# Hunting Down the Payday Loan Customer 

## The Debt Collection Practices of Two Payday Loan Companies

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## Executive Summary

The payday loan industry in Illinois has continued to violate short term lending laws and develop new products with slightly modified terms and conditions specifically to avoid the legislation and regulation designed to protect borrowers seeking short term emergency forms of credit. The newest iteration, the high cost installment loan, has virtually replaced the traditional two week or 31-day payday loans in Illinois and is not covered by the strong consumer protections passed by the General Assembly as part of the Payday Loan Reform Act.

To better understand what types of abuses borrowers are facing, the Monsignor John Egan Campaign has examined the court records of borrowers taken to court by two companies now offering these new payday installment loans, Americash and Cottonwood (doing business as The Cash Store) in 2005 and 2006. These loans, which were made before the Payday Loan Reform Act (PLRA), show the types of abuses and aggressive litigation borrowers can expect from these companies currently offering loans designed to circumvent the law.

## Key Findings Since 2004

- The Payday Loan Reform Act is working, but lenders are working hard to evade the law, offering payday installment loans that are expensive and dangerous.

The consumer protections provided by the PLRA have helped to reduce to the cost of using payday loans in Illinois by 39 percent, saving borrowers about $\$ 25$ per $\$ 300$ loan. However, in an effort to evade these protections, lenders have adapted longer term payday installment loans that are not covered by the act (Figure 1).

Figure 1. APRs of Installment Loans Before and After the Payday Loan Reform Act


- One in three borrowers taken to court by The Cash Store had at least one renewal or "roll over." These renewals provide strong evidence that borrowers who take out these types of loans often enter into a cycles of debt and cannot pay off old loans without resorting to new ones. Since the passage of the PLRA, in a phone survey of a dozen Cash Stores across Illinois conducted in the Summer of 2006, the Egan Campaign identified that Cash Stores were now offering a renewal-driven 140-day loan with nine interest-only payments (similar to nine automatic renewals) and an insurmountable balloon payment of the entire principal. Roll over information was not indicated on Americash contracts reviewed.
- Women made up a large portion of payday loan borrowers taken to court. Of the Americash cases reviewed, 72 percent of the defendants were female, with 23 percent male, and 5 percent gender unknown. Of The Cash Store cases, 66 percent are female, 21 percent are male, and 13 percent are unknown.
- Americash and The Cash Store court cases are heavily concentrated in minority communities. This provides further evidence that these communities are more likely to be impacted by high levels of non-productive debt. Nearly 70 percent of Americash borrowers with pending or complete court cases because of default were located in low- or moderate-income, predominately minority ZIP codes, with nearly 90 percent of cases located in predominately minority communities of any income.
- Borrowers often fail to appear in court, resulting in a default judgment in favor of the lender. In the event that a defendant does not appear in court, a default judgment is granted and the lender wins the case by default. Default judgments were granted in 51 percent of Cash Store cases and 22 percent of Americash cases.
- The average court award is almost twice the average loan amount. Court awards greatly exceed the loan principal, even if the borrower has already made interest payments that exceed the amount they originally borrowed. Americash was awarded $\$ 1,894$ for the average loan of $\$ 930$, almost twice the amount of the loan. The Cash Store was awarded $\$ 1,287$ for the average loan of $\$ 824$.
- The length of time between the loan date and the complaint date drastically increases the cost to borrowers in default. The average time between loan origination and the complaint date was 1.81 years for The Cash Store and 1.36 years for Americash.
- The average attorney's fee for Americash cases was $\$ 343$ and the average Cash Store case was $\$ 173$. Almost all Americash cases had an attorney's fee of $\$ 350$, regardless of the amount of the loan or the work that the attorney actually accomplished. The Cash Store fees ranged from $\$ 100$ to $\$ 325$.


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## Introduction

This report conducts a comprehensive analysis of the high cost installment loan products offered out by Americash and The Cash Store before the adoption of the Payday Loan Reform Act (PLRA) to better understand the default conditions borrowers are now facing as this type of product becomes the predominant loan product in the industry. Americash and The Cash store were selected because they are the two lenders most actively pursuing customers in default through the court system in Cook County, Illinois. This report examines 2004 and 2005 debt collection cases filed by Americash and the Cash Store for loans originated between March 2001 and February 2006. It demonstrates the predatory nature of payday lending-documenting the big game hunt mentality of lenders who stalk payday loan customers for excessive finance charges in an environment with few consumer protections, aggressive debt collection practices and high collection judgments. Further, payday lenders are effectively dragging out the chase of borrowers with the intention of prolonging their indebtedness.

This report begins with a description of changes in the Illinois payday loan industry before and after the approval of the Payday Loan Reform Act (PLRA) demonstrating the ability of the PLRA to reduce the cost of borrowing and provide consumer protections that keep borrowers entering into a short term loan agreement from acquiring long-term non-productive debt. The second section describes the terms and conditions, as well as the default provisions and court outcomes, of installment loans offered by Americash and The Cash Store before the PLRA went into effect. The outcomes make it clear that the companies offering unregulated payday installment loans are offering an expensive and dangerous product and that these new loans should be subject to the same strong consumer protections passed by the General Assembly for traditional short-term payday loans.

## The Payday Loan Industry Since the Passage of the PLRA

The payday loan industry in Illinois also has a long history of adapting its short term loan products to ensure that they are not subject to the short term loan restrictions adopted by the General Assembly and state regulators. By offering an unregulated product, the industry is able to continue charging exorbitant interest rates, offer endless cycles of expensive "roll overs" and aggressively pursue borrowers in the court system.

In March of 2004, the Egan Campaign published Greed: An In-depth Study of the Debt Collection Practices, Interest Rates, and Customer Base of a Major Illinois Payday Lender, which provided concrete evidence of the aggressive and often litigious payday loan debt collection practices in Chicago. That report was a study of 444 debt collection cases filed against payday loan customers by Americash Loans, LLC between 2002 and 2003.

Since the Monsignor John Egan Campaign last examined the loans offered by Americash in 2004, there have been significant changes in the regulation of payday loans in Illinois. Based on the recommendations in the 2004 report, the Egan Campaign developed the protections included in the Illinois Payday Loan Reform Act that went into effect in December 2005. The PLRA requires that all short-term lenders in Illinois offering loans with annual percentage rates (APRs) exceeding 36 percent and terms less than 120 days provide additional consumer protections to help keep borrowers out of longterm, unproductive debt. The protections include:

1. A fee cap of $\$ 15.50$ per $\$ 100$ to reduce the cost of using payday loans for every borrower
2. An industry wide loan cap limiting payday loan principals to 25 percent of a borrower's income or $\$ 1,000$, which ever is less
3. Limits borrowers to 45 days of continuous indebtedness before a mandatory debt-free recovery period or repayment plan
4. A 7-day recovery period to break the cycle of debt created by back-to-back loans
5. A repayment plan that gives any borrower who takes out a payday loan the opportunity to enter into a fee-free repayment plan
6. Special protections for military personnel, including a limit on wage garnishments
7. A statewide consumer reporting service to aid enforcement of the new protections

Table 1 shows the effect of the PLRA on the cost of borrowing a short-term payday loan in Illinois. Before the PLRA went into effect, lenders charged borrowers an average APR in excess of 573 percent. Since the passage of the Act, the fee cap and other consumer protections have reduced the cost of borrowing the average payday loan to about 351 percent-a 39 percent decrease that saves borrowers about $\$ 25$ on the average loan.

Table 1. Traditional Payday Loans Before and After the Payday Loan Reform Act ${ }^{1}$

|  |  |  |  | Cost of a $\$ 300$ Percent <br> Loan for 14 days  | Change |
| :--- | ---: | ---: | ---: | ---: | ---: | ---: | ---: |

[^0]
## Payday Lenders are Violating the PLRA and Other Laws

Since the PLRA went into effect in December 6, 2005, the Illinois Department of Financial and Professional Regulations (DFPR), which regulates payday and payday installment lenders, has issued dozens of enforcement actions and levied hundreds of thousand of dollars of fines against payday lenders. Americash and the Cash Store, two companies whose lending practices are highlighted in this report, have received some of the highest fines for violating the PLRA.

Americash Loans and another large lender, Advance America, have committed several violations of the PLRA and been fined hundreds of thousands of dollars. In July 2006, Americash was fined $\$ 190,000$ by DFPR for failing to comply with the PLRA, ignoring consumer protections, and charging finance charges higher than those allowed by law. ${ }^{2}$ Advance America was fined over $\$ 75,000$ by DFPR for multiple violations in May 2006. ${ }^{3}$ Advance America made loans in excess of the maximum term of indebtedness stipulated by the PLRA and over the maximum loan amount. In addition, Advance America violated the PLRA by making more than two payday loans to one borrower.

In April 2006, DFPR shut down four payday installment loan stores operated by the Payday Loan Store of Illinois. ${ }^{4}$ The charges against the stores included knowingly making a loan to consumer with a Social Security number belonging to a dead person, forging documents, and falsifying signatures. In addition, the company discarded the consumer disclosure statements they were required by PLRA to give payday loan borrowers.

Payday lenders have repeatedly engaged in deceptive and misleading advertising to discourage borrowers from taking out loans with consumer protections afforded by PLRA. The Cash Store was fined $\$ 10,000$ for displaying advertising that inflated the finance charges of PLRA loans, falsely stating that they are a more expensive option than installment loans. ${ }^{5}$ Other payday lenders, including Illinois Lending Corporation and Advance America, have been fined for similar violations. ${ }^{6}$

[^1]
## Some Lenders Evading the Law with "Look Alike" Loans

In addition to flagrant violations of the Act, many Illinois lenders have begun offering "look alike" loans which evade most of the mandated consumer protections. Since the PLRA regulates loans of 120 days or less, the Illinois payday loan industry increasingly marketed and offered their customers payday installment loans with terms of 121 days or more. These new "look alike" loans, called payday installment loans, have many of the same features as installment loans offered before the act, but with a significantly higher price tag. Payday installment lenders have also developed increasingly sophisticated methods of securing their loans, such as directly debiting payments from a borrower's checking account, or requiring wage assignments through the borrower's employer.

Table 2 shows the cost of the typical payday installment loans made after the passage of the PLRA compared to the typical installment loan offered as a low cost alternative to 14- or 31-day payday days before the passage of the PLRA. These same loans now have APRs of almost 400 percent, over five times the cost of installment loans before PLRA.

Payday installment lenders now offer two distinct, but equally dangerous, products designed to evade the PLRA. Some products, like the payday installment loans offered by Americash require the borrower to pay off the loan in equal installments, much like a mortgage or car payment. Unlike these types of loans, however, Americash payday installment loans carry interest rates of nearly 300 percent. Many of these new payday installment loans are little more than traditional short-term payday loans with several "built in" roll-overs. The Cash Store in particular offers this type of product-a 140 day "look alike" loan requiring nine biweekly interest payments, with a final balloon payment of the entire principal amount. For the borrower, this "look alike" loan is essentially a 14-day payday loan with 10 built in rollovers. Like 14-day payday loans, the final balloon payment is extremely difficult to pay in full, necessitating the additional refinancing and cyclical debt common with the 14 -day payday loan product. This spiral of prolonged payday loan debt is precisely what the General Assembly attempted to correct with the PLRA by limiting indebtedness of no more than 45 days.

## Table 2. Installment Loans Before and After the Payday Loan Reform Act ${ }^{7}$

|  |  |  |  |  | Cost of a \$300 | Percent <br> Lype of Installment Loan for 140 days | Change |
| :--- | ---: | ---: | ---: | ---: | ---: | ---: | ---: |

[^2]
## Debt Collection Practices of Two Payday Installment Lenders

The PLRA was designed to ensure that borrowers in default would not be liable for legal fees or additional interest, and would be able to use a fee-free repayment plan to help break the cycle of debt. In order to understand the risk to borrowers of unregulated payday installment loans, which are made without any of these protections, this report examined the court cases of 194 borrowers who had defaulted on pre-PRLA installment loans offered by Americash and filed in 2005 and 2006. ${ }^{8}$ In addition, shortterm payday loans offered by The Cash Store, which previously only offered payday loans but has completely switched to the payday installment model since the passage of the PLRA were also analyzed.

All post-PLRA installment loans were designed to evade the consumer protections provided in the act. As a result, there is very little information on the terms and conditions of these loans since none of these loans have been entered into the statewide consumer reporting database. However, by examining the loans made by these two companies, and the court records of the loans in default, this report attempts to illustrate the hazards borrowers face when taking out a longer-term loan without the consumer protections offered by the PLRA.

Chart 2 shows that the frequency of debt collection court cases filed in Cook County, Illinois by Americash and the Cash Store from 1999 to July 2006. All of these cases are for loans originated before PLRA went into effect.


[^3]The court cases filed by Americash and The Cash Store are heavily concentrated in minority ZIP codes, providing further evidence that these communities are more likely to be impacted by high levels of nonproductive debt. Nearly 70 percent of Americash borrowers with pending or completed court cases because of default were located in low- or moderate-income, predominately minority ZIP codes, with nearly 90 percent of cases located in predominately minority communities of any income.

Figure 3 shows a summary of the distribution of payday and payday installment loan court cases filed by Americash and The Cash Store across the Chicago region, as mapped in Figure $4 .{ }^{\mathbf{1 0}}$

## Figure 3. Percent of Cases by ZIP code Income and Race/Ethnic Composition



[^4]Figure 4. Distribution of Payday and Payday Installment Loan Court Case


Table 3 contains the court case summary statistics including the average principal, information on refinancing, the use of wage assignments, average amount awarded by the court, attorney's fees, occurrence of default judgments, cases filed against woman, and the geographic distribution of borrowers by community income and minority composition.

Table 3. Summary of Court Cases

| Lender Characteristic | $\begin{gathered} \text { Americash } \\ 2004 \end{gathered}$ | $\begin{gathered} \text { Americash } \\ 2006 \end{gathered}$ | The Cash Store $2006$ |
| :---: | :---: | :---: | :---: |
| Average Loan Principal Amount | \$ 784 | \$ 930 | \$ 824 |
| Number of Rollovers | No data | No data | 35.1\% |
| Percent of Contracts with Wage Assignments | 98\% | 100\% | no data |
| Average Court Award to Lenders | \$ 955 | \$ 1,894.00 | \$ 1,287.00 |
| Ratio of Award to Loan Amount | 2.8 to 1 | 2 to 1 | 1.5 to 1 |
| Attorneys Fees | \$ 303 | \$ 343 | \$ 173 |
| Percent of Default Judgments Granted | N.A. | 41\% | 61\% |
| Percent of Cases Filed Against Women | 63.0\% | 72.3\% | 65.7\% |
| Percent of Borrowers Residing in Lower-Income Communities | 67.4\% | 69.9\% | 40.5\% |
| Percent of Borrowers Residing in Predominantly Minority Communities | 76.5\% | 90.4\% | 63.0\% |

## Findings from the Debt Collection Cases

A discussion of the findings is provided below:

1. The principals for payday installment loans are larger. The average Americash installment loan increased from $\$ 784$ in the 2004 Greed report to $\$ 930$, an increase of about 20 percent. The average payday loan from The Cash Store is $\$ 824$.

## 2. Multiple rollovers are common.



Borrowers using payday and payday installment loans have reported to the members of Egan Campaign describing the endless cycle of debt created by "rolling over" a short term loan. For the first time, the Egan Campaign has evidence that this cycle of debt is pervasive and harmful to a borrower's financial health.

Based on refinancing information collected from 44 Cash Store cases in default, one out of every three cases had at least one "roll over (Figure 5)."
3. Wage assignments put payday lenders first in line for borrowers' income. By taking an interest in a borrower's wages, the debt incurred by payday loans is placed in a position ahead of other secured debt, such as home and auto payments. All of the Americash contracts include a standard provision securing the loan with the borrower's wage assignment. The Cash Store contracts did not include this provision and secured their loans with a post-dated check. Few customers realize that these wage assignments are revocable at will; customers simply have to contact their payroll department. When borrowers pay payday lenders first, they are more likely to default on their home mortgage or car loan.
4. Wage deductions. Borrowers in default are also likely to have the payments for their payday loan garnished. Both companies are often granted wage garnishments in court judgments-taking income directly from the borrower's employer. Where the outcome of the cases is known, wage deductions were granted in 20 percent of Americash cases and 32 percent of Cash Store cases.
5. The average court award is almost twice the average loan amount. Loan judgments on the average Americash loan of $\$ 911$ were $\$ 1,765$, almost twice the amount of the loan. Loan judgments on the average The Cash Store loan of $\$ 826$ were $\$ 1,290$.
6. The average attorney's fees for The Cash Store cases were $\mathbf{\$ 1 7 4}$, and for Americash cases were $\$ 343$. The PLRA forbids lenders from charging attorney's fees. Before the act, both lenders charged borrowers in default attorney's fees as part of the judgment against them, dramatically increasing the borrower's total debt as a percent of the principal. Without the protections afforded by the PLRA, borrowers in default will continue to be charged attorney's fees.
7. Judgment-related costs increase the total debt burden for payday loan borrowers. Judgment expenses increase the cost of paying off a payday loan dramatically and often include loan principal, accrued interest, attorney fees, court costs, and damages.
8. Mandatory arbitration - Most payday loan contracts require borrowers to agree to mandatory arbitration, which is a final and binding dispute resolution process that does not provide many protections for borrowers. Arbitration clauses do not allow trial by jury and may involve prohibitive expenses for the borrower. Further, most arbitral procedures are not public and there is often no provision for an individual to be represented by counsel giving the lender a significant legal advantage.
9. Filing delays increase costs for Cash Store customers in default. Although The Cash Store loans reviewed had terms of 30 days, the complaints were filed, on average, 1.36 years after the loan was made. The Americash cases reviewed had an average delay 1.8 years. This delay substantially increases the post-default cost of the loan in cases where interest continues to accrue on the outstanding principal.
10. Borrowers often fail to appear in court, resulting in a judgment in favor of the lender. In the event that a defendant does not appear in court, an default judgment is granted and the lender wins the case by default. Default judgments were granted in 61 percent of Cash Store cases and 41 percent of Americash cases.
11. Women made up a large portion of borrowers in court because of payday loans. Of the Americash cases reviewed, 72 pecent of the defendants were female, with 23 percent male and 5 percent gender unknown. Of The Cash Store cases, 66 percent are female, 21 percent are male and 13 percent are unknown.
12. Americash and The Cash Store court cases are heavily concentrated in minority ZIP codes, providing further evidence that these communities are more likely to be impacted by high levels of non-productive debt. Nearly 70 percent of Americash borrowers with pending or complete court cases because of default were located in low- or moderate-income, predominately minority ZIP codes, with nearly 90 percent of cases located in predominately minority communities of any income.

## Recommended Consumer Protections for Payday Installment Loans

Based on characteristics of high cost installment loans that have been settled in the court system described in this report, the Monsignor John Egan Campaign for Payday Loan Reform recommends the following principals to protect borrowers. Like the PLRA, these principals are based on nationally recognized standards for safe borrowing and accommodate the unique terms and conditions of Illinois high cost installment loan. Taken together, they will help protect the interest of consumers and military personnel, limit over borrowing, prevent the cycle of debt caused by multiple rollovers and refinancing, and make high cost installment loans more affordable.

1. Loan limit: the amount of the loan should be indexed to the borrower's income.
2. Multiple loans: there should be limits on the number of payday and payday installment loans.
3. Fee Cap: total fees, including interest, fees, and other costs should be limited.
4. Loan Payments: installment loans should be fully amortizing loans with regular and equal term payments. Balloon payments are prohibited.
5. Consumer Reporting Service: All loans must be entered into the consumer reporting service, authorized under the Payday Loan Reform Act, to verify and ensure compliance with these consumer protections.
6. Military Protections: provisions should be made to protect the interests of military personnel.
7. No post default interest: No interest may be permitted to accrue after default.
8. No attorney's fees: Legal fees upon default should be barred.
9. Mandatory arbitration: No mandatory arbitration clauses that are oppressive, unfair, unconscionable, or substantially in derogation of the rights of consumers

## Appendix: Litigation Data

This appendix is the printed version of the litigation database. It includes data for all 194 Americash and Cash Store cases analyzed by the Monsignor John Egan Campaign for Payday Loan Reform.

## Variable Description

Co: The company filing the case. "TCS" indicates The Cash Store and "AC indicates Americash.
ZIP: $\quad$ The customers residence ZIP code from the loan contract
Case: The lawsuit's official number as assigned by the Circuit Court of Cook County
Ln Date: The date on which the loan was originated
Sec: The security provided for the loan "WA" indicates wage assignment, "PDC" indicates post-dated check.
Principal: The loan principal dispersed to the borrower
Fee: $\quad$ The fee charged for the loan
Term: The term of the loan
APR: The effective APR charged on the loan based on the principal, term and fee paid by the borrower.
Rnwl: The number of renewals or "roll overs." "No data" indicates that this information was not recorded on the loan contract provided in the court case.

Complete: The date on which the complaint was filed in the Circuit Court of Cook County.
Dmgs: The total damages sought by Americash or The Cash Store.
Fees: The portion of the damages sought by Americash or The Cash Store to cover the company's attorney's fees.

OC: The outcome of the case. "B" stands for bankruptcy, "D" for dismissed, "DBA" for dismissed by agreement, "DFLP" for dismissed by agreement, "DV" dismissed voluntarily, "DJ" for default judgment, "IP" for installment plan, "J" for judgment, "JP" for judgment for plantiff, "U" for unknown and "W' for wage deduction.

Ded: Indicates a wage deduction.
Due: $\quad$ Total amount sought by lender, including damages and legal fees.
Inc: The income of the borrower's home address ZIP code. "LMI" stands for a low- and moderate-income ZIP code with an income below 80 percent of the Average Family Income for the Chicago region. MUI stands for middle- and upper-income or more than 80 percent of the Average Family Income for the Chicago region.

Min: $\quad$ The percentage of minority residents in the borrower's home address ZIP code. Minority is determined using the percentage of population that is not "Non-Hispanic White." Hispanics are considered minority but can be of any race. " 1 " is greater than 50 percent minority, " 2 " is less than 50 percent minority.
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[^0]:    ${ }^{1}$ See Monsignor John Egan Campaign for Payday Loan Reform (2004). Greed: An In-depth Study of the Debt Collection Practices, Interest Rates, and Customer Base of a Major Illinois Payday Lender. Public Action Foundation: Chicago. p. 3 and Veritec Solutions (2006). Illinois Trends in Payday Lending - Initial Report. Veritec Solutions: Jacksonville. p. 4. Pre-PLRA figures include loans with terms varying from 14-31 days, the corresponding APR is the average for all loans.

[^1]:    ${ }^{2}$ Illinois Department of Financial and Professional Regulation. Official Press Release (July 9, 2006) Blagojevich Administration and Attorney General Madigan File Simultaneous Enforcement Actions against Payday Lender. Retrieved September 26, 2006 from http://www.idfpr.com/newsrls
    ${ }^{3}$ ibid. Order No. 06CC127 in the Matter of Advance America (May 4, 2006). Order of Fine.
    ${ }^{4}$ ibid. Official Press Release (April 2, 2006) Blagojevich Administration Moves to Shut Down Unscrupulous Short-term Lenders. Retrieved September 26, 2006 from http://www.idfpr.com/newsrls
    ${ }^{5}$ ibid. Order No. 05CC140 in the Matter of Cottonwood Financial (December 19, 2005) Order Assessing Fine and Suspension of Licenses.
    ${ }^{6}$ See Illinois Department of Financial and Professional Regulation. Order Assessing Fine in the Matter of Illinois Lending Corporation (December 20, 2005) and Order Assessing Fine in the Matter of Advance America (December 21, 2005).

[^2]:    ${ }^{7}$ See Williams, Marva and Tom Feltner (2004). Reinvestment Alert 25: New Terms for Payday Loans - High Cost Lenders Change Loan Terms to Evade Illinois Consumer Protections. Woodstock Institute: Chicago. p. 4 and Veritec Solutions (2006). Illinois Trends in Payday Lending: Initial Report. p. 4

[^3]:    ${ }^{8}$ These court cases were collected and analyzed by the Monsignor John Egan Campaign for Payday Loan Reform and are on file at the offices of the Public Action Foundation, 28 E. Jackson, Suite \#605, Chicago, Illinois 60604.
    ${ }^{9}$ Cases filed between 1999 and 2005 were collected from a search of the database of the Cook County Clerk of Courts available at http://www.cookcountyclerkofcourt.org [viewed on June 2006].

[^4]:    ${ }^{10}$ Minority is determined using the percentage of population that is not "Non-Hispanic White." Hispanics are considered minority but can be of any race. Minority is than 50 percent minority, White is less than 50 percent minority. LMI indicates low- or moderate-income based on 80 percent or less of the 2000 U.S. Census Median Family Income (MFI) of $\$ 61,182$ for the Chicago PMSA. MUI indicates middle- and upper-income or greater than 80 percent of the MFI.

