NDESPA

North Dakota Economic Security and Prosperity Alliance

October 6, 2016

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

Re: North Dakota Legislative 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 undersigned senators and representatives of the North Dakota state legislature, in coordination with the North Dakota Economic Security and Prosperity Alliance, file this comment on 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 it must be strengthened.

As State Representatives and State Senators in North Dakota, we have seen first-hand the devastating impact that predatory payday loans have on struggling families, on small businesses and on North Dakota’s economy overall.

The payday and installment loan industries have proven adept at exploiting loopholes and continuing to use deceptive and abusive lending practices. North Dakota is a prime example of how good regulatory intentions can be thwarted by predatory lenders taking advantage of loopholes. For example, even though North Dakota forbids interest rates and fees above 20% per loan, this allows the APR on payday loans in North Dakota to reach 487%. When families are already struggling to make ends meet, these staggering interest rates make most current payday loans virtually impossible to repay, while meeting a family’s basic needs.

Annually, these high cost loans drain $6,863,350 in payday fees, a significant loss both to borrowers and to the overall state economy. This is particularly detrimental to North Dakota's 52,035 veterans, who are not covered under the Military Lending Act. In North Dakota, approximately half of payday loan borrowers will default within two years of their first loan. Payday lenders’ ability to seize money directly out of borrower's bank accounts means that people are left with little choice but to reborrow, becoming more deeply mired in a cycle of debt.

The core principle of the CFPB's proposal makes sense – requiring lenders to ensure that a loan is affordable without having to re-borrow or default on other expenses. We strongly support this approach. This must be applied to every loan – with no exceptions and no room for future evasion. As currently written, the proposed rule contains loopholes that significantly undermine this standard. The current proposal allows 6 payday loans a year to be made without requiring payday lenders to meet the 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 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. 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.

The Bureau's proposed rule is an important step forward for the people of North Dakota 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. We urge the CFPB to enact a strong rule our families deserve.

Thank you for this opportunity to comment. For further clarification on these comments, please contact Scott Fry, 701-224-0588.

Sincerely,

State Senator Carolyn Nelson, District 21

State Senator Erin Oban, District 35

State Senator Kyle Davison, District 41

State Senator Robert Erbele, District 28

State Senator Tim Mathern, District 11

State Representative Ben Hanson, District 16

State Representative Eliot Glassheim, District 18

State Representative Gail Mooney, District 20

State Representative Joshua Boschee, District 44

State Representative Kylie Oversen, District 42

State Representative Naomi Muscha, District 24

State Representative Pamela Anderson, District 41

State Representative Richard Holman, District 20

State Representative Ron Guggisberg, District 11