result, a number of state laws, where payday lenders continue to thrive, require disclosures that alert borrowers to risks of extended indebtedness.[10]

In Texas, where disclosures with some similarities to those the Bureau now proposes to test became law in 2012, payday and auto title operations have vigorously opposed any legislation that offers even the slightest relief to borrowers from the high cost of the loans or the harmful cycle of debt. In contrast, the lenders offered no opposition to those disclosures.[11]

At the federal level, payday lenders urged the Bureau to take a disclosures approach to addressing payday lending, including a push for a disclosure trial two weeks before the 2016 proposal of the ability-to-repay protections, after it had been reported that release of such proposal was imminent.[12] The lenders coupled their recommendation with a request that the Bureau's proposal be delayed or the comment period be held open pending completion of the study.[13] The Bureau rejected the request not only for substantive reasons but also in light of the payday lenders' "strategic procedural posturing."[14]

Given their commitment to their debt trap business model, lenders have strong incentives to continue to make loans that borrowers lack the ability to repay, regardless of what disclosures they provide. This dynamic, where incentives prevail over disclosures, is clear in the context of extended repayment plans. Disclosures typically note these plans are available, but lenders lack the incentive to provide them

[9] For example, in 2012 in Pennsylvania, payday lenders pushed legislation that would have authorized high-cost short-term payday lending in the state while also requiring a disclosure alerting borrowers to the risks of extended indebtedness. *See, e.g.*, the original text of Pennsylvania's HB 2191 from 2012, which states: "This transaction is not meant to meet long-term financial needs and should be used only to meet short-term cash needs." https://www.legis.state.pa.us/cfdocs/legis/PN/Public/btCheck.cfm?txtType=PDF&sessYr=2011&sessInd=0&billBody=H&billTyp=B&billNbr=2191&pn=3216. The Pennsylvania legislature rejected the payday lenders' effort, but similar disclosure requirements have passed in other states.

[10] *See*, *e.g.*, Alaska Stat. § 06.50.510(b)(1) ("The disclosure statement required by (a) of this section must (1) indicate the advance is intended to address short-term, not long-term, financial needs…"); Idaho Code Ann. § 28-46-415 ("Payday loans are intended to address short-term, not long-term, financial needs."); Mich. Comp. Laws § 487.2152(2)(n) ("1. A deferred presentment service transaction is not intended to meet long-term financial needs…2. You should use this service only to meet short-term cash needs."); Minn. Stat. § 47.60(4)(e) ("These loan charges are higher than otherwise permitted under Minnesota law. Minnesota law permits these higher charges only because short-term small loans might otherwise not be available to consumers. If you have another source of a loan, you may be able to benefit from a lower interest rate and other loan charges.")

[11] The one bill in the 2011 session (when the disclosure law was passed), HB 2593, that addressed the product substantively (though minimally), was not brought up for a vote, while disclosures moved forward.

[12] CFPB, Payday, Vehicle Title, and Certain High-Cost Installment Loans, Final rule, 82 Fed. Reg. 54472, 54637 (Nov. 17, 2017).

[13] *Id.*

[14] *Id.*

because they disrupt the cycle of loan flipping.[15] As a result, take-up rates for these plans are very low; in Florida in 2014, where 84% of loans were made to borrowers with 7 or more loans, fewer than 0.5% of all loans were given the cost-free extended payment plan.[16]

Ultimately, lenders cause substantial harm to consumers by making payday and car title loans without reasonable ability-to-repay determinations. Disclosures will not stop lenders from making loans without reasonable ability-to-repay determinations,[17] so disclosures will not prevent the substantial harm that practice causes.

III. The Bureau's robust real-world study of disclosures found only marginal reduction in loan volume and miniscule reduction in reborrowing.

The Bureau has already studied the impact of disclosures, with substantial similarities to those it is now proposing to test, in the real world.[18] In January 2012, Texas began requiring disclosures that, like those the Bureau proposes to test, depict both (i) the cost of approximately five renewals, and (ii) the substantial portion of borrowers—40%—who renew their loan five or more times.[19]

The Bureau studied the Texas market during the six months before and after the new disclosure law went into effect. Applying difference-in-differences methodology, and controlling for other changes in laws and lender practices, the Bureau found that the disclosures resulted in only a "marginal" reduction in loan volume of 13% relative to other states.[20] It further found only a miniscule reduction in loan flipping. Prior to the law, a loan had a 79% probability of being reborrowed within 30 days. Among borrowers who took out a loan after the law went into effect, that probability declined by only 2.1%.[21]

Thus, the Texas disclosures were not effective in preventing the practice at the root of the harm caused by making unaffordable payday loans. This is not unexpected, and particularly since once a borrower is in an initial unaffordable payday loan, they are stuck: All options—repay, reborrow, or default—are harmful, regardless of what any disclosure might say.[22]

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15 CFSA, Best Practices for the Small-Dollar Loan Industry, Revised June 2018, at #11, https://www.cfsaa.com/files/files/CFSA-BestPractices.pdf (requiring members to provide and disclose the availability of an extended repayment plan, where permitted by state law).

16 82 Fed. Reg. at 54639, n. 799.

17 82 Fed. Reg. at 54636 ("No commenter [on the proposed ability-to-repay rule] claims that providing disclosures will prevent [the practice of making covered loans without reasonably determining that consumers will have the ability to repay the loans according to their terms.]").

18 CFPB, Supplemental Findings on payday, payday installment, and vehicle title loans, and deposit advance products, Chapter 3 at 62-79 (June 2, 2016), https://files.consumerfinance.gov/f/documents/Supplemental_Report_060116.pdf [CFPB Supplemental Findings].

19 *Id.*, Chapter 3 Appendix at 98.

20 *Id.*; 82 Fed. Reg. at 54636-37.

21 CFPB Supplemental Findings at 78-79.

22 82 Fed. Reg. at 54637 ("[W]ith disclosures in this specific context, the only option for a consumer warned about the risks of an unaffordable loan is simply not to take out the loan at all, since once a consumer takes out a loan

As noted above, the payday lenders did not oppose these new disclosure requirements; in light of this data, that should not be surprising.

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In conclusion, we oppose the Bureau's plans to conduct disclosure testing because overwhelming evidence, with none to the contrary, shows that payday loan disclosures will not prevent the harms payday and car title lenders cause by making loans without a reasonable ability-to-repay determination. Moreover, the CFPB's imprimatur on disclosures will only help payday lenders resist meaningful substantive consumer protection measures.

<u>National</u>

Center for Responsible Lending
Americans for Financial Reform Education Fund
Better Markets
Change to Win
Coalition on Human Needs
Congregation of Our Lady of Charity of the Good Shepherd, U.S. Provinces
Consumer Action
Consumers for Auto Reliability and Safety
Consumer Federation of America
Cooperative Baptist Fellowship
Local Initiatives Support Corporation (LISC)
NAACP
National Advocacy Center of the Sisters of the Good Shepherd
National Association of Consumer Advocates
National Consumer Law Center (on behalf of its low income clients)
Woodstock Institute
US PIRG

<u>State</u>

AKPIRG (AK)
Alabama Arise
Arkansans Against Abusive Payday Lending
Brazos Valley Affordable Housing Corporation (TX)
Brazos Valley CDC, Inc. (TX)
Brazos Valley Financial Fitness Center (TX)
CASH Campaign of Maryland

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that in fact turns out to be unaffordable the consumer's only options are to choose between the harms associated with default, re-borrowing, or forgoing other major financial obligations or basic living expenses.").

Center for Economic Integrity (AZ)
Community Economic Development Assoc. of Michigan (CEDAM)
Consumer Federation of California
Every Texan
Florida Alliance for Retired Americans
The Greenlining Institute (CA)
Helping Hands Ministry of Belton (TX)
Housing Action Illinois
Housing and Economic Rights Advocates (CA)
Jacksonville Area Legal Aid, Inc.
Maryland Consumer Rights Coalition
Missouri Faith Voices, A Faith in Action Federation
Montgomery County Community Action Development Commission (PA)
Mountain State Justice (WV)
New Jersey Citizen Action
PA Council of Chapters, Military Officers Association of America (PA)
The Progressive Baptist Church, New Orleans
Public Counsel (CA)
Public Justice Center (MD)
RAISE Texas
Shoreline Study Center (CA)
South Carolina Appleseed Legal Justice Center
Texas Appleseed
Texas Baptist's Christian Life Commission
Tzedek DC (DC)
Virginia Organizing
VOICE-OKC (OK)
WISPIRG (WI)
WV Citizen Action Education Fund