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Joint Statement by:

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As representatives of consumer, community, religious and civil rights organizations, we applaud the Consumer Financial Protection Bureau (CFPB) for releasing a strong proposed payday and car title lending rule and urge the Bureau to close some concerning loopholes that would allow some lenders to continue making harmful loans with business as usual.

At the heart of the CFPB's proposed rule released earlier this month in Kansas City, Missouri, is a common sense principle—that lenders should be required to determine whether or not a consumer has the ability to repay a loan without hardship or re-borrowing—a requirement that will stop the debt trap of unaffordable loans.

An ability to repay requirement, when broadly applied, achieves three critical goals for reform: It will go a long way to ensuring that loans are affordable at the outset and do not set borrowers up for failure. It will protect consumers in states without payday lending from industry efforts to roll back important interest rate caps. And it will create a level playing field for payday lenders, online lenders and banks alike.

Exemptions to this standard, however, weaken the rule and achieve none of these goals. Before the release of the proposed rule, the CFPB considered and rejected one such exemption, advanced by the Pew Charitable Trusts, that would allow lenders to make longer-term installment loans without considering a borrower's ability to repay so long as the payment did not exceed five percent of a borrowers' income. We support the CFPB's decision not to permit use of a purely income-based standard as a substitute for underwriting for ability to pay. We believe that the removal of this exemption -- and others that remain in the proposal -- will result in a stronger rule, better able to prevent loans that are unaffordable at the outset.

According to extensive new CFPB data released along with the proposed rule, when borrowers receive payday loans made with no ability to repay, they default at high rates. The report analyzed millions of payday loan transactions and found that many loans with payments equal to or less than five percent of a borrower's income still were unaffordable - averaging default rates as high as 40 percent.[1] A 40 percent failure rate for products such as cars, electronics, or others would not be considered safe, and the same is true here. And the default rate is only the tip of the iceberg, leaving out loans that trigger overdraft fees and difficulty meeting other expenses.

Exemptions from the proposed ability to repay requirement will also encourage future efforts to undermine stronger state laws, such as interest rate caps. Currently 14 states and the District of Columbia have usury caps that protect over 90 million consumers from abusive lending practices. If payday and car title lenders are permitted to make loans without considering a borrower's ability to repay, it will send a harmful message to state legislators by putting the CFPB stamp of approval on unsafe lending.

There is little evidence that providing additional carve outs to the ability to repay requirement will encourage new bank alternatives. For decades, banks have been free to make short-term, small-dollar loans to their customers. Instead they have taken one or both of the following approaches that have increased revenue but failed to adequately meet the credit needs of consumers. A few banks opted to offer bank payday loans that looked and operated almost exactly like the payday loans offered by storefront lenders—also at triple-digit interest rates. At the same time, most banks have a powerful financial incentive to avoid the small-dollar credit market entirely, since any new products would likely reduce the billions in overdraft revenue that banks rake in annually – much of it from the same customers who might benefit from a better product. If the goal is to encourage banks to offer better small-dollar products, the CFPB should move forward with its rulemaking to protect consumers from abusive overdraft fees in addition to regulating payday loans.

While we are encouraged by the direction the CFPB has taken in its proposed rule, we urge additional changes to protect consumers. Currently, the CFPB is proposing to exclude up to six balloon-payment loans per year from the ability to repay standard. Other proposed exemptions focus on loans with low interest rates and low default rates – appropriate standards – but also permit some forms of installment loans with high origination fees. We urge that these exemptions be removed in the final rule as well.

It also appears that the discretion the CFPB is giving lenders to determine the income necessary to meet basic expenses could be untethered in reality and result in unaffordable loans. We fear that the CFPB will allow lenders to rely on their ability to seize payments from borrowers' bank accounts, minimizing default rates, as evidence of borrowers' ability to repay going forward—in our view, little more than "business as usual." Focusing only on lenders whose default rates stand out when compared with other high-cost lenders also puts the bar far too low.

We have seen the harm of this "business as usual" loophole before and know how it can undermine attempts to prevent abusive lending. Payday lenders in Florida successfully incorporated prior repayment history into that state's industry-backed and deeply flawed payday law by claiming that a "consumer's ability to borrow is based on his or her repayment history."[2] In Florida, however, over 80 percent of payday loans are made to borrowers with seven or more loans a year,[3] and 90 percent of loans are taken out within 60 days after the previous loan was repaid.[4]

The Bureau's proposed rule represents a critical first step to protecting the millions of consumers that struggle with high-cost debt trap credit products. A generally applicable ability to repay requirement is the cornerstone of this effort. The CFPB has rightly rejected a purely income-based exemption from the ability to repay rule. We now urge the Bureau to consider the impact of the remaining exemptions and take the necessary steps to close those loopholes and protect consumers.

The CFPB seeks public input on the rule between now and September 14, 2016. We invite the public to submit their comments to the CFPB today, calling for a strong rule to stop the debt trap at www.stoppaydaypredators.org.

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[1] Consumer Financial Protection Bureau, "Supplemental findings on payday, payday installment, and vehicle title loans, and deposit advance products," (June 2, 2016), http://1.usa.gov/1V9AeSW

[2] Floridians for Financial Choice, which is affiliated with Florida Community Financial Services Association, "The Florida Model: Baseless and Biased Attacks are Dangerously Wrong on Florida Payday Lending," page 13, (April 2016), http://bit.ly/23kvgsY

[3] Florida Trends in Deferred Presentment: State of Florida Deferred Presentment Program. Veritec Solutions LLC (Aug. 2006-May 2015); See also Center for Responsible Lending, "Perfect Storm: Payday Lenders Harm Florida Consumers Despite State Law," (March 2016), http://bit.ly/1sNxDI4

[4] Consumer Financial Protection Bureau, "Supplemental findings on payday, payday installment, and vehicle title loans, and deposit advance products," (June 2, 2016), http://1.usa.gov/1V9AeSW