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NCRC
OPENING DOORS TO ECONOMIC OPPORTUNITY

October 7, 20016

Monica Jackson
Office of the Executive Secretary
Consumer Financial Protection Bureau
1700 G Street NW, Washington, DC 20552

Re: Docket No. CFPB-2016-0025
RIN: 3170-AA40
Notice of Proposed Rulemaking on Payday, Vehicle Title, and Certain High-Cost Installment Loans

Dear Ms. Jackson:

The National Community Reinvestment Coalition (NCRC) appreciates the opportunity to comment on the Consumer Financial Protection Bureau's (CFPB) proposed rule for payday, vehicle title, and certain high-cost installment loans. Payday loans are often a debt trap by design that locks borrowers into a cycle of repeated loans at extremely high interest rates. Payday lenders charge interest rates averaging 400 percent, and repaying a loan in just two weeks consumes more than one-third of the typical borrower's next paycheck. Most borrowers cannot afford to spend more than five percent of their paycheck towards a loan payment without re-borrowing.[i] As a result, the average payday borrower remains in debt for five months of the year, spending an average of $520 in fees to repeatedly borrow $375.[ii]

While we commend the extraordinary work reflected in the CFPB's proposed rule to establish an ability to repay standard for payday lending, the proposed rule will still leave many issues around small-dollar lending unaddressed. NCRC urges the CFPB to address the harm of payday lending at its core by using its exclusive supervisory authority over fair lending and consumer compliance by large depository institutions to better coordinate with the federal banking regulators and encourage stronger enforcement of the Community Reinvestment Act (CRA). If banks' CRA ratings were to better reflect their failure to provide needed financial products and services in the communities in which they are chartered to serve, we believe it could help diminish the reliance on high-cost alternative financial services, particularly in low- and moderate-income (LMI) and majority-minority communities.

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NCRC is an association of more than 600 community-based organizations that promote access to basic banking services to create and sustain affordable housing, job development, and vibrant communities for America's working families. Our members include community reinvestment organizations, community development corporations, local and state government agencies, faith-based institutions, community organizing and civil rights groups, minority and women-owned business associations, and social service providers from across the nation. NCRC's members are very concerned with the predatory nature of payday lending, and also that many LMI and minority borrowers are forced to rely on such loans due to a lack of more reasonable alternatives. If CRA were better enforced, we believe it would be a much better incentive for traditional banks to offer more safe and affordable small-dollar loan products.

Payday Lending and the CRA

The CFPB's request for comment seeks to balance consumer protection and access to credit with the costs placed on lenders in providing access to small-dollar loans. The proposed rule, while offering additional consumer protections, would still allow high-cost consumer loan products to proliferate in the market and remain an option for LMI borrowers who will struggle to repay them. In many LMI communities, traditional banks – federally insured depository institutions – are simply not offering reasonably priced alternatives despite their "continuing and affirmative obligation" under CRA.[iii] The reliance of LMI communities on high-cost alternative financial services, such as payday lending, highlights the weak enforcement of CRA. Banks' difficulties in meeting their statutory obligations under CRA have left a gap for predatory payday lenders to step in.

CRA requires the banking regulators to use their authority when examining banks to encourage those institutions to help meet the credit needs of the local communities in which they are chartered, consistent with safety and soundness standards.[iv] Although the federal banking regulators – the Office of the Comptroller of the Currency (OCC), the Federal Deposit Insurance Corporation (FDIC) and the Federal Reserve Board – have the primary statutory authority to examine and rate banks under CRA, the Dodd-Frank Wall Street Reform and Consumer Protection Act gives the CFPB exclusive supervisory authority to examine large depository institutions for compliance with federal fair lending and other consumer financial laws.[v] The law also requires the CFPB to coordinate its supervision of large banks with the other federal and state regulators.[vi] The fair lending and consumer law compliance review conducted by the CFPB is then to be considered by the federal banking regulators when assigning a CRA rating to the bank.

The CFPB's supervision of large banks' consumer compliance for CRA examinations, as well as their supervision of payday lenders, puts them in a unique position to monitor the prevalence of high-cost payday lending in the CRA assessment areas of the banks they supervise. The CFPB should coordinate with the bank agencies to ensure that CRA performance context analysis identifies those bank assessment areas that have a concentration of high-cost payday lending. A bank's CRA performance context is the "broad range of economic, demographic, and institution- and community-specific information that an examiner reviews to understand the context in which an institution's record of performance should be evaluated."[vii] Highlighting geographic areas within a bank's CRA assessment area where LMI and minority borrowers are relying largely on high-cost alternative financial services may aid banking regulators in better evaluating the bank under CRA. It will also assist with evaluating whether a bank is meeting the credit needs of that community consistent with its obligations under CRA. In addition, fair lending reviews should assess whether any underwriting or marketing techniques used by banks are disproportionately excluding majority-minority communities from accessing small-dollar loan products offered by banks.

The CFPB and the prudential bank agencies should also work together to encourage the banks they jointly supervise to make safe and affordable small-dollar loans that serve as alternatives to high-cost payday loans. The bank agencies recently amended the interagency questions and answers regarding CRA document to indicate that offering responsible small-dollar loans would be considered an innovative and flexible practice under CRA exams.[viii] The agencies further encourage banks to offer financial education in conjunction with the small-dollar loans. The CFPB and the bank agencies could develop an interagency memo for banks on small-dollar lending that would explain how loans that conform to the CFPB final rule would help banks implement this Q&A and garner banks favorable consideration on CRA exams. One example that could provide guidance is the "Safe, Affordable, and Feasible Template for Small-Dollar Loans" proposed by the FDIC.[ix] The CFPB should take this opportunity to further stress the need for banks to serve communities currently underserved by banks. Doing so helps further mitigate the risks involved with payday lending.

Conclusion
The prevalence of high-cost payday lenders further highlights the need for a stronger, better enforced, CRA. Banks must be held to their affirmative obligation to help prevent borrowers from being forced into unaffordable, predatory loans. We urge the CFPB to address both of these issues by implementing a strong final rule and by coordinating with banking regulators on their CRA performance context analysis, their fair lending reviews, and encouraging banks to make responsible small-dollar loans.

If you have any questions please contact me at NCRC, (202)628-8866 or at jtaylor@ncrc.org.

Sincerely,

John Taylor
President and CEO
National Community Reinvestment Coalition

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[i] Pew Charitable Trusts, "Payday Loan Facts and the CFPB's Impact" (Jan. 2016); available at: http://www.pewtrusts.org/~/media/assets/2016/01/paydayloanfastfacts_factsheet.pdf

[ii] Ibid.

[iii] 12 U.S.C. 2901

[iv] Ibid.

[v] 12 U.S.C. 5515

[vi] Ibid. See also "CFPB Supervision and Examination Manual" (October 2012). Requires the CFPB and prudential regulators to coordinate the scheduling of examinations of large depository institutions.

[vii] Choi, Laura and Downing, Will, *Understanding Community Development Needs through the Performance Context,* Federal Reserve Bank of San Francisco (December 2014) citing the *Interagency Questions & Answers Regarding Community Reinvestment*, §ll.21(b).

[viii] Innovative or Flexible Lending Practices, § ll.22(b)(5), p. 48539; available at: https://www.gpo.gov/fdsys/pkg/FR-2016-07-25/pdf/2016-16693.pdf

[ix] "A Template for Success: The FDIC's Small-Dollar Pilot Program" (2010); available at: https://www.fdic.gov/bank/analytical/quarterly/2010_vol4_2/FDIC_Quarterly_Vol4No2_SmallDollar.pdf