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DISTRICT 30

Arizona House of Representatives
Phoenix, Arizona 85007

July 28th, 2016

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

Docket No. CFPB 2016-0025

Dear Director Cordray:

We the undersigned are writing to applaud your efforts and the efforts of the Consumer Financial Protection Bureau (CFPB) to address the high cost of short-term small consumer loans and payday and auto title lending debt traps. We are greatly encouraged by the CFPB establishing an ability-to-repay principle for these loans. Ensuring that lenders take prudent actions on the front-end before making a loan is absolutely critical and appropriate to protecting borrowers. However, we encourage you to strengthen the proposed rules for payday and other high-cost small dollar loans and write to share our experiences as state legislators here in Arizona.

Arizona's working families are continually at risk from predatory lenders, and ensuring that basic underwriting standards are followed for every loan is the only way this rule can work in this state. Closing certain loopholes in the proposed rule will help protect those families struggling to stay economically stable.

History of high-cost lending in Arizona

Traditional payday lending terminated in Arizona in July 2010 when the authorizing law for single-payment check-based lending expired. The issue was the subject of intense lobbying from the payday loan industry throughout the past decade. In addition to lobbying legislators to broaden payday lending in the state, the industry introduced a ballot measure in 2008 (Proposition 200) to remain operational in Arizona. Despite these efforts, voters overwhelmingly rejected the industry's ballot initiative by a 60 to 40 percent vote, and the Arizona Legislature refused to extend a lifeline to the payday loan industry. Arizona has provided strong leadership in revoking payday lending; however, lenders continued to seek exceptions to both state and federal consumer protections going forward.

While Arizona has a consumer lending law that caps small loan rates at 36 percent APR, lenders continue to seek exemptions and carve outs. In the post-payday lending era in Arizona, car title and former payday lenders have demonstrated a track record of exploiting weaknesses in the statute. While some payday lenders left the state, others easily transitioned to offering loans

secured by vehicle titles, loans based on auto registrations, and loans tied to prepaid debit cards as evasion mechanisms. The short-term loan industry has gone so far as to offer "registration" loans under Arizona's title loan law to consumers who do not hold clear title to vehicles. These types of evasions have resulted in business as usual here in Arizona, leaving consumers unprotected from predatory lenders.

Given that CFPB recognizes in its own preamble that state usury laws and small loan rate caps provide the best protections for borrowers, CFPB should further strengthen the rule by making it an unfair, deceptive or abusive practice for lenders to violate these caps. Doing so will help to improve enforcement under the rule and make it clear to states that the establishment of national payday loan rules is not an endorsement or support for the payday loan product.

Closing certain loopholes in the CFPB rule will ensure that consumers are protected

For these reasons, it is imperative that the CFPB close loopholes in the proposed rule, such as the provision narrowly applying the rule to leveraged payment mechanisms within the first 72 hours of the loan. Lenders will simply wait until the 72-hour leveraged payment window passes and will then solicit direct access to borrower's bank account or seek to secure the loan with the borrower's vehicle.

Additionally, the proposed rule should be expanded to cover **all** leveraged loans. Title and former payday lenders will continue to ask state legislators to enact laws authorizing loans secured by personal property, rather than a vehicle title or access to a borrower's bank account, in order to evade CFPB protections. Year after year, we witness the intense lobbying efforts that the payday lending industry engages in to write the very rules by which they are to be governed. It is paramount that a strong federal rule be established that cannot be evaded by this industry.

This past session in Arizona offered a prime example of the type of legislation sought by the payday loan industry. If enacted, Arizona S.B. 1316 would have permitted 180 percent annual rates for loans secured by personal property. (Please refer to the attached bill). The Arizona State Senate refused to enact the 2016 version of the bill, but we are expecting renewed efforts at the Legislature next session to exploit any gaps in the proposed CFPB rule.

The proposed CFPB rule should also require a determination of ability to repay on every covered loan. The current requirement of ensuring ability to pay after the consumer accepts a string of six payday loans per year is not strong enough to protect consumers in our state. Just one unaffordable loan can harm consumers irreparably. These loopholes must be closed to protect Arizona consumers from the payday loan industry's debt-trap.

As state legislators we stand with the Arizonans who voted against the payday lending industry's Prop 200 ballot initiative in 2008. We are asking your agency to stand with state policymakers and to enact strong rules that cannot be easily evaded by the payday and car title loan industry.

Lenders continue to exploit title loan loophole

While payday lending terminated in 2010, title loans operate under a different section of Arizona law that authorizes loans at up to 204 percent APR (A.R.S. 44-291). Lenders continue to take full advantage of the imprecise wording of this law that defines these loans as secured by a lien on a vehicle title, without specifying that it must be a first lien or that the borrower must own the vehicle free and clear. As a result, Arizona is overrun with sales finance agencies that offer both title-secured loans and loans based on the borrower having a vehicle registration.

To secure payment, some of these title/registration lenders also require borrowers to provide a blank check drawn on their bank account or provide authorization to electronically withdraw payment from a bank account. This back-up payment tactic is not specifically authorized for title

lenders, but effectively makes these thinly veiled payday loans. We certainly hope that CFPB rules for the high-cost small-dollar loan sector will include loans secured by the borrower's vehicle, vehicle registration or **personal property**. We also see this as an area where the 72-hour leveraged payment window will be exploited.

We also urge you to stand firm on the requirement that the consumer have the ability to repay the loan, which is essential due to weaknesses in Arizona's statutes. Arizona's Secondary Motor Vehicle Finance Transaction law sets no limits on loan size or term, no loan limits based on the value of the vehicle, no limit on total loans or loan frequency, no rules on the size of loan compared to income, and no cooling-off periods to break the debt cycle. Furthermore, Arizona title lenders make asset-based loans, and commonly advertise "your car is your credit," and "no credit checks." These tactics allow short-term lenders to continue to trap consumers in debt cycles.

Arizona consumers need comprehensive CFPB rules in order to provide a guaranteed minimum of protection in the small loan market.

Further considerations for a stronger CFPB rule

Lenders should be required to make loans based on the borrower's ability to repay the loan, taking both income and expenses into consideration. CFPB rules should prevent loans from becoming debt traps by limiting the duration of indebtedness. Lenders should also be restricted from requiring borrowers to provide a check or electronic access to their checking account as a condition of extending credit. Finally, lenders should be prohibited from hiding the cost of the loan in fees that are not disclosed in the APR. These common sense protections should apply to the first loan and every loan made after that, with no exemptions for the type of unsafe, inequitable and predatory lending we, as legislators, have long debated and worked so diligently to eliminate in Arizona.

We are pleased to see the CFPB take these first steps in making the small consumer loan marketplace safer and more affordable. We hope that your agency will take our comments and suggestions into consideration in order to craft an improved CFPB rule that will further protect Arizona's consumers.

Sincerely,



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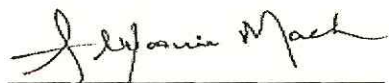
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