



October 7, 2016

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

Re: Proposed rulemaking on payday, auto title, and certain high-cost installment loans  
Docket number 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.

We believe that New Economy Project has an especially vital perspective to share, as an economic justice organization based in a state that has always effectively banned payday lending. Working with low-income New Yorkers, particularly women, seniors, immigrants, and people of color, we have seen first-hand how strong, enforceable laws against usurious payday lending make a tremendous difference in people's lives. We can attest to the fact that, contrary to the industry's insistence that people *need* payday loans, the sky has not fallen in New York. Yes, people struggle financially, but we are all much, much, much better off without payday lending debt traps. Moreover, we reject the premise that strong CFPB rules would cut off access to credit for people who need it. Rather, strong rules would ideally cut off access to *harmful, exploitative* credit.

**The CFPB has a mandate to issue strong rules.**

We urge the CFPB to issue a strong final rule that, once and for all, stops payday and other high-cost lenders from ensnaring people and their families in a debt trap. With its ever-growing wealth and income gaps, our country cannot afford to suffer the disastrous effects of a too-moderate rule that would allow payday lenders continued latitude to make predatory,

unaffordable loans. Had regulators responded strongly to curb predatory mortgage lending when it was ravaging communities of color in the 1990s, our country would have been spared another decade of that plague. Similarly, the CFPB must not now turn a blind eye, in effect, to all the problems that a weak payday lending rule would leave unaddressed.

Continuing to allow lenders to make unaffordable loans under any circumstances – as the CFPB’s proposed rule would do – runs counter to the CFPB’s mandate to address unfair, abusive, and predatory lending, and would allow for the continued exploitation of people struggling to make ends meet. This would be akin to a government agency permitting toxic food to be distributed to low-income people on the ground that any food, however poor in quality, is better than none. It would be like allowing toxic medications to be administered to low-income patients, even if those medications would cause more harm than good.

**Payday lending cannot be the answer to income shortfalls.**

Similarly, the CFPB must reject the notion that access to payday loans – usurious credit – is a lifeline for low-income families and the solution to income shortfalls. To the contrary, payday lending exploits – rather than meets – the needs of working poor Americans. Long-term dependence on debt – particularly high-cost debt that ensnares and ultimately worsens financial hardship – cannot be advanced as the solution to chronic economic insecurity and inequality. Indeed, former payday loan borrowers report being better off after their states eliminated these debt traps. Taking strong action to eliminate abusive payday lending does not curtail responsible lending, and indeed there are robust networks of community development lenders in states, like New York, that ban payday loans. The CFPB must not limit itself to rulemaking that simply mitigates the worst harms, and sanctions less predatory payday lending. The CFPB must be bold and accountable, and finalize rules that end the scourge of payday debt traps, once and for all.

Our organization, New Economy Project, is based in New York, one of the 14 states, plus D.C., that effectively prohibit payday lending. For more than 20 years, New Economy Project has worked to promote economic justice in low-income neighborhoods and neighborhoods of color throughout New York City. We have successfully fought against discriminatory and unfair financial practices, including predatory mortgage lending, employment credit checks, and abusive debt collection. For far too long, we have also been forced to defend New York’s strong civil and criminal usury laws against frequent attacks by the payday lending and check cashing industries, which have repeatedly sought legislation that would gut or allow them to circumvent our usury laws.

For the past 11 years, New Economy Project has provided free legal assistance to low-income New Yorkers through our NYC Financial Justice Hotline. We have worked with thousands of low-income Yorkers who are on a fixed income, or who barely earn the minimum wage, and cannot afford to pay their rent or utility bills, or to make payments that will stave off the debt collectors calling them day and night.

Their stories belie the notion that people living on a fixed income, or from paycheck to paycheck, need payday loans to survive. We have helped these New Yorkers find their way to vital resources, such as emergency government assistance to pay their rent and utility bills. We have advised them of their right to tell debt collectors to stop contacting them and of the protections under the law for their exempt and/or minimum-wage income. We have referred them to community development credit unions to receive financial counseling and discuss the possibility of a suitable debt consolidation loan. Fortunately, many of these financially-struggling New Yorkers had never even heard of payday loans.

**New Yorkers are much better off today, thanks to efforts by organizations like ours and to our state's rigorous enforcement actions.**

Although payday loans are strictly illegal in New York, for years we also heard from some low-income New Yorkers in great financial, and often emotional, distress, as a result of usurious payday loans made illegally to them over the Internet. Despite the fact that the loans clearly violated New York law and were void and uncollectible under New York law, the online payday lenders aggressively tried to collect on these illegal loans, frequently using harassment and other intimidation methods.

These methods often had severe collateral consequences. For instance, one of our hotline callers, Ivy Brodsky, a low-wage worker, took out online payday loans to help pay her bills, and granted the payday lenders access to her bank account. But the payday lenders' incessant debits constantly drained her account, and so she turned to her bank for help. Her bank refused her requests to block the payday lenders' debits or to close her account. In a two-month period, the payday lenders attempted to debit her account 55 times, and her bank charged her more than \$1,500 in overdraft fees. Only then did her bank close her account, in addition to sending her to collections and reporting her to Chexsystems, which made it very difficult for her to open an account at any other financial institution.

Fortunately, we were able to represent Ms. Brodsky, along with another New Yorker, Subrina Baptiste, in a federal lawsuit, *Baptiste v. JPMorgan Chase Bank, N.A.*, that stopped this bank from continuing to facilitate illegal payday lending in New York State, and helped shine a spotlight on similar practices throughout the country. (We also co-drafted a national sign-on letter calling on the CFPB, national bank and credit union regulators, and the National Automated Clearing House Association (NACHA) to take steps to address systematic problems that bank and credit union customers have when attempting to stop automatic debits from their accounts.)

Even after surviving this ordeal, Ms. B found herself pursued by two debt buyers that had purchased two of her payday loans and were harassing her to pay them back. We filed a complaint on her behalf with the New York City Department of Consumer Affairs and successfully stopped the debt buyers from harassing her. Both the NYC Department of Consumer Affairs and the NYS Department of Financial Services later brought successful enforcement

actions against one of the two debt buyers for attempting to collect on illegal payday loans from New Yorkers.

In 2013 and 2014, the NYS Department of Financial Services (DFS) took a series of strong actions against illegal payday lending, warning debt collectors that it was illegal in New York State to collect on payday loans; directing payday lenders to stop making illegal payday loans to New York State residents; and calling on banks and the National Automated Clearing House Association (NACHA) to work with DFS and stop allowing payday lenders to access New Yorkers' bank accounts. DFS also prevailed when two tribal payday lenders sued the agency in federal court, claiming that they had tribal sovereignty and did not need to comply with state usury laws.

Our Attorney General has also been aggressive in stamping out illegal payday loans made to New Yorkers, suing payday lenders Western Sky and CashCall, and obtaining the national credit bureaus' agreement to cease reporting illegal payday loans on New Yorkers' credit reports.

As a result of our organization's efforts and our state's much-needed enforcement actions, we have all but stopped hearing from New Yorkers to whom payday lenders have made illegal payday loans. We do occasionally hear from low-income New Yorkers still plagued by the residual effects of having taken out online payday loans many years ago. For instance, they report having received letters or calls from debt collectors that claimed to be from a law enforcement agency and threatened arrest if they did not pay on a payday loan. The alleged debt collectors frequently knew their name, address, Social Security Number, and other personal and financial information. At least one hotline caller who reported being harassed in this way had not even taken out a payday loan, but had simply filled out an online application. Another hotline caller reported to us that two of her relatives, whom she had listed as references on her online payday loan applications many years ago, were still getting harassing phone calls from debt collectors (as was she).

**New York needs a strong CFPB rule to bolster its state protections and to help keep payday lending out of New York.**

The payday lending and check cashing industries have for many years attempted to crack open our usury law and make predatory high-cost lending legal in our state. Seeing an untapped, lucrative market they could exploit in New York, the payday lending and check cashing trade groups have repeatedly pushed our state legislature to legalize high-cost payday, payday installment, and other forms of harmful lending. Time and again, these efforts have pitted the public interest against predatory lending interests, leading to ugly battles between community groups and industry, and draining massive public resources in the process. Fortunately, we have successfully beat back these attempts to gut our usury law, thanks in large measure to effective advocacy by a broad coalition of community, labor, and civil rights groups, which has ensured that payday lending remains illegal in our state. But a weak CFPB rule that allows lenders to

make unaffordable loans would not only allow for continued exploitation of people struggling to make ends meet; it would also give payday lenders unwarranted ammunition to knock down existing state protections, as they have been aggressively seeking to do for years.

In short, even though payday loans are strictly illegal in New York, New Yorkers still need the enhanced protections that a strong federal, anti-predatory lending rule would provide. A strong federal rule would bolster our state's enforcement powers against payday lenders, debt collectors seeking to collect on payday loans, lead generators seeking to profit off of selling people's personal and financial information to payday lenders and debt collectors, and other entities that would facilitate illegal lending in our state. Critically, a strong federal rule would also undergird our state's existing protections, by setting a strong national standard for sound, responsible lending.

### **Recommendations**

We recognize that the CFPB is unable by law to set a federal usury cap. However, there are other things that the CFPB is fully within its authority to do – things that would help protect people in all states. At a minimum, the CFPB should:

- **Require a meaningful “ability to repay” standard that applies to all loans, without exceptions and with no safe harbors or legal immunity for poorly underwritten loans.** Sound underwriting is a fundamental principle of responsible lending, and to allow any exceptions is to condone the continuation of predatory, unaffordable lending. The ability-to-repay provision should require thorough consideration of both income and expenses, and state that loans that do not meet a meaningful ability-to-repay standard are *per se* unfair, unsafe, and unsound. The proposed exception would allow lenders to offer certain loans “with more flexible underwriting” as long as they adhered to “certain restrictions,” but these alternative “restrictions,” unlike sound underwriting, would not do enough to ensure the affordability of the loan.
- **Strengthen the enforceability of strong state consumer protection laws, by providing that offering, making, facilitating, servicing, or collecting loans that violate state usury or other consumer protection laws is an unfair, deceptive, and abusive act or practice (UDAAP) under federal law.** The CFPB's success in deploying its UDAAP authority against payday lenders such as CashCall – which a federal court recently found had engaged in UDAAPs by servicing and collecting on loans that were void or uncollectible under state law, and which the borrowers therefore did not owe – as well as against debt collectors, payment processors, and lead generators, provides a strong legal foundation for including this explicit determination in its payday lending rule. By doing so, the CFPB will help ensure the viability and enforceability of the laws that currently protect people in payday loan-free states from illegal lending. At the very least, the CFPB should provide, in accordance with the court's decision against CashCall, that servicing or collecting on loans that are void or uncollectible under state law are UDAAPs under federal law.

- **Prohibit abusive bank account access by payday lenders, by clarifying that attempting to debit an account for a payment on an illegal loan is a violation of the Electronic Fund Transfer Act and Regulation E, and that purported authorizations for payday lenders to debit payments for loans that are unenforceable under state law are invalid.** The CFPB should also require banks to permit accountholders to close their accounts at any time for any reason and to comply with accountholders' stop-payment requests, and prohibit banks from charging overdraft fees once the accountholder has requested that the account be closed.
- **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, debt collectors, and other entities.** The sale of this information exposes people already in dire financial straits to risks of fraud and other exploitative business practices.

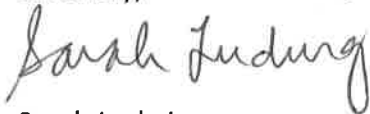
**It is critical that the CFPB issue a rule that does more than address the "worst abuses" of payday lending.**

We cannot overstate how critically important a strong federal rule is to New York State. After all that New Yorkers have worked so hard to achieve – and to prevent – the last thing we need is a weak federal rule that will all but open the door to yet another form of predatory lending in our state. We are deeply concerned that weaknesses in the proposed rule will inevitably be seen as sanctioning high-cost loans that are illegal in New York. A rule that undercuts laws that protect tens of millions of Americans in payday loan-free states does not, in our view, constitute sound public policy-making, even if the rule mitigates some of the harms caused by payday lending in states where it is now legal. Many groups are referring to the proposed rule as addressing "the worst" abuses of payday lending. Given the agency's clear mandate, and given all we know about payday lending, we implore the CFPB to use its fullest possible jurisdiction to address *all* of the abuses of payday lending.

People in our state—and everywhere—are better off without these high-cost, unaffordable loans. We urge the CFPB to issue the strongest possible rule, without loopholes.

Please contact Sarah Ludwig, [sarah@neweconomynyc.org](mailto:sarah@neweconomynyc.org), 212-680-5100 x. 207, or Susan Shin, [susan@neweconomynyc.org](mailto:susan@neweconomynyc.org), 212-680-5100 x. 204, if you have any questions.

Sincerely,



Sarah Ludwig  
Founder & Co-Director



Susan Shin  
Legal Director