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Richard Cordray, Director
Consumer Financial Protection Bureau
1700 G Street, NW
Washington, DC 20552

Re: Request for Comment on Payday Lending Hearing Transcript

Dear Director Cordray:

We are submitting the following comments in response to the CFPB's request for additional information on payday lending.

In 2008, the Ohio legislature, with overwhelming bi-partisan support, passed what is now known as the Short Term Lending Act (STLA).This legislation repealed existing law permitting payday loans with a 391% APR. Among other things, this Act caps the cost of small dollar, short term loans to 28% APR and requires a minimum of 31 days to repay the loan.

The intent of this legislation was to eliminate payday lending as it then existed in Ohio. Former Republican Speaker of the House John Husted stated, "We did not ban small consumer loans. Rather we capped the interest rate at a level that created a reasonable expectation that the borrower can pay it back. We didn't ban small loans. We banned a defective product."

After the STLA was enacted, the payday lending industry was successful in placing a referendum on the ballot, challenging the new, stricter law. Ohio voters defeated the referendum by a clear margin, sending the message that Ohio citizens did not want payday lending in Ohio.

Despite legislation and ratification by Ohio citizens, payday lending remains alive and well in Ohio. No lender holds a license under the Short Term Loan Act. Lenders engaging in the business of short term, small dollar loans have instead sought licensing under other provisions of the Ohio Revised Code that were on the books prior to the now-repealed 1995 legislation that opened the door to payday lending in Ohio. A study by Policy Matters Ohio, published almost a year after the STLA was approved by Ohio voters, found that "[d]espite having one of the best-crafted payday lending laws in the nation, Ohioans are still paying triple-digit interest rates on payday loans." David Rothstein, "New Law, Same Old Loans: Payday Lenders Sidestep Ohio Law," *Policy Matters Ohio* (Sept. 2009), at Executive Summary, http://www.policymattersohio.org/new-law-same-old-loans-payday-lenders-sidestep-ohio-law The study's "findings indicate that payday loans are similar to, if not worse than, before the legislative changes from 2008, because lenders are not operating under the new law. Stores are still selling high-cost, short-term, two-week loans." *Id*. at 6.

Both before and after passage of the STLA, the profit margin of the industry has depended heavily on repeat borrowing, which traps consumers in a cycle of debt. This cycle of debt has been documented in various publicly available studies conducted in Ohio and elsewhere. These studies have found that—contrary to the marketing claims made by the payday loan industry—the vast majority of new payday loans are *not* taken out to cover one-time financial emergencies. Rather, the payday loan business model encourages "repeat" or "chronic" borrowing, where borrowers obtain new payday loans in back-to-back transactions to pay off existing payday loans and thereby get trapped in a long-term cycle of debt. David Rothstein and Jeffrey D. Dillman, "Trapped in Debt: The Growth of Payday Lending in Ohio," *Policy Matters Ohio* (Feb. 2007), http://www.policymattersohio.org/trapped-in-debt-the-growth-of-payday-lending-in-ohio. The result of this debt trap is that "the typical borrower ends up paying back $793 for a $325 loan." Uriah King, Leslie Parrish and OzlemTanik, "Financial Quicksand: Payday lending sinks borrowers in debt with $4.2 billion in predatory fees every year," *Center for Responsible Lending* (Nov. 30, 2006), at 7, http://www.responsiblelending.org/payday-lending/research-analysis/financial-quicksand-payday-lending-sinks-borrowers-in-debt-with-4-2-billion-in-predatory-fees-every-year.html. Furthermore, "[t]his 'churning' of existing borrowers' loans every two weeks accounts for three-fourths of all payday loan volume . . . In contrast, loans to non-repeat borrowers account for just two percent of loan volume." Leslie Parrish and Uriah King, "Phantom Demand: Short-term due date generates repeat need for payday loans, accounting for 76% of total volume," *Center for Responsible Lending* (July 9, 2009), at 3, http://www.responsiblelending.org/payday-lending/research-analysis/phantom-demand-final.pdf.

Furthermore, in the experience of Ohio consumer advocates, the resurgence of payday lending after the 2008 legislative reform has brought even more abusive loans terms and conditions, abusive collections practices, and many more collections suits on defaulted loans, in addition to the debt trap that already existed for this defective product. Consumer advocates routinely hear from clients with multiple loans who report collection tactics that would violate the Fair Debt Collection Practices Act if carried out by a third party collector: threats of prison or jail time, harassment at work, threats and calls to family members and friends, and home visits designed to publicly embarrass borrowers.

Another payday loan industry practice that has emerged since the 2008 legislative reforms is the practice of issuing the loan proceeds in the form of a check, then offering the service of cashing the check for as much as 7% of the check amount. Under the previous statutory payday scheme, lenders typically issued the loan proceeds as cash. In legislative hearings challenging the current practice of check cashing, the industry defended itself, alleging that lenders incur additional expenses to maintain cash on premises, that borrowers are not required to cash the loan checks at the lender storefront, and that the fee is a necessary part of the profit margin to stay in business.

In addition, many of the form contracts currently being used by payday lenders in Ohio contain terms and conditions that are oppressive to consumers. The following are examples of such loan terms and conditions:

1. Consents for lender or third party collector's use of text messaging, automatic telephone dialing systems, and/or prerecorded voice to any debtor phone numbers, whether or not supplied by the debtor. Clauses include agreements by the debtor that the lender will not be liable for calls, or that calls are not "unsolicited" for purposes of state and federal law.
2. Authorization of prearranged debits or electronic payments from the debtor's bank account in the event of default. Some contracts allow the debtor to terminate authorization by written notice "in such time as to afford us and your bank a reasonable opportunity to act on it."
3. Jury trial waivers, independent of any arbitration agreement.
4. Waivers of all legal defenses to the debt.
5. Binding arbitration, with exceptions only for filing in Small Claims Court. All of the arbitration provisions contain class action bans. Some arbitration clauses do provide an opt-out process, but to opt out, the debtor must send a notice in writing to a designated person and address different from the storefront office at which the loan was processed, usually a corporate address out of state. Furthermore, debtors may exercise the right to opt out of arbitration within either 30 or 60 days of the loan application date, but loan terms are typically only 14 to 30 days.
6. Notice and cure. Prior to initiating litigation or arbitration, a party to the contract must first give the other party a detailed written notice of the claim and the relief requested; the opposing party then has 30 days to respond. Frequently the debtor must use an out-of-state corporate address for the notice.

Such loans terms exemplify the defective and detrimental nature of this financial product.

The reason we share Ohio's story is that it illustrates how persistent, creative, and aggressive the payday loan industry has been in findings ways to avoid regulation and continue offering loans that victimize vulnerable consumers. The continuation of payday lending in Ohio, the pervasiveness of both storefront and internet payday lending, and the entry of conventional banking into the short term, small dollar loan market all evidence the increasing need to reign in these high cost loans and underscore the need for regulatory action on the federal level. Safer, affordable loan products will not emerge in the marketplace as long as the current model of payday lending persists without significant consumer protection.

Thank you for your investigation into short term, small dollar loan market.

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