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Consumer Financial Protection Bureau
1700 G St. NW
Washington, DC 20552
Via Electronic Submission

**RE: Payday, Vehicle Title, and Certain High-Cost Installment Loans;
Docket No. CFPB-2019-0006 (RIN 3170-AA80)**

Director Kraninger:

Attached to this letter are comments from The Pew Charitable Trusts regarding the Consumer Financial Protection Bureau’s proposal to eliminate the ability-to-repay safeguards for small-dollar loans it finalized in 2017 (“2019 proposal”). Based on extensive research conducted over more than eight years, Pew strongly supports efforts to reform the market for payday and similar loans, including the Bureau’s 2017 rule. Pew’s research, as well as that from the CFPB and numerous other sources, makes clear both that single-payment and balloon-payment payday and auto title loans are damaging consumers financially, and that appropriate safeguards can be effective at both protecting consumers and promoting access to more affordable credit.

As explained below, Pew is deeply concerned that the Bureau’s proposal to rescind the ability-to-repay provisions it finalized in 2017 will harm consumers and dissuade lenders from providing affordable credit at scale. The 2017 rule encouraged lenders to provide safe and competitive alternatives that could save millions of borrowers billions of dollars per year compared to the high-cost single-payment loans that have been pervasive. Under the 2017 rule, consumers would have widespread access to small-dollar credit.

The rationale the Bureau has offered for its 2019 proposal is based on a severe misunderstanding or mischaracterization of the market impact of the 2017 final rule. While the Bureau claims that the consumer safeguards of the 2017 final rule should be removed primarily because they will impede access to credit, this claim is not substantiated. As demonstrated in this letter, there will be widespread access to credit under the 2017 rule. Small loans will continue to be available from the same lenders to the same consumers via four primary channels: 1) assessing ability to repay; 2) using the principal step-down option; 3) issuing payday and vehicle title installment loans with terms beyond 45 days; and 4) issuing payday and vehicle title lines of credit with terms beyond 45 days.

The Bureau’s 2019 proposal neglected to account for the provision of installment loans and lines of credit in its assessment, repeatedly and incorrectly equating a reduction in the number of short-term

balloon payment loans with a decrease in access to credit generally. In addition to continued payday and vehicle title lending, installment lenders, banks, credit unions and financial technology firms have said that they are also ready and willing to extend access to credit under the 2017 final rule, and they are likely to *expand* their small-dollar lending —something the Bureau failed to address.

Further, in its proposal to change the 2017 final rule, the Bureau repeatedly paraphrased the rule’s language in ways that substantially change its meaning. Notably, the Bureau ignored entire passages in the 2017 rule discussing the harm that results after a loan is originated, when consumers find themselves unable to pay a large balloon payment on a loan and unable to protect themselves because the lender holds a leveraged payment mechanism (securing payment via access to a checking account or a vehicle title). The 2019 proposal has ignored the foundational rationale for the 2017 rule, failed to refute or reinterpret the bulk of research underpinning it, and has also mischaracterized the rule as being largely based on a concern about borrowers’ expectations at the time a first loan is originated.

Reasonable minds can disagree about the value of access to high-cost credit for people who are in difficult financial circumstances. But the evidence base behind the 2017 rule conclusively demonstrates that consumers are suffering substantial injury they cannot reasonably avoid. Moreover, the 2017 rule’s safeguards provide a level playing field and regulatory certainty for lenders, along with strong protections for consumers, while maintaining widespread access to credit. If there is an evidence-based rationale for the Bureau’s 2019 proposal, it is not apparent within its pages. We therefore respectfully urge the Bureau to rescind its 2019 proposal. On behalf of Pew’s consumer finance project and many colleagues who have worked with us to protect Americans from harmful practices in the financial sector, we thank you for considering our recommendation.

We are honored that the Bureau’s 2016 Notice of Proposed Rulemaking cited our work more than 40 times, the 2017 final rule cited our work more than 50 times, and the 2019 proposal cited our work 19 times. Even though the Bureau has not sought our input on this proposal nor accepted our request for a meeting to discuss it, we remain willing to provide assistance based on our deep knowledge of this subject and our more than two dozen publications on small-dollar loans.

Sincerely,



Nick Bourke
Director, Consumer Finance
The Pew Charitable Trusts
www.pewtrusts.org/small-loans

Attachments: Comment letter; Appendices A through W

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1. Pew's Qualifications for Commenting on the Rule

The Pew Charitable Trusts is a global, non-governmental research and public policy organization dedicated to serving the public. We strive to improve public policy by conducting rigorous analysis, linking diverse interests to pursue common cause, and focusing on tangible results. Consumer finance is an area to which Pew has dedicated significant resources in recent years.

Specifically, Pew began work on small-dollar loans in December of 2010, five months after Congress authorized the creation of the CFPB as part of the Dodd-Frank Act. Pew's consumer finance project works to provide thorough, objective analysis to help inform the efforts of policymakers, including the CFPB. In creating this project in 2010, we realized that there were significant gaps in available research about the markets for payday, auto title, and similar forms of small-dollar loans, particularly with respect to understanding the needs and experiences of borrowers and identifying and evaluating policy responses to perceived consumer harms.

Now, more than eight years later, Pew's consumer finance project has produced a comprehensive body of research and developed a group of highly qualified experts on this subject. The team's director has been with the project since its inception in 2010, and the two lead researchers have been with the project since 2011. Altogether, the full-time staff on this project collectively has more than thirty years of experience conducting research and analysis on the market for payday and similar small-dollar loans. Their prior training and experience includes advanced degrees in law and public policy (including training in statistical research methods), professional public opinion research at the highest levels, product management and consulting work in the consumer finance industry and elsewhere, banking experience, federal regulatory work, community organizing, and policy analysis and advocacy.

In July of 2012, we published our first report, entitled "Payday Lending in America: Who Borrows, Where They Borrow, and Why." This report included findings from a first-ever nationally representative telephone poll of payday loan borrowers about their experiences using the loans.¹ The *Payday Lending in America* series of reports grew over the following three years to include a total of five reports about storefront payday lending, online payday lending, and auto title lending.²

As of this writing, Pew's research and contributions to the literature include the following:

- Unique, nationally representative surveys consisting of in-depth telephone interviews with borrowers of payday and similar loans (as well as the general public) conducted according to the highest standards of survey research.

¹ The Pew Charitable Trusts, *Payday Lending in America: Who Borrows, Where They Borrow, and Why* (2012), http://www.pewtrusts.org/~media/legacy/uploadedfiles/pcs_assets/2012/pewpaydaylendingreportpdf.pdf. Methodology for the report is available on page 31.

² The reports are attached as appendices, and are also available as a collection online at <http://www.pewtrusts.org/en/research-and-analysis/collections/2014/12/payday-lending-in-america>.

- Conversations with hundreds of borrowers in more than 20 focus groups throughout the country.
- Scores of meetings, interviews, and store visits with nonbank lenders and consumer finance professionals across many industries.
- More than 100 conversations with bank and credit union officials about small-dollar lending. We convened a group of executives from more than ten banks (which collectively operate approximately one-fifth of all bank branches in the United States) to discuss federal regulation of small-dollar loans.
- Standards for bank and credit union small-dollar loans based on our research with consumers and executives from banks and credit unions.
- Development of safer payday and auto title installment loan models that are viable for lenders and result in far better outcomes for consumers.
- Extensive consultation with community groups throughout the country, including representatives of consumer advocacy groups, civil rights and faith-based organizations, consumer credit counselors, legal advocates, and others.
- Analysis of academic literature and regulatory data. We have read all published academic papers about payday and auto title loans and reviewed all publicly available data about this market from state and federal government agencies as well as additional non-publicly available data obtained through special requests to various regulators and private companies.
- Including the five *Payday Lending in America* reports, Pew's consumer finance project has released more than two dozen carefully researched and reviewed issue briefs, fact sheets, and multi-media publications. See Table 1 at the end of this section for a selected list with links to our website (www.pewtrusts.org/small-loans); many of these publications are also attached as Appendices.
- In recent years, we have provided comment letters, testimony, technical assistance, and informal input to federal regulators and state government officials throughout the country and spoken about this topic at dozens of conferences and other professional gatherings. Our work has been cited or quoted in a wide variety of publications from federal, state, and local government officials including the Bureau.

- Pew’s publications on small-dollar loans have been cited in scholarly articles by academics and other researchers more than 140 times.
- Pew’s work on small-dollar loans has been cited in more than 1,000 media stories.

Pew spent nearly three years researching the markets for payday and similar forms of small-dollar credit before developing initial policy recommendations in October 2013.³ The report included a case study of Colorado’s 2010 payday loan reform law (which converted payday loans in that state from conventional short-term loans to those with six-month terms); survey data finding that borrowers favor having more time to repay loans in smaller installment payments; and discussion of various potential benefits and harms associated with installment lending and how policy could help ensure that the migration to installment lending is safe and effective.⁴ In the years since, we have revisited the data underlying that report and supplemented our recommendations with additional research and analysis, making revisions where appropriate.

Pew is deeply committed to unbiased research and dedicated to improving public policy through pragmatic measures that would accommodate legitimate interests of both borrowers and lenders, as well as the public generally. Stakeholder outreach has been a constant feature of our work since it started.

In sum, Pew is highly qualified to comment about the proposal to rescind the 2017 ability-to-repay provisions for payday, vehicle title, and certain high-cost installment loans. We are honored that the Bureau’s 2016 Notice of Proposed Rulemaking cited our work more than 40 times, the 2017 final rule cited our work more than 50 times, and the 2019 proposal cited our work 19 times. We hope the Bureau finds value in our input. We look forward to the opportunity to work with the Bureau as it reviews feedback on its proposal.

³ The Pew Charitable Trusts, *Payday Lending in America: Policy Solutions* (2013), http://www.pewtrusts.org/~media/legacy/uploadedfiles/pcs_assets/2013/pewpaydaypolicysolutionsoct2013pdf.pdf.

⁴ *Id.*

Table 1: Selected Publications from Pew's Consumer Finance Project

[Report 1 - Payday Lending in America series: Who Borrows, Where They Borrow, and Why](#)

[Report 2 - Payday Lending in America series: How Borrowers Choose and Repay Payday Loans](#)

[Report 3 - Payday Lending in America series: Policy Solutions](#)

[Report 4 - Payday Lending in America series: Fraud and Abuse Online: Harmful Practices in Internet Payday Lending](#)

[Report 5 - Payday Lending in America series: Auto Title Loans: Market Practices and Borrowers' Experiences](#)

[Fact Sheet: How State Rate Limits Affect Payday Loan Prices](#)

[Interactive: State Payday Loan Regulation and Usage Rates](#)

[Issue Brief: Trial, Error, and Success in Colorado's Payday Lending Reforms](#)

[Issue Brief: Understanding the CFPB Proposal for Payday and Other Small Loans \(2015\)](#)

[Issue Brief: CFPB Proposal for Payday and Other Small Loans: A Survey of Americans \(2015\)](#)

[Issue Brief: From Payday to Small Installment Loans](#)

[Fact Sheet: Payday Loan Facts and the CFPB's Impact \(2016\)](#)

[Issue Brief: Americans Want Payday Loan Reform, Support Lower-Cost Bank Loans](#)

[Issue Brief: Payday Loan Customers Want More Protections, Access to Lower-Cost Credit From Banks](#)

[Issue Brief: Standards Needed for Safe Small Installment Loans from Banks, Credit Unions](#)

[Report: State Laws Put Installment Loan Borrowers at Risk](#)

[Analysis: Reforming Payday Loans Begins With Understanding How They Really Work](#)

[Analysis: As Payday Loan Market Changes, States Need to Respond](#)

[Analysis: Ohio a National Model for Payday Loan Reform](#)

[Video: Payday Loans Explained](#)

[Video: Payday Loans: Who Uses Them and Why?](#)

[Video: Payday Loans—And How to Fix Them](#)

[Video: How Ohio Solved Payday Loan Reform](#)

2. Executive Summary

Millions of the most financially fragile individuals in this country are experiencing harm because payday loans and other small-dollar loans that they use to help pay bills actually have the reverse effect of making it harder to make ends meet. This problem is compounded as some lenders abuse “leveraged payment mechanisms” to collect on loans even when it undermines borrowers’ ability to meet basic needs or other financial obligations. As summarized in Section 3 of this letter, the case for reform is overwhelmingly supported by research.

After more than eight years of relevant research and analysis, we have concluded that credit can in fact help people cope with periodic shortfalls in their monthly budgets, but *only if that credit is structured affordably*. In the case of covered loans (payday and auto title loans that carry terms of 45 days or shorter or have a balloon payment), safeguards are necessary. Pew published its original recommendations detailing the features of safe, small-dollar loans in October 2013, and they are summarized as follows:

- Limit payments to an affordable percentage of a borrower's periodic income.
- Spread costs evenly over the life of the loan.
- Guard against harmful repayment or collection practices and excessively long loan terms.
- Require concise disclosures that reveal both periodic and total costs.
- States should continue to set maximum allowable charges on loans for those with poor credit.⁵

These recommendations are designed to protect consumers while also enabling widespread access to credit if policymakers wish for high-rate loans to be available to consumers with damaged credit histories.

(a) The 2017 final rule is narrow in scope

In 2017, the Bureau finalized a rule that is much more modest than the rule it originally proposed in 2016. The 2016 proposal required an ability-to-repay assessment for loans with terms longer than 45 days as well as short-term loans.⁶ Based on extensive feedback from industry, the Bureau substantially narrowed the scope of the 2017 final rule, instead tailoring it to focus on short-duration loans that consistently harm consumers. All the changes made to the 2017 final rule gave lenders more flexibility than had been proposed in 2016, effectively limiting the rule’s scope.

⁵ The Pew Charitable Trusts, *Payday Lending in America: Policy Solutions* (2013), http://www.pewtrusts.org/~media/legacy/uploadedfiles/pes_assets/2013/pewpaydaypolicysolutionsoct2013pdf.pdf.

⁶ 81 FR 47863.

The research on payday lending supports a more robust rule with stronger consumer protections than the Bureau finalized in 2017. But the rule would clearly benefit consumers by placing strong safeguards on repeated issuance of loans structured in ways that have consistently failed those who use them. At the same time, the rule gives lenders complete latitude if they allow borrowers more than 45 days to repay in installments, as banks, credit unions, and installment lenders generally already do.

Under that rule, credit would be widely available. As detailed in Section 4 of this letter, payday and auto title lenders could issue small loans in four ways: 1) assess applicants' ability to repay, 2) use a principal step-down option, 3) issue payday or vehicle title installment loans, or 4) issue payday or vehicle title lines of credit. Empirically, loans falling into the third and fourth categories are already available and can be offered widely to the same customer base. The rule would benefit consumers by ending the provision of long sequences of single-payment loans, and it would benefit transparent lenders who acknowledge, disclose, and structure loans with sufficient time to repay in installments.

As an example, even a borrower who uses a single-payment vehicle title loan made before the rule change who lacks the ability to repay under the 2017 rule will generally still have access to credit. The borrower can obtain 1) a longer-term auto title loan, 2) a payday installment loan or payday line of credit, if the borrower is among the 85 percent of auto title loan customers that have a checking account, 3) a subprime consumer loan from a traditional installment lender, or 4) a small installment loan or line of credit from their bank or credit union. None of these loans are covered by the 2017 rule because they all have terms of more than 45 days and do not carry balloon payments. The 2017 rule correctly recognized that borrowers would only have reduced access to single-payment and balloon-payment loans, not to all forms of credit available to them.

As explained in Section 6 of this letter, if the 2017 rule takes effect, high-cost lending would continue in most or all states where it exists today, and it is even likely to thrive. Payday and auto title lenders have already started adapting to the 2017 rule by making longer-term loans; in fact, our research shows that these lenders are already offering high-cost installment loans and lines of credit in a majority of states and are likely to expand to others.⁷ This development renders the 2019 proposal's arguments largely moot because borrowers will maintain access to credit under the 2017 final rule.⁸ Most experts who have analyzed this issue have concluded that the bulk of today's payday loan borrowers will continue to be approved for high-cost loans or lines of credit under the rule, though lenders will shift mostly to loans with terms of more than 45 days. Lenders will maintain a strong ability to collect on these loans, because the 2017 rule allows them to continue using leveraged payment mechanisms. Though the Bureau originally proposed to place certain

⁷ The Pew Charitable Trusts, *From Payday to Small Installment Loans* (2016), 5, http://www.pewtrusts.org/~media/assets/2016/08/from_payday_to_small_installment_loans.pdf#page=5.

⁸ Our research has shown that liquidity credit can be helpful, even at high APRs, but only if it is structured in a way to ensure affordable payments, reasonable time to repay, and the other safeguards noted above.

safeguards on these loans too in 2016, it instead altered the 2017 final rule to give lenders far more flexibility than the 2016 proposal.

(b) The 2019 proposal misunderstands or mischaracterizes the 2017 rule's impact

The 2019 proposal cites as its rationale that access to credit will be severely curtailed under the 2017 rule and competition⁹ will be harmed.¹⁰ Yet the Bureau has not supported these claims, and they are, in many cases, directly contradicted by available evidence.

Inappropriate and erroneous claims of reduction in access to credit

The Bureau argues the 2017 rule would have “dramatic impacts in restricting consumer access to payday loans”¹¹ and “eliminating over 90 percent of all payday and vehicle title loans would adversely affect the interests of all borrowers.”¹² The Bureau’s 2019 proposal describes the 2017 final rule as stating that “...the Bureau estimated that, absent the conditional exemption in 1041.6, the Mandatory Underwriting Provisions of the Rule would reduce payday loan volume and lender revenue by approximately 92 to 93 percent relative to lending volumes in 2017 and vehicle title volume and lender revenue by between 89 and 93 percent.”¹³

This paraphrasing strongly implies that the 2017 rule estimates there will be large drops in access to credit. But the 2017 rule does not reach that conclusion. Instead, the 2017 rule says “...the Bureau estimates that the restrictions on short-term vehicle title lending will prevent between 89 and 93 percent of *short-term* vehicle title loans that are currently made” (emphasis added).¹⁴ That conclusion is substantially different, because lenders are not limited to offering only short-term loans up to 45 days in length. Instead, many will shift to offering loans that are not covered because they have terms beyond 45 days—in fact, lenders have already done so in the vast majority of states where they operate. The 2017 rule acknowledges this, explaining “The primary impact of this rule, *prior to any reforms it may prompt in market practices*, will be a substantial reduction in the volume of *short-term* payday and vehicle title loans...” (emphasis added).¹⁵

⁹ As we will discuss later, payday lenders do not primarily compete on price, instead pricing at the state rate ceiling no matter where it is set, as the Bureau tentatively acknowledged in its 2019 proposal. It is unclear how consumers would suffer even if the ostensible lack of competition materialized under the 2017 rule; see The Pew Charitable Trusts, “How State Rate Limits Affect Payday Loan Prices” (2014), http://www.pewtrusts.org/~media/legacy/uploadedfiles/pes/content-level_pages/fact_sheets/stateratelimitsfactsheetpdf.pdf.

¹⁰ The Bureau contends that the “Mandatory Underwriting Provisions” in the 2017 rule “would have the effect of restricting access to credit and reducing competition for these products,” by which the Bureau appears to mean “liquidity loan products” or “credit products for consumers struggling to make ends meet.” 84 FR 4252, 4262.

¹¹ 84 FR 4266.

¹² 84 FR 4274.

¹³ 84 FR 4259.

¹⁴ 82 FR 54834.

¹⁵ 82 FR 54817.

Similarly, the 2019 proposal describes the impact of the 2017 rule as “a large (55 to 62 percent) contraction of the storefront payday industry.”¹⁶ This estimate appears to be a rephrasing of the 2017 rule’s finding that “the estimated impact of the lending restrictions shows a decrease in the number of loans of 55 to 62 percent.”¹⁷ Again, the 2017 rule’s estimate is of the change in volume of *single-payment payday loans*, but the 2019 proposal appears to misconstrue this estimate as the number of storefront payday lenders that will close. The assumption underlying this misunderstanding is that lenders will not avail themselves of one of their compliance options by giving consumers more than 45 days to repay, even though *lenders have made this change in every single state where single-payment loans were restricted but longer-term loans were not*. The 2019 proposal also suffers from several basic errors that would be obvious to experts in this policy field.¹⁸

The 2019 proposal appears to be motivated primarily by a misunderstanding of the availability of credit under the 2017 rule because of the Bureau’s assumption that lenders will not extend terms beyond 45 days to comply with the rule even though they have done so profitably in many states; but at this point there is enough evidence from states to be certain that this unsupported assumption is demonstrably incorrect (see Section 6 below).¹⁹

Unfounded claims about the impact on competition

The 2019 proposal also expresses concern that the 2017 rule “would have a dramatic effect on competition.”²⁰ Yet the 2019 proposal does not support this concern with evidence. The 2019 proposal even concedes that “because of State-law regulation of interest rates, the effect of reduced competition may not manifest itself in higher prices.”²¹ This is correct. As Pew has previously published, “States with more firms operating, a standard measure of competition, do not see lower prices.”²² In addition to conceding that the 2017 rule is unlikely to result in higher prices, the 2019 proposal also acknowledges the 2017 rule does not cover emerging products that let consumers access their wages early (and thus are competitive alternatives to covered loans). It also

¹⁶ 84 FR 4264.

¹⁷ 82 FR 54826.

¹⁸ For example, in making this argument, the proposal mentions that “the Bureau noted in the 2017 Final Rule that two States that permit vehicle title lending do not permit payday lending.” (See 84 FR 4264- 171). This is not correct and instead seems to be another misstatement or mischaracterization of the 2017 Final Rule’s findings, because the 2017 Final Rule correctly noted that “all but *three* of the States that permit some form of title lending (Arizona, Georgia, and New Hampshire) also permit payday lending” (emphasis added). (See FR 82 54490).

¹⁹ For example, the 2019 proposal claims that, “because of the principal step-down feature of the conditional exemption, consumers obtaining loans under that exemption would be forced to repay their loans more quickly than they do today,” (84 FR 4259) and, “many borrowers would likely be required to repay their loans more quickly than prior to the Rule—a requirement that could create financial hardship for such consumers” (84 FR 4264). In fact, evidence from states and developments since the rule was finalized show the final 2017 rule would result in a shift to longer-term loans with borrowers having more time to repay, not less.

²⁰ 84 FR 4274.

²¹ *Id.*

²² The Pew Charitable Trusts, “How State Rate Limits Affect Payday Loan Prices” (2014), http://www.pewtrusts.org/~media/legacy/uploadedfiles/pes/content-level_pages/fact_sheets/stateratelimitsfactsheetpdf.pdf.

surmises that the 2017 rule could hurt nonprice competition but does not specify any forms of nonprice competition and does not provide evidence that the 2017 rule would hurt nonprice competition. If the Bureau has any evidence that the 2017 rule will harm competition, and this will in turn harm consumers, it did not present this evidence in the 2019 proposal. Based on Pew's research and analysis there is no evidence that the 2017 rule would on net decrease competition, while there is ample evidence that it was already stimulating competition in the market for installment loans lasting longer than 45 days (see Section 6 below).

(c) The 2019 proposal ignores the bulk of the research underpinning the 2017 rule, and fails to address the original rule's rationale

The Bureau's 2019 proposal argues that there is insufficient or inadequate research to support the findings of unfairness and abusiveness in the 2017 rule. The proposal especially focuses on pieces of three studies, two by Pew, and one by Professor Ronald Mann, which it believes the 2017 rule misinterprets. While we believe the studies discussed were interpreted correctly in the 2017 rule, they are hardly the only basis for the 2017 rule. The CFPB studied payday lending for six years before finalizing a rule (see Appendix A), and we count 153 separate studies that the Bureau cited in its 2017 rule, including 60 distinct academic studies. The 153 studies total more than 8,000 pages. (See Section 7 of this letter for a discussion of how the 2019 proposal treats the research underpinning the 2017 rule, and Section 3 for a review of research demonstrating the need for the 2017 rule.)

Further, the 2019 proposal has fundamentally failed to address the core rationale for the 2017 rule or supply any relevant evidence for challenging it. The core of the Bureau's 2017 argument supporting the final rule was as follows: "After they take out the initial loan, consumers are no longer able to protect their interests as a practical matter because they are already face to face with the competing injuries of default, delinquency, re-borrowing, or the collateral consequences of making unaffordable payments, with no other way to opt out of the situation. An unaffordable first loan can thus ensnare consumers in a cycle of debt from which they cannot extricate themselves without incurring some form of injury, rendering them unable to protect their interests in selecting or using these kinds of loans."²³ But the Bureau's 2019 proposal sidesteps this argument without refuting or even discussing it.

To conclude this executive summary, the research is overwhelmingly clear that consumers are experiencing harm in this market, and the Bureau's 2017 regulatory action was both justified and supported by a wide body of research. The 2017 rule is narrowly tailored to the most significant problems in the market, especially compared to the broader 2016 proposed rule, and this leaves a wide range of credit options available for affected consumers. The Bureau's 2019 claims that the 2017 rule would result in a dramatic reduction in access to credit and harm competition are both

²³ 82 FR 54618.

unsupported and inaccurate. And the Bureau has not refuted the 2017 rule's core finding of harm once consumers have taken a loan and find that they are trapped by an inability to repay it in full and face difficulty in defaulting because lenders hold leveraged payment mechanisms. Therefore, we reiterate our recommendation that the Bureau rescind its 2019 proposal.

3. Research Findings Demonstrating Need for 2017 Final Rule

(a) Borrower profile

Individuals who use high-cost payday loans are struggling financially, and 58 percent report trouble covering ordinary living expenses from month to month.²⁴ A majority (52 percent) report paying bank overdraft fees, and most carry credit cards but with little available credit.²⁵ Almost all have a damaged credit history that makes them ineligible for mainstream consumer credit, with credit scores that are at the lowest end of the scale (typical FICO scores in the low 500s and similarly low VantageScores).²⁶ These consumers are not the unbanked—they have an income and checking account, which are requirements for getting a payday loan—but they are dealing with periodic cash shortfalls rather than rare and unexpected emergency expenses.²⁷

The average payday loan borrower earns about \$30,000 per year,²⁸ although borrowers within every income group have used a payday loan.²⁹ Regardless of income, most borrowers find it difficult to repay the average lump-sum payment of \$430 that is required on their next payday, which represents 36 percent of the average borrower’s paycheck. Only 14 percent of borrowers say they can actually afford this amount.³⁰ In 22 focus groups that Pew has organized, borrowers conveyed a variety of hardships caused by unaffordable loan payments, from having to skip meals to not being able to meet children’s basic needs. As a borrower in one focus group said, “As much as I would just like to say, ‘Here’s the \$300, I’m good. I don’t want another loan,’ I can’t. Because if I do, that \$255 that I don’t have, what am I going to do? That’s anything from like rent, other bills, food, cost of living stuff. It’s difficult.”³¹

Instead, the average payday loan borrower can afford to pay about \$50 per two weeks—similar to the fee for renewing a typical payday loan today. These data help explain why most borrowers renew or reborrow rather than repay their loans in full, and why the CFPB has found

²⁴ The Pew Charitable Trusts, *Payday Lending in America: How Borrowers Choose and Repay Payday Loans* (2013), 10, [http://www.pewtrusts.org/~media/assets/2013/02/20/pew_choosing_borrowing_payday_feb2013-\(1\).pdf#page=10](http://www.pewtrusts.org/~media/assets/2013/02/20/pew_choosing_borrowing_payday_feb2013-(1).pdf#page=10).

²⁵ Neil Bhutta, Paige Marta Skiba, and Jeremy Tobacman, *Payday Loan Choices and Consequences*, Oct. 11, 2012, Vanderbilt Law and Economics Research Paper No. 12-30, 13, <http://dx.doi.org/10.2139/ssrn.2160947>. Fifty-nine percent of borrowers in the dataset have a credit card.

²⁶ Neil Bhutta, Paige Marta Skiba, and Jeremy Tobacman, *Payday Loan Choices and Consequences*, Oct. 11, 2012, Vanderbilt Law and Economics Research Paper No. 12-30, <http://dx.doi.org/10.2139/ssrn.2160947>.

²⁷ The Pew Charitable Trusts, *Payday Lending in America: Who Borrows, Where They Borrow, and Why* (2013), 14, http://www.pewtrusts.org/~media/legacy/uploadedfiles/pes_assets/2012/pewpaydaylendingreportpdf.pdf#page=16.

²⁸ The Pew Charitable Trusts, *Payday Lending in America: Policy Solutions* (2013), 53, http://www.pewtrusts.org/~media/legacy/uploadedfiles/pes_assets/2013/pewpaydaypolicysolutionsoct2013pdf.pdf#page=59

²⁹ The Pew Charitable Trusts, *Payday Lending in America: Who Borrows, Where They Borrow, and Why* (2012), 10, http://www.pewtrusts.org/~media/legacy/uploadedfiles/pes_assets/2012/pewpaydaylendingreportpdf.pdf#page=12.

³⁰ The Pew Charitable Trusts, *Payday Lending in America: How Borrowers Choose and Repay Payday Loans* (2013), 14, [http://www.pewtrusts.org/~media/assets/2013/02/20/pew_choosing_borrowing_payday_feb2013-\(1\).pdf#page=14](http://www.pewtrusts.org/~media/assets/2013/02/20/pew_choosing_borrowing_payday_feb2013-(1).pdf#page=14).

³¹ The Pew Charitable Trusts, *Payday Lending in America: How Borrowers Choose and Repay Payday Loans* (2013), 16, [http://www.pewtrusts.org/~media/assets/2013/02/20/pew_choosing_borrowing_payday_feb2013-\(1\).pdf#page=16](http://www.pewtrusts.org/~media/assets/2013/02/20/pew_choosing_borrowing_payday_feb2013-(1).pdf#page=16).

that 82 percent of loans are renewals or quick reborrows³² while lenders report that loan loss rates are only 3 percent.³³

Auto title loans are a similar form of high-cost lending and mirror payday loans in both structure and borrower experience. These borrowers are also unable to qualify for traditional financing, and they struggle to make ends meet. Most auto title loan borrowers report having a checking account,³⁴ though they do not necessarily need an income to obtain the loan, as the lender can repossess the borrower's vehicle if they fail to repay. Further, loan payments are even larger and consume half of the average borrower's monthly income.

Borrowers are not shopping for credit in the conventional sense, but rather trying to cover regular recurring expenses: 69 percent of payday borrowers first used the loan to cover a recurring expense, such as utilities, credit card bills, rent or mortgage payments, or food, while 16 percent dealt with an unexpected expense, such as a car repair or emergency medical expense.³⁵ Yet research has found that use of payday loans has a negative effect on the ability of lower-income households to meet other expenses.³⁶ Borrowers are torn about the experience—a majority says payday loans take advantage of them, and a majority also says they provide relief. The appreciation for urgently needed cash and friendly service conflicts with borrowers' feelings of dismay about high costs and frustration with unaffordable payments and lengthy indebtedness.³⁷

Repaying the loan in one lump sum is difficult for most borrowers. Previous research, as well as discussions with industry leaders, and state-level reports, all make clear that a typical borrower uses payday loans many times per year, and much of this borrowing comes in relatively quick

³² Consumer Financial Protection Bureau, *CFPB Data Point: Payday Lending* (2014), 9, http://files.consumerfinance.gov/f/201403_cfpb_report_payday-lending.pdf#page=9.

³³ Advance America, Cash Advance Centers Inc., *Form 10-K Annual Report* (Period Ending 12/31/11), 5 and 41, <http://quote.morningstar.com/stock-filing/Annual-Report/2011/12/31/t.aspx?t=XNYS:AEA&ft=&d=c12cd1f791e34bf03980d4825adc1730>. Using 2011's Annual (10-K) Report from Advance America, the largest storefront lender, as an example, we can calculate an approximate loss rate by dividing the "provision for doubtful accounts" by the "aggregate principal amount of cash advances originated." This calculation of \$107,911,000 divided by \$3,965,225,000 yields an estimated loss rate of 2.72 percent. Borrowers may renew or reborrow a loan, or experience temporary defaults by bouncing checks and incurring nonsufficient funds fees while still paying back a loan eventually; Jamie Fulmer, "Advance America and Payday Lending: Who Borrows and Why," *Advance America*, presentation, Oct. 18, 2012, http://www.ncsl.org/portals/1/documents/fiscal/Jamie_Fulmer_PowerPoint.pdf#page=12. Advance America has made a similar point, stating, "97 percent of our customers pay us back;" David Burtzloff and Brittny Groce, *Payday Loan Industry*, Stephens Inc. (2011).

³⁴ The Pew Charitable Trusts, *Auto Title Loans: Market Practices and Borrowers' Experiences* (2015), 7, <http://www.pewtrusts.org/~media/assets/2015/03/autotitleloansreport.pdf#page=11>.

³⁵ The Pew Charitable Trusts, *Payday Lending in America: Who Borrows, Where They Borrow, and Why* (2013), 14, http://www.pewtrusts.org/~media/legacy/uploadedfiles/pcs_assets/2012/pewpaydaylendingreportpdf.pdf#page=16.

³⁶ Brian T. Melzer, *The Real Costs of Credit Access: Evidence from the Payday Lending Market*, *The Quarterly Journal of Economics* (2011) 126: 517-555, <http://qje.oxfordjournals.org/content/126/1/517.full.pdf+html>.

³⁷ The Pew Charitable Trusts, *Payday Lending in America: How Borrowers Choose and Repay Payday Loans* (2013), 39, [http://www.pewtrusts.org/~media/assets/2013/02/20/pew_choosing_borrowing_payday_feb2013-\(1\).pdf#page=39](http://www.pewtrusts.org/~media/assets/2013/02/20/pew_choosing_borrowing_payday_feb2013-(1).pdf#page=39).

succession once someone begins using payday loans.³⁸ To repay a loan, 41 percent have needed a cash infusion of some kind, including getting help from friends or family, selling or pawning personal possessions, or taking out another type of loan.³⁹ Frequently, these alternatives borrowers use to retire payday loan debt were available to them instead of using the loans in the first place. But desperation or unrealistic expectations, fueled by the product's unsustainable promise of debt lasting only weeks, often make comparisons with more transparent alternatives—and the fundamental decision about whether to borrow in the first place—difficult.⁴⁰ Long-term debt and high costs are the rule rather than the exception: Only 3 percent of lump-sum payday loans go to customers who use just one or two per year, and more borrowers use 17 or more loans in a year than use just one.⁴¹ The single-payment loan, whether offered by a bank,⁴² a storefront lender,⁴³ or an online lender,⁴⁴ simply does not work as advertised for the vast majority of borrowers.

(b) Payday loan borrowers are unusually fragile consumers

Payday and auto title loan borrowers are unusually fragile financially compared to consumers who do not rely on high-cost credit to make ends meet. For example, they typically have incomes below \$40,000, no savings, no liquidity on credit cards, and struggle to cover expenses. Just 49 percent of all payday loan borrowers are employed full-time, 14 percent are unemployed, and 13 percent are employed part-time. Further, borrowers who self-identified as disabled or unemployed in Pew's national survey were the most likely to have used a loan of any employment group, with usage rates of 12 percent and 10 percent respectively.⁴⁵ High-cost loan

³⁸ Consumer Financial Protection Bureau, *CFPB Data Point: Payday Lending* (2014), 12, http://files.consumerfinance.gov/f/201403_cfpb_report_payday-lending.pdf#page=12. Data show “that half of all loans are in sequences of 10 or more loans; 62% are in sequences of seven or more loans.” Consumer Financial Protection Bureau, *Supplemental findings on payday, payday installment, and vehicle title loans, and deposit advance products* (2016), 111, <http://www.consumerfinance.gov/data-research/research-reports/supplemental-findings-payday-payday-installment-and-vehicle-title-loans-and-deposit-advance-products/>. Data show over 80 percent of loans are reborrowed within 14 days from the same lender.

³⁹ The Pew Charitable Trusts, *Payday Lending in America: How Borrowers Choose and Repay Payday Loans* (2013), 37, [http://www.pewtrusts.org/~media/assets/2013/02/20/pew_choosing_borrowing_payday_feb2013-\(1\).pdf#page=37](http://www.pewtrusts.org/~media/assets/2013/02/20/pew_choosing_borrowing_payday_feb2013-(1).pdf#page=37).

⁴⁰ The Pew Charitable Trusts, *Payday Lending in America: How Borrowers Choose and Repay Payday Loans* (2013), 19-29, [http://www.pewtrusts.org/~media/assets/2013/02/20/pew_choosing_borrowing_payday_feb2013-\(1\).pdf#page=19](http://www.pewtrusts.org/~media/assets/2013/02/20/pew_choosing_borrowing_payday_feb2013-(1).pdf#page=19).

⁴¹ Veritec Solutions LLC, *Oklahoma Trends in Deferred Deposit Lending* (2011), https://www.ok.gov/okdocc/documents/2011_10_OK%20Trends_Final_Draft.pdf.

⁴² Consumer Financial Protection Bureau, *Payday Loans and Deposit Advance Products: A White Paper of Initial Data Findings* (2013), http://files.consumerfinance.gov/f/201304_cfpb_payday-dap-whitepaper.pdf.

⁴³ Consumer Financial Protection Bureau, *Payday Loans and Deposit Advance Products: A White Paper of Initial Data Findings* (2013), http://files.consumerfinance.gov/f/201304_cfpb_payday-dap-whitepaper.pdf. The median storefront payday loan customer uses 10 loans in a year.

⁴⁴ David Burtzlaff and Brittany Groce, *Payday Loan Industry* (Stephens Inc., 2011). This paper notes that neither storefront nor online payday lenders are profitable unless borrowers use multiple loans.

⁴⁵ The Pew Charitable Trusts, *Payday Lending in America: Who Borrows, Where They Borrow, and Why* (2012), 11, http://www.pewtrusts.org/~media/legacy/uploadedfiles/pes_assets/2012/pewpaydaylendingreportpdf.pdf#page=13. It is possible that unemployed people were employed at the time of their last payday loan, or that they are receiving a loan based on some other form of income, such as a benefits check.

borrowers mostly do not qualify for traditional loans because they have damaged credit histories.

Like many low- and moderate-income households, they are at risk of seeing their incomes fluctuate. Since 1979, nearly half of households in the U.S. have experienced an income gain or drop of more than 25 percent in any given two-year span.⁴⁶ And in recent years, contract employment has continued to increase—a shift often referred to as the “gig” or “sharing” economy. Data show that since 2010, 1099s (the forms that some employers fill out when paying contract workers more than \$600) have been gaining ground and even outpacing W-2 forms. As companies drop employees and add contract workers, W-2s decrease and 1099s increase. The Census Bureau’s count of non-employment businesses (i.e., independent workers) has also increased.⁴⁷ Together, these data suggest an increasing shift to hourly jobs, which could exacerbate income volatility since wages fluctuate with varying work schedules.

Swings in income can destabilize a family’s finances by making it difficult to budget and meet monthly expenses, including loan payments. Data from the U.S. Financial Diaries Project show that for households living below the poverty line, 26 percent of monthly income is unpredictable compared with only 9 percent for those earning 200 to 300 percent of the poverty line.⁴⁸

This shift will likely have a greater impact on lower-income households. Research shows that poorer households experience higher rates of income volatility than their middle-income counterparts,⁴⁹ and low-income households with children and people with disabilities are among those more likely to experience sharp income declines.⁵⁰ Further, research on work schedules for young adults shows that part-time employees experience a higher level of work-hour instability and lower averages of work hours, and that fluctuations in work hours may result in financial insecurity.⁵¹

⁴⁶ The Pew Charitable Trusts, “The Precarious State of Family Balance Sheets” (2015), <http://www.pewtrusts.org/en/research-and-analysis/reports/2015/01/the-precious-state-of-family-balance-sheets>.

⁴⁷ Justin Fox, “The Rise of the 1099 Economy,” *Bloomberg View*, Dec. 11, 2015, <https://www.bloomberg.com/view/articles/2015-12-11/the-gig-economy-is-showing-up-in-irs-s-1099-forms>.

⁴⁸ Anthony Hannagan and Jonathan Morduch, *Income Gains and Month-to-Month Income Volatility: Household evidence from the US Financial Diaries*, 2015, 1, <https://static1.squarespace.com/static/53d008ede4b0833aa2ab2eb9/t/553521dae4b048e6faa46cdb/1429545456581/paper1.pdf#page=1>. The authors summarized income volatility by an average coefficient of variation of monthly income, which was 55 percent for those below the poverty line and 34 percent for those from 100-300 percent of the poverty line.

⁴⁹ Gregory Mills and Joe Amick, “Can Savings Help Overcome Income Instability?” *The Urban Institute*, 6, <http://www.urban.org/sites/default/files/alfresco/publication-pdfs/412290-Can-Savings-Help-Overcome-Income-Instability-.PDF#page=6>. Coefficient of variation for monthly household income in lowest quintile was 0.499 and 0.321 for middle quintile.

⁵⁰ Gregory Acs, Pamela Loprest, and Austin Nichols, “Risk and Recovery: Understanding the Changing Risks to Family Incomes” (2009), *The Urban Institute*, <http://www.urban.org/sites/default/files/alfresco/publication-pdfs/411971-Risk-and-Recovery-Understanding-the-Changing-Risks-to-Family-Incomes.PDF>.

⁵¹ Susan J. Lambert, Peter J. Fugiel, and Julia R. Henly, “Precarious Work Schedules among Early-Career Employees in the US: A National Snapshot,” *University of Chicago*, 12, https://ssascholars.uchicago.edu/sites/default/files/work-scheduling-study/files/lambert.fugiel.henly_precarious_work_schedules.august2014_0.pdf#page=14.

Recent research has also found that highly indebted households' consumption is more sensitive to income shocks. Because these households devote a greater share of their income to fixed monthly debt payments, they have less room to cut non-essential expenses when faced with an income loss. (See Appendix F for a more detailed discussion of the research on income volatility.)

In short, the population of borrowers seeking covered loans is more fragile than nonborrowers and will be exposed to a great deal of financial risk, especially considering that most borrowers earn less than \$40,000 annually, struggle to make ends meet, and seek the loans for consumption-smoothing rather than wealth-building purposes.

(c) Payday and title lenders have unusually strong leverage over consumers to ensure their ability to collect loan payments

As Pew has previously discussed,⁵² payday lenders are unique in that they do not use traditional underwriting to determine whether the borrower has the ability to repay the loan while fulfilling other obligations.⁵³ They focus primarily on the ability to collect repayment, using leveraged payment mechanisms such as deferred presentment (holding the borrower's check or having electronic access to the borrower's checking account).⁵⁴ Many other types of lenders use electronic access as a way of ensuring and streamlining repayment, but conceptually, electronic repayment plans differ from deferred presentment arrangements for several reasons: 1) payday lenders condition credit on use of a leveraged payment mechanism; 2) the repayment is tied to a borrower's payday, meaning lenders are first in line to get paid before the borrower's other creditors; and 3) borrowers can cancel the plans with other lenders and retain control over the inflows and outflows of their checking accounts. Thus, payday lenders have unusually strong ability to collect unaffordable payments, which sets them apart from other creditors.

A leveraged payment mechanism becomes a dangerous tool when it lacks limits and is coupled with a high-cost loan to a financially fragile borrower. For storefront loans, borrowers are required to return to the store to repay the loan in cash, or if they cannot afford the full payment, to pay the fee to renew it and extend the due date; if the borrower does not return, the lender can deposit the check or use ACH to debit the full loan amount. For online loans, electronic access is almost universal, as there is a strong disincentive for the borrower to choose

⁵² The Pew Charitable Trusts, *Payday Lending in America: Policy Solutions* (2013), 27,

http://www.pewtrusts.org/~media/legacy/uploadedfiles/pcs_assets/2013/pewpaydaypolicysolutionsoct2013pdf.pdf#page=33

⁵³ Some providers use automated underwriting models that assess more than just whether someone has a checking account and an income stream, but do not engage in an assessment of all of the borrower's expenditures and liabilities to assess their ability to pay the loan because they still retain the ability to collect via the leveraged payment mechanism.

⁵⁴ Consumer Financial Protection Bureau, *Payday Loans and Deposit Advance Products: A White Paper of Initial Data Findings* (2013), 44, http://files.consumerfinance.gov/f/201304_cfpb_payday-dap-whitepaper.pdf#page=44. "Lenders may instead rely on their relative priority position in the repayment hierarchy to extend credit without regard to whether the consumer can afford the loan. This position, in turn, trumps the consumer's ability to organize and prioritize payment of debts and other expenses."

an alternate method of applying for, receiving, and repaying the loans by mail.⁵⁵ Auto title lenders also retain strong leverage using a car title, which can lead to repossession of a borrower's vehicle as a consequence of falling behind on loan payments. The threat of repossession alone is enough to make borrowers return to the lender to make a payment to extend the term for another pay period or month.

This mechanism allows the lender to compel payment on an unaffordable loan. This explains why defaults, charge-offs, and losses are all artificially low in this market even though borrowers often struggle to repay and repeatedly renew the loans. In short, lenders of covered loans hold unusually strong leverage over unusually fragile borrowers.

Conventional creditors engage in underwriting to control risk that the borrower will not pay them back. Payday and auto title lenders typically do not engage in conventional underwriting because they use a leveraged payment mechanism as the primary means to control their risk.⁵⁶ With the power to reach into a borrower's checking account on payday—often ahead of other creditors—or repossess a borrower's vehicle, lenders of covered loans have greater power to compel repayment than conventional creditors typically have. This gives lenders of covered loans strong ability to control credit losses with relatively less up-front underwriting effort, even when lending to financially fragile borrowers who have damaged credit histories.⁵⁷

Short-term loans usually carry large payments that borrowers cannot afford to repay without borrowing again. But once they have borrowed, it is unusually difficult to default because the lender is especially powerful (able to compel repayment using the leveraged payment mechanism).⁵⁸ Even the *threat* of exercising this leveraged payment mechanism is sufficient to convince borrowers of payday or auto title loans to pay the lender even if doing so undermines

⁵⁵ "Frequently Asked Questions," CashNetUSA, accessed Sept. 28, 2016, <https://www.cashnetusa.com/faq.html#>. For example, see the following response regarding CashNetUSA loan terms in Alabama to the question: "What if I want to make payments without agreeing to the ACH authorization portion of the loan contract?" The response: "If you would like to make payments without agreeing to the ACH authorization portion of the contract, you can follow the procedures below: 1. Print out the loan contract, cross out the ACH authorization agreement and initial next to the section. 2. Provide us with a post-dated check (using the date of your next payday) for the amount of your total payment, including principal and fees, and a copy of the contract via mail, FedEx, or another delivery service. 3. We will confirm the issuing of your loan once we receive these documents."

⁵⁶ The Pew Charitable Trusts, *Payday Lending in America: Policy Solutions* (2013), 26, http://www.pewtrusts.org/~media/legacy/uploadedfiles/pcs_assets/2013/pewpaydaypolicysolutionsoct2013pdf.pdf#page=32 Lenders of covered loans need to control for risk of fraud. Online lenders have developed sophisticated solutions to control fraud associated with lending to unknown customers over the internet (see *The Pew Charitable Trusts, Fraud and Abuse Online: Harmful Practices in Internet Payday Lending* (2014), http://www.pewtrusts.org/~media/assets/2014/10/payday-lending-report/fraud_and_abuse_online_harmful_practices_in_internet_payday_lending.pdf). But for controlling risk of credit losses—ensuring that legitimate borrowers will repay the loans—the leveraged payment mechanism is the primary tool throughout the covered loan market.

⁵⁷ We discuss the unusually strong leverage of lenders and unusually financially fragile condition of borrowers in the covered loan market in Sections 3(b) and 3(c).

⁵⁸ *Id.*

the borrower's ability to pay other bills or meet other personal or family needs.⁵⁹ As long as lenders retain the ability to reach into borrowers' checking accounts or repossess vehicles in association with high-cost loans, the relationship between borrower and lender will inherently be an asymmetric one and consumers will be at risk of abuse.⁶⁰

The risk posed by the combination of a large payment, leveraged payment mechanism, and high cost warrants regulation, demonstrating the need for clear safeguards as a counterbalance to this risk. Desperate to get help paying bills, living in circumstances where work schedules often fluctuate, and income is volatile, where making ends meet is often a struggle and low credit scores make borrowing from conventional lenders difficult or impossible, those who borrow covered loans have little ability to protect themselves when lenders abuse or threaten to abuse the leveraged payment mechanism.

(d) Key problems in the market

Pew's research identified the following key problems in the market:

- i. Unaffordable payments enforced by leveraged payment mechanisms (typical payments take more than one-third of borrower paychecks when most borrowers cannot afford to pay more than 5 percent)**

A typical payday loan payment takes 36 percent of an average borrower's paycheck, and the average lump-sum auto title loan payment consumes 50 percent of gross monthly income.⁶¹ Most borrowers cannot afford to lose this much from their periodic income and still make ends meet, yet lenders use leveraged payment mechanisms to ensure their ability to collect anyway. This leads borrowers to renew or reborrow their loans repeatedly. As a result, a typical borrower, who takes out a \$375 two-week loan, is indebted for five months of the year, and pays \$520 in fees instead of the originally contracted fee amount of \$55.⁶²

⁵⁹ The Pew Charitable Trusts, *Payday Lending in America: Policy Solutions* (2013), 40-42, http://www.pewtrusts.org/~media/legacy/uploadedfiles/pcs_assets/2013/pewpaydaypolicysolutionsoct2013pdf.pdf#page=46
The Pew Charitable Trusts, *Auto Title Loans: Market practices and borrowers' experiences* (2015), 13, <http://www.pewtrusts.org/~media/assets/2015/03/autotitleloansreport.pdf#page=17>.

⁶⁰ This abuse would include, but would not necessarily be limited to, lenders taking "unreasonable advantage" of "the inability of the consumer to protect the interests of the consumer in selecting or using a consumer financial product or service" as defined at 12 U.S.C. 5531(d)(2)(B).

⁶¹ The Pew Charitable Trusts, *Payday Lending in America: Policy Solutions* (2013), 31, http://www.pewtrusts.org/~media/legacy/uploadedfiles/pcs_assets/2013/pewpaydaypolicysolutionsoct2013pdf.pdf#page=37
The Pew Charitable Trusts, *Auto Title Loans: Market Practices and Borrowers' Experiences* (2015), 1, <http://www.pewtrusts.org/~media/assets/2015/03/autotitleloansreport.pdf#page=5>.

⁶² The Pew Charitable Trusts, *Payday Lending in America: Who Borrows, Where They Borrow, and Why* (2012), 9, http://www.pewtrusts.org/~media/legacy/uploadedfiles/pcs_assets/2012/pewpaydaylendingreportpdf.pdf#page=11.

ii. Deceptive business model

Although conventional two-week payday loans are advertised as a quick short-term solution for unexpected expenses, the average borrower is in debt for five months during the year. Data from lenders' filings and industry officials' testimonies reveal that renewals are an essential part of the payday lending business model: If borrowers were using single-payment loans as advertised, the lenders would go out of business.⁶³ As the CFPB has noted, four in five loans are taken within two weeks of a previous loan. Data from Florida show that approximately 97 percent of loans go to those who use three or more annually, and about 3 in 5 go to those who use 12 or more loans.⁶⁴ Data from Oklahoma show that more borrowers use 17-plus loans in a year than just one.⁶⁵ To ensure that loans work as advertised, they should have affordable installment payments that fit into a borrower's budget and pay down principal (as explained elsewhere in this letter, the Bureau's 2017 final rule creates virtually no compliance burden for any lender making a loan or line of credit that lasts longer than 45 days and features amortizing installment payments). In addition, all fees and charges should be clearly disclosed and be pro rata refundable to reduce the incentive for lender-driven refinancing. Colorado's 2010 payday loan reform shifted the market from single-payment loans lasting an average of 18 days to installment loans lasting an average of 3 months (the law required a 6-month minimum contractual term, but most borrowers repaid early). Before that law change, a loan's advertised price represented 13 percent of finance charges actually paid in a year, whereas after the 2010 reform, the advertised price represented 87 percent of actual annual spending.⁶⁶ Much like the CFPB's 2017 final rule that would steer the market toward installment lending, this change gave borrowers more time to repay in equal installments and improved transparency.

iii. Defaults

Payday loan borrowers' low credit scores mean they are at higher risk of defaulting on any loan. And yet defaults for these and other covered loans are much lower than they could be because of the lender's use of a leveraged payment mechanism. This creates artificially low default rates because it allows lenders to compel repayment (either the full amount or a fee

⁶³ John Robinson, president of TitleMax Holdings LLC, "Affidavit of John Robinson, President of the Debtors, in Support of First Day Motions and Applications," 11, April 21, 2009, U.S. Bankruptcy Court for the Southern District of Georgia, Savannah Division, <http://s3.documentcloud.org/documents/1227212/tmx-exec-delcaration-in-bk-case.pdf>; Robert DeYoung and Ronnie J. Phillips, *Payday Loan Pricing* (Federal Reserve Bank of Kansas City Economic Research Department, 2009), <https://www.kansascityfed.org/PUBLICAT/RESWKPAP/PDF/rwp09-07.pdf>.

⁶⁴ Veritec Solutions LLC, *Florida Trends in Deferred Presentment* (2010). On file with The Pew Charitable Trusts.

⁶⁵ Veritec Solutions LLC, *Oklahoma Trends in Deferred Deposit Lending* (2011), https://www.ok.gov/okdocc/documents/2011_10_OK%20Trends_Final_Draft.pdf.

⁶⁶ The Pew Charitable Trusts, *Payday Lending in America: Policy Solutions* (2013), 12, http://www.pewtrusts.org/~media/legacy/uploadedfiles/pes_assets/2013/pewpaydaypolicysolutionsoct2013pdf.pdf#page=18. As discussed elsewhere in this letter, due to a ballot initiative passed in 2018, the market in Colorado is changing and payday lenders are moving to the general installment loan statute to provide loans, which generally feature lower costs for longer-term loans and higher costs for shorter-term loans compared to loans made under the 2010 payday loan law.

to renew the loan, effectively masking a default), even though the borrower may be struggling to meet other obligations. When lenders do not have a leveraged payment mechanism, such as in the credit card market or traditional installment loan market for example, they engage in more conventional underwriting.⁶⁷

iv. Negligible price competition

Borrowers of high-cost loans show little sensitivity to price because they are not shopping for credit, but rather looking for quick cash to meet an urgent need, usually paying a bill. Lenders recognize this behavior and therefore do not compete on price, and instead, compete on non-price elements, such as location, certainty of approval, and customer service.⁶⁸ The same lenders charge different prices to similarly situated borrowers across states. For states with usury caps, lenders typically charge the ceiling, and in states with no rate caps, lenders charge even higher prices.⁶⁹ For example, on a \$500 loan, the same lender charges 664 percent APR to borrowers in Texas, but 391 percent APR to borrowers in Kansas.⁷⁰ Yet, in states with lower rate limits, payday credit is not significantly constrained; instead, fewer stores simply serve more customers each.⁷¹ For example, in the five years after Colorado lowered permissible interest rates for payday loans, more than half of stores closed; but each remaining store doubled its average customer count. Borrowers' access to credit in the state was virtually unchanged.⁷² The 2019 proposal acknowledges the current inefficiency of the payday loan market, saying "based on administrative [sic] State data from three States, that the average payday store served around 500 customers per year."

⁶⁷ World Acceptance Corporation, *2015 Annual Report*, http://www.worldacceptance.com/wp-content/uploads/2015/07/2015-ANNUAL-REPORT_6-25-15.compressed.pdf; Regional Management, *2015 Annual Report*, <http://www.regionalmanagement.com/phoenix.zhtml?c=246622&p=irol-sec#14225200>; Springleaf Financial, *2014 Annual Report*, http://files.shareholder.com/downloads/AMDA-28PMI5/1248530341x0x823670/5A26396A-A4D8-4870-B693-B8F6B87F954A/Springleaf_2014_AR10K.pdf.

⁶⁸ There is strong evidence that borrowers would choose lower-cost options if they were aware of them and these options were competitive on these factors; see Section 3(d) and Appendix G of this letter.

⁶⁹ The Pew Charitable Trusts, "How State Rate Limits Affect Payday Loan Prices" (2014), http://www.pewtrusts.org/~media/legacy/uploadedfiles/pes/content-level_pages/fact_sheets/stateratelimitsfactsheetpdf.pdf.

⁷⁰ "Find Your Closest Store," Advance America, accessed Sept. 30, 2016, <https://www.advanceamerica.net/locations>.

⁷¹ Robert B. Avery and Katherine A. Samolyk, "Payday Loans Versus Pawn Shops: The Effects of Loan Fee Limits on Household Use" (2011), <http://www.frbsf.org/community-development/files/2-avery-paper.pdf>; and Mark J. Flannery and Katherine A. Samolyk, "Scale Economies at Payday Loan Stores" (2007), http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2360233. Both papers have detailed this tendency.

⁷² Colorado Office of the Attorney General, *2009 Deferred Deposit Lenders Annual Report* (2010), http://coag.gov/sites/default/files/content/uploads/cp/ConsumerCreditUnit/UCCC/AnnualReportComposites/2009_ddl_compo_site.pdf; Colorado Office of the Attorney General, *2015 Deferred Deposit Lenders Annual Report* (2016), http://coag.gov/sites/default/files/content/uploads/cp/ConsumerCreditUnit/UCCC/AnnualReportComposites/2015_ddl_compo_site.pdf.

The Bureau’s 2019 proposal alleges that the 2017 final rule would lead to a reduction in the supply of credit which “would have a dramatic effect on competition.”⁷³ The 2019 proposal acknowledges that “because of State-law regulation of interest rates, the effect of reduced competition may not manifest itself in higher prices.”⁷⁴ The proposal then argues that “lenders compete on non-price dimensions”⁷⁵ but does not enumerate them or offer evidence that the 2017 rule would hurt competition on these unspecified dimensions. It proceeds to note that some new products have come to market in recent years enabling employees to access earned wages prior to payday and that the “2017 Final Rule included exclusions to accommodate these emerging products.”⁷⁶ Despite the fact that these products are not covered by the 2017 rule, the 2019 proposal claims without substantiation or example that the 2017 rule “would constrain innovation in this market.”⁷⁷

(e) Key lessons from research and reform efforts in Colorado and elsewhere

Two features of payday loans harm consumers: unaffordable payments and unnecessarily high prices.⁷⁸ Much research has focused on the question of whether consumers are better off with or without access to such high-cost loans. But the Bureau’s 2017 final rule altered the market for high-cost loans rather than eliminating it, so the relevant question concerns the lessons that research and experience provide to assess how the rule will affect lenders and consumers. We explore this question below.

i. Research aimed at evaluating whether consumers are better off with or without access to payday loans is of little relevance to understanding the 2017 rule

To determine whether payday and similar loans are on net beneficial, many studies have attempted to compare outcomes for people with and without access to payday loans. That is, they have attempted to compare the effects of having access to credit that typically has 400 percent APRs and balloon payments that take one-third of a consumer’s paycheck, versus no access to credit. Most of these studies have detected small impacts in either direction or no net impact. Overall, the empirical research about this simple question of access versus no access to payday loans is mixed or inconclusive.⁷⁹

⁷³ 84 FR 4274.

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ As in many other parts of this letter: We focus our discussion on payday loans but note that the discussion has broad general applicability to all forms of covered loans.

⁷⁹ For example, some of the rigorous studies finding that access to payday loans is on net harmful to consumers include: Brian Melzer (Northwestern University) “The Real Costs of Credit Access” (2011), <https://academic.oup.com/qje/article-abstract/126/1/517/1902774>. Paige Marta Skiba (Vanderbilt University) and Jeremy Tobacman (University of Delaware), “Do

This simplistic approach to the payday loan question may have made sense at a time when states primarily debated whether to have high-cost single-payment payday loans (with APRs in the range of 400 percent) or little to no access to small-dollar credit. But the choice set is not in reality limited in this way, and even if it were the research is not conclusive one way or the other.

Accordingly, while the 2017 final rule reviewed and commented on studies that found net harm and net benefit to consumers based on access to single-payment loans with APRs usually around 400 percent, it did not take sides in this debate. By contrast, the 2019 proposal does take a side in this debate, choosing to believe the subset of studies that have found access to high-cost single-payment loans benefits consumers, even though the overall evidence is mixed. Yet even as it chooses a side in this debate, the 2019 proposal does not review the relevant research from academics and others, nor does it demonstrate awareness of the shaky empirical ground on which its argument lies.⁸⁰ Further, the Bureau's current proposal compounds this error by failing to recognize that the outcome of the 2017 rule for most consumers—even those who would have reduced access to repeated short-term loans—would be continued or expanded access to *different forms* of small-dollar credit (see Section 6 of this letter).

ii. **Research from Colorado and elsewhere provides more relevant findings about the likely results of the 2017 final rule**

In 2010, the Colorado legislature developed a solution to achieve their goals of access to credit and much better outcomes for consumers. The law resulted in APRs averaging 129 percent according to the most recently published state regulatory data (with a \$392 average loan repaid in 97 days at a cost of \$119).⁸¹ Loans became repayable in small installments, with each payment reducing the loan balance. There was a six-month minimum term, three-quarters of loans were repaid early, and state law ensured there was no penalty for doing so.⁸² The loans carried two fees and an interest rate, but one of the fees was not assessed until the end of the second month, so if borrowers repaid early, the APR would be lower.⁸³

Payday Loans Cause Bankruptcy?" https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1266215. Brian Melzer (Northwestern University), "Spillovers from Costly Credit," <https://academic.oup.com/rfs/article-abstract/31/9/3568/4760436>. Yunhee Chang (University of Mississippi) and Melissa Perry (Marathon Health), "Access to Payday Loans and Household Food Insecurity," <https://www.consumerinterests.org/assets/docs/CIA/CIA2015/E1a%20Chang%20Perry.pdf>.

⁸⁰ The 2019 proposal does not discuss or cite any of the studies mentioned in the previous footnote.

⁸¹ Colorado Office of the Attorney General, *2016 Deferred Deposit Lenders Annual Report* (2017), http://coag.gov/sites/default/files/content/uploads/cp/ConsumerCreditUnit/UCCC/AnnualReportComposites/2016_ddl_compo_site.pdf.

⁸² Because of how the law is designed, lenders have incentive to keep loan terms set as close to six months as possible; consequently, few if any loans last longer than seven months.

⁸³ The Pew Charitable Trusts, *Payday Lending in America: Policy Solutions* (2013), 7-21, http://www.pewtrusts.org/~media/legacy/uploadedfiles/pew_assets/2013/pewpaydaypolicysolutionsoct2013pdf.pdf#page=13

As a result of this law, average borrowers paid 4 percent of their paychecks toward loan payments compared with 36 percent nationally, and consumers saved over \$50 million per year in fees in 2016 compared with 2009 (the last year before the law change).⁸⁴ State regulatory data show that six years after the law change, credit was still widely available and borrowers had both the lowest prices and most affordable payments of any state where lenders operated.⁸⁵ Lender-charged bounced-check fees and defaults both declined as well.⁸⁶ Colorado voters passed a ballot initiative that amended this law to eliminate this type of lending altogether in 2018.⁸⁷

Two key lessons from the Colorado reform experience are that credit can be made available at much lower prices, and that shifting from unaffordable single-payment loans to installment loans with longer terms is essential to the success of reforms. This example shows that payday installment loans can be made widely available to typical payday loan customers, and lenders will switch to issuing those loans if it is a rational response to regulation or legislation. This is an important real-world data point for understanding why credit would still be widely available under the 2017 rule.

⁸⁴ Colorado Office of the Attorney General, *2009 Deferred Deposit Lenders Annual Report* (2010), http://coag.gov/sites/default/files/contentuploads/cp/ConsumerCreditUnit/UCCC/AnnualReportComposites/2009_ddl_compo_site.pdf; Colorado Office of the Attorney General, *2015 Deferred Deposit Lenders Annual Report* (2016), http://coag.gov/sites/default/files/contentuploads/cp/ConsumerCreditUnit/UCCC/AnnualReportComposites/2015_ddl_compo_site.pdf.

⁸⁵ The Pew Charitable Trusts, "Trial, Error, and Success in Colorado's Payday Lending Reforms" (2014), http://www.pewtrusts.org/~media/assets/2014/12/pew_co_payday_law_comparison_dec2014.pdf; Administrator of the Colorado Uniform Consumer Credit Code, "Payday Lending Demographic and Statistical Information: July 2000 through December 2009" (2010), <http://coag.gov/sites/default/files/contentuploads/cp/ConsumerCreditUnit/UCCC/AnnualReportComposites/DemoStatsInfo/dlasummary2000-2009.pdf>; Administrator of the Colorado Uniform Consumer Credit Code, "Payday Lending Demographic and Statistical Information: July 2000 through December 2012" (2013), <http://coag.gov/sites/default/files/contentuploads/cp/ConsumerCreditUnit/UCCC/AnnualReportComposites/DemoStatsInfo/dlasummary2000-2012.pdf>.

Pew's publications have also showed that while some stores close under such policies, remaining stores tend to absorb excess demand sufficient to serve the vast majority of borrowers. In Colorado, the number of borrowers declined by only 15 percent while average loan sizes and typical borrower demographics remained virtually unchanged.

⁸⁶ In 2016, 23 percent of loans in Colorado defaulted, though a loan being paid at all late in Colorado could count as a default, so a more accurate description of this situation is that 23 percent of loans had a late payment or default. 8.4 percent of dollars lent were charged off, so that is the share of principal borrowers did not repay, which may provide a more analogous reference point compared to defaults in other markets.

⁸⁷ The Bureau's 2019 proposal describes this ballot initiative and says it "takes effect February 1, 2019, shortly before the release of this NPRM. Colorado is now counted here as a State prohibiting short-term payday lending." (See 84 FR 4254.) The 2019 proposal defines short-term payday lending as being 45 days or shorter. But Colorado's law that was altered by the ballot initiative had a six-month minimum term, so there was no lending in Colorado that would have been covered by the 2017 final rule. Therefore, it is unclear why the 2019 proposal would mistakenly characterize Colorado as having allowed short-term lending until February 1, 2019 and now reclassify it.

4. The 2017 Final Rule’s Safeguards Struck a Balance

(a) The 2017 final rule was an industry-leaning compromise

The CFPB proposed a rule in June 2016 that many commenters viewed as insufficient to protect borrowers, while payday, vehicle title, and other lenders complained vociferously that its constraints were too significant. Pew commented that the rule needed both stronger consumer protections for potentially harmful loans, while it also should provide a simpler compliance process for consumer-friendly loans with strong safeguards. The CFPB took the feedback it received into account, changing the proposed rule in five major ways, all of them industry-friendly.

- 1) The final rule included no ability-to-repay or repeat usage requirements for amortizing installment loans with terms longer than 45.
- 2) The final rule included no ability-to-repay or repeat usage requirements for lines of credit with terms longer than 45 days that lack a balloon payment.
- 3) The final rule included a large exemption for any lender that issues fewer than 2,500 otherwise-covered loans per year that make up no more than 10 percent of total revenue.
- 4) The final rule only applied its very modest payment protection provisions to loans that have a Truth in Lending Act APR above 36 percent rather than having an “all-in” APR over 36 percent.
- 5) The final rule extended the already-long proposed 15-month implementation period to 21 months.⁸⁸ (See Appendix B.)

The reactions to the 2017 final rule from bank, credit union, installment loan, and some payday installment loan voices were mostly muted or positive, in an indication that they recognized the enormity of the changes the CFPB had made compared to the proposed rule.⁸⁹ For example, the Independent Community Bankers of America criticized the 2016 proposal, saying the “rule must allow community banks to have the flexibility to provide access to small-dollar credit,”⁹⁰ while it lauded the 2017 final rule, saying “ICBA appreciates that the bureau’s rule recognizes community banks as responsible lenders.”⁹¹ Similarly, the American Financial Services Association, representing traditional subprime installment loan companies, said the 2016 proposal “will harm consumers’ access to safe, responsible

⁸⁸ For a more detailed discussion of this unusually long implementation period relative to more conventional ones, see The Pew Charitable Trusts, comment on “Payday, Vehicle Title, and Certain High-Cost Installment Loans; Delay of Compliance Date,” March 18, 2019, <https://www.regulations.gov/document?D=CFPB-2019-0007-0074>.

⁸⁹ E.g., James Gutierrez, *The Hill*, “States Must Step Forward as CFPB Retreats on Predatory Lending,” Feb. 4, 2019.

⁹⁰ Independent Community Bankers of America, June 2, 2016, <https://www.icba.org/news/news-details/2016/06/02/icba-statement-on-cfpb-proposal-on-small-dollar-lending>.

⁹¹ Independent Community Bankers of America, October 5, 2017, <https://www.icba.org/news/news-details/2017/10/05/icba-statement-on-cfpb-final-small-dollar-lending-rule>.

credit,”⁹² but said the 2017 final rule “has made the important distinction between beneficial traditional installment lending, and payday and title lending.”⁹³

While the 2017 final rule will absolutely benefit consumers, it is vital to understand that the Bureau had already proposed a compromise rule in 2016, and then modified it substantially, with all the changes in the direction lenders had requested, rather than those recommended by consumer advocates.

(b) The 2017 final rule gave lenders flexibility and preserved their ability to collect

Though the leveraged payment mechanism (securing a loan with a checking account on payday or a vehicle title) is inherently dangerous, it is also the tool that makes it possible to extend credit to consumers with damaged credit histories. Payday loan borrowers are primarily consumers who have missed bill payments or struggled with conventional credit in the past, and the typical payday loan applicant has a FICO credit score in the low 500s.⁹⁴ Such a low credit score means, by definition, that the borrower presents a substantially elevated risk of defaulting on a loan compared to prime borrowers.⁹⁵ That explains why conventional creditors will no longer extend loans to consumers whose credit scores drop so low: Without a leveraged payment mechanism to help compel repayment, credit losses on such loans would be unmanageable.

Banning the leveraged payment mechanism would effectively eliminate payday and auto title loans. While some policymakers might reasonably choose to do that, the Bureau’s 2017 rule instead allowed lenders to continue to secure loans with these mechanisms. Instead, the Bureau placed safeguards on loans that borrowers generally cannot afford to repay without borrowing again, but where it is unusually difficult to default because lenders’ ability to collect is so strong.⁹⁶ As the Bureau noted repeatedly in the final rule, too many lenders of covered loans rely on their ability to collect without respect to the borrower’s ability to repay.

⁹² American Financial Services Association, June 2, 2016, <https://www.afsaonline.org/Stay-Informed/Press-Media-Releases/Post/3045/AFSA-says-CFPB-Small-Dollar-Lending-Proposal-Restricts-Access-to-Consumer-Credit>.

⁹³ American Financial Services Association, October 5, 2017, <https://www.afsaonline.org/Stay-Informed/Press-Media-Releases/Post/5806/AFSA-Statement-on-Final-Small-Dollar-Lending-Rule>.

⁹⁴ Neil Bhutta, Paige Marta Skiba, and Jeremy Tobacman, *Payday Loan Choices and Consequences*, Oct. 11, 2012, Vanderbilt Law and Economics Research Paper No. 12-30, <http://dx.doi.org/10.2139/ssrn.2160947>. See also Section 3(a) for a discussion of borrowers’ profiles.

⁹⁵ See, e.g., VantageScore, *Credit Score Basics, Part 1: What’s Behind Credit Scores?* (2011), http://www.transunion.com/docs/rev/business/financialservices/VantageScore_CreditScoreBasics-Part1.pdf.

⁹⁶ While we support the Bureau’s payment protection provisions, they are wholly inadequate to alleviating the harm or risk associated with leveraged payment mechanisms. It is clear from today’s market that even the *threat* of cashing a check, debiting an account electronically, or repossessing a vehicle is sufficient to compel many consumers to repay or renew the covered loan even though it undermines their ability to pay other bills or meet other obligations.

(c) The CFPB’s ability-to-repay process gives lenders substantial leeway in assessing applicants’ financial condition

The CFPB’s ability-to-repay process and limitations on repeated issuance of short-term and balloon-payment loans are effective safeguards against long-term cycles of debt. But these standards still give lenders a great deal of flexibility in making ability-to-repay determinations.

The 2017 final rule would require lenders to assess applicants by verifying income, identifying debt obligations in a “national consumer report” from a conventional consumer credit reporting agency, reviewing borrowing history of covered loans, and estimating certain expenses. Based on this information, lenders would be required to make a “reasonable determination” that the applicant will be able to repay the loan according to its terms. This formula requires no verification of expenses that are not shown on the national consumer report, and as the 2017 final rule notes, “lenders must reasonably *estimate* an amount that the borrower needs for basic living expenses” and could satisfy this requirement by “*using available estimates published by third parties*” (emphasis added).⁹⁷

We urged the Bureau in 2016 to take a stronger approach in establishing an ability-to-repay assessment,⁹⁸ but instead the 2017 final rule gave lenders tremendous flexibility in determining affordability. For example, if a payday loan applicant spends 47 percent of income on rent, but consumers with similar incomes in that market spend 30 percent of income on rent, the lender is free to use the 30 percent figure to underwrite the loan. In our view, this kind of flexibility is reasonable in the context of a covered short-term loan that has other consumer safeguards but would not be appropriate or effective for longer-term loans of the type that the CFPB ultimately did not cover with its final rule (we discuss four readily available compliance options for lenders in the next subsection).

The Bureau’s 2017 rule gave lenders substantial flexibility in determining ability to repay. The 2019 proposal does not recognize this and instead is mostly concerned with the risk of people who have the ability to repay not being able to establish it. The 2019 proposal explains that such “risk arises in part from the difficulty some borrowers may have in proving their ability to repay and in part from that the [sic] fact that some lenders may choose to ‘over-comply’ in order to reduce their legal exposure.” Given the flexibility provided by the 2017 final rule, this concern is not warranted.

⁹⁷ 82 FR 54822.

⁹⁸ The Pew Charitable Trusts, comment letter to the Consumer Financial Protection Bureau, “Payday, Vehicle Title, and Certain High-Cost Loans (Proposed Rule); Docket No. CFPB-2016-0025 (RIN 3170-AA40)” (October 7, 2016), at p. 44 et. seq. <https://www.regulations.gov/document?D=CFPB-2016-0025-142716>.

To help illustrate this point, we refer to the example from the 2017 final rule that contemplates an applicant whose household income is between \$2,000 to \$2,499 (see Table 3 below, copied from the final rule and modified to highlight the given example).⁹⁹ This example reflects a borrower with somewhat lower income than average (the average borrower’s income is about \$2,500 per month).¹⁰⁰

TABLE 3—DISTRIBUTION OF HOUSEHOLD EXPENDITURES AND AVERAGE REMAINING INCOME BY HOUSEHOLD MONTHLY INCOME ^a

Household monthly income	Total household expenditures ^a				Recurring obligations ^b	Basic living expenses ^c	Remaining income
	Mean	10th Pct.	Median	90th Pct.	Mean	Mean	Mean
\$0-\$499	\$1,096	\$432	\$982	\$1,888	\$555	\$541	\$- 884
\$500-\$999	971	428	879	1,641	451	520	- 190
\$1000-\$1499	1,196	595	1,094	1,958	589	607	36
\$1500-\$1999	1,383	732	1,280	2,156	673	710	350
\$2000-\$2499	1,519	888	1,450	2,281	756	763	689
\$2500-\$2999	1,674	1,002	1,557	2,461	870	804	1,062
\$3000-\$3499	1,743	1,066	1,667	2,617	901	843	1,459
\$3500-\$3999	1,854	1,157	1,743	2,736	975	880	1,864
\$4000-\$4999	2,011	1,218	1,900	2,981	1,052	959	2,436
\$5000-\$5999	2,186	1,342	2,087	3,152	1,189	997	3,260
\$6000-\$6999	2,325	1,471	2,227	3,359	1,283	1,042	4,112
\$7000-\$7999	2,580	1,650	2,500	3,735	1,453	1,128	4,841
\$8000-\$8999	2,760	1,709	2,656	4,017	1,551	1,209	5,668
\$9000-\$9999	2,855	1,801	2,824	4,188	1,576	1,279	6,547
\$10,000+	3,182	2,014	3,108	4,652	1,819	1,363	9,562

Source: 2010 BLS Consumer Expenditure Survey.
^aHousehold expenditures include housing obligations (rent or mortgage payments), vehicle loan payments, expenditure on transportation (gas and public transit), payments on utilities, and expenditure on food.
^bRecurring obligations include housing obligations (rent or mortgage payments) and vehicle loan payments.
^cBasic living expenses include expenditure on transportation (gas and public transit), payments on utilities, and expenditure on food.

Source: 82 FR 54830.

In this example, the Bureau notes the average recurring obligations (for housing and vehicle payments) and basic living expenses (for gas, public transit, utilities, and food), and concludes: “That leaves \$689 [of “remaining income”] to cover any other financial obligations, including payments on other forms of debt, other basic living expenses, and payments on a new loan.”¹⁰¹

We were concerned by this example that the Bureau didn’t require a more stringent assessment of ability to repay and stronger affordability safeguards,¹⁰² but as the example demonstrates, the Bureau gave lenders a great deal of flexibility in the size of payments allowed. This is especially true because the final rule permitted lenders to automate much of the process of assessing expenses, including using market estimates rather than assessing

⁹⁹ 82 FR 54830.

¹⁰⁰ The Pew Charitable Trusts, *Payday Lending in America: Policy Solutions* (2013), 53, http://www.pewtrusts.org/~media/legacy/uploadedfiles/pcs_assets/2013/pewpaydaypolicysolutionsoct2013pdf.pdf#page=59

¹⁰¹ 82 FR 54829.

¹⁰² A variety of research shows that typical borrowers can afford no more than about \$100-\$125 per month toward a loan while still making ends meet. See Section 3(a) of this letter for discussion of what payday loan borrowers can afford and why they use the loans. For a summary of research supporting limiting payments to about 5 percent of income, see The Pew Charitable Trusts, comment letter to the Consumer Financial Protection Bureau, “Payday, Vehicle Title, and Certain High-Cost Loans (Proposed Rule); Docket No. CFPB-2016-0025 (RIN 3170-AA40)” (October 7, 2016), at p. 44 et. seq. <https://www.regulations.gov/document?D=CFPB-2016-0025-142716>, Appendix C.

individual outlays.¹⁰³ As a result, payday and vehicle title lenders are likely to be able to assess applicants' ability to repay without a great deal of difficulty. But even in those cases where applicants do not demonstrate the ability to repay, lenders have three other ways to comply with the regulation.

(d) The 2017 final rule gave lenders four ways to comply, which virtually guarantees ongoing access to credit in this market

The 2017 final rule gave lenders four reasonable ways to comply with the final rule, all of which provide some safety to borrowers and also enable lenders to operate profitably: 1) Assess ability to repay, 2) Use the principal step-down option, 3) Allow borrowers more than 45 days to repay an installment loan, or 4) Allow borrowers more than 45 days to repay a line of credit.

We have discussed the first, assessing ability to repay. The second option is one that consumer advocates vehemently objected to because it would let lenders issue short-term, single-payment loans without assessing ability to repay. Nonetheless, the Bureau finalized that exemption, offering payday lenders an option to continue making short-term loans regardless of their affordability. This option contains safeguards by limiting usage and requiring successively smaller loans, limiting the damage that can be done to consumers' finances. As the Bureau noted in its analysis in both the 2017 final rule and the 2019 proposal, lenders will still be able to use this option to extend high-cost loans even to borrowers who lack the ability to repay.

The third and fourth options are giving borrowers more than 45 days to repay a payday or vehicle title installment loan or payday or vehicle title line of credit. These options alone virtually guarantee ongoing access to credit in this market. As demonstrated elsewhere in this letter, lenders already make such loans in the vast majority of states where they also provide covered loans, as do a variety of other lenders including consumer finance companies, nationally chartered banks, and federal credit unions.

Bloomberg's editorial board summarized these options and the impact of the 2017 rule well: "The CFPB struck a reasonable balance between stopping the worst abuses and keeping emergency credit available. It gave lenders two options: Verify customers' ability to pay, or allow them to return the money more gradually. The rule applied only to the most problematic loans — those with terms of less than 45 days. This was meant to nudge banks

¹⁰³ Vendors for payday lenders in 2016 began advertising automated solutions for simplifying compliance with CFPB ability-to-repay rules. See, e.g., Microbilt Corporation, <http://www.microbilt.com/product/instant-bank-verification>; FactorTrust, "FactorTrust Offers Advanced Lendprotect ATR Solution To Better Assess Ability To Repay," May 17, 2016, <http://ws.factortrust.com/2016/05/17/factortrust-offers-advanced-lendprotect-atr-solution-to-better-assess-ability-to-repay/>.

to enter the market with less expensive, longer-term loans. The rule began to have the desired effect long before August 2019, the deadline for the industry to comply. Earlier this year, for example, U.S. Bank started offering short-term, small-sum loans to its checking-account customers. The interest on a three-month installment loan of \$400 could be as little as \$48, compared with about \$360 for a succession of payday loans.”¹⁰⁴

5. Payday Loan Borrowers and Public Favor Changes That Would Result from 2017 Final Rule

(a) Borrower Survey

Pew surveyed 826 *payday loan borrowers* to gauge their views on payday lending, potential regulatory reforms, and potential changes in market offerings. (See Appendix G for methodology and topline results.) The survey found that:

- 70 percent of borrowers believe that payday loans should be more regulated. This finding is consistent with Pew’s 2013 survey finding that 72 percent of payday loan borrowers said they wanted more regulation.¹⁰⁵
- Borrowers support requiring installment payment structures: More than 3 in 4 borrowers say it will be a major improvement if they are given several months to repay a loan and if they can repay it in smaller installments. Pew’s 2013 survey had similar results.¹⁰⁶
- When deciding where to get a loan, borrowers ranked the top three factors as: 1) the fees charged, 2) how quickly they can get the money, and 3) certainty of approval.
- 8 in 10 borrowers would prefer to borrow from a bank or credit union if they were equally likely to be approved. And 93 percent of borrowers would view it as a good thing if banks and credit unions offered small loans at prices 6 times lower than payday lenders. (Pew has concluded that this is a likely outcome under the 2017 final rule, pending action from bank regulators along the lines of the bulletin the Office of the Comptroller of the Currency issued in May 2018 and modifications by the National Credit Union Administration to its Payday Alternative Loan program.)

¹⁰⁴ *Bloomberg*, Editorial, “An Unwelcome About-Face on Payday Lending,”

<https://www.bloomberg.com/opinion/articles/2018-12-13/democrats-should-resist-weakening-cfpb-payday-lending-rule>.

¹⁰⁵ The Pew Charitable Trusts, *Payday Lending in America: How Borrowers Choose and Repay Payday Loans* (2013), 48, [http://www.pewtrusts.org/~media/assets/2013/02/20/pew_choosing_borrowing_payday_feb2013-\(1\).pdf#page=48](http://www.pewtrusts.org/~media/assets/2013/02/20/pew_choosing_borrowing_payday_feb2013-(1).pdf#page=48).

¹⁰⁶ The Pew Charitable Trusts, *Payday Lending in America: Policy Solutions* (2013), 22, http://www.pewtrusts.org/~media/legacy/uploadedfiles/pes_assets/2013/pewpaydaypolicysolutionsoct2013pdf.pdf#page=28

In summary, borrowers want loans that cost less, have longer repayment terms with smaller payments, and where they have a reasonable certainty of approval. They would prefer to borrow from banks and credit unions if the loans are competitive in terms of price, speed of loan origination, and certainty of approval. All these developments were beginning to occur and are likely to accelerate if the 2017 final rule goes into effect.

(b) Survey of Public

Pew also surveyed *the general public* to gauge their opinions on some of the possible outcomes of federal payday lending regulation and the types of loans that might result from it. (See Appendix H for methodology and topline results.) The survey found that:

- 70 percent of American adults believe that payday loans should be more regulated. Similar results were reported in Pew’s 2015 survey.¹⁰⁷
- 7 in 10 Americans want to see banks offer small loans to borrowers with low credit scores. 70 percent said that their view of a bank would be more favorable if the bank offered a \$400, three-month loan for \$60 (as banks are likely to do if the 2017 final rule takes effect and their primary regulators act).
- 86 percent of respondents believe it would be a good outcome if most people who use payday loans could obtain lower-cost credit from their banks and credit unions (as is likely to happen under the final rule).
- By almost 5 to 1, respondents believe it would be a good thing if banks began offering small installment loans at prices six times lower than payday lenders (as is likely to happen under the final 2017 rule), even when they are told the rates would be higher than those for credit cards.

These findings reveal that when evaluating effectiveness of regulation, Americans and payday loan borrowers view favorably the likely outcomes of the 2017 final rule: giving borrowers more time to repay in equal installments, and welcoming lower-cost installment loans and lines of credit from banks and credit unions. Even though the Bureau lacks the power to regulate prices, the 2017 rule created regulatory certainty for banks and credit unions and gave them a great deal of leeway as long as they give borrowers more than 45 days to repay in equal installments.

¹⁰⁷ The Pew Charitable Trusts, “A Survey of Americans: CFPB Proposal for Payday and Other Small Loans” (2015), 3, http://www.pewtrusts.org/~media/assets/2015/07/cfpb_chartbook.pdf#page=5.

6. Estimated Impact of the 2017 Final Rule

Borrowers who qualify today for single-payment loans also qualify for multi-payment loans. The 2019 proposal even cites research from a vendor to the payday loan industry that finds that the economics of transitioning from single-payment loans to installment loans are eminently manageable for both lenders and borrowers.¹⁰⁸ When the CFPB in 2016 proposed requiring an ability-to-repay assessment for longer-term loans as well as short-term ones, industry analysts estimated that most payday loan borrowers would pass an underwriting test for those loans, indicating that credit would have been widely available even under a rule much more stringent than the one finalized in 2017.¹⁰⁹ As an example, Speedy Cash has offered \$300 payday installment loans in Missouri with bi-weekly payments of just \$49.61, but with terms of 18 months, so borrowers would repay more than \$1,800.¹¹⁰ The 2017 final rule does not place restrictions on loans like these. This section offers evidence from state payday and vehicle title loan markets that credit will continue to be widely available under the 2017 final rule, because lenders can comply by giving borrowers more than 45 days to repay.

(a) State-licensed payday and vehicle title lenders can issue high-cost loans with terms longer than 45 days in at least 29 of 38 states where they operate and may do so in others

i. Migration to multi-payment loans is well underway and will continue under the 2017 final rule

A key impact of the final rule would be to shift the market from consistently harmful high-cost single-payment loans to multi-payment loans that would have a range of costs. This is because if lenders do not wish to comply with the ability-to-repay or principal step-down options of the 2017 final rule, they can avoid doing so by giving borrowers more than 45 days to repay. In 29 of the 38 states where payday or vehicle title lenders operate today, there are already high-cost loans with terms longer than 45 days.¹¹¹ In these states, lenders will continue making loans that have no federal restrictions.

¹⁰⁸ 84 FR 4255, citing nonPrime101, *Report 8: Can Storefront Payday Borrowers Become Installment Loan Borrowers? Can Storefront Payday Lenders Become Installment Lenders?*

¹⁰⁹ Clarity Services, “Nonprime101 Conference 2015,” St. Petersburg, Florida, Aug. 4-5, 2015, <https://www.nonprime101.com/wp-content/uploads/2015/08/NP101-Rick-Hackett.pdf#page=48>. This analysis found that about 8 in 10 borrowers would show at least \$201.26 per month in residual income that could be put towards loan payments under the ability-to-repay test for longer-term loans proposed in 2016.

¹¹⁰ “Missouri Rates and Terms,” Speedy Cash, accessed Sept. 28, 2016, <https://www.speedycash.com/rates-and-terms/missouri>. The referenced Speedy Cash loan is available in Missouri as a payday installment loan.

¹¹¹ The Pew Charitable Trusts, “From Payday to Small Installment Loans: Risks, Opportunities, and Policy Proposals for Successful Markets” (2016), 5, http://www.pewtrusts.org/~media/assets/2016/08/from_payday_to_small_installment_loans.pdf#page=5. These states are the 26 identified in the cited brief, minus South Dakota, which has since enacted a 36 percent rate cap, plus Iowa, Kentucky, Oklahoma, and Washington. In Washington, at least one lender has used the payday lending statute to issue multi-payment loans. In Kentucky, lenders can use the traditional installment loan statute to issue small loans with credit insurance, resulting in three-digit all-in APRs. Oklahoma passed a law in April 2019 to enable payday lenders to issue high-cost payday installment loans, and consumer finance companies there already issue small loans with three-digit APRs. In Iowa, lenders can issue high-cost lines of credit though we are not aware of state-licensed lenders who have switched to doing so.

Moreover, in the remaining states lenders will likely accelerate their efforts to modify state installment, line of credit, and brokerage laws to allow high-cost lending. For example, in 2016 Mississippi passed legislation that enabled high-cost auto title installment lending,¹¹² and since then Florida¹¹³ and Oklahoma¹¹⁴ have passed laws to allow payday lenders to issue high-cost payday installment loans up to \$1,000 and \$1,500, respectively, with terms longer than 45 days.¹¹⁵

There are several additional states where lenders may try to take advantage of credit services organization (CSO) or credit access business (CAB) statutes to broker high-cost loans. In 2016, a high-cost lender started offering loans using a CSO statute in Arkansas, a previously restrictive state with no traditional payday lending until state officials forced the lender to shut down in 2017.¹¹⁶ In Texas, where lenders issue loans using CAB statutes, APRs often exceed 500 percent because their statute does not impose limits on brokerage fees. State-licensed online lenders are also issuing high-cost multi-payment loans in a majority of states.

To sum up, in at least 29 of the 38 states where payday or auto title lenders operate, they will likely continue issuing high-cost covered installment loans and lines of credit, and other states are vulnerable because lenders will attempt to use brokerage statutes or encourage legislatures to modify laws if the single-payment payday and auto title loan markets become more restricted.

Banks and credit unions also have the power to export interest rates from their home states. If any states remain where payday or vehicle title lenders are unable to issue loans with terms beyond 45 days, there would be both short-term credit available from these lenders, and longer-term credit available from banks and credit unions.

For example, U.S. Bank operates in a majority of states, and it offers Simple Loan,¹¹⁷ a small-dollar installment loan available to those with damaged credit, to all of its qualifying

¹¹² Ted Carter, "Mississippi's expansion of short-term lending starts July 1," *Mississippi Business Journal*, May 26, 2016, <http://msbusiness.com/2016/05/mississippis-expansion-of-short-term-lending-starts-july-1/>.

¹¹³ Lawrence Mower, *Tampa Bay Times*, March 7, 2018, "Payday loan companies approved changes to their own bill, emails show," <https://www.tampabay.com/florida-politics/buzz/2018/03/07/payday-loan-companies-approved-changes-to-their-own-bill-emails-show/>.

¹¹⁴ Oklahoma, SB720, <http://www.oklegislature.gov/BillInfo.aspx?Bill=SB%20720>.

¹¹⁵ Yuka Hayashi, "Florida Gives Payday Lenders a Boost," *Wall Street Journal*, March 19, 2018, <https://www.wsj.com/articles/florida-gives-payday-lenders-a-boost-1521503621>;

"Oklahoma Small Lenders Act," Enacted April 18, 2019, <http://www.oklegislature.gov/BillInfo.aspx?Bill=SB%20720>.

¹¹⁶ Brian Fanney, "CashMax fees break state law, North Little Rock says," *Arkansas Online*, Aug. 5, 2016, <http://www.arkansasonline.com/news/2016/aug/05/cashmax-fees-break-state-law-nlr-says-2/?f=news-arkansas#/>.

¹¹⁷ U.S. Bank, Simple Loan, "A loan option to cover immediate cash flow needs," <https://www.usbank.com/loans-credit-lines/personal-loans-and-lines-of-credit/simple-loan.html>.

customers. It began offering this small-dollar loan *after* the 2017 final rule was issued. As other banks and credit unions expand their small-dollar loan offerings, a widely expected development, small loans will become more widely available.¹¹⁸ As long as these bank and credit union loans have terms longer than 45 days, they will not be constrained by the 2017 final rule. And because of the regulatory certainty provided to banks and credit unions by the 2017 rule, small credit is likely to become *more widely available* from depository institutions than it was prior to the rule’s finalization.¹¹⁹

(b) Empirical Evidence From States Contradicts 2019 Proposal’s Assumptions

i. Projected credit reductions fail to recognize shift to multi-payment loans

The 2019 proposal’s estimate of the reduction in access to credit is not substantiated with new evidence or research. Instead, the proposal cites reductions in the estimated volume of *short-term loans with terms up to 45 days* and appears to misinterpret those figures as projected reductions in *access to credit*. Projections for the decline in payday loan volume from the Bureau and several industry analysts examine only single-payment loans. The volume of these loans is almost certain to shrink, but the availability of high-cost credit is likely to increase as lenders shift from single-payment to multi-payment loans.

The 2019 proposal seems to misunderstand that a reduction in *short-term* loans up to 45 days is in no way the same as a reduction in access to credit. The extent of this misunderstanding is laid plain by the 2019 proposal’s repeated paraphrasing of the 2017 final rule in ways that changes the meaning of statements made in the 2017 final rule. The 2017 rule often describes reductions in *short-term* loans with terms up to 45 days and recognizes that lenders may choose to extend loans with terms of more than 45 days, as they have done routinely in states. The 2019 proposal recharacterizes these changes as “reduced access to credit.”¹²⁰

ii. Credit Remained Available When Colorado Shifted to Longer Terms

A key result of the 2017 final rule would be a shift from single-payment to multi-payment loans. Payday loan borrowers strongly favor such a change.¹²¹ That change would be easier

¹¹⁸ Nick Bourke, *American Banker*, “Momentum is Building for Small-Dollar Loans,” Sept. 12, 2018, <https://www.americanbanker.com/opinion/momentum-is-building-for-small-dollar-loans>.

¹¹⁹ Lorie Konish, *CNBC*, “Your neighborhood bank may now offer short-term, small-dollar loans,” May 24, 2018, <https://www.cNBC.com/2018/05/24/big-banks-get-green-light-to-make-short-term-small-dollar-loans.html>.

¹²⁰ 84 FR 4259.

¹²¹ The Pew Charitable Trusts, *Payday Lending in America: Policy Solutions* (2013), http://www.pewtrusts.org/~media/legacy/uploadedfiles/pes_assets/2013/pewpaydaypolicysolutionsoct2013pdf.pdf.

than the one lenders faced in Colorado, when the shift to installment loans also came with a rate cap and several other requirements. Lenders in Colorado described their state’s law in their 2016 comment letter to the CFPB: “The State of Colorado has been at the forefront of responsible regulation for the payday/installment lending industry since 2010. Colorado has been successful in establishing a balance between consumer protection and maintaining access to short-term credit. The 6-month installment lending law enacted in 2010, was developed with significant input from the lending industry and various consumer groups.... The new lending law is clearly saving Colorado consumers more money, while still ensuring that they have a viable short-term lending option from a regulated lender.”¹²² Colorado payday lenders’ description is accurate. By contrast, the 2019 proposal describes the 2017 final rule differently, citing “the Rule’s dramatic impacts in restricting consumer access to payday loans,”¹²³ and describing the 2017 rule as “eliminating many lenders and decreasing consumer access to financial products that they may want.”¹²⁴

iii. Lenders Have Shifted to Longer Terms in Numerous States

A more accurate understanding of the 2017 rule’s impact can be gained by learning from states’ experiences. In most states, lenders will continue to replace single-payment loans with installment loans and lines of credit.¹²⁵ This shift has already begun in many states, such as Illinois, New Mexico, Ohio, Texas, Virginia, Wisconsin,¹²⁶ and others.¹²⁷ Lenders in these states easily transitioned from offering single-payment loans to primarily offering multi-payment loans. In 2012, 27 percent of Texas’ payday loan revenue came from payday installment loans, while that figure tripled to 85 percent by 2018.¹²⁸ This shift has been quick and extreme in Texas, though the state did not mandate it. Total revenue for payday and auto title lenders in Texas topped \$1.85 billion in 2018, up from \$1.25 billion in 2012.

¹²² Josh Fritts, President, COFISCA, October 7, 2016, Comment to Consumer Financial Protection Bureau, <https://www.regulations.gov/docketBrowser?rpp=25&so=DESC&sb=commentDueDate&po=0&s=josh%2Bfritts&dct=PS&D=CFPB-2016-0025>.

¹²³ 84 FR 4266.

¹²⁴ 84 FR 4268.

¹²⁵ We have concerns that many of the new payday and vehicle title installment loans and lines of credit

¹²⁶ In a state like Wisconsin, using an installment loan format instead of a single-payment loan format enables lenders to avoid certain restrictions like cooling-off periods, which the 2019 proposal notes in Wisconsin is “24 hour [sic] after renewals.” (See 84 FR 4254.)

¹²⁷ The Pew Charitable Trusts, “From Payday to Small Installment Loans: Risks, Opportunities, and Policy Proposals for Successful Markets” (2016), http://www.pewtrusts.org/~media/assets/2016/08/from_payday_to_small_installment_loans.pdf.

¹²⁸ Texas Office of Consumer Credit Commissioner, *Credit Access Business (CAB) Annual Data Report* (2012), <http://occc.texas.gov/sites/default/files/uploads/misc/cab-annual-2012.pdf>; Texas Office of Consumer Credit Commissioner, *Credit Access Business (CAB) Annual Data Report* (2018), <https://occc.texas.gov/sites/default/files/uploads/reports/cab-annual-2018.pdf>.

When other states have changed laws that made multi-payment lending relatively more attractive to lenders than single-payment loans, such as Delaware¹²⁹ and Illinois,¹³⁰ lenders quickly adapted. Those states imposed limits on single-payment loans that did not apply to longer-term loans, much like the CFPB's 2017 rule. Lenders quickly adjusted their products to have longer terms. Similarly, when Virginia began requiring longer terms for small-dollar loans, lenders complied and continued lending.¹³¹ The 2019 proposal's assumption that credit will be unavailable because lenders will cease issuing loans rather than shifting to those longer than 45 days is directly contradicted by this extensive history of the industry shifting to issue longer-term loans.

iv. Companies and State Laws Are Already Shifting into Loans Compliant with 2017 Rule

As evidence, many payday lenders are voluntarily transitioning toward offering multi-payment loans. A large online and storefront payday lender recently disclosed to investors that only 19 percent of its revenue came from multi-payment loans in 2010, but by the third quarter of 2018, that figure had quadrupled to 77 percent.¹³² Other companies have migrated sharply from single-payment to multi-payment loans, including Elevate, which exclusively offers installment and line of credit products, while its predecessor offered single-payment loans. Enova has also dramatically shifted its product mix from single-payment loans to installment loans and lines of credit. Both of these lenders noted that they would continue making small loans under even the 2016 proposal, which was much more stringent than the 2017 final rule.¹³³ At this point, all major payday lenders offer at least some payday installment loans and lines of credit.

As a further indication that payday and auto title lenders can shift from single-payment to multi-payment loans, the industry has backed bills encouraging states to authorize

¹²⁹ Jessica Masulli Reyes, *The News Journal*, "Lawmakers eye caps on changing payday lending industry," Aug. 29, 2016, <https://www.delawareonline.com/story/news/local/2016/08/26/lawmakers-eye-caps-changing-payday-lending-industry/87632062/>.

¹³⁰ Veritec Solutions, LLC, Illinois Department of Financial and Professional Regulation, "Illinois Trends Report 2012," http://www.idfpr.com/News/DFI/IL_Trends_Report%20since%20Inception%20through%209-30-12%20final.pdf.

¹³¹ Virginia Bureau of Financial Institutions, Annual Reports, <https://www.scc.virginia.gov/bfi/annual.aspx>. The extent of the shift is not fully apparent because Virginia does not limit rates for lines of credit or include those loans in their annual reports, and some lenders have shifted to offering high-rate lines of credit instead.

¹³² Curo Group, December 2018, *Presentation at Jefferies Consumer Finance Summit*, <https://ir.curo.com/events-and-presentations>.

¹³³ Meg Graham, *Chicago Tribune*, June 7, 2016, "Chicago online lender Enova preps for payday loan regulation," <https://www.chicagotribune.com/bluesky/originals/ct-enova-cfpb-regulation-bsi-20160607-story.html>; Ken Rees, *American Banker*, April 6, 2016, "CFPB Payday Rules Are Win-Win for Lenders and Consumers," <https://www.americanbanker.com/opinion/cfpb-payday-rules-are-win-win-for-lenders-and-consumers>.

installments loans and lines of credit. Florida¹³⁴ and Oklahoma¹³⁵ enacted new payday installment loan statutes in 2018 and 2019, respectively. Mississippi authorized new auto title installment loans in 2016.¹³⁶ As demonstrated by their public comments, lenders supported these law changes, as well as other bills that did not pass in Arizona,¹³⁷ Indiana,¹³⁸ and Louisiana¹³⁹ that would have authorized payday installment loans following the CFPB's finalizing its 2017 rule.

Because this transition is well underway, the Bureau's 2017 estimates of the costs to lenders of making this shift are overstated. (The Bureau wrote in its 2017 rule, "Lenders who do not currently offer longer-term products but decide to expand their product range would incur a number of costs. These might include learning about or developing those products; developing the policies, procedures, and systems required to originate and to service the loans; training staff about the new products; and communicating the new product offerings to existing payday and single-payment vehicle title borrowers."¹⁴⁰) Even this summation substantially overstates lenders' difficulties in transitioning to multi-payment loans.

v. States' Experience Underscores Major Error in 2019 Proposal's Methodology

Until 2010, Colorado had a typical payday loan law- lenders could lend up to \$500¹⁴¹ for a fee of \$75 per pay period, and loans were due on the borrower's next payday in full. Data compiled by the state attorney general's office showed that most borrowers used the loans repeatedly. Loans consumed more than one-third of a typical borrower's paycheck. Average APRs were in the 300s. In short, it looked like the payday loan market as a whole. More than 90 percent of loans would have been covered by the CFPB's 2017 final rule.

¹³⁴ Lawrence Mower, *Tampa Bay Times*, March 7, 2018, "Payday loan companies approved changes to their own bill, emails show," <https://www.tampabay.com/florida-politics/buzz/2018/03/07/payday-loan-companies-approved-changes-to-their-own-bill-emails-show/>.

¹³⁵ Oklahoma, SB720, <http://www.oklegislature.gov/BillInfo.aspx?Bill=SB%20720>.

¹³⁶ Ted Carter, *Mississippi Business Journal*, March 4, 2016, "Mississippi Senate passes bill to expand car title-lending," <https://msbusiness.com/2016/03/car-title-lending-bill-called-step-to-preserve-small-loans/>.

¹³⁷ Howard Fischer, *Arizona Capitol Times*, March 21, 2017, "Lending industry persuades Senate panel to advance bill permitting high-interest loans," <https://azcapitoltimes.com/news/2017/03/21/lending-industry-persuades-senate-panel-to-advance-bill-permitting-high-interest-loans/>.

¹³⁸ Chris Sikich, *Indianapolis Star*, April 15, 2019, "Indiana 'loan shark' lending bill dies on House floor," <https://www.indystar.com/story/news/politics/2019/04/15/indiana-loan-shark-bill-dies-house-floor/3477075002/>.

¹³⁹ Caitie Burkes, *Greater Baton Rouge Business Report*, May 4, 2018, "Opponents say bill to expand payday lending in Louisiana is 'greed and arrogance at the highest level,'" <https://www.businessreport.com/article/opponents-say-bill-expand-payday-lending-louisiana-greed-arrogance-highest-level>.

¹⁴⁰ 82 FR 54835.

¹⁴¹ The maximum loan size under the 2010 law was the lesser of \$500 or 25 percent of the borrower's gross monthly income. As the 2019 proposal notes, some other states use a similar structure for maximum loan size: "States that limit the loan amount to the lesser of one percent [sic] of the borrower's income or a fixed-dollar amount include Idaho (25 percent or \$1,000), Illinois (25 percent or \$1,000), Indiana (20 percent or \$550), Washington (30 percent or \$700), and Wisconsin (35 percent or \$1,500)." (See 84 FR 4254.)

Applying the 2019 proposal’s methodology to Colorado’s market in 2010 would have predicted a large decline in access to credit from that new law. Loans until 2010 generally had terms shorter than 45 days, and the new law disallowed those short terms. Using the 2019 proposal’s methodology, there would no longer be credit available, because the old loans did not already comply with the new requirements. The table below shows the results of what happened, and what the 2019 proposal’s assumption would be, because Colorado’s market until 2010 looked the same as the country’s overall. This kind of empirical analysis is essential to assessing the 2019 proposal’s claims that the 2017 final rule will have “dramatic impacts in restricting consumer access to payday loans.”¹⁴²

Colorado 2010 (Payday)

Expected Decline in Credit Using Methodology from 2019 CFPB Proposal	Actual Decline in Credit Based on State Regulatory Data (2014)	
	By borrower count	By days of credit
62-68%	15%	0%

Source of data: Colorado Office of the Attorney General, 2009 and 2014 annual reports.

Similarly, in Texas, the bulk of payday and vehicle title lending was single-payment lending until recently. But the market has shifted to multi-payment loans. As industry analysts have noted, single-payment loan borrowers can be served with an installment product. Applying the CFPB’s methodology to Texas’ 2012 payday and vehicle title loan market would have produced an expectation of a large reduction in access to credit. But those markets have already shifted to multi-payment loans not covered by the CFPB’s 2017 final rule. The remainder of those markets would be likely to do so as well if lenders wished to lend to borrowers without assessing their ability to repay or offering them the protections afforded by the principal step-down option.

Texas 2012 (Payday)

Expected Decline in Credit Using Methodology from 2019 CFPB Proposal	Actual Share of Credit That is Single-Payment Based on State Regulatory Data
	<i>By borrower spending (2018)</i>
62-68%	15%

Source of data: Texas Office of Consumer Credit Commissioner, 2012 and 2018 annual reports.

Texas 2012 (Vehicle Title)

Expected Decline in Credit Using Methodology from 2019 CFPB Proposal	Actual Share of Credit That is Single-Payment Based on State Regulatory Data
	<i>By borrower spending (2018)</i>
89-93%	27%

Source of data: Texas Office of Consumer Credit Commissioner, 2012 and 2018 annual reports.

¹⁴² 84 FR 4266.

Illinois’ payday loan market used to be exclusively a single-payment market. Applying the CFPB’s methodology to Illinois’ market before the shift would have produced similar expectations as the CFPB’s 2019 proposal has for the country as a whole. But in fact, that market quickly shifted to multi-payment loans, illustrating the vast overestimates in projected reductions in access to credit in the CFPB’s 2019 proposal.

Illinois 2010 (Payday)

Expected Decline in Credit Using Methodology from 2019 CFPB Proposal	Actual Share of Credit That is Single-Payment Based on State Regulatory Data
	<i>By borrower count (2013)</i>
62-68%	12%

Source of data: Illinois Department of Financial and Professional Regulation, 2013 report.

While Colorado, Texas, and Illinois are just three states, Pew has documented how payday or vehicle title lenders can issue multi-payment loans in at least 29 of the 38 states where they operate. Similarly, there are approximately 14,000 branches of consumer finance companies, also known as traditional or subprime installment lenders, located in 44 states. These lenders always set loans to be due in equal installments over terms of at least 4 months, meaning those loans are not covered by the 2017 CFPB final rule. The 2019 proposal does not discuss these companies, though like payday and vehicle title lenders, they make small loans to consumers with low credit scores, so are highly relevant to any discussion of access to small-dollar subprime consumer credit. The only specific mention of these lenders in the 2019 proposal is when the Bureau seeks comment on the type of underwriting a “consumer finance lender would do for a small business loan,”¹⁴³ although consumer finance lenders in fact make consumer loans, not small business loans.¹⁴⁴

Banks and credit unions also (with rare exceptions) give consumers more than 45 days to repay loans in installments. Payday and vehicle title lenders have largely offered single-payment loans, which create demand for more single-payment loans because of their unaffordable nature. The CFPB’s steps to place safeguards on those loans and steer the market toward loans that offer adequate time to repay undoubtedly will change the market, but access to credit will remain widespread.

In summary, the 2019 proposal’s methodology may be an accurate way of estimating the decline in volume of *short-term loans up to 45 days*, but real-world experience borne out in numerous states has shown that lenders modify loan terms to comply with new laws. If the 2017 final rule takes effect, lenders will undoubtedly modify loan terms. As Enova, one of the

¹⁴³ 84 FR 4276.

¹⁴⁴ The Pew Charitable Trusts, “State Laws Put Installment Loan Borrowers at Risk: How outdated policies discourage safer lending” (2018), <https://www.pewtrusts.org/research-and-analysis/reports/2018/10/17/state-laws-put-installment-loan-borrowers-at-risk>.

largest online payday lenders explained to its investors, its “advanced analytics and flexible tech infrastructure enables swift adaptation to final CFPB rules.”¹⁴⁵

(c) Uniform Small Loan Law Offers Parallels to CFPB 2017 Final Rule

To understand how the final 2017 rule is likely to affect the marketplace, it’s worth looking backwards to how policymakers handled a similar issue in the early to mid-20th century. In the early 1900s, illegal, high-rate money lending was widespread. The solution to this problem, The Uniform Small Loan Law (USLL), let lenders charge enough to be profitable, but shifted the market away from single-payment loans toward credit repayable in equal installments over more time. Today it is widely celebrated by economic historians and economists. Despite its rate caps and longer terms, groups that strongly favor market-oriented solutions and often balk at regulation celebrate the Uniform Small Loan Law.¹⁴⁶ The USLL has strong implications for present-day problems in small-dollar loan markets, and the CFPB’s 2017 final rule in important ways parallels the USLL by steering the market to longer-term installment terms without reducing access to credit. To understand how, we quote at length from our 2013 report *Policy Solutions*¹⁴⁷:

In the early 20th century, high-interest credit in the United States was readily available from lenders, and often due on the borrower’s next payday.¹⁴⁸ A number of consumer finance experts have written about this period.¹⁴⁹ One author notes that the standard “practice was to require the whole amount to be repaid at the end of the week, [and] the consumer found this hard to do. . . . So he renewed the loan each week by paying a fee.”¹⁵⁰ Others describe repaying these loans as “daunting,”¹⁵¹ explaining that repeated borrowing “almost inevitably results,”¹⁵² because this structure means that the loans are “for too short a period of time, making the payments too high”¹⁵³ and thus will “keep the borrower in debt by encouraging renewals.”¹⁵⁴ One financial writer describes such lenders’ practices: “Short maturities

¹⁴⁵ Enova, Investor Presentation, March 2019, <http://ir.enova.com/presentations-events>.

¹⁴⁶ Consumer Credit Symposium: A Century of Experience with the Uniform Small Loan Law, <https://www.mercatus.org/events/consumer-credit-symposium-century-experience-uniform-small-loan-law>.

¹⁴⁷ The Pew Charitable Trusts, *Payday Lending in America: Policy Solutions* (2013), http://www.pewtrusts.org/~media/legacy/uploadedfiles/pca_assets/2013/pewpaydaypolicysolutionsoct2013pdf.pdf.

¹⁴⁸ Robert Mayer, *Quick Cash: The Story of the Loan Shark* (DeKalb: Northern Illinois University Press, 2010).

¹⁴⁹ Robert Mayer, “Loan Sharks, Interest-Rate Caps, and Deregulation,” *Washington and Lee Law Review* 69, no. 2 (2012), <http://scholarlycommons.law.wlu.edu/wlulr/vol69/iss2/10>. The author identified many of the primary sources cited in this brief history.

¹⁵⁰ Morris R. Neifeld, *Neifeld’s Manual on Consumer Credit* (Easton: Mack Publishing Co., 1961), 336.

¹⁵¹ Lendol Calder, *Financing the American Dream* (Princeton, NJ: Princeton University Press, 1999), 17.

¹⁵² Neifeld, *Neifeld’s Manual*, 388.

¹⁵³ Donald Tyree, *The Small-Loan Industry in Texas* (Austin: Bureau of Business Research, University of Texas, 1960), 59. The author quotes an assistant attorney general of Texas.

¹⁵⁴ Neifeld, *Neifeld’s Manual*, 388.

are preferred since those will be harder to repay, and renewal and refinancing charges will build up the 'take.' . . . Interest for the [lenders] becomes almost an annuity."¹⁵⁵ Another notes that those making these loans were "more concerned in collecting the interest than the principal."¹⁵⁶ These analysts recognized that many borrowers could afford to pay only the fee to reborrow, and thus could be in debt for extended periods and still owe as much as they did when they first took the loan.¹⁵⁷

Around the same time, the Russell Sage Foundation and its expert in the field of small credit, Arthur Ham, recognized the problem with these high-interest, lump-sum repayment loans.¹⁵⁸ A group of unlicensed lenders that offered the loans formed a trade association with the goal of becoming licensed to make small-dollar loans at higher rates than the 6 to 8 percent annualized interest state laws typically permitted at the time.¹⁵⁹ To raise allowable interest rates and end unlicensed lending, this group of lenders and the foundation partnered to create the Uniform Small Loan Law—model legislation that was eventually passed by 34 states to permit licensed lenders to make installment loans.¹⁶⁰

Legislators enacted the USLL to make small credit affordable, in reaction to the pervasiveness of unaffordable loans from unlicensed lenders, estimated to be used by as many as one in five workers in larger cities.¹⁶¹ The Russell Sage Foundation and the lenders association agreed upon 42 percent (or 3.5 percent per month) as the annualized interest rate to be permitted for loans of \$300 or less. Some states permitted somewhat lower interest rates and still saw a successful market for small credit.¹⁶²

One author explained: "The provision in the law that loans be scheduled for repayment in equal monthly payments was intended to offer the consumer a regular

¹⁵⁵ Ira Cobleigh, *How and Where to Borrow Money* (New York: Avon Books, 1964), 109.

¹⁵⁶ Gerald W. Gibbs, *The Complete Guide to Credit and Loans* (New York: Playboy Paperbacks, 1982), 65.

¹⁵⁷ Neifeld, *Neifeld's Manual*, 409. Neifeld made this point clearly in 1961, writing: "The inherent defect in the salary-buying scheme of loan and the flipping type of loan is the fact that the whole indebtedness matures at one time. Almost invariably, repayment of the loan or appreciable reduction of the principal is beyond the ability of the borrower. Through necessity the borrower must continue to renew the loan each payday upon payment of interest with little or no reduction of the amount of the original loan. A Good law should contain some compulsory provision for the amortization of small loans in monthly or shorter installments."

¹⁵⁸ Calder, *Financing the American Dream*, 124.

¹⁵⁹ Bruce G. Carruthers, Timothy Guinnane, and Yoonseok Lee, "Bringing 'Honest Capital' to Poor Borrowers: The Passage of the U.S. Uniform Small Loan Law, 1907–1930," *Journal of Interdisciplinary History* (Winter 2012), 393–418.

¹⁶⁰ Elisabeth Anderson, "Experts, Ideas, and Policy Change: The Russell Sage Foundation and Small Loan Reform, 1909–1941," *Theory and Society* 37, no. 3 (2008): 271–310, <http://www.jstor.org/stable/10.2307/40211037>. Interest rates on small loans were set by state governments, rather than the federal government. The Uniform Small Loan Law was model legislation that the coalition encouraged states to pass, and a majority did so.

¹⁶¹ Calder, *Financing the American Dream*, 118.

¹⁶² Anderson, "Experts, Ideas, and Policy Change," 271–310.

program of amortization, tailor-made for his family budget.”¹⁶³ A 1938 piece about the impact of the USLL argued, “Insistence upon planned, orderly liquidation of the loan is one of the hallmarks of the honest lender.”¹⁶⁴

The Bureau’s 2017 final rule recognized the same problem most state legislatures identified in the first half of the 20th century. Single-payment loans due in a short amount of time are structurally unaffordable, and therefore lead to more single-payment loans due in a short amount of time. Therefore, safeguards are needed to protect borrowers. But it is possible to align the incentives of borrowers and lenders, so both can succeed. Protecting consumers from particularly harmful loan terms need not impede their access to credit if laws or regulations are designed well. Neither the Uniform Small Loan Law nor the CFPB’s 2017 final rule removed consumers’ access to small loans, but both created a more level playing field where loans would become safer and more transparent.

¹⁶³ Neifeld, *Neifeld’s Manual*, 336.

¹⁶⁴ Charles A. Gates, “The Social Worker in the Service of the Small Loan Business,” *Annals of the American Academy of Political and Social Science* 196 (1938), 223, <http://www.jstor.org/stable/1021721>.

7. The 2019 Proposal Ignores Most of the Research Cited in the 2017 Rule

The 2019 proposal alleges that “the key evidentiary grounds relied upon in the 2017 Final Rule were insufficiently robust and reliable to support the findings of an unfair and abusive practice.”¹⁶⁵ The proposal explains that “the weaknesses in the evidentiary record on which the Bureau relied for the Mandatory Underwriting Provisions in the 2017 Final Rule is particularly problematic as a policy matter because these provisions will have dramatic effects, including eliminating many lenders and decreasing consumer access to financial products that they may want.”¹⁶⁶ As discussed earlier, the Bureau’s unfounded and unsupported belief that the 2017 final rule will dramatically shrink access to credit is contradicted by states’ experiences regulating payday and vehicle title lending. This mistaken belief about access and competition is the rationale for the 2019 proposal. But the Bureau’s core argument against the reason for maintaining the 2017 rule is that there is insufficient evidence to support it.

The Bureau’s argument is not that new evidence has come to light since October 2017, or that there is new information about the evidence relied upon for the 2017 rule, but rather, the Bureau now has a different interpretation of the same evidence. In short, the Bureau has changed its mind and so is planning to change a final regulation. But even in explaining this, the 2019 proposal’s criticism of the 2017 final rule’s interpretation of research is limited to just three papers from just two authors. The small scale of this critique is striking because the 2017 Final Rule cited 153 distinct studies comprising more than 8,000 pages of research.

Table: Summary of Research Cited (2017 Final Rule vs. 2019 Proposal)

	Evidence to support 2017 Final CFPB Rule	Studies the 2019 proposal reinterprets	Evidence the 2019 proposal ignores or does not dispute	Share of research the 2019 proposal ignores or does not dispute
Number of unique studies	153	3	150	98%
Pages of research	8,117	142	7,975	98%

It is unclear why the 2019 proposal fails to recognize the role of the other 150 studies in supporting the 2017 final rule, or why it believes it can ignore them rather than explaining why it has changed its mind about how to interpret those studies. Even if the Bureau were not to rely on the three

¹⁶⁵ 84 FR 4268.

¹⁶⁶ Id.

studies in question, there is ample evidence to substantiate the unfairness and abusiveness findings among the other 150 cited papers.

As an example, below is a table listing the research cited in *just one subsection* of the CFPB’s 2017 final rule, Market Concerns—Underwriting: Short-Term Loans. The left column lists the studies cited in that subsection in the 2017 final rule. The right column indicates whether the 2019 proposal reinterpreted, ignored, or cited but did not dispute the interpretation of the research included in the 2017 Final Rule to substantiate its unfairness and abusiveness findings. This subsection was selected because it discusses the studies which the Bureau reinterpreted in its 2019 proposal. Of the 59 studies discussed in this subsection, the 2019 proposal reinterprets three, cites but does not dispute 17, and completely ignores 39.

Table: 2019 Proposal Ignores Most Research Cited in the 2017 Rule, and Does Not Dispute Most of the Rest

Research Cited in “Market Concern—Underwriting” in 2017 Final Rule	How 2019 Proposal Approached the Same Research
Ronald Mann, <i>Assessing the Optimism of Payday Loan Borrowers</i>	Reinterpreted
FDIC, “2013 FDIC National Survey of Unbanked and Underbanked Households”	Ignored
FDIC, “2015 FDIC National Survey of Unbanked and Underbanked Households”	Cited, did not dispute interpretation
The Pew Charitable Trusts, <i>Payday Lending in America: Who Borrows, Where They Borrow, and Why</i>	Reinterpreted
CFPB, <i>Payday Loans and Deposit Advance Products</i>	Cited, did not dispute interpretation
Report on Delaware Short-term Consumer Loan Activity (2014)	Ignored
Washington Department of Financial Institutions, <i>2014 Payday Lending Report</i>	Ignored
nonPrime101, <i>Profiling Internet Small-Dollar Lending</i>	Ignored
Rob Levy & Joshua Sledge, <i>A Complex Portrait: An Examination of Small-Dollar Credit Consumers</i>	Cited, did not dispute interpretation, questioned relevance of one item
The Pew Charitable Trusts, <i>Auto Title Loans: Market Practices and Borrower Experiences</i>	Cited, did not dispute interpretation
Kathryn Fritzdixon et al, <i>Dude, Where’s My Car Title?: The Law, Behavior, and Economics of Title Lending Markets</i>	Cited, did not dispute interpretation
Neil Bhutta et al, <i>Consumer Borrowing after Payday Loan Bans</i>	Cited, did not dispute interpretation
nonPrime101, <i>Can Storefront Payday Borrowers Become Installment Loan Borrowers?</i>	Cited, did not dispute interpretation
Stephen Nuñez et al, <i>Online Payday and Installment Loans: Who Uses Them and Why?</i>	Ignored

Gregory Elliehausen, <i>An Analysis of Consumers' Use of Payday Loans</i>	Cited, did not dispute interpretation
Jonathan Zinman, <i>Restricting Consumer Credit Access: Household Survey Evidence on Effects Around the Oregon Rate Cap</i>	Cited, did not dispute interpretation
The Pew Charitable Trusts, <i>Payday Lending in America: How Borrowers Choose and Repay Payday Loans</i>	Reinterpreted
Todd J. Zywicki, <i>Consumer Use and Government Regulation of Title Pledge Lending</i>	Ignored
Jim Hawkins, <i>Credit on Wheels: The Law and Business of Auto-Title Lending</i>	Ignored
CFPB, <i>Single-Payment Vehicle Title Lending</i>	Cited, did not dispute interpretation
CFPB, <i>Data Point: Payday Lending</i>	Ignored
CFPB, <i>Report on Supplemental Findings</i>	Cited, did not dispute interpretation
The Pew Charitable Trusts, <i>A Short History of Payday Lending Law</i>	Ignored
Jim Hawkins, <i>Using Advertisements to Diagnose Behavioral Market Failure in Payday Lending Markets</i>	Ignored
Illinois Dept. of Fin. & Prof. Reg., <i>Illinois Trends Report: All Consumer Loan Products Through December 2015</i>	Ignored
Colorado Office of the Attorney General, <i>2009 Deferred Deposit Lenders Annual Report</i>	Ignored
Utah Report of the Commissioner of Financial Institutions for the Period July 1, 2013 to June 30, 2014	Ignored
Brandon Coleman and Delvin Davis, <i>Perfect Storm: Payday Lenders Harm Florida Consumers Despite State Law</i>	Ignored
CFPB, <i>Online Payday Loan Payments</i>	Cited, did not dispute interpretation
Arthur Baines et al, <i>Economic Impact on Small Lenders of the Payday Lending Rules Under Consideration by the CFPB</i>	Ignored
Marc Anthony Fusaro & Patricia J. Cirillo, <i>Do Payday Loans Trap Consumers in a Cycle of Debt?</i>	Ignored
nonPrime101, <i>Searching for Harm in Storefront Payday Lending</i>	Ignored
nonprime101, <i>A Balanced View of Storefront Payday Lending</i>	Cited, did not dispute interpretation
Floridians for Financial Choice, <i>The Florida Model: Baseless and Biased Attacks are Dangerously Wrong on Florida Payday Lending</i>	Ignored
Tennessee Dept. of Fin. Insts., <i>Report on the Title Pledge Industry (2016)</i>	Cited, did not dispute interpretation
Paige Marta Skiba and Jeremy Tobacman, <i>Payday Loans, Uncertainty, and Discounting: Explaining Patterns of Borrowing, Repayment, and Default</i>	Cited, did not dispute interpretation
Uriah King and Leslie Parrish, <i>Payday Loans, Inc.: Short on Credit, Long on Debt</i>	Ignored
Michael A. Stegman, <i>Payday Lending</i>	Ignored
Clarity Services, <i>2017 Subprime Lending Trends: Insights into Consumers & the Industry</i>	Ignored

G. Michael Flores, <i>The State of Online Short-Term Lending, Second Annual Statistical Analysis Report</i>	Ignored
nonPrime101, <i>How Persistent is the Borrower-Lender Relationship in Payday Lending?</i>	Ignored
Marianne Bertrand and Adair Morse, <i>Information Disclosure, Cognitive Biases, and Payday Borrowing</i>	Cited, did not dispute interpretation
Tarrance Group et al, <i>Borrower and Voter Views of Payday Loans</i>	Ignored
Harris Interactive, <i>Payday Loans and the Borrower Experience</i>	Ignored
Brian Baugh, <i>What Happens When Borrowers Are Cut Off From Payday Lending?</i>	Ignored
Sendhil Mullainathan & Eldar Shafir, <i>Scarcity: The New Science of Having Less and How It Defines Our Lives</i>	Ignored
Johanna Peetz & Roger Buehler, <i>When Distance Pays Off: The Role of Construal Level in Spending</i>	Ignored
Johanna Peetz & Roger Buehler, <i>Is There A Budget Fallacy? The Role of Savings Goals in the Prediction of Personal Spending</i>	Ignored
Gulden Ulkuman, <i>Will I Spend More in 12 Months or a Year? The Effects of Ease of Estimation and Confidence on Budget Estimates</i>	Ignored
Jonathan Z. Berman et al., <i>Expense Neglect in Forecasting Personal Finances</i>	Ignored
Daniel Kahneman & Amos Tversky, <i>Intuitive Prediction: Biases and Corrective Procedures</i>	Ignored
Roger Buehler et al, <i>Exploring the ‘Planning Fallacy’: Why People Underestimate Their Task Completion Times</i>	Ignored
Roger Buehler et al, <i>Inside the Planning Fallacy: The Causes and Consequences of Optimistic Time Prediction</i>	Ignored
Gregory Elliehausen and Edward C. Lawrence, <i>Payday Advance Credit in America: An Analysis of Customer Demand</i>	Cited, did not dispute interpretation
Susana Montezemelo & Sarah Wolff, <i>Payday Mayday: Visible and Invisible Payday Defaults</i>	Ignored
nonPrime101, <i>Report 3: Measure of Reduced Form Relationship between the Payment-Income Ratio and Default Probability</i>	Ignored
Diane Standaert & Brandon Coleman, <i>Ending the Cycle of Evasion: Effective State and Federal Payday Lending Enforcement</i>	Ignored
Delvin Davis, <i>Mile High Money: Payday Stores Target Colorado Communities of Color</i>	Ignored
Washington Department of Financial Institutions, <i>2015 Payday Lending Report</i>	Ignored

Note: Order of studies is their order of citation in the described subsection of the 2017 final rule.

To be clear, the 2019 proposal’s reinterpretation of the three studies in question is dubious. The 2019 proposal criticizes a study by Professor Ronald Mann because it “involved a single payday lender in just five states.”¹⁶⁷ This is correct, but the CFPB has supervisory data from numerous payday lenders in every state where payday lenders operate. This comprehensive CFPB research, along with the Mann study and many others, together form the research basis for the 2017 final rule. The fact that one study has data from one lender in five states in no way undercuts the validity of the overall body of research underpinning the 2017 rule.

Further, the 2019 proposal seems to elevate the Mann study to a position of outsized importance because of another misreading of the 2017 final rule. (In fact, the 2017 rule acknowledged clearly the limitations of the Mann study.) The 2019 proposal incorrectly describes the 2017 final rule as hinging on evidence that “consumers do not have a specific understanding of their personal risks and cannot accurately predict whether they will remain in long reborrowing sequences after taking out covered short-term and longer-term balloon-payment loans.”¹⁶⁸ The 2019 proposal also says that the 2017 final rule “acknowledged that [sic] ‘is possible that many borrowers accurately anticipate their debt duration,’”¹⁶⁹ as if this issue were at the heart of the 2017 final rule, when it is not. The 2019 proposal further argues that consumers can in fact protect their own interests *before they borrow*. However, this is not the rationale for the 2017 final rule’s finding that borrowers are unable to protect their own interests. Instead, the 2017 final rule argues that “*After they take out the initial loan, consumers are no longer able to protect their interests as a practical matter because they are already face to face with the competing injuries of default, delinquency, re-borrowing, or the collateral consequences of making unaffordable payments, with no other way to opt out of the situation. An unaffordable first loan can thus ensnare consumers in a cycle of debt from which they cannot extricate themselves without incurring some form of injury, rendering them unable to protect their interests in selecting or using these kinds of loans*”¹⁷⁰ (emphasis added).

In other words, the 2019 proposal simply ignores the argument the 2017 final rule actually makes about *when* consumers are not in a position to protect their own interests. Instead the 2019 proposal describes the 2017 final rule as hinging on the idea that consumers “cannot accurately predict whether they will remain in long reborrowing sequences”¹⁷¹ but this is a “straw man” argument. The 2017 final rule’s findings result from consumers’ inability to protect their own interests after they begin borrowing, not before they begin borrowing.

The 2019 proposal also reinterprets three survey questions Pew asked of payday loan borrowers. We agree with the 2017 final rule’s interpretation that the responses to those questions are largely evidence of financial fragility, not evidence that borrowers’ frequent financial struggles mean they

¹⁶⁷ 84 FR 4265.

¹⁶⁸ 84 FR 4268.

¹⁶⁹ 84 FR 4262.

¹⁷⁰ 82 FR 54618.

¹⁷¹ 84 FR 4268.

get lots of helpful experience at protecting their own interests when they cannot afford to cover their expenses.

The 2019 proposal references some new studies that have come out since the 2017 rule was finalized. One describes how installment loans, which are not covered by the 2017 rule, are not available in Arkansas because of its 17 percent rate cap.¹⁷² This finding is correct, but it has little if any relevance to the 2017 rule, which does not institute a rate cap, does not eliminate credit, and does not even cover the type of loans researched in the paper on Arkansas. Another cited paper argued that payday loans ceased to exist in Ohio after a new law took effect at the end of 2008, and that borrowers shifted to using other forms of credit.¹⁷³ As any observer of the small-loan market would know, Ohio had one of the most well-documented payday and vehicle title loan problems in the country for a decade after this law took effect.¹⁷⁴ This research included in the 2019 proposal makes a fundamental and straightforward mistake of believing that because payday lenders had to obtain licenses under new statutes to continue making payday loans after the 2008 law, there were no longer payday loans in Ohio. It is unclear what this paper has to do with the 2017 final rule.

As this review of the cited research demonstrates, the Bureau only offered a new interpretation of three studies by two authors and ignores most of the studies cited in the 2017 final rule. Even if the Bureau maintains its new interpretation of those three studies, the other studies provide a sufficient basis for findings of unfairness and abusiveness. The 2019 proposal refers to “the Pew Study” repeatedly, but Pew had published approximately two dozen studies on small-dollar lending by the time of the 2019 proposal, eight of which are cited in the 2017 final rule. The 2019 proposal’s reinterpretation of a few pieces of research does not undercut the entirety of the body of research on payday and vehicle title lending developed over more than two decades.

¹⁷² 84 FR 4292.

¹⁷³ 84 FR 4293.

¹⁷⁴ The Pew Charitable Trusts, *Ohio Has the Highest Payday Loan Prices in the Nation: Major Facts and Figures* (2016), <https://www.pewtrusts.org/en/research-and-analysis/fact-sheets/2016/12/ohio-has-the-highest-payday-loan-prices-in-the-nation>.

8. Conclusion

The 2019 proposal contains numerous errors. Some are inconsequential, while others are not consequential in and of themselves, such as mistaking the number of states that have auto title lending but do not allow payday loans, but they are errors that are obvious to people with extensive knowledge of small-dollar lending. It is unclear why the Bureau referenced new studies on non-covered installment loans from Arkansas¹⁷⁵ and lenders' licensing practices in Ohio¹⁷⁶ that have minimal if any relevance to the rulemaking.

But the most substantial errors are three fundamental ones that cut to the core of the proposal itself: 1) a serious misunderstanding of the impact of the 2017 rule on access to credit and competition, 2) mischaracterizing the 2017 final rule's description of when consumers can reasonably avoid substantial injury, and 3) alleging fault with the interpretation of three studies cited in the 2017 final rule and ignoring the other 150 cited studies, many of which are highly relevant to the rule's findings.

The 2019 proposal's rationale for rescinding the 2017 ability-to-repay safeguards is that the 2017 rule will drastically reduce the availability of credit to consumers. But the evidence to substantiate that claim is largely a misreading of the estimates from the 2017 rule, which projected a reduction in volume of *short-term loans* up to 45 days but did not make forecasts about access to *small-dollar credit* generally. There is strong evidence from every single state that has placed safeguards on short-term loans but enabled lenders to offer longer-term small loans that lenders have switched to issuing these longer-term loans. All available evidence points to continued access to credit under the 2017 rule, including increased access to small loans from banks and credit unions, as demonstrated by the launch of U.S. Bank's Simple Loan *after* the 2017 rule was finalized.¹⁷⁷

The 2017 rule describes injury that customers cannot reasonably avoid as occurring *after* a first unaffordable loan, when it is difficult for consumers to default because of the leveraged payment mechanism but they also cannot afford to repay. The 2019 proposal sidesteps this core argument that underpinned the 2017 final rule, and instead makes a tangentially related argument "that consumers need not have a specific understanding of their individualized likelihood and magnitude of harm such that they could accurately predict how long they would be in debt after taking out a covered short-term or longer-term balloon-payment loan for the injury to be reasonably avoidable."¹⁷⁸ Though reasonable observers might disagree with this opinion offered in the 2019 proposal, this argument does not refute the 2017 final rule's well-substantiated finding that "After they take out the initial loan, consumers are no longer able to protect their interests as a practical

¹⁷⁵ 84 FR 4292.

¹⁷⁶ 84 FR 4293.

¹⁷⁷ U.S. Bank, "Small-dollar loans made simple," Sept. 10, 2018, <https://www.usbank.com/newsroom/stories/small-dollar-loans-made-simple.html>.

¹⁷⁸ 84 FR 4269.

matter because they are already face to face with the competing injuries of default, delinquency, re-borrowing, or the collateral consequences of making unaffordable payments, with no other way to opt out of the situation.”¹⁷⁹

The 2017 rule cites 153 distinct studies. The 2019 proposal reinterprets pieces of three of them and ignores the rest. Even the alleged faults with those three studies are tenuous. For example, it dismisses the Mann study because it relies on data from just five states. But the CFPB itself has published studies from supervisory data that include payday lending data from every state where lenders operate, which the 2019 proposal does not reinterpret or dispute. Similarly, the Pew studies and others include data from every state where payday and vehicle title lenders operate.

The substantive, factual, and interpretative errors underlying the 2019 proposal are of such severity that the Bureau should withdraw it.

¹⁷⁹ 82 FR 54618.

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Appendix A

The CFPB's Rulemaking on Payday, Vehicle Title, and Certain High-Cost Installment Loans—A Timeline

July 2010: Dodd-Frank Wall Street Reform and Consumer Protection Act Signed into Law, Granting CFPB Authority to Regulate Unfair, Deceptive, and Abusive Acts and Practices

July 2011: Consumer Financial Protection Bureau Begins Operating

January 2012: CFPB Holds Birmingham, Alabama Field Hearing on Payday Lending

March 2012: CFPB Begins Soliciting Public Comments on Payday Lending

April 2013: CFPB Publishes White Paper on Payday Lending and Deposit Advance Products

March 2014: CFPB Publishes Data Point on Payday Lending

March 2015: CFPB Publishes Outline of Regulations for Payday, Vehicle Title, and Certain High-Cost Installment Loans

April 2015: CFPB Convenes Panel of Small Entity Representatives, fulfilling its obligations under the Small Business Regulatory Enforcement Fairness Act

April 2016: CFPB Publishes Research on Online Payday Loan Payments

May 2016: CFPB Publishes Research on Vehicle Title Loans

June 2016: CFPB Publishes Six Studies described as “Supplemental findings on payday, payday installment, and vehicle title loans, and deposit advance products.”

June 2016: CFPB Publishes a Notice of Proposed Rulemaking on Payday, Vehicle Title, and Certain High-Cost Installment Loans

October 2016: Comment Period Closes on Notice of Proposed Rulemaking, with more than 1.4 million comments submitted

October 2017: CFPB Publishes Final Rule on Payday, Vehicle Title, and Certain High-Cost Installment Loans following six years of data collection and a 30-month rulemaking process

February 2019: CFPB Proposes to Rescind its Final Rule on Ability to Repay to Payday, Vehicle Title, and Certain High-Cost Installment Loans

Appendix B

The CFPB’s 2019 Proposed Delay Would Greatly Extend an Unusually Long Compliance Period

In its 2017 final regulation, the CFPB increased the initial implementation period of the payday loan rule to 21 months, an increase from the 15 months it proposed in 2016. In the CFPB’s separate 2019 proposal, it suggests increasing that to 36 months. The changes to payday lending laws made by states generally had a more substantial impact on the payday and auto title lending industries than the 2017 CFPB regulation would, because the state laws included regulations of loan terms including prices and durations. The 2017 final CFPB regulation did not set prices or terms, and it provided industry with four compliance options including a) assessing ability to repay, b) using a principal step-down option, c) giving consumers more than 45 days to repay high-cost loans in installments, or d) giving consumers more than 45 days to repay high-cost lines of credit. In more than two-thirds of the states where payday or auto title lenders operate, they already issue at least some longer-term high-cost installment loans or lines of credit, and these products were not covered by the 2017 regulation’s ability-to-repay requirements.

Chart: Implementation Period for Payday Loan Law Changes

Number of months

	3	6	9	12	15	18	21	24	27	30	33	36
Arkansas 2008												
Colorado 2010												
Colorado 2018												
Florida 2018												
Georgia 2004												
Montana 2010												
New Mexico 2017												
Ohio 2018												
Oregon 2007												
South Dakota 2016												
Virginia 2008												
Washington 2009												
CFPB 2016 Proposal												
CFPB 2017 Final Rule												
CFPB 2019 Proposal												

Notes: All implementation periods are rounded to the nearest 3 months. Because the CFPB’s 2017 final rule was not printed in the federal register for 1.5 months following publication, the actual time periods for both the 2017 final rule and 2019 proposal are 1.5 months longer than shown. All time periods shorter than three months are listed in the category of three months. The chart excludes temporary payday loan laws that had sunset provisions and no implementation periods, such as in Arizona and North Carolina.