Company Comment Letter Outline
RE: CFPB’s Notice of Proposed Rulemaking (NPRM) on Payday Reconsideration

- CFSA offers this outline to assist companies in drafting a comment letter on the CFPB’s rule proposal to rescind the Mandatory Underwriting Provisions of the Bureau’s 2017 Final Rule on “Payday, Vehicle Title, and Certain High-Cost Installment Loans.” CFSA supports this rule proposal to reconsider requirements on payday loans, as the CFPB’s 2017 Rule was a needlessly complex and overbroad proposal that would have caused irreparable harm to industry businesses and eliminated an important form of credit to consumers. While we support this rulemaking, we do remain concerned that the payment provisions contained within the same 2017 rule are also not being addressed in a new rulemaking. Please feel free to provide a draft of your comment letter to CFSA, as we wish to ensure a consistent message.

HOW TO SUBMIT COMMENT LETTER

- Your comment must be received by the government on or before Wednesday, May 15, 2019, at 11:59 pm eastern time.

- Be sure to identify the Docket No. CFPB–2019–0006, or the Regulatory Information Number, RIN 3170–AA80, at the beginning of your company’s comment letter.

- Select one of the following three options to submit comment letters. The preferred method of sending a comment is electronically through Regulations.gov or by e-mail. We recommend that if you submit your comment letter electronically, save and submit the letter in a PDF format.

  1) Electronic Submission via Regulations.gov

  2) Email:
     - [2019-NPRM-PaydayReconsideration@cfpb.gov](mailto:2019-NPRM-PaydayReconsideration@cfpb.gov)
     - Submit your comment letter as an attachment to an email or place letter content in the body of the email.

  3) Mail/Hand Delivery/Courier: (*Mailed by Friday, May 10, to ensure arrival by deadline)
     - Comment Intake
       Bureau of Consumer Financial Protection
       1700 G Street, NW
       Washington, DC 20552
Main Points of Comment Letter

- Docket No. CFPB–2019–0006
- We are pleased that the CFPB has taken steps to rescind the mandatory underwriting provisions of its 2017 Final Rule for small-dollar lending and support this rule proposal. Rescinding these requirements is warranted to avoid unnecessary industry burdens and harm to consumers.
- If the CFPB’s 2017 Final Rule for small-dollar lending were to take effect, it would decimate the entire small-dollar lending industry.
- For similar reasons, the CFPB should also delay the payment provisions of the 2017 Rule and begin a new rulemaking for payments.

Briefly Explain Your Company/Association and Important Role in Community

- Provide a brief history of your business/company, industry knowledge.

2017 Rule Would Have a Devastating Impact on Industry

- The 2017 Rule requirements would have an adverse impact on the industry, as it imposes conditions that are so onerous that would have same effect as outright ban on industry.
- The CFPB’s 2017 proposals would have an especially devastating impact on small businesses, as the requirements will result in the closing of thousands of small businesses across the country.

CFPB’s Arbitrary and Capricious Rule Will Negatively Impact Small Businesses and Their Customers

- The CFPB’s 2017 Rule will have an adverse impact on consumers, harming millions of Americans who responsibly use payday loans to manage unexpected and periodic financial difficulties. The loss of access to credit would have had a negative effect on borrowers and their families.
- Consumers support small-dollar lenders and their products, often expressing high levels of satisfaction.
- The 2017 Rule’s underwriting requirements are needlessly complex and confusing. Determination of income, major financial obligations, and living expenses will be time consuming, expensive, and exceedingly complex as has been the case in the mortgage context. Americans who value the flexibility and reliability of the loans will lose access to this simple, transparent credit product.
- The 2017 Rule is arbitrary, capricious and based on unsupported assumptions. For example, there is simply no evidence that use of small-dollar loans harms consumers as the CFPB presumes.
- The Bureau’s proposed ability-to-repay (ATR) and Residual Income Tests are arbitrary and capricious, as they do not effectively measure nor predict consumers’ ability to pay a loan or credit worthiness. In addition, residual income is not a normal primary factor in underwriting nearly all other loans. ATR and residual income tests also ignore consumers’ willingness to repay.

CFPB’s Arbitrary and Capricious Rule Ignores Existing and Effective State Laws

- In crafting its 2017 Rule, the CFPB failed to consider less burdensome state models that can more effectively accomplish their goals without restricting access to credit. Rather, it developed a rule to preempt numerous state laws and regulations.

CFPB’s Rulemaking Process Was Biased Against the Industry

- 2017 Rule was impermissibly motivated by the CFPB’s public policy bias against the industry and its products.
- CFPB officials consulted closely with consumer groups that have vocally advocated for the restriction or banning of small-dollar loans long before the creation of the CFPB.
- CFPB acted in furtherance of a public policy objective by proposing a Rule that would knowingly cripple the industry without serious consideration of less onerous alternatives.

CFPB Should Also Revisit the Payment Provisions

- The payment provisions of the 2017 Rule were drafted under same umbrella of flawed research used to support the mandatory underwriting provisions and contain numerous ambiguities and problems that require attention.
- The CFPB’s proposal falls short of fully protecting consumers and preventing overly burdensome and costly, unnecessary regulation of the industry.
- The Bureau should conduct a separate and new rulemaking for payment provisions of its 2017 Rule.