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United Way of Metropolitan Dallas

October 7, 2016
The Honorable Richard Cordray
Director, Consumer Financial Protection Bureau
1700 G Street NW
Washington, DC 20552

Re: United Way of Metropolitan Dallas 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,

Thank you for the opportunity to submit comments on the CFPB's proposed rule on payday, vehicle title, and certain high cost installment loans. We appreciate the CFPB's work in studying this industry and proposing changes that aim to end many of its harmful practices. The proposed rule makes great strides in stemming these practices, whose harms affect the lives of so many North Texas. As the largest social service funders in the region, United Way of Metropolitan Dallas frequently hears from service providers that their clients have experienced these harms. While the rule is a step towards better market practices, we hope the CFPB will ensure the rule is effective by clarifying and strengthening it.

The cycle of debt, which is rampant in Texas' payday and auto title loan market, hurts the financial stability of working families, seniors, and military families and consumes valuable charitable and public resources from our communities. Because of the economic drain this industry brings to our communities, city leaders, faith leaders, social service providers, and nonprofit organizations across Texas have called for payday and auto title lending reform since the 1990's.

The Dallas Metropolitan Statistical Area (MSA) currently has 386 payday and auto title lending storefronts.[1] In 2015, there were $337.9 million in new loans made in the Dallas MSA along with about $274.6 million in fees and $390.5 million in refinances. Refinances made up 55% of single payment loan transactions in the Dallas MSA in 2015. Sixteen percent of Dallas auto title borrowers had their cars repossessed in 2015. The average cost to repay a $500 payday or auto title loan with no refinances ranges from $579 to $1,165, but for borrowers who refinance, the average cost to repay a $500 loan can reach over $3,000. Average APRs for payday and auto title loans in the Dallas MSA range from 192% to 497%. Installment loans are one of the main drivers of high fees; these loans only made up 20% of the total dollars lent for 2015, but

[1] The following statistics all refer to the Dallas MSA. *See* Texas Appleseed, *Payday and Auto TItle Lending in Texas: Dallas MSA 2015* (2016) (analyzing data from the Texas Office of Consumer Credit Commissioner's Credit Access Business Quarterly and Annual Data Reports).

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accounted for 49% of the fees charges. The data is clear: payday and auto title loans leave borrowers worse off, paying high fees while making little progress to pay down the principal.

Our North Texas community has worked hard to stem the negative impacts of payday and auto title lending. Though the statistics for the Dallas MSA reflect a market still in need of reform, we have made important strides to improve the market for the citizens of our city. Dallas was the first city to pass a local ordinance, which later became known as the unified payday and auto title loan ordinance that 38 cities across Texas have now adopted.[2] United Way worked with other faith and city leaders to collect thousands of petition signatures calling on the Dallas City Council to do the right thing. Since then, we have supported other local cities to adopt the ordinance – like Garland, Denton, and Mesquite

The unified ordinance limits renewals of payday and auto title loans, requires each payment to reduce the loan principal by at least 25 percent, and limits loans based on borrowers' ability to pay. An analysis of the impacts of the ordinance by the *Dallas Morning News* found that "Dallas' payday lending rules are yielding tangible results."[3] The unified ordinance has faced multiple legal challenges and has remained intact.[4]

United Way of Metropolitan Dallas commends the CFPB on many aspects of the rule, particularly its broad scope, the ability to repay standards, and its role as a floor on which stronger protections, including parts of our city ordinance, can be stacked. As evidenced by the history of payday and auto title lending in Texas, this industry is constantly innovating to evade existing lending regulations; the rule recognizes the expansive nature of the industry and its predatory products by covering a broad scope of loans. For many of the loans covered, the rule establishes reasonable underwriting standards ensuring lenders evaluate borrowers' ability to repay loans. In addition, the rule requires notice to consumers prior to attempting to collect payment from their account and limits the number of failed attempts by lenders to withdraw funds from borrowers' accounts. These are all important measures, but we are concerned that without strengthening them, many of them could be rendered ineffective.

The following aspects of the rule should be addressed to ensure that lenders cannot continue their predatory practices.

- **Require ability to repay standard for all loans, with no exceptions:** The core principle of the CFPB's proposal is the right approach – requiring payday and auto title

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[2] Texas Municipal League, *Payday Lending Clearinghouse*, available at http://www.tml.org/payday-updates.

[3] Jim Mitchell, "Here's proof that Dallas' payday lending rules are working." *Dallas Morning News* (October 30, 2014), *available at:* http://dallasmorningviewsblog.dallasnews.com/2014/10/heres-proof-that-dallas-payday-lending-rules-are-working.html/.

[4] Emily Mathis, *Texas Cities Follow Dallas' Lead and Stand Up to Payday Lenders. Is the State Next?*, The Dallas Observer (Jul. 22, 2014), available at http://www.dallasobserver.com/news/texas-cities-follow-dallas-lead-and-stand-up-to-payday-lenders-is-the-state-next-7113630.

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businesses ensure loans are affordable for borrowers.[5] It is critical the rule apply this basic principle to every loan – with no exceptions and no room for future evasion. Guaranteeing that borrowers can repay loans without having to re-borrow or default on other expenses is essential to ending the current predatory business model, and we strongly support this approach.

As currently written, the proposed rule contains dangerous loopholes that significantly undermine the ability to repay standard, a standard which should be applied to all loans. Currently, the proposal could allow six 600% APR payday loans a year without any ability to repay standard. 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 as well as loans where the lender takes access to the bank account or the car after 72 hours of making the loan.[6] These loopholes must be closed; the ability to repay standards should apply to all loans.

- **Long-term loans need added protections to ensure affordable terms**: As the rule stands, there are few protections from a likely scenario of increasing the length of the loan term in order to cloak unaffordability. The unified ordinance includes payment limitations and effective limitations on the length of the loan, but in Texas many online lenders evade state consumer lending laws. Under the current long-term lending proposal, very expensive small loans with long repayment terms could meet an affordability test, unless there are further objective standards in the rule, such as a hard backend default rate that elevates regulatory scrutiny, and a front-end loan term standard to ensure that loan terms are commensurate with the size of the loan.[7]

- **Strengthen protections against loan flipping:** We are concerned that the proposed rule does not go far enough to prevent the flipping of borrowers from one unaffordable loan to the next. Borrowers' short-term debt should not become unaffordable long-term debt; to help, the CFPB should change the cooling off period to

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5 Small dollar lenders in Texas are regulated under Chapter 342 of the Texas Finance Code, where lenders "must consider, in determining the size, duration, and schedule of installments of a loan, the financial ability of the borrower to repay the loan." Payday and auto title loan businesses are not subject to Chapter 342; the CFPB's rules would ensure the payday and auto title lending industry also must account for borrowers' ability to repay their loans. See 7 Tex. Admin. Code §83.852.

6 In Texas, the dangers of allowing unlimited fees have resulted in sky high fees, one of the main reasons the CSO model has thrived. Lenders should not be given the discretion to charge unlimited origination fees; the standard of a "reasonable and proportional" fee is insufficient to ensure that fees are not excessive.

7 A recent study by the National Consumer Law Center of installment lending recommends that default rates above 10% should be a trigger for added regulatory scrutiny. *See* Lauren K. Saunders, Margot Saunders, and Carolyn Carter. *Misaligned Incentives: Why High-Rate Installment Lenders Want Borrowers Who Default*, at 3(2016). *See* Lauren K. Saunders, Leah A. Plunkett, and Carolyn Carter. *Stopping the Payday Loan Trap: Alternatives that Work, Ones that Don't*, National Consumer Law Center, at 8-18 (2010). Another study by the National Consumer Law Center recommends a one month loan term per $100 lent, which could provide a helpful front-end standard.

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60 days, rather than just 30 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 and borrowers will once again be stuck in a debt trap.

- **Clarify that rule requires compliance from Credit Services Organizations (CSOs) and Credit Access Businesses (CABs) and includes language consistent with our city ordinances to facilitate enforcement:** The rule must aim to prevent payday and auto title businesses from finding ways to continue their current practices by exploiting any ambiguities or loopholes in the rule. In Texas, payday and auto title lenders operate as "credit access businesses" (CABs)[8] with uncapped fees and loan structures that too often keep borrowers in a cycle of debt that extends far longer than the original loan term. The very structure of CABs, where payday and auto title lenders use the state's credit services organizations law to pose as brokers, as opposed to lenders, exemplifies how these businesses will exploit any loophole they can.
While the rule applies to all covered products regardless of the entity making the loan, in some instances, the apply only to the lender and its affiliates, and not the CAB. It is critical that the rule provisions explicitly apply to the "lender", "service providers" and "affiliates", so that neither the CAB nor the lenders can evade the rule's protections.

- **Ensure definitions in the rule encompass Texas local ordinances:** Thirty-eight cities have passed ordinances to address the cycle of debt. It is important that these laws work in conjunction with the rule since the rule provides a floor on which local and state entities can expand. To work in concert, the CFPB should ensure that the definitions encompass of a "loan sequence" explicitly includes the terms "rollover", "refinance", and "renewal." Otherwise, there could be confusion over the terms, confusion which businesses could seek to exploit, even though they are effectively included under the loan sequence definition. In addition, the term "payment" should include the word "installment" in the definition to avoid any confusion on the applicability of the protections in the Texas city ordinances and the way those protections interact with the new rule.

[8] These designations are codified within the Texas Credit Services Organization Act, Section 393 of the Texas Finance Code.

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Our community has led the way for Texas cities to take a stand against the predatory practices of the payday and auto title industry. We are doing our part to constrain harmful market practices and promote better products. We need strong rules from the CFPB to help us continue our hard fought progress.

Sincerely,

Greg Mangum
Vice President of Community
Financial Stability

Stephanie Mace
Senior Director of Public Policy