Consumer Federation of America

Testimony of

Jean Ann Fox
Director of Consumer Protection
Consumer Federation of America

And on behalf of

Consumers Union
National Consumer Law Center
U. S. Public Interest Research Group

Before the

Forum on Payday Lending
Senator Joseph I. Lieberman

December 15, 1999

Senator Lieberman, I am Jean Ann Fox, Director of Consumer Protection of the Consumer Federation of America (CFA).[1] I am testifying on behalf of CFA, Consumers Union[2], the National Consumer Law Center[3], and the U. S. Public Interest Research Group[4].

I appreciate the opportunity to testify on consumer concerns about payday lending and the impact of these high-cost loans on borrowers. CFA has issued three reports on payday lending[5] that describe practices by this sector of the credit industry, law enforcement and private litigation to protect consumers, and recommendations for policy makers. CFA and the National Consumer Law Center have developed a model state law for those states that choose to authorize payday loans. We also assisted Rep. Bobby Rush, (D, IL) in developing H. R. 1684 to provide minimum standards for state payday loan laws and to require banks to comply with the payday loan laws of the state where the consumer receives the proceeds of the loan.

Our concern about the costs and unique risks of short-term, single-payment loans based on personal checks held for future deposit is part of a larger CFA initiative that addresses both sides of the financial marketplace: the over-aggressive marketing of credit cards to over-indebted families and the need for an asset development campaign to assist consumers in building up savings.

Consumer Issues in Payday Lending

As President Clinton noted in his plan for Financial Privacy and Consumer Protection in the 21st Century, "issues deserving further scrutiny are lending practices such as "payday" loans (short-term loans which can carry interest rates of 400%)..."[6] CFA has documented that short-term small loans based on personal checks held for deposit are extremely expensive for borrowers, lead to perpetual debt through loan roll-overs, and foster abusive collection practices.

Twenty-three states and the District of Columbia have granted payday lenders safe harbor from state small loan laws and/or usury limits, while another seven states have no usury limits to restrain interest rates.[7] Payday lenders in Indiana operate under the $33 minimum finance charge permitted by Indiana's credit code. The maximum legal fees for payday loans in states with

---

[1] Consumer Federation of America is a nonprofit association of 260 pro-consumer groups, with a combined membership of 50 million people. CFA was founded in 1968 to advance consumers' interests through advocacy and education.
[2] Consumers Union is a nonprofit organization that publishes *Consumer Reports*.
[3] National Consumer Law Center is a nonprofit organization specializing in consumer credit issues on behalf of low-income people.
[4] U. S. Public Interest Research Group is the national lobbying office for state PIRGs, which are nonprofit, nonpartisan consumer advocacy groups with half a million members around the country.
[5] "The High Cost of Banking at the Corner Check Casher," 1997, "The Growth of Legal Loan Sharking," 1998, "Safe Harbor for Usury," 1999, Consumer Federation of America.
[6] "The Clinton-Gore Plan for Financial Privacy and Consumer Protection in the 21st Century," May 4, 1999, p. 1.
[7] See Attachment A.

payday loan laws range from $15 to $33.50 to borrow $100. For loans repayable in 14 days, the range of Annual Percentage Rates in these states is 390% to 871%.

Nineteen states still have laws limiting small loan rates which apply to payday lenders. Payday lenders are partnering with federally and state charted banks and thrifts and industrial loan companies to export deregulated interest rates and to preempt state restrictions on small loans. For example, Advance America uses WebBank (a Utah industrial loan company) to make payday loans in Alabama. Small loan companies and check cashing outlets are state-regulated financial entities. Banks should not be in the business of enticing other banks' depositors to write checks to borrow money at exorbitant rates while undercutting states' abilities to protect their citizens from usury.

In your invitation letter, CFA was invited to address five questions about payday lending.

1. Please briefly describe the development of consumer protection measures in the context of small, short-term lending.

The emergence of payday lending in the 1990's is not a new story. The debate about the ethics, economics, and the socio-economic consequences of this kind of lending was held in the first half of the century. The prior wave of salary-lending triggered an earlier reform movement which took place over roughly 50 years between the late 1800s and World War II.

Salary-lending grew up in the late 19th century, as more households began to rely on wages and as the level of those wages was increased enough to give people some margin of income over the bare necessities from which debts could be repaid. As one observer noted fifty years ago, the business of salary-buying thrived upon higher wages and rising standards of living, not upon "abject poverty."[8] "Midget loans" were advanced in anticipation of the next payday. Terms were short – a week, two weeks, or a month – and the price tag was steep. The "5 for 6 boys" lent $5, to be repaid by $6 in one or two weeks, a 522% APR for two weeks. One 1941 study reported effective APRs on low-end, short-term loans ranging from 279% to 559%.[9] (In a survey of payday lenders last year, CFA member groups found rates ranging from 261% to 625% APR.[10]) The form of these early loans varied. "Salary buyers" would "buy" the next wage packet at a discount, for example advancing $22.50 on January 15 in exchange for the "sale" of the $25 paycheck due January 28, an effective 311% APR. Other lenders took wage assignments, chattel mortgages on household goods, or unsecured notes.[11]

---

[8] Rolf Nugent, The Loan Shark Problem 3, 4, 8 Law and Contemporary Social Problems (1941). The article was part of a series published collectively in a symposium entitled *Combating the Loan Shark* in that issue. The historical information in these comments is taken from this symposium, referred to as *1941 Symposium.*

[9] William Hays Simpson, *Cost of Loans to Borrowers Under Unregulated Lending,* 73, 74-75 1941 Symposium.

[10] "The Growth of Legal Loan-Sharking: A Report on the Payday Loan Industry," (Consumer Federation of America, November, 1998, Appendix.)

[11] See Jackson R. Collins, *Evasions and Avoidance of Usury Laws,* 54, 55, 58: Nugent, p. 5 (*1941 Symposium.*) Threats of garnishment and confession of judgments also facilitated collection.

A later reform movement curtailed the use of these devices, after the abusive use of them and their consequences became apparent. States had prohibited or curtailed them by the 1960s. A series of hearings was held around the country by the Federal Trade Commission in the mid-1970s in which problems with these and other overreaching contract terms were documented. Based on that record, the use of such terms in consumer credit contracts was

There is another direct antecedent of today's post-dated check loan. One of the collection techniques of some early salary lenders was to have the borrower sign a bank check in the amount of the principal and interest, though those borrowers had no bank accounts. The lender explained the check as "security." In the event of default, the lender deposited the check, which, of course, bounced. The lender then threatened criminal prosecution as a collection tactic.[12] This use of criminal prosecution for bad checks is a problem in this second wave of salary lender, discussed later in this testimony.

Then, as now, the real distress created by midget loans with giant price tags came with renewals (often encouraged by the lender, as therein lies the profitability), and the related problem of trying to juggle the debt, "borrowing from Peter to pay Paul."[13] Compare these stories:

- *One borrower, making $35 a week, borrowed a total $83 from four different lenders as a result of family sickness. To service that $83 loan, he paid those four lenders $16 per month. At the end of the year, he had paid $192 in interest, but still owed the $83.*
- *A mill employee, with a $25 a week salary, borrowed a total of $55 from four different loan companies. After paying $69.40 in interest for a year, he still owed the original $55.*
- *After borrowing $150, and paying $1000 in fees for 6 months, a Kentucky borrower still owes the $150.*
- *Paying $1,364 in fees over 15 months, another consumer only reduced the principal balance on $400 loan to $248.*

The first two borrowers' experiences are from 1939 studies; the second two are reported in CFA's 1998 study.[14]

As the prior reform movement recognized, it is too simplistic to answer the policy issues with a mantra that this is a matter of personal choice. With the experience of many years of salary lending behind them, the first wave of reformers knew that such "choices" have consequences on entire families and the larger community.[15] Complaints to regulators today indicate that renewals and the Peter to Paul phenomenon may result in **monthly** debt service of $500 to $600 on midget loans. Given the average annual household income of around $25,000 for the current payday loan customer reported in some independent surveys, this kind of debt

---

curtailed at the federal level by the FTC Credit Practices Rules, 16 C.F.R. 444. Garnishment abuses, and the negative impact on whole families resulting from garnishment, was addressed both by state legislation and by the federal garnishment act, 15 U.S.C. § 1671 et seq., and the Fair Debt Collection Practices Act, 15 U.S.C. § 1692.

[12] Joe B. Birkhead, *Collection Tactics of Illegal Lenders, Symposium,* 78, 86. A salary lender in Kansas City used this system. One of the earliest reports of the modern payday lenders using the post-dated check scheme to try to evade usury and credit disclosure laws came from Kansas City. "Postdated check firms may violate usury laws," Kansas City Star, p. 1A (October 23, 1988.) See also George Gisler, Organization of Public Opinion for Effective Measures Against Loan Sharks, 183, 187-194 (1941 *Symposium*) for a discussion of the Missouri reform effort.

[13] See, e.g. Nugent, p. 5 (1941 *Symposium*)

[14] Simpson, p. 74-75 (1941 *Symposium*); "The Growth of Legal Loan Sharking: A Report on the Payday Loan Industry," p. 6 (Consumer Federation of America, November, 1998.)

[15] Nugent, 13; Robert W. Kelso, *Social and Economic Background of the Small Loan Problem,* 14, 15 (1941 *Symposium*). See also Charles S. Kelly, *Legal Techniques for Combating Loan Sharks,* 88, 89-91 (1941 *Symposium.)*

burden for what is typically consumption debt (as opposed to investment debt, or asset-building debt), obviously will have a major impact on households, as well as on other economic players in the community.[16]

The effort to "combat the loan-sharks" began at the dawn of this century, and over the next four decades was anchored to a large extent around the Russell Sage Foundation's deliberative, broad-based studies and efforts. The result was the Uniform Small Loan Act, crafted and re-crafted, widely adopted by states, which gave rise to the commercial small loan or finance company industry.[17] From the description, it appears that then, as now, there was a discrepancy between what the economic theorists posited would be the result, and the real world consequences that the reformers actually saw. The economic theorists argued that legal restrictions were inappropriate: without them, supply, demand, and competition would assure equity and pricing in accordance with risks and costs.[18] But then, as now, theory and reality are two different things. That theory ignores the fact that opportunistic pricing can and does occur in market sectors where there are imperfect market conditions. And small loans were – and still are – "an excellent example of imperfect competition." The borrower's need, the lender's advertising, unequal bargaining position, misleading representations concerning the real costs for fear of "sticker shock," the absence of meaningful choice are as real today as they were at the beginning of the century.[19]

America is facing the second wave of salary-lending in a century.[20] Salary-lenders' "midget loans" were the catalyst for states to adopt small loan laws and, as a result, these loans were outlawed. Not surprisingly, on the heels of financial deregulation in the latter half of the century, the same abuses have resurfaced. Once again, effective regulations and consumer protections are the answer.

2. What alternatives to payday borrowing exist today for consumers of small, short-term loans?

A thoughtful analysis of the reasons that people use payday loans may shed light on some connections to other areas that need reform. For example, if auto repair is a major reason to

---

[16] Consumers Union analyzed occupations disclosed in 1741 letters sent by California payday loan borrowers in opposition to SB 834. Using the Major Occupation Groups of the Bureau of Labor Statistics, CU computed the average income of payday loan customers. For the 83.35% of payday loan patrons who participate in the paid labor market, the average annual income was $25,416.97. The 1999 Illinois Department of Financial Institutions study of Short Term Loans found payday loan customers had an average income of $25,131.

[17] The first draft appeared in 1916, the seventh draft was revised in 1942. Though not without problems, that largely served the credit needs of the small borrower until the '80s, when the siren call of higher-margin, deregulated, home-equity secured loans lured much of the finance company sector upstream. In the meantime, the explosion of credit cards supplied and expanded the short-term, small sum credit market.

[18] Nugent, 12.

[19] For discussion of why and how certain segments of the consumer credit marketplace remain today a good example of an "imperfect market," see generally National Consumer Law Center, *The Cost of Credit: Regulation and Legal Challenges,* § 11.1 (1995).

[20] Courts uniformly hold that payday loans are loans. *Turner v. E-Z Check Cashing, Inc.,* 35 F. Supp. 2d 1042 (M.D. Tenn. 1999); *Burden v. York,* Civil Action No. 98-268 (E.D. Ky., Sept. 29, 1999); *Hamilton v. HLT Check Exchange,* 987 F. Supp. 953 (E.D. Ky. 1997); *White v. Check Holders, Inc.* 996 S.W.2d 496 (Ky. 1999); *Commonwealth v. Allstate Express Check Cashing,* No. HD-44-1 (Cir. Ct. Richmond, Va., Oct. 20, 1993).

borrow quick cash, are subprime auto finance customers and payday borrowers the same market? Auto finance in the subprime market generates incentives to sell cheap cars that are likely to need a lot of repair. Can we solve part of this problem by reforming used car financing?

What are the structural barriers to savings that impact low-income and working consumers? Instead of making quick credit at triple-digit interest rates available, shouldn't we be making savings more attractive by dealing with minimum balance requirements and high fees on low balances and by encouraging Individual Development Accounts?

Non-loan options for longer-term solutions include consumer credit counseling, asset development, and lower-cost/free alternatives, such as utility repayment plans, LIHEAP funds for emergency heat bills, utility bill-payment plan options at 0% interest, student assistance programs on-campus, the military relief charities' interest-free loans, and the wide array of charitable/social organizations that assist consumers with financial crises. Consumers used these alternatives until the advent of the new wave of salary lending. The industry creates the alleged "need". Advertisements for easy and quick cash lures consumers away from smarter but more labor intensive solutions. All payday lenders require from borrowers is a paycheck/benefit check and an open bank account, not a good credit rating or demonstration of capacity to repay.

The credit alternatives for consumers needing small, short-term loans include cash advances on credit cards and secured credit cards, traditional small loans or signature loans, and pawns. Informal loans are an option. Consumers can ask for advances on salary from their employer or ask for help from friends and family. Overdraft protection from the consumer's bank is an option. A feasible and sensible credit alternative to a payday loan is a secured credit card with low credit limits (such as $1,000, with the limits enforced, not taxed by over-the-limit fees) secured by a genuine savings account, (one with no maintenance fees on the savings.)

To demonstrate the extreme variation in cost for alternatives to payday loans, CFA's actuary calculated the cost to borrow $200 and repay it in one month and in three months. To get a cash advance on a Capital One credit card (19.99% APR, no grace period, 2.5% cash advance fee with a $2.50 minimum) would cost $8.41 finance charge and 50.46% APR if repaid in one month and $11.86 finance charge and 35.25% APR if repaid over three months. A traditional small loan at the 36% APR cap would have a $6 finance charge for one month and a $12.10 finance charge if repaid over three months. A traditional pawn at 20% a month or 240% APR would cost $40 finance charge if repaid in one month and $84.82 if repaid over three months. A one-month payday loan (15-day term with one roll-over) at $17.50/$100 would cost $70 finance charge. If rolled-over five times and repaid at the end of three months, this $200 loan would cost $210 in finance charges. The APR in both cases is 457%.

3. Will competition between payday lenders provide consumers with lower prices?

No, for several reasons. The trend in the industry is to consolidate. Stephens Inc. advises investors to wait until payday lending is legal in enough states to go public and forecasts a roll-up or consolidation of smaller companies.[21] Just recently Advance America bought out another

[21] Stephens Inc. "The Emerging Business of Deferred Presentment," April 1, 1999, p. 6.

large national chain. Even with many players in the market, price competition is ineffective in the fringe financial market. Although there is some variation, lenders tend to charge the legal limit, if there is one, and the industry counts on consumers to be convenience-driven, not price sensitive.

Small loan companies and rent to own stores, other financial providers that target necessitous credit customers, have not significantly competed down their prices. The argument was made at the Virginia General Assembly a few years ago that deregulation of small loan rates would lead to more competition and lower rates. Small loan prices cluster at the cap which, in Virginia, was set by regulation at about 31% for the smallest loans. The General Assembly enacted a statutory cap for loans of $2500 or less at 36% APR and rates went UP to the new cap. The rent-to-own industry has grown over the years, but the most recent survey by the U.S. Public Interest Research Group found that average effective APRs were 100% for rent-to-own transactions in 1997 compared to average APRs of 111% in 1994, a negligible difference over four years.[22]

The evidence from states where payday loans have been allowed for several years demonstrates that competition has little price impact. The number of licensed Colorado post-dated check lenders rose from 188 in 1997 to 218 in 1998. Colorado reports that the average payday loan cost consumers 485.26% in 1997 and 486.39% in 1998. The total number of supervised loans by payday lenders in Colorado increased 55.9% in 1998 over 1997, but the average APR charged stayed the same.[23]

4. Do consumers need protection from payday lending practices?

Yes. The unique features of these loans put borrowers at risk beyond the interest rates that result from the disparate bargaining power of necessitous borrowers. Payday loans are very short-term, single-payment loans. Not all lenders disclose the Annual Percentage Rate prior to making loans, disclosures that enable consumers to comparison shop. Some lenders deny that these transactions are even loans and protest federal requirements to disclose the finance charge and APR despite the unbroken string of state and federal court decisions that unanimously find that payday loans are credit transactions subject to state and federal credit laws. These loans are for relatively small amounts (typically $50 up to $300) and for very short periods of time (a few days up to two weeks or the borrower's next payday). The fee, expressed in dollars, does not fully communicate the long-term impact on borrowers.

The high cost of payday loans demonstrates rate gouging. The most expensive loan we know about was reported by the Indiana Department of Financial Institutions following an inspection of licensed lenders. One loan of $100 for one day with a $20 fee cost 7,300% APR. The average cost of over 54,000 loans reviewed in Indiana was 498.75% APR. An Illinois study

---

[22] "DON'T Rent To Own: PIRG's 1997 National Rent-To-Own Survey," U.S. PIRG, June 1997, p. 1. And "Rent To Own=Ripping Them Off: A State-by-State Survey of The High Cost of Rent-to-Own," The Public Interest Research Groups, March 1994, p. 1.
[23] State of Colorado 1997 and 1998 Post-Dated Check Cashers Supervised Lenders' Annual Reports.

found the average payday loan cost 533% APR. A CFA survey reported payday loan fees that produced annual percentage rates ranging from a minimum of 261% to 625% for a 14-day loan.[24]

These loans are designed to keep consumers in perpetual debt. One industry expert told a California reporter that the average payday loan customer takes out 11 loans a year.[25] Indiana's Department of Financial Institutions inspected 47 licensees, reviewing a total of 5,350 customers' files and a total of 54,508 loans. Indiana found an average of 10.19 loans per year per customer, with the ten largest lenders averaging 12.05 loans per person per year.[26] The Illinois Department of Financial Institutions conducted a study of licensees and found that the average customer had 13 loan contracts present in files. The Illinois DFI report to the Illinois Senate concluded that customers are "captive" when unable to end the cycle of rolling over their accounts due to the excessive cost.

The problems arise when customers consistently incur expenses which exceed their income and are unable to free themselves from this biweekly financial cycle. Illinois examiners found customers who were borrowing continuously for over a year on their original loan. Industry members, who have testified at the two public Illinois Senate hearings, have referred to their customers as average citizens who encounter unexpected financial hardships. What they have failed to mention was that the financial strains placed on consumers were rarely short-lived. Customers playing catch-up with their expenses do not have the ability to overcome unexpected financial hardships because their budgets are usually limited. The high expense of a short-term loan depletes the customer's ability to catch-up, therefore making the customer "captive" to the lender.[27]

The Nashville *Tennessean* reported: "Bankruptcy officials said 'payday' lending companies increasingly are showing up as creditors in bankruptcy cases here and around the country in states where legislatures have legalized triple-digit interest rates. Of some 12,400 chapter 13 bankruptcy cases pending in Middle Tennessee, 413 show debts to 'payday loan' businesses, records show."[28]

The problem of renewals (which exist even in states where theoretically prohibited, because of the difficulty of enforcement) clouds the issue of profitability and "risk-pricing." A person who borrows $85 for a two-week term, subject to a $15 fee, may pay $15 every two weeks for four months to keep that check afloat before ultimately defaulting. The lender has received $120 – the equivalent of repayment of principal plus $35 finance charge, which amounts to a 217% yield on that 4-month $85 loan. Yet officially, this is a "defaulted" loan, because none of the $120 reduced the principal; it all went to service the 460% price tag.

---

[24] Jean Ann Fox, "The Growth of Legal Loan Sharking: A Report on the Payday Loan Industry," Consumer Federation of America, November 1998.
[25] M. Anderson, "Cash poor, choice rich, Paycheck-advance firms move in," *Sacramento Business Journal* (Jan. 11, 1999.)
[26] Indiana Department of Financial Institutions, Summary of Payday Lender Examinations Conducted from 7/99 thru 10/99.
[27] "Short Term Lending Final Report." Illinois Department of Financial Institutions, p. 31.
[28] Sheila Wissner, "'Payday loans' cited in bankruptcies," *The Tennessean*, April 18, 1999 p.1.

To learn more about these transactions, credit counselors in California, Washington, Nevada, Oregon, Idaho and Montana collected information from clients who reported having payday loans. Fifty borrowers answered questions about payday loan use, family income, and collection practices.[29] Half of the respondents had taken out 9 or more payday loans in the last year and 40% borrowed from five or more payday lenders. Half had been asked by lenders to write more than one check to get the loan. When asked what steps they took when unable to repay the lender, 34 of these borrowers responded that they extended the loan for an additional fee, 29 paid off the loan and immediately took out another one from the same lender, 28 sought loans at another lender, and 29 failed to meet other expenses. The impact of loans caused 44 of the 50 to seek financial counseling and led 33 to multiple loans and/or roll-overs. The survey asked consumers why they took the first payday loan. By far the largest response (35 of 50) was for emergencies/no savings. Nineteen answered to avoid bank bounced check charges and 17 said the loans were easy to get.[30]

Lenders can and do use coercive collection practices because a personal check or electronic access to a personal bank account is the basis for payday loans. These tactics range from deliberately depositing a check although funds are not available and triggering both the bank's and the lender's bounced check charges, to bringing civil charges for bad check-writing to get triple damages, to threatening criminal hot-check prosecutions.

Any default on a payday loan, by definition, involves a worthless check. State attorneys general and court decisions have concluded that a check written for a payday loan is not a "hot check" subject to criminal penalties. A Tennessee federal judge ruled earlier this year that a check cashing outlet violated the Tennessee consumer protection law by deceptively threatening to prosecute a delinquent customer. The *Turner* court found that the transaction did not involve the passing of a "bad" check since the lender knew the consumer did not have sufficient funds in the checking account when the loan was made to cover the cash advanced.[31]

The Iowa Attorney General provided an informal advisory opinion to guide regulators on this issue.[32] The Colorado Attorney General's "Report of the Uniform Consumer Credit Code Revision Committee" issued in October noted: "In addition, criminal fraud by check provisions do not apply to bounced deferred deposit loan checks since the lender knew at the time the borrower entered into the transaction that the borrower did not have the funds in his or her checking account to pay the loan. The required intent to defraud is lacking."[33]

The credit counseling client survey compiled by Consumers Union asked payday loan customers how lenders responded when consumers were unable to pay back loans. Out of 50 surveys, 21 reported that checks were deposited knowing funds were not available, 17 said lenders threatened deposit of checks knowing funds were not available, 16 said lenders

[29] 60% of respondents reported annual incomes of $25,000 or less; 24% received government benefits or pensions.
[30] Survey of credit counseling clients designed and compiled by Consumers Union West Coast Office.
[31] *Turner v. E-Z Check Cashing of Cookeville, TN, Inc.* 35 F. Supp.2d 1042 (M.D. Tenn. 1999).
[32] Iowa Department of Justice, Informal Advisory #87 (Feb. 18, 1999), Clearinghouse No. 52,156.
[33] Laura E. Udis, Administration of the Uniform Consumer Credit Code, "Report of the Uniform Consumer Credit Code Revision Committee, October 8, 1999, p. 22.

threatened small claims or other court action, and 11 threatened to bring criminal charges for failure to repay.

The growing body of court decisions, enforcement decisions by local law enforcement agencies, and industry guidelines do not halt the threat of "hot check" prosecution to collect on payday loans. An Ohio court found "egregious conduct" on the part of a collector of a payday loan that violated the Fair Debt Collection Practices Act. The collector identified himself as a police officer and threatened criminal prosecution.[34] The case of a Florida consumer reported by a credit counseling agency illustrates the twin threats of perpetual debt and coercive collection practices:

Ms. Jones, a single mother with one child who is under medical care for cerebral palsy, came to credit counseling to save her home from foreclosure. The counselor learned that Ms. Jones had been using payday loans for the last 18 months. The fees alone cost over $644 per month, more than her $451 mortgage payment. When she allowed one payday loan check to bounce, she got a letter from the lender threatening legal action for writing a worthless check. They told her they would be sending a sheriff over to arrest her and that social services would take her daughter and put her in a foster home for Christmas. The letter stated: "(lender) may at its discretion turn over the above dishonored check(s) to the State Attorney for criminal prosecution."

5. How would you address the problems you see for consumers in the payday loan industry?

A. Study the Effects on Consumers

Not enough is known about payday loan customers from disinterested parties. To craft thoughtful alternatives, we need to know how and why people use payday loans. A study, such as the 1941 Symposium by non-government organizations or the 1960s Commission on Consumer Finance, would help us understand what is really involved. We should also determine how much this industry and the excessive supply of quick, easy, high-cost credit is contributing to the glut of bankruptcies.

B. Ban the Use of Personal Checks to Make Loans

Ideally, loans should not be offered based on personal checks or electronic access to depository accounts. The risks of perpetual debt from single-payment loans drawn directly from checking accounts and of coercive collection tactics due to "live" checks in the hands of the lender expose consumers to unacceptable financial disaster. It is very difficult to draft an enforceable law to prevent abuses while allowing loans based on checks .

C. Close the Preemption Loophole for Financial Institutions

If loans based on checks are allowed, these loans should be subject to state small loan laws with interest caps or state usury limits. In order for states to effectively protect their citizens, Congress should prohibit the growing use of financial depository institutions to preempt

[34] Boyce v. Attorney's Dispatch Service, 1999 U.S. Dist. LEXIS 12970 (S.D. Ohio April 27, 1999)

state credit laws and consumer protections and to export deregulated interest rates and fees into states against the wishes of their democratically-elected legislatures.

D. Legislate Appropriate Consumer Protections

If payday loans are permitted, the risks inherent in loans based on access to depository accounts must be removed. Payday loan rates should be capped and clearly disclosed; loans should be designed to prevent perpetual debt; and coercive collection tactics should be prohibited. Congress should enact legislation to set mandatory minimum standards for state payday loan laws such as those in H.R. 1684 and require banks to comply with the payday loan laws of the state in which the borrower receives the proceeds of the loan.

Thank you for this opportunity to share our views.

Attachment A

Status of State/Territory Payday Loan Law

States with specific payday loan laws or regulations that permit payday loans

Arkansas	California	Colorado
Florida[35]	Hawaii	Iowa
Kansas	Kentucky	Louisiana(amendment effective 1/1/0)
Minnesota	Mississippi	Missouri
Montana	Nebraska	Nevada
North Carolina	Ohio	Oklahoma[36]
South Carolina	Tennessee	Utah
Washington	Wyoming	
District of Columbia		

States that prohibit payday loans due to small loan interest rate caps, usury law, and/or specific prohibitions for check cashers

Alabama[37]	Alaska	Arizona
Connecticut	Georgia	Maine
Maryland	Massachusetts	Michigan[38]
New Hampshire[39]	New Jersey	New York
North Dakota	Pennsylvania	Puerto Rico
Rhode Island	Texas	Vermont
Virginia	Virgin Islands	West Virginia

States that permit payday loans: no small loan rate cap or usury limit / min. finance charge

Delaware	Idaho	Indiana[40]
Illinois	New Mexico	Oregon
South Dakota	Wisconsin	

---

[35] Florida money transmitter regulations permit cashing post-dated checks at same fee as cashing personal checks. Roll-overs or extensions of loans violate Florida usury and/or consumer finance act.

[36] Oklahoma permits loans of under $101.97 as single-pay one-month loans. Any loans for $102 or more have a minimum term of 60 days.

[37] Loans currently permitted under terms of court injunction in case pending between Alabama Banking Department and the Alabama Check Cashers Association. Legislation to authorize payday lending failed at the 1999 session and at the special fall session of the Alabama legislature.

[38] Michigan Financial Institutions Bureau has stated that companies are not required to be licensed under the Regulatory Loan Act if they charge no more than 5% per annum interest plus the check casher's fee for cashing personal checks. Check cashing rates are not regulated in Michigan.

[39] Effective 1/1/0, New Hampshire interest rate cap is repealed, making New Hampshire a state permitting payday loans by licensed lenders.

[40] Indiana has minimum $33 finance charge in uniform consumer credit code.