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August 15, 2016

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

Members of the Delaware General Assembly comment on the proposed rulemaking on payday, vehicle title, and certain high-cost installment loans

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

Dear Director Cordray,

We, the undersigned Members of the Delaware General Assembly, file 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. The rule is a critical first step in stopping the harms of unaffordable loans, but the rule must be strengthened to ensure it stops the debt trap once and for all.

As State Senators and Representatives of the State of Delaware, we have seen firsthand the devastating impact that predatory payday and car title lending has on struggling families, on small businesses and on Delaware’s economy overall. We hear the stories from families who’ve lost their car, their ride to work and even their home because of the payday loan debt trap. When families are already struggling to make ends meet, the outrageous interest rates, averaging a staggering 521% APR in Delaware, make most current payday and car title loans virtually impossible to repay and still meet a family’s basic needs. Yet, the direct access to bank accounts, back dated checks or access to a car title that payday lenders demand mean that families are left with little choice but to re-borrow and go deeper into a cycle of debt and desperation.

The payday, installment and car title loan industries have proven adept at exploiting loopholes and continuing to use deceptive and abusive lending practices. In the wake of the Military Lending Act, the Bureau’s own investigation found that the payday lending industry slithered through loopholes to continue trapping active duty service members and their families in debt. Delaware is a prime example of how good regulatory intentions can be thwarted by predatory lenders taking advantage of loopholes. We enacted a limit of 5 payday loans per year, not unlike your proposed rule’s allowance of six loans, and lenders simply shifted to longer term loans. It is clear that the payday and car title industry are determined to continue exploiting hard-working families however they can. It is critically important that the Bureau close these loopholes in the law.

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In Delaware, the debt trap payday and car title loans cause is currently left largely unchecked. On a $300, two-week payday loan, payday lenders typically charge 521%.[1] Annually, these high cost lenders drain $520,000 in payday fees and $29,803,284 in car title fees, a significant loss both to borrowers and to the overall state economy.[2] This is particularly detrimental to Delaware's 73,443 veterans and communities of color, populations which 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 a borrower’s car means that people are left with little choice but to reborrow, becoming more deeply mired in a cycle of debt. The CFPB's rule would help these borrowers by beginning to rein in predatory lending practices.

Gloria James' story demonstrates the harm predatory lending can cause. Gloria James, a former hotel housekeeper, took out a $200 loan, expecting to be charged a block rate of $60. She was instead charged 26 biweekly interest-only payments of $60 with a final balloon payment of $60 interest and the entire principal, resulting in $1,620 in interest on the $200 loan. Living paycheck-to-paycheck, Gloria defaulted on the 838% APR loan after paying back $197 of the principal. She was only able to escape from the debt trap when Delaware's Court of Chancery voided the loan, calling its terms unconscionable.[3] This loan also demonstrates the type of harmful longer-term loans payday lenders now make in Delaware to sidestep the protections our state enacted, on bi-partisan lines, for short-term loans of limiting indebtedness to 5 payday loans in a 12 month period.

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 6 payday loans a year to be made without any ability to repay standard. This is 6 unaffordable loans too many. In addition, the rule exempts longer-term payday loans with high origination fees from its proposed ability to repay test. These loopholes must be closed.

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 90 days every 12 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, we hear about families who have gone hungry, gone without medicine or paid hundreds in overdraft fees after a loan payment was taken out of their account. 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 bank account or car. At the same time, the Bureau should take care not to sanction industry-wide high rates of defaults and reborrowing by comparing one payday lender's rates only to other payday lenders' rates.

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[1] Center for Responsible Lending, Map of U.S. Payday Loan Interest Rates, 2016, http://www.responsiblelending.org/research-publication/map-us-payday-interest-rates

[2] 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

[3] Delaware Law Weekly, "Court of Chancery Voids 'Unconscionable' Payday Loan", 2016, http://www.delawarelawweekly.com/id=1202753565784/Court-of-Chancery-Voids-Unconscionable-Payday-Loan?mcode=0&curindex=0&curpage=1

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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 5% 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 loans.

For the CFPB rule to bring the vicious cycle borrowers like Gloria face to an end, we, in Delaware, will need the CFPB to show that payday lenders are both dependent on the debt trap and will exploit loopholes. Ever since we enacted a limit of 5 payday loans a year, payday lenders have evaded this protection by migrating to make longer-term payday loans with unlimited rates. CFPB must close all loopholes and strengthen provisions to prevent the harms of long-term payday and car title loans.

The Bureau's proposed rule is an important step forward for millions of Americans and for the people of Delaware struggling to escape the debt trap, but it must be strengthened to be effective. As a nation, we must put people over profits and protect vulnerable families from deception, coercion and abuse by poor-quality lending products. I urge the CFPB to enact the strong rule our families deserve.

Thank you for this opportunity to comment. For further clarification on these comments, please contact Delaware Rep. Helene Keeley.

Sincerely,

Helene M. Keeley

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