

Dear Director Cordray,

American for Financial Reform and the undersigned consumer, civil rights, labor and community organizations write to urge the Consumer Financial Protection Bureau to issue a strong rule to address unfair, deceptive or abusive practices in the payday and small dollar loan market. In particular, it is essential that any rule encompass the longer-term, multi-payment products that are already evolving in an attempt to evade expected CFPB rules. We fear that an unduly narrow rule would have little impact on curbing debt trap abuses and could potentially do more harm than good.

The fundamental problem with payday loans is that they are made without regard to the borrower's ability to repay the loan while meeting other expenses. Traditional single-payment payday loans have several elements that undermine the incentive that responsible lenders have to ensure proper underwriting. The high rate, short term, balloon payment structure, and preauthorized repayment device all contribute to a product that is unaffordable and yet ensures that the lender will be repaid.

A small dollar loan rule should target as many of these elements as possible, whether or not they are all present together. The payday loan industry is already in the process of changing the structure of its products in an effort to evade coming rules, without altering the fundamental problems of a dangerous product made without regard to borrowers' ability to pay.

Lenders should not be able to evade the rules by offering high-rate longer term loans that still lack proper underwriting and are still secured by a post-dated check, the electronic equivalent, or other automated repayment methods. Indeed, in many ways it is this repayment device that is the most pernicious element of payday loans, because it ensures ability to collect even when the lender makes loans that borrowers cannot afford to repay. Just like the wage garnishments prohibited in the Federal Trade Commission's Credit Practices Rule, preauthorized payment methods that are used as a method to collect rather than a convenience for the borrower are unfair, deceptive and abusive.

We see several potential dangers in a rule that is too narrow. Lenders will merely evolve and consumers may get little protection. Payday lobbyists will push states to carve larger holes in their usury caps and to authorize longer and larger high-cost loans secured by post-dated checks or other repayment devices.¹ State legislatures and others could misinterpret the CFPB's actions and get the message that protections to ensure responsible lending focused on ability to repay are not necessary for loans that do not have short terms or balloon payments.

The result could be lending that creates an even deeper debt trap for borrowers and causes even more harm. Some consumers may be induced to take out larger loans for longer periods of time with the payday renewals built in to the original loan's terms. New practices will become entrenched and more difficult to address with a new rule than it would have been to head off predictable evasions at the outset. State law changes could also have ramifications beyond payday loans as protections for installment loans, auto loans and other products could be undercut.

¹ In many states, payday loan authorization statutes are exceptions to usury statutes.

Many of our groups have been engaged in the fight against payday lending for decades. If the payday industry can too easily evade new rules without making their products safer, we will have merely put off the battle for another day, while also risking the potential that the problem will become worse, not better.

It is also important to note that the first formal step that the Bureau is likely to undertake in the rulemaking process is to convene panels under the Small Business Regulatory Flexibility Act (SBRFA). At that early stage, it is especially important for the Bureau to explore a broader rule, even if as one of a couple of alternatives. A potential rule can always be narrowed, but it would be truly unfortunate if the SBRFA process had the result of foreclosing the CFPB's ability to prevent evasions as more information about the harms of new payday-like products becomes available and during the later public comment process.

We also observe that the Bureau has the authority to prevent predictable evasions at the outset and does not need to let problems emerge, grow and become substantial enough to document. We note in this regard that holding post-dated checks or authorizations for electronic debits as part of the loan application is not part of the standard business model of most responsible, longer term small dollar loans. But it is a predictable, and indeed already occurring, evolution of payday loans offered without regard to borrowers' ability pay.

Thank you for your continuing efforts to protect consumers. We appreciate the extensive work that the Bureau is doing to help ensure meaningful, defensible reforms that have been so long in coming in the small dollar loan market.

Yours very truly,