

October 7, 2016

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

Re: NC Coalition comments on proposed rulemaking on payday, vehicle title, and certain high-cost installment loans

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

Dear Director Cordray:

We file this comment in response to the Consumer Financial Protection Bureau's proposed rule on payday, vehicle title, and certain high cost installment loans. Thank you for the opportunity to submit comments on this important issue. The rule must be strengthened to ensure that a weak rule does not undermine the strong combination of laws that has long been enacted in North Carolina.

We are writing on behalf of the 171 North Carolina organizations listed below, which include military and veterans associations, faith organizations, housing and credit counseling agencies, affordable housing organizations, legal service providers, civil rights, seniors and labor leaders, and many others.

Your proposed rule includes a number of important provisions. It operates as a floor and not a ceiling by not preempting stronger state laws. It focuses on the debt trap and a strong ability-to-repay standard. And it includes a number of provisions to prevent lenders from evading the rule.

Despite these strengths, we are deeply concerned that weaknesses and loopholes in the proposed rule sanction dangerous loan products and will not stop the debt trap. This is bad for North Carolina and bad for every other state in the country. If these weaknesses and loopholes are not closed, your final rule will threaten our state consumer protections by lending undeserved legitimacy to predatory products and practices. Payday lenders desperately want to re-enter the North Carolina market and a weak national rule could provide the ammunition they need in their long-standing fight to overturn our state laws.

We cannot afford to have this happen. We know that North Carolinians are far better off without payday and will continue to fight to keep all forms of high-cost lending out of our state.

### **The fight against payday lending in North Carolina**

North Carolina has a unique payday lending story. North Carolina was the first state to:

- Roll back a once legal payday industry,
- Litigate the rent-a-bank model, and
- Force a bank to drop its bank payday loan product.

We have included this story in detail in Appendix A to illustrate how strongly we believe that payday lending causes tremendous harm to borrowers and their families; how hard we have worked to keep all forms of high-cost lending out of our state; how hard the industry has fought, and will continue to fight, to bring it back; and the significance of the CFPB's actions to the future of our strong state protections.

Payday lending was legal in North Carolina for only four years, from 1997 to 2001. By 2000, 10% of the payday loan storefronts in the country were in our state, with heavy concentrations in neighborhoods of

color and around military bases. In 2001, the North Carolina General Assembly allowed the authorization for payday lending to sunset, making payday loans illegal here again, though it took five more years to successfully enforce our rate cap. By summer 2006, all payday shops had left our state.

In 2012, our North Carolina coalition moved quickly to oppose Regions Bank who was making bank payday loans here. They dropped their bank payday product in our state in January 2013. In addition, car title lending has never been legal in our state.

During most years since the payday law sunset in 2001, lenders have mounted aggressive lobbying campaigns to re-authorize payday lending in North Carolina. With tremendous work, we have held the line against payday, car title and other forms of high-cost lending.

Payday loans caused tremendous harm during the nine years that payday lenders operated in our state, legally and illegally. Having seen the devastating impact of the payday debt trap over this period, North Carolinians strongly oppose payday lending. Hundreds of organizations (and thousands of individuals) have been part of this fight to keep payday lenders out of our state. We will continue this fight because we understand first-hand the harm caused by payday lending and the high stakes if payday lenders return to North Carolina.

### **A weak rule would jeopardize our North Carolina interest rate cap**

We appreciate the Bureau's efforts to curb predatory payday lending by crafting the first-ever federal payday lending rules. Strong interest rate caps are the best way to regulate high-cost lending. Since the Consumer Financial Protection Bureau (CFPB) is prohibited by statute from setting a rate cap, it is extremely important that we protect and maintain our North Carolina rate cap and other state lending protections.

Though your final rule would not preempt our stronger state rate cap, weaknesses in your final rule would present a direct threat to our state consumer protections by lending undeserved legitimacy to predatory products and practices. Payday lenders would argue that North Carolina should conform to this new "national model," attempting to roll back our strong North Carolina protections against payday and other forms of high-cost lending.

### **Proposed rule includes important provisions**

CFPB's proposed rule includes a number of important provisions. The proposed rule:

- Operates as a floor rather than a ceiling. It does not preempt state laws, like ours in North Carolina, that offer stronger protections against payday and other forms of high-cost lending;
- Focuses on preventing the debt trap, the most abusive aspect of high-cost lending;
- Includes a strong ability-to-repay standard, based on income and expenses, a long standing principle of responsible lending; and
- Includes a number of provisions to prevent lenders from evading the rule, including:
  - A broad scope of covered products (long-term and short-term, open end and closed end, balloon payment, installment loans and combinations of the two),
  - Strong anti-evasion language, and
  - An "all-in" APR definition, to capture high fees and high interest and ancillary products.

We are pleased that one loophole has already been closed – an exemption from the proposed ability-to-repay test, included in the CFPB's preliminary outline, if loan payments are less than 5% of a borrower's income. Examining income only is not enough to determine if a loan is affordable.

**We are very concerned that weaknesses in the CFPB’s proposed rule sanction dangerous loan products and will not stop the debt trap.**

**We ask that the CFPB’s final rule build on, rather than undermine, our strong state protections and strengthen our ability to enforce our state law against lenders making illegal loans.**

- Reaffirm the importance of state rate caps;
- Make it an unfair, deceptive, and abusive practice (federal UDAAP violation) to offer or make loans that violate state interest caps and other state protections; and
- Make it a federal UDAAP violation to facilitate illegal loans through payment processing, lead generating, and advertising.

**We also ask the CFPB to close loopholes that undermine the ability-to-repay standard, specifically:**

- **Require an ability-to-repay determination on every loan, with no exceptions.** Since the CFPB cannot set a rate cap, a strong ability-to-repay test is critically important. However, this basic principle must be applied to every loan – with no exceptions and no room for future evasion. As currently written, the proposed rule contains dangerous loopholes. For example, the proposal allows six 400% payday loans a year without any consideration of ability-to-repay, six unaffordable loans too many. The rule also exempts longer-term payday loans with high origination fees from the ability-to-repay test. These loopholes must be closed.
- **Close the “business as usual” loophole.** The proposed rule must be strengthened to ensure that people have enough money to live on after paying back the loan. The rule falls short by allowing lenders to simply continue “business as usual,” making loans to borrowers who cannot afford the loan but have not defaulted in the past. Low default rates are not evidence of ability to repay, since lenders hold a super lien against the borrower’s checking account (with a post-dated check) or car title.
- **Strengthen protections against flipping, particularly for long-term loans.** The proposed rule does not go far enough to stop borrowers from flipping from one unaffordable loan to the next. The CFPB should do more to ensure that short-term debt does not become unaffordable long-term debt. It is critically important to strengthen the protections against repeatedly refinancing longer-term loans, allowing debt to pile up and borrowers to continue to be stuck in a debt trap.
- **Cover all loans that give lenders extra leverage to collect their payments,** such as loans with a super lien against the borrower’s checking account, secured by personal property, or with a right to garnish wages.

The best way to address abusive payday, car title, and other forms of predatory high-cost lending is to put an end to it once and for all, as we have in North Carolina. We continue to support a federal Congressional usury limit and to support our counterparts in every state who fight to make, or keep, their state free from these abusive loans.

North Carolinians strongly oppose payday and all other forms of high-cost lending. Please do not allow a weak federal rule to usher in a new wave of predatory lending in North Carolina and other states where payday lending is illegal. If you have questions about this comment, please contact Alfred Ripley at the NC Justice Center at [al@ncjustice.org](mailto:al@ncjustice.org) or 919-856-2573 or Susan Lupton at the Center for Responsible Lending at [susan.lupton@responsiblelending.org](mailto:susan.lupton@responsiblelending.org) or 919-313-8521.

Respectfully,

Signed by 171 North Carolina organizations listed on pages 4 through 7.

Navy-Marine Corps Relief Society, Camp Lejeune  
Navy-Marine Corps Relief Society, MCAS New River  
NC Council of Chapters, Military Officers Association of America  
NC Veterans Council  
NC Justice Center  
Habitat for Humanity of North Carolina  
NC Alliance for Retired Americans  
NC Assets Alliance  
NC Association of Community Development Corporations  
NC Council on Aging  
NC Child  
NC Community Action Association  
NC Community Development Initiative  
NC Conference, United Methodist Church  
NC Congress of Latino Organizations  
NC Consumers Council  
NC Costa Rican Association  
NC Council of Churches  
NC Hispanic Chamber of Commerce  
NC Housing Coalition  
NC NAACP  
NC National Organization for Women  
NC Public Interest Research Group (PIRG)  
NC Public Service Workers Union-U.E. Local 150  
NC Rural Center  
NC State AFL-CIO  
NC A. Philip Randolph Educational Fund  
NC A. Philip Randolph Institute, Inc.  
NC Women United  
NC Advocates for Justice  
Action NC  
Reinvestment Partners  
United Way of Asheville and Buncombe County  
United Way of Greater Greensboro  
General Baptist State Convention of NC, Inc.  
The Episcopal Diocese of NC  
Presbytery of Coastal Carolina  
Baptist Peace Fellowship  
Carolina Jews for Justice  
Methodist Federation for Social Action NC  
Ecumenical Poverty Initiative  
Beloved Community Center of Greensboro  
Credit Counseling Agencies Association of NC  
Disability Rights NC  
El Pueblo, Inc.  
The Collaborative of NC  
Arcade Credit Union  
Carolina Small Business Development Fund  
Century Employees Savings Fund Credit Union  
Ecusta Credit Union  
The Institute

Latino Community Credit Union  
Latino Community Development Center  
Self-Help and Center for Responsible Lending  
Summit Credit Union  
Black Workers For Justice  
Institute for Dismantling Racism, Inc.  
Center for Financial Social Work  
Center for Housing and Community Studies, UNCG  
Centre for Homeownership & Economic Development Corporation  
Consumer Federation of America  
Financial Protection Law Center  
First in Families of North Carolina  
Good Work  
Legal Services of Southern Piedmont  
Pisgah Legal Services  
United for a Fair Economy  
Women AdvaNCE  
Working America North Carolina

Alexander County Habitat for Humanity  
Ashe County Habitat for Humanity  
Asheville Area Habitat for Humanity, Inc.  
Asheville-Buncombe County Branch NAACP  
Bob Ipock & Associates, Inc.  
Bonnie Wright & Associates  
BPFNA ~ Bautistas por la Paz  
Brunswick County Habitat for Humanity  
Caldwell County Habitat for Humanity  
Cape Fear Habitat for Humanity  
Carolina Behavioral Health Alliance, LLC  
Carolina Home Mortgage  
CCCS of Greater Greensboro  
CCCS of WNC DBA OnTrack Financial Education & Counseling  
Cedar Grove Institute for Sustainable Communities  
Charlotte Family Housing  
Chatham Habitat for Humanity  
Children First/Communities In Schools of Buncombe County  
Chowan-Perquimans Habitat for Humanity  
Church Women United, Raleigh/Wake County  
Circle of Mercy Congregation, Asheville  
CityWell United Methodist Church, Durham  
Clara James Real Estate Broker/Housing Counselor  
Clarke Connections/Center for Financial and Human Dignity  
College Park: An American Baptist Church, Greensboro  
Common Wealth Charlotte  
Community Empowerment Fund  
Community Link  
Community Management Corporation  
Core Catering  
Crisis Assistance Ministry  
Crystal Coast Habitat for Humanity  
David R. Badger, P.A.  
Davidson Housing Coalition

Donald L Coomes, PLLC  
Duck United Methodist Church  
Durham Congregations, Associations, and Neighborhoods (CAN)  
Durham People's Alliance  
Durham Regional Financial Center  
Elizabeth City Habitat for Humanity  
Empowerment Resource Center of Asheville/Buncombe, Inc.  
Fayetteville Area Habitat for Humanity  
Financial Pathways of the Piedmont  
First Calvary Baptist Church, Durham  
Gardner Stokes, Inc.  
Gateway Community Development Corporation  
Greensboro Housing Coalition  
Habitat for Humanity of Alamance County  
Habitat for Humanity of Cabarrus County  
Habitat for Humanity of Catawba Valley, Inc.  
Habitat for Humanity of Charlotte  
Habitat for Humanity of Craven County  
Habitat for Humanity of Davie County, Inc.  
Habitat for Humanity of Forsyth County  
Habitat for Humanity of Gaston County  
Habitat for Humanity of Goldsboro-Wayne, Inc.  
Habitat for Humanity of Greater Greensboro  
Habitat for Humanity of High Point, Archdale and Trinity  
Habitat for Humanity of Johnston County, Inc.  
Habitat for Humanity of Lincoln County  
Habitat for Humanity of Pitt County  
Habitat for Humanity of Randolph County, Inc.  
Habitat for Humanity of the Lexington Area Inc.  
Habitat for Humanity of Wake County  
Habitat for Humanity, Orange County, NC  
Haywood Habitat for Humanity  
Henderson County Habitat for Humanity  
Hertford County Habitat for Humanity  
Holistic Transformations  
Innovative Systems Group  
InSight Fund -Triangle Community Foundation  
Kingdom Community Development Corporation  
Land of the Sky UCC, Asheville  
Lapas Law Offices, PLLC  
Mitchell-Yancey Habitat for Humanity  
Mountain People's Assembly  
New Hope Community Development Corporation  
New Hope Community Development Group  
New Hope Missionary Baptist Church, Greensboro  
OptInference LLC  
Partners Ending Homelessness  
Prosperity Unlimited, Inc.  
QC Family Tree  
Raleigh Friends Meeting, Raleigh  
Rutherford County Habitat for Humanity  
Salisbury Community Development Corporation  
Samaritan Ministries, Winston-Salem

School for Conversion  
St. John's Baptist Church, Charlotte  
Taylor Meuller Realty  
The Concerned Citizens of Lake Waccamaw  
The Power of the Dream, Inc.  
Thermal Belt Habitat for Humanity  
Triangle Labor Council AFL-CIO  
Umstead Park United Church of Christ, Raleigh  
Upper Yadkin Valley Habitat for Humanity  
Virginia Mae Owner Finance Program  
Wake Forest Baptist Church, Winston-Salem  
Watauga County Habitat for Humanity  
West End Community Foundation  
Wilson Community Improvement Association (WCIA)  
Winston-Salem/Forsyth County Asset Building Coalition

## **Appendix A:**

### **The Fight against Payday Lending in North Carolina**

North Carolina has a unique story to tell about payday lending. North Carolina was the first state to:

- Roll back a once legal payday industry,
- Litigate the rent-a-bank model, and
- Force a bank to drop its bank payday loan product.

We recount this story because it illustrates how strongly we believe that payday lending causes tremendous harm to borrowers and their families; how hard we have worked to keep all forms of high-cost lending out of our state; how hard the industry has fought, and will continue to fight, to bring it back; and the significance of the Bureau's actions to the future of our critical state protections.

Payday lending was legal in North Carolina for only four years, from 1997 to 2001. By 2000, 10% of the payday loan storefronts in the country were in our state, with heavy concentrations in neighborhoods of color and around military bases.

In 2000, the year before the law authorizing payday lending was scheduled to sunset, a broad coalition of North Carolina organizations came together to oppose payday lending abuses. Following strong opposition to these 400% Annual Percentage Rate (APR) payday loans, and despite a vigorous and well-funded effort by the industry to keep payday lending legal, the North Carolina General Assembly allowed the authorization for payday lending to sunset.

Following the sunset in August 2001, the NC Commissioner of Banks notified all payday lenders in the state that they were making illegal loans. Most shops (we estimate 600 of the 1,000 shops) closed their doors. Others used a variety of schemes to continue operating. The most common scheme to avoid our state interest rate cap and licensing requirements was the rent-a-bank model, used by the large national chains. Under this model, payday lenders claimed they were not making the loans themselves, but instead were the "marketing, processing and servicing agent" of an out-of-state bank which, the payday lenders claimed, was the actual lender.

The NC Attorney General took enforcement action against a number of payday lenders, including the large national chains and smaller lenders. In 2004, the NC Attorney General initiated a lengthy investigation of the largest lender in the state, Advance America. After numerous hearings, the NC Commissioner of Banks, who rules in these matters, ruled against Advance America in December 2005. The ruling stated that Advance America itself was making illegal loans in North Carolina, and that its "partnership" with an out-of-state bank did not allow it to ignore North Carolina lending laws. Advance America was unsuccessful on appeal, and unable to make payday loans during the appeal period.

Shortly after this ruling, in March 2006, the NC Attorney General announced consent agreements with the three remaining large payday chains still making loans here, First American Cash Advance (a subsidiary of CompuCredit/Valued Services Acquisitions), Check Into Cash, and Check 'n Go. These companies agreed to stop making loans in North Carolina and to stop collecting interest and fees on existing loans. These actions forced the last payday shops out of our state, almost five years after the sunset.

The NC General Assembly has a two-year legislative session, with a long session in the odd years and a short session in the even years mostly focused on reconciling the budget. During almost every long session and many short sessions since the payday law sunset in 2001, payday lenders have mounted aggressive lobbying campaigns to re-authorize payday lending in our state. In some years, they have been joined by other high-cost lenders, like car title and installment lenders. Despite their aggressive efforts, we have held the line against payday, car title and other forms of high-cost lending.

In 2012, our North Carolina coalition moved quickly to oppose banks making payday loans here, following new research that documented the abuses of this 300% APR “direct deposit advance” payday loan product. We were extremely concerned that bank payday loans could quickly be accepted as mainstream, like abusive overdraft fees. If this scenario played out, all of our efforts to eliminate storefront payday lending in North Carolina would be for naught.

Regions Bank, with a very small retail presence in North Carolina, was the only bank making these payday loans here. However, two other banks, each with a large retail presence in our state, had expressed their intent to introduce bank payday loan products here. We moved quickly and aggressively against Regions, which dropped its payday loan product in our state in January 2013. To our knowledge, we are the only state to have won a victory of this type. Following strong action by federal regulators, the other two banks considering bank payday loan products here chose not to introduce them.

Payday loans caused tremendous harm during the nine years that payday lenders were active in our state, the four years when they were authorized (1997-2001) and the five years when they operated illegally under the rent-a-bank scheme (2001-2006). Having seen the devastating impact of the payday debt trap over these nine years, North Carolinians are strongly united in their opposition to payday lending.

Hundreds of organizations (and thousands of individuals) have been part of this 15-year fight to keep payday lenders out of our state, many for the entire 15 years. We have continued this fight because we understand first-hand the harm caused by payday lending in our state and the high stakes if payday lenders return.