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Statement Regarding CFPB's Payday Proposal: Strong Start but Worrisome Loopholes

(WASHINGTON) The Consumer Financial Protection Bureau's (CFPB) preliminary proposal released today to regulate payday loans includes strong standards that could make small dollar loans safer for consumers, according to advocates at the National Consumer Law Center, but some unaffordable, high-cost loans would be allowed to continue, advocates said.

National Consumer Law Center Associate Director Lauren Saunders released the following statement:

"The CFPB has recognized that payday lenders must do what any responsible lender does: consider the borrower's ability to repay the loan while meeting other expenses without needing to reborrow. Payday lenders prey on struggling families by relying on borrowers' *inability* to repay to trap them in a cycle of debt. The CFPB has made clear that ensuring that a loan is affordable is the cornerstone of fair and responsible lending in the small dollar loan market, as in all credit markets.

"The CFPB is wisely looking down the road at how the payday lending industry will evolve. The proposal would cover not only traditional two-week payday loans but also longer installment loans, auto title loans, bank payday loans, and open-end lines of credit. The payday industry would morph chameleon-like if the rules did not cover evasive new products.

"Despite the strong fundamentals of the CFPB's approach, loopholes would permit some unaffordable high-cost loans to stay on the market. The CFPB has taken an 'either/or' approach: 'prevention or protection.' But borrowers need *both*. Lenders must be judged both on whether they evaluate affordability before making a loan and also on whether those loans default, roll over or are refinanced in significant numbers.

"The proposal would permit up to three back-to-back payday loans and up to six payday loans a year. Rollovers are a sign of inability to pay and the CFPB should not endorse back-to-back payday loans.

"The proposal would permit a triple-digit six-month installment loan if payments are limited to 5% of the borrower's gross income, regardless of the borrower's expenses or debts. That is a dangerous approach that blesses unaffordable high-rate loans. Looking only at income ignores key elements to evaluate affordability: the borrowers' expenses and how the loans perform in practice. The 5% threshold is loosely based on the Colorado payday loan experience. Yet

Colorado's data show that 38% of state payday borrowers default and nearly half of larger loans are 'flipped' loans taken out the same day as an early payoff of the previous loan.

"It also is not enough to evaluate individual consumers' ability to pay at the outset of a loan. Any business looks at how its loans perform overall and the CFPB should do the same. A lender that makes triple-digit loans with high default rates, high numbers of bounced payments, or other indicators of unaffordability should not get a pass.

"The CFPB does not have authority to cap interest rates which is the single most effective way to curtail predatory lending. State interest rate caps will remain critical even with federal rules to regulate payday loans.

"The CFPB's proposal is just that: an early look at the agency's thinking. We look forward to working with the CFPB to close loopholes and to fulfill the promise of the CFPB's commitment to making the small dollar loan market fairer and safer for consumers."

LINKS

- *American Banker* op-ed by Lauren Saunders "Colorado is no model for a national payday rule" (Dec. 10, 2014): <http://www.americanbanker.com/bankthink/colorado-is-no-model-for-a-national-payday-rule-1071579-1.html>
- Letter to Washington State Senate re: WA HB 1922, SB 5889, high-cost consumer installment loans (Feb. 24, 2015): http://www.nclc.org/images/pdf/high_cost_small_loans/payday_loans/nclc_letter_re_washington_installment_loan_bill_02242015.pdf
- NCLC policy brief: Guidelines for Affordable Small Dollar Loans (January 2014): http://www.nclc.org/images/pdf/high_cost_small_loans/payday_loans/ib-affordable-small-dollar-loans.pdf
- More information about NCLC's advocacy work on payday loans: <http://www.nclc.org/issues/payday-loans.html>

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