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April 11, 2022

Comment Intake–Fee Assessment
Consumer Financial Protection Bureau
1700 G Street NW
Washington, DC 20552

Submitted electronically via www.regulations.gov

RE: Request for Information: Fees Imposed by Providers of Consumer Financial Products or Services (Docket No. CFPB-2022-0003)

Dear Director Chopra:

Thank you for the opportunity to comment on financial products that have excessive fees that harm consumer wellbeing or undermine competition from transparently priced options.

Pew has studied consumer financial products including credit cards, prepaid cards, checking accounts, and small-dollar loans such as payday, auto title, and installment loans for more than a decade.[1] Pew's research on these topics is informed by dozens of focus groups with consumers, nationally representative consumer surveys, and hundreds of conversations with industry participants, regulators, lawmakers, and consumer advocates across the nation.

Our comments focus primarily on penalty overdraft fees as well as payday and similar high-cost loans with excessive, non-transparent prices. We commend the CFPB for distinguishing unnecessary fees from necessary ones and encourage the Bureau to take this framework into account in its future research, supervision, enforcement, and rulemaking.

There has been a longstanding expectation of a sharp tradeoff between the availability of credit and its price. In many markets, evidence confirms this hypothesis, but in the two areas we discuss in this comment—overdraft and payday lending—an overwhelming amount of data demonstrates it is possible to sharply reduce consumer costs while maintaining similar access. These products have had prices that are not just high, but *unnecessarily* high, meaning access is preserved even when prices suddenly become much lower.

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[1] Pew's research on payday and small-dollar loans is available at https://www.pewtrusts.org/en/projects/consumer-finance/small-dollar-loans. See also Pew's research on banking and checking accounts, at https://www.pewtrusts.org/en/projects/consumer-finance/banks-and-credit-unions, and on prepaid cards, available at https://www.pewtrusts.org/en/research-and-analysis/articles/2015/03/prepaid-cards. Pew published research on practices in the credit card market before and after enactment of the Credit CARD Act of 2009, available at https://www.pewtrusts.org/en/projects/archived-projects/safe-credit-cards-project.

Overdraft

About 39 million Americans use overdraft, and about one-third of them report using it as a form of credit.[2] However, to date, regulators and banks have not treated overdraft as credit. Overdraft programs are not subject to the Truth in Lending Act, which hinders consumers from comparing the high costs of overdraft to other, lower-cost credit options, such as small loans from banks.

To better understand consumers' experience with overdraft fees (as asked in RFI Question 1c), in 2014, Pew surveyed consumers and found that more than 75% of overdrafters expressed concerns about overdraft policies including the cost, the imposition of "extended" fees, and reordering transaction practices used by some banks and credit unions to maximize overdraft fee revenue. Nearly 3 in 4 overdrafters did not understand that they have the right to have transactions declined without a fee if their account did not have sufficient funds to cover a debit card purchase.[3] People who overdrafted typically struggled to predict when the penalty fees would occur because of uncertain timing of processing credits and debits at their financial institution. The fact that most overdrafts are cured quickly is further evidence of this persistent confusion.

Despite overdraft being promoted as an occasional courtesy for accidental occurrences, CFPB data found that a small proportion (18 percent) of account holders pay the vast majority (91 percent) of all overdraft fees triggered by debit cards, checks, and automated clearinghouse (ACH) electronic transactions.[4] In 2015, Pew undertook a survey of "heavy overdrafters" defined as those who incur over $100 in overdraft and non-sufficient funds fees—or roughly three or more $35 fees—each year. Heavy overdrafters tended to have lower incomes than the U.S. population, with most earning less than $50,000 a year. Half of heavy overdrafters paid 6 or more overdraft fees in the preceding year and nearly one quarter of heavy overdrafters paid the equivalent of one or more weeks of wages in fees.[5]

Overdraft fees are a significant, nontransparent, source of revenue for many banks and credit unions (see RFI Question 4). In 2020, banks generated $12.4 billion of fee revenue from overdraft.[6] Overdraft revenues make up over half of some banks' net income.[7] The CFPB should consider that the source of this revenue comes largely from consumers who cannot reasonably anticipate or

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[2] The Pew Charitable Trusts, "Overdraft Does Not Meet the Needs of Most Consumers: Bank Programs Often Function as Costly, Inefficient Credit" (2017), https://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2017/12/overdraft-does-not-meet-the-needs-of-most-consumers.The Pew Charitable Trusts, "Consumer Overdraft Survey: Methodology and Topline Result" (2018), 1, https://www.pewtrusts.org/-/media/assets/2018/03/methodology_od-survey_update_030218.pdf.

[3] The Pew Charitable Trusts, "Overdrawn: Persistent Confusion and Concern About Bank Overdraft Practices" (2014), 5, 10, http://www.pewtrusts.org/~/media/assets/2014/06/26/ safe_checking_overdraft_survey_report.pdf

[4] Consumer Financial Protection Bureau, "Data Point: Checking Account Overdraft" (July 2014), 18, http://files.consumerfinance.gov/f/201407_cfpb_report_data-point_overdrafts.pdf.

[5] The Pew Charitable Trusts, "Heavy Overdrafters: A Financial Profile," (2016): 2–4, https://www.pewtrusts.org/en/research-and-analysis/fact-sheets/2016/04/heavy-overdrafters

[6] Financial Health Network, "Finhealth Spend Report 2021" (2021), 27, https://finhealthnetwork.org/research/finhealth-spend-report-2021/.

[7] Brookings Institution, "A Few Small Banks Have Become Overdraft Giants," March 1, 2021, https://www.brookings.edu/opinions/a-few-small-banks-have-become-overdraft-giants.

predict the occurrence or total cost of overdrafts, and these costs tend not to be factored into the price when customers initially sign up for a transaction account. Rather, the number of overdrafts incurred and the cost of maintaining an account for low-balance customers both depend on intricate details of the depository institution's policies, like transaction ordering.

It is often unclear to consumers why overdraft fees are charged (see RFI Question 1d).[8] Although Regulation E requires affirmative consent, or opt-in, to these programs, lower-income, low-balance consumers who pay the most for overdraft often are not aware of the option not to opt into overdraft programs. Despite disclosures, Pew's research has found many overdrafters do not realize they can have purchases declined at no charge. Some research shows a slight decrease of overdraft usage when consumers become more aware of the cost of overdrafting an account.[9] But in Pew's 2017 survey, only 27 percent of survey respondents had a conversation with their bank about their overdraft options despite clear evidence that consumers do not understand these options well.[10]

Finally, the cost of overdraft and non-sufficient funds (NSF) fees are unnecessarily expensive and punitive, meaning competition is not driving down these fees to a level where they approach providers' costs. The typical penalty overdraft fee is $35 per transaction, but some providers offer this service at a much lower cost, and in recent months three of the top 20 banks have eliminated all overdraft fees. Several others have lowered their fees to $10 or $15. These changes and continued access to overdraft demonstrate that $35 as a price for overdraft was not driven by either competition or providers' costs to offer a service. Similarly, non-sufficient funds fees have also frequently been $35, but a slew of banks have eliminated them altogether. Given that financial institutions simply decline payments when charging a non-sufficient funds fee and incur only minimal cost, the $35 charge, or really any meaningful charge for doing so, bears no relation to the provider's cost since it is not extending any credit or otherwise providing a desired service.

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[8] The Pew Charitable Trusts, "Overdrawn: Consumer Experiences with Overdraft," (2014): 5, 12, https://www.pewtrusts.org/en/research-and-analysis/reports/2014/06/26/overdrawn-consumer-experiences-with-overdraft.

[9] Sule Alan, Mehmet Cemalcilar, Dean Karlan, and Jonathan Zinman, "Unshrouding: Evidence from Bank Overdrafts in Turkey," 2017, https://onlinelibrary.wiley.com/doi/abs/10.1111/jofi.12593. This study found that when a bank advertised a 50 percent discount on overdrafts to consumers, usage dropped. The most likely explanation for the decrease in usage is that the advertising reminded consumers of the high cost of overdraft, leading them to reduce their overdraft activity. The authors also noted that "banks lack incentives to unshroud or compete on overdraft prices because doing so backfires." The authors discussed their findings, explaining: "Altogether our results are consistent with models where consumers have limited and reactive attention to add-ons like overdrafts, and suppliers respond by shrouding add-on costs. Specifically, it seems that overdraft costs and availability are not at the top of mind for consumers, and even when brought closer to top of mind they do not stay there for long. As such recent behavioral models of add-on pricing, marketing, and usage do capture key aspects of reality with consumers that tend to underestimate add-on costs and react strongly but temporarily when their attention is drawn to add-on, and with firms that lack incentives to unshroud or compete on add-on costs." Therefore, the authors believe, "competing on overdraft prices will not capture market share or increase usage, and thus will lower revenue."

[10] The Pew Charitable Trusts, "Overdraft Does Not Meet the Needs of Most Consumers: Bank Programs Often Function as Costly, Inefficient Credit" (2017), 4, https://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2017/12/overdraft-does-not-meet-the-needs-of-most-consumers.

Overdrafters Need Better Options

Current overdraft market outcomes compared with better public policy

	Consumer outcome	
Consumer profile	**Status quo**	**Better public policy**
Would prefer to have transactions declined and not pay overdraft fees, but is opted in to overdraft	Pays overdraft penalty fees, with amount borrowed due back in a lump sum	Transactions declined with no fee
Wants occasional transactions processed through and is willing to pay overdraft fees		Pays overdraft penalty fees, with amount borrowed due back in a lump sum
Wants access to small amounts of credit to cope with income or expense volatility		Borrows small installment loan from the bank or credit union

In Pew's national survey of American adults, 68% viewed a $35 overdraft fee as unfair. On the other hand, 85% believed that $35 would be a fair cost to borrow $300 for three months.[11] If a bank or credit union wishes to extend credit to a customer with a low-balance account, they should do so, but it should be structured as credit with fair pricing, affordable payments, and a reasonable amount of time to repay. Shifting away from excessive penalty overdraft fees towards affordable small-dollar installment loans or lines of credit would create a more transparent pricing structure for consumers (see RFI Question 5).

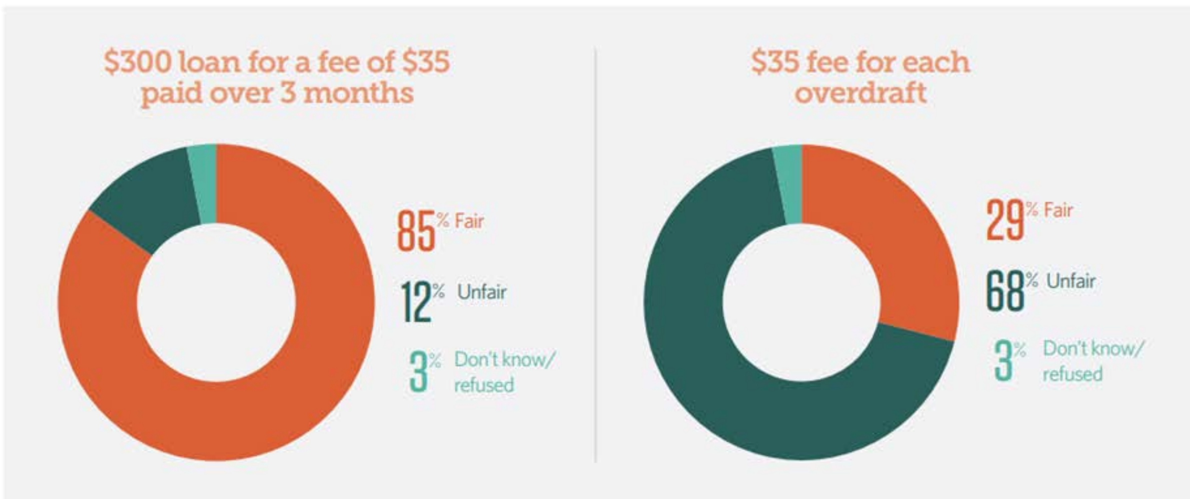
(Continued on page 5.)

[11] Ibid., 12.

Figure 6

More Than 8 in 10 Say a $35 Fee for a Three-Month, $300 Loan Would Be Fair

But two-thirds consider checking account overdraft fees to be unfair



Note: Respondents were asked: "If banks and credit unions offered a three-month, $300 loan for a fee of $35, do you think that loan would be fair or unfair?" and "Today, banks typically charge a fee of around $35 for each overdraft. Do you think that's fair or unfair?" Results are based on 1,018 interviews.

In positive news for consumers and the banking system as a whole, in recent months banks have started to make seismic shifts. These changes are happening thanks to increased competition from providers that offer overdraft-free accounts, much-needed scrutiny from policymakers,[12] and the spread of bank-issued small installment loans that can serve as a safer, lower-cost substitute for repeated overdrafting.[13] In January 2022, five of America's largest banks announced that they would eliminate NSF and certain overdraft charges while adding safeguards to their overdraft programs; Pew estimated that the resulting savings to consumers on the overdraft changes alone from those five banks are upwards of $2 billion annually. These large banks have also begun offering or announced small installment loans or lines of credit with maximum amounts ranging from $500 to $1,000.[14] And in the past year, a majority of the top 20 banks have either eliminated or meaningfully curtailed overdraft and non-sufficient funds fees. These developments illustrate

[12] M.J. Hsu, Acting Comptroller of the Currency, "Reforming Overdraft Programs to Empower and Promote Financial Health: Remarks " (presentation, The Consumer Federation of America's 34th Annual Financial Services Conference, Virtual 12/8/2021), https://www.occ.gov/news-issuances/speeches/2021/pub-speech-2021-129.pdf.
[13] The Office of the Comptroller of the Currency, Small-Dollar Lending: Interagency Lending Principles for Offering Responsible Small-Dollar Loans, OCC Bulletin 2020-54 (2020), https://www.occ.treas.gov/news-issuances/bulletins/2020/bulletin-2020-54.html.
[14] The Pew Charitable Trusts, "America's Largest Banks Make Major Overdraft Changes That Will Help Consumers" (2022), https://www.pewtrusts.org/en/research-and-analysis/articles/2022/02/08/americas-largest-banks-make-major-overdraft-changes-that-will-help-consumers.

that depository institutions can sharply reduce their reliance on penalty fees, increase the transparency of their product offerings, and significantly reduce costs for consumers, all without tradeoffs in access to credit.

The Consumer Financial Protection Bureau has helped spur these developments and should continue to facilitate the market shift away from overdraft towards transparent small-dollar loans. This approach is already showing major benefits for consumers, especially those who have used overdraft intentionally as a form of credit.[15] For consumers who would like help controlling their spending, declining transactions is what most borrowers prefer—more than two-thirds of consumers who overdraft answered in a 2014 Pew survey that they would rather have a transaction declined than be charged a $35 overdraft fee.[16] However, it is possible with no-cost overdrafts or lower-cost overdrafts those preferences may change. Pew's 2015 national survey found that consumers, especially unbanked prepaid card holders, were relying on prepaid cards to avoid costly overdraft fees.[17]

Single-payment payday loans and rent-a-bank products from storefront and online lenders

Pew's research has also focused attention on policies and products in the non-bank payday loan market. This market is characterized by unaffordable payments and excessive prices—where millions of borrowers in financial distress borrow small sums and typically pay more in fees than they receive in credit, almost always at the maximum rates allowed by state law. In 27 states, lenders issue balloon-payment loans secured by access to the borrower's checking account due back in two weeks.[18] Payday lenders rely on their ability to collect using a "leveraged payment mechanism" timed to the borrower's payday, rather than on the borrower's ability to repay to loan.[19]

For a decade, Pew has researched the experiences and preferences of payday loan borrowers (see RFI Question 1c). Some of the relevant findings from Pew's national polling of payday borrowers include:

- A majority of borrowers say payday loans take advantage of them, and a majority also say they provide relief.

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[15] About one-third of overdrafters report using it as a way to borrow money. The Pew Charitable Trusts, "Overdraft Does Not Meet the Needs of Most Consumers: Bank Programs Often Function as Costly, Inefficient Credit." See Figure 7, https://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2017/12/overdraft-does-not-meet-the-needs-of-most-consumers.

[16] The Pew Charitable Trusts, "Overdrawn," (2014): 2.

[17] The Pew Charitable Trusts, "Banking on Prepaid; Survey of Motivations and Views of Prepaid Card Users" (2015), 1, https://www.pewtrusts.org/en/research-and-analysis/reports/2015/06/banking-on-prepaid.

[18] The Pew Charitable Trusts, "Payday Loans Cost 4 Times More in States with Few Consumer Protections: States That Have Enacted Reforms Preserved Widespread Access to Credit" (2022), 3, 7, https://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2022/04/payday-loans-cost-4-times-more-in-states-with-few-consumer-protections.

[19] The Pew Charitable Trusts, letter to The Consumer Financial Protection Bureau, "Payday, Vehicle Title, and Certain High-Cost Loans (Proposed Rule)," 10/7/2016, 46, https://www.pewtrusts.org/-/media/assets/2017/05/pct_cfpb_payday_comment_letter.pdf.

- Most payday loan borrowers have trouble meeting monthly expenses at least half the time.
- The average borrower reports being able to afford $50 per two weeks to a payday lender, but only 14 percent can afford the more than $400 needed on average to pay off the full amount in lump sum, as structured.
- 7 in 10 borrowers believe that payday loans should be more regulated.
- 8 in 10 borrowers want more time to repay the loans.
- 8 in 10 borrowers would prefer to borrow from their bank rather than a payday lender.

Payday loans are marketed as short-term solutions for unexpected expenses, like a car repair or emergency medical need, for a fixed fee. However, when the large balloon-payment comes due, typically in two weeks, it consumes one third of the average borrower's gross paycheck. As a result, borrowers renew these loans repeatedly.[20] What is advertised as a two-week product with a fixed cost results in the average borrower in debt for five months of the year, paying more in fees ($520) than the amount initially borrowed ($375).[21]

Advertised vs. Experienced Cost to Borrow $375 for Typical Payday Loan Borrower

Loan Amount	Advertised Cost	Advertised Duration
$375	$55	Two weeks
Loan Amount	**Experienced Cost**	**Experienced Duration**
$375	$520	Five months

Source: Pew's analysis of payday loan pricing, see The Pew Charitable Trusts, "Payday Lending in America: Who Borrows, Where They Borrow, and Why" (2012), 7-9, https://www.pewtrusts.org/en/research-and-analysis/reports/2012/07/19/who-borrows-where-they-borrow-and-why.

The payday loan business model relies on nontransparent pricing, excessive fees, and repeat borrowing. The vast majority of industry revenue comes from borrowers who take out three or more loans a year[22] and three-quarters of payday loans go to those who take out 11 or more of the loans annually.[23] Industry analysis has found that storefront lenders do not recoup the costs of issuing a single-payment loan unless customers borrow repeatedly.[24] Payday lenders have used such research to argue that their margins are normal for financial services, which is accurate. But

[20] The Pew Charitable Trusts, "Payday Lending in America: Policy Solutions" (2013), 3–5, https://www.pewtrusts.org/en/research-and-analysis/reports/2013/10/29/payday-lending-in-america-policy-solutions.

[21] The Pew Charitable Trusts, "Payday Lending in America: Who Borrows, Where They Borrow, and Why" (2012), 4, https://www.pewtrusts.org/en/research-and-analysis/reports/2012/07/19/who-borrows-where-they-borrow-and-why.

[22] 97 percent of all loans according to one state's administrative data. The Pew Charitable Trusts, "Payday Lending in America: How Borrowers Choose and Repay Payday Loans" (2013), 19, https://www.pewtrusts.org/en/research-and-analysis/reports/2013/02/19/how-borrowers-choose-and-repay-payday-loans.

[23] The Pew Charitable Trusts, "Payday Loan Facts and the CFPB's Impact" (2016), 1, https://www.pewtrusts.org/en/research-and-analysis/fact-sheets/2016/01/payday-loan-facts-and-the-cfpbs-impact; Consumer Financial Protection Bureau, "Payday Loans and Deposit Advance Products: A White Paper of Initial Data Findings " (2013), 22, https://files.consumerfinance.gov/f/201304_cfpb_payday-dap-whitepaper.pdf.

[24]The Pew Charitable Trusts, "Who Borrows, Where They Borrow, and Why," 7. Ernst & Young, "The Cost of Providing Payday Loans in a Us Multiline Operator Environment: A Study Prepared on Behalf of the Financial Service Centers of America" (2009), 23–25, https://www.fisca.org/FISCA/Content/Industry-Resources/Industry-Research2.aspx.

they have also used that data to argue that if their prices are forced to be lower they would go out of business, which is not accurate. Their normal margins reflect inefficiencies and high overhead costs—their costs rise to meet prices rather than what happens in standard markets where prices get lower until they approach costs.

In most states payday loans carry excessive prices—lenders typically charge 4 times more in states with few consumer protections than those with strong ones. Pew conducted research in 2014 finding that payday loan pricing is primarily determined by state rate limits and not by market competition and confirmed that finding with updated research in April 2022.[25] States that have the highest number of stores per capita also have the highest prices.[26] Payday lenders charge unnecessarily high fees for payday loans in permissive states, open more stores, and each store serves fewer customers. There is a strong disincentive for lenders to charge lower prices—if they don't charge the maximum fees, their competitors will open additional stores and gain market share. This is a market failure because additional competition does not benefit consumers with lower prices or higher quality, as it does in a conventional market.

Empirical evidence demonstrates that effective payday loan regulations can reduce unnecessarily high fees without tradeoffs in access to credit. In 2010, Colorado lawmakers required all loans to be paid back in amortizing installments, and they brought down costs by a factor of three. Consumers saved more than $40 million annually. Even with the sharply lower pricing after reform, borrowers did not receive less credit. Before reform, approximately 82 percent of Colorado residents had a payday lender within five miles of their home, compared with 77 percent after the change. To adapt to the new law, lenders cut overhead and increased efficiency. Lenders that had diversified sources of revenue, such as check-cashing, were best able to transition to the new rules that required all loans to be issued with an installment structure at lower costs. Lenders still charged the maximum allowed, but that maximum was lower, borrowers had a pathway out of debt, and they repaid early if they could afford to do so.[27]

Transparency in Colorado's market was dramatically improved. Before reform, the advertised cost to borrow was $61, because consumers could only see what the loan would cost for one pay period, but the average consumer paid $476 because the loan was outstanding for much longer than that–the price tag included only 13 percent of fees actually paid. After reform, the advertised price represented 87 percent of the fees actually paid.

(Continued on page 9.)

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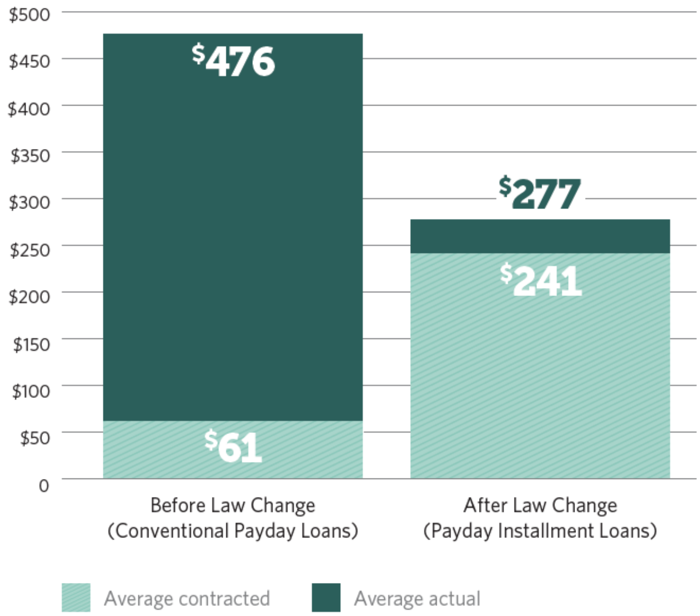
[25] The Pew Charitable Trusts, "Payday Loans Cost 4 Times More in States with Few Consumer Protections," 2.
[26] The Pew Charitable Trusts, "How State Rate Limits Affect Payday Loan Prices" (2014), https://www.pewtrusts.org/en/research-and-analysis/fact-sheets/2014/04/10/how-state-rate-limits-affect-payday-loan-prices.
[27] The Pew Charitable Trusts, "Policy Solutions," 12–13.

Exhibit 2

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.

Lenders in Colorado described their state's law in a 2016 comment letter to the CFPB: "The State of Colorado has been at the forefront of responsible regulation for the payday/installment lending industry since 2010. Colorado has been successful in establishing a balance between consumer protection and maintaining access to short-term credit. The 6-month installment lending law enacted in 2010, was developed with significant input from the lending industry and various consumer groups…The new lending law is clearly saving Colorado consumers more money, while still ensuring that they have a viable short-term lending option from a regulated lender."[28]

Eleven years after Colorado's payday market reform, four of the largest payday loan chains still operate in the state.[29] Despite this fact, industry representatives repeatedly claim that regulations like Colorado's will eliminate access to credit.[30]

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[28] J. Fritts, President, Colorado Financial Services Associations, letter to The Consumer Financial Protection Bureau, "Comment Letter Concerning Proposed Rules for Payday, Vehicle Title, and Certain Highcost Installment Loans " 10/7/2016, https://www.regulations.gov/comment/CFPB-2016-0025-147273.

[29] Colorado voters passed a ballot initiative in 2018 that resulted in payday lenders operating under a different statute with slightly lower pricing than was in place from 2010 to 2018, which in turn was about three times lower than what was in place before 2010, with loans still repayable in equal installments.

[30] This claim is false. For example, in 2020, representatives of a Kansas-based company that operates in Colorado and Ohio claimed in committee hearings that they would be shutting down their operations on account of reform. More than a year later, they still operate in Colorado and Ohio. https://www.cjonline.com/story/business/finance/2021/02/28/payday-loan-reform-kansas-gets-another-shot-banks-lenders-consumers-finance-banking-interest-cap/6842187002/

In 2018, Ohio passed bipartisan legislation known as the Fairness in Lending Act.[31] Similar to Colorado's outcome, payday lenders consolidated their storefronts following reform and increased the number of customers served per store in the state. In 2020, Ohio-licensed lenders issued $99 million in credit, with an average loan size of $403.[32] Pew estimated annual borrower savings of more than $75 million.[33] These reforms have also since been replicated in Virginia (2020) and Hawaii (2021) with similar results.[34] Lenders in each of these four states now issue fully amortized installment loans that cost about three to six times less than before as required by law.

Cost to Borrow $500 for 4 Months Before vs. After Reform

State	Finance Charges Before	Finance Charges After	Excessive Fees/Consumer Savings	Credit Widely Available
Colorado	$600	$110	$490	Yes
Ohio	$900	$159	$741	Yes
Virginia	$493	$138	$355	Yes
Hawaii	$706	$158	$548	Yes

Sources: Pew's analysis of payday loan pricing. See The Pew Charitable Trusts, "How State Rate Limits Affect Payday Loan Prices" (2014), https://www.pewtrusts.org/en/research-and-analysis/fact-sheets/2014/04/10/how-state-rate-limits-affect-payday-loan-prices; The Pew Charitable Trusts, "Payday Lending in America: Policy Solutions" (2013), https://www.pewtrusts.org/en/research-and-analysis/reports/2013/10/29/payday-lending-in-america-policy-solutions; "Payday Loans Cost 4 Times More in States with Few Consumer Protections: States That Have Enacted Reforms Preserved Widespread Access to Credit" (2022), https://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2022/04/payday-loans-cost-4-times-more-in-states-with-few-consumer-protections.

In 27 states, absent reasonable pricing policies and other consumer protections or federal product safety standards from the Consumer Financial Protection Bureau, consumers who take out balloon-payment payday loans are being charged fees that are on average about four times higher than necessary to maintain a similar level of nonbank credit access. In the most extreme example of this, the very same lenders who are licensed to operate payday loan storefronts in both Colorado and Idaho, charge Idaho residents nine times more for the same amount of credit.[35]

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[31] 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; The Pew Charitable Trusts, "As Payday Loan Market Changes, States Need to Respond" (2018), https://www.pewtrusts.org/en/research-and-analysis/articles/2018/08/22/as-payday-loan-market-changes-states-need-to-respond.

[32] Ohio Department of Commerce Division of Financial Institutions, "2020 Annual Report of Small Loan Act, General Loan Law, Short Term Loan Act, Consumer Installment Loan Act, and Residential Mortgage Lending Act" (2020), 5, https://com.ohio.gov/static/documents/fiin_AnnualReport2020.pdf.

[33] The Pew Charitable Trusts, "The Ohio Legislature Got Payday Loan Reform Right" (2018), https://www.pewtrusts.org/en/about/news-room/opinion/2018/10/29/the-ohio-legislature-got-payday-loan-reform-right.

[34] The Pew Charitable Trusts, "Hawaii Adopts Comprehensive Payday Lending Reform" (2021), https://www.pewtrusts.org/en/research-and-analysis/articles/2021/06/17/hawaii-adopts-comprehensive-payday-lending-reform; The Pew Charitable Trusts, "How Virginia's 2020 Fairness in Lending Act Reforms Small-Dollar Loans" (2020), https://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2020/10/how-virginias-2020-fairness-in-lending-act-reforms-small-dollar-loans.

[35] The Pew Charitable Trusts, "Payday Loans Cost 4 Times More in States with Few Consumer Protections," 3, 9.

In healthy markets, price sensitivity is a prerequisite for price competition. But when it comes to consumer decision making (see RFI Questions 6 & 8), research has consistently shown that payday loan borrowers are in financial distress. It is difficult for them to know how much a loan will ultimately cost because they only see the two-week price, but most borrowers are in debt far longer than that. This is true both because the total costs of reborrowing are hidden and because consumers are in financial distress and not sensitive to price when taking out a payday loan. And the lack of price competition by payday lenders means that even if a small share of borrowers is price sensitive, they have little to gain by shopping around because payday lenders generally all charge the most allowed by state law.

Pew's survey research found that 58 percent of borrowers had trouble meeting their financial obligations half of the time or more and 37 percent of borrowers reported that they had been in such a difficult financial situation that they would take out a payday loan at any terms offered. The fact that payday loan borrowers are primarily focused on speed rather than price is acknowledged among industry participants as well—as one company explained in their filings to the SEC, payday loans "fulfill a borrower's immediate funding needs," and that for non-prime consumers on a list of 10 loan attributes, "lowest APR" finished 9th, with just 16% prioritizing it. The company noted that compared to prime borrowers, their customers considered "APR much less important" and "speed of funding much more important." They explained "where prime consumers consider price most in selecting their credit products, we believe that non-prime consumers will often consider a variety of features, including the simplicity of the application process, speed of decisioning and funding, how they will be treated if they cannot pay their loan back on time, and flexible repayment terms."[36] Research from a vendor monitoring payday loan borrowing at the state level has also identified this dynamic, stating that borrowers are concerned about "obtaining credit from somewhere quickly."[37]This is true—when in financial distress, borrowers are not typically sensitive to price or affordability and focus instead on speed and certainty, enabling lenders to charge the maximum allowed. Pew's market research demonstrates this repeatedly, including systematic reviews of market practices at the state level in 2014, as well as an updated market scan in 2022.[38]

In the absence of price competition, when policies have attempted to address consumer protection concerns or market failures stemming from single—payment payday loans, clear disclosures have not led to lower prices or measurably better outcomes. For example, in Texas where clear consumer disclosure is required, payday installment loans cost three times as much as commensurate products in Colorado that do not require such clear disclosures. While disclosures may discourage a small share of potential borrowers, they have not improved affordability or price in the payday loan market.[39]

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[36] Elevate Credit Inc., "Form S-1" (2017), 118–119, https://sec.report/Document/0001193125-17-096406/.

[37] Veritec Solutions LLC, "Competition Commission Payday Lending Market Investigation" (2013), 10–11, http://docplayer.net/9461788-Competition-commissionpayday-lending-market-investigation-submission-from-veritec-solutions-llc.html.

[38] The Pew Charitable Trusts, "How State Rate Limits Affect Payday Loan Prices," 1–3; The Pew Charitable Trusts, "Payday Loans Cost 4 Times More in States with Few Consumer Protections," 3, 5.

[39] The Pew Charitable Trusts, "Pew Urges Cfpb to Forgo Proposed Disclosure Test, Reinstate 2017 Payday Loan Rule" (2020), 2, https://www.pewtrusts.org/en/research-and-analysis/speeches-and-testimony/2020/12/14/pew-urges-cfpb-to-forgo-proposed-disclosure-test-reinstate-2017-payday-loan-rule.

Disclosure Policies Have Not Led to Lower Prices or Measurably Better Outcomes

Evidence from 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
Policy focused primarily on disclosure	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.

In the payday loan market, further unnecessary costs have been added when lenders arrange their businesses in such ways to avoid state consumer protections and pricing restrictions. For example, in eight states, due to "rent-a-bank" partnerships between FDIC-regulated banks and payday installment lenders, bank-originated loans are as costly or more so than those offered by state-licensed payday lenders. In Texas, payday lenders operate as "Credit Access Businesses" brokering loans to affiliated companies with annual percentage rates higher than those otherwise allowed by state law, adding fees to arrange, collect, and guarantee loans. In another example, in at least two states, a high-cost payday lender is issuing what is nominally a line of credit but requiring the loans to be repaid in full in two weeks—effectively circumventing state laws that require the loans to be paid in amortizing installments over months. To do so, they are partnering with a payment services provider that charges an additional 10 percent fee each time the loan is disbursed and each time it is repaid.[40] These extreme examples illustrate ways in which aggressive providers in the payday loan market drive up the cost of borrowing—harming both consumers and lower-cost competitors who seek to offer products that are transparently priced.

Conclusion

Markets and competition work best when pricing is salient and transparent, and when customers are price sensitive; these conditions typically do not exist in conventional payday markets and in states without strong safeguards to protect consumers from harmful single-payment payday loans.

[40] The Pew Charitable Trusts, letter to Federal Deposit Insurance Corporation, Department of the Treasury, Office of the Comptroller of the Currency, "Stop Harmful 'Rent-a-Bank' Partnerships, Pew Experts Advise: Comment Letter Offers Recommendations for Protecting Consumers from Risky Third-Party Lending Arrangements and Encouraging Safer Loan Products," 10/18/2021, 3, https://www.pewtrusts.org/en/research-and-analysis/speeches-and-testimony/2021/10/18/stop-harmful-rent-a-bank-partnerships-pew-experts-advise.

To address serious harms in the nonbank payday loan market, the CFPB should use its authority to stop lenders from collecting loans that include costly fees that are prohibited and otherwise void under state law. A number of states, including Ohio and Virginia, include provisions in state law declaring loans void if they are made without an applicable license or for other reasons. The CFPB should closely examine the lending activities of companies that operate in states without applicable licenses or under terms that violate otherwise applicable state laws, especially in cases where non-bank lenders partner with bank lenders and claim exemption from state licensing requirements.

Absent the ability to regulate interest rates for unnecessarily high-cost payday loans, the CFPB should re-issue its 2017 payday rule that was designed effectively to promote affordability and transparency. If the CFPB is considering broader rules to define “abusiveness,” it should focus on aggressive and harmful product features that hinder transparency and enable lenders to charge excessive costs, such as lump-sum payments, leveraged payment mechanisms, and related business practices that understate or obscure the true cost of credit and duration of indebtedness for borrowers. These are common features of payday loan and overdraft products.

Overdraft and NSF penalty fees are excessively priced, routinely confuse customers, and push consumers out of the banking system. One-third of overdrafters use it as a form of credit and pay the majority of fees, yet banks and credit unions have for years presented overdraft as an occasional, fee-based convenience and regulators have exempted the practice from the rules that govern the rest of the consumer credit market. The Bureau should coordinate with prudential regulators and continue to encourage banks to shift away from reliance on back-end fees like overdraft and towards affordable, small installment loans that are explicitly structured as credit with transparent pricing. Despite watershed developments on bank overdraft and small-dollar loans over recent months, most banks and credit unions have not yet acted to change their overdraft policies or begun issuing affordable small installment loans. Ongoing scrutiny and meaningful regulation of overdraft would help facilitate this shift.

Providers’ rationale for the high prices for payday, overdraft, and other expensive small loans has been that they are necessary to offer such products. But state payday loan reforms and recent changes on overdraft pricing and eliminating NSF fees show that in markets such as these, it is possible to have much lower prices and transparent pricing without reducing access to credit. These financial products have not just been expensive; they have been *unnecessarily* expensive.

Respectfully submitted,

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