United States Senate
WASHINGTON, DC 20510

October 7, 2016

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

Dear Director Cordray:

We appreciate the Consumer Financial Protection Bureau (CFPB) examining the small-dollar credit marketplace to ensure consumers are protected from bad actors and predatory practices. Your work in this area is critical to help protect consumers from long term debt traps that over time could undermine their financial security. We are writing to urge that the CFPB's Final Payday and Small Dollar Lending Rule be written so that it doesn't unintentionally cut off consumer access to credit, especially for Americans that need it most.

As currently drafted, we are concerned that traditional lenders, such as banks and credit unions, will be unable to actively participate in this market space at scale or continue to offer *de minimis* character loans without facing significant reporting requirements. As such, we respectfully request the CFPB re-examine its rule to ensure it provides the ability for traditional, well-regulated lenders the flexibility to innovate viable products to fill customer demand for small dollar, short term lending, while protecting consumers from abusive practices.

Today, the need for accessible small-dollar credit liquidity for consumers is growing. According to the Federal Reserve, nearly half of all American adults say they cannot cover an unexpected $400 expense.[1] Similarly, a recent Bankrate study found "63% of American adults say they are unable to pay an unexpected expense with their savings..."[2] With stagnant wages, consumers have less cushion for emergencies, strained credit scores, and fewer credit options, making access to reasonably priced small-dollar, short-term liquidity products all that more important. Various entry-level credit products exist to meet a wide range of these needs, including traditional credit cards and personal loans. Unfortunately, many consumers cannot qualify for these forms of credit.

Under the CFPB's current proposal and past guidance from the Office of the Comptroller Currency (OCC) and the Federal Deposit Insurance Corporation (FDIC) financial institutions are limited in their ability to offer small dollar credit products. We are concerned that in the absence of these products, consumers will ultimately pay higher prices for payday installment loans or may face increased delinquency, late payment, nonsufficient fund, and overdraft fees.

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[1] Board of Governors of the Federal Reserve System - *Report on the Economic Well-Being of U.S. Households in 2015* (May 2016).

[2] http://www.bankrate.com/finance/consumer-index/money-pulse-1215.aspx?ic_id=Top_Financial%20News%20Center_link_3

Specifically, the proposed rule would make it an abusive and unfair practice for a lender to offer a covered short-term or longer-term loan without conducting an analysis of a consumer's ability to repay the loan (Full Payment Test). For banks and credit unions that wish to offer affordable, easy-to-use products, this analysis may be too expansive and costly. For example, to provide a covered small-dollar loan, lenders would have to verify the consumer's income, "major financial obligations," and borrowing history using third-party records to determine whether the consumer has the ability to repay the loan after covering other major financial obligations and basic living expenses. This level of underwriting complexity is more akin to a mortgage loan than a small dollar loan, and ignores the expense and length of time it takes to undertake this kind of analysis, while limiting the potential for low-cost automation. Requiring this level of underwriting prices out lower-cost providers, advantaging large-scale payday and auto title lenders that are willing to lend at 300 to 500 percent APR.

The proposal does allow for a lender to avoid this restrictive underwriting analysis if they choose; however, the alternative methods call for restrictive, complex, and prescriptive provisions that do little to provide financial institutions with clear standards. While avoiding the costly underwriting requirements by way of these safe harbors would be helpful, these provisions will garner little interest due to constraints that will inhibit lower-cost credit at scale. Only easily implemented standards will allow financial institutions to make quick loans at reasonable prices.

Accordingly, we urge the CFPB to explore options that will provide access to manageable small dollar credit products at financial institutions, consistent with essential consumer safeguards. These options should include a payment to income (PTI) alternative supported by Pew Charitable Trusts and cited in the CFPB's initial framework released in March 2015. We encourage the CFPB to work with stakeholders to find a reasonable PTI ratio that will provide both viable and safe products that meet high consumer demand for small dollar lending. A set of clear and simple guidelines requiring a borrower to pay no more than a fixed percentage of gross monthly income would be a win-win for consumers, banks, and credit unions. It would provide access to safe, reliable small dollar credit, while permitting financial institutions the necessary flexibility to innovate, automate, and meet customer needs. Available evidence suggests that a 5% PTI ratio may be suitable to for some lenders, but these are new products and experience may suggest that a different percentage is appropriate over time.

We also encourage the CFPB to provide banks and credit unions that do a *de minimis* amount of small dollar lending a clear exemption that will provide these institutions the ability to offer the same service and credit to customers that they currently offer. For example, the CFPB should explore exempting from coverage small-dollar loans from providers that issue no more than a limited number of otherwise-covered loans per year, if those loans represent no more than 5% of a provider's total revenue. An exemption along these lines would allow continued lending from community banks and credit unions that offer one-off small dollar loans on an infrequent basis with no additional requirements.

Consumer protections should be central to any financial product or service; however, these restrictions need to be realistic to ensure viable and safe small-dollar credit from regulated financial institutions. Overly restrictive regulations may lead to less competition and an increase in prices,[3] and could contribute to a growing unbanked and under-banked population that does not have access to mainstream credit opportunities. We are concerned that the provisions provided for in the current proposal could result in steering consumers away from banks and credit unions, ultimately limiting choice and competition.

We encourage the Bureau to construct its rule to allow for sensible small dollar products at well-regulated financial institutions. CFPB is in a unique position to draft strong uniform standards that ensure financial products are both accessible and safe. We urge the CFPB to work with all stakeholders including consumers, financial institutions, and the prudential financial service regulators to develop a sound data-driven foundation for a comprehensive supervisory approach that provides, safe, reliable small dollar credit access to American consumers.

Sincerely,

Heidi Heitkamp
U.S. Senator

Claire McCaskill
U.S. Senator

Joe Manchin
U.S. Senator

3 According to study conducted the Center for Financial Services Innovation entitled A Fundamental Need: Small-Dollar, Short-Term Credit (2008), continued market competition and product innovation would be advantageous in expanding small-dollar, short-term lending and may ultimately help lower the cost of these products for both providers and consumers.