Testimony of the Center for Responsible Lending

Before the House Financial Services Subcommittee on Consumer Protection and Financial Services

April 30, 2019

> *Kathy, from Springfield, Missouri, received a payday loan in 2014, ended up in a debt trap that lasted two years. She described the stress from her payday and title loans as "soul-crushing."*
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> *She says: "You are constantly worried about how to keep the loan and your necessary bills (rent, utilities, etc.) paid…You are stressed and it impacts everyone around you, children included. I want people to understand how devastating the effects of getting a payday loan really is on a family. The stress is unbearable. You are worried and upset all of the time. Your children get stressed out because the parents are worried about how to cover all the bills and a payday loan payment. It's a horrible way to live…Why will the government not pass laws to protect our most financially vulnerable citizens from these predatory lenders?"*[1]

Thank you for the opportunity to provide testimony today. My name is Diane Standaert, and I am the Executive Vice President and Director of State Policy for the Center for Responsible Lending. The Center for Responsible Lending (CRL) is a nonprofit, nonpartisan research and policy organization dedicated to protecting homeownership and family wealth by working to eliminate abusive financial practices. CRL is an affiliate of Self-Help, a one of the nation's largest community development financial institution. For thirty years, Self-Help has focused on creating asset-building opportunities for low-income, rural, women-headed, and families of color, primarily through financing safe, affordable home loans and small business loans. In total, Self-Help has provided $6.4 billion in financing to 87,000 homebuyers, small businesses and nonprofit organizations and serves more than 80,000 mostly low-income families through more than 40 retail credit union branches in North Carolina, California, Florida, Illinois, South Carolina, Virginia, and Wisconsin.

Payday and car title lenders charge annual percentage rates of 300% and strip away around $8 billion annually from people typically earning approximately $25,000 a year. The debt trap of unaffordable loans drives this business model, with 75% of fees generated by people stuck in more than 10 loans a year. Low-income borrowers face a cascade of consequences such as delinquency on other bills, bank account closures, and even bankruptcy. As borrowers suffer the harms of these debt trap loans, private equity plays a growing role in fueling the engines of the industry.

Policy trends at the state and federal level for more than a decade have been to rein in the harms of the unsafe loans, ranging from the 2006 passage of the 36% rate cap in the Military Lending Act to voter-enacted 36% rate caps in South Dakota and Colorado, in 2016 and 2018, respectively. Since 2005, no new state has legalized payday lending. States with rate caps that prevent the payday loan debt trap are home to about 100 million people.

My testimony today will:

- Describe how payday and car title lenders have situated themselves to perpetuate our country's two-tiered financial services system,
- Discuss how the harms and consequences of payday loans exacerbate racial wealth disparities and disproportionately burden communities of color,

- Highlight how competition and alternatives do not address the harms of predatory lending practices; and
- Conclude with policy recommendations for addressing these abusive lending practices.

CRL calls on the Consumer Financial Protection Bureau (CFPB) to stand with the millions of people trapped in the cycle of debt caused by payday, car title, and high-cost installment loans. To do so, the CFPB should implement, not repeal, its 2017 rule which simply requires lenders to determine before making a loan whether a borrower can afford to repay it.

Payday and Car Title Lenders Perpetuate a Financial System Rooted in a Legacy of Discrimination and Exclusion

The United States' two-tiered financial services system is rooted in a legacy of discrimination and perpetuates wide racial wealth disparities. Homeownership is a prime example, as it remains the single largest opportunity for people to build wealth in this country; yet, business practices and federal, state, and local housing policies have systematically excluded families of color, especially Black families, from this opportunity. Specifically, Black communities were redlined as not worthy of investment to deny access to federally insured mortgage loans, which denied them the opportunity to build home equity in the same manner as whites who have since passed on that wealth created intergenerationally. Today, the Black homeownership rate predates its level at the passage of the Federal Fair Housing Act. As a result, white families now have 12 times the wealth of Black families based on unfair economic advantage, which enables them to better weather financial shocks.

By 2008, the homeownership gap had begun to close. However, predatory lenders exploited these gains by targeting communities of color with dangerous mortgage lending products peddled by subprime lenders that swept in to take advantage of equity borrowers of color had built. Subprime lenders made loans in communities of color at far greater rates than in white communities, even after accounting for income and credit risk—meaning that these borrowers could have qualified for more affordable, responsible loans that were crowded out by unfair and deceptive lending.

Payday lending in many ways is playing out the same way that the mortgage crisis did. Abusive lenders purport to provide access to credit in communities of color. However, lax regulation enables lenders to offer loans on predatory terms that are designed to strip wealth, rather than build it.

Although state usury limits, or interest rate caps, have been part of the nation's fabric since its Independence, the payday lenders chipped away at the between the mid-1990s and late 2000s. [2] Payday lenders went state-by-state-by-state, lobbying state legislatures to provide them exclusive exemptions to long-standing state interest limits in order to charge 400% APR under the pretense of offering access to emergency credit.[3] As states quickly learned, these loans were debt traps that would lead to further financial devastation in their communities. **Since 2005, no state has legalized payday lenders to allow them into its borders, and several states have reversed course to restore their rate limits' applicability to these loans.**[4]

Communities of color have historically been disproportionately excluded from the mainstream banking system due to discrimination. About 17% of Black and 14% of Latino households are unbanked, compared to 3% of white households.[5] Generally, a bank account is required to obtain a payday loan, but because these loans cause significant debt, payday loans increase the likelihood that a borrower will have their bank account involuntarily closed, exacerbating the racial disparity between those with bank accounts and those without.

A history of redlining and race-based restrictive covenants have led to racial residential segregation, which payday lenders are able to exploit through the location of their payday loan shops. Due to long-term, systemic discrimination in housing, lending, policing, and other areas such as employment, communities of color are also more likely to experience higher rates of poverty. Likewise, people of color are likely to both have lower wages and higher cost burdens just to pay for basic living expenses as the result of facing broad societal discrimination. Women of color have faced the double-burden of racial and gender discrimination, resulting in even wider and more startling gaps in wages and employment. For example, Black women only earn 61 cents and Latinas only 53 cents for every dollar earned by a white male.[6] These disparities mean that people of color are more likely to be financially distressed, more likely to struggle to make ends meet--and thus more vulnerable to predatory lenders.

The history of racial discrimination and exclusion in our country's banking system has produced racially inequitable outcomes which persist today. Payday and car title lenders are profiteers of this history of racial discrimination. Payday and car title lenders frequently promote their products as providing access to credit to emergencies, but in reality they are exploiting chronic racial and economic disparities that cannot be solved or ameliorated with a 400% APR loan. As explained further below, these predatory products strip borrowers of hard-earned money and assets, leaving them worse off, while stifling the development of responsible products—a double-edged sword. Permitting their unfair and abusive practices unfettered entrenches the two-tier financial services system. One group of consumers has access to the mainstream financial system which is cheaper, while another is further marginalized, relegated to predatory lenders pushing costly debt trap products, reinforcing a history of financial exploitation.

The Harms of Payday Lending, Car-Title Lending, and High-Cost Installment Loans Perpetuate Income and Wealth Disparities

"Payday lending is bad for many consumers, but like many predatory scams, it invariably ends up as a weapon against the disadvantaged communities that are least able to bear its terrible burden. It uses the lure of quick cash to trap struggling families in a cycle of debt and slowly drain them of what little money they have."

Vanita Gupta, President and CEO of The Leadership Conference on Civil and Human Rights[7]

Payday and car title loans are debt traps by design. The lender takes control of a coercive payment device—access to the borrower's bank account or the title to their car. They make a loan, without any assessment of the loan's affordability in light of the borrower's income and expenses, and typically tie the loan payments to a borrower's payday. The borrower is typically unable to afford the payment, plus the high fees. As a result, the borrower is left with three options, all of them harmful: take out a new (unaffordable) loan to repay the loan, default on the loan, or repay the loan and default on other obligations or expenses. The vast majority of the loans payday lenders make are made within 30 days of a prior loan, indicating the initial loan was unaffordable from the start. The payday and vehicle title business model, then, is not about providing access to productive credit or bridging a short-term financial shortfall. It is about flipping a borrower from one unaffordable loan to another for, the lenders hope, a very long time.

This debt trap is the core of the payday lenders' business model:

- The typical payday loan borrower is stuck in 10 loans a year, generally taken in rapid back-to-back succession.[8]
- Over 75% of all payday loan fees are due to borrowers stuck in more than 10 loans a year.[9]
- Only 2% of payday loans go to borrowers who take out one payday loan and do not come back for a year.[10]

While this debt trap is extremely lucrative for the lenders, it is incredibly devastating for borrowers and for the communities in which payday lenders are situated. For borrowers, payday loans are associated with a cascade of financial consequences, such as increased likelihood of bankruptcy, bank penalty fees, delinquency on other bills like rent and medical bills, delinquency on child support payments, and involuntary bank account closures.[11]

Car title loans likewise result in a debt trap followed by harmful consequences like the seizure of people's cars. The typical short-term car title loan is refinanced 8 times. And, an astounding one in five auto title loan borrowers have their vehicle seized.[12] **In Virginia, a state that allows longer-term car title loans, lenders seized over 70,000 cars between 2014 and 2017**. [13]

The CFPB has quantified bank fees triggered when funds were insufficient on longer-term loans, as well as subsequent lost bank accounts. It found that about half of borrowers paid an insufficient fund (NSF) or overdraft fee. These borrowers paid an average of $185 in such fees, while 10% paid at least $432. It further found that 36% of borrowers with a bounced payday payment later had their checking accounts closed involuntarily by the bank.

The debt treadmill becomes so unsustainable that eventually nearly 50% of borrowers default, even though they have generally paid significant amounts in fees and interest.[14] For one borrower in South Dakota, prior to the enactment of the state's rate cap, a borrower who had received an original $2,000 loan, was flipped 13 times in loans carrying 260% APR over the course of two years, paying over $8,300 in interest and fees before defaulting. Three years after her last payment, the payday lender filed a lawsuit to collect $5,300.[15] For another person, **a $200 loan resulted in seven flips, $3,233 interest and fees paid before defaulting, and a debt collection suit of $3,400.[16]** Upon default, payday lenders employ aggressive debt collection tactics, such as contacting people at work or their friends and family. Once a payday loan debt goes into collection, it is often reported to the credit bureaus, thus further damaging their credit standing and increasing barriers to jobs, housing, insurance or other affordable products in the future.

While the bulk of payday and car title loans are due in full with a single payment in 14 or 30 days, many of these payday and car title lenders are now also making high-cost installment payday and car title loans. Lenders falsely argue that simply because a loan is an installment loan, it is a good loan. Despite their installment terms, these loans have the same troublesome characteristics as other payday and car title loans: a lack of underwriting; access to a borrower's bank account or car as security; structures that prevent borrowers from making progress repaying; and excessive rates and fees that increase costs further when loans are flipped.

The move to longer-term high-cost installment loans is occurring in the traditional brick and mortar lenders, but also through lenders operating online. Many of these online lenders, making excessively priced loans with direct access to a borrowers' bank account and no safeguards of affordability, seek to disguise their harmful lending practices under the guise of "fintech." The "fintech" label does not wipe away the underlying harms and consequences of these unaffordable loans. One online lender that makes high-cost installment loans, Elevate, reported charged-off debt amounting to 52% of their domestic revenues in both 2016 and 2017, with no intent to drive those numbers down.[17] Bloomberg reports that two large online lenders failed to verify income and employment in a significant percentage of the loans they make: one lender did not verify income or employment for about 25% of their loans, and another did not verify income or employment for about two-thirds of its loans. [18]
When made a loan they cannot afford, the borrower experiences inescapable debt or loss of assets, while, thanks to some combination of the high cost and repeat reborrowing, the lender lines his pockets. That's the business model of predatory lenders: they succeed by setting up the borrower to fail. And this is true whether the loan is a high-cost, unaffordable balloon payment loan or a high-cost, unaffordable installment loan.

Finally, what people see at the street level as a lender's little storefront on the corner is actually one of many tentacles that private equity firms use to extract hard earned money from people already struggling to make ends meet. Over the last several years, private equity firms have been acquiring ownership stakes in high-cost lending companies.[19] For example, DFC Global, which does business as names like Money Mart making loans at 300% APR, is owned by the behemoth firm Lone Star Fund, a $70 billion private equity fund. Ace Cash Express, with stores in 23 states charging rates between 200 and 661% APR, is owned by JLL Partners of New York. Community Choice Financial, a publicly-traded payday lender which charges rates upwards of 150% APR, is primarily owned by two private equity firms – Diamond Castle Holdings and Golden Gate Capital. These are just a few of many examples of private equity's ownership stake in predatory lenders.

Wall Street investors also benefit through purchasing these loans in the forms of asset backed securities.[20] As a range of subprime consumer lenders have begun bundling and selling their loans back to Wall Street. In some cases, such as with high-cost online lender Enova, the interest rates on these bundled loans reach up to 100% APR. [21]

Unaffordable lending fueled by these investors has profound human cost: Enova was the subject of a recent CFPB enforcement action that illuminated the unaffordability of its loans for many borrowers.[22] That's but one example. Borrower experience after borrower experience makes painfully clear the "soul-crushing" impacts of unaffordable high-cost lending.[23] These entities siphon billions of dollars a year from people making $25,000 a year, and it is going into the pockets of the wealthiest people in the world.

Communities of Color Disproportionately Bear the Burden of Predatory Payday Loans

"A drive through any low-income neighborhood clearly indicates people of color are a target market for legalized extortion…Visits to payday stores…are threatening the livelihoods of hardworking families and stripping equity from entire communities."

Julian Bond, former national chairman of the NAACP[24]

In determining their locations, payday and car title lenders are able to exploit the compounding harms of residential racial segregation and the continuing effects of disinvestment due to redlining. Research has repeatedly found that payday lenders concentrate in communities of color. In other words, payday lenders engage in a type of reverse redlining, locating primarily in communities that have been historically and systematically deprived of mainstream financial services in order to extract fees on the false promise of access to credit.

These patterns are not new nor accidental. They been found all over the country. Payday lenders in California are 2.4 times more concentrated in Black and Latino communities, even after controlling for income and a variety of other factors.[25] Payday lenders in Florida were also more concentrated in majority Black and Latino communities, even after controlling for income.[26] A 2018 analysis of storefront locations in Rhode Island, in which 26 of the state's 28 payday loan stores are owned by Advance America and Check 'N Go, shows similar patterns. **Among 80% to 120% area median income, neighborhoods with a significant population of Black and Latino residents have a 70% higher concentration of payday loan stores than those neighborhoods that are predominately white**.[27] There is only one payday loan store in any Rhode Island neighborhood that is upper-income, and predominately white. Dating back to 2005, when the Center for Responsible Lending produced the first report of this kind, payday lenders still had shops in North Carolina, and the pattern was clear even then. At that time, Black neighborhoods had three times as many stores per capita as white neighborhoods.[28] This three-fold disparity remained unchanged even after controlling for the neighborhood characteristics of income, homeownership, poverty, unemployment rate, urban location, age, education, share of households with children, and gender.[29] Similar patterns are well-documented in many other states such as Michigan,[30] Louisiana,[31] Colorado,[32] and Georgia.[33]

Payday lenders publicly acknowledge that location of their stores is one of the most critical factors in their competitive edge among other payday lenders. Payday lenders compete on location and convenience, rather than price (as further evidenced by payday lenders' each charging the maximum rate under state law). Payday lenders aggressively market their loans in order to lure people in to their doors for the first time, such as by offering their first loan free, a frequent borrower discount, or discounts for referring a friend, because lenders know that the typical borrower will cycle through the revolving door many more times.

In light of this concentration in communities of color and the importance of location in the payday lenders' business model, it is unsurprising that a disproportionate share of payday borrowers are people of color:

- In Pima County, Arizona, while Black, Latino, or Native American adults make up 30% of the population, they represented 65% of all payday borrowers when such loans were legal.[34]

- In California, while Black, Latino, and Native American people make up about 35% of the adult population, they represent 56% of all payday borrowers.[35]
- In Texas, researchers found that Black and Latino individuals make up over three-quarters (77%) of all payday borrowers, while they comprise only 40% of the population.[36]
- A survey by the Pew Charitable Trust found that African Americans were 105% more likely than other races/ethnicities to have had a payday loan in the last five years.[37]

Older Americans are Particularly Attractive to High-Cost Lenders and Especially Vulnerable to the Harms the Loans Cause.

Older Americans are particularly attractive to payday and vehicle lenders and especially vulnerable to the harm the loans cause. Coupled with recent dramatic declines in the value of their largest assets—homes and retirement assets—many older Americans also struggle with limited incomes. Nearly half of all older Americans are considered economically insecure, living on $29,425 per year or less. Forty-seven percent of single recipients of Social Security depend on it for 90% or more of their income. Senior women in particular face diminished incomes because of lower lifetime earnings and Social Security and pension benefits. Not only are these incomes limited, but they are also fixed, meaning seniors are particularly unlikely to be able to address financial shortfalls by working extra hours or otherwise earning extra income.

Facing these financial hardships, older Americans are particularly vulnerable to payday and car title lenders' claims of quick cash. And older Americans are particularly attractive to lenders because Social Security benefits provide a steady source of repayment. Indeed, an analysis by one researcher found that payday lender storefronts cluster around government-subsidized housing for seniors and the disabled in a number of states across the country.[38]

As one payday lender described federal benefits recipients: *"These people always get paid, rain or shine . . . [They] will always have money, every 30 days."*[39]

As another put it: *"[Borrowers receiving Social Security or disability] payments would come in for a small loan and write a check to the company dated the 3rd of the month, when their government checks would arrive. All the Advance America employees were required to come in early on that day, so we could quickly cash their checks and wipe out their checking accounts."*[40]

It is unsurprising, then, that significant numbers of older Americans become trapped in payday loans. Moreover, in recent years, trends have suggested that older Americans have comprised a growing share of payday borrowers. The share of payday borrowers in Florida age 65 and older more than doubled over the past decade, while the share of Florida's overall population comprised of that age group grew by only 9.7%.[41] The share of older borrowers in California has also grown steadily in recent years.[42]

CRL's research on bank payday loans found that over one-quarter of bank payday borrowers were Social Security recipients, making these borrowers 2.2 times as likely to have had a bank payday loan as bank customers as a whole.[43] One widow who relied on Social Security for her income testified before the Senate Committee on Aging that her $500 bank payday loan from Wells Fargo got her trapped for five years and ended up costing her nearly $3,000.[44]

Unaffordable payday loans made to seniors are particularly troubling because the Social Security funds the lenders routinely seize are protected from creditors in other contexts. Congress has long sought to protect Social Security funds and other public benefits intended for necessities from the unilateral reach of creditors. The Social Security Act prohibits collection of Social Security benefits through assignment, garnishment, or other legal process. The policy underlying this legal protection is to ensure the debtor a minimum subsistence income—for essential needs like food, shelter, and medicine—and courts have repeatedly upheld it.

Payday lenders making loans to Social Security recipients who cannot afford to repay the loans grossly undermine this critical protection by requiring the borrowers to provide direct access to their bank accounts and immediately taking the Social Security income for repayment—even if that means that the borrower is left with no funds for essentials. CRL research found that bank payday lenders took an average of 33% of the recipient's next Social Security check to repay a bank payday loan. For Annette Smith, the borrower described above, they took more than half.[45] The threat that unaffordable payday loans pose to Social Security recipients became more pronounced in 2013, when electronic distribution of government benefits became mandatory.

Competition and Alternatives Do Not Address the Harm of Predatory Lending Practices

"We don't want our families in any way vulnerable to the abuse payday lenders carry out – trapping people with little money into cycles of debt that put them into ever worse situations."

Lisa Hasegawa, Executive Director of the National Coalition for Asian Pacific American Community Development[46]

Payday lenders and their supporters deflect regulatory attention away from the lenders' inherently destructive business model by pointing to competition and other alternatives. Data show that neither will interrupt the debt trap of unaffordable, high cost loans.

In support of its gutting of the 2017 payday loan rule, the CFPB under Director Kathy Kraninger suggests that substantive protections to ensure loans are affordable are not needed if additional products by banks and others also exist in the marketplace. There is no evidence to support this claim. In fact, the evidence points to the contrary – that additional high-cost, poorly underwritten products push borrowers deeper into unsustainable debt, rather than substitute or drive down the cost of even higher-cost products.

Predatory subprime mortgages were prolific despite the availability of responsible mortgages. Only meaningful regulation could drive these products form the market, not competition. The time period in which six major banks made payday loan-like loans known as deposit advance loans is also informative. When six banks were making deposit advance loans at one-half to two-thirds the price of nonbank payday loans, their annual volume was about $6.5 billion.[47] There is no evidence that this lending drove down the cost or volume of nonbank payday lending. Moreover, the Bureau's research suggested these loans did not substitute for high-cost overdraft fees, and that many bank payday borrowers were carrying loads of both bank payday and non-bank payday loan debt. Indeed, software developers love to tout that bank payday loans, as well as installment loans being considered currently by the National

Credit Union Administration, will not “cannibalize” overdraft fee revenue. If these loans were truly substituting for higher-cost credit, they would drive down overdraft fees.

The introduction of high-double-digit APR loans from our nation’s banks is a step in the wrong direction. Thus far, only US Bank has rolled out a 70% APR loan. There is no evidence to support that this will draw borrowers away from payday loans, rather than compound their high-cost debt. Rather, this product undermines state usury limits and threatens a race to the bottom by bank and nonbank lenders alike.

Additionally, competition among payday and other high-cost lenders has abjectly failed to lower costs. The last annual financial report from Advance America (before it was bought by Grupo Elektra) notes about the market “the principal competitive factors are customer service, location, convenience, speed, and confidentiality.”[48] Missing from that phrase is the word “price.”

In hopes of turning attention to other products besides their debt traps, payday and car title lenders will claim there are no other options for low-income consumers. The experiences of states without these products show that this is not the case. Moreover, as discussed above, there is generally credit available for customers with the capacity to take on more credit. Just as pulling weeds from a garden allows flowers to bloom, ridding the market of predatory loans clears space for responsible credit to thrive.

The presence of these other alternatives is helpful to people as they are options that do not lead people into financial quicksand. However, their presence alone will not reduce the cost of 300% interest rate loans, nor otherwise address the harms flowing from payday and car title lenders’ debt trap business mode. The best way to mitigate the harms of the debt trap is not to look elsewhere to other products, but rather to address the harms of the flawed products head on – such as their cost and inherent unaffordability.

Both State and Federal Government Must Act to Rein in Payday and Car Title Lending Debt Traps

“Clearly, more needs to be done to rein in these uniquely unscrupulous lenders. States can push for interest rate caps to complement the CFPB’s rule and play an even greater role in ensuring consumers do not fall into debt traps."

Janet Marguia, President, UnidosUS. [49]

- **States can and must address the harms of predatory payday lending in its communities of enforcing rate caps of 36% or less.**

  Today, 16 states plus the District of Columbia enforce such as cap, protecting nearly 100 million people from these harms and saving their residents over $2.2 billion annually in fees that would otherwise be paid to payday lenders for high-cost loans.[50] The two most recent states to join these ranks were South Dakota and Colorado, when over 75% of voters in each state affirmed lowering the cost of these loans to 36%. These ballot initiatives, along with those in Arizona, Ohio, and Montana, and a significant number of public polls nationally and states like Michigan, Iowa, Indiana, and others, show overwhelming public support for reining in the harm of these debt trap products.[51]

- **Due to the important role of these voter-affirmed state level protections, Congress and federal regulators must reject any proposals that preempt state laws or allow lenders to evade them by partnering with out-of-state banks**.

Such proposals allow payday lenders and others to partner with banks in order avoid state usury limits. Pushed under the guise of providing access to credit, these schemes will simply usher in a new wave of triple-digit interest rate loans across the country, even in states that seek to prohibit them.

- **Congress can and should enact a rate cap of 36% or less, while not pre-empting the laws of states with even stronger rate caps.**

  In 2006, upon the finding by the U.S. Department of Defense that predatory lending "undermines the military readiness,"[52] Congress enacted with bi-partisan support a 36% rate cap for consumer credit, including for payday and car titles, to active duty military and covered dependents.[53] Congress should extend the same protection to prevent the harms of the debt traps.

  With the protection of a rate cap of 36% or less in place, people have other options to navigate financial shortfalls that do not sink them into a spiraling debt trap.[54] Households with lower credit scores are served by a range of credit products; these include credit cards, as even subprime cards are far cheaper than a payday loan; pawn, which is typically cheaper than payday loans and offers an exit strategy (forfeiture of the item) if the borrower cannot repay; small loans from credit unions; and payment plans from utility companies. In fact, rather than providing a productive source of credit that meets consumers' credit needs, unaffordable payday loans generate their own demand—80% of payday loans are taken out to repay a prior payday loan. And the 100 million Americans living in states without payday lending deal with cash shortfalls without unaffordable payday loans and the harms they cause. Despite payday lenders' claim to the contrary, states with rate caps do not experience higher rates of online lending than those with payday loans.[55]

- **The Consumer Financial Protection Bureau must reverse its course of seeking to delay and repeal the ability-to-repay provisions of its 2017 protections for payday, car-title, and high-cost installment loans.**

  The 2017 rule aimed at stopping the debt trap of these loans established common sense principals of ensuring that these lenders assess a borrower's ability to repay the loan in light of their income and expenses. [56] Rather than do the necessary work to prepare for compliance of this rule by its August 2019 effective date, the lenders have sought to block the rule in every way possible -- through Congress, through the courts, and now through the CFPB itself.

  Both the delay and the repeal of the rule will allow payday and car title lenders' debt trap business model to continue as usual and leave millions of people across our country burdened with the unavoidable harms of this crushing debt.[57] For example, during the CFPB's proposed 15-month delay of the rule's implementation, an estimated 425,000 cars will be repossessed by car title lenders. Over that same time, payday and car title lenders will siphon over $9 billion out of the pockets of people earning on average $25,000 a year. The CFPB must allow the 2017 rule to go into effect as scheduled in August 2019, and reject its current proposal to gut them.

  Allowing the 2017 rule to go into effect as planned is the bare minimum that the CFPB should do. It is absurd that we should even have to make such a straightforward request of an agency whose charge is to protect consumers from unfair, deceptive, and abusive financial practices. Even so, the CFPB must not only do this work, but do even more – such as use its enforcement authority to provide redress to people harmed by predatory lending practices, and it must continue the work to address the harms of long-term payday, car-title, and high-cost installment loans as it originally set out to do in its 2016 proposed rule.

- **Finally, federal banking regulators have a key role to play in ensuring that people are not ensnared in these dangerous debt traps.**

  Before 2014, a handful of banks issued so-called deposit advance products that were payday loans, dressed up in a suit and tie. Banks put deposit advance borrowers in an average of 19 of these loans a year at over 200% annual interest.[58] The Office of Comptroller of the Currency should restore its 2013 guidance against bank payday loans, just as the FDIC should continue the guidance it still has in place.

  Federal regulators, as well as states, should reject the notion that income-only underwriting is ability-to-repay--it is not. Provisions that require lenders to only assess whether payments exceed a certain percentage of a borrower's income do not ensure that a loan is affordable to the borrower. Most importantly, this approach fails to account for the borrower’s other obligations, like rent or mortgage payments, car payments, medical bills, or other loans. Data from the CPFB show that for 12-month, fully amortizing long-term payday loans, the default rate is as high as 40% when the payment accounts for 5% of a borrower's monthly income. A coalition of over 500 civil rights, consumer, labor, faith, veterans, seniors, and community organizations from all 50 states, have expressed that an income-only approach to ability-to-repay that permits payments of up to 5% of a borrower’s pay will not prevent the harm caused by unaffordable loans.

  Neither the OCC nor FDIC should take steps that would enable non-bank lenders to usurp state interest rate limits. Specifically, the OCC must reject any special purpose charter for non-bank lenders that would make loans at rates higher than permitted under state laws. And, the FDIC must hold firm on its 2005 guidance regarding banks’ third-party relationships which is a critical safeguard against non-bank lenders, such as payday lenders, partnering with out-of-state banks in order to export interest rates that are higher than what is permitted under state law. Finally, the FDIC should not roll back its affordable small dollar loan guidelines that established a reasonable interest rate limit of 36%.

[1] Jackie Rehwald, Springfield News-Leader, "Payday loans are bad for your health, study says. Springfield residents share stories," March 24, 2019 http://bit.ly/2XPxBPm

[2] Christopher Peterson, "Usury Law, Payday Loans, and Statutory Slight of Hand: Salience Distortion in American Credit Pricing Limits," Minnesota Law Review, (2008), http://bit.ly/2Hz5pNm

[3] Gary Rivlin, Broke, USA: How the Working Poor Became Big Business, (2010, HarperCollins Publishers), at page 78 ("The more ambitious payday companies had lawyers researching the usury laws of every state. Illinois! Illinois had no cap on the rates a lender could charge. Wisconsin! Oregon! New Mexico! And when they worked their way through the scattering of available states, they explored new frontiers with the help of the lobbyists they put on retainer.")

[4] North Carolina, Arizona, New Hampshire, South Dakota, Colorado, Montana used to allow 300% APRs on payday loans, but now do not.

[5] 2017 FDIC National Survey of Unbanked and Underbanked Households, at 3, available at https://www.economicinclusion.gov/downloads/2017_FDIC_Unbanked_HH_Survey_Report.pd

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