

Faith Leaders  
*for*  
Fair Lending



**Texas Fair Lending Alliance**

October 4, 2016

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

Re: Texas Fair Lending Alliance and Faith Leaders for Fair Lending  
comments on proposed rulemaking on payday, vehicle 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. The rule will certainly help to end the harms these loans inflict on communities across the state; however, to ensure that it ends the cycle of debt so many borrowers experience, we urge the CFPB to clarify and strengthen the rule. The cycle of ongoing debt that is too common in Texas' payday and auto title loan market hurts the financial stability of working families, seniors, and military families and drains charitable and public resources from our communities.

The Texas Fair Lending Alliance (TFLA), Faith Leaders for Fair Lending (FL4FL), and our predecessor coalitions, 500% Interest is Wrong, and Texas Faith for Fair Lending, have been working since 2010 towards a market with fair and transparent payday and auto title loans that encourage both borrower

and lender success. TFLA is a coalition of over 60 organizations and individuals working to transform the Texas payday and auto title lending market. Faith Leaders for Fair Lending is a coalition of hundreds of faith leaders in Texas coordinated by the Texas Catholic Conference and the Texas Baptist Christian Life Commission.

Since the mid-1990's, faith leaders, social service providers, and nonprofit organizations have tried to reform the predatory practices of payday and auto title lending businesses. In 2001, the Texas Legislature attempted to control payday and auto title lending by bringing those businesses under the jurisdiction of the Texas Office of Consumer Credit Commissioner (OCCC) and squarely within the state's consumer lending laws; however, the majority of the industry began using the "rent-a-bank" model to get around the 2001 law. In 2005, following the adoption of FDIC guidelines limiting bank payday lending practices, payday lenders in Texas found a new model, classifying themselves as Credit Services Organizations (CSO), to evade state usury caps. After the move to the CSO model, there was tremendous growth of the payday and auto title lending industry; in 2004, there were 1,300 storefronts in Texas and today there are over 2,500 storefronts.

Through our work, TFLA and FL4FL collect borrower stories, stories like those of Tiffany Richardson and Evelyn Hatchett, both of whom lost their cars to auto title lenders. Tiffany's mother received a cancer diagnosis that caused Tiffany to miss a lot of work to care for her, eventually leading to the loss of her job, her home, and her savings, amounting to what she said was a "perfect storm of financial disaster."<sup>1</sup> After relying for months on family and friends, Tiffany took out an auto title loan, then another on her second

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<sup>1</sup> Corrie MacLaggan, *Thousands Lose Cars Amid Calls for Restrictions*, Texas Tribune (Aug. 24, 2014), available at <https://www.texastribune.org/2014/08/24/payday-lending/>.

vehicle, eventually losing both of her cars, when she could not keep up with the payments on the amount she owed, which was several times more than what she originally borrowed.<sup>2</sup> As Tiffany said of the payments, “You’re like a hamster on a wheel.” For Evelyn Hatchett, after getting behind on some bills, she paid \$4,000 on a \$1,500 title loan, but still had her car repossessed. As she said about her ordeal, "You're just giving them free money, it's all just fees. It doesn't touch the principal amount."<sup>3</sup>

TFLA and FL4FL have worked at the state, city, and county level towards reform of payday and auto title lenders. On account of the lenders’ tremendous growth and corresponding economic drain, the issue has gained a high profile across the state with more and more community organizations, faith leaders, elected officials, social services providers, and advocates calling for reform. In 2011, there was a groundswell of bipartisan support for reform with more than 50 individuals and organizations providing testimony in support of bills to limit rates and fee charges.<sup>4</sup> That same year, a survey by the Texas Catholic Conference found that Catholic Charities paid over \$1 million in one year to help clients trapped in payday loans.<sup>5</sup> While a

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<sup>2</sup> *Id.*

<sup>3</sup> Mike Morris, *City lists rules for payday lenders but wants lawmakers to act*, Houston Chronicle (Feb. 6, 2013), available at <http://www.chron.com/news/houston-texas/houston/article/City-lists-rules-for-payday-lenders-but-wants-4254176.php>.

<sup>4</sup> The bipartisan effort resulted in the passage of a bill that improved the regulatory situation in Texas, but did not address the exorbitant fees and faulty loan structure that lead to a cycle of debt. The new laws were small steps forward for consumers: one bill required detailed cost disclosures and the other established licensing under the CSO Act as well as data collection to better understand industry operations. The witness list for HB 410 from the 82nd Texas Legislative Session illustrates the breadth of support for reform:

<http://www.capitol.state.tx.us/flodocs/82R/witlistmtg/html/C3952011032208001.HTM>.

<sup>5</sup> Kate Shellnut, “Texas religious leaders want tighter regs on payday loans,” *The Houston Chronicle* (March 28, 2011). Available at: <http://blog.chron.com/believeitornot/2011/03/texas-religious-leaders-want-tighter-regs-on-payday-loans/>.

compromise measure passed with new licensing, data collection and disclosures, the lenders' large lobby pushed to remove the cycle of debt protections and rate caps.

On the heels of the 2011 legislative session, the City of Dallas adopted what later became known as the unified payday and auto title loan ordinance to begin to address the cycle of debt caused by these loan products. Since then, 38 cities across Texas have now adopted the unified ordinance.<sup>6</sup> As ordinances expanded across Texas, our coalitions sponsored polling to assess Texans' attitudes towards payday and auto title loan businesses. That poll found that 75% of surveyed registered voters in Texas supported legislation to lower consumer costs on these heavily marketed small-dollar loans that trap many payday and auto title borrowers in mounting debt.<sup>7</sup> Even with this showing of widespread popular support, bi-partisan co-sponsorship, and advocacy from diverse coalitions such as TFLA and FL4FL, none of the statewide reform bills filed in 2013 or 2015 made it through the legislative process.<sup>8</sup>

In addition to the unified ordinance, at least fifteen cities across the state have passed zoning ordinances aimed at controlling the growth of payday and auto

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<sup>6</sup> The unified ordinance limits renewals of payday and auto title loans, requires each payment to reduce the loan principal by at least 25 percent, and limits loans based on borrowers' ability to pay.

<sup>7</sup> Press Release from Texas Fair Lending Alliance and Texas Faith for Fair Lending, *Two Major Coalitions Team Up to Push for New State Laws to Rein in High-Cost Payday and Auto Title Lending in 2013*, (Jun. 21, 2012), available at <https://www.texasappleseed.org/sites/default/files/77-PDL-PressReleasePollJune2012.pdf>.

<sup>8</sup> Texas Faith for Fair Lending website, available at <http://www.texasfaithforfairlending.org/>; Texas Fair Lending Alliance, Alliance Members available at <http://www.texasfairlending.org/about/alliance-members/>.

title loan storefronts.<sup>9</sup> In addition, other cities and counties have passed resolutions asking for state lawmakers to do more to regulate the payday and auto title industry as well as resolutions to ensure that municipalities retain the ability to regulate payday and auto title businesses. TFLA and Faith Leaders for Fair Lending have also worked to promote alternatives to payday and auto title loans, something that is critical to helping people in need of small-dollar loans.

Payday and auto title lending is a \$5.8 billion industry in Texas with APRs averaging from 200% to over 500%. Data on these businesses shows a market dominated by fees and refinances. From 2012 to 2015, refinances and fees made up 68% or more of the total dollar volume of the market, which includes both short- and long-term loans. Fees have increased at a rapid rate over the past four years. Fees rose by 34% from \$1.24 billion in 2012 to \$1.67 billion in 2015, while the dollar value of new loans fell by 9%.<sup>10</sup> Much of this increase in fees is due to the growth of installment lending, whose volume grew by 112% over this same period. Overall, the market share of single payment payday loans is declining while installment payday loans and single payment auto title loans are rising.<sup>11</sup>

On a \$300, two-week payday loan, payday lenders typically charge 662%.<sup>12</sup> Annually, these high cost lenders drain \$1,240,697,188 in payday fees and \$432,068,934 in car title fees, a significant loss both to borrowers and to the

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<sup>9</sup> Texas Municipal League, *Payday Lending Clearinghouse*, available at <http://www.tml.org/payday-updates>.

<sup>10</sup> Texas Appleseed, *Payday and Auto Title Lending in Texas: Market Overview and Trends 2012-2015*, 4 (2016), available at [https://texasappleseed.org/sites/default/files/Payday-Auto-Title-Lending-Tx\\_MktOv-Trends2012-2015Rev.pdf](https://texasappleseed.org/sites/default/files/Payday-Auto-Title-Lending-Tx_MktOv-Trends2012-2015Rev.pdf).

<sup>11</sup> *Id.*

<sup>12</sup> Center for Responsible Lending, *Map of U.S. Payday Loan Interest Rates* (2016), available at <http://www.responsiblelending.org/research-publication/map-us-payday-interest-rates>.

overall state economy.<sup>13</sup> This is particularly detrimental to Texas' 1.5 million veterans and its communities of color, populations whom the payday and car title loan industries target and exploit. Payday lenders' ability to seize money directly out of borrowers' bank accounts and car title lenders' ability to threaten repossession of borrowers' vehicles leaves borrowers with little choice but to re-borrow, becoming more deeply mired in a cycle of debt.

In a recent survey of TFLA members and affiliate organizations, including social service providers and charitable organizations, half of respondents said 50% or more of their clients had a payday or auto title loan. Furthermore, 70% of respondents said that over half of their clients were pulled into a cycle debt because of these loans. This survey builds on data collected by the Texas Catholic Conference in 2012 that found one out of every three people that walked through their charities' doors were struggling to pay off a payday or auto title loan.

The CFPB's rule would help borrowers across Texas like Evelyn and Tiffany by starting to thwart predatory lending practices. We applaud many aspects of the rule, particularly its broad scope, the included ability to repay standards, and its role as a floor on which other protections can be layered. The story of payday and auto title loans in Texas is one of constant innovation and evasion; the rule recognizes the expansive nature of the industry and its predatory products by covering a broad scope of loans. For many of the loans covered, the rule establishes reasonable underwriting

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<sup>13</sup> Center for Responsible Lending, *Payday and Car Title Lenders Drain \$8 Billion in Fees Every Year* (2016), available at <http://www.responsiblelending.org/research-publication/payday-and-car-title-lenders-drain-8-billion-fees-every-year>. A 2015 study from the Texas League of Women Voters found that payday and auto title businesses caused an estimated estimated loss of \$351 million in economic value and a loss of 7,375 jobs in 2014. League of Women Voters, *Facts and Issues: Payday and Auto Title Loans in Texas* (August 2015), available at <http://www.lwvtexas.org/files/StudyPayDayLoansFactsIssues.pdf>.

standards ensuring lenders evaluate borrowers' ability to repay loans. In addition, the rule requires notice to consumers prior to attempting to collect payment from their account and limits the number of failed attempts by lenders to withdraw funds from borrowers' accounts. These are all important measures, but we are concerned that without strengthening them, many of them could be rendered ineffective.

The following aspects of the rule should be addressed to ensure that lenders cannot continue their predatory practices.

- **Require ability to repay standard for all loans, with no exceptions:**

The core principle of the CFPB's proposal is the right approach – requiring payday and auto title businesses ensure loans are affordable for borrowers.<sup>14</sup> It is critical the rule apply this basic principle to every loan – with no exceptions and no room for future evasion. Guaranteeing that borrowers can repay loans without having to re-borrow or default on other expenses is essential to ending the current predatory business model, and we strongly support this approach. As currently written, the proposed rule contains dangerous loopholes that significantly undermine the ability to repay standard, a standard that should be applied to all loans. Currently, the proposal could allow six 600% APR payday loans a year without any ability to repay standard. This is six unaffordable loans too many. In addition, the rule exempts longer-term payday loans with high origination fees from its proposed ability to repay test as well as loans where the lender takes access to the

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<sup>14</sup> Small dollar lenders in Texas are regulated under Chapter 342 of the Texas Finance Code, where lenders “must consider, in determining the size, duration, and schedule of installments of a loan, the financial ability of the borrower to repay the loan.” Payday and auto title loan businesses are not subject to Chapter 342; the CFPB's rules would ensure the payday and auto title lending industry also must account for borrowers' ability to repay their loans. See 7 Tex. Admin. Code §83.852.

bank account or the car after 72 hours of making the loan.<sup>15</sup> These loopholes must be closed; the ability to repay standards should apply to all loans.

- **Long-term loans need added protections to ensure affordable terms:** As the rule stands, there are few protections from a likely scenario of increasing the length of the loan term in order to cloak unaffordability. Though Texas state law and the city ordinances include payment limitations and effective limitations on the length of the loan, the online space in Texas includes many lenders evading state consumer lending laws. A Texas borrower recently asked one of our partner organizations for help, because she was buried under a \$2,500 4-year loan that included a total repayment of \$13,000. When she asked for help, she had already paid \$9,000 on the loan and still owed much of the principal. Under the current long-term lending proposal, this loan could meet an affordability test, unless there are further objective standards in the rule, such as a hard backend default rate that elevates regulatory scrutiny and a front-end loan term standard to ensure that loan terms are commensurate with the size of the loan.<sup>16</sup>

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<sup>15</sup> In Texas, the dangers of allowing unlimited fees have resulted in sky high fees, one of the main reasons the CSO model has thrived. Lenders should not be given the discretion to charge unlimited origination fees; the standard of a “reasonable and proportional” fee is insufficient to ensure that fees are not excessive.

<sup>16</sup> A recent study by the National Consumer Law Center of installment lending recommends that default rates above 10% should be a trigger for added regulatory scrutiny. See Lauren K. Saunders, Margot Saunders, and Carolyn Carter. *Misaligned Incentives: Why High-Rate Installment Lenders Want Borrowers Who Default*, at 3(2016). See Lauren K. Saunders, Leah A. Plunkett, and Carolyn Carter. *Stopping the Payday Loan Trap: Alternatives that Work, Ones that Don't*, National Consumer Law Center, at 8-18 (2010). Another study by the National Consumer Law Center recommends a one month loan term per \$100 lent, which could provide a helpful front-end standard.



- **Strengthen protections against loan flipping:** We are concerned that the proposed rule does not go far enough to prevent the flipping of borrowers from one unaffordable loan to the next. Borrowers’ short-term debt should not become unaffordable long-term debt; to help, the CFPB should change the cooling off period to 60 days, rather than just 30 days as proposed, between each short-term loan. In addition, it is critically important to strengthen the protections against repeat refinancing of longer-term loans. If lenders can repeatedly flip borrowers from one long-term loan into another – as they do in Texas today - debt will continue to pile up and borrowers will once again be stuck in a debt trap.
- **Clarify that the rule requires compliance from Credit Services Organizations (CSOs) and Credit Access Businesses (CABs):** The rule must aim to prevent payday and auto title businesses from finding ways to continue their current practices by exploiting any ambiguities or loopholes in the rule. In Texas, payday and auto title lenders operate as “credit access businesses” (CABs)<sup>17</sup> with uncapped fees and loan structures that too often keep borrowers in a cycle of debt that extends far longer than the original loan term. The very structure of CABs, where payday and auto title lenders use the state’s credit services organizations law to pose as brokers, as opposed to lenders, exemplifies how these businesses will exploit any loophole they can. While the rule applies to all covered products regardless of the entity making the loan, in some instances, the provisions are at risk of applying to the lender

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<sup>17</sup> These designations are codified within the Texas Credit Services Organization Act, Section 393 of the Texas Finance Code.

and its affiliates only, and not the CSO. It is critical that the rule provisions explicitly apply to the “lender”, “service providers” and “affiliates”, so that neither the CSO nor the lenders can evade the rule’s protections.

- **Ensure definitions in the rule encompass state laws and local ordinances:** Thirty-five cities, including Dallas, Austin, San Antonio, Amarillo, and Midland have passed ordinances to address the cycle of debt. Sixteen cities have passed zoning ordinances to limit the clustering of these storefronts in city neighborhoods. It is important that these laws work in conjunction with the rule since the rule provides a floor on which local and state entities can expand. To work in concert, the CFPB should ensure that the definitions encompass of a “loan sequence” explicitly includes the terms “rollover”, “refinance”, and “renewal.” Otherwise, there could be confusion over the terms, confusion which businesses could seek to exploit, even though they refer to the same things. In addition, the term “payment” should include the word “installment” in the definition to avoid any confusion on the applicability of the protections in the Texas city ordinances and the way those protections interact with the new rule.

For every Texan employed by payday and auto title businesses, many more families are struggling, caught in a cycle of debt. The high recurring fees and faulty loan structure create increased financial hardship for Texas families. As Tiffany said to anyone considering taking out a payday or auto title loan,

“No matter how bad it gets,” she said, “do not go.”<sup>18</sup> To change the reality for borrowers like Tiffany, the CFPB’s proposed rule must be stronger.

Attached to this comment letter are supporting documents based on our coalition’s work, including borrower stories submitted to TFLA’s and FL4FL’s members and partners (Attachment 1), a sample of city and county resolutions (Attachment 2), and a 2011 publication documenting the scope of the problem and the breadth of support for reform (Attachment 3).

We commend the CFPB for its important work in this area and look forward to the positive effects this rule will have on the financial well-being of so many Texans across our state. Thank you for this opportunity to comment.

Sincerely,

A2Z Real Estate Consultants  
Border Interfaith  
Border Interfaith-El Paso  
Brazos Valley Affordable Housing Corp.  
Brownsville Literacy Center  
Builders of Hope CDC  
Calder Baptist Church  
Calvary Baptist Church  
Catholic Charities of Southeast Texas  
Center for Public Policy Priorities  
Chinese Community Center  
Christian Restoration Community  
CIS of Cameron County  
Citizens for Responsible Lending  
CitySquare

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<sup>18</sup> Corrie MacLaggan, *Thousands Lose Cars Amid Calls for Restrictions*, Texas Tribune (Aug. 24, 2014), available at <https://www.texastribune.org/2014/08/24/payday-lending/>.

Dallas Area Interfaith  
East Village Condominium Owners Inc.  
Faith in Texas  
Family Promise of East Bell County  
Friendship of Women, Inc.  
Greater Longview United Way  
Habitat for Humanity of Camp County, Texas Inc.  
Health Services of North Texas  
Helping Hands Ministry of Belton, Inc.  
Hispanic Baptist Convention of Texas  
Home Sweet Home Community Redevelopment Corp  
Irving Cares  
Joyce E. Tate REALTORS  
Longview Interfaith Hospitality Network  
Mathis Economic Development Corporation  
Metro St. Louis Coalition for Inclusion and Equality, M-SLICE  
Mexican American Unity Council, Inc.  
New Hope Housing, Inc.  
RAISE Texas  
Proyecto Juan Diego  
St. Vincent de Paul - Sacred Heart Catholic Church Conference  
Texas Appleseed  
Texas Baptist Christian Life Commission  
Texas Municipal League  
TexPIRG  
The Metropolitan Organization- Houston  
The Women's Resource of Greater Houston  
United Way of Tarrant County  
United Way of Central Texas  
United Way of Greater Houston  
United Way of Metropolitan Dallas  
United Way of Southern Cameron County  
United Ways of Texas

Valley Interfaith  
Waco Regional Baptist Association

The following individuals also signed on in support of the letter; where appropriate, their organizations are listed, but only for identification purposes.

Gloria Casas, Financial Coach  
Miriam Foshay, League of Women Voters of Texas  
Alice Gaulty, Foundation Communities  
Linda Garcia, GECU  
Rev. Eric Howell, Pastor, DaySpring Baptist Church  
Leticia Reyes, Financial Coach  
Bob Sanders  
Brynne VanHettinga  
Paul Ware  
Tracey Whitley, Legal Aid Lawyer