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May 15, 2019

Kathy Kraninger
Director, Consumer Financial Protection Bureau
1700 G Street NW
Washington, DC 20552



HRW.org

Submitted via email to 2019-NPRM-PaydayReconsideration@cfpb.gov

RE: Docket No. CFPB-2019-0006 - Human Rights Watch Comment on CFBP Proposal to Rescind Provisions in the Rule Governing Payday, Vehicle Title, and Certain High-Cost Installment Loans

Dear Ms. Kraninger,

We write to express our deep concern with the Consumer Financial Protection Bureau's (CFPB's) proposal to rescind certain provisions of the rule governing Payday, Vehicle Title, and Certain High-Cost Installment Loans, particularly those provisions requiring an assessment of a possible loan recipient's ability to pay.¹ The rule's finalization in 2017 was a significant and necessary step forward in protecting the millions of Americans subject to predatory high interest loans that, by design, often lead low-income borrowers into cyclical debt traps.²

Now that the time is approaching for the 2017 rule to take effect, we urge you to consider the protections for consumers this rule provides. Rather than rescinding provisions of the rule, we strongly encourage the CFPB to fully implement the 2017 rule as originally planned.

According to research by the Pew Charitable Trusts, approximately 12 million Americans take out payday loans and 2.5 million take out vehicle-title loans each year.³ The short-term nature of these loans and their repayment structure

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¹ Bureau of Consumer Financial Protection, RIN 3170-AA80, February 14, 2019, <https://www.govinfo.gov/content/pkg/FR-2019-02-14/pdf/2019-01906.pdf> (accessed April 25, 2019) 12 CFR Part 1041 [Docket No. CFPB-2019-0006].

² "CFPB Finalizes Rules To Stop Payday Debt Traps," Consumer Financial Protection Bureau news release, October 5, 2017, <https://www.consumerfinance.gov/about-us/newsroom/cfpb-finalizes-rule-stop-payday-debt-traps/> (accessed April 25, 2019).

³ Pew Charitable Trust, "Payday Loan Facts and the CFPB's Impact," January 14, 2016, <https://www.pewtrusts.org/en/research-and-analysis/fact-sheets/2016/01/payday-loan-facts-and-the-cfpbs-impact> (accessed April 25, 2019).

drive about 80 percent of borrowers to re-borrow frequently and repeatedly pay fees to refinance their accumulated debt.⁴ The 2017 rule establishes logical baselines for consumer protection, including by requiring lenders to verify that borrowers have the ability to repay the loan and its associated fees prior to issuing a loan.

The CFPB rule, and specifically the mandatory underwriting requirements for making ability-to-pay determinations, found broad bipartisan support. A 2017 poll conducted by Lake Research Partners and Chesapeake Beach Consulting on behalf of Americans for Financial Reform and the Center for Responsible Lending found that 73 percent of likely American voters from across the political spectrum supported this provision and other regulations included in the CFPB rule.⁵ This went up to 79 percent in a 2018 poll.⁶ Widespread support is in part due to American voters recognizing the strong connection between financial regulation and its beneficial impact on their lives. While the rule's implementation would benefit Americans across the country and of different demographics, it is crucial to note that predatory lenders disproportionately target and consequently harm low-income minority communities.⁷

Human Rights Watch has investigated the impacts of predatory payday lending in some of the poorest parts of the United States such as Native Americans reservations, specifically the impacts on people living on Cheyenne River and Pine Ridge Reservations in South Dakota, and Laguna and Zia Pueblos in New Mexico. In 2012 we surveyed 387 individuals living on reservations, in financial literacy classes, in pow-wows, and with the help of financial institutions, who distributed the surveys for us. The survey methodology was not random and therefore not representative, but the results paint a worrying picture of the negative impacts of payday lending.

The vast majority, around 73 percent, of survey respondents reported household incomes under US\$40,000, with an average of two children each, and nearly half had taken out a payday, auto title, or both types of short-term loans. People reported taking out loans most

⁴ "CFPB Finalizes Rules To Stop Payday Debt Traps," Consumer Financial Protection Bureau news release, October 5, 2017, <https://www.consumerfinance.gov/about-us/newsroom/cfpb-finalizes-rule-stop-payday-debt-traps/> (accessed April 25, 2019).

⁵ "New Poll Reveals Strong Bipartisan Support for Financial Regulation; Americans Say Wall Street's Influence in Washington is Too High," Lake Research Partners and Chesapeake Beach Consulting joint press release, July 18, 2017, http://www.lakeresearch.com/images/Press_Releases/4LRPpublicmemo.AFR.CRL.PollRelease.f.07172017.pdf (accessed April 25, 2019).

⁶ "New Poll Shows Voters Oppose Mulvaney Policies at CFPB," Americans for Financial Reform and Center for Responsible Lending joint press release, July 31, 2018, <https://ourfinancialsecurity.org/2018/07/afrcrl-poll-new-survey-reveals-discontent-with-mulvaney-path-at-cfpb/> (accessed April 25, 2019).

⁷ Graciela Aponte-Diaz, "State Research Shows That Payday Lending Stores are Heavily Concentrated in African American and Latino Communities Across California," *Center for Responsible Lending* media, December 9, 2016, <https://www.responsiblelending.org/media/state-research-shows-payday-lending-stores-are-heavily-concentrated-african-american-and> (accessed April 25, 2019).

often to cover unexpected expenses, but also for their everyday expenses and groceries. More than half of those who took out a loan said they had trouble repaying their loans and associated fees.⁸

Over 70 percent of borrowers found that the loan repayment process made covering regular household expenses more difficult, and the difficulty increased if they took out more than one loan per year.⁹ Alarming, about one-third of respondents reported specific negative experiences related to their loans, like threats of criminal charges by aggressive debt collectors, car repossession, eviction, or loss of employment. The additional financial difficulties many low-income Native American reservation families face during the repayment process expose the predatory nature of an unregulated payday loan industry. The ability-to-repay provision included in the 2017 CFPB rule as finalized helps ensure that consumers would not have to choose between repaying loans or meeting basic expenses. It would also prevent the cascade of potentially negative repercussions when a person is unable to repay a loan.

About a quarter of the survey respondents were from Cheyenne River Sioux Reservation in South Dakota. At the time we conducted our research, 50 percent of adult workers on Cheyenne River were unemployed or out of the workforce.¹⁰ Residents could not access payday loans on the reservation, and so would often drive long distances to Pierre or Rapid City to take out loans from lending storefronts, often with triple- or even quadruple-digit interest rates. Such high-cost payday loans are often the only source of credit for many Native Americans living on reservations. Human Rights Watch's research on Cheyenne River and other reservations shows that a disproportionate number of people living on reservations within the United States depend on short-term loans to meet unexpected expenses.

In a positive development in 2017, South Dakota implemented an interest rate cap of 36 percent for short-term loans.¹¹ New Mexico followed in 2018 with a 175 percent interest rate cap on small loans of less than \$5000.¹² While this has curbed some of the negative impacts from exorbitant payday interest rates, local news has reported that this may be driving consumers to

⁸ Human Rights Watch, Payday Lending Survey Data (Cheyenne River and Pine Ridge Reservations in South Dakota, and Laguna and Zia Pueblos in New Mexico), July-November 2012.

⁹ Human Rights Watch, Payday Lending Survey Data (Cheyenne River and Pine Ridge Reservations in South Dakota, and Laguna and Zia Pueblos in New Mexico), July-November 2012.

¹⁰ Arvind Ganesan, "Predatory Lending and Indian Country," commentary, Human Rights Dispatch, September 24, 2013, <https://www.hrw.org/news/2013/09/24/predatory-lending-and-indian-country>.

¹¹ Liz Farmer, "Facing 652% Interest Rates, South Dakota Voters Regulate Payday Lending," *Governing*, November 9, 2016, <https://www.governing.com/topics/elections/gov-south-dakota-payday-lending-ballot-measures.html> (accessed April 25, 2019).

¹² Statement of Rules Changes Related to Licensees under the Small Loan Company Act of 1955 (SLA) and Changes Made from the Proposed Rules to the Final Adopted Rules, *New Mexico Regulation and Licensing Department Financial Institutions Division*, September 15, 2018, <http://www.rld.state.nm.us/uploads/files/FID%20Statement%20of%20Small%20Loan%20Rules%20Changes%2009-14-18%20-final.pdf> (accessed April 25, 2019).

use unregulated online lenders.¹³ This further highlights the need for robust federal rules and oversight that would not allow for regulatory gaps or loopholes that could again trap low-income individuals in debt that they cannot afford to repay.

While regulation alone will not lift low-income people who borrow payday loans out of poverty or low-income status, it is a crucial first step towards protecting their families and preventing them from falling into cyclical financial crisis and debt. By fully implementing the rule as finalized in 2017, the CFPB would take a vital first step towards holding predatory lenders accountable and making sure that consumers the agency is mandated to protect are able to access short-term loans without risking months of further financial instability.

We would be happy to provide additional information, and also welcome the opportunity to further discuss this issue with representatives from your agency. If you would like to arrange such a meeting, please contact Namratha Somayajula (somayan@hrw.org).

Sincerely,



Arvind Ganesan
Director
Business and Human Rights



Komala Ramachandra
Senior Researcher
Business and Human Rights

¹³ Bart Pfankuch, "Payday loans gone, but need for quick cash remains," South Dakota News Watch, March 18, 2018, <https://www.sdnewswatch.org/stories/payday-loans-gone-but-need-for-quick-cash-remains/> (accessed April 25, 2019); Casey Wonnemberg, "Company Says It's Filling a Need After Payday Lenders Close," Keloland, February 1, 2019, <https://www.keloland.com/news/your-money-matters/company-says-it-s-filling-a-need-after-payday-lenders-close/1746199294> (accessed April 25, 2019).