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Director Kathleen Kraninger
Consumer Financial Protection Bureau
1700 G Street NW
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Submitted electronically via https://www.regulations.gov

Re: Proposal to Rescind Ability-to-Repay Requirements Governing Payday, Vehicle Title, and Certain High-Cost Installment Loans [Docket No. CFPB-2019-0006; RIN 3170-AA80]

Director Kraninger:

I read with disappointment your recent proposal to rescind the thoroughly considered, factually grounded Consumer Financial Protection Bureau (CFPB) rule provision mandating ability-to-repay determinations by lenders offering payday, title and balloon loans. As a policy organization working to advance the public good in a state with wholly insufficient consumer protections for borrowers, Alabama Arise knows the CFPB's payday lending rule would help thousands of people in Alabama, if left as written and implemented in good faith.

Astronomical and exploitative payday loan annual percentage rates (APR)[1] routinely trap borrowers in our state in inescapable debt cycles. Payday lenders have misled regulators and the public about the purpose of these loans since the day they were legalized in Alabama. Contrary to industry talking points, payday loans are not a short-term solution to emergencies. They are debt traps for people struggling to make ends meet, as the CFPB's own 2014 report shows. A majority of payday borrowers in Alabama take out multiple loans every year. Thousands of borrowers in our state took out 30 or more payday loans last year.[2] Borrowing histories like that result from traps, not transactions between parties of equivalent power and

[1] Adam Hayes, *Annual Percentage Rate (APR) Definition*, Investopedia (2019), available at https://www.investopedia.com/terms/a/apr.asp (noting "[a]n annual percentage rate (APR) is the annual rate charged for borrowing," and "[t]he formula for the Annual Percentage Rate (APR) is ((((Fees + Interest) / Principal) / [Number of days in loan term]) x 365) x 100").

[2] Veritec Solutions, *Report on Alabama Deferred Presentment Loan Activity For the Year Ending December 31, 2018* (2019).

legal sophistication. For thousands of people who take out multiple loans a year, predatory loans are not an option. They are inherently destructive traps that destabilize families, and they destroy the lives of people throughout the United States who become trapped in intentionally created cycles of debt.

The American people overwhelmingly support regulation of payday loans. Eighty-four percent of Alabama respondents in a recent state survey[3] said they want significant reform to payday lending practices. Most Alabamians want to cap payday loan APR at 36 percent. That rate would be less than a tenth of the usurious 456 percent APR that Alabama allows on a 14-day loan, the most common loan period in our state. Further, a majority of the survey respondents said they want those reforms even if such changes cut into industry profits.

The Agency's purported justification for rescinding the rule is a lack of data supporting the underwriting provision. The Agency bases this assertion on an arbitrary de-emphasis of the Mann study,[4] which was industry-funded yet nonetheless demonstrated that four in ten consumers had no knowledge of how they would repay loans. The Agency also de-emphasizes its own personnel's expertise in determining the financial awareness of consumers.

The multi-page Agency justification for ignoring its own analysis could have been spun from a lending industry lobbyist. In it, the CFPB wrote, "Mann concluded that most borrowers anticipate that they will not be free of debt at the end of the initial loan term and instead will need to reborrow." This sunny characterization of borrowers' financial understanding ignores the 40 percent of borrowers who have no idea when they will escape the debt trap.

Moreover, the focused protections created by the CFPB's rule have not yet been given a chance to work, even though the underwriting requirement falls short of the sweeping elimination of predatory loans the public wants. The Agency's rhetoric surrounding this attempt to eliminate protections has relied heavily on the sort of talking points often repeated by the industry lobbyists we see lining the walls of the Alabama State House. Industry mouthpieces have claimed for years that regulation of any sort would bankrupt them. But reality shows these claims to be false. Procedural reform efforts focused on providing escape valves for trapped borrowers have not eliminated payday loans in the numerous states that have implemented them.[5]

The rule's protections focus on borrowers who take out multiple loans over a short period and borrowers who spend much of their time in short-term loan debt. Lenders are conditionally exempt from the underwriting mandate for loans under $500, up to the third loan in a loan cycle. The rule is structured to prevent loan churn and stop cycles of debt. The payday lending business model relies on keeping borrowers in debt. One of the best ways to prevent that

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[3] Public Affairs Research Council of Alabama, *Alabama Public Opinion Survey* (2018), available at http://parcalabama.org/wp-content/uploads/2018/09/PARCA-2018-Public-Opinion-Survey.pdf, 18.
[4] Ronald Mann, *Assessing the Optimism of Payday Loan Borrowers*, 21 Supreme Court Econ. Rev. 105 (2013), http://www.columbia.edu/~mr2651/AssessingPayday.pdf.
[5] *See, e.g.*, Fla. Stat. § 560.404(22) (2018).

exploitation is to ensure that borrowers have a realistic way out of debt before they take out high-cost loans. The CFPB should protect borrowers, not the profits of an industry reliant on perpetuating human suffering to make its money.

Repeal of this protective provision would be a disservice to the fundamental mission of the CFPB. The Agency's purpose is to protect consumers, not to clear the field of regulations to ensure lenders' ability to prey upon on members of the public whose precarious financial positions leave them most vulnerable to predatory practices. The only support underlying the decision to eliminate this consumer protection is fanciful assertion by regulated parties that the regulatory costs of compliance would significantly damage their interests. Bald assertions of harm made by an industry with a history of operating in bad faith are wholly insufficient justification for an Agency rule. The CFPB should not engage in arbitrary determinations based on a dearth of evidence. Eliminating this protection is unjustified.

The CFPB's rule in its current form would help mitigate the effects of the systematic exploitation of borrowers who can barely keep their heads above water. The ability-to-repay provision is not a complete reform of the usurious practices of predatory lending, but it helps rein in some of the worst abuses. Preventing lenders from issuing products structured to trap many borrowers in loans they are unable to repay is squarely within the Agency's mission. The CFPB should implement the ability-to-repay rule as written. Anything less would be complicity in abusive practices and would be widely and correctly cited as an example of regulatory capture.

Sincerely,

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