

October 7, 2016

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

Re: Connecticut nonprofit organizations' comments on proposed rulemaking on payday, auto title, and certain high-cost installment loans

Docket number CFPB-2016-0025 or RIN 3170-AA40

Dear Director Cordray:

Thank you for the opportunity to submit comments on the CFPB's proposed rule on payday, vehicle title, and certain high-cost installment loans. The undersigned organizations and individuals represent advocates for consumers, students, lower-income children, families, and individuals, working throughout the state of Connecticut, where payday lending is effectively prohibited by state law. We believe we have an especially relevant perspective to share. Our experience clearly demonstrates that people are better off without payday and car title lending, and the best way to address abusive payday lending, as well as other forms of predatory high-cost lending, is to put an end to it once and for all.

However, weaknesses in the proposed rule, including loopholes and out-right exemptions, would not stop the debt trap and effectively sanction high-cost loans that are illegal in our state. While we know that your final rule would not override our stronger state laws, we call on the CFPB to issue a strong final rule that does not undermine Connecticut's usury and other consumer protection laws. Indeed, we urge you to set a high bar for the entire country and issue a rule that enhances our existing protections by issuing the strongest possible rule that will truly end the payday loan debt trap.

The payday lending industry has thrived in states where it is allowed because so many people do not have sufficient income to cover their basic living expenses. The last thing struggling people need are predatory, high-cost loans that dig them into an even deeper hole — precisely what happens now in states that permit payday lending. Many Connecticut residents are in financial distress, regularly struggling to make ends meet or finding themselves unable to deal with financial emergencies. The fact that Connecticut does not have payday or car title lending has proven critical to protecting a significant portion of our population from financial exploitation. Where payday lending is legally permitted, the industry has targeted black and Latino communities, draining hundreds of millions of dollars and perpetuating the racial wealth gap in the U.S.

We consider ourselves extremely fortunate to live and work in a state that protects its residents from the harms of predatory payday lending. Connecticut has never legalized high-cost debt trap products. Keeping payday and car title lending out of the state has provided significant benefits to Connecticut residents, local communities, and the state economy at large. For

example, each year our state's usury law saves Connecticut residents approximately \$134 million that they would otherwise spend on fees for unaffordable payday and car title loans.¹ This money saved is money that is used to pay basic living expenses, could be used for asset building, and is money that is otherwise kept within our state and not extracted from our communities.

While Connecticut's strong usury laws have proven effective at keeping predatory payday and car title lenders from operating legally within our borders, the state is not immune to attempts by online lenders and others to offer high-cost, small-dollar loans. In recent years, our state Department of Banking has brought multiple enforcement actions against out-of-state companies that offered high-cost small dollar loans to residents in the state over the Internet.² However, some of these lenders claim that they do not need to comply with our state's laws.³

We are well aware that the CFPB may not set interest rates, but the agency can and should use its full authority to take strong action. Absent strong federal action, stopping payday lending, including payday installment lending, will continue to be a game of whack-a-mole.

The proposed rule contains a long list of loopholes and exceptions that raise major concerns for our organizations. However, we appreciate that one of the loopholes that was in an earlier version of the rule is not in the proposed rule. This loophole would have exempted certain longer-term loans from the ability-to-repay requirement if the loan payment did not exceed 5% of a borrower's income. Considering income alone, without looking at expenses, is not enough to determine if a loan is affordable. We hope this loophole remains excluded from the final rule.

We are extremely concerned that weaknesses in the CFPB's proposed rule sanction dangerous loan products and will not stop the debt trap. We strongly urge the CFPB, at a minimum, to:

- **Require a meaningful "ability to repay" standard that applies to all loans, without exceptions and with no safe harbors or legal immunity for poorly underwritten loans.** The "ability to repay" provision should require consideration of both income and expenses, and state that loans that do not meet a meaningful ability-to-repay standard are *per se* illegal. A weak CFPB rule that allows lenders to make unaffordable loans or that includes a safe harbor would not only allow for continued exploitation of people struggling to make ends meet, it would also give payday lenders unwarranted ammunition to enter states like Connecticut, whether by attempting to seek legislative changes to weaken our state's law or by offering loans that are illegal in our state but nonetheless comply with the federal rule.

¹ Center for Responsible Lending, "States without Payday and Car-title Lending Save \$5 Billion in Fees Annually," 2016, http://www.responsiblelending.org/sites/default/files/nodes/files/research-publication/crl_payday_fee_savings_jun2016.pdf.

² See, e.g., Consent Order, *In the Matter of: Fidelity One Credit, Corp.* (Jan. 15, 2015), <http://www.ct.gov/dob/cwp/view.asp?a=2246&q=559474>; Modification of Findings of Fact, Conclusions of Law and Order and Consent Order, *In the Matter of: CashCall, Inc., et al*, (Apr. 2, 2014), <http://www.ct.gov/dob/cwp/view.asp?a=2246&q=543054>;

³ See, e.g., Commissioner's Ruling on Motion to Dismiss, *In the Matter of: Great Plains Lending, LLC et al* (Jan. 6, 2015), http://www.ct.gov/dob/lib/dob/legal_nonhtml/great_plains_lending_01-06-15.pdf.

- **Strengthen the enforceability of strong state consumer protection laws, by providing that offering, making, facilitating, servicing, or collecting loans that violate state usury or other consumer protection laws is an unfair, deceptive, and abusive act or practice (UDAAP) under federal law.** The CFPB’s success in deploying its UDAAP authority against payday lenders such as CashCall – which a federal court recently found had engaged in UDAAPs by servicing and collecting on loans that were void or uncollectible under state law, and which the borrowers therefore did not owe – as well as against debt collectors, payment processors, and lead generators, provides a strong legal foundation for including this explicit determination in its payday lending rule. By doing so, the CFPB will help ensure the viability and enforceability of the laws that currently protect people in payday loan-free states from illegal lending. At the very least, the CFPB should provide, in accordance with the court’s decision against CashCall, that servicing or collecting on loans that are void or uncollectible under state law are UDAAPs under federal law.

We are deeply concerned that weaknesses in the proposed rule will inevitably be seen as sanctioning high-cost loans that are illegal in Connecticut. We ask that you close the remaining loopholes and issue the strongest rule possible to stop the harmful debt trap of unaffordable payday and car title loans. Unless these loopholes are closed, we are extremely concerned that your final rule will not stop the debt trap in states where these loans are still legal and will inevitably be seen as sanctioning high-cost loans that are illegal in Connecticut.

Families in our state—and everywhere—are better off without these high-cost, unaffordable loans. We urge the CFPB to issue the strongest possible rule, without loopholes.

Please contact Jim Horan at the Connecticut Association for Human Services, jhoran@cahs.org, (860) 951-2212, ext. 235, if you have any questions.

Sincerely,

Connecticut Association for Human Services
Bridgeport Child Advocacy Coalition
Connecticut Alliance for Basic Human Needs
Connecticut Appleseed
Connecticut Citizen Action Group
Connecticut Legal Services
Connecticut Public Interest Research Group
National Association of Consumer Advocates, Connecticut Chapter
New Haven Legal Assistance Association
Rosa Carrero
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