



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

October 7, 2016

Docket No. CFPB 2016-0025

Dear Director Cordray:

Thank you for the opportunity to comment on the Bureau’s *Proposed Rule on Payday, Vehicle - Title, and Certain High-Cost Installment Loans*. We appreciate all the work that the CFPB has done to document the economic havoc wreaked by these predatory financial products. The Maryland Consumer Rights Coalition is a statewide organization that advances fairness and justice for Maryland consumers through research, education, and advocacy. Our 8,500 supporters across the state include individuals, as well as poverty, housing, youth, and older adult advocates. MCRC conducts original research on financial products and services, promotes consumer education through consumer guides, original films, video PSAs, as well as earned and social media, and promotes progressive economic policy and consumer protections at the local, state, and federal level.

Overview of Payday Loans in Maryland

Maryland has a long history of keeping loans affordable by capping small-loan interest rates at 28-33 percent. As a result, payday lenders do not operate on the ground in Maryland and many Maryland families are protected from falling into long-term debt-traps. Yet, according to a study from Pew Charitable Trusts, at least 3 percent of Marylanders take out a payday loan online—despite the fact that these businesses are unlicensed in the stateⁱ. These online lenders charge borrowers interest rates of 400 percent on average. In four years, Maryland received 404 complaints about payday lending—a practice that is illegal in the state. In 2014-2015, 154 Maryland consumers complained to the Commissioner of Financial Regulation’s office about the high-cost, unsustainable loans they had taken outⁱⁱ. In 2011-2013, the office received 250 complaints about payday lenders and approximately 200 more on the businesses collecting on these illegal loansⁱⁱⁱ.

Fortunately, Maryland’s Commissioner of Financial Regulation has aggressively pursued payday lenders who illegally issued loans in our state. Actions of Maryland state regulators, coupled with strong usury rate caps, means that far fewer consumers are harmed by these high-cost loans and working families have saved more wealth than in states with payday lenders. In fact, Maryland consumers have saved a total of **\$141,016,533** in payday fees and **\$111,967,142** in car title loan fees each year^{iv}.

As a state with strong usury rate caps, MCRC is concerned that if exemptions remain within the final rule, the unintended consequence of the Bureau’s exhaustive efforts may be to 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.

Specifically, we urge the CFPB to strengthen the enforceability of our state laws, by declaring in the payday lending rule 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). Indeed, a number of the enforcement actions that the Bureau has taken over the last few years – against payday lenders, debt collectors, payment processors, and lead generators – provide a strong foundation for including this explicit determination in the payday lending rule.

In addition to declaring a violation of state usury and other consumer laws a UDAAP, the CFPB should clarify that attempting to debit an account for a payment on an illegal loan is a violation of Regulation E. Under Regulation E, a lender’s debit from a borrower’s account for an illegal loan is an unauthorized payment. Regulation E requires a clear and readily understandable authorization; a request for authorization for an illegal loan is per se not clear or readily understandable, and is thus unauthorized. This clarification would make clear that lenders collecting payments on illegal loans are violating not only state laws, but the federal Electronic Fund Transfer Act as well.

A. 1041.3 Scope of Coverage; Exclusions

MCRC supports the Bureau’s proposal to cover short-term loans, described as those for terms of less than 45 days. This length of time encompasses the two week and month long terms of most traditional and emerging payday products. We also support including longer-term loans with interest rates above 36 percent. Maryland’s usury rate cap for short-term loans is 33 percent so anything that exceeds 33 percent would be consistent with our state laws. In addition, a 36 percent threshold harmonizes the final rule with the federal Military Lending Act as well as many other state usury rate caps. Harmonization with federal and state rules provides consistency and clarity in terms of the scope and will also make it easier to enact and enforce the final rule.

Loans secured by a car-title, even if the interest rate is below 36 percent should be included in the scope of coverage. In fact, in Maryland, title-loans secured by a vehicle comprise one of the most common loans made in violation of our usury rate caps. A recent settlement agreement^v found that one firm, Roadrunner, made 284 illegal auto-title loans with interest rates ranging from 514 percent to 598 percent. Each of the 284 cases were secured by the consumer's motor vehicle or other titled personal property and the interest rates exceeded 400 percent. In 261 of the 284 loans, the firm understated the true annual interest rate. Moreover, many loans were for less than \$700 including 206 of the 284 loans, and despite being prohibited by law from doing so, the Roadrunner firm took a security interest in consumer loans of less than \$700.

Given the prevalence of these loans in a state with strong usury rates and oversight, we strongly support including these kinds of high cost loans in the scope of the rule. Moreover, as noted in Maryland, in some cases, title-loans were secured by other titled personal property so we urge the Bureau to expand the scope of the proposed rule to include other vehicles such as motorcycles, mopeds, boats, and manufactured homes as well as any other titled personal property that might be used as security.

B. Subpart B. Short-Term Loans

1041.4 Identification of abusive and unfair practices

1041.5 Ability-to-repay determination required

1041.6 Additional limitations on lending-covered short-term loans

1041.7 Conditional exemption for certain covered short-term loans

1041.4 Identification of abusive and unfair practices

Despite our state usury laws, payday and title-lenders offered high-cost, short-term loans to Maryland residents. Loans made to Maryland consumers have exceeded 400 percent interest rates and some cases were as high as 1216 percent. Oftentimes, consumers were told the APR was lower than it actually was. In vehicle-title loans cases, several consumers had their vehicles repossessed but did not received the required discretionary notice nor the notice of repossession. Even after paying to redeem the vehicle, many consumers lost their personal belongings which were never returned^{vi}.

1041.5 Ability-to-Repay Determination Required

We support the Bureau's approach to use an Ability-to-Repay (ATR) standard for underwriting rather than a debt-to-income approach. We agree that making a reasonable determination that the consumer can repay the loan is prudent. In fact, sound underwriting is the basis for most of the financial services and products currently on the market. We believe that the Bureau must take a more prescriptive approach in this particular case because we are concerned that the lender might not include the correct number of expense categories in its calculations. Furthermore, we believe

that verifying and documenting the factors that are included in an ATR standard is critical. We are concerned about any proposals that permit an assumption for basic living expenses rather than an objective measure of how much consumers actually need.

Major Financial Obligations

In addition to the items already described in the proposed rule, we suggest adding non-covered loans, including student loans, car loans, and even pawn loans. We believe that the Bureau should reconsider some aspects of earlier proposals and explicitly include utility payments, daycare, and medical expenses within the definition. In many states, utility and water companies are moving towards monthly billing which ensures that the information is verifiable. In Maryland, many electric companies provide a budget billing option to rationalize costs across the year to address price surges in months when individuals may rely on heat or cooling more than at other times of the year. In Baltimore City, water rates are increasing by 30 percent. The City is also moving to monthly payments for water bills. In both cases, the services are essential and costly to low-income consumers. Failing to factor these costs in will provide a skewed picture of the residual income.

MCRC urges the Bureau to include daycare and medical expenses in the calculations. From a gender perspective, it is particularly important to ensure these costs are included. As the Bureau has noted, for single mothers, as well as many two-career families, safe, reliable child-care is a necessity in order to work outside the home. Yet the costs of child-care are extremely high. In Maryland, the average cost for childcare is \$17,622, ranging from \$10,344 in a center, to \$29,102 in the home. The cost is 23 percent of the household income and 103 percent of minimum wage (if the cost is being measured as a percentage of minimum wage)^{vii}. In addition, regularly re-occurring medical expenses (outside of health care premiums) should be included in the ATR.

Similarly, there are gender differences regarding many medical expenses. For example, migraines are twice as common in women as men, and many women's migraines occur monthly, triggered by hormonal fluctuations^{viii}. Furthermore, women have a higher prevalence of several common chronic pain conditions than men, including fibromyalgia, chronic tension-type headache, irritable bowel syndrome, temporomandibular disorders, and interstitial cystitis^{ix}. All of these medical expenses are essential in order to ensure that women can effectively manage and treat pain in order to carry out paid and unpaid labor. The benefits of women's paid (and unpaid, reproductive) labor to human capital development are high. Failing to incorporate these expenses, which disproportionately affect women, when assessing an ATR for borrowers who are disproportionately women, who, on average still earn less than men, is a serious oversight. The unintended consequences of excluding these expenses will result in qualifying women for loans that are, in reality, unaffordable for them-leading to the debt traps that have already been well-documented by the Bureau and in other academic and policy research. MCRC strongly urges the Bureau to include daycare and reoccurring medical expenses under major financial obligations.

Basic Living Expenses

MCRC supports the consideration of basic living expenses. We support using transaction accounts as well as statements whenever possible. We believe that consumer account information and transaction records should capture most ‘major financial obligations’ as well as ‘basic living expenses’. Conversely, we urge the Bureau to consider other measures such as high rates of default, delinquency, and re-borrowing as indicators of inability to repay. With such an indicator, the potential lender would have to take this information into account as well in any ATR determination and may be prohibited from lending if this information demonstrates the loan would be unaffordable.

1041.5 Long-Term Indebtedness on Short-Term Loans

MCRC supports the use of ATR determination for all loans-from the first to the last. We believe that all loans should use ATR, verification of income, expenses, and borrowing. Consideration of a consumer’s ATR is a critical safeguard that is needed to ensure that these loans are sustainable. Should the proposed rule allow six loans without requiring an ATR determination, more than two-thirds of payday loans would be exempt. Allowing this type of loophole undermines the principle of requiring universal ATR.

Reviewing the terms of the 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 the conclusions of 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 loans 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 cases, the lender has access to the borrower’s car title as leverage, whether the borrower can afford to repay the loan with interest or not. 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 personal 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.

Moreover, this type of loop-hole would be exploited by payday lenders who would seek a carve-out from Maryland’s (and other non-authorizing states’) usury rate caps to legally provide six loans without relying on ATR in our states. 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. 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 percent per loan^x. In 2013, Maryland's Commissioner of Financial Regulation pursued banks that are helping process payday loans in Maryland despite the rate 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 1825 percent interest rates to more than 1,200 Maryland consumers^{xi}. Western Sky, which is based on the Cheyenne Sioux Reservation, claimed tribal sovereignty and argued that state usury rates would not apply to them. In 2014, Commissioner Kaufman noted that "They (Western Sky) sought to structure around long-standing statutory prohibitions and to deny borrowers' protections to which they are legally entitled"^{xii}.

Given Maryland's past experience fending off payday lenders' attempts to exploit loop-holes to circumvent usury rate caps, MCRC is extremely concerned that if the Bureau's final rule is implemented as proposed, the payday loan industry would use Bureau's model of six loans that do not require an ATR determination to offer a payday product that meets this criteria. The unintended consequences of waiting till the seventh loan to apply an ATR determination will likely result in weakening non-authorizing states efforts to keep payday lenders from providing loans in their states. Instead of focusing on the numerous other pressing consumer protection issues, consumer advocates will have to spend scarce resources fending off payday products that over-ride 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.

For all of these reasons, MCRC urges the Bureau to revise the proposed rule to state that the ATR determination should apply to all loans from the first to the last.

1041.6 Additional limitations on lending-covered short-term loans

The Bureau proposes a 30 day cooling off period which has been reduced from the 60 day period in the original proposal. MCRC urges the Bureau to revise the final rule to include a 60 day mandatory cooling-off period. Making a payment on a prior short-term loan could impact multiple cycles of household expenses. A 60 day cooling-off period enables households to absorb the financial impact of the payday loan on the households' finances before taking on another loan.

1041.7 Conditional exemption for certain covered short-term loans

While recognizing the Bureau's desire to balance access to credit with consumer protections, MCRC strongly opposes any exemptions from an ATR determination. Despite the thoughtful framework outlined in the section, MCRC believes it does not provide the robust protections that use of an ATR requirement does. Moreover, despite the Bureau's statement that this exemption would work in tandem with, rather than over-ride state laws, it weakens the framework of ATR. Including these types of exemptions will signal to the industry and state regulators and legislators that it is acceptable to make a loan without determining a borrower's ability to repay.

Prohibition Against Evasion

As the Bureau notes, it is likely that some lenders may try to evade requirements in the final rule. As described earlier, Maryland, which has strong usury rate caps has seen numerous attempts by lenders to skirt our rate caps and licensing requirements and offer high-cost, unsustainable loans to Maryland residents. There is no reason to believe that the industry would cease attempts to evade or receive a carve-out to increase their profitability by offering loans in Maryland.

MCRC supports a broad anti-evasion provision. In addition, we urge the Bureau to offer states, particularly non-authorizing states, additional tools to oversee and enforce state laws by explicitly providing that offering, making, facilitating, or collecting a loan that violates a state usury or other consumer protection law is an unfair, deceptive, and abusive act or practice.

On behalf of the Maryland Consumer Rights Coalition and our 8,500 supporters, I thank you for your work to rein in these abusive, high-cost loans and appreciate the opportunity to comment on the proposed rule.

Marceline White
Executive Director

ⁱ Pew Charitable Trust, *Payday Lending in America: Who Borrows, Where they Borrow, and Why*. July 2012.

http://www.pewtrusts.org/~media/legacy/uploadedfiles/pes_assets/2012/pewpaydaylendingreportpdf.pdf

ⁱⁱ Email correspondence with Carmen Flowers, MPIA Officer, Commissioner of Financial Regulation's Office, March 15, 2016

ⁱⁱⁱ Ambrose, Eileen "Maryland Goes After Payday Lender's Banks to Stop Illegal Loans," *Baltimore Sun*, August 19, 2013.

^{iv} David, Delvin and Lupton, Susan. *States without Payday and Car-title Lending Save \$5 Billion in Fees Annually*.

June 2016. http://www.responsiblelending.org/sites/default/files/nodes/files/research-publication/crl_payday_fee_savings_jun2016.pdf

^v *In the Matter of Roadrunner Title Pawn, LLC; Advanced EZ Cash, L.L.C., a/k/a Advanced EZ Cash, LLC a/k/a Advanced EZ Cash LLC; George T. Parker a/k/a Timothy Parker a/k/a Tim Parker; and Mandy Lynn Parker f/k/a Margaret Teresa Vick*, <http://www.dllr.state.md.us/finance/consumers/enforcement2015.shtml> accessed on October 3, 2016.

^{vi} *ibid*

^{vii} Schulte, Brigid and Alieza Durana *The Care Report*, New America Foundation; September 2016;

<http://www.newamerica.org/in-depth/care-report/>

^{viii} Nasim Maleki, Clas Linnman, Jennifer Brawn, Rami Burstein, Lino Becerra, David Borsook *Her versus his migraine: multiple sex differences in brain function and structure*; DOI: <http://dx.doi.org/10.1093/brain/aws175> 2546-2559 First published online: 28 July 2012

^{ix} **[E. J. Bartley*](#)** and **[R. B. Fillingim](#)** *Sex differences in pain: a brief review of clinical and experimental findings* Br. J. Anaesth. (2013) 111 (1): 52-58 doi:10.1093/bja/aet127

^x Ambrose, Eileen "Payday Lenders Face Tougher Restrictions," *Baltimore Sun*; April 12, 2010

^{xi} Sherman, Natalie "State Announces \$2 Million Lending Settlement," *Baltimore Sun*, June 23, 2014

^{xii} *ibid*