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February 6, 2019

Kathleen Kraninger
Director
Consumer Financial Protection Bureau
1700 G St. N.W.
Washington, D.C. 20552

Dear Director Kraninger:

I am writing to express my grave concern that the Consumer Financial Protection Bureau ("CFPB"), under your direction, is failing to protect consumers from abusive payday loan products. Today, the CFPB proposed a new rule that undermines the CFPB's October 2017 payday loan rule and eliminates crucial protections that protect borrowers from being caught in cycles of debt.

The CFPB's new rulemaking comes on the heels of two lawsuits recently settled by the agency against payday lenders—neither of which provided a dime of restitution to consumers. Taken together, these actions make clear that the CFPB is not adequately preventing predatory payday lenders from harming consumers.

According to a study by the Federal Reserve Board of Governors, 40% of American adults lack sufficient savings to cover an unexpected $400 expense.[1] These families often rely on payday, or other short-term, high interest loans, to make ends meet. According to CFPB research, borrowers that rely on payday loans are typically low-income individuals with poor credit scores: the average VantageScore 3.0 credit score of borrowers at certain storefront payday lenders, for example, was 532—compared to an average score for the general public of 673.[2]

Although borrowers typically seek modest loans from payday lenders—the median amount of a payday loan is $350[3]—payday loans often trap families in a cycle of debt. Borrowers can find

[1] Board of Governors of the Federal Reserve System, "Report on the Economic Well-Being of U.S. Households in 2017," May 2018, https://www.federalreserve.gov/publications/files/2017-report-economic-well-being-us-households-201805.pdf.
[2] Consumer Financial Protection Bureau, "Payday, Vehicle, and Certain High-Cost Installment Loans," Notice of proposed rulemaking, https://s3.amazonaws.com/files.consumerfinance.gov/f/documents/cfpb_payday_nprm-2019-reconsideration.pdf; Value Penguin, "Average Credit Score in America: 2019 Report," https://www.valuepenguin.com/average-credit-score.
[3] Consumer Financial Protection Bureau, "Payday, Vehicle, and Certain High-Cost Installment Loans," Notice of proposed rulemaking, https://s3.amazonaws.com/files.consumerfinance.gov/f/documents/cfpb_payday_nprm-2019-reconsideration.pdf.

themselves indebted to payday lenders for months or years. CFPB researchers found that 80% of payday loans are rolled over or renewed, requiring borrowers to pay additional interest and fees.[4] For three out of every five payday loans, loan fees and expenses exceed the amount originally borrowed.[5] These practices devastate families who are stretching to make ends meet.

In October 2017, the CFPB finalized a rule that was carefully calibrated to end these devastating cycles of debt while simultaneously preserving access to payday loans for eligible borrowers in need. At the center of this regulation was a requirement that lenders underwrite their loans to ensure borrowers have the ability to repay their balance on time while still affording necessities and living expenses. As the CFPB noted in the rule, payday lenders "have developed business models that deviate substantially from the practices in other credit markets by failing to assess consumers' ability to repay their loans according to their terms."[6] Bringing these lenders' practices into line with other financial institutions would preserve access to the loans for those who could afford them while curbing the abusive practice of trapping families under loads of debt that would take months or years to pay back.

The CFPB spent five years developing the original rule. It drew on data from nearly twelve million loans to produce numerous research reports[7] and considered more than a million comments. The final rule was careful to preserve responsible access to the loans for those who could afford to repay them while preventing abusive loans to customers who lenders knew would never be able to repay the principal. Lenders could satisfy the rule either by determining that the borrower could repay the loan or by lending to borrowers who had an appropriate borrowing history or met other conditions, and were provided with required disclosures.[8]

Today, the CFPB released a proposal to rescind the underwriting requirements in the October 2017 payday rule and delay its implementation.[9] The new proposal asserts that "the evidence underlying the identification of the unfair and abusive practice in the Mandatory Underwriting Provisions of the 2017 Final Rule is not sufficiently robust and reliable to support that determination, in light of the impact those provisions will have on the market for covered … loans, and the ability of consumers to obtain such loans."[10] The new proposal ignores much of

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[4] Consumer Financial Protection Bureau, "CFPB Data Point: Payday Lending," March 2014, https://files.consumerfinance.gov/f/201403_cfpb_report_payday-lending.pdf.

[5] Consumer Financial Protection Bureau, "CFPB Finds Four Out Of Five Payday Loans Are Rolled Over Or Renewed," press release, March 24, 2014, https://www.consumerfinance.gov/about-us/newsroom/cfpb-finds-four-out-of-five-payday-loans-are-rolled-over-or-renewed/.

[6] Federal Register, "Payday, Vehicle Title, and Certain High-Cost Installment Loans," CFPB Final Rule, November 11, 2017, https://www.federalregister.gov/documents/2017/11/17/2017-21808/payday-vehicle-title-and-certain-high-cost-installment-loans.

[7] Consumer Financial Protection Bureau, "CFPB Data Point: Payday Lending," March 2014, https://files.consumerfinance.gov/f/201403_cfpb_report_payday-lending.pdf

[8] Consumer Financial Protection Bureau, "Summary of Proposed Rulemakings: 2019 Proposals to Amend the Payday Lending Rule," February 6, 2019, https://s3.amazonaws.com/files.consumerfinance.gov/f/documents/cfpb_Payday_Summary-of-2019-Proposed-Rulemakings.pdf.

[9] Consumer Financial Protection Bureau, "Payday, Vehicle, and Certain High-Cost Installment Loans," Notice of proposed rulemaking, https://s3.amazonaws.com/files.consumerfinance.gov/f/documents/cfpb_payday_nprm-2019-reconsideration.pdf.

[10] *Id.*

CFPB's work that went into the initial rule, and then throws out the old rule by questioning one piece of evidence that the Bureau relied on in the existing rule. And to make this effort at cherry-picking data for the benefit of payday lenders even worse, the new rule cites "two industry-sponsored surveys.[11]"

The conclusion reached by CFPB—that there is not enough evidence of abusive behavior by payday lenders and how to stop it—belies the agency's extensive history of combatting abusive payday lenders. CFPB has, since 2013, taken dozens of enforcement actions against payday and other short-term high dollar lenders for scamming their customers.[12] For example, in 2014, the CFPB took action against Ace Cash Express, one of the nation's largest payday lenders.[13] The CFPB's investigation found a graphic in the company's training manual that provided step-by-step instructions on how catch consumers in a cycle of debt and revealed that the company had no expectation that all their consumers would be able to repay the loans.[14] Just yesterday, the CFPB settled with Cash Tyme, a storefront payday lender that admitted to, among other things, "withdra[ing] funds or attempt[ing] to withdraw funds from consumers' accounts…after those costumers had paid off their payday loans in whole or in part."[15]

The agency's release of this new rule suggests that, under your leadership, the CFPB is continuing your predecessors' pattern of going easy on payday lenders at the expense of consumers—a pattern reflected in the CFPB's recent enforcement actions. Since January 1, 2019, the CFPB has filed three enforcement actions against payday lenders—only one of which provided any compensation to consumers. On February 1, the CFPB settled with several Maltese and Canadian companies and Canadian individuals who collected on loans that were void under certain state usury laws.[16] No restitution for consumers was included in the settlement. On January 25, the CFPB settled with Enova International, a payday lender that does business as CashNetUSA and NetCredit for illegally "extract[ing] millions of dollars in unauthorized debits from consumers' accounts."[17] Consumers who made payments on those unlawful loans also received no restitution.[18]

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[11] *Id.*
[12] "Consumer Financial Protection Bureau, "Enforcement actions," https://www.consumerfinance.gov/policy-compliance/enforcement/actions/?topics=payday-loans&page=4&page=1#o-filterable-list-controls.
[13] Consumer Financial Protection Bureau, "CFPB Takes Action Against ACE Cash Express for Pushing Payday Borrowers Into Cycle of Debt," press release, July 10, 2014, https://www.consumerfinance.gov/about-us/newsroom/cfpb-takes-action-against-ace-cash-express-for-pushing-payday-borrowers-into-cycle-of-debt/.
[14] Ace Cash Express, "The Loan Process," https://files.consumerfinance.gov/f/201407_cfpb_graphic_ace-cash-express-loan-process.pdf.
[15] Consumer Financial Protection Bureau, "Consent Order," February 05, 2019, https://s3.amazonaws.com/files.consumerfinance.gov/f/documents/cfpb_cash-tyme-consent-order_2019-02.pdf.
[16] Consumer Financial Protection Bureau, "[Proposed] Stipulated Final Judgment and Order," February 1, 2019, https://s3.amazonaws.com/files.consumerfinance.gov/f/documents/cfpb_ndg-financial-corp_consent-order_2019-02.pdf.
[17] Consumer Financial Protection Bureau, "Consent Order," January 25, 2019, https://s3.amazonaws.com/files.consumerfinance.gov/f/documents/cfpb_enova-international_consent-order_2019-01.pdf.
[18] *Id.*

The rule you released today makes a mockery of the CFPB's statutory mission of protecting consumers. It should be withdrawn immediately.

Sincerely,

Elizabeth Warren

Elizabeth Warren
United States Senator