



## Consumer Federation of America

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### **H.R. 6139 Does Not Exclude Payday Lenders from Federal Charter Bill 30-day Loan-Term Threshold Does Not Curb Predatory Loans**

**H.R. 6139, the “Consumer Credit Access, Innovation, and Modernization Act,”** was introduced July 12, 2012 by Rep. Luetkemeyer (R-MO) and Rep. Baca (D-CA) to create a federal charter under the Office of Comptroller of the Currency for nonbank lenders. H.R. 6139 is likely to remove federally-chartered nonbank lenders from supervision by the new Consumer Financial Protection Bureau, exempts these lenders from state licensing and supervision, and preempts state usury and rate caps for federally chartered lenders. H.R. 6139 also repeals a key protection of the federal Truth in Lending Act. No lender will be required to quote the annual percentage rate (APR) for any loan of one year or less in term, denying consumers essential cost comparison information and giving short-term lenders an unfair advantage over other lenders.

H.R. 6139’s backers claim that payday lenders will not benefit from this bill, because nonbank entities must make loans of 31 days or more in duration to receive a federal charter.<sup>1</sup> This claim is simply not true. A 30-day loan limit threshold will not prevent payday or similar lenders from receiving a federal charter:

- **A 30-day loan term is not a defining characteristic of a payday loan.** The Consumer Financial Protection Bureau’s supervision guidance for payday lending does not use loan length to describe the payday loans subject to CFPB oversight. CFPB defines “payday loans” as generally having three features: small-dollar loan amounts, borrowers must repay quickly, and borrowers must give lenders access to repayment through a claim on the borrower’s deposit account.<sup>2</sup> In providing an example of a payday loan subject to its jurisdiction, CFPB uses a six-month open-end credit product. It makes no reference to a 30-day term to distinguish “payday” from other loans.
- **State laws that authorize and define payday lending often permit longer loan terms or set no limit at all.** The majority of the states that authorize some version of payday lending define these loans as being longer than 30-days in length. Twenty-eight states define payday loans as 31-days or longer, or with no maximum loan term. All a payday lender would have to do to qualify for a federal charter under this bill is to tweak its loans to have a 31-day or longer term. Since the payday loan industry is expert at adjusting loan terms to evade state

<sup>1</sup> H. R. 6139. Section. 3. National Consumer Credit Corporations (e)(2)(G)(iii), see page 18, lines 24-25.

<sup>2</sup> CFPB Examination Procedures: Short-Term, Small-Dollar Lending, p. 2.

<http://files.consumerfinance.gov/f/2012/01/Short-Term-Small-Dollar-Lending-Examination-Manual.pdf>

consumer protections, it is highly likely they would do so to get a federal “blank check” to evade state usury laws and consumer protections.

- **The Department of Defense defined payday loans subject to the Military Lending Act as closed-end loans with terms of 91 days or less.**<sup>3</sup> Although the DoD definition effective September 1, 2007 to implement the John Warner National Defense Authorization Act of 2007 was criticized as too narrow, it describes a product with three-times the loan duration as H. R. 6139 employs to presumably exclude “payday lending” by federal charter holders.

H.R. 6139’s 30-day rule to exclude some payday lending does nothing to curb longer-term loans with the same characteristics as payday loans. National Consumer Credit Corporations would still be in the business of making triple-digit rate loans that put key borrower assets at risk. A 30-day cut off does not exclude these products that pose the same risks as payday loans:

- One-month car title loans at 300 percent APR, secured by title to a vehicle owned by the borrower.
- Online installment loans at rates of 300 percent APR and higher. Online installment loans are typically involve larger amounts of money and longer repayment terms, but still cost payday-loan rates.
- Repeat-renewal online loans that cost up to 780 percent APR.<sup>4</sup> As a recent FTC complaint illustrates, a \$300 online loan costing 684.38% APR was set up to be paid with finance charge-only payments for three paydays before paying down any loan principle. To pay this loan under the default payment schedule would take ten paydays and cost a total finance charge of \$675 on the \$300 loan for a total repayment amount of \$975.<sup>5</sup>

H.R. 6139 allows federal charter-holders to escape key consumer protections, including:

- Product restrictions under state payday loan, car title loan, check cashing, and small installment lending laws. For example, Virginia requires two pay cycles as the minimum term for a payday loan, while Colorado sets a minimum six-month term for these loans.
- State usury caps, rate caps, fee limitations. The Comptroller of the Currency and any governmental entity is prohibited from imposing a rate cap on federally-chartered non-bank lenders. State ballot votes to curb predatory lending would not impact federally-chartered payday lenders. For example, Montana voters recently adopted a 36 percent APR rate cap for all small loans.
- State supervision of federal charter holders, leaving oversight of these lenders up to the Office of Comptroller of the Currency which has no experience with nonbank supervision. OCC would be prohibited from curbing lending via the Internet.

<sup>3</sup> 32 CFR Part 232.3 (b) (1)(i) defines a payday loan for purposes of the Military Lending Act.

<sup>4</sup> CFA Survey Online Payday Lenders September 2011, <http://www.consumerfed.org/pdfs/CFAsurveyInternetPaydayLoanWebsites.pdf>

<sup>5</sup> FTC v. AMG Services, et al., [www.ftc.gov/os/caselist/1123024/index.shtm](http://www.ftc.gov/os/caselist/1123024/index.shtm)