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To: **Bureau of Consumer Financial Protection**
Re: **Comment on the CFPB's Notice of Proposed Rulemaking on "Payday, Vehicle Title, and Certain High-Cost Installment Loans" Docket No. CFPB-2019-0006**

We are grateful for the opportunity to comment on the Consumer Financial Protection Bureau's (Bureau) Notice of Proposed Rulemaking (NPRM) on "Payday, Vehicle Title, and Certain High-Cost Installment Loans."[1] We thank Director Kraninger and the Bureau for their thoughtful leadership in reevaluating the Payday Rule announced in November 2017 (2017 Rule or Rule).[2]

About the Authors

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Introduction

In November 2017, the CFPB published its Final Rule on "Payday, Vehicle Title, and Certain High-Cost Installment Loans." The Rule covered loans with terms of 45 days or less, longer-term balloon-payment loans, and longer-term loans with an annual interest rate in excess of 36 percent and that authorize lenders to withdraw payments from the borrower's account.[3]

The Rule consisted of two sets of provisions: Mandatory Underwriting Provisions and Payment Provisions. The Rule's Mandatory Underwriting Provisions, which the Bureau has proposed to rescind in the NPRM,[4] require lenders to assess borrowers' ability-to-repay (ATR), including income and expense verification, before making a covered loan. The Payment Provisions,

1 84 FR 4252.
2 82 FR 54472.
3 Ibid., 54473.
4 84 FR 4252, 4252.

which the Bureau has not proposed to rescind,[5] ban lenders from initiating a payment withdrawal from a borrower's account after the second unsuccessful attempt due to insufficient funds.[6]

The Bureau is right to rescind the Mandatory Underwriting Provisions of the Payday Rule. As the NPRM accurately summarizes, "the evidence underlying the identification of the unfair and abusive practice in the Mandatory Underwriting Provisions of the 2017 Rule is not sufficiently robust and reliable to support" the core provisions of the Rule. Contrary to the statements made in the 2017 Rule, the Bureau did not demonstrate a market failure in the market for short-term loans. Nor is there convincing evidence that the Rule's proposed interventions would improve consumer welfare. Finally, the Bureau's simulations of how the U.S. short-term lending market would change in response to the Rule may severely underestimate its negative impact on borrowers' access to loans. As a result, we agree with the Bureau's proposal in the NPRM to rescind the Mandatory Underwriting Provisions of the 2017 Rule.

We also encourage the Bureau to take into consideration additional deficiencies of the 2017 Rule, including the lack of "robust and reliable" evidence to support its central premise: that repeat users of payday loans do not have sufficient means to avoid the alleged harms resulting from rolling over payday loans; the Rule's reliance on concepts of behavioral economics, which empirical testing has revealed is not robust in real-world decision-making contexts for consumer credit; and the lack of sufficiently "robust and reliable" underlying evidence to support the application of the Rule's Mandatory Underwriting Provisions to auto title loans.

Additionally, we suggest that the Bureau should reconsider the Payment Provisions of the 2017 Rule. The concerns that motivated the Rule's Payment Provisions relate not to the payment practices of lenders *per se*, but to their interactions with bank account features such as overdraft and non-sufficient funds (NSF) fees. Addressing these concerns by regulating short-term lenders—who may, as a result, withdraw credit from the most hard-pressed borrowers for whom failed withdrawal attempts are most likely—is ill-advised. We recommend the Bureau instead address concerns about short-term lenders' payment practices and their interaction with account fees in a separate market investigation. If the Bureau chooses not to rescind or reconsider that element of the Rule in its revised Rule, it should consider revisiting the issue in the near future.

Millions of consumers benefit from access to small-dollar loans, so robust evidence would be required in order to justify depriving consumers of that choice and pushing them into inferior or more expensive options. The NPRM has rightly reevaluated the costs and benefits of the Rule, concluding that no such robust evidence existed. The NPRM therefore prudently recognizes that the "opinions and conclusions" of the Rule lacked a reliable foundation and is proposing to rescind the Mandatory Underwriting Provisions of the Rule.

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[5] Ibid., 4253.
[6] 82 FR 54472, 54720.

The Bureau stated in 2017 that "[m]uch of the debate here represents different characterizations and opinions about potential conclusions drawn from the facts, rather than direct disagreements about the facts themselves."[7] We therefore submit in this letter further analysis of those facts, examining several weaknesses in the economic logic and conclusions that predicate significant portions of the Rule.

The remainder of this comment letter proceeds as follows. Section I briefly describes the market for short-term loans, discusses the types of people who typically seek them, and explains their reasons for doing so. Section II summarizes the recent academic literature on the welfare effects of payday lending, the impact of payday lending regulations on consumer welfare, and consumers' perspectives on payday loans. Section III discusses critical flaws in the reasoning used to justify the Mandatory Underwriting Provisions of the 2017 Payday Rule. Section IV explains the reasoning behind our view that the Mandatory Underwriting Provisions would reduce access to credit by more than the Bureau's simulations suggest. Sections V and VI explain our concerns with the Bureau's analysis of the vehicle title lending market and its use of behavioral economics, respectively. Section VII explains why the Bureau should reconsider the Rule's Payment Provisions. Section VIII concludes by summarizing the most significant flaws with the current Rule's logical foundations and its likely consequences, and urges the Bureau to rescind both the Underwriting and Payment Provisions of its 2017 Payday Rule in order to improve choice and competition among the small-dollar credit options at consumers' disposal.

I. Who Uses Payday Loans, and Why?

Payday loans are short-term unsecured loans with a typical term of two weeks. The median size of a payday loan is $350 and the median loan fee is $15 per $100 borrowed.[8] The median loan term is 14 days.[9] Most payday lenders require borrowers to own a bank account.[10] Vehicle title loans are pawn loans that use the borrower's vehicle as security.[11] As of mid-2019, payday loans are legal in 33 states, while the remaining 17 states and the District of Columbia either explicitly ban them or have an interest ceiling low enough to make payday lending unprofitable.[12] Vehicle title loans are allowed in 23 states, of which only 17 permit the single-payment vehicle title loans covered by the Rule.[13]

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[7] 82 FR 54472, 54558.
[8] CFPB, "Payday Loans and Deposit Advance Products: A White Paper of Initial Data Findings," April 24, 2013, 17, https://files.consumerfinance.gov/f/201304_cfpb_payday-dap-whitepaper.pdf.
[9] 82 FR 54472, 54479.
[10] Thomas W. Miller, Jr., *How Do Small-Dollar, Nonbank Loans Work?* (Mercatus Center at George Mason University, 2019), 12.
[11] Ibid., 34.
[12] 84 FR 4252, 4253-4254.
[13] Ibid., 4256.

Payday loans can be obtained from storefront or online lenders. There are 14,348 storefront payday lenders, according to the Bureau,[14] down from 22,000 15 years ago.[15] Most storefronts belong to large payday lenders with more than 200 outlets, but 2,400 storefront lenders are small businesses. The joint loan volume originated by storefront and online payday lenders was $39.5 billion in 2015.[16] That volume has been in decline since 2007 because of increasingly tight regulation of the industry at the state level.[17]

It is hard to give a precise number of unique payday borrowers in the United States, but Bureau data suggest there may be as many as 12 million.[18] Typically, short-term borrowers use such credit to cover unexpected gaps in disposable income. For example, 16 percent of payday borrowers use these loans to cover emergency expenses, while 69 percent borrow to pay for recurring items, such as rent and utility bills.[19]

The consumers who turn to payday and vehicle title loans for short-term financing have few alternative options available. According to the Bureau's own research, the average payday borrower has made more than five credit inquiries in the last 12 months, most of them unsuccessful, and has a credit score of 525-532,[20] which credit bureaus consider to be "subprime" and close to "deep subprime."[21] Four in five payday borrowers have been denied traditional credit in the past year due to their poor credit record.[22] To assume that, in the absence of the short-term credit covered by the 2017 Rule, these consumers could turn to cheaper alternatives contradicts not just the theory of rational behavior, but much of the available evidence.

More than half of payday and vehicle title borrowers have annual family incomes below $30,000.[23] In addition to being more vulnerable to unexpected expenses, this socioeconomic group is also more likely to experience volatile income across the year.[24] Because minorities are overrepresented among the low-income and underbanked populations,[25] it should not come as a surprise that they also form a disproportionate share of payday and vehicle title borrowers.[26]

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[14] Ibid., 4255.
[15] Michael A. Stegman, "Payday Lending," *Journal of Economic Perspectives* (Winter 2007), 169.
[16] 82 FR 54472, 54479.
[17] 84 FR 4252, 4254.
[18] Ibid., 4255.
[19] Pew Charitable Trusts, "Payday Lending in America: Who Borrows, Where They Borrow, and Why," July 2012, 14, https://www.pewtrusts.org/-/media/legacy/uploadedfiles/pcs_assets/2012/pewpaydaylendingreportpdf.pdf.
[20] Ibid., 54557.
[21] Brittney Mayer, "300-850: The 'Credit Score Range' Explained (FICO & VantageScore)," *BadCredit.org*, March 25, 2019, https://www.badcredit.org/how-to/credit-score-range/.
[22] 82 FR 54472, 54557.
[23] 82 FR 54472, 54557.
[24] Jonathan Morduch and Rachel Schneider, The Financial Diaries: How American Families Cope in a World of Uncertainty (Princeton University Press, 2017), 33.
[25] Federal Deposit Insurance Corporation, , "2017 FDIC National Survey of Unbanked and Underbanked Households," October 2018, 19-20, https://www.fdic.gov/householdsurvey/2017/2017report.pdf.
[26] 82 FR 54472, 54557.

II. What the Academic Literature Says About Payday Loans and Their Regulation

There is a rich empirical literature on payday lending, partly thanks to the historically decentralized regulatory regime that has allowed researchers to compare the impact of different policy approaches in different states. Academic research on the consumer welfare effects of payday loans shows ambiguous results. To be sure, the ability to access payday loans helps many households deal with short-term shocks to their income or expenses and allows them to meet urgent and important household financial needs. In particular, much of the empirical literature finds that payday loans help households cope with the financial consequences of natural disasters.[27] Research also shows that payday loan restrictions drive borrowers to higher-cost options such as pawnbrokers[28] and bank overdrafts.[29] While payday loans are often described as "predatory," research suggests that the practices of payday lenders in the United States do not meet a rigorous definition of predatory lending, for instance, "a welfare reducing provision of credit."[30]

Some researchers have found that payday borrowing can adversely affect consumers' welfare, correlating borrowing with higher bankruptcy rates[31] and increased financial distress.[32] Other studies, however, find that payday loan bans lead to an increase in overdraft fees, returned checks, and allegations of hostile debt collection practices.[33] Research on the impact that payday loan bans have had on credit delinquencies shows that these bans have had mixed effects and no clear benefits.[34] Thus, there is no academic consensus on the negative effects of payday loans to warrant the 2017 Rule's intended two-thirds reduction in loan volumes.[35]

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27 Adair Morse, "Payday Lenders: Heroes or Villains?," *Journal of Financial Economics* Vol. 102 No. 1 (October 2011): 28-44. https://www.sciencedirect.com/science/article/pii/S0304405X11000870.

28 Neil Bhutta, Jacob Goldin, and Tatiana Homonoff, "Consumer Borrowing After Payday Loan Bans," *Journal of Law and Economics* Vol. 59 (February 2016): 225-259. https://www.journals.uchicago.edu/doi/pdfplus/10.1086/686033

29 Jonathan Zinman, "Restricting Consumer Credit Access: Household Survey Evidence on Effects Around the Oregon Rate Cap," *Journal of Banking and Finance* Vol. 34 No. 3 (March 2010): 546-556. https://www.sciencedirect.com/science/article/pii/S0378426609002283

30 Donald P. Morgan, "Defining and Detecting Predatory Lending," Federal Reserve Bank of New York Staff Report No. 273 (January 2007). https://pdfs.semanticscholar.org/c7e4/e90b653f98e02b7d59bc9d301974d0bc72b4.pdf In the author's model, lenders engage in predatory lending deceiving borrowers about their future income.

31 Paige M. Skiba and Jeremy Tobacman, "Do Payday Loans Cause Bankruptcy," Vanderbilt Law and Economics Research paper No. 11-13 (February 2011). https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1266215

32 Brian T. Melzer, "The Real Costs of Credit Access: Evidence from the Payday Lending Market," *Quarterly Journal of Economics* Vol. 126 No. 1 (February 2011): 517-555.

33 Donald P. Morgan, Michael R. Strain, and Ihab Seblani, "How Payday Credit Access Affects Overdrafts and Other Outcomes," *Journal of Money, Credit and Banking* Vol. 44 (March 2012): 519-531. https://onlinelibrary.wiley.com/doi/abs/10.1111/j.1538-4616.2011.00499.x

34 Chintal A. Desai and Gregory Elliehausen, "The Effect of State Bans of Payday Lending on Consumer Credit Delinquencies," *Quarterly Review of Economics and Finance* Vol. 64 (May 2017): 94-107. https://www.sciencedirect.com/science/article/abs/pii/S1062976916300515

35 82 FR 54472, 54817.

Furthermore, it appears that most payday borrowers are satisfied with payday and vehicle title loans. A 2012 survey by the Center for Financial Services Innovation found more than 50 percent of payday borrowers gave payday loans a satisfaction score of 4 or 5 out of 5. 33 percent of these borrowers would use these loans again "without hesitation" and another 44 percent would resort to them if there were no better options.[36] Vehicle title loans receive similar ratings from their users, although a smaller share (22 percent) would use them again unhesitatingly, whereas 55 percent would do so given no better options.[37] Additionally, a 2017 Cato CMFA survey found that 63 percent of payday borrowers thought their chosen lenders had "provided good information" on the fees and risks associated with their loan.[38]

The evidence therefore suggests that most payday and vehicle title loans serve their intended purpose of providing emergency liquidity for credit-constrained borrowers reasonably well or very well.

III. Why the Bureau Is Right to Rescind the Payday Rule's Mandatory Underwriting Provisions

The 2017 Rule's analysis failed to prove that the short-term credit industry had experienced a market failure sufficient to warrant intervention. It also neglected to provide a convincing explanation for why some consumers elect to roll over their loans while others default. Contrary to the Rule's claims, the fact that most lender revenue comes from repeat borrowers is not evidence that those borrowers are harmed by their use of these loans. Furthermore, the Rule's Mandatory Underwriting Provisions, which would reduce access to short-term credit for borrowers who benefit from such credit, rest on flawed economic reasoning.

The 2017 Rule is Not Based on Evidence of Market Failure

According to the Bureau's own estimates, the 2017 Rule would reduce the volume of payday loans by 62 to 68 percent.[39] Restricting loan volume is only economically justifiable if there is clear evidence of predatory lending—whereby lenders would mislead borrowers into taking out loans they cannot and will not repay—or behavioral biases—whereby borrowers are excessively optimistic about their chances of repayment and the time it will take them to repay.[40] The Bureau's

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[36] Rob Levy and Joshua Sledge, "A Complex Portrait: An Examination of Small-Dollar Credit Consumers," Center for Financial Services Innovation, 21.
https://www.fdic.gov/news/conferences/consumersymposium/2012/a%20complex%20portrait.pdf
[37] Ibid.
[38] Emily Ekins, "Wall Street Vs. the Regulators: Attitudes on Banks, Financial Regulation, Consumer Finance, and the Federal Reserve," Findings from the Cato Institute 2017 Financial Regulation Survey, 27.
https://object.cato.org/sites/cato.org/files/survey-reports/pdf/financial_regulation_survey_report_updated.pdf
[39] Ibid., 54817.
[40] Jonathan Zinman, "Consumer Credit: Too Much or Too Little (or Just Right)?," *Journal of Legal Studies* Vol. 43 No. S2 (June 2014), 224-225, https://www.journals.uchicago.edu/doi/pdfplus/10.1086/676133.

analysis of the payday lending market, which preceded the Rule's publication, did not demonstrate such market failure. Nor did it show that the Payday Rule would improve consumer welfare.[41]

Instead, the analysis relied on one particular study, conducted by Professor Ronald Mann of Columbia University, showing that 60 percent of borrowers accurately estimate their date of repayment within one 14-day window.[42] Mann's study also shows that, to the extent that borrowers misestimate their repayment date, they are no more likely to over-estimate than they are to under-estimate it.[43] If borrowers were systematically over-optimistic, they would tend to underestimate the length of time required for them to repay their loans. But the evidence suggests this is not the case, and another survey of payday and vehicle title borrowers finds that 62 percent and 71 percent, respectively, pay off their loans on time.[44] The study cited by the Bureau thus provides no evidence of a behavioral market failure or of predatory lending.

Nevertheless, the analysis in the 2017 Rule focused on the small fraction of late-paying borrowers who did underestimate the length of their payday loan sequence.[45] Yet it is a stretch to argue, as the analysis did, that "there is little correlation between [borrowers'] predictions and [their] behavior."[46] In fact, most borrowers accurately predict their repayment date,[47] and even though late-paying borrowers' estimates are worse than average,[48] this does not necessarily constitute evidence that these borrowers are behaving irrationally or that payday loans adversely impact their welfare. Because late-paying borrowers are typically the most financially distressed, it is plausible that they are both more constrained in their credit options and less able to accurately predict when or if they can repay that credit. In the context of what may be their poor credit history, high outstanding debt, and volatile income, payday loans may be the sole lifeline for these borrowers.

Professor Mann himself has strongly criticized the way in which his data was interpreted for purposes of the 2017 Rule. In an October 2016 communication to the Bureau, he noted that the absolute prediction errors were largest among long-term borrowers, but that "those errors are no more systematic than the errors of short-term borrowers." He added, "some of those borrowers repay the loans sooner than they expect and others repay them later than they expect."

As Mann noted, a plausible explanation for the large errors among the longest-term borrowers is that these borrowers "are in the most dire financial distress, and consequently least able

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41 Kevin W. Caves and Hal J. Singer, "Re: Docket No. CFPB-2016-0025/RIN 3170-AA40," Economists Inc., Oct. 7, 2016, 15-16.
42 Ronald J. Mann, "Assessing the Optimism of Payday Loan Borrowers," Columbia Law & Economics Working Paper No. 443 (2013), 18 and 25-27, https://scholarship.law.columbia.edu/cgi/viewcontent.cgi?article=2798&context=faculty_scholarship.
43 Ibid., 10.
44 Levy and Sledge, "A Complex Portrait," 17 and 19.
45 82 FR 54472, 54568-54569.
46 Ibid., 54555.
47 Mann, "Assessing the Optimism of Payday Loan Borrowers," 21.
48 Ibid., 33.

to predict their future liquidity." He added: "[t]o be clear, though, their error does not—as the [2017 Rule] improperly suggests—consist of systematic underestimation of the duration of borrowing."[49]

The 2017 Rule Relies on Unsubstantiated Theories about Consumer Reborrowing and Default

The 2017 Rule rests on two fundamental but unproven assumptions. The first is that long-term payday loan borrowers are victims of a "debt trap," whereby lenders coerce borrowers into rolling over their loans for an additional period. The second is that subjecting lenders and borrowers to the Rule's ability-to-repay test would solve the problem of repeat rollovers. Neither of these propositions are factually supported in the 2017 Rule, a fact that the NPRM correctly highlights.

"Debt trap" is a term that it is not rigorously defined in the Rule, but it typically refers to a product—such as a payday loan—that allows borrowers to roll over a single loan multiple times before paying it off. The 2017 Rule purports to protect consumers from becoming caught in these supposed debt cycles. In doing so, however, it assumes that the reason some borrowers roll over their payday loans instead of defaulting is that they are somehow forced to re-borrow. The Rule does not consider the alternative explanation: that borrowers roll over their payday loans because the benefits of *not* defaulting outweigh the costs of defaulting. By focusing on roll overs, the Rule thus misses a critical question: why do consumers *choose not to default* on their payday loans? From an economic perspective, this is the more relevant and important question.

Because the lender initially extends credit, any lengthening of consumer credit raises the possibility of "post-contractual opportunism" from consumers who borrow money but fail to repay the loan. As a result, economists typically model a consumer's decision to default on a payday loan as a financial "option"—either to repay the loan or to default.[50] Thus, when the marginal benefits to a consumer from default exceed the marginal cost associated with defaulting, rational consumers will be predicted to default. The "option" model of consumer default is well-established and is supported by extensive empirical testing that finds that it predicts consumer default.[51]

From this perspective, a consumer's decision to roll over a payday loan instead of choosing to default is somewhat puzzling. Rollovers and defaults seem to be inversely correlated: 62 percent of payday loans are part of sequences of seven or more loans, yet most loan defaults occur in

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[49] Ronald J. Mann, "Re: Docket No. CFPB-2016-0025 (RIN 3170-AA40)," Oct. 4, 2016. https://www.regulations.gov/contentStreamer?documentId=CFPB-2016-0025-141822&attachmentNumber=1&contentType=pdf.

[50] *See* Written Testimony of Professor Todd J. Zywicki, "Proposed Mortgage Modifications in Bankruptcy Code," Hearing of the Subcommittee on Commercial and Administrative Law, Committee on the Judiciary, United States House of Representatives (Jan. 22, 2009) (summarizing model).

[51] The model has been tested most extensively in the context of home mortgage default. *See*, *e.g.*, Kerry D. Vandell, How Ruthless Is Mortgage Default? A Review and Synthesis of the Evidence, 6 J. HOUSING RES. 245 (1995); James B. Kau & Donald C. Keenan, An Overview of the Option-Theoretic Pricing of Mortgages, 6 J. HOUSING RES. 217 (1995); Patric H. Hendershott & Robert Van Order, Pricing Mortgages: An Interpretation of the Models and Results, 1 J. FIN. SERVICES RES. 19 (1987).

sequences of three or fewer payday loans.[52] According to the Bureau's own research, the typical "defaulter" borrowed for just one payday loan sequence and tended to default on the first or the subsequent two loans.[53] The 2017 Rule provides three possible explanations for why consumers might roll over their payday loans: threat of litigation, fear of adverse credit reporting, and aggressive debt collection. Yet the Rule relies on little evidence to explain how these factors affect borrowers' propensity to reborrow.

The 2017 Rule speculates that borrowers might reborrow—to pay off initial sums borrowed—because of a threat of litigation by the lender or third-party debt buyers for failure to repay. Yet, with the exception of Utah, the Rule offers no evidence that litigation to enforce payday loan debts is widespread.[54] Nor did the Rule substantiate its assumption that fear of litigation forces reborrowing and discourages defaults. Indeed, many payday lenders state that, in light of the small size of the debts at stake and the judgment-proof nature of many defaulted payday loan borrowers, the costs of litigation exceed the expected benefits. While these conversations are not proof of their claims, the Bureau should consider conducting follow-up research to determine the extent to which payday lenders actually sue to enforce their contracts.

The potential for adverse credit reporting is a second reason given in the 2017 Rule. But as with its allegation of consumers' fear over lawsuits, the Rule points to no evidence that adverse credit reporting is forcing borrowers to reborrow instead of defaulting. It is generally accepted that payday lenders place limited reliance on standard credit bureau information in deciding whether to issue a payday loan and most payday lenders do not report defaults to standard credit reporting agencies.[55] Moreover, academic studies have found that defaulting on a payday loan does not impair a consumer's credit score, presumably because these consumers' scores tend to be so low to begin with, and because default on payday loans is a symptom—not a cause—of financial difficulties.[56]

Not only does the Rule offer no evidence that consumers who roll over payday loans suffer a reduction in their credit scores, rollovers may in fact help consumers improve these scores.[57] In addition, according to a survey by economist Victor Stango, 88 percent of payday loan customers prefer to use payday loans instead of "bank/credit union" loans precisely because defaulting on a payday loan does *not* adversely affect their credit score.[58] In other words, not only will defaulting on

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[52] Consumer Financial Protection Bureau, "Data Point: Payday Lending," CFPB Office of Research, March 2014, 12-13 and 25-28. https://files.consumerfinance.gov/f/201403_cfpb_report_payday-lending.pdf
[53] Ibid., 13 and 27.
[54] Ibid.
[55] 82 FR 54472, 54481.
[56] Ronald J. Mann, "Do Defaults on Payday Loans Matter?" (Feb. 10,. 2015), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2560005.
[57] *See* Jennifer Priestley, "Payday Loan Rollovers and Consumer Welfare," Working Paper (Dec. 5, 2014), https://pdfs.semanticscholar.org/5d8c/9c34a22c309e0f52195ffbd31d908307f8a4.pdf?_ga=2.244164870.2000311692.1557318240-719631171.1557318240.
[58] Victor Stango, "Are Payday Lending Markets Competitive?", *Regulation* 26, p. 32, Table 3 (Fall 2012). Overall, 55% of payday loan customers in the survey indicated that they would prefer to borrow from a payday lender *even if a bank or*

a payday loan not harm a consumer's credit score, consumers explicitly refer to this very reason when explaining why they prefer payday loans to traditional bank or credit union loans.

The final reason that the 2017 Rule assumes some borrowers roll over their payday loans has to do with the lenders' supposedly aggressive debt collection tactics. Yet the 2017 Rule provides only anecdotal and speculative support for this claim. It occasionally references consumers' complaints over payday lenders' debt collection activities—for example, one passage states that, over a three-year period, "more than 31,000 debt collection complaints cited payday loans as the underlying debt."[59] This amounts to about 10,000 complaints per year. Considering that there are about 12 million payday loan borrowers every year, this means that for every 10,000 payday loan borrowers the Bureau received 3.7 complaints—in other words, less than one-half of one-percent of all payday loan borrowers file a complaint each year because of collection activities by payday lenders.[60]

The 2017 Rule also notes anecdotal reports that some consumers may be subject to collections but do not complain to the Bureau, although it provides no estimate of how large that unobserved population might be. Finally, the 2017 Rule notes that over a period of several years, the Bureau brought a handful of enforcement actions against payday lenders and debt collectors as a result of their improper debt collection practices. Protecting consumers against unfair and improper debt collection practices is, of course, a crucial and important part of the Bureau's enforcement and supervision activities. The anecdotes above, however, do not answer the fundamental question that must be addressed in order to justify the provisions of the 2017 Rule—*why* do some consumers roll over payday loans repeatedly instead of defaulting?

The 2017 Rule provides no evidence that customers reborrow out of fear over lenders' debt-collection actions. It is worrisome that the 2017 Rule did not conduct a more thorough analysis and consider alternative reasons consumers might have for choosing to roll over, rather than default on, their loans. Its language merely states:

> The Bureau is highly dubious of the claim made by some industry commenters that consumers suffer no harm in the event of a default on a covered loan. The Bureau has seen many examples of payday lenders that engage in strenuous efforts, either on their own behalf or by contracting with debt collectors (or selling the debt to debt buyers), to pursue borrowers for payment in the event of default. And the commenters did not present any evidence to show the extent to which lenders of covered short-term loans actually do refrain from seeking to collect on overdue debts…. In any event, the underlying premise is quite implausible. If there were no

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credit union offered an identical product because of the non-price features of payday loans, such as hours, location, speed, and privacy. *Id.* at p. 33.

[59] 2017 Rule page 54608.

[60] *Id.*

real consequences to defaulting on these loans, it is difficult to understand why so many borrowers would engage in repeat re-borrowing rather than simply defaulting.[61]

In order to justify a rulemaking process that could eliminate more than two-thirds of short-term loan volume[62] and severely limit the credit options for credit-constrained borrowers, regulators should be sure their analysis rests on firmer ground than their own speculations about which claims are "dubious" and "implausible." Adjectives are not a substitute for data and sound economic reasoning. Furthermore, the Rule's circular reasoning, which emanates from the unsupported claim that lenders somehow force repeat borrowers to roll over their loans, does not signify that there is any evidence for this reasoning—only that the Rule was formulated without adequately considering alternative hypotheses.[63]

In fact, it may be better to ask why so many borrowers default when the supposed harm caused by default is so substantial. Indeed, as the language of the 2017 Rule admits: "[T]he loss rates on storefront payday loans—the percentage or amounts of loans that are charged off by the lender as uncollectible—are relatively high."[64] Between 2011 and 2012, for example, charge-offs "equaled nearly one-half of the average amount of outstanding loans during the year. In other words, for every $1.00 loaned, only $.50 in principal was eventually repaid. One academic study found loss rates to be even higher."[65] The study in question, conducted by Mark Flannery and Katherine Samolyk, estimated that annual charge-offs on storefront payday loans were 66.6 percent of average outstanding loans— i.e. the outstanding amount lent out by lenders at any point in time.[66] Even when measured against the total revenue collected by lenders, the charge-off rate remains very high at 15.1 percent.[67]

Regardless of the preferred measure, loss rates on payday loans belie the 2017 Rule's assumption that borrowers are "coerced" into repaying their loans or otherwise pushed into so-called "debt traps." Whatever supposedly deters payday loan borrowers from defaulting on payday loans are largely ineffective measures if loss rates are above half, with many payday loan customers seemingly unconcerned about the consequences of default. Indeed, as the Bureau's Office of Research points out, many borrowers default without ever making a single payment.[68] The Rule provides no evidence concerning the consequences of default to these or any other borrowers.

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61 82 FR 54472, 54593.
62 Ibid., 54817.
63 The Bureau used similar methods of asserting causation without considering alternative hypotheses during its rulemaking on class action waivers in consumer finance contracts. See Jason Johnston and Todd J. Zywicki, "The CFPB's Arbitration Study: A Summary and Critique," *Banking and Financial Services Policy Report*, Vol. 35, No. 5, p. 9 (May 2016).
64 82 FR 54472, 54483.
65 Ibid., 54484.
66 Mark Flannery & Katherine Samolyk, "Payday Lending: Do the Costs Justify the Price?" at 16 (FDIC Ctr. For Fin. Res. Working Paper No. 2005-09 (2005).
67 Ibid.
68 Consumer Financial Protection Bureau, "CFPB Data Point: Payday Lending," CFPB Office of Research, March 2014, 13 and 27, https://files.consumerfinance.gov/f/201403_cfpb_report_payday-lending.pdf.

In order to determine rollovers' supposed harm to consumers, there must first be an evidence-based explanation for *why* consumers roll over their loans. That, in turn, requires explaining why this particular subset of borrowers does not default. Since default is a proxy for financial distress, the fact that borrowers with long loan sequences do not have higher default rates than short-sequence borrowers—in fact, they show lower rates of default—would appear to contradict the 2017 Rule's assertion that long-sequence borrowers are the most harmed by payday loans.

The 2017 Rule states:

> As for the commenters who asserted that default does not affect consumers' credit reports and sometimes does not lead to debt collection efforts, these are marginal matters when compared to the core harms associated with unaffordable loans that end in default.[69]

The notion that the Rule can conclude that these consumers are harmed without first determining why they roll over is flawed, and any conclusions it generates are arbitrary. For example, if these consumers choose not to default because they want to retain access to future payday loans (an alternative explanation that we consider below), then the policy implications associated with that causal explanation are far different from those based on a model that assumes consumers are forced to roll over. Moreover, the results of Mann's study, which figures prominently in the 2017 Rule, suggest that most payday borrowers—including those who take out more than one loan in a sequence—correctly anticipate the number of rollovers on their loan.[70]

Absent an explanation for why borrowers default or roll over, the 2017 Rule lacks credible evidence for a policy that would wipe out two-thirds of payday loans, eradicate 90 percent of vehicle title loans,[71] and deprive millions of consumers of a valuable lifeline to pay rent, medical bills, day care fees, and other important payments.

The 2017 Rule Failed to Consider Alternative Hypotheses that Might Explain Rollover Behavior

The 2017 Rule provides little explanation for both the presence of repeat reborrowing and high default rates within the population of payday loan customers. Specifically, if the cause of reborrowing were the difficulty of default, then 20 percent of borrowers would not be "defaulters."[72] Additionally, if borrowers rolled over their loans because they found themselves caught in an unexpected debt trap, as the 2017 Rule assumes, then most borrowers could not accurately anticipate *ex ante* how long it would take them to repay the loan. Instead of considering different

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[69] 2017 Rule page 54605.
[70] Mann, "Assessing Payday Optimism," 18.
[71] 82 FR 54472, 54817.
[72] Consumer Financial Protection Bureau, "CFPB Data Point: Payday Lending," CFPB Office of Research, March 2014, 26, https://files.consumerfinance.gov/f/201403_cfpb_report_payday-lending.pdf.

hypotheses that might explain the observed evidence, however, the 2017 Rule simply supposes that there must be some *in terrorem* effect that induces consumers to reborrow instead of defaulting.

There are other hypotheses that may be more plausible than those underlying the 2017 Rule. For example, conversations with payday lenders suggest that the primary reason why borrowers reborrow on payday loans is that the consequence of default is a loss of access to future loans from that lender. Although these anecdotal conversations alone are not evidence to support the hypothesis, we urge the Bureau to conduct further research to determine the validity of this hypothesis and not simply ignore it. Given that these loans are effectively a last resort for many customers, losing access to these loans can be quite traumatic. Indeed, the 2017 Rule acknowledged that "storefront payday loan borrowers…generally return to the same store to re-borrow," suggesting that the fear of not being able to return to that lender for future loans could induce borrowers to refrain from defaulting.[73]

In theory, a borrower who defaults on a payday loan from Company A can go down the street and enter into a new loan from Company B. Conversations with industry figures, however, indicate that over time lenders have developed mechanisms to address this opportunistic behavior by borrowers by sharing information about those who default, thereby enabling Company B to gain information from Company A about a borrower's loan performance and refuse to lend funds to a borrower who defaults with another creditor. Many states have made it much easier for lenders to address this information problem by requiring lenders to participate in state-wide databases that provide a clearinghouse of accurate information for lenders. In those states, lenders report, defaulting on a loan to any payday lender in the state effectively shuts off access to loans from *any* lender in the state. This leads many borrowers to roll over their loans instead of defaulting in order to retain access to credit.

Paradoxically, the 2017 Rule's requirement that lenders furnish borrower information to a registered information system (RIS) for loans made under the ATR approach would raise the cost of default for borrowers, making rollovers more attractive. Furthermore, by causing a large decline in the number of payday lenders in the United States, the 2017 Rule specifically contemplates replacing the current industry structure with large geographic monopolies that control most of the payday loan business within a several mile radius.[74] Under current market conditions, the fragmented nature of the market and the difficulty of communication among lenders in a given market may enable borrowers to default on a payday loan taken from one lender without losing access to other local lenders, thereby reducing the consequences of default. Once these competitive conditions are replaced with geographic monopolies, however, a defaulting borrower will have nowhere else to turn, thereby increasing the consequences of default. The 2017 Rule's proposal for a Registered Information System, through which all lenders would be required to conduct their ATR verification, will only magnify this effect.

[73] 82 FR 54472, 54488.
[74] 82 FR 54472, 54817.

If the hypothesis that many borrowers choose not to default for the primary purpose of retaining access to future payday loans is correct, then the Bureau's "dubious" opinion of lenders' claims that they do not pursue aggressive collection actions is all the more misplaced. For borrowers who are already suffering from impaired credit and who have a repeated need for short-term loans, the possibility of losing future access to those loans can harm them significantly. Such a consequence would force them to turn to products such as bank overdraft protection—which, at an average fee of $34 according to Bureau statistics,[75] can be *more* expensive than payday loans or other inferior substitutes such as pawnbrokers.[76]

We hasten to add that the suggestion that many borrowers roll over in order to maintain access to future payday loans is also a hypothesis. Most borrowers who roll over expect to do so from the moment they take out the first loan.[77] Furthermore, it appears that rollovers are partially determined by state-level caps on maximum loan size (as we discuss in the next section). Yet the 2017 Rule gives no serious credence to any alternative hypotheses, referring primarily to unsubstantiated theories drawn from predetermined ideas about lenders and borrowers. Such flawed methodology falls far short of the evidentiary standard needed to support the 2017 Rule. The NPRM is correct to point this out and to note the lack of an adequate factual foundation for the 2017 Rule.

Other Factors Affecting Repeat Borrowing

A separate comment letter filed by Professors Thomas Miller and Todd Zywicki, also notes the 2017 Rule's failure to consider any alternative factors that may explain repeat borrowing.[78] Preliminary results from the authors' ongoing empirical research project indicate that the average number of loans taken out by a borrower is partly a function of state caps on maximum permitted loan size.[79] In other words, borrowers on average take a larger number of loans in states that have lower caps on loan size. As Miller and Zywicki note, the most logical explanation for this observed relationship between maximum loan size and the number of loans per individual borrower is that these consumers are searching for a certain amount of money to meet an urgent financial need (such as $900 for a new water heater or tires), and because they are unable to acquire the necessary amount through one loan, they take out several loans simultaneously or sequentially.

Thus, borrowers in states with low caps on permitted loan size will, on average, have a larger number of loans, even if they borrow the same amount of money and pay the same amount in loan fees. As a result, the 2017 Rule's reliance on the *number* of loans taken in a 12-month period is

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75 82 FR 54472, 54723.

76 Pawnbrokers are inferior because they require parting with personal property at a substantial discount below the replacement value of such property.

77 Mann, "Assessing Payday Optimism," 22-25.

78 See Comment Letter of Professor Thomas Miller, Jr., and Professor Todd J. Zywicki (May 13, 2019).

79 Ibid.

entirely arbitrary and potentially unrelated to any useful measure of consumer welfare. If the objective of the 2017 Rule is to reduce the *number* of loans that borrowers take out, it would be far simpler and more sensible to simply preempt state laws that limit the amount that a borrower can borrow at any given time. Our point is not to urge the Bureau to pursue this option; instead, we seek to illuminate the arbitrary and unfounded nature of the way in which the 2017 Rule measures consumer welfare (that is, by the number of loans taken within a 12-month period) without considering state-specific regulations, such as maximum loan size restrictions, which may be just as important for determining the number of loans a customer obtains.

IV. How the 2017 Rule Harms Borrowers and Consumers

The Rule Would Limit Access for Borrowers Who Benefit from Short-Term Loans

The 2017 Rule is a radical industrial intervention based on shaky foundations—one that would, by the Bureau's own calculations, cause payday loan volumes nationwide to shrink by two-thirds and vehicle title loan volumes to shrink by up to 93 percent.[80] Even granting the questionable assumption that heavy loan use and long loan sequences are harmful to consumers' welfare, the anticipated impact of the 2017 Rule should have raised concerns on its own terms. While 62 percent of payday loans are part of sequences of seven or more loans,[81] there is no guarantee that the expected volume reduction from the 2017 Rule would only, or even mainly, affect those sequences. Instead, since the 2017 Rule would cause a reduction in the number of payday lenders serving all borrowers,[82] the drop in loan volumes would likely affect a cross-section of borrowers, and not just heavy users.

Additionally, the 2017 Rule would change the risk composition of borrowers able to take out short-term loans, which in turn would affect the amount of revenue that lenders received per borrower. As the Bureau has noted in the past, long-sequence borrowers—those who take out more than six loans—account for 90 percent of the fees collected by payday lenders.[83] While the 2017 Rule's explicit intent was to reduce the number of long loan sequences, it is incorrect to suppose that the Rule will have "very little direct cost" to lenders who already offer products consistent with its terms.[84] In fact, the opposite is true: owing to the difficulty of assessing ATR among highly credit-constrained borrowers, along with the size and rollover limits placed on loans that are conditionally exempt from ATR requirements,[85] lenders are likely to adjust their product offerings by raising fees and lending only to the most creditworthy borrowers. As the Bureau notes, much short-

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80 82 FR 54472, 54817.

81 Consumer Financial Protection Bureau, "CFPB Data Point: Payday Lending," CFPB Office of Research, March 2014, 12, https://files.consumerfinance.gov/f/201403_cfpb_report_payday-lending.pdf.

82 The Bureau itself anticipates such a reduction. See 82 FR 54472, 54817.

83 CFPB, "Payday Loans and Deposit Advance Products: A White Paper of Initial Data Findings," April 24, 2013, 22, https://files.consumerfinance.gov/f/201304_cfpb_payday-dap-whitepaper.pdf.

84 82 FR 54472, 54835.

85 Ibid., 54694.

term lending is at prices close to the statutory limit set by states,[86] so there may be little room in most states for lenders to recoup higher underwriting costs through increases in loan fees. That means most of the adjustment would be in the form of a reduced loan supply and a preference for higher-quality borrowers within the applicant pool.

However, there is little reason to believe that the most creditworthy borrowers will benefit the most from access to payday and vehicle title loans. On the contrary, more creditworthy borrowers typically have greater access to credit options. Thus, the 2017 Rule would make lending to many borrowers illegal or unprofitable, reducing access to credit regardless of the welfare effects of such credit on individual borrowers. International evidence concurs with this hypothesis: when the UK Financial Conduct Authority capped interest rates on payday loans in 2015, the ensuing 60 percent plunge in loan originations[87] was accompanied by a decline in the share of low-income borrowers, from 50 percent to 35 percent of loans.[88] Neither of these effects were accurately anticipated by UK regulators.

Flawed Simulations Miscalibrate the Impact of Mandatory Underwriting Provisions on Borrower Access

The Bureau's simulation of the 2017 Rule's impact on the market for short-term lending shows a large discrepancy between lender and consumer outcomes. On one hand, the Bureau estimated that only 6 percent of payday borrowers would be prevented "from initiating a payday borrowing sequence they would have initiated absent the rule,"[89] and that just 5 percent of loans "not part of an existing sequence" would not be issued as a result of the 2017 Rule.[90] On the other hand, the Bureau expected payday loan volumes to shrink by somewhere between 62 percent and 68 percent, and vehicle title loan volumes to decline by somewhere between 89 percent and 93 percent, under the 2017 Rule.[91]

How did the Bureau reconcile this apparent divergence? It is difficult to tell, because the 2017 Rule only cites the estimated reduction in borrower access twice, and never with direct reference to the other market changes that the 2017 Rule would cause.[92] It did note that "most borrowers take out six or fewer loans each year, and are not engaged in long sequences of borrowing." Therefore, they would supposedly not "find their preferred borrowing patterns

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[86] 82 FR 54472, 54834-54835.
[87] Financial Conduct Authority, "High-Cost Credit: Including Review of the High-Cost Short-Term Credit Price Cap," Feedback Statement FS 17/2, July 2017, 10-11, https://www.fca.org.uk/publication/feedback/fs17-02.pdf.
[88] Social Market Foundation, "A Modern Credit Revolution: An Analysis of the Short-Term Credit Market," 2016, 12, https://cfa-uk.co.uk/wp-content/uploads/2016/11/SMF-Report-AKT10796.pdf.
[89] 82 FR 54472, 54815.
[90] Ibid., 54840.
[91] Ibid., 54817.
[92] See ibid., 54815 ("the Bureau's simulations suggest that the rule will only restrict roughly 6 percent of borrowers from initiating a payday borrowing sequence they would have initiated absent the rule") and 54839 ("The Bureau's simulations […] imply that only 5.9 to 6.2 percent of borrowers will be prohibited from initiating a sequence of loans they would have initiated absent the rule.")

interrupted by the rule's requirements and prohibitions."[93] But this assumes that the short-term lending market will not experience structural changes as a result of the 2017 Rule, which is an unrealistic assumption since most of the fee revenue from payday loans currently comes from sequences of more than six loans.[94] Clearly, if lenders altered their fee schedules or the mix of borrowers to whom they are willing to lend in response to the 2017 Rule's Mandatory Underwriting Provisions, even borrowers who currently have sequences of at most six loans may be excluded from the market.

The assumption that the market structure will not change as a result of the 2017 Rule is rendered even more implausible by the Bureau's own estimate that only 33 percent of payday borrowers will be able to satisfy the Mandatory Underwriting Provisions' ATR requirements—a proportion that remains constant for subsequent applications in a loan sequence, so that the share of payday borrowers qualifying for a loan under the ATR decreases exponentially as the loan sequence lengthens.[95] With the bulk of payday borrowers therefore pushed to seek a loan under the conditional exemption—what the Bureau refers to as the "principal step-down approach"[96]—and those borrowers likely to be less creditworthy than average as reflected by their failing the ATR test, lenders will necessarily need to adjust charges or the pool of approved borrowers to be able to lend profitably. That adjustment suggests that the 2017 Rule's estimate of a modest (6 percent) decline in the number of borrowers with access to payday loans is invalid, and that the drop in originations and access to short-term credit would be much greater than what the 2017 Rule suggests.

There is a paradox in the Bureau's simulation of the impact the 2017 Rule's Mandatory Underwriting Provisions would have on borrowers' access. Namely, the Rule justifies itself on behavioral grounds, proceeding from the assumption that borrowers act irrationally when taking out short-term loans, but it does not take account of the Rule's own possible behavioral effects when estimating its impact on the market. Instead, the 2017 Rule assumes that the structure of charges and fees, together with the mix of borrowers to whom lenders will supply credit, will remain unchanged. But the Mandatory Underwriting Provisions will force a drastic change in lenders' fee structures, which, coupled with the ATR requirements, will make it unprofitable to lend to the less creditworthy among the current borrower pool, whether or not they take out more than six loans in a sequence. Thus, the impact of the 2017 Rule on borrower access is likely much greater than the Bureau's simulation suggests, and the increase in loan originations and access to credit as a result of the NPRM will therefore be significantly higher than 5 percent and 6 percent, respectively.[97]

The 2017 Rule is not the first to have dramatically underestimated the impact of regulation on the short-term credit market. When the UK FCA decided to cap payday interest rates, it

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93 Ibid., 54839.
94 CFPB, "A White Paper," 22.
95 82 FR 54472, 54826.
96 Ibid., 54814.
97 84 FR 4252, 4289.

anticipated that loan volume would decline by 11 percent, that the number of borrowers would drop by 21 percent, and that lender revenues would decrease by 42 percent. The actual declines were 56 percent in loan volumes, 53 percent in borrowers, and 73 percent in revenues.[98] This discrepancy suggests that hundreds of thousands of borrowers who benefited from access to short-term loans lost out from the new regulations. We are confident that the Bureau's simulation of the Mandatory Underwriting Provisions' impact similarly understates how many borrowers would lose access to the credit they need.

In addition, the 2017 Rule's analysis fails to recognize that by shrinking the credit supply, it will also substantially reduce the number of competitors in the market. According to the Bureau, under the status quo, the average payday loan consumer lives within five miles of a lender, and under the 2017 Rule most borrowers would only have to travel an additional five miles to obtain a loan.[99] But the analysis fails to consider the likelihood that driving so many payday lenders out of these areas will effectively create monopolistic conditions in many now-competitive markets.

For example, even if the 2017 Rule's analysis is correct, and wiping out one payday loan store would mean that a borrower would only have to travel an additional five miles to obtain a loan from a different lender, the Rule does not consider that the mere presence of *both* stores in a given market may provide competitive conditions that benefit consumers. Replacing competitive conditions with monopolistic conditions could further negatively impact the supply of loans to consumers and the mix of consumers who receive loans.

The 2017 Rule Relies on Flawed Economic Reasoning

In justifying its restrictions on repeat borrowing, the 2017 Rule compares the marginal benefits of taking the first payday loan in a sequence with the *total* costs of all loans in the sequence. This approach is not supported by any method of economic analysis.

It is a foundational principle of economics that in modeling consumer choice, the appropriate method of analysis is to examine the *marginal* benefits and *marginal* costs of a particular action, not the total costs and benefits of a series of actions. As a result, the relevant unit of analysis on which the Bureau should focus its attention is the marginal benefit of each payday loan—the value of, say, two additional weeks of liquidity—compared to the marginal cost of each loan. This method applies regardless of whether a loan is the first, second, fifth, or eighth loan in any given 12-month period. The mere coincidence that the second or fifth loan in a sequence happens to come

[98] Financial Conduct Authority, "High-Cost Credit: Including Review of the High-Cost Short-Term Credit Price Cap," Feedback Statement FS 17/2, July 2017, 11, https://www.fca.org.uk/publication/feedback/fs17-02.pdf; FCA, "Proposals for a price cap on high-cost short-term credit," Consultation Paper CP14/10, July 2014, 6, https://www.fca.org.uk/publication/consultation/cp14-10.pdf; Consumer Finance Association, "Impact of Regulation on High Cost Short Term Credit: Hoe the Functioning of the HCSTC Market Has Evolved," March 2017, 8, https://cfa-uk.co.uk/wp-content/uploads/2017/03/030317-HCSTC-and-market-functioning-Oxera.pdf.
[99] 82 FR 54472, 54599.

immediately after a prior loan, as opposed to a day, week, or month in between, does not change the fundamental calculus—namely, whether the marginal benefit of a short-term loan at a given price exceeds the marginal cost.

Inexplicably, the 2017 Rule presumes that the marginal benefit of the first or sixth loan in a twelve-month period often exceeds the cost, yet the marginal benefit of the seventh or eighth loan in that same period does not exceed the cost. The 2017 Rule does not appreciate that the analysis is identical. Whether a loan happens to be the seventh in a year rather than the sixth is completely irrelevant to determining consumer rationality and welfare. The relevant question is whether the marginal benefit of a loan exceeds the marginal cost of the same loan. Limiting the maximum number of loans that a borrower may take out to six in a year, as the 2017 Rule's Mandatory Underwriting Provisions require, therefore contradicts standard methods of welfare analysis.

In a comment on the 2017 Rule, economists Hal Singer and Kevin Caves write:

> If—as the Bureau concedes—a single, two-week [payday loan] can benefit a Repayer by allowing her to satisfy critical and immediate financial obligations, then by extension so can a second two-week loan offered on the same terms at the first, and a third one after that, and so on. Given the absence of compounding interest on [payday loans], a borrower contemplating a rollover transaction *faces the same tradeoff* as a borrower taking out the first in a sequence of loans: If the benefit of extra the [sic] liquidity exceeds the biweekly interest cost, then the consumer benefits from having access to [payday loan] credit. The accumulated interest cost at that point is a sunk expense, and thus should not enter the decision calculus. While it might make for good rhetoric, a simplistic comparison of cumulative interest payments relative to the principal is economically irrelevant."[100]

The 2017 Rule's erroneous reliance on sunk costs—costs that have already been incurred and therefore should not be part of the decision whether to take out an additional loan—is particularly puzzling in light of the fact that the Rule assumes it is *consumers* who supposedly are acting irrationally by choosing to take out multiple payday loans. Contrary to this reasoning, the value of an additional two weeks of liquidity to a payday loan borrower is unrelated to the number of previous loans that borrower might have taken. Singer and Caves estimate that the cost to consumers who are deprived of payday loans by the 2017 Rule at between $1.8 billion and $2.5 billion.[101]

The faulty method that the 2017 Rule uses to analyze the benefits and costs of payday loans provides further justification for the NPRM's conclusion that the 2017 Rule lacks sufficiently

[100] Singer and Caves, "Re: Docket No. CFPB-2016-0025/RIN 3170-AA40," 22.
[101] Ibid., 38.

"robust and reliable" evidence to support the mandatory underwriting provisions of the 2017 Rule.[102]

The 2017 Rule is particularly preoccupied with the fact that payday lending companies draw much of their lending volume and profit from repeat borrowers.[103] The Bureau had previously found that 90 percent of lenders' fee income comes from loan sequences of seven or more loans.[104] The 2017 Rule observes, "In the markets for covered loans, however, lenders have built a business model that—unbeknownst to borrowers—depends on repeated reborrowing, and thus on the consumer's lack of capacity to repay such loans without needing to reborrow."[105]

Yet despite the great attention that the 2017 Rule pays to it, the mere fact that a disproportionate amount of fee revenue comes from a subset of repeat customers is a *non sequitur* and not relevant in determining whether restricting the ability of these customers to obtain their desired level of credit will improve their overall welfare. The fact that most payday lenders' revenue derives from long-sequence borrowers also tells us nothing about how profitable those borrowers are—that is, how much they bring in after costs—relative to shorter-sequence borrowers. In fact, the Bureau's own data suggest that borrowers' share of fees is roughly proportional to the share of dollars advanced by lenders.[106]

Oddly, the 2017 Rule seems to indicate that the fact that payday lenders rely on repeat customers is problematic on its own terms. This belief is bizarre, like suggesting that short-sequence borrowers get a great deal because they account for 2 only percent of the fees.[107] *Every* retail industry relies on repeat customers for a significant portion of its business—whether a department store, hamburger place, or Amazon.com. In fact, this is the basis for the so-called "80/20 Rule," also known as the "Pareto Principle"—that 20 percent of a company's customers account for 80 percent of its sales.[108]

Retail financial services are no exception to this rule. For example, an analysis of one community bank's deposits found that approximately 15 percent of accounts made up 83 percent of the bank's dollar balances. Similarly, 13 percent of commercial loans accounted for 73 percent of the bank's commercial loan commitments.[109] The 80/20 Rule also holds for bank overdraft customers.[110]

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102 84 FR 4252, 4253.
103 82 FR 54472, 54484.
104 CFPB, "A White Paper," 22.
105 Ibid., 54621.
106 CFPB, "A White Paper," 22.
107 Ibid.
108 *See*, *e.g.*, Perry Marshall, "The 80/20 Rule of Sales: How to Find Your Best Customers, WWW.ENTREPRENEUR.COM (Oct. 9, 2013), https://www.entrepreneur.com/article/229294.
109 *See* G. Michael Flores and Todd J. Zywicki, "Commentary: CFPB Report, Data Point: Checking Account Overdraft" at p. 8 (Sept. 2014), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2499716.
110 Ibid., 8.

Thus, the 2017 Rule's notion that there is something inherently suspicious about payday lenders being disproportionately reliant on the repeat business of a minority of consumers is unfounded.

The 2017 Rule also suggests that the payday loan industry is unique for deriving a substantial amount of its revenue from borrowers who remain in debt for extended periods. But this concern is also misplaced. For example, credit card issuers derive the majority of their revenues from the minority of cardholders who revolve balances from month to month, sometimes for years at a time.[111] Thus, despite the 2017 Rule's implications to the contrary, the idea that the business model of payday lenders "*depends*" (emphasis in original) on repeated reborrowing is no more suspicious than the equally accurate statement that the "business model" of credit cards depends on revolving balances from month to month, or that the business model of mortgage lenders depends on a borrower remaining in debt for 30 years.

The Rule makes a great deal of the fact that some extended borrowers may end up paying more in fees than the original principal they borrowed after several rollovers. But to presume that, say, a $500 loan rolled over seven times is the same as one loan mistakes the function of payday and other short-term loans altogether. Payday borrowers are buying liquidity, two weeks at a time.[112] When they cease to need that liquidity, they repay the loan; while they need it, they pay a biweekly fee. Fees should thus not be examined relative to the initial amount borrowed, but in relation to the total amount of liquidity the borrower has gained over the loan sequence (in the above example, $3,500).

Furthermore, the phenomenon whereby loan costs constitute a large proportion of the principal is common with many other consumer financial products. For example, many consumers with a 30-year fixed rate mortgage will end up paying more in interest payments than in principal. To take one numerical example, if a consumer borrows $100,000 on a 30-year mortgage at a modest rate of interest of 6 percent, that consumer will eventually pay $115,838 in interest. At an interest rate of 10 percent, the consumer will pay $215,925 in interest over the life of the loan. Moreover, this feature is built into the structure of the mortgage loan itself.

Nor is there anything unusual about payday lending companies being particularly concerned about attracting repeat customers. As Aaron Huckstep notes in a 2007 article in the *Fordham Journal of Corporate and Financial Law*, traditional payday loan stores have high fixed costs relative to marginal costs and are thus highly dependent on retail volume. Aside from credit losses, most of the costs of operating payday loan stores are fixed costs such as rent, employee salaries, and the like. Given that speed, convenience, customer service, hours, and location are all important margins on which payday lenders compete for customers, payday lenders are obliged to run many well-staffed stores with long hours of operation. As Huckstep notes, high-fixed-cost industries are characterized by a

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111 *See* Thomas A. Durkin, Gregory Elliehausen, Michael E. Staten, and Todd J. Zywicki, *Consumer Credit and the American Economy* at p. 347, Figure 7.1 (2014).
112 Caves and Singer, "Re: Docket No. CFPB-2016-0025/RIN 3170-AA40," 25.

need to increase volume: "The most successful payday lending stores offset these fixed operating costs by processing a large volume of loans. As the number of loans processed increases, store profitability increases as well. *Therefore, repeat borrowers, the source of a heated policy debate, do not inherently increase a store's profitability—they simply add to the loan volume of a particular store.*"[113]

Despite the high prices of payday loans relative to other credit, there is no evidence that payday loan companies earn economic profits or "rents" once the costs of operations and losses are considered.[114] In fact, because of the volume-oriented nature of the payday loan industry, "new stores are profitable only after several years of operation when loan-origination finally reaches a certain volume."[115] Huckstep, for example, finds that "payday lenders are not overly profitable organizations" falling "far short of profits for mainstream commercial lenders."[116] Indeed, Huckstep concludes that the profits of the payday lending industry are substantially lower than Starbucks.

V. The 2017 Rule's Restrictions on Auto Title Loans Lack an Adequate Factual Basis

Many of the problems discussed above with respect to the 2017 Rule's treatment of payday loans also apply to the Rule's treatment of auto title loans. There are additional considerations unique to auto title loans, however, that further support the NPRM's conclusion that the Mandatory Underwriting Provisions of the 2017 Rule lack a sufficiently robust and reliable factual basis to support them. First, significantly less research has been conducted on auto title loans than on payday loans, making the conclusions of the 2017 Rule's analysis inherently weaker in this regard than its conclusions on payday loans.

The Bureau should therefore be particularly cautious before taking steps that would dramatically reduce access to auto title loans. Consumers who rely on auto title loans typically have even fewer choices among credit products than those who use payday loans, primarily because auto title borrowers, like pawn shop customers, are more likely to be unbanked than payday loan customers.[117] In addition, auto title loans are typically non-recourse loans, which limits the liability of the borrower to the lender.[118]

Of particular importance is the 2017 Rule's discussion of repossession of cars upon default. Estimates of repossession rates vary by source and type of measurement, but the 2017 Rule

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[113] Aaron Huckstep, "Payday Lending: Do Outrageous Prices Necessarily Mean Outrageous Profits?" 12 *Fordham Journal of Corporate and Financial Law* 202, at p. 222 (2007) (italics added).
[114] *See* Mark Flannery & Katherine Samolyk, "Payday Lending: Do the Costs Justify the Price?" FDIC Center for Financial Research Working Paper No. 2005-09 (June 2005); Paige Skiba & Jeremy Tobacman, "The Profitability of Payday Loans," Working Paper (Dec. 7, 2006).
[115] Huckstep at p. 222.
[116] Huckstep at p. 227.
[117] Todd J. Zywicki, "Consumer Use and Government Regulation of Title Pledge Lending," 22 *Loyola consumer Law Review* 425 (2010).
[118] Thomas W. Miller, Jr., *How Do Small-Dollar, Nonbank Loans Work?* (Mercatus Center at George Mason University, 2019), 34-35.

estimated that 3 percent of all single-payment vehicle title loans lead to repossession and 20 percent of auto loan sequences end in repossession.[119] Most research has found repossession rates to be much lower than the 2017 Rule's estimates, however.[120] As the 2017 Rule acknowledged, only a minority of auto title borrowers pledge the title to their only operating vehicle, and only a very small percentage of auto title borrowers ever end up losing ownership of their only source of transportation to work as a result of its repossession post-default.[121] But the 2017 Rule adds, "Even those with a second vehicle or the ability to get rides from friends or take public transportation would presumably experience significant inconvenience or even hardship from the loss of a vehicle."[122]

It is undoubtedly true that a consumer who loses a vehicle to an auto title lender will suffer inconvenience and hardship. But this partial analysis ignores the fact that *not* being able to pledge one's vehicle can *also* result in hardship. For example, according to survey research by Fritzdixon, Hawkins, and Skiba, 17 percent of those who take out an auto title loan report that they are doing so while having their own car repaired.[123] Thus, the title pawn loan itself might be for the car requiring repairs, without which the car would become inoperative. While engaging in an auto title loan involves the borrower's risking the loss of the car, the borrower may also risk losing use of their car altogether if they cannot engage in an auto title loan.

For example, in a survey of Houston title loan consumers, Jim Hawkins found that 8.57 percent of respondents reported that, if they could not obtain an auto title loan, they would have to sell their car in order to raise necessary funds. This figure is comparable to most studies' estimates on the percentage of consumers who lose their car to foreclosure.[124] Hawkins' findings drew from a small sample, but they raise the possibility that, by depriving consumers of the option of pawning their car as collateral for a loan with a small possibility of repossession, the 2017 Rule could force consumers to sell their car instead. Nowhere, however, does the 2017 Rule consider the possibility of this perverse result.

VI. Behavioral Law and Economics Has Not Been Empirically Vindicated

The 2017 Rule also lacks a robust and reliable basis for the behavioral economics on which its conclusions rely. For example, the 2017 Rule includes an extensive discussion of various alleged

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[119] 82 FR 54472, 54573 and 54555.
[120] Jim Hawkins, "Credit On Wheels: The Law and Business of Auto-Title Lending," 69 *Washington & Lee Law Review* 535, at 565 Table 2 (2012); *see also* Kate Berry, "CFPB Data on Auto Title Loans is Flawed, Academics Say," *American Banker* vol. 181 Issue F368 at p. 1 (May 27, 2016).
[121] 82 FR 54472, 54574.
[122] 2017 Rule at p. 54839.
[123] Kathryn Fritzdixon, Jim Hawkins, and Paige Marta Skiba, "Dude, Where's My Car Title?: The Law, Behavior, and Economics of Title Lending Markets," 2014 *University of Illinois Law Review* 1013, at 1036, Table 7 (2014).
[124] Jim Hawkins, "Credit on Wheels: The Law and Business of Auto-Title Lending," 69 *Washington & Lee Law Review* 535, at 591 Table 5 (2012).

biases and psychological errors, such as "tunneling and "optimism bias,"[125] to explain why some consumers repeatedly take out payday loans.

Yet behavioral economics hypotheses have not always been empirically vindicated. For example, cognitive biases such as over-optimism are cited to explain various aspects of consumer credit card use, but they have been rejected upon testing—especially the belief that consumers systematically underestimate their ability to resolve their month-to-month debt.[126]

The Bureau is not unaware of the doubts surrounding behavioral theories of consumer financial behavior. As the 2017 Rule states:

> Although some commenters criticized this approach as "novel" and relying too heavily on behavioral economics, the Bureau has no reason to believe that these theories and methodologies are particularly unconventional at this point of their development in the field of economics.[127]

However, the problem is not that behavioral economics is "novel." It is that behavioral hypotheses have been rejected in many applications to consumer credit, including consumer behavior with respect to payday loans.[128] As one consumer credit expert formerly on the Bureau's Consumer Advisory Board writes, "[l]inks between behavioral biases, equilibrium contracts, and consumer debt levels are intriguing but remain largely speculative."[129]

The 2017 Rule's application of behavioral biases to auto title loans has similar problems. The sole source that the Bureau uses to validate its behavioral economics claims is the article by Fritzdixon, Hawkins, and Skiba, cited earlier. As the Bureau notes, the authors of the study claim that "the entire population of borrowers was slightly optimistic, on average, in their predictions."[130] But it seems that the authors overlooked that the consumers in their sample are almost as likely to under-estimate their chances of early repayment as to over-estimate them. Indeed, their data appear to show that the borrowers' errors were unbiased, similar to Professor Mann's data on consumer payday loan estimates, discussed earlier.

The authors' conclusions are based on Table 9 from their article (reproduced below with simplified labels):

Table 9: Prediction of Months to Completely Pay Off the Loan

	Borrowers' Predictions	Actual Usage
	Percentage	Percentage

[125] 82 FR 54472, 54568-54571.
[126] *See* Thomas A. Durkin, Gregory Elliehausen, and Todd J. Zywicki, "An Assessment of Behavioral Law and Economics Contentions and What We Know Empirically About Credit Card Use by Consumers," 22 *Supreme Court Economic Review* 1 (2014).
[127] 82 FR 54472, 54617.
[128] Ronald Mann, "Assessing the Optimism of Payday Loan Borrowers," 21 *Supreme Court Economic Review* 105 (2014).
[129] Zinman, "Too Much or Too Little?," 227.
[130] 82 FR 54472, 54568.

1 month	20.13%	27.00%
2-3 months	37.58%	24.00%
4-5 months	14.09%	13.00%
6+ months	28.19%	36.00%
Total	100%	100%

Reviewing this evidence, the authors conclude:

> The percentage of people in our sample who thought they would pay the loan off in two to three months is higher than the general usage data would imply, and the percentage of people in our sample who thought it would take six or more months to pay off the loan is too low compared to the general usage data. This leads us to believe that people may be overly optimistic about their ability to repay.[131]

While this summary is correct as far as it goes, it is still incomplete. Although it is true that a total of 7 percent of borrowers who predicted repayment in 2 to 3 months took longer to repay than they expected (4–5 months or 6+ months), the authors failed to note that approximately the same number of borrowers paid off the loans sooner than they predicted. As the table shows, 20 percent of borrowers predicted that they would pay off their loan in 1 month, yet 27 percent did so. This number is virtually identical to the number of consumers who took longer than expected—that is, more than 2 to 3 months—to pay off their loan. The fact that these errors are unsystematically biased throws into question the argument in the 2017 Rule that borrowers are persistently over-optimistic.[132]

The 2017 Rule's references to "tunneling" are similarly misplaced. The Rule argues that consumers can be subject to "tunneling" when they make decisions under conditions of crisis or stress, such as financial distress leading up to a payday loan. Yet as the 2017 Rule acknowledges, payday loan customers search extensively for credit before finally deciding to take out a payday loan.[133] Moreover, empirical evidence suggests that consumers who take out payday loans do so in a manner consistent with the predicted behavior of a rational consumer seeking to minimize costs under their particular choice constraints.[134]

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[131] Fritzdixon, Hawkins, and Skiba, "Dude, Where's My Car Title?," 1042.

[132] As one of us (Zywicki) has argued elsewhere, one possible explanation for this is that the researchers themselves labor under the cognitive biases that they attribute to others—in this case, the "confirmation" bias, which might have misled the researchers into looking for only the evidence of over-optimism by auto title loan borrowers and to ignore the symmetrical evidence of under-optimism. See Zywicki, "The Behavioral Economics of Behavioral Law and Economics," 440-441.

[133] Neil Bhutta et al., "Payday Loan Choices and Consequences," 47 J. of Money, Credit and Banking 223 (2015).

[134] Brian T. Melzer & Donald P. Morgan, Competition and Adverse Selection in a Consumer Loan Market: The Curious Case of Overdraft vs. Payday Credit 1–2 (Dec. 2, 2009) (unpublished manuscript), available at http://www.clevelandfed.org/research/conferences/2010/9-9-2010_ household-finance/melzer_morgan_2_16_2010.pdf.

The 2017 Rule ignores non-behavioral yet well-founded explanations for consumer behavior in using payday loans and other alternative credit products.[135] Some consumers are credit-rationed yet still face a high demand for consumer credit. Consumers with a high demand for credit and high credit risk may find insufficient levels of mainstream credit available to satisfy their demand. In such circumstances, these consumers will turn to alternative credit products, such as payday lenders or pawnbrokers, to satisfy this unmet demand. Economic theory predicts that consumer demand for these loans will be highly inelastic. Thus, one would expect these consumers to be relatively unresponsive to price competition and willing to accept loans at a higher price than non-rationed borrowers. .[136] Juster and Shay's model of the use of high-cost, small-dollar lending by credit constrained borrowers thus provides a theoretically robust and empirically-validated neoclassical explanation for consumer use of payday loans and other similar products.[137] Not all explanations for why borrowers might be willing to pay a high price for emergency credit are behavioral.

It should also be noted that consumers who use alternative lending products not only have lower credit scores than consumers who use mainstream products (such as credit cards) but also that they tend to be younger in age, as younger consumers typically have higher-than-average credit needs and a short credit history. As these consumers age and acquire assets, a credit history, and a higher income, their need for alternative credit tends to decline. As a result, many users of alternative credit tend to age out of those products and shift to more mainstream credit products as they qualify for better credit products.[138] This is an example of the life-cycle of credit, but not of a "debt trap" persistently holding back borrowers.

VII. Why the Bureau Should Rescind the Payday Rule's Payment Provisions

The Bureau's concern in the 2017 Rule was that repeated attempts by lenders to withdraw funds from borrowers' accounts were causing borrowers to incur overdraft or non-sufficient funds (NSF) fees, each of which average $34.[139] The Bureau also noted then that payday lenders had much higher rates of returned payment attempts than other industries.[140] However, payday lenders are typically dealing with very credit-constrained and illiquid borrowers, so it should not be a surprise that they have "outlier return rates."[141] Similarly, the Bureau's finding that account closures are more prevalent after NSF events related to payday loans than to other payment attempts is likely a matter of correlation rather than causation: payday borrowers are less profitable bank customers than

[135] *See* Thomas F. Juster and Robert P. Shay, *Consumer Sensitivity to Finance Rates: An Empirical and Analytical Investigation*, NBER Occasional Paper 88 (1964). See also discussion in Durkin, Elliehausen, Staten, and Zywicki, at pp. 109-123.
[136] Ibid.
[137] *See* Durkin, Elliehausen, Staten, and Zywicki, Consumer Credit and the American Economy, at pp. 113-123 (discussing Juster-Shay model and empirical tests of the model).
[138] Durkin, Elliehausen, Staten, and Zywicki at Chapter 8.
[139] Ibid., 54723.
[140] Ibid., 54724-54725.
[141] Ibid., 54724.

others since they maintain lower average account balances, use fewer products besides their bank account, and pose a greater credit risk than other bank customers.

In the 2017 Rule, the Bureau estimated that "only 7 [percent] to 10 percent of the payments attempted through the ACH system came after two failed payments requests."[142] The Rule stated that these were "high-end estimates" of the impact that the Payment Provisions would have on lenders' ability to collect from borrowers, as lenders could still seek payment "by engaging in other lawful collection practices."[143] The Rule did not give examples of what other practices lenders might follow to collect on the funds owed them, nor did it tally the costs to lenders of their inability to initiate additional withdrawal attempts against the benefits to consumers in the form of lower overdraft and NSF fees. Instead, the Rule estimated the revenue losses to lenders from failing to seek payment after the second attempt—between $55 and $219 per borrower—and the savings to consumers from not incurring additional overdraft or NSF fees at between $64 and $87.[144] This cost-benefit analysis is incomplete, however, because it does not account for the impact the 2017 Rule would have on lenders' collection costs. Nor does it account for the impact that the Payment Provisions might have on borrower access to credit.

Indeed, the 2017 Rule's analysis of the impact of its Payment Provisions suffers from the same behavioral naivety discussed above regarding the Rule's Mandatory Underwriting Requirements. To wit, the analysis assumes that lenders will continue to serve borrowers as they currently do under the 2017 Rule's limits on payment withdrawal attempts. But there are no grounds to warrant such optimism. Even granting the Bureau's estimate that "only" 7 percent to 10 percent of payments attempted came after two previous attempts, more than that share of borrowers may react strategically after the introduction of the Payment Provisions, knowing that lenders cannot initiate new withdrawals after the first two attempts. Anticipating such behavior from some borrowers, lenders will restrict their lending to that subset of borrowers from whom they can expect to collect. Thus, many more loans than is suggested by the Bureau's 7 percent to 10 percent estimate are likely to be affected by the 2017 Rule's Payment Provisions. These Provisions may actually cause the market to shrink considerably if lenders expect that the Provisions will make collection more difficult.

The concerns that the 2017 Rule cited to justify the Payment Provisions—that lenders' collection practices cause borrowers to incur large amounts of overdraft and NSF fees—relate to the interaction between the short-term lenders covered by the rule and the banks at which borrowers hold their accounts. The Payment Provisions may reduce the number of occasions in which borrowers incur bank fees, but they do not by any means assure that borrowers will be better off than under the status quo. Indeed, the loss of access to short-term credit that the Payment

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142 Ibid., 54847.
143 Ibid.
144 CFPB, "Supplemental Findings on Payday, Payday Installment, and Vehicle Title Loans, and Deposit Advance Products," June 2016, 150. https://files.consumerfinance.gov/f/documents/Supplemental_Report_060116.pdf

Provisions may cause due to greater rationing by lenders could more than offset the benefits to a fraction of the affected borrowers from lower bank fees.

Instead of risking a reduction in access to credit, the Bureau should study how such access can be preserved while reducing the bank fees incurred by borrowers due to repeated collection attempts by lenders. Any regulatory changes should consider the market as a whole – short-term lenders as well as banks – to avoid causing undue disruption to credit access and access to banking services. Payment withdrawal practices should be addressed under the Bureau's authority under EFTA and Regulation E, not through arbitrary payment provisions on only some of the institutions that the Bureau regulates. Furthermore, the Bureau should evaluate whether private standards-setting organizations, such as NACHA,[145] are better able to address the problems it has identified, since they are more aware of the second-order effects from restricting debt collectors' ability to attempt payment withdrawals.

VIII. Conclusion

The Bureau's 2017 Rule, if it went into full effect as written, would dramatically transform the market for short-term loans in the United States, causing millions of highly credit-constrained borrowers to lose access to liquidity with which to address emergencies and income volatility. The Bureau is correct that "the key evidentiary grounds relied upon in the 2017 Rule were insufficiently robust and reliable to support the findings of an unfair and abusive practice"[146] and to justify a regulation that would have shrunk the payday loan market by up to 68 percent and the vehicle title loan market up to 93 percent.

The 2017 Rule does not conclusively demonstrate the existence of a market failure in short-term lending. It does not propose a convincing explanation for why borrowers roll over their loans, and why rollovers are harmful to their welfare. The Rule relies on unrealistic assumptions about consumer credit markets to arrive at the questionable forecast that few if any borrowers who currently benefit from short-term loans would lose access to such credit after the implementation of the 2017 Rule. The Rule does not present well-grounded motivations and its sanguine expectation of the market impact are not convincingly supported by evidence and sound economic theory.

Therefore, the Bureau is right to rescind the Mandatory Underwriting Provisions of the 2017 Rule. It should go further and rescind the Rule's Payment Provisions, too. The experience of the 2017 Rule confirms what economists have known for a long time—namely, that restricting output in an industry can rarely if ever benefit consumers.[147] As the Bureau continues to explore ways to

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[145] NACHA is an industry association the administrator of the automated clearinghouse (ACH) payments network, which processed 23 billion transactions worth $51.2 trillion in 2018. See https://www.nacha.org/content/network-statistics.
[146] 84 FR 4252, 4268.
[147] Singer and Caves, "Re: Docket No. CFPB-2016-0025/RIN 3170-AA40," 14.

improve consumer well-being in the market for small-dollar loans, it should keep the expansion of choice and competition—not their restriction—at the center of its rulemaking initiatives.