



The State of South Carolina Department of Consumer Affairs

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October 7, 2016

Monica Jackson
Office of the Executive Secretary
Docket No. CFPB-2016-0025
Bureau of Consumer Financial Protection
1700 G Street
Washington, DC 20552

RE: Consumer Financial Protection Bureau--RIN 3170-AA40

Dear Ms. Jackson:

The South Carolina Department of Consumer Affairs ("SCDCA"/"Department") is pleased to offer comments in response to the Consumer Financial Protection Bureau's ("Bureau") Proposed Rule regarding Payday, Vehicle, Title and Certain High Cost Installment Loans. SCDCA is South Carolina's consumer protection agency. Established in 1974, SCDCA helps formulate and modify consumer laws, policies, and regulations; resolves complaints arising out of the production, promotion, or sale of consumer goods or services in South Carolina, whether or not credit is involved; and promotes a healthy competitive business climate with mutual confidence between buyers and sellers. The Department's primary responsibility is to administer and enforce Title 37 of the *South Carolina Code of Laws*, the law governing consumer credit transactions. In doing so, SCDCA protects consumers while giving due regard to those businesses acting in a fair and honest manner.

The South Carolina small-dollar consumer loan marketplace is dominated by two primary lending groups: supervised lenders and deferred presentment lenders. The statutes regulating supervised lending are found in Title 37, giving enforcement and interpretation authority to our agency. While deferred presentment licensing is found in another title, our office can assist with its enforcement upon request of the licensing agency but the industry is also subject to, and must additionally comply with, the provisions of Title 37. It is from our over forty years of regulatory experience involving the industries and products subject to the proposed rule that we provide the following comments.

Preemption

Section 1041(a)(1) of the Dodd-Frank Act provides that Title X does not preempt state law "except to the extent that a state law is inconsistent with the provisions of [Title X] and then only

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to the extent of the inconsistency.” Section 1041(a)(2) explains that a state law is “not inconsistent,” and therefore is not preempted, if the state law provides “greater” consumer protection than that provided under Title X. Section 1041(a)(2) further provides that, “A determination regarding whether a statute, regulation, order, or interpretation in effect in any State is inconsistent with the provisions of [Title X] may be made by the Bureau on its own motion or in response to a nonfrivolous petition initiated by any interested person.”

The Bureau’s commentary makes clear that the proposed rule is intended to serve as a floor for consumer protection, and that states with stricter consumer protection laws will not be preempted. Further, the Bureau is explicit in its opinion that fee and interest rate caps in certain States “provide greater consumer protections than, and would not be inconsistent with, the requirements of the proposed rule.” As our agency and others of South Carolina hold extensive knowledge of the industries subject to the proposed rule, we appreciate the sentiment of permitting state laws to stand. However, the rule has the potential of affecting at least eight South Carolina statutes:

Lending Type	South Carolina State Law
Supervised Lending	Section 37-3-101 <i>et seq.</i> Section 34-29-10 <i>et seq.</i>
Deferred Presentment	Section 34-39-110 <i>et seq.</i>
Short-Term Vehicle Secured (Auto Title Loans)	Section 37-3-413
Line of Credit	Section 37-3-101 <i>et seq.</i>
Restricted Lending	Section 34-29-10 <i>et seq.</i>
Credit Union Lending	Section 34-26-800 <i>et seq.</i> Section 34-26-1300 <i>et seq.</i>

Communication between the Bureau and states regarding what provisions are preempted by the proposed rule and which remain in effect is essential for market stability. Because the Bureau has authority to make determinations regarding whether state laws are inconsistent with the provisions of Title X, SCDCA requests the Bureau:

- (1) Clarify or otherwise outline the process intended for notifying state regulators of identified conflicts between state law and the proposed rule; and
- (2) Establish a timeline for notifying states of any conflicts in light of the effective date of the proposed rule to provide an opportunity for us to engage our legislative process as deemed necessary.



We understand and have operated under the fact that consumer protection often involves both state and federal requirements. SCDCA also recognizes, however, effective consumer protection requires these two levels of regulation work in harmony. Unless the Bureau provides clarification regarding the proposed rule's effect on specific state laws, a convoluted patchwork of requirements would likely follow and inhibit effective administration and enforcement, thus hindering the consumer protection goal.

Enforcement

Just as SCDCA seeks clarification in the preemption arena, we are also seeking guidance on the state regulators' role in enforcing the rule. The primary instruments for ascertaining compliance with the rule's provisions are the Registered Information Systems ("RIS"). However, the proposed rule is unclear regarding whether state regulators will have access to the RIS for enforcement purposes.

South Carolina tracks deferred presentment transactions through one database, updated in real-time. Because all licensed deferred presentment lenders utilize one database, state regulators are able to monitor and evaluate transactions uniformly to enforce state law and assess industry data. Such effectiveness would be hindered if lenders and regulators are accessing multiple databases to investigate or enforce violations of the rule and state law without the information being ultimately housed in one database repository or reported to one information system. Further, unless all databases functioned based on common data standards, the potential for reporting errors and gaps in information would significantly increase. SCDCA is further concerned about the security and confidentiality of data housed in the newly created systems and the lack of defined purposes for which the stored information can be utilized as well as by whom. Due to the above concerns, SCDCA believes more detailed parameters governing access to, utilization and security of the information contained therein are warranted.

Another enforcement concern of ours relates to the ability-to-repay ("ATR") standards described in the rule. The main tenet of the proposal correctly identifies a borrower's inability to timely repay a loan as the underlying issue in high cost small dollar loan products. SCDCA supports the idea of an ATR framework where it can be achieved without eliminating entirely consumers' access to small dollar loans. We have concerns, however, with the current method contained in the rule to ascertain a consumer's ability to repay a covered loan.

The establishment of the ATR standard is straightforward; however, this standard is not a universal requirement for extending loans under the proposal. The rule sets forth a complicated decision tree where lenders meeting certain conditions must comply with a different set of requirements regarding the ATR analysis. SCDCA is concerned the framework put forth will be difficult for regulators and industry to navigate and result in varying methods used by the industry, thus complicating the compliance review and enforcement process, and potentially inhibiting the provisions' consumer protection goal.



Impact on the Marketplace

In recent years, South Carolina has passed amendments to its credit laws to tighten restrictions on certain high cost loans including deferred presentment (commonly known as payday lending) and short-term vehicle secured loans (commonly referred to as title loans.) The results of both amendments could provide insight into the potential effect of the proposed rule.

The supervised lending industry represents approximately sixty-nine percent of the small dollar loan market in South Carolina and deferred presentment approximately twelve percent. Prior to 2010, deferred presentment providers garnered nearly one third of the market share. Amendments to the governing statute taking effect that year limits borrowers to one outstanding payday loan at a time and prohibits the use of a new loan to pay off an existing one. Additionally, lenders are required to utilize one database to track transactions and ensure borrowers do not have any outstanding loans which would prohibit extending a new loan. In 2009, there were approximately four million payday loan transactions, and nearly \$1 billion advanced to consumers. By 2015 this reduced to 876,985 transactions and approximately \$360 million advanced to borrowers.

The impact of the statutory revisions on the deferred presentment industry is clear from the numbers, and SCDCA is unaware of any negative impact endured by consumers related to the passage of the amendments. One can assume some consumers who previously relied upon deferred presentment loans on a consistent basis were able to seek credit from supervised lenders. The supervised lending industry remained fairly consistent in the number of transactions from 2010-2014, sustaining growth from 2010-2013. Due to the broad definition of a supervised lender, which encompasses consumer lenders assessing a finance charge in excess of twelve percent, several loan products fall under one regulatory brush, including title loans.

In 2004, South Carolina did attempt to place specific restrictions on the title loan industry. The amendments included consumer disclosures, limitations on renewal and other consumer protections. The law defines a title loan as one with an original repayment term of less than one hundred and twenty days; as a result, some of the industry circumvented the law by extending the term of their loans beyond the specified timeframe.

The two examples of statutory changes meant to increase consumer protections in South Carolina can hopefully serve as examples to the Bureau of the potential for a consumer goal to be accomplished and, unfortunately, pitfalls to avoid. We anticipate if the proposed rule goes into effect as written, some businesses will adapt and comply, new loan products meant to circumvent the law will emerge, and some provisions not meant to provide exemptions or exclusions from the rule will be used to accomplish such a goal. Additionally, because of these factors and that multiple industries will be impacted by the rule, unlike our state's deferred presentment changes, the total impact to consumers and businesses in South Carolina of the proposed rule is difficult to predict.



As stated previously, SCDCA is charged with protecting consumers in the marketplace while giving due regard to those businesses acting honestly and fairly. We certainly recognize the need for additional regulation of high cost loans, however we request the Bureau look closely at the rule with the above concerns in mind.

Conclusion

SCDCA appreciates the opportunity to comment on the Proposed Rule regarding Payday, Vehicle, Title and Certain High Cost Installment Loans. We commend the Bureau for the work and effort put into this process and appreciate the task at hand. SCDCA hopes you find the information we provided regarding our concerns pertaining to preemption, enforcement and market impact of the proposed rule beneficial. Should you have any questions pertaining to our comments, please feel free to contact me at 803-734-4233.

Best regards,

A handwritten signature in black ink that reads "Carri Grube Lybarker".

Carri Grube Lybarker, Esq.