



October 7, 2016

Via Electronic Submission

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

Re: Proposed rulemaking on payday, vehicle title, and certain high-cost installment loans, Docket No. 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. On behalf of organizations based in the 14 states, plus the District of Columbia, where payday lending is prohibited by state law, we write to urge the CFPB to issue a final rule that will bolster states' efforts to enforce their usury and other consumer protection laws against payday lenders, debt collectors, and other actors that seek to make, collect, or facilitate illegal loans in our states.

Our jurisdictions, which represent more than 90 million people—about one-third of the country's population—have taken the stance, through our 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. Our states have also taken strong enforcement actions against predatory lending, resulting in millions of dollars of debt relief and restitution to its residents.¹ Nevertheless, payday lenders continue to try to exploit loopholes in the laws of some of our states; claim that they need not comply with our state laws (for example, in the case of lenders purporting to have tribal sovereignty); or simply disregard them altogether.

It is therefore not enough for the CFPB simply to acknowledge the existence of, and not preempt, laws in the states that prohibit payday loans.² Rather, the CFPB should strengthen the enforceability of our state laws, by declaring in the final 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) under federal law. 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.³

The CFPB's success in its federal lawsuit against payday lender CashCall provides a particularly strong basis for including such a provision in the final rule. There, the CFPB sued CashCall and its loan servicer/debt collector, alleging that they engaged in practices that were unfair, deceptive and abusive under Dodd-Frank, included making and collecting on loans that violated state usury caps and licensing laws and were therefore void and/or uncollectible under state law.⁴ The court agreed, stating as follows:

Based on the undisputed facts, the Court concludes that CashCall and Delbert Services engaged in a deceptive practice prohibited by the CFPB. By servicing and collecting on Western Sky loans, CashCall and Delbert Services created the "net impression" that the loans were enforceable and that borrowers were obligated to repay the loans in

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 As the Bureau states in the preamble to the proposed rule, "...certain States have fee or interest rate caps (i.e., usury limits) that payday lenders apparently find too low to sustain their business models. The Bureau believes that the fee and interest rate caps in these States would provide greater consumer protections than, and would not be inconsistent with, the requirements of the proposed rule." Consumer Fin. Protection Bureau, Payday, Vehicle Title, and Certain High-Cost Installment Loans, Proposed Rule, 81 Fed. Reg. 47903 (June 22, 2016).

³ 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).

⁴ Complaint, *CFPB v. CashCall, Inc., et al.*, (D. Mass. Dec. 16, 2013) (Case No. 1:13-cv-13167).

accordance with the terms of their loan agreements....[T]hat impression was patently false – the loan agreements were void and/or the borrowers were not obligated to pay.⁵

Critically, the court explicitly rejected the defendants’ argument that Congress had not authorized the CFPB to transform a state law violation into a violation of federal law, holding that “while Congress did not intend to turn every violation of state law into a violation of the CFPB, that does not mean that a violation of a state law can never be a violation of the CFPB.”⁶

Accordingly, by deeming conduct in violation of relevant state usury and lending laws UDAAPs, the CFPB would render such conduct a violation of federal law as well, thereby giving all states a clearer path for enforcing their laws. Without such a provision in the final rule, state Attorneys General and banking regulators, though authorized by Dodd-Frank to enforce federal UDAAP violations, would continue to have to prove that certain acts or practices meet the legal standard, subject to the courts’ final determination.

In addition, even where states have strong statutory prohibitions against not only illegal lending but the facilitation and collection of illegal loans,⁷ some state law penalties may be too small to effectively deter illegal lending. For many payday lenders and related entities, these penalties are simply the cost of doing business. The greater penalties under Dodd-Frank for federal UDAAP violations would provide a much stronger enforcement tool to state Attorneys General and regulators, as well as a much more effective deterrent against illegal lending.

The CFPB should also clarify that attempting to debit a borrower’s deposit account for a payment on an illegal loan is unauthorized and therefore a violation of the federal Electronic Fund Transfer Act and Regulation E. This would establish that lenders collecting payments on illegal loans in this manner are violating not only state laws, but federal law as well.

⁵ *Consumer Fin. Protection Bureau v. CashCall, Inc., et al.*, No. 2:15-CV-7522-JFW-RAO, 2016 WL 4820635 at *10 (C.D. Cal., Aug. 31, 2016).

⁶ *Id.* at *12 (citing *Currier v. First Resolution Inv. Corp.*, 762 F.3d 529, 537 (6th Cir. 2014)).

⁷ *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).

We thank you for your continued consideration of our concerns, and hope that the CFPB's final rule serves to strengthen our states' abilities to enforce our state laws and protect our residents from the payday loan debt trap.

Respectfully,

Arizona Community Action Association
Arkansans Against Abusive Payday Lending
Center for Economic Integrity (AZ)
The Collaborative of NC
Community Legal Services of Philadelphia (PA)
Connecticut Association for Human Services
DC 37 Municipal Employees Legal Services (NY)
Empire Justice Center (NY)
Georgia Watch
Granite State Organizing Project (NH)
Hebrew Free Loan Society (NY)
IMPACCT Brooklyn (NY)
Lower East Side People's Federal Credit Union/PCEI, Inc. (NY)
The Midas Collaborative (MA)
Maryland Consumer Rights Coalition
Montana Organizing Project
New Economy Project (NY)
New Hampshire Legal Assistance
New Jersey Citizen Action
New York Public Interest Research Group (NYPIRG)
North Carolina Assets Alliance
North Carolina Coalition for Responsible Lending
North Carolina Council of Churches
North Carolina Justice Center
Pennsylvania Public Interest Research Group (PennPIRG)
Philadelphia Unemployment Project (PA)
Reinvestment Partners (NC)
Rural Dynamics (MT)
United Valley Interfaith Project (NH, VT)
West Virginia Center on Budget and Policy