American Bankers Association
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The Honorable J. Michael Mulvaney
Acting Director
Bureau of Consumer Financial Protection
1700 G Street, NW
Washington, DC 20552

Re: Rulemaking Relating to Final Rule on "Payday, Vehicle Title, and Certain High-Cost Installment Loans"

Dear Acting Director Mulvaney:

The American Bankers Association[1] (ABA) welcomes the Bureau's recent announcement that it will initiate a rulemaking process to reconsider the Bureau's final rule on small dollar lending (the Rule). Like so many of the Bureau's regulatory policy initiatives, the Bureau's effort to regulate payday lending resulted in a Rule that is broad in scope, complicated in detail, aggressive in its objectives, and likely to reduce the supply of financial services available to consumers.

We agree with the recognition in the Rule that the banking industry can and should be a major participant in the market for small dollar credit. While the Rule contains important elements to facilitate that role, some unnecessary contrary obstacles remain. We look forward to providing comments during the rulemaking process as to how the Rule can be improved by addressing provisions that may limit the ability of banks to meet their customers' small dollar credit needs.

As we do so, we will seek to build upon positive elements that are in the Rule. In particular, we wish to underscore the importance of preserving the Rule's exemption for depository institutions that made 2,500 or fewer small dollar loans in each of the current and preceding calendar years if the institution derives no more than 10% of its receipts from those loans.[2] ABA led industry efforts to request this exemption in order to preserve the small dollar "accommodation lending" that half or more of our members have been offering to meet the small dollar credit needs of their customers.[3]

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[1] The American Bankers Association is the voice of the nation's $17 trillion banking industry, which is composed of small, regional, and large banks that together employ more than 2 million people, safeguard $13 trillion in deposits, and extend more than $9 trillion in loans.
[2] Final Rule, Payday, Vehicle Title, and Certain High-Cost Installment Loans, 82 Fed. Reg. 54,472, 54,874 (Nov. 17, 2017) (codified at 12 C.F.R. § 1041.3(f)), *available at* https://www.gpo.gov/fdsys/pkg/FR-2017-11-17/pdf/2017-21808.pdf.
[3] Of the sample of 93 banks that responded to a 2015 ABA survey, overall 73% of responding banks made small dollar loans either as an accommodation to serve a customer or as part of an established lending program of the bank. The responding banks are located in 41 states and represent asset sizes that range between $37 million and $48.6 billion, with a heavy concentration among community banks. For the full survey results, visit https://www.regulations.gov/document?D=CFPB-2016-0025-0032.

During the rulemaking process, our members, including a number of community banks, met with Bureau staff to explain that bank customers rely on these loans for a variety of reasons, such as to pay emergency expenses or to manage differences in the timing of their expenses with the timing of income. They explained that the proposed rule's prescriptive underwriting requirements, as well as cumulative impact of the other requirements, would curtail customer access to the variety of small dollar loans offered by depository institutions, despite the lack of evidence that these loans pose risks to customers. In sum, the proposed rule would have imposed uniform underwriting and significant ancillary requirements for small dollar lending, preventing each institution from designing and customizing loan products that accommodate the variety of needs of customers in the small dollar credit market.

ABA was pleased that the Bureau provided an exemption from the Rule for depository institutions that make accommodation loans. The exemption reflects the Bureau's recognition that banks and other depository institutions are able to make these loans in a safe and responsible manner. It also demonstrates how the Bureau can effectively tailor regulations to avoid imposing unnecessary regulatory requirements when consumer harm is absent. Critically, the Bureau *completely* exempted accommodation lending from the Rule. If the Bureau had exempted accommodation loans made by these institutions from only the Rule's underwriting requirements, a bank would still have had to review, understand, and comply with the Rule's other extensive requirements—which spanned more than 1600 pages. The costs and compliance risks associated with these requirements would have caused many banks to exit the market, depriving many consumers (particularly those in small or rural communities) of access to safe small dollar loans. ABA urges the Bureau to preserve the accommodation loan exemption.

While accommodation lending serves an important segment of the market, it cannot meet the full demand for small dollar credit. Therefore, we support the Bureau's review of other parts of the Rule to determine whether it leaves room for institutions to assess their market and design sustainable small dollar loan products that meet the needs of existing and potential customers.

The decision to exclude installment loans of more than 45 days from the Rule's underwriting requirements suggests an interest in encouraging greater bank participation in small dollar lending. We are hopeful that banks will be able to innovate to meet customers' short-term credit needs through the creation of longer-term installment loan products, but there are elements of the regulatory framework that warrant further analysis. For example, the credit risk associated with a longer-term installment loan differs from that of a short-term, single-payment loan, and elevated credit risk will need to be reflected in the price of the loan product. This pricing in a fair but sustainable manner can be frustrated by a regulatory approach that evaluates short-term small dollar credit by applying an *annual* interest measure to credits with terms of a few weeks or a couple of months. Moreover, institutions will need to design efficient, predictive underwriting appropriate for an installment loan product that allows the institution to offer fast and convenient access to small dollar credit while minimizing underwriting costs.

We appreciate the Bureau’s interest in reconsidering the Rule and look forward to working closely with the Bureau to design a regulatory framework that encourages the supply and access to small dollar credit by minimizing regulatory burdens and promoting efficiency.

Sincerely,

Virginia O'Neill

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