LAWYERS' COMMITTEE FOR
CIVIL RIGHTS
UNDER LAW

1500 K Street, NW
Suite 900
Washington, DC 20005

Tel: 202.662.8600
Fax: 202.783.0857
www.lawyerscommittee.org

Kristine M. Andreassen
Senior Counsel, Office of Regulations
Consumer Financial Protection Bureau
1700 G Street NW
Washington, DC 20552

Re: Lawyers' Committee for Civil Rights Under Law's Comment on the CFPB's Proposed Delay in Compliance for Provisions of the Payday, Vehicle Title, and Certain High-Cost Installment Loans Final Rule Docket Number: CFPB-2019-0007

The Lawyers' Committee for Civil Rights Under Law ("Lawyers' Committee") appreciates the opportunity to comment on the proposed rulemaking by the Consumer Financial Protection Bureau ("CFPB") titled *Payday, Vehicle Title, and Certain High-Cost Installment Loans; Delay of Compliance*.

The Lawyers' Committee is a nonpartisan, nonprofit organization that was formed in 1963 at the request of President John F. Kennedy to enlist the private bar's leadership and resources in combating racial discrimination. The principal mission of the Lawyers' Committee is to secure equal justice for all through the rule of law. To that end, the Lawyers' Committee has participated in hundreds of impact lawsuits challenging race discrimination prohibited by the Constitution and federal statutes relating to voting rights, housing, employment, education, and public accommodations.

The Lawyers' Committee opposes the proposed delay of the compliance date for the mandatory underwriting and record keeping provisions promulgated by the CFPB in November 2017, governing Payday, Vehicle Title, and Certain High-Cost Installment Loans (the "Final Rule").[1] The Final Rule provides critical protections for consumers—particularly people of color—and delay will cause substantial harm by putting vulnerable consumers at further risk of being trapped by payday loan debt. A fifteen-month delay in compliance would mean that these borrowers could incur several additional high-interest loans—further increasing the risk of falling deeper into the debt

[1] Specifically, the CFPB seeks to delay the following sections from Subpart B–Underwriting: Identification of unfair and abusive practices, Ability-to-repay determination requirement, and Conditional exemption for certain covered short-term loans. 12 C.F.R. §§ 1041.4–6. Additionally, the CFPB seeks to delay the following sections from Subpart D–Information Furnishing, Recordkeeping, Anti-Evasion, and Severability: Information furnishing requirements, Registered information systems, and Compliance program and record retention. 12 C.F.R. §§ 1041.10–12.

LAWYERS' COMMITTEE FOR CIVIL RIGHTS UNDER LAW
1500 K Street, NW
Suite 900
Washington, DC 20005
Tel: 202.662.8600
Fax: 202.783.0857
www.lawyerscommittee.org

trap. The Lawyers' Committee strongly urges the CFPB to reconsider delay of the compliance date.

Background

The CFPB promulgated the Final Rule in 2017 after receiving more than 1.4 million public comments on the proposed rulemaking. *See* Payday, Vehicle Title, and Certain High-Cost Installment Loans, 82 FR 54472-01 (Nov. 17, 2017) (codified at 12 C.F.R. § 1041) ("Final Rule"). It imposed "ability-to-repay" protections (also referred to as the "Underwriting Requirements") that require lenders to conduct a "full-payment test" to determine upfront a borrower's ability to repay the loan while also meeting major financial obligations and basic living expenses without needing to reborrow over the next 30-days.[2] The Final Rule represented the culmination of over five years of research and outreach to both consumer and industry stakeholders. 12 C.F.R. § 1041.5(a)(1). The Final Rule's administrative record unequivocally demonstrated that payday or car title loans provided without a determination of the borrower's ability to repay is an "unfair" and "abusive" practice under the Consumer Financial Protection Act. Now, without providing any evidence contrary to that determination, the CFPB seeks to delay the compliance date of these essential rules by 15 months—from August 19, 2019 to November 19, 2020—while the agency contemplates wholly rescinding critical provisions of the Final Rule.

Legal Standards

When an agency reverses or changes course on a prior APA rulemaking, the agency must provide "a reasoned analysis for the change beyond that which may be required when an agency *does not act* in the first instance." *FCC v. Fox Television Stations, Inc*, 556 U.S. 502, 514 (2009) (emphasis in original) (internal quotations and citations omitted). While the agency need not

[2] The Final Rule defines major financial obligations as a consumer's housing expense, minimum payments under debt obligations (including outstanding covered loans), child support obligations, and alimony obligations. It also defines basic living expenses as expenditures, other than payments for major financial obligations, that a consumer makes for goods and services that are necessary to maintain the consumer's health, welfare, and ability to produce income, and the health and welfare of financial dependents. *See* 12 C.F.R. § 1041.5(a)(1).

LAWYERS' COMMITTEE FOR CIVIL RIGHTS UNDER LAW
1500 K Street, NW
Suite 900
Washington, DC 20005
Tel: 202.662.8600
Fax: 202.783.0857
www.lawyerscommittee.org

always provide a more detailed explanation for the new policy, it must do so "when, for example, its new policy rests upon factual findings that contradict those which underlay its prior policy."[3] As such, "a reasoned explanation is needed for disregarding facts and circumstances that underlay or were engendered by the prior policy."[4] . The obligation to perform a reasoned analysis cannot be avoided by staying implementation of a final rule. *See Clean Air Council v. Pruitt*, 862 F.3d 1, 14 (D.C. Cir. 2017) (finding the Environmental Protection Agency lacked inherent authority to stay or not enforce a final rule while the rule was being reconsidered). *See* Order at 2–3.[5]

In order to repudiate its prior decision by delaying the mandatory underwriting provision, the CFPB must at least acknowledge the change and justify the new position on the merits. As shown below, the CFPB fails to provide a reasoned explanation for its new position by neglecting to consider the serious impact on vulnerable consumers that underlies the Final Rule.

Argument

1. **Delaying the mandatory underwriting provisions will stall critical protections for vulnerable consumers, particularly people of color who are disproportionately targeted by payday lenders.**

In its attempt to support the proposed delay, the CFPB focused its cost-benefit analysis almost entirely on how the delay would benefit lenders and never addressed, or even acknowledged, the harms that payday and vehicle title loans cause for consumers—most notably consumers of color who are, as noted below, more vulnerable to these unfair and abusive lending practices. As discussed below in Section 2, delaying these necessary rules by 15 months will cause irreversible harm to these consumers—harm that has already been extensively documented in the administrative record of the Final Rule. Despite the fact that the Final Rule contained findings about the racial demographic makeup of small-dollar credit borrowers, and the harm these lending practices instill on these populations, the current proposed

---

[3] *Id*. at 516.
[4] *Id*.
[5] The Western District of Texas recently entered an order to stay the compliance date of the Payday Lending Rule pending the formal agency rulemaking. *Community Fin. Services Ass'n of Am. Ltd. v. Consumer Fin. Protection Bureau*, No. 1:18-cv-00295 (W.D. Tx. Nov. 2, 2018).

LAWYERS' COMMITTEE FOR CIVIL RIGHTS UNDER LAW
1500 K Street, NW
Suite 900
Washington, DC 20005
Tel: 202.662.8600
Fax: 202.783.0857
www.lawyerscommittee.org

delay does not analyze or provide quantitative data about the economic and psychological harm that would be caused by delaying these protections.

The typical payday borrower earns a low-to-moderate income. In fact, one-quarter of payday borrowers earn an annual salary below $15,000, and nearly one-half of borrowers receive an annual income of $25,000 or less *See* The Pew Charitable Trusts, Safe Small-Dollar Loans Research Project, Payday Lending in America: Who Borrows, Where They Borrow, and Why at 35 (July 2012). (hereinafter "Pew Charitable Trust Safe Small-Dollar Loans). These borrowers are more likely to live in unmarried female-headed families. Payday, Vehicle Title, and Certain High-Cost Installment Loans, 82 FR 54472-01, 54557 (Nov. 17, 2017) (codified at 12 C.F.R. § 1041). In addition, unmarried female-headed families are more than twice as likely as married couples to be payday borrowers.[6] Nearly one-fifth of storefront borrowers relied on Social Security or another form of government benefits or public assistance when procuring these loans.[7]

Communities of color are disproportionately affected by payday lending practices. *See*, *e.g.*, The Pew Charitable Trusts, Safe Small-Dollar Loans Research Project, Payday Lending in America: Who Borrows, Where They Borrow, and Why at 9 (July 2012); Skiba and Tobacman (2011) (using individual-borrower data from a payday lending company, including demographic variables in their analysis of the relationship between payday lending and bankruptcy filings and indebtedness); MassMutual African American Middle America Financial Security Study, Sept. 2017, (finding African Americans are more likely to use payday loans than other groups).[8] Payday borrowers are disproportionately members of racial and ethnic minority groups, and borrow these loans at a rate two to three times higher than for non-Hispanic whites. *See* Final Rule at 82 F.R. 54472-01 (Nov. 17, 2017) (codified at 12 C.F.R. § 1041) (citing FDIC, "2015 FDIC National Survey of Unbanked and Underbanked Households," (Oct. 20, 2016).[9] Payday loan usage is 105 percent higher for African Americans than for other racial or ethnic groups. *See* The Pew Charitable Trusts, Safe Small-Dollar Loans Research Project, Payday Lending in America: Who Borrows, Where They Borrow, and Why at 9 (July 2012). Moreover, 29 percent of African

---

[6] *Id*.
[7] *Id*. at 54556.
[8] *Available at* https://www.massmutual.com/-/media/files/mm-2017-african-american-fin-sec-study.
[9] *Available at* https://www.fdic.gov/householdsurvey/2015/2015report.pdf.

LAWYERS' COMMITTEE FOR CIVIL RIGHTS UNDER LAW
1500 K Street, NW
Suite 900
Washington, DC 20005
Tel: 202.662.8600
Fax: 202.783.0857
www.lawyerscommittee.org

Americans report using small-dollar credit products including payday loans, despite comprising 14 percent of the overall population. *See* Rob Levy & Joshua Sledge, "A Complex Portrait: An Examination of Small-Dollar Credit Consumers," (CFSI 2012).[10] The CFPB acknowledged this racial disparity in payday lending when announcing the Final Rule. *See* Final Rule at 82 F.R. 54472-01 (Nov. 17, 2017) (codified at 12 C.F.R. § 1041). Indeed, the CFPB even noted that commenters did not take issue with the CFPB's demographic assessments on race. Instead, commenters ranging from industry participants to consumer groups consistently reinforced the point that minority borrowers disproportionately use small-dollar credit. *See* Final Rule at 82 F.R. 54457-01.

The CFPB also found in the Final Rule that the demographics of single-payment title borrowers are roughly comparable to the demographics of payday borrowers. As with payday loans, U.S. Census data indicates that vehicle title borrowers are disproportionately African American or Hispanic, and are more likely to live in unmarried female-headed families. [11] An academic survey of borrowers in three States similarly found that title borrowers were disproportionately female and minority: "Over 58 percent of title borrowers were female. African-Americans were over-represented among borrowers compared to their share of their States' population at large. Hispanic borrowers were over-represented in two of the three States."[12] Again, the CFPB noted that commenters generally did not take issue with these points, and various submissions from both industry participants and consumer groups supported the view that these demographics are an accurate reflection of the borrower population.

Despite the overwhelming evidence of the negative effects of these lending practices on persons of color compiled and cited by the CFPB, the CFPB still seeks to delay implementation of the Final Rule that was promulgated to protect these borrowers. As indicated below, delaying implementation will ensure that these borrowers will face 15 more months of disproportional harm caused by these unfair and abusive practices.

---

[10]), *Available at* https://www.fdic.gov/news/conferences/consumersymposium/2012/A%20Complex%20Portrait.pdf.).
[11] *Id.* (citing FDIC, "2015 FDIC National Survey of Unbanked and Underbanked Households.")
[12] *Id.* (citing Kathryn Fritzdixon et al., "Dude, Where's My Car Title?: The Law Behavior and Economics of Title Lending Markets," 2014 U. IL L. Rev. 1013, at 1029–1030 (2014)).

LAWYERS' COMMITTEE FOR CIVIL RIGHTS UNDER LAW
1500 K Street, NW
Suite 900
Washington, DC 20005
Tel: 202.662.8600
Fax: 202.783.0857
www.lawyerscommittee.org

2. **Delaying the compliance date for the Payday Lending Rule will cause irreparable harm to some of the nation's most vulnerable consumers.**

Delaying the implementation of this rule will cause irreparable harm to these vulnerable consumers, including communities of color, by stalling long overdue and critical protections.

The Final Rule specifically contemplates the harm that consumers face when borrowing loans without an ability to repay determination.[13] After reviewing over one million comments received during the initial rulemaking, the CFPB determined that "a substantial population of borrowers is harmed, *many severely*… as a result of the identified practice of failing to make a reasonable assessment of the borrower's ability to repay before making the loan."[14]

One such harm is that borrowers of payday loans often fall into a debt trap by incurring several subsequent loans as a result of their inability to pay. For instance, the CFPB found in a 2013 study that, within the course of a year, the typical payday consumer borrows ten loans. *See Payday Loans and Deposit Advance Products: A White Paper of Initial Data Findings*, at 22, Consumer Financial Protection Bureau, April 24, 2013.[15] The annual percentage rate on a typical storefront payday 14-day loan with these terms is 391 percent.[16] *See* Final Rule, 82 F.R. at 54477. In aggregate, payday and car title lenders drain billions of dollars each year from some of the nation's most vulnerable consumers—individuals who earn an average annual income of $25,000. *See Payday and Car Title Lenders Drain $8 Billion in Fees Every Year*, Center for Responsible Lending, January 2017, at 1.[17] For payday borrowers, a fifteen-month delay in compliance would mean that these borrowers could incur several additional high-interest loans—further increasing the risk of falling deeper into the debt trap. These harms are not limited to the fifteen-month period, but will continue to harm these consumers for years into the future.

---

[13] *Id*. at 54472.
[14] *Id*. at 54591 (emphasis added).
[15] *Available at* https://files.consumerfinance.gov/f/201304_cfpb_payday-dap-whitepaper.pdf.
[16] The CFPB calculated this interest rate by using the median storefront payday loan fee {which} is $15 per $100; thus for a $350 loan, the borrower must repay $52.50 in finance charges together with the $350 borrowed for a total repayment amount of $402.50. *See* Final Rule, 82 F.R. at 54477.
[17] *Available at* https://www.responsiblelending.org/sites/default/files/nodes/files/research-publication/crl_statebystate_fee_drain_may2016_0.pdf.

1500 K Street, NW
Suite 900
Washington, DC 20005

Tel: 202.662.8600
Fax: 202.783.0857
www.lawyerscommittee.org

In addition to incurring *more* debt, these consumers also suffer harm from delinquency and default of loans. The Final Rule emphasizes that 20% of payday loan sequences and 33% of single-payment vehicle title loan sequences result in borrower default. *See* 82 F.R. at 54555. The CFPB's 2016 study on online lending similarly found that half of borrowers paid a nonsufficient funds (NSF) or overdraft fee. *See Online Payday Loan Payments*, Consumer Financial Protection Bureau, April 2016, at 3.[18] Payday borrowers often do not stop once their loans default. Instead, 39% of borrowers who defaulted re-borrowed at a later date. *See* Susanna Montezemolo and Sarah Wolff, *Payday May: Visible and Invisible Payday Lending Defaults*, Center for Responsible Lending, March 2015, at 6.[19] These defaults have collateral consequences for vulnerable consumers. For instance, 20% of borrowers of single-payment vehicle title loan sequences ultimately lost their car or truck to repossession.[20]

Maintaining the current implementation date of the Payday Lending Rule will help borrowers by putting a stop to the long-term injuries associated with borrowing these loans. These harms range from: increased difficulty paying bills, delayed medical spending, and decreased job performance, to involuntary bank account closure and a higher likelihood of filing for bankruptcy. *See Shark-Free Waters: States are Better Off without Payday Lending*, Center for Responsible Lending, updated September 2017, at 1.[21] A study by the Center for Responsible Lending confirmed that payday lending restrictions help curb these long-term harms. A study by the Center for Responsible Lending confirmed that payday lending restrictions help curb these long-term harms.[22] Implementing the Payday Lending Rule in accordance with its current compliance date will offer critical safeguards for consumers who need it most.

Therefore, the sooner this rule goes into effect, the sooner its protections will begin to shield vulnerable borrowers from predatory loans that they cannot afford. The CFPB has already, in its initial rulemaking, decided that the

---

[18] *Available at* https://files.consumerfinance.gov/f/201604_cfpb_online-payday-loan-payments.pdf
[19] *Available at* https://www.responsiblelending.org/sites/default/files/nodes/files/research-publication/finalpaydaymayday_defaults.pdf.
[20] *Id*.
[21] *Available at* http://www.responsiblelending.org/sites/default/files/nodes/files/research-publication/crl_shark_free_waters_aug2016.pdf.
[22] *Id.* at 5–6.

LAWYERS' COMMITTEE FOR
CIVIL RIGHTS
UNDER LAW

1500 K Street, NW
Suite 900
Washington, DC 20005

Tel: 202.662.8600
Fax: 202.783.0857
www.lawyerscommittee.org

current timeline is *necessary* to protect these consumers. Any reversal of that decision must show, with substantial evidence and reasoned analysis, that the delay will not harm these consumers. The proposed rule does not establish this—and in fact, it ignores the well-documented harm that consumers face as a result of predatory payday lending practices.

Conclusion

For the reasons stated above, the Lawyers' Committee strongly urges the CFPB to not delay the compliance date for the above-mentioned provisions of the Payday Lending Rule and to proceed with the current compliance date of the August 19, 2019.