

May 15, 2019

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

**Re: *Payday, Vehicle Title, and Certain High-Cost Installment Loans***  
***Docket No. CFPB-2019-0006***

Dear Director Kraninger:

The American Financial Services Association (“AFSA”)<sup>1</sup> commends the Consumer Financial Protection Bureau (“CFPB” or “Bureau”) for limiting the application of the original Payday, Vehicle Title, and Certain High-Cost Installment Loans (“2017 Final Rule” or “Rule”).<sup>2</sup> The Mandatory Underwriting Provisions of the 2017 Final Rule focus specifically on short-term, “payday loans” and certain longer-term balloon payment loans, not on traditional installment loans. As we explain below, installment lending is a safe, beneficial, and affordable form of small-dollar credit.

In addition to an explanation of traditional installment lending, AFSA’s letter in response to the February 14, 2019 Notice of Proposed Rulemaking (“2019 NPRM”) focuses on the following three issues: (1) the exclusions for certain types of credit from the Rule, (2) the Payment Provisions, and (3) the prohibition against evasion. While we understand that the Bureau is not seeking comment on these sections, we believe that these three issues should be addressed, if not through this rulemaking, then through a separate one.

## **I. Traditional Installment Lending**

In AFSA’s comment letter on the proposed Payday, Vehicle Title, and Certain High-Cost Installment Loans rule (“2016 Proposed Rule”), we explained what traditional installment loans are and how they benefit American consumers. We believe that as the Bureau reconsiders the 2017 Final Rule, it is worthwhile to reiterate that explanation. Below is a summary from our letter describing consumers who use installment loans. Attached in the Appendix is a description of what installment loans are.

“AFSA members provide TILs to individuals and families. Their customers are teachers, lawn service employees, lawyers, stay-at-home parents, young adults renting a room with a relative, homeowners, nannies, farmers, etc. In short, they are Americans of almost all professions and socioeconomic classes. Sometimes,

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<sup>1</sup> Founded in 1916, AFSA is the national trade association for the consumer credit industry, protecting access to credit and consumer choice. AFSA members provide consumers with many kinds of credit, including traditional installment loans, mortgages, direct and indirect vehicle financing, payment cards, and retail sales finance.

<sup>2</sup> The 2017 Final Rule addressed two topics: (1) the 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 recordkeeping and reporting requirements (the “Mandatory Underwriting Provisions”); and (2) the Rule contained a set of provisions, applicable to the same set of loans and also to certain installment loans, establishing certain requirements and limitations with respect to attempts to withdraw payments on the loans from consumers’ checking or other accounts (the “Payment Provisions”).

these customers are ‘unbanked’ or ‘under-banked.’ They may be ‘credit invisible’ or have credit histories containing insufficient or stale information. The customers often have impaired credit histories, so they may not be served by banks or credit unions. Some of these customers have prime credit scores and regular banking relationships. They may use TILs because they like the product and the personal touch of the branch-based nature of finance companies. Or they may use TILs because they have very little or no savings. Or they simply need quick access to smaller amounts of credit than banks will offer.

“Some customers need access to credit to meet an immediate need. Seventy-six percent of Americans live paycheck to paycheck, so if something unexpected happens, many need quick access to credit. In fact, a recent survey by the Federal Reserve found a lack of economic preparedness among many Americans. Only 53 percent of survey respondents indicated that they could cover a hypothetical emergency expense costing \$400 without selling something or borrowing money. Using a home equity line of credit or a credit card is not necessarily an option for people with impaired credit and little or no home equity. Yet, when these consumers hit a bump in the road, they still need access to credit. The demand does not go away. That demand has many faces, including: vehicle repairs (transmission, tires), household appliances (washer, dryer, water heater—repairs or replacement), furniture, back to school expenses, debt consolidation, baby items (crib, car seat), funeral expenses, and medical expenses—generally, the everyday items and services essential to live productive and enjoyable lives, as well as to meet obligations.

“Many customers use TILs as a thoughtful process to manage their finances. These customers may use TILs like other Americans use home equity lines of credit or credit cards. After some customers struggled to get out of credit card debt, they simply prefer the more structured nature of TILs. Regardless, they still have a common need for small-dollar credit. And, because many TIL lenders report to one or more of the credit reporting agencies (‘CRAs’), customers can use TILs as a way to build or repair their credit.”<sup>3</sup>

We appreciate the Bureau’s understanding of this valuable product.

## **II. Exclusions from the 2017 Final Rule**

Whether it does so through this rulemaking or a subsequent one, the Bureau should clearly exempt purchase money security interest (“PMSI”) credit and wealth management products.

### *A. Purchase Money Security Interest Credit*

The purpose of the Rule was to regulate payday lending. As former CFPB Director Richard Cordray said when the Rule was released on October 5, 2017, “The CFPB’s new rule puts a stop to the payday debt traps that have plagued communities across the country. Too often, borrowers who need quick cash end up trapped in loans they can’t afford. The rule’s common sense ability-to-repay protections prevent lenders from succeeding by setting up borrowers to fail.”

Accordingly, the 2017 Final Rule excludes certain types of credit. Specifically, the Rule does not apply to PMSI credit defined in section 1041.3 of the Rule as, “Credit extended for the sole and express purpose of financing a consumer’s initial purchase of a good when the credit is secured by the property being purchased, whether or not the security interest is perfected or recorded.” While we appreciate that the Bureau excludes some PMSI credit,

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<sup>3</sup> Himpler, Bill. *Letter to the CFPB on the 2016 Proposed Rule*. Oct. 6, 2016. p. 2.

the exclusion should be comprehensive. The Bureau should clarify that all PMSI credit is exempted from the entirety of the Rule. Specifically, AFSA recommends that the CFPB adopt the three changes outlined below.

- (1) **The CFPB should make it abundantly clear that the PMSI exclusion applies to all three categories of loans: covered short-term loans, covered longer-term balloon-payment loans, and covered longer-term loans.** We believe this is the CFPB’s intention. In the Bureau’s Small Entity Compliance Guide (“Guide”) for the Rule, the Bureau writes, “Credit is excluded from being a covered loan (*i.e.*, is not subject to the Payday Lending Rule) if it is **any** of the following: 1. Purchase money security interest loan...”<sup>4</sup> [emphasis added] However, the Guide specifies that it is not a substitute for reviewing the Rule and that the Rule and its Official Interpretations are the definitive sources of information. The Bureau should clarify that the exclusion for PMSI credit is for the entirety of the Rule.
- (2) **The CFPB should reverse its position on refinances.** Currently, the exclusion does not apply to refinances of credit extended for the purchase of a good. The exclusion should be absolute for PMSI credit. Any extension of credit that was originally secured by a PMSI should be excluded from the rule provided there is no break in the chain of debt secured by the applicable good.
- (3) **The exclusion as drafted only excludes PMSI credit extended “for the sole and express purpose of financing a consumer’s purchase,” but it should also include PMSI loans that include voluntary protection products (“VPP”) purchased by the consumer.** This is not the first time we have advocated for including VPP as part of a PMSI exclusion. In response to the 2016 Proposed Rule’s use of a sole purpose test, AFSA and other commenters expressed concern that the exclusion should include PMSI that included taxes, fees, and VPP. In response, the CFPB streamlined and added language to the Rule’s Commentary to specify that a loan qualifies for the exclusion even if the amount financed includes taxes or fees. However, the Bureau at that time stated that the same considerations do not apply to VPP, such as credit insurance. We disagree and again ask to include VPP.

As AFSA wrote in its October 2016 letter, “The CFPB has no basis to conclude that the financing of these additional items, beyond the purchase price of the collateral, presents any risks to consumers, not to mention the same types of risks to consumers as are presented by covered loans.”<sup>5</sup> In fact, under the Truth in Lending Act and Regulation Z, VPP are expressly not part of the finance charge if not required by the lender. As such, there is no logical reason to exclude a PMSI loan without VPP but not to exclude a PMSI loan with VPP voluntarily purchased by the borrower. We ask that the CFPB make the following change: Loans that are “primarily,” though not “solely,” used to finance the purchase of a vehicle should be exempted, and we ask that the Official Interpretations clearly expound upon this exemption. This would be consistent with the exemption for real estate secured credit which does not have the sole purpose test.

The Rule is clearly intended to regulate payday, vehicle title, and certain high-cost installment loans. It is not intended to regulate PMSI extensions of credit. If the CFPB identifies an issue with PMSI extensions of credit, it should outline those problems and propose a rulemaking specific to that market. PMSI extensions of credit should not be part of this rulemaking.

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<sup>4</sup> CFPB. *Payday, Vehicle Title, and High-Cost Installment Lending Rule: Payment-Related Requirements Small Entity Compliance Guide*. February 2019. p. 16.

<sup>5</sup> Himpler, p. 20.

## *B. Wealth Management Products*

In addition to clarifying the PMSI exemption, the Bureau should exempt wealth management products from the Rule. Examples of wealth management products that could be covered by the Rule include: demand lines of credit (unsecured or secured by non-real estate collateral, such as a securities account); credit lines (unsecured or secured by non-real estate collateral, primarily securities accounts); capital lines; and bridge term loans (secured by collateral other than real estate, or unsecured).

High net-worth consumers who use these products are not the consumers the Bureau sought to target with the Rule. Additionally, rates for wealth products are well below the rates of loans cited as justification for the rule by the Bureau. Hence, these products should specifically be excepted from coverage by the Rule.

## **III. Payment Provisions**

While the Bureau is not proposing to reconsider the Payment Provisions in the 2019 NPRM, it does state that it has received informal requests related to various aspects of the Payment Provisions section, including requests to delay the compliance date. Thus, we take this opportunity to ask the CFPB to initiate a separate rulemaking related to the Payment Provisions. We respectfully request that the CFPB: (1) delay the compliance date for the Payment Provisions, and (2) clarify certain aspects of the requirements in the Payment Provisions.

### *A. Delayed Compliance Date*

We join others in asking the Bureau for an extension of the compliance date because of the uncertainty surrounding the effective date. The uncertainty stems from two sources—litigation challenging the Bureau and the Rule and the CFPB’s own statements.

The litigation challenging the Bureau itself is creating compliance problems. There is a case in front of the U.S. Court of Appeals for the Fifth Circuit<sup>6</sup> that challenges the CFPB’s constitutionality. If the CFPB’s structure is ultimately deemed to be unconstitutional, the legality of the Rule itself would be in question.

In addition, the Texas federal district court hearing the lawsuit filed by two trade associations challenging the 2017 Final Rule<sup>7</sup> has continued the stay of the lawsuit and the August 19, 2019 compliance date for both the Rule’s Mandatory Underwriting Provisions and the Payment Provisions. It is unknown when the stay will be lifted and what the result of the litigation will be.

Furthermore, the CFPB itself has neither commented on the stay nor moved to have the stay lifted. Because it is extremely difficult to prioritize resources and money to a compliance project that has an unknown compliance date, AFSA asks that the CFPB consider issuing a new compliance date after the litigation has been completed. Doing so will give the industry the time to allocate compliance resources appropriately.

Moreover, the Bureau itself has said that it is examining the issues surrounding the Payment Provisions and deciding whether or not to initiate a separate rulemaking. It is wasteful for financial institutions to spend time and resources complying with a rule that may be changed soon after spending the time and resources to comply. Thus,

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<sup>6</sup> *Consumer Financial Protection Bureau v. All American Check Cashing, Inc.*, No. 18-60302 (5<sup>th</sup> Cir.)

<sup>7</sup> *Community Financial Services Association of America v. Consumer Financial Protection Bureau*, Cause No. A-18-CV-0295-LY (U.S. Court for the Western District of Texas Austin Division)

we ask that the Bureau delay the compliance date until the litigation is complete and the Bureau makes a final decision regarding the Payment Provisions of the Rule.

However, if the CFPB's intention is to enforce the August 19 compliance date, then we recommend that the Bureau make a definitive comment stating its intent. Furthermore, if the August 19 compliance date is immediately effective once litigation is completed and the stay is lifted, then we ask that the Bureau consider issuing some safe harbor guidelines that can be easily and quickly implemented. Such a safe harbor must provide lenders with time to implement the final rule—however it is enacted. This is important because the biggest compliance challenge with the Rule is building a system that tracks failed payment attempts across different payment channels and different loans, as well as tying the delivery of the required notices to the specific triggers in the Rule. This is not easily done and requires a long lead time, plus appropriate allocation of resources.

### *B. Request for Clarification*

As well as delaying the compliance date, AFSA respectfully requests that the CFPB clarify certain aspects of the Payment Provisions.

- (1) Compliance Date:** Some of the Payment Provisions are difficult to implement due to their lack of practicality. For example, it seems intuitive that the Payment Provisions would apply to covered loans booked on or after the compliance date. However, the Rule is ambiguous with respect to the application of the Payment Provisions to existing loans and whether existing loans become “covered loans” after the compliance date. If current loans became covered loans after the application date, lenders would be required to send existing consumers, with whom they have long-standing recurring ACH agreements, the first payment notice required under the Rule long after they have withdrawn the first payment simply because their loan became a “covered loan” after the compliance date. There appears to be no consumer benefit to sending this notice in those circumstances.
- (2) Single Immediate Payment Transfer at the Consumer's Request Exception—Second Consecutive Failed Payment Transfer:** Section 1041.8(d) provides an exception for initiating a single immediate payment transfer at the consumer's request. After a lender's second consecutive payment transfer has failed, the Rule permits the lender to initiate a payment transfer from the consumer's account without obtaining the consumer's authorization for additional payment transfer, only if: (1) the payment transfer is a single immediate payment transfer at the consumer's request, and (2) the consumer authorizes the underlying one-time electronic fund transfer.

AFSA members have asked Bureau staff for clarification around this exception. AFSA believes that the following scenario would fit squarely within the exception: The consumer has a failed ACH payment, calls the lender and gives the lender a debit card number to the same account, asking the lender to process the payment using the debit card. Bureau staff, when asked about this example, said that it would not qualify for the single immediate payment transfer exception because it is a lender-initiated payment, not a consumer-initiated payment.

This position really seems to gut the exception because a consumer-initiated withdrawal would essentially be considered a lender-initiated withdrawal if the lender has consumer account information and processes the payment. Please consider the unintended consequences of this position. After the first failed payment transfer, many lenders will require consumers to make the next payment in cash or certified funds, which

seem to be the only payment methods that are, without a doubt, not lender-initiated. These methods of payment are inconvenient for consumers because cash payments must be made in person and are more costly to consumers because of the bank fees associated with obtaining certified funds.

- (3) Single Immediate Payment Transfer at the Consumer’s Request Exception—Unusual Payment Withdrawal Notice:** Under the Rule, an Unusual Payment Withdrawal Notice is required to be provided if any of the following occur: A payment occurs on a date other than a regularly scheduled payment under the terms of the loan agreement, a different payment channel is used from the preceding payment, or the amount of the payment varies from the regularly scheduled payment. A lender must send an Unusual Withdrawal Notice within three business days prior to initiating the payment, if the lender has e-mail authorization, or six business days prior, if the lender has to send the notice by regular mail.

However, if the unusual payment transfer is a single immediate payment transfer at the consumer’s request, the payment transfer is exempt from the requirement to send an Unusual Payment Withdrawal Notice because the payment transfer is excluded from the definition of leveraged payment mechanism. In order for a payment transfer to be considered a single immediate payment transfer at the consumer’s request, the payment transfer must be initiated within one business day after the consumer’s authorization is *obtained* for the payment transfer.

AFSA asks that the Rule be amended, or guidance issued, to define “obtain” to mean the date identified by the consumer as the date on which she authorizes a payment transfer to be initiated, and *not* the date on which the lender and the consumer communicate about changing the payment transfer to a different date. Defining “obtain” this way allows for a lender to initiate a payment transfer within one business day from the date the consumer requests and authorizes as the payment transfer date, allows for the payment transfer to qualify as a single immediate payment transfer at the consumer’s request, and would not trigger delivery of an Unusual Payment Withdrawal Notice. This change, or clarification, would serve consumers.

As written, the Rule does not provide the flexibility consumers expect regarding control over when their payments are posted. For example, if a consumer enrolled in a recurring remotely created check (“RCC”) program has authorized RCCs to be processed on the 10<sup>th</sup> of each month calls the lender on the 9<sup>th</sup> of the month and requests that the RCC for that month be processed on the 11<sup>th</sup> instead, the lender, as the Rule is currently written, would have to deny the consumer’s request because there is insufficient time (3 or 6 days being required) to issue an Unusual Payment Withdrawal Notice. Without this clarification, lenders would be required to wait 3 or 6 days before initiating the transfer—which may well cause the consumer to incur late fees.

Similarly, a consumer who is enrolled in a recurring debit card payment program would not be afforded the discretion to log into her online account and adjust the payment schedule to suit her current situation because the lender would be forced to limit the consumer’s flexibility to make changes to the payment schedule due to the time delays for notices (3 or 6 days), which must be factored into any changes. This is inconvenient and even harmful to consumers who need the flexibility to customize payment schedules in accordance with their expected cash flow, and could easily cause late payments and late fees to be incurred by the consumer.

In another example, a consumer who calls a branch office on the 5<sup>th</sup> to inform the lender that she will be working offshore for the next three weeks will not be able to simply change her payment schedule.

Currently, knowing that her payment is due on the 7<sup>th</sup> but that she will be offshore on the 7<sup>th</sup>, she would be able to ask the lender to set up a post-dated ACH payment to occur on the 7<sup>th</sup>. Under the Rule, the lender would have to deny her request because there would not be sufficient time to present the consumer with the 3 or 6 day notice under the Rule. Therefore, the consumer would have to either pay early (which may not be an option for many consumers who live paycheck to paycheck), or pay late and incur a late fee.

Amending or clarifying the single immediate payment transfer at the consumer's request exception to define "obtain" to mean the date that the consumer authorizes the payment transfer to be initiated, and *not* the date that the lender and consumer originally communicate about the payment transfer would permit lenders to honor their consumers' requests. The ability to accommodate consumer requests like these are critically important because many consumers need the flexibility to reschedule payments based on the ebb and flow of their financial resources.

**(4) Payment Schedule In Loan Agreement—Unusual Payment Withdrawal Notice:** Under the Rule, an Unusual Payment Withdrawal Notice is required if a payment transfer is scheduled to be initiated on a date other than a regularly scheduled payment date under the terms of the loan agreement. Some lenders allow consumers the option to set up weekly or bi-weekly payments to better fit within their household budgets. Because these payments are not in accordance with the terms of the loan agreement, under the Rule they would require delivery of an Unusual Payment Withdrawal Notice prior to each payment transfer. This would mean that a consumer would receive no less than 52 notices each year if the consumer is making weekly payments. AFSA suggests that the Bureau remove the term "loan agreement" from the definition and requirements of sending the Unusual Payment Withdrawal Notice, and replace it with "payment authorization agreement." This change would require a notice only in the event that a payment transfer differs in amount, date, method from the amount, date, or method that the consumer authorized in the payment authorization agreement.

**(5) Two Consecutive Failed Payment Transfers:** The Bureau should define the timeframe within which two consecutive failed payment transfers must take place in order to trigger the Consumer Rights Notice. Under the Rule, a lender must send a Consumer Rights Notice after two consecutive failed payment transfers that are returned for insufficient funds. The lender must send the Consumer Rights Notice no later than three days after receiving information that the second consecutive attempt has failed.

Because there is no express time limit within which these two failed payments must occur, these failed payments might take place as far apart as one month, two months, even a year. The purpose behind this section was to stop lenders from initiating multiple payment transfer attempts on a consumer's account in a short period of time. However, this is generally not the practice nor common for lenders whose payments are due monthly and the term of the loan is longer than 45 days.

"Consecutive" should be interpreted to mean two failed payment transfers that take place within one calendar month. A one calendar month period would allow for normal payment cycles that exist in traditional installment loans. This would allow lenders the time they need to reach out to their consumer to determine the cause of the missed payment and propose helpful solutions to resume normal payments.

#### **IV. Prohibition Against Evasion**

The 2017 Final Rule contains a prohibition against evasion which should be removed. Even if the Mandatory Underwriting Provisions are eliminated, continuing to include this section in the Rule creates a bad precedent. As we wrote in our October 2016 comment letter, “This section is an extraordinary departure from the basic construction of common law or a statutory and regulatory framework. ...if the CFPB cannot show that a covered person engaged in a practice that has been defined as ‘prohibited,’ that covered person should not be punished for evasion.”<sup>8</sup>

#### **V. Conclusion**

AFSA is pleased that the Bureau recognizes the importance of traditional installment lending. While a large portion of the Final Rule did not apply to installment lenders, the Payments Provisions do apply. AFSA looks forward to continuing to work with the Bureau on this section of the Rule. We encourage the Bureau to delay the compliance date while questions about the Rule are addressed. We also strongly urge the Bureau to exempt PMSI credit from the Rule.

If you have any questions, please do not hesitate to contact me by phone at 202-776-7300 or e-mail at [cwinslow@afsamail.org](mailto:cwinslow@afsamail.org).

Sincerely,



Celia Winslow  
Vice President, Legal & Regulatory Affairs  
American Financial Services Association

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<sup>8</sup> Himpler, p. 21.

## APPENDIX

### **It is crucial to preserve access to TILs.**

Traditional installment lenders are community-based lenders in cities and towns nationwide. As recognized by so many and for so long, installment lending has proven to be the most affordable and responsible form of consumer credit for working Americans. Payday and title loans are relatively new and are radically different from TILs in the way they are structured, priced, and regulated. These differences are what make TILs a smarter and long accepted option for borrowers, offering them better rates and significantly higher levels of safety and affordability. In fact, CFPB Director Richard Cordray said, “We are trying to make sure there is room for responsible lending, for community banks and credit unions in particular, but [also] . . . installment lenders who are traditional and have responsible products.”<sup>9</sup> Both the National Black Caucus of State Legislators and the National Hispanic Caucus of State Legislators have passed resolutions promoting access to safe and affordable small-dollar credit. (See Appendix I) The resolutions stress the importance of protecting vulnerable elements in society, including some service members, from harmful products, while at the same time preserving their access to beneficial forms of credit.

And, long before the internet, the local branch of an installment lender was often the only legal access to credit for many Americans. There were and are other forms of credit – loan sharks, back-door deals, and organized crime. In the past, due to important state law regulation of small-dollar credit, and persistent local and federal law enforcement initiatives, those non-legal forms of credit have been substantially reduced, but not eliminated. The need for credit existed in the past and it still exists. And if safe, legal, and affordable credit cannot be readily obtained, consumers will meet their needs through much less desirable credit alternatives. In point of fact, in this day and age, trends show that consumers will easily obtain credit from unlicensed and unregulated online lenders. Consider what happened in North Carolina. Because of the restrictions in North Carolina’s Consumer Finance Act, the 2009 Consumer Banking and Finance Survey found that 11 percent of residents surveyed had received a payday or title loan through the internet or by driving to another state. This was an almost three-fold increase since 2007, when the law changed that restricted small consumer credit options.<sup>10</sup> As the Federal Trade Commission has said, “In recent years, the availability of payday loans via the Internet has markedly increased. Unfortunately, some payday lending operations have employed deception and other illegal conduct to take advantage of financially distressed consumers seeking these loans.”<sup>11</sup>

These unregulated and unlicensed online lenders can be as dangerous as loan sharks. As Ed Mierzwinski of U.S. Public Interest Research Group said, “Online payday lenders may not be subject to any regulation under your state law, they can ignore any state-issued consumer protections on the industry, like capped interest rates, rollovers and repayment plans.” He continued, “Online payday lenders think they’re beyond the reach of state enforcers and often act like it.”<sup>12</sup>

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<sup>9</sup> United States. Cong. House. Committee on Financial Services. *Hearing on The Semi-Annual Report of the CFPB*. Sept. 29, 2015. (testimony of Richard Cordray, Director, CFPB). Available at <https://www.youtube.com/watch?v=eJmBjHv2RNk>.

<sup>10</sup> MarketSearch Corporation, *Consumer Banking and Finance Survey*, North Carolina Office of the Commissioner of Banks, April/May 2009. pp. 22-23.

<sup>11</sup> Federal Trade Commission, *Payday Lending*. Available at <https://www.ftc.gov/news-events/media-resources/consumer-finance/payday-lending>.

<sup>12</sup> Riddell, Kelly. *Consumers Fear Online Lenders as Option if Feds Squeeze Paydays Out*. Washington Post. Sept. 2, 2015. Available at <http://www.washingtontimes.com/news/2015/sep/2/online-lenders-unconstrained-by-state-laws-fill-vo/>.

Many online lenders are based in other countries, such as Costa Rica, the West Indies and Malta. This makes it difficult for regulators to track them down. “Last year, we took 18 enforcement actions against unlicensed payday lenders and 15 of those were against unlicensed online vendors,” said Tom Dresslar, a spokesman for California’s Department of Business Oversight. “A lot of them are offshore, so it’s an extremely difficult fight, extremely difficult to get any enforcement. It’s like whack-a-mole: You beat one down and another pops up. We do the best we can, but no one here is pretending it’s an easy problem to solve.”<sup>13</sup>

A news story outlined the problems with unregulated and unlicensed online lenders:

“Consumer groups say these types of lenders may be even riskier for struggling borrowers than brick-and-mortar lenders, leading consumers into even more hopeless financial quagmires.

“They loan to people not even caring whether they can pay the whole thing off, said Jay Speer, the executive director of the Virginia Poverty Law Center. ‘They just want a certain amount every couple weeks — as much as they can beat out of you until you default.’”<sup>14</sup>

For these and other reasons, any federal regulation of small-dollar credit must not drive out the single best form of small-dollar credit – the traditional installment loan. TILs are fixed-rate, fully-amortizing, small-dollar loans repaid in substantially equal monthly payments or installments. They are “plain vanilla” loans with transparent, easy-to-understand terms, due dates, and payment amounts. TILs are offered by state-licensed and regulated lenders who underwrite loans on each customer’s ability to pay. TILs do not trap borrowers in a cycle of debt. They are structured to empower a consumer to pay off his debt.

Though it varies by lender, the average loan is for \$1,500, the average monthly payment is \$120, and the average term is 15 months. Because traditional installment lenders engage in underwriting, TILs are designed to be affordable and allow borrowers to budget their finances. Traditional installment lenders underwrite loans based on consumers’ credit reports and other factors. At the time of origination, each and every loan is made with the highest confidence and expectation that it will be paid back in full and on time. These factors are crucial because: (1) the lender has to borrow funds in order to lend money to its customers; (2) the loan is not and never has been subsidized, and therefore not a burden on taxpayers;<sup>15</sup> and (3) in order to remain in business and continue lending, the lender must make a profit. It is also important to note that if a customer is not satisfied, she will go elsewhere. Reputation is important in small communities. Traditional installment lenders have a strong desire to treat customers fairly because of their involvement in the community. Moreover, they want repeat business and they want satisfied customers to recommend their services through word-of-mouth.

According to the Center for Financial Services Innovation (“CFSI”), an affordable, small-dollar loan is one for which the loan amount, repayment period, interest rate, and fees are such that the borrower can successfully repay the loan without re-borrowing,<sup>16</sup> while still meeting basic needs and other financial obligations. In other words,

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<sup>13</sup> *Ibid.*

<sup>14</sup> Stuart, Hunter, *Payday Lenders are Using the Internet to Evade State Law*. The Huffington Post. Jan. 21, 2015. Available at [http://www.huffingtonpost.com/2015/01/12/payday-lenders\\_n\\_6443134.html](http://www.huffingtonpost.com/2015/01/12/payday-lenders_n_6443134.html).

<sup>15</sup> During the recent recession, when some banks were being subsidized and failing, no traditional installment lender sought or obtained any governmental assistance.

<sup>16</sup> CFSI specifies that by “without re-borrowing,” they are “making a distinction between borrowing again at some future date because a new credit need arises (which does not necessarily indicate that the original loan was unaffordable) and re-borrowing immediately or shortly after repaying the original loan (which strongly suggests the borrower could not afford to pay back the loan while still meeting basic needs and other financial obligations in the next period).” The point is valid, though we would use the term “refinanced” rather

whether a loan is affordable or not depends on underwriting, structure and pricing – not on price alone. This is because “[S]tructure is just as important as price in determining whether a small-dollar loan is affordable. For example, for borrowers who struggle financially, a two-week loan with a balloon payment structure is often very difficult to repay, even at very low prices. In most cases, loans should be structured in fully-amortizing installment payments; the amount of the loan and the repayment period are variables that should be adjusted to ensure that the borrower can afford to make the regular payments while still having enough left over to meet basic needs and other financial obligations.”<sup>17</sup>

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than “re-borrowing” (which may be a good thing), because “re-borrowing” can be confused with “repeat re-borrowing.” Repeat re-borrowing is generally considered to be a bad practice associated with payday and title lending. (CFSI, *The Compass Guide to Small-Dollar Credit*. 2014. p. 7. Available at <http://www.cfsinnovation.com/Document-Library/The-Compass-Guide-to-Small-Dollar-Credit>.

<sup>17</sup> *Ibid*, p. 7.