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October 7, 2016

**Via Email** ([FederalRegisterComments@cfpb.gov](mailto:FederalRegisterComments@cfpb.gov))

Richard Cordray  
Director  
Consumer Financial Protection Bureau  
1700 G Street, NW  
Washington, D.C. 20552

**Re: Docket No. CFPB-2016-0025 / RIN 3170-AA40  
Payday, Vehicle Title, and Certain High-Cost Installment Loans  
Request for Information and Comments**

Dear Director Cordray:

The undersigned State Attorneys General (the “States”) welcome the opportunity to submit comments in response to the Consumer Financial Protection Bureau’s (the “Bureau”) proposed rules concerning Payday, Vehicle Title, and Certain High-Cost Installment Loans (“Proposed Rules”), to be codified at 12 C.F.R. § 1041. The States commend the Bureau for exercising its rulemaking authority in an area that has such a widespread impact on the lives of millions of financially vulnerable consumers across the nation.<sup>1</sup> The Bureau’s Proposed Rules will significantly curtail unfair, deceptive, and abusive payday lending practices for those states that lack strong usury caps, by implementing an ability to repay requirement,<sup>2</sup> placing limitations on lenders’ collection practices,<sup>3</sup> requiring payday lenders to make

<sup>1</sup> See Federal Deposit Insurance Corporation, *FDIC National Survey of Unbanked and Underbanked Households: Appendices*, at 83-84 (Oct. 2014), available at <https://www.fdic.gov/householdsurvey/2013appendix.pdf> (finding that payday borrowers are disproportionately Hispanic or African-American); Consumer Financial Protection Bureau, *Payday Loans and Deposit Advance Products: A White Paper of Initial Data Findings*, at 18-19 (Apr. 24, 2013) [hereinafter *CFPB Payday Loans and Deposit Advance Products White Paper*], available at [http://files.consumerfinance.gov/f/201304\\_cfpb\\_payday-dap-whitepaper.pdf](http://files.consumerfinance.gov/f/201304_cfpb_payday-dap-whitepaper.pdf) (finding that 18 percent of storefront payday borrowers relied on social security income or some other form of government benefits or public assistance); The Pew Charitable Trusts, *Payday Lending in America: Who Borrows, Where They Borrow, and Why*, at 35 (July 2012), available at [http://www.pewtrusts.org/~media/legacy/uploadedfiles/pes\\_assets/2012/pewpaydaylendingreportpdf.pdf](http://www.pewtrusts.org/~media/legacy/uploadedfiles/pes_assets/2012/pewpaydaylendingreportpdf.pdf) (finding that 49 percent of payday borrowers had an income of \$25,000 or less).

<sup>2</sup> Consumer Financial Protection Bureau, *Payday, Vehicle Title, and Certain High-Cost Installment Loans*, §§ 1041.5, 1041.9. (June 1, 2016) [hereinafter *CFPB Proposed Payday Lending Rules*], available at [http://files.consumerfinance.gov/f/documents/Rulemaking\\_Payday\\_Vehicle\\_Title\\_Certain\\_High-Cost\\_Installment\\_Loans.pdf](http://files.consumerfinance.gov/f/documents/Rulemaking_Payday_Vehicle_Title_Certain_High-Cost_Installment_Loans.pdf).

<sup>3</sup> *Id.* at §§ 1041.13-1041.14.

certain consumer disclosures prior to withdrawing funds from a borrower's bank account,<sup>4</sup> and requiring the creation of a payday lending reporting database,<sup>5</sup> among other things.

The proliferation of payday lending<sup>6</sup> has been a source of increasing concern over recent years.<sup>7</sup> Companies engaged in payday lending earn millions of dollars by targeting and exploiting financially fragile consumers through television, radio, and internet advertisements, promising them “fast cash” to meet their most basic living expenses. In return, these companies charge exorbitant interest rates that essentially force struggling consumers to roll over one payday loan into another. Before long, consumers are caught in a vicious, never ending cycle of high-cost borrowing that they can never repay.<sup>8</sup> The economic consequences of these lending activities are significant. According to a March 2013 study from the Insight Center for Community Economic Development, “the payday lending industry had a negative impact of \$774 million in 2011, resulting in the estimated loss of more than 14,000 jobs. U.S. households lost an additional \$169 million as a result of an increase in Chapter 13 bankruptcies linked to payday lending usage, bringing the total loss to nearly \$1 billion.”<sup>9</sup> In addition, approximately one-third of borrowers default within six months of their first payday loan and almost half of borrowers default within two years of their first payday loan.<sup>10</sup>

While many states have enacted statutes setting rigorous usury caps, which in effect, prohibit payday lending altogether, the Bureau's Proposed Rules will nonetheless benefit consumers in those states with either less strict usury caps or whose statutes and regulations are silent on key issues, such as whether a payday lender is required to assess the borrower's ability to repay the debt. As important as these additional protections are, it is crucial that lenders not use the promulgation of the Bureau's rules to

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<sup>4</sup> *Id.* at § 1041.15.

<sup>5</sup> *Id.* at §§ 1041.16-1041.17.

<sup>6</sup> See NPR, *Payday Loans – And Endless Cycles of Debt – Targeted By Federal Watchdog* (Mar. 26, 2015), available at <http://www.npr.org/2015/03/26/395421117/payday-loans-and-endless-cycles-of-debt-targeted-by-federal-watchdog> (reporting that payday lending has exploded from a \$14 billion industry in 2001 to a \$46 billion industry in 2015).

<sup>7</sup> See, generally, Consumer Financial Protection Bureau, *Online Payday Loan Payments* (Apr. 2016), available at [http://files.consumerfinance.gov/f/201604\\_cfpb\\_online-payday-loan-payments.pdf](http://files.consumerfinance.gov/f/201604_cfpb_online-payday-loan-payments.pdf); Consumer Financial Protection Bureau, *CFPB Data Point: Payday Lending*, (Mar. 2014), available at [http://files.consumerfinance.gov/f/201403\\_cfpb\\_report\\_payday-lending.pdf](http://files.consumerfinance.gov/f/201403_cfpb_report_payday-lending.pdf); *CFPB Payday Loans and Deposit Advance Products White Paper*.

<sup>8</sup> A Bureau study found that four out of five payday loans are reborrowed within 14 days of the previous loan being repaid and that more than 80 percent of payday loans taken out by these borrowers were rolled over or reborrowed within 30 days. See Consumer Financial Protection Bureau, *Supplemental Findings on Payday, Payday Installment, and Vehicle Title Loans, and Deposit Advance Products*, at 115-116 (June 2016), available at [http://files.consumerfinance.gov/f/documents/Supplemental\\_Report\\_060116.pdf](http://files.consumerfinance.gov/f/documents/Supplemental_Report_060116.pdf); see also *CFPB Payday Loans and Deposit Advance Products White Paper*, at 21-23 (finding that the average payday borrower takes out ten loans a year.).

<sup>9</sup> Insight Center for Community Economic Development, *The Net Economic Impact of Payday Lending in the U.S.*, at 1 (Mar. 2013), available at <http://www.insightcced.org/uploads/assets/Net%20Economic%20Impact%20of%20Payday%20Lending.pdf>.

<sup>10</sup> See Center for Responsible Lending, *Payday Mayday: Visible and Invisible Payday Lending Defaults*, at 5 (Mar. 2015), available at [http://www.responsiblelending.org/sites/default/files/nodes/files/research-publication/finalpaydaymayday\\_defaults.pdf](http://www.responsiblelending.org/sites/default/files/nodes/files/research-publication/finalpaydaymayday_defaults.pdf).

erode more stringent state laws. As the Bureau has expressly stated in its preamble to the Proposed Rules:

The protections imposed by this proposal would operate as a floor across the country, while leaving State and local jurisdictions to adopt additional regulatory requirements (whether a usury limit or another form of protection) above that floor as they judge appropriate to protect consumers in their respective jurisdictions.<sup>11</sup>

We appreciate that the Bureau has explicitly provided that its Proposed Rules set a minimum standard and will not preempt stronger state laws. It is essential to preserve the ability of individual states like the undersigned to maintain their existing usury caps. For that reason, the undersigned States urge the Bureau to include similar language in the body of the Rules, not just the preamble. While our States support the Bureau's efforts to adopt a set of rules that protect consumers from high-cost loans by attempting to ensure that loans are affordable, we are concerned that the Bureau's Proposed Rules, including the proposed exemptions from the ability-to-repay requirement, are weaker than our state laws and might encourage future efforts to eliminate stringent state usury caps. Since the Bureau cannot set interest rates for loans, it is crucial to preserve the right of states to do so as usury caps are, in fact, the single most effective way of ending the harms of payday and other high interest consumer lending.<sup>12</sup>

The undersigned States have long been concerned with high-cost loans and have passed some of the toughest lending laws in the country, which essentially make payday lending illegal in these States. For example, New York's civil usury law prohibits most non-bank lenders that are not licensed by New York State from charging more than 16% interest on small unsecured loans.<sup>13</sup> Lenders that are licensed by New York State cannot charge more than 25% under New York's criminal usury laws.<sup>14</sup> In Connecticut, the civil usury rate is 12%.<sup>15</sup> Licensed small loan lenders are permitted to charge no more than 36% for small loans up to \$5,000 and no more than 25% for small loans over \$5,000 and less than or equal to \$15,000.<sup>16</sup> In Maryland, licensed lenders are prohibited from charging an annual interest rate in excess of 24% or 33% for consumer loans of \$6,000 or less, depending on the original and unpaid principal balance of the loans.<sup>17</sup> In Massachusetts, the civil usury rate is 12% for small dollar loans of \$6,000 or less, and licensed lenders are permitted to charge no more than 23%.<sup>18</sup> New Hampshire limits

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<sup>11</sup> CFPB Proposed Payday Lending Rules, at 177.

<sup>12</sup> Center for Responsible Lending, *Springing the Debt Trap: Rate caps are only proven payday lending reform* (Dec. 13, 2007), available at <http://www.responsiblelending.org/sites/default/files/nodes/files/research-publication/springing-the-debt-trap.pdf>.

<sup>13</sup> See N.Y. Gen. Oblig. L. § 5-501; N.Y. Banking L. § 14-a.

<sup>14</sup> See N.Y. Penal Law § 190.40.

<sup>15</sup> See Conn. Gen. Stat. § 37-4.

<sup>16</sup> See Ch. 668, Part III, Conn. Gen. Stat.

<sup>17</sup> See Md. Code Ann., Com. Law §§ 12-301-12-303, 12-306.

<sup>18</sup> See Mass. Gen. L. c. 140, § 96; 209 CMR 26.01 (Small Loan Rate Order).

the annual percentage rate on payday loans to 36%.<sup>19</sup> Pennsylvania effectively has a cap at 24% for small dollar loans. Pennsylvania's usury law establishes the general interest rate cap of 6% for non-mortgage consumer loans in amounts less than \$50,000. The Consumer Discount Company Act allows "consumer discount companies" licensed by the Pennsylvania Department of Banking and Securities to make loans in excess of 6%, at rates up to approximately 24%.<sup>20</sup> Any loans that exceed these thresholds are void under many state laws.<sup>21</sup> Moreover, lenders that set up their operations out-of-state, overseas, or on tribal lands in an attempt to evade state regulation are still subject to State laws when lending to consumers.<sup>22</sup>

Our States have also vigorously enforced our usury laws against companies engaged in illegal payday and auto title lending activities in our respective states. For example, in August 2013, the New York State Attorney General's Office ("NYAG") filed an enforcement action against Western Sky Financial, LLC, CashCall, Inc., WS Funding, LLC, and their owners (collectively, "Western Sky") for violations of New York's usury and licensed lender laws in connection with personal loans they made over the Internet and telephone.<sup>23</sup> The NYAG amassed extensive evidence that Western Sky originated high-interest, personal loans to consumers that carried annual percentage rates of interest ("APRs") ranging from 89.26% to more than 355%. From early 2010 through 2013, Western Sky made approximately 18,000 high interest loans to New York consumers, lending more than \$38 million in principal. The interest and fees owed on those loans totaled nearly \$185 million. In a settlement with the NYAG, Western Sky agreed to cease collecting interest on outstanding loans to New York consumers, provided refunds to New York borrowers who have paid back more than the principal of their loan plus the legal interest rate of 16%, and paid \$1.5 million in penalties. Seven of the undersigned States separately filed litigation or administrative actions against the Western Sky entities

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<sup>19</sup> See N.H. RSA 399-A:17(1).

<sup>20</sup> See 41 P.S. §§ 101 *et seq.*; 7 P.S. §§ 6201 *et seq.*

<sup>21</sup> See, e.g., Conn. Gen. Stat. § 36a-573; D.C. Official Code § 28-3301(a); Md. Code Ann., Com. Law § 12-314; Mass. Gen. L. c. 140, § 110 (loans in excess of statutory cap by unlicensed lenders automatically void); N.H. RSA 399-A:15(V); N.Y. Gen. Oblig. L. § 5-511(1); Title 8, Vt. Stat. Ann. § 2215(d).

<sup>22</sup> See, e.g., *Otoe-Missouria Tribe of Indians v. N.Y. State Dep't of Fin. Servs.*, 769 F.3d 105, 114-115 (2d Cir. 2014) (holding that the district court did not err in finding that plaintiffs failed to prove the state was regulating "on-reservation" conduct because consumers applied for the loans from New York, the transactions included the collection and extension of credit in New York, and the tribe was permitted to withdraw funds from consumers' bank accounts that were located in New York); *Western Sky Fin., LLC v. Maryland Comm'r of Fin. Regulation*, 2012 WL 3126863 (D. Md. July 31, 2012) (in dismissing a declaratory judgment action by Western Sky and related South Dakota companies, the district court stated that with regard to the Commissioner's enforcement of the Maryland Consumer Loan Law against the companies' Internet lending activities, "Maryland's interest in protecting its citizens from predatory loans *made in Maryland, not on reservations*, does not 'by its very nature' conflict with an 'overwhelming federal interest'" (emphasis added); Memorandum of Decision and Order on Plaintiffs' Consolidated Motion for Judgment on the Pleadings and the Defendant's Motion for Order of Enforcement, *Cash Call, Inc., et al. v. Massachusetts Div. of Banks*, C.A. Nos. 13-cv-1616-B and 13-cv-1641-C, at p. 4 (Mass. Super. Ct. Aug. 31, 2015) (citing New York's *Otoe-Missouria* decision and holding: "All of these same considerations are present here. All of the loans were applied for, paid from, and collected from Massachusetts. Western Sky reached well beyond the reservation's boundaries to transact business with Massachusetts residents. The Massachusetts statutes at issue are non-discriminatory and apply to all citizens of the state and those who conduct their business here. Massachusetts may therefore regulate the loans made by Western Sky.").

<sup>23</sup> See Verified Petition, *People of the State of New York v. Western Sky Fin., LLC*, Index No. 45170/2013 (Sup. Ct. N.Y. Cnty.).

and four settlements have been concluded offering consumers in those states substantially similar or greater relief.<sup>24</sup>

Our States have effectively taken action to stop other payday and high cost lenders. In addition to suing Western Sky, New York obtained more than five settlements with such lenders (and debt collectors collecting on illegal payday loans) between 2004 and 2013.<sup>25</sup> Other states, such as Maryland,<sup>26</sup> Pennsylvania,<sup>27</sup> and Vermont,<sup>28</sup> have all taken similar action.

<sup>24</sup> See, e.g., Consent Order and Judgment, *Western Sky Fin., LLC, et al. v. Maryland Comm'r of Fin. Regulation*, No. 24-C-13-004207, *CashCall, Inc. v. Maryland Comm'r. of Fin. Regulation*, No. 24-C-12-004946 (consolidated cases) (Cir. Ct. for Baltimore City, Md. June 19, 2014), available at <http://www.dllr.state.md.us/finance/consumers/pdf/westernskyfinal.pdf> (summarized at <http://www.dllr.state.md.us/whatsnews/frwesternsky2014.shtml>); Final Judgment By Consent, *CashCall, Inc., et al. v. Massachusetts Div. of Banks*, C.A. Nos. 2013-1616-B, 2013-1641-B, and 2015-3044-D (consolidated cases) (Mass. Super. Ct. Oct. 26, 2015); Assurance of Discontinuance, *In re Western Sky Fin., LLC, et al.* No. 241-4-14 wncv (Vt. Super. Ct. Apr. 18, 2014).

<sup>25</sup> The NYAG has been successful at stopping numerous companies from engaging in predatory payday or high cost loans. See, e.g., <http://www.ag.ny.gov/press-release/ag-schneiderman-reaches-settlement-auto-title-loan-company-refund-interest-usurious> (announcing the NYAG's December 2013 settlement with Manor Resources, LLC d/b/a TurboTitleLoan.com, an out-of-state company that offered short-term loans secured by borrowers' vehicles at APRs of 120% and 180%); <http://www.ag.ny.gov/press-release/ag-schneiderman-announces-settlements-five-companies-collected-illegal-payday-loans> (announcing the NYAG's September 2013 settlement with five debt collection companies that were collecting on illegal payday loans from New Yorkers); <http://www.ag.ny.gov/press-release/attorney-general-cuomo-announces-distribution-52-million-settlement-rent-bank-payday> (announcing the NYAG's November 2009 settlement with companies making illegal payday loans to New York consumers under a fraudulent "rent-a-bank" scheme); <http://www.ag.ny.gov/press-release/payday-lender-forgive-loans-and-provide-refunds> (announcing the NYAG's November 2004 settlement with Cashback Payday Loans, Inc. for providing illegal payday loans to New York consumers over the internet); <http://www.ag.ny.gov/press-release/court-halts-illegal-payday-loan-scheme> (announcing the court's decision voiding illegal payday loans disguised as catalog sale purchases by JAG NY, LLC d/b/a N.Y. Catalog Sales).

<sup>26</sup> The MD AG and Commissioner of Financial Regulation have brought numerous enforcement actions against various businesses and individuals making usurious loans. See, e.g., *B&S Mktg. Enters., LLC v. Consumer Prot. Div.*, 153 Md. App. 130, 835 A.2d 215 (2003) (usurious loans disguised as "sale-leaseback" transactions); <http://www.dllr.state.md.us/finance/consumers/pdf/onyxredactedfinal.pdf> (court ordered dismissal of over 1,500 associated confessed judgments and lawsuits against Maryland consumers by Nigerian payday lending ring); <http://www.dllr.state.md.us/finance/consumers/pdf/mycashnowfinal.pdf> (settlement with five payday lenders obtaining restitution, and invalidation of all agreements with Maryland residents); <http://www.dllr.state.md.us/finance/consumers/pdf/plaintiffundinglawcash.pdf> (settlement with litigation funding company, obtaining restitution, and other consumer benefit); *Maryland Comm'r of Fin. Regulation v. Roadrunner Title Pawn, LLC, et al.*, No. 21-C-16-56933 (Cir. Ct. for Washington Co., Md. May 6, 2016) (preliminary injunction against title lender making usurious loans under guise of pawnbroker services).

<sup>27</sup> The PA AG settled with NCAS of Delaware, LLC d/b/a Advance America Cash Advance Center and Advance America Cash Advance Centers, Inc. and obtained \$8 million in restitution and \$12 million in loan forgiveness. See [https://www.attorneygeneral.gov/Media\\_and\\_Resources/Press\\_Releases/Press\\_Release/?pid=1479](https://www.attorneygeneral.gov/Media_and_Resources/Press_Releases/Press_Release/?pid=1479). The PAAG has also filed a complaint against companies alleged to have engaged in an illegal rent-a-bank/rent-a-tribe lending scheme. See [https://www.attorneygeneral.gov/Media\\_and\\_Resources/Press\\_Releases/Press\\_Release/?pid=1205](https://www.attorneygeneral.gov/Media_and_Resources/Press_Releases/Press_Release/?pid=1205).

<sup>28</sup> The VT AG settled with six payday lenders and four payment processors, obtaining \$1.5 million in relief for more than 6,000 Vermont borrowers involving high-interest online loans. See <http://ago.vermont.gov/focus/consumer-info/money-and-credit/illegal-lending.php>.

States with strong usury caps and robust payday lending laws translate into significant monetary and non-monetary benefits to consumers. For example, one study estimates that in states that ban payday loans consumers save more than \$2.2 billion annually in fees.<sup>29</sup> In addition, these laws help consumers by “preventing increased difficulty paying bills, delayed medical spending, involuntary bank account closure, higher likelihood of filing for bankruptcy, and decreased job performance.”<sup>30</sup>

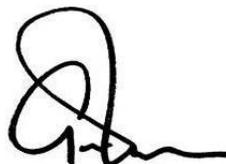
If enacted, the Proposed Rules will provide vulnerable consumers with significant protections from unaffordable high-cost loans without preempting stronger state laws. For this reason, the undersigned States appreciate the Bureau’s initiative in this important area. We strongly encourage the Bureau to continue to emphasize that its Proposed Rules, if enacted, should not be used to undermine more stringent state protections and enforcement efforts that have proven so effective in combatting predatory lending.

If we can provide any further information, please do not hesitate to contact us.

Respectfully submitted,



ERIC T. SCHNEIDERMAN  
New York Attorney General

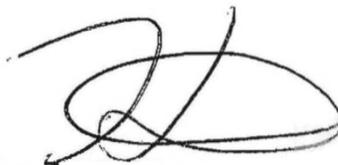


GEORGE JEPSEN  
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<sup>29</sup> See Center for Responsible Lending, *States without Payday and Car-title Lending Save \$5Billion in Fees Annually*, at 1-2 (June 2016), available at [http://www.responsiblelending.org/sites/default/files/nodes/files/research-publication/crl\\_payday\\_fee\\_savings\\_jun2016.pdf](http://www.responsiblelending.org/sites/default/files/nodes/files/research-publication/crl_payday_fee_savings_jun2016.pdf) (listing the annual payday and car title loan fee savings for each of the undersigned States: Connecticut (\$134 million), District of Columbia (\$30 million), Maryland (\$253 million), Massachusetts (\$248 million), New Hampshire (\$27 million), New York (\$790 million), Pennsylvania (\$489 million), Vermont (\$22 million). The study also notes that these estimates are conservative in that they do not include online or installment lending.

<sup>30</sup> Center for Responsible Lending, *Shark Free Waters: States are Better Off without Payday Lending*, at 1, 5-6 (Aug. 2016), available at [http://www.responsiblelending.org/sites/default/files/nodes/files/research-publication/crl\\_shark\\_free\\_waters\\_aug2016.pdf](http://www.responsiblelending.org/sites/default/files/nodes/files/research-publication/crl_shark_free_waters_aug2016.pdf).



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