



Effective State and Federal Payday Lending Enforcement: Paving the Way for Broader, Stronger Protections

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Payday loans, whether made online, in stores or by banks are designed to trap individuals in long-term debt. Data consistently show that the majority of payday loan revenue comes from repeatedly churning borrowers, and individuals are typically indebted for most of the year.¹ The predatory features of payday loans, and the impact of their long-term debt on consumers, have in recent years drawn the attention of legislators and regulators. Policymakers at all levels have acted to limit the payday lending debt trap, particularly in recent months.

Trends in Payday Lending Regulation and Enforcement

Recognizing the damaging structure of payday loans, and their devastating impact on families' financial well-being, the trend among policymakers has been to rein in this abusive debt trap using a variety of available tools. While 22 states either prohibit high-cost payday lending or have significantly curbed the payday debt trap caused by 300% APR payday loans, two-thirds of Americans lack these protections.² Recent developments clearly support the implementation of policies that limit the debt trap across the board.

Regulators and Courts: Online Payday Lenders Are Not Exempt

Payday lenders falsely claim that strong laws simply push borrowers to unregulated Internet payday loans. Data indicate, however, that borrowers do not flock online in the absence of storefront payday lenders,³ and Internet loans are subject to laws that prevent abusive payday lending.⁴ Importantly, and as described below, recent rulings in Iowa and New York, and actions by the Federal Trade Commission (FTC) and Consumer Financial Protection Bureau (CFPB) show that state and federal laws do apply to online loans made by tribal lenders.

Following the recent crackdown by state and federal regulators against illegal payday loans, some of the most ubiquitous online lenders have stopped making payday loans⁵ and the number of credit checks for online payday loans has fallen by 50 percent.⁶

State and Federal Regulators Employ Multiple Enforcement Tools

In many states, illegal loans, including online loans, are void and unenforceable.⁷ This means the lender does not have the legal authority to collect on the loan via garnishment, court action, or otherwise. As outlined in more detail below, states are working to prevent illegal payday loans, using their laws to halt origination, payment, and collection.

Federal regulators have been doing their part as well. Both the Federal Deposit Insurance Corporation (FDIC)⁸ and Department of Justice (DOJ)⁹ are working through the Federal

Financial Fraud Enforcement Task Force to ensure banks are acting in accordance with existing bank laws and guidance and not processing illegal payday loan transactions, such as those violating state laws. Additionally, the FTC¹⁰ and CFPB¹¹ are moving to enforce federal laws against online payday loans made by tribes and others.

Strong Enforcement is Possible, But More Must Be Done

Twenty-two states maintain laws that restrict or eliminate the payday lending debt trap. These state laws apply to all types of payday loans, including those made online. Federal regulators can equally use their authorities to address abuses violating federal laws, such as when federally-regulated banks facilitate illegal activities that violate state laws.

However, given that 60 percent of Americans live in states where the payday debt trap is legal--draining more than \$3 billion a year through churning borrowers into repeated loans--both state and federal regulators must do more. More states should pass and enforce annual interest rate limits of 36% or lower. Federal regulators must continue to ensure compliance with existing laws and to enact rules to prevent debt-trap lending regardless of where the loan is made or type of lender.

Recent State Enforcement Actions Against Payday Loans

Arkansas: In October 2013, Arkansas Attorney General Dustin McDaniel brought action against payday lenders CashCall and WesternSky Financial,¹² asserting that their online loans and purported tribal sovereign immunity do not shield them from the state's constitutional 17% usury limit.¹³ This action follows settlements with out-of-state companies, such as Kansas-based Geneva-Roth Capital, to stop making illegal payday loans to Arkansas residents over the Internet,¹⁴ and settlements with companies that seek to collect illegal payday loan debt.¹⁵

Georgia: In July 2013, Georgia commenced an enforcement action against payday lenders making loans online in violation of the state's usury laws which have never permitted 300% APR payday loans. Attorney General Sam Olens stated clearly: "The [payday lenders'] utter disregard for the law of this state will not be tolerated. I have taken the necessary legal action to enforce the law and ensure that these unscrupulous lenders will no longer be able to exploit Georgia consumers."¹⁶

Iowa: In September 2013, an Iowa administrative court ruled that online payday loans made to Iowa residents by purported tribal lenders were subject to the state's payday lending law. In the ruling, the judge affirms: "the interest of the state of Iowa in protecting citizens from usurious interest rates in consumer credit transactions is considerable" and expressly held that "Iowa law applies to the loans at the issue in these matters."¹⁷

Pennsylvania: A 2010 unanimous Pennsylvania Supreme Court decision held that the state's law applies to payday loans made over the Internet. In its decision against Texas-based Cash America's illegal online payday loans, the 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.”¹⁸ In the last two years, the Pennsylvania banking regulator has brought enforcement actions against out-of-state payday lenders making illegal loans.¹⁹

Maryland: This year, Maryland has taken a number of actions against different elements of payday loan transactions that violate its long-standing 30% rate cap, even when such loans are made online by out-of-state lenders. Their actions include finding that loans made with 300% interest rates are illegal and void;²⁰ preventing banks from facilitating the payments of such illegal loans;²¹ and preventing the collection of illegal payday loan debt.²²

Massachusetts: In April 2013, Massachusetts ordered the halt of both making and collecting payday loans made in violation of the state’s rate limit.²³ The cease and desist order to halt collection of the illegal online loans was against Nevada-based Delbert Services, which is owned by John Reddam, who also owns Cash Call.

New York: In recent months, New York also has used to its authority to address nearly every facet of illegal payday transactions: the loan terms itself violate state law regardless of who makes the loan; banks should not facilitate the payments of illegal transactions; and debt collectors cannot collect illegal payday loan debt.

- In October, the court for the Southern District of New York rebuffed online tribal lenders’ arguments that they are exempt from the state’s long-standing usury limits. The court concluded: “The undisputed facts demonstrate that the activity the State seeks to regulate is taking place in New York , off of the Tribes’ lands. Having identified no ‘express federal law’ prohibiting the State’s regulation of payday loans made to New York residents in New York, the Tribes are subject to the State’s non-discriminatory anti-usury laws.”²⁴
- In August, New York’s banking regulator ordered online lenders to cease making payday loans in violation of the state’s law, and demanded banks to stop facilitating the processing of these illegal payments.²⁵ Shortly after, the most ubiquitous online payday lenders ceased operations upon learning that their partnering banks severed their relationships.²⁶
- In February, 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: “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.”²⁷

West Virginia: In September 2012, the court upheld the state’s claim that its historic 31% rate limit applied to online payday loans.²⁸ Between 2005 and 2010, West Virginia reached settlements with 107 Internet and tribal payday lenders and their collection agencies, resulting in \$2.5 million in refunds and cancelled debts for over 8,000 West Virginians.²⁹

¹Consumer Financial Protection Bureau, *Payday Loans and Deposit Advance Products: A White Paper of Initial Data Findings*, April 24, 2013, <http://bit.ly/CFPBPaydayPaper>.

²Susanna Montezemolo, Center for Responsible Lending, *State of Lending: Payday Lending Abuses and Predatory Practices*, Sept. 2013, <http://bit.ly/GCJJej>

³Pew Charitable Trust, *Payday Lending in America: Who Borrows, Where They Borrow, and Why*, July 2012, <http://bit.ly/1f5nmgA>

⁴Consumer Federation of America, “States Have Jurisdiction Over Internet Payday Lenders,” May 2010, <http://bit.ly/1bEfQW5> (summarizing case law and enforcement actions showing that “[r]egardless of where the online payday lender is located, it must comply with the credit laws of the state where the consumer resides”).

⁵Kevin Wack, American Banker, “Online Lenders Go Bust After New York Crackdown,” Aug. 28, 2013 (noting that 9 online lenders, including Western Sky, stopped making payday loans due to increased scrutiny of banks’ role).

⁶Carter Dougherty, “Online Lending Rules Clarity Promised by FDIC’s Gruenberg,” Sept. 26, 2013

⁷See e.g., New York letter to National Automated Clearing Housing Association, September 3, 2013, noting that “[u]nsurprising payday loans are illegal in New York, and such loans are void and unenforceable.”

⁸Financial Institution Letter, FIL-43-2013, “FDIC Supervisory Approach to Payment Processing Relationships With Merchant Customers That Engage in Higher-Risk Activities,” Sept. 27, 2013 (continuation of FIL-43-2013); <http://1.usa.gov/15MynQR>. See also Office of the Comptroller of the Currency, “Payment Processors: Risk Management Guidance,” April 24, 2008, (providing guidance for banks’ in exercising due diligence in relationships with payment processors, noting for example, “At a minimum, bank programs should verify the legitimacy of the processor’s business operations, assess the bank’s risk level, and monitor processor relationships for activity indicative of fraud.”), <http://1.usa.gov/176JsaI>

⁹U.S. Department of Justice, Financial Fraud Enforcement Task Force, Executive Director Michael J. Bresnick, March 30, 2013 (highlighting DOJ and Task Force actions to clamp down on banks facilitating payday loan transactions in violation of laws such as the Bank Secrecy Act, and warning of the scope of the problem: “Return rates at the levels we have seen are more than red flags. They are ambulance sirens, screaming out for attention... [W]e naturally also are examining banks’ relationship with the payday lending industry, known widely as a subprime and high-risk business. We are aware, for instance, that some payday lending businesses operating on the Internet have been making loans to consumers in violation of the state laws where the borrowers reside. And, as discussed earlier, these payday lending companies are able to take the consumers’ money primarily because banks are originating debit transactions against consumers’ bank accounts. This practice raises some questions.”), <http://1.usa.gov/1bEg8wc>. See also, Kevin Wack, American Banker, “Banks Pressured to Settle in Online Lending Probe (DOJ),” Sept. 25, 2013.

¹⁰See, e.g., Press Release, Federal Trade Commission, “AMG Defendants Settle FTC’s Debt Collection Charges,” (highlighting judge’s order in F.T.C. action against tribal payday lender finding that “the FTC Act ‘gives the FTC the authority to bring suit against Indian Tribes, arms of Indian Tribes, and employees and contractors of arms of Indian Tribes,’ and likewise found that the FTC has authority to bring its TILA and EFTA claims.”), July 22, 2013, <http://www.ftc.gov/opa/2013/07/amg.shtm>. See also, Press Release, Federal Trade Commission, “FTC Files Amicus Brief Supporting Class Action Suit that Challenges Payday Lender’s Arbitration Practices,” Sept. 26, 2013.

¹¹Consumer Financial Protection Bureau, Decision and Order on Petition by Great Plains Lending, LLC; Mobiloans, LLC; and Plain Green, LLC to Set Aside Civil Investigative Demands, Sept. 26, 2013 (rejecting lenders’ claims of sovereign immunity and ordering compliance with the CFPB’s investigative demands), <http://1.usa.gov/1buxYW1>

¹²As of September 2013, at least 13 additional states have taken enforcement or civil actions against Cash Call and/or Western Sky and related companies and owners: Colorado, Connecticut, Florida, Georgia, Iowa, Kansas, Maryland, Massachusetts, Minnesota, New York, Oregon, and West Virginia. See Commonwealth of Pennsylvania Department of Banking and Securities v. CashCall, Inc. WSFunding, LLC, and John Paul Reddam, Order to Cease and Desist, Prohibit, Pay Fine, and Provide Restitution, Sept. 9, 2013 (providing citations for the 13 state actions), <http://bit.ly/1748git>

¹³Press Release, Arkansas Office of the Attorney General, “McDaniel Sues Online Payday Lenders,” Oct. 1, 2013

¹⁴Consent Judgment, Arkansas v Geneva-Roth Capital, Inc. et al, Case No. CV 10-487, Pulaski County Circuit Court, 3rd Division, May 4, 2011 (permanently restraining and enjoining defendants “from offering, funding, or collecting upon any loan with an interest rate in excess of the then-applicable maximum rate set out in the Arkansas Constitution where such offer or subsequent loan is made to any resident of Arkansas”)

¹⁵Press Release, Arkansas Office of the Attorney General, “Settlement Reached in Lawsuit over Payday Debt Collection” May 2013, <http://1.usa.gov/15OC2bE>

¹⁶ Press Release, Georgia Department of Law, “Attorney General Olens Files Suit to Protect Georgia Consumers from Illegal Payday Lenders,” July 29, 2013, <http://1.usa.gov/1aPBPse>; See complaint filed by the Georgia Department of Law, <http://1.usa.gov/16lHC96>

¹⁷ Iowa Department of Inspections and Appeals, Division of Administrative Hearings, Ruling on Whether Loans at Issue are Subject to Iowa Law, In the Matter of Cashcall, Inc. September 26, 2013

¹⁸ Cash America Net of Nev., LLC v. Dep’t of Banking, 607 Pa 432, 449; 8 A.3d 282, 292 (2010).

¹⁹ See Commonwealth of Pennsylvania Department of Banking and Securities, Bureau of Compliance and Licensing, v. CashCall, Inc. WSFunding, LLC, and John Paul Reddam, Order to Cease and Desist, Prohibit, Pay Fine, and Provide Restitution, Sept. 9, 2013 (providing citations for the 13 state actions), <http://bit.ly/1748git>; See also Commonwealth of Pennsylvania Department of Banking and Securities v. Martin Webb, Payday Financial, LLC, Western Sky Financial, LLC, and Red Stone Financial, LLC, Consent Agreement and Order, June 26, 2013, <http://bit.ly/19XTEmC>; Commonwealth of Pennsylvania Department of Banking and Securities v Carey Vaughn Brown and Credit Payment Services, et al. Cease and Desist Order, Jan. 14, 2013, available at <http://bit.ly/1a3TUST>

²⁰ Final Order to Cease and Desist, In the Matter of: MyCashNow, Inc et al and Carey V. Brown before the Maryland Commissioner of Financial Regulation, Sept. 17, 2013, <http://bit.ly/18VugPq>. See also, Lorraine Mirabella, Baltimore Sun, “S.D. lender that claimed tribal immunity ordered to stop making loans in Md.” June 13, 2013, <http://bit.ly/17ygX95>

²¹ Jessica Silver-Greenberg and Ben Protess, New York Times, “New York Tells Online Lenders to Abide by State’s Interest Rate Cap,” Aug. 5, 2013, <http://nyti.ms/17yizzz> (“State authorities in Maryland, according to the officials, have also referred potential instances of wrongdoing by the banks to the Federal Deposit Insurance Corporation.”)

²² Final Order to Cease and Desist, In the Matter of: MyCashNow, Inc et al and Carey V. Brown before the Maryland Commissioner of Financial Regulation, Sept. 17, 2013, <http://bit.ly/18VugPq>. See also, Press Release, Md. Dep’t of Labor, Licensing, and Regulation, “Maryland Commissioner of Financial Regulation Issues Final Order to Cease and Desist Against MyCashNow, Paydaymax and Related Payday Lenders,” Sept. 17, 2013, <http://bit.ly/15Ln9MB> (stating “they are prohibited by law from collecting on loans illegally made by unlicensed lenders and in violation of the state’s usury laws.”).

²³ Press Release, “Massachusetts Office of Consumer Affairs and Division of Banks Announce Shut Down of Debt Collector and Action against Five Unlicensed Predatory Lenders,” April 29, 2013, <http://1.usa.gov/174d1sl> (quoting the Commissioner of Banks David J. Cotney “These companies have exhibited a blatant disregard for Massachusetts borrowers and the state’s consumer protection statutes and regulations. The Division of Banks will continue to aggressively identify and pursue entities engaging in the solicitation, lending, purchasing and collection of illegal and predatory loans.”).

²⁴ Memorandum and Order, The Otoe-Missouria Tribe of Indians, et al, v. New York State Department of Financial Services, U.S. Southern District of New York, 13 Civ. 5930, Sept. 30, 2013 at 11.

²⁵ Jessica Silver-Greenberg and Ben Protess, New York Times, “New York Tells Online Lenders to Abide by State’s Interest Rate Cap,” Aug. 5, 2013, <http://nyti.ms/17yizzz>

²⁶ Kevin Wack, American Banker, “Online Lenders Go Bust After New York Crackdown,” Aug. 28, 2013 (noting that 9 online lenders, including Western Sky, stopped making payday loans due to increased scrutiny of banks’ role).

²⁷ Press Release, Office of Governor Andrew Cuomo, “Governor Cuomo Announces Department of Financial Services Notifies Debt Collectors Not to Seek Collection on Illegal Payday Loans,” Feb. 22, 2013, <http://bit.ly/1bBpzMS>

²⁸ Final Order On Phase II Of Trial: The State’s Usury And Lending Claims, State of West Virginia, ex rel. vs CashCall, Inc and J. Paul Reddam, Kanawha County Circuit Court, Civil Action No.: 08-C-1964, Sept. 10, 2012. <http://bit.ly/16lOhAe> (upholding the state’s claim that Cash Call was the defacto lender, not the First Bank of Delaware, and that its loans were subject to and in violation of the state’s usury laws).

²⁹ Jessica M. Karmasek, West Virginia Record, “McGraw settles with Internet payday lender, collection agency,” Aug. 24, 2011, <http://bit.ly/19olx6j>