

May 24, 2016

The Honorable Richard Cordray
Consumer Financial Protection Bureau
1700 G Street NW
Washington, DC 20552

Re: Deeming a violation of state usury and other state consumer laws a federal UDAAP

Dear Director Cordray,

We very much appreciated the opportunity to meet with you on April 6, 2016 and are writing to follow up regarding our discussion of the upcoming rule on small-dollar lending and its impact on states where payday and other high-cost loans are illegal. We wish to expand on an important priority we raised at the meeting, as well as in our state advocate letters: our need for the CFPB to support and enhance state-level efforts to enforce state usury and other consumer protection laws against actors who seek to make or facilitate illegal loans in our states.

This issue is of critical importance to our groups. Our states have taken the stand, through long-standing usury laws or more recent legislative and ballot reforms, that strong, enforceable rate caps are sound public policy and the best way to end the payday loan debt trap.

States can and do enforce their laws with actions that have resulted in millions of dollars of debt relief and restitution to people around the country, including in payday loan-free states.¹ However, as you well know, there are still payday lenders that attempt to exploit loopholes in state laws, or simply disregard state laws altogether.

The CFPB should therefore strengthen the enforceability of our state laws, by declaring in the payday lending rule that offering, collecting, making, or facilitating loans that violate state usury or other consumer protection laws is an unfair, deceptive, and abusive act or practice (UDAAP). Indeed, a number of the enforcement actions that the Bureau has taken over the last few years – against payday lenders, debt collectors, payment processors, and lead generators – provide a strong foundation for including this explicit determination in the payday lending rule.²

By so doing, the CFPB will offer states additional, and stronger, tools to crack down on illegal lending and effectively enforce their laws. For example, some illegal payday lenders purport to be affiliated with Native American tribes, complicating the enforcement of state law. A CFPB rule stating that a violation of state usury laws is a UDAAP creates a violation of federal law, giving states a clearer path to enforce their laws. In addition, although Dodd-Frank does provide state Attorneys General and banking regulators with enforcement authority over federal UDAAP violations, state regulators currently must still prove that certain acts or practices meet the legal standard, with the courts as the final arbiters. A clear statement in the CFPB rule will more consistently ensure that our regulators will be able to effectively enforce our state laws.

Finally, even where states have strong laws prohibiting not only illegal lending but the facilitation and collection of illegal loans,³ some penalties under our state laws may be too small to adequately deter illegal lending. For many actors, they are simply the cost of doing business. As a result, one actor may be penalized or shut down for illegal lending activities, only to pop up again in another form or under

another name. The penalties under Dodd-Frank for federal UDAAP violations provide a much stronger tool to state Attorneys General and regulators to ensure that our state laws are followed and effectively enforced.

In addition to declaring a violation of state usury and other consumer laws a UDAAP, the CFPB should clarify that attempting to debit an account for a payment on an illegal loan is a violation of Regulation E. Under Regulation E, a lender's debit from a borrower's account for an illegal loan is an unauthorized payment. Regulation E requires a clear and readily understandable authorization; a request for authorization for an illegal loan is *per se* not clear or readily understandable, and is thus unauthorized. This clarification would make clear that lenders collecting payments on illegal loans are violating not only state laws, but the federal Electronic Fund Transfer Act as well.

We thank you for your continued consideration of our concerns, including our appeal that the CFPB provide that loans made or facilitated in violation of state usury or other consumer protection laws are unfair, deceptive, and abusive acts or practices under federal law. In doing so, the Bureau will strengthen our states' abilities to enforce our state laws and protect our residents from the payday loan debt trap.

Respectfully,

Kerry E. Smith, Senior Staff Attorney
Community Legal Services of Philadelphia
ksmith@clsphila.org

Submitted on behalf of all the states who attended the April 6, 2016 meeting with Director Cordray.

¹ Diane Standaert & Brandon Coleman, *Ending the Cycle of Evasion: Effective State and Federal Payday Lending Enforcement* (2015), available at http://www.responsiblelending.org/sites/default/files/nodes/files/research-publication/crl_payday_enforcement_brief_nov2015.pdf.

² See, e.g., Complaint CFPB v. D and D Marketing, et al., (C.D. Cal. Dec. 17, 2015) (Case No. 2:15-cv-9692); Complaint, CFPB v. NDG Financial Corp., et al., (S.D.N.Y Jul. 31, 2015) (Case No. 1:15-cv-02511); Complaint, CFPB v. CashCall, Inc., et al., (D. Mass. Dec. 16, 2013) (Case No. 1:13-cv-13167).

³ See, e.g., Conn. Pub. Act 15-65 (2016) (explicitly prohibiting the offering, soliciting, collection, purchase, advertising, lead generating, and other activities without first obtaining a license and for loans that violate the rate cap and other consumer protection provisions); Conn. Gen. Stat. § 36a-573(d) (2015) (prohibiting the aiding and abetting of lending in violation of the state's small loan law); 9 V.S.A. § 2481w(b)(-d) (2013) (making it an unfair and deceptive practice: 1) for a lender to make or solicit a loan unless in compliance with the lending law; 2) for a payment processor to process a payment for a loan unless the lenders is in compliance with the state's lending laws; and 3) for any person to provide "substantial assistance" to a lender or payment processor when the person knows or should know that the lender or processor is in violation of the statute or committing an unfair or deceptive act or practice).