National Hispanic Leadership Agenda

October 7, 2016

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

Docket number: CFPB-2016-0025 or RIN 3170-AA40

Re: NHLA comments on proposed rulemaking on payday, vehicle title, and certain high-cost installment loans

Dear Director Cordray,

The National Hispanic Leadership Agenda (NHLA) files this comment in response to the Consumer Financial Protection Bureau's (CFPB) proposed rule on payday, vehicle title, and certain high cost installment loans.

NHLA is a premier coalition of the nation's 40 prominent Latino organizations. Collectively, NHLA leads the advocacy behind the pressing civil rights and policy issues impacting the 58 million Latinos living in the United States. Chief among those priorities is strengthening the economic outlook for Latino households, who have historically been underserved by the financial mainstream and relegated to alternative financial products and services that do not face the same regulatory oversight as traditional products in the financial marketplace.

The CFPB is the only federal agency charged with protecting the interests of consumers and during your first five years of existence, you have delivered on that promise. In particular, your first rulemaking action focused on the remittance market, which was a tremendous victory for Latino families who deserve transparency about fees when they are sending money to their loved ones abroad.

Today, one of the most ubiquitous providers of these alternative financial products are payday loan lenders, nationally numbering more storefronts than McDonald's and Starbucks combined.[i] A recent study released by the Center for Responsible Lending found that race and ethnicity are the leading factors in determining payday lender locations, with concentrations of these businesses in lower-income and largely minority communities.[ii]

Payday loans are inherent debt traps, locking borrowers in a cycle of rollover loans that can last several months, with a borrower ultimately owing hundreds of dollars in interest and fees before the loan is finally paid off. According to The

Pew Charitable Trusts' testimony before the Senate Committee on Banking, Housing, and Urban Affairs, more than 58% of payday loan borrowers report using the loans to cover monthly expenses such as utilities, rent, and food.[iii] But a payday loan typically requires a balloon payment averaging $400 to be paid with a borrower's next paycheck. When borrowers don't have this large lump sum in two weeks' time, countless borrowers "pay off" their loan by immediately taking out another loan to continue covering their living expenses. This revolving door of loans creates a debt trap that leaves borrowers in a worse financial position than before they took out the original loan. Regulations are needed to protect consumers from these largely unchecked financial products that are, by design, trapping people in a cycle of debt.

The payday lending market is not a small segment of consumers: Research shows that 12 million Americans take out a payday loan each year. Of these consumers, four out of five are not able to pay back the loan within its original term,[iv] suggesting that the loan is not affordable for the majority of consumers who use them. While there is a definite need for small-dollar credit, especially for low-income Latino consumers and those who may be outside the financial mainstream, consumers should not end up in financial ruin as a result of taking out a $300 loan.

The CFPB's proposed rule is an important step toward reforming an extremely misguided industry. The core principle of the CFPB's proposal is the right approach – requiring lenders to ensure that a loan is affordable without having to re-borrow or default on other expenses by assessing a borrower's ability to repay. This is critically important to halting the harms of this predatory business model, and we strongly support this approach.

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 that significantly undermine this standard. For example, the proposal could allow six, 400% APR payday loans a year to be made 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. These loopholes must be closed.

And finally, the rule must be strengthened to ensure that people have enough money to live on while paying back the loan. The proposal says that an affordable loan leaves the borrower with enough money left over to afford basic living expenses, but it allows payday lenders to define what constitutes as "basic living expenses." Far too many families are sacrificing necessities like groceries or diapers just to live at the mercy of the payday lenders or have paid hundreds of dollars in overdraft fees after a loan payment was taken out of their account. Instead of letting the lenders define basic living expenses themselves, they should be required to use an objective measure for calculating a borrower's basic living expenses and avoid over-reliance on back-end measures like default and reborrowing rates. These measures are not sufficient evidence of ability to repay given the lender's ability to coerce repayment through direct access to the borrower's car title or bank account through Automated Clearing House (ACH).

Since CFPB is not able to cap the rates on these abusive high-cost payday loans, the Bureau must find a way to curb this vicious cycle of debt. To do so, the CFPB should close the loopholes we have described in this comment letter and strengthen provisions to ensure a meaningful ability to repay test for each and every loan.

Thank you for this opportunity to comment. For additional information, please do not hesitate to contact NHLA through Marisabel Torres, NCLR Senior Policy Analyst, at (213) 787-9602 or mtorres@nclr.org; or Mónica Ramírez, NHLA Director of Gender Equity and Advocacy, at (202) 508-6919 or monica@nationalhispanicleadership.org.

Sincerely,

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[i] Federal Reserve Bank of St. Louis, *Payday Loans: Time for Review* (St. Louis, MO: Federal Reserve Bank of St. Louis, 2014), https://www.stlouisfed.org/publications/inside-the-vault/fall-2014/payday-loans (accessed April 14, 2015).
[ii] Wei Li, et al., *Predatory Profiling: The Role of Race and Ethnicity in the Location of Payday Lenders in California* (Washington, DC: Center for Responsible Lending, 2009).
[iii] Senate Committee on Banking, Housing, and Urban Affairs, Subcommittee on Financial Institutions, *Are Alternative Financial Products Serving Consumers*, 113th Cong., 2nd sess., 2014; and http://www.pewtrusts.org/~/media/legacy/uploadedfiles/pcs/content-level_pages/issue_briefs/2014/pewpaydaysenatebanking032414pdf.pdf
[iv] Susanna Montezemolo, *The State of Lending in America and its Impact on U.S. Households*, (Washington, DC: Center for Responsible Lending, 2013).