FINANCIAL SERVICE CENTERS OF AMERICA, INC.
A NATIONAL TRADE ASSOCIATION

June 1, 2020

The Honorable Kathy Kraninger
Director
Bureau of Consumer Financial Protection
Comment Intake
1700 G Street, N.W.
Washington, DC 20552

Submitted electronically via Regulations.gov

Re: Docket No. CFPB-2020-0013; Request for Information to Assist the Taskforce on Federal Consumer Financial Law — Comments of the Community Financial Services Association of America, Ltd. & Financial Service Centers of America, Inc.

Dear Director Kraninger:

This comment letter is submitted on behalf of the Community Financial Services Association of America, Ltd. (CFSA)[1] and Financial Service Centers of America, Inc. (FiSCA),[2] both national trade associations representing financial services businesses in communities throughout the country. We are submitting this comment in response to the Bureau of Consumer Financial Protection's ("Bureau") *Request for Information to Assist the Taskforce on Federal Consumer Financial Law*, published in the Federal Register on April 1, 2020 (the "RFI").[3]

CFSA and FiSCA members have extensive experience, knowledge, and insight that can help the Taskforce advise the Bureau on how to best develop balanced, workable consumer financial services regulations that foster competition and preserve consumer choice among a variety of responsible and valuable credit products. As such, both organizations are well-suited

[1] CFSA's member companies represent approximately half of all traditional small-dollar loan storefronts across the country, in more than 30 states. CFSA members provide credit to more than 19 million households, as well as a wide range of other financial products and services, including check cashing, installment and auto title loans, prepaid debit cards, as well as bill payment and tax preparation services. CFSA members' storefront locations put us in the heart of many financially underserved communities. Further information about CFSA, including its Best Practices attached as **Exhibit A**, is available on its website at cfsaa.com.

[2] FiSCA represents more than 4,000 neighborhood financial service center locations throughout the U.S. offering a wide array of regulated financial products and services, including check cashing, money orders, electronic bill payments, money transfers, ATM access, government benefit and payroll payments, tax preparation, prepaid debit cards, deposit acceptance services, and small dollar loans where permitted by state law. Further information about FiSCA, including its Best Practices attached as **Exhibit B**, **is** available at fisca.org.

[3] *Request for Information to Assist the Taskforce on Federal Consumer Financial Law*, 85 Fed. Reg. 18214 (April 1, 2020).

to provide the Taskforce with specific information about how to expand consumer access to credit by identifying obstacles to financial inclusion.

Introduction

Small-dollar loans, checking cashing services, and prepaid cards are critical to millions of consumers. Just last month, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the National Credit Union Administration, and the Office of the Comptroller of the Currency issued a set of principles to encourage financial institutions to offer small-dollar loans to customers.[4] In doing so, the agencies noted the "important role that responsibly offered small-dollar loans can play in helping customers meet their ongoing needs for credit due to temporary cash-flow imbalances, unexpected expenses, or income shortfalls, including during periods of economic stress, national emergencies, or disaster recoveries."[5] Indeed, in any given year, approximately 12 million American adults use small-dollar loans.[6] They do so because they are making rational choices between two different outcomes: obtaining and paying the costs of a small-dollar loan or suffering higher costs from inferior alternatives like bouncing checks and defaulting on other obligations, such as utility bills or car payments. Only a consumer understands the particular circumstances he or she faces, and only a consumer is equipped to determine the products and financial service providers that best meet their needs. Government policy should thus focus on expanding credit access and facilitating consumer choice.

The COVID-19 pandemic and current economic climate have further highlighted the critical role consumer choice and consumer access to credit play in helping Americans cope with unexpected income or expense shocks. By providing a source of credit to consumers with low credit scores and no viable alternatives, small-dollar loans expand financial choices and allow individuals to better manage their cash flow in the face of volatile income and expenses. Moreover, non-bank financial service providers such as CFSA and FiSCA members have been designated by the U.S. Treasury Department and by governors and regulators across the country as essential and part of the nation's critical infrastructure. CFSA and FiSCA members range from large companies with hundreds of stores, to small companies with a single location. These financial service providers have remained open to serve consumers even while many traditional financial institutions such as banks have closed branches or operated on limited days and hours. They have also continued to provide employment opportunities to tens of thousands of employees nationally. The performance of the industry under these circumstances demonstrates the valuable services provided to consumers who trust and choose to use them.

CFSA and FiSCA members comply with a myriad of applicable federal and state consumer financial protection laws in offering small-dollar credit products. State licensing laws and regulations impose significant limitations on small-dollar loans. Federal laws applicable to all creditors under the Federal Consumer Credit Protection Act apply to such loans. The NACHA

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[4] Interagency Lending Principles for Offering Responsible Small-Dollar Loans (May 2020), available at, https://www.occ.treas.gov/news-issuances/news-releases/2020/nr-ia-2020-65a.pdf

[5] *Id.*

[6] Neil Bhutta et al., *Payday Loan Choices and Consequences* 4 (Vanderbilt U.L. Sch. Law & Econ., Working Paper No. 12-30, 2013).

rules already have in place a reasonable framework for handling potential consumer payment issues. CFSA and FiSCA members also comply with industry Best Practices and a Code of Conduct, which provide additional consumer protections. CFSA and FiSCA Best Practices promote transparency and offer enhanced consumer protections in each transaction. Lenders are also subject to supervision and enforcement by state regulators and the Bureau, in the conduct of their business. In light of these existing consumer protections, the Bureau should focus on adopting policies that expand credit access and facilitate consumer choice.

Part I of this comment letter discusses why the Bureau must ensure a level playing field among financial services providers and conduct further research to determine why consumers do not utilize bank accounts and whether bank accounts are indeed the most appropriate financial service for all Americans. Part II of the letter discusses why the Bureau's supervisory practices and the Payment Provisions of the 2017 Final Rule provide the Bureau with a significant opportunity to increase access to small-dollar credit. Part III of the letter explores why an annual percentage rate ("APR") is a poor measure of loan cost and loan affordability for short-term small-dollar loans. Part IV of the letter urges the Bureau to be guided by consumer data and input from *all* interested parties, including consumer groups and industry participants, in assessing the efficacy of consumer financial protection laws.

I. The Bureau Should Not Advocate for Any Specific Type of Financial Service Provider; Appropriate Disclosures and Consumer Choice Should Dictate the Use of Financial Products and Services

Question 1 of the Bureau's RFI asks whether it should promote greater access to banking services and, if so, how? It further seeks information as to whether alternatives to deposit accounts, such as prepaid cards, are sufficient when compared to traditional banking products.[7] CFSA and FiSCA submit that it should not be the function of the Bureau to promote one form of financial service over another, in essence, picking winners over losers. In fact, the Dodd-Frank Act directed that the Bureau focus on the proper functioning of markets. Furthermore, Dodd-Frank provided that the Bureau ensure a level playing field among financial service providers, again not favoring particular providers such as depositories over non-depositories.[8]

The RFI points out that millions of Americans do not have bank accounts. Before embarking on an effort to promote greater access to banking services, the Bureau should undertake appropriate research to determine why many consumers do not utilize bank accounts and whether bank accounts are the most appropriate financial services for all Americans. The Federal Deposit Insurance Corporation ("FDIC") periodically conducts significant research into the behavior of unbanked and underbanked Americans.[9] In its 2017 Survey, the FDIC reported that the most cited reasons households did not have a bank account include "[d]o not have enough money to keep in account", "[d]on't trust banks", "[a]ccount fees are too high", and

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[7] 85 Fed. Reg. 18215 (April 1, 2020).

[8] 12 U.S.C § 5511(b)(4). Dodd-Frank mandates that the Bureau exercise its authorities for the purposes of ensuring federal consumer financial law "is enforced consistently, *without regard to the status of a person as a depository institution* . . . ." (Emphasis added.)

[9] *See* FDIC National Survey of Unbanked and Underbanked Households (Oct. 2018), available at, https://www.fdic.gov/householdsurvey/2017/2017report.pdf

"[a]ccount fees unpredictable".[10] Research conducted by the Urban Institute similarly shows that for many Americans, the decision not to utilize a bank is a deliberate choice.[11] Other research shows that many consumers prefer to use alternative financial service providers for services such as remittances, or money transfers. Certainly, bank accounts are a fundamental financial product, however, we submit that it should not be the role of the Bureau to advocate for one form of financial service over another, and that the proper role of the Bureau is to ensure fairness, a level playing field and adequate disclosure of the terms, conditions, and cost of various financial products and services.

Almost 20 years ago, the financial service center industry realized that their customers could benefit from a secure mechanism to handle the proceeds of their check cashing and other transactions. This need was not being met through programs offering Electronic Transfer Accounts and First Accounts, and banks were still not providing low-cost accounts to these consumers. In order to fill the need, the industry, at its own expense, and working with partners, pioneered a "stored-value card" now commonly known as a prepaid card. Offered as branded Visa or MasterCard, prepaid cards act as virtual bank accounts, allowing consumers to park funds until they are needed. These cards can now be used as the destination for wages, government benefits, and other direct deposits, facilitate person-to-person payments, and allow consumers safe access to electronic commerce. Most of the industry now offers some form of prepaid card. Through this mechanism, customers have loaded billions of dollars of cash into virtual bank accounts.

The global market for prepaid cards is expected to reach $3.1 trillion by 2022.[12] Since the early use of stored value cards, prepaid cards can now facilitate many different transactions. In addition to government benefit disbursements, payroll processing, and healthcare reimbursements, several prepaid card products offer consumers the ability to access a safe, secure savings account. In its 2018 report on the prepaid card industry, Infosys reported that both the NetSpend (Tsys) card, and the Mango card (Mango Financial) offer customers interest-bearing (5% and 6% respectively) savings accounts.[13] Just two weeks ago, the Department of the Treasury and the IRS began sending out 4 million coronavirus-related Economic Impact Payments by prepaid debit card. According to Treasury Secretary Mnuchin, "[p]repaid debit

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[10] *Id.* at. 4.

[11] Caroline Ratcliffe et al, Urban Institute, *Where Are the Unbanked and Underbanked in New York City?* (Sept, 2015), available at, https://www.urban.org/sites/default/files/publication/71511/2000430-Where-Are-the-Unbanked-and-Underbanked-in-New-York-City.pdf

[12] Infosys, White Paper, *Prepaid Card Industry-Product Offerings, Leading Players, Current Trends, and Challenges Faced*, 2, (2018), available at, https://www.infosys.com/industries/cards-and-payments/resources/Documents/prepaid-card-industry.pdf

[13] In approximately 2001, FiSCA initiated a National Savings Program with NetSpend. Through this program, consumers were able to establish a no fee, FDIC-insured, savings account through their NetSpend Card. The program allowed consumers the ability to transfer money back and forth between the Card and their savings account at no cost and offered participants in the Savings Program a 5% annual yield on deposits. The accounts required no minimum monthly balance to maintain. The FiSCA Savings Program accounted for the economic inclusion of tens of thousands of customers who over the life of the program deposited approximately $44 million into savings accounts. Further, after FiSCA pioneered the development of the Savings Program to be offered through its members, the program was expanded, and other businesses, such as convenience stores, offered the Program, increasing the numbers of low-and moderate-income consumers who had access to the no-fee, no minimum balance savings account.

cards are secure, easy to use, and allow us to deliver Americans their money quickly. Recipients can immediately activate and use the cards safely."[14]

The financial service center industry has remained a significant distributor of prepaid cards. Other characteristics of prepaid cards are significant, including the fact that consumers that use mobile payments more often utilize prepaid cards as well. According to Mercator Advisory Group, 4 in 5 mobile payers acquire prepaid cards.[15] Mercator also reported that minorities (Black, Asian, and Hispanic) in the U.S. are more likely than Whites to buy prepaid cards. Finally, Mercator reported that in 2018, 17% of all prepaid cards were acquired in financial service center locations. The Bureau should continue to research the prepaid card market as an alternative to traditional bank accounts and should recognize the role played by non-bank financial service providers such as FiSCA and CFSA members in reaching consumers that utilize this product.

II. By Increasing Collaboration with Supervised Entities and Addressing the Myriad of Issues Associated With the Payment Provisions of the 2017 Final Rule, the Bureau Can Expand Credit Access

Question 4 of the Bureau's RFI asks what "impediments exist for expanding access to short-term, small-dollar loans and ensuring that this market is fair, transparent, and competitive."[16] By re-examining the Bureau's supervisory practices with an eye toward more collaboration and cooperation, and revisiting the Payment Provisions of the 2017 Final Rule, the Bureau could expand access to this valuable form of credit and ensure a fair, transparent, and competitive market.[17]

A. Increased Collaboration Between the Bureau and Supervised Entities Would Reduce Unnecessary Costs and Expand Credit Access

We have previously shared our concerns regarding the Bureau's supervisory practices.[18] And while opportunities have substantially improved over the years, especially under its new leadership, we believe there remain several ways to enhance the Bureau's relationships with supervised entities. If seized, these opportunities will not only enable the Bureau and supervised entities to avoid unnecessary costs, it will benefit consumers. In a 2019 speech at the Bipartisan Policy Center, Director Kraninger stated the following regarding the Bureau's supervisory practices:

> I have challenged the staff to take a fresh look at the entire process – the prioritization and frequency of exams, the size of the exam teams, the days spent

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[14] "Treasury is Delivering Millions of Economic Impact Payments by Prepaid Debit Card," U.S. Dep't of the Treasury (May 18, 2020), available at, https://home.treasury.gov/news/press-releases/sm1012

[15] Mercator Advisory Group *Customer Monitor Survey Series, Payments, 2011-2018*.

[16] Request for Information to Assist the Taskforce on Federal Consumer Financial Law, 85 Fed. Reg. 18215 (April 1, 2020).

[17] Payday, Vehicle Title, and Certain High-Cost Installment Loans, 82 Fed. Reg. 54472 (Nov. 17, 2017).

[18] Letter from Dennis Shaul, Chief Executive Officer, CFSA, to Mick Mulvaney, Bureau of Consumer Fin. Prot., Re: Docket No. CFPB-2018-0004; Request for Information Regarding the Bureau's Supervision Program (May 21, 2018).

onsite, the systems and job aids that support the work, the time it takes to complete an exam and deliver a report, and how we empower examiners to provide input on the exam process, among other things.[19]

We applaud Director Kraninger and the Bureau's staff for reevaluating these aspects of the Bureau's supervisory practices. These aspects of the Bureau's supervisory practices and others could be significantly improved by increased collaboration between the Bureau and supervised entities. For example, we ask the Taskforce to consider the following:

- The Bureau should more frequently solicit input from supervised entities before starting a new examination. Bureau exams are often lengthy and at incredible cost to supervised entities, especially to the smaller businesses. Increased pre-examination communications regarding the scope and timing of an examination can ensure that a small entity has adequate staff and resources in place to complete the examination.
- The Bureau should provide more advance notice of the materials the Bureau intends to examine to allow supervised entities and their staff more time to prepare for an examination and allocate resources.
- The Bureau should increase coordination and communication with supervised entities to schedule on-site examinations in a manner that is the least disruptive to the daily operations of supervised entities.
- The Bureau should collaborate with supervised entities to ensure outstanding examinations have been completed before initiating new examinations. This would enable supervised entities to fully implement prior feedback from the Bureau before new issues are addressed.
- The Bureau should discuss potential violations with supervised entities as soon as they identify them and before finalizing examination reports. Such communications would enable supervised entities to take corrective action sooner, which would benefit supervised entities and consumers.
- When possible, the Bureau should coordinate with other federal and state regulators to prevent unnecessary duplication of efforts by the supervised entity, the Bureau, and other regulators.
- The Bureau should solicit feedback from supervised entities and conduct a post-exam review process that identifies efficiency gaps.

Over the years, our members and other supervised entities have had to significantly increase their compliance staff and incur associated costs. These increased costs have forced some small lenders to the brink, and in some cases caused small businesses to close their operations. More open communication and collaboration with supervised entities would promote confidence in the supervisory process, strengthen the Bureau's relationships with supervised entities, and encourage more responsible conduct, such as self-reporting. Moreover, such actions would significantly reduce unnecessary compliance costs, remove barriers to entry that impede market competition, and ultimately, expand access to small-dollar credit.

[19] Speech at the Bipartisan Policy Center by Kathleen L. Kraninger, Director, Consumer Financial Protection Bureau (April 17, 2019), available at, https://www.consumerfinance.gov/about-us/newsroom/kathleen-kraninger-director-consumer-financial-protection-bureau-bipartisan-policy-center-speech/.

B. The Payment Provisions of the 2017 Final Rule Impede Credit Access by Creating Unnecessary Compliance Costs that Fail to Increase Consumer Protections

While we applaud the Bureau's efforts to reconsider the Underwriting Provisions of the 2017 Final Rule, the Payment Provisions of the Rule remain problematic. During the rulemaking stage of the 2017 Final Rule, we expressed our concern regarding the adverse impact of the Payment Provisions on industry and consumers. CFSA[20] and FiSCA[21] again expressed these concerns last year and while we will not reiterate every issue raised in past comment letters, a few points bear mentioning for the Taskforce to consider.

Like the Underwriting Provisions of the 2017 Final Rule, the Payment Provisions were unsupported by substantial evidence because they relied on the same research used to support the Underwriting Provisions of the Rule. Moreover, the Bureau, under its prior leadership, failed to provide a reasoned explanation for the overly broad scope of the Payment Provisions, especially in light of numerous other federal, state, and industry rules. Finally, the Payment Provisions ignore practical considerations, contain many ambiguities and inefficiencies, and are largely unrelated to the issues they seek to address. The myriad issues associated with the Payment Provisions of the 2017 Final Rule impede credit access.

1. <u>The Payment Provisions Need to be Re-examined</u>

The 2017 Final Rule proposes payment-practices regulations for all lenders in order to prevent purported harms associated with repeated failed payment withdrawal attempts.[22] While the harm to consumers is alleged to be by all lenders, the only evidence on which the Bureau relied concerned repeated payment withdrawal attempts for a subset of lenders, namely, online lenders.[23] The Bureau revisited the Underwriting Provisions in part because they were premised on limited data that were not sufficiently robust and representative. The Bureau put forth numerous reasons for concluding that there was insufficient evidence to support the Underwriting Provisions, but it left the ban on the payment practices in place. We do not agree that such a distinction is warranted. For the same reasons that the Bureau has recognized there was insufficient evidence to support the Underwriting Provisions, the limited data the Bureau relied on in promulgating the Payment Provisions is similarly insufficient. Those provisions should apply, at most, only to online lenders.

Finally, the targeted payment practices are neither unfair nor abusive under the Bureau's revised standards. Under the new standards, the Bureau determined that the underwriting practices should not be considered unfair or abusive, but it left the ban on the payment practices in place. Although the immediate impact of the Underwriting Provisions makes it reasonable for the Bureau to proceed by reviewing those provisions prior to the Payment Provisions, the Bureau

[20] <u>Comment from Dennis Shaul, Chief Executive Officer, CFSA, to Kathleen Kraninger, Bureau of Consumer Fin. Prot., Re: Docket No. CFPB-2019-0006; Payday, Vehicle Title, and Certain High-Cost Installment Loans (May 15, 2019).</u>
[21] <u>Comments from Edward P. D'Alessio, Executive Director, FiSCA, to Kathleen Kraninger, Bureau of Consumer Fin. Prot., Re: Docket No. CFPB-2019-0006; Payday, Vehicle Title, and Certain High-Cost Installment Loans (May 15, 2019).</u>
[22] Payday, Vehicle Title, and Certain High-Cost Installment Loans, 81 Fed. Reg. 47864, 48048 (July 22, 2016).
[23] *See id.* at 48049.

should also review the Payment Provisions because the revised standards show that the payment practices cannot be deemed either *unfair* or *abusive*.

2. The Payment Provisions Impede Credit Access by Creating Unnecessary and Costly Compliance Obligations to Address Issues Already Covered by Federal, State, and Industry Rules

Small-dollar lenders are subject to significant federal[24] and state regulation.[25] Inconsistent regulation of industry across states increases compliance costs and creates barriers to entry that hurt competition. The Bureau is well positioned to assist in ensuring these products are regulated with clear rules of the road and that regulations are not duplicative or redundant. The Payment Provisions of the 2017 Final Rule are a clear example of redundant and unnecessary regulation in light of federal laws, numerous state lending and payment laws, and industry rules promulgated by the National Automated Clearing House Association ("NACHA"). These laws, and the NACHA Operating Rules in particular, already provide ample protection to consumers by setting forth a number of restrictions, limitations, requirements, and disclosures that small-dollar lenders must follow.

On the federal level, the Electronic Fund Transfer Act ("EFTA") and Regulation E already provide stringent requirements for obtaining a consumer's authorization to debit his or her account, including specific disclosures regarding the consumer's right to revoke an authorization at any time.

Instead of implementing a rule that will deprive consumers of access to much-needed credit, the Bureau should develop narrowly tailored regulations that incorporate elements of the various successful State approaches.[26] Many of these regulations directly address the Bureau's concerns and could, of course, be modified as necessary if adopted by the Bureau as part of a uniform national rule. Indeed, the Bureau has recognized that changes to State level regulation

[24] On the federal level, the Consumer Financial Protection Act of 2010 (the "CFPA"), enacted as Title X of the Dodd-Frank Act, empowers the Bureau to bring enforcement actions to prevent lenders from committing or engaging in unfair, deceptive, or abusive acts or practices (collectively, "UDAAPs"). Lenders must also comply with, among other statutes, the Truth-in-Lending Act—which has been interpreted to require small-dollar loan fees to be disclosed as an annual percentage rate ("APR")—the Fair Debt Collection Practices Act, the Electronic Fund Transfer Act, the Gramm-Leach-Bliley Act, and the Equal Credit Opportunity Act.

[25] Small-dollar lenders are subject to a maze of state laws and regulations. Inconsistent regulation of industry across states increases compliance and credit costs and creates barriers to entry that hurt competition. Because many general state usury laws prohibit the rates of interest that small-dollar lenders charge, small-dollar lenders operate only in those States that have exempted them from usury laws. The grant of such an exemption is accompanied by other types of regulation, which comes in widely varying forms. For example, some States cap the size of small-dollar loans at an absolute amount or as a percentage of a borrower's monthly income. Others limit the number of loans a person may have outstanding at a particular time, prohibit rolling over or renewing a loan without a "cooling-off" period (typically one or two days), grant consumers a right to rescind a loan transaction within a reasonable period of time, or mandate extended or other alternative repayment options.

[26] *See* Payday, Vehicle Title, and Certain High-Cost Installment Loans, 81 Fed. Reg. 47864, 47931 (July 22, 2016); Alex Kaufman, Payday Lending Regulation 6–7 (Fed. Reserve Bd. , Div. of Research & Statistics, No. 2013-62) (collecting state strategies). *See generally* Nat'l Conference of State Legislatures, Payday Lending State Statutes (Jan. 23, 2018), available at, https://www.ncsl.org/research/financial-services-and-commerce/payday-lending-state-statutes.aspx (summarizing state statutes regarding small-dollar lending).

may have contributed to a nearly 50% decline in consumer small-dollar loan complaints from 2016 to 2017.[27]

Despite the successes of state legislation in improving consumer protections, the Bureau, through the Payment Provisions of the 2017 Final Rule, risks limiting consumer access to credit while simultaneously imposing an unnecessary burden on an industry that may now be forced to comply with unnecessary federal regulation that, in some cases, conflicts with state laws. For example, in the state of Oklahoma, without express authorization, a lender is prohibited from communicating with a borrower before the payment due date, to remind the borrower of an upcoming payment.[28] However, the payment reminder notices of the 2017 Final Rule conflict with this law. In addition to Oklahoma, the Payment Provisions may also be inconsistent with the laws of Michigan, Indiana, Florida, and Washington.[29] The legal regimes in these states address many of the concerns the Bureau purports to address with the Payment Provisions.

With respect to industry rules, NACHA's return thresholds implemented in September 2015 limit a merchant's total return for unauthorized transactions to 0.5% for a merchant to remain a participant in the ACH payments system.[30] This creates a strong incentive for creditors to limit ACH returns. Furthermore, there is ample evidence to show that the NACHA Operating Rules are already having the positive results the Bureau is seeking with the 2017 Final Rule. For example, prior to the start of NACHA's risk and quality framework, the return rate for ACH debits was 2.44%; whereas in 2015 that rate had been cut nearly in half to 1.28%.[31] The Bureau's analysis (and indeed justification) at the time for the Payment Provisions of the 2017 Rule rested largely on data gathered by the Bureau for a period of 18 months in 2011 and 2012. This data does not take into account the impact of NACHA's September 2015 Rule to update and enhance the re-initiation cap. The Bureau should now initiate a separate rulemaking to determine if further regulation is necessary in light of these laws and preexisting industry rules.

3. <u>The Numerous Gaps and Ambiguities in the Payment Provisions Impede Credit Access Without Increasing Consumer Protections</u>

The Payment Provisions of the 2017 Final Rule ignore practical considerations, are largely unrelated to the problems they seek to address, are overly broad, contain ambiguities that must be addressed, and unnecessarily penalize lenders without any corresponding benefit to consumers. A failure to reconcile these issues will result in increased compliance costs, discourage new lenders from entering the small-dollar loan market and ultimately, impede access to this valuable form of credit.

First, the Payment Provisions of the 2017 Final Rule fail to recognize the numerous practical considerations and the potential harm compliance could have on the very consumers the

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[27] *See* 84 Fed. Reg. at 4254.
[28] OKLA. ADMIN. CODE. § 160:70-11-3 (2019).
[29] FLA. STAT. ANN. § 560.404 (22) (2019); IND. CODE ANN. § 24-4.5-7-401(4) (2019); WASH. REV. CODE ANN. § 31.45.082(3)(a) (2019).
[30] Letter from William D. Sullivan, Senior Director & Group Manager, NACHA, to Monica Jackson, Bureau of Consumer Fin. Prot., Re: Docket No. CFPB-2016-0025/RIN 3170-AA40; Proposed Rule Regarding Payday, Vehicle Title, and Certain High-Cost Installment Loans at 3 (Sept. 13, 2016).
[31] *Id.*

Bureau seeks to protect. As a practical matter, lenders already have an incentive not to initiate payment instruments that will be returned, in part because the lender will incur a fee from its bank. Millions of consumers each year authorize recurring payments because of the convenience it affords them in paying their mortgages, rent, credit cards, cable bills, and other monthly expenses. Many of these consumers would be confused and inconvenienced if they were forced to re-authorize a payment only for covered small-dollar loans.

Second, the alleged UDAAP problem related to consumers incurring non-sufficient fund ("NSF") fees has nothing to do with the vast majority of notice requirements found in Section 1041.9 of the 2017 Final Rule. For example, the notice provisions require lenders to provide an explanation of an interest only or negatively amortizing payment.[32] This requirement is unrelated to protecting consumers from incurring NSF fees. An explanation that the payment is an interest only or negatively amortizing payment will not prevent a consumer from incurring NSF fees. For these reasons, the Bureau should revisit the need and justification for the notice provisions found in Section 1041.9 of the 2017 Final Rule. Such provisions are unrelated to the purported harms the Bureau is concerned with and reduce credit access by increasing compliance costs and discouraging new actors from entering the small-dollar loan market.

Third, the application of the Payment Provisions to debit cards and other payment transfers that do not result in customers incurring NSF fees is unjustified. The primary justification for the Payment Provisions was the Bureau's efforts to protect consumers from incurring NSF fees. However, the Bureau's justification is inapplicable to debit cards and other forms of payments that do not result in consumers incurring fees. For example, Regulation E already prohibits lenders from assessing overdraft fees for paying ATM or one-time debit card transactions pursuant to the lender's overdraft service, unless the customer chooses to opt-in or affirmatively consents to those services.[33] In light of NACHA's Operating Rules, the Bureau's primary motivation for the Payment Provisions (protecting consumers from incurring multiple NSF fees) is particularly unjustifiable for installment loans. For example, if a lender unsuccessfully attempts to debit a consumer's account, the consumer will either already have been notified by his or her banking institution or otherwise become aware of the unsuccessful debit. In light of this, there is no reason to require lenders to seek re-authorization to debit a customer's bank account for their next installment payment. The NACHA Operating Rules recognize this reality. Those Rules also limit return rates, however, they do so only with respect to each installment payment.

Fourth, a review of the Payment Provisions of the 2017 Final Rule reveals numerous ambiguities and gaps. For example, the Rule does not define what constitutes a "business day" or "email." Moreover, it is unclear how the Payment Provisions apply to loan assignees and third parties (such as friends and family) who make loan payments on behalf of a borrower. As noted by the U.S. Small Business Administration, such ambiguities are particularly problematic for smaller lenders who may not have the resources to hire counsel to assist them in navigating the Rule's confusing requirements.[34]

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[32] *Id.*

[33] *Id.* § 1005.17(b).

[34] *See* U.S. Small Business Administration, Office of Advocacy, Docket No. CFPB-2018-0009 Request for Information Regarding Bureau Rulemaking Process, June 7, 2018,

Finally, the Payment Provisions unjustly penalize lenders without any benefits of increased consumer protection. For example, there is no exception to the requirements for unusual withdrawal notices when consumers seek a short extension of payment dates. Consumers frequently seek (and lenders often accommodate) a simple one- to two-day extension. The new rule prohibits granting consumers such an extension unless an unusual payment notice is issued to the consumer. Lenders should not be punished for providing consumers with this increased flexibility. Similarly, the rule should be amended to provide that declined card authorizations are not failed payment attempts. Given that declined card authorizations do not incur NSF fees, there is no justification for the Bureau's inclusion of them within the definition of a failed payment attempt. Moreover, to obtain valid consumer consent for electronic delivery of payment notices, the 2017 Final Rule requires lenders to provide the choice of text message and email. Although some lenders currently have the ability to send a message by text, they do not all have the ability to send a message by email. Accordingly, lenders that cannot provide email as an option are forced to only use regular mail rather than give the customer the choice between text message and regular mail.

Unjustified and redundant regulation of the industry will ultimately restrict access to this valuable form of credit and inhibit market competition by creating a further barrier to entry. Many lenders simply do not have the ability to track failed withdrawal attempts and developing and maintaining such systems will be costly. Lenders will also likely be forced to pass along these additional costs to borrowers. The Bureau could address these deficiencies by initiating a new rulemaking.

III. An APR Fails to Meaningfully Measure Loan Affordability for Short-term Loans

The Bureau's RFI asks (1) whether an annual percentage rate ("APR") is a meaningful measure for a very short-term loan; and (2) if not, what other measure might be more useful to help consumes understand and assess the cost of short-term credit.[35] While APRs are a useful measure of cost and loan affordability for long-term loans, they fail to meaningfully measure cost or loan affordability for short-term small-dollar loans.

A. Instead of an APR, Consumers should be given a More Meaningful Measure of Cost that Better Reflects How Consumers Use Small-Dollar Loans

APR is not an accurate measure to assess the cost of overdraft fees, nor is it to quantify the cost of short-term, small-dollar credit. One survey of eight Chicago banks estimated the APR for their overdraft protection plans at 2,400%.[36] The Bureau itself has observed that one common

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https://www.regulations.gov/document?D=CFPB-2018-0009-0055 ("Advocacy believes that the Bureau is trying to provide information to the public in its rulemakings. However, the Bureau's attempt to provide information has led to academic NPRMs and final rules that are more nebulous than transparent. For example, the NPRM for the small dollar/payday lending rule was over 1300 pages. It was difficult to navigate and comprehend.")

[35] 85 Fed. Reg. 18215.

[36] Todd J. Zywicki, The Case Against New Restrictions on Payday Lending, 12-15 (Geo. Mason U., Mercatus Ctr., Working Paper No. 09-28, 2009) (documenting APRs of 520% and 1,067%, and noting that "the APR on these overdraft loans can easily exceed the cost of a payday loan").

overdraft scenario, involving a $34 finance charge on an overdraft of $24 borrowed for three days, carries an APR of 17,000%.[37] Yet, it would be nonsensical for a bank to inform a consumer that its overdraft protection plan has an APR of 2,400% or 17,000% because an overdraft fee is not correlated with an annual term. For the same reason, to determine whether an APR is a meaningful measure of a short-term loan, the Bureau should analyze how a shorter length of a loan term affects how consumers view the cost of credit.

Consumers generally use small-dollar loans in one of three ways. First, many consumers use small-dollar loans to cope with income and expense shocks, that is, with unexpected, temporary expenses or shortfalls in income. Second, many consumers use small-dollar loans for income smoothing in the face of income and expense volatility, that is, where the consumer's income or expenses fluctuate over the course of the year. Income volatility may exist for any number of reasons, such as where the consumer works on commission, is scheduled to receive a one-time income supplement (e.g., a holiday bonus), or expects to have a seasonal opportunity to earn extra income. Third, some small-dollar borrowers use small-dollar loans to manage accumulated debt, preferring to use the small-dollar loan proceeds to pay down other debt for which nonpayment or default would be more costly. Notably, none of these uses of small-dollar loans correlate with an annual loan term. When used in these ways, an APR significantly overstates the cost of a small-dollar loan that is a 2-week loan with a finance charge of $15 per $100. An APR would also significantly overstate the cost of loan sequences that result from re-borrowing over a 90-day period.

Thus, instead of an APR, consumers should be given another measure of cost that better reflects the term length of most small-dollar loans. Such disclosures would be easier for consumers to understand, provide a more meaningful measure of cost, and better reflect the term length of a typical small-dollar loan.

B. The Cost or Affordability of a Short-Term Small-Dollar Loan Must be Analyzed in Light of the Typical Consumer's Alternatives

Each year, millions of consumers rationally choose small-dollar loans and loan sequences because they are more affordable than other available alternatives. For this reason, the cost of a small-dollar loan and its "affordability" must be analyzed in light of other credit options that are available to consumers who use these products. By providing a source of credit to consumers with low credit scores and no viable alternatives, small-dollar loans "expand financial choices and allow individuals and households to better manage their cash flow in the face of volatile income and expenses."[38] This in turn enables these consumers to avoid more costly alternatives, such as pawnbrokers, bank overdraft services, late-payment fees, and the like.

Indeed, numerous studies support the notion that unavailability of small-dollar loans pushes consumers to more costly alternatives. For example, in States that have banned small-

[37] *See* Press Release, Consumer Fin. Prot. Bureau, CFPB Finds Small Debit Purchases Lead to Expensive Overdraft Charges (July 31, 2014), available at, https://www.consumerfinance.gov/about-us/newsroom/cfpb-finds-small-debit-purchases-lead-to-expensive-overdraft-charges/

[38] Neil Bhutta, *Payday Loans and Consumer Financial Health*, 47 J. Banking & Fin. 230, 233 (2014).

dollar loans, there is an increase in the number of pawn loans.[39] Consumers subject to small-dollar loan bans also bounce more checks and pay more bank overdraft fees.[40] Crucially, these alternative forms of credit are both more expensive and have equivalent or higher APRs than small-dollar loans—as shown by academic papers and studies that calculate the average costs of these products in terms of dollars and APRs. For example, a single overdraft charge is typically $50 ($25 to the merchant and $25 to the bank), which is substantially more than $15 for a $100 small-dollar loan. [41] Further, unlike payday loan defaults, which typically are not reported to the national credit bureaus, missed payments on other loans and invoices can damage the consumer's credit standing, making it even more difficult for the consumer to obtain credit and substantially harming his or her long term financial health.[42] Finally, consumers lacking access to small-dollar loans may turn to underground sources of credit, including illegal, unregulated lenders and criminal loan sharking, with its associated threats of violence.[43]

Against this backdrop, it is unsurprising that standard economic analysis confirms that small-dollar loans offer a superior alternative for many rational consumers. Consider, for example, a consumer who faces a $50 utility bill and a $50 credit card bill due before his next paycheck.[44] Assume he cannot cut $100 of expenses before his next paycheck. Late payments on both bills will incur costs of, for example, $5 for the utility company and $30 for the credit-card company. With a $100 small-dollar loan, the consumer will avoid $35 in costs but incur a $15 finance charge. The consumer saves $20 (or $17.39 if discounted to present value) for choosing a small-dollar loan instead of paying late fees.[45] And the financial and non-pecuniary costs of the non-payment of bills would be substantially higher (and the small-dollar loan option substantially more valuable by comparison) if, for instance, late payment of the utility bill would result in service disruption and a reconnection fee.

Accordingly, the cost or affordability of short-term, small-dollar loans must be analyzed in light of the typical alternatives that are available to consumers who use these products.

IV. The Bureau Should be Guided by Consumer Data and Input from *all* Interested Parties in Assessing the Efficacy of Federal Consumer Financial Protections

Question 23 of the Bureau's RFI asks how the Bureau can best assess the efficacy of Federal consumer financial protection in achieving its goals.[46] When determining whether a particular credit product, such as small-dollar loans, provides effective consumer financial protections, the Bureau should be guided by (1) consumer data that analyzes whether a consumer understands a particular product; (2) consumer complaint data; and (3) information and input

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[39] Neil Bhutta et al., Consumer Borrowing After Payday Loan Bans, 3 (2016) (unpublished manuscript) (on file with author).
[40] Donald Morgan et al., *How Payday Credit Access Affects Overdrafts and Other Outcomes*, 44 J. MONEY CREDIT & BANKING 519, 521 (2012).
[41] *Id.* at 522.
[42] *See* Ronald J. Mann, *Do Defaults on Payday Loans Matter?* 22 (Colum. L. Sch., Ctr. L. & Econ. Studies, Working Paper No. 509, 2014).
[43] Todd J. Zywicki, The Case Against New Restrictions on Payday Lending, at 17 (Geo. Mason U., Mercatus Ctr., Working Paper No. 09-28, 2009).
[44] *See id.* at 12–13.
[45] *See id.*
[46] 85 Fed. Reg. 18214, 18217 (April 1, 2020).

from *all* interested parties. In issuing the 2017 Final Rule, the Bureau's prior leadership selectively interpreted consumer and market data on small-dollar loans, ignored the concerns of industry participants that would be most affected by its rulemaking, and moved forward with a pre-determined outcome.

A. Numerous Studies Illustrate that Consumers Understand the Nature of Small-Dollar Loans

The Bureau should be guided by peer reviewed studies that analyze whether a consumer understands a particular product in determining the efficacy of consumer financial protections. Empirical research shows that small-dollar loan borrowers understand the nature of the product, including that their loan indebtedness may last longer than the two-week or thirty-day initial term of the loan, and accurately predict how long it will take to repay their loans. Consumers thus fully understand and act in their own interests.

In one survey of over 1,000 borrowers who had recently repaid a small-dollar loan (without further reborrowing), a research group asked consumers if they had accurately predicted how long it would take them to "completely repay the loan."[47] Of these borrowers, 94% responded that they were able to repay their small-dollar loan in the amount of time they had expected.[48] Over 90% responded that they used small-dollar lending responsibly, carefully weighed the risks and benefits of taking out a small-dollar loan, and considered the overall costs they would incur before taking out a small-dollar loan.[49] These borrowers reported high levels of satisfaction with small-dollar lenders in general and their experience with small-dollar loans in particular.[50] A similar, more recent survey found the same results.[51] The vast majority of borrowers "completely understood how long it would take to pay off the payday loan" and "completely understood the finance charges" they would pay, and the "payday lender clearly explained the terms of the loan."[52] The overwhelming majority of small-dollar loan borrowers also reported that they "carefully thought about the risks and benefits" before taking out the loan.[53] Finally, 96% of borrowers reported that small-dollar loans had been very useful or somewhat useful to them.[54]

Likewise, in a survey of consumers who had used a small-dollar loan at least once in the preceding year, borrowers reported that they had accurately predicted how long it would take them to pay off their loan, and also reported high levels of satisfaction with the product.[55] A large majority of small-dollar loan borrowers reported the loan as costing no more than expected;

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[47] Harris Interactive, Payday Loans and the Borrower Experience 3 (Dec. 2013) (unpublished PowerPoint slide deck) (on file with author).
[48] *Id.*
[49] *Id.* at 4.
[50] *Id.* at 6, 10–11.
[51] *See* Tarrance Group et al., Borrower & Voter Views of Payday Loans (Feb. 2016), available at, https://www.cfsaa.com/files/files/CFSA%20Borrower%20and%20Voter%20Survey%20Analysis%20%20-%20Feb.%202016.pdf
[52] *Id.* at 6.
[53] *Id.* at 16.
[54] *Id.* at 6.
[55] *See* ROB LEVY & JOSHUA SLEDGE, CTR. FOR FIN. SERV. INNOVATION, A COMPLEX PORTRAIT: AN EXAMINATION OF SMALL-DOLLAR CREDIT CONSUMERS 21 (2012).

68% of borrowers repaid their loans in the same or less time than they had expected; and 77% of loan borrowers said they would use the product again.[56] In sum, millions of consumers responsibly rely on small-dollar loans and small-dollar loan sequences as superior alternatives for meeting their credit needs. Consumers overwhelmingly praise the product and understand and appreciate the costs and risks. Academic studies confirm that the availability of small-dollar loans has a net positive effect on consumer welfare.

In issuing the 2017 Final Rule, however, the Bureau's prior leadership failed to adequately consider such studies or interpreted them in an unreasonable manner. For example, the Bureau's prior leadership mischaracterized Professor Mann's findings. Similarly, the Bureau's reliance on the limited Pew study was an insufficient basis for a rulemaking that would essentially ban an entire industry. For these reasons, we strongly supported the Bureau's efforts to revisit the Underwriting Provisions of the 2017 Final Rule and encouraged the Bureau to similarly reconsider the Payment Provisions because those provisions relied on the same flawed and stale research used to support the Underwriting Provisions.

*B. Small-Dollar Loans are Among the Least Complained About Loan Product*s

Every day, millions of Americans make rational, calculated, and deliberate decisions about what goods and services to buy. And Americans are among the most conscientious and demanding group of consumers. The countless number of companies that file for bankruptcy each year illustrate that consumers have little tolerance for bad products, poor service, and high prices. For these reasons, the Bureau should consider consumer complaints in assessing the efficacy of consumer financial protections and whether further regulation of a product is warranted.

Consumer complaint data on small-dollar loans illustrate that such products are among the least complained about loan products, and consumers overwhelmingly praise the flexibility they provide. The Bureau's most recent consumer complaint data, which analyzes complaint volume changes during the COVID-19 pandemic, stated that in "March and April 2020, the Bureau's Office of Consumer Response received approximately 36,700 and 42,500 complaints, respectively — the highest monthly complaint volumes in the Bureau's history."[57] Despite the Bureau receiving a record number of consumer complaints, payday loans was one of only three product categories that showed a decrease in the number of consumer complaints.[58]

The Bureau's Consumer Response 2018 Annual Report, which analyzes the trends the Bureau has seen in consumer complaints during the past year, tells a similar story. The Annual Report analyzes a broad spectrum of consumer complaints, from credit cards and student loans, to mortgages and personal loans. Out of the 329,800 complaints received by the Bureau, only 0.7% (2,300) were related to small-dollar loans.[59] Similarly, out of the 329,800 complaints

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[56] *Id.* at 21.
[57] BUREAU OF CONSUMER FIN. PROT., COMPLAINT BULLETIN, COMPLAINTS MENTIONING CORONAVIRUS KEYWORDS 5 (2020), https://files.consumerfinance.gov/f/documents/cfpb_complaint-bulletin_coronavirus-complaints.pdf
[58] *Id.* at 6.
[59] BUREAU OF CONSUMER FIN. PROT., CONSUMER RESPONSE ANNUAL REPORT 9 (2019), https://files.consumerfinance.gov/f/documents/cfpb_consumer-response-annual-report_2018.pdf

received by the Bureau, only 0.2% (600) were related to title loans.[60] Equally important, the number of complaints related to small-dollar loans has consistently gone down for the last several years. In 2016, the Bureau handled approximately "4,400 complaints in which consumers reported 'payday loan' as the complaint product."[61] In 2017, the Bureau received approximately 2,900 small-dollar loan complaints, and approximately 2,300 in 2018.[62] Data from the FTC similarly show low levels of consumer complaints.[63] Moreover, the over 1 million comments submitted to the Bureau in opposition to the 2017 Final Rule illustrate that consumers overwhelmingly support small-dollar loans.[64]

Accordingly, if the Bureau wishes to use its time and resources in a manner that best protects consumers, it should pursue loan products that have generated the most consumer complaints, not small-dollar loans.

C. The Bureau Should Consider Input from All Interested Parties

The Bureau should be guided by information and input from *all* interested parties when assessing the efficacy of consumer financial protections. For years, CFSA, FiSCA, and their respective memberships, expressed concern about the way in which the Bureau conducted its rulemaking for small-dollar lending. On numerous occasions we spoke out about the Bureau's rulemaking process. However, at every step of the rulemaking process for the 2017 Final Rule, the Bureau's prior leadership, which had already pre-judged the industry and our products, ignored our input and concerns and moved forward with a pre-determined outcome.

The Bureau's prior leadership met with few business representatives and categorically excluded outreach to those in the industry who would have been most affected by its rulemaking. This issue was of particular concern for the Small Business Administration (SBA) Office of Advocacy. The disregard of the then proposed rule's effects on small businesses and the customers they serve was of concern to SBA.

From our perspective, at no time was the Bureau's prior leadership open to truly listening to and considering the opinions and viewpoints of small-dollar lenders. Rather, throughout the rulemaking process of the 2017 Final Rule, the Bureau's prior leadership solicited input and relied upon information ONLY from consumer activist groups. As a result, the Bureau largely allowed these outside groups, who were opposed to non-bank small-dollar lending, to drive its small-dollar rulemaking.

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[60] *Id.*
[61] Payday, Vehicle Title, and Certain High-Cost Installment Loans, 84 Fed. Reg. 4252, 4254-55 (Feb. 14, 2019).
[62] *Id.*
[63] FED. TRADE COMM'N, CONSUMER SENTINEL NETWORK, DATA BOOK 2018, at 80 (2019) (small-dollar loans account for only 0.25 percent of all (unverified) consumer complaints received in 2018), https://www.ftc.gov/system/files/documents/reports/consumer-sentinel-network-data-book-2018/consumer_sentinel_network_data_book_2018_0.pdf
[64] CFPB-2016-0025-199625, A-1 Check Cashing of Paradise, Multiple Comments (500), February 22, 2017, https://www.regulations.gov/document?D=CFPB-2016-0025-199625; CFPB-2016-0025-144125, Multiple Comments Submitted by Advance America, (13,101 Submissions), October 21, 2016, https://www.regulations.gov/document?D=CFPB-2016-0025-144125

For these reasons, we applaud Director Kraninger's efforts to obtain input from *all* interested parties across a wide range of credit products. The Bureau's recent initiatives, such as hosting a symposium that focuses on defining "abusive" under the Bureau's UDAAP authority, illustrate that the Bureau's current leadership understands the importance of working with the industries it regulates to form sensible rules and policies that protect consumers while expanding credit access and promoting healthy market competition. We urge the Bureau to continue hosting symposiums, including a symposium that specifically focuses on small-dollar credit. Such an event would provide the Bureau a significant opportunity to gather information and input from industry participants and strengthen the Bureau's relationships with the entities it regulates.

V. Conclusion

The CFPB's broad authority provides it with the unique opportunity to work with industry stakeholders to develop regulations that build upon existing federal, state, and industry rules. In seizing this opportunity, the Bureau should craft clear regulations that are designed to expand credit access to those who need it most. Government regulations should not be designed to favor certain credit providers over others or allocate credit among consumers. The Payment Provisions are one example of where the Bureau could implement this policy to address and correct the many inadequacies, ambiguities, and inappropriate applications of those provisions.

Thank you for the opportunity to present these comments and concerns. It is our sincere hope that the Bureau, under its new leadership, will be able to make significant improvements and to change for the better the way in which it conducts research, educates its officials, solicits input from industry, enforces its rules, and conducts rulemaking activities – all with a focus on expanding consumer access to all types of credit and other financial tools.

Sincerely,

COMMUNITY FINANCIAL SERVICES
ASSOCIATION OF AMERICA

D. Lynn DeVault
D. Lynn DeVault
Chair, Board of Directors

FINANCIAL SERVICE CENTERS
OF AMERICA

Ed D'Alessio
Ed D'Alessio
Executive Director

* * *

Attachments:

Exhibit A — CFSA Best Practices
Exhibit B — FiSCA Best Practices

Exhibit A

BEST PRACTICES FOR THE SMALL-DOLLAR LOAN INDUSTRY

CFSA
COMMUNITY FINANCIAL SERVICES ASSOCIATION OF AMERICA

CFSA Corporate Members Must Abide by the Following Best Practices:

1. COMPLIANCE. A member will comply with all applicable laws. A member will not charge a fee or rate for a loan that is not authorized or that is prohibited by local, state or federal law.

2. LICENSING/REGISTRATION. A member agrees to register with the appropriate government agencies and hold all necessary business licenses to operate legally in the jurisdictions in which it offers small-dollar loan products. A member that offers small- dollar loans through the Internet or other electronic modes shall be licensed in each state where its customers reside and shall comply with the disclosure, renewal, refinance rate, and other requirements imposed by each such state, unless such state does not require the member to be licensed or to comply with such provisions, or the state licensing requirements and other applicable laws are preempted by federal law.

3. FULL DISCLOSURE. A member will comply with the disclosure requirements of the state in which the loan is made and with federal disclosure requirements, including the Federal Truth in Lending Act and the Electronic Fund Transfer Act (Regulation E). A contract between a member and the customer must fully and completely outline the terms of the loan transaction. Members agree to disclose the cost of the service fee both as a dollar amount and as an annual percentage rate ("APR"). A member, in compliance with CFSA guidelines where they do not conflict with applicable federal, state or local requirements, will further ensure full disclosure by making rates clearly visible to customers before they enter into the transaction process.

4. TRUTHFUL ADVERTISING. A member will not advertise a credit product in any false, misleading, or deceptive manner, and will promote only the responsible use of credit.

5. ENCOURAGE CONSUMER RESPONSIBILITY. A member will implement procedures to inform consumers of the appropriate use of the small-dollar loan. These procedures will include the placement of a "Customer Notice" on all marketing materials, including all television, print, radio and on-line advertising, direct mail and in-store promotional materials where it is reasonable to do so. When determining reasonableness, a member should consider size, location, and audience.

> ***CUSTOMER NOTICE:*** *There are a wide variety of loan products available in the marketplace, so your choice of lending products should match your financial needs. Small-dollar loans used over a long period of time can be expensive.*

6. ABILITY TO REPAY. A member, before extending credit, shall undertake a reasonable, good-faith effort to determine a customer's creditworthiness and ability to repay the loan.

7. RIGHT TO RESCIND. Unless state law requires otherwise, a member will give its customers the right to rescind a loan, at no cost, on or before the close of the following business day.

8. NO CRIMINAL ACTION. A member will not threaten or pursue criminal action against a customer for non-payment of a small- dollar loan.

9. RESPONSIBLE REPAYMENT. A member shall ensure that all credit products offered provide customers with a structure to reduce the principal balance.

For a single repayment loan, a member shall comply with state law regarding repayment of a single repayment loan. In such cases where authorized, a member will limit rollovers of a single repayment loan to four (4) or the state limit where not otherwise limited by law. (A rollover is the extension of an outstanding advance by payment of only a fee.)

10. APPROPRIATE COLLECTION PRACTICES. A member must collect past due accounts in a professional, fair and lawful manner. A member will not use unlawful threats, intimidation, or harassment to collect accounts. The collection limitations contained in the Fair Debt Collection Practices Act (FDCPA) should guide a member's practice in this area.

11. EXTENDED REPAYMENT PLAN. A member shall ensure that a consumer who is undergoing financial hardship and is unable to repay the loan in a timely manner is afforded a reasonable repayment program without incurring extraordinary costs or penalties.

For a single repayment loan, a member will make available to customers who are unable to repay a loan according to its original contract terms, the option of repaying the loan over a longer period of time unless otherwise not allowed by state law. Such an extended payment plan will be offered in compliance with any requirement in state law to provide an extended payment plan or, in the absence of such a requirement in state law, in compliance with the Best Practice "Guidelines for Extended Payment Plans." A member will adequately disclose the availability of the Extended Payment Plan to its customers in compliance with any requirement in state law for such a disclosure or, in the absence of such a requirement in state law, in compliance with the Best Practice "Guidelines for Extended Payment Plans."

12. RESOLVING CUSTOMER COMPLAINTS. Each member company agrees to maintain and post its own toll-free consumer hotline telephone number in each of its storefronts and on its website, as well as provide electronic means for consumers to submit concerns and complaints about company products or services. A member commits to responding to and resolving consumer complaints in a timely and appropriate manner.

13. MAINTAINING PRIVACY. A member who possesses any personally identifiable information about a consumer agrees to maintain the privacy of such information in accordance with all state and federal privacy laws and regulations.

14. SUPPORT BALANCED LEGISLATION. A member will work with legislators and regulators to support responsible legislation of the short-term lending industry that incorporates these Best Practices.

15. DISPLAY OF THE CFSA MEMBERSHIP SEAL. A member company shall prominently display the CFSA Membership Seal in all stores to alert customers to the store's affiliation with the association and adherence to the association's Best Practices.

CFSA Best Practices are intended to cover all small-dollar loans made by members to the extent that such practices are allowed by applicable laws and regulations. State or local laws and regulations may not permit implementation of some Best Practices for certain types of small- dollar loans. However, all members are expected to comply with these Best Practices to the fullest extent possible. Supplemental Guidelines for implementation of the Best Practices are incorporated herein by reference and are available on the CFSA website.

Exhibit B

FINANCIAL SERVICE CENTERS OF AMERICA, INC.
A NATIONAL TRADE ASSOCIATION

BEST PRACTICES FOR THE FINANCIAL SERVICE CENTER INDUSTRY

FINANCIAL SERVICE CENTERS OF AMERICA ("FISCA") MEMBERS MUST ABIDE BY THESE BEST PRACTICES FOR ALL FINANCIAL SERVICES:

1. **LICENSING.** A Member must hold an active license issued by each state in which the Member is doing business and for each product or service offered that requires licensing.

2. **COMPLIANCE.** A Member will conduct its business in full compliance with all federal and state laws and regulations, including all laws and regulations applicable to federally registered Money Services Businesses ("MSB") and all applicable federal Consumer Financial laws, and will establish a compliance management system commensurate for the size of the business to ensure compliance. A Member will take appropriate steps to ensure employees are trained and knowledgeable about laws and regulations applicable to the business.

3. **PRIVACY.** A Member will take reasonable steps to protect its customers' non-public personally identifiable information, in paper and electronic formats.

4. **TRUTHFUL ADVERTISING.** A Member will not knowingly advertise any financial product or service in any false, misleading, or deceptive manner.

5. **DISCLOSURE OF FEES.** A Member will disclose its fees in compliance with state and federal laws and regulations, and make available to every customer a printed receipt showing the transaction details.

6. **APPROPRIATE COLLECTION PRACTICES.** A Member must collect past due accounts in accordance with the collection limitations contained in the federal Fair Debt Collection Practices Acts ("FDCPA").

7. **SELF-POLICING OF THE INDUSTRY.** A Member will participate in self-policing of the industry and will be expected to report violations of these Best Practices to FiSCA.

8. **VENDOR MANAGEMENT.** A Member will manage its relationships with its vendors in order to ensure compliance with all applicable laws and regulations.

Approved 10.5.13

9. **CONSUMER COMPLAINTS.** A Member will post a consumer hotline number in each of its business locations. A Member will promptly and thoroughly track and respond to consumer complaints.

10. **NOTICE REQUIREMENTS.** Members shall post FiSCA's Best Practices, or the Best Practices of another established industry association that are consistent with FiSCA's Best Practices, in a visible and conspicuous location in all business locations. A link to the Best Practices should be included on all company websites.

11. **PAYDAY LOANS.** Members that offer payday loans, also known as deferred deposit loans, payday advances, cash advances, and deferred deposit loans ("Payday Loan"), shall abide by the following additional Best Practices for Offering Credit:

    a. **FULL DISCLOSURE.** A Member will comply with the disclosure requirements of each state in which the Member is doing business, and with federal disclosure requirements including the Federal Truth in Lending Act. A contract between a Member and the customer must fully outline the terms of the transaction. Members agree to disclose the cost of the service both as a dollar amount and as an annual percentage rate ("APR").

    b. **RIGHT TO RESCIND.** A Member will give its customers the right to rescind a payday advance transaction at no cost, on or before the close of business on the following business day, or as required by law, whichever is longer.

    c. **LIMITATION ON ROLLOVERS.** A Member will not allow customers to rollover a payday loan (the extension of an outstanding advance by payment of only a fee) unless expressly authorized by state law, but in cases where authorized, the Member will limit rollovers to four (4) or the state limit, whichever is less.

    d. **NO CRIMINAL ACTION.** A Member will not threaten, or pursue, criminal actions against a customer as a result of the customer's check being returned or the customer's defaulting on a debt.

    e. **EXTENDED PAYMENT PLAN.** A Member will provide customers who are unable to repay a payday loan according to their original contract the option of an extended payment plan in compliance with any requirement in state law or, in the absence of such a requirement in state law, in compliance with FiSCA's "Guidelines for Extended Payment Plans" (available at www.fisca.org), or the Guidelines for Extended Payment Plans of another established industry association that are consistent with the FiSCA Guidelines.

    f. **CUSTOMER NOTICES.** A Member will provide customers notice of their option to rescind a payday loan and to an extended payment plan in a reasonable manner, including in a written disclosure as permitted or required by law.

g. **INTERNET LENDING.** Members that offer payday loans through the Internet shall be licensed in each state where its payday loan customers reside and shall comply with applicable laws and regulations, including limitations on rates, rollovers, disclosures and other requirements imposed by state law, unless such state does not require the lender to be licensed or to comply with such provisions.

h. **USE OF AUTOMATED CLEARING HOUSE (ACH) SYSTEM.** A Member will comply with all of the Rules of the National Automated Clearing House Association (NACHA) when utilizing the ACH system.

i. **MILITARY.** To the extent that any Member does business with a Military "Covered Person" as defined by federal law, Members will comply with any federal and state laws on doing business with the military and related "Covered Persons."