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REPORT TO LAW & LEGISLATION COMMITTEE
City of Sacramento
915 I Street, Sacramento, CA 95814-2671

STAFF REPORT
October 2, 2007

Honorable Members of the
Law and Legislation Committee

Title: ESTABLISHING A MORATORIUM ON CHECK CASHING CENTERS IN THE CITY OF SACRAMENTO AND DECLARING THE ORDINANCE TO BE AN EMERGENCY MEASURE TO TAKE EFFECT IMMEDIATELY UPON ADOPTION (M07-070)

Location/Council District: Citywide

Recommendation: Staff recommends that the committee 1) review the emergency ordinance to establish a moratorium on check cashing centers and facilities in the City of Sacramento; 2) direct staff to take the emergency ordinance to City Council for adoption.

Contact: Jennifer Pulsifer, Junior Planner, 808-4771; Joy Patterson, Principal Planner, 808-5607

Presenters: Joy Patterson, Principal Planner, 808-5607

Department: Development Services

Division: Current Planning

Organization No: 4885

Description/Analysis

Issue: Councilmember Sheedy requested that staff investigate a moratorium on check cashing centers in the City of Sacramento. The purpose of the emergency ordinance will be to allow the time to gather data and develop regulations for check cashing facilities in city neighborhoods and communities.

Currently, the zoning regulations in Title 17 of the City Code allow check cashing centers by right in most commercial zones, with the exception that they are prohibited in some Special Planning Districts.

The Department of Corporations has jurisdiction over the business-practice regulation of these facilities statewide (California Financial Code §23000-23106).

Staff has prepared an emergency ordinance (Attachment 1) that would establish a moratorium on the creation of new, and the expansion of existing check cashing centers and facilities citywide in order to conduct research on the impact these centers have on surrounding areas. Concern is related to predatory lending practices in low-income communities and related issues of safety and crime.

Policy Considerations: The emergency ordinance is consistent with the City's Strategic Plan focus areas to achieve sustainability and livability in the City of Sacramento.

Committee/Commission Action: None

Environmental Considerations: The proposed ordinance is not considered a project and therefore has no potential for an effect on the environment as stated by the provisions of the California Environmental Quality Act [§ 15061 (b) (3)].

Rationale for Recommendation: The emergency ordinance to suspend the creation of new check cashing centers and the expansion of existing check cashing centers, will allow the necessary time to be devoted to researching the adverse effects of these centers on blighted areas.

Check cashing centers are believed to concentrate their locations in lower-income neighborhoods. Accessibility to these centers for their targeted customers appears to contribute to, and worsen the challenged economic conditions of the communities in which they serve.

During the 45-day moratorium, staff will evaluate and consider the location of such facilities in relation to economically-challenged communities, their orientation to other check cashing facilities, and whether a permanent ordinance would ease and/or prevent the negative aspects associated with them.

Financial Considerations: There are no financial considerations associated with this ordinance.

Emerging Small Business Development (ESBD): No goods or services are being purchased under this report.

Respectfully Submitted by: David W Kwong
David Kwong
Planning Manager

Approved by: William Thomas
William Thomas
Director of Development Services

Moratorium on Check Cashing Centers (M07-070) October 2, 2007

Recommendation Approved:

for RAY KERRIDGE
City Manager

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Attachment 1

ORDINANCE NO.

Adopted by the Sacramento City Council

Date Adopted

ESTABLISHING A MORATORIUM ON CHECK CASHING CENTERS IN THE CITY OF SACRAMENTO AND DECLARING THE ORDINANCE TO BE AN EMERGENCY MEASURE TO TAKE EFFECT IMMEDIATELY UPON ADOPTION (M07-070)

BE IT ENACTED BY THE COUNCIL OF THE CITY OF SACRAMENTO:

SECTION 1. Findings

The City Council of the City of Sacramento finds and declares as follows:

A. General Findings.

1. Check cashing businesses cash payroll, government, personal, and other types of checks, among other related services, while taking a commission off the face-value of the check.

2. Payday lender businesses (also known as deferred deposit transaction businesses and advanced payday lenders) provide small cash loans based on a borrower's personal check held for future deposit or on electronic access to a borrower's bank account. Generally, the borrower must include the fee for the loan in the face value of the personal check.

3. According to the Consumer Federation of America, because of the high fees paid for these short term loans and check cashing services, some borrowers may pay the equivalent of more than 900% annual percentage rate interest on their loan. In California, the fee for a payday loan can be up to $17.50 for every $100 borrowed, up to the maximum of $300. The annual percentage rate for such a transaction is 911% for a one week loan, 456% for a two-week loan, and 212% for a one-month loan. Since payday loans were legalized in California in 1997, more than 3,500 payday loan businesses have opened in the state.

4. According to the California Reinvestment Coalition ("CRC"), check cashing and payday lender businesses have grown over 1100% nation-wide between 1996 and 2003 and are estimated to be growing at a rate of 15% a year. The growth of check cashing and payday lender businesses appears to be focused in lower income neighborhoods where full service financial institutions are removing their branch offices.

5. A recent study by The Progressive Policy Institute revealed that a traditional bank account is the first step toward giving low-income Americans access to the mainstream tools for wealth creation now taken for granted by the middle-class. The unchecked proliferation of check cashing and payday lender businesses in the commercial districts of lower income neighborhoods leads to the displacement of full service banking institutions, making access to traditional banking services even more difficult in lower income neighborhoods. Without appropriate controls, a result of the continuing high growth of check cashing and payday lender businesses will be a reduction or displacement of needed financial services and other commercial benefits in these neighborhoods, .

B. Under the current provisions of Title 17 of the Sacramento City Code (the Zoning Code), check cashing centers, check cashing facilities, and payday lender businesses (collectively "check cashing centers") are classified as commercial services and are allowed in most nonresidential zones by right.

C. The purpose of this Ordinance is to protect the public health, safety, and welfare by prohibiting the review, approval, and issuance of any building permits or other development-related permits for any new check cashing center or expansion or modification of an existing check cashing center while the City studies and enacts new land use regulations to address the effects and potentially blighting impacts check cashing centers can have on the surrounding neighborhoods as detailed above in subsection (A). Allowing the establishment of new and the expansion of existing, check cashing centers pending the development and enactment of the needed land use regulations would frustrate and interfere with the efforts to protect the City's neighborhoods from the continuing proliferation of these uses and their associated impacts.

D. This Ordinance is enacted as an urgency measure under Government Code section 65858 to protect against the current and immediate threat to the public health, safety, and welfare that check cashing centers can pose to the City as described above. It is appropriate that this Ordinance take effect immediately to ensure that check cashing centers are not established or expanded during the thirty day period that would otherwise elapse before this Ordinance would take effect.

SECTION 2. Restriction on Check Cashing Centers

A. During the term of this Ordinance, including the term of any extension(s) of this Ordinance, no check cashing center shall commence operation at any location in the City of Sacramento, and no existing check cashing center shall expand either at the same location or to a different location in the City of Sacramento.

B. During the term of this Ordinance, including the term of any extension(s) of this Ordinance, no application for a building permit or other development-related permit or entitlement shall be accepted, no hearing on an application (including appeals) for a discretionary entitlement shall be conducted, and no building permit or other development-related permit shall be issued for a check cashing center.

C. For purposes of this Ordinance, "check cashing center" includes check cashing centers, check cashing facilities, and payday loan stores as defined below:

1. "Check cashing center" means an establishment that, for compensation, engages in the business of cashing checks, warrants, drafts, money orders or other commercial paper serving a similar purpose. This classification does not include a state or federally chartered bank, savings association, credit union or similar financial institution. This classification does not include establishments selling consumer goods, including consumables, where the cashing of checks or money orders is incidental to the main purpose of the business.

2. "Check cashing facility" means an establishment primarily engaged in cashing payroll or personal checks for a fee or advancing funds on future checks, not including state or federally chartered banks, credit unions, savings and loans, or similar financial institution.

3. "Payday lender business" means an establishment that offers, originates, or makes a deferred deposit transaction. A "deferred deposit transaction" is a transaction whereby a person defers depositing a customer's personal check until a specific date, pursuant to a written agreement. A payday lender business does not include a state or federally chartered bank, savings association, credit union, or similar financial institution, or retail stores that incidentally charge a fee not exceeding $2.00 to cash checks or money orders as a service to customers.

SECTION 3. Term and Extensions

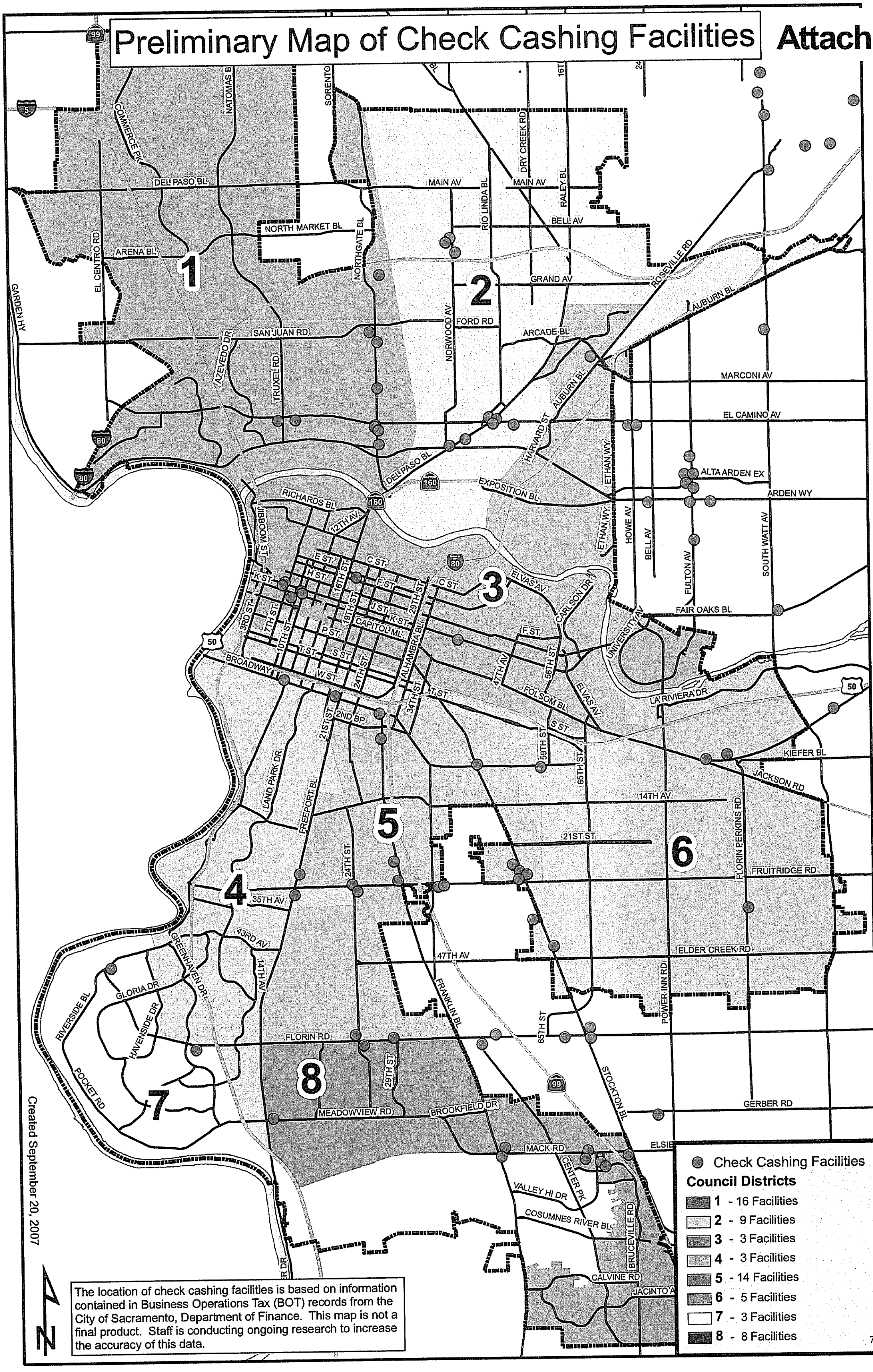
This Ordinance shall be of no further force and effect forty-five (45) days from the date of its adoption, unless prior to that date the City Council approves one or more extensions pursuant to Government Code section 65858, in which case this Ordinance shall remain in effect through the term of the extension(s).

SECTION 4. Declaration of Emergency

This Ordinance is declared to be an emergency ordinance to take effect immediately upon adoption by the City Council pursuant to Sacramento City Charter Section 32(g)(2). The facts constituting the emergency are as set forth in Section 1 of this Ordinance, all of which are incorporated into this section as facts supporting the emergency nature of this Ordinance.

Preliminary Map of Check Cashing Facilities

Attachment 2



The location of check cashing facilities is based on information contained in Business Operations Tax (BOT) records from the City of Sacramento, Department of Finance. This map is not a final product. Staff is conducting ongoing research to increase the accuracy of this data.

Attachment 3

The Financial Divide:

An Uneven Playing Field

Bank Financing of Check Cashers and Payday Lenders in California Communities

March 2005

CRC

California Reinvestment Coalition

The Financial Divide

The California Reinvestment Coalition

The California Reinvestment Coalition is now a coalition of more than two hundred organizations advocating increased access to bank services, loans and investments for California's low-income communities and communities of color. CRC efforts include research on the financial services industry, technical assistance to local community coalitions, and creation of new financial products for California's culturally and economically diverse communities.

Bank CRA commitments negotiated by CRC members add more than $20-30 billion annually in lending, investment and services to California communities. These agreements provide access to financing for affordable housing, consumer and small business loans, investments, grants, branch locations, and deposit accounts.

CRC also does action research on banking and financial issues. Its reports include *Who Really Gets Home Loans*, *Helping Small Businesses Grow*, and *No Credit for Those Who Need It.*

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Acknowledgments

The California Reinvestment Coalition wishes to acknowledge the assistance of Jean Ann Fox, Matthew Lee, Kevin Byers, Jim Bliesner, Bill Kennedy, Maeve Elise Brown, Robert Buck, Roberto Barragan, Sharon Kinlaw, Josh Stillman, Drew Miazga, Geoff Smith, and many others. In addition, CRC wants to thank the Consumer Federation of America, the Center for Economic Policy Alternatives, the Center for Responsible Lending, the Woodstock Institute for their work on this issue. CRC also appreciates the financial support of the Friedman Foundation, Evelyn and Walter Haas Jr. Fund, McKay Foundation, and others.

The Financial Divide: An Uneven Playing Field

Driving through California towns and cities, the economic division between lower-income and wealthier neighborhoods is reflected in the starkly separate locations of check cashers and payday lenders in lower-income neighborhoods on the one hand and mainstream banks and savings & loans in wealthier neighborhoods on the other. This two-tier consumer finance system has a dramatic negative impact on California's diverse communities. In contrast to outward appearances, the two seemingly-separate financial sectors are, in fact, two faces of a seamless financial web.

Check cashers and payday lenders crowd the streets of lower-income neighborhoods seeking to lure consumers through their doors with charming customer service while they dramatically overcharge them. In California communities like West Oakland or Pacoima or National City, banks are scarce and fairly-priced alternatives are few for the residents. Instead there are financial price-gougers:

- Check cashers that charge two percent or more to cash payroll checks that could be deposited for free into a mainstream checking or savings account.
- Payday lenders that charge 500 plus annual percent rate (APR) when an expensive credit card charges interest of 20 percent annually or less.

This California Reinvestment Coalition study of check cashers and payday lenders in five California counties reveals the growing inequities between these two economies and the role that mainstream bank financing of price gougers has played in their growth as shown by public financial reports and other data. The study's core findings are:

- Financial institutions have removed their bank branches from most lower-income communities while they profit from financing high-priced and highly profitable check cashers and payday lenders in these same neighborhoods.
- The lack of retail competition from bank branches in these communities has created this lucrative opportunity for price-gouging check cashers and payday lenders.

The Profits of Predatory Lending

The lack of bank and savings & loan branches in lower income communities and communities of color has created a price-gouging opportunity for rapidly-expanding check cashers, payday lenders, and finance companies that prey on consumers with few financial alternatives. The lack of competition from mainstream finance and huge profit opportunities have meant that the number of check cashers and payday lenders has increased nationally from 2,000 in 1996 to 22,000 in 2003 and is still growing. The lack of competition means that finance companies pull in hundreds of millions of dollars in revenues while their executives take home million dollar salaries. Dollar Financial Group reports that its profit margin per store is 32.3 percent. The presence of these price gougers has dramatically lessened personal financial opportunities for low-income people whose choices are limited to high cost, low quality financial products that take their scarce financial resources and block their path to asset building.

Banks vs. Check Cashers

Looking at California communities, the financial divide between traditional and predatory finance can be seen in neighborhood after neighborhood.

The Financial Divide

- In Los Angeles' San Fernando Valley, Encino and Pacoima exemplify this division. Pacoima has a population (90,000) which is roughly twice the size of Encino (40,700) while average income is skewed in the opposite direction ($40,000 to $91,475). Encino has one check casher and twenty-seven bank branches. Pacoima has nine check cashers and two bank branches; one of which just opened last year. The cities are twelve miles apart.
- The wealthy City of Piedmont (10,952) is half the size of the nearby neighborhood of West Oakland (19,684) while its household income ($134,270) is more than four times that of West Oakland ($27,545). Piedmont has three bank branches and no check cashers. West Oakland has no bank branches and three check cashers.
- Thirty-five miles apart on the Pacific Coast in San Diego County, the cities of Carlsbad and National City exhibit similar disparities. Carlsbad's population (78,000) is a little larger than National City's (54,000); its average income ($65,145) is more than twice as high as National City($29,826). Carlsbad has 25 banks and two check cashers compared to National City's five bank branch and twelve check cashers.

The Price Paid by Californians

This loss of opportunity in lower-income neighborhoods is reflected in individual financial hardships at the local level. An average user of check cashers and payday lenders spends one thousand additional dollars ($1,000) annually more than the cost of mainstream products. But, when the picture broadens to the state level, it exhibits immense and devastating economic disadvantages for the daily lives of lower income Californians:

- An estimated 5.2 million Californians[1] use check cashers and are charged at least a two percent fee to cash their checks. Using the California average income of $47,493, this costs Californians $4.9 billion ($4,900,744,729) annually.
- An estimated 1.5 million[2] California households use a payday lender 11 times annually[3] for a $300[4] advance at a $45 fee ($15 per $100) each time at a cost of $757 million ($757,291,590) annually.

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[1] United States General Accounting Office Report to the Subcommittee on Oversight and Investigations, Committee on Financial Services,House of Representatives, September 2002, on Electronic Transfers states that twenty-eight percent of all U.S. adults are unbanked. So, it is estimated that 5,159,439 Californians are unbanked.

[2] "As many as 14 million of the 105 million U.S. households used payday lenders in 2003, according to analyst Dennis Telzrow of Stephens Inc., a Little Rock, Arkansas–based investment bank." "Preying on the Poor" by Edward Robinson, Bloomberg Magazine, January 2005. This is 13.3 percent of U.S. households. Applied to California, it is 1,529,882 households.

[3] "California: Stop legal loan sharks" Editorial, Los Angeles Times, p.B10, May 14, 2001.

[4] California Financial Code Section 23035 limits the face value of the check to $300.

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This means that at least $5.7 billion comes out of lower-income Californians' pockets annually just due to the high charges of check cashers and payday lenders. This $5.7 billion does not even include probable further loss of funds due to high charges from refund tax loans, rent-to-own stores, subprime mortgage lenders, pawnbrokers, and others. These billions go to unscrupulous finance companies and are lost to families who are struggling on limited budgets.

Studies clearly show that payday lending impacts women and African Americans disproportionately. A broad national survey[5] of payday borrowers conducted last year identified two of three respondents as women. An Illinois study[6] found more than 60 percent of payday borrowers being sued by a major payday lender were women. The Payday Loan Industry Newsletter stated in 2003[7] that 60 percent of the payday customer base were women. The Center for Community Capital[8] found that African-American households were almost twice as likely to borrow from a payday lender as white households in North Carolina. The Center and a more recent study[9] of payday lending in the San Fernando Valley found that payday loan offices favor locations in neighborhoods with majority minority populations.

Banks Finance the Predators

While most Americans have witnessed this two-tier financial system, the connections between mainstream financial institutions and these usurious lenders are much less obvious.

- First, these usurious lenders are filling the void left by conventional financial institutions' retreat from low-income communities and communities of color.
- Second, and more covert, is the fact that mainstream banks finance the payday lenders, check cashers, and other "subprime" financial subsidiaries that trap lower income people and people of color in a system of lower-tier finance that costs significantly more than the mainstream products offered by these same financial institutions.
- Third, the major financial institutions – Bank of America, Citigroup, Washington Mutual, Wells Fargo Bank and others – have corporate structures that include high-priced consumer finance company subsidiaries. So, they also operate the price-gouging lending directly.

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5 "Payday Advance Consumer Satisfaction Survey," by Patricia Cirillo, Cypress Research Group, May 2004.

6 "Greed: An In-depth study of the Debt Collection Practices, Interest Rates and Customer Base of a Major Illinois Payday Lender," March 2004.

7 "Tribune Enterprises," Payday Loan Industry Newsletter, Issue 03-10, 2003.

8 "Payday Lending: a Business Model that Encourages Chronic Borrowing" by Michael Stegman and Robert Farris, Center for Community Capitalism, University of North Carolina, 2003.

9 "A Survey of Check Cashers in the San Fernando Valley" by Roberto Barragan and Arthi Varma, Valley Economic Development Center, December 2004.

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These two ostensibly separate financial structures are in fact complementary faces of the same financial system separated by a thin veneer of pretense. The California Reinvestment Coalition (CRC) studied these predatory lenders and the financial links between them and major financial institutions in five California counties. Lending records show that Bank of America, JP Morgan Chase, U.S. Bank, Union Bank of California, Wells Fargo Bank, Westamerica Bank and other financial institutions are lending hundreds of millions of dollars to underwrite the activities and growth of usurious check cashers and payday lenders.

It is a myth that check cashers and payday lenders are a cash business that finances itself. In fact, CRC found that the majority are underwritten by mainstream capital. In Fresno and Sacramento Counties, sixty percent of the check cashers and payday lenders are supported by major financial institutions (see Appendix B). In Alameda County, Los Angeles and San Diego it is nearly as prevalent. In addition to the banks listed above, they are also financed by Banco Popular, Hanmi Bank, Westamerica Bank, Saehan Bank, and Merchants Bank. So, instead of these mainstream financial institutions directly providing reasonably priced financial products to lower-income communities and communities of color, banks profit from check cashers and payday lenders who prey upon these consumers.

This is particularly apparent with the new giants of predatory consumer lending:

- Dollar Financial Group maintains a $60 million revolving credit line with Wells Fargo Bank. Dollar operates as Money Mart in California where 119 of its 1,130 stores are located. In 2004, their gross national revenue was $246.4 million.
- Advance America has a $300 million credit facility with Bank of America. Advance America Cash Advance Centers have 303 of their 2,290 stores in California. In 2004, their gross national revenue was $489.5 million.
- ACE Check Cashing has a $200 million revolving credit line with Wells Fargo and JP Morgan Chase Banks. Ace America's Cash Express operates 130 of their 1,327 stores in California. In 2004, their gross national revenue was $253 million.

From Mom & Pop to National Franchises

This bottom-dwelling financial tier is no longer little Mom and Pop stores. As can be seen above, it is an already huge, consolidating industry that offers highly profitable franchises charging usuriously high prices for financial services. It has grown 1100 percent nationally from 1996 to 2003. The amount of payday lending grew 84 percent[10] in Washington State in just the last three years according to a report released recently by that state's Department of Financial Institutions. There were 1.55 million payday loans made in 2003 in Washington State or one and a half loans for every state resident who is sixteen years old or older.

California has 6,446 locations licensed by the state to do check cashing or payday lending. This is more than five times as many locations as McDonald's Hamburgers has in the state. Half of these licensees are liquor stores, groceries, and convenience stores for whom this is a secondary business. The remaining 3,106 are retail consumer outlets whose primary business is predatory

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[10] From $580.5 million in 2000 to $1.07 billion in 2003. Payday Lending Report, Statistics & Trends for 2003, Washington State Department of Financial Institutions, January 2005.

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finance: check cashing and payday lending. Three hundred and three of these solely predatory locations, or ten percent, are owned by one financial corporation, Advance America. Across California, two-thirds, or 2,186 of the 3,106 primarily payday and check cashing outlets are chains of three or more outlets (see Appendix A). In the five counties studied, sixty to eighty percent of these predatory lenders are chains consisting of three or more stores. In Sacramento County, eight of ten of these outlets are chains. It is big business to over-charge those with few alternatives.

Three of the largest of these predatory lenders in California are actually bank subsidiaries. Union Bank of California has its own check cashing outlet, 15 offices of Cash & Save, as well as a partnership with Nix Check Cashing which has 59 outlets, all of them in the Los Angeles area. Banco Popular's subsidiary Popular Cash Express has 55 outlets almost all of which are in the Los Angeles area also. Bancomer Financial Services, a subsidiary of Mexico's second largest bank Bancomer, has 18 outlets in Southern California.

Beyond investments and debt financing, banks also "provide cash to check cashers by permitting them to draw against uncollected funds, e.g., checks that have been deposited but have not yet been cleared.[11]" In contrast, regular consumers are not allowed to draw against their deposits until they have cleared. Chase Manhattan Bank, Citibank, Fleet Financial, HSBC and other banks have partnered with check cashers in New York, New Jersey and Connecticut to provide payroll services for the employees of the banks' commercial customers.[12] These banks would evidently prefer to send potential customers to check cashers rather than serve them directly.

A number of the national predatory lenders hide behind national bank charters to avoid state regulation. Dollar Financial Group and ACE have an arrangement with Republic Bank, QC Holdings (California Budget Financing and USA Checks Cashed) with County Bank of Delaware and First Bank of Delaware has been partnering with the Cash Store, Check' N Go and Dollar Financial. ACE used Goleta National Bank near Santa Barbara, California, until recently when the Office of the Comptroller of the Currency ordered them to cease underwriting payday loans. A just-issued FDIC Financial Institution Letter: Guidelines for Payday Lending is a good tentative step toward stopping the evasion of state regulation. It describes concerns regarding the high risk nature of payday lending and its substantial growth.

As a result of this two-tier infrastructure, the poor pay more for inferior financial products while being ignored by mainstream financial institutions. The dimensions of lower-tier finance nationally have increased geometrically in the last decade so that check cashing revenue is more than $60 billion and payday lending more than $40 billion annually. For one example of the high profits involved, Dollar Financial Group's operating margin on its stores in 2004 was 34.8 percent and its revenue per store was $407,000; this is an extremely profitable business. And, despite much discussion of the high level of risk, net write-offs by Dollar were only 0.25 percent of the face value of checks cashed.

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[11] "Check Cashers are Good Bank Customers" published by the Financial Services Centers of America, page 2.

[12] Ibid, page 3.

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Most people use check cashers because of barriers placed in their way by mainstream banks, such as distant branch locations and inappropriate products. CRC's just-completed survey of its members has many comments about these issues.

- "There is a shortage of branches in our neighborhoods. So, teller and ATM lines are very long."
- "We recently found that it is very expensive for low-income people without checking accounts to cash their checks at the local bank. This is a serious need."
- "There is no attention to the needs of low-income consumers."
- "The few bank personnel that are bilingual only know certain set products and cannot answer many questions."
- "What you hear from groups in minority communities has not changed — that banks have moved out and left their job to groups like non-profits that offer loan assistance and something other than ATM's."

Dennis Telzrow, the consumer finance analyst at Stephens, Inc., estimates that the payday loan center industry, which makes small high-interest loans for a short period of time (traditionally "until next payday"), is growing at a rate of 15 percent a year. "The payday loan product has the strongest growth among financial service offerings and is not well known on Wall Street. Growth opportunities are high in this industry[13]," he explains. "People in the lower income level live paycheck to paycheck. If they need a loan of some sort, they don't have much of an alternative, and that is why the payday loan is so strong."

Mis-Treatment of Military Personnel

Among those targeted by payday lenders and check cashers are military personnel. The greatest concentration of these usurious finance companies in the United States is in the zip code bordering Camp Pendleton in San Diego County[14]. A New York Times article[15] reported that 26 percent of all military households have had a payday loan. The Department of Defense has identified payday lending as one of ten key issues in its official "Key Issues - the Department of Defense / States Military Partnership." It states "payday lending practices have proven to be detrimental to Service members who have chosen these loans as a way of overcoming immediate needs for cash." It suggests working toward state statutes that cap interest rates and establish usury ceilings.

In Georgia last year, local military commanders were leaders in passing state statutes to limit payday lending interest rates in the face of strong opposition from the payday lending industry.

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[13] "Stephens Inc.: DRILLING DOWN INTO FINANCIALS" BY Meghan Leerskov, Buyside Magazine, 2005.

[14] "Rent-a-Bank Payday Lending," Consumer Federation of America and the US Public Interest Group, November 2001.

[15] "Seeking Quick Loans" by Diana Henriques, December 7, 2004.

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Retired Admiral Charles S. Abbot, President of the Navy-Marine Corps Relief Society, terms payday lenders "just legalized loan sharks[16]."

Summary

Millions of Californians are paying much higher rates for credit than they should, which directly impacts their ability to pay their families' basic expenses. Military personnel are specifically targeted by payday lenders. As can be seen, mainstream banks play the role of financing many of these predatory lenders while they offer minimal access to the neighborhoods on which the predators prey. The financial damage to hundreds of thousands of families as a result of this financial divide is rarely exposed to the public and even more rarely acted upon and remedied.

CRC Prototypes

The California Reinvestment Coalition has developed two product prototypes (see Appendix C) that banks can use to directly compete with check cashers and payday lenders. CRC has proposed these prototypes to California's major financial institutions. None have yet adopted either product.

- The Essential Bank Account: Many lower-income people have difficulty with "free" checking accounts and e-banking because their major payee, their landlord, won't accept personal checks or e-payments and the danger of expensive insufficient funds charges or "bounce protection." The Essential Bank Account has direct deposit and withdrawal only by ATM, point of sale or money order. Thus, the customer has a money order for the landlord and other payments and cannot incur insufficient funds charges. Since the financial institution controls payments, it could also allow the bank to lower the barriers of ChexSystems so that more people can open accounts.
- The Quick Consumer Loan: The majority of borrowers are unable to repay their payday advance within the initial two week period and, with rollovers, may end up with interest greater than the initial loan. The Quick Consumer Loan is a two-month loan at 30 percent APR. It does allow partial payment but not rollovers.

Recommendations

- Financial institutions must recognize the financial potential of lower-income communities and communities of color by 1) implementing products and marketing that is more appropriate for them and 2) opening branches in their neighborhoods.
- Cities and counties should restrict the proliferation of predatory lenders with zoning restrictions and other land use tools.
- The State of California should 1) restrict interest rates charged by these predatory lenders and 2) stop rollovers by payday lenders.
- The federal financial regulators should 1) end financing of and partnerships with predatory lenders by banks and savings & loans and 2) mandate that bank locations and products allow full access by under-served communities.

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[16] Letter to Washington State Senator Darlene Fairley in support of bills to tighten regulation of payday lending.

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Appendix A - Major California Check Cashers and Payday Lenders

The following chart identifies the check cashers and payday lenders whose bank debt was reflected in public UCC loan filings in California. The first column is the debtor business, the second column reflects the number of outlets of that corporation in California, and the third is the number of outlets nationally (if known).

The major check cashers are often subsidiaries of national chains. For example, Money Mart is a subsidiary of Dollar Financial Group with 1,130 stores nationally. California Budget Financing and USA Checks Cashed are subsidiaries of QC Holdings which has 295 stores across the country. In fact, all of the major California check cashers listed below are either national or international with the exception of Nix Check Cashing.

Major California Check Cashers and Payday Lenders	Outlets	
	CA	US
ADVANCE AMERICA, CASH ADVANCE CENTERS	303	2,290
CHECK 'N GO	174	1,100
CHECK INTO CASH	139	715
ACE AMERICA'S CASH EXPRESS	130	1,111
MONEY MART	119	1,130
CALIF. BUDGET FINANCE	65	295
NIX CHECK CASHING	59	59
CALIFORNIA CHECK CASHING STORES, INC.	58	
GIROMEX, INC.	56	
POPULAR CASH EXPRESS	55	
CASH PLUS	42	80
USA CHECKS CASHED	39	
TRAVELEX CURRENCY SERVICES INC.	25	
BANCOMER FINANCIAL SERVICES, INC.	18	

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Appendix B - Loans by County

The following charts identify the check cashers and payday lenders whose bank debt was reflected in public UCC loan filings in the five California counties that were studied. The first column is the debtor business, the second column reflects the number of outlets of that corporation in the particular county, and the third is the bank lender.

(Please note that some check cashers and payday lenders have more than one credit relationship. In that case, the number of outlets is only listed once.)

Alameda County

Debtor	Outlets	Lender
Advance America Cash Advance Centers	9	US Bancorp
Advance America Cash Advance Centers		Wells Fargo Fin Leasing
California Budget Finance	1	US Bank NA
California Check Cashing Stores	7	Union Bank of California
Cash & Go	3	JP Morgan Chase
Cash 1	3	Banco Popular
Check Into Cash	4	Bank of America
Check 'N Go of California	8	PNC Bank NA
Check 'N Go Worldwide		National City Bank
Giromex Inc	2	Merchants Bank of CA
Money Mart	8	Wells Fargo Bank

Fresno County

Debtor	Outlets	Lender
ACE America's Cash Express	7	Wells Fargo Bank
Advance America Cash Advance Centers	23	US Bancorp
Advance America Cash Advance Centers		Wells Fargo Fin Leasing
Broadway Liquor and Deli	1	United Commercial Bank
California Budget Finance	6	US Bank NA
Cash Plus	3	Hanmi Bank
Cash Plus		Westamerica Bank
Check Into Cash	5	Bank of America
Check Into Cash of California		Bank of America
Check Into Cash of California		National City Bank
Check 'N Go of California	8	PNC Bank NA
Check 'N Go Worldwide		National City Bank
Money Mart	12	Wells Fargo Bank
Popular Cash Express	3	Banco Popular

The Financial Divide

Los Angeles County

Debtor	Outlets	Lender
ACE Cash Express	38	Wells Fargo Bank Texas
Advance America Cash Advance Centers	59	US Bancorp
Advance America Cash Advance Centers		Wells Fargo Fin Leasing
American Check Cashing	1	JP Morgan Chase Bank
Area Check Cashing Centers	4	Wilshire State Bank
Area Check Cashing Centers		Orange Community Bank
Area Check Cashing Centers		Wilshire State Bank
Associated Foreign Exchange	7	Union Bank
Azteca of California, Inc.	2	Corus Bank
Bancomer Financial Services	12	Bancomer
Benny's Market	1	Hanmi Bank
Benny's Market		Saehan Bank
California Budget Finance	16	US Bank NA
Cash 1	2	Banco Popular
Cash In a Flash	4	Union Planters Bank
Cash In a Flash, Inc.		Banco Popular North America
Cash Plus	14	Merchants Bank of CA
Check Advance Services, Inc.	3	Wells Fargo Financial Leasing, Inc.
Check Into Cash	31	Bank of America
Check 'N Go of California	42	PNC Bank NA
Check 'N Go Worldwide		National City Bank
City Check Cashers	8	Banco Popular North America
Continental Currency Services	26	Bank of California
Currency Services of California	10	Union Bank of California
Fast Cash, Inc.	1	California Bank & Trust
Gentri Finance	1	Hanmi Bank
Giromex Inc	23	Merchants Bank of CA
Giros Internacionales	8	Merchants Bank of CA
Mexico Check Cashing	1	Merchants Bank of CA
Mexico Check Cashing		Merchants Bank of CA
Money Machine	5	Merchants Bank of CA
Money Mart	23	Wells Fargo Bank
Money Mart		Banco Popular
Nix Check Cashing	55	Union Bank of California
Omnipol Capital, Inc.	1	Merchants Bank of CA
Payday Advance	4	Banco Popular
Payday Advance		US Bancorp
Popular Cash Express	44	Banco Popular

The Financial Divide

Su Casa De Cambio	4	Merchants Bank of CA
Sun's Cash Express	1	Merchants Bank of CA
Travelex Currency Services	4	Barclays Bank, Sec Trustee
USA Cash Services Management, Inc.	1	Wells Fargo Bank

Sacramento County

Debtor	**Outlets**	**Lender**
ACE Cash Express	13	Wells Fargo Bank Texas
Advance America Cash Advance Centers	17	US Bancorp
Advance America Cash Advance Centers		Wells Fargo Fin Leasing
California Budget Finance	2	US Bank NA
California Check Cashing Stores	13	Union Bank of California
Cash & Go	7	JP Morgan Chase
Cash 1	3	Banco Popular
Check Into Cash	6	Bank of America
Check 'N Go of California	6	PNC Bank NA
Check 'N Go Worldwide		National City Bank
Money Mart	14	Wells Fargo Bank
Sunrise Check Cashing	1	US Bancorp
Travelex Currency Services	1	Barclays Bank
USA Cash Services	8	US Bank NA

San Diego County

Debtor	**Outlets**	**Lender**
ACE Cash Express	3	Wells Fargo Bank Texas
Advance America Cash Advance Centers	23	US Bancorp
Advance America Cash Advance Centers		Wells Fargo Fin Leasing
Baja-Mex Currency Services	5	Wells Fargo Bank
Cash N Advance Centers of CA	4	Bank of America
Cash Plus	3	Hanmi Bank
Cash Plus		Westamerica Bank
Check Advance Services	2	Wells Fargo Fin Leasing
Check Cashing Etc.	5	Travelers Express Co.
Check Into Cash of California	7	Bank of America
Check Into Cash of California		National City Bank
Check 'N Go of California	13	PNC Bank NA
Check 'N Go Worldwide		National City Bank
Giromex Inc	4	Merchants Bank of CA

The Financial Divide

Payday Now Inc	1	Banco Popular NA
The Check Cashing Place	21	Mid Am Bank
The Check Cashing Place		Union Bank of CA
Travelex Currency Services	5	Barclays Bank

The Financial Divide

Appendix C - CRC Bank Product Prototypes

California Reinvestment Coalition

THE ESSENTIAL BANK ACCOUNT

California Reinvestment Coalition (CRC) is advocating for a low fee account known as the *Essential Bank Account*. Such an account could serve as a gateway into the financial mainstream for 20% of the population that is considered "unbanked." The *Essential Bank Account* has free money orders in lieu of checks and would allow account holders to draw their accounts down without incurring fees for non-sufficient funds (NSF) and/or for having their accounts be in the negative.

The following is a list of general problems amongst banks' low cost or "free" checking accounts:

- Monthly service fee if customer does not have minimum balance
- Excessive fees for NSF which puts customer in danger of being listed on ChexSystems
- Existing deposit only accounts (no checks) require customers to pay bills on-line
- Fees often assessed for exceeding allowable transactions with a live teller or calls to customer service

The *Essential Bank Account* would have following features:

- Direct Deposit
- No checks
- ATM/Debit Card with unlimited use
- Unlimited teller access and telephone customer service (live and pre-recorded)
- Five free money orders per month
- No minimum deposit to open and no minimum balance to maintain
- Account Statement (hard copy, not on-line)
- Loosened ChexSystems screening: Non fraudulent activity older than 1 year is disregarded if overdraft has been paid
- Publicized acceptance of Matricula Consular as well as other foreign government-issued identification cards (i.e., Consular Identification cards) for primary identification
- Publicized acceptance of alternative identification (i.e., utility bills) for secondary identification
- No enrollment in a "bounce protection" plan

California Reinvestment Coalition

THE QUICK CONSUMER LOAN

California Reinvestment Coalition (CRC) is advocating with banks and savings & loans for a low cost consumer loan known as the *Quick Consumer Loan*. This lending product is designed as an alternative to payday lending. The *Quick Consumer Loan* has a longer term, lower interest rate and does not allow extension of the loan.

The following is a list of general problems with payday loans:

- High interest rates of 400 to 500 percent APR
- Allows loan to rollover endlessly causing the interest cost to sky rocket
- Borrower cannot make partial payment

The *Basic Consumer Loan* would have following features:

- Customer with direct deposit and regular paycheck
- Loan at $1 per $40 borrowed (30 percent APR)
- Term of loan = two months
- Loan cannot be taken out for a third consecutive month
- Partial payments allowed
- Loan is only available maximum of three times per year with at least one month between loans

474 Valencia Street, Ste 110, San Francisco, CA 94103
(415) 864-3980 *** fax (415) 864-3981 *** www.calreinvest.org

Attachment 4

Comments

To the Federal Trade Commission

Regarding the

Fair Debt Collection Practices Act

Collecting Consumer Debts: The Challenges of Change

By the
Consumer Federation of America

June 20, 2007

I. Introduction

Consumer Federation of America (CFA) appreciates the Federal Trade Commission's interest in protecting borrowers as evidenced by the inquiry into debt collection practices and the adequacy of laws meant to protect consumers from abusive tactics. In planning the Workshop agenda, we request the FTC to include a panel to examine the unique debt collection risks caused by the design of high cost payday and car title loans marketed principally to low and moderate income or credit impaired consumers. In addition to routine debt collection tactics, consumers who use these products are subject to risks when they take out loans secured by or based on soliciting checks written without funds on deposit, providing authorization to electronically access a bank account, or signing over the title to the family's vehicle to borrow a fraction of the car's value.

For the last ten years, CFA has studied and reported on high cost, high risk lending to vulnerable consumers, including payday loans and car title loans/pawns.[1] These loans have several characteristics in common:

- Extremely high interest rates
  - Payday loans cost 390 to 780 percent APR for two-week loans.
  - Car title loans average 300 percent APR for one month loans.

- Little consideration of ability to repay
  - Payday loans are made without a credit report or information about other obligations. Lenders typically only use a specialized data service, such as Teletrack.
  - Title loans are based on the value of the vehicle, not the creditworthiness of the borrower. Title lenders do not usually obtain credit reports or report payment to mainstream credit reporting services.

- Unaffordable repayment terms
  - Payday loans are single payment, balloon loans, due in full on the borrower's next payday. The typical loan is around $350, due in two weeks.
  - Car title loans for hundreds to thousands of dollars are due in full at the end of one month but are easily renewed by paying the finance charge and extending the debt another month without reducing principal.

[1] See CFA Reports posted at www.consumerfed.org. Also, see www.paydayloaninfo.org

- Risk losing a valuable family asset
  - Every payday loan is based on a personal check written on the borrower's bank account and held for future deposit or on authorization to electronically debit the account to collect payment. Failure to make good on the check can lead to escalating insufficient funds and overdraft fees, loss of the bank account or interruption of check writing privileges.
  - Title loans are secured by the title and, often, a duplicate set of keys, to the borrower's paid-for vehicle. Failure to pay can result in repossession and, in some states, deficiency balances.

- Risk coercive collection tactics due to security for loan
  - Some payday lenders threaten criminal sanctions for failure to repay the loan.
  - Repossession threats by some title lenders coerce repeat loan renewals without paying down loan principal.

- Vulnerable borrowers
  - Payday loan borrowers are typically female, make around $25,000 a year, are renters, and more likely to be minorities than the general population. Payday lenders have clustered around military bases, in low to moderate income neighborhoods, and in predominantly minority areas. The Department of Defense reported to Congress that high cost lenders target military bases.[2]
  - Title loan customers are described by a few state studies. Missouri's Auditor reported that 70 percent of payday and title loan customers earned less than $25,000 per year.[3] Illinois title loan users had average salaries of less than $20,000 according to a Department of Financial Institutions study in 1999.[4] New Mexico regulators report that the average income of title loan borrowers, as reported by licensees for 2004, was $21,818.[5] For many borrowers, the family vehicle is their most valuable asset and provides necessary transportation to work, school or healthcare.

II. Payday Loans

Payday loans are small cash advances for less than $1,000, typically in the $300 to $500 range, based on the borrower's personal check or electronic access for the amount of the loan and the finance charge. To get a payday loan, a borrower must have an open bank account, a source of income, and identification. Loans are due and payable in full on the

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[2] See, www.paydayloaninfo.org for Research and Reports on borrower demographics.
[3] Missouri Auditor Report No. 22001-36, at 3.
[4] Illinois DFI 1999 Short Term Lending Report at 27.
[5] New Mexico Summary of Title Loans, 2004, on file with author.

borrower's next payday and typically cost 390 to 780 percent APR for two-week terms. Finance charges are typically expressed as dollars per hundred borrowed, in the $15 to $30 per $100 range. On the next payday, a borrower can bring in cash and "buy back" the check, the check can be deposited for payment, or the borrower can pay only the finance charge and renew the loan for another pay cycle without reducing the principal. Most checks are never deposited and are bought back by customers who are then encouraged to take out another loan. Industry analysts estimate that about five percent of American consumers have taken out at least one payday loan.[6]

Payday Loans are Big Business

The modern payday loan industry emerged in the last decade but dates back to "salary-buying" in the early 20th Century.[7] Payday loans are made by mono-line payday lenders; by check cashers, pawn shops and rent-to-own stores; and online through electronic funds transfer. Recent analysis of state regulatory and industry data by the Center for Responsible Lending found that 24,803 payday loan outlets made over $28.2 billion in loans in 2005, up over 100 percent in five years. Consumers paid almost $5 billion for loans.[8] Industry analysts report a larger volume of business and higher fees paid by borrowers. According to Stephens Inc., a Little Rock investment bank that follows this sector, loan volume in 2006 was $42 billion and fee revenue grew eight percent to $6.5 billion.[9]

Check-Holding Risk to Borrowers

The essential features of a payday loan make them a debt trap for borrowers and susceptible to collection abuses. These loans meet the criteria for predatory lending.[10] Loans are made without consideration of the borrower's ability to repay. Interest rates are exorbitant, starting at around 400 percent annual interest. Loans come with balloon payments, due in full on the borrower's next payday, not in affordable installments. In fact, payday lenders do not allow installment payments, recent industry proposals notwithstanding, because the business model is predicated on forcing people to pay their entire loan balance plus fees or pay to renew the full loan. The average borrower has eight to twelve loans per year at the same lender.

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[6] Michael A. Stegman, "Payday Lending," *Journal of Economic Perspectives*, Vol. 21, No 1, at 170.
[7] Jean Ann Fox, Testimony, Lieberman Payday Loan Forum, December 1999. On file with author.
[8] Uriah King, Leslie Parrish and Oxlem Tanik, "Financial Quicksand: Payday lending sinks borrowers in debt with $4.2 billion in predatory fees every year," Center for Responsible Lending, Nov. 30, 2006, 9-11.
[9] Dennis Telzrow, "Payday Loan Industry," Industry Report, Stephens Inc. Investment Bankers, March 27, 2007 at 13.
[10] FDIC's Office of the Inspector General (OIG), Challenges and FDIC Efforts Related to Predatory Lending, Audit Report No. 06-011, June 2006. "Characteristics potentially associated with predatory lending include, but are not limited to, (1) abusive collection practices, (2) balloon payments with unrealistic repayment terms, (3) equity stripping associated with repeated refinancing and excessive fees, and (4) excessive interest rates that may involve steering a borrower to a higher-cost loan." Payday lending is listed as an example. "Payday Loans are small-dollar, unsecured, short-term advances that have high fees relative to the size of the loan. When used frequently or for long periods, the total costs can rapidly exceed the amount borrowed."

Check/debit holding sets up coercive collection tactics as some lenders threaten or imply that the borrower will be "in trouble" for failure to make good on the check. A key characteristic of a payday loan is the use of a personal check or electronic access to a bank account as security, payment device, and collection tool. Every loan involves a potential unfunded check/debit that will trigger a bounced check fee at both the payday lender's outlet and the consumer's bank. Checks can be re-deposited to trigger multiple fees, with paper checks resubmitted as electronic transactions. Elliehausen notes that the postdated check used to get a payday loan provides an incentive to repay the loan, reducing the probability of default and the expected value of collection costs.[11] While check holding benefits lenders, this device puts bank account ownership at risk for consumers, as well as the ability to write checks at retailers if repeat defaults are reported to ChekSystems where black marks stay on the record for five years.

Payday Loans are Modern Wage Assignments

Securing payment of a debt by the borrower's next paycheck to be deposited in the bank or electronic authorization to access pay deposited into an account is the modern banking equivalent of a wage assignment. Federal law makes void any loan with a wage assignment to an enlisted Service member. The Federal Trade Commission ruled decades ago that a wage assignment that could not be withdrawn was an unfair trade practice under the Credit Practices Rule. The FTC Credit Practices Rule outlaws credit contract provisions analogous to check holding, such as wage assignments, confessions of judgment, and the taking of a non-purchase money security interest in household goods. Holding the consumer's signed check is even more advantageous for a lender than holding a confession of judgment. With the check, the creditor goes directly to the bank to collect without filing suit or going to court to get a writ of execution. Since so many paychecks are now direct deposited, a loan based on access to the funds that will be deposited into the account on the next payday is very close to a wage assignment.

The Electronic Funds Transfer Act prohibits conditioning the extension of credit on requiring electronic payment of debts for periodic payment loans, but is silent on the single payment electronic payday loan model. Some payday lenders use remotely created demand drafts to collect directly from bank accounts when consumers exercise their rights to revoke access to accounts under the EFTA. (See examples below)

Check/debit holding a powerful collection mechanism

While consumers may not believe they can be imprisoned for failure to repay loans, they do fear the consequences of failing to "make good" on personal checks. Our legal system is not supposed to permit incarceration for failure to pay a debt. A federal court in Tennessee ruled that threats to bring criminal prosecution for failure to repay a payday loan constituted an unfair trade practice. The court noted that the lender knew full well that the borrower had no money in the bank at the time the loan was made and could not

[11] Gregory Elliehausen, "Consumers' Use of High-Price Credit Products: Do They Know What They Are Doing?" Working Paper, Networks Financial Institute at Indiana State University, May 2006 at 5.

later claim to be the victim of a fraudulent "hot" check.[12] The court found that the loan did not involve a "bad" check and that threatening to take an action the lender had no legal right to take constituted an unfair or deceptive act.

Despite industry codes of conduct promising otherwise[13] and state laws prohibiting threats or use of criminal prosecution for unpaid payday loans, some payday lenders threaten or imply criminal sanctions when borrowers are unable to make good on the checks used to get cash advances. Some state laws treat the unpaid payday loan as a civil bad check, triggering multiple damages, attorneys' fees and court costs, while a few apply criminal sanctions for failure to make good on the check used to get the loan under limited circumstances.

Basing loans on personal checks or agreements to permit electronic access to borrowers' bank accounts compounds collection problems for vulnerable consumers. Following are illustrations:

Unfair payment terms facilitated by access to bank accounts

1. First Bank of Delaware "Consumer Installment Loan Agreement" for loan sold by a payday lender to a Service member stationed in California

The loan of $1,500 cost $1,448.64 in finance charges and 450.12% APR and was to be repaid in eight $368.58 bi-monthly payments for total payments of $2,948.64. The lender took a security interest in "ACH Debit Authorization and Remotely Created Check Authorization." This also was the method of repayment. A borrower who exercised her rights under the Electronic Funds Transfer Act to revoke authorization to debit the bank account would not be able per the terms of the contract to close off access to her bank account. The contract required that a demand draft (an unsigned paper check prepared by the lender and presented to the borrower's bank) be used. "If you revoke your ACH debit authorization, then you authorize us, and our agents, successors, and assigns, to submit a Remotely Created Check to your Bank Account for each payment that you owe under this Loan Agreement." The contract later states "Your typed name shall constitute your authorized signature fully reflecting your intent to authenticate these Remotely Created Checks, which are also known as demand drafts, telechecks, preauthorized drafts, or paper drafts." If the bank returns either an ACH or demand draft payment, the lender charges a $35 insufficient funds fee.

2. Internet payday loans build loan flipping into the payment structure. For example, MTE Financial Services, operating as Quickest-Cash-Advance.com loaned $300 to a

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12 Turner v. E-Z Check Cashing, 35 F. Supp. 2d 1042 (M.D. Tenn. 1999)

13 Community Financial Services Association Best Practices include: "7. Appropriate Collection Practices. A member must collect past due accounts in a professional, fair and lawful manner. A member will not use unlawful threats, intimidation, or harassment to collect accounts. CFSA believes that the collection limitations contained in the Fair Debt Collection Practices Act (FDCPA) should guide a member's practice in this area. 8. No Criminal Action. A member will not threaten or pursue criminal action against a customer as a result of the customer's check being returned unpaid or the customer's account not being paid. See www.cfsa.net/industry_best_practices.html

Virginia consumer, charged a $90 finance charge or 782.143 percent APR Per the contract, the loan would be automatically renewed with payment of only the finance charge. At the fifth renewal and every renewal thereafter, the loan principal would be paid down by $50. In other words, this borrower would have paid $450 in finance charges BEFORE starting to pay down the $300 principal.

3. In another example of a payday loan contract with a demand draft provision, ZipCash LLC loaned an Illinois consumer $200 at a cost of $60 or 1564.286 percent APR in March 2006. The Promise to Pay section of the contract included the disclosure that the borrower may revoke authorization to electronically access the bank account as provided by the Electronic Funds Transfer Act. However, revoking that authorization will not stop the lender from unilaterally withdrawing funds from the borrower's bank account. The contract authorizes creation of a demand draft which cannot be terminated. "While you may revoke the authorization to effect ACH debit entries at any time up to 3 business days prior to the due date, you may not revoke the authorization to prepare and submit checks on your behalf until such time as the loan is paid in full."

If the ZipCash borrower defaults, the loan contract includes this threat: "I understand and accept if my account is turned over to the ZipCash LLC collections agency and they are unable to collect the amount owed ZipCash LLC will then pursue every action granted to them under the law, including but not limit to criminal prosecution and garnishment."[14]

4. Check 'n Go of Washington, Inc. was charged by the Washington Department of Financial Institutions with collecting multiple checks from borrowers to secure single payday loans (in violation of a 2004 DFI policy), charging excessive fees, and collecting personal identification numbers without the borrower's knowledge. When multiple checks for a single loan were returned unpaid by the bank, the lender imposed multiple NSF fees on the borrower, in violation of Washington's maximum one-time fee of up to $25 for an unpaid check on a single payday loan. DFI announced in August 2006 that it intended to revoke Check 'n Go's license to make payday loans and to impose fines of $333,700.[15] A Consent Order issued in December 2006 imposed a fine of $82,000, restitution of $69,675 to consumers plus investigative costs. Check 'n Go agreed to comply with the law and discontinue practices that led to the complaint.[16]

5. An Indiana consumer had insufficient funds to repay a $300 payday loan plus $35 finance charge on its due date. The lender's first electronic funds draft was returned for insufficient funds. The lender then broke the debt into three parts and submitted three electronic drafts for $167.50, $167.50 and $20, respectively. The Promissory Note stated "I authorize **an** electronic funds transfer as detailed in this note," raising the question of

[14] Loan Supplement (ZipCash LLC) Form #2B, on file with CFA.
[15] Washington Department of Financial Institutions, Press Release, "State Files Largest Case Against Payday Lender," August 16, 2006.
[16] Consent Order, Washington Department of Financial Institutions, In the Matter of Determining Whether there has been a violation of the Check Cashers and Sellers Act of Washington, by Check 'N Go of Washington, Inc., d/b/a Check 'N Go, December 8, 2006.

whether two of the three transactions were unauthorized. The borrower's bank charged a $26 "bounce protection" charge for each item which overdrew his account.[17]

Threats of "hot check" legal actions

1. Letter from All American Cash Advance in Albuquerque, NM

"You have borrowed money from our company and we have allowed you to pay that loan off with a personal check. Your bank for lack of funds has either returned this check or the account has been closed. You have ignored all our previous efforts to collect these funds. Passing worthless checks is a criminal offense in the state of New Mexico. In accordance with the instructions of the State Attorney's office, we are hereby putting you on a **TEN-DAY NOTICE OF INTENT TO TAKE LEGAL ACTION…**In the event that you decide to ignore this letter by the prescribed date, we shall send this matter to our legal department. You will then be responsible for all costs involved in collections and legal procedures[18]."

2. A Florida consumer told a legal services attorney about threatening payday loan collection calls. "On May 24, 2007, she received a call from "Sharon Jackson at (name of company)" …They told her they were collecting the payday loan she owed…Ms. Jackson told her she had exactly one hour to wire her the money owed which she claimed to be $650 on a $430 debt. Ms. Jackson said if payment was not received within the hour they were sending out a squad car to have her arrested. They told her the failure to pay her debt was a felony.[19]"

3. A threatening payday loan collection email is posted at attorney Bud Hibb's website, www.budhibbs.com/payday.html. The email sent April 3, 2007 from "Legal Department" on behalf of National Payday Advance states, in part:

"You have defrauded National Payday Advance. A prompt rely to this communication will demonstrate your intent to remedy the current violations. If you do not respond within 72 hours of receipt of this email I will be forced to assume that your intentions were illicit. **Civil** and probable **Criminal Charges** are pending. I have already opened a line of communication with your local District Attorney's office and I have been informed they will get a Grand Jury indictment for any criminal charges brought against you." Signed "Criminal Investigator" with an email address at bankfraud@cash-advance.us.

4. Storer v. Buckeye Check Cashing of Virginia, Inc. alleges a "campaign of relentless harassment by the Defendant, a Payday Lender, that included false and specifically prohibited threats of criminal prosecution, in violation of the Virginia Payday Loan Act." A collector allegedly left a taped telephone message stating "We are going to continue calling, and eventually what is going to happen is our legal department is going to press

[17] On file with CFA.
[18] Collection letter on file with CFA.
[19] Electronic communication from Lynn Drysdale, Jacksonville Area Legal Aid.

charges against you." The plaintiffs are Social Security recipients whose checks are protected by federal law from assignment, levy, garnishment or other legal process.[20]

5. Florida's Attorney General won final default judgment in 2007 against debt collection firm Ellis Crosby & Associates, Inc. and Ted Ellis Crosby individually, for illegally collecting payday loan debts from thousands of consumers across the country. The charges are summed up as follows:

"Defendant ECA and Defendant CROSBY illegally contacted consumers at work, engaged in harassing, oppressive and abusive conduct, failed to identify themselves as collections agents, falsely represented themselves as law enforcement officers or attorneys, falsely threatened legal action, falsely threatened criminal arrest, threatened violence, misrepresented that the consumer had committed a crime, falsely represented the amount due, falsely implied they were government investigators, falsely stated their office is in a federal building, falsely claimed that an Order of Homeland Security prevented disclosure of their address, falsely threatened to seize computers, falsely stated that non payment would result in arrest, and falsely stated that the sum owed could only be paid in full."[21]

6. In 2007 Advance America, Cash Advance Centers Inc. settled a debt collection case with the West Virginia Attorney General by agreeing to stop contacting consumers at their homes and leaving door hangers for consumers when attempting to collect alleged debts. The company agreed to stop contacting people listed as references in most instances. Advance America affiliates in Kentucky, Ohio, Tennessee, and Virginia within fifty miles of West Virginia signed the agreement. The Attorney General brought the case following complaints alleging that Advance America employees attempted to coerce payment by threatening criminal charges, making unauthorized collection calls to third parties and visiting borrowers' homes in West Virginia.[22] In an earlier West Virginia case, the Attorney General settled a case with National Payroll Advance, an Ohio payday lender accused of using threatening collection tactics, including a loan agreement and billing statements which stated "We Prosecute Bad Check Writers to the Fullest Extent of the Law."[23]

7. The Arizona Attorney General ordered Check Center, a Tucson payday lender, to refund all funds collected from consumers who were sent letters that illegally threatened them with jail and criminal prosecution for failure to repay loans. The 2004 consent order was issued by Pima County Superior Court. The collection letters cited by Arizona officials alleged that borrowers had committed a crime by writing checks for payday

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[20] Donald Storer and Gail Storerer v. Buckeye Check Cashing of Virginia, Inc., d/b/a Check$mart, Complaint and Demand for Jury Trial, Circuit Court for Isle of Wight County, Virginia, filed with the American Arbitration Association on May 14, 2007.

[21] State of Florida v. Ellis Crosby & Associates, Inc., Complaint for Declaratory Relief, August 24, 2005 at 2.

[22] Press Release, "McGraw Reaches Agreement with Advance America," West Virginia Office of Attorney General, March 13, 2007. "State, payday lender reach agreement," Gazette-Mail, March 14, 2007.

[23] Attorney General of West Virginia, In the Matter of Black-Frymyer Company, Inc. d/b/a National Payroll Advance, Assurance of Discontinuance, December 17, 2003.

loans and included the claim that the merchant was an authorized agent of the Pima County Attorney's Office. One letter threatened the consumer with penalties including six months in jail, a $3,500 fine, twice the face amount of the check and attorney's fees.[24]

8. Payday loan customers around the country received letters in late 2001 from Check Protection Services (CPS) in Indiana Wells, CA regarding unpaid loans to a payday lender. CPS claimed to have "assumed the original creditors rights," and warned "Please be advised that the check in our possession may be referred to the District Attorney's Bad Check Restitution Program for prosecution if you do not contact us immediately." The letter went on to state: "A crime report may be filed accusing you of a violation of Penal Code Section 476A (Passing a worthless check) by the creditor if you fail to respond by the requested date," and was signed on behalf of "Bad Check Division."[25]

9. Washington Department of Financial Institutions cited Pacific Financial Holdings, d/b/a Fast Cash Loans and Loan Ex, of abusive debt collection practices in 2004. Of fifty customers interviewed by state regulators, thirty-two said Fast Cash collectors represented themselves as fraud investigators and threatened consumers with criminal prosecution for felony check fraud. In a few cases, borrowers were told they would lose custody of their children or their children were told the parents would go to jail for nonpayment.[26]

10. Last year the Department of Defense filed a report with Congress detailing the impact of predatory lending on Service members and their families. The following excerpt from testimony by Lynn Drysdale, Jacksonville Area Legal Aid, before the Senate Banking Committee hearing on the Department of Defense Report illustrates the coercive consequences of basing loans on personal checks held for deposit:

- Mr. Hubbell and his wife are both service members. You may have seen their story on a recent ABC News program. Due to the costs of his wife's illness and her inability to work, they took out a payday loan which led to thousands of dollars in outstanding loans from both payday lenders and installment loan companies. The more they paid, the more they owed and have repaid tens of thousands of dollars. One loan led to another because they had to keep borrowing more money *to avoid the threats of criminal prosecution and the consequences of the lender contacting Mr. Hubbell's command.* Over a five-year period of time, they were forced to borrow just over $10,000 and still have a monthly payday loan debt of just over $3,500. The Hubbells still owe over $12,000 on loans, most of which only went to pay off other loans and provided no benefit to the Hubbells except for digging them deeper into debt. Mr. Hubbell is an air traffic controller

[24] Mary Vandeveire, Arizona Daily Star, July 3, 2004.
[25] Collection letter on file with CFA.
[26] Candace Heckman, "State Accuses Paycheck Lender of Collection Abuses," Seattle Post-Intelligencer, September 28, 2004.

and felt he had no option but to stay on this debt treadmill because of his fear of the real danger of losing his security clearance and his rank.[27]

11. A Texas consumer filed a lawsuit against a payday lender illustrating the coercive collection tactics made possible due to securing loans with a personal check held for future deposit. A loan company representative left a business card at his door with a hand-written admonition to call about this "hot check." She also left a document which bore the seal of the McLennan County Criminal District Attorney and stated "writing hot checks is a type of theft" and "the hot check writer can also be charged additional expense of the fine and court costs which could run into hundreds of dollars or could be sentenced to jail or prison."[28]

Multiple electronic attempts to collect payday loans

1. On January 3, 2003 a Service member was charged $200 for ten returned check fees as a result of repeated attempts to debit his account to collect on one payday loan. The credit union charged $20 per returned debit. The payday lender's contract authorized its $20 returned check fee in addition to the credit union fees. The original $300 loan cost a $45 finance charge and 342.19% APR and listed the personal check as "security" for the loan.[29]

2. A Pennsylvania consumer had insufficient funds to repay a $455 loan from County Bank of Rehoboth Beach, Delaware in 2003. The loan cost 782.14% APR. On April 4, 2003, her bank statement showed five attempts to collect the same "Cashnet Collection" transaction, triggering five $19 NSF item fees. Again on April 18, 2003 the same transaction was presented and bounced seven times for a total of $133 in returned item fees that day. The lender attempted collection three times each on March 7 and March 21, and twice on February 21. The consumer was charged more in NSF fees to her own financial institution than the amount financed for the original loan.[30]

Lenders sue for treble damages for "hot checks"

1. The California Attorney General filed charges of deceptive business practices and fraud against now defunct Fast Cash loan service in Arcadia. The complaint filed in Pasadena Superior Court sought $2 million in civil penalties, including $350,000 in restitution for borrowers. The Attorney General said that Fast Cash threatened lawsuits, tried to squeeze settlements from borrowers and deceived the courts about the checks written to secure loans. In violation of California law, Fast Cash sued more than 400 payday loan customers for treble damages for checks passed on insufficient funds.[31]

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[27] Lynn Drysdale, Jacksonville Area Legal Aid, Testimony, Senate Committee on Banking, Housing and Urban Affairs, September 14, 2006.
[28] Robby Ellison v. Advance America Servicing of Texas, L.P. d/b/a Advance America, Plaintiff's Original Petition and Request for Disclosure, District Court of McLennan County, TX, Jay 12, 2005.
[29] Loan and credit union documents on file with Consumer Federation of America
[30] On file with CFA.
[31] Gary Scott, "Payday Loan Firm Faces Charges," *Pasadena Star-News*, August 2, 2006.

Payday lenders employ wage assignments.

1. An Illinois consumer entered into an Internet payday loan with Northway Financial Corporation Ltd for a $200 loan that cost $54 finance charge and 657 percent annual interest. The lender claimed that the law of the Republic of Malta governed the transaction. The contract gave a security interest in "your ACH debit in the amount of Total of Payments, plus applicable NSF, collection and reasonable attorney fees." NSF fees cost $29 each. The contract included a "Declaration of Wage Assignment," which stated in part "I acknowledge this instrument as an absolute, irrevocable, and unconditional assignment and sale of the said amount of my wages." [32]

Recommendation:

The following practices should be declared unfair trade practices by the Federal Trade Commission:

Basing or securing loans with the borrower's check held for future deposit.

Holding electronic authorization to access the borrower's bank account as security for payment of a loan.

Creating demand drafts or remotely created checks to repay loans

The Federal Trade Commission should investigate the payday loan industry and bring cases to stop the use of mandatory wage assignments and threats of criminal prosecution and other threats of unfounded legal consequences for failure to repay loans.

III. Car Title Loans or Pawns

Quick cash loans secured by the title to the borrower's vehicle owned free and clear expose borrowers to the risk of repossession if consumers are unable to repay one-month loans at 300 percent annual interest. The form of title lending varies, depending on state law requirements and business models. Title loans are authorized in about half the states. In Georgia and Alabama, title loans are made under the pawn laws with lenders not required to return surplus funds when repossessed cars are sold. In Virginia and Kansas, title loans are structured as open end credit to avoid the Kansas closed end small loan rate cap and to take advantage of Virginia's legal vacuum for open-end credit providers. In some jurisdictions, title lenders seek to collect deficiency balances if the loan and fees are not covered by sale of the repossessed car.[33] For a full discussion of title loans, reports from CFA and the Center for Responsible Lending are posted at CFA's web site.[34]

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[32] On file with CFA.

[33] Settlement Agreement, In the Matter of Anderson Financial Services, LLC, d/b/a Loan Max and LoanSmart, LLC, Virginia Attorney General, June 8, 2007. Lender agreed not to seek deficiency balance from defaulting borrowers whose cars were repossessed.

[34] Jean Ann Fox and Elizabeth Guy, "Driven into Debt: CFA Car Title Loan Store and Online Survey," Consumer Federation of America, November 2005. Also, see Amanda Questor and Jean Ann Fox, "Car

Car Title Loans Pose Repossession Risk

A few state regulators report information about car title loan repossessions. A 2004 report from the New Mexico Financial Institutions Division found almost two thousand vehicles were repossessed by New Mexico lenders and less than a thousand were reclaimed by consumers who were able to pay the balance and repossession costs.[35] New Mexico regulators did not report the total number of loans made during the year, but less than 20,000 title loans were outstanding at the end of calendar year 2004 compared to over one thousand consumers who lost vehicles to repossession that year.

The Tennessee Department of Financial Institutions (DFI) reported on title lenders early in 2007, based on a survey of licensed lenders. The Department reported that 92,489 title loan transactions were made during the year ended June 30, 2006. The 2007 report noted industry data that 10,933 vehicles were repossessed during the same year.[36] An earlier report from Tennessee DFI found that the average borrower had seven title loan transactions during the year. [37] If there were no title loan renewals or repeat loans to the same customer during the year, this results in a repossession rate of 12 percent. If every customer had only three title loans/renewals during the year, 35 percent of borrowers' cars were lost to repossession. If every title loan borrower averaged seven transactions during the year as indicated by DFI studies, over half of all cars pledged for loans were eventually lost to repossession.

One title loan company in Virginia sends its repossessed cars to auction the first Saturday of every month, according to the auction's web site. A partial list of LOAN MAX and LOAN SMART vehicles listed for sale on February 3, 2007 totaled 37 cars and trucks.[38]

The threat of repossession is a powerful collection device or incentive to keep consumers paying the finance charge without reducing principal. Recently an Alabama consumer reported to CFA that a title lender cut the lock off the gate to her yard to repossess a truck whose title secured a loan for $3,500. Although she had make payments during the year, the balance owed was still $3,500. Despite her bad experience, to keep from losing her husband's truck, the desperate consumer took out two additional title loans on other vehicles to raise funds to reclaim the truck.

Title Lending: Driving Borrowers to Financial Ruin," Center for Responsible Lending and Consumer Federation of America, April 2005. www.consumerfed.org

[35] Summary of Title Loans, New Mexico Financial Institutions Division, October 4, 2005. On file with CFA.

[36] "Report on the Title Pledge Industry: A Supplement to the 2006 Report to the Tennessee General Assembly," Tennessee Department of Financial Institutions, February 12, 2007. See, also

[37] "Report to the Tennessee General Assembly, Pursuant to Public Chapter 440, Acts of 2005, Section 7(e)," Tennessee Department of Financial Institutions, February 1, 2006 at 6.

[38] Bryan Buchanan Auto Auction, Inc., Auction Schedule 2007, posted at www.bryanbuchananauction.com/schedule.htm, visited January 27, 2007.

Recommendation

The Federal Trade Commission should define high cost loans secured by title to the borrower's vehicle as an unfair trade practice per the FTC Credit Practices Rule. The Commission should investigate the repossession and collection practices of the title loan industry and take action to ensure compliance with the Fair Debt Collection Practices Act, the Credit Practices Rule, and the Federal Trade Commission Act for loans collected by the lender.

Attachment 5

THE UNBANKED AND THE ALTERNATIVE FINANCIAL SECTOR

Discussion Comments
Anne Kim
Progressive Policy Institute

> Management believes the Company's core customer group is composed primarily of individuals whose average age is 29. They rent their house or apartment and hold a wide variety of jobs in the service sector or are clerical workers, craftsmen, and laborers. These customers tend to change jobs and residences more often than average, have annual family income under $30,000, often pay their bills with money orders, and prefer the availability of immediate cash provided by cashing checks at the Company's stores.[1]
>
> — Ace Cash Express, Inc.

> The Company believes that many of its customers are workers or independent contractors who receive payment on an irregular basis and generally in the form of a check. The Company's core customer group lacks sufficient income to accumulate assets or to build savings. These customers rely on their current income to cover immediate living expenses and cannot afford the delays inherent in waiting for checks to clear through the commercial banking system.[2]
>
> — Dollar Financial Group, Inc.

The preceding quotations were taken from the most recent publicly filed annual reports of the two largest check-cashing companies in America today. These two companies are Ace Cash Express Inc. (ACE) and Dollar Financial Group, Inc; (Dollar). Together, they control about one-fifth of the check-cashing stores in the country.[3]

It is not a coincidence that the customer profiles described above match quite closely in many respects to the findings of **Dunham** and **Rhine**. The statements by Ace and Dollar illustrate very well what

Dunham and **Rhine** confirm in their research: that check cashers have become impressively effective at targeting, catering to, and profiting from, a potentially very vulnerable population of young, disproportionately minority, working-poor, and near-poor individuals.

The research by **Dunham** and **Rhine** also confirm an emerging bifurcation of financial services, with one system for low-income individuals and another for the middle and upper class. This emerging stratification is very troubling because it signals this potential end-result: banks for the middle class and check cashers for the poor. Access to savings tools for the middle class but barriers to savings for the poor. Low-cost financial services for the middle class and high fee-based services for the poor. Because it is the equitable thing to do, and also because ultimately it is good business, policymakers, banks, and government should work together to reverse this trend toward stratification. **Caskey** has demonstrated one excellent way that this can be done.

Researchers have known for quite some time that a significant percentage of low-income individuals are either disconnected from mainstream banks or don't have the same level of banking relationships as the middle class. What research has not discovered, however, is exactly why. One common assumption has been that banks don't put branches in low-income neighborhoods. But as **Rhine** notes, this is not necessarily the case. Most of the neighborhoods studied by **Rhine** either had equal numbers of banks and check cashers, or just banks.

Another common assumption made has been that bank fees are too high. And this, in part, is true, as discussed below. But **Dunham** and **Rhine** have found a much more significant reason why so many low-income people are either unbanked or underbanked. And the reason is this: mainstream banking institutions simply do not offer, at least in any affordable way, the types of financial services that match the spending and saving behaviors of low-income workers.

One example is the finding by both **Dunham** and **Rhine** that many check cashing customers also hold bank accounts. This finding runs counter to the conventional assumption that if a person becomes banked, he no longer needs to use check cashers. But **Dunham** and **Rhine** have found that that is not the case. As the management of Ace Cash Express also knows, low-income workers both want and are willing to pay for immediate access to their paychecks. This is something banks will not do, especially for low-deposit customers.

Another example of this mismatch between needs and services is illustrated by **Dunham's** somewhat surprising finding that for many people, check cashers are cheaper than banks, although this comparison is relative. Because this finding also runs counter to conventional assumptions, a real-life illustration will prove this point.

In one of the neighborhoods located southeast of Capitol Hill, there are two financial service providers on a single block — one is Ace Cash Express, and the other is a branch office for one of the three largest banks in America, which for purposes of this illustration will be called "Mainstream Bank."

Ace charges its customers 89 cents per money order, and check-cashing fees run a sliding scale that depends on the size of the check. For checks over $250, for example, the fee is 2 percent of the face amount of the check plus $.99. A $700 check, therefore, costs $15 to cash.

Mainstream Bank, by contrast, charges $7.50 a month for a basic checking account, or $90 a year, and $5.00 a month for a basic savings account, or $60 a year. Together, the annual cost of the two accounts is $150.

If an individual can avoid all check-cashing fees, as **Dunham** says many do, and his only expense is for money orders, then a check casher is the cheaper choice. For example, four money orders a month (which is more than **Dunham's** average) will cost four times 89 cents times 12, or $42.72 a year — about half the cost of a checking account at Mainstream Bank, and a third of the cost of holding both checking and savings accounts.

Moreover, maintenance fees are probably not going to be the only fees that the typical low-income customer will pay. If a customer bounces a check, which he is very likely to do given his low income, the likelihood of low balances in his account, and the uncertainty over when exactly checks will clear, Mainstream Bank will charge this customer $30 for each bounced check. One bounced check all year will increase a customer's annual costs to $175. And there is yet one more barrier to opening an account, which is the $100 opening balance.

The cost picture does change if an individual uses check-cashing services. For example, a very low-wage worker who takes home $700 a month will spend $180 a year just to cash those checks. Add in fees for money orders and costs begin to pile up rapidly.

In both cases, however, the fees are high, especially since wealthier people can often avoid charges by maintaining minimum balances. (As an aside, Mainstream Bank is not a particularly expensive bank in terms of fees.) According to the Federal Reserve, the average maintenance fee charged by big banks for a simple checking account is even higher than the fee used in this example. In fact, the average fee charged by large banks is $8.20 a month.[4]

But again, fees are not the principal barrier to becoming banked. As **Caskey** notes, the federal government has initiated a couple of programs to encourage the creation of very low-cost accounts. But also as **Caskey** notes, these programs have not taken off in popularity. The lack of appropriate services offered by mainstream banks is as significant a barrier as high fees. Because of these combined deficiencies, it should come as no surprise that check cashers are thriving.

Thriving is precisely what check-cashing institutions are doing. **Dunham** contends that fewer people than expected use check cashers and that the fees paid by most people do not reach exorbitant heights. The size and profitability of the check-cashing industry, however, seem to belie that conclusion. Again, some real-life examples.

As mentioned before, the top two check cashers in the country are Ace and Dollar. There are only about five other large companies in the industry, and the rest of the nation's check-cashing stores are small-time, corner store operations. Ace and Dollar, however, are emblematic of both the growth and consolidation that's currently going on in this industry. For example, in 1993, Ace owned 276 stores in 10 cities. By last summer, Ace owned more than three times as many stores in 272 cities. Similarly, Dollar now owns six times as many stores as it did only five years ago.

Why such growth? It's because of the potential for big profits. In the last fiscal year, total revenues for Ace equaled about $140 million, and its net income (about $9 million) was more than double what it was five years ago.[5] Dollar, which was in the red two years ago, made profits last year of about $5.5 million, off revenues of $166 million.[6] This is a great deal of money stripped from the pockets of minority low-income workers. Ace and Dollar also represent only about one-fifth of the total check-cashing market. Data on the profitability of check cashers generally does not appear to be available, but it is possible to extrapolate to some extent. **Rhine** notes that, according to the industry's trade association, check cashers nationwide cash $55 billion in checks a year. If average fees total three percent of the face value of this amount, revenues for the industry would total $1.65 billion dollars a year.

One of the reasons check cashers are so profitable is that the fees they charge are far in excess of actual risk. Check cashers say they charge the fees because they are assuming the risk that the check being cashed could eventually bounce. Most of the checks cashed by these institutions, however, are issued by governments and employers, and not, for example, by a customer's next-door neighbor. In fact, many check cashers have policies not to cash those kinds of personal checks. In other words, the risk is small, and the profits are big.

Here's an illustration: Last year, Ace and Dollar together cashed about $6.5 billion in checks. The value of the bad checks among these checks, that is, the checks these companies could not collect upon at all, totaled less than one-fourth of one percent of this amount. Meanwhile, Ace was collecting an average fee of 2.2 percent of face value, and Dollar was collecting an average fee of 3.5 percent of face value.[7]

Payday lending is an even bigger money maker. At Ace, for example, the amount of the average payday loan is $220, and the average fee is $31.80.[8] For a two-week loan, which is the usual term, the interest rate works out to about 14 percent. But if this rate annualizes, the true interest rate turns out to be about 360 percent a year.

The bifurcation in financial services discussed at the beginning of these comments is perhaps the most significant reason why check cashers and payday lenders have made so much money. In other words, half the players are sitting on the bench. Mainstream banks are not competing effectively or perhaps even willingly to provide the services low-income people both want and need.

First, a threshold question: Why does this matter? What's wrong with a dual market? After all, if Neiman Marcus and Target can co-exist to serve different segments of the market, why should banking services be any different? There are several answers to this question.

First of all, society should strive to lower the high costs of being poor. Compared to the vast majority of the attendees at this conference, low-income people pay a lot more for financial services, both in absolute dollars and relative to their income, regardless of whether they use check cashers or banks. Second, this second-tier market developing for low-income people does not provide access to the same tools for asset creation that middle-class people take for granted. Check cashers do not offer savings accounts and in fact encourage their customers to spend as much money as possible, if not on check-cashing services, then on lottery tickets, prepaid phone cards, cellphones, and other "extras" provided by these institutions. Third, the research by **Dunham** and **Rhine** supports the contention that the need for hybrid financial institutions exists. As they document, many people use a combination of banks and currency exchanges to meet their financial service needs. Why not be efficient and create "one-stop shops?"

And one-stop shops are exactly what **Caskey** recommends. Because competition is always a better option than regulation, the best way to get lower prices and better service is to encourage more players to enter the market. **Caskey** has outlined an excellent strategy for how mainstream banks can effectively serve low-income communities while at the same time, as the saying goes, well by doing good.

But perhaps the financial-services industry can go even farther. The growth of the check-cashing industry has been portrayed so far as a wholly negative phenomenon. With the right encouragement, however, check cashers could potentially become part of the solution, rather than part of the problem. To make this possible requires the creation of the right kinds of partnerships with banks. If banks and currency exchanges can reach across the aisle toward each other, they can, together, create hybrid institutions that offer a full menu of financial services, including low-cost savings products.

This strategy could work for the following reasons:

First, check cashers already have the infrastructure to reach low-income communities, with 6,000 outlets nationwide and counting. Second, as they have abundantly demonstrated, they have refined their ability to market products effectively. There is no reason why banks cannot and should not leverage that. Third, the ongoing consolidation in the check-cashing industry has created the big players necessary to enter large-scale partnerships with mainstream banks. Finally, some of this hybridization is already beginning to happen, and now is the time to shape the direction this hybridization is taking.

As happens to all maturing industries, check cashers have "gone corporate." In recent years, the industry has attempted to downplay the neon signs and bulletproof glass and put more emphasis on buffing up its image. For example, what was once the National Check Cashers Association is now the Financial Service Centers of America.

The industry has also become more creative and more diverse, but not necessarily in ways that are beneficial to low-income people. In New York, New Jersey, and Connecticut, for example, check cashers have created something called PAYNET. PAYNET permits employers to send paychecks straight to check cashers, and employees can pay a slightly "discounted" fee to access their wages.[9]

Check cashers have also partnered with banks to create a special "debit" card that allows customers to make withdrawals from either electronically transferred federal benefits or from employer paychecks. This program, however, only provides for spending, not savings, and there is no savings feature attached to this product. But there could be.

And there should be. Products such as these are where the potential for hybridization lies. In fact, in one pilot project in the Bronx, two check cashers have teamed up with a credit union to offer a full menu of financial services, from check cashing to simple savings products.[10] If check cashers are really trying to become more mainstream, banks, policymakers, and government can help make sure this happens.

In conclusion, mainstream banks need to see what check cashers already know: that low-income communities can be a profitable market. But to tap into this market, banks will need the courage to venture outside their traditional business. This risk, however, is one that banks should find worth taking.

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3 Coopers & Lybrand, LLP, *Non-Bank Financial Institutions:A Study of Five Sectors*, February 28, 1997, pp. 31-32.

4 Board of Governors of the Federal Reserve System, *Annual Report to the Congress on Retail Fees and Services of Depository Institutions*, July 2000, p. 12.

5 Ace Cash Express Inc., Annual Report on Form 10-K for the fiscal year ended June 30, 2000.

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100 *The Unbanked and the Alternative Financial Sector*

8 *Ibid.*

9 See the website for the Financial Service Centers of America at www.nacca.org.

10 *Ibid.*

Attachment 6

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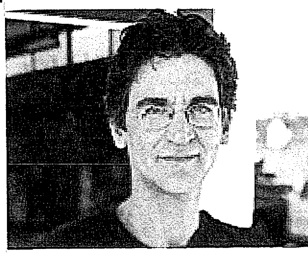

Photo by John Blais

Sudden Debt

By Barry Yeoman, September & October 2006

Overdrawn by $5? Need a loan until payday? Hidden bank fees and the high rates of storefront lenders land millions of Americans in trouble. Can't happen to you? That's what these folks thought

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For Mark Keil, 45, the spiral began with some smokes. It was April 2004 when Mark (pictured above) stopped by his favorite convenience store in Dayton, Ohio, and spent $19.45 for several packs of cigarettes. The self-employed residential designer knew his bank balance was running low. Nevertheless, Mark handed over his debit card. He wasn't really sure what his account balance was, but he thought the transaction would be rejected in case he didn't have enough funds. If that happened, he figured, he'd just hand the cigarettes back to the clerk and go on his way.

The charge went through just fine. What he didn't know was his account was indeed short and that the Fifth Third Bank automatically covered his overdraft. Its fee for this service, however, ended up costing Mark almost twice what his cigarettes cost. That's because the bank automatically enrolls customers in an overdraft-protection program when they sign up for a checking account—unless they opt out or choose to link their account with a credit or savings account. This feature allows customers to overspend their accounts, with one catch. The bank tacks on a charge (in Mark's case, $30) for each overdrawn transaction, along with a $6 fee for every day the account remains in the red. Mark didn't know this, so he used the debit card a few more times over the next several days. By the time he made a deposit two weeks later, the bank had charged him $198 for the privilege of covering his $59 in overdrafts. "I couldn't keep up with it," he says.

Shark Spotting

How do you tell the difference between a predatory lender and a fair one? Here are questions to ask that should alert you.

Will you check my credit history? If you hear "No credit check needed," an alarm should go off.

What's my annual interest rate? Ask until you get an answer. Get it on paper. A triple-digit rate is an automatic red flag for a bad loan.

Can I repay the principal in installments? Many predatory lenders have all-or-nothing payment policies, which only end up getting you deeper in debt.

Does the contract have a mandatory-arbitration clause? If so, you'll lose your right to sue if anything goes wrong. Arbitration is often biased in the lender's favor.

Need a small loan? To avoid predatory lenders, first contact your local credit union or ask for an advance from your employer. If you're paying off a debt, negotiate a payment plan with your creditor. For more borrowing info, read AARP.org's articles on avoiding abusive lenders.

By the following October, Mark's race to catch up had cost him more than $1,194 in overdraft fees. Finally, unable to break the cycle, he walked away from his overdrawn account. This had consequences, though: a debt collection agency came after him, and he was barred from opening a bank account for at least five years. But, he says, he had no choice: "I was throwing money down a hole."

These days a growing number of Americans of all economic levels feel as if they're throwing money down holes. That's because several multibillion-dollar industries have sprung up for the specific purpose of lending small amounts of money at interest rates that would make a loan shark blush. And, in most cases, it's perfectly legal.

Some of these loans come, as in Mark's case, in the form of "overdraft protection" charges or, as they're often referred to, "bounce loans" from banks, which lend their overdrawn customers enough to keep their accounts in the black. Other loans come from storefront companies that accept postdated checks and automobile titles as collateral for short-term loans. Companies like these may seem like godsends, especially for those who struggle from paycheck to paycheck. Godsends until their customers, unable to pay the fees and interest charges, find themselves sucked into endless spirals of debt.

Consumer-protection groups such as the Center for Responsible Lending in Durham, North Carolina, and the Consumer Federation of America in Washington, D.C., refer to these practices as predatory lending, a term previously attached almost exclusively to shady real-estate loans. They and a number of public officials—including attorneys general Thurbert Baker of Georgia, Roy Cooper of North Carolina, Patricia Madrid of New Mexico, and Tom Miller of Iowa—have led the charge for tougher regulations to curb these practices. "Consumers get on a debt treadmill and need a life preserver," says Cooper. "Instead, these companies throw them an anvil."

Shortly after a heart attack forced her to retire, Sandra Matthis found herself short of cash. Her ex-husband had fallen behind in alimony payments, she says, and her monthly disability checks didn't quite cover all her bills. "Times were hard," says the 57-year-old former insurance agent. On a nephew's suggestion, Sandra went to a business called First Southern Cash Advance in the farming town of Clinton, North Carolina. The company, known as a payday lender, offered an attractive deal: with no credit check, it would lend her $150 until the following payday. All Sandra had to do was fill out an application, show utility bills in her name, and write a postdated check for $175 (the $150 loan amount plus $25 interest). Sandra got the $150—and paid her overdue telephone bill. "It felt pretty good," she says.

Payday lenders typically charge customers annual interest rates of 390% to 780%.

Pretty good, that is, until the next month, when she was supposed to repay the loan. Her ex-husband still hadn't paid the alimony. As a result, Sandra couldn't pay back the $175 she owed. Desperate to cover her postdated check, she borrowed money from a second payday lender. Then she went to a third company and a fourth. "I kept digging deeper every month," she says. "By the time I paid off one loan and the interest, I had nothing left." And she wasn't alone. During her monthly trips to the various lenders, Sandra started seeing the same faces over and over again: people trapped in debt cycles similar to hers. "I'd say, 'My God, look at the money these places are making off the same people month after month.'" Eventually Sandra sought out a legal aid attorney, who in 2004 filed a lawsuit against one of the lenders and told Sandra to stop making payments. By then the North Carolinian was forced to give up her apartment and move into a trailer in her brother's backyard. She still hasn't been able to recover.

Of all the different kinds of predatory lenders, perhaps none are as visible as the payday firms, whose storefronts dot street corners of cities and suburbs across the United States. The industry took hold in the early 1990s. Since then it has grown into a formidable economic force. In 2005 loan-industry giant Advance America, for instance, reported revenues of $630 million from its 2,600 outlets in 36 states. The Center for Responsible Lending estimates that payday-loan fees cost U.S. families at least $3.4 billion a year, with the average borrower paying $800 for a $325 loan. California alone has more payday-loan outlets than it has McDonald's and Burger King restaurants combined, reports the *Los Angeles Times*. And it's estimated that one American in 20 has taken out such a loan.

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According to the University of North Carolina's (UNC's) Kenan Institute of Private Enterprise, the typical payday-loan customer has a steady job, a checking account, poor credit, and an annual income of less than $50,000. The Colorado Attorney General's Office reports that 7.4 percent of payday-loan customers in that state are older than 55. But Jean Ann Fox of the Consumer Federation of America says that figure underestimates the secondary effect of payday loans on older Americans. "They're the ones who have to bail out their adult children when they become victims," she says.

Payday lenders say they're performing a valuable service by offering quick cash to people who find themselves in temporary monetary crunches. "If you go to your bank, they're not going to loan you $200 for two weeks," says Steve Schlein, spokesperson for the Community Financial Services Association of America, a payday-lender trade group. "We fill that niche."

Over the past decade payday lenders have worked hard to reinforce that message by engaging a fleet of lobbyists, initiating a vigorous public relations campaign, and heralding an industrywide set of "best practices" that encourages, among other things, full disclosure of loan conditions. "There's been a well-funded, intentional effort to legitimize payday lenders," says Yolanda McGill, an attorney for the Center for Responsible Lending. Adds New Mexico attorney general Madrid: "The small-loan industry has argued that they're providing a necessary service. You'll probably hear that same argument from drug dealers."

California has more payday-loan outlets than it has McDonald's and Burger Kings combined.

Research from UNC's Kenan Institute, Ohio State University's law school, and various state agencies and consumer groups across the nation shows that these businesses purposely structure their contracts so consumers like Sandra have a hard time repaying their initial debts. They typically charge annual interest rates of 390 percent to 780 percent, restrict loan periods to two weeks, and refuse to accept partial payments on the principal. Consumers who can't pay off the entire debt at once must keep refinancing until they can.

State regulators in Illinois, Indiana, Washington, and Wisconsin looked at data between 1999 and 2003 and concluded the average payday customer takes out ten or more loans each year. A 2005 survey commissioned by the Oklahoma Department of Consumer Credit identified more than 1,500 Oklahomans who had borrowed at least 40 times over a 12-month period. The same survey showed that 34 percent of all payday-loan customers used two or more different lenders. "The repeat transactions are where the abuse is," says attorney McGill.

After Anita Monti borrowed $300 from Advance America to buy Christmas presents in 2001, she found that she wasn't able to pay off the loan all at once. Since Advance America had an all-or-nothing repayment policy, Anita had to refinance the loan continuously for two years. During that time the principal amount stayed the same. "Those clothes and those toys," says the 63-year-old North Carolinian. "My grandchildren outgrew them long before the loan was paid off." By then she had added another $400 to her loan principal. That $700 total ended up costing her $1,780 in finance charges.

As more stories like Anita's have surfaced, state governments have tried to regulate or even ban high-interest payday lending. But the industry manages to stay one step ahead by finding and using a wide range of loopholes. For example, some payday firms affiliate themselves with banks in less regulated states. Patsy Alston, Advance America's senior director of public affairs, explains that these arrangements are necessary for her company to survive. "What we're trying to do is provide options to customers," she says. "Without our product, where are they going to go?"

Delores Jones turned to a different type of lender when she needed new tires for her Buick Park Avenue in 2002. The 78-year-old retired elder-care worker had seen advertisements for Wisconsin Auto Title Loans, one of a number of firms nationwide that use customers' vehicles as collateral for high-interest loans. She went to an office in her hometown of Milwaukee, turned over the required spare key and title to her car, and signed a contract to borrow $730 at an annual interest rate of 300 percent. When the loan came due a month later, the payoff fee had grown to $1,027. Delores couldn't pay it. The amount due was more than her entire Social Security check. She couldn't imagine forfeiting her vehicle. "I would be so lost without a car," says Delores, who asked that her real last name not be used. So she began borrowing money from other sources just to pay the monthly interest, without ever making a dent in the principal. The auto-title-loan debt grew until finally, in 2003, she sold the '92 Buick for $1,000 to help pay the debt.

Auto-title loans like Delores's are especially hard on consumers, according to lawyers, activists, and officials who fight predatory lending. Says Pete Koneazny, an attorney with the Legal Aid Society of Milwaukee: "They're really devastating for elderly people who need their cars." The loans keep increasing and using up more and more of the borrower's income. "Consumers end up buying back the use of their own car at 500 percent interest," says Koneazny, who represents Delores and two others in a lawsuit against Wisconsin Auto Title Loans, which declined to comment.

Less reluctant to comment was LoanMax, one of the nation's largest auto-title lenders. In a December 2005 press release, the Georgia-based company described itself in heroic terms. It claimed to fill the void created by banks whose "pernicious and discriminatory attitudes" deny credit to women, minorities, and the elderly. Owner Rod Aycox says his company's loans aren't meant to be refinanced repeatedly but rather to offer "a solution to a short-term problem."

Short-term, unfortunately, isn't always the case. An Oregon Division of Finance & Corporate Securities report showed that 28 percent of auto-title loans weren't paid off until after the third renewal. Studies by the Missouri state auditor and the Illinois Department of Financial Institutions yielded similar results. And, as with payday lenders, most auto-title firms don't accept partial payments. This makes refinancing almost inevitable for many customers. Worse, says Iowa attorney general Miller, auto-title lenders aren't justified in the rates they charge, which often hover around 300 percent annually. Still, LoanMax's Aycox insists he would go out of business if he couldn't charge triple-digit interest. "The average age of my cars is in excess of eight years," he says. "When I repossess a car, it's basically valueless."

Over the past few years many banks have started to cash in on the same market targeted by auto-title and payday-lending services, through their "overdraft protection service." The premise is simple: the bank will honor checks, ATM withdrawals, and debit-card purchases even if the accounts are overdrawn. The rub is that the bank tacks on a service charge for each transaction—typically $20 to $35—often without the customer's knowledge. "This revolutionary program has resulted in a 50 to 300 percent sustainable increase in noninterest income for our clients," says John M. Floyd & Associates, a Texas firm that helps set up overdraft plans at banks and credit unions. The Center for Responsible Lending estimates Americans pay more than $10 billion in overdraft fees every year.

Bankers, however, tout overdraft protection as a useful tool for consumers. "People today are having trouble making ends meet," says Richard Edgar, president of Valley Ridge Bank in Kent City, Michigan. "If this is a way for them to get food or their prescriptions, more power to them." Edgar says his bank's overdraft program is "not a loan" but rather "a privilege." Yet opponents say that such overdraft "privileges" are indeed loans—and predatory ones at that. "These products are worse than payday loans," says Chi Chi Wu, an attorney with the National Consumer Law Center in Boston. "With payday loans at least you get a disclosure, which is required by federal law, so you know how much they're gouging you." The federal government, though, doesn't require banks to disclose the annual interest costs on overdraft programs, although various studies have pegged them at 1,100 percent or higher for loan periods of up to seven days. For example, a $35 fee on a $100 overdraft, if repaid the following day, would be equivalent to an annual interest rate of 12,775 percent. The smaller the overdraft amount and the shorter the loan period, the more astronomical the annual interest rate.

What makes overdraft loans even more insidious, critics say, is that many consumers aren't notified about the charges until they receive their bank statements. By then the damage is done. As Ohio's Mark Keil attests, many people believe that if an ATM spits out money, it's because their account is in the black. This assumption can cost an unwary customer hundreds of dollars in fees in just a single day. Some banks even display the overdraft limit—instead of the actual amount of funds in the account—on ATM screens, which can trick consumers into overdrawing their accounts and incurring more fees. Last year Kentucky's Farmers Bank and Capital Trust Co. disclosed that one of its account holders had racked up an astonishing $6,800 in overdraft fees in just 11 months.

And that isn't an isolated incident. After San Diego's USA Federal Credit Union started offering overdraft protection, it found that nearly one third of its customers who used the service overdrew their accounts six or more times per month. "Once they've maxed out at a negative $1,000, which is our limit, the next paycheck is automatically spent once deposited," president Mary Cunningham wrote in *The Credit Union Journal* last year. "In this case, we are no longer offering value—we're adding to his problems." In response, the credit union changed some of its overdraft policies, lowered fees, and beefed up its education and counseling programs.

Across the country, consumer-friendly institutions are starting to provide more ethical alternatives to small, high-interest loans. In 2001 the North Carolina State Employees' Credit Union unveiled a low-cost program for depositors who found themselves temporarily strapped for cash. "We became appalled by how our members were being abused by payday lenders," says Phil Greer, the credit union's senior vice president of loan administration. Now, with a program called Salary Advance, customers can borrow up to $500 until the next payday at only 12 percent annual interest (a maximum finance charge of $5.10 for a 30-day loan). One requirement: members have to deposit 5 percent of any amount they borrow into a savings account. They have access, but if they withdraw the money, they get no cash advance for six months. Since the program's inception, more than 68,000 people have used the program—and socked away more than $9 million in savings. Other institutions now offer similar programs. At the same time, officials and activists have been mobilizing to crack down on predatory lending. In July 2005, Representative Carolyn Maloney (D-NY) introduced a bill to extend federal truth-in-lending laws to overdraft programs.

On the state level, many lawmakers are taking a hard look at payday and auto-title loans, often with the encouragement of consumer groups and state attorneys general. (So far this year, AARP has worked in 13 states to pass legislation that fights predatory lending practices.) "These lenders prey on our most vulnerable citizens," says AARP Foundation senior attorney Deborah Zuckerman, who represents predatory-lending victims and has filed numerous "friend of the court" briefs for AARP in these types of cases. "And they're really no better than common thieves."

Contributing editor Barry Yeoman, based in North Carolina, wrote "Rethinking the Commune" for the March-April 2006 issue.

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