FLORIDA ALLIANCE
FOR CONSUMER PROTECTION

October 5, 2017

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

Docket Number: CFPB-2016-0025 or RIN 3170-AA40

Dear Director Cordray:

RE: Florida Alliance for Consumer Protection comments on proposed rulemaking on high cost, predatory loans

Florida Alliance for Consumer Protection submits these comments on the Consumer Financial Protection Bureau (CFPB)'s proposed rule addressing payday, vehicle title and certain high cost installment loans. We appreciate the opportunity to provide you with our assessment of the proposed rule. We support the work of the CFPB on creating these rules to address some of the worst practices of the predatory lenders but we also urge you to strengthen the rules, as more fully set out below.

Florida Alliance for Consumer Protection is a statewide nonpartisan nonprofit organization whose mission is to advocate and educate around consumer protection and tenant rights. We were formed in 2012, by a group of concerned Florida citizens, including legal services and private attorneys, the faith community and other activists who sought to ensure Florida consumers had a voice on important issues. Many of us previously advocated on these issues for other organizations and, therefore, have been engaged around the issue of payday loans, vehicle title loans and installment loans in Florida since before the 2000 and 2001 legislative changes in Florida.

The overall emphasis of the rules around the ability of the borrower to repay the loan is, we believe, an important protection we fully support. Further, allowing for a lengthy period between loans is also important in protecting consumers from repeat borrowing that causes debt traps. However, both of these particular portions of the rule have very problematic weaknesses: the ability to repay carries too many exemptions that unscrupulous lenders will abuse; and, the length between loans, intended to allow borrowers' finances to stabilize, is too short. In order to appreciate our concern around these issues, it will be helpful to look at a brief history of these products in Florida.

The Regulatory History of Small Dollar High Cost Loans in Florida

Unregulated payday loans and vehicle title loans grew in Florida during the 90's. Abuse of consumers by these predatory lenders was so extensive that local governments began passing ordinances to rein in some of the worst practices, most crucially the exorbitant interest rates. During the period of the late 90's, over 30 local governments passed ordinances addressing vehicle title lenders. Subsequently, ordinances to rein in payday lending were passed as well. These ordinances were precursors to state legislation of both vehicle title loans and payday loans.

Vehicle Title Loans
In 2000, under then-Governor Jeb Bush, the Florida legislature passed the Florida Title Loan Act. This law created a regulatory framework that was designed to protect consumers against predatory vehicle title loans through provisions including (but not limited to) (1) licensing requirements and oversight of title lenders by the Office of Financial Regulation, (2) limiting the annual interest to 30 percent, and (3) banning the sale of any type of insurance product, since these products significantly inflate the price of these loans while providing little to no benefit to the consumer. While this law curbed predatory title lending in Florida for a while, in 2011, title lenders such as TMX Finance have renewed predatory title lending in Florida by exploiting loopholes in the Florida Consumer Finance Act, a law that fails to prohibit the costly ancillary products that increase the price of these loans exponentially.

Payday or Deferred Presentment Loans
For several years, a broad coalition, that included the U.S. Navy, AARP, legal services and legal aid programs, the faith community, unions, and social service organizations, sought a payday loan law with a similar interest rate cap as the title loan law. In 2001, however, the coalition was sold a false bill of goods when the legislature passed its payday loan law containing what payday lenders called "industry best practices." The coalition members understood that these "best practices," such as one-loan-a-time limit, 24-hour cooling off period between loans, credit counseling, and database tracking, would keep consumers from falling into a debt trap from payday loans. The end result, however, was that the law codified a regulatory framework that allows payday lenders to legally offer the same triple-digit interest rate loans to Floridians that they were selling before passage of the law. The "best practices," we now know from the data collected by the state, have done nothing to save consumers from an endless cycle of debt from payday loans.

Consumer Finance High Cost Installment Loans
Installment loans issued under Florida's Consumer Finance Act have existed in Florida in various forms since the law's passage in 1973. These loans, limited to $25,000 or less, have been capped at 30 percent interest per annum. However, the sale of ancillary products – a practice not banned by this law – frequently causes these loans to exceed 36 percent APR. Vehicle title lenders have abused this Act by holding out these loans as "car title loans," but rolling them over month after month as constantly renewing car title loans.

Since these three chapters have been in Florida law, consumer advocates have fought for changes, while attempting to hold the line on industry efforts to erode what limited protections currently exist. Twice, vehicle title lenders have sought to increase the effective interest rate in the Florida Title Loan Act most recently in 2011. A strong coalition of organizations successfully fought these changes, with the support of then-Attorney General Bill McCollum during the first attempt. Just this past legislative session, over 20 organizations fought, unsuccessfully, for a rate cap on payday loans of 30 percent because of the debt trap these loans cause to Floridians. Finally, the installment lending industry has sought several changes over the years which a coalition of groups have fought with mixed success.

The greatest bar to the success of state advocacy around payday loans has been the strong, high paid and influential lobby for payday lenders. Additionally, a recent study shows the extent of donations by payday lenders to Florida legislators at both the state and federal level and to both sides of the aisle.[1] These donations have greased the way for payday lenders and their lobbyists to have access to legislators, access that most consumer advocates do not have. It concerns us that legislators are not hearing both sides of the story about predatory loans.

Predatory Payday Lending in Florida Today

Florida's payday loan law has not changed since 2001, except to allow payday lenders the ability to reach into borrowers' bank accounts for payment. The law allows licensed payday lenders to provide loans of up to $500, payable in a lump sum, between 7 and 31 days from taking out the loan. Lenders may charge a $5 fee per loan and a cost of 10 percent of the principal per loan. The average payday loan in Florida is $350 paid in two weeks, for approximately a 280 percent APR.[2] However, the annual interest rate can be much higher depending on the amount of the loan and the term of the loan.

The law provides that a borrower may only take out one loan at a time and a state database is used to insure lenders comply. However, within a household, multiple family members may each take out loans. Additionally, a borrower must wait 24 hours between loans. Finally, if a borrower is unable to pay the loan when due, the payday lender is to provide the borrower with information about state-approved credit counseling agencies; the borrower is provided a 60-day grace period when no interest accrues, if the borrower completes the credit counseling program. These "industry best practices" were included in the Florida law in 2001 – industry was willing to agree to any amount of window dressing at that time in order to obtain the Holy Grail – triple digit interest on these loans. What we have learned in the past 15 years is that the "industry best practices" have done nothing to curb the debt trap these loans create for consumers.

How do we know this? The Deferred Presentment Act requires payday lenders to report certain data to the Office of Financial Regulation. Private vendor Veritec accumulates the data and

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[1] "A Florida Plan, How Payday Lenders Bought Florida's Political Establishment," *Allied Progress.* May 2016. https://www.scribd.com/doc/312010389/A-Florida-Plan-How-Payday-Lenders-Bought-Florida-s-Political-Establishment.

[2] See "Perfect Storm: Payday Lenders Harm Florida Consumers Despite State Law," *Center for Responsible Lending*. March 2016. http://www.responsiblelending.org/sites/default/files/nodes/files/research-publication/crl_perfect_storm_florida_mar2016.pdf.

issues a report every year. Looking at the reports over the last six years, we can see that the data has held steady. Between June 2010 and May 2016, for a data collection period of June to May each year, the average number of transactions per consumer per year was between 8 and 9 loans. From 83% to 85% of Florida payday loans were to Floridians stuck in 7 or more loans a year over these 6 years. From 57% to 63% of Florida payday loans were to Floridians stuck in 12 or more loans a year for this same time period.[3] The data exposes a pattern over multiple years: borrowers are caught in a debt trap that requires they continue to borrow over and over again.

Stories of Borrowers Caught in Payday Loan Debt Traps
It is nearly impossible to avoid the cycle of debt caused by these short-term high-interest payday loans, evidenced by the repeat borrowing by consumers in Florida. Furthermore, stories directly from borrowers illustrate the devastating effects these loans can have:

> *"I took out a loan every month, that's how it works. I would borrow $500 and payback $555 then borrow back $500 no sooner than 24 hours later because I can't afford to pay off the loan."* Jim, a senior citizen on social security[4]
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> *"She's borrowing money from payday loan places to get through the week – she's not living paycheck to paycheck because there isn't a paycheck left by the time she gets one."* The legal services attorney for an employed single mom with three children[5]
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> *"The loan amount was $500... Loan repayment was due on 6/30/14, I requested an extension to 7/7/14 because I do not have the money to re-pay the loan. I am caught in a vicious cycle, robbing Peter to pay Paul. I may not be able to borrow the money from family and friends so I may have to request another loan."* Schoolteacher during the summer teaching hiatus[6]
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> *"I needed to take out more money and it took several loans to be able to get out of the vicious circle."* Stephanie, working and attending college, took out a $300 loan and ultimately paid $2000 until she was finally able to get out of the debt cycle[7]
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> *"My pay wasn't enough, but every time I paid it I didn't have money to pay other bills and that was my cycle of borrowing."* Jose, employed with two young children[8]

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[3] "Florida Trends in Deferred Presentment: State of Florida Deferred Presentment Program," *Veritec Solutions,* Florida Office of Financial Regulation. June 2011, June 2012, June 2013, June 2014, June 2015, June 2016.
[4] Jim's story, http://www.stopthedebttrapflorida.org.
[5] Single mom's story, http://www.stopthedebttrapflorida.org.
[6] "Payday Loan Story Collection Analysis, Final Report to the RAISE Florida Network," *Research Institute on Social and Economic Policy*, Alayne Unterberger, PhD, Florida International University. 15 January 2015. http://www.stopthedebttrapflorida.org/uploads/7/3/8/7/73874201/payday_loan_story_summary-2.pdf.
[7] *Id.*
[8] *Id.*

> *"Because of this loan, I had to apply for public assistance."* Rosa, single mom working at Walmart[9]
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> *"[Client] used a payday loan of $400 to pay her rent after she made the decision to pay for glasses for her two young children. Her children were struggling in school because they were in need of glasses. [Client] did not have vision insurance and therefore had to pay over $300 for two pair of glasses. These glasses cost her more than $800 in fees to the payday lender and over $200 in late fees to her apartment complex. [Client] borrowed the money from family to pay off the payday loan and paid the family member back over 8 months."* Employed single mom as told to her budget counselor[10]

These stories illustrate that these families did not have the ability to repay these loans and regret that they ever took out the very first loan, which they were unable to repay. Further, since Florida only requires 24 hours between loans, each of these borrowers repeatedly took out loan after loan "24 hours later," clearly indicating that a much longer period between loans is needed.

How the Proposed Rule Provides Protection for Borrowers

The cornerstone of the rule, the ability-to-repay requirement, is one of the best aspects of the rule. If most of the borrowers we have talked to had an assessment of whether they had adequate income – after expenses – to repay these short-term loans, it is unlikely that they would have been caught in the debt trap that caused, in many cases, a financial collapse for their household. A determination of whether a borrower can repay a loan is a basic tenet expected from responsible, legitimate lenders. The last Florida legislative session, we saw a bill filed that provided a small dollar loan product with statutorily created underwriting.[11] The product had several problems and the underwriting needed to be more robust, but we were encouraged to see this as part of the discussion. The bill did not pass. For small dollar loans, including payday loans, including strong underwriting requirements in the regulations provides the protection for consumers that we feel should undergird all loan products.

There has been a great deal of discussion in Florida around the five percent payment-to-income loophole. We are pleased to have that taken out of the proposed rule. Many borrowers of small dollar loans have budgets with limited room for additional expenses. When looking at a borrowers' ability to repay, in many cases an additional debt of even five percent of their monthly income would be sufficient, without considering their other expenses, to push them into a debt trap. Further, the CFPB's own analysis shows that there is still a high default rate (28 to 40 percent) on longer-term payday loans when payments are five percent of income or less. We urge you to keep this out of the final rule.

As we understand it, the measures to address loan flipping would be beneficial in Florida. The 24-hour waiting period between payday loans under the Florida law has proven to be a failure in

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[9] *Id.*
[10] Credit counselor client story, http://www.stopthedebttrapflorida.org.
[11] SB 1696, Sen. Flores and HB 1425, Rep. Fant, Consumer Finance Loans, 2016 Florida Legislative Session. http://www.flsenate.gov/Session/Bill/2016/1696.

stopping debt traps for consumers. The proposed rule provides a 30-day waiting period between any loan with a balloon payment, which would include payday loans and a limited number of longer-term loans in Florida. A longer period between loans would allow households to recover from a large payment from their budget so we welcome improvements by lengthening the period between loans.

Finally, we see some help for Florida with the definition of longer-term loans. Under the proposed rule, the longer-term loans are defined as loans longer than 45 days, where the lender takes access to the borrower's bank account or takes a security interest in a vehicle within 72 hours of the loan disbursement, and the all-in APR of the loan exceeds 36 percent. Many of the installment loans in Florida, though set at the statutory rate of 30 percent per annum, end up exceeding 36 percent APR after ancillary products are added. For Florida loans that meet this definition, the protections afforded consumers would be over and above what Florida law provides. The ability-to-repay requirement, the longer cooling off period between loans, and the additional protections in the long-term space would provide much needed debt trap safeguards for Floridians.

Closing Loopholes in the Proposed Rules

Though we appreciate the provisions designed to protect consumers in the rule, there are weaknesses and loopholes that, if not amended, stand to make ineffective the beneficial aspects of the rule. Looking first at the cornerstone of the rule, the ability-to-repay requirement, there are glaring loopholes that will erode the rule's basic foundation. We advocate that an ability-to-repay determination be required for all loans. No one should ever receive a loan without a determination of whether he or she will be able to repay the loan.

Florida data shows that consumers take out numerous payday loans each year. According to the most recent data from the Florida Veritec report, 83 percent of borrowers took out 7 or more loans per year, and over half of borrowers took out 12 or more loans per year. This corroborates the anecdotal evidence we have from dozens of consumers. Under the proposed rule, which would exempt from the ability-to-repay requirement up to six short-term loans in a 12-month period, Florida borrowers will remain at risk of falling into a cycle of debt. If borrowers are allowed up to six loans exempt from an ability-to-repay determination (in addition to additional "compliant" loans), Floridians will continue the cycle of 7 or more payday loans a year, repeat borrowing that amounts to "robbing Peter to pay Paul" as the Florida school teacher told us. An across the board ability-to-repay requirement also relieves consumers of understanding the cumbersome sequencing requirement, which surely will be abused by lenders.

Hand-in-hand with requiring an ability-to-repay determination for all loans to remediate the cycle of debt that is clearly happening in Florida, is limiting the duration of indebtedness to 90 days for all short term loans, consistent with the FDIC's 2005 guidelines addressing payday loans. Florida law has no limitation either in the number of loans a consumer may take out per year or the duration of indebtedness. Protection offered by the CFPB's rule will advance consumer rights in Florida on this point.

As stated above, we feel that many longer-term loans in Florida, written under Consumer Finance Act, will fall within the proposed rule's definition for these loans. However, the rule provides a huge loophole for these loans by exempting high-cost longer-term loans if the bank account access or car title is taken by the lender more than 72 hours after the loan has been disbursed. Being familiar with the lending practices of high cost lenders in Florida and their propensity to exploit every loophole available, we know that it will become routine to use this loophole to evade the rule's requirements. The Bureau must act to close this easily accessible loophole.

Most of the borrowers we have spoken to were required to grant authority for repayment of their loans through the automatic ACH deduction from their checking accounts, including Jim who for over two years had his payments automatically deducted from his direct deposit social security payments. Under the "business as usual" provision of the proposed rule – which equates a lender's ability to successfully collect payments to a borrower's bona fide ability to afford the loan – Jim would appear to be able to afford his loan since it was paid off each month for over 24 months in a row. However, an ability-to-repay determination would show that Jim could not afford the loan. Repayment of a high cost loan by automatic ACH deduction must not be used to provide the appearance the borrower can afford the loan.

The Florida legislature recently adopted the protections of the Military Lending Act into state law, empowering the Florida Office of Financial Regulation to enforce the provisions of the Act.[12] Unanimously passed by the full legislature, bill sponsor and former Senate President Don Gaetz pointed out repeatedly the problems for consumers with these high cost predatory lending products. The Bureau's proposed rule, covering many of the same loan products, goes a long way toward extending protections to all consumers. But only if the loopholes are closed can consumers be assured that the rules will provide adequate protections.

Again, thank you for the opportunity to share our thoughts and concerns about the proposed rules. We appreciate the work of the CFPB to protect consumers and look forward to working with you on this and other issues. If you need additional information or have any questions about our position on the issue, please contact Alice Vickers at 850 556-3121 or alicevickers@flacp.org.

Sincerely,

Alice Vickers
Director

Brad Ashwell
Legislative Director

[12] SB 696, Sen. Gaetz, and HB 717, Rep. Burgess, Consumer Credit, 2016 Florida Legislative Session. http://www.flsenate.gov/Session/Bill/2016/0626.