ISSUE BRIEF

THE ALTERNATIVE FINANCIAL SERVICES INDUSTRY

INTRODUCTION

The alternative financial services (AFS) industry refers to the growing array of financial service providers that lie outside the system of federally insured financial institutions (hereafter referred to as "traditional" financial institutions). Check cashing outlets and payday lenders, pawnbrokers, title pawn/lenders, rent-to-own stores, and most subprime mortgage lenders are among the growing number of AFS businesses. In many cases, these businesses are alternatives to traditional financial institutions and are a major source of banking and credit services for low-income and working poor consumers, residents of minority neighborhoods, and consumers with heavy debt burdens and/or less favorable credit histories.[1] AFS businesses provide ready access to cash and/or credit, generally without standard credit checks. The charges for these services, however, are often many times those charged by traditional financial institutions for equivalent services.

This issue brief provides an overview of the AFS industry and discusses the policy implications of its rapid growth.

<u>The AFS Industry</u>

AFS businesses include:

Check Cashing Outlets (CCOs). CCOs provide access to cash by cashing checks, such as paychecks and benefits checks, for a per-check fee. These businesses also often sell money orders or money transmits which customers can use to pay bills. A recent AARP survey found that almost one-fifth (19 percent) of persons age 50-64 had cashed a check at a check cashing outlet.[2] Another recent study found that 17 percent of consumers without a checking account had used a CCO to cash checks at least once over the course of the previous year.[3]

Payday Lenders. Payday loans (also called deferred presentments) are small cash advances based on personal checks held by the lender for a scheduled period of time, generally either until the next payday or a one- or two-week period. On that date, the consumer allows the check to be deposited, pays off the loan, or pays another fee and renews the loan for another period of time. In some states, if the consumer does not have enough funds to pay off or renew the loan, the lender may deposit the check, generate a bounced check fee, and, in some cases, impose a civil bad check penalty against the borrower. Currently, approximately six million U.S. households (six percent of all households) use the services of payday lenders, accounting for nearly 40 million transactions.[4] In addition to payday lenders, many multiproduct stores (check cashing outlets, money transmitters, and liquor stores, for example) also offer payday loans. Over one-half of all CCOs offer payday loan services.[5]

Subprime Mortgage Lenders. Subprime mortgage lending refers to the extension of home-secured credit to persons who are considered to be higher credit risks.[6] Subprime loan originations in the United States were estimated at $140 billion in 2000, representing about 13 percent of total mortgage originations.[7]

Traditional Pawnbrokers. Traditional pawns are structured as pledges, sales, or "conditional sales" of the borrower's property to the pawnbroker, subject to the right of redemption. Nationally, the vast majority of pawnshop loans are for $150 or less. The average loan is about $70 and the maturity is generally one to three months.[8] Most pawnbrokers lend about one-half of the quick resale value of the collateral. Approximately 80 percent of pawned items are eventually redeemed.

Auto Title Loan/Pawn Lenders. In a title loan transaction, a borrower drives a vehicle to an automobile title loan/pawn lender (also known as a title broker), and pawns the title while keeping the car. Many times, the borrower is required to give the lender a key to the vehicle to facilitate, if necessary, repossession of the vehicle. In some states, a borrower sells the vehicle to the title lender and then executes a rent-to-own contract with the lender ("sale/leaseback" arrangement). In other states, the borrower signs a power of attorney form giving the lender the right to transfer the title to the vehicle if the borrower defaults on the loan.

Rent-to-Own (RTO) Lenders. RTO lenders offer the option for consumers to acquire household goods, appliances, and electronics through installment payments.[9] The RTO industry is generally seen as distinct from the much older rent-to-rent industry whose customers do not intend to purchase the rented products. RTO charges, along with the cost of the lease, include security deposits, administrative fees, delivery charges, "pick-up payment" charges, late fees, insurance charges, and liability damage waiver fees. RTO lenders often repossess the goods from the consumer who forfeits all equity in the goods.

Refund Anticipation Loans (RALs). Refund anticipation lenders make cash loans against the borrower's expected income tax refund. RALs are available at a wide range of businesses including tax-preparers, RTOs, and used car dealers. Some used car dealers advertise for borrowers to bring in tax forms for preparation without charge if they buy a car and use the tax refund as a downpayment.

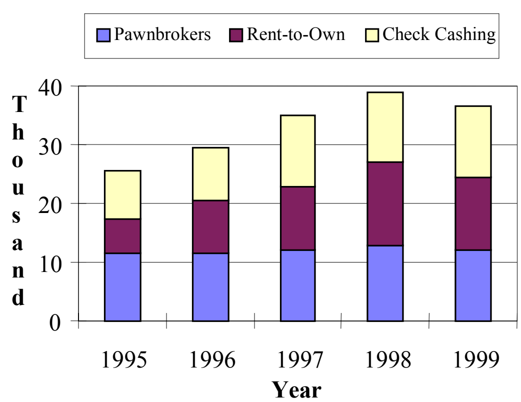
Borrowers are charged fees by RAL lenders for each of the following services: preparing the tax forms; electronically filing tax returns (electronic filing is required by RAL lenders); and lending the anticipated tax refund amount.

Growth of the AFS Industry

The AFS industry is growing rapidly. Since 1998, one national bank has arranged more than $700 million in loans to three of the largest check cashers.[10] Nationally, the subprime home refinance mortgage market increased by 102 percent during 1996, 72 percent during 1997, and 43 percent during 1998.[11]

Growth in CCOs, Pawnbrokers, and RTO Lenders. Figure 1 shows that there were over 35,000 check cashers, pawnbrokers, and rent-to-own businesses in the U.S. in 1999, up from approximately 25,000 in 1995. The number of pawnshops listed in the telephone directory's yellow pages rose from 4,849 in 1985 to 8,787 in 1992;[12] in 1999, there were over 10,000 pawnbrokers.

Figure 1
Growth in Selected AFS Businesses



Source: "InfoUSA Inside Mortgage Finance;" **Business Week** *(4/24/2000)*
AARP Public Policy Institute

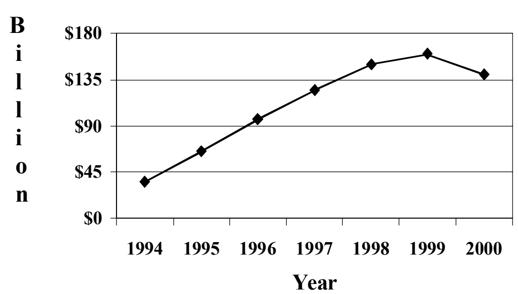
Growth in RALs. With increasing access to technology, more consumers are filing tax returns electronically. According to the Internal Revenue Service (IRS), the number of tax returns filed electronically has more than tripled from 7.5 million in 1991 to 24.6

million in 1998.[13] Congress's mandate to the Internal Revenue Service (IRS) to have 80 percent of all transactions filed electronically by 2008 will likely result in a continued increase in the number of electronic returns.

Growth in Payday Lending. The number of payday lenders in the U.S. has grown to 9,000 storefronts (6,000 stand-alone payday advance stores and 3,000 multiproduct stores) nationally, from a base of virtually 0 in 1994.[14] The industry projects that, by the year 2004, 80 to 110 million transactions will occur, with approximately 15 percent of U.S. households becoming customers for this type of lending.[15] Much of the growth in payday lending is by large chains; four companies currently operate roughly one-half of the payday lenders in the United States.[16]

Growth in Subprime Mortgage Lending. Figure 2 shows the substantial growth in subprime mortgage lending, expanding from a $35 billion industry in 1994 to $140 billion in 2000.

Figure 2
Increase in Subprime Mortgage Originations (1994-2000)



Source: Inside Mortgage Finance Publications. (2001). AARP Public Policy Institute

A combination of factors account for the growth in the AFS industry. These factors include federal preemption and deregulation of state usury ceilings,[17] the increased availability of capital to finance AFS businesses through initial public offerings (IPOs),[18] securitization,[19] and affiliation with traditional financial institutions.[20] For example, leading investment firms packaged and resold nearly $56 billion of subprime mortgage loans to investors in 2000, compared with less than $3 billion in 1995.[21]

Increasing homeownership and home equity, particularly in minority and low-income communities, has also created fertile ground for the rapidly increasing subprime mortgage market.[22]

<u>Who Uses AFS Businesses and Why</u>

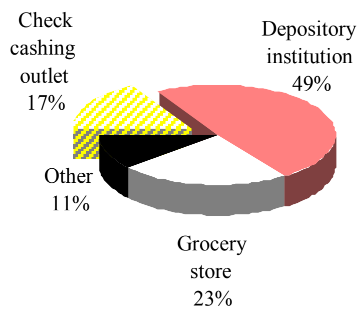
Certain segments of the population are more likely than others to use AFS businesses. These include households with low and moderate incomes, households without deposit accounts, minority households, households with little or no savings, and households with less favorable credit risk profiles.

A recent AARP survey found that 32 percent of persons with annual incomes under $20,000 had used a CCO compared with 20 percent of persons with higher incomes. The survey also found that low-income persons were more likely to have pawned a personal item for cash or credit.[23]

Over one in six consumers (17%) without deposit accounts use CCOs to cash checks (Figure 3). The primary reason reported for not having an account is that persons "have very little or no financial savings."[24]

It is difficult for families with few financial assets to pay for unexpected expenses and emergencies. Greater indebtedness and a higher incidence of cyclical incomes among borrowers, combined with few financial assets, make many consumers financially vulnerable[25] and more likely to use AFS businesses. In 1998, 25 percent of U.S. households had net financial assets of less than $25,000; 13 percent of households had net financial assets of less than $10,000.[26]

Figure 3
Consumers Without Deposit Accounts: Where They Cash Checks



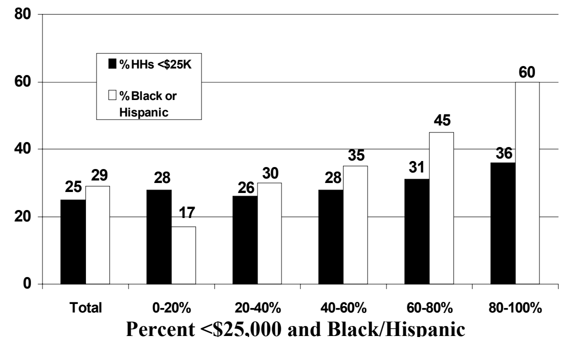
Source: Caskey, J. (1999). **Lower Income Americans, Higher Cost Financial Services**
AARP Public Policy Institute

A recent study of households with credit cards (66% of all households) shows that liquid assets decreased from $6,468 in 1989 to $4,700 in 1995.[27] Over the same period, debt as a percentage of income increased from 48 to 55 percent, and cardholders were significantly more likely to work in relatively unskilled blue-collar jobs with incomes closely tied to an economic business cycle.[28] Credit card debt of poor households nearly doubled between 1983 and 1999.[29] A recent analysis of the latest Survey of Consumer Finances (SCF) shows the proportion of families with high payment-to-income ratios (greater than 40 percent) increased across every income category between 1995 and 1998 with the greatest increases among households with annual incomes under $50,000.[30]

AFS businesses are often conveniently located, especially for low-income and minority consumers, compared to traditional financial institutions.[31] For example, low-income and minority households are significantly more likely to have CCOs located within one mile of their homes than higher-income and non-minority households (Figure 4).

Service offerings that address the needs of low-income customers (for example, small, short-term loans) are often unavailable in

Figure 4
Percent of Households with Annual Incomes Less than $25,000 and Percent Black or Hispanic Population Near a CCO



AARP Public Policy Institute and AARP Knowledge Management (2001)

traditional financial institutions. Traditional financial institutions are increasingly seeking a more affluent customer base.[32] Further, only seven states require banks to offer low-cost lifeline accounts,[33] and efforts at the federal level to require such accounts were recently defeated. Increasingly, nationally chartered banks are partnering with AFS businesses to benefit from the profit potential of these high-cost services.[34] Currently, AFS businesses may "borrow the charter" of a national bank located in another state. This offers a significant advantage to AFS businesses by allowing them to "export" interest rates from states with weak or no usury laws into states with strong usury laws.

Discriminatory lending practices also continue to make it difficult for some individuals to access the prime lending market. A recent national study concluded that disparities in lending between African American and white neighborhoods persist.[35] Findings from recent studies in Chicago[36] and Atlanta[37] conclude that subprime mortgage loans are five times more prevalent in African American neighborhoods than in white neighborhoods. Moreover, when comparing similar income groups, African American borrowers remain much more likely than white borrowers to have a subprime mortgage loan.[38] Similarly, there is evidence that older homeowners are being targeted. A recent study found that borrowers 65 years of age and older were three times more likely to hold a subprime mortgage than borrowers less than 35 years of age.[39]

Female-led households are heavy users of AFS services. For example, 60 percent of payday borrowers and one-half of title loan borrowers in Illinois were women.[40] In Georgia, most RAL borrowers were low-income, nonwhite, females.[41] A recent study also found that older female borrowers were more likely to hold subprime mortgages than were older male borrowers.[42]

Additional reasons for the use of AFS services include a discomfort in doing business with banks, a desire to keep financial records private, and the need for immediate cash.[43]

AFS INDUSTRY – POLICY ISSUES

Growth of the AFS industry raises a number of public policy issues including 1) the emergence of a two-tiered financial services market where growing numbers of consumers, especially those with low and moderate incomes, pay relatively high costs for basic financial services provided by uninsured and largely unregulated providers, and 2) the unfair practices that occur in the subprime or "lower tier" of the financial system.

Emergence of a Two-Tiered Financial Services Market

The emergence of a two-tiered financial system results from practices in the traditional financial industry that tend to exclude low- and moderate-income persons.

For example, bank fees often are structured to encourage large account balances. Low-income consumers cannot maintain the required minimum balances and pay higher fees, such as charges for each check used.[44] Similarly, traditional financial institutions avoid business from small loans because servicing and origination costs do not differ substantially from those for larger loans[45] and generate smaller profits than larger loan business. Even when low-income consumers are able to obtain credit, they are often required to pay for credit insurance and are charged higher interest rates.[46]

The fees charged by many AFS businesses can be characterized as high in comparison to those charged by traditional financial institutions. For example, a study by the Federal Reserve Bank of New York found that accessing the payments system through CCOs is expensive compared to traditional financial institutions, even in states where CCOs are relatively well-regulated.[47] Further, even when potentially higher risks are taken into account, rates of return are much higher for AFS businesses than for standard businesses.[48]

A very significant consequence of the increased use of AFS businesses is that their practices may actually worsen the financial situation of low- and moderate-income consumers. Frequent refinancing of debt, such as "rollovers"[49] and "flipping,"[50] often results in the accumulation of debt far beyond the consumer's ability to pay and, in some cases, foreclosure. Geographic isolation and a lack of alternative services,[51] income volatility,[52] a lack of savings,[53] and a lack of consumer information[54] reduce the ability of many low-income consumers to be price-driven. AFS businesses are acutely aware of these factors and structure their products and advertising accordingly.[55] The results can be misleading in some cases. For example, the terms "fees or charges" may be used rather than "interest."[56] As a result of the factors cited previously, low- and moderate-income persons often rely on the more expensive and less-regulated AFS industry for financial services.

Unfair Practices

A wide variety of unfair practices occur in AFS businesses.

Payday Loans. High costs, rollovers, and inappropriate collection practices are major issues of concern with regard to payday loans. A recent study of lenders in 20 states found the average payday loan annual percentage rate (APR) was 474 percent, and concluded that payday loans were being made in states despite usury ceilings far below such APRs.[57] Other lenders have attempted to structure the payday transaction as a "sale" or a "rental fee" rather than a loan to avoid lending regulations.

Borrower risk appears to be less of a factor in the pricing of payday loans than the fact that there is little price competition in the industry, especially when consumers lack alternatives. A recent investment report states that profitability "…translate[s] into annualized returns on investments of above 70 percent…"[58] In addition, default rates are only slightly above bank loan default rates[59] and loss rates have stabilized at 1.0 to 1.3 percent of receivables.[60] In North Carolina, payday lenders reported that they earn $6.00 per dollar in capital assets, compared to $0.21 for credit card companies.[61]

Payday lenders assert that payday loans are less expensive than bounced checks for many customers. However, such comparisons do not include alternatives such as using a basic checking account, and fail to include multiple payday loan rollover costs that often occur and that significantly increase the total cost of the loan to the borrower.[62] For example, in Indiana there was an annual average of 10 to 12 rollovers per customer.[63] In Illinois there was an annual average of 13 contracts per borrower, with 21 percent of borrowers reporting that they received more than 20 payday loans in a 12-month period.[64] North Carolina found that more than 50 percent of borrowers used the services of the same lender more than six times in 1999, and 14 percent did so 19 or more times.[65] In Iowa, regulators found an average of 12 loans per year per borrower; the average loan amount was $239.23, the average loan term was two weeks, and the average APR was 342 percent; 48 percent of the customers had at least 12 loans in the preceding 12 months, and 11 percent had more than 25 loans.[66]

The large number of rollovers raises concerns that payday loans are evolving from a form of short-term, emergency credit to a type of long-term financing with costs that are exorbitant in comparison to alternatives such as credit cards, cash advances, and credit union loans.[67] These practices create an artificial "demand" for such loans and create significant risks for borrowers.

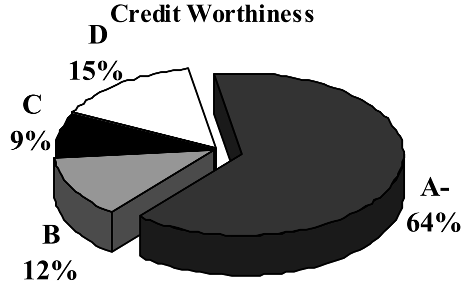
Some payday lenders have threatened to file bad check charges in order to collect debts.[68] In addition, lenders have failed to give required Truth-in-Lending Act (TILA) disclosures or have provided inaccurate information which makes it difficult for consumers to understand the costs and terms of these loans.[69]

Subprime Mortgage Lending. Among the issues of concern for consumers are 1) subprime lending to borrowers qualified for lower-cost "A" loans, 2) predatory lending, and 3) subprime lending that leads to foreclosure.

Many subprime borrowers qualify for less expensive, prime loans. According to Home Mortgage Disclosure Act (HMDA) data, approximately two-thirds (63%) of subprime loans are "A-" loans (Figure 5).

A 1996 study found that of these "A-" borrowers receiving higher cost subprime loans, between 10 percent and 35 percent were qualified for prime loans;[70] recent estimates

Figure 5
Subprime Borrowers by Credit Worthiness



Source: Home Mortgage Disclosure Act (HMDA)
AARP Public Policy Institute

show one-third to one-half of "A-" borrowers were qualified for prime loans.[71] In addition to borrowers' financial situations, demographic characteristics, knowledge, and financial sophistication are also significant factors in determining whether borrowers receive subprime or prime mortgages.[72]

Subprime home mortgage lending becomes predatory when lenders' practices include: inappropriately targeting a particular population; taking advantage of the borrower's inexperience and lack of information; manipulating a borrower into a loan the borrower cannot afford to repay; or defrauding the borrower.[73] Characteristics of predatory subprime mortgage lending include, but are not limited to: excessive fees and interest; fraudulent, high-pressure, or misleading marketing; "packing" and financing of unnecessary fees; and "flipping."

Prepayment penalties and single premium credit insurance are much more likely to be "packed" into subprime loans than prime loans. The use of prepayment penalties in subprime loans has grown from 50 percent of the market prior to 1998 to 80 percent in mid-2000,[74] compared to a low and relatively stable two percent for prime loans. Credit insurance penetration rates are difficult to obtain, but, according to one estimate, are one-half of the subprime mortgage market compared to six percent in the prime mortgage market.[75]

In 1999, the number of annual residential foreclosures was more than 570,000.[76] There is growing evidence that many foreclosures are associated with predatory subprime mortgage loans. A recent study in Chicago found that 25 percent of foreclosures in 1998 involved borrowers with high and extremely high interest rates, up from 10 percent in 1993.[77] Similarly, in Atlanta, while the overall volume of foreclosures declined by seven percent between 1996 and 1999, the volume of foreclosures on loans originated by subprime lenders grew by 232 percent.[78]

Title Loan/Pawn Lenders. The APR (annual percentage rate) of title pawns often exceeds 900 percent,[79] while the lender is exposed to limited risk. First, the maximum loan is generally only approximately 25 percent of the value of the vehicle.[80] Second, in the case of default, lenders who required a set of keys easily access the car and quickly resell the vehicle, often without refunding the borrower the difference between the resale price and the amount owed by the borrower. The process is expedited and profits are increased when the lender owns the used car lot, often at the same location as the title pawn business.

RTO Stores. RTO transactions generally are structured as terminable leases and, thus, are not regulated by the Truth-in-Lending Act (TILA) or, in most states, usury ceilings. In addition, such transactions usually are excluded from state laws governing credit sales.[81]

Purchasing products from RTOs generally costs two to five times as much as purchasing the same items at department and discount stores. One study found the interest rate of RTOs to be equivalent to 100 percent.[82]

Consumers may not be provided with adequate disclosures such as APR, whether the product is new or used, and the product's total cost to own.[83] Most states require RTO lenders to disclose both a "cash price" and "total cost to own" if paid in installments; however, the cash price often is unrelated to fair market value and significantly underestimates the additional costs of an RTO transaction.[84]

RALs. Interest rates and APRs of RALs are difficult to ascertain,[*] with estimates ranging from 67 to 768 percent,[85] often in violation of state credit and usury laws.[86]

Recently, the largest national RAL business was ordered by a federal court to stop using the phrase "rapid refund" and other terms that were "deliberately intended to disguise expensive loans."[87] The court found that the RAL "concealed the reality that rather than receiving refunds, clients were taking out high-interest loans to obtain their money a few days sooner than the Treasury Department would have sent them at no charge."[88] The RAL was found to have made loans with APRs in excess of 500 percent.[89]

In another case, a national RAL has been accused of charging an effective annual interest rate of more than 3,000 percent, evading the state small loan interest rate cap by characterizing its business as a fee-for service transaction rather than a loan.[90]

[*] It is difficult to estimate RAL interest rates and APRs, in part because the estimation requires knowing the actual length of time between the date of the transaction and the date the refund is received by the lender from the IRS.

REGULATORY OVERSIGHT AND POLICY OPTIONS

Policymakers at the federal, state, and local levels have attempted to respond to the emergence of a two-tiered financial services market and unfair practices of AFS businesses through a variety of approaches. These include the following:

<u>Increasing access of low-income consumers to a wider range of financial services, and entry into the federally insured banking system</u>

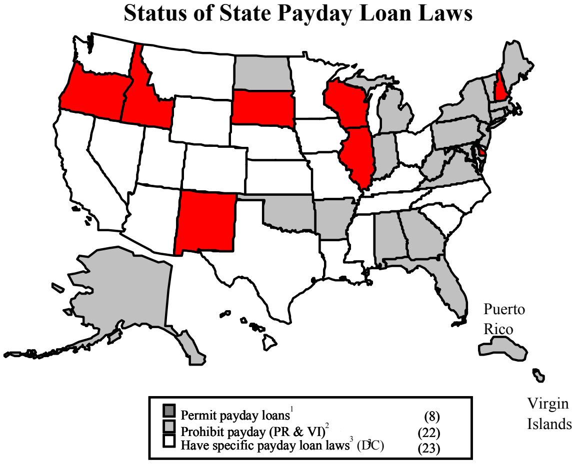
While the banking industry successfully opposed the addition of low-cost (i.e., "lifeline") banking service requirements to the Financial Services Modernization Act of 1999, federal legislation signed into law in 1998 overturned a Supreme Court decision that prevented credit unions from adding new groups to their membership from low-income communities currently underserved by commercial banks.[91] States and consumer organizations have also sought to have the Treasury Department overturn an existing interpretation of federal banking law that effectively exempts national banks from compliance with state basic banking statutes (i.e., interest rate exportation).[92] States also have experimented with zoning reforms and "banking development districts" to encourage traditional institutions to expand services in underserved areas.[93]

The desire of federal and state governments to achieve administrative savings through the electronic delivery of federal and state benefits has led to renewed efforts to make bank accounts available to the estimated 8.4 million families without such accounts. Approximately 600 institutions in 7,000 locations currently are offering or expect to offer Electronic Transfer Accounts (ETAs), an electronic debit account, to permit federal benefit recipients to receive payments electronically. The Treasury Department has also initiated a "First Accounts" program in 2000 to provide similar accounts to the segment of the "unbanked" population who do not receive federal benefits.[94] However, the current administration has indicated it will recommend eliminating funding for this program.[95] Other approaches to increasing access to bank accounts include individual development accounts (IDAs) which provide matching funds to encourage savings, and counseling and financial education.[96]

Establishing licensure and reporting requirements

States have sought to increase the effectiveness of their oversight of the practices of AFS businesses through licensing and reporting requirements. For example, 22 states require licensure or permits for CCOs[97] and 24 states require licensing or registration of payday lenders.[98] Twenty-two states prohibit payday lending and twenty-three states have specific payday loan laws (Figure 6).

Figure 6
Status of State Payday Loan Laws



[1] No small loan rate cap or usury limit/minimum finance charge
[2] Prohibit payday loans due to small loan interest rate caps, usury law, and/or specific prohibitions for check cashers
[3] Have specific payday loan laws that permit payday loans

Source: Consumer Federation of America. (2001).
AARP Public Policy Institute

These laws and their enforcement vary significantly in scope and effectiveness. Additional licensing requirements were recently recommended for home improvement contractors and mortgage brokers by the Departments of HUD (Housing and Urban Development) and Treasury.[99]

Currently, few states collect demographic information about payday borrowers. Colorado does so on an annual basis.[100] Iowa, Illinois, North Carolina, and Indiana examined a cross-section of lenders and produced one-time reports that include data such as average size of loan, average APR, maximum APR, and number of loans per customer. Illinois collects the average income of payday borrowers.

A recent report by the Departments of HUD and Treasury on predatory mortgage lending cited the need for improved data collection under the Home Mortgage Disclosure Act (HMDA).[101] The Federal Reserve Board has proposed, under Regulation C of HMDA, that eligible mortgage lenders be required to report additional data, including APR of the loan, and high-cost status under the Home Ownership and Equity Protection Act of 1994 (HOEPA). The Federal Reserve Board has received formal comments recommending that the age of the borrower be reported by lenders in addition to current demographic requirements of income, race, and gender.

Reporting requirements provide data that inform policymakers about industry and borrower practices. Such data also are valuable in determining the impact of AFS practices on vulnerable populations and in improving enforcement.

Relating prices to actual costs and risks of AFS transactions

Many states are attempting to establish a closer relationship between costs and risks of AFS transactions. Industry reports often show high rates of return and/or low delinquency rates relative to the high costs charged to the borrower.

For example, 20 states and the District of Columbia limit fees of CCOs, and 10 states limit payday loan rollovers.[102] However, many states lack such protections, and existing limitations are often very weak.[103]

Twenty states require payday lenders to comply with state small loan or criminal usury laws.[104] These laws maintain interest rate caps of up to 36 percent per annum. Typically, these laws contain extensive provisions specifying the maximum loan amount, the maximum and/or minimum term, the maximum interest rate, and permitted charges.

Six states have passed specific legislation prohibiting auto title pawns,[105] while other states have legalized title pawns,[106] overseeing provisions such as interest rate caps, total loan charges, and mandated refunds.

As noted earlier, state efforts to establish a better balance between cost and risk have been severely hampered by federal preemption of state usury laws by nationally chartered banks that permits AFS businesses to export state interest rates, avoiding in-state interest rate limitations.

<u>Eliminating unfair practices</u>

At the local, state, and federal levels, attempts have been made to prohibit unfair practices in AFS businesses.

HOEPA strengthens consumer protections for high-cost home-secured loans. HOEPA loans are defined to have interest rates of 10 percent or more above comparable Treasuries, or points and fees of eight percent or more. Loans with interest rates above that level are subject to additional disclosures and to restrictions on loan terms. Currently, less than one percent of subprime loans are covered by HOEPA. The Federal Reserve Board has proposed reducing the HOEPA "trigger" to eight percent above comparable Treasuries, which is estimated to increase that ratio to five percent.[107]

In 1999, North Carolina passed legislation defining as predatory and prohibiting specific lending practices for high-cost home loans including: 1) lending without regard to the borrower's ability to repay the loan; 2) financing of loan fees; 3) lending without consumer counseling; and 4) balloon payments.

In 2001, the District of Columbia passed legislation establishing a list of acts and practices that indicate a predatory loan, and strengthening consumer protections against foreclosures.

In Illinois, recently adopted regulations protect consumers from predatory lending by prohibiting single-premium credit life insurance, limiting prepayment penalties to three years and three percent of the loan amount, and capping the amount of points and fees that can be financed at six percent.[108] In addition, an ordinance in Chicago was recently passed to provide further consumer protections against predatory mortgage lending.[109]

Disclosure requirements may eliminate some unfair practices. Seventeen states require payday lenders to post fees, eight states require TILA disclosures, and 19 states require a written agreement or notice.[110] In addition, some states prohibit payday lenders from threatening to use or using the criminal process in order to collect the loan.[111]

CONCLUSION

The AFS industry is growing as increasing numbers of consumers are unable to access the traditional banking system. Like traditional banks, AFS businesses provide access to cash and/or credit. AFS services include subprime services such as small loans, auto financing, and home equity lending.[112] However, AFS services often are substantially more expensive than traditional banking services, and frequently involve unfair and deceptive practices.

The primary goal of state and federal policy should be to assure equal consumer protections for the customers of both traditional and alternative financial services. Consumers should be encouraged to save, as well as have opportunities to enter the traditional banking system. Consumers who use AFS services should have access to fairly priced alternatives, and be provided with information to make informed choices. In addition, when consumers use AFS services, they should be protected from unfair and predatory practices that can lead to a long-term "financial treadmill," that delays or prevents entry into the financial mainstream of American life.

Written by Sharon Hermanson and
George Gaberlavage
Consumer Team
Public Policy Institute
August 2001

AARP, 601 E Street, N.W., Washington, DC 20049
http://research.aarp.org

ENDNOTES

[1]Drysdale, L. and Keest, K. "The Two-Tiered Consumer Financial Services Marketplace: The Fringe Banking System and its Challenge to Current Thinking About the Role of Usury Laws in Today's Society." **South Carolina Law Review** (Spring 2000) 51(3):590-616.

[2]Princeton Survey Research Associates. "Consumer Behavior, Experiences and Attitudes: A Comparison by Age Groups." Report prepared for AARP, 1999.

[3]Caskey, J. "Lower Income Americans. Higher Cost Financial Services." Filene Research Institute Center for Credit Union Research, 1997.

[4]Robinson, J. and Lewis, G. "The Emerging Business of Deferred Presentment. The Changing Face of Short-Term Access to Credit: A New Distribution Channel for the Sub-Prime Consumer." Report prepared for Stephens, Inc., 2000.

[5]U.S. Senate Committee on Governmental Affairs. Testimony of Robert E. Rochford, Deputy General Counsel for the Financial Service Centers of America at a forum on "Payday Lending." Washington, DC, December 15, 1999.

[6]California State Assembly Committee on Banking and Finance. Testimony of the Federal Trade Commission at hearings on "Predatory Lending Practices in the Home-Equity Lending Market," February 21, 2001. <http://www.ftc.gov/os/2001/02/predlendstate.htm>. The testimony also states that, "Credit to 'prime' borrowers, generally borrowers with good credit histories, is referred to as 'A' credit. 'A' mortgage loans are those that conform to the secondary market standards for purchase by the two largest government-sponsored entities (although they recently began purchasing 'A-' subprime loans)." It should be noted that some studies show that many subprime borrowers are not high-risk borrowers (see discussion, page 7).

[7]Walters, N. and Hermanson, S. "Subprime Mortgage Lending and Older Borrowers." Data Digest #57. AARP Public Policy Institute, March 2001.

[8]Caskey, J. "Lower Income Americans. Higher Cost Financial Services." Filene Research Institute Center for Credit Union Research, 1997.

[9]Drysdale, L. and Keest, K. "The Two-Tiered Consumer Financial Services Marketplace: The Fringe Banking System and its Challenge to Current Thinking About the Role of Usury Laws in Today's Society." **South Carolina Law Review** (Spring 2000) 51(3):590-616.

[10]Foust, D. "Predatory Lending: Easy Money." **Business Week** (April 24, 2000). p. 107-118.

[11]Scheessele, R. "1998 HMDA Highlights." Office of Policy and Development and Research, October 1999.

[12]Caskey, J. "Fringe Banking: Check-Cashing Outlets, Pawn Shops and the Poor." New York: Russell Sage Foundation, 1994.

[13]Internal Revenue Service. "1996 Data Book" (Table 8). "1998 Data Book" (Table 5).

[14]Lewis, G. "Non-Bank Financial Service Industry Notes." Report prepared for Stephens Inc, March 23, 2000. <http://stephens.com/research>.

[15]Lewis, G. "Non-Bank Financial Service Industry Notes." Report prepared for Stephens Inc, March 23, 2000. <http://stephens.com/research>.

[16]National Journal. "*Lobbying and Law. Payback Time for High-Fee Lenders*." (September 11, 1999).

[17]Public Interest Research Groups (PIRGs) and the Consumer Federation of America (CFA). "Show Me the Money," February 2000. See also Robinson, J. and Lewis, G. "The Developing Payday Advance Business: The Next Innings: From Emergence to Development." Report prepared for Stephens, Inc., 1999. <http://stephens.com/research>. Federal banking regulations allow payday lenders to partner with commercial banks to offer high interest loans even in states that have usury caps that would ordinarily prohibit such practices.

[18]Hudson, M. "Predatory Financial Practices: How Can Consumers Be Protected?" Report prepared for AARP Public Policy Institute (D16630), 1998.

[19]U.S. Housing and Urban Development and U.S. Department of Treasury. "Curbing Predatory Home Mortgage Lending: A Joint Report," June 2000. <http://www.huduser.org/publications/pdf/treasrpt.pdf>.

[20]U.S. Senate Committee on Governmental Affairs. Testimony of Robert E. Rochford, Deputy General Counsel for the Financial Service Centers of America at a forum on "Payday Lending." Washington, DC, December 15, 1999. See also Branch, S. "Where Cash is King." **Fortune** (June 8, 1998). p. 16.

[21]Inside Mortgage Finance. "The 2001 Mortgage Market Statistical Annual. Volume II." (2001). p. 175-176.

[22]Simon, N. "Predatory Practices and the Fair Housing and Lending Laws: Predatory Lending Litigation from Around the Country: A Broad Range of Tools," 2000.

[23]Princeton Survey Research Associates. "Consumer Behavior, Experiences and Attitudes: A Comparison by Age Groups." Report prepared for AARP, 1999.

[24]Caskey, J. "Lower Income Americans. Higher Cost Financial Services." Filene Research Institute Center for Credit Union Research, 1997. See also Robinson, J. and Lewis, G. "The Developing Payday Advance Business: The Next Innings: From Emergence to Development." Report prepared for Stephens, Inc., 1999. <http://stephens.com/research>.

[25]Black W. and Morgan, D. "Meet the New Borrowers." Current Issues in Economics and Finance. Federal Reserve Bank of New York, February 1999. See also Staten, M. "Borrowing Trends and Household Debt Burdens**."** **Credit Counseling Quarterly** (Fall 2000).

[26]Montalto, C. "Wealth of American Households: Evidence from the Survey of Consumer Finances." Report to the Consumer Federation of America, 2001. Excludes 401K and retirement plan savings.

[27]Black, S. and Morgan, D. "Meet the New Borrowers." Current Issues in Economics and Finance. Federal Reserve Bank of New York, February 1999. Note: Credit card holders only. Liquid asset holdings include balances in checking accounts, savings accounts, call accounts at brokerages, certificates of deposit, and mutual funds.

[28]Black, S. and Morgan, D. "Meet the New Borrowers." Current Issues in Economics and Finance. Federal Reserve Bank of New York, February 1999.

[29]Bird, E. Hagstrom. P, et al. "Credit Card Debts of the Poor: High and Rising." **Journal of Policy Analysis and Management** (Winter 1999)18:125-133.

[30]Staten, M. "Borrowing Trends and Household Debt Burdens." **Credit Counseling Quarterly** (Fall 2000):6.

[31]Doyle, J., Lopez, J., and Saidenberg, M. "How Effective is Lifeline Banking in Assisting the 'Unbanked'?" Current Issues in Economics and Finance. Federal Reserve Bank of New York, June 1998. <http://www.newyorkfed.org/rmaghome/curr_iss/ci4-6.htm>. See also Hogarth, J. and O'Donnell, K. "Banking Relationships of Lower Income Families and the Governmental Trend toward Electronic Payment." Federal Reserve Bulletin, July 1999. See also Alwitt, L. and Donley, T. **The Low-Income Consumer: Adjusting the Balance of Exchange.** Sage Publications, 1996.

[32]Brooks, R. "Unequal Treatment: Alienating Customers Isn't Always a Bad Idea, Many Firms Discover – Banks, Others Base Service on Whether Account is Profitable or a Drain, Redlining in the Worst Form." **Wall Street Journal** (January 7, 1999).

[33]Seven states (Illinois, Massachusetts, Minnesota, New Jersey, New York, Rhode Island and Vermont) have enacted legislation creating lifeline banking accounts.

[34]Gallagly, E. and Dernovsek, D. (2000). "Fair Deal. Creating Credit Union Alternatives to Fringe Financial Services." Center for Professional Development, Credit Union National Association, Inc. See also Branch, S. "Where Cash is King." **Fortune** (June 8, 1998). p. 16.

[35]Wyly, E. and Holloway, S. "The Color of Money Revisited: Racial Lending Patterns in Atlanta's Neighborhoods." **Housing Policy Debate** (1999) 10(3):555-600.

[36]U.S. Housing and Urban Development. "Unequal Burden: Income and Racial Disparities in Subprime Lending in America," 2000. <http://www.hud.gov/library/bookshelf18/pressrel/subprime.html>.

[37]Abt Associates Inc. (2000). *Unequal Burden in Atlanta: Income and Racial Disparities in Subprime Lending*. Report prepared for U.S. Housing and Urban Development.

[38]Woodstock Institute. "Two Steps Back: The Dual Mortgage Market, Predatory Lending, and the Undoing of Community Development," November 1999.

[39]Lax, H., et. al. "Subprime Lending: An Investigation of Economic Efficiency" (February 2000, unpublished paper).

[40]Illinois Department of Financial Institutions. "Short Term Lending" (1999, Final Report 26). <www.state.il.us.dfie>.

[41]Lewis, J. Swagler, R. and Burton, J. "Refund Anticipation Loans and the Consumer Interest: A Preliminary Investigation," 1996.

[42]Walters, N. and Hermanson, S. "Subprime Mortgage Lending and Older Borrowers." Data Digest #57. AARP Public Policy Institute, March 2001.

[43]Caskey, J. "Lower Income Americans. Higher Cost Financial Services." Filene Research Institute Center for Credit Union Research, 1997.

[44]Alwitt, L. and Donley, T. **The Low-Income Consumer: Adjusting the Balance of Exchange**. Sage Publications, 1996. See also Caskey, J. "Lower Income Americans. Higher Cost Financial Services." Filene Research Institute Center for Credit Union Research, 1997.

[45]Caskey, J. "Lower Income Americans. Higher Cost Financial Services." Filene Research Institute Center for Credit Union Research, 1997.

[46]Alwitt, L. and Donley, T. **The Low-Income Consumer: Adjusting the Balance of Exchange**. Sage Publications, 1996.

[47]Doyle, J., Lopez, J., and Saidenberg, M. "How Effective is Lifeline Banking in Assisting the 'Unbanked'?" Current Issues in Economics and Finance. Federal Reserve Bank of New York, June 1998. <http://www.newyorkfed.org/rmaghome/curr_iss/ci4-6.htm>. In 1997, a family of four with an income at poverty level ($15,600) would pay $172 to cash one year's checks at a CCO, compared to $44 if that family used a low-balance checking account. The price gap was even wider when the cost of money orders to pay bills is included. Under New York's lifeline banking law, low-cost accounts include the cost of writing eight checks per month.

[48]Drysdale, L. and Keest, K. "The Two-Tiered Consumer Financial Services Marketplace: The Fringe Banking System and its Challenge to Current Thinking About the Role of Usury Laws in Today's Society." **South Carolina Law Review** (Spring 2000) 51(3):590-616.

[49]For example, when a payday loan is due, a borrower may extend (that is, rollover) the loan by paying another fee. The principal is not reduced, and, should the borrower get into a "debt treadmill," the loan is officially "defaulted, because none of the fees reduced the principal. Lenders in 20 states found the average payday loan annual percentage rate (APR) was 474 percent.

[50]Loan flipping occurs when a homeowner is induced into refinancing his/her mortgage several times within a short period of time. With each refinancing, the new lender charges the homeowner new points, fees, and other charges, and the previous lender charges prepayment penalties, thus reducing the amount of equity in the home.

[51]Alwitt, L. and Donley, T. **The Low-Income Consumer: Adjusting the Balance of Exchange**. Sage Publications, 1996.

[52]Koretz, G. "A New Economy but No New Deal More Full-Time Workers are Poor." **Business Week** (July 7, 2000). p. 34.

[53]Anderson, J. "The Wealth of U.S. Families: Analysis of Recent Census Data." Report to the Consumer Federation of America and Capital Research Associates. 1999. See also Robinson, J. and Lewis, G. "The Developing Payday Advance Business: The Next Innings: From Emergence to Development." Report prepared for Stephens, Inc., 1999. <http://stephens.com/research>.

[54]Lee, J. and Hogarth, J. "The Price of Money: Consumers' Understanding of APR and Contract Interest Rates." **Journal of Public Policy and Marketing** (Spring 1999) 18:67.

[55]Robinson, J. and Lewis, G. "The Developing Payday Advance Business: The Next Innings: From Emergence to Development." Report prepared for Stephens, Inc., 1999. <http://stephens.com/research>.

[56]Gallagly, E. and Dernovsek, D. (2000). "Fair Deal. Creating Credit Union Alternatives to Fringe Financial Services." Center for Professional Development, Credit Union National Association, Inc.

[57]Public Interest Research Groups (PIRGs) and The Consumer Federation of America (CFA). "Show Me the Money," February 2000.

[58]Lewis, G. "Non-Bank Financial Service Industry Notes." Report prepared for Stephens, Inc., March 23, 2000. <http://stephens.com/research>.

[59]U.S. Senate Committee on Governmental Affairs. Testimony of Jean Ann Fox, Consumer Federation of America at a forum on "Payday Lending." Washington, DC, December 15, 1999.

[60]Robinson, J. and Lewis, G. "The Developing Payday Advance Business: The Next Innings: From Emergence to Development." Report prepared for Stephens, Inc., 1999. <http://stephens.com/research>.

[61]Skillern, P. "How Payday Lenders Make their Money," April 2001. Report prepared for Community Reinvestment Association of North Carolina. <http://cra-nc.home. mindspring.com>.

[62]Woodstock Institute. "Unregulated Payday Lending Pulls Vulnerable Consumers into Spiraling Debt." Reinvestment Alert (Vol. 14, March 2000).

[63]Indiana Department of Financial Institutions. "Summary of Payday Lender Examinations Conducted from 7/99 through 10/99," 1999.

[64]Woodstock Institute. "Unregulated Payday Lending Pulls Vulnerable Consumers into Spiraling Debt." Reinvestment Alert (Vol. 14, March 2000).

[65]Report to the General Assembly on Payday Lending, Office of the Commissioner of Banks, North Carolina. February 22, 2001. p. 5-6.

[66]Iowa Division of Banking. "Survey of Banking Payday Loan Survey," December 2000.

[67]Woodstock Institute. "Unregulated Payday Lending Pulls Vulnerable Consumers into Spiraling Debt." Reinvestment Alert (Vol. 14, March 2000).

[68]National Consumer Law Center (NCLC). "Payday Lender Collection Threats Derailed," NCLC Reports, May/June 1999, vol 17.

[69]National Consumer Law Center (NCLC). "Spotlight: Payday Lending." NCLC Reports, November/December 1999, vol. 18.

[70]Federal Home Loan Mortgage Corporation. "Automated Underwriting Report: Making Mortgage Lending Simpler and Fairer for America's Families," September 1996.

[71]Community Reinvestment Association of North Carolina. "Introduction to Predatory Lending," 2000. <http://cra-nc.home.mindspring.com>.

[72]Lax, H., et. al. "Subprime Lending: An Investigation of Economic Efficiency" (February, 2000 unpublished paper).

[73]Joint Center for Housing Studies of Harvard University. "Understanding Predatory Lending: Moving Toward a Common Definition and Workable Solutions," 1999.

[74]Standard and Poor's. "Subprime Prepayment Penalties Spur NIMS, Criteria," January 4, 2001. <http://biz.yahoo.com/bbw/010104/ny_s_p.html>.

[75]Coalition for Responsible Lending. Comments to the Federal Reserve Board on proposed HOEPA regulations. (Docket #R-1090, February 20, 2001).

[76]U.S. Census Bureau. "Statistical Abstract of the United States: 2000," 2000.

[77]National Training and Information Center. "Preying on Neighborhoods. Subprime Mortgage Lending and Chicagoland Foreclosures," September 1999.

[78]Gruenstein, D. and Herbert. C. "Analyzing Trends in Subprime Originations and Foreclosures: A Case Study of the Atlanta Metro Area." A report prepared for Abt Associates Inc, February 2000.

[79]National Consumer Law Center. "The Cost of Credit: Regulation and Legal Challenges," 2000.

[80]Caskey, J. "Lower Income Americans. Higher Cost Financial Services." Filene Research Institute Center for Credit Union Research, 1997.

[81]Drysdale, L. and Keest, K. "The Two-Tired Consumer Financial Services Marketplace: The Fringe Banking System and its Challenge to Current Thinking about the Role of Usury laws in Today's Society." **South Carolina Law Review** (Spring 2000) 51(3):590-616.

[82]U.S. Public Interest Research Group (PIRG). "Don't Rent to Own: PIRG's 1997 National Rent-To-Own Survey," June 1997.

[83]U.S. Public Interest Research Group (PIRG). "Don't Rent to Own: PIRG's 1997 National Rent-To-Own Survey," June 1997.

[84]Drysdale, L and Keest, K. "The Two-Tired Consumer Financial Services Marketplace: The Fringe Banking System and its Challenge to Current Thinking about the Role of Usury laws in Today's Society." **South Carolina Law Review** (Spring 2000) 51(3):590-616.

[85]Drysdale, L and Keest, K. "The Two-Tired Consumer Financial Services Marketplace: The Fringe Banking System and its Challenge to Current Thinking about the Role of Usury laws in Today's Society." **South Carolina Law Review** (Spring 2000) 51(3):590-616.

[86]Note: National banks that offer RALs are allowed to "export" interest rates from a state with less stringent regulations to the borrower's state, and avoid state laws, including usury ceilings.

[87]Johnston, D. "Block Is Ordered to Stop Advertising 'Rapid Refunds' of Taxes." **New York Times** (February 28, 2001).

[88]Consumer Financial Services Law Report. "Federal Court Orders H&R Block to Stop Advertising Loans as 'Refunds,'" (March 30, 2001) 4:18.

[89]Johnston, D. "Block Is Ordered to Stop Advertising 'Rapid Refunds' of Taxes." **New York Times** (February 28, 2001).

[90]State of Colorado v. Cash Now Store, Inc. AARP has filed a "friend of the court" brief in State of Colorado v. Cash Now Store, Inc. The brief urges Colorado's highest court to look at the substance of a transaction—not its form—in order to determine whether transactions are in fact loans and therefore are subject to consumer protection laws.

[91]AARP. (2000). *Public Policy Agenda.* <http://www.aarp.org/legiply.html>. See also Stegman, M. "Electronic Benefit Transfer's Potential to Help the Poor." Brookings Institute, March 1998. There are approximately 346 community development credit unions working in underserved areas.

[92]Written communication from J. Traier, Deputy Commissioner, Division of Banking, New Jersey Department of Banking and Insurance to C. Johnson, Director, Cash Management, Policy and Planning Division, Financial Management Service, U.S. Department of the Treasury (12/16/97). Letter from J. Fox, Consumer Federation of America, F. Torres, Consumers' Union, M. Sanders, National Consumer Law Center, R. Nader, E. Mierzwinski, U.S. Public Interest Research Group to Hon P. Gramm and Honorable P. Sarbanes, Senate Banking Committee regarding the pending nomination of J. Hawke as Comptroller of the Currency (OCC) (September 9, 1999). Statement of New York and U.S. Public Interest Research Groups (June 27, 2000). <http://www.house.gov.banking/62700mu.htm>.

[93]Doyle, J., Lopez, J., and Saidenberg, M. "How Effective is Lifeline Banking in Assisting the 'Unbanked'?" Current Issues in Economics and Finance. Federal Reserve Bank of New York, June 1998. <http://www.newyorkfed.org/rmaghome/curr_iss/ci4-6.htm>.

[94]U.S. Department of Treasury. "The First Accounts Initiative" Fact Sheet, November 2000.

[95]Goldstein, A. and Kessler. "Budget Trims Take Parts of Clinton's Vision: Bush's Spending Plan Shows a Shift in Priorities, Preparing the Way for Tax Cuts." **Washington Post** (April 1, 2001).

[96]Gangglass, E. and Kane, A. "Building Assets and Economic Independence through Individual Development Accounts." National Governors' Association Reports Online, January 31, 1997. Nine states provide financial matches for IDAs. See also <http://www.house.gov/banking/62700gen.htm> Statement of Treasury Undersecretary G. Gensler (June 27, 2000); Kotsiras, J. Electronic communication to Financial Services Education Coalition on Federal Deposit Insurance Corporation (FDIC), Department of Labor. Money Smart Program. See also Lee, J. and Hogarth, J. "The Price of Money: Consumers' Understanding of APRs and Contract Interest Rates" regarding the need for financial education. (Spring 1999). See also U.S. Housing and Urban Development and U.S. Department of Treasury. "Curbing Predatory Home Mortgage Lending: A Joint Report,"(June 2000. <http://www.huduser.org/publications/pdf/treasrpt.pdf>.

[97]Eskin, S. "Check Cashing: A Model State Statute." Report prepared for AARP Public Policy Institute (D16910), 1999.

[98]Renuart, E. "Payday Loans: A Model State Statute." Report prepared for AARP Public Policy Institute (D16954), 2000. States with specific payday loan legislation includes provisions such as: licensure of check cashers and payday lenders; interest rate caps; payday rollover limits; and limitations upon the lender's ability to threaten depositing borrowers' bad checks.

[99]U.S. Housing and Urban Development and U.S. Department of Treasury. "Curbing Predatory Home

Mortgage Lending: A Joint Report," June 2000. <http://www.huduser.org/publications/pdf/treasrpt.pdf>.

[100]Fox, J. Electronic correspondence on April 18, 2001. The state of Colorado publishes the most extensive annual statewide aggregate payday loan data.

[101]U.S Housing and Urban Development and U.S. Department of Treasury. "Curbing Predatory Home Mortgage Lending: A Joint Report," June 2000. <http://www.huduser.org/publications/pdf/treasrpt.pdf>.

[102]Eskin, S. "Check Cashing: A Model State Statute." Report prepared for AARP Public Policy Institute (D16910), 1999. See also Renuart, E. "Payday Loans: A Model State Statute." Report prepared for AARP Public Policy Institute (D16954), 2000.

[103]Eskin, S. "Check Cashing: A Model State Statute." Report prepared for AARP Public Policy Institute (D16910), 1999. See also Renuart, E. "Payday Loans: A Model State Statute." Report prepared for AARP Public Policy Institute (D16954), 2000.

[104]Renuart, E. "Payday Loans: A Model State Statute." Report prepared for AARP Public Policy Institute (D16954), 2000. The 20 states are: Alabama, Alaska, Arkansas, Connecticut, Florida, Georgia, Indiana, Maine, Maryland, Massachusetts, Michigan, New Jersey, New York, North Dakota, Oklahoma, Pennsylvania, Rhode Island, Vermont, Virginia, West Virginia (and Puerto Rico and the Virgin Islands). (Electronic correspondence from J. Fox, Consumer Federation of America with 2001 legislative updates this list based on recent legislative activity. New Hampshire is removed and Arkansas, Florida, and Indiana are added to the list in the original publication.)

[105]Fox, J. Written correspondence of June 13, 2000. The six states are: Arkansas, Virginia, West Virginia (statute); and New Hampshire, Virginia, Louisiana (court decision/attorney general opinion).

[106]Renuart, E. Electronic correspondence of April 20, 2001. The seven states that permit title loans by legislation are: Florida, Georgia, Kentucky, Louisiana, Minnesota, New Hampshire, and Tennessee. Alabama permits via a court decision.

[107]Inside B&C Lending. "Fed Proposes Changes to HOEPA, Cuts the Rate Trigger to 8 Percent," (December 18, 2000) 5:25.

[108]On July 3, 2001, the Illinois Association of Mortgage Brokers, which represents some 500 mortgage brokers and lenders in Illinois, filed a federal lawsuit against the state, arguing that federal law preempts the Illinois regulations. They are also seeking an injunction stopping the enforcement of the rules. (Illinois Association of Mortgage Brokers v. Office of Banks and Real Estate, et al., No. 01 C 5151 (E.D. Ill., filed July 3, 2001)).

[109]Inside B&C Lending. "State, Local Governments Turn Up the High-Cost Heat," (December 18, 2000) 5:25.

[110]Renuart, E. "Payday Loans: A Model State Statute." Report prepared for AARP Public Policy Institute (D16954), 2000. The seventeen states that require the posting of fees are: Arizona, Arkansas, Colorado, Florida, Hawaii, Iowa, Kentucky, Louisiana, Minnesota, Mississippi, Nebraska, Nevada, Ohio, South Carolina, Texas, Utah, and Washington (and District of Columbia). The nineteen states that require written agreement/notice are: Arizona, Arkansas, California, Colorado, Hawaii, Indiana, Kansas, Minnesota, Mississippi, Montana, Nebraska, Nevada, North Carolina, Ohio, South Carolina, Tennessee, Texas, Utah, and Wyoming. The eight states that require TILA disclosure by state law are: Arizona, Colorado, Kentucky, Nevada, South Carolina, Tennessee, Utah, and Wyoming.

[111]Renuart, E. "Payday Loans: A Model State Statute." Report prepared for AARP Public Policy Institute (D16954), 2000.

[112]Drysdale, L and Keest, K. "The Two-Tired Consumer Financial Services Marketplace: The Fringe Banking System and its Challenge to Current Thinking about the Role of Usury Laws in Today's Society." **South Carolina Law Review** (Spring 2000) 51(3):590-616.