

September 26, 2016

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

FederalRegisterComments@cfpb.gov

Re: Arizonans for Responsible Lending Coalition Comments on Proposed Rule-making on Payday, Vehicle Title, and Certain High-cost Installment Loans

Docket Number CFPB-2016-0025 or RIN 3170-AA40

Dear Director Cordray:

We file this comment in response to the Consumer Financial Protection Bureau's ("CFPB") proposed rule on payday, vehicle title, and certain high cost installment loans. Thank you for the opportunity to submit comments on this important issue. The rule must be strengthened to ensure that a weak rule does not undermine Arizona's small loan law while simultaneously putting an end to the debt trap once and for all.

We are writing on behalf of the Arizona organizations listed below, which include military and veterans associations, faith organizations, child and family organizations, affordable housing organizations, domestic violence organizations, civil rights and labor leaders, and many others. This coalition has been working together on the issue of predatory small loan lending here in Arizona for the past fifteen years. This coalition has remained steadfast in its purpose calling upon regulators and decision makers at all levels of government to rein in abusive debt trap lending practices and ensure fair, transparent, safe and affordable credit is made available to low income working families throughout our state.

Your proposed rule includes a number of important provisions. It operates as a floor and not a ceiling by not preempting stronger state laws. It focuses on the debt trap and a strong ability-to-repay standard. And it includes a number of provisions to prevent lenders from evading the rule.

Despite these strengths, we are deeply concerned that weaknesses and loopholes in the proposed rule sanction dangerous loan products and will not stop the debt trap.

Indeed we have already seen this past legislative session attempts by the payday lending industry to circumvent your proposed rules by introducing a “flex loan” bill which would have allowed payday lenders to re-enter the Arizona market. This is bad for Arizona and bad for every other state in the country. If these weaknesses and loopholes are not closed, your final rule will threaten our hard won consumer protections. A weak rule will lend undeserved legitimacy to predatory products and practices and open the door once again for payday lenders to operate with impunity in our state.

We cannot afford to have this happen. We know that Arizonans are far better off without payday lenders and Arizona voters agreed by a 2 to 1 margin in 2008 when they voted against a payday initiative. We continue to fight other high-cost lending such as auto title lending in our state and are counting on a strong rule that will ensure Arizona consumers have adequate protections from the payday and auto title debt trap.

### **The fight against payday lending in Arizona**

Traditional payday lending terminated in Arizona in July 2010 when the authorizing law for single-payment check-based lending expired. This issue was the subject of intense lobbying from the payday loan industry throughout the past decade. In addition to lobbying legislators to broaden payday lending in the state, the industry introduced a ballot measure in 2008 (Proposition 200) to remain operational in Arizona. Despite these efforts, voters overwhelmingly rejected the industry's ballot initiative by a 2 to 1 margin, and the Arizona Legislature refused to extend a lifeline to the payday loan industry. Every year since the payday lender's defeat at the ballot box the industry has introduced and lobbied for favorable state legislation. Each year our coalition and many other ordinary Arizonans have put forth information and provided testimony refuting the industry arguments. We as a coalition are looking to the CFPB to provide the strongest rule possible in order to protect Arizona's vulnerable consumers now and into the future.

### **The proposed rule includes important provisions**

CFPB's proposed rule includes a number of important provisions. The proposed rule:

- Operates as a floor rather than a ceiling. It does not preempt state laws, like ours in Arizona, that offer stronger protections against traditional payday lending;
- Focuses on preventing the debt trap, the most abusive aspect of high-cost lending;

- Includes a strong ability-to-repay standard, based on income and expenses, a long standing principle of responsible lending; and
- Includes a number of provisions to prevent lenders from evading the rule, including:
  - A broad scope of covered products (long-term and short-term, open end and closed end, balloon payment, installment loans and combinations of the two – which will help with some of the ongoing title and registration lending issues we see here in Arizona),
  - Strong anti-evasion language, and
  - An “all-in” APR definition, to capture high fees and high interest and ancillary products.

We are pleased that one loophole included in the CFPB’s preliminary outline has already been closed; an exemption from the proposed ability-to-repay test, if loan payments are less than 5% of a borrower's income. Examining income only is not enough to determine if a loan is affordable.

### **A weak rule would jeopardize Arizona’s small loan law**

We appreciate the Bureau’s efforts to curb predatory payday lending by crafting the first-ever federal payday lending rules. Strong interest rate caps are the best way to regulate high-cost lending. Since the CFPB is prohibited by statute from setting a rate cap, it is extremely important that we protect and maintain Arizona’s small loan law which caps interest rates on small loans at 36% per annum.

Though your final rule would not preempt our stronger state rate cap, weaknesses in your final rule would present a direct threat to our state consumer protections by lending undeserved legitimacy to predatory products and practices. Payday lenders would argue that Arizona should conform to this new “national model”, attempting to roll back our hard won protections against payday lending.

**We are very concerned that weaknesses in the CFPB’s proposed rule will sanction dangerous loan products and will not stop the debt trap.**

We ask that the CFPB's final rule build on, rather than undermine our strong state protections and strengthen our ability to enforce our state law against lenders making illegal loans. At a minimum, CFPB must:

- Reaffirm the importance of state rate caps;
- Make it an unfair, deceptive, and abusive practice (federal UDAAP violation) to offer or make loans that violate state interest caps and other state protections; and
- Make it a federal UDAAP violation to facilitate illegal loans through payment processing, lead generating, and advertising.

**We also ask the CFPB to close loopholes that undermine the ability-to-repay standard and specifically:**

- **Require an ability-to-repay determination on every loan, with no exceptions.** Since the CFPB cannot set a rate cap, a strong ability-to-repay test is critically important. This basic principle though must be applied to every loan – with no exceptions and no room for future evasion. As currently written, the proposed rule contains dangerous loopholes. For example, the proposal allows six 400% payday loans a year without any consideration of ability-to-repay, six unaffordable loans too many. The rule also exempts longer-term payday loans with high origination fees from the ability-to-repay test. These loopholes must be closed.
- **Close the “business as usual” loophole.** The proposed rule must be strengthened to ensure that people have enough money to live on after paying back the loan. The rule falls short by allowing lenders to simply continue “business as usual” making loans to borrowers who cannot afford the loan but have not defaulted in the past. Low default rates are not evidence of ability to repay, since lenders hold a super lien against the borrower's checking account (with a post-dated check) or car title.
- **Strengthen protections against flipping, particularly for long-term loans.** The proposed rule does not go far enough to stop borrowers from flipping from one unaffordable loan to the next. The CFPB should do more to ensure that short-term debt does not become unaffordable long-term debt. It is critically important to strengthen the protections against repeatedly refinancing longer-term loans, allowing debt to pile up and borrowers to continue to be stuck in a debt trap.

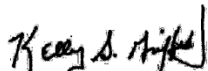
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- **Cover all loans that give lenders extra leverage to collect their payments**, such as loans with a super lien against the borrower's checking account, secured by personal property, or with a right to garnish wages.

The best way to address abusive payday, car title, and other forms of predatory high-cost lending is to put an end to these practices once and for all. Here in Arizona we have put an end to payday lending but we still have more work to do to put an end to other abusive high cost lending schemes such as auto title lending. 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.

Arizonans strongly oppose payday and all other forms of high-cost lending. Please do not allow a weak federal rule to usher in a new wave of predatory lending in Arizona and other states where payday lending is illegal.

Respectfully,



Kelly Griffith, on behalf of

Kelly Griffith, Center for Economic Integrity

Diane Brown, Arizona P.I.R.G.

Josh Oehler, Children's Action Alliance

James J. McLaughlin, UFCW 99

Samuel Richard, Protecting Arizona's Families Coalition (PAFCO)

Arizona House Representative, Debbie McCune-Davis

Ken Briggs, United Way of Tucson and Southern Arizona

Peggy Hutchison, Primavera Foundation

Sarah Michelsen, Arizona Wins

Laura Jasso, Southern Arizona Grandparent Ambassadors

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