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Dec. 14, 2020

Comment Intake
Consumer Financial Protection Bureau
1700 G St. NW
Washington, DC 20552
Via Electronic Submission

RE: Payday Loan Disclosure Testing, Docket No. CFPB-2020-0035

Director Kraninger:

As we detailed in our comments on the CFPB's proposal to rescind its ability-to-repay regulations, Pew's research has found the market for single-payment payday and vehicle title loans to be in need of major reform.[1] Our analysis has also found that the Bureau erred in its decision to rescind the well-balanced and well-researched 2017 regulations, and that it errs again in considering a disclosure-only approach to payday and title lending. The Bureau's 2020 rescission harmed struggling households that cannot effectively repay small-dollar loans and dissuaded lenders from providing affordable credit at scale when it rescinded the ability-to-repay provisions it finalized in 2017. The 2017 rule encouraged lenders to provide safe and competitive alternatives that could save millions of borrowers billions of dollars per year compared to pervasive high-cost, single-payment loans. Under the 2017 rule, consumers would have had widespread access to small-dollar credit.

The Bureau's supplementary materials to this proposal to test payday loan disclosures note "the results of this testing (estimated to conclude September 2021) may be used, along with other Bureau considerations, to inform the decision-making process around whether to move forward with a rulemaking related to payday loan disclosures." There is already ample evidence from states that a disclosure-only approach to payday and title lending is ineffective. The CFPB highlights Texas in its proposal, noting "…in 2012 Texas began requiring a disclosure that incorporates elements of those used in the Bertrand and Morse study for all payday and vehicle title loans. The Bureau conducted an evaluation to analyze the effects of this disclosure (the "CFPB Texas study").[2] In both the Bertrand and Morse study and the CFPB Texas study, consumers who received the disclosure reduced their use of payday loans by 11-13 percent. This reduction in payday loan use following the receipt of the disclosure suggests that if consumers receive additional information, or the same information presented in a different manner, some consumers may become better-informed about such loans and as result [sic] may make changes in their borrowing behavior."

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[1] The Pew Charitable Trusts, *Pew Raises Concerns About CFPB Proposal to Rescind Payday Loan Rule* (May 15, 2019), https://www.pewtrusts.org/en/research-and-analysis/speeches-and-testimony/2019/05/15/pew-raises-concerns-about-cfpb-proposal-to-rescind-payday-loan-rule.

[2] Consumer Financial Protection Bureau, *Supplemental findings on payday, payday installment, and vehicle title loans, and deposit advance products* (2016), https://www.consumerfinance.gov/data-research/research-reports/supplemental-findings-payday-payday-installment-and-vehicle-title-loans-and-deposit-advance-products/.

The core problems with single-payment payday and vehicle title loans are that their payments are unaffordable, their loan terms are too short, lenders have the ability to collect even if borrowers lack the ability to repay, and their prices are unnecessarily high. Lenders are aware that their customers' financial distress makes them less sensitive to price and therefore tend not to compete on price. Pew's research has found people who use single-payment payday and vehicle title loans generally have few good options for coping with financial shortfalls.[3] Requiring particular disclosures for single-payment loans that routinely fail consumers and lead to repeated reborrowing does not change that fact.

While the Bureau highlights Texas' disclosures, it omits from its proposal the important information that Texas has extremely high prices relative to other states for both payday and title loans, suggesting its disclosures have been ineffective in spurring competition on price or affordability. By contrast, states such as Colorado and Ohio that have not mandated the type of disclosures the CFPB proposes to test have loans available from many of the same loan companies that operate in Texas, but at a much lower price point and with much more affordable payments.[4] An average single-payment loan in Texas regulatory data is for $448 with a fee of $102.73 and is due back in 22 days.[5] For a typical borrower earning $30,000 annually, that payment would consume 30 percent of their income during that time period. So, even if the Texas disclosures discouraged some potential borrowers from taking loans, as the CFPB notes, these disclosures did not improve the fundamental aspects of the market related to competition on affordability or price.

Most Recent Regulatory Data On Payday Loan Costs By State

	Colorado	Ohio	Texas (single-pay)	Texas (installment)
Average APR	114%	124%	380%	334%
Average loan size	$531	$393	$448	$581
Widespread access to payday loan credit	Yes	Yes	Yes	Yes
Required Disclosure Like CFPB Proposes to Test	No	No	Yes	Yes

Sources: Colorado Administrator of the Uniform Consumer Credit Code, *Comparison of 2018 vs. 2019 Small-Dollar Lending*, 2020, http://coag.gov/app/uploads/2020/11/Annual-Report-Composite-Comparison.pdf; Ohio Division of Financial Institutions, *Annual Report*, 2020, https://www.com.ohio.gov/documents/FIIN_2019_CILA_GLL_SLA_STLA_Annual_Report.pdf; Texas Office of Consumer Credit Commissioner, Credit Access Business (CAB) Second Quarter Data Report, 2020, https://occc.texas.gov/sites/default/files/uploads/reports/cab-q2-state-2020_1.pdf.

[3] The Pew Charitable Trusts, *How Borrowers Choose and Repay Payday Loans* (2013), https://www.pewtrusts.org/en/research-and-analysis/reports/2013/02/19/how-borrowers-choose-and-repay-payday-loans; The Pew Charitable Trusts, *Auto Title Loans: Market Practices and Borrowers' Experiences* (2015), https://www.pewtrusts.org/en/research-and-analysis/reports/2015/03/auto-title-loans.

[4] The Pew Charitable Trusts, *Trial, Error, and Success in Colorado's Payday Lending Reforms* (2014), https://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2014/12/trial-error-and-success-in-colorados-payday-lending-reforms; The Pew Charitable Trusts, *Ohio a National Model for Payday Loan Reform* (2018), https://www.pewtrusts.org/en/research-and-analysis/data-visualizations/2018/ohio-a-national-model-for-payday-loan-reform.

[5] Texas Office of Consumer Credit Commissioner, Credit Access Business (CAB) Second Quarter Data Report, 2020, https://occc.texas.gov/sites/default/files/uploads/reports/cab-q2-state-2020_1.pdf.

Cost to Borrow $1,000 for 6 Months from Largest Payday Lender in U.S., By State

	Colorado	Ohio	Texas (single-pay loan used semi-monthly)	Texas (installment)	Texas (extended)
Dollar Cost	$200	$276.78	$3,057.24	$885.86	$2,685.36
APR	76.33%	95.88%	664.22%	297.46%	574.61%
Widespread access to payday loan credit	Yes	Yes	Yes	Yes	Yes
Required Disclosure Like CFPB Proposes to Test	No	No	Yes	Yes	Yes

Sources: Advance America published prices, https://www.advanceamerica.net/, accessed Dec. 3, 2020.

The information in the two previous tables should not be misread to understand that required payday loan disclosures are causing high prices or that a lack of the same disclosures is causing lower prices. Instead, it demonstrates clearly that a disclosure-only approach to regulating payday lending is ineffective and not worth undertaking. Clear disclosures are appropriate as a minor part of comprehensive reform, and we recommend them, but they are not a substitute for substantive safeguards that are well within the CFPB's authority.

Pew's research has found the core problem with single-payment loans is not that information is presented poorly to borrowers, but that borrowers cannot afford to sacrifice a large share of their paycheck. We have found the typical $375 payday loan takes 36 percent of a borrower's bi-weekly paycheck and the typical $1,000, 30-day vehicle title loan consumes 50 percent of a borrower's monthly income. No amount of disclosure can make those payments affordable. At the same time, the profitability in payday lending comes from repeat borrowing. Two weeks is not long enough for a payday lender to earn a profit, nor is 30 days enough time for a vehicle title lender to earn a profit.

Although conventional two-week payday loans are advertised as a quick short-term solution for unexpected expenses, the average borrower is in debt for five months during the year. Data from lenders' filings and industry officials' testimonies reveal that renewals are an essential part of the payday lending business model: If borrowers were using single-payment loans as advertised, the lenders would go out of business.[6] The consistent, repeated usage of single-payment loans is driven by borrowers' inability to afford lump-sum payments and is necessary for single-payment lenders' profitability. Even the clearest disclosures about the contractual terms of single-payment payday loans have not solved this problem in the past and there is no evidence suggesting we should expect a different result going forward.

As the CFPB has noted, four in five loans are taken within two weeks of a previous loan.[7] Data from Florida show that approximately 97 percent of loans go to those who use three or more annually, and about 3 in 5 go to those who use 12 or more loans.[8] Data from Oklahoma show that more borrowers use 17-plus loans in a year than just one.[9] To ensure that loans work as advertised, they should have

[6] John Robinson, president of TitleMax Holdings LLC, "Affidavit of John Robinson, President of the Debtors, in Support of First Day Motions and Applications," 11, April 21, 2009, U.S. Bankruptcy Court for the Southern District of Georgia, Savannah Division, http://s3.documentcloud.org/documents/1227212/tmx-exec-delcaration-in-bk-case.pdf; Robert DeYoung and Ronnie J. Phillips, *Payday Loan Pricing* (Federal Reserve Bank of Kansas City Economic Research Department, 2009), https://www.kansascityfed.org/PUBLICAT/RESWKPAP/PDF/rwp09-07.pdf.

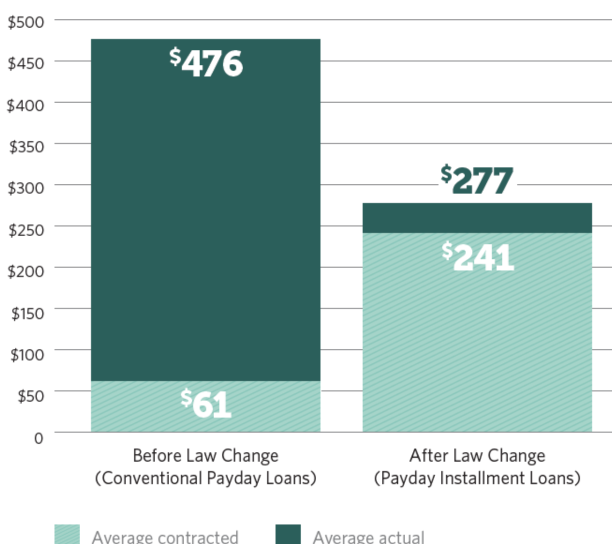
[7] Consumer Financial Protection Bureau, *CFPB Data Point: Payday Lending* (2014), https://www.consumerfinance.gov/about-us/newsroom/cfpb-finds-four-out-of-five-payday-loans-are-rolled-over-or-renewed/.

[8] Veritec Solutions LLC, *Florida Trends in Deferred Presentment* (2010). On file with The Pew Charitable Trusts.

[9] Veritec Solutions LLC, *Oklahoma Trends in Deferred Deposit Lending* (2011), https://www.ok.gov/okdocc/documents/2011_10_OK%20Trends_Final_Draft.pdf.

affordable installment payments that fit into a borrower's budget and pay down principal (the Bureau's 2017 final rule created virtually no compliance burden for any lender making a loan or line of credit that lasts longer than 45 days and features amortizing installment payments). Colorado's 2010 payday loan reform shifted the market from single-payment loans lasting an average of 18 days to installment loans lasting an average of 3 months (the law required a 6-month minimum contractual term, but most borrowers repaid early). Meanwhile, total loan costs became more transparent to consumers. Before that law change, a loan's advertised price represented 13 percent of finance charges actually paid in a year, whereas after the 2010 reform, the advertised price represented 87 percent of actual annual spending.[10]

Increased Transparency Under Installment Law



Under the old law, the average contracted cost represented 13% of fees actually paid. Under the new law, this cost represents 87% of fees actually paid.

Note:

Before law change refers to 2009 and after law change refers to 2012. Indebtedness figures are calculated using the 2009 average loan cost and number of loans (7.84) and the 2012 average loan cost and number of loans (2.3, based on 2011 data because a 2012 figure has not been published).

Sources: Colorado Office of the Attorney General, 2010, 2012, and 2013.

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Source: The Pew Charitable Trusts, *Payday Lending in America: Policy Solutions* (2013), http://www.pewtrusts.org/~/media/legacy/uploadedfiles/pcs_assets/2013/pewpaydaypolicysolutionsoct2013pdf.pdf. Exhibit 2, page 12.

Much like the CFPB's 2017 final rule that steered the market toward installment lending, Colorado's 2010 law change gave borrowers more time to repay in equal installments and improved transparency. To understand why a disclosure-only approach to single-payment lending is inadequate to improve the marketplace, it's worth looking backwards to how policymakers handled single-payment lending in the early to mid-20th century. In the early 1900s, unlicensed, high-rate, single-payment money lending was rampant. The solution to this problem, The Uniform Small Loan Law (USLL), let lenders charge enough to be profitable, but shifted the market away from single-payment loans toward credit repayable in equal installments over more time. Today it is widely celebrated by economic historians and economists. Despite its rate caps and longer terms, groups that strongly favor market-oriented solutions and often balk at regulation celebrate the Uniform Small Loan Law.[11] The USLL has strong implications for present-day problems in small-dollar loan markets, and the CFPB's 2017 final rule in important ways mirrored

[10] The Pew Charitable Trusts, *Payday Lending in America: Policy Solutions* (2013), 12, http://www.pewtrusts.org/~/media/legacy/uploadedfiles/pcs_assets/2013/pewpaydaypolicysolutionsoct2013pdf.pdf#page=18. As discussed elsewhere in this letter, due to a ballot initiative passed in 2018, the market in Colorado is changing and payday lenders are moving to the general installment loan statute to provide loans, which generally feature lower costs for longer-term loans and higher costs for shorter-term loans compared to loans made under the 2010 payday loan law.

[11] Consumer Credit Symposium: A Century of Experience with the Uniform Small Loan Law, https://www.mercatus.org/events/consumer-credit-symposium-century-experience-uniform-small-loan-law.

the USLL by steering the market to longer-term installment terms without reducing access to credit. To understand how, we quote at length from our 2013 report *Policy Solutions*[12]:

> In the early 20th century, high-interest credit in the United States was readily available from lenders, and often due on the borrower's next payday.[13] A number of consumer finance experts have written about this period.[14] One author notes that the standard "practice was to require the whole amount to be repaid at the end of the week, [and] the consumer found this hard to do... . So he renewed the loan each week by paying a fee."[15] Others describe repaying these loans as "daunting,"[16] explaining that repeated borrowing "almost inevitably results,"[17] because this structure means that the loans are "for too short a period of time, making the payments too high"[18] and thus will "keep the borrower in debt by encouraging renewals."[19] One financial writer describes such lenders' practices: "Short maturities are preferred since those will be harder to repay, and renewal and refinancing charges will build up the 'take.' . . . Interest for the [lenders] becomes almost an annuity."[20] Another notes that those making these loans were "more concerned in collecting the interest than the principal."[21] These analysts recognized that many borrowers could afford to pay only the fee to reborrow, and thus could be in debt for extended periods and still owe as much as they did when they first took the loan.[22]
>
> Around the same time, the Russell Sage Foundation and its expert in the field of small credit, Arthur Ham, recognized the problem with these high-interest, lump-sum repayment loans.[23] A group of unlicensed lenders that offered the loans formed a trade association with the goal of becoming licensed to make small-dollar loans at higher rates than the 6 to 8 percent annualized interest state laws typically permitted at the time.[24] To raise allowable interest rates and end unlicensed lending, this group of lenders and the foundation partnered to create the Uniform Small Loan Law—model legislation that was eventually passed by 34 states to permit licensed lenders to make installment loans.[25]

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[12] The Pew Charitable Trusts, *Payday Lending in America: Policy Solutions* (2013), http://www.pewtrusts.org/~/media/legacy/uploadedfiles/pcs_assets/2013/pewpaydaypolicysolutionsoct2013pdf.pdf.

[13] Robert Mayer, *Quick Cash: The Story of the Loan Shark* (DeKalb: Northern Illinois University Press, 2010).

[14] Robert Mayer, "Loan *Sharks, Interest-Rate Caps, and Deregulation*," *Washington and Lee Law Review* 69, no. 2 (2012), http://scholarlycommons.law.wlu.edu/wlulr/vol69/iss2/10. The author identified many of the primary sources cited in this brief history.

[15] Morris R. Neifeld, *Neifeld's Manual on Consumer Credit* (Easton: Mack Publishing Co., 1961), 336.

[16] Lendol Calder, *Financing the American Dream* (Princeton, NJ: Princeton University Press, 1999), 17.

[17] Neifeld, *Neifeld's Manual*, 388.

[18] Donald Tyree, *The Small-Loan Industry in Texas* (Austin: Bureau of Business Research, University of Texas, 1960), 59. The author quotes an assistant attorney general of Texas.

[19] Neifeld, *Neifeld's Manual*, 388.

[20] Ira Cobleigh, *How and Where to Borrow Money* (New York: Avon Books, 1964), 109.

[21] Gerald W. Gibbs, *The Complete Guide to Credit and Loans* (New York: Playboy Paperbacks, 1982), 65.

[22] Neifeld, *Neifeld's Manual*, 409. Neifeld made this point clearly in 1961, writing: "The inherent defect in the salary-buying scheme of loan and the flipping type of loan is the fact that the whole indebtedness matures at one time. Almost invariably, repayment of the loan or appreciable reduction of the principal is beyond the ability of the borrower. Through necessity the borrower must continue to renew the loan each payday upon payment of interest with little or no reduction of the amount of the original loan. A Good law should contain some compulsory provision for the amortization of small loans in monthly or shorter installments."

[23] Calder, *Financing the American Dream*, 124.

[24] Bruce G. Carruthers, Timothy Guinnane, and Yoonseok Lee, "Bringing 'Honest Capital' to Poor Borrowers: The Passage of the U.S. Uniform Small Loan Law, 1907–1930," *Journal of Interdisciplinary History* (Winter 2012), 393–418.

[25] Elisabeth Anderson, "Experts, Ideas, and Policy Change: The Russell Sage Foundation and Small Loan Reform, 1909–1941," *Theory and Society* 37, no. 3 (2008): 271–310, http://www.jstor.org/stable/10.2307/40211037. Interest rates on small loans were set by state governments, rather than the federal government. The Uniform Small Loan Law was model legislation that the coalition encouraged states to pass, and a majority did so.

> Legislators enacted the USLL to make small credit affordable, in reaction to the pervasiveness of unaffordable loans from unlicensed lenders, estimated to be used by as many as one in five workers in larger cities.[26] The Russell Sage Foundation and the lenders association agreed upon 42 percent (or 3.5 percent per month) as the annualized interest rate to be permitted for loans of $300 or less. Some states permitted somewhat lower interest rates and still saw a successful market for small credit.[27]
>
> One author explained: "The provision in the law that loans be scheduled for repayment in equal monthly payments was intended to offer the consumer a regular program of amortization, tailor-made for his family budget."[28] A 1938 piece about the impact of the USLL argued, "Insistence upon planned, orderly liquidation of the loan is one of the hallmarks of the honest lender."[29]

The Bureau's 2017 final rule recognized the same problem most state legislatures identified in the first half of the 20th century. Single-payment loans due in a short amount of time are structurally unaffordable, and therefore lead to repeat borrowing and cumulative fees. Therefore, safeguards are needed to protect borrowers. But it is possible to align the incentives of borrowers and lenders, so both can succeed. Protecting consumers from particularly harmful loan terms need not impede their access to credit if laws or regulations are designed well. Neither the Uniform Small Loan Law nor the CFPB's 2017 final rule removed consumers' access to small loans, but both created a more level playing field where loans would become safer and more transparent.

Reformers, lenders, and legislatures in the first half of the 20th century wisely took this approach and reformed loans structurally so that they were repayable in small installments, with lenders and borrowers succeeding together. Appropriately, they recognized that single-payment loans lead to more single-payment loans and do not provide borrowers with a pathway out of debt. They did not leave the single-payment loan in place and then offer buyer-beware disclosures that the loans generally failed to work as advertised. The CFPB should take the same approach and set guardrails to ensure loans have affordable payments and sufficient time to repay.

We encourage the Bureau to withdraw its proposal to test new ways of informing people in dire financial straits that single-payment loans are designed to fail them, and instead to reinstate its 2017 payday loan rule, as originally finalized, without further delay.

Sincerely,

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[26] Calder, *Financing the American Dream*, 118.
[27] Anderson, "Experts, Ideas, and Policy Change," 271–310.
[28] Neifeld, *Neifeld's Manual*, 336.
[29] Charles A. Gates, "The Social Worker in the Service of the Small Loan Business," *Annals of the American Academy of Political and Social Science* 196 (1938), 223, http://www.jstor.org/stable/1021721.