

July 19, 2016

Chief Information Office
Consumer Financial Protection Bureau
Information Quality Program
1700 G Street, N.W.
Washington, D.C. 20552

Re: Information Quality Act Request for Correction of CFPB 2013 White Paper on Payday Loans

Dear Sir or Madam:

Advance America, Cash Advance Centers, Inc. submits this complaint pursuant to Section 515 of Public Law 106-0554, known as the Information Quality Act. We are requesting correction of the CFPB's "Payday Loans and Deposit Advance Products: A White Paper of Initial Data Findings" dated April 24, 2013.¹

Our request for correction is based on the failure of the White Paper to comply with the "Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by Federal Agencies" issued on February 22, 2002 by the Office of Management and Budget² pursuant to the Information Quality Act and the CFPB's own Information Quality Guidelines. Specifically, as detailed below, the CFPB White Paper on payday loans does not meet either the general standards of "**utility**" and "**objectivity**" applicable to all information disseminated by the Bureau or the **heightened transparency and reproducibility standards** applicable to "**influential**" information.

We discuss more fully below the CFPB's continuing to cite the White Paper findings as support for its payday rulemaking while repeatedly characterizing the White Paper

¹ CFPB, PAYDAY LOANS AND DEPOSIT ADVANCE PRODUCTS: A WHITE PAPER OF INITIAL DATA FINDINGS (2013), available at http://files.consumerfinance.gov/f/201304_cfpb_payday-dap-whitepaper.pdf

² Office of Management and Budget, Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by Federal Agencies, 67 Fed. Reg. 8452, 8460 (Feb. 22, 2002).

conclusions as “initial findings” to be followed up with additional research and analysis.³ This was cited multiple times publically by CFPB officials as further detailed in the summary attached. On June 2, without having produced any support for the proposition that sustained payday borrowing harms consumers⁴, the Bureau issued a proposed rule that will force most storefront payday lenders out of business. The CFPB’s continued reliance on the White Paper as support for this proposed rule compels us to submit this petition.

In the sections below, we describe the information to be corrected, the specific errors we have identified, and our proposed method of correction.

1) The White Paper Fails to Meet OMB and CFPB Quality Standards applicable to all Information Disseminated by the CFPB

a) The White Paper Fails to Meet OMB and CFPB Quality Standards for Utility Because it is Based on Insufficient Data

OMB Guidelines define “utility”, a component of information quality, as “the usefulness of the information to its intended users, including the public.”⁵ The CFPB’s internal Information Quality Guidelines state the Bureau’s commitment to ensuring the utility of all information it disseminates to the public.

The White Paper lacks utility for assessing the need for regulatory intervention in the payday lending market. This is because it is based on far less data than the CFPB has access to under the Dodd-Frank Act. The limited size and date range of the CFPB’s payday lending data set has been shown to bias and manipulate the conclusions reached in the White Paper to a statistically significant degree.

³ “Finally, we note that the white paper presents ‘initial data findings’, a phrase used to reflect the fact that we intend to conduct initial data analysis using the data we have in hand, as well as obtain additional data.” CFPB response to Section 515 petition by the Community Financial Services Association, p. 5.

⁴ Concurrently with the proposed short-term credit rule, the Bureau issued a report entitled “Supplemental Findings on Payday, Payday Installment, and vehicle title loans, and deposit advance products” (June 2016). This report does not demonstrate that payday loans are relatively more harmful than other alternatives available to payday borrowers and does not resolve the flaws in the methodology used in the White Paper.

⁵ Id.

In sampling loans for inclusion in the White Paper data set, the CFPB selected all borrowers whose loans appeared in a lender portfolio in a given month. The CFPB then followed these borrowers for one year. Because heavy users are more likely to have a loan outstanding at any given time, this sampling method caused heavy users to be included in the sample in disproportionate numbers, as acknowledged by the CFPB in a footnote within the White Paper.⁶

The CFPB subsequently attempted to determine how the chosen sampling method affected the White Paper results. In “CFPB Data Point: Payday Lending”, published in March 2014⁷, the Bureau used the same data set as the White Paper but applied two new sampling methods: (1) sampling only borrowers who did not have a loan outstanding in the first month of the sample (the “new borrower” method)⁸; and (2) sampling borrowers who had a loan outstanding at any time during the sample period (the “all borrowers” method). The CFPB then tracked the sampled borrowers until the end of the sample period, which was eleven months for the “new borrowers.”

The CFPB concluded in the Data Point that the White Paper results were not significantly affected by the sampling method chosen.⁹ These results were subsequently confirmed by Clarity Services, Inc. in a study applying the three CFPB sampling methodologies (White Paper, “new borrower” and “all borrowers”) to Clarity’s own larger¹⁰ payday data set.¹¹ The three sampling methods showed similar intensity of use among the three groups.

The Clarity study found a significant difference in intensity of use, however, when it tracked borrowers over four years instead of eleven months. When tracked for four years, borrowers sampled using the “new borrower” method showed *lower* intensity of use than borrowers sampled using the White Paper method. More importantly, the four-year sample period showed a *difference* in

⁶ CFPB White Paper, p. 21, footnote 24.

⁷ CFPB DATA POINT: PAYDAY LENDING (2014), available at

http://files.consumerfinance.gov/f/201403_cfpb_report_payday-lending.pdf

⁸ The Data Point report refers to these borrowers as “new borrowers”, though it acknowledges that they may be experienced borrowers who do not happen to have a loan outstanding in the first month of the sample.

⁹ CFPB DATA POINT: PAYDAY LENDING (2014)

¹⁰ Clarity’s data set includes 72.5 million loans and 4.1 million borrowers over a period of five years. The CFPB data set includes 15 million loans over one year.

¹¹ CLARITY SERVICES, INC., SEARCHING FOR HARM IN STOREFRONT PAYDAY LENDING: A CRITICAL ANALYSIS OF THE CFPB’S “DEBT TRAP” DATA (Feb. 12, 2016), available at <https://www.nonprime101.com/wp-content/uploads/2016/02/Report-7-B-Searching-for-Harm-in-Storefront-Payday-Lending-nonPrime101.pdf>

use intensity between “new borrowers” and White Paper borrowers that was *three times larger* than the CFPB observed using its eleven-month sample period.

These results indicate that the sampling method used in the White Paper caused the CFPB to underestimate the difference in use patterns between new and experienced borrowers. The White Paper oversampled heavy users, and the eleven-month sample period used in the Data Point was too short to detect the resulting bias. A four-year sample period, however, shows significantly lower intensity of use among “new” borrowers.

The fact that Clarity’s results, which were based on a larger data set and longer sampling period, differed significantly from the CFPB’s is important because it suggests that a consumer taking out his first payday loan is more likely to be a light user than the CFPB data suggests. While we strongly dispute the Bureau’s conclusion that consumer harm automatically follows from the intensity of use (as discussed in Subsection (b)), if the Bureau believes that higher intensity use borrowers are more likely to experience harm, the Bureau must use an accurate and reliable methodology to determine that intensity of use. The question of intensity of use and any resulting harm proven to follow from such use is critical in determining whether intervention in the market is necessary and evaluating the costs and benefits of that intervention.

Perhaps more importantly, the fact that a larger number of loans tracked over a longer period of time failed to confirm the CFPB’s results means that the CFPB’s conclusions about the intensity of use are influenced by the size of its data set. This is not by any means an unusual occurrence in statistical analysis. The problem with the CFPB’s data set is not that it is less than ideal but that it is only a small fraction of the data to which the Bureau has ready access.¹² The Bureau could use its supervisory authority to collect and study a more robust data set including loan type, repayment structure, period of indebtedness, state of origination, repayment structure, and number and frequency of renewals for payday loans originated in the last four years. This is data Advance America

¹² Congress expected the Bureau to engage in a more robust data collection as part of the supervisory authority conferred under Section 1024 of the Dodd-Frank Act, which provides as follows: “The Bureau **shall require reports** and conduct examinations on a periodic basis of [payday lenders] for purposes of . . . obtaining information about the activities and compliance systems or procedures of such person”¹² Dodd-Frank Act, Section 1024(b), 12 U.S.C. § 5514 (emphasis added). The CFPB has not implemented any reporting regime for payday lenders. If it had, it could by now have systematically collected and analyzed data on tens of millions of loans over multiple years.

and other large lenders initially provided to Clarity at the CFPB’s request, and it has been available to the CFPB and other researchers since July of 2014.

Because the CFPB has no reporting regime in place for payday lenders and has chosen not to attempt to work out an agreement to use the additional loan data they asked us to provide to Clarity, it has only one year of examination data to work with. The conclusions the CFPB has drawn from this limited data are contradicted by conclusions available with a larger data set. Unless there is a principled reason for doing so, the CFPB should not undertake a rulemaking as significant as the payday lending rule it is now pursuing without accessing high-quality data directly bearing on the intensity of use metrics the Bureau is trying to determine.

The CFPB should seek to understand the discrepancy between the results Clarity obtained using a four year sample period and the results the CFPB obtained using an eleven-month sample period. One possible explanation is that the pool of payday loan users is constantly in flux. Consumers use payday loans to smooth out periodic cash shortfalls. With a four year sample period, one can see borrowers entering and exiting the product as they face cash flow shortages at different times. An eleven-month “snapshot” of new borrowers that started in a given month necessarily captures only those borrowers just beginning to resolve a cash flow shortage, which may take several monthly income and expense cycles. When analyzed over a longer period of time, that same new borrower is not considered a frequent user once their cash flow shortage is resolved.

b) The White Paper Fails to Meet OMB and CFPB Standards for Objectivity Because it Makes Unsubstantiated Statements About Consumer Harm

The OMB standard for “Objectivity” requires both the substance and the presentation of disseminated data to be “unbiased.” The CFPB commits itself to this standard in its internal Information Quality Guidelines.

The White Paper makes repeated reference to the possibility that consumers are harmed by repeated payday loan use.¹³ The data on which the White Paper

¹³ CFPB White Paper, p. 4 (“However, if the cost and structure of a particular loan make it difficult for the consumer to repay, this type of product may further impair the consumer’s finances”); p. 43 (“However, these products may become harmful for consumers when they are used to make up for

is based, however, does not and could not support any conclusions as to whether payday loans cause harm to consumers. This is true for several reasons. The White Paper data did not include any metric of payday borrowers' financial health. In addition, the White Paper did not evaluate the relative expense to the borrower of available credit alternatives, such as utilizing overdraft on their bank account or paying bills late. Without an analysis of the costs that would have been incurred by the borrower except for the payday loan, the Bureau cannot determine consumer harm. Finally, it does not address whether the use pattern and resulting cost is consistent with the borrowers' expectations.

The only Section 515 complaint the CFPB has received to date requested withdrawal of speculative statements about consumer harm in the White Paper.¹⁴ The CFPB responded by saying that the White Paper did not draw any conclusions about consumer harm but merely "identified these concerns as subjects that are appropriate for further examination" without "pre-judg[ing] outcomes."¹⁵

The CFPB's response might resolve the issue if it were followed by research and analysis on the causal relationship between payday loan use and consumer financial health. The CFPB has not produced that analysis, however.

Instead, the Bureau decided to address, without substantiation, its "serious concerns" that frequent use of payday loans harms consumers. The SBREFA Outline the Bureau produced in March 2015, like the White Paper, refers repeatedly to the possibility of consumer harm as a basis for rulemaking but, again, provides no supporting data.¹⁶ Now, the Bureau has issued a proposed

chronic cash flow shortages"); p. 44 ("... the current repayment structure of payday loans and deposit advances, coupled with the absence of significant underwriting, likely contributes to the risk that some borrowers will find themselves caught in a cycle of high-cost borrowing over an extended period of time").

¹⁴ Petition of Community Financial Services Association of America, Ltd. For Retraction Of "Payday Loans and Deposit Advance Products: A White Paper of Initial Data Findings", June 20, 2013. We believe that this CFSAs petition was well-founded and the Bureau's response insufficient. However, we will not revisit the details of the exchange between the CFSAs and CFPB here.

¹⁵ Response of CFPB to CFSAs Petition, August 19, 2013.

¹⁶ "The Bureau's findings through its research and market monitoring underscore the risks to consumers from these various practices and features of short-term loans. In April 2013, the Bureau published initial findings on consumer use of short-term payday loans and deposit advance products; in March 2014, the Bureau published further analysis of the data on short-term payday loans." *Outline of Proposals Under Consideration and Alternatives Considered, Consumer Financial Protection Bureau, Small Business Advisory Review Panel for Potential Rulemakings for Payday, Vehicle Title, and*

rule intended to address harm caused by frequent use, but, again, has not defined the harm or explained when it occurs except to say that consumers who borrow repeatedly incur “substantial costs” by doing so.¹⁷

It is surprising that the Bureau developed a rule intended to address its concerns about consumer harm before subjecting those concerns to a rigorous (and transparent) application of data. One explanation may be the Bureau’s statement that it views concerns about consumer harm resulting from sustained payday borrowing as “uncontroversial.”¹⁸

There is no disagreement that the cost of a payday loan is more expensive than other credit products, such as larger and longer term secured loans. However, these options are often not available to our borrowers or are not responsive to our borrowers’ needs. Many borrowers have installment loans in addition to payday loans, but these types of loan products are not direct substitutes and address very different needs. The expense of a payday loan, whether as a single loan or in a sequence of loans, can only be judged relative to other alternatives available to and considered by a payday loan borrower. Citing the monetary cost of repeated loan use does not relieve the Bureau of its obligation to address difficult questions on which state and federal regulators, scholars and researchers have disagreed. For example, the Bureau has no research as to the effect of repeated payday borrowing on a consumer’s overall financial health, whether payday loans are relatively more harmful than other options available to payday borrowers, and whether a certain number of loans in a sequence is proven to have a detrimental effect on a payday loan borrower as compared to those other available alternatives. The Bureau must support the proposed rule with a data-driven analysis of these and related questions.¹⁹ The White Paper does not provide this support, and the Bureau has not provided it in connection with the proposed rule issuance.

The CFPB has suggested that consumers are harmed when they use multiple

Similar Loans (March 26, 2015), p. 10, available at
http://files.consumerfinance.gov/f/201503_cfpb_outline-of-the-proposals-from-small-business-review-panel.pdf.

¹⁷ The commentary to the proposed rule also mentions account closure as a possible result of the consumer’s defaulting in a payday loan, based on the Bureau’s April 20, 2016 report entitled “Online Payday Loan Payments.” The Bureau has not, however, demonstrated any causal link between online payday loan payments and account closure in that report or elsewhere.

¹⁸ Response of CFPB to CFSAs Petition, p. 5.

¹⁹ The Dodd-Frank Act uses the term “injury” to define an unfair or abusive practice. We use the term “harm” because that is the term the Bureau has used consistently.

payday loans within an arbitrary time frame.²⁰ If the Bureau has adopted this definition of “harm,” it has concluded informally, without explanation or supporting evidence that a consumer who borrows frequently is paying more for the loan than it is worth and thus struck a bad bargain or behaved irrationally.²¹

The only way to reach this conclusion, however, is to treat the consumer’s decision to use a payday loan as if it were made in a vacuum. It ignores the fact that the borrowers receive loan proceeds and liquidity not once at the beginning of a sequence of loans, but receives proceeds with each new transaction, which provides additional value and liquidity used to pay new obligations each time. It further ignores the fact that a payday loan is neither a bad bargain nor irrational if it avoids a greater cost in the form of, for example, a lost job, damage to formal credit standing, or discontinuation of utility service, regardless of how frequently it is used.

Because the Bureau has already issued the proposed rule, we are not now requesting retraction of the speculative statements about consumer harm in the White Paper. We have reviewed the proposed rule and the Bureau’s “Supplemental Findings on Payday, Payday Installment, and Vehicle Title Loans, and Deposit Advance Products” with the expectation of finding new data and analysis demonstrating the consumer harm to be addressed and establishing the relationship between the demonstrated harm and the substantive elements of the rule. Having found no such supporting analysis, we are requesting (in Section 3 below) that the Bureau provide it before proceeding to final rulemaking.

²⁰ See, e.g., CFPB Press Release, March 25, 2014, “CFPB Finds Four out of Five Payday Loans are Rolled Over or Renewed”, available at <http://www.consumerfinance.gov/about-us/newsroom/cfpb-finds-four-out-of-five-payday-loans-are-rolled-over-or-renewed> (“The study also shows that the majority of all payday loans are made to borrowers who renew their loans so many times that they end up paying more in fees than the amount of money they originally borrowed.”); CFPB White Paper, p. 4 (“A primary focus is on what we term ‘sustained use’ – the long-term use of a short-term high-cost product evidenced by a pattern of repeatedly rolling over or consistently re-borrowing, resulting in the consumer incurring a high level of accumulated fees.”).

²¹ The CFPB suggests in the White Paper that consumers who are sustained users of payday loans may not be behaving rationally. See, e.g., CFPB White Paper, p. 44 (“It is unclear whether consumers understand the costs, benefits, and risks of using these products.”); CFPB White Paper, p. 22, n. 27 (“an important policy question here is the benefit the consumer receives, in the form of credit extended, in return for the fees paid . . .”).

2) The Challenged Information is “Influential” Information Subject to Heightened Standards for Transparency and Reproducibility that the CFPB has not met

a) The Definition of “Influential” Under OMB and CFPB Guidelines

OMB Guidelines define “Influential” information to mean information that has “a clear and substantial impact on important public policies or important private sector decisions.”²² The CFPB Information Quality Guidelines use the same definition.

At the time the White Paper was issued, it was unclear to what extent the CFPB planned to use the White Paper to support its payday lending rulemaking. In fact, in the White Paper²³ and a subsequent response to a Section 515 petition by the Community Financial Services Association²⁴, the Bureau stated that the White Paper was merely an initial step in an ongoing review process to include further fact gathering and analysis.

These statements suggested that the White Paper was not expected to have a substantial impact on public policy. However, the SBREFA Outline discusses the White Paper findings extensively as a basis for the Bureau’s “concern” about intensive use of payday loans and its plans to intervene in the market through rulemaking.²⁵ On June 2, the Bureau issued a notice of proposed rulemaking based in part on the White Paper findings.²⁶

²² Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by Federal Agencies, 67 Fed. Reg. 8452, 8460 (Feb. 22, 2002).

²³ CFPB White Paper, p. 44 (“Our findings thus raise substantial consumer protection concerns. The CFPB intends to continue its inquiry into small dollar lending products to better understand the factors contributing to the sustained use of these products by many consumers and the light to moderate use by others.”)

²⁴ “Finally, we note that the white paper presents ‘initial data findings’, a phrase used to reflect the fact that we intend to conduct initial data analysis using the data we have in hand, as well as obtain additional data.” CFPB response to CFSA petition, p. 5.

²⁵ See SBREFA Outline at p. 10, “The Bureau’s findings through its research and market monitoring underscore the risks to consumers from these various practices and features of short-term loans. In April 2013, the Bureau published initial findings on consumer use of short-term payday loans and deposit advance products; in March 2014, the Bureau published further analysis of the data on short-term payday loans.”

²⁶ See, e.g. CFPB Proposed Rules, “Payday, Vehicle Title, and Certain High-Cost Installment Loans”, pp. 224-28 (discussing results of White Paper).

The payday lending rule represents the CFPB’s decision as to whether, and in what form, consumers should have access to payday loans. This is a public policy decision of the most important type, and the rule’s effect will be substantial.

By the Bureau’s own calculations, the rule will, if implemented as currently proposed, dramatically curtail the short-term consumer lending market. Additionally, the rule as outlined in the SBREFA process has already prompted publicly-traded lenders to announce their exit from the payday lending business, and the industry expects many other lenders to exit as a result of the recent proposed rule announcement.

The White Paper is now having a substantial impact on public policy and private sector decision-making, which means that it is “influential” information. As such, it cannot be relied upon to support the proposed payday lending rule unless it meets the applicable reproducibility and transparency standards under OMB and CFPB Guidelines.²⁷

b) Requirements for “Influential” Information Under OMB and CFPB Guidelines

The OMB Guidelines require the Bureau, when disseminating influential information such as the White Paper, to be sufficiently transparent about the data and methods it has used to allow third parties to reproduce the results. The CFPB’s own Information Quality Guidelines require that, when information is determined to be “influential”, “an added level of scrutiny will be applied, including an assurance that the information is reproducible.”²⁸ The OMB intended the reproducibility standard to “cultivate a consistent agency commitment to transparency about how analytic results are generated.”²⁹

²⁷ A study not initially considered to be “influential” may become so if it is later relied upon by an agency to support “an important and far-reaching regulation.” In such cases, the OMB Guidelines would “require the rulemaking agency, prior to publishing the notice of proposed rulemaking, to evaluate [the study] to determine if the analytic results stated therein would meet the ‘capable of being substantially reproduced’ standards in [the OMB Guidelines] and, if necessary, related standards governing original and supporting data in [the OMB Guidelines].” If the study does not meet the reproducibility standard, the agency may still rely on it, but only if the study meets the transparency standard and the agency complies with, and discloses, the “robustness checks” performed to ensure information quality. OMB Guidelines, 67 Fed. Reg. 8452 at 8457.

²⁸ CFPB Information Quality Guidelines

²⁹ 67 Fed. Reg. 8452, 8456

Public access to original data is the preferred approach to reproducibility under the OMB Guidelines. The Guidelines emphasize that the reproducibility standard is intended to ensure sufficient transparency to allow the public to evaluate the extent to which the results depend on the agency's assumptions and choice of analytic methods.

The OMB Guidelines recognize that there are situations in which granting public access to the research data set would entail violation of a compelling privacy interest. The Guidelines make clear, however, that agencies are expected to seek alternative methods of ensuring reproducibility in such cases, such as, for example, having results replicated by a third party subject to the same confidentiality restrictions as agency staff. Where even confidential third-party replication is not possible, meaning that the reproducibility standard cannot be met, the agency is required to perform documented "robustness checks" and to document with the information dissemination its efforts to ensure an appropriate level of information quality.

c) The White Paper Release Fails to Meet OMB and CFPB Standards for "Influential" Information

The CFPB's release of the White Paper conformed to neither the reproducibility standard nor the alternative "robustness check" requirement set out in the OMB Guidelines. In fact, the issuance shows a notable lack of transparency about the data and methods used. The CFPB did not disclose the data set it used to produce the White Paper, the number of lenders or borrowers sampled, the amount of overlap between the sampled lenders' portfolios, the criteria used to select lenders, the start and end date of the sample periods for each lender, the states where loans were originated or the distribution of loans among the 33 states sampled.

The CFSAs filed a Section 515 petition requesting disclosure of the data set on June 20, 2013. The CFPB denied the petition on the grounds that the data was "confidential supervisory information" and disclosure could result in "identification of the lenders and characteristics of their businesses, products or customers".³⁰ It is not obvious how disclosure of, for example, the number of lenders sampled, the state of origination of sampled loans, or the distribution of sampled loans among various states could result in the identification of any lender. The Bureau's response did not differentiate among the different categories of information the CFSAs petition requested.

³⁰ CFPB Response to CFSAs Petition, p. 3.

The Bureau’s blanket refusal to disclose any of the data underlying the White Paper precludes any public testing of the White Paper results. These discrepancies cannot be analyzed because the CFPB has not disclosed any of the original data it examined.

The lack of information accompanying the White Paper issuance also raises an obvious question: what prevented the Bureau from releasing the data in depersonalized or redacted form to protect the borrowers’ and lenders’ identities? Other federal agencies and independent researchers routinely depersonalize and publish their data sets to allow replication and sensitivity analysis by third parties. To take just one example from federal bank regulatory agency publications, the FDIC made public the full results of its 2009 survey of bank lending practices, which constituted confidential supervisory data.³¹

Even if, as the Bureau claims, confidentiality concerns prevented disclosure of the White Paper data set, the OMB Guidelines and the CFPB’s internal policy require the Bureau to take documented steps to ensure robust data quality.³² Other than stating generally that the White Paper had been subjected to “an extensive pre-publication review process within the Bureau, involving multiple Bureau divisions”³³ -- a review process that may or may not have involved intensive statistical and data analysis -- the CFPB has not provided any details on the steps it took to ensure information quality.

The CFPB certainly did not undertake to ensure that the White Paper data was reproducible, as its own Information Quality Guidelines require with respect to

³¹ FDIC, THE EFFECTS OF UNDERWRITING PRACTICES ON LOAN LOSSES: EVIDENCE FROM THE FDIC SURVEY OF BANK LENDING PRACTICES (Aug. 2009), available at https://www.fdic.gov/bank/analytical/cfr/2009/aug/CFR_2009_okeefe.pdf.

³² See, e.g. OMB Guidelines, 67 Fed. Reg. 8452, para. V(3)(B)(ii) (“In situations where public access to data and methods will not occur due to other compelling interests, agencies shall apply especially rigorous robustness checks to analytic results and document what checks were undertaken.”); OMB Guidelines, 67 Fed. Reg. 8452, 8455 (“Agency guidelines need to achieve a high degree of transparency about data even when reproducibility is not required.”); CFPB Information Quality Guidelines (“The Bureau will comply with all legal and policy rules, regulations, directives, and guidance governing any phase of the process. High quality information represents a performance goal for organizational components of the Bureau who are charged with disseminating information . . . The Bureau will disseminate information that meets high standards as confirmed by stringent internal review and approval processes.”).

³³ CFPB Payday Lending White Paper, p. 3.

“influential” information.³⁴ It is also clear that no independent third party reviewed the White Paper prior to its release; though, as OMB Guidelines suggest, this could have been done with the use of appropriate confidentiality agreements.

3) Description of Corrective Measures Requested

In light of the deficiencies we identified above, we are requesting that the CFPB take the following corrective measures:

- a)** Publish, in redacted or de-identified form, the full data set used to produce the White Paper and the 2014 Data Point together with information necessary for independent evaluation of the results, including, without limitation, the number of lenders sampled, the amount of overlap between the sampled lenders’ portfolios, the criteria used to select lenders, the start and end date of the sample periods for each lender, the 33 states where loans were originated and the distribution of loans among the states sampled.
- b)** Use the CFPB’s supervisory authority to collect and study a more robust data set including, for example: loan type, repayment structure, period of indebtedness, state of origination, and number and frequency of renewals with respect to each loan originated over at least a four-year period.
- c)** Use the data described in the preceding paragraph to conduct a study on sustained use over a four-year sample period as a means of evaluating the discrepancy between the White Paper findings and the results of the attached Clarity study.
- d)** Support the speculative statements about consumer harm currently contained in the White Paper and the 2014 Data Point with data that meets the OMB and CFPB standards for information quality generally and the objectivity standard in particular. Delay final rulemaking until the CFPB has evaluated this additional data and allowed sufficient time for public comment.

In addition to the corrective measures requested above as to the White Paper, we have substantial concerns as to the additional research recently released by the CFPB and whether this new research would meet the robust standards set forth in the

³⁴ CFPB Information Quality Guidelines (“When information is determined by an organization component to be ‘influential,’ an added level of scrutiny will be applied, including an assurance that the information is reproducible.”)

OMB's and the CFPB's guidelines on information quality. We urge the CFPB to re-examine this research, release all the data, as applicable, and subject the research to third-party peer review.

4) Description of how Advance America is Affected by the Identified Information Errors

Advance America, Cash Advance Centers, Inc. is a small-dollar lender subject to the proposed rule the Bureau issued on June 2. The regulation is based in part on the White Paper. For the reasons described above, we believe the White Paper fails to meet OMB and CFPB information quality guidelines and request that the CFPB take the corrective steps described above.

Sincerely,



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