



## Consumer Federation of America

The Honorable Richard Shelby  
Chairman  
Committee on Banking, Housing and Urban Affairs  
U.S. Senate  
Washington D.C. 20510

The Honorable Sherrod Brown  
Ranking Member  
Committee on Banking, Housing and Urban Affairs  
U.S. Senate  
Washington D.C. 20510

Re: April 5, 2016 hearing on the Effects of Consumer Finance Regulations and April 7, 2016 hearing on The Consumer Financial Protection Bureau's Semi-Annual Report to Congress

Dear Chairman Shelby, Ranking Member Brown and Members of the Committee:

Consumer Federation of America (CFA)<sup>1</sup> would like to submit the following statement for the record for the hearing entitled “Effects of Consumer Finance Regulations” held on April 5, 2016 and the hearing entitled “The Consumer Financial Protection Bureau's Semi-Annual Report to Congress” held on April 7, 2016. This statement addresses the critical work underway at the Consumer Financial Protection Bureau to protect consumers from the harmful practices of payday and auto title lenders. CFA strongly supports this work and urges you to support this and other efforts to protect consumer from abusive lending and oppose any efforts to delay the Bureau’s much-needed rule.

The Consumer Federation of America also supports the important consumer financial protection efforts undertaken by the Bureau in other areas addressed in the statements prepared by members of Americans for Financial Reform. Although we do not have a position on every consumer regulatory issue discussed by other AFR members, we associate ourselves with other remarks defending the CFPB’s work and structure.

### **1. A Strong CFPB Rule is Necessary to Protect Consumers from the Financial Harm Caused by Payday, Auto Title and Payday Installment Loans**

According to the Center for Responsible Lending, the failure to limit abusive repeat loans issued by payday lenders results in \$3.5 billion in additional fees paid by payday loan borrowers<sup>2</sup> and \$3.6 billion in

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<sup>1</sup> CFA is an association of over 250 nonprofit consumer organizations that was established in 1968 to advance the consumer interest through research, advocacy and education.

<sup>2</sup> Parrish, Leslie, and Uriah King. *Phantom Demand: Short-Term Due Date Generates Need for Repeat Payday Loans, Accounting for 76% of Total Volume*. Washington, DC, July 9, 2009. <http://www.responsiblelending.org/payday-lending/research-analysis/phantom-demand-final.pdf>.

additional fees paid by title loan borrowers each year.<sup>3</sup> Currently 35 states authorize triple digit interest rate payday loans made without any consideration of a borrower's ability to repay.<sup>4</sup> As a result, 71 percent of Americans live in states that would see a considerable improvement in consumer protections for payday and auto title loans if a strong CFPB rule is enacted.

As a data-driven regulator committed to improving the financial market place and protecting consumers, the CFPB has exhaustively documented the frequency of repeat borrowing and other harmful practices that its current proposal seeks to address. In March 2014, the CFPB released research documenting that repeat borrowing is standard practice—over 80 percent of loans are renewed because a borrower is unable to repay in full and on time and half of all loans are part of a series of ten or more loans.<sup>5</sup> In a 2013 white paper on payday lending, the CFPB also found that 75 percent of loan fees were charged to borrowers that used 11 or more payday loans in a 12-month period.<sup>6</sup>

## **2. Recent Enforcement Actions Demonstrate Harm Caused by Payday and Auto Title Loans**

The CFPB has also taken strong action against payday lenders who have violated current consumer protections and these actions have helped expose harmful practices.

In 2014, the CFPB took enforcement action against ACE Cash Express, one of the largest payday lenders in the country for using illegal debt collection tactics to push borrowers into taking out additional loans they could not afford.<sup>7</sup> By using false threats, intimidation and harassing phone calls, the CFPB found that ACE Cash Express pressured overdue borrowers to temporarily repay their short-term loans then quickly re-borrow—resulting in mounting fees and a long-term cycle of debt. ACE Cash Express's training manual confirmed that this tactic was common practice in the company, going so far as to include a graphic explaining how short-term borrowing results in an inability to repay followed by a new loan and commensurate fees (see Figure 1). ACE Cash Express was ordered to pay \$5 million in consumer refunds to borrowers that were harmed by this abusive practice.

In November 2015, the CFPB took enforcement action against Integrity Advance, LLC an online lender. The Bureau alleged that Integrity Advance had hidden the true cost of the loan by only disclosing the cost of borrowing based on a single payment and then automatically renewing the loan and charging additional finance charges. The Bureau also alleged that the online lender unfairly used a little-known payment

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<sup>3</sup> *Driven to Disaster: Car-Title Lending and Its Impact on Consumers*. Washington, DC: Center for Responsible Lending and Consumer Federation of America, February 28, 2013. <http://www.responsiblelending.org/other-consumer-loans/car-title-loans/research-analysis/CRL-Car-Title-Report-FINAL.pdf>.

<sup>4</sup> *State Payday Loan Regulation and Usage Rates*. The Pew Charitable Trusts, July 11, 2012. [http://www.pewtrusts.org/en/multimedia/data-visualizations/2014/~media/Data%20Visualizations/Interactives/2014/State%20Payday%20Loan%20Regulation%20and%20Usage%20Rates/Report/State\\_Payday\\_Loan\\_Regulation\\_and\\_Usage\\_Rates.pdf](http://www.pewtrusts.org/en/multimedia/data-visualizations/2014/~media/Data%20Visualizations/Interactives/2014/State%20Payday%20Loan%20Regulation%20and%20Usage%20Rates/Report/State_Payday_Loan_Regulation_and_Usage_Rates.pdf).

<sup>5</sup> *CFPB Data Point: Payday Lending*. Washington, D.C.: Consumer Financial Protection Bureau, March 2014. [http://files.consumerfinance.gov/f/201403\\_cfpb\\_report\\_payday-lending.pdf](http://files.consumerfinance.gov/f/201403_cfpb_report_payday-lending.pdf).

<sup>6</sup> *Payday Loans and Deposit Advance Products: A White Paper of Initial Data Findings*. Washington, DC: Consumer Financial Protection Bureau, April 13, 2013. [http://files.consumerfinance.gov/f/201304\\_cfpb\\_payday-dap-whitepaper.pdf](http://files.consumerfinance.gov/f/201304_cfpb_payday-dap-whitepaper.pdf).

<sup>7</sup> "CFPB Takes Action Against ACE Cash Express for Pushing Payday Borrowers Into Cycle of Debt." Washington, DC: Consumer Financial Protection Bureau, July 10, 2014. [http://files.consumerfinance.gov/f/201407\\_cfpb\\_consent-order\\_ace-cash-express.pdf](http://files.consumerfinance.gov/f/201407_cfpb_consent-order_ace-cash-express.pdf).

mechanism called a remotely-created check to debit consumers' checking accounts even after they have revoked the lender's authorization to make automatic checking account withdrawals.

These enforcement actions, and others undertaken by the Bureau, demonstrate the harm caused by high-cost, short-term loans originated with no consideration of a borrower's ability to repay the loan without re-borrowing or financial hardship. Both actions described above show that repeat borrowing and unfettered access to a borrowers checking account is the business model of payday lenders. While ongoing enforcement of existing consumer protection laws are critical to prevent widespread abuse, we believe that additional protections, such as those that the Bureau has proposed, are necessary to protect consumers going forward.

### **3. The ability to repay standard proposed by the CFPB will protect consumers who take out payday and auto title loans**

At a March 2015 field hearing in Richmond, Virginia, the CFPB issued a working draft of possible consumer protections under consideration for a proposed rule – a critical first step to ensuring that consumers are protected from abusive practices such as poor underwriting and back-to-back lending.<sup>8</sup> The proposal contains a straight-forward, common-sense ability to repay standard that requires lenders to review borrowers' income and expenses before issuing a loan to ensure that they can repay the loan in full and on time without additional borrowing. The adoption of such a standard that applies to short-term and long-term payday and auto title loans, without loopholes for unsafe repeat borrowing, is critical to protecting consumers and stopping the debt trap caused by unsafe credit products. An ability to repay standard is already in place for other types of lending, such as mortgage and credit card lending, and those products remain widely available.

### **4. Protecting consumers from short- and longer-term payday loans will prevent current and future abusive practices**

The CFPB proposal rightly applies the ability to repay standard to short- and long-term payday and auto title lending, as well as to similar, harmful products structured as open-end lines of credit. The scope of the proposal is fundamental to protecting consumers and to ensuring that lenders do not develop new products to evade a final rule.

Payday and title lenders are already shifting to longer-term loans and the Bureau's application of a strong ability to repay standard to longer-term payday loans is critical to preventing evasions. A 2014 report by payday lending analysts Stephens, Inc., documents the shift from balloon payment payday loans to payday installment loans among storefront lenders and illustrates the need to apply consumer protections to both short- and long-term payday and auto title loans and open-end credit. The Stephens report found that, as of 2014, installment loan growth represented well over half of the total growth for payday industry participants who experienced growth in 2013.<sup>9</sup> One of the largest lenders, Cash America has

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<sup>8</sup> "Small Business Advisory Review Panel for Potential Rulemakings for Payday, Vehicle Title, and Similar Loans: Outline of Proposals Under Consideration and Alternatives Considered." Washington, DC: Consumer Financial Protection Bureau, March 26, 2015. [http://files.consumerfinance.gov/f/201503\\_cfpb\\_outline-of-the-proposals-from-small-business-review-panel.pdf](http://files.consumerfinance.gov/f/201503_cfpb_outline-of-the-proposals-from-small-business-review-panel.pdf).

<sup>9</sup> Hecht, John. "Alternative Financial Services: Innovating to Meet Customer Needs in an Evolving Regulatory Framework." presented at the CFSA Solutions, Little Rock, AR, February 27, 2014. [http://cfsaa.com/Portals/0/cfsa2014\\_conference/Presentations/CFSA2014\\_THURSDAY\\_GeneralSession\\_JohnHecht\\_Stephens.pdf](http://cfsaa.com/Portals/0/cfsa2014_conference/Presentations/CFSA2014_THURSDAY_GeneralSession_JohnHecht_Stephens.pdf).

also shifted from balloon payment payday loans to longer-term payday loans and open-end lines of credit. Including both storefront and online lending, Stephens, Inc. noted that Cash America's installment and open-end products now comprise about 56 percent of the company's domestic loan balance as of December 2013.<sup>10</sup>

This shift to long-term lending means that the longer-term payday loan ability to repay standard is a critical part of the CFPB proposal and must be strong enough to ensure that lenders do not simply shift to this form of lending to avoid new restrictions on short-term payday loans.

## **5. Recommendations to improve the current CFPB payday proposal**

CFA encourages the Bureau to consider four key improvements to ensure that the rule adequately protects consumers. The final rule should apply an ability to repay requirement to all covered credit without any exemption or safe harbor for loans that do not consider and document a borrowers' income and expenses to ensure affordability. To protect borrowers from the well-documented cycle of debt caused by high-cost, short-term payday loans, the CFPB should prohibit lenders from making short-term payday loans that would put borrowers in debt for more than 90 days in a 12-month period. To protect consumers from common abuses associated with the longer-term payday loans discussed previously, the CFPB should strengthen underwriting requirements and limit abusive refinancing designed to mask defaults and extend the term of the loan. The rule should also explicitly recognize the importance of the usury caps adopted by state legislatures as an important consumer protection to preventing abusive lending.

## **6. Borrowers can and do turn to lower-cost, more sustainable financial options if abusive, back-to-back lending is restricted**

A strong rule would not unduly reduce access to safe and sustainable credit options. Instead it would ensure that all lenders, including storefront and online lenders, are only issuing loans that a borrower can repay in full and on time without re-borrowing or financial hardship.

In 2012, the Pew Charitable Trusts issued a report examining how borrowers would manage their financial options if high-cost payday lending was unavailable. The report found that 81 percent of borrowers that used payday loans would cut back on expenses. Borrowers also indicated that they would borrow from family or friends or sell or pawn possessions instead of taking out a high-cost payday loan. Likewise, 44 percent indicated that they would take a loan from a bank or credit union, 37 percent would use a credit card and 17 percent would borrow from an employer.<sup>11</sup>

A strong rule based on an ability to repay standard that applies to the entire payday and auto title market would serve the dual purpose of preventing widespread, well-documented abuses and giving borrowers the option of turning to lower-cost and more sustainable credit options as they already do in states that do not allow payday and auto title lending. While the proposal as currently structured may ultimately limit the number of back-to-back loans, this should be viewed as a dramatic improvement in a marketplace where over 80 percent of all loans are followed by another loan just days or weeks later.

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<sup>10</sup> Ibid. Note that Cash America has since spun off its online lending operation, Enova Financial.

<sup>11</sup> *Payday Lending in America: Who Borrows, Where They Borrow, and Why*. Washington, DC: The Pew Charitable Trusts, July 2012. [http://www.pewtrusts.org/~media/legacy/uploadedfiles/pes\\_assets/2012/PewPaydayLendingReportpdf.pdf](http://www.pewtrusts.org/~media/legacy/uploadedfiles/pes_assets/2012/PewPaydayLendingReportpdf.pdf).

## **Conclusion**

Effective regulation of the lenders that offer high-cost payday, auto title and other loans is critical to protecting consumers from abusive practices and the financial insecurity that results from the sustained use of high-cost debt. The proposal under consideration by the CFPB is the result of a comprehensive analysis of the high-cost credit marketplace and is supported by robust CFPB research and information collected as part of its ongoing supervision and enforcement activities. It represents a targeted response that will prevent bad practices so that good practices can flourish. We urge you to fully consider the profound harm suffered by consumers trapped in a long-term cycle of debt caused by payday and auto title loans and support the Bureau's work to ensure that consumers are treated fairly.

If you have any additional questions or concerns, please contact Tom Feltner, director of financial services at Consumer Federation of America at 202-618-0310 or [tfeltner@consumerfed.org](mailto:tfeltner@consumerfed.org).

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Tom Feltner', with a stylized, cursive script.

Tom Feltner  
Director of Financial Services  
Consumer Federation of America

**Figure 1. Graphic from ACE's 2011 Training Manual illustrating the cycle of debt business model**

