October 7, 2016

Monica Jackson
Office of the Executive Secretary
Consumer Financial Protection Bureau
1700 G Street, NW
Washington DC 205552

Re: Docket No. CFPB-2016-0025 or RIN 3170-AA40

To the Consumer Financial Protection Bureau:

The undersigned members of the Legal Impact Network, a community of state-based legal organizations from thirty-one states and the District of Columbia working on behalf of people in poverty, write to express support for and to suggest improvements to Proposed Rule CFPB-2016-0025, RIN 3170-AA4 0.[1] The Proposed Rule would help stem the tide of lenders who prey upon the most financially vulnerable Americans, locking them into a cycle of high-interest borrowing and exorbitant repayment, a cycle known to advocates and targeted borrowers as the "debt trap." The Legal Impact Network applauds the Consumer Financial Protection Bureau (CFPB) for its leadership in helping to provide protection to America's consumers from an industry that profits by harming its customers.

Legal Impact Network member organizations advocate on behalf of the most financially vulnerable people in America. In the case of emergencies or temporary shortfalls in income, our clients often have few financial reservoirs from which to draw. Predatory lending institutions — payday lenders, vehicle and other title lenders, and vendors of longer-term, high-cost "installment loans" — exploit their desperation by extracting disproportionate fees and interest on modest, short-term lines of credit (typically no more than a few hundred dollars to be repaid in full, with high fees and interest, at the time of the borrower's next paycheck). Frequently, our clients lack the means to make these short-term payments, and predatory lenders use this as leverage to extend loans for additional fees, or to refinance loans with even more unfavorable terms, driving our clients further into debt. We have watched payday and other high-cost loans ruin our clients' lives, rendering them unable to provide basic necessities for themselves and their loved ones. Worse still, protections for these borrowers are inconsistent across the United States, with only a limited number of state legislatures stepping in to provide regulatory protection to limit harms caused by the debt trap.

The CFPB's new payday loan rule is an appropriate first step in reducing the harmful impact of payday loans on everyday consumers, especially low-income borrowers. The proposed uniform regulatory framework would require underwriting of dangerous

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[1] Payday, Vehicle Title, and Certain High-Cost Installment Loans; Proposed Rule, 81 Fed. Reg. 47863–48218 (2016) (to be codified at 12 C.F.R. pt. 1041).

financial products targeting low-income consumers, limit the number of loans a lender may offer to customers who cannot afford them, and curb unfair and deceptive practices in the Payday Lending Industry. This is a crucial improvement to the patchwork of protections currently in place, provided that it does not undermine protections in those states that already have strong measures preventing exploitative lending practices.

While the proposed rule in its current form would constitute an improvement over the current predatory lending environment, the Legal Impact Network recommends several improvements to the language of the proposed rule to enhance its protection of consumers:

- First, the Final Rule should include stronger restrictions on "loan flipping" by limiting exceptions to proposed language intended to prevent lenders from offering new predatory loans or harmful refinancing terms to individuals already under the burden of repayment obligations.

- Second, the CFPB should strengthen proposed underwriting requirements. Underwriting requirements should consider the borrower's income and her expenses, should have discernible guidelines that limit payday lender discretion, and should be applied to any high-interest loan through which the lender takes control of a borrower's checking account, property, or wages.

- Third, the Final Rule must explicitly commit to the support and protection of existing state laws that deter or prohibit predatory loans and make clear that its provisions in no way supplant or obviate stronger consumer protections that states have enacted or may enact in the future.

- Finally, the Legal Impact Network recommends several modifications to the language of the Proposed Rule that will expand consumer protection to a wider range of predatory lending products, facilitate greater fairness in lending for linguistically diverse communities, and ensure that consumers are not doubly injured when payday lenders seek repeated payment from a borrower's overdrawn bank account.

With the adjustments described above, the CFPB has the potential to dramatically reduce the number of Americans who have their financial footing torn from under them by a business model designed to mine wealth from low-income individuals and communities before discarding them. Limiting the means by which payday lenders can achieve this shameful end means that American communities will have more to invest in their futures, providing many with the beginnings of a path out of poverty.

Low Income Americans Are Harmed by an Unfair High-Cost Lending Landscape

In its explanations for the Proposed Rule, the CFPB has amply described harms to the American public caused by the Payday Lending Industry. Specifically, the CFPB has clearly shown that the Payday Lending Industry traps customers in cycles of "reborrowing,

default, and collateral harms from making unaffordable payments."[2] Compounding the problem, our collective experience as advocates for people in poverty is consistent with the observations of academics and regulators — the Payday Lending Industry "targets those who are already especially vulnerable."[3] Payday storefronts are most concentrated in low-income neighborhoods and neighborhoods where people of color reside; as a result of this targeting, these communities have borne the brunt of the $8 billion in fees that are drained from vulnerable Americans every year through payday and vehicle title loans.[4]

Fourteen states have recognized these egregious practices and created usury caps that functionally prohibit payday loans. Similarly, the Department of Defense has decried the devastating impact of payday and other high-cost lending on vulnerable consumers.[5] In an effort to protect members of the military who have been victimized by unscrupulous lenders, Congress passed the Military Lending Act, which prohibits the type of lending[6] that precipitated the Proposed Rule by "protect[ing] service men and women from predatory credit practices [to ensure] military families receive the consumer protections they deserve."[7] While Congress has acknowledged the threat that the short-term, high-cost lending market poses to members of the military, everyday consumers face these same threats and most remain unprotected from them.

The CFPB has demonstrated its awareness of the harms to consumers caused by the Payday Lending Industry, which are well-documented in the media,[8] academia,[9] and courts.[10] These harms are also evident in the stories that borrowers have shared with advocates in the Legal Impact Network. Borrowers' experiences demonstrate the calamitous impact high-cost, short-term lending has on low-income consumers. The harms suffered by these clients are consistent with those documented by the CFPB, including the

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[2] 81 Fed. Reg. at 47920.

[3] Krista R. Granen, *Can Local Governments Provide Protection to Vulnerable Communities in California, A State Which Has Legalized Predatory Payday Lending and Failed to Pass Reform?*, 12 Hastings Race & Poverty L. J. 57, 59 (2015).

[4] Diane Standaert and Delvin Davis, Center for Responsible Lending, *Payday and Car Title Lenders Drain $8 Billion in Fees Every Year* (2016), *available at* http://www.responsiblelending.org/sites/default/files/ nodes/files/research-publication/ crl_statebystate_fee_drain_may2016_0.pdf .

[5] *See* U.S. Dept. of Defense, *Report on Predatory Lending Practices Directed at Members of the Armed Forces and Their Dependents* (Aug. 9, 2006).

[6] The MLA caps short-term lending at 36% APR. 10 U.S.C. § 987(b).

[7] Press Release, U.S. Department of Defense, *Department of Defense Issues Final Military Lending Act Rule* (July 21, 2015) (announcing the issuance of the final Military Lending Act rule).

[8] *See, e.g.*, Editorial, *Cracking Down on Predatory Payday Lenders*, NEW YORK TIMES, Aug. 29, 2013 (describing predatory nature of payday loans).

[9] *See, e.g.*, Zoë Elizabeth Lees, *Payday Peonage: Thirteenth Amendment Implications in Payday Lending*, 15 Scholar: St. Mary's L. Rev. & Soc. Just. 63, 93 (2012) (detailing long-term financial harms to communities as a result of payday lenders).

[10] *See, e.g., Ward v. Lombardo, Davis & Goldman*, LLC, No. 11–CV–114A, WL 2600642 (W.D.N.Y., June 29, 2011) at *1 (finding violations of Fair Debt Collection Practices Act, including harassment; false and misleading representations; abusive language and others where payday lender hired debt collector to pursue borrower who could not afford payments).

"loss of . . . housing, shut-off of utilities, and an inability to provide basic requirements of life for the consumer and any dependents" highlighted by the CFPB.[11]

Their stories humanize and underscore the pressing need for swift, decisive regulation of the Payday Lending Industry.

Illinois:

A client who asked that her name not be used reached out to the Sargent Shriver National Center on Poverty Law hoping to participate in the Shriver Center's support for CFPB regulation of the Payday Lending Industry. In order to pay off tickets and have a boot removed from her vehicle, this client initially borrowed $300 for a $50 fee and an A.P.R. of 435% from First Cash Advance. These tickets also left her short on rent and when she could only repay a portion of what she owed on the loan, she was convinced by an employee of First Cash Advance to reborrow the full $300. To take out a loan of this same amount, she was charged another fee. When she returned to repay her initial $300 loan, an employee encouraged her to take out yet another loan, this time for $500, that she was told repayment had made her eligible for. She was then overwhelmed by lender solicitations, and as her financial crisis mounted without alternative lines of credit, she found herself dependent on taking out new high cost, short term payday loans to pay off old ones. Eventually she was ineligible for additional payday loans due to a "cooling off" period required in Illinois. Undeterred, lenders offered her largely unregulated installment loans at interest rates of over 700%. Drowning in debt and desperate to stay afloat, the client eventually owed on over 25 installment and payday loans. Counting bank fees from repeated lender efforts to withdraw non-existent money from her account and outstanding debt to payday lenders, she at one point owed over $15,000. She and her family have suffered in multiple ways, but she especially laments that payments to payday lenders took precedent over personal care, including periodontal treatments for an inflammation disorder. Because she was unable to afford these treatments during her struggle to make payments to lenders, she no longer has teeth.

Beginning with her first payday loan in 2006, the client's cycle of debt has lasted over 10 years. Even after settling her debts and developing repayment plans through the help of a legal aid lawyer, she still owes money on five loans. The client says she will never take out another payday loan, but still sees vulnerable members of her community, including family, drawn in by payday lenders due to their prevalence in her community and promises of easy access to cash.

South Carolina

Ms. Nancy is 84 years old and lives in Irmo, South Carolina. Despite working as a nurse in New York City for over 20 years, she has no retirement fund or pension.

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[11] 81 Fed. Reg. at 47991.

Ms. Nancy's monthly income consists of $753 from SSI and $57 in food stamps. She has one son and two daughters, along with nine grandchildren. She has buried three of her children.

In 2014, Ms. Nancy borrowed about $3,000 dollars from Smart Loans to help pay her bills and because she needed to pay funeral costs for her recently deceased son. Given her limited income, Ms. Nancy could not keep up with the high payments from Smart Loans, which were more than $600 a month. After seeing an advertisement for MotorMax and with no better alternative she applied to refinance her loan. After Motor Max completed the switch, the company told Ms. Nancy to come in to not only sign her new contract, but also to pick up a $500 check. Before having her sign the new contract, Motor Max inquired only about Miss Nancy's income and never asked about her bills or monthly living expenses. By the time they were finished Motor Max had her indebted for $5,604.21 and set her monthly payments at $319.28. She would pay APR of 51% and payments would continue for 33 months. For almost two years Ms. Nancy has struggled to make this payment, often not taking care of her monthly needs. By the time Ms. Nancy finishes her 33 payments, she will have paid back $10,536.24. Ms. Nancy has been admitted to the emergency room twice in the past few months, incurring more than $500 dollars in debt for the ambulance rides. While in the hospital Ms. Nancy called Motor Max and informed them that she would be behind on her payment because she could not leave the hospital to deliver payment. Motor Max responded with a $16.50 late fee. Motor Max also requested that she mail them her debit card so that the company could make automatic withdrawals.

Neither loan made to Ms. Nancy would have been approved had the companies engaged in basic underwriting and inquired about Ms. Nancy's financial status. This practice is actually required under South Carolina state law, but the state regulator has taken the position that they are not empowered to enforce the requirement. Ms. Nancy is trapped in a debt cycle because of an inability to pay, a cycle that should never have been initiated.

Nebraska

During a home visit to a family of four (a husband, wife and two children) in Nebraska, advocates learned that two years earlier, the family took out a loan from a paycheck advance lender to cover an emergency. Eventually unable to make payments, they found an unsecured loan on the internet and were stuck in debt. At the time of the visit, this family had already made $2,000 in payments for what was originally a $500 loan. Because of their severe financial distress, caused in part by these exorbitant payments, the family was 35 days behind on their mortgage payment and praying that a state tax refund would come through so that they could make payment. The impacts of this financial crisis pervade their lives. One of the children has a condition that required travel to Omaha for medical care. Their mechanic warned them that a tire on their car was in danger of blowing. Unable to afford replacing the tire, they did not make that appointment. They at

present see no way out and can only hope to scrape together enough resources to keep up their loan payments and cover their bare necessities.

Ohio

The Legal Aid Society of Southwest Ohio recently represented a widow with a disability who was preyed upon by unscrupulous lenders. In June 2013, she visited an auto title lender because she needed money to pay her water bill. She received a $600 loan that required her to repay the full principal amount plus $202 in fees in 30 days. The most basic inquiry would have revealed to the lender that this total payment of $802 exceeded her fixed monthly income by almost $100 and would be impossible for her to pay. When she inquired about making a minimum payment when her loan came due, she was told that she could pay $212 instead of the full balance. What the lender did not explain to her, was that her original loan did not allow for partial payments, and that by this payment she would instead be rolled over into a new 30-day loan, with new fees and interest attached. In this same manner, the consumer unknowingly refinanced her loan four more times over the course of five months. In December 2013, when she was unable to make a "minimum payment," her 2000 Honda Accord was repossessed and sold. The auto title lender then billed her for a $1,000 deficiency.

Minnesota

Sherry Shannon, a single adult whose only income is from Social Security Disability, lives in Roseville, Minnesota. In testimony before a Minnesota Senate committee in 2014, she described taking out a $140 payday loan. She "was told to come back on the third of the month to pay my loan. So I paid the amount and took out a new loan on the same day to cover my expenses. Every month when I receive my social security check, I pay off my loan and take out a new one — and I don't see how I'm going to get out of this cycle. Today, I owe $264, and the APR of my current loan is 171%. In the last year, I've paid nearly $500 in fees to Payday America but I still owe them $264.50. After a few loans, I was stuck. Once you're in this trap, it gets harder and harder to get out."

There are thousands of stories like these, providing overwhelming evidence that payday and other high-cost lending hurts borrowers. The CFPB's obligation to "protect consumers from unfair, deceptive or abusive practices"[12] compels action on the issue of short-term, high-cost lending.

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[12] Consumer Financial Protection Bureau, *About Us*, *available at*, http://www.consumerfinance.gov/about-us/the-bureau/

Payday Lending is Structured to Exploit and Harm Consumers

Among financial actors, the Payday Lending Industry stands apart as an exploitative burden on American communities. The CFPB has acknowledged that the industry's profit model actually depends on consumers' inability to repay what they borrow.[13] What's more, the Bureau notes that "[t]he majority of lending revenue earned by storefront payday lenders and lenders that make single-payment vehicle title loans comes from borrowers who reborrow multiple times and become enmeshed in long loan sequences."[14] Even members of the Industry itself admit that "[t]he theory in the business is you've got to get that customer in, work to turn him into a repetitive customer, long-term customer, because that's really where the profitability is."[15]

In other industries, customers could arguably depend on the market to regulate bad behavior. In payday lending, however, self-regulation due to market forces and competition simply does not happen. Payday lenders do not undercut each other with lower interest rates and fees; in fact, "no competition seems to occur."[16] Rather than compete to make their products more desirable and worthwhile for consumers, payday lenders instead count on customer desperation and predatory practices to charge the maximum possible. The stark differences between the loans pushed by the Payday Lending Industry and virtually every other financial product offered to Americans itself justifies strong regulations to protect consumers.

Underwriting is the Backbone of an Effective Rule

Proposed 12 C.F.R. § 1041.5 for Covered Short-Term Loans and § 1041.9 for Covered Long-Term Loans form an appropriate beginning for the underwriting requirements of the Proposed Rule. These requirements will alleviate many of the harms caused by irresponsible high-cost lending simply by preventing payday lenders from offering loans to borrowers they know are unable to afford them. Payday lenders should be held to the standard of almost all other financial industries offering credit: "[M]aking loans without regard to the borrower's ability to repay stands in stark contrast to the practice of lenders

[13] 81 Fed. Reg. at 47935. ("Lenders' business model depends upon a substantial percentage of consumers not being able to repay their loans when due and, instead, taking out multiple additional loans in quick succession.")
[14] *Id.* at 47921.
[15] Bethany McLean, *Payday Lending: Will Anything Better Replace It?* THE ATLANTIC, May 2016; http://www.theatlantic.com/magazine /archive/2016/05/payday-lending/476403/ (quoting the admission made by Chief Executive Officer of Cash America, Daniel Feehan).
[16] Michael Kenneth, *Payday Lending: Can "Reputable" Banks End Cycles of Debt?*, 42 U.S.F. L. Rev. 659, 690 (2008).

in virtually every other credit market, and upends traditional notions of responsible lending enshrined in safety-and-soundness principles as well as in a number of laws."[17]

Experiences of Legal Impact Network clients strongly support the CFPB's assertion that the practices currently held out by the Payday Lending Industry as "underwriting," are designed only to prevent fraud and "assess whether the lender will be able to extract payments from the consumer."[18] In Illinois, clients relayed that they were typically only asked to prove their employment, provide a check, and prove they had a reliable phone number. Presumably, these factors were used to show that they had income from which the payday lender could draw, an account that could be mined for cash, and a way that the borrower could be contacted by debt collectors. This process has little or nothing to do with responsible lending or concern for the customers who are taking out loans. The most financially vulnerable consumers deserve the strongest protections from unscrupulous lending. Underwriting in an industry where businesses target customers in low-income areas and communities of color because these individuals are less likely to have financial alternatives is a basic protection that should be implemented immediately.

Finally, Legal Impact Network members do not believe that "off ramps" — extended payment plans offered when it becomes clear that a borrower cannot repay — are a sufficient substitute for strong, consistent underwriting provisions across loans. Too much discretion would lie with an industry that has already proven it will not responsibly and fairly consider the basic well-being of its customers. As investigations showed "lenders train employees not to mention repayment plans until after employees have offered renewals, and only then mention repayment plans if borrowers specifically ask about them."[19] Underwriting should be required for the issuance of all or the vast majority of short-term, high-cost loans in America.

The CFPB Must Close Loopholes to Prevent Loan Flipping

Encouraging and inducing repeated reborrowing to lock consumers into long-term cycles of debt is one of the most dangerous financial threats to individuals in the communities served by the Legal Impact Network. As written, many of the provisions of the Proposed Rule, including cooling-off periods and others, are a first step in blunting the dangers of loan flipping. However, a number of other provisions include shortcomings that would enable payday lenders to continue their abusive practices. We recommend the following improvements to the Proposed Rule

- Proposed 12 C.F.R. § 1014.2(a)(15)

[17] 81 Fed. Reg. at 47996.
[18] *Id.* at 47941.
[19] *Id.* at 47925.

The definition of "outstanding loans" in this section should be broadened beyond only those loans consumers have paid within the previous 180 days.[20] Mounting debt obligations, regardless of how old, are an impediment to financial stability and have a direct impact on a borrower's ability to repay any new loan. These loans must be considered in the ability to repay analysis

- Proposed 12 C.F.R. § 1014.6(b)(2)

Under the proposed language of this section, payday lenders would be exempt from a presumption of unaffordability where borrowers seek to "reborrow no more than half of the amount that the consumer has already paid on the prior loan."[21] This is faulty logic. Any need to reborrow signals potential financial problems and in many cases reflects a new or renewed financial crisis and decreased ability to repay new loans. Moreover, conversations with consumers suggest that new loans and rollovers — even for lesser amounts — are designed to keep consumers under the control of the lender and subject to a system the CFPB has acknowledged is skewed toward the lender by design. Any exception with the potential to extend a borrower's time beholden to a payday lender, such as the exemption in proposed 12 C.F.R. §1041.6(b)(2), should for this reason be rejected.

- Proposed 12 C.F.R. § 1014.6(d)

The Proposed Rule would prohibit a consumer with an outstanding loan that is seven days or more delinquent from taking out a new loan with the same lender.[22] The Legal Impact Network generally supports this section, but believes that *any delinquency*, not just one of seven days or more, should trigger a presumption that a new payday loan is unaffordable for the borrower. Delinquencies, regardless of their length, should signal to any prudent lender that the borrower does not have the means to repay a new loan. Thus, the proposed seven day requirement is unreasonable.

- Proposed 12 C.F.R. § 1014.6(f)

As written, the Proposed Rule would establish a presumption of unaffordability when a consumer has any covered short-term loan outstanding and for 30 days thereafter.[23] *The Legal Impact Network believes the Bureau's proposed "cooling off period" should be extended to 60 days*, which was the originally proposed amount of time for the cooling off period.[24] In the Legal Impact Network's opinion, it is highly unlikely that a borrower will fully recover from a financial shock necessitating the use of payday or other predatory loan products within 30 days. Instead, the CFPB should build in additional time for the process

[20] *Id.* at 47907.
[21] *Id.* at 47963.
[22] *Id.* at 48170.
[23] *Id.*
[24] *Id.* at 47951 (describing a proposal by the Bureau "to require lenders to determine that a consumer will have the ability to repay a covered short-term loan without needing to reborrow for 60 days.").

of re-balancing a budget to meet not only basic living expenses, but also to account for setbacks caused by repayments to lenders.

- Proposed 12 C.F.R. § 1014.7

This section of the Proposed Rule is among those that most concerns advocates in the Legal Impact Network. As written, it would allow payday lenders to issue "step down loans," a total of 6 per year, without performing any ability to repay assessment on those loans under certain conditions. The Legal Impact Network adds its name to the "several hundred national and state consumer advocates" who oppose this exception.[25] This proposed section will result in payday lenders continuing to issue multiple unaffordable loans within a short period of time to a single borrower. Advocates who are familiar with the patterns of predatory behavior by the Payday Lending Industry know this to be a disastrous outcome for any consumer.

As written, the Proposed Rule is more lenient on a dangerous industry than the guidance of the Federal Deposit Insurance Corporation is in ensuring bank deposit advances do not jeopardize the financial wellbeing of consumers.[26] The communities preyed upon by the payday lending deserve the same protection of customers who seek out conventional banking credit, and the exception should be eliminated. There is no reasonable explanation for easing underwriting requirements when the Bureau has full awareness of the dangers of multiple high-cost loans to the borrowers targeted by the Payday Lending Industry.

Repeated Withdrawals After Denied Transactions Compound Financial Harms to Borrowers

Apart from the multitude of dangers high-cost, short-term lending already poses to borrowers, the practice by lenders of repeatedly making unauthorized withdrawal attempts on a borrower's account, even after notice that the account has insufficient funds, is an area of great concern to many of the communities served by the Legal Impact Network. These withdrawals place borrowers in greater peril than they were already facing, adding overdraft and other fees charged by banks to the mountains of debt accumulated through payday loans.

As written, proposed 12 C.F.R. §1041.14 would prohibit lenders from making a third attempt to withdraw payment from a borrower's bank account after two unsuccessful attempts in succession, unless the borrower gives "new and specific authorization" for an additional attempt.[27] The Legal Impact Network generally supports the logic behind this

[25] *Id.* at 47970.
[26] Federal Deposit Insurance Corporation, *Guidance on Supervisory Concerns and Expectations Regarding Deposit Advance Products*, 78 Fed. Reg. 70552 (Nov. 26, 2013) (requiring covered banks to determine ability to repay loans, limiting deposit advances to six per customer per year).
[27] 81 Fed. Reg. at 48048.

section. Given the mechanics of the current payday lending system, it is unsurprising that many borrowers lack funds necessary to repay a loan. Where this occurs and payday lenders seek payment anyway, borrowers who are already clearly struggling to make ends meet are placed in further peril due to "insufficient funds" fees that virtually every American bank charges when an account is overdrawn. Borrowers are also frequently subject to fees charged by the lender for a failed payment. Sinking borrowers further into debt by attempting to extract money from them in spite of notice that there is no money to be had is an intolerable and abusive practice.

However, the CFPB's Final Rule should be amended to provide greater protections than appear in its Proposed Rule by requiring notice to borrowers for a *single* failed attempted withdrawal and a request for authorization from the borrower for any additional withdrawal after one failed attempt. There is no sound justification for an additional "free" chance to withdraw money from an empty account, compounding the borrower's already dire situation.

The Consumer Financial Protection Bureau Should Fortify the Rule to Provide Greater Protection from Predatory Lenders.

The Proposed Rule would benefit from two additional amendments to its language as written. First, lenders should be required to provide any disclosures mandated by the Final Rule in the language in which the loan was transacted and proposed 12 C.F.R. § 1041.7(e)(1)(vii) should be amended accordingly. Communities of color and immigrant communities are among those most targeted by the Payday Lending Industry. These communities are, in general, more likely to be comprised of non-English speakers. To prevent lenders from further taking advantage of unequal bargaining power, the Final Rule should require that all notices and disclosures mandated by the Final Rule are provided in the language used to negotiate the transaction. Similar protections in states such as Minnesota verify that this is a necessary and effective protection.[28]

Second, proposed 12 C.F.R. § 1041.11(c) — which currently disqualifies lenders from exemptions to the ability-to-repay requirement if a loan would result in the consumer being indebted on more than three outstanding loans from the lender or its affiliates within a 180-day period[29] — should be amended to disqualify lenders from exemption where the proposed loan would result in three outstanding payday debts to *any* lender.

Legal Impact Network clients are inundated with solicitations from the many lenders that target their communities. The dangers or repeat borrowing are equally significant whether a borrower uses one lender or multiple lenders. Allowing the industry as a whole to do that which no one lender can would significantly undermine the effectiveness of this Proposed Rule. Lenders must be required to review records of non-

[28] *See* Minn. Stat. § 47.601, subd. 2(c) (2015) (requiring that contracts and disclosures offered by short-term lenders be "written in the language in which the agreement was negotiated . . . .").
[29] 81 Fed. Reg. at 48174.

affiliated lenders using a "registered information system" already proposed by the CFPB.[30] Situations in which borrowers turn to new payday lenders to pay outstanding payday debts should be avoided at all costs.

States that Ban or Place Greater Limits on Predatory Lending Than Those Set By The Propose Rule Should Be Explicitly Protected.

Fourteen states and the District of Columbia effectively prohibit payday loans through the use of low usury interest rate limits. Contrary to the doomsday prognostications of the Payday Lending Industry, lending markets in these jurisdictions have adapted and consumers have not been faced with the disappearance of credit.[31] While the Legal Impact Network acknowledges that the CFPB does not have the authority to set limits on interest rates, we know that Industry lobbyists are pointing to these pending rules as evidence that the stronger protections available to states are unnecessary and inadvisable. It is of paramount importance that the Bureau explicitly state that the Proposed Rule is complementary to stronger existing state protections and does not replace, preempt, or obviate them. The Legal Impact Network believes that the CFPB can strengthen its statement that state and local governments would still have the ability "to adopt additional regulatory requirements (whether a usury limit or another form of protection) above that floor as they judge appropriate to protect consumers in their respective jurisdictions."[32] A clear statement that the Proposed Rule will set a national floor for the regulation of high-cost lending which does not conflict with stronger, proven regulation at the state level should appear in plain language in the Final Rule.

Conclusion

For decades, predatory short-term lending has devastated the financial wellbeing of American communities, especially low-income communities and communities of color, as unscrupulous lenders have too frequently operated without meaningful oversight. The CFPB's efforts in this arena are of the utmost importance for the security and futures of low-income people in the United States. The Legal Impact Network believes the Proposed Rule, with the alterations described above, would be a monumental step to improve the lives of our clients.

Thank you for your consideration of these comments and the opportunity to share our perspective. For questions, please contact Gavin Kearney, Director of the Legal Impact Network, gavinkearney@povertylaw.org; and Kevin Herrera, Staff Attorney at the Sargent Shriver National Center on Poverty Law, kevinherrera@povertylaw.org.

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[30] *Id.* at 48172.

[31] University of North Carolina Center for Community Capital, *North Carolina Consumer After Payday Lending: Attitudes and Experiences with Credit Options* (Nov. 2007) ("More than twice as many former payday borrowers reported that the absence of payday lending has had a positive rather than negative effect on their household.")

[32] 81 Fed. Reg. at 47913.

SUBMITTED ON BEHALF OF THE FOLLOWING MEMBERS
OF THE LEGAL IMPACT NETWORK

Alabama Appleseed
Colorado Center on Law and Policy
Columbia Legal Services (Washington)
Empire Justice Center (New York)
Florida Legal Services
Hawaii Appleseed
Kentucky Equal Justice Center
Legal Aid Justice Center (Virginia)
Legal Aid Society of the District of Columbia
Maine Equal Justice Partners
Massachusetts Law Reform Institute
Mid-Minnesota Legal Aid
Mississippi Center for Justice
Nebraska Appleseed
New Hampshire Legal Assistance
New Mexico Center on Law and Poverty
Ohio Poverty Law Center
Public Justice Center (Maryland)
Rhode Island Center for Justice
Sargent Shriver National Center on Poverty Law (Illinois)
South Carolina Appleseed Legal Justice Center
Tennessee Justice Center
Texas Legal Services Center
Vermont Legal Aid
Western Center on Law and Poverty (California)
William E. Morris Institute for Justice (Arizona)