OPPORTUNITY FINANCE NETWORK™

October 7, 2016

Director Richard Cordray
Consumer Financial Protection Bureau
1275 First Street NE
Washington, DC 20002

Re: RIN 3170-AA40

Dear Mr. Cordray:

Opportunity Finance Network (OFN) appreciates the opportunity to comment on RIN 3170-AA40, the Payday, Vehicle Title, and Certain High-Cost Installment Loans proposed rule, published in the Federal Register on July 22, 2016.

OFN is a national network of community development financial institutions (CDFIs) investing in opportunities that benefit low-income, low-wealth, and other underresourced communities across America. OFN Members are performance-oriented, responsible investors that finance community businesses, sparking job growth in the areas that need it most, and delivering both sound financial returns and real changes for people and communities.

Our network has originated more than $42 billion in financing in urban, rural, and Native communities through 2014. With cumulative net charge-off rates of less than 1 percent, we have demonstrated our ability to lend prudently and productively in unconventional markets often overlooked by conventional financial institutions.

OFN supports responsible lending and increased consumer protection at the federal level, and applauds the Consumer Financial Protection Bureau (CFPB) for its leadership in reining in predatory lending practices. The proposed rule makes some important steps to protect vulnerable consumers. However, it also contains significant loopholes that must be closed in order to truly limit the negative impacts of payday lending, especially in low-income communities.

OFN's comments on the proposed rule include: identifying the loopholes that need to be closed; highlighting the role of CDFIs in providing access to affordable, responsible credit; and detailing payday lending alternatives CDFIs in our network have developed to meet the small dollar credit needs of their borrowers.

Proposed Rule: Critical Loopholes Need to Be Addressed

OFN agrees that the core ability-to-repay principle of the CFPB's proposal– requiring lenders to ensure that a loan is affordable without having to re-borrow or default on other expenses- is the right approach. At the same time, OFN agrees with the Center for

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Responsible Lending that the proposal contains significant loopholes that must be addressed in the final rule, and would like to reinforce these recommendations[1]:

- **Exceptions to the ability-to-repay requirement**

  The proposal exempts six high-cost payday loans from the ability-to-repay requirement. Given that payday loans can carry costs as high as 391% on average, agrees with the Center for Responsible Lending that this loophole allows lenders to make six unaffordable loans, which is too many. Even a single unaffordable loan can result in a cascade of dangerous financial consequences for borrowers. OFN appreciates that this exception to underwriting is not available to car title loans; in the same way, this six loan exemption loophole must be closed.

- **Repeated flipping of loans**

  The CFPB's current proposal does not provide sufficient protections to protect borrowers from being flipped from one unaffordable loan to the next. For short-term loans, the CFPB must do better to ensure that short-term debt does not become unaffordable long-term debt. The final rule should ensure a 60-day cooling off period between each short-term loan, rather than just 30 days as proposed. It should also ensure that short-term loan indebtedness does not exceed a total of 90 days every 12 months, consistent with FDIC 2005 guidelines for its banks, and similar to guidelines for NCUA for short-term loans.[2]

  The CFPB must also strengthen the protections against repeat refinancing of longer-term loans higher-cost loans with an all-in APR exceeding 36%, and for which the lender takes extraordinary leverage over the borrower's bank account or car title. Loopholes in the long-term portion of the rule are particularly concerning because lenders, anticipating stricter rules on short-term loans, are increasingly making long-term loans. These loans pose significant risks by allowing lenders to repeatedly flip borrowers from one long-term loan into another, keeping them stuck in a repeat cycle of debt. OFN supports measures to strengthen protections against flipping of these loans and stronger measures to prevent high defaults.

- **"Business as usual" loopholes in the ability-to-repay requirement**

  The draft rule does not go far enough to ensure that people have enough money to survive financially after repaying the loan. To fix this, lenders should be

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[1] Center for Responsible Lending, "Initial Analysis of CFPB's Proposed Rule to Address Payday and Car Title Loans", June 6, 2016. Available at

[2] Federal Deposit Insurance Corporation, "Financial Institution Letters: Guidelines for Payday Lending (Revised November 2015)", Available at https://www.fdic.gov/news/news/financial/2005/fil1405a.html; National Credit Union Administration, "Final Rule - Part 701, Short-term, Small Amount Loans", October 2010. Available at https://www.ncua.gov/Legal/Documents/Regulatory%20Alerts/RA2010-13.pdf.

required to use an objective measure for reasonably projecting a borrower's basic living expenses, and avoid over-reliance on back-end measures like default and reborrowing rates. Even low default rates are not sufficient evidence of ability-to-repay, given the lender's ability to coerce repayment through control over the borrower's bank account or car regardless of whether the borrower can afford the payment, and even if the payment overdraws the borrower's account.

The CFPB should take care not to sanction industry-wide high rates of defaults and reborrowing by comparing one payday lender's default rates only to other payday lenders' default rates. The CFPB can and should close the "business as usual" loopholes in the ability-to-repay test by requiring lenders to show that loan payments will leave borrowers with enough money to pay their necessary expenses, and not allow them to rely on already too low industry standards as evidence that loans are affordable.

- **Exemption for loan payments less than 5% of borrower's income**

  OFN commends the CFPB for closing one loophole that was included in the preliminary proposal released in 2015: exemption from the proposed ability-to-repay test if loan payments are less than 5% of a borrower's income. Examining income only is not enough to determine if a loan is affordable, especially for borrowers who are already stretching every dollar just to cover basic needs. In addition, the CFPB's own data shows that even loans under this 5% payment to income threshold still results in high default, with between 28% to 40% of loans defaulting, on average. Closing this loophole is an important step in helping consumers avoid expensive and predatory debt traps.

OFN urges the CFPB to close these remaining loopholes in order to stop the harmful debt trap of unaffordable payday loans.

CDFIs: Providing Critical Access to Capital

Lack of access to traditional financial services like checking and savings accounts as well as limited relationships with mainstream financial institutions mean there is a massive unmet credit need in low income communities. More than nine million American households are unbanked, meaning they do not have a checking or savings account. An additional 20 million households are underbanked, meaning they may have an account but instead rely on alternative financial services.[3] Payday lenders are able to flourish in many low-income communities because there is a demand for the products and services they provide: quick, convenient access to short-term credit. For millions of Americans who don't even have

[3] Federal Deposit Insurance Corporation, 2013 FDIC National Survey of Unbanked and Underbanked Households," October 2014. Available at https://www.economicinclusion.gov/surveys/2013household/documents/2013_FDIC_Unbanked_Underbanked_HH_Survey_ExecSumm.pdf.

enough savings to cover a $400 emergency, payday lending provides cash needed to cover a shortfall. A 2015 report on the Report on the Economic Well-Being of U.S. Households in 2014 found 47 percent of respondents say they either could not cover an emergency expense costing $400, or would cover it by selling something or borrowing money.[4]

Exacerbating the issue, even if customers have relationships with a financial institution, most banks and credit unions do not even offer small dollar loans. Small dollar lending requires considerable investments of staff time, accounting and risk management systems, and oversight needed to issue and document an in-person loan for such a small amount. Traditional financial institutions are also operating within a regulatory environment where additional compliance and reporting requirements make small dollar lending risky and expensive. This gap between the credit needs of consumers and the products available from traditional financial institutions has allowed unscrupulous lenders to prey on financially vulnerable consumers, creating a multibillion dollar industry whose revenue model is based on keeping consumers trapped in debt.

These challenges are even more pronounced in communities of color. A Center for Responsible Lending study of Florida's payday lending landscape found Florida payday lenders are more highly concentrated in communities with significant black and Latino populations. The study found that high-minority areas in Florida (over 50% black and Latino) have 8.1 payday lending stores per 100,000 people, compared to 4.0 stores for neighborhoods that are mostly white (below 25% black and Latino). The study found that even when controlling for income, store concentrations are notably higher in high-minority census tracts when compared to their low-minority counterparts.[5]

There is a clear need for prudent, responsible small dollar lending, and CDFIs are stepping up to fill this gap. According to the FDIC, CDFIs fill a niche in the nation's financial services system by specializing in providing credit to borrowers and communities that may be difficult for traditional banks to serve, including borrowers that may lack credit history, have limited personal savings, or have had poor past experiences with alternative or predatory credit providers.[6]

CDFIs like the ones in OFN's network provide access to capital in under-resourced communities without predatory and usurious pricing of their loan products. CDFIs are profit-making, but not profit-maximizing, offering affordable financial products combined with

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[4] Federal Reserve Board Division of Consumer and Community Affair, "Report on the Economic Well-Being of U.S. Households in 2014," May 2015. Available at https://www.federalreserve.gov/econresdata/2014-report-economic-well-being-us-households-201505.pdf.

[5] Brandon Coleman, Policy Counsel Delvin Davis, Senior Researcher, "Perfect Storm: Payday Lenders Harm Florida Consumers Despite State Law", March 2016. Available at http://www.responsiblelending.org/sites/default/files/nodes/files/research-publication/crl_perfect_storm_florida_mar2016.pdf.

[6] Federal Deposit Insurance Corporation,
"Strategies for Community Banks to Develop Partnerships with Community Development Financial Institutions", March 2014. Available at https://www.fdic.gov/consumers/community/cdfi/cdfis_entirereport.pdf.

technical assistance and financial coaching needed to help ensure that borrowers use credit and capital effectively. Because CDFIs are mission-focused, ensuring borrowers' ability to repay is core to their business model.

An increasing number of certified CDFIs are providing access to affordable, responsible small dollar loans. In addition to approximately 25 CDFI loan funds that make consumer loans, CDFI-certified banks and credit unions are also increasingly meeting the credit needs of low- and moderate-income consumers or those who have been underserved by traditional financial institutions.

CDFIs work at the crossroads of the financial services industry, lending with a mission focus in the markets about which the CFPB is most concerned. Because CDFIs – by nature of their mission – lend responsibly, we encourage the CFPB to look to the opportunity finance industry for examples of responsible small dollar loan products like the ones listed below, and to allow some regulatory flexibility for CDFIs to continue to innovate and meet the credit needs of the communities they serve successfully.

Examples of CDFI Payday Lending Alternative Products

Below is a list of a few consumer financial products and services and payday loan alternatives offered by CDFIs in OFN's network:

- **Capital Good Fund** is a CDFI based in Rhode Island with a mission of providing equitable financial services that create pathways out of poverty. Capital Good Fund has provided more than 1,000 loans totaling more than $1 million since it was founded in 2009 and has had a repayment rate of 90 percent. Capital Good Fund's underwriting and risk management policies are based on close relationships with customers and sound underwriting standards, rather than a reliance on big data or what the organization terms "magic algorithms." Loan payments made by Capital Good Fund's borrowers are submitted to the three main credit bureaus, enabling its customers to build credit. The CDFI also offers financial coaching to both customers and non-customers for a fee of $180. This fee is broken down into monthly payments of $15 and is booked as a loan with zero percent interest that is also submitted to credit bureaus, providing yet another opportunity for positive credit building.[7]

- **One Detroit Credit Union** is a Detroit credit union with a mission to help people in their community who have been overlooked by the mainstream banking system providing them with credible, fair and reasonably priced financial products

[7] Noelle S. Baldini, "Capital for Communities: CDFIs Innovate on Small Consumer Loans*", Federal Reserve Bank of Philadelphia, CASCADE: NO. 91, SPRING 2016, available at https://www.philadelphiafed.org/community-development/publications/cascade/91/01_capital-for-communities.

and services. One Detroit offers the MyPay small dollar loan product as an alternative to payday loans, which allows One Detroit Credit Union members to borrow $500 with an interest rate of 18% and a 60-day repayment term.

- **Rio Grande Valley Multibank Corporation (RGVMC)** is a Texas-based CDFI with a mission to provide financial products and development services to the Rio Grande Valley, particularly in the area of affordable housing and consumer lending. RGVMC provides affordable, alternatives to payday and car title loans through their Community Loan Center Small-Dollar Loan Program. The Community Loan Center (CLC) was established in 2011 by the RGVMC in order to offer low-interest, low-fee personal loans. Since October 2011, CLC has loaned $3.9 million to borrowers in the Rio Grande Valley. The program offers employer-based, small-dollar loans ranging in size from $400-$1,000 with a one-year term. For a $1,000 loan with a 30-day term, the average payday lender charges $775 in fees. RGVMC charges only $120 in fees with a 12-month repayment, and all earnings are reinvested into the program for expansion and lending capital.

- **Sunrise Banks** is a Minnesota-based CDFI bank that developed the TrueConnect loan product**.** The employer-based loan integrates with payroll systems through proprietary software that's designed to scale. Based on a borrower's salary rather than credit score, loans range from $1,000—$3,000 and, to avoid excessive borrowing, cap at 8% of wages. Payments are deducted directly from the borrower's paycheck over a 12-month period. Sunrise also offers employers its financial education program to accompany the loan. The CDFI has successfully piloted the product with three employers in Minnesota, Ohio, and California, including Minnesota Lutheran Social Services (LSS), which employs 2,300 people statewide. Employees facing hardships or financial needs—maybe an unexpected hospital expense, car repair, or other emergency – can apply for a loan through TrueConnect's affordable and confidential platform. Sunrise plans to expand TrueConnect nationally and to offer a safe loan alternative for those 26 million Americans who do not have a credit score.

The CFPB proposal represents a huge step forward in reducing the negative impact of payday lending in low-income communities. OFN appreciates the CFPB's thoughtful approach to crafting the rule, and we encourage the Bureau to continue to ensure people in all communities have access to affordable, responsible financial products and services.

OFN urges the CFPB to issue a final rule that will rein in predatory practices, but also allows space for responsible lenders like CDFIs to continue to offer access to affordable financial products and services. We also encourage the CFPB to make continued efforts to ensure lenders are fully disclosing interest rates and fees relate to small dollar loans to borrowers upfront, and that borrowers have access to information needed to understand the costs of payday loans as well as other affordable loan options such as the products offered by CDFIs.

We appreciate your consideration of these comments and look forward to continuing to work with you. Please do not hesitate to contact me if you have questions or concerns about these recommendations via email: dwilliams@ofn.org or phone at; 215.320.4318.

Thank you,

Dafina Williams

Dafina Williams
Vice President, Public Policy

cc: Liz Lopez, Executive Vice President, Public Policy
Nancy Santiago Negrón, Chief External Affairs Officer