Financial Health Network Statement on the CFPB’s Rescission of 2017 Payday Rule

The Financial Health Network is disappointed in the Consumer Financial Protection Bureau’s (CFPB’s) recent decision to rescind the mandatory underwriting provision of the 2017 Payday, Vehicle Title, and Certain High-Cost Installment Loan Rule (Payday Rule). As the nation’s leading authority on financial health, we strongly believe that lenders should be required to engage in underwriting to ensure their customers can successfully repay the loan while still being able to cover their daily living expenses. By rescinding the underwriting provision of the Payday Rule, we believe the CFPB has missed an opportunity to incentivize market actors to promote consumer financial health, undermining recent interagency guidance on responsible small dollar credit and putting borrowers at greater risk of financial ruin in the midst of the economic downturn brought about by Covid-19.

In our recent Comment Letter to the CFPB’s Taskforce on Consumer Financial Law, we suggested that the Bureau should pay close attention to consumers’ financial health outcomes as it seeks to determine the efficacy of consumer protection. By reopening the door for payday loan products that have been shown to be detrimental to many borrowers, the CFPB has passed up an important opportunity to incentivize lenders to offer products that are more likely to lead to positive financial health outcomes.

The Financial Health Network recently released a detailed Policy Perspective on small-dollar credit. While we believe that the demand for small-dollar credit is itself a symptom of financial health challenges, some consumers may benefit from well-designed small-dollar credit products to help manage misaligned cash flow or an unexpected expense. However, not all of those who turn to small-dollar credit can benefit from it, and policymakers have a critical role to play to ensure these products do not undermine the financial health of vulnerable consumers. We believe that small-dollar credit must be affordable, that lenders should be required to engage in underwriting, and that policymakers should allow financial institutions to experiment along the cost & availability spectrum to provide small-dollar credit that builds financial health.

Federal banking regulators have recently issued a set of Interagency Lending Principles for Offering Responsible Small-Dollar Loans. Those principles are, in the main, consistent with the Financial Health Network’s policy perspective, and they recognize that responsible lending is characterized by a “high percentage of consumers successfully repaying their small dollar loans in accordance with original loan terms” -- thereby “minimiz[ing] adverse consumer outcomes, including cycles of debt due to rollovers or reborrowing”. To achieve those ends, the principles explicitly name “loan underwriting” as being necessary for responsible small-dollar lending. The CFPB’s decision to abandon the Payday Rule’s underwriting provision is at odds with the Interagency Principles, which we believe are a step in the right direction.
This decision also comes at a time when consumers are at their most vulnerable due to the Covid-19 Crisis. According to the US Census Household Pulse Survey, 49.1% of households had someone who lost employment income between March 13 and late June. In such an economic climate, there may very well be a need for well-structured small-dollar credit products designed to promote successful repayment under manageable terms. However, both our research and the Bureau’s own research shows that consumers who take out a payday loan often end up in debt on that loan for a considerable part of the year as unaffordable loan payments result in high levels of repeat borrowing. It is also worth noting that our research on small-dollar credit consumers finds that “underwriting based on the ability to repay and understanding of consumer need will be critical to preventing repeat usage.” In short, there is an abundance of evidence that without underwriting, many borrowers will fall victim to repeat usage and persistent indebtedness while others will end up defaulting on the debt and risk being subject to collection lawsuits and wage garnishment.

While navigating financially uncertain times, it is especially important for lenders to offer credit on terms that comport with consumers’ ability to repay so as to avoid creating prolonged cycles of indebtedness. We will continue to encourage lenders to offer credit on such terms, and call on financial institutions to take it upon themselves to put consumers’ financial health first, even when policymakers do not.