



October 7, 2016

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

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

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

Dear Director Cordray,

Georgia Watch files this comment in response to the CFPB's proposed rule on payday, vehicle title, and certain high cost installment loans. Thank you for the opportunity to submit comments on this important subject. While the rule is a critical step in stopping the harms of unaffordable loans in states that currently do not have adequate protections, it must be strengthened to ensure it does not undermine existing strong state laws that safeguard citizens from the downward financial spiral caused by debt trap lending.

Georgia Watch is Georgia's leading consumer advocacy organization. As a 501(c)(3) non-profit, non-partisan organization, we work to empower and protect Georgia consumers on matters that impact their wallets and quality of life through education, advocacy, and policy development. We focus on ensuring access to quality, affordable healthcare, fair utility rates, renewable energy options, safeguarding personal finances, and access to the courts. While we serve all Georgia consumers, we are particularly dedicated to ensuring that the most vulnerable of our population have representation and access to necessary resources, and are aware of their rights in the consumer marketplace.

We understand that the CFPB does not have the authority to place a cap on interest rates and that the proposed rules would not preempt state law. At the same time, we would like to see the CFPB's final rule build on, rather than undermine our state protections and strengthen our ability to enforce our state law against lenders making illegal loans.



Specifically, we ask the CFPB to create a strong rule that:

- mandates ability-to-repay requirements for all covered loans;
- closes the “business as usual” loophole in the proposed ability-to-repay test; and
- declares loans made in violation of our state laws as unfair, deceptive and abusive practices, which would give us additional enforcement tools.

## Historical Context

Georgia has battled predatory lending for over a century. Since the industry started 20 years ago, the payday lending industry has been oddly effective at shirking attempts at regulation. The industry uses high-powered lobbying mechanisms to push for loopholes in regulation. We want the CFPB to understand how hard our state has fought to protect its consumers from payday lenders and how much our citizens stand to lose if federal regulations undermine these protections.

At the turn of the 20th century, Georgia stopped lenders from both using assignments of future wages as security for a debt, and from rolling over debt said debt – both common practices at the time. In response, lenders began buying future wages outright and finding ways around the rollover ban. In the 1950s, Georgia fired back at these attempts to evade state law by instituting its first usury caps for small dollar loans. It also required small lenders to register with the state’s Office of the Industrial Loan Commissioner.

However, these regulations could not stop payday lenders from unearthing other ways to circumvent the law. In the 1990s, lenders began securitizing personal checks and using the “rent-a-bank” model to subvert Georgia’s usury laws. Finally, in 2004, Georgia passed the Payday Lending Act of 2004, which capped small consumer loans at Georgia’s loan usury rate of 60 percent per year, added stiff criminal and civil penalties for violators, and barred non-bank lenders from collaborating with banks to avoid Georgia’s usury laws. This Act effectively outlawed payday lending and made it the first state law to expressly prohibit payday lenders from scheming with out-of-state banks to avoid state usury limits.

Less than ten years later, payday lenders tested the scope of these penalties. The Georgia Office of the Attorney General received complaints that out-of-state lenders were making payday loans through the internet. The Attorney General’s Office was able to fend off these financial predators by threatening to enforce our strict criminal penalties. This incident shows that strong laws against payday lenders can protect consumers even with the mere threat of enforcement.



Payday lenders will seize any opportunity to reenter Georgia and prey upon its citizens. We know because they have tried repeatedly. In 2007, out-of-state lenders introduced legislation that would have repealed Georgia's stringent criminal penalties for usury cap violations. Fortunately, the bill never made it past the House floor.

Today, title pawn loans are governed by the Georgia Pawnbroker Act (O.C.G.A. § 44-12-130). This act grants special rights to pawnbrokers, including the right to collect interest, charges, and fees on personal property pawns, such as car titles, that would otherwise be considered usurious or even criminal. In the post-payday lending era in Georgia, car title lenders have demonstrated a history of exploiting weaknesses in the statute. We have no illusions that Georgia is permanently safe from payday lenders. We are concerned the title lending industry could use the CFPB rules as a masquerade to rewrite our state's laws. In fact, the industry tried earlier in 2016 to use the CFPB's rulemaking as an excuse to legalize new forms of title lending in Georgia. Two virtually identical bills were introduced in both the Senate and the House that would alter O.C.G.A. § 44-12-130. This proposed legislation could have exempted certain title pawn transactions from existing usury limits. While this legislation did not pass in the 2016 session, we are expecting renewed efforts at the next Legislative session to exploit any gaps in the proposed CFPB rule.

Year after year, we witness the intense lobbying efforts that the payday lending industry engages in to write the very rules by which they are to be governed. It is paramount that a strong federal rule be established that cannot be evaded by this industry.

### **Georgia residents are better off without predatory lending products**

Our experience demonstrates that people are better off without these harmful, high-cost, unaffordable payday loans. We see every day that people have other options besides falling into the payday lenders' debt trap. Annually, our citizens save \$284,112,449 that would otherwise be spent on fees to float unaffordable payday loans.<sup>1</sup> The savings from our rate cap benefit not only individual people, but also the state economy as a whole. However, we still have work to do in

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<sup>1</sup> Center for Responsible Lending, "States without Payday and Car-title Lending Save \$5 Billion in Fees Annually," 2016, [http://www.responsiblelending.org/sites/default/files/nodes/files/research-publication/crl\\_payday\\_fee\\_savings\\_jun2016.pdf](http://www.responsiblelending.org/sites/default/files/nodes/files/research-publication/crl_payday_fee_savings_jun2016.pdf)



rescuing our citizens from the debt trap caused by car title loans. Annually, our citizens lose \$199,575,563 in fees due to this type of loan.<sup>2</sup> This is particularly detrimental to Georgia's 681,840 veterans and communities of color, populations that the payday and car title loan industries target and exploit.

Although the Georgia Pawnbrokers Act does cap lender fees, the fee caps are high. Further, the act sets no limits on loan size, no loan limits based on the value of the vehicle, no limit on total loans or frequency, no rules on the size of the loan compared to income, and no cooling-off periods to break the debt cycle. Under the Georgia law, title lenders may sell the vehicle if the customer is unable to pay the principle, the interest, repossession fees up to as much as \$250, plus a storage fee of five dollars per day. The lenders also get to keep the profit made from the sale of the vehicle, which gives these title lenders an incentive to make the fees higher, so the consumer defaults on the loan. Also, Georgia title lenders make asset-based loans, and commonly advertise, "Turn your Georgia car title into cash," and "No credit checks needed." These tactics allow short-term lenders to continue to trap consumers in debt cycles.

Georgia Code § 44-12-131 regulates title loan lending, but the regulation does not govern rollovers or renewals of loans in any way. The statute sets out that the title loans must be for 30 days, but the loan may be extended or continued for additional 30-day periods indefinitely. Furthermore, while Georgia's Pawnbroker Act caps small loan rates at 25 percent for 30 days, the title pawn industry continues to seek exemptions and carve outs that trap Georgia consumers in a cycle of debt. Frequently, these consumers cannot pay off these title loans monthly, so the rate can get as high as 300 percent APR.

Ronald L.'s story demonstrates the harm predatory car title lending can cause, and these lenders' propensity to subvert consumer protections. Ronald, 62, bought a house with his wife, Robin K., 58, and needed help in keeping up with the mortgage payments. The couple borrowed \$2,000 originally in the form of a title pawn loan. Because they don't have enough to pay the loan off in full, each month they renew the loan by making a \$245 interest payment. They now owe \$6,000. That's \$4,000 more than their original loan. The car they used to obtain the loan does not even run anymore. Ronald says they want to trade in the car, but the lending company is holding the title. Robin has no way of getting to work without a car, so the couple has been renting a car every week for the last 10 months in order for her to get to work. Ronald has been on disability for the past 4

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<sup>2</sup> Center for Responsible Lending, "Payday and Car Title Lenders Drain \$8 Billion in Fees Every Year", 2016, <http://www.responsiblelending.org/research-publication/payday-and-car-title-lenders-drain-8-billion-fees-every-year>



years. Between their regular bills and this high-cost title loan, the elderly couple has no way of purchasing a new car or fixing the air conditioning unit in their home, which has been an issue for weeks.

Another Georgia consumer, Keisha H., 21 years old at the time, was laid off from her job and behind on her bills. She initially borrowed \$2,000 against her car, which was a gift from her parents that she owned free and clear. The interest on the loan was so much that she ended up almost tripling the amount she originally took out. After rolling the loan over multiple times, and paying hundreds of dollars each time, Keisha could no longer pay her other bills on time. Even when she went in to make her last loan payment, the lenders told her if she wanted to miss this month, they wouldn't charge her interest. She speaks out about title loans, "We look for situations to help us get through life at that time, but it can literally leave you penniless, without anything."

While we do look forward to the added protections the Bureau's rule will bring to Georgia consumers like Ronald, Robin, and Keisha, we reiterate that any weaknesses or loopholes which invite other forms of predatory lending, would be a major detriment to our consumers. Our consumers are better off with all forms of predatory lending and we seek a tightly designed strong rule that promotes responsible, affordable lending.

### **What the Proposed Rule gets Right**

The CFPB's rule will be critical in states that have yet to pass a rate cap, however we maintain that our own rate cap has been the most effective protection from predatory lending practices in Georgia. As the Bureau recognizes in the proposed rule "... certain States have fee or interest rate caps (i.e. usury limits) that payday lenders apparently find too low to sustain their business models. The Bureau believes that the fee and interest rate caps in these States would provide greater consumer protections than, and would not be inconsistent with, the requirements of the proposed rule." 12 C.F.R. 47903. The recognition that state fees and interest rate caps offer greater protections than the proposed rule is critical to our state's ability to maintain the strong protections we currently have. This is particularly true as we fully anticipate payday and car title lenders to use the rule as leverage in their attempts to weaken our laws, as has already been seen in other states. We appreciate this acknowledgment. We are also grateful that the proposed rule makes clear that the rule will not preempt stronger state laws and that the proposed rule is a floor, not a ceiling for payday lending regulation. We urge you to keep these statements in the final rule.



While we will continue to protect the rate limits in our state, we call on the CFPB to issue a rule without exceptions and without loopholes. Thankfully, one loophole has already been closed – an exemption from the proposed ability-to-repay test, included in the Bureau's preliminary outline, if loan payments are less than five percent of a borrower's income. The CFPB's research shows that there is still a high default rate (28 to 40%) on longer-term payday loans when payments are 5% of income or less. Loans allowed under the 5% payment-to-income loophole would seriously undermine Georgia's strong state laws. These loans would carry triple digit interest rates, making them illegal under our state law. Much like loans allowed under the 6-loan loophole, inclusion of the 5% payment-to-income loophole would send the message that these high cost and frequently unaffordable loans are "safe" even though they are not and are illegal in our state. It would give payday lenders further ammunition to attempt to loosen state laws to allow high-cost predatory lending.

Furthermore, the core principle of the CFPB's proposal is the right approach – requiring lenders to ensure that a loan is affordable without having to re-borrow or default on other expenses. Examining income only is not enough to determine if a loan is affordable. This is critically important to stopping the harms of this predatory business model, and we strongly support this approach. We call on the CFPB to close the remaining loopholes and issue the strongest rule possible to stop the harmful debt trap of unaffordable payday and car title loans.

### **Closing Loopholes in the Proposed Rule**

The ability-to-repay principle must be applied to every loan – with no exceptions and no room for future evasion. As currently written, the proposed rule contains dangerous loopholes that significantly undermine this standard. For example, the exemption in the Bureau's current proposal – permitting a string of six high-cost loans of potentially 300% or more before any ability-to-repay assessment is required – is a dangerous loophole and will be damaging to consumers in our state. This loophole will be perceived as endorsing the very type of high cost loans that are illegal in our state, thus putting the state at further risk of attempts by payday lenders to loosen state laws. This is six unaffordable loans too many. Just one unaffordable loan can harm consumers irreparably. While we are thankful that this loophole does not apply to car title loans, these loopholes must be closed for payday loans, as well. CFPB rules should stop the harmful debt trap of unaffordable car title loans by limiting the duration of indebtedness.



We are also concerned that several exemptions exist in the proposed rule for longer-term loans that carry high origination fees, such as the exemption for loans with a 36% APR and origination fees of \$50 or higher. These must also be closed. They may be too easily exploited by predatory lenders.

The proposal must also be strengthened to ensure that people have enough money to live on after paying back the loan. Right now, the proposal falls short in this regard and may allow lenders to simply continue “business as usual.” If the ability-to-repay test is weak or too easily gamed, it further puts Georgia state law at risk. The industry's history of exploiting loopholes clearly shows that this is not an industry to be trusted. Repeatedly, Georgia Watch hears about families who have gone hungry, gone without medicine or lost their car to the car title lender because of an unaffordable loan. Rather than allowing lenders to forecast a borrower’s living expenses, as proposed, lenders should be required to use an objective measure for projecting a borrower's basic living expenses and avoid over-reliance on back-end measures like default and re-borrowing rates.

In addition, the proposal allows payday lenders to say that they are meeting their ability-to-repay requirements because their default, delinquency, or re-borrowing rates are no worse than other payday lenders. 12 C.F.R.48193(Paragraph 5(b)(2)(iii)). Even low default rates are not sufficient evidence of ability to repay, given the lender's ability to coerce repayment through control over the borrower's car. At the same time, the Bureau should take care not to sanction industry-wide high rates of defaults and re-borrowing by comparing one high-cost lender's default rates only to other high-cost lenders' default rates.

States can and do enforce their laws with actions that have resulted in millions of dollars of debt relief and restitution to people around the country, including in payday loan-free states. However, payday lenders exploit loopholes in state laws or simply disregard state laws altogether. The CFPB should therefore 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). By so doing, the CFPB will offer states additional, and stronger, tools to crack down on illegal lending and effectively enforce their laws with stronger penalties than exist in state’s laws. Such a ruling is consistent with enforcement actions recently taken by the CFPB, particularly in the CashCall case, where a judge ruled at the end of August that the collection and servicing of loans made in violation of state usury and licensing laws are a UDAAP.



## Conclusion

Georgia families are better off without these high-cost, unaffordable loans. For the CFPB rule to bring the vicious cycle to an end, we, in Georgia, will need the CFPB not to undermine Georgia's rate cap, which effectively protects against payday abuses. However, lenders should be required to make loans based on the borrower's ability to repay the loan, taking both income and expenses into consideration. The CFPB rules should prevent loans from becoming debt traps closing the "business as usual" loophole in the proposed ability-to-repay test. Finally, making it an unfair or abusive practice for lenders to violate usury laws and rate caps will close loopholes and improve enforcement under the law. These protections should apply to the first loan and every loan made after that, with no exemptions for the type of unsafe, inequitable and predatory lending we have long worked to eliminate in Georgia.

Thank you for this opportunity to comment. We appreciate the work that you have done to protect consumers and hope that this rule will become as strong as possible in order to truly end the debt trap. For further clarification on these comments, please contact me at 404-525-1085.

Sincerely,

A handwritten signature in black ink, which appears to read "Liz Coyle". The signature is written in a cursive, flowing style.

Elizabeth B. Coyle  
Executive Director