



December 14, 2020

Submitted via Federal E-rulemaking Portal (www.regulations.gov)

Bureau of Consumer Financial Protection - Comment Intake
Attention: PRA Office, Suzan Muslu, Data Governance Program Manager
1700 G Street NW
Washington, DC 20552

Re: Payday Loan Disclosure Testing, Docket No. CFPB-2020-0035, OMB Control Number: 3170-0022

Dear Ms. Muslu:

On Thursday, November 12, 2020, the Bureau of Consumer Financial Protection (“Bureau”) published a notice seeking comment on Payday Loan Disclosure Testing. We appreciate the opportunity to review the materials published by the Bureau and to provide comments. We are pleased to introduce INFiN and respond to the Bureau’s request for comments.

INFiN, A Financial Services Alliance

INFiN, a Financial Services Alliance, is the leading national trade association representing the diverse and innovative consumer financial services industry. Formerly the Financial Service Centers of America (“FiSCA”) and comprising members of FiSCA and the Community Financial Services Association of America (“CFSA”), INFiN includes more than 350 companies, operating approximately 8,000 locations throughout the United States and online. Headquartered in Washington, DC, INFiN serves as the voice of the vital and rapidly evolving consumer financial services industry to advocate on behalf of its customers.

INFiN members offer critical access to financial services to millions of Americans, particularly middle-income working families, who are often underserved by banks and credit unions and value the wide range of services provided by community-based financial service providers. Consumers choose these providers because they are affordable, offer integrated services through multiple convenient channels, and deliver services in a transparent and regulated environment.

Those consumer financial services include check cashing, pre-paid cards, money transfers, electronic bill payments, and small-dollar loans, among others. These simple, popular financial solutions play an integral role in the financial lives of millions of American households, helping them to manage their financial obligations and challenges and providing essential financial inclusion and stability. Consumer financial services are available across a range of platforms and channels – from community-based storefronts to online tools powered by the latest technology.

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Consumer financial services often fill a niche in the marketplace that other financial institutions, such as banks and credit unions, have chosen not to fill. They are valued by customers, providing critical access to essential, regulated financial services designed to help them attain greater financial experience, security, and upward mobility.

Millions of hardworking consumers, particularly middle-class families, choose to use consumer financial services – such as check cashing, pre-paid cards, money transfers, electronic bill payments, and small-dollar loans – because these products and services match their needs, and they are highly satisfied with the way in which their transactions are conducted.

INFiN Supports the Bureau’s Payday Loan Disclosure Testing

As outlined in detail below, we appreciate and support the Bureau’s efforts at testing consumer disclosures for payday loans. We believe that disclosures aid in our industry’s longstanding efforts and aid in the Bureau’s mission to ensure that consumers receive timely and understandable information so they can make responsible decisions about financial transactions. Below, we urge the Bureau to expand its review of available academic research regarding the benefits of disclosures. We also suggest ways the Bureau can enhance the information that will be collected. Finally, we offer our assistance in the Bureau’s efforts to minimize the burden of collection of information on respondents.

A. Whether the collection of information is necessary for the proper performance of the functions of the Bureau, including whether the information will have practical utility.

Yes, collecting information about disclosures is necessary and does have practical utility.

INFiN supports the use of clear consumer disclosures to help consumers understand their financial services transactions. Clear consumer disclosures are a critical component of the Dodd Frank Act and of our industry.¹ Based on the industry’s collective experience with consumers, small-dollar loan transactions are basic, straightforward, financial services easily understood by consumers even in the absence of enhanced disclosures.

The Dodd-Frank Act provides that one of the Bureau’s mandated purposes is to ensure that “consumers have access to markets for consumer financial products and services and that

¹See for example, CFSA (Shaul) October 6, 2016 Letter to the Bureau, https://downloads.regulations.gov/CFPB-2016-0025-143347/attachment_2.pdf, pp 79-81.

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markets for [these] products and services are fair, transparent, and competitive."² The Dodd-Frank Act also notes that one of the Bureau's objectives is to ensure that "consumers are provided with timely and understandable information to make responsible decisions about financial transactions" for themselves.³ The Dodd-Frank Act further indicates that the Bureau's rules should "ensure that the features of any consumer financial product or service, both initially and over the term of the product or service, are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with that product or service, in light of the facts and circumstances."⁴

Our industry trade associations have consistently mandated disclosure requirements as a core tenant of membership,⁵ and as outlined below, have urged the Bureau to focus on these Congressional mandates. As a result, we appreciate this opportunity to have the Bureau test the benefits of consumer disclosures.

Our industry has urged the Bureau to consider promulgating sample disclosures, rather than overly prescriptive rulemaking, since the Bureau's first field hearing related to our services. On January 19, 2012, the Bureau initially held a field hearing in Birmingham, Alabama. In response, our industry leaders submitted comments to the Bureau supporting the Bureau's

² Dodd-Frank Act § 1021(a).

³ Dodd-Frank Act § 1021(b).

⁴ Dodd-Frank Act § 1022(a).

⁵ Best practices mandated by INFiN provide for "Full and transparent disclosure of all terms and fees." FiSCA Best Practices provide: #8 "A Member will disclose its fees in compliance with state and federal laws and regulations and make available to every customer a printed receipt showing the transaction details." #11.a. "A Member will comply with the disclosure requirements of each state in which the Member is doing business, and with federal disclosure requirements including the Federal Truth in Lending Act. A contract between a Member and the customer must fully outline the terms of the transaction. Members agree to disclose the cost of the service both as a dollar amount and as an annual percentage rate ("APR")." 11.f. "A Member will provide customers notice of their option to rescind a payday loan and to an extended payment plan in a reasonable manner, including in a written disclosure as permitted or required by law." CFSA Best Practices provide: #3 "A member will comply with the disclosure requirements of the state in which the loan is made and with federal disclosure requirements, including the Federal Truth in Lending Act and the Electronic Fund Transfer Act (Regulation E). A contract between a member and the customer must fully and completely outline the terms of the loan transaction. Members agree to disclose the cost of the service fee both as a dollar amount and as an annual percentage rate ("APR"). A member, in compliance with CFSA guidelines where they do not conflict with applicable federal, state or local requirements, will further ensure full disclosure by making rates clearly visible to customers before they enter into the transaction process." Best practices mandated by the Online Lenders Alliance provide: "Ensure consumers are making educated financial decisions by fully disclosing all loan terms in a transparent and easy to understand way."

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goal of obtaining information about our industry and committing to our longstanding efforts at delivering clear and transparent disclosures.⁶ We have not wavered in such commitment.

Beginning on March 26, 2015, the CFPB announced an outline of a proposal for rulemaking regarding payday, vehicle title, and certain installment loans as part of its Small Business Advisory Review Panel process, ultimately issuing a final report on June 25, 2015.⁷ As part of that SBREFA process, 22 non-depository lenders provided feedback to the Bureau regarding its proposal, emphasizing the importance of disclosures. Comments regularly suggested testing disclosures like those used in Texas, rather than imposing overly prescriptive rulemaking. Those comments included, for example:

- The “Bureau should consider proposals which require disclosures that clearly inform and educate consumers about covered loans and the options available to them, not proposals that will take these options away from them.”⁸
- [S]tudies show that simple disclosures can reduce the frequency of successive loans. If successive loans are a problem, then disclosures would provide a less burdensome alternative. A set of disclosure requirements should be a first step in rulemaking to see if such less burdensome alternative accomplishes regulatory objectives.⁹
- Provide a model disclosure clearly disclosing the costs imposed on a given transaction and sequence of transactions, similar to the following disclosures mandated in the transaction in the State of Texas.¹⁰
- [T]he CFPB could resolve the purported unfair and abusive elements by simply requiring clear oral and written disclosures so that consumers can better decide whether to proceed with our services.¹¹
- Before imposing punitive regulations like blanket underwriting standards and cooling off periods, the CFPB should assess whether disclosure requirements would solve the problems the CFPB perceives in the market. We believe that reasonable, less costly regulations might include requiring lenders to have consumers sign a

⁶ See for example, April 23, 2012 CFSA (D. Lynn DeVault) Letter to the Bureau, <https://beta.regulations.gov/comment/CFPB-2012-0009-0608>.

⁷ Prepared Remarks of CFPB Director Richard Cordray at the Field Hearing on Payday Lending, March 26, 2015; Small Business Advisory Review Panel for Potential Rulemakings for Payday, Vehicle Title, and Similar Loans Outline of Proposals Under Consideration and Alternatives Considered, March 26, 2015. Final Report: Small Business Advisory Review Panel for Potential Rulemakings for Payday, Vehicle Title, and Similar Loans, April 27, 2015.

⁸ Cash Time (Allen) Small Entity Representative Written Comments, May 13, 2015.

⁹ Loansmart (Evensen) Small Entity Representative Written Comments, May 13, 2015, citing *The Consumer and Social Welfare Benefits and Costs of Payday Loans: A Review of the Evidence*, pg. 8, Robert Shapiro, (March 2011).

¹⁰ Loansmart (Evensen) Small Entity Representative Written Comments, May 13, 2015.

¹¹ Loansmart (Evensen) Small Entity Representative Written Comments, May 13, 2015.

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"Know Before You Owe" disclosure, similar to those developed by the Bureau for mortgages, student loans and credit cards and by some states, like Texas, for small dollar loans.¹²

Thus, from the beginning of the rulemaking process, the industry has urged the Bureau to consider model disclosures regarding costs, to ameliorate perceived harms.

Our industry continued its efforts to request that the Bureau review the benefits of its longstanding disclosures and to study the benefits of enhanced disclosures, rather than engaged in overly prescriptive rulemaking. Specifically, on June 2, 2016, the Bureau issued a proposed rule regarding payday, vehicle title, and certain installment loans and invited public comment on its proposal.¹³ In receiving an unprecedented number of comments to the proposal, mostly from consumers concerned about a possible loss of access to credit, members of our industry again urged the Bureau to first review current disclosures and to consider implementing new disclosure requirements, rather than the overly prescriptive rulemaking issued. Those comments included, for example:

- To the extent the Bureau believes that consumers do not adequately understand the financial risks of payday loans—a belief that underlies both the unfairness and abusiveness determinations of the ability-to-repay provisions... it should address that problem by requiring heightened disclosures at the time of the loans. Disclosure is the backbone of federal consumer credit law.¹⁴
- Given that disclosures used instead of this extensive Proposed Rule would significantly reduce the regulatory burdens on small businesses, the CFPB should conduct studies on how to draft effective disclosures to achieve its objectives, rather than dismiss the impact of disclosures entirely.¹⁵
- In any case, a lack of understanding would not support a sweeping underwriting rule based on abusiveness. A lack of understanding would, in the first instance, compel the CFPB to explore enhanced disclosures as a remedy, something the CFPB has not done in its Proposal. Interestingly, the CFPB's own research appears to indicate that disclosures work. In its "Supplemental Findings" research, the CFPB found that those borrowers who are more likely to be indebted are also more responsive to disclosures and informational remedies.¹⁶
- If the CFPB is concerned about borrowers' understanding of the all-in costs of a loan or the remedies available to a lender, the solution is more and better disclosures, not

¹² SunUp Financial, LLC (Hutton) Small Entity Representative Written Comments, May 13, 2015.

¹³ Proposed Rule: Payday, Vehicle Title, and Certain High-Cost Installment Loans, June 2, 2016.

¹⁴ CFSA (Shaul) Comment Letter, October 18, 2016.

¹⁵ FiSCA (D'Alessio) Comment Letter, October 7, 2016.

¹⁶ OLA Comment Letter (McGreevy), October 18, 2016, citing CFPB Supplemental Findings at 66.

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a rule that in effect eliminates borrowers' ability to access the product. As President Obama has written, "giving careful consideration to benefits and costs . . . means using disclosure as a tool to inform consumers of their choices, rather than restricting those choices."¹⁷

In summary, our members have consistently provided basic, straightforward, and easily understood disclosures consistent with the nature of their transactions. We have also urged the Bureau to study and ultimately implement disclosure requirements to further aid in consumer understanding. We believe disclosures should be consistent with the simple, convenient, and short-term nature of the transaction. In short, we want to ensure that consumers don't receive so much paperwork that they lose sight of the actual transaction terms or otherwise feel burdened by complexity that doesn't exist in these transactions. Our industry has long believed that appropriately tailored disclosures, like those required in Texas could help consumers better understand the transactions.

We continue to encourage the Bureau to study these disclosures and to draw sound inferences from such disclosures, including that such disclosures may aid consumers in understanding the product's costs and risks. We believe longstanding and effective cost disclosures have not reduced consumers' desire to use our products and believe that enhancing disclosures will not reduce our consumers' desire to use our products. But, the point of disclosure is to inform consumer behavior, not to curtail it. We encourage the Bureau to take results of these surveys and test whether consumers better understand the products and their potential consequences, rather than testing an increase or decrease in borrowing rates.¹⁸ Like Congress, in its passage of the Dodd Frank Act, we have long believed that providing clear disclosures to consumers, and allowing them to choose whether to enter a financial services transaction, is the right way to regulate transactions, rather than imposing pricing, payments, and other complex limitations.

B. The accuracy of the Bureau's estimate of the burden of the collection of information, including the validity of the methods and the assumptions used.

The Bureau appears to have assumed that only two academic studies contemplate the benefits of disclosures. However, other studies have addressed the benefits of disclosures and to accurately and validly study these benefits, the Bureau should take those studies into account as well.

¹⁷ OLA Comment Letter (McGreevy), October 18, 2016, citing Barack Obama, Toward a 21st-Century Regulatory System, Wall Street Journal (Jan. 18, 2011).

¹⁸ Check into Cash (Proffitt) Comment Letter, October 4, 2016.

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We understand that the Bureau aims to build upon previous research addressing payday loan disclosures and to create disclosures that present key information clearly and effectively. To do so, the Bureau has indicated that it will collect information on how consumers locate, comprehend, and use information in the disclosures. Respondents will review disclosure forms and be asked questions about their impressions of the form. This testing is intended to analyze comprehension of information presented, usability, and decision making. Usability questions will focus on the impressions taken away from the form, given the content and layout of the form. Decision making questions will focus on how participants use the information given to assess the cost, payment, and timing of the loan.

Despite these worthwhile aims and despite various studies concerning the value of disclosures, the Bureau's request for comment focuses on only two disclosure studies and one consumer survey.¹⁹ We encourage the Bureau to look at not only those two studies and one consumer survey, but also others pertinent to the analysis.

Research has found time and again that mandatory disclosures can improve the functioning of markets. Disclosures do make a positive difference. They do so by helping to overcome information asymmetries without distorting markets by specifying prices, quality, or contract terms.²⁰ Mandated disclosures are widely understood as a well-suited tool for increasing consumer self-determination and promoting consumer empowerment.²¹

For background, we note that members of our industry have been disappointed by the Bureau's perspective on disclosures as an avenue for remediating perceived risks and harms. In proposing its rulemaking related to payday, title, and certain installment loans, the Bureau cited the Bertrand and Morse study, conducted in 2011, to support its contention that disclosures only have a "marginal effect." It also cited its own review of the Texas disclosure as having an impact it found "insignificant." Such conclusions ignore studies indicating that disclosures can, in fact, be effective.²² They also reflect a misdirected goal of reducing

¹⁹ Bertrand and Morse, "Information Disclosure, Cognitive Biases and Payday Borrowing," *Journal of Finance* 2011 at pp. 1865-1893; Consumer Financial Protection Bureau, "Supplemental findings on payday, payday installment, and vehicle title loans, and deposit advance products," June 2016; and the request for comment also notes that a survey of payday borrowers in Indiana shows that more than half of borrowers would "very much" like to give themselves "extra motivation to avoid payday loan debts" and around 90 percent of these borrowers would at least "somewhat" like to have extra motivation (Allcott, et al., 2019).

²⁰ See for example, Christoph Busch, *Implementing Personalized Law: Personalized Disclosures in Consumer Law and Data Privacy Law*, 86 U. Chi. L. Rev. 309, 310 (2019).

²¹ See for example, Christoph Busch, *Implementing Personalized Law: Personalized Disclosures in Consumer Law and Data Privacy Law*, 86 U. Chi. L. Rev. 309, 310 (2019).

²² See for example, Eli P. Cox III, Michael S. Wogalter, Sara L. Stokes & Elizabeth J. Tipton Murff, Do Product Warnings Increase Safe Behavior? A Meta-Analysis, 16 J. Pub. Pol'y & Marketing 195, 201 (1997). Regarding the increased benefit of combining written disclosures with oral disclosures, see also, Jeff Sovern,

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consumer use of payday loans, rather than aiding consumers in understanding payday loan costs.²³

We believe that in studying how to enhance disclosures, the CFPB should consider the ways in which current disclosures, including signage, state mandated disclosures, customer documentation, and customer communications have helped consumers understand their transactions. According to one study previously submitted to the Bureau, “Ninety-six percent of borrowers” in one survey said “they fully understood how long it would take to pay off their payday loan and the finance charges they would pay before taking out the loan.”²⁴ Likewise, an interactive poll of consumers (“Harris Poll”) who borrowed from a regulated storefront short-term lender found that 97 percent of borrowers agree their lender clearly explained the terms of the loan to them, including 88 percent who strongly agree.²⁵ This Harris Poll was the first in-depth examination of payday loan borrowers’ experience. Here are a few highlights of this study:

- 9 out of 10 customers were satisfied with their payday loan experience;
- More than four in five customers said that before starting the process, they understood very well how much it would cost (85%) and how long it would take to completely repay the loan (84%);
- 95% of customers valued having the option to take a payday loan; and
- 93% of customers carefully weighed the risks and benefits before taking the loan.

These results show overwhelming satisfaction with the payday lending product, and reflect that even before starting the process, consumers seeking payday loans understood the cost and the time to completely repay the loan.²⁶ Reviewing these studies to determine the benefits these consumers received from disclosures, may help enhance disclosures for all consumers.

Other research has focused on the financial consequences of taking out successive payday loans. Those borrowers who were told how much it would cost in dollars to renew their payday loans for three months – a total of six loan in succession – were about 10 percent less likely to renew the loans that brought them into the survey when compared to a control

Written Notice of Cooling-Off Periods: A Forty-Year Natural Experiment in Illusory Consumer Protection and the Relative Effectiveness of Oral and Written Disclosures, 75 U. Pitt. L. Rev. 333, 333–34 (2014).

²³ Check into Cash (Proffitt) Comment Letter, October 4, 2016.

²⁴ Advance America (O’Shaughnessy) Comment Letter, October 7, 2016, citing “*Borrower and Voter Views of Payday Loans*” March 2016.

²⁵ Advance America (O’Shaughnessy) Comment Letter, October 7, 2016, citing “*Payday Loans and the Borrower Experience*” December 2013.

²⁶ Lending Bear (Lynn) Comment Letter October 3, 2016, citing “*Payday Loans and the Borrower Experience*” December 2013.

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group. The researchers concluded that this information bridged a ‘cognitive gap’ that may be common to payday loan borrowers and urged policymakers to post such information at payday loan locations.²⁷

Research suggests that disclosures can impact consumer understanding and usage.²⁸ In summary, numerous studies have found that well-designed and well-timed disclosures can affect consumer behavior. We encourage the Bureau to look beyond two limited studies to evaluate the benefits of consumer disclosures for our industry.

C. Whether the collection of information is necessary for the proper performance of the functions of the Bureau, including whether the information will have practical utility.

The Bureau can enhance its information collection by reforming certain questions and provide the respondents with the benefits of a typical disclosure experience.

While INFiN appreciates the Bureau’s proposal to collect information regarding the efficacy of consumer disclosures, certain aspects of the proposed information collection process may diminish the practical utility. Certain questions do not address the disclosures at all and are likely to yield responses that reflect personal biases of a pool of individuals lacking payday loan experience. The questions and limited documentation used predispose respondents to conclude that information about successive transactions are missing – but that predisposition does not reflect actual transaction experiences.

- **Many Questions Test Biases about Payday Loans, Not the Disclosures the Bureau Intends to Test.**

The stated purpose of the interviews is to evaluate and refine potential options for a Bureau-designed payday loan disclosure. However, several of the questions asked go well-beyond evaluating a disclosure. The questions asked, and the responses provided, could improperly influence the consumer’s thought process regarding the disclosures consumers customarily receive, and could lead to mistaken conclusions about matters beyond the disclosures.

For example, the following questions do not relate to disclosures:

3.2. When was the last time you took out a payday loan?

²⁷ Loansmart (Evensen) Small Entity Representative Written Comments, May 13, 2015.

²⁸ Loansmart (Evensen) Small Entity Representative Written Comments, May 13, 2015.

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- 3.4. What other options would you consider if you weren't getting a payday loan?
- 3.5. What else could someone use instead of a payday loan?
- 3.6. Are you familiar with what it means to rollover, renew, or extend the due date of a payday loan?
 - 3.6.1 If they mean different things, what do they mean? Which word would you use?
- 3.7. Have you ever rolled over, renewed, or extended the due date of a payday loan?
- 3.8. Do most people rollover, renew, or extend payday loans more than once? Why do you say that?
- 5.5.1.b [Question 1 of 2] How likely are you to pay off the loan by the due date as opposed to rolling over, renewing, or extending for another amount?
 - 6.1. Is a payday loan better or worse than other types of loans or credit?
 - 6.1.1 Why do you say that?
 - 6.2. How do you think the interest rate on this loan compares to other forms of credit?
 - 6.2.1 Is a payday loan more or less expensive to use than a credit card?
 - 6.2.1a. What makes payday loans better or worse than a credit card?
 - 6.2.1b. Better or worse, why?

Unlike other questions, these questions do not even address the disclosure or the loan. These questions seem to address the respondent's preconceived notions about payday loans.

For example, the first question of two questions in 5.5.1.b is particularly problematic. The respondents to these questions will predominantly be made up of consumers who haven't had a payday loan, at least in the prior two years. Yet it asks respondents how likely they are to payoff "the loan"- a fictional loan, with blank fields, that the respondents have little to no experience with. A respondent looking at a blank agreement, with no actual transaction figures cannot conceivably determine whether they could hypothetically pay the fictional loan or not. In the model form used, the respondent does not receive an actual numerical

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disclosure of the loan amount, the total of payments, or the finance charge – instead, they merely see fields for lenders to disclose such information.

Moreover, the survey process does not appear to be control tested in any way for the variations that will arise due to respondents' guesses about repayment. The question simply forces an inexperienced respondent to look at a blank agreement,²⁹ without the aid of state mandated disclosures and employee conversations, and make a guess about the likelihood of paying off a loan that a questioner calls a "payday loan."³⁰ The responses will be guesswork, and the data provided will be misleading and irrelevant to the proclaimed purposes of the study.

The remaining questions are similarly problematic. Because the survey is structured so that no more than 25% of respondents will have had a payday loan, the opinions of 75% of respondents have no basis in experience, prior review of state mandated disclosures, or employee oral disclosures. For example, asking a random individual with little to no experience as a consumer the question posed in 3.8, about whether "most people" enter successive transactions and "why" they respond the way they do, provides no information about the disclosures. Instead responses will predominantly reflect guesswork, assumptions, and biases about payday loan transactions. Unlike other questions, these questions are not prefaced by phrases such as "based on the information in this form," or "looking at the information on this form," etc. Because the stated purpose is to evaluate and refine potential options for a Bureau designed payday loan disclosure, and those questions do not relate to disclosures, they should be significantly revised or removed.

- **The Approach to Questioning Predetermines the Conclusion.**

The questions appear to be presented to a respondent in a manner intended to focus their attention on successive transactions (extensions, deferrals, and rollovers). Specifically, the

²⁹ This question also illustrates the problem of asking a consumer to look only at a form documenting a credit transaction due for a two-week period and asking the consumer what comes afterwards. In actual transactions, the consumer is disclosed information about the possibility of successive transactions, but those disclosures are provided in state mandated ancillary documents, state mandated signage, in information employees disclose in conversations, or in some combination thereof. In short, by directing the consumer to an agreement for the current transaction, the consumer is directed to the wrong resource to answer questions about future transactions.

³⁰ The survey invites questions from consumers, but the request for information does not provide answers to potential questions. For example, the term "payday loan" is not defined, and given that 75% of respondents may not have experience with payday loans, it is conceivable that consumers will ask questioners what the term means. The answer could impact survey results. We urge the CFPB to publish for comment, in advance of the survey, anticipated questions and answers that respondents will use.

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questions include at least 14 detailed questions about successive transactions including 3.6, 3.6.1, 3.7, 3.8, 5.5, 5.5.1, 5.5.1a, 5.5.1b, 5.6, 5.61, 5.7, 5.7.1, 5.8, and 5.9. No other topic has as many questions. The questions ask respondents whether the single, two-week agreement in front of them includes details related to extensions, deferrals, and rollovers. When the detailed questions only probe one topic in detail – successive transactions – and only superficially address other topics, the questioner focuses the respondent on one topic. Then, the questioners ask respondents whether the agreement appears to be lacking information about anything. The natural conclusion for a respondent, well primed to focus on successive transactions, will be to point out successive transactions as a subject for which more information is needed. However, those responses will reflect the detailed probing respondents endured about successive transactions, not actual consumer experiences. Actual consumers see in-store signage, state mandated disclosures, and they have actual conversations with employees. The respondents will only look at a blank two-week agreement, and then be asked about something customarily addressed elsewhere.

With so many questions on one subject, presentation of a document least likely to reflect successive transactions – a two-week agreement – and a lack of the useful information actual consumers typically receive about successive transactions, the responses are quite predictable. Respondents, unlike actual payday loan customers, will conclude that more information is needed about successive transactions.

The Bureau can better position the results to reflect real borrower data in several ways. For example, the questions asked of respondents can be balanced to probe other topics besides successive transactions, so that the weight of the questioning isn't so heavily focused on that one topic. In addition, respondents could be tested in a store location, after the opportunity to see signage, state mandated disclosures, and engaging in conversations with storefront employees.

Oral disclosures made in conversations with consumers have a real effect.³¹ Storefront payday loan consumers learn a great deal about the due date and subsequent transactions in

³¹ One study found that consumers who receive both oral and written notice of their rights are more likely to avail themselves of those rights than those who receive only written notices, and that the differences are statistically significant. For example, fifty-three percent of the sellers who gave only a written notice of buyer cancellation rights and did not speak of the buyer's right to cancel said buyers never cancelled, nearly double the percentage for sellers who do tell buyers (27%) about cancellation rights. Businesses that provide both oral in-person and written notices of rights to rescind are more than twice as likely to report that more than 1% of their customers cancelled contracts as those that provided only written notices. In short, oral and written notices combined are more effective than written notice alone. Jeff Sovern, *Written Notice of Cooling-Off Periods: A Forty-Year Natural Experiment in Illusory Consumer Protection and the Relative Effectiveness of Oral and Written Disclosures*, 75 U. Pitt. L. Rev. 333, 333–34 (2014).

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conversations with customers, not a solitary transaction intended to memorialize a given two-week obligation.³² With these changes, the questioning process

would be more consistent with an objective effort to understand payday loan disclosures that borrowers experience, rather than targeting a pre-selected issue in a manner that could predispose a specific response.

- **Section 4 Lacks Sufficient Information to Provide Meaningful Comment.**

The questions in Section 4 all make generic reference to “Section X” without any clarifying information about which materials the questioner will ask respondents to provide comment on. This makes it impossible to comment on potential issues related to the questions. Those questions state:

4.2. Does this section (Section X) make you want more information about anything? What?

4.3. What do you think is happening in this section (Section X) of the notice? What is this section for/telling you/ supposed to do/why is this section here [Depending on the notice, point to either the stick figures, or the fees expanding?]

4.4. Does this section (Section X) make you want more information about anything? If so, what? [Depending on the notice, point to either the stick figures, or the fees expanding.]

³² Consumer conversations frequently address subsequent transactions. Contractual terms are not an optimal place to disclose important information about costs of subsequent transactions. In at least two instances, the CFPB has taken enforcement actions that have created a chilling effect not only on lenders offering single payment transactions, but also forecasting the possibility of successive transaction scenarios in writing. See Consent Order, Triton Mgmt. Grp., Inc., CFPB No. 2018-BCFP-0005 (July 19, 2018) and Consent Order, In re TMX Fin. LLC, No. 2016-CFPB-0022 (Sept. 26, 2016). In addition, various studies suggest contractual terms themselves are less likely than conversations and disclosures, to provide useful information to consumers. Debra Pogrud Stark & Jessica M. Choplin, *A License to Deceive: Enforcing Contractual Myths Despite Consumer Psychological Realities*, in Selected Works of Debra P. Stark 1, 30 (2009). See also, Shmuel I. Becher & Esther Unger-Aviram, *The Law of Standard Form Contracts: Misguided Intuitions and Suggestions for Reconstruction*, 8 DePaul Bus. & Com. L.J. 199 (2009) (finding significant majorities of consumers indicated that they did not read certain standard form contracts before agreeing). See also Jeff Sovern, *Preventing Future Economic Crises Through Consumer Protection Law or How the Truth in Lending Act Failed the Subprime Borrowers*, 71 Ohio St. L.J. 761, 797-98 (2010).

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- **Outdated Form Bank.**

Finally, with respect to the template Deferred Presentment Services Agreement, including Federal Truth-in-Lending Disclosures and arbitration provision, the Bureau should update its template. The document the Bureau intends to furnish as a representative example, is no longer a template in use by members of the industry and reflects a long-outdated template. The Bureau should present consumers with an actual example of an agreement that is widely in use in the current marketplace, along with ancillary written disclosures consumers receive, addressing options available on the consumer's due date. Presenting a respondent with an outdated form that lacks more recent drafting conventions, lacks ancillary state disclosures, and lacks other information consumers receive, will result in conclusions that have little if any relevance to actual current consumer experiences.

D. Ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Visiting respondents in local stores may help reduce the burden of collection of information.

As mentioned above, to learn about the impact of current disclosures, we urge the Bureau to conduct its study in a manner most consistent with the information regularly disclosed to consumers. This includes working with respondents who receive the benefit of in-store disclosures on signs, on ancillary disclosures, and in oral disclosures made to consumers. Through a realistic disclosure experience, the Bureau will best determine what consumers currently understand about the transactions based on actual disclosures. To minimize the burden of collecting this data in a manner that reflects the real disclosure experience, our members extend an invitation to engage in in-store interviews as part of (or following) actual consumer transactions. This will allow respondents to have the benefit of in-store disclosures and can provide enough time and space to conduct surveys. We invite the Bureau to contact us to arrange ways in which we can reduce the burden of information collection in such ways.

Additional Considerations

In addition to the foregoing responses regarding the Bureau's request for comment, INFiN encourages the Bureau to consider our preliminary comments regarding model disclosures, focused on state law, programming and implementation, as well as consumer cost comparisons.

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- **Model Disclosures: State Law Considerations.**

Ultimately, if the Bureau moves forward with requiring disclosures like those contemplated in this request for comments, then we would like the Bureau to consider the impact of the terminology used on state law compliance, allowing for flexibility with respect to certain terminology. For example, Version 1 of the model disclosures contemplates that the customer may “renew” a loan 1, 3, or 5 times. However, certain state laws prohibit loan renewals, and disclosures suggesting renewals are allowed, particularly for a fee, will likely violate state law.³³ The terminology used in the Bureau’s disclosure will have consequences for consumer understanding and state law compliance.

Similarly, depending on state law limitations on successive transactions, disclosures regarding consumers renewing “five or more times” may also mislead consumers about their rights under state law. For example suggesting five or more renewals are permitted in states such as Florida, that impose a 24 hour cooling off period between loans, would mislead the consumer into believing renewal rights exist, when they are prohibited by state law.³⁴ Other states that allow successive transactions, may not allow for five renewals. In fact, given the prevalence of state law limitations on successive transactions, INFiN questions the statistical accuracy and source of information used to form the basis for the “five or more times” disclosure. Several states impose payment plan requirements as well, and by not referencing this possibility in the model disclosures being tested, consumers are not fully informed about their rights.

- **Model Disclosures: Programming Considerations.**

In reviewing the disclosures, our members believe the disclosures would be provided immediately before the transaction documents are signed, so that the consumer could consider the potential costs of successive transactions. It is not clear whether the disclosures would be provided on a consumer specific basis, based on each consumer’s actual loan amount and due dates, or provided in a general way. The model disclosures appear to include specific repayment dates, amounts, finance charges, as well as anticipated “renewal” dates. We anticipate that programming specific disclosures on a consumer by consumer basis may ultimately create significant business expense that may not be necessary to aid in consumer understanding. In states using similar disclosures, providing a disclosure with a loan amount at an increment close to the consumer’s loan amount is a helpful way to illustrate costs and

³³ A licensee shall not renew a deferred presentment service agreement. A licensee may extend a deferred presentment service agreement only if the licensee does not charge a fee in connection with the extended transaction. A licensee who extends an agreement under this subsection shall not create a balance owed above the amount owed on the original agreement. Mich. Comp. Laws Ann. § 487.2155.

³⁴ See for example, F.S.A. § 560.404 mandating a 24-hour cooling off period between transactions.

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timing for consumers, without undergoing the significant expense of programming consumer specific forms. If, however, the disclosures are intended to be provided based on each consumer's specific transaction, INFiN members request that the Bureau consider this hurdle in projections regarding the cost and timing necessary for implementation.

- **Model Disclosures: Additional Considerations.**
 - **Cost Comparison Only to Credit Cards**

In the model disclosures presented for comment, consumers are told to “learn more” about possible options such as credit cards or “a loan from a finance company,” by visiting cfpb.gov/payday. This disclosure may not reflect a range of options available to many payday loan customers, and the website linked does not further address consumer options. INFiN requests that the Bureau determine the range of options available to most payday loan customers and include such information in its disclosure and on its website.

Alternatives may include pawn transactions, title loan transactions, overdraft, debt consolidation, debt counseling, etc. If the Bureau only discloses options that actual payday loan consumers may not have, and points to a website that doesn't point to alternatives, the disclosure will not provide meaningful information to consumers.

- **“Ask Yourself” Questions.**

Also, in the model disclosures being tested, consumers are asked questions about transaction alternatives. We believe the Bureau should include additional questions for consumers to consider. For example:

If I do not obtain this loan, will I be able to pay my bills?

Will I experience any overdraft fees or utility service cut-offs, if I do not obtain this loan?

We believe that positioning the potential transaction with questions such as these, help consumers consider their financial circumstances, and alternatives to obtaining the loan.

Conclusion

As a new alliance moving into 2021, INFiN looks forward to a new dialogue with the Bureau. We appreciate that the Bureau is now going to review and test consumer disclosures. These efforts can be helpful towards our mutually aligned mission to help consumers understand their transactions and make sound financial choices. We look

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forward to working with the Bureau in testing, and ultimately implementing sound financial services disclosures.

The Bureau has indicated that the results of this testing, estimated to conclude in September 2021, may be used, along with other Bureau considerations, to inform the decision-making process of whether to move forward with a rulemaking related to payday loan disclosures. INFiN would like to invite the CFPB to collaborate on considerations related to consumer comprehension, use of disclosures in member locations, and to generally assist in building disclosures that will help consumers understand their transactions.

INFiN appreciates the opportunity to provide comments and the Bureau's attention to these important issues.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "E. D'Alessio". The signature is stylized and cursive.

Edward D'Alessio
Executive Director