January 22, 2019

Mr. Paul Robin
Section Chief
Federal Deposit Insurance Corporation
550 17th Street NW
Washington, D.C. 20429

Re: Request for Information on Small-Dollar Lending, RIN 3064-ZA04

Dear Mr. Robin:

The U.S. Chamber of Commerce created the Center for Capital Markets Competitiveness (CCMC) to promote a modern and effective regulatory structure for capital markets to fully function in a 21st century economy. Strong and appropriate consumer protections and access to credit are important and necessary components of efficient capital markets.

We appreciate the opportunity to respond to the Federal Deposit Insurance Corporation's (FDIC) Request for Information (RFI) regarding small dollar lending. It is critical that responsible lenders are able to provide short term, small dollar credit to consumers who need it. To ensure responsible lenders offer these products, it is crucial that the FDIC:

1. Pursue an interagency short term, small dollar rule to establish a workable, consistent standard;
2. Coordinate with the Consumer Financial Protection Bureau as it reassesses its Payday Loan Rule; and
3. Rescind the harmful Deposit Advance Product Guidance.

Small Dollar Market Overview

Each year, consumers take out nearly $90 billion in loans. Millions of Americans try to make ends meet with short term, small dollar loans, mostly ranging in amounts from $300 to $5,000.[1] According to the Federal Reserve Board's Survey of Household Economics and Decisionmaking of 2017:

- 40% of adults would either not be able to cover an unexpected expense of $400 or would cover it by selling something or borrowing money. This percentage is an improvement from 48% in 2013 when the survey began.
- Over one-fifth of adults are not able to fully pay off all of their current month's bills.
- Over one-fourth of adults skipped necessary medical care in 2017 because they could not afford the cost.[2]

Similarly, the Center for Financial Services Innovation (CFSI) found concerning statistics in its U.S. Financial Health Pulse (Pulse).[3] The methodology behind the Pulse is based on CFSI's Financial Health Score that is comprised of methodology, consumer surveys, and transactional records. A few illuminating figures from the Pulse include:

- 47% of Americans are spending more than or equal to their income.
- 36% of Americans are not able to pay their bills on time.
- 30% of Americans say they have more debt than they can manage.
- 40% of Americans do not plan ahead financially.

As policymakers attempt to change this troubling reality, it is imperative that these Americans have access to small dollar loan products from responsible sources and that regulators encourage lenders to provide this type of credit. Even if the supply of responsible credit from responsible lenders dries up, the demand does not and, instead, these borrowers are forced to turn to lenders with less favorable terms.

The FDIC Should Encourage Responsible Lenders to Offer Short Term, Small Dollar Products.

[1] OCC, "Comptroller Urges Banks to Meet Consumers' Short-Term, Small-Dollar Credit Needs" (May 23, 2018) https://www.occ.gov/news-issuances/news-releases/2018/nr-occ-2018-51.html
[2] Fed "Survey of Household Economics and Decisionmaking of 2017" (May 2018) https://www.federalreserve.gov/publications/2018-economic-well-being-of-us-households-in-2017-executive-summary.htm
[3] Center for Financial Services Innovation, U.S. Financial Health Pulse https://cfsinnovation.org/u-s-financial-health-pulse/

We applaud the FDIC for publishing this RFI and for inquiring what the FDIC can do to enable banks to provide such products to meet consumer demand. We also are pleased the FDIC "recognizes the important role small-dollar credit products can play…[by] addressing cash-flow imbalances, unexpected expenses, or income volatility."[4] We agree that small dollar credit products can play an important role, especially to help with unanticipated financial issues that arise. We support a balanced rulemaking approach that spurs responsible lenders to get into the marketplace, while establishing strong consumer protections.

I. Regulatory Coordination is Critical to Achieve One Workable Standard.

To confidently offer short term, small dollar products in a cost-effective manner and without fear of retribution, compliance-minded institutions need to have clear rules to follow, regulators who are openly communicating, and enough flexibility to offer the loans while accounting for credit risk. Establishing clear rules of the road requires an adequate notice and comment rulemaking, and robust feedback from stakeholders. It is important that any final policy clarify what is and is not an unfair or deceptive act or practice (UDAP). True clear rules of the road must minimize ambiguity, precisely define vague of terms, and adhere to due process before bringing supervisory or enforcement actions and to reduce the risks and costs of meritless consumer litigation. Further, coordination with regulator counterparts is essential for companies to offer short term, small dollar credit products. Specifically, there are three areas of coordination that must be cured before lenders would likely consider entering the marketplace.

a. Pursue an Interagency Short Term, Small Dollar Rule to Establish a Workable, Consistent Standard.

We are encouraged by recent statements by federal regulators promoting short term, small dollar products, however, a formal rulemaking is necessary for institutions to enter the marketplace. In May 2018, we were pleased that the Office of the Comptroller of the Currency (OCC) released a statement[5] and "Core Lending

[4] FDIC RFI at 58567.
[5] OCC, "Comptroller Urges Banks to Meet Consumers' Short-Term, Small-Dollar Credit Needs" (May 23, 2018) https://www.occ.gov/news-issuances/news-releases/2018/nr-occ-2018-51.html

Principles for Short-Term, Small-Dollar Installment Lending,"[6] encouraging banks to offer these types of loans. In his statement, Comptroller Otting illustrated the demand for short term, small dollar loans and urged banks to offer affordable credit, especially to consumers who have weaker credit history and ability to repay. He stated, "[b]anks may not be able to serve all of this large market, but they can reach a significant portion of it and bring additional options and more competition to the marketplace while delivering safe, fair, and affordable products that promote the long-term financial goals of their customers."

We urge the FDIC to issue a similar statement promoting the creation of responsible short term, small dollar loan products, and we also ask the FDIC to pursue a formal Administrative Procedures Act rulemaking in conjunction with the OCC, Federal Reserve, and Consumer Financial Protection Bureau (CFPB or Bureau). During the rulemaking process, we encourage the banking regulators to engage with financial services stakeholders to discuss how different types of products are or could be structured and what workable rules might entail. In addition, it is critical that a final rule lay out an ongoing process of open communication between lenders and regulators to get feedback on a product at the outset and continued feedback as the product's effects are realized.

b. Coordinate with the Consumer Financial Protection Bureau as it reassesses its Payday Loan Rule.

The CFPB finalized its "Payday, Vehicle Title, and Certain High-Cost Installment Loans" (Payday Loan Rule) in October 2017 and many issues with the final rule remain.[7] Lenders have made it clear to the CFPB that the Payday Loan Rule, as written, impairs their ability to reenter the marketplace. This is why the Bureau indicated it will be revisiting the rule.[8] Compliance-minded lenders will follow the most onerous rulemaking to ensure they are not in violation, even if it keeps them from providing much-needed credit. If the FDIC adopts a policy that encourages depository institutions to reenter the market, these lenders will still be hamstrung by the CFPB's rule and, as a result, will stay out of the market.

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[6] OCC BULLETIN 2018-14, "Description: Core Lending Principles for Short-Term, Small-Dollar Installment Lending" (May 23, 2018) https://www.occ.gov/news-issuances/bulletins/2018/bulletin-2018-14.html

[7] *Payday, Vehicle Title, and Certain High-Cost Installment Loans*, 82 Fed. Reg. 54472 (2017).

[8] CFPB, "Public Statement Regarding Payday Rule Reconsideration and Delay of Compliance Date" (Oct. 26, 2018) https://www.consumerfinance.gov/about-us/newsroom/public-statement-regarding-payday-rule-reconsideration-and-delay-compliance-date/

Although the Bureau indicated it will be revisiting the "ability to repay" requirements of the rule as part of a reassessment, we hope it will accept comments on all aspects of the rule, including its definitions of covered products. One unintended consequence of the current final rule is that traditional bank loans that are neither short-term nor small-dollar could be captured, which restricts the ability of depository institutions to serve their customers. We also hope the CFPB might be willing to reassess the portion of Regulation E that prevents bank lenders from requiring that loan repayments be debited from bank accounts at the lender institutions. We urge the FDIC to work closely with the CFPB throughout its work reconsidering the rule to ensure there is a uniform standard that companies can follow, instead of being steered to the most restrictive rule.

c. Rescind the Harmful Deposit Advance Product Guidance.

We respectfully ask the FDIC to rescind the 2013 Deposit Advance Product (DAP) Guidance.[9] DAP drove lenders out of the small dollar market place as technological and overhead compliance costs outweighed the benefits. This left consumers without products that they needed.

It is critical that any standard allows institutions to develop and manage their own underwriting procedures. Further, we ask the FDIC to look at the unintended consequences of the "cooling-off" provisions because some institutions have found that, as a result of these limitations, customers took out more money than they needed and had higher interest payments. We also ask the FDIC to look at other methods of interest rate measurement, such as "cost of credit," instead of the annual percentage rate because that measurement does not accurately capture the convenience and risk associated with a small dollar, short term credit product.

The departure of responsible institutions from this market, as a result of the DAP Guidance, was especially troubling because customers liked this product and were subsequently forced to less regulated sources. As an illustration, one regional lender received excellent reviews of its small dollar product before it subsequently exited the market after the DAP guidance. On a five point scale, "[a]bout 80% say they are 'very likely' to use the service again (mean rating = 4.69) should the need arise. And 75% are very likely to recommend (mean rating = 4.56) [the product] to

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[9] FDIC, "Guidance on Supervisory Concerns and Expectations Regarding Deposit Advance Products" (November 21, 2013) https://www.fdic.gov/news/news/press/2013/pr13105a.pdf

others." Moreover, the lender received comments favoring the product's one-time repayment structure instead of multiple installments because it was convenient and easier for customers to remember.

The OCC rescinded its DAP guidance over a year ago.[10] Upon rescinding the guidance, Acting Comptroller Keith Noreika stated:[11]

> [I]n the years since the agency issued the guidance, it has become clear to me that it has become difficult for banks to serve consumers' need for short-term, small-dollar credit. As a result, consumers who would rely on highly regulated banks and thrifts for these legitimate and well-regulated products to meet their financial needs turn to other, lesser regulated entities, which may result in consumer harm and expense. In ways, the guidance may even hurt the very consumers it is intended to help, the most marginalized, unbanked and underbanked portions of our society.

We could not agree more that the DAP guidance and aspects of the CFPB Payday Loan Rule will harm the exact people they are intended to help by pushing these people away from compliance-oriented lenders to less regulated lenders with likely higher interest rates.

II. Establish a Process for Robust Open Communication when Crafting Small Dollar Products.

Open communication between the regulator and the institution is critical when crafting a short term, small dollar product. Once clear rules are established, the FDIC and other banking regulators should establish office hours or other forums to discuss creative ways that institutions – both bank and non-bank – can meet the standards in place. Since institutions will structure their products differently from each other, we ask that the regulators support innovative approaches and refrain from establishing a one-size-fits-all approach.

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[10] OCC, "Acting Comptroller of the Currency Rescinds Deposit Advance Product Guidance" (October 5, 2017) https://www.occ.treas.gov/news-issuances/news-releases/2017/nr-occ-2017-118.html

[11] *Id.*

Conclusion

As the statistics suggest, consumers need responsible short term, small dollar credit, especially when unexpected expenses arise. We urge the FDIC to work with its fellow banking regulators to create standards that allow lenders to provide short term, small dollar credit with reasonable terms that account for credit risk and provide strong consumer protections.

We look forward to working with the FDIC as it assesses the short term, small dollar marketplace and welcome the opportunity to be a resource. Please do not hesitate to contact the undersigned with any questions.

Sincerely,

Kate Larson Prochaska