CENTER FOR SURVIVOR AGENCY & JUSTICE

October 7, 2016
The Honorable Richard Cordray
Director
Consumer Financial Protection Bureau
1700 G Street, NW
Washington, DC 20552

Re: Center for Survivor Agency and Justice (CSAJ) 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 Center for Survivor Agency and Justice, along with a national coalition of partners and supporters, files this comment in response to the Consumer Financial Protection Bureau's (CFPB) proposed rule on payday, vehicle title, and certain high cost installment loans. We believe that, while the rule is a critical step in curtailing the harms of unaffordable loans, it must be strengthened to ensure that it eliminates the debt trap once and for all, particularly for survivors of domestic and sexual violence who are at substantial risk of harm.

The Center for Survivor Agency and Justice (CSAJ) is a national organization that addresses the critical link between domestic violence and economic security.[1] CSAJ's Consumer Rights for Domestic and Sexual Violence Survivors Initiative enhances economic justice for survivors by building the capacity of and building partnerships between the anti-violence and consumer rights fields, and our Racial and Economic Equity for Survivors Project addresses the systemic economic barriers facing survivors of color, including Latin@s, immigrants, and survivors who are marginalized by their intersecting identities. We submit these comments on behalf of national and state domestic and sexual violence and anti-poverty organizations and experts who have critical insight into the unique and detrimental effects of payday loans on survivors of domestic and sexual violence.

Domestic violence[2] and sexual assault[3] financially devastate survivors in an "economic ripple effect" across the lifespan, placing survivors in greater need of short-term lending strategies.[4] In fact, 99% of

[1] For more details on our mission and work, go to: www.csaj.org

[2] "Domestic violence" and "intimate partner violence" are often interchangeable, but for these comments we use domestic violence for its cultural familiarity. Domestic violence is defined as "a pattern of violent acts and their political framework, the pattern of social, institutional, and interpersonal controls, that usurp a survivor's capacity to determine her destiny" (Stark, 2009).

[3] While research on sexual violence and the specific utilization of payday loans (and their impact) is nascent, there is a clear connection between sexual assault and economic instability. In fact, the National Alliance to End Sexual Assault reported, "Fifty percent of sexual violence victims report that they had to quit or were forced to leave their jobs in the year following their assaults due to the severity of their reactions (source)." Thus, our research refers

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survivors of domestic violence report economic abuse by their partner, with 38% of abusive partners stealing money and assets, 71% building debt, and 78% sabotaging survivors' employment.[5] This is even more concerning for low-income women, who are two times more likely to experience domestic violence and who, as financially vulnerable individuals, are primary targets of the predatory lending industry. Survivors marginalized by race, ethnicity, citizenship and other factors experience disproportionately high rates of both poverty, domestic and sexual violence[6] [7] and are more likely to live in communities that are targeted by payday lenders.[8] Abusive partners use economic coercion to undermine survivors' ability to maintain economic stability and to create dependence on the abusive partner, thereby making it harder for survivors to escape from future violence. For survivors, abuse can create a financial trap, which serves as a barrier to long-term safety.

Predatory lending practices compound this financial trap, further limiting survivors' economic options and exposing them to increased risk of physical violence for years to come.

> *Like countless other survivors of domestic violence, Jane[9], a St. Louis, MO native, left an abusive relationship and experienced financial challenges, stemming from years of economic abuse. Because her safety net was depleted as a result of the abuse, she regularly took out payday loans in order to pay creditors and to keep her utilities on, despite the astronomical interest rates offered by the payday lenders. Jane was desperate for cash, as she was unable to repay the loans, and she was afraid for her safety. Fortunately, she found a local domestic violence program offering access to a non-profit run collaborative bank, and was able to pay back the predatory loans with a no-interest loan. Prior to accessing the bank, Jane had been teetering on the edge of eviction and bankruptcy.*

Imagine the pain and hardship for a survivor of domestic violence who has struggled against fear and financial devastation to leave an abusive relationship only to find herself lured into the trap of predatory lending. When looking to flee abuse or create a new life for themselves and their children, survivors are burdened by the financial decimation of their former relationships, and many look to payday lenders as a financial bridge to safety. Safety is expensive. Survivors wrestle with the costs of transportation, childcare, relocation, legal fees, employment disruption, safety costs (changing locks, getting new

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primarily to survivors of domestic violence, but we acknowledge the potential unique economic impacts of payday loans facing survivors of sexual violence (outside of intimate partner relationships).

[4] Shoener, S. & Sussman, E. (2013). The Economic Ripple Effect of IPV: Building Partnerships for Systemic Change. Source: https://csaj.org/library/view/economic-ripple-effect-of-ipv-building-partnerships-for-systemic-change

[5] Postmus et al., 2011; Adams et al., 2008

[6] Institute for Women's Policy Research, 2015

[7] **Breiding, et al.,** Prevalence and Characteristics of Sexual Violence, Stalking, and Intimate Partner Violence Victimization — National Intimate Partner and Sexual Violence Survey, United States, 2011

[8] King et al., 2005

[9] Not her real name

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documents, etc.), and managing the debt created by their abusive partner. And, because payday lenders are generally outside of the traditional banking and credit system, survivors often feel safer using payday lenders as it minimizes the likelihood that their abusive partner will be alerted to their attempt to access money. While the payday lenders appear friendly and helpful, once in the payday lending debt trap, payday lenders can take control over bank accounts, garnish wages, take away cars, and use harassment and threats to maintain control over the survivor. **Indeed, this payday debt trap mirrors the coercive control and economic abuse perpetrated by the abusive partner the survivor worked so hard to escape.**

This debt trap is even more economically dangerous for survivors marginalized by race, ethnicity, citizenship, and other factors who live in communities with high concentrations of payday lenders and who (for reasons related to historical exclusionary and predatory financial practices) often do not have access to reasonable banking alternatives to get out of high-interest refinanced debt.

The CFPB has a critical opportunity to tighten the rules that would end the debt trap, ultimately increasing safety for survivors of domestic violence. **The core principle of the CFPB's proposal– requiring lenders to ensure that a loan is affordable via an ability-to-repay standard so that a survivor would not have to re-borrow or default on other expenses-- is the right approach.** This is critically important to stopping the harms of this predatory business model, and we strongly support this approach. This basic principle must be applied to every loan – with no exceptions and no room for future evasion. However, the proposed rule contains dangerous loopholes that significantly undermine this standard, and we respectfully submit suggestions to strengthen its efficacy.

The proposal allows too many dangerous exceptions to its ability to repay test. While we applaud the CFPB for proposing an ability-to-repay standard that accounts for a consumer's income as well as their expenses and debt obligations, the proposed rule allows lenders to exempt six of the same type of loans made to consumers from this standard.[10] Given that payday loans come with finance charges that equate to an annual percentage rate of 391% on average, this is six unaffordable loans too many. CFPB should eliminate exemptions from the ability-to-repay test. Further, the proposed repay test states that lenders must allow a reasonable cushion for basic expenses, but permits lenders to use any "reasonable" method to determine it. CFPB should offer clearer guidance on how to calculate "reasonable" estimates to cover basic expenses so it actually works for survivors. For Jane, the survivor from Missouri, offering access to payday loans without checking her ability to pay placed her at dangerous risk of eviction and bankruptcy and turned her "short term" debt into unaffordable long-term debt.

The proposed rule fails to protect against lenders flipping borrowers from one unaffordable loan to the next. The final rule should ensure an appropriate cooling off period, longer than just 30 days as proposed, between each short-term loan. It should also ensure that short-term loan indebtedness does

[10] Payday lenders can make three back-to-back 14-day loans without any underwriting, then need to take a 30-day break, then can do three more. There is 90 days/year cap.

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not exceed a total of 90 days every 12 months, consistent with the FDIC's 2005 Guidelines for Payday Lending[11] 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 to another, debt will continue to pile up and survivors will once again be stuck in a debt trap.

Even a single unaffordable loan can create a cascade of financial consequences for borrowers. Survivors of domestic violence face collateral economic damages from abuse that linger long after a relationship is over. Unaffordable loans merely compound these challenges. 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 urge the CFPB to require an ability-to-repay determination on every loan, with no exceptions.

We support measures to strengthen protections against flipping loans, such as prohibiting more than one refinancing of these loans and/or eliminate origination fees.

The proposed rule does not go far enough to ensure that people have enough money to live on after repaying the loan.

> *Mandy, a survivor of domestic violence and mother of four children in Texas, took out a payday loan of $3500 to take care of her family after leaving an abusive relationship.[12] Mandy said, "It is very scary because these are your children and you have to get out of the situation but take care of the family. I had to take out a loan to pay an attorney for my divorce, help with daycare, and fix my truck and catch up on bills. The payday loan ended up taking the vast majority of my paycheck." Mandy's monthly income of $1000 was not adequate to feed her children and cover the loan costs.*

Right now, the proposed rule would allow lenders to continue to make insurmountable loans to survivors like Mandy. To fix this, lenders should be required to use an objective measure for reasonably projecting a borrower's basic living expenses. The CFPB can and should close the "business as usual" loopholes in the ability-to-repay test by requiring lenders to show that loan payments will leave borrowers with enough money to be able to pay their necessary expenses, so they do not rely on low industry standards as evidence that loans are affordable. Mandy should not have to choose between feeding her children and staying safe.

Many abusive loans still fall outside of the scope of the proposed rule, and should be covered. All loans secured by a bank account or car title should be covered by the rule, regardless of when security is taken. In addition, loans where lenders can aggressively collect by garnishing wages or taking access to a borrower's personal property should be subject to the CFPB's ability-to-repay test. Punishing survivors' attempts to bridge their economic insecurity by taking away other assets or continuing

[11] Also revised, November 2015: https://www.fdic.gov/news/news/financial/2005/fil1405a.html
[12] Texas Council on Family Violence, January 2015

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harassment in new ways is deplorable. We cannot effectively address domestic violence if we legitimize abusive payday lending systems.

Today, 14 states plus the District of Columbia enforce rate caps, which effectively prohibit these dangerous payday loans, and survivors of domestic violence and their families are better off as a result. Capping the rates, as some states have done, is the most effective way to prevent these harms. The CFPB should avoid undermining these strong state laws, and must go further to deem that making or offering a loan in violation of a state law is an unfair, abusive, and deceptive practice.

The CFPB has an opportunity to limit the abusive grip of payday lending that increases danger for survivors struggling to find freedom from abusive partners. In the absence of being able to cap the rates on these abusive high-cost loans, the CFPB rule must close these loopholes and strengthen provisions to ensure a meaningful ability to repay test for each and every loan to curb the vicious cycle of debt for survivors of domestic violence. A strong CFPB rule will foster creative short-term lending interventions and financial options that increase long-term safety for survivors of domestic violence.

On behalf of diverse anti-violence and anti-poverty organizations across the nation and the survivors for whom they advocate, we thank you for the opportunity to comment. The link between domestic violence and economic security is inextricable. CFPB has the opportunity to meaningfully address an abusive system that perpetuates economic and physical insecurity. We therefore, collectively request that you adopt stronger rules to address payday, vehicle title, and high-cost installment loans. For further clarification on these comments, please contact Erika Sussman, Executive Director of CSAJ, at Erika@csaj.org.

Sincerely,

Erika Sussman

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