

September 27, 2016

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

FederalRegisterComments@cfpb.gov

Re: Southwest Center for Economic Integrity and Consumer Federation of America  
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 Southwest Center for Economic Integrity (CEI) and Consumer Federation of America (CFA) 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 on this important subject. The proposed rule is a critical step in stopping the harms of unaffordable loans, but must be strengthened to ensure it stops the debt trap once and for all.

CEI's mission is to build economically strong communities for all and opposes unfair corporate practices. CEI is based in Tucson, Arizona and works in rural, low-income communities in Arizona, New Mexico, Utah and Nevada. CEI has partnered with businesses, economic justice advocates and community groups since 2002 to help create systemic change that puts money back into poor people's pockets. CEI advocates for reforms in the consumer credit market before the Arizona legislature, led the No on Prop 200 campaign that defeated the payday loan industry's ballot measure in 2008 and convenes the broad coalition that works to prevent abuses in Arizona's small loan market.

The Consumer Federation of America (CFA) is an association of non-profit consumer organizations that was established in 1968 to advance the consumer interest through research, advocacy, and education. Today, nearly 300 of these groups, including CEI, participate in the federation. CFA and CEI worked together on the No on Prop 200 campaign in Arizona and jointly issued a report in 2016 on car title lending in Arizona, titled "Wrong Way: Wrecked by

Debt/Auto Title Lending in Arizona.”<sup>1</sup> These comments supplement additional, more detailed comments that CFA will submit in response to the proposed rule.

CEI and CFA support a strong CFPB rule to provide a federal floor for consumer protections in the payday, car title, and installment loan markets. In these comments, we strongly urge CFPB to close every loophole in the proposed Ability to Repay standards and expand the scope of the rule to cover all forms of high-cost leveraged consumer lending in order to provide the protections claimed for these rules. We urge CFPB to broaden the protections for payments directly from consumers’ bank accounts and to prohibit the use of remotely created checks as a payment device. And, we urge stronger support for state usury and rate cap laws so that stronger state laws, such as Arizona’s 36 percent rate cap on consumer loans, are not undermined.

### **Arizona Tried and Rejected Payday Lending**

Arizona enacted legislation in 2000 to authorize “deferred presentment” transactions as an exception to the Consumer Lender law’s usury cap. Payday lenders were permitted to charge up to 459 percent annual rates for a typical two-week loan (17 percent of the face value of the check). The law included a sunset provision, requiring the legislature to renew authorization in order to continue offering the product. Despite industry lobbying, the payday loan law was not extended by the Arizona legislature, leading the industry to mount an expensive but futile campaign to persuade voters to permanently authorize their product in the 2008 ballot campaign. Prop 200 was defeated by a 60 to 40 percent voter margin. A key issue that led to defeat of Prop 200 was that payday loans trapped consumers in unaffordable debt and caused such harm to the public that voters rejected the product outright.

In the interim between the rejection of Prop 200 in 2008 and the expiration of the payday loan law on July 1, 2010, the payday loan industry tried several tactics to be able to continue selling triple-digit debt in Arizona. Payday lenders tried and failed to win new authorizing legislation from the Arizona legislature.<sup>2</sup> Payday lenders introduced a variety of products designed to evade sunset of the payday loan law. And, many payday lenders became licensed car title loan companies.

Some lenders offered prepaid debit cards with cash advance or overdraft features to replace their payday loan product. For example, CheckSmart charged \$15 for each \$100 overdraft on its prepaid debit card promoted at Arizona outlets. If repaid in two weeks, this “overdraft” cost

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<sup>1</sup> CEI/CFA “Wrong Way: Wrecked by Debt” Report, issued January 2016, at <http://bit.ly/wrongwayreport> hereafter referenced as “Wrong Way Report.”

<sup>2</sup> The Arizona legislature failed to enact HB2370 /HB2161 in the 2010 session. HB2161 was held in committee. [http://www.azleg.gov/legtext/49leg/2r/comm\\_Min/House/012510%20bi.doc.htm](http://www.azleg.gov/legtext/49leg/2r/comm_Min/House/012510%20bi.doc.htm) Striker amendment to HB2370 failed in the Senate committee March 19, 2010.

391 percent APR. CheckSmart also sold the Insight prepaid debit card issued by Urban Trust Bank with a loan feature made by Buckeye Credit Solutions of Arizona, LLC, a credit services organization. The Insight card line of credit cost \$14 per \$100 borrowed plus 35.9 percent annual interest.<sup>3</sup> When payday lending “sunset” in Arizona, the Attorney General issued a warning to former lenders to avoid seeking to evade the law by using a variety of ruses, including making loans via prepaid cards.<sup>4</sup>

The primary tactic employed was for payday lenders to become title loan companies. When the deferred presentment law expired in mid-2010, many companies previously licensed as “deferred presentment” lenders simply changed licenses to continue making high-cost loans in Arizona. Half of the largest title lenders in 2015 based on number of licensed locations were licensed as payday lenders in 2007.<sup>5</sup> Former payday lenders or affiliated companies licensed 268 locations that offered title loans in 2015, almost 40 percent of title loan locations.<sup>6</sup>

In 2013, Arizona was the seventh most concentrated title loan market in the nation, with one licensed location for every 9,944 adults.<sup>7</sup> By 2015, Arizona had one licensed location for every 8,072 adults, based on our analysis of the Arizona Department of Financial Institutions’ Sales Finance Licensee roster in mid-2015.<sup>8</sup>

### **Title Lending is Big Business in Arizona**

Title lending is very big business in Arizona, based on our estimates. Our analysis of Sales Finance licensees identified 100 companies with 633 licensed outlets offering “Secondary Motor Vehicle Finance Transaction” loans in 2015.<sup>9</sup> The Arizona Department of Financial Institutions, which licenses title lenders as “sales finance” companies, requires no annual reporting from title lenders and does not provide any data on the number of licensed outlets,

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<sup>3</sup> CFA, NCLC, CRL complaint to Comptroller of the Currency, Re: Urban Trust Bank partnership with Community Choice Financial (CheckSmart) to enable prepaid card payday loans to evade state law,” May 3, 2012 at <http://consumerfed.org/wp-content/uploads/2010/08/Comments.UrbanTrustLetterOCC5.3.12.pdf> See also, press release: [http://consumerfed.org/press\\_release/bank-regulator-urged-to-stop-community-choice-financial-inc-going-public-may-8-from-using-prepaid-card-payday-loans-to-evade-state-law/](http://consumerfed.org/press_release/bank-regulator-urged-to-stop-community-choice-financial-inc-going-public-may-8-from-using-prepaid-card-payday-loans-to-evade-state-law/)

<sup>4</sup> Letter from Arizona Attorney General Terry Goddard, June 9, 2010, at <https://www.azag.gov/sites/default/files/lettertolender.pdf>

<sup>5</sup> CEI/CFA, “Wrong Way Report,” p. 16. Payday lenders now licensed as sales finance companies making title loans include ACE Cash Express, Inc., Fast Auto Loans, Inc., Check into Cash of Arizona, Inc., Buckeye Title Loans, Inc./Buckeye Check Cashing of Arizona, Inc.; and Allied Cash Advance Arizona LLC.

<sup>6</sup> CEI/CFA, “Wrong Way Report,” p. 9.

<sup>7</sup> CFA and Center for Responsible Lending, “Driven to Disaster: Car-Title Lending and Its Impact on Consumers,” February 23, 2013, p. 15 at <http://www.responsiblelending.org/other-consumer-loans/car-title-loans/research-analysis/CRL-Car-Title-Report-FINAL.pdf>

<sup>8</sup> CEI/CFA, “Wrong Way Report,” p. 14.

<sup>9</sup> CEI/CFA, “Wrong Way Report,” p. 4.

the volume of title loans, the range of rates charged, or information on defaults, repossessions, or litigation to collect on loans and/or deficiency balances.

The CEI/CFA study of title lending in Arizona used national reports to estimate the size of title lending, estimating that 190,000 to 285,000 Arizona consumers use title loans per year, or 4 to 5.5 percent of adults. If Arizona is similar to Virginia in volume of lending, title lenders take in \$316.5 million in revenue per year.<sup>10</sup> The Center for Responsible Lending estimates that Arizona consumers pay \$254,924,519 in fees for car title loans, making Arizona the 11<sup>th</sup> ranked state for the total paid for payday and title loans, despite having no payday lending. In the CRL analysis, Arizona ranks fifth in volume of title loan fees paid, just below Alabama, Mississippi, Ohio, and Texas.<sup>11</sup>

### **“Registration” Loans Add Debt Trap Risk in Arizona**

In our view, Arizona is saturated with title lenders due in part to lenders offering both title-secured loans and “registration” loans available to consumers who do not own their vehicles, expanding the available market beyond vehicle owners. We have labeled these “registration” loans as the latest version of payday lending in Arizona. Almost half of the licensed locations for title lending in Arizona also offer “registration” loans.

The legal status of Arizona “registration loans” is uncertain at best. In 2000, the Arizona legislature did not intend to authorize loans based on registrations, using the term “Secondary Motor Vehicle Finance Transactions” to distinguish title loans from purchase-money auto loans also regulated in the same section of law. Arizona’s Secondary Motor Vehicle Finance Transaction law defines an authorized loan as a contract that either obtains a security interest in or lien on a motor vehicle other than in connection with the sale of that motor vehicle.<sup>12</sup>

The title loan law was enacted to legalize sale-leaseback deals under challenge at the time by the Arizona Attorney General who had sued Sal Leasing for unlicensed Consumer Lender Act lending. Based on the legislative report on the bill, the Secondary Motor Vehicle Finance Transaction section of the law was not intended to authorize loans “secured” by encumbered vehicles. The legislative Fact Sheet for S.B. 1244 describes the intent of the bill to authorize sale/lease-back transactions. Legislators were told: “Secondary motor vehicle finance transactions, as defined in this bill, refer to short term (usually three to four months), fairly small (average of \$800) loans that are secured with a motor vehicle. Because such transactions

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<sup>10</sup> CEI/CFA, “Wrong Way Report,” p. 4.

<sup>11</sup> Center for Responsible Lending, “Payday and Car Title Lenders Drain \$8 Billion in Fees Every Year,” May 2016, Table 1. [http://www.responsiblelending.org/sites/default/files/nodes/files/research-publication/crl\\_statebystate\\_fee\\_drain\\_may2016\\_0.pdf](http://www.responsiblelending.org/sites/default/files/nodes/files/research-publication/crl_statebystate_fee_drain_may2016_0.pdf)

<sup>12</sup> A.R.S. § 44-281(13)(a)(i). Definition of Secondary Motor Vehicle Finance Transaction provision in the Motor Vehicle Time Sales Disclosure Act.

may require consumers to conditionally sell their vehicle to the lender and then lease it back (the lease payment reflects the monthly finance charge), such transactions are sometimes known as ‘sale-leaseback’ agreements. Currently these transactions are not regulated by state law, although businesses engaging in these transactions must comply with federal disclosure regulations regarding lease transactions.”<sup>13</sup> Although S.B. 1244 did not specify a clear title to secure loans, it appears clearly anticipated that consumers would own their vehicles outright in order to be able to “sell,” then lease them back to obtain a “secondary motor vehicle finance transaction.”

This interpretation is backed up by news coverage at the time of passage that described transactions as “So-called car title loans...car owners sell their vehicles to a lender and then have to lease the car back.”<sup>14</sup> No mention was made of loans “secured” by borrowers’ equity in vehicles they did not own. Soon after payday lending sunset in 2010, however, the title loan trade association was quoted saying “A registration loan is an auto-title loan...They might call them a different name, but at the end of the day, it’s still a loan secured by your motor vehicle.”<sup>15</sup>

There is no formal opinion from the Arizona Attorney General or published guidance from the Arizona Department of Financial Institutions permitting loans to be secured by encumbered vehicles, but there have been no enforcement actions, either. According to the Superintendent of Financial Institutions, an informal opinion was obtained from the Attorney General’s office that a loan qualified under the Secondary Motor Vehicle Finance Transaction section of the Arizona Code as long as the loan note stated that the loan was secured by a vehicle. Regulators do not require licensees to hold the title to a vehicle used to secure the loan, to obtain a Power of Attorney from a borrower to later file a lien on the title, or to seek agreement from the first lienholder to permit the licensee to add a second or third lien to the title.<sup>16</sup> As a result, consumers can obtain more than one loan “secured” by their car and become trapped in high-cost debt even when lenders cannot repossess vehicles.

### **Arizona Title Loans Subject to CFPB Proposed Rules**

Title loans made pursuant to Arizona law meet the CFPB definitions for both short and long-term covered loans. Title loans cost well over the 36 percent annual rate used by CFPB to define long-term loans. Loans made under the Secondary Motor Vehicle Finance Transaction

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<sup>13</sup> Arizona State Senate, Final Revised Fact Sheet for S.B. 1244, [www.azleg.gov/FormatDocument.asp?inDoc=legtext/44/leg/2r/summary/s.1244fir](http://www.azleg.gov/FormatDocument.asp?inDoc=legtext/44/leg/2r/summary/s.1244fir) ... Viewed 1/11/2016.

<sup>14</sup> Tom Collins, “Legislature: Bill makes random gunfire a felony,” *Tucson Citizen*, Mar. 22, 2000, <http://tucsoncitizen.com/morgue2/2000/03/22/96357-legislature/> viewed 4/27/2016

<sup>15</sup> Josh Bodesky and Rob O’Dell, “Title Loans Hurt Poor, Critics Say,” *The Republic*, April 1, 2013. Quoted Scott Allen, President of the Arizona Title Loan Association and Cash Time Title Loans.

<sup>16</sup> Meeting with Superintendent, Arizona Department of Financial Institutions, Phoenix, AZ, July 19, 2016.

law cost consumers 204 percent APR for loans up to \$500, 180 percent APR for loans over \$500 up to \$2,500, 156 percent APR for loans over \$2,500 up to \$5,000 and 120 percent APR for loans exceeding \$5,000.<sup>17</sup> There is no maximum size or duration limit for vehicle-secured loans in Arizona. There is no prohibition in Arizona for balloon payment installment title loans. As a result, covered short term loans with durations up to 45 days are made by title lenders, as well as long term installment and balloon loans secured by the borrower's vehicle and costing more than 36 percent inclusive annual rates.

Based on our experience in Arizona, the proposed CFPB rules must be strengthened to achieve the goal of protecting consumers from the debt trap and other abuses of the payday and title loan market, to preserve strong state usury laws, and to prevent obvious tactics to evade CFPB's intended protections. The following discussion focuses on the Arizona experiences that illustrate these concerns.

### **We Support the CFPB Rule Definition of Arizona "Registration" Loans as Title Loans**

To make sure its rules apply to both traditional title loans as well as the "registration" loans made in Arizona, CFPB defines "vehicle security" broadly to include both title and registration loans as made in Arizona. Specifically, the proposed rule definition of "vehicle security," regardless of how the transaction is characterized by State law, includes:

- (1) Any security interest in the motor vehicle, motor vehicle title, or motor vehicle registration whether or not the security interest is perfected or recorded: or
- (2) A pawn transaction in which the consumer's motor vehicle is the pledged good and the consumer retains use of the motor vehicle during the period of the pawn agreement. (§ 1041.3(d)(1 and 2).

We support this definition of title loans in the CFPB proposed rules for the purpose of applying a uniform set of protections to both title and "registration" loans as made in Arizona. Arizona is the only state where "title" loans are made to consumers who do not hold a clear title to the vehicle. Arizona's lax title loan law is so poorly written that lenders extend loans to consumers who do not own their vehicles, do not hold the title to cars, and for which lenders cannot file a first lien on the vehicle.

In the CEI/CFA survey of Arizona lenders, we found 20 companies make "registration" loans at 310 licensee locations, almost half the total title loan locations. Many of the "registration" lenders are former payday lenders. For the ten largest lenders by store count, "registration" loans range from \$50 to \$5,000, with the typical maximum loan size between \$1,000 and \$1,500. Six of the ten largest lenders offer single payment loans that would fall under the CFPB

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<sup>17</sup> A.R.S. § 44-291-G

definition of a Short-Term loan. Four of the ten largest lenders offer longer term installment loans, ranging from 6 to 18 months duration, which fit the definition of Longer Term loans.<sup>18</sup>

Consumers can become trapped in unaffordable loans “secured” by encumbered vehicles. A 68-year-old Tucson woman took out a loan with her 2005 Hyundai car as collateral although she did not own it free and clear, owing \$106 a month payments for six months. She was unable to make full payments, paying \$50 a month which made her owe much more than the original loan amount.<sup>19</sup>

### **Risks to Arizona Consumers from Title Lending**

CFPB rules are needed to provide a floor of consumer protections for states, like Arizona, that fail to protect their citizens from debt trap consequences of predatory lending. Arizona’s title loan law is so deficient that a law professor described the legal status of title lending in Arizona as “authorized but effectively unregulated.”<sup>20</sup> The Arizona title loan law provides no protections against loans becoming a debt trap, not even the modest provisions in other state laws. There are no limits on the size or duration of loans, the relative size of loans to the value of the borrower’s vehicle, the number of loans at one time or in sequence. In fact, since loans can be “secured” by an encumbered vehicle with no lien filed to inform other lenders, consumers can have multiple loans secured by the same vehicle. There is no requirement that lenders consider a borrower’s ability to repay, or limit the size of a loan in relation to borrower’s income. Arizona requires no cooling off period between loans to break up the title loan debt cycle. And, Arizona permits balloon payment loans and asset-based lending.

Asset-based Title Loans: CFPB’s proposed Ability to Repay rules, which require lenders to responsibly lend to consumers based on a full consideration of their ability to repay the loan without experiencing other hardships, are essential, especially in light of practices in the title loan industry in Arizona. Title loans are made based on the lender’s ability to collect, not on the borrower’s ability to repay.

Many Arizona lenders promote loans based on the value of the borrower’s vehicle. For example, the largest store-front chain TitleMax/TitleBucks claims “Your car is your credit” in store brochures and, on its website, states that no credit checks are performed.<sup>21</sup> LoanMax

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<sup>18</sup> CEI/CFA, “Wrong Way Report,” p. 39-40.

<sup>19</sup> Jonathan Higuera, “Targeting Title Loans,” AARP Bulletin, December 2013.

<sup>20</sup> Jim Hawkins, “Credit on Wheels: The Law and Business of Auto-Title Lending,” *69 Wash. & Lee L. Rev.* 535(2012), <https://scholarlycommons.law.wlu.edu/wlulr/vol69/iss2/5>, page 580.

<sup>21</sup> TitleMax brochure “Turn Your Car Title Into Cash! Your car title is your credit. Instant approval process. Keep driving your car. Get cash today.” Obtained 7/15/15. On file with CFA. See, also, [www.titlebucks.com](http://www.titlebucks.com) last viewed 6/15/15. “Your car is your credit and is used as your collateral, so it doesn’t matter if you have good credit, bad credit, or no credit at all, you can keep driving your car and turn your title into bucks with Titlebucks!”

says “Owning car proves credit worthiness.”<sup>22</sup> Check Into Cash says “There’s no credit check required, and you could be eligible for a maximum of \$25,000 on a first lien loan and \$500 on a second lien loan.”<sup>23</sup> “If you have bad credit, no credit, or you simply need a cash loan now, Cash Time will work with you to provide you with the cash you need.”<sup>24</sup> Tio Rico Te Ayuda tells borrowers “Your credit history is not an important part of our customer evaluation.”<sup>25</sup> California-based online title lender 800LoanMart discloses “Determining factors for eligibility are vehicle value, gross income, and status of the title.” 800LoanMart does not have a credit score requirement and lends to borrowers with a previous bankruptcy or repossession. The 800LoanMart FAQ states: “A previous bankruptcy or a derogatory credit history will not hurt your chances of qualifying for an auto title loan, since title loans are based more on the value of your vehicle.”<sup>26</sup>

### Repeat Renewals and Balloon Payment Loans Trap Borrowers in Debt

Arizona consumers are harmed when title loan companies offer balloon payment loans and single payment loans that can be endlessly renewed, both resulting in long-term title loan debt traps. Under the Arizona fee schedule that permits 204 percent annual interest for loans secured by vehicles, a consumer borrowing \$500 for one month and renewing the loan eight times would pay a total of \$765 in finance charges while in debt nine months (original loan and eight renewals) for a total payment of \$1,265.

In the CEI/CFA survey of licensed title lenders in Arizona, we found that half of the ten largest lenders offer loans due in a month or 30 days, the typical title loan term. All of the single-payment lenders permit borrowers to make interest only payments and extend the loan. Check Into Cash and 1 Stop Money Centers required that five percent of the loan principle be reduced after three interest-only renewals. Single balloon payment loans are far too large to repay in one month. Buckeye Check Cashing of Arizona, Inc. made a \$970 loan due in one month that included a \$95 finance charge and cost 118.8 percent APR.<sup>27</sup>

One of Arizona’s large title loan licensees offers balloon payment as well as installment title loans. On its website, Cash Time’s example of a balloon payment schedule for a \$500 loan with bi-weekly payments listed 12 interest-only payments of \$39 with a final \$539 payment that included interest and the total loan principle. Cash Time posted a 203.944% APR and \$509.86

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<sup>22</sup> [www.loanmaxtitleloans.net/Benefits](http://www.loanmaxtitleloans.net/Benefits), viewed 6/2/15. LoanMax states that lenders do not look at credit scores.

<sup>23</sup> <https://checkintocash.com/arizona-title-secured-loans/> viewed 8/4/15

<sup>24</sup> <http://cashtime.com/about-us> viewed 6/5/15

<sup>25</sup> [www.mytiorico.com/title-loan-faq/](http://www.mytiorico.com/title-loan-faq/) viewed 6/2/15

<sup>26</sup> [www.800loanmart.com/Faq.aspx](http://www.800loanmart.com/Faq.aspx) viewed 9/9/15

<sup>27</sup> Buckeye Check Cashing of Arizona, Inc. title loan contract dated 2/25/15, on file with CFA.



in interest for total payment of \$1,009.86 for credit extended less than six months.<sup>28</sup> To illustrate the result of balloon payment lending, CEI received this complaint from an Arizona consumer caught in a title loan debt trap, resulting in repeat renewals from interest-only payments with no reduction in loan principle.

“In August 2012, I obtained a \$2,000 six-month title loan from Cash Time Title Loans with my paid for 2007 vehicle as collateral. I had just been offered a job with the County after being unemployed for several months. I found myself unemployed yet again and in November, 2012, Cash Time repossessed the car and advised me that I needed \$1,100 in five days or else the vehicle would be auctioned off. I was able to get the funds necessary to have the vehicle returned to me. I continued to make payments to Cash Time. In March, 2013, I met with Cash Time in person to discuss the terms of my contract and was convinced to “re-write” the original loan of \$2,000.00. I had already paid Cash Time \$1,920 but it was as if I paid them nothing. I was advised they were waiving all the interest I had accumulated. None of the payments I had already given them mattered. Therefore, I, under duress, agreed to this re-writing of the original loan. I was back at owing them \$2,000. It has now been 1 year and I have given Cash Time over \$2,300 on this re-written contract. I have met with Cash Time, in person, twice to try and settle this nightmare. I have given them close to \$5,000.00 however, I am advised by Cash Time that I owe them over \$2,900! Cash Time’s solution to this is for me to come into their office and they will re-write the loan again – for the 3<sup>rd</sup> time!”<sup>29</sup>

The proposed rule does not ban balloon payments outright but requires lenders to follow the short-term loan ability to repay requirements. This requirement may lessen balloon payment title lending, since few title loan borrowers are expected to meet ATR standards. CFPB states that few single payment title loans are expected to pass that test, given the average \$700 title loan and the typical borrower income of \$3,000 per month or less, so that few households would be able to demonstrate an ability to repay.<sup>30</sup> While we prefer an outright ban on balloon

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<sup>28</sup> Cash Time Disclosures at <http://cashtime.com/disclosures> which links to examples of payment schedules for Title Loans and Personal Loans at <https://cashtimecmstest.blob.core.windows.net/imagecontainer/Documents/APR%20Fees%20Interest%2008.11.15.pdf> last viewed 12/30/15.

<sup>29</sup> Complaint on file with the Southwest Center for Economic Integrity. The loan had a balloon payment structure with interest only installments and the loan principal included in the final installment. See, Maria Polletta, “Quick loans, or quicksand? Title lenders spread across SEV,” *Arizona Republic*, 6/20/14 . <http://www.azcentral.com/story/news/local/mesa/2014/06/20/auto-title-lenders-give-additional-high-risk-option/11061451/>

<sup>30</sup> CFPB proposed rule, p. 969.

payment loans, we support the proposed treatment of balloon payment long term title loans as short term loans for purposes of determining ability to repay.

### **Harm to Arizona Consumers from Title Lending**

Consumers are harmed by high-cost title loans that cannot be repaid on schedule. Failure to pay title loans can result in repossession and sale of the vehicle used to secure the loan, in court cases to collect the loan or the deficiency balance following repossession, and in aggressive debt collection activity. When lenders also hold access to borrowers' bank accounts, nonpayment can impinge upon bank account ownership. Borrowers are at risk from the first loan transaction, since they have signed over access to their bank accounts and/or secured loans with their vehicles with the first contract.

### **Repossession**

Since Arizona regulators do not collect information from title lenders that quantify defaults or repossession rates, we must estimate the harm of repossession based on the number of licensed loan outlets in Arizona and the national estimates of loans per store and percentage of the population that uses title loans to provide estimates of the number of people likely harmed by title loan practices under lax state laws. If Arizona title lenders repossess vehicles at the same rate per store as reported in Virginia, 25,320 Arizona vehicles may have been repossessed last year, based on 40 repossessions per store in Virginia multiplied by the 633 licensed title lender locations we identified in Arizona in mid-2015.<sup>31</sup>

According to CFPB's study of title installment loans, 11 percent of loan sequences end up in repossession. For single-payment title loans, CFPB found that one-in-five borrowers lost their vehicle to repossession when they failed to make payments.<sup>32</sup> We do not know the proportion of Arizona title loans structured as short-term single payment loans, those structured as long-term installment loans, or those written as balloon payment long term installment loans. If Arizona is typical of the other 24 states where title lending operates legally, 190,000 to 285,000 Arizona consumers use title loans per year, or 4 to 5.5 percent of adults. If all of these consumers took out installment title loans, based on CFPB's findings 31,350 customers may have had vehicles repossessed (11% of 285,000 borrowers.) If all Arizona title loans were single payment loans, 57,000 customers may have had their vehicles repossessed (20% of 285,000.)

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<sup>31</sup> CEI/CFA, "Wrong Way Report," page 14.

<sup>32</sup> CFPB, "Supplemental findings on payday, payday installment, and vehicle title loans, and deposit advance products," June 2016, p. 22, link to full report at <http://www.consumerfinance.gov/data-research/research-reports/supplemental-findings-payday-payday-installment-and-vehicle-title-loans-and-deposit-advance-products/> and, CFPB, "Single-Payment Vehicle Title Lending," May 18, 2016, link to full report at <http://www.consumerfinance.gov/data-research/research-reports/single-payment-vehicle-title-lending/>

Repossessions harm consumers beyond loss of a key family asset. Repossessions add expenses that are deducted from the proceeds of selling the vehicle. For example, a Tempe, Arizona consumer was charged an \$800 repossession fee, deducted from the proceeds of selling his vehicle.<sup>33</sup>

### **Collection litigation**

Arizona permits lenders to sue for deficiency balances after repossessing and selling a vehicle used to secure a title loan when the proceeds do not cover the amount owed. Lenders can sue borrowers who then fail to pay the deficiency balance. For example, a Speedy Cash contract states: “If you default, we may repossess and sell your Vehicle. If we sell your Vehicle, you may not receive any proceeds from the sale because of the costs incurred, AND you may be liable to pay additional funds if the proceeds from the sale of your Vehicle are not sufficient to cover your debt plus the costs of repossession and sale.”<sup>34</sup>

If contracts or refinancing agreements provide for it, Arizona permits lenders to collect a “reasonable amount” for the cost of collection, court costs and attorneys’ fees to the balance owed when suing for unpaid loans.<sup>35</sup> Court dockets routinely show the extra costs added to title loans when lenders sue. For example, the judgment entered in Maricopa County Justice Court on a \$500 principal title loan debt included \$384 in costs, \$400 for the lender’s attorney fee, and \$257 in interest owed, with costs totaling \$784 to collect \$757 in loan and interest.<sup>36</sup>

### **Debt collection risks**

Lenders use threats of criminal violations to coerce payment on loans secured by vehicles. Some Arizona title loan contracts include a quote from the criminal code that warns about the penalties for failing to surrender a vehicle used to secure a loan after default. “Under A.R.S. 13-1813 it is unlawful to fail to return a motor vehicle subject to a security interest within (30) days after receiving notice of default...Unlawful failure to return a motor vehicle subject to a security interest is a stolen vehicle for purposes of A.R.S. 28-4845 and is a Class 6 felony which carries a maximum penalty of a \$150,000 fine and 1.5 years imprisonment for a first offense.”<sup>37</sup>

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<sup>33</sup> Deficiency/Surplus Notice, Auto Title Loans USA, LLC, 7/18/14, exhibit in Complaint, *Richard Ostler vs. Auto Title Loans USA, LLC*, Superior Court of Arizona Maricopa County.

<sup>34</sup> A Speedy Cash, Agreement & Disclosure Statement Secondary Motor Vehicle Finance Transaction, signed 1/9/15, page 8. On file with CFA.

<sup>35</sup> A.R.S. § 44-289 A.

<sup>36</sup> Maricopa County Justice Courts Cash Information, Case Number CC2013-200420, filed 11/8/2013 at <http://justicecourts.maricopa.gov/FindACase/caseInfo.asp?caseNumber=CC2013200420000> viewed 1/11/16.

<sup>37</sup> 1 Stop Money Centers, LLC contract, dated 1/08/15, on file with CFA. Similar language is found in Cash Time title Loans, Inc. contract signed 3/14/13, on file with CFA.

When a U. S. Air Force veteran in Arizona fell behind on title loan payments, the lender called his references repeatedly. When the borrower could no longer make payments, his car was repossessed.<sup>38</sup> An Arizona consumer asked for help from a local television station when his keys were not returned by a title lender after a loan was repaid. The loan company required borrowers to provide a duplicate set of keys to get a loan, then failed to return the keys over five years after the loan was initially obtained.<sup>39</sup> This borrower took out the loan in 2011 and repeatedly made interest-only payments, renewing his title loan each time, interrupted by inability to repay due to medical and employment emergencies. He was only able to settle the debt in 2016 after he received a lump sum benefit payment.<sup>40</sup>

### **Risk to Bank Accounts**

In addition to securing loans with vehicles, some title lenders in Arizona also use bank account access to ensure payment, making these loans double-leveraged. Although the title loan law does not authorize use of bank account access to secure loans and despite the sunset of the payday loan law in 2010 that authorized loans secured by checks held for future deposit, many title lenders require borrowers to provide a blank check, a debit card or an ACH authorization when they apply for loans.

In our review of Arizona title lenders conducted during the fall of 2015, we found that nine of the ten largest lenders require borrowers to provide bank account access to get loans secured by vehicles. For example, The Leading Lender, LLC required a blank check or a Direct Deposit form and an open checking account,<sup>41</sup> while MooLoans LLC required a personal check from your bank account for a title loan.<sup>42</sup> Xpress Cash Financial Services of Arizona required borrowers to bring a check from a checking account in order to apply for a title loan.<sup>43</sup> Allied Cash Advance<sup>44</sup> and ACE Cash Express<sup>45</sup> require borrowers to provide blank checks or bank account access to obtain “registration” loans. Auto Now Financial/Tio Rico Te Ayuda requires borrowers of its “Personal Loan” up to \$1,000 to have a bank account or payroll debit card.<sup>46</sup> A

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<sup>38</sup> Erica Lang, “Arizona Auto Title Loans Offer Quick Holiday Cash but Mounting Debt Could be Side Effect,” Cronkite News, Dec. 11, 2015, <http://ktar.com/story/809581/arizona-auto-title-loans-offer-quick-holiday-cash-but-mounting-debt-could-be-side-effect/> last viewed 8/17/16

<sup>39</sup> Joe Ducey, “Valley man fights to have key returned from car title company,” ABC15TV, [www.abc15.com/news/let-joe-know/title-company-loses-valley-mans-keys](http://www.abc15.com/news/let-joe-know/title-company-loses-valley-mans-keys), 8/16/2016

<sup>40</sup> Conversation with Arizona borrower in ABC15TV report. 8/18/16

<sup>41</sup> [www.theleadinglender.com](http://www.theleadinglender.com) viewed 7/9/15.

<sup>42</sup> [www.mooloans.com/faqs.html](http://www.mooloans.com/faqs.html) viewed 10/12/15

<sup>43</sup> [www.xpresscashnow.com/title-loan](http://www.xpresscashnow.com/title-loan) viewed 10/12/15

<sup>44</sup> Flyer from Allied Cash Advance store in Prescott, AZ lists required documents for Choice Loan up to \$5,000, including “voided Check or Direct Deposit form.” Obtained 7/15/15. On file with CFA.

<sup>45</sup> ACE Cash Express brochure for “Motor Vehicle Secured Loan” includes “pre-printed check” in list of items to bring to borrow up to \$1,500. Obtained January, 2015. On file with CFA.

<sup>46</sup> [www.mytiorico.com/personal-loans/](http://www.mytiorico.com/personal-loans/) list of items needed to qualify for a personal loan, “You have a bank checking Account or Debit Card from your employer.” Viewed 6/2/15

surveyor in Phoenix was told that a voided check or a debit card was required for a loan<sup>47</sup> as was a surveyor in Tucson who was told that a bank statement, blank check and debit card were required to get a “registration” loan at Tio Rico.

Title lenders’ access to borrowers’ bank accounts may be viewed as a secondary form of security to the vehicle title. Contracts for A Speedy Cash Car Title Loans LLC state that the lender will use ACH to withdraw payment from the borrower’s bank account if she fails to pay in person by the appointment time on each due date; however, this lender’s contract also states that electronic payments are voluntary and can be cancelled.<sup>48</sup> 1 Stop Money Centers answers the question “Why do they ask to see my debit card?” with “Sometimes your debit card will be used for collecting the total refinance payment or an outstanding balance. Since most banks are now paperless, we will need to perform this transaction as a debit.”<sup>49</sup> 1 Stop also informs borrowers that they will use the borrower’s debit card to withdraw payment if it is not made in person at the appointed time.<sup>50</sup>

We know of no research on the impact on borrowers when title lenders also require bank account access in order to apply for a loan, however, research on the impact of bank account leverage in the payday loan and online loan markets may apply as well to title lenders. CFPB research finds that half of online payday loan borrowers have at least one debit attempt that failed or overdrew the borrower’s bank account, with borrowers incurring an average of \$185 in bank overdraft and insufficient funds fees, not counting the fees charged by lenders for returned payment or a late fee. When title lenders secure loans with direct payment from a bank account, consumers are also at risk of bank account closure. CFPB found that 36 percent of bank accounts with a failed debit from an online lender were eventually closed by the bank, usually within 90 days of the first returned payment.<sup>51</sup> Arizona title loan borrowers need to be protected from lending that also leverages bank accounts.

### **CFPB Ability to Repay Approach is Sound but Loopholes Must be Closed**

Given that CFPB cannot set a federal usury cap, federal rules to require responsible lending practices in order to mitigate the unfair relationship between lenders that hold leveraged collection tools and consumers who struggle to make ends meet is a good option. Ability to repay rules are a moderate policy option compared to the stronger protections of the Military

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<sup>47</sup> Store visit, Tio Rico, Phoenix, 10/14/15.

<sup>48</sup> Contract, A Speedy Cash Car Title Loans, LLC, dated 1/9/15, page 2 of 8, “If you do not appear in person to pay by 3pm CST, then we will submit your payment due by the EFT/ACH Authorization set out below.” On file with CFA.

<sup>49</sup> 1 Stop Money Centers, LLC customer information packet, page 2, on file with CFA.

<sup>50</sup> 1 Stop Money Centers, LLC customer information packet, page 2, on file with CFA.

<sup>51</sup> CFPB, “Online Payday Loan Payments,” April, 2016, p. 23.

[http://files.consumerfinance.gov/f/201604\\_cfpb\\_online-payday-loan-payments.pdf](http://files.consumerfinance.gov/f/201604_cfpb_online-payday-loan-payments.pdf)

Lending Act which prohibit the use of bank account access or vehicle titles to secure high-cost loans made to active-duty military families and set a federal usury cap at 36 percent inclusive annual interest.

Instead of simply prohibiting over-leveraged lending, CFPB seeks to mitigate the harm that results from lenders making credit decisions based on their ability to collect, not borrowers' ability to repay high-cost loans. The proposed rules provide two options lenders can use: A "full-payment test" of the borrower's ability to repay and a "principal payoff option" for short-term payday but not title loans and for two longer-term loan options to provide credit to borrowers who may not meet the ATR test. As title loans are authorized in Arizona, lenders will be subject to the short-term loan "full payment test" and to the long-term and long-term balloon loan provisions.

## **Arizona Issue Priorities:**

### **Support State Usury and Rate Caps**

The CFPB preamble recognizes that state usury laws and small loan rate caps provide stronger protection than the proposed Ability to Repay rules. This is especially important to Arizona, a state that does not authorize triple-digit rates for payday loans and that enforces the Consumer Lender law's 36 percent annual rates for consumer loans. We have urged Arizona lawmakers to repeal the title loan law, placing all lenders under the lower-rate Consumer Lender law. If we are successful, it will be especially important that these rules do not undermine our strong state usury law. CFPB should be a partner with states in enforcing state usury laws.

**Recommendation:** CFPB should make violation of a state usury or small loan rate cap law an unfair and abusive practice under the Dodd-Frank Act to strengthen enforcement of stronger state protections.

### **Provide a Floor for Protections in states with weak laws while Permitting Stronger State Laws**

Title loans are legal in only half the states, while high-cost payday lending is not authorized in fourteen states, including Arizona, plus the District of Columbia.<sup>52</sup> CFPB rules provide a floor for consumer protection, but should not be construed to condone legalization of predatory lending.

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<sup>52</sup> Pew Charitable Trusts, "State Payday Loan Regulation and Usage Rates," July 11, 2012 at [http://www.pewtrusts.org/en/multimedia/data-visualizations/2014/~media/data%20visualizations/interactives/2014/state%20payday%20loan%20regulation%20and%20usage%20rates/report/state\\_payday\\_loan\\_regulation\\_and\\_usage\\_rates.pdf](http://www.pewtrusts.org/en/multimedia/data-visualizations/2014/~media/data%20visualizations/interactives/2014/state%20payday%20loan%20regulation%20and%20usage%20rates/report/state_payday_loan_regulation_and_usage_rates.pdf)

**Recommendation:** Enact a strong rule to protect consumers in states such as Arizona that fail to provide consumer protections that would prevent debt traps and safeguard key family assets such as vehicles. CFPB should make clear that setting minimum requirements for loans is not an endorsement of covered products and should not be viewed by legislators as an invitation to legalize payday or title lending in the states that do not authorize the products.

### **Anticipate Evasion Tactics and Expand Coverage**

Proposed rules apply to all short term loans and to long term loans costing over 36 percent annual inclusive rates that are secured by consumers' vehicles or bank accounts. To ensure a fair marketplace, prevent evasions of ATR requirements by requiring more specificity on how lenders document basic living expenses, CFPB should anticipate state legislative attempts to evade the rule and expand the scope of the rule to all leveraged consumer loans.

The proposed rules do not include loans leveraged by personal property. In 2016, the payday/title loan industry pushed legislation in Arizona to expand title loan rates to unsecured installment loans and to installment loans secured by personal property, neither of which would be subject to the CFPB rule as proposed. The industry attempted to sell S.B 1316 which created new loan products termed 'Flexible Credit Loans' as necessary in light of expected CFPB rules. The bill as introduced set rates at up to 204 percent APR for unsecured loans over \$500 and at 180 percent for loans secured by personal property. The Arizona Senate refused to enact the industry bill this year, but backers can be expected to try again next session to exploit any loopholes in coverage that CFPB provides.

**Recommendation:** Expand the coverage of the proposed rule to include all forms of super-leveraged lending, including loans secured by personal property or where lenders retain the right to garnish wages to collect.

CFPB is proposing to exempt high-cost longer term loans from coverage under these rules if the bank account access or car title is taken by the lender more than 72 hours after the loans has been disbursed. If CFPB finalizes rules with the 72-hour loophole, lenders will exploit that provision to make longer-term title and payday loans without these protections. In the 2016 legislative session, Arizona S.B. 1316 to authorize Flexible Credit Loans specifically authorized lenders to seek borrowers' authorization to collect payment electronically from bank accounts. The rule's 72-hour definitional limit provides the roadmap for evading all the long-term loan protections. Lenders will simply wait three days and then offer inducements to borrowers to sign ACH authorizations to "conveniently" make loan payments without having to return to the payday/title loan store to pay in person.

**Recommendation:** Remove the 72-hour time window from the definition of covered long-term payday and title loans. If lenders seek either form of payment leverage during the life of the

loan, those loans should be subject to ATR requirements and other protections. This will not impact low-cost payday and title loans, only those costing 36 percent inclusive annual interest. If borrowers want the convenience of electronic payments, they can set up bill-pay through their bank accounts and retain full control over payments from their accounts.

## **Strengthen Protections in Proposed Rules**

### Ability to Repay for Every Loan

While payday lending is no longer authorized in Arizona, we had ten years' experience with consumers caught in the debt trap of repeat borrowing. And today, Arizona is saturated with title lenders charging triple-digit rates for loans secured by a vehicle, and often by access to the borrower's bank account. The CFPB rules must be strengthened to require an ability to repay determination for the first and every loan made. As proposed, the rules permit six payday loans to be made without any determination of ability to repay. This is a shocking loophole in rules touted as ending the debt trap of payday lending. Once a consumer has handed over a personal check to secure a loan, even for a first loan, the lender has extraordinary leverage to compel repeat borrowing. Consumers are harmed by any high-cost loan leveraged with a bank account.

This 6-loans-per-year loophole is not supported by CFPB's research which shows high default rates when payday loans are made without an ability to repay requirement, with default rates averaging 40 percent. That failure rate meets the "exploding toaster" standard of a hazardous product noted during the debate on creation of the CFPB. And, the default rate doesn't quantify the harm caused by the bank insufficient funds fees or overdraft fees that are collateral damage of inability to pay a loan secured by the borrower's check. It also leaves out difficulties families face in juggling their other obligations when payday lenders pay themselves first out of every deposited pay or benefit check. If CFPB intends to break the payday loan debt trap, it must require an ability to repay determination on the first and every loan made.

**Recommendation:** Require an Ability to Repay determination for the first and every covered loan made to consumers. Eliminate the alternative for ATR short term loans. Do not support payday lenders' campaigns to undermine stronger state laws.

### Loan Flipping Rules to Prevent Long Term Unaffordable Debt

The proposed rules shorten the cooling off period from the 60 days between loans included in the SBREFA proposal to just a 30 day period. CFPB should restore the 60-day cooling off period to better protect consumers from repeated loan flipping. To stop debt trap lending, the rules should also be strengthened with protections against repeat financing of longer-term loans. When consumers have to refinance a loan, especially at triple-digit rates, it is clear that the first



loan was unaffordable. Rules should be strengthened to prevent lenders from flipping borrowers from one unaffordable loan to the next. Refinancing of longer-term loans should be considered unaffordable if a consumer is delinquent by even one day on the prior loan and/or the borrower has not repaid at least 75 percent of the loan principal.

**Recommendation:** CFPB should adopt at least a 60-day cooling off period between short term loans to short-circuit the debt trap and should set a maximum 90-day limit per year on indebtedness for all short term loans, regardless of whether they are ATR payday or title loans or exception payday loans. A 90-day indebtedness limit is consistent with the FDIC's 2005 payday lending guidelines and backstops the ATR determination.

#### The "business as usual" loopholes in the proposed ability-to-repay test

The proposed rules require only that the lender not have unusually high default, delinquency or reborrowing rates. That ignores the impact of the leverage held by payday and title lenders. Lenders' ability to seize payments from borrowers' bank accounts or repossess their vehicles minimizes default rates and under the proposed rules could be used as evidence of borrowers' ability to repay. CFPB should not condone "business as usual" by grading on the curve by only looking at lenders whose default rates stand out when compared with other high-cost lenders. Low default or reborrowing rates do not prove that leveraged lenders are making responsible loans. It just shows that consumers will keep paying on a payday or title loan to avoid bounced check fees, closed bank accounts, repossessed cars, or being sued in court for nonpayment resulting in wage garnishment.

**Recommendation:** CFPB should eliminate the presumption that loans are affordable if lenders meet industry averages on ability to collect due to leveraged payment devices.

#### Long Term Balloon Payment Loan Rules

CFPB's research finds that balloon payment loans are often renewed just before the final payment is due, a sure sign that loans are not affordable. Balloon payment loans lure consumers in with seemingly low periodic payments of interest, with the final payment including the full principal as well as another month's interest payment. We view balloon payment leveraged loans as blatantly unfair, deceptive and abusive. If CFPB chooses not to simply ban these products, the rules on ability to repay for balloon loans must be strengthened.

Under the CFPB proposal, a LT balloon payment title loan must be treated as a short term title loan for determining ability to repay. There would be a presumption of unaffordability if the borrower got a second or third LTB loan during or within 30 days of repaying another ST or LTB loan. A lender would have to show verified improvement in a borrower's financial condition since the time the previous loan was underwritten that would be sufficient to afford the new

loan. Depending on how strictly the “presumption of unaffordability” rule is applied, it is possible that consumers could be trapped in repeated borrowing year round. The 30-day proposed waiting period after a balloon payment loan is too short to impede repeat unaffordable lending.

**Recommendation:** No balloon payment loans should be excluded from the ability to repay standard. If CFPB is not going to ban them outright, the ATR rules should apply to every loan.

### Bank Account Protections

The proposed rule limits the number of times a lender can attempt to withdraw payment from a borrower’s bank account to two failed consecutive attempts after which the lender must get new authorization to collect that payment plus future payments from the borrower’s bank account. The rule should be strengthened to require reauthorization after any failed attempts. The proposed rule also requires notice to consumers at least three business days prior to the lender attempting to collect payment from borrowers’ bank accounts.

These reforms are important for Arizona borrowers. Although payday lending is no longer authorized in Arizona, we found that many title lenders require borrowers to provide bank account access in order to get title and/or registration loans made under the Secondary Motor Vehicle Finance Transaction law. Our complaints to state regulators about title lenders’ use of checks/bank account access to secure loans despite sunset of the authorizing law have gone unanswered. Arizona consumers need strong CFPB rules to safeguard essential bank accounts from the insufficient funds fees and overdraft fees averaging \$35 that drive up the cost of loans leveraged with bank account access, the risk of closed bank accounts due to repeat insufficient funds, and the loss of control over management of deposited pay or benefits in borrowers’ bank accounts.

Lenders also use bank account numbers and routing numbers to create unsigned checks that can be used to withdraw payment from consumers’ bank accounts. For example, Cash Time Title Loans, Inc. includes payment by “drafts from your account” in its contract provision for “payment authorization.”<sup>53</sup> While we would prefer an outright prohibition on securing loans with checks held for future deposit or electronic access to bank accounts, we strongly support rules that limit the harm that results from this form of loan leverage.

**Recommendation:** if CFPB does not ban the use of a leveraged payment mechanism as an unfair, deceptive and abusive practice, the final rules must provide stronger protections for

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<sup>53</sup> Cash Time Title Loans, Inc., Secondary Motor Vehicle Finance Contract Loan and Security Agreement, Additional Terms, Agreements and Conditions, 2013, p. 2 of 4, on file with CFA.

consumers' bank accounts and require reauthorization after any failed attempt to collect a payment.

## **Conclusion**

Arizona consumers need strong CFPB rules to impose responsible lending restraints on our largely unregulated title loan market and to safeguard consumers' bank accounts which are also used to "secure" title loans made in this state. Arizona consumers need CFPB to close all the loopholes and expand coverage to other forms of leveraged lending in order not to welcome debt trap lending to this state. Arizona consumers also need additional provisions in a final rule by CFPB to preserve the hard-fought sunset of payday lending, such as making violation of our state's usury laws an unfair, deceptive, and abusive practice under the Dodd Frank Act.

Thank you for the opportunity to comment. We appreciate CFPB's work to date on researching the harm caused by payday and title loans, enforcing the law against abuses in this industry, and in framing these proposed rules. To deliver on the promise of ending the debt trap caused by predatory small dollar loans, CFPB must close loopholes and strengthen these rules.

For further information on these comments, please contact Jean Ann Fox, Fellow, Consumer Federation of America at 202-387-6121 or Kelly Griffith, Southwest Center for Economic Integrity, at 520-250-4416.

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