May 15, 2019

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

Re: Payday, Vehicle Title, and Certain High-Cost Installment Loans, Docket No. CFPB-2019-0006, RIN 3170-AA80, 84 Fed. Reg. 4252 (Feb. 14, 2019)

Dear Consumer Financial Protection Bureau:

Better Markets Inc.[1] appreciates the opportunity to comment on the above-captioned notice of proposed rulemaking ("Proposal" or "Release"), issued by the Consumer Financial Protection Bureau ("CFPB" or "Bureau"). The Proposal would rescind the provisions of the Bureau's 2017 rule governing payday loans ("Final Payday Rule")[2] that would make it an unfair and abusive practice to extend certain short-term, high-dollar loans, including payday loans and vehicle title loans,[3] without determining that consumers have the ability to repay the loans according to their terms.

Following an exhaustive rulemaking process that spanned five years, the Bureau concluded in November 2017 that millions of Americans living paycheck-to-paycheck needed new protections against unfair and abusive loan practices that were trapping them in interminable cycles of costly short-term debt, consigning them to a virtual debtors' prison without bars. The result was the Final Payday Rule. A core component of those protections are the common sense underwriting provisions requiring lenders to determine, before extending a payday loan, that consumers have the ability to repay it. Now, just over a year and a half after the Final Payday Rule was issued, the Bureau is attempting to rescind the underwriting provisions.

<u>SUMMARY OF COMMENTS</u>

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[1] Better Markets is a non-profit, non-partisan, and independent organization founded in the wake of the 2008 financial crisis to promote the public interest in the financial markets, support the financial reform of Wall Street, and make our financial system work for all Americans again. Better Markets works with allies—including many in finance—to promote pro-market, pro-business, and pro-growth policies that help build a stronger, safer financial system, one that protects and promotes Americans' jobs, savings, retirements, and more.

[2] Payday, Vehicle Title, and Certain High-Cost Installment Loans, 82 Fed. Reg. 54,472 (Nov. 17, 2017).

[3] For convenience, in this letter we refer to any loans covered by the underwriting provisions of the Final Payday Rule as "payday loans."

The Bureau's dramatic shift in position and decision to rescind the underwriting provisions cannot be justified under the bedrock principles that limit an agency's ability to alter its previously adopted rules without a good reason and a detailed explanation. Here, the Bureau fails those tests. The Bureau's asserted rationale for eliminating the underwriting provisions of the Final Payday Rule is that the factual and legal justifications for those provisions are "not sufficiently robust."[4] In light of the exhaustive rulemaking process, and the extensive rulemaking record built up over the half-decade leading to the Final Payday Rule, this assertion is demonstrably false.

Even worse, the Bureau now states that, in rescinding the Final Payday Rule that was based on five years of effort and the comprehensive rulemaking record that resulted, it will not even attempt to reckon with that extensive record or develop new evidence that might support its rescission. Indeed, the Bureau quite literally concedes that it has no idea whether or not the findings that originally supported the underwriting standards are actually valid. It goes further, throwing up its hands and declaring that it now "does not believe it is cost-effective for itself and for lenders and borrowers to conduct the necessary research" to confirm or refute the Bureau's previous determinations that support the underwriting provisions.[5] Its irrational solution is the non-sequitur that the underwriting standards should be discarded entirely.

The Proposal is deeply flawed in another respect, as the Bureau relies on policy priorities that are completely reversed and inconsistent with its stated mission to "protect consumers from unfair…or abusive practices."[6] To support the Proposal, the Bureau mourns the adverse impact that the underwriting standards are expected to have on the payday lending industry, noting that they may force many lenders to go out of business.[7] Further evidence of this unwarranted solicitude for the industry is reflected in the companion proposal to delay by 15 months the compliance date of the Final Payday Rule[8] (the "Delay Proposal"), issued largely out of the Bureau's concern that the industry would have to shoulder compliance costs.[9]

At the same time, the Bureau ignores the vast harm to consumers that the underwriting standards were designed to prevent: the financial prison that payday lenders create by trapping consumers in never-ending cycles of unaffordable debt. In fact, the Bureau explicitly refuses to consider consumer harm, stating that for "purposes of this rulemaking proposal, the Bureau need

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4 Release at 4264.

5 *Id.*

6 https://www.consumerfinance.gov/about-us/the-bureau/.

7 *See, e.g.,* Release at 4264 (asserting that "more robust and reliable" evidence is needed to support the underwriting provisions because of the "dramatic effects" they would have on the market for payday loans.").

8 84 Fed. Reg. 4298 (Feb. 14, 2019).

9 Delay Proposal at 4299 (citing unspecified "outreach to affected entities" regarding potential costs of compliance with Final Payday Rule).

not consider that the 2017 Final Rule found that the identified practice causes or is likely to cause substantial injury."[10]

The Bureau attempts to disguise or justify these reversed priorities by contending that removing the underwriting standards (thus giving payday lenders even more latitude to exploit desperate borrowers) will preserve "competition" in the industry and promote consumer choice and "access" to credit. [11] But these euphemistic attempts to hide the truth are unavailing. The Bureau's decision to cater to the payday industry while ignoring the significant consumer harms exhaustively catalogued in the Final Payday Rule[12] is contrary to the Bureau's stated mission to protect consumers, and it is arbitrary and capricious.

Even the rulemaking process underlying the Proposal is contaminated. Recent reports reveal that the Proposal has been inappropriately influenced through secret meetings with the payday lending industry—meetings that the CFPB attempted to cover up. In addition, it now appears clear that the rulemaking record includes reports paid for and effectively written by the payday lending industry but portrayed as valid, credible, and independent academic studies.

In sum, the CFPB is abdicating its duty to provide a record-based justification for its dramatic change in policy; bowing down to the payday lending industry while ignoring abundant evidence of consumer harm; and contaminating the record with improper industry input—a maneuver that the Bureau attempted to cover up. All of these defects lead to a fatally flawed proposal that should be abandoned. If finalized in its present form, the Proposal will be vulnerable to legal attack in court under the Administrative Procedure Act.

I. The Final Payday Rule was well-considered policy, based on an exhaustive record.

The Bureau's current attempt to cast out the underwriting provisions of the Final Payday Rule is based on insufficient evidence and it belies the extensive efforts and careful consideration that led to the adoption of the Final Payday Rule. The rulemaking process began in January 2012, when the Bureau held a field hearing in Birmingham, Alabama.[13] At this field hearing, the Bureau "heard testimony and received input" from a variety of stakeholders—including industry participants.[14] In addition, the CFPB published a transcript of that meeting and invited comment on the issues discussed at the hearing; in response, the Bureau received and reviewed 664 comments on that hearing alone.[15] The Bureau then held four other field hearings and meetings on payday lending issues, at which the Bureau outlined its developing approach and received input

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10 *Id.*
11 *Id.*
12 Final Payday Rule at 54,553 – 81.
13 *Id.* at 54,504.
14 *Id.*
15 *Id.*

from a variety of stakeholders.[16] In addition to these formal meetings, various leaders within the Bureau, including the then-director, participated in numerous meetings with other stakeholders.[17]

The Bureau also conducted its own independent research into the payday lending industry, which resulted in the publication of multiple white papers.[18] These white papers reflected extensive Bureau research into various issues concerning the payday lending industry, including industry practices, business models, borrower characteristics, and borrower behavior.[19] In these white papers, the Bureau found, among other things, that most payday loan borrowers roll over their payday loans at least once, and many payday loans result in lengthy cycles of reborrowing, which traps consumers in debt for lengthy periods of time.[20] The Bureau also gained significant expertise on the practices of payday lenders from its routine supervision efforts, as well as its enforcement activities.[21]

Ultimately, the Bureau's robust effort to collect information on the payday lending industry resulted in a rule proposal issued in June 2016.[22] The Bureau received and reviewed over *one million* comments on that proposal. Finally, in November 2017, the Bureau issued the Final Payday Rule, which contained a number of significant changes from the proposal in response to comments.[23] In the release accompanying the Final Payday Rule, which spanned 450 pages in the Federal Register, the Bureau painstakingly explained its justification for the rule, citing extensively to the rulemaking record. That record included the input received at the various field hearings, the evidence gathered in the course of producing multiple white papers, the results of the Bureau's supervisory and enforcement activities, a wide variety of academic studies, and the comments received in response to the proposed rule. Ultimately, drawing on the enormous amount of evidence available to it, the Bureau reasonably determined that the Final Payday Rule, including the underwriting standards, was necessary to protect millions of borrowers of limited means from the consequences of becoming trapped in an endless cycle of debt.

The entire process, spanning five years, reflected the Bureau's determination to receive as much input as possible, so that it could appropriately balance the various competing interests of a variety of stakeholders and issue the best possible rule it could. And indeed, the rule is eminently reasonable. It identifies, based on substantial evidence, a specific, concrete harm to consumers when they take out payday loans they cannot afford. It crafts an appropriate solution, including the key requirement that payday lenders make a reasonable determination that consumers can

16 *Id.*
17 *Id.* at 54,504-05.
18 *Id.* at 54,507-09.
19 *Id.*
20 *Id.*
21 *Id.* at 54,505-07.
22 *Id.* at 54,512.
23 *Id.* at 54,518.

afford to repay payday loans on their terms. This is the work that the Bureau of 2019 now seeks to undo.

II. <u>The Bureau has failed to justify its attempt to rescind the underwriting standards.</u>

In the Proposal, the Bureau has failed to provide a sufficiently detailed, credible, and compelling justification for its change of course with respect to the underwriting provisions. In its effort to justify the rescission, it has misrepresented the Bureau's prior assessment of the supporting evidence. Further, it even acknowledges that the foundation for the underwriting provisions may be entirely valid, but then refuses to undertake any further research and analysis to answer that critical question.

The law clearly provides that when an agency departs from a prior position, it must "display awareness that it *is* changing position" and "must show that there are good reasons for the new policy."[24] Moreover, when a "new policy rests upon factual findings that contradict those which underlay [an agency's] prior policy," the agency must "provide a more detailed justification than what would suffice for a new policy created on a blank slate."[25] This is because, when changing policies, "a reasoned explanation is needed for disregarding facts and circumstances that underlay or were engendered by the prior policy."[26] This requirement is all the more important where, as here, the agency seeks to change a policy that was adopted relatively recently and only after a lengthy and exceptionally thorough rulemaking process, involving years of empirical analysis and a mountain of evidence.

More generally, when undertaking *any* action, an agency must always "examine the relevant data and articulate a satisfactory explanation for its action including a 'rational connection between the facts found and the choice made.'"[27] Conversely, the agency may not rely on factors "which Congress has not intended it to consider."[28] And agency actions that are based too heavily on speculation rather than evidence are likely to be deemed arbitrary and capricious.[29] The Proposal violates these principles, as the Bureau has, for numerous reasons, failed to justify its decision to change course and rescind the underwriting provisions.

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24 *F.C.C. v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009) (emphasis in original).

25 *Id.*

26 *Id.*

27 *See Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 103 S. Ct. 2856, 2866 (1983) (quoting *Burlington Truck Lines, Inc. v. United States*, 371 U.S. 156, 168 (1962).

28 *See State Farm*, 103 S. Ct. at 2867 (a rule is arbitrary and capricious if the agency has "relied" on factors that Congress did not intend).

29 *Sorenson Commc'ns Inc. v. FCC*, 755 F.3d 702, 708 (D.C. Cir. 2014).

A. The Proposal mischaracterizes the extent of the Bureau's prior reliance on the Mann Study and the Pew Study.

In the face of the extensive rulemaking record described above, the Bureau now attempts to justify its change in position not on the basis of any evidence in the rulemaking record that would undermine or contradict the conclusions that underlay the Final Payday Rule, nor on the basis of any new evidence not available or not considered by the Bureau in 2017. Instead, the Proposal is devoted primarily to quarreling with two studies that provided some evidence to support the Final Payday Rule. One of these studies showed that a significant number of payday borrowers underestimated how long it would take to pay back their loans ("Mann Study").[30] The other study found that a significant number of payday loan borrowers stated that they have experienced financial situations so difficult they would accept a payday loan on any terms offered. ("Pew Study").[31] These studies formed part of the support for the conclusions in the Final Payday Rule (1) that consumers lacked understanding of the material risks and costs associated with payday loans issued without considering consumers' ability to repay or were unable to protect their interest in selecting payday lending products, and (2) that the harms caused by payday lender practices were not reasonably avoidable by consumers.[32] The Bureau now raises questions about those studies and further asserts that they are so foundational that the underwriting standards should be entirely discarded.

However, the Bureau's criticisms are invalid. The idea that the Bureau, after five years of compiling evidence from every available source relied almost exclusively on these two studies to support the Final Payday Rule's underwriting provisions is absurd on its face. While these two studies provided some of the evidence supporting the Bureau's conclusions in 2017, they were far from the only evidence on which the Bureau relied in issuing the underwriting provisions. In the Proposal, the Bureau is cherry-picking these two studies from a vast body of material that the Bureau compiled during the original rulemaking and attempting to convey the impression that the underwriting provisions were based almost entirely on these two studies.

In reality, the Final Payday Rule contains ample evidence demonstrating that consumers do in fact develop misleading expectations about the consequences of taking out payday loans, as also found by the Mann Study. This evidence begins with active deception by payday lenders. As the Bureau found, while lenders market payday loans "as short-term loans designed to provide a bridge to the consumer's next payday or other income," in fact paying back the loan consumes "such a large portion of the consumer's paycheck…as to be unaffordable for most consumers seeking to recover" from a financial shock, touching off the cycle of reborrowing that transforms a nominally short term loan into a disastrous long term debt trap.[33] This was bolstered by the

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30 Ronald Mann, *Assessing the Optimism of Payday Loan Borrowers*, 21 SUP. CT. ECON. REV. 105 (2013).

31 Release at 4267.

32 *Id.* at 4264.

33 Final Payday Rule at 54,554.

Bureau's research, which found that over "80% of payday loans are rolled over or followed by another loan within 14 days."[34] Indeed, there is little dispute that the business model of payday lenders relies heavily on reborrowing.[35] In addition, the Bureau cited research showing that individuals "generally have unrealistic expectations about their future earnings, their future expenses, and their ability to save money to repay future obligations."[36]

In other words, independent of the Mann Study, the Bureau provided ample evidence that: (1) generally, consumers tend to be overly optimistic about their financial situation; (2) payday lenders deceptively market payday loans as short term loans that will be affordable on their terms; (3) in practice, those purportedly short term payday loans frequently end up trapping borrowers in long term cycles of debt; and (4) even though they market payday loans as short term products, in practice, the business model of payday lenders depends on consumers getting trapped in long-term debt cycles. The Mann Study bolsters this evidence by confirming that, like consumers in general, payday borrowers in particular tend to overestimate their ability to repay future obligations, and by showing that payday lenders' deceptive marketing, by playing on this tendency, is effective. However, the Mann Study is by no means the only evidence that payday borrowers would not expect short term loans to turn into long term debt traps.

Similarly, the Pew Study did in fact provide support for the commonsense notion that borrowers in desperate financial situations lack the ability to protect themselves from predatory financial products, but it was far from the only piece of evidence cited in the Final Payday Rule on this point. In the Final Payday Rule, the Bureau noted research showing "that when people are under pressure they tend to focus on the immediate problem they are confronting and discount other considerations, including the longer-term implications of their actions," and further cited evidence that people in financial crisis especially exhibit this tendency.[37] The Pew Study bolsters the conclusion in the Final Payday Rule regarding the behavior of individuals in financial distress, but hardly provides the sole basis for that conclusion.

B. The Bureau improperly refuses to even attempt to refute any evidence underlying the underwriting provisions of the Final Payday Rule.

Remarkably, even as the Bureau attempts to discredit the Mann and Pew studies and exaggerate the Bureau's prior reliance on those studies, it concedes that they may actually reach valid conclusions or results. Moreover, the Bureau abandons any attempt to ascertain whether the Mann Study or Pew Study, or any other aspect of the Bureau's prior analysis, were in fact correct. Indeed, the Bureau now provides no alternative substantive analysis whatsoever regarding the

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[34] CFPB Data Point: Payday Lending (Mar. 2014), https://files.consumerfinance.gov/f/201403_cfpb_report_payday-lending.pdf.

[35] Final Payday Rule at 54,484.

[36] *Id.* at 54,571.

[37] *Id.* at 54,570 (citing Sendhil Mullainathan & Eldar Shafir, *Scarcity: The New Science of Having Less and How It Defines Our Lives* (Picador, 2014)).

findings that the agency now believes were insufficiently supported. Instead, the Release contains this astonishing admission:

> The Bureau also preliminarily believes that it cannot, in a timely and cost-effective manner for itself and for lenders and borrowers, develop evidence **that might or might not** corroborate the Mann Study results that the Bureau relied upon to support the key findings the Bureau set forth in the 2017 Final Rule.[38]

The Release repeats this revelation multiple times, again and again conceding that the agency has nothing to offer in the way of substantive analysis regarding whether or not the earlier findings are actually valid, yet nonetheless jumps to the irrational conclusion that the underwriting standards should be repealed. Specifically, with respect to the Pew study, the release observes that:

> [A]s with the Mann Study, as discussed above, the Bureau preliminarily believes that it cannot, in a timely and cost-effective manner for itself and for lenders and borrowers, develop sufficiently robust and reliable evidence **that might or might not corroborate** the Pew Study results.[39]

And the summary section states unabashedly that:

> **The Bureau is not aware of any additional evidence** that would provide the support needed for the key findings that are essential to such a determination and does not believe it is cost-effective for itself and for lenders and borrowers to conduct the necessary research to try to develop those key findings. The Bureau is therefore proposing to rescind those identifications.[40]

In essence, the Bureau is simply questioning the validity of a few findings underlying the Final Payday Rule, which was based on years of research, analysis, and deliberation, while at the same time conceding that those findings may in fact be proven entirely valid if more research and analysis were to be conducted. It is arbitrary and capricious for an agency to throw up its hands and admit ignorance about the foundation for an existing rule yet nevertheless conclude that the rule should be rescinded, simply because the agency is unwilling to do the work.

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[38] Release at 4266 (emphasis added).
[39] *Id.* at 4268 (emphasis added).
[40] *Id.* at 4253 (emphasis added).

III. <u>The Bureau improperly ignores evidence of substantial consumer injury, while expressing deep concern for the health of the payday lending industry, in contravention of its core statutory mission.</u>

Another bewildering aspect of the Proposal is the Bureau's refusal to address its prior conclusion that the underwriting provisions of the Final Payday Rule are necessary to prevent substantial consumer injury. The Proposal flatly admits that it will not consider this evidence, stating that "[f]or purposes of this rulemaking proposal, the Bureau need not reconsider that the 2017 Final Rule found that the identified practice causes or is likely to cause substantial injury."[41] This renders the Release internally inconsistent insofar as the Bureau elsewhere asserts that, in reconsidering the Final Payday Rule, it is not simply assessing the bare legal adequacy of that rule, but whether it is sound policy with a "robust and reliable evidentiary basis."[42] In any case, refusing to contend with its previous findings of substantial consumer injury renders the Proposal a failure on both legal and policy grounds.

The attempt to sidestep the Bureau's prior determination—supported with ample evidence—that consumers suffer substantial injury suffer from abusive payday lending practices, renders the Proposal legally infirm. If the Bureau is going to simply cast aside its prior determination that the underwriting provisions would prevent substantial consumer injury—a determination that is key to the analysis of whether a practice is unfair or abusive—"a reasoned explanation is needed."[43] The Bureau now provides none.

The Bureau's new approach of ignoring its prior determination of substantial consumer injury resulting from payday lender practices is equally egregious from a policy standpoint. In the Final Payday Rule, the Bureau demonstrated in stark detail the damaging consequences consumers suffer when they take out unaffordable payday loans. Borrowers who cannot afford to repay the loan *and* meet basic living expenses must make a choice. Those who attempt to repay the loan must forego basic and essential living expenses such as rent, food, and health care.[44] Similarly, those who roll over the loan are likely to find themselves in a long term cycle of debt that drains their bank account—and in which they may pay hundreds of dollars in fees before paying back the principal of the loan.[45] Borrowers who default are frequently subject to aggressive debt collection tactics that can result in serious psychological harm.[46] These real, concrete injuries must be taken into account if the Bureau is going to allow them to continue by rescinding the underwriting provisions of the Final Payday Rule.

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[41] *Id.* at 4264.
[42] *Id.*
[43] *F.C.C. v. Fox Television Stations, Inc.*, 556 U.S. 502, 516 (2009).
[44] Final Payday Rule at 54,575.
[45] *Id.* at 54,577; *see also* Brian T. Melzer, *The Real Costs of Credit Access: Evidence from the Payday Lending Market*, 1265 Q. J. Econ. 517 (2011).
[46] Final Payday Rule at 54,555.

To the extent the Proposal does discuss the impact of rescinding the underwriting provisions of the Final Payday Rule on consumers, it frames that discussion in terms of consumer access to credit.[47] Presumably, in the Bureau's current view, anything that would result in restricting "consumer access" to payday loans is bad policy. What the Bureau chooses to ignore is that "consumer access" to unaffordable payday loans also constitutes "consumer access" to toxic financial products that often cause serious harm. Access to credit is not, in and of itself, a desirable end. This fundamental principle should be obvious given the lessons of history, from the long-standing need to regulate usurious interest rates to the overly abundant "access to credit" that fueled the financial crisis of 2008. The crisis saw mortgage lenders making loans to millions of borrowers without determining their ability to repay, causing untold harm to those borrowers as well as the financial system as a whole. These lessons should be especially clear to the agency founded in the wake of that crisis and tasked with protecting consumers from financial predators. The Bureau's decision in the Proposal to turn a blind eye to consumer harm is inexplicable and indefensible.

The Bureau's priorities are doubly skewed. Not only does it shunt aside consumer harm, it exhibits an almost desperate desire to prop up the payday lending industry. The Bureau expresses concern that the Final Payday Rule would result in a reduction in payday lender revenue of between 71 and 76 percent, and a reduction in vehicle title lender revenue of between 89 and 93 percent.[48] The Proposal then makes clear that it is proposing to rescind the underwriting provisions of the Final Payday Rule because those provisions "would impose substantial burdens on the industry" and "significantly constrain lenders' offering of products."[49] This is precisely backwards. After all, the CFPB is the "*Consumer* Financial Protection Bureau," not the "*Industry Profit* Protection Bureau." The CFPB's concern should be on the burdens *consumer's* face, not the burdens of industry, and particularly not the burdens on an industry whose business model is inherently predatory.

IV. <u>The Proposal is tainted by improper industry input.</u>

The Proposal rests on a flawed foundation in yet another sense. The Proposal not only lacks support but also apparently rests on biased and contaminated input—a rulemaking foundation that is worse than nothing at all. Recent reporting has revealed, for example, that the CFPB's decision to scale back the Final Payday Rule was influenced by secret meetings between the payday lending industry (directly or through its lobbyists and representatives) and the

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[47] Release at 4264 ("the Bureau believes it is prudent as a policy matter to require a more robust and reliable evidentiary basis to support key findings in a rule that would eliminate most covered short-term and longer-term balloon payment loans and providers from the marketplace, thus restricting consumer access to these products.").

[48] *Id.*

[49] *Id.*

CFPB.[50] The existence of these meetings, confirmed by an industry participant, contradicts statements by the CFPB that it did not meet with the industry prior to issuing the Rescission Proposal.[51]

Why would the CFPB falsely deny meeting with the payday lending industry before proposing to delay and then rescind a rule that the payday lending industry opposes? Because it would confirm that the CFPB was adopting that industry's proposals regardless of merit, deliberation, or basis.

Moreover, recent reports have also revealed the extent to which the payday lending industry has shaped purportedly independent academic studies supporting the positions of the payday lending industry. For example, one recent report revealed that Ronald Mann, a Columbia Law School professor who penned an influential study (which was funded by the payday lending industry), had extraordinarily close ties with an industry group of payday lending lawyers and advised them on how to present data when urging policymakers to deregulate their industry.[52] These previously undisclosed ties likely reveal why Professor Mann desperately tried to frame his results as favoring the industry, even though the data demonstrated substantial consumer harm and confusion associated with payday loans.[53] In an even more egregious example, another purportedly academic study on payday lending was not only requested and funded by the industry

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[50] *See* Kevin Dugan, *CFPB Spoke With Industry Execs Before Relaxing Payday Loan Rules*, N.Y. POST (Feb. 27, 2019), https://nypost.com/2019/02/27/cfpb-spoke-with-industry-execs-before-relaxing-payday-loan-rules/; *see also*, Dennis Kelleher, Opinion, Keep Industry Insiders Out of the Payday Loan Rulemaking Process, THE HILL (Mar. 11, 2019), https://thehill.com/opinion/finance/433426-keep-industry-insiders-out-of-the-payday-loan-regulatory-process.

[51] Kevin Dugan, *CFPB Spoke With Industry Execs Before Relaxing Payday Loan Rules*, N.Y. POST (Feb. 27, 2019), https://nypost.com/2019/02/27/cfpb-spoke-with-industry-execs-before-relaxing-payday-loan-rules/. According to the report, when asked about the contradiction the CFPB spokesperson requested speaking with the reporter off the record. When the reporter refused, the CFPB spokesperson stopped responding to requests. *Id.*

[52] Kevin Dugan, *Columbia Prof's Ties to Payday Lenders Cloud CFPB Rollback*, N.Y. POST (Jan. 31, 2019), https://nypost.com/2019/01/31/columbia-professors-murky-ties-could-compromise-cfpb-rollout/.

[53] Professor Mann's study, as the CFPB noted in 2017, demonstrated that a significant percentage of consumers—nearly half—who took out payday loans underestimated how long they would be in debt. Final Payday Rule at 54,569. Notwithstanding Professor Mann's attempt to spin the results of his study, the CFPB reasonably interpreted this data to indicate widespread misunderstanding by consumers about the impact of taking out payday loans (after all, it is highly unlikely that nearly half of consumers who take out 3 year car loans significantly underestimate how long it will take to pay back those loans). *Id.* at 54,472; 54,569.

but also apparently largely shaped by a particularly zealous advocate for the payday lending industry.[54]

Given how extraordinarily difficult it is to unearth and expose such carefully concealed corruption of academics and the rulemaking process, one can only assume that these two industry-influenced studies are only the tip of the iceberg. Many more examples of similarly corrupted "academic studies" on which the CFPB is relying undoubtedly exist. We call upon the CFPB to promptly conduct a thorough investigation of all pro-industry studies reviewed or relied on in connection with the Proposal (as well as the Delay Proposal) and ascertain if there has been any additional industry influence associated with purportedly independent work. To the extent that the CFPB is attempting to support its Proposal on the basis of these and other industry talking points laundered through supposedly independent studies, it lacks a reliable and credible foundation.

V. The Bureau must not rescind the payment provisions of the Final Payday Rule.

The Bureau has indicated that the provisions of the Final Payday Rule that would limit the ability of payday lenders to repeatedly attempt to withdraw funds from borrowers' deposit accounts are outside of the scope of this rulemaking.[55] Nevertheless the Bureau has indicated that it has received a rulemaking petition to exempt debit card payments from these provisions.[56] Moreover, industry participants will almost certainly implore the Bureau to rescind those provisions as broadly as possible. The Bureau should not, in this rulemaking or in the future, rescind those provisions. As demonstrated in the Final Payday Rule, repeated unsuccessful attempts to withdraw payments from a borrowers' checking accounts result in significant consumer harm in the form of multiple bank fees, and possibly even account closure.[57] Payday lenders are also likely to charge a fee when a payment is returned. However, repeatedly attempting to withdraw funds from a consumer's account provides negligible justifiable benefit to lenders: If the first attempt to withdraw from the borrowers' account fails, subsequent attempts are likely to fail as well.[58] There can be little justification for allowing a practice that results in substantial consumer harm while providing little in the way of legitimate benefit to lenders.

CONCLUSION

In summary, the Proposal lacks a persuasive, objective, evidence-based, and adequately explained justification for the wholesale rescission of the underwriting standards. The Bureau should withdraw it.

We hope these comments are helpful as you evaluate the Proposal.

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[54] Renae Marle, *How a Payday Lending Industry Insider Titled Academic Research In Its Favor*, WASH. POST (Feb. 25, 2019), https://www.washingtonpost.com/business/2019/02/25/how-payday-lending-industry-insider-tilted-academic-research-its-favor/?utm_term=.7cee8ee8d01e.

[55] Release at 4253.

[56] *Id.*

[57] Final Payday Rule at 54,500.

[58] *Id.*

Sincerely,

Dennis M. Kelleher
President & CEO

Stephen W. Hall
Legal Director and Securities Specialist

Jason R. Grimes
Senior Counsel

Better Markets, Inc.
Suite 1080
1825 K Street, N.W.
Washington, D.C. 20006
(202) 618-6464

dkelleher@bettermarkets.com
shall@bettermarkets.com
jgrimes@bettermarkets.com

www.bettermarkets.com