NEW YORK STATE
DEPARTMENT of
FINANCIAL SERVICES

Andrew M. Cuomo
Governor

Maria T. Vullo
Superintendent

October 7, 2016

Monica Jackson
Office of the Executive Secretary
Consumer Financial Protection Bureau
1700 G Street, NW
Washington, DC 20552

Re: Proposed Rulemaking: Payday, Vehicle Title, and Certain High-Cost Installment Loans
Docket No. CFPB-2016-0025

Dear Ms. Jackson:

The New York Department of Financial Services ("DFS") submits the following comments to the proposed rulemaking of the Consumer Financial Protection Bureau ("CFPB") relating to small-dollar loans.

New York prohibits high interest small-dollar loans and DFS is a fierce advocate against abusive lending practices that trap vulnerable consumers in a cycle of debt, including high-interest payday, installment and car title loans. DFS has taken a comprehensive approach to fighting abusive lending practices, recently focusing on protecting New Yorkers from high-interest payday loans made online. DFS submits that all states should adopt stronger protections for consumers by following the example of New York and 13 other states and the District of Columbia[1] and make abusive, high-interest consumer loans illegal. Until the remaining states ban such loans, DFS supports rigorous rulemaking to reform payday, vehicle title and other high-cost installment lending in order to prevent some of the industry's worst abuses.

The payday lending industry — which sometimes charges interest rates in excess of 1,000 percent — often engages in predatory tactics that harm struggling borrowers who can least afford it. In New York, payday and other high-interest small-dollar lending is illegal under both civil and criminal usury statutes. Under New York General Obligations Law § 5-501 and

[1] High interest payday loans are prohibited in New York, Arizona, Arkansas, Connecticut, the District of Columbia, Georgia, Maryland, Massachusetts, Montana, New Hampshire, New Jersey, North Carolina, Pennsylvania, Vermont and West Virginia.

New York Banking Law § 14-a, it is civil usury for a company to make a loan or forbearance under $250,000 with an interest rate exceeding 16 percent per annum. New York Banking Law § 340 also prohibits unlicensed, nonbank lenders from soliciting and making consumer loans of less than $25,000 with interest rates exceeding 16 percent per annum. Further, under New York Penal Law §§ 190.40-42, a small dollar lender commits criminal usury when it makes a loan in New York with an interest rate exceeding 25 percent per annum. In addition, under New York law, usurious loans are void and unenforceable and therefore it is illegal to collect on those loans.

Internet payday lending in New York is just as unlawful as payday lending made in person in New York. DFS is engaged in a comprehensive effort to stop illegal online payday lending in New York, including investigations into payday lenders, marketers, lead generators and debt collectors. DFS has issued warnings to debt collectors that loans with interest rates above the statutory maximums are void and unenforceable, and that collecting on such loans is therefore illegal. DFS also has sent cease-and-desist letters to online lenders making usurious loans to New Yorkers with annual interest rates as high as over 1,000 percent. The majority of these companies have ceased business in New York after receiving letters from DFS, and investigations of others continue.

DFS also has been investigating "lead generation" firms suspected of deceptive or misleading marketing of illegal, online payday loans in New York. In March 2015, for example, DFS announced a settlement with Selling Source, LLC, MoneyMutual LLC and affiliated entities concerning misrepresentations made while marketing and generating leads for payday loans. In March 2016, DFS reached a settlement with Blue Global LLC, a payday loan lead generator, and its Chief Executive Officer to resolve an investigation into the marketing of illegal payday loans and misrepresentations about the security of personal information that New York consumers provided to Blue Global.

DFS also has stopped debt collectors that collect on illegal payday loans from New York consumers. In May 2016, DFS announced settlements with National Credit Adjusters, LLC and Webcollex LLC (doing business as CKS), which were collecting on payday loan debts in New York.

The payday lending lobby argues that they fill a consumer need for quick, easy loans. While some users of payday loans have emergency financial needs, consumers in states without payday loans typically have access to safer, better priced mainstream credit and savings. In addition, bans on usurious payday and car title loans, which are relentlessly marketed as fast and easy cash to financially strapped consumers, saves consumers from paying significant, unaffordable finance fees. The magnitude of these savings helps consumers maintain stable financial footings and avoid falling into a cycle of debt. DFS is committed to protecting these savings for consumers by aggressively enforcing New York's strong consumer lending laws.

Recommendations for Strengthening the CFPB's Proposed Rules

As noted, DFS believes that payday loans should be made illegal in all states. With respect to the CFPB's proposed rules on payday, vehicle title and certain high-cost installment loans, we urge the CFPB to consider the following recommendations to strengthen the rules and help stop abusive lending practices that prey on vulnerable consumers.

Stop Abusive Interest Rates

First, because the CFPB is not empowered to cap interest rates on small-dollar consumer loans,[2] the proposed rule aims to require that lenders offer loans with better underwriting and payment structures. Yet, this still means that consumers in states that do not prohibit payday loans are not adequately protected from abusive triple-digit interest rates. While the proposed rules will curb many abusive lending practices, DFS encourages all states to follow the example of New York and 13 other states and the District of Columbia, and ban payday and other high-interest abusive consumer loans in their state. As discussed above, New York's usury cap saves New Yorkers from significant, unaffordable finance fees, while maintaining a robust financial services system that allows consumers to get fairly priced credit. States that permit payday lending should look to the experience of 14 states and the District of Columbia and take action to ensure that all consumers nationwide are protected from high-interest consumer loans that trap families in spiraling debt.

Strengthen State Consumer Protection Laws

Second, the CFPB's rule should clearly state that pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act"), 12 USCS § 5551, these and all other rules promulgated under the Act represent a floor not a ceiling for consumer protections, and lenders will still be subject to any stronger state consumer lending laws. State laws that prohibit payday loans in New York and 13 other states and the District of Columbia will still apply to lenders, even if the proposed rule becomes final. DFS appreciates that the CFPB explained in the supporting documents to the rule that "the Bureau believes that fee and interest rate caps in [certain] States would provide greater consumer protections than, and would not be inconsistent with, the requirements of the proposed rule."[3] But the rule itself should state that stronger state laws like New York's apply. DFS proposes that the following sentence be added to the rule: "Nothing in this Part shall annul, alter, or affect, or exempt any lender from complying with the statutes, regulations, orders, or interpretations in effect in any State that affords consumers greater protection than provided under this Part." DFS will continue to

[2] 12 USCS § 5517(o)

[3] Payday, Vehicle Title, and Certain High-Cost Installment Loans, 81 Fed. Reg. 47863 (Jul 22, 2016) (proposed) at 48005.

enforce New York's strong consumer protection laws against lenders, lead generators and debt collectors who violate New York state law.

Third, the final rule should state that the offering or making of a loan in violation of state usury laws is an Unfair and Deceptive Act and Practice violation enforceable by the CFPB, state attorneys general, and state regulators under the Dodd-Frank Act. This is consistent with the position already taken by the CFPB in litigation and would put lenders that try to evade state law by offering illegal loans online on notice that they are subject to the state law where they are lending. The rule should also make clear that generating leads, servicing and collecting payments on illegal, usurious loans by third-parties are likewise enforceable Unfair and Deceptive Act and Practice violations. In New York, usurious loans are automatically void and uncollectable.

<u>Strengthen Underwriting Standards</u>

Fourth, in an attempt to protect consumers from falling into the debt trap of high-cost small-dollar loans, the CFPB's proposed rule provides lenders with a choice when they offer small-dollar loans with a term of 45 days or less: lenders must either make a reasonable determination, prior to originating the loan, that a consumer will be able to repay it, or, if lenders want to avoid making this determination, the loan offered to the consumer must follow the CFPB's guidelines for structuring the loan. If lenders choose to avoid the ability-to-pay assessment and prefer the latter option, the CFPB requires that the loan be no greater than $500. If consumers need additional small-dollar loans with a term of 45 days or less to pay off this initial loan, only two additional loans are allowed with the second loan capped at two-thirds the principal amount of the first loan, and the third loan capped at one-third the principal of the first loan. The concept is that principal on the loan would thus be paid off either within the term of the first loan or steadily, with the second and third loans paying off the principal of the original loan. The proposed rule offers lenders this alternative to an ability-to-pay determination because it suggests that with the structural limitations it would impose with the alternative, the loans would be less likely to lead to a debt trap.

DFS believes that the proposed alternative short-term loan model to the requirement that a lender to determine a borrower's ability to repay, if made available at all, should be restricted to only lower interest loans. DFS views high-interest loans with terms of 45 days or less as harmful to consumers even when these loans are $500 or less because the triple-digit interest rates that these loans typically carry are unaffordable for many consumers. The proposed rule explains the need for lenders to do better underwriting and that failure to determine a borrower's ability to repay these high risk loans is an abusive and unfair practice. In the explanation for the exception to this rule, the CFPB explains that the alternative model has other protections, such as the structural requirements noted and lower compliance costs. But, DFS believes that, if at

all, the exception should **only** apply to loans below 25 percent APR that present a lesser risk of trapping consumers in unaffordable debt.

DFS does not express a view as to whether the ability-to-pay standard as proposed by the CFPB is sufficient to prevent consumers from taking loans they ultimately cannot afford, particularly where interest rates can range from 400 percent to as high as 1300 percent. Again, for this reason, among others, DFS believes that the better approach is for states to adopt strong usury laws like New York's and those of 13 other states and the District of Columbia.

Empower Consumers with Strong Disclosures and Educational Resources

Fifth, consumer disclosures should be clear and unambiguous. The proposed rule's disclosures present an opportunity to inform and empower consumers to make good financial choices. In addition to those set forth in the proposed rule, DFS suggests that consumers will be better informed if the disclosures are required to include not only the total amount due at the end of the loan, but also a breakdown of principal, interest and fees.

Further, while small-dollar loans, including payday, installment and auto title loans, are often advertised as quick fixes to pay for unanticipated expenses, the research cited in the proposed rule shows that many payday loan borrowers end up taking out additional payday loans in the future. DFS believes that, among other things, financial education empowers consumers to make responsible financial choices. The required disclosures are an opportunity to reach consumers with this kind of important financial information. Lenders should be required to inform consumers about their rights and protections as well as the availability of information and resources on budgeting and planning for unexpected expenses.

In summary, DFS believes that payday loans and other high-interest small-dollar loans should be made illegal in all states in order to protect consumers. With respect to states that have not yet prohibited such practices, DFS's proposed changes will strengthen the CFPB's proposed rule, help better educate and protect consumers, and prevent abusive financial practices.

Very truly yours,

Maria T. Vullo
Superintendent of Financial Services