



Southwest Community Development Corporation

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Partnerships Building Neighborhood Pride

October 7, 2016

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

Docket No: CFPB-2016- 0025

Proposed Payday Loan Rule

Dear Director Cordray,

The Southwest (Philadelphia) Community Development Corporation (Southwest CDC) appreciates the opportunity to comment on the CFPB's proposed rule on payday and auto-title lending. We applaud the Consumer Financial Protection Bureau for taking a critical step in protecting consumers across the country by proposing the first set of federal regulations specifically focused on small-dollar lending. For too long, many small-dollar lenders across the country have undertaken wrongful lending practices by offering triple-digit interest payday loans, high-cost installment loans, vehicle title loans, and deposit advances. In so doing, the industry has extracted billions of dollars in abusive interest and fees from communities who can least afford these types of loans.

Southwest CDC is a not-for-profit community organization in the southwest section of the City of Philadelphia. Our boundaries cover the area between University City and the Philadelphia Airport, where more than 73,000 Philadelphians reside. The work of Southwest CDC is extensive and we take our work seriously. We serve as a Neighborhood Advisory Committee and Neighborhood Energy Center. We provide many types of services, including housing counseling; neighborhood utility assistance; business support; after school programs; and we publish the Southwest Globe Times newspaper. These are just a few of the many types of programs we implement, and it's because our residents carry some of the heaviest economic and social burdens in Philadelphia. Nearly 30% of Southwest Philadelphia's citizens live below the poverty line. Southwest has a higher 4-year violent crime rate than the city as a whole.

We are extremely thankful that Pennsylvania has one of the strongest laws in the country to guard against predatory lending, with a strict cap on fees and interest for consumer loans. Pennsylvania residents are among the 90 million Americans who live in states free of high-cost payday lending and the host of harms it brings. Our law has been effectively enforced against payday lenders operating illegally – both in storefronts and online.

Our experience clearly demonstrates that: (1) people are far better off without payday lending; and (2) the best way to address abusive payday lending, as well as other forms of predatory high-cost lending, is to put an end to it once and for all. We see every day that people have other options besides falling into the payday lenders' debt trap. Annually, our citizens save \$489,497,834 that would otherwise be spent on

fees to float unaffordable payday and car title loan debt.¹ The savings from our rate cap benefit not only individual people and communities but the state economy as a whole. It is with this understanding that we appreciate the CFPB's acknowledgement that the best way to protect consumers from high-cost, predatory loans is through strong state caps on interest and fees.

We understand that the CFPB's rulemaking does not preempt our state's strong cap on interest rates and fees. We also recognize that the CFPB cannot set an interest rate cap, which is by far the best way to prevent predatory, high-cost lending. However, if finalized as is, weak provisions in the CFPB's proposed rulemaking on payday lending will undermine our state's strong consumer protections and could result in the unintended consequence of predatory payday lending store-fronts dropping into our neighborhoods, seeking to hoodwink the very neighbors we serve.

Already, the payday lenders are using the CFPB rule as leverage to weaken our state law. They are crafting state legislation to legalize their loans based on provisions in the proposed rule that would permit high-cost, unaffordable, long-term payday loans, and implying that the CFPB has given its "seal of approval" to these loans.

The payday lenders have a long history of trying to disguise their legislative proposals to legalize high-cost loans in Pennsylvania. They have repeatedly rebranded payday loans as "short-term loans," "micro-loans," or "a fresh start," and have falsely promoted their legislation as consumer protection. What is unique this year is that they are using the CFPB as a Trojan horse to bring their predatory loans into Pennsylvania.

Battles to keep predatory payday lending out of Pennsylvania have been fierce. A diverse coalition has been working tirelessly to keep the Commonwealth's safeguards in place—all in the face of relentless and aggressive efforts by the payday lenders to undue them. As reported by the *Philadelphia Inquirer*, the payday lenders have employed unfair tactics, including sending "cease and desist" letters – on no legal basis – to faith leaders who spoke out against legalizing payday lending, and bringing our budget process to a halt by sneaking language into the fiscal code that falsely stated that both chambers of the General Assembly intended to legalize high-cost lending.

We fear that this year's legislative battle may be the most challenging, as the payday lenders point to the proposals from the CFPB – our nation's "consumer cop on the beat" – as the model for their bill.

Many residents in our community are in financial distress, struggling to make ends meet from paycheck to paycheck and the fact that we do not permit payday lending here has proven vital to protecting a huge segment of the population from financial exploitation. The last thing they need is a plague of predatory, high-cost, small-dollar loans to dig them into an even deeper hole—precisely what could result if the CFPB does not use its *full authority* to issue the strongest rule possible against payday lending.

Although not as strong as our state interest rate cap, which we understand the CFPB lacks the authority to establish, the core principle of the CFPB's proposal is the right approach – requiring lenders to simply ensure that a loan is affordable without having to re-borrow or default on other expenses. In light of the CFPB's inability to set a rate cap, a strong ability-to-repay test is critically important. This basic principle though must be applied to every loan – with no exceptions and no room for future evasion.

A stronger CFPB rule would, at a minimum:

¹ Center for Responsible Lending, "States without Payday and Car-title Lending Save \$5 Billion in Fees Annually," 2016, http://www.responsiblelending.org/sites/default/files/nodes/files/research-publication/crl_payday_fee_savings_jun2016.pdf

- **Require a meaningful “ability to repay” standard that applies to all loans, without exceptions and with no safe harbors or legal immunity for poorly underwritten loans.** As currently written, the proposed rule contains dangerous loopholes to this standard. For example, the proposal allows six triple-digit APR payday loans a year to be made without any ability-to-repay determination. This is six 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.
- **End loopholes in the rule that allow lenders to continue “business as usual”.** The rule must be strengthened to ensure that people have enough money to live on after paying back the loan. Right now, the proposal falls short in this regard and may allow lenders to simply continue “business as usual.” Lenders should be required to use an objective measure for 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 title. At the same time, the Bureau 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.
- **Eliminate the risk of unaffordable long-term indebtedness.** We are also concerned that the proposed rule does not go far enough to stop borrowers from flipping one unaffordable loan to the next. The CFPB should do more to ensure that short-term debt does not become unaffordable long-term debt. It should ensure a sixty day cooling off period, rather than just thirty days as proposed, between each short-term loan. 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 with borrowers will once again be stuck in a debt trap.
- **Strengthen the enforceability of strong state consumer protection laws, by providing that offering, making, facilitating, servicing, or collecting loans that violate state usury or other consumer protection laws is an unfair, deceptive, and abusive act or practice (UDAAP) under federal law.** The CFPB's success in deploying its UDAAP authority against payday lenders such as CashCall – which a federal court recently found had engaged in UDAAPs by servicing and collecting on loans that were void or uncollectible under state law, and which the borrowers therefore did not owe – as well as against debt collectors, payment processors, and lead generators, provides a strong legal foundation for including this explicit determination in its payday lending rule. By doing so, the CFPB will help ensure the viability and enforceability of the laws that currently protect people in payday loan-free states from illegal lending. At the very least, the CFPB should provide, in accordance with the court's decision against CashCall, that servicing or collecting on loans that are void or uncollectible under state law are UDAAPs under federal law.

While we are calling for an even stronger CFPB rule, it is important to note that the recently released proposal already had strong elements that our coalition had previously called for, most notably their specific affirmation that state interest rate caps are the most effective way to protect people from payday and other predatory high cost loans. Although the CFPB is not able to set an interest rate cap, it is critical that states maintain their caps on interest, fees, and other consumer protections against abusive high-cost lending.

Weaknesses in the proposed rule may be seen as sanctioning high-cost lending products that are not legal in Pennsylvania. We strongly oppose predatory payday lending and other forms of high-cost lending that

traps borrowers in long-term debt. The threat of any opportunity for the payday lending industry to take advantage of policies as a “Trojan horse” to enter our community makes us extremely wary. Payday lenders would not only trap our residents into a cycle of debt. They would also drain money from our community and force Southwest CDC to divert resources away from making neighborhood progress in an effort to assist our clients in climbing out of debt traps. This would result in disastrous consequences for our community, our programs, and the clients we serve. The payday lending industry is the last thing we need to see in our neighborhoods. We call on you to issue a stronger national rule that in no way undermines Pennsylvania’s strong protections against abusive payday lending practices – a strong rule that will benefit people everywhere.

Respectfully,

A handwritten signature in blue ink, appearing to read "Donna M. Henry".

Donna Henry, Executive Director
Southwest Community Development Corporation