Testimony of Rebecca Borné
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Before the Senate Special Committee on Aging
Hearing: "Payday Loans: Short-term Solution or Long-term Problem?"

July 24, 2013

Good afternoon Chairman Nelson, Ranking Member Collins, and Members of the Committee. Thank you for inviting me to testify to discuss payday lending and its impact on older Americans.

I am a senior policy counsel at the Center for Responsible Lending (CRL), a nonprofit, nonpartisan research and policy organization dedicated to protecting homeownership and family wealth by working to eliminate abusive financial practices. CRL is an affiliate of Self-Help, a nonprofit community development institution. For thirty years, Self-Help has focused on creating asset-building opportunities for low-income, rural, women-headed, and minority families, primarily through safe, affordable home loans and small business loans. Self-Help has provided $6 billion in financing to 70,000 homebuyers, small businesses and nonprofit organizations and serves more than 80,000 mostly low-income families through 30 retail credit union branches in North Carolina, California, and Chicago.

My testimony will make the following points:

- **Payday loans are designed to create a long-term debt trap.**

- **Payday loans cause borrowers severe harm, leaving them worse off than they were before the first payday loan.**

- **Payday loans were legalized only in relatively recent years based on the claim they would be used for emergencies, but they typically are not used this way.**

- **A few banks are payday lenders, posing severe consumer protection concerns and safety and soundness risk to banks. Without decisive regulatory action by all the bank prudential regulators, many banks will likely become payday lenders.**

- **Older Americans are particularly attractive to payday lenders and particularly vulnerable to the harm payday loans cause. Research has found that over one-quarter of bank payday borrowers are Social Security recipients.**

- **Public policy is trending against payday lending, with a growing number of states—now 22, home to over 40 percent of Americans—prohibiting or significantly restricting it.**

- **Strong policy responses are critical to stopping the harm that payday lending causes.**

I. Payday loans are designed to create a long-term debt trap.

A. Payday lenders, as a matter of practice, make loans borrowers likely do not have the ability to repay.

Payday loans—loans of around $350 averaging 300-400% annual percentage rate (APR) repaid from the borrower's next paycheck or receipt of public benefits—are designed to create a long-term debt trap.

Borrowers already struggling with regular expenses or facing an emergency expense with minimal savings are typically unable to repay the large payment of principal and fees due and meet their other expenses until their next payday. Though their loan is typically technically repaid on the due date, the repayment of the loan plus the fee does not leave borrowers enough money to pay for necessities, such as rent or food, for the rest of the pay period or month. Consequently, borrowers are forced to renew their loan before the end of the next pay period, paying a new fee. Payday lenders repeat this cycle over and over again, leading to a long-term cycle of churned loans. A forthcoming report from CRL finds that <u>borrowers pay $3.4 billion in fees alone annually for payday loans by non-bank payday lenders, not including fees paid for payday loans made by banks</u>.[1]

Rather than determine the borrower's ability to repay the loan, payday lenders rely on their ability to seize the borrower's incoming funds by holding a personal check or an ACH authorization for the entire amount due, which serve as collateral. It would be inaccurate to conclude that lenders do assess ability to *repay* because they typically have the ability to *collect* the loan proceeds from the borrower's bank account. Federal regulatory precedent makes clear that lending with regard to ability to repay means determining the borrower can repay the loan *from sources other than the collateral*; in the payday loan context, that means that the borrower can *both* repay the loan *and* meet other obligations *without reborrowing*.[2] Thus, the high number of loans per borrower demonstrates payday lenders' disregard of the borrowers' ability to repay.

B. The data overwhelmingly demonstrate that borrowers cannot afford to repay.

Data measuring frequency of payday loans and days of indebtedness overwhelmingly demonstrate that borrowers typically do not have the ability to repay payday loans. Most recently, the Consumer Financial Protection Bureau (CFPB), in the most comprehensive data set on payday lending ever compiled and analyzed, found that the median borrower took out <u>ten payday loans</u> from a single storefront lender during one year, and spent <u>199 days of the year</u> in payday debt.[3] These findings were generally consistent with other studies by CRL (nine loans,[4] 212 days in a year[5]); Pew (eight loans averaging 18 days each, or 144 days total);[6] the Center for Financial Services Innovation (CFSI) (11 loans, 150 days);[7] and even Advance America, the largest payday lender, which has reported that its borrowers average eight loans per year.[8]

Further, data quantifying payday loan "churn"—when a borrower's loan is renewed or when the loan is technically repaid but the lender flips the borrower into a new loan shortly thereafter —underscores the existence of a long-term debt trap. CRL has found that half of new loans are the result of a previous loan being flipped virtually immediately,[9] 87% within two weeks, and 94% within one month.[10] Similarly, the CFPB recently found that most of the transactions conducted by consumers with seven or more loans were taken within 14 days of a previous loan. The effective impact of churned transactions is simply repaying fees to float the same principal debt, rather than being extended new credit each time.

Payday loans made by banks, which banks refer to as "deposit advances," show the same patterns of long-term indebtedness and loan churn. CFPB found that bank payday borrowers spend an average of 112 days in debt, with only 13 days between paying off an advance in full and taking out a new one—indicating that bank payday loans do not typically sustain borrowers through even a single pay cycle.[11] CRL found that borrowers took out 13.5 bank payday loans in 2011 and spent at least part of six months in bank payday loan debt.[12] The mean number of loans was 19—far higher than the median, because over one-third of borrowers had more than 20 loans.[13]

C. High-cost payday installment loans can be the functional equivalent of a series of short-term balloon-payment loans.

The following five elements contribute to the debt trap: lack of underwriting for affordability, high fees, short-term due date, single balloon payment, and direct access to the borrower's checking account through a personal check or electronic access. But all of these elements need not be present for loans to create a debt trap. Indeed, although payday loans are typically due in full in a single payment, some payday lenders are moving to payday installment loans that carry triple-digit interest rates and are the effective equivalent of a series of short-term, single-payment payday loans.[14]

As discussed below, payday lenders attempt to justify the triple-digit annual interest rates on their loans on the basis that they are short, two-week loans; these high rates are particularly unjustified for longer-term loans. In addition, the very high rates on these loans cause most of the borrower's payment to go toward interest, not principal; as a result, as with two-week loans, the borrower often pays as much or more in interest than in principal. Thus, whether a triple-digit-APR payday loan is a single-payment loan or an installment loan, it leaves the borrower in extended triple-digit-APR debt.

D. Car-title loans are similarly structured and lead to similar cycles of debt.

A close cousin of the payday loan is the car-title loan, which averages around $1,000 and is secured by the title to a borrower's vehicle that is owned free-and-clear. These are expensive, 300% APR loans that are often marketed as short-term (with a one-month due date) but tend to be renewed multiple times (eight times on average).[15] Nationally, we estimate that borrowers pay $4.3 billion in fees alone annually for these loans—more than double the amount of credit extended.[16] As with payday loans, there is an emerging trend toward longer-term and still high-cost installment products. Most car-title loan borrowers end up paying far more in fees than principal borrowed, and a significant share of borrowers face repossession of their cars.[17]

II. Payday loans cause borrowers severe harm, leaving them worse off than they were before the first payday loan.

The typical payday borrower pays more in interest than they receive in principal. Studies find that *on average* borrowers pay $450-$500 in fees for approximately $350 in non-churn principal, with many paying far more.[18] Strikingly, approximately half of payday borrowers have been found to ultimately default, many after spending months or years in debt and paying large fees that far exceeded principal.[19]

Research has long shown that payday loans cause serious financial harm to borrowers. Payday loan usage is associated with paying credit card debts and other bills late,[20] increased likelihood of bankruptcy,[21] delayed medical care,[22] and loss of basic banking privileges because of repeated overdrafts.[23]

The large share of borrowers who ultimately default experience additional financial stress, including NSF fees from the bank and the lender, legal ramifications (garnishment or court action), and having their debt sold to a collection agency (impacting credit reports and scores and leading to repeated solicitations, illegal harassment, or debt collection scams).[24]

One academic researcher who compared low- and middle-income households living in areas with and without payday lending establishments recently concluded: "I find no evidence that payday loans alleviate economic hardship. To the contrary, loan access leads to increased difficulty paying mortgage, rent and utilities bills."[25] The same researcher also found that payday loans are associated with higher rates of delinquency on child support payments.[26]

We also hear from credit counselors and other advocates that payday loans cause severe emotional distress. One former employee of a major payday lender described visiting borrowers' places of employment while working for the lender's collections department:

> *We would not tell their bosses where we were from, but we would carry a clip board with our [company's] name on it in a prominent way. We would request that a person be pulled off the factory floor, not to collect, but to keep them on the hook. The key was embarrassment and intimidation.*—former Advance America employee[27]

Researchers have studied how residents in states that prohibit payday loans deal with financial shortfalls and how payday borrowers report they would handle shortfalls in the absence of payday lending due to regulation. They have found that borrowers choose or would choose options such as cutting back on expenses, delaying or not paying a bill, entering payment plans for bills, tapping into savings, borrowing from friends and family, or visiting a pawnshop.[28] Importantly, these are the same options that payday borrowers who do not default ultimately take advantage of in order to finally retire their payday debt.[29] The difference is that residents in states that do not allow lenders to charge triple-digit annual interest rates do not pay hundreds or even thousands of dollars in fees before exercising those other options. In addition, in North Carolina—a state where payday lending was made illegal—more than twice as many former payday borrowers reported that the absence of payday lending had had a positive rather than a negative effect on them; nearly 90% of households thought that payday loans were bad for their finances.[30]

III. Payday loans were legalized only in relatively recent years based on the claim they would be used for emergencies, but they typically are not used this way.

Historically, states had usury caps in place that prevented payday and other high-cost loans from being made. In the early 1990s, many states exempted payday lenders from those caps based on the industry's claim that their loans were for emergency, short-term use, and were thus entitled to a far higher interest rate limit.

To the contrary, the evidence shows that the majority of payday borrowers are trying to plug budget gaps caused by recurring, everyday expenses, rather than trying to get through occasional emergencies.[31] That payday loans are used for everyday, recurring expenses suggests a structural budget problem where expenses exceed income, which helps explain why it is so difficult to repay two-week balloon payment or escape the ensuing cycle of debt. High-cost, short-term loans are unaffordable for these borrowers.

Yet even as they purport to discourage long-term use, payday lending industry representatives have often acknowledged that loan churning not only occurs but is encouraged:

> *[T]he theory in the business is [that] you've got to get that customer in, work to turn him into a repetitive customer, long-term customer, because that's really where the profitability is.*—Dan Feehan, CEO of Cash America[32]
>
> *Advance America's disclosures show that repeat borrowing is important.*—Morgan Stanley[33]

That payday lenders also frequently offer the borrower's first loan for free or at a discount further exposes that churned loans are expected.[34]

IV. A few banks are payday lenders, posing severe consumer protection concerns and safety and soundness risk to banks. Without decisive regulatory action by all the bank prudential regulators, many banks will likely become payday lenders.

The great majority of banks do not offer payday loans, but we are aware of at least six that do. Two are supervised by the Federal Reserve Board (Federal Reserve): Fifth Third Bank and Regions Bank. Four are supervised by the Office of the Comptroller of the Currency (OCC):

Wells Fargo Bank, U.S. Bank, Bank of Oklahoma and its bank affiliates,[35] and Guaranty Bank. Banks are attempting to use the doctrine of federal preemption to make payday loans even in states whose state laws do not authorize payday lending, grossly undermining state law.[36]

A. Payday loans by banks function like other payday loans.

Bank payday loans, which banks typically refer to as "deposit advances," are structured to function the same 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 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 after 35 days, even if the repayment overdraws the consumer's account, potentially triggering high overdraft fees for subsequent transactions. Banks impose fees in the range of $7.50 to $10 per $100 borrowed for bank payday loans; for the typical loan term of 12 days, these fees translate to <u>APRs ranging from 225% to 300%</u>. **<u>CRL's research has found that more than one in four bank payday borrowers are Social Security recipients.</u>**

Banks have pitched their payday loans as a way for customers to avoid overdrafts and associated fees, but the data show that <u>bank payday borrowers are significantly more likely to incur overdraft fees</u> than customers not taking out bank payday loans.[37]

Banks, like non-bank 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. But these "safeguards" are set by bank and non-bank payday lenders at levels that have little impact on the cycle of long-term indebtedness; indeed, it is in the lenders' interest to perpetuate the debt trap, as that is where most of their revenue is generated. For example, banks permit installment plans but make these plans difficult to qualify for or obtain.[38] They also establish "cooling-off" periods that still allow borrowers to become mired in a cycle of debt before the cooling-off period is triggered.[39] The data above demonstrate that banks' "safeguards" are ineffective, just as similar "safeguards" that non-bank payday lenders have long touted have proven ineffective as well.[40]

B. Bank payday lending threatens to grow rapidly absent decisive regulatory action by all the bank prudential regulators.

There are clear signals that bank payday lending may grow rapidly if swift regulatory action is not taken. A software consultant marketing a bank payday software program has promised banks massive revenue potential and has reported a high level of interest from banks.[41]

Bank payday lending clearly falls within the purview of both the prudential banking regulators (the OCC, FDIC, and Federal Reserve)—which are responsible for the safety and soundness of the banks they supervise—and the CFPB, which is responsible for consumer financial protection generally. <u>Indeed, bank payday loans pose serious safety and soundness concerns, including that they violate the basic safety and soundness principle of lending based</u>

on the borrower's ability to repay a loan; they pose severe reputational risk, as evidenced by sweeping negative reaction to these products;[42] and they risk violation of consumer protection laws, which itself poses safety and soundness risk.[43]

In April 2013, the OCC and the FDIC, recognizing that payday lending poses both safety and soundness and consumer protection risk to banks, proposed supervisory guidance that would address central problems with payday loans by requiring determination of the borrower's ability to repay the loan while meeting other expenses and limiting churned loans. Public comments on the proposed guidance were due June 30, 2013; as of this writing, the proposed guidance has not been finalized.[44]

Unlike the OCC and the FDIC, the Federal Reserve did not propose bank payday supervisory guidance with explicit underwriting guidelines. It did, however, issue a supervisory statement emphasizing the "significant consumer risks" bank payday lending poses.[45] The statement highlighted the CFPB's recent findings of sustained and harmful usage and underscored that examiners should thoroughly review bank payday products for compliance with laws prohibiting unfair and deceptive practices. This statement should compel Fifth Third Bank and Regions Bank to make meaningful changes that eliminate the debt trap the bank payday loan product has been shown to cause. To our knowledge, however, the banks have not indicated plans to do so since the supervisory statement was issued.

In addition, based on its extensive study of bank and non-bank payday loans, the CFPB, concluding that there is "substantial probability" that consumers will be indebted for longer than anticipated, announced that it expects to address the problems identified by its study.[46]

V. Older Americans are particularly attractive to payday lenders and especially vulnerable to the harm payday loans cause. Research has found that over one-quarter of bank payday borrowers are Social Security recipients.

A. Older Americans are showing signs of greater financial hardship than other age groups and are often less able to recover from financial distress.

Since 2006, the wealth of American households dropped $6 trillion because of decreased home values and losses in stock market-based retirement savings.[47] The impact of this financial shipwreck can be especially severe for older Americans, who have a shorter remaining time horizon and therefore less ability to rebuild their wealth and financial security. The problem is even more acute for older African-American households, who have only one-sixth of the wealth of older white households.[48]

Coupled with recent dramatic declines in the value of their largest assets—homes and retirement assets—many older Americans struggle with limited incomes. More than 13 million older adults are considered economically insecure, living on $21,800 per year or less.[49] Senior women in particular face diminished incomes because of lower lifetime earnings and Social Security and pension benefits.

Faced with insufficient incomes, many older Americans take on debt to cover medical and living expenses. Over the last twenty years, the percentage of households with credit card debt has decreased for every age category except those aged 55 and over, with those aged 75 and older experiencing the largest increase.[50] Amidst the deleveraging of the last five years, credit card debt for households aged 50+ decreased somewhat (to a still-large average of $8,300 for indebted families), but by much less than it did for younger households.[51]

The result is not just more debt, but also greater levels of unaffordable debt. One-fifth of older households with annual incomes below $50,000 report spending more than 40 percent of their income on debt payments.[52] The results are sadly predictable: Those over age 65 make up the fastest-growing segment of people seeking bankruptcy protection.[53]

Facing these financial hardships, older Americans are particularly vulnerable to payday lenders' claims of quick cash, only to find themselves trapped in payday debt that makes their situation worse. For real-life examples of older Americans trapped in payday loan debt, see the Appendix.

B. Social Security benefits provide lenders with a steady source of repayment.

Older Americans are particularly attractive to payday lenders because they have a steady source of income in the form of Social Security payments. As one payday lender described federal benefits recipients:

> *"These people always get paid, rain or shine . . . [They] will always have money, every 30 days."*—former manager of payday loan stores[54]

As another put it:

> *"[Borrowers receiving Social Security or disability] payments would come in for a small loan and write a check to the company dated the 3rd of the month, when their government checks would arrive. All the Advance America employees were required to come in early on that day, so we could quickly cash their checks and wipe out their checking accounts."*—former Advance America employee[55]

Indeed, an analysis by one researcher found that payday lender storefronts cluster around government-subsidized housing for seniors and the disabled in a number of states across the country.[56]

C. Significant numbers of older Americans become trapped in payday loans, comprising a growing share of all payday borrowers.

Though older Americans do not make up a disproportionate share of payday borrowers overall,[57] they make up a significant and growing share of payday borrowers. In both Florida and California, approximately one in five payday borrowers is aged 55 and over.[58] And the number of older Americans in payday loan debt appears to be growing rapidly: In Florida, the proportion of payday borrowers aged 65 and over increased by 73% from 2005 to 2011, while this age group among the general Florida population increased by only 4%.[59] Data on payday lending in Florida indicate most of its borrowers become trapped in debt. Despite "safeguards" in Florida technically prohibiting renewals (where the borrower pays the only fee without retiring principal) and imposing a 24-hour cooling-off period, borrowers average nine loans per year. About half of borrowers' subsequent loans resulted from a loan being extended immediately following the 24-hour cooling off period; nearly 90% resulted from additional loans within the same pay period the previous loan was repaid.[60]

In addition, as noted earlier, research has found that over one-quarter of bank payday borrowers are Social Security recipients, making these borrowers 2.2 times as likely to have a bank payday loan as bank customers as a whole.[61] The CFPB also found that a significant share of payday borrowers—nearly one in four—reported some form of public assistance or other benefits or retirement funds as an income source.[62]

D. Social Security funds are protected from creditors in other contexts yet are routinely seized by bank and non-bank payday lenders.

Congress has long sought to protect Social Security funds and other public benefits intended for necessities from the unilateral reach of creditors.[63] The Social Security Act prohibits collection of Social Security benefits through assignment, garnishment, or other legal process. The policy underlying this legal protection is to ensure the debtor a minimum subsistence income—for essential needs like food, shelter, and medicine—and courts have repeatedly upheld it.[64]

Payday lenders grossly undermine this critical protection by requiring Social Security recipients to provide direct access to their bank accounts—either through a post-dated check or electronic access—and immediately taking the income for repayment. Indeed, CRL research has found that bank payday lenders take an average of 33% of the recipient's next Social Security check to repay a bank payday loan.[65] The Treasury Department recently made significant strides in protecting Social Security funds in checking accounts from bank freezes in response to garnishment orders,[66] but these rules do not address the informal wage assignment routine to payday lending model. They also do not apply to the practice whereby the financial institution repays itself as creditor, as with bank payday loans.[67]

E. Seniors became more vulnerable to payday lenders following the March 1, 2013 requirement that all Social Security benefits be distributed electronically.

The threat payday loans pose to Social Security recipients became more pronounced March 1 of this year, when electronic distribution of government benefits became mandatory.[68] Benefits that have been distributed by paper check, often to those most financially vulnerable, are now 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.[69] However, benefits deposited into traditional checking accounts remain at risk to payday loans by both banks and non-banks.[70]

VI. Public policy is trending against payday lending, with a growing number of states—now 22, home to over 40 percent of Americans—prohibiting or significantly restricting it.

Some states have never allowed payday loans to be part of their small loan marketplace, while several have prohibited or significantly restricted them in recent years.[71] Since 2007, eight states (including the District of Columbia) have enacted or enforced meaningful reform to address payday lending[72]—while no state without payday lending has authorized it since 2005.

In addition, federal policy is increasingly opposed to payday lending. In 2006, Congress passed the Military Lending Act, which prohibited payday loans to military service members and their families. This law stemmed from Department of Defense and base commander concern that troops were incurring high levels of high-cost payday loan debt, which was threatening security clearances and military readiness.[73] At that time, the President of the Navy-Marine Corps Relief Society testified:

> *This problem with . . . payday lending is the most serious single financial problem that we have encountered in [one] hundred years.*—President of Navy-Marine Corps Relief Society[74]

VII. Strong, comprehensive policy responses are critical to stopping the harm that payday lending causes.

Today, we highlight the following policy recommendations needed to eliminate the cycle of debt inherent to payday lending:

- **The OCC and FDIC should finalize their supervisory guidance addressing bank payday lending,** preserving in particular the proposed underwriting requirements that aim to ensure borrowers have the ability to repay their loan without reborrowing, and the limit on the number and frequency of payday loans.[75]

- **The Federal Reserve Board should likewise issue supervisory guidance addressing bank payday loans** that clarifies appropriate underwriting procedures and limits the number and frequency of payday loans.

- **Congress and the states should enact the strongest protection possible against payday lending. An interest rate limit of about 36% annually** has been demonstrated to be the most effective way to ensure that loans are structured in an affordable manner:[76]

  - **Congress should enact a 36% APR limit** applicable to all borrowers, similar to what it enacted for active-duty military and their families in the 2006 Military Lending Act.

  - **States should continue to put in place and enforce 36% APR limits applicable to small dollar loans, including payday loans.**

- **The CFPB should issue regulations** that require lenders to determine the borrower's ability to repay the loan and afford their regular expenses without taking out another loan, and that limit the length of time lenders can keep borrowers in debt.

- **Policymakers should ensure that borrowers' checking accounts—especially income, like Social Security benefits, that is used to pay for necessities—are protected from the effective wage assignment that payday lending creates.** Lenders should be prohibited from requiring, or effectively requiring, access to a borrower's checking account as a condition of making a loan.

Thank you for the opportunity to testify today. I look forward to answering your questions.

Appendix A: Real-life examples of older Americans trapped in payday loans

***As reported in* AARP The Magazine (text reproduced verbatim):**[77]

Mary Love, of Kentucky:

> Love, 67, is a divorced LaGrange, Kentucky, resident and a minister in the Presbyterian Church (U.S.A.). When she got her first payday loan, in 2003, she wasn't destitute; she was working for UPS Logistics in Louisville. But she'd fallen behind on her rent.
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> Her first loan was for $200. She doesn't recall the name of the place that sold her the short-term cash advance. "They were everywhere," she says of the storefront operation. Love wrote a check for $230, including the $30 fee for the cost of the loan. The lender handed her $200 in cash. Two weeks later, Love came back to retrieve the check and repay the loan in cash.
>
> Now, though, she was out of money again. So she wrote the store another check, but for twice as much — $460, including a $60 finance charge for the second loan — because she needed to pay off other bills. This cycle of repeat borrowing spun on for months. By the end of the year, Love says, she'd spent $1,450 in fees. Two years later, with the debt still churning and no end in sight, Love was living rent-free in her sister's basement and relying on temp work to pay off the loans.
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> ***
>
> For Mary Love, escape from the debt trap wouldn't come for several years. In 2005 she saw a billboard advertising the debt-relief referral services of the Red Cross, which put her in touch with the Consumer Credit Counseling Service. That led to a payoff plan; she finally emerged from the debt in 2007. The total payoff, she believes, was "way into the thousands." Years later, she doesn't think she's fully recovered.
>
> "This is not how you get out of debt," she says. "This is how you get into it."

The 96-year-old mother of Randy Morse of Lynchburg, Virginia:

> Payday lenders also aggressively collect debt from borrowers who bounce checks, even garnishing (seizing) Social Security benefits. Technically, the 1935 Social Security Act bars creditors from garnishing benefits. But because the transaction usually takes place between the lender and a local bank, it often escapes regulatory notice. That's what Randy Morse of Lynchburg, Virginia, discovered when a local Allied Cash Advance outlet threatened his 96-year-old mother with garnishment last March. She had fallen behind on a loan she'd taken out the previous September.

As recorded by the National Consumer Law Center:[78]

Mr. B, a Social Security recipient using Wells Fargo's payday loan program, found himself paying exorbitant interest rates and locked in a cycle of debt that aggravated rather than alleviated financial distress. A review of 39 consecutive monthly statements showed that Mr. B had taken out 24 payday loans of $500, averaging approximately eight days each, with the shortest running just two days and the longest 21 days. The finance charges for these short-term loans totaled $1,200, and their effective APRs ranged from 182 percent to 1,825 percent. Ironically, even though bank payday loans are marketed as a way of avoiding overdraft fees, Mr. B still ended up paying $676 in overdraft penalties on top of the $1,200 in loan fees.

As told to CRL by the borrowers:

Arthur Jackson,[79] a 69-year-old warehouse worker and grandfather of seven, went to the same Advance America payday shop for over five years. His total interest paid is estimated at about $5,000 for a loan that started at $200 and eventually increased to a principal of $300. Advance America flipped the loan over a hundred times, collecting interest of up to $52.50 each time. Every payday, rather than defaulting or coming up short on bill money, Jackson went into the Advance America store, renewed his loan, and paid the fee. The clerks knew him by name, and often had his paperwork ready for him when he came in.

Anita Monti,[80] an older American, went to an Advance America store in hopes of finding a solution to a common problem—how to afford Christmas gifts for her grandchildren. Unable to repay both the principal and interest on the initial loan, Monti had no choice but to renew her loan with Advance America every payday, paying $45 many times to keep the same $300 loan outstanding. She went to a second payday lender, Check 'n Go, to help repay Advance America. Monti could not afford the $820 it would take to pay off the two loans in full and get out of the trap. After just four months, she had paid almost $1,000 in fees and still owed the $820 in principal borrowed. "I got a promotion and a raise, but I never saw any of that money," said Monti. She finally went to her church for help making her rent payment and to a consumer credit counseling agency for help in negotiating a repayment plan for the payday loans. It took Monti nine more months to complete these payments.

***As reported in the Texas Observer*:**[81]

Roger Tillman, a 64-year-old living in Houston, took out a $500 payday loan from The Money Center in 2008 after the security company he worked for scaled back his overtime shifts. The Money Center currently offers $500 two-week loans for $150 in interest and fees, or about 650% APR. Like many borrowers, Tillman was unable to pay off the loan and thus renewed it, resulting in deepening debt until October 2009, when he was laid off. He reports that he requested an extended repayment plan but was not given one. In November 2009, the lender filed a criminal complaint against him, demanding that he pay $1,020 within ten days or potentially face felony charges that carry two to 20 years in jail and fines up to $10,000. "In all, the district attorney demanded $1,250, including 'district attorney fees' of $140 and merchant fees of $90"—even though Texas law prohibits payday loan companies from threatening to pursue criminal charges against their customers, except in unusual circumstances.

APPENDIX B

Every bank that we are aware of making payday loans tells its customers that the product is intended for short-term rather than long-term use:

<u>FRB-supervised</u>:

Fifth Third Bank: "[Early Access is a] line of credit used to assist our customers with short-term, financial emergencies or unexpected financial needs."[82]

Regions Bank: "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 based for planned purchases, discretionary spending, or regular monthly expenses."[83]

<u>OCC-supervised:</u>

Wells Fargo Bank: "The service can help get you through a financial emergency . . . . Advances are intended to assist with short-term cash needs and are not recommended as a solution for your long-term financial needs."[84]

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."[85]

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."[86]

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."[87]

NOTES

[1] CRL's forthcoming 2013 *State of Lending in America* chapter on payday lending (on file with CRL).

[2] The 2001 *Interagency Expanded Guidance on Subprime Lending Programs* describes that abusive lending practices occur when "the lender structures a loan to a borrower who has little or no ability to repay the loan from sources other than the collateral pledged." *Interagency Expanded Guidance or Subprime Lending Programs,* FIL 9-2001, January 31, 2001. The OCC's 2000 letter on abusive lending practices, which is applicable to payday loans, discusses collateral or equity stripping as "reliance on . . . collateral, *rather than* the borrower's independent ability to repay . . ." [emphasis added]. *OCC Advisory Letter on Abusive Lending Practices*, AL 2000-7 (June 25, 2000), *available at* http://www.occ.gov/static/news-issuances/memos-advisory-letters/2000/advisory-letter-2000-7.pdf. The OCC's 2003 letter on abusive and predatory lending does the same. *OCC Advisory Letter, Guidelines for National Banks to Guard Against Predatory and Abusive Lending Practices,* AL 2003-2 (Feb. 21, 2003), available at http://www.occ.gov/static/news-issuances/news-releases/2003/nr-occ-2003-8-advisory-ltr-2003-2.pdf.

For further discussion, see comments of AARP, CRL, Consumer Federation of America, Leadership Conference on Civil and Human Rights, NAACP, National Consumer Law Center (on behalf of its low income clients), and National Council of La Raza, to the Office of the Comptroller of the Currency (OCC) and the Federal Deposit Insurance Corporation (FDIC) on their *Proposed Guidance on Deposit Advance Products,* dated May 30, 2013, available at http://www.responsiblelending.org/payday-lending/policy-legislation/regulators/advocates-support-proposed.html [hereinafter Comments to OCC and FDIC].

[3] Consumer Financial Protection Bureau, *Payday Loans and Deposit Advance Products: A White Paper of Initial Data Findings,* April 24, 2013, *available at* http://files.consumerfinance.gov/f/201304_cfpb_payday-dap-whitepaper.pdf [hereinafter CFPB Findings].

CFPB examined data from15 million payday loan transactions from 1.5 million borrowers and covering one year of activity. Its findings are likely conservative because it did not examine borrower experiences across multiple lenders.

[4] CRL's forthcoming 2013 *State of Lending in America* chapter on payday lending (on file with CRL).

[5] U. King and L. Parrish, *Springing the Debt Trap: Rate Caps Are the Only Proven Reform* (2007), Center for Responsible Lending, *available at* http://bit.ly/VBx3Fa [hereinafter CRL, 2007].

[6] The Pew Charitable Trusts, Safe Small-Dollar Loans Research Project, *Payday Lending in America: Who Borrows, Where They Borrow, and Why* at 8, 13 (2012), *available at* http://bit.ly/UnPjTq [hereinafter Pew, 2012].

[7] R. Levy & J. Sledge, *A Complex Portrait: An Examination of Small-Dollar Credit Consumers*, Center for Financial Services Innovation (2012), *available at* http://1.usa.gov/Xmo6Rp [hereinafter CFSI, 2012].

[8] C. Dougherty, *Payday Loans Get U.S. Consumer Bureau Scrutiny as "Ddebt Traps,"* (2013), Bloomberg, *available at* http://bloom.bg/Y0tYzu.

[9] These include loans that are not flipped the same day the previous loan is renewed but immediately following the expiration of a mandatory cooling-off period; for example, Florida has a 24-hour cooling-off period.

[10] L. Parrish & U. King, *Phantom Demand: Short-term Due Date Generates Need for Repeat Payday Loans, Accounting for 76% of Total Loan Volume*, (2009), Center for Responsible Lending, *available at* http://bit.ly/WJNQa0.

[11] CFPB Findings at 37.

[12] R. Borné and P. Smith, *Triple Digit Danger: Bank Payday Lending Persists* (\2013), Center for Responsible Lending, *available at* http://www.responsiblelending.org/payday-lending/research-analysis/Triple-Digit-Bank-Payday-Loans.pdf [hereinafter CRL, 2013].

[13] CRL, 2013.

[14] *See*, e.g., Advance America's payday installment loan in Delaware, whereby a borrower loaned $500 pays $108 every two weeks for approximately 20 weeks, eventually paying $493 interest on a $500 loan, or 388% APR: https://www.advanceamerica.net/apply-for-a-loan/fees/DE.

[15] Affidavit of J. Robinson, President of Titlemax Holdings LLC, U.S. Bankruptcy Court for the Southern District of Georgia, Savannah Division (2009).

[16] For a recent comprehensive report on car title lending, *see* S. Montezemolo, *The State of Lending in America & its Impact on U.S. Households: Car Title Lending*, Center for Responsible Lending (July 2013), *available at* http://rspnsb.li/s45r67 [hereinafter CRL, *Car Title Lending*, 2013].

[17] CRL and Consumer Federation of America's analysis of data from a class action lawsuit against a Delaware car title lender found that one in six borrowers paid a repossession fee. CRL, *Car Title Lending*, 2013. Two national car title loan companies report comparable annual rates of default, with Community Loans of America reporting a 15% default rate and TitleMax reporting a charge-off rate of 11% of loan volume. *See*, respectively, Affidavit of J. Robinson, President of Titlemax Holdings LLC, U.S. Bankruptcy Court for the Southern District of Georgia, Savannah Division (2009) and R. Reich, President of Community Loans of America a d Texas Car Title Loans Services, Testimony before the Texas Senate Committee on Business and Commerce (2011) and Affidavit of John Robinson, President of Titlemax Holdings LLC, U.S. Bankruptcy Court for the Southern District of Georgia, Savannah Division (April 20, 2009). In addition, one study found that in New Mexico in 2008, 60% of borrowers lost their cars. *See* N. Martin, N. & O. Adams, O, *Grand Theft Auto: Repossession and Demographic Realities in Title Lending*, Missouri Law Review, *available at* http://bit.ly/Zl2wSX.

[18] CFPB found that borrowers paid an average of $458 in fees to borrow $350 in principal (CFPB Findings); Pew found that borrowers pay $520 in fees alone for an initial loan of $375 (Pew, 2012) ; a forthcoming CRL analysis of state regulator data found that borrowers repay $504 in fees alone for $346 in credit (forthcoming *State of Lending* payday chapter, on file with CRL).

[19] CRL's analysis of Oklahoma payday lending data showed that payday borrowers were loaned greater amounts over time (e.g., an initial loan of $300 loan increased to $466) and more frequently over time (borrowers averaged nine loans in the first year and 12 in the second year). Thirty-seven percent of the payday borrowers experienced default in the first year of borrowing; within the first two years, 44% did (CRL, 2011). This finding is consistent with another study of data from a large Texas-based payday lender that found a 54% default rate. *See* P.M. Skiba & J. Tobacman, *Payday Loans, Uncertainty, and Discounting: Explaining Patterns of Borrowing, Repayment, and Default* (2008), *available at* http://bit.ly/ZCsSur.

[20] Research has found that once credit card users began borrowing from payday lenders, they were 92% more likely to become delinquent on their credit card payments. S. Agarwal, S., P.M. Skiba & J. Tobacman, *Payday Loans and Credit Cards: New liquidity and credit scoring puzzles?* (2009), NBER Working Paper, *available at* http://bit.ly/RtDsXx. *See also* B. Melzer, *The Real Costs of Credit Access: Evidence from the Payday Lending Market*, (2011), Oxford University Press, *available at* http://bit.ly/10M01tZ [hereinafter Melzer, 2011].

[21] One study found that payday borrowers nearly doubled their chances of filing for bankruptcy compared with households of similar financial status who were denied a payday loan. P.M. Skiba & J. Tobacman, *Do Payday Loans Cause Bankruptcy?*, (2008), SSRN working paper, *available at* http://bit.ly/UhdRNJ.

[22] Melzer, 2011.

[23] Research has shown that payday lending is linked with increased rates of involuntary bank account closures, which makes routine financial transactions more expensive and risky. *See* D. Campbell, A.S. Jerez, & P. *Tufano*, *Bouncing Out of the Banking System: An empirical analysis of involuntary bank account closures*, Harvard Business School (2011), *available at* http://bit.ly/VWJGk9.

[24] For an example of a payday illegal debt collection scam, see Federal Bureau of Investigation (FBI), *Extortion Scam Related to Delinquent Payday Loans*, (2010), *available at* http://1.usa.gov/1bl4wyJ. *See also* Liana Gonzales, *Woman says she paid off a debt twice and is now being harassed to pay it again,* (2013), *available at* http://www.azfamily.com/news/consumer/Woman-says-she-paid-off-a-debt-twice-and-is-now-being-harrassed-to-pay-it-again-186515611.html.

[25] Melzer, 2011.

[26] B. Melzer, *Spillovers from Costly Credit* (2010), *available at* http://bit.ly/10FsYmE.

[27] *Bailed-Out Banks Finance Predatory Payday Lenders*, Center for Media and Democracy (Sept 16, 2010) (reporting from a GRO-MO action, September 16, St. Louis, MO, and quoting a former Advance America employee who remained anonymous because he was reportedly forced to sign a confidentiality agreement upon leaving the firm), *available at* http://www.prwatch.org/node/9456 [hereinafter Center for Media and Democracy, 2010].

[28] Pew, 2012 at 16; *See also* University of North Carolina (UNC) Center for Community Capital, *North Carolina Consumers After Payday Lending: Attitudes and experiences with credit options* (2007), *available at* http://bit.ly/10SKPr8 [hereinafter UNC, 2007].

[29] The Pew Charitable Trusts, Safe Small-Dollar Loans Research Project, *Payday Lending in America: How Borrowers Choose and Repay Payday Loans* at 36 (Feb. 2013), *available at* http://www.pewstates.org/uploadedFiles/PCS_Assets/2013/Pew_Choosing_Borrowing_Payday_Feb2013.pdf.

[30] UNC, 2007.

[31] For example, Pew (2012) found that despite payday lender claims to the contrary, 69% of payday loans are taken out for recurring expenses, with only 16% for unexpected emergencies, 8% for "something special," and 2% for "other."

Other researchers similarly have stated that payday loans do not go to people who are managing temporary short-term income shocks, but rather to people with "extremely persistent weakness in credit record attributes" over the long term. *See* N. Bhutta, P.M. Skiba, & J. Tobacman, *Payday Loan Choices and Consequences*, (2012), Vanderbilt University Law School Law & Economics Working Paper Number 12-30 *available at* http://bit.ly/UheCWR. In addition, CFSI (2012) similarly found that payday loans primarily cover recurring expenses.

[32] Dan Feehan, CEO of Cash America, at a Jeffries Financial Services Conference in 2007.

[33] Morgan Stanley Analysis Report. *Advance America: Initiating with an Underweight V-Rating* (Jan. 25, 2005) at 10.

[34] A survey of company websites and direct mail advertisements of the 15 largest payday lending companies from 2008-2010 showed that nine of these companies offered a free or discounted first loan and six offered a discount on loans for returning customers (CRL, 2011 at 12). Offering a free first loan gives demonstrates industry's confidence that borrowers will need to return often for new loans once the payday lending cycle begins, making up for an initial "discount" many times over.

[35] These affiliates are Bank of Albuquerque, Bank of Arizona, Bank of Arkansas, Bank of Kansas City, Bank of Texas, and Colorado State Bank and Trust.

[36] In North Carolina, a state that does not permit payday lending, public outcry and state attorney general opposition led Regions Bank to stop making its payday loans there in January. *See* D. Ranii, *Regions Bank stops offering controversial loans in N.C.*, Raleigh News and Observer (Jan. 17, 2013), *available at* http://www.newsobserver.com/2013/01/17/2614414/regions-bank-stops-offering-controversial.html#storylink=cpy.

[37] CRL analysis finds that nearly two-thirds of bank payday borrowers incurred overdraft fees, and these borrowers were three times as likely to incur overdraft fees as bank customers as a whole (CRL, 2013). The CFPB's analysis found similar results, with 65 percent of bank payday borrowers incurring overdraft fees, which was more than 3.5 times the portion of customers eligible for a bank payday loan who did not take one out (CFPB Findings). The CFPB further found that one-quarter of the bank payday borrowers most heavily steeped in the cycle of debt incurred an average of 18 or more overdraft or non-sufficient funds fees during the 12-month period (CFPB Findings).

[38] For instance, Regions Bank's 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. *See* Regions Ready Advance Account Agreement and Disclosures, http://www.regions.com/personal_banking/ready_advance_tc.rf (last visited July 19, 2013).

Wells Fargo Bank'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. 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.

[39] 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. Wells Fargo Bank's cooling-off policy, for example, allows six consecutive months of loans until a one-month cooling-off period. After six consecutive months with loans, a borrower will typically have paid hundreds of dollars in fees and still owe the original principal on the loan. By contrast, if provided an affordable installment loan at the outset, after six months the borrower would have been finished, or be well on the way toward, paying off the loan. *Id.*

[40] CRL examined millions of loans across several states that adopted similar "best practices" to ostensibly reform payday loans, but loan churn persisted; for example, over 60 percent of all loans from these states go to borrowers with 12 or more transactions in a year (CRL, 2007).

[41] Fiserv, Inc., a provider of software systems to the financial industry, has actively promoted a bank payday software product it calls "Relationship Advance." Fiserv has reported significant interest in the product: "The pipeline is extremely strong. We've had some very nice mid-tier signings over the last three, four months and we see this as an interesting driver of … high-quality recurring revenue . . ." Fiserv, Investor conference webcast (Oct. 11, 2011), retrieved from http://investors.fiserv.com/events.cfm.

Fiserv's marketing of the Relationship Advance product has included promises that a bank's revenue from the product "will be greater than all ancillary fee revenue combined" within two years. Fiserv's Relationship Advance program description, retrieved from http://www.relationshipadvance.com/ in August 2011, on file with CRL.

[42] Center for Responsible Lending, *Bank Payday Lending: Overview of Media Coverage and Public Concerns* (March 7, 2013), *available at* http://rspnsb.li/10wra0y.

[43] Center for Responsible Lending, *Prudential Regulators Should Apply Safety and Soundness Standards to Bank Payday Loan Products* (Jan. 24, 2013), *available at* http://rspnsb.li/Yqd0uH.

[44] The prudential regulators' recent supervisory steps are also consistent with concerns they have expressed about payday lending for many years. In the early 2000s, payday lenders were partnering with banks to use bank preemption law to skirt state restrictions on payday loans. The federal banking regulators, noting safety and soundness and consumer protection risks stemming from payday lending, put an end to this so called "rent-a-bank" practice.

[45] Federal Reserve Board, *Statement on Deposit Advance Products*, April 25, 2013, *available at* http://www.federalreserve.gov/bankinforeg/caletters/CALetter13-07.pdf.

[46] CFPB Findings at 44-45.

[47] Federal Reserve. *Balance Sheet of Households and Nonprofit Organizations, available at* http://www.federalreserve.gov/releases/z1/current/z1r-5.pdf.

[48] Federal Interagency Forum on Aging-Related Statistics, *Older Americans 2010: Key Indicators of Well-Being* (July 2010), *available at* http://www.agingstats.gov.

[49] National Council on Aging, *A Blueprint for Increasing the Economic Security of Older Adults* (March 2011), *available at* http://www.ncoa.org/enhance-economic-security/economic-security-Initiative/a-blueprint-for-economic-security.html [hereinafter, National Council on Aging, 2011].

[50] Alicia H. Munnell, *More Retire with Mortgages,Credit Card Debt*, Marketwatch (June 5, 2013), *available at* http://blogs.marketwatch.com/encore/2013/06/05/more-retire-with-mortgages-credit-card-debt/.

[51] Amy Traub, *In the Red: Older Americans and Credit Card Debt*, Middle Class Security Project: An Initiative of the AARP Public Policy Institute, Demos (Jan. 2013) *available at* http://www.aarp.org/content/dam/aarp/research/public_policy_institute/security/2013/older-americans-and-credit-card-debt-AARP-ppi-sec.pdf.

[52] National Council on Aging,2011.

[53] J. A. E. Pottow, *The Rise In Elder Bankruptcy Filings And The Failure Of U.S. Bankruptcy Law (Working Paper No. 10-015)* (2011), University of Michigan Law School, *abstract available at* http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1669298##.

[54] Ellen E. Schultz and Theo Francis, High-Interest Lenders Tap Elderly, Disabled, *Wall Street Journal* (Feb. 12, 2008), *available at* http://online.wsj.com/article/SB120277630957260703.html [hereinafter Wall Street Journal, 2008].

[55] Center for Media and Democracy, 2010 (citing former Advance America employee).

[56] Wall Street Journal, 2008. An analysis of data from the U.S. Department of Housing and Urban Development shows many payday lenders are clustered around government-subsidized housing for seniors and the disabled. The research was done by Steven Graves, a geographer at California State University at Northridge, at The Wall Street Journal's request.

[57] Pew found that the typical payday borrower is younger, with most borrowers between 25 and 44 years old. Pew, 2012.

[58] Per CRL's analysis of Florida regulator data tracked in a Veritec database, in 2005, 12.2% of Florida payday loan customers were 55 and over (8.4% were 55-64, and 3.8% were 65 and over). By 2011, the share of customers 55 and over rose to just over 20% (13.2% of customers were 55-64, and 6.9% were 65+).

[59] The general Florida population aged 65 and over increased from 16.6% in 2005 to 17.6% in 2011. U.S. Census Bureau's American Community Survey.

[60] Forthcoming CRL *State of Lending* payday lending chapter (on file with CRL). *See also* Comment letter to CFPB from several Florida organizations that represent or work on behalf of Florida's low-income residents (May 1, 2012) (noting "the devastation that . . . payday loans cause to budgets of financially stressed Floridians" and urging the CFPB to take action to stop the payday lending debt trap), *available at* http://www.regulations.gov/#!documentDetail;D=CFPB-2012-0009-0603.

[61] CRL, 2013; analysis on file with CRL. These findings, based on 2011 checking account data, are consistent with our analysis of 2010 data, which found that nearly one-quarter of all bank payday borrowers were Social Security recipients, who were 2.6 times as likely to have a bank payday loan as bank customers as a whole. R. Borné, J. Frank, P. Smith, and E. Schloemer, *Big Bank Payday Loans: High interest loans through checking accounts keep customers in long-term debt* (2011), Center for Responsible Lending, *available at* http://www.responsiblelending.org/payday-lending/research-analysis/big-bank-payday-loans.pdf.

[62] CFPB Findings at 18.

[63] *See*, *e.g.*, Social Security Act, at 42 U.S.C. § 407(a).

[64] For further discussion and detail, see Testimony of Margot Saunders, National Consumer Law Center (on behalf of its low income clients) before the Subcommittee on Social Security, Committee on Ways and Means, U.S. House of Representatives, June 24, 2008, *available at* http://www.nclc.org/images/pdf/other_consumer_issues/exempt_public_benefits/NCLC_exemptBenefitsTestimony_House_June2008.pdf..

[65] *Id.*

[66] 31 C.F.R. § 212.1.

[67] 76 Fed. Reg. 9947

[68] U.S. Department of the Treasury, Interim Final Rule, Federal Government Participation in the Automated Clearing House, 75 Fed. Reg. 80335, amending 31 CFR Part 208 (2010).

[69] "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." 75 Fed. Reg. at 80338.

[70] 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.

[71] The following 16 states (including the District of Columbia) eliminate the payday debt trap through APR limits: Arizona, Arkansas, Connecticut, District of Columbia, Georgia, Maryland, Massachusetts, Montana, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Vermont, and West Virginia.

The following 6 states limit but do not eliminate the debt trap: Colorado, Delaware, Maine, Oregon, Washington, and Virginia.

[72] The eight states, including DC, are Arkansas, Arizona, Colorado, the District of Columbia, New Hampshire, Ohio, Oregon, and Montana.

[73] U.S. Department of Defense, *Report on Predatory Lending Practices Directed at Members of the Armed Forces and Their Dependents* (2006), *available at* www.defense.gov/pubs/pdfs/Report_to_Congress_final.pdf.

[74] Testimony of Admiral Charles Abbot, US (Ret.), President of Navy-Marine Corps Relief Society, Hearing before the Senate Banking, Housing and Urban Affairs Committee, 109th Cong. (2006).

[75] The guidance should also clarify that safe and sound banking principles require that interest and fees be reasonable; consistent with the FDIC's affordable small loan guidelines, cost should equate to no more than 36 percent in annualized interest rate terms, subject to more restrictive state usury laws. For further detail, see Comments to OCC and FDIC.

[76] *See*, *generally*, CRL, 2007.

[77] J. Sandman, *The New Loan Sharks, Payday lenders have more tricks up their sleeves*, AARP The Magazine, (Dec. 7, 2012), *available at* http://www.aarp.org/money/scams-fraud/info-12-2012/the-new-loan-sharks.2.html.

[78] L. Plunkett and M. Saunders, *Runaway Bandwagon: How the Government's Push for Direct Deposit of Social Security Exposes Seniors to Predatory Bank Loans* at 21, National Consumer Law Center (July 2010), *available at* http://www.nclc.org/images/pdf/pr-reports/runaway-bandwagon.pdf.

[79] Longer account *available at* CRL's website: http://www.responsiblelending.org/payday-lending/tools-resources/victims-4.html.

[80] Longer account *available at* CRL's website: http://www.responsiblelending.org/payday-lending/tools-resources/victims-3.html.

[81] F. Wilder, *Fast Cash: How Taking Out a Payday Loan Could Land You in Jail*, Texas Observer (July 16, 2013), *available at* http://www.texasobserver.org/cash-fast-how-taking-out-a-payday-loan-could-land-you-in-jail/.

[82] Fifth Third Early Access, Summary of Key Features, https://www.53.com/doc/pe/pe-eax-tc.pdf (last visited July 19, 2013).

[83] Regions Ready Advance Account Agreement and Disclosures, http://www.regions.com/personal_banking/ready_advance_tc.rf (last visited July 19, 2013).

[84] 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.

[85] U.S. Bank Checking Account Advance, Summary of Key Features, https://www.usbank.com/checking/caa/agreement.html (last visited July 19, 2013).

[86] 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 July 19, 2013).

[87] Guaranty Bank Easy Advance Line of Credit Agreement and Disclosures, as of February 27, 2013, *available at* http://www.guarantybanking.com/ContentDocumentHandler.ashx?documentId=18342.