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October 5, 2016

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

Re: Rulemaking on payday loans, CFPB-2016-0025/ RIN 3170-AA40

Dear Director Cordray:

We appreciate the role that the CFPB has played in the few years since its inception, and thank you and the agency for taking steps that have been of such tremendous benefit to consumers, including the working people and retirees who are our clients.

As the CFPB moves closer to promulgating a final rule on payday and similar loans, we urge you to issue the strongest possible rule to end the payday loan trap. Unfortunately, the proposed rule falls short of what it should be. We make the following specific recommendations:

1. Include an across the board ability-to-repay standard in the final rule. The proposed rule contains loopholes and carve-outs that would allow lenders to run an end-around and continue to make unaffordable loans. As but one example, the proposed rule would inexplicably permit a lender to make up to six small-dollar loans per year without determining whether the borrower can afford the repayments. It should be a bedrock principle that every loan must be properly underwritten and have an ability-to-repay standard, including an evaluation of a consumer's expenses as well as income.

As you know, New York is one of the states with an interest rate cap that effectively prohibits payday loans. Over the years many organizations in New York have labored to protect the integrity and viability of our state's laws that promote fair lending. Our regulators, including most recently the Department of Financial Services, have acted firmly and successfully to prevent out-of-state actors from being able to illegally market, make, and attempt to collect on payday loans to our residents. All these efforts will be seriously undermined if the CFPB issues a rule without an ability-to-repay requirement applying to all payday loans.

2. Confirm that the laws of many states ban or restrict payday loans, by declaring it an unfair, deceptive and abusive act or practice (UDAAP) under the CFPB rule to make a loan that is void, null or uncollectable. It is not enough for the CFPB to merely acknowledge the existence of

laws in the states that restrict payday loans. To fully protect consumers in those states, the CFPB should make practices that violate state law, a violation of the CFPB's rules as well.

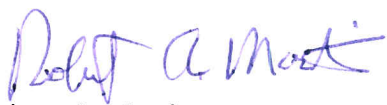
A review of the Dodd-Frank Act and the CFPB's successful litigation shows that it clearly has such authority. Most notably, the CFPB sued CashCall Inc. and other defendants alleging they engaged in practices that were unfair, deceptive and abusive under Dodd-Frank. Those practices included making and collecting on loans that violated state usury caps and licensing laws. A U.S. District Court found that the conduct of CashCall and its collectors was deceptive by creating the impression to borrowers that was "patently false" because the "loan agreements were void and/or the borrowers were not obligated to pay."¹

It is worth noting that the Court in *CashCall* squarely rejected the argument that the CFPB, in suing the defendants for UDAAP violations, was attempting to establish a usury limit on payday loans, which under Dodd-Frank it cannot do. "Instead, the [CFPB] is seeking to enforce a prohibition on collecting amounts that consumers do not owe."²

We urge the CFPB to follow up on its successful litigation by making it a UDAAP for businesses to make, facilitate, or collect on loans that are void or null under state laws, and to continue to bring cases when lenders and other actors such as debt collectors and lead generators engage in such conduct. By exercising its UDAAP authority in this way, the CFPB will also aid the efforts of state Attorneys General and banking regulators in enforcing their states' laws.

Thank you for consideration of these concerns. We appreciate your attention to the critical issue of payday loans and again, we urge you to promulgate the strongest possible rule.

Sincerely,



Robert A. Martin

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¹ *CFPB v. CashCall et al*, 2016 WL 4820635 (U.S. District Court, S.D. Cal.), 8/31/16. The CFPB has filed other legal actions against payday lenders, debt collectors, and related actors as well. See Complaints in *CFPB v. NDG Financial Corp. et al* (filed 7/31/15) and *CFPB v. D and D Marketing et al* (12/17/15).

² *CFPB v. CashCall et al*, 2015 WL 9591569 (U.S. District Court, S.D. Cal.) 2/20/15.