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March 18, 2019

The Honorable Kathy Kraninger
Director
Consumer Financial Protection Bureau
1700 G Street, NW
Washington, DC 20552

RE: Rule Docket Number: CFPB-2019-0007 - Payday, Vehicle Title, and Certain High-Cost Installment Loans; Delay of Compliance Date; RIN 3170-AA95

Dear Director Kraninger:

The Independent Community Bankers of America (“ICBA”)¹ welcomes the opportunity to respond to the Consumer Financial Protection Bureau’s (“CFPB” or the “Bureau”) proposal to delay the compliance date for the mandatory underwriting provisions of the November 2017 Payday, Vehicle Title, and Certain High-Cost Installment Loans Final Rule (“2017 Final Rule” or “Final Rule”).

Background

The CFPB issued this proposal to delay the compliance date of the mandatory underwriting provisions of the 2017 Final Rule, by 15 months, from August 19, 2019 to November 19, 2020, in conjunction with the Bureau’s proposal to rescind the mandatory underwriting provisions contained in the Final Rule. ² The 2017 Final Rule: (1) considers it an unfair and abusive practice for a lender to make certain long- and short-term loans without assessing a consumer’s ability to repay; (2) establishes a “full payment test” and alternative “principal-payoff option;” (3)

¹ The Independent Community Bankers of America® creates and promotes an environment where community banks flourish. With more than 52,000 locations nationwide, community banks constitute 99 percent of all banks, employ more than 760,000 Americans and are the only physical banking presence in one in five U.S. counties. Holding more than \$4.9 trillion in assets, \$3.9 trillion in deposits, and \$3.4 trillion in loans to consumers, small businesses and the agricultural community, community banks channel local deposits into the Main Streets and neighborhoods they serve, spurring job creation, fostering innovation and fueling their customers’ dreams in communities throughout America. For more information, visit ICBA’s website at www.icba.org.

² 12 C.F.R. Part 1041

requires lenders to obtain and consider a consumer report and submit certain information to registered information systems created by the CFPB; and (4) requires related recordkeeping requirements.

The Bureau's rationale for proposing to delay the compliance date associated with the Final Rule includes: concern about the resources industry participants will expend on implementing a rule that may be void; new awareness of potential compliance obstacles; and, the unavailability of technology to meet the tenants of the Final Rule by the existing compliance date.

The Final Rule requires lenders to furnish to provisionally registered and registered information systems registered with the Bureau certain information concerning most covered loans. The Final Rule also requires lenders making certain covered loans to obtain consumer reports from registered information systems. The rule imposes processes for the registration of information systems and establishes eligibility criteria that entities must meet in order to become provisionally registered or registered information systems with the Bureau. As of January 19, 2019, there were no information systems registered with the CFPB.

ICBA Comments

ICBA applauds the Bureau for its thoughtful assessment and approach to ensuring a seamless implementation process that allows affected entities to comply. For the reasons provided by the CFPB, ICBA agrees that the compliance date for the underwriting provisions should be delayed.

In our comment letter responding to the 2017 Proposal, ICBA advocated for a 24-month effective date after publication of the Final Rule.³ We noted that the final rule would substantially change the small-dollar loan market and represent a sea change in the way lenders originate and service these loans. While ICBA made clear that many community banks would cease offering covered loan products if the rule was finalized, our letter also acknowledged that those that remained in the market would be saddled by changes in originating, tracking, processing, and collecting on small-dollar loan products given the burdensome implementation process required for community bank compliance.

Additionally, ICBA strongly urges the Bureau to delay the compliance date for the entire Final Rule until December 31, 2021. The current delay proposal does not consider the Final Rule's troublesome provisions governing payments. First, the Final Rule requires a lender to provide written notice before the first attempt to withdraw a payment, and before subsequent attempts that deviate from the scheduled amounts, dates, or involve a different payment method.

³ ICBA's Comment Letter on the Payday, Vehicle Title, and Certain High-Cost Installment Loans, October 7, 2016.

Second, when two consecutive withdrawal attempts fail, the lender must send a consumer rights notice no later than three business days after it receives information that the second consecutive attempt failed.

ICBA's 2016 comment letter highlighted that community banks are disproportionately impacted by regulatory burden because they do not have the advantage of economies of scale over which to spread regulatory costs. Most community banks do not have dedicated legal and compliance departments, and as such must divert staff from other duties, including serving customers, to implement new rules and other changes. The Final Rule's mandatory payment provisions present an implementation burden that would be even greater as it would require community banks to establish new and unique processes for these loans.

Fortunately, the Bureau "intends to examine these issues and if the Bureau determines that further action is warranted, the Bureau will commence a separate rulemaking initiative."⁴ As such, ICBA strongly urges the Bureau to not only delay the compliance date for mandatory underwriting provisions, but for the entire Final Rule to December 31, 2021.

Conclusion

In conclusion, ICBA appreciates this opportunity to comment on the Bureau's proposal to delay the compliance date for the mandatory underwriting provisions of the 2017 Final Rule. Should you have any questions or would like to discuss anything further, please do not hesitate to contact me at Rhonda.Thomas-Whitley@icba.org or at 202-659-8111.

Sincerely,

/s/

Rhonda Thomas Whitley
Vice President and Regulatory Counsel

⁴ https://files.consumerfinance.gov/f/documents/cfpb_payday_nprm-2019-reconsideration.pdf p.6