APPLICATION FOR A NO-ACTION LETTER TEMPLATE FROM THE CONSUMER FINANCIAL PROTECTION BUREAU

SUBMITTED BY

BANK POLICY INSTITUTE

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WASHINGTON, D.C. 20005

A. NO-ACTION LETTER TEMPLATE APPLICATION INFORMATION

1. The identity of the entity applying for the No-Action Letter Template.

The Bank Policy Institute ("BPI") submits this Application to request the Consumer Financial Protection Bureau's ("CFPB's" or "Bureau's") issuance of a No-Action Letter Template under section E.1.a of the *Policy on No-Action Letters*, 84. Fed. Reg. 48229 (Sept. 13, 2019) (the "Policy"). BPI is requesting this No-Action Letter Template to serve as the basis for No-Action Letter applications by BPI members ("BPI Members") and other deposit-taking institutions that intend to offer certain small-dollar credit products, as discussed in section A.2 of this Application. This Application is not intended to preclude existing small-dollar lending products that differ from the product described in this Application, or to imply that financial institutions must first seek a No-Action Letter from the CFPB before offering small-dollar lending products. BPI is a nonpartisan public policy, research and advocacy group, representing the nation's leading banks and their customers. Our members include universal banks, regional banks and the major foreign banks doing business in the United States. Collectively, they employ almost 2 million Americans, make nearly half of the nation's small business loans, and are an engine for financial innovation and economic growth. BPI's address is 600 13th Street NW, Suite 400, Washington, D.C. 20005.

2. A description of the consumer financial product or service in question, including (a) how the product or service functions; (b) the terms on which it will be offered; and (c) the manner in which it is offered or provided, including any consumer disclosures.

BPI submits this Application for a No-Action Letter Template covering a standardized small-dollar credit product (the "Proposed Product") that may be offered by an insured deposit-taking institution to customers who hold deposit accounts at the institution (collectively, "Depository Institutions").[1] This Application describes the general structure and features of the Proposed Product. Some of the features are quite definite, functioning as guardrails that should be included in all versions of the Proposed Product. Others are less definite. As indicated in the No-Action Letter Policy, Depository Institutions submitting an application for a No-Action Letter based on a No-Action Letter Template issued in response to this Application would design a version of the Proposed Product that includes the guardrails, but that also would provide further specific information regarding the precise nature and details of the individual version of the Proposed Product they intend to offer, including the manner in which it would be offered and provided. Such specific details would depend on a variety of factors, including the Depository Institution's business strategy, risk tolerance, underwriting criteria, and customer needs.

Depository Institutions would design their specific versions of the Proposed Product to provide customer protections and features specifically intended to address the potential risks associated with certain small-dollar credit products, including (i) "cycles of debt" facilitated by the rollover of increasingly costly borrowing; (ii) high costs associated with numerous, difficult to understand fees; and

[1] BPI acknowledges the limitations on the CFPB's supervisory and enforcement jurisdiction under section 1026 of the Dodd-Frank Act as it relates to insured depository institutions and insured credit unions with total assets of $10,000,000,000 or less. *See* 12 U.S.C. § 5516.

(iii) the risk of default. See section A.3 and A.4 of this Application for more information about how the Proposed Product would mitigate these risks.

a. *Structure*

The Proposed Product would be structured in one of two ways: (i) as an installment loan; or (ii) as a line of credit.

i. *Installment Loan:* The Proposed Product could be structured as a fixed-term, amortizing small-dollar installment loan, which the customer would pay back in fixed minimum payments over the term of the loan. The installment loan generally would have a longer term and higher dollar amount than the line of credit structure, so as to enable Depository Institutions to meet larger, unanticipated small-dollar credit needs of their customers.

ii. *Line of Credit:* The Proposed Product could be structured as an open-end line of credit, which would be linked to a customer's associated deposit account.[2] Amounts drawn under the line would have a fixed repayment period, to be repaid by the customer in fixed minimum payment amounts over that period. Multiple draws would be permitted so long as the customer repays the full amount of the prior draw before drawing on the line of credit again. For example, a Depository Institution might provide a customer with a $500 line of credit, with each successive draw repayable in minimum fixed installments over the course of three months. The customer might initially draw $200 on the line of credit, repayable over three months from the date of the draw. After repaying that draw in full, the customer might thereafter make another draw of up to $500, which would be repayable over a three-month borrowing period beginning on the date of that additional draw.[3] The line of credit structure generally would have a shorter term (i.e., draw period) and a smaller dollar amount than the installment loan structure, so as to meet the occasional short-term liquidity and small-dollar credit needs of customers.

b. *Annualized Percentage Rate ("APR")*

Depository Institutions offering their specific versions of the Proposed Product would determine the annualized percentage rate ("APR") based on a range of factors, such as credit risk, funding costs, and the precise terms of the loan, subject to all applicable laws and regulations (e.g., any interest rate limitations imposed under the Military Lending Act or other relevant laws, where applicable). Specific information regarding the APR, as well as how the APR (when combined with other terms) would improve the options available to consumers within the market for small-dollar credit products, would be detailed in the Depository Institution's application for a No-Action Letter based on the Template. BPI

2 Depository Institutions would not offer the line of credit version of the Proposed Product by means of a credit card.

3 This example is provided purely for purposes of illustrating the basic mechanics of multiple draws, and not to indicate any specific repayment period, amount, etc.

notes that, according to Pew Research Center, payday loans typically carry APRs of 300% to 500%, whereas lower-cost credit from banks and credit unions could cost six times less.[4]

c. *Other Fees*

Depository Institutions offering a version of the Proposed Product would not charge a late payment fee or impose a prepayment penalty. Any other fee charged to consumers would be clearly disclosed in advance and in compliance with all applicable laws and regulations. Specific information regarding any fees charged in connection with a Depository Institution's version of the Proposed Product, as well as how these fees (when combined with other terms) would improve the options available to consumers within the market for small-dollar credit products, would be detailed in the Depository Institution's application for a No-Action Letter based on the Template.

d. *Dollar Amount*

The Proposed Product would not exceed $2,500, consistent with existing industry practices and regulatory expectations of a "typical" small-dollar loan. The specific dollar amount itself would vary depending on the structure and the term of a Depository Institution's version of the Proposed Product (e.g., line of credit versus installment loan).

e. *Disbursement of Funds*

Depository Institutions would disburse the amount borrowed (whether in the form of an installment loan or a draw on a line of credit) into the borrower's deposit account at the Depository Institution within three to five business days after the borrower is approved.[5]

f. *Repayment Term and Payment Structure*

The repayment term of the Proposed Product would generally not exceed a specified term, consistent with existing industry practices and regulatory expectations of a "typical" small-dollar credit product. The repayment structure would depend on the dollar amount and term of the loan, with larger loans being subject to repayment over longer terms.

For the installment loan structure, the repayment term would be more than 45 days and less than one year. (BPI anticipates that, in most cases, it would be between 46 days and three months.) Loans would be amortized on a straight-line basis across more than one payment, with no balloon or similar payment (i.e., the loan would not have any payment that is more than twice as large as any other payment).

For the line of credit structure, draws under the line of credit would have a term of more than 45 days and less than one year, with draws amortized on a straight-line basis across more than one

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[4] Pew Research Center, *Payday Loan Customers Want More Protections, Access to Lower-Cost Credit from Banks* (Apr. 19, 2017), https://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2017/04/payday-loan-customers-want-more-protections-access-to-lower-cost-credit-from-banks; Ian McKendry, *Banks' Secret Plan to Disrupt the Payday Loan Industry*, AMERICAN BANKER (May 6, 2016), https://www.americanbanker.com/news/banks-secret-plan-to-disrupt-the-payday-loan-industry.

[5] The Proposed Product would be serviced by the Depository Institution providing the Proposed Product, not a third party.

payment, with no balloon or similar payment (i.e., the draw would not have any payment that is more than twice as large as any other payment), with one potential exception: If the dollar amount advanced is of a small sum (e.g., the dollar amount requested may be 10 percent of the maximum dollar amount established by the Depository Institution for the Proposed Product), the draw may come due in less than 45 days in a single repayment.

Specific information regarding account terms and conditions, such as related account closure terms, would be addressed in the Depository Institution's application for a No-Action Letter based on the Template.

g. *Collateral*

The borrower would not be required to provide collateral or other security for borrowing under the Proposed Product. The Depository Institution may, however, maintain a right to setoff funds in the customer's existing deposit account, to the extent authorized by applicable laws and regulations.

h. *Rollovers and Reborrowing*

The Proposed Product would not permit rollovers (i.e., the extension or renewal of a loan or draw on which a scheduled payment has not been made, for an additional fee), nor would the Depository Institution make a new loan or provide a new draw under the Proposed Product the proceeds of which are to be used to repay an outstanding balance associated with a prior loan or draw under the Proposed Product. Similarly, the borrower would not be able to receive a new loan or draw where he or she has not repaid a prior or existing loan or draw, regardless of the use of proceeds of the new loan or draw. Depository Institutions offering a version of the Proposed Product would use underwriting and other terms and conditions to limit reborrowing risk, including, for example, through the use of "cooling off" periods, periodic borrowing limits, "off ramps," and/or similar measures. The specific mechanisms a Depository Institution chooses to employ to mitigate reborrowing risk would be detailed in its application for a No-Action Letter based on the Template.

i. *Underwriting*

Depository Institutions would establish the specific underwriting criteria for their respective versions of the Proposed Product, including eligibility and credit decisioning criteria. Depending on the Depository Institution's individual criteria, eligibility factors might include length of time the customer has held an account at the Depository Institution; frequency of deposits; average minimum balance; average draw amount; any charge-offs, delinquencies, or insufficient funds; and other account history. Credit decisioning criteria might include the consumer's deposit account history, including substantiation of recurring income payments into the consumer's deposit account, and/or prior instances of the borrower applying for the Depository Institution's version of the Proposed Product (where applicable). In each case, these underwriting criteria would focus on the consumer's transaction activity in their accounts at the Depository Institution, also known as "cash flow" underwriting. Specific information regarding the above types of underwriting criteria, and any additional criteria, to be used in connection with the Depository Institution's version of the Proposed Product, would be detailed in the Depository Institution's application for a No-Action Letter based on the Template.

j. *Eligibility and Delivery Channels*

Depository Institutions applying for a No-Action Letter based on the Template would offer their respective versions of the Proposed Product solely to customers who hold a deposit account at the Depository Institution. The Depository Institution's version of the Proposed Product would be marketed through one or more of its existing delivery channels. In some cases, the Depository Institution may choose to limit offering its product to only certain channels (e.g., online and mobile devices) to limit costs for all parties.

k. *Credit Reporting*

Depository Institutions offering a version of the Proposed Product may report payments and non-payments to credit reporting agencies, which would provide an opportunity for borrowers to increase their credit scores and further the ability for borrowers to receive other products based on repayments. Depository Institutions would provide information about any such credit reporting in their application for a No-Action Letter based on this Template.

l. *Disclosures*

Consumer disclosures and marketing materials associated with the Depository Institution's version of the Proposed Product would be designed to meet the applicable requirements under all applicable Federal consumer financial protection and other laws and regulations. Such institutions would shorten and modify disclosures for consumers' ease of use and readability for online and mobile channels.[6]

3. **An explanation of the potential consumer benefits associated with the product or service.**

BPI believes that a No-Action Letter Template from the CFPB would incentivize Depository Institutions to re-enter the small-dollar credit products space, which would lead to a number of consumer benefits, including by (i) addressing consumers' significant needs for short-term credit; (ii) expanding access to credit; (iii) serving the financial needs of underbanked populations; (iv) increasing the regulation of small-dollar loans and access to Depository Institution services; (v) facilitating clear, simple, and transparent terms and disclosures to consumers; (vi) offering a streamlined application and underwriting process for small-dollar products; and (vii) meeting consumer demands for online and mobile banking options.

[6] To the extent there was uncertainty about whether such modified disclosures were compliant with applicable disclosure requirements, applicants could also submit an application under the Bureau's Policy to Encourage Trial Disclosure Programs or the Bureau's Policy on the Compliance Assistance Sandbox. *See* CFPB, Policy to Encourage Trial Disclosure Programs, 84 Fed. Reg. 48,260 (Sept. 13, 2019), https://www.govinfo.gov/content/pkg/FR-2019-09-13/pdf/2019-19761.pdf; CFPB, Policy on the Compliance Assistance Sandbox, 84 Fed. Reg. 48,246 (Sept. 13, 2019), https://www.govinfo.gov/content/pkg/FR-2019-09-13/pdf/2019-19762.pdf.

a. *Addressing Consumers' Significant Needs for Short-Term Credit*

Consumers rely on small-dollar credit products to meet their needs for short-term liquidity and to pay for larger, unanticipated expenses.[7] While some Depository Institutions currently offer small-dollar credit products, additional opportunities for Depository Institutions to address unmet demand for consumer credit in their communities would be facilitated by addressing the regulatory uncertainty associated with these products. BPI is submitting this Application as a step toward providing regulatory certainty to Depository Institutions that wish to meet consumers' need for short-term credit.

There is significant demand for short-term credit. According to the OCC, "[e]ach year, millions of Americans rely on nearly $90 billion in small-dollar loans, typically between $300 and $5,000."[8] According to a Federal Reserve study released in May 2019, about 40 percent of U.S. adults said they would not be able to cover a $400 unexpected expense or would cover it by selling something or borrowing money.[9] Seventeen percent of adults are not able to pay all of their current month's bills in full, and another 12 percent would be unable to if they had a $400 unexpected expense.[10]

In addition, FDIC research suggests that, in 2017, nearly 13% of U.S. households (approximately 14.8 million) "may have had unmet demand for small-dollar credit from banks," and that "[a] majority of these households reported staying current on bills in the prior year."[11] FDIC research also found that, "[a]lthough the vast majority (nearly 9 in 10) of these households had a bank account, fewer than one in three applied for credit from a bank."[12]

Notwithstanding the demand for short-term credit, few banks have entered the small-dollar lending market over the past decade.[13] For example, in 2008, the FDIC launched a Small-Dollar Loan Pilot Program, which was designed to illustrate how banks can profitably offer affordable small-dollar loans. The program's low participation rates only highlighted the challenges associated with this market for banks. Loans were capped at $1,000, and origination and other upfront fees plus interest charges were capped at a 36 percent APR. A year into the program, the FDIC increased the maximum loan

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7 OCC, Press Release, *Comptroller of the Currency Supports CFPB Proposed Rule on Short-Term Small-Dollar Lending* (Feb. 11, 2019), https://www.occ.treas.gov/news-issuances/news-releases/2019/nr-occ-2019-14.html. Small-dollar credit products also help small businesses with meeting short-term and emergency expenses.

8 *Id. See also* OCC Bulletin 2018-14, *Installment Lending, 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.

9 Board of Governors of the Federal Reserve System, *Report on the Economic Well Being of U.S. Households in 2018* (May 2019), https://www.federalreserve.gov/publications/files/2018-report-economic-well-being-us-households-201905.pdf.

10 *Id.*

11 *See* FDIC, Request for Information on Small-Dollar Lending, 83 Fed. Reg. 58,566 (Nov. 20, 2018), https://www.govinfo.gov/content/pkg/FR-2018-11-20/pdf/2018-25257.pdf.

12 *See id.*

13 For example, in its response to the FDIC's Request for Information on Small-Dollar Lending, the ABA stated: "Although 73% of banks that responded to the 2015 ABA survey made small dollar loans in 2014, only 35% of responding banks made small dollar loans as part of an established program." *See* American Banker Association, re: Request for Information on Small-Dollar Lending, 83 Fed. Reg. 58,566 (Nov. 20, 2018) [RIN 3064-ZA04], at 4 (Jan. 22, 2019). In addition, Pew Research Center has stated that, "[t]o date, most banks have not offered small installment loans in part because of concerns that without explicit approval, they could be subject to future regulatory action." Pew Research Center, *Prospects Rising for Lower-Cost Small-Dollar Loans* (Oct. 9, 2019), https://www.pewtrusts.org/en/research-and-analysis/articles/2019/10/09/prospects-rising-for-lower-cost-small-dollar-loans.

amount to $2,500 following requests from the participating banks.[14] After the pilot program ended in December 2009, the FDIC concluded that "banks can offer alternatives to high-cost, emergency credit products, such as payday loans or overdrafts," and released a Safe, Affordable, and Feasible Small-Dollar Loan Template for other banks to replicate.[15] Notwithstanding these conclusions and efforts, as noted above, banks have generally not significantly increased small-dollar product offerings.

As a result of the significant demand for short-term credit, and the challenges facing banks that wish to meet this demand, it has been reported that the FDIC, Federal Reserve, and OCC are currently engaging in a joint agency effort to offer clearer guidelines to banks regarding small-dollar credit products.[16] FDIC Chairman Jelena McWilliams has stated that "[t]he reason banks have not gotten back into [the small-dollar credit space] is because [the regulators] have not come up with an interagency position."[17] McWilliams also stated that she does not believe that banks would have enough certainty to move forward in this space "without some kind of a steady document."[18] According to the FDIC, "[g]iven the unique role banks play in the communities they serve and the benefits to consumers of having a relationship with an insured financial institution, banks are well-positioned to address the credit needs of their customers in a responsible manner."[19]

More recently, the OCC, FRB, FDIC, NCUA, and CFPB jointly issued a statement encouraging financial institutions to offer responsible small-dollar loans in the face of the COVID-19 crisis.[20] The last sentence of that statement noted that "[t]he agencies are working on future guidance and lending principles for responsible small-dollar loans to facilitate the ability of financial institutions to more effectively meet the ongoing credit needs of their communities and customers."[21]

b. *Expanding Access to Credit*

As discussed above, Depository Institutions offering a version of the Proposed Product would employ underwriting processes designed to expand access to credit through the use of "cash flow" underwriting methods. In an interagency statement, the CFPB acknowledged that "[i]mproving the measurement of income and expenses through cash flow evaluation may be particularly beneficial" for

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14 FDIC Quarterly, A Template for Success: The FDIC's Small-Dollar Loan Pilot Program, Vol. 4, No. 2 (2010), https://www.fdic.gov/bank/analytical/quarterly/2010-vol4-2/fdic-quarterly-vol4no2-smalldollar.pdf.

15 *See id.* at 37.

16 L. Clozel, *Banks Want Reassurance on Payday-Type Loans* (Sept. 6, 2019), https://www.wsj.com/articles/banks-want-reassurance-on-payday-type-loans-11567771201.

17 *Id.*

18 *Id.*

19 *See* FDIC, Request for Information on Small-Dollar Lending, 83 Fed. Reg. 58,566 (Nov. 20, 2018), https://www.govinfo.gov/content/pkg/FR-2018-11-20/pdf/2018-25257.pdf.

20 Joint Statement Encouraging Responsible Small-Dollar Lending in Response to COVID-19 (Mar. 26, 2020), https://www.consumerfinance.gov/about-us/newsroom/federal-agencies-encourage-banks-savings-associations-credit-unions-to-offer-responsible-small-dollar-loans-consumers-small-businesses-affected-covid-19/. The statement was also joined by the Conference of State Banking Supervisors.

21 *Id*.

certain customers.[22] Moreover, FinRegLab, Inc. recently found that underwriting based on cash-flow information was predictive of credit risk and loan performance; inclusive of borrowers who may have faced constraints on access to credit; and consistent across borrowers who likely belong to different demographic groups.[23]

c. *Serving the Financial Needs of Underbanked Populations*

Given the regulatory uncertainty associated with bank small-dollar credit, the Bureau's issuance of the requested No-Action Letter Template could enable Depository Institutions to serve the financial needs of underbanked consumers who may not have other options to pay for unexpected or emergency expenses, or would otherwise have to seek a loan with a prohibitively high interest rate from a payday lender. Depository Institutions offering a version of the Proposed Product would be able to provide borrowers of lesser credit quality (e.g., with a thin or no credit history) access to needed small-dollar credit from supervised institutions.

By providing greater legal certainty regarding offering particular versions of the Proposed Product (i.e., by issuing No-Action Letters in response to applications from particular Depository Institutions based on the Template), the Bureau could help ensure that such versions are broadly accessible to consumers in a full range of geographic locations, including individuals in low- and moderate-income geographies where there are fewer bank branches, and where borrowers may be difficult to reach through traditional banking channels.

d. *Increased Regulation of Small-Dollar Loans and Access to Bank Services*

The small-dollar lending market has traditionally been dominated by payday lenders and other non-traditional lenders, rather than by banking organizations that are subject to heightened regulatory supervision. For example, non-traditional lenders are not subject to numerous regulations that apply to banks, ranging from Community Reinvestment Act requirements to prudential standards, such as capital and liquidity requirements, deposit insurance requirements and assessments, resolution-planning requirements, and prompt corrective action requirements.

Lending activity in connection with the Proposed Product would, in contrast, occur within the highly regulated and supervised framework in which Depository Institutions operate. In addition, by obtaining small-dollar credit products from such institutions, consumers may also be able to benefit from the wide range of other services that Depository Institutions provide, including financial monitoring and education tools and long-term savings products.[24] Improving financial skills would also help consumers reduce reliance on the high-cost, short-term credit products that currently dominate this market.

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22 Federal Reserve Board, CFPB, FDIC, NCUA, OCC, Interagency Statement on the Use of Alternative Data in Credit Underwriting, at 2 (Dec. 3, 2019), https://files.consumerfinance.gov/f/documents/cfpb_interagency-statement_alternative-data.pdf.

23 FinRegLab, *The Use of Cash-Flow Data in Underwriting Credit: Empirical Research Findings*, at 3 (July 2019), https://finreglab.org/wp-content/uploads/2019/07/FRL_Research-Report_Final.pdf.

24 *See* OCC, Press Release, *Comptroller of the Currency Supports CFPB Proposed Rule on Short-Term Small-Dollar Lending* (Feb. 11, 2019), https://www.occ.treas.gov/news-issuances/news-releases/2019/nr-occ-2019-14.html.

e. *Clear, Simple, and Transparent Terms and Conditions*

Consistent with the No-Action Letter Template for the Proposed Product, key terms and conditions of the particular version of the Proposed Product offered by Depository Institutions would be clear, simple, and transparent. Marketing and customer disclosures in connection with the Proposed Product would comply with all consumer protection laws and regulations and be shortened and modified for consumers' ease of use and readability for online and mobile channels.[25]

f. *Streamlined Underwriting and Application Process*

Depository Institutions offering a version of the Proposed Product would streamline the application and underwriting process, which would result in lower underwriting costs, and, ultimately, lower costs for consumers.

g. *Expanded Delivery Channels*

The Proposed Product may help meet consumer demands for online and mobile banking options.[26] In some cases, a Depository Institution may choose to offer its version of the Proposed Product through only certain channels (e.g., online and mobile devices) to limit costs for all parties. A No-Action Letter Template for the Proposed Product would reduce regulatory risk and uncertainty for Depository Institutions that would like to offer a version of the Proposed Product, enabling these Depository Institutions to go to market more quickly.

4. **An explanation of the potential consumer risks associated with the product or service, and how the applicant intends to mitigate such risks.**

There are three primary risks associated with small-dollar credit products if appropriate guardrails are not put in place: (i) cycle of debt; (ii) high cost; and (iii) risk of default. However, as discussed in more detail below, BPI believes that the Proposed Product includes mitigants to sufficiently address each of these concerns.

a. *Cycle of Debt*

One of the most serious risks associated with some small-dollar credit products is the potential that borrowers may fall into a "cycle of debt," whereby a borrower who defaults on a higher-cost loan product may obtain another higher-cost loan product to pay off the first loan. This risk is especially pronounced where the loan product is "rolled over" into a new loan that triggers an entirely new round of related fees and interest costs. The Proposed Product would clearly and unequivocally mitigate this risk by prohibiting rollovers and not allowing borrowers to receive a new loan or draw where they have not repaid a prior or existing loan or draw, regardless of the use of proceeds of the new loan or draw. In addition, Depository Institutions offering a version of the Proposed Product would use underwriting and

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25 *See supra* note 6.

26 FEDS Notes, *Mobile Banking: A Closer Look at Survey Measures* (Mar. 27, 2018), https://www.federalreserve.gov/econres/notes/feds-notes/mobile-banking-a-closer-look-at-survey-measures-20180327.htm ("While mobile phones have been prevalent in the U.S. for the past decade, smartphone adoption has grown rapidly in recent years. The uses for smartphone technology have expanded, including the use of mobile phones for banking. In 2017, about half of U.S. adults with bank accounts had used a mobile phone to access a bank account in the past year.").

other terms and conditions to establish mechanisms to limit reborrowing risk, including, for example, through the use of "cooling off" periods, periodic borrowing limits, "off-ramps," and/or similar measures. The specific additional mechanisms a Depository Institution chooses to employ to mitigate reborrowing risk would be identified in the Depository Institution's application for a No-Action Letter based on the Template.

b. *High Cost*

The high transaction costs and the higher risk of default typically associated with small-dollar loan products may result in a higher cost of credit, which may be more expensive than other traditional loan products (e.g., high-dollar loans or secured loans). These higher costs can be particularly exacerbated where the loan product is rolled over (triggering another series of related fees and interest costs) and/or subject to prepayment penalties or late fees.

The structure and terms of the Proposed Product would reflect the cost of extending small-dollar credit and associated risks, but would avoid the product features typically associated with nonbank small-dollar credit that are most likely to increase potential costs to consumers. In addition, disclosures provided by the Depository Institutions would reflect the costs associated with their respective versions of the Proposed Product, so as to allow for consumers to appropriately evaluate the product before submitting an application. In the absence of small-dollar credit products offered by Depository Institutions, consumers are limited to loan products from alternative lenders with higher rates and fees, less favorable terms, and that are subject to less regulatory scrutiny and supervision. According to Pew Research Center, "[t]he average payday loan customer borrows $375 over five months of the year and pays $520 in fees, while banks and credit unions could profitably offer that same $375 over five months for less than $100."[27] Specific information regarding the APR of the Proposed Product, as well as how the APR (when combined with other terms) would improve the options available to consumers within the market for small-dollar credit products, would be detailed in the Depository Institution's application for a No-Action Letter based on the Template.

c. *Risk of Default*

Because of the typical risk profile of many borrowers seeking access to small-dollar credit, there may be a risk of default or failure to repay the loan in the specified time-frame. Although some risk of default is, of course, inherent in any credit product, the Proposed Product would seek to limit default risk in several ways. First, the repayment and other terms of the Proposed Product would be simple and transparent, allowing borrowers to more fully understand their repayment obligations and any costs associated with the product. Second, as described elsewhere, the Proposed Product would avoid the product features typically associated with nonbank small-dollar credit that are most likely to increase potential costs to consumers (e.g., rollovers and late fees). Additional mitigation of default risk would be provided via each Depository Institution's own underwriting criteria and practices, and by requiring borrowers to have an existing relationship with the Depository Institution. The Depository Institution would be able to take into account the borrower's history with the Depository Institution, in addition to other internal and external data sources, when evaluating a consumer's creditworthiness. Finally, the

[27] Pew Research Center, *Standards Needed for Safe Small Installment Loans from Banks, Credit Union: Millions of Borrowers Could Save Billions of Dollars Annually* (Feb. 15, 2018), https://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2018/02/standards-needed-for-safe-small-installment-loans-from-banks-credit-unions.

Proposed Product would also encourage repayment by expressly *not* imposing any penalty on borrowers who wish to prepay.

5. **An identification of the statutory and/or regulatory provisions as to which the applicant seeks a No-Action Letter Template and an explanation of why a No-Action Letter Template is needed, such as uncertainty or ambiguity regarding the application of the identified statutory and/or regulatory provisions to the product or service in question.**

BPI is seeking compliance assistance with respect to the CFPB's authority under sections 1031 and 1036 of the Dodd-Frank Act to prohibit unfair, deceptive, or abusive acts or practices ("UDAAP").[28] Although BPI appreciates the CFPB's January 24, 2020, Statement of Policy Regarding Prohibition on Abusive Acts or Practices, which is helpful in providing greater clarity regarding the scope of UDAAP, the CFPB itself acknowledged that "[u]ncertainty remains as to the scope and meaning of abusiveness."[29] The standards for unfair or deceptive acts or practices also create uncertainty. The CFPB has acknowledged that "the particular facts in a case are crucial to a determination of unfairness [and deception]," and that changes in facts could change the appropriate determination.[30]

In addition, although federal financial regulators have issued guidance regarding small-dollar lending by Depository Institutions (as detailed above), the fact that relatively few such institutions have entered this market to date indicates that uncertainty remains.

Notwithstanding this lingering uncertainty, BPI believes that, in light of the multiple benefits and mitigated risks, as described above, the act or practice of offering or providing the Proposed Product would not be unfair, deceptive, or abusive to the extent that the product that would be offered or provided has the structure and features described in section A.2 above. In addition, although NAL applications by particular Depository Institutions based on the Template will provide greater detail about some of these features, the same should be generally true of those particular products.[31] Further, this Application is not intended to preclude existing small-dollar lending products that differ from the Proposed Product, or to imply that financial institutions must first seek a No-Action Letter from the CFPB before offering small-dollar lending products.

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28 *See* Dodd-Frank Act, Title X, Subtitle C, §§ 1031, 1036; PL 111-203 (July 21, 2010).

29 *See* CFPB, Statement of Policy Regarding Prohibition on Abusive Acts or Practices (Jan. 24, 2020), https://files.consumerfinance.gov/f/documents/cfpb_abusiveness-enforcement-policy_statement.pdf.

30 *See* CFPB, Consumer Laws and Regulations: Unfair, Deceptive, or Abusive Acts or Practices, Manual V.2, at 3, 7 (Oct. 2012), https://files.consumerfinance.gov/f/documents/102012_cfpb_unfair-deceptive-abusive-acts-practices-udaaps_procedures.pdf.

31 That said, BPI acknowledges that the Bureau's assessment of an application for a No-Action Letter based on the Template will depend, in part, on the Bureau's assessment of the version of the Proposed Product described in the application, including the description of the manner in which it will be offered and provided. BPI also acknowledges that such a No-Action Letter would be limited to the described aspects of the product, and thus would not provide "blanket" no-action protection under sections 1031 and 1036 of the Dodd-Frank Act. For example, even if the disclosures provided in connection with a particular version of the Proposed Product were compliant with all applicable disclosure requirements, if the recipient's employees orally provided deceptive information about the product to consumers, the No-Action Letter would not shield the recipient from a supervisory or enforcement deception action based on sections 1031 and 1036 of the Dodd-Frank Act.

BPI is not seeking in this Application any relief under the Payday, Vehicle Title, and Certain High-Cost Installment Loans Rule (the "Payday Lending Rule").[32] In cases where the Payday Lending Rule would apply, once effective, the Proposed Product would comply with all applicable requirements, unless and to the extent that a Depository Institution wished to submit a separate request for a No-Action Letter request focused on the applicable provisions of the Payday Lending Rule.

6. **If the applicant wishes to request confidential treatment under the Freedom of Information Act (FOIA), the Bureau's rule on Disclosure of Records and Information (Disclosure Rule), or other applicable law, this request and the basis therefor should be in a separate letter and submitted with the application. The applicant should specifically identify the information for which confidential treatment is requested, and may reference the Bureau's intentions regarding confidentiality under section G of the Policy.**

Confidential treatment has been requested by separate letter.

7. **If the applicant wishes the Bureau to coordinate with other regulators, the applicant should identify those regulators, including but not limited to those the applicant has contacted about offering or providing the product or service in question.**

BPI respectfully requests that the Bureau coordinate with the OCC, FDIC, and FRB in reviewing this Application and provide greater clarity and certainty regarding the regulation of bank-provided small dollar credit. Regulatory coordination with these agencies would ensure a consistent approach to the Proposed Product, particularly in light of the potential guidance that the OCC, FDIC, and FRB may issue on small-dollar credit products offered by Depository Institutions.

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32 *See* Payday, Vehicle Title, and Certain High-Cost Installment Loans, 82 Fed. Reg. 54,472 (Nov. 17, 2017), https://www.govinfo.gov/content/pkg/FR-2017-11-17/pdf/2017-21808.pdf; *see also* Payday, Vehicle Title, and Certain High-Cost Installment Loans, 84 Fed. Reg. 4,252 (Feb. 14, 2019), https://www.govinfo.gov/content/pkg/FR-2019-02-14/pdf/2019-01906.pdf.