

September 22, 2016

The Honorable Richard Cordray

Director

Consumer Financial Protection Bureau

1700 G Street, NW

Washington, DC 20552

Re: Franciscan Action Network 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 Franciscan Action Network 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. Thank you for the opportunity to submit comments. The rule is a critical step in stopping the harms of unaffordable loans, but the rule must be strengthened to ensure it stops the debt trap once and for all.

Inspired by the Gospel of Jesus, and the example of Saints Francis and Clare, the Franciscan Action Network (FAN) is a collective Franciscan voice seeking to transform United States public policy related to peace making, care for creation, poverty, and human rights. As an organization we do not do direct service, but we have Franciscans all over the world working to help marginalized communities.

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 is critically important to stopping the harms of this predatory business model, and we strongly support this approach. 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.

**The proposal allows too many dangerous exceptions to its ability to repay test**. For example, the draft proposal would allow six payday loans a year to be made without any ability-to-repay standard. Given that payday loans carry costs as high as 391% on average, this is six unaffordable loans too many. Even a single unaffordable loan can create a cascade of financial consequences for borrowers. 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.

**The draft rule does not go far enough to ensure that people have enough money to live on after repaying the loan**. Right now, the proposal may allow lenders to simply continue “business as usual.” To fix this, lenders should be required to use an objective measure for reasonably 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. At the same time, the CFPB 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. 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, and not allow them to rely on already too low industry standards as evidence that loans as affordable.

**The rule does not provide sufficient protections against flipping borrowers from one unaffordable loan to the next.** For short-term loans, the CFPB must do better to ensure that short-term debt does not become unaffordable long-term debt. We are concerned that under the draft rule someone could still be stuck in ten or more short-term loans in a year. The final rule 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 does not 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. We support measures to strengthen protections against flipping loans, such as prohibiting more than one refinancing of these loans.

**Many abusive loans still fall outside of the scope of the proposed rules, and should be covered.** One concerning loophole ripe for exploitation by predatory lenders is the proposal that high-cost longer terms loans are not covered if the lender waits just a few days to can leverage over the borrower's bank account or car title, even if these loans carry rates as high as 300%. 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.

**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 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.



Today, there 14 states plus the District of Columbia that enforce rate caps that effectively prohibit these dangerous payday loans, and families are better off. Capping the rates on payday and car title loans at about 36% is the most effective way to prevent these harms. The CFPB must not undermine 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.

In its absence of being able to cap he rates on these abusive high-cost loans, for the CFPB rule to curb this vicious cycle of debt, it must close these loopholes and strengthen provisions to ensure a meaningful ability to repay test for each and every loan.

Thank you for this opportunity to comment. For further clarification on these comments, please contact Patrick Carolan at (202) 527-7565.

Sincerely,



Patrick Carolan

 Franciscan Action Network Executive Director