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September 21, 2016

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

Re: DCRAC 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:

Delaware Community Reinvestment Action Council, Inc., (DCRAC) files this comment in response to the CFPB's proposed rule on payday, vehicle title, and certain high cost installment loans. Thank you for this opportunity. The rule is a critical first step in stopping the harms of unaffordable loans, but the rule must be strengthened to ensure it stops the debt trap.

We are opposed to any carve-outs and loopholes because the small dollar loan market is nimble and can continue to cause our community to be stuck in a quagmire of predatory debt.

We believe:

- Ability to Repay is a strong underwriting guideline and must apply to ALL loans.
- When a borrower has to resort to loan flipping, refinancing, or rolling over a loan, there must be a presumption that ability to repay guideline was not considered.
- Back-end review must be as robust as strong underwriting up-front to assure that the small dollar market conducts itself responsibly.

DCRAC is a Delaware non-profit whose mission is to ensure equitable treatment and equal access to credit and capital through advocacy, education, legislation, and outreach. Our interest in the small dollar market intensified in 1999 when we met a Delawarean at a homeless shelter. He borrowed \$200 and promised to repay \$800 within 30 days. He made 6 payments of \$50 each over the next 6 months to prevent seizure of his car. In Delaware, car is a necessity given our transportation infrastructure. Needless to say, but after paying \$300 in roll-over fees, he not only lost his car, but had a deficiency judgment. When he lost his car, he soon lost his job. Without a job, he could not meet his rental obligations. We met him many years later at a shelter.

On a \$300, two-week payday loan, payday lenders typically charge 521%.¹ Annually, these high cost lenders drain \$520,000 in payday fees and \$29,803,284 in car title fees, a significant loss both to borrowers and to the overall state economy.² This is particularly detrimental to Delaware's 73,443 veterans and communities of color, populations which the payday and car title loan industries target and exploit.

Payday lenders' ability to seize money directly out of borrowers' bank accounts and car title lenders' ability to threaten repossession of a borrower's car means that people are left with little choice but to re-borrow, becoming more deeply mired in a cycle of debt. The CFPB's rule would help by beginning to rein in predatory lending practices.

Gloria James, a Delawarean and a former hotel housekeeper, took out a \$200 loan, expecting to be charged a block rate of \$60. She was instead charged 26 biweekly interest-only payments of \$60 with a final balloon payment of \$60 in interest and the entire principal, resulting in \$1,620 in interest on the \$200 loan. Living paycheck-to-paycheck, Gloria defaulted on the 838% APR loan. She was only able to escape from the debt trap when Delaware's Court of Chancery voided the loan, calling its terms unconscionable.³ This loan also demonstrates the type of harmful longer-term loans payday lenders now make in Delaware to sidestep the protections our state enacted, on bi-partisan lines, for short-term loans of limiting indebtedness to 5 payday loans in a 12 month period.

We are opposed to any carve-outs and loopholes because the small dollar loan market is nimble and can continue to cause our community harm. The industry is already devising plans. According to http://www.vice.com/en_ca/read/payday-lenders-consumer-protection-strategy-atlantis-bahamas

- The industry is exploring ways to restructure long-term installment loans.
- The industry is exploring ways to meet the ability to repay standards without really meeting them.

Ability to Repay is a strong underwriting guideline and must apply to ALL loans.

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 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 6 payday loans a year to be

¹ Center for Responsible Lending, Map of U.S. Payday Loan Interest Rates, 2016, <http://www.responsiblelending.org/research-publication/map-us-payday-interest-rates>

² 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>

³ Delaware Law Weekly, "Court of Chancery Voids 'Unconscionable' Payday Loan", 2016, <http://www.delawarelawweekly.com/id=1202753565784/Court-of-Chancery-Voids-Unconscionable-Payday-Loan?mcode=0&curindex=0&curpage=1>

made without any ability to repay standard. This is 6 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.

Any exception or alternative defeats the purpose of this long standing tenet of responsible lending. The Ability to Repay standard is uniquely important in the payday and title loan world where the lender holds priority access to the bank account or car title. As would be expected, when the lending model is based on the ability to collect, the end result is a debt-trap; regardless of whether it is one loan or six loans.

When a borrower must resort to loan flipping, refinancing, or rolling over, it must be presumed that ability to repay was not considered.

Such presumption may be overcome by a showing of changed financial circumstances. There should be consequences for not taking the ability to repay into consideration.

Back-end review must be as robust as strong underwriting up-front to assure that the small dollar market conducts itself responsibly.

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 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 is a necessary check to assure the underwriting quality as well as the borrower's true financial profile.

It should also ensure that short-term loan indebtedness doesn't exceed a total of 90 days every 12 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.

Without a centralized reporting system, which lenders are now quite used to, there will be no opportunity for the industry to correct itself periodically. We support this requirement.

We support efforts to curb predatory collection practices.

We support the requirement of a notice to consumers at least three (and no more than seven) business days prior to attempting to collect payment from the account.

We also support limiting attempts to collect payment from a consumer's account to two failed attempts at which point a new consumer authorization is required for that and future payments.

We also urge that the lender notice should be required regardless of payment presentment method (e.g., ACH, debit card), and it should include notice of the borrower's right to revoke authorization.

We also urge that a new consumer authorization be required for continued payments after three failed attempts in a 12-month period (consecutive or not).

Ever since we enacted a limit of 5 payday loans a year in Delaware, payday lenders have evaded this protection by migrating to make longer-term payday loans with unlimited rates. CFPB must close all loopholes and strengthen provisions to prevent the harms of long-term payday and car title loans.

Thank you for this opportunity to comment. For further clarification on these comments, please contact Rashmi Rangan, rrangan@dcrac.org, 302-824-5219.

Sincerely,



Rashmi Rangan
Executive Director
Delaware Community Reinvestment Action Council, Inc.