Consumer Federation of America

May 1, 2015

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Chairman
Homeland Security and Governmental Affairs Committee
United States Senate
340 Dirksen Senate Office Building
Washington, DC, 20510

Senator Thomas Carper
Ranking Member
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United States Senate
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Senator Heidi Heitkamp
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Dear Senators,

Thank you for the opportunity to provide information about the rulemaking process in the United States. Consumer Federation of America (CFA) is a nonprofit association of nearly 300 consumer groups that, since 1968, has sought to advance the consumer interest through research, advocacy, and education. Our members represent millions of people. As part of that mission, CFA has worked on numerous specific rules to improve consumer protections, and has sought to ensure both that the rulemaking process enhances consumer protections and that the rules that we work on are promulgated in a robust, transparent and timely manner.

Congress created independent federal agencies to develop expertise on how to protect American consumers from dangerous products, tainted food and deceptive financial services products, among other public interest goals. Most agencies work hard to navigate the already complex, time consuming, expensive and difficult rulemaking process.

Our work has been focused on the benefits of the regulatory process. These benefits include increasing consumer protections to reduce harms caused by the lack of necessary protections. I will provide examples of these types of rules that impact product safety, food safety and ensuring a fair financial market place.

Product Safety

CFA was been involved in petitioning the U.S. Consumer Product Safety Commission (CPSC) to promulgate rules about numerous product safety issues including all terrain vehicles, baby bath seats, product registration and window coverings to name but a few. We also have supported legislation that would require the CPSC to promulgate rules to protect consumers through such legislation as the Consumer Product Safety Improvement Act which passed in 2008. We support rulemaking at the CPSC because the benefits are considerable: lives will be saved from product hazards.

The CPSC has always been staffed by technical experts, such as engineers and human factors psychologists, scientists, and economists. These experts use their technical expertise to further the mission of the CPSC – to reduce deaths and injuries caused by potentially unsafe products. It is incredibly important not to place potential political hurdles in front of the CPSC's ability to protect the public.

The CPSC historically, and still in many instances, relies upon voluntary standards to address product hazards. Only when the voluntary standards are not adequately eliminating or reducing the hazard, does the CPSC proceed to the promulgation of a mandatory standard. In these cases, there is a serious problem that must be addressed and time is of the essence. The longer the mandatory standard takes to be finalized, the longer it takes for consumers to be protected, and the more consumers are put at risk and are potentially injured.

CPSC rulemakings historically take many years. In testimony[1] to the House Committee on Energy and Commerce Subcommittee on Oversight and Investigations on July 7, 2011, Commissioner Robert Adler stated that on average the CPSC promulgates a rule every 3 $^{1}/_{3}$ years and he has since adjusted that number to 3 ½ years. This is based on the CPSC's promulgation of 10 rules in 34 years.

If however, one looks at a number of specific rulemakings that have yet to be completed, it is clear that 3 ½ years is an underestimate of the time actually required. For example:

- The CPSC published a Notice of Proposed Rulemaking for ATVs on August 10, 2006. Even after Congress directed the CPSC to complete the rulemaking by 2012, the CPSC has still not issued a final rule. Thus, after over 8 years, the rule is still not completed.
    - The latest data on ATV death and injuries from the CPSC released in March 2015, found that 99,600 people required emergency room treatment in 2013 as a result of ATVs and the estimated and incomplete deaths for 2012 include 650 fatalities. In 2013, ATVs killed at least 62 children younger than 16, accounting for 15 percent of ATV fatalities.
- In 1994 the CPSC began to work on a rule for upholstered furniture flammability and expanded the scope for the rule in 2003 but the rule has still not been completed.

[1] Statement of Robert S. Adler, Commissioner United States Product Safety Commission, Before the House Committee on Energy and Commerce Subcommittee on Oversight and Investigations http://democrats.energycommerce.house.gov/sites/default/files/documents/Testimony-Adler-OI-Views-on-Independent-Agencies-on-Regulatory-Reform-2011-7-7.pdf

- More recently, the CPSC published a Notice of Proposed Rulemaking in September of 2012 for high power magnets (skipping the Advanced Notice stage as permitted by the Consumer Product Safety Improvement Act (CPSIA)). The rule was finalized in October of 2014 and was implemented in April of 2015 after overcoming a temporary injunction by the 10th Circuit. Thus, that rule which was purportedly on an expedited schedule took over two years to become final and still has not been implemented.
    - The consequences of inhaling or swallowing more than one of these powerful magnets are severe. Children who swallow two or more magnets are at risk of developing serious injuries such as small holes in the stomach and intestines, intestinal blockage, blood poisoning, and even death. Removing magnets surgically often requires the repair of the child's damaged stomach and intestines.
    - This product poses a hidden hazard because parents are often not aware that their child has swallowed such magnets and because the early symptoms of magnet ingestion often mimic other common illnesses, making a magnet ingestion difficult to diagnose.
    - According to the CPSC, 2,900 possible magnet set ingestions occurred in the United States from January 1, 2009 through December 31, 2013, that required emergency department treatment. The CPSC is aware of one fatality that occurred in 2013.

These examples illustrated that while the CPSC rulemaking is incredibly important to prevent deaths and injuries caused by unsafe products, it takes a long period of time and that period of time varies significantly.

Rulemaking at the CPSC takes a long time and one of the reasons for the extensive delay is that the CPSC is subject to numerous comprehensive cost-benefit analyses requirements as part of its rulemaking process. Since the 1981 passage of amendments to the Consumer Product Safety Act (and under other acts it enforces), the CPSC has been required to conduct an extensive cost-benefit analysis when the CPSC promulgates mandatory safety rules. Under these amendments, the CPSC's current cost-benefit approach is as comprehensive, if not more so, than that set forth in any executive order issued by the Office of the President. The CPSC's existing requirements to perform extensive cost-benefit analyses derive from: section 9 of the Consumer Product Safety Act; section 3 of the Federal Hazardous Substances Act; and section 4 of the Flammable Fabrics Act.

To do an adequate job protecting consumers from death and serious injury, the CPSC must be able to act quickly, decisively, and efficiently. Consumers—and Congress—depend on it. However, the current requirements have led the CPSC to promulgate extremely few mandatory safety rules throughout its history.

This has changed for a category of products, infant and toddler products, as a result of provisions in the CPSIA. As a result of this provision, products such as cribs are now subject to the most protective standards in the world. Since June 2011, the new federal crib standard have stopped the sale, re-sale, manufacture, and distribution of drop-side cribs and also prohibits drop-side cribs at motels, hotels and childcare facilities. Drop side cribs have resulted in the deaths of at least 32 infants since 2001. The CPSC's crib standards also made mattress supports stronger, crib

hardware sturdier and compliance testing more rigorous. This was the first time in nearly 30 years that federal crib standards have been updated. Thus, the benefits are profound for consumers but took an incredibly long time to be finalized with the vast cost of at least 32 infant deaths.

Rolling back existing rules would be devastating. For product safety, the recent gains made as a result of the CPSIA have made a huge impact on product safety in this country. While many benefits are not yet quantifiable, the promulgation of these rules has provided some certainty for manufacturers of these products and deregulation in this sector would lead to widespread uncertainty, a waste of resources used to comply with these rules, and a decrease in consumer faith in the strength of our nation's safety net.

Food Safety

Food Safety regulations protect consumers and prevent illnesses. Numerous food safety regulations, however, have been delayed for long periods of time which means that consumers remain at risk of foodborne illness. The Centers for Disease Control and Prevention (CDC) estimates that every year, 48 million Americans are sickened, 128,000 are hospitalized, and 3,000 die from foodborne disease. An unknown number of Americans develop long-term health complications, such as arthritis and kidney failure, as a result of contracting a foodborne illness.[2] Illnesses associated with meat and poultry products are estimated to cost U.S. society almost $7 billion each year.[3,4]

Improvements, however, have been identified as a result of regulations. For example, the Pathogen Reduction/Hazard Analysis (PR/HAACP) and Critical Control Points Rule promulgated by the Food Safety and Inspection Service (FSIS) was finalized in 1998. This rule requires meat and poultry plants to identify hazards in production process and take steps to prevent contamination from occurring. This rule has resulted in reduced contamination of meat and poultry, particularly from E. coli, especially in the early years of implementation, though it could still be strengthened. Salmonella was not included in this rule and reductions in contamination have not been seen.

Public Health Benefits of PR/HAACP Rule

Identifying and fully quantifying the public health impact of the PR/HACCP rule is challenging because food contamination can occur at numerous points along the food supply chain and adequate assurance of food safety requires multiple steps and approaches that are often occurring simultaneously. Consequently, distinguishing the impact of any one program, such as HACCP, from all other activities that affect food safety is difficult. Still, most cost/benefit estimates on the PR/HACCP rule show that the benefits exceed the costs by wide margins.[5]

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[2] Centers for Disease Control and Prevention, "CDC Estimates of Foodborne Illness in the United States 2011" via http://www.cdc.gov/foodborneburden/2011-foodborne-estimates.html.

[3] Since information regarding the long-term health complications from foodborne illness is incomplete, societal costs are likely underestimates and could change with additional data.

[4] Batz MB, Hoffmann S, Morris JG, "Ranking the Disease Burden of 14 Pathogens in Food Sources in the United States Using Attribution Data from Outbreak Investigations and Expert Elicitation." *Journal of Food Protection* 75 (2012): 1278-1291

[5] Center for Science in the Public Interest (on behalf of the Safe Food Coalition) comments to FSIS on Pathogen Reduction; Hazard Analysis and Critical Control Points (HACCP) Systems, July 5, 1995.

The CDC, which annually tracks the incidence of foodborne illness in the United States, gives the PR/HACCP rule some credit for declines in the incidence of infections caused by *Yersinia*, *Listeria*, *Campylobacter*, and *Salmonella* from 1996 to 2001, which is the initial period of HACCP implementation.[6] Other factors played a role as well: egg-quality assurance programs, improved agricultural practices, seafood and juice HACCP, new intervention technologies to reduce food contamination, food safety education programs, and increased attention to imported food.[7] In addition, concurrent changes in food distribution, retailing, and consumer behavior during that time period no doubt had an impact.[8] As a National Research Council committee has cautioned, identifying a direct causation between the PR/HACCP rule and declines in foodborne illness is difficult.[9]

While it is likely that the PR/HACCP regulation played some role in the decline in foodborne illness from 1996 to 2001, there has been little progress in reducing foodborne illnesses since then. In reviewing CDC's annual data on the incidence of foodborne illness (which refers to illnesses from all food sources, not just meat and poultry products), the rate of illness for most of the major pathogens has either not changed or has increased since the early 2000s. Progress has been made in reducing illnesses from *E. coli* O157:H7, though in recent years that progress may be slipping. Also troubling is the fact that illnesses from non-O157:H7 STECs continue to trend upwards and the incidence of illnesses from non-O157 STECs is now higher than illnesses from *E. coli* O157:H7.

Comparisons to more recent years have also shown little progress. Data from 2013 reveals statistically significant increases from 2006-2008 for illnesses from *Campylobacter*, and virtually no change for illnesses from *Listeria monocytogenes*, *Salmonella*, *E. coli* O157:H7 and other Shiga-toxin producing strains of *E. coli* (non-O157 STECs).[10] The current incidence of foodborne illness from the major pathogens remains far from U.S. government National Health Objective targets set for 2020.[11]

Economic Costs of PR/HAACP

Estimating the economic costs of HACCP is more straight-forward. A common concern of the meat and poultry industry during the debate on the PR/HACCP rule was the high cost of implementing the new requirements. An early analysis of the costs and benefits of the HACCP program by the GAO found that the estimated benefits to the public were far greater than the

[6] Centers for Disease Control and Prevention, "Preliminary FoodNet Data on the Incidence of Foodborne Illnesses - Selected Sites, United States, 2001." MMWR 51(15); 325-9, April 19, 2002.
[7] Ibid.
[8] Centers for Disease Control and Prevention, "Incidence and Trends of Infection with Pathogens Transmitted Commonly Through Food — Foodborne Diseases Active Surveillance Network, 10 U.S. Sites, 2006–2013." MMWR 63(15); 328-332, April 18, 2014.
[9] National Research Council, "Scientific Criteria to Ensure Safe Food." *The National Academies Press*, 2003, p.154.
[10] Centers for Disease Control and Prevention, "Incidence and Trends of Infection with Pathogens Transmitted Commonly Through Food — Foodborne Diseases Active Surveillance Network, 10 U.S. Sites, 2006–2013." MMWR 63(15); 328-332, April 18, 2014.
[11] U.S. Department of Health and Human Services, "Healthy People 2020: Food Safety" Accessed October 14, 2014 via http://www.healthypeople.gov/2020/topics-objectives/topic/food-safety/objectives.

estimated costs of the program to the industry.[12] GAO found that the cost of implementing the PR/HACCP rule varied by plant size and species slaughtered, but estimated that if the consumer bore the entire cost of a plants' HACCP implementation, the cost to consumers would be less than 50 cents per year. Another early report from the U.S. Food and Drug Administration's (USDA) Economic Research Service (ERS) found that the benefits of the PR/HACCP rule, in terms of lower health care costs, lower productivity costs and fewer premature deaths, were far greater than the costs of HACCP implementation.[13]

Several years after implementation of the PR/HACCP rule, the ERS reviewed the program and found that the costs of implementing the PR/HACCP regulation did not significantly increase the overall cost of production. ERS found that HACCP implementation raised a plant's costs of production by about 1.1 percent – 0.4 cents per pound for poultry and 1.2 cents per pound for beef – and noted that the estimated costs to industry were less than one-half the decrease in health care costs associated with reductions in foodborne illnesses due to implementation of the PR/HACCP rule.[14]

HACCP implementation had another important effect. A 2004 report by ERS found that implementation of HACCP spurred significant investments in food safety by the meat and poultry industry. From 1996 through 2000, meat and poultry plants as a whole spent about $380 million annually and $570 million in long-term investments to comply with the PR/HACCP regulation, and an additional $360 million on long-term food safety investments that were not required by the PR/HACCP rule.[15] Still, ERS noted that the annual cost of HACCP compliance amounted to "less than 1 percent of the cost of meat and poultry products."[16] ERS concluded that these investments in food safety would "undoubtedly have a beneficial effect for consumers in improving the safety of meat and poultry products and would benefit the industry in terms of reduced food safety risk and increased consumer confidence."[17]

Difference in How FSIS treats E. coli and Salmonella Shows Differences in Impact of Regulation vs. Inaction

In the wake of the *E. coli* O157:H7 outbreak linked to Jack in the Box hamburgers, FSIS made the ground-breaking determination that raw ground beef contaminated with *E. coli* O157:H7 would be considered adulterated within the meaning of the Federal Meat Inspection Act

[12] U.S. Government Accounting Office, "Analysis of HACCP Costs and Benefits." GAO-RCED 96-62R, February 29, 1996.
[13] Crutchfield SR, Buzby JC, Roberts T, Ollinger M, Lin CTJ, "An Economic Assessment of Food Safety Regulations: The New Approach to Meat and Poultry Inspection." Economic Research Service, Report No 755, July 1997.
[14] Ollinger M, Mueller V, "Managing for Safer Food: The Economics of Sanitation and Process Controls in Meat and Poultry Plants." Economic Research Service, Agricultural Economic Report No. (AER-817), April 2003.
[15] Ollinger M, Moore D, Chandran R,"Meat and Poultry Plants' Food Safety Investments: Survey Findings."Economic Research Service, Technical Bulletin No. (TB-1911), May 2004.
[16] Ibid.
[17] Economic Research Service, "The Interplay of Regulation and Marketing Incentives in Providing Food Safety," July 2009.

(FMIA).[18] This was a critical step in addressing a deadly pathogen that had made hundreds of consumers sick and killed four children.

When it comes to *Salmonella* in raw products, however, the approach is very different: FSIS does not consider *Salmonella* to be an adulterant. As a result, it is perfectly legal for companies to sell consumers raw ground beef or poultry products that are contaminated with *Salmonella*.

Since FSIS does not consider *Salmonella* to be an adulterant in raw product as it does *E. coli* O157:H7[19] and other Shiga toxin-producing *E. coli* strains,[20] there is no regulatory requirement that raw poultry or ground beef should be free from *Salmonella*.[21] Instead, the agency performance standards serve as "acceptable levels" for *Salmonella* in products that are sold to the public. Yet *Salmonella* levels can increase on raw product if the product is improperly stored or handled, increasing the risk to consumers.

The rules promulgated by the Food and Drug Administration (FDA) as a result of the passage of the Food Safety Modernization Act (FSMA) to address produce safety, preventive controls and imports were delayed for 18 months at the Office of Management and Budget (OMB). Rules are currently being finalized by FDA and then will need OMB approval again. However, the initial delay has significantly slowed down implementation of FSMA and putting in place better food safety programs to protect consumers from contaminated food. The consequence of this delay is the cost to families and to society of unsafe food and illness and death resulting from the failure of preventative controls.

In addition, two other rules have been delayed at FSIS and FDA that contribute to the costs of food borne illness. The USDA announced a regulation expected to prevent, each year, approximately 79,000 cases of foodborne illness and 30 deaths caused by consumption of eggs contaminated with the bacterium *Salmonella* Enteritidis. The Egg Rule was finalized in July of 2009 and went into effect July 2010. The rule requires preventive measures during the production of eggs in poultry houses and requires subsequent refrigeration during storage and transportation. Egg-associated illness caused by *Salmonella* is a serious public health problem. Infected individuals may suffer mild to severe gastrointestinal illness, short term or chronic arthritis, or even death. Implementing the preventive measures would reduce the number of *Salmonella* Enteritidis infections from eggs by nearly 60 percent. The rule requires that measures designed to prevent *Salmonella* Enteritidis be adopted by virtually all egg producers with 3,000 or more laying hens whose shell eggs are not processed with a treatment, such as pasteurization, to ensure their safety.

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[18] Bottemiller H, "Looking Back: The Story Behind Banning E. coli O157:H7." *Food Safety News*, September 14, 2011; Taylor MR, "Change and Opportunity: Harnessing Innovation to Improve the Safety of the Food Supply." 1994 American Meat Institute Annual Convention, September 29, 1994.

[19] *Supreme Beef Processors, Inc. v. U.S. Dept. of Agriculture*. United States District Court for the North District Of Texas, May 25, 2000.

[20] Food Safety and Inspection Service, Notice 07-13: Control of Agency Tested Products for Adulterants. February 1, 2013.

[21] Marler B, "Why isn't Salmonella a Legal Adulterant?" Blog post, Marlerblog, February 15, 2013 via http://www.marlerblog.com/lawyer-oped/why-isnt-salmonella-a-legal-adulterant/#.U3z9hXaGe_W.

The Mechanically Tenderized Meat rule that FSIS is working on, has been delayed by USDA and OMB. This rule should have been released in December of 2015, but is still at OMB. Beef is mechanically tenderized through a process of piercing the product with a set of needles or blades, which break up muscle fiber and tough connective tissue, resulting in increased tenderness. These needles or blades pierce the surface of the product increasing the risk that any pathogens, such as *E. coli* or *Salmonella*, located on the surface of the product can be transferred to the interior.[22]

A substantial portion of steaks and roasts are mechanically tenderized. FSIS estimated that over 50 million pounds of mechanically tenderized beef products were being produced each month.[23] RTI further estimated that 10.5% of raw beef products are mechanically tenderized, and 15.8% are mechanically tenderized and enhanced.[24] Additionally, RTI estimates that the food service industry market share for mechanically tenderized beef (including beef containing added solution) is 53 percent and the market share for retail is 47 percent. In its proposed rule, FSIS estimates that mechanically tenderized beef accounts for 6.2 billion servings annually.

Since 2003, the CDC has identified five outbreaks attributable to mechanically tenderized beef products prepared in restaurants and consumers' homes. Among these outbreaks, there were a total of 157 *E. coli* O157:H7 cases that resulted in 34 hospitalizations and 4 cases of hemolytic uremic syndrome (HUS). Failure to thoroughly cook a mechanically tenderized raw or partially cooked beef product was a significant contributing factor in all of these outbreaks.[25]

Thus, though sometimes hard to quantify, the benefits of food safety regulations are considerable, the costs are exceed by the benefits and delays of the promulgation of these regulations contribute to the costs of foodborne illness.

Financial Services

The regulatory process and promulgation of rules is critical to ensuring a fair financial marketplace. Three specific rules exemplify the benefits of such regulation, the costs saved, and the costs of delay and inaction.

The "Enhancement of Protections on Consumer Credit for Members of the Armed Forces and Their Dependents" rule, docket **#:** DOD-2013-OS-0133-0039 is in the process of being promulgated by the Department of Defense.

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[22] Luchansky JB, Phebus RK, Thippareddi H, Call JE. Translocation of surface-inoculated Escherichia coli O157:H7 into beef subprimals following blade tenderization. *J Food Prot.* 2008 Nov; 71(11):2190-7.

[23] U.S. Department of Agriculture. 2008. Results of Checklist and Reassessment of Control for *Escherichia coli* O157:H7 in Beef Operations, p. 35. Available at: www.fsis.usda.gov/PDF/Ecoli_Reassement_&_Checklist.pdf.

[24] Based on slaughter volumes multiplied by average carcass weights in the "Expert Elicitation on the Market Shares for Raw Meat and Poultry Products Containing Added Solutions and Mechanically Tenderized Meat and Poultry Products," RTI International, February 2012.

[25] Culpepper W, Ihry T, Medus C, Ingram A, Von Stein D, Stroika S, Hyytia-Trees E, Seys S, Sotir MJ. "Multi-state outbreak of *Escherichia coli* O157:H7 infections associated with consumption of mechanically-tenderized steaks in restaurants—United States, 2009." Presented at International Association for Food Protection; August 1–4, 2010; Anaheim, CA. Swanson, L. E., Scheftel, J.M., Boxrud, D.J., Vought, K.J., Danila, R.N., Elfering, K.M., and Smith, K.E. 2005. Outbreak of *Escherichia coli* O157:H7 infections associated with nonintact blade-tenderized frozen steaks sold by door-to-door vendors. *J. Food Prot* 68:(1198–1202).

Benefits of the Enhancement of Protections on Consumer Credit for Members of the Armed Forces and Their Dependents Rule

The Department of Defense (DoD) is currently considering the expansion of the Military Lending Act (MLA), which caps interest rates at 36 percent for active-duty servicemembers and their dependents. The proposed rule would prevent payday lenders from charging servicemembers interest rates of 400 percent or more without any consideration of their ability to repay the loan in full and on time without additional borrowing. It would also allow safe and sustainable lending, such as small loans from credit unions or lower-cost credit cards, to continue.

Cost of Inadequate Regulation of High Cost Credit for Servicemembers

The DoD's first MLA rule, promulgated in 2007, defined "consumer credit" and applied the 36 percent rate cap to three types of narrowly defined products: closed-end payday loans, car-title loans of limited length, and tax refund anticipation loans. While the rule had a positive impact in protecting servicemembers from those three forms of credit, the narrow definition of consumer credit under the current MLA rule opened the door to harmful evasions.

- ***The current, inadequate rule has resulted in harmful evasions of the original intent of the Military Lending Act*:** instead of complying with the Military Lending Act and the required 36 percent rate cap, lenders developed longer-term or open-ended payday loans with triple digit interest rates that were exempt from the 2007 rule and the MLA's interest rate cap and protections.
- ***More than half of all active-duty servicemembers are at risk of financial abuse*:** A March 2013 analysis by CFA found that over half of servicemembers are currently stationed in states where state law permits high-cost lending that is not included in the 2007 definition of covered consumer credit and exempt from the 36 percent rate cap required by the MLA.
- ***One out of every ten enlisted servicemembers take out loans with interest rates that exceed 36 percent*:** In April 2014, the Department of Defense conducted a survey of servicemembers and military financial counselors. The survey found that, as a result of inadequate regulation, 11 percent of enlisted servicemembers continue to turn to high-cost credit—a strong indication that the current rule is insufficient in protecting servicemembers from debt trap lending.
- ***DoD believes that improved regulation is necessary and would not limit access to safe and sustainable credit*:** The April 2014 DoD report also found that financial education alone is insufficient in reducing demand and expanded restrictions on high-cost credit are needed. The report also concluded that servicemembers would not be negatively impacted if access to high-cost credit was restricted.

Toll of Deregulation

Failure to act swiftly and close the loopholes in the MLA puts servicemembers at risk of sustained financial harm, undermines force-readiness and may result in involuntary separation from the armed forces. The Department of Defense believes that "predatory lending undermines military readiness, harms the morale of troops and their families, and adds to the cost of fielding

an all-volunteer fighting force."[26] In 2013, the Department of Defense also described payday lending as "the biggest, current financial challenge facing our Servicemembers, Veterans, and their families."[27]

Another example of a critically important rule is the "Monitoring Availability and Affordability of Auto Insurance," rule, docket #: TREAS-DO-2014-0001-0001, being promulgated by the Federal Insurance Office (FIO). The comment period for a request for information has closed and the FIO is working on a data collection proposal but this process has been delayed.

Benefits of Affordable and Accessible Auto Insurance

There is strong public support for improving the affordability and accessibility of auto insurance for low-wealth drivers to ensure that all drivers are adequately insured. The FIO has begun a data collection effort to determine the accessibility of auto insurance for low-wealth drivers and has solicited comments from the public on how to best define affordability and proceed with a data collection effort. This effort, which has been published for notice and comment, is ongoing. However, delays as a result of industry opposition have slowed its completion despite a mandate under Dodd-Frank to carry out much-needed data collection to ensure that low-wealth drivers are given every opportunity to comply with state auto insurance mandates and drive safely without being exposed to punitive and counter-productive penalties for failure to carry insurance that is unaffordable.

According to recent CFA research, a typical driver would not have access to an auto insurance premium under $500 in one out of every three low-income neighborhoods in the 50 largest metropolitan areas. In addition, low-wealth drivers are more likely to have lower credit scores, lower education levels and lower-status occupations, all of which increase the cost of insurance considerably—even controlling for previous accidents or traffic tickets. Collecting data at the national level will ensure that drivers are getting fair rates, inform important state policies to reduce the number of uninsured drivers and protect drivers from abusive pricing practices, such as the widespread practice of increasing rates for drivers that are less likely to comparison shop.

Cost of Inadequate Auto Insurance Regulation

While nearly all states require drivers to carry state minimum liability auto insurance coverage, most state regulation is inadequate to reduce the number of uninsured drivers. Nearly every state focuses its regulatory response on the establishment of penalties for driving without insurance. However, CFA research has shown that uninsured motorist rates are more closely tied to poverty rates than the severity of penalties. At the same time, the widespread and largely unregulated use of non-driving rating factors, such as credit score, level of education or type of occupation has resulted in significantly higher rates for low-wealth people compared to higher-wealth people—increasing premiums threefold in many cases, even for good drivers.

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[26] *Report On Predatory Lending Practices Directed at Members of the Armed Forces and Their Dependents*. Washington, DC: Department of Defense, August 9, 2006. http://www.defense.gov/pubs/pdfs/report_to_congress_final.pdf.

[27] Testimony of Colonel Paul Kantwill, Director of Legal Policy, Office of the Undersecretary for Personnel and Readiness, Department of Defense before the Senate Committee on Veterans Affairs on July 31, 2013 available at http://www.veterans.senate.gov/imo/media/doc/kantwill-7-31-13.pdf.

Toll of Deregulation of the Auto Insurance Industry

The deregulation of the auto insurance market is closely tied to greater increases in auto insurance premiums. CFA research released in 2013 found that, since 1989, states with the strongest consumer protections in place saw premiums increase an average of 48 percent while deregulated states saw an average increase of 70 percent. California, one of the most consumer-friendly states in the nation saw a slight decrease over the same time period. CFA research has also determined that, as of 2013, California maintained a highly competitive auto insurance market and that deregulated states, on average, had less competitive insurance markets than those states that had rate regulation in place.

A final example of a critically important rule, is the Payday, Vehicle Title, and Similar Loans rule being promulgated by, the Consumer Financial Protection Bureau (CFPB). The rule is under review by the Small Business Advisory Review Panel.

Benefits of a Strong CFPB Payday Lending Rule

The current CFPB proposal to address the negative effects of payday lending under consideration by the CFPB's small business review panel will establish a common-sense, straightforward ability to repay standard for payday, auto title and payday installment loans. These loans exceed 300 percent interest and have been shown to trap borrowers in a long-term cycle of debt. Repeat borrowing is standard practice—over 80 percent of loans are renewed because a borrower is unable to repay in full and on time and half of all loans are part of a series of ten or more loans. If adopted, the proposal would hold payday, auto title and payday installment loans to similar standards applied to mortgage lenders and credit card issuers—that they make safe and sustainable loans that borrowers can repay without falling into a long-term debt trap. There are a number of improvements to the current proposal that must be included to prevent lenders from exploiting loopholes and offering triple digit interest rate loans without any consideration of a borrower's ability to repay. However, this proposal represents a strong step forward for the millions of borrowers living in states with little to no consumer protections.

Cost of Inadequate Regulation of High Cost Lending

Currently 35 states authorize triple digit interest rate loans with few, if any, consumer protections. As a result 81 percent of Americans live in states that would see a considerable improvement in consumer protections for payday loans if the CFPB rule is enacted. According to the CFPB, 75 percent of payday loan fees are generated by borrowers trapped in at least 11 loans per year and, according to the Center for Responsible Lending, this loan churning results in $3.5 billion in fees paid by payday loan borrowers and $3.6 billion in fees paid by title loan borrowers each year.

Toll of Deregulation

If the CFPB issues a weak final rule that provides an exemption to the proposed ability to repay standard, consumers in states that offer stronger consumers protections would likely be harmed as a result of inevitable industry efforts to roll back stronger state protections under the guise of complying with the new CFPB standard. For example, by allowing three back-to-back loans without a review of the borrower's income and expenses, it is likely that lenders would aggressively seek to weaken stronger state laws by arguing that the CFPB has endorsed back-to-back triple digit interest rate lending as a safe practice. The only way to prevent the final CFPB

rule from undermining stronger state laws is to ensure that the ability to repay standard applies to the first loan and every loan.

Conclusion

The federal rulemaking process is already lengthy and difficult. Those rules that are finalized and implemented lead to significant benefits to consumers though quantification of those benefits as required by many statutes is difficult and often likely an underestimation. The costs of delay and the costs of deregulation are considerable. For consumer protections, most rules lead to consumer benefits that significantly exceed costs. Efforts to make the rulemaking process more time-consuming, expensive, and burdensome for federal agencies to propose consumer protection measures will result in harm to American consumers.

Sincerely,

Rachel Weintraub
Legislative Director and General Counsel