



NYT Article on Banks Aiding Payday Loans: There's Even More to the Story

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On February 23, the *New York Times* (NYT) published a front-page article, "Major Banks Aid In Payday Loans Banned by States." This brief provides a broader legal context for best understanding this article.

We have existing laws that address Internet payday; strong enforcement is needed.

- Much of the lending described in the NYT article is illegal. Loans made over the Internet are already subject to federal and state laws that prevent abusive payday lending.
- Federal banking regulators can stop banks from supporting payday loans that are illegal under state and/or federal law. For example, the FDIC has issued guidance directing banks to be responsible for the practices of their clients, such as electronic payment processors who may be engaged in illegal activities.
(<http://www.fdic.gov/news/news/financial/2012/fil12003.html>)
- The FTC has authority to take action against illegal payday lending under federal laws such as Electronic Funds Transfer Act, and is already doing so.
(<http://www.ftc.gov/opa/2012/04/amg.shtm>)
- To address the problems posed by abusive payday lending—regardless of whether these loans are made online, in storefronts, or by banks—we need strong enforcement using available legal tools at the state and federal levels.

States with strong laws have curbed predatory payday lending.

- At least 18 states either have never allowed high-cost payday lending or have significantly curbed the payday debt trap caused by 300% APR payday loans.
- State law applies to loans made over the Internet. The invention of the telegraph didn't gut state authority on small loans. For the purposes of legal jurisdiction, the Internet is just another means of transmitting information.
(<http://www.consumerfed.org/pdfs/IPDL-States-Have-Jurisdiction.pdf>)
- In many states, illegal loans are void and unenforceable, even when made online. This means the lender doesn't have the legal authority to collect on the loan via garnishment, court action, or otherwise.
- Strong state laws are effective in addressing the debt trap of payday lending AND these protections do not drive consumers to the Internet. According to a July 2012 report by the Pew Charitable Trusts, borrowers who live in states with strong payday protections

are not more likely to seek payday loans online.

(<http://www.pewstates.org/research/reports/who-borrows-where-they-borrow-and-why-85899405043>)

- Several states have successfully limited the ability of payday lenders to evade state laws. Here are just a few examples:
 - Georgia: “When it comes to payday lending in Georgia, there is no gray area. It is unquestionably illegal in any form,” said Attorney General Sam Olens. “We will not stand for unscrupulous, out-of-state lenders taking advantage of Georgia consumers by skirting our laws.” (<http://law.ga.gov/press-releases/2012-05-18/attorney-general-sam-olens-intervenues-stop-illegal-payday-lending-georgia>)
 - Pennsylvania: A 2010 unanimous Pennsylvania Supreme Court decision held that Pennsylvania’s existing law applies to payday loans made over the Internet. In its decision against Texas-based Cash America’s illegal online payday loans carrying annual interest rates of 250% and higher, the Supreme Court noted: “It is well established that public policy in this Commonwealth prohibits usurious lending, and this prohibition has been recognized for over 100 years.”
 - New York: On February 22, 2013, Governor Andrew M. Cuomo announced that it is illegal to attempt to collect a debt on a payday loan made to a New Yorker, since such loans are illegal in New York. “Today’s notification will remind debt collectors in the state that such practices are illegal in New York,” Governor Cuomo said. “Internet payday lending is just as unlawful as payday lending made in person in New York. No matter what method is used to make the loan, usurious and illegal payday loans are not valid debts and cannot lawfully be collected on.”
 - West Virginia: Between 2005 and 2010, West Virginia’s Attorney General reached settlements with 107 Internet payday lenders and their collection agencies, resulting in nearly \$2.5 million in refunds and cancelled debts for over 8,000 West Virginians. These actions reflect enforcement of the state’s interest rate limit of 31% APR. (<http://www2.wvrecord.com/news/228338-mcgraw-settles-with-five-payday-loan-websites>)
 - Minnesota: Minnesota Attorney General Lori Swanson obtained a Consent Decree with an unlicensed Internet “payday” lender that made loans violating state law. The Consent Decree requires the company, Sure Advance, LLC, to pay \$760,000 and to stop lending to Minnesota residents unless it becomes properly registered to do business in Minnesota and complies with state interest rate caps and other consumer protection laws. Since 2010, AG Swanson’s office has sued eight illegal

Internet payday lenders; seven of those lenders have settled the lawsuits.

(<http://www.ag.state.mn.us/Consumer/PressRelease/121220InternetPayDay.asp>)

- Senator Merkely's bill highlighted in the *New York Times* article enhances states' ability to enforce their existing consumer protection laws but is not a substitute for strong state law; in fact, portions of Senator Merkely's bill are dependent on meaningful state protections for payday borrowers.

There is strong opposition to granting a federal charter for payday lenders.

- The NYT article mentions that the Online Lenders Alliance backs a federal payday loan charter. There is strong, broad opposition to this proposed charter.
- At least 41 state Attorneys General have publicly opposed the charter proposal because it would significantly undermine states' powers to address payday abuses.
(<http://naag.org/attorneys-general-oppose-federal-bill-to-limit-state-regulation-of-payday-lending.php>)
- In strongly worded testimony, federal regulators also have rejected the charter, stating in Congressional testimony that the proposal "will result in a decrease in protections for categories of consumers that may be the most vulnerable ...".
(<http://www.occ.gov/news-issuances/congressional-testimony/2012/pub-test-2012-113-written.pdf>)
- The reason some lenders are pushing to create a federal charter is precisely because state law is working. If state law is ineffective in restricting payday practices, why is there this effort to create a federal charter overruling state law?

Wells Fargo is making payday loans itself.

- Only five major banks are making direct payday loans now; Wells Fargo is one of them.
- Wells Fargo calls its payday product a "direct deposit advance," but like storefront payday loans, this product comes with a triple-digit APR and all the other features that make it just like a traditional payday loan.
- Federal banking regulators have increasingly expressed concern about payday lending by banks and about payday lending generally.
(<http://www.responsiblelending.org/payday-lending/tools-resources/bankpaydaylending.html>)

Bottom line on predatory payday lending: Strong state laws are working now. More states need to take a stand against debt-trap loans by passing annual interest rate limits of 36% or less. Federal regulators must do their part, too. Ultimate success depends on a real commitment to fair lending and tough enforcement by state and federal leaders.