



January 11, 2018

Naomi Rao, Administrator
Office of Information and Regulatory Affairs
Office of Management and Budget
725 17th Street NW
Washington, D.C. 20503

RE: Bureau of Consumer Financial Protection Information Collection Request; Request for OMB Rejection of the Bureau's Submission for its Final "Payday Lending" Rule

Dear Ms. Rao:

The Competitive Enterprise Institute (CEI) hereby requests that OMB reject the information collection request currently pending before it for the Consumer Financial Protection Bureau's (CFPB) final "Payday Lending" Rule. The rule, formally titled the Payday, Vehicle Title, and Certain High-Cost Installment Loans Rule, was published on Nov. 17, 2017. 82 FR 54,472. The rule was accompanied by an information collection request (reference No. 201711-3170-002). Under 44 U.S.C. 3507(d)(4)(C) and 5 C.F.R. § 1320.11(h), the deadline for OMB action on that submission is January 16, 2018.

For the reasons set forth below, CEI submits that CFPB's information request is totally inadequate under the PRA's requirement that unreasonable burdens not be imposed on industry and consumers. Requiring more burdensome paperwork on small dollar loans than on a \$250,000 mortgage is excessive. Requiring loan providers to collect a consumer's housing expense, required payments under debt obligations (including outstanding loans), child support obligations, and alimony obligations, and all potential sources of income and then calculate from this and other information the ability to repay the loan turns loan providers into financial planners and goes well beyond what is necessary. Contrary to the PRA, CFPB has failed to properly assess these and numerous other burdens.

It is true that CFPB is an independent agency and that independent agencies "administered by two or more members of a commission, board, or similar body" can override the determination of the OMB under the PRA.¹ However, under the Dodd-Frank Act which created it, CFPB is a single-headed agency and therefore does not fall under this provision of the PRA.² Moreover, even under the PRA provision, OMB is still responsible for making a determination in the first instance regarding PRA compliance; it is CFPB which must affirmatively override that determination if it chooses to.³

¹ 44 U.S.C § 3507(f).

² 12 U.S.C. § 5491(a), (b).

³ Another provision in the Dodd Frank Act requires OMB to treat CFPB rules "on the same terms and conditions as apply to any rule or order prescribed or proposed by the Board of Governors of the Federal Reserve System." 44 U.S.C. § 3513(c). However, this does not mean that the CFPB and the Federal Reserve Board are to be treated the

Identity of the Requester: CEI is a nonprofit 501(c)(3) organization, founded in 1984, dedicated to opposing government economic overregulation. CEI has long been active in economic and financial regulatory issues, and is currently involved in a court challenge to the constitutionality of CFPB's structure. CEI staff have written extensively on the Payday Loan issue, and filed comments on the proposed rule. CEI, along with the 60 Plus Association and the State National Bank of Big Spring, Texas, are challenging the constitutionality of CFPB in *State National Bank of Big Spring v. Lew*.⁴ Our challenge is being held in abeyance pending the resolution of *PHH Corp. v. CFPB*.⁵ Some recent reports by CEI on the issue of the payday loan and CFPB include: *Ending Payday Lending Would Harm Consumers*,⁶ *How Dodd-Frank Harms Main Street*,⁷ and *The Case against the Consumer Financial Protection Bureau: Unconstitutionally Structured and Harmful to Consumers*.⁸

Most recently CEI filed comments on this very rule.⁹ In that comment, we explained why the rule was such a bad policy. In this request, we focus not on how bad the policy is, but on the extensive and unnecessary paperwork burdens imposed by this rule.

I. CFPB's Paperwork Reduction Act Analysis is Inadequate, Especially with Respect to its Examination of the New Evidence Submitted to It

Under the Paperwork Reduction Act of 1995 (PRA),¹⁰ federal agencies are generally required to seek approval from the OMB for information collection requirements prior to implementation. This involves approving that the agency has accurately assessed costs of each paperwork burden, balanced these costs and benefits, considered the need for and utility of each individual paperwork requirement, and minimized the collection burden of the information collection request. CFPB's rulemaking has failed to comply with these requirements.

same, only that the same "terms and conditions" apply. One of these conditions is that, as with other multi-member independent boards, at least two Fed Reserve board members are required to overrule OMB. The Board of Governors can usually satisfy this condition since it normally has seven members, but this is not always the case. For example, if the Board of Governors were to have six vacancies and only one member during some time period, it would be unable to overrule the OMB. Since CFPB has only one member (its director), it too cannot overrule OMB. And once again, under the PRA, it is OMB that must first make the determination.

⁴ *State National Bank of Big Spring, et al. v. Lew, et al.*, Case No. 12-1032 (D.D.C. held in abeyance pending outcome in *PHH Corp. v. CFPB* July 12, 2016).

⁵ *PHH Corp. v. CFPB*, Case No. 15-1177 (D.C. Cir. *en banc* oral argument May 24, 2017).

⁶ Hilary Miller, *Ending Payday Lending Would Harm Consumers*, Oct. 5, 2016, https://cei.org/sites/default/files/Hilary_Miller_-_Ending_Payday_Lending_Would_Harm_Consumers.pdf.

⁷ Iain Murray, *How Dodd-Frank Harms Main Street*, July 20, 2015, <http://www.cei.org/sites/default/files/Iain%20Murray%20-%20How%20Dodd%20Frank%20Harms%20Main%20Street.pdf>.

⁸ Iain Murray, *The Case against the Consumer Financial Protection Bureau: Unconstitutionally Structured and Harmful to Consumers*, September 2017, <https://cei.org/sites/default/files/Iain%20Murray%20-%20The%20Case%20against%20the%20Consumer%20Financial%20Protection%20Bureau.pdf>.

⁹ Ian Murray and John Berlau, *Comments of the Competitive Enterprise Institute*, Oct. 7, 2016, <https://www.regulations.gov/contentStreamer?documentId=CFPB-2016-0025-143356&attachmentNumber=1&contentType=pdf>.

¹⁰ 44 U.S.C. 3501.

A. The fact that CFPB's rule is based so heavily on paperwork makes a proper analysis of its paperwork burdens all the more important.

Every single provision of the short-term lending rule is structured around information collection requests subject to the PRA. The rule's central requirement is that lenders determine a borrower's ability to repay by demanding financial information from the borrower, reviewing and verifying the information, and then recording the result of various calculations. This involves purchasing new technology, consulting with credit reporting systems, consulting with vendors and lawyers, employing and training data and compliance specialists, and retaining data, amongst other requirements. Each of these requirements is its own paperwork burden.

According to the Bureau, the following aspects of the rule are information collection requirements under the PRA:

- development, implementation, and continued use of notices for covered short-term loans made under § 1041.6, upcoming payment notices (including unusual payment notices), and consumer rights notices;
- obtaining a consumer report from a registered information system;
- furnishing information about consumers' borrowing behavior to each registered information system;
- retrieval of borrowers' national consumer report information;
- collection of consumers' income and major financial obligations during the underwriting process;
- obtaining a new and specific authorization to withdraw payment from a borrower's deposit account after two consecutive failed payment transfer attempts;
- application to be a registered information system;
- biennial assessment of the information security programs for registered information systems;
- retention of loan agreement and documentation obtained when making a covered loan, and electronic records of origination calculations and determination, records for a consumer who qualifies for an exception to or overcomes a presumption of unaffordability, loan type and term, and payment history and loan performance.¹¹

B. CFPB did not adequately analyze the rule's paperwork burdens.

Given the vast amount of information collection requirements, it would be expected that the Bureau provided a focused, comprehensive justification and quantification of paperwork burdens. Indeed, in "Section IX Paperwork Reduction Act" analysis of the final rule, the Bureau recognized that it "received a fairly significant number of comments pertaining to the expected burden of the proposal, including burdens accounted for in the PRA. Some of those comments specifically noted the PRA, and argued that the proposed collections of information did not fill a legitimate regulatory purpose." Despite this, CFPB has failed to provide the required analysis under the PRA.

¹¹ CFPB, Payday, Vehicle Title, and Certain High-Cost Installment Loans final rule, Nov. 17, 2017, 82 FR 54871.

In the proposed rule, the Bureau provided a limited 3-page analysis of the paperwork burdens under the PRA, in which it failed to provide a justification for each paperwork burden.¹² However, the Bureau at least provided a supporting statement to the rule, breaking down the total cost and hours of the paperwork burden and describing the burden estimate methods.¹³ The final rule provided no such analysis.

In finalizing the rule, the Bureau has substantially changed the rule's calculated paperwork burdens lenders. For example, under the proposed rule the annual time burden in hours was estimated to be 6,629,201, while the Annual Cost Burden in dollars was estimated to be 129,825,941.¹⁴ The final rule saw this change drastically, raising the Annual Time Burden to 8,199,819 hours, while reducing the Annual Cost Burden fell to 100,844,367.¹⁵ At a minimum, such a change should have included its own separate, revised analysis to determine and explain the changes in the paperwork burden, as well as the justification for each burden. Instead, the Bureau reiterated its analysis under the proposed rule almost identically, without providing *any* supporting statement describing the burden or estimation methods. Under Section IX, the Bureau states that the explanation is included in Section V and VII, the section-by-section analysis and the Section 1022(b)(2) Analysis. Yet these sections are not coherent attempts to quantify and justify the change in the paperwork burden. They are related to responding to comments and the cost-benefit analysis required by the Dodd-Frank Act. The paperwork burden discussions that are included are on an ad-hoc basis, spread out over nearly 1,300 pages, and are predominately in response to public comments. Instead of a focused, comprehensive analysis, the Bureau's justification of its information collection requirements, as described in Section IX, is limited to the following cursory conclusion:

[T]he Bureau is confident that each of the collections of information is worth the burden and serves an important purpose. Specific to the verification of income and debt requirements, the Bureau believes that these requirements are not overly burdensome. In many cases, covered lenders already verify income. Verification of debt will be achievable through obtaining consumer reports, an approach that would not burden consumers, and is consistent with industry practices in most other credit markets. These requirements advance the stated goal of assessing ability to repay because they ensure that lenders verify essential variables for a reasonable ability-to-repay determination, and they combat significant risks associated with lenders' potential evasion of the rule.¹⁶

In finalizing the rule, the agency has made little attempt to accurately account for the changes in paperwork burden as required under the PRA. There has been no focused attempt to accurately assess costs, balance these costs and benefits, consider the need for and utility of each individual paperwork requirement, and minimize the collection burden in the final rule. As

¹² CFPB, Payday, Vehicle Title, and Certain High-Cost Installment Loans proposed rule, Jul 22, 2016, 82 FR 54871.

¹³ CFPB, Supporting Statement Part A, <https://www.regulations.gov/contentStreamer?documentId=CFPB-2016-0025-0002&contentType=pdf>.

¹⁴ Reporting, Recordkeeping, and Disclosure Requirements, new, https://www.reginfo.gov/public/do/PRAViewIC?ref_nbr=201606-3170-001&icID=221772.

¹⁵ Reporting, Recordkeeping, and Disclosure Requirements, modified, https://www.reginfo.gov/public/do/PRAViewIC?ref_nbr=201711-3170-002&icID=221772.

¹⁶ 82 FR 54871.

discussed below, the justifications provided by the Bureau in Section IX are directly refuted by numerous comments filed to the Bureau. Not only are the paperwork requirements excessively burdensome, but many are so complex that they are almost impossible to reasonably fulfill. Even worse, the Bureau's paperwork burden estimates are resoundingly inaccurate, and vastly understate the total burden to both lenders and consumers, as pointed out by numerous commenters. However, it is difficult to determine the extent to which the Bureau has underestimated such costs, because it does not provide a separate, comprehensive analysis of the paperwork burdens in the final rule. More importantly, there has been little attempt to engage with these detailed criticisms of its analysis of the proposed rule's costs. Instead, the Bureau often disregarded these concerns citing its authority without reasonable discussion. CFPB's attempt to comply with the PRA can only be described as wholly inadequate.

C. The inadequacy of CFPB's analysis is highlighted by the more detailed PRA analyses that it has provided in the past.

In past rulemakings, the Bureau has issued far more detailed PRA analyses. For example, the Qualified Mortgage Standards received analysis regarding the ability to repay, documentation and record retention requirements.¹⁷ This involved quantification and justification of the paperwork burdens in its own dedicated section in the final rule. The Prepaid Accounts rule involved the same kind of consideration.¹⁸ In finalizing the payday loan rule, the Bureau provided no such analysis, restricting its discussion to a single paragraph, quoted above.

II. The Bureau Imposes Unreasonable Burdens On Lenders and Consumers

Under the PRA, the Bureau is required to consider the need for and utility of each individual paperwork requirement and to minimize the collection burden of the information collection request. The vast requirements described above cannot reasonably be considered as fulfilling either condition. An annual paperwork burden of over 8,000,000 hours and 100,000,000 dollars (which is drastically underestimated) is a substantial and unreasonable burden on both lenders and consumers. These requirements are often taxing for consumers and prohibitively expensive for small dollar lenders.

A. The rule's underwriting requirements are far more substantial than those of larger credit instruments such as mortgages and credit cards

Numerous commenters pointed out that the Bureau's rule required significant collection of consumer's personal data in order to determine a customer's "ability to repay," and that the total constituted more than a much larger and more complex loan. Mark Asmus, the chief compliance officer at First Nebraska Bank, stated that: "These items aren't even required to make six-figure real estate mortgages, so why would they be necessary for a small dollar loan?"

¹⁷ CFPB, Ability-to-Repay and Qualified Mortgage Standards under Truth in Lending Act (Regulation Z) Final Rule, Jan 30, 2013, 78 FR 6407.

¹⁸ CFPB, Prepaid Accounts Under the Electronic Fund Transfer Act (Regulation E) and the Truth in Lending Act (Regulation Z), Dec 23, 2014, 82 FR 13782.

The paperwork necessary for a \$1,000 loan should not be more in depth than that required for a \$300,000 home loan; it must be in a reasonable proportion to the size of the request.”¹⁹

Furthermore, the Online Lenders Alliance noted that:

The Proposal’s [Ability to Repay] standard imposes more rigid underwriting standards and substantially higher costs than the ATR standards that apply to underwriting a \$2,500 credit card line, even though credit cards and small dollar loans are close substitutes for each other and share many similar attributes. The Proposal’s ATR standard is comparable to, and in some respects even more onerous than, the ATR requirements for underwriting a \$250,000 mortgage.²⁰

The Bureau also received tens of thousands of comments from customers concerned about the amount of information they would have to provide in order to qualify for a loan. One commenter stated that “I like that I don’t have to give a lot of personal information to get a payday loan currently. The CFPB’s new rule would change this process and create a lot more paperwork to fill out.”²¹ Such sentiment is echoed by thousands of other commenters and confirmed by much of the academic literature, which has found that one of the most common reasons customers cited for using payday loans was that it was an easy, convenient process with little paperwork.²²

As part of the information collection request, the final rule forces customers to provide extensive information about their financial history, income, employment, housing expenses, child care payments, debt obligations, and much more. It then requires lenders to collect and report this information to a credit reporting agency, make an ability to repay assessment, and then store this financial data. Such an extensive procedure is an unreasonable burden for a small-dollar loan, which typically amounts to \$300. In comments to the Bureau, the Financial Services Centers of America noted that these requirements “would essentially turn lenders into financial planners.”²³ Indeed, such paperwork burdens are prohibitively expensive, and will likely make small-dollar loans unprofitable for most lenders.

In promulgating the rule, CFPB has not attempted to minimize the collection burden of the information collection request. A \$300 loan should not require such extensive personal financial information that it is more burdensome than many forms of credit for much larger

¹⁹ Mark Asmus, First Nebraska Bank, October 7, 2016, p.2, <https://www.regulations.gov/contentStreamer?documentId=CFPB-2016-0025-147176&attachmentNumber=1&contentType=pdf>.

²⁰ Online Lenders Alliance, October 7, 2017, p.32, <https://www.regulations.gov/contentStreamer?documentId=CFPB-2016-0025-143973&attachmentNumber=1&contentType=pdf>.

²¹ Garcia Bailey, July 12, 2016, <https://www.regulations.gov/contentStreamer?documentId=CFPB-2016-0025-5838&attachmentNumber=1&contentType=pdf>.

²² Gregory Elliehausen, *An analysis of consumers’ use of payday loans*, George Washington University, January 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.

²³ Financial Services Center of America, October 7, 2016, p.10, <https://www.regulations.gov/contentStreamer?documentId=CFPB-2016-0025-186584&attachmentNumber=1&contentType=pdf>.

amounts. As discussed below,²⁴ the Bureau had many alternative options that would have significantly reduced the paperwork burden on both lenders and consumers, yet it failed to appropriately consider them.

B. The rule's excessively expensive underwriting requirements are so disproportionate that they should be rejected under the PRA.

CFPB admitted in the final rule that it had “received a significant number of comments from industry arguing that the underwriting requirements in the proposed rule would be too costly, take too much time to administer, be too restrictive and require too much document verification.”²⁵

One such example is from the Financial Services Center of America. FiSCA describes how the rule's underwriting requirements will drastically raise costs on lenders:

The Proposed Rule would require lenders to obtain at least two different forms of credit reports at the time of origination, as well as to furnish information about the loan product and loan performance to multiple credit reporting agencies. These requirements would exponentially increase cost to lenders. Lenders will have to implement the reporting requirements, which will require new policies and procedures, employee training, and likely new systems. Furthermore, requiring lenders to report information regarding every covered loan to all registered furnishers will create significant operational costs associated with compliance, as well as operational risks associated with data security and data integrity.²⁶

The Online Lenders Alliance provided evidence, in comments to the Bureau, that the average cost of underwriting a covered longer-term loan would increase by \$58.00 to \$88.30 per loan, representing an increase of \$30.30 or 52 percent per loan.²⁷ Another lender, Personal Finance Company, noted that its estimated costs will likely rise by 68 percent.²⁸

The cost of the loan origination and data furnishing system required by the Bureau will be very expensive to lenders. OLA again noted that “Developing such a substantial and comprehensive automated data furnishing system will be exceptionally costly. Small businesses without the required expertise will have to hire sophisticated vendors to develop such a system, which could cost up to \$300,000.”²⁹ Another lender, Check Into Cash, reiterated these concerns, stating that “In total, 19,090 hours of work are required to meet the Proposed Rule's demands on

²⁴ See Part II.D.

²⁵ CFPB final rule, 82 FR 54630.

²⁶ FiSCA, p.19, <https://www.regulations.gov/contentStreamer?documentId=CFPB-2016-0025-186584&attachmentNumber=1&contentType=pdf>.

²⁷ OLA, p. 13, <https://www.regulations.gov/contentStreamer?documentId=CFPB-2016-0025-143973&attachmentNumber=1&contentType=pdf>.

²⁸ Personal Finance Company, October 7, 2016, <https://www.regulations.gov/contentStreamer?documentId=CFPB-2016-0025-141771&attachmentNumber=1&contentType=pdf>.

²⁹ OLA, p. 75, <https://www.regulations.gov/contentStreamer?documentId=CFPB-2016-0025-143973&attachmentNumber=1&contentType=pdf>.

a lender's loan origination systems. Given a standard 40 hour work week, it would take a team of four (4) programmers over 26 months to complete these tasks alone."³⁰

The burdens associated with the information collection requirements of CFPB are enormous, and will likely put thousands of lenders out of business. According to OLA "Lenders will not be able to absorb those costs since profit margins in the industry are relatively low".³¹ Instead of recognizing how burdensome the procedural requirements are, CFPB largely ignored their impact on lenders. Instead, it claims the largest effects on lenders come from the limitations on rollovers. Yet lenders almost unanimously noted that the enormous paperwork burdens themselves would put them out of business. Underestimating the true costs of the paperwork burdens allows the Bureau to claim a much smaller impact on lenders than is the case.

C. Many of the rule's paperwork requirements are nearly impossible to fulfill.

In order to assess a customer's ability to repay, the Bureau imposed enormous paperwork burdens on both customers and lenders. Perhaps worst of all, many of these procedural requirements are incredibly hard to fulfill, such as having to determine that a customer will be financially stable for the next thirty days after taking out a small dollar loan. This includes forecasting a customer's major financial obligations and basic living expenses. The Bureau expansively defines basic living expenses as "expenditures... that a consumer makes for goods and services that are necessary to maintain the consumer's health, welfare, and ability to produce income, and the health and welfare of the members of the consumer's household who are financially dependent on the consumer," and major financial obligations as a "consumer's housing expense, required payments under debt obligations (including, without limitation, outstanding covered loans), child support obligations, and alimony obligations."³²

The Financial Services Centers of America discussed just how burdensome these requirements would be: "While the complexity of verifying housing and income alone is daunting, it pales in comparison to the requirements to project a consumer's ability to meet financial obligations for 30 days after the highest loan payment, and to show improvement in financial capacity before extending additional credit. These concepts are abstract and vague and would essentially turn lenders into financial planners."³³ FiSCA went on to note that "The verification requirements will significantly increase the time needed to underwrite a loan," making most loans unprofitable to make.

A storefront payday lender, Advance America, further noted the immense difficulty of predicting a consumer's average housing costs:

The Bureau's expense verification method is purely speculative and cannot serve a legitimate public interest, as there is no way to ensure the accuracy of, for example, the average housing expenses in the applicant's area. Wide variations of

³⁰ Check Into Cash, October 4, 2016, p. 49, <https://www.regulations.gov/contentStreamer?documentId=CFPB-2016-0025-187768&attachmentNumber=1&contentType=pdf>.

³¹ OLA, p. 13, <https://www.regulations.gov/contentStreamer?documentId=CFPB-2016-0025-143973&attachmentNumber=1&contentType=pdf>.

³² CFPB final rule, 82 FR 54874.

³³ FiSCA, p. 10, <https://www.regulations.gov/contentStreamer?documentId=CFPB-2016-0025-186584&attachmentNumber=1&contentType=pdf>.

home values and other expenses within a single area are common within urban areas. Where these variations exist, the higher expenses of individuals with higher incomes will inevitably be imputed to individuals with lower incomes who live nearby; thus, lower income, under-banked individuals, who are often minority protected class members, will be effectively barred from obtaining access to credit.³⁴

Many borrowers use small dollar loans specifically because their incomes are fluctuating and hard to predict. They themselves struggle to forecast their income accurately, as many work flexible hours or seasonal jobs. As a comment submitted on behalf of the Mercatus Center notes:

Many subprime borrowers, however, tend to be hourly workers who live paycheck to paycheck. Unlike prime borrowers, these subprime consumers are painfully familiar with income variability. Salaried employees get paid when they are sick and cannot come to work. Hourly employees do not get paid unless they work. Roofers do not work—and therefore do not get paid—when it rains. Restaurant servers do not get paid to take a child to the doctor. This income variability imperils consumers' credit and gives rise to the need for short-term loan products.³⁵

It also makes it extremely difficult to forecast their ability to repay.

CFPB is required under the PRA to assess the relative merits of each paperwork requirement and to minimize the costs of these requirements. Imposing procedures that are just about impossible for a lender to fulfill is a sure sign that the Bureau has not faithfully attempted to fulfill their requirements under the PRA. Indeed, accurately predicting a customer's living expenses, major financial obligations, and ability to repay while maintaining good financial health for the next 30 days is far beyond most credit issuers, let alone lenders making loans of \$300. Commenters proposed multiple alternative options for confirming that a customer has the ability to repay that would have been much less burdensome to make, such as written testimony from a consumer of their ability to repay, but CFPB refused to consider these proposals.

D. The bureau failed to minimize the paperwork burden by adequately considering alternatives.

The final rule issued by CFPB largely proceeds with many of the paperwork burdens in the proposed rule, despite numerous commenters suggesting alternatives to minimize such burdens.

As part of its rulemaking, CFPB is required to undertake the Small Business Regulatory Enforcement Act (SBREFA) process in order to, in part, identify alternative regulatory approaches that reduce the paperwork burden on smaller entities. Under the SBREFA process, lenders aired numerous concerns in regards to the paperwork burdens of the rule, proposing alternatives that would have minimized the costs while still addressing the concerns of the Bureau.

³⁴ Advance America, October 2, 2016, p. 26, <https://www.regulations.gov/contentStreamer?documentId=CFPB-2016-0025-142467&attachmentNumber=1&contentType=pdf>.

³⁵ Mercatus Center, October 7, 2016, p. 4, <https://www.mercatus.org/system/files/miller-payday-lending-pic-v1.pdf>.

The final report of Small Business Review Panel of small businesses selected by the CFPB concluded:

[T]he [Small Entity Representatives] stated that the proposals under consideration by the Bureau were unnecessary and onerous. Many of the SERs rejected the premises of the Bureau's rulemaking and argued that they would be unable to continue operating profitably once the Bureau's rule went into effect. The SERs stated that their goal, as lenders, was to engage in successful transactions. The SERs expressed the belief that the Bureau, in considering these proposals, seemed to assume that the lenders were being unfair or abusive rather than simply being businesses operating lawfully within their jurisdictions and serving the financial needs of their communities. Numerous SERs recommended that the Bureau forgo the ability-to-repay requirements entirely and either defer to existing state regulation or model federal regulation on the laws or regulations of certain states.³⁶

According to people involved in the SBREFA process like Paul Hoffer of Xpress Cash, CFPB entirely ignored the alternative approaches proposed by the SBREFA members.³⁷ One lender, Check City Partnership, involved in the process noted that "When reading CFPB's proposed rule it is patently clear to us that CFPB has ignored 100% of the concerns raised by the small business representatives at this hearing. It looks as if CFPB conducted the hearing only because it was forced to do so, with no intention of thoughtfully considering the comments raised in the hearing as it drafted the proposed rule."³⁸

In the words of the American Financial Services Association, some of the alternative proposals raised as part of the SBREFA process included:

1. Allowing lenders to consider a borrower's ability to repay using less prescriptive means. Returning customers that have borrowed and repaid loans in the past, for example, have already demonstrated their ability to repay several times over. Customers that need money for emergencies should also not be shut out from obtaining credit due to rigid underwriting requirements. The Bureau could adopt an alternative to the ability-to-repay requirements based, for example, on a payment-to-income standard.
2. Recognizing other consumer safeguards. State law, NACHA requirements, and trade association best practices have transformed loan underwriting for the better in recent years, without any need for a prescriptive ability-to-repay

³⁶ Final Report of the Small Business Review Panel on CFPBs' Rulemaking on Payday, Vehicle Title, and Similar Loans, June 25, 2015, p. 14-15, available at <https://www.acainternational.org/assets/payday-lending-rulemaking/part-1-cfpb-sbrefa.pdf>.

³⁷ Paul Hoffer, Xpress Cash Management LLC, Oct. 5, 2016, p.4 ("It now seems that they were just going through the motions during the SBREFA process and had very little intention of listening, let alone of trying to come up with a rule that would not so drastically kill the small businesses in the industry, not to mention the bigger businesses as well."), <https://www.regulations.gov/contentStreamer?documentId=CFPB-2016-0025-142156&attachmentNumber=1&contentType=pdf>.

³⁸ Check City Partnership, September 26, 2016, p. 5, <https://www.regulations.gov/contentStreamer?documentId=CFPB-2016-0025-143064&attachmentNumber=1&contentType=pdf>.

requirement. The Bureau must take these improvements into account when fashioning the final rule.

3. Streamlining the requirements for reporting the use of covered loans to consumer reporting agencies. Although Traditional Loan Product providers have relationships with credit-reporting bureaus, the Proposed Rule would take the unprecedented step of requiring lenders to integrate with all registered information systems. This mandate will necessitate significant expenditures of time and money by lenders without producing any apparent benefit, and will lead many lenders to exit the market for covered Traditional Loan Products entirely.³⁹

According to the Online Lenders Alliance and many others, CFPB failed to consider these approaches adequately:

In fact, despite clear and consistent feedback from [Small Entity Representatives] and the small business advocacy review panel, the CFPB changed very little about the outline in the Proposal. How could the CFPB be said to have considered the advice and recommendations of SERs if the Proposal is essentially the same as the outline it developed before meeting with SERs? We believe SBREFA requires more than a token acknowledgment of the concerns of small businesses.⁴⁰

Three Senators, Sen. Rubio (R-FL), Sen. Kennedy (R-LA), and Sen. Risch (R-ID), also filed comments to the Bureau requesting a delay in promulgating the rule. It was the belief of the Senators that CFPB has failed to appropriately address the concerns of the U.S. Small Business Administration, particularly in regards to paperwork burdens. The Senators wrote:

In August 2016, the Government Accountability Office (GAO) released a report on CFPB's use of SBREFA panels. GAO's findings showed bare minimal compliance with the letter of the law, and a disregard for congressional intent that agencies not railroad small businesses with unduly burdensome regulations...

It was our hope that the CFPB would improve its rulemaking efforts in response to GAO's performance audit. Instead, the Office of Advocacy at the Small Business Administration (SBA) found that CFPB grossly violated the [Regulatory Flexibility Analysis] in promulgating the Payday Lender Rule by:

- Underestimating the potential economic impact on small entities;
- Failing to perform a complete analysis of the costs of compliance;
- Failing to provide an adequate estimate of the aggregate impact of requirements on the revenue stream for financial services customers;

³⁹ The American Financial Services Association, October 6, 2016, p.53, <https://www.regulations.gov/contentStreamer?documentId=CFPB-2016-0025-142151&attachmentNumber=1&contentType=pdf>.

⁴⁰ OLA, p. 85, <https://www.regulations.gov/contentStreamer?documentId=CFPB-2016-0025-143973&attachmentNumber=1&contentType=pdf>.

- Proposing a rule that was materially different from the initial proposed rule;
- Adding unnecessary hurdles for regulated small entities;
- Failing to consider other less harmful methods of regulation;
- Neglecting a more than 70 percent decrease in revenue for regulated small entities;
- Failing to provide an exception for emergencies;
- Neglecting to recognize state regulations of these same entities;
- Failing to consider the effects on rural communities and tribes;
- Ignoring projections of harm for a large percentage of payday lenders and small businesses needing credit; and
- Neglecting the expertise of NCUA’s, Deloitte, SBREFA panelists, and the SBA Office of Advocacy.⁴¹

Instead of adopting reasonable measures to reduce the paperwork burden of the final rule, the Bureau failed to even consider alternative measures proposed by either commenters or lenders in the SBREFA process. It cannot be said that the Bureau has therefore sought to minimize the paperwork burden on lenders, as it is required to under the PRA.

III. The Bureau Has Not Accurately Accounted for the Paperwork Burden on Lenders

Consistently throughout the final rule, CFPB has failed to accurately assess the paperwork burdens on lenders and consumers. Numerous commenters suggest that the Bureau was so deficient that it appears that it neglected its responsibility to conduct the appropriate analysis altogether. Not only does this significantly underestimate the total paperwork burden hours and cost, but it enables the Bureau to claim that the costs of the procedural requirements may have a marginal impact on the small dollar loan market. Instead, it claims that “the larger effects will come from the limitations on lending,”⁴² that is, the limitations on rollovers. Yet lenders almost unanimously noted that the enormous paperwork burdens themselves would put them out of business. Underestimating the true costs of the paperwork burdens allows the Bureau to claim a much smaller impact on lenders than is the case.

A. The time needed to process ability-to-pay applications is much longer than estimated.

In the proposed rule, the Bureau estimated that an ability to pay determination would “take essentially no time for a fully automated electronic system” and between 15 and 20 minutes for a fully manual system. Many commenters’ noted that this estimate was far too low, with various commenters’ estimating that one to four hours is a more accurate account. The only concession the Bureau made was to increase the estimated manual processing time from 15-20

⁴¹ Sen. Rubio (R-FL), Sen. Kennedy (R-LA), and Sen. Risch (R-ID), June 30, 2017, <https://www.regulations.gov/contentStreamer?documentId=CFPB-2016-0025-211929&attachmentNumber=1&contentType=pdf>.

⁴² CFPB final rule, 82 FR 54834.

minutes to 15-45 minutes. Many commenters provided evidence of procedures that the Bureau has not accounted for in its calculation.

Gary Elkins, the founder of a small-dollar loan business, Personal Credit Corporation, found that this estimate was so greatly underestimated that it “leads a person to believe that the group of people who wrote the proposed rules are completely ignorant of what they have proposed or do not understand what they are proposing.”⁴³ He described the estimate that the manual processing would only take 15 - 20 minutes as “naive.”⁴⁴

The American Financial Services Association described the estimate as “unreasonable.”⁴⁵ Describing the steps to successfully underwrite an ability-to-repay loan by manual process, the association noted that “the employee must discuss what is required with the applicant, answer the applicant’s questions, assist the applicant in obtaining documentation from employers and others, compile the information, ensure the information is complete, and then review the completed information to determine ability to repay.”⁴⁶

For those businesses with an automated underwriting system, which the Bureau believed would take no time at all,⁴⁷ AFSA stated that the Bureau has not considered the fact that “employees would still be required to monitor the system and ensure that it is functioning appropriately. The Proposed Rule fails to consider these monitoring costs, as well as other costs necessary to create, maintain, and monitor a properly functioning ability-to-repay decision making system.”⁴⁸

Further, the American Association of Responsible Auto Lenders found that the Bureau’s estimate “completely misses the mark.”⁴⁹ AARAL claimed that “Many small lenders will not be able to afford to set up ‘fully automated systems’, and the idea that the layers of analysis required by the rule can be completed ‘in essentially no time’ is laughable even with such automation.”

An online and storefront lender, Check into Cash, provided evidence that manually processing applications in the U.K. takes one to four hours. The company described,

[A] similar manual process employed by a [Check-Into-Cash]-affiliated lender in the United Kingdom under the Financial Conduct Authority regulations similar to

⁴³ Gary Elkins, Personal Credit Corp, September 30, 2016, p.39, <https://www.regulations.gov/contentStreamer?documentId=CFPB-2016-0025-208314&attachmentNumber=1&contentType=pdf>.

⁴⁴ *Id.*

⁴⁵ Comment Submitted by Bill Himpler, AFSA, Oct. 6, 2016, p. 51, <https://www.regulations.gov/contentStreamer?documentId=CFPB-2016-0025-142151&attachmentNumber=1&contentType=pdf>.

⁴⁶ *Id.*

⁴⁷ CFPB final rule, 82 FR 54599.

⁴⁸ Comment Submitted by Bill Himpler, AFSA, Oct. 6, 2016, p. 51, <https://www.regulations.gov/contentStreamer?documentId=CFPB-2016-0025-142151&attachmentNumber=1&contentType=pdf>.

⁴⁹ The American Association of Responsible Auto Lenders, October 7, 2016, p. 31 <https://www.regulations.gov/contentStreamer?documentId=CFPB-2016-0025-142821&attachmentNumber=1&contentType=pdf>.

those proposed by the Bureau for small loans takes significantly longer. To process a customer application, scan and upload the required supporting documentation, review and grade the customer's declared income and expenditures against national averages for the same, analyze the customer's full credit report and bank account statements showing the customer's actual monthly expenses and outstanding debts, then answer any lingering questions regarding the application with the customer that need clarification and execute the loan agreement, requires one (1) to four (4) hours of employee time for each customer credit application.⁵⁰

This is substantially longer than the estimated provided by the Bureau. The Bureau also noted a community bank survey that stated that respondents anticipated three hours of processing time on average to complete ability-to-repay verification and determination.⁵¹

The Bureau's response to these commenters was incredibly limited. Despite receiving strong evidence, the Bureau disregarded these issues without further investigation, stating that the Bureau's analysis "seems to be based on the most applicable information... and thus informs the Bureau's estimates."⁵² However, as noted, multiple commenters objected to this, with at least two providing credible evidence of 3 hours and 1-4 hours. Given the large disparity in the documented manual processing times, the Bureau should have provided a more thorough consideration of these claims. It is likely, therefore, that the paperwork burden may be much more significant than the Bureau has claimed.

B. CFPB failed to adequately analyze the cost of utilizing a credit reporting system.

The direct cost of purchasing a credit report is more than twice what CFPB estimates. The CFPB estimates \$0.50 per consumer report, but the typical cost is substantially higher than this. The Online Lenders Alliance estimates twice the cost estimated by CFPB.⁵³ According to CFPB: "The comments were approximately evenly split as to whether the estimated costs were substantially too low, slightly too low, or approximately accurate."⁵⁴ And yet despite a third saying the estimated costs were "substantially too low" and a third saying they were "slightly too low" and none saying they were too high, CFPB didn't change its estimated costs at all, totally ignoring the comments.

In addition to these direct costs of pulling the report are the costs of integrating these credit reports into the decision making process. This requires programmers, training, and support personnel. None of these was estimated by CFPB in the burden imposed.

These costs will need to be paid even for people who don't actually end up borrowing anything. So the price increase passed on to each consumer who does purchase something will be

⁵⁰ Comment submitted by Check Into Cash, Oct. 4, 2016, p. 50, <https://www.regulations.gov/contentStreamer?documentId=CFPB-2016-0025-187768&attachmentNumber=1&contentType=pdf>.

⁵¹ CFPB final rule, 82 FR 54855.

⁵² 82 FR 54840.

⁵³ Comments by OLA, Oct. 7, 2016, p.76, <https://www.regulations.gov/contentStreamer?documentId=CFPB-2016-0025-143973&attachmentNumber=1&contentType=pdf>.

⁵⁴ 82 FR 54864

substantially larger. Exactly how much is unknown as it depends on how many consumers who do not qualify would apply.

In addition to the costs in money, there is the additional time it will take to run the credit report and evaluate it. According to CFPB it will cost nine minutes to manually pull the credit report. In addition to this cost, is the time to process and understand what that credit report means and figure out how that changes the loan terms. For loan decisions that were quick, they will no longer be due to CFPB's requirement to pull a credit report.

But even beyond the direct increase in costs of pulling a credit report, there is also the harm that pulling such a report does to the consumer's credit report. On average people lose 3-5 points per hard pull of their credit report. For some people, with very good credit reports and no recent hard pulls, as many as 30 points could be lost from a single hard pull of their credit report.

Each of these one-time losses is compounded by how many places they search for credit. Those with bad credit may need to go to many different places in search of someone who will extend them credit. Each time, a new credit report will be required to be pulled, further decreasing their credit score. There is the possibility that a kind of credit death spiral will occur in that the search for credit itself will prevent the person from being able to get credit.

C. CFPB severely understated employment and training costs, despite the evidence submitted to it.

Small-dollar lenders will need to hire and train new employees to comply with the vast and complex procedural changes imposed by the rule. Numerous commenters raised this issue, yet the Bureau's discussion of these concerns was limited to a two sentence statement: "Commenters also raised concerns that the Bureau's time estimates for initial and periodic ongoing training estimates were too low. The Bureau has reviewed its assessment, and the broader set of comments, and has concluded that the training estimates laid out were reasonable."⁵⁵ The Bureau claimed elsewhere that "the vast majority of the comments from more directly-related trade groups and lenders remained silent on these estimates."⁵⁶ As the comments directly below demonstrate, this is not the case.

CFPB estimates that employees will require only 4.5 hours of initial training and 2.5 hours of periodic ongoing training per year to comply with the ATR requirements. These training costs represent the total costs to comply with the rule, including training to conduct an underwriting assessment, pull a credit report, assess borrower history, and comply with disclosure requirements. According to the Online Lenders Alliance, this is incredibly inadequate. "The CFPB... underestimates the amount of staff training that would be required to ensure compliance with the rule. Employees will require much more training to understand and comply with the furnishing requirements of the Proposal. Small businesses will also need to hire additional employees to ensure compliance with the Proposal... This is not enough time and demonstrates that the CFPB does not appreciate the complexity of the Proposal."⁵⁷

⁵⁵ CFPB final rule, 82 FR 54856.

⁵⁶ 82 FR 54823.

⁵⁷ OLA, p. 75, <https://www.regulations.gov/contentStreamer?documentId=CFPB-2016-0025-143973&attachmentNumber=1&contentType=pdf>.

Further, a comment from the Florida Community Financial Services Association stated:

Providers must significantly expand their employee training manuals and related training courses, guidance and scripts to address the requirements of the Proposed Rule. This is a process that will require countless hours of labor and compliance, escalating costs beyond what may be sustainable for the operation of the business. There must also be an extensive and costly effort to “train the trainers” so that they may effectively educate both existing employees and new hires about the Proposed Rule.⁵⁸

At least one commenter, the Personal Finance Company specifically estimated the costs of training, stating that “A very rough initial estimate at this time is approximately \$15,000 per year in training costs.”⁵⁹ Meanwhile, PFC noted that one-time costs for training time and expense would be \$30,000.⁶⁰ Given that CFPB has failed to provide a comprehensive, dedicated assessment of the paperwork burden, it is difficult to determine exactly what the dollar costs of employee training are. However, a \$15,000 per year assessment is *much* larger than the cost of 2.5 hours of periodic ongoing training per employee per year to comply with the ATR requirements. CFPB has largely underestimated the true costs of the paperwork burden by failing to accurately assess the amount of time and money it will take to appropriately train staff.

D. CFPB understated the cost of utilizing technology for underwriting process.

In order to conduct an ATR assessment, lenders are required to develop compliant loan management systems. For many lenders, this will require establishing new systems or upgrading old ones. Just one example of the new burden imposed that will have to be absorbed by the lenders is CFPB’s estimate of a \$10,000 fee for upgrading their software to collect the new information and \$100 increase per user.⁶¹ One of the authors of the instant request to OMB is Devin Watkins, who was a senior software developer at Intel. According to Mr. Watkins, this vastly underestimates the costs required to upgrade and maintain such a significant increase in data collection and the complicated algorithms required to calculate the ability to pay. While we suspect the software costs are going to be much more significant, even these fees are an additional burden on an industry with razor thin margins as is.

This is established in many comments to the Bureau. Check-Into-Cash, a storefront and online lender, explained that “CIC is left to conclude that the Bureau conducted no real analysis of the software requirements necessary to meet the Proposed Rule’s requirements as our internal

⁵⁸ Florida Community Financial Services Association, September 30, 2016, p. 7, <https://www.regulations.gov/contentStreamer?documentId=CFPB-2016-0025-199452&attachmentNumber=1&contentType=pdf>.

⁵⁹ Personal Finance Company, p. 17, <https://www.regulations.gov/contentStreamer?documentId=CFPB-2016-0025-141771&attachmentNumber=1&contentType=pdf>.

⁶⁰ *Id.*

⁶¹ CFPB final rule, 82 FR 54821.

estimates are ten times (10x) longer than those presented by the Bureau.”⁶² Personal Finance Company also noted that initial costs of technology to be \$95,000.⁶³

Furthermore, the Online Lenders Alliance notes:

Developing such a substantial and comprehensive automated data furnishing system will be exceptionally costly. Small businesses without the required expertise will have to hire sophisticated vendors to develop such a system, which could cost up to \$300,000...The CFPB’s assumption that lenders can easily upgrade existing systems to incorporate the furnishing requirements is misguided. The complex reporting requirements will require extensive consultation and development of a separate system that might work with, but is not an enhancement of, an existing system. Even after an automated system is functioning, small businesses will have to invest in the system to maintain, test, and update it on a regular basis. The CFPB does not acknowledge any of these costs.⁶⁴

Despite such a wide differential, the Bureau entirely failed to address the costs appropriately. The final rule states:

Across a number of business processes, commenters raised concerns that the Bureau’s estimates for the one-time costs to update policies, systems, and materials were underestimated. Regarding the disclosure requirements of the proposed rule, commenters stated that the time and costs to develop and ensure disclosures are accurate was underestimated. Similarly, commenters also stated that the estimated one-time costs to update credit reporting systems were too low. Finally, commenters stated that the Bureau’s estimates of the costs to upgrade general computer systems... were underestimated. The Bureau appreciates these comments, but believes its estimates, and the cost framework used throughout the rule, are accurate.⁶⁵

Not only has the Bureau failed to accurately assess the costs of the information collection burdens that it is imposing, but it has neglected to review its proposal in light of commenters’ concerns. Worst of all, there is no way to determine whether its estimates, and the cost framework used throughout the rule are accurate because it does not provide a concise Paperwork Reduction Act analysis in the final rule, nor does it provide a supporting statement to the final rule’s information collection request. In short, the Bureau has not provided an adequate analysis of the paperwork burdens in the rule, and in the sparsely located places it has, it has largely underestimated such burdens.

⁶² Check Into Cash, p. 48, <https://www.regulations.gov/contentStreamer?documentId=CFPB-2016-0025-187768&attachmentNumber=1&contentType=pdf>.

⁶³ Personal Finance Company, p. 17, <https://www.regulations.gov/contentStreamer?documentId=CFPB-2016-0025-141771&attachmentNumber=1&contentType=pdf>.

⁶⁴ OLA, p. 75, <https://www.regulations.gov/contentStreamer?documentId=CFPB-2016-0025-143973&attachmentNumber=1&contentType=pdf>.

⁶⁵ CFPB final rule, 82 FR 54856.

E. CFPB failed to address the cost of lawyers and other vendors needed for compliance.

In acknowledging that making ability-to-repay determinations will be a challenge for small entities, CFPB stated that, “The Bureau expects that vendors, law firms, and trade associations are likely to offer both products and guidance to lenders” in order to successfully comply with the information collection requirements of the rule. Yet the Bureau never included a discussion and estimation of what these costs were to be. Failing to account for these burdens masks the total impact of the rule on lenders.

Furthermore, the Bureau even regarded the employment of these vendors and law firms as beneficial to lenders, lowering the costs of developing compliance procedures. The Online Lenders Alliance regarded this description of costs as “misplaced,” as “attorneys and vendors will cost small businesses money. It is unclear why CFPB refers to attorneys and vendors as cost-savers when they are additional costs that should be described in the [Initial Regulatory Flexibility Analysis].”⁶⁶ Further, OLA states that “Although the CFPB acknowledges that small businesses will have to develop procedures to comply with the Proposal, it does not ‘describe’ these procedures. The CFPB does not describe what small businesses must do to develop these procedures, including consulting with lawyers, vendors, and navigating through the complexity of the rule.”⁶⁷ Another commenter, Personal Finance Company, stated that “A very rough initial estimate at this time is... at least \$10,000 in legal, compliance, and audit costs [annually].”⁶⁸ Further, PFC believed that the onetime cost of legal services to review and analyze the rule, provide legal advice and draft documents to be \$80,000, and the onetime cost of legal and compliance staff time to create policies and procedures to be \$6,000.⁶⁹ In ignoring the costs of third parties that will be required to comply with the paperwork burdens of the rule, CFPB has not accurately accounted for the costs as required by the PRA.

The Bureau also received comments noting that lenders will have to incur additional costs associated with dispute resolution. One commenter specifically noted that consumers would dispute negative data contained on their reports which would require investigation along with company responses. The commenter cited a figure of \$50,000 per year to handle these disputes and other costs of furnishing.⁷⁰

The Bureau’s response to both of these concerns is inadequately and limited to the following discussion:

Litigation risks and the pricing of vendor or consulting services could also change in response to the rule. While the exact form of these indirect costs is uncertain and the Bureau does not have the data available to estimate them, small lenders may face a relatively higher burden than larger lenders, given their smaller scale

⁶⁶ OLA, p.77, <https://www.regulations.gov/contentStreamer?documentId=CFPB-2016-0025-143973&attachmentNumber=1&contentType=pdf>.

⁶⁷ *Id.* at 75.

⁶⁸ Personal Finance Company, p. 17, <https://www.regulations.gov/contentStreamer?documentId=CFPB-2016-0025-141771&attachmentNumber=1&contentType=pdf>.

⁶⁹ *Id.* at 16, 17.

⁷⁰ CFPB final rule, 82 FR 54821.

over which to spread fixed investments, and their potentially more limited access to financing options.⁷¹

The Bureau has failed to account for the costs associated with the imposed information collection requirements, such as hiring lawyers and employing vendors, for which commenters have specifically addressed in comments to the Bureau. In doing so, CFPB has further underestimated the total paperwork burden resulting from the final rule.

F. CFPB admitted that it could not assess the impact on online lenders.

Despite the Bureau's requirement to do so, to date, the Bureau has failed to accurately assess the costs of procedural requirements on online lenders. CFPB estimated the impact of the rule on storefront payday loans and vehicle title loans. For storefront payday loans, CFPB estimated that revenues would decrease between 60 and 81 percent and loan volume would decrease between 60 and 82 percent. However, CFPB has not provided any estimate of the impact of the rule on online lenders.

In the final rule, CFPB 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."⁷² 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. If the Bureau cannot reasonably estimate the impact that the rule will have on online lenders, then it cannot be said that they have attempted to accurately assess the costs of paperwork burdens on lenders.

G. The bureau underestimated the cost of recordkeeping requirements.

In the final rule, CFPB reported that it does "not believe that these new [recordkeeping] requirements would impose a meaningful new burden on lenders."⁷³ In particular, it believes the only cost to be a \$50 purchase of additional electronic storage.

According to The American Financial Services Association, this cost is largely underestimated:

Those [recordkeeping] costs are significant. Even if a lender maintains records electronically, it will incur substantial additional costs in developing a document retention policy, obtaining additional computer storage space to maintain the documents, programming the computer system to keep the documents for 36 months and then delete them, training employees to comply with the recordkeeping requirements, and monitoring the implementation of these new procedures. Despite these significant costs, the Bureau's initial regulatory

⁷¹ CFPB final rule, 82 FR 54856.

⁷² 82 FR 54833.

⁷³ 82 FR 54850.

flexibility analysis fails to account for the cost of the new recordkeeping requirements.⁷⁴

IV. Conclusion

CFPB payday rule imposes substantial and unnecessary paperwork burdens on millions of business and consumers. CFPB has failed to properly account for these burdens. When the paperwork burdens for small-dollar loans are greater than mortgages or large credit card lines of credit, the burden is far from reasonable.

The burdens from underwriting and determining the consumer's "ability to pay" are extensive, requiring inquiring into every aspect of the consumer's financial life. And yet these extensive burdens are required even for a \$50 loan. The disproportionateness of the burdens demonstrates that these paperwork requirements are unnecessarily burdensome.

CFPB has completely failed to adequately account for the burdens of requiring a credit report to be pulled on every loan, the secondary support personal that would be required to comply with this regulation, and even acknowledges that it doesn't know the extent of the burden imposed on online lenders.

For all these reason and others explained in detail above, CFPB has failed to satisfy their burden under the Paperwork Act, and so the OMB should deny their information collection request.

Sincerely,

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⁷⁴ AFSA, p. 50, <https://www.regulations.gov/contentStreamer?documentId=CFPB-2016-0025-142151&attachmentNumber=1&contentType=pdf>.