PUBLIC INTEREST LAW SECTION — THE FLORIDA BAR

October 3, 2016

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

Re: Public Interest Law Section of the Florida Bar 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 Public Interest Law Section of the Florida Bar submits comments to the Consumer Financial Protection Bureau's proposed rule on payday, vehicle title, and certain high cost installment loans. We support the rule as a necessary first step in stopping the harms of unaffordable loans. We, however, advocate that the rule must be strengthened to ensure it provides the best measure for protecting consumers from predatory loans. We appreciate the opportunity to share our comments.

The Public Interest Law Section of the Florida Bar's mission is to advocate for and enhance the constitutional, statutory or other rights that protect the dignity, security, justice, liberty, or freedom of the individual or public at large. In addition, we strive to increase the knowledge and understanding of the public in the substantive areas of public interest law. Attorneys who are section members have expertise in a variety of legal specialties including consumer protection.

As attorneys we hear many stories from clients who have fallen into legal and financial problems because of payday, vehicle title and consumer finance installment loans. These frequently follow a pattern of a borrower having a financial emergency and thinking the easiest resolution is a payday or other predatory loan. What follows is the borrower is then unable to pay the loan when due. With payday loans, the lender generally uses the ACH automatic payment to reach into the borrower's bank account and recover the loan amount. This either results in a bank fee because of insufficient funds or the borrower suffering another financial emergency because of an inability to meet their budget needs for the next month. We are often dealing with clients who are facing eviction, foreclosure or a debt collection law suit because of the original predatory loan.

What do these loans look like in Florida? A borrower may, for example, have taken out a $300, two-week payday loan for which payday lenders typically charge 304%.[1] A large proportion of borrowers are continuously mired in the debt trap, as 92% are reborrowed within 60 days of repayment of the previous loan.[2] At least 83% of payday loans are to borrowers with 7 or more loans per year; over 50% of loans are to those taking out 12 or more loans per year.[3] This data show clearly that families are trapped in debt from these loans. The CFPB's rule would help these borrowers by beginning to rein in predatory lending practices.

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 lenders to offer borrowers access to six payday loans a year without making any determination of whether the borrower can repay the loan. 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." 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. 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] Table 21, page 108, CFPB Supplemental findings on payday, payday installment, and vehicle title loans, and deposit advance products, http://files.consumerfinance.gov/f/documents/Supplemental_Report_060116.pdf

[3] "Florida Trends in Deferred Presentment: State of Florida Deferred Presentment Program," Veritec Solutions, Florida Office of Financial Regulation, June 2016.

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.

In Florida, we will still need to address the high cost of these loans to consumers. But a strong rule from the CFPB, without loopholes, to ensure that loans are within a borrower's budget will provide protection to consumers. Additionally, the CFPB must enact a strong rule that ensures payday lenders cannot continue their "business as usual" debt trap lending.

Thank you for this opportunity to comment.

Sincerely,

Sarah Sullivan

Chair, Public Interest Law Section of The Florida Bar