



May 15, 2019

By Electronic Delivery to 2019-NPRM-PaydayReconsideration@cfpb.gov

Comment Intake  
Bureau of Consumer Financial Protection  
1700 G Street NW  
Washington, D.C. 20552

Re: **Docket No. CFPB-2019-0006; RIN 3170-AA40**  
Proposed Rule with Request For Public Comment  
Payday, Vehicle Title, and Certain High-Cost Installment Loans  
84 Federal Register 4252 (February 14, 2019)

To Whom it May Concern:

The Illinois Bankers Association (IBA)<sup>1</sup> is writing on behalf of its members to comment on the proposed rule reconsidering the 2017 Final Rule governing payday, vehicle title, and certain high-cost installment loans. We appreciate the Bureau's efforts to protect consumers from the significant threats posed by predatory payday lenders and other bad actors who trap consumers in harmful cycles of debt, while also recognizing the very real burdens the 2017 Final Rule places on depository institutions and other responsible lenders.

We strongly support the proposed rule's removal of the 2017 Final Rule's burdensome mandatory underwriting provisions. Financial institutions are making responsible, affordable small-dollar loans in their communities at far lower costs than other lenders covered by the 2017 Final Rule. The complex and restrictive mandatory underwriting provisions in the 2017 Final Rule would discourage banks from serving their customers and communities with responsible small-dollar loan programs, which often serve to displace predatory loans made by unscrupulous payday and vehicle title lenders.

Eliminating the mandatory underwriting provisions from the 2017 Final Rule is an important step towards encouraging responsible lending programs, but further changes are needed to appropriately tailor the scope of the rule's requirements to the harms they are intended to address. The 2017 Final Rule exempts certain purchase money loans, credit cards, pawn loans, student loans, and several other types of credit, but ironically it does not include exemptions for loans made to high-net-worth individuals. For example, many commercial banks offer consumer-purpose loan programs that are limited to their wealthiest customers, who provide collateral in the form of marketable securities, artwork, and even planes and yachts. Such loans often are structured with interest-only payments and final balloon payments, subjecting them to the 2017 Final Rule as covered "longer-term balloon loans."

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<sup>1</sup> The Illinois Bankers Association is a full-service trade association dedicated to creating a positive business climate that benefits the entire banking industry and the communities our members serve. Founded in 1891, the IBA brings together state and national banks and savings banks of all sizes in Illinois. Over 40% of IBA members are community banks with less than \$150 million in assets, and over 75% of IBA members are community banks with less than \$500 million in assets. Collectively, the IBA represents nearly 90% of the assets of the Illinois banking industry, which employs more than 100,000 men and women in almost 5,000 offices across the state.

Such borrowers are not the intended beneficiaries of the 2017 Final Rule's protections. Rather, the 2017 Final Rule was intended to cover loans "used by consumers who are living paycheck to paycheck, have little to no access to other credit products, and seek funds to meet recurring or one-time expenses." 81 Fed. Reg. 47863 (July 22, 2016). The protections of the rule are specifically designed for consumers "in economically precarious positions" who "have low to moderate incomes . . . and generally have no savings to fall back on." *Id.* at 48075.

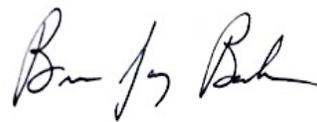
Consequently, we urge the Bureau to add a sensible exemption from the rule's coverage that excludes loans made to sophisticated, high-net-worth individuals. One possible model for a sensible carve-out is the "accredited investor" concept found in federal and state securities laws. Under the SEC's regulations, for example, individuals may be granted accredited investor status when their net worth exceeds \$1 million (excluding primary residences) or their annual income exceeds \$200,000 (or \$300,000 in joint income with a spouse). 17 CFR 230.501(a)(5), (6). SEC regulations exclude such individuals from the general investor protections provided to other individuals because they are presumed to be financially sophisticated and able to "fend for themselves." See SEC Investor Bulletin, Accredited Investors (January 31, 2019).

By extension, we believe at the very least that loans made to individuals who meet high-net-worth or annual income thresholds similar to those for accredited investors should qualify for an exemption from the 2017 Final Rule. In the alternative, we also support establishing a reasonable loan amount threshold that would exempt larger loans from the rule's coverage, which we understand is an approach that some other commentators representing financial trade groups may be suggesting.

Under either approach, a well-crafted carve-out for loans made to more sophisticated borrowers would relieve financial institutions from a needless burden imposed by the 2017 Final Rule, without compromising any of the safeguards for the class of consumers it was intended to protect — who implicitly are not considered to be sophisticated borrowers, and who could not qualify for the large- or even moderate-sized loans that would be covered by our requested exemption in any event.

Thank you for your consideration of our comments, and please let us know if you have any questions.

Very truly yours,

A handwritten signature in black ink, appearing to read "Bruce Jay Baker". The signature is fluid and cursive, with the first name "Bruce" being the most prominent.

Bruce Jay Baker  
Executive Vice President  
and General Counsel