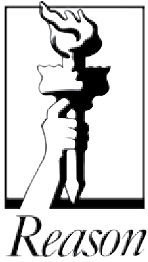

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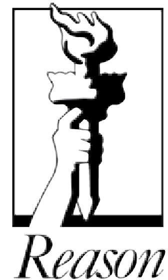
Payday Lending: Protecting or Harming Consumers?

by Adam B. Summers

Reason Foundation



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Payday Lending: Protecting or Harming Consumers?

By Adam B. Summers

Executive Summary

The payday lending industry has enjoyed meteoric growth in the past couple of decades. From virtually no payday lending stores in the early- to mid-1990s, it has grown to more than 20,000 outlets today—that is more than the number of McDonald's, Walmart and Home Depot stores in the nation combined. These payday lending facilities extend about $38.5 billion in short-term credit to 19 million American households a year.

Typically, a payday lending arrangement issues the customer a loan in the amount of $100 to $600 in exchange for a personal check written out in the amount of the loan plus fees, which are generally about $15 per $100 advanced. Thus, a standard $300, two-week payday loan, for example, will cost a total of $345. The borrower's check is post-dated to coincide with the date of his or her next paycheck. At the end of the two-week term, the lender either cashes the check or, if the borrower does not have enough in his checking account for the check to clear, he may extend, or "roll over," the loan by paying the $45 in fees for the original loan and writing out a new post-dated check for another $345.

To take out a payday loan, a borrower must have a job and a checking account. Some payday lenders may additionally do a credit check to ensure that the borrower has not defaulted on other payday loans in the past.

The Rise of Government Regulation

The payday lending industry's success has been accompanied by a backlash from politicians, consumer groups and many journalists who accuse the industry of taking advantage of vulnerable individuals and targeting certain populations in order to extract their wealth. The result is that regulation of payday lending has grown almost as fast as the industry itself.

Seventeen states and the District of Columbia prohibit payday lending or limit implied interest rates to levels that are so low as to make payday lending unprofitable. State governments may require payday lenders to obtain state licenses, limit the interest rates that may be charged for

loans, and restrict the amount and frequency of loans. Local governments may also impose strict loan restrictions or outright prohibitions, but regulation in cities and counties more commonly takes the form of zoning restrictions, special license and permit requirements, mandates related to business practices (such as limitations on hours of operation or advertising), or moratoriums that prevent new payday lending businesses from opening. Many federal laws and regulations apply to the industry as well.

The industry responds to its critics by saying that it provides a needed service to people underserved by banks and credit unions, allowing them access to credit they would not otherwise have so that they may make it through periods of financial difficulty. Who is right? On closer inspection, many of the criticisms of the payday lending industry turn out to be based on myths. Moreover, the evidence shows that payday lending offers many benefits to consumers.

Payday Lending Myth #1: Excessive Fees

Critics argue that the fees charged by payday advance firms are exorbitant and constitute a form of usury. They note that typical fees range from $15 to $30 per $100 loaned, which, if one were to project the costs out over a one-year period, would translate to an APR of 390 percent to 780 percent. But does it really make sense to project payday loans out over a whole year when they are intended to be repaid in two weeks? As one industry figure pointed out, this is like saying taxi fares are exorbitant because it would cost thousands of dollars to take a cab across the country.

Moreover, the short-term alternatives to payday loans may prove even more costly. A May 2005 *Consumer Reports* article revealed that the implicit APR on overdraft protection ranged from 608 percent to 791 percent. Bounced check fees, meanwhile, yielded an APR of between 487 percent and 730 percent. A November 2008 FDIC report calculated that typical check, debit and ATM overdraft fees would have implicit APRs ranging from 1,067 percent to 3,520 percent. Finally, a comparison by the Community Financial Services Association of America of the cost of payday loans and other short-term options revealed the following:

- $100 payday advance with a $15 fee = 391% APR
- $100 bounced check with $56 non-sufficient funds and merchant fees = 1,449% APR
- $100 credit card balance with a $37 late fee = 965% APR
- $100 utility bill with $46 late/reconnect fees = 1,203% APR

Thus, while payday lending fees may appear high when projected to cover an entire year, when compared to other short-term options such as bouncing checks, missing credit card payments, or skipping bills, they are not only reasonable but are a cheaper and more attractive option for many people.

Furthermore, if payday lending companies were “gouging” their customers, this should be reflected in high profit margins. But according to a September 2009 Ernst & Young study for the Financial Service Centers of America, payday lending companies earned an average profit of $1.37 on

$15.26 in revenue per $100 loan (pre-tax). This translates to a profit margin of nine percent. Another study, this one in October 2006 for the *Fordham Journal of Corporate and Financial Law,* reported an average profit margin of 7.6 percent for payday lenders and pawn shops (the profit margin for pure payday lenders was only about 3.6 percent). This was comparable to the profit margin of Starbucks (nine percent) and less than that of commercial lenders (13 percent). In reality, the profitability of payday lending companies is limited by high costs for bad debts and high operating costs: Ernst & Young found that bad debt write-offs account for 27 percent of lenders' total costs, on average, and operating costs make up an additional 68 percent of total costs.

Payday Lending Myth #2: The Debt Trap

Closely related to the excessive fees argument is the charge that payday lending companies trap their customers in a cycle of debt. This hypothesis is contradicted by empirical evidence, however. A study by the Federal Reserve Bank of New York on the effects of payday lending bans in Georgia and North Carolina found that the bans resulted in significantly worse outcomes for consumers. After the bans, consumers "bounced more checks, complained more to the Federal Trade Commission about lenders and debt collectors, and filed for Chapter 7 bankruptcy protection at a higher rate."

Consumers in Oregon likewise were harmed by the lack of short-term credit opportunities when the state sharply restricted payday lending in 2007. A study comparing consumers facing negative financial shocks in Oregon to those in Washington, which did not ban payday lending, concluded that there was a "large and significant deterioration in the financial condition of Oregon respondents relative to their Washington counterparts."

A study evaluating state-level data between 1990 and 2006 similarly cast doubt on the "cycle of debt" argument and determined, "if anything, the presence of payday stores in a state is associated with a smaller number of Chapter 7 bankruptcy filings." Moreover, the study found support that bankruptcies resulted in the need to use payday lending services, not the other way around.

The presence of payday lenders even appears to help prevent foreclosures and crime (since some of those in desperate enough financial straits may resort to theft), according to a study of payday lending in California between 1996 and 2002. By contrast, after the state of Hawaii doubled the maximum amount of payday loans from $300 to $600 in July 2003, consumers had fewer and less-chronic financial problems, as evidenced by a significant decrease in bankruptcies.

Ultimately, the debt cycle theory seems to get the causality of payday lending behavior backwards: people use payday loan services because they face financial emergencies, not the other way around.

Payday Lending Myth #3: Lenders Target the Poor and Minorities

Payday critics charge that lenders target certain groups of people, such as minorities and those with low incomes. However, a study of payday lending pricing behavior in Colorado concluded that

"Payday lenders are more likely to locate in markets with relatively low household incomes, but after controlling for income, payday lenders are *not* more likely to locate in markets with disproportionate minority populations." So while income levels may determine, at least in part, where payday loan businesses locate, racial demographics do not. Moreover, to the extent that payday lenders do aim their services at those with low incomes, this may be: (a) an effort to tap an underserved market and satisfy the financial needs of those that banks and credit unions have ignored; and (b) a reflection of the fact that payday customers tend to be those in financial distress, which is oftentimes associated with lower incomes. In other words, it could simply be that there is a greater need and natural customer base for payday lending in relatively low income areas.

Payday Lending Myth #4: Most Consumers Want More Protection from Payday Lenders

According to a George Washington University School of Business survey of payday customers, 89 percent of borrowers were "very satisfied" or "somewhat satisfied" with their most recent payday loan, and only about three percent mentioned difficulty getting out of debt as a reason for being dissatisfied or even partially dissatisfied. In addition, 86 percent of borrowers agreed that payday loan companies provide a useful service to customers, 76 percent were satisfied with their dealings with payday lending companies, and 59 percent did not think the government should limit the number of loans they can obtain in a year. Surveys conducted by payday lender Advance America found that 90 percent of borrowers are satisfied with their understanding of the terms and costs of a payday advance. State regulators, meanwhile, report very few complaints: among nearly 11 million transactions, Advance America responded to fewer than 100 customer complaints filed with state agencies in 2009.

Payday Lending Benefits

While critics of the payday lending industry try to portray it as preying upon unfortunate and disadvantaged members of society, the growth and success of the industry, including the millions of satisfied customers, clearly indicate that it offers many benefits to consumers. Among these benefits are the following:

Greater Consumer Welfare. While a small percentage of borrowers may overuse payday lending services and may end up even worse off than before as a result, this is the exception to the rule and, in any case, is true of any kind of loan product. The fact is that payday loans allow consumers to better weather short-term financial difficulties, avoid bankruptcies and bounce fewer checks.

Increased Access to Credit. Payday loans offer access to credit to those who might not be able to obtain it from other sources such as banks, credit unions or credit cards.

Convenience. Payday loans may be obtained almost immediately, and the large number of locations and longer business hours (compared to banks and credit unions) make them more convenient for consumers.

Transparency. Payday loan terms are displayed prominently in stores for all to see, so customers do not have to parse hundreds of pages of legalese in bank/checking account terms to determine how much the fees will be and when and how they will be assessed.

Cost. While often criticized for the high cost of their fees—and they are not necessarily cheap—payday loans offer fees that are still less expensive than the fees charged for alternate options, such as bank overdraft/bounced check fees, credit card late fees and utility late/reconnect fees. They may also offer cheaper rates and better terms than pawn shops, auto title lenders or rent-to-own businesses.

Better Than Alternatives. In addition to being less costly than other alternatives, payday loans may be preferable for other reasons, and allow borrowers to avoid risking reduced quality of life by skipping medical visits or having utilities shut off for lack of payment, resorting to dangerous black market lenders (loan sharks), or enduring embarrassment and potential conflict from borrowing from friends or relatives.

Conclusion

Consumers have already rendered their verdict: they believe they benefit from the option of payday loans. This is why they enter into such arrangements in the first place. This is why they are willing to go to great lengths, such as driving across city—or even state—lines, to utilize payday loan services when their own jurisdictions deny them this option. And this is why they overwhelmingly claim that they are satisfied with their payday lending experiences and that payday lenders provide a valuable service.

Instead of restricting or eliminating payday lending markets through regulation, policymakers should seek to open them up to competition by repealing payday lending bans and regulations. State governments should remove prohibitions on payday lending, interest rate/fee caps, and limits on the amount of loans or the frequency with which they may be taken out. Local governments should repeal moratoriums, constraints on business practices and other restrictive zoning, licensing and permitting laws. The federal government should similarly repeal its laws regarding payday lending and remove the authority of the fledgling Consumer Financial Protection Bureau to pile even more regulations on the industry.

Ultimately, the goal should be to maximize consumer choice and minimize the cost of short-term loan transactions. This will benefit economic growth generally and short-term borrowers in particular.

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Part 1

Introduction

The payday lending industry has exploded since it grew out of the check cashing business in the early 1990s. While it has enjoyed great success, it has also garnered strong criticism from policymakers and others. Through legislation at all levels of government and public awareness campaigns by organizations that claim to represent consumer interests, payday lending has become stigmatized as a new sin industry, receiving the kind of scorn typically reserved for "undesirable" businesses such as strip clubs, sex shops, casinos, liquor stores and pawn shops.[1]

Yet the payday lending industry is merely a form of lending money. What is it about payday lending that generates such a visceral reaction in politicians and certain members of the public, leading them to try to justify restrictions on these businesses on moral grounds?

Payday lending's success has been rivaled only by its notoriety, as some have contended that payday lenders charge usurious interest rates for their loans and prey upon the poor and economically illiterate, trapping them into a cycle of never-ending debt. This has prompted calls for government regulation. Many cities and states have responded by imposing restrictions on the terms of payday loans. These include caps on the fees that may be charged, as well as the amounts and numbers of loans that may be offered. Some authorities issue moratoriums on the number of payday lenders that may operate within their borders, or even prohibit the practice altogether.

The industry responds that it is providing a needed service to people underserved by banks and credit unions, allowing them access to credit they would not otherwise have so that they can make it through periods of financial difficulty. And does regulation really benefit consumers? Payday lending fees may not be cheap, but, in fact, they are preferable—and oftentimes cheaper—than many other less attractive options such as bouncing checks, missing payments to other creditors (which could lead to the shutting off of one's electricity, for example), skipping medical or dental appointments to save money, or resorting to loan sharks on the black market. Payday loans are also quicker and easier to get than other types of credit, and the large number of payday lending outlets and typically long business hours (especially compared to banks and credit unions) make them more convenient for borrowers. Prohibiting or severely restricting payday lending through government regulations may sound benevolent to some groups that claim to advocate for consumers' interests, but for many this only cuts off their best means of obtaining needed short-term credit.

The aim of this study is to evaluate the arguments for and against the regulation of payday lending. In particular, it will analyze the effects of payday lending—and the regulation thereof—from the point of view of consumers, since it is primarily their welfare that is in question in the payday lending debate.

Part 2

Background

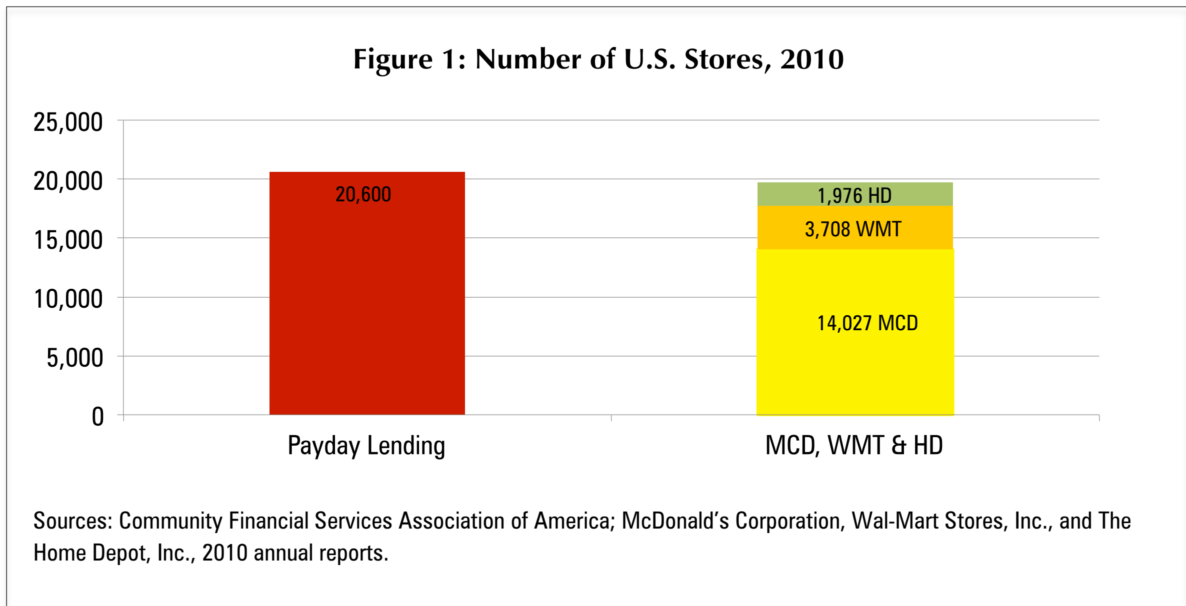
The payday lending industry has enjoyed meteoric growth in the past couple of decades since its modern incarnation arose from the check cashing business during the early 1990s. From virtually no payday lending stores in the early- to mid-1990s, the industry has boomed to more than 20,000 outlets today. According to the Community Financial Services Association of America, the national payday lending trade group that represents more than half of all payday advance stores, there are now approximately 20,600 payday advance stores across the country.[2] That is more than the number of McDonald's, Walmart and Home Depot stores in the nation combined (see Figure 1).[3] These payday lending facilities extend about $38.5 billion in short-term credit to 19 million American households a year.[4]

Such a large and open demand for a service is generally indicative of a licit desire for it. If payday lending were really such a bad thing, as critics claim, demand for such services would tend to be more niche and illicit.

Despite the industry's success, this rise has been accompanied by a backlash from politicians, consumer groups and many journalists who paint a picture of unscrupulous businesses taking advantage of vulnerable individuals and shamelessly targeting certain populations in order to extract their wealth. The industry responds that it is providing a needed service to people underserved by banks and credit unions, allowing them access to credit they would not otherwise have so that they may make it through periods of financial difficulty.

In order to take out a payday loan, a borrower must have a job and a checking account. Some payday lenders may additionally do a credit check to ensure that the borrower has not defaulted on other payday loans in the past.

In a typical payday lending arrangement, the customer is issued a loan in the amount of $100 to $600 in exchange for a personal check written out in the amount of the loan plus fees, which are generally about $15 per $100 advanced.[5] Thus, a standard $300, two-week payday loan, for example, will cost a total of $345. (See Part 4 for more on payday lending fees and comparisons to the alternatives.) The borrower's check is post-dated to coincide with the date of his or her next paycheck. At the end of the two-week term, the lender either cashes the check or, if the borrower does not have enough in his checking account for the check to clear, he may extend, or "roll over," the loan by paying the $45 in fees for the original loan and writing out a new post-dated check for another $345.



While some might have the impression that payday lending customers are predominantly poor and uneducated, this is not necessarily the case. A survey of payday lending customers for the Financial Services Research Program at the George Washington University School of Business revealed the following:

- Payday loan customers tend to be in younger age brackets (most were less than 45 years old, and about three-fourths were younger than 55);
- 63 percent of customers were from families that had children at home;
- Customers typically had low or middle incomes (39 percent earned at least $40,000 a year, about one-quarter earned at least $50,000—which was a larger share than those earning less than $15,000—and 8.9 percent earned at least $75,000);
- Customers were educated (90 percent had achieved at least a high school diploma, and 54 percent had attended some college or earned a college degree);
- 85 percent of customers used other types of consumer credit, and 54 percent had a credit card, yet 55 percent had experienced credit limitations within the previous five years;
- Most customers had limited liquid assets and savings;
- Nearly half of customers considered other sources of credit before taking out a payday loan; and
- Customers typically use payday loans sparingly or moderately use to handle unexpected, short-term expenses (for more on this last point, see the discussion in Part 4 on the "debt trap" myth).[6]

Thus, consumers tend not to be as uninformed about their financial needs, planning and options as paternalistic opponents of payday lending believe when they assert that the industry must be eliminated or highly regulated for consumers' own good. This has not stopped government from piling on the regulations, however.

Part 3

The Rise of Government Regulation

The growth in government regulation of the payday lending industry, particularly in recent years, has been nearly as rapid as the growth in the industry itself. To date, a plethora of payday lending regulations have been issued from every level of government. This has led one financial analyst to assert that, notwithstanding all the usual risks that come with doing business in a competitive market, "Regulatory risk is by far the biggest risk factor for the payday loan industry."[7] We will examine these regulations, in turn, beginning with those applied by the states, since these are oftentimes the most significant.[8]

State Regulations

While laws may vary significantly from one state to another, state governments may require payday lenders to obtain state licenses, limit the interest rates that may be charged for loans, and restrict the amount and frequency of loans. Some have even prohibited payday lending. About one-third of the states have heavily regulated payday lending, while the remaining two-thirds have enacted safe harbor laws to exempt payday lenders from pre-existing small loan and criminal usury laws.[9] According to the Consumer Federation of America, 17 states and the District of Columbia prohibit payday lending or limit implied interest rates that may be charged to levels that are so low as to make most payday lending unprofitable (see Table 1):

> *In Georgia, payday lending is explicitly prohibited and a violation of racketeering laws. New York and New Jersey prohibit payday lending through their criminal usury statutes, limiting loans to 25 percent and 30 percent annual interest, respectively. The Arkansas Court ruled in 2008 that the state Check Cashers Act, which purported to authorize high-cost payday lending, violated the state's constitutional usury cap. Almost all payday lending halted in Arkansas due to enforcement by the Attorney General and private litigation. In 2010 voters adopted a 17% annual rate cap for consumer credit under the state constitution. In 2011 the Arkansas legislature repealed the Check Cashers Act that had authorized payday lending.*
>
> *Payday lending is not specifically authorized and is de facto prohibited by several state small loan rate caps. These states include Arizona, Connecticut, Maryland, Massachusetts, North Carolina, Pennsylvania, Vermont, West Virginia, and the District of Columbia. Of those jurisdictions, the District of Columbia, Arizona and North Carolina repealed or sunset their payday loan authorization laws.*[10]

In addition, Maine, Montana, New Hampshire, Ohio and Oregon technically permit payday lending, albeit with annual interest rates capped at rates (in the range of 28 percent to 36 percent) that are much lower than those of typical payday loans, effectively prohibiting the service.[11] (See Appendix A for a table of state payday lending laws.)

Table 1: States That Prohibit or Effectively Ban Payday Lending

State	Small Loan Rate/APR Cap	Description	Citation
Arizona	36% per year + 5% fee	Consumer Lenders Act applies	Ariz. Rev. Stat. 6-632
Arkansas	17% per year	Small loan rate cap established by ballot measure in 2010.	Arkansas Constitution, Art. 19, Section 13 (usury provision)
Connecticut	30.03% per year or $17 per $100 loaned up to $600; $11 per $100 loaned up to $1,800	Usury act or small loan act applies.	Conn. Gen. Stat. 36a-563
Georgia	16% per year (10% per year discounted plus fees); 60% per year criminal usury	Industrial loan act applies.	Ga. Code Ann. 7-3-14; Ga. Comp. R. & Regs. r. 80 3-1.02(7) and O. C.G.A. Section 16-17-1 et seq.
Maine	30% per year on loan amounts up to $2,000 or a fee of $5 for amounts financed up to $75; $15 for amounts financed $75.01–$249; or $25 for amounts financed of $250 or more	UCCC applies. Supervised lenders are exempted.	9-A Me. Rev. Stat. Ann. 2-401; 32 M.R.S.A. 6138(4)(D)
Maryland	2.75% per month; 33% per year	Consumer loan act applies.	Md. Code Ann. Com. Law II 12-301 et seq.
Massachusetts	23% per year + $20 administrative fee	Small loan act applies. Check cashers are specifically prohibited from making loans unless licensed under the small loan act.	Mass. Gen. Laws Ann. Ch. 140 96 et seq.; 209 Mass. Code Regs. 26.01; 209 Mass. Code Regs. 45:14(8).
Montana	36% per year	$300 maximum loan amount; Maximum loan term is 31 days.	Mont. Code Ann. 31-1-701
New Hampshire	36% per year	$500 maximum loan amount. Loan term is 7–30 days. Only one outstanding loan at a time is permitted. Loan cannot be renewed, extended or refinanced.	N.H. Rev. Stat. Ann. 399-A:1 et seq.
New Jersey	30% per year	Consumer loan act applies but rates as agreed to by contract. However, criminal law sets the usury cap at 30%. A check cashing licensee cannot cash or advance money on a postdated check.	N.J. Stat. Ann. tit. 17, 1 et seq. N.J. Stat. Ann. 2C: 21-19 N.J. Stat. Ann. 17:15A-47

Table 1: States That Prohibit or Effectively Ban Payday Lending			
State	**Small Loan Rate/APR Cap**	**Description**	**Citation**
New York	25% per year	Licensed lender law applies but interest rate is that agreed to by contract. A check casher licensee cannot make loans or advance any moneys on a post-dated check unless it is a payroll check. Criminal law sets the usury cap at 25%.	N.Y. Banking Law 340 et seq. N.Y. Banking Law 373 N.Y. Penal Code 190.40
North Carolina	36% per year	Consumer finance act applies. North Carolina passed a law in 1997 that permitted payday lending but it was allowed to sunset in 2001.	N.C. Gen. Stat. 53-173 N.C. Gen. Stat. 53-281 (no longer in effect—sunset)
Ohio	28% per year	$500 maximum loan amount; Minimum term of 31 days; The number of loans that a consumer can take out is limited to one at a time and four per year; No rollovers are permitted.	Ohio Rev. Code Ann. 1321.35 et seq.
Oregon	36% per year + $10 per $100 loaned (up to $30) in fees	Minimum loan term is 31 days; Up to two renewals are permitted.	54 Or. Rev. Stat. Ann. 725.600 et seq.
Pennsylvania	24% per year or $9.50 per $100 per year discount	Check cashers are specifically prohibited from making payday loans. Otherwise, Consumer Discount Company Act applies.	63 P. S. Section 2325(a) (Check Cashing Licensing Act of 1998, Section 505(a)) 7 Pa. Cons. Stat. Ann. 6201 et seq.
Vermont	18% per year	Small loan act applies	Vt. Stat. Ann. Tit. 9 41a
West Virginia	31% per year on a loan of $2,000 or less	Small loan act applies	W. Va. Code 46A-4-107 and 32A-3-1 et seq.

Source: Consumer Federation of America

But even abolishing payday lending altogether does not abolish the need for short-term credit. And where there is strong demand, there is also a strong incentive for entrepreneurs and businesses to seek avenues to satisfy that demand. As George Mason University law professor Todd Zywicki maintains, “While competition and free choice is good, enacting well-intentioned but misguided regulations that eliminate consumers’ preferred options and push them to less-preferred options is not a strategy well-designed to increase their welfare. You simply cannot wish away consumer need for credit, even short-term, high-cost credit.”[12]

It should thus come as no surprise that lenders have found ways to continue offering products to fulfill that consumer demand. In Arizona, for example, the payday loan industry was decimated in 2010 when a 36 percent APR cap went into effect. As noted above, however, this did not eradicate consumers' desires to obtain small, short-term loans. In response, companies discovered several new avenues for offering products substantially similar to payday loans. A company called Cash 1 LLC began selling gift cards with a credit option to large retailers. The fees charged for the credit translated to about 360 percent when calculated on an annual basis. The Arizona attorney general's office sued the company, and in April 2012 the company agreed to stop selling the cards. Other short-term lending avenues have not yet been choked off by regulators, however. Two major national banks that operate in the state, Wells Fargo and U.S. Bank, began offering customers with regular direct deposits from paychecks or Social Security benefits advances on their deposits. In exchange, the banks charge a fee—7.5 percent and 10 percent, respectively—on the amount advanced. In addition, CheckSmart, a company with stores in Arizona that sells prepaid debit cards, offers customers who make regular direct deposits to their cards an optional line of credit, with principal, fees and interest to be paid out of the next direct deposit. Fees are $14 per $100 borrowed, and the bank that lends the money via CheckSmart additionally charges 35.9 percent interest. This works out to a total cost of $15.38 per $100 borrowed for a two-week loan, about the same amount that payday lenders charge. CheckSmart's direct deposit customers may also set up an overdraft protection service, which costs 15 percent of a negative balance, up to a maximum of $36 in fees.[13]

The advent of the Internet and the growth of e-commerce introduced another set of issues. Some payday lenders began offering their services online. One reason for doing this was to attempt to bypass the more onerous restrictions of some states by claiming that they had the right to offer services online to any consumer based on the license issued by their home state. Lenders argued that borrowers had agreed in advance that the transactions they entered into were taking place in, and therefore governed by, the state in which the company maintained its license, so the practice was perfectly legitimate. But in *Quik Payday, Inc. v. Stork,* the Tenth Circuit Court of Appeals unanimously found that payday lending company Quik Payday was unable to rely upon its Utah license to issue loans to residents of Kansas.[14] Thus, a company that wanted to offer payday lending services online to residents in multiple states would have to go through the costly and time-consuming process of complying with the regulations of each and every state in which it sought to offer its services to customers. More recently, in October 2010 the Pennsylvania Supreme Court ruled in *Cash America Net of Nevada, LLC v. Department of Banking* that a payday lending company licensed in Texas was not allowed to issue loans to consumers in Pennsylvania, and that Pennsylvania lending and licensing laws applied, even though the company did not maintain any offices or employees in the state.[15]

Senator Jeff Merkley (D-OR) has introduced a bill, S. 172, which would further solidify the issue by requiring online lenders to adhere to the laws of the state in which the borrower lives, instead of those where the lender is located. Supporters of online payday lending have legislation in their favor pending as well, however. The trade group Online Lenders Alliance has supported federal legislation such as Representative Blaine Luetkemeyer's (R-MO) H.R. 1566, which would grant a

federal charter for online payday lenders, thus superseding state laws that prohibit or restrict the practice.[16]

Some companies have chosen to avoid burdensome regulations by not only offering their services online but also incorporating offshore in nations such as Belize, Costa Rica and Panama.[17] Another increasingly popular means of bypassing regulations is through the sovereign immunity of Indian tribes.[18] This sovereign protection from federal, state and local U.S. laws means that Indian tribes, or those incorporating on Indian territory, may even lend to customers whose states have explicitly or effectively banned payday lending.[19] In December 2008 the California 2nd District Court of Appeal reversed a lower court ruling when it found that tribal sovereign immunity did, in fact, apply to off-reservation commercial activity in a case in which the state's Department of Corporations sought to enforce certain provisions of the Deferred Deposit Transaction Law against five Internet payday lending companies—Ameriloan, United Cash Loans, US Fast Cash, Preferred Cash and One Click Cash—offering services through the Miami tribe of Oklahoma and the Santee Sioux tribe of Nebraska to California residents. The case was sent back to the trial court, in part so it could determine whether the payday lending companies were, indeed, acting on behalf of the tribes as "arms of the tribe."[20] Similarly, in Colorado, the state Supreme Court ruled in November 2010 on a case involving two online payday lending companies that had also partnered with the Miami and Santee Sioux tribes. In *Cash Advance and Preferred Cash Loans v. State of Colorado*, the court found that "tribal sovereign immunity applies to state investigatory enforcement actions,"[21] essentially affirming the prior Court of Appeals ruling that tribal sovereign immunity prevents the state from enforcing its regulatory schemes on the tribes and their partner companies operating as arms of the tribes.[22]

This freedom from regulation is more and more often leading tribes to start payday lending businesses or partner with existing payday lending companies. As with the gaming industry, the payday lending industry is being seen as a boon and an entrepreneurial opportunity by tribes suffering from extremely high levels of poverty and unemployment. By one estimate, more than 35 of the 300 companies making payday loans over the Internet are owned by American Indian tribes. Under this business model, tribes issued approximately 12,500 loans per month in 2010, generating about $420 million in revenue.[23] Due to such success, the Chippewa Cree tribe in Montana and several other tribes have even formed an organization called the Native American Lenders Alliance to encourage more online tribal lending businesses.[24]

Local Government Regulations

Local governments may impose loan restrictions or outright prohibitions on the service, just as do many state governments.[25] But regulation in cities and counties more commonly takes the form of zoning restrictions, special permit requirements or moratoriums that permit existing outlets to remain in business but prevent any additional payday lending businesses from opening.[26] Local ordinances may take one or more of the following forms:

- Limit the number of payday lending businesses that may exist within city limits, either by specifying an arbitrary maximum number of stores or on a per capita basis;
- Confine businesses to certain special zoning areas;
- Require periodic inspections by city officials;
- Force businesses to obtain special licenses and permits that may run several hundred dollars a year—on top of any fees they must pay to the state government;
- Compel business owners to obtain special permission from the city council;
- Set strict limits on stores' hours of operation;
- Specify the type of building the business must operate out of, such as requiring it to be located in a shopping mall and prohibiting a separate external entrance; and
- Prohibit outlets from locating within a certain distance from residential areas (commonly within 500 feet), other payday lending stores (commonly 1,000 feet or 1,320 feet but, in some cases, up to one mile), other financial institutions such as banks and credit unions, parks, schools and playgrounds, churches, liquor stores, "sexually oriented" businesses, pawn shops and liquor stores.

A city of Los Angeles ordinance even seems designed to run payday lenders out of business by favoring their potential competitors and offering incentives to credit unions to move into areas where payday lenders are prevalent.[27] (See Appendix B for a table of local government payday lending ordinances.)

Federal Regulations

As if these state and local regulations were not enough, the federal government has repeatedly stepped in to regulate payday lending as well. In the early days of payday lending, it was not clear whether the federal Truth in Lending Act (TILA) applied to payday lenders. In 2000, however, the Federal Reserve Board decided that payday lenders were, indeed, subject to TILA's Regulation Z, which requires lenders to fully disclose all costs and fees related to credit transactions, including the disclosure of these costs in terms of the annual percentage rate of interest (APR).[28] As the Fed argued,

> *TILA, as implemented by Regulation Z, reflects the intent of the Congress to provide consumers with uniform cost disclosures to promote the informed use of credit and assist consumers in comparison shopping. This purpose is furthered by applying the regulation to transactions, such as payday loans, that fall within the statutory definition of credit, regardless of how such transactions are treated or regulated under state law.*[29]

The Federal Deposit Insurance Corporation (FDIC) has also regulated payday lending offered through financial institutions under its jurisdiction. At times, its enforcement has been rather ad

hoc, but the FDIC issued guidance in 2003 to offer more standard payday lending regulations. Federally chartered banks offering payday lending services were directed to increase their reserves to as much as 100 percent of the value of payday loans issued, depending on the level and volatility of the risk involved, and to enact policies to:

- Limit the number and frequency of loan extensions and renewals;
- Set a maximum number of loans that a customer may take out within a year or other designated time period;
- Prohibit issuing loans to customers that already have a payday loan outstanding;
- Prohibit making advances to finance unpaid interest and fees, and
- Establish a "cooling off" or waiting period between the time a customer pays off a payday loan and the time he or she may apply for another loan.

Moreover, adherence to the FDIC guidelines was to be included in lender evaluations under the Community Reinvestment Act (CRA), which mandates that banks offer banking services in lower-income neighborhoods. The CRA evaluations are important for when regulators consider approval of bank mergers and acquisitions.[30]

The FDIC revised its guidance in 2005, when it attempted to restrict the frequent use of payday loans by preventing banks from issuing loans to borrowers who have had payday loans outstanding for a total of three months within the previous 12-month period. The agency also announced a plan to implement a "mystery shopper" program to go undercover and spy on banks that offer payday loans to make sure they were complying with its rules. At the time, the FDIC noted that of the more than 5,200 FDIC-supervised financial institutions across the nation, only 12 were engaged in payday lending.[31]

In 2008, the FDIC tried to encourage banks to offer an alternative to payday loans in the form of small loans with low or no fees and a maximum APR of 36 percent. Banks were also asked to transfer a portion of loan revenues into a savings account for the borrower and to offer financial counseling to repeat borrowers. The program proved to be a flop, however, as banks concluded that such loans simply were not profitable.[32]

Instead, some banks have established a short-term loan product similar to a payday loan, called a deposit advance. Under a deposit advance, the bank makes a short-term, small-dollar loan to a customer who has a checking account with a recurring direct deposit. Typically, to be eligible for a deposit advance, the customer must have maintained the checking account for a certain minimum length of time and must receive direct deposits to that account of a certain minimum amount. Banks charge a fee for the loan, which, when projected over a one-year period, generally translates to an APR of 300 percent or more. The amount of the advance and the fee are paid out of the next direct deposit. If the deposit is not enough to pay off the advance and the fee, the repayment will be made using future deposits. If the deposits are insufficient to repay the advance and the fee within a certain period of time, usually 35 days, the bank will tap the rest of the checking account balance to pay off the remaining balance. Note that, unlike payday lending companies, banks have automatic

access to customers' underlying deposit accounts, and so are able to make such forced repayments from their checking accounts.

Concerned with the growing use of deposit advances, the FDIC and the comptroller of the currency issued proposed guidance on deposit advance products in April 2013.[33] The guidance stipulates that banks issuing deposit advances should establish underwriting policies that ensure that customers will be able to pay off the advance in full—without having to rely on repeated borrowing—while continuing to pay necessary expenses such as food, housing, health care, transportation and other debts. Customers should maintain a relationship with the bank for at least six months prior to receiving an advance, in order to allow the bank to have sufficient information upon which to analyze their eligibility for a deposit advance, and customers with any "delinquent or adversely classified credits should be ineligible."[34] In addition, banks should offer no more than one deposit advance loan per month and should impose a cooling-off period of at least one month before extending another advance.

The federal government also restricted to whom payday lenders could offer their services when it passed the Military Lending Act in 2006 (effective as of October 1, 2007). The law capped the fees that could be charged on payday, auto title or tax refund loans to members of the military at an APR of 36 percent, effectively altogether banning such loans.

Further authority to regulate payday loans was granted in the Dodd-Frank Wall Street Reform and Consumer Protection Act in 2010.[35] Under the Dodd-Frank Act, regulators are required to write roughly 300 new rules for financial firms, and the Government Accountability Office has estimated the cost of enforcing the law at $1.25 billion over the next two years.[36] Dodd-Frank also established the Consumer Financial Protection Bureau (CFPB) as an independent agency within the Federal Reserve System. The CFPB is charged with regulating consumer lending and other financial practices, researching consumer behavior and promoting financial education.

Exactly how the CFPB will affect the payday lending industry remains unclear. Although the Dodd-Frank Act was passed in July 2010, and the CFPB has officially been up and running since July 2011, it only gained its full powers in January 2012 with the appointment of former Ohio Attorney General Richard Cordray as the agency's director. According to the Dodd-Frank Act, the bureau was prohibited from writing any new rules or otherwise regulating non-bank lenders such as payday advance businesses until a director was installed, and was instead limited to regulating banks under existing laws.

The appointment of the CFPB director was—and still is—a contentious issue. President Obama installed Cordray as director while Congress was in recess, avoiding the need for senatorial approval. This appointment has been challenged in the court system, though as of publication it remains to be seen whether rules authorized during Cordray's term as director will be ruled invalid.

In the meantime the CFPB has continued to move forward on restricting payday lending. The CFPB released a study in April 2013 that was highly critical of payday loans and deposit advance products. While acknowledging that there is a sizable demand for such products, and that they help many consumers by providing the short-term credit needed to cover their expenses, the CFPB report frowned upon what it considered to be excessive use of the products, particularly in cases where loans or advances were rolled over or new loans were taken out immediately after old loans were paid off.[37] The report concluded: "The potential harm and the data gathered to date are persuasive that further attention is warranted to protect consumers. Based upon the facts uncovered through our ongoing work in this area, the CFPB expects to use its authorities to provide such protections."[38] Just what such measures might be, and how extensive they would be, remain unknown.

Senator and former Obama advisor Elizabeth Warren (D-MA), a Harvard Law School professor who is credited with the formulation of the CFPB, has indicated that, in light of the fact that payday loans do provide an important short-term credit option to many people, payday lending would not be banned by the agency, although it will look to ensure the safety of payday advance products and make sure they benefit the consumer.[39] Thus, it could potentially restrict the terms of payday loan agreements. While the CFPB cannot, according to the Dodd-Frank Act, impose interest rate caps or other usury limits on loans or extensions of credit,[40] it can prohibit "unfair, deceptive, or abusive" lending practices.[41] Like most regulators, the CFPB will likely interpret these definitions of authority broadly.

As of this writing, the CFPB has issued a proposed set of rules to establish the supervisory authority over non-bank financial entities (including payday lending businesses) given to it by the Dodd-Frank Act.[42] If adopted following the public comment period, the proposed rules would institute procedures and timelines for determining whether "nonbank persons" suspected of engaging in "conduct that poses risks to consumers with regard to the offering or provision of consumer financial products and services" will be subject to the agency's regulatory power, and how those accused of exhibiting such behavior are to respond to the agency's inquiry.

The CFPB has also announced an agreement to work with state banking regulators through the Conference of State Banking Supervisors to oversee the lending industry.[43] It has even declared its intention to monitor the industry through the use of "crowdsourcing," in which it will solicit information, consumer complaints and reviews about local payday lending stores directly from customers.[44] It should be noted, however, that such voluntary rating and review resources have already been made available to consumers by the private sector in the forms of the Better Business Bureau and Web sites such as Yelp.com, YellowPages.com and Yahoo! Local. Regardless of the precise form the CFPB's regulations ultimately take, one thing is clear: the regulations will benefit the banks by imposing additional costs and restrictions on their non-bank competitors. In fact, proponents of the Dodd-Frank Act claimed from the start that this was a chief aim of the legislation.[45]

Finally, in addition to all the aforementioned laws, regulations, and rules, payday lenders may also be subject to numerous other federal laws, including the Equal Credit Opportunity Act, Fair Credit Reporting Act, Fair Debt Collection Practices Act, and Federal Trade Commission Act, as well as federal regulations regarding privacy and the safeguarding of consumer information, such as those contained in the Gramm-Leach-Bliley Act.

Part 4

Payday Lending Criticisms and Myths

Proponents of payday lending assert that the services provided are a needed source of short-term credit for consumers who have few alternatives. Critics contend that lenders abuse customers by charging usurious fees, engaging in predatory behavior and trapping them in cycles of debt. Several religious leaders in Texas said payday lending practices were "immoral" and "tantamount to financial slavery."[46] "These places are like vultures," said Manuel Lozano, mayor of Baldwin Park, California, a city of 75,000 people located 25 miles east of Los Angeles, shortly after the city issued a moratorium on any new payday lending businesses within city limits in 2008.[47] The following section will analyze such criticisms of payday lending and examine how it affects consumer welfare.

Myth #1: Excessive Fees

Critics of payday lending argue that the fees charged by payday advance firms are exorbitant and constitute a form of usury. Once upon a time, the charging of interest on loans was considered a sin against nature, but modern economics views it as nothing more than the price of borrowing. An October 2009 *Reason* magazine article describes historical notions of usury:

> *Trawl through online arguments against payday lending, and you're likely to come across something like this, from Americans for Fairness in Lending: "Prophet Ezekiel includes usury in a list of 'abominable things,' along with rape, murder, robbery and idolatry." The site also notes that in his* Inferno*, Dante "places usurers at the lowest ledge in the seventh circle of hell—lower than murderers." In* Hamlet*, Polonius famously advises: "Neither a borrower nor a lender be; /For loan oft loses both itself and friend/ And borrowing dulls the edge of husbandry." Charges of usury periodically inflamed pogroms against Jews in Europe. (Jewish law forbids charging interest to other members of the tribe but not to gentiles, which is the historical reason moneylending is associated with Jews.) Koranic instructions against interest are enforced in the Islamic world even today.*
>
> *The traditional view of usury as morally corrupt changed only during the Enlightenment. As a young man in 1787, the philosopher Jeremy Bentham wrote a controversial defense of usury in which he attacked the aging Adam Smith for supporting legal limits on the rate of interest, noting that to restrict people's choices was to reduce the overall welfare. The British author G.K. Chesterton has pointed to Bentham's essay as the moment when "the*

modern world began." Capitalism isn't possible without capital, and accumulating capital in a world without interest-bearing loans is almost impossible. Hatred and fear of usury still lingers in the industrialized world in the attenuated form of vague moral outrage at high-interest loans.[48]

In economic jargon, people have different "time preferences."[49] Some want or need capital to buy things immediately while others are willing to put off their consumption until the future, provided that they are adequately compensated for so doing. Put simply, some people are savers and others are spenders. The interest rate is the amount that borrowers must pay lenders (in addition to the borrowed principal) so that lenders will agree to forego their current spending in favor of future consumption and borrowers can use that money to buy things today. It is only because people have different rates of time preference that lending arrangements are possible in the first place.

Comparison to Bank Overdraft and Credit Card Late Fees

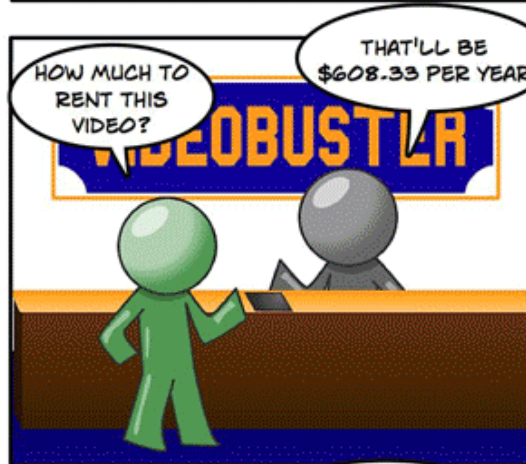
As to whether or not fees are excessive, the first question one must answer is: excessive compared to what? Critics note that typical fees range from $15 to $30 per $100 loaned. While these loans are intended to be only two-week loans, if one were to project the costs out over a one-year period this would translate to an APR of 390 percent to 780 percent.[50] While the Truth in Lending Act requires this sort of calculation and disclosure, it is not really relevant for a short-term loan like a payday advance. As Tracy Rawle, vice president of payday lending company Check City, points out, calculating an implied APR for a year-long duration on a short-term payday loan "would be like trying to show that a taxi cab is way too expensive because to take one to New York would take thousands of dollars where it's only intended to take you a few blocks or a mile."[51] Using similar logic, one could project the principal amount of a typical two-week, $300 loan out for an entire year and say that the payday lender was actually offering access to $7,800 worth of capital. As with the APR calculation, this has nothing to do with the single, short-term loan the customer wants to take out, however. (For other examples illustrating how calculating fees for a short-term loan the same way as for a large, long-term financial contract does not make sense, see the cartoon on the next page.)

Next, let us compare payday lending fees with the fees of a consumer's closest alternatives to payday loans. In the absence of payday loans, consumers would be forced to turn to less attractive alternatives. One of the main alternatives to obtaining a payday loan is to incur bank overdraft protection or bounced check (non-sufficient funds) fees in an attempt to postpone debts until finances, hopefully, improve.

Overdraft penalties are a significant source of income for banks, costing Americans an estimated $38.5 billion in fees in 2011, an increase of 93 percent just since 2000.[52] Such fees make up approximately 18 percent of net operating income for banks and over 60 percent of that of credit unions.[53]

THE PROBLEM WITH APR...

BECAUSE APR IS CALCULATED ON A YEARLY BASIS AND IS APPROPRIATELY APPLIED TO LONG-TERM FINANCIAL CONTRACTS, IT IS NOT AN APPROPRIATE MEASURE FOR THE SHORT-TERM FINANCIAL CONTRACT MODEL. WHAT IF OTHER INDUSTRIES THAT DEAL IN SHORT-TERM CONTRACTS WERE REQUIRED TO HOLD TO SIMILAR, NON-PROPORTIONATE STANDARDS WHEN EXPRESSING THE FEES THAT THEY CHARGE?



IF SOMEONE WISHES TO SECURE A TWO-WEEK LOAN, THEY WANT TO KNOW HOW MUCH IT WILL COST THEM, NOT HOW MUCH IT WOULD COST THEM IF THEY WERE GOING TO GET A LOAN EVERY TWO WEEKS FOR AN ENTIRE YEAR...

IF THE CUSTOMER ONLY WANTS A LOAN FOR 3.8% OF A YEAR (TWO WEEKS), THEN WHY MUST WE QUOTE THEM THE RATE FOR 100% OF A YEAR?

Source: Check Into Cash, Inc.

Applying the same APR calculations to bank account overdraft protection fees as to those for payday lending reveals that overdraft protection costs are even more "usurious" than payday lending costs. A May 2005 *Consumer Reports* article revealed that the implicit APR on overdraft protection ranged from 608 percent to 791 percent, and bounced check fees yielded an APR of between 487 percent and 730 percent.[54] In addition, according to a November 2008 FDIC report,

> *Assuming a $27 overdraft fee (the survey median), a customer repaying a $20 POS [point-of-sale]/debit overdraft in two weeks would incur an APR of 3,520 percent; a customer repaying a $60 ATM overdraft in two weeks would incur an APR of 1,173 percent; and a customer repaying a $66 check overdraft in two weeks would incur an APR of 1,067 percent.*[55]

According to the FDIC data, 84 percent of overdraft fees were paid by customers who incurred at least 10 charges in a year, at an average total cost of $1,363.[56] This report, in conjunction with public anger over federal bank bailouts, led to a Federal Reserve ruling prohibiting banks from automatically enrolling customers into overdraft coverage programs.[57]

Finally, an April 2011 Pew Health Group report found:

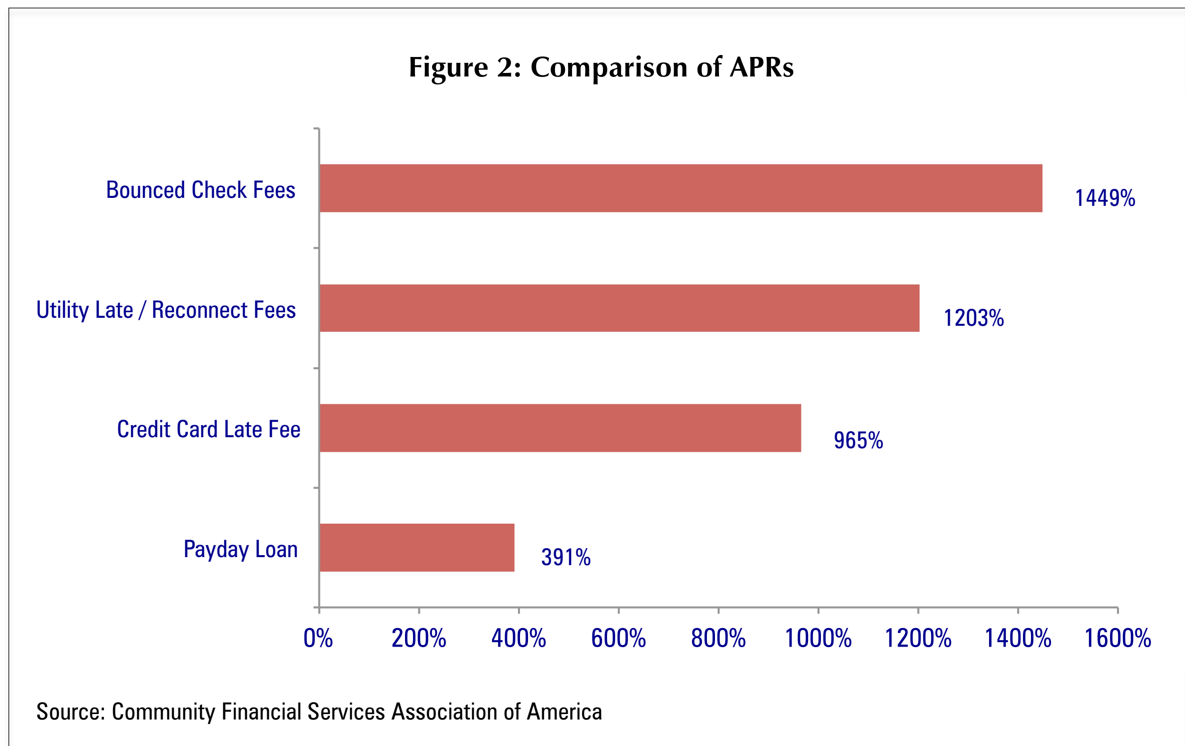
> *The FDIC's research shows that the median overdraft amount is $36.44. If the median overdraft penalty fee of $35 is applied to a $36 overdraft with a repayment period of seven days, the APR, or annual percentage rate, on the typical overdraft would be over 5,000 percent—a costly way to address credit needs.*[58]

This is even more costly when one considers that banks may also charge extended overdraft fees (the median fee in the Pew Health Group study was $25) if a customer's account remains overdrawn for a certain period of time—typically about seven days—and banks may maximize penalties by charging overdraft fees on multiple transactions the same day. They may also reorder transactions by posting withdrawals before deposits or posting larger withdrawals before smaller ones in order to deplete available funds quicker and trigger more fees, although some banks have adjusted their policies in recent years to prevent this from happening.[59] In November 2011, Bank of America reached a $410 million settlement with a class of about one million customers who had accused the bank of charging excessive overdraft fees for electronic transactions.[60] Lastly, repeated violations not only rack up lots of fees, they could also result in the bank closing the offender's account.

Instead of overdrawing one's bank account, one might try to buy some time by missing a credit card payment, but this, too, is costly. Missed payments negatively impact one's credit score, making future borrowing even more difficult and expensive. And while federal law has, in recent years, capped the late fees that credit card companies may charge, the fees are still not cheap. Under the Credit CARD Act of 2009, the Federal Reserve Board wrote rules to limit late fees to $25 (instead of the $39 fee that was common before the law's enactment) for a first offense and $35 for a second missed payment within the ensuing six billing cycles. Moreover, late payment and over-the-limit fees were no longer allowed to exceed the amount of the violation.[61]

The Community Financial Services Association of America summarizes and compares the costs (expressed in implicit APRs) of payday loans with other short-term options:

- $100 payday advance with a $15 fee = 391% APR;
- $100 bounced check with $56 in non-sufficient funds and merchant fees = 1,449% APR;
- $100 credit card balance with a $37 late fee = 965% APR; and
- $100 utility bill with $46 late/reconnect fees = 1,203% APR (see Figure 2).[62]



Thus, while payday lending fees may appear high when projected to cover an entire year, when compared to other short-term options such as bouncing checks, missing credit card payments or skipping bills, they are not only reasonable but are a cheaper and more attractive option for many people.

And then there are the perceptions of payday loan customers themselves. A January 2009 survey of payday loan customers found that virtually all customers indicated that they were aware of the finance charges for their loans, but, while the vast majority (81 percent) recalled receiving the required disclosure about the APR those charges translated to, far fewer were able to remember the actual rate.[63] This indicates that fees expressed in dollar terms were clearer and more important to consumers in making their short-term credit decisions, and APR data was not very useful.

Comparison to Business Costs

Perhaps the accusation of excessive fees is instead concerned with the profits payday lenders make on their loans. Let us consider the criticism that lenders are somehow "gouging" their customers with "inflated" fees, presumably because they are able to take advantage of unusual market power or informational asymmetry. (This ignores the facts that in a market economy transactions occur because of the voluntary exchange between parties who each feel they will be made better off by the deal, and that prices are determined by what borrowers and lenders mutually agree upon and what the market is willing to bear, but let us consider the notion for the sake of argument.)

If payday lending companies were "gouging" their customers, this should be reflected in high profit margins. But that is not the case. According to a September 2009 Ernst & Young study for the Financial Service Centers of America, payday lending companies earned an average profit of $1.37 on $15.26 in revenue per $100 loan (pre-tax).[64] This translates to a profit margin of nine percent. Similarly, in an October 2006 article for the *Fordham Journal of Corporate and Financial Law*, author Aaron Huckstep reported an average profit margin of 7.6 percent for payday lenders and pawn shops. (The profit margin for pure payday lenders was only about 3.6 percent.) This was comparable to the profit margin of Starbucks (nine percent) and less than that of commercial lenders (13 percent).[65]

Another reason for the confusion over the supposedly excessive fees—as expressed in terms of annual interest rates—charged by payday lending companies is a misunderstanding of just what "interest" truly is. Economist and syndicated columnist Thomas Sowell explains: "What is called 'interest' by the media includes things that an economist would not call interest. The fees charged must also cover the cost of processing the loan, which is to say the pay of people doing the work, the rent of the premises and other overhead expenses, as well as the risk of default."[66]

The profitability of payday lending companies is greatly limited by high costs for bad debts and high operating costs. The aforementioned Ernst & Young study found that bad debt write-offs account for 27 percent of total costs, on average, and operating costs make up an additional 68 percent of total costs.[67] The bad debt costs are not surprising, considering that payday loan customers are riskier to lenders than other borrowers. Payday loans are uncollateralized, making it more difficult for lenders to recover payment on defaulted loans. In addition, if payday loan borrowers could easily obtain cheaper credit elsewhere, most would not be willing to pay the relatively high fees for access to payday loans that their high-risk nature necessitates. According to Huckstep, the high operating costs are due to the fact that the business model calls for providing added convenience to customers by operating a higher density of stores with longer hours than traditional lenders. This means higher rent costs and higher labor costs since more employees are needed to work the additional hours of operation.[68] Furthermore, these overhead costs would be essentially the same whether the loans being issued were for a two-week period or a one-year (or longer) period, or whether they are in the amount of $100 or $100,000, but of course the fees look larger as a percentage of the smaller loan amount.[69] Thus, concludes Huckstep,

> *The payday lending industry has experienced high growth and increasing notoriety over the past decade. Calls for regulating the industry are based partially on an assumption that payday lenders generate enormous profits from the high cost of borrowing. High profits for payday lenders, however, may be more myth than reality. Consistent with industry explanations, operating expenses for payday lenders are high. Wages, occupancy costs, and loan losses account for a majority of these high operating costs. These expenses are incurred to promote customer convenience. In order to provide a valuable service, payday lenders choose to keep longer business hours and operate a higher density of stores than traditional lenders such as banks. The cost of convenience is lower profitability.*[70]

Myth #2: The "Debt Trap"

Closely related to the excessive fees argument is the charge that payday lending companies trap their customers in a cycle of debt. The reasoning is that many people struggle to pay off the initial payday loan, so they must "roll over" the first loan and take out a second loan to pay off the first, racking up higher fees in the process. This pattern is repeated and borrowers fall further and further in debt due to higher and higher transaction fees. Borrowing from one payday lender to pay back another has a similar effect.

Some studies support the notion that payday lending can make borrowers worse off financially. An analysis comparing households in states that allow payday lending with those in states that prohibit it found that access to payday loans increases the chances of economic hardship through increased difficulty paying mortgage, rent and bills, and delay of needed health care.[71] Another found a positive correlation between the presence of payday lending and involuntary bank account closures, both in a broad cross-section of the nation and in the specific case of the state of Georgia, which banned payday lending in May 2004.[72] A study of the relationship between payday loans and credit card delinquencies concluded that those who took out a payday loan were nearly twice as likely as those who did not to suffer a serious credit card delinquency over the following year.[73]

Many other studies refute the debt trap hypothesis and have determined that payday lending has positive effects on borrowers' financial conditions. Another study on the Georgia payday lending ban, as well as on a similar ban imposed by North Carolina in December 2005, conducted by the Federal Reserve Bank of New York found that the bans resulted in significantly worse outcomes for consumers than existed before the bans:

> *Compared with households in states where payday lending is permitted, households in Georgia have bounced more checks, complained more to the Federal Trade Commission about lenders and debt collectors, and filed for Chapter 7 bankruptcy protection at a higher rate. North Carolina households have fared about the same. This negative correlation—reduced payday credit supply, increased credit problems—contradicts the debt trap critique of payday lending, but is consistent with the*

hypothesis that payday credit is preferable to substitutes such as the bounced-check "protection" sold by credit unions and banks or loans from pawnshops.[74]

Moreover, contrary to a Center for Responsible Lending study that estimated the payday lending ban in Georgia would save consumers $147 million a year,[75] it actually ended up costing them an additional $36 million a year due to increased bounced check fees incurred after the ban.[76]

A study evaluating state-level data between 1990 and 2006 similarly cast doubt on the "cycle of debt" argument and determined, "if anything, the presence of payday stores in a state is associated with a smaller number of Chapter 7 bankruptcy filings."[77] Moreover, the study found support that bankruptcies resulted in the need to use payday lending services, not the other way around.[78]

As with the cases in Georgia and North Carolina, when Oregon sharply restricted payday lending in 2007 consumers were found to be harmed by the lack of such a short-term lending opportunity. A study comparing consumers facing negative financial shocks in Oregon to those in Washington, which did not ban payday lending, concluded:

Estimates on a summary measure of any adverse outcome—being unemployed, experiencing a recent decline in financial condition, or expecting a future decline in financial condition—suggest large and significant deterioration in the financial condition of Oregon respondents relative to their Washington counterparts. As such the results suggest that restricting access harmed Oregon respondents, at least over the short term, by hindering productive investment and/or consumption smoothing.[79]

Moreover, after the state of Hawaii doubled the maximum amount of payday loans from $300 to $600 in July 2003, consumers had fewer and less-chronic financial problems, as shown by a significant decrease in bankruptcies.[80]

The presence of payday lenders even appears to help prevent foreclosures and crime (since some of those in desperate enough financial straits may resort to theft). As a study of payday lending in California from 1996–2002 demonstrated,

Natural disasters induce an increase in foreclosures by 72%, but the existence of payday lenders significantly offsets half of this increase. In particular, I find that access to credit in distress times prevents 1.22 foreclosures per 1,000 homes. The results also indicate that payday lenders alleviate individuals' need to resort to small property crimes in times of financial distress. . . . Natural disasters increase larcenies by 13% (nearly 9 larcenies per 1,000 households). Access to credit, however, mitigates 2.67 larcenies per 1,000 households, or 30% of the effect of the natural disaster.[81]

Experimental economics also provides insights into the impact of payday loans and the plausibility of the debt cycle hypothesis. One experiment assessed the response of subjects to financial shocks, either with or without access to payday loans. The availability of payday loans benefitted the vast majority of subjects,[82] increasing the probability of financial survival by 31 percent on average.[83]

But what of the repeat borrowers? A July 2012 study by The Pew Charitable Trusts found that the average payday lending borrower takes out eight loans per year,[84] and the 2013 CFPB study found that 48 percent of borrowers in its data sample had more than 10 payday loan transactions (including payday loans or rollovers of existing loans) within a one-year period.[85] Kathleen Day, spokeswoman for the Center for Responsible Lending, claims: “The model that the payday industry is based on is repeat borrowers. If no one in the payday industry rolled over a loan, they would not be making money. It’s true that most of the customers don’t roll over, but those who do pay the profit.”[86]

Most payday loan customers do not roll their loans over; according to the Community Financial Services Association of America, more than 90 percent of payday loans are repaid by the due date.[87] Moreover, payday lenders do not rely for their profitability on chronic borrowers. A 2005 FDIC study of payday industry profitability, which used proprietary store-level data, noted: “We do not find that loan renewals or loans from frequent borrowers are more profitable than other loans per se, although they certainly contribute to a store’s loan volume.”[88]

While repeat borrowers would likely be better off if they were able to obtain lower-cost, longer-term financing, such financing is often not available to the people who seek payday loans. So, complaining that a small proportion of people rely too extensively on payday loans as a source of financing is probably futile, and the existence of such repeat borrowers does not support the claim that payday lenders are generally abusive, or that they suck large portions of borrowers into a “cycle of debt” from which they cannot escape. The cycle of debt theory is based on the premise that repeated use of payday loans is due to some sort of deceptive or otherwise untoward behavior on the part of payday lenders, irrational behavior by consumers or miscalculations about the cost of payday loan fees and/or the length of indebtedness one will endure, or both.[89] As explained previously, the terms of a payday loan are quite clear and simple, especially compared to alternatives such as relying on bank overdrafts, so let us focus now on the consumer behavior aspect of the argument.

The question at hand is whether payday lending customers behave irrationally. Are they miscalculating the cost of loan fees or the duration of indebtedness they will endure? Do they, therefore, need the regulator’s protection? An April 2013 Consumer Financial Protection Bureau report suggested this may be the case: “It is unclear whether consumers understand the costs, benefits, and risks of using these products . . . . Moreover, consumers may not appreciate the substantial probability of being indebted for longer than anticipated and the costs of such sustained use.”[90] And a February 2013 report from The Pew Charitable Trusts similarly laments that customers “hold unrealistic expectations about payday loans.”[91]

Yet, on the other hand, when one examines the evidence of actual consumer behavior and perceptions, it becomes clear that this presumption is inaccurate. An August 2012 report from the Center for Financial Services Innovation, which took a critical look at small-dollar credit products such as payday loans, found that only about one-third of payday loan customers (32 percent) reported that it took more time than expected to repay the loan (and 13 percent reported that it took

less time than expected).[92] Similarly, a March 2013 study of consumers' expectations about their use of payday loans discovered that nearly three-fifths (57 percent) of borrowers predicted the final repayment date of their loans within one pay period (14 days), concluding:

> *First, most borrowers expected that they would continue borrowing for some time after the initial loan. This undermines the notion (characteristic of much of the legal literature on the subject) that the repeated borrowing that is typical of payday borrowers generally reflects surprise on the part of the borrowers or deception on the part of the lenders. Second, the borrower's predictions about their future repayment behavior, although imperfect, are surprisingly accurate.*[93]

Perhaps it is the debt-cycle critics—and not the payday lenders or their customers—who have an unrealistic view of what "short-term" credit is and how it should be used. Perhaps consumers feel that repeated borrowing or multiple rollovers over a period of weeks or months is an appropriate use for payday loans or other forms of short-term credit. And who are the politicians and regulators to tell them differently?

Some argue, as do the Pew and CFPB studies, that payday loans should be used only for emergencies, and not for everyday expenses such as rent or utilities (and that those emergencies must be resolved within a two-week period, or at least not result in repeated rollovers or additional borrowing beyond a certain arbitrarily determined amount of time). Perhaps this would be ideal, but it is not the reality for many consumers, particularly during a period of prolonged economic stagnation such as they have experienced the past several years. The presence of repeated payday borrowing does not provide evidence of harm if it is preferable to other alternatives. The 2012 Pew study surveyed payday lending customers and asked them what they would do if they faced a financial shortfall and payday loans were not available as an option. The results were as follows:

- 81 percent of respondents said they would cut back on expenses;
- 62 percent would delay paying some bills;
- 57 percent would borrow from friends and family;
- 57 percent would pawn or sell personal possessions;
- 44 percent would seek a loan from a bank or credit union;
- 37 percent would use a credit card; and
- 17 percent would borrow from an employer.[94]

The tone of the paper implies that these alternatives are preferable to obtaining a payday loan. But payday loan customers seem to disagree. Even after considering other alternatives such as these, consumers chose to utilize payday loans, presumably because they saw payday lending as the best option to help them with their individual financial situations. Any attempt to use regulation to alter this decision is merely dictating that the regulator's or central planner's preferences are superior to the consumer's preferences for spending his or her own money.

The debt cycle theory additionally seems to get the causality of payday lending behavior backwards: it is the fact that people face financial difficulties that causes them to use payday loan services, not the other way around. It is also worth remembering that it would not be good business for payday lenders to abuse and bankrupt their own customers. Not only would such a strategy preclude future business with those driven to financial ruin, it would also signal to other customers and potential customers that the business did not care about their needs, severely damaging both its reputation and its bottom line.

Such behavior is also inconsistent with payday loan customers' own views of their experiences with payday lending. According to the aforementioned George Washington University School of Business survey of payday customers, 89 percent of borrowers were "very satisfied" (55 percent) or "somewhat satisfied" (34 percent) with their most recent payday loan, and only about three percent mentioned difficulty getting out of debt as a reason for their dissatisfaction.[95]

Furthermore, the notion of abuse goes both ways. To be sure, as with any other loan product, there will be those who will take on more debt than they can repay. Those irresponsible with money who violate their contracts should not be coddled, however, nor should a beneficial and valuable service be restricted or denied to many because of the irresponsibility of a few.

Finally, media coverage of payday lending tends to suffer from bias: journalists like sensational stories and accounts that tug at the heartstrings. Hence, they are more likely to favor descriptions of payday lending as "predatory lending."[96] This is because they tend to report only the relatively few "victims" who take on more payday loan debt than they can afford and then find themselves in even more dire economic circumstances. Payday lending success stories of people using payday loans to get through financial emergencies generally are not considered exciting or sensational enough to be news, so they don't get reported.

This phenomenon was described by 19th-century French statesman and economist Frédéric Bastiat in *That Which Is Seen, and That Which Is Not Seen*.[97] In the book, Bastiat described how the bad economist focuses only on the most immediate and most visible effects of a particular act or law, and ignores the more subtle effects and unintended consequences. In the case of payday lending, "that which is seen" are those who are irresponsible or otherwise get into debt trouble and thus generate media reports; "that which is not seen" are the millions who benefit from payday loans and use them responsibly, and those who suffer even greater economic hardship because government regulations and prohibitions prevent them from utilizing payday services, forcing them to undertake less attractive and more costly alternatives instead. The untold stories of these millions of transactions may not make the headlines, but such transactions are critical in helping many to make it through difficult economic times.

Another example of "what is not seen" is the unintended consequence of payday fee/rate caps causing *more* chronic payday borrowing rather than less. By instituting binding price ceilings on the cost of payday loans, governments make payday loans cheaper, thus increasing demand and encouraging people to engage in more payday borrowing.[98]

Myth #3: Predatory Lending and the Targeting of Minority Groups

In addition to their general assertions that payday lenders abuse their customers, payday critics often charge that lenders "target" certain groups of people, such as minorities, women, the elderly and members of the military. Unscrupulous payday lenders, they claim, move into poor, working-class neighborhoods, especially those containing higher proportions of these targeted populations, and "prey" upon these people. Before the city of Baldwin Park, California, passed a moratorium preventing any new payday lending businesses from opening within in the city, Mayor Manuel Lozano claimed payday lenders were "out there preying on the poor and those people in desperate straits."[99]

In 2003, Julian Bond, then-chairman of the board of directors for the National Association for the Advancement of Colored People (NAACP), accused the payday lending industry of offering its services to "target" and "extort" money from people in poor and minority communities: "A drive through any low-income neighborhood clearly indicates people of color are a target market for legalized extortion. Visits to payday stores—which open their doors in low-income neighborhoods at a rate equal to Starbucks opening in affluent ones—are threatening the livelihoods of hardworking families and stripping equity from entire communities."[100] Added Bond in a separate publication, "The NAACP is dedicated to eliminating payday lending, because wealth-building and saving for the future are vital to the economic success of communities of color."[101] And in March 2011, Charlie Singleton, director of Texas Baptists' African American Ministries, claimed that payday lenders prey on vulnerable members of society such as the poor, minorities, the elderly and the military, and called payday lending "analogous and tantamount to financial slavery."[102]

A December 2003 study by the Southwest Center for Economic Integrity mapped the location of payday advance stores in Pima County, Arizona, and compared them to certain populations. The study cited findings such as "37% of pay day loan locations in Pima County lie within 1/4 mile of areas with a high percentage of Latinos," compared to 19 percent for banks and 18 percent for credit unions, and "67% of pay day locations are within 1/4 mile of high poverty areas, compared to credit unions at 51%, and banks at 34%" as evidence that Latinos and the poor were being surreptitiously and unfairly "targeted" by payday lending businesses.[103] But is this really evidence of "targeting"? And if such a strategy does exist, is it really "predatory"?

A study of payday lending pricing behavior in Colorado concluded, "Payday lenders are more likely to locate in markets with relatively low household incomes, but after controlling for income, payday lenders are *not* more likely to locate in markets with disproportionate minority populations" (emphasis in original).[104] In other words, you are less likely to find lots of payday lending stores in Beverly Hills or the Hamptons because the wealthy people that live there probably are not going to need payday loans. So income levels may determine, at least in part, where payday loan businesses locate, but racial demographics do not matter. To put it bluntly, the only color that matters is the green in consumers' pockets (or lack thereof).

Moreover, even if payday lenders are "targeting" the poor, does this necessarily constitute some kind of harm? Such a strategy could be simply to tap an underserved market and satisfy the financial needs of those "unbanked" and "underbanked" consumers in areas that banks and credit unions have ignored.[105] According to a 2009 FDIC report, approximately 9 million U.S. households (7.7 percent of all households in the nation), consisting of at least 17 million individuals, are classified as unbanked, and an additional 21 million households (17.9 percent), or as many as 43 million people, are defined as underbanked.[106] That is a sizable market to tap, especially considering that, in a separate FDIC report from February 2009 entitled, *FDIC Survey of Banks' Efforts to Serve the Unbanked and Underbanked*, the agency found: "Seventy-three percent of banks are aware that significant unbanked and/or underbanked populations are in their market areas, but less than 18 percent of banks identify expanding services to unbanked and/or underbanked individuals as a priority in their business strategy."[107]

Since payday customers tend to be those in financial distress, oftentimes (though not always) associated with lower incomes, it could simply be that there is a greater need and natural customer base in lower income areas. Why should a company be prevented from going to the places that it believes will attract the greatest number of customers? By the same anti-targeting, predation logic, the government should prevent Weight Watchers from targeting women, video game makers from targeting men, and television advertisers from targeting young adults.

Myth #4: Most Consumers Want More Protection from Payday Lenders

Government regulation of payday loans is predicated on the assumption that politicians and regulators know what is good for individuals better than the individuals themselves. But even former Rep. Barney Frank (D-MA), who served as chairman of the House Financial Services Committee and co-sponsored the Dodd-Frank bill that established the Consumer Financial Protection Bureau, has criticized this view:

> *I have always believed that it is a mistake to tell adults what to do with their own money. Some adults will spend their money foolishly, but it is not the purpose of the Federal Government to prevent them legally from doing it. We should ensure that they have appropriate consumer protections and information, but otherwise allow people to pursue activities that they enjoy which do not harm others.*[108]

Frank then quoted from John Stuart Mill's "On Liberty":

> *The only freedom which deserves the name is that of pursuing our own good in our own way, so long as we do not attempt to deprive others of theirs, or impede their efforts to obtain it. Each is the proper guardian of his own health, whether bodily, or mental or spiritual. Mankind are greater gainers by suffering each other to live as seems good to themselves, than by compelling each to live as seems good to the rest.*[109]

Opponents of payday lending often castigate the businesses for their supposedly high fees, but the fact that payday lenders are thriving is evidence that customers feel the services are worth the

price. Customers appear happy to patronize payday lenders and utilize their services. There seems to be little, if any, evidence of any significant customer backlash against payday lenders. As a *Los Angeles Times* article describing the city of Baldwin Park's efforts to ban payday lending noted, according to state regulators, rates are generally clearly spelled out and few complaints are filed, particularly given the number of transactions that take place.[110] In fact, according to the George Washington University School of Business survey of payday loan customers, "Nearly all payday loan customers said that they were satisfied or somewhat satisfied with their most recent new payday loan. Receiving the funds quickly, the easy loan process, and courteous treatment accounted for by far the most reasons for satisfaction."[111] In addition,

- 86 percent of payday loan customers agreed that payday loan companies provide a useful service to consumers;
- 76 percent of customers were satisfied with their dealings with payday loan companies; and
- 59 percent of customers did not think that the government should limit the number of payday loans they can obtain in a year.[112]

Similarly, customer surveys conducted by payday lender Advance America Cash Advance Centers demonstrate:

- About 70 percent of customers choose cash advances for convenience.
- Customers also choose cash advances because they are cost-competitive and effective. 84 percent of customers say a cash advance helped them with an unexpected expense, and approximately three-quarters reported that an advance helped them avoid other fees.
- Approximately 92 percent of customers say a cash advance is a useful service.
- 90 percent are satisfied with their understanding of the terms and costs of an advance.
- State regulators report very few complaints: among nearly 11 million transactions, Advance America responded to fewer than 100 customer complaints filed with state agencies in 2009.[113]

Besides, if high prices really were the concern, then banning new businesses is about the worst thing the government could do. By prohibiting new entrants to the market, the government restricts competition, thereby limiting the opportunity individual customers have to find a better deal and practically ensuring that the fees charged by existing businesses will be higher.

No one is forcing payday borrowers to sign over a check for $345 in exchange for $300 in immediate cash. For many, as the survey above reveals, payday loans are convenient and the fees are acceptable. In any case, an individual's decision to take out a payday loan is based on a subjective evaluation of which is better: $300 now or $345 two weeks from now. Given that people's situations, propensities to save or spend, and risk tolerances vary greatly, it is unwise for a government regulator to claim that his one-size-fits-all restriction is best for all consumers. Ultimately, it is the borrower who should decide whether to accept the fees and other terms of a payday loan, not a politician or a bureaucrat.

Part 5

Payday Lending Benefits

While critics of the payday lending industry try to portray it as preying upon unfortunate and disadvantaged members of society, the growth and success of the industry, including the millions of satisfied customers, clearly indicates that it offers many benefits to consumers. To show how payday loans improve people's lives, this section will expand upon some of the benefits that were touched on in the previous section in response to critics' accusations that payday lending harms people.

Increased Access to Credit

Payday lending allows many to gain access to needed credit that they might otherwise not have. Restricting this access through government regulation may drive up prices, resulting in a rationing of credit, thus making it impossible for would-be borrowers to afford any formal credit at all.[114] By contrast, payday lending transactions are affordable, if not cheap, and even those with poor credit can utilize them so long as they have a steady income available. In addition, loans can be obtained in minutes and borrowers do not have to put up collateral to get them. This is especially important to those who are not being served by traditional banking institutions. As noted above, the FDIC estimates that there are over 17 million individuals (8 percent of households) in the U.S. classified as unbanked, and up to an additional 43 million (18 percent of households) defined as underbanked.[115]

The effects of the additional access to credit afforded by payday lending are probably best seen, however, in areas where it has been denied due to regulatory restrictions and bans on payday lending practices. As studies of such bans have revealed, consumers in Georgia and North Carolina suffered after payday lending was banned, while borrowers in Hawaii benefited when payday regulations were relaxed.[116] And restrictions in Oregon caused borrowers there to fare worse than those in neighboring Washington, which did not restrict payday lending.[117] For those living paycheck to paycheck, access to quick, short-term credit can make the difference between staying financially afloat and having one's heat turned off or sliding into bankruptcy.

Access to credit may be important not only in the present, but also for the future. Obtaining a short-term payday loan may be not only critical for paying the bills today, but it may also provide a stepping stone to improved credit tomorrow. Thus, argues writer Mike Foley, "Not only do they

provide liquidity when it is most needed, payday lenders provide the borrower an opportunity to establish a positive credit history. In short, payday lenders provide a means for the unbanked to join the financial mainstream."[118] This is supported by the fact that adults who were raised in households with parents who maintained a banking relationship are less likely to make use of payday loans, "suggesting borrowers graduate to more mainstream credit."[119]

Superiority to Other Options

Some argue that payday loans are expensive and unattractive to those in positions of financial distress, but the evidence indicates that many consumers see them as a beneficial and superior option compared to alternate courses of action. This is demonstrated by the growth and success of the industry, as well as by the fact that people are willing to go well out of their way to get payday loans—even driving across state lines and seeking out payday options over the phone or Internet when access to payday loans has been restricted or prohibited in their own states. In some cases, payday loans may be the best—or only—viable option. After the state of Montana effectively killed the payday lending industry by capping fees at an implied APR of 36 percent, the manager of a Noble Finance store in Helena, which was forced to close as a result of the law (as were all the Noble Finance stores in Montana), related the frustration and despair her former clients felt after the law went into effect: "They're all telling me that they've tried the banks. They can't get the help, and they don't know what they're going to do. The have nowhere to turn now. I've been through a lot of tears and a lot of anger, and I feel bad. There's nothing I can do to help them."[120]

Governments and other organizations have tried to push short-term lending programs to compete with payday lending, with terms purportedly more favorable to borrowers, but they have failed to generate interest among consumers. The FDIC rolled out its Small Dollar Loan Pilot Program, and Goodwill Charities partnered with a credit union in Wisconsin to offer payday loan equivalents at a rate of $10 per $100 borrowed, compared to the $15 per $100 borrowed that payday lenders typically charge. But these programs came with strings that turned consumers off, according to Community Financial Services Association of America spokesman Steven Schein. "You have to attend a financial literacy class," said Schein. "You have to keep a certain amount of money in the savings account. The nonfinancial requirements really annoy the customer. It all has to do with the notion that banks are going to be charities now."[121] In other words, people do not like being lectured to and manipulated, no matter how well-intentioned those doing the lecturing and manipulating may be.

As noted in the previous section, while payday loans are costly (because of the need to compensate lenders for the high risk of default and the large expenditures on overhead relative to loan size), they are generally cheaper than bouncing checks, relying on bank and credit union overdraft protection charges, or missing credit card payments, even when making comparisons based on implied APRs. Another factor to consider is the impact that resorting to these alternatives may have on a person's credit score, which would make future credit even more costly and difficult to obtain. Meanwhile, opting to miss other payments instead may be more costly not only in terms of

dollar amounts but also in terms of convenience and comfort. For example, missing utility bill payments can result in having one's gas, electricity, telephone, water and sewer, trash and recycling, or Internet service shut off, meaning not only a short-term cash crunch but a significant drop in one's standard of living. Paying a higher interest rate than some consumers might be able to obtain for a longer-term, "prime" loan is one thing; not having heat in the winter or being able to call friends, family or work is another matter entirely. In addition, disconnect and/or reconnect fees may run $40 to $70 each time,[122] making this option a double whammy. Skipping needed medical or dental appointments could prove even more costly in the long run.

Some who have been denied the option of payday loans turn to pawn shops, but these have drawbacks as well. First, unlike an unsecured payday loan, one must offer some collateral, meaning one must offer up something that one values, knowing that one might not ever get it back. Second, there is the chance that one does not own anything of sufficient value, as determined by the pawn shop owner, to pawn. Moreover, pawn shop loans tend to be rather small, averaging only $75, making them insufficient to deal with many financial troubles.[123]

Another alternative is tax refund anticipation loans (RALs), although these suffer from the fact that one is essentially limited to taking out such a loan only once per year. If a bad financial situation drags on longer than expected, or if a consumer has more than one cash crisis within a year, which is not uncommon for many struggling to get by and living paycheck to paycheck), an RAL will be inadequate. For those needing a loan to make certain purchases, a rent-to-own (RTO) arrangement might be a possibility, although RTO fees can rack up quickly and be a more expensive option than payday loans.

A subprime home equity loan might be an option for some, but many will not qualify for these loans, particularly during the current housing and economic climate. Moreover, payday customers are only looking for small loans to get them through temporary cash crunches. A home equity loan could force borrowers to take on more debt than they would be comfortable with—and they would risk losing their home if they defaulted on the loan. This need for short-term, small loans is the whole reason the payday lending industry arose in the first place.

An even less attractive choice is resorting to the illegal, underground loan market and dealing with loan sharks. Many have been forced to use loan sharks when payday lending options were taken away. In one state that banned payday lending, for example, loan sharks were observed showing up in front of a check cashing business every Friday and offering short-term loans to those cashing their paychecks. The loan sharks charged an interest rate of 20 percent for a two-week loan (compared to the 15 percent rate customers could previously get for a payday loan before the ban).[124] In addition to the higher cost, consumers have no real protection if they are unable to repay their loans. There is no option to file for bankruptcy, and because of the nature of black market transactions, disputes cannot be resolved through the legal system. Since loan sharks cannot collect bad debts through the aid of court rulings, they may resort to violence.

Finally, there is always the possibility of borrowing money from friends and family. While this might be the cheapest option, since these lenders are more likely to charge lower interest rates—or maybe no interest at all—this option has drawbacks of its own. Borrowing from friends or family may carry a certain stigma. There is good reason for this. If one is not able to pay back a faceless business, it is unfortunate, and the inability to repay one's debts carries its own stigma, but this can be handled through the relatively clean means of credit score evaluation, debt collection services, and, if necessary, the court system. Reneging on a debt to a friend or family member, however, may not only involve these measures, but can additionally cause an irreparable rift an important personal relationship. Finally, it may be the case that one is ashamed that he is not doing better financially and does not want to borrow from friends or family because he does not want loved ones to know about his situation or worry about him. One payday customer illustrated this sentiment when he was interviewed in a *Los Angeles Times* article about the city of Baldwin Park's (eventually successful) efforts to issue a moratorium on payday lending. He acknowledged that taking out such a loan was not cheap, "But that's the price you pay," he said. "I'd rather pay the fee and get it over with. I don't want to ask my relatives or friends for money."[125] Salary advances from an employer may similarly be awkward and tricky, with the associated risk that loan default results in the loss of one's job, seriously exacerbating one's financial predicament.

Greater Consumer Welfare

The existence of a quick, cheap, convenient short-term loan option in the form of payday lending has benefited consumers greatly. There is certainly a small percentage of borrowers who overuse the service and may end up even worse off than before, but this is the exception to the rule and, in any case, is true of any kind of loan product. The fact is that payday loans allow consumers better to weather short-term financial difficulties,[126] avoid bankruptcies,[127] and bounce fewer checks.[128] Because of the quality and beneficial nature of the services provided, there are few customer complaints against payday lenders,[129] and increased access to payday loans results in fewer complaints against lenders and debt collectors.[130] Payday lending offers borrowers more options, enabling them to eschew asking friends or family members for money, avoid more costly—and potentially more dangerous—loan sharks, and bypass other inferior substitutes.

Implicit evidence of these benefits is expressed by the growth in the industry and the fact that people voluntarily engage in such transactions in the first place. Explicit evidence is provided in numerous academic studies showing how consumer welfare improves when payday lending is made available, and how consumer welfare is reduced when such lending is restricted or prohibited, as well as by customers' own statements to the press and in survey responses.

Even if one were to conjecture that a minority of the population does not generally act in its own rational self-interest due to ignorance or mental incapacity,[131] this raises another question: should the rules be written for the rational or the irrational, for the responsible or the irresponsible? There should be a penalty for irresponsible behavior; it should not be rewarded with government coddling—at the expense of responsible consumers.

Transparency

Fee schedules are clearly posted in payday lending stores, so customers know up front what the total charges will be. This is another reason the predatory lending claim is unconvincing. In order to demonstrate that someone has been a victim of predatory lending, one must assume that he or she either has been duped in some way or is incapable of making decisions in his or her self-interest. But if the costs are clear and the borrower goes in with his eyes open, it cannot reasonably be argued that he was tricked into acting contrary to his own interests.

This level of transparency represents a stark contrast to the typical bank overdraft fee. As noted previously, bank account overdrafts are one of the chief alternatives to taking out a payday loan. The banking industry is notorious for its lack of clarity regarding fee costs and policies. An April 2011 Pew Health Group Report highlighted some of these shortcomings:

> ***Banks do not provide important policies and fee information in a concise and easy-to-understand format that allows customers to compare account terms and conditions among banks.*** *Pew's research showed that the median length of bank disclosures for key checking account policies and fee information was 111 pages. In addition, the banks often used different names for the same fee or service; put the information in different documents, different media (Web or hard copy), or different locations in a document; and did not summarize or collect key information anywhere.*
>
> ***Accountholders are not provided full information about the respective costs of overdraft options. . . .***
>
> ***Bank overdraft penalty fees are disproportionate to the size of the median overdraft amount.*** *Overdraft fees will cost American consumers an estimated $38 billion in 2011—an all-time high. The median overdraft amount is $36, yet the median overdraft penalty is $35. In addition, the majority of checking accounts charged an extended overdraft fee after a median of seven days if the fees and principal were not paid. The median extended overdraft fee was $25. While banks have to incur a risk that they will not be repaid, most institutions manage this by limiting the overdraft amount given to any customer. Banks have long argued that overdraft penalty fees are not compensation for the cost of overdrafts to the bank but rather are designed to deter customers from repeating this behavior. Penalty fees in other consumer financial products (e.g., credit cards) are related in size to the violation.*
>
> ***Banks reserve the right to reorder transactions in a manner that will maximize overdraft fees.*** *Overdraft penalty fees are imposed each time a withdrawal is posted to an account with insufficient funds to cover it at that moment. Banks can maximize the number of times an account "goes negative" by reordering deposits and withdrawals to reduce the account balance as quickly as possible. Posting withdrawals before deposits and posting withdrawals from largest to smallest have the effect of maximizing overdrafts. . . .*
>
> ***More than 80 percent of accounts examined contain either binding mandatory arbitration agreements or fee-sharing provisions that require the accountholder to pay the banks'***

> ***losses, costs, and expenses in a legal dispute regardless of the outcome of the case. . . .*** *(all emphasis in original).*[132]

The changing of federal rules in recent years regarding overdraft fees once again brought to light banks' obfuscation of overdraft fees. In November 2009, the Federal Reserve Board amended Rule E, which implements the Electronic Fund Transfer Act, ruling that overdraft fees cannot be charged for most debit card and ATM transactions unless the customer opts in to a bank's overdraft protection program.[133] The rule went into effect on July 1, 2010, for new customers, and on August 1, 2010, for existing account holders. An April 2011 Center for Responsible Lending survey looked into the responses of banks and their customers to the new opt-in rule and found that banks confused and harassed customers into consenting to join their overdraft coverage programs. According to the survey:

- *Sixty percent (60%) of consumers who opted in stated that an important reason they did so was to avoid a fee if their debit card was declined. In fact, a declined debit card costs consumers nothing.*
- *Sixty-four percent (64%) of consumers who opted in stated that an important reason they did so was to avoid bouncing paper checks. The truth is that the opt-in rules cover only debit card and ATM transactions.*
- *For almost half of those who opted in, simply stopping the bank from bombarding them with opt-in messages by mail, phone, email, in person, and online banking was a factor in their decision.*[134]

While the banking industry is characterized by confusing and elusive fee information, fee policies that may be manipulated to maximize the cost to customers, and disclosures over 100 pages long, the payday lending industry offers simple and straightforward fee schedules that are obvious as soon as the customer walks in the door. This allows payday customers to make better-informed decisions about their short-term credit options.

Part 6

Conclusion

In its 20 or so years of existence, the payday lending industry has become both highly valued and controversial. It has seen rapid growth, but also increasing regulation by nanny-state politicians at all levels of government.

Critics charge that payday lending fees are exorbitant, yet an analysis of the business reveals that its costs are in line with its higher operating and bad debt expenses. Translating the fees of small-denomination, short-term loans into annual percentage rates of interest yield apparently high interest rates, but performing the same types of calculations for bank and credit union overdraft fees or credit card missed payment fees reveals that payday lending fees are not only reasonable but also cheaper in comparison. Other options such as skipping utility bills or medical visits, utilizing pawn shops or loan sharks, and borrowing from friends and family are generally more costly and/or less desirable.

Opponents also contend that payday lending traps borrowers in a "cycle of debt"—as consumers rack up fees when they are unable to repay loans and must roll them over into additional loans—and "prey" upon certain populations such as the poor, minorities, and members of the military. While some people will be irresponsible and abuse payday lending or, through no fault of their own, suffer unforeseen financial emergencies that cause them to end up worse off through repeated loan rollovers, this is the case in any lending market. Such cases may be tragic, but the borrower bears responsibility as well. Those who would welsh on their debts or hide behind a veil of ignorance should not be coddled by government protections, which come at the expense of the majority of consumers who act responsibly. Where borrowers are wronged by lenders, existing laws against fraud, misrepresentation and negligence are sufficient and should be enforced. Poor customers may take advantage of pro bono or contingency fee arrangements to gain access to the legal system.

The relatively few cases of abuse or unforeseeable misfortune notwithstanding, the vast majority of payday loan customers benefit greatly from the cost, convenience and transparency of the loans. These loans represent a needed service to a population that would otherwise be shut out of the credit market. They allow borrowers to weather short-term financial emergencies, bounce fewer checks, avoid bankruptcies, pay the bills, prevent utility shutoffs, and even pick up some Christmas presents for the kids during tough economic times. Payday loans have, additionally, been shown to result in fewer foreclosures, thefts and complaints about lenders and debt collectors. Moreover, the

very fact that would-be borrowers seek out these types of credit services and engage in such voluntary transactions is evidence that they believe they will make them better off than not taking advantage of these services. If they are wrong or decide to use payday loans irresponsibly, then they must suffer the consequences of their own decisions.

Table 2: Benefits of Payday Lending	
Benefit	**Explanation**
Access to Credit	Payday loans offer access to credit to those who might not be able to obtain it from other sources such as banks, credit unions or credit cards.
Convenience	Payday loans may be obtained almost immediately, and the large number of locations and longer business hours (compared to banks and credit unions) make them more convenient for consumers.
Transparency	Payday loan terms are displayed prominently in stores for all to see, so customers do not have to parse hundreds of pages of legalese in bank/checking account terms to determine how much fees will be and when and how they will be assessed.
Cost	While often criticized for the high cost of their fees—and they are not necessarily cheap—payday loans offer fees that are still less expensive than the fees charged for alternate options, such as bank overdraft/bounced check fees, credit card late fees and utility late/reconnect fees. They may also offer cheaper rates and better terms than pawn shops or rent-to-own businesses.
Better Than the Alternatives	In addition to being less costly than the alternatives, payday loans may be preferable for other reasons, and allow borrowers to avoid risking reduced quality of life by skipping medical visits or having utilities shut off for lack of payment, resorting to dangerous black market lenders (loan sharks), or enduring embarrassment and potential conflict by borrowing from friends or relatives.

Payday loan terms may not appear overly attractive (as should be expected, given the risks to the lenders) to the average politician or "consumer advocate," but the opportunity costs of the alternatives to many borrowers are even higher. Restricting or banning payday loans increases the cost of doing business, reduces competition and makes consumers worse off. Indeed, in Georgia, Oregon and North Carolina, where payday lending has been banned, consumer welfare has declined. In Hawaii, where regulations were relaxed, consumer welfare improved.

This should not be surprising. Regulations only increase costs to businesses and reduce competition, resulting in higher prices and fewer choices for consumers. The do-gooders in government and consumer advocacy organizations would do well to heed these realities, rather than try to shape the industry to their liking.

Even if politicians and regulators ignore all the economic studies and experiments that tout the benefits of payday lending, they need only pay attention to the words and actions of the consumers themselves. The truth is that consumers have already rendered their verdict: they think they benefit from the option of payday loans, which, of course, is why they enter into such arrangements in the first place. It is why they are willing to go to great lengths, such as driving across city—or even

state—lines, to utilize payday loan services when their own jurisdictions deny them this option. It is why consumers overwhelmingly claim that they are satisfied with their payday lending experiences, and that payday lenders provide a valuable service. To restrict or deny payday lending services is to prevent the vast majority of consumers who utilize them responsibly from improving their situation and/or avoiding worse outcomes from not having access to such credit.

Instead of restricting or eliminating markets through regulation, policymakers should seek to open them up to competition by repealing payday lending bans and regulations. State governments should remove prohibitions on payday lending, interest rate and fee caps, and limits on the amount of loans or the frequency with which they may be taken out. Local governments should repeal moratoriums, limits on the numbers of outlets that may operate within their jurisdictions, constraints on business practices (such as regulations that restrict business hours or dictate in what kind of building the business must be housed), and other restrictive zoning, licensing and permitting laws. The federal government should similarly repeal its laws regarding payday lending and remove the authority of the Consumer Financial Protection Bureau to pile even more regulations on the industry.

The goal should be to maximize consumer choice and minimize the cost of short-term loan transactions. This can only be achieved by permitting borrowers and lenders alike to have the freedom to do business how they please and with whom they please. In order to maximize consumer welfare, policymakers should remove the regulatory barriers to payday lending that they have erected. This will benefit economic growth generally and short-term borrowers in particular.

Appendix A

State Payday Lending Laws*

State Payday Lending Laws			
State	**Statutory Citation**	**Maximum Loan Amount**	**Finance Charges**
AL	5-18A-1 et seq.	$500	May not exceed 17.5 percent of the amount advanced.
AK	06.50.010 et seq.	$500	A licensee may only charge a nonrefundable origination fee in an amount not to exceed $5; and a fee that does not exceed $15 for each $100 of an advance, or 15 percent of the total amount of the advance, whichever is less.
AZ	6-632	Prohibited	1. On a consumer loan in an original principal amount of $1,000 or less, a consumer loan rate of 36 percent. 2. On a consumer loan in an original principal amount of more than $1,000, either: (a) A consumer loan rate of 36 percent on the initial $500 of the original principal amount, and a consumer loan rate of 24 percent on that part of the principal amount greater than $500. (b) The single blended consumer loan rate that results from the total amount of finance charges that the licensee would receive through the scheduled maturity of the consumer loan at the consumer loan rates that otherwise would be applicable pursuant to subdivision (a) of this paragraph to the different portions of the unpaid principal balance, assuming that the consumer loan will be paid according to its agreed terms.
AR	Ark. Const. Amendment 89, §7	Prohibited	The maximum lawful rate of interest on any other loan or contract shall not exceed 17 percent per annum.
CA	Civil Code 1789.30 et seq. Financial Code 23000 et seq.	$300	A fee for a deferred deposit transaction shall not exceed 15 percent of the face amount of the check. Any person who violates any provision of §670 of the John Warner National Defense Authorization Act for Fiscal Year 2007 (Public Law 109-364) or any provision of §232 of Title 32 of the Code of Federal Regulations, as published on August 31, 2007, in Volume 72 of the Federal Register, violates this division.
CO	5-3.1-101 et seq.	A lender shall not lend an amount greater than $500 nor shall the amount financed exceed $500 at any time to a consumer.	A lender may charge a finance charge for each deferred deposit loan or payday loan that may not exceed 20 percent of the first $300 loaned plus seven and one-half percent of any amount loaned in excess of $300. Such charge shall be deemed fully earned as of the date of the transaction. The lender may also charge an interest rate of 45 percent per annum for each deferred deposit loan or payday loan. If the loan is prepaid prior to the maturity of the loan term, the lender shall refund to the consumer a prorated portion of the annual percentage rate based

* Source: National Conference of State Legislatures, "Payday Lending Statutes" (updated as of January 18, 2013), http://www.ncsl.org/IssuesResearch/BankingInsuranceFinancialServices/PaydayLendingStateStatutes/tabid/12473/Default.aspx.

State Payday Lending Laws			
State	**Statutory Citation**	**Maximum Loan Amount**	**Finance Charges**
CO cont.			upon the ratio of time left before maturity to the loan term. In addition, the lender may charge a monthly maintenance fee for each outstanding deferred deposit loan, not to exceed $7.50 per $100 loaned, up to $30 per month. The monthly maintenance fee may be charged for each month the loan is outstanding 30 days after the date of the original loan transaction. The lender shall charge only those charges authorized in this article in connection with a deferred deposit loan. Upon renewal of a deferred deposit loan, the lender may assess an additional finance charge not to exceed an annual percentage rate of 45 percent.
DE	5 Del. C. §2227 et seq.	$1,000	
DC	26-319	Prohibited	
FL	560.401 et seq.	$500 exclusive of the fees	A deferred presentment provider or its affiliate may not charge fees that exceed 10 percent of the currency or payment instrument provided. However, a verification fee may be charged as provided in §560.309(7). The 10 percent fee may not be applied to the verification fee. A deferred presentment provider may charge only those fees specifically authorized in this section.
GA	16-17-1 et seq.	Prohibited	
HI	480F-1 et seq.	$600	A check casher may charge a fee for deferred deposit of a personal check in an amount not to exceed 15 percent of the face amount of the check.
ID	28-46-401 et seq.	$1,000	None
IL	815 ILCS 122/1-1 et seq.	$1,000 or 25 percent of the consumer's gross monthly income, whichever is less	No lender may charge more than $15.50 per $100 loaned on any payday loan over the term of the loan, or more than $15.50 per $100 on the initial principal balance and on the principal balances scheduled to be outstanding during any installment period on any installment payday loan. Any installment payday loan must be fully amortizing, with a finance charge calculated on the principal balances scheduled to be outstanding and be repayable in substantially equal and consecutive installments, according to a payment schedule agreed by the parties with not less than 13 days and not more than one month between payments; except that the first installment period may be longer than the remaining installment periods by not more than 15 days, and the first installment payment may be larger than the remaining installment payments by the amount of finance charges applicable to the extra days. For purposes of determining the finance charge earned on an installment payday loan, the disclosed annual percentage rate shall be applied to the principal balances outstanding from time to time until the loan is paid in full, or until the maturity date, whichever occurs first. No finance charge may be imposed after the final scheduled maturity date.
IN	24-4.5-7-101 et seq.	At least $50 and not more than $550	Finance charges on the first $250 of a small loan are limited to 15 percent of the principal. Finance charges on the amount of a small loan greater than $250 and less than or equal to $400 are limited to 13 percent of the amount over $250 and less than $400. Finance charges on the amount of the small loan greater than $400 and less than or equal to $500 are limited to 10 percent of the amount over $400 and less than $500.

State Payday Lending Laws			
State	**Statutory Citation**	**Maximum Loan Amount**	**Finance Charges**
IA	533D.1 et seq.	A licensee shall not hold from any one maker a check or checks in an aggregate face amount of more than $500 at any one time.	A licensee shall not charge a fee in excess of $15 on the first $100 on the face amount of a check or more than $10 on subsequent $100 increments on the face amount of the check for services provided by the licensee, or pro rata for any portion of $100 face value.
KS	16a-2-404	Cash advance is equal to or less than $500	A licensed or supervised lender may charge an amount not to exceed 15 percent of the amount of the cash advance. The contract rate of any loan made under this section shall not be more than three percent per month of the loan proceeds after the maturity date. No insurance charges or any other charges of any nature whatsoever shall be permitted, except returned check fees, including any charges for cashing the loan proceeds if they are given in check form.
KY	286.9 et seq.	A licensee shall not have more than two deferred deposit transactions from any one customer at any one time. The total proceeds received by the customer from all of the deferred deposit transactions shall not exceed $500.	A licensee shall not charge a service fee in excess of $15 per $100 on the face amount of the deferred deposit check. A licensee shall prorate any fee, based upon the maximum fee of $15.
LA	RS 9:3578:1 et seq.	$350	A licensee may charge a fee not to exceed 16 and 75/100 percent (16.75%) of the face amount of the check issued.
ME	Me. Rev. Stat. Ann. Tit. 9-A §1-201 and Me. Rev. Stat. Ann. Tit. 9-A §1-301	None	None
MI	487.2121 et seq.	$600	A licensee may charge the customer a service fee for each deferred presentment service transaction. A service fee is earned by the licensee on the date of the transaction and is not interest. A licensee may charge both of the following as part of the service fee, as applicable: (a) An amount that does not exceed the aggregate of the following, as applicable: (i) Fifteen percent of the first $100 of the deferred presentment service transaction. (ii) Fourteen percent of the second $100 of the deferred presentment service transaction. (iii) Thirteen percent of the third $100 of the deferred presentment service transaction. (iv) Twelve percent of the fourth $100 of the deferred presentment service transaction. (v) Eleven percent of the fifth $100 of the deferred presentment service transaction. (vi) Eleven percent of the sixth $100 of the deferred presentment service transaction. (b) The amount of any database verification fee allowed under section 34(5).

State Payday Lending Laws			
State	**Statutory Citation**	**Maximum Loan Amount**	**Finance Charges**
MN	47.60	$350	(i) On any amount up to and including $50, a charge of $5.50 may be added; (ii) on amounts in excess of $50, but not more than $100, a charge may be added equal to ten percent of the loan proceeds plus a $5 administrative fee; (iii) on amounts in excess of $100, but not more than $250, a charge may be added equal to seven percent of the loan proceeds with a minimum of $10 plus a $5 administrative fee; (iv) for amounts in excess of $250 and not greater than $350, a charge may be added equal to six percent of the loan proceeds with a minimum of $17.50 plus a $5 administrative fee. After maturity, the contract rate must not exceed 2.75 percent per month of the remaining loan proceeds after the maturity date calculated at a rate of 1/30 of the monthly rate in the contract for each calendar day the balance is outstanding.
MS	75-67-501 et seq.	$500 (including all fees)	May not exceed $20 per $100 loaned for loan amounts less than $250, and $21.95 per $100 loaned for loan amounts between $251 and $500. Notwithstanding any other provision of law, no check cashing business licensed under this article shall directly or indirectly charge or collect fees for check cashing services in excess of the following: (a) Three percent of the face amount of the check or $5, whichever is greater, for checks issued by the federal government, state government, or any agency of the state or agency of the state or federal government, or any county or municipality of this state; (b) Ten percent of the face amount of the check or $5, whichever is greater, for personal checks; or (c) Five percent of the face amount of the check or $5, whichever is greater, for all other checks, or for money orders. A licensee shall not directly or indirectly charge any fee or other consideration for cashing a delayed deposit check in excess of 18 percent of the face amount of the check.
MO	408.500 to 408.506	$500 or less	Any person, firm, or corporation may charge, contract for and receive interest on the unpaid principal balance at rates agreed to by the parties. No borrower shall be required to pay a total amount of accumulated interest and fees in excess of 75 percent of the initial loan amount on any single loan.
MT	31-1-701 et seq.	The minimum amount of a deferred deposit loan is $50 and the amount, exclusive of fees allowed, may not exceed $300.	A licensee may not charge a fee for making or carrying each deferred deposit loan authorized by this part that exceeds 36 percent per annum, exclusive of the insufficient funds fees.
NE	45-901 et seq.	No licensee shall at any one time hold from any one maker a check or checks in an aggregate face amount of more than $500.	No licensee shall charge as a fee a total amount in excess of $15 per $100 or pro rata for any part thereof on the face amount of a check for services provided by licensee.

State Payday Lending Laws			
State	**Statutory Citation**	**Maximum Loan Amount**	**Finance Charges**
NV	604A.010 et seq.	A licensee shall not make a deferred deposit loan that exceeds 25 percent of the expected gross monthly income of the customer when the loan is made.	Notwithstanding any other provision of law, a violation of any provision of §670 of the John Warner National Defense Authorization Act for Fiscal Year 2007, Public Law 109-364, or any regulation adopted pursuant thereto shall be deemed to be a violation of this chapter.
NH	399A:1 et seq.	$500	Payday loans shall incur interest only. No other charges or fees shall apply to or be collected on payday loans. Interest shall not accrue at a greater rate than six percent per year. The annual percentage rate on a payday loan shall be no more than 36 percent per year.
NM	58-15-1 et seq.	No licensee shall make a payday loan to a consumer if the total principal amount of the loan and fees, when combined with the principal amount and fees of all of the consumer's other outstanding payday loan products, exceeds 25 percent of the consumer's gross monthly income.	Upon the execution of a new payday loan, the licensee may impose an administrative fee of not more than $15.50 per $100 of principal, which fee is fully earned and nonrefundable at the time a payday loan agreement is executed and payable in full at the end of the term of the payday loan or upon prepayment of the payday loan unless a payday loan is rescinded; upon the execution of a new payday loan agreement, the licensee may impose an additional administrative fee of not more than 50 cents per executed new payday loan agreement as necessary to cover the cost to the licensee of verification pursuant to §58-15-37, which fee is fully earned and nonrefundable at the time a payday loan agreement is executed and payable in full at the end of the term of the payday loan or upon prepayment of the payday loan unless a payday loan is rescinded; a licensee shall not charge a consumer interest on the outstanding principal owed on a payday loan product; and if there are insufficient funds to pay a check or other type of debit on the date of presentment by the licensee, a licensee may charge a consumer a fee not to exceed $15. Only one fee may be collected by a licensee on a check or debit authorization. A check or debit authorization request shall not be presented to a financial institution by a licensee for payment more than one time unless the consumer agrees in writing, after a check or other type of debit has been dishonored, to one additional presentment or deposit.
NC	24-1.1	Prohibited	For loans of less than $25,000, the maximum legal interest rate is the greater of 16 percent or 6 percent above the 6-month U.S. Treasury bill rate per annum.
ND	13-08-01 et seq.	$500	A licensee may charge a fee for the deferred presentment service, not to exceed 20 percent of the amount paid to the customer by the licensee. This fee may not be deemed interest for any purpose of law.
OH	1321.35 et seq.	$500	Interest calculated in compliance with 15 U.S.C. 1606, and not exceeding an annual percentage rate greater than 28 percent.
OK	59-3101 et seq.	$500 exclusive of the finance charge	A deferred deposit lender may charge a finance charge for each deferred deposit loan that does not exceed $15 for every $100 advanced up to the first 300 of the amount advanced; for the advance amounts in excess of $300, the lender may charge an additional finance charge of $10 for every $100 advanced in excess of $300.

State Payday Lending Laws			
State	**Statutory Citation**	**Maximum Loan Amount**	**Finance Charges**
OR	725.600 et seq. 2010 Chapter 23	None	A lender in the business of making payday loans may not: (a) Make or renew a payday loan at a rate of interest that exceeds 36 percent per annum, excluding a one-time origination fee for a new loan; (b) Charge during the term of a new payday loan, including all renewals of the loan, more than one origination fee of $10 per $100 of the loan amount or $30, whichever is less; or charge a consumer any fee or interest other than a fee or interest described in paragraph (a) or (b) of this subsection or in subsection (2) of this section.
RI	19.14.1-1 et seq. 19.14.4-1 et seq.	$500	No licensee shall: (1) Charge check-cashing fees in excess of three percent of the face amount of the check, or $5, whichever is greater, if the check is the payment of any kind of state public assistance or federal social security benefit; (2) Charge check-cashing fees for personal checks in excess of 10 percent of the face amount of the personal check or $5, whichever is greater; or (3) Charge check-cashing fees in excess of five percent of the face amount of the check or $5, whichever is greater, for all other checks. (4) Charge deferred deposit transaction fees in excess of 10 percent of the amount of funds advanced.
SC	34-39-110 et seq.	$550 exclusive of fees allowed in §34-39-180(E)	A licensee shall not charge, directly or indirectly, a fee or other consideration in excess of 15 percent of the face amount of the check.
SD	54-4-36 et seq.	$500	None
TN	45-17-101 et seq.	Not to exceed $500	None
TX	7 Tex. Admin. Code §83.604, Tex. Fin. Code Ann. §342.251 et seq. and §342.601 et seq.	See Tex. Fin. Code Ann. provisions in §342.301 and Chapter 341, Subchapter C	See Tex. Fin. Code Ann. provisions in §342.251.
UT	7-23-101 et seq.	None	None
VA	6.1-444 et seq. and 6.1-330.78	$500	A licensee may charge and receive on each loan interest at a simple annual rate not to exceed 36 percent. A licensee may charge and receive a loan fee in an amount not to exceed 20 percent of the amount of the loan proceeds advanced to the borrower. A licensee may charge and receive a verification fee in an amount not to exceed $5 for a loan made under this chapter. The verification fee shall be used in part to defray the costs of submitting a database inquiry as provided in subdivision B 4 of §6.1-453.1.
WA	31.45.010 et seq.	May not exceed $700 or 30 percent of the gross monthly income of the borrower, whichever is lower.	A licensee that has obtained the required small loan endorsement may charge interest or fees for small loans not to exceed in the aggregate 15 percent of the first $500 of principal. If the principal exceeds $500, a licensee may charge interest or fees not to exceed in the aggregate 10 percent of that portion of the principal in excess of $500. If a licensee makes more than one loan to a single borrower, and the aggregated principal of all loans made to that borrower exceeds $500 at any one time, the licensee may charge interest or fees not to exceed in the aggregate 10 percent on that portion of the aggregated principal of all loans at any one time that is in excess of $500.

State Payday Lending Laws			
State	**Statutory Citation**	**Maximum Loan Amount**	**Finance Charges**
WI	138.14	May not exceed $1,500 (including customer's aggregate liability in principal, interest, and all other fees) or 35 percent of the customer's gross monthly income, whichever is less.	1. Except as provided in sub. (12) (b), this section imposes no limit on the interest that a licensee may charge before the maturity date of a payday loan. 2. If a payday loan is not paid in full on or before the maturity date, a licensee may not charge, after the maturity date of the loan, interest.
WY	40-14-362 et seq.	None	No post-dated check finance charge shall exceed the greater of $30 or 20 percent per month on the principal balance of the post-dated check or similar arrangement.

Note: The following states do not have specific payday lending statutory provisions and/or require lenders to comply with interest rate caps on consumer loans: Connecticut, Maryland, Massachusetts, New Jersey, New York, Pennsylvania, Vermont and West Virginia.

Arizona and North Carolina allowed pre-existing payday lending statutes to sunset.

Arkansas repealed its pre-existing statute in 2011.

Appendix B

Local Government Payday Lending Laws

Local Government Payday Lending Laws*			
City/County	**Regulation Type(s)**	**Description**	**Ordinance(s)**
ALABAMA			
Birmingham, AL	Moratorium	6-month moratorium on new payday lending businesses.	Citation not available
Homewood, AL	Permit	Restrictions on new payday lender businesses.	Citation not available
Mobile, AL	Moratorium	6-month moratorium on payday loan outlets as of April 2010.	City Code Chapter 64
ARIZONA			
Avondale, AZ	Zoning	Cannot operate within 1,320 feet of adult businesses, bars, night clubs, or other payday lending businesses. Conditional use in C-2 zoning districts.	Zoning Ordinance Section 305(F)
Casa Grande, AZ	Zoning	Cannot operate within 1,320 feet of other payday lending businesses, including those located outside city limits.	Title 17, Chapter 17.12, Section 17.12.415
Gilbert, AZ	Zoning Permit	Cannot operate within 1,000 feet of other payday lending businesses. Must apply for conditional use permit after going through a public hearing for approval.	Citation not available
Mesa, AZ	Zoning Permit	Cannot operate within 1,200 feet of schools or other payday lending businesses. Must obtain a conditional use permit in C-1, C-2, and C-3 districts.	Code Section 11-6-3(B)(3) Title 11, "Zoning," Section 11-1-6
Phoenix, AZ	Zoning	Cannot operate within 1,320 feet of other payday lending businesses, or within 500 feet of residential areas.	Ordinance G-4817
Pima County, AZ	Zoning Permit	New payday lending outlets cannot operate within 1,320 feet of existing payday lending businesses, or within 500 feet of residential areas. Must obtain a conditional use permit in CB-2 districts.	Code, Section 18.45.040(H)
South Tucson, AZ	Zoning	Cannot open within 1,000 feet of existing payday lending businesses, or within 500 feet of residential areas, schools, playgrounds, or parks. Permitted in SI-1, SB-2, and SB-2A districts.	Code of Ordinances, Section 24-526
Tempe, AZ	Zoning	Cannot operate within 1,320 feet of another payday lending business, or within 500 feet of residential areas.	Zoning and Development Code, Chapter 4, Section 3-423
Tucson, AZ	Zoning Permit	Cannot operate within 1,320 feet of another payday lending business, or within 500 feet of R-3 or more restrictive zoning. Special permit required.	Land Use Code, Article 3, Section 3.5.4.5 – Financial Service
Youngstown, AZ	Moratorium	Banned within town limits	Section 17.16.040

* The primary sources for this data are Amy Lavine, "Zoning Out Payday Loan Stores and Other Alternative Financial Services Providers," July 13, 2011, Appendix: Payday Loan Ordinances, available at SSRN: http://ssrn.com/abstract=1885197; and Kelly Griffith, Linda Hilton, and Lynn Drysdale, "Controlling the Growth of Payday Lending Through Local Ordinances and Resolutions: A Guide for Advocacy Groups and Government Officials" (Washington, D.C.: Consumer Federation of America, 2010), http://www.consumerfed.org/pdfs/PDL-Local-Ord-final-master9-10.pdf, although the material has been updated and supplemented by the author's own research.

Local Government Payday Lending Laws			
City/County	**Regulation Type(s)**	**Description**	**Ordinance(s)**
CALIFORNIA			
La Mirada, CA	Zoning Business Practices	Cannot operate within 1,000 feet of another payday lending business, or within 500 feet of residential areas. Business hours are restricted to 7:00 AM – 7:00 PM. Restrictions on store buildings.	Municipal Ordinance 21.45.010
Long Beach, CA	Zoning/Permit Business Practices	Check cashing institutions must be located in commercial districts. In addition: (1) Business hours must be stated in the business application and are subject to review; (2) Building floor plans must include a customer waiting/service area of sufficient size to accommodate queues, with at least 50 square feet for each teller window; (3) Windows may not be obscured by placement of signs, dark tinting, shelving, racks, or other obstructions; (4) Security bars and roll-up doors are prohibited; and (5) Exterior pay phones are prohibited.	Municipal Code, Sections 21.15.475, 21.15.480, and 21.52.212
Los Angeles, CA	Increase Credit Unions	Ordinance provides incentives for credit unions to expand into areas where payday lenders are present.	No citation
National City, CA	Moratorium	Check cashing and payday advance moratorium.	Ordinance 2232
Norwalk, CA	Prohibition/Limit Zoning	No more than 8 outlets in the city. Cannot operate within 1,320 feet of other payday lending businesses. Permitted in C-1, C-3, and M-1 zones (except prohibited in the PF overlay).	Municipal Code, Section 17.04.095
Oakland, CA	Zoning Permit Business Practices	Cannot operate within 1,000 feet of another check casher/payday lender, or within 500 feet of: (1) community education civic activities (schools), (2) state or federally chartered banks, savings associations, credit unions, or industrial loan companies, (3) community assembly civic activities (churches), or (4) liquor stores (excluding full service restaurants or liquor stores with 25 or more full-time employees). Special operating permit required. (1) Hours of operation are restricted to 7:00 AM – 7:00 PM, Monday through Saturday; (2) Storefronts must have transparent glass with no more than 10% covered by any signs; (3) There must be at least one security guard on duty at all times the business is open; (4) Exterior pay phones are prohibited; (5) Graffiti must be removed within 72 hours; and (6) Litter must be removed twice daily.	Planning Code, Section 17.102.430
Oceanside, CA	Zoning Permit	Cannot operate within 1,000 feet of similar businesses, or within 500 feet of a home, church, park, or school. Requires a special operating permit. Payday lenders are classified as adult businesses.	Citation not available
Pico Rivera, CA	Zoning*	Cannot operate within 2,640 feet of another payday pending outlet. Zoned to certain areas.	City Ordinance 1057
Rialto, CA	Permit	Must go before planning commission to receive approval and conditional use permit.	City Ordinance 18.66.030

* Pico Rivera, CA previously had a one-year long moratorium on payday advance businesses.

Local Government Payday Lending Laws			
City/County	**Regulation Type(s)**	**Description**	**Ordinance(s)**
Riverside, CA	Zoning Business Practices	Cannot operate within 1,000 feet of shelters and businesses that sell alcohol, 600 feet of schools or parks, or 100 feet of residential areas. Business must be fully visible from a public street. Businesses must have a lighting plan for security and the safety of parking and access areas. Hours of operation are restricted to 8:00 AM – 9:00 PM. Exterior pay phones are prohibited.	Municipal Code, Chapter 19.280
Sacramento, CA	Zoning Business Practices	Cannot operate within 1,000 feet of another payday lender, check casher, school, or bank, or within 500 feet of residential areas. Prohibited in the Freeport Special Planning District, McClellan Heights and Parker Homes Special Planning District, Northgate Boulevard Special Planning District, Del Paso Boulevard/Arden Way Special Planning District, Sacramento Railyards Special Planning District, and RMX and OB districts. Business hours are restricted to 7:00 AM – 7:00 PM. Business must have a sign program, lighting plan, and security plan.	City Code, Section 17.24.050(84)
San Diego, CA	Zoning	Restricted to commercial zones.	Municipal Code Section 158.0302
San Francisco, CA	Zoning	Cannot operate within 1,320 feet of other payday lending businesses. Payday lending outlets are referred to as "fringe financial services" and restricted to specific districts.	Municipal Code, Section 249.35, Ordinance No. 269-07
DISTRICT OF COLUMBIA			
Washington, D.C.	Business Practices (Interest Rate Cap)	Interest rate (APR) may not exceed 24% for loans of less than $2,500 and not secured by real property.	DC Statute 28-3301
FLORIDA			
Ft. Lauderdale, FL	Permit	City Zoning Code does not prohibit or permit check cashing services. A special permit is required and is awarded on a case-by-case basis.	Citation not available
Orlando, FL	Zoning	Prohibited in the Semoran Boulevard overlay district.	Code, Section 62.408(h)
Pembroke Pines, FL	Permit	City Zoning Code does not prohibit or permit check cashing services. A special permit is required and is awarded on a case-by-case basis.	Citation not available
Seminole County, FL	Business Practices	A written agreement is required for each loan and loan extension issued; loans may not exceed $500; borrowers may only have one outstanding loan at a time; lenders must permit partial payments; the interest rate charged may not exceed 18%; loans may include an initial fee of not more than $5 for bona fide expenses; lenders may impose a bad check charge of up to $20; and various other requirements.	Code of Ordinances, Section 45.141, et seq.
GEORGIA			
Columbus, GA	Zoning Business Practices	Payday lending businesses are restricted to certain zoning areas. Businesses must maintain a borrower database; the number of loans is capped; and businesses are prohibited from issuing multiple loans within a 7-day period.	Municipal Code Section 3.1.5
ILLINOIS			
Belleville, IL	Prohibition/Limit Permit	No more than 3 outlets in the city. Permit required.	Municipal Code Section 3.1.5
Bellwood, IL	Permit	Outlets are required to go through a special licensing process.	City Ordinance Section 117.187
Chicago, IL	Zoning	Outlets are restricted to specified districts.	City Code Chapter 17-3

Local Government Payday Lending Laws			
City/County	**Regulation Type(s)**	**Description**	**Ordinance(s)**
Evanston, IL	Zoning	Restricted to C2 district. Cannot operate within 1,000 feet of other payday lending businesses. Businesses existing prior to March 26, 2012 are grandfathered in, and thus are not affected by the new zoning regulations.	Zoning Ordinance, Section 6-18-3 and Section 6-10-4-3 (Ordinance No. 35-O-12)
Fairview Heights, IL	Prohibition/Limit Permit	No more than 2 outlets within city limits. Permit Required.	Revised Code of Ordinances, Section 8-11-1, et seq.
Glendale Heights, IL	Permit	Special use permit required.	City Code Title 4, Chapter 1
Springfield, IL	Zoning	Cannot operate within 1,500 feet of other payday lending businesses.	Code of Ordinances, Section 155.048.1
IOWA			
Ames, IA	Zoning	Cannot operate within 1,000 feet of schools, child care centers, parks, other payday lending businesses, residential areas, or any arterial streets. Payday lending businesses existing as of May 8, 2012, are grandfathered in and are thus not affected by the new zoning regulations.[*]	Municipal Code Section 29.1312 (Ordinance 4111)
Clive, IA	Zoning Business Practices	Restricted to C-2, M-1, and M-2 zoning districts. Cannot operate within 1,000 feet of day care centers, schools, places of worship, parks, adult businesses, other payday lending businesses, or residential areas. Doors and windows must be made of clear glass; windows must be clear of obstructions at least 3 feet into the store; and exterior bars, grills, mesh, etc. are prohibited. Signage is limited to 30% of window space.	City Code, Section 11-4-20
Des Moines, IA	Zoning Moratorium	Cannot operate within 2,640 feet of other payday lending businesses, or within 250 feet of residential areas. Prohibited in Neighborhood pedestrian commercial (NPC) C-2 districts; permitted in C3-R district. Temporary 3-month ban beginning May 2010.	Municipal Code, Chapter 134, Sections 134-3, 134-912, 134-956, and 134-992 (Ordinance No. 14,979)
West Des Moines, IA	Zoning	Cannot operate within 2,640 feet of other “delayed deposit services businesses,” or within 250 feet of residential areas.	City Code, Section 9-10-4(G)(8)
KANSAS			
De Soto, KS	Zoning Permit	Cannot operate within one mile of another payday lending business, or within 500 feet of residential areas. Requires a permit at a cost of $250 annually. Periodic inspections may be made. Inspections must be reasonable and cannot unreasonably interfere with business.[**]	Municipal Ordinances, Article 5
Kansas City, KS	Zoning	Prohibits payday lending or check cashing businesses on parkways or boulevards.	Citation not available

[*] An article in the *Des Moines Register* argues that the new payday lending zoning regulations, which were passed May 8, 2012, effectively ban any new payday lending businesses from opening anywhere within the city limits. See Adam Benz, “New zoning law squelches payday lenders in Ames,” *Des Moines Register*, May 10, 2012, http://www.desmoinesregister.com/article/20120510/BUSINESS/305100024/New-zoning-law-squelches-payday-lenders-in-Ames?odyssey=tab|topnews|text|News (retrieved May 20, 2012).

[**] De Soto, KS previously had a complete prohibition on cash advance businesses within city limits.

Local Government Payday Lending Laws			
City/County	**Regulation Type(s)**	**Description**	**Ordinance(s)**
Overland Park, KS	Zoning	Cannot operate within one mile of another payday lending business, or within 200 feet of residential areas.	Code, Chapter 5.72
Shawnee, KS	Zoning Permit	Cannot operate within one mile of another payday lending business, or within 200 feet of residential areas. Requires a permit at a cost of $300 annually. Periodic inspections may be made. Inspections must be reasonable and cannot unreasonably interfere with business.*	Municipal Ordinances, Section 5.53.000
MARYLAND			
Prince George's County, MD	Permit Business Practices	Permit required. Business hours are restricted to 9:00 AM – 8:00 PM; fees must be clearly posted; store cannot share floor space with any other business; security lighting and cameras shall be provided on all open sides of the facility providing surveillance of the area within 100 feet from the exterior of the building; store must maintain one security guard on the premises during business hours; and cashiers must work behind bullet resistant glass.	Municipal Code Section 27-341.01
MISSISSIPPI			
Byram, MS	Moratorium	Moratorium beginning November 2009.	Citation not available
Canton, MS	Moratorium	Moratorium on new check cashing businesses.	Citation not available
Clinton, MS	Zoning Moratorium	Restricted to certain commercial zone. Cannot operate within 500 feet of residential areas, places of worship, schools, hospitals, parks, playgrounds, or other payday lending businesses. 90-day moratorium beginning March 2, 2010.	Zoning Ordinance Section 2104
Flowood, MS	Zoning	Payday lending businesses are restricted to industrial zoned areas.	Municipal Code Section 207.07
Ridgeland, MS	Zoning	Restricted to C-2a commercial zone. Cannot operate within 2,000 feet of pawn shops, tattoo parlors, title loan establishments, businesses purchasing gold or other precious metals as a primary business, nail salons, bail bondsmen, or other payday lending businesses. Stores cannot be larger than 3,000 square feet.**	Zoning Ordinance, Section 21, Section 420.02, and Section 600.14.F (see Restricted Uses Ordinance, Ordinance no. 201017)
Starkville, MS	Moratorium	Restricted to certain zoning areas. Allowed in M-1 manufacturing zones, and with a conditional use permit in C-2 commercial zones.***	Code of Ordinances, Appendix A, Article VIII, Section M (Ordinance No. 2012-1)
MISSOURI			
Arnold, MO	Zoning Permit	Restricted to certain commercial areas. Conditional use permit for "small loan business" required.	Appendix B, Zoning

* Shawnee, KS previously had a complete prohibition on cash advance businesses in the eastern side of the city.

** Ridgeland, MS previously had a moratorium on new payday lending businesses from August 2009 to November 2, 2010. See "City's new zoning ordinance to go into effect," *Mississippi Business Journal*, September 29, 2010, http://msbusiness.com/2010/09/citys-new-zoning-ordinance-to-go-into-effect/ (retrieved May 20, 2012).

*** Starkville, MS previously had a moratorium on new payday lending businesses from January 2010 to January 2012. See "Starkville says no to new 'payday loan' outfits," *Mobile Press-Register*, January 21, 2010, http://blog.gulflive.com/mississippi-press-news/2010/01/starkville_says_no_to_new_payday_loan_outfits.html (retrieved May 14, 2012); Tim Pratt, "Starkville extends moratorium on payday loan outfits," *Dispatch*, December 22, 2010, http://www.cdispatch.com/news/article.asp?aid=9320 (retrieved May 20, 2012); and David Miller, "Starkville residents call form-based codes confusing," *Dispatch*, January 4, 2012, http://www.cdispatch.com/news/article.asp?aid=14861 (retrieved May 20, 2012).

Local Government Payday Lending Laws			
City/County	**Regulation Type(s)**	**Description**	**Ordinance(s)**
Bellefontaine, MO	Moratorium	Ban on check cashing businesses and "predatory lenders."	Municipal Code Section 29-9
Berkeley, MO	Zoning/Permit	Cannot operate within 1,400 feet of other short-term loan businesses, or within 300 feet of places of worship, schools, or residential areas.	Municipal Code Section 400.130(d)(19)
Blue Springs, MO	Prohibition/Limit Zoning Permit	Limited to one outlet per 4,500 residents. Cannot operate within 1,500 feet of schools, parks, city limits, or other payday lending businesses, or within 200 feet of residential areas. Restricted to certain zoning districts. Permit required.	Municipal Code Chapter 405
Fairview Heights, MO	Prohibition/Limit	No more than 2 outlets within city limits.	City Code, Article XI
Gladstone, MO	Zoning	Cannot operate within one mile of other outlets, or within 200 feet of residential areas. Outlet must be in a multi-tenant commercial building housing at least four separate entities.	Municipal Code Section 7.135.020, Ordinance No. 4.036
Kansas City, MO	Zoning Permit/License	Cannot operate within 1,000 feet of landmark and historic districts, or within one mile of other payday lending businesses. Permit required. City may inspect outlets.* License required at a cost of $1,000 for new permits, and $1,000 for annual permit renewal.	City Ordinances, Section 43-1, Ordinance No. 100773
New Haven, MO	Permit/License	Special use permit required in C-1 and I-1 districts; permitted upon review in C-3 districts; prohibited in C-2 districts.	Planning, Zoning and Land Subdivision Regulations, Sections 405.070, 405.190, 405.200, 405.210, and 405.220
North Kansas City, MO	Zoning Permit	Cannot operate within one mile of another short-term loan facility, hotel, or motel, or within 1,000 feet of any liquor store, school, religious institution, senior citizen or public housing development, museum, or property or district which has been designated as a landmark or historic district. Special use permit required. Must demonstrate that there will be/has been no negative impact on properties within 500 feet of the establishment. Prohibited on, or north of, 16th Avenue.	Code, Sections 17.84.020.B.25 and 7.135.020
Oak Grove, MO	Prohibition/Limit Permit	Limited to one outlet per 5,000 residents. Special permit required.	Citation not available
St. Ann, MO	Prohibition/Limit	No more than 3 outlets within city limits.	Municipal Code Section 400.390
St. John, MO	Prohibition/Limit	No more than 2 outlets within city limits.	Municipal Code Section 636.010
St. Joseph, MO	Prohibition/Limit	Limited to one outlet per 15,000 residents.	No citation
St. Louis, MO	Zoning Permit	Cannot operate within one mile of other payday lending businesses, or within 500 feet of schools or residential areas. Conditional land use permit required. Conditional use in districts F, G, H, I, J, and K.	Municipal Code, Sections 26.08.101 and 26.08.384

* Kansas City, MO previously had a total ban on payday lending establishments in certain districts.

Local Government Payday Lending Laws			
City/County	**Regulation Type(s)**	**Description**	**Ordinance(s)**
St. Louis County, MO	Zoning	Cannot operate within one mile of other payday lending businesses, or within 300 feet of residential areas.*	Municipal Code Section 1003.133
Smithville, MO	Zoning Permit	Cannot operate within one mile of another short-term loan facility, hotel, or motel, or within 1,000 feet of any liquor store, school, religious institution, senior citizen or public housing development, museum, or property or district which has been designated as a landmark or historic district. Special use permit required. Must demonstrate that there will be/has been no negative impact on properties within 500 feet of the establishment.	Municipal Code, Article 1, Section 400.630
Valley Park, MO	Zoning Permit Business Practices	Cannot operate within 1,000 feet of other payday lending businesses. Permit required. Business hours are restricted to 7:00 AM–9:00 PM.	Municipal Code Section 605.340 et seq.
NEVADA			
Clark County, NV	Zoning Permit License	Cannot operate within 1,000 feet of other payday lending businesses, or within 200 feet of residential areas. Outlets must be located in mixed-use developments in the U-V (urban village) district. Store buildings, or portion thereof that is dedicated to the use, shall have a minimum size of 1,500 square feet. Special use or conditional use permit required in certain zoning areas. Requires license at a cost of $300 per year.	Code of Ordinances Section 30.44.020 and Section 6.12.295
Henderson, NV	Zoning	Cannot operate within 1,000 feet of other payday lending businesses, or within 200 feet of residential areas.	Municipal Ordinance Title 19.06
Las Vegas, NV	Zoning Permit Business Practices	Cannot operate within 1,000 feet of other financial institutions, auto title loan business, or auto pawn business, or within 200 feet of residential areas. The building or portion thereof that is dedicated to the use shall have a minimum size of 1,500 square feet. Conditional use or special use permit required. In addition: (1) Business hours are restricted to 8:00 AM – 11:00 PM; (2) The building design and color scheme shall be subject to review by the Department of Planning to ensure that it will be harmonious and compatible with the surrounding area; (3) No temporary sign such as balloons, inflated devices, searchlights, pennants, portable billboards, portable signs, streamers, trucks parked for signage purposes, or other similar devices are permitted, except that banners announcing a "grand opening" or that a business is "coming soon" may be approved administratively for a period not to exceed 30 days; and (4) Window signs shall not: a. Cover more than 20% of the area of all exterior windows; b. Include flashing lights or neon lighting; or c. Include any text other than text that indicates the hours of operation and whether the business is open or closed.	Unified Development Code, Section 19.12.070

* St. Louis County, MO previously required a conditional use permit with a public hearing.

Local Government Payday Lending Laws			
City/County	**Regulation Type(s)**	**Description**	**Ordinance(s)**
North Las Vegas, NV	Zoning	Cannot operate within 2,500 feet of other payday lending businesses, 500 feet of residential areas, or 3 miles of auto title lending businesses. Buildings must have a floor area of at least 1,500 square feet.	Municipal Code, Chapter 17, Sections 17.24.020.C.26, 17.24.020.C.28, and 17.28.050.B.5
NEW JERSEY			
Hackettstown, NJ	Permit	Payday lending businesses must obtain permission from the city council to open stores in the downtown area.	Citation not available
OHIO			
Clayton, OH	Zoning Permit Business Practices (Including Interest Rate Cap)	Cannot operate within 1,000 feet of other payday lending businesses, residential areas, places of worship, or establishments that sell alcohol. Outlets must be located in a multi-tenant commercial building. Conditional use permit required at a cost of $100. Loans must not exceed $500 and must be less than 6 months in duration; the interest rate (APR) on loans must not exceed 36%; all terms and conditions must be written; and business hours are restricted to 8:00 AM – 6:00 PM.	Codified Ordinances, Planning and Zoning Code, Chapters 1124.93 (Ordinance No. O-03-08-08), 1149.04, and 1151.04
Cleveland, OH	Prohibition/Limit Zoning	Limited to one outlet per 20,000 residents. Cannot operate within 1,000 feet of other payday lending businesses.	Zoning Code, Section 347.17(c)
Cuyahoga Falls, OH	Prohibition/Limit Zoning	Limited to one outlet per 10,000 residents. Cannot operate within 1,000 feet of other payday lending businesses.	General Development Code, Section 1131.05
Lakewood, OH	Zoning	Cannot operate within 750 feet of other payday lending or similar businesses.	Municipal Ordinance 1365-2006
Parma, OH	Prohibition/Limit Zoning	Limited to one outlet per 10,000 residents. Cannot operate within 1,000 feet of other payday lending businesses. Restricted to certain zoning districts.	Chapter 1170
Xenia, OH	Zoning Permit	Cannot operate within 5,000 feet of other payday lending businesses. Permit required.	Municipal Ordinance 1294.21
OKLAHOMA			
Oklahoma City, OK	Zoning	Restricted to certain zoning areas.	Municipal Ordinance 8300.57
OREGON*			
Beaverton, OR	Business Practices	Borrower may cancel loan within close of the next business day, with restrictions. Lender may not renew loans more than twice. Lender may not renew loan unless the borrower has paid at least 25% of the principal plus interest on balance. After the maximum number of rollovers has been exhausted, the lender shall allow the borrower to convert to a payment plan prior to default with no additional fees assessed.	Title 7, Chapter 7.12, Sections 7.12.005 – 7.12.060
Bend, OR	Business Practices License	Same as Beaverton, OR *(Repealed 2011)* Special license required at a cost of $150 per year (still in effect).	Chapter 7, Sections 7.850 – 7.895
Eugene, OR	Business Practices	Same as Beaverton, OR	Chapter 3, Sections 3.550 – 3.560

* The passage of the 2007 Oregon state law capping interest rates at 36% had no effect on local ordinances.

Local Government Payday Lending Laws			
City/County	**Regulation Type(s)**	**Description**	**Ordinance(s)**
Gresham, OR	Business Practices	Same as Beaverton, OR	Chapter 9, Sections 9.90.010 – 9.90.110
Oregon City, OR	Business Practices	Same as Beaverton, OR	Title 5, Chapter 5.32, Sections 5.32.010 – 5.32.100
Portland, OR	Business Practices License	Same as Beaverton, OR A permit is required at a cost of $1,500 per year.	Code, Title 7, Chapter 7.26, Sections 7.26.010 – 7.26.110
Troutdale, OR	Business Practices	Same as Beaverton, OR	Title 5, Chapter 5.06, Sections 5.06.010 – 5.06.110
PENNSYLVANIA			
Hellertown, PA	Zoning	Cannot operate within 1,000 feet of other payday lending businesses, or within 1,000 feet of traditional banks.	Ordinance No. 706
Pittsburgh, PA	Zoning License Business Practices	Cannot operate within 1,000 feet of a pawn shop, gaming enterprise, or other payday lending business, or within 500 feet of residential areas. State license required. May not remain open more than 9 hours in any 24-hour period and may not operate on Sundays.	Chapter 911, Section 911.04.A.93
SOUTH CAROLINA			
Columbia, SC	Zoning	Permitted in C-1, C-2, C-3, C-3A, C-4, C-5, M-1, M-2, and UTD districts. Cannot operate within 3,000 feet of other payday lending businesses. Stores must be located in a building with at least 12,000 square feet of floor area.	Ordinance No. 2009-109
Greenville, SC	Zoning	Cannot operate within 3,000 feet of other payday lending businesses. Store must be located in a shopping center or grocery store which is at least 30,000 square feet in size. The store cannot have separate exterior access to the building.	Code of Ordinances, Chapter 19, Article 19-4, Section 19-4.3.3(D)(6)
TENNESSEE			
Memphis, TN & Shelby County, TN	Zoning	Cannot operate within 1,000 feet of other payday lending businesses, or within 1,320 feet of residential areas or historic overlay districts. Permitted in EMP and IH districts; conditional use in the OG, CMU-1, and CMU-3 districts.	Shelby County, TN Code, Section 2.6.3.M, Ordinance No. 369
Nashville, TN & Davidson County, TN	Zoning Permit	Store may not be larger than 2,500 square ft. Permit required.	Title 17, Section 17.16.050 (Ordinance BL2008-169) Title 17, Section 17.08.030
TEXAS			
Brownsville, TX	License Moratorium	Registration of each outlet required at a cost of $100 per year. 6-month moratorium running through May 2010.	Code of Ordinances, Chapter 22, Section 22-625
Irving, TX	Zoning License	Cannot operate within 1,000 feet of other payday lending businesses, 200 feet of residential areas, or 500 feet of major highways. Annual registration required at a cost of $50.	Municipal Code Section 52-35, Ordinance No. 2009-9070 Ordinance No. 2009-9071

Local Government Payday Lending Laws			
City/County	**Regulation Type(s)**	**Description**	**Ordinance(s)**
Little Elm, TX	Zoning	Cannot operate within 1,000 feet of other payday lending businesses, or within 500 feet of residential areas. Outlets are prohibited in the town center and must be located in a free standing structure.	Municipal Code Section 106-7
Mesquite, TX	Zoning	Cannot operate within 1,000 feet of other payday lending businesses, 200 feet of residential areas, or 500 feet of freeways. Prohibited in certain special districts.	Municipal Code Section 3-505, Ordinance No. 3932
Richardson, TX	Zoning*	Cannot operate within 1,000 feet of other payday lending businesses.	Municipal Ordinance Supplemental Regulations for Certain Uses, Section 9
Sachse, TX	Zoning Permit Business Practices (Interest Rate Cap)	Cannot operate within 1,000 feet of other payday lending or similar businesses, or within 500 feet of the city line and George Bush Highway. Permit required. The interest rate (APR) on loans must not exceed 36%.	Municipal Ordinance, Article 3, Section 11
San Antonio, TX	Permit Business Practices	Outlets must obtain special authorization from the city council. Operating hours are controlled by the city council. No outdoor service is permitted.	Municipal Codes, Chapter 35
UTAH			
American Fork, UT	Prohibition/Limit Zoning Business Practices	Limited to one outlet per 10,000 residents. Cannot operate within one mile of other payday lending businesses. Special use in PC, CC-1, CC-2, and GC-2 zoning districts. Exterior neon lighting is prohibited. Exterior colors of stores are limited to earth tones; 25% of the façade must be windows or doors with clear glass; and no bars, chains, or similar security devices are allowed.	Municipal Code, Chapter 5.30 and Development Code Section 2-5.46
Brigham City, UT	Prohibition/Limit Zoning	Limited to one outlet per 10,000 residents. Cannot operate within one mile of other payday lending businesses inside or outside of city limits.	Title 29, Chapter 29.13, Section 29.13.020
Layton City, UT	Prohibition/Limit Zoning	Limited to one outlet per 10,000 residents Cannot operate within 1,500 feet of another payday lending business.	Municipal Code, Section 19.14.100(12)
Logan, UT	Prohibition/Limit	Limited to one outlet per 10,000 residents.	Municipal Code 5.19.020
Midvale, UT	Prohibition/Limit Zoning	Limited to one outlet per 10,000 residents. Cannot operate within 600 feet of another payday lending business.	Municipal Code, Section 17-2-3
Murray, UT	Prohibition/Limit Zoning	Limited to one outlet per 10,000 residents. Cannot operate within 1,000 feet of other payday lending businesses. Prohibited in mixed-use zones.	City Code, Title 17, Chapter 17.146, Section 17.146.020, and Chapter 17.38

* Richardson, TX previously had a limit on the number of payday lending outlets allowed to operate in the city.

Local Government Payday Lending Laws			
City/County	**Regulation Type(s)**	**Description**	**Ordinance(s)**
Ogden, UT	Prohibition/Limit Zoning Business Practices	No more than 15 outlets in the city. Cannot operate within 1,000 feet of other payday lending businesses, or within 660 feet of any pawnbroker or sexually oriented business. Outlets must display a sign that says that short-term loans should not be used as a long-term credit solution.	Not yet codified (passed June 2010).
Orem, UT	Prohibition/Limit Zoning	Limited to one outlet per 10,000 residents. Cannot operate within 2,640 feet of other payday lending businesses.	City Code, Chapter 22, Article 22-14, Section 22-14-21(A)
Roy, UT	Moratorium	No new payday cash advance businesses.	Article from *Standard-Examiner*
Salt Lake County, UT (Unincor-porated)	Prohibition/Limit Zoning	Limited to one outlet per 10,000 residents. Cannot operate within 600 feet of other payday lending businesses. Conditional use in C-2 and C-3 districts.	Municipal Code, Title 5, Chapter 5.73, Sections 5.73.010 – 5.73.030, and Sections 19.62.040 and 19.64.040
Sandy, UT	Prohibition/Limit Zoning Permit	Limited to one outlet per 10,000 residents. Cannot operate within one mile of other payday lending businesses. Restricted to certain zoning areas. Conditional use permit required.	Chapter 15A-11-20
South Jordan, UT	Zoning	Cannot operate within one mile of other payday lending businesses. Conditional use in C-C districts.	City Code, Title 17, Chapter 17.52.030
South Salt Lake City, UT	Prohibition/Limit Zoning	Limited to one outlet per 5,000 residents. Cannot operate within 600 feet of other payday lending businesses or residential areas. Conditional use in C-C districts.	Code, Title 17, Chapter 17.26, Section 17.26.030
Taylorsville, UT	Prohibition/Limit Zoning	Limited to one outlet per 10,000 residents. Cannot operate within 600 feet of other payday lending businesses.	City Code, Title 13, Chapter 13.04, Section 13.04.103
Washington Terrace, UT	Prohibition/Limit Zoning	Limited to one outlet per 15,000 residents. Cannot operate within one mile of other payday lending businesses. Conditional use permit required.	Municipal Code, Sections 17.28.050 and 17.44.210 (Ordinance No. 08-08)
West Jordan, UT	Prohibition/Limit Zoning	No more than 12 outlets in the city. Cannot operate within 1,000 feet of other payday lending businesses. Conditional use in C-G, SC-2, and CC-F districts.	City Code, Title 13, Chapter 13.5, Section 13-5E-5.C
West Valley City, UT	Prohibition/Limit Zoning	Limited to one outlet per 10,000 residents. Cannot operate within 600 feet of other payday lending businesses. Prohibited in MXD and CC districts, and in the Decker Lake Overlay Zone, the Jordan River Overlay Zone, and the 5600 West Overlay Zone; conditional use in C-2 and C-3 districts, and in the Manufacturing Zone.	Land Use Development and Management Act, Title 7, Chapter 7.1, Section 7.1.103(30)
VIRGINIA			
Chesterfield County, VA	Zoning	Restricted to certain commercial zones. Stores cannot have a separate exterior entrance.	Chapter 19, Sections 19.145 and 19.175
Manassas, VA	Zoning	Cannot operate within 750 feet of places of worship, schools, parks, libraries, ball fields, adult businesses, or residential areas	Code of Ordinances, Chapter 130, Section 130-94, Ordinance No. O-2011-21

Local Government Payday Lending Laws			
City/County	**Regulation Type(s)**	**Description**	**Ordinance(s)**
Norfolk, VA	Permit	Must receive permission from the city council in the form of a "special exception use" permit.	Chapter 6-4
WISCONSIN			
Green Bay, WI	Zoning Business Practices	Cannot operate within 5,000 feet of other payday lending businesses, or within 150 feet of residential areas. Business hours restricted to 6:00 AM – 9:00 PM.	Zoning Ordinance, Chapter 13, Section 13.1606(v)
Madison, WI	Zoning	Cannot operate within 5,000 feet of other payday lending businesses.	Zoning Code, Chapter 28, Sections 28.09(4)(d)(10) and 28.09(6)(d)(2)-(3)
Milwaukee, WI	Zoning	Cannot operate within 1,500 feet of other payday lending businesses, or within 150 feet of residential areas. Special use permit required in commercial districts (except C9A) and IM and TL districts; prohibited in all other districts.	Subchapter 6, Sections 6.295.603, 6.295.703, 6.295.803, and 6.295.903(2a)
Racine, WI	Zoning	Cannot operate within 2,500 feet of other payday lending businesses, or within 250 feet of residential areas. Conditional use permitted in B2 districts.	Municipal Code, Chapter 114, Article V, Division 3, Section 114.468(28)
Superior, WI	Prohibition/Limit Zoning Business Practices	Limited to one outlet per 5,000 residents. Restricted to commercial highway (C-2) zones. Cannot operate within 2,500 feet of other payday lending businesses, or within 300 feet of residential areas. Business hours are restricted to 8:00 AM – 10:00 PM.	Code of Ordinances, Chapter 122, Article V, Section 122.614(24)
Wauwatosa, WI	Zoning Business Practices	Cannot operate within 2,500 feet of other payday lending businesses, or within 250 feet of residential areas. Prohibited in Trade Districts and Village Trade Districts; conditional use in AA commercial and A business districts. Business hours are restricted to 9:00 AM – 9:00 PM. In addition, stores: (1) must have glass entrance and exit doors with all windows clear of any signs or advertisements; (2) must have a floor area of at least 1,500 square feet; (3) must have interior and exterior lighting; (4) must use a city-approved outdoor surveillance camera; (5) must prepare a security plan addressing limits on the amount of cash immediately available, use of security guards, and securing the facility; and (6) must have a graffiti and litter abatement program.	Code of Ordinances, Title 24, Chapter 24.46, Section 24.46.100(C)
West Allis, WI	Zoning Business Practices	Cannot operate within 3,000 feet of other payday lending businesses. Business hours are restricted to 9:00 AM – 9:00 PM.	City Ordinances, Sections 9.32 and 12.43

About the Author

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[131] Fraud is a separate issue and can be handled through the legal system. Through pro bono and contingency fee arrangements, even the poorest can gain access to the legal system and seek remedies when wronged.

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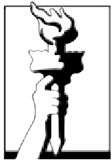

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