

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

October 7, 2016

Re: Comments on Proposed Rulemaking on Payday, Vehicle Title, and certain
High-Cost Installment Loans by the Southern Poverty Law Center

Docket No. CFPB-2016-0025 or RIN 3170-AA40

Dear Director Cordray:

The Southern Poverty Law Center (SPLC) writes regarding the Bureau's proposed rule on payday, auto title, and certain high-cost installment loans. We greatly appreciate the opportunity to submit comments on this critical issue. We applaud the Bureau for its efforts to protect consumers across America and for taking this important step to enact safeguards to protect consumers from unscrupulous lenders.

The SPLC is a non-profit legal organization based in Montgomery, Alabama, with additional offices across the Deep South. For over four decades SPLC has sought justice for and represented the needs of the most vulnerable members of our society. The SPLC is committed to ensuring that low-income consumers are protected from lenders who prey on their vulnerabilities and seek to trap them in an endless cycle of debt.

SPLC is also a member of The Alliance for Responsible Lending in Alabama (ARLA), a diverse, statewide coalition of advocates and stakeholders dedicated to reforming payday and auto title lending in Alabama. With ARLA, the SPLC works to increase public awareness about predatory lending in Alabama and to advocate for reform.

Payday and Car Title Lending In Alabama

Historically, Alabama had strong safeguards in place to protect consumers, with an 8% usury cap.¹ In 1959, the Small Loan Act was adopted and allowed higher interest rates of 3% per month (or 36% annually) for small loans.² These safeguards have drastically been whittled away since that time. During the 1990s Alabama saw a significant increase in the number of payday and car title loan storefronts, as did many other parts of the country. Lenders quietly charged far-beyond the allowable thirty-six percent then authorized by the Small Loan Act. In 1993, the

¹ Ala. Code § 8-8-1

² Ala. Code § 5-18-15(a)

Alabama Supreme Court ruled that auto title loans should be governed by the Alabama Pawnshop Act, though the lender did not take possession of the car as they do with traditional pawnshop loans. Title Loans have thus been allowed as 30-day loans in Alabama, with interest rates of twenty-five percent (300% APR).³

In 1994, the Alabama Attorney General issued an opinion stating that payday lenders could not violate the interest rate caps and other protections in the Alabama Small Loan Act, the Alabama Consumer Credit Act “Mini-Code,” and the Truth in Lending disclosure requirements.⁴ Enforcement actions began in 1998, when the Alabama State Banking Department issued 150 cease and desist orders to lenders violating the interest cap. Lenders sued in response, and, while the litigation was pending, the Alabama Legislature modified the Small Loan Act, Ala. Code § 5-18-1 *et seq.*, to provide an alternative rate schedule increasing the thirty-six percent annual interest cap to approximately 190 percent.

By 2003 industry lobbyists had pushed the legislature to pass the Deferred Presentment Services Act, Ala. Code § 5-18A-1 *et seq.*, allowing annual percentage rates upwards of 456 percent on short-term payday loans. The Act purportedly limits a borrower to \$500 in outstanding payday loans at any given time and provides that lenders must utilize database systems “where available.” Because the State did not have a common-source, centralized mechanism to track loans or enforce the provision, however, lenders were using any of seven different databases. In 2013, the Banking Department mandated all payday licensees use a central database, an action that several payday lenders sued to block. The database became operational in August 2015 after the Banking Department’s actions were approved by the Alabama Supreme Court.

Numbers from the database confirm that these loans are not used as short-term products, but instead create a debt trap for many Alabamians. Over the first year of data collection, nearly 2.1 million payday loans had been taken out by a mere 246,824 unique borrowers. This averages to mean of over eight loans per borrower per year, trapping the borrower in debt for an average of 168 days per year.⁵

Reform efforts have also been blocked by industry lobbyists and the legislators they fund. As part of ARLA, the SPLC has been a part of reform efforts since the 2013 state legislative session, advocating for legislative reform of Alabama’s payday and title lending laws. We’ve fallen short every year, despite the fact that Alabamians overwhelmingly support our reform efforts: Editorial Boards in almost every major city have written pieces in favor of payday and auto title reform.⁶ A survey of Birmingham Business Journal readers and found only seven percent of

³ Ala. Code § 5-19A-1 *et seq.*

⁴ Op. of the Ala. Att’y Gen. dated July 7, 1994, <http://www.ago.state.al.us/opinions/pdf/9400210.pdf>.

⁵ AL.com, September 22, 2016, http://www.al.com/news/index.ssf/2016/09/alabamians_use_payday_loans_tw.html.

⁶ This includes Montgomery (*Editorial: Payday loan bill a chance to reform*, MONTGOMERY ADVERTISER, Mar. 5, 2014, <http://www.montgomeryadvertiser.com/story/opinion/editorials/2014/03/06/editorial-payday-loan-bill-a-chance-to-reform/6095339/>); Anniston (*Editorial: Rein in the payday lenders in Alabama*, ANNISTON STAR, Oct. 7, 2016, http://www.annistonstar.com/opinion/editorial-rein-in-the-payday-lenders-in-alabama/article_8117a484-074f-11e6-94c4-6b83dae45ddb.html); Tuscaloosa (*Editorial: It’s time to limit payday lenders*, TUSCALOOSANEWS.COM, Apr. 11, 2016, <http://www.tuscaloosaneews.com/opinion/20160411/editorial-its-time-to-limit-payday-lenders>); *Editorial: Usury bill would lend a hand to many in Alabama*, TUSCALOOSANEWS.COM, May 24, 2014,

respondents were *not* in favor of payday lending reform.⁷ Even many state legislators support reform efforts. In 2013, a title reform bill SPLC supported in the House of Representatives had just twenty-seven co-sponsors in a body of 105 members;⁸ that number grew in 2015 to sixty-seven co-sponsors—more than half of the legislative body.⁹ Despite the large number of co-sponsors on the bill, however, the bill failed in the House Financial Services Committee. Members of that committee received over \$59,000 in campaign contributions from the industry during the 2014 campaign season, and members of the Senate Banking Committee received more than \$116,000 in contributions from the industry.¹⁰ Thus, despite the overwhelming support for reform across Alabama, including legislative and business support, far too many Alabamians continue to be ensnared in these debt traps.

In response to the lack of reform at the state level, over twenty cities across Alabama have passed local ordinances in an effort to bring reform at the local level.¹¹ The cities vary in terms of population and geographical location, but all agree that payday and auto title lenders are harmful to their communities.

Alabamians Struggle to Escape the Debt Trap of Payday and Title Loans

We have spoken extensively with consumers across Alabama, and heard about the devastation these loans cause in their lives. Many were trapped for months or years making payments on loans that legally carry interest of 456% APR (payday) or 300% APR (car title). They have paid thousands of dollars in interest and multiple times their original loan amounts. Some of those stories are published in our report entitled “Easy Money, Impossible Debt: How Predatory Lending Traps Alabama’s Poor.”¹² As we noted in the report, the business model of payday and title lenders encourages loaning consumers more money than they can afford to pay back, in order to secure multiple interest payments as these consumers are forced to renew their loans each time they come due. The owner of one payday store told us, “To be honest, it’s an entrapment—it’s to trap you.” Borrowers know this all too well.

Pamela Tarver, for example, turned to TitleBucks when she needed \$700 to pay her rent. At the time Ms. Tarver was a single mother with two disabled children. She had recently lost her minimum wage job and was struggling to support her family while she put herself through

<http://www.tuscaloosaneews.com/opinion/20140524/editorial-usury-bill-would-lend-a-hand-to-many-in-alabama>), and many others.

⁷ *Business Pulse Poll: Do you think Alabama needs to reform payday lending?*, BIRMINGHAM BUSINESS JOURNAL, <http://www.bizjournals.com/birmingham/pulse/poll/do-you-think-alabama-needs-to-reform-payday-lending/16911291>.

⁸ <http://alisondb.legislature.state.al.us/ALISON/SearchableInstruments/2013RS/PrintFiles/HB462-int.pdf>

⁹ <http://alisondb.legislature.state.al.us/ALISON/SearchableInstruments/2015RS/PrintFiles/HB400-int.pdf>

¹⁰ http://www.al.com/opinion/index.ssf/2015/03/while_predatory_lenders_bilk_b.html

¹¹ This includes Decatur (Eric Fleischauer, *Decatur council extends moratorium on payday lenders*, DECATURDAILY.COM, Jan. 21, 2014, http://www.decaturdaily.com/news/local/decatur-council-extends-moratorium-on-payday-lenders/article_f1e52c70-82c4-11e3-8773-10604b9f6eda.html) and Birmingham (AL.com, *Open here, but not here: Birmingham City Council implements zoning restrictions for payday lending businesses*, Dec. 17, 2013, http://blog.al.com/spotnews/2013/12/open_here_but_not_here_birming.html).

¹² SOUTHERN POVERTY LAW CTR., *Easy Money, Impossible Debt: How Predatory Lending Traps Alabama’s Poor* (Feb. 2013),

https://www.splcenter.org/sites/default/files/d6_legacy_files/downloads/publication/Payday_Lending_Report_web.pdf

school in order to find better opportunities in the future. A TitleBucks employee told Ms. Tarver she was qualified for a \$2,000 loan with a lower interest rate. Ms. Tarver was told she would be required to pay a minimum payment of \$219 each month. Only after Ms. Tarver signed the contract did she learn that her minimum payment would only cover interest. Month after month Ms. Tarver found herself unable to keep up with the minimum payments. Despite her inability to pay, TitleBucks offered her more money, which she took because the interest payments to TitleBucks often left her with no money for rent. Over four years Ms. Tarver paid only \$300 towards the principal. She instead paid over \$14,000 in interest and fees —nearly four times more than her principal balance.

Faye King, another Alabama resident, has struggled with both payday and title loans for nearly ten years. She has lost two vehicles to a title lender—particularly detrimental for people like Ms. King who live in a state lacking adequate public transportation. Ms. King took the loans out to help her pay utility bills and prescriptions and to help her care for her grandchildren. Ms. King’s only source of income at the time was her monthly social security payment. The lenders knew this, and still offered Ms. King loans that were unaffordable for her. As Ms. King says, the lenders were “robbing her without a gun.” Ms. King is currently watching her grandchildren struggle with payday loans. She feels helpless because she receives only social security and cannot offer them any financial assistance.

Latara Bethune needed help with expenses during a high-risk pregnancy that prevented her from working. The hairstylist in Dothan, Alabama, turned to a title loan shop for help. She was offered twice the amount she requested, and ended up borrowing \$400. It was only later that Ms. Bethune discovered the so-called “monthly payments” the lender said she owed had mostly covered only interest, and would result in 18 payments totaling \$1,787 to pay off her \$400 loan.

Barbara took out her first payday loan from Payday Loan Stores of Alabama for \$500 to help her pay for bills. Barbara found herself unable to pay the full amount of the loan, so she renewed the loan multiple times. She often made interest-only payments of \$87.50 because she could not afford to pay off the loan in full. It took her nearly four months to pay off the two-week loan. Barbara paid approximately \$350 in just interest for her \$500 loan. Just two months after Barbara finished paying this loan, she found herself still struggling to make ends meet, so she took out another \$500 loan. Again, Barbara found herself unable to pay the full amount due, so she renewed the loan at least twice, making interest-only payments because she could not afford to pay the loan in full. She could not continue making payments, and this loan became part of her declaration of bankruptcy.

The Proposed Rules

The SPLC believes in the core principle of the proposed rules: that lenders should be required to engage in responsible lending and find that borrowers have the ability to make each loan payment without having to re-borrow or default on other obligations. Too often, SPLC has seen how the failure to consider a borrower’s ability to repay results in that borrower becoming caught in a debt trap, paying interest only for many months or even years. It also results in failures by lenders to make clear to the borrower the full amount of any payments due, as we have seen with many borrowers as well as in the CFPB’s recent enforcement action against TMX

Finance,¹³ and borrowers themselves are often unable to make an accurate assessment of whether they can afford the payments. We believe that the experiences of Alabamians, as well as the rest of the record compiled by the CFPB, shows the need for strong rules that require consideration of a borrower's true ability to repay.

But the current proposal falls short of requiring lenders to make a fully accurate determination of that ability to repay, especially considering the history of these lenders to evade the law to offer unaffordable products. Borrowers have told us time and again that they rely on lenders' determination of what loan they qualify for; many, like Ms. Bethune and Ms. Tarver, borrowed more than they could afford based on the lender's suggestion that they qualified for it. SPLC's understanding, based on many similar conversations with borrowers, comports with that of the Bureau—that “consumers who take out these loans typically appear not to understand when they first take out a loan how long they are likely to remain in debt and how costly that will be for them.”¹⁴ Without obtaining an accurate assessment of borrowers' expenses—or even asking borrowers about them—lenders will continue to recommend loans with payments far beyond borrowers' means. Industry analysts estimate that, under the Bureau's proposed test, most payday loan borrowers will qualify for payments of at least \$200 per month.¹⁵

- *The proposal does not take into account court-ordered payments or court debt (beyond child support) in its calculation of major financial obligations.* Many low income consumers have required payments under court orders, including payments to bankruptcy court, payments for probation or other supervision, and payments on fines and fees owed in criminal cases (ranging from traffic tickets to misdemeanors). In a survey of persons on probation in Alabama, for example, individuals reported paying monthly supervision fees between \$35 and \$150, and almost all reported having other court-owed obligations beyond those fees.¹⁶ Sixteen percent of those surveyed reported taking out a payday loan to try to pay these fees.¹⁷
- *Estimations allowed by the proposal will result in undercounting of expenses.* Lenders should be required to conduct a true analysis of how much a borrower actually needs to spend on basic living expenses. Setting minimum percentages or dollar amounts based on unknown studies will likely not capture the specifics of that consumer's situation. For instance, with respect to utility payments, two recent studies showed that low-income households spend between three and ten times more for energy than higher income

¹³ CFPB Fines Titlemax Parent Company \$9 Million for Luring Consumers Into More Costly Loans, CONSUMER FIN. PROT. BUREAU, Sept. 26, 2016, <http://www.consumerfinance.gov/about-us/newsroom/cfpb-fines-titlemax-parent-company-9-million-luring-consumers-more-costly-loans/>.

¹⁴ CONSUMER FIN. PROT. BUREAU, Proposed Rule: Payday, Vehicle Title, and Certain High-Cost Installment Loans, at 252 http://files.consumerfinance.gov/f/documents/Rulemaking_Payday_Vehicle_Title_Certain_High-Cost_Installment_Loans.pdf.

¹⁵ *Using Supply Side Data, Consumption Pattern Data and Consumer Characteristics to Model Effects of Regulation and Suggest Industry Responses*, nonPRIME101 Conference 2015, <https://www.nonprime101.com/wp-content/uploads/2015/08/NP101-Rick-Hackett.pdf#page=48>.

¹⁶ Foster Cook, *The Burden of Criminal Justice Debt in Alabama: 2014 Participant Self-Report Survey* at 7, https://www.uab.edu/medicine/substanceabuse/images/The_Burden_of_Criminal_Justice_Debt_in_Alabama_Part_1_Main_Report.pdf.

¹⁷ *Id.* at 9.

households, which varied from city to city.¹⁸ Estimates based on percentages or dollar amounts compared to households of similar size also may not capture the full costs of childcare for those households that incur that expense. Analysis of a borrower's spending habits may provide a much more accurate analysis of their basic needs. Otherwise, any studies used for such purposes should be unbiased, validated sources.

Moreover, if the rules continue to allow estimates, basing the validity of any estimates on a comparison to the default and reborrowing rates of other high-cost lenders will not result in accurate measures of basic living expenses. It instead will sanction high industry-wide rates of default and reborrowing.

Short-Term Loans: We agree with the provisions of the rule that recognize the importance of considering the borrower's ability to pay, and with the Bureau's recognition that short-term car title loans should never be given without consideration of the borrower's ability to repay. However, as currently written, the proposed rule contains extremely dangerous loopholes for short-term loans that will not mitigate the harm currently suffered by many borrowers. The proposal could allow six high-cost payday loans a year to be made without any ability to repay standard. This is six unaffordable loans too many, and allows lenders to give borrowers multiple loans that they already know they are unable to pay by the due date.

To allow borrowers a greater chance of escaping the debt trap, the CFPB should increase the cooling off period between loans to 60 days, rather than 30 days as proposed, as making a payment on a short-term loan could impact multiple cycles of household expenses. The rules should also ensure that all short-term indebtedness does not exceed a total of 90 days every 12 months, consistent with previous FDIC guidance for banks.

Longer-Term Loans: We support including all longer-term loans with an all-in, fee-inclusive interest rate of 36% APR or higher, to ensure that lenders cannot avoid scrutiny by supplementing a lower income rate with high origination fees or other add-on products.

As outlined above, we are concerned that the ability-to-repay test as currently proposed will allow lenders to avoid accounting for all of a borrower's expenses, leading to a finding that borrowers have a larger share of residual income than is truly available.¹⁹ Borrowers will thus be open to harm both from abusive long-term products with high interest and high monthly payments, as well as from the six unaffordable short-term loans allowed per year. We encourage the development of responsible, affordable loan products as alternatives if these high-cost loans are allowed to remain on the market. The Bureau solicited feedback on an alternative that would allow loans that have payments limited to five percent of a borrower's paycheck, are fully amortizing, and have a term of no more than six months. Banks and credit unions have supported

¹⁸ Ariel Dreihobl and Lauren Ross, *Lifting the High Energy Burden in America's Largest Cities: How Energy Efficiency Can Improve Low-Income and Underserved Communities*, Apr. 20, 2016, <http://aceee.org/research-report/u1602>; Patrick Sobol, *From Power to Empowerment: Plugging Low Income Communities Into The Clean Energy Economy*, http://groundswell.org/frompower_to_empowerment_wp.pdf.

¹⁹ Industry analysts estimate that more than half of current payday loan consumers have residual incomes of greater than 30 percent. *Using Supply Side Data, Consumption Pattern Data and Consumer Characteristics to Model Effects of Regulation and Suggest Industry Responses*, nonPRIME101 Conference 2015, <https://www.nonprime101.com/wp-content/uploads/2015/08/NP101-Rick-Hackett.pdf#page=48>.

this alternative as one that would allow them to make lower-cost loans on a larger scale. We believe this option, if coupled with a provision allowing higher scrutiny for those lenders with high default rates, will allow consumers to access safer credit and will limit payments beyond what may result under the current ability-to-repay test.

The Bureau should also require heightened scrutiny for all long-term loan portfolios that have default rates above 10 percent—including both the loans under the ability-to-repay provisions and any alternative loans. The Bureau’s proposal currently lacks clear guidelines to help examiners distinguish between loans that pose greater or lesser risk of harm to consumers. The 10 percent default threshold for heightened scrutiny could help examiners make this type of distinction. A loan should be counted as “defaulted” if it is refinanced or reborrowed, so that lenders cannot artificially lower their default rate by encouraging borrowers who cannot afford to pay to take out new loans.

Thank you for the opportunity to comment on this issue. The SPLC, along with many other organizations and individuals across America, welcomes the proposed rules and hopes the Bureau will enact a strong rule, without loopholes, to ensure that our communities are protected from predatory lending.

Sincerely,

Sara Zampierin
Acting Deputy Legal Director
Southern Poverty Law Center