

October 7, 2016

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

Re: NC Coalition 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:

We file this comment in response to the Consumer Financial Protection Bureau's proposed rule on payday, vehicle title, and certain high cost installment loans. Thank you for the opportunity to submit comments on this important issue. The rule must be strengthened to ensure that a weak rule does not undermine the strong combination of laws that has long been enacted in North Carolina.

We are writing on behalf of the 171 North Carolina organizations listed below, which include military and veterans associations, faith organizations, housing and credit counseling agencies, affordable housing organizations, legal service providers, civil rights, seniors and labor leaders, and many others.

Your proposed rule includes a number of important provisions. It operates as a floor and not a ceiling by not preempting stronger state laws. It focuses on the debt trap and a strong ability-to-repay standard. And it includes a number of provisions to prevent lenders from evading the rule.

Despite these strengths, we are deeply concerned that weaknesses and loopholes in the proposed rule sanction dangerous loan products and will not stop the debt trap. This is bad for North Carolina and bad for every other state in the country. If these weaknesses and loopholes are not closed, your final rule will threaten our state consumer protections by lending undeserved legitimacy to predatory products and practices. Payday lenders desperately want to re-enter the North Carolina market and a weak national rule could provide the ammunition they need in their long-standing fight to overturn our state laws.

We cannot afford to have this happen. We know that North Carolinians are far better off without payday and will continue to fight to keep all forms of high-cost lending out of our state.

The fight against payday lending in North Carolina

North Carolina has a unique payday lending story. North Carolina was the first state to:

- Roll back a once legal payday industry,
- Litigate the rent-a-bank model, and
- Force a bank to drop its bank payday loan product.

We have included this story in detail in Appendix A to illustrate how strongly we believe that payday lending causes tremendous harm to borrowers and their families; how hard we have worked to keep all forms of high-cost lending out of our state; how hard the industry has fought, and will continue to fight, to bring it back; and the significance of the CFPB's actions to the future of our strong state protections.

Payday lending was legal in North Carolina for only four years, from 1997 to 2001. By 2000, 10% of the payday loan storefronts in the country were in our state, with heavy concentrations in neighborhoods of

color and around military bases. In 2001, the North Carolina General Assembly allowed the authorization for payday lending to sunset, making payday loans illegal here again, though it took five more years to successfully enforce our rate cap. By summer 2006, all payday shops had left our state.

In 2012, our North Carolina coalition moved quickly to oppose Regions Bank who was making bank payday loans here. They dropped their bank payday product in our state in January 2013. In addition, car title lending has never been legal in our state.

During most years since the payday law sunset in 2001, lenders have mounted aggressive lobbying campaigns to re-authorize payday lending in North Carolina. With tremendous work, we have held the line against payday, car title and other forms of high-cost lending.

Payday loans caused tremendous harm during the nine years that payday lenders operated in our state, legally and illegally. Having seen the devastating impact of the payday debt trap over this period, North Carolinians strongly oppose payday lending. Hundreds of organizations (and thousands of individuals) have been part of this fight to keep payday lenders out of our state. We will continue this fight because we understand first-hand the harm caused by payday lending and the high stakes if payday lenders return to North Carolina.

A weak rule would jeopardize our North Carolina interest rate cap

We appreciate the Bureau's efforts to curb predatory payday lending by crafting the first-ever federal payday lending rules. Strong interest rate caps are the best way to regulate high-cost lending. Since the Consumer Financial Protection Bureau (CFPB) is prohibited by statute from setting a rate cap, it is extremely important that we protect and maintain our North Carolina rate cap and other state lending protections.

Though your final rule would not preempt our stronger state rate cap, weaknesses in your final rule would present a direct threat to our state consumer protections by lending undeserved legitimacy to predatory products and practices. Payday lenders would argue that North Carolina should conform to this new "national model," attempting to roll back our strong North Carolina protections against payday and other forms of high-cost lending.

Proposed rule includes important provisions

CFPB's proposed rule includes a number of important provisions. The proposed rule:

- Operates as a floor rather than a ceiling. It does not preempt state laws, like ours in North Carolina, that offer stronger protections against payday and other forms of high-cost lending;
- Focuses on preventing the debt trap, the most abusive aspect of high-cost lending;
- Includes a strong ability-to-repay standard, based on income and expenses, a long standing principle of responsible lending; and
- Includes a number of provisions to prevent lenders from evading the rule, including:
 - A broad scope of covered products (long-term and short-term, open end and closed end, balloon payment, installment loans and combinations of the two),
 - Strong anti-evasion language, and
 - An "all-in" APR definition, to capture high fees and high interest and ancillary products.

We are pleased that one loophole has already been closed – an exemption from the proposed ability-to-repay test, included in the CFPB's preliminary outline, if loan payments are less than 5% of a borrower's income. Examining income only is not enough to determine if a loan is affordable.

We are very concerned that weaknesses in the CFPB’s proposed rule sanction dangerous loan products and will not stop the debt trap.

We ask that the CFPB’s final rule build on, rather than undermine, our strong state protections and strengthen our ability to enforce our state law against lenders making illegal loans.

- Reaffirm the importance of state rate caps;
- Make it an unfair, deceptive, and abusive practice (federal UDAAP violation) to offer or make loans that violate state interest caps and other state protections; and
- Make it a federal UDAAP violation to facilitate illegal loans through payment processing, lead generating, and advertising.

We also ask the CFPB to close loopholes that undermine the ability-to-repay standard, specifically:

- **Require an ability-to-repay determination on every loan, with no exceptions.** Since the CFPB cannot set a rate cap, a strong ability-to-repay test is critically important. However, this basic principle must be applied to every loan – with no exceptions and no room for future evasion. As currently written, the proposed rule contains dangerous loopholes. For example, the proposal allows six 400% payday loans a year without any consideration of ability-to-repay, six unaffordable loans too many. The rule also exempts longer-term payday loans with high origination fees from the ability-to-repay test. These loopholes must be closed.
- **Close the “business as usual” loophole.** The proposed rule must be strengthened to ensure that people have enough money to live on after paying back the loan. The rule falls short by allowing lenders to simply continue “business as usual,” making loans to borrowers who cannot afford the loan but have not defaulted in the past. Low default rates are not evidence of ability to repay, since lenders hold a super lien against the borrower’s checking account (with a post-dated check) or car title.
- **Strengthen protections against flipping, particularly for long-term loans.** The proposed rule does not go far enough to stop borrowers from flipping from 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 is critically important to strengthen the protections against repeatedly refinancing longer-term loans, allowing debt to pile up and borrowers to continue to be stuck in a debt trap.
- **Cover all loans that give lenders extra leverage to collect their payments,** such as loans with a super lien against the borrower’s checking account, secured by personal property, or with a right to garnish wages.

The best way to address abusive payday, car title, and other forms of predatory high-cost lending is to put an end to it once and for all, as we have in North Carolina. We continue to support a federal Congressional usury limit and to support our counterparts in every state who fight to make, or keep, their state free from these abusive loans.

North Carolinians strongly oppose payday and all other forms of high-cost lending. Please do not allow a weak federal rule to usher in a new wave of predatory lending in North Carolina and other states where payday lending is illegal. If you have questions about this comment, please contact Alfred Ripley at the NC Justice Center at al@ncjustice.org or 919-856-2573 or Susan Lupton at the Center for Responsible Lending at susan.lupton@responsiblelending.org or 919-313-8521.

Respectfully,

Signed by 171 North Carolina organizations listed on pages 4 through 7.

Navy-Marine Corps Relief Society, Camp Lejeune
Navy-Marine Corps Relief Society, MCAS New River
NC Council of Chapters, Military Officers Association of America
NC Veterans Council
NC Justice Center
Habitat for Humanity of North Carolina
NC Alliance for Retired Americans
NC Assets Alliance
NC Association of Community Development Corporations
NC Council on Aging
NC Child
NC Community Action Association
NC Community Development Initiative
NC Conference, United Methodist Church
NC Congress of Latino Organizations
NC Consumers Council
NC Costa Rican Association
NC Council of Churches
NC Hispanic Chamber of Commerce
NC Housing Coalition
NC NAACP
NC National Organization for Women
NC Public Interest Research Group (PIRG)
NC Public Service Workers Union-U.E. Local 150
NC Rural Center
NC State AFL-CIO
NC A. Philip Randolph Educational Fund
NC A. Philip Randolph Institute, Inc.
NC Women United
NC Advocates for Justice
Action NC
Reinvestment Partners
United Way of Asheville and Buncombe County
United Way of Greater Greensboro
General Baptist State Convention of NC, Inc.
The Episcopal Diocese of NC
Presbytery of Coastal Carolina
Baptist Peace Fellowship
Carolina Jews for Justice
Methodist Federation for Social Action NC
Ecumenical Poverty Initiative
Beloved Community Center of Greensboro
Credit Counseling Agencies Association of NC
Disability Rights NC
El Pueblo, Inc.
The Collaborative of NC
Arcade Credit Union
Carolina Small Business Development Fund
Century Employees Savings Fund Credit Union
Ecusta Credit Union
The Institute

Latino Community Credit Union
Latino Community Development Center
Self-Help and Center for Responsible Lending
Summit Credit Union
Black Workers For Justice
Institute for Dismantling Racism, Inc.
Center for Financial Social Work
Center for Housing and Community Studies, UNCG
Centre for Homeownership & Economic Development Corporation
Consumer Federation of America
Financial Protection Law Center
First in Families of North Carolina
Good Work
Legal Services of Southern Piedmont
Pisgah Legal Services
United for a Fair Economy
Women AdvaNCE
Working America North Carolina

Alexander County Habitat for Humanity
Ashe County Habitat for Humanity
Asheville Area Habitat for Humanity, Inc.
Asheville-Buncombe County Branch NAACP
Bob Ipock & Associates, Inc.
Bonnie Wright & Associates
BPFNA ~ Bautistas por la Paz
Brunswick County Habitat for Humanity
Caldwell County Habitat for Humanity
Cape Fear Habitat for Humanity
Carolina Behavioral Health Alliance, LLC
Carolina Home Mortgage
CCCS of Greater Greensboro
CCCS of WNC DBA OnTrack Financial Education & Counseling
Cedar Grove Institute for Sustainable Communities
Charlotte Family Housing
Chatham Habitat for Humanity
Children First/Communities In Schools of Buncombe County
Chowan-Perquimans Habitat for Humanity
Church Women United, Raleigh/Wake County
Circle of Mercy Congregation, Asheville
CityWell United Methodist Church, Durham
Clara James Real Estate Broker/Housing Counselor
Clarke Connections/Center for Financial and Human Dignity
College Park: An American Baptist Church, Greensboro
Common Wealth Charlotte
Community Empowerment Fund
Community Link
Community Management Corporation
Core Catering
Crisis Assistance Ministry
Crystal Coast Habitat for Humanity
David R. Badger, P.A.
Davidson Housing Coalition

Donald L Coomes, PLLC
Duck United Methodist Church
Durham Congregations, Associations, and Neighborhoods (CAN)
Durham People's Alliance
Durham Regional Financial Center
Elizabeth City Habitat for Humanity
Empowerment Resource Center of Asheville/Buncombe, Inc.
Fayetteville Area Habitat for Humanity
Financial Pathways of the Piedmont
First Calvary Baptist Church, Durham
Gardner Stokes, Inc.
Gateway Community Development Corporation
Greensboro Housing Coalition
Habitat for Humanity of Alamance County
Habitat for Humanity of Cabarrus County
Habitat for Humanity of Catawba Valley, Inc.
Habitat for Humanity of Charlotte
Habitat for Humanity of Craven County
Habitat for Humanity of Davie County, Inc.
Habitat for Humanity of Forsyth County
Habitat for Humanity of Gaston County
Habitat for Humanity of Goldsboro-Wayne, Inc.
Habitat for Humanity of Greater Greensboro
Habitat for Humanity of High Point, Archdale and Trinity
Habitat for Humanity of Johnston County, Inc.
Habitat for Humanity of Lincoln County
Habitat for Humanity of Pitt County
Habitat for Humanity of Randolph County, Inc.
Habitat for Humanity of the Lexington Area Inc.
Habitat for Humanity of Wake County
Habitat for Humanity, Orange County, NC
Haywood Habitat for Humanity
Henderson County Habitat for Humanity
Hertford County Habitat for Humanity
Holistic Transformations
Innovative Systems Group
InSight Fund -Triangle Community Foundation
Kingdom Community Development Corporation
Land of the Sky UCC, Asheville
Lapas Law Offices, PLLC
Mitchell-Yancey Habitat for Humanity
Mountain People's Assembly
New Hope Community Development Corporation
New Hope Community Development Group
New Hope Missionary Baptist Church, Greensboro
OptInference LLC
Partners Ending Homelessness
Prosperity Unlimited, Inc.
QC Family Tree
Raleigh Friends Meeting, Raleigh
Rutherford County Habitat for Humanity
Salisbury Community Development Corporation
Samaritan Ministries, Winston-Salem

School for Conversion
St. John's Baptist Church, Charlotte
Taylor Meuller Realty
The Concerned Citizens of Lake Waccamaw
The Power of the Dream, Inc.
Thermal Belt Habitat for Humanity
Triangle Labor Council AFL-CIO
Umstead Park United Church of Christ, Raleigh
Upper Yadkin Valley Habitat for Humanity
Virginia Mae Owner Finance Program
Wake Forest Baptist Church, Winston-Salem
Watauga County Habitat for Humanity
West End Community Foundation
Wilson Community Improvement Association (WCIA)
Winston-Salem/Forsyth County Asset Building Coalition

Appendix A:

The Fight against Payday Lending in North Carolina

North Carolina has a unique story to tell about payday lending. North Carolina was the first state to:

- Roll back a once legal payday industry,
- Litigate the rent-a-bank model, and
- Force a bank to drop its bank payday loan product.

We recount this story because it illustrates how strongly we believe that payday lending causes tremendous harm to borrowers and their families; how hard we have worked to keep all forms of high-cost lending out of our state; how hard the industry has fought, and will continue to fight, to bring it back; and the significance of the Bureau's actions to the future of our critical state protections.

Payday lending was legal in North Carolina for only four years, from 1997 to 2001. By 2000, 10% of the payday loan storefronts in the country were in our state, with heavy concentrations in neighborhoods of color and around military bases.

In 2000, the year before the law authorizing payday lending was scheduled to sunset, a broad coalition of North Carolina organizations came together to oppose payday lending abuses. Following strong opposition to these 400% Annual Percentage Rate (APR) payday loans, and despite a vigorous and well-funded effort by the industry to keep payday lending legal, the North Carolina General Assembly allowed the authorization for payday lending to sunset.

Following the sunset in August 2001, the NC Commissioner of Banks notified all payday lenders in the state that they were making illegal loans. Most shops (we estimate 600 of the 1,000 shops) closed their doors. Others used a variety of schemes to continue operating. The most common scheme to avoid our state interest rate cap and licensing requirements was the rent-a-bank model, used by the large national chains. Under this model, payday lenders claimed they were not making the loans themselves, but instead were the "marketing, processing and servicing agent" of an out-of-state bank which, the payday lenders claimed, was the actual lender.

The NC Attorney General took enforcement action against a number of payday lenders, including the large national chains and smaller lenders. In 2004, the NC Attorney General initiated a lengthy investigation of the largest lender in the state, Advance America. After numerous hearings, the NC Commissioner of Banks, who rules in these matters, ruled against Advance America in December 2005. The ruling stated that Advance America itself was making illegal loans in North Carolina, and that its "partnership" with an out-of-state bank did not allow it to ignore North Carolina lending laws. Advance America was unsuccessful on appeal, and unable to make payday loans during the appeal period.

Shortly after this ruling, in March 2006, the NC Attorney General announced consent agreements with the three remaining large payday chains still making loans here, First American Cash Advance (a subsidiary of CompuCredit/Valued Services Acquisitions), Check Into Cash, and Check 'n Go. These companies agreed to stop making loans in North Carolina and to stop collecting interest and fees on existing loans. These actions forced the last payday shops out of our state, almost five years after the sunset.

The NC General Assembly has a two-year legislative session, with a long session in the odd years and a short session in the even years mostly focused on reconciling the budget. During almost every long session and many short sessions since the payday law sunset in 2001, payday lenders have mounted aggressive lobbying campaigns to re-authorize payday lending in our state. In some years, they have been joined by other high-cost lenders, like car title and installment lenders. Despite their aggressive efforts, we have held the line against payday, car title and other forms of high-cost lending.

In 2012, our North Carolina coalition moved quickly to oppose banks making payday loans here, following new research that documented the abuses of this 300% APR “direct deposit advance” payday loan product. We were extremely concerned that bank payday loans could quickly be accepted as mainstream, like abusive overdraft fees. If this scenario played out, all of our efforts to eliminate storefront payday lending in North Carolina would be for naught.

Regions Bank, with a very small retail presence in North Carolina, was the only bank making these payday loans here. However, two other banks, each with a large retail presence in our state, had expressed their intent to introduce bank payday loan products here. We moved quickly and aggressively against Regions, which dropped its payday loan product in our state in January 2013. To our knowledge, we are the only state to have won a victory of this type. Following strong action by federal regulators, the other two banks considering bank payday loan products here chose not to introduce them.

Payday loans caused tremendous harm during the nine years that payday lenders were active in our state, the four years when they were authorized (1997-2001) and the five years when they operated illegally under the rent-a-bank scheme (2001-2006). Having seen the devastating impact of the payday debt trap over these nine years, North Carolinians are strongly united in their opposition to payday lending.

Hundreds of organizations (and thousands of individuals) have been part of this 15-year fight to keep payday lenders out of our state, many for the entire 15 years. We have continued this fight because we understand first-hand the harm caused by payday lending in our state and the high stakes if payday lenders return.