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October 7, 2016

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

Docket number: CFPB-2016-0025 or RIN 3170-AA40

Re: NCLR comments on proposed rulemaking on payday, vehicle title, and certain high-cost installment loans.

Dear Director Cordray,

The National Council of La Raza (NCLR) is filing these comments in response to the Consumer Financial Protection Bureau's (CFPB) proposed rule on payday, vehicle title, and certain high cost installment loans. Thank you for the opportunity to submit comments.

NCLR—the largest national Hispanic civil rights and advocacy organization in the United States—works to improve opportunities for Hispanic Americans. Through its network of more than 260 affiliated community-based organizations, NCLR reaches millions of Hispanics each year in 41 states, Puerto Rico, and the District of Columbia. To achieve its mission, NCLR conducts applied research, policy analysis, and advocacy, providing a Latino perspective in five key areas—assets/investments, civil rights/immigration, education, employment and economic status, and health. In addition, it provides capacity-building assistance to its Affiliates who work at the state and local level to advance opportunities for individuals and families.

NCLR's Office of Research, Advocacy, and Legislation (ORAL) is one of the most influential and visible national advocacy voices championing public policy on behalf of Latinos. In order to achieve its mission, ORAL is composed of several departments and issue-focused policy projects that: 1) gather and share information, research, and data on Latinos; 2) develop policy analyses, proposals, and ideas; 3) equip Hispanic-serving community leaders and NCLR Affiliates with information that empowers and engages them in public policy debates; and 4) provide decision-makers with strategic advice on how best to advance policy issues for Latinos.

## **Background**

NCLR has a long history of working to eliminate abusive and predatory financial products, while also promoting the creation of rules and regulations within the financial marketplace that are conducive to fair and accessible products and services for consumers. For years, the Latino community and other communities of color were denied financial services as lending institutions

refused to extend credit to, or simply failed to place branches in, communities of color. Instead, an industry of fringe and typically more expensive financial products, such as payday loans and check cashers, became standard outlets in our communities. In the case of payday loans, these predatory products carry excessive fees and interest rates that insidiously undermine low-income families' economic stability as they struggle to make ends meet.

In the wake of the near-collapse of financial markets in 2008, issues of financial scams and unscrupulous lending, misconduct on Wall Street, and consumer financial recovery have garnered significant attention from policymakers, regulators, and advocates. The Department of Justice's numerous settlements with financial institutions since the financial crisis speak to the extreme levels of misconduct rampant within the financial services sector.

The sharp focus led to positive results in 2010, when the Dodd-Frank Wall Street Reform and Consumer Protection Act was signed into law, which also led to the creation of CFPB. The CFPB has introduced several important protections for Hispanic consumers, including a remittance rule that went into effect in October 2013, and nationwide mortgage servicing standards that went into effect in January 2014.

NCLR's research and policy work over the years has documented gaps and limitations in social safety nets and work-support systems that often overlook hardworking families. NCLR has published the following original research related to the financial condition of Latino families:

- [\*Latino Financial Access and Inclusion in California \(2013\)\*](#)
- [\*Banking in Color: New Findings on Financial Access for Low- and Moderate-Income Communities \(2014\)\*](#)

In addition, NCLR has submitted the following statements to the U.S. Congress for the record:

- ["Putting an End to the Foreclosure Crisis for Latinos and Communities of Color"](#)
- ["Principles to Modernize the Community Reinvestment Act: How CRA Can Help Low-Income Latino Families"](#)
- "Harnessing the Power of the Community Reinvestment Act to Connect Latinos to Banking Services"

NCLR also participated in the Bipartisan Policy Center's Financial Regulatory Reform Initiative and co-authored a report entitled, [\*The Consumer Financial Protection Bureau: Measuring the Progress of a New Agency\*](#).

Given the significant racial and ethnic disparities in accessing mainstream financial services, Hispanics and other low-income communities of color have few choices when seeking products and services to meet their financial needs. This means that nonbank credit products can have significant effects on the household balance sheets of Latinos and other minority consumers, and by extension, the entire economy.

## Concerns with Payday Lending

Today, the most ubiquitous providers of these alternative financial products are payday loan lenders, nationally numbering more storefronts than McDonald's and Starbucks combined.<sup>i</sup> A recent study released by the Center for Responsible Lending found that race and ethnicity are the leading factors in determining payday lender locations, with concentrations of these businesses in lower-income and largely minority communities.<sup>ii</sup>

Payday loans are inherent debt traps, locking borrowers in a cycle of rollover loans that can last several months, with a borrower ultimately owing hundreds of dollars in interest and fees before the loan is finally paid off. According to testimony from the Pew Charitable Trusts before the Senate Committee on Banking, Housing, and Urban Affairs, nearly 70% of payday loans borrowers report using the loans to cover monthly expenses such as utilities, rent, and food.<sup>iii</sup> But a payday loan typically requires a balloon payment averaging \$400 to be paid with a borrower's next paycheck. When borrowers don't have this large lump sum in two weeks' time, countless borrowers "pay off" their loan by immediately taking out another loan to continue covering their living expenses. This revolving door of loans creates a debt trap that leaves borrowers in a worse financial position than before they took out the original loan. Regulations are needed to protect consumers from these largely unchecked financial products that are, by design, trapping people in a cycle of debt.

The payday lending market is not a small segment of consumers: Research shows that 12 million Americans take out a payday loan each year. Of these consumers, four out of five are not able to pay back the loan within its original term,<sup>iv</sup> suggesting that the loan is not affordable for the majority of consumers who use them. While there is a definite need for small-dollar credit, especially for low-income Latino consumers and those who may be outside the financial mainstream, consumers should not be forced into financial ruin as a result of taking out a \$300 loan.

The Center for Responsible Lending's analysis of data provided by the California Department of Business Oversight on repeat lending in the state demonstrated the extent to which repeat borrowers make up the bulk of the industry's profits, with 76% of all payday loan fees originating from borrowers with seven or more payday loans per year.<sup>v</sup> Further, this analysis showed that in 2013, the number of borrowers with 10 or more loans in California increased by 11% over 2012 figures, even with the total number of loans declining slightly over the same period.<sup>vi</sup> As a result, it behooves policymakers to address the long-term financial stress that consumers face due in large part to the lack of regulations on the current payday lending model.

Many of NCLR's Affiliates work with clients who have first-hand experience with the payday debt trap. Montebello Housing Development Corporation (MHDC) in Los Angeles, California, works with members of the Latino community who are looking to purchase their first home. They shared this personal testimony from a client who incurred long-term debt and whose credit was ruined. As a result of the current payday lending business model, they are now years from being able to purchase a home:

*“My name is Maria Cervantes and I would like to share my experience with payday loans. Although I knew about the pitfalls of payday loans, I found myself in a situation where I thought I had no other choice but to take out a payday loan. What I thought would be a short term loan turned into five years. It’s been approximately five years of paying three loans at \$45 each, every two weeks. I was paying \$135 biweekly and \$270 a month. Every time I thought that I was going to pay off the \$300 loan, something always happened, so I found myself in a cycle.*

*I regret ever taking the loan that, from the start, the lender gives you only \$245 and not the full \$300. If I had to do it all over again, I would ask a friend or family member instead of paying the hundreds of dollars I gave the payday lenders. Not only did I have to pay the high interest, but [there were also] the harassing phone calls about late payment at work or to my references I wrote on my applications.”*

Maria’s credit dropped to a FICO score of 500, she filed bankruptcy twice, and was unable to obtain preapproval for a home loan because of her credit history. MHDC is working with her on budgeting and prioritizing her debt to improve her credit score, which will likely take years.

## **Reaction to CFPB’s Proposed Rule**

It is with these stories in mind that NCLR offers its comments on the proposed rule. Maria’s story is illustrative of a system that has wreaked havoc on the financial stability of the Latino community and other low-income households with limited access to credit. Because payday and auto title lending abuses are hampering families’ economic mobility, we believe that regulation in this industry is long overdue. In the six years since it was established, CFPB already has a proven record of commitment to its mission of protecting consumers from deceptive and abusive practices in the financial marketplace. We are encouraged by the steps CFPB is taking to rid the marketplace of the most abusive and predatory practices involved in small-dollar lending. We suggest the rule be strengthened in the following areas:

### **Ability to repay:**

The ability to repay should be a fundamental requirement of any consumer loan transaction, taking into account a borrower’s income and expenses. Borrowers should be able to meet other regular financial obligations and expenses without needing to re-borrow to afford loan payments, a sentiment that is generally reflected in the proposed rule. The proposal also recognizes that this principle must apply to a sufficiently broad range of small-dollar loans, not just a narrowly defined set of payday or car title loans.

An unaffordable loan does little to help a borrower in financial need; in fact, it can result in serious financial harm.

*HOLA, an NCLR Affiliate in Ashtabula, Ohio, worked with a client whose initial loan of \$800 to help a family member with medical expenses resulted in \$1,800 in interest payments plus principle. Of her experience keeping up with the loan payments, the*

*borrower said: “It’s been a very painful experience; I am working solely for them [lenders] now.” — Mariely (Akron, Ohio)*

The proposed rule is a step in the right direction. However, we are concerned about the provisions in the proposal that would allow lenders to use alternatives to the ability-to-repay determination at the outset, in the “debt trap protection requirements.” These options undermine the ability-to-repay principle, as well as the rule’s overall effectiveness in protecting consumers from financial harm due to unaffordable loans. NCLR strongly believes that all loans covered under the final rule, regardless of being short-term or longer-term loans, must adhere to an ability-to-repay requirement.

*NCLR partner organization in St. Louis, Missouri, Latinos en Acción STL, worked with a client whose wages from her jobs as a domestic worker and at a tamale food cart were insufficient to meet her financial obligations of rent, bills, and caring for her three children, so she took out a \$1,200 auto title loan. When her job cut her hours, she was no longer able to keep up with the monthly payments, so she took out another loan to help her cover the first. An illness caused her to be hospitalized for three weeks, and she lost her job, without access to worker’s compensation. During this time, she was also unable to keep up with her loan payments—she owed over \$5,000 in interest alone. She ultimately lost her car, her job, and her apartment and has suffered depression. In addition to the financial consequences she must now deal with, her children have missed school without the family’s car and she has missed medical appointments, jeopardizing her children’s education and her health.*

Clearly, a backstop was needed to prohibit loans from being made to someone in such financial stress. We urge CFPB to apply an ability-to-repay test based on income and expenses with no exceptions. Further, this determination must apply to every single loan in which the lender takes control over the borrower’s checking account, car, other property, or wages.

Currently, the proposed rule could allow six, 400% APR payday loans a year to be made without adhering to any ability-to-repay-standard. Through research, survey work in the field, and the collection of payday and auto title borrower stories, NCLR has seen first-hand that even one unaffordable loan—let alone six—is enough to send vulnerable families spiraling into debt and devastate an individual’s future financial prospects.

Further, the proposed rule exempts longer-term payday loans with high origination fees from its proposed ability-to-repay test. This loophole must not be part of the final rule. Specifically, longer-term loans should be presumed unaffordable if the borrower has to refinance to avoid default, or if the loan is refinanced before 75% of the loan principal is paid. In addition, lenders should be prohibited from refinancing longer-term loans a second time, as the financial burden to the borrower is clearly not being taken into account in this case. If the ability-to-repay determination were conducted at the start of the lending process, it would stand that refinancing and default rates would be very low.

## **Protections against flipping loans and length of time between loans:**

CFPB's rule must ensure that borrowers cannot be stuck in short-term, two-week loans for three months or more, and must prevent the serial flipping of longer-term loans, which would be an indication of the inability to afford a loan. As written, the proposal does not prohibit lenders from lending multiple short-term loans within a 12-month period—there is no limit on the number of days of borrower indebtedness. The CFPB can and should consider a limit, like the Federal Insurance Deposit Corporation has done with its guideline of a 90-day limit of indebtedness. The exclusion of a limit only serves to perpetuate the existing payday borrower debt trap.

Additionally, we are concerned that there is a reduced cooling-off, or waiting, period between loans from 60 days in the CFPB's preliminary proposal to 30 days in the proposed rule. CFPB's own research found that 80% of payday loans are rolled over or followed by another loan within 14 days.<sup>vii</sup> By reducing the cooling off period, the CFPB's protection against repeated borrowing is substantially weakened. We urge the CFPB to ensure that a cooling-off period is long enough that borrowers can manage their expenses and do not re-borrow in order to service prior short-term loans.

*An NCLR Affiliate in Boise, Idaho, Idaho Community Action Network, worked with a payday loan borrower who originally had to take out a loan to fix a vehicle. When this borrower was unable to afford the payments for her original loan, she took out subsequent loans to pay for the first. She took out loans from three separate lenders, borrowing between \$700 and \$1,000 each time in a period of a few months. In the borrower's words: "It was difficult to survive and provide for family while paying back the loans."*

Safeguards against the number of times she could re-borrow within such a short time frame could have helped this borrower. In her experience, she borrowed from multiple lenders; over-drafted her bank account when the lenders collected their payments; had the inability to pay for family expenses while paying off the loans; was subject to harassment from the lenders to collect payment; suffered from emotional stress, and ultimately, declared bankruptcy.

You can see more stories by viewing the NCLR video of payday loan borrowers at <http://nclr.us/PaydayLoanStories>.

## **Enhance strong state laws:**

We do not believe that it is the intent of CFPB to undermine strong rules already in place in states that have regulated payday loans. However, the proposal should make explicit that in states which prohibit high-cost abusive loans, it will deem violation of state law an unfair practice. There are currently 14 states plus the District of Columbia that enforce rate caps that effectively prohibit dangerous payday loans, and communities benefit from these protections. Capping the rates on payday and car title loans at about 36% is the most effective way to prevent these harms. Therefore, the CFPB must not undermine these strong state laws, and must go further in declaring that making or offering a loan in violation of a state law is an unfair, abusive, and deceptive practice.

## Conclusion

NCLR supports the efforts of CFPB to address the most abusive and predatory elements of the small-dollar loan market, which we recognize is no small task, and we appreciate the ability to provide the perspective from the Latino community. We also recognize that much care must be taken to balance access to credit with the elimination of bad actors in the marketplace. We hope the stories in these comments, which represent the Latino community's experience with payday and auto title lenders, will help inform a final rule that effectively puts an end to the abuse and predatory practices in the payday market, which have been stripping wealth from hard-working individuals and households for far too long.

If you have additional questions about these comments, please contact Marisabel Torres, Senior Policy Analyst, [mtorres@nclr.org](mailto:mtorres@nclr.org), or Lindsay Daniels, Associate Director, Economic Policy, [ldaniels@nclr.org](mailto:ldaniels@nclr.org).

Thank you for the opportunity to comment.

Sincerely,



Eric Rodriguez  
Vice President  
Office of Research, Advocacy, and Legislation  
National Council of La Raza

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<sup>i</sup> Federal Reserve Bank of St. Louis, *Payday Loans: Time for Review* (St. Louis, MO: Federal Reserve Bank of St. Louis, 2014), <https://www.stlouisfed.org/publications/inside-the-vault/fall-2014/payday-loans> (accessed April 14, 2015).

<sup>ii</sup> Wei Li, et al., *Predatory Profiling: The Role of Race and Ethnicity in the Location of Payday Lenders in California* (Washington, DC: Center for Responsible Lending, 2009).

<sup>iii</sup> Senate Committee on Banking, Housing, and Urban Affairs, Subcommittee on Financial Institutions, *Are Alternative Financial Products Serving Consumers*, 113th Cong., 2nd sess., 2014.

<sup>iv</sup> Susanna Montezemolo, *The State of Lending in America and its Impact on U.S. Households*, (Washington, DC: Center for Responsible Lending, 2013).

<sup>v</sup> Paul Leonard and Graciela Aponte, *Analysis: New State Data Show California Payday Lenders Continue to Rely on Trapping Borrowers in Debt* (Washington, DC: Center for Responsible Lending, 2014).

<sup>vi</sup> Ibid

<sup>vii</sup> Kathleen Burke et al., *CFPB Data Point: Payday Lending*. Office of Research, Consumer Financial Protection Bureau. Washington, DC, 2014