Appleseed

October 7, 2016

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

Re: Appleseed Network 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:

The Appleseed Network ("Appleseed") files this comment in response to the Consumer Financial Protection Bureau (CFPB) proposed rule on payday, vehicle title, and certain high-cost installment loans ("small dollar loans"). Thank you for the opportunity to submit comments on this important subject. The rule is a critical step in stopping the harms of unaffordable loans, but it must be strengthened to ensure it stops the debt trap once and for all. The CFPB has the unique opportunity, and indeed obligation, to bring meaningful reform to the marketplace.

We urge that any rule addressing high-cost payday, vehicle title or installment loans accomplish the following: 1) require the lender to determine the borrower's ability to repay the loan, including consideration of income and expenses; 2) not sanction any series of repeat loans or provide a safe harbor for poorly underwritten loans; 3) establish an outer limit on the length of indebtedness;[1] and 4) restrict lenders from requiring a post-dated check or electronic access to a borrower's checking account as a condition of extending credit for all loans.

[1] Ninety days per 12-month period for loans of 45 days or less; and for longer term loans, require underwriting and standards that ensure the loans are affordable for the full term of the loan and that longer loan terms are not used to disguise the unaffordability of very high-cost loans. E.g., Payments on a three-year $500 loan at 500% APR would look very much like the minimum fee payment on a $500 two-week loan at 500%.

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BACKGROUND

Appleseed is a nonprofit network of 17 public interest justice centers in the United States and Mexico dedicated to building a society in which opportunities are genuine, access to the law is universal and equal, and government advances the public interest. Our Appleseed centers and national Appleseed financial access and asset building program are devoted to promoting fairness, transparency, multiple options, financial education, and safe and secure banking and asset building options for low-income persons. Ending predatory lending practices – targeted toward low income communities – is critical to achieving these goals. Appleseed [2] encourages the CFPB to recognize the importance of supporting programs that help all individuals climb the economic ladder and avoid costly debt cycles.

Appleseed's position is unique because we operate as a network and can report that our individual center experiences and we have reached the same conclusion: Small dollar lending reform is essential to protect low-income consumers and expand economic opportunity — and the CFPB is in the best position to make this happen.

Appleseed centers operate in payday and title lending states that run the gamut from 1) virtually non-regulated (Alabama and Texas), 2) partially yet ineffectively regulated (South Carolina), and 3) regulated with rate caps of 36% that are under attack (New Jersey). The centers' breadth of experience working on this issue has led to unified conclusions.

Alabama Appleseed

Payday and title loan lending is at epidemic levels in Alabama and has been growing steadily since the mid-1990s. In 2015 there were at least 1,100 registered payday lenders and 1,056 registered pawn shops in Alabama, significantly outnumbering the number of McDonalds or Starbucks operating in the state.

In August 2015 the State Banking Department established a centralized database for payday loans issued in Alabama. Since that time, the number of payday loans stores has declined to 747. In the first year of reported data, there have been 2.1 million payday loans issued, with an average loan amount of $326.84 and an average fee per loan of $56.77. This loan volume, at this average loan and fee size, equates to at least $118.7 million in fees paid by payday loan borrowers in just one year.

Since the mid-1990s, flying largely under the radar, payday lenders quietly began charging interest rates far beyond the 36% authorized under Alabama's Small Loan Act. On July 7, 1994, Alabama's Attorney General issued an opinion that payday loans are covered by the Small

[2] These comments are submitted on behalf of The Appleseed Foundation and the following Appleseed Centers: Alabama, Chicago, Connecticut, Hawai'i, Kansas, Massachusetts, Mexico, New Jersey, New York, South Carolina and Texas.

Loan Act and subject to Truth in Lending disclosure requirements. No action to enforce the 1994 opinion was taken until July 1, 1998, when the Banking Department issued 150 cease and desist orders against payday lenders violating the interest cap. There was litigation about these cease and desist orders and the Banking Department's position thereon, and finally in 2005, the Alabama Supreme Court held that deferred presentment services (i.e. payday loans) were subject to the Small Loan Act, but only those loans made prior to the 2003 passage of the Deferred Presentment Services Act (Sec. 5-18A-1, et seq.) which legalized payday loans by specific legislation. *Austin v. Alabama Check Cashers Assoc*., 2005 Ala LEXIS 197 (Ala. 2005).

In 2002, the Legislature increased allowable loans to approximately 190% APR on loans of up to $1,000 with a duration of 12 months. The Alabama Legislature passed a 2003 bill legalizing payday loans and allowing 456% APR on payday loans of up to $500 for 10-31 days largely to protect the payday lenders from pending litigation.

Reform advocates have come together over the last five to six years to form a strong and diverse lobby of their own called the Alliance for Responsible Lending in Alabama ("ARLA"), whose members include, inter alia, Alabama Appleseed, Alabama Arise, Greater Birmingham Ministries, YWCA of Central Alabama, Birmingham Faith in Action, Gateway Credit Counseling, and The Women's Fund.

In the 2016 legislative session, a compromise bill, patterned on Colorado's payday loan reform law, passed the Alabama Senate on a 28-1 vote and was poised for passage in the Alabama House, until a last minute unexpected and unrelated circumstance prevented a vote. Great momentum is building in Alabama for reform of both the payday and title loan laws.

Alabama Appleseed Asks: "Are car title lenders more interested in getting the borrower's car than their payment?"

Bernita (not her real name in order to protect her confidentiality) is an African American women living with several young kids in Birmingham, Alabama. She was in an abusive relationship, that, among other things, wrecked her financial situation. To get some financial help, she took out an auto title loan. She made her first two payments on time, but on the third payment, she waited until the last day to take her payment in to the title lender. But, she was five minutes late at 7:05 PM, and although she had her payment in hand and there was an employee still in the store, the employee would not open the door to take her payment and told her the office was closed (it closed at 7:00 PM) and that she had to come back tomorrow. She pleaded with the employee to open the door and take her payment, but to no avail. She went back to her residence and a little while after she got back there, she looked out the window and say an unmarked, unnamed tow truck pull up with three huge guys in it - she tried to stop them from repossessing her car, but they did it anyway and towed her car away. She was only working daily temp work at that time and could therefore not afford to redeem her car that had been repossessed. So, bring five minutes late to take her payment in cost her the loss of her car and only means of transportation to her job.

South Carolina Appleseed

Payday lending has been a deregulated in South Carolina since 1982, meaning that payday lenders can charge any interest rate they like as long as they file the rate with the South Carolina Department of Consumer Affairs and post it "conspicuously" in their place of business. This has allowed for triple digit interest rates.

In 1995 the law was amended to limit, not abolish, abusive refinancing of these small loans in an effort to limit the incentives for automatic refinancing of loans and to rein in interest rates.

To protect the consumer from this cycle of debt, the Legislature passed the South Carolina Deferred Presentment Act in 1999. As of February 1, 2010, loan limits were raised, licensing required and internet lending barred for those who are not licensed and complying with the limitations on number of and amount of payday loans.

Consumers' difficulties with payday loans increase dramatically when they enter into multiple contracts. This is a form of loan "flipping," since the same business is not used to pay off the original loan but it does not violate the letter of the law in South Carolina. Until six years ago in South Carolina, it was not unusual to encounter consumers indebted to more than 10 companies at one time and paying more than $500 every two weeks in fees. In years subsequent to the Deferred Presentment Act, consumers raised this issue with the state regulator, but the regulatory agency refused to find that this practice violated the intent of the act, despite legislators stating it was always their intent to limit loans to "one at a time."

In 2009, following five years of debate and millions of dollars spent by the payday loan industry, the Legislature amended the payday statutes. A South Carolina law, effective February 1, 2010, did not cap the interest rate, but did provide some additional protections by limiting the number of payday loans to just one per consumer at any one time and creating an outstanding loan database and requiring every lender to: 1) check it before issuing a new loan to a consumer, 2) note in the database when the loan is made and paid in full, 3) refrain from making a loan to a consumer with an outstanding payday loan or an Extended Payment Plan (EPP) with any lender, and 4) wait two full business days to lend once a consumer has made seven consecutive loans. The size of the loan was increased to $550. It is significant that the two-day "wait period" has done little to prevent back-to-back loans, as 57% took out six or more loans in 2015.

Auto title lenders lure borrowers with promises of "no credit checks," "quick cash," and "bad credit, no problem." Consumers end up facing enormous interest rates and many lose their cars when they cannot make the loan payments, risking their ability to hold their jobs. Until 2004, there were no laws restricting or addressing auto title loans. This meant that an auto title lender could roll over type of loan endlessly. A loan larger than $600 could earn an auto title lender literally thousands of dollars in interest, and the car could still be repossessed if the consumer got behind in repayments.

The Legislature has attempted to address these abuses by enacting a new law governing "Short-Term Vehicle Secured Loans. However, title lenders no longer make short-term loans but operate under South Carolina law as any other consumer lender, making loans for 12 months or more, disclosing an APR usually around 300%. It is business as usual.

South Carolina Appleseed, AARP-South Carolina, South Carolina Fair Share and the South Carolina Baptist Convention have worked together to reign in the multiple loans and constant loan flipping and rollovers occurring around the state.

A South Carolina Story of Desperation

The Brown family of Great Falls, South Carolina, contacted South Carolina Appleseed about a problem with a payday loan. This elderly couple had a combined income of $1,210 a month from retirement and Social Security. With this limited income, the Browns were paying a $461 mortgage payment, a $600 utility bill, a $440 car payment, and an $80 cable bill, which totals $1,581 a month or an income to spending deficit of $371 a month.

Advance America knew about the Browns' financial situation, yet still made multiple loans to the family over the course of three months totaling $978.30. Not only did Advance America make loans that never should have been approved in the first place, but the payday loan company proceeded to call and harass the Brown family when they got behind. First with calls trying to collect debts; then once some of the debts were paid, calls attempting to get the Brown family to take out another loan. The Brown's inability to pay should have prevented them from being able to take out these loans. Instead, the Browns became trapped in a cycle of debt.

Texas Appleseed

Texas is a major profit center for the payday and auto title lending industry nationally. Former Texas House Speaker Tom Craddick stated at a legislative hearing in 2011, "Of the four publicly traded companies that deal in [payday lending], they make 60% of their profits in the state of Texas." [3] An executive administering a payday loan program observed, "Demand [for the

[3] Texas State Rep. Tom Craddick, statement before the Texas House Committee on Pensions and Investments, March 22, 2011.

payday loan product] is insatiable and customers are not price-sensitive." [4] This assessment describes a market ripe for abuse.

The primary reason for the high profits coming out of Texas is a climate that allows payday and auto title businesses to operate without caps on fees or without other limitations. As a result, many borrowers are trapped in a cycle of debt when these short-term balloon loans are not repaid on time (usually within a required two to four weeks). This business model has produced a small-dollar loan market dominated by payday and auto title loans with annual percentage rates (APRs) of 500% and higher. In Texas, the estimated average payday loan borrower can pay up to $840 for a $300 loan; monthly fees for a $4,000 auto title loan often exceed $1,000. [5] High-cost installment loans, with rates exceeding 500% APR, are increasingly available.

Since the early days of payday and auto title lending in Texas, some in the industry have attempted to circumvent state usury limits. In the late 1990s, then-Attorney General John Cornyn filed lawsuits against payday lenders, alleging usurious lending, deceptive trade practices and abusive debt collection practices. "We cannot allow payday lenders to operate outside the law when making consumer loans, and then have them use the law for the purpose of collecting illegal and outrageous interest," Cornyn said in a May 1999 announcement of a lawsuit against a statewide payday loan company. [6]

In 2000, the Texas Finance Commission adopted rules, still in effect today, establishing lending gu*i*delines to accommodate the short-term nature of payday loans. In 2001, the state Legislature adopted a law bringing payday lenders under the authority of the Texas Office of Consumer Credit Commissioner (OCCC), a move that placed them squarely under state consumer lending laws. There was a general sense that the issue was resolved, but that was far from true.

An era of loopholes ensued from 2001 to 2011. To circumvent Texas' attempts to bring some of the lenders into compliance with consumer lending laws, the majority of the Texas payday lending industry began partnering with out-of-state banks and importing interest rates from

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[4] Trend Sorbe, senior vice president, Metapay, "Market Response to a Need: Auditing the Small-Value, Short-Term Credit Landscape," Center for Financial Services Innovation (CFSI) webinar, Sept. 9, 2008. Available at: http://cfsinnovation.com/node/330409?article_id=330409

[5] Because no Texas-specific data are currently available, the cost estimate for payday loans in Texas is based on data from Oklahoma, where the average payday borrower uses nine loan transactions per year. The estimate assumes a $20 per $100 borrowed charge per loan transaction, which is on the lower end of charges observed in the Texas market. See "Oklahoma Trends in Deferred Deposit Lending," Oklahoma Deferred Deposit Program, Veritec, June 2010, p. 8. The auto title loan cost is based on the common market charge of $25 per $100 borrowed per month.

[6] "Cornyn Files Suit in Austin and McAllen Against 'Payday' Lenders: Illegally Charging Up to 860% Interest Rate," press release, Office of the Attorney General of Texas, May 12, 1999. Available at: www.oag.state.tx.us/newspubs/newsarchive/1999/19990512paydayloans.htm

states with no usury cap. Often called the “rent-a-bank” model, this approach allowed payday loan businesses to get around the 2001 usury law.

During the first half of the decade, bills were filed in the Texas Legislature, some to rein in this high-cost lending practice, and others to specifically authorize small-dollar lending at 390% APR or higher. None were adopted.

In 2005, the Federal Deposit Insurance Corporation (FDIC) issued revised examination guidelines governing payday lending by FDIC-supervised banks. [7] They limit outstanding payday loan debt for a customer to no more than three months in a one-year period. For a typical two-week payday loan, this standard translates to a cap of approximately six loans per borrower per year. The ultimate impact of this guideline was the large-scale abandonment of the out-of-state bank partnership business model.

Beginning in the 1990s, a handful of businesses used the little-known Texas Credit Services Organizations (U.S.) Fifth Circuit Court of Appeals ruling in *Lovick v. Ritemoney Ltd.* that the fees charged by Texas CSOs to obtain consumer credit for customers do not constitute “usury.”[8] A 2006 letter from the Texas Attorney General’s Office regarding the legality of the CSO lending model stated, “On its face, the CSO model does not appear to be prohibited under Texas law …”[9]

The Fifth Circuit decision, in combination with the Attorney General letter, led to an explosion of CSO registrations by payday and auto title companies in Texas. In 2004, there were 250 registered CSO locations. By November 2011, there were over 3,400 registered locations, the vast majority being payday and auto title loan businesses.[10]

While the policy arena kept silent, local charities and faith-based groups reported a growing number of requests for assistance from Texas families indebted to payday and auto title lenders. After months of paying high fees on a payday or auto title loan, these borrowers still owed the entire loan principal and some were threatened with losing their cars.

During the 2011 Texas legislative session, there was a groundswell of popular and bipartisan support to reform the payday and auto title industry. Major state newspapers published

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[7] “Guidelines for Payday Lending,” Federal Deposit Insurance Corp., Feb. 25, 2005. Available at: www.fdic.gov/news/news/financial/2005/fil1405a.html
[8] *Lovick v. Ritemoney Ltd.*, 378 F.3d 433 (5th Cir. Tex. 2004).
[9] Letter from Barry R. McBee, First Assistant Attorney General, Office of the Attorney General of Texas, to Ms. Leslie Pettijohn, Consumer Credit Commissioner, Jan. 12, 2006.
[10] Historical CSO registration data were compiled by Texas Appleseed through data requests to the Texas Secretary of State starting in 2007. Registration numbers prior to 2007 were estimated based on the year of first registration reported for all 2007 registered locations.

editorials in support of reform.[11] More than 50 organizations, associations, churches, cities, and individuals from across Texas attended legislative hearings and provided over seven hours of testimony documenting abuses and supporting bills to limit rate and fee charges. Thousands of constituents called or wrote their legislators in support of reform.

Ultimately, only two bills passed. One bill requires detailed cost disclosures, and the other establishes licensing under the CSO Act. The licensing bill also calls for data collection to better understand industry operations.

A "World Shattering" Experience in Texas

It comes down to "a world shattering experience" for myself and everyone I have ever known who has gotten one of these loans. Two of my friends (also on disability) had taken out car title loans: The bottom line was IT WAS TOO EXPENSIVE and they BOTH HAD THEIR CARS REPOSSESSED. The manager showed no compassion even though both friends tried to make arrangements.

Working for 35 years and becoming disabled after five back surgeries over an eight-year period, I suffered with not only a physical/mental disability but a financial disability as well. My credit was severely affected prior to my disability award so I had to turn to a payday loan like countless others who cannot get a loan with a decent interest rate. Every friend, family member and myself have renewed the payday loans a minimum of two or three times and paid excessive finance charges while only saving money to pay the principal.

I get sick knowing that I will need extra money during any given month, since it is so difficult living on Social Security alone. Credit scores do not tell you what a person is really like or has endured to get where they are – we all need a little help from time to time. Sad it has to be from the predatory lenders and not a credible financial institution.

Appleseed Center Collective Experience Underpins Common Conclusions

Our centers have valiantly fought for lending reform in their states only to face similar challenges despite their diversity of experience. South Carolina Appleseed conducted impressive work but the industry found a way around it. The Texas story is different, but the outcome is the same. In Alabama, we created a great coalition but cannot get legislation passed despite continuing to build momentum. New Jersey has a strong usury cap but is still fighting battles to keep payday lending out while online lenders are coming in. The need is clear;

[11] Newspapers that published editorials in support of reform include Amarillo GlobeNews, Austin American-Statesman, Dallas Morning News, Houston Chronicle and San Antonio Express-News.

reformers work hard; the need for reform persists. Appleseed centers have had similar, and dismal, experiences seeking reform and firmly believe federal rulemaking is essential to achieve small dollar loan reform in a comprehensive way rather than in a state by state manner which will not work.

Appleseed centers' common experiences prove that:

- **Payday and Vehicle Title Lending is at Epidemic Proportions with Common Triple-Digit Rates and Online and Geographical Growth.**
- **Even after Modest Reforms, Fees are Exorbitant.** Payday and vehicle title loan interest rates are far beyond what the average American would tolerate as a loan for a washing machine or air conditioner.
- **Industry Flies Under the Radar and Evolves and Evades.** Our centers faced brick walls when seeking reforms, at times helped propel modest reforms, and yet the industry evolves and evades legislation and regulation.
- **State Enforcement is Lax and at Times Non-existent.** Appleseed centers report that some of their states have gaps in enforcement and decline to enforce against out of state and or online lenders.
- **Strong Coalitions Form but Achieve Only Limited Success.** Appleseed's Alabama, South Carolina and Texas centers have worked hard with diverse coalition partners and come together to support families and fight predatory market practices. All centers have made progress towards establishing fair standards at the state level, but in the face of moneyed and powerful opposition, much work remains to be done.

Our Appleseed Centers have also spearheaded efforts to promote municipal ordinances to curb payday loans in the absence of state reforms.

APPLESEED APPLAUDS KEY ELEMENTS OF THE PROPOSED RULE

Appleseed has long held that **lending must be based on borrower and lender success**, not lending that succeeds on borrower failure. The proposed rule is clearly on the right track, a significant improvement over current spotty state regulation and can address many of the problems we have described. With these regulations in place our consumers will have a strong and interested regulator that is willing to ensure that consumers are protected, something that is missing in our states.

- **Scope of the Proposed Rule.** The rule spans four different products, including short term payday and auto title loans and long term payday and auto title loans. This is extremely important as the rule would be exceedingly easy to evade if it did not span those four products as well as installment loans. Inclusion of installment loans is significant and important to Appleseed given the national trend to move to installment payday lending.

- **Ability to Repay Standard.** Proof of ability to repay is essential to achieving borrower and lender success. While Appleseed is pleased to see this standard in the proposed rule, Appleseed suggests strengthening this provision.

STRENGTHEN THE PROPOSED RULE TO ACHIEVE BORROWER AND LENDER SUCCESS

We urge that the CFPB to make the following adjustments to the rule:

- **Strengthen the ability-to-repay test, based on income and expenses, with no exceptions: Apply it to every loan where the lender takes control over the borrower's checking account, car, other property, or wages.** Assessing income alone is not sufficient to determine if a loan is affordable or not. Without looking at all expense along with income there is no ability to assess a consumer's ability to pay. An objective standard makes it easier to enforce the law.
- **Add stronger protections against flipping loans.** Ensure borrowers can't be stuck in so-called two-week loans for three months or more and prevent serial flipping of longer-term loans. The rule's proposed criteria to address flipping of longer-term loans is insufficient to prevent lenders from flipping borrowers from one unaffordable loan to the next. This loophole can be closed by allowing that the refinancing of a longer-term loan should carry a presumption of unaffordability if the borrower is delinquent by even one day or the borrower has paid less than 75% of the loan principal. The rule should also prohibit the refinancing of a covered longer-term loan a second time.
- **Enhance strong state laws.** The rule must not undermine states that prohibit these high-cost abusive loans, and it should deem a violation of state law an unfair practice.
- **Close the loopholes: Ensure lenders can't game the rule in a way that leaves borrowers without enough money to live on.** The CFPB is proposing a dangerous loophole that is ripe for evasion: exempting high-cost longer-term loans if the bank account access or car title is taken by the lender more than 72 hours after the loan has been disbursed. All loans secured by a bank account or car title should be covered by the rule, regardless of when security is taken.

  Additionally, loans secured by personal property and those where the lender retains the right to garnish wages are currently not covered by the rule. Due to the same tendency to compel reborrowing when a loan proves to be unaffordable, these loans should similarly be covered by the rule. Failure to do so would allow business as usual.

- **Lengthen Cooling Off Period.** We urge the CFPB to increase the length of the cooling off period to 60 days to protect consumers from repeated flipping of loans. Implement a limit of total indebtedness for short-term loans of 90 days every 12 months, consistent with the FDIC's long-time standard.
- **Avoid a "Race to the Bottom" Among Companies.** The proposal requires that the lender not have unusually high default, delinquency, or reborrowing rates as compared to other companies. This affords latitude to the industry because 1) abusive products will be on the market for a while before it is even ascertained they are problematic and could create a "race to the bottom" regarding lending quality within the industry, and 2) enforcement is likely to be difficult and create a longer timeline for curing abuses. The CFPB should develop benchmarks for what constitutes high default, delinquency, or reborrowing rates as compared to other lending rather than merely compared among companies.
- **Limit Origination Fees and Prepayment Penalties.** Front-loaded charges do not incentivize early payback. The rule prohibits prepayment penalties. Yet prepayment penalties can masquerade as origination or other frontloaded fees and evade prepayment penalty prohibition and are effectively pre-payment penalties. We echo the Pew recommendation that the simplest approach is to allow only interest charges or monthly fees on the loan, with no other fees.
- **Installment Loans.** Installment loans must not be secured by a paycheck or vehicle title because this opens up installment lending to abuse.
- **Ensure that Unaffordable Short Term Debt does not become Unaffordable Long Term Debt.** Appleseed is concerned that the affordability standard as it exists now could lead to abusive long term loans. South Carolina recognized this in changes it made to its laws to take away financial incentives for small finance loans more than 20 years ago. While extra charges were removed it never eliminated this problem and to this day we see small loans flipped on a regular basis. Refinancing a loan is often a strong indication of the unaffordability of the prior loan. If long term loans expand, we won't see the hoped-for loan volume decline; we will see a shift in the market. Pew suggest in a bullet point in its report (and with a reference to the Colorado law that has a six-month payment term): "Require loans to have reasonable repayment terms, such as the Colorado payday loan reform's six months repayment period."
- **Strengthen Enforceability of Strong State Consumer Protection Laws.** Questions may be raised about ambiguity between federal and state rules that can lead to evasion of the rule's requirements. For example, under the Texas CSO model, storefronts work with third parties to structure loans; as the rule is written, storefronts don't have certain liability. Improve the proposed rule's compatibility with state law.

- **Plain Language Spanish Disclosures and Contracts:** All contracts and disclosures should be provided in plain language in English and in the language in which the loan transaction was negotiated and advertised. As the proposal stands, it indicates that businesses "may" offer a disclosure in a foreign language. That standard leaves out too many Texas families from key contract and disclosure information. According to the 2010-2014 American Community Survey, 25.6% of Texans 18 and older speak a language other than English at home, and 21% speak Spanish. That amounts to over 4.2 million Texans impacted.

  In Appleseed's Comments on the CFPB's Language Access Plan, Docket Number CFPB-2014-002, January 6, 2015, nine Appleseed centers joined national Appleseed in advocating for detailed language access in CFPB documents.[12]

  Further, Appleseed supported the language in the remittance regulations and believes it should be replicated in the payday rule. The current CFPB international remittance rule, 12 CFR Part 1005 (g) should be used as a model for required foreign language contracts and disclosures.

  > "Under the CFPB's Regulation E, remittance transfer providers *must* provide certain pre and post-transactions disclosures to customers sending international remittances. Under 1005.31, these disclosures must be made in English *and*, if applicable, either:
  >
  > In each of the foreign languages principally used by the remittance transfer provider to advertise, solicit, or market remittance transfer services, either orally, in writing, or electronically, at the office in which a sender conducts a transaction or asserts an error; or in the foreign language primarily used by the sender with the remittance transfer provider to conduct the transaction or to assert an error, provided that such foreign language is principally used by the remittance transfer provider to advertise, solicit, or market remittance transfer services, either orally, in writing, or electronically, at the office in which a sender conducts a transaction or asserts an error, respectively".

[12] Comments on the CFPB's Language Access Plan, Docket Number CFPB-2014-002. January 6, 2015. Nine Centers joined national Appleseed in advocating for detailed language access in CFPB documents.

Appleseed believes both plain language and replication of the remittance language are essential to the success of the rule.

- **Correct Language and Definitional Problems**. The proposed rule may inadvertently create loopholes due to missing, inconsistent or imprecise language and definitions. Protracted legal battles about what a certain term means can result. The CFPB should clearly define them. A partial list includes:

  - Integrate federal and state definitions so there is no ambiguity between state and federal law and clarify interaction with state laws.
  - Ensure consistency of language so there is no misinterpretation of terms. Examples: Loan sequence, refinance or rollover may be confused. Are rollovers covered by the loan sequence?
  - Include "installment" under the definition of "payment" in the rule. There is no legal definition of installment and, as it is a common term associated with long-term loans, not including it as part of the definition could create confusion.
  - Precisely define prepayment so that circumvention such as origination fees are included.

Five Percent Payment-to-Income Loans

Appleseed respectfully recognizes that some advocates are recommending limiting payments to five percent of the borrower's gross monthly income ("5 % loans") and that other parties disagree with this approach.

Appleseed acknowledges the benefits (streamlined underwriting, possible increase in financial institutions offering these loans and an underwriting safe harbor) and harm (without any cost limitations and no consideration of expenses, a 5% payment amount could still result in an unaffordable loan). If the Bureau were to adopt this approach, it should include a cost limitation similar to the other long-term loans included in the proposed rule and require a six-month amortization, with no pre-charging of fees and a maximum $500 loan.

CONCLUDING THOUGHTS

We again applaud the CFPB for recognizing the need to address the myriad of problems related to small dollar lending. We appreciate the work that you have done so far to protect consumers and hope that this rule will become as strong as possible in order to truly end the debt trap.

For further clarification on these comments, please contact us (see below).

Sincerely yours,

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