

May 14, 2019

Comment Intake  
Bureau of Consumer Financial Protection  
1700 G Street NW  
Washington, DC 20552

Re: Comments on Payday, Vehicle Title, and Certain High-Cost Installment Loans, Docket No. CFPB-2019-0006; RIN 3170-AA80

Dear Office of Regulations Counsel:

UnidosUS (formerly the National Council of La Raza) is filing these comments to strongly oppose the Consumer Financial Protection Bureau's (CFPB) proposed rescission of the ability-to-repay requirements of the CFPB's 2017 payday and vehicle title loan rule ("Ability-to-Repay Rule," "Payday Rule," or "2017 Rule").<sup>1</sup> Thank you for the opportunity to comment on this proposal.

UnidosUS is the largest national Hispanic\* civil rights and advocacy organization in the United States. For 50 years, we have worked to advance opportunities for middle and working-class Latino families to achieve economic stability and to build wealth. In this capacity, UnidosUS and its Affiliate network of more than 260 community-based organizations in 35 states, the District of Columbia, and Puerto Rico, work to provide education, health care, housing, workforce development, free tax preparation, and other services to millions of Latinos in the United States each year.

For more than two decades, UnidosUS has been actively engaged in anti-poverty work. UnidosUS has combined original research, policy analysis, and advocacy to support policy solutions that will help advance the nation's 58.8 million Latinos. This has included: advocating for a fair and equitable federal income tax system; empowering Latino wealth-building through homeownership; and supporting a regulatory environment that fosters a safe and affordable financial market.

## Background

UnidosUS 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. Latinos and other communities of color have faced historical barriers to financial services as lending institutions refused to extend credit to, or have branches in, communities of color.<sup>2</sup> In their absence, fringe

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\* The terms "Hispanic" and "Latino" are used interchangeably by the U.S. Census Bureau and throughout this document to refer to persons of Mexican, Puerto Rican, Cuban, Central and South American, Dominican, Spanish, and other Hispanic descent; they may be of any race.

and costly alternative financial services (AFS) have become the default providers of financial products for many households in our communities.\*

Additionally, UnidosUS's research and advocacy has documented the disparities in accessing mainstream financial services that limit the choices Hispanics and other low-income consumers have when seeking products and services to meet their financial needs.<sup>3</sup> Further, Latinos have lower levels of access to mainstream credit than other populations—nearly one-out-of-three (31.5%) Latinos had no mainstream credit in 2017 compared to just one-in-seven (14.4%) White consumers.<sup>4</sup> The gaps in access to safe and affordable financial tools have given non-bank credit products or AFS significant influence over the household balance sheets of Latinos and other minority consumers, and by extension, the entire economy.

Since its creation, UnidosUS has supported the efforts of CFPB to introduce several important protections for Latino consumers, including the 2017 Rule to reign in one of the most predatory actors in the financial marketplace and most ubiquitous among AFS providers: payday lenders.<sup>5</sup> In evaluating the CFPB's original proposal which resulted in the 2017 Rule, UnidosUS sought input from Affiliates working with clients who had used payday and auto title loans. Affiliates gathered stories from their clients that demonstrated the impact these loans had on their lives—whether they could pay them off in a timely manner; if they had to roll the original loan over or take out subsequent loans to pay back the original one; and how this loan debt affected their ability to pay off other debts or afford other expenses.

UnidosUS Affiliate organizations across the country documented the financial harm that Latinos encountered as a result of using payday and auto-title loans. Some of these experiences were chronicled in UnidosUS' blog series, "Truth in Payday Lending: Stories from Latino Borrowers."<sup>6</sup> These narratives help to illustrate the ways in which financially vulnerable consumers are being taken advantage of by these expensive and predatory products, and how wealth will continue to be drained from our communities without regulation of this industry.<sup>†</sup>

The CFPB's payday rule was the culmination of over four years of information gathering and analysis by the Bureau and was rooted in the fundamental principle that lenders should make a reasonable determination that a borrower has the ability to repay a loan before making it. UnidosUS continues to advocate for strong consumer protections against these predatory

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\* Latinos' use of transaction alternative financial services (AFS) has steadily declined since 2011—but remains prominent compared to White households. In 2017, 32.4% of Latino households used transaction AFS in the previous 12 months—a 7.1% decrease since 2011. Yet, the rate of Latino households using transaction AFS remains more than double that of White households (12%). Latino households are more likely to rely on cash, non-bank money orders, and prepaid cards than their White counterparts. For example, in 2017, 60% of Latino households used only bank methods to pay bills, compared to 85.1% of White households. See, *Latino Banking in 2017: A Snapshot of the FDIC National Survey of Unbanked and Underbanked Households* <http://publications.unidosus.org/bitstream/handle/123456789/1910/LatinoBankingin2017.pdf?sequence=3&isAllowed=y>

† Client stories depicted common consumer experiences with the payday lending model that resulted in negative financial consequences for individuals and households. Often times, a payday or car title loan borrower would be seeking a few hundred dollars to address a shortfall in income that would result in months of re-borrowing and financial hardship. Borrowers ended up paying hundreds or even thousands of dollars in fees and interest payments, and they described becoming more financially insecure as a result of taking out the loans.

financial products and urges the Bureau to reconsider its efforts to weaken the 2017 Rule in any way, including rescinding the underwriting provisions of the 2017 Rule.

### **Ability to Repay as a Key Provision in Unfair and Abusive Practices**

The current Notice of Proposed Rulemaking (NPRM) published in the Federal Register on February 14, 2019 seeks to rescind §1041.5 of the final rule, which requires lenders making covered short-term loans (such as payday loans) or longer-term balloon payment loans to obtain a written statement from the consumer with respect to the consumer's net income and major financial obligations; obtain verification of evidence of the consumer's income and financial obligations; obtain a report from a national consumer reporting agency and a report from a registered information system with respect to the consumer; and review its own records and the records of its affiliates for evidence of the consumer's required payments under any debt obligations. This information was required for the lender, under §§1041.5(b) and (c)(1) to make a reasonable projection of the consumer's net income and payments for major financial obligations over the next 30 days; calculate the consumer's debt-to-income ratio; estimate the consumer's basic living expenses; and determine if the consumer will be able to make payments for his or her payment obligations. These proposed requirements are improper and show blatant disregard for the experiences of Latino and other low-and moderate-income consumers using these products. Additionally, they disregard the culmination of over four years of well-founded and legally sound information gathering and analysis by the Bureau.

Without underwriting requirements that will require a lender to evaluate whether a borrower has the ability to repay their loan, the payday industry will continue to target lower-income and largely minority communities, who are often unable to successfully pay off their loans in a timely manner.

This can have immediate and long-term implications for these consumers. Payday loans are marketed as a short-term financial fix but can result in months and even years of debt for customers, to their extreme financial detriment. A client of a UnidosUS Affiliate in Boise, Idaho took out an initial \$350 loan but could not afford the payments, ultimately flipping it 24 times and paying more than \$3,000 in fees. She told us: "As a senior with a fixed income, it is hard to get by each month and now that I have this loan payment, I find myself trapped because I have to get behind on other bills to stay current on my loan. Then I have to re-borrow to get current on my other bills."<sup>7</sup>

Without these necessary underwriting standards, and in the absence of state or federal requirements to evaluate a borrower's ability to afford to repay the loan, a payday lender is under no obligation to give the borrower reasonable loan terms. As the CFPB's own investigation of one of the leading payday lenders, Ace Cash Express, reveals, it is more advantageous to the lender to place a borrower in an unaffordable loan that they will be stuck in for months or longer. For a borrower with limited options for a loan or credit, they have no leverage to obtain more favorable loan terms.

The experiences with these abusive loans documented by UnidosUS Affiliates are unfortunately not unique to Latino consumers. The outpouring of community support for the 2017 Payday Rule was from a broad coalition of communities, including veterans, seniors, communities of color, faith-based groups—all united for the common purpose of stopping the targeted financial abuse of economically vulnerable communities.

## **Conclusion**

Borrowers are left with unaffordable loan payments and end up in worse financial situations as a result of taking out loans that do not have to adhere to basic lending principles. It is troubling that as the federal regulator with purview over these businesses, CFPB would place the concerns of lenders over the financial well-being of everyday Americans who are struggling to make ends meet.

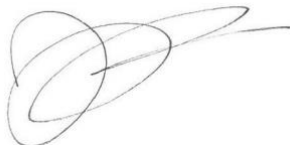
UnidosUS recognizes that CFPB wishes to strike a balance in regulation of the market between access to credit and the elimination of predatory actors. However, we cannot stress enough that a marketplace of lenders who can take advantage of consumers with limited options for financing is not equivalent to fair and affordable credit access. Rescinding the underwriting provisions of the 2017 Payday Rule would be the antithesis of consumer protection. Instead of ensuring that payday and auto-title lending businesses treat consumers fairly, eliminating the ability-to-repay standard would sanction the peddling of expensive and predatory products to our communities. Further, it sends the message that LMI consumers of color are not deserving of sound and affordable financial services or protections against abusive lending practices.

We urge the bureau to prohibit the continued predatory practices that allow this industry to take out vast sums of wealth from our communities, and to implement the rule as written without further delay.

If you have additional questions about these comments, please contact Marisabel Torres, Senior Policy Analyst, [mtorres@unidosus.org](mailto:mtorres@unidosus.org).

Thank you for the opportunity to comment.

Sincerely,

A handwritten signature in black ink, appearing to read "Jennifer Brown", with a long horizontal flourish extending to the right.

Jennifer Brown, Esq.  
Associate Director, Economic Policy  
UnidosUS

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- <sup>1</sup> "Payday, Vehicle Title and Certain High-Cost Installment Loans." *Code of Federal Regulations*, 12 CFR Part 1041 (2017) 54472-54921. <https://www.govinfo.gov/content/pkg/FR-2017-11-17/pdf/2017-21808.pdf>.
- <sup>2</sup> Terri Friedline, Julie Birkenmaier, and Mathieu R. Despard. *Policy Recommendations for Expanding Access to Banking and Financial Services*. Grand Challenges for Social Work initiative Policy Brief No. 11-4 May 2018 (Baltimore, MD: University of Maryland, 2018) <http://grandchallengesforsocialwork.org/wp-content/uploads/2018/05/PB11-4.pdf>
- <sup>3</sup> National Council of La Raza, *Latino Financial Access and Inclusion in California*, (Washington, DC: National Council of La Raza, 2013); and, National Council of La Raza, *Banking in Color: New Findings on Financial Access for Low- and Moderate-Income Communities*, (Washington, DC: National Council of La Raza, 2014). [http://publications.unidosus.org/bitstream/handle/123456789/1203/bankingincolor\\_web.pdf](http://publications.unidosus.org/bitstream/handle/123456789/1203/bankingincolor_web.pdf)
- <sup>4</sup> UnidosUS, *Latino Banking in 2017: A Snapshot of the FDIC National Survey of Unbanked and Underbanked Households* (Washington, DC: UnidosUS, 2018) <http://publications.unidosus.org/bitstream/handle/123456789/1910/LatinoBankingin2017.pdf?sequence=3&isAllowed=y>
- <sup>5</sup> Eric Rodriguez for UnidosUS, *RE: NCLR Comments on Proposed Rulemaking on Payday, Vehicle Title, And Certain High-Cost Installment Loans.*" Public Comment to the Consumer Financial Protection Bureau. Washington, DC: 2016, [http://publications.unidosus.org/bitstream/handle/123456789/1637/nclrcommentstocfpb\\_10716.pdf?sequence=1&isAllowed=y](http://publications.unidosus.org/bitstream/handle/123456789/1637/nclrcommentstocfpb_10716.pdf?sequence=1&isAllowed=y).
- <sup>6</sup> "Truth in Payday Lending: Stories from Latino Borrowers." *Truth in Payday Lending* (blog). <https://blog.unidosus.org/tag/truth-in-payday-lending/>.
- <sup>7</sup> "Senior Citizen Fixed Incomes Threatened by Payday Lenders." *Truth in Payday Lending: Stories from Latino Borrowers* (blog), April 6, 2016. <https://blog.unidosus.org/2016/04/06/truth-payday-lending-senior-citizen-fixed-incomes-threatened-lenders/>.