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Jennifer Carr Allmon
EXECUTIVE DIRECTOR

September 1, 2016

Docket No. CFPB-2016-0025

Dear Director Cordray,

I am writing to comment on the recently published payday and auto title rules. These rules are an excellent first step at reasonable and meaningful regulation of a predatory industry that has operated in an exploitive manner for far too long. The Consumer Financial Protection Bureau has the authority to regulate unfair, deceptive, or abusive practices. We applaud the Bureau for putting forth rules that will protect borrowers. Yet, we remain concerned with the rule's shortcomings, which include: defining basic living expenses inadequately, extending exemptions to exploitative products, establishing short waiting periods between renewals, and disrupting alternative loan products provided by credit unions and community banks.

The Texas Catholic Bishops became concerned about the harmful effects of payday and auto-title lending in Texas after our charitable ministries reported that nearly a third of the clients we served had outstanding payday and auto-title loans. Frustrated with the lack of regulation and action, we began a "Payday Lending Roadshow" in 2013, conducting listening sessions with our ministry clients to better understand their experiences with these products.

Attached to these comments are the surveys we have conducted among our clients, the narrative transcriptions of the listening sessions, the written legislative testimony submitted by the Texas Catholic Conference on this topic, and the opinion editorials and media coverage of our efforts to reform the harmful practices of this industry.

Yours in Christ,

Jennifer Carr Allmon
Executive Director

Attachments:
2010 Catholic Charities Payday Lending Survey
2012 Non-profit Payday Lending Survey
Payday Lending Roadshow Narratives
Payday Lending Op-Ed by Bishop Michael Sis
Payday Lending Op-Ed by Bishop Placido Rodriguez
Payday Lending Op-Ed by Bishop Michael Olson

**Texas Catholic Conference Payday and Auto-title Lending Rule Comments**
Docket No. CFPB-2016-0025

In the last three years, thousands of clients of our charitable ministries have reported that payday and auto-title loans consistently cause substantial financial injury. The structure of these financial products is such that lender profit increases when borrowers fail. Such a design is inherently exploitative and unfair. The purpose of our comments is to address individual sections of the proposed rule by providing direct quotes from the individual Texans we help in our charitable ministries. We aim to shed light on the injuries redressed or overlooked by the rule.

## Substantial Injury to Consumers

Section 1031(c)(1) of the Dodd-Frank Act explains that the Consumer Financial Protection Bureau (CFPB) has the ability to declare a financial product or service unlawful if it is unfair. To be legally unfair, the product or service must meet three criteria: it must cause an injury that is substantial;[1] it must not be outweighed by any countervailing benefits to consumers or competition;[2] it must be an injury that consumers themselves could not reasonably have avoided.[3] The following stories illustrate how the products addressed by the rule meet these requirements.

Corpus Christi, June 18, 2014: auto-title borrower named Irma demonstrates substantial injury:

> "I lost my truck a couple of years back. I got a title loan that I had to renew and renew and it caught up to my husband and I [*sic*]. We used Title Star, Title Loan Star, one of those. The loan was for $1,000, that's the most we could borrow. They put a limit on us. We paid almost all of it, but then it was due to renew and we didn't have the rest so they renewed and it started all over again. We just pay and pay and pay. I had paid $1,800 on a $1,000 loan when they took my truck. Since we lost the truck my husband lost his job. We ended up in a worse situation than we started off in."

Beaumont, February 28, 2014: Catholic Charities (CC) client named Evelyn demonstrates all three components of unfairness in an exchange with Jennifer Allmon, Executive Director of the Texas Catholic Conference:

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[1] For a definition of substantial harm, see proposed rule at 47901: "The FTC noted that an injury is 'sufficiently substantial' if it consists of a small amount of harm to a large number of individuals or if it raises a significant risk of harm. The FTC has found that substantial injury also may involve a large amount of harm experienced by a small number of individuals."
[2] For a definition and analysis of an unfair act's countervailing benefits to consumers or competition, see proposed rule at 47901, and at 47938-47940: "it generally is appropriate for purposes of the countervailing benefits prong of the unfairness standard to consider both the costs of imposing a remedy and any benefits that consumers enjoy as a result of the practice, but the determination does not require a precise quantitative analysis of benefits and costs."
[3] FTC Policy Statement on Unfairness, *Int'l Harvester*, 104 F.T.C. at 1074. For a definition of reasonable avoidance, see proposed rule at 47937: "an injury is not reasonably avoidable where 'some form of seller behavior... unreasonably creates or takes advantage of an obstacle to the free exercise of consumer decision-making,' or, put another way, unless consumers have reason to anticipate the injury and the means to avoid it." See also 47901.

Evelyn: "I had two daughters who died within seven months of each other. One of them was sick with breast cancer and I needed money to get her medication. She encouraged me to get a loan to get it for her and so I did. The loan was $380 and she's been dead a year and every month I pay on it but it's the same thing and never goes down. When you pay for five months, even though some of my notes are $85-100, then when five months are up, they tell me that I need to roll it over and it starts over as the same thing and I don't get credit for all of the payments that I made during the five months. I might pay $85-100 but it doesn't go on my loan. So, if you pay $25-30 over what they say is due, you still don't get credit for it."

Jennifer Allmon: "Did you understand what you were getting into?"

Evelyn: "No, we needed money because my daughter had breast cancer and we had so many bills. She encouraged me one Saturday to go get the loan because she needed some medication. I pay on it, but it never goes down. I redid the loan one time. You have to have the loan paid off within six months. When you are paying $75-80-100 and that's just the interest. In my condition, I just have $15 dollars over that to pay, so I can never pay it down but after six months they said they have to roll it over and you just don't ever pay it down."

Jennifer Allmon: "Did they go over the contract and read it to you?"

Evelyn: "Maybe they did and maybe I just didn't understand it. I never was late in all of the times that I paid on it. My daughter died a couple of months later and then my other daughter died and I was busy trying to help my grandchildren with their mothers."

Jennifer Allmon: "Are you working or do you receive social security?"

Evelyn: "No—I'm 81 years old. I retired a long time ago. I get my husband's social security and widow's pension. I would never go to one again. I've got to keep paying to try to pay it off. If they take money from my bank account, I won't have money for other bills. I have no other choice but to pay it off. There are other bills that I need to pay that I can't because of these payments. I call every month on the third to see how much I have to pay to them. Every six months my light bill is paid by Red Cross when I get a cut-off notice. They only pay every six months so that's when I don't pay my light bill."

## Inappropriate and Aggressive Collection Practices

One of the major consumer harms that we see in Texas is aggressive and inappropriate collection practices.[4] Collections efforts are inconsistent and appear to be arbitrary. In particular, lenders in Texas threaten criminal charges against borrowers for "hot check" violations that our Attorney General and state Office of Consumer Credit Commissioner have ruled are inappropriate.

Corpus Christi, June 2014: Payday lending borrower details collection practices:

[4] See proposed rule at 47937: "where lenders' attempts to extract money directly from the consumer's account fails, the lender often will resort to other collection techniques, some of which—such as repeated phone calls, in-person visits to homes and worksites, and lawsuits leading to wage garnishments—can inflict significant financial and psychological damage on consumers. See also 47901 for comment by the FTC on this standard.

> "I got into a financial problem and asked for a loan from Total Loan to pay my T-Mobile cell phone bill. I paid half of it and decided to inactivate my T-Mobile account because I couldn't pay it. Not long ago they started calling me out of San Antonio. They told me they were going to take me to court and said on Friday they were going to send a Sheriff to pick me up. I said I'd be waiting for you while I'm drinking my coffee."

<u>Waco, November 2013: Client story shared by a homeless shelter case worker about aggressive collection practices:</u>

> "There is one particular client story, I'll never get over. He had a car title loan and kept telling them he could not pay it. One weekend he was telling them that he was going to move into the homeless shelter and was putting his stuff in a storage unit. When the truck was loaded up with their TV and dressers and a lot of their items is exactly when the people showed up to repossess. We went through a lot of lawyers in town to try to get their stuff back. Of course when we did get the car back, none of their stuff was there. It's written in their little articles that whatever is in the car is theirs. That one really has never gotten out of my heart. When we tried to work with the company and they didn't want to give us the paperwork—they didn't want us to know what they were doing and how much they were charging."

<u>Corpus Christi, June 18th, 2014: Ashleigh, a small debt claims processor, describes collections:</u>

> "We've seen payday lenders taking more money than they are told from consumer's debit and credit cards. Never pay with a debit or credit card, because they'll go in the next month and take a payment out again. They authorize themselves to do the withdrawal. Give them a money order or cashier's check."

**<u>Typical Clients Reside in Low-income Households</u>**

The Texas Catholic Conference surveyed non-profit clients in Texas in 2010 and in 2012. We found that 76 percent of payday or auto title borrowers seeking charitable assistance were also receiving a public benefit, which demonstrates the poverty levels of payday borrowers in Texas. In addition, we found that 36 percent of the clients seeking financial assistance from non-profit financial assistance agencies in Texas were stuck in payday loans while they were seeking basic assistance from us.

<u>Beaumont, February 28, 2014: Client listening session abstract:</u>

> "A listening session was conducted with clients of Catholic Charities of Southeast Texas regarding their experiences with payday and auto-title loans. Clients of the direct financial education and asset development program were invited to participate. All clients were low-income clients and those with outstanding payday and auto-title loans were over the age of fifty-five. One client attended in order to better understand how her senior mother could have such high loan balances despite the fact that she made all of her payments on time. Another client was struggling to pay the monthly fees when her only source of income is her husband's social security and widow's pension, totaling less than

> a thousand dollars of income per month. All clients described aggressive collection practices and a lack of understanding of the loan terms or products."

**Default rates and consequences of default**

According to the CFPB's proposed rules for storefront payday lenders, "The Bureau estimates that during the 2011-2012 timeframe, charge-offs (i.e., uncollectible loans defaulted on and never repaid) equaled nearly one-half of the average amount of outstanding loans during the year. In other words, for every $1.00 loaned, only $0.50 in principal was eventually repaid."[5] When Texans repay two, three, or four times the principal value of such loans, it is unconscionable to consider such a loan in default. To extract excessive profit, lenders can theoretically shift costs to debtors who repay or roll-over the loan, but in practice lenders shift costs almost entirely to debtors who roll-over. About 90 percent of all loan fees come from debtors who borrow seven or more times; 75 percent comes from debtors who borrow ten or more times.[6] The structure of these financial products is such that lenders overcome loss rates only by inflicting substantial harm on debtors who neither default on nor repay their loan in full.

Houston, June 20, 2013: 2-1-1 operator describes one caller who had an outstanding loan she could not repay:

> "A woman fell behind on her car note because her hours had been reduced at work. She worked for minimum wage and did not have the credit for a loan. She went to a payday lender to get $200 and they suggested that she get $600 instead. She realized that there were many other bills and needs for her kids that she could use the money for and took the $600. The payments were too much for her and she could not pay it off. 2-1-1 referred her to Covenant [an alternative lender offering low interest rates for low income borrowers] and they provided her classes and helped her access a secure loan to pay off the payday loan."

Waco, November 19, 2013: Habitat for Humanity representative sheds light on effect of default:

> "My role is to select families for Habitat homes and it's basically a mortgage application process. As we are qualifying families for the program, we look at their debt-to-income ratio. So we see what percentage of their monthly income is being used to pay debt. We also include accounts that are past due in that calculation. If it's in collections we don't know what the payment is but we have to assume that it's 5 percent of whatever the balance is. We find people who have ten pages of World Finance or car title loans that are in collections. We have to include 5 percent of each of those balances. That's one of the number one reasons that we have to deny applicants: because they have a stack of payday loans in collections."

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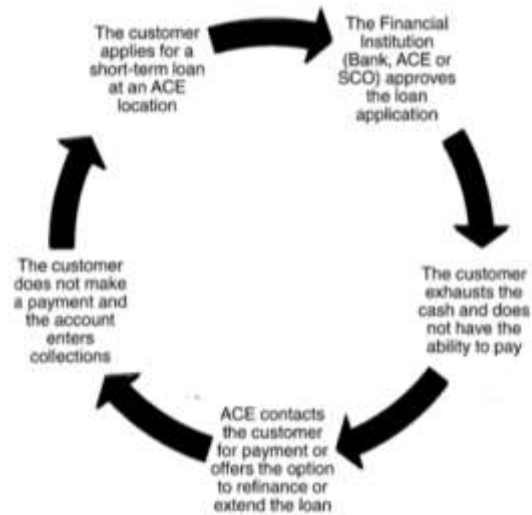
[5] See proposed rule at 47874. The loss rate of online lenders is higher; one reports a loss rate of 71 percent. See proposed rule at 47879.

[6] See proposed rule at 47874.

**Cycle of debt as a business strategy**

We are particularly concerned that the CFPB research found that 80% of the loans were re-borrowed on the same day a previous loan was repaid. This clearly documents the reality that these loans usually create a cycle of debt that harms consumers. Previous CFPB enforcement[7] actions established that payday lending companies often discourage repayment and actively encourage clients to renew or roll-over the loans rather than repay them. The Bureau found that lender's creation of the false sense of urgency to get delinquent borrowers to take out more payday loans is abusive. ACE Cash Express even had a graphic model in their training manual (illustration at right) on how to encourage the cycle of debt.[8]




Beaumont, February 28, 2014: Client describes her growing debt and the lender's discouragement to repay:

> "It started out $800 and now it's like $5,000. Every time I come in to try to make a payment they said, 'Oh, you don't have to pay today and you can have some more money.' Well, when you are broke and desperate and don't have no money you are going to take the money to pay the light bill. So then, I got a hold of some money and paid like $4000 and it was still high."

Houston, June 20, 2013: Financial educator talks about families being discouraged from repaying loans:

> "I actually have not heard of a client ever paying the loans back. Once the loan is started, they have to try to make ends meet and pay it back. There's not going to be a good way to determine how many clients are able to pay it back in a small amount of time because of the fact that when they do go back to pay it, and they have the money to pay it, they are offered more money. They already living paycheck to paycheck and have dire needs. They are thinking, 'I could get money now to get ahead and pay it back later.' So it's just deferred again and again."

**Alternative Product Success**

The Society of St. Vincent De Paul (SVDP) in Austin and Dallas have set up predatory loan conversion programs in order to assist clients in stopping the cycle of debt. SVDP loans have demonstrated that this client base can successfully repay their loans, if the loans are structured

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[7] http://www.consumerfinance.gov/about-us/newsroom/cfpb-takes-action-against-ace-cash-express-for-pushing-payday-borrowers-into-cycle-of-debt/

[8] http://files.consumerfinance.gov/f/201407_cfpb_graphic_ace-cash-express-loan-process.pdf

for borrower and lender success. These loan programs have a default rate of less than five percent.

The Texas Tribune Reports on a SVDP predatory loan borrower, Leonard Abbott:

> "Leonard Abbott of San Marcos had heard of the dangers of payday loans — the small-dollar, high-interest credit that can quickly trap borrowers in a morass of debt. But when unexpected medical bills blew a hole in his monthly budget last year, he felt he had nowhere else to turn. He took out a $500 loan, expecting to pay it back in full in two weeks. When he couldn't, he sought more loans, until about a third of his $1,700 monthly take-home pay was going toward paying interest and fees alone.
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> "The second loan that I got was to help pay the first one, and it kind of just snowballed," said Abbott, a 53-year-old Department of Public Safety security officer at the state Capitol. "One thing that I didn't realize is, it doesn't matter how many payday loans you have, you still qualify for more."
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> "The group's [Society of St. Vincent De Paul Austin] Predatory Loan Conversion Program, launched in 2014, works with a credit union to convert high-interest loans into secured credit with lower rates. So far, the program has helped 56 people convert 88 loans. In May, Abbott's four payday loans — totaling nearly $2,500 — were converted into a loan from the Randolph-Brooks Federal Credit Union. His interest payments were reduced from $450 monthly to $30.50 in total. He now has 12 months to pay back his loan." [9]

**<u>Lack of information about risk of default and renewal</u>**

We found that consumers do not understand the high risk of default or loan renewal inherent in these financial products. Moreover, we discovered that lenders work to obscure, rather than clarify, the benefits of full and prompt repayment. Lender marketing[10] frequently targets individuals who have previously had short-term loans. Such outreach encourages Texans to re-borrow, even in the absence of a pressing need.

<u>Brownsville, June 2014: Client details marketing practices of short-term lenders:</u>

> "My son came down here and he has bad credit. I am trying to teach him independence so I asked him to consider what his options were. So, I went with him to get the loan. I was his 'collateral.' He had an emergency and the loan covered it. I paid it for him the following month. They keep you in their database. They are very friendly and persuasive. They keep calling you offering you more money. I think that anybody at any given time has a need, or something that they want. Then, you have these people calling you and saying, 'Oh, do you want some money? We can give you more money if you need some.' It takes a very special person to say that 'I don't need your money now.' They are dangerous and very persuasive. They know who they are dealing with."

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[9] https://www.texastribune.org/2016/06/18/federal-rules-could-tame-wild-west-texas-payday-le/

[10] See proposed rule at 47923.

Houston, February 27, 2014: Senior services case worker talks about lack of information:

> "In our senior services program for people over 60 years old, we have had numerous clients who did not share this information with us because of embarrassment, guilt, and frustration that they took out this loan and have not been able to pay for it. Many of them did not understand that that interest accrued with the payment or that they were only paying for the interest and not the principal. Many times they took out the loan to pay utility or food bills and they did not feel like they had any place to go. Some of them took out the loans because they were sick, and two or three people took out the money to pay for burial expenses for their spouses. They just began to be aware that they could not pay for the loans because they kept accruing debt through the interest. Many of them have borrowed money from family members to help them pay the loan off."

Brownsville, June 3, 2014: A community assistance provider highlights the lack of guidance provided to debtors:

> "When I talked to the supervisor of a payday loan company he explained it this way, 'The clients are paying rent. Instead of interest, they are paying rent every month on the capital they got. Every month they are paying the fees, which are rent to keep it from going to collections and to stay in good standing, but they still owe the same loan amount.' This was a personal conversation with the manager, but he said that he doesn't tell the client that, he tells them, 'Don't worry about the interest because in two weeks you are going to pay off that loan.'"

**Foreign Language Disclosures**

As we traveled around the Rio Grande Valley, we heard repeatedly that the lenders advertise and conduct the transactions in Spanish while all of the contracts and paperwork are in English. If the company is capable or marketing in Spanish, they should disclose loan terms in Spanish as well.

Fort Worth, May 13, 2014: Comment from a financial assistance worker about the lack of foreign language disclosure:

> "Another co-worker and I went to see how it works and it was so easy. It took us about 20 minutes and it took nothing. They did not provide us with any information about the terms of the loan. It was two years ago. That was when we realized that even though people are getting the money, they don't really know what it costs them. They talked to us in Spanish, but all of the forms we signed were in English. So, lots of people don't really know what they are signing. We have clients bringing in their contracts and paperwork and asking us to explain it to them because they don't know what it means."

Waco, November 19, 2013: Relative of debtor describes contact with lender:

> "I called a lender myself on behalf of an individual who was not able to pay. I was trying to explain that the client was Spanish speaking and really didn't understand the terms of the loan. He just responded that she should not have signed something she didn't understand. This was a family member of mine."

## Benefits of the Rule

Reduction of Harmful Loans
The proposed CFPB rule will restrain most short term loans and hasten the market shift to long term loans. Long-term loan products guarantee and increase in the length of time that the consumer is stuck in the cycle of debt. The short term products at least have the potential that the client can end the fees and debt within two weeks or a month, while the design of the long-term installment products require the borrower to pay substantially more fees than short-term products. Current data reported by the industry in Texas have shown a sharp increase in the fees due to the dramatic shift to longer term installment products. It is essential that these rule addresses this market shift with tight controls on refinancing longer term loans.

Strong Ability to Repay Standards
The consideration of borrower income and expenses in the ability to repay provisions is a critical improvement. These types of guidelines are central to other lending products, but absent in the payday and auto-title lending market. The requirement to check the credit report of the borrower is important in Texas as these businesses operate as credit service organizations. However, this provision is unmined by exempting six short term loans in a twelve-month period from ability to repay standard. No short term loans should be made without an ability to repay assessment.

Centralized Reporting
The rule requires centralized reporting for compliance. This is essential for effective enforcement of the rule. The Texas Catholic Conference supports the use of a CFPB registered real time loan database before issuing a loan and the requirement that lenders also report loans to it in real time.

Improved Collection Practices
The rule requires notice to consumers prior to collecting payment from their account and limits failed attempts to withdraw from borrowers' accounts. These provisions are crucial as this notice helps consumers to be aware of their upcoming payment withdrawals and prevent overdraft fees for failed withdrawals. This helps consumers to plan their budgets accordingly.

Enforcement
This rule has a broad anti-evasion clause to prevent lenders from taking actions with the intent of evading the proposed rule requirements. This, combined with the enforcement authority provided to the Bureau, to state Attorneys General, and to state regulators, will increase compliance and reduce industry attempts at evasion. The information systems contemplated in the rule are robust and will be instrumental in reform efforts.

Local Ordinances
We are grateful that the rule is designed to complement and support local ordinances and not override them. This reflects the principle of subsidiarity. Local communities have put in place some reasonable local rules and it is appropriate that these ordinances continue after the federal rule is implemented.

## Shortcomings of the Rule

Despite the many helpful provisions, the rule does contain several dangerous shortcomings that may undermine the rule's effectiveness.

Credit Service Organizations (CSO) Model Deficiencies:
The proposed rules leave too many ambiguities that can be exploited by lenders who utilize the CSO lending scheme. The proposal does not clearly hold both the lender and CSO "service providers" accountable under the rule provisions because it proposes a carve-out for longer-term loans with unlimited origination fees. The rules should be streamlined to ensure that neither the CSO nor the lenders can evade the CFPB's proposed protections.

Assumptions about Living Expenses
The CFPB requires lenders to verify a debtor's ability-to-repay a loan before approval, which is an excellent way to protect individuals from predatory lenders. However, the CFPB's rule defines ability-to-repay ambiguously: it requires lenders to verify the debtor's income, and estimate the debtor's major financial obligations and basic living expenses. Once this is done, the lender would then estimate whether the debtor has the ability to repay the loan. This ambiguous definition should be simplified: it should be assumed that a debtor can repay a short-term loan if the loan costs less than a definite percent of the debtor's income. This defined percent requirement would provide a clear and simple front-end definition of ability-to-repay.

Leaves Other Bad Products Out
The rule does not cover all loans with a leverage payment mechanism (such as loans that allow the lender to access the borrower's bank account after 72 hours in order to repay, loans secured by personal property, or loans that allow the lender to garnish wages). Exceptions in the rule could allow for 400% APR products to continue.

Waiting Periods not robust enough
The loan waiting periods are not long enough and fail to prevent high re-borrowing rates, allowing up to 10 loans per year in some cases. We request a return to the initial proposed 60 days rather than the final proposed 30 days between short term loans.

Impact on Banks and Credit Unions
We are concerned that the Bureau's proposed rule could disrupt current efforts of banks and credit unions to offer small dollar installment loans. In particular, the Catholic Church in Texas partners with credit unions to offer low-cost loans to individuals and families in crisis. These alternative products are the just and charitable alternative to predatory payday and vehicle title loans; they are the antithesis of the unfair and abusive products targeted by the Bureau. We urge the Bureau to carefully review the proposed rule in order to ensure that the progress it makes is not annulled through the elimination of alternative products. We recommend that the rule completely exempt credit union products which cost consumers less than 36 percent APR, pursuant to the Bureau's authority under Section 1022(b)(3) of the Dodd-Frank Act.