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May 15, 2019

Comment Intake
Consumer Financial Protection Bureau
1700 G Street NW
Washington, DC 20552

RE: **Payday, Vehicle Title, and Certain High-Cost Installment Loans**
Docket No. CFPB-2019-0006

Dear Director Kraninger:

On behalf of our 38 million members and all older Americans nationwide, AARP writes today to thank you for the opportunity to comment on the Consumer Financial Protection Bureau's (CFPB) re-consideration of its rule governing payday, vehicle title, and certain high-cost installment loans. AARP finds that older adults face increasing financial challenges as they age, and are poorly served by lending practices that threaten their financial livelihoods at a time when they are least able to rebound from shortfalls.

AARP firmly believes that business practices, consumer contracts, and marketing materials should be straightforward—not unfair, deceptive, or abusive.[1] And yet, the high-cost loan products subject to the CFPB's regulation have all demonstrably violated this principle based on the disconnect between what is offered and the practical experience of borrowers.[2] Based on the documented harms of payday, auto title, and related loan products on older Americans and their families, the long record of state, local, and nonprofit actors seeking to limit these harms to consumers, and the importance of borrower protections in consumer financial markets, AARP has serious concerns with the proposal to eliminate ability to repay requirements for these loans as described below.

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[1] "AARP Consumer Principles," AARP Policy Book 2019-2010, available at https://policybook.aarp.org/policy-book/financial-services-and-consumer-products/aarp-consumer.
[2] AARP respectfully disagrees with the revised proposal's claim that this disconnect does not represent a form of consumer harm: "The Bureau doubts that an inconsistency between a company's business model and its marketing of a product or service is a pertinent factor in assessing whether the method of deciding to extend credit constitutes unreasonable advantage-taking." 84 FR 4276.

In addition to maintaining the 2017 rule's ability to repay standard, AARP also encourages the CFPB to maintain the payment protection provisions under the existing rule in order to prevent aggressive collection practices that lead to involuntary bank account closures.

Payday, vehicle title, and high-cost installment lending threaten 50+ Americans' financial livelihoods

Recent data estimate that nearly 1.8 million households headed by someone age 50 or older took out a payday, auto title, or related loan product in 2017—comprising more than two out of every five high-cost loan borrowers nationwide.[3] 3.5 percent of households headed by someone age 50 to 64 used these products, reflecting similar usage to their younger counterparts, among whom 3.6 percent took out a loan. Of those age 65 and over, about 1.8 percent took out such a loan in 2017. State data also reflects growing use of payday loans by older borrowers. In California, payday lending usage tripled among Americans age 62 and older from 2015 to 2016, and in Florida, borrowers age 65 and older were the fastest-growing demographic.[4]

The likelihood of repeat borrowing for payday and auto title borrowers has long been well-documented, with the vast majority of customers reborrowing or refinancing a loan rather than paying it back on time.[5] Recent findings from states reinforce this trend. In California, more borrowers in 2017 took out ten or more payday loans than took out a single loan, and nearly four out of five repeat transactions took place within a week after concluding a previous transaction, suggesting that the vast majority of borrowers rolled over their loans because the initial loan was unaffordable.[6] Additionally, borrowers in California age 52 and older engaged in seven transactions per year on average, higher than any younger age group.[7] In Florida, 83 percent of payday loans in 2015 were to borrowers with 7 or more loans per year, and 57 percent

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[3] AARP tabulations of Federal Deposit Insurance Corporation 2017 Survey of Unbanked and Underbanked Households. The June 2017 Current Population Survey asked a number of questions about financial services usage. This count includes any household in which someone took out "a payday loan or payday advance from
some place other than a bank," or an auto title loan, or "any other types of loans or lines of credit from a payday lender, auto title lender, pawn shop, or check casher." (Pawn loans specifically were the subject of another question not included in this estimate.)

[4] Alessandra Malito, "Lax payday loan regulations could hit older Americans especially hard," *MarketWatch*, February 9, 2019, available at https://www.marketwatch.com/story/lax-payday-loan-regulations-could-hit-older-americans-especially-hard-2019-02-08.

[5] For example, Leslie Parrish and Uriah King, "Phantom Demand: Short-term due date generates need for repeat payday loans, accounting for 76% of total volume," Center for Responsible Lending, July 9, 2009, available at https://www.responsiblelending.org/payday-lending/research-analysis/phantom-demand-final.pdf.

[6] California Department of Business Oversight, "Summary Report: California Deferred Deposit Transaction Law - Annual Report and Industry Survey," June 2018, available at http://www.dbo.ca.gov/Licensees/Payday_Lenders/pdfs/Annual%20Report%20CDDTL%202017%20Final.pdf.

[7] Ibid.

of loans were to borrowers taking out 12 or more loans per year.[8] And in Texas, the average borrower in 2017 refinanced a single payment payday or auto title loan roughly six times, with refinances constituting the majority of all loan transactions (56 percent of payday loans and 65 percent of title loans).[9] Meanwhile, installment loan borrowers in Texas refinance less frequently, but incur far higher fees and effective annual percentage rates. An appendix to this letter details several borrower accounts with these loans by, or on behalf of, older Americans and their families.

The consequences for these borrowers are severe. While on average older adults have higher levels of savings and assets, there remain major wealth disparities that lead to vulnerable financial situations. 40 percent of families headed by someone age 45 to 64 have no retirement accounts at all.[10] For those age 65 and older, at the median spending level nearly 80 percent of dollars spent simply go to fill basic needs of housing, healthcare, food, clothing, and transportation.[11] Lower levels of savings and asset accumulation in recent decades mean that aging households may be even more cost-burdened in the future.[12] For vulnerable older borrowers, high-cost lending is more likely to be a hindrance than a help. If they fall into a cycle of debt, they have fewer options to address that debt and return to a sound financial footing without spending down limited assets. For example, borrowers may be unable to return to work or take on more hours at work in an attempt to get out of debt. They may also face additional obligations such as family caregiving that require significant contributions of time and money.[13]

The re-proposal relies on dangerous assumptions about high-cost lending

The CFPB's revised proposal makes two concurrent and dangerous assumptions about the high-cost lending market. The first is that borrowers have full information about the products and their risks before taking out a loan, and are therefore

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[8] Brandan Coleman and Delvin Davis, "Perfect Storm: Payday Lenders Harm Florida Consumers Despite State Law," Center for Responsible Lending, March 2016, available at https://www.responsiblelending.org/sites/default/files/nodes/files/research-publication/crl_perfect_storm_florida_mar2016_0.pdf.

[9] Texas Appleseed, "Payday and Auto Title Lending in Texas: State of Texas 2017," last accessed April 23, 2019, available at https://www.texasappleseed.org/sites/default/files/Texas2017.pdf.

[10] Federal Reserve Board of Governors, "2016 SCF Chartbook," July 23, 2018, available at https://www.federalreserve.gov/econres/files/BulletinCharts.pdf.

[11] Steven A. Sass, "Will the Financial Fragility of Retirees Increase?" Center for Retirement Research at Boston College, February 2018, available at https://crr.bc.edu/briefs/will-the-financial-fragility-of-retirees-increase/.

[12] Ibid.

[13] There are approximately 40 million Americans who provide unpaid care for adult family members or friends. In 2016, family caregivers spent roughly $7,000 per year on caregiving expenses—20 percent of total income on average. More than half of employed caregivers faced work-related strains such as reduced hours or the need to take paid or unpaid leave. Chuck Rainville, Laura Skufca, and Laura Mehegan, "Family Caregiving and Out-of-Pocket Costs: 2016 Report," AARP, November 2016, available at https://www.aarp.org/content/dam/aarp/research/surveys_statistics/ltc/2016/family-caregiving-costs.doi.10.26419%252Fres.00138.001.pdf.

completely able to weigh alternatives and reasonably avoid injury.[14] Many end up in debt far longer than anticipated, as noted above. Particularly when dealing with financial stress, disclosures of rates and terms may not be fully understood or taken into account.[15] Similarly, by the time consumers receive information about pricing and terms, it may be too late in the process for these disclosures to have an effect on their ability to shop around or choose a different option.[16] The failure of effective disclosure and rational decision making has also been observed in other consumer financial markets, including wealth-stripping home loans prior to the financial crisis in which vulnerable borrowers were repeatedly offered quick cash offers in exchange for an elongated loan term or onerous repayment provisions, effectively draining families' wealth.[17] Similarly, the revised proposal questionably argues that because mandated disclosures did not affect the practice of reborrowing, consumers already had enough information to make decisions.[18] Instead, it is entirely plausible that disclosures in general were ineffective for a flawed product design.

Meanwhile, borrower experiences after payday loan bans went into effect demonstrate that for many, the product was not necessary and without it, better alternatives were found. Ultimately, the preferred alternative may not be a credit product at all. In states that do not authorize storefront payday lending, 95 percent of would-be borrowers found other alternatives not involving credit, while only five percent took out a payday loan online or borrowed another way.[19] Similarly, a 2015 survey in response to Arkansas' 2008 court ruling banning payday lending found that seven years after the ban went into effect, nearly 9 out of 10 former borrowers reported they did not miss the product and their financial situation had stayed the same or improved.[20] Given that the vast majority of payday loan transactions represent phantom demand, and a large percentage of former customers are satisfied elsewhere when the product does not exist, it is unlikely that taking out these loans broadly reflects a fully rational choice.

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[14] The revised rule claims that studies underpinning the previous rule "do not provide a sufficiently robust and reliable basis for finding that consumers cannot reasonably avoid injury or protect their interests, and do not understand the material risks, costs, and conditions of the loans." 84 FR 4277.

[15] "The calculations required to borrow shrewdly are numerous and knotty… the more overwhelming a decision, the more appealing radical shortcuts become." Omri Ben-Shahar and Carl E. Schneider, "The Failure of Mandated Disclosure," *University of Pennsylvania Law Review* Vol. 159 Issue 3 (2011), available at https://scholarship.law.upenn.edu/penn_law_review/vol159/iss3/2/.

[16] Lauren Willis, "Decisionmaking and the Limits of Disclosure: The Problem of Predatory Lending: Price," *Maryland Law Review*, Vol. 65 No. 3 (2006).

[17] Ibid.

[18] 84 FR 4277.

[19] Pew Charitable Trusts, "Payday Lending in America: Who Borrows, Where They Borrow, and Why," July 2012, available at https://www.pewtrusts.org/~/media/legacy/uploadedfiles/pcs_assets/2012/pewpaydaylendingreportpdf.pdf.

[20] Meredith Covington and Jennifer Johnson, "Into the Light: A Survey of Arkansas Borrowers Seven Years after State Supreme Court Bans Usurious Payday Lending Rates," Southern Bancorp Community Partners, April 2016, available at https://banksouthern.com/sbcp/into-the-light/.

The second assumption is that the benefit to the small percentage of customers who successfully use one of these products outweighs the harm caused to others.[21] The proposal states that between 22 and 30 percent of payday loan sequences and a smaller share of vehicle title sequences involve paying back the loan in a single installment.[22] For these users, the product may be claimed to work as intended. For the overwhelming majority of customers, however, outcomes are significantly different—and a product for which most borrowers cannot meet the terms of the agreement is, at best, a misleading product.[23] And in the process of attempting to pay off this debt, the borrower may also resort to other financial products, relying on family and friends, or using a tax refund simply to extricate oneself from the debt.[24] The existence of a refinance market for these loans driven by nonprofit religious and community organizations clearly demonstrates that even when loans are paid off, an entire community pays the price.[25]

Outcomes are even more dire for borrowers who default on their loans. The revised proposal understates the consequences of default.[26] For payday loan borrowers, default may mean closure of a bank account, leading to a negative record with a credit reporting agency that tracks account closures, and ultimately the inability to open another bank account in the future. For vehicle title loan borrowers, default means the loss of a vehicle that may be necessary to get to work, medical appointments, or other obligations. The CFPB has previously found that nationwide, about 1 in 5 title loan borrowers lose their car.[27] Similarly, in 2017, 15 percent of Texas auto loan borrowers

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[21] "The Bureau now believes that in the 2017 Final Rule it understated the risk that, under the mandatory underwriting requirements, some consumers who would be repayers and would benefit from receiving a loan would nonetheless be denied a loan." 84 FR 4273.

[22] 84 FR 4272-4273.

[23] Joe Valenti, Sarah Edelman, and Julia Gordon, "Lending for Success," Center for American Progress, July 13, 2015, available at https://www.americanprogress.org/issues/economy/reports/2015/07/13/117020/lending-for-success/.

[24] The use of tax refunds among Earned Income Tax Credit beneficiaries for debt repayment is well-documented. For example, Ruby Mendenhall and others, "The Role of Earned Income Tax Credit in the Budgets of Low-Income Families," February 2012, available at https://users.nber.org/~kling/eitc.pdf.

[25] Examples include Minnesota's Exodus Lending ("We get Minnesotans out of payday loan debt and back on track financially by enrolling and supporting them in a 0% interest refinance program, lending up to $1,000 to qualified participants." Exodus Lending, "Who We Are," available at http://exoduslending.org/who-we-are/) and Virginia's Jubilee Assistance Fund (Rebecca Robbins, "Churches step in with alternative to high-interest, small-dollar lending industry," *The Washington Post*, January 9, 2015, available at https://www.washingtonpost.com/news/get-there/wp/2015/01/09/churches-step-in-with-alternative-to-high-interest-small-dollar-lending-industry/).

[26] "Moreover, the Bureau is now concerned that in the 2017 Final Rule it may have minimized the value to consumers of substituting a payday lender for other creditors, such as a creditor with the power to initiate an eviction or shut off utility services or refuse medical care. The Bureau is also concerned that the 2017 Final Rule may have minimized the value of a 'temporary reprieve' which may enable defaulters to stave off more dire consequences than the consequences of defaulting on a payday loan." 84 FR 4274. The CFPB also notes in this section that 32 percent of vehicle title borrowers default, but fails to acknowledge the severe consequences.

[27] Consumer Financial Protection Bureau, "Single-Payment Vehicle Title Lending," May 18, 2016, available at http://files.consumerfinance.gov/f/documents/201605_cfpb_single-payment-vehicle-title-lending.pdf.

had their vehicle repossessed.[28] In both cases, the lender has retained access to at least some collateral, whether a bank account or a vehicle.

The fact that the vast majority of borrowers are ultimately worse off with these loans has increasingly prompted actions by state and local governments as well as by individual voters. A number of state legislatures have prohibited payday lending through interest rate caps of 36 percent or less without adverse effects.[29] Where authorized, local ordinances have also restricted lenders' ability to operate.[30] While the CFPB itself is prohibited from imposing similar caps, its earlier rulemaking affirmed the effectiveness of this action.[31] At the ballot box, voters have also overwhelmingly opted to greatly restrict high-cost lending practices through these caps. Nearly 60 percent of Arizona voters effectively chose to adopt an interest rate cap for payday loans in 2008 by opposing a ballot measure that would have struck down a sunset provision[32] and 72 percent of Montana voters chose to impose a rate cap on payday loans in 2010.[33] More recently, more than 76 percent of South Dakota voters approved an interest rate cap in 2016[34] and more than 75 percent of Colorado voters did the same in 2018.[35] The voices of voters and state legislatures on this issue reflect evolving standards of acceptable practices in the consumer financial marketplace.

Ability to repay requirements and borrower protections are established principles

The assessment of a borrower's ability to repay is a core principle for responsible lending practices.[36] Without it, the lender is operating solely based on the ability to collect. Lending strictly based on collateral has historically been a business practice

[28] Texas Appleseed, "Payday and Auto Title Lending in Texas: State of Texas 2017."
[29] Robin Howarth, Delvin Davis, and Sarah Wolff, "Shark-Free Waters: States are Better Off without Payday Lending," Center for Responsible Lending, September 2017, available at https://www.responsiblelending.org/sites/default/files/nodes/files/research-publication/crl-shark-free-waters-aug2016.pdf.
[30] For example, in Texas over 40 cities have enacted local business regulations concerning payday lending, while others have enacted zoning or land use restrictions. Luke Ranker, "She needed $500 for food and now owes $1,700. Is it time to regulate payday loans?" *Fort Worth Star-Telegram*, November 26, 2018, available at https://www.star-telegram.com/news/local/community/fort-worth/article221977265.html
[31] "The Bureau regards the fee and interest rate caps in these States as providing greater consumer protections than, and thus as not inconsistent with, the requirements of the final rule." 82 FR 54523.
[32] Craig Harris, "Vote may be the end of payday lenders," *Arizona Republic*, November 10, 2008, available at http://archive.azcentral.com/arizonarepublic/news/articles/2008/11/10/20081110biz-payday1110.html.
[33] Erin Madison, "Debate over I-164 rages as high-rate lenders prepare to close," *Great Falls Tribune*, November 7, 2010.
[34] Dana Ferguson, "Payday lenders flee South Dakota after rate cap," *Argus Leader*, January 6, 2017, available at https://www.argusleader.com/story/news/politics/2017/01/06/payday-lenders-flee-sd-after-rate-cap/96103624/.
[35] Joe Robino, "Colorado Proposition 111: Payday loan interest limit wins big," *The Denver Post*, November 6, 2018, available at https://www.denverpost.com/2018/11/06/colorado-proposition-111-payday-wins/.
[36] Joe Valenti, Sarah Edelman, and Julia Gordon, "Lending for Success."

requiring heightened scrutiny.[37] High-cost loans involving access to a bank account or vehicle should be no different. Additionally, loans that carry disproportionate risk have also traditionally required heightened regulation. For example, the Home Ownership and Equity Protections Act of 1994 and its subsequent regulations impose additional requirements on high-cost mortgage loans, including borrower safeguards.[38] The market for payday, vehicle title, and high-cost installment loans should not be treated more leniently than other consumer finance markets.

Payment protections remain essential to prevent account closures

While AARP has serious concerns about eliminating the ability to pay requirements of the rule, the CFPB should be commended for its proposal to retain the Payment Protections section of the rule. As the CFPB's own estimates in the online payday loan market demonstrate, continuing account access can lead to significant fees and penalties.[39] Among online borrowers, half of all accounts incurred an overdraft or non-sufficient funds fee, including fees as the result of repeated payment requests and even multiple payment requests received on the same day. Nearly one in four online borrowers ultimately have a bank account closed either voluntarily or involuntarily, with over one-third of accounts that faced a non-sufficient funds fee closed involuntarily. In turn, bank account closure may lead to higher costs in the future if borrowers are unable to participate in the financial mainstream and instead rely on alternative financial services such as check cashers.

Payment protections are essential to mitigate the harm caused by high-cost loans by prohibiting excessive attempts to access a customer's bank account. Borrowers should have the choice—just as with any other financial obligation—to make payments in the sequence that their means allow, rather than face lenders who insist upon being repaid immediately even before basic needs are met. Yet on their own, these back-end protections are insufficient without also ensuring that products are safe and affordable from the outset.

Conclusion

AARP appreciates the opportunity to address our concerns with the CFPB's re-proposal regarding payday, vehicle title, and certain high-cost installment loans, and believes that the CFPB should continue to require an ability to repay determination as

[37] For one discussion of the use and misuse of collateral: "Indeed, if the borrower posts a lot of collateral, the lender might be tempted to finance a project even if he knows the project has a negative NPV. The lender may gain from such a loan because he obtains the collateral whenever the loan goes bad. However, society as a whole (in particular, the borrower) loses..." Yaron Leitner, "Using Collateral to Secure Loans," *Business Review* (Q2) (2006): 9–16, available at https://www.philadelphiafed.org/research-and-data/publications/business-review/2006/q2/br_q2-2006-2_using-collateral.pdf.
[38] The Home Ownership and Equity Protection Act was part of the Riegle Community Development and Regulatory Improvement Act of 1994, P.L. 103-325.
[39] Consumer Financial Protection Bureau, "Online Payday Loan Payments," April 2016, available at https://files.consumerfinance.gov/f/201604_cfpb_online-payday-loan-payments.pdf.

well as payment protections for these loans. If you have any questions, please feel free to contact Jasmine Vasquez of our Government Affairs staff at (202) 434-3711 or by email at JVasquez@aarp.org.

Sincerely,

David Certner
Legislative Counsel and Policy Director
Government Affairs

Appendix A: Borrower Testimonials

These personal accounts collected from Texas borrowers and advocates are just a sample of the harm of these loans on older borrowers and their families across the country.[40]

"After having health insurance refused and then experiencing a stroke and then a heart attack, I could not keep up with my payments... I needed money for prescriptions and needed propane for heating. I thought a short-term loan from [a payday lender] would get me through until my [Social Security disability] check arrived... I make the interest payment and pay down the balance maybe $50 each month, but it sure kills my budget. There is always something that really needs to be paid and they make it so easy to get cash that most people fall into the trap." -Larry Perry, Granbury, TX

"I didn't know anything about these places until my mother-in-law's caretaker came to me for help... She had taken out a title loan to pay for her stepson's burial... $5,000 due in 30 days. Right off the bat, that's impossible... they got her hooked. She paid them $1,308 in interest each month for seven months, taking out payday loans to pay for the interest on her title loan... 'I went to the district attorney, who was incensed... She was very surprised to have found out that it was all legal'." -Paul Davis, Midland, TX

"I became aware [of auto title loans] through... Ms. K., a 73-year-old raising her granddaughter and great-granddaughter... She was financially struggling to get by on a fixed income... She took out the auto title loan when she fell behind in her rent. She struggled to pay the electric bill and to keep food in the house... She borrowed $500 with 317% APR. She was supposed to pay $150 per month and she had difficulty with that. She panicked because she worried she would lose her vehicle. She... took out an extension on the loan, borrowing $150 to pay what was due at that time... She was not able to get any of the principle paid off... If there hadn't been funds [from a nonprofit] to get out from this loan, she would still be struggling and she would have lost her car." -Jackie Kudlaty, Jewish Family Service, Houston, TX

"My dad has stage 4 colon cancer. Both my parents are elderly. They have Social Security, but that's all they have... I got some grants to help with the treatment, but we have to supplement as much as we can. They will withhold treatment if the money is not there. So I had to take out a payday loan. Almost the minute you sign the papers and make your first interest payment, you've failed. It sets you up for failure. I took out my second loan to help with the interest payments on my first loan but still be able to help my dad. When it came time for the third loan, I was desperate. I thought I could pay off the first, pay the interest on the second, and still have something to contribute. I was in a vulnerable state and got caught up in a situation I couldn't get out of. It's embarrassing and it's awful. I kept up the payments as long as I possibly could. After a year, I finally just said, 'I'm sorry, I can't keep it up.' They tried to get me to take out a loan on a closed checking account or to take out a title loan on my car, but I wouldn't. I

[40] Texas Faith for Fair Lending, "The Case for Payday and Auto Title Loan Reform" (2011), available at https://www.texasappleseed.org/sites/default/files/95-PDL-CaseforPaydayandTitleLoanReform2011.pdf.

never say I'm a victim. You do need to be responsible for the choices you make. I was in a vulnerable state, and I got caught up in a situation I couldn't get out of. I feel like it's financial bullying." -Polly Ritter, Garland, TX