Consumer Affairs

The Honorable Kathy Kraninger
Consumer Financial Protection Bureau
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Lorelei Salas
Commissioner

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May 13th, 2019

Re: Payday, Vehicle Title and Certain High-Cost Installment Loans, RIN 3170-AA80

Dear Director Kraninger:

The New York City Department of Consumer Affairs (DCA) protects and enhances the daily economic lives of New Yorkers to create thriving communities. Through our enforcement and education work, and through the work of our Office of Financial Empowerment (OFE), we seek to protect consumers in the marketplace and promote access to safe and affordable financial products.

In October 2016, DCA submitted comments on the Bureau's Proposed Rule on Payday, Vehicle, Title and Certain High-Cost Installment Loans ("Payday Rule").[1] In these comments, we urged the Bureau to include stringent "Ability to Repay" provisions. We were gratified to see these provisions included in the 2017 Final Rule, just as we are distressed to see that, in this Notice of Proposed Rulemaking (NPRM), the Bureau has announced its plan to eliminate these important underwriting provisions.

DCA has a strong interest in the outcome of the Bureau's rulemaking process. Through the work of our financial counseling and coaching programs, including our Financial Empowerment Centers, we provide free one-on-one financial counseling to New Yorkers. In Calendar Year 2018, alone, our programs served over 8,500 clients. Since inception in 2008, they have helped New Yorkers reduce more than $65 million in debt and increased their savings by over $5.5 million. While we are fortunate to have strong usury caps in New York, we know that New Yorkers are still vulnerable to high-cost, predatory lenders who violate our state law and target residents of our state. In 2015, DCA secured nearly a million dollars in consumer restitution from a debt collection agency that had illegally collected on payday loans in New York City.[2] The outcome of this lawsuit demonstrates that state usury caps do not provide complete protection against high-cost online lenders. Strong federal action—such as the 2017 Payday Rule—is needed to protect consumers from high-cost loans rightly referred to as debt traps.

Rescinding the Payday Rule's Mandatory Underwriting Provisions, which require lenders to verify prospective borrowers' Ability to Repay, would endanger consumers in New York City and across the country by subjecting them to high-interest loans they cannot afford, leading to a cycle of reborrowing and material hardship. In the face of these risks to consumer wellbeing, the NPRM cites no

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[1] https://www1.nyc.gov/assets/dca/downloads/pdf/partners/Advocacy-CFPB-2016-0025-100716.pdf
[2] https://www1.nyc.gov/site/dca/media/pr010515.page

additional research the Bureau has undertaken, or plans to undertake, that would justify the rescission of the Ability to Repay standard.

Instead, this NPRM cites as justification for the gutting of these needed protections the Bureau's concern for the availability of credit. The NPRM states the Bureau's belief that enacting the underwriting provisions of the 2017 Payday Rule would cause what the Bureau characterizes as an unacceptable contraction of the market for high-cost loans.

DCA well understands the need to improve access to credit for underserved individuals. According to the Bureau's research, roughly 20 percent of New York City adults lack a credit file, have a thin file, or have a file with only stale credit data.[3] In July 2018 we hosted a convening on the problem this data point highlights: the need to connect New Yorkers to credit-building opportunities so they can access affordable credit tools for smoothing income and expense spikes and building assets. But while we agree with the Bureau that access to credit is a critical financial health issue, we disagree with the Bureau's contention that reduced consumer access to high-cost short-term credit is an outcome to be avoided on the basis of credit access concerns. High-cost loans crowd out the kinds of safe and affordable forms of credit highlighted at our 2018 convening, such as low-interest loans from Community Development Financial Institutions. The decline of the high-cost credit market, with its triple-digit interest rates and high reborrowing rates, is an outcome greatly to be desired.

We urge the Bureau to reconsider its decision to rescind the Mandatory Underwriting Provisions of the Payday Rule, and we thank you for the opportunity to comment on this proposed rule.

Sincerely,

Lorelei Salas
Commissioner

[3] https://files.consumerfinance.gov/f/documents/cfpb_credit-profiles_handout_New-York-City.pdf