October 7, 2016

Via email: FederalRegisterComments@cfpb.gov

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

Re: Proposed rulemaking on payday, auto title, and certain high-cost installment loans
Docket number CFPB-2016-0025 or RIN 3170-AA40

Dear Director Cordray:

We greatly appreciate the opportunity to submit comments to you regarding the Consumer Financial Protection Bureau’s proposed rule on payday, vehicle title, and certain high-cost installment loans. We applaud your leadership of the CFPB and all the work the CFPB has engaged in since its creation. There is no question, consumers’ well-being, as well as the safety and soundness of our financial landscape have improved greatly because of the work of the CFPB in the United States. We appreciate the strong rules the CFPB has come out with regarding certain high-cost installment loans but we strongly urge you to strengthen them further and particularly, to instill protections for states that ban payday loans already so that these nefarious loans never become legal in our state.

Empire Justice Center is a statewide legal services organization with offices in Albany, Rochester, Westchester and Central Islip (Long Island), New York. Empire Justice provides support and training to legal services and other community-based organizations, undertakes policy research and analysis, and engages in legislative and administrative advocacy. We also represent low income individuals, as well as classes of New Yorkers, in a wide range of poverty law areas including foreclosure prevention, public benefits, domestic violence and civil rights. Our Consumer Housing and Finance unit has focused on predatory financial services issues for over fifteen years including practices in mortgage lending, student lending, and consumer finance.
Small dollar installment lending that includes interest rates higher than twenty-five percent are prohibited in New York by state law. We have been very proud of, and feel very fortunate that the payday loans that we see wreaking havoc and draining money from low-income folks in other states cannot legally be made to New Yorkers. We have not taken this fortunate position for granted as every single year for the past several, lobbying attempts by the industry try to push our doors open, even just a crack, to allow for payday lending to come into New York. The lobbying efforts by the industry are fierce and speak to the volumes of profits lenders would love to be making off of the backs of the most financially vulnerable New Yorkers through high-cost installment lending.

We appreciate that the rules developed by the CFPB are targeted at states where payday lending is legal. We believe there is ample evidence showing that payday loans with interest rates higher than say New York’s twenty-five percent cap, are inherently unfair and harmful and should just be banned. We urge the CFPB to take this position and not condone the industry whatsoever; regulations end up being interpreted as approval of a practice.

If there is an unwillingness to ban high-cost payday lending outright on the federal level, then we call on the CFPB to act with great care to ensure that the rules only have the effect of regulating payday lending where it is legal, and not the unintended effect of opening the door to payday ending in states where it is illegal. The regulations should be keeping the bar high, as high as it has been set in the states that ban payday lending, and raising the other states up a notch towards that bar.

We echo the voices of our colleagues in New York State, as well as in other states in which payday lending is illegal, and strongly urge the CFPB, at a minimum, to:

- **Require a meaningful “ability to repay” standard that applies to all loans, without exceptions and with no safe harbors or legal immunity for poorly underwritten loans.** The “ability to repay” provision should require consideration of both income and expenses, and state that loans that do not meet a meaningful ability to repay standard are *per se* unfair, unsafe, and unsound. A weak CFPB rule that allows lenders to make unaffordable loans or that includes a safe harbor would not only allow for continued exploitation of people struggling to make ends meet. It would also give payday lenders unwarranted ammunition to knock down existing state protections, as they have been aggressively seeking to do for years.

- **Strengthen the enforceability of strong state consumer protection laws, by providing that offering, making, facilitating, servicing, or collecting loans that violate state usury or other consumer protection laws is an unfair, deceptive, and abusive act or practice (UDAAP) under federal law.** The CFPB’s success in deploying its UDAAP authority against payday lenders such as CashCall – which a federal court recently found had engaged in UDAAPs by servicing and collecting on loans that were void or uncollectible under state law, and which the borrowers therefore did not owe – as well as against debt collectors, payment processors, and lead generators, provides a strong legal
foundation for including this explicit determination in its payday lending rule. By doing so, the CFPB will help ensure the viability and enforceability of the laws that currently protect people in payday loan-free states from illegal lending. At the very least, the CFPB should provide, in accordance with the court’s decision against CashCall, that servicing or collecting on loans that are void or uncollectible under state law are UDAAPs under federal law.

Assuming the final rule will fall short of a ban, we ask the CFPB to issue its final rule with a strong statement and message to state lawmakers, and to the industry, that the issuance of regulations cannot be interpreted to mean that payday lending is now a valuable financial product to be promoted. To the contrary, the issuance of regulations should come with a warning label that payday lending is still costly and risky business.

Thank you very much for the opportunity to comment on the proposed regulations. Again, we sincerely thank the CFPB for the wonderful work you are doing and for the incredible research and thought you have put into these rules to date and moving forward. Please feel free to reach out should you have questions.

Sincerely,

Kirsten E. Keefe