

September 12, 2016

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

Re: Maine Center for Economic Policy 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 Maine Center for Economic Policy (MECEP) 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 these important consumer protections. The rule is critical for ending the harms of unaffordable loans, but MECEP believes it must be strengthened to stop the predatory lending practices that are exploiting Maine consumers and forcing them deeper into poverty.

MECEP is a nonpartisan, nonprofit research organization and Maine's leading voice for objective and accurate economic policy analysis. We advance public policies to help Maine people prosper in a strong, fair, and sustainable economy. Our policy advocacy is research-based, data-driven, and factual. Our robust analytic capacity gives us credibility on a wide-range of economic issues.

One in three working families in Maine today does not earn enough to pay for their basic needs. MECEP's strives to ensure that these families have greater economic opportunity with sufficient resources to not only cover their bills but also to save for the future.

Payday lending exploits struggling Maine families, siphoning money they need for food, gas, rent, utilities, and other basic needs and often leading to a cascade of other financial consequences: hefty overdraft fees, delinquency on other bills, involuntary loss of bank accounts, and even bankruptcy.

Payday lenders tout their loans' convenience and access to credit that low-income borrowers in particular could not normally obtain. But easy access does not make a loan affordable. Without

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assessing the consumer's ability to repay the loan and by imposing usurious fees and interest rates, payday lenders design their loans to roll over as many times and to extract as many fees as possible.

The CFPB draft rule begins to address predatory lending practices and to level the playing field for lenders across the board. It will help to protect hardworking Maine consumers from onerous debt and let them use their paychecks for essentials like food and shelter and to invest in their and their children's future. It is a good beginning, but there is still much work to be done to ensure this rule truly protects consumers from the predatory lenders who prey on them. In particular, we urge you to enact stronger provisions to assure that Maine consumers can repay their loans without having to default on other bills or going deeper into debt.

Historical Context

MECEP has advocated for consumer finance reform since 2010 when we pushed for the creation of the Consumer Finance Protection Bureau.

More recently, in 2015, MECEP led a group of consumer advocates in crafting state legislation to reign in abusive debt collectors. The new law passed by the legislature addresses some of the most egregious debt collection practices in Maine, including prohibiting suing consumers for debts that are beyond the legally allowable time limit and ensuring that consumers will not be pursued for a debt if they make a payment after the legally allowable time to collect has lapsed.

The concern about payday lending abuses is broadly shared across and at all levels of Maine government. Leaders ranging from the state's top legal officer¹ to members of our Congressional Delegation (Senator King² and Congresswoman Pingree³), to state lawmakers⁴ have called for an end to predatory payday lending in Maine and nationally.

MECEP continues to be one of a diverse range of a dozen Maine nonprofit organizations advocating for stronger consumer protections including spokespeople for our state's women, seniors, low-income, and disabled residents, the Catholic Church, labor unions, and other consumer activists.

Predatory payday lending in Maine today

Maine is a leader in protecting consumers from financial predators. Lawmakers passed the Maine Consumer Credit Code in 1973 and have continued to strengthen it over the years. For example in 2014, lawmakers prohibited unlicensed lending middlemen, or processors, as a way of stemming the flow of illegal loans into the state.

Maine requires payday lenders to:

- Obtain a “supervised lender” license; the provisions of which allow for compliance examinations conducted by state personnel.
- Charge no more than 30% per year interest on unsecured loans of less than \$2,000. For loans of between \$2,000-\$4,000 the ceiling is 24%, and loans greater than \$4,000 are subject to an 18% rate cap.¹
- Post a surety bond in the amount of \$50,000 that the state can access if a consumer can demonstrate they’ve been financially harmed by the actions of a licensed, bonded entity.
- Comply with truth-in-lending disclosures so borrowers know in advance what it will cost them to pay back loans.
- Forfeit collecting loan interest if they are unlicensed.

Maine law also prohibits automobile title loans.

We know that regulation can be effective. Maine’s licensing bureau reports that licensed lenders are responsive and quick to resolve complaints; and that it has been able to wipe out illegal interest charges and even recover funds from unauthorized transactions for scores of Maine consumers.⁵ Additionally, research shows that that state interest rate cap saves Maine’s consumer \$25 million dollars annually.⁶

Still thousands of Mainers get caught in the debt trap every year from unlicensed internet-based lenders.⁷ These lenders are not located in Maine and are not licensed here. They operate unlawfully in our state. They have not posted a bond, as the law dictates. They do not abide by the fee and interest rate ceilings. They do not make truth-in-lending disclosures.⁸

Based on a review of consumer complaints conducted by the Maine Bureau of Consumer Credit Protection, internet payday lenders doing business in Maine are located in such places as the West Indies, the Island of Malta, British Columbia, England, and in Native American reservations in Oklahoma, Nebraska and other states. These companies ignore our state laws or claim that they are not applicable to them.⁹

As a result, state regulators struggle to find unlicensed lenders to enforce Maine’s consumer credit protection laws. Often they do not even know these lenders are doing business in Maine until they receive a consumer complaint, and then, they are often difficult to find hiding behind affiliated financial service providers or in the depths of cyberspace.

According to the state Bureau of Consumer Credit Protection,

¹ In the alternative, lenders can assess a minimum finance charge of \$15 on a loan between \$75 and \$250, or \$25 on a loan in excess of \$250 regardless of the term (length of time for repayment).

“In order to meet short-term cash needs, Mainers are turning to payday loans in droves, despite the high costs and the risks of doing business with unknown lenders in unknown locations. It’s an epidemic, made more frustrating because of the inabilities of state regulators to effectively pursue these lenders or their collectors to force compliance with the state’s licensing, lending, and collection laws.”¹⁰

The harm done to Maine consumers from payday loans is evidenced by:

- Payday lending establishments issue loans that cost Maine consumers over half a million dollars in payday fees every year.¹¹
- Despite statutory limits, the interest rate on a typical payday loan in Maine is 217%.¹²
- One-fourth of those contacting the state consumer credit protection bureau owe money to more than one payday lender.¹³
- Maine’s consumer credit protection bureau receives over 100 payday-related complaints a year.¹⁴

It is clear that while Maine has taken steps to protect consumers, payday lenders are simply skirting our laws. Maine needs a strong federal rule to support our state’s efforts to protect consumers who are vulnerable to predatory on-line or out-of-state lenders.

What the proposed rule gets right

The ability-to-repay principle underpinning the proposed rule is the right one. It is a long-standing tenet of responsible lending. A standard, which considers income and expenses, will help ensure that loans are affordable. We also believe that an ability to repay standard, which to ensure consistency industrywide, is more aptly established at the federal level than the state.

MECEP believes the CFPB was right to eliminate an exemption from the ability-to-repay test based only on income, if a payment did not exceed five percent of the borrower’s income. Assessing income alone is not sufficient to determine if a loan is affordable or not. The CFPB’s research shows that there is still a high default rate (28 to 40 percent) on longer-term payday loans when payments are five percent of income or less.

In addition, Maine does not have a cooling off period between loans, nor does state law limit the number of loans that a payday lender can issue; standards needed to prevent unaffordable loans that trap people in debt.

These provisions would provide robust support to Maine’s consumer credit code, where one in four borrowers seeking help are mired in debt trying to pay off multiple loans at a time. We applaud the CFPB for proposing these standards. However, we urge you to strengthen them in specific ways as follows.

Closing loopholes in the proposed rule

Apply the ability-to-repay standard to all covered loans.

The ability-to-repay standard should apply to all covered loans. Even a single unaffordable loan can trap borrowers. We ask that you remove the exemption from the ability-to-repay standard for the first six loans and subject all short-term loans to this test. We also ask that you remove the exemptions that currently exist for longer-term loans that carry high origination fees, such as the exemption for loans with a 36% APR and origination fees of \$50 or higher.

Prevent unaffordable short-term debt from becoming unaffordable long-term debt.

We ask that CFPB impose a 60-day waiting period between loans, rather than the current proposed 30 days to protect consumers from repeated flipping of loans. We also ask you to implement a limit of total indebtedness for short-term loans of 90 days every 12 months, consistent with the FDIC's long-time standard for the banks it regulates.

Strengthen protections against repeat financing of longer-term loans.

We ask CFPB to help prevent lenders from flipping longer-term loans (loans longer than 45 days) by including a presumption of unaffordability if the borrower is: 1) delinquent by even one day; and/or 2) the borrower has not repaid at least 75% of the loan principal. We also ask CFPB to prohibit the refinancing of a covered longer-term loan a second time.

Close the "business as usual" loopholes in the proposed ability-to-repay test.

We ask CFPB to require lenders to make an objective assessment of a borrower's basic living expenses as part of the ability-to-repay test, rather than allowing them to forecast living expenses or rely on default, delinquency, or re-borrowing rates. Even low default rates are not sufficient evidence of ability to repay, since lenders have direct access to borrowers' bank accounts.

Cover any loans where the lender has leverage to coerce payment or re-borrowing.

The current proposal exempts 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. We ask that all loans secured by a bank account or car title 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 but the rule. Due to the same tendency to compel re-borrowing when a loan proves to be unaffordable, we ask that these loans be similarly covered by the rule.

Conclusion

Maine has seen firsthand how payday lenders ignore consumer protection laws. As currently proposed, payday lenders will use the exemptions permitted to circumvent the federal rule as well.

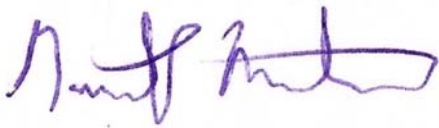
Even worse, the exemptions will undermine Maine's protections. Lenders will simply point to the federal rule as rationale to continue skirting our laws. A weak rule supplies powerful ammunition for the payday industry's lobbyists to argue against Maine's rate cap and our other restrictions on the grounds that even CFPB, the country's most important consumer protection advocate, considers payday loans to be safe. Allowing these exemptions tacitly grants a government seal of approval to unaffordable loans.

In order to effectively prevent lenders from exploiting Maine consumers, we ask that the CFPB, in its final rule, deem the making or offering loans made in violation of our state laws an abusive practice. Such provisions will further enhance our own state regulators' ability to swiftly prevent predatory and illegal lending practices.

Maine has done its job to protect its citizens from predatory lenders. We urge the CFPB to back up our state laws with the strongest rule possible.

Thank you for this opportunity to comment. We appreciate the work that you have done so far to protect Maine 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 Associate Director Jody Harris at 207.622.7381, ext 5 or jharris@mecep.org.

Sincerely,



Garrett Martin
Executive Director

¹ Mills, Janet, Attorney General. "Letter to Joint Standing Committee on Insurance and Financial Services in support of LD 1691, An Act to Stop Unlicensed Loan Transactions." Maine Legislature: Augusta, ME, January 30, 2014. Available at: <http://www.mainelegislature.org/legis/bills/getTestimonyDoc.asp?id=14191>.

² Press Release. "Durbin Joins More Than 30 Senators To Urge Consumer Agency To Issue "Strongest Possible Rules" To Stop Predatory Payday Lending." Dick Durbin Web Site. June 4, 2015. Available at: <http://www.durbin.senate.gov/newsroom/press-releases/durbin-joins-more-than-30-senators-to-urge-consumer-agency-to-issue-strongest-possible-rules-to-stop-predatory-payday-lending>.

³ "Letter to Director Richard Cordray supporting rulemaking addressing payday and car title lending," Junw 22, 2015. Available at: http://stopthedebttrap.org/wp-content/uploads/2015/06/letter_directorcordray_22June2015.pdf.

⁴ Powers, Christine, Representative. "Measure will protect low-income consumers from growing threat." Christine Powers Web Site: March 17, 2014. Available at: <http://www.christinepowers.me/news/fri-may-9-2014>.

⁵ William N. Lund, Superintendent, Bureau of Consumer Credit Protection. "Report on Payday Lending Activities to Representative Henry Beck, Maine House of Representatives," February 8, 2013.

⁶ Center for Responsible Lending. "Springing the Debt Trap: Rate caps are only proven payday lending reform," December 13, 2007.

⁷ Maine Public Broadcasting Network, "Maine Regulators Warn about Internet Lenders," December 30, 2014, <http://news.mpbn.net/post/maine-regulators-warn-about-internet-lenders#stream/0>.

⁸ Lund, William N., "Testimony before the Committee on Insurance and Financial Services on LD 1691, An Act to Stop Unlicensed Loan Transactions," January 30, 2014

⁹ William N. Lund, Superintendent, Bureau of Consumer Credit Protection. "Report on Payday Lending Activities to Representative Henry Beck, Maine House of Representatives," February 8, 2013.

¹⁰ William N. Lund, Superintendent, Bureau of Consumer Credit Protection. "Report on Payday Lending Activities to Representative Henry Beck, Maine House of Representatives," February 8, 2013.

¹¹ Center for Responsible Lending. "Payday and Car Title Lenders Drain \$8 Billion in Fees Every Year," May 2016.

¹² Center for Responsible Lending, "Map of U.S. Payday Loan Interest Rates," May 2016,
<http://www.responsiblelending.org/research-publication/map-us-payday-interest-rates>.

¹³ William N. Lund, Superintendent, Bureau of Consumer Credit Protection. "Report on Payday Lending Activities to Representative Henry Beck, Maine House of Representatives," February 8, 2013.

¹⁴ Maine Consumer Credit Protection Bureau, September 2, 2016.