Comments from the Center for Responsible Lending to the U.S. Department of Justice regarding United States et al. v. Springleaf Holdings, Inc., et al.; Proposed Final Judgment and Competitive Impact Statement

January 23, 2016

The Center for Responsible Lending[1] submits this comment to provide additional context about the consumer installment loan market, in particular to highlight issues unaddressed by the proposed settlement with One Main and Springleaf. In this letter, the undersigned organizations bring to your attention three areas of concern that the settlement did not address, but which have a significant impact on borrowers:

- The high incidence of repeat refinancing in the industry;
- The sale of ancillary products such as credit insurance that significantly increase the cost of installment loans while providing very little benefit to borrowers; and
- The tendency of lenders to charge the maximum interest rate permitted under state law regardless of the creditworthiness of the borrower.

We were also particularly concerned about the Department's characterization of installment loans as a "lifeline" for consumers. Loans that are not appropriately underwritten such that a borrower can repay them without refinancing are not a lifeline. Neither are loans laden with credit insurance products that significantly increase the cost of the loan while providing little to no benefit to the borrower a lifeline. Rather, installment loans like those that OneMain and Springleaf make often sink borrowers into inescapable debt.

Repeat refinancings provide lenders the opportunity to extend the length of the loan and charge new origination or processing fees, but often fail to generate benefits for the borrower. Worse, refinancing allows the lender to sell new add-on credit insurance products. This creates a harmful, symbiotic relationship between refinancing and add-on products – refinancing is not only a powerful and lucrative incentive for installment lenders to extend the loan, but the ability to sell new insurance products with each loan that provide substantial compensation to the lender results in added cost to the borrowers with little or no benefit.

Repeat Refinancing Indicates Unaffordable Loans or Lending Without Regard to Ability to Repay

Regardless of the type of loan product, evidence of significant repeat refinancing is a signal of troublesome practices. Typically, the original loan was not made on terms affordable to the borrower and/or the lender is engaged in loan flipping to increase the costs of the credit and extend the indebtedness. In fact, longstanding applications of the principle of "ability to repay" provide that it means determining the borrower can afford to repay a loan *without refinancing, renewing, or reborrowing.*[2] Installment loans have been associated with repeated refinances that account for as much two-thirds of loan business. Upon refinancing, the lender assesses new fees and add-on products where allowed while extending the term of the loan. Consumers are typically not given an adequate rebate of charges prepaid on the first loan.

These loans are often secured by a borrower's personal property, car or both. This practice provides the lender extraordinary leverage over the borrower as well as the opportunity to require and sell expensive property insurance. In the case of loans secured by personal property, it is extremely unlikely that upon default the lender will repossess used personal property of little value, but the threat of repossession is an effective collection tactic.[3] It is for this reason that the FTC banned the practice of securing loans with household goods, but the decades-old rule has not been updated to include items such as computers and smartphones. Even in the case of auto title loans, where lenders do repossess the vehicles, the primary purpose of holding the title is to coerce repayment of an unaffordable loan.

A front-page New York Times article noted that, although OneMain Financial "offers its borrowers unsecured, installment loans with interest rates of up to 36 percent," many of its borrowers refinance the loan.[4] (Note: Importantly, this interest rate excludes the typically significant cost of ancillary products, discussed further below.) According to the New York Times: "About 60 percent of OneMain's loans are so-called renewals" that may essentially be "'default masking' because borrowers may be able to refinance before they run into trouble paying back their current balance."[5]

In addition, in documents related to the securitization of the loans, OneMain notes, "In certain cases, a Renewal may be offered to customers whose personal loans are in the early stages of delinquency."[6]

Likewise, Springleaf also emphasizes the importance of loan renewals to its business plan, expecting "a substantial portion of the Loans will be renewed . . . ."[7] It further notes: "[E]ffecting renewals of personal loans for current personal loan borrowers who have demonstrated their ability and willingness to repay amounts owed to Springleaf into new and larger personal loans is an important part of Springleaf's branch lending business."[8]

These trends of repeat refinancing extend beyond these individual national companies, but rather appear to permeate the consumer installment industry as a whole. In North Carolina, for example, where the state regulator collects annual data on installment lending, in 2014, 80 percent of loans made by all consumer finance companies in the state were re-financings of outstanding loans or the origination of new loans to previous customers.[9]

Ancillary Products Significantly Increase the Cost of Loans Above Their Stated Interest Rate, While Providing Notoriously Little Benefit to Borrowers

Add-on products are of particular concern in installment loans, yet the settlement is silent as to this additional cost. Installment loans frequently include high-cost ancillary products like credit life and disability insurance and/or discount clubs or plans that increase the cost of credit significantly. Refinancing exacerbates the harms caused by add-on products, giving additional opportunities for lenders to pack additional fees into each loan.

As a signal of the harms of these ancillary products, in 2006, when Congress enacted the Military Lending Act's cap of a 36% Military APR (MAPR) on consumer credit extended to active duty families, it specifically included, within the calculation of the cap, charges for credit insurance and other ancillary products sold in connection with credit transactions. In 2014, the U.S. Department of Defense noted, "[O]ther costs to the consumer not included in the APR could make loans below 36% above that threshold when considered as part of that calculation. These additional costs, along with repeated refinancing have come under scrutiny."[10] As a result of these concerns, in 2015, the U.S. Department of Defense updated its rules implementing the MLA not only to extend the 36% MAPR to installment loans but also to ensure that the MAPR is always inclusive of credit insurance and other ancillary products.[11]

A recent investigative series into the sale of credit insurance highlighted both the significant increased cost to borrowers and the significant lack of value these products provide.[12] For example, one installment loan described in the investigative series was made to a Service member with an APR of 90% but actually had an effective 182% MAPR when the ancillary products were included. In another example, "A $2,475 installment loan made [by TMX Finance] to a soldier at Fort Stewart near Savannah, Ga., in 2011 … carried a 43 percent annual rate over 14 months — but that rate effectively soared to 80 percent when the insurance products were included. To get the loan, the soldier surrendered the title to his car." The investigation further describes how some employees of lenders deliberately conceal or misrepresent the add-on products from the borrower.[13] This same investigative series also showed how installment lenders sell loss of income insurance to individuals receiving government benefits, such as social security or government pensions.[14]

Borrowers are also likely to have a poor understanding of potential exclusions for the insurance purchased or may be misled to believe that the insurance policy covers more than it does. For example, one man who purchased credit disability insurance lost two fingers in a work-related accident but was denied coverage because the policy only paid if the borrower lost at least four fingers or the whole hand.[15]

These add-ons accrue notoriously little benefit to borrowers. A key measure of the efficacy of insurance programs is the loss ratio -- the percentage of premiums that are paid out in claims. We do not know the loss ratios of the Springleaf or One Main credit insurance products, but available evidence about other products indicates that credit insurance often has little value for the consumer. For one insurance company whose products are sold by consumer finance companies, 69 percent of the premiums went to back to the lenders, while 5 percent went to pay actual insurance claims. A similar pattern holds for the sale of its accident and health policies sold in junction with the loan – in one state, Georgia, in 2011, 56 percent went back to the lenders, and only 14 percent went to claims.[16]

A series of enforcement actions by the Consumer Financial Protection Bureau provides important examples of how add-on products can be used to increase the cost of using a credit card, both at the time the account is opened and later in the relationship.[17] In July 2012, the CFPB issued a bulletin describing its supervisory experience with add-on products and clarifying the steps that supervised institutions should take to ensure that add-on products do not harm consumers or violate federal law.[18] The bulletin discussed expectations around the marketing of add-on products and associated employee compensation guidelines to ensure that financial institutions do not create an incentive to provide inaccurate information. The bulletin also highlighted the need to ensure that consumers are not required to purchase products as a condition of obtaining credit.

As noted in reports to investors, both Springleaf and OneMain sell various ancillary products, such as credit insurance and membership products, which are typically financed into the principal of the loan upon origination.[19] Both companies sell the products through affiliates; for both companies, these affiliates are significant parts of their business. For example, Springleaf notes that financed insurance premiums account for 4% of the aggregate principal loan balance, and for OneMain, they represented 5.3% of the aggregate principal balance of OneMain Financial's personal loan portfolio as of December 31, 2013.

In North Carolina, where Springleaf and OneMain comprise the two largest lenders, the sale of insurance products on installment loans made by consumer finance companies is more than double the number of loans originated, indicating that a single loan is often stacked with multiple insurance products.[20]

Further indicative that some lenders use credit insurance or other add-on sales to drive up loan costs is the fact that installment lenders tack on add-on products in states that have lower statutory caps on interest, but do not do so in states that allow for higher interest rates.[21]

A survey by the North Carolina Justice Center puts a point on how add-ons help drive refinancings. The survey of 50 cases filed by consumer finance lenders in Wake County, North Carolina, found that where there was evidence of refinancing, a majority of the "payout" went towards paying credit insurance fees. The average amount disbursed to borrowers was less than $1.50.

Lenders tend to charge the maximum rate permitted under state law

In its 2012 annual report to investors, a national consumer installment lender noted "that virtually all participants in the small-loan consumer finance industry charge at or close to the maximum rates permitted under applicable state laws in those states with interest rate limitations."[22] Similarly, in an in-depth examination of the consumer installment lending industry, the NC Commission on Banks determined that "licensees were charging the maximum blended rate allowable."[23] There is no competition on price in this market – rather, any competition is centered around store location and branding. For consumers, the presence of more or different lenders in a community will have no meaningful impact on the cost of installment loans.

We urge the Department to consider this information carefully, and to clarify its statement that these loans are helpful to communities in need. As this information shows, too often these loans lead to financial harm, not help.

[1] The Center for Responsible Lending (CRL), a nonprofit, nonpartisan research and policy organization dedicated to protecting homeownership and family wealth by working to eliminate abusive financial practices. CRL is an affiliate of Self- Help, a nonprofit community development financial institution. For thirty years, Self- Help has focused on creating asset-building opportunities for low-income, rural, women- headed, and minority families, primarily through financing safe, affordable home loans and small business loans. In total, Self-Help has provided $6 billion in financing to 70,000 homebuyers, small businesses and nonprofit organizations and serves more than 80,000 mostly low-income families through 30 retail credit union branches in North Carolina, California, and Chicago.

[2] *See, e.g.*, the Federal Reserve Board's 2009 rules under the Home Ownership and Equity Protection Act (HOEPA), which note that "[l]ending without regard to repayment ability . . . facilitates an abusive strategy of 'flipping' borrowers in a succession of refinancings." Federal Reserve System, Truth in Lending, Regulation Z; Final Rule, 73 Fed. Reg. 44522, 44542 (July 30, 2008).

[3] Indeed, given this extraordinary, coercive leverage, repayment of a loan secured by personal property is far from indication that a borrower had a genuine ability to afford the loan while meeting ongoing expenses; it means only that the lender was able to extract payment. (footnoting b/c thinking it seems good to include but don't want to interrupt the refinance flow)

[4] Michael Corkery, "States Ease Interest Rate Laws That Protected Poor Borrowers," New York Times, Oct. 21, 2014

[5] Id.

[6] OneMain Financial, OMFIT 2015-3 Private Placement Memorandum, at 91, http://files.shareholder.com/downloads/AMDA-28PMI5/1321842233x0x867148/8308BAA5-B813-4111-84BC-31DCD0DD0918/OMFIT_2015-3_--_Final_PPM.pdf

[7] Springleaf Financial Services, 2013-A Private Placement Memorandum, http://investor.springleaffinancial.com/asset-backed-securities.cfm

[8] Id.

[9] http://www.nccob.org/Public/docs/Financial%20Institutions/Consumer%20Finance/2014_Annual_Report.pdf

[10] U.S. Department of Defense, "Report: Enhancement of Protections on Consumer Credit for Members of the Armed Forces and Their Dependents" (April 2014)

[11] U.S. Department of Defense, "Limitations on Terms of Consumer Credit Extended to Service Members and Dependents," Final Rule, July 2015, https://www.gpo.gov/fdsys/pkg/FR-2015-07-22/pdf/2015-17480.pdf

[12] The ProPublica series on installment lending from May 2013 is at: http://www.marketplace.org/topics/wealth-poverty/beyond-payday-loans/victory-drive-soldiers-defeated-debt-story-propublica

[13] Id., ("You were supposed to tell the customer you could not do the loan without them purchasing all of the insurance products, and you never said 'purchase,' ...You said they are 'included with the loan' and focused on how wonderful they are ... Every new person who came in, we always hit and maximized with the insurance...That was money that went back to the company.")

[14] Complaint, *Illinois v. CMK Investments, Inc.*,

[15] Paul Kiel, *The 182 Percent Loan: How Installment Lenders Put Borrowers in a World of Hurt*, PROPUBLICA, May 13, 2013, available at http://www.propublica.org/article/installment-loans-world-finance.

[16] Id.

[17] See summary of CFPB enforcement actions in Comments of Center for Responsible Lending, National Consumer Law Center, Consumer Federation of America, Consumer Action, and U.S. PIRG, to U.S Department of Defense, December 31, 2014, http://www.responsiblelending.org/sites/default/files/nodes/files/research-publication/mla_comments_12242014.pdf

[18] Marketing of Credit Card Add-on Products. CFPB Bulletin 2012-06. Washington, DC: Consumer Financial Protection Bureau, July 18, 2012. http://files.consumerfinance.gov/f/201207_cfpb_bulletin_marketing_of_credit_card_addon_products.pdf.

[19] Springleaf Financial Services, 2015-B Private Placement Memorandum, http://investor.springleaffinancial.com/asset-backed-securities.cfm "Springleaf, Springleaf sells credit

insurance products to its personal loan borrowers. These products are provided by a group of Springleaf-affiliated insurance companies and insure the personal loan borrower's payment obligations on the related personal loan in the event of such personal loan borrower's inability to make monthly payments due to death, disability or involuntary unemployment. Payment of the associated premiums can be made by the Borrower separately, but except in very rare instances, the personal loan borrower finances payment of the premium and it is included in the principal balance of the applicable personal loan. The financing of credit insurance products premiums generally represents approximately 4.00% of the aggregate principal balance of Springleaf's personal loan portfolio."

OneMain Financial, OMFIT 2015-3 Private Placement Memorandum, at 91, http://files.shareholder.com/downloads/AMDA-28PMI5/1321842233x0x867148/8308BAA5-B813-4111-84BC-31DCD0DD0918/OMFIT_2015-3_--_Final_PPM.pdf "OneMain Financial offers its customers optional credit insurance products and membership programs, and the premiums and fees for these products and programs typically are financed as part of the principal balance of the applicable personal loan. See "*Underwriting Process and Standards—Optional Products: Credit Insurance and Membership Program*" in this private placement memorandum. This represents approximately 4.9% of the aggregate principal balance of OneMain Financial's personal loan portfolio as of June 30, 2015…. OneMain Financial offers optional insurance products to its customers through its affiliated insurance companies American Health and Life Insurance, Co. ("**AHL**"), and Triton Insurance Company ("**Triton**" and together with AHL, "Citi Assurance Services" or "**CAS**"), as described below under "*Underwriting Process and Standards—Optional Products: Credit Insurance and Membership Program*" in this private placement memorandum. AHL and Triton are wholly-owned subsidiaries of CCC.

[20] The North Carolina Commissioner of Banks's 2014 Consumer Finance Annual Report showed more than 1.2 million credit insurance products were sold on only 495,682 loans. http://www.nccob.org/Public/docs/Financial%20Institutions/Consumer%20Finance/2014_Annual_Report.pdf

[21]Kiel, Paul, "The 182 Percent Loan: How Installment Lenders Put Borrowers in a World of Hurt," ProPublica, May 13, 2014. http://www.propublica.org/article/installment-loans-world-finance.

[22] World Acceptance Corporation, SEC Filing 10-K, March 31, 2012

[23] N.C. Commissioner of Banks, "The Consumer Finance Act: Report and Recommendations to the 2011 General Assembly." February 2011