May 15, 2019

Director Kathleen L. Kraninger
Attn: Comment Intake
Consumer Financial Protection Bureau
1700 G Street NW
Washington, DC  20552

Re: Proposed Rulemaking on Payday, Vehicle Title, and Certain High-Cost Installment Loans
[Docket No. CFPB-2019-0006, RIN 3170-AA80]

Dear Director Kraninger,

On behalf of Prosperity Now and the undersigned, I am writing to express our strong opposition to the Consumer Financial Protection Bureau’s (CFPB) proposal to rescind key elements of the 2017 Final Rule governing Payday, Vehicle Title, and Certain High-Cost Installment Loans. We find it unacceptable that the CFPB would consider undermining the rule finalized in 2017, as well as disregard congressional intent, after years of careful research and outreach.

Rather than adhering to the Bureau’s core mission of protecting consumers from harmful financial products, the CFPB’s proposal would leave countless consumers vulnerable to a predatory industry whose business model is built on unaffordability and reborrowing, forcing consumers to choose between two bad choices: defaulting on the loan or rolling it over, often multiple times. This drains roughly $8 billion from the pockets of hard-working families each year. As a national nonprofit organization that works to expand economic opportunity for millions of people, especially low-income families and communities of color, we know that sensible consumer protections are key to helping households attain financial security and thrive. By requiring lenders to determine whether a borrower is actually able to afford a loan before offering one (the ability to repay or ATR standard) and by limiting the number of loans a borrower can take out over a period of time, the Bureau’s 2017 Final Rule would put a stop to the most predatory practices of the payday industry and ensure that consumers do not compromise their financial security in order to have access to short-term credit.

Today, 40% of households are just one financial emergency away from economic ruin, meaning they don’t have the wealth necessary to live at the poverty level for three months if they were left without stable income. For communities of color—which research has shown are more likely to use payday loans and be targeted by lenders—the problem is even worse. According to our 2019 Prosperity Now Scorecard, nearly three out of every five households of color (57%) are currently living in this financial red zone. Moreover, as we discuss more below, Black and Latino households have just a fraction of the wealth owned by White households.
One of Prosperity Now’s core missions is to reduce the racial wealth divide, and payday loans do the opposite. More than just the sum of one’s assets minus their debts, wealth allows families to take advantage of transformative asset-building opportunities that can move up the economic ladder, such as a higher education or homeownership. It also helps ensure that the next generation has the resources they need to succeed and provides families with a cushion to weather financial challenges. But they cannot do this if the wealth they build is being stripped out from underneath them by predatory financial products.

Finalizing the current proposal would allow lenders to continue siphoning off what little wealth financially vulnerable families have, rather than ensuring that these households can safely navigate the financial market place in ways that allow them to thrive over the short- and long-terms.

In addition, the decision to reconsider the rule is not based on some major change in the industry or some landmark study that shows these products are safe and affordable, contradicting the mountains of evidence that show just how predatory the payday market is (more details below). In fact, between the release of the rule in 2017 and the release of the proposed rule in February of this year, the payday industry has not made any significant changes to the way they do business. Rather, the new proposal is based on a dubious legal reinterpretation that completely ignores all the accumulated evidence, including the research done by the Bureau itself.

After taking more than five years to create the 2017 Final Rule, including gathering input from industry, consumer advocates and community stakeholders, conducting numerous studies, and reviewing over one million public comments, we call on the Bureau to rescind the new proposal, and implement the 2017 Final Rule without any changes as originally planned.

The remainder of this letter is structured as follows:

1. What the Bureau Is Currently Proposing Would Undermine the 2017 Rule
2. The 2017 Final Rule Is Supported by a Significant Amount of Research
3. If the 2017 Final Rule Is Implemented Without Changes, There Will Still Be Access to Credit
4. If the Current Proposal Is Enacted, Vulnerable Borrowers Will Continue to Be Harmed
5. Conclusion

What the Bureau Is Currently Proposing Would Undermine the 2017 Rule

In February of this year, the Consumer Financial Protection Bureau (CFPB) released a proposal to rescind key elements of the payday lending rule that was finalized in the fall of 2017. Specifically, the proposal would repeal the ability-to-repay (ATR) standard and the limits on reborrowing that form the core of the 2017 Final Rule. While the finalized rule did not include everything Prosperity Now had recommended in our letter to improve what was proposed at the time, it is an extremely strong rule that would put a stop to the worst abuses of the payday lending industry.

The Importance of the Ability-to-Repay (ATR) Standard

By striking at the heart of the 2017 Final Rule—the ATR standard—the CFPB’s current proposal fundamentally undermines the rule’s effectiveness and subjects consumers to continued harm.
The Office of the Comptroller of the Currency (OCC) states that a “fundamental characteristic of predatory lending is the aggressive marketing of credit to prospective borrowers who simply cannot afford the credit on the terms being offered.” The CFPB’s findings discussed in more detail below indicate that more than 80% of payday and vehicle title loans are reborrowed, and half of online loans trigger fees for insufficient funds. Default rates are also high, and the typical borrower will end up paying more in fees than what is owed on the original loan. This is very strong evidence that these loans are unaffordable for most users, and therefore highly predatory.

ATR curtails this by requiring lenders to determine whether a borrower is able to pay off a loan in full when due and still be able to pay for basic living expenses and other major financial obligations. If the borrower is unable to do so, a lender is not allowed to offer them a loan. This is a commonsense underwriting practice used in virtually all other lending markets.

The Value of Reducing Loan Principal

We should also note that the 2017 Final Rule includes a provision that allows lenders to circumvent the ATR standard by complying with a set of restrictions which include the limits on loan flipping discussed above (this does not apply to auto title loans). While not as strong as ATR—which is the gold standard of loan underwriting—a welcome feature of this approach is the requirement that additional loans in a sequence must be for less money than earlier loans. Specifically, the maximum amount of an initial loan must not be for more than $500, while the maximum amount for a subsequent loan must be a third less than the preceding loan. This provision allows consumers to reduce the amount of loan principal they owe, which helps address the 80% of payday borrowers who owe more on the last loan in a sequence than on the first. The 2017 Final Rule highlights that, along with encouraging repeat borrowing, it is uncommon for lenders to offer adequate off-ramps to borrowers trapped in a cycle of debt that would reduce loan principal over time (P. 54564).

Limiting Repeat Borrowing Protects Consumers

By repealing restrictions on how many loans a borrower can take out yearly, the number of times a loan can be rolled over (“flipped”) and on how long a person can be in debt, the CFPB’s current rule would legitimize a cycle of reborrowing that is extremely damaging to payday borrowers.

In guidance on Subprime Mortgage Lending that was released by a number of federal agencies—including the OCC, the Board of Governors of the Federal Reserve, and the Federal Deposit Insurance Corporation (FDIC)—a typical predatory lending practice involves “inducing a borrower to repeatedly refinance a loan in order to charge high points and fees each time the loan is refinanced (“loan flipping”).” As mentioned below, three-quarters of payday fees are from borrowers who take out more than ten loans each year, and half of borrowers get trapped in cycles that last that long.

Throughout the 2017 Final Rule, the Bureau repeatedly points out that the payday business model is deliberately structured to generate repeat borrowing because significant profits come from this practice. This is an extremely predatory model that prioritizes lender profits over consumer safety and financial security. To address this problem, the 2017 Final Rule reins in this practice by setting
limits on the number of loans that can be taken out in sequence over a certain period of time. The ATR provision requires a 30-day cooling off period after three consecutive loans (each underwritten with ATR). There is also the conditional exemption that limits the number of loans to six per year and no more than 90 days of indebtedness annually.

Restrictions on Account Access Makes Consumers Safer

Lastly, while CFPB’s current proposal rightly upholds the restrictions on account access, it unfortunately does not rule out reconsideration of these provisions in the future. As evidence presented below shows, if one repayment attempt fails, it is highly likely another one will, but it is not uncommon for lenders to access an account multiple times in one day. While the lender can access an account as many times as they want free of charge, the borrower is charged a fee each time the account comes up short. The 2017 Final Rule curbs this by requiring lenders to disclose their intention to access an account and get explicit consent from the borrower to try again after two failed attempts to collect.

The 2017 Final Rule Is Supported by a Significant Amount of Research

A considerable amount of evidence shows the extremely predatory nature of the payday lending industry. In this letter, we are focusing on the findings from key research conducted by the CFPB, but it is important to keep in mind that much more evidence exists to support these findings.

Over the course of several years, the Bureau published a number of reports on various aspects of the small dollar lending industry, including traditional storefront lending, vehicle title loans, and the online payday lending market. The results consistently show an industry rife with abuses across the board. We outline some of the major findings from these studies below.

The Consumer Financial Protection Bureau’s (CFPBs) April 2013 White Paper

The Bureau’s April 2013 White Paper notes that a typical payday loan fee is $15 per $100 borrowed, which translates to an annual percentage rate (APR) of 391% for a 14-day loan. The same report also estimates that the median loan amount is $350. At the same time, the median payday borrower takes out ten loans annually and pays $458 in fees—while about a quarter of such users pay close to $800 in fees. It is important to emphasize that these figures do not include any of the loan principal. This means the amount a borrower is paying in fees alone is often more than the amount owed on the original loan, and sometimes substantially more.

It is also important to note that three-quarters of payday loan fees are generated from those who take out more than ten loans each year, and the median borrower is in debt for close to 200 days annually, which is more than half the year.

In short, these loan products carry triple digit interest rates, result in borrowers paying more in fees than the loan principal, create significant profits for lenders from extended cycles of repeat borrowing, and end with borrowers in lengthy periods of indebtedness.
March 2014 Data Point

The 2013 White Paper was followed by the Bureau’s 2014 Data Point, that yielded additional evidence about the harmful aspects of the small dollar lending industry. Significantly, the study found that more than 80% of loans are rolled over or renewed within 14 days of taking out an earlier loan. Half of all loans also end up in a sequence of loans that are at least 10 loans long.

The data from this report also reveals that borrowers who take out more than one loan are not paying down the principal amount of the original loan. In more than 80% of cases, the last loan in a sequence is in fact larger than the initial loan, with the size increasing the longer the sequence.

In short, there are extremely high rates of rollovers and repeat borrowing, pointing to the unaffordable nature of these loans. The majority of borrowers are unable to pay off a loan in full when due and roll over the loan, incurring new fees each time. Moreover, this data suggests that paying down the loan principal (amortizing) is not a priority. In fact, the structure of these loans actually discourages paying down principal in order to profit from a string of fee payments.

April 2016 Report on the Online Payday Lending Industry

In the spring of 2016, the CFPB released another report on the small dollar lending industry, this one focusing on the impact of payday products offered online (not at a storefront). The study found that half of all accounts have at least one payment attempt that results in fees from overdraft or nonsufficient fees (NSFs) because the borrower did not have enough money in their account to cover the loan amount. On average, these accounts generated around $185 in fees over the 18-month period that was studied (the typical fee for an overdraft or NSF is $34).

Additionally, if a lender accesses a borrower’s checking account for loan payment and the attempt fails, another attempt to access the account for payment will fail 70% of the time, and additional requests are even less successful. Despite this extremely low rate of success after a failed attempt, lenders often submit several requests for payment on the same day, resulting in additional fees for the borrower, without the lender experiencing any negative consequences.

The report also shows that consumers who take out online payday loans are more likely to have their bank accounts closed than those who do not use these products, and this is especially true for accounts with failed online loan payment requests. While only 6% of borrowers without online payday activity had their account closed during the study period, 42% of those with failed payment attempts ended up with a closed account (along with 23% of online payday loan users in general).

In short, there are high failure rates in the online industry as well, and there are no regulations or incentives for lenders to stop accessing an account for payment, even when it is extremely likely the account in question has insufficient funds. This results in additional fees for the borrower without any effect on the lender.

May 2016 Report on Single-Payment Vehicle Title Lending

Another report released by the Bureau in 2016 examines the borrowing patterns of consumers who take out auto title loans. These loans are usually for greater amounts than payday loans, and
collateral for the loan is the car title, which means if the borrower defaults, they lose their car. Just like with payday loans, the reborrowing rates are extremely high for vehicle title loans. More than 80% are rolled over the day the loan is due. Similar to payday loans, approximately half of loans are in a borrowing cycle of ten or more loans.

Moreover, the default rates for these products are high. About a third of auto title loans end in default, and about a fifth end with the vehicle being repossessed by the lender for failure to pay.

In short, like with payday loans, reborrowing is the norm and the inability to keep up with payments results in significant harm, which is not uncommon.

October 2017 Final Rule

The CFPB discusses calculations in the 2017 Final Rule that show the average borrower paid bi-weekly would have to set aside 37% of their paycheck to pay off a payday loan. For auto loans, an astronomical 49% of monthly income would be needed (P. 54561).

The Bureau also indicates that after eight weeks, more than half the borrowers caught in a sequence of at least three loans would typically have paid charges that equal 60% or more of the original loan amount and would not have paid down a penny of the original loan. Moreover, about a third of users are caught in a cycle of at least six loans, and after three-and-a-half months, will have paid charges equal to 100% of the original loan amount and also still owe all of the loan principal (P. 54589).

If the 2017 Final Rule Is Implemented Without Changes, There Will Still Be Access to Credit

Although we are concerned by the shift towards longer-term installment lending that has occurred in the payday industry over the past several years and would like to see further actions taken to protect consumers in this space, we strongly believe that a 2017 Final Rule that is implemented without changes has the potential to meaningfully protect payday borrowers, yet would not completely cut off access to these products.

We would be remiss if we did not acknowledge that the CFPB’s simulations estimating the impact of the ATR and Conditional Exemption (presented in the Supplemental Report) indicate a decline in loan volume and lender revenues if the rule was enacted. At the same time, these changes will not completely restrict eligibility or access to these products. In the rule proposal that preceded the final version – which is reiterated in the 2017 Final Rule – the Bureau stated that for those borrowers who are able to take out a loan without reborrowing, “many” would “reasonably” satisfy ATR, meaning the ATR mandate “would not have a significant impact on their eligibility” for credit (P. 54599).

The simulations in the Supplemental Report on the impact of the Conditional Exemption also suggest that the greatest contractions will be with excessive loan flipping, the source of a significant amount of the harm caused by this market. In it, the Bureau states the significant reduction in lending under the alternative approach is “primarily due to a reduction in the reborrowing of an initial loan, rather than a decrease in initial loans in a sequence taken out by a consumer.”
Borrowers will still be able to take out one or two loans, which actually makes the product conform more to the way it is marketed, as a bridge loan to weather a temporary financial hardship.

In addition, the Supplemental Report presents findings examining the impact on access to storefronts after changes to various state laws restricted the payday market. Findings indicate a contraction in the number of stores, but only modest changes to distances from remaining stores. Specifically, for more than 90% of borrowers, the contraction added no more than five miles to a trip to a storefront (due to the fact that payday stores tend to cluster together in the same area). Given this, it is more accurate to say the rule would restrict access to harmful credit, not all credit. For those who can satisfy ATR or use the product as the industry advertises them—as a bridge loan to weather a financial hardship for a short period of time—these loans would be available to them.

If the Current Proposal Is Enacted, Vulnerable Borrowers Will Continue to Be Harmed

In the 2017 Final Rule, the Bureau discusses how in a substantial number of cases, payday borrowers are unable to anticipate how severe the consequences could be for taking out one of these loans. The recent proposal suggests the Bureau relied too heavily on one study to back this up (the “Mann” study). We think it is inaccurate to state that the study is the only evidence the Bureau uses to support the borrower’s understanding of potential injury. The entire universe of data that is presented throughout the 2017 Final Rule, some of which is referenced above, also supports this finding.

As the Bureau states in the rule with respect to avoiding injury, “an especially compelling example of how consumers may be prone to error in making reasonable evaluations about the injuries to which they are exposed by the identified practice is the substantial number of consumers who re-borrow, many of them repeatedly, prior to eventually defaulting on these loans” (P. 54594). Later, they state that it is a “plausible inference that the substantial injury many reasonable consumers sustain, as actually observed in the marketplace for covered short-term loans, is not in fact avoided by normal consumer decision-making” (P. 54598). In other words, the harm is not captured in one study but by looking at how the product impacts consumers in the marketplace as a matter of fact. This is where more than 80% of loans are reborrowed and half the users get caught in a debt cycle of ten loans or more. It is hard to imagine any reasonable person thinking a product with a rollover rate of more than 80% is safe for consumers. But if the Bureau’s current efforts to repeal core elements of the rule are successful, the harm from these practices will continue.

Moreover, the brunt of this harm will continue to be shouldered by those who can least afford to lose what little wealth they have.

Borrowers Are Typically Low-Income and Have Difficulty Accessing Safe Credit

Payday loans are predatory by nature and harmful to all consumers, regardless of income or wealth. But the abusive quality of these loans is particularly problematic given the typical payday borrower is low-income and least able to afford them, has poor credit, and cannot access mainstream financial products. According to the CFPB, the median income level of payday users is around $22,476.14 The Bureau also finds that more than 20% of those paid on a monthly basis take out one payday loan a
month (12 loans annually) on average, and a majority of these are government benefits recipients (social security, etc).\textsuperscript{15} The 2017 Final Rule also lists several studies that show the typical borrower has subprime credit and has a hard time accessing traditional loan products (P. 54557).

It is not uncommon for people living paycheck to paycheck to use credit when their income will not stretch enough to cover an unexpected bill or even basic living expenses. But their poor credit or other issues create barriers to accessing mainstream financial products that come with more affordable terms and conditions. Thus, they turn to payday loans during moments when they are backed up in a corner with few other options.\textsuperscript{16} Payday lenders take advantage of this and often market their products as bridge loans or short-term credit to weather a financial rough spot. But for many borrowers, the loans rarely work the way they are advertised, and expensive, lengthy loan sequences are common.

\textit{Borrowers Are Disproportionately Households of Color with Far Less Wealth}

Much like with low-income households, communities of color are least able to absorb the high-cost nature of these products. Black and Latino households have far less accumulated wealth than White families; $3,400 and $6,300, respectively, compared to $140,500 for White households.\textsuperscript{17} Yet as was mentioned earlier, these households are 1.5 to two times more likely to use payday loans,\textsuperscript{18} are disproportionately marketed these products,\textsuperscript{19} and are more often the targets of fair lending abuses.\textsuperscript{20}

In March of 2019, Prosperity Now \textcolor{blue}{submitted a comment letter} in response to the advanced notice of proposed rulemaking that recommended delaying the implementation of the original rule by 15 months. The letter focused on the negative impact a delay of the rule would have on households of color, including how it would exacerbate America’s significant racial wealth divide. It is important to understand that the same harms stemming from a delay will happen if the rule is significantly weakened.

Instead of allowing the payday industry to strip billions of dollars of wealth from these communities, we would like them to use those dollars to save for a rainy day, improve their credit, and build wealth.

\textbf{Conclusion}

The payday lending industry is extremely predatory. With triple digit interest rates, high fees, and a business model built on unaffordability and repeat borrowing, it traps borrowers in a vicious cycle of debt. The harmfulness is compounded by the fact that typical borrowers are low-income and do not have access to safe credit. These products also exacerbate the racial wealth divide by targeting households of color.

Yet, despite the mountain of evidence from the CFPB’s own reports as well as numerous other studies that reveal the predatory nature of these loans, the Bureau is seriously considering rescinding core provisions of the 2017 payday lending rule that would do much to curb the industry’s worst abuses.
For the sake of protecting consumers, particularly for the low-income families and households of color that are least able to protect themselves from the payday debt trap, we ask the CFPB not to finalize the proposed rule to rescind core provisions of the 2017 Final Rule. The safest course of action for consumers would be to implement the 2017 Final Rule without any changes.

Sincerely,

Andrea Levere, President of Prosperity Now

Affordable Housing, Education and Development (AHEAD), Inc.
African American Health Alliance
Asset Building Clinic/California State University, Los Angeles
Austell Community Task Force
Berkshire United Way
Building Skills Partnership
CAFE Montgomery MD
California Asset Building Coalition
California Community Economic Development Association (CCEDA)
Community Action Pioneer Valley (CAPV)
CASH Campaign of Maryland
Center for Survivor Agency and Justice
City of St. Louis, MO
Community Financial Resources (CA)
Community Reinvestment Alliance of South Florida
Credit Builders Alliance
Denver Asset Building Coalition
East Bay Asian Local Development Corporation
Enterprising Latinas, Inc.
Fair Housing Council of the San Fernando Valley
Financial Pathways of the Piedmont
FL Alliance of Community Development Corporations, Inc.
Florida Policy Institute
Gary Community Investments Company
Green River Asset Building Coalition, Inc.
Illinois Asset Building Group
Indiana Legal Services, Inc.
JP Credit Education & Consulting LLC
Junior Achievement of Chicago
Lafayette Neighborhood Housing Services, Inc. dba Homestead CS
Local Initiatives Support Corporation (LISC)
Love Lotus Coaching
Micro Enterprise Services of OR
National Advocacy Center of the Sisters of the Good Shepherd
Neighborhood Trust Financial Partners
Nevada Partners
Opportunity Alliance Nevada
Our Lifeline, Incorporated
Pathfinders
Pennsylvania Council of Churches
Prepare + Prosper
RAISE Texas
Teens, Training, and Taxes (WA)
The Community Empowerment Fund
The Financial Clinic
The Middleburg Institute
United Way
United Way of Lancaster County
United Way of Lee County, Inc.
United Way of Passaic County
United Way of Southern Cameron
United Way of Tucson and Southern Arizona
United Way of Washtenaw County
Ventura County Community Development Corporation
YWCA

1 Congress also recognized the pitfalls of the payday market and wanted the Bureau to use their authority under the Dodd-Frank Act to regulate these lenders. The final rule quotes language from the Senate version of the legislation that described payday loans as products where “consumers have long faced problems” because there are no “adequate Federal rules and enforcement,” describing borrowers as stuck in a “perpetual debt treadmill.” (P. 54521)

2 Diane Standaert and Delvin Davis, Payday and Car Title Lenders Drain $8 Billion in Fees Every Year (Washington, DC: Center for Responsible Lending, 2017), https://www.responsiblelending.org/sites/default/files/nodes/files/research-publication/crl_statebystate_fee_drain_may2016_0.pdf.

3 Prosperity Now is a national nonprofit organization based in Washington, DC that works to expand economic opportunity for millions of people, especially people of color and those of limited incomes, to achieve financial security, stability and, ultimately, prosperity. We offer a unique combination of scalable practical solutions, in-depth research and proven policy solutions, all aimed at building wealth for those who need it most. In addition, Prosperity Now is committed to partnerships with our movement of committed advocates and practitioners seeking to create a clear path to financial stability, wealth and prosperity. Today, the Prosperity Now Community brings together more than 24,000 practitioners, advocates and researchers across all 50 states and DC to forge strong connections between those in our Community and mobilize action to create lasting social change. The
Community includes Networks that bring together peers and other experts to share information, alerts and promising practices around financial coaching, adult matched savings, community tax preparation, racial wealth equity, affordable homeownership and more.


7 Prosperity Now, *Vulnerability in the Face of Economic Uncertainty: Key Findings from the 2019 Prosperity Now Scorecard*.


13 Ibid.


