NDESPA North Dakota Economic Security and Prosperity Alliance

To:
Consumer Financial Protection Bureau
1700 G Street, NW
Washington, DC 20552

Community Organizations from North Dakota comment on the proposed rule-making on payday, vehicle title, and certain high-cost installment loans

Re: Docket No. CFPB-2016-0025

Director Cordray,

We applaud the Consumer Financial Protection Bureau (CFPB) for releasing a proposed payday and car-title lending rule to rein in the most abusive practices of this industry. The rule is a critical step forward for the 12 million Americans caught in the debt cycle each year, but the rule must be made stronger to ensure that it ends the debt trap once and for all.

When families are already struggling to make ends meet, the outrageous interest rates, averaging a staggering 487% APR in North Dakota, make most current payday and car title loans virtually impossible to repay and still meet a family's basic needs. Yet, 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 heart of the proposed rule is a common sense principle – lenders must determine whether or not a consumer has the ability to repay the loan without hardship or re-borrowing. This is a strong and critically important principle and we strongly support it. Basic underwriting should be applied to every covered loan with no exceptions. Anything less allows a business model that depends on coercion and re-borrowing to continue. Applying the ability to repay standard to every covered loan levels the playing field for payday lenders, online lenders and banks alike. It is a common sense protection that will go a long way towards ensuring that loans are affordable and don't set borrowers on a path to financial ruin and distress. No responsible lender would consider making a loan without basic underwriting and the same standard must apply to the small dollar and car title loans.

As it is currently written, the proposed rule contains several troubling exceptions to this standard. Currently, up to six high-cost payday loans could be exempted from the ability to repay standard, leaving borrowers in debt for much of the year. The rule also creates exemptions for some longer-term loans with high origination fees. Even a single unaffordable loan can have a devastating financial impact on borrowers. The ability to repay standard should apply to every loan with no exceptions.

When borrowers are unable to make ends meet after a balloon payment, they are often forced to open a new loan or refinance an existing loan, allowing debt to mount ever higher. The proposed rule does not go far enough to prevent this cycle of loan flipping. The waiting period between loans should be extended from 30 days to at least 60 days. In addition, a provision should be added that caps total indebtedness to 90 days per year for short-term loans. These additions make sense and will help the rule stay consistent with the FDIC's 2005 guidelines on payday lending. It is also critically important to strengthen the protections against repeat refinancing of longer-term loans. If loans can be repeatedly refinanced, debt will continue to pile up and borrowers will once again be stuck in a debt trap.

The rule also does not go far enough to ensure that borrowers can really meet their basic needs after repaying their loan. Requirements for determining ability to repay must be tied to reality and lenders must not be allowed to use low default rates as evidence that a loan is affordable. Payday and car title loans are built on coercion – borrowers give up access to their accounts or their car titles and payday lenders can snatch payments directly or threaten to take a borrower's car if a payment is not made.

Low default rates in the payday and car title industry are evidence of coercion – not evidence that loans are affordable. This is little more than business as usual for predatory lenders and this loophole must be closed.

The payday and installment 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. North Dakota is a prime example of how good regulatory intentions can be thwarted by predatory lenders taking advantage of loopholes.

North Dakota has wonderful reporting on payday lending and an electronic database the makes it impossible for a borrower to have more than $600 in payday loans at any one time. These same laws also make it impossible for lenders to loan more than $500 in any given instance. But, the laws of North Dakota are not able to rein in the predatory nature of these loans. North Dakota's laws allow payday lenders to charge 20% per loan which means payday borrowers could pay as much as 487% in annual interest.

The payday lending industry is determined to continue exploiting hard-working families however they can. It is critically important that the Bureau close these loopholes in the law.

The harm caused by these exploitative and abusive loan products is clear. More than half of payday borrowers today end up paying more in fees and interest than they originally borrowed. They are nearly twice as likely to file for bankruptcy as people in similar financial situations and more than 92 percent more likely to become delinquent on their credit cards. As struggling families get caught in a cycle of debt and desperation, the ripple effects are felt throughout our community. Families struggling with debt often must turn to local governments and social services for support while payday lending funnels millions out of our local economy. In North Dakota, payday lenders are stripping over $6.8 million in fees out of our economy.

The Bureau's proposed rule is an important step forward for millions of Americans and for the people of North Dakota struggling to escape the debt trap, but it must be strengthened to be effective. Our organizations are dedicated to serving our communities and helping families find opportunity and hope, not despair and debt. We must put people over profits and protect vulnerable families from deception, coercion and abuse. We urge the CFPB to enact the strong rule our families deserve.

1 Pew Safe Small-Dollar Loans Research Project (2012). "Payday lending in America: Who borrows, where they borrow, and why.
2 Consumer Financial Protection Bureau (CFPB). 2013. "Payday Loans and Deposit Advance Products: A White Paper of Initial Data Findings." CFPB: http://1.usa.gov/1aX9ley
3 Skiba, P.M. and Tobacman, J. (2008). "Do payday loans cause bankruptcy?" SSRN working paper.
4 Campbell, D., Jerez, A.S., and Tufano, P. (2011) Bouncing out of the banking system: An empirical analysis of involuntary bank account closures. Harvard Business School; Agarwal, S., Skiba, P.M. and Tobacman, J. (2009). "Payday loans and credit cards: New liquidity and credit scoring puzzles?" NBER Working Paper.
5 Standaert, D. The Buckeye Burden: An Analysis of Payday and Car Title Lending in Ohio. Nov. 2015.

Sincerely,

Charles Hall Youth Services

Creating a Hunger Free North Dakota

Community Action Partnership Dickinson/Williston Regions

Community Action Partnership-Minot Region

Community Action Partnership of North Dakota

Community Action Region VI

Community Action Program Region VII, Inc.

Dakota Prairie Community Action Agency

Family Voices of North Dakota

Great Plains Food Bank

High Plains Fair Housing Center

Native American Development Center

North Dakota AFL-CIO

North Dakota Catholic Conference

North Dakota Economic Security and Prosperity Alliance

North Dakota Women's Network

Red River Valley Community Action

Society of St Vincent de Paul, District Council of Fargo, Inc

Southeastern North Dakota Community Action Agency

West River Head Start