NEW YORK STATE
DEPARTMENT of
FINANCIAL SERVICES

Andrew M. Cuomo
Governor

Benjamin M. Lawsky
Superintendent

February 4, 2015

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

Dear Director Cordray:

The Consumer Financial Protection Bureau (CFPB) has been a leader in investigating and rooting out unfair, deceptive, and abusive payday lending practices. The payday lending industry — which sometimes charges interest rates in excess of 1,000 percent — often engages in predatory tactics that harm struggling borrowers who can least afford it.

The CFPB has indicated it will soon take an important next step by issuing national rules to help reform payday lending and stamp out some of its worst abuses. That is potentially great news for consumers across the country, and we believe that there are a number of steps the CFPB should take to maximize the effectiveness of these rules, including:

- Making crystal clear that the laws of states with stronger anti-payday-lending rules still apply to lenders. (In other words, the CFPB should spell out that its rules are a floor, not a ceiling, for consumer protection.)
- Banning payday lenders from using so-called "remotely created checks;"
- Restricting the sharing of consumers' sensitive personal information by payday lenders, lead generators and other third parties;
- Creating a rigorous "ability-to-repay" standard for loans

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In a number of states, including New York, payday lending is illegal. Nonetheless, payday lenders have tried to evade state laws by operating online, as well as using an assortment of other schemes. Although there are no payday lending storefronts in New York, a loan shark in cyberspace is just as harmful as a loan shark on a street corner.

Regulators in states that have strong anti-payday lending laws have served as a first line of defense for consumers through investigations and enforcement actions. That is especially important given the risks that these products pose to consumers.

Payday loans are marketed as providing a short-term advance to consumers facing a temporary cash crunch. Instead, however, these products far too often trap families in unending cycles of debt from which they cannot escape. In many cases, the interest rates that these companies charge are so high consumers are forced to take out a new payday loan just to pay off the previous one when it comes due.

These lenders have also used a variety of contemptible tactics to drain consumers' bank accounts — even when doing so violates the law.

Take the story of one consumer from a suburb of Buffalo, New York. In April of 2013, she applied online for a payday loan. Months later, after having paid $620 on a $400 loan with a 700 percent annual percentage rate, she had barely reduced the principal on the loan.

When she discovered that payday loans are illegal in New York, she asked her bank to stop the lender from illegally debiting her bank account. Her bank complied, and cut off the lender from debiting through the Automated Clearing House network, the traditional system for debiting and crediting these loans.

However, the lender just side-stepped the bank and began making withdrawals using "remotely created checks," which are electronic checks that do not require a consumer's signature. Banks are unable to easily stop these electronic checks, even for illegal or unauthorized debits. In the end, the only way she could stop these unending withdrawals was to close her bank account.

In response to examples like this, the New York State Department of Financial Services (DFS) has undertaken a multifaceted effort to protect consumers from illegal, online payday lending, and we are making progress.

We have issued 55 cease-and-desist letters to online payday lenders operating illegally in New York — the majority of which have subsequently stopped lending into our state. Additionally, we have undertaken an extensive investigation into so-called "lead generation" firms that sell consumer data to illegal, online payday lenders and other companies, including scam artists, in violation of New York State law. We have also been engaging banks and debit card networks to help them prevent illegal transactions. And when some payday lenders sued DFS in an attempt to stop our work, the courts rejected their arguments.

The stories we have heard from consumers about payday loans becoming a nightmare of spiraling debts reflect a national problem. Pew recently released a report finding that the average annual percentage rate for an online payday loan is 650 percent. According to Pew, 22 percent of consumers end up closing their bank account because of a payday loan, and 30 percent of online payday loan borrowers receive threats of legal action, arrest, or harassing calls at their place of work. These types of threats are often illegal. A strong and comprehensive federal response to the payday lending nightmare is long overdue.

While our Department will continue to aggressively protect New York consumers, there is much we hope the CFPB will do to help stop abusive payday lending practices.

First, the CFPB should make crystal clear that while its rules set a minimum level of protection for payday loan borrowers nationwide, the rules of states with stronger consumer financial protection laws will still apply to lenders.

In fact, in consolidating consumer financial protection into a single agency in the Dodd-Frank Act, Congress recognized that in most cases CFPB rules would create a floor, not a ceiling, and that states' authority to provide stronger consumer protections is preserved.

The CFPB is also in a unique position to regulate certain banking and marketing practices that make it easier for payday lenders to abuse consumers. The CFPB should ban the use of remotely created checks in connection with collecting on payday loans. Remotely created checks make it too easy for payday lenders to make unauthorized withdrawals from a consumer's bank account.

Additionally, a strong CFPB rule should restrict the sharing of consumers' sensitive financial information with payday lenders, payday loan lead generators, and other third parties. The absence of national regulation of lead generators has led to outrageous scams and harassment when consumers' sensitive financial information falls into the hands of criminals.

Finally, should the CFPB set standards for short-term, small-dollar loan products in states that allow them, any such standards should reflect consumers' real ability to repay the loans. As the CFPB has noted, payday loans are often unaffordable and become debt traps for consumers. An installment loan structure that a consumer cannot afford is no better than a lump-sum payday loan.

These are just a few of the issues that the CFPB should address in crafting strong national rules for payday lending. American consumers are fortunate to have an agency like the CFPB that is addressing abusive financial practices nationwide. The CFPB has an opportunity to make an enormous difference in the financial lives of millions of financially vulnerable Americans by writing strong, forward-thinking payday lending rules. We look forward to continuing to work with you on this issue.

Sincerely,

Benjamin M. Lawsky
Superintendent
New York State Department of Financial Services