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How the Consumer Financial Protection Bureau's Payday Loan Rule Hurts the Working Poor

Small Dollar Loans Provide Credit for Consumers Who Most Need It

By Daniel Press[1]

Ariane is a 22-year-old single mother from Oakland, California. Working a low-wage job, she gets by paycheck to paycheck, but like nearly half of all Americans, she does not earn enough to weather a financial emergency and has limited access to traditional lines of credit. So, when her car broke down, she lacked the money to fix it. Needing a car to drop her daughter off at day care and to get to work, Ariane faced a tough decision: default on her rent and face eviction, or lose the ability to get to work and possibly lose her job. In such a situation, who would you turn to?[2]

For Ariane, whose story is told by University of Pennsylvania Professor Lisa Servon in her recent book, *The Unbanking of America*, and around 12 million other Americans, the answer is payday loans.[3] As long as you have a job, a checking account, and a valid form of identification, you can borrow between $100 and $500 over a two-week period, for an average 15 percent fee.[4] For example, a borrower could borrow $300 with a promise to repay $350, writing a postdated check due in two weeks. Taking out such a high-cost loan may not be ideal, but many consumers have no better options. A recent Federal Reserve survey found that two thirds of Americans making less than $40,000 would have to borrow money to pay an unexpected $400 bill.[5] When facing possible eviction or job loss, access to a financial safety net is crucial.

Unfortunately, new government regulations threaten access to emergency funds for people in Ariane's position. In October, the Consumer Financial Protection Bureau (CFPB), a federal agency established under the 2010 Dodd-Frank Wall Street Reform and Consumer Protection Act, issued its final rule on small-dollar loans, including payday, vehicle title, and high-cost installment loans.[6] While the CFPB is statutorily limited from regulating the interest rates of small-dollar loans, it has sought to undermine the industry through onerous regulations that make these loans unprofitable for lenders.

Regulating payday lending out of existence would do nothing to help the millions of low- and middle-income people served by small-dollar loans. These consumers would still need financial services, and the new regulations do not provide for any better alternatives. If consumers cannot access lawful forms of credit, they will be forced to either default on other loans or pursue illegal or unregulated loan sources, perhaps even loan sharks.

To counter this regulatory assault on small-dollar lenders, Congress can block the CFPB's small-dollar loan rule from coming into effect through a resolution of disapproval under the

Congressional Review Act. A resolution recently introduced in the House of Representatives would do just that.[7]

Small-dollar loans provide a valuable service to people in difficult financial conditions. Unfortunately, misconceptions about the industry have led to misguided regulation and even bans of payday lending at the state level, by lawmakers from both major parties. Thankfully, however, lawmakers from both sides of the aisle have expressed interest in protecting access to short-term consumer credit.

There is substantial empirical evidence showing that small-dollar loans have modest consumer benefits. Surveys show that consumers value access to payday lending. The CFPB's rule appears aimed at shaping the marketplace to its liking rather than protecting consumers. The upshot is even greater financial burden on low- and middle-income communities, as evidenced by the negative experiences of states that have severely limited or banned payday lending.

Payday lenders provide a means for the unbanked to join the financial mainstream. Eliminating the already limited choices of marginalized Americans helps no one.

Who Uses Small-Dollar Loans? Small-dollar loans are critical for those on the financial fringe. Borrowers most frequently use small-dollar loans when faced with a financial emergency—car repair, for example, or an unexpected medical bill—or to pay preexisting obligations, such as rent or credit card bills.[8]

Small-dollar loans, such as payday loans, predominately support employed individuals who are trying to stay afloat between paychecks when they run short on cash, often because of an emergency. These are people with few liquid assets, limited access to traditional credit, and few or even exhausted savings.[9] They are typically young, female, and/or African-American, with subprime credit scores and an average annual income of $35,000.[10] They are much more likely to have bounced a check or paid a late fee than the average consumer.[11]

Taking out a high-cost small-dollar loan is a perfectly rational response to the options many consumers face. For financially strapped consumers, small-dollar loans are often a better option than the available alternatives, such as overdrawing a bank account or defaulting on a different loan. Defaulting on traditional forms of credit can ruin a person's credit score and cost more than taking out a small loan. In fact, the bulk of academic research suggests that access to payday loans may improve consumers' performance in paying back other loans and reduce difficulty in paying bills.[12]

For these reasons, payday loans enjoy widespread support among their users. Surveys have found that 95 percent of borrowers say they value having the option to take out a payday loan.[13] The same proportion also believe that payday loans provide a safety net during unexpected financial trouble. A 2009 comprehensive economic analysis of consumer demand for payday loans by George Washington University Economics Professor Gregory Elliehausen (currently a member of the Federal Reserve Board of Governors) found that 88 percent of respondents were satisfied with their last transaction.[14] Less than 2 percent of the consumer complaints filed with the CFPB are related to payday loans, with the vast majority related to already illegal collection practices.[15]

Small-dollar loans give people without access to traditional credit the ability to smooth their consumption in a convenient and dignified way. People who are better off do this with credit cards. When a financial emergency arises, such as a broken down car, it is convenient to put the charge on a credit card and carry the balance over into the next month, which is the same as rolling over a payday loan. In fact, according to a study by the Federal Reserve Bank of Boston, only 35 percent of credit card users do not carry a balance.[16] Small dollar loans allow those with fewer financial resources to smooth their consumption costs the same way, paying larger bills over time.

Millions of payday loan users understand the tradeoffs they face, and they find that taking out multiple small-dollar loans to be cheaper and superior to the alternatives, even if it is only their "least bad" option. Many of the claims made against payday lending are based on paternalistic assumptions about their customers, not empirical evidence.

Misconceptions about the Payday Lending Business Model. There are many misconceptions about the small-dollar lending market—that it is exploitative, driven by predatory actors, and awash with profits for lenders. However, empirical research shows that the industry is overwhelmingly driven by consumer demand, and that, on net, small dollar loans provide a modest welfare benefit to consumers.

Small-dollar lenders are often more competitive on price and accessibility than traditional banks. Some customers prefer payday lenders because they are more transparent and provide better service.[17] Rather than being hit with an unexpected overdraft fee, customers appreciate the transparency of a flat, predictable fee. Storefront payday lenders also foster personal relationships between the teller and the customer. Professor Lisa Servon, who reported the story of Ariane, worked as a check casher and small-dollar loan teller. She found that many customers felt they got better service than at banks. According to Servon, not a single person she served complained about being charged too much or about quality of the products, or got into an argument with their teller.[18] She and her colleagues were repeatedly tipped by their customers who appreciated the service.[19]

Another misconception is that small-dollar loans rely on unreasonably high costs to earn excess profits. The fact is that these loans are expensive to make because of their inherent risk. The average default rate for payday loan stores is more than 20 percent, compared to only 3 percent for loans issued by smaller commercial banks.[20] Meanwhile, the overhead on payday loan stores accounts for around two-thirds of the fees payday lenders collect.[21] These loans are relatively expensive because they have high fixed costs and are uncollateralized and prone to high defaults.

Storefront lenders have better default recovery options than online ones. That is because online lenders must contend with two additional challenges. First, they face much higher costs related to acquiring and retaining customers. Second, because they are not participants in their borrowers' neighborhoods and culture, there is a greater propensity for customers to default on a loan.[22]

The result is a competitive marketplace and incredibly slim profits for lenders. A 2009 study by the consultancy firm Ernst & Young found that stores' average profit margin before tax and interest was less than 10 percent.[23] Others have found average profit margins of only 3.57 percent.[24] There is no evidence of excess economic returns in the industry that would suggest a lack of competition.[25] Use of traditional underwriting processes or caps on the number of rollovers, as included in the CFPB's rule, would be ruinously expensive in the small-dollar loan context, making them unprofitable for the vast majority of firms. The CFPB predicted that the paperwork burden alone would run over $100 million annually.[26]

Small-dollar loans serve people in financial straits. To casual observers, such loans may appear to take advantage of them. Yet the fact that payday-loan stores nationwide outnumber McDonald's restaurants and Starbucks coffee shops combined—despite being prohibited in 18 states—demonstrates that the industry's growth has been driven by consumer demand.[27] Unfortunately, regulations undercutting the small-dollar loan industry might do something about those appearances while making consumers even worse off.

Problems with the CFPB's Final Rule. The CFPB's final rule is designed to prevent borrowers from "overusing" payday loans, particularly targeting rollovers. The rule states: "[A]ccess to payday loans may well be beneficial for those borrowers with discrete, short-term needs, but only if they can succeed in avoiding long sequences of loans."[28] This is based on two faulty assumptions: 1) that because rollovers are relatively expensive, they must be harmful to consumers; and 2) that because they are common, lenders must lure borrowers into them.[29]

There is not sufficient empirical evidence to support either premise. In fact, the bulk of academic research suggests the opposite. Multiple surveys have found that consumers are not "tricked" into rolling over their loans, but understand the terms perfectly well.[30] A 2011 study by Ronald Mann of Columbia University tracked borrowers' repayment performance and found that the majority of consumers expected and understood, before borrowing, that they were likely to roll over the loan.[31] Sixty percent of borrowers also accurately predicted within one pay period the date when they would pay off the loan in full. Contrary to the CFPB's reasoning, the payday lending industry is not characterized by either market failures or asymmetries of information that justify regulation.[32]

Payday loan consumers shop around extensively for credit options before deciding on a payday loan.[33] One study found that payday loan applicants had an average of five credit option inquiries during the 12 months before taking out a loan, three times higher than that of the general population.[34]

The assertion that rolled-over loans cause debtors harm is also unfounded. While rolling over a loan may be expensive, it is often better than the other options available to consumers. Current Fed Governor Gregory Elliehausen and Edward C. Lawrence of the University of Missouri found that a payday loan taken out to avoid late payments on utility and credit card bills enhances consumer welfare.[35] This includes not only those who take out a single loan, but also those who roll over their loans several times. Jennifer Priestley of Kennesaw State University in Georgia found that borrowers whose loans were outstanding for longer had *larger* positive changes in credit scores than those whose borrowing was more time-limited.[36]

In surveys of payday loan users, more than 80 percent said it was easy to repay their loan, including more than half who said it was very easy.[37] Another study by Elliehausen found that only about 2 percent of all payday loan customers disliked payday loans because they made it too hard to get out of debt.[38]

Payday loans, as the CFPB admits, are highly beneficial to consumers with an urgent, short-term credit need. Loans that are rolled-over multiple times may be costly, but the empirical literature still determines that overall, payday loans improve consumers' outcomes. Most consumers accurately predict how long they will be in debt, and those who cannot have extensively sought out other options and still decided on a payday loan as their best option.

Nonetheless, the CFPB has taken aim at this type of financial service. The rule covers small-dollar loans, such as payday, vehicle title, and certain high-cost installment loans. The rule, under its three main provisions:

- Requires lenders to determine a customer's "ability to repay" their loans and still be able to meet major financial obligations over the next month;
- Exempts certain loans deemed less-harmful from the ability-to-repay standard, structures loans to be lowered by one-third of the previous amount each time, and limits such loans to two rollovers and six total loans per year, as well as instituting other requirements; and
- Prevents lenders from automatically charging a customer's checking account after two unsuccessful attempts to collect payment.[39]

The rule exempts lenders who make less than 2,500 short-term loans per year, deriving no more than 10 percent of their revenue from such loans. This will overwhelmingly apply to credit unions and community banks that occasionally make such loans.

The rule has several defects.

Flawed "Ability to Repay" Standard. The "ability to repay" standard is inappropriate for small-dollar loans. If borrowers had an immediate ability to repay—including a month of no financial trouble—they would have no need to patronize payday lenders in the first place. Instead, they would access traditional sources of credit, such as their own savings, credit cards, or bank loans. Such options are not available to the majority of payday borrowers, who know that they may have to string together multiple loans. One survey found that at the time of their most recent payday loan, over 80 percent of customers reported that they lacked sufficient funds to deal with an emergency expense.[40] That does not mean that consumers are "lured" into taking out payday loans or that they are harmed by doing so. It is typically the opposite.

As Servon reported in her book, Ariane understood that she did not have the ability to repay her loans on time, as she needed every dollar to pay her rent and utilities and to buy food. But even without the ability to repay, she knew that it was in her best interest. '"I know it's bad. I knew what a payday loan was," she said. "But I'm on a month-to-month lease, and it was either get evicted or take out the loans."[41] Rather than exploitation, the frequency of payday loan transactions may simply reflect the lack of other credit alternatives.

Furthermore, the CFPB's ability to repay requirement imposes regulatory burdens more in line with the requirements of a mortgage, not a two-week loan of under $500. Specifically, it mandates customers to provide extensive information about their financial history, such as income, employment, housing expenses, child care payments, debt obligations, and other information. It then requires lenders to submit this information to a credit reporting agency. As the Financial Services Center of America—a trade association that represents small-dollar lenders and other financial services providers serving the unbanked and underbanked—argued in comments to the CFPB regarding the payday lending rule, such a requirement "would essentially turn lenders into financial planners."[42] In reality, few lenders could afford to undertake such a task.

Access to Bank Accounts Impacts Online Lenders. The rule prevents lenders from automatically charging a customer's checking account after repeated failed attempts at collection. This has important implications, particularly for online lenders. While a substantial portion of payday loans are repaid in person at a storefront, online lenders rely on having access to a customer's bank account. Without any collateral or the ability to service their debts, online lenders are at a much greater risk of fraud, default, or bad faith borrowing (borrowing without intent to repay). Indeed, some online payday lenders already charge higher fees to consumers who do not commit to electronic debits to compensate for the higher risk.[43]

Inadequate Data to Justify Rulemaking. Under the Dodd-Frank Act, the CFPB is required to consider the costs and benefits of each rulemaking. Yet the CFPB failed to adequately consider the substantial benefits that small-dollar loans provide. The evidence provided by the Bureau against the practice was based on limited data from small-dollar lenders and included no information about consumer welfare outcomes. Rather, the Bureau assumed that because subprime loans come with subprime terms and fees, they must be "unfair and abusive."

But even after five years of study, the CFPB never performed, contracted for, or purchased research related to the welfare effects of protracted payday borrowing on consumers.[44] The CFPB also had numerous opportunities to test its proposed interventions, but declined the opportunity.

Worse, the public comments that the Bureau legally had to consider were often disregarded or manipulated to support the Bureau's conclusions. One example is the research of Columbia Law Professor Ronald Mann. The CFPB utilized Mann's data to conclude that payday loan borrowers cannot make decisions for themselves. This is the exact opposite of Mann's conclusion. Mann found that the majority of consumers predicted when they would become debt-free.[45] Mann reaffirmed this conclusion in an op-ed in *American Banker*, stating:

> [P]ayday loan re-borrowing is not forced in the least. Surprisingly for such a data-based agency, the Bureau offers no evidence that lenders 'force' their customers to re-borrow. Indeed, the empirical evidence suggests that borrowers understand the consequences of their actions more accurately than the Bureau's paternalistic mindset implies.[46]

Moreover, the CFPB—in the rule itself—admits that it does not have enough data on the online lending market to make a sufficient analysis of the rule's impact. The rule states: "The available information does not allow for reliably tracking sequences of online payday loans, as borrowers appear to change lenders much more often online and there is no comprehensive source of data on all online lenders."[47] But instead of calling for further study of online lenders, as it did with certain longer-term installment loans, the Bureau decided to regulate lenders for which it admits it lacks adequate data.

Moreover, the Bureau was required by law to consult with the small dollar loan industry, but failed to do so adequately. In its rulemaking, under the Small Business Regulatory Enforcement Act (SBREFA) the CFPB is required to collect input from small entities on regulations and identify alternative regulatory approaches for small businesses.[48] From just about all accounts of those involved, the CFPB entirely ignored SBREFA commenters. One lender involved in the process, Check City Partnership, noted that "it is patently clear to us that the CFPB has ignored 100 percent of the concerns raised by the small business representatives at this hearing. It looks as if the CFPB conducted the hearing only because they were forced to do so, with no intention of thoughtfully considering the comments".[49] Sens. Marco Rubio (R-Fla.), John Kennedy (R-La.), and James Risch (R-ID) filed comments with the CFPB in which they noted that the Small Business Administration's Office of Advocacy "found that CFPB grossly violated the [SBREFA requirements] in promulgating the Payday Lender Rule."[50]

To date, the CFPB has not provided evidence to justify regulating the small-dollar loan market. The majority of empirical evidence does not support increased regulation. There is little evidence that payday lending traps consumers in a cycle of debt or that it harms consumers in any other way. As noted, less than 2 percent of the consumer complaints filed to the CFPB are related to payday loans. The CFPB's study of the small-dollar loan industry has been wholly inadequate to justify a rulemaking. In fact, it could be argued that the Bureau has failed to comply with the Dodd-Frank Act's requirement to consider the costs and benefits of any rule it issues.

Convenience, Data Privacy, and Security. One of the benefits of small-dollar loans is that they are quick, easy, and confidential to obtain. In his study, Elliehausen found that the most common reasons customers cited for using payday loans were that it was an "easy convenient process/little paperwork" and that they were able to obtain "needed money quickly."[51] Another study found that 55 percent of current payday borrowers said they would prefer to borrow from payday lenders even if a bank or credit union offered an identical product.[52]

Mandating the collection of huge volumes of unnecessary financial information erodes these benefits and will needlessly put customers' data at risk.[53] The average small-dollar loan amounts is only $350, but the rule will require customers to submit extensive personal financial information, regardless of the amount borrowed, as part of its ability-to-repay requirement. Lenders must share this information with a credit reporting agency registered with the CFPB.

Exemptions for Small Banks and Credit Unions. Notably, the CFPB decided to exempt institutions making fewer than 2,500 loans or deriving less than 10 percent of their annual revenue from such loans. This arbitrary determination is puzzling. Why would a small-dollar loan be suitable for the first 2,500 people, but not anyone after that? Allowing institutions to offer products only if they derive less than 10 percent of their revenue from them restricts this business to those who neither specialize in the product nor benefit from economies of scale. The exemption has little to do with consumer benefit. Instead, it appears to be an effort to undermine the viability of the payday loan industry.[54]

The exemption appears designed to maintain market share for small banks and credit unions. But there is no reason to believe that these institutions are any better at serving small-dollar loan customers than large banks or specialist payday loan firms. In fact, larger banks previously engaged in small-dollar lending before the Obama administration regulated them out of the market. A 2013 guidance document issued by the Office of the Comptroller of the Currency and the Federal Deposit Insurance Corporation imposed tougher loan standards on payday-like products known as "deposit advance."[55]

As Richard Hunt of the Consumer Bankers Association explains: "Deposit advance products were cheaper than payday loans, offered greater transparency, required substantial disclosures and compliance with federal law, received positive feedback from borrowers, and had low default rates."[56] The anti-small-dollar loan advocacy group Center for Responsible Lending found that the average fee for a deposit advance was 10 percent, which is 5 percent lower than the average price of a payday loan.[57]

Most critically, the exemption for small banks and credit unions will not halt the exodus of small-dollar lenders from the marketplace. Small-dollar loans are still too expensive for the majority of community banks to make—it costs banks around the same amount to lend out $500 as it does $20,000, with much lower revenue.[58] Credit Unions comprise around 2 percent of the current payday loan market.[59] In contrast, there are around 20,000 payday loan shops making approximately 150 million loans per year.[60]

Allowing a limited number of small banks and credit unions to offer 2,500 loans each simply will not meet consumer demand if payday lending is regulated out of existence. That will make lower income consumers worse off. As Adair Morse of the University of Chicago found: "In the majority of specifications, banks cannot serve the welfare-enhancing role for individuals in distress that payday lenders serve."[61]

The Rule Will Hit Low-to-Middle Income People Hardest. The CFPB's own analysis found that the rule would reduce industry-wide revenue by 75 percent.[62] That would render at least three-quarters of the industry unprofitable and wipe out about $11 billion in consumer credit.[63]

Given that 12 million consumers use payday loans each year, it can be expected that millions of people will lose access to a critical source of finance. But these consumers will still need emergency funds, and the new regulations do not provide for any better alternatives. Therefore, two choices emerge: 1) legal second-best options and 2) borrowing from black market lenders.

Small-dollar loan users, such as a single mother with a broken-down car, will resort to their remaining "second-best" options. These include defaulting on other loans, overdrawing a checking account, filing for bankruptcy, or working a second job. Yet, consumers have long had this choice and instead have overwhelmingly opted for payday loans as being in their best interest.

These second-best options, such as paying with a check that incurs overdraft fees, are often more expensive than small-dollar loans.[64] The median interest rate for these overdraft fees is up to 20 times that of a payday loan.[65] Overdrawing a checking account typically comes with a charge of around $35, while the average charge for a payday loan is only $15.[66]

Payday loans and overdraft fees were of equivalent price in 2000, until the "Durbin Amendment," a Dodd-Frank provision capped the interchange fees on debit card transactions paid by retailers to banks.[67] With the revenue from interchange fees restricted, banks sought to make up for it elsewhere. This led some banks to raise the average overdraft charge significantly. Thousands of customers then opted for payday loans, which became much less costly than overdraft fees. A recent study by economic research firm Moebs Services confirms: "In 2000 payday lenders were a little over 5 percent of the overdraft market. By 2017 more than half of people who overdraw go to payday lenders."[68]

Further, as in the case of Ariane, without access to a loan, she is left to choose between defaulting on rent or losing her job. Both choices come at significantly higher costs than a small-dollar loan. Like millions of consumers, she will likely seek short-term credit to cover her financial emergency. A 2013 survey by the Pew Charitable Trusts found that nearly 40 percent of payday loan borrowers were so desperate to pay their bills that they would take a payday loan on any terms offered.[69]

Without the possibility of obtaining credit lawfully, consumers will often be pushed to borrowing from illegal and predatory loan sharks who charge even higher fees and often enforce collection with the threat of violence. As attorney and statistician Hilary Miller concludes in a 2016 Competitive Enterprise Institute study: "[L]enders who are willing to extend illegal credit are just as likely to engage in illegal collection practices when the loans come due. In fact, the development of payday loans can be viewed as a private, market solution to the problem of such criminality."[70]

In issuing its final rule, the CFPB disregarded the concerns of numerous commenters suggesting that consumers who cannot access lawful loans will patronize illegal sources.[71]

Rather, the Bureau claimed that cash-strapped individuals would still qualify for a "step-down" loan, which limits rollovers at two. Yet this explanation ignores the very real possibility that up to 80 percent of all payday loan stores will be put out of business by the rule.[72] The Bureau never bothered to explain how consumers will continue to access loans once the vast majority of them are eliminated.

At best, consumers will be stuck with choices that are more expensive and more detrimental to their credit scores compared to a small-dollar loan—choices they have long had and have consistently decided against. At worst, the new regulations will result in the growth of an underground loan shark industry, charging higher fees on worse terms and without any legal protections for consumers. Regulation of this type has been tried before, with poor results.

Heavy State Regulation Failed in the Past. The idea that small-dollar loans are lightly regulated is prevalent, but incorrect. Numerous federal statues cover consumer credit generally, such as the Truth in Lending Act, the Equal Credit Opportunity Act, the Electronic Funds Transfer Act, and the Gramm-Leach-Bliley Act. All 50 states also regulate small-dollar loans extensively. Eighteen states and the District of Columbia prohibit high-cost payday lending entirely. Arkansas went so far as to impose an interest rate cap in its state constitution.[73] A wealth of research shows that the states that regulated small-dollar loans the hardest have had the worst outcomes for consumers.

Georgia and North Carolina were the first states to ban payday lending in 2005. A New York Federal Reserve study found that households in those states bounced more checks, filed more complaints about lenders and debt collectors, and filed for Chapter 7 bankruptcy protection at much higher rates than states that had not prohibited payday lending.[74]

A recent Mercatus Center study demonstrates the detrimental effect of Arkansas' constitutionally imposed interest rate cap of 17 percent. As researchers Thomas W. Miller, Jr. and Onyumbe Ben Lukongo found, there is a distinct "credit desert" in the interior counties of Arkansas, with residents of those counties holding just 3 percent of outstanding installment loans. Credit is more available near the state's borders, as Arkansas residents often drive to neighboring states to acquire these loans. Nearly 97 percent of all outstanding installment loans were held by Arkansas residents who live in counties adjacent to one of the six bordering states that allow small-dollar lending.[75]

As noted, the CFPB claimed there is no evidence of desperate consumers turning to illegal lenders if they cannot access lawful forms of credit. However, research largely contradicts the CFPB's claim. Former Columbia University Sociology Professor Sudhir Venkatesh documented the use of loan sharking by the urban poor in the early 2000s.[76] George Mason University Law Professor Todd Zywicki has explored evidence from France, the United Kingdom, Japan, Germany, and Italy, to demonstrate the correlation.[77] Furthermore, Mark Haller and John Alviti, writing in the 1970s, discuss how organized crime syndicates arose in the 1930s to control much of the small-loan market in many major American cities.[78]

As experience in the states shows, consumers overwhelmingly demand a lawful form of short term, small-dollar loan. Destroying the legitimate market for these loans nationwide will only encourage consumers to seek them illegally or resort to worse options like overdrawing a bank account. Regulating small-dollar loans out of existence will do considerable harm to consumers on the financial margins.

Conclusion. The Consumer Financial Protection Bureau's final rule has failed to establish a reasonable justification for regulating small-dollar loans. The Bureau disregarded vast amounts of empirical research demonstrating that such loans are a vital and beneficial source of finance for low- to middle-income Americans. The result is a paternalistic rule that prohibits lenders from offering loans to those in the direst financial situations.

This is not a partisan issue. In 2015, for example, all 10 of Florida's congressional Democrats wrote in a letter to the CFPB that the new rule would do an "immeasurable disservice to our constituents, many of whom rely on the availability of short-term and small-dollar loans."[79] Members of the Congressional Black Caucus, such as Gregory Meeks (D-N.Y.), have long supported legislation to support lawful forms of small dollar loans.[80]

Congress can stand up for low-income consumers by blocking the rule via a joint resolution of disapproval under the Congressional Review Act, such as the one recently introduced in the House of Representatives. The House Resolution, H.J.Res.122, was introduced by Rep. Dennis Ross (R-Fla.) and is cosponsored by Reps. Alcee Hastings (D-Fla.), Tom Graves (R-Ga.), Henry Cuellar (D-Texas), Steve Stivers (R-Ohio), and Collin Peterson (D-Minn.).

Taking away choices from people on the financial fringe will not eliminate hardship. Instead, millions of consumers will be forced to turn elsewhere. At best, they will resort to defaulting on other loans or working a second job, options they had always had but decided against. At worst, they will be pushed toward illegal predatory lenders who charge even higher rates of interest and enforce collection through the threat of violence.
Small-dollar loans may not be ideal for everyone, but they provide an important source of finance for millions of desperate consumers.

Notes

[1] *Daniel Press is a policy analyst at the Competitive Enterprise Institute.*
[2] Lisa Servon, *The Unbanking of America: How the New Middle Class Survives* (Boston: Houghton Mifflin Harcourt, 2017).
[3] CFPB, 12 CFR Part 1041, Docket No. CFPB-2016-0025, RIN 3170–AA40, "Payday, Vehicle Title, and Certain High-Cost Installment Loans," Final Rule; official interpretations, October 4, 2017, http://files.consumerfinance.gov/f/documents/201710_cfpb_final-rule_payday-loans-rule.pdf.
[4] Ibid.
[5] Board of Governors of the Federal Reserve System, "Report on the Economic Well Being of U.S. Households in 2015," May 2016, https://www.federalreserve.gov/2015-report-economic-well-being-us-households-201605.pdf.
[6] CFPB, Final Rule
[7] H.J.Res.122 - Providing for congressional disapproval under chapter 8 of title 5, United States Code, of the rule submitted by the Bureau of Consumer Financial Protection relating to "Payday, Vehicle Title, and Certain High-Cost Installment Loans"., https://www.congress.gov/bill/115th-congress/house-joint-resolution/122.
[8] Hilary Miller, "Ending Payday Lending Would Harm Consumers," *OnPoint* No. 220, Competitive Enterprise Institute, October 5, 2016, https://cei.org/content/ending-payday-lending-would-harm-consumers.
[9] Ibid.

[10] Ibid.
[11] Ibid.
[12] Ibid.
[13] Harris Interactive, "Payday Loans and the Borrower Experience," Prepared for the Community Financial Services Association of America, December 2013, p. 5, http://cfsaa.com/Portals/0/Harris_Interactive/CFSA_HarrisPoll_SurveyResults.pdf.
[14] Gregory Elliehausen, "An analysis of consumers' use of payday loans," George Washington University, 2009, https://www.researchgate.net/profile/Gregory_Elliehausen/publication/237554300_AN_ANALYSIS_OF_CONSUMERS%27_USE_OF_PAYDAY_LOANS/links/00b7d5362429f9db10000000/AN-ANALYSIS-OF-CONSUMERS-USE-OF-PAYDAY-LOANS.pdf?origin=publication_detail
[15] The number of complaints for "payday loan" is 17,103 matches out of 918,538 total complaints. CFPB, Consumer Complaint Database, "Payday Loan", Accessed 12/10/2017, https://www.consumerfinance.gov/data-research/consumer-complaints/search/?from=0&searchField=all&searchText=payday%20loan&size=25&sort=created_date_desc.
[16] Scott Fulford and Scott Scuh, "Consumer Revolving Credit and Debt over the Life Cycle and Business Cycle," Federal Reserve Bank of Boston 2015, https://www.bostonfed.org/publications/research-department-working-paper/2015/consumer-revolving-credit-and-debt-over-the-life-cycle-and-business-cycle.aspx.
[17] Servon, *The Unbanking of America.*
[18] Lisa Servon, "What is Driving the Unbanking of America," Fresh Air, National Public Radio, January 10, 2017, https://www.npr.org/2017/01/10/509126878/what-is-driving-the-unbanking-of-america.
[19] Lisa Servon, "The Real Reason the Poor Go without a Bank Account," CityLab, September 11, 2013, https://www.citylab.com/life/2013/09/why-poor-choose-go-without-bank-accounts/6783/.
[20] Bethany McLean, "Payday Lending: Will Anything Better Replace It?" *The Atlantic*, May 2016, https://www.theatlantic.com/magazine/archive/2016/05/payday-lending/476403/.
[21] Ibid.
[22] CFPB CFR 12 CFR 1041, Docket No. CFPB-2016-0025, RIN:3170-AA40, "Payday, Vehicle Title, and Certain High-Cost Installment Loans," Proposed Rule, July 22, 2016, https://www.federalregister.gov/documents/2016/07/22/2016-13490/payday-vehicle-title-and-certain-high-cost-installment-loans
[23] Ernst & Young, "The Cost of Providing Payday Loans in a US Multiline Operator Environment," September 2009, http://cfsaa.com/Portals/0/Policymakers/Research_ShortTermCreditAlts_ACloserLookPriceandIndustryProfits.pdf.
[24] Aaron Huckstep, "Payday Lending: Do Outrageous Prices Necessarily Mean Outrageous Profits?" *Fordham Journal of Corporate & Financial Law*, Vol. 12, No. 1 (2007), pp. 203-231, http://ir.lawnet.fordham.edu/jcfl/vol12/iss1/4/.
[25] Paige Skiba and Jeremy Tobacman, "The Profitability of Payday Loans," December 2007.
[26] Office of Information and Regulatory Affairs, Information Collection Request—Agency Submission, Payday, Vehicle Title, and Certain High-Cost Installment Loans (12 CFR Part 1041), https://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201711-3170-002.
[27] Scott Carrell and Johnathan Zinman, "In Harm's Way? Payday Loan Access and Military Personnel Performance," August 2008, https://www.dartmouth.edu/~jzinman/Papers/PayDay_AirForce_aug08.pdf
[28] CFPB Final Rule, p.1413
[29] CFPB Final Rule.
[30] Harris Interactive.
[31] Ronald J. Mann, "Assessing the Optimism of Payday Loan Borrowers," Columbia Law and Economics Working Paper No. 443, March 12, 2013, http://ssrn.com/abstract=2232954.
[32] John Campbell, Howell Jackson, Brigette Madrian and Peter Tufano, "Consumer Financial Protection," *Journal of Economic Perspectives*, American Economic Association, Vol. 25, No. 1 (Winter 2011), https://www.aeaweb.org/articles?id=10.1257/jep.25.1.91.
[33] Todd Zywicki, "Payday Lending, Bank Overdraft Protection, and Fair Competition at the CFPB," Review of Banking and Financial Law, 2013, http://www.bu.edu/rbfl/files/2014/03/RBFL-V.-33_1_Zywicki_Clarke.pdf

[34] Neil Bhutta, Paige Marta Skiba, and Jeremy Tobacman, "Payday Loan Choices and Consequences," Vanderbilt University Working Paper, 2012, http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2160947.
[35] Gregory Elliehausen and Edward C. Lawrence, "Payday Advance Credit in America: An Analysis of Customer Demand," Monograph #35, Credit Research Center, McDonough School of Business, Georgetown University, April 2001, http://www.cfsaa.com/Portals/0/analysis_customer_demand.pdf.
[36] Jennifer Priestley, "Payday Loan Rollovers and Consumer Welfare," Kennesaw State University, December 4, 2014, http://ssrn.com/abstract=2534628.
[37] Harris Interactive.
[38] Elliehausen, 2009 as cited by Robert Clarke and Todd Zywicki, *Payday Lending, Bank Overdraft Protection, and Fair Competition at the Consumer Financial Protection Bureau*, Review of Banking & Financial Law, 2013, Vol. 33, No. 1, p. 275.
[39] CFPB Final Rule.
[40] Edward Lawrence and Gregory Elliehausen, "A Comparative Analysis of Payday Loan Customers," Contemporary Economic Policy, 2008
[41] Lisa Servon, "What Good Are Payday Loans?" *New Yorker*, February 13, 2014, https://www.newyorker.com/business/currency/what-good-are-payday-loans.
[42] Financial Services Center of America, Comment of Payday Loan Rule, October 7, 2016, p.10, https://www.regulations.gov/contentStreamer?documentId=CFPB-2016-0025-186584&attachmentNumber=1&contentType=pdf.
[43] CFPB Final Rule.
[44] Miller.
[45] Ronald Mann, "Assessing the Optimism of Payday Loan Borrowers," *Supreme Court Economic Review*, Vol. 21 (2013), https://academiccommons.columbia.edu/catalog/ac:195485.
[46] Ronald Mann, "Trust Payday Loan Borrowers to Make Decisions for Themselves," *American Banker*, September 22, 2015, https://www.americanbanker.com/opinion/trust-payday-loan-borrowers-to-make-decisions-for-themselves.
[47] CFPB final rule, p. 1365.
[48] U.S. Small Business Administration, "Summary of SBREFA," accessed January 4, 2018, https://www.sba.gov/advocacy/summary-sbrefa.
[49] Check City Partnership, Comments on the Payday Loan Rule, September 26, 2016, p. 5, https://www.regulations.gov/contentStreamer?documentId=CFPB-2016-0025-143064&attachmentNumber=1&contentType=pdf.
[50] United States Senate, Committee on Small Business and Entrepreneurship, Letter from Sens. Marco Rubio, John Kennedy, and James Risch to Consumer Financial Protection Bureau Director Richard Cordray, June 30, 2017, https://www.regulations.gov/contentStreamer?documentId=CFPB-2016-0025-211929&attachmentNumber=1&contentType=pdf.
[51] Elliehausen 2009.
[52] Victor Stango, "Are Payday Lending Markets Competitive?" *Regulation*, Cato Institute, Fall 2012, p. 26, https://object.cato.org/sites/cato.org/files/serials/files/regulation/2012/11/v35n3-5.pdf.
[53] The CFPB has a poor record of protecting consumer data. For example, the Government Accountability Office criticized the Bureau for not implementing appropriate privacy controls to secure peoples personal data. Government Accountability Office, "Some Privacy and Security Procedures for Data Collections Should Continue Being Enhanced," GAO Highlights, Highlights of GAO-14-758, a report to congressional addressees, September 2014, http://www.gao.gov/assets/670/666001.pdf.
[54] Richard Hunt "Consumer bureau harms Americans when it picks the winners and losers," *The Hill,* November 3, 2017, http://thehill.com/opinion/finance/358591-consumer-bureau-harms-americans-when-it-picks-the-winners-and-losers.
[55] A series of enforcement actions by the Comptroller of the Currency in 2003 effectively prohibited banks from offering traditional payday loans through third party lenders. Office of the Comptroller of the Currency, "Payday Lending," https://occ.gov/topics/consumer-protection/payday-lending/index-payday-lending.html.
[56] Richard Hunt, "CFPB Pours Cold Water on Banks' Deposit Advance Hopes," *American Banker,* June 2 2016, https://www.americanbanker.com/opinion/cfpb-pours-cold-water-on-banks-deposit-advance-hopes.
[57] Rebecca Borné, Joshua Frank, Peter Smith, and Ellen Schloeme, "Big Bank Payday Loans," Center for Responsible Lending, July 2011, http://www.responsiblelending.org/payday-lending/research-analysis/big-bank-payday-loans.pdf.

[58] McLean.
[59] Stango.
[60] Financial Services Center of America, "Fact Sheet: Payday Advance Loans," June 2013, http://www.fisca.org/content/NavigationMenu/AboutFISCA/FiSCAFactSheet/Payday_Loans_2013.pdf.
[61] Adair Morse, "Payday Lenders: Heroes or Villains?" University of Chicago, 2007, http://www.fisca.org/Content/NavigationMenu/Resources/ForTheIndustry/IndustryResearch/heroes_or_villains.pdf.
[62] CFPB Final Rule.
[63] Miller.
[64] Elliehausen and Lawrence.
[65] Marc Anthony Fusaro, "Hidden Consumer Loans: An Analysis of Implicit Interest Rates on Bounced Checks," *Journal of Family and Economic Issues*, Vol. 29, No. 2 (2008), pp. 251-263, https://link.springer.com/article/10.1007%2Fs10834-008-9101-3.
[66] Melanie Scarborough, "Card interchange outpaces overdraft income," September 14, 2017, http://www.bankingexchange.com/news-feed/item/7042-card-interchange-outpaces-overdraft-income?Itemid=639#.WbvwOLG7EDQ.email.
[67] Investopedia, "The Durbin Amendment," accessed December 12, 2017, https://www.investopedia.com/terms/d/durbin-amendment.asp.
[68] Scarborough.
[69] Pew Charitable Trusts, "Payday Lending in America, Report 2: How Borrowers Choose and Repay Payday Loans," February 2013, http://www.pewtrusts.org/en/research-and-analysis/reports/2013/02/19/how-borrowers-choose-and-repay-payday-loans.
[70] Miller.
[71] CFPB Final Rule.
[72] Miller.
[73] Payday Loan Consumer Information, "Legal Status of Payday Loans by State," accessed December 12, 2017, http://www.paydayloaninfo.org/state-information.
[74] Donald Morgan and Michael Strain, "Payday Holiday: How Households Fare after Payday Credit Bans," Federal Reserve Bank of New York, November 2007, https://www.newyorkfed.org/research/staff_reports/sr309.html.
[75] Thomas W. Miller, Jr. and Onyumbe Enumbe Ben Lukongo, "Adverse Consequences of the Binding Constitutional Interest Rate Cap in the State of Arkansas," Working Paper, Mercatus Center, October 12, 2017, https://www.mercatus.org/publications/constitutional-interest-rate-cap-arkansas. While installment loans were exempted from the CFPB's Final Rule, the Mercatus study is instructive as to the impact of a federal rulemaking on small-dollar loans.
[76] Sudhir Venkatesh, "Off the Books: The Underground Economy of the Urban Poor," Harvard University Press, 2006.
[77] Todd Zywicki, "The Case against New Restrictions on Payday Lending," Mercatus Center, 2009 https://www.mercatus.org/system/files/WP0928_Payday-Lending.pdf.
[78] Mark H. Haller and John V. Alviti, "Loansharking in American Cities: Historical Analysis of a Marginal Enterprise," *American Journal of Legal History*, Vol. 21, No. 2 (April 1977), pp. 125-156, https://www.jstor.org/stable/845211?seq=1#page_scan_tab_contents (as cited by Zywicki 2009).
[79] Lydia Wheeler, "Florida reps urge CFPB to use their payday rules as model," *The Hill, April 30, 2015,* http://thehill.com/business-a-lobbying/240681-florida-reps-urge-cfpb-to-use-their-payday-rules-as-model.
[80] John Berlau, "H.R. 1909 Brings Competitive Regulation to Small Loan Market," Competitive Enterprise Institute Blog, September 13, 2011, https://cei.org/blog/hr-1909-brings-competitive-regulation-small-loan-market.