Congress of the United States
Washington, DC 20515

Oct. 7, 2016

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

Dear Director Cordray:

We are writing to comment on the Consumer Financial Protection Bureau's (Bureau) proposed rule titled "Payday, Vehicle Title, and Certain High-Cost Installment Loans," Docket No. CFPB-2016-0025. As representatives of Maryland, a state with strong payday loan regulations, we believe our State's experiences can help inform the development of a rule that provides the strongest possible protections for consumers.

The loans that would be subject to the Bureau's proposed rule (collectively "covered loans") are harmful to borrowers. According to the Center for Responsible Lending, the typical payday loan is for just $350, but the borrower will renew the loan eight times and pay more than $450 in fees.[1] Research also shows that the typical car title loan borrower renews a loan eight times, eventually paying back more than three times the amount borrowed. One in five title loan borrowers ultimately has a vehicle repossessed.[2]

Not only are individual borrowers harmed by these loans, communities as a whole are harmed by payday and car title lending. When borrowers pay exorbitant fees to out-of-state payday loan companies, those dollars will not be reinvested in the community. When borrowers pay payday loan fees, they reduce their consumption of goods and services, which in turn reduces the income of local businesses, the wages of their employees, and the number of employees hired. One study found that payday and car title lending together cost the Florida economy more than $380 million and more than 2,000 jobs in 2012.[3]

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[1] Center for Responsible Lending, *Payday Loan Quick Facts: Debt Trap by Design* (July 2014) (online at www.responsiblelending.org/payday-lending/payday_loans_quickfacts.pdf).

[2] Center for Responsible Lending, *The State of Lending in America & its Impact on U.S. Households* at 122 (2013) (online at www.responsiblelending.org/state-of-lending/State-of-Lending-report-1.pdf; Consumer Financial Protection Bureau, *Single-Payment Vehicle Title Lending* (May 2016) (online at files.consumerfinance.gov/f/documents/201605_cfpb_single-payment-vehicle-title-lending.pdf).

[3] Haydar Kurban, Adji Fatou Diagne, and Charlotte Otabor, *The Economic Impact of Payday Lending in Economically Vulnerable Communities* (Dec. 2014) (online at coas.howard.edu/centeronraceandwealth/reports&publications/1214-the-economic-impact-of-payday-lending-in-economically-vulnerable-communities.pdf).

In Maryland, residents are protected by state statutes that require lenders of covered loans to register with the State Commissioner of Financial Regulation, and limit covered loans to a maximum 33% interest rate.[4] Auto title loans are effectively prohibited.[5] According to the Center for Responsible Lending, Maryland borrowers save nearly $253 million annually from lower fees thanks to these statutes.[6]

We are pleased the Bureau recognizes that strong and effective rules, and especially state rate caps, are imperatives to protecting small-dollar borrowers. The Bureau notes it "believes that the fee and interest rate caps in these States would provide greater consumer protections than, and would not be inconsistent with, the requirements of the proposed rule."[7] Because interest rate caps are effective at protecting borrowers, we appreciate the Bureau's decision to apply the proposed rule to all short-term loans with a total cost of credit exceeding 36%.

In the draft rulemaking, the Bureau has proposed a strong rule that would implement a nationwide ability-to-repay standard. Under this standard, small-dollar lenders would be required to ensure that borrowers can make payments on the loans they receive while meeting their other major financial obligations and basic living expenses without having to take out additional loans.[8] This standard is critical to ensuring borrowers do not get trapped in an endless cycle of debt.

While we believe the proposed rule takes critical steps to protect consumers from abusive practices, we offer the following three recommendations to strengthen the proposed rule.

1. **Every covered loan should be subject to the ability-to-repay requirement.** The proposed rule's ability-to-repay requirement would not apply to all loans provided by predatory lenders. For example, under the proposed rule, lenders would be permitted to originate up to six short-term loans to a borrower in a 12-month period without conducting an ability-to-repay analysis.[9] High-interest, limited underwriting loans are precisely the types of loans the Bureau should regulate. As such, the Bureau should require an ability-to-repay analysis before any covered loan can be originated.

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[4] MD Code Annotated Fin. Inst. §11-204; MD Code Annotated Com. Law §12-306 (a) (6) (i).

[5] *Id.*

[6] Center for Responsible Lending, *States without Payday and Car-title Lending Save $5 Billion in Fees Annually* (June 2016) (online at www.responsiblelending.org/sites/default/files/nodes/files/research-publication/crl_payday_fee_savings_jun2016.pdf).

[7] Bureau of Consumer Financial Protection, *Payday, Vehicle Title, and Certain High-Cost Installment Loans; Proposed Rule*, 81 Fed. Reg. 47864 (July 22, 2016).

[8] *Id.*

[9] *Id.*

2. **The standard for determining basic living expenses should be objective.** While the proposed rule's ability-to-repay requirement would prohibit lenders from originating covered loans to borrowers who cannot afford loan payments and also meet basic living expenses, the rule does not detail how basic living expenses are to be calculated.[10] Without an objective definition, lenders may grossly under-calculate the basic living expenses of borrowers.

   This test in the Bureau's proposal has the capacity to greatly affect Marylanders. Although Maryland has enacted a rate cap of 33 percent, there may be instances in which even one loan at that relatively low rate would violate a strong basic living expenses test. As such, the Bureau should require that all lenders use the same objective standard for determining basic living expenses.

3. **Violations of state consumer lending laws should be deemed unfair, deceptive, and abusive acts or practices (UDAAP) under federal law.** Strengthening the proposed rule by deeming state violations to be UDAAP violations would enable state financial regulators to enforce their own laws more effectively and consistently. Deeming would apply the entire body of UDAAP law to state cases to guide determination of the acts or practices that meet the legal standard (including decisions by the Bureau) instead of leaving these matters to be resolved by state courts using standards that could vary from state to state and even from locale to locale.

Even though Maryland's statutes protect its residents, Marylanders will benefit by the implementation of a strong federal rule that incorporates the three improvements recommended above. Although the State's statutes have helped protect Marylanders from exorbitant interest rates, they have not been able to prevent all forms of usurious lending from reaching residents through online venues. One site acknowledges that "Maryland is one of the few states in America that have very strict regulations when it comes to payday lending," but notes that "the internet is open for business 24/7 and is full of payday lenders just waiting to offer you a payday loan."[11] Another site that markets payday loans to Marylanders online offers annual percentage interest rates that "range from 200% to 1386%."[12]

These sites are providing or facilitating loans despite Maryland case law prohibiting their behavior.[13] While the State's Commissioner of Financial Regulation may bring cases against

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[10] The rule defines basic living expenses as payments "a consumer makes for goods and services necessary to maintain the consumer's health, welfare, and ability to produce income, and the health and welfare" of dependents. *Id.*, at 47943.

[11] Same Day Payday, *Maryland Payday Loan* (online at www.samedaypayday.com/Maryland-Payday-Loan) (accessed Sept. 8, 2016).

[12] Green Leaf Loan Group, *Why Online Payday Loans Are So Popular?* (online at www.greenleafloangroup.com/Online_Payday_Loans.aspx) (accessed Sept. 8, 2016).

[13] *See, e.g., Maryland Commissioner of Financial Regulation v. CashCall, Inc.*, 225 Md. App. 313 (Md. Ct. Spec. App. 2015) (holding that a company which arranged for Maryland consumers loans by out-of-state banks was a "credit services business," and by operating without

sites like these that offer loans to Maryland residents that violate Maryland law, the sheer number of online storefronts operating across jurisdictions makes policing by state regulators difficult and time-consuming. A strong national lending standard would ensure improved protections for all borrowers from predatory online lenders.

We applaud the Bureau for its work on the Payday Lending Rule and appreciate its consideration of our comments.

Sincerely,

Barbara A. Mikulski
U.S. Senator

Benjamin L. Cardin
U.S. Senator

Elijah E. Cummings
Member of Congress

Chris Van Hollen
Member of Congress

John P. Sarbanes
Member of Congress

Donna F. Edwards
Member of Congress

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a license and without complying with any of Maryland's remedial statutes).