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September 20, 2016

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

Re: West Virginia Center on Budget and Policy 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 West Virginia Center on Budget and Policy (WVCBP) 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 is a critical step in stopping the harms of unaffordable loans, but it must be strengthened to ensure it stops the debt trap once and for all.

Since 2007, the WVCBP has used research and analysis to advance the well-being of West Virginia communities, and to promote and support the essential role of government in improving the quality of life in the state. Continuing to keep payday lending out of West Virginia would protect our most vulnerable population from falling into a debt trap caused by these high-interest loans.

Payday Lending in West Virginia

Payday lending has always been illegal in West Virginia thanks to the state's strong usury laws, however, over the years, the payday lending industry has worked very hard to get around these laws.

One loophole that was used here and in other states was the "rent-a-bank" model. Payday lenders set up store fronts where consumers could go to get loans. The loans were issued not by the payday lender but by banks chartered in other states that allow payday lending. These lenders were not bound by West Virginia's usury laws but by the laws in the state where the bank was headquartered.

Since the payday lenders entered into contracts with the banks that actually placed the economic risk of the loans back on the payday lenders, these contracts were exposed for the scams that they are. And the banks were forced to stop participating in these practices.

Next the payday lenders moved to the Internet arguing that their loans were governed by their home states, not the states where their customers were located. West Virginia's Attorney General challenged

that notion, arguing that the loans were actually made in West Virginia and governed by West Virginia law. Payday lenders had to settle with their customers in West Virginia and refund fees and other costs.

Payday lending remains illegal in West Virginia despite repeated attempts by the payday lending industry to circumvent our state's protective laws. This is why we are calling for a strong rule to be issued by the CFPB. Every year West Virginia residents save over \$48 million in payday lending fees because they are protected by the state's strong laws.

In fact, the West Virginia Attorney General's office was successful in getting Internet payday lending collection agencies to return all payments they collected and agree to stop collecting them. There were two kinds of relief: cash refunds to consumers and cancelled debts for consumers.

There were 110 total settlements, 84 with lenders and 26 with collection agencies. These totaled \$1.34 million in cash refunds and \$1.11 million in cancelled debts.

One of the first complaints to the West Virginia Attorney General's Consumer Protection Division involved a woman from Pineville in Wyoming County who had gotten Internet payday loans from over 15 different lenders. She and her husband, who was gainfully employed in the coal-mining industry, were driven into bankruptcy. Her complaints, however, led to formal investigations of many Internet payday lenders that ultimately led to successful settlement agreements.

Closing loopholes in the proposed rule

West Virginians are part of the 90 million in the United States who live in payday-lending-free states. Protecting these hard-working West Virginians from falling victim to payday loans will keep them from falling into the debt trap. With one of the highest poverty rates in the nation, West Virginia does not need high-interest loans that would create further debt for low-income workers and their families.

The proposed rule contains a long list of loopholes and exceptions that raise major concerns for our organization. We strongly urge the CFPB, at a minimum, to:

Require a meaningful "ability to repay" standard that applies to all loans, without exceptions and with no safe harbors or legal immunity for poorly underwritten loans. The "ability to repay" provision should require consideration of both income and expenses, and state that loans that do not meet a meaningful ability to repay standard are *per se* unfair, unsafe, and unsound. That means eliminating the six-loan loophole that would allow lenders to issue six loans without any scrutiny of the borrower's ability to repay. Instead of protecting borrowers, this loophole would burden them with up to ten unaffordable loans a year. A weak CFPB rule that allows lenders to make unaffordable loans or that includes a safe harbor would not only allow for continued exploitation of people struggling to make ends meet. It would also give payday lenders unwarranted ammunition to knock down existing state protections, as they have been aggressively seeking to do for years.

Strengthen the enforceability of strong state consumer protection laws, by providing that offering, making, facilitating, servicing, or collecting loans that violate state usury or other consumer protection laws is an unfair, deceptive, and abusive act or practice (UDAAP) under federal law. The CFPB's success in deploying its UDAAP authority against payday lenders such as CashCall – which a federal court recently found had engaged in UDAAPs by servicing and collecting on loans that were void or uncollectible under state law, and which the borrowers therefore did not owe –

as well as against debt collectors, payment processors, and lead generators, provides a strong legal foundation for including this explicit determination in its payday lending rule. By doing so, the CFPB will help ensure the viability and enforceability of the laws that currently protect people in payday loan-free states from illegal lending. At the very least, the CFPB should provide, in accordance with the court's decision against CashCall, that servicing or collecting on loans that are void or uncollectible under state law are UDAAPs under federal law.

Weaknesses in the proposed rule will inevitably be seen as sanctioning high-cost loans that are illegal in West Virginia. This would weaken laws that protect tens of millions of Americans in payday loan-free states. It would circumvent West Virginia's strong history of consumer protection and aggressively going after predatory lenders, keeping them outside our borders.

We view it as the CFPB's responsibility to keep the door closed on the payday lending industry in West Virginia. We do not need a federal loophole that will be exploited and lead to payday lending abuses.

Families in our state—and everywhere—are better off without these high-cost, unaffordable loans. We urge the CFPB to issue the strongest possible rule, without loopholes.

Thank you for this opportunity to comment. We appreciate the work that you have done so far to protect consumers and hope that this rule will become as strong as possible in order to truly end the debt trap. For further clarification on these comments, please contact Linda Frame at 304-720-8682.

Sincerely,

West Virginia Center on Budget and Policy