



March 15, 2019

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

Re: Notice of Proposed Rulemaking on Payday, Vehicle Title, and Certain High-Cost Installment Loans; Delay of Compliance Date RIN 3170-AA95 Docket No. CFPB-2019-0007

Dear Director Kraninger:

The Office of Advocacy of the U.S. Small Business Administration (Advocacy) submits these comments on the Bureau of Consumer Financial Protection's proposed rule on *Payday, Vehicle Title, and Certain High-Cost Installment Loans; Delay of Compliance Date*.<sup>1</sup> While Advocacy commends the Bureau for delaying the comment period for the Mandatory Underwriting Provisions of the regulation promulgated by the Bureau in November 2017 governing Payday, Vehicle Title, and Certain High-Cost Installment Loans (2017 Final Rule), Advocacy asserts that the other provisions of the 2017 Final Rule should be included in the delay as well.

#### Advocacy Background

Advocacy was established pursuant to Pub. L. 94-305 to represent the views of small entities before federal agencies and Congress. Advocacy is an independent office within the U.S. Small Business Administration (SBA), so the views expressed by Advocacy do not necessarily reflect the views of the SBA or the Administration. The RFA,<sup>2</sup> as amended by the SBREFA,<sup>3</sup> gives

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<sup>1</sup> 84 Federal Register 4298, February 14, 2019.

<sup>2</sup> 5 U.S.C. § 601 et seq.

<sup>3</sup> Pub. L. 104-121, Title II, 110 Stat. 857 (1996) (codified in various sections of 5 U.S.C. § 601 et seq.).

small entities a voice in the rulemaking process. For all rules that are expected to have a significant economic impact on a substantial number of small entities, federal agencies are required by the RFA to assess the impact of the proposed rule on small business and to consider less burdensome alternatives.

The Small Business Jobs Act of 2010 requires agencies to give every appropriate consideration to comments provided by Advocacy.<sup>4</sup> The agency must include, in any explanation or discussion accompanying the final rule's publication in the Federal Register, the agency's response to written comments submitted by Advocacy on the proposed rule, unless the agency certifies that the public interest is not served by doing so.<sup>5</sup>

The Office of Advocacy performs outreach through roundtables, conference calls and other means to develop its position on important issues such as this one. Advocacy contacted trade associations to discuss the proposed rule.

### The Proposed Rule

On February 14, 2019, the Bureau published a proposed rule to delay the compliance date of the Mandatory Underwriting Provisions of the Bureau's 2017 Final Rule establishing consumer protection regulations for payday loans, vehicle title loans, and certain high-cost installment loans, relying on authorities under Title X of the Dodd-Frank Wall Street Reform and Consumer Protection Act. Concurrently, the Bureau published a proposed rule to rescind the 2017 Final Rule.

The 2017 Final Rule addressed two topics. First, the 2017 Final Rule contained a set of provisions with respect to the underwriting of covered short-term and longer-term balloon payment loans, including payday and vehicle title loans, and related reporting and recordkeeping requirements. The Bureau refers to those provisions as the "Mandatory Underwriting Provisions" in the proposed rule. Second, the 2017 Final Rule contained a set of provisions, applicable to the same set of loans and also to certain high-cost installment loans, establishing certain requirements and limitations with respect to attempts to withdraw payments from consumers' checking or other accounts. The Bureau refers to those provisions as the "Payment Provisions."

The Bureau is proposing in this NPRM to delay the August 19, 2019 compliance date for the 2017 Final Rule's Mandatory Underwriting Provisions to November 19, 2020 because the Bureau is considering rescinding the Mandatory Underwriting Provisions of the 2017 Final Rule. The Bureau is concerned that if the August 19, 2019 compliance date for the Mandatory Underwriting Provisions is not delayed, industry participants will expend significant resources and incur significant costs in order to comply with the 2017 Final Rule, and industry participants could experience substantial revenue disruptions that could impact their ability to stay in business once the compliance date has passed. The Bureau is not delaying the compliance date for the other provisions of the 2017 Final Rule, including the Payment Provisions.

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<sup>4</sup> Small Business Jobs Act of 2010 (PL 111-240) § 1601.

<sup>5</sup> Id.

## The Delay in Compliance Will Reduce Unnecessary Burden on Small Entities

Advocacy commends the Bureau for delaying the compliance date for the Mandatory Underwriting Provisions and for proposing a rule to rescind those costly provisions. As noted in the preamble, small members of the industry do not have the resources to conform their management systems to address the 2017 Final Rule and newly enacted state laws that were not anticipated in 2017. In addition, industry participants have also stated that software that provides the technology to comply is not fully operational and may not be operational by August 2019.<sup>6</sup>

As stated in Advocacy's October 17, 2016 comment letter on the proposed rule on payday lending, the ability to repay/Mandatory Underwriting Provisions are burdensome to small entities.<sup>7</sup> Delaying the compliance date in order to allow time for the rescission of Mandatory Underwriting Provisions will reduce uncertainty and prevent small entities from incurring unnecessary costs while the Bureau takes the necessary steps to rescind the rule.

## The Delay Would Be Helpful for Small Credit Unions

Moreover, a fifteen-month delay would be helpful for small credit unions. When the 2017 Final Rule was finalized, the National Credit Union Administration (NCUA) Payday Alternative Loan (PALs) program had one version. In 2018, NCUA proposed additional versions of the program. A fifteen-month delay would allow ample time for the CFPB to review NCUA's changes to the PALs, and to identify inconsistencies and resolve problems that were not considered in 2017.

## The Bureau Should Delay the Payment Provisions

Advocacy further asserts that the delay should apply to the Payment Provisions in the 2017 Final Rule. The 2017 Final Rule payment provisions require small entities to provide notice prior to initiating the first payment transfer from a customer's account, ensure that no more than two unsuccessful payments attempts are made to the customer's account without obtaining a new authorization from the customer, and provide a consumer rights notice after two consecutive failed payment withdrawals stating that the lender is no longer permitted to make withdrawals.<sup>8</sup> The provisions require lenders to design and implement a payment system that complies with the regulation by August 19, 2019.

In the proposed rule, the Bureau states that it has received a rulemaking petition to exempt debit card payments from the Rule's Payment Provisions. The Bureau also states that it received informal requests related to various aspects of the Payment Provisions or the Rule as a whole, including requests to exempt certain types of lenders or loan products from the Rule's coverage and to delay the compliance date for the Payment Provisions. In the NPRM, the Bureau states that it intends to examine those issues. If the Bureau determines that further action is warranted, the Bureau states that it will commence a separate rulemaking initiative.<sup>9</sup>

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<sup>6</sup> 84 Fed. Reg. at 4300.

<sup>7</sup> See, <https://www.sba.gov/advocacy/10-07-2016-payday-vehicle-title-and-certain-high-cost-installment-loans>.

<sup>8</sup> 84 Fed. Reg. at 4299.

<sup>9</sup> Id. at 4301.

Designing and implementing a system that complies with the Payment Provisions is costly and time consuming for small entities. To require small entities to make such expenditures while the Bureau is determining how to proceed creates uncertainty and may lead small entities to make changes in technology that may later need to be reversed. Advocacy encourages the Bureau to delay the Payment Provisions of the 2017 Final Rule. The additional time will provide an opportunity to address the concerns, provide clarity and minimize confusion.

### Conclusion

The 2017 Final Rule is extremely burdensome to small entities. The decision to rescind the Mandatory Underwriting Provisions of the 2017 Final Rule will reduce the burden on small entities. Delaying the implementation date of the 2017 Final Rule will prevent the unnecessary expenditure of resources and minimize uncertainty. Advocacy encourages the Bureau to delay the implementation date of all of the provisions of the 2017 Final Rule.

Thank you for the opportunity to comment on this important proposal and for your consideration of Advocacy's comments. If you have any questions regarding these comments or if Advocacy can be of any assistance, please do not hesitate to contact me or Jennifer Smith at (202) 205-6943.

Sincerely,

/s/

Major L. Clark, III  
Acting Chief Counsel  
Office of Advocacy  
U.S. Small Business Administration

/s/

Jennifer A. Smith  
Assistant Chief Counsel  
For Economic Regulation & Banking  
Office of Advocacy  
U.S. Small Business Administration