PRIMAVERA
PROVIDING PATHWAYS OUT OF POVERTY
151 W. 40TH STREET
TUCSON, AZ 85713
520-882-5383
WWW.PRIMAVERA.ORG

August 29, 2016
Hon. Richard Cordray
Director
Consumer Financial Protection Bureau
1700 G Street NW
Washington, DC 20552

Re: *Primavera Foundation* 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 Primavera Foundation 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 this important subject. The rule must be significantly strengthened before it becomes final in order to ensure that it does not undermine our strong payday loan rate cap, and also to stop the harms of abusive car title lending that still plagues our state.

The Primavera Foundation was founded in 1983 to address the systemic causes of homelessness in Southern Arizona. Primavera's mission is to provide pathways out of poverty through safe, affordable housing, workforce development, and neighborhood revitalization. Every year Primavera's continuum of emergency services, safe, affordable housing, workforce development, financial empowerment, asset building, and neighborhood revitalization programs serve more than 8,000 households living in metropolitan Tucson and Pima County. With more than one in five people living below the poverty threshold, the City of Tucson is the eighth-poorest major metropolitan area in the nation. In Pima County, the rate of homelessness is nearly twice the national average. Every day our staff and volunteers witness the destructive impact that pay day and auto title car loans have on the community residents and neighborhoods we serve. While we work with residents to build up their assets, pay day and auto title loans do the opposite, returning families to homelessness, multi-generational cycles of poverty, and neighborhood destabilization. This is why Primavera is strongly against payday, vehicle title and other high-cost installment loans.

Due to our strong payday loan rate cap, which the majority of millions of Arizonans' affirmed, people are protected from the harms of the typical 300% APR payday loans. We appreciate that the CFPB clearly stated in the proposal that states with rate caps, such as ours, provide stronger protection than what the rule can provide. Yet, we are concerned that the weaknesses in the proposed rule may be seen as state legislators being sanctioned instead of the predatory payday lenders. The loopholes in the proposed rule must be closed to ensure that the CFPB proposal does not undermine our state in any way. Our experiences demonstrate that people are better off without these harmful, high-cost, unaffordable payday loans. We see every day that people have other options besides falling into the payday lenders' debt trap.

Annually, our citizens save $167,474,987 that would otherwise be spent on fees to float unaffordable payday loans.[1] The savings from our rate cap benefit not only individual people but the state economy as a whole. While the CFPB's rule will be critical in states that have yet to pass a rate cap, a rate cap has been the most effective protection from predatory lending practices. We call on the CFPB to issue a rule without exceptions and without loopholes. While we will continue to enforce the rate limits in our state, we also call on the Bureau to declare that loans made in violation of our state laws are unfair, deceptive, and abusive.

However, we still have work to do in rescuing our citizens from the debt trap caused by car title loans. In addition, these high-cost lenders in Arizona engage in the dangerous practice of "registration loans" which appear to be payday loans disguised as car title loans, putting both the borrower's bank account and car at risk.[2] Annually, our citizens lose $254,924,519 in fees due to car title loans.[3] This is particularly detrimental to Arizona's 514,290 veterans and communities of color, populations which the payday and car title loan industries target and exploit. The CFPB's rules must be stronger in reining in these types of abusive loans as well.

Scott's story demonstrates the harm predatory car title lending can cause. To buy Christmas presents and pay off some bills, Scott, a father of two and a U.S. Air Force veteran, received a $2,000 car title loan. He was told that his monthly payment was $150 but soon realized that he also had to pay $300 a month in interest. As he fell behind on his payments, the lender called his references repeatedly, straining Scott's relationships with his family. Ultimately, Scott woke up one morning to go to work and found that his car had been repossessed.[4] “The money you would get from these people is not worth what’s going to happen later,” Scott said.

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 six payday loans a year to be made without any ability to repay standard. This is six unaffordable loans too many. In addition, the rule exempts longer-term payday loans with high origination fees from its proposed ability to repay test. While we are thankful that this loophole does not apply to car title loans, these loopholes must be closed for payday loans, as well.

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

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[1]Center for Responsible Lending, "States without Payday and Car-title Lending Save $5 Billion in Fees Annually", 2016, http://www.responsiblelending.org/research-publication/states-without-payday-and-car-title-lending-save-5-billion-fees-annually

[2] Consumer Federation of America and Center for Economic Integrity, "Wrong Way: Wrecked by Debt, Auto Title Lending in Arizona," January 2016, http://consumerfed.org/wp-content/uploads/2016/01/160126_wrongway_report_cfa-cei.pdf

[3]Center for Responsible Lending, "Payday and Car Title Lenders Drain $8 Billion in Fees Every Year", 2016, http://www.responsiblelending.org/research-publication/payday-and-car-title-lenders-drain-8-billion-fees-every-year

[4] "Critics Warn of Auto Title Loans’ Mounting Interest", 2016, http://www.trivalleycentral.com/casa_grande_dispatch/business_news/critics-warn-of-auto-title-loans-mounting-interest/article_49283346-a100-11e5-9ea8-3f11223774ec.html

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 ninety days every twelve 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." Time and time again, Primavera hears about families who have gone hungry, gone without medicine or lost their car to the car title lender because of an unaffordable loan. 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 re-borrowing 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 car. At the same time, the Bureau should take care not to sanction industry-wide high rates of defaults and re-borrowing by comparing one high-cost lender's default rates only to other high-cost lenders' default rates.

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 five percent 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 and car title loans.

For the CFPB rule to bring the vicious cycle borrowers like Scott face to an end, we, in Arizona, will need the CFPB to not undermine Arizona's strong law that prevents high cost payday loans. Arizona used to have payday loans, but thankfully now does not due to millions of Arizona voters who voted for the sunset on 400% payday loans in our state. The experience in our state shows that families are better off without payday loans, and we have fought year after year to keep payday lenders bringing their harmful products back into our state. The CFPB rule must declare that loans made in violation of our state law are unfair, deceptive, and abusive. The CFPB proposal must also be stronger to prevent abusive car title loans (including those made under the "registration loan" ruse) that are unaffordable light of a borrower's income and expenses.

Thank you for this opportunity to comment. For further clarification on these comments, please contact: Peggy Hutchison, Chief Executive Officer, The Primavera Foundation, phutchison@primavera.org .

Sincerely,

Peggy Hutchison
Chief Executive Officer for
The Primavera Foundation