Triple-Digit Danger: Bank Payday Lending Persists

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INTRODUCTION

In July 2011, the Center for Responsible Lending (CRL) released *Big Bank Payday Loans*, an analysis of 2010 data, finding that payday loans made by banks, like those made by other payday lenders, carried triple-digit interest rates and trapped customers in cycles of long-term debt.[1] We urged federal banking regulators to put an immediate end to this product, which was being offered by only a handful of banks.

Since that time, regulators have expressed renewed concerns about the terms and conditions of payday loans generally and the risks of payday lending by banks in particular.[2] To our knowledge, no additional banks have entered the payday market, but those few banks that were making payday loans then—Wells Fargo Bank, U.S. Bank, Regions Bank, Fifth Third Bank, Bank of Oklahoma and its affiliate banks,[3] and Guaranty Bank—continue to do so.

In this paper, we update and expand our original analysis using more recent data. We find that, even while each participating bank continues to claim that these products are intended for short-term emergencies rather than long-term use, and despite marginal recent changes to product terms,[4] bank payday loans are continuing to trap borrowers in high-cost, triple-digit debt.

KEY FINDINGS

- Bank payday loans carry an annual percentage rate (APR) that averages 225 to 300 percent.
- The median bank payday borrower took out 13.5 loans in 2011 and spent at least part of six months during the year in bank payday debt. Over a third of borrowers took out more than 20 loans, bringing the mean number of loans per borrower to 19.
- Bank payday borrowers are two times more likely to incur overdraft fees than bank customers as a whole.
- Over one-quarter of all bank payday borrowers are Social Security recipients.

BANK PAYDAY LOANS ARE MARKETED UNDER A VARIETY OF NAMES

Wells Fargo Bank	Direct Deposit Advance
U.S. Bank	Checking Account Advance
Regions Bank	Ready Advance
Fifth Third Bank	Early Access
Bank of Oklahoma	Fast Loan℠
Guaranty Bank	Easy Advance

BACKGROUND

Despite federal banking regulators' recognition of the abuses of payday lending and aggressive action blocking previous bank partnerships with payday lenders, a few large banks have begun offering payday loans directly through checking accounts.

Bank payday loans are structured in the same way as other payday loans. The bank deposits the loan amount directly into the customer's account and then repays itself the loan amount, plus a very high fee, directly from the customer's next incoming direct deposit of wages or public benefits. If the customer's direct deposits are not sufficient to repay the loan, the bank typically repays itself anyway within 35 days, even if the repayment overdraws the consumer's account, triggering high fees for subsequent overdraft transactions.

The fundamental structure of payday loans—a short loan term and a balloon repayment—coupled with a lack of traditional underwriting makes repeat loans highly likely. Borrowers already struggling with regular expenses or facing an emergency expense with minimal savings are typically unable to repay the entire lump-sum loan and fees *and* meet ongoing expenses until their next payday. Consequently, though the payday loan itself may be repaid because the lender puts itself first in line before the borrower's other debts or expenses, the borrower must take out another loan before the end of the pay period, becoming trapped in a cycle of repeat loans.

Research has shown that payday lending often leads to negative financial outcomes for borrowers; these include difficulty paying other bills, difficulty staying in their home or apartment, trouble obtaining health care, increased risk of credit card default, loss of checking accounts, and bankruptcy.[5]

Our analysis of 2010 data published in our 2011 report, *Big Bank Payday Loans*, found that bank payday loans, like other payday loans, do indeed create a long-term cycle of high-cost debt. The great majority of banks do not offer payday loans, but we are aware of at least six that do: Wells Fargo, U.S. Bank, Regions, Fifth Third, Bank of Oklahoma and its bank affiliates,[6] and Guaranty Bank.

KEY FINDINGS

For our analysis, we used 2011 checking account data from a nationwide sample of U.S. credit card holders, generally representative across geography, household income, and credit scores, tracked by Lightspeed Research Inc.[7] Participating account holders provide Lightspeed access to all of their checking account activity occurring during their period of participation, including deposits, paper checks, electronic bill payments, debit card purchases, fees, and miscellaneous charges or credits that are posted to the account.

Our analysis included transaction-level data for 742 checking accounts over a 12-month period; this was the total number of checking accounts in the consumer panel held at banks that were found to offer payday loans, based on observing instances of payday loans in the panel.[8] We identified instances of bank payday loan repayments within 66 of those 742 accounts and analyzed these for loan term, loan frequency, and other relevant factors.[9]

For more information on our data and methodology, see Appendix A.

Finding 1: Bank payday loans carry an annual percentage rate (APR) that averages 225 to 300 percent based on the typical loan term of 12 days.

The cost for bank payday loans ranges from $7.50 to $10 per $100 borrowed.[10] CRL's latest analysis of checking account data for the year 2011 found that the average bank payday loan term is 12 days—that is, the bank repays itself from the borrower's next direct deposit an average of 12 days after the bank extended the credit.[11] *This cost and loan term translates to an annual percentage rate ranging from 225% to 300%,* an extremely high cost for credit.

This finding is generally consistent with our previous research analyzing 2010 data and published in our 2011 report, *Big Bank Payday Loans,* which found an average loan term of 10 days. At that time, all banks making payday loans charged $10 per $100 borrowed, so the cost in annual percentage rate terms was 365%. The difference between the high end of the 2011 range, 300%, and the 2010 figure, 365%, is due exclusively to the two-day increase in the typical loan term from 10 days to 12 days. The difference between the low end of the 2011 range, 225%, and 365% is due to both the increase in the typical loan term and a pricing decrease at one bank from $10 to $7.50 per $100 borrowed.

Finding 2: The median bank payday borrower took out 13.5 loans in 2011 and spent at least part of six months during the year in bank payday debt. Over a third of borrowers took out more than 20 loans, bringing the mean number of loans per borrower to 19.

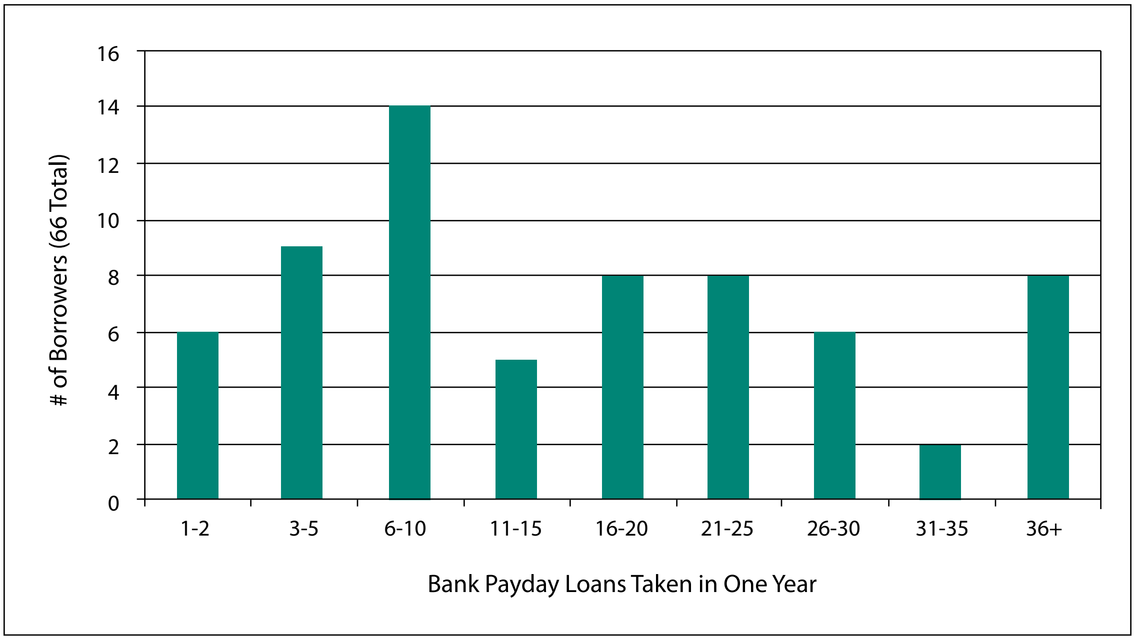
Our analysis found that *the median bank payday borrower took out 13.5 loans in 2011 and was in bank payday loan debt at least part of six months annually*—that is to say, a typical borrower had one or more bank payday loans outstanding at some point during six discrete calendar months during the year.[12]

Because a significant portion of borrowers had significantly more than the median number of loans—over a third of borrowers had more than 20 loans—the mean number of loans per borrower was 19.

This finding demonstrates that bank payday loans trap bank customers in a cycle of debt, even while participating banks claim that the products are meant for occasional use to manage a short-term cash shortfall and not as long-term credit.[13]

As the graph below illustrates, many borrowers take out twenty, thirty, or more loans annually:

Figure 1: Bank Payday Loans Taken in One Year



Finding 3: Bank payday borrowers are two times more likely to incur overdraft fees than bank customers as a whole.

Banks have pitched their payday loans as a way for customers to avoid overdrafts and associated overdraft fees.[14] In reality, though, our recent analysis finds that *nearly two-thirds of bank payday borrowers also incur overdraft fees, and these borrowers were two times more likely to incur overdraft fees than bank customers as a whole.*[15]

This finding is consistent with what consultants selling bank payday loan software have promised banks—that payday lending will result in little-to-no "overdraft revenue cannibalization"[16]—and prior research finding that non-bank payday loans often exacerbate overdraft fees, leading to checking account closures.[17]

An illustration of how bank payday loans create a debt trap and cause overdraft fees for a Social Security recipient is included in Appendix B. Over two months, this senior citizen paid $162 in payday loan interest plus $57 in overdraft fees.

Finding 4: Over one-quarter of all bank payday borrowers are Social Security recipients.

Our recent analysis of bank payday loans finds that *more than one-quarter of bank payday borrowers are Social Security recipients.* This finding is consistent with the 2010 data, which found that nearly one-quarter of all bank payday borrowers were Social Security recipients. For an example of the impact that bank payday loans have on a Social Security recipient in CRL's 2010 database, *see* Appendix B. At the end of a two-month period during which the borrower spent 47 of 61 days in payday loan debt, the borrower is again left with a negative balance, in an immediate crisis, in need of another loan.

DISCUSSION AND POLICY RECOMMENDATIONS

The above findings based on 2011 data, like those previously published based on 2010 data, demonstrate that bank payday loans are not the short-term credit solution banks represent them to be, but that, instead, they are structured in a way that trap bank customers in a cycle of high-cost debt.

Ineffective "safeguards"

Banks, like storefront payday lenders, often point to "safeguards" they have in place on payday loans to ensure that borrowers do not become mired in a long-term debt trap, like installment "options" and severely limited cooling-off periods.[18] But the above findings, like those in the non-bank payday context,[19] discredit any claims that these "safeguards" as currently structured prevent cycles of long-term debt.

Banks that permit installment "options" continue to steer borrowers into the default balloon repayment structure by making installment plans difficult to qualify for or obtain. Wells Fargo's "payment plan," which allows payments in $100 increments rather than balloon repayments, is available only to customers who have already been in balloon payment loans in three consecutive months and have at least $300 in bank payday debt outstanding.[20] Regions' installment option is available only to borrowers who call the bank prior to taking out the advance and explicitly request an installment plan, while the bank places any borrowers who request a payday loan online, at a branch, or over the phone without specifying the installment option into the default balloon repayment structure.[21]

A similar dynamic has long been at play in the non-bank payday loan context. Installment "options," though long endorsed as a "protection" by the payday lending industry, have been similarly discouraged by payday lenders in practice. They are often available only to borrowers who are already substantially indebted or who meet other strict eligibility requirements.[22] As a result, borrower use of installment plans with non-bank payday loans has been extremely rare—in the one-to-two-percent range.[23] Indeed, lenders have little incentive to encourage installment plans that may allow borrowers an "off-ramp" from the cycle of repeat loans.

Limited cooling-off periods in the non-bank payday loan context have been employed in a similar way—endorsed by the industry as a "protection" but, in reality, ineffective at stopping the cycle of repeat loans.[24] As currently structured, banks' cooling-off periods allow borrowers to become mired in a significant, destructive cycle of debt before the cooling-off period is triggered. Wells Fargo's cooling-off policy, for example, allows six consecutive months of loans until a one-month cooling-off period.[25] After six consecutive months with loans, a borrower will typically have paid hundreds of dollars in fees and still effectively owe the original principal on the loan—a deep hole from which to recover. By contrast, if provided an affordable installment loan at the outset, after six months the borrower would have been finished, or well on the way, to paying off the loan.

Undermining state and federal law

Despite having expressed concerns about payday lending for many years, federal banking regulators have not taken decisive action to end bank payday lending. As a result, banks continue making payday loans, not only in states that permit payday lending but also, through the doctrine of federal preemption, in states that prohibit or meaningfully restrict the product from non-bank lenders.

Bank payday loans also undermine federal protections of the Military Lending Act that aim to protect service members and their families from payday loans. 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. The protection grew from concern by the Department of Defense and base commanders that troops were incurring high levels of high-cost payday loan debt, which was threatening security clearances and military readiness.[26] But banks structure their loans in a way that attempts to evade this law: the regulation under the law covers "closed-end" loans,[27] and banks call their payday loans "open-end" instead, even though the due date for the loan, much like a closed-end loan, is fixed as the next deposit date or, at the latest, after 35 days.[28]

Payday Loans Can Hit Seniors Particularly Hard

Annette is a 69-year-old, disabled widow who lives on a fixed income in California. More than two years ago, she found herself unable to afford the fees for smog repair and registration for her truck. Her bank, Wells Fargo, suggested that she take out a Direct Deposit Advance.

In the 26 months since, from January 2011 through February 2013, Wells Fargo has made 25 advances to Annette, and she has paid over $900 in fees. This is in spite of a "continuous use" policy the bank claims prevents extended indebtedness. To this day, Annette remains stuck in a cycle of debt.

Source: Andrea Luquetta, California Reinvestment Coalition

Heightened risk for Social Security recipients

The threat bank payday loans pose to Social Security recipients only became more pronounced March 1 of this year, when electronic distribution of government benefits became mandatory.[29] Benefits that have been distributed by paper check, often to those most financially vulnerable, will now be directly deposited to checking accounts or prepaid cards. As part of the new rule, the Treasury Department prohibited government deposits to prepaid cards that allow payday loans out of concern that credit products would siphon off exempt benefits,[30] but benefits deposited into traditional checking accounts remain at risk to bank payday loans, where banks would repay themselves the loan amount before any other expense or creditor.[31]

Prompt, decisive regulatory action needed

Bank payday lending clearly falls within the purview of both the prudential banking regulators [the Office of the Comptroller of the Currency (OCC), Federal Deposit Insurance Corporation (FDIC) and Federal Reserve Board], who are responsible for the safety and soundness of the banks they supervise, and the Consumer Financial Protection Bureau, responsible for consumer financial protection generally. Indeed, bank payday loans pose serious safety and soundness concerns, including that they violate the basic safety and soundness principle of lending based on the borrower's ability to repay a loan; they pose severe reputational risk, as evidenced by sweeping negative reaction to these products;[32] and they risk violation of consumer protection laws, which itself poses safety and soundness risk.[33]

Recent federal action by regulators has been encouraging. In May of 2012, the FDIC announced that it was "deeply concerned" about payday lending by banks and that it was investigating the practice.[34] In July of 2012, the OCC testified before the House of Representatives that payday lending is "unsafe and unsound and unfair to consumers" and that the profitability of payday loans "is dependent on effectively trapping consumers in a cycle of repeat credit transactions, high fees, and unsustainable debt."[35] The agency further noted the importance of the protections that the Military Lending Act provides members of the military and their dependents by "restricting the cost and terms of . . . abusive credit products."[36]

RECOMMENDATIONS:

1. Regulators should take immediate supervisory and/or enforcement action to stop Wells Fargo, U.S. Bank, Regions Bank, Fifth Third Bank, Bank of Oklahoma and its affiliate banks, and Guaranty Bank from making unaffordable payday loans.

2. Regulators should require that any small loan product be affordable without leading to a cycle of repeat loans, including that it be repayable in affordable installments over at least 90 days; be reasonably priced, carrying an effective annual percentage rate of 36 percent or less; be underwritten based on an ability to repay the loan without taking out another loan shortly thereafter; and not require mandatory automatic repayment from the consumer's checking account.

APPENDIX A

Bank Payday Loan Statistics

The following figure shows the key statistics from our 2010 and 2011 analyses of bank payday loan data, using Lightspeed Research's checking account data from 55 and 66 American checking account holders, respectively, who received bank payday loans.

Mean Bank Payday (BP) loan size: $185.14 (2010: $201.15)
Median BP loan size: $100 (2010: $140)
Mean BP loan repayment time: 14 days (2010: 10.7 days)
Median BP loan repayment time: 12 days (2010: 10 days)
Mean number of BP loans per year: 19.2 loans (2010: 16.4 loans)
Median number of BP loans per year: 13.5 loans (2010: 14 loans)

To determine the number of months during 2011 during which a typical borrower had a bank payday loan outstanding, we manually computed the number of discrete calendar months during which each bank payday borrower in our Lightspeed database had a bank payday loan outstanding for any portion of the calendar month. From those figures we computed the median, arriving at six months.

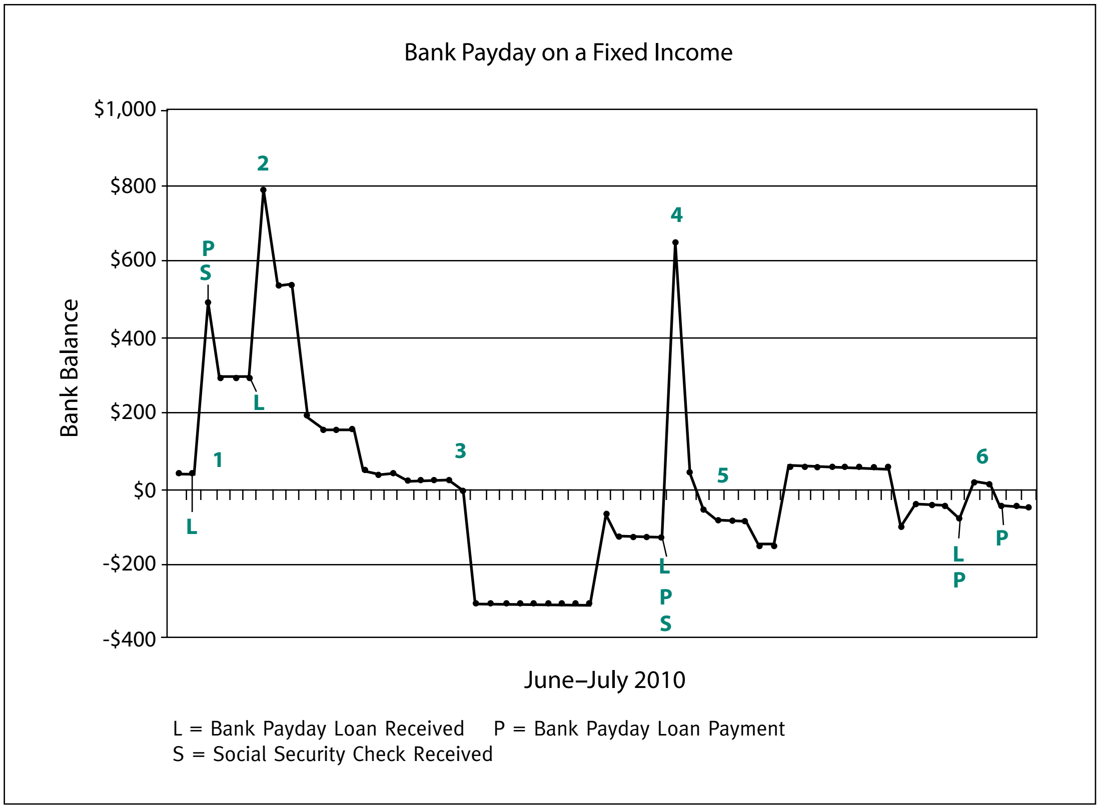
Likelihood of Overdraft Fees Calculation

The following chart demonstrates our calculation that borrowers taking out bank payday loans are two times more likely to incur an overdraft fee than bank customers as a whole.

Total panel from banks making bank payday loans	N=742
Panelists from banks making bank payday loans that paid overdraft fees	N=150 (20.2%)
Panelists that took out bank payday loans	N=66 (8.9%)
Panelists that took out bank payday loans and paid overdraft fees	N=42 (63.6% of bank payday borrowers)
Increased likelihood of overdraft fees for bank payday borrowers	63.6%/20.2% = 3.15x as likely = 2.15x more likely

APPENDIX B

The figure below demonstrates the impact that bank payday loans have on a Social Security recipient in CRL's 2010 database. The figure maps two months of checking account activity of a panelist whose primary source of income is Social Security. The line on the graph represents the borrower's account balance. It goes up when the customer receives a direct deposit, other deposit, a payday loan, or an overdraft. It goes down when checks, bill payments, debit card transactions, or other withdrawals are posted to the account, or when the bank collects the payday loans (after a direct deposit is received) or overdrafts and related fees.



1: Bank payday loan takes balance up to $500.
2: Borrower receives June Social Security Check, and bank uses deposit to pay off first bank payday loan. Panelist then takes out second bank payday loan, reaching his highest balance for the two-month period.
3: Several large bills and payments put our panelist on the verge of overdraft, and the payback for the payday loan is about to come due.
4: July's Social Security Check and a new bank payday loan bring our panelist's account balance to positive for only a few days.
5: More bills and the payday loan payback take him right back into overdraft.
6: Small bills and payday loan fees and paybacks offset small deposits, transfers, and bank payday loans, and our panelist begins August in the red.

This graph demonstrates that bank payday loans only briefly increase the customer's account balance. Several days later, when the principal and fees ($10 per $100 borrowed in this case) are collected in one lump sum, the customer's account balance decreases dramatically and overdraft fees soon follow. At the end of a two-month period during which the borrower spent 47 of 61 days in payday loan debt, the borrower is again left with a negative balance, in an immediate crisis, in need of another loan.

ENDNOTES

1 Center for Responsible Lending, "Big Bank Payday Loans," CRL Research Brief, July 2011, *available at* http://www.responsiblelending.org/payday-lending/research-analysis/big-bank-payday-loans.pdf.

2 In May of 2012, the Federal Deposit Insurance Corporation (FDIC) announced that it was "deeply concerned" about payday lending by banks and that it was investigating the practice (Letter from FDIC to Americans for Financial Reform, May 29, 2012, *available at* http://www.responsiblelending.org/payday-lending/policy-legislation/regulators/Bank-DDA-FDIC-OC12-65R-1.pdf). In July of 2012, the Office of the Comptroller of the Currency (OCC) testified before the House of Representatives that payday lending is "unsafe and unsound and unfair to consumers" and that the profitability of payday loans "is dependent on effectively trapping consumers in a cycle of repeat credit transactions, high fees, and unsustainable debt" (Testimony of Grovetta Gardineer, Deputy Comptroller for Compliance Policy, Office of the Comptroller of the Currency, Before the Subcommittee on Financial Institutions and Consumer Credit, Committee on Financial Services, U.S. House of Representatives, July 24, 2012, at 1, 5).

3 Bank of Albuquerque, Bank of Arizona, Bank of Arkansas, Bank of Kansas City, Bank of Texas, and Colorado State Bank and Trust.

4 For example, since 2010, Wells Fargo has reduced the fee charged per $100 from $10 to $7.50 and has amended the terms of its cooling-off period. As discussed later in this report, this amended cooling-off period continues to allow borrowers to remain indebted for six consecutive months.

5 *See* the following studies for discussions of these negative consequences of payday lending: 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; 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; Dennis Campbell, Asis Martinez Jerez, and Peter Tufano, *Bouncing Out of the Banking System: An Empirical Analysis of Involuntary Bank Account Closures,* Harvard Business School (June 6, 2008), *available at* http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1335873; 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://insight.kellogg.northwestern.edu/index.php/Kellogg/article/the_real_costs_of_credit_access; and Bart J. Wilson, David W. Findlay, James W. Meehan, Jr., Charissa P. Wellford, and Karl Schurter, "An Experimental Analysis of the Demand for Payday Loans" (April 1, 2008), *available at* http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1083796.

6 Bank of Albuquerque, Bank of Arizona, Bank of Arkansas, Bank of Kansas City, Bank of Texas, and Colorado State Bank and Trust.

7 As banks have not made data on this product public themselves, our only means of obtaining detailed data on bank payday loans has been to purchase transaction activity from a data aggregator. Lightspeed has the most robust transaction level data of any aggregator of which we are aware.

8 Lightspeed requires that participants have internet access, which may lead to selection bias. A survey conducted by the Pew Internet & American Life Project from October 24-December 2, 2007 reveals that while 72 percent of adults ages 50 to 64 use the internet, only 37 percent of adults 65 or older do.

9 CRL found instances of bank payday transactions in 66 separate accounts from 2011. We derive all general figures from the entire 66-account population. With respect to findings specific to Social Security recipients, we found instances of Social Security deposits in 85 accounts at the banks we identified as making payday loans. Of those accounts, 17 accounts contained bank payday lending activity. Our findings related to Social Security recipients are based on these accounts.

Our findings based on the 2011 data are consistent with our findings based on the 2010 data published previously in *Big Bank Payday Loans* as well as with numerous studies of other payday loans that have found high volumes of repeat loans and significant indebtedness over the course of a year. *See, e.g.,* Leslie Parrish and Uriah King, *Phantom Demand: Short-Term Due Date Generates Need for Repeat Payday Loans, Accounting for 76 Percent of Total Volume,* Center for Responsible Lending, July 9, 2009, *available at* http://www.responsiblelending.org/payday-lending/research-analysis/phantom-demand-final.pdf (finding that borrowers are in debt an average of 212 days (58 percent) of the first year they borrow and continue to be indebted over half the time in their second year); Uriah King and Leslie Parrish, *Payday Loans, Inc.: Short on Credit, Long on Debt,* Center for Responsible Lending, March 31, 2011, *available at* http://www.responsiblelending.org/payday-lending/research-analysis/payday-loan-inc.pdf (finding that among loans made to repeat borrowers, 94 percent were opened within one month of the borrower's previous loan); The Pew Charitable Trusts, Safe Small-Dollar Loans Research Project, *Payday Lending in America: Who Borrowers, Where They Borrow, and Why,* July 2012, at 4, *available at* http://www.pewstates.org/

uploadedFiles/PCS_Assets/2012/Pew_Payday_Lending_Report.pdf (finding that, on average, payday borrowers take out eight loans of $375 per year, paying $520 in interest).

10 While it continues to charge $10 per $100 borrowed, as it did in 2011, during a borrower's first year of payday loan use, Regions Bank recently began charging $7 per $100 borrowed under certain circumstances for customers whose first Regions payday loan was taken out at least one year prior. Regions Ready Advance Account Agreement and Disclosures, http://www.regions.com/personal_banking/ready_advance_tc.rf (last visited February 26, 2013).

11 The median loan term is 12 days; the mean loan term is 14 days.

12 The mean number of loans is 19.2; the median number of loans is 13.5.

13 Every bank we know of making payday loans tells customers the product is intended for short-term rather than long-term use:

> **Wells Fargo:** "The Direct Deposit Advance service may be helpful if you are experiencing a financial emergency and need money on a short-term basis . . . . Advances are intended to assist with short-term cash needs and are not recommended as a solution for your long-term financial needs." Wells Fargo Direct Deposit Advance Service Agreement and Product Guide, Effective May 14, 2012 with Addenda effective January 29, 2012; July 15, 2012; and October 22, 2012 at 4, available at https://www.wellsfargo.com/downloads/pdf/checking/dda/termsandconditions_english.pdf.
>
> **US Bank:** "Checking Account Advance is a loan product designed for short-term credit needs. We do not recommend ongoing use of the Checking Account Advance service." U.S. Bank Checking Account Advance, Summary of Key Features, https://www.usbank.com/checking/caa/agreement.html (last visited February 26, 2013).
>
> **Fifth Third:** "[Early Access is a] line of credit used to assist our customers with short-term, financial emergencies or unexpected financial needs." Fifth Third Early Access, Summary of Key Features, https://www.53.com/doc/pe/pe-eax-tc.pdf (last visited February 26, 2013).
>
> **Regions:** "Ready Advance is an open-end credit plan that is designed to provide you with funds when you have an emergency or other unexpected expense. Ready Advance is not intended for customers who need to repay an extension of credit over an extended period of time. Ready Advance should not be used for planned purchases, discretionary spending, or regular monthly expenses." Regions Ready Advance Account Agreement and Disclosures, http://www.regions.com/personal_banking/ready_advance_tc.rf (last visited February 26, 2013).
>
> **Guaranty Bank:** "This service . . . is designed to help our customers meet their short term needs and is not intended to provide a solution for longer-term financial needs or recurring expenses that you can plan for." Guaranty Bank Easy Advance Line of Credit Agreement and Disclosures, as of December 12, 2012, *available at* http://www.guaranty-banking.com/ContentDocumentHandler.ashx?documentId=183421.
>
> **Bank of Oklahoma:** "The service is designed to help our customers meet their short-term borrowing needs, but is not intended to provide a solution for longer-term financial needs." Fast Loan Terms and Conditions, 2011, *available at* https://www.bankofoklahoma.com/sites/Bank-Of-Oklahoma/asset/en/theme/default/PDF/Bank%20of%20Oklahoma%20FastLoanSM%20Terms%20and%20Conditions.pdf (last visited February 25, 2013).

14 *See, e.g.,* Kevin Burbach et. al., B*ig Banks' quick-cash deals: Another form of predatory lending?,* MinnPost, February 4, 2013 ("In their defense, banks said the emergency loans are less expensive than overdrafts."); Wells Fargo's Direct Deposit Advance Service Agreement and Product Guide, Effective May 14, 2012, *available at* https://www.wellsfargo.com/downloads/pdf/checking/dda/termsandconditions_english.pdf (last viewed February 19, 2013) (providing a chart comparing borrowing $300 for 30 days as costing $22.50 with the deposit advance (payday loan) product versus $70 with overdraft (assuming two overdraft items at $35 each) and also stating: "If you find yourself in a situation where the funds in your . . . checking account may be insufficient to cover checks or other items that will post to your deposit account, you may choose to advance from [the direct deposit advance] service to avoid the overdraft . . . . The Direct Deposit Advance service is an expensive form of credit, and while the advance fee may be lower than an overdraft or insufficient funds fee, you may want to consider speaking with a banker regarding overdraft protection options that may be available to you").

15 The prevalence of overdraft use among bank payday users is 63.6%, compared with 17.2% overall and 20.2% at banks that offer bank payday products. *See* Appendix A.

16 Fiserv Relationship Advance program description, http://www.relationshipadvance.com/ as viewed August 2011, on file with the Center for Responsible Lending.

17 *See* Center for Responsible Lending, *Payday Loans Put Families in the Red,* Research Brief, February 2009, *available at* http://www.responsiblelending.org/payday-lending/research-analysis/payday-puts-families-in-the-red-final.pdf.

18 In the payday lending context, a "cooling-off" period is a period following repayment of one payday loan during which the lender will not extend the consumer another payday loan.

19 CRL examined millions of loans across several states that adopted similar "best practices" to ostensibly reform payday loans. Nevertheless, there was no measurable reduction in repeat borrowing. For example, over 60 percent of all loans from these states go to borrowers with 12 or more transactions in a year. *See generally,* Uriah King and Leslie Parrish, *Springing the Debt Trap: Rate caps are the only proven reform,* December 13, 2007, *available at* http://www.responsiblelending.org/payday-lending/research-analysis/springing-the-debt-trap.pdf [hereinafter *Springing the Debt Trap*].

20 Wells Fargo Direct Deposit Advance Service Agreement and Product Guide, Effective May 14, 2012 with Addenda effective January 29, 2012; July 15, 2012; and October 22, 2012.

21 Regions Ready Advance Account Agreement and Disclosures, http://www.regions.com/personal_banking/ready_advance_tc.rf (last visited February 26, 2013).

22 *Springing the Debt Trap* at 14.

23 *Id.* at 14, Table 8.

24 *Id.* at 13.

25 Wells Fargo Direct Deposit Advance Service Agreement and Product Guide, Effective May 14, 2012 with Addenda effective January 29, 2012; July 15, 2012; and October 22, 2012. Despite that the bank's product will keep customers in debt 11 out of 12 months of the year, the bank touts the cooling off period as a way to keep borrowers out of long-term debt. *See* Pamela Yip, *Banks' 'deposit-advance' loans just another name for payday lending,* The Dallas Morning News, Nov. 25, 2012 (quoting Wells Fargo spokesperson Richele Meddick: "If a customer uses this service for six consecutive statement cycles, we ask them to take a break because we don't want them to use this for a long period.")

26 *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.

27 32 CFR 232.3(b).

28 For further discussion of banks making payday loans available to service members, including at branches located on military bases, see Jean Ann Fox, *The Military Lending Act Five Years Later,* Consumer Federation of America, May 29, 2012, at 58-60, *available at* http://www.consumerfed.org/pdfs/Studies.MilitaryLendingAct.5.29.12.pdf.

29 Interim Final Rule, Department of the Treasury, Federal Government Participation in the Automated Clearing House, 75 Fed. Reg. 80335 (Dec. 22, 2010), amending 31 CFR Part 208; *see also* http://www.fms.treas.gov/eft/regulations.html.

30 75 Fed. Reg. at 80338: "In order to prevent Federal payments from being delivered to prepaid cards that have payday lending or 'account advance' features, we are prohibiting prepaid cards from having an attached line of credit if the credit agreement allows for automatic repayment of a loan from a card account triggered by the delivery of the Federal payment into the account. Our intention is that this restriction will prevent arrangements in which a bank or creditor 'advances' funds to a cardholder's account, and then repays itself for the advance and any related fees by taking some or all of the cardholder's next deposit."

31 In its discussion, Treasury cited Regulation E's prohibition on compulsory electronic repayments as the comparable protection on traditional checking accounts, *id.,* but this prohibition is typically not read to apply to single-payment loans, as bank payday loans typically are. Thus, federal benefits direct deposited to traditional checking accounts remain vulnerable to bank payday loans.

32 *See* Center for Responsible Lending, *Bank Payday Lending: Overview of Media Coverage and Public Concerns,* January 17, 2013, *available at* http://rspnsb.li/10wra0y.

33 For further detail, *see* Center for Responsible Lending, *Prudential Regulators Should Apply Safety and Soundness Standards to Bank Payday Loan Products,* January 24, 2013, *available at* http://rspnsb.li/Yqd0uH.

34 Letter from FDIC to Americans for Financial Reform, May 29, 2012, *available at* http://www.responsiblelending.org/payday-lending/policy-legislation/regulators/Bank-DDA-FDIC-OC12-65R-1.pdf.

35 Testimony of Grovetta Gardineer, Deputy Comptroller for Compliance Policy, Office of the Comptroller of the Currency, Before the Subcommittee on Financial Institutions and Consumer Credit, Committee on Financial Services, U.S. House of Representatives, July 24, 2012, at 1, 5.

36 *Id.* at 5.

About the Center for Responsible Lending

The Center for Responsible Lending is a nonprofit, nonpartisan research and policy organization dedicated to protecting homeownership and family wealth by working to eliminate abusive financial practices. CRL is affiliated with Self-Help, one of the nation's largest community development financial institutions.

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