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Informational Hearing on the Consumer Financial Protection Bureau
Rulemaking for Payday, Vehicle Title and Similar Loans
California Senate Banking Committee

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I. Introduction

Thank you for the opportunity to speak with you today. I am Paul Leonard, California Director of the Center for Responsible Lending (CRL). I am grateful for having the opportunity to share CRL's perspectives on the Consumer Financial Protection Bureau's (CFPB or "the Bureau") new proposals for payday and car title and other similar loans.

The Center for Responsible Lending (CRL) is a not-for-profit, non-partisan research and policy organization dedicated to protecting homeownership and family wealth by working to eliminate abusive financial practices. CRL is an affiliate of Self-Help, which consists of a state-chartered credit union (Self-Help Credit Union (SHCU)), a federally-chartered credit union (Self-Help Federal Credit Union (Self-Help Federal)), and a non-profit loan fund. Over 30 years, Self-Help has provided over $6 billion in financing to help nearly 90,000 low-wealth borrowers buy homes, start and build businesses, and strengthen community resources.

SHCU has been a North Carolina-chartered credit union since the early 1980s. Beginning in 2004, SHCU began merging with community credit unions that offer a full range of retail products. In 2008, Self-Help founded Self-Help Federal to expand Self-Help's mission by building a statewide network of branches in California that serve working families and underserved communities. With 20 branches in the Bay Area, Central Valley and San Gabriel Valley (LA), three branches in Illinois, approximately $600 million in assets, and serving more than 70,000 members and clients, Self-Help Federal is one of the fastest-growing low-income designated credit unions in the country.

II. Overview

The CFPB aims to cover payday and similar loans under its rule regardless of the provider or channel offering the loans (storefront and online; bank/credit union, non-depository, tribal entity). The Bureau's proposal would create a single consistent regulatory floor, while maintaining the prerogative of states to strengthen its consumer protections as they see fit. We strongly support this effort.

These loans are by definition made on extremely risky terms: they are either balloon-repayment loans (and thus covered under the short-term portion of the rule, usually bearing triple-digit interest rates), or they are longer-term but still very high-cost, carrying an APR inclusive of fees exceeding 36 percent. In both cases, the lender holds extreme leverage over the borrower to coerce repayment irrespective of a borrower's other obligations and expenses. The extreme nature of these loans informs our recommendations on scope and the other areas where we urge the Bureau to strengthen its proposed protections.

The proposal, for both short- and long-term loans, holds the potential to bring desperately needed protections to the small dollar loan market. It holds this potential because it is, generally speaking, rooted in the principle that a lender be expected to determine that a borrower has the ability to repay a loan before extending it. Ability-to-repay should be a fundamental requirement of any loan transaction. It became the law for mortgages following the subprime mortgage crisis. It is uniquely important in the payday loan industry, and for any loan, particularly a high-cost one, where the lender can coerce repayment by holding priority access to the borrower's checking account or other critically needed collateral, like the borrower's vehicle. In these instances, a lender's typical incentive to ensure that borrowers can afford to repay a loan is flipped entirely on its head: The lender collects payment on the loan regardless, and actually earns more when the borrower *cannot* afford to repay without needing to reborrow, allowing the lender to flip the borrower from one high-cost loan into another for an extended period of time.

Though the Bureau's proposal is largely rooted in this ability-to-repay principal, both the short- and long-term proposals would provide lenders an ability to opt out of determining the borrower's ability-to-repay the loan. The CFPB's so-called "debt trap protection requirements." These alternative options, or safe harbors, would severely undermine the ability-to-repay principle and, consequently, the rule's efficacy in protecting borrowers from financial harm caused by unaffordable loans. As a national organization that works in many states across the country as well as here in California which permits payday lending, CRLis concerned that the alternative option will undermine those states that have chosen to prohibit or significantly constrain high-cost payday and/or car title lending. We thus urge that the Bureau require determination of ability-to-repay on *every* loan.

We first present a summary of our views, followed by more detailed discussion.

Critical elements of CFPB's proposal that must remain intact:

1. A scope that:
    a. Includes single- and multi-payment (i.e., short- and longer-term) payday and car title loans, essential to preventing harm as well as foreseeable efforts at evasion;
    b. For longer-term loans, excludes only loans where the annual percentage rate (APR) is 36 percent or less *using an APR that is inclusive of fees and add-on products*, similar to the APR under the Military Lending Act.
2. A strong ability-to-repay principle, including consideration of income and obligations; in addition, for short-term loans, a requirement that the assessment of ability to repay cover a period extending 60-days beyond the loan's contract term;
3. Reporting requirements that facilitate back-end monitoring of loan performance, including reborrowing, to help ensure that front-end "reasonable determinations" of ability-to-repay are indeed reasonable and effective.
4. Payment protections that prevent lenders from holding sustained abusive control over a borrower's checking account.

Our primary concerns with the proposal, which we urge be addressed:

1. Short-term loans: alternative to ability to repay. In the short-term proposal, CFPB offers an alternative to the ability-to-repay requirement that would sanction three back-to-back loans twice during the year (six loans total), and 90 days' total indebtedness, with no underwriting for ability-to-repay. These loans will cause consumers harm – delinquency, default, and consequent harms. Even when delinquency or default doesn't occur, harms caused in efforts to avoid them (delinquency and default on other bills and overdraft fees, for example). *We urge that no loans without ability-to-repay underwriting or any unaffordable back-to-back loans be sanctioned, and that the 90 days' indebtedness limit be coupled with the ability-to-repay requirement rather than in lieu of it.*

2. Long-term loans:

   a. Protections against long-term, high-cost, unaffordable debt. For longer-term loans, we are concerned that the overall suite of proposed protections – upfront underwriting, protections against flipping, and back-end indications of unaffordability – are together not sufficient to keep borrowers out of long-term, high-cost debt they cannot afford. *We urge stronger protections against making these high-risk loans to borrowers already struggling with other debt; broadening the definition of "refinance" and the circumstances under which a refinance carries a presumption of inability to repay; and ensuring that back-end loan performance assessment consider late and bounced payments as additional indicators of borrower distress.*

   b. Payment-to-income alternative to ability-to-repay. The Bureau proposes that for certain longer-term loans, the lender may avoid an ability-to-repay determination by limiting the periodic loan payment to 5% of the borrower's corresponding periodic income. *This income-only method will not ensure affordability and will not prevent borrower harm, and we strongly oppose it.*

3. Scope. While we strongly support the Bureau's proposal not to limit scope based on the length or size of the loan, the Bureau proposes carving out credit card accounts, pawn loans, and loans secured by personal property other than vehicles and unsecured loans. Such credit products should be covered by the rule to the extent that they may create loopholes for replicating the risky practices that the proposal aims to constrain. *We urge the Bureau to include loans made on credit cards to the extent they otherwise meet the scope of the rule, to include some pawn loans to the extent they are functioning like payday loans, and to include loans secured by any personal property, in addition to car titles.*

III. Strong Proposed Ability-To-Repay Standards Must Not Be Undermined By Offering Lenders "Alternative Options"

A. Payday loans create a debt trap.

State regulator and independent academic studies and the CFPB's own research have reached an overwhelming data conclusion: payday loans create a debt trap for borrowers. They do so because lenders typically lend without regard to ability-to-repay. Indeed, borrowers typically *cannot* afford to repay the loan and meet ongoing financial obligations, so the lender flips them from one loan into another.

CRL's published research shows that the *average* payday borrower is in these purportedly two-week or one-month loans for *seven months* of the year.[1] The Bureau's data show 75% of all payday loan fees are from borrowers with more than 10 loans per year, with those loans churned on a nearly continual basis.[2]

California's Department of Business Oversight 2014 payday licensee survey data confirm the findings of the CFPB on the pervasiveness of the payday lending debt trap:

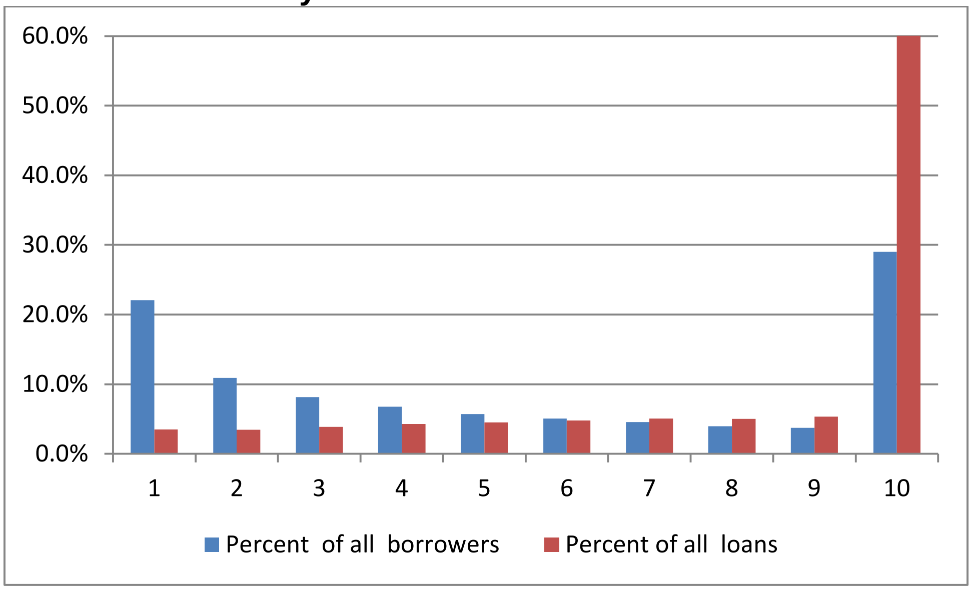
- ***Payday lenders rely on borrowers who get stuck in a cycle of repeat borrowing.***[3]
  - 76% percent of all payday loan fees are due to borrowers stuck in 7 or more payday loans per year.
  - 60% of payday loan fees are from borrowers with 10 or more loans in a year.

- ***The long-term debt trap is the most typical California borrower experience.***[4]
  - Borrowers taking out 7 or more loans per year accounted for 45% of borrowers.
  - The "10 or more" loan category was the single largest, accounting for 29% of all borrowers. Conservatively, borrowers in this category received an average of 13 loans annually, or more than one loan per month.

- ***The debt trap in California is growing deeper:*** The number of borrowers with 10 or more loans in 2013 increased by 11 percent over 2012, even as the total number of payday loans declined slightly over the same period.[5]

- ***Payday loans that are used only occasionally – as they are advertised – account for only a small portion of payday lending business.***
  - Only 4 percent of all payday loan activity in 2013 was from borrowers with just one loan in 2013. These borrowers accounted for 22% of all borrowers.
  - Only 15 percent of all payday loan activity in 2013 was from borrowers with 4 or fewer loans.

California Distribution of Payday Loan Usage
Percent of Borrowers vs Percent of All Payday Loans,
By Number of Transactions



Source: CA Department of Business Oversight

B. The proposed ability-to-repay standard, requiring consideration of income and expenses, is strong.

We strongly support the Bureau's proposed standard for ability to repay: a good-faith, reasonable determination that the borrower has the ability to repay the loan when due while satisfying major financial obligations and other living expenses, without defaulting or reborrowing. Indeed, if a borrower repays a loan but reborrows shortly thereafter, the borrower likely did not have the ability to repay in the first instance.

We are deeply concerned that this strong standard will be undermined by proposed alternatives to determining ability-to-repay for both short- and longer-term loans.

C. "Debt protection options" would severely undermine the strong ability-to-repay standard.

We strongly oppose any exemption from an ability-to-repay requirement. The Dodd-Frank Act and the CFPB have established the importance of ability-to-repay in mortgage lending and should extend the concept as a requirement for all lending. An ability-to-repay requirement is particularly important for payday loans, where the market incentive to underwrite is flipped on its head because the lender holds first-in-line access to the borrower's checking account. In this context, the lender is counting not on the borrower's ability to repay the loan, but rather on their ability to collect on the loan, whether or not the borrower can afford to repay it. Indeed, because substantial lender revenue is derived through loan flipping – which occurs when the loan is not affordable – the lender has a disincentive to lend to borrowers who do have the ability to repay.

CRL recently studied loan performance of payday loans made in North Dakota, a state with payday loan laws typical of states that permit payday lending.[6] We found that a very large portion of borrowers default on their first or second loans. This provides further support that an ability-to-repay determination at the outset is required in order to prevent the harm caused by payday loans.[7] Any default may result in lender-imposed late and NSF fees, bank fees, and abusive collection tactics, and cascading financial hardships.

1. Short-term loans.

The Bureau's proposal would permit certain short-term loans not exceeding $500 to be made without regard to the borrower's ability to repay the loan. These loans would be limited to two rollovers (defined as a loan made within 60 days of the previous loan), followed by a 60-day cooling off period, coupled with an outer limit of 6 such loans and 90 days' indebtedness in such loans annually.

By sanctioning two rollovers, which are evidence of inability to repay, and exempting six very high-cost loans annually from an ability-to-repay requirement, the Bureau would undermine the basic principle of requiring universal ability-to-repay and existing state laws in about a third of states that do not permit such loans at all. While clearly not preemptive, the Bureau's rule will be seen as a federally approved guideline and will likely set the tone for debates around payday lending in the states. It should not send the message that any loan made without a determination of the borrower's ability to repay is acceptable.

A 90-days' indebtedness limit is a useful backstop against prolonged indebtedness, consistent with the FDIC's 2005 guidelines addressing payday lending.[8] *But critically, it should be a backstop, or a check, to ensure that ability-to-repay determinations at the outset are meaningful for all short-term loans—not an option in lieu of determining front-end affordability.*

We do strongly support the proposal that no short-term car title loan would be exempted from a front-end ability-to-repay requirement; this approach should be extended to payday and other covered loans as well.

2. Longer-term loans.

a. Income-only underwriting should not be permitted in lieu of a meaningful ability-to-repay determination.

The Bureau is considering permitting certain loans to be exempt from ability-to-repay underwriting where the periodic payment does not exceed 5 percent of the borrower's expected gross income for the corresponding pay period. We strongly oppose this alternative.

Income-based underwriting, with no required consideration of expenses, does not ensure affordability. As noted previously, these loans are among the riskiest, most harmful in the consumer financial market, typically made to borrowers who have already experienced financial distress. These are among the last borrowers for whom an income-only-based approximation should ensure affordability. This approach will not prevent harm, as the Bureau is charged to do, and it should not be permitted.

b. If an exemption from ability-to-repay is provided, loans similar to National Credit Union Administration-sanctioned loans would be far preferable to the income-only option.

The Bureau is also considering permitting certain loans not exceeding $1,000 with terms between 45 days and six months to be made on terms similar to those permitted for National Credit Union Administration-sanctioned loans (including an application fee reflecting costs of no more than $20 per loan and an APR not exceeding 28 percent); these would not be subject to the general underwriting requirements and would be limited in number to four annually.

These loans would mark a dramatic improvement over current market payday installment loans (installment loans paired with direct access to a borrower's bank account) and could help to bail borrowers out of loans made on far worse terms. However, we urge important additional safeguards around these loans, including:

- Underwriting must require consideration of income and expenses;
- The application fee should be limited following the first loan in a 12-month period. Since it is meant to reflect lender costs, which decrease as subsequent loans are made to the same borrower, it should not be permitted to remain static at $20 per loan.

IV. Short-term Loans: Upfront Underwriting, Protections Against Flipping, and Back-End Review of Loan Performance

For any covered loan, it is essential that the combination of strong initial underwriting, protections against loan flipping, and back-end performance review are sufficient to ensure the lender cannot trap the borrower in unaffordable loans for an extended period of time.

A. Underwriting

Both the short- and long-term proposals require similar underwriting unless the lender chooses one of the alternative, safe-harbor options. As noted above, we oppose providing alternative options and support requiring underwriting on every loan. This section addresses the proposed underwriting requirements when the alternative option is not chosen.

We support that the Bureau's proposed underwriting would require verification with third-party documentation of income and major financial obligations; indeed, we believe that any income-only based underwriting will not reasonably ensure affordability and prevent harm.

For underwritten loans, the Bureau's proposal would also require consideration of a consumer's borrowing history, which we support but urge strengthening. The Bureau is considering requiring lenders to assess whether a borrower has recently defaulted or is currently delinquent on any covered loan with that lender or affiliate, or has recently defaulted on a covered loan with any lender.

- We urge that recent delinquency or default on a covered loan at a minimum create a rebuttable presumption of inability to repay that the lender can overcome only by documenting a change in borrower circumstances.

- We further urge that a recent default on any credit, whether covered or not, create the same rebuttable presumption; if the borrower lacked the ability to repay less risky credit, it only follows that the borrower likely lacks the ability to repay this high-risk credit.

- In addition, we urge that, should the Bureau proceed in allowing the short-term non-underwritten, alternative option loan (which, as discussed below, we oppose) the rule prohibit a lender from flipping a borrower from a short-term, safe harbor loan into a long-term loan within 60 days of repayment of the safe harbor loan; otherwise, lenders may "bait" borrowers with loans that carry no underwriting requirements, allowing for quick and easy approval, only to switch them into longer-term loans carrying smaller payments but locking them into high-cost debt for an extended period of time.

B. Loan Flipping

For short-term loans that are underwritten (i.e., outside the safe harbor), the Bureau's proposal would establish a 60-day "underwriting period," meaning that the lender must determine the borrower's ability to repay the loan and meet other obligations for 60 days following the end of the loan term. As such, the proposal would prohibit additional loans within the 60-day period without demonstration of a change in circumstances. Following a third loan within sixty days of a previous loan, additional loans would be prohibited until a 60-day "cooling-off" period has passed. We support these measures.

In addition, as noted above, we support an additional backstop: an outer limit of 90 days' total indebtedness within a rolling twelve-month period, consistent with the FDIC's longstanding 2005 guidelines addressing payday lending. The CFPB has proposed this limit as part of its alternative option, but we urge that this limit be coupled with required underwriting on every loan. Again, this additional protection is warranted, and needed, in the context of a market where lender incentive is flipped on its head, the lender has a super-lien on the borrower's limited income, and the loan purports to be intended for a short-term, occasional emergency.

The Bureau also notes its concern about lenders alternating between covered and non-covered loans to evade the rules. We share this concern and urge the Bureau to include non-covered "bridging" loans in the 60-day underwriting period and the 60-day cooling off period to guard against it.

C. Back-End Loan Performance

Loan performance is an essential component of ensuring that borrowers have the ability to repay loans. Indeed, the Bureau's proposal notes that "extensive defaults or reborrowing" may be an indication that a lender's upfront underwriting methodology is not reasonable. The proposal would require annual reports containing data sufficient to monitor performance of covered loans, including information on defaults and reborrowing for both short- and long-term loans. We strongly support this requirement and urge that it also include information on late payments and bounced payments, further indicators of borrower distress and inability to repay.

V. Longer-term Loans: Upfront Underwriting, Protections Against Flipping, and Back-End Review of Loan Performance

A. Underwriting

The proposed underwriting requirements, including required verification of income and major financial obligations and consideration of borrower history, are substantially the same for longer-term loans as for short-term loans. Our recommendations in V. above apply here as well.

B. Loan Flipping

For longer-term loans, the underwriting period is the loan term, but the Bureau proposes protections around refinancings; we urge significant strengthening of protections against flipping long-term loans.

The Bureau's proposal would provide a rebuttable presumption of inability to repay for refinances under certain circumstances where borrower distress is demonstrated, but we are concerned these circumstances are too limited. In addition, the Bureau would not provide heightened protections around loans taken out very shortly after a previous loan is repaid, even if that the previous loan is repaid early. This leaves borrowers vulnerable to lenders encouraging prepayment and subsequent reborrowing in order to maximize fees and prolong indebtedness.

To address these concerns, we urge the Bureau to define a refinance to include any loan made within at least 30 days of a previous loan that is repaid early. We further urge that any refinance be deemed a sign of distress and thus trigger a presumption of inability to repay, with a possible narrowly drawn exception for cash-out refinances that are clearly not indicative of borrower distress.

Further, we are concerned about lenders switching borrowers from short-term to longer-term loans. As recommended above, we urge that a lender be prohibited from making a longer-term loan to a borrower with 60 days of short-term loan that is not underwritten, with a possible exception for longer-term loans complying with proposed (yet strengthened, as we suggest) NCUA-based requirements.

C. Back-End Review of Loan Performance

As with underwriting, the Bureau is considering similar requirements for back-end monitoring of loan performance for both short- and long-term loans. We strongly support these requirements in the longer-term loan context as well, and again urge the Bureau to require reporting of late and bounced payments for longer-term loans.

California Finance Lenders Law (CFLL) licensee annual report data show that many California lenders offering loans greater than $2,500 appear to have particularly weak underwriting based on their recent loan performance. According their 2014 annual report, Rise Credit reported charge-offs amounting to more than 100% of their average monthly loan balances. Other large installment lenders which generally have direct access to borrowers' accounts also experienced high rates: Check 'N Go (the largest installment lender in the $2,500 - $5,000 loan space) typically charged APRs of greater than 200% on such loans and reported average monthly charge off rates of 46% in 2013 and more than 80% in 2014. Similarly, Cash Call and Net Credit also reported 2014 charge-offs in excess of 30%.[9]

These extremely high levels of defaults suggest inadequate up-front underwriting. But many such lenders can remain profitable even if they experience high levels of default because sky-high interest rates allow the loans to become profitable for the lender after only a small fraction of loan payments are made. For example, a typical Check N' Go $3,000 one year loan has an APR of approximately 220%, with monthly payments of $623.88.[10] After just five months of payments, the borrower will have repaid more than the original loan amount, or $3,119. After the sixth payment, the lender will have made $743 on this one loan. If at any point thereafter, the borrower defaults, the lender will have still made a significant profit. The borrower, however, may continue to suffer damaged credit and to contend with aggressive debt collection efforts by both the original lender or by subsequent buyers of the debt.

CFPB should both require reporting of loan performance metrics and vigilantly use these metrics to identify and take action against lenders whose upfront underwriting is not resulting in a reasonable, accurate determination of true ability to repay.

VI. Scope: Support but Expand to Include Possible Evasion Mechanisms

The Bureau's proposal would establish for the first time a single national regulatory floor for covered loans regardless of the type of lender or the channel by which the loan is delivered. Covered lenders would include deposit-taking institutions like banks and credit unions, non-depository lending businesses, as well as tribal businesses. Similarly, CFPB's standards would apply to loans originated in bank branches, in storefronts and online. We strongly support the creation of a single national floor, while also recognizing that such standards would not preempt states from establishing more robust consumer protection regimes as they see fit.

The Bureau appropriately proposes to include both single-payment and longer term, multi-payment loans, as well as both closed-end and open-end loans, within the scope of its rule. This is critical both to protect borrowers against harm from existing products and to guard against foreseeable efforts to evade a rule. In states like California where high rates are permitted on longer-term loans, payday lenders like Check N' Go are already making installment loans secured by access to the borrower's checking account. For these loans, like for balloon loans, the lender puts itself first-in-line for repayment, reasonably assured of its ability to collect regardless of the borrower's true ability to repay.

We also strongly support inclusion of all car title loans within the scope of the rule. In most of the 21 states that permit car title lending, loans are one-month balloon payment loans. In California, the rapidly growing car title lending market falls under the California Finance Lenders Law, marked by at least $2,500 long-term installment loans with triple digit interest rates and elevated rates of repossessions. Here again, lenders lack incentive to assess borrower ability to repay, taking a lien on a car the borrower owns free and clear and needs desperately, using the threat of repossession to coerce repayment. For more on car title lending abuses, see our 2013 report.[11]

The proposal would exclude from scope longer-term loans whose "all-in" APR, i.e., an APR inclusive of fees and add-on products, does not exceed 36 percent. Given deficiencies in the way the APR is often calculated, we strongly support using an "all-in" APR, similar to the APR under the Military Lending Act, which limits interest rates to military members and their families. This "all-in" APR is critical to preventing evasion of coverage under the rule by charging periodic interest rates under 36% but with outsized origination or other fees.

While we support the above elements of the proposed scope, we have several significant concerns about potential dangerous limitations to scope: exclusion of credit cards, pawn transactions that function similarly to payday loans, and loans secured by personal property.

There should be no carve-out for credit cards. The Bureau's long-term proposal, under which typical credit cards would fall, would already provide a carve-out for loans less than 36 percent APR inclusive of most fees; thus, mainstream credit cards would typically fall outside the scope of the rule. Higher cost credit cards, typically targeted at borrowers with lower credit scores, should be covered. We are particularly concerned about the prospect of a payday lender using a credit card to evade the CFPB's proposal, which the proposal would not currently prevent.

We are also concerned that pawn transactions that function similarly to payday loans will skirt the rule's protections This is especially concerning where payday lenders use pawn to evade laws aimed to address payday loans. Currently in Ohio, for example, Cash America is attempting to move legislation that would allow it to operate under a new "pawn plus" license – escaping both payday lending regulation and tripling the state's interest rate limits, allowing triple digit APRs and no safeguards for affordability or against refinancing.[12]

Finally, loans secured by personal property provide lenders coercive leverage similar to checking account or car title access. The Federal Trade Commission recognized this with its 1984 Credit Practices Rule, prohibiting non-possessory interests in household goods, which it defined as including clothing, furniture, appliances, and personal effects, including wedding rings.[13] But this list has not been updated for many years, and it does not include certain personal property like cellular phones. The Credit Practices Rule should be updated in many respects;[14] in the meantime, CFPB should ensure that any loan secured by a non-possessory interest in personal property is covered by its payday and similar loans rule.

VII. Payment Practices: Support but Strengthen

The Bureau's proposal also includes protections around lender collection practices, (1) requiring notice to consumers at least three (and no more than seven) days prior to attempting to collect payment from the account, and (2) limiting attempts to collect payment from a consumer's account to two failed attempts at which point a new consumer authorization is required for that and future payments.

These proposals underscore the tremendous harm that payday and car title lenders cause borrowers through first-in-line access to their checking accounts.[15] We support the above proposed protections while urging that they be strengthened.

CFPB should clarify that the lender notice should be required regardless of payment presentment method (e.g., ACH, debit card), and it should include notice of the borrower's right to revoke authorization.

With respect to reauthorizations, since repeated failed presentments indicate an inability to repay, the requirements for obtaining a borrower's reauthorization should be more stringent than obtaining the initial authorization. The lender should be required to document demonstrated change in financial condition or sufficient funds. Further, providing a single payment after automatic revocation of the initial authorization should not constitute or be concurrent with reauthorization for future, recurring payments.

Beyond these two elements of the proposal, we urge that CFPB make clear that the only method by which lenders may provide incentive to borrowers to provide lenders with electronic access to their account is by offering a modest monetary discount. They may not, for example, deny expedited access to funds when borrowers refuse to provide access to the account.

VIII. Conclusion

We thank the Committee for the opportunity to testify on this important proposal, and we would be happy to discuss our comments further.

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[1] Uriah King & Leslie Parrish, *Payday Loans, Inc.: Short on Credit, Long on Debt* at 5 (Mar. 31, 2011), *available at* http://www.responsiblelending.org/payday-lending/research-analysis/payday-loan-inc.pdf.

[2] Consumer Financial Protection Bureau, *Payday Loans and Deposit Advance Products: A White Paper of Initial Data Findings* at 22 (April 24, 2013) *available at* http://files.consumerfinance.gov/f/201304_cfpb_payday-dap-whitepaper.pdf.

[3] Center for Responsible Lending calculations based on Summary Report: California Deferred Deposit Transaction Law – Industry Survey, Page 6. The total number of loans is assumed to be 12.2 million, as reported in the DBO 2013 Annual Report, http://dbo.ca.gov/Licensees/Payday_Lenders/pdfs/2014_CDDTL_Industry_Survey_Summary_Report_Letter.pdf:

[4] Paul Leonard & Graciela Aponte, *Analysis: New State Data Show California Payday Lenders Continue to Rely on Trapping Borrowers in Debt, (*Oct. 9, 2014) available at http://www.responsiblelending.org/payday-lending/research-analysis/CRL-Analysis-CA-Payday-Lenders-Rely-on-Trapping-Borrowers-in-Debt.pdf. DBO's survey provides very conservative estimates of the debt trap. The survey does not take into account borrowers who use multiple lenders over the course of the year. A borrower who takes out three loans from one lender might also be taking out 8 or 10 loans from one or more other lenders. Because each lender would report only its own data, this would under count the total number of loans for that borrower and potentially over count the number of borrowers in the more occasional use categories.

[5] This estimate is very conservative, since it does not adjust for the lower percentage of licensees replying to DBO's survey in 2013 (78% in 2013 vs 93% in 2012). See page 6, http://dbo.ca.gov/Licensees/Payday_Lenders/pdfs/2013_CDDTL_Industry_Survey_Summary_Report_Letter.pdf There were 12.2 million loans in 2013, a decline of 91,194 or less than 1% Data on number of transactions comes from *DBO Annual Report 2013, p 7.*

[6] Susanna Montezemolo and Sarah Wolff, *Payday Mayday: Visible and Invisible Payday Lending Defaults*, Center for Responsible Lending (Mar. 2015), *available at* http://www.responsiblelending.org/payday-lending/research-analysis/payday-mayday-visible-and.html.

[7] *Id.* at 5-6 (finding that nearly half of all North Dakota payday borrowers defaulted within two years of taking out their first loan, and of those who defaulted, nearly half defaulted on either their first or second loan).

[8] FDIC 2005 Payday Loan Guidelines, *available at* https://www.fdic.gov/news/news/financial/2005/fil1405a.html.

[9] CRL calculations based on each licensee's DBO Annual Reports, available upon request.

[10] Terms taken from Check N' Go California Installment Loan Schedule of Charges, https://www.checkngo.com/wp-content/themes/cng/assets/stateDisclosures/California_ILP/schedcharges__ILP___CA___online_.jpg, viewed May 5, 2015.

[11] Susanna Montezemolo, *The State of Lending in America and Its Impact on U.S. Households: Car-Title Lending*, Center for Responsible Lending (July 2013), *available at* http://www.responsiblelending.org/state-of-lending/reports/7-Car-Title-Loans.pdf.

[12] Sheryl Harris, *Payday lenders sneak new loan license into House*, The Plain Dealer (May 1, 2015), *available at* http://www.cleveland.com/consumeraffairs/index.ssf/2015/05/payday_lenders_sneak_a_new_loa.html#incart_river.

[13] 16 C.F.R. § 444.1(i).

[14] Margot Saunders, *Time to Update the Credit Practices Rule: CFPB Should Modernize FTC Rule Addressing Abusive Creditor Collection Practices*, National Consumer Law Center (Dec. 2010), *available at* https://www.nclc.org/images/pdf/debt_collection/credit-practices-rule-update.pdf.

[15] *Payday Mayday, supra,* at 10 (finding that for payday borrowers (across a range of states) in a dataset we analyzed, overdrafts and bounced transactions frequently occurred close in time to the use of payday loans. Nearly half of payday borrowers incurred an overdraft or NSF fee in the two weeks after a payday loan transaction, and 64% paid overdraft or NSF fees at some point during the period they were in the dataset).