Consumer Federation of America
1620 I Street, N.W., Suite 200 * Washington, DC 20006

Consumers Union

**Testimony of**

**Jean Ann Fox**
**Director of Consumer Protection**

**On Behalf of**
**Consumer Federation of America**
**Consumers Union**
**National Consumer Law Center**
**(on behalf of its low income clients)**

**Before the Subcommittee on Domestic Policy of the**
**House Committee on Oversight and Domestic Reform**

**Hearing on Foreclosure, Predatory Lending and Payday Lending in America's Cities**

**March 21, 2007**

Mr. Chairman, Representative Issa, and Members of the Subcommittee, my name is Jean Ann Fox and I am the Director of Consumer Protection for the Consumer Federation of America (CFA).[1] I am testifying today on behalf of CFA, the national consumer organization; Consumers Union[2], the publisher of Consumer Reports; and National Consumer Law Center[3] on behalf of its low income clients. I appreciate the opportunity to offer our comments on predatory payday lending and recommendations for state and federal reform.

Payday lending provides easy access to quick cash for families that run short on money before payday. The catch is that these small loans come with triple-digit interest rates and often trap borrowers in a cycle of debt. Cash-strapped consumers are paying about $5 billion a year to borrow against their next paycheck. Balloon payment loans can take up to 75 percent of bi-weekly paychecks from the typical borrower. Loans secured by personal checks or electronic access to the borrower's bank account endanger the banking status of borrowers, foster coercive collection tactics, and function as unfair wage assignments.

My testimony describes how payday loans work, the size and structure of the industry, and what makes these loans predatory debt traps. We will explain where payday loan outlets cluster and describe the consumers most likely to use these products. The testimony describes the state legal status of payday lending and explains tactics used by lenders to evade state consumer protections. It also provides examples of the abuses rampant in this industry, as identified by the enforcement actions taken by states and litigation by consumers who have been harmed. We conclude by explaining why industry public relations efforts fail to correct abusive payday lending practices and recommend federal and state reforms needed to prevent payday loans from preying on vulnerable consumers.

## A. Payday Product and Industry

Payday loans are small cash advances for less than $1,000, typically in the $300 to $500 range, based on the borrower's personal check or electronic access for the

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[1] The **Consumer Federation of America** is a nonprofit association of over 280 pro-consumer groups, with combined membership of 50 million people. CFA was founded in 1968 to advance consumers' interest through advocacy, research and education.
[2] **Consumers Union** is a nonprofit membership organization chartered in 1936 under the laws of the state of New York to provide consumers with information, education and counsel about goods, services, health and personal finance, and to initiate and cooperate with individual and group efforts to maintain and enhance the quality of life for consumers. Consumers union's income is solely derived from the sale of Consumer Reports, its other publications, and from noncommercial contributions, grants and fees. In addition to reports on Consumers Union's own product testing, Consumer Reports with more than 5 million paid circulation, regularly carries articles on health, product safety, marketplace economics and legislative, judicial and regulatory actions which affect consumer welfare. Consumers Union's publications carry no advertising and receive no commercial support.
[3] The **National Consumer Law Center** is a non-profit organization specializing in consumer issues on behalf of low-income people. NCLC works with thousands of legal services, government and private attorneys, as well as community groups and organizations, who represent low-income and elderly individuals on consumer issues.

amount of the loan and the finance charge. Loans are due and payable in full on the borrower's next payday and typically cost 390 to 780 percent APR for two-week terms. Finance charges are typically expressed as dollars per hundred borrowed, in the $15 to $30 per $100 range. On the next payday, a borrower can bring in cash and "buy back" the check, the check can be deposited for payment, or the borrower can pay only the finance charge and renew the loan for another pay cycle without reducing the principal. Most checks are never deposited and are bought back by customers who are then encouraged to take out another loan. Industry analysts estimate that about five percent of American consumers have taken out at least one payday loan.[4]

Competition does not drive the price of payday loans. An FDIC report found that "payday advance stores tend to charge an effective APR near the applicable statutory limit."[5] A Colorado Attorney General's review of licensed lenders found that 93 percent of all loans are priced at the maximum permitted level. Annual filings by publicly traded payday lenders to the Security and Exchange Commission show consistent rates, even in saturated markets, indicating that competition does not impact rates charged.

Few questions are asked of loan applicants by payday lenders. Borrowers are only required to have a source of income, identification, and an account open at a bank or credit union. No ability to repay questions are asked. Lenders may check a specialized reporting service, such as TeleTrack, to score applications but usually do not get a regular credit report. Most lenders do not report positive payment to credit reporting services, so payment of payday loans does not improve a borrower's credit rating. Failure to pay is reported, however.

The modern payday loan industry emerged in the last decade but dates back to "salary-buying" in the early 20th Century.[6] Payday loans are made by mono-line payday lenders; by check cashers, pawn shops and rent-to-own stores; and online through electronic funds transfer. Recent analysis of state regulatory and industry data by the Center for Responsible Lending found that 24,803 payday loan outlets made over $28.2 billion in loans in 2005, up over 100 percent in five years. Consumers paid almost $5 billion for loans.[7] Industry analysts report a larger volume of business and higher fees paid by borrowers.

States with the largest total loan fees paid by consumers in 2005 include California ($405 million), Missouri ($352 million), Louisiana ($346 million), Texas ($288 million), Alabama ($250 million), Illinois ($244 million), and Ohio ($233 million).[8] The states most saturated with payday loan outlets include South Dakota, New

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[4] Michael A. Stegman, "Payday Lending," *Journal of Economic Perspectives* , Vol. 21, No 1, at 170.
[5] Flannery & Samolyk, "Payday Lending: Do the Costs Justify the Price?", FDIC, June 2005, endnote 34 at 9.
[6] Jean Ann Fox, Testimony, Lieberman Payday Loan Forum, December 1999. On file with author.
[7] Uriah King, Leslie Parrish and Oxlem Tanik, "Financial Quicksand: Payday lending sinks borrowers in debt with $4.2 billion in predatory fees every year," Center for Responsible Lending, Nov. 30, 2006, 9-11.
[8] "Financial Quicksand," at 17.

Mexico, Louisiana, Missouri, Alabama, South Carolina, Tennessee, Idaho, Nevada and Mississippi.[9]

## B. Payday loans meet the criteria for predatory lending

The essential features of a payday loan meet all the definitions of predatory lending, making them hazardous to borrowers.[10] Loans are made without consideration of the borrower's ability to repay. Interest rates are exorbitant, starting at around 400 percent annual interest. Loans come with balloon payments, due in full on the borrower's next payday, not in affordable installments. In fact, payday lenders do not allow installment payments, recent proposals notwithstanding, because their business model is predicated on forcing people to pay their entire loan balance plus fees. Every payday loan involves a check or debit authorization for money that may not be in the bank on the borrower's next payday. And, finally, check/debit holding sets up coercive collection tactics as some lenders threaten or imply that the borrower will be "in trouble" for failure to make good on the check.

A key characteristic of a payday loan is the use of a personal check or electronic access to a bank account as security, payment device, and collection tool. Elliehausen notes that the postdated check used to get a payday loan provides an incentive to repay the loan, reducing the probability of default and the expected value of collection costs.[11] While check holding benefits lenders, this device puts bank account ownership at risk for consumers, as well as the ability to write checks at retailers if repeat defaults are reported to ChekSystems where black marks stay on the record for five years. Every loan involves a potential bad check/debit that will trigger a bounced check fee at both the payday lender's outlet and the consumer's bank. Checks can be re-deposited to trigger multiple fees. A Jacksonville Area Legal Aide attorney testified to the Senate Banking Committee last fall that an online payday loan was presented to the bank eleven times in one day, triggering a bounced check fee each time.[12]

Securing payment of a debt by the borrower's next paycheck to be deposited in the bank is the modern banking equivalent of a wage assignment. Federal law makes void any loan with a wage assignment to an enlisted Service member. The Federal Trade Commission ruled decades ago that a wage assignment that could not be withdrawn was

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[9] Ferris Baker Watts, "PayDay Industry Overview," March 2006 presentation, using 2005 data.
[10] FDIC's Office of the Inspector General (OIG), Challenges and FDIC Efforts Related to Predatory Lending, Audit Report No. 06-011, June 2006. "Characteristics potentially associated with predatory lending include, but are not limited to, (1) abusive collection practices, (2) balloon payments with unrealistic repayment terms, (3) equity stripping associated with repeated refinancing and excessive fees, and (4) excessive interest rates that may involve steering a borrower to a higher-cost loan." Payday lending is listed "Payday Loans are small-dollar, unsecured, short-term advances that have high fees relative to the size of the loan. When used frequently or for long periods, the total costs can rapidly exceed the amount borrowed."
[11] Gregory Elliehausen, "Consumers' Use of High-Price Credit Products: Do They Know What They Are Doing?" Working Paper, Networks Financial Institute at Indiana State University, May 2006 at 5.
[12] Lynn Drysdale, Jacksonville Area Legal Aide, Testimony before the Senate Committee on Banking, Housing, and Urban Affairs, September 14, 2006, at 8.

an unfair trade practice under the Credit Practices Rule. The Electronic Funds Transfer Act prohibits conditioning the extension of credit on requiring electronic payment for periodic payment loans, but is silent on the single payment electronic payday loan model.

Bankruptcy Risk Heightened by Payday Loan Use

There are some indications that the use of payday loans increases the likelihood that a consumer will file for bankruptcy. Skiba and Tobacman report that there is suggestive but inconclusive evidence that payday loans increase Chapter 13 bankruptcy filing rates. They found an increase of 27 percent in Chapter 13 bankruptcy petitions within two years of an approved payday loan application, probably because payday loans compromise the borrower's financial stability over the long term due to repeated finance charges. "With sufficient repeated borrowing behavior, the interest payments would slowly take a toll on the agents' ability to stay solvent during a future shock and thus in the longer run lead to increased bankruptcy filings."[13]

Payday loan customers are viewed as highly credit constrained. An industry-funded study in 2001 reported that payday loan borrowers are four times more likely to have filed for bankruptcy in the past than the average adult.[14] Loyola University professor Robert Mayer examined a sample of 500 bankruptcy filings in Milwaukee County, Wisconsin in 2004 and described bankruptcy petitions as "a window into the sweatshop of payday lending." While the Mayer study notes the difficulty of isolating the impact of payday loan debt as a cause of bankruptcy, he noted that the industry may bear some responsibility for the increasing vulnerability of working families. In the petitions he examined, seventy percent of the filers who listed any payday loan listed more than one. Nearly 30 percent had four or more payday loans at the time they filed for bankruptcy. One debtor with four loans totaling $5,150 owed seven times as much as his net monthly income when he filed for bankruptcy. Just the fees to renew payday loans ate up 30 percent of each paycheck for the median individual with two or more loans.[15]

## C. Payday Lenders Harm Vulnerable Borrowers

Payday lenders cluster around military bases with large populations of relatively low wage young workers with steady pay and required bank accounts, as documented in the Peterson/Graves study published by the Ohio State Law School.[16] Major General Mike Lehnert, commander of Marine Corps Bases (West) noted in a speech in 2006 that payday lenders outside the gates at Camp Pendleton (CA) "are parasites, bottom feeders

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[13] Paige Marta Skiba and Jeremy Tobacman, "Measuring the Individual-Level Effects of Access to Credit: Evidence from Payday Loans," *Job Market Paper*, January 19, 2007 at 26.
[14] Gregory Elliehausen and Edward C. Lawrence, "Payday Advance Credit in America: An Analysis of Consumer Demand," Monograph 35, Georgetown University, Credit Research Center, 2001.
[15] Robert Mayer, "One Payday, Many Payday Loans: Short-Term Lending Abuse in Milwaukee County," Working Paper, Loyola University Chicago, undated.
[16] Christopher Peterson and Steven Graves, "Predatory Lending and the Military: The Law and Geography of 'Payday' Loans in Military Towns," *Ohio State Law Journal,* Vol. 66, No. 4, 2005.

and scumbags."[17] The Department of Defense issued a report to Congress in August that predatory payday lenders are prevalent around military bases and concluded that "Predatory lending undermines military readiness, harms the morale of troops and their families, and adds to the cost of fielding an all volunteer fighting force."[18]

The Center for Responsible Lending found that African-American neighborhoods in North Carolina have three times as many payday lending stores per capita as white neighborhoods and that the disparity increases as the proportion of African-Americans in a neighborhood increases. When characteristics of income, homeownership, poverty, and unemployment are taken into account, the same disparities remain.[19] Payday loan stores are almost twice as likely to be in African American population centers than white in Washington, according to a Zip-code-level analysis conducted for the Seattle Post Intelligencer. The report also found evidence associating payday loan outlets with high-poverty zip-codes, even after adjusting for race and education.[20]

Who Borrows from Payday Lenders?

Lenders claim that their customers are middle class and middle income.[21] However, the evidence suggests that the bulk of payday loan consumers earn low or moderate incomes and are often minorities. The most reliable data on borrowers comes from customer applications collected by regulators as licensees are inspected, not from industry-funded telephone surveys drawn from customer lists provided by lenders. The Colorado Attorney General's office supervises licensed payday lenders and collected a sample of customer records over five years of inspections. Borrower demographics of over 10,000 applications collected during over 680 compliance examinations show that the typical payday loan customer is a thirty-six year old single woman, making $2,186 per month. Consumers earning less than $2,500 per month ($30,000 per year) make up nearly two-thirds of all borrowers. The majority (62.8 percent) of all Colorado borrowers occupy the lowest three income occupations of laborer, office worker, or benefit recipient. While Service members make up only one percent of the adult population of Colorado, military personnel are over four percent of payday loan customers. Despite CFSA's claim that their 25 percent of their customers have average incomes in excess of $50,000, Colorado regulators found only 0.24 percent of loan applicants in this bracket.[22]

[17] American Thinker, "General Lehnert speaks," July 11, 2006.
[18] Department of Defense, "Report on Predatory Lending Practices Directed at Members of the Armed Forces and Their Dependents," August 9, 2006.
[19] Uriah King, Wei Li, Delvin Davis, and Keith Ernst, "Race Matters: The Concentration of Payday Lenders in African-American Neighborhoods in North Carolina," Center for Responsible Lending, 2005.
[20] Assaf Oron, "Easy Prey; Evidence for Race and Military Related Targeting in the Distribution of Pay-Day Loan Branches in Washington State," Consulting Report for the Seattle Post-Intelligencer, March 2006 at 2.
[21] Community Financial Services Association, "Payday Advance Customer Profile," at www.cfsa.net/govrelat/pdf/Payday_Advance_Customer_Profile.pdf
[22] Paul Chessin, "Borrowing from Peter to Pay Paul: A Statistical Analysis of Colorado's Deferred Deposit Loan Act," *Denver University Law Review,* Vol. 83, No. 2, 2005, page 405-407.

An academic 2001 survey of low-income families in Charlotte, North Carolina's largest city, found that African Americans were about twice as likely to have borrowed from a payday lender in a two-year period as whites and that African Americans were five times more likely than whites to take out multiple payday loans, controlling for many socioeconomic characteristics. The same study found that payday lenders clustered in working-class neighborhoods and disproportionately favored high-minority neighborhoods.[23]

Texas payday loan borrowers are disproportionately African American and Hispanic, according to an academic study based on analysis of a database of 145,000 payday loan applicants during 2000-2004 from a "large payday and pawn lender" in Texas. While only 11 percent of Texas adults are Black, 43 percent of payday loan borrowers were. Despite lower bank account ownership by Hispanic families (24 percent nationally are unbanked compared to ten percent for the population as a whole, according to the Federal Reserve's Survey of Consumer Finances[24]), 34 percent of payday loan borrowers were Hispanic, compared to 29 percent of Texas adults. The Skiba/Tobacman study also found that 62 percent of borrowers were female and that the median annual pay was $18,540, compared to Census data for Texas of $19,617. Only 34 percent of borrowers own their own home.[25]

## D. Payday Loans are Debt Traps

Payday loans were sold to state legislators as "once-in-a-blue-moon" emergency cash flow tools. The reality that has emerged is that payday loans foster repeat borrowing and become long term or frequent obligations. The Texas study mentioned above found that the average borrower had 9.8 loans per year, indicating that payday loan behavior is unlikely to be driven by temporary shocks to consumption needs. Assuming a two-week loan term and an average $245 loan, borrowers paid $350 in interest payments for the use of $245 for less than twenty weeks out of the year.[26] The Skiba/Tobacman study concludes that "the repeated and persistent borrowing we observe appears difficult to reconcile with temporary shocks to consumption needs," in contrast to industry claims that payday loans are only used to cover emergencies such as car repair or doctor visits.

A loan is "rolled over" when a payday loan is extended for another pay cycle before the loan is again due. The lender collects the finance charge, but the loan principal is not reduced. Some states ban rollovers, but that is easily circumvented. Lenders can allow borrowers to pay off one loan and immediately take out another one, sometimes called back-to-back transactions or serial loans. Although this is nominally a new loan, it

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[23] Michael A. Stegman, "Payday Lending," *Journal of Economic Perspectives, Vol. 21, Number 1, Winter 2007,* at 174.

[24] Maude Toussaint-Comeau, "Changing Hispanic demographics: Opportunities and constraints in the financial market," Chicago Fed Letter, No. 192, August 2003, at 3.

[25] Paige Marta Skiba and Jeremy Tobacman, Table 1.

[26] Paige Marta Skiba and Jeremy Tobacman, at 3. Study reports 9.8 loans for a total of $2400 and $350 in interest payments per year. CFA calculated that $2400 divided by the total number of loans reveals the amount of credit outstanding at one time. Multiplied by the typical two week loan term results in the length of time the average $245 loan was outstanding.

has the same financial impact as renewing a loan. Borrowers can effectively roll over a loan by borrowing from a second lender to repay the first or by taking out multiple loans to keep checks from bouncing at loan outlets.

Limits on Loan Renewals Fail to Prevent the Payday Loan Debt Trap

State payday loan laws attempt to limit rollovers by limiting the number of times a loan can be renewed or extended, by prohibiting one loan to repay a prior loan at the same lender, or imposing short cooling off periods between paying off one loan and getting a new one. None of these work to prohibit repeat borrowing, as they do not help borrowers work their way out of the payday debt trap. Cooling off periods are typically 24 to 72 hours and still leave borrowers unable to afford lump sum repayment without having to borrow again prior to the next payday. Florida limits borrowers to one loan at a time from all lenders in the state, with a 24-hour cooling off period between loans. In Florida, 89 percent of loans go to borrowers with five or more transactions per year and 57 percent of loans go to borrowers with 12 or more loans per year. Florida borrowers average 8 per year, even with the strictest renewal limits on the books.

## E. Legal Status and Enforcement

While small lenders are subject to federal credit laws, such as Truth in Lending Act, Fair Credit Reporting, and Equal Credit Opportunity Act, the industry is typically licensed and supervised at the state level. In the early 1990's, payday lenders started pursuing industry-friendly safe-harbor state laws, following litigation that challenged these loans for violating state usury and small loan rate caps in Tennessee and Kentucky, with the goal of achieving payday loan authorizing laws in all fifty states. Payday lending is currently legal in 37 states while another two states permit licensed lenders to charge deregulated rates. In eleven states, payday lenders have not won exemption from state usury or small loan rate caps and payday lending is either explicitly prohibited or rates are not high enough to attract the industry. These states include New York and New Jersey whose criminal usury caps of 25 percent and 30 percent APR respectively thwart lending at triple-digit rates.[27]

The industry has run into stiff resistance in the last year or so, stalling the march of states that legalized payday lending. North Carolina experimented with legal payday lending and let the law expire in 2001 when information reported by the Banking Commissioner demonstrated that payday loans were a debt trap for many borrowers. Georgia enacted tough anti-payday loan enforcement tools in 2004, including racketeering sanctions for persistent violation of its rate cap, and closed all the loopholes being employed by rogue lenders. The industry tried and failed to persuade Pennsylvania to legalize payday lending.

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[27] See www.paydayloaninfo.org, Legal Status.

State Enforcement and Litigation Illustrates Consumer Protection Issues

Payday lenders have a track record of evading state protections, exploiting loopholes, and using sham transactions to disguise usurious lending.[28] Enforcement and litigation actions in 2006 illustrates the many consumer protection failings of payday lending.

**Q.C. Financial, Inc:** A class action lawsuit was filed in Circuit Court of St. Louis County charging QC Financial Services, Inc., dba Quik Cash, of violating the Missouri payday loan law by renewing loans more than six times, failing to evaluate ability to repay the loans, and charging more than 75 percent of the original loan amount in interest and fees. The head of Q. C. Financial is President of the industry trade organization, and is featured in CFSA's national TV advertising campaign, urging borrowers to use payday loans responsibly.

**John A. Gill, Jr.,** a payday lender with a long career of using a variety of shams and ruses, including catalogue and Internet "rebate" deals to cloak illegal lending, was convicted by a Pensacola, FL jury in August. He was found guilty of criminal usury violations of the Florida racketeering statute, was remanded into custody and is facing up to thirty years in jail and up to three million in criminal restitution. Mr. Gill ran a variety of payday loan businesses since 1992 which ran afoul of state regulators in Alabama, Colorado, Florida, Georgia, Louisiana, New York, North Carolina, South Carolina, Texas, Virginia, and Washington.[29] For example, the Texas Attorney General froze Gill's assets in a deceptive practices case against Advance Internet and Texas Advance Internet, alleging loans at 782 percent interest for payday loans. Gill's Texas companies charged $30 for a $100 advance, disguised as a rebate on an Internet access contract.[30]

**Washington Department of Financial Institutions: Check 'n Go** of Washington, Inc. was charged by the Washington Department of Financial Institutions of collecting multiple checks from borrowers to secure single payday loans (in violation of a 2004 DFI policy), charging excessive fees, and collecting personal identification numbers without the borrower's knowledge. When multiple checks for a single loan were returned unpaid by the bank, the lender imposed multiple NSF fees on the borrower, in violation of Washington's maximum one-time fee of up to $25 for an unpaid check on a single payday loan. DFI announced in August 2006 that it intended to revoke Check 'n Go's license to make payday loans and to impose fines of $333,700.[31]

**Florida: EZCorp Inc.**'s Florida outlets, EZPawn and EZPawn Money Payday Loan Stores, were charged by the Florida Office of Financial Regulation with unlawfully

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[28] For more information, see Jean Ann Fox, "Unsafe and Unsound: Payday Lenders Hide Behind FDIC Bank Charters to Peddle Usury," CFA, March 2004.
[29] Duwayne Escobedo, "Loan Shark Predator: Tale of Alabama Man's Payday Lending Schemes," Independent News, Vol. 6, No. 29, July 20, 2006.
[30] Mike Anderson, "AG Sues Loan Company, Citing Sky-High Lending Rates," Waco Tribune-Herald, May 24, 2006.
[31] Washington Department of Financial Institutions, Press Release, "State Files Largest Case Against Payday Lender," August 16, 2006.

blocking examiners from inspecting its loan records. The State is trying to determine if the 18 outlets should be licensed in Florida.[32]

**Washington: Expressit, Inc.** was banned and ordered to pay over $304,000 in restitution to Washington borrowers. The Washington State Department of Financial Institutions found that the Lacey, WA company made loans without a license, failed to provide borrowers with written agreements or disclosures, exceeded state limits on fees and loan size, and refinanced loans with proceeds from other loans. The settlement resolved a case dating back to February 2005 when DFI issued a temporary cease and desist order. Expressit permitted loan roll-overs, with one borrower paying over $19,500 in interest on a series of small loans ranging from $600 to $1,875 between 1997 and early 2005 and still owed $1,875.[33]

**Arkansas Internet Access cases** were brought by the Attorney General against companies that cloaked their usurious loans as the sale of Internet access with a rebate. Money in a Flash.net required borrowers to make monthly or biweekly payments of up to $60 for "rebates," which translated to 520 percent APR loans. Some contracts required borrowers to pay $1,500 in a year for a $300 "rebate." Payment was made by electronic access to the consumer's bank account.[34] A survey by Arkansans Against Abusive Payday Lending (AAAPL) identified seventeen outlets that used this ploy early in 2006 to make payday loans.[35]

**Arkansas Enforcement Cases:** As a result of the well documented reports from AAAPL, the Arkansas Board of Collections brought a series of highly publicized enforcement cases against payday lenders operating without complying with the highly questionable check cashing law. The Arkansas State Board of Collection Agencies ordered C. Michael Stout, the former owner of Cash Advance and Check Mart Inc. to personally pay $173,050 in fines and almost $44,000 in refunds to customers. He was accused of using a Missouri entity as a screen for loans that violated Arkansas rules. In June the Board fined Dennis Bailey of Fordyce more than $1.3 million for operating 14 payday loan stores without licenses.[36] The Board ordered all his stores closed and voided all transactions between Fast Cash stores and consumers who have no obligation to repay the loans. Mr. Bailey is appealing the agency's order.[37]

**California** Department of Corporations brought a series of cases against unlicensed payday lenders. Check Exchange in Lomita was accused of making more than 3,000 payday loans without a license and falsifying an application for a license.[38] The California Attorney General filed charges of deceptive business practices and fraud

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[32] Richard Burnett, "State Files Suit to Open EZPawn's Records," Orlando Sentinel, July 19, 2006.
[33] Washington Department of Financial Institutions, Press Release, "DFI Bans Payday Lender from the Industry and Orders Restitution to Consumers," September 11, 2006.
[34] Rob Moritz, "AG Lawsuit Alleges Payday Lending Scam," Arkansas News Bureau, Mar. 1, 2006
[35] AAAPL, "Payday Lenders in Arkansas: The Regulated and Unregulated, Enclosure 6, Internet Rebate-Payday Lender List, February 2006
[36] David Smith, "Regulators fine lender $173,050," Arkansas Democrat-Gazette, Nov. 15, 2006.
[37] Joanne Bratton, *Baxter Bulletin*, Oct. 27, 2006.
[38] City News Service, "State Bars Lomita Payday Loan Shop," *DailyBreeze.com*, Feb. 8, 2006.

against now defunct Fast Cash loan service in Arcadia. The complaint filed in Pasadena Superior Court sought $2 million in civil penalties, including $350,000 in restitution for borrowers. The Attorney General said that Fast Cash threatened lawsuits, tried to squeeze settlements from borrowers and deceived the courts about the checks written to secure loans. In violation of California law, Fast Cash sued more than 400 individuals for treble damages for checks passed on insufficient funds.[39]

**Illinois** Department of Financial Institutions fined violators about $500,000 in 2006 as the new payday loan law was implemented. Illinois regulators fined **Illinois Title, Inc**. $55,000 for non-compliance with the requirement to report payday loans to the state-run database; **Cottonwood Financial Ltd**. $10,000 for misleading advertising to divert payday loan customers into a 140-day loan not covered by the new law; accused four **Payday Loan Stores of Illinois** of falsifying signatures, making loans to people with invalid Social Security numbers, and failure to make required disclosures. In May, Illinois fined **Advance America** $77,500 for violating the PLRA. Affinity Credit Services has been fined $273,000 since the PLRA went into effect. The Illinois Attorney General and the Department of Financial and Professional Regulation issued an order July 6, 2006 against **AmeriCash Loans LLC**, fining the company $190,000 for allegedly charging higher interest rates than the law sets. Examiners identified loans made at 521 percent APR, 28 percent higher than state law permits.

In 2006, state regulators also stepped up enforcement actions against Internet payday lender violation of state laws.

**Colorado** settled a case against Quik Payday, Inc. of Logan, Utah for $2 million in restitution to about 15,000 Colorado consumers who got illegal loans via the Internet from the company. Quik Payday charged higher fees than Colorado allows and permitted loan renewals more than one time. The company agreed not to make loans to Colorado residents without a license.[40]

**California** took enforcement action in September 2006 against four unlicensed Internet payday lenders doing business in California. Ameriloan.com, USFastCash.com, PreferredCashLoans.com and UnitedCashLoans.com were named in cease-and-refrain orders. Internet Cash Advance Marketing, Inc., of Vancouver, B.C. and its President were ordered not to offer or arrange loans for online companies without a state license.[41]

**Sonic Payday.com:** California regulators issued a desist and refrain order to Sonic Payday Limited dba Sonic Payday, LTD with an address in Dublin, Ireland. The online lender was cited for unlicensed payday lending, failure to provide a written contract, and charging fees exceeding 25 percent per two-weeks (650 percent APR).[42] (Nevada

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[39] Gary Scott, "Payday Loan Firm Faces Charges," *Pasadena Star-News*, August 2, 2006.
[40] Press Release, "Attorney General Suthers Announces $2 Million Settlement with Internet 'Payday' Lender," December 23, 2005.
[41] Press Release, "California Department of Corporations Orders Payday Loan Stores to Stop Lending in State," California Department of Corporations, September 8, 2006.
[42] California Department of Corporations, Desist and Refrain Order, Joanne Turner and Sonic Payday Limited, May 10, 2006.

regulators notified Clark County Legal Services that it, too, had "issued the appropriate action as required" when its investigation found that Coastline Credit Ltd. Dba:Sonicpayday.com was an unlicensed payday lender in Nevada.)[43] Three Florida consumers filed a class action lawsuit against Sonic Payday and Coastline Credit for charging excessive interest rates, approving loans even though borrowers have outstanding loans with other lenders, refusing to provide Florida's required grace period for repayment, and harassing borrowers with calls at work. The plaintiffs were charged 607 to 817 percent APR for loans made via the Internet.[44]

**District of Columbia** Attorney General settled a case against Utah-based Yourcashbank.com, a company that made payday loans via the Internet. The DC investigation found that the unlicensed lender was charging excessive interest rates and fees on loans collected through automatic withdrawals from consumers' bank accounts. DC laws permit only check-based lending, not electronic funds transfers to repay loans.[45]

**Massachusetts Commissioner of Banking** issued 91 cease activity orders to Internet payday lenders in February 2005 following an investigation of loans marketed to Massachusetts consumers. Massachusetts caps annual rates for small loans at 23 percent with fees capped at $20, far lower than payday loan rates. In May 2006, Massachusetts regulators issued an additional 48 cease activity orders against out-of-state payday lenders marketing illegal loans via the Boston Craig's List website and in the Boston Herald. The Commissioner of Banks asked the website and newspaper to stop accepting advertising from payday lenders.[46]

**Community Legal Services in Philadelphia** filed a lawsuit late in 2005 against Cash Today, a large check-cashing company that allegedly operated an illegal payday loan scam. Cash Today claimed to refer its customers to Cash Today of Delaware, accessed by a computer at their check cashing outlets to the Internet site, www.cashtoday123.com that made loans to Pennsylvania consumers. Cash Today of Delaware charged Pennsylvania consumers $20 per $100 or 520 percent APR for two week loans and used electronic access to borrowers' bank accounts to deliver and collect on loans. The loans automatically renewed unless borrowers notified the lender of a payoff three days prior to the due date.[47] Cash Today filed for bankruptcy protection early in 2006.[48]

**West Virginia Attorney General** brought numerous actions against illegal Internet payday lending, based on consumer complaints in West Virginia, a state that caps rates for licensed lenders at 36 percent APR. On November 6, 2006, the Office announced

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[43] Letter from Deputy Commissioner, Nevada Financial Institutions Division, to Clark County Legal Services Program, Inc, July 3, 2006, on file with author.
[44] David Bauerlein, "Lawsuit Targets Payday Lenders," *The Florida Times-Union,* September 11, 2006.
[45] Press Release, "DC's Attorney General Investigates Payday Lender: Yourcashbank.com," District of Columbia Office of Attorney General, April 5, 2006.
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[47] Press Release, "CLS Sues to Stop Illegal Payday Lending Scheme," Community Legal Services of Philadelphia, December 21, 2005. Complaint, Turner v. Frascella Enterprises, Inc. D/B/A Cash Today, et al., Court of Common Pleas , Philadelphia County, December Term, 2005.
[48] Todd Mason, "Check-Cash Firm Seeks Protection," Philadelphia Inquirer, Feb. 1, 2006.

eighteen settlement agreements with Internet payday lenders. An additional eight companies have provided written confirmation that they will cease making loans in the state. Suit was filed in Circuit Court in Charleston against fourteen Internet lenders to enforce investigative subpoenas. West Virginia officials reported that consumers are being charged 600 to 800 percent APR, more than 44 times the maximum for unlicensed loans in the state. Companies sued include Apple Fast Cash Personal Loans; Cash Advance Network, Inc.; Cash Advance USA; Cash Advance Marketing, Inc. d/b/a Cash back Values; Cash Net/ American Interweb Marketing d/b/a/ CASHRebateOnLine.com; Leads Global, Inc. d/b/a/ Cash Today Limited, and d/b/a/ Cash2day4your.com; GECC d/b/a Cashdirectnow.com; Americash Hotline, LLC d/b/a Direct Cash Express, LLC; Magnum Cash Advance, Inc.; Ambassador Financial Services d/b/a Nationwide Cash; PayDay OK d/b/a PayDay Select; Quik Payday.com Financial Solutions; and USA Cash Center.[49]

**Colorado Attorney General** subpoenaed unlicensed internet lenders Cash Advance and Preferred Cash Loans in early 2005 following consumer complaints. The Court awarded contempt citations when lenders failed to provide information, after which the lenders moved to dismiss the proceedings alleging lack of jurisdiction. The payday lenders in the Colorado cases claim that they are Indian tribal corporations (Miami Tribe and Santee Nation), and that they are not part of the Fontano C.B. and Executive businesses based in Carson City, Nevada, and have sovereign immunity from state law. According to Colorado's Response, "This evidence suggests that, at some point after the State's investigation, the tribes joined with the Fontano entities in a 'rent-a-tribe" scheme by which the tribal entities act as straw man, pass through fronts to shield the Fontano entities' illegal loan making behind the 'impenetrable' wall of tribal immunity, and thereby circumvent state consumer credit protection laws."[50] The District Court in Denver ruled that claims of tribal immunity do not prohibit a state from investigating violations of its own laws occurring within its own borders and noted that tribal activities conducted outside of tribal lands are subject to state regulation. The Court denied the Tribal Entities' motion to dismiss.[51]

Colorado court filings state that in earlier Kansas litigation, Fontano testified that Cash Advance and United Cash Loans were wholly-owned by five off-shore entities located in Charlestown, Nevis, St. Georges, Grenada, and Basetterre, St. Kitts. The owner of these Internet payday loan websites is a convicted felon, currently serving time in a federal penitentiary for felony tax evasion. "As detailed in the Government's Sentencing Recommendations, his plea arose out of his role as a promoter of and conspirator in 'the

[49] Press Release, "Attorney General Darrell McGraw Reaches Settlement Agreements with 18 Internet Payday Lenders and Sues 14 Internet Payday Lenders to Enforce Investigative Subpoenas and to Enjoin Usurious Lending Activities," West Virginia Office of Attorney General, November 6, 2006.
[50] State of Colorado v. Cash Advance and Preferred Cash Loans, Applicant's Response to Respondents' Motions to Dismiss, Case No.: 05CV1143 (consolidated with Case No. 05CV1144), Nov. 16, 2006, p. 11.
[51] Order, District Court, City and County of Denver, Colorado, in State of Colorado v. Cash Advance and Preferred Cash Loans, Case Number 05 CV 1143, March 12, 2007.

nation's major offshore tax evasion organization' with operations 'in Nevis and Grenada.'"[52]

## F. Evading State Limits

Despite winning legal authorization in thirty-nine states, payday lenders use a variety of tactics to evade state limits on small lending. These include "renting" bank charters, finance companies or Indian tribes; claiming to be credit services organizations arranging credit-improving loans for borrowers, and restructuring into installment lenders to get around limitations on payday loans.

Rent-a-Bank Lending

Last year, almost all store front payday lenders stopped partnering with state-chartered banks, following FDIC action to stop banks from renting their charters to facilitate payday lending in states with restrictive laws. Earlier the Office of Comptroller of the Currency, the Federal Reserve Board, and the Office of Thrift Supervision stopped their charters from participating directly in payday lending through a combination of guidelines, safety and soundness compliance, and law enforcements. As a result of the end of this tool, the industry sought new ways to stay in business without complying with state usury or small loan laws or, even, with state payday loan authorization laws that were viewed as too restrictive by some in the industry. A few payday lender-bank operations persist, including loans made by First Bank of Delaware and ACE Cash Express in Arkansas.[53]

Credit Services Organization Model

Stegman describes the switch from rent-a-bank payday lending to credit services organization model as a "through-the-looking-glass metamorphosis for payday lenders".[54] All payday lending in Texas now operates under the Credit Services Organization model, with payday lenders claiming that they are just brokering loans for other lenders in an effort to improve their customers' credit standing. Texas does not license, regulate or supervise credit services organizations, leaving borrowers unprotected from rate gouging. The combination of fees and interest make CSO loans even more expensive than the old rent-a-bank payday loans made in Texas and far higher than the Texas small loan rate cap of 48 percent annual interest plus a $10 per loan fee. Advance America collects three fees for its CSO loans, including a $20 per $100 borrowed "referral fee," a $10 per $100 "application" fee for filling out the paperwork, plus interest on the loan from a separate limited liability company capped by the Texas small loan law.

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[52] Colorado Attorney General, Applicants' Response to Respondents' Motions to Dismiss, State of Colorado v. Cash Advance and Preferred Cash Loans, Nov. 16, 2006 at 8.
[53] Press Release, "ACE Cash Express Reports Fiscal 2006 Third Quarter Results," ACE Cash Express, April 27, 2006. Electronic communication from AAPL in Arkansas, July 6, 2006, reporting that ACE and First Bank of Delaware offer $1,000 loan with 10 bi-weekly payments of $199.97 for a total of $1,999.70 repaid at 390 percent APR.
[54] Stegman, at 180.

According to Motley Fool, Advance America carries the default risk which is just two percent of gross loans receivable.[55]

Cash America uses the CSO model in Florida and Michigan, states where payday loans are authorized by state laws. In Florida, Cash America charges 18 percent annual interest paid to the nominal lender NCP Finance Limited Partnership plus $18 per $100 for the "broker fee" paid to its wholly-owned subsidiary, Cash America Financial Services, Inc., which acts as a "credit services organization." A $500 CSO loan, repaid in two weeks, costs almost 500 percent annual interest, compared to the 287 percent APR maximum for a $500 loan under Florida's payday loan law.[56]

Open-end Credit

As of March 27, 2006, Advance America's 100 Pennsylvania outlets stopped issuing payday loans through its bank partner, following enforcement action by the FDIC. In June, Advance America started marketing a new form of payday lending in Pennsylvania, a state with a 24 percent APR small loan rate cap. The "Choice" product is an open-end line of credit for up to $500 with a periodic rate of 5.98 percent APR plus a monthly participation fee of $149.95. Truth in Lending Reg Z excludes participation fees from the definition of the finance charge which is used to compute the annual percentage rate.[57] Since the fee is not used to compute the APR, the borrower will never be told the true cost of 370 percent APR of using Advance America's latest product. As with a payday loan, a "Choice" borrower leaves as "security" a personal check made out for the full payment of the account balance.

When the Pennsylvania Department of Banking filed a complaint against Advance America's Choice product, Governor Rendell said that a person who borrows $500 and makes the minimum payments ends up paying back $4,000 over about two years. The Governor described Advance America's product as "outrageous," and stated that payday lenders "prey on people who live paycheck to paycheck."[58] The Pennsylvania Banking Department charged the company with operating as an unlicensed lender, with making a loan or advance of money or credit under the meaning of the Consumer Discount Company Act, and with charging more than six percent interest, the state limit for unlicensed lenders. The Department alleged that the Monthly Participation Fee is a sham to charge illegal, usurious interest in violation of the maximum allowable annual rate of interest under the Loan Interest and Protection Law. The State asked for a declaratory judgment that Advance America's "Monthly Participation Fee" is not authorized by Pennsylvania law and violates the Consumer Discount Company Act and

[55] Lawrence Meyers, "Payday Lenders Strike Back," Motley Fool, July 29, 2005.
[56] "Payday Loan Companies May Exploit State Credit Repair Acts to Evade Usury Laws," NCLC Reports Consumer Credit and Usury Edition, Vol. 25, July/August 2006, at 1.
[57] Federal Reserve Board, Reg. Z A§ 226.4(c)(4)
[58] Press Release, "Governor Rendell Announces Lawsuit to Protect PA Consumers Against Payday Loan Company," Office of the Governor, Commonwealth of Pennsylvania, Sept. 27, 2006.

the Loan Interest and Protection Law; and asked for a permanent injunction and other relief.[59]

Installment Lending

Oregon enacted payday loan rate caps, effective July 2007. During debate at the special session of the legislature, industry spokesman Mark Thompson, representing MoneyTree, told lawmakers that the Payday Loan Reform Act won't stop loan abuses as lenders develop new products that are unregulated.[60] The new law does not apply to installment lenders making loans for longer than 60 days. As of November, a fourth of payday lending stores had bought conventional lender licenses which are not subject to the new rate caps. The Oregon Department of Consumer and Business Services told a Senate committee that it is planning to propose legislation to cap annual interest rates for conventional loans at 36 percent annual interest.[61] A bill to cap all small loans at 36 percent is pending.

Illinois is the "poster child" for lenders that use installment loans to evade state limits on payday loans, defined under the Payday Loan Reform Act as being loans for 120 days or less. There is no rate cap for lenders licensed under the Consumer Installment Loan Act, providing an incentive for payday lenders to institutionalize loan flipping into "installment" contracts. These 121-day installment loans are based on checks and wage assignments but do not conform to fee caps or comply with rules on loan roll-overs or collection practices.

The Monsignor John Egan Campaign for Payday Loan Reform report, "Hunting Down the Payday Loan Customer: The Debt Collection Practices of Two Payday Loan Companies," examined the court records of borrowers taken to court by Americash and Cottonwood d/b/a The Cash Store in 2005 and 2006. These two companies formerly made payday loans but are now using installment loans to evade the Illinois Payday Loan Reform Act. The new "payday installment loans" appear to be payday loans with built-in renewals. The Cash Store offers a 140 day loan with nine biweekly interest payments and a final balloon payment of the entire principal, essentially a 14-day loan with 10 built in rollovers.[62]

## G. Momentum is growing to protect consumers from payday loans

In 2006 Congress enacted the John Warner Defense Manpower Authorization Act ("Military Lending Act" or "MLA") which included protections against predatory

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[59] Complaint for Declaratory and Injunctive Relief, Pennsylvania Department of Banking vs. NCAS of Delaware, LLC, d/b/a Advance America Cash Advance Centers, Commonwealth Court of Pennnsylvania, Sept. 27, 2006.
[60] Oregonians for Payday Loan Fairness, www.paydayloanfairness.org/loophole/, visited June 13, 2006
[61] Bill Graves, "Payday Lenders Look for Ways Around Cap," The Oregonian, July 2, 2006.
[62] Press Release, "Major Follow Up Study of Payday Loan Practices Since Implementation of Important Reform Legislation Shows New Method for Evading the Law," Monsignor John Egan Campaign for Payday Loan Reform, Chicago, IL, October 16, 2006. Report posted at www.woodstockinst.org.

lending for Service members and their families. Congress capped loan rates at 36 percent annual interest, inclusive of fees, and outlawed loans secured by personal checks or required electronic debits. The Department of Defense is currently writing regulations to implement the law which takes effect October 1. While the MLA does not only apply to payday lending, passage of federal usury protections started a national dialogue about protecting all low-wage workers from triple-digit rate payday loans.

In about a dozen state legislatures so far this year, bills to cap payday loan rates at 36 percent APR or to repeal payday loan carve-outs from usury or small loan laws were introduced. Former supporters of payday lending are now calling for repeal or reform, including the original sponsor of the Virginia payday loan law. Virginia Senator Saslaw killed his weak industry bill to prevent Governor Tim Kaine from inserting a 36 percent annual rate cap to the bill. In South Carolina, home to industry giant Advance America, almost 90 House members co-sponsored a bill to cap payday loan rates at 36 percent plus a $5 loan fee. Last year Oregon enacted a moderate rate cap which will take effect in July. Repeal or reform bills are being heard from New Hampshire to California. The Attorneys General of Missouri and Montana called for 36 percent small loan rate caps for payday lending.

Cities and towns are fighting back against the glut of neon-lit fast cash outlets, using zoning laws and permits to slow down the proliferation of lenders. A recent report compiled by a Utah religious organization identified 58 jurisdictions with local zoning or ordinances on the books or in process, up from 39 jurisdictions just fifteen months ago. Jurisdictions limit payday lending outlets most commonly by special zoning and density restrictions.[63] California's San Francisco declared a moratorium on new check cashers or payday lenders and Oakland requires a special use permit and distance restrictions. Tucson and the Salt Lake City suburbs have adopted zoning ordinances that treat payday loan outlets as nuisances. Just this week, City Council in Overland Park in Kansas voted to impose a one-mile limit between new payday loan stores and to require existing ones to register with the city and pay a yearly $1,000 licensing fee. Payday loan and car title loan stores will be restricted to at least 200 feet from residential areas.[64]

## H. Industry Public Relations Fails to Reform Payday Loan Product

When threatened, the payday loan trade group adopts voluntary industry best practices instead of reforming their product or supporting meaningful consumer protections. Industry "best practices" do not protect consumers and do not address any of the hazardous features of loans. Every time the payday loan industry is criticized, it updates its "best practices." When Consumer Federation of America and US PIRG criticized "rent-a-bank" payday lending, CFSA issued best practices for partnering with banks. Those meaningless efforts did not stop the Comptroller of the Currency, the Office of Thrift Supervision and, later, the FDIC, from issuing and enforcing compliance standards that put a halt to banks aiding and abetting the evasion of state usury laws.

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[63] Linda Hilton, 2007 Local Payday Ordinances Summary, Coalition of Religious Communities, March 2007.
[64] Brad Cooper, "Overland Park adopts payday loan regulations," The Kansas City Star, March 20, 2007.

When witnesses in uniform began testifying in opposition to payday lending at state hearings, CFSA issued its military "best practices." That ineffectual code did not stop the Department of Defense from calling for protections to stop payday lending to Service members or stop Congress from enacting a 36-percent annual rate cap in the John Warner National Defense Authorization Act for Fiscal Year 2007.

And, now that payday lending has been labeled "financial quicksand," and a "debt trap" by consumer groups, civil rights organizations, military associations and financial regulators, the industry is offering an extended payment plan as another "best practice" to be adopted as legislation in some states. This is a tacit admission by the industry that their product is a debt trap. But, rather than restructuring loans to be affordable at the outset, the industry offers a once-a-year escape hatch that will not solve the problem.

Payment plans do not prevent the payday loan debt trap. The details of CFSA's extended payment plan have not been made public, but state legislation that the industry supports illustrates why after-the-fact payment plans do not prevent payday loans from trapping unwary borrowers in a cycle of debt. Bills filed in Texas, Arizona, Washington, Colorado, and Arkansas require a borrower to request, sometimes in writing, an extended payment plan the day BEFORE the loan is due in order to be eligible for more time to pay. Only one plan per year is offered by the industry, although the average borrower has eight or more loans during the year.

Repayment plans already in state laws are optional, not required, and are seldom used due to obstacles and lender incentives to discourage use of the plans. States with these laws include Alabama, Alaska, Florida, Illinois, Michigan, Nevada, Oklahoma and Washington. Less than half of one percent of loans in Oklahoma are paid through an extended payment plan while the average Oklahoma borrower has nine loans per year. In Washington, 90 percent of loans go to borrowers with five or more loans per year, borrowers' average eight loans per year, and less than 0.8 percent of loans employ the payment plan option.[65]

## I. Federal and State Reforms Needed to Protect Consumers

1. Congress should enact legislation to prohibit the relatively new practice of holding a check or electronic access to bank accounts as security for a loan. Using the check/debit as security for the payment of a payday loan is the key to the coercive collection tactics used by lenders. Consumers are often forced to choose among three untenable options at the end of a short-term loan because lenders are holding their check: 1) allow the check to be debited from their bank account where it will deplete money needed for food and other living necessities; 2) allow the check to bounce, triggering bounced check fees from both the lender and the consumer's bank, exposing the borrower to coercive collection tactics when lenders threaten civil or criminal prosecution for unpaid checks, and risking the loss of their bank account or check-writing privileges, or 3) renew the loan at an increased cost. Basing loans on personal checks/debits that will

[65] "Protecting Working Families from Abusive Payday Loans: Lessons from Other States," VaPERL, January 2007, www.VirginiaFairLoans.org.

be deposited to repay the loan on the next payday is the modern equivalent of securing loans through wage assignments, a disreputable credit practice that violates Federal Trade Commission rules.

2. Legislation should also extend Electronic Funds Transfer Act protections to single payment loans that require consumers to sign over electronic access to their bank accounts. For almost thirty years, creditors have been prohibited from conditioning the extension of credit on electronic payment of installment loans. Payday loans made by some companies and via the Internet use mandatory electronic access to borrowers' bank accounts as security for the loans. Legislation should track EFTA requirements by prohibiting single payment loans based on required electronic access to an account in a federally insured depository institution or insured credit union.

Congress provided these protections to military borrowers in 2006 by enacting the John Warner National Defense Manpower Authorization Act. In addition to capping rates for loans to Service members, the Military Lending Act prohibited loans secured by personal checks and electronic access to bank accounts. We believe that these protections should be provided to all consumers. Irrevocable electronic access to borrowers' bank accounts is especially problematic for loans made via the Internet. We have seen contracts that make it impossible for consumers to withdraw account access authorization, allowing lenders to repeatedly withdraw funds for loan renewals.

3. Congress should forbid federally insured institutions from serving as a front for payday lenders by partnering with them in rent-a-bank arrangements. Although this practice has largely stopped, there are some holdouts, and there is currently no law or regulation prohibiting it.

4. States should revoke the special treatment of payday lending and impose an effective usury limit to protect necessitous borrowers from rate gouging. Bills to repeal payday loan exemptions from rate caps or to apply a universal small loan rate cap would provide to all consumers the protections Congress has conferred on Service members and their families.

5. Mainstream financial institutions should offer affordable, responsible small loan products to their depositors. We applaud FDIC Chairman Sheila Bair's leadership in proposing guidelines for responsible small loans and her call for military banks to develop products that meet the test of the Military Lending Act predatory lending protections. Banks and credit unions should extend their line of credit overdraft protection to more account holders.

6. Banks and credit unions should encourage emergency savings accounts for low and moderate income consumers. Emergency savings are essential to keep low income consumers out of the clutches of fast cash outlets. CFA's analysis based on Federal Reserve Board and other survey data found that families earning $25,000 per year with no emergency savings were eight times as likely to use payday loans as families in the same income bracket who had more than $500 in emergency savings. We urge banks and credit unions to make emergency savings easy and attractive for their customers.