The Case for Banning Payday Lending: Snapshots from Four Key States

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California Reinvestment Coalition advocates for fair and equal access to banking and other financial services for California's low–income communities and communities of color. CRC has a membership of close to 300 nonprofit organizations and public agencies across the state of California.

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The Case for Banning Payday Lending: Snapshots from Four Key States

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For years, community groups and advocates around the country have waged pitched battles to eliminate payday lending in their respective states. Notwithstanding extensive documentation of the payday lending debt trap and the billions of dollars payday lenders have systematically stripped from low-income families and communities, especially those of color, the payday lending industry has cannily built and exerted its political power in state capitols throughout the U.S. As a result, many states permit usurious payday lending, with often dire consequences for millions of payday loan borrowers already struggling to make ends meet.

A key move in the industry's playbook is to convince states that the best way to address predatory payday lending is to regulate the industry. But regulations in states that authorize payday loans are too often written by industry and porous at best, and across the board fail to eliminate the hooks that trap people in these usurious and harmful loans. Other less subtle strategies the industry employs are to co-opt state legislators through generous campaign contributions, and to lobby aggressively against any and all attempts to prohibit or curtail payday lending.

This report presents snapshots of payday loan regulation in four key states – California, Illinois, New York, and North Carolina. The snapshots are intended to provide helpful lessons and serve as a useful basis for comparison. Although New York has long prohibited payday lending altogether through its strong usury law, North Carolina opened the door to payday lending for five years before restoring its previous ban in 2001. Illinois, by contrast, has attempted to restrict payday lending through a series of legislative and regulatory reforms adopted over the past 12 years, many of which the industry immediately circumvented. California, for its part, has few payday loan regulations on the books. While some cities and counties in California have sought to curb payday lending by passing local ordinances, the industry has to date successfully thwarted all efforts to pass meaningful state-level protections.

The four organizations that prepared the snapshots – California Reinvestment Coalition, New Economy Project (formerly NEDAP), Reinvestment Partners, and Woodstock Institute – offer their perspective as financial justice advocates that have been in the thick of payday lending battles in their home states. Their direct experience with a range of regulatory frameworks has shown that strong usury caps have proven the single most effective means of banning payday lending.

The report comes at an exciting time. Advocates have spent years

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refuting and defending against the payday lending industry's shameless and aggressive lobbying, and there is now a clear turning of the tide. Last month, the Consumer Financial Protection Bureau published a comprehensive study on storefront and bank payday loans, which showed how payday loans trap many borrowers in a long-term cycle of indebtedness. That same week, the Federal Deposit Insurance Corporation and Office of the Comptroller of the Currency issued strong proposed guidance that would effectively rein in predatory payday lending by banks.

There is an emerging chorus at local, state, and federal levels calling for an end to payday lending – whether by banks, storefront payday lenders, or over the internet – and the squeeze is now squarely on the industry. The changing dynamic will likely increase pressure in battleground states, such as California and Illinois, and we hope soon to see strong federal action that ends payday lending once and for all.

California Snapshot

Payday lending is a relatively new phenomenon in California. In 1996, the state legislature legalized payday loans by permitting check cashers to defer the deposit of personal checks written by their customers for up to 30 days.[1] The short history of payday lending in California has been tumultuous, with advocates, legislators, and industry constantly at odds with one another over the abusive nature of payday loans and the need for regulation and consumer protections.

The payday lending industry saw dramatic growth in California during the early- to mid-2000s. At one point, the number of payday lending storefronts exceeded the number of McDonald's in the state.[2] While payday lenders reap enormous profits by pushing millions of economically vulnerable Californians deep into debt, the state legislature has done nothing to protect consumers.

Policy makers in cities and counties throughout California, however, have recognized the harmful effects of the payday loan debt trap, and major cities such as San Francisco, Oakland, Sacramento, Oceanside, and San Jose, along with a slew of smaller cities, have adopted land use ordinances to restrict the growth of the industry. Several cities, including San Diego, have adopted resolutions calling on the state to take action to end abusive payday lending.

Despite a groundswell of support from local communities and governments for increased oversight and regulation of payday lenders, key members of the California State Senate and Assembly have been reluctant to enact legislation to end or even curtail predatory payday lending. Interestingly, there has been a regional divide among legislators, with San Francisco Bay Area and northern California members more often voting in support of proposals to rein in the payday loan industry, and those from the greater Los Angeles region siding with the trade associations and payday loan corporations.

Overview

California's payday lending law permits a maximum loan amount of $300, including any fees, and prohibits lenders from offering borrowers more than one payday loan at a time. The law states that if a lender speaks to the borrower in a language other than English, the loan documents must be in that same language. Finally, the law permits borrowers to request

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1 Mark Farouk, Kathleen O'Malley, and Tiffany Morrison, "California Deferred Deposit Transaction Law" (Report to Assembly Committee on Banking and Finance, March 4, 2013).

2 Steven M. Graves, "Think Payday Lending Isn't Out of Control in the United States?" (California State University Northridge Geography, 2006). http://www.csun.edu/~sg4002/research/mcdonalds_by_state.htm

an extension of the payment due date or to make payments on an existing payday loan for no additional fee, though most borrowers are unaware of these options.

In 2002, the legislature enacted the California Deferred Deposit Transaction Law (CDDTL), which shifted payday lending oversight from the state's Department of Justice (DOJ) to the state's Department of Corporations (DOC). In addition to imposing licensing requirements, the law requires payday lenders to disclose certain information to consumers, including finance charges and interest expressed as an annual percentage rate (APR). The law, however, does not curtail the high interest and fees that payday lenders typically charge, and generally falls short of providing any meaningful consumer protections.

The state's largest payday lenders and the industry trade associations have aggressively and successfully lobbied against local and statewide reform efforts.

By 2006, there were nearly 2,500 storefronts across the state that made 10 million loans to 1.4 million borrowers that year. Following the financial collapse of 2007, the number of brick-and-mortar outlets declined to around 2,100 at the end of 2011. The number of Californians using payday loans has grown, however, from 1.6 million in 2009 to 1.7 million in 2011.[3] The payday lending industry collected an estimated $578 million in fees in California in 2011.

According to the DOC, borrowers in California take out an average of 7-10 loans per year.[4] These numbers illustrate the debt trap that often ensues once a consumer takes out an initial payday loan, and the fact that payday loans are not the short-term fixes the industry purports them to be. In 2011, payday lending caused a net economic loss to California of $135 million.[5]

The Industry

Although there are hundreds of payday loan companies in California, including national chains, large statewide companies, and some mom-and-pop stores, the five biggest payday loan companies hold almost half of all the payday lender licenses in the state. Los Angeles, Sacramento, Fresno, and San Diego have the highest numbers of payday lenders in the state.

The state's largest payday lenders and industry trade associations have aggressively and successfully lobbied against local and statewide reform

3 California Business, Transportation and Housing Agency, Department of Corporations, "2011 Annual Report, Operation of Deferred Deposit Originators licensed under the California Deferred Deposit Transaction Law" (October 31, 2012). http://www.corp.ca.gov/Laws/Payday_Lenders/pdfs/CDDTL2011ARC.pdf

4 Applied Management & Planning Group and Analytic Focus, "2007 Department of Corporations Payday Loan Study" (Submitted to the California Department of Corporations, December 2007; Updated June 2008). http://www.corp.ca.gov/Laws/Payday_Lenders/Archives/pdfs/PDLStudy07.pdf

5 Tim Lohrentz, "The Net Economic Impact of Payday Lending in the U.S." (Insight Center for Community Economic Development, March 2013). http://www.insightcced.org/uploads/assets/Net%20Economic%20Impact%20of%20Payday%20Lending.pdf

efforts. The payday lending industry has also made substantial contributions to legislators and party committees. From May 2008 to May 2012, the top ten Senate recipients of contributions from payday lenders received approximately $222,000, and the top ten Assembly recipients received $150,000.[6]

Two of the country's largest banks, Wells Fargo and U.S. Bank, also make high-cost payday loans in California.[7] Although these bank payday loans are marginally less expensive than storefront payday loans, they create a similar cycle of debt and cause the same overall harm to borrowers. Neither bank has been willing to share data with community organizations, but both banks clearly add significantly to the number of borrowers ensnared in payday loan debt. Borrowers of these banks' payday loans have told California Reinvestment Coalition that they trusted their bank and did not realize how predatory these loans were until they had been trapped in debt for months. Although bank lobbyists have not publicly opposed payday lending legislation in California, voting patterns suggest that the lobbyists are influencing legislators behind closed doors.

Local Responses

Communities across the state are increasingly concerned about the harmful social and economic impact of payday lending on people and neighborhoods, and many city-level policy makers want to curb abusive payday lending practices. Preempted by state law and regulatory authority, local jurisdictions in California have sought to regulate payday lending by exercising their land use authority. By passing local zoning ordinances, for example, cities have made it more difficult for payday loan companies to open up shop and have gone on public record that they are opposed to the industry's harmful practices.

By passing local zoning ordinances, cities have made it more difficult for payday loan companies to open up shop.

Oakland, Oceanside, Sacramento, San Francisco, and San Jose have adopted local policies to curb payday lending, ranging from restrictions on permits for payday loan businesses to caps on the number of payday loan stores permitted citywide. Some cities and counties, including Santa Clara County, have passed interim or permanent moratoria on new payday lending storefronts. Local campaigns to pass land use ordinances have served as platforms to educate community groups, elected officials, and the public on the abusive nature of payday loans, and to build a network of anti-payday lending advocates and activists throughout the state.

Payday Lending Reform in Sacramento

State legislative efforts to address payday lending have been extremely

6 MapLight, "Payday/Title Loans Interest Group Contributions" http://maplight.org/california/interest/F5400

7 Wells Fargo, "Direct Deposit Advance Frequently Asked Questions" https://www.wellsfargo.com/checking/direct-deposit-advance/faqs; U.S. Bank, "Checking Account Advance Frequently Asked Questions" https://www.usbank.com/checking/caa/faqs.html

frustrating, to say the least. On one hand, there has been a constant flow of proposals to strengthen payday lending regulation and consumer protections, which industry has defeated. On the other hand, there have been proposals to increase permissible payday loan amounts, as well as to allow internet-based payday lending, which advocates have blocked.

Attempts to enact an interest rate cap in California have failed. A 2008 proposal to cap payday loan APRs at 36% was defeated in the Assembly banking committee. In 2010, a similar cap for borrowers receiving unemployment benefits also died in committee.[8] Legislators have refused to enact a rate cap because of the industry's claims that they would not be able to make a profit if APRs were capped at 36%, that payday lenders would be forced to shut down shop and leave the state, and that this would leave Californians without access to small dollar credit.

Attempts to enact an interest rate cap in California have failed.

Since then, advocates in California have stymied two industry-backed bills that would have increased maximum loan limits from $300 to $500. In the spring of 2013, a coalition that included California Reinvestment Coalition, the Center for Responsible Lending, the Law Foundation of Silicon Valley, and National Council of La Raza supported a state bill to cap the number of times a lender could make a loan to a borrower at four per year, impose an underwriting requirement, and extend the minimum repayment period to 30 days per $100 borrowed (so that a borrower would have 90 days to repay a $300 loan). Though they fall short of imposing an interest rate cap, these incremental reforms would go far to addressing the payday loan debt trap. Unfortunately, even though the bill's supporters and sponsors were willing to make significant compromises, the bill failed to garner the five votes needed to pass out of the Senate banking committee.

Conclusion

California advocates believe that the state legislature is unlikely to rein in the payday loan industry absent some dramatic shift in capitol politics and the composition of key legislative committees. Running a statewide ballot initiative is another possible strategy, but the cost of operating an electoral campaign presents a barrier. In the meantime, many organizations continue to educate community groups and local leaders on the abusive nature of payday loans and build support for local campaigns. Advocates also plan to refocus efforts towards engaging the Consumer Financial Protection Bureau and working with the agency to crack down on payday lenders in California and across the country.

8 Mark Farouk, Kathleen O'Malley, and Tiffany Morrison, "California Deferred Deposit Transaction Law" (Report to Assembly Committee on Banking and Finance, March 4, 2013).

Illinois Snapshot

Introduction

The payday lending industry continues to have a strong presence in Illinois, notwithstanding a series of reforms the state implemented in 2005 and 2010 to curb the most predatory aspects of payday loans. Although advocates have not succeeded in securing a double-digit interest rate cap on all payday loans, which would end abusive payday lending, they have won other important consumer protections, including a limit on the number of loans a borrower can have at one time, the maximum term of the loan, and the number of rollovers.

The inability to pass an interest rate cap in Illinois stems in large part from the payday loan industry's political power in the state. Over the years, payday lenders and industry groups have contributed significant amounts of money to Democrat and Republican political action committees, individual legislative campaigns, and party leaders. The Illinois Small Loan Association, for example, contributed more than $126,000 between 1999 and 2012; Americash contributed upwards of $300,000 between 2000 and 2012; and Cottonwood, another prominent payday lender, contributed roughly $437,000 over the last 12 years.[1]

The inability to pass an interest rate cap in Illinois stems in large part from the payday loan industry's political power in the state.

In addition to making direct campaign contributions, payday lenders in Illinois have funded community events, such as school supply drives and local festivals, in an attempt to manufacture a positive image with local officials and community residents. Furthermore, payday lenders hired a significant number of contract lobbyists with insider connections during both the 2005 and 2010 efforts for state reform.

Another factor limiting advocates' ability to curb abusive payday lending is the Illinois General Assembly's preference for "negotiated bills" on controversial topics. This means that advocates must negotiate with the payday lenders and garner at least some industry support before a bill can move forward in the legislative process. This environment makes it especially challenging to pass a strong interest rate cap, and advocates increasingly believe that abusive payday lending in Illinois will not end without federal action.

History

The first payday loans in Illinois were offered in the late 1990s, and carried annual percentage rates (APRs) ranging from 90 to 700 percent. Preliminary research indicates that these loans were made most frequently to low-income individuals and that 62 percent of borrowers were women. Borrowers took out an average of 12.6 payday loans per year, frequently

1 Illinois State Board of Elections, "Contribution Search - All Contributions" http://www.elections.il.gov/CampaignDisclosure/ContributionsSearchByAllContributions.aspx

renewing loans and thereby remaining in a prolonged cycle of debt.[2]

Early advocacy and industry's evasion of rules

The Monsignor John Egan Campaign for Payday Loan Reform formed in 1999, shortly after payday loans had become prevalent in the Chicago area. This grassroots coalition included research and policy organizations such as Woodstock Institute and Citizen Action/Illinois, as well as religiously-affiliated entities and other consumer protection groups.

In 2001, the Egan Coalition persuaded the Illinois Department of Financial and Professional Regulations (IDFPR) to adopt consumer protections for payday loans with terms less than 30 days. The IDFPR's rules limited borrowers to one loan at a time with a maximum of two rollovers and, in an effort to break borrowers' cycle of debt, required a "cooling-off" period between loans. Unfortunately, these rules did not include any enforcement mechanisms, and payday lenders were immediately able to evade the new rules simply by offering payday products with terms just over 30 days.

The industry again found a loophole to exploit shortly after the new law went into effect… and borrowers received installment loans with rates as high as 700 percent.

When it became clear that the industry was willfully circumventing the IDFPR's rules, advocates pushed for state legislation. Despite heavy protests from the industry, several key state legislators led negotiations and refused to back down until protections were implemented. Illinois Attorney General Lisa Madigan, a staunch opponent of the payday lending industry, also worked with advocates throughout the process, and in 2005, Illinois enacted the Payday Loan Reform Act (PLRA). The law applies to loans with terms of up to 120 days, sets caps on fees and loan amounts, limits a borrower to two payday loans at a time, and establishes a seven-day cooling-off period between loans. It also created a real-time database, maintained by the IDFPR, that lenders must use to verify a borrower's eligibility for a loan.

Despite the good faith negotiations that led to the PLRA's passage, the industry again found a loophole to exploit shortly after the new law went into effect. Although most loans made before the PLRA had been for well under 120 days, one-third of loans made after the law went into effect had terms longer than 120 days. By extending loan terms, lenders were able to avoid coverage under the PLRA, and began to operate instead under the state's Consumer Installment Loan Act (CILA), which included few consumer protections. Once payday lenders moved into this area, borrowers received installment loans with rates as high as 700 percent.

Strengthening payday lending reforms

Closing this loophole took two years of concerted negotiations, grassroots

2 Woodstock Institute, "Reinvestment Alert: Unregulated Payday Lending Pulls Vulnerable Consumers Into Spiraling Debt" (March 2000, No. 14). http://www.woodstockinst.org/sites/default/files/attachments/alert.pdf

and media campaigns, and research documenting how lenders were changing their products to evade the new law. In 2010, Illinois enacted reforms that modified both the PLRA and CILA to ensure basic consumer protections, no matter which unsecured product lenders offer. The new law created a new type of loan under PLRA, the payday installment loan, which covers loans with terms between 120 and 180 days, and instituted multiple protections, including a $15.50 per $100 rate cap. Longer-term installment loans regulated under CILA are now capped at a 99 percent APR for loans under $4,000, and 36 percent for loans over $4,000. Balloon payments are prohibited for all loans. Lenders must report payday and payday installment loans to the IDFPR's database and may approve loans only after ensuring that a borrower does not have more than one outstanding loan. In addition, lenders must be licensed under either PLRA or CILA, but may not be licensed under both, to prevent customers from being rolled between products.

While state consumer protections could certainly be stronger, the reforms of 2005 and 2010 provide at least some assurance that payday loan borrowers in Illinois will not be subjected to an endless cycle of debt. Since the 2010 reforms went into effect, it appears that neither PLRA nor CILA lenders have found any loopholes to exploit. Nevertheless, the payday lending industry continues to thrive in Illinois. Currently, 509 licensed payday lenders and more than 1,000 licensed CILA lenders operate in the state.[3] According to the most recent IDFPR database report, payday lenders made more than 153,000 loans in 2011, and 106,425 loans in the first nine months of 2012. The number of payday installment loans is even higher. Payday loans continue to be marketed to lower-income borrowers, 56 percent of whom earn less than $30,000 per year, and 82 percent of whom earn less than $50,000 per year.[4]

Consumer advocates have continually had to defend against legislation that seeks to chip away at the protections passed in 2010. Every year, industry lobbyists push to change the enforcement mechanisms, the ban on dual licensing, the maximum loan terms, and other provisions. So far, advocates have succeeded in defeating these efforts, but must constantly monitor new bills and remind legislators that the compromise legislation of 2010 sets an absolute minimum set of protections that should not be pared back.

Consumer advocates have continually had to defend against legislation that seeks to chip away at the protections passed in 2010.

Bank and Online Payday Products

Banks, including U.S. Bank, Wells Fargo, Bank of Oklahoma, Fifth Third

3 Illinois Department of Financial and Professional Regulation, "Licensee Records" http://www.idfpr.com/dfi/LicenseeSearch/EnterLicenseeSearch.asp

4 Illinois Department of Financial and Professional Regulation, "Illinois Trends Report: All Consumer Loan Products Through September 2012" (Prepared by Veritech Solutions, LCC, September 2012). http://www.idfpr.com/News/DFI/IL_Trends_Report%20since%20Inception%20through%209-30-12%20final.pdf

Bank, and Regions Bank, along with online payday lenders, are the latest to offer predatory payday products in Illinois. The banks, in circumvention of state law, are failing to verify borrowers' ability to repay the loans, allowing for multiple rollovers, and imposing balloon payments. Although the banks' fees are somewhat lower than those charged by storefront payday lenders, the banks' payday loans can cause even more harm to borrowers because banks have direct access to their customers' bank accounts. They can extract funds regardless of the account balance, and unilaterally prioritize repayment of the payday loans over their customers' other bills, such as rent and utilities, and trigger overdraft fees. These practices often lead bank payday loan borrowers to take out another predatory loan – either at the bank or elsewhere – to pay off the first loan. Additionally, banks do not enter loan information in IDFPR's database, effectively skirting state oversight and enforcement.

Woodstock staff and other consumer advocates hold a holiday event warning potential customers about the dangers of payday loans.

The proposed rules issued by the FDIC and the Office of the Comptroller of Currency in April 2013 on bank payday loans would address many of these concerns and provide needed oversight and enforcement by federal prudential regulators.[5,6]

Online payday lenders are acting in a similar fashion to banks that offer payday loans, skirting Illinois regulations and providing Illinois residents with loans that do not include consumer protections required under state law. The Illinois legislature passed a law to ensure that customers are not required to pay back loans with terms that violate the PLRA, but regulators should require banks and online payday lenders to abide by the same set of standards or else cease operating in the state.

Conclusion

Since 2010, Illinois laws and regulations have included key consumer protections for payday loans. Despite these laws and regulations, payday loans in Illinois still carry triple-digit interest rates that make them very hard for borrowers to repay. Furthermore, bank payday loans and online payday loans flout Illinois consumer protections laws, making those loans even more harmful to borrowers. Without strong action at the state and federal level, payday lenders will continue to operate in Illinois, ensnaring its low-income residents in a cycle of debt.

5 Office of the Comptroller of the Currency, "Proposed Guidance on Deposit Advance Products" (April 2013). http://www.occ.gov/news-issuances/bulletins/2013/bulletin-2013-11a.pdf
6 Board of Governors of the Federal Reserve System, "Statement on Deposit Advance Products" (CA 13-7, April 2013). http://www.federalreserve.gov/bankinforeg/caletters/caltr1307.htm

New York Snapshot

NY Message to Payday Lenders: Keep Out!

Payday lending is categorically illegal in New York, and for most New Yorkers is a foreign concept. New York State has long banned payday lending through its strong usury laws, which make it a felony to charge more than 25 percent interest on a loan. For years, however, the payday lending industry has sought to break into New York's lucrative market, using a battering-ram approach to try to blast open the state's usury laws. Working hand-in-hand with the New York check cashers' association, the payday lending industry has repeatedly pushed bills in Albany that would legalize payday lending by exempting licensed check cashers from the state's longstanding usury caps.

In response, a broad-based coalition of community and economic justice groups has for many years engaged in concerted organizing, advocacy, and media outreach to ensure that New York does not authorize payday lending and open the floodgates to usurious, wealth-stripping small-dollar loans.

Although it had floated various bills over more than a decade, the payday lending industry started to gain visible legislative traction in New York only in 2010. That year, supported by a handful of state legislators, the industry got both state legislative houses to introduce bills to legalize usurious short-term, small-dollar loans. The bills provided a wholesale exemption from the state's civil and criminal usury laws for check cashers making these loans. From the get-go, there was little pretense over who wrote the bills. State elected officials and their staff, for example, blatantly referred to the proposed legislation as "the check cashers' bill," and frequently discussed substantive amendments that the check cashers "planned to introduce."

The New York check cashers' association had begun gearing up for the legislative push as early as 2007, when it redubbed its "PDA (payday advance) Committee" the "Small Loan Committee," to disassociate its rhetoric from notorious payday lending.[1] Aware that attempts to offer traditional payday loans in New York would not prevail, the industry crafted a bill to permit New York check cashers to offer short-term installment loans. It became immediately clear to advocates, however, that the bill was a thinly-veiled payday loan scheme. The bill expressly tied permissible loan amounts, loan application documentation, and repayment schedules to a borrowers' paystubs and pay day. Included, practically verbatim, were provisions found in other states' payday lending laws.

Payday lending is categorically illegal in New York, and for most New Yorkers is a foreign concept.

1 Financial Service Centers of New York, "Board of Directors Meeting Minutes, February 2007."

The bill contained no underwriting safeguards: loans would be based solely on people's paystubs, rather than on their actual ability to repay the loans.

In an effort to mask the true cost of these loans, the bill did not specify the exorbitant rates or fees that check cashers would be permitted to charge. Rather, the bill would have required the NYS Banking Superintendent to set maximum fees and interest for these loans, and to base the fees and rates on those charged by similar (i.e., payday) lenders in other states. Strikingly, the bill also would have required the Superintendent to ensure that interest and fees were high enough to guarantee a profit to the check cashers.

New Yorkers for Responsible Lending (NYRL), a state-wide coalition of more than 160 member organizations,[2] organized a campaign to expose the true intent of the bill and to educate lawmakers and the general public about the harmful effects of payday lending. The coalition was determined to show legislators that the bill was a wolf in sheep's clothing, but had a hard time keeping up with industry lobbyists, who maintained a constant presence in Albany.

The bill contained no underwriting safeguards: loans would be based solely on people's paystubs, rather than on their actual ability to repay the loans. The coalition pointed to the catastrophic experiences of so many payday loan borrowers, and the tremendous financial distress and emotional toll of the resulting debt trap, in states that permit payday loans. Several bill sponsors, particularly in the Assembly, quickly removed their names from the bill once they understood that it was not a credit access bill, as industry lobbyists had represented, but in fact entailed a dangerous carve-out of the state's usury laws.

This year, dogged by the coalition's strong opposition to and negative media around the usury exemption, the industry rewrote the bill to make it appear that the loans would comply with the state's usury laws. The amended bill, introduced in early 2013, stated that check cashers would make short-term, small-dollar loans within the 25 percent usury limit. But it also provided for a series of fees, such as application and monthly maintenance fees. Tucked into the 2013 bill was the same carve-out from the usury laws contained in previous versions. Under the terms of the amended bill, then, a $300, 90-day loan would carry an APR of 204 percent -- more than eight times the state's usury cap.

It was not lost on advocates or legislative staff that the industry was merely trying to hide the usurious nature of the proposed loans by shifting "interest" to "fees." Under well-established New York law, interest calculations for determining usury entail factoring in both the interest rate and fees – not to mention that the bill would have exempted the industry altogether from compliance with the state's usury laws.

2 New Yorkers for Responsible Lending, "NYRL Coalition Members" http://www.nedap.org/programs/nyrlmembers.html

In February 2013, the New York State Department of Financial Services (DFS), which oversees both check cashers and state-chartered banks, issued a strong letter to licensed debt collectors in the state, reminding them that it is illegal to collect on payday and usurious loans – which in New York are void and unenforceable – including loans made over the Internet. DFS Superintendent Benjamin M. Lawsky advised that his agency "would protect consumers from usurious lending, including payday lending, through aggressive enforcement of law violations."[3]

By spring 2013, the industry effort hit a wall, thanks to effective coalition organizing and a damning newspaper exposé that connected the industry campaign contributions to state legislators sponsoring the bill.[4] Shortly thereafter, the DFS superintendent sent a letter to the state Assembly Speaker expressing the Cuomo Administration's opposition to the bill. The administration's weighing in on pending legislation was virtually unprecedented and caught the attention of several newspaper editorial boards and local media, which further took bill sponsors to task for crassly supporting a toxic payday lending bill in exchange for industry campaign contributions. Within days, the Senate bill sponsor disclosed that, in light of the governor's opposition, he would not seek to advance the bill.

Banks Making Payday Loans Need to Stay Away Too

Wells Fargo Bank entered the New York retail market only a few years ago, when it acquired Wachovia during the financial meltdown. In early 2011, Wells Fargo shared its plan to introduce its payday loan product in New York, as part of rebranding the old Wachovia branches as Wells Fargo outlets. The bank intended to use its status as a national bank to evade New York's usury laws, based on federal preemption.

Good, old-fashioned organizing defeated the bank's plan. Wachovia's branches in the state were clustered in New York City, and local labor, community, legal services, and civil rights groups, along with community development financial institutions, quickly banded together to prevent Wells Fargo from bringing its usurious payday loans to the state. The coalition of more than 25 organizations that emerged sent a strong message to the bank that New Yorkers were vehemently opposed to circumvention of the state's usury laws, and invoked the potentially serious reputational risk to the bank if it were to introduce toxic payday loans in New York. Although their immediate concerns pertained to Wells Fargo's actions in New York, the groups also framed its public messaging broadly that the

The coalition sent a strong message to the bank that New Yorkers were vehemently opposed to circumvention of the state's usury laws.

3 NYS Department of Financial Services, "Letter to all debt collectors operating in the State of New York" (February 22, 2013). https://www.governor.ny.gov/press/02222013cuomo-annc-deptoffinanc-debtcollect-not-seek-collections-illegal-paydayloans

4 Daily News, "Check cashing stores push Albany lawmakers to allow 200% APR loans" (April 23, 2013). http://www.nydailynews.com/news/politics/check-cashing-stores-push-offer-200-apr-loans-article-1.1325661#ixzz2UsGeSrAh

bank should not be engaged in payday lending anywhere.

New York groups were especially alarmed by the slippery slope that would result from one national bank's making payday loans in the state, which would not only harm low-income New Yorkers but also seriously undermine the campaign to keep all forms of payday lending out of the state.

The industry's push in New York was part of a national effort to undo strong regulation of payday lending at the state level.

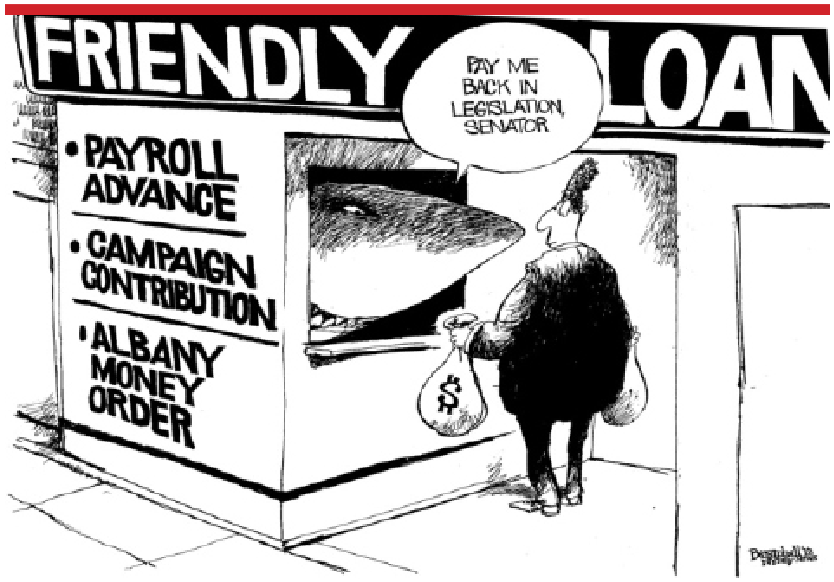
Observations

The industry's push in New York was part of a national effort to undo strong regulation of payday lending at the state level. The industry is also apparently worried about prospective rule-writing and enforcement action by the federal Consumer Financial Protection Bureau (CFPB), and seeks to open up payday lending in states like New York before the CFPB takes such steps.

Groups in New York increasingly recognize the need to reframe the debate over payday lending. Millions of New Yorkers are struggling to make ends meet, but the answer to their income shortfalls is not greater financial distress caused by predatory loans. Devising a "better payday loan" is not the goal. Rather, we should actively promote savings; support community development financial institutions, especially neighborhood-based credit unions; and work diligently to ensure that all people have a living wage and broader economic security.

Conclusion

Fortunately, the New York payday loan bill was stopped this year. Unfortunately, payday lending proposals in New York are like the creature from the lagoon that keeps rearing its head even when you think it's gone. Some advocates expect to see the industry back in Albany before long, pushing another payday loan bill. The work continues.



from NY: (source: Daily News, April 25, 2013)

North Carolina Snapshot

Ending payday lending was like rooting out kudzu after years of growth in the summer heat. Every advocacy and enforcement tool imaginable was used to rid North Carolina of the stubborn root of greed that pervades the payday loan industry.

On March 1, 2006, North Carolina Attorney General Roy Cooper announced a settlement with three payday lenders. The action marked the end of storefront payday lending in North Carolina – the culmination of a six-year campaign to end payday lending in the state.

Ten years earlier, in 1996, North Carolina had authorized payday lending under its check-cashing laws, by classifying payday loans as "deferred presentment checks." This camouflaging enabled payday lenders to circumvent the state's Consumer Finance Act, which sets a 36 percent APR limit for specified loans.

Between 1996 and 2001, the number of payday lenders in North Carolina grew to more than 800 stores. Although some were single-store operations with local owners, most were national chains such as Ace Cash Express or Advance America. By one estimate, these outfits charged consumers almost $100 million a year in fees and interest.

According to Reinvestment Partners' 2002 report, Small Loans, Big Bucks: An Analysis of the Payday Lending Industry in North Carolina, which analyzed data collected by the North Carolina Commissioner of Banks, 17 percent of borrowers generated more than 33 percent of payday lenders' revenue. These borrowers were likely to fall into a debt trap because they renewed their loans – on average more than 18 times a year – when they were unable to pay them off. With loss rates approaching 20 percent, stores depended on finding borrowers who would repeatedly refinance their loans. With each renewal, payday lenders exacted an additional round of fees, and generated disproportionately high revenue by catching a percentage of borrowers in repeat transactions.

The state law authorizing payday lending contained an important sunset provision that set August 2001 as the date for determining possible reauthorization of payday lending. State legislators, the Governor, the Attorney General, and a mobilized base of advocates successfully rallied to deny the reauthorization. But only some payday lenders closed their doors. While the independent storefronts either sold out to the chains or shut down, the national chains affiliated with out-of-state banks, which did not have to comply with the state's 36 percent usury cap, and were thereby able to evade the law.

Advocates therefore turned their attention to addressing preemption of state laws by out-of-state banks that were making payday loans in North

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Carolina. These banks included First Bank of Delaware, County Bank of Rehoboth Beach, BankWest, and Republic Bank & Trust. As a result, policy campaigns to stop payday lending in North Carolina suddenly turned on the ability of local groups to influence federal regulators. The goal was to end partnerships between payday lenders and banks.

The Office of Thrift Supervision, Office of the Comptroller of the Currency, and Federal Reserve Board sought to discourage and end partnerships between banks and payday lenders. The FDIC, however, allowed the partnerships to flourish. When the FDIC changed leadership in 2005, it also changed its policy, effectively ending the bank-payday lender partnership. This forced the payday lenders to settle with the North Carolina Attorney General, as they had no basis for claiming federal pre-emption from the state's usury cap.

Results: Demand Evaporates

Despite payday lenders' claims that chaos would ensue if they were not permitted to operate in North Carolina, research by the UNC Center for Community Capital shows that the state's ban on payday lending has not diminished credit availability for people in the state, and has "helped more households than it has harmed."[1]

Like an annual migration, payday lenders continue to seek support from North Carolina's General Assembly to reauthorize payday lending in the state. With a new political party in control of the House, Senate, and Governorship, payday lenders succeeded in getting a new bill introduced in 2013. Public Policy Polling then released a study, in February 2013, showing that 73% of North Carolinians favored keeping the current restrictions in place and that 72% were "less likely" to vote for a legislator that supported the bill. As a result, the bill died in committee.

The Bank Payday Loan

In 2012, Regions Bank introduced its ReadyAdvance payday loan product in a few of its bank branches in North Carolina. Like all payday lenders, Regions bank charged exorbitant rates for its short-term loans. Borrowers paid one dollar in fees for every ten dollars in advances, as well as 21 percent simple interest during the period when the balance was outstanding. The loan term could last as long as 35 days, but the bank could collect any outstanding debt with the next direct deposit. Regions has asserted that it can hide behind its licensure as a check casher in the state of Alabama in order to evade North Carolina's law against payday lending.

1 Roberto G. Quercia and Janneke Ratcliffe, "North Carolina Consumers After Payday Lending: Attitudes and Experiences with Credit Options" (University of North Carolina at Chapel Hill Center for Community Capitalism, November 2007). http://www.ccc.unc.edu/documents/NC_After_Payday.pdf

The North Carolina Attorney General and advocates launched a campaign to end the bank's payday lending in the state. Responding to street protests, regulatory complaints, and media criticism, Regions Bank decided in January 2013 that it would no longer offer the ReadyAdvance product in North Carolina. The broad-based, vocal opposition to payday lending has deterred other banks that make payday loans in other states – including banks with substantial North Carolina branch footprints, such as Wells Fargo and Fifth Third Bank – from making them in North Carolina.

Reinvestment Partners campaign visual in the fight to end payday lending.

Recommendations

Payday loans perpetuate fundamental inequities in our economic system and are an especially toxic loan product that exploits the fact that millions of people don't earn enough money to make ends meet. Broader systemic change is needed to enable low- and moderate-income people to earn a living wage, cover basic living expenses, and save money. In the short term, however, state and federal governments can and should undertake the following specific policy changes to end payday loan abuses:

- **Congress and state legislatures should set a rate cap of 36 percent or lower for all credit transactions.**

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Payday lenders have thrived in states that do not have a strong rate cap for small-dollar loans, despite efforts to restrict payday lending through other consumer protections. It is critical that Congress set a 36 percent federal rate cap for all credit transactions to end usurious payday lending by storefront, online, and bank payday lenders. The federal rate cap must include language ensuring that stronger state rate caps are not preempted. It is also critical that states institute rate caps of 36 percent or lower and strongly enforce them against all bank and non-bank payday lenders.

- **The CFPB should enact strong rules to curb abusive payday lending.**

Although the CFPB lacks authority under the Dodd-Frank Act to institute rate caps, the agency has broad rule-writing and enforcement authority to limit abusive lending practices by storefront, online, and bank payday lenders. The CFPB should enact strong rules, for example, that require lenders to underwrite small-dollar loans based on borrowers' ability to repay (while covering existing expenses and debts); prohibit rollovers and balloon payments; and ban credit and payday advance products on prepaid cards.

- **The OCC and FDIC should adopt and strengthen their proposed guidance on bank payday lending, and the Federal Reserve Board should follow suit.**

The OCC and FDIC's proposed rules, issued in April 2013, strike at the heart of abusive bank payday lending by requiring banks to underwrite "deposit advance" loans to assess a borrower's ability to repay, and by restricting banks' ability to trap borrowers in a cycle of debt. To further strengthen the proposed rules, the OCC and FDIC should institute a rate cap for "deposit advance" loans and limit banks' ability to automatically reach into their customers' accounts to collect on loans. Unlike the CFPB, the prudential regulators have authority to institute rate caps on bank payday loans. The Federal Reserve Board should adopt rules consistent with the proposed FDIC/OCC rules on bank payday lending.

Conclusion

Payday lending is among the most harmful forms of credit. The experiences of four key states, California, Illinois, New York, and North Carolina, reflect a range of payday loan regulatory frameworks – from all-out prohibition to lax regulation and oversight. These state snapshots underscore the urgent need for strong federal action to end payday lending. State action is also critically needed to ensure responsible lending and fair access to credit. If we believe that a fair financial system is a predicate to racial and economic justice, then ending payday lending is nothing short of a moral imperative.