FAIR LENDING FOR A THRIVING COLORADO

Members of Fair Lending for a Thriving Colorado (FLTC) work to protect consumers from predatory lending practices that harm communities and Colorado's economy, while championing access to safe and reliable capital.

October 6, 2016

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

> Re: The Fair Lending for a Thriving Colorado 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:

The members of the Fair Lending for a Thriving Colorado coalition file this comment in response to the CFPB's proposed rule on payday, vehicle title, and certain high-cost installment loans. Thank you for the opportunity to submit comments. The rule is a critical first step in stopping the harms of unaffordable loans, but the rule must be strengthened to ensure it stops the debt trap once and for all.

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In Colorado, payday loans continue to trap working families in debt despite reforms enacted in 2010 that capped rates and fees, imposed a minimum six-month loan term and required that all loans be structured for payments in installments. While capping rates and fees lowered the cost of these loans, they remain expensive with payday loan contracts carrying annual percentage rates of 190%.[1]

Moreover, re-borrowing and defaults remain high, revealing that even with the rate caps, the move to relatively longer-term installment loans does not prevent borrowers from becoming trapped in long-term high-cost debt. As noted in the explanatory materials included with the CFPB's proposed rule:

> In Colorado, in 2012, two years after the State's amendments to its payday lending law, 36.7 percent of new loans were taken out on the same day that a previous loan was paid off, an

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1 Center for Responsible Lending, Map of U.S. Payday Loan Interest Rates, 2016, http://www.responsiblelending.org/research-publication/map-us-payday-interest-rates Because Colorado law makes origination fees refundable pro-rata when a loan is repaid before the end of the loan term, the effective average annual percentage rate is 121%.

increase from the prior year; for larger loans, nearly 50 percent were taken out on the same day that a previous loan was repaid.[2] Further, despite a statutorily-required minimum loan term of six months, on average, consumers took out 2.9 loans from the same lender during 2012 (by prepaying before the end of the loan term and then reborrowing).[3] Colorado's regulatory reports demonstrate that in 2013, the number of loan defaults on payday installment loans, calculated as a percent of the total number of borrowers, was 38 percent but increased in 2014 to 44 percent.[4] [5]

On average, the typical Colorado payday loan borrower spent 286 days—almost 4/5 of the year—in high-cost debt in 2012.[6] This is more than 3 times the maximum indebtedness limit established by the FDIC in its 2005 guidelines for its banks. This is especially problematic given that the typical payday loan borrower in Colorado had just $2,833 in *gross* monthly income in 2015.[7]

Annually, these high-cost lenders drain $57,256,103 in payday fees in Colorado.[8] This is particularly detrimental to Colorado's 395,007 veterans and its communities of color, populations which payday lenders target and exploit. Payday lenders' ability to seize money directly out of borrowers' bank accounts means that people are left with little choice but to re-borrow, becoming more deeply mired in a cycle of debt. The CFPB's rule would help these borrowers by beginning to rein in predatory lending practices.

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. This is critically important to stopping the harms of this predatory business model, and we strongly support this approach. This basic principle though 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.

Of particular concern in Colorado – the rule exempts certain longer-term payday loans with high origination fees from the ability to repay requirements. This loophole must be closed. As Colorado's experience demonstrates, turning two-week payday loans into longer-term payday loans does not, without additional protections, make the loans affordable or end the pattern of repeat borrowing and extended time in debt.

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2 CFPB Proposal at 82, citing Colorado UCCC 2000-2012 Demographic and Statistical Information, http://coag.gov/sites/default/files/contentuploads/cp/ConsumerCreditUnit/UCCC/AnnualReportComposites/DemoStatsInfo/ddlasummary2000-2012.pdf, at 25.

3 Id., citing Colorado UCCC 2000-2012 Demographic and Statistical Information, at 15,18.

4 Id., citing State of Colo. Dep't of Law, 2014 Deferred Deposit/Payday Lenders Annual Report; http://www.coloradoattorneygeneral.gov/sites/default/files/contentuploads/cp/ConsumerCreditUnit/UCCC/2014_ddl_ar_composite.pdf; The Pew Charitable Trusts, Trial, Error, and Success in Colorado's Payday Lending Reforms, at 6 (2014), available at http://www.pewtrusts.org/~/media/assets/2014/12/pew_co_payday_law_comparison_dec2014.pdf,

5 Updated data released by the Colorado Attorney General show in 2015, Colorado's payday loan borrowers took out on average 3.29 loans and spent 299 days in debt. Colorado UCCC 2000-2015 Demographic and Statistical Information. http://www.coloradoattorneygeneral.gov/sites/default/files/contentuploads/cp/ConsumerCreditUnit/UCCC/AnnualReportComposites/DemoStatsInfo/ddlasummary2000-2015.pdf

6 Colorado UCCC 2000-2012 Demographic and Statistical Information

7 Colorado UCCC 2000-2015 Demographic and Statistical Information. http://www.coloradoattorneygeneral.gov/sites/default/files/contentuploads/cp/ConsumerCreditUnit/UCCC/AnnualReportComposites/DemoStatsInfo/ddlasummary2000-2015.pdf

8 Center for Responsible Lending, "Payday and Car Title Lenders Drain $8 Billion in Fees Every Year", 2016, http://www.responsiblelending.org/research-publication/payday-and-car-title-lenders-drain-8-billion-fees-every-year

The Fair Lending for a Thriving Colorado coalition especially urges the CFPB to strengthen the protections against repeat refinancing of longer-term loans. If lenders can repeatedly flip borrowers from one long-term loan into another, debt will continue to pile up and borrowers will continue to be stuck in a debt trap.

Finally, the rule must be strengthened to ensure that people have enough money to live on after paying back the loan. Right now, the proposal falls short in this regard and may allow lenders to simply continue "business as usual." Time and time again, the members of our broad coalition hear about families who have gone hungry, gone without medicine or paid hundreds in overdraft fees after a loan payment was taken out of their account. Lenders should be required to use an objective measure for projecting a borrower's basic living expenses and avoid over-reliance on back-end measures like default and re-borrowing rates. Even low default rates are not sufficient evidence of ability to repay, given the lender's ability to coerce repayment through control over the borrower's bank account or car. At the same time, the Bureau should take care not to sanction industry-wide high rates of defaults and re-borrowing by comparing one payday lender's rates only to other payday lenders' rates.

We are thankful that one loophole has already been closed – an exemption from the proposed ability to repay test, included in the Bureau'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 call on the CFPB to close the remaining loopholes and issue the strongest rule possible to stop the harmful debt trap of unaffordable payday loans.

For the CFPB rule to end the vicious cycle borrowers face, we, in Colorado, will need a strong rule that makes loan terms affordable to borrowers. The CFPB rules must ensure that loans are affordable in light of a borrower's income and expenses, particularly for longer-term loans such as those in Colorado. The CFPB must enact strong rules, without loopholes, that ensure payday lenders cannot continue their "business as usual" debt trap lending.

Thank you for this opportunity to comment. For further clarification on these comments, please contact Rich Jones at jones@bellpolicy.org or (303) 297-0456.

Sincerely,

Members and supporters of the Fair Lending for a Thriving Colorado coalition:

The Bell Policy Center
Colorado Center on Law and Policy
Colorado Coalition for the Homeless
Colorado Council of Churches
Colorado Fiscal Institute
CoPIRG – Colorado Public Interest Research Group
CLLARO
FRESC
Generation Latino
Habitat for Humanity of Colorado
Interfaith Alliance of Colorado
m*powered*
NAACP Colorado Montana Wyoming State Conference
One Colorado
Servicios de La Raza
State Innovation Exchange, SiX