VaPERL
VirginiaFairLoans.org

Virginia Partnership to Encourage Responsible Lending

Docket No. CFPB-2016-0025

September 29, 2016

Monica Jackson

Office of the Executive Secretary

Consumer Financial Protection Bureau

1700 G Street, NW

Washington, DC 20552

Dear Director Cordray,

The Virginia Partnership to Encourage Responsible Lending is writing in response to the Consumer Financial Protection Bureau's request for comment on its proposed rule for Payday, Vehicle Title, and Certain High-Cost Installment Loans. We are a statewide coalition of individuals and organizations dedicated to promoting responsible lending products and discouraging predatory lending in Virginia.

Our goal is to ensure that the first-ever federal rule for small-dollar loans stops the harms payday and car-title loans have caused borrowers for the past 25 years and fosters safe and affordable products at lower prices. We appreciate the opportunity to comment on this rule and strongly encourage the CFPB to set clear product safety standards for small-dollar loans in order to protect borrowers and make it possible for lower-cost providers like banks and credit unions to offer small installment loans on fair terms to their customers.

Members of our coalition have been urging the Virginia General Assembly for many years to put into place reasonable regulations governing payday, car title, open-end credit and internet lending products. While we have some success, the biggest obstacle to reform is the lenders themselves. The lenders use lawyers and consultants to find multiple ways around laws and regulations. Here is a history of some of the most egregious ways the payday and car title lenders have evaded the law in Virginia:

- In 1998, payday lenders opened stores outside Virginia military bases and claimed they need not follow Virginia law because they were making loans through out-of-state banks and the banks did not have to follow Virginia usury law. This "rent- a- bank charter" deception was later shut down by the Comptroller of the Currency.[1] Internet lenders are now doing the same thing except now they are pretending to be affiliated with Native American tribes in the western U.S.[2]

- The 2002 Virginia Payday Loan Act prohibits rolling over or renewing loans in order to prevent borrowers from being caught in a cycle of debt. But payday lenders did a phony back-to-back loan scheme for many years until the Virginia Supreme Court ruled that the scheme violated the law in 2011.[3] Virginia payday lenders made an estimated 9.2 million illegal loans with this scheme.[4]

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[1] *Peoples National Bank to Pay $175,000 Civil Money Penalty And End Payday Lending Relationship with Advance America*, OCC Press Release, January 31, 2003

[2] *US authorities in crackdown on "rent-a-tribe" payday lenders*, Financial Times June 28, 2016

[3] Ruby v. Cashnet, 708 S.E.2d 871 (2011). Virginia payday lenders were violating the law intended to keep borrowers from being trapped in a "vicious cycle of debt".

[4] Estimate based upon data collected by the Virginia Bureau of Financial Institutions.

- In response to constituent complaints about payday lending, the 2008 Virginia General Assembly reformed the Payday Loan Act. Instead of complying with the new law, many payday lenders steered borrowers into "open-end" loans instead of payday loans.[5]

- The 2009 Virginia General Assembly passed legislation stopping payday lenders from using the open-end law evasion but many payday lenders then dropped their payday loan license and switched to "line of credit" loans to avoid complying with the new law.[6]

- In 2014, car title lenders got consumer finance licenses for their car title loan locations to evade the Motor Vehicle Title Loan Act by making unregulated consumer finance loans to unsuspecting borrowers.[7]

To prevent these abuses, clear, simple standards are needed that cannot be gamed. Unscrupulous lenders thrive in complexity, and the proposed regulations are extremely complicated, making examination and enforcement difficult—we know this from many years of experience.

In Virginia, much of the small dollar lending market has shifted to longer term loans but unfortunately this is not an improvement. Short term payday loans are declining every year but they are increasingly being replaced by line of credit loans and car title loans. Former payday lenders are shifting to line of credit loans in order to evade all regulation.[8] The line of credit lenders trap borrowers not with constant renewals but loaning to borrowers who can only make minimum payments and never pay the principal. "One woman who borrowed $500 from a firm she thought was a

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[5] *Lenders Find Loopholes Around Virginia Law Limiting Payday Loans,* Fox News Politics, December 31, 2008

[6] *Again, payday lenders roll Virginia's legislature,* The Virginian Pilot editorial, May 2, 2009

[7] *Inside the Fast Cash World of Virginia Car-title lenders,* WAMU 88.5, October 2, 2015.

[8] *Lenders find way around crackdown on payday and car-title loans* Daily Press, January 25, 2014,

payday lender paid $800 in interest and fees and still owed $500 months later."[9] Although the average car title loan in Virginia is for one year, the average interest rate is over 200% APR and the loans are so unaffordable that 32% of the borrowers have not made a payment for 60 days. In 2015, the Virginia car title lenders made 160,073 loans and repossessed 20,448 cars.[10] Clearly, longer term car title loans still lead to disaster for many Virginians.

We feel that the proposed rule concerning long term loans should be strengthened to include more objective measures of inability to repay such as evidence of defaults and rules to ensure that borrowers are not trapped in longer term loans due to inability to repay because of their other obligations.

Sincerely,

Dana Wiggins

VaPERL Coordinator

[9] *Another warning to high rate lenders, but no action,* Daily Press, February 4, 2016.
[10] Virginia Bureau of Financial Institutions 2015 Annual Report