



Consumer Financial
Protection Bureau

1700 G Street, N.W., Washington, DC 20552

August 19, 2013

Hilary Miller
On behalf of the Community Financial Services Association of America
500 West Putnam Avenue
Suite 400
Greenwich, CT 06830-6096

Dear Mr. Miller,

This letter responds to your petition submitted to the Consumer Financial Protection Bureau (CFPB) on June 20, 2013, on behalf of the Community Financial Services Association of America, Ltd. (CFSA) under the CFPB Information Quality Guidelines. The petition requests the public retraction by the CFPB of its publication titled “Payday Loans and Deposit Advance Products: A White Paper of Initial Data Findings” (White Paper).

We are Ron Borzekowski and Corey Stone, respectively, Acting Assistant Director for the Office of Research and Assistant Director for the Office of Deposits, Cash, Collections and Reporting Markets. Both of our offices reside within the CFPB’s Research, Markets and Regulations Division, and we are responsible for publication of the White Paper.

We have reviewed your Information Quality Act petition. We deny your request to retract the White Paper. The White Paper conforms to the CFPB’s information quality guidelines, which are directed toward ensuring the utility and objectivity of factual data disseminated by the Bureau to the public. We address the specific objections you have raised on these bases below.

We do, however, agree that our description of online payday lending merits clarification regarding the manner in which lenders electronically initiate repayment from borrowers’ bank accounts. The CFPB has posted a clarification on its website.

I. The White Paper Conforms with the CFPB's Information Quality Guidelines

For the reasons indicated below, we find the White Paper to be in conformance with the standards for the utility, integrity, and objectivity for publications contained in the CFPB's Information Quality Guidelines.¹

Researching consumers' use of financial products and services is part of CFPB's statutory mission.² The research on payday loans contained in the White Paper – including the study of approximately 15 million loans generated by storefronts in 33 states, and our findings, which are an accurate representation of how these products are used by a sizable share of borrowers in the marketplace – was conducted in furtherance of this statutory mission. A note about these data will be useful before discussion of specific objections contained in your petition, as many of your concerns relate to the limitations surrounding the use of confidential supervisory information.

The CFPB obtained its sample of payday loan data through supervisory examinations of storefront payday lenders. These examination data varied from lender to lender along a number of dimensions, including the beginning and end dates of the time periods covered, the particular lender's geographic coverage, and the presence or absence of specific data elements. We believe the data represent all of the loans made by each lender during the time periods – which occurred during 2011 and 2012 – for which each provided data. Although the sample does not cover all lenders or loans in the market, it represents a sizable share of storefront payday lending activity.³

In accordance with CFPB's Information Quality Guidelines⁴ and our rules covering the treatment and protection of confidential supervisory information,⁵ the White Paper did not publish the

¹ CFPB Information Quality Guidelines, available at <http://www.consumerfinance.gov/informationquality/>. These guidelines are effective on an interim basis until the CFPB issues a final version. Although certain points made in your petition focus on the CFPB's *interpretation* of facts and data, which falls outside the guidelines, we are addressing those points as a matter of discretion to enhance public understanding.

² See, e.g., Dodd Frank Act, tit. X sec. 1021(c) ("Functions – The primary functions of the Bureau are...(3) collecting, researching, monitoring, and publishing information relevant to the functioning of markets for consumer financial products and services to identify risks to consumers and the proper functioning of such markets..."); sec. 1013(b)(1) ("Research – The Director shall establish a unit whose functions shall include researching, analyzing, and reporting on (A) developments in markets for consumer financial products or services ... (E) consumer behavior with respect to consumer financial products or services...").

³ See White Paper, p. 14 ("While our data do not represent all consumers using these products, our findings are an accurate representation of how these products are used by a sizable share of borrowers in the marketplace.").

⁴ See CFPB Information Quality Guidelines ("The Bureau will make both original and supporting data and the source of the data available to the public when appropriate."); ("The guidelines do not override other compelling interests such as privacy, trade secrets, intellectual property, and other confidentiality protections."); see also Office of Management and Budget, Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information

original data because it was obtained through the supervision process and constitutes confidential supervisory information. In particular, it preserved the confidential nature of the supervisory information by limiting descriptive details of the lenders and the sample that may have resulted in identification of the lenders and characteristics of their businesses, products, or customers.⁶

Mindful of its commitment – both through its published Information Quality Guidelines and as a part of its underlying mission – to provide the public with useful and objective information, the CFPB subjected the White Paper and the underlying data and analysis it contains to an extensive pre-publication review process within the Bureau, involving multiple Bureau divisions.⁷

The following subsections address each of your objections.

A. Objection to Sampling Technique

We have reviewed your objection to the sampling technique used in the White Paper. Our review included construction of samples from our data set using alternative methods and conducting similar analysis of repeat usage, a principal focus of the paper. We have concluded that the White Paper employed an objective and useful method for depicting borrowers' rates of repeat usage of payday loans.

The White Paper explained its methodology and research focus:

The sample consists of consumers who have a loan in our dataset in the first month of a 12-month period and then tracks usage across this timeframe. We limit our analysis to this subset of consumers because one focus of our analysis is sustained use, and consumers that we initially observe later in the data can only be followed for a more limited time. The start and end dates of lenders' 12-month data reporting varies, which mitigates concerns about seasonality effects. Overall, the study sample consists of a total of approximately 15 million loans generated by storefronts in 33 states.⁸

As described, the White Paper sample captured a snapshot of payday users who had active loans at a moment of time – in this case, at the first month of the datasets we received from various lenders –

Disseminated by Federal Agencies, 66 Fed. Reg. 49718 (Sept. 28, 2001) (“[T]hese guidelines do not alter the otherwise applicable standards and procedures for determining when and how information is disclosed. Thus, the objectivity standard does not override other compelling interests, such as privacy, trade secret, and other confidentiality protections.”).

⁵ See CFPB's Final Rule on Disclosure of Records and Information, 12 C.F.R. § 1070.40 et seq.

⁶ See CFPB Information Quality Guidelines (“The Bureau will utilize transparent methods consistent with its obligation to protect proprietary or confidential information.”).

⁷ See CFPB Information Quality Guidelines (“The Bureau will subject all information to editing and review.”).

⁸ White Paper, pp. 14-15.

and tracked these borrowers' usage over the subsequent 11 months. The White Paper examined the correlation between these borrowers' characteristics and certain usage patterns, including their period of sustained use. In particular, this method is a reasonable and accurate one for depicting the portion of borrowers at any given point of time who are sustained users.

Your petition argues that the White Paper methodology oversampled heavy users because it did not exclude users who had taken out a loan in the months preceding the initial month of the lenders' datasets:

The key error in sampling results from failure to limit the study sample to borrowers without outstanding loans in the months immediately preceding the commencement of the study period. The study sample includes – as, indeed, n. 24 acknowledges – a disproportionately high number of heavy users, because previous users – those most likely to continue their use heavily – were not excluded from the study sample.⁹

You suggest that a more representative approach would have been to employ the “static pool” or “vintage” analysis that is used in evaluating the performance of credit card and other loan portfolios. However, the sampling method required for calculating repayment, delinquency, and default rates of portfolios of revolving credit and other *loans* underlying asset-backed securities over quarters and years¹⁰ may not necessarily be appropriate for tracking *borrowers' usage* of successive loans, the terms of which average two weeks. This method would, by your petition's own estimation, exclude 70 to 90% of all borrowers.¹¹

The approach suggested in your petition may be a valid approach for studying the experience of first-time or new borrowers, but not of measuring the usage of the active borrower population at a point in time, which was the goal of the White Paper. Put another way, the White Paper adopted a sampling method that is useful for asking the question: “What are the usage characteristics of the borrowers in payday lenders' portfolios?” An approach that tracks new or first time borrowers would be useful for asking the questions: “What is the experience of consumers who first take out payday loans?” and “How many new users pay their loans off quickly and how many become sustained users?” These are valid questions for policymaking. However, the existence of another sampling approach does not in itself undermine the objectivity or utility of the approach taken in the White Paper.

⁹ See CFSA Petition, p. 5.

¹⁰ 17 C.F.R. § 229.1105.

¹¹ See CFSA Petition, p. 5 (“In any large, mature payday loan portfolio, loans to repeat borrowers generally constitute between 70 and 90% of the portfolio, and for some lenders, even more. The Bureau failed to test for, or exclude, previous borrowers from the study sample.”).

You have further suggested that the results derived from the sampling approach used in the White Paper may be further suspect due to seasonality. As the paper indicates, we received loan data from lenders that began at different start dates and normalized these start dates to obtain a common 12 month observation period. The different start dates mitigate seasonality effects.¹²

Finally, we note that the White Paper presents “Initial Data Findings,”¹³ a phrase used to reflect the fact that we intend to conduct additional analysis using the data we have in hand, as well as obtain additional data.

B. Objection to the White Paper’s Discussion of Potential Harm to Consumers

As explained at the beginning of the White Paper, payday loans could help or hurt a consumer’s finances:

The CFPB recognizes that demand exists for small dollar credit products. These types of credit products can be helpful for consumers if they are structured to facilitate successful repayment without the need to repeatedly borrow at a high cost. However, if the cost and structure of a particular loan make it difficult for the consumer to repay, this type of product may further impair the consumer’s finances.¹⁴

In support of the CFPB’s statutory mission to study risks to consumers,¹⁵ the White Paper reviewed evidence of sustained use in the data.¹⁶ The White Paper then expressed concern that sustained use of high-cost, short-term products may cause consumer harm. This concern about the impact of sustained use is uncontroversial. Congress,¹⁷ state legislatures,¹⁸ other federal regulators,¹⁹

¹² White Paper, pp. 14-15.

¹³ White Paper, p. 14.

¹⁴ White Paper, p. 4.

¹⁵ See Dodd Frank Act, tit. X sec. 1021(c) (“Functions – The primary functions of the Bureau are...(3) collecting, researching, monitoring, and publishing information relevant to the functioning of the market for consumer financial products and services to identify risks to consumers and the proper functioning of such markets....”).

¹⁶ See White Paper, p. 4 (“A primary focus is on what we term “sustained use”—the long-term use of a short-term high-cost product evidenced by a pattern of repeatedly rolling over or consistently re-borrowing, resulting in the consumer incurring a high level of accumulated fees.”).

¹⁷ For example, the Military Lending Act prohibits rollovers on payday loans issued to active-duty military personnel, active National Guard or Reserve personnel, and their dependents. See 10 U.S.C. § 987(e)(1).

¹⁸ See, e.g., Washington Code § 31.34.073 (capping loans at 8 per year and mandating a 45-day cooling off period); Virginia Payday Loan Act § 6.2-1816(6)(v) (mandating cooling off period of 45 days after the fifth loan); White Paper, p. 9 (“In states in which payday lending is permitted, laws often include provisions that attempt to limit sustained use, such as: (1) restrictions on the number of times a loan can be rolled over, (2) requirements to offer extended payment plans, (3) cooling-off periods between loans that are triggered after a period of time indebted or number of transactions conducted, (4) limits on loan size based on monthly income, and (5) limits on the number of loans that can be taken over a certain period of time.”).

¹⁹ See, e.g., OCC Advisory Letter 2000-10, p. 7-8 (“A bank should not renew a payday loan except upon a written request by the borrower that certifies an inability to repay the loan, states a specific reason that occurred subsequent to the date of origination or last renewal, and states why the borrower will be able to repay the loan at the new maturity date. Multiple renewals—particularly renewals without a reduction in the principal balance, and renewals in which interest and fees are

consumer advocates²⁰ and industry²¹ all have shown concern that sustained use may cause harm to consumers. The White Paper did not, however, draw conclusions about the potential harm – it merely identified these concerns as subjects that are appropriate for further examination. Accordingly, we deny the petition’s request that these statements be withdrawn.

C. Objection to Reporting Borrower Income Data that Is “Unreliable”

Your petition²² argues that the payday borrower income data represented in the White Paper violated the objectivity standards of the Guidelines because they included a mix of gross and net incomes and were only available for a portion of borrowers in the sample. We do not agree.

Imperfections in data are normal in social science, economic, and behavioral research and analysis. Indeed, a standard of perfection in this regard would be both nearly impossible to attain and negate much of the empirical work on which policymaking must rely. Thus, the paper transparently explains the limitations of the data we obtained on borrower incomes, including that a) we could not determine whether a borrower’s income was stated on a pre-tax or after-tax (i.e. take-home) basis; b) the borrower’s income was not available for all borrowers in our sample because only some lenders were able to provide it;²³ and c) when reported, stated income did not reflect all sources of income of a borrower or of a borrower’s household.²⁴

The White Paper presents limited analyses of payday borrower’s annualized incomes and their reported sources of income based on the available data and consistent with the paper’s sampling methodology. These analyses are objective and useful, and the limitations of the data on which they are based are transparently disclosed.

added to the principal balance, are an indication that a loan has been made without a reasonable expectation of repayment at maturity.”).

²⁰ See, e.g., Pew Charitable Trusts, “Payday Lending in America: Who Borrows, Where They Borrow, and Why,” (July 2012).

²¹ See CFSA, Your Guide to Responsible Use of Payday Advances (“Repeated or frequent use of payday advances can cause serious financial hardship.”); CFSA Member Best Practice #5 – Rollovers (“Members shall not allow customers to rollover a payday advance (the extension of an outstanding advance by payment of only a fee) unless expressly authorized by state law, but in such cases where authorized the member will limit rollovers to four or the state limit, whichever is less.”), available at <http://cfsaa.com/cfsa-member-best-practices.aspx>.

²² See CFSA Petition, p. 9.

²³ See White Paper, p. 17 n. 21 (“The income data reported in this section is only available for a sub-set of lenders in our sample.”).

²⁴ See White Paper, pp. 17-18, including footnotes.

D. Other Objections (Labeled “E” in the Petition)

Your petition makes other objections to the White Paper. Our understanding of your objections (*in italics*) – and responses to them – follow in the sequence in which you raised them.

1. *The White Paper states (p.8) that “initial analysis of loan charge-off rates on deposit advances conducted by the CFPB in connection with this study suggests that deposit advance loss rates are lower than those reported for storefront payday loans.” But the paper “omits to state what the respective charge-off rates of the two products were.”*²⁵

Our analysis of charge-off rates combined confidential supervisory information on the deposit advance product banks with metrics used by payday lenders in publicly available company reports. The reference to the charge-off rate on payday loans is found in the footnote to the previous sentence in the White Paper on page 8, which quotes a CFSA document that we determined to be a reasonable benchmark for industry charge-off rates and consistent with the magnitude of – and method used to calculate – charge-off rates disclosed in public securities filings of payday loan companies. We calculated charge-offs for deposit advance product banks by dividing net charge-offs in 2011 by the total dollars advanced in 2011. The White Paper’s “omission” of the specific rates found does not constitute a failure of objectivity.

2. *The White Paper does not disclose the number of payday lenders who provided data, their basis for selection, or how their portfolios overlapped.*

As discussed above, the data used in this paper were obtained through the CFPB’s supervisory process. Disclosure of confidential supervisory information is governed by the CFPB’s regulations found at 12 CFR § 1070.40 et seq. In accordance with these regulations and with CFPB’s Information Quality Guidelines, the White Paper does not identify, either directly or indirectly, any particular persons to whom the confidential information pertains. To preserve confidentiality, the paper does not disclose information about the lenders and the sample that

²⁵ CFSA Petition, p. 9.

may result in identification of the lenders and characteristics of their businesses, products, or customers.

3. & 4. *The White Paper raises questions about consumers' understanding of potential risks associated with payday loan use that intimate that consumers do not understand these risks.*

The White Paper provided preliminary findings on intensity of use, sustained use, and costs of two forms of high-cost, small dollar credit extended on a short term basis. The findings that some substantial portion of consumers use these products on a sustained basis and appear to have difficulty paying these loans off raise questions about consumer understanding generally and in the context of what may be difficult circumstances. The questions raised in the White Paper do not pre-judge outcomes, but suggest what may be a useful focus for future research.

E. Objection to Statements About How Payday Loans Are Marketed (Labeled “D”)

Your petition cites a statement in the White Paper about how payday loans are marketed as being appropriate for consumers with an emergency expense who will have enough income to pay off the loan when it is due. The objection is that this statement is false.²⁶ During its examinations of storefront payday lenders, the CFPB reviewed marketing materials depicting payday loans as appropriate for consumers who have an immediate expense that needs to be deferred for a short period of time and will have sufficient funds by the next pay period to retire the loan.²⁷ These materials included a broad range of content and media, including online content, brochures, in-store signage, and other forms of direct advertising. These materials may differ from standard disclosures that may be presented to consumers at the instant that they are signing for a new loan. The White Paper's statements about marketing were based on the CFPB's review of these materials obtained through the supervisory process.

The materials obtained through the examination process were not disclosed in the White Paper for reasons of confidentiality.²⁸ We note, however, that even a simple review of public materials by

²⁶ CFSA Petition, p. 10 (“This statement is false. No such ‘representations’ are made by CFSA members, nor, to our knowledge, by other operators in the industry....”).

²⁷ See White Paper, p. 44.

²⁸ See CFPB's Final Rule on Disclosure of Records and Information, 12 C.F.R. § 1070.40 et seq.

industry trade groups²⁹ and several payday lenders³⁰ shows that payday loans are often marketed as emergency, short-term credit products.

F. Objection to Description of How Online Payday Loans Operate (Labeled “E”)

The White Paper focused on the use of storefront payday loans and deposit advance loans. On page 10, it provided a description of online payday loans. This description was one page long and did not go into detail on the technical operations of online payday loans. Your petition objected to the White Paper’s statement regarding wire transfer payments and the lender’s submission of an authorization to withdraw a borrower’s payment.

The White Paper states:

In the online lending model, a consumer completes a loan application online and provides an authorization for the lender to electronically debit her deposit account. Other payment methods such as remotely-created checks or wire transfers may also be used. The loan proceeds are then deposited electronically into the consumer’s deposit account. On the due date, the lender submits the debit authorization to the consumer’s depository institution for repayment.³¹

Your petition states that this text “contains two misstatements of fact: wire transfers are *not* used as a repayment mechanism for online payday loans; on the due date, the lender does *not* submit a

²⁹ See, e.g., CFSA, “Is a Payday Advance Appropriate for You?” (“The payday advance service is a cost-efficient “financial taxi” to get from one payday to another when a consumer is faced with a small, short-term cash need. Just as a taxi is a convenient and valuable service for short distance transportation, a payday advance is a convenient and reasonably-priced service that should be used to meet small-dollar, short-term needs. A taxi service, however, is not economical for long-distance travel, and a payday advance is inappropriate when used as a long-term credit solution for ongoing budget management.”), available at <http://cfsaa.com/what-is-a-payday-advance/is-a-payday-advance-appropriate-for-you.aspx>.

³⁰ For example, Check ‘n Go shows an image of a woman with a broken down car and states “If it has moving parts, it can break. When it does, we’ve got you covered. Quick Approval Time. Less Than Perfect Credit. Pay Back on Your Next Pay Period. Up to \$1,500. Apply Now.” See <http://www.checkngo.com/>, accessed on July 29, 2013. Another page within the website states “In this day and age, financial problems are not uncommon. That being said, many customers are turning to payday loans online to meet their financial needs. Perhaps there is an unexpected medical bill, car repair bill, or personal crisis.” See <http://www.checkngo.com/payday-loans.aspx>, accessed on July 29, 2013. CheckSmart markets that “Sometimes people need emergency cash to meet unexpected expenses quickly and conveniently. Some typical circumstances requiring fast cash include: emergency car repairs, sudden repairs to the home, that suddenly unbearable toothache, or a child’s trip to the Urgent Care Center may require an emergency cash advance.”

<http://www.checksmartstores.com/missouri/loan-options/>, accessed July 29, 2013. FastBucks defines a payday loan as a “method in which people go about securing short term cash. A payday loan or payday advance is generally for a small amount (\$100 – \$500) and is normally paid back within a few days.” See <http://www.fastbucks.com/>, accessed July 29, 2013. Cash Tyme states that “Occasionally, due to unexpected events, some people find themselves with little or no money in their checking account between paydays. Therefore, Cash Tyme provides a cash advance service that can help out at the time when these unexpected expenses occur.” See <http://cashtyme.com/>, accessed July 29, 2013. SpeedyCash explains that “A payday loan (or payday advance) is a short-term loan that provides you with a cash advance from your next paycheck. Whether you need a temporary cash fix between paychecks, extra cash in a crunch, or quick cash to help avoid high bank fees or late penalties, Speedy Cash payday loans offer dependable and realistic short-term cash solutions.” See <http://www.speedycash.com/store-services/payday-loans/>, accessed July 29, 2013.

³¹ See White Paper, p. 10.

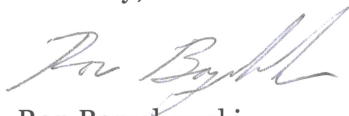
debit *authorization* to the borrower’s bank (the lender retains the authorization and causes its payment processor to submit an ACH debit *entry*).”³²

The term “wire transfer” is sometimes used to describe an electronic transfer of funds between two parties.³³ The White Paper used the term in this broad manner to include money transfers, which are used as a method of payment for online payday loans. We do, however, recognize that “wire transfer” is often used in a more technical sense to refer to a specific kind of bank-to-bank electronic transfer of funds that does not include money transfers. Additionally, with regard to the repayment process, the White Paper intended “the lender submits the debit authorization to the consumer’s depository institution,” which is imprecise phrasing, to mean that the lender submits an ACH debit entry to its depository institution or processor to obtain repayment from the consumer’s account at her depository institution. To help avoid any misunderstanding by readers, the CFPB has posted a clarification on its website.³⁴

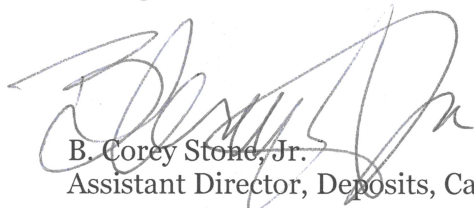
II. Conclusion

We deny CFSA’s petition to withdraw the White Paper because it does not demonstrate that the White Paper fails to meet the standards of objectivity and utility set forth in the CFPB Information Quality Guidelines. However, we agree that the White Paper’s use of the term “wire transfer” and description of electronic debits merit further clarification, and the CFPB has posted a note on its website.

Sincerely,



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B. Corey Stone, Jr.
Assistant Director, Deposits, Cash, Collections and Reporting Markets

³² CFSA Petition, p. 11.

³³ See Ask CFPB – What is a wire transfer?, available at <http://www.consumerfinance.gov/askcfpb/1163/what-wire-transfer.html> (updated May 21, 2013).

³⁴ See <http://www.consumerfinance.gov/reports/white-paper-on-payday-loans-and-deposit-advance-products/>.