September 23, 2016
Hon. Richard Cordray
Director
Consumer Financial Protection Bureau
1700 G Street NW
Washington, DC 20552

Re: Arizona Coalition to End Sexual and Domestic Violence 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 Arizona Coalition to End Sexual and Domestic Violence (ACESDV) files this comment in response to the CFPB's proposed rule on payday, vehicle title, and certain high cost installment loans. Thank you for the opportunity to submit comments on this important subject. The rule must be significantly strengthened before it becomes final in order to ensure that it does not undermine our strong payday loan rate cap, and also to stop the harms of abusive car title lending that still plagues our state.

ACESDV is the designated dual issue coalition in Arizona addressing both sexual and domestic violence. Our purpose is to increase public awareness about the issues of sexual and domestic violence, enhance the safety of and services for sexual and domestic violence victims and survivors and end sexual and domestic violence in Arizona communities. We are located in Phoenix, Arizona and our mission is to lead, to advocate, to educate, to collaborate, to prevent and end sexual and domestic violence in Arizona.

The dependency perpetuated by payday lending is harmful to survivors of domestic violence—who are seven times more likely to live in low-income households—because 99 percent of survivors already experience economic abuse at the hands of an intimate partner[1]. Economic abuse comes in a variety of forms and abusive partners can make it impossible for survivors to acquire or maintain financial resources. Abusive partners can keep survivors from accessing financial institutions, control their money, refuse to disclose financial information, sabotage employment or educational opportunities. Abusers can even destroy a survivor's credit – sometimes long before survivors are even made aware of it themselves.

Many survivors are forced to turn to payday lending because they have poor credit scores. In some instances, abusers take out credit cards in the survivor's name for the explicit purpose of ruining credit scores, thereby forcing the survivor to remain in the relationship or face the additional barrier of bad credit when trying to leave. As consumer lending has permeated American life, abusive partners have begun using debt as a means of exercising abusive control, making the consumer credit system an unknowing party to domestic violence. Coerced debt can take a variety of forms. It ranges from abusers taking out credit cards in their partners' names without their knowledge to forcing survivors to obtain loans for the abuser and more.

[1] National Network to End Domestic Violence, 2016

For many survivors, concerns over their ability to provide financially for themselves and their children are a significant reason for staying in or returning to an abusive relationship. Survivors who are economically dependent are less likely to leave their abusive partner and research suggests that income level is the best predictor of whether a survivor will leave or stay with an abuser. As such, predatory lending—especially if it pushes survivors into debt—may exacerbate survivors' economic instability.

Due to economic abuse, many domestic violence survivors lack financial assets of their own. The nature of the abuse that survivors experience may limit their ability to reach out to friends and family who could help them pay off a loan. If abusers learn about such efforts to acquire loans or seek out support, survivors could be placed in greater danger.

In situations where survivors experience checking-account overdrafts due to a payday lender making a withdrawal from their account, this represents a risk to their safety. Survivors who experience economic abuse may share accounts with their abusers, who could retaliate against them if the abuser gains knowledge of third parties accessing the account. This practice of lenders withdrawing funds against the will of the individual is detrimental to survivors.

When abuse and other factors such as poverty and unemployment block survivors' access to the mainstream banking system, payday or other similar loans may appear to be a short term solution. In reality, these predatory loans can result in significant immediate and long term – not to mention potentially dangerous – consequences.

Due to our strong payday loan rate cap, which the majority of millions of Arizonans' affirmed, people are protected from the harms of the typical 300% APR payday loans. We appreciate that the CFPB clearly stated in the proposal that states with rate caps, such as ours, provide stronger protection than what the rule can provide. Yet, we are concerned that the weaknesses in the proposed rule may be seen as state legislators being sanctioned instead of the predatory payday lenders. The loopholes in the proposed rule must be closed to ensure that the CFPB proposal does not undermine our state in any way.

Our experiences demonstrate that people are better off without these harmful, high-cost, unaffordable payday loans. We see every day that people have other options besides falling into the payday lenders' debt trap.

Annually, our citizens save $167,474,987 that would otherwise be spent on fees to float unaffordable payday loans.[2] The savings from our rate cap benefit not only individual people but the state economy as a whole. While the CFPB's rule will be critical in states that have yet to pass a rate cap, a rate cap has been the most effective protection from predatory lending practices. We call on the CFPB to issue a rule without exceptions and without loopholes. While we will continue to enforce the rate limits in our state, we also call on the Bureau to declare that loans made in violation of our state laws are unfair, deceptive, and abusive.

---

[2]Center for Responsible Lending, "States without Payday and Car-title Lending Save $5 Billion in Fees Annually", 2016, http://www.responsiblelending.org/research-publication/states-without-payday-and-car-title-lending-save-5-billion-fees-annually

However, we still have work to do in rescuing our citizens from the debt trap caused by car title loans. In addition, these high-cost lenders in Arizona engage in the dangerous practice of "registration loans" which appear to be payday loans disguised as car title loans, putting both the borrower's bank account and car at risk.[3] Annually, our citizens lose $254,924,519 in fees due to car title loans.[4] This is particularly detrimental to Arizona's 514,290 veterans and communities of color, populations which the payday and car title loan industries target and exploit. The CFPB's rules must be stronger in reining in these types of abusive loans as well.

The core principle of the CFPB’s proposal is the right approach – requiring lenders to ensure that a loan is affordable without having to re-borrow or default on other expenses. This is critically important to stopping the harms of this predatory business model, and we strongly support this approach. 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 that significantly undermine this standard. For example, the proposal could allow six payday loans a year to be made 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. While we are thankful that this loophole does not apply to car title loans, these loopholes must be closed for payday loans, as well.

We are also concerned that the proposed rule does not go far enough to prevent the flipping of borrowers from one unaffordable loan to the next. The CFPB should do more to ensure that short-term debt doesn’t become unaffordable long-term debt. It should ensure a 60-day cooling off period, rather than just 30 days as proposed, between each short-term loan. It should also ensure that short-term loan indebtedness doesn’t exceed a total of ninety days every twelve months, consistent with FDIC 2005 guidelines for its banks. 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, debt will continue to pile up and borrowers will once again be stuck in a debt trap.

Finally, the rule must be strengthened to ensure that people have enough money to live on after paying back the loan. Right now, the proposal falls short in this regard and may allow lenders to simply continue “business as usual.” Time and time again, ACESDV hears about survivors who have been and continue to be victimized by financial abuse, which exacerbates the precarious position of families who have also gone hungry, gone without medicine or lost their car to the car title lender because of an unaffordable loan. Lenders should be required to use an objective measure for projecting a borrower's basic living expenses and avoid over-reliance on back-end measures like default and reborrowing rates. Even low default rates are not sufficient evidence of ability to repay, given the lender's ability to coerce repayment through control over the borrower's car. At the same time, the Bureau should take care not to sanction industry-wide high rates of defaults and reborrowing by comparing one high-cost lender's default rates only to other high-cost lenders' default rates.

---

[3] Consumer Federation of America and Center for Economic Integrity, "Wrong Way: Wrecked by Debt, Auto Title Lending in Arizona," January 2016, http://consumerfed.org/wp-content/uploads/2016/01/160126_wrongway_report_cfa-cei.pdf

[4] Center for Responsible Lending, "Payday and Car Title Lenders Drain $8 Billion in Fees Every Year", 2016, http://www.responsiblelending.org/research-publication/payday-and-car-title-lenders-drain-8-billion-fees-every-year

We are thankful that one loophole has already been closed – an exemption from the proposed ability to repay test, included in the Bureau's preliminary outline, if loan payments are less than five percent of a borrower's income. Examining income only is not enough to determine if a loan is affordable. We call on the CFPB to close the remaining loopholes and issue the strongest rule possible to stop the harmful debt trap of unaffordable payday and car title loans.

For the CFPB rule to bring the vicious cycle borrowers like Scott face to an end, we, in Arizona, will need the CFPB to not undermine Arizona's strong law that prevents high cost payday loans. Arizona used to have payday loans, but thankfully now does not due to millions of Arizona voters who voted for the sunset on 400% payday loans in our state. The experience in our state shows that families are better off without payday loans, and we have fought year after year to keep payday lenders bringing their harmful products back into our state. The CFPB rule must declare that loans made in violation of our state law are unfair, deceptive, and abusive. The CFPB proposal must also be stronger to prevent abusive car title loans (including those made under the "registration loan" ruse) that are unaffordable light of a borrower's income and expenses.

Thank you for this opportunity to comment. For further clarification on these comments, please contact Shannon Rich, Director of Public Policy, at 602-279-2900 or shannon@acesdv.org.

Sincerely,

Arizona Coalition to End Sexual and Domestic Violence
2800 N. Central Ave. Ste. 1570
Phoenix, AZ 85004