Mainstream banks making payday loans

Regulators must put swift end to new trend

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Executive Summary

Nearly a decade ago, the national bank regulator, the Office of the Comptroller of the Currency (OCC), cracked down on partnerships between payday lenders and banks. The OCC cited concerns that payday lending "can pose a variety of safety and soundness, compliance, consumer protection, and other risks to banks."[1] Since then, national banks have not partnered with payday lenders. But some have simply begun making payday loans directly—and the OCC has condoned the practice.

At least two nationally chartered banks are offering their own version of payday loans, with high fees and short-term balloon payments similar to those that cause the typical payday borrower to become trapped in long-term debt.

These bank payday loans are offered in amounts of up to $500 and repaid automatically upon the accountholder's next direct deposit. The fee for these loans is advertised at 120 percent annual percentage rate (APR), and the actual rate can be much higher depending on how quickly the loan is repaid. Because the entire loan must be repaid in short order, borrowers are likely to have difficulty both retiring the loan and meeting their other obligations. As a result, these borrowers—like the typical customer of payday loan stores—will likely take out a series of back-to-back loans, staying indebted for a significant portion of the year.

Strikingly, the banks market these loans as a way for accountholders to bring their accounts back into good standing after overdraft fees are assessed—essentially encouraging the repayment of one high-cost debt with another.

Fifteen states plus the District of Columbia cap annual interest at levels that preclude triple-digit rate payday loans by non-bank lenders.[2] But these states have little control over what national banks do within the states' borders—a situation made worse by the OCC's expansive interpretation of national bank preemption in recent years. Based on this preemption, national banks evade these states' laws, making millions of borrowers vulnerable to the payday lending debt trap who would otherwise be protected from such high-cost loans.

In 2006, Congress passed legislation prohibiting high-cost payday loans to active-duty military servicemembers and their families, but the national banks evade this law as well by structuring their product so that it is excluded from the scope of the legislation. As a result, the banks can make these high-cost loans to military personnel without restriction.

Payday lending has a disparate impact on communities of color, and banks who engage in this practice are at high risk of violating the Equal Credit Opportunity Act and other fair lending laws.

Payday lending by national banks is a growing practice, likely to grow further without appropriate regulator action. The OCC appropriately took action in 2000 to ensure national banks do not partner with payday lenders; the agency must now stop the banks from directly issuing these loans themselves.

The OCC Has Long Acknowledged That Payday Lending is Harmful

Payday loans—small loans of $500 or less with annual percentage rates (APRs) starting at nearly 400 percent for the typical two-week loan—carry short-term due dates that frequently trap borrowers in debt. Research has shown that payday lending can lead to negative financial outcomes for borrowers, including difficulty paying other bills, increased risk of credit card default, loss of checking accounts, and bankruptcy.[3]

Prior to 2000, some national banks partnered with payday lenders so that lenders could evade state interest rate caps on small loans, which, due largely to policies promoting expansive national preemption, do not apply to national banks. But in 2000, the OCC issued payday lending guidance that put an end to these partnerships, noting that payday lending "carries significant credit, transaction, reputation, and compliance and legal risks that raise supervisory concerns."[4]

The OCC further noted that its guidance more generally addressing abusive lending practices should also be applied in the context of payday lending. That guidance identifies the following indicators of abusive lending, which are characteristic of payday loans: pricing and terms that far exceed the cost of making the loan; loan terms designed to make it difficult for borrowers to reduce indebtedness; and frequent and multiple refinancings.[5]

The OCC stated it would "closely review the activities of national banks engaged in . . . payday lending, through direct examination of the bank . . . ."[6]

From Partnering with Payday Lenders to Making Payday Loans Directly

Following issuance of the OCC's guidance, national banks did stop partnering with payday lenders. But today, at least two national banks are offering payday loans directly to their customers—loans that carry all the characteristics the OCC identified as abusive in 2000.

<u>A growing trend</u>

Wells Fargo, which recently acquired Wachovia, has offered its Direct Deposit Advance product since 1994. At that time, it charged $5 per $100 advanced—already a relatively high annual percentage rate (60 percent) for a short-term loan—and loaned customers a maximum of $200 at a time. Since then, its advance has become doubly expensive—at $10 per $100—and its maximum loan size has more than doubled to $500.[7]

U.S. Bank began offering its deposit advance product more recently. (Fifth Third Bank also offers a similar product. This bank held a national charter for some of its branches and was therefore regulated by the OCC until the fourth quarter of 2009; today, it is solely state-regulated.)

This growing trend may soon accelerate, for several reasons. First, with its acquisition of Wachovia, Wells Fargo has significant potential to expand its Direct Deposit Advance product into markets where it is not currently offered. Moreover, banks will likely continue to look for new sources of fee income, and this product has the potential to generate significant fees. Indeed, the writing is already on the wall: at least one financial services technology company has started to market a software solution for financial institutions that want to make bank payday loans.[8]

How bank payday loans work

Banks call this product a “direct deposit advance” or “checking account advance,” but it closely mirrors the traditional payday loan product.[9] Typically, the banks offer loans of up to $500 at a fee of $10 per $100 borrowed. The bank uses funds from incoming direct deposits to repay the loan, or—if those are not sufficient within 35 days—repays itself by withdrawing the funds from the borrower’s bank account, even when no deposit has been made. The bank can withdraw the funds even if the withdrawal overdraws the customer’s account.[10]

The following table illustrates three potential repayment scenarios for a $500 loan. The customer owes the bank $550, to be automatically withdrawn from the customer’s next direct deposit(s). In Scenario 1, the bank repays itself with a portion of the next incoming direct deposit. In Scenario 2, the entire direct deposit is taken for repayment along with a portion of a later direct deposit. In Scenario 3, an entire direct deposit is taken again for repayment, but because there is no other income that month, the bank also withdraws funds from the borrower’s bank account directly, potentially resulting in the account becoming overdrawn.

Table 1. Possible repayment scenarios of a $500 bank payday loan

	Scenario 1 Repayment through one direct deposit	**Scenario 2** Repayment through multiple direct deposits	**Scenario 3** Repayment through direct deposit and automatic withdrawal by bank at day 35
Loan amount, plus fee owed	$550	$550	$550
Incoming direct deposit(s)	$1,000	Initial $250, then another $500 later in the month	$250
Bank repayment through direct deposit	$550	$250 from first, $300 from second direct deposit	$250
Remainder of direct deposit credited to bank account	$450	$200 from second direct deposit	$0
Amount bank withdraws from account at day 35	N/A	N/A	$300 (may cause account to be overdrawn)

What bank payday loans cost

While bank payday loans are advertised at an APR of 120 percent, this rate assumes the loan is not paid back for one month. But repayment within a couple of weeks is far more likely for those receiving paychecks twice a month.

Bank payday loans are far more expensive than alternative products, such as credit cards or consumer finance loans, no matter what the scenario—but a shorter repayment period results in an APR *many times higher* than alternative products:

Table 2. APR for bank payday loan with typical fee of $10 per $100 borrowed

Loan term	APR
3 days	1,217%
5 days	730%
7 days	521%
14 days	261%
One month/statement cycle	120%

This high cost is particularly unwarranted given the low risk posed to the bank. Because the bank repays itself, the risk is low compared to other forms of credit. As one banking analyst has noted: "They get to charge a 120 percent interest rate on what is essentially a risk-free loan."[11]

The same debt trap as traditional payday loans

Banks offering these advances attempt to differentiate their products from those offered by payday lenders, likely because bank regulators have looked unfavorably on the payday lending industry. Wells Fargo has noted that their advances are different from payday loans because the borrower cannot repeatedly renew the loan and because certain safety valves, such as cooling-off periods and payment plans, are put in place to curtail long-term use.[12]

As described in more detail below, these distinctions are superficial at best—and fictions at worst. For example, even the payday industry's "Best Practices" call for limits on rollovers and encourage lenders to offer the option of an extended payment plan.[13] Traditional payday lenders easily evade these "protections," and an analysis of the terms of bank payday loans indicates these provisions are similarly ineffective.

In short, bank payday loans are made at a similarly high cost, with a similarly short repayment term, and, like traditional payday loans, without a meaningful assessment of the customer's ability to repay. As a result, these products ensure that many borrowers will end up trapped in cycles of debt —just as they are by traditional payday loans.

Short repayment term

Like traditional payday loans, bank payday loans are due, in full, within a short time period—rather than allowing for more manageable installment payments over time. The loan is repaid when the next cash infusions are made to the borrower's bank account. Thus, a significant portion—or all—of the borrower's next paycheck may be used to repay the loan, leaving the borrower inadequate funds to meet other obligations during that pay period.

Research on traditional payday lending has shown that repaying this type of loan in one pay period is likely to lead to yet another financial shortfall, requiring the borrower to take out a new payday loan soon after retiring the previous one. In fact, nearly 90 percent of all new loans are taken in the same pay period in which the previous loan was repaid.[14]

The table below illustrates this dynamic: A borrower repays a small loan in a balloon payment, resulting in a new financial shortfall. This problem would likely not occur if the borrower were instead allowed to repay the loan in smaller installments over a longer period of time.

Table 3. Inability to repay bank payday loan and meet basic obligations

	$25,000 Salary	$35,000 Salary
Before tax income for two-week pay period[15]	$962	$1,346
minus taxes*	$66	$105
After tax income	$895	$1,241
Payday loan balance and fee due	$550 ($500 loan plus	$550 ($500 loan plus

	$50 fee)	$50 fee)
Money left over	$345	$691
Basic expenses per two-week period (housing, transportation, food, healthcare)*	$798	$895
Deficit	$(453)	$(204)

*Derived from annual estimates from the 2007 Consumer Expenditure Survey, Bureau of Labor Statistics

Even if this borrower requested an advance of only $250 (half the amount for which he/she qualifies at these income levels), the borrower would still face a deficit if earning $25,000. If earning $35,000, the borrower would have only $71 remaining for other expenditures like debt repayment, child care, or clothing.

Back-to-back transactions

Since borrowers typically lack the funds to repay their payday loan and meet other expenses, in the vast majority of states that ban renewals or refinancing of existing loans, the borrower simply repays one loan and then immediately takes out another. This is often called a "back-to-back" transaction, and the effect it has on the borrower's finances is identical to a renewal.

Similarly, banks restrict customers from renewing their bank payday loans but allow back-to-back transactions. In addition, because bank payday loans are structured as open-end credit lines, a borrower who has not reached the $500 limit could take out an additional loan while a previous loan is still outstanding. For example, someone who has already borrowed $200 could borrow an additional $220 to repay the initial loan. In any event, customers using bank payday loans can be indebted for much or all of the year without a break from this high-cost debt:

Table 4. Time in debt before cooling-off period is triggered

Bank	Number of days indebted	Maximum share of year indebted
Wells Fargo	365 days (The credit line is reduced by $100 after one year of indebtedness. The cooling-off period is not triggered for several months following the completion of one year.)*	100% of the year
U.S. Bank	270 days**	74% of the year

*Wells Fargo customers can borrow for 12 straight months before credit limit is reduced by $100 for each subsequent month of use. A 30-day cooling-off period only applies if the credit line is eventually reduced to zero.
**After borrowing for nine consecutive months, U.S. Bank customers incur a three-month cooling-off period.

Customers using Wells Fargo's product may pay $1200 in fees by cycling through back-to-back loans of $500 before finally having their credit line reduced by $100—and before ever reaching a cooling-off period. U.S. Bank's customers could pay $900 in fees before reaching a 90-day cooling-off period.[16]

Clearly, the banks' claims that their products are distinguishable from traditional payday loans are unconvincing.

Interaction With Another Expensive Bank Product—Overdraft Loans

Recently, there has been significant regulatory scrutiny of bank overdraft fee practices, as abusive overdraft practices have become pervasive throughout the industry. Many large national banks charge multiple overdraft fees per day, re-order transactions to generate more overdrafts, and charge additional "sustained" overdraft fees if a customer's account remains negative for a few days. Bank payday loans allow banks to collect additional fees from consumers already struggling with overdrawn accounts and increase the risk that they will incur additional overdraft fees in the future.

Wells Fargo and U.S. Bank both advertise their bank payday loan product as a way for accountholders to bring an overdrawn account back into good standing.[17] In essence, this allows a customer to take out another high-cost loan to repay both the credit extended by the bank to cover the overdrafts and the associated overdraft fees.

Additionally, if funds are not directly deposited into a borrower's account from which the bank payday loan can be repaid within 35 days, the institution pays itself back automatically by pulling funds from the borrower's bank account. If this withdrawal overdraws the customer's account, all subsequent debits to that account may incur an overdraft or NSF fee until the next deposit is made.

Undermining Small Loan Interest Rate Caps

Recognizing the harmful impact of payday lending on their residents, several states have re-instituted interest rate caps in recent years, prohibiting payday lenders from offering loans with triple-digit APRs. Other states never allowed these loans to be part of their small loan marketplace. As a result, payday loans are not available in 15 states and the District of Columbia, with Arizona to follow suit in July 2010.[18]

Despite these interest rate caps, banks can continue to charge triple-digit rates for their payday loans because national banks are not subject to state small loan laws. Currently, Wells Fargo and U.S. Bank offer bank payday loans in at least six of the 17 states with interest rate caps on payday loans.[19] If Wells Fargo extends its advance product to current Wachovia locations, well over two-thirds (71 percent) of these states will have bank payday products offered to their residents.[20]

In addition to preempting current state laws, these bank payday loans also threaten to undermine efforts to reform the payday lending industry in other states. Policymakers may be less inclined to strengthen small loan laws if they know that their efforts can be thwarted by national banks who will continue to offer high-cost products to their residents. Further, the mere fact that large, national banks are offering a product can bring a sense of legitimacy to charging triple-digit interest rates on loans that trap borrowers in debt. Explaining the upside of the bank payday lending product for traditional payday lenders, an industry spokesman said the following: "We think it legitimizes the [payday lending] product and makes it more mainstream."[21]

The OCC bears significant responsibility for national banks' ability to operate outside the limits of state laws addressing loan terms, including interest rates and fees. Through regulations and a series of interpretive letters, the OCC has expanded the scope of federal preemption, leaving little, if any, room for the states to have meaningful control over the loans that national banks make to their own citizens.[22] The OCC has full authority to stop the national banks from issuing bank payday loans; its role in preventing states from addressing this harmful product should only further compel it to address the issue directly.

Undermining Federal Legislation Aimed at Protecting Military Servicemembers

In 2006, the federal government capped interest rates on payday loans at 36 percent APR to active-duty members of the military and their families. Congress passed this protection for servicemembers out of concern from the Department of Defense and base commanders that troops were incurring high levels of payday loan debt, which was threatening security clearances and—by extension—military readiness.[23]

But the national banks structure their loans in such a way that evades the protection of the federal legislation.[24] As a result, banks can make these loans to active-duty military and their families without restriction. These bank payday loan products are therefore perpetuating a problem for active-duty soldiers and their families that Congress sought to address four years ago.

Disproportionate Impact on Communities of Color

Many studies have demonstrated that payday lending has a disproportionate impact on communities of color. In California, payday lenders are 2.4 times more concentrated in communities of color, even after controlling for income and a variety of other factors.[25] State surveys have found that African Americans comprise a far larger percentage of the payday borrower population than they do the population as a whole.[26]

Julian Bond, chairman of the NAACP, has stated: "Study after study has demonstrated that payday lenders are concentrated in communities of color. A drive through minority neighborhoods clearly indicates that people of color regardless of income are a target market for legalized extortion. Payday lending is an economic drain that threatens the livelihoods of hardworking families and strips wealth from entire communities."[27]

The OCC's guidance on payday lending cautions that the product "may foster abusive pricing or discriminatory steering of borrowers to high cost payday loans" and therefore lead to violation of the Equal Credit Opportunity Act (ECOA).[28] The guidance further cautions that failure to comply with ECOA and other fair lending laws may lead to "various administrative actions, including enforcement actions to address violations and to ensure appropriate corrective action; lawsuits; and civil penalties."

We are unaware of any investigative or corrective action the OCC has taken with respect to the impact of bank payday loans on communities of color.

Recommendations

Unless the OCC and other bank regulators take action with regard to bank payday loans, these products will likely proliferate throughout the banking industry as financial institutions look for new sources of fee income. Specifically, the OCC should do the following:

- As noted earlier, the OCC said in 2000 it would "closely review the activities of national banks engaged in . . . payday lending, through direct examination of the bank . . . ."[29] The OCC should apply this commitment to those banks directly offering payday loans to their customers and bring an immediate stop to it.

- The OCC should also assess how these, and any loans offered by its banks, align with the affordable small-dollar loan guidelines set by the FDIC. These guidelines recommend that banks offer small loans at rates at or below 36 percent APR with regularly-amortizing installment payments.[30] The OCC should require that small loans offered at national banks fulfill these requirements to ensure borrowers are only offered loans that they are able to repay without being trapped in debt long-term.

- It is critical that the OCC investigate the impact of bank payday loans on borrowers of color and take appropriate enforcement action where it finds violation of fair lending laws.

- At the very least, the OCC should start by promptly gathering information from the banks offering bank payday loans in order to understand the profile of customers using these products and how they are being used. A non-exhaustive list of the questions the OCC should ask is as follows:

    - □ What is the average loan term for customers using this product?
    - □ How many advances does a customer take, on average, in a 12-month period?
    - □ For those customers who take multiple advances over a 12-month period, how long are the breaks between each advance? Are they spaced sporadically throughout the year, or do customers tend to take an advance each pay period?
    - □ What share of customers using advances do so to bring their overdrawn account back above zero?

- What share of customers have insufficient direct deposit income to repay their advance, resulting in the bank repaying itself in the absence of a subsequent deposit? Of these customers, for what share does this automatic repayment result in their account becoming overdrawn?
- What are the demographic characteristics of the customers taking out these loans?

APPENDIX: Payday Loan Products Offered by National Banks

	Wells Fargo	U.S. Bank
Regulator	OCC	OCC
Program Name	Direct Deposit Advance	Checking Account Advance
Eligibility	An electronic deposit of $100 or more at least every 35 days	An electronic deposit of $100 or more at least every 35 days; account opened for 6 months
How accessed	Phone, website (access by ATM being discontinued)	Phone, website, branch, ATM
Max. credit line	$500 or 50% of monthly direct deposit income, whichever is less (rounded up to nearest $100)	$500 or 50% of monthly direct deposit income, whichever is less (rounded up to nearest $20)
Fee/APR	$2 per $20, 120% APR assuming one month term	$2 per $20, 120% APR assuming one month term
Repayment	Automatically repaid from electronic deposits of $100 or more; after 35 days, automatic repayment of any outstanding balance from checking account balance, even if account becomes overdrawn. Soon, a “payment by mail” option will be offered for an additional fee.	Automatically repaid from direct deposits of $100 or more; after 35 days, automatic repayment of any outstanding balance from checking account, even if account becomes overdrawn. Manual payments maybe be made at branch, over phone, or on web.
Policies to curb long-term use	After used for 12 consecutive months, credit limit reduced by $100 each subsequent month of use and may be reduced to zero for one month. Payment plan available for those using advance of $300 or more for five consecutive months, whereby $100 is taken out of each qualified deposit rather than the entire deposit being applied toward repayment, potentially allowing repayment to exceed normal 35 day maximum. Cannot take another advance while in payment plan.	After used for 9 consecutive months, may limit access for up to 90 days. Payment plan available, but will not be eligible for other advances while in payment plan or for one month following.

Policies for overdrawn customers	Can use to bring overdrawn account back into good standing. If automatic repayment triggers an overdraft, no overdraft fee charged on that repayment (but subsequent debits will trigger overdraft or NSF fees). Not eligible for an advance if overdrawn for seven consecutive business days.	If automatic repayment triggers an overdraft, no overdraft fee charged on that repayment (but subsequent debits will trigger overdraft or NSF fees); cannot access another advance for 30 days. Not eligible for an advance if overdrawn for five consecutive business days; if overdrawn for more than 13 consecutive days, will close access to advance entirely. Also ineligible if more than 20 overdraft incidents in past two months.
Other	Right to cancel advance on same day, negative information reported to credit bureaus.	30-day money back guarantee on first advance, if default can speed up repayments by pulling funds from other accounts

[1] *OCC Advisory Letter on Payday Lending*, AL 2000-10 (Nov. 27, 2000).

[2] High-cost payday loans are not available in the following states/jurisdictions: Arkansas, Connecticut, the District of Columbia, Georgia, Maine, Maryland, Massachusetts, New Jersey, New Hampshire, New York, North Carolina, Ohio, Oregon, Pennsylvania, Vermont, and West Virginia. While the exact interest rate cap varies by state, most are about 36% APR. Arizona will soon follow suit, with citizens in that state voting to allow the payday lending authorization there to expire in July 2010.

[3] *See* the following four studies for discussions of these negative consequences of payday lending: (1) Paige Marta Skiba and Jeremy Tobacman, *Do Payday Loans Cause Bankruptcy?* Vanderbilt University and the University of Pennsylvania (October 10, 2008). Available at www.law.vanderbilt.edu/faculty/faculty-personal-sites/paige-skiba/publication/download.aspx?id=2221; (2) Sumit Agarwal, Paige Skiba, and Jeremy Tobacman. *Payday Loans and Credit Cards: New Liquidity and Credit Scoring Puzzles?* Federal Reserve of Chicago, Vanderbilt University, and the University of Pennsylvania (January 13, 2009). Available at http://bpp.wharton.upenn.edu/tobacman/papers/pdlcc.pdf; (3) Dennis Campbell, Asis Martinez Jerez, and Peter Tufano (Harvard Business School). *Bouncing Out of the Banking System: An Empirical Analysis of Involuntary Bank Account Closures*, Harvard Business School (June 6, 2008). Available at www.bos.frb.org/economic/eprg/conferences/payments2008/campbell_jerez_tufano.pdf; and (4) Brian T. Melzer, *The Real Costs of Credit Access: Evidence from the Payday Lending Market*, University of Chicago Business School (November 15, 2007). Available at http://home.uchicago.edu/%7Ebmelzer/RealCosts_Melzer.pdf.

[4] *OCC Advisory Letter on Payday Lending*, AL 2000-10 (Nov. 27, 2000).

[5] *OCC Advisory Letter on Abusive Lending Practices*, AL 2000-7 (July 25, 2000).

[6] *OCC Advisory Letter on Payday Lending*, AL 2000-10 (Nov 27, 2000).

[7] *See* Peter Sinton, *Cash Advances for the Strapped / Wells Fargo lets customers borrow money at ATMs*, San Francisco Chronicle (Nov. 28, 1994); *Personal Finance Notes*, The Orange County Register (Nov. 21, 1994).

[8] *Fiserv unveils Relationship Advance: Full-service solution provides a safer, more cost-effective alternative to courtesy overdraft programs*, Press Release (Nov. 18, 2009). Available at http://investors.fiserv.com/releasedetail.cfm?ReleaseID=425106.

[9] *See* appendix for more details on the bank payday loan products offered by Wells Fargo and U.S.Bank.

[10] While the repayment of bank payday loans offered by Wells Fargo and U.S. Bank can cause an account to be overdrawn, it appears that no overdraft fee would be assessed on that repayment transaction. However, any subsequent transactions can result in an overdraft or NSF fee if the account remains below zero. For example, U.S. Bank notes in its Frequently Asked Questions about its Checking Account Advanced product that "[a]n overdraft fee will not be assessed on the checking account advance payment transaction, however if other items post to your account, overdraft fees may be assessed on those items."

[11] Richard Bove, Rochdale Securities, commenting in Chris Serres, *Biggest banks stepping in to payday arena: The big guns' entry into payday lending may finally bring fringe financial product out of the shadows and into the financial mainstream, despite howls of protest from consumer groups and the risk of tighter regulation*, Star-Tribune (Sept. 6, 2009).

[12] For example, see statements by Peggy Gunn and Mark Chapman of Wells Fargo about how their products differ from payday loans because customers cannot rollover loans and cooling-off periods exist, in Chris Serres, *Biggest banks stepping in to payday arena: The big guns' entry into payday lending may finally bring fringe financial product out of the shadows and into the financial mainstream, despite howls of protest from consumer groups and the risk of tighter regulation*, Star-Tribune (Sept. 6, 2009) and Lee Davidson, *Do banks overcharge?*, Deseret Morning News (Jan. 22, 2007).

[13] *See* Best Practices for the Payday Advance Industry, Community Financial Services Association. Available at www.cfsa.net/industry_best_practices.html.

[14] An analysis of the over 80 percent of payday borrowers with multiple payday loans in a year found that almost 90 percent of the time, subsequent loans were taken within the same two-week pay period as a previous loan was repaid. *See* Leslie Parrish and Uriah King, *Phantom Demand: Short-term due date generates need for repeat payday loans, accounting for 76% of total volume*, Center for Responsible Lending (July 9, 2009). Available at www.responsiblelending.org/payday-lending/research-analysis/phantom-demand-final.pdf.

[15] For example, a survey of California payday borrowers found that 54 percent were either paid twice a month or every two weeks, with 26 percent paid once a month, 15 percent paid weekly, and the remainder having another pay schedule. See 2007 Department of Corporations Payday Loan Study, conducted by AMPG for the California Department of Corporations (December 2007). Similarly, a study of payday borrowers using a large Texas-based payday lender found that 70 percent of customers were paid bi-weekly or twice a month, compared to 13 percent paid weekly and 17 percent paid monthly. *See* Paige Marta Skiba and Jeremy Tobacman, *Do Payday Loans Cause Bankruptcy?* Vanderbilt University and the University of Pennsylvania (October 10, 2008).

[16] Assuming a borrower takes out a $500 advance twice a month, an accountholder at Wells Fargo could take a new $500 loan 24 times, totaling $12,000. The fees associated with these back-to-back transactions would be $1,200 (10% of $12,000). At U.S. Bank, borrowers are limited to nine consecutive months of usage. Even with this limitation, a borrower taking out a $500 advance twice a month could still incur fees of $900 on 18 back-to-back loans worth a total of $9,000.

[17] The banks do exclude customers who have recently been excessively overdrawn from eligibility, but they set the threshold at what constitutes "excessive" fairly high, likely leaving many struggling consumers eligible. See Appendix for details.

[18] High-cost payday loans are not available in the following states/jurisdictions: Arkansas, Connecticut, the District of Columbia, Georgia, Maine, Maryland, Massachusetts, New Jersey, New Hampshire, New York, North Carolina, Ohio, Oregon, Pennsylvania, Vermont, and West Virginia. While the exact interest rate cap varies by state, most are about 36% APR. Arizona will soon follow suit, with citizens in that state voting to allow the payday lending authorization there to expire in July 2010.

[19] These states are Arkansas, Arizona, Georgia, Ohio, Oregon, and Pennsylvania.

[20] Additional states in which Wells Fargo may offer its product in the future include Connecticut, Maryland, New Jersey, New York, and North Carolina, as well as the District of Columbia.

[21] Lyndsey Medsker, a spokesperson for the Community Financial Services Association, the payday lending trade group, in Chris Serres, *Biggest banks stepping in to payday arena: The big guns' entry into payday lending may finally bring fringe financial product out of the shadows and into the financial mainstream, despite howls of protest from consumer groups and the risk of tighter regulation*, Star-Tribune (September 6, 2009).

[22] National Consumer Law Center, *Cost of Credit: Regulation, Preemption and Industry Abuses*, Sec. 3.4 (4th Ed. 2009).

[23] See *Report on Predatory Lending Practices Directed at Members of the Armed Forces and Their Dependents*, Department of Defense (August 9, 2006). Available at www.defense.gov/pubs/pdfs/Report_to_Congress_final.pdf.

[24] The 2006 Talent-Nelson Amendment to the Defense Authorization Bill established a cap of 36% annual interest on payday loans made to active-duty military and their families, but the applicable regulations only cover closed-end credit. Because the national banks structure their loans as open-end instead of closed-end, the loans are not currently covered under the Act's provisions.

[25] Wei Li, Leslie Parrish, Keith Ernst, and Delvin Davis, *Predatory Profiling: The Role of Race and Ethnicity in the Location of Payday Lenders in California*, Center for Responsible Lending (March 26, 2009) and Mark L. Burkey and Scott P. Simkins, "Factors Affecting the Location of Payday Lending and Traditional Banking Services in North Carolina" *Review of Regional Studies,* Fall 2004 Vol. 34 no. 2 pp. 191-205.

[26] For example, a California survey found that African Americans make up 6 percent of the total adult population, but about 19 percent of total payday borrowers. *Payday Loans: Taking the Pay Out of Payday*. California Budget Project, (September 2008), at 30. A Texas survey found that African Americans make up 11 percent of the total adult population, but 43 percent of total payday borrowers. *See* Table 1 of Paige Skiba and Jeremy Tobacman. *Do Payday Loans Cause Bankruptcy?* (Feb.19, 2008) and 2000 Census data for Texas population age 18 and older.

[27] Julian Bond, Chairman, NAACP.

[28] *OCC Advisory Letter on Payday Lending*, AL 2000-10 (Nov. 27, 2000).

[29] *Id.*

[30] See FDIC Financial Institution Letters, *Affordable Small Dollar Loan Products, Final Guidelines*, FIL-50-2007 (June 19, 2007).