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The Honorable Richard Cordray
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October 7, 2016

Re: Comment from Texas Appleseed comments regarding proposed rulemaking on payday, vehicle title, and certain high-cost installment loans, Docket number CFPB-2016-0025 or RIN 3170-AA40

Dear Director Cordray,

Texas Appleseed appreciates the opportunity to submit comments to the Consumer Financial Protection Bureau (CFPB) regarding proposed rulemaking on payday, vehicle title, and certain high-cost installment loans.

Introduction

Texas Appleseed is a public interest justice center working to change unjust laws and policies that prevent Texans from realizing their full potential. Working with pro bono partners and collaborators, Texas Appleseed develops and advocates for innovative and practical solutions to complex issues. As part of its work, Texas Appleseed also conducts data-driven research to better understand inequities and identify solutions for concrete, lasting change. Texas Appleseed is part of a non-profit network of 17 justice centers in the United States and Mexico.

Through its Fair Financial Services Project, Texas Appleseed is a leader in advocating for reform of the payday and auto title lending industry in Texas. Texas Appleseed is also part of the Texas Fair Lending Alliance, a coalition of organizations and individuals working to transform the Texas payday and auto title loan market from one reliant on trapping consumers in a cycle of debt to one that encourages both borrower and lender success.

Texas Appleseed has supported state, local and market-based reforms to rein in abusive practices by payday and auto title loan businesses for nearly a decade. The prevalence of high-dollar campaign contributions in state legislatures and the U.S. Congress has made meaningful market-wide reforms hard to come by in Texas, particularly in recent years.[1]

We have found that the closer political systems are to impacted communities, the more responsive they are to the need for reforms. The city-based movement in Texas stands out. In an era of extreme partisanship, local communities—including elected officials, business leaders, faith leaders, nonprofits, and borrowers—have come together, across party lines, to help Texas families. Building on this local accountability, 38 Texas cities and counting have adopted the unified payday and auto title lending reform ordinance, and cities are taking the lead to promote fair lending in communities across Texas.[2] This movement has been such a powerful unifying force that it inspired a documentary film, *The Ordinance*, to show what is possible when diverse voices come together for the good of our families and communities.

Local action, one city at a time, has made a meaningful difference in Texas. The ordinances—which simply keep the promise of short-term credit true to its word by limiting single payment or installment payday and auto title loan transactions to four payments; requiring that each payment pay down 25% of the loan principal; and limiting the size of the loans based on borrower income—apply within the city limits of cities that have adopted the ordinance. However, the standards cannot reach businesses operating online or outside of the city limits.

Texas needs strong rules from the CFPB to complement the local work that has been done here, so that fair lending standards apply everywhere. The following sections document the problem in Texas, offer support for strong components of the rule, and provide insight, based on the Texas experience, into where the rule still needs to be strengthened.

[1] *See* "Politicians Cower in Payday-Loan Pockets," *Texans for Public Justice Lobby Watch* (May 2015) and "Texas Legislators Taking Money from Payday Lending Industry, ETBU Study Reveals," *Texas Baptist Standard* (Sept. 2014). According to these two studies, Texas elected officials received $6,214,067 in contributions from 2010-2014, 81% of Texas House members received contributions from payday and auto title lenders in 2014. These contributions are in addition to the 60 or more lobbyists hired by payday and auto title businesses in Texas each legislative session. A study of federal lobbying dollars during the 2013-2014 election cycle found two Texas members of Congress among the top 10 recipients of money from payday loan businesses. *See* "Payday-to-Play," *Americans for Financial Reform* (June 2015).

[2] *See*: www.tml.org/payday-updates for information about the unified ordinance, including a list of all 38 Texas cities that have adopted the ordinance to date. A new Texas Appleseed Toolkit, *A Toolkit for Cities: Increasing Access to Fair, Low-Cost Loans* (Sept. 2016), profiles successful local efforts to support fair lending.

In Texas, Payday and Auto Title Loan Profits Built on Borrower Failure

Texas payday and auto title loan businesses operate as loan brokers rather than direct lenders in order to evade state usury laws.[3] They operate as credit access businesses (CABs), a designation under the state Credit Services Organizations (CSO) Act that was put into law in 2011.[4] The 2011 law created new licensing by and data reporting to the Texas Office of Consumer Credit Commissioner, the state consumer credit regulator.

With four full years of data reporting, some interesting trends are emerging. A Texas Appleseed analysis of the state data, from 2012-2015, shows record fee income for payday and auto title loan businesses despite an increase in auto title repossessions for single payment auto title loans and high levels of borrowers struggling to make payments.

The full study is provided as Supplemental Resource 1 with this letter. Some highlights include:

- Loan APRs averaged 216% to 738% over the four-year study period.
- Fee revenue increased by 34% from 2012-2015, driven partially by an increase in installment payday loans.
- Installment payday lending increased from 11% to 27% of the Texas payday and auto title loan market volume. Installment payday loan fees increased by 225% over the same 4-year period, from $254 million to $827 million.
- Fees and refinances made up between 68% and 71% of payday and auto title loan volume in Texas from 2012-2015—with less than 1/3rd of the volume consisting of new loans.
- In 2015, over 37,000 Texans, or 717 per week, lost a car to repossession by an auto title loan business. Across all loans, one in seven auto title borrowers lost a car to repossession. For single payment auto title loans, one in five borrowers lost a car.
- In 2015, 32% of all loan transactions and 36% of installment loan transactions (both payday and auto title installment loans) resulted in a payment to the lender of the guaranty by the payday or auto title loan business. In the Texas three-party system, where the payday or auto title loan business is a broker that charges high fees to guaranty, service and collect on loans offered by a third-party lender, paying the guaranty means some violation of the terms of the contract and indicates the borrower is not paying as promised. When looking at the number of borrowers instead of number of transactions, there was fully one guaranty payment per borrower across all loan products in 2015, indicating a very high rate of hardship making payments across all borrowers.

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[3] For a recent history of Texas efforts to rein in payday and auto title lending abuses, *see*: Ann Baddour, "Why Texas' Small Dollar Lending Market Matters," *Federal Reserve Bank of Dallas e-Perspectives*, vol. 12, issue 2 (2012).
[4] Tex. Fin. Code §393.601-§393.628.

The Texas payday and auto title lending statistics tell a story of high fees, numerous refinances, and borrowers' struggles to repay high-cost payday and auto title loans—both single payment and installment loans. The statistics are supported by complaints submitted to Texas regulators and by borrowers' experiences.

Supplemental Resource 2, included with this letter, provides a detailed analysis of over 2,600 consumer complaints filed with Texas regulators from March of 2011 to February of 2016. To put that number of complaints into perspective, it is helpful to know that for fiscal year 2016, payday and auto title loan businesses, operating as credit access businesses in Texas, had the highest ratio of complaints to 100 licensees, at 13.54 complaints per 100 licensees, of all the consumer loan businesses regulated by the Texas Office of Consumer Credit Commissioner, and the lowest regulatory compliance percentage, at 48.79%.[5]

Based on this study of consumer complaints, the most common issues that consumers complained about included interest and fee charges, collections practices, and payment posting and processing. These top issues, and particularly fee charges and collections practices, mirror consumer complaints from individuals who contact Texas Appleseed for assistance:[6]

- Dorothy, a senior citizen from Fort Worth, Texas, contacted Texas Appleseed because of problems with an auto title loan. She had been paying $419 per month for 8 months—a total of $3,250 on a $3,630 loan—and was shocked that the principal was not going down. "When I realized it was just fees I was paying, I asked, 'You expect me to pay [the full loan amount] in one month?' The lady did not explain that to me. I would never have taken out the loan…At my age, I cannot get a steady job to pay off a car. At this age [81 years old], I cannot get anything to pay it off. I have social security income, and I work in the nursery of my church," she shared. "They are becoming rich on the poorest, most vulnerable people in our society. This kind of a business is the most despicable business out there."

- Sammy took out a payday loan in Terrell, Texas, which, after many payments, was refinanced into an installment payday loan with the same business. "I paid $1,600 or $1,700 dollars for a $700 loan. When I lost my job and knew I couldn't pay, I tried to make an arrangement with them, almost a full week before the payment was due. I was trying to find odd and end jobs. They weren't willing to work anything out with me. They told me that if I missed my payment, I would be in default. The day after the first payment I missed, they started hitting my account. They hit my account two times. I closed the account and cleared my outstanding debt with the bank. They didn't really explain to me—I didn't have any idea how much it was going to cost me to pay this back," he explained. He did not hear from the business and thought the matter was closed, given how much he had already paid for the loan. Three years later, he received two collections calls

[5] Texas Finance Commission, Meeting Materials and Packets, Finance Commission and Agencies at 65 and 68 (Aug. 19, 2016).

[6] Texas Appleseed is not a direct service provider, but we offer assistance or contacts with local resources when consumers contact us directly asking for help.

threatening him with felony theft charges if he didn't pay them. "I don't have anything like that on my record. I don't want a felony on my record. It scared me."

- An individual from El Paso reached out, trying to help a friend caught up in an auto title loan. His friend is a double amputee, and on dialysis. His friend's wife tried to make a payment on the loan, but the store refused to accept the payment, because her husband was not with her. "I accompanied her to TitleMax and the manager there, to my face, said we will not accept the payment, because he [the double amputee who took out the loan] has to be here. That is what the contract calls for…It is usurious and unconscionable the way it was proceeding. The terms of the loan was onerous. They only accept payment in cash or money order. They do not accept personal checks. The location is in the city of El Paso, on the East side. If you borrow in store #1, you cannot make payments in any other store, even though it is the same outfit," he noted. The couple wanted to make a payment, yet the store location made it extremely difficult, requiring a disabled man to come in person to the specific store location. As a result, they could not make their payment on the loan.

These stories offer a glimpse into the borrower experiences behind the state data and complaint statistics. Supplement 2, attached to this comment, includes many more such stories, taken directly from complaints submitted to the Texas Office of Attorney General.

We commend the CFPB for taking on this important rulemaking. This is a market in desperate need of reforms. Too many Texas families have experienced significant financial harms at the hands of loosely regulated payday and auto title loan businesses.

Strong Features of the Proposed Rule

The proposed rule has many strong features. Those most important to address problems in the Texas market include:

- **Required ability to repay determination:** Assessing ability to repay is a common sense approach to any credit market. The Texas Administrative Code includes an ability to repay determination requirement for consumer finance companies licensed by the state (7 TAC §83.852). The proposed rule adds important definition to the ability to repay determination and ensures that it applies the short-term and longer-term loans covered by the rule.

- **Scope covering short-term and longer-term products.** The broad scope of the rule, covering all loans of less than 45 days and loans longer than 45 days with a leveraged payment instrument and an all-in APR above 36% is essential to capture the Texas market. Currently payday and auto title loan businesses offer multiple loan products with varying loan terms—with marked growth in longer-term payday and auto title loans. Fair standards that broadly cover the market are essential to limit the ability of businesses to develop creative schemes to evade the rule's main provisions aimed at both mitigating consumer harm and establishing a fair playing field to promote meaningful competition.

- **Limitations on failed payment transfers.** The limitation on failed payment transfers from a transaction account that is included in the proposed rule is essential for these loans. Too many borrowers end up having to close accounts because of multiple nonsufficient funds and returned payment fees that exacerbate the financial hardship caused by these loans. This limitation also bolsters the ability to repay determination requirement by supporting a shift from a market based on the ability to collect to one based on affordable loans.

- **Provisions to align lender success with borrower success.** The proposed rule includes robust research showing a market where payday, auto title, and certain installment loan businesses profit despite high rates of borrower default and vehicle repossessions for loans secured by a vehicle title. The same dynamic is at play in the Texas market. This market failure and the resulting consumer harms of an ongoing cycle of high-cost debt, the harmful financial repercussions of unaffordable loans, and the financial loss caused by high rates of default or struggles to make payments, are well-documented in Texas. Aligning borrower and lender success is a key component of a fair, healthy, and beneficial credit market.

Features of the Proposal that Need Strengthening or Clarification

The following proposed changes to the rule are intended to strengthen and clarify provisions to ensure that the final rule achieves the goal of ending consumer harms created by common lending practices in payday and auto title lending markets. The Texas experience is informative. Texas has a usury cap and has acted, at various times, to enforce and uphold it. At the same time, high-cost loan businesses have a long history of evading state usury laws and state consumer protection standards for consumer loans.[7]

1. **Certain definitions should be adjusted to limit evasion and enhance compliance.**
    a. **Loan Sequence or sequence:** This definition would benefit from including words that are in the Texas local ordinances and many state laws that have the same effective meaning, in order to avoid confusion in compliance and enforcement. For example, the terms "refinance" and "renewal" are used to indicate loan activity that would be covered under the definition of loan sequence.[8] Indicating that the terms loan sequence or sequence include, but are not limited to the terms renewal, refinance, and rollover could clarify the compatibility of terms from the start to facilitate assessing compliance with both the proposed rule and existing state and local laws.

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[7] The 1869 Texas Constitution did not have a usury cap, but it was amended in 1876 to add a usury cap, after interest rate abuses occurred in the state. Since 1876, there has been a push and pull dynamic around the regulation of small consumer loans. On one side, there has been the movement to stop unconscionable lending through adopting protections and enforcing caps on rates and fees. On the other is a constant assault of evasion in the market, from salary advances, to broker fees, to sale-leaseback transactions, to payday advances, to the current Credit Services Organization brokering model, all to get around state rate and fee caps for small loans to desperate consumers.

[8] Refinance and renewal are used in the unified ordinance that has been adopted by 38 Texas cities. *See* Example Ordinance, *available at* www.tml.org/paydayloan-updates.

b. **Prepayment Penalty:** The current definition of prepayment penalty leaves out a growing practice among credit access businesses in Texas, of charging all loan fees for multiple payment loans on the front end of the loan. The result is an effective prepayment penalty, as a full six months of fees, which in Texas can be 25% of the loan principal every two weeks, or more, is charged and earned upfront. Texas law prohibits prepayment penalties,[9] but this loophole allows effective prepayment penalties while still technically complying with the law. The current definition would allow that loophole to continue and flourish. Supplemental Resource 3 includes a loan contract with such a penalty. In the case of the contract, $1,829.70 in fees on a $2,033 auto title loan with a 168 day loan term were earned in full on the day the borrower received the funds. The loan business assured the borrower that there was no prepayment penalty and pointed to the language in the contract prohibiting a prepayment penalty. The borrower, who eventually lost the car, was shocked to find out that, after paying $2,168 two-weeks later, there was still a loan balance of more than $1,700—the remaining fees still owed on the loan.
c. **Non-covered bridge loan.** The non-covered bridge loan definition refers only to the lender and its affiliate. In Texas, it is the service provider that originates, guarantees, and services the loan. Payday and auto title loan businesses operate as credit services organizations and most are also credit access businesses. Under the proposed rule, these entities would be considered "service providers." In addition, service providers in Texas can operate licensed pawn shops or be affiliated with pawn shops. To ensure that service providers are not used as a way to evade this standard, the definition should cover loans made or arranged by the same lender or its affiliate as well as the same service provider or its affiliate. In addition, all mentions in the rule of the non-covered bridge loan should apply to loans arranged or offered by the service provider and service provider affiliates in addition to the lender and its affiliates.
d. **Charges included in the total cost of credit.** A recent article in *The New York Times* documented a national trend by certain consumer lenders to change state laws to allow the sale of term life insurance with the sale of a loan and finance that insurance into the loan.[10] Such a bill was filed in Texas in the 84th legislative session in 2015. It would have allowed high-cost term life insurance products with terms that often mirror the term of a loan, to be sold with and financed into a consumer loan.[11] The lender that supported bill also owned the insurance company that would have offered the life insurance product. Effectively, selling the high-cost term life insurance along with a loan transaction, in addition to permitted credit insurance products, created another way to boost the return on the loan without disclosing it in the APR or raising the interest rate. Charges included in the total cost of credit should also include charges incurred for any insurance product sold in

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[9] Tex. Fin. Code §393.201(c)(1).

[10] Ben Protess, "Subprime Lender, Busy at State Level, Avoids Federal Scrutiny," *The New York Times* (Sept. 6, 2016).

[11] 84th Texas Legislative Session, HB 3938.

conjunction with the loan that is financed into the loan or paid with funds from the loan, to ensure that the total cost of credit accurately reflects costs to the consumer.

e. **Payment under the covered short-term or longer-term loan.** For loans that could include more than one payment, it would be helpful to include the term "installment" in the payment definition, not to limit the definition, but rather to expand it and ensure that it aligns with terms used in state and local laws for clarity and consistency, and to ensure smoother integration of final CFPB definitions and standards.

2. **The scope of the rule includes some limitations that could undermine its effectiveness.**
    a. **Leveraged payment mechanism obtained within 72 hours.** In order to be a covered loan under the proposed rule, a leveraged payment mechanism must be obtained within 72 hours of the borrower receiving the loans funds. Based on the Texas experience, that standard is concerning, particularly as it relates to multiple payment payday loans. These loan businesses often require borrowers to come in person to make payments, often in cash. It would be very easy to obtain a leveraged payment mechanism when the borrower comes in to make the first payment—usually two-weeks after the loan is made. We recommend that any loan where a leveraged payment mechanism is obtained should be covered by the rule, no matter when the leveraged payment mechanism is obtained.
    b. **The vehicle security provision may benefit from further expansion.** In Texas, in the late 1990's, "sale-leaseback" transactions were used to evade state usury laws. Customers would "sell" property to a business and then lease it back for periodic "rental" payments that amounted to 700% plus APRs for the transactions. In 2001, sale-leaseback transactions were added to the Texas Finance Code as consumer loan transactions, subject to applicable rate and fee limits.[12] Due to current state laws, it is unlikely this scheme would reemerge in Texas unless the laws change, but it could be used to evade this rule for vehicle-secured loans. Another area of concern, which is illustrated in Supplemental Resource 3, attached to this comment, is the questionable use by some auto title loan businesses of a pre-signed power of attorney to obtain the right to sell the vehicle. Based on the current language in the proposed rule, it is unclear if such a scheme would be covered under the "any security interest" standard.[13]

3. **To ensure coverage of the CSO model, the rule must apply to service providers and their affiliates whenever it applies to lenders and their affiliates.** In Texas, it is the service provider, and not the lender, that is licensed and examined by the state regulator and that engages in all interactions with the borrower. Some examples where the rule needs to be changed to accommodate this lending model include:
    a. **The ability to repay determination as well as limitations on lending for short-term and longer-term loans should hold both the lender and service provider accountable for complying with the rule standards.** As the proposed rule is

[12] Tex. Fin. Code §341.001(9)
[13] The general power of attorney is included on p.29 of Supplemental Resource 3.

currently written, standards related to the ability to repay determination and limitations on lending only apply to the lender. These standards should also apply to the service provider. Otherwise, as the lenders in Texas are unregulated, there will be little regulatory oversight and therefore little accountability to comply with the standards.

b. **Standards in the conditional exemptions for certain covered short-term loans and longer-term loans that apply to a lender or a lender and its affiliates should also apply to the service provider and its affiliates.** Omitting service providers and service provider affiliations from the standards creates an opening for possible evasion of the standards of the conditional exemptions. In addition, the disclosures related to the conditional exemptions should require lender and service provider contact information. For loans arranged under the credit services organization model, the consumer only has direct contact with the service provider, so omitting that contact information could create confusion on the part of the consumer. All disclosure should require contact information of both the lender and the service provider.

c. **Payment protections and prohibition on evasion should also cover service provider.** As they are written, protections in the proposed rule that cover payments and prohibit evasion of the rule apply only to the lender. In Texas, most payments are initiated by the service provider, whether they are fee only payments or payments that include principal, and not the lender. Without expressly establishing the service provider as accountable under these provisions, it is likely that service providers could evade them without penalty.

4. **One-time lump sum payments, payments from tax refunds, legal settlements, or other income that is not consistently reliable should not be used to determine affordability of the loan payment or to overcome the presumption of unaffordability.** We have seen time and again borrowers take out payday or auto title loans with the expectation that a certain lump sum payment, like a tax refund check or legal settlement payment will come in, only to have the payment delayed, get less funds than expected, or have the payment not come in at all. For families living close to the edge, the financial results can be devastating. A February, 2015 story in the *Fort Worth Star-Telegram*, profiles the story of Mary Dixon, a local grandmother, who nearly lost her car to an auto title lender when her tax refund did not come in as expected.[14] In another case, in Austin, Texas, a disabled woman, whose primary income was a disability check, took out a payday loan, with the expectation that a legal settlement payment would come in. The payment never materialized, and she ended up in a financial bind, only able to make the fee payments on the multi-payment balloon payday loan, and never able to come up with the money to pay off the principal. A local non-profit ended up making the payment to get her out of the loan.

[14] Yamil Berard, "The Debt Trap: Texans taken for a ride by auto title loans," *Fort Worth Star-Telegram* (Feb. 14, 2015), *available at*: http://www.star-telegram.com/news/local/community/fort-worth/article10258943.html.

5. **Conditional exemption and exemption to the presumption of unaffordability for short-term loans could weaken the strong ability to repay standard of the rule.** It is encouraging that the conditional exemption for short-term loans includes principal repayment and limitations on the size of the loan. However, an allowance for six loans in a one-year period to a borrower, with no affordability standard, could undermine this strong principal that underlies most of the rule.

   Under the exemption to the presumption of unaffordability for sequence of covered short-term loans, the proposal allows renewals without additional ability to repay assessments. This standard also could weaken the ability to repay foundation of the rule, as the need to re-borrow in such short order is a strong indication of unaffordability. Yet, the standard allows two additional back-to-back short-term loans without regard to the borrower's ability to repay the loans.

6. **All disclosures and contracts should be required to be in plain language and provided in both English and a foreign language if the lender or service provider negotiates the transaction in that foreign language.** The disclosure forms are largely prescribed by the proposed rule, but contracts are not. Based on our experience in Texas, the majority of contracts are written in complex language, in a font size that appears to be less than 10pt. Add to the mix a borrower who does not speak English, and the disclosures and contract information are essentially a formality rather than key information that every borrower should know. See Supplemental Resource 3 for an example of a typical Texas contract, which includes two separate contracts, one with the lender and one with the service provider, all written in very small font size. Regulated consumer lenders in Texas currently must comply with plain language contract standards and offer a summary version of the contract in Spanish is the terms of the loan are negotiated in Spanish (Tex. Fin. Code 341.502(a-1)). The CFPB remittance rule also includes similar standards for international remittance disclosures and should be used as a model for foreign language disclosure requirements in other rulemakings.

7. **For longer-term loans, under the ability to repay determination, the definition of payment for a line of credit may allow lenders to extend the term of the line of credit to multiple years to make the payments appear affordable.** In the current proposed rule, if a line of credit does not have termination date, the lender must calculate payments for the affordability assessment based on a termination date of 180 days. It does not, however, have any standard for a line of credit that has a termination date that is far beyond 180 days. We are concerned that lenders could extend terms to multiple years as a way to establish payments that meet affordability standards, but are essentially equivalent to the current fee payment in the single payment loan structure. Establishing that all payments be calculated based on the 180 day full repayment standard would address this concern. That standard is consistent with Texas law as it applies to credit services organizations, the primary businesses operating in the payday and auto title lending space. Credit services

organizations are limited to 180 days for the services that they provide (including the loans that they arrange or assist in arranging).[15]

8. **Full underwriting standards for longer-term loans, without limitations on loan terms could allow long loan terms to mask unaffordability.** As the rule is written for longer-term loans that are not lines of credit, it appears that very long-term small loans could be offered that technically meet affordability standards, but are not meaningfully different from the current single payment loan market, because of their extremely slow amortization. For example, a $500 loan with a 3-year term, could carry $100 monthly payments over three years leading to a total cost of credit of $3,600. After one year of payments on that loan, a borrower would have paid $1,200 and still owe $494 on the $500 loan. In order to avoid this kind of scenario, which already exists, particularly in online markets, the rule needs additional front-end and back-end safeguards. It needs front-end safeguards to ensure that loan terms are not lengthened to technically, but not effectively, meet the affordability standard and a tighter back-end standard that sets a hard maximum default rate. The current standard in the official interpretation uses the default rate of peer lenders as a standard of evaluation. If all peer lenders have equally excessive defaults or delinquent payments, they will all look the same and will not trigger scrutiny under the existing standard.

9. **The exception for the presumption of unaffordability for certain covered longer-term loans could allow flipping from an unaffordable longer-term balloon payment loan into another amortizing longer-term loan.** The exception states that if every payment on the new covered longer-term loan is substantially smaller than the largest required payment of the prior covered balloon loan, then the loan is exempted from the presumption of unaffordability. Given the large size of the balloon payment for longer-term or short-term balloon loans, any longer-term amortizing loan will likely comply with this exemption. Such an exception could enable flipping back and forth between balloon and non-balloon products without triggering a presumption of unaffordability. Based on the Texas experience, longer-term balloon loans are generally harmful. In particular, borrowers on fixed incomes have often found the fee payments affordable, but are never able to repay the loan in full, exacerbating the cycle of debt. Longer-term balloon loans are essentially a single payment loan structure with a fixed number of rollovers built in. Ideally, as a solution to the problem raised under this exception, longer-term balloon loans should not be permitted at all. The only way a longer-term balloon loan could meet an affordability test is if a lump-sum payment is expected at a designated future date, and, as discussed above, such payments tend to be unreliable, and so should not form the basis of an affordability test.

[15] Tex. Fin. Code 393.201(b)(2).

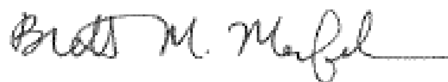
Additional Comments

1. **Services that offer access to earned income for a fee or offer income smoothing tools do not currently fall under the definition of "lender" under the rule.** We recommend that the CFPB monitor these products, and particularly patterns of repeat usage and the fee charges as they relate to the amount of funds obtained by the consumer. An advantage of these services is that consumers tend to access just the amount of funds that they need—perhaps $20 to cover a bill—rather than obtaining higher dollar amounts which are often pushed by payday and auto title businesses. However, services that offer early access to earned income for a fee are not substantially different from direct deposit advances or the precursors to payday lenders that offered salary advances at the turn of the century at abusive terms. These products can be beneficial or harmful based on the charges and terms. Monitoring these innovations is essential to ensure that they do not evolve into new loopholes around fair market standards.

2. **Further guidance on what "greater consumer protection" means in conjunction with the integration of the rule with local and state laws.** The rule is intended to coexist with applicable laws in cities and states where those laws provide greater consumer protection than the proposed rule; however, greater clarity is needed around this term. For example, the unified city ordinance, passed by 38 cities in Texas, permits three rollovers of single-payment loans, while the proposed rule permits two. The city ordinances allow no rollovers for an installment payday or auto title loan, while the proposed rule applies an ability to repay test to those transactions and could permit a rollover or refinance. Based on the Texas experience, limiting the amount of time in debt to very high-cost loans offers the greatest consumer protection, as it creates a stronger market incentive to ensure that the loans are affordable from the start, and limits opportunities for lenders to profit while borrowers fail. However, it is possible that counter arguments could be made, asserting that longer time to repay benefits borrowers. Such questions could become burdensome to answer for regulators and lawmakers and delay effective implementation of a final rule; it would be beneficial to define "greater consumer protection" with further clarity upfront so as to minimize confusion.

Texas Appleseed is grateful for the CFPB's efforts to protect consumers and hopes that the proposed rules governing payday, auto title and certain installment loans are strengthened to ensure that families and consumers are offered credit products we can trust, built on sound lending and fair market practices.

Sincerely,



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