Maryland Consumer Rights Coalition

Director Kathleen Kraninger
Consumer Financial Protection Bureau
1700 G Street NW
Washington, DC 20552
Submitted electronically via https://www.regulations.gov

May 15, 2019

**Re: Comments on Proposal to Rescind Ability-to-Repay Requirements Governing Payday, Vehicle Title, and Certain High-Cost Installment Loans, Docket No. CFPB-2019-0006; RIN 3170-AA80**

Dear Director Kraninger:

On behalf of the Maryland Consumer Rights Coalition, I appreciate the opportunity to provide a statement on Maryland's experiences with the payday lending industry, as well as our recommendations for regulating payday and other high cost lending.

The Maryland Consumer Rights Coalition (MCRC) advances economic rights and financial inclusion through research, advocacy, education, organizing, and direct service. Our 8,500 supporters and members work with us to mobilize for systemic policy change which focuses on reducing inequality and expanding racial and gender equity.

MCRC writes today to vehemently oppose the proposed rescission of the common sense ability-to-repay requirements of the Consumer Financial Protection Bureau (the Bureau)'s 2017 payday and vehicle title loan rule ("Ability-to-Repay Rule" or "Rule").

Bank-issued payday loans, the expansion of which the Bureau now encourages, were also typically unaffordable, leading to a cycle of repeat loans. Contrary to bank claims, we have seen no evidence that these loans gave people an alternative to non-bank payday lending or drove non-bank payday lender volume down. Rather, data suggests they simply saddle bank customers with additional unaffordable debt.

Maryland, along with 15 other states and the District of Columbia, maintains a rate cap (33-36%) for small, consumer loans which effectively deters payday lenders from making loans to Maryland borrowers. Consequently, the Center for Responsible Lending estimates that Maryland consumers have saved a total of **$141,016,533** in payday fees and **$111,967,142** in car title loan fees each year, thanks to our protective laws.

*Payday Lenders' Myriad Attempts to Exploit Loopholes*
Undeterred by Maryland's small loan rate cap, payday lenders have tried time and again to exploit legal loopholes in state laws to provide high-cost loans to financially fragile consumers.

In the past seven years, Maryland regulators, legislators, and consumer advocates have thwarted three attempts by payday providers to lend in our state. In 2010, payday lenders attempted to circumvent Maryland's usury rate caps by providing online loans that met the usury rate caps, but also charged a broker's fee of $20 per $100 borrowed. Factoring in the fees, Marylanders were paying an average of 640% per loan.[1] In 2013, Maryland's Commissioner of Financial Regulation pursued banks that were partnering with payday lenders in Maryland – despite the rate cap. While the original loan met the rate cap, fees for the bank and other charges compounded to create an average APR of 400% – well above Maryland's 33% cap. In 2014, Maryland's Commissioner of Financial Regulation reached a $2 million settlement from Western Sky and Cash Call for usurious payday loans with 1,825% interest rates to more than 1,200 Maryland consumers.[2]

Most recently, in 2017, out-of-state, payday lenders offered payday-type loans to Marylanders as open-end lines of credit. Open-end lines of credit were not covered by the 33% rate cap at the time because no one had ever offered a consumer loan under that subtitle. While these loans carried a 24% APR, high fees put the annual rates on these predatory loans well above 300%, more than 10 times the highest rate permitted for Maryland's other consumer loans. In addition to packing excessive fees into the loan cost, the lender could seize money directly from borrowers' bank accounts.

The financial and psychological costs of these loans is exemplified by several of the complaints that Maryland's Commissioner of Financial Regulation received concerning these predatory, high-cost loans.

- *"I took out a loan and was advanced $14,975 – to date, I've paid $38,893 and still owes $1,897." (Woman, Maryland resident)*
- *"CashNet took money out of my account each week, when it was supposed to be every other week. I've had to file bankruptcy." (Woman, Baltimore County)*
- *"They have caused my account to be overdrawn and left me unable to pay [my] household obligations. My balance at the time of complaint for the $1,000 loan had reached $2,582.66." (Woman, Baltimore City)*
- *"The debt is crippling. I have paid my advance off three times but am making no progress on paying off the debt – I pay $225 per month but principal goes down by $18." (Man, Anne Arundel County)*

[1] Ambrose, Eileen "*Payday Lenders Face Tougher Restrictions*," *Baltimore Sun*; April 12, 2010
[2] Sherman, Natalie "*State Announces $2 Million Lending Settlement*," *Baltimore Sun*, June 23, 2014

*The Importance of the Ability to Repay (ATR) Standard*

The Ability-to-Repay (ATR) standard requires payday lenders to make a reasonable determination that the consumer can repay the loan. This isn't just prudent – this type of sound underwriting is the basis for most of the financial services and products currently on the market.

Reviewing the terms of payday loans taken out online by cash-strapped Marylanders, we see that a number of the consumers defaulted on their first or second loan. Although our review included only a small portion of the 250 complaints filed with the Commissioner of Financial Regulation's office, our findings support conclusions by the Center for Responsible Lending's research, which found that a large portion of borrowers default by their second loan. Our review of settlement cases found that Maryland borrowers faced bank penalty fees and abusive collection practices after they defaulted on their loan. Rather than help consumers, these usurious lenders increased the financial hardships of already struggling families.

The need for an ATR determination at the outset – prior to the first loan being offered – is particularly important in cases of auto-title loans. In these instances, the lender has access to the borrower's car title as leverage. Again, a review of Maryland cases found that many borrowers defaulted within the first two loans and, in many cases, had their vehicle repossessed and were never able to regain missing personal items and property that were lost during the repossession. Not surprisingly, losing one's vehicle can lead to an array of additional problems. In Baltimore City and towns throughout most of Maryland, public transit is infrequent, if it exists at all. Without access to a car, commuting to work, running errands, and providing enrichment activities for children is difficult.

Eliminating the ATR standard would gut the heart of the CFPB proposed rule. Moreover eliminating the ATR standard would enable payday lenders to offer a "CFPB approved" loan to cash-strapped Maryland consumers. A high-cost loan lacking meaningful underwriting standards that has the imprimatur of the CFPB would be leveraged by payday lenders in order to begin introducing high-cost loans to Maryland consumers – despite the state's long history of maintaining a 33% rate cap.

This is not conjecture; it's based on our history of fending off attempts to exploit loop-holes in our usury rate caps or carve-outs to allow payday lenders to legally provide high-cost loans to struggling families in our state.

Instead of focusing on the numerous other pressing consumer protection issues, consumer advocates will have to spend scarce resources fending off payday products that override our usury rate caps, rate caps that the Bureau acknowledges are one of the most effective ways to reduce the prevalence of high-cost, predatory loans being offered to consumers who cannot repay them.

*Enforceability and State Laws*
As advocates from a state with strong usury rate caps, MCRC is concerned that eliminating the ATR standard within the final rule, will allow payday lenders to legally operate in Maryland. We urge the Bureau to close the exemptions and affirm that the final rule will defer to stronger state laws.

MCRC urges the CFPB to strengthen the enforceability of our state laws by strengthening the proposed payday lending rule to state that offering, collecting, making, or facilitating loans that violate state usury or other consumer protection laws is an unfair, deceptive, and abusive act or practice (UDAAP).

For Maryland, and other states with strong usury rate caps, eliminating the ATR standard is tantamount to inviting payday lenders into our borders to offer predatory loans, contrary to the express wishes of our state lawmakers. For these reasons, we urge the CFPB to maintain the ATR standard and prohibit banks from offering payday loans.

Thank you for your consideration of this statement.

Sincerely,

Marceline White
Executive Director