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Assembly
California Legislature

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Small Dollar Consumer Lending in California
January 11th, 2016 at 2:00pm
Room 444

Agenda

1) **Opening Remarks:**

   Assemblymember Dababneh, Chair

2) **Regulatory Overview:**

   Jan Owen, Commissioner, *Department of Business Oversight*

3) **Statement from California Attorney General Kamala Harris:**

   Amos Hartston, Deputy Attorney General, California Department of Justice

4) **Perspectives on CFPB Proposal:**

   Dennis Shaul - CEO, *Community Financial Services Assn*

   Paul Leonard, California Director, *Center for Responsible Lending*

5) **Current state of California's Consumer Lending Laws & Recommendations for Improvement:**

   Raul Vazquez, CEO, *Oportun*

   Paulina Gonzalez, Executive Director, *California Reinvestment Coalition*

   James Gutierrez, CEO, *Insikt*

   Dan Gwaltney, President, *California Financial Service Providers*

Leigh Ferrin, Attorney, *Public Law Center*-Orange County

Sophia Garcia, State Director, Government Affairs, *Advance America*

Paul Leonard, California Director, *Center for Responsible Lending*

Lester Firstenberger, Esq. SVP, Global Regulatory and Government Affairs, *DFC Global Corp.*

Kyra Kazantzis, Directing Attorney Fair Housing Law Project, Public Interest Law Firm

Jabo Covert, SVP, Government Affairs, *Check Into Cash*

Arthur Levy, Attorney, *Housing and Economic Rights Advocates* (HERA)

6) **Tribal Lending:**

Sherry Treppa, Chairperson for the *Habematolel Pomo of Upper Lake*

7) **Public Comment**

Small Dollar Consumer Lending in California
January 11th, 2015
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Rm: 444

A little over 55% of Californians have subprime credit, meaning they have credit scores below 700.[1] The Consumer Financial Protection Bureau (CFPB) has found that due to no credit files or very thin credit files one in five Americans have no traditional credit score. Couple these factors together and you have a large group of consumers that may have difficulty in getting a personal loan at a bank or credit union or attaining a low interest credit card. This is not to say that everyone in these categories will have the same level of difficulty or need. Some consumers will not need to borrow money, or may have access to credit cards though only 27% of consumers that use small-dollar credit have a credit card, compared to 61% of consumers who do not use small dollar credit.[2] In other surveys, 29% (majority of those surveyed) of payday loan borrowers believe, often correctly that they would not qualify for a loan from a bank or a credit card.[3] Overall American consumers spent $138 billion in fees and in interest across 26 financial products in 2014 with overdraft representing the single largest revenue category of $23.4 billion.[4]

The Banking & Finance Committee has reviewed numerous proposals over the last decade concerning small dollar credit. At times, success has been achieved with the creation of innovative new programs such as the Pilot Program for Increased Access to Responsible Small Dollar Loans. Though, most of the time spent examining the small dollar market is down to a fundamental disagreement between industry participants on one side and consumer organizations on the other. The debate can best be summarized, though somewhat over simplified, to this: Either the the underlying economic conditions of the borrower of small dollar credit creates further financial stress that can lead to repeat usage of a specific product such as payday loans, or that the products themselves are designed in such a way that they create a cycle of debt.

This background paper and the hearing itself are designed to provide an overview of the small dollar lending market in California and the pending CFPB proposals which could radically alter the way small dollar credit is offered in California and nationwide.

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[1] Corporations for Enterprise Development (CFED), Asset and Opportunity Scorecard, http://scorecard.assetsandopportunity.org/latest/state/ca

[2] Rob Levy and Joshua Sledge. A complex Portrait: An Examination of Small-Dollar Credit Consumers. Center for Financial Services Innovation. August 2012

[3] Consumers and Mobile Finance Services 2014. Federal Reserve Board, March 2014. Pg 9

[4] 2014 Underserved Market Size, Center for Financial Services Innovation, CORE Innovation Capitol, Morgan Stanley. http://www.cfsinnovation.com/CMSPages/GetFile.aspx?guid=ac5235a9-a42a-434c-a26a-66a1b148b712

Deferred Deposit Transaction Law:

A payday loan, known more formally in California as a deferred deposit transaction is a short-term loan in which a borrower writes a post-dated, personal check to a lender for a specified amount, that is capped by state law. The payday lender advances the borrower the amount on the check, less the fee, which is also capped by law. The payday lender does not cash the check at the time the loan is made. Both parties are aware that the borrower lacks sufficient funds to cover the check when the check is written. The assumption underlying the loan is that the borrower will repay the loan by the agreed-upon date, either by depositing sufficient funds in his or her checking account to cover the check, or by paying the payday lender in cash on the loan's due date, and having the lender return the original check to the borrower, without cashing it.

Under the California's payday loan law, any payday lender who makes a payday loan must be licensed. Each licensee may defer the deposit of a customer's personal check for up to 31 days. The face amount of the check presented by a borrower may not exceed $300, and the fee charged by the licensee may not exceed 15% of the face amount of the check ($45 on a $300 check). This statutorily capped fee must be expressed to borrowers in the form of an Annual Percentage Rate (APR). Given the short-term nature of payday loans (average is 17 days) the average APR is 411%. However, while the APR is high on a short-term product, the dollar costs of the fee cannot exceed 15% of the face amount of the check.

Licensees may charge one non-sufficient funds fee, capped at $15, for checks that are returned by a customer's financial institution. In addition, licensees may not directly or indirectly charge any additional fees in conjunction with a payday loan. Licensees may not enter into a payday loan with a customer who already has a payday loan outstanding and may not allow a customer to use one loan to pay off another. Licensees are also forbidden from accepting any collateral for a payday loan or making any payday loan contingent on the purchase of any goods or services. Each payday loan must be made pursuant to a written agreement. Licensees must clearly post their fees and charges at their business locations.

In the early 1990s, check cashers operated in what could only be termed as a legal gray area as they cashed checks from consumers for a fee (ranging from 10-20%) in which the check might be deposited immediately or held for 14 days. The reasoning behind this practice was the belief that sections of the California Commercial Code concerning the use of checks was the governing body of law for these transactions. These transactions did not involve loan agreements or loan disclosures and the fees were generally the same regardless of the length of time the check was held by the check casher. However, subsequent discussions and opinions led to the creation of clear statutory authority for offering payday loans via SB 1959, (Calderon, Chapter 682, Statutes of 1996). SB 1959 permitted check cashers to defer deposit on payday loans made by the check casher. These transactions were originally regulated by the State Department of Justice. SB 898 (Perata, Chapter 777, Statutes of 2002), shifted the responsibility for administering payday lending from the California Department of Justice to the Department of Corporations (DOC) now known as Department of Business Oversight (DBO).

The debate over the appropriateness of the payday loan product has been the subject of numerous bills appearing before this legislature since the first statute authorizing the product. Consumer organizations highlight that payday loans are a "debt trap" meaning that the borrower gets stuck in a cycle of debt leading to further deficits in personal income. For example, if the borrower doesn't have $300 today for expenses then will the borrower have the extra money after paying their regular bills, to pay back the loan in two weeks when the loan comes due? In many cases, the borrower simply takes out additional loans, back-to-back, in an attempt to make up the income deficit. As will be discussed later, many payday borrowers take out numerous loans throughout the year. The other side of this debate is that payday loans are a necessary product for consumers to fill short term needs and pay emergency expenses. Additionally, some argue that it is a product of last resort for borrowers as they may have exhausted other options, or they may not have had options to begin with.

California Finance Lenders Law (CFLL)

The CFLL applies to lenders who make consumer or commercial loans, whether unsecured or secured by real or personal property or both, to consumers for use primarily for personal, family, or household purposes.

The CFLL was enacted by the California legislature effective on July 1, 1995 and consolidated and replaced the Personal Property Brokers Law, the Consumer Finance Lenders Law and the Commercial Finance Lenders Law which were previously applicable to personal property brokers, consumer finance lenders, and commercial finance lenders.

The CFLL provides for varying rate structures depending on the amount of money borrowed. The consumer lending structure of the CFLL involves installment loans both secured (car title lending) and unsecured loans. The allowed APRs on these consumer loans vary from 12% to over 100%. The existing tiered structure of the CFLL has its own Rubicon which after it is crossed anything goes. Specifically, this is the $2500 and above loan tier where no interest restrictions exist and the market is left to create its own pricing. As discussed later in this document the rate structure below $2,500 historically has not had wider market usage as many argue that the rates on short term installment loans are so low that most lenders cannot be profitable on those types of loans. A response to this problem was the creation of a pilot program that allowed for some increases in rates and fees in the hopes of jump starting more lender participation in the small dollar loan markets. This program is discussed later in this document.

The $2,500 line in the lending sand dates to 1985 when a bill to lower the ceiling on regulated loans to $2,500 which increased the number of loans with unlimited rates. Supporters said they thought it would open up competition and eventually push rates down. The limit had been lowered to $5,000 from $10,000 in 1983.

The bill's author, the late Sen. Rose Ann Vuich wrote to then Governor Deukmegian in support of the bill "Rates above $5,000 are now set competitively in the marketplace and are generally below the former statutory rate ceilings," and the current bill "is expected to lead similarly to lower rates for loans in the $2,500 to $5,000 bracket."

The Department of Corporations at the time argued in favor of the 1985 bill, stating "rate regulation provides very little consumer protection and may even work against consumers since lenders tend to lend money at the maximum allowable rate irrespective of the credit worthiness of the borrower."

Who makes use of the costly products? The Federal Deposit Insurance Corporation (FDIC) estimates (National Survey of Unbanked and Under-banked Households) estimate that one third of households nationally; utilize alternative credit products, which would include loans offered under the CFLL. The Center For Economic and Policy Research has concluded via their study, "*Small-Dollar Lending: Is There a Responsible Path Forward*" that "it is reasonable to infer from the very large size of the current market for ultra-high-cost credit...that the unmet demand for high-quality small-dollar loans is very large. Presumably, all of those who currently obtain ultra-high-cost loans would, other things being equal, prefer to obtain much lower-cost affordable loans." In 2010, the Center for Financial Services Innovation (CFSI) reviewed the subject of small dollar loans, including obstacles to greater access and growing alternative approaches. CFSI states that installment loans are costly to provide due to the operation of physical stores and underwriting expenses. Furthermore, they stated, "One industry representative estimates that achieving breakeven with a $200 loan requires charging borrowers an APR of about 250%. The breakeven APR drops to approximately 145% if the volume of $250 loans reaches 1,000. Larger loans in the amount of $2,500 would require APRs closer to 44%, and the breakeven APR would drop to a projected 35% if 1,000 loans at that amount were made." On the other side of this debate some argue that the high interest rates are not a reflection of actual risk, but an attempt to exploit customers for greater financial gain.

Alternatives

The Legislature and Governor in 2010 enacted the Affordable Credit Building Opportunities Pilot Program (ACBO), placing it under the CFLL. The goal was to increase consumers' access to capital by encouraging development of a more robust small dollar loan market in California. The ACBO – established by SB 1146 (Florez) – took effect January 1, 2011. Its provisions applied to consumer loans of $250 to $2,499. To incentivize lenders' participation, the ACBO allowed them to charge borrowers marginally higher interest rates, and larger origination and delinquency fees than those permitted for CFLL consumer loans of that size made outside the program.

A low lender participation rate led to ACBO's demise. It was replaced by the Pilot Program for Increased Access to Responsible Small Dollars Loans, created in 2013 under SB 318 (Hill). The Pilot –*Financial Code section 22365 et seq.* – took effect January 1, 2014. It will remain in effect until January 1, 2018, unless extended by the Legislature and Governor.

Pilot Performance.

DBO recently released a report, *Report of Activity Under Small Dollar Loan Programs,* on the performance of the ACBO and the Pilot covering January 1, 2011 to December 31, 2014. The data presented in the report includes loans arranged without a finder as finder activity was very limited and not reported until 2014. The following are highlights from the report:

- Loan applications – Borrower applications increased by 58.5 percent over the period, from 207,092 in 2011 to 328,198 in 2014. The loan approval rate increased from 39 percent in 2011 to 50 percent in 2014.

- Aggregate principal – The annual total principal of loans made increased by 83.8 percent over the period, from $97.9 million in 2011 to $179.9 million in 2014.

- Dollar amounts – Loans made in the $300-$499 range fell by 42.3 percent over the period, from 1,518 in 2011 to 876 in 2014. Loans made in the highest range, from $1,500 to $2,499, increased by 106 percent, from 21,349 to 43,975.

- Interest rates – Of the 6,560 loans made in the $300-$499 range over the period, 73.9 percent carried an APR of 40 percent to 49.99 percent. In the $500-$999 range, 43.4 percent carried APRs of 40 percent to 49.99 percent, while 25.2 percent had APRs of 35 percent to 39.99 percent. In the $1,500-$2,499 range, the APR distribution was more even. In that category, 42.8 percent of the loans had APRs of 35 percent to 39.99 percent, while 19.6 percent had APRs of 30 percent to 39.99 percent, 18.2 percent had APRs of 40 percent to 49.99 percent, and 15.6 percent had APRs of 25 percent to 29.99 percent.

- Delinquencies – Of the 164,300 loans made in 2014, 22.5 percent were delinquent for seven days to 29 days, 7.3 percent were delinquent for 30 days to 59 days, and 3.9 percent were delinquent for 60 days or more.

- Multiple loans – The number of borrowers who took out more than one loan jumped dramatically from 2011 to 2012. Since then, however, the upward trajectory has been less steep. The number went from 2,189 in 2011 to 10,804 in 2012. From 2012 through 2014, the number rose by 21.6 percent, to 13,136. Of the 13,136 multiple-loan borrowers in 2014, 12,999 took out two loans.

- Credit scores – The share of multiple-loan borrowers who obtained higher credit scores on subsequent loans averaged 61 percent annually over the four-year period. The average size of the increase for those borrowers jumped from 34 points in 2011 to 355 points in 2014.

- Loan term – In 2014, of the 164,300 loans made, 50.9 percent were for 360 days or more. The ratios for other terms: 120 days to 179 days, essentially 0 percent (only two loans); 180 days to 269 days, 20.2 percent; and 270 days to 359 days, 28.8 percent.

- Borrower income – Of the 486,287 loans from 2011-2014, 18.4 percent were made in low-income neighborhoods. The ratios for other neighborhood income levels: moderate-income, 45.4 percent; middle-income, 21.1 percent; and upper-income, 4.4 percent. The annual low-income ratio increased from 16.6 percent in 2011 to 19.5 percent in 2014.

- Loan purpose – Of the 164,300 loans made in 2014, borrowers took out 45 percent (74,026) to build or repair credit. Ratios for other purposes: medical or other emergency, 18.4 percent; pay bills, 12.7 percent; consolidate debt, 5.7 percent; non-vehicle purchase, 5.3 percent; vehicle purchase, 2.7 percent; vehicle repair, 2.6 percent; other, 6.4 percent.

Internet Lending

Many licensed payday lenders that have storefront operations also offer payday loans via the internet in compliance and conjunction with their state licenses in accordance with state law. However, unregulated online lending has grown in recent years. Pew research predicts that by 2016 internet loans will account for 60% of payday loans almost double from 2012. August 16, 2012 the LA Times reported, *California Warns of Online Payday Lending Risk,* that the Department of Corporations, known now as DBO, had issued a consumer alert concerning the dangers of online lending, as well as sanctioned nine payday lenders for unlicensed activity. On February 23, 2013, the New York Times reported, *Major Banks Aid in Payday Loans Banned by*

States, that a growing number of payday lenders had setup online operations to avoid rate caps in states that have banned payday lending. The article pointed out that for an online payday loan the borrower gives the lender their account and routing number to set up automatic repayment of the loan via their account. These authorizations can lead to numerous overdraft charges as online payday lenders repeatedly ding the consumer's account for the outstanding loan repayment. In some cases, these transactions have occurred even after the loan was paid off. In one case highlighted in the article, a consumer with six outstanding payday loans attempted to close their bank account to stop any future withdrawals. The account was not closed by the bank and the consumer racked up $1,523 in insufficient funds fees, extended overdraft and service fees. The article further placed responsibility on the banks for allowing automatic withdrawals by illegal payday lenders and for not quickly honoring consumer's requests to end these withdrawals in a timely manner.

Restricting unregulated payday lending is difficult as many payday lenders may operate offshore in other countries or use tribal sovereignty to avoid state enforcement. Furthermore, borrowers may not be aware that an illegal payday loan (loan made by unlicensed lender) is unenforceable. These unregulated payday lenders typically will not follow consumer protection laws, fair debt collection laws, and in some cases may abuse the court process to intimidate borrowers into paying their loans. While storefront payday lenders may be limited by geographic location, internet payday lenders (both legal and illegal) are available by the thousands online and those that are unlicensed are not constrained by fee caps. This lack of regulation may, unfortunately, make them an attractive option for borrowers seeking to borrow beyond the California limit of $300.

Research on the impact of storefront payday lending restrictions and a potential growth in online lending reveal that consumers would not necessarily choose the online lending route if storefront payday lenders were eliminated. However, some media reports have highlighted concerns with the rising use of unregulated online payday. The Portland Business Journal reported on February 11, 2009, *Borrowers Flock to Online Payday Lenders,* that Oregon laws effectively banned 80% of the state's storefront payday lending businesses and forced borrowers to turn to unregulated online payday lenders. As with the previously mentioned articles, online borrowers in Oregon faced harassing and illegal debt collection tactics, extremely high fees and interest rates, and deceptive marketing ads. The Portland Business Journal article did not reveal actual data on the amount of online lending before or after Oregon's heavy restrictions on storefront lending. This lack of data is a typical problem in researching this issue.

Online payday lending largely functions through the use of third party online finders or referral services. Many of the online loan portals a consumer may find on the internet may be finders and not actual payday lenders. These finders take the borrower's information and then send it out for bids from payday lenders on what they will pay to the finder to lend to the particular borrower. Once a lender is matched with a borrower, the borrower is forwarded to that specific lender's loan website. This process happens behind the scene in only a few minutes. This system of finders, however, fuels unregulated online lending. If a borrower from California goes through one of these services (often the borrower will not know whether the site they are visiting is a lender or finder) the third party service does not determine whether the payday lenders who bid for the loan are licensed in California, or for that matter, licensed anywhere. Typically the factors that determine whether the loan is funded is the referral fee that the lender is willing to pay to the finder, and if the borrower meets that lender's risk profile.

Some of the risk of online lending that occurs outside of California's laws and restrictions has been mitigated through actions of DBO. On April 7th, 2015 DBO announced[5] efforts to work with major Internet search engines (Google, Bing, Yahoo, Ask Jeeves[6]) to block unlicensed payday lender ads. Under these efforts, DBO issues cease and desist orders against the unlicensed lender and then forwards copies of those orders to the search engines so they can take action to block the lender from search results.

Marketplace Lending or Peer to Peer:

Marketplace lending cuts a broad swath across a diverse set of credit needs from installment loans, payday loans, student loans, real estate finance, merchant advance, small business loans and even purchase finance. Marketplace lenders use computer-driven systems to evaluate borrowers and approve them in minutes or hours using the power of big data to determine credit risk, often using other credit indicators outside of a traditional FICO score. Instead, marketplace lenders evaluate current job position and potential for promotion, as well as a borrower's higher education achievements to see if they are a sound candidate for a personal loan. Conventional credit requirements including monthly income versus expenses may also be evaluated to determine eligibility, but these are often combined with other, less tangible borrower attributes. Combining these factors paints a more comprehensive picture of a borrower, allowing the marketplace lender the ability to rate the overall risk of a loan on more than a simple financial analysis of an individual.

These companies started out making unsecured personal loans, mostly to pay off credit-card debt, but have since branched out into bigger products such as small-business loans and mortgages. Loan amounts can vary from a few thousand dollars to a hundred thousand dollars.

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[5] http://dbo.ca.gov/Press/press_releases/2015/Search_Engine_initiative_04-07-15.pdf
[6] HA! Ask Jeeves no longer exists and has morphed into Ask.com. If you read this note that means you have read further than most.

The regulatory landscape is different than typical lenders. Lending Club, for instance, doesn't originate loans, so it isn't subject to bank regulation however they are licensed as a CFL. Instead, it partners with Salt Lake City-based WebBank, which originates Lending Club's loans and sells them quickly to investors like hedge funds, or to other banks. Prosper, another large marketplace lender, obtained several non-bank state licenses across the nation including the CFL license. With differing laws in each state this model became a compliance burden so Prosper attempted to get an industrial loan charter so they could lend with uniform terms across all states. This effort was unsuccessful so Prosper partnered with WebBank just as Lending Club did. Prosper and WebBank have adopted an interest rate cap of 36% for their loans even though under their arrangement they are not restricted on what interest rate they may charge.

The key difference between marketplace lenders and conventional lenders (Banks, credit unions, CFL installment lenders) is how loans are funded. Instead of dipping into their own coffers to finance a new personal loan, marketplace lenders list a newly accepted loan on their website for investors to fund. Accredited investors and institutional investors have the ability to fund all or a portion of a loan listed on a lender's site, and those investors bear the risk of the borrower defaulting on payments. This unique relationship creates an environment where those who need funding are put in direct contact with those who have the ability to give it, with the lender simply acting as the online conduit necessary to complete the transaction in a transparent, safe manner.

Small dollar lending laws in California:

PRODUCT	TRANSACTION VOLUME	DOLLAR VOLUME	STATUTORY GUIDELINES
Deferred Deposit Transaction (Payday Loans)[7]	12,407,422 total loans to 1,818,524 individual customers	$3,376,447,239	The amount of the consumer's personal check cannot exceed $300. The lender cannot charge a fee that is higher than 15 percent of the check amount. So, for example, a borrower who gives the lender a check for $300 will take home only $255 if the lender charges the maximum fee of 15 percent. The term of a payday loan cannot last longer than 31 days.
Finance Lenders Law Below $2500[8]	345,796 loans[9]	$243 million	• First $225, 2.5% per month (30% annual rate) • Over $225, less than $900, 2.0% per month (24% annual rate) • Over $900, less than $1650, 1.5% (18% annual rate) • Over $1,650, less than $2,500, 1.0% per month (12% annual rate) • In addition to interest lenders are allowed to charge borrowers the lessor of 5% of the loan amount or $50 as an Administrative fee. • Lenders may also sell credit insurance.
Finance Lenders Law $2500 and above[10]	348,028 loans	$1,030,263,000	No interest rate cap.
Car Title (licensed under CFL)[11]	105,259 loans	$381,878,000	All but 1,114 car title loans occurred in amounts at and above $2,500 and thus were not subject to interest rate limitations.
Pilot Program[12]	164,300 loans	$179,942,616	• Up to $1,000-lessor of 36% or Prime rate plus 32.75% • Over $1,000, less than $2,500-lessor of 35% of Prime rate plus 28.75 • Lenders may charge administrative fee of the lessor of 7% or $90 on the first loan to a borrower, the lessor of 6% or $70 for subsequent loans.

[7] Data from 2014 DBO Annual Report: Operation of Deferred Deposit Originators Licensed under the California Deferred Deposit Transaction Law

[8] Data from 2014 DBO Annual Report: Operation of Finance Companies under the California Finance Lenders Law. Number reported here includes only unsecured loans. CFL allows other types of lending (e.g. commercial, real property, and auto-lending)

[9] 80% of volume is from two companies, Oportun and Adir Financial.

[10] DBO Annual report on California Finance Lenders.

[11] Ibid.

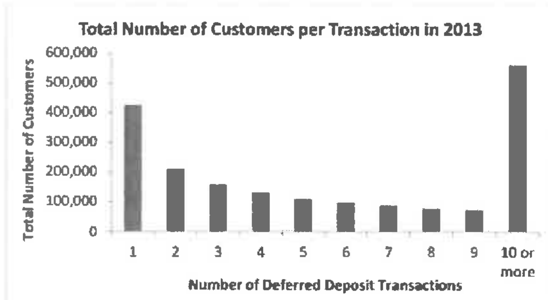
[12] Pilot Program for Increased Access to Responsible Small Dollar Loans. Data from DBO *Report of Activity Under Small Dollar Loan Pilot Programs*, January 1, 2011 through December 31, 2014.

A vast majority (80%) of the volume of CFL lending below $2500 is from two companies, Oportun and Adir Financial. Adir provides product financing for Southern California based retailer Curacao and Oportun is also the top lender, in volume under the pilot program.

Payday lending is a $3 billion business with over 12 million transactions and the most used small dollar loan product among the options currently available. In 2014 DBO released a payday loan industry survey covering 273 licenses or about 78%.[13] The survey revealed large majorities of customers taking 10 or more payday loans (559,535) in a year or 1 loan in a year (425,464). The chart below has a breakdown of loans per customer according to the 2014 survey. The 2015 survey did not include similar information.

Deferred Deposit Transaction Volumes per Customer

Questions one through ten of the Survey asked deferred deposit transaction originators (payday lenders) to report the number of customers who have obtained a specified number of transactions during 2013. The table below and graph to the right provide the aggregated response data for each question.



Source: Survey questions 1 through 10.

Question #	1	2	3	4	5	6	7	8	9	10
Question text	Number of customers who obtained 1 deferred transaction	Number of customers who obtained 2 deferred transactions	Number of customers who obtained 3 deferred transactions	Number of customers who obtained 4 deferred transactions	Number of customers who obtained 5 deferred transactions	Number of customers who obtained 6 deferred transactions	Number of customers who obtained 7 deferred transaction	Number of customers who obtained 8 deferred transaction	Number of customers who obtained 9 deferred transaction	Number of customers who obtained 10 or more deferred transactions
2013 Totals	425,464	210,852	156,881	130,772	110,339	97,495	88,447	76,809	72,413	559,535

Active Military Customers

- In 2013 less than one percent of reporting licensees indicated that they have customers who are in active military service. Of this share of payday lender licensees, the total number of customers was 5,663, with 5,717 unique transactions amounting to $1,375,448. *(Source: Survey questions 38 through 41.)*

[13] *2014 California Deferred Deposit Transaction law Industry Survey.* http://www.dbo.ca.gov/Licensees/Payday_Lenders/pdfs/2014_CDDTL_Industry_Survey_Summary_Report_Letter.pdf

Sample Small Dollar Loans Offered in California[14]

LENDER	TERM[15]	Statutory authority	LOAN AMOUNT	PAYMENTS	PAYMENT AMOUNT	FINANCE CHARGE	TOTAL REPAYMENT	APR
Check 'N Go	14 d	DDTL	$255	1	$300	$45	$300	460%
Rise Lending	16 m	CFLL	$2,600	32	$241	$5,126	$7,726	224%
Springleaf	24 m	CFLL	$2,600	24	$158	$1,187	$3,787	39%
Oportun	13 m	CFLL Pilot	$1,000[16]	27	$49	$292	$1,292	49.3%
CashCall	47 m	CFLL	$2,600	47	$294	$11,239	$13,840	135%
SpeedyCash	47 m	CFLL	$2,600	91	$137	$9,864	$12,464	132%
Lending Club	36 m	CFLL[17]	$6,000	36	$185.24	$788.64[18]	$6668.64	8.36%
SpotLoan	3 m	Tribal loan	$800	6	$212	$472	$1272	390%

Research Findings Concerning Small Dollar Credit.

- Only 27% of small-dollar credit users have a credit card, compared to 61% of non-small dollar credit consumers. (Levy & Sledge).
- Less than half of payday customers have savings or other types of liquid credit. (Elliehausen).
- Top three uses for small dollar credit include utility bills (36%), general living expenses (34%) and rent (18%). (Levy & Sledge).
- 54% of payday borrowers have a bank credit card compared to 74.5% of the general population. (Elliehausen).
- Most payday borrowers are aware of the finance charge but not the APR. (Elliehausen).
- Nearly 40% of payday borrowers have reported not paying back their original loan when it first came due (Levy & Sledge).
- 70% of installment loans are fully paid off and most borrowers do not keep their loans until maturity as most are paid off or charged off before the maturity date.

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14 Information on loan terms and pricing gathered from information on licensees websites and other publically available sources.

15 M=Months D=Days

16 Loan amount, terms and conditions in this example are based on a typical loan offered to a new customer.

17 Lending Club and several other marketplace lenders are licensed as CFLL lenders but also have partnerships with specific financial institutions. This is just one possible type of marketplace loan. Marketplace loans can vary widely on loan amounts, fees and interest rates.

18 Total finance charge includes interest paid over length of payments and origination fee which is held back from the loan proceeds by the lender.

(Beals & Goel).

- 60% of payday borrowers are able to accurately predict when they will finally repay their loans meaning that borrowers know before they even borrow that they will need the loans for longer than two weeks. (Mann).

- The use of payday loan funds is consistent across multiple studies of the issue with two-thirds of borrowers using the funds for recurring expenses (rent, utilities, groceries, etc.), with around 10% using payday loans for emergencies. (Mann).

- Payment-to-income ratio may be a poor metric for predicting whether a loan will be paid off or not. (Beals & Goel)

- Lack of knowledge concerning payday loan alternatives may assist with a perception that options don't exist. (Edmiston).

- Two factors most heavily associated repeat loan usage are 1) ratio of loan size to income, and 2) when the need for credit came from a consistent shortfall in income relative to expenses. (Levy & Sledge).

- Payday borrowers may be option limited due to the constraints of their credit ratings. (Edmiston).

- In reviewing small dollar credit (payday loans are included in this definition) researchers found that the top three loan attributes that mattered most were: quick access to money, ability to qualify, and clear terms. (Levy & Sledge).

- Repeat loan usage has been correlated with the ratio of loan size to income, and that the need for credit came from a consistent shortfall of income relative to expenses. (Levy & Sledge).

- Operating costs for payday lenders are high relative to the size of the payday loan and these high costs offset much of the revenue generated from the loan. (Elliehausen).

- Research on states that have banned payday lending concludes a range of impacts, from increased use of unregulated online lending to other negative credit effects. Other studies and surveys have found consumer satisfaction that the product is gone, or a belief that the dangers of the product outweigh the benefits. Media reports suggest that online lending has increased in states with a ban, while the Pew research disputes this.

- The Pew Charitable Trusts, provides the following:

    - Twelve million American adults use payday loans annually. Nationally, on average, a borrower takes out eight loans of $375 each per year and spends $520 on interest.

- Most borrowers use payday loans to cover ordinary living expenses over the course of months, not unexpected emergencies over the course of weeks. The average borrower is indebted about five months of the year.

- If faced with a cash shortfall and payday loans were unavailable, 81% of borrowers say they would cut back on expenses. Many also would delay paying some bills, rely on friends and family, or sell personal possessions.

- In states that enact strong legal protections, the result is a large net decrease in payday loan usage; borrowers are not driven to seek payday loans online or from other sources. Fifty-eight percent of payday loan borrowers have trouble meeting monthly expenses at least half the time.

- The choice to use payday loans is largely driven by unrealistic expectations and by desperation. A majority of borrowers say payday loans take advantage of them, and a majority also say they provide relief. The appreciation for urgently needed cash and friendly service conflicts with borrowers' feelings of dismay about high costs and frustration with lengthy indebtedness.

- By almost a 3-to-1 margin, borrowers favor more regulation of payday loans. In addition, two out of three borrowers say there should be changes to how payday loans work. Despite these concerns, a majority would use the loans again. In a state where payday storefronts recently stopped operating, former borrowers are relieved that payday loans are gone and have not sought them elsewhere.

- 55% of borrowers surveyed believe that payday loans take advantage of borrowers, while 48% say the loans help more than hurt, with 8% reporting that the loans both help and hurt. Furthermore, 56% say the loans relieve stress and anxiety versus causing it.

- Six reasons people use payday loans:

    - Desperation, as more than a third of borrower's report that a situation in which they were so desperate they would accept a loan on any terms offered.

    - Perception that payday loans do not cause ongoing debt.

    - Reliance on accurate information provided by the payday lender that the product is a two week loan.

    - Focus on fee, rather than how a lump sum repayment will affect their budget.

- Trust that by some bank deposit borrowers that bank payday loans are safer than non-bank payday loans.
- Temptation as some borrowers consider them too easy to obtain.

Consumer Financial Protection Bureau (CFPB) Proposal:

In March of 2015 the CFPB released a framework to regulate short-term loan products nationwide. In articulating the basis for the proposed rule, CFPB Director Richard Cordray said:

> *Today we are taking an important step toward ending the debt traps that plague millions of consumers across the country. Too many short-term and longer-term loans are made based on a lender's ability to collect and not on a borrower's ability to repay. The proposals we are considering would require lenders to take steps to make sure consumers can pay back their loans. These common sense protections are aimed at ensuring that consumers have access to credit that helps, not harms them.*

The final rules on these loan products are set to be released in stages. According to the latest information available, the first round of rules covering payday loans and deposit advance products are set to be released sometime during February of 2016. The rules for installment loans and vehicle title loans are set for release September of 2016.

The proposal is divided into provisions for "short-term loans" and "long-term loans" with the rules for those transactions divided between "debt-trap prevention" and "debt-trap protection."

The debt-trap prevention approach encompassed in the proposal would attempt to prevent so called "debt-traps" by requiring lenders to take into account certain factors during the underwriting or credit scoring phase, such as verifying the applicant's income, other major financial obligations, and borrowing history.

Under the debt-trap protection approach, lenders would be required to take certain steps to ensure that a consumer can afford to repay their debt, such as limiting the number of loans a borrower can take out in a row and over a certain period of time.

Short-Term Credit:

The portions of the proposal applicable to "short-term credit" apply to loans of 45 days or less and includes payday loans and other loans that would fall into this time frame.

Short-term lenders who choose to comply with the debt-trap prevention requirements would need to comply with the following requirements:

1) Confirm that an applicant can repay the loan when due without defaulting or re-borrowing

before approving the applicant for credit.

2) Adhere to a 60-day cooling off period between loans.

3) Confirm the applicant does not have any outstanding covered loans with any lender.

4) If the loan is consumer's 2nd or 3rd loan within a two-month window, document that there has been some "change in circumstances" in the borrower's financial situation (e.g., an increase in income) so as to enable the borrower to repay the new loan without re-borrowing.

5) If three loans are taken out within a short period of time, adhere to a 60-day cooling period. In other words, lenders would be prohibited from extending credit to that borrower within 60 days after the borrower pays off a third loan within a short, still undefined, period of time.

Lenders choosing to follow the debt-trap protection approach would be required to comply with the following:

1) Loan amount limited to $500.

2) Loan term limited to 45 days.

3) May only collect one finance charge.

4) Consumer's vehicle may not be used as collateral.

5) Confirm the applicant would not be in debt more than 90 days on covered short-term loans in any 12-month period.

6) Confirm the applicant does not have any other outstanding covered loans with any lender.

7) Cap rollovers at two (i.e., three loans total) and adhere to a 60-day cooling off period after the 3rd loan.

8) Only provide 2nd and 3rd consecutive loans if the lender provides an affordable way out of the debt. CFPB has considered two approaches to meet this requirement. The first would require a decrease in principal over the three-loan sequence so that it is repaid in full when the third loan is due. The second would require the lender to offer a no-costs payment plan.

Long-Term Credit:

The long-term credit provisions of the proposal would cover credit products for which:

1) The loan term is more than 45 days;

2) The lender has access to the borrower's bank account or paycheck or a security interest in a vehicle; and

3) The "all-in" APR is more than 36% (including interest, fees, and add-on product charges).

This definition would include certain longer term title loans, high-cost installment loans, and open-end products.

As with short-term lenders, long-term lenders choosing to comply with the debt prevention approach would be required to verify the consumer's income, other major financial obligations, and borrowing history to evaluate the applicant's ability to repay. Lenders would also be required to confirm a consumer is able to repay the loan each time a borrower requests to refinance or re-borrow. For borrowers that have missed a payment, the lender would be prohibited from refinancing the loan into another loan with similar terms unless the lender obtains documentation the borrower's financial circumstances have improved such that the borrower can afford to repay the new loan.

The CFPB is considering two alternatives for the debt trap *protection* approach, both of which would permit lenders to extend credit with a minimum of 45 days a maximum of 6 months. The first approach would require lenders to follow the same protections as "payday alternative loans" offered by the National Credit Union Administration. That is, interest would be capped at 28% and any application fees would be capped at $20. Loan amounts would be restricted to $200-$1,000 with the balance decreasing over the term of the loan. Consumers would only be able to enter into one of these loans if the consumer has no other covered loans at the time and lenders would be prohibited from offering more than two of these loans to a consumer within 6 months (but not more than one at a time).

Under the second approach, monthly loan payments would be limited to no more than 5% of the consumer's gross monthly income. The consumer could not have more than one covered loan at a time and no more than two of such loans in a 12-month period.

Access to Bank Accounts:

The proposals would also place restrictions on lenders accessing borrowers' checking accounts. Small-dollar lenders currently use one or more of several methods to collect payment for a loan:

1) Obtain an authorization to electronically debit a borrower's checking, savings, savings, or prepaid account. This can take the form of an authorization to debit the borrower's account for the full amount of the loan after the maturity date or an authorization to debit the borrower's account multiple times for smaller amounts than the full amount of the loan after the maturity date.

2) Use a remotely created check.

3) Take a post-dated check from the applicant at the time the loan agreement is executed.

The CFPB is currently considering two different proposals to curb these practices. The first would require lenders to notify borrowers three business days before attempting to withdraw funds from the borrower's account and include the following information:

1) The exact amount and date of the upcoming payment attempt;

2) The payment channel through which the attempt will be made;

3) A breakdown of the application of payment amount to principal, interest, and other fees and charges;

4) The loan balance remaining if the payment attempt succeeds;

5) The name, address, and phone number the borrower can use to reach the lender; and

6) For payment attempts via signature check or remotely created check, the check number associated with the payment attempt.

The second proposal being considered would prohibit lenders from making any additional attempts to access a borrower's bank account after two consecutive unsuccessful attempts. A check that is returned from the borrower's bank due to insufficient funds, for instance, would be considered an unsuccessful attempt. The lender would be required to obtain a new authorization from the borrower before initiating any new transactions to withdraw money from the borrower's bank account.

Recordkeeping:

The proposal would require lenders to retain records of compliance for 36 months after the last entry on the loan, including:

1) Documentation of the determination of ability-to-repay;

2) Verification of the consumer's history of covered loans;

3) Documentation regarding the consumer's eligibility for any loan; and

4) History of payment presentments.

The CFPB would also require annual reports for each type of covered loan, including data regarding information such as defaults, reborrowing, and refinancing

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Paulina Gonzalez
California Reinvestment Coalition

Background Materials for Banking and Finance Committee Hearing
on Small Dollar Lending, CFL Reform and pending CFPB Rulemaking
Submitted by the California Reinvestment Coalition

Monday, January 11, 2016

Contents

Consumer Experiences with Some of California's Consumer Finance Lenders:

Featured consumer narratives from the Consumer Financial Protection Bureau's (CFPB) Consumer Complaint Database

Date received: 11/23/15
Company: CashCall, Inc.
Consumer Complaint:

I took a loan from cash call in XXXX 2014. When I was contacted I voiced my concern that the lowest amount they funded was {$2500.00}. I only wanted a loan for {$400.00}. I let the gentleman know that I was uninterested. He informed me that I could take the loan and there would be no penalty for prepaying the loan and that he had customers do this all the time. ***I agreed to the loan but was never clearly aware of the outlandish rate of 139 % interest. The way the person on the phone explained it was once I prepaid the loan {$2000.00}, all my payments would go to the principal.*** I was financially in need so I agreed and sent the email back agreeing.

I tried to pay back the loan but was told I could only pay on my due date of payment. I call on the XXXX and they say I need to pay on the XXXX. I call back on the first and was told I could not use a credit card but I could use it online. I tried to pay online and would be charge a wiring fee and could only pay {$800.00} per wire so it would have taken me XXXX wires at {$20.00} a piece. I feel that the information I was told when I initially obtained the loan was false. I was never told about how difficult they make the prepay process and all the rules. ***Cash Call has made it impossible for me to pay back my loan so they can continue to charge me 139 % interest.*** I feel they were negligent and are committing fraud. I also feel that these high interest loans should not be allowed in the US. If I complete my loan, will have paid {$10000.00} for a {$2500.00} loan. I want this company investigated.

Date received: 10/23/15
Company: Check Into Cash, Inc.
Consumer Complaint:

The lender cashed the check I wrote, for {$2000.00} early. I explained that the funds wouldn't be available until XX/XX/XXXX, I dated the check for XX/XX/2015, and it clearly states on my bank statement that the check was deposited on XX/XX/XXXX, which lead to various overdraft fees, along with my account being overdrawn. ***I spoke to XXXX, and made very clear that the funds would NOT be in my account until XX/XX/XXXX, like the check was dated. They also called me, to verify that the check was mine, and that the funds would be there on XX/XX/XXXX.***

Date received: 9/18/15
Company: Enova International
Consumer Complaint:

While serving XXXX, I fell behind on money. I applied for a payday loan with NetCredit. ***After being charged over {$200.00} every two weeks and my balance not going down I did some research and found out I have a 153.01 % interest rate. When I contacted them about this being illegal for XXXX military they blew me off.*** Having this is ruining my credit score and I cannot keep up.

Date received: 7/27/15
Company: CashCall, Inc.
Consumer Complaint:

I received a loan for {$2,600.00} to date I have paid over {$10,000.00}. I have asked to settle the loan because I am a single mom and the $ XXXX monthly payment has become a challenge. They denied my settlement offer. I continue to make the scheduled payments and they continue to call me on a daily basis saying that I am behind when I am not. I am on the verge of tears and I just can't take the calls anymore. They say they will stop calling because they see that I HAVE been making the payments but the calls and emails continue. Please help!

Date received: 7/26/15
Company: RISE Credit, LLC
Consumer Complaint:

My name is XXXX XXXX and I need help in dealing with Rise Credit. I am a single mother who is living 138 % below the poverty level. I have had my share of credit problems and have owed more than I make for quite some time.

I was misled by Rise Credit to believe that they were unlike other predatory loan companies. By the time I understood what I had signed, I had paid them thousands of dollars in interest. I have recently become temporarily unemployed and called them to ask for help during my time of financial hardship. They refused any solution and my account is headed to collections now.

In the last sixty days I have paid over XXXX dollars in interest and the total paid is far over the amount I initially borrowed from Rise. The interest is around XXXX percent. This is robbery and all of the necessities I have for myself and ***my children are suffering because of it***. If I were to steal from someone like Rise has stolen from me it would be considered robbery.

How is it that they can do this? I am asking for help for not only my family, but for all of the families targeted by these predatory loans meant to target those living in poverty and struggling to live paycheck to paycheck.

Thank you so much for any assistance.

Date received: 3/29/15
Company: Avant Credit Corporation
Consumer Complaint:

I got a loan with Avant Credit XXXX {$2500.00} and I made XXXX payments of {$110.00} which totaled {$2200.00}, I still owe a total of {$1500.00} which in total calculates to XXXX, which means that the loan's interest rate is 160.056 %, I am unable to find the original documents and have attempted to contact the company. I believe that the loan violates the Truth in Lending Act and specifically 15 U.S. Code 1602, 15 U.S. Code 1666i-2 borrowed 2500 paid XXXX XXXX owe XXXX.

Consumer Financial Protection Bureau

EMBARGOED UNTIL 12:01 A.M. EDT:
March 26, 2015

FACTSHEET: THE CFPB CONSIDERS PROPOSAL TO END PAYDAY DEBT TRAPS

Today the Consumer Financial Protection Bureau (CFPB) announced it is considering proposing rules that would end payday debt traps by requiring lenders to take steps to make sure consumers can repay their loans. The proposals under consideration would also restrict lenders from attempting to collect payment from consumers' bank accounts in ways that tend to rack up excessive fees. The strong consumer protections being considered would apply to payday loans, vehicle title loans, deposit advance products, and certain high-cost installment and open-end loans.

Overview

The proposals under consideration cover both short-term and longer-term credit products that are often marketed heavily to financially vulnerable consumers. The CFPB recognizes consumers' need for affordable credit but is concerned that the practices often associated with these products – such as failure to underwrite for affordable payments, repeatedly rolling over or refinancing loans, holding a security interest in a vehicle as collateral, accessing the consumer's deposit account for repayment, and performing costly withdrawal attempts – can trap consumers in debt. Consumers can be forced to choose between re-borrowing, defaulting, or falling behind on other obligations, and also may face deposit account fees and closures, vehicle repossessions, and other harms.

For short-term loans, the CFPB has found that for consumers living paycheck to paycheck, the short timeframe can make it difficult to accumulate the necessary funds to pay off the principal and fees before the due date. Borrowers who cannot repay often roll over the loan – pay more fees to delay paying off the loan or take out a new loan to replace the old one. For many borrowers, what starts out as a short-term loan turns into an unaffordable, long-term cycle of debt. For longer-term loans, many consumers struggle to keep up with unaffordable payments, which can result in defaults, costly refinancing, or falling behind on other bills.

The proposals under consideration provide two different approaches to ending debt traps – prevention and protection. Under the prevention requirements, lenders would have to determine at the outset that the consumer is not taking on unaffordable debt. Under the protection requirements, lenders would have to comply with various restrictions designed to ensure that consumers can affordably repay their debt. Lenders could choose which set of requirements to follow.

The CFPB is publishing the outline of proposals under consideration in preparation for convening a Small Business Review Panel to gather feedback from small lenders, which is the next step in the rulemaking process.

Products Covered by Proposals

- **Payday loans:** Payday loans typically are structured as single-payment, short-term loans with repayment due at the time of the consumer's next paycheck or benefit payment. Payday storefronts have been commonplace in many states since the 1990s, and many online lenders also offer payday loans. About 2.5 million households used payday loans over a 12-month period, according to the 2013 "National Survey of Unbanked and Underbanked Households" by the Federal Deposit Insurance Corporation. And, according to another study, payday lenders (storefront and online combined) collect about $8.7 billion annually in interest and fees.

- **Deposit advance products:** In the past, a small number of banks and credit unions offered deposit advance products. The bank or credit union would automatically collect payment on the loan from the borrower's incoming qualifying electronic deposits. Following recent guidance from two federal prudential regulators, however, nearly all of these products have been discontinued. To the extent that depository institutions may offer replacement products, those products may be subject to today's proposals under consideration.

- **Vehicle title loans:** Vehicle title loans typically are expensive credit, backed by a security interest in the consumer's vehicle. About 1 million households use vehicle title loans each year according to the FDIC study. They spend approximately $3 billion annually in fees, according to the Pew Charitable Trusts. Title loans may be short-term or longer-term, and the lender may repossess the consumer's vehicle if the consumer is unable to pay.

- **High-cost installment loans:** The proposals under consideration would cover many types of installment loans. Installment loans have multiple payments, often over several months, and have loan amounts ranging from a hundred dollars to several thousand dollars. They may carry very high interest rates. Some have balloon payments.

- **Open-end lines of credit and other loans:** Open-end lines of credit and other loans that fall within the CFPB's proposal under consideration, regardless of how they are named or marketed to consumers, would also be covered.

Ending Debt Traps: Short-Term Loans

The proposals under consideration would cover short-term credit products that require consumers to pay back the loan in full within 45 days. Typical short-term loans include many payday loans, deposit advance products, certain open-end lines of credit, and some vehicle title loans. The CFPB is considering using 45 days to define short-term loans to distinguish those loans that are required to be repaid in one income and expense cycle. Many short-term loans are 14 days or one month to match the timing of consumers' paychecks. However, loans taken out shortly before a consumer is paid may not be due until the following paycheck. The 45-day definition would capture these slightly longer loans.

The proposals under consideration include two ways that lenders could extend short-term loans without causing borrowers to become trapped in long-term debt. Under the proposals, lenders could either prevent debt traps at the outset of each loan, or they could protect against debt traps throughout the lending process. Specifically, all lenders making covered short-term loans would be required to adhere to one of the following sets of requirements:

- **Debt trap prevention requirements:** This option would eliminate debt traps by requiring lenders to determine at the outset that the consumer can repay the loan when due – including interest, principal, and fees for add-on products – without defaulting or re-borrowing. For each loan, lenders would have to verify the consumer's income, major financial obligations, and borrowing history to determine whether there is enough money left to repay the loan after covering other major financial obligations and living expenses. Other requirements include:

- Lenders would generally have to adhere to a 60-day cooling off period between loans.
- The consumer could not have any other outstanding covered loans with any lender.
- To make a second or third loan within the two-month window, lenders would have to document that the borrower's financial circumstances have improved enough to repay a new loan without re-borrowing. They would have to verify, for example, that the consumer's income had increased following the prior loan.
- After three loans in a row, all lenders would be prohibited from making a new short-term loan to the borrower for 60 days.

- **Debt trap protection requirements:** These requirements would protect against debt traps by limiting the number of loans that a borrower can take out in a row and requiring lenders to provide affordable repayment options. These protections would include the following restrictions:
  - The loan could not exceed $500, last longer than 45 days, carry more than one finance charge, or require the consumer's vehicle as collateral.
  - The consumer could not have any other outstanding covered loans with any lender.
  - Rollovers would be capped at two – three loans total – followed by a mandatory 60-day cooling-off period.
  - The second and third consecutive loans would be permitted only if the lender offers an affordable way out of debt. The Bureau is considering two options for this. The first would require that the principal decrease over the three-loan sequence so that it is repaid in full when the third loan is due. The second would require the lender to provide a no-cost "off-ramp" if the borrower is unable to repay after the third loan, to allow the consumer to pay the loan off over time without further fees.
  - The consumer could not be more than 90 days in debt on covered short-term loans in a 12-month period.

<u>**Ending Debt Traps: Longer-Term Loans**</u>

The proposals under consideration would also apply to high-cost, longer-term credit products of more than 45 days where the lender has access to repayment from the consumer's deposit account or paycheck, or holds a security interest in the consumer's vehicle, and the all-in annual percentage rate is more than 36 percent. This includes longer-term vehicle title loans, some high-cost installment loans, and similar open-end products. In order to reduce compliance burdens for lenders, the CFPB is considering using existing lines in federal law for the coverage threshold, such as the Military Lending Act's 36 percent all-in annual percentage rate, which includes interest, fees, and add-on product charges.

Installment loans typically stretch longer than a two-week or one-month payday loan, have loan amounts ranging from a hundred dollars to several thousand dollars, and may impose very high interest rates. The principal, interest, and other finance charges on these loans are typically repaid in installments. Some have balloon payments. The proposal would also apply to high-cost open-end lines of credit with deposit account, paycheck, or vehicle title access.

The CFPB's proposals under consideration for longer-term loans would eliminate debt traps by requiring lenders to take steps to determine that borrowers are able to repay their debt. Just as with short-term loans, lenders would have two alternative ways to meet this requirement – prevent debt traps at the outset or protect against debt traps throughout the lending process. Specifically, lenders making covered longer-term loans would have to adhere to one of the following sets of requirements:

- **Debt trap prevention requirements:** This requirement would prevent debt traps by requiring lenders to determine at the outset that the consumer can make each payment on the loan when due – including interest, principal, and fees for any add-on products – without defaulting or re-borrowing. For each loan, lenders would have to verify the consumer's income, major financial obligations, and borrowing history to determine whether there is enough money left to make payments on the loan after covering other major financial obligations and living expenses. Other requirements include:
  - Lenders would be required to determine if a consumer is able to repay the loan each time the borrower seeks to refinance or re-borrow.
  - If the borrower has been delinquent on a payment, the lender would be prohibited from refinancing into another loan with similar terms without documentation that the consumer's financial circumstances had improved enough to be able to repay the loan.

- **Debt trap protection requirements:** The Bureau is considering two specific approaches to the debt trap protection requirements for longer-term products. Under either approach, loans would have a minimum duration of 45 days and a maximum duration of six months.
  - Under the first approach, lenders could provide generally the same terms as loans offered under the National Credit Union Administration program for "payday alternative loans." Under this requirement, the following restrictions would apply:
    - The loan principal is between $200 and $1,000, and the balance decreases over the loan term.
    - The lender could not charge an interest rate higher than 28 percent and an application fee higher than $20.
    - The consumer has no other covered loans.
    - The lender would only be able to provide two of these loans to a consumer within six months, and the consumer could only have one at a time.
  - Under the second approach, lenders could make a longer-term loan provided the following conditions are met:
    - The amount the consumer is required to pay each month is no more than 5 percent of the consumer's gross monthly income.
    - The consumer has no other covered loans.
    - The lender does not provide more than two of these loans to the consumer in a 12-month period.

<u>Restricting Harmful Payment Collection Practices</u>

Lenders of both short-term and longer-term loans often obtain access to a consumer's checking, savings, or prepaid account to collect payment through a variety of methods, including post-dated checks, debit authorizations, or remotely created checks. However, this can lead to unanticipated withdrawals or debits and transaction fees. When lenders attempt to get their money through repeated, unsuccessful withdrawal attempts, consumers are charged insufficient funds fees by their depository institution and returned payment fees by the lender, and may even face account closure. These fees add to the spiraling costs of falling behind on these loan products and make it even harder for a consumer to climb out of debt. To mitigate these problems, the Bureau is considering proposals that would:

- **Require borrower notification before accessing deposit accounts:** Under the proposals being considered, lenders would be required to provide consumers with three business days advance notice before submitting a transaction to the consumer's bank, credit union, or prepaid account for payment. The notice would include key information about the forthcoming payment collection attempt. This requirement would apply to payment collection attempts through any method and would help consumers better manage their deposit accounts and overall finances.

- **Limit unsuccessful withdrawal attempts that lead to excessive deposit account fees:** Under the proposals being considered, if two consecutive attempts to collect money from the consumer's account were unsuccessful, the lender would not be allowed to make any further attempts to collect from the account unless the consumer provided a new authorization. This would limit fees incurred by multiple transactions that exacerbate a consumer's financial woes.

The Rulemaking Process

As the next step in the rulemaking process, the Bureau is publishing an outline of the proposals under consideration in preparation for convening a Small Business Review Panel to gather feedback from small lenders.

An outline of the proposals under consideration will be available on March 26 at:
http://files.consumerfinance.gov/f/201503_cfpb_outline-of-the-proposals-from-small-business-review-panel.pdf

In addition to consulting with the Small Business Review Panel, the Bureau will continue to seek input from a wide range of stakeholders before issuing a proposed rulemaking. Once the Bureau issues its proposed regulations, the public will be invited to submit written comments which will be carefully considered before final regulations are issued.

A factsheet summarizing the Small Business Review Panel process is at:
http://files.consumerfinance.gov/f/201503_cfpb_factsheet-small-business-review-panel-process.pdf

A list of questions on which the Bureau will seek input from the small business representatives providing feedback to the Small Business Review Panel will be available on March 26 at:
http://files.consumerfinance.gov/f/201503_cfpb_list-of-questions-from-small-business-review-panel.pdf

###

The Consumer Financial Protection Bureau is a 21st century agency that helps consumer finance markets work by making rules more effective, by consistently and fairly enforcing those rules, and by empowering consumers to take more control over their economic lives. For more information, visit consumerfinance.gov.

State of California ~ Department of Justice
OFFICE of the ATTORNEY GENERAL
KAMALA D. HARRIS

Attorney General Kamala D. Harris Urges the Consumer Financial Protection Bureau to Adopt Consumer Protections Against Harmful Practices by Payday Lenders

Tuesday, December 29, 2015
Contact: (415) 703-5837, agpressoffice@doj.ca.gov

LOS ANGELES -- Attorney General Kamala D. Harris today issued a letter urging the Consumer Financial Protection Bureau (CFPB) to adopt regulations that strengthen protections against harmful payday and small-dollar lending practices. The CFPB is proposing to create the first nationwide regulatory floor for the payday lending industry that can work in harmony with California's laws and regulations to further protect vulnerable consumers from falling into vicious cycles of debt.

"Together with California's existing lending laws, the Bureau's proposals would bring needed protections to vulnerable California consumers who take out small-dollar loans, which too often are predatory and create a debt trap for fixed- and low-income borrowers. Californians who need short-term emergency access to cash are getting stuck in a destructive and unaffordable cycle of repeat high-interest loans that they cannot afford to repay," Attorney General Harris stated in the letter to the CFPB.

In 2014, 1.8 million California consumers took out 12.4 million payday loans, borrowing $3.38 billion. There are over 2,000 licensed payday loan locations in California (substantially more than the number of McDonald's restaurants). Moreover, many locations are in counties with high poverty rates and low education levels, effectively targeting communities most in need of emergency access to cash and most at risk of becoming trapped in crippling cycles of debt.

In the letter, Attorney General Harris strongly supports the CFPB's proposals to curb the abuse stemming from traditional, high-cost payday loans and collections and urges the CFPB to consider additional measures that would provide a meaningful alternative for Californians who need small-dollar loans.

Attorney General Kamala D. Harris' Comments on the CFPB's Proposed Actions

Require a meaningful "ability to repay" standard: Attorney General Harris strongly supports the CFPB's proposed "ability to repay" standard. This would require lenders to make good-faith, reasonable determinations that a consumer has the ability to repay the loan, after satisfying financial obligations and living expenses. Requiring an ability to repay analysis for payday and small-dollar loans would help ensure consumers are provided with loans they can afford without needing to re-borrow or default.

60-day "cooling off" period: Attorney General Harris supports the proposed 60-day "cooling off" period between short-term loans, which presumes an inability to repay subsequent loans made within 60 days of another loan, and a mandatory 60-day "cooling off" period after consumers take out three short-term loans in a row. This would help protect consumers from falling into debt cycles.

Implement an "off-ramp" to taper of indebtedness: If the CFPB decides to allow an alternative to an "ability to repay" standard, Attorney General Harris would support increasing screening requirements, structural requirements, structural protections, and potentially phasing out alternative loans that do not require an "ability to pay" standard over time. Attorney General Harris would support the CFPB's "off-ramp" proposal, which would allow consumers to repay certain short-term loans over additional installments without incurring additional costs, so they may better avoid taking out additional loans. Lenders should also be required to notify consumers of their right to take the off-ramp, and should not discourage borrowers from using the off-ramp.

- Curbing harmful payment collection practices: Attorney General Harris strongly supports proposals requiring notification before lenders attempt to collect payment from consumers' accounts. Lenders should also be limited to two attempts to collect payment unless they obtain new authorization. This can help protect consumers from excessive account fees following unsuccessful withdrawal attempts.

- **Protect consumer privacy:** Attorney General Harris encourages the CFPB to require strict limitations on information entered into databases. Use of this data should be restricted to confirming eligibility for new loans, and access should only be granted to the necessary parties. Borrowers should receive notice that their data will be collected and stored in the database.

- Permit states to adopt more restrictive laws and regulations: The CFPB is strongly encouraged to take the necessary steps to clarify that it does not intend to undermine or preempt stricter state and local laws governing payday and small-dollar loans. Following assessment of need, further regulations may be deemed necessary for certain states and localities. The ability to implement additional restrictions should remain available.

###

Attachment	Size
Letter to Hon. Richard Cordray re Payday Lending.pdf	1.44 MB

Congress of the United States
Washington, DC 20515

June 22[th], 2015

The Honorable Richard Cordray, Director
Consumer Financial Protection Bureau
1700 G Street NW
Washington, DC 20552

Re: Rulemaking addressing payday and car title lending

Dear Director Cordray:

We write to express our support of the Consumer Financial Protection Bureau's (Bureau) preliminary proposals to address abusive payday and car title lending practices. We applaud the Bureau's initial steps and urge you to implement strong consumer protections to enforce responsible lending that helps, rather than harms consumers.

We appreciate the strengths of the Bureau's proposal. While there is a need for affordable credit, unfair, deceptive, and abusive payday and car title lending practices often pull consumers into a cycle of debt. As your 2013 Payday Loans and Deposit Advance Product White Paper highlighted, over 80 percent of payday loans are rolled over or followed by another loan within 14 days and 75 percent of loan fees on payday loans came from consumers with more than 10 transactions over a twelve-month period. We support the Bureau's efforts to close the door to unaffordable loans by addressing failure to underwrite for affordable payments, repeatedly rolling over or refinancing loans, accessing the consumer's account for repayment, and performing costly withdrawals. We hope your final rule will protect vulnerable communities and empower consumers to make sound financial choices so that we can build a safer and stronger financial system.

We strongly support the Bureau's general endorsement of an ability-to-repay principle, based on an evaluation of a borrower's income and obligations. We also strongly support applying that principle, as the Bureau proposes, to short-term balloon payment loans as well as vehicle title loans and longer term high-cost loans where the lender has direct access to the borrower's checking account. In finalizing proposed rules, we urge you to focus on meaningful measures to ensure a consumer's ability to repay.

Ability to repay is the fundamental element of any responsible loan. As the Bureau has noted, rather than lending based on ability to pay, payday lenders often lend based on their ability to collect, putting themselves first-in-line to repay themselves directly from the borrower's checking account as soon as the borrower receives a paycheck or public benefits. This leaves borrowers vulnerable to incurring ongoing financial difficulties.

Lending without ability to repay and monitoring of performance causes substantial harm to borrowers. As you finalize your proposed rule, we urge you to give this standard appropriate consideration. We appreciate your attention to this issue and look forward to your final proposed rule.

Sincerely,

Terri A. Sewell
Member of Congress

Alma S. Adams
Member of Congress

Karen Bass
Member of Congress

Xavier Becerra
Member of Congress

Sanford D. Bishop
Member of Congress

Earl Blumenauer
Member of Congress

Julia Brownley
Member of Congress

G. K. Butterfield
Member of Congress

Lois Capps
Member of Congress

Michael E. Capuano
Member of Congress

André Carson
Member of Congress

Judy Chu
Member of Congress

David N. Cicilline
Member of Congress

Peter A. DeFazio
Member of Congress

Katherine M. Clark
Member of Congress

Mark DeSaulnier
Member of Congress

Emanuel Cleaver
Member of Congress

Lloyd Doggett
Member of Congress

James Clyburn
Member of Congress

Keith Ellison
Member of Congress

Steve Cohen
Member of Congress

Anna G. Eshoo
Member of Congress

Danny K. Davis
Member of Congress

Sam Farr
Member of Congress

Raúl M. Grijalva
Member of Congress

Eddie Bernice Johnson
Member of Congress

Luis V. Gutiérrez
Member of Congress

Marcy Kaptur
Member of Congress

Rubén Hinojosa
Member of Congress

Robin L. Kelly
Member of Congress

Mike M. Honda
Member of Congress

Ann McLane Kuster
Member of Congress

Sheila Jackson Lee
Member of Congress

Jim R. Langevin
Member of Congress

Hank Johnson
Member of Congress

Brenda L. Lawrence
Member of Congress

Barbara Lee
Member of Congress

John Lewis
Member of Congress

Zoe Lofgren
Member of Congress

Alan S. Lowenthal
Member of Congress

Carolyn B. Maloney
Member of Congress

Betty McCollum
Member of Congress

Eleanor Holmes Norton
Member of Congress

Frank Pallone, Jr.
Member of Congress

Bill Pascrell, Jr.
Member of Congress

Donald M. Payne, Jr.
Member of Congress

Chellie Pingree
Member of Congress

Stacey E. Plaskett
Member of Congress

Mark Pocan
Member of Congress

Jan D. Schakowsky
Member of Congress

David E. Price
Member of Congress

Bobby C. Scott
Member of Congress

Cedric L. Richmond
Member of Congress

Louise Slaughter
Member of Congress

Bobby L. Rush
Member of Congress

Adam Smith
Member of Congress

Linda T. Sánchez
Member of Congress

Mark Takano
Member of Congress

John P. Sarbanes
Member of Congress

Bennie G. Thompson
Member of Congress

Chris Van Hollen
Member of Congress

Matt Cartwright
Member of Congress

Bonnie Watson Coleman
Member of Congress

Elijah E. Cummings
Member of Congress

Frederica S. Wilson
Member of Congress

Filemon Vela, Jr.
Member of Congress

John A. Yarmuth
Member of Congress

David Scott
Member of Congress

United States Senate

WASHINGTON, DC 20510

June 4, 2015

The Honorable Richard Cordray
Director
Consumer Financial Protection Bureau
1700 G Street NW
Washington, DC 20552

Re: Rulemaking addressing payday lending

Dear Director Cordray:

We write regarding the Consumer Financial Protection Bureau's (CFPB) efforts to study and address payday lending practices. We support the CFPB's initial steps towards releasing a proposed rule and urge you to issue the strongest possible rules to end the damaging effects of predatory lending.

Small-dollar, short-term loans with astronomical interest rates that pull consumers into a cycle of debt are predatory. These loans have high default rates, including after the borrower has already paid hundreds or thousands of dollars because of triple-digit interest rates. Notably, the typical borrower of a two-week loan is in debt for more than half the year.[1] In addition, longer term high-cost installment loans with smaller payments than lump-sum payday loans can result in high default or refinancing rates, high rates of bounced payments and other harmful consequences. Even if consumers do not default on these loans, high interest rates, preauthorized payment methods and aggressive debt collection efforts often cause a cascade of devastating financial consequences that can include lost bank accounts, delinquencies on credit cards and other bills, and bankruptcy.

Predatory lenders should not be able to continue unfair, deceptive, and abusive acts or practices that are designed to trap borrowers in a cycle of debt. A CFPB study found that 75 percent of loan fees on payday loans came from consumers with more than 10 transactions over a twelve-month period.[2] This is a business model rooted in preying on individuals and families that have no ability to repay, and the CFPB has a critical opportunity to protect consumers by issuing strong rules. We hope that the Bureau will do so, while also taking into account and respecting states that have strong laws currently in place and building on their efforts to protect consumers from predatory lending.

In finalizing proposed rules, we urge you to focus on meaningful measures to ensure a consumer's ability to repay. In the outline of the proposals being considered, the CFPB wrote

[1] CFPB, "Payday Loans and Deposit Advance Products," 24 April 2013, page 23, http://files.consumerfinance.gov/f/201304_cfpb_payday-dap-whitepaper.pdf.
[2] CFPB, "Payday Loans and Deposit Advance Products," 24 April 2013, page 22, http://files.consumerfinance.gov/f/201304_cfpb_payday-dap-whitepaper.pdf.

that it "believes that the failure to make an ability-to-repay determination results in many consumers taking out unaffordable loans."[3] Ability-to-repay is a fundamental element of responsible lending; however, predatory lenders, particularly those with direct access to a consumer's checking account, have not prioritized this standard. Lending in the absence of an effective ability-to-repay determination, and monitoring of how loans perform in practice, causes substantial harm to consumers. We urge you to give this standard appropriate consideration in the proposed rules.

We appreciate your attention to this issue and hope you will soon issue strong rules to address the predatory lending practices that will only continue to harm consumers without swift action.

Sincerely,

Jeffrey A. Merkley
United States Senator

Richard J. Durbin
United States Senator

Christopher A. Coons
United States Senator

Tammy Baldwin
United States Senator

Sherrod Brown
United States Senator

Elizabeth Warren
United States Senator

[3] CFPB, "Small Business Advisory Review Panel for Potential Rulemakings for Payday, Vehicle Title, and Similar Loans," 26 March 2015, page 3, http://files.consumerfinance.gov/f/201503_cfpb_outline-of-the-proposals-from-small-business-review-panel.pdf.

Al Franken
United States Senator

Tom Udall
United States Senator

Mazie K. Hirono
United States Senator

Amy Klobuchar
United States Senator

Ron Wyden
United States Senator

Richard Blumenthal
United States Senator

Edward J. Markey
United States Senator

Dianne Feinstein
United States Senator

Martin Heinrich
United States Senator

Bernard Sanders
United States Senator

Jack Reed
United States Senator

Barbara Boxer
United States Senator

Maria Cantwell
United States Senator

Jeanne Shaheen
United States Senator

Sheldon Whitehouse
United States Senator

Angus S. King Jr.
United States Senator

Debbie Stabenow
United States Senator

Patrick Leahy
United States Senator

Christopher S. Murphy
United States Senator

Tim Kaine
United States Senator

Charles E. Schumer
United States Senator

Kirsten E. Gillibrand
United States Senator

Cory A. Booker
United States Senator

Gary C. Peters
United States Senator

Benjamin L. Cardin
United States Senator

Patty Murray
United States Senator

Brian Schatz
United States Senator

LA UNION

LOS ANGELES COUNTY FEDERATION OF LABOR, AFL-CIO

Rusty Hicks
Executive Secretary-Treasurer

Ricardo F. Icaza
President

The Honorable Richard Cordray, Director
Consumer Financial Protection Bureau
1700 G Street NW
Washington, DC 20552

September 3, 2015

Re: Rulemaking addressing payday lending

Dear Director Cordray:

On behalf of the Los Angeles County Federation of Labor, AFL-CIO, representing over 600,000 workers and over 300 unions. We believe that working families deserve fair and affordable financial access, which is why we are writing in regard to the Consumer Financial Protection Bureau's (CFPB) current rule making process to eliminate debt traps associated with high-cost payday, car title and installment lending practices.

Recently, Los Angeles joined a growing number of California cities that have increased their minimum wage to help lift low-wage workers out of poverty. These efforts have been led by the County Fed and our labor and community allies. As working people continue to win these important victories that will begin to address economic inequality, it is important that the CFPB ensure that these wages are not stripped away by unscrupulous lenders. **It is in this vein that we urge you to develop the strongest possible rules to end the income-stripping effects of predatory lending practices that create long-term cycles of debt for working families.**

This is why we need the CFPB to propose and enact strong rules that will protect hard working consumers from these unfair and exploitative lending practices. The payday lending industry model is based on consumers' inability to repay their loans, and the CFPB has an unprecedented opportunity to change these practices and establish a federal floor for consumer protections. We strongly believe that any meaningful reforms must include an "ability to repay" requirement, to ensure that lenders assess the borrower's ability to repay the debt, factoring in not only the borrower's income, but also their expenses. Far too often, we see borrowers turn to payday loans to help make ends meet. However, once the loan comes due, they find themselves in a more difficult situation when they cannot afford to pay off the entire loan without having to re-borrow so that they have funds to meet their regularly occurring expenses.

Nearly two million Californians are affected by the payday loan debt trap. A mandatory ability to repay standard is critical to ensuring that those who can least afford triple-digit interest rate loans do not get caught in the cycle.

In closing, we'd strongly urge the Bureau to give consideration to including mandatory underwriting as a core provision of the upcoming proposed rule. We

2130 W. James M. Wood Blvd.
Los Angeles, CA 90006
(213) 381-5611
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LOS ANGELES COUNTY
FEDERATION OF LABOR,
AFL-CIO

Rusty Hicks
Executive Secretary-Treasurer

Ricardo F. Icaza
President

greatly appreciate your attention to this issue and hope you will soon propose strong rules to stop debt trap products from continuing to impede the economic and financial security of hard working American families.

Sincerely,

Rusty Hicks
Executive Secretary-Treasurer

2130 W. James M. Wood Blvd.
Los Angeles, CA 90006
(213) 381-5611
fax (213) 383-0772

THE HILL

July 29, 2015, 04:00 pm

Why we need commonsense payday lending rules

By Wade Henderson and Janet Murguia

Four years ago, our nation experienced an important change in the effort to level the playing field and promote the financial health of all Americans when the Consumer Financial Protection Bureau (CFPB) opened its doors. For decades, Americans had been left without any meaningful voice in setting the ground rules for mortgage lending, credit cards, debt collections, and other financial services that have a profound effect on their pocket books.

Thanks to the creation of the CFPB in 2011, we have seen a paradigm shift. Americans from all walks of life who felt confused or even cheated by the complexity of the financial world finally have a place to turn for help. Many of the reckless mortgage terms that brought our economy to its knees are now gone. And while the many honest lenders have benefited from clear rules that apply throughout the entire industry, those who would prey on struggling consumers to line their own pockets are now being held accountable.

Yet as we celebrate the many accomplishments of the CFPB, we look forward to another tremendous opportunity for the Bureau to continue its good work. This fall, the CFPB is expected to issue sweeping new rules to help bring an end to the destructive practices we have seen in payday lending and some other types of small-dollar loans. Even if they have never fallen prey to payday loans themselves, we hope that all Americans will encourage the CFPB to get these rules right.

Payday lending is sold as a quick, easy fix for people who have fallen behind on their bills or have emergency repairs, and have nowhere else to turn for money. They are sold even more aggressively in communities of color still reeling from the financial crisis and years of low wages and underemployment. While there is a real need for short-term, small-dollar credit, too often, payday loans don't work as advertised. Through a mix of fees that seem reasonable up front, but which quickly snowball out of control, and underwriting that ignores long-term financial health, many people wind up in a deeper hole than when they started.

Fees for payday loans typically run from $10 to $20 for every $100 borrowed per pay period. So a payday loan of $350, at a rate of $15 for each $100 borrowed, requires a borrower to repay more than $400 in just two weeks. Over the course of a year, that can translate into a rate as high as 400 percent.

It's understandable that lenders would charge more for small loans than they would for home or car loans. But as we've seen from the 2008 mortgage crisis, if the power to lend is abused, it can turn into the power to destroy. Just as we require drug companies to see that their cures for disease are safe, the cures being sold for financial ailments shouldn't be worse than the disease itself.

In the coming months, we'll hear from industry lobbyists who say payday lenders already underwrite loans to make sure borrowers can pay them back. But there is a big difference between making sure borrowers have funds that can quickly be wired out of a checking account and making sure that borrowers can actually use loans to get back on their feet.

In too many cases, borrowers are so deep in debt that their only choice is to renew their loans at the same high rates. The CFPB found that nearly half of all payday loan customers take out 10 or more loans every year. Lobbyists for payday lenders know this—indeed, their business model depends on it—and that's why we can expect to see them fighting along with their allies in Congress to hang on to it.

We'll also hear payday lenders' lobbyists argue that this rule undermines "access to credit." Yet eight years ago, Congress outlawed payday loans to military service members, and nobody—except payday lenders' lobbyists—argued that soldiers and sailors were being unfairly deprived of access to credit. If it is unfair and immoral to make 400 percent interest loans to people who serve our country, it is unfair and immoral to make those kinds of loans to any American.

The upcoming CFPB rule will only require payday lenders to do what every lender should do as a matter of common sense: make sure that borrowers can repay their loans, on time, without getting in over their heads and trapped in an endless cycle of debt. This isn't controversial—simply put, this should be a matter of right and wrong—and we're hopeful that, with help, the CFPB will get it right.

Henderson is president and CEO of The Leadership Conference on Civil and Human Rights. Murguia is president and CEO of National Council of La Raza. Both organizations are members of the Asset Building Policy Network.

The Hill 1625 K Street, NW Suite 900 Washington DC 20006 | 202-628-8500 tel | 202-628-8503 fax

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Prepared For: [redacted]

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Sincerely,

Christine Heinle
Director of Consumer Underwriting

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The APR ranges from 99.75% to 184.36%. For example, a consumer in California with a 560 FICO who meets income and other credit requirements, could receive a loan for $10,600 with an interest rate of 95% and origination fee of $500 for an APR of 99.75%. In this example, a consumer would receive $10,100 deposited into their account and will make 84 monthly payments of $840.56. Eligibility requirements for this loan include, but are not limited to acceptable credit score, income and minimum age. Minimum loan amount $2,600.

LoanMe, Inc. - Consumer Division, 1900 S. State College Boulevard, Suite 300, Anaheim, CA 92806. 1-844-252-2992. © Copyright 2015 LoanMe, Inc. All Rights Reserved. California loans are made pursuant to California Department of Business Oversight Finance Lenders Law License #603K061. LoanMe also offers loans in certain other states.

Automobile Title Loan CONSUMER ADVISORY

Exercise caution before borrowing money through an automobile title loan. These loans require you to put up as collateral the ownership of your car. If you miss payments or default on the auto title loan, the lender can take your vehicle.

Auto title loans typically are advertised as short-term loans for people who need money quickly but may not have access to more conventional loans, possibly due to marginal credit scores.

Few assets are more important to Californians' financial security than their cars. Borrowers who use their auto titles as loan collateral are risking that asset. That's why we strongly urge consumers to exercise great care before taking out an auto title loan, and to try other options first. The amount of these loans typically is less than what the car is worth.

WARNING: FOR ALMOST ALL AUTO TITLE LOANS, THE INTEREST RATE LENDERS CAN CHARGE IS UNLIMITED. THIS SHOULD BE A LOAN PRODUCT OF LAST RESORT.

Current state law does not limit interest rates for consumer loans of $2,500 or more. In 2013, virtually 100 percent (99.99 %) of auto title loans equaled or exceeded that threshold. The annualized interest rate on the vast majority of these loans ranged from 70% to 100% and higher.

Even if you don't have the protection of interest rate limits, the law requires lenders to deal with you fairly and honestly. That means they must fully inform you about the interest you will pay. Carefully review the terms of the loan BEFORE you sign a contract!

Tips for consumers considering an auto title loan:

- *Borrow only as much money as you can afford to fully repay when the payment is due, which may be less than the amount you may be eligible to receive.*
- *You have the right to full disclosure in your contract of all interest charges, the annual percentage rate (APR) of the loan and all fees. The final contract must be in the language in which you negotiated it.*
- *Before you take out a loan, read the contract thoroughly and be sure you understand all the terms. Once the loan agreement is signed, you are legally responsible to fulfill the obligations in the contract.*
- *Be aware some lenders use remote engine shutdown devices that allow them to turn off your car if you don't make payments. Some of these devices have GPS tracking capability.*
- *Although these loans are quick and easy to obtain, you pay higher prices for the convenience.*
- ***ABOVE ALL, CONSIDER AVAILABLE ALTERNATIVES.** Examples include asking your employer for an advance on your next paycheck; finding out if your bank or credit union provides short-term credit products; asking creditors for more time to pay your bills; asking for a loan from a relative or friend.*

Always check with the Department of Business Oversight on a company's license BEFORE entering into an agreement for an auto title loan.

www.dbo.ca.gov 1-866-275-2677

Sophia Garcia
Advance America

APR DISTORTS FLAT FEE FOR SHORT-TERM CONSUMER LOANS

California law provides several meaningful safeguards for cash advance borrowers, including setting a maximum advance amount of $255 and limiting fees to $17.50 per $100 borrowed.

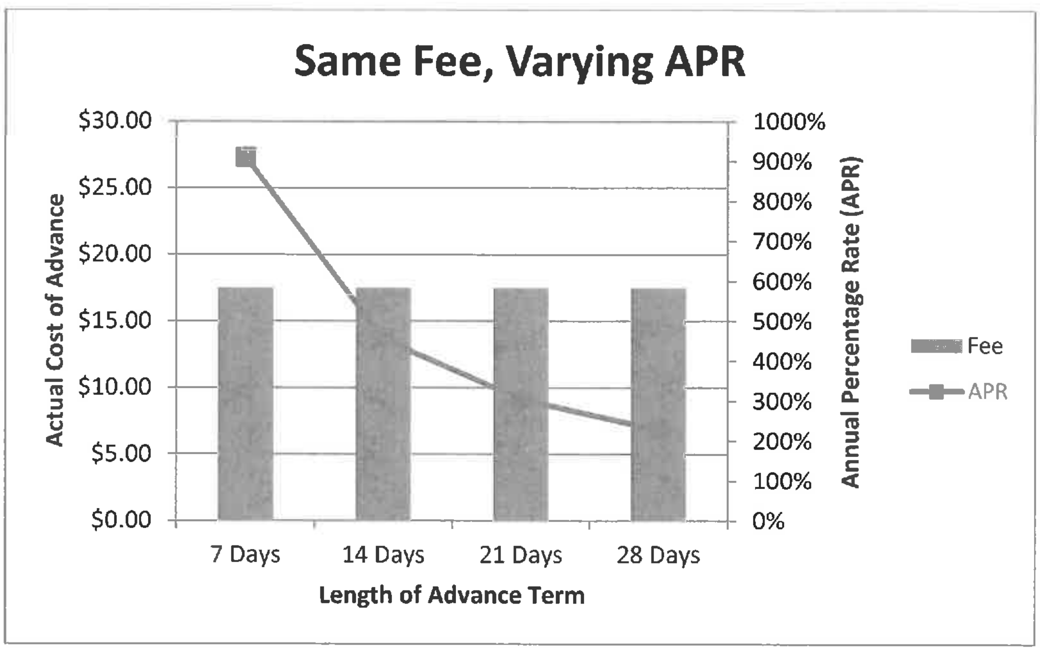
Annual Percentage Rate (APR)

As required by the Truth in Lending Act (TILA), short-term credit providers always disclose the fee associated with services as both a dollar amount and an Annual Percentage Rate (APR). In California, the $17.50 fee is equivalent to a 455% APR. But, due to the short-term nature of a payday advance, APR is not an appropriate value indicator.

A Flawed Calculation. The APR calculations disclosed by lenders represent the *implied* annual rate for an advance, and assumes that short-term loans are extended 26 times (every two weeks) during a year, with the customer paying a new fee each time. This is a flawed assumption. Customers use our service for a relatively short period of time – weeks or months, not years.

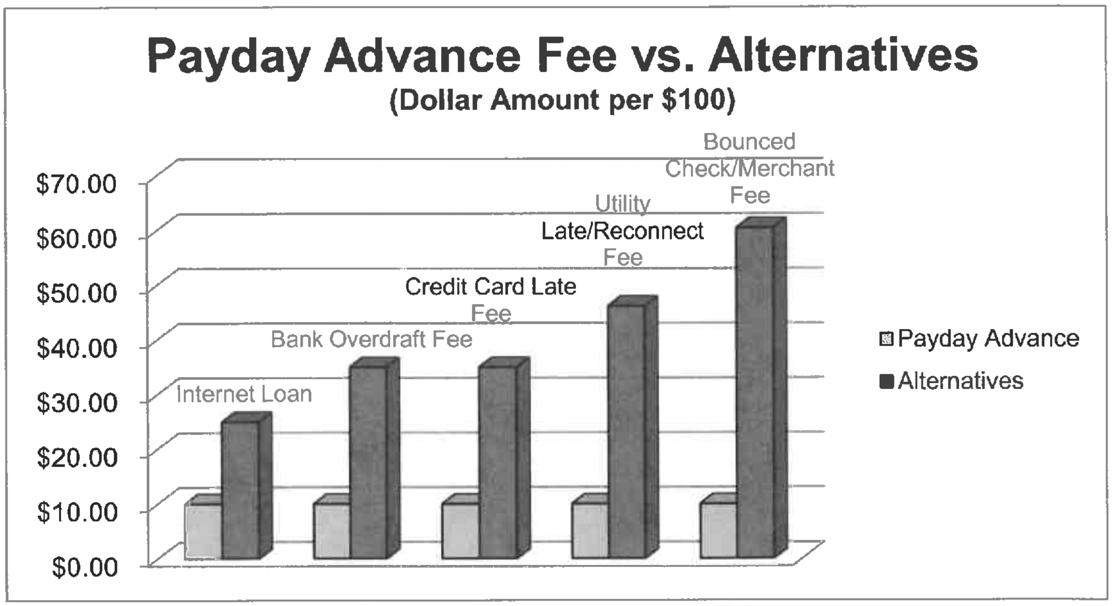
$17.50 Typical Advance Fee (per $100 Borrowed) **X 26** # of Consecutive 14-day Pay Cycles **= 455%** Implied APR

The Flat Fee. The fee on an advance is a flat, fixed amount based on the total amount borrowed, and does not compound interest. Whether a customer repays their advance in three days or 30, they will pay the same one-time fee.



Note: Chart based on the Rhode Island fee of $10 per $100 borrowed.

And, this one-time fee often proves to be less expensive than the costs associated with offshore Internet loans, overdraft usage, bounced checks, late payments to credit card companies, and utility reconnections.



Sources: CFSAA.com; Stephens, Inc. 2011; Pew Health Group "Still Risky" Report 2012; Bankrate.com; Readex Research National Data on Short-Term Credit Alternatives 2006; Moebs Services 2010 Financial Pricing Survey

Even bank and credit union officials have said that APR is not an accurate measurement of short-term credit.

"Any time an annual percentage rate is calculated for a term less than a year, the inclusion of a fixed fee, even a modest one, will distort and overstate the APR. The shorter the repayment period, the greater the APR will appear in instances where there is a fixed fee. This means that the sooner the consumer repays, the greater the calculated APR – a difficult concept to explain to consumers, as it appears that paying earlier actually increases the cost of credit." **Kenneth J. Clayton, American Bankers Association (ABA)**

The Alternatives. According to an FDIC study, the short-term consumer loan product is often the most cost-effective option even when comparing the implied APR for an advance against the annual rates of bank overdraft programs. Unlike payday loans, the services below are not required by law to publish the fee as an APR.

Service	Median Size	Median Fee	Median Fee/$100	APR
POS/Debit Overdraft	$20	$27	$135	3,520%
ATM Overdraft	$60	$27	$45	1,173%
Check Overdraft	$66	$27	$41	1,067%
Payday Advance	$361	$53	$15	391%

Source: FDIC Study of Bank Overdraft Programs 2008 and Company data.

Eliminating Credit through APR Caps. Despite these facts, a number of state legislatures have pursued misguided legislation that would impose an APR cap on short-term loans; an effective ban of the cash advance service. In fact, the Center for Responsible Lending, which has led the campaign to prohibit short-term lending in various states, said that one state's policy makers "**fully understood that [an APR cap] would ban the product**," when the legislature passed an APR cap in 2008.[1]

Several states and the District of Columbia have implemented APR caps, including Arkansas, Arizona, New Hampshire, Ohio, and Oregon. These actions created an environment that was not economically viable for many lenders, as they were unable to cover basic operating costs, such as wages, rent and utilities.

For example:

- Under **a 36% APR cap, the average $300 loan would yield a $4.14 fee**. No business – not a credit union, not a bank – can lend money to many customers for less than 30 cents a day without being subsidized.
- Lenders in these states were forced to close hundreds of centers, costing thousands of employees their jobs and leaving consumers with fewer credit options.
- Historically, price fixing of any kind almost always results in reduced consumer access to any product.

Interest rate caps harm consumers by eliminating a critical choice for thousands of people who need short-term credit, forcing them to choose costlier or less regulated options, such as offshore Internet loans.

[1] Business TN, September 2008

OVERDRAFT IS COSTLIER SHORT-TERM CREDIT

When facing unexpected expenses or periodic financial challenges, consumers consider a variety of short-term credit options, including overdraft programs offered by banks and credit unions.

A study from **former U.S. Comptroller of the Currency Robert Clarke** and **George Mason University** Professor Todd Zywicki examined short-term lending and overdraft protection's overlapping customer base, direct competition, and similar consumer protection concerns. Clarke and Zywicki urge consistent regulation of these similar products, or risk harming consumers. They caution that inconsistent regulatory treatment of payday and overdraft would lead to reduced choice and higher prices without a corresponding increase in consumer protection.

"[S]ome consumers are essentially paying $34 – which is the typical overdraft fee – to have the bank spot them less than $24 for just a few days. If a consumer were to get a loan on those terms, that would equate to an annual percentage rate of over 17,000 percent."

-- Richard Cordray, Director, Consumer Financial Protection Bureau

A number of recent studies from leading research and advocacy organizations reveal rapidly rising bank fees, as well as the growing number and complexity of these fees. Economic research firm Moebs Services found that the price and usage of bank overdrafts have risen while at the same time competition has reduced the cost of cash advances. According to Moebs:

"Rather than a bank or credit union, more consumers utilize payday lenders to cover an overdrawn balance in their checking account. The reason is the median charge for a $100 advance ... A bank would charge $30 and a credit union $27. Our research shows the median overdraft account balance is about $40. 57 out of 100 frequent overdraft users go to payday lenders when they are short on funds, because payday lenders are the low price source for short term cash needs."

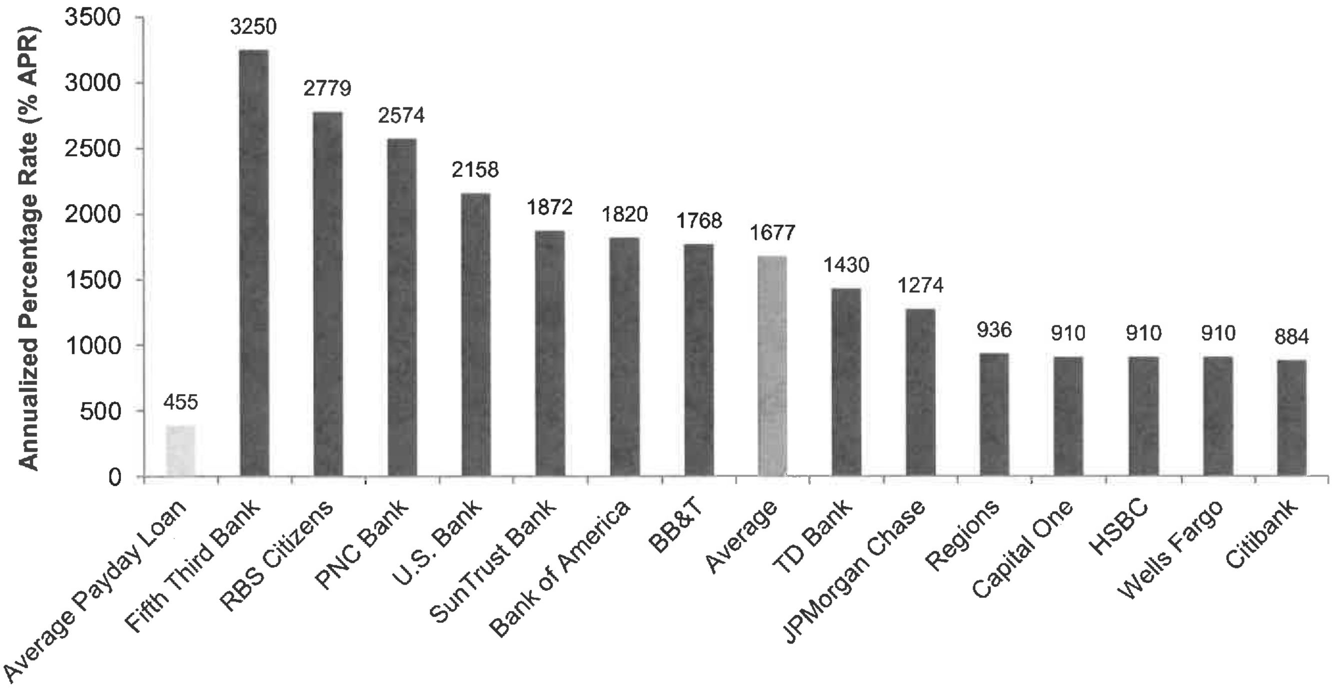
And, the fees associated with these overdraft programs remain high:

- Most large banks charge a **median fee of $34** per overdraft; credit unions charge a median fee of $28 per overdraft, up 12 percent over two years.
- For bounced checks banks charge a **median non-sufficient funds (NSF) fee of $32.20**; meanwhile, retailers receiving bad checks charge a median price of $25, for **a total cost of more than $57.**
- Consulting firm Strunk & Associates reports that overdraft represented **51 percent of its credit union clients' fee income** in 2012, and **78 percent of its community bank clients' fee income**.

In many cases, these fees may even be higher than the actual amount of a consumer's overdraft. The Consumer Financial Protection Bureau (CFPB) found that the median overdraft transaction amount resulting in an overdraft is $50, and the median debit card transaction amount resulting in an overdraft is $24. A recent report from the Pew Charitable Trusts found that 15 percent of overdrafters report that the transaction causing their most recent overdraft was not more than $5.

In their report, "2012 CFA Survey of Big Bank Overdraft Loan Fees and Terms," the Consumer Federation of America (CFA) determined that charges on a $100 overdraft often equate to an annual percentage rate (APR) of over 1,000 percent. CFA's Jean Ann Fox concluded that "banks are charging staggeringly high rates for short-term borrowing."

Average Overdraft is Four Times More Expensive than Average Payday Loan



Source: "2012 CFA Survey of Big Bank Overdraft Loan Fees and Terms"

Select Quotes from Government Officials:

"...I think you're absolutely right to note that there are comparabilities between [payday loans] and overdraft product and the effect on consumers."

-- Richard Cordray, Director, CFPB, House Oversight and Government Reform Subcommittee Hearing, January 24, 2012

"When consumers (overdraw) recurrently, it is a credit product, and they're paying eye-popping rates."

-- Sheila Bair, then Federal Deposit Insurance Corporation Chair, "Anger at Overdraft Fees gets Hotter, Bigger and Louder," USA Today, September 29, 2009

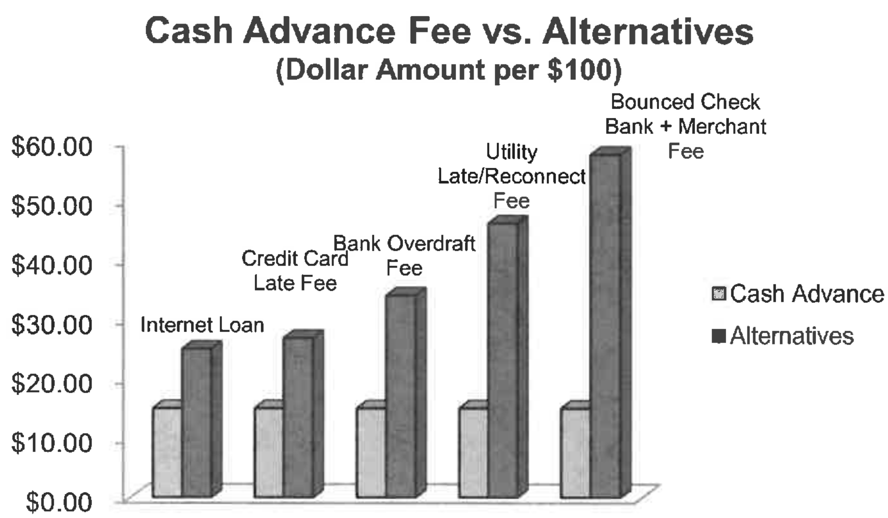
"Income generated by overdraft protection programs is also coming under increasing scrutiny. We believe that this is a legitimate product if it is used properly. By 'properly,' I mean that it should be offered as a convenience to customers that is used sparingly, not operate as a thinly disguised credit product that consumers use routinely as an alternative to payday loans or other such products."

-- John Walsh, then-Acting Comptroller of the Currency, the Annual Convention of the Independent Community Bankers of America, March 23, 2011

CASH ADVANCES: LESS EXPENSIVE THAN THE ALTERNATIVES

The fee on a cash advance is a flat, fixed amount based on the total amount borrowed, and does not compound interest. Whether a customer repays their advance in three days or 30, they will pay the same one-time fee.

This one-time fee often proves to be less expensive than the costs associated with offshore Internet loans, overdraft usage, bounced checks, late payments to credit card companies, and utility reconnections.



Sources: CFSAA.com; Stephens, Inc. 2011; CFPB CARD Act Annual Adjustments, 2013;Moebs Services, 2013; Readex Research National Data on Short-Term Credit Alternatives 2006; Bankrate.com 2013 Checking Account Survey 2013; Moebs Services 2012

Even bank and credit union officials have said that APR is not an accurate measurement of short-term credit.

> "Any time an annual percentage rate is calculated for a term less than a year, the inclusion of a fixed fee, even a modest one, will distort and overstate the APR. The shorter the repayment period, the greater the APR will appear in instances where there is a fixed fee. This means that the sooner the consumer repays, the greater the calculated APR – a difficult concept to explain to consumers, as it appears that paying earlier actually increases the cost of credit." **Kenneth J. Clayton, American Bankers Association (ABA)**

The Alternatives. According to an FDIC study, the short-term consumer loan product is often the most cost-effective option even when comparing the implied APR for an advance against the annual rates of bank overdraft programs. Unlike cash advances, the services below are not required by law to publish the fee as an APR.

Service	Median Size	Median Fee	Median Fee/$100	APR
POS/Debit Overdraft	$20	$27	$135	3,520%
ATM Overdraft	$60	$27	$45	1,173%
Check Overdraft	$66	$27	$41	1,067%
CA Payday Advance	$255 (max.)	$44.63 (on $255)	$17.50	455%

Source: FDIC Study of Bank Overdraft Programs 2008 and Advance America Company data.

Sherry Treppa
Habematolel Pomo of Upper Lake

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Toll Free: 1-877-543-5102 - Fax: 707-275-0757

January 4, 2016

Honorable Committee Chairman Dababneh and honorable members of the Assembly Banking and Finance Committee,

My name is Sherry Treppa and I am the chairperson of the Habematolel Pomo of Upper Lake, a federally-recognized Indian Tribe. I have represented the Tribe's interests as an elected leader for the past eleven years, and held the position of chairperson for the last seven years. Our Tribe owns and operates several online small-dollar lending businesses, and I am here today to provide you and the Assembly with information on how these businesses work, how they ensure compliance, and how we meet the myriad of challenges inherent in operating small-dollar lending businesses.

After a brief overview of our business, our customers, and how we are regulated, I offer four essential points for your consideration. First, I will describe our underwriting process and how it squarely addresses the common concern about whether and how lenders evaluate customers' ability to repay. Second, I will address the common misperception that our products are somehow designed to perpetuate a consumer "cycle of debt." Third, we need the Committee to understand the pitfalls of relying too heavily on the measure of annual percentage rates when considering products like our installment loans. Finally, as a federally recognized Indian tribe and as an owner and operator of lending businesses, the Tribe would like to share some observations on the bill, AB 268.

Overview

The Tribe's four lending portfolios offer loans in the range of $300-$1000, with qualified returning customers eligible for a loan of up to $1200. Outside of finance charges, we do not charge a fee to apply for a loan. Consumers reach the lending businesses on our reservation through internet portals that we own and operate. Our loans are not payday loans, as that term is commonly understood. Our loans are structured such that repayment occurs in a series of 20 installment payments which are bi-weekly or semi-monthly to coincide with the dates the customer is paid. If a customer makes only the minimum payments set out in their repayment schedule, then their loan will be paid in full in ten months. However, as I will discuss in more detail later, customers may pay in excess of the minimum payments (all excess pays down the principal) or pay their loan off in full early whenever possible, and they may do so without penalty.

Across all of our lending companies, our average borrower is approximately 45 years old with a median income of $45,000. Our customers rarely report public assistance or other benefits as an income source. Our median loan amount is $700, and, while our loan contract is structured on a ten-month payment duration, our customers frequently repay their loans in less than 90 days. Moreover, borrowing patterns are moderate; over a one-year period, 75% of our borrowers had one transaction; while 86% of our borrowers have two transactions or less when measured over a two-year period.

As a federally-recognized Indian tribe, we are responsible for our own regulation. We have responded to this charge by creating a robust regulatory framework. Our lenders are incorporated under tribal law and are licensed and regulated by the Tribal Consumer Financial Services Regulatory Commission, the regulatory arm of the Tribe. As a condition of licensure, our lenders must implement internal controls and processes to ensure that business is conducted in a responsible manner, and in accordance with all applicable laws. To that end each lender has implemented a comprehensive compliance management system for its operations including a suite of regularly-updated written policies covering all aspects of lending. The Commission regularly performs audits in order to assess compliance and identify deficiencies. Should a lender fail to satisfy the responsibilities imposed by applicable law, the Commission may impose fines and penalties, and may even revoke a license in the event of noncompliance.

Underwriting/Ability to Repay

Many who seek to further regulate online lending emphasize greater evaluation of borrowers' "ability to repay." The CFPB's March 2014 outline of proposed rules for small-dollar loans mentions this often, and features it as a focal point of their proposed rules. The CFPB heavily implies that lenders do not evaluate the borrower's ability to repay – their proposal speaks of lenders' "failure to determine consumer's ability to repay" and the consequences that occur "when lenders do not determine a consumer's ability to repay."

The truth is quite the opposite. Lenders such as ours devote substantial time and resources to underwriting techniques that assess ability to repay. It is a central tenet (if not *the* central tenet) of lending that one wishes to be repaid the money that one lends. Our loans are unsecured: if a customer defaults, they do not have their car or other property repossessed, and, because we do not report default to the big "3" (Experian, Transunion and Equifax), their credit report is not affected. Because our lenders carry all of the risk in these transactions, with no real remedies for defaults, a robust underwriting process is an operational imperative.

Our lenders, and the online lending community generally, are leading the way in software-based underwriting. Consistent with our mission to deliver a quick, easy, and hassle-free experience for the borrower, our underwriting is fast and reliable. Our lenders use a systematic "waterfall" to assess customer data against a set of proprietary algorithms and data analytic tools. The customer's loan request is compared against their income and existing credit obligations because it is a strong factor in determining the customer's *ability* to repay. The customer's repayment history is also checked because it is the strongest factor in assessing the customer's *willingness* to repay. If the customer's ability to repay and willingness to repay satisfy our underwriting requirements, then their application will proceed through the identity verification portion of our process, to deter fraud, money laundering, and terrorist activities. After an application has passed the automated portion of our underwriting process, it proceeds to the "live" underwriting process during which a trained and monitored customer service agent follows a set of written procedures to verify the information in the consumer's application, including employment. If the consumer's application fails to pass any portion of this underwriting process, it is denied.

Specific data from our businesses illustrate the rigor and effectiveness of our underwriting. From January through June 2015, 1,600,000 applications were offered to our lenders, and only 55,000 – or 3.4% – were accepted. Of those accepted, only 30,000 were approved and funded. Put another way: 98% of new customers are rejected in underwriting. These numbers make it clear that our lenders place great importance on evaluating a prospective customer's ability to repay, and lending only to those we believe will indeed repay their loans.

The "Cycle of Debt" Myth

Another popular criticism of small dollar lenders is that businesses thrive on trapping the consumer in a never ending "cycle of debt" where, once the first loan is made, a consumer is allegedly unable to escape repayment burdens. This is a myth that is belied by our business strategy, our practices, and the data provided today.

Our lending activities are focused on providing the consumer with a positive experience. Our business model depends on helping underbanked consumers facing difficult financial issues meet their obligations without incurring the serious ramifications of defaulting on an obligation, failing to pay a bill, or incurring an overdraft on their checking account. This mission is incompatible with the idea of purposefully trapping consumers in a cycle of debt. Our business practices explicitly encourage consumers to pay off debts early (without penalty): our customer service agents' guidelines ensure that customers understand that the quicker they pay the principal the less interest they will have to pay over the course of the loan. Furthermore, we have invested in helping increase our customers' financial literacy by engaging the services of EverFi, a company that provides online courses and materials. We provide a link to these materials on our lender websites.

Like any business we want repeat customers, but we want the kind of repeat customers that make the decision to come back and take out another loan with us – not the kind of repeat customers who are forced to stay.

APR and Overdraft

The use and utility of annual percentage rate is an important part of any discussion of small dollar lenders. Opponents of the small dollar lending industry regularly use APR as a proxy for whether a loan is fair, without acknowledging how the measure is ill-suited to financial products that do not stretch over a number of years. The CFPB rule proposal further perpetuates the APR debate by essentially demanding a 36% APR threshold for all small dollar loans, and imposing multiple and quite onerous underwriting and reporting requirements for all products above that rate.

We believe, however, that APR is a poor, inaccurate, and misleading metric for evaluating our loans, and small dollar loans generally. For example, the loans made by our tribal businesses, are, on average, paid off in less than three months, with no loan being longer than ten months. **Annual** percentage rate is a grossly inaccurate measure of the cost of our credit.

Another example of the limited utility of APR in providing the entire picture of a product is overdraft protection. Most banks and credit unions offer overdraft protection of some type, where instead of being liable for the insufficient funds fee (and for the bounced check) the bank will cover the overdraft. The bank does this for a fee, of course, likely a per-overdraft as well as per-day charge until the consumer pays the bank back for the overdraft. If you look at this as a loan, the implied APRs can be staggering: a survey of overdraft protection plans at eight large banks in Chicago calculated the implicit APR of these plans at 2400%.[1]

AB 268

Tribal Sovereignty is an inherent attribute of Indian Tribes that predates the United States Constitution. Generally, states cannot impose their laws on Tribes unless Congress pursuant to its plenary power over Indian affairs provides explicit authorization to do so. However, as the Committee is no doubt aware, tribal governments and state governments do collaborate on a wide range of issues. Since Assembly Member Dababneh has put forth AB 268 and plans to use it to reform the California Finance Lenders Law, I thought it would be a useful exercise to give a tribal lender's perspective on some of its provisions.

[1] See "Payday Holiday: How Households Fare after Payday Credit Bans," by Donald P. Morgan and Michael R. Strain, Federal Reserve Bank of NY Staff Report no. 309, November 2007 (rev. February 2008), at page 4 and footnote 5. Morgan and Strain also quotes additional studies that point out that North Carolina banks began to offer overdraft protection services "more actively after payday lending was banned". (fn. 5).

The major changes in AB 268 are the establishment of an installment loan rate review process for those lenders who wish to become a licensee of the Commissioner of Business Oversight. The bill outlines the minimum level of information that must be provided to the Commissioner by a prospective licensee. The principal concerns to AB 268 are two disclosure requirements: (i) displaying a "representative" APR for the products, and (ii) the underwriting standards used by the lender, which are discussed briefly below.

Representative APR Disclosure. Displaying a representative APR for our credit products would be difficult, if not impossible, to disclose accurately. The APR of a specific loan in the same product line is highly dependent on various factors including the date the loan was taken out, the date the first payment is due, the repayment period of the loan, and whether any promotions have been applied.

Let's consider our lending model as an example. Each payment that a consumer makes on one of our lender's loan consists of a set finance charge and an amount equaling 5% of the customer's initial principal balance. These payments are scheduled to coincide with the customer's payment dates. This means that the APR calculation on a $500 loan would display a different amount for a customer who is paid semi-monthly (e.g. the 1st and 15th of each month), and a customer who is paid bi-weekly (e.g. every two weeks). Further, returning customers may receive rate discounts and promotions where their first payment may be reduced or extended. These variances affect the interest rate and would prevent our lenders from providing the Commissioner with the single "representative" interest rate for a particular product.

Attempting to offer some range of APR values would cause confusion to the consumer and would potentially cause our lenders to run afoul of federal consumer protection laws. It is important to note, however, that we already disclose the accurate APR for a consumer's specific loan in the loan application disclosures, as is required by the Truth-in-Lending Act.

Disclosure of Underwriting Standards. We would also take issue with disclosing underwriting standards. As previously mentioned, our underwriting process uses proprietary and confidential algorithms. This is the result of the efforts of our team of software developers and engineers, and for trade secret purposes we would be wary of disclosing anything beyond a simple overview of this process, especially if such disclosures are public record. The sheer technical complexity of this process may also make disclosure impractical, unhelpful, and harmful to competition.

Conclusion

I hope my testimony has been helpful to you and the rest of the Assembly, and I hope you have a better picture of the landscape of tribal lending. I want also to make clear my sincere appreciation for the Assembly's decision to include representatives of tribal lending in the process of debating this bill.

One of our issues with the CFPB's proposed rules has been the CFPB's glaring lack of meaningful engagement with tribes. While we maintain the position that the CFPB does not have jurisdiction over tribes, we feel that since the rules threaten an industry with heavy tribal involvement it would have been a helpful and appreciated gesture to reach out to tribes more throughout the process. We appreciate that, in this process, the Assembly has thoughtfully engaged tribes in a way that federal regulators have not.

I am happy to answer any questions you or the Assembly may have.

Sherry Treppa
Chairperson Board of Directors TLE, Inc.
A wholly owned corporation of the
Habematolel Pomo of Upper Lake Tribe

Additional Information

CFSI Study Finds $23.4 Billion in Overdraft Fees for Underserved Consumers in 2014

New Market Sizing Report from CFSI and Core Innovation Capital Reveals Financially Underserved Market Grew More than Seven Percent in 2014 to Estimated $138 Billion

December 08, 2015 08:00 AM Eastern Standard Time

CHICAGO--(BUSINESS WIRE)--Today, the Center for Financial Services Innovation (CFSI) and Core Innovation Capital (Core) released their fifth annual Underserved Market Size Study. The report, which benefitted from the financial support and strategic input of Morgan Stanley and with additional financial support from CFSI'S Founding Partner the Ford Foundation, reveals that underserved American consumers spent $138 billion in fees and interest in 2014, generated from a volume of $1.6 trillion in financial activity. Overdraft represents the single largest revenue category of all 26 products sized at $23.4 billion.

"Underserved consumers make up a large portion of financially unhealthy Americans, and represent a tremendous opportunity for financial institutions and innovators," said Jennifer Tescher, President and CEO of CFSI. "This annual study explores the complex makeup of the marketplace so that providers are better able to develop and launch safe, affordable, high-quality financial products and services to improve consumer financial health."

Findings indicate a continually growing marketplace that expanded at a rate of 7.6% during 2014, demonstrating significant opportunities for financial institutions and investors to develop high-quality, affordable solutions that improve the financial health of underserved consumers. The market is projected to grow by 6.8% from 2014 to 2015, reaching total revenue of $147 billion.

"Americans' financial lives are becoming more complex and more volatile - financial vulnerability is the new normal, and ongoing growth in alternative products and services reflects this pressure," said Core Innovation Capital's Vice President Colleen Poynton. "While advancements in technology and new entrants are driving increased efficiency in certain product verticals, massive opportunity remains to reduce costs and enhance access, efficiency, and experience across financial services by innovating at the level of infrastructure, risk, product design, and distribution."

The Market Size Study identified three key trends driving the growth of 26 different products and services used by underserved Americans to borrow, spend, save and plan in 2014, including subprime auto loans, prepaid cards, and checking accounts.

- **Short-term credit continues to grow faster than single-payment credit**
  Consumer are spending more on short-term credit products – including installment loans and subprime credit cards. The category has grown 15% to $29 billion since 2013, while spending on single-payment credit -- such as payday loans and overdraft -- has declined by 0.6% to $38 billion over that same period. CFSI projects that short term credit products will soon overtake single payment credit in total revenue. Major factors driving this shift in credit revenue from loans due in one lump sum to loans due in installments or offered on a revolving basis include:
    - Anticipated regulatory changes likely to slow the revenue growth of single-payment products further;
    - Continued innovation from online installment and marketplace lenders;
    - Marketing of credit cards to a wide range of subprime consumers.

- **Subprime auto and student loans drive steep growth in long-term credit**
  At $48 billion in total, long-term credit products make up the largest percentage of interest and fees paid by consumers within this study. Subprime auto constitutes the largest product segment among Long Term Credit products with more than $22 billion in total fees and interest. The availability of cheap credit for subprime auto loans and sustained high consumer demand for student loan products drive the bulk of lending in this category.

- **Explosion of growth for marketplace lending**
  Marketplace lending, typically offered by online, nonbank institutions that match sources of capital with applicants for personal installment loans, is a recent entrant into the consumer finance market, but is growing faster than any other segment with 310% expansion of revenue during 2014. It remains relatively small in terms of total revenue at $0.6 billion, but CFSI anticipates

that it may play an increasing role in the expansion on installment and line-of-credit loan models currently drawing a growing number of consumers -- and will maintain a high growth rate into next year.

"As the market for high quality products for the financially underserved continues to grow, there are significant investment opportunities to support innovative solutions that can help low-income Americans improve their financial security and address the nation's growing economic inequality," said Audrey Choi, Head of Global Sustainable Finance at Morgan Stanley. "At Morgan Stanley, we are committed to harnessing the capital markets to bring these kinds of solutions to scale."

This annual report sizes the market opportunity to improve the financial health of underserved consumers. At a minimum, this market includes the 68 million adults that lack bank accounts or use alternative financial services, according to the FDIC. In addition, CFSI and Core measure marketplace revenue generated by consumers who are underserved due to subprime credit scores, unscorable credit information, or low-to-moderate or volatile incomes.

The report is not intended as a commentary on the appropriateness, safety, or quality of any specific product, nor should it be construed as an endorsement of, or investment advice on, any product or service included.

About CFSI:

The Center for Financial Services Innovation (CFSI) is the nation's authority on consumer financial health. CFSI leads a network of financial services innovators committed to building a more robust financial services marketplace with higher quality products and services, specifically for those who are struggling. Through its Compass Principles and a lineup of proprietary research, insights and events, CFSI informs, advises, and connects members of its network to seed the innovation that will transform the financial services landscape. For more on CFSI, go to http://www.cfsinnovation.com and follow on Twitter at @CFSInnovation.

About Core Innovation Capital

Core Innovation Capital is a leading investor in financial services that empower everyday Americans. With offices in San Francisco and Los Angeles, Core leverages its deep financial services, technology and regulatory expertise to help entrepreneurs and other investors build disruptive, high growth businesses. Core portfolio companies save over ten million customers more than four billion dollars every year. Investments include Oportun, Ripple Labs, CoverHound, NerdWallet, and TIO Networks. Follow Core at @CoreEMC and online at www.corevc.com.

About Morgan Stanley

Morgan Stanley is a leading global financial services firm providing a wide range of investment banking, securities, investment management and wealth management services. With offices in more than 43 countries, the Firm's employees serve clients worldwide including corporations, governments, institutions and individuals. Since 2006, Morgan Stanley has committed more than $9.6 billion to strengthen underserved communities. For further information about Morgan Stanley, please visit www.morganstanley.com.

enova.

January 4, 2015

Assemblymember Matthew Dababneh
c/o Mark Farouk
Chairman, Assembly Banking & Finance Committee
1020 N Street, Room 360B
Sacramento, CA 94249
Transmitted via email to: Mark.Farouk@asm.ca.gov

Dear Assemblymember Dababneh

Enova International Inc. (NYSE: ENVA) develops and offers financial products to individuals in California, across the United States, and internationally. We pride ourselves on putting customers first, developing products for consumers who do not have prime credit scores (approximately 40% of the U.S.) and providing excellent customer service. As one of the largest licensed online consumer lenders in the U.S. and the U.K., Enova is a leader in using data, technology, and analytics to provide access to credit while championing responsible lending practices and innovative product features like those recently highlighted by the Center for Financial Services Innovation (http://www.cfsinnovation.com/Press-Releases/Financial-Services-Companies-Pursuing-Quality,-Tes). Enova is directly supervised by the Consumer Financial Protection Bureau in the U.S. (in addition to many state-level regulators) and the Financial Conduct Authority in the U.K.

While we don't believe that the Internet has changed everything, we do believe that online services have brought convenience and efficiency to consumers and that many consumers access the Internet via their mobile phones. Consumers have shown a clear preference for electronic payment systems (particularly using ACH instead of paper checks to pay bills), as Federal Reserve statistics on payments[1] have shown. In addition, the December 2015 American Banking Association survey shows that most banks are simply not servicing consumers who need personal loans for less than $2,500. This matches the well-established FDIC Households Survey that shows a large and growing number of consumers who have bank accounts but use alternative financial services, with 20 percent (24.8 million) of U.S. households categorized as "underbanked" in 2013.

We believe it is important that California continue to ensure that consumers, especially consumers who don't qualify for prime credit, have access to a variety of credit products. It is in the spirit of that belief that we offer the following information.

Deferred Deposit Transaction Law (DDTL) - CNU

In California, Enova operates under the DDTL through CNU of California, LLC d/b/a CashNetUSA ("CNU"), which makes online short-term loans of up to $255 to eligible consumers, and has been licensed under the DDTL since 2006. As a licensee, CNU is examined annually by the DBO. The CNU platform uses more detailed and extensive scorecards than the simple FICO score tiers used by many mainstream automobile and credit card lenders. These advanced credit models incorporate real-time imports from credit reporting agencies and third

[1] https://www.frbservices.org/files/communications/pdf/research/2013_payments_study_summary.pdf

party databases, "know your customer" tools, and customer identification providers to establish identity. The automated approval systems are backstopped by manual underwriting processes to ensure that the credit guidelines accurately assess the creditworthiness of consumers.

To provide the best possible customer service, Enova offers call center access by phone, email, and live chat 24 hours a day, seven days a week. We strive to provide the best customer service possible, and as a result our customer satisfaction data is very positive. For the past 6 months, 95% of CNU California customers indicate they are happy with our customer service and 97% of CNU California customers would recommend the product to friends, relatives, and colleagues. In fact, with respect to California specifically, Enova received only seven complaints out of 284,809 loans in 2014.

California Finance Lenders Law (CFLL) - CNU and NetCredit

Enova also offers personal loans in California under the CFLL through CNU, and also through NC Financial Solutions of California, LLC d/b/a NetCredit ("NetCredit"). NetCredit is an online financial service provider servicing mid-size personal loans (aka installment loans) from $2,600-$10,000 over periods of 6 months to 5 years. We believe every eligible customer should get the best offer - highest amount and lowest rate - that they qualify for based on their unique financial picture.

According to a market study[2] recently completed by Enova the most important criteria for consumers when selecting a lender for an online loan was the trustworthiness of the lender (88% rated this criteria #1 or #2). Interestingly, borrowers find trustworthiness much more important than the total cost of the loan (the tenth most important criteria). 66% of NetCredit customers judged NetCredit as being a trustworthy lender, in comparison to an industry average of 41%. In fact, NetCredit ranked higher than the competition on several other key criteria, including: (1) terms being clear and easy to understand (75% vs. 43%), and (2) flexibility of terms (65% vs. 37%). Among five of the top online lenders, Enova brands ranked #1 in customer preference, with 59% of online customers stating they would only use or prefer to use Enova products, compared with 45% for other brands.

Responsible Small Dollar Lending Program ($300-$2499)- No Current Enova Product

Currently, Enova does not offer a short-term unsecured loan in California for amounts between $300 and $2499, the subject of the Responsible Small Dollar Lending (RSDL) pilot program established by Senate Bill 318 (Chap. 467, Stats. 2013; "pilot program"). While we would be very interested in offering loans in this market segment, the restrictions of the current pilot program for loans in these amounts make such loans commercially unfeasible. This memorandum is intended to provide the committee with information useful to their deliberations over changes to this pilot program and the availability of credit in this market segment.

Online lending industry - generally

Demand for online short-term loans continues to grow as consumers today are looking for convenience and flexibility, demanding mobility, transparency and instant access to credit. We

[2] Enova conducted proprietary consumer marketplace information through an online, primary research study. Data was collected via an external third party's execution from October 20 – December 2, 2015, fielding a total of 769 interviews. This US-based study included CA residents.

believe that consumers are increasingly seeking online lending services for numerous reasons, including that they:

- prefer simplicity, transparency and convenience of these services;
- require access to financial services outside of normal banking hours;
- have an immediate need for cash for financial challenges and unexpected expenses;
- have been unable to access certain traditional lending or other credit services;
- seek an alternative to the high cost of bank overdraft fees, credit card and other late payment fees and utility late payment fees or disconnect and reconnection fees; and
- wish to avoid potential negative credit consequences of missed payments with traditional creditors.

Our internal marketing data indicates that our customers primarily use our products as a result of unexpected expenses, mismatch between timing of expenses and income, and unexpected events such as a temporary drop in income.

Enova Data Analytics
As an initial matter, because online lending is necessarily electronic, Enova maintains more sophisticated platforms and systems than typical brick and mortar establishments. In particular, Enova uses advanced risk analytics to provide more accurate affordability outcomes than storefront lenders. Enova's credit decision model declines customers with poor repayment probability and includes a manual underwriting process that is triggered by red flags in the application process.

Enova - Lower rollover rates
Consumers who obtain a loan from Enova are less likely to obtain subsequent or rollover loans than are consumers of other licensed lenders. As shown in the table below, Enova's customers in California obtain 31% fewer loans per year from Enova than customers of other licensed lenders: 4.3 loans per year at Enova in 2013, compared to the industry average of 6.8 loans per year among all licensed lenders in California, most of which are brick and mortar establishments. In other words, because Enova's underwriting requirements and lending procedures more accurately assess a customer's ability to repay, Enova's overall use rate is nearly one third lower than other DBO-licensed lenders on average.

CNU affordability vs. all CDDTL licensees

		2010	2011	2012	2013
CA All Lenders	# of loans made	12,092,091	12,427,810	12,255,026	12,163,832
CA All Lenders	# of customers	1,646,700	1,738,219	1,768,501	1,779,471
CA All Lenders	# loans/year	7.3	7.1	6.9	6.8
CA CNU	# of loans made	326,532	339,150	292,442	305,345
CA CNU	# of customers	55,876	71,149	65,142	71,014
CA CNU	# loans/year	5.8	4.8	4.5	4.3

Department of Business Oversight 2014 report, CashNetUSA annual filings to the DBO

Another major reason for the reduced rollover rate for Enova's customers is that online loans effectively have a built-in hold period between loan payment and subsequent loan funding due to how the ACH system operates. Enova customers must currently wait a minimum of 2 days between the payment of a loan by ACH debit and the funding of a subsequent loan. As a result, a large number of subsequent loans are cancelled during these waiting periods. As such, while so-called "two-handed transactions"—transactions where a customer enters a store with a "$300 payment" and exits with $255 in new loan proceeds—are common for storefront licensees, these impulsive loans are impossible under Enova's business model, which is likely better for the consumer.

Licensed vs. unlicensed online lending

Enova and other licensed online lenders provide loans at a lower cost to consumers, as compared to unlicensed online lenders. Under the DDTL, Enova is limited to charging $17.65 per $100 borrowed. [see Cal. Fin. Code §§ 23035(a), 23036(a)]. However, an unlicensed internet-based lender that takes the position that it is exempt from state law and not bound by the DDTL typically imposes substantially greater charges, often up to $30 per $100 loaned. From a policy perspective, consumers of loans in the $300-$2600 market segment are best served by having access to lenders that are state regulated. If California consumers lack the ability to obtain loans from online licensed lenders, they will be driven towards unlicensed lenders that impose greater fees on consumers and are not subject to important consumer protections under California law.

Interest rates and consumer access to credit

As noted in the Department of Business Oversight's June, 2015 Report of Activity on the Small Dollar Loan Pilot Programs "[a] stubbornly low lender participation rate led to ACBO's demise." The pilot program which replaced the ACBO (the RSDL) has displayed a similarly low lender participation rate. One notable finding in the report lists the total number of pilot program loans conducted in 2014 at 164,344. Compared to the 12.4 million loans issued by payday lenders, there appears to be an obvious need to widen program participants and make credit more accessible to a larger consumer market. One significant factor leading to this low lender participation rate is a lack of flexibility with regard to interest charges and fees. An interest rate is, essentially, the price of credit. That price is driven by a number of factors, the most significant of which is the risk that a loan will not be repaid. An arbitrary cap on the price of credit will simply reduce the number of consumers able to qualify for a loan. This approach has the benefit of improving on-time repayment rates and reducing defaults, but does so at the cost of denying access to credit to a wide swath of consumers who need it most.

Policy recommendation:

From the information provided by the state, it appears that the RSDL Pilot program has not been effective in its stated goal of expanding the supply of loans in the $300-$2499 market segment. This result is similar to prior attempts to cap rates below the level at which the market would price the risk. This is especially important for unsecured personal loans. We believe it is best to let the market operate with clear disclosures of rates and terms by lenders, registration and reporting to make it easier to supervise lenders, and principles-based rules that allow lenders to develop products that keep pace with advancements in technology.

Competition Policy in Consumer Financial Services: The Disparate Regulation of Online Marketplace Lenders and Banks

Thomas P. Brown and Molly E. Swartz[1]

INTRODUCTION

In October 2014, Washington D.C. City Council passed legislation that effectively allowed Uber to operate in the District. David Plouffe, formerly an advisor to the President and now an executive with Uber, greeted the new legislation with the following observation:

> Obviously what we're doing doesn't necessarily in all cases fit in existing regulation. I think that's what Washington really wrestled with and decided they needed to chart a new pathway forward. So rather than say how do we fit this new technology and service into existing regulations, let's look at how do we create new regulations that give citizens of the city the right kind of confidence on things like safety, on things like insurance.[2]

Uber is just one of many startups struggling to fit their businesses into existing regulatory frameworks. As technological innovation leads to new business models, there is increasing friction between these new companies and the existing regulatory regime.

The tension between regulated entities and new entrants is particularly acute in the context of online marketplace lending.[3] While bank lenders enjoy regulatory privileges that enable them to lend immediately to consumers in all 50 states, non-bank lenders are forced to engage in resource-intensive analyses to satisfy state-specific compliance requirements. As non-bank lenders expand access to credit to those currently underserved by banks—providing new underwriting methodologies, real-time data transmission and new financing mechanisms—disparate regulation of banks and non-bank lenders appears problematic.

In the past, where new entrants have challenged existing regulatory frameworks, restructuring has occurred to ensure a functioning market. This continues to happen in a number of industries, with the Uber-led transformation of taxi regulation being the most prominent. This kind of regulatory reorganization is also needed in the lending space. The existing framework for regulating the delivery of financial services works against the interests of consumers, competition, regulators and society as a whole. A state-by-state legal regime serves as barrier to entry protecting incumbent banks from competition and depriving consumers of alternatives. There is simply no reason why banks should enjoy access to the common market while non-bank lenders cannot.

This is not to say that banks and non-banks should be treated similarly on all counts. There are numerous situations in which it is appropriate for banks to maintain regulatory privileges inaccessible to non-banks. In fact, in the context of financial services, banks tend to bear a greater regulatory burden than non-banks (e.g., application of customer identification program requirements, required maintenance of leverage ratios, etc.). In the lending context, however, banks' unique ability to offer products on a nationwide basis remains largely unjustified.

In Part I below, we provide an overview of online marketplace lending. We suggest that marketplace lenders offer value that is not currently replicable by banks. Part II examines marketplace lending across state lines, recognizing the near impossibility of full compliance. Part III provides examples of cases in which new entrants have successfully challenged existing regulatory frameworks. In these cases, regulatory change reinvigorated competition to the benefit of consumers. Finally, in Part IV, we suggest the need for reorganization of the existing lending regulatory framework. The current bifurcated regulatory framework increases costs to consumers, limits consumer choice and insulates banks from competition.

I. ONLINE MARKETPLACE LENDING BENEFITS BOTH UNDERSERVED BORROWERS AND INVESTORS

In the past few years, marketplace lending has emerged as an alternative to traditional bank lending. In the wake of the 2008-2009 financial crisis, banks tightened credit guidelines. This left many consumers and small businesses without access to bank-issued credit. Total consumer lending fell by 6.1 percent between January 2009 and March 2010.[4] At the same time that they tightened credit standards, banks found themselves a safe haven for deposits even as yields on those deposits plummeted.

The simultaneous tightening of credit standards and drop in yields created an opportunity for new credit intermediaries to emerge. Marketplace lenders filled this gap. In their initial incarnation, firms such as Prosper and Lending Club enabled lenders to fund loans to borrowers. They and other alternative lenders simultaneously expanded the pool of available credit and enabled yield-starved investors to obtain a positive rate of return on funds that would have generated no return had they been left on deposit at banks and other depository institutions.

Marketplace lenders differ from traditional financial institutions in a number of ways. First, marketplace lenders often serve demographics that are underserved by bank lenders. Marketplace lenders have enabled "thin file" borrowers and small business borrowers to access credit that traditional financial institutions were unwilling to extend. Borrowers rendered ineligible by traditional bank underwriting models may find investors on online marketplaces willing to finance their credit needs. Alternative underwriting models may enable such lenders to extend credit to thin file borrowers who would not qualify for credit based solely on traditional underwriting criteria such as FICO score.

Second, marketplace lenders rely on technology to reduce the cost of connecting borrowers with lenders. They use algorithms, rather than lending officers, to screen borrowers, and they provide granular information about repayment risk to investors. Further, many such platforms have eliminated unnecessary or unwanted services associated with traditional lenders, such as branches and other physical locations.[5] Through better underwriting and more efficient operations, marketplace lenders and other lending platforms have lowered the cost of obtaining loans and are able to offer borrowers credit on better terms.

Third, platform lenders offer value to investors. Marketplace lenders have enabled investors to diversify their investment portfolios by investing directly in individual loans. Even to the extent that investors choose to fund pools of loans rather than individual loans, marketplaces may be able to pass a larger portion of the interest that those loans generate to the investors that fund their loans.[6]

II. MARKETPLACE LENDING ACROSS STATE LINES TRIGGERS SIGNIFICANT COMPLIANCE OBLIGATIONS

In lending across state lines, marketplace lenders, like other non-bank lenders and, indeed, all non-bank providers of financial services, confront a complex, unstable and fragmented regulatory regime. The regulatory thicket that surrounds the financial services industry in the United States, particularly the lending business, is Byzantine. A firm that is considering launching a product that provides liquidity to customers must grapple with a long list of Federal laws and regulations, including the Truth-in-Lending Act,[7] the Fair Credit Reporting Act,[8] the Electronic Funds Transfer Act,[9] the Equal Credit Opportunity Act,[10] Regulation Z,[11] and Regulation E[12] (to name but a few). Individual states have their own laws. California, for example, regulates non-bank lenders through the California Constitution,[13] the Finance Lenders Law[14] and, in some instances, the Consumer Legal Remedies Act.[15]

How and whether any one of these laws or regulations applies turns on a number of factors, including the following: (1) whether the service is provided for household use; (2) whether the service provider is a bank (or other federal insured deposit taking institution); (3) whether the service creates a debt enforceable against the customer; (4) whether the service involves a finance charge on a loan or a "time-price" charge associated with a sale; (5) whether the service is associated with a prepaid account but not a deposit account; and (6) whether the information on which the decision to provide liquidity is collected from the customer directly, third parties that have a direct relationship with the customer, or third parties that collect information from others about the customer.

This body of law and regulation is also unstable. Regulators, courts, and, of course, legislatures change the rules from time-to-time, and these changes can have significant repercussions for industry participants. The Second Circuit's recent decision in *Madden v. Midland Funding, LLC*,[16] provides one timely example. *Madden* arose from a dispute between a consumer and purchaser of debt owed by the consumer to the bank that had issued the consumer a credit card.[17] The consumer sued the debt collector in New York state court alleging that the fees charged by the debt collector exceeded the cap set by New York usury law.[18] The Second Circuit held that federal preemption was not available to the debt collector in collecting the debt pursuant to the terms of the loan agreement because the debt collector was acting on behalf of itself rather than the bank.[19] The court deflected criticism that its decision would undermine the sale of charged-off debt by banks by arguing that it "would not significantly interfere with any national bank's ability to exercise its powers under the [National Bank Act]."[20]

Among other things, *Madden* illustrates that the regulatory burdens and benefits are not evenly distributed in the lending space. On its face, the Second Circuit's decision creates a special privilege for banks relative to non-banks. A bank purchaser of another bank's debt can, under the Second Circuit's analysis, invoke its ability to preempt state law to block a consumer's challenge to the fees collected by the second bank based on the loan originated by the first. Most non-banks not exercising the powers of a national bank, according to the Second Circuit, have no such right.[21] Both of the publicly traded platform lender, Lending Club and OnDeck, saw their valuations decline relative to traditional lenders in the wake of the decision, and commentators have attributed the relative severity of the decline to regulatory risk.[22]

The existing regulatory framework for regulation of non-bank lenders is a patchwork of complicated and overlapping state laws and regulations. Each state sets a different maximum interest rate that parties may contract for, and this rate may vary depending on whether the credit will be used for personal, household or family purposes (i.e., consumer credit) or for business purposes (i.e., commercial credit). In many states, consumer and/or commercial lenders may be authorized to charge interest above a state's usury cap if they obtain a state lender license—a time-consuming and expensive process. For example, a marketplace lender may contract with a Utah-based borrower for any rate of interest without a license.[23] In Virginia, a lender must obtain a lender license to offer consumer loans to Virginia residents at interest above 12 percent per annum.[24] In California, a license is required to engage in the business of a finance lender, regardless of what interest rates are offered.[25]

Lender license applications can also be quite burdensome and appear designed to deter applications. The applications often require applicants to submit background checks and fingerprints on all persons owning or controlling 10 percent or more of the lending entity, financial statements, and surety bonds. Nevada, for example, requires lenders to maintain a physical office in the state—a requirement that is particularly onerous for online lenders with no physical location.[26]

III. TO AVOID STATE LENDING LAWS, MARKETPLACE LENDERS ARE FORCED TO PARTNER WITH BANKS

To avoid this morass of state lending laws, a number of marketplace lenders have chosen to partner with banks. A regulatory regime where the burden of compliance is so high that companies are forced to partner with competitor incumbents to provide cost-effective products seems unequivocally problematic.

Both Prosper and Lending Club were, in their original incarnations, fairly novel. They enabled investors to fund loans extended to individuals without a traditional financial institution, either a bank or licensed lender, serving as originator. Yet although Prosper and Lending Club were serving as intermediaries between borrowers and investors, neither used the form that has dominated the consumer lending business in the United States since the early part of the Twentieth Century—*i.e.*, a chartered financial institution such as a bank, credit union or thrift. And it was not at all clear how either company thought that it was complying with the raft of Federal and state laws related to consumer lending.[27]

But times have changed. In the almost ten years that have passed since Prosper got its start, Prosper and Lending Club have almost completely reinvented their businesses. Today, both companies rely on banks to originate loans. Likewise, both companies have jettisoned the direct investment approach. Under the model that both companies have now adopted, investors no longer directly fund loans to borrowers. Rather, the companies interpose intermediaries that own the right to the receivables generated by borrowers, and those intermediaries then pay investors based on the repayment history of borrowers. Although the platforms offer investors far more visibility into the performance of particular loans, the structure of the relationship between investors in the loans and borrowers is similar in form to traditional securitization.[28]

Viewed through this lens, the "new" platform lending businesses look pretty similar to "old" consumer lending businesses. That is, a non-bank contracts with a bank to help the bank acquirer borrowers, underwrite those borrowers, service those borrowers and manage the resulting portfolio for the benefit of third-party investors. Although some of the details have obviously evolved, the basic components of the "new" platform-lending model should be familiar to anyone who has followed the credit card industry since General Motors offered the GM Rewards card in the 1980s.[29] In fact, the 1996 Narratives to the Office of the Comptroller of the Currency handbook issued for the supervision of credit card lending describes the component parts of a credit card business in terms that mirror the relationship between platform lenders, their bank origination partners, consumers, and investors.[30]

Having chosen to partner with a state chartered bank for the origination of the loans, Lending Club and Prosper have subjected themselves to regulatory supervision in more or less the same way that non-bank technology providers have been subjecting themselves to regulatory supervision for decades. The loans are bank products, and the banks that originate them are answerable to their regulators for the financial performance of those loans as well as the many regulatory issues that arise in connection with the issuance of such loans. In short, Lending Club and Prosper have achieved regulatory compliance by relying on banks' preemptive privileges.

IV. VARIED STATE AND FEDERAL REGULATION IN THE AIRLINE, TELECOMMUNICATIONS AND TAXI INDUSTRIES DEMONSTRATE THE NEED FOR REGULATORY REORGANIZATION

The fact that Lending Club and Prosper felt compelled to partner with a bank to reduce the regulatory burden should be understood as broad indictment of that regulatory regime. In other industries where new business models have challenged existing regulatory frameworks, the government has been willing to revise the overarching regulatory framework to ensure a functioning market. In the airline, telecommunications, and taxi industries, for example, existing regulations unfairly advantaged incumbents, thus precluding competition. To ensure a functioning market, regulatory reorganization was necessary.

Prior to passage of the Airline Deregulation Act of 1978[31] ("ADA"), airlines were heavily regulated by the Civil Aeronautics Board ("CAB"). The CAB had jurisdiction to control route entry and exist of air carriers, regulate fares, award subsidies, and control mergers and inter-carrier agreements.[32] The inflexibility of this federal regulation made it increasingly difficult for carriers to comply. A number of studies determined that economic regulation resulted in excessively high fares and a net economic loss to society at large.[33]

In an effort to avoid this stringent federal regulation, some carriers began investing in intrastate travel—a market that remained outside of CAB jurisdiction. Carriers operating in the unregulated intrastate markets were able to offer lower fares to consumers and avoid CAB regulation all together.[34] As Lewis A. Engman, then chairman of the Federal Trade Commission stated,

> If you have any doubt that one consequence of the CAB's control over rates and routes is higher prices, you need only look at what happened some years ago in California when Pacific Southwest Airlines, an intrastate carrier not subject to CAB regulation or entry restrictions entered the San Francisco/Los Angeles market with rates less than half those being charged by the interstate CAB certified carriers TWA, Western, and United.[35]

Fares were 30 percent less for the unregulated intrastate airlines in Florida.[36]

Eventually, economists determined that economic regulation in the airline industry was distorting the efficient performance of the marketplace. With leadership from Senator Edward Kennedy, Congress eventually passed the ADA. The ADA rescinded CAB's authority over route entry and exist, airline fares, and mandated that the CAB be dissolved by 1984. In essence, the government acknowledged that there was a problem: consumers were poorly served by a system that incentivized airlines to provide only intrastate travel.

Similarly, the telecommunications faced significant organization where state and federal regulation were set up so as to encourage monopolistic behavior. Prior to 1969, the telecommunications industry was regulated as a lawful monopoly.[37] Local telephone service was provided by an operating company of the AT&T-owned Bell System or by one of approximately 1,600 independent telephone companies. Long distance telephone service was provided by the long Lines Department of AT&T in partnership with the Bell operating companies.[38]

In 1969, however, the Federal Communications Commission approved an application submitted by AT&T competitor MCI to construct and operate a long distance telephone system between Chicago and St. Louis.[39] Effectively, however, to provide long distance service, MCI would need to rely on AT&T-owned interconnections and local distribution facilities. Although MCI and AT&T attempted to negotiate a permanent agreement regarding access to this infrastructure, negotiations failed. Among other things, MCI claimed that AT&T was unlawfully denying it interconnections and that it was being charged excessive and discriminatory prices for local distribution facilities.[40] MCI filed suit. Shortly thereafter, the Department of Justice ("DOJ") began an investigation.

Again, consumers were unable to benefit from competition in the market. And again, the government was forced to step in. After a protracted lawsuit, AT&T settled with the DOJ. Among other things, AT&T agreed to divest itself of the operating companies that provided the local exchange service. Challenging AT&T's established monopoly, new entrant, MCI effectively transformed the existing regulatory paradigm, opening telecommunications up to multiple providers and offering consumers greater choice.

This trend—new business models threatening existing regulatory frameworks—continues today. As noted at the beginning of this article, Uber poses a tremendous threat to the incumbent taxi industry. While common carrier regulations are well intentioned, these regulations were written in a time before geolocation-enabled smartphones and ride-sharing applications. They reflect and benefit regulatory concerns associated with taxi service, not peer-to-peer ride-sharing. Yet as consumers continue to use Uber's services and demand regulatory changes to support Uber's business, state governments have begun to revise state utility laws to accommodate Uber—despite taxi industry protests.

In California, for example, Uber was successful in lobbying the California Public Utilities Commission ("CPUC") to create a new category of regulated entities ("Transportation Network Companies") to cover peer-to-peer ride-sharing services. Recognizing the value of Uber's product, the CPUC altered its regulatory framework, thus expanding the market for transportation services and consumer choice.

V. LEVELING THE PLAYING FIELD BETWEEN BANKS AND NON-BANKS

In the same way that new entrants have forced re-examination of the regulatory framework for the airline, telecommunications and now, taxi industries, the effort of Prosper, Lending Club and countless others to reinvent financial services should lead regulators to re-evaluate the regulatory framework for that industry. The fact that Lending Club and Prosper have effectively joined the club by partnering with incumbents does not give regulators in this industry a pass.

Banks have a vested interest in preserving the regulatory status quo. Banks benefit from the complexity, instability and fragmentation of regulation in two ways. First, banks are incumbent providers of services that others would like to offer, and as incumbents, the complex and unstable regulatory regime serves as a barrier to entry. Second, banks have a unique ability to export the terms of the loans that they offer from the states in which are chartered to the states in which their consumers reside.[41]

There is no policy justification for giving banks and other chartered financial institutions a monopoly on the ability to export contract terms from one state to another. Although banks are subject to prudential supervision, there is no discernable connection between onsite government supervision to protect against the systemic risks that massively leveraged institutions create for the economy as a whole and banks' unique ability to exploit the efficiencies associated with the common market. Exportation of product terms is not a source or solution to the systemic risks created by the enormous leverage that lurks on bank balance sheets. In short, the risks that uniquely justify much of the supervision of banks do not also justify their sole ownership on exportation. After all, the massive risks of leveraged institutions simply are not present for online lending marketplaces or other alternative lenders. To the extent that exportation of product terms creates regulatory issues, those regulatory issues fall in the realm of consumer protection, and in the wake of the passage of Dodd-Frank, that playing field has been largely leveled with the creation of the Consumer Financial Protection Bureau.

The bank monopoly on national contracting is also a relatively recent creation. Until the mid-1960s, the prevailing rule in U.S. courts when faced with disputes about which law to apply to a lending agreement—the law of the domicile of the lender or the law of the domicile of the borrower—did not turn on whether the lender was a bank or an unchartered financial institution. Courts generally enforced the law of the lender, rather than the borrower.[42] When the prevailing judicial approach to conflict of laws changed in the 1960s, banks sought new ways to ensure that their contracts could be enforced on a nationwide basis, and courts eventually latched on to the pre-emptive force of federal banking statutes. Although non-banks cannot currently claim a similar right, they could regain the ability to export terms if courts simply reverted to the conflict rule that used to apply to lenders regardless of charter—i.e., that the law of the state of the lender, not the borrower, governs the relationship between the two.

VI. CONCLUSION

The broader point goes well beyond giving non-banks the same ability to contract across state lines as banks. In the financial services industry today, as in the telecommunications and transportation industries a generation ago, competition has essentially been lost as a guiding regulatory principle. Regulatory compliance has become an economic moat that existing providers are using to fend off disruptive competition. Rather than looking for ways to force upstarts to join with those incumbents, regulators in this industry should look for inspiration in the examples of the past and find ways to level the regulatory playing field. Leveling the playing field will ensure greater consumer access to better financial products.

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[1] Thomas P. Brown is a partner and Molly E. Swartz is an associate at Paul Hastings LLP. The views expressed are entirely their own. Their views do not represent the view of the firm or any client of the firm.

[2] Dana Rubenstein, "Uber Publicly Embraces Regulation, the 'Modern' Sort," *Politico New York*, October 29, 2014, http://www.capitalnewyork.com/article/city-hall/2014/10/8555647/uber-publicly-embraces-regulation-modern-sort.

[3] For purposes of this paper, we use the phrase "marketplace lenders" to distinguish between bank lenders and technology driven lenders. In our experience, however, this taxonomy is a bit narrow in that technology driven lenders follow two variations—(1) those that involve discrete sources of third-party capital and are generally described as "marketplace lenders" such as Prosper, Lending Club, and OnDeck; and (2) those that lend off their own balance sheet such as PayPal Credit but that use an essentially identical origination model and are generally described as "platform lenders."

[4] "Epic Consumer Credit Crunch Unfolding," *Seeking Alpha*, March 2, 2010, http://seekingalpha.com/article/191517-epic-consumer-credit-crunch-unfolding.

[5] Andrew Verstein, "The Misregulation of Person-to-Person Lending," *U.C. Davis Law Review* 45, (2011): 445, 457.

[6] *Id.*

[7] 15 U.S.C. §§ 1601 *et seq.*

[8] 15 U.S.C. §§ 1681 *et seq.*

[9] 15 U.S.C. §§ 1693 *et seq.*

[10] 15 U.S.C. §§ 1691 *et seq.*

[11] 12 C.F.R. §§ 1026 *et seq.*

[12] 12 C.F.R. §§ 205.1 *et seq.*

[13] Cal. Const. art. XV, § 1.

[14] Cal. Fin. Code §§ 22000 *et seq.*

[15] Cal. Civ. Code §§ 1750 *et seq.*

[16] *Madden v. Midland Funding, LLC,* 786 F.3d 246 (2d Cir. 2015).

[17] *Id.* at 247-49.

[18] *Id.*

[19] *Id.* at 245-53.

[20] *Id.* at 249.

[21] *Id.* at 251 (stating that "[i]n most cases in which NBA preemption has been applied to a non-national bank entity, the entity has exercised the powers of a national bank—i.e., has acted on behalf of a national bank in carrying out the national bank's business. This is not the case here."). *See also Marquette Nat. Bank of Minneapolis v. First of Omaha Service Corp.*, 439 U.S. 299, 308, 313-316 (1978) (holding that a federally chartered bank may offer loans to consumers in any of the other 49 states at any interest rate allowed by the bank's state of residence regardless of whether the consumer's home state recognizes a lower usury cap); *Smiley v. Citibank (South Dakota), N.A.*, 517 U.S. 735 (1996) (holding that the NBA preempts state limits on fees as well as finance charges).

[22] Leena Rao, "Once-hot Online Lending Companies Go Cold in Face of Skepticism," *Fortune*, June 30, 2015, http://fortune.com/2015/06/30/lending-club-ondeck-shares.

[23] Utah Code Ann. § 15-1-1 (West).

[24] Va. Code §§ 6.2-1501, 6.2-303.

[25] Cal. Fin. Code § 22100(a).

[26] Nev. Rev. Stat. §§ 675.090(2)(a); 675.090(3).

[27] Eileen Ambrose, "Peer-to-Peer Lending Alternative Runs into a Regulatory Wall," *Baltimore Sun*, December 7, 2008, http://articles.baltimoresun.com/2008-12-07/business/0812060058_1_lending-sites-peer-to-peer-lending-prosper-loans (stating that "Peer-to-peer lending . . . recently has come into regulators' sights . . . [sidelining] the largest peer-to-peer lending site, Prosper.com," and also quoting Lending Club CEO's statement that he "concluded that the industry was headed toward regulation.").

[28] Jane Kim, "Peer-to-Peer Lender Relaunched," *Wall Street Journal*, April. 28, 2009, http://www.wsj.com/articles/SB124088142201761953; Prosper Funding LLC, August 2015 prospectus for up to $500,000,000 in principal amount of Borrower Payment Dependent Notes at *10, https://www.prosper.com/Downloads/Legal/Prosper_Prospectus_2015-08-13.pdf; Lending Club, August 2014 prospectus for Member Payment Dependent Notes at *7, https://www.lendingclub.com/fileDownload.action?file=Clean_As_Filed_20140822.pdf&type=docs.

[29] David S. Evans and Richard Schmalensee, *Paying with Plastic* (Cambridge: The MIT Press, 2005), 78-79.

[30] *See* OCC Credit Card Handbook 1996 at 12 ("Although some institutions develop their own scoring models, most are built by outside vendors."); *id.* at 5 ("Issuing banks often employ outside vendors to perform solicitation, servicing, collections, or other functions ....").

[31] Airline Deregulation Act of 1978, Pub. L. No. 95-504, 92 Stat. 1705 (codified as amended in scattered sections of 49 U.S.C.).

[32] Andrew R. Goetz and Paul S. Dempsey, "Airline Deregulation Ten Years After: Something Foul in the Air," *Journal Air Law and Commerce* 54, (1986): 927, 929.

[33] *Id.* at 930.

[34] *Id.*

[35] Christine Chmura, "The Effects of Airline Regulation," *The Freeman, Foundation for Economic Education,* August 1, 1984, http://fee.org/freeman/the-effects-of-airline-regulation/ quoting Lewis A. Engman, "Regulating Industry," *Washington Post,* October 15, 1974.

[36] *Id.* quoting Robert Lindsey, "Airline Deregulation is Weighted," *New York Times,* February 7, 1975, p. 39.

[37] *MCI Communications Corp. v. American Tel. & Tel. Co.,* 708 F.2d 1081, 1093 (7th Cir. 1983).

[38] *Id.*

[39] *Id.* at 1094.

[40] *Id.* at 1096.

[41] 12 U.S.C. § 1831d; *Greenwood Trust Co. v. Mass.,* 971 F. 2d 818, 826 (1st Cir. 1992).

[42] *Ury v. Jewelers Acceptance Corp.,* 227 Cal. App. 2d 11 (Ct. App. 1964).

LoanMe

Payment Reminder

PO Box 5645
Orange, CA 92863

Phone: 844-764-7368
Fax: 949-535-9150
www.loanme.com

Rancho Santa Margarita, CA 92688

As of 10/22/2015: *Loan #*

*Total Past Due	*Late Fees	*NSF Fees	Payment Due	Monthly Payment	Monthly Total
$ 495.31	$ 0.00	$ 15.00	11/01/2015	$ 495.31	$ 1020.62

*** PAST DUE AMOUNTS ARE DUE IMMEDIATELY.**

To avoid a late charge we must receive your 11/01/2015 payment by 11/15/2015!

You can save time and money by having your payment automatically withdrawn from your checking account by simply logging into your account at www.LoanMe.com and completing the LoanMe Check Payment Authorization Form. You can also call our Customer Service Department at 844-764-7368 and we would be happy to email or mail a form directly to you. Available draft dates are the 1st, 3rd, 5th, 10th or 15th. We will deduct your payment on a monthly basis - saving you time and avoiding costly fees!

MoneyGram.

LoanMe
Orange, CA
Receive Code: 15049
Account Number # : :

Use MoneyGram® ExpressPayment® service to make your LoanMe payment in cash (or PIN debit at Walmart) at 40,000 MoneyGram agent locations nationwide including Walmart and CVS/pharmacy. For the same day, guaranteed service, MoneyGram agent will charge a small fee of only $6.99. For more agent locations call 1-800-MONEYGRAM.

This communication is an attempt to collect a debt and any information obtained will be used for this purpose. As required by law, you are hereby notified that a negative credit report reflecting on your credit record may be submitted to a credit reporting agency if you fail to fulfill the terms of your credit obligations.

Cut Here

LoanMe

As of 10/22/2015 :

Rancho Santa Margarita, CA
92688

Remittance

Loan:

Past Due Payment	$ 495.31
Late Fees	$ 0.00
NSF Fees	$ 15.00
Payment	$ 495.31
Total Amount Due	$ 1020.62

Amount Enclosed:

LoanMe
PO Box 5645
Orange, CA 92863

Select a Draft Date

1st	3rd	5th	10th	15th
☐	☐	☐	☐	☐

LOAN ME, INC.

PROMISSORY NOTE AND DISCLOSURE STATEMENT

No.:	Date of Note: , 2015 Expected Funding Date: 2015
Lender: LoanMe, Inc.	Borrower:
Address: 1900 S. State College Boulevard, Suite 300 Anaheim, CA 92806	Address: RANCHO SANTA MARGARITA, CA 92688

In this Promissory Note and Disclosure Statement ("Note"), the words "you" and "your" mean the person signing as a borrower. "We," "us,", and "our," mean LoanMe, Inc. and any subsequent holder of this Note.

TRUTH IN LENDING ACT DISCLOSURE STATEMENT

ANNUAL PERCENTAGE RATE	**FINANCE CHARGE**	**AMOUNT FINANCED**	**TOTAL OF PAYMENTS**
The cost of your credit as a yearly rate	*The dollar amount the credit will cost you*	*The amount of credit provided to you*	*The amount you will have paid after all payments are made as scheduled*
115.93 %	**$36,974.85**	**$5,125.00**	**$42,099.85**

PAYMENT SCHEDULE
One payment of $429.00 on June 01, 2015.
84 monthly payments of $495.31 beginning on July 01, 2015.
One payment of $64.81 on July 01, 2022.

Late Charge: If a payment is more than 15 days late, you will be charged $15.00.

Prepayment: If you pay off this loan early, you will not have to pay any penalty.

Please see the remainder of this document for additional information about nonpayment, default and any required repayment in full before the scheduled date.

ITEMIZATION OF AMOUNT FINANCED

Congratulations! Your AvantCredit Loan has been Approved

1 message

support@avantcredit.mailgun.org <support@avantcredit.mailgun.org> — Tue, , 2015 at 11:30 AM
Reply-To: support@avantcredit.com
To:

Dear ,

Customer #

Thank you for using AvantCredit for your cash advance needs. Your loan has been approved and you will receive the funds directly into your bank account (WELLS FARGO BANK NA ending in ********) within the next 3 business days.*

Principal Amount: 12500.00

Funding Date: 2015-

If you have any questions or concerns, our Customer Support Team is available seven days a week to help answer all your questions via phone, email or online chat.

Interested in sharing your AvantCredit experience? We'd love to hear what you have to say! Write an online review

AvantCredit Application Support

Phone: 800-712-5407

Fax: 312-264-0891

Email: support@avantcredit.com

www.AvantCredit.com

California

Customer Support
800-712-5407

Number: #
Customer ID:
Consumer Installment Loan Agreement
Date: 	), 2015

Licensee:	Address:	City:	State:	Zip:	Phone:
AvantCredit of California, LLC d/b/a AvantCredit (Lic No. 603 K 124)	640 N. La Salle Dr., Suite 535	Chicago	Illinois	60654	800-712-5407

Customer:	Main Phone:	Work Phone:
		N/A

Address:	City:	State:	Zip Code:
	LAGUNA HILLS	CA	92653

FEDERAL TRUTH IN LENDING ACT ("TILA") DISCLOSURES

ANNUAL PERCENTAGE RATE

The cost of your credit as a yearly rate.

37.45%

FINANCE CHARGE

The dollar amount the credit will cost you.

$13513.64

Amount Financed

The amount of credit provided to you or on your behalf.

$12500.00

Total of Payments

The amount you will have paid after you have made all payments as scheduled.

$26013.64

Your payment schedule will be:

Gmail

Your Funds Have Been Approved

1 message

customerservice@cashcentral.com <customerservice@cashcentral.com> Fri, , 2015 at 10:55 AM
Reply-To: customerservice@cashcentral.com
To:

central

, 2015

Congratulations! Your loan process is complete. Cash Central has submitted your loan proceeds and the anticipated delivery date to your checking account is 2015. Funds will then be available to you depending on the policies and procedures of your bank.

Below is a summary of your loan:

Loan Amount	$2,501.00
Fees	$75.00
Current Balance	$2,576.00
First Payment Date	8/1/2015
First Payment Amount	$412.92
Loan Duration	24
Payment Frequency	Monthly

You can log in to Cash Central's Customer Section 24 hours a day, 7 days a week to see detailed information regarding your loan.

If you have questions or need assistance, please visit us online at www.cashcentral.com or call customer service at 1-800-460-4356.

Forgot your username and/or password? Click here to have it emailed to you.

Congratulations on your loan approval and thank you for choosing Cash Central!

Kindest Regards,

Cash Central
1-800-460-4356
customerservice@cashcentral.com

To ensure your receipt of our emails, please add customerservice@cashcentral.com to your email's list of approved senders. For instructions on adding Cash Central to your list of approved senders, click here.

Cash Central takes identity theft seriously. If you believe someone is using your email address or this email was sent in error, TransactionSummary

central

YOUR TRANSACTION IS COMPLETE!

Amount Financed

$2,501.00

Effective Date

/2015

Term

24 Months

Payment Frequency

Monthly

Payment Due Date

/2015

Payment Amount

$412.92

Finance Charge (without prepayments)

$7,407.92

Total of Payments (without prepayments)

$9,908.92

Loan Maturity Date

/2017

Annual Percentage Rate (APR)

183.18%

·. PROMISSORY NOTE AND DISCLOSURE STATEMENT

Loan No.:	Date of Note: September 03, 2013 Expected Funding Date: September 04, 2013
Lender:	Borrower:
Address: Anaheim, CA 92806	Address:

In this Promissory Note and Disclosure Statement ("Note"), the words "you" and "your" mean the person signing as a borrower. "We," "us,", and "our," mean . and any subsequent holder of this Note.

TRUTH IN LENDING ACT DISCLOSURE STATEMENT

ANNUAL PERCENTAGE RATE	FINANCE CHARGE	AMOUNT FINANCED	TOTAL OF PAYMENTS
The cost of your credit as a yearly rate	*The dollar amount the credit will cost you*	*The amount of credit provided to you*	*The amount you will have paid after all payments are made as scheduled*
139.12 %	**$11,577.87**	**$2,525.00**	**$14,102.87**

PAYMENT SCHEDULE
One payment of $263.25 on October 01, 2013.
47 monthly payments of $294.46 beginning on November 01, 2013.

Late Charge: If a payment is more than 15 days late, you will be charged $15.00.

Prepayment: If you pay off this loan early, you will not have to pay any penalty.

Please see the remainder of this document for additional information about nonpayment, default and any required repayment in full before the scheduled date.

ITEMIZATION OF AMOUNT FINANCED	
Amount Financed:	$2,525.00

Amount Paid to Borrower Directly:	$2,525.00
Prepaid Finance Charge/Origination Fee:	$75.00

FOR VALUE RECEIVED, you promise to pay to the order of ., or any subsequent holder of this Note the sum of **$2,600.00**, together with interest calculated at **135.00 %** and any outstanding charges or late fees, until the full amount of this Note is paid.

Your payments will be applied first to any outstanding charges or late fees, then to earned interest and finally to principal. The payment schedule described above is only an estimate and may change in the event you do not make all payments as scheduled.

Interest is calculated on a 360/360 simple interest basis. This means that interest is calculated by dividing the annual Interest Rate by 360, multiplying that number by the outstanding principal balance, and multiplying that number by the number of days the principal balance is outstanding, assuming that each full month is comprised of 30 days.

You may prepay all or any part of the principal at any time without penalty.

You will be subject to a fee not to exceed the legally permitted amount if any payment you make is returned for non-sufficient funds.

If you fail to make any payment due hereunder, we shall have the right, after a 30-day grace period, to declare this Note to be immediately due and payable. If you file for an assignment for the benefit of creditors, bankruptcy, or for relief under any provisions of the United States Bankruptcy Code, we shall have the right to declare this Note to be immediately due and payable.

In the event that we are required to employ an attorney at law to collect any amounts due under this Note, you will be required to pay the reasonable fees of such attorney to protect our interest or to take any other action required to collect the amounts due hereunder.

You agree that all payments not made within fifteen (15) days of the due date shall be subject to a late fee of $15.00.

The origination fee included in the prepaid finance charge/origination fee disclosed above is fully earned upon loan origination, is not subject to rebate upon prepayment or acceleration of this Note and is not considered interest.

We may delay or forgo enforcing any of its rights or remedies under this Note without losing them. You hereby, to the extent allowed by law, waive any applicable statute of limitations, presentment, demand for payment, or protest and notice of dishonor. Upon any change in the terms of this Note, and unless otherwise expressly stated in writing, no party who signs this Note, whether as maker, guarantor, accommodation maker or endorser, shall be released from liability.

This Note shall take effect as a sealed instrument and shall be construed, governed and enforced in accordance with the laws of the State of California.

This Note is in original format an electronic document fully compliant with the Electronic Signatures in Global and National Commerce Act (E-SIGN) and other applicable laws and regulations, and that the one, true original Note is retained electronically by us. All other versions hereof, whether electronic or in tangible format, constitute facsimiles or reproductions only.

You understand that you have previously consented to receive all communications from us, including but not limited to, all required disclosures via electronic mail.

You understand and agree that we may obtain credit reports on you an ongoing basis as long as this loan remains in effect. You also authorize us to report information concerning your account to credit bureaus and anyone else it believes in good faith has a legitimate need for such information.

You understand that, from time to time, we may monitor or record telephone calls between you and us for quality assurance purposes. You expressly consent to have your calls monitored or recorded.

You agree that in the event we need to contact you to discuss your account or the repayment of your loan, we may telephone you at any number, including any cell phone number provided, and that we may leave an autodialed or prerecorded message or use other technology to make that contact or to communicate to you the status of your account.

A married or registered domestic partner applicant may apply for a separate account. As required by law, you are hereby notified that a negative credit report reflecting on your credit record may be submitted to a credit reporting agency if you fail to fulfill the terms of your credit obligations. If we take any adverse action as defined by Section 1785.3 of the California Civil Code and the adverse action is based, in whole or in part, on any information contained in a consumer credit report, you have the right to obtain within 60 days a free copy of your consumer credit report from the consumer reporting agency who furnished us your consumer credit report and from any other consumer credit reporting agency which compiles and maintains files on consumers on a nationwide basis. You have the right as described by Section 1785.16 of the California Civil Code to dispute the accuracy or completeness of any information in a consumer credit report furnished by the consumer credit reporting agency.

This Agreement encompasses the entire agreement of the parties, and supersedes all previous understandings and agreements between the Parties, whether oral or written. Any modifications to this Agreement must be made in writing and signed by both parties.

ARBITRATION PROVISION

GOVERNING LAW. This Note will be governed by the laws of the State of California except to the extent governed by federal law. This Arbitration Provision is governed by the Federal Arbitration Act, 9 U.S.C. Sections 1-16 ("FAA").

WAIVER OF JURY TRIAL AND ARBITRATION PROVISION. Arbitration is a process in which persons with a dispute: (a) waive their rights to file a lawsuit and proceed in court and to have a jury trial to resolve their disputes; and (b) agree, instead, to submit their disputes to a neutral third person (an "arbitrator") for a decision. Each party to the dispute has an opportunity to present some evidence to the arbitrator. Pre-arbitration discovery may be limited. Arbitration proceedings are private and less formal than court trials. The arbitrator will issue a final and binding decision resolving the dispute, which may be enforced as a court judgment. A court rarely overturns an arbitrator's decision. We have a policy of arbitrating all disputes with customers which cannot be resolved in a small claims tribunal, including the scope and validity of this Arbitration Provision and any right you may have to participate in an alleged class action. **THEREFORE, YOU ACKNOWLEDGE AND AGREE AS FOLLOWS**:

For purposes of this Waiver of Jury Trial and Arbitration Provision, the words "dispute" and "disputes" are given the broadest possible meaning and include, without limitation (a) all claims, disputes, or controversies arising from or relating directly or indirectly to the signing of this Arbitration Provision, the validity and scope of this Arbitration Provision and any claim or attempt to set aside this Arbitration Provision; (b) all federal or state law claims, disputes or controversies, arising from or relating directly or indirectly to the Loan Agreement, the information you gave us before entering into this Agreement, including the customer information application, and/or any past agreement or agreements between you and us; (c) all counterclaims, cross-claims and third-party claims; (d) all common law claims, based upon contract, tort, fraud, or other intentional torts; (e) all claims based upon a violation of any state or federal constitution, statute or regulation; (f) all claims asserted by us against you, including claims for money damages to collect any sum we claim you owe us; (g) all claims asserted by you individually against us and/or any of our employees, agents, directors, officers, shareholders, governors, managers, members, parent company or affiliated entities (hereinafter collectively referred to as "related third parties"), including claims for money damages and/or equitable or injunctive relief; (h) all claims asserted on your behalf by another person; (i) all claims asserted by you as a private attorney general, as a representative and member of a class of persons, or in any other representative capacity, against us and/or related third parties (hereinafter referred to as "Representative Claims"); and/or (j) all claims arising from or relating directly or indirectly to the disclosure by us or related third parties of any non-public personal information about you.

1. You acknowledge and agree that by entering into this Arbitration Provision:

(a) YOU ARE GIVING UP YOUR RIGHT TO HAVE A TRIAL BY JURY TO RESOLVE ANY DISPUTE ALLEGED AGAINST US OR RELATED THIRD PARTIES;

(b) YOU ARE GIVING UP YOUR RIGHT TO HAVE A COURT, OTHER THAN A SMALL CLAIMS TRIBUNAL, RESOLVE ANY DISPUTE ALLEGED AGAINST US OR RELATED THIRD PARTIES; and

(c) YOU ARE GIVING UP YOUR RIGHT TO SERVE AS A REPRESENTATIVE, AS A PRIVATE ATTORNEY GENERAL, OR IN ANY OTHER REPRESENTATIVE CAPACITY, AND/OR TO PARTICIPATE AS A MEMBER OF A CLASS OF CLAIMANTS, IN ANY LAWSUIT FILED AGAINST US AND/OR RELATED THIRD PARTIES.

2. Except as provided in Paragraph 5 below, all disputes including any Representative Claims against us and/or related third parties shall be resolved by binding arbitration only on an individual basis with you. **THEREFORE, THE ARBITRATOR SHALL NOT CONDUCT CLASS ARBITRATION; THAT IS, THE ARBITRATOR SHALL NOT ALLOW YOU TO SERVE AS A REPRESENTATIVE, AS A PRIVATE ATTORNEY GENERAL, OR IN ANY OTHER REPRESENTATIVE CAPACITY FOR OTHERS IN THE ARBITRATION.**

3. Any party to a dispute, including related third parties, may send the other party written notice by certified mail return receipt requested of their intent to arbitrate and setting forth the subject of the dispute along with the relief requested, even if a lawsuit has been filed. Regardless of who demands arbitration, you shall have the right to select any of the following arbitration organizations to administer the arbitration: the American Arbitration Association (1-800-778-7879) http://www.adr.org or JAMS (1-800-352-5267) http://www.jamsadr.com. The parties may also agree to select an arbitrator who resides within your federal judicial district who is an attorney, retired judge, or arbitrator registered and in good standing with an arbitration association, and arbitrate in accordance with such arbitrator's rules. The party receiving notice of arbitration will respond in writing by certified mail return receipt requested within twenty (20) days. If you demand arbitration, you must inform us in your demand of the arbitration organization you have selected or whether you desire to select a local arbitrator. If related third parties or we demand arbitration, you must notify us within twenty (20) days in writing by certified mail return receipt requested of your decision to select an arbitration organization. If you fail to notify us, then we have the right to select an arbitration organization. The parties to such dispute will be governed by the rules and procedures of such arbitration organization applicable to consumer disputes, to the extent those rules and procedures do not contradict the express terms of this Arbitration Provision, including the limitations on the arbitrator below. You may obtain a copy of the rules and procedures by contacting the arbitration organization listed above.

4. Regardless of who demands arbitration, at your request we will pay your portion of the arbitration expenses, including the filing, administrative, hearing and arbitrator's fees ("Arbitration Fees"). Throughout the arbitration, each party shall bear his or her own attorneys' fees and

expenses, such as witness and expert witness fees. The arbitrator shall apply applicable substantive law consistent with the FAA, and applicable statutes of limitation, and shall honor claims of privilege recognized at law. The arbitration hearing will be conducted in the county of your residence. The arbitrator may decide, with or without a hearing, any motion that is substantially similar to a motion to dismiss for failure to state a claim or a motion for summary judgment. In conducting the arbitration proceeding, the arbitrator shall not apply any federal or state rules of civil procedure or evidence. If allowed by statute or applicable law, the arbitrator may award statutory damages and/or reasonable attorneys' fees and expenses. If the arbitrator renders a decision or an award in your favor resolving the dispute, we will reimburse you for any Arbitration Fees you have previously paid. At the timely request of any party, the arbitrator shall provide a written explanation for the award. The arbitrator's award may be filed with any court having jurisdiction.

5. All parties, including related third parties, shall retain the right to seek adjudication in a small claims tribunal in the county of your residence for disputes within the scope of such tribunal's jurisdiction. Any dispute, which cannot be adjudicated within the jurisdiction of a small claims tribunal, shall be resolved by binding arbitration. Any appeal of a judgment from a small claims tribunal shall be resolved by binding arbitration.

6. This Arbitration Provision is made pursuant to a transaction involving interstate commerce and shall be governed by the FAA. If a final non-appealable judgment of a court having jurisdiction over this transaction finds, for any reason, that the FAA does not apply to this transaction, then our agreement to arbitrate shall be governed by the arbitration law of the State of California.

7. This Arbitration Provision is binding upon and benefits you, your respective heirs, successors and assigns. This Arbitration Provision is binding upon and benefits us, our successors and assigns, and related third parties. This Arbitration Provision continues in full force and effect, even if your obligations have been paid or discharged through bankruptcy. This Arbitration Provision survives any cancellation, termination, amendment, expiration or performance of any transaction between you and us and continues in full force and effect unless you and we otherwise agree in writing. If any of this Arbitration Provision is held invalid, the remainder shall remain in effect.

OPT-OUT PROCESS

You may choose to opt out of the Arbitration Provision, but only by following the process set-forth below. If you do not wish to be subject to this Arbitration Provision, then you must notify us in writing within sixty (60) calendar days of the date of this Note at the following address: Arbitration Opt-Out, , Anaheim, CA 92806. Your written notice must include your name, address, account number or social security number and a statement that you wish to opt out of this Arbitration Provision.

☑	YOU CERTIFY THAT YOU HAVE READ AND UNDERSTAND THIS ARBITRATION PROVISION AND AGREE TO BE BOUND TO ITS TERMS.

Payments. You have previously authorized and requested us to initiate an automated clearinghouse or other electronic funds transfer ("EFT") from the bank account identified on your Application (the "Bank Account") to make each payment required hereunder on the day it is due. You also authorize us to initiate an EFT to or from the Bank Account to correct any erroneous payment and, in the event any EFT is unsuccessful, to attempt such payment up to two additional times. You understand that unsuccessful EFTs may result in charges by your bank, and you agree that we are not liable for such charges. We will notify you 10 days prior to any given transfer if the amount to be transferred varies by more than $50 from your regular payment amount. You also authorize us to withdraw funds from your account on additional days throughout the month in the event you are delinquent on your loan payments. Your request and authorization for us to initiate EFTs is entirely voluntary, and you may terminate this authorization by notifying us in writing via fax (') or email (customer.service@ ı) soon enough to allow us a reasonable opportunity to act on your termination (generally at least three business days in advance).

By signing this promissory note, you also authorize us to obtain payments from your Bank Account by creating and processing paper checks (each a "Check") in place of initiating any or all of the EFTs described above. Each Check will be in the amount of the payment that would have been initiated as an EFT, and each Check will be deposited by us for processing on or after the same day that the payment would have been initiated as an EFT. We will type your name in the signature line of each Check, and you agree that your typed name constitutes your authorized signature. You acknowledge that an electronic image of each Check may be created and processed as a substitute check pursuant to the Check 21 Act. If you terminate your EFT authorization as described above, this authorization to create Checks will also terminate.

THIS LOAN CARRIES A VERY HIGH INTEREST RATE. YOU MAY BE ABLE TO OBTAIN CREDIT UNDER MORE FAVORABLE TERMS ELSEWHERE. EVEN THOUGH THE TERM OF THE LOAN IS 48 MONTHS, WE STRONGLY ENCOURAGE YOU TO PAY OFF THE LOAN AS SOON AS POSSIBLE. YOU HAVE THE RIGHT TO PAY OFF ALL OR ANY PORTION OF THE LOAN AT ANY TIME WITHOUT INCURRING ANY PENALTY. YOU WILL, HOWEVER, BE REQUIRED TO PAY ANY AND ALL INTEREST THAT HAS ACCRUED FROM THE FUNDING DATE UNTIL THE PAYOFF DATE.

☑	YOU CERTIFY THAT NO PERSON HAS PERFORMED ANY ACT AS A BROKER IN CONNECTION WITH THE MAKING OF THIS LOAN.
☑	YOU CERTIFY THAT YOU HAVE READ AND UNDERSTAND THE AMORTIZATION SCHEDULE ON THIS LOAN. Click here to view.
☑	**YOU HAVE READ ALL OF THE TERMS AND CONDITIONS OF THIS PROMISSORY NOTE AND DISCLOSURE STATEMENT AND AGREE TO BE BOUND BY ITS TERMS. YOU UNDERSTAND AND AGREE THAT YOUR EXECUTION OF THIS NOTE SHALL HAVE THE SAME LEGAL FORCE AND EFFECT AS A PAPER CONTRACT.**

This Loan Is Made Pursuant To The California Finance Lender Law, Division 9 (commencing with Section 22000) of the Financial Code. **FOR INFORMATION, CONTACT THE DEPARTMENT OF BUSINESS OVERSIGHT, STATE OF CALIFORNIA, LICENSE NO. 603-8780.**

Click here to print out a copy of this document for your records.

STATEMENT OF LOAN, FEDERAL DISCLOSURE
SECURITY AGREEMENT AND PROMISSORY NOTE

NOTE: FOR VALUE RECEIVED, the undersigned jointly and severally, promise to pay to the order of Lender at its office shown below, the principal (the Amount Financed plus Prepaid Finance Charges), together with charges computed upon unpaid principal balances in the manner and at the rates shown in agreed Rated of Charge below. Payments of principal and charges shall be made in consecutive monthly payment as indicated below, beginning on the indicated First Payment Date and continuing on the same day of each succeeding month thereafter until the entire principal and charges shall have been fully paid.

Principal Amount $ 2,800.00 _Initial _ _ _ date

DEFAULT: Default in the payment of the full amount of any installment of principal and charges hereof, at the option of the lender, shall render the entire unpaid balance and accrued charges thereon immediately due and payable. Payment in advance may be made on this loan in any amount at any time. The undersigned may be subject to charges in the event of a repossession of a motor vehicle as provided by law.

In the event that the Lender, pursuant to authorization contained in any loan agreement, security agreement, or deed of trust executed in connection with the loan evidenced hereby, shall make any advance for the purpose of protecting any security given as collateral for this note including the payment. If real or personal property taxes, insurance, maintenance, or other charges, then the undersigned agrees to repay such advance together with charges at the rate provided for herein from the date of the advance until the date of repayment.

DELINQUENCY CHARGES: A maximum of $10 for a loan payment in default for not less than 10 days, or a maximum of $15 for a loan payment in default for not less than 15 days.

A $15 CHARGE WILL BE MADE ON ALL RETURN CHECKS _Initial _ _ date

DEFERRAL: Extension of the time of payment of all or any part of the amount owing hereon at any time or times shall not effect the liability of any party hereto or surety or guarantor hereof. Sureties, guarantors, and other parties hereto severally waive demand and presentment for payment, notice of nonpayment, notice of protest and protest of this note.

LOAN NO. ACCOUNT NO		DATE OF LOAN 5/9/2008

NAME & ADDRESS OF BORROWER(S)

1
2 0

FULLERTON, CA 92831

Acct. No.	n/a Prior Loan
Balance	n/a
Deduct refunds on:	
Prop. Ins $	n/a
Credit Ins. $	n/a
Net Balance: $	n/a

LENDER SECURED PARTY

Anaheim, CA. 92801
LIC. NO

ANNUAL PERCENTAGE RATE	FINANCE CHARGE	AMOUNT FINANCED	TOTAL OF PAYMENTS
The cost of your credit as a yearly rate	The dollar amount the credit will cost you	The amount of credit provided to you or on your behalf.	The amount you will have paid after you have make all payments as scheduled
84 %	$4,932.90	$ 2,800.00	$7,732.90

Your payment schedule will be:

NO PMT	First Payment Due Date	Amount Each PMT	ALL PAYMENTS DUE SAME DAY OF EACH MONTH; FINAL PAYMENT IS EQUAL IN ANY CASE TO UNPAID PRINCIPAL AND CHARGE	FINAL PAYMENT DUE DATE
36	6/9/2008	e $214.80		5/9/2011

SECURITY: You are giving a security interest in [ ] Personal Property [X] Auto [ ] Insurance Proceeds [ ] Other

DELINQUENCY CHARGES: A maximum of $10 for a loan payment in default for not less than 10 days, or a maximum of $15 for a loan payment in default for not less than 15 days.

PREPAYMENT: You may pay in advance in any amount at any time without penalty.

See your contract documents for any additional information about nonpayment default right to accelerate the maturity of the obligation.

_ _Initial _ _ date "e" means estimate

BORROWER AUTHORIZES THE FOLLOWING

ITEMIZATION OF THE AMOUNT FINANCE

1	$ 2,800.00	TO: Amount Given To You Directly
2	$ 0.00	TO: Amount Paid On Your Account
3	$ 0.00	TO: Motor Vehicle Fees
4	$ 0.00	TO: County Accorder Filing Fee
5	$ NONE	TO: Credit Life Insurance
6	$ NONE	TO: Credit Disability Insurance
7	$ 0.00	TO: Auto Insurance
8	$ NONE	TO: Personal Property Insurance
9	$ 75.00	TO: Processing Fee
10	$ 0.00	TO:

TOTAL OF AMOUNT FINANCED $ 2,800.00

$0.00 TO: Prepaid Finance Charge

(Administrative Fee) which is included in the finance charge above and is fully earned when this loan is made. _Initial _ _ date

CREDIT INSURANCE AUTHORIZATION & APPLICATION

	TERM		PREMIUM	I WANT INSURANCE	I DO NOT WANT INSURANCE
CREDIT LIFE INSURANCE	NONE	MOS	$ NONE	[ ]	X
JOINT SPOUSE CREDIT LIFE INSURANCE	NONE	MOS	$ NONE	[ ]	X
CREDIT DISABILITY INSURANCE	NONE	MOS	$ NONE	[ ]	X

CREDIT LIFE AND DISABILITY INSURANCE ARE NOT REQUIRED AS CONDITION TO THIS LOAN

You request the insurance for which a premium is entered and authorize inclusion of such premiums in this contract

You are applying for the credit Insurance marked above, Your signature below means that you agree that:

1. You are not eligible for disability insurance if you reached your 65th birthday.
2. You are eligible for disability insurance only if you are working for wages or profit 30 hours a week or more on the Effective Date
3. Your co-buyer is not eligible for disability insurance