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

October 7, 2016

Re: Comments on Proposed Rulemaking on Payday, Vehicle Title, and certain High-Cost Installment Loans by the Southern Poverty Law Center

Docket No. CFPB-2016-0025 or RIN 3170-AA40

Dear Director Cordray:

The Southern Poverty Law Center (SPLC) writes regarding the Bureau's proposed rule on payday, auto title, and certain high-cost installment loans. We greatly appreciate the opportunity to submit comments on this critical issue. We applaud the Bureau for its efforts to protect consumers across America and for taking this important step to enact safeguards to protect consumers from unscrupulous lenders.

The SPLC is a non-profit legal organization based in Montgomery, Alabama, with additional offices across the Deep South. For over four decades SPLC has sought justice for and represented the needs of the most vulnerable members of our society. The SPLC is committed to ensuring that low-income consumers are protected from lenders who prey on their vulnerabilities and seek to trap them in an endless cycle of debt.

SPLC is also a member of The Alliance for Responsible Lending in Alabama (ARLA), a diverse, statewide coalition of advocates and stakeholders dedicated to reforming payday and auto title lending in Alabama. With ARLA, the SPLC works to increase public awareness about predatory lending in Alabama and to advocate for reform.

Payday and Car Title Lending In Alabama

Historically, Alabama had strong safeguards in place to protect consumers, with an 8% usury cap.[1] In 1959, the Small Loan Act was adopted and allowed higher interest rates of 3% per month (or 36% annually) for small loans.[2] These safeguards have drastically been whittled away since that time. During the 1990s Alabama saw a significant increase in the number of payday and car title loan storefronts, as did many other parts of the country. Lenders quietly charged far-beyond the allowable thirty-six percent then authorized by the Small Loan Act. In 1993, the

[1] Ala. Code § 8-8-1
[2] Ala. Code § 5-18-15(a)

Alabama Supreme Court ruled that auto title loans should be governed by the Alabama Pawnshop Act, though the lender did not take possession of the car as they do with traditional pawnshop loans. Title Loans have thus been valid as 30-day loans in Alabama, with interest

respondents were *not* in favor of payday lending reform.[7] Even many state legislators support reform efforts. In 2013, a title reform bill SPLC supported in the House of Representatives had just twenty-seven co-sponsors in a body of 105 members;[8] that number grew in 2015 to sixty-seven co-sponsors—more than half of the legislative body.[9] Despite the large number of co-sponsors on the bill, however, the bill failed in the House Financial Services Committee. Members of that committee received over $59,000 in campaign contributions from the industry during the 2014 campaign season, and members of the Senate Banking Committee received more than $116,000 in contributions from the industry.[10] Thus, despite the overwhelming support for reform across Alabama, including legislative and business support, far too many Alabamians continue to be ensnared in these debt traps.

In response to the lack of reform at the state level, over twenty cities across Alabama have passed local ordinances in an effort to bring reform at the local level.[11] The cities vary in terms of population and geographical location, but all agree that payday and auto title lenders are harmful to their communities.

Alabamians Struggle to Escape the Debt Trap of Payday and Title Loans

We have spoken extensively with consumers across Alabama, and heard about the devastation these loans cause in their lives. Many were trapped for months or years making payments on

school in order to find better opportunities in the future. A TitleBucks employee told Ms. Tarver she was qualified for a $2,000 loan with a lower interest rate. Ms. Tarver was told she would be required to pay a minimum payment of $219 each month. Only after Ms. Tarver signed the contract did she learn that the minimum payment would only cover interest. Month after month Ms. Tarver found herself unable to keep up with the minimum payments. Despite her inability to pay, TitleBucks offered her more money, which she took because the interest payments to TitleBucks often left her with no money for rent. Over four years Ms. Tarver paid only $300 towards the principal. She instead paid over $14,000 in interest and fees —nearly four times more than her principal balance.

Faye King, another Alabama resident, has struggled with both payday and title loans for nearly ten years. She has lost two vehicles to a title lender—particularly detrimental for people like Ms. King who live in a state lacking adequate public transportation. Ms. King took the loans out to help her pay utility bills and prescriptions and to help her care for her grandchildren. Ms. King's only source of income at the time was her monthly social security payment. The lenders knew

Finance,[13] and borrowers themselves are often unable to make an accurate assessment of whether they can afford the payments. We believe that experiences of Alabamians, as well as the rest of the record compiled by the CFPB, shows the need for strong rules that require consideration of a borrower's true ability to repay.

But the current proposal falls short of requiring lenders to make a fully accurate determination of that ability to repay, especially considering the history of these lenders to evade the law to offer unaffordable products. Borrowers have told us time and again that they rely on lenders' determination of what loan they qualify for; many, like Ms. Bethune and Ms. Tarver, borrowed more than they could afford based on the lender's suggestion that they qualified for it. SPLC's understanding, based on many similar conversations with borrowers, comports with that of the Bureau—that "consumers who take out these loans typically appear not to understand when they first take out a loan how long they are likely to remain in debt and how costly that will be for them."[14] Without obtaining an accurate assessment of borrowers' expenses—or even asking borrowers about them—lenders will continue to recommend loans with payments far beyond borrowers' means. Industry analysts estimate that, under the Bureau's proposed test, most payday loan borrowers will qualify for payments of at least $200 per month.[15]

> *The proposal does not take into account court-ordered payments or court debt (beyond child support) in its calculation of major financial obligations.* Many low income consumers have required payments under court orders, including payments to bankruptcy court, payments for probation or other supervision, and payments of fines and fees owed in criminal cases (ranging from traffic tickets to misdemeanors). In a survey of persons on probation in Alabama, for example, individuals reported paying monthly supervision fees between $35 and $150, and almost all reported having other court-owed obligations beyond those fees.[16] Sixteen percent of those surveyed reported taking out a payday loan to try to pay these fees.[17]
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> *Estimations allowed by the proposal will result in undercounting of expenses.* Lenders should be required to conduct a true analysis of how much a borrower actually needs to spend on basic living expenses. Setting minimum percentages or dollar amounts based on unknown studies will likely not capture the specifics of that consumer's situation. For instance, with respect to utility payments, two recent studies showed that low-income households spend between three and ten times more for energy than higher income

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[13] *CFPB Fines Titlemax Parent Company $9 Million for Luring Consumers Into More Costly Loans*, CONSUMER FIN. PROT. BUREAU, Sept. 26, 2016, http://www.consumerfinance.gov/about-us/newsroom/cfpb-fines-titlemax-parent-company-9-million-luring-consumers-more-costly-loans/.

[14] CONSUMER FIN. PROT. BUREAU, Proposed Rule: Payday, Vehicle Title, and Certain High-Cost Installment Loans, at 252, http://files.consumerfinance.gov/f/documents/Rulemaking_Payday_Vehicle_Title_Certain_High-Cost_Installment_Loans.pdf

[15] *Using Supply Side Data, Consumption Pattern Data and Consumer Characteristics to Model Effects of Regulation and Suggest Industry Responses*, nonPRIME101 Conference 2015, https://www.nonprime101.com/wp-content/uploads/2015/08/NP101-Rick-Hackett.pdf#page=48

[16] Foster Cook, *The Burden of Criminal Justice Debt in Alabama: 2014 Participant Self-Report Survey* at 7, https://www.uab.edu/medicine/substanceabuse/images/The_Burden_of_Criminal_Justice_Debt_in_Alabama-_Part_1_Main_Report.pdf

[17] *Id*. at 9.

households, which varied from city to city.[18] Estimates based on percentages or dollar amounts compared to households of similar size also may not capture the full costs of childcare for those households that incur that expense. Analysis of a borrower's spending habits may provide a much more accurate analysis of their basic needs. Otherwise, any studies used for such purposes should be unbiased, validated sources.

Moreover, if the rules continue to allo

this alternative as one that would allow them to make lower-cost loans on a larger scale. We believe this option, if coupled with a provision allowing higher scrutiny for those lenders with high default rates, will allow consumers to access safer credit and will limit payments beyond what may result under the current ability-to-repay test.

The Bureau should also require heightened scrutiny for all long-term loan portfolios that have default rates above 10 percent—including both loans under the ability-to-repay provisions and any alternative loans. The Bureau's proposal currently lacks clear guidelines to help examiners distinguish between loans that pose greater or lesser risk of harm to consumers. The 10 percent default threshold for heightened scrutiny could help examiners make this type of distinction. A loan should be counted as "default" if it is refinanced or reborrowed, so that lenders cannot artificially lower their default rate by encouraging borrowers who cannot afford to pay to take out new loans.

Thank you for the opportunity to comment on this issue. The SPLC, along with many other organizations and individuals across America, welcomes the proposed rules and hopes the Bureau will enact a strong rule, without loopholes, to ensure that our communities are protected from predatory lending.

Sincerely,

Sara Zampierin
Acting Deputy Legal Director
Southern Poverty Law Center