COMMENT OF

CENTER FOR RESPONSIBLE LENDING

NATIONAL CONSUMER LAW CENTER (ON BEHALF OF ITS LOW-INCOME CLIENTS)

CONSUMER FEDERATION OF AMERICA

THE LEADERSHIP CONFERENCE ON CIVIL AND HUMAN RIGHTS

NAACP

NATIONAL COUNCIL OF LA RAZA

ON

BUREAU OF CONSUMER FINANCIAL PROTECTION

REQUEST FOR INFORMATION ON PAYDAY LOANS, VEHICLE TITLE LOANS, INSTALLMENT LOANS AND OPEN-END LINES OF CREDIT

DOCKET NUMBER CFPB-2016-0026

RIN 3170-AA40

NOVEMBER 7, 2016

Thank you for the opportunity to provide information on additional potential consumer protection issues presented by loans both covered and not covered by the proposed payday lending rule. As evidenced in this comment, there remain significant consumer protection concerns in these lending markets. We are pleased that the Bureau is seeking additional information regarding the consumer protection issues related to these products and practices.

> ***1. Is there a viable business model in extending high-cost, non-covered loans for terms longer than 45 days without regard to the borrower's ability to repay the loan as scheduled? If so, what are the essential characteristics of this business model or models and what consumer protection concerns, if any, are associated with such practices. For instance:***
>
> ***a. Are there non-covered loan products with particular payment structures that make it viable for a lender to extend loans without regard to the consumer's ability to repay?***
>
> ***b. Are there non-covered loan products with security or possessory interests in products or documents other than the consumer's vehicle (and without leveraged access to the consumer's transaction account) that make it viable for a lender to extend loans without regard to the consumer's ability to repay?***
>
> ***c. Are there particular collections practices that make it viable for lenders to make high-cost, non-covered loans without regard to the consumer's ability to repay?***
>
> ***d. Are there other loan features or practices that make it viable for lenders to extend loans without regard to the consumer's ability to repay?***
>
> ***e. To the extent there are loans made in categories a through d, how prevalent are such practices? How easy is it for consumers to find and obtain such services? To what extent are these loans leading to injury to consumers? To what extent are consumers aware of the costs and risks of such loans?***
>
> ***f. Are there changes in technology or the market that make such practices more likely to develop in the future?***

<u>Overview</u>

Lenders can and do make non-covered loans without regard to the borrower's ability to repay as scheduled, and doing so can be highly profitable. In particular, high-cost loans provide a significant disincentive against lending based on ability to repay, even absent a coercive repayment mechanism or security. When rates are high, lenders can profit despite significant defaults and can even make profits on loans that default.[1]

We urge the Bureau to use its enforcement authority without delay to address unfair and abusive practices related to lending without regard to ability to repay in the high-cost lending

[1] *See* Lauren Saunders et al., National Consumer Law Center (NCLC), *Misaligned Incentives: Why High-Rate Lenders Want Borrowers Who Will Default* (July 2016), available at http://www.nclc.org/issues/misaligned-incentives.html (hereafter *Misaligned Incentives*).

market generally, including the typical practice of serial refinancing in the consumer finance market.

We are also concerned about other products and practices that already in the market and are not covered under the Concurrent Proposal as currently constructed, and which have significant consumer protection concerns. These concerns include:

- High rate loans without vehicle titles or payment devices and installment loans made without ability to repay consideration, including:
    - Loans secured by personal property;
    - Loans made through "live check" marketing;
    - Lenders that rely on aggressive debt collection or other tactics rather than access the borrower's bank account.
- Purchase money loans on sales of overpriced items and without consideration of ability to repay.
- Loans made through other exemptions from the Concurrent Proposal, including prepaid card lines of credit and other credit cards, and other exemptions.
- Marketplace loans, even though the rates are generally under 36%.

In our comments on the Concurrent Proposal,[2] we summarized our concerns about the harms and dangers caused by high-cost longer-term loans. Those same concerns apply to the non-covered high-cost loans discussed in these comments:

- Longer term loans tend to be larger than short-term loans and put consumers deeper in debt.
- Longer-term loans are, by definition, longer, and can result in a longer high-cost debt trap.
- Larger and/or longer loans can mean higher overall costs taken from the budgets of struggling families.
- The high interest rates on longer-term loans compound when the loan is delinquent or defaults.
- A longer, multi-payment loan means longer exposure to the harms of a repeatedly-used leveraged payment device.

High-cost loans with especially long terms (i.e., more than six months), pose additional harms and dangers, whether they are covered loans or non-covered loans:

[2] Comment of the Center for Responsible Lending, Consumer Federation of America and National Consumer Law Center (on behalf of its low-income clients), found at: http://www.responsiblelending.org/sites/default/files/nodes/files/research-publication/crl_payday_comment_oct2016.pdf (hereafter *CRL/CFA/NCLC Comment*).

- The longer the loan term, the greater the likelihood of significant income or expense volatility that may inhibit the borrower's ability to repay.
- Larger and longer loans are more likely to have payments for many months that cumulatively exceed the loan amount and yet do not significantly reduce the loan balance.
- Loans with terms longer than six months are more likely to default.
- The longer the term of the loan, the greater the likelihood that the consumer will, at some point, become delinquent and suffer from aggressive debt collection practices.
- Longer loan terms increase the chance of other collateral consequences of unaffordable payments.
- Longer loan terms increase misaligned incentives because there is a higher possibility that the lender will recover the loan amount, and maybe a profit, even if the consumer eventually defaults.
- Small loans with disproportionately long terms put consumers in an extended debt trap with potential harm that likely outweighs the possible benefit.
    a. Small loans with long loan terms have an especially high potential for profitable defaults and weak underwriting.[3]

In our comment on the Concurrent Proposal, we provide extensive discussion of concerns that the rule will not cover certain abusive practices in covered loans, and we refer you to those discussions in the comment.

b. Are there non-covered loan products with particular payment structures that make it viable for a lender to extend loans without regard to the consumer's ability to repay?

High rates alone can permit lender profitability even when the consumer lacks ability to repay. In addition, several different payment structures can enhance the lender's ability to profitably extend loans without regard to the consumer's ability to repay.

Interest-only payments

Loans with interest-only payments can increase the chance that a borrower will make a profit on the loan despite the consumer's inability to repay the loan in full. With interest-only payments, the lender is more likely to recover the full loan -- and potentially a profit -- early in the term of the loan before the consumer makes substantial progress repaying. For example, Big Picture Loans, an online lender using a tribal model, offers $1,000 loans with 44 biweekly payments (over 20 months).[4] The first five payments of $350 are interest-only. The lender recovers more than the entire loan after only three payments on a 44-payment loan, even

[3] *Id.* at 32.
[4] See *Big Picture Loans Rates*, available at https://www.bigpictureloans.com/loan-rates.

though the borrower has not repaid a single penny of principal. Interest-only payments also exacerbate the problems of loan-flipping, discussed below.

In response to the Bureau's question regarding consumers' ability to protect themselves, consumers are unable to protect themselves from certain loan features, like an interest-only repayment structure, for a number of reasons. These include financial distress, which the Bureau recognizes in the Concurrent Proposal creates a number of circumstances that can make consumers unable to reasonably avoid significant harm. In addition, interest-only loans defeat borrowers' reasonable expectation that payments make meaningful progress toward principal. The following examples were pulled from the Bureau's complaint database:

- "I took a $500.00 personal loan with a company called Insta Loan …. When i looked at my balance it never decreased it only increased each time i made a payment. [A man in the office] told me that these kinds of loans are not set up for you to get out of, and that i 'll be making endless payments for years."

- "She took out a $3000.00 installment loan…. Paid [$4800.00] to the lender. However, only $700.00 of that has actually gone toward her principle and she still has an outstanding debt of $2100.00. At times there was not enough money in her bank account to cover those payments and she accrued about $200.00 in overdraft fees."

- "Niece took out loan with Castle Payday [for $800.00]… [Payments] were made to Castle Payday, for a total of $1100.00 …. They told me that all the payments I made were for interest, and that I still owed $1300.00."

Loans with interest-only payments are discussed at greater length in response to Question 12.

Small loans with excessively long terms

Another business model that can be viable despite unaffordability and high default rates is making small loans with excessively long terms. For example, Speedy Cash has an 18-month $300 loan with biweekly payments of $49.61.[5] As the National Consumer Law Center noted in its report, small, high-rate loans with excessively long terms may also become more common as the CFPB focuses on balloon-payment payday loans and adopts stricter underwriting requirements that push lenders toward installment loans.[6] This different structure is still, in effect, the same as a payday loan with built-in rollovers. For example, instead of a $300 two-week payday loan with $45 rollover payments, payday lenders could design a $500, 2-year loan with $45 biweekly payments and 231% interest. It would take only about 6 months on the 2-

[5] See *Missouri Rates & Terms*, available at https://www.speedycash.com/rates-and-terms/missouri/.
[6] *Misaligned Incentives* at 12-13.

year loan for the lender to recover the principal, and after one year of payments totaling $1,170, the lender would recover more than twice the original loan amount while reducing the customer's balance by less than $50.

While some of these loans will rely on leveraged payment mechanisms and thus be covered under the payday proposal, it may be possible for lenders to rely on aggressive debt collections, security interests in personal property, lawsuits and wage garnishments, or other means to make these loans despite weak underwriting. When the loans are small but the term is long, the lender only needs to receive a few payments – far short of full payment – to recover the loan. It takes only 7 of the 39 payments for Speedy Cash to recover the loan amount. The hypothetical $500 2-year loan above needs to collect 7 out of 52 payments to get the principal back. Thus, lenders may be able to drop the leveraged payment mechanisms and still have a viable business model on unaffordable loans.

Loans with slowly amortizing payments are discussed at greater length in response to Question 12.

High rates over a longer term

Longer-term loans with high interest rates can also have the same impact as interest-only loans. Higher interest rates mean that, due to the nature of amortization, a borrower pays little of the loan principal until late in the loan term. The lender simply needs to keep the borrower in the loan long enough to recover costs and generate sufficient profit before the borrower defaults. As a result, a lender can recoup the principal lent, the costs associated with the loan, and collect sufficient profit without the loan being paid to term. These loans are discussed at greater length in response to Question 12.

> ***c. Are there non-covered loan products with security or possessory interests in products or documents other than the consumer's vehicle (and without leveraged access to the consumer's transaction account) that make it viable for a lender to extend loans without regard to the consumer's ability to repay?***

Interest in Personal Property

Many installment lenders take a security or possessory interest in personal property, which would not be covered under the Concurrent Proposal as written. Installment lenders also take security interests in motor vehicles, and, if the all-in APR these lenders charge exceed 36%, then these lenders may shift to relying more on taking a security interest in personal property instead to evade coverage under the Concurrent Proposal. Loans secured by personal property provide lenders coercive leverage similar to checking account or vehicle title access. These loans can be very high cost and the model can be driven by costly renewals at the expense of ability-to-repay.

Lenders take an interest in personal property to use as leverage to convince a borrower to pay or to refinance into a new loan. The property rarely has any value as security for the lender, but has tremendous significance to the consumer. Lenders are clear that they do not intend to take the collateral, but the psychological impact of facing the threat of losing one's possessions is a powerful collections tool, and one that is easily abused. In some cases, depending on what personal property the lender requires to be listed, the lender may be violating the Credit Practices Rule. And, as loans secured by personal property fall outside of the Concurrent Proposal, we can expect that lenders will look to this practice as an alternative to access to the borrower's bank account.

For instance, World Acceptance Corporation states, in SEC filings:

> "Substantially all new customers are required to submit a listing of personal property that will serve as collateral to secure the loan, but the Company does not rely on the value of such collateral in the loan approval process and generally does not perfect its security interest in that collateral. Accordingly, if the customer were to default in the repayment of the loan, the Company may not be able to recover the outstanding loan balance by resorting to the sale of collateral."[7]

Regional Management states similar practices in its filings: "[O]ur small installment loans, which are typically secured by unperfected interests in personal property…."[8]

OneMain is another company that relies on security interests in personal property or vehicles for many of its loans. OneMain Financial and Springleaf Financial merged earlier this year and now do business under the OneMain umbrella.

Although OneMain's nominal interest rates are generally 36% or lower, OneMain aggressively markets credit insurance through its captive subsidiaries. The addition of credit insurance pushes the full cost of the loans above 36%. (Credit insurance is more fully discussed in response to Questions 17 through 19 below.) OneMain does not generally take a leveraged

---

[7] World Acceptance Corporation 10-K, at 8, found at: http://www.worldacceptance.com/investors/filings/?qm_page=9986. Depending on the type of property listed, this may be a violation of the FTC's Credit Practices Rule and an unfair, deceptive or abusive practice under the Consumer Financial Protection Act.

[8] Regional Management Corporation, *United States Securities and Exchange Commission form 10-K* (February 2016), at 26, available at: http://www.regionalmanagement.com/phoenix.zhtml?c=246622&p=irol-sec&secCat01Enhanced.1_rs=31&secCat01Enhanced.1_rc=10&control_searchbox=&control_selectgroup=0.

payment mechanism and thus avoids coverage under the Concurrent Proposal.[9] OneMain relies on security interests in personal property, aggressive debt collection tactics, and in person communications through its storefront locations.

Prior to its merger with OneMain, Springleaf noted the importance of collateral: "The possible loss of the collateral creates a strong incentive for the borrower to repay the personal loan." [10]

Requiring consumers to provide a list of personal property is not only an effective tool to convince the borrower to repay, but it also provides the opportunity for the lender to sell credit property insurance, for which the lender earns a commission.

The Federal Trade Commission noted in the Federal Register notice for the Credit Practices Rule, promulgated in 1984, the power of security interests in personal property:

> "In this proceeding, a large majority of industry witnesses confirmed that household goods have little, if any, economic value to creditors. Their value to creditors is psychological, as noted in the testimony of Helmut Schmidt, Vice Chairman of Transamerica Financial Corporation:
>
> *There are two very important values to the furniture. One is the replacement value, the other is psychological, that may enhance sentimental values in heirlooms being provided and the negative of price, the loss thereof if a repossession takes place, et cetera. I couldn't possibly say whether replacement value or pride is the more important.*
>
> The record reflects the fact that creditors rarely engage in actual repossession of household goods. When it does occur, the furniture and other items seized frequently have little or no economic value; occasionally, the act of seizure appears to be undertaken for punitive or psychological deterrent effect.
>
> Although seizure of household goods is rare, when it occurs it can have severe economic consequences. It may occur in the context of divorce, where a wife finds herself financially devastated and deprived of her personal belonging, or without baby furniture, or a refrigerator. Repossessed furniture may be taken to the dump or auctioned for a tiny fraction of its replacement value. For the debtor, the replacement value is a true measure of the cost of the repossession. Thus seizure often imposes a

---

[9] OneMain has an online lending platform called iLoan, through which it solicits borrowers for loans. Borrowers who obtain a loan through the iLoan platform and who live near a branch are encouraged to close the loan in a branch. This shows that, while OneMain will accept ACH payments, it prefers to have consumers interact with the branch. See: http://www.snl.com/interactive/newlookandfeel/4405478/2015AnnualReport.pdf at 18.

[10] SFLT 2015-B Private Placement Memorandum, March 2015, http://files.shareholder.com/downloads/AMDA-28PMI5/3643368980x0x814024/9a099512-d40d-425c-8784-877688a3e32c/SFT_2015-A_BLACK_as_printed_.PDF.

> cost on the consumer which is seriously disproportionate to any benefit the creditor obtains.
>
> In the context of seizure the disproportionate economic impact of non-purchase money security interests is most apparent. Debtors lose property which is of great value to them and little value to the creditor. The value to debtors consists primarily of the replacement cost of the goods seized, together with psychological and emotional value. The debtor is, in an economic sense, willing to pay more for the household goods than they are ever worth to the creditor on the resale market. Although creditors are entitled to payment, such security interests offer little economic return to creditors at great cost to the debtor.
>
> When consumers run into difficulty, the non-purchase money security interest in household goods also enables a creditor to threaten the loss of all personal property located in the home. This psychological lever, referred to over and over again in this proceeding, together with the cost to the consumer of replacing the security, gives this remedy its value to the creditor.
>
> The preponderance of evidence on the record supports our finding that despite the limited economic value of household goods, creditors rely on the psychological lever to seek payment and to persuade consumers to take other actions the creditors may deem appropriate, such as refinancing or obtaining a cosigner.
>
> *If in your discussion with the applicant you find that certain articles have a sentimental value because of the fact that they are family heirlooms or gifts, make a note of this on your appraisal for future use.*"[11]

The FTC's findings from 1984 ring true today. The Credit Practices Rule protects a limited set of possessions that did not contemplate the potential value of certain items commonplace today. The Credit Practices Rule prohibits taking security interests in clothing, furniture, appliances, one radio and one television, linens, china, crockery, kitchenware, and personal effects (including wedding rings) of the consumer and his or her dependents. The Rule does not cover computers, cell phones or other electronics, antiques, jewelry, or art.[12] As such, the Rule would not cover a computer that children in the family rely on to do homework, or a simple heirloom of great personal value but which falls under the definition of antique. Because the Rule has not been updated to adequately reflect the value of today's commonplace possessions, the CFPB should, at a minimum, ensure that any high-cost non purchase-money loan secured by a non-possessory interest in personal property is subject to a reasonable ability-to-repay determination.

---

[11] *Trade Regulation Rule; Credit Practices*, 49 Fed. Reg. 7740 (Mar. 1, 1984), at 7763.

[12] 16 C.F.R. §444.1 (2016).

State data shows the heavy, and we would argue inappropriate, reliance installment lenders place on security interests in personal property. The most recent Consumer Finance Annual Report from the North Carolina Commissioner of Banks shows that of the 528,479 loans made by licensed consumer finance lenders in 2014, 246,968 (or 47%) were secured by personal property and an additional 155,593 were secured by a motor vehicle.[13] These lenders included credit property insurance on 360,096 of those loans totaling $22,704,518 in premiums.[14] Lenders also rarely reported repossession of collateral. In 2014, lenders reported repossessing the collateral on 2,536 loans with a total amount outstanding of $7,674,652, compared to 41,923 loans totaling $96,120,202 that were charged-off during 2014.[15]

Further, data on loans from New Mexico suggest that personal property is being used to leverage payment and to drive churning of unaffordable high-cost loans. In 2013, there were over 92,000 loans with APRs averaging over 175% secured by property other than vehicle titles. Over half of the loans were under $5,000.[16] On nearly a third (32%) of these loans, the principal and interest were not repaid in full, and 35% of loans were renewed, refinanced, or extended—indicating that borrowers lacked the ability to repay on a substantial portion of loans. Yet the property was repossessed or foreclosed on in only 128 loans, suggesting that the security is being used to coerce repayment.[17]

***Non-covered loans with leveraged payment mechanisms*.**

Another type of security interest that facilitates a viable business model for unaffordable loans is the same one described in the Concurrent Proposal – high rates plus a leveraged payment mechanism or vehicle title. In some cases, we expect that the leveraged payment mechanism or vehicle title will be obtained more than 72 hours after the entire disbursement of funds. In other cases, lenders will find a way to steer borrowers into adding credit insurance more than 72 hours after disbursement (i.e., in exchange for waiving a late fee), belatedly bringing the rate above 36%. We also have concerns about whether leveraged payment mechanisms are being used to bolster inadequate underwriting on some marketplace loans that have rates below 36%. Marketplace loans are discussed in response to Question 20.

---

[13] North Carolina Commissioner of Banks, *Consumer Finance Annual Report*, 2014, at 15, available at http://www.nccob.org/Public/docs/Financial%20Institutions/Consumer%20Finance/2014_Annual_Report.pdf.
[14] *Id* at 16.
[15] *Id.*
[16] The average loan amount was $4,542. See Cynthia Richards, New Mexico Regulation and Licensing Department, Financial Institutions Division, *Memorandum regarding annual report installment loan products with APR greater than 175%* (October 1, 2014), available at http://www.rld.state.nm.us/uploads/files/FID%202013%20HB337%20Reports.pdf

[17] For more information on the harm these loans cause, see Letter from New Mexico Fair Lending Coalition to CFPB, Nov. 3, 2015, urging coverage of loans secured by personal property.

As noted in our Concurrent Proposal comment, the 72-hour approach is insufficient to prevent foreseeable evasion. Instead, the payday rule should (1) include loans with a leveraged payment mechanism regardless of when authorization is obtained, which for practical purposes means the lender must either perform an ability-to-repay determination upfront or be prohibited from obtaining payment authorization later; and (2) prevent adding ancillary products or obtaining a vehicle title after the disbursement of funds. In the alternative, the Bureau should provide that any portfolio for which recurring payment authorization is obtained for more than 25% of loans per quarter becomes subject to the scope on a going-forward basis, for all loans within the portfolio.

We are already aware of lenders that are planning to obtain leveraged payment mechanisms after 72 hours to evade coverage.

d. Are there particular collections practices that make it viable for lenders to make high-cost, non-covered loans without regard to the consumer's ability to repay?

As the CFPB is well aware, the debt collection system in the United States is fundamentally broken. Both collectors and creditors collecting their own debts are harassing and abusing consumers to collect unpaid debts. Abusive debt collection practices continue to be pervasive because they work: creditors and collectors using these tactics can coerce consumers into paying debts they cannot afford ahead of other necessities.

Aggressive debt collection tactics support and enable lending programs that do not sufficiently consider borrowers' ability to repay their loans. Sometimes these tactics supplement other means to coerce unaffordable payments, such as preauthorized payments, and sometimes they are the primary means to collect from borrowers who cannot afford their loans.

Collection efforts by high-cost lenders often begin with a series of form letters and then graduate to phone calls from collection employees. The industry's technological capabilities, along with the perverse incentives it provides its employees, ensure that these calls are frequent and often abusive. In particular, the collection employee is often eligible for salary incentives based on the amount he or she collects. Collectors often use automated dialing systems that will place a million calls per day.

Some lenders also resort to calls to employers, references, friends and families, or to the borrower at his or her workplace, in an effort to bully payments. Intimidating in-person visits are also becoming more common.

Many people find it enormously stressful to receive multiple collection calls every day.[18] The

[18] Courts have found that repeated calls can state a claim for harassment. See, e.g., Rucker v. Nationwide Credit, Inc., 2011 WL 25300 (E.D. Cal. Jan. 5, 2011) (approximately 80 phone calls in one year); Krapf v. Nationwide Credit,

calls are highly intrusive. They cause great distress and trigger difficulties in marriages. Multiple collection calls interfere with daily life. The calls themselves, the dread of future calls, and the fear of the dissemination of personal, embarrassing information to friends, neighbors, co-workers and employers permeate the lives of consumers. Indeed, in some cases, aggressive collection efforts have caused such significant emotional distress as to cause physical illness.[19]

Lenders may threaten a wide variety of consequences if the consumer does not pay – from lawsuits, attorneys' fees, wage garnishment and even criminal action – even if the lender does not intend to take those actions.

Below are examples where lenders have used aggressive debt collection tactics:

World Acceptance

World Acceptance, discussed above, relies on aggressive debt collection tactics rather than a leveraged payment mechanism to compensate for weak underwriting. These are just a few of the many complaints in the CFPB's database:

- Im XXXX and i can no longer pay the loan at this time. I have told the loan company this and yet they still call my fiance, go to my work place and even call my mothers boyfriends workplace where i occasionally work to fill in for some one daily. It is harrasing me that they continue to call and show up at his work place and even call my fiance while he is at work trying to get him to pay the loan. (Complaint # 1514784)

- … This company also caused me alot of grief and stress as they would call my job to my BOSS'S DESK PHONE ... ..ALL.DAY.LONG! Even after he asked them to stop calling they still called and almost caused me to get fired. The called my MOTHER and scared her as well and she doesnt even live in this state asking her for my wherabouts! They even came in person to my house and were yelling at me in front of my kids…. These people scared myself, my kids and jeopardized my job! These people should be ashamed and should be taken out of business. (Complaint #1407623)

- World Acceptance Corporation called my boss 's PERSONAL CELL PHONE trying to reach me. He asked them how they got his number, and the person replied that it was printed

---

Inc., 2010 WL 2025323 (C.D. Cal. May 21, 2010) (four to eight calls daily for two months); Turman v. Central Billing Bureau, Inc., 568 P.2d 1382 (Or. 1977) (at least four calls over nine days).

[19] *See, e.g.,* Margita v. Diamond Mortgage Corp., 406 N.W.2d 268 (Mich. Ct. App. 1987) (stress from telephone collection efforts including phone calls aggravated paroxysmal atrial tachycardia); Turman v. Central Billing Bureau, Inc., 568 P.2d 1382 (Or. 1977) (affirming tort verdict; blind consumer rehospitalized with anxiety and glaucoma complications after repeated collection calls); GreenPoint Credit Corp. v. Perez, 75 S.W.3d 40 (Tex. App. 2002) (affirming jury verdict of $5 million in compensatory damages against debt collector; elderly consumer suffered severe shingles-related sores, anxiety, nausea, and elevated blood pressure due to repeated telephone and in-person harassment over a debt she did not owe).

on my paycheck stub. ABSOLUTE LIE. We would never print ANY personal cellular numbers on our paystubs. They must have done some digging to find out who owns the company I work for…. (Complaint #1565273)

- …The company had also contacted my place of employment after both I and a manager asked them not too seeing it was my place of work, they also have contacted a few of my referrals trying to get a hold of me even after I told them to stop calling my work cause I was no longer employed there, possibly one of the reasons why I was let go. I have also told them to stop calling me EVERY DAY sometimes multiple times a day they would call because I do not have any income or help that I would be able to pay them, I told them when I get money you will get it. They have left messages after messages on my machine and one unfortunately my husband deleted due to him being upset they were still calling but in that one they were trying to get me to call them back saying they had me down as a "reference '' which I know was a lie cause nobody I know would get a loan thru them. (Complaint #1838534)

<u>Mariner Finance</u>

Mariner Finance makes loans based on live checks and also makes high-cost loans online and at storefront locations. (Live checks are discussed below.) The following examples of debt collection harassment are taken from the CFPB's complaint database:

- I spoke with the company and let them know I had been severed from my job in XXXX. They said they understood and would work with me. I paid small payments, but then when I was unable to pay in XXXX they began calling me twice a day on weekdays and once a day on the weekend. Then, today they called one of my references. I was two months behind and they became very predatory and made me feel harassed. when I spoke with them today, they claimed they did not have record that I was unemployed and had recieved severance although they admited to sending me the necessary documentation for it. I told them I was contacting CFPB and they said that would turn me over to legal if I did not make a payment by XXXX XXXX. I made a {$200.00} payment, but felt a lot of pressure after their threatening legal and wage garnishment on me. I can provide more documentation (call logs on my cell phone, my reference contacting me about them calling her, and the paperwork they sent to me when I was unemployed). This is predatory and unfair. (Complaint #2133004).

- My significant other passed away. Before he passed, we took out a loan with Mariner Finance. Since his passing, this loan along with others have fallen behind. I have taken on all bills and have finally hit a wall not being able to pay my rent at all as well as these bills ontime. However, with the other places I have told of my situation and thwy put me on a hardship plan to help become current again. Mariner Finance threatened me with court attorney fees up to {$1000.00} and garnishment of my bank account if I do n't become current by the XXXX of XXXX. I told them that I will do my best to pay towards what I owe but I have n't paid rent yet because of my hardship. Which I am trying to fix before this month 's end. The fact that thwy will not work with me to get current is very upsetting. I am behind {$280.00} with Mariner Finance. They say that by the XXXX I will become sued for court costs attorney costs as well as garnishment which will put me in a perfect poverish state of being. I have a XXXX XXXX XXXX daughter and can not be put out on the street because of added on court fees. Everything is being paid I just need a plan with them to catch up. I 'm fighting my way back ... with everyone but I need a give qith this company (Complaint # 2019552).

- Sometime XXXX XXXX, I secured a {$1000.00} loan from Mariner Finance in XXXX MD. In addition to the original loan, I also opted to pay for the supplemental insurance (Unemployment) should (unfortunately) this should occur. Due to unforeseen circumstances, I fell behind on 1 payment which prompted numerous and repeated phone calls to both my cell, home, and work. Each time-especially work, not to contact me here for phone calls are monitored by security. The company refused to adhere to my wishes and continued to repeatedly call my job which placed my employment in jeopardy. On XXXX XXXX, XXXX, I lost my job due to downsize-at least that is what I was told…. (Complaint # 1926132)

- I have been unable to make payments due to my decrease in income as of XXXX 2014. However, there are actually several of these " loan shark '' companies in town that I unfortunately became involved with to do business when I had been low on money in the past. It is a nightmare to even try and pay XXXX off because they always entice you to re-borrow. And once I tell them I am unable to pay anything at the time it is due they continue to ask questions of when, or cant you borrow from someone, and then proceed to call daily. They call my cell phone, which is part of my business, they call my professional business office where I am a XXXX and have sessions with my clients. They have even came to my office, came to my home, where my husband 's XXXX is located, and then even proceeded to contact me on my private social media via messenger. (XXXX) They call everyone on my initial application and harasses them as well. I even asked them not to call or even let my husband have knowledge that I was applying for a loan as he would be angry. However, they violated my confidentiality and even proceeded to come to my home, and spoke with my husband on XXXX occasions that I know of. NIGHTMARE!

<u>One Main</u>

As discussed above, One Main and the company it acquired, Springleaf, make loans that may fall outside the payday loan rule because the loans are not secured by a leveraged payment mechanism or vehicle title. The CFPB's complaint database contains over 100 complaints against One Main. Just a few of the complaints that describe debt collection tactics include:

- Repeated harassing voice mails with veiled threats. Calling and harassing references. Call from district manager saying I should get a lawyer. In XXXX 2015 I had fallen behind because I was in the hospital 8 days with XXXX. I was getting calls while I was in the hospital…. My experience last year, convinced me that One Main uses this to encourage you to call but the agenda is to try and pressure and harass you until you make an immediate payment. I assume this strong arm tactic is used by this type of lender in an attempt to reduce the percentage of loan defaults. I also suspect based on the number and the harassing nature of the calls, it must be tied to an incentive bonus. However, it does n't excuse their tactics and excuse them from the fair loan practices that they are bound by. When a district manager leaves a call saying he has your file and your employer information and suggesting you call a lawyer was the last straw. I am sure they are well schooled on what constitutes a threat but that is a matter of legal semantics. A veiled threat is not the same as a direct threat, but their protocol does violate the process. (Complaint # 1805728)

- I AM SUBMITTING THIS COMPLAINT TODAY AGAINST THE SPRINGLEAF FINANCIAL SERVICES COLLECTION AGENCY. My account # - XXXX 1). SPRINGLEAF financial services collection agency threatened me today, XXXX XXXX, 2016 at approximately XXXX XXXX for past due loan repayment in the amount of {$160.00}. 2). SPRINGLEAF FINANCIAL SERVICES HAVE CONSTANTLY HARASSED ME FOR A DEBT OWED TO THEM IN THE AMOUNT OF {$160.00} for 1 month payment past due. They have been excessively calling me XXXX - 6 times a day. And, sending me numerous letters and emails for just 1 month past due payment in the amount of {$160.00} 3). I attempted to contact SPRINGLEAF FINANCIAL COLLECTION DEPARTMENT TODAY BECAUSE I COULD NOT TAKE THE HARASSMENT AND THREATS ANY LONGER. But nothing was resolved because SPRINGLEAF REFUSE TO DO A DEFERMENT, PROMISE TO PAY OR EVEN TRY TO BE A LITTLE COMPROMISING DUE TO MY CURRENT FINANCIAL HARDSHIP SITUATION AS I HAVE REPEATEDLY INFORMED THEM OVER AND OVER AGAIN. THEY ARE VIOLATING SO MANY CONSUMER PROTECTION LAWS AND SHOULD BE FINED AND STOPPED. (Complaint # 2061847)

- I have had a hardship and I am unable to pay my debts at this time. I have notified all of my creditors, all have complied with the do not contact request except for Onemain Financial, XXXX. I have sent them numerous requests to stop contacting me, especially at my place of employment. They are calling no less than 5 times a day! They are sending letters to my home, my husband, my place of employment and calling my cell phone relentlessly. This must stop. I have told them my situation however they refuse to stop harassing me! (Complaint # 1769740)

<u>CashCall</u>

Recent cases brought against CashCall, an Internet-based high-cost installment loan lender, illustrates the profitable and abusive nature of creditors' collection tactics. The court found that there were a total of 292 CashCall borrowers in West Virginia – some of whom were never in default on their loans. Yet CashCall made 84,371 calls to these borrowers – an average of 289 calls per borrower, and likely far higher for those who were late or defaulted.[20] Some excerpts from the court's opinion on CashCall's collection practices include:

- All of the State's representative consumer witnesses testified that CashCall contacted them repeatedly and continuously at home, at work, on their cell phones, and at times or places that CashCall knew, or should have known, were inconvenient. The Court notes with particular concern that CashCall continued to contact the consumers at work after they unequivocally asked CashCall to stop.[21]

- CashCall admitted that 10-20 calls per day, and 1,000 calls over several months, were not unusual or unreasonable.[22]

CashCall plans for high default rates[23] and thus employs a lot of people to work in the collections department. For CashCall, the cost of this collections apparatus equals 10% of each loan.[24] According to its Director of Collections, CashCall has employed hundreds of employees in its servicing section – otherwise known as collections.[25] At some point, as many as 1,200 employees were focusing on collections work in two offices, one in Las Vegas, Nevada, and the other in Anaheim, California.[26]

CashCall's debt collectors are required to place hundreds of calls every day to delinquent borrowers. As one example, the collectors working in the group dealing with borrowers who are 30 days delinquent are required to make 190 calls to borrowers every day.[27]

The collectors are incentivized through bonus systems to obtain promises to pay by borrowers, and then to collect the dollars promised. [28] They also receive bonuses based on the number of payment plans entered into with borrowers.[29]

---

[20] State of West Virginia *ex rel.* Darrell V. McGraw, Jr., Attorney General v. CashCall, Inc. and J. Paul Reddam, in his capacity as president and CEO of CashCall, Inc. *Final Order on Phase I of Trial: The State's Debt Collection Claims*, Sept. 10, 2012, at 24 (number of calls) and 49 (number of consumers).
[21] *Id.* at 43. A number of callers received over 1,000 calls from CashCall attempting to collect from them.
[22] *Id.* at 50.
[23] *See* NCLC, *Misaligned Incentives* at 16-17.
[24] Expert Report of Margot Saunders at 15, Attachment 2 to Declaration of Arthur D. Levy in Support of Response to Motion for Summary Judgment on Unconscionability Claim filed by Eduardo De La Torre, Lori Saysourivong, De La Torre v. CashCall, Inc., Case # 3:08-cv-03174-MEJ (N.D. Cal. filed Oct. 21, 2013) ("M. Saunders CashCall Report").
[25] *Id.* (citing Deposition of Stephen B. Klopstock, Mar. 17, 2010, at 20-24 ("Klopstock Depo.").
[26] M. Saunders CashCall Report at 15 (citing Klopstock Depo. at 19).
[27] *Id.* (citing Klopstock Depo. at 94).
[28] *Id.* (citing Klopstock Depo. at 113-17).
[29] *Id.*

CashCall requires collectors to push customers with delinquent payments to make their payments using MoneyGram.[30] Every time a customer uses MoneyGram to make a payment, there is an additional $6.50 or $6.95 fee. This fee is in addition to the late fees imposed by CashCall. CashCall's insistence to borrowers that they use a payment method that imposes an additional fee may be in violation of the rules in the California Finance Lenders Law, which strictly limit the fees to those specifically named in the Act.[31]

Borrowers whose loans were written off by CashCall were the subject of a special team of collectors who focused efforts on squeezing more payments from them.[32] Their forceful methods resulted in payments from about 13% of these borrowers – 7,442 of the borrowers whose loans were written off.[33]

Numerous borrower complaints have been made to CashCall's regulator in California, the Department of Corporations, as well as to the Attorney General's office and the Better Business Bureau. Many of the complaints protest CashCall's rough collection practices, including:

- "Now that I can't make the payments they call my cell phone and work saying that they are going to call the cops on me and they are leaving message with my works voicemail about this issue where my co-workers can hear."[34]

- "This company would harass me all day long, morning and night regardless of time. Didn't stop calling even after I requested. They would automatically take money from my bank account even when I told them not to. I had to change my bank account number and cell number in order for the calls to stop."[35]

- "I receive over 10 calls a day starting on the 1st and not ending until I make my payment. Rude messages are left on my phone and constant emails. This company pries into your very personal business to get an answer from you. I was lied to about the terms of my loan and interest rate. I became ill for a short period of time and alerted them that a payment would be late and I was belittled and barraged with question after question for over 20 minutes until I just gave up and hung up the phone. . . . I would like the

---

[30] *Id.* at 8 (citing CashCall's New Hire Module 2, Training Manual, Def # 0213).
[31] Cal. Fin. Code § 22306.
[32] M. Saunders CashCall Report at 16 (citing Deposition of Delbert Orien Meeks, III, June 13, 2013, at 128).
[33] M. Saunders CashCall Report at 16 (Amended Response to Interrogatory No. 33 states that 57,907 class members' loans were charged off, and 50,465 of these borrowers "made no further loan payments after charge-off.").
[34] *Id.* (citing Complaint to California Department of Corporations, 6/16/2011. CashCall # 023313).
[35] *Id.* (citing Complaint to California Better Business Bureau, unknown date. CashCall # 0233374).

harassing phone calls to stop, and to have my interest rate lowered and payment amount reduced."[36]

As discussed later, lenders frequently resort to using wage garnishment and court proceedings to collect on delinquent loans. And, as discussed earlier, taking security interests in personal property or automobiles provide significant leverage over borrowers in addition to normal debt collection practices.

e. Are there other loan features or practices that make it viable for lenders to extend loans without regard to the consumer's ability to repay?

Live checks are used to trap consumers in unaffordable loans with minimal underwriting.

Live checks are marketing materials for lenders in which a borrower is mailed a check that can be cashed at a bank or the lender's office. The checks are easy to cash – in most cases the checks can simply be deposited at the borrower's local bank branch. By signing the check, the borrower is obligated to pay the loan under the terms disclosed in the mailing. Live checks involve little underwriting – the lender likely does not know the borrower's financial circumstances beyond his or her credit score range.

For example, Regional Management Corporation is the holding company for an installment lending company that does business through 331 branches in nine states. Regional uses live checks extensively; as noted below, 16.8% of the company's loans were through "convenience" checks. The rates on these loans vary depending on the state. The term is up to 36 months on loans less than $2,500 and 18-60 months on larger loans.

However, as the company notes in its recent annual SEC filing, the company cannot fully underwrite live check loans, which has led to higher levels of default with those loans:

> *"A significant portion of our growth in our small installment loans has been achieved through our direct mail campaigns, which involve mailing to pre-screened recipients 'convenience checks', which customers can sign and cash or deposit, thereby agreeing to the terms of the loan, which are disclosed on the front and back of the check and in the accompanying disclosures. We use convenience checks to seed new branch openings and attract new customers and those with better credit in our geographic footprint. In 2014 and 2015, loans initiated through convenience checks represented 18.8% and 16.8%, respectively, of the value of our originated loans. We expect that convenience checks will continue to represent a meaningful portion of our small installment loan originations in the*

[36] *Id.* (citing Complaint to California Attorney General's Office, October, 2011. CashCall # 023523).

future. There are several risks associated with the use of convenience checks, including the following:

- *it is more difficult to maintain sound underwriting standards with convenience check customers, and these customers have historically presented a higher risk of default than customers that originate loans in our branches, as we do not meet convenience check customers prior to soliciting them and extending a loan to them, and we may not be able to verify certain elements of their financial condition, including their current employment status or life circumstances;*

- *we rely on credit information from a third-party credit bureau that is more limited than a full credit report to pre-screen potential convenience check recipients, which may not be as effective or may be inaccurate or outdated;…*

For example, in 2014 we experienced a convenience check credit quality deterioration in our direct mail campaigns. We responded to these issues by hiring a Chief Risk Officer and other personnel focused on credit risk management, establishing a Credit Committee to oversee direct mail campaign underwriting and origination processes, implementing additional policies and internal control procedures related to the audit of direct mail campaign files, and improving upon early-stage delinquency reporting and communication. Despite these efforts, we may experience future issues relating to our credit checks and other processes associated with our direct mail strategy. Our expected increase in the use of convenience checks will further increase our exposure to, and the magnitude of, these risks."[37]

For Regional, "convenience check" loans are their second-highest yielding loan product.[38]

World Acceptance, in its most recent annual report, announced that it planned to begin using live checks as a marketing tool, stating:

> "We launched our first-ever live check offering in Tennessee with tremendous enthusiasm and support from our associates in that state. This has proved to be a great success, with response rates five times that of even our usual pre-approval mailings, and the credit score ranges of the responders have been in line with our expectations. We now intend to expand this program both in Tennessee and other states, while improving the modelling (*sic)* that supports our marketing decisions with each campaign. This live

[37] Regional Management Corporation, *United States Securities and Exchange Commission form 10-K* (February 2016), at 26, available at: http://www.regionalmanagement.com/phoenix.zhtml?c=246622&p=irol-sec&secCat01Enhanced.1_rs=31&secCat01Enhanced.1_rc=10&control_searchbox=&control_selectgroup=0.
[38] *Id.*at 58.

check product has been offered in the marketplace for many years by our competitors, so we are successfully 'playing catch-up' in this marketing channel."[39]

A 2009 Illinois study by the Woodstock Institute found that lines of credit solicited through live checks represented 13 percent of the installment loan market.[40] The study also found that these credit lines had principal balances larger than high-cost installment loans and charged a lower rate of interest. Loan amounts for lines of credit solicited through live checks ranged from $2,000 to $7,500, with a median principal of $5,000. In a sample of court filings involving these credit lines, 59 percent of cases resulted in ex-parte default judgments. Interest rates ranged from 20 percent to 50 percent, and 98 percent of loans carried interest rates less than 36 percent APR. The typical borrower of a check-solicited line of credit was a female (57 percent) earning a median net salary of $27,036.

Live checks may also result in identity theft, as indicated in the following two complaints about Mariner Finance in the CFPB's database:

- "In XXXX 2016 I received a letter in the mail from Mariner Finance thanking me for opening an account. I did not open an account with them so I immediately called the number on the letter and left a message stating as such. I did this twice with no response. A week or so later I received a call from Mariner Finance asking me if I wanted to set up online payments. I told them I never opened an account with them and they said that they sent me a (NOT requested) live check in the mail and someone must have cashed it in my name. It has now been months upon months and this issue has not been resolved. I have filed a police report and given them their needed information and still nothing. In the meantime they are reporting that I am late on payments effectively destroying my credit. I will be pursuing legal action if this is not resolved and corrected immediately. After doing research online I have found they are not XXXX accredited and they write 'check inside! open immediately!' on these checks they send out to unsuspecting people putting them at risk for identity theft. This is unethical and unacceptable business practices that need to be corrected." (Complaint # 2163550, 10/20/2016).

- "Upon reviewing my XXXX Credit Report, I came across an account for an unsecured loan, I do not recognize from XXXX/XXXX/2009. It states paid with a XXXX balance and current." (Complaint # 1855053, 3/29/2016).

---

[39] https://www.loansbyworld.com/wp-content/uploads/2016/09/2016-World-Acceptance-Annual-Report.pdf at 4.
[40] Feltner, Thomas, and Sarah Duda. *Beyond Payday Loans: Consumer Installment Lending in Illinois.* Chicago, IL: Woodstock Institute, March 2009. http://www.woodstockinst.org/sites/default/files/attachments/beyondpaydayloans_march2009_feltnerduda_0.pdf at pg. 8.

We can expect that as more lenders enter the installment lending market, the use of live checks will continue to expand.

Refinancing

As discussed at length in our payday loan comments, refinancing of installment loans can bolster a business model based on unaffordable loans. Refinancing simultaneously helps lenders deal with a consumer who is having trouble making a payment while also extending the term of the loan and increasing the likelihood that the lender will collect enough payments to make a profit even if the borrower eventually defaults.[41] Without strengthening, the proposed payday rule is likely to permit serial refinancings of longer-term loans that compound and mask the borrower's inability to afford the loan. Weak treatment of refinancings also seriously undermines the rule that lenders must ensure that borrowers have enough residual income to cover basic expenses, and are able to weather non-catastrophic income dips and expense shocks over the course of the loan, without reborrowing.

Refinancing is also problem with loans that are not covered by the payday rule. Lenders that rely on high refinancing rates include World Acceptance and OneMain. Refinancing is discussed in response to Question 9 below.

Retail Purchase Loans

Retail purchase loans are close-ended loans used to finance a retail purchase. Typically, financing is arranged at the point of purchase, but funded and serviced by a third-party lender. Inflated prices of goods are a common problem in this market, resulting in deceptively low interest rates and, at times, evasion of state usury rates. These loans also may be made to borrowers with very low incomes with questionable underwriting. While the loans may be secured by the item sold, they can also result in collection actions.

Similar retail purchase loans also exist for electronics, along with furniture and other household items. In the cases below, lenders advertised low interest rates but instead inflated the prices of the goods. This use of inflated prices as hidden interest has attracted enforcement activity, including from the Bureau. The Bureau should require an assessment of ability to repay for retail purchase loans regardless of the nominal interest rate, especially when the goods are sold at inflated prices.

For example, Rome Finance, a sales finance company, routinely inflated purchase prices to hide the total cost of borrowing. In 2014, the Bureau and 13 Attorneys General issued an enforcement action against Rome Finance's parent companies Colfax Capital Corporation and Culver Capital, LLC.[42]

---

[41] *CRL/CFA/NCLC Comment* at 189-205.

[42] "CFPB and 13 State Attorneys General Obtain About $92 Million in Debt Relief for Servicemembers Harmed by Predatory Lending Scheme." Consumer Financial Protection Bureau, July 29, 2014.

Rome Finance targeted service members and consumers with finance offers for products such as computers and televisions – often requiring no down payment and disclosing a low interest rate. However, the CFPB and state attorneys general found that Rome Finance had inflated the initial cost of the products and shrouded the true cost of borrowing. Thus, service members and consumers paid higher interest rates than were disclosed and these higher interest rates violated the interest rate restrictions of many states. Rome Finance also deceived consumers by attempting to collect payments on loans that were in violation of some state laws.

The enforcement action permanently barred Rome Finance from further lending activity and required that the company provide approximately $92 million in debt relief to approximately 17,000 consumers with outstanding loans. Rome Finance was also required to compensate service members and consumers for hidden, inflated interest charges.

Another problematic retail installment seller, which is now out of business, was USA Discounters, later renamed USA Living. USA Discounters operated locations exclusively near military bases and offered loans secured by allotment without a credit check or consideration of a borrower's ability to repay.

Complaints posted on complaint websites typically claimed that products are over-priced and that extras are expensive. For example, a consumer complained that USA Discounters priced a Nintendo Wii video game system at $500 while the price elsewhere was $199.[43] A Compaq Presario computer sold at USA Discounter for around $3,000 but cost $458 at Office Depot, per another complaint.[44] USA Discounters charged $250 for credit protection and $262 for an extended warranty, per a consumer who noted, "Beware of their antics – low 5.99% simple interest (true) but they super inflate their prices." In that complaint, the store is said to charge $2,399 to $2,599 for a Sony VAIO computer that lists for $699 on Amazon.[45]

CFA analysis of price inflation confirmed these complaints. CFA surveyed eight products offered at a USA Discounters location operated outside Fort Bragg in Fayetteville, North Carolina, in March 2014.   By comparing the prices for three television sets, three refrigerators and a washer and dryer to the manufactured recommended price, CFA found that that the

---

http://www.consumerfinance.gov/newsroom/cfpb-and-13-state-attorneys-general-obtain-about-92-million-in-debt-relief-for-servicemembers-harmed-by-predatory-lending-scheme/.

[43] https://usa-discounters.pissedconsumer.com/usa-discounters-buyer-beware-20100526183549.html as referenced in Fox, Jean Ann. "The Military Lending Act Five Years Later: Impact on Servicemembers, the High-Cost Small Dollar Loan Market, and the Campaign against Predatory Lending." Washington, DC: Consumer Federation of America, May 2012. http://www.consumerfed.org/pdfs/Studies.MilitaryLendingAct.5.29.12.pdf.

[44] http://usa-discounters.pissedconsumer.com/over-charges-for-items-20080611123816.html

[45] www.ripoffreport.co/loans/usa-discounters/usa-discounters-beware-disc-4cce7.htm

company, on average, increased the cash purchase price by 65%, dramatically increasing the total cost of borrowing even with an ostensibly low annual percentage rate.[46]

Citing lower sales, regulatory scrutiny and adverse media coverage, USA Discounters closed its last store in 2015 and filed for bankruptcy protection.[47]

A 2009 Illinois study by the Woodstock Institute found high-cost retail furniture loans represented 11 percent of the installment loan market.[48] Loan principals ranged from $556 to $8,757, with a median principal of $1,508. The interest rate ranged from 15 percent to 49 percent, with a median interest rate of 29 percent. We do not know if the sales prices of these loans were inflated but we suspect that they were. Retail purchase terms ranged from five months to six years, with a median term of two years and an average monthly payment of $120. The median net income for borrowers taking out retail purchase loans was $19,626. Retail purchase loans contained the largest number of loans taken out by borrowers living in lower-income communities (60 percent) and communities of color (78 percent).

Although these loans may have been secured by the furniture, lenders still sought court judgements rather than simply repossessing the collateral. In the Woodstock Institute sample of court filings, 44 percent of cases involving furniture loans resulted in ex-parte default judgments.

While enforcement activity against Rome and USA Discounters has resulted in those companies leaving the market, we suspect that the problems found there were not unique. We urge the Bureau to continue monitoring the retail installment loan market for problems, and to cover all high-cost loans by ability-to-repay rules.

Prepaid card overdraft lines of credit and other "credit cards"

The proposed payday loan rule excludes credit cards, even if the total cost of credit is far above 36% and even if repayment is secured by a leveraged payment mechanism or vehicle title. As discussed in our payday comments, however, the definition of "credit card" is far too broad.[49] Payday lenders could design "credit cards" that bear no resemblance to traditional credit cards.

---

[46] Pricing records on file with Consumer Federation of America

[47] Kiel, Paul. "Company That Sued Soldiers Closes Its Stores." *ProPublica*, August 14, 2015. https://www.propublica.org/article/company-that-sued-soldiers-closes-its-stores.

[48] Feltner, Thomas, and Sarah Duda. "Beyond Payday Loans: Consumer Installment Lending in Illinois." Chicago, IL: Woodstock Institute, March 2009. http://www.woodstockinst.org/sites/default/files/attachments/beyondpaydayloans_march2009_feltnerduda_0.pdf at pg. 8.

[49] *CRL/CFA/NCLC Comment* at 64-66.

The CFPB may have reasoned that credit cards are already covered by an ability to repay requirement. However, the minimal requirements for credit cards are insufficient to protect borrowers with lower profiles, especially if rates are high.[50]

In addition, the new prepaid card rules that the Bureau just finalized expand the definition of "credit card" to include overdraft lines of credit that are accessed through a prepaid card. While we welcome the protections that this expanded definition brings, they will not be enough to protect vulnerable borrowers if payday lenders develop high-cost prepaid card overdraft credit lines. Many payday lenders sell prepaid cards,[51] and a growing number of financially vulnerable consumers use a prepaid card as their primary account. Payday lender prepaid cards are specially designed not to be truly prepaid and instead to permit payday lenders to secure repayment of high-cost loans from the card.[52] Thus, it is quite possible that payday lenders will evade the payday rules by designing new high-cost credit lines that can be accessed by overdrafting a prepaid card.

We urge the CFPB to cover high-cost credit cards under the payday loan rule. If the Bureau declines to do so, it should adopt similar protections through a new rulemaking.

Other exclusions from the payday loan rule

We also urge the Bureau to monitor, tighten up or eliminate other exemptions from the payday loan rule for pawn loans, overdraft lines of credit, and private education loans.[53] If these exemptions are retained, the Bureau should watch closely to ensure that these exemptions are not used to evade the payday rule and to make unaffordable loans without regard to ability to repay.

f. To the extent there are loans made in categories a through d, how prevalent are such practices? How easy is it for consumers to find and obtain such services? To what extent are these loans leading to injury to consumers? To what extent are consumers aware of the costs and risks of such loans?

We have discussed these issues in previous sections.

g. Are there changes in technology or the market that make such practices more likely to develop in the future?

[50] *Id.*
[51] Lauren Saunders, NCLC, Payday Lender Prepaid Cards (July 2015), http://www.nclc.org/issues/payday-lender-prepaid-cards.html (NCLC, Payday Lender Prepaid Cards).
[52] *Id.*
[53] CRL/CFA/NCLC Comment at 67-72.

Online lending

As discussed above and below, the Concurrent Proposal has already created change in the market. Current lenders in the payday lending and car title lending markets are beginning to change their products to evade coverage under the Concurrent Proposal. And, with these changes, other current actors in the installment space also see opportunity to expand their product base and are also considering changes to their business model to avoid coverage under the Concurrent Proposal.

Online lending has made installment lending more available than before and presents its own risks. Further, it can be more difficult for borrowers with valid claims to identify and sue the appropriate actor in court. We discuss these issues in more detail later in the comment.

> ***2. To the extent that certain business models enable lenders to extend non-covered loans to consumers facing liquidity shortfalls without regard to the consumer's ability to repay, what factors might limit or encourage growth of these business models going forward?***
>
> ***a. What are the State and Federal regulations that affect their viability and growth?***

Gaps in regulation at the state and federal level are a primary—perhaps *the* primary—factor that is encouraging the growth of high-cost loans that are made without regard to the consumer's repayment ability. Regulation at the state and federal level is the chief way that these products can and should be limited.

Gaps in the scope of the Concurrent Proposal will encourage the growth of high-cost products that fit in those gaps, such as those that do not use leveraged payment mechanisms or obtain them after 72 hours. As discussed in our comments on the Concurrent Proposal, we also expect the payday and installment rule to encourage the shift from short-term payday loans to longer-term covered loans that will benefit from loopholes in the rule and still make loans that borrowers are not able to repay while meeting other expenses without reborrowing.

In the near term, the Concurrent Proposal could have a significant impact on the growth of the high-cost installment loan market. The Bureau will need to move expeditiously to enact a larger participant rule for installment lending and be active in ensuring that installment loans do not become the new avenue for payday lending.

State laws also have a large impact on encouraging or restraining the growth of high-cost lending without regard to ability to repay. Existing installment lenders have benefitted from being viewed as less expensive than payday lending. As a result of this perception, many state regulators have taken a hands-off approach. But even if APRs are lower and payments are smaller than for traditional payday loans, installment loans can be more expensive over the long term due to their longer term and often larger size. In addition, installment loans at quadruple-digit interest rates have been documented in several states.[54] The result is that, in many cases, state law does not provide regulators with tools to deal effectively with abusive lending practices.

State law governing installment credit varies widely. A number of states have fairly strong laws that limit the interest and fees that installment lenders can charge. These laws serve to limit or prohibit outright current forms of payday and car title lending and high-cost installment loans that payday or car title lenders may create to evade coverage of the Concurrent Proposal. These laws also curb other high-cost installment lending.

For example, North Carolina law limits the interest rates and fees that can be charged on installment loans in the state. With those limits, the maximum APR (excluding credit insurance) for a two-year $2000 installment loan is around 31% APR.[55] These limits serve to exclude payday and car title lenders, as well as other high-cost installment lenders from the state.

Those limits do not, however, include credit insurance, which lenders have used to circumvent the state's interest rate and fee limits. As noted elsewhere in these comments, North Carolina installment lenders sold more credit insurance policies than loans made in the state in 2014.[56] The North Carolina Consumer Finance Act places no requirement on the lenders' regulator, the Commissioner of Banks, to ensure that loans are made considering the borrower's ability to repay.

At the other end of the spectrum, Missouri law contains no limits on the interest rates or fees that can be charged on loans made in the state.[57] As such, installment loans in the state have APRs akin to those charged by payday and car title lenders. With relatively minor changes, lenders making loans in Missouri can structure high-cost loans to reside outside the coverage of the Concurrent Proposal.

A 2009 Illinois study examined high-cost installment loans operating under the state's installment loan statute. Closed-end installment loans represented approximately 54% of the total installment loan market, and more than 65% of these loans carried rates that exceeded a

---

[54] *See* Tom Feltner and Sarah Duda, Beyond Payday Loans: Consumer Installment Lending in Illinois (March 2009) , *available at* http://www.issuelab.org/resources/11768/11768.pdf (documenting installment loans at APRs up to 1142%); State ex rel. King v. B & B Investment Group, Inc., 329 P.3d 658 (N.M. 2014) (finding installment lender's interest rates, which were as high as 1500%, substantively unconscionable).

[55] *See* National Consumer Law Center, Installment Loans: Will States Protect Borrowers from a New Wave of Predatory Lending? (July 2015) at p.9, *available at* http://www.nclc.org/issues/installment-loans.html**.**

[56] *See* North Carolina Commissioner of Banks, "Consumer Finance Annual Report" at 16 (2014), *available at* http://www.nccob.org/Public/docs/Financial%20Institutions/Consumer%20Finance/2014_Annual_Report.pdf.

[57] *See* National Consumer Law Center (NCLC), National Consumer Law Center, Installment Loans: Will States Protect Borrowers from a New Wave of Predatory Lending? (July 2015) at p.9, *available at* http://www.nclc.org/issues/installment-loans.html**..**

36% APR. Principals ranged from $175 to $17,247, with a median principal of $1,397. Interest rates ranged from 5% to 1,142% with a median interest rate of 95%.[58]

Another illuminating example is California. Under California law, interest rates and fees are capped for loans made with principal amounts of $2,500 or less (except for payday loans, capped at $300). After the statutory scheme was amended to allow loans over $2500 to be made without an interest rate cap, lenders simply restructured their business models to make loans above that amount. Further, lenders in California sold far fewer credit insurance policies than those in North Carolina and other states.[59] This is consistent with the strategy installment lenders use to evade stricter interest rate and fee limits in certain states. In those states, credit insurance premiums are excluded from the definition of finance charge (consistent with Regulation Z), and as such lenders sell more insurance in those states to generate additional revenue.[60]

Another regulatory issue that affects the growth of high-rate installment lending is the rent-a-bank model. Some lenders are already using relationships with banks and other entities to circumvent state interest rate and fee limits. This includes rent-a-bank lending, where non-depositories make loans at rates prohibited by state usury laws under the pretext that their partnership with a depository permits them to charge the depository's home state rate, pursuant to national bank preemption and related law.[61] While some of the aspects of this practice fall outside of the Bureau's purview, it is important for the Bureau to work with the other federal banking agencies to make sure that rent-a-bank lending does not take hold in the installment loan market. The use of the rent-a-bank model is also further evidence that lenders seeking to charge excessively high interest rates are willing to use any means available to them to make high-cost loans to consumers.

b. What effect, if any, would the Bureau's Concurrent Proposal, if finalized, have on their viability and growth?

As discussed elsewhere in this comment, lenders who would likely be covered under the Concurrent Proposal are changing their products to evade its protections. The Concurrent

---

[58] Tom Feltner and Sarah Duda, Beyond Payday Loans: Consumer Installment Lending in Illinois (March 2009), *available at* http://www.issuelab.org/resources/11768/11768.pdf.
[59] *See* http://www.dbo.ca.gov/Licensees/Finance_Lenders/pdf/2015_CFLL_Aggregated_Annual_Report_FINAL.pdf
[60] Kiel, Paul, The 182 Percent Loan: How Installment Lenders Put Borrowers in a World of Hurt (May 13, 2013), https://www.propublica.org/article/installment-loans-world-finance.
[61]As the FDIC explains, "Federal law authorizes federal and state-chartered insured depository institutions making loans to out of state borrowers to 'export' favorable interest rates provided under the laws of the state where the bank is located. That is, a state-chartered bank is allowed to charge interest on loans to out of state borrowers at rates authorized by the state where the bank is located, regardless of usury limitations imposed by the state laws of the borrower's residence." FDIC, Guidelines for Payday Lending (Revised November 2015), *available at* https://www.fdic.gov/news/news/financial/2005/fil1405a.html. However, as described here, this doctrine has not been used to permit evasion of state law through non-depository/depository relationships.

Proposal needs to be significantly strengthened in order to close the loopholes that high-cost lenders will exploit. As we argued in our comment to the Concurrent Proposal, longer-term loans merit more substantial underwriting, so the Bureau should, among other things, require a larger cushion.[62]

Lenders and their trade groups have already begun promoting legislation to change state interest and fee limits to allow high-cost longer-term loans — both closed-end and open-end -- that they perceive will fall outside the Concurrent Proposal.

Bills filed in the past year to authorize longer-term, high-cost closed-end installment loans in Arizona, California, Georgia, Indiana, Iowa, Michigan, New York, Oklahoma, Pennsylvania, and Washington have thus far not progressed.[63] Legislation to authorize these loans was enacted in 2016 in Mississippi.[64] In addition, New Hampshire amended its lending laws in 2016 to allow an annual $100 application fee and an annual $100 membership fee for certain consumer loans.[65] Fees of this magnitude would increase the allowable APR significantly above the 36% interest rate cap that other sections of the statute provide.

The state legislative proposals have varied in the details of their generally complicated fee structures and repayment terms. But the proposals typically authorize high rates, access to the borrower's checking account, and incentives for lenders to encourage repeated refinancing. In at least some instances, lenders have framed these proposals as being done in anticipation of the CFPB's pending rules.[66]

c. Are technology, investment and other market factors affecting their viability and growth?

As discussed elsewhere, a number of online lenders have emerged in the installment lending space. Some lenders, whether directly or through lead generators, market loans in states where their loans are illegal. This underscores the need for the Bureau to take steps to curb loans that

---

[62] http://www.responsiblelending.org/research-publication/comment-cfpbs-proposed-rule-payday-and-car-title-lending at 9.
[63] CRL, *Migration*, at 5, n. 39. Bill numbers on file with authors.
[64] SB2409 (closed-end).
[65] Mississippi; New Hampshire: SB 308 (closed-end car title).
[66] *See, e.g.*, Hearing on S.B. 842 and S.B. 843 Before the S. Comm. On Banking and Fin. Inst., 2015-16 Sess. (Mich. 2016) (testimony of Ron Hicks, Senior Dir. For Gov't Aff. And Community Outreach, Advance America), *available at* http://www.senate.michigan.gov/committees/files/2016-SCT-BANK-03-08-1-10.PDF; Hearing on S.B. 842 and S.B. 843 Before the S. Comm. On Banking and Fin. Inst., 2015-16 Sess. (Mich. 2016) (testimony of Christopher Henn, Executive V. Pres. of NCP Finance), *available at* http://www.senate.michigan.gov/committees/files/2016-SCT-BANK-03-08-1-02.PDF; Hearing on S.B. 842 and S.B. 843 Before the S. Comm. On Banking and Fin. Inst., 2015-16 Sess. (Mich. 2016) (testimony of Joanne Needleman, Clark Hill PLC), *available at* http://www.senate.michigan.gov/committees/files/2016-SCT-BANK-03-08-1-04.PDF).

violate state interest and fee limits, and provide state regulators additional tools to prevent abusive loans.

Investors have also shown interest in high interest rate lenders. Investment in online lending boomed until last year, when regulators began to scrutinize part of the online lending market.[67]However, some lenders have seen investments grow, in part due to the high yields that high interest rate lending provides investors.[68]

More sophisticated consumer identification and underwriting models and the use of big data are also increasing the growth of online lending, allowing high-cost lenders to create a viable business model despite the higher default rates that are typically associated with online loans as compared to those made in person. But these loans remain very expensive and pose clear consumer protection concerns, including lending without ability to repay.[69]

d. What factors affect competition in these markets, particularly the emergence of new market players and development of new product alternatives?

Despite new entrants to the field, prices remain high among online lenders. We do not expect to see price competition due to the entrance of new players – as storefront lenders do not compete on price, online lenders have no incentive to enter into price competition either.

3. To what extent are consumers able to protect themselves in the selection or use of products identified in response to questions number 1(a) through 1(d)? For example:

a. What evidence, data, or other information exists with respect to the ability of consumers to shop effectively for products of the type described above and for alternative products that may better serve consumer's needs? Are there currently websites or other digital tools that facilitate effective price comparison among lenders offering products designed to serve the needs of liquidity-constrained borrowers, including comparison of prices, prior to surrendering personal information such as names, email addresses, and bank account numbers? Are consumers in search of such a loan to meet a liquidity shortfall able to avail themselves of common internet search engines to effectively shop for loans to meet their needs?

A continuing challenge is the lack of transparency in the high-cost lending market. Many of the lenders that are the focus of these comments do not operate online or disclose their prices online. Many of the lenders discussed do their lending primarily through storefronts or through live checks in the mail, and do not generally disclose pricing online. Consumers who take out loans from these companies are unlikely to be doing comparison shopping online. If they do,

---

[67] *See* http://fortune.com/2016/07/29/online-lenders-investment-dropped/,

[68] *See* http://finance.yahoo.com/news/elevate-announces-545-million-expanded-160000275.html,

[69] *See* Persis Yu, NCLC, Big Data, Big Disappointment (March 2014), http://www.nclc.org/issues/big-data.html.

accurate pricing from these lenders would not be available – either on the lenders' websites or on those of comparison sites.

Even for those lenders that do make loans online or reveal pricing online, lenders most often require the borrower to fill out a full application before disclosing the actual price of the loan. This makes effective price comparison difficult, if not impossible.

There are a number of online loan comparison tools whose stated purpose is to assist consumers in comparison shopping for loans. However, the methods by which the comparison tool chooses and orders the multiple lenders is often not transparent to the consumer. Some of these websites may also have ulterior motives, even beyond advertising revenue and the sale of leads. Creditcards.com, for example, is now owned by the debt settlement law firm Lexington Law.

These websites often filter by credit score range and loan amount, and list lenders with a few pieces of information, such as a non-binding estimated APR and payment amount. Clicking on a lender will typically redirect the consumer directly to the individual lender's website. The quality and detail of advertising disclosures on these websites vary widely. This variance may, in some cases, leave the consumer with the impression that the consumer is seeing an objective list of recommendations when, in fact, a financial relationship exists between the aggregator website and the individual lenders.

Even in a market focused more on prime borrowers, obtaining pricing information can be difficult. The FTC recently surveyed the consumer online interface of the top marketplace lenders by Alexa Rank to determine what consumers experience when shopping and applying for a loan.[70] Among the 15 participants, wide variation was found in terms of what type of loan information was displayed and at what stage of the process often expressed in "# of clicks". They found the following number of websites did not display specific critical pieces of information within two clicks: 2 websites - Maximum APR, 4 websites – Loan Periods, 4 websites - Type of Credit Check/Possible Impact on Credit. There was also wide variation in the types of fees that were disclosed. For the 15 lender online interfaces, the most commonly encountered fees were unsuccessful payment fees (9), origination (8) and late payment (8). The APR calculations also ranged widely from a minimum of 4.49%-34% to a maximum of 12-155% and in several cases changed dynamically as consumer information was entered. Borrowers in this context would inevitably have difficulty in understanding which fees are included when comparing APRs, underscoring the substantive problems with the current APR disclosure, which needs reform as discussed later in this comment.

b. Are new business entrants in the market for high-cost, non-covered loans able to offer loans at a lower cost than those offered by established lenders? What factors

[70] See: https://www.ftc.gov/system/files/documents/public_events/944193/a_survey_of_15_marketplace_lenders_online_presence.pdf

inhibit the ability of new market entrants to do so? Are new business entrants with lower pricing able to effectively raise customer awareness about the benefits of their products in comparison to established covered or non-covered loans?

Data and evidence suggests that most new entrants are pricing loans similar to existing lenders. LendUp, an online lender based in California, is an example of a lender that promised an opportunity for consumers to access lower cost loans over an extended period of time, but ultimately did not deliver. LendUp pitched itself as a consumer-friendly, tech-savvy alternative to traditional payday loans. Borrowers were presented with an opportunity to build credit, but instead found themselves on the receiving end of high-cost loans, reversed pricing, a hidden APR, and failed credit reporting, among other abuses.[71] Keeping borrowers in a cycle of loans remains the primary business model for many newer lenders. The ability to price loans to maximize yield remains the engine that powers the market, and lack of effective price competition means that lenders can charge high rates and expect that borrowers will continue to refinance or borrow again repeatedly.

Lenders that have been successful in lowering prices tend to be depository institutions that see offering a lower-cost product as a service to members or those lenders who buck pressure to maximize yield. Those whose business is solely making loans have a stronger counter-pressure from investors to maximize yield.

c. Are there cognitive, behavioral or psychological limitations that make it more difficult for consumers facing a liquidity crisis to shop effectively for a non-covered loan to meet their needs?

d. Are there marketing practices or loan features that take advantage of these cognitive, behavioral, or psychological limitations?

e. What evidence, data or other information exists with respect to the existence and prevalence of any such limitations, market practices, or loan features?

We were encouraged to see the Bureau's attention to these issues when issuing the Concurrent Proposal, and we would encourage the Bureau to continue to explore these issues.[72] In addition, while the discussion in the Concurrent Proposal is focused on installment loans from payday and car title lenders, as we discuss in this comment there are particular concerns in the market that exists outside what the Concurrent Proposal would over that are relevant to this discussion.

[71] *In Re Flurish Inc. d/b/a LendUp, Inc.*, 2016-CFPB-0023 (2016), *available at* http://files.consumerfinance.gov/f/documents/092016_cfpb_LendUpConsentOrder.pdf.
[72] The relevant discussion appears at 81 Fed. Reg. 47992 (2015).

4. Are there practices in obtaining or using wage garnishment orders to collect covered or non-covered loans that raise consumer protection concerns? If so, what data, evidence, or other information tends to show these concerns exist or are likely to emerge in the future?

Wage garnishment raises serious consumer protection concerns. First is simply the devastation that wage garnishment causes for working families. The inadequate statutory limits on the amount that can be taken from a worker's wages, which are discussed in more detail in response to Question 8, are a particular concern for the cash-strapped families that are the prime targets of high-cost lenders. The fact that these families use high-cost lenders for small cash loans means that they are the families who least can afford a 25% bite out of a wage earner's paycheck.[73]

Wage garnishment is especially serious for families because of the weak protections against firing an employee because of a wage garnishment. Federal law prohibits an employer from discharging an employee because of wage garnishment to collect a single debt.[74] However, an employee whose wages are garnished for a second debt can be fired. And the federal law does not prohibit the employer from taking other adverse action, such as demotion or reduction in hours, against an employee even for garnishment for a single debt.

Another consumer protection concern is judgment creditors' use of out-of-state garnishment orders as a way of evading state protections for wages. For example, Pennsylvania protects very little in the way of personal or real property from judgment creditors, but this lack of protection is somewhat balanced out by an almost complete prohibition of wage garnishment. Judgment creditors evade this prohibition by obtaining garnishment orders from courts in states such as Maryland that allow wage garnishment. If the debtor's employer has a location in Maryland, the judgment creditor may serve the garnishment on the employer there, or it may have the garnishment sent to the employer's Pennsylvania location where the judgment debtor works. While the legality of this evasion is still being litigated, many courts have upheld it.[75]

5. Are there practices in obtaining or using attachment or garnishment orders to seize funds from deposit accounts, prepaid cards, or other consumer assets to collect covered or non-covered loans that raise consumer protection concerns? If so, what data, evidence, or other information tends to show these concerns exist or are likely to emerge in the future?

---

[73] *See* Paul Kiel, For Nebraska's Poor, Get Sick and Get Sued, ProPublica, (Apr. 28, 2016), available at https://www.propublica.org/article/for-nebraskas-poor-get-sick-and-get-sued (documenting that most of the debtors whose wages or bank accounts were garnished by collection agencies were low-income).

[74] 15 U.S.C. § 1673 (2006).

[75] *See* National Consumer Law Center, Collection Actions § 12.11.4 (3d ed. 2014), updated at www.nclc.org/library.

Garnishment of bank accounts raises serious consumer protection concerns. It enables judgment creditors to leave a family penniless, is a way of evading protections for wages, and frequently results in seizure of exempt funds. As noted below in response to Question 8, many states provide no protections for even a basic amount of money in a bank account. Few exempt enough money to cover a month's rent, and even those that do almost never make the protection self-executing. In many states, a judgment creditor can clean out the debtor's bank account, leaving the family with no money for rent, utilities, food, or commuting expenses.

Even when the underlying funds are protected by state or federal law, the fact that bank account exemptions are not self-executing is a serious problem. Many states have obscure, complicated procedures that the debtor must invoke to apply an exemption to a bank account. Without a self-executing procedure, exemptions designed to protect a family from destitution often have no effect. In addition, without a self-executing exemption, the account will usually be frozen for what can be a substantial period, even if the debtor ultimately succeeds in navigating the procedures to apply an exemption to the funds. By contrast, as discussed in more detail in response to Question 8, the Treasury Department has created a self-executing procedure to protect Social Security and certain other exempt federal benefits that are directly deposited into beneficiaries' bank accounts.[76] This reform was a recognition of the fact that, without a self-executing procedure, the statutory exemptions for these federal benefits were not actually protecting debtors.

Another issue is that creditors can use bank account garnishments as a way to evade state limits on wage garnishment. Federal law protects 75% of a debtor's net earnings or thirty times the minimum wage, whichever is greater.[77] However, most courts have held that this protection applies only to wages in the hands of the employer. Once the wages are paid, they are entirely unprotected. This means that wages that are paid by direct deposit, or paid via a payroll card, are at extreme risk. A few states' exemption laws provide that the protection for wages extends to deposited wages, but even in these states the protection is typically not self-executing.

Another practice that raises serious consumer protection concerns is the issuance of a garnishment order from a court in another state. We know of cases in which a judgment creditor in New York obtained a bank account garnishment order from a New York court against a national bank that had branches both in New York and in Florida. The result was the garnishment of the Florida bank account of a judgment debtor in Florida. Because of the

---

[76] 31 C.F.R. Part 212. *See* National Consumer Law Center, Collection Actions § 12.6.3 (3d ed. 2014), updated at www.nclc.org/library.
[77] 15 U.S.C. § 1673(a) (2016).

distance, the Florida debtor was at an extreme disadvantage in contesting the garnishment. Even obtaining information about what had happened was difficult. Courts are split on the legality of interstate garnishment of bank accounts.[78]

Bank account garnishments often result in seizure of money that does not in fact belong to the debtor. For example, it is common for a depositor to add a family member's name to an account in order to be able to handle financial matters if the depositor becomes ill. (A power of attorney can, in theory, be used for this purpose, but the depositor may have to retain an attorney to prepare one, and powers of attorney can be cumbersome when dealing with a bank.) If the non-depositor owes a judgment debt, the judgment creditor may garnish the account. In some states, the debtor's name on the account establishes irrefutably that the debtor co-owns it.[79]

Bank account garnishments cause severe consumer harm. Cleaning out a bank account often means that a family's money for rent, food, and commuting to work is gone. Moreover, bank account garnishments typically cause all the debtor's outstanding checks or electronic transactions to bounce. Bounced transactions can drive a consumer out of the banking system for the long term.

> ***6. Are there practices in obtaining or using judgment liens on vehicles or other consumer goods that raise consumer protection concerns? If so, what data, evidence, or other information tends to show these concerns exist or are likely to emerge in the future?***

Execution on cars and other personal property is more cumbersome than wage or bank account garnishments for judgment creditors. We do not know of data about the prevalence of executions upon cars or household goods either in general or in connection with judgment debts arising out of high-cost loans. Based on our experience representing debtors, we can confirm that there are occasions when they execute on cars, and even on household goods. Execution on these items is especially abusive as to low-income debtors whose household goods are unlikely to be worth more than the cost of selling them. However, in our experience, execution on cars and household goods is more frequently threatened than implemented. The *in terrorem* effect of a threat to seize a low-income family's car or household goods is powerful.

> ***7. With respect to each of these questions, what is the prevalence of these practices in the current market? And, can the Bureau reasonably anticipate that these practices would increase or decrease if the Bureau were to finalize a rule along the lines of the Bureau's Concurrent Proposal? If so, why?***

---

[78] *See* National Consumer Law Center, Collection Actions § 12.11.3 (3d ed. 2014), updated at www.nclc.org/library.
[79] *See* National Consumer Law Center, Collection Actions § 12.6.5 (3d ed. 2014), updated at www.nclc.org/library.

The prevalence of these practices in the current market.

The Bureau asks about the current prevalence of practices such as wage garnishment, bank account garnishment, and execution upon vehicles and personal property. Data on the prevalence of these practices is difficult to come by. Statistical reports from state court systems often do not break down filings in enough detail to show the use of these practices.[80] States may treat post-judgment collection remedies as part of the original suit on the debt, so there will not be a new case number when the collection remedy is invoked. Tying the use of one of these remedies to a consumer debt is another challenge.

However, there is some data on the prevalence of these practices. A groundbreaking 2014 study by ADP, the payroll services provider, analyzed the prevalence of wage garnishment for a data set of 13 million workers.[81] This study revealed that, in 2013, 2.9% of these workers had their wages garnished other than for child support, taxes, or bankruptcy.[82] The majority of these garnishments were for student loans or court-ordered consumer debts. Since there were 135,266,000 employees in the United States in 2013,[83] this suggests that 3,922,714 employees were subjected to garnishment for consumer debt.[84] ADP's internal data shows that one in ten employees will have at least one garnishment over his or her lifetime.[85]

Wage garnishment for consumer debt was highest for employees in the 35 to 44 age range. ADP's study showed that 4% of these employees had their wages garnished for consumer debt in 2013. These workers are likely to be supporting young children, who will be particularly harmed by the financial instability and deprivation that wage garnishment causes.

---

[80] *See* Richard M. Hynes, Broke But Not Bankrupt: Consumer Debt Collection in State Courts, 60 Fla. Law Rev. 1, 24 (Jan. 2008) (noting the paucity of data on the use of garnishment; author was able to obtain data only for the state of Virginia and for Cook County, Illinois).

[81] ADP Research Institute, Garnishment: The Untold Story (2014), *available at* https://www.adp.com/tools-and-resources/adp-research-institute/insights/~/media/RI/pdf/Garnishment-whitepaper.ashx.

[82] *Id.* at 3. *See also* Richard M. Hynes, Broke But Not Bankrupt: Consumer Debt Collection in State Courts, 60 Fla. Law Rev. 1, 4, 24-25, 48 (Jan. 2008) (showing a rate of about 119 garnishments per 5000 residents of Virginia in 2006, a rate of 2.38%; note that a rate of 2.38% of all residents is likely more than 2.9% of all employees; in addition, Virginia may not be typical because it had an unusually high rate of filing of civil suits at the time).

[83] Bureau of Labor Statistics, Employment, Hours, and Earnings from the Current Employment Statistics survey (National), available at http://data.bls.gov/timeseries/CES0000000001 (Jan. 2013 figure).

[84] ADP Research Institute, Garnishment: The Untold Story (2014), *available at* https://www.adp.com/tools-and-resources/adp-research-institute/insights/~/media/RI/pdf/Garnishment-whitepaper.ashx. *See also* Paul Kiel, Old Debts, Fresh Pain: Weak Laws Offer Debtors Little Protection, ProPublica, (Sept. 16, 2014), *available at* https://www.propublica.org/article/old-debts-fresh-pain-weak-laws-offer-debtors-little-protection.

[85] Automatic Data Processing, Inc., Wage Garnishments, *available at* https://www.adp.com/solutions/large-business/services/tax-and-compliance/wage-garnishments.aspx.

There is much less data available about the prevalence of bank account garnishment and execution upon personal property. However, it is clear that high-cost lenders initiate a substantial percentage of collection lawsuits. In New Mexico, which does not cap the interest rate on consumer loans,[86] high-cost lenders filed 5,401 collection lawsuits in 2012, more than the number filed by debt buyers and major banks combined.[87] High-cost lenders also dominate the lower level court in Nevada, and filed a total of 150,000 lawsuits there from 2004 through 2014.[88] High-cost lenders are responsible for the vast majority of collection suits in Oklahoma.[89] From 2005 through the middle of 2010, almost 38% of the 154,736 cases filed in the Utah small claims courts were a result of payday lending activities.[90] Since the main reason creditors file collection suits is to be able to invoke the court's garnishment and execution powers, it is likely that the lenders attempted garnishment or execution in a high percentage of these suits after obtaining judgment.

The use of wage garnishment, attachment orders, and judgment liens is like to increase if the Bureau finalizes the Concurrent Proposal.

Because wage garnishments, attachment orders and judgment liens are not included within the scope of the Concurrent Proposal, we expect lenders to increase the use of these collection devices in order to be able to make loans outside of that rule. Just like aggressive debt collection practices, these tactics can all be used to compensate for weak underwriting and can help the lender to collect notwithstanding borrowers' inability to repay.

> ***8. Do particular Federal, State, or local laws affect consumer protection concerns associated with enhanced collection practices that would not be addressed by the Concurrent Proposal?***

The rules governing garnishment of wages and bank accounts and enforcement of judgment liens vary from state to state. In many states these rules are outdated and inadequate. As

---

[86] *See* National Consumer Law Center, Installment Loans: Will States Protect Borrowers from a New Wave of Predatory Lending? (July 2015) at 6, *available at* http://www.nclc.org/images/pdf/pr-reports/report-installment-loans.pdf (hereafter *Installment Loans*).
[87] Data extracted from New Mexico spreadsheets posted as part of Paul Kiel, So Sue Them: What We've Learned About the Debt Collection Lawsuit Machine, ProPublica, (May 5, 2016), *available at* https://www.propublica.org/article/so-sue-them-what-weve-learned-about-the-debt-collection-lawsuit-machine.
[88] Paul Kiel, So Sue Them: What We've Learned About the Debt Collection Lawsuit Machine, ProPublica, (May 5, 2016), *available at* https://www.propublica.org/article/so-sue-them-what-weve-learned-about-the-debt-collection-lawsuit-machine.
[89] Paul Kiel, When Lenders Sue, Quick Cash Can Turn Into a Lifetime of Debt, ProPublica, (Dec. 13, 2013), *available at* https://www.propublica.org/article/when-lenders-sue-quick-cash-can-turn-into-a-lifetime-of-debt.
[90] Payday Lenders and Small Claims Court Cases in Utah, *available at* http://www.consumerfed.org/pdfs/PDL-UTAH-court-doc.pdf.

detailed below, much of the authority to provide greater protection to consumers lies with Congress or the states. However, there are some steps that the Bureau or other federal agencies can take.

Wage garnishment

Since 1970, federal law has protected 75% of a wage earner's net earnings or 30 times the federal minimum wage, whichever is greater.[91] This means that wage garnishment cannot legally reduce a debtor's weekly paycheck below $217.50 (thirty times the current minimum wage of $7.25 an hour). But a weekly paycheck of $217.50 places even a single individual who has no dependents below the federal poverty level.[92] For a family of four, $217.50 per week is less than half of the federal poverty guideline ($467.30).[93]

Federal law gives states the option of protecting a larger portion of a debtor's paycheck if they choose. Yet only 12 jurisdictions protect even a poverty level wage for a family of four, and 21 jurisdictions do not go beyond the federal minimum at all.[94]

The inadequate protection of workers from wage garnishment could be addressed at the federal level by an amendment to the federal wage garnishment statute. Barring that, state legislative action would be required to give workers more protection. Reducing unaffordable lending is also likely to reduce wage garnishment indirectly by reducing the number of debtors who default. The Bureau should take the use of wage garnishment into account when considering the overall harm of certain lending practices and products.

Garnishment of bank accounts

Garnishment of bank accounts is particularly problematic. In contrast to wage garnishment, no federal law protects any minimum amount in a family's bank account. In many states, a judgment creditor can clean out the entire account, leaving the family with no money for rent, food, utilities, or the costs of commuting to a job.

---

[91] 15 U.S.C. §§ 1671-1677.
[92] The 2016 federal poverty level for a one-person household is $11,880 a year or $228.46 per week. *See* 81 Fed. Reg. 4036 (Jan. 25, 2016).
[93] The 2016 federal poverty level for a four-person household is $24,300 a year or $467.30 per week. *See* 81 Fed. Reg. 4036 (Jan. 25, 2016).
[94] National Consumer Law Center, No Fresh Start: How States Let Debt Collectors Push Families into Poverty (Oct. 2013), *available at* http://www.nclc.org/images/pdf/pr-reports/report-no-fresh-start.pdf.

Federal law protects certain kinds of benefit payments, such as Social Security, SSI, and veterans benefits, from the reach of creditors.[95] An innovative federal rule, effective May 1, 2011, makes this protection self-executing, requiring banks to identify direct deposits of these benefits and shield two months of benefits from garnishment.[96] However, there is no federal protection for a basic amount of money in a bank account unless it is derived from one of these federal benefit programs. (This protection also does not apply to the depository institution holding the account as creditor, as in the case of overdraft debt, for example.)

Few states provide any significant protection for a basic amount in a bank account. Massachusetts exempts $2,500 in a bank account from garnishment, New York protects $1,740, and Wisconsin protects $5,000. A number of other states give debtors a "wild card" exemption that allows them to exempt up to a certain dollar amount of property, including a bank account, but the amount is very low in many states. For example, Georgia provides an exemption of $5,000 to cover all real and personal property. A debtor in Georgia is unlikely even to be able to protect a car that is necessary to get to work, much less the family's household goods and the rent money in a bank account.

The rise in direct deposit of wages makes bank account garnishment especially dangerous. Only eight states have statutes that provide that the limits on garnishment of wages apply to wages that are deposited in a bank account.[97] Even in these states, that protection may not be self-executing. In the remaining states, a judgment creditor may be able to seize 100% of a worker's wages by garnishing the worker's bank account instead of sending the garnishment to the worker's employer.

Seizure of the debtor's car

Only nine jurisdictions—Idaho, Iowa, Kansas, Louisiana, Massachusetts, Nevada, Oklahoma, Puerto Rico, and Rhode Island—protect even an average used compact car (one worth $7,000 or more) from seizure to pay a judgment debt. (Several states—Arizona, Colorado, Minnesota, New York, and North Dakota— protect a car worth more than $7,000, but only if the debtor is elderly or disabled, or if the car is specially adapted for use by a disabled person.)

Some states do not specifically protect a car worth $7,000, but give the debtor a "wild card" exemption that the debtor can apply to a car, household goods, or certain other types of property. This approach can enable a debtor to preserve an average used compact car, as long

---

[95] *See* 42 U.S.C. §§ 407(a) (Social Security benefits), 1383(d)(1) (SSI benefits); Porter v. Aetna Casualty & Surety Co., 370 U.S. 159 (1962) (veterans disability benefits).

[96] 31 C.F.R. Part 212. *See* National Consumer Law Center, Collection Actions § 12.6.3 (3d ed. 2014), updated at www.nclc.org/library.

[97] National Consumer Law Center, No Fresh Start: How States Let Debt Collectors Push Families into Poverty at 39-40 (Oct. 2013), *available at* http://www.nclc.org/images/pdf/pr-reports/report-no-fresh-start.pdf.

as the wild card amount is high enough, so that the debtor does not have to choose between preserving the car or preserving the refrigerator and beds. For example, if a state allows a debtor to apply a $9,000 wild card exemption to a car and household goods, the debtor could preserve a $7,000 car and $2,000 in household goods.

The District of Columbia and eleven states – Indiana, Mississippi, New Hampshire, New Mexico, North Carolina, North Dakota, South Carolina, Tennessee, Texas, Vermont, and Wisconsin—have wild card exemptions that, either by themselves or combined with other exemptions, total at least $9,000. Debtors in these states may be able to preserve at least the most basic household goods and a very low-value used car. Six additional states – Arizona, Colorado, Maine, Virginia, West Virginia and Wyoming—allow a debtor to keep a car worth between $5,000 and $6,999. Maryland and Washington also fall in this category: although they provide exemptions of less than $5,000 for a car, they also provide a wild card exemption that might enable a family to keep a low-value used car. Alaska, California, Connecticut, Florida, Georgia, Hawaii, Illinois Kentucky, Minnesota, Missouri, Montana, Nebraska, New York, Ohio, Oregon, South Dakota, and Utah provide only enough of an exemption to enable a debtor to keep, at most, a very low-value used car, one worth between $1,500 and $4,999. Georgia and South Dakota give the debtor a $5,000 or $6,000 exemption, but it must cover household goods as well.

A few states provide so little protection for a debtor's car that it will almost never be possible for a debtor to protect a working car from seizure. Alabama, Arkansas, Delaware, Michigan, New Jersey, Pennsylvania, and the Virgin Islands all either provide less than $1,500 protection for a car, or provide a very minimal wild card exemption that cannot protect both a working car and minimal household goods. Delaware protects a car worth up to $15,000, but only if the debtor files bankruptcy.

Execution on other personal property

States vary widely in the extent to which they protect a judgment debtor's household goods from execution. The strongest approach is to protect all of a debtor's necessary household goods and appliances. According to a 2013 report,[98] six states—California, Connecticut, Hawaii, Kansas, Louisiana, and Oklahoma—follow this approach. In addition, Maine achieves a similar result by protecting all household goods and appliances as long as the value of any individual item does not exceed $200. Maine also provides a wild card exemption that ranges, depending on the circumstances, from $400 to $6,000 that can be used to protect more expensive items such as appliances. Although New York does not protect all household goods, it protects all household furniture plus a list of other items, including a stove and refrigerator.

[98] National Consumer Law Center, No Fresh Start: How States Let Debt Collectors Push Families into Poverty (Oct. 2013), *available at* http://www.nclc.org/images/pdf/pr-reports/report-no-fresh-start.pdf.

A second approach that some states take is to allow the debtor to exempt household goods up to a dollar amount. Some states provide an exemption just for household goods, capping the aggregate dollar amount of household goods exempted and sometimes also placing a cap on the value of any individual item. In other states, the debtor must use a single exemption, with its dollar cap, for household goods, the family car, and work tools. As long as the dollar amount is high enough, the debtor can protect the items necessary to keep a family intact. (Some of these states also provide a separate exemption for certain specified household items, such as beds.)

Of the jurisdictions that follow this approach, ten—the District of Columbia, Massachusetts, Minnesota, Nevada, New Hampshire, North Carolina, Ohio, Texas, Washington, and Wisconsin—allow a debtor to keep at least $10,000 of household goods (or provide a combined exemption sufficient to protect $10,000 of household goods plus a $7,000 car).

Ten states—Idaho, Indiana, Iowa, Mississippi, North Dakota, Rhode Island, South Carolina, Tennessee, Vermont, and West Virginia—protect at least $7,000 but less than $10,000 of household goods, or provide a wild card exemption that will protect $7,000 of household goods and a motor vehicle worth at least $2,000. Eighteen jurisdictions—Alabama, Alaska, Arizona, Colorado, Florida, Georgia, Illinois, Kentucky, Maryland, Missouri, Montana, New Mexico, Oregon, South Dakota, Utah, the Virgin Islands, Virginia, and Wyoming— protect only between $2,000 and $6,999 of household goods.

Seven jurisdictions—Arkansas, Delaware, Michigan, Nebraska, New Jersey, Pennsylvania, and Puerto Rico—protect virtually none of the debtor's household goods. For example, Arkansas provides a $200 exemption ($500 if the debtor is married or the head of a household), which must cover all personal property. Delaware provides just a $500 exemption for all personal property except work tools, clothing, and bedding.

This means that creditors can clean out a family's home even though used household goods typically have little or no resale value. And, most consumers are likely unaware of their rights in these proceedings, which increases the lender's leverage.

> ***9. Are there marketing or other business practices with respect to lender incentives or encouragement of loan refinancing that raise consumer protection concerns?***
> ***a. If so, what specific business practices or contractual terms are associated with consumer harm?***

As discussed at length in our payday loan comment, lenders that have a regular practice of refinancing installment loans before the end of the loan pose serious consumer protection concerns.[99] High refinancing rates for installment loans pose several problems:

- Refinancing often reflects inability to repay and can be triggered by the unaffordability of the prior loan. Lenders typically offer cash out, which can enable a borrower who is having difficulties to cover a payment. The need or desire to refinance can show that the consumer was unable to repay the prior loan without reborrowing.
- Refinancing provides lenders a viable business model despite inadequate underwriting. Refinancing gives the lender a method to deal with struggling borrowers and also increases the debt trap for those borrowers. Refinancing can increase the gap between lender success (a loan with enough payments to make a profit) and borrower success (fully repaying the loan and getting out of debt). Thus, refinancing can increase the misaligned incentives between lenders and borrowers and encourage weak underwriting.
- Refinancing can help lenders avoid regulatory and investor scrutiny. Refinancing disguises default rates that might otherwise attract attention. Refinance transactions may also serve to mask delinquencies and save lenders from having to move loans in to the 30+ day delinquency pool, which is a red flag for investors and regulators. Those companies that are publicly traded state that refinances of accounts beyond 30+ days delinquent are fairly rare. Given the high rate of refinances reported by these companies, it is likely that many of these refinance transactions are entered into after a consumer has missed a payment.
- Refinancing increases the cost of the loan. The loan term is extended and the consumer pays additional interest for a longer period of time. Loan costs increase especially dramatically if the loan has up-front fees or add-on charges that are not refunded on a pro rata basis. Under various state laws, lenders are permitted to charge a variety of front-loaded fees (e.g., origination fees, account maintenance fees, etc.) which may be treated as fully earned upon disbursement of the loan and, therefore, are not subject to rebate upon prepayment.
- By extending the time that the consumer is in debt, refinancing increases the chance that the consumer will experience overdraft fees, NSF fees, difficulty handling other expenses, or debt aggressive debt collection tactics over the course of the loan.
- Refinancing keeps the consumer in debt longer than anticipated. Consumers who take out a loan with a term of a few months do not expect to be stuck in debt for years.

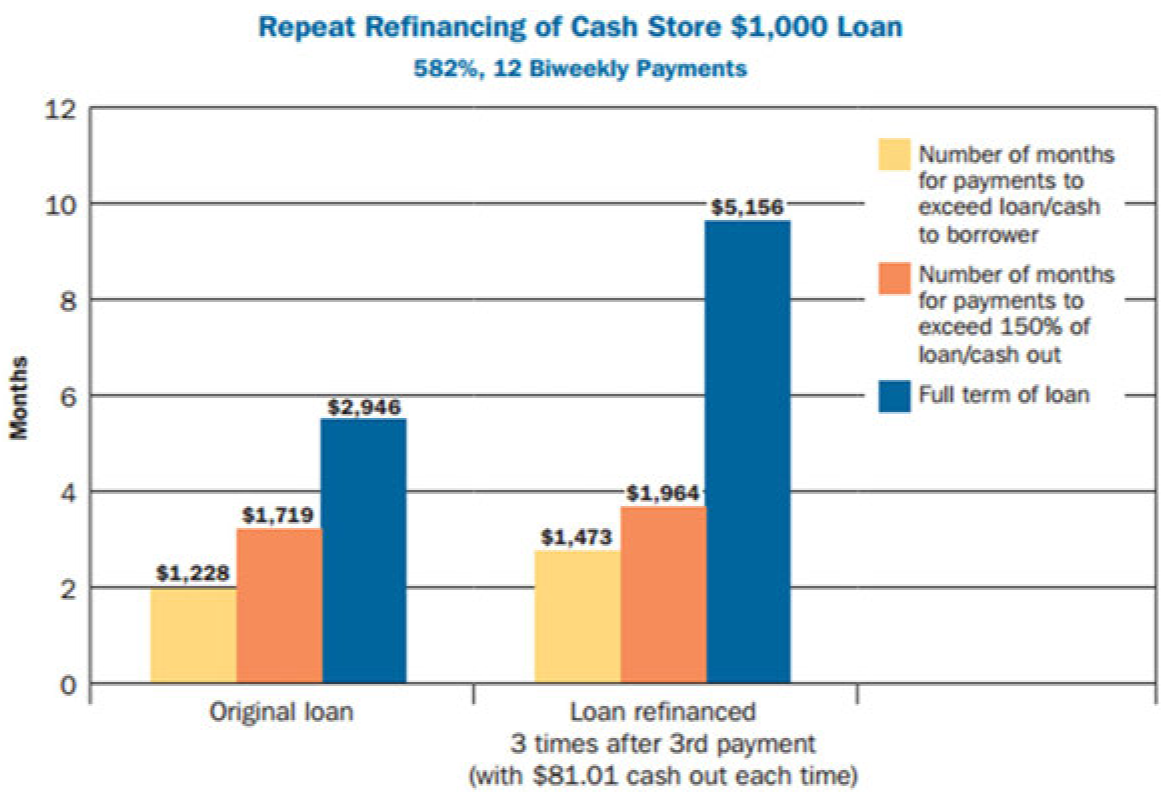
The aspects of refinancing that clearly relate to ability to repay are discussed at length in our comments on the Concurrent Proposal and will not be repeated here. We will add a few words here on the consumer harm from increased cost and extension of the time in debt, when the

[99] *CRL/CFA/NCLC Comment* at 189-204.

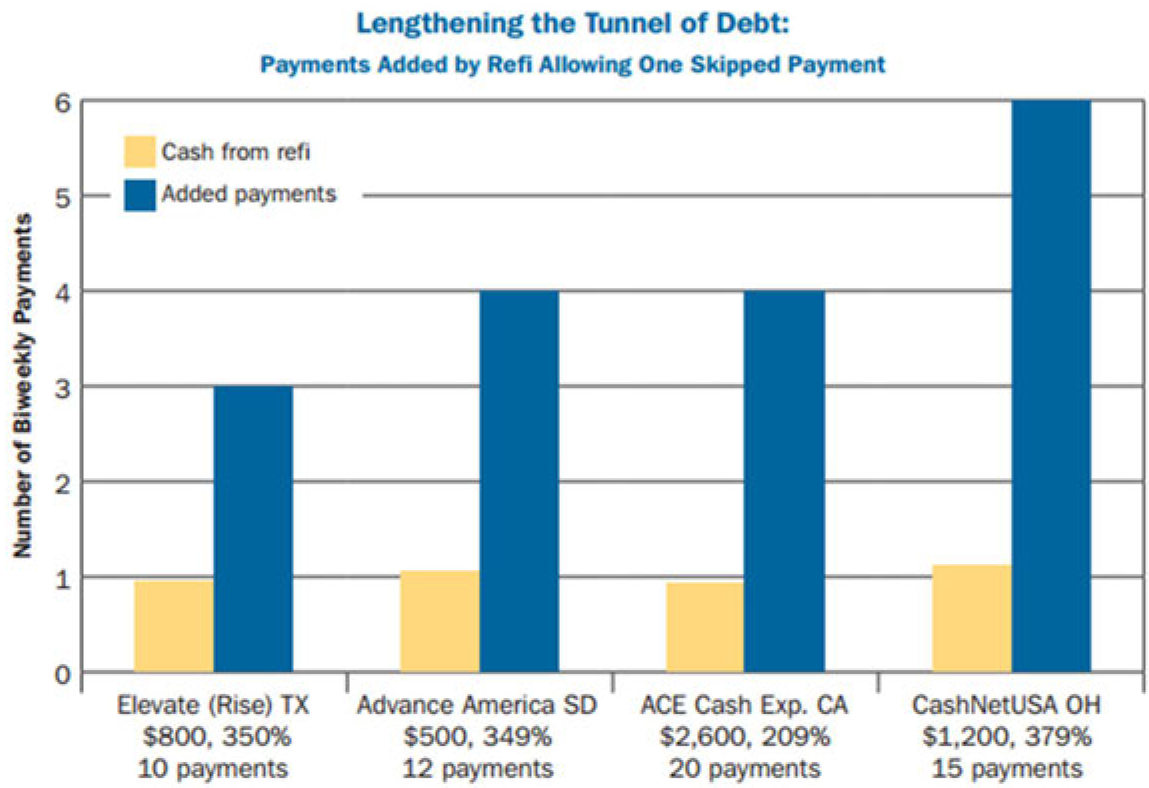
issue may be more than lack of ability to repay or when the connection to inability to repay is less clear.

Consumers who take out a loan with a specific term likely do not expect that they could end up making payments for a substantially longer period of time. Consumers who are struggling to repay a loan may welcome the respite that some cash-out from a refinancing provides. They likely do not realize the huge cost that a minor respite can impose.

For example, a Cash Store loan that is refinanced three times, giving the consumer $81.01 in cash out each time (a total of $243.03 in additional credit), adds $2,210 in additional payments. That gross disparity is likely unapparent to the consumer.



Similarly, with several other lenders, a refinance that yields enough cash-out to cover one payment could add three to six additional payments.



Note: Each loan is refinanced at the point where the principal reduction (and thus the cash out from a refinance) is about one payment.

Here again, consumers may agree to refinance to gain short-term relief from onerous payments. However, they suffer injury from being in debt far longer, and at much greater cost, than they originally anticipated. Consumers who take out high-cost loans are almost always struggling with their finances, and lenders take advantage of those struggles to push borrowers into refinancing.

Refinance transactions also generate opportunities to sell new credit insurance policies, which, in turn, generate revenue for the lender. This issue is discussed more fully in response to Questions 17 through 19 below.

> ***b. What data, evidence or other information tends to show the current or likely future prevalence of consumer harm associated with these practices?***

The CFPB is well aware that high refinancing rates are common in the payday and car title lending markets. The Concurrent Proposal recognizes this and attempts to curb refinancing activity in that sector of the market. However, the Concurrent Proposal needs to be considerably strengthened to close loopholes that would allow serial refinancing of covered loans to continue.

Repeat refinancing is also a common practice in other loan markets that may not be covered by the Concurrent Proposal. Data and evidence show that repeat refinancing is significant issue for installment lenders.

For instance, in North Carolina 67.8% of the loans made in 2014 renewed existing accounts, and 12.9% of loans made were to former borrowers of that particular lender.[100] Only 19.2% of loans were made to new customers. This high level of refinancing suggests that borrowers have continued difficulty making payments. It is also indicative of the strong incentives lenders have to keep borrowers in loans long term.

World Acceptance is one non-covered lender that has high refinancing rates. World Acceptance touts that it takes into account a borrower's ability to repay:

> *"In evaluating the creditworthiness of potential customers, the Company primarily examines the individual's discretionary income, length of current employment and/or sources of income, duration of residence and prior credit experience. Loans are made to individuals on the basis of their discretionary income and other factors and are limited to amounts we believe that customers can reasonably be expected to repay from that income given our assessment of their stability, ability and willingness to pay."*[101]

However, the data from World Acceptance tells a different story. The bulk of World Acceptance's lending is refinances: "For fiscal 2016, 2015 and 2014, the percentages of the Company's loan originations that were refinancings of existing loans were 69.4%, 71.5% and 73.5%, respectively."[102] Refinance activity of that level strongly suggests that while the borrower may have sufficient income at the time of origination to make the loan payments, that income is insufficient to manage repayment of the loan for the duration of the loan.

World Acceptance also affirmatively markets refinances:

> "The Company markets the opportunity for qualifying customers to refinance existing loans prior to maturity. In many cases the existing customer's past performance and established creditworthiness with the Company qualifies that customer for a larger loan. This, in turn, may increase the fees and other income realized for a particular customer."[103]

---

[100] *See* North Carolina Commissioner of Banks, Consumer Finance Annual Report at 15 (2014), *available at* http://www.nccob.org/Public/docs/Financial%20Institutions/Consumer%20Finance/2014_Annual_Report.pdf.
[101] World Acceptance Corporation, Form 10-K at 7 (2016), *available at* https://www.sec.gov/Archives/edgar/data/108385/000010838516000127/wrld-331201610xk.htm.
[102] *Id.* at 8.
[103] *Id.*

As this statement demonstrates, beyond the opportunity to garner additional fees and insurance compensation, refinancing can also push consumers into larger loans. Thus, refinancing leads to a deeper and longer debt trap.

OneMain is another company that lends to subprime borrowers and has high refinancing rates that can indicate inability to repay and cause other problems. Prior to merger with Springleaf, the New York Times reported:

> "About 60 percent of OneMain's loans are so-called renewals — a trend one analyst called 'default masking' because borrowers may be able to refinance before they run into trouble paying back their current balance."[104]

The newly merged organization also cites refinance activity as an important part of the company's business model. According to a company presentation, half of all customers refinance at least once during the life of their loans. Further, customers of Springleaf or OneMain that have refinanced and are included in the new company's portfolio refinanced their loans between two and three times on average.[105]

Indeed, a recent complaint to the CFPB indicates that One Main uses refinancing as a technique to deal with delinquent borrowers and increase the cost of the loan:

> "I took out an unsecured loan in XXXX at One Main Financial previously XXXX XXXX. In XXXX I refinanced loan. The principal on the account was {$7900.00}. I have been paying on the loan for 5 years and they say that I still owe {$7200.00}. They are now threatening to turn the account over to their legal department and have my wages garnished because we are 2 months behind due to my hours at work being cut by half. To date we have payed close to over {$11000.00} on this loan, it should be payed off or almost paid in full by now. We have been making payments of $ XXXX/month for the life of the loan. When we asked for help, for one month they wanted to refinance the whole loan again and wanted the title to my car and I declined that offer. That is when they threatened to garnish my wages…. (Complaint # 2008652, 7/13/2016)"

It is also important to note that the vast majority of installment lenders currently operating in the market require the customer to make payments in person, rather than rely on electronic access to a bank account. This serves two main purposes. First, the consumer develops a relationship with the lender that puts additional pressure on the consumer to make payments even after falling behind. Second, in-person payment provides an opportunity for the lender to solicit the consumer to refinance the loan. This is particularly important for lenders in states with more stringent interest and fee limits because every refinance is also an opportunity to sell new credit insurance policies, which in turn provides a new commission for the lender.

---

[104] Michael Corkery, States Ease Interest Rate Laws That Protected Poor Borrowers, The New York Times, October 1, 2014, *available at* http://dealbook.nytimes.com/2014/10/21/states-ease-laws-that-protected-poor-borrowers/.
[105] http://www.snl.com/interactive/newlookandfeel/4405478/2015AnnualReport.pdf

We discuss this more, below, and in response to Questions 17-19, where we discuss the sale of ancillary products with the loan.

> ***10. Are there circumstances in which the imposition of prepayment penalties raises consumer protection concerns in non-covered loans marketed to consumers facing a liquidity crisis?***

We are not aware of current lenders directly imposing prepayment penalties on consumer installment loans or other loans that may fall outside of the scope of the Concurrent Proposal. Some states prohibit prepayment penalties on loans covered by the state's consumer finance laws, but many do not.[106]

However, there are particular practices that act as a *de facto* prepayment penalty. Some lenders use the precomputed interest method, and in states that allow use of the Rule of 78s to calculate refunds of unearned interest, this can act as a prepayment penalty. Refunds of unearned credit insurance premiums are also often calculated in a way that disfavors the borrower. Some lenders also may charge interest for the full loan term even if it is repaid early. We discuss these issue in more detail in our response to the next questions.

We have also seen prepayment penalties on Property Assessed Clean Energy (PACE) loans. While these loans are secured by real property and are likely outside of this RFI, in some circumstances the loans purport to be a method of financing a broken appliance or other repair for a consumer without liquidity.

> ***a. If so, what specific contractual terms or business activities are associated with consumer harm?***

As mentioned above, we are not aware of particular practices currently in the market.

> ***b. What evidence, data or other information tends to show the current or likely future prevalence of consumer harms associated with prepayment penalties in non-covered loans?***

As the CFPB requires lenders to underwrite their loans for ability to repay, lenders may find that borrowers are more able and likely to prepay their loans. Under some circumstances, a borrower who prepays a loan can be less profitable than one who defaults.[107] For that reason, the lender CashCall balances prepays against defaults to avoid unprofitable loans.[108]

Consequently, if lenders that are subject to ability-to-repay rules find that early prepayments are causing economic impacts, then lenders may decide to add prepayment penalties to loans to make up for those losses.

---

[106] *See* NCLC, *Installment Loans*, Appendix C at 74.
[107] *See* NCLC, *Misaligned Incentives* at 1.
[108] *Id.*

11. Are there methods of imposing informal penalties for prepayment, such as withholding a promised rebate, which raise consumer protection concerns in either covered or non-covered loans marketed to consumers facing liquidity crisis?

Yes, in several ways. If upfront fees are earned at origination, a consumer who refinances or repays the loan early in the loan term pays a greater share of costs than a consumer who does not. Some states require a refund of unearned fees, but most consider the fees earned instantly.

As mentioned above, use of the Rule of 78s on loans with precomputed interest serves as a prepayment penalty. The method by which refunds are calculated on unearned insurance premiums is similar, and also serves as a prepayment penalty. Some lenders may also charge interest for the entire term even if the loan is repaid early.

a. If so, specifically what contractual terms or business activities are associated with consumer harm?

Prepayment Penalties

In whatever form they appear, prepayment penalties always cause consumer harm. They inhibit consumers from repaying their loans early and getting out of debt. They increase the cost of the loan beyond what consumers anticipated. To the extent they are charged on high-cost loans, prepayment penalties make it more difficult to escape expensive loans that may have been taken out at a moment of desperation, and more difficult to obtain help in paying off a loan. Prepayment penalties are also likely to be hidden in the fine print of contracts that consumers do not see.

Failure to refund precomputed interest

Some state laws still allow lenders to use the precomputed interest model rather than the periodic interest model.[109] Federal law requires lenders to refund precomputed interest if a loan is repaid early. One complaint in the CFPB's database against One Main indicates that one lender may not be doing so: "When I signed the papers, every time it said no penalty for early repayment, the agent put his finger on the page to point that out, so his finger hid the next line, which said: but you still have to pay the interest for the full term." (Complaint # 1827412.)

Rule of 78s

The Rule of 78s is a method of calculating rebates of unearned interest on loans that use the precomputed interest method. It increases the cost of a loan that is repaid early, as compared

[109] NCLC, *Installment Loans* at 18.

to a loan with interest charged on a standard amortization model. The unfairness of the Rule of 78s led Congress to ban its use, but only for loans over 61 months.[110] World Acceptance is one lender that still uses the Rule of 78s.[111]

An NCLC report on installment lending explains the Rule of 78s:

> "The Rule of 78s was developed in an era without computers. The rule is so named because it is based on assigning a number to each month in the loan term, and adding these numbers together. For a 12-month loan, 1 + 2 + 3 + 4 + 5 + 6 + 7 + 8 + 9 +10 + 11 + 12 = 78. The rule allows the creditor to attribute 1/78th of the interest to the last month of the loan, 2/78ths to the second-to-last month, and so on. Then the rebate is computed based on the sum of these fractions. For example, if the consumer pays off the loan when just two payments are left owing, the rebate would be 1/78th plus 2/78ths of the interest on the loan, for a total of 3/78ths of the interest. For complicated reasons, this formula allows the lender to keep more of the interest than it has actually earned at a given point in time, *i.e.*, more than it has earned when calculated on an actuarial basis."[112]

The following chart from the same report shows the potential impact of the Rule of 78s:

TABLE 3

Rule of 78s Penalty for 24-month $2000 Loan at 36%

Showing the difference between a Rule of 78s rebate and an actuarial rebate for a $2000 24-month loan at 36% interest

IF LOAN IS REFINANCED AFTER...	RULE OF 78s PENALTY
4 months	$20.95
8 months	$27.98
12 months	$24.73

[113]

The Rule of 78s is also used in calculating rebates for unearned credit insurance premiums when the loan prepays or is refinanced. This has a similar impact on consumers as the Rule of 78s on unearned interest – the method generally results in a rebate that skews to the benefit of the lender.

Consumers do not understand the Rule of 78s or how it increases the costs of prepaying or refinancing a loan. The ability to use computers to instantly compute the unearned interest

---

[110] 15 U.S.C. § 1615.

[111] https://www.sec.gov/Archives/edgar/data/108385/000010838515000036/wrld-331201510xk.htm

[112] NCLC, Installment Loans at 18.

[113] *Id.*

easily should make the Rule of 78s obsolete, but the Rule of 78s persists because of its benefit to lenders.

Up-front fees and add-on products.

As discussed above, up-front fees and add-on products that are not rebated upon prepayment can increase the cost of a loan.

> ***b. What evidence, data, or other information tends to show the current or likely future prevalence of consumer harm associated with such informal penalties for prepayment.***

Specific data on rebates of unearned fees, interest or insurance premiums is not readily available. A number of states allow the use of the Rule of 78s to calculate rebates, and as such is likely applied to the majority of borrowers, if not all, in those states.[114]

> ***12. Are there circumstances in which excessively slow amortization of high-cost installment loans or open-end lines of credit raise consumer protection concerns?***
>
> ***a. If so, what specific contractual terms or business activities are associated with consumer harm?***
>
> ***b. To what extent are consumers aware of the costs and risks of such loans? Are there other factors that might frustrate the ability of consumers to protect their interests in using such loans?***
>
> ***c. Is there consumer harm from loan payment schedules where the bulk of repayment allocated to principal occurs in the final few payments of an even payment loan? What specific criteria should the Bureau consider in identifying such consumer harm, if any?***
>
> ***d. What data, evidence, or other information tends to show the current or likely future prevalence of consumer harm, if any, associated with payment schedules of this type?***
>
> ***e. What evidence exists that consumers who make an even-payment understand that the lower principal is not being evenly paid down?***

Slow amortization of high-cost installment loans or open-end lines of credit raises serious consumer protection problems. As we discussed in our comments on the Concurrent Proposal, lenders that make slowly amortizing loans are less likely to adequately consider the borrower's ability to repay. These loans can be profitable for the lender even if the consumer defaults, resulting in misaligned incentives and poor underwriting.[115] Thus, we made several suggestions in those comments to account for slowly amortizing loans, including requiring a more substantial residual income cushion for loans over six months long and providing that

[114] NCLC, Installment Loans, Appendix C at 74.
[115] *See* NCLC, *Misaligned Incentives*.

refinancing before consumers have made substantial progress in repaying the loan (i.e., have repaid 75% of the loan) triggers a presumption of inability to repay.

Even beyond the impact on underwriting, slowly amortizing loans also pose several other problems for consumers. Slow amortization schedules on high-cost loans:

- Are unfair, deceptive and abusive because the slow amortization schedule defeats consumers' reasonable expectations that their payments will make progress in repaying a loan.[116]
- Can cause debt fatigue and frustration, leading to higher default rates.
- Make it harder to escape high-cost loans, keeping consumers trapped in expensive debt.
- Push consumers deeper into debt when loans are refinanced, because loan size must increase in order to provide cash-out to induce refinancing.

Many complaints in the CFPB's database are from consumers who are upset that they have been making loan payments for a long time with little to show for it. Clearly, these consumers did not understand that their payments would not make progress repaying the loans. These are just a few of the many complaints from the CFPB's database that involve significant impact on consumers resulting from payments that have not made significant progress reducing principal:

- "I took a XXXX loan from Cash Call…. In taking the loan I was never disclosed the accurate interest rate.I never received paperwork and I have come to find that I am paying roughly XXXX per month as my payment and {$0.00} cents of that are going to principle. This cant fit in a box called fair lending. This is financial prison!..." (Complaint # 1485328, 7/24/2015)
- "I took out a loan [from Cottonwood Financial] for {$42000.00}. The first month payment was {$3500.00} and then it was {$2500.00} a month after that. After almost a year of paying I called requesting a pay off amount. They told me the pay off would be almost {$47000.00}!!! I do n't understand how the balance goes up? Please help me resolve this. I have not missed a payment."(Complaint # 2141108, 10/3/2016).
- "I have a XXXX-Cash call-XXXX loan. I obtained this loan in XXXX 2012. I pay {$480.00} a month. It was a {$5000.00} loan. After XXXX I have paid in & gt ; {$8000.00}. I thought it was a XXXX month loan at 100 % interest (I was desperate at the time). I called to check

[116] While mortgages also have slow amortization, that is a function of the large loan size and resulting long term. Consumers who take out a 30-day year mortgage expect to be paying for years and do not expect significant principal reduction in the early years. Consumers who take out much smaller and shorter loans likely do not expect that they can make hundreds or thousands of dollars of payments without significantly reducing loan principal. Credit cards also have slow amortization—albeit at typically much lower rates than higher-cost installment loans or other open-end lines of credit—and that is one of the key problems with credit cards: it is too easy to get deep into debt and too hard to get out with minimum payments.

my pay off and was informed the pay off was about {$5300.00} at 116 % interest and 100 % daily interest with a XXXX month loan." (Complaint # 1400952, 6/1/2015)

- "In XXXX 2014, I took out a {$5000.00} personal loan with Cash Call, Inc. The terms of the loan are egregious and predatory. My annual percentage rate is 116 %. The cost of my loan, according to my contract is {$35000.00} and the total cost, if payments (84) are paid according to schedule, will be {$40000.00}. My monthly payments are {$480.00} (with exception of my first payment which was {$640.00}) and are debited from my checking account each month. After making payments on my loan for the past two years, I find that as little as XXXX cents a month has been applied to the principal amount of my loan. Currently, less that {$3.00} per month is applied toward each payment." (Complaint # 1880951, 4/15/2016)
- "I took out an unsecured loan in XXXX at One Main Financial previously XXXX XXXX. In XXXX I refinanced loan. The principal on the account was {$7900.00}. I have been paying on the loan for 5 years and they say that I still owe {$7200.00}. They are now threatening to turn the account over to their legal department andI have my wages garnished because we are 2 months behind due to my hours at work being cut by half. To date we have payed close to over {$11000.00} on this loan, it should be payed off or almost paid in full by now. We have been making payments of $ XXXX/month for the life of the loan….This seems to me that there is something that needs to be done. I am not saying that I do not owe money, but I know that I do not owe them over {$7000.00}." (Complaint # 2008652, 7/13/2016)
- "She took out a $3000.00 installment loan…. Paid [$4800.00] to the lender. However, only $700.00 of that has actually gone toward her principle and she still has an outstanding debt of $2100.00. At times there was not enough money in her bank account to cover those payments and she accrued about $200.00 in overdraft fees."
- "Niece took out loan with Castle Payday [for $800.00]… [Payments] were made to Castle Payday, for a total of $1100.00 …. They told me that all the payments I made were for interest, and that I still owed $1300.00."

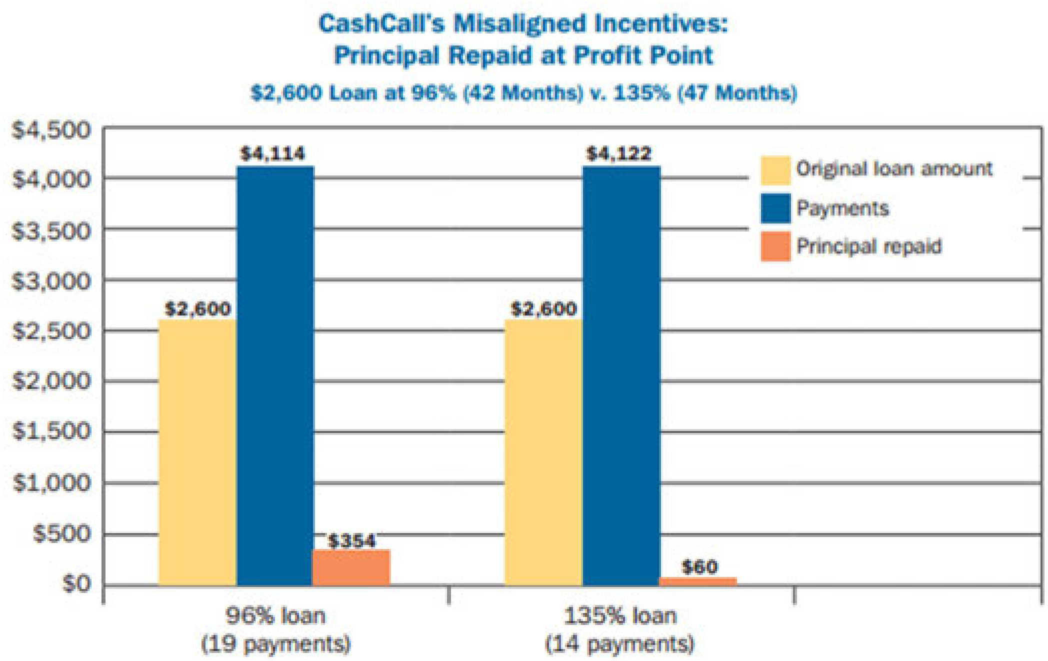
In another example, a Delaware court recently found that a loan was unconscionable based on several factors, including the fact that it had interest-only payments for the first 12 months.[117]

While some of the CFPB complaints involve interest-only loans, many do not. Payments that are nearly interest-only for many months can also result from high-rate loans with regular amortization schedules but longer terms. The lender may be able to collect the loan amount and possibly even enough to make a profit long before the consumer makes significant progress in repaying the loan. Thus, lenders can be more callous about default rates and have a viable business model despite inadequate underwriting to ensure that the borrower can repay the

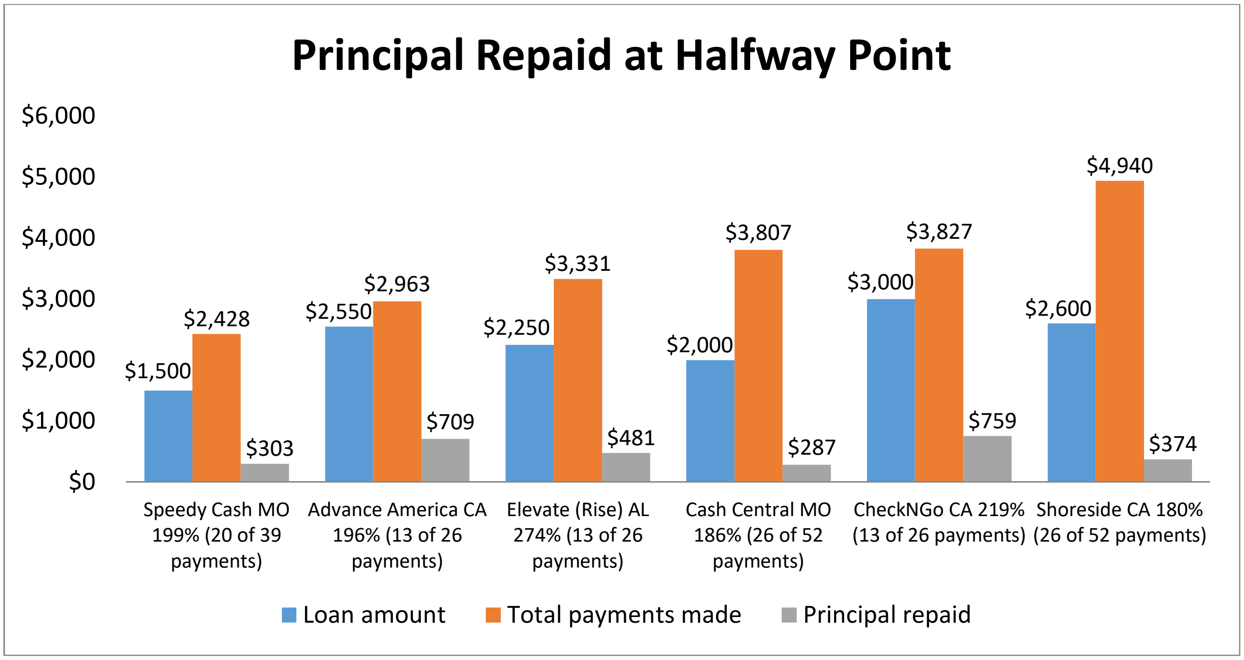
[117] James v. National Fin., L.L.C., 132 A.3d 799, 821-826 (Del. Ch. 2016).

entire loan. At the same time, consumers who struggle to make payments but see little progress may be more likely to default.

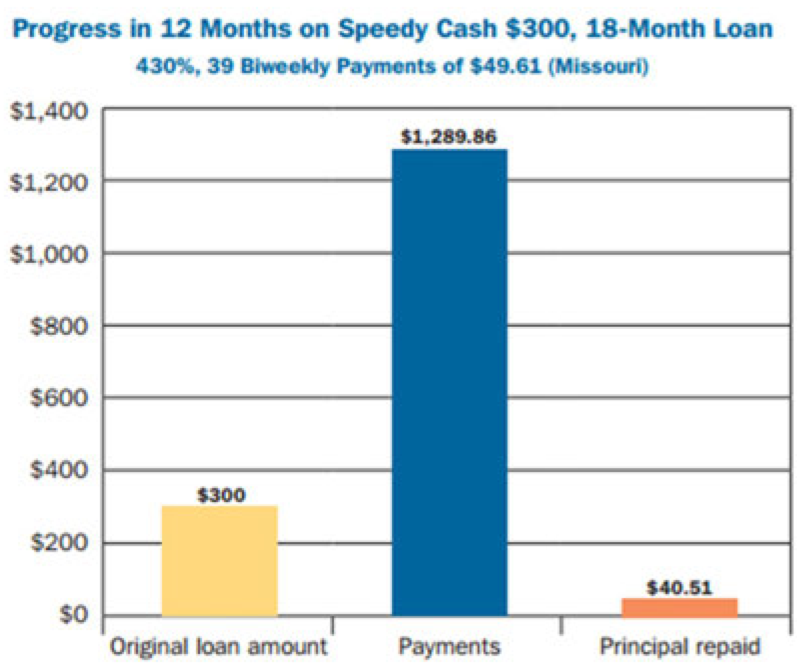
NCLC illustrated in its report on high-cost installment loans that a loan with an especially long term can be profitable even if the consumer defaults well short of full term. For example, as shown in the following chart, litigation against CashCall exposed that the lender started making a profit at month 19 on its 42-month loan, and could turn a profit after only 14 months once it increased the interest rate and lengthened the term to 47 months. Yet the consumer has repaid almost none of the loan principal at that point.



Similarly, the following chart shows that, by the halfway point on several other high-rate loans, the consumer has made little progress on the principal, but the lender has received payments that exceed the loan amount and more.



While the biggest disparities happen on large loans, even smaller loans can have nearly interest-only payments for long periods of time if the term is long enough. For example, after making $1,289.86 in payments on a $300 Speedy Cash loan with 39 biweekly payments, the loan has only been reduced by $40.51."[118]



[118] CRL/CFA/NCLC Comment at 169-170.

As the consumer complaints quoted above show, consumers experience frustration with payments that are not making progress toward paying down principal. The payments on high-cost loans made to subprime consumers are inevitably difficult for the consumers to manage while also meeting other expenses. Consumers take out these loans at a moment of desperation, thinking that the loan will help, only to discover how onerous the payments are. After consumers discover how little progress they have made despite making hundreds or thousands of dollars of payments, they are likely to give up, as the complaints illustrate, and stop putting the loan payment ahead of other expenses.

One industry study observed that loans with a term above the median had significantly higher charge-off rates (36.90%) than those with terms below the median (30.74%).[119] While the focus of that data is loan term, not amortization, it is likely that loans with longer terms also had slower amortization. The study observed that the higher default rates on these loans could be the result of debt fatigue: "at some point, borrowers are no longer willing to continue making payments."[120] But debt fatigue is not about unwillingness to make *affordable* payments; it is about the inability or unwillingness to continue struggling to make *unaffordable* payments ahead of necessities and other expenses. Indeed, the industry study noted that the higher default rate on longer loans could be due to the higher likelihood of unexpected income or expense changes that make repayment more difficult.[121] Payments that are not making progress repaying the loan compound the problems posed by these spikes and dips because they make it more likely that the consumer will default on an unaffordable loan because it is simply too difficult to manage and they cannot see a way out.

Indeed, slowly amortizing payments also injure consumers because they make it more difficult for a consumer to escape a high-rate loan. The higher the balance that remains after numerous payments, the harder it is to find a way to pay it off. An early payoff could come from the consumer's own resources, like a year-end bonus or a tax refund. Or the consumer could seek help from a family member, charity or other source to get out of an unmanageable loan. Either way, slow amortization schedules are more likely to keep consumers trapped in high-cost loans because the loans are more difficult to pay off early.

Even though consumers may be aware of the full term of the loan, slow amortization schedules result in deception because consumers may have a reasonable expectation that they will be

---

[119] J. Howard Beales, III & Anand M. Goel, "Small-Dollar Installment Loans: An Empirical Analysis," at 25 (Mar. 20, 2015).
[120] *Id.* at 25.
[121] *Id.* at 25-26. The paper characterized debt fatigue as "at some point, borrowers are no longer willing to continue making payments." *Id.* at 25. But debt fatigue is more properly understood as the cumulative impact of unaffordable payments – an unwillingness or inability to continue letting the loan payment interfere with other obligations and basic expenses. Consumers may be especially unwilling to continue struggling with an unaffordable payment if they cannot see progress in repaying the loan and the end is not in sight.

able to repay the loan early. Consumers take out high-cost loans when they are in crisis, but consumers may hope that they will be able to exit the loan short of full term when their situation improves. That expectation is frustrated by a slow amortization schedule.

Finally, slow amortization schedules also injure consumers because they increase the possibility that the consumer will be pushed deeper into debt when they are refinanced into larger loans. The lure of cash-out for a struggling borrower is a powerful incentive to refinance. Yet if the consumer has not made significant progress in repaying a loan after numerous payments, the only way to provide that cash-out is through a larger loan.

The CFPB's payday research confirms that refinancing often pushes consumers into larger loans. The CFPB found that the median consumer who refinanced a storefront payday installment loan received $402 in cash-out. This cash was not entirely generated by principal pay-down: the median new loan was more than 12% larger than the original loan.[122] Of the $402 in cash-out, nearly a third, $123 came from the larger loan,[123] and only $279 came from the principal pay-down.

Median Refinanced Storefront Payday Installment Loan (assuming 248% APR, 12 biweekly payments of $142.42)	
Original loan	$944
Balance at refinancing	-$715
Amount repaid	=$279
New loan	$1117
Increase over prior loan	$123
Total cash-out	$402

An industry report also shows refinancing leading to larger loans. The report found that consumers who refinance take out an average of 2.6 loans and that, for the median consumer, the last loan is 20% higher than the first one. [124] This is similar to the pattern that has been

[122] CFPB, Supplemental Findings at 20. The CFPB found that the ratio of the previous loan to the new loan was .89. Reversed, 1.0 divided by .89 shows the new loan was 112.4% as large as the previous loan.

[123] For storefront installment loans, the ratio of the median cash-out to the median new loan principal was .36. Supplemental Findings at 20. So if the cash-out was $402, the median new loan was $1117. The ratio of the median previous loan to the median new loan was .89, so the previous loan was $994.

[124] J. Howard Beales, III & Anand M. Goel, "Small-Dollar Installment Loans: An Empirical Analysis," at 38-39 (Mar. 20, 2015). The report found that the average last loan was 48% larger, indicating that a small fraction of loan sequences resulted in a more substantial increase. A dramatic jump in loan size might indicate a lender that offered a "tester" loan to a new customer and then a much larger loan once the consumer repaid the first loan. Smaller loan increases would appear to be indicative of loan creep and a deepening debt trap.

found in short-term payday loans—where consumers get deeper in debt over time, rather than digging themselves out.[125]

As discussed elsewhere in these comments, refinancing is prevalent both in covered and non-covered installment loan markets. Slow amortization schedules increase the harm from those refinancings by pushing consumers deeper in debt and extending their time in debt even longer.

> ***13. With respect to each of these questions, what is the prevalence of these practices in the current market? And, can the Bureau reasonably anticipate that these practices would increase or decrease if the Bureau were to issue a final rule along the lines of the Bureau's notice of proposed rulemaking? If so, why?***

We discuss in detail the prevalence of these practices in the market elsewhere in this comment. And, as we have mentioned elsewhere in this comment and in our comment on the Concurrent Proposal, if the Bureau were to issue a final rule along the lines of the Bureau's notice of proposed rulemaking without closing the significant loopholes in the proposal, we can expect to see significant shifts in the market to avoid coverage under the Rule. Many existing payday and car title lenders have already changed their products to installment products with slow amortization rates, which would have harmful impact similar to single-payment balloon loans.

For practices related to non-covered loans, we would expect these practices to continue post-rule, and may even increase if lenders who previously occupied the payday and car title lending space see opportunities to profit from practices allowed for installment loans in the states.

> ***14. Other than circumstances identified in the Concurrent Proposal, as discussed above, under what circumstances do lenders' use of post-delinquency or default revenue terms such as late fees, default interest rates, or other contractual provisions or remedies in either covered or non-covered loans marketed to consumers facing liquidity crisis raise consumer protection concerns?***

Post-default charges raise significant consumer protection concerns.

We first discuss the general problems post by post-default charges and then discuss the most significant post-default problem: high interest rates, far higher than the judgment interest rate, that continue indefinitely after the loan is default.

---

[125] Uriah King & Leslie Parrish, "Payday Loans, Inc.: Short on Credit, Long on Debt," at 3-4, Center for Responsible Lending (Mar. 31, 2011), http://www.responsiblelending.org/payday-lending/research-analysis/payday-loans-inc-exec-summary.pdf. A study based on Oklahoma borrowers found that initial loans averaged under $279 but the average borrower owes $466.

Problems caused by post-default charges

Post-default charges can significantly increase the costs of a loan for the consumer. Post-default charges also make it easier for lenders to push borrowers into repeat borrowing: a borrower who does not have the funds to make a payment is even less likely to have funds available to pay late fees or additional interest on top of the missed payment. Such a borrower is a prime target for an offer to refinance the loan, rolling the missed payments and late fees into a new loan with a longer term. The higher principal and the longer term will significantly increase the financial impact on the consumer. This pattern can easily repeat itself, leading to a series of loans with increasing principal, interest, and fees and an ever-longer period of indebtedness.

The ability to impose post-default charges also skews the lender's incentives. If the lender can increase revenue by imposing default charges, it has an incentive to encourage or even manufacture default. For instance, after the Supreme Court held that state laws limiting late fees and other fees on credit card were preempted by federal law, banks began finding numerous ways to put borrowers in the "sweat box" – triggering retroactive default interest rate increases, late fees incurred if payments did not arrive by artificially early times in the day, and over limit fees on spending that banks encouraged. Due to the widespread use of these practices, Congress had to intervene and address them in the Credit CARD Act.

Late fees and other consequences of being late are even more problematic in markets aimed at subprime borrowers. Lenders that target subprime consumers know that they struggle with their finances and are highly likely to become delinquent from time to time. These lenders count on delinquency charges as part of their revenue model. In the worst case scenarios, the lenders may actual induce late payments.

For example, one consumer recently filed a complaint with the CFPB, stating:

> "I took out an unsecured loan in XXXX at One Main Financial previously XXXX XXXX. In XXXX I refinanced loan. The principal on the account was {$7900.00}. I have been paying on the loan for 5 years and they say that I still owe {$7200.00}. … To date we have payed close to over {$11000.00} on this loan, it should be payed off or almost paid in full by now. … Also I have noticed that when I make the payment, they hold the check and run it thru the bank after the due date so that they can charge me a late fee and add interest." (Complaint 2008652, 7/13/2016).

A lender's ability to increase revenue by imposing additional charges on borrowers who default skews its incentives in an even more significant way, by giving it the incentive to seek out those borrowers. This incentive provides a powerful countervailing force against any attempt to require lenders to evaluate the borrower's ability to repay a loan. It gives lenders the incentive to evade those requirements, or to comply with them only on paper.

The types of post-default fees that raise consumer protection concerns include late fees, which can accumulate month after month, default interest rates, and clauses that allow the lender to charge the contract rate after the maturity of the loan. These last clauses are discussed in the next section.

Post-maturity contract interest rates

Clauses that allow the lender to charge the contract rate after the maturity of the loan are at least as great a concern as, and probably more common than, clauses that allow an installment lender to increase the interest rate if the borrower defaults. When the contract rate is in the triple digits, allowing the lender to charge it *ad infinitum* after the loan reaches maturity can significantly increase the debt.

Some states limit the interest that can be charged post-default or post-judgment, but many do not.[126] As the Bureau noted in the RFI, even judges who find that the indefinite exponential explosion of debt "shocks the conscience" have found themselves powerless to stop the escalation.

When a lender is allowed to charge post-maturity interest at the contract rate, and the state also allows high or uncapped interest rates on loans, a small debt can balloon enormously if the debtor defaults. Missouri, from which the Bureau drew the examples it described in its Federal Register notice, is the state where these concerns have been raised most prominently, but a sampling of post-judgment interest rate statutes in other states suggests that the same concerns could arise elsewhere.

The harm caused by post-maturity interest at the contract rate is particularly pronounced when it is combined with wage garnishment. The judge in the Missouri case, for example, was forced to uphold the wage garnishment of one borrower whose $80 loan ballooned into a balance of over $19,000 due to post-judgment interest, for which the lender had already collected over $5,400 via wage garnishment.[127] Many states allow continuous wage garnishment, by which serving a single wage garnishment order on the judgment debtor's employer ties up the debtor's wages until the debt is paid off.

Given a high interest rate, the amount that is deducted from the debtor's wages to pay the debt may be less than the amount of interest that is accruing on the debt, putting the debtor into negative amortization and perpetual debt. The practice of charging post-maturity interest at a high contract rate greatly increases the harm caused to borrowers by unaffordable lending.

a. To what extent do lenders making covered loans or non-covered, high-cost loan to consumers facing cash shortfalls consider post-delinquency or default revenue generating terms such as late fees, default interest rates, or other contractual

[126] NCLC, *Installment Loans* at 18.

[127] CRL, *Migration*, *supra* (citing Hollins v. Capital Solutions Investments I, Inc., No. 102093, 2015 WL 3485877 (Mo. Ct. App. June 2, 2015) (Dowd, R., concurring); *see also* Paul Kiel, "When Lenders Sue, Quick Cash Can Turn Into a Lifetime of Debt," Dec. 13, 2013. http://www.propublica.org/article/when-lenders-sue-quick-cash-can-turn-into-a-lifetime-of-debt.

provisions or remedies when they perform underwriting? If they do so, how do they do it?

We do not know the extent to which lenders take post-delinquency or default revenue into account when they underwrite covered loans or non-covered high-cost loans These incentives profoundly undermine any underwriting that the lender does, whether or not the underwriting takes into account the borrower's ability to pay these fees.

The California lender CashCall provides an example. As described in a recent NCLC report:

> "CashCall planned for very few of its loans to pay to full term. As noted, as a result of both defaults and early repayments, the average actual life of CashCall's [42-month] loans during the class period was only 20 months. Less than 7% of CashCall's loans over the period covered by the litigation paid to full term; 45% defaulted, 44% paid early, and the remainder presumably paid in full beyond the original term[.]
>
> CashCall borrowers struggled with their loans but almost always made some payments. Two-thirds of borrowers were late by 30 days or more at some point. But only 4% of the defaults occurred without any payment of principal."[128]

Moreover, CashCall *planned* for a high default rate:

> "CashCall's high default rates did not occur by accident; CashCall targeted a 35% to 40% default rate in its profitability model. That model balanced defaults against prepayments, because when prepayments went up, interest income went down. If default rates went up, normally prepayment rates went down.
>
> CashCall monitored its profitability model to ensure that it had the right mix of defaults and prepayments to achieve its target return on investment. Daily and weekly loan performance reports were reviewed at the highest levels of the company. Although CashCall rejected 72% of borrowers, high, planned defaults were a key element of CashCall's business model."[129]

These high default rates are by no means unusual among high-rate lenders. The CFPB studied the default rates of 2 million payday installment loans made by seven different lenders that charged interest from 197% to 369% with a median of 249%. The lenders generally tied payment to the borrower's payday or benefit payment date and obtained payments through access to the consumer's checking account. The CFPB found: "[E]ven with the priority provided by leveraged payment mechanisms and vehicle title, an extremely high number of loans ultimately end in default…. The overall loan level default rate across payday installment loan products the Bureau [analyzed] is 24 percent. The default rate on loans originated online is much higher, at 41 percent, while for loans originated through storefronts that rate is 17

[128] NCLC, *Misaligned Incentives* at 16-17.
[129] *Id.* at 16.

percent." When refinancing sequences are considered as a single string of borrowing, the default rate for payday installment loans was 38% of sequences —55% for loans originated online, and 34% for storefront loans. Roughly 35% of loans defaulted even when payments were under 5% of the borrower's gross income.[130]

b. *If lenders' current underwriting practices do not include consideration of the borrower's ability to repay post-delinquency or default revenue generating terms, what would be a reasonable method of underwriting for this factor?*

If a lender has a portfolio with a high proportion of borrowers who become delinquent and trigger additional fees or interest, these costs it should built into the underwriting model. The lender should ensure that the borrower can afford to repay not just the loan but also the fees and interest that are likely to accrue should the borrower struggle to pay on occasion during the term of the loan.

Appropriate underwriting, which would include ensuring that the borrower has sufficient residual income to weather any financial shocks that may occur during the loan, would help to prevent the additional burden of post-delinquency and default fees and interest. The Bureau should also pay close attention to high rates of default, both for covered loans and loans that fall outside the scope of the Concurrent Proposal. High default rates are not only a sign that loans are being made without consideration of ability to repay, but also signal additional harm to borrowers through the imposition of additional fees and interest.

c. *What evidence, data, or other information shows the current or likely future prevalence of consumer harm, if any, associated with post-delinquency or default revenue terms in covered or non-covered high-cost consumer loans?*

Publicly available data on the entirety of the market is difficult to obtain. Regulators that collect and publicly report data do not break out fee and interest income from post-default or delinquency charges. Data from individual companies yields little in useful data on this point, as these fees and interest are included in the overall total of fees and interest collected. We recommend that the CFPB require detailed reporting of this information.

As to future prevalence, we think it is likely that the imposition of default fees and high post-maturity or default interest rates will increase as high-cost lenders move into installment loans. Many of the states that authorize high-cost payday lending still have caps on interest rates and loan fees for installment loans.[131] Lenders that move into installment lending in these states, unable to charge the interest rates to which they are accustomed, are likely to be looking for other ways to increase revenues.

---

[130] CFPB, "Supplemental Findings on Payday, Payday Installment, and Vehicle Title Loans, and Deposit Advance Products" at 11-12 (2016), *available at* http://www.consumerfinance.gov/data-research/research-reports/supplemental-findingspayday-payday-installment-and-vehicle-title-loans-and-deposit-advance-products/.
[131] NCLC, *Installment Loans* at 55-56.

State lending laws universally authorize late charges, so it is likely that these lenders will seek to maximize this source of revenue. States vary more in whether they allow post-maturity interest at the contract rate, and whether default interest rates are allowed, but it can be expected that high-cost lenders will look to these revenue sources, too.

15. Are there circumstances in which the use of teaser rates which reset to high-cost loans made to consumers facing liquidity crisis raise consumer protection concerns?

We are not aware of lenders currently using teaser rates in the installment loan market. However, given shifts in the market in anticipation of the final Concurrent Proposal we would not be surprised to see lenders starting to use teaser rates. We commend the Bureau for anticipating this possibility and evaluating the harm that teaser rates might cause consumers.

Teaser rates were widely used in the mortgage market prior to the 2008 mortgage meltdown. This history amply demonstrates the consumer protection concerns raised by teaser rates. If underwriting is performed using the teaser rate, rather than to the fully-indexed rate, consumers will be significantly harmed (and there may be risks to the economy at large). Even if a lender underwrites to the fully-indexed rate, teaser rates have the potential to lure customers in and bind them to obligations that they will have difficulty managing.

If the use of teaser rates takes hold in the installment loan market, we would have the same recommendations as we have for adjustable rate mortgages, including but not limited to:

- Prohibiting underwriting to the teaser rate instead of the fully-indexed rate,
- Ensuring that the borrower can truly handle the payment shock associated with interest rate recast,
- Considering the incentive for refinance that a changing interest rate would create,
- Looking at whether the interest rate is fully adjustable up or down, or whether the rate can only increase, and
- Ensuring that the consumer understands the payment terms and the impact of rate increases on monthly payment.

While we have not seen teaser rates in the current installment loan market, we have seen their opposite: a high "initial" rate that the lender assures the consumer will be reduced in the future. This tactic also has the potential to lure consumers in, and then trap them in loans where the rate reduction never materializes.

a. If so, what specific contractual terms or business activities are associated with consumer harm?

With teaser rates, the structure of the loan itself is designed to create a delayed financial emergency. Even if the loan is underwritten to the fully-indexed rate, the consumer will experience payment shock when the fully-indexed rate kicks in. Consumers who go to high-rate lenders rarely have the ability to set aside money in order to afford higher payments when the teaser rate period ends. Further, if the point of the loan is to solve an immediate liquidity issue, starting with an artificially low payment that dramatically increases some time later is likely to exacerbate, not solve the issue.

b. Do teaser rate products, to the extent any exist, create a mismatch between borrowers' repayment expectations and their actual experiences in either covered or non-covered loans?

To the extent that teaser rate products are being made in the market, we would expect that the use of the teaser rate would create mismatches in repayment expectations. A borrower may take on a loan with a teaser rate in hopes of being able to repay before the interest rate changes, but may encounter an unexpected financial emergency during the loan period. This would likely lead to a refinance at a higher interest rate, making it more likely that the borrower will be in the loan long-term. Consumers also may not understand that a teaser rate is temporary.

c. If lenders offer teaser rate products in loans to consumers facing liquidity needs, do they consider recast interest rates in underwriting? If they do so, how do they do it?

The use of teaser rates is not common in the installment loan market at this point, so we are unaware of how lenders are considering or would consider recast interest rates in underwriting. At the least, the lender should underwrite to the fully-indexed rate and ensure that the borrower has sufficient residual income to weather unexpected events during the term of the loan.

d. What data, evidence, or other information tends to show the current or likely future prevalence of consumer harm, if any, associated with adjustable interest rates products in covered or non-covered high-cost loans?

We do not know of any data regarding the effect on consumers of installment loan teaser rates. However, data regarding the effect of teaser rates in mortgage lending (especially prior to 2008) and credit card lending is likely to be analogous enough to be useful in evaluating the harm that this practice would cause to installment loan borrowers.

16. Are there other circumstances in which "back-end" pricing impedes the ability of consumers to afford or to understand and compare credit options marketed to consumers facing liquidity crisis in a way that raises consumer protection concerns or impedes their ability to understand or anticipate the full cost of the loan to that consumer?

As mentioned earlier, back-end pricing can distort the market, particularly if the lender is already expecting a high level of delinquency and default. Borrowers may be aware of penalty fees and rates, but likely will not understand the impact of those fees and interest if the borrower falls behind. Post-judgment interest in states that allow high-interest rates and that have no cap on post-judgment interest can overwhelm a borrower. At the very least, it is likely that a borrower will significantly understate the risk of financial burden should the loan become unmanageable.

a. If so, what specific back-end pricing fees, contractual terms, or other business activities exist in the marketplace or are likely to evolve in the future?

The most prevalent back-end pricing practices are late fees and post-maturity interest at the contract rate. Loan flipping can also be seen as a back-end pricing practice: especially when combined with per-loan fees and disadvantageous rebate formulas, loan flipping can dramatically increase the price of a loan, often in a way that is nearly invisible to the consumer.

b. If so, what back-end pricing fees, contractual terms, or other business activities are associated with consumer harm?

As explained in earlier sections, all of the items listed above are associated with consumer harm.

c. What data, evidence, or other information tends to show the current or likely future prevalence of consumer harm, if any, associated with such back-end pricing in covered or non-covered high-cost loans?

As mentioned earlier, publicly available data does not provide enough granularity to parse out the amount of back-end fees or interest collected from consumers, separate from front-end fees and interest collected during the normal course of the loan. However, given the high default rates and high refinance rates associated with installment lending, it stands to reason that these fees have a significant impact on borrowers. The current lack of good data regarding these fees makes it particularly important for the Bureau to require data reporting regarding them. The shift to installment lending in reaction to the Concurrent Proposal will likely lead to increased harm from back-end pricing.

17. Aside from affordability, are there consumer protection concerns arising out of the marketing of ancillary products in covered payday, vehicle title, or similar loans? If so, what evidence, data, or other information shows the current or likely future prevalence of these concerns?

We discuss the consumer protection concerns of products currently offered in the installment lending market in response to Question 19.

18. To what extent do lenders making non-covered, high-cost loans consider the cost of ancillary products in determining whether borrowers have the ability to repay?

a. If they do so, how do they do it?

We are not aware of any evidence that lenders making non-covered high-cost loans consider the cost of ancillary products in determining the borrower’s ability to repay.

b. If lenders do not currently consider the affordability of such products, what would be a reasonable method of underwriting for this component of the loan?

As discussed below, most ancillary products should be prohibited, or included within rate caps, because they tend to be deceptive ways of increasing the cost of the product and pose many problems beyond inability to repay. To the extent they are permitted, the consumer's full payment including the ancillary product should be evaluated for ability to repay.

c. What evidence, data, or other information shows the current or likely future prevalence of unaffordable ancillary products in non-covered loans?

We discuss the prevalence of ancillary products, particularly credit insurance, below. The high penetration rates of credit insurance in states with stringent interest rate and fee limits suggests that these products are being used to evade those protections, while significantly increasing the cost of these loans for consumers. We can expect that as lenders with loans covered under the Concurrent Proposal move into installment loans and restructure loans to evade coverage under the rule, lenders will also look to ancillary products as a way to increase revenue and to make high-cost loans in states with interest rate and/or fee caps.

19. Are there other consumer protection concerns associated with the marketing or use of ancillary products in combination with covered or non-covered, high-cost credit? If so, what evidence, data, or other information shows the current or likely future prevalence of such consumer protection concerns?

Credit insurance is the primary ancillary product that most current installment lenders, but these lenders also offer (or have offered) auto club memberships,[132] "buying clubs" that sell consumer goods to consumers that can be paid for with proceeds from loans,[133] non-credit insurance,[134] and tax preparation.[135] State law regarding what additional products a lender may offer varies.

There are several consumer protection concerns beyond questions of affordability:

- Use of credit insurance to hide the full cost of the loan and to evade state interest rate caps,
- High penetration rates and excessive pressure on the consumer to finance insurance,
- Expensive products with low value for the consumer,

---

[132] For example, World Acceptance Corporation, Form 10-K at 5 (2016), *available at* https://www.sec.gov/Archives/edgar/data/108385/000010838516000127/wrld-331201610xk.htm.
[133] *Id.*
[134] NCLC, *Installment Loans* at 16 (2015).
[135] *Id.*

- "Back-end" underwriting,
- Unfair rebate methods,
- Selling more credit insurance than will be necessary to pay off the loan.

Lenders Use Credit Insurance to Disclose a Misleading APR, Deceive Borrowers about the Cost of the Loan, and Evade State Interest Rate Caps

The cost of credit insurance must be included in the TILA APR if the insurance is mandatory. However, the cost may be excluded from the finance charge under Regulation Z, and thus from the APR, if the insurance is voluntary and is agreed to separately from the loan itself.[136] One exception is credit property insurance, which is sold to "protect" the collateral the lender takes for secure the loan. Credit property insurance is excluded as long as the consumer is informed that the coverage can be obtained from a person of the consumer's choice, and the creditor discloses the cost of the insurance if it is purchased from the creditor.[137]

However, there is ample evidence that lenders use techniques that make the voluntary nature of credit insurance illusory. These lenders routinely pre-pack contracts with credit insurance products and require the borrower to decline each one of them.[138] Or they may require the borrower to submit a form and a letter to the main office before they will remove credit insurance from a loan.[139]

Evidence suggests that many lenders use credit insurance as a way to circumvent state interest rate and fee limits. Consumer finance lenders, for example, sell more credit insurance in states

[136] 15 U.S.C. § 1605(b); 12 C.F.R. § 1026.4(d).
[137] 12 C.F.R. § 1026.4(d)(2) (also requiring the term of the insurance to be disclosed if it is less than the term of the transaction).

[138] Paul Kiel, "The 182 Percent Loan: How Installment Lenders Put Borrowers in a World of Hurt," *ProPublica* (May 13, 2013) (quoting a former World Finance manager as saying: "You were supposed to tell the customer you could not do the loan without them purchasing all of the insurance products, and you never said 'purchase,'" Buys recalled. "You said they are 'included with the loan' and focused on how wonderful they are"), *available at* https://www.propublica.org/article/installment-loans-world-finance.
[139] *Id*. ("But World soon made it harder to remove the insurance premiums, Buys said. She couldn't remove them herself but instead had to submit a form, along with a letter from the customer, to World's central office. That office, she said, sometimes required borrowers to purchase the insurance in order to get the loans.")

with lower interest rate limits than they do in states with higher or no limits.[140] And where they do sell it, these "voluntary" products can have close to 100% attachment rates.[141]

The comments of Reinvestment Partners in response to this RFI describe the role of credit insurance in more detail. The following chart, taken from those comments, describes the large disparity between the TILA APR and the full APR with credit insurance included for loans from various lenders including Springleaf, First Franklin, Acceptance Loan, Harrison Finance, ABC Finance, Conn's, and ABC Finance. That disparity allows lenders to evade state interest rate caps:

[140] The interactive map provided here—http://projects.propublica.org/graphics/installment-loans—shows the stated APR versus the effective APR on World Acceptance loans in the states where the company operates. In a state like Missouri that has no rate cap on longer-term loans, the effective and stated APRs are identical (203.9% each), meaning that the company does not sell insurance products (since that cost is typically excluded from the APR). But in states with rate caps on longer-term loans, the effective APR far exceeds the stated rate, with the difference largely attributable to credit insurance and other ancillary products. For example, Kentucky has a 36% rate cap for installment loans like World's. The stated APR on World's loans there is 33.6%, versus an effective APR of 75.1%. Pro Publica reported that World said that whether or not it sells insurance products in a state depends on state law and if "it makes business sense to do so." Kiel, Paul. The 182 Percent Loan: How Installment Lenders Put Borrowers in a World of Hurt (May 13, 2013), https://www.propublica.org/article/installment-loans-world-finance.

[141] The attachment rates of these products in states where World sells them are close to 100%. In one study, 100% of World borrowers in samples from Tennessee and Louisiana and 99% in a sample from South Carolina had purchased a voluntary product. 96% of all such borrowers across all five states purchased a voluntary product; 75% purchased two or more voluntary products. The average borrower purchased 2.42 voluntary products per loan. "Mangrove Partners: Presentation to the Consumer Finance Protection Bureau." Washington, D.C., August 20, 2013. On file with Consumer Federation of America.

State	Loan Amount	CI Premiums	TILA APR	Interest Rate with CI
MS	$1,667	$308	33.3%	64.0%
TX	$9,079	$2,368	16.8%	60.2%
IL	$10,800	$2,800	36.0%	57.2%
LA	$1,447	$88	35.9%	54.6%
FL	$2,476	$457	29.7%	52.9%
TN	$4,267	$676	28.8%	50.5%
GA	$5,176	$680	36.6%	48.5%
SC	$2,212	$212	36.0%	47.5%
LA	$1,554	$95	35.8%	46.4%
AZ	$4,577	$577	35.8%	46.2%
CA	$4,235	$435	35.0%	43.9%
VA	$3,337	$325	33.4%	42.8%
IL	$10,444	$2,293	25.6%	41.4%
KY	$2,153	$236	26.9%	39.7%
VA	$6,591	$546	32.8%	39.7%
TX	$6,419	$919	28.6%	38.5%
AL	$5,318	$253	32.4%	37.8%
LA	$5,961	$661	30.1%	37.6%
TX	$4,409	$410	30.4%	37.3%
LA	$2,129	$125	32.2%	37.1%
MO	$6,140	$348	31.5%	35.2%
TX	$6,072	$1,177	18.7%	35.0%
IL	$10,324	$324	26.1%	28.1%

As we discuss in more detail in the next section, the penetration rate of credit insurance is particularly high in states with more stringent interest rate and fee limits. For instance, in North Carolina in 2014, more credit insurance products were sold than loans made in the state.[142]

High Penetration Rates/High Pressure Sales

As discussed earlier, in order for credit insurance to be excluded from the calculation of finance charge under Regulation Z, the products must be voluntarily offered to the consumer and cannot be required to receive the loan.[143] However, the high penetration rate of insurance in certain states is evidence that these products are not truly voluntary, and that lenders use different pressure tactics to convince borrowers to finance credit insurance into the loan.

Courts have established different thresholds to determine whether a certain penetration rate is proof that credit insurance products are not truly "voluntary." One court held that ostensibly voluntary insurance was in fact required where 100% of borrowers under the age of seventy purchased it,[144] but another court suggested that if even one consumer rejects the insurance then the product might still be considered voluntary.[145]

State-level data provides some information about credit insurance penetration rates in installment lending.

In North Carolina, the interest rate and fee limits in the state's Consumer Finance Act do not include credit insurance. As such, lenders have used the sale of ancillary products to circumvent the interest rate and fee limits in North Carolina. North Carolina installment lenders sold more credit insurance policies than loans made in the state in 2014.[146] According to the annual report on installment lending from the North Carolina Commissioner of Banks, who regulates installment lenders in North Carolina, lenders made 528,479 loans in 2014, and sold 1,201,059 credit insurance policies in conjunction with those loans. This included:

- 425,175 credit life policies,
- 239,697 credit accident and health policies,
- 176,091 credit unemployment policies, and
- 360,096 credit property insurance policies.

---

[142] *See* North Carolina Commissioner of Banks, Consumer Finance Annual Report at 16 (2014), *available at* http://www.nccob.org/Public/docs/Financial%20Institutions/Consumer%20Finance/2014_Annual_Report.pdf.

[144] Kaminski v. Shawmut Credit Union, 494 F. Supp. 723, 729 (D. Mass. 1980).

[145] *In re* Milbourne, 108 B.R. 522 (Bankr. E.D. Pa. 1989) (99 1/2% credit life penetration rate was probative in efforts to establish that insurance was required, but court needed explanation as to why the other 1/2% did not purchase it).

[146] *See* North Carolina Commissioner of Banks, Consumer Finance Annual Report at 16 (2014), *available at* http://www.nccob.org/Public/docs/Financial%20Institutions/Consumer%20Finance/2014_Annual_Report.pdf.

Researchers have found similar data in other states:

> "Credit insurance could be interpreted as being more beneficial to the lender than it is for the consumer. In states that collect the data, the sale of insurance products is more than double the number of loans originated, indicating that a single loan can be often stacked with multiple insurance products. Lenders make tremendous revenue off these products while the cost to the borrower out-weighs the products' benefits. Also indicative of these products' purpose as a revenue generating tool is their state-by-state presence: installment lenders tack these credit insurance products onto loans in states that have lower statutory caps on interest, but not in states that allow for higher interest rates.[147]"

Court records have also proven to be a useful source of information regarding the inclusion of credit insurance products. CRL recently examined documents included in collections suits filed in Wake County, NC by four of the state's largest installment lenders (Time Financing, Springleaf, Regional, and OneMain) between 2012 through 2015.[148]

In cases involving loans that had not been refinanced, excluding loans from live checks:[149]

- 76.3% included credit insurance products.
- 100% of loans from one particular lender, Time Financing, had credit property insurance.
- 85.7% of loans from Regional Finance had credit property insurance.

In cases involving loans that had been refinanced:

- Many paid very little cash out to the borrower, as most of the loan proceeds paid off the prior loan's balance or add-on insurance products.
- Over half of all refinances paid out less than 25% of the amount financed to the borrower. 75% of the loan proceeds were devoted to credit insurance premiums, paying off the prior loan amount, and fees.
- Approximately 88.2% of all refinances included add-on insurance products.
- Time Financing placed add-on insurance products on ***all*** of its refinances,
- Regional placed insurance products on 95.7% of its refinances.
- OneMain and Springleaf placed insurance on 68.2% of its refinances, and
- Springleaf placed insurance on 64% of refinances.

---

[147] Reinvestment Partners, An Introduction to Credit Insurance at 3, *available at* http://www.reinvestmentpartners.org/wp-content/uploads/2016/03/An_Introduction_to_Credit_Insurance.pdf..

[148] The Wake County court records sampled consist of 375 case files (278 of which included loan documents) from 2012-2015 involving lenders Time Financing Service, Springleaf, Regional, and OneMain. Court records on file with the author.

[149] Credit insurance is not sold in conjunction with live check loans.

Within this pool of loans, an average of 10.2% of the amount financed was devoted to insurance products.

In a number of cases involving loans that had been refinanced, the borrower from the transaction financed significant credit insurance premiums. For example:

1. Borrower A (Springleaf) was refinanced into a $6774.75 loan (with payments totaling $11471.14 over 48 months). Of the amount financed, $3076.64 paid off the prior loan, $2204.72 paid insurance premiums for 3 policies. **Credit insurance equaled 32.5% of the loan amount.**
2. Borrower B (Springleaf) was refinanced into a $8225.43 loan (with payments totaling $15363.60 over 60 months). Of the amount financed, $4553.64 paid off the prior loan, $2670.22 paid insurance premiums for 2 policies. **Credit insurance equaled 32.5% of the loan amount.**
3. Borrower C (Springleaf) was refinanced into a $5303.45 loan (with payments totaling $8009.45 over 48 months). Of the amount financed, $3740.87 paid off the prior loan, $1553.38 paid insurance premiums for 3 policies, and Borrower C received $9.20 in cash from the transaction. **Credit insurance equaled 29.2% of the loan amount.**
4. Borrower D (Time Financing) was refinanced into a $1463.02 loan (with payments totaling $1968.00 over 24 months). Of the amount financed, $974.54 paid off the prior loan balance, $196.29 paid insurance premiums on 6 policies, net of insurance refunds on prior account, and Borrower D received $34.31 in cash from the transaction. **Credit insurance equaled 13.4% of the loan amount.**

These cases also illustrate the incentive credit insurance provides to refinance the loan.

Lenders routinely use high-pressure tactics to sell credit insurance products. This includes pre-filling the loan contract with the products included and requiring the borrower to decline all of them. If the borrower declines, lenders can say that reprinting the contracts will take time and threaten to withhold funds as pressure to take the loan with the insurance included. Examples from the Bureau's complaint database illustrates these tactics:

- "OneMain, 4/4/16 - I went in to get a loan from spring leaf financial and the representative went over the benefits and features of the payment protection and life insurance. Quoted me a payment with it automatically added. I then declined to take the "optional insurance product '' She then continued to try to sell me the product even after I had declined and said I was not interested. She insisted that she needed to continue telling me the benefits and features in case I wanted to change my mind. They then told me how my rate was going to increase because I did not take the insurance so it put my loan just under XXXX. I then asked them can we increase the loan to the amount they were going to do with the additional insurance on there to get the lower rate and the woman said no. she said we would only allow that loan amount if you were going to take our additional insurance product otherwise we will not increase your loan to that amount if you are electing now to take it. She also then indicated that because I chose not to take it which would have increased the amount and reduced the rate that I would be subject to the higher interest rate. I tried to speak with the woman to say that this seems very deceptive and she said that it was how they did things and that it was an optional insurance product. To me it doesn't seem right that they are willing to increase a loan amount if I buy their insurance but not if I don't and that they are going to raise my rate if I don't take it by changing the approved amount. Also they kept pressuring me to take the insurance after I had already indicated I did not want it."

- "OneMain (3/3/16) - I took out a {$4000.00} loan with Springleaf Financial Services. I applied online for the loan. I went into the company 's office to pick up the loan check and to complete the process.The loan term was to be 36 months, with a payment of {$190.00}. The loan specialist showed where they had applied several insurances unemployment, XXXX, and XXXX different accidental death. I told him I did not want the insurances. The worker assured me the insurance would be removed from the loan. The date of stated above loan was XXXX/XXXX/2015. According to Springleaf policy my documents would be emailed to me. I made 10 payments on time .i received {$1500.00} loan on XXXX/XXXX/2015. It was to be same 36 month term as the first loan. Payments were to be {$260.00} a month. As before I did not want the insurance. I received my payment statement for the combined loan with a balance {$12000.00}. I had only borrowed a total of {$5500.00}. I called spoke with XXXX the manager, she told me if I only made the minimum payment it would be the {$12000.00} amount. I went to their office and got the paperwork I never received. I am completely horrified at the amounts I was charged and what was added to not one loan but both! The XXXX loan I was charged {$1100.00} for insurance premium s I had declined. I only borrowed {$4000.00} but it showed I had financed {$5100.00} with pre computed interest added {$3100.00} with the loan term 42 months! This was not the amount and terms I had agreed. The 24 % APR turned out to be 28.86 %. The XXXX loan was combined and another {$2000.00} in insurance premiums added to the original {$1500.00} loan amount. The amount financed was {$7500.00} with interest {$4900.00}. The term was for 48 months This is predatory lending at its worst! I have called and spoke to several staff and managers each time I am told something different. When I said I did not want the insurance on either loans and it was only 36 months. XXXX said I could not pick the loan term duration ... Why was I asked then! The insurance premiums total the amount of {$3200.00} then with pre computed interest added to each payment, over {$5000.00} added to the original loan amount combined of {$5500.00}. I have kept my ground and when they realized I had been charged for the same type insurance twice on the last loan, they made arrangements to refund the premiums of the XXXX loan in the amount of {$2000.00}. I do not find this acceptable. I want the amount of the XXXX loan insurance premium {$1100.00} plus interest that was added to the full amount of {$3200.00}."

Low value for the consumer

Particularly on high-cost loans, credit insurance and other ancillary products often provide little value to the borrower.[150] The bulk of credit insurance premium dollars do not go to pay claims. Instead, the bulk of premium dollars collected are used to pay commissions to the lender selling the policy and as compensation to the insurance company.

Data from the National Association of Insurance Commissioners showed that the national average amount of premium dollars to pay claims on credit life insurance policies was 45.21% and for credit accident and health was 33.84% in 2015.[151] Oregon regulators reported that 20.6% of credit insurance premiums were used to pay claims. Colorado regulators reported that 35.93% of credit property & casualty premiums and 37.24% of credit accident & health premiums written went to pay claims.

On a dollar-per-dollar basis, claims paid on credit insurance policies fall far below those related to other insurances."[152] In contrast, more than 60% of property casualty insurance written on real property is paid out in claims. Model legislation from the National Association of Insurance Commissioners (NAIC) recommended that states require a loss ratio of at least 60% for credit insurance products.[153]

Back-end Underwriting

Credit insurance premiums may even be charged to consumers when they do not qualify for insurance (for example, credit accident and health insurance provided to a disabled consumer). The insurer then denies the claims that consumers file, but keeps the premiums for all the other ineligible consumers.

Unfair rebate methods

As discussed in a previous section, insurers and lenders often use methods to rebate unearned insurance premiums that disfavor the borrower. In particular, insurers may use a refund

---

[150] *See, e.g.*, Adam Rust, "Why Credit Insurance Is a Poor Value," *Bank Talk* (Sept. 11, 2015), *available at* http://banktalk.org/content/why-credit-insurance-poor-value; *See, e.g.,* NCLC, *Installment Loans* at 13-17 (discussing loan packing); Paul Kiel, "The 182 Percent Loan: How Installment Lenders Put Borrowers in a World of Hurt," *ProPublica* (May 13, 2013) (discussing how add-on credit-related products increased the cost at no benefit to the borrower), *available at* https://www.propublica.org/article/installment-loans-world-finance.

[151] National Association of Insurance Commissioners, Credit Life Insurance and Credit Accident & Health Insurance Experience 2011-2015 (2016).

[152] Adam Rust and Amelia O'Rourke-Owens, "An Introduction to Credit Insurance" at 2, Reinvestment Partners, *available at* http://www.reinvestmentpartners.org/wp-content/uploads/2016/03/An_Introduction_to_Credit_Insurance.pdf.

[153] www.naic.org/store/free/MDL-370.pdf

formula based on the Rule of 78s, which consistently results in the borrower getting a smaller refund than if the insurer used another, more accurate method.[154]

Selling more credit insurance than will be necessary to pay off the loan

Lenders can also inflate the cost of insurance premiums by selling more insurance that is necessary to pay off the amount of the loan. This practice increases the interest charged for the loan, and the amount the consumer has to repay.[155]

> ***20. Are there other marketing, origination, underwriting, or collection practices that currently exist or, if the Bureau issues a final rule along the lines of the Concurrent Proposal, are likely to emerge, that pose risk to consumers and may warrant Bureau regulatory, supervisory, enforcement, or consumer educational action?***

Electronic signatures and communications

As more and more lending moves online and onto mobile devices, the CFPB must be mindful of the issues posed by electronic signatures, disclosures and communications. While electronic methods can pose a convenience, they can also present the risk that consumers do not see or understand information. Online lending also poses identity theft problems.

Just because a transaction is completed electronically does not mean that the consumer has effective internet access. In-person transactions are often completed through an electronic tablet provided by the lender. For example, we are seeing numerous problems posed by PACE energy efficiency loans that are promoted by contractors going door to door with ipads to sign up seniors and others. In many of these cases, the consumers did not see the contract or disclosures before the transaction; did not understand that they were signing a binding contract (as opposed to an estimate or permission to check their credit); and never received or had access to the contract or the accompanying disclosures. More and more storefronts complete agreements electronically in this way as well, raising questions about whether the terms of the contract are different from those understood by the consumer, and whether the contracts and disclosures were actually made available to the consumers.

There is also some question whether transactions entered into in this manner comply with both the requirements of the federal E-Sign Act, requiring that the consumer electronically consent

---

[154] *See* National Consumer Law Center, Consumer Credit Regulation § 6.10.3 (2d ed. 2016), *updated at* www.nclc.org/library.
[155] *See* NCLC, *Installment Loans* at 14.

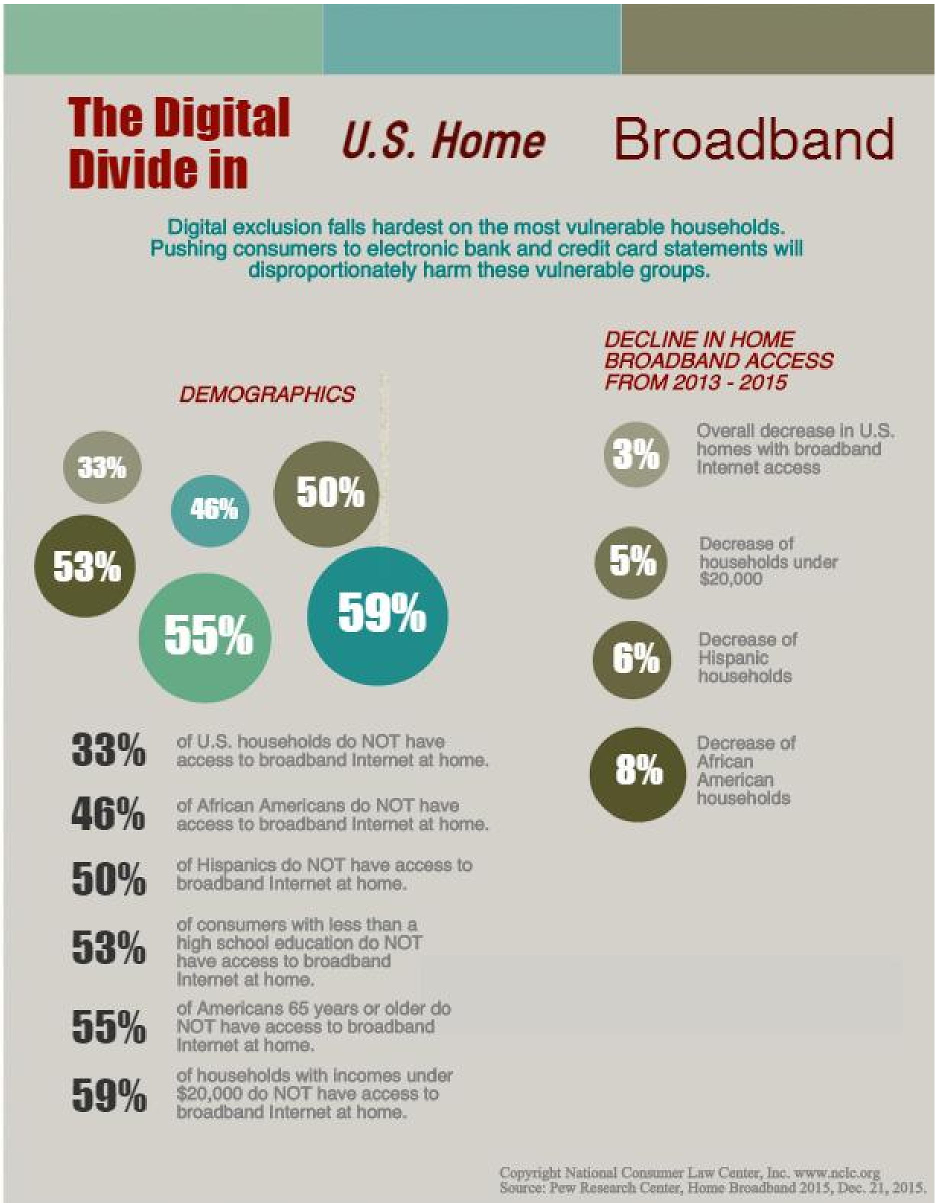
in a manner that evidences the ability to access the documents,[156] and with the requirements of the Uniform Electronic Transaction Act (applicable in almost all states) only allowing written documents to be replaced by electronic records when both parties have agreed to conduct the transaction by electronic means.[157]

Millions of consumers, especially those of color, or elderly, or in rural areas, do not have reliable and affordable internet access.[158] For example, 41% of elderly households and 23% of households living below an annual income of $30,000 do not have access the Internet at all.[159] This means they have no access through either a computer or a mobile device at home, at work, or somewhere in their community.

Moreover, even if consumers have an email access and some access to the internet, it does not mean they have access to a fast enough connection to be truly functional. A recent survey by the Federal Trade Commission found that large parts of the country lack broadband access.[160] The FCC found that large parts of the country do not have fixed internet access at the speed benchmarks of 25 Mbps download/3 Mbps upload (25 Mbps/3 Mbps). Fully 10% of all Americans (34 million people) and 39 percent of rural Americans (23 million people) lack access to 25/3 service. In rural America, 20% lack access even to service at 4 Mbps/1 Mbps. Another study, by Pew, found that 33% of all households, and 59% of households with incomes under $20,000, do not have access to broadband internet at home.[161]

[156] 15 U.S.C. § 7001(c).
[157] *See e.g.* Uniform Electronic Transactions Act, Section 5(b).
[158] Pew Research Center, "Smartphone Use in 2015" at 4 (Apr. 2015) (smartphone connectivity is tenuous for the poor), *available at* http://www.pewinternet.org/2015/04/01/us-smartphone-use-in-2015/; Pew Research Center, "Home Broadband 2015" at 4 (Dec. 2015), *available at* http://www.pewinternet.org/2015/12/21/home-broadband-2015/; Colin Rhinesmith, "Digital Inclusion and Meaningful Broadband Adoption," at 8-9, Benton Foundation (Dec. 2015).

[159] Monica Anderson & Andrew Perrin, "13% of Americans don't use the internet. Who are they?" Pew Research Center (Sept. 7, 2016), http://www.pewresearch.org/fact-tank/2016/09/07/some-americans-dont-use-the-internet-who-are-they/.
[160] Federal Communications Commission, "2016 Broadband Progress Report" (Jan. 29, 2016), https://www.fcc.gov/reports-research/reports/broadband-progress-reports/2016-broadband-progress-report.
[161] Pew Research Center, "Home Broadband 2015" at 4 (Dec. 2015), *available at* http://www.pewinternet.org/2015/12/21/home-broadband-2015/.



A lack of fully functional internet access can make it harder or less convenient to download documents or click through screens. Consumers may be less likely to see disclosures or review statements.

Even though many consumers now apply for and receive loans through mobile phones, it is likely that a good proportion of these consumers do not have full internet access. While the number of consumers with smartphones is growing, the number with full internet access is dropping – down 3% from 2013 to 2015, with an 8% decrease among African American households.

Understanding the nature of a transaction and the disclosures, and retaining access to the loan documents, is virtually impossible through the tiny screen of a mobile phone. Many websites that are clear on a desktop may not be easily navigated on a smartphone. Companies may make it easy to see and navigate to the parts of the website that they want consumers to see and difficult to reach the parts that they want to obscure.

As a result, it is essential that the CFPB requires that 1) online disclosures be formatted for mobile viewing, 2) that all documents signed and delivered electronically remain accessible (and downloadable) to the consumer on the lender's website for three years until the credit is repaid; and 3) the documents be retained by the lender in a format which cannot be changed after the consumer's signature is attached.[162] It is also important to remember that many consumers also lose internet or mobile access intermittently or permanently, either because they have prepaid allotment has run our or because they have trouble paying the bill. For consumers with limited means, the cost of broadband service is unaffordable and consumers go without, or have sporadic connectivity.[163] Thus, even if a consumer has internet access when she takes out a loan, she will not necessarily continue to have it throughout the life of a loan.

Many consumers who take out a loan online may also prefer paper bills, records and other communications.[164] Paper communications may be more likely to be seen, remembered or retained. Consumers often receive hundreds of emails a day and can easily lose track of important emails. Even computer-savvy consumers often prefer paper bills.[165]

Ensuring consumer choice through adherence to the requirements of the E-Sign Act is thus essential. Consumers should not be forced into receiving important information electronically.

---

[162] Most states have virtually identical versions of the Uniform Electronic Transactions Act, which requires in Section 12(a) "If a law requires that a record be retained, the requirement is satisfied by retaining an electronic record of the information in the record which: (1) accurately reflects the information set forth in the record after it was first generated in its final form as an electronic record or otherwise; and (2) remains accessible for later reference."

[163] Pew Research Center, "Smartphone Use in 2015" at 4 (Apr. 2015) (smartphone connectivity is tenuous for the poor), *available at* http://www.pewinternet.org/2015/04/01/us-smartphone-use-in-2015/; Pew Research Center, "Home Broadband 2015" at 4 (Dec. 2015), *available at* http://www.pewinternet.org/2015/12/21/home-broadband-2015/; Colin Rhinesmith, "Digital Inclusion and Meaningful Broadband Adoption," at 8-9, Benton Foundation (Dec. 2015).

[164] Chi Chi Wu, Lauren Saunders, "Paper Statements: An Important Consumer Protection" (2016), http://www.nclc.org/images/pdf/banking_and_payment_systems/paper-statements-banking-protections.pdf.

[165] *Id.* An analysis of customer records from a major East Coast utility found: "91 percent of customers chose to receive their bills by mail despite a clear preference to pay bills online. Even among the utility's newest customers — those expected to be more digitally savvy — an average of 89 percent opted to have their bills mailed to them." U.S. Post Office, Office of Inspector General, "Will the Check Be in the Mail? An Examination of Paper and Electronic Transactional Mail," Report Number RARC-WP-15-006 (2015), *available at* https://www.uspsoig.gov/sites/default/files/document-library-files/2015/rarc-wp-15-006_0.pdf.

If the law requires that a statement or other disclosure be made in writing, the E-Sign Act requires that:

- The consumer must affirmatively consent to electronic delivery.
- The financial institution must make certain disclosures to the consumer.
- The consumer's consent must demonstrate that he or she has access to the equipment and programs necessary to receive, open, and read the relevant electronic documents.
- The consumer must be given notice of the right to withdraw consent for electronic delivery.[166]

The CFPB must also keep in mind the real possibility that consumers will not see information provided electronically.

Identity theft can also be an issue when loans are originated online. Electronic signatures can be easily forged and be difficult to refute. Even purportedly handwritten signatures could be generated electronically. We are seeing many electronically "signed" documents with what looks like a handwritten signature (or one signed on a tablet with a finger or stylus) that is in fact typewritten in handwriting font. As the number of data breaches continues to climb, consumers may be at risk when their data is used by a fraudster to take out a loan.

Thus, as the CFPB considers future rules about the information that consumers must receive and provide, keeping in mind the complicated issues posed by electronic signatures, communications, disclosures and records is essential.

Imprisonment for debt

Imprisonment for debt raises significant consumer protection concerns that the Bureau should consider. Imprisonment for civil debt is prohibited in all or nearly all the states and the District of Columbia.[167] There is no nationwide federal prohibition, but a federal statute prohibits federal courts from ordering imprisonment for debt in states where it is prohibited.[168]

Nonetheless, debtors are imprisoned for civil debt in the United States. This happens by three routes. First, creditors may maneuver debtors into making themselves vulnerable to criminal prosecution if they fail to repay the debt. The classic example is requiring the debtor to provide post-dated check as security for a loan—the original tactic of payday lenders. When the debtor's account, predictably, lacks sufficient funds to cover the check, the lender files bad check charges against the debtor. Many payday lenders have now abandoned this tactic, often because state law prohibits it. However, in Texas, where the practice is ostensibly prohibited,

---

[166] 15 U.S.C. § 7101(c)(1).
[167] *See* National Consumer Law Center, Collection Actions § 12.12.1 (3d ed. 2014), *updated at* www.nclc.org/library.
[168] 28 U.S.C. § 2007.

between January 1, 2012 and the spring 2014, payday lenders still filed over 1500 criminal bad check charges against borrowers.[169] Arrest warrants were issued in a substantial percentage of cases, and some borrowers spent time in jail.[170]

The second route is contempt for violating an order to make payments. Many of the states that prohibit imprisonment for debt nonetheless allow a court to order a judgment debtor to make payments of a certain amount on a civil debt. A debtor who fails to pay faces contempt of court charges and potential imprisonment.[171] Courts justify this practice on the theory that the debtor is not being imprisoned for the debt itself, but rather for violation of the order to pay it. Inability to pay may be a defense, but some courts place the burden of proof on the debtor, and there are no particular standards to guide the court in determining whether the debtor is able to pay.[172]

The final route is through contempt for failing to appear for a debtor's examination. In most or all states, the judgment creditor is entitled to subpoena the judgment debtor to a location to be examined about his or her assets and income. If the debtor fails to appear, the judgment creditor can charge the debtor with contempt, which can result in imprisonment.[173] Judgment creditors have been accused of scheduling debtor's examinations not to get information but for the purpose of obtaining these contempt citations as leverage to get the debtor to pay the debt.[174]

When the Bureau considers the harm to debtors caused by unaffordable lending, it should take into account the continuing possibility of imprisonment for these debts. Imprisonment takes the harm caused by an unaffordable debt to an entirely new level, and makes strict, loophole-free enforcement of an ability-to-pay standard all the more important.

Marketplace Lending

One of the newest developments in lending in recent years is the advent of marketplace loans. The U.S. Department of Treasury defines marketplace lending as "investment capital and data-

---

[169] Texas Appleseed, Letter to Director Cordray, Chairwoman Ramirez, Attorney General Abbott, and Commissioner Pettijohn (Dec. 17, 2014), *available at* https://www.texasappleseed.org/sites/default/files/Complaint-CriminalCharges-PaydayBusinesses-Final2014.pdf.

[170] *Id.*

[171] *See* National Consumer Law Center, Collection Actions § 12.12.3 (3d ed. 2014), *updated at* www.nclc.org/library.

[172] *Id.* § 12.3.4.

[173] *See* Paul Kiel, "When Lenders Sue, Quick Cash Can Turn Into a Lifetime of Debt" (Dec. 13, 2013) (reporting that debtors had been jailed in Missouri and Oklahoma for failing to appear at debtor's examinations), *available at* https://www.propublica.org/article/when-lenders-sue-quick-cash-can-turn-into-a-lifetime-of-debt.

[174] *See* Ballard v. Wall, 413 F.3d 510 (5th Cir. 2005) (refusing to dismiss § 1983 claim against attorneys who allegedly conspired with a state court judge to use imprisonment of debtors who failed to appear for examinations as a way to coerce them to pay the underlying judgments).

driven online platforms used to lend directly or indirectly to consumers and small businesses."[175] A survey by the California Department of Business Oversight showed that, for the 13 lenders that responded, consumer loan volume increased by 715.7% nationwide from 2010-2014, to $12.97 billion in 2014.[176] Market analysts have identified a $1.0 trillion potential market for online marketplace lenders (excluding mortgages) and have estimated that loan origination volumes could reach $90.0 billion by 2020.[177]

Marketplace lending holds the promise of significant benefits for consumers, but it also poses risks that must be addressed. Marketplace lending is reaching consumers and small businesses who have not been well served by traditional institutions. Many marketplace loans on the market today have relatively low rates and can help consumers and business access credit or refinance it at lower rate. With the notable exception of one small business lender, rates by marketplace lenders are typically well under 36%.[178] Nonetheless, marketplace loans can be quite large, up to $40,000 for consumers, and 36% would be a very high rate if charged on loans of that size. Moreover, a California survey found consumer loan rates as high as 81% in prior years, casting doubt on the claim that all marketplace lending activity is at reasonable interest rates.[179]

We also have a number of other concerns. Some of our organizations have previously submitted longer comments on marketplace loans, and we will only briefly summarize those comments here.[180]

Preemption of state laws. While the key players in marketplace loans are not financial institutions, they often partner with those institutions. Those partnerships are often designed

---

[175] U.S. Department of the Treasury, Opportunities and Challenges in Online Marketplace Lending at 5 (May 10 , 2016), https://www.treasury.gov/connect/blog/Documents/Opportunities%20and%20Challenges%20in%20Online%20Marketplace%20Lending%20vRevised.pdf ("Treasury Marketplace Loans White Paper").

[176] See Calif. Dep't of Business Oversight, Survey Of Online Consumer And Small Business Financing Companies – 01/01/2010 through 06/30/2015 (Apr. 8, 2016), http://www.dbo.ca.gov/Press/press_releases/2016/Survey%20Response%20Summary%20Report%2004-08-16.pdf ("Calif. DBO Marketplace Loans Survey").

[177] Treasury Marketplace Loans White Paper at 9 (citing Autonomous Research, "Digital Lending: The 100 Billion Dollar Question," January 13, 2016, https://autonomous.app.box.com/s/zsemdkbykegjndrgnxjvzvllv5meq0zp).

[178] The Treasury Department lists the rates for Avant, Lending Club, Prosper, Bond Street, Funding Circle, CommonBond, and SoFi as all having a maximum rate of 36%, with On Deck having rates as high as 98.4%. *See id.* at 10. Similarly, a California survey found that median APRs for consumer loans made by the 13 lenders that responded were as high as 34.01% nationally, and 35.94% in California in the first half of 2015. Calif. DBO Marketplace Loans Survey at 5.

[179] Calif. DBO Marketplace Loans Survey at 5.

[180] *See* Comments of NCLC to U.S. Dep't of the Treasury on Marketplace Lending RFI, TREAS-DO-2015-0007-0001 (Sept. 30, 2015), http://www.nclc.org/images/pdf/rulemaking/treasury-marketplace-loan-comments.pdf; Comments of CRL to U.S. Dep't of the Treasury on Marketplace Lending RFI, TREAS-DO-2015-0007-0001 (Sept. 30, 2015), http://responsiblelending.org/sites/default/files/nodes/files/research-publication/crl_comment_treasury_marketplacelending_sept2015_final.pdf.

to or have the impact of evading state laws including interest rate caps, state oversight and state licensing requirements. Marketplace entities may market, underwrite, and service the loan as well as market the securities and deal with investors. The financial institution may have little to do with the loan other than originating it and quickly selling it off. As in other rent-a-bank arrangements, the financial institution's role may be little more than a fig leaf to justify preemption of state laws. State laws and state oversight play a critical role in protecting consumers and should not be evaded through bank partnerships.

Underwriting for ability to repay. The new business models of some marketplace lenders could also result in the lenders having insufficient skin in the game, skewing origination incentives and leading to poor underwriting. The pressure on consumers to permit lenders to use ***preauthorized electronic payments*** can also weaken consumers' control over their bank accounts, cause bank account closures, and create incentives for weaker underwriting. The respondents also reported a large range in the ratio of delinquent (30+ days past due) consumer loans/total consumer loans at midyear 2015. Some marketplace lenders reported troubling delinquency rates in California as high as 25.30%.[181] Lenders at the high end of the delinquency range clearly demonstrate inadequate underwriting.

Big data. A central aspect of the "innovative" aspect of marketplace lending is the use of complicated algorithms incorporating big data in underwriting.[182] But big data underwriting poses many risks, and those risks are especially great due to the completely opaque nature of big data.[183]

The key consumer protection principles that underlie the ***Fair Credit Reporting Act*** are critical in the use of big data: The data must be accurate and be used for fair and appropriate uses. Consumers must be informed when information about them leads to a denial of credit or a higher price -- in order to have an opportunity to determine if the information (or conclusions based on it) is mistaken, or to learn from the experience. Consumers must have the right to invoke clear dispute procedures that companies must follow when there is a potential error. These principles are essential whether or not a use of big data technically falls within the FCRA rules. Yet companies that use big data are unlikely to give consumers any opportunity to correct any errors or even to know how the data is being used.

Big data also poses the troubling potential to violate ***fair lending laws*** and to inadvertently lead to redlining in cyberspace. Many elements of big data may be correlated with race, neighborhood, or community. If a white consumer and a black consumer have identical incomes and credit histories, it may still be that the black consumer is a bigger credit risk because, due to historical discrimination, she is less likely to have parents, friends or family with

---

[181] Calif. DBO Marketplace Loans Survey at 6.

[182] See: http://www.pymnts.com/news/2015/webbank-and-alt-lendings-perfect-storm/

[183] *See* Persis Yu et al., NCLC, Big Data, Big Disappointment (March 2014), http://www.nclc.org/issues/big-data.html.

the resources to help her out if she hits a bump in the road.[184] Discrimination on that basis is rightly illegal. But big data algorithms may tend to lead to credit denials or higher prices for borrowers of color, even though the decisions will not be flagged that way.

Many uses of big data also pose troubling ***privacy issues*** for consumers.[185] Here again, the opacity of big data presents significant new risks.

New underwriting methods may also incorporate ***alternative data*** sources that have other negative impacts on consumers.[186] For example, some are promoting full-file reporting of ***utility payment data*** to credit reporting agencies. But mass incorporation of this data could give millions of low-income consumers bad or worse credit scores and could undermine state consumer protections, such as prohibitions against wintertime shut offs for vulnerable consumers, such as the elderly.[187]

Finally, the use of **lead generators** could lead to the sale of sensitive financial information, potential for fraud, and the other problems prevalent in the online payday loan and debt relief markets.

In light of the issues posed by this new lending model and its explosive growth, it is critical that the CFPB ***begin examining marketplace lenders***. We urge the CFPB to identify the larger participants in the installment loan market and to include marketplace lenders in that market.

> ***21. Are there arrangements with brokers, credit service organizations, or other intermediaries in the marketing, origination, underwriting, collection or information-sharing practices associated with non-covered high-cost credit markets that pose risk to consumers and may warrant Bureau regulatory, supervisory, enforcement, or consumer educational action?***

While the CFPB has appropriately made clear that fees charged by service providers such as CSOs are counted for purposes of determining rule coverage under the Concurrent Proposal, we are concerned that not all provisions of the proposed rule apply to CSOs as we believe is

---

[184] *See* NCLC, Past Imperfect: How Credit Scores and Other Analytics "Bake In" and Perpetuate Past Discrimination (May 2016), http://www.nclc.org/images/pdf/credit_discrimination/Past_Imperfect050616.pdf.

[185] For more information on privacy issues, see Comments by the U.S. Public Interest Research Group (USPIRG) and the Center for Digital Democracy (CDD) on "Expanding Access to Credit through Online Marketplace Lending." U.S. Department of the Treasury RFI. [FR Doc. 2015–17644 Billing code 4810–25–P4810-25-P Docket #RFI, TREAS-DO-2015-0007-0001.] (Sept. 30, 2015) http://www.uspirg.org/sites/pirg/files/reports/USPIRG_CDD_MarketplaceLendingRFI_Final30Sept2015.pdf.

[186] NCLC, Issue Brief: Credit Invisibility and Alternative Data: The Devil is in the Details (June 2015), http://www.nclc.org/images/pdf/credit_reports/ib-credit-invisible-june2015.pdf.

[187] NCLC, Issue Brief: Full Utility Credit Reporting: Risks to Low Income Consumers (August 2013), http://www.nclc.org/images/pdf/credit_reports/ib_utility_credit_2013.pdf.

intended, which we recommend addressing by modifying the definition of "lender." Our comments on the Concurrent Proposal provide further discussion.

As noted by the Bureau, when faced with state regulatory changes that challenge their business model, small dollar lenders have responded by shifting their models or products. Through these tactical shifts, they have continued to make substantially similar loans and/or charge substantially similar fees, which continues to cause the harm that regulatory interventions were intended to prevent.[188]

One troubling form of subterfuge involves the use of state laws designed to regulate credit service organizations (CSOs). Acquiring CSO licenses, small-dollar lenders hold themselves out as the broker in a transaction, rather than as the lender. Because of the original intent of these laws – to regulate actors offering debt relief services, not lending services – state-level credit repair statutes fail to limit the broker fees that are being charged under these schemes and do not incorporate such fees into the cost of the underlying credit.

Under this CSO scheme, lenders charge the maximum interest rate allowed on the underlying loan plus an additional "broker" fee, typically ranging from $20 to $25 per $100, resulting in loans with an effective annual APR in excess of 500%.[189] Further, actors licensed under CSO statutes are not necessarily subject to the restrictions that apply to other small-dollar consumer lenders.

In 2005, payday and auto title loan lenders in Texas moved to the CSO model, partnering with unlicensed third-party lenders to make the loans, as a method to evade state fee and interest rate caps for licensed consumer lenders.[190]

In Ohio, lenders responded to a 2008 legislative fee-inclusive 28% rate cap aimed at payday loans, affirmed by a ballot referendum, by shifting to vehicle title loans, using a CSO model, and lending under the state's mortgage lender law. These loans exceed 300% APR, with some payday loans reaching as high as 600% APR. These lenders drain more than $502 million in predatory loan fees from Ohioans annually, twice what payday lenders drained in 2005. In more recent years, lenders have expanded to longer-term, larger loans as well.[191]

While the CSO model has existed in Ohio and Texas for a number of years, predatory lenders have committed to attempts to expand the model, particularly to states with strong consumer

---

[188] CRL/CFA/NCLC Comment at 35.

[189] Diane Standaert and Sara Weed, "Payday Lenders Pose as Brokers to Evade Interest Rate Caps: The next chapter in payday lender subterfuge," at 1 (2010), *available at* http://www.responsiblelending.org/sites/default/files/nodes/files/research-publication/CRL-CSO-Issue-Brief-FINAL.pdf.

[190] Ann Baddour, et al, "Pulling Back the Curtain: Shining a Light on Payday and Auto Title Loan Businesses in Texas" at 4 (2015), *available at* https://www.texasappleseed.org/sites/default/files/Pulling%20Back%20the%20Curtain_0.pdf

[191] CRL/CFA/NCLC Comment at 35-36.

protections. This scheme has been attempted but shut down in many states, including California, Maryland, Florida, and Michigan.

In 2014, Michigan's Department of Insurance and Financial Services ruled that the use of the CSO model violated Michigan law. The Michigan Supreme Court upheld the Department's ruling. In 2016, lenders supported legislation to authorize the CSO model in Michigan, which was not enacted.

The most recent attempt to exploit the CSO loophole has been earlier this year in Arkansas, where CashMax has opened its first two locations (to date) in that state. Arkansas currently has one of the strongest small dollar consumer protection frameworks in the nation, employing a constitutional 17% interest rate limit on loans.[192] Notwithstanding the 17% interest rate cap in the Arkansas Constitution, CashMax's Arkansas website advertises the following typical loans: [193]

Sample Loan Fee Schedule: (Based on Bi-Weekly Pay Frequency)

Loan Amount	Payment Amount	No. Payments	Total Payback	Finance Charge *	CSO Fee	Lender Interest	TILA APR **
$ 300.00	$ 97.03	4	$ 388.12	$ 88.12	$ 81.75	$ 6.37	280.82%
$ 600.00	$ 127.61	7	$ 893.25	$ 293.25	$ 268.50	$ 24.75	259.79%

* Finance Charge is comprised of fees paid to CSO for Credit Services and loan guaranty and interest paid to lender. The two columns to the right of the Finance Charge show the breakdown.

** The CSO Fee is NOT considered interest under Arkansas law; however, the Federal Truth in Lending Act does require the CSO Fee to be included in the Finance Charge calculation for your loan.

22. If so, what specific actions or policies should the Bureau consider in addressing such consumer harm? Other than usury limits applicable to an extension of credit, which Congress has not authorized the Bureau to establish, are there examples of existing law, regulations, or other policy interventions that the Bureau should consider?

Our top recommendation is to extend the ability-to-repay requirements under the Concurrent Proposal (strengthened as we have recommended) to all high-cost loans (including types of loans excluded from the Concurrent Proposal, including credit cards, purchase money loans and private education loans). As it has done in the Concurrent Proposal, the CFPB should impose front-end procedural underwriting requirements and also ensure that underwriting is effective in practice by monitoring refinances, defaults, delinquencies, bounced payments and other

---

[192] Ark. Const. Amendment 89, § 3. 17% interest rate limit covers all loans with the exception of governmental bonds and loans and loans by federally insured depository institutions.

[193] CashMax Arkansas, *Learn About Our Loan Fees*, https://www.cashmaxar.com/fee-schedule/.

indicators of inability to repay. Here again, we recommend that any lender with per-consumer default rates in excess of 10% receive special scrutiny. The CFPB should also make clear that all lenders, regardless of interest rate, must make reasonable determinations that their borrowers are able to repay their loans while meeting other expenses without reborrowing.

We also recommend that the payment protections of the Concurrent Proposal be extended to all high-cost loans. Whether as part of that proposal or in a new rulemaking, we also urge the Bureau to adopt the further payment reforms discussed below.

We have made numerous recommendations to strengthen the Concurrent Proposal that the Bureau may decline to adopt. The Bureau should consider them as part of any subsequent rulemaking. The primary focus of the Concurrent Proposal is ensuring ability-to-repay, and the Bureau may decline at this time to adopt recommendations that also serve other goals. For example, our many recommendations on limiting refinancing and bait-and-switch tactics serve the goal of ensuring ability-to-repay without reborrowing and preventing evasions. But, apart from ability-to-repay, these recommendations also help to prevent unfair, deceptive or abusive practices that increase the cost or length of the loan beyond what the consumer initially contemplated. Rules to prevent these practices should be adopted in a more comprehensive rulemaking on installment loans if they are not included in the Concurrent Proposal.

We also urge the Bureau to address the following issues, whether through rules, supervision or enforcement actions, to address the practices discussed throughout these comments:

- *Update the FTC's Credit Practices Rule and prohibit security interests in all personal property*. The FTC extensively documented the unfair and deceptive nature of security interests in household goods, and that rationale applies equally to items like cell phones and computers that were not prevalent in 1980.

- *Prohibit loans made through live checks*. By definition, live checks are a form of lending that entails virtually no underwriting for ability to repay, and they also pose a risk of identity theft.

- *Prevent lenders from artificially inflating purchase prices to hide the true cost of borrowing.* Loans based on inflated purchase prices prevent consumers from making an informed decision about whether to take out credit.

- *Impose ability-to-repay rules on purchase money loans when the purchase price is inflated, regardless of the nominal interest rate.* Inflated sales prices are used to evade interest rate caps and ability-to-repay rules.

- *Require pro-rata or actuarial rebates of up-front fees and the cost of add-on products when loans are refinanced, and prohibit refinancing of unpaid interest or fees.*

Multiplying fees provide incentives for lenders to flip loans, increasing their cost and extending the debt trap.

- *Prohibit prepayment penalties, including the Rule of 78s.* Consumers should never be deterred from getting out of debt or escaping a high-cost loan.

- *Prohibit balloon payment loans and require substantially equal payments, absent a compelling, verified, and documented reason.* Unless the balloon benefits the borrower—such as for a seasonal worker who will have significantly more income when the balloon payment is due—balloon payment loans are an unfair, deceptive and abusive practice designed to induce reborrowing and disguise the unaffordability of the loan.

- *Prohibit interest-only payments and negative amortization, and require loans to have payments that make significant progress in repaying the loan.* It is unfair, deceptive and abusive to structure a loan with payments that defeat consumers' expectations that their payments are reducing principal.

- *Prohibit teaser rates for high-cost loans.* These rates are likely to be a deceptive bait-and-switch.

- *Require penalty fees to be reasonable and proportional.* Excessive penalty fees encourage unfair, deceptive and abusive practices of back-end pricing. In addition, require a reasonable grace period for high-cost loans, which are aimed at borrowers who are highly likely to have trouble paying on time consistently.

- *Prohibit creditors from selling credit insurance unless the loss ratio is reasonable.* Legitimate insurance products that provide value to consumers have loss ratios well above the level currently found in the credit insurance market. Credit insurance with lower loss ratios is merely a disguised form of interest.

- *Require all high-cost lenders to report loan terms, default rates and other key data to the CFPB and make that data public.* Public data such as that collected by California, North Carolina, and other states plays a key role in identifying problematic practices and increasing transparency.

- *Clarify the definition of open-end credit so that loans that function like closed-end loans can no longer masquerade as open-end loans.*

In addition, as discussed at greater length in the following sections:

- *Close loopholes in the APR*. Fees and charges that are excluded from the APR disguise the cost of credit, prevent comparison shopping, evade usury caps, and encourage loan flipping.

- *Prevent abuse of payment methods and ban remotely created checks*.

- *Strengthen rules to prevent illegal lending*. Declare the marketing, making or collection of a loan that violates applicable interest rate caps or licensing rules to be an unfair, deceptive or abusive practice; a violation of the EFTA when the payment is collected through an electronic fund transfer; and an unfair, deceptive and abusive collection practice.

Close Loopholes in the APR

The CFPB should close loopholes in the way the APR is calculated and disclosed under TILA and Regulation Z. Far too many fees are permitted to be excluded from the APR. Adopting a fully fee-inclusive APR would serve several goals:

- Ensuring that consumers get accurate pricing information and can compare the cost of different loans.
- Reducing incentives to charge fees that fuel loan flipping and can increase the APR and loan cost beyond what consumers expect.
- Preventing evasion of usury caps.
- Simplifying pricing and encouraging use of simple periodic interest.

Over the years, the Federal Reserve Board (FRB) carved numerous exceptions into the rules governing which fees and charges must be included in the APR. Predictably, lenders have exploited these rules to move charges into fees that are not included in the APR.

The biggest loopholes are for open-end credit. Only periodic interest must be disclosed in the APR that lenders use to advertise the cost of open-end loans.[194] Even after a credit line is opened, FRB amendments to Regulation Z eliminated the statutory requirement for disclosure on statements of the "effective APR," which includes fees.[195] Ironically, the proposed payday rule uses this same effective APR that the FRB eliminated from the statement disclosure requirements to calculate the total cost of credit for open-end credit to determine whether it is a covered loan.[196]

---

[194] 12 C.F.R. § 1026.16(b)(ii).

[195] 12 C.F.R. § 1026.14(b). For a history of this, *see* National Consumer Law Center, Truth in Lending § 6.7.6.4 (9th ed. 2015), *updated at* www.nclc.org/library.

[196] Proposed § 1041.2(a)(18)(iii)(B). *See* 81 Fed. Reg. at 47909, 48168.

The result of the Regulation Z disclosure rules for open-end APRs is that some high cost open-end loans do not disclose an APR at all or could legally disclose an APR of 0%. The payday lender Elevate, for example, does not disclose an APR for its purportedly open-end Elastic line of credit.[197] A $380 advance repaid with monthly minimum payments would cost $480 to repay over four months, the equivalent of about 120% APR. Payday lenders have also used participation fees to understate the APR and attempt to evade interest rate caps.[198]

Fee harvester credit cards also use high cost fees to understate the APR. For example, the First Premier Bank Credit Card discloses an APR of 36% but charges a $95.00 processing fee and a $75 annual fee the first year on a credit line that, net of fees, is initially only $130.[199] The fees alone are 130% of the available credit before the consumer has made a single purchase. Without accurate APR disclosures, consumers have a difficult time understanding how expensive some forms of credit are or whether they might have better credit options.

Loopholes in the APR for closed-end credit also encourage lenders to add fees and charges that make the APR misleading and lead to evasions. For example:

- *Application fees*: Kinecta Federal Credit Union is subject to the 18% federal credit union usury cap. The National Credit Union Administration uses Regulation Z to calculate a credit union's interest rate. Thus, Kinecta is able to boast on its website: "The Nix Payday Cash Advance Loan is better than other payday loans due to a lower, maximum APR of 15%, fewer fees, and higher loan values."[200] But a $37.50 application fee on its 14-day loans makes the true APR 259%.

- *Credit insurance and other add-ons*: Only required credit insurance must be included in the APR, but some lenders use various means to coerce virtually all borrowers into

[197] Republic Bank & Trust Company, *What It Costs*, https://www.elastic.com/what-it-costs/.
[198] Advance America previously offered the Choice Line of Credit, an open-end line of credit of up to $500 at 6 percent interest along with a monthly participation fee of $149.95. The State of Pennsylvania claimed that the fee structure was designed to evade the state's usury law. In February 2015, Advance America agreed to a settlement of $8 million in restitutions and was required to forgive approximately $12 million in unpaid balances. Boyle, Jim. "Advance America Agrees to $8M Settlement with Pennsylvania." *Legal Newsline Legal Journal*. February 12, 2015. http://legalnewsline.com/news/254880-advance-america-agrees-to-8m-settlement-with-pennsylvania.
[199] First PREMIER Bank, *First PREMIER Bank Credit Card Application*, https://www.premiercardoffer.net/CardDetailsPage/E3DIBF022%200012OMI. The disclosures show initial available credit of $225.00 on a $300 credit line, but that does not take into account the $95 "processing" fee.
[200] NIX Neighborhood Lending, *Low-Cost Payday Loans in Los Angeles*, http://nixlending.com/en/personal-loans/detail/payday-loan.

paying for credit insurance, costs that they do not include in the APR. Credit insurance is often used to evade state interest rate caps.[201]

As these examples show, APR calculations can be more than disclosures: a misleadingly low APR can also lead to evasions of state and federal interest rate caps.

The CFPB has recognized this problem, and appropriately used an all-in total cost of credit to assess coverage under the payday loan rule. The Military Lending Act does the same. It is time to prevent manipulations and deceptive APR disclosures and close loopholes in the TILA APR as well. We urge the CFPB to close loopholes in TILA's APR calculations and to re-instate the effective APR for open-end credit.[202]

Adopt expanded protections connected to consumer payments

The CFPB has taken important steps in the proposed payday loan rule to address the problems posed by preauthorized payment devices. However, loans that are outside of the scope of the proposed rule can pose the same types of problems and warrant the same protections. The proposed payday rule only covers longer-term loans that are secured by a payment mechanism or vehicle title within the first 72 hours, but lenders may obtain payment devices after that time period. Some loans are also completely outside the scope of the proposed rule even with a payment device. No matter when the payment mechanism is obtained or what type of loan is involved, consumers can still suffer the same problems of nonsufficient funds fees, returned items fees and other consequences when payments are submitted repeatedly.

Thus, we urge the CFPB to extend the protections of proposed 12 C.F.R. § 1041.13 to § 1041.15 to other lenders that obtain preauthorized forms of payment. These protections should not be limited to lenders that charge above 36%. Repeat re-presentment of payments can cause consumer harm regardless of the interest rate.

In addition, as we discussed in our comments on the payday loan proposed rule, a broader range of payment protections are needed to protect consumers on a wide range of lending products.

Lenders should not be permitted to use back-up payment channels if a payment fails. If a consumer stops a payment, contests it as unauthorized, or does not have sufficient funds, re-

[201] The comments of Reinvestment Partners include a table comparing the stated APR to the full APR including credit insurance for loans in several states.
[202] The calculation of the effective APR could be adjusted to prevent the distortions that led the Fed to eliminate it. For example, the effective APR could be discloses on a rolling 12-month basis rather than being calculated for 30 days at a time.

presenting the payment in another form evades the consumer's legal rights and could enable the lender to collect despite the unaffordability of the loan. Remotely created checks – which have been used to circumvent rules limiting ACH presentments – have outlived their usefulness and should be banned altogether for consumer transactions,[203] just as the FTC has banned them in telemarketing transactions.[204]

Preauthorized payment methods should not be used to collect an accelerated balance or another fee or charge beyond regular charges that the consumer expects. Consumers can be harmed by surprise payments they do not expect.[205]

The CFPB must clarify and strengthen the Regulation E rules against compulsory use of preauthorized payments. A wide range of online lenders, including those that do not charge high rates, evades the compulsory use ban by leading consumers to believe that they must authorize electronic repayments.

The CFPB should clarify that consumers have the right to revoke a lender's preauthorization for an electronic fund transfer[206] and may do so as long as they provide notice within three business days of the scheduled payment, the same time period required to stop payment.[207] Giving consumers control over their accounts helps to prevent abuses. The notice requirements before each payment proposed in the payday loan rule would also be helpful for other types of loans, and should be expanded to include notice of the right to revoke authorization.

All lenders must comply with the network rules – i.e., NACHA, Visa, MasterCard, etc. – that govern any form of payment they use. NACHA rules, for example, have specific authorization requirements that require notice of the consumer's right to revoke authorization. Violation of payment rules in a manner that injures consumers should be deemed an unfair, deceptive or abusive practice and a violation of Regulation E (if the payment is an electronic fund transfer). Failure to comply with authorization requirements, in particular, should result in subsequent payments being deemed unauthorized under Regulation E.

---

[203] For a longer discussion of the reasons that remotely created checks and remotely created payment orders are outdated and should be prohibited for consumer transactions, see Letter from NCLC et al. to Chairman Ben Bernanke, Board of Governors of the Federal Reserve System (Dec. 13, 2013), http://www.nclc.org/images/pdf/high_cost_small_loans/payday_loans/rcc-fed-comments12132013.pdf.
[204] *Id*.
[205] *See, e.g.,* James v. National Fin., L.L.C., 132 A.3d 799, 821-826 (Del. Ch. 2016) (finding unconscionable a loan that had interest-only payments for the first 12 months and contained disadvantageous clauses buried in small print, including one giving the lender the right to withdraw money from the borrower's bank account in any amount up to the full balance, without notice).
[206] Regulation E gives consumers an explicit right to stop payment with their bank, but the right to revoke the payee's authorization is implicit and should be clarified. Reg. E, 12 C.F.R. § 1005.10(c).
[207] Reg. E, 12 C.F.R. § 1005.10(c).

Address illegal lending in violation of state licensing and usury laws.

Illegal lending takes many forms. Some lenders claim to be offshore, some claim affiliations with Native American tribes, and some do not even attempt to hide their illegality. The CFPB does not need to assess which state laws apply to which loans. The CFPB can simply make clear the consequences of making loans that do not comply with "applicable" laws – leaving the determination of what state laws apply to state enforcement authority and the courts.

The CFPB, FTC, U.S. Department of Justice and state attorney general offices have made great strides in reducing the amount of unfair, deceptive, abusive and illegal lending taking place in violation of state licensing and usury laws. A judge recently affirmed the Bureau's position that the collection and servicing of loans made in violation of state usury and licensing laws, which are thus uncollectable or void under state law, is a federal violation of the prohibition of unfair, deceptive or abusive practices under the Consumer Financial Protection Act.[208] CashCall was collecting loans originated by Western Sky, which purported to be covered by tribal sovereign immunity. The court found that CashCall, not Western Sky, was the true lender and was covered by state lending laws.[209]

Despite these strides, illegal lending, including by tribal-affiliated lenders, persists. For example, a recent report by PIRG lists Red Rock Tribal Lending (dba Big Picture Loans) (Lac Vieux Desert Band of Lake Superior Chippewa Indians), Mobiloans, LLC (Tunica-Biloxi Tribe of Louisiana), and Blue Chi Financial (dba Spotloan) (Turtle Mountain Band of Chippewa Indians of North Dakota) among the top 15 most complained about payday loan companies.[210]

It is important to note that tribal loans that do not comply with state licensing and interest rate laws are *illegal* even if the lender has tribal sovereign immunity. Even if the lender that originates, services, and collects a loan is a tribe itself, a loan made off reservation must comply with state laws and is illegal (and thus unfair, deceptive and abusive under federal law) if it does not. Tribal sovereign immunity does not make a loan legal. Sovereign immunity is immunity from being sued, not an exemption from complying with the law. "There is a difference between the right to demand compliance with state laws and the means available to enforce them."[211] The Supreme Court recently restated the longstanding rule that "'Indians going

---

[208] CFPB v. CashCall, 2016 WL 4820635 (C.D. Cal. Aug. 31, 2016).
[209] *Id*.
[210] Mike Litt & Edmund Mierzwinski, "Predatory Loans & Predatory Loan Complaints," at 3, U.S. PIRG Education Fund (2016), *available at* http://www.uspirg.org/reports/usp/predatory-loans-predatory-loan-complaints. The report also lists MNE Services (doing business under several names), affiliated with the Miami Tribe of Oklahoma, but notes that the company does not appear to be in business any longer.
[211] Kiowa Tribe of Okla. v. Manufacturing Technologies, Inc., 523 U. S. 751, 755 (1998).

beyond reservation boundaries' are subject to any generally applicable state law."[212] When a tribe conducts off reservation activity, the state may "deny a license."[213] If the tribe goes ahead with unlicensed off-reservation activity, the state "could bring suit against tribal officials or employees (rather than the Tribe itself) seeking an injunction," or could even "could resort to its criminal law," prosecuting individuals involved.[214]

We recommend the CFPB take several steps to address illegal loans. First, the CFPB should codify that offering, collecting, making, or facilitating loans that violate applicable state usury or licensing laws is an unfair, deceptive, and abusive act or practice. This would be consistent with CFPB's contention in the CashCall case.

Second, the CFPB should declare that any purported authorization for an electronic fund transfer to repay an illegal loan is invalid under Regulation E, resulting in the payment being an unauthorized transfer subject to the protections of Regulation E.[215] Any attempt to use an EFT to debit an account for an illegal loan should be considered unauthorized under Regulation E because the purported authorization would not be "clear and readily understandable."[216]

Third, the CFPB should make clear that if a debt collector attempts to collect an illegal loan, it is an abusive practice prohibited by the Fair Debt Collection Practices Act. By invoking the protections of these federal laws, the CFPB will offer states and consumers additional, and stronger, tools to crack down on illegal lending, enforce state laws, and obtain remedies for unlawful conduct.[217]

Once again, the CFPB does not need to make a determination about which loans are illegal in order to adopt these protections. It can leave the determination of whether the loan is legal or not to state authorities and the courts.

---

[212] Michigan v. Bay Mill Indian Comm'y, 134 S.Ct. 2024, 2034 (2014).
[213] *Id*. at 2035.
[214] *Id*.
[215] *See* NCLC, Consumer Banking and Payments Law § 5.3.8 (5th ed. 2013), updated at www.nclc.org/library.
[216] 12 CFR 1005.4(a)(1).
[217] For further discussion of this and other issues of particular importance in states without payday lending, *see* Letter from groups from 13 states without payday lending to CFPB, May 24, 2016, *available at* http://www.neweconomynyc.org/2016/04/news-release-new-economy-project-allies-urge-cfpb-issue-strong-payday-lending-rule/.