

October 1, 2016
The Honorable Richard Cordray
Director, Consumer Financial Protection Bureau
1700 G Street, NW
Washington, DC 20552

Re: Greater Birmingham Ministries comments on proposed rulemaking for payday,
vehicle title, and certain high-cost installment loans

Docket number CFPB-2016-0025 or RIN 3170-AA40

Dear Director Cordray,

Greater Birmingham Ministries (GBM) was founded in 1969 in response to urgent human and justice needs in the greater Birmingham area. We are a multi-faith, multi-racial organization providing emergency services for people in need, while engaging in systemic change efforts to build a strong, supportive, engaged community and pursue a more just society for all people. GBM provides food, clothing and financial assistance to over 10,000 low-income people each year, including over 4,000 children. They all live on the margins economically and many have to choose every month between buying food, paying their utility bills or paying on their payday loans. Many are trapped in a vicious cycle of loans with interest rates so high, they can never hope to repay the principal of the loan.

Over many years, we have been working in coalition to fight against the legal, but extremely dangerous, high-cost consumer credit products that take advantage of borrowers during their time of need. We have focused these efforts on reform of the high-cost payday and auto title lending practices that trap consumers in cycles of unaffordable debt. As you are well aware, in Alabama, payday loans charge 456 percent interest (APR), while auto title loans charge up to 300 percent and carry the risk of vehicle repossession. We are also concerned about high-cost installment loan products that carry triple-digit interest rates and can ensnare borrowers in debt traps.

Payday lending is a particular menace in our city of Birmingham, where the CFPB chose to hold its first-ever field hearing on this subject in 2012. Advocates for responsible lending practices were present that day, when testimony about high-cost debt was solicited, and we were also present when President Obama came to Birmingham last year to announce the CFPB rules in his speech at Lawson State. But the industry was present too, and their voice is being heard by lawmakers. One of our state representatives from Birmingham, Rep. Oliver Robinson, actively partners with the payday lenders' professional association, BorrowSmart Alabama, and is a vocal defender of the industry at the Legislature.

Our city's astonishing density of payday lenders, along with a high number of auto title pawn lenders and other high-cost installment lenders, suggests an astronomical problem, stripping wealth out of our community and preying on our most vulnerable citizens. These lenders are bad

for the borrowers, and bad for economic development. The interest rates they charge are usurious and immoral.

We were optimistic and excited when the CFPB announced proposed rules on high-cost consumer lenders, particularly because federal action would represent a way to address this problem in light of the state legislature's refusal (or inability) to act. For the past several years, we have attempted to achieve policy reform in Montgomery, but have been unable to overcome the well-financed lobbying efforts of the high-cost lending industry. Despite GBM's grassroots efforts, direct actions and influence with local legislators, the lending industry has been able to maintain the status quo. Recent media coverage has detailed extensively the astonishing and disproportionate influence of the lending industry over Alabama lawmakers.¹²³

The proposed federal rules are an opportunity to go around the unethical and disheartening deadlock at the state level, much like federal action in the civil rights era was an important way to circumvent state inaction on segregation, voting rights, and other forms of discrimination. We are proud of the ordinances passed by the City of Birmingham designed at addressing this issue, and many of our neighboring cities have followed in our footsteps by passing laws at the local level. GBM will continue to push municipalities and state lawmakers to achieve reform, and we will continue to work closely with our statewide coalition partners, but we expect substantive and lasting change to result from the finalized CFPB rules.

The proposed rules are a critical step in stopping the harms of unaffordable loans, but must be strengthened to ensure a permanent end to the debt trap of small-dollar, high-cost consumer loans. We don't need to merely add paperwork to the front end of issuing the loan. We need basic product safety standards built into the loans themselves, resolving the characteristics that make these current loans into defective products that don't function as advertised.

At GBM we were pleased to see that the rule includes a basic "ability to repay" standard, which begins to address one of our premier concerns with payday and auto title lending – absence of underwriting. Evaluation of a borrower's income and expenses is one of the most important responsible lending practices.

Unfortunately, as proposed, this "ability to repay" standard does not apply to all loans. It allows six traditional payday loans without any kind of underwriting. This is six loans too many, allowing borrowers to spend much of the calendar year in extremely expensive debt, taking funds away from other critical living expenses. The CFPB should act promptly to eliminate the six-loan exemption for lenders. The "ability to repay" standard should apply to all covered loans with no loopholes.

Worse, there are no teeth to this "ability to repay" standard. The CFPB should require a specific test that lenders must conduct in order to substantively investigate whether the loan is affordable

¹ "Alabama ethics fails: Lawmakers get free trip to lavish hotel and spa;" Kyle Whitmire; July 12, 2016; http://www.al.com/opinion/index.ssf/2016/07/alabama_ethics_fails_lawmakers.html

² "Alabama Ethics Commission allowed special interest group to quietly amend bogus disclosures;" Kyle Whitmire; August 31, 2016; http://www.al.com/opinion/index.ssf/2016/08/alabama_ethics_commission_allo.html

³ "More lawmakers (and two ethics commissioners) who got free trips on Alabama Lenders' dime;" Kyle Whitmire; August 31, 2106; http://www.al.com/opinion/index.ssf/2016/08/more_lawmakers_and_two_ethics.html

or not. The lender should be required to insure that the borrower has enough money to live on after the loan is repaid, and they should be forced to make a real and meaningful examination of the borrower's living expenses. Simply requiring the lender to look at default, delinquency and re-borrowing rates is not enough, especially because lenders can currently simply rip the funds out of the borrowers' bank accounts. It's impossible to tell if a loan is affordable if simply looking at whether they are paid back in a timely manner – especially if the lender is already holding all of the advantages. Examination of living expenses may be difficult, but is critical. The cooling off period is also a laudable concept, but must also be strengthened. The period should be lengthened to 60 days in order to give borrowers a chance to recover from their high-cost loan experience, and to prevent the practice of “flipping” the loan, refinancing the customer on a constant basis. Two months ought to give the borrower time to get their finances back in order before needing another high-cost loan product.

The CFPB also needs to ensure that title lending comes to an end in Alabama. We have heard far too many stories about borrowers who can't get to work or the grocery store, or even seek medical care due to repossession of the family's only vehicle due to a title pawn transaction. Auto title lending isn't even specifically authorized by a statute in Alabama, and relies on a court decision that holds it to be governed by our state's Pawnshop Act. It's critical to apply the rules to all loans where the car title is taken by a lender, closing the exemption for longer-term loans and applying the rule no matter when the security is taken.

Weaknesses in the CFPB's proposed rule, along with exemptions presumably negotiated by the lending industry will allow lenders to continue business as usual in Alabama and could cause additional harm to consumers by implicitly issuing a federal endorsement of dangerous debt trap practices. State lawmakers have resisted our calls for reform by saying, “Let's wait to see what the feds do.” We cannot have their delay be answered with weak reform.

We will continue to agitate for reform from our state Senators and Representatives, along with our municipal leaders. But federal rules must conclusively send a message that usury and high-cost lending are unacceptable in Alabama.

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 **me**.

Sincerely,

A handwritten signature in black ink, appearing to read "Scott Douglas", with a stylized flourish at the end.

Scott Douglas
On Behalf of
Greater Birmingham Ministries

