May 15, 2019

Consumer Financial Protection Bureau
1700 G St NW
Washington, DC 20552

Via: http://www.regulations.gov

Re: Docket ID CFPB-2019-0006-0001, Notice of Proposed Rulemaking

Comments in Response to the Consumer Financial Protection Bureau's Notice of Proposed Rulemaking That Would Rescind Certain Provisions of the 2017 Regulation Governing Payday, Vehicle Title, and Certain High-Cost Installment Loans

The National Association of Consumer Advocates (NACA), a national non-profit association of attorneys and advocates actively engaged in promoting a fair and open marketplace that forcefully protects the rights of consumers, submits these comments in response to the Consumer Financial Protection Bureau's ("The Bureau") notice of proposed rulemaking that would rescind provisions of the Bureau's 2017 regulation governing payday loans ("the Rule").

As an organization fully committed to promoting justice for consumers, NACA opposes the Bureau's proposal to rescind the provisions of the Rule that prohibit lenders from making covered short-term or longer-term balloon-payment loans ("payday loans") without making a reasonable determination that consumers are able to repay those loans according to their terms ("ability to repay provision"). We strongly urge the Bureau to retain the Rule's ability to repay provision and implement the Rule as written.[1]

We join the overwhelming bipartisan consensus of American voters in favor of reining in payday lenders. Eviscerating the payday rule goes against that consensus. Polling shows that more than 75% of voters from across the political spectrum support the Rule.[2] Also, in recent years, strong majorities of voters in South Dakota, Colorado, Montana, Ohio, and Arizona have capped their interest rates at 36% or less.

[1] Payday, Vehicle Title, and Certain High-Cost Installment Loans, 82 Fed. Reg. 54472.
[2] Lake Research Partners, Poll of 1000 Likely voters nationwide by telephone 10 (2018).

The Rule was Based on Years of Empirical Research

In this proposal, the Bureau claims that the underlying evidence supporting the ability to repay provision is not sufficiently robust given the Rule's likely effect on the market for payday loans and the ability of consumers to access such products.[3] However, the Rule and the ability to repay provision were developed based on five years of extensive research and outreach on payday lending by the Bureau.[4] In contrast, the current proposal relies on incomplete evidence, is not supported by any new research, and fails to adequately consider the harm payday loans inflict on consumers.

The Bureau states that its primary consideration in proposing to rescind the ability to repay provision is the effect the provision would have on the payday loan market. In particular, the Bureau alleges the Rule would cause a drastic decrease in lender volume and revenue.[5] The proposal fails to acknowledge that lender revenue is primarily generated through fees paid by borrowers and that increased revenue for lenders is also a sign of money lost by borrowers. The proposal also states that only an estimated 33% of current payday borrowers would qualify for a loan if the ability to repay provision was implemented.[6] This is not a negative consequence as the proposal suggests. It is not that the other 67% of borrowers are losing access to a needed financial product but that payday lenders are no longer able to take advantage of those 67%. When loans are made to borrowers who cannot pay them back, the loans do not serve to help the borrowers; they only serve to drive the borrowers into a vicious cycle of debt to pad the lender's profits.

The Bureau conducted five years of research on payday loans' impact on consumers, and the evidence shows that these high-interest loans cause great financial harm to ordinary people. The Bureau should not ignore its own findings. It should heed the financial welfare of the consumers it is mandated to protect.

Payday Loans Inflict Financial and Emotional Damage on Consumers

Short-term, high-cost loans are designed to trap borrowers in cycles of debt. According to the Bureau's own research, a typical payday loan carries an annual percentage rate of 400%, over 80% of payday loans are renewed, and half of all payday loans are part of a sequence of at least

[3] Payday, Vehicle Title, and Certain High-Cost Installment Loans, 84 Fed. Reg. 4252, 4253 (proposed Feb. 14, 2019).
[4] Payday, Vehicle Title, and Certain High-Cost Installment Loans, *supra* note 1.
[5] Payday, Vehicle Title, and Certain High-Cost Installment Loans, *supra* note 3, at 4259.
[6] Id.

10 loans.[7] Additionally, 75% of all fees on these loans are generated from borrowers who are stuck in a sequence of 10 or more loans.[8]

These statistics indicate that borrowers are unable to afford to pay the exorbitant interest rates on these loans and are being forced to continuously take out further loans to survive, which is where the lenders make the bulk of their profit. It is clear that the payday loan business model is predicated on taking advantage of desperate borrowers to steer them into series of unaffordable loans – not providing access to much-needed credit as the lenders like to claim.

When consumers get trapped in debt, the consequences can be devastating and permeate every aspect of their lives. Payday loan borrowers are already financially insecure and struggling to make ends meet. The average payday loan borrower earns just $30,000 a year and 58% already have trouble with their monthly expenses.[9] Piling on steep fees only serves to push borrowers further into instability.

Borrowers have reported getting stuck paying over $10,000 in interest on an initial loan of only $500.[10] They live in constant fear that their vehicles will be repossessed.[11] They are forced to choose between feeding themselves and making payments on their loans.[12] All of the Bureau's findings suggest that these experiences are the norm for payday borrowers rather than outliers. Payday loans leave borrowers fighting harder than ever for basic survival, not to mention the constant shame and stress that come with being in seemingly inescapable debt.

The Rule clearly laid out the substantial harms that unaffordable loans create for consumers and how the ability to repay provision would mitigate them.[13] The Bureau cannot simply dismiss the mountains of evidence it has collected and the first-hand accounts of how payday loans are hurting consumers. The current proposal to rescind the ability to repay provision is misguided, irresponsible, and not based on the most complete data. Allowing payday lenders to continue making unaffordable loans to desperate consumers serves only to line the pockets of predators with money taken from those who need it most.

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7 The CFPB Office of Research, CFPB Data Point: Payday Lending 4 (2014).
[8] CFPB, Payday Loans and Deposit Advance Products 22 (2013).
[9] Pew Charitable Trusts, Payday Loan Facts and the CFPB's Impact, https://www.pewtrusts.org/en/research-and-analysis/fact-sheets/2016/01/payday-loan-facts-and-the-cfpbs-impact
[10] Ctr. For Responsible Lending, The Victims of Payday Lending, https://www.responsiblelending.org/issues/victims-payday.
[11] Allyson Fredricksen, Caught in the Debt Trap: Stories of Payday and Car Title Loan Borrowers 3.
[12] Id., at 5.
[13] Payday Vehicle Title, and Certain High-Cost Installment Loans, *supra* note 1, at 54554-76.

We urge the Bureau to make consumers its priority and to implement the 2017 Rule with the ability to repay provision untouched.

Sincerely,

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