

# COMMENT LETTER FROM NEW YORK

October 7, 2016

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

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:

We, the 131 signatories to this letter, represent a diverse cross-section of elected officials, government, labor, grassroots organizing, civil rights, legal services, faith-based and other community organizations, as well as community development financial institutions. We respectfully request that the CFPB count this letter as 131 comments.

Together, we urge you to issue a strong payday lending rule that ends the payday loan debt trap. As the CFPB prepares to issue a final rule to address payday lending nationally, we urge you not to undermine our state's longstanding civil and criminal usury laws. Indeed, we urge you to issue a rule that enhances our existing protections.

As the CFPB undoubtedly recognizes, a list of signatories of this magnitude and breadth is not to be taken lightly. This letter reflects the position of more than 38 state and local elected officials, the NYC Department of Consumer Affairs, the Progressive Caucus of the NYC Council – as well as 92 organizations that represent a broad spectrum of communities, perspectives, and constituents. We are concerned that the CFPB is poised to issue a weak rule that would not only set a low bar for the entire country, but that would also directly undermine our state's longstanding ban on payday lending.

As New Yorkers, we believe we have an especially relevant perspective to share. More than 90 million Americans – nearly a third of the country – live in states like New York where payday lending is illegal. Our experience clearly demonstrates that: (1) people are way better off without payday lending; and (2) the best way to address abusive payday lending, as well as other forms of predatory high-cost lending, is to put an end to it once and for all.

As proposed, the CFPB's payday lending rule is filled with loopholes and would effectively sanction high-cost loans that are illegal in our state and many other jurisdictions in the country. We call on the CFPB to issue a strong final rule that does not undermine New York's longstanding usury and other consumer protection laws. We urge you to set a high bar for the entire country and issue a rule that enhances, and does not undermine, our existing protections. We call on the CFPB to use its full authority to issue the strongest possible final rule that will truly end the payday loan debt trap.

The payday lending industry has thrived because so many people in our country do not have sufficient income to cover their basic living expenses. The last thing struggling people need are predatory, high-cost loans that dig them into an even deeper hole — precisely what happens now in states that permit payday lending. Indeed, many New Yorkers are in financial distress, struggling to make ends meet from paycheck to paycheck (or government benefits check to government benefits check), and the fact that we do not permit payday lending here has proven vital to protecting a huge segment of the population from financial exploitation. Where payday lending is legally permitted, the industry has targeted black and Latino communities, draining hundreds of millions of dollars and perpetuating the racial wealth gap in the U.S.

In short, we consider ourselves extremely fortunate to live and work in a state that bans payday lending. Our centuries-old usury law makes it a felony to charge more than 25 percent interest on a loan. Keeping payday lending out of New York has provided vast benefits to New Yorkers, local communities and the state economy at large. Each year, for example, our state's usury law saves New Yorkers approximately \$790 million that they would otherwise spend on fees for unaffordable payday and car title loans.<sup>1</sup>

Despite these clear advantages, payday lenders 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 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.

We are well aware that the CFPB may not set interest rates, but the agency can and should use its full authority to take strong action. Absent strong federal action, stopping payday lending, including payday installment lending, will continue to be a game of whack-a-mole.

We are extremely concerned that a weak CFPB rule will play right into the hands of the payday lending industry, providing it with ammunition needed to defeat strong laws like we have in New

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<sup>1</sup> Center for Responsible Lending, "States without Payday and Car-title Lending Save \$5 Billion in Fees Annually," 2016, [http://www.responsiblelending.org/sites/default/files/nodes/files/research-publication/crl\\_payday\\_fee\\_savings\\_jun2016.pdf](http://www.responsiblelending.org/sites/default/files/nodes/files/research-publication/crl_payday_fee_savings_jun2016.pdf)

York. Indeed, in Pennsylvania and Georgia, the payday lending lobby has reportedly used the CFPB's 2015 blueprint for the rule, suggesting to state legislators that the CFPB has given its stamp of approval to high-cost payday and payday-like loans.

The proposed rule contains a long list of loopholes and exceptions that raise major concerns for our organization. We strongly urge the CFPB, at a minimum, to:

- **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.** The “ability to repay” provision should require 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. A weak CFPB rule that allows lenders to make unaffordable loans or that includes a safe harbor 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.
- **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.

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, why isn't the CFPB seeking to address all of the abuses of payday lending?

Families 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.

Sincerely,

ELECTED OFFICIALS:

NYS Senator Leroy Comrie  
NYS Senator Brad Hoylman  
NYS Senator Liz Krueger  
NYS Senator Velmanette Montgomery  
NYS Senator Gustavo Rivera  
NYS Senator James Sanders, Jr.  
NYS Senator Daniel Squadron

NYS Assemblymember Charles Barron  
NYS Assemblymember Jeffrey Dinowitz  
NYS Assemblymember Daniel O'Donnell  
NYS Assemblymember Linda B. Rosenthal

NYC Council Progressive Caucus  
Manhattan Borough President Gale A. Brewer

NYC Council Member Inez Barron  
NYC Council Member Andrew Cohen  
NYC Council Member Rafael L. Espinal, Jr.  
NYC Council Member Julissa Ferreras-Copeland  
NYC Council Member Daniel R. Garodnick  
NYC Council Member Vanessa Gibson  
NYC Council Member Ben Kallos  
NYC Council Member Andy King  
NYC Council Member Peter Koo  
NYC Council Member Rory I. Lancman  
NYC Council Member Brad S. Lander  
NYC Council Member Stephen Levin  
NYC Council Member Mark Levine  
NYC Council Member Alan Maisel  
NYC Council Member Carlos Menchaca  
NYC Council Member Rosie Mendez  
NYC Council Member I. Daneek Miller  
NYC Council Member Annabel Palma  
NYC Council Member Antonio Reynoso  
NYC Council Member Donovan Richards  
NYC Council Member Ydanis Rodriguez  
NYC Council Member Debi Rose  
NYC Council Member Helen Rosenthal  
NYC Council Member Ritchie Torres  
NYC Council Member Paul A. Vallone

GOVERNMENT AGENCY:

NYC Department of Consumer Affairs

ORGANIZATIONS:

Affordable Housing Partnership  
Anti-Discrimination Center  
Association for Neighborhood and Housing Development  
Bronx Legal Services  
Brooklyn Coop Federal Credit Union  
Brooklyn Legal Services  
Brooklyn Legal Services Corporation A  
Brooklyn-Wide Interagency Council of the Aging, Inc. Educational Fund  
Buffalo Urban League  
Business Center for New Americans  
CAMBA Legal Services  
Center for NYC Neighborhoods  
Central New York Citizens in Action  
Chhaya CDC  
Common Cause New York  
Community Development Corporation of Long Island  
Consumers Union  
Cultural Renaissance for Economic Revitalization  
CWA District 1  
DC 37 Municipal Employees Legal Services  
Dēmos  
DRUM - Desis Rising Up & Moving  
Ellicott District Community Development, Inc.  
Empire Justice Center  
Erasmus Neighborhood Federation  
Fifth Avenue Committee  
First American International Bank  
Fordham Law School Feerick Center for Social Justice  
Foreclosure Resisters, Inc.  
Genesee Cooperative Federal Credit Union  
Good Old Lower East Side (GOLES)  
Grow Brooklyn  
Habitat for Humanity New York City  
Hebrew Free Loan Society  
Housing and Family Services of Greater New York, Inc.  
Housing Court Answers  
Housing Help, Inc.  
Human Development Services of Westchester  
IMPACCT Brooklyn  
JASA/Legal Services for the Elderly  
La Fuerza Unida CDC

LatinoJustice PRLDEF  
Legal Services for the Elderly, Disabled or Disadvantaged of WNY  
Legal Services NYC  
LISC New York City  
Long Island Housing Services, Inc.  
Lower East Side People's Federal Credit Union  
Manhattan Legal Services  
Margert Community Corporation  
MFY Legal Services, Inc.  
National Center for Law and Economic Justice  
Neighborhood Trust Financial Partners  
Neighbors Helping Neighbors, Inc.  
New Economy Project  
New York Communities for Change  
New York Legal Assistance Group  
New York Public Interest Research Group (NYPIRG)  
New York Statewide Senior Action Council, Inc.  
NYS CDFI Coalition  
PathStone Enterprise Center  
Picture the Homeless  
PUSH Buffalo  
Queens Legal Services  
Rensselaer County Housing Resources, Inc.  
Restaurant Opportunities Center of New York  
Retail, Wholesale and Department Store Union (RWDSU)  
Rockland Housing Action Coalition  
SEIU 32BJ  
Sojourner House  
Staten Island Legal Services  
Syracuse Cooperative Federal Credit Union  
Syracuse United Neighbors  
Securities Arbitration and Consumer Law Clinic, Syracuse University College of Law  
Teamsters Local 237  
The Coalition for Debtor Education  
The Financial Clinic  
The Legal Aid Society  
The SC Group  
The Working World  
Tompkins County (NY) Workers' Center  
Troy Rehabilitation and Improvement Program  
UAW Local 2320  
University Neighborhood Housing Program  
Urban Homesteading Assistance Board  
VOCAL-NY  
Washington Heights and Inwood Development Corporation

West Harlem Group Assistance, Inc.  
Westchester Residential Opportunities, Inc.  
Western New York Council on Occupational Safety and Health  
Western New York Law Center  
Western New York Worker Center  
Westminster Economic Development Initiative, Inc. (WEDI)