

Congress of the United States
House of Representatives
Washington, D.C. 20515

August 23, 2019

The Honorable Kathleen Kraninger
Director
Consumer Financial Protection Bureau
1700 G Street, NW
Washington, D. C. 20552

Dear Director Kraninger:

We write to express our significant concerns with the Consumer Financial Protection Bureau's (Consumer Bureau) plans to remove a crucial feature, the ability-to-repay requirements, from the 2017 rule on Payday, Vehicle Title, and Certain High-Cost Installment Loans (Payday rule). The Consumer Bureau's proposed action would allow predatory payday and car-title lenders to continue their abusive practices unfettered. We also write to oppose the recent final rule¹ that delays implementation of the ability-to-repay provisions of the 2017 Payday rule, leaving consumers without critical small dollar lending protections for an additional 15 months.

As you may be aware, the House Financial Services' Subcommittee on Consumer Protection and Financial Institutions held a hearing on April 30, 2019, entitled, "Ending Debt Traps in the Payday and Small Dollar Credit Industry," which featured a diverse group of witnesses who discussed the perils of unchecked predatory payday and car-title lending.² We would like to bring to your attention the following small sample of witness testimony on the matter:

"It would be iniquitous and immoral for someone who's been knocked down to receive handcuffs when they have, out of desperation, asked for a hand up. The payday loan industry is guilty of such unjust and unethical practices that prey upon the desperation of the poor who are already disadvantaged. Payday predators hijack the hopes of the vulnerable and re-victimize them by baiting them into a debt trap.... It is reprehensible that there may be a plan to open the way for old bank payday loans to re-enter the marketplace, as well as predatory high-cost bank installment loans." – *Rev. Dr. Frederick Douglass Haynes, III, Senior Pastor, Friendship West Baptist Church in Dallas, Texas*

"Unfortunately, I took out a payday loan of about \$700. That turned out to be a very big mistake that truly altered the course of my life. I found I could not afford to pay off the first loan without taking out another one. Thus, began a cycle of debt, which lasted over a year. Soon I was paying \$600 per month in fees and interest. I eventually closed my bank account to stop payments from being drawn out and leaving me without cash for my family's rent, groceries and other essential bills. This led to debt collections and a judgment. My tax refund was garnished, making things that much more difficult for my family. All told, that \$700 loan ended up costing me \$7,000." – *Ken Whittaker, former payday loan consumer, current activist with Southeast Michigan Organizing Director, Michigan United*

¹ This rule delays the 2017 Payday rule's effective date relating to ability-to-repay provisions to November 19, 2020, available at <https://www.consumerfinance.gov/policy-compliance/rulemaking/final-rules/payday-vehicle-title-and-certain-high-cost-installment-loans-delay-compliance-date-correcting-amendments/>.

² More information on this hearing available at <https://financialservices.house.gov/calendar/eventsingle.aspx?EventID=403646>.

“Allowing the 2017 rule to go into effect as planned is the bare minimum that the CFPB should do. It is absurd that we should even have to make such a straightforward request of an agency whose charge is to protect consumers from unfair, deceptive, and abusive financial practices. Even so, the CFPB must not only do this work, but do even more – such as use its enforcement authority to provide redress to people harmed by predatory lending practices, and it must continue the work to address the harms of long-term payday, car-title, and high-cost installment loans as it originally set out to do in its 2016 proposed rule.” – *Diane Standaert, Executive Vice President and Director of State Policy, Center for Responsible Lending*

Contrary to recklessly false characterizations, payday, car-title, and predatory consumer installment loans made without regard to the borrower’s ability to repay are not acceptable or sustainable sources of credit. Payday and car-title lenders have the leverage to seize hundreds if not thousands more than the original cost of the loan and have control over the borrower’s bank account and/or the ability to repossess the borrower’s car. The result is obvious: payday and car-title lenders lack the incentive to make loans that borrowers have the ability to repay while still being able to afford basic necessities of life.

Research, including that coming from the Consumer Bureau, has shown that these predatory products trap people in a cycle of debt and leave them in a significantly worse position than they were in prior to taking out the loan. According to Consumer Bureau data, 75 percent of payday loan fees are from borrowers stuck in more than 10 loans a year.³ Payday and car-title loans are estimated to carry an annual percentage rate (APR) of 391 percent on average.⁴ Many car-title borrowers refinance their loan up to eight times, and one out of five car-title borrowers lose their car in repossession.⁵ Experts have noted that payday loans often target communities of color, military servicemembers, and seniors,⁶ charging billions of dollars a year in unaffordable loans to borrowers with an average annual income of \$25,000 to \$30,000.⁷

These predatory products siphon billions of dollars from consumers in states with little to no regulation for payday or car title lenders, and consumers caught in these debt traps fall into a devastating avalanche of financial consequences like bank penalty fees, lost bank accounts, delinquency on other bills, destroyed credit, and even bankruptcy.

The American people in hardworking, politically-diverse communities across the nation are voicing that they do not want these unchecked products in their communities, as 16 states and the District of Columbia enforce rate caps to effectively prevent the payday lending debt trap. The laws changed in a portion of these states due to the will of the voters via ballot initiatives, with Arizona (2008)⁸, Ohio (2008), Montana (2010), South Dakota (2016), and Colorado (2018) being more recent examples. Consumers are asking for better and deserve better.

The Consumer Bureau’s proposal represents a betrayal of its statutory purpose and objectives to put consumers, rather than lenders, first. Moreover, the Bureau has offered no new

³ Consumer Financial Protection Bureau, “*CFPB Data Point: Payday Lending*,” March 2014, available at http://files.consumerfinance.gov/f/201403175%_cfpb_report_payday-lending.pdf.

⁴ CRL, “The Debt Trap of Triple-Digit Interest Rate Loans: Payday, Car-Title, and High-Cost Installment Loans” (2019), available at <https://www.responsiblelending.org/research-publication/debt-trap-triple-digit-interest-rate-loans-payday-car-title-and-high-cost>.

⁵ *Id.*

⁶ Comment letter submitted by CRL, CFA, NCLC, NAACP, Leadership Conference, UnidosUS, AFR, et al to the Consumer Bureau, Oct. 7, 2016, available at: https://www.responsiblelending.org/sites/default/files/nodes/files/research-publication/crl_payday_comment_oct2016.pdf

⁷ 82 Fed. Reg. 54581 (2017).

⁸ Arizona voters voted to uphold the existing 36 percent rate cap in 2008.

evidence and no rational basis to remove the ability-to-repay provisions. We think you should immediately rescind the harmful proposal to roll back the 2017 Payday rule. We also urge you to reconsider the final rule delaying the 2017 Payday rule implementation and allow for the ability-to-repay standard to go into effect without delay. As the Director of the Consumer Bureau, it is critical that you do what is right on behalf of all consumers, which is supposed to be the primary imperative of the agency. We look forward to your swift action to put consumers first.

Sincerely,

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