

March 23, 2016

The Honorable Richard Cordray
Director
Consumer Financial Protection Bureau
1700 G Street, NW
Washington, D.C. 20220

Dear Director Cordray:

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

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 below 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-provided protections. 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

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 North Carolina, 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% APR payday loans, and despite a vigorous and well-funded effort by the industry to keep payday lending legal, the North Carolina law that authorized payday lending was allowed 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 caps 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.

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. Year after year, this effort has consumed significant financial and staff resources for these organizations, mostly non-profits. 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.

Tremendous harm from and opposition to payday lending in North Carolina

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). During the formal comment period, we will document this harm through stories about North Carolina borrowers caught in the payday debt trap for months and sometimes years on end.

During the formal comment period we will also share documentation of the widespread opposition to payday lending in our state. For example, a March 2015 poll conducted by Public Opinion Strategies showed that North Carolinians remain strongly united in their opposition to payday lending in our state. In extremely strong poll results, 83% of registered voters oppose state legislation that would allow payday lending in North Carolina, with 66% strongly opposing. These polling results were consistent across party lines and ideology (from very conservative to very liberal).

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, and we recognize that this is not an easy task. Since the Consumer Financial Protection Bureau (CFPB) is prohibited by statute from setting an interest rate cap, by far the best way to regulate high-cost lending, it is extremely important that we protect and maintain our North Carolina interest rate cap. Though we understand that a national CFPB rule would not preempt our stronger state interest cap, weaknesses in the rule would present a direct threat to these state consumer protections by lending undeserved legitimacy to predatory practices.

We are extremely concerned that the Bureau's preliminary proposal risks doing just that. For example, the proposal would permit payday lenders to make up to six unaffordable short-term loans to the same borrower, with 400 percent annual interest rates and no underwriting. The current outline would also allow some longer-term payday loans without ensuring they are affordable. From our experiences with payday lending in North Carolina, we believe this is bad public policy.

If the CFPB, the federal regulator charged with assuring that financial services are fair, issues a rule with significant weaknesses, it will be putting a government seal of approval on 400% payday loans, both single- and multi-payment. Payday lenders desperately want to re-enter the North Carolina market and a weak national rule could provide the ammunition they need in their fight to overturn our state laws.

We ask you to issue a strong national payday rule

The best way to address abusive payday, car-title, and other forms of predatory high-cost lending is to put an end to them once and for all. 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.

We ask that your final rule build on, rather than undermine, our strong state protections and enhance our ability to enforce them, including:

- Reaffirm the importance of state rate caps;
- Emphasize that offering loans that violate state usury or other state laws is itself an unfair, deceptive, and abusive practice; and
- Emphasize that those who facilitate illegal loans through payment processing, lead generating, and advertising are engaging in unfair, deceptive, and abusive practices.

In addition, we ask that your final rule include a strong ability to repay standard across the board, as follows:

- Require that lenders verify a borrower's ability to repay every loan, including consideration of income *and* expenses, while still being able to cover basic needs like food and rent;
- Guard against the debt trap by preventing long-term indebtedness (more than 90 days over 12 months) in short-term loans;
- Provide no safe harbor or legal immunity for poorly underwritten loans; and

- With respect to longer-term loans, guard against extended periods in unaffordable loans by requiring more stringent underwriting for longer-term loans, discouraging loans where payments do not make significant progress toward principal, and addressing serial refinancing. We also ask that you protect against abusive ACH practices, the charging and financing of credit insurance products, and the taking of collateral interests in personal property that was not purchased with the proceeds of the loan.

North Carolinians strongly oppose payday and other forms of high-cost lending. Please do not usher in a new wave of predatory lending in North Carolina and other states where payday lending is illegal with a weak federal rule.

Thank you for your leadership on this critical issue. We would appreciate the opportunity to meet and continue this discussion. Should you have any questions or if we can provide additional information, please contact Alfred Ripley of the NC Justice Center at al@ncjustice.org or 919.856.2573.

Respectfully,

NC Veterans Council
 Habitat for Humanity of NC
 NC NAACP
 NC Alliance for Retired Americans
 NC Council of Churches
 NC Child
 NC Congress of Latino Organizations (former NC Latino Coalition)
 NC Conference, United Methodist Church
 Navy-Marine Corps Relief Society, Camp Lejeune
 The Episcopal Diocese of NC
 NC Assets Alliance
 Credit Counseling Agencies Association of NC
 Latino Community Credit Union
 NC Council of Chapters, Military Officer Association of America
 General Baptist State Convention of NC, Inc.
 NC Hispanic Chamber of Commerce
 Presbytery of Coastal Carolina
 Legal Services of Southern Piedmont
 The Episcopal Diocese of Western NC
 NC Consumers Council
 Disability Rights NC
 The Institute Of Minority Economic Development
 NC Housing Coalition
 NC State AFL-CIO
 Reinvestment Partners
 Church Women United in NC
 United Way of Greater Greensboro
 Pisgah Legal Services
 Methodist Federation for Social Action NC
 NC Association of Community Development Corporations
 Self-Help and Center for Responsible Lending

NC National Organization for Women
NC Rural Center
The Collaborative of NC
Cape Fear Chapter, Military Officers Association of America
Centre for Homeownership & Economic Development Corporation
Century Employees Savings Fund Credit Union
Consumer Federation of America
Ecumenical Poverty Initiative
Ecusta Credit Union
El Pueblo, Inc.
Financial Protection Law Center
Action NC
Baptist Peace Fellowship
Black Workers For Justice
Institute for Dismantling Racism, Inc.
Latino Community Development Center
Summit Credit Union
NC A. Philip Randolph Institute, Inc.
NC Advocates for Justice
NC Community Development Initiative
NC Costa Rican Association
Presbytery Of Charlotte
NC Justice Center
NC Public Interest Research Group (PIRG)
NC Public Service Workers Union-U.E. Local 150
North Carolina Women United
NC A. Philip Randolph Educational Fund
Piedmont Chapter, Military Officers Association of America
The Support Center
The Minority Women Health Project
Women AdvaNCE

4newlifelow
A2Z, Inc.
AG Marshall and Associates LLC
Alexander County Habitat for Humanity
Asheville Area Habitat for Humanity
Asheville-Buncombe County Branch NAACP
Baker Organizing School South (BOSS)
Bob Ipock & Associates, Inc.
BPFNA ~ Bautistas por la Paz
Brunswick County Habitat for Humanity
Caldwell County Habitat for Humanity
Caldwell Presbyterian Church, Charlotte
Cape Fear Habitat for Humanity
Carolina Home Mortgage
CCCS of Catawba County
CCCS of Greater Greensboro
Cedar Grove Institute for Sustainable Communities
Celebration Ministries, Lutheran, Durham
Center for Financial Social Work

Center for Housing and Community Studies
Changed Choices
Charlotte Family Housing
Charlotte Housing Investment Partnership
Chatham Habitat for Humanity
Children First/Communities In Schools of Buncombe County
Chowan-Perquimans Habitat for Humanity
Church of the Master United Church of Christ, Hickory
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
Clergy on Call
College Park: An American Baptist Church, Greensboro
Common Wealth Charlotte
Community Empowerment Fund
Community Link
Core Catering
David R. Badger, P.A.
Divine Restoration Ministries, Inc., High Point
Donald L Coomes, PLLC
Duck United Methodist Church
Durham CAN
Durham Regional Financial Center
Eastside CDC/LEAP
Empowerment Resource Center of Asheville/Buncombe, Inc.
Fayetteville Area Habitat for Humanity
Financial Pathways of the Piedmont
First Missionary Baptist Church, Goldsboro
Gardner Stokes, Inc.
Good Work
Greensboro Housing Coalition
Habitat for Humanity Cabarrus County
Habitat for Humanity of Catawba Valley
Habitat for Humanity of Charlotte
Habitat for Humanity in Cleveland County
Habitat for Humanity of Davie County
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, NC
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, Crystal Coast (Onslow & Carteret Counties)
Habitat for Humanity, Elizabeth City, NC

Habitat for Humanity, Orange County, NC
Halifax-Northampton Habitat for Humanity
Harmony United Methodist Church
Haywood Habitat for Humanity
Henderson County Habitat for Humanity
Holistic Transformations
InSight Fund -Triangle Community Foundation
ISG
Jesus Ministry/ Ministerio de Jesus, Charlotte
Juvenile Support Services
Kingdom Community Development Corporation
Land of the Sky UCC, Asheville
Lapas Law Offices, PLLC
Mary Skurka, Broker
Mitchell-Yancey Habitat for Humanity
Mt. Zion United Methodist Church, Lenoir
New Creation Community Presbyterian Church, Greensboro
Non-Profit Industries, Charlotte
OnTrack Financial Education & Counseling
OptInference LLC
Partners Ending Homelessness
People's Alliance
Prosperity Unlimited, Inc.
Pullen Memorial Baptist Church, Raleigh
QC Family Tree
Raleigh Friends Meeting, Raleigh
Rod A Vujovic, Attorney at Law, PA
Rutherford County Habitat for Humanity
Salisbury Community Development Corporation
Samaritan Ministries, Winston-Salem
School for Conversion
St. John's Baptist Church, Charlotte
Tarboro Habitat for Humanity
Thermal Belt Habitat for Humanity
Total Wellness Center
Triangle Labor Council AFL-CIO
Umstead Park United Church of Christ, Raleigh
United for a Fair Economy
Upper Yadkin Valley Habitat for Humanity
Wake Forest Baptist Church, Winston-Salem
Watauga County Habitat for Humanity
Wilson Area Habitat for Humanity
Wilson Community Improvement Association (WCIA)