

July 21, 2016

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

Re: The National Association of Social Workers, West Virginia Chapter 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 National Association of Social Workers, West Virginia Chapter 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. The rule must be strengthened to ensure that a weak rule does not undermine the strong combination of laws that has long been enacted in West Virginia. Since 1972, the National Association of Social Workers, West Virginia Chapter has represented the interests of over 4,000 licensed professional Social Workers as well as the vulnerable and disenfranchised populations they serve. Our mission includes providing communications, representation and advocacy for policies that strengthen families and communities, assure a strong social safety net, and promote better physical and mental health.

Due to our strong interest rate cap, people in our state are protected from the harms of the typical 300% APR payday and car title loans. We appreciate that the CFPB clearly stated in the proposed rule that states with rate caps, such as ours, provide stronger protection than what the rule can provide. However, we are concerned that the weaknesses in the proposed rule will be seen as the CFPB sanctioning these harmful loans that our state does not allow. The loopholes in the proposed rule must be closed to ensure that the CFPB proposal does not undermine our state protections against high-cost lending.

Our experiences demonstrate that people are better off without these harmful, high-cost and unaffordable payday loans. We see every day that people have other options besides falling into the payday lenders' debt trap.

Annually, our citizens save \$86,286,184 that would otherwise be spent on fees to float unaffordable payday and car title loan debt.¹ The savings from our rate cap benefit not only individual people and communities 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

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>

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.

Although not as strong as our state interest rate cap, which we understand the CFPB lacks the authority to establish, the core principle of the CFPB's proposal is the right approach – requiring lenders to simply ensure that a loan is affordable without having to re-borrow or default on other expenses. In light of the CFPB's inability to set a rate cap, a strong ability-to-repay test is critically important. 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 to this standard. For example, the proposal allows six 300% APR payday loans a year to be made without any ability-to-repay determination. 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. These loopholes must be closed.

We are also concerned that the proposed rule does not go far enough to stop borrowers from flipping one unaffordable loan to the next. The CFPB should do more to ensure that short-term debt does not 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." Lenders should be required to use an objective measure for projecting a borrower's basic living expenses and avoid over-reliance on back-end measures like default and reborrowing rates. Even low default rates are not sufficient evidence of ability to repay, given the lender's ability to coerce repayment through control over the borrower's bank account or car title. At the same time, the Bureau should take care not to sanction industry-wide high rates of defaults and reborrowing by comparing one payday lender's default rates only to other payday 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 5% of a borrower's monthly income. Examining income only is not enough to determine if a loan is affordable. We call on the CFPB to close the remaining loopholes and issue the strongest rule possible to stop the harmful debt trap of unaffordable payday loans.

For the CFPB rule to help us to continue to protect West Virginia consumers, the CFPB must not undermine our state's rate cap that effectively protects against payday and car title loan abuses. Families in our state are better off without these high-cost, unaffordable loans. The CFPB must enact a strong rule, without loopholes, and declare the loans made in violation of our state law are unfair, deceptive, and abusive.

Thank you for this opportunity to comment. For further clarification on these comments, please contact:
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Sincerely,

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