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October 6, 2016

*Via E-mail ([FederalRegisterComments@cfpb.gov](mailto:FederalRegisterComments@cfpb.gov)) and Federal Express*

Office of the Executive Secretary  
Consumer Financial Protection Bureau  
1275 First Street, NE  
Washington, DC 20002  
Attn: Ms. Monica Jackson

Re: Comments on CFPB Proposal on Payday, Vehicle Title, and Certain High-Cost Installment Loans (RIN 3170-AA40; Docket No. CFPB-2016-0025)

Ms. Jackson, Ladies and Gentlemen:

We appreciate the opportunity to comment on the proposed rule on Payday, Vehicle Title, and Certain High-Cost Installment Loans, to be codified at 12 C.F.R. pt. 1041 (the "Proposed Rule"). The Proposed Rule was published by the Consumer Financial Protection Bureau ("CFPB" or "Bureau") in 81 Fed. Reg. 47,864 (July 22, 2016) (the "Release").

This letter is submitted on behalf of a client (the "Company") that provides financing to customers ("Customers") of merchants who participate in the Company's financing programs ("Merchants"). This financing is sometimes in the form of retail installment contracts between the Merchant and the Customer ("RICs"), where the RICs are purchased after origination by the Company, and sometimes in the form of direct loans to the Customer ("Loans"), where the Loan proceeds are paid to the Merchant. Whether the financing is through RICs or Loans, it helps Customers pay for essential purchases, including automobile repairs and services, health care costs, furniture and appliances. We write to suggest that the CFPB should: (1) clarify that the Proposed

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Rule does not apply to RIC financing; and (2) retain and expand the exclusion from the Proposed Rule for certain purchase-money financing transactions (the “Purchase-Money Loan Exclusion”). *See* 12 C.F.R. § 1041.3(e)(1).

1. *Application of Proposed Rule to RICs:* We believe but seek confirmation that the Proposed Rule does not apply to RICs. We are concerned that the Proposed Rule’s occasional references to “credit,” a term broad enough to encompass RICs, rather than “loans,” a term that clearly does not include RICs, could potentially be misread to imply that RICs can be covered. *See, e.g.,* proposed 12 C.F.R. §§ 1041.2(3) (definition of “closed-end credit”), 1041.2(9) (definition of “credit”); 1041.2(14) (definition of “open-end credit”); and 1041.3(b) (defining “covered loan” to mean “closed-end or open-end credit” meeting specified requirements).

Nevertheless, a close reading of the Proposed Rule shows that the definition of “covered short-term loan” in 12 C.F.R. § 1041.2(6) is limited to a “loan” described in 12 C.F.R. § 1041.3(b)(1), which in turn is limited to credit in the form of a “loan” substantially all of which must be repaid within 45 days. By the same token, the definition of “covered longer-term loan” in 12 C.F.R. § 1041.2(8) is limited to a “loan” described in 12 C.F.R. § 1041.3(b)(2), which in turn is limited to credit in the form of a “loan” that does not meet the “covered short-term loan” definition and meets specified additional requirements.

Additionally, the substantive provisions of the Proposed Rule govern the activities of “lenders,” defined under 12 C.F.R. § 1041.2(11) as persons who regularly extend “loans” to a consumer primarily for personal, family, or household purposes. *See, e.g., id.* at 1041.4(a) (providing that it is an abusive and unfair practice for a “lender” to make a “covered short-term loan” without reasonably determining that the consumer will have the ability to repay the “loan”); *id.* at 1041.8(a)

(providing that it is an abusive and unfair practice for a “lender” to make a “covered longer-term loan” without reasonably determining that the consumer will have the ability to repay the “loan”).

Needless-to-say, *this* is a fundamental point, and no doubt should be left on the question. Accordingly, we respectfully request that the CFPB modify the definitions in the Proposed Rule or add a Comment to the Proposed Rule clarifying that the Proposed Rule does *not* apply to RICs.

2. *Scope of Purchase-Money Loan Exclusion:* Proposed 12 C.F.R. § 1041.3(e)(1) excludes from the coverage of the Proposed Rule credit “extended for the sole and express purpose of financing a consumer’s initial purchase of a good when the credit is secured by the property being purchased, whether or not the security interest is perfected or recorded.” We welcome this exclusion and submit that it is well-warranted. As the Bureau has recognized, this exclusion is needed for consumers to purchase needed but relatively expensive items. Moreover, the Bureau has not conducted the research required to justify rule-making as to purchase-money loans.

Not only should the Purchase-Money Loan Exclusion be preserved, it should be expanded. As noted earlier, purchase-money credit in the form of a RIC should not be covered by the Proposed Rule. This is the case whether the RIC is secured or unsecured and whether it finances the purchase of goods or services, or a combination of goods or services, such as automobile repairs, which are generally comprised of both. We submit that the same treatment should apply to all purchase-money loan financing, since there is no credible rationale for excluding from the Proposed Rule a RIC financing the sale of automobile repairs and simultaneously cover an identical purchase-money loan financing the same services. Nor is there any apparent reason to require a security interest in connection with loan financing but not for RIC financing.

Ms. Monica Jackson  
October 6, 2016  
Page 4

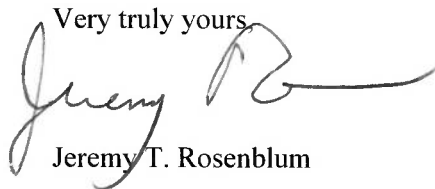
We have reviewed the Release (and the Department of Defense explanations of its Military Lending Act rules, which served as a precursor to the Proposed Rule). We have found no explanation for why the Purchase-Money Loan Exclusion should be limited to the financing of goods or why a security interest in the financed goods should be required. The financing of services is often as important or more important to the consumer than the financing of goods, and the security interest requirement serves no apparent purpose. Indeed, security interests in goods expose the consumer to loss of the financed property and also create opportunities for mischief by the creditor. For example, a creditor that has no intent of recovering and reselling goods it has sold to the consumer could nevertheless require the consumer to insure the goods and could reap additional profits on insurance sales.

Accordingly, we request that the CFPB modify 12 C.F.R. § 1041.3(e)(1) to read as follows:  
“*Certain purchase money loans.* Credit extended for the sole and express purpose of financing a consumer’s initial purchase of goods or services.”

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We thank the Bureau for the opportunity to comment on the Proposed Rule. Please feel free to contact me with any questions at 215-864-8505 or [rosenblum@ballardpahr.com](mailto:rosenblum@ballardpahr.com).

Very truly yours,



Jeremy T. Rosenblum