

August 12, 2019

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

Re: Payment Provisions Compliance Date of August 19, 2019

Dear Director Kraninger:

We write to call on the Consumer Financial Protection Bureau (CFPB) to request an end to a court-ordered stay and to take all action possible to ensure the timely implementation of the payments protections in its 2017 Payday, Vehicle Title, and Certain High-Cost Installment Loans rule (Rule). These provisions are not affected by the CFPB's pending proposal to change the Rule. Still, since its 2017 leadership change, the CFPB has repeatedly failed to support the August 19, 2019, compliance date the agency established for these important provisions. Now, to serve the consumers it was created to protect, the CFPB should immediately request that the U.S. District Court for the Western District of Texas lift the stay on the provisions' compliance date.¹ The CFPB should also press the Office of Management and Budget (OMB) for approval of the provisions under the Paperwork Reduction Act; if OMB continues to withhold approval, the CFPB should acknowledge that under OMB's regulation, OMB approval can be inferred and its inaction is not a barrier to implementation of the Rule.²

The Rule's payments provisions will protect consumers from significant harm by restricting an unfair and abusive practice: payday and vehicle-title lenders' repeat attempts to debit borrowers' bank accounts, after two consecutive withdrawal attempts fail due to insufficient funds. Lenders take direct access to borrowers' accounts and attempt, again and again, to repay themselves from those accounts, even when borrowers lack funds for repayment. The repeat hits to accounts cause borrowers to shoulder multiple non-sufficient funds, overdraft, or other fees, lead to checking account closures, and painfully hamper borrowers' ability to manage their finances. These harms are especially acute in a market plagued by lenders making loans to borrowers who cannot afford to repay them. Such unaffordable loans would be perpetuated by the CFPB's pending proposal to rescind other aspects of the Rule: its ability-to-repay protections. By restricting repeat debits and providing other consumer protections, the payment provisions will limit lenders' ability to relentlessly kick struggling borrowers when they are down and will bring real and meaningful relief to millions of consumers. These safeguards are important under any circumstance, but even more so because the agency has delayed and is proposing to undo the ability-to-repay protections.

¹ Americans for Financial Reform Education Fund, Center for Responsible Lending, National Consumer Law Center, and Public Citizen, Inc. have appeared as amici, represented by Rebecca Smullin of Public Citizen Litigation Group, in the U.S. District Court for the Western District of Texas case challenging the Rule. Rebecca Smullin of Public Citizen Litigation Group is also representing Cooperative Baptist Fellowship, which is seeking to intervene in the case to defend the Rule.

² See 5 C.F.R. §§ 1320.5(a)(2), 1320.11(i).

We recognize that in an industry legal challenge to the Rule, the U.S. District Court for the Western District of Texas has stayed the Rule's compliance date. Nevertheless, the CFPB can and should ask the court to lift the stay as applied to the payment provisions and support implementation of these consumer protections as close as possible to the August 19 compliance date. The CFPB's failure to make this request in its most recent court filing, on August 2, is inexcusable. The court stayed the Rule's compliance date last fall at the request of the CFPB, who joined with the industry plaintiffs challenging the Rule, rather than defending its timely implementation. Then, in a March 8 filing, the CFPB acknowledged that the plaintiffs had "not attempted to make" a showing necessary to justify their request that the court stay the payment protections' compliance date until the CFPB completes rulemakings on other aspects of the Rule.³ By not also seeking to lift the stay on the payment provisions' compliance date and supporting implementation of its own regulatory provisions, the CFPB is abandoning its consumer-protection mission.

To discuss our concerns further, please contact Rebecca Smullin of Public Citizen Litigation Group at 202-588-7714 or Will Corbett of the Center for Responsible Lending at 919-313-8544.

Sincerely,

Lisa Donner, Executive Director
Americans for Financial Reform Education Fund

Will Corbett, Litigation Director
Center for Responsible Lending

Lauren Saunders, Deputy Director
National Consumer Law Center (on behalf of its low income clients)

Rebecca Smullin, Attorney
Public Citizen

cc: Mary McLeod, General Counsel, CFPB
John R. Coleman, Deputy General Counsel, CFPB
Steven Y. Bressler, Assistant General Counsel, CFPB
Kristin Bateman, Attorney, CFPB
Kevin Friedl, Attorney, CFPB

³ See Joint Status Report at 7, *Cnty Fin. Servs. Ass'n of Am., Ltd. v. CFPB*, No. 1:18-cv-295 (W.D. Tex. Mar. 8, 2019), ECF No. 57.