April 23, 2012

RE: BUREAU OF CONSUMER FINANCIAL PROTECTION
[Docket No. CFPB–2012–0009]
Request for Comment on Payday Lending Hearing Transcript

AARP appreciates the opportunity to provide feedback regarding payday lending in response to the request for comments, 77 F.R. 16817 (Mar. 13, 2012). Payday lenders, one of the main players in the "fringe banking" industry, target vulnerable borrowers who cannot access traditional sources of credit.[1] Rather than helping them handle a short-term crisis, such loans actually exacerbate their financial distress. While State legislatures have enacted usury, small loan, and other interest rate limits to protect these borrowers, the companies that make these loans historically have engaged in various practices designed to avoid such laws. AARP urges the Consumer Financial Protection Bureau ("the Bureau") to take steps to protect consumers from lending practices that are harmful to borrowers and society.

AARP addresses the specific questions posed by the request for comments below. While specific comment regarding the ability of consumers to obtain redress for injuries caused by payday lending has not been sought, AARP believes the Bureau should ban forced arbitration clauses contained in payday lending contracts.

The forced arbitration clauses routinely imbedded in the contract for such loans make it virtually impossible for any victim of payday lending to challenge the practices of payday lenders, especially since the court ruled in *AT&T v. Concepcion* that many state court defenses to such clauses are no longer available.[2] Despite the availability of the arbitration, consumers do not access it. Indeed, in *King v. Advance America*, the plaintiffs learned in discovery that no person nationwide had sought relief in arbitration.[3] Nevertheless, that case was forced into individual arbitration after *AT&T v. Concepcion*

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[1] Sharon Hermanson, George Gaberlavage, *The Alternative Financial Services Industry*, AARP PPI Issue Br. 51 (Aug. 2001).
[2] *AT&T Mobility, LLC v. Concepcion,* 131 S. Ct. 1740, (2011).
[3] *Raymond King, et al., v. Advance America, Cash Advance Centers, Inc., et al., defendants, Sharlene Johnson, et al., v. Advance America, Cash Advance Centers, Inc., et al.,* C.A. nos. 07-237, 07-3142, 2011 U.S. Dist. Lexis 9863 (E.D. PA Aug. 31, 2011).

was decided. Instead of providing relief for thousands of borrowers from the illegal practices at issue in the case, only the claims of the individual named plaintiffs survived.

Payday lending is a major source of credit for a wide variety of low income and minority people, whether or not they have bank accounts. This segment of consumers needs greater protections, and forced arbitration should not be permitted in payday lending contracts.

Does the impact of payday loans and deposit-advance products vary by the type of consumer?

Regardless of the type of product, payday loan and deposit advance products harm consumers in the greatest amount of need. While there are clear differences between an over- draft protection policy, a two week payday loan, or another form of deposit advance product, the end result is that consumers who are least likely to understand the costs or to understand their alternatives, and who are most vulnerable to being taken advantage of, are those most likely to be targeted and harmed by such lending.[4]

AARP is particularly concerned about the negative impact on Social Security beneficiaries. Older people are increasingly entering their retirement years with high levels of debt. Indeed, they often have unaffordable debt that consumes over 40 percent of the monthly income.[5] The consequences of unaffordable debt can be devastating, especially at a time in one's life when income typically decreases and remaining working years are limited. Many people do not have the resources to preserve their independence, financial security, or even to provide the basic necessities of life.

In addition, older people are often targeted by abusive debt collection practices, scams, and fraud that may exacerbate their need and drive them toward such high cost products. Older people are significantly more susceptible to fear-based marketing and outright threats, have a limited understanding of the court systems, may fear they will be jailed or lose their homes for not paying their debts, and increasingly lose their capacity to make financial decisions as they age.[6] Older people thus are at great risk of being taken advantage of by such high cost lending.

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[4] See Ann McLarty Jackson, Donna V.S. Ortega, Elizabeth Costle, George Gaberlavage, Naomi Karp, Neal Walters, Vivian Vasallo, *A Portrait of Older Underbanked and Unbanked Consumers: Findings from a National Survey* (September 2010). Available at http://www.aarp.org/money/credit-loans-debt/info-09-2010/D19394.html

[5] See EBRI Notes, *Debt of the Elderly and Near Elderly, 1992–2007*, Vol. 30, No. 10. p.9 [Oct. 2009] available at http://www.ebri.org/pdf/notes pdf/EBRI_Notes_10-Oct09.DebtEldly.pdf

[6] See Donna S. Harkness, *When Over-The-Limit is Over The Top: Addressing The Adverse Impact of Unconscionable Consumer-Credit Practices on the Elderly*, 16 Elder L.J. 1, 3-4 (2008); Matthew W. Ludwig, *Abuse, Harassment, and Deception: How the FDCPA is Failing America's Elderly Debtors*, 1 Elder L.J. 135, 135-37, 151-56 (2008).

An additional concern is that the Treasury Department has implemented a paperless disbursement policy that requires all recipients of Social Security and other federal benefits to receive their funds via direct electronic deposit. This policy change opens all Social Security recipients to the risk of having their funds removed from their accounts – either by bank offset policies, overdraft fees, or payday advances – before the recipient has access to the funds. AARP urges the CFPB to work with the Treasury Department and other relevant agencies to prevent the offset of Social Security by either payday lenders or mainstream banks.

Who is helped and who is harmed by deposit advance and payday products?

Payday loans have stripped what little wealth there was from the most impoverished communities. Payday lenders target the working poor, minorities, and people who depend on Social Security benefits or who have blemished credit histories. Such people have less access to traditional sources of short-term unsecured credit, such as credit cards and checking accounts with overdraft lines of credit. Overdraft abuses have driven them further into debt. Their ability to obtain credit has further diminished with the general decline in the willingness of banks and finance companies to make small short-term loans.[7]

Well aware that they are an easy source of quick cash for many low-income consumers, payday lenders maintain they do nothing wrong and, in fact, provide a benefit by filling the gap left by traditional lenders. Even if this were true, the provision of a needed service does not justify the harm inflicted on consumers by these lenders.

Payday lenders understand that borrowers often will not be able to pay their loans and that they will need recurring loans in order to make ends meet. When the lenders make these loans, they push poor borrowers deeper into debt and therefore are assured of future business. As industry leaders themselves acknowledged, the payday lending business model depends on keeping borrowers in debt.[8]

Does the answer vary depending on whether the product is provided by a storefront, a bank, or online?

AARP believes that harm may be caused by such loans regardless of whether the product is provided through a storefront, online, or a bank. But there are differences in who may access such products. For example, a consumer in a state that bans

[7] Nat'l Consumer Law Ctr., THE COST OF CREDIT, 17 n. 27 (2005) (traditional finance companies have left the small-loan market in the last 20 years for greater profitability in larger-loan markets).
[8] *See* Uriah King & Leslie Parrish, Ctr. for Responsible Lending, *Springing the Debt Trap,* 11-12 (2007) (payday lenders and industry observers commenting on the necessity of return customers), http://www.responsiblelending.org/payday-lending/research-analysis/springing-the-debt-trap.pdf .

storefront payday lending would be at greater risk of products made available over the internet.

Communities with large numbers of storefront payday lending establishments are correlated with higher levels of crime. Lower income and minority neighborhoods are far more likely to host a large number of such facilities than higher income neighborhoods, putting the residents at greater risk.

AARP is also concerned about the increasing number of mainstream banks that have entered the payday lending market and are offering payday advances. Consumers may expect that banks, rather than alternative financial services providers, are a safer alternative for them. Many people who lack the level of financial literacy or mental capacity necessary to protect them from high cost lending[9] may assume that banks will not charge exorbitant interest rates, even if they don't fully comprehend the nature of interest and fees.

Additionally, internet payday lending presents significant challenges. States have limited regulatory or enforcement authority over such entities. Consumers have little opportunity to evaluate the products they offer and limited recourse for loans that are harmful or illegal. Moreover, few consumers understand how to seek redress or understand that they may have a remedy when they are taken advantage of by lenders that violate the law.

How are small-dollar loans and products marketed?

Payday loans are marketed as a quick, easy way to obtain cash. Borrowers only need to maintain a personal checking account, be employed for a specified period with their current employer, and show a pay stub and bank statement. Payday lenders do not make inquiries routinely made by mainstream lenders: credit checks, examinations of the borrowers' ability to repay, or assessments of the borrowers' debt-income ratio.

For decades, cash advance and payday lenders have used a variety of ruses to avoid the requirements of state laws designed to protect consumers. Invariably, laws enacted to protect the most distressed borrowers are often thwarted by practices that disguise the interest rates and fees, the lending methods, the actual lender, or another key element of the transaction.

Conclusion

AARP has long been involved in state activity to protect consumers from predatory lending practices. We supported the enactment of the Dodd/Frank Wall Street Reform and Consumer Protection Act, and the jurisdiction conferred upon the CFPB over non-bank entities. We appreciate the opportunity to comment on the dangers of payday lending, and look forward

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[9] *See* Naomi Karp, T. Ryan Wilson, *Protecting Older Investors: The Challenge of Diminished Capacity*, 11, AARP Public Policy Institute (Nov. 2011)

to working with the Bureau in the future. If you have any further questions, please feel free to contact Mary Wallace of our Government Affairs staff at 202-434-3954.

Sincerely,

David Certner
Legislative Council and Legislative Policy Director
Government Affairs