April 5, 2016

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

Re: CFPB’s Forthcoming Payday Lending Rule

Dear Director Cordray:

Arkansas has been a payday loan-free state since 2009 and we respectfully urge the Consumer Financial Protection Bureau (CFPB) to issue a strong payday lending rule that ends the payday loan debt trap throughout the country.

The best way to address abusive payday lending, as well as car title and other forms of predatory high-cost lending, is to put an end to it once and for all. Ninety million Americans live in payday loan-free states like Arkansas, and we know they are far better off without payday lending. We will continue to fight to keep high-cost loans out of Arkansas and the communities within our state.

As the CFPB prepares to issue a proposed rule to address payday lending nationally, we call on the CFPB not to undermine our state’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, rather than diminishes, our existing state protections. Like you, we appreciate that there is a tremendous amount at stake for low-income families and communities throughout the country.

We remain deeply concerned that a weak CFPB payday lending rule will usher in a new wave of predatory lending in our state, as aggressive payday lenders argue that what is permitted in some states under CFPB’s rule should be permitted everywhere. A rule that undercuts laws that protect tens of millions of Americans in payday loan-free states would not be sound public policy, even if it mitigates harms in states where payday lending is now legal.

We have tried payday lending in Arkansas. Even though Arkansas has a constitutional usury limit, check cashers were able to get the Check Cashers Act passed in 1999 which permitted payday lending with interest rates from 182% to 2,088% per annum. They were able to do that in Arkansas, even with a usury limit in our constitution that limited consumer loans to no more than 5% above the Federal Reserve Discount Rate, with a maximum of 17% per annum. To bypass this constitutional usury limit they called their payday loans “deferred presentment” of a check, stated their transactions were not deemed “loans” and that their fees were not deemed “interest.”
Payday loans in Arkansas caused great harm, since they were unaffordable. These loans trapped low income borrowers and borrowers of color into renewals and refinancing due to the borrower's inability to repay the loan in full. Most borrowers of these high-cost loans could not afford any additional debt, and were unable to pay off the loan when it came due. Borrowers in Arkansas were trapped in perpetual debt to these high-cost lenders for months and often years.

In 2004, we formed a coalition of forty (40) senior, civil rights, labor, faith-based, community, consumer justice groups, affordable housing, military and veterans, legal services organizations, and others -- see attached list.

We sought relief at the Legislature in 2005 and 2007. When those efforts did not succeed we went to the Arkansas Supreme Court. Arnold, Batson, Turner & Turner, Attorneys-at-Law, a member of our coalition, petitioned the Arkansas Supreme Court in three separate cases and won all three. Once the Arkansas Supreme Court issued opinions that the Check Casher Act of 1999 was unconstitutional, the Arkansas Attorney General demanded that the payday lenders exit our state.

Seventy-five percent of the payday lenders complied while twenty-five percent changed their mode of operation. They pretended to operate within our laws and constitutional usury limit. However, they were still charging fees that equated to triple-digit interest rates. It took fifteen months for the Arkansas Attorney General to force all of the remaining payday lenders to close up shop and leave our state. The last payday lender, First American Cash Advance, left our state on July 31, 2009 and we have been a payday loan free state ever since.

In 2011, the state Legislature repealed the Check Cashers Act of 1999 which had authorized "deferred presentment" of checks which the Arkansas Supreme Court found unconstitutional in 2008. That same year the voters of Arkansas agreed to increase the constitutional usury rate to 17% per annum for all loans.

Some Internet-based payday lenders continued to loan to Arkansans with both high-cost single payment and installment loans. The Arkansas Attorney General listened to complaints from Arkansans and one by one those operations were forced to forgive those loans and stop lending to our citizens.

The Arkansas Attorney General's office no longer receives complaints of high-cost loans in our state. I personally have helped over fifty victims of payday lending, and I have not had a victim come to me in over two years. Payday loans and other types of high-cost lending are truly dead in Arkansas and our citizens are much better off for it.

Many Arkansans have low incomes and struggle to make ends meet from paycheck to paycheck. The last thing Arkansas residents need is a plague of predatory, high-cost, small-dollar loans to dig them into an even deeper hole — precisely what could result if the CFPB were to issue a weak payday lending rule.

A strong rule would, at a minimum:

- **Strengthen the enforceability of existing usury laws and other state consumer protections.** The CFPB rule should provide that a violation of state usury or other consumer protection laws is an unfair, deceptive and abusive act and practice (UDAAP). The rule should provide that payday loans are subject to the law of the state where the
borrower resides. And it should establish that those who facilitate illegal loans, including through payment processing, lead generating, and advertising, are engaging in unfair, deceptive, and abusive practices.

- **Require a meaningful “ability to repay” standard without exceptions, and with no safe harbors or legal immunity for poorly underwritten loans.** The CFPB rule should include a strong “ability to repay” requirement for all loans, based on income and expenses. It should not provide any safe harbors. A weak rule, particularly one that allows lenders to make unaffordable loans or that includes a safe harbor, would give payday lenders unwarranted ammunition to knock down existing state protections, as they have been trying to do for years. Rather, the rule should provide that loans that do not meet a meaningful ability to repay standard are per se unfair.

- **Include enforceable protections against abuses by lead generators and other third-party marketing affiliates that sell people’s sensitive personal and financial information to payday lenders.** The sale of this information exposes people already in dire financial straits to risks of fraud and other exploitative business practices.

- **Affirm that state interest rate caps are the most effective ways to protect people from payday and other predatory, high-cost loans.** Although the CFPB may not set an interest rate cap, it is critical that states maintain their caps and other consumer protections against abusive high-cost lending.

In addition, the CFPB should require all financial institutions to permit accountholders to close their accounts at any time for any reason, and prohibit financial institutions from charging overdraft fees once the accountholder has requested that the account be closed.

Arkansas has shown that strong, enforceable prohibitions against payday lending constitute sound public policy and clearly benefit the public interest. Financially-struggling Arkansas residents have found ways other than abusive, unfair, and predatory payday loans to address their financial needs. Payday lending would, as it has elsewhere where permitted, make these residents worse off, not better.

For these reasons, we urge you to issue a strong rule that in no way undermines Arkansas’ clear ban on payday lending, and that enhances Arkansas’ protections against abusive payday lending practices. Indeed, a strong rule will benefit people everywhere.

Respectfully,

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See Page 4 for a list of our Arkansans Against Abusive Payday Lending Coalition Partners.
Arkansans Against Abusive Payday Lending – Coalition Partners

Note: Arkansans Against Abusive Payday Lending (AAAPL) was active from September 2004 through July 2009. In July 2009 we were successful in our mission to rid our state of high-cost payday lending. We disbanded our coalition after the last payday lender left our state on July 31, 2009. The organizations listed below were all a part of our 40 member coalition.

AARP/Arkansas
Air Force Sergeants Association - Chapter 658
Arkansas Advocates for Children and Families
Arkansas Consumer Law Center
Arkansas Education Association
Arkansas Hunger Coalition
Arkansas Interfaith Alliance
Arkansas State Representative David Johnson
Arkansas Trial Lawyers Association
Arnold, Batson, Turner & Turner, Attorney-at-Law
Association for Community Organizations for Reform Now
AFL/CIO
Best Credit Services, Inc.
Better Business Bureau of Arkansas
Central Arkansas Development Council
Clark County Quorum Court Justice of the Peace Wayne Bowen
College Station Community Development Corporation
Community Development Department of the City of Jacksonville
Consumer Credit Counseling Service (CCCS)
Crawford-Sebastian Community Development Council, Inc.
Family Council
Family Service Agency
Family Support on Little Rock Air Force Base (ex officio)
Federal Reserve Bank of Little Rock
Jewish War Veterans of the U.S.A., Arkansas Post 436
Law Offices of Blankenship & Warner
League of Latin American Citizens (LULAC)
Legal Aid of Arkansas, Inc.
Military Officers Association of America (MOAA) - Arkansas Council of Chapters
NAACP/Arkansas
Nicholson Communications
North Little Rock Ministerial Alliance
Private Citizens
Pulaski County Cooperative Extension Service
Silver Haired Legislators Alumni Association (SHLAA)
Springer’s of Granite Mountain
United Way - Heart of Arkansas
U.S. Citizens for Fair Credit Card Terms, Inc.
And many Victims