September 10, 2020

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Community Development Financial Institutions (CDFI) Fund
U.S. Department of the Treasury
1500 Pennsylvania Ave. NW
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Submitted via email to cdfihelp@cdfi.treas.gov

Re: Request for Information on Small Dollar Loan Program

I. Introduction and Overview

The Center for Responsible Lending (CRL), **National Consumer Law Center (on behalf of its low income clients) (NCLC)**, **NAACP, Americans for Financial Reform Education Fund**, **Consumer Federation of America,** and **Public Citizen** appreciate the opportunity to comment on the CDFI Fund (Fund) Small Dollar Loan Program (SDLP). We support efforts to promote affordable and responsible small dollar loan programs but urge that any funding be tied to strict criteria in order to exclude high-cost loans or loans with high-risk features. Unfortunately, the CDFI designation is not sufficient to ensure that loans will be affordable and responsible. **Most critically, we urge that the Fund (1) limit SDLP grants to programs priced at the lower of 18% APR – with limits on fees outside of the APR to prevent evasions – or the state interest rate limit; and (2) limit eligibility to lenders whose portfolios do not include loans exceeding the lower of a fee-inclusive 36% APR or the state interest rate limit. We also urge the Fund to limit high-risk features and aggressive debt collection practices.**

CRL is an affiliate of Self-Help Credit Union, Self-Help Federal Credit Union, and Self-Help Ventures Fund, all CDFIs and, with CRL, part of the Center for Community Self-Help (Self-Help). For 40 years, Self-Help has created asset-building opportunities for low-income individuals, rural communities, women, and families of color. In total, Self-Help has provided over $9 billion in financing to 172,000 homebuyers, small businesses, and nonprofit organizations and serves more than 154,000 mostly low-income families through 62 retail credit unions in North Carolina, California, Florida, Illinois, South Carolina, Virginia, and Wisconsin. This comment is informed by Self-Help's experience.

Small dollar loans can promote financial inclusion when they are reasonably priced and responsibly made. Federal dollars should not be used to support loan programs, however, that offer high-cost loans or have dangerous features or practices.

Too often, however, we see "financial inclusion" as the central purported justification for permitting irresponsible lending practices, unreasonably high rates, and erosion of longstanding consumer protections. It is becoming difficult to keep track of all the affirmatively harmful regulatory actions taken in recent years in the name of "access to credit" and "financial inclusion" – which in reality exacerbate *exclusion*. At present, we are particularly concerned about a growing push to "promote financial inclusion" by lenders that charge high interest rates and evade state interest rate limits, an essential protection against predatory lending.[1] Even CDFIs have charged rates as high as a shocking 190% APR.

So-called "fintechs" offering online installment loans at high rates are among the loudest pushing for schemes to avoid state interest rate caps in the name of "access to credit." These lenders, using "soaring rhetoric,"[2] portray their loans as better alternatives to payday loans, but they often lead to similar problems. They often carry extremely high rates, with repayment still tied to payday, with little regard for the borrower's ability to repay while meeting other expenses – all part of a business model where lenders can profit despite high borrower defaults.

Data show time and again that high-cost unaffordable credit, like that offered by many of these so-called "fintechs" – and some CDFIs, discussed in section II below – does not drive out other, higher-cost unaffordable credit. It simply piles more unaffordable credit onto already struggling borrowers.[3]

Harm caused by high-rate loans extends far beyond the higher cost itself. High-cost lending turns incentives on their head, so that lenders succeed when borrowers fail.[4] Once even small portions of principal are paid down, lenders aggressively push refinances to borrowers to keep

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[1] The OCC and the FDIC are taking a lead role in this effort despite their lack of authority to regulate non-banks. The OCC's fintech charter would enable non-banks to ignore state rate caps. It has been successfully challenged by New York in Federal District Court, though the OCC is appealing the decision to the Second Circuit. Both the OCC and FDIC recently issued final rules providing that non-bank assignees of bank loans can ignore state interest rate caps and continue charging whatever interest the bank charged. These rules are being challenged in court by a number of State Attorneys General. The OCC also recently proposed a rule that would enable non-banks to ignore state rate caps by laundering loans through banks. The proposal would gut the centuries-old anti-evasion doctrine by providing that the "true lender" in a rent-a-bank scheme is the bank, so long as the bank's name is on the loan document. *See*, *e.g.,* Comments on the OCC's proposal to gut the true lender doctrine from a coalition of national consumer and civil rights groups, filed Sept. 3, 2020, at https://www.responsiblelending.org/research-publication/comment-occ-rule-would-allow-payday-lenders-use-rent-bank-schemes-evade-state.

[2] *See* Christopher K. Odinet, *Predatory Fintech and the Politics of Banking* 19, 20, 22-28 (Iowa Law Review (2021 Forthcoming)) (Aug. 2020), https://papers.ssrn.com/sol3/Papers.cfm?abstract_id=3677283

[3] *See* Comments of CRL, NCLC and other consumer and civil rights groups on the FDIC's Request for Information on Small-Dollar Lending at 5-8, Jan. 22, 2019, https://www.responsiblelending.org/sites/default/files/nodes/files/research-publication/crl-fdic-smalldollar-rfi-22jan2019.pdf.

[4] *See generally*, NCLC, *Misaligned Incentives: Why High-Rate Installment Lenders Want Borrowers Who Will Default* (July 2016), https://www.nclc.org/issues/misaligned-incentives.html.

them on a high-cost debt treadmill.[5] Even with these high refinance rates, defaults on high-cost loans are extraordinarily high. Elevate, a lender whose loans average 122% APR,[6] describes its mission as "Good Today, Better Tomorrow."[7] But Elevate has net charge-offs as a percentage of revenues of 50%.[8]

Thus, interest rate limits are an essential component of responsible lending because they better align lender incentives with borrower incentives by making it more difficult for a lender to build a business model with high defaults; they enable borrowers to make progress on paying down principal; and they make the loan cost reasonable for the borrower. At the same time, lenders can still make unaffordable loans even operating under reasonable rate limits – through coercive payment collection devices, loan flipping, and aggressive debt collection, including legal actions and garnishment. So an upfront ability-to-repay determination and protections from other harmful practices are also essential.

Extended high-cost indebtedness and default inflict misery of all kinds on borrowers and their families,[9] ultimately leaving them worse off than when they started. Communities of color are targeted and disproportionately harmed by high-cost lending, which exploits and fuels the racial wealth gap.[10]

The SDLP provides opportunities for CDFIs to grow responsible SDLPs, and we urge the Fund to ensure that its SDLP grant parameters be rooted in longstanding principles of responsible lending.[11] We urge the Fund to put its imprimatur only on lending practices that, in the spirit of

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[5] The CFPB found that for online payday installment loans (the channel for most new "fintech" loans) refinance rates were very high. CFPB Supplemental Findings on payday, payday installment, and vehicle title loans (June 2, 2016) at 15 (35% for storefront, 22% for online); *see also* Elevate Credit, Inc., Form 10K, 2019, https://www.sec.gov/Archives/edgar/data/1651094/000165109420000010/elevate10-kx2019.htm, at 15 (noting "[a]pproximately 55% of Rise installment customers in good standing had refinanced or taken out a subsequent loan as of December 31, 2019, with 40% of the outstanding Rise installment loan balances on that date consisting of new customer loans and 60% related to returning customer loans."). While mainstream lenders also often have substantial rates of refinancings, those lenders also charge rates that permit reasonable amortization of loan balances.

[6] Elevate Form 10K, 2019, at 75.

[7] Elevate Form 10K, 2019, at 6; *see also* Elevate's website at https://www.elevate.com/company.html.

[8] Elevate Form 10K, 2019, at 75; CFPB Supplemental Findings on payday, payday installment, and vehicle title loans (June 2, 2016) at 9 (the CFPB found that 55% of online loan sequences ended in default).

[9] For discussion of financial impacts as well as growing research documenting health impacts of the high-cost debt treadmill, *see* Comments from CRL, NCLC and additional consumer and civil rights groups to the OCC at 39-42, filed Sept. 3, 2020, at https://www.responsiblelending.org/research-publication/comment-occ-rule-would-allow-payday-lenders-use-rent-bank-schemes-evade-state.

[10] *Id.* at 43-44.

[11] Ability-to-repay based on income and expenses, without reborrowing, and without lender's reliance on collateral, is one of those longstanding principles, as discussed in Section IV.

the CDFI mission, comply with state usury laws and avoid burdening borrowers with high-cost debt.

I. Some CDFIs' current practices provide examples of what the SDLP should clearly not support.

Several CDFIs are engaged in lending at high rates and/or abusive debt collection practices. We provide these as clear examples of what the SDLP should not allow. But we emphasize that many programs far less irresponsible than these outliers still would not satisfy the standards that a federally subsidized program like the SDLP should uphold.

Fig Loans, which describes itself as the "first fintech" to receive CDFI certification, discloses an "example" APR of an extraordinary 190%.[12] The terms of its "Fig Loan" product range from $300-$750, from 4 to 6 months.[13] Fig Loans touts that it "provide[s] credit building alternatives to payday loans," and proudly shows the CDFI seal on its website. (See Appendix for a screenshot of the CDFI seal sharing a screen with a 190% APR loan.) There is no universe in which an entity charging 190% APR should have the imprimatur of the CDFI Fund.

Aura (formerly Insikt/Lendify) makes high-rate loans through finders. Aura charged between 40% and 69.99% APR on three-fourths of its loans in 2017.[14] Available loan performance data raise serious questions about the affordability of Aura loans. In 2017, 57% of Aura's average loans outstanding incurred a late fee, and those that were charged late fees incurred, on average, 4.5 late fees each. Aura charged off over 5,200 loans during 2017, or 15.8% of its average number of loans outstanding. Aura securitizes loans it brands as "social impact bonds."[15] Aura has also lobbied to weaken state usury laws – in California, Florida, and New York, for example – by pushing for exceptions that would allow it to lend at higher rates than the laws allow.

Aura's finder model also skirts broker laws in a number of states and encourages unaffordable lending. Aura pays these finders for marketing, brokering, and loan servicing. But these finders, though acting as brokers, are not licensed or regulated as brokers, even as they have access to a borrower's social security number, credit report, and other personal information. Aura also has pushed for laws that would enable it to pay finders more for larger loans than for smaller ones – a strong incentive for brokers to push borrowers into larger, less affordable loans.

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[12] https://www.figloans.com/

[13] *Id.*

[14] Aura's 2018 report, reporting on 2017 loans, to the California Department of Business Oversight, on file with CRL. These loans were all under $2,500, with most in the $500-$1,999 range, and with an average contracted term of 12 months.

[15] https://myaura.com/invest

Oportun, another CDFI, also has a history of charging high rates up to 69.99%. While its refinance rates are not available, 80% of its dollars loaned go to repeat customers.[16] Its late fees also signal unaffordability: In 2018, it collected late fees on roughly 75% of its loans.[17] Oportun has recently made headlines for grossly abusive debt collection practices.[18] ProPublica investigated Oportun's sue-to-intimidate method, finding that the company filed 47,000 suits across Texas over the last four years, making it the state's most litigious personal loan company. Oportun has filed over 5,000 suits in Texas since the start of the pandemic. The Guardian found that Oportun accounted for at least 15% of small claims filings in California from mid-2017 to mid-2018 and had filed 14,000 suits in the state during the first half of 2020.[19] The company drops suits in the rare cases where borrowers obtain lawyers, signaling it sues only to intimidate and/or collect default judgments. Oportun lends primarily to the Latino community, where its litigation tactics are prone to evoke pronounced fear in light of fear of immigration enforcement.[20]

Following media inquiries into its litigation practices, Oportun announced it would lower its maximum APR to a fee-inclusive 36%; drop its pending lawsuits; suspend new filings for the time being; and reduce its filing rate going forward by 60%.[21] Even if meets that target, Oportun would be the fifth most litigious debt collector in Texas – showing that interest rate alone does not guarantee affordability.[22]

Some CDFI banks and credit unions also engage in abusive overdraft practices. Overdraft fees strip billions of dollars annually from struggling consumers, leaving them less able to save to weather shortfalls, more vulnerable to predatory promises of "short-term" loans, and generally financially worse off.[23] Any CDFI program aiming to provide more vulnerable members with

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[16] Kiah Collier, Ren Larson and Perla Trevizo, *The Loan Company That Sued Thousands of Low-Income Latinos During the Pandemic*, ProPublica, Aug. 31, 2020, https://www.propublica.org/article/the-loan-company-that-sued-thousands-of-low-income-latinos-during-the-pandemic#:~:text=A%20monthslong%20investigation%20revealed%20that,%E2%80%94%20even%20amid%20COVID%2D19 (ProPublica, Aug. 2020).

[17] Raheem Hosseini, *Exclusive: the litigious debt collectors targeting Latinos during a pandemic*, The Guardian, Aug. 2, 2020, https://www.theguardian.com/us-news/2020/aug/02/oportun-loans-lawsuits-latino-small-claims-californi (The Guardian, Aug. 2020).

[18] *See* ProPublica, Aug. 2020 and The Guardian, Aug. 2020 for in-depth descriptions of Oportun's practices, including accounts of the impact of these practices on the financially distressed Latino borrowers featured.

[19] The Guardian, Aug. 2020.

[20] ProPublica found that of 467 lawsuits reviewed in Texas, fewer than half included the defendant's Social Security number. ProPublica, Aug. 2020.

[21] Oportun Statement, *Oportun to cap new loan originations at an "all-in" 36% APR*, July 28, 2020, https://oportun.com/about/press/oportun-to-cap-new-loan-originations-at-an-all-in-36-apr/.

[22] ProPublica, Aug. 2020.

[23] *See, generally*, Peter Smith et. al, *Overdraft Fees: Banks Must Stop Gouging Consumers During the COVID-19 Crisis*, Center for Responsible Lending (June 2020),

responsible credit options en route to better financial stability will be far less effective when paired with a high-cost overdraft program – so no CDFI that operates a typical abusive so-called "courtesy pay" program should be eligible for the SDLP.

II. SDLP grants should be limited to (1) loans not exceeding the lower of 18% APR, with limited fees, or the state interest rate limit, and (2) lenders whose portfolios do not include loans exceeding the lower of a fee-inclusive 36% APR or the state interest rate limit. In addition, SDLPs involving banks should abide by the interest rate limits in the state where the borrower resides.

To ensure that SDLPs are meeting the statutory objective to promote financial inclusion, they must operate within reasonable interest rate limits. As discussed earlier in Section I, interest rate limits promote affordability not only because they keep costs down but also because the higher the rate, the more easily lenders can profit even when large portions of borrowers default.[24]

Any loan that receives federal assistance must meet the highest standards. We urge the Fund to provide funding only for loans that comply with the lower of the interest rate cap for federal credit unions (currently 18% APR) or the state interest rate limit. The 18% APR federal credit union cap is rooted in years of federal regulatory precedent and is a reasonable cap, particularly for a product that will benefit from federal subsidy. In order to ensure that fees are not used to evade the 18% APR cap, the Fund should prohibit fees from exceeding one fee in a rolling 12-month period of no more than $20. This fee exemption is consistent with the Military Lending Act's exemption of one fee per rolling 12-month period from the Military APR (MAPR) for loans made under the National Credit Union Administration's Payday Alternative Loan (PAL) program.[25]

In addition, to ensure that SDLP funding is not effectively cross-subsidizing harmful lending, or that SDLP borrowers are not "upsold" into harmful products, eligibility for SDLPs should be limited to lenders whose portfolios do not include any high-cost loans. For small loans, the 36% fee-inclusive rate cap under the Military Lending Act (MLA) that protects servicemembers and their dependents is a widely accepted dividing line between affordable loans and high-cost ones.[26] For larger loans, states impose lower rate limits: a median of 31% APR including fees for

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https://www.responsiblelending.org/sites/default/files/nodes/files/research-publication/crl-overdraft-covid19-jun2019.pdf.

[24] *See generally*, NCLC, *Misaligned Incentives: Why High-Rate Installment Lenders Want Borrowers Who Will Default* (July 2016), https://www.nclc.org/issues/misaligned-incentives.html.

[25] 32 CFR Part 232.4(c)(iii)(B); see Department of Defense's discussion of its approach at 80 Fed. Reg. 43560, 43571 (July 22, 2015).

[26] *See* Lauren Saunders, *Why 36%? The History, Use, and Purpose of the 36% Interest Rate Cap*, NCLC (April 2013), https://www.nclc.org/images/pdf/pr-reports/why36pct.pdf.

a $2,000 loan and a median of 25% APR for a $10,000 loan.[27] Thus, to be eligible for funding, the maximum interest rate for any product in the lender's portfolio should be no higher than:

- For loans up to $1,000, the lower of a fee-inclusive 36% under the MLA or the state interest rate limit;

- For loans $1,001 to $2,500, the lower of a fee-inclusive 31% (calculated consistent with the MLA) or the state interest rate limit;

- For loans above $2,500, the lower of a fee-inclusive 25% (calculated consistent with the MLA) or the state interest rate limit.

It makes little sense to provide a federal subsidy to lenders making loans so expensive that Congress has prohibited them for our nation's servicemembers or that are illegal in most states. An exception should be provided for federal credit unions whose only product that exceeds these rates is PALs.

A number of CDFIs, as well as banks and credit unions that are not CDFIs, offer loans at these rates without a loss subsidy, demonstrating the feasibility of doing so with a loss subsidy. For example, a 2017 survey of credit unions operating in Arizona found that 45 offered one or more products of $500 or less at 18% APR or less; these loans do not incur fees beyond the annual credit union membership fee.[28] Credit cards are another widely available form of small dollar credit; even some subprime credit cards are priced well below 36% APR.

We also urge the Fund to require that SDLPs involving banks abide by the interest rate limits in the state where the borrower resides. We caution the Fund to be alert to potential "rent-a-bank" schemes, where non-bank CDFIs may seek to scheme with banks to take advantage of banks' preemption privileges in order to evade state laws that prohibit high interest rates.[29] If rates for bank SDLP programs are not required to comply with the state law where the borrower resides, then federal subsidies may inappropriately go to high-cost non-bank CDFIs that launder their loans through a bank to evade state rate caps. **In addition, we urge that no lender engaging in such schemes involving other loans in its portfolio be eligible for SDLP grants.**[30]

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[27] NCLC, *State Annual Percentage Rate (APR) Caps for $500, $2,000 and $10,000 Installment Loans* (2019), https://www.nclc.org/images/pdf/high_cost_small_loans/fact-sheet-apr-caps-for-installment-loans.pdf.

[28] Comments of Arizona-based Center for Economic Integrity to National Credit Union Administration, July 30, 2018, updated Aug. 24, 2018 (reporting results from a 2017 Arizona Community Action Survey) on file with CRL.

[29] Comments on the OCC's proposal to gut the true lender doctrine from a coalition of national consumer and civil rights groups, filed Sept. 3, 2020, at https://www.responsiblelending.org/research-publication/comment-occ-rule-would-allow-payday-lenders-use-rent-bank-schemes-evade-state.

[30] For detailed discussion of our concerns about rent-a-bank schemes, *see id.*

III. SDLP loans should carry an ability-to-repay determination that considers both income and expenses, and the Fund should consider operating the subsidy as a loss collar.

Lending based on a borrower's ability to repay – *while meeting other expenses*, *without needing to refinance/reborrow*, and *without relying on collateral* – is a fundamental tenet of responsible lending.[31] Thus, a meaningful ability-to-repay determination considers both the borrower's

[31] HOEPA statutory language since 1994 requires that repayment ability include "current and expected income, *current obligations*, and employment." 15 U.S.C. 1639(h): ". . . A creditor shall not engage in a pattern or practice of extending credit to consumers under [high-cost] mortgages . . . *based on the consumers' collateral* without regard to the consumers' repayment ability, including the consumers' current and expected income*, current obligations*, and employment" (emphasis added).

The 2000 OCC Advisory Letter on Abusive Lending Practices discusses equity stripping as "*reliance on . . . collateral, rather than the borrower's independent ability to repay*. . . ."OCC Advisory Letter on Abusive Lending Practices, AL 2000-7 (June 25, 2000), *available at* http://www.occ.gov/static/news-issuances/memos-advisory-letters/2000/advisory-letter-2000-7.pdf (emphasis added).

The 2001 Interagency Subprime Guidance provides that abusive lending practices occur when "the lender structures a loan to a borrower who has little or no ability to repay the loan *from sources other than the collateral pledged."* Interagency Expanded Guidance or Subprime Lending Programs, FIL 9-2001, January 31, 2001. The FDIC's 2005 payday loan guidelines also notes that it clarifies previously issued guidance, including the 2001 Expanded Subprime Guidance; the 2001 Expanded Subprime Guidance also contemplates equity stripping outside the context of mortgage lending, noting that lenders may make a loan to a borrower who has little or no ability to repay other than from the collateral pledged, then take possession of the borrower's home or automobile upon default.

The FDIC's 2005 payday loan guidelines describe concerns with "payday loans to individuals who do not have the ability to repay, or that may result in repeated renewals or extensions and fee payments over a relatively short span of weeks." FDIC Guidelines for Payday Lending (revised Nov. 2015), https://www.fdic.gov/news/financial-institution-letters/2005/fil1405a.html#:~:text=Provide%20that%20no%20more%20than,during%20the%20previous%2012%20months.

The Federal Reserve's 2009 HOEPA rules required verification of income, assets *and obligations* for both high-cost and higher-priced loans. They also note that "[l]ending without regard to repayment ability . . . facilitates an abusive strategy of 'flipping' borrowers in a succession of refinancings." Federal Reserve System, Truth in Lending, Regulation Z; Final Rule, 73 Fed. Reg. 44522, 44542, 445446. (July 30, 2008).

The Wall Street Reform Act, 2010, for all residential mortgages, requires "a reasonable and good faith determination based on verified and documented information," 15 U.S.C. § 1639c(a)(1), including, among other items, expected income, *current obligations*, *debt-to-income ratio or residual income*, and other financial resources other than the consumer's equity. 15 U.S.C. § 1639c(a)(3).

The regulations implementing the ability-to-repay provision of the Credit CARD Act of 2009 also require credit card issuers to consider "the consumer's current obligations." 12 C.F.R. § 1026.51(a)(1)(i).

NCUA's PAL program provides the following: "[T]he FCU must consider the borrower's *entire financial position*, *including debt burden*, and make an informed judgment consistent with responsible lending principles regarding whether to extend a PALs loan to a borrower. Accordingly, the FCU should conduct some inquiry into whether the borrower can manage to repay the PALs loan *without the need for additional PALs loans or traditional payday loans*." 84 Fed. Reg. 51942, 51946 (Oct. 1, 2019) (emphasis added).

The recent Interagency Lending Principles for Offering Responsible Small-Dollar Loans from the Federal Reserve, FDIC, NCUA, and OCC, states that characteristics of "responsible programs" include successful repayment "in accordance with original terms," and minimizing "cycles of debt due to rollovers or reborrowing." https://www.federalreserve.gov/newsevents/pressreleases/files/bcreg20200520a1.pdf.

income and expenses. Responsible underwriting is especially important when, like most online loans today, a lender has access to the borrower's checking account and can repay itself automatically out of the account before a borrower can pay other essential expenses.

Payment-to-income (PTI) ratios cannot substitute for underwriting. Consider a family of four living just below the federal poverty level of $24,300 annually or $2,025 monthly. A 5% PTI standard would unrealistically assume that the borrower has $101 in spare cash each month, or $1,215 annually, that they can spare toward service of additional debt. Yet, by definition, the poverty level is the level below which a family already has insufficient income. Even at somewhat higher income levels, it is far-fetched to categorically assume that a borrower who is already struggling financially has an extra 5% of her income available to put towards a new debt.

The CDFI should also monitor default rates (discussed below) because high default rates signal unaffordability. But low default rates alone do not mean borrowers have the ability-to-repay. Refinances mask unaffordability. And when a lender has a repayment mechanism, like electronic access to the account, the lender will often collect payment even when the borrower cannot afford the loan. Thus, review of default rates does not substitute for an upfront ability-to-repay determination.

To ensure subsidized programs have adequate incentive to determine ability-to-repay, the Fund could operate the loss subsidy as a collar, whereby the lender takes the first x% of losses and anything over y%, while the grant covers losses between x%-y%.

IV. Additional structural and procedural safeguards are important to protect borrowers.

We further urge the Fund to require the following:

- **Equal, fully amortizing installments due at equal intervals**. SDLP loans should carry a traditional responsible loan structure with no balloon payments or other surprises for borrowers.

- **Minimum and maximum loan terms, tiered by size.** Minimum loan terms promote affordable installment payments. Maximum loan terms help to ensure that relatively small payments, repaid over a very long period of time, don't end up costing borrowers an unreasonable amount in interest relative to principal borrowed. For example, a tiered structure could look something like this:

    - Up to $500: 3-12 months
    - $501-$1,000: 6-12 months
    - $1,001-$2,500: 12-24 months

- **No coerced automated repayment.** Regulation E makes it illegal for lenders to require installment loan borrowers to repay by preauthorized electronic fund transfer (EFT). But some lenders coerce automated repayment by, for example, delaying loan disbursement for borrowers who do not agree to automatic repayment; making it unreasonably onerous to sign up for manual payment; charging fees for manual payment that have no relationship to the cost of processing those payments; or requiring repayment by remotely created check if the borrower does not agree to an EFT. The Fund should ensure that automated repayment is not coerced.

- **No excessive refinancings, which signal unaffordable lending.** High refinance rates are a hallmark feature of unaffordable loan programs. Refinancing can mask defaults or lengthen the debt trap, and upfront fees provide lenders added incentives to push refinances. Consequently, (1) upfront fees should be prohibited or (2) upfront fees on any loan repaid early should be refunded *pro rata* upon prepayment. Even without upfront fees, lenders have incentives to keep borrowers in sustained indebtedness by pushing refis. Thus, refinancings should either be prohibited before 80% or 90% of principal has been paid down, or a 30-day gap between loans should be required.

- **No add-ons, including credit insurance.** Add-ons like credit insurance dramatically drive up the cost of loans, incentivize lenders to push refinances, and provide little-to-no value to borrowers. These should be prohibited outright.

- **No security interest in household goods, vehicles, or deposit accounts except for loans with a savings component.** These security interests create perverse incentives for lenders to make unaffordable loans because they hold borrowers' necessities, like their car or their incoming paycheck, over their heads to coerce payment. Vehicle title loans are notoriously abusive and unaffordable. SDLP loans should be unsecured, except by a savings account for loans with a savings component or credit builder loans.

- **No or low late fees.** Given the subsidy involved, late fees should be low – for example, $5 – and limited to one fee per default.

- **No repayment by overdrawing the account.** Lenders who hold the account from which repayment is being made should not be permitted to make a loan payment that overdraws the account or when the account is already overdrawn.

- **No abusive overdraft programs by participating lenders.** Lenders who operate typical abusive overdraft programs should be ineligible. These programs are harming the very borrowers the SDLP is intended to help. Moreover, even if, consistent with the prior bullet point, a lender is prohibited from repaying the loan via overdraft, subsequent debits to the account could trigger overdrafts and overdraft fees, due in part to the loan repayment. Thus, lenders should not be allowed to charge per-transaction or per day overdraft fees (as opposed to a reasonably priced overdraft line of credit offered under the Truth in Lending Act where the cost is a function of the amount owed and the time for which it is owed).

- **Responsible debt collection practices.** Aggressive debt collection practices are another sign of unaffordable lending. Lenders should be required to make affordable loans upfront and adhere to the following on any SDLP loans:
    - **Required workout program.** Lenders should be required to offer and prominently disclose reasonable accommodations to struggling borrowers before pursuing other debt collection avenues.
    - **No sale of defaulted debt.** Debt buyers are notorious for their abusive debt collection practices.
    - **No lawsuits to collect debt.** A small dollar loan that receives a federal subsidy should not lead a consumer into a legal nightmare that could lead to wage or bank account garnishment or compounding fees.
    - **Required reporting about details of debt collection practices.** Participating lenders should be required to describe how they address borrowers at varying levels of delinquency, as well as information on accounts placed with debt collectors.

- **Savings features should be encouraged.** Savings features promote a more stable financial future. The cushion they build also makes borrowers less vulnerable to predatory lenders going forward. The savings component can be built into the regularly-scheduled payments on a loan – provided that the resulting payment is still affordable – or, at a minimum, loans can be structured so that, subject to the consumer's consent, payments continue for a period of time after the loan is repaid with all of the payments going into a savings vehicle.

- **No forced arbitration clause or class action ban.** These contractual provisions promote irresponsible lending by sheltering lenders from accountability for violating the law. These clauses should be prohibited.

- **Reporting.** We encourage the Fund to require loan level data that enables it to understand loan costs, terms, refinances, delinquencies, and defaults. We also, as noted above, encourage it to collect details of the debt collection practices associated with the SDLP.

V. Conclusion

Thank you for considering these comments. We would be happy to discuss them further.

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(see following page for Appendix)

Appendix

Screenshot from Fig Loans website showing CDFI seal beside an example rate of 190% APR