

Payday Lenders Evade Regulations:

A Summary of Findings from Surveying Payday Lending Establishments

California Reinvestment Coalition

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Background

The California Reinvestment Coalition is a Community Reinvestment Act advocacy coalition of more than 245 nonprofit organizations and public agencies. CRC has launched an anti-predatory payday lending campaign. In hopes of revealing the predatory nature of payday loans, CRC's members and allies surveyed 253 payday lending outlets in California. The surveys enabled CRC to systematically collect evidence that the current operations and terms of the payday loan product in its current form do not aid cash-strapped borrowers. CRC's findings reveal that consumers are being misinformed about the cost and terms of the loan when in the process of securing a payday loan and not being given appropriate information about their rights and protections as consumers under the law. .

The payday lending industry has grown exponentially from a few hundred locations in the early 1990s to nearly 25,000 locations nationwide. There are now more payday lending establishments than there are McDonald's and Starbucks locations *combined*. Nationwide, the Industry earns \$6 billion in revenue. In California, there are 2,501 Payday Lending Licensees¹ and Californians spend more than \$757 million annually² on payday loan fees.

With such a massive small-dollar lending industry operating where an estimated 1.5 million California households³ use a payday lender 11 times annually⁴, it would be reasonable to assume that California would have strict regulations to ensure compliance with the law, as well as robust protections for consumers against predatory payday lending. However, California has extremely lenient laws governing payday lenders. The reporting requirements of payday lenders to their regulatory agency, the California Department of Corporations, are minimal. This laissez-faire nature that "regulates" the payday industry pushed many financially-struggling consumers to turn to consumer advocacy groups to find small-dollar loan alternatives, as well as advocacy for greater restrictions for the payday industry.

Federal legislation has been passed to restrict the predatory nature of payday loans, at least with respect to United States military personnel. In 2006, Congress passed the Talent-Nelson Amendment which will cap payday loans extended to military personnel and their dependents at 36 percent. Such legislation was passed in the wake of growing

¹ Figures received from the California Department of Corporations, February 8, 2007.

² "The Financial Divide: An Uneven Playing Field" by Alan Fisher, California Reinvestment Coalition, March 2005.

³ "Preying on the Poor" by Edward Robinson, Bloomberg Magazine, January 2005. This is 13.3 percent of U.S. households. Applied to California, it is 1,529,882 households.

⁴ "California: Stop legal loan sharks" Editorial, Los Angeles Times, p. B10, May 14, 2001.

criticism and concern about the payday loan product as being too costly, which has forced many consumers into a debt trap. With APRs ranging from an average of 460 percent to upwards of 2,000 percent for a loan of \$255, such a product deserves much criticism.

Summary of Findings

The most significant findings from CRC's payday lending surveys are:

- 32 percent of the payday outlets did not post a complete Schedule of Fees,⁵ which is necessary in order for consumers to be knowledgeable about how much the loan will cost.

Most payday outlets post many advertisements in their establishments regarding the products and services they offer, such as pre-paid phone cards, wire-transfers, and check cashing, but 32 percent of payday outlets neglected to post the Schedule of Fees. The complete Schedule of Fees is necessary in order for consumers to understand how much interest and fees they will pay on a payday loan. For those payday lenders who posted the Schedule of Fees, a majority of their postings were indiscernible, failing to comply with the law that mandates postings have fonts of the APRs no less than ½ inch in height, and some posted incorrect annual percentage rates which misleads customers.

- 70 percent of the payday lending representatives did not know what the APR of a \$255 loan or gave an inaccurate APR for the loan.

Clearly, all payday lending representatives should be well-versed and informed about the product they are selling to a consumer. CRC's surveyors found that 70 percent of payday lending representatives did not know the APRs that accompanied their payday product. This was alarming as the APRs that are assessed average 460%.

- According to the tellers who knew the APR of their payday product, the lenders' APR for a payday loan varied from the average 460% to as high as 2147%.

The Annual Percentage Rates of the payday loans varied too greatly from one store to another, according to what the payday lending representatives would reveal, and such

⁵ California Financial Code Section 23035 (d2) instructs that the schedule of all charges and fees giving the annual percentage rates for 14 day loans and 30 day loans must be provided in a chart for consumers to see in all establishments.

inconsistencies were present even among payday lending establishments within the same company. There must be an interest rate that is not only reasonable, but also consistent that lenders should be forced to comply with. Otherwise, there is nothing to ensure that lenders are not arbitrarily assessing their consumers more exorbitant fees than what is already being assessed.

- 68 percent of payday lenders did not allow their customers to extend the term of the loan from two weeks to one month in order for the customer to more affordably pay back the loan.
- Of the lenders willing to extend the term of the loan from two weeks to one month, more than 25 percent charged an additional fee (According to the law, the extension of the term of the loan from two weeks to one month can be done at the discretion of the lender, but it is illegal for the lender to charge an additional fee to do so).⁶

Since 68 percent of the payday lenders still did not allow their customers to extend the term of their loans from two weeks to one month, how can the payday loan industry make the claim that they have changed their policies to accommodate consumers to make the loans more affordable with a lengthier repayment period?

Furthermore, more than 25 percent of the lenders who did allow an extension of the term of the loans were charging their customers an additional \$45 fee for a \$255 loan. This simply gouges the consumer even more and is something clearly prohibited by law, but lenders continue to engage in illegal practices because they know there will be no enforcement action taken against them to ensure compliance.

- 16 percent of lenders encourage or suggest that their customers get additional Payday Loans from other companies, while the consumer already has a loan outstanding.
- 4 percent of payday lenders encouraged existing customers to roll over their loans into a new loan and pay an additional fee, if the customer is unable to pay the entire loan at the end of the loan's two-week term.

As one would expect, the payday industry may be inconsistent with the terms of its loans and the APR it charges, but it is however consistent about encouraging its consumers to take out loans from other companies simultaneously. The companies do this knowing that the customer is already struggling with the one payday loan they have outstanding. Volunteers administering the surveys were even offered references in order to secure additional loans either at a payday lender within their same company, or offered a phone call reference to a different payday loan establishment close to the vicinity of the lender.

⁶ California Financial Code Section 23026 (b) prohibits an additional fee to be charged to customer if the term of the loan is extended at the discretion of the lender.

Such a fact is important to note, as many victims of predatory payday lending are convinced that lenders know that consumers take out loans from multiple payday lending establishments simultaneously, in order to pay back outstanding payday loans. The payday loan industry often argues that it provides a high-risk product and therefore, is justified in charging triple-digit APRs because of the shorter term of the loan. However, this is a myth that must be debunked as research conducted by the Center for Responsible Lending shows that 99 percent⁷ of all payday loans are rolled over into a new loan, thereby forcing the consumer to pay even higher interest rates. Furthermore, the typical payday loan consumer takes out between 9-13 payday loans a year⁸ from multiple payday lenders simultaneously. Therefore, if payday loans were treated as long-term high interest loans, which are ultimately what they become, only then can one truly understand the predatory nature of such a product. Thus, one payday loan at 460 percent APR easily becomes multiple payday loans outstanding for a consumer now trapped in a debt cycle.

- Although clearly prohibited by law, there were lenders asking for auto titles as collateral in conjunction with securing a payday loan.⁹

84 percent of payday lending establishments surveyed did not have postings notifying consumers that “*No collateral may be accepted in conjunction with the loan.*” More data must be gathered to determine to what extent people are in such economic hardship that they are forced to provide collateral in order to secure payday loans.

- 38 percent of the lenders do not give consumers a “Right of Rescission” of the loan; which allows consumers who change their mind to give back money without having to pay a fee.¹⁰

The largest payday lending industry trade association, Community Financial Services Association of America, has agreed to offer a cost-free mandatory Right of Rescission among its members in which a consumer may return the full amount of the loan within the first 24 hours of taking out the loan, and can not be assessed any fee. However, many lenders were not in compliance with this agreement, and therefore are taking advantage of consumers in yet another way. 38 percent of lenders surveyed would allow the money to be returned, but they would also keep the \$45 fee for a \$255 loan.

⁷ “Quantifying the Economic Cost of Predatory Payday Lending” by Center for Responsible Lending, p.3, 2003.

⁸ Consumer Federation of America, Payday Loan Fact Sheet. November 30, 2005.

⁹ California Financial Code Section 23035 (c5) prohibits lenders from accepting collateral in conjunction with a deferred deposit transaction.

¹⁰ Community Financial Services Association of America’s “Best Practices for the Payday Advance Industry” #6 requires that its members allow customers a cost-free right to rescind on payday loans within 24 hours of taking out the loan.

- 51 percent of payday lenders did not provide information or the necessary postings to notify consumers that they could not be criminally prosecuted in order to fulfill the obligations of the loan.¹¹

The criminal postings notifying the consumer of their rights against criminal prosecution is necessary in order for consumers to avoid falling victim to intimidation and harassment. Since many consumers may not know their rights and protections under the law, they may be easily intimidated with exorbitant fees or even criminal prosecution if they were unable to fulfill the obligations of the payday loan.

- 78 percent of payday lenders did not provide the California Department of Corporations toll-free number 1- (866) ASK CORP (275-2677).¹²

In order for payday lending customers to express their concerns, the California Department of Corporations instructs that all establishments should provide the toll-free number 1-(866) ASK CORP to report complaints and concerns regarding the services and products provided by the establishments. However, 78 percent of the establishments did not have the toll-free number available for consumers to call. Furthermore, 72 percent of the payday lenders did not provide their own toll-free number in order for customers to report complaints or concerns to the company. Therefore, there are potentially many concerns and complaints regarding payday loans, but the absence of a consumer concerns toll-free hotline greatly reduces the likelihood that regulators or the public would learn about the problematic nature of the product if consumers did not have a means to report their concerns in the first place.

- 80 percent of payday lending establishments surveyed were not in compliance with the law requiring them to post the following disclaimer stating *“The check is being negotiated as part of a deferred deposit transaction made pursuant to Section 23035 of the Financial Code and is not subject to the provision of Section 1719 of the Civil Code. No customer may be required to pay treble damages if this check does not clear.”*¹³

There are cases now coming into fruition in which litigation has been filed against payday loan customers to pay treble damages if they were unable to fulfill the obligations of the payday loan. Because this was not posted in 80 percent of establishments, consumers are not aware of their rights and protections in a court of law if they default on their loan.

¹¹ California Financial Code Section 23035 (e9) prohibits prosecution or the threat of prosecution to collect on a payday loan.

¹² California Financial Code Section 23035 (c4) requires that lenders provide the California Department of Corporations toll-free number to customers in order to report complaints and concerns.

¹³ California Financial Code Section 23035 (i) prohibits customers from being required to pay treble damages if they do not meet the obligations of a payday loan.

Findings via Area Distribution:

The percentages below were derived by the total number of payday lending outlets visited out of the total number of lenders per area according to the California Department of Corporations: CRC has visited more than 10 percent of the 2,501 payday lending licensees in California. The number of surveys conducted per area is as follows: Los Angeles (45 of 184), Sacramento (39 of 79), San Diego (77 of 79), Oakland (20 of 20), San Francisco (32 of 39), Van Nuys (23 of 23), National City (4 of 10), Oceanside (10 of 22), Miscellaneous (3), and 15 closed establishments statewide.

	Los Angeles	Van Nuys	San Diego	National City	Oceanside	Oakland	Sacramento	San Francisco
Violations								
Did not have the necessary postings to notify consumers that they could not be criminally prosecuted in order to fulfill their obligations of the loan.	56%	23%	57%	25%	80%	55%	41%	47%
Did not post a complete Schedule of Fees, which is necessary in order for consumers to be knowledgeable about how much the loan will cost.	42%	27%	31%	0%	10%	35%	21%	44%
Payday Lending representatives did not know what the APR of a \$255 loan was or provided an inaccurate APR for their payday loans.	87%	73%	66%	50%	80%	75%	67%	72%
Did not post the California Department of Corporations toll-free number, in order for consumers to report their complaints and concerns about the service or payday loan products.	93%	91%	83%	100%	80%	45%	72%	56%
Did not give customers the "Right of Recission" allowing customers to bring back the loan and receive a full refund as long as returned within 24 hours of taking out the payday loan.	42%	41%	36%	0%	20%	35%	26%	56%

Did not allow consumers to extend the term of the loans from two weeks to one month									
		73%	64%	75%	50%	60%	40%	72%	63%

Conclusion

It is CRC's hope that the findings of these surveys will be taken into consideration by the California Department of Corporations and Legislators, as well as other consumer advocacy groups in understanding the severity of the predatory payday lending problem that has affected so many Californians. The findings, as well as predatory payday lending victims' stories, will hopefully compel the California Department of Corporations to act in the interest of California consumers and take appropriate regulatory measures to both protect consumers from predatory payday loans and also ensure compliance with the law on the part of the lenders. There must be continued analysis of the growth and trends of payday lending, in order to best identify how to address the needs of consumers. Only the growth of bank and savings and loan branches in lower income neighborhoods and communities of color will alleviate the current usurious conditions that plague too many Californians. More importantly, the traditional banking institutions and credit unions need to compete with the payday lending industry by creating and implementing a well-branded and affordable small-dollar loan.

About this Survey

Surveys for the California Reinvestment Coalition's Payday Campaign were conducted from October 2006 through March 12, 2007 in the following areas: San Francisco, Sacramento, Los Angeles, San Diego, Oakland, Oceanside, National City, and San Fernando Valley. Surveyors visited more than 10 percent of the payday lending in California.

The payday lending establishments surveyed varied from the largest companies to smaller local payday lending establishments. 99 percent of the locations visited were in areas where there was a high concentration of payday lending establishments. The payday lending establishments visited are provided below, with multiple locations of the same payday lending company surveyed. There were 253 surveys completed among 81 different payday lending companies. More than one-third of the lenders surveyed were members of the Community Financial Services Association of America, another more than one-third of the lenders were a part of other larger payday lending companies not necessarily members of CFSA, and the remaining one-third were smaller lenders with between 1 and 3 branches visited. The payday lending companies surveyed were:

Advance America		Check Center		Papa Cash Payday Loan Corp
Advance Cash Express		Check Etc		Pawnshop/Case de Empeno
Advance Til Payday		Check into Cash of California		Payday Advance Cash America
All City Financial		Check 'N Go		Payday Express
Allied Cash Advance		Check Point Check Cashing		Payday Loan

America's Cash Express	Checkmate	Payday Loan Corp (& Check Cashing Etc)
Army Check Cashing	Checks Cashed	Payday Your Way
Bayview Check Cashing	Checks Cashed 4 Less	People's Check Cashing
Buck oo Bucks	Checks Cashed Here	Popular Cash Express
California Budget Finance	Checks Cashed Payday Loans	Pronto Cash Advance
California Check Cashing	City Check Cashers	Quick Cash of CA
Cambiamos Cheques	Continental Currency	Ready Money
Cash 'N Advance	Dollar Financial (Money Mart)	Ria Financial Services Inc
Cash 'N Go	Dollar Smart Money Center	Royal Loan
Cash 'N More	Elite Mt., Inc	San Francisco Check Cashing
Cash 1	Fast Auto and Payday Loans	Scotty's Check Cashing
Cash A Check	Fast Bucks	Sun Cash
Cash Advance	Fast Money	Super Pawn
Cash America Payday Advance	King's Jewelry and Loan	The Check Cashing Place, Inc
Cash Check	Lots A Loot	The Check Depot Corp
Cash Connections, Inc	Mission Check Cashers	Third Street Quik Check
Cash Express for Less	Money Guy	Uncle Buck's
Cash Plus	Money Tree	United Cash A Check
Cash Point Payday Advance	New Money Express Inc	United Check Cashing
Cash-4-Checks	Nix Check Cashing/Payday Today	USA Checks Cashed
Check Advance of San Diego	Pacific Cash Advance	Van Nuys Check Cashing
Check Cashing	Pacific Western Financial	Western Check Cashers

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The primary author of this summary of findings is Charisse Ma Lebron of the California Reinvestment Coalition. The views expressed in this summary of findings are those of the author and are not necessarily reflective of the views of the organizations or individuals who participated in CRC's campaign. Any errors or omissions are strictly the responsibility of the author.