

March 31, 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:

We, the 22 signatories to this letter, respectfully urge the CFPB to issue a strong payday lending rule that ends the payday loan debt trap. 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, and we know they are far better off without payday lending. We will continue to fight to keep high-cost loans out of our states and communities.

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 protections. Like you, we appreciate that there is a tremendous amount at stake for low-income families and communities throughout the country. A rule that mitigates the harms of payday lending where it is now permitted, however, but that undercuts laws that protect 90 million Americans in states that ban it, would not be sound public policy.

We represent a broad cross-section of Montana elected officials and organizations – including community development financial institutions; faith-based, labor, community, and consumer justice groups; and affordable housing, legal services, and seniors organizations.

Payday lending was first introduced to Montana during the 1999 legislative session and expanded in 2001 to allow title loans on automobiles. Efforts to protect consumers from the adverse effects of the resulting proliferation of predatory lenders were not enough to turn the tide. The Montana legislature convenes only in odd numbered years, so the opportunity to introduce legislation to appeal or regulate the industry was limited. Several long-standing and respected legislators carried these bills and the attorney general at the time made it his top priority to shut down predatory lenders, but all efforts died in committee. In 2010, several consumer advocate groups across the state convened to develop a strategy for a citizen's ballot initiative to address the issue. After much planning and polling, the initiative simply sought to cap payday lending rates at 36% putting payday lenders on par with all other usury rates in the state. Despite significant challenges including two lawsuits and heavy advertising against the initiative by a well-funded payday lending industry, it passed easily with 72% of the votes, effectively ending payday lending in Montana. The measure was so successful it received a majority in all 56 of Montana's counties and in every House District.

Today, many Montana residents remain in financial distress, struggling to make ends meet from paycheck to paycheck. The last thing Montana residents need is the return of 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 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 verifiable 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 unsafe and unsound.

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 banks to permit account holders to close their accounts at any time for any reason, and prohibit banks from charging overdraft fees once the account holder has requested that the account be closed.

Montana has shown that strong, enforceable prohibitions against payday lending constitute sound public policy and clearly benefit the public interest. Financially-struggling Montana 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. We remain deeply concerned that a weak CFPB payday lending rule will usher in a new wave of predatory lending in our state.

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

Respectfully,

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Montana - N.Wyoming Conference United Church of Christ
Montana Organizing Project
NeighborWorks Great Falls
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