Ending the Cycle of Evasion: Effective State and Federal Payday Lending Enforcement

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Payday loans – whether made online, in stores or by banks – are designed to trap individuals in long-term debt. Data consistently show that the majority of payday loan revenue comes from repeatedly churning borrowers, and that borrowers are typically indebted for most of the year.[1] Recognizing the damaging structure of payday loans and their devastating impact on families' financial well-being, the trend among policymakers has been to rein in this abusive debt trap using a variety of available tools. Today, 20 states and the District of Columbia either prohibit high-cost payday lending or have significantly curbed the payday debt trap.[2]

Given that 60 percent of Americans live in states where the payday debt trap is legal—draining more than $3 billion a year in payday loan fees—both state and federal regulators must do more. More states should pass and enforce annual interest rate limits of 36% or lower. The Consumer Financial Protection Bureau (CFPB) must enact strong rules, without loopholes, and in doing so, provide states' additional tools to strengthen their ability to enforce against unfair, deceptive, and abusive practices. Other federal law enforcement agencies must also continue to enforce compliance with existing consumer protections.

This brief provides a summary of recent federal and state enforcement actions. Cumulatively, these enforcement actions have resulted in millions of dollars in restitution and debt relief for consumers. While these positive outcomes are encouraging, regulators' ability to engage in meaningful enforcement actions are made possible only by strong underlying laws at the state and federal levels. Thus, strong regulation is essential at all levels of government to effectively prevent debt trap lending practices.

State Enforcement Activity

Strong state rate caps of 36% or less annually remain the strongest method to protect consumers from the payday loan debt trap. Regardless of whether states have strong or less stringent regulations, lenders have shown a propensity to seek loopholes or outright disregard state regulation.

Some lenders attempt to sidestep regulations through a number of schemes, such as by claiming that affiliations with Native Nations or operating online exempt them from complying with state regulation. Furthermore, in many cases, these lending schemes incorporate an elaborate web of services – including lead generators, payment processors, and debt collection agencies – to issue and collect illegal loans.

Enforcement actions by state Attorneys General and other state regulators show that, despite payday lenders' claims otherwise, states do have tools available to halt these illegal lending operations, protect consumers, and assess penalties for violation of state law. Under certain states' laws, these illegal loans are void and unenforceable – meaning that the lender does not have a legal right to collect on the loan via garnishment, court action, or otherwise.[3]

What follows is a snapshot of enforcement activity at the state level, including common actors and legal theories used to effectively rein in their illegal practices.

State Enforcement Actions Related to Lenders Originating Unlawful Loans

Primary targets of state regulatory action are lenders originating unlawful loans, regardless if they licensed or unlicensed, or make loans online or through traditional storefront operations. Generally, these entities have been charged with state law violations such as exceeding interest and fee limitations,[4] unlicensed lending,[5] charging unconscionable prices,[6] and unfair and deceptive practices.[7] In addition, at least one state, Illinois, is using its authority to enforce the abusive prong of the federal Dodd-Frank Wall Street and Consumer Protection against a payday lender selling ancillary products to evade rate limitations.[8]

While a multitude of lenders have been cited in these actions,[9] there are a few that have come under scrutiny across a number of jurisdictions. For example, J. Paul Reddam, his affiliated companies CashCall Inc. and WS Funding LLC, along with Martin Webb and his company Western Sky Financial, have been subject to enforcement actions in more than a dozen states. These entities engaged in an elaborate scheme to offer, issue and collect loans in violation of state consumer protection laws.

The scheme is structured similarly to a historic form of payday subterfuge known as "rent-a-bank," in which non-bank lenders, such as payday lenders, partner with out-of-state banks in order to charge rates higher than what is permitted by state law.[10] Western Sky (a non-bank company claiming tribal sovereign immunity) originated illegal payday loans over the internet, then quickly sold the loans to California-based company CashCall (or one of its subsidiaries) often before the first payment.[11] Subsequently, the loans were serviced by CashCall (or one of its affiliated entities). Court documents revealed further that virtually all of Western Sky's operations were controlled by CashCall.[12] CashCall et al. claim that their association with Western Sky exempts them (and the companies servicing and collecting loans originated by Western Sky) from regulation under state law.

> "The law is clear that payday lending is illegal in Georgia. The defendants' utter disregard for the law of this State will not be tolerated." – *Attorney General Sam Olens*

The claims by Western Sky and Cash Call et al. have failed for a number of reasons including: (1) CashCall being the *de facto* lender as it bore all the risk of the loans and controlled all transactional activity ranging from advertising to underwriting;[13] (2) Western Sky was a South Dakota limited liability company (established by and for the benefit of Martin Webb, a member of the Cheyenne River Sioux Tribe), whereby no approval was required from the Tribe, the business was not established on Tribal land, nor did the business operate for the benefit of the Tribe;[14] and (3) courts have determined that the loan contracts in question were formed in the consumers' state of residence, not in tribal territory.[15]

State regulators continue to combat unlawful activity by other online and out-of-state lenders, successfully arguing that the nexus of the payday transaction is the state in which the consumer is located, and therefore, the laws of that state apply, including rate and fee restrictions.[16] Pennsylvania, for example, has a deep history of enforcing its laws against online lenders, dating back to a 2010 unanimous decision by the state's Supreme Court against Texas-based Cash America.[17] The court held that although the company did not have a physical location in the state, Cash America's online loans to people in Pennsylvania were subject to the state regulation, and that the loans – with rates from 260%

to more than 600% – violated the state's law.[18] These illegal loans were deemed to be void and unenforceable.[19]

Violations of state law, however, are not isolated to unlicensed lenders. As recently as January 2015, the California Department of Business Oversight cited licensed, online lender, CNU of California (dba CashNetUSA, a subsidiary of Enova International, Inc.), for violations of several sections of the California Financial Code.[20] Alleged violations in this case include charging fees and interest in excess of the legal limit, and engaging in unfair, unlawful, or deceptive conduct.[21] Under the Order issued by the Department, CNU is to pay an administrative penalty of $10,000, forfeit all charges and fees associated with payday loans made in violation of the law, and is to refrain from further violations of California law.[22]

State Enforcement Actions Related to Lead Generators, Payment Processors and Debt Collectors

Understanding that lenders often facilitate their usury schemes through other entities, state regulators have not limited their enforcement actions solely to the payday lender at the center of the operation. Regulators have been wise in pursuing actions against lead generators that drum up business by advertising illegal loans, payment processors that facilitate payment on illegal loans, and debt collectors that assess and collect excessive interest on illegal loans.

Lead generators are companies that advertise access to payday loans, capture key contact (and sometimes banking) information from potential borrowers, and sell said information to lenders.[23] Through regulatory actions such as civil investigative demands and litigation, state regulators seeking to prohibit the marketing of illegal loans have cracked down on these companies, including prominent lead generator, Selling Source, LLC (dba MoneyMutual).[24] In at least one state, the attorney general has addressed lead generators by joining them with other parties, such as a Texas-based company and debt collectors, in an action under the state's racketeering statute for collaborating in a scheme to evade the state's usury law.[25]

The Vermont Attorney General has successfully reached agreements with a variety of lenders, lead generators, and companies that publish advertisements of illegal loans, such as Google and Microsoft.[26] The Vermont Attorney General has also reached settlements with several payment processors for their role in facilitating payments on these illegal loans.[27] Vermont maintains one of the strongest regulatory frameworks, as it holds entities that facilitate the operations of illegal lenders (such as payment processors) directly responsible for the harms caused by those illegal loans.[28] Both the Vermont Attorney General and New York banking regulator issued letters to banks, credit unions and other payment processors warning them against transacting with or for issuers of illegal loans.[29]

Similar to actions against lead generators and payment processors, state regulators are cracking down on debt collectors in their role of closing the payment loop in these usurious lending schemes. Delbert Services Corporation, a Nevada-based debt collector, has been a frequent defendant and is often a co-defendant in cases with its affiliate, CashCall.[30] And where other states have cited CashCall for violations of state usury laws, the District of Columbia is utilizing its debt collection law as a vehicle to rein in CashCall's predatory practices.[31] Legal theories in cases against debt collectors who collect on illegal loans include collection of interest and fees in excess of the legal limit, and commission of unfair or deceptive acts or practices.[32]

Federal Enforcement Activity

While state regulators continue to enforce the laws of their respective jurisdictions, numerous federal agencies have also taken action to crack down on payday lending. The Federal Trade Commission (FTC) and CFPB have worked to enforce federal laws against payday loans made both online and at traditional storefront locations. The Federal Deposit Insurance Corporation (FDIC) and Department of Justice (DOJ) are working to ensure that banks are acting in accordance with existing bank laws and guidance. Federal criminal prosecutors are using their authority under the federal Racketeer Influenced and Corrupt Organizations (RICO) Act. Against this backdrop, the CFPB is moving forward with proposals for new rules that prevent unfair, deceptive, and abusive payday lending practices.

Federal Trade Commission

In April 2012, the FTC filed a complaint in federal district court in Nevada against AMG Services, MNE Services and several other co-defendants, including several lending entities owned by Native Nations.[33] The FTC alleged violations of the FTC Act and the Truth in Lending Act (TILA) because these companies made misrepresentations to consumers regarding the cost of the loan, and failed to accurately disclose certain loan terms including the annual percentage rate.[34] The FTC also alleged violations of the Electronic Funds Transfer Act (EFTA) and its implementing Regulation E for requiring preauthorized, periodic debits from consumers' bank accounts as a condition of the loan.[35]

> "[T]his ruling makes it crystal clear that the FTC's consumer protection laws apply to businesses that are affiliated with tribes… It's a strong signal to deceptive payday lenders that their days of hiding behind a tribal affiliation are over." - *Jessica Rich, Director of the FTC's Bureau of Consumer Protection*

Over the defendants' objections, the magistrate judge concluded that the FTC Act has "broad reach" and applies generally, giving the agency "the authority to bring suit against Indian Tribes, arms of Indian Tribes, and employees and contractors of arms of Indian Tribes."[36] On appeal, the U.S. District Court for the District of Nevada affirmed the magistrate judge's finding that the payday lenders affiliated with Native Nations are within the reach of FTC enforcement actions, notwithstanding their tribal affiliations.[37] Thereafter, in May 2014, the U.S. district court judge denied the defendants' motion for summary judgment, finding that the defendants' loan documents were deceptive and violated TILA.[38]

In January 2015, the FTC announced a settlement with AMG and MNE, arising from the 2012 lawsuit.[39] Under the proposed settlement, AMG and MNE will pay $21 million and will waive another $285 million in charges that were assessed (but not collected) from consumers.[40] The defendants are prohibited from misrepresenting the terms of any loan product and from further violation of TILA and EFTA.[41]

Consumer Financial Protection Bureau

The CFPB has been challenging payday lenders' claims of tribal immunity for several years in its investigation into several online lenders, including Great Plains Lending, Mobiloans, and Plain Green.[42] In

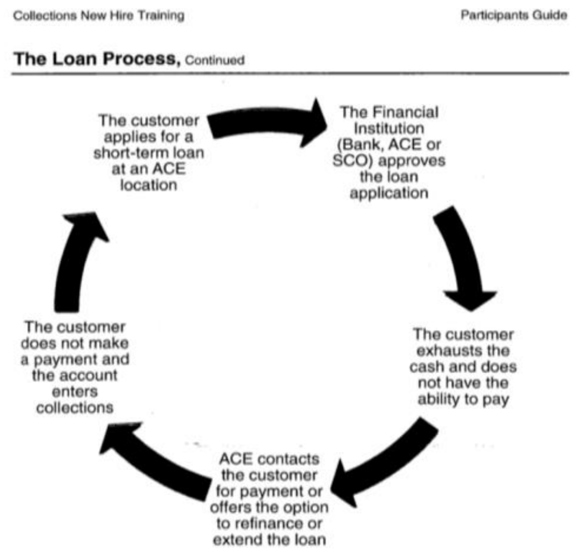
May 2014, the U.S. District Court of the Central District of California ruled in favor of the CFPB, granting a petition to enforce its civil investigative demands (CID).[43] This court found that laws of general applicability, like the Dodd-Frank Wall Street Reform and Consumer Protection Act, apply to Native Nations, and that tribal immunity does not bar enforcement of the CID.[44]

In December 2013, the CFPB sued CashCall, WS Funding, Delbert Services, and J. Paul Reddam for collecting and servicing what it alleged to be illegal online installment loans with respect to loans made to borrowers in Arkansas, Arizona, Colorado, Indiana, Massachusetts, New Hampshire, New York, and North Carolina.[45] Similar to the allegations in many state enforcement actions, the CFPB alleged that CashCall and its wholly owned subsidiary, WS Funding, entered into an arrangement with Western Sky to secure high-cost, consumer installment loans, whereby Western Sky served as originator (in name only), WS Funding as financer, and CashCall and/or Delbert Services as servicer.[46] In the Complaint, the CFPB states that loans issued in these states were abusive as they either violated the state's usury limits or licensing requirements, and that the states' laws rendered the loans void.[47]

Even as litigation in the CashCall case remains ongoing, in July 2015, the CFPB brought another enforcement action against an off-shore payday lender, NDG Financial Corp. (and its affiliated companies), based on a similar theory of abusive loans made in violation of state laws, in addition to other claims of unfair and deceptive practices.[48]

Similar to regulatory action in the states, the CFPB has not limited its actions to online payday lenders. The agency has also sought to address aggressive debt collection tactics by some of the nation's largest storefront payday lenders. On November 20, 2013, the CFPB announced an enforcement action against payday lender Cash America International, Inc., that would require the company to refund $14 million to Ohio consumers for robo-signing court documents in debt collection lawsuits, and for illegally overcharging service members and their families.[49] Furthermore, Cash America was also required to pay a $5 million fine for these violations and for destroying records in advance of the Bureau's examination.[50]

In July 2014, the CFPB took action against the Texas-based financial services company ACE Cash Express.[51] The agency found that the company employed abusive and illegal tactics to collect debts and trap borrowers into a cycle of debt, such as using tactics to promote re-borrowing among consumers unable to repay the previous loan.[52]



Through this enforcement action, the CFPB uncovered a training manual provided by ACE that confirms what CRL research found long ago: payday lenders purposefully target vulnerable consumers in order to trap them in an endless cycle of debt.[53] This fact is not unique to ACE, but is true of the payday lending model, generally. As a result of the CFPB's enforcement action, ACE will pay $5 million in refunds to borrowers and $5 million in fines.[54]

Banks Processing Illegal Loans: Federal Deposit Insurance Corporation and Department of Justice

One major problem with online payday lending is that payday lenders make loans in states where such loans are illegal, but are able to process payments through banks that do not track these loans or their legality under state law. While Attorneys General have had success addressing this problem in states where payday is illegal, federal agencies took helpful action in 2013 through bank supervision.

In a speech given in March of 2013, the Executive Director of the Financial Fraud Enforcement Task Force of the U.S. Department of Justice (DOJ) highlighted the actions being taken by DOJ's Task Force to clamp down on banks' facilitation of payday loan transactions in violation of laws such as the Bank Secrecy Act.[55] He warned and described their concerns:

> Return rates at the levels we have seen are more than red flags. They are ambulance sirens, screaming out for attention… [W]e naturally also are examining banks' relationship with the payday lending industry, known widely as a subprime and high-risk business. We are aware, for instance, that some payday lending businesses operating on the Internet have been making loans to consumers in violation of the state laws where the borrowers reside. And, as discussed earlier, these payday lending companies are able to take the consumers' money primarily because banks are originating debit transactions against consumers' bank accounts. This practice raises some questions.[56]

The DOJ thereafter sent more than 50 subpoenas to banks and payment processing firms, including large banks like PNC Financial Services Group (PNC), and small ones, such as National Bank of California.[57]

In Fall 2013, the FDIC issued a Financial Institution Letter to banks, clarifying the FDIC's supervisory approach to payment processing relationships with online lenders and others that "engage in higher-risk activities."[58] The FDIC clarified that, in connection with such dealings, banks were "expected to perform proper risk assessments, conduct due diligence sufficient to ascertain that the merchants are operating in accordance with applicable law, and maintain appropriate systems to monitor these relationships over time."[59]

The initial impact from these actions seems to have been significant in protecting people's bank accounts.[60] In September 2013, a DOJ official commented, that "as a result, banks are cutting off processors, processors are cutting off scammers, and scammers are starting to get desperate for a way to access consumers' bank accounts."[61] In January 2014, the DOJ entered into a settlement with Four Oaks Bank in North Carolina to pay a $1.2 million fine, and to accept tight restrictions to prevent fraudulent merchants, such as fraudulent payday lenders, from accessing the national payment system.[62]

Conclusion

In a recent letter to the CFPB, stakeholders in states with rate caps noted that their states "have shown that strong, enforceable prohibitions against payday lending constitute sound public policy and clearly benefit the public interest."[63] In addition to the continued enforcement of strong state laws, the letter called on the CFPB to ensure its future rule is loophole-free, and for "final rules that build on, rather than undermine, strong state protections and that enhance [states'] ability to enforce them" by affirming the importance of state rate caps and make clear that loans made or offered in violation of state usury laws is itself an unfair, deceptive, and abusive act or practice.[64]

Payday lenders claim that strong laws simply push borrowers to unregulated internet payday loans. This notion is false for a number of reasons. First, enforcement efforts against online lenders have been quite effective. A multitude of state and federal actions have rejected the notion that online lenders are exempt from state regulation simply because they are not physically located in the state. While many of these online lenders have attempted to affiliate with Native Nations to evoke tribal sovereign immunity from state and federal laws, this defense has failed to shield these lenders from being subjected to state and federal lending laws when offering payday loans to people outside of the tribal land.

Second, the lenders' argument – that strict regulation drive borrowers to more elusive online lenders – would imply that online lending should be more prevalent in states that prohibit or strictly restrict payday lending. However, in terms of loan volume, recent research shows that the "lion's share of business" by illegal online lenders is conducted in states that allow payday lending, not in those states that prohibit it.[65] Data also shows that borrowers do not flock to online lenders in the absence of storefront payday lenders.[66]

What remains true is that an absence of well-formulated regulations and enforcement mechanisms leave regulators without the tools necessary to address illegal lending, regardless of whether it occurs online or at brick-and-mortar storefronts. Enabling regulators with the legal tools necessary to address abusive and illegal lending tactics remains the best way to protect and prevent consumers from the dangers of debt trap lending.

[1] Consumer Financial Protection Bureau, *Payday Loans and Deposit Advance Products: A White Paper of Initial Data Findings* (Apr. 24, 2013), *available at* http://bit.ly/CFPBPaydayPaper.

[2] States that eliminate the debt trap through enforcement of an APR limit: Arizona, Arkansas, Connecticut, Georgia, Maryland, Massachusetts, Montana, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Vermont, West Virginia, plus the District of Columbia. States with reforms that limit, but do not eliminate the debt trap: Colorado, Delaware, Maine, Oregon, Washington, and Virginia.

[3] *See e.g.*, Letter from New York State Department of Financial Services to Janet O. Estep, National Automated Clearing Housing Association (NACHA) (Sept. 3, 2013) (noting that "[u]surious payday loans are illegal in New York, and such loans are void and unenforceable."), *available at* http://www.dfs.ny.gov/about/letters/pr130806-link2.pdf. *See also* Complaint, *CFPB v. CashCall, Inc.*, (D. Mass. 2013) (Case 1:13-cv-13167) (indicating that illegal loans are void in at least these eight states: Arizona, Arkansas, Colorado, Indiana, Massachusetts, New Hampshire, New York, and North Carolina), *available at* http://files.consumerfinance.gov/f/201312_cfpb_complaint_cashcall.pdf.

[4] *See e.g.* Final Judgment By Consent, *CashCall, et al. v. Massachusetts Division of Banks* (Mass. Sup. 2015) (SUCV2013-01616-B); Opinion, *Maryland Commissioner of Financial Regulation v. CashCall, et al.* (MD Ct. of Special App. 2015); Findings of Fact, Conclusions of Law and Order, *In re: CashCall* (Conn. Dept. of Banking 2014); Complaint, *State of Arkansas v. Western Sky Financial, et al.* (Pulaski Co. Cir. Ct. 2013) (60CV-13-3893); Final Decision and Order, *In re: CashCall* (Wash. Dept. of Fin. Inst. 2011) (DFI No. C-11-0701-14-FO1). *See also* Press Release, Washington State Department of Financial Institutions, "Washington DFI Enters Settlement Agreement With CashCall and Western Sky Financial Over Unlicensed Internet Predatory Lending" (Oct. 21, 2015); Press Release, Michigan Attorney General, "Schutte, Flood Net $2.2 Million for Michigan Consumers in Western Sky and CashCall Settlement Involving High-Interest Loans" (May 14, 2015); Press Release, Missouri Attorney General, "AG Koster's sweep of payday loan sites shuts down eight predatory operations in Missouri" (Mar. 5, 2015); Press Release, Iowa Attorney General, "State Revokes California Online Lender's License, Orders $1.5 Million Restitution for Iowa Borrowers" (Oct. 6, 2014); Press Release, Pennsylvania Attorney General, "Banking and Secirities Department Announces Consent Agreement for Unlicensed Lending to Pennsylvanians (July 17, 2014); Press Release, MD Dept. of Labor, "Maryland Commissioner of Financial Regulation Announces $2 Million Settlement with Western Sky Financial, CashCall, Inc. and Others" (June 23, 2014); Press Release, New York Attorney General, "A.G. Schneiderman Announces Settlement With Western Sky Financial And Cashcall For Illegal Loans Made Over The Internet" (Jan. 24, 2014); Complaint, *Colorado ex rel. Suthers v. CashCall, et al.* (Denver Co. Dist. Ct. 2013); Complaint, *State of Florida v. Western Sky Financial, et al.* (Hillsborough Co. Cir. Ct. 2013); Amended Complaint, *Georgia ex rel. Olens v. Western Sky Financial, et al.* (Fulton Co. Sup. Ct. 2013) (No. 2013-CV-234310); Cease Order, *In re: CashCall* (Mass. Office of Consumer Affairs and Business Reg., Div. of Banks 2013) (Docket No. 2013-010); Complaint, *North Carolina ex rel. Cooper v Western Sky Financial, et al.* (Wake Co. Sup. Ct. 2013) (Case No. 13CVS16487);

[5] *See e.g.* Final Judgment By Consent, *CashCall, et al. v. Massachusetts Division of Banks* (Mass. Sup. 2015) (SUCV2013-01616-B); Opinion, *Maryland Commissioner of Financial Regulation v. CashCall, et al.* (MD Ct. of Special App. 2015); Findings of Fact, Conclusions of Law and Order, *In re: CashCall* (Conn. Dept. of Banking 2014); Complaint, *Colorado ex rel. Suthers v. CashCall, et al.* (Denver Co. Dist. Ct. 2013); Amended Complaint, *Georgia ex rel. Olens v. Western Sky Financial, et al.* (Fulton Co. Sup. Ct. 2013) (No. 2013-CV-234310); Cease Order, *In re: CashCall* (Mass. Office of Consumer Affairs and Business Reg., Div. of Banks 2013) (Docket No. 2013-010); Complaint, *North Carolina ex rel. Cooper v Western Sky Financial, et al.* (Wake Co. Sup. Ct. 2013) (Case No. 13CVS16487); Final Decision and Order, *In re: CashCall* (Wash. Dept. of Fin. Inst. 2011) (DFI No. C-11-0701-14-FO1). *See also* Press Release, Washington State Department of Financial Institutions, *supra* note 4; Press Release, Michigan Attorney General, *supra* note 4; Press Release, Missouri Attorney General, *supra* note 4; Press Release, Pennsylvania Attorney General, *supra* note 4; Press Release, New York Attorney General, *supra* note 4; Erica Teichert, "Ill. AG Accuses Online Payday Lenders Of Predatory Tactics", LAW360, Apr. 8, 2014, http://www.law360.com/articles/525990/ill-ag-accuses-online-payday-lenders-of-predatory-tactics.

[6] *See New Mexico ex rel. King v. B&B Investment Group, Inc.,* (N.M. 2014). *See also* Brief of the Center for Responsible Lending, et al., *de la Torre, et al. v. CashCall* (9th Cir. 2015) (Case No. 3:08-cv-03174-MEJ).

[7] *See e.g.* Final Judgment By Consent, *CashCall, et al. v. Massachusetts Division of Banks* (Mass. Sup. 2015) (SUCV2013-01616-B); Complaint, *State of Arkansas v. Western Sky Financial, et al.* (Pulaski Co. Cir. Ct. 2013) (60CV-13-3893); Complaint, *Colorado ex rel. Suthers v. CashCall, et al.* (Denver Co. Dist. Ct. 2013); Complaint, *State of Florida v. Western Sky Financial, et al.* (Hillsborough Co. Cir. Ct. 2013); Complaint, *North Carolina ex rel. Cooper v Western Sky Financial, et al.* (Wake Co. Sup. Ct. 2013) (Case No. 13CVS16487); Final Decision and Order, *In re: CashCall* (Wash. Dept. of Fin. Inst. 2011) (DFI No. C-11-0701-14-FO1). *See also* Press Release, Washington State Department of Financial Institutions, *supra* note 4.

[8] Complaint for Injunctive Relief, *Illinois v. CMK Investments, Inc.* (Cook Co. Cir. Ct. 2014) (2014ch04694).

[9] *See e.g.* Consent Judgment, *State of Arkansas v. Kamberis, et al.* (Pulaski Co. Cir. Ct. 2015) (60CV-14-2198); Implementation Agreement, *In the Matter of: MyCashNow et al. and Carey v. Brown* (Maryland Commissioner of Fin. Reg. 2014) (CFR-FY2011-134); Consent Judgment, *State of Arkansas v. Geneva-Roth Capital, et al.* (Pulaski Co. Cir. Ct. 2011). *See also* Teichert, *supra* note 5; Zeke Faux, "Payday Lending by Tribe Targeted by Connecticut", BLOOMBERG BUSINESS, Jan. 6, 2015, http://www.bloomberg.com/news/articles/2015-01-06/payday-lending-by-tribe-targeted-by-connecticut; Press Release, Colorado Attorney General, "Attorney General Announces Settlement Against EZPawn Colorado Inc., and EZMoney Colorado, Inc.", (Apr. 2, 2013); Jessica M. Karmasek, "McGraw settles with Internet payday lender, collection agency", WEST VIRGINIA RECORD, Aug. 24, 2011, http://wvrecord.com/stories/510601142-mcgraw-settles-with-internet-payday-lender-collection-agency.

[10] *See* Diane Standaert and Rebecca Borné, Comment in re: the Dept. of Treasury's RFI on marketplace lending (Sept. 30, 2015), *available at* http://www.responsiblelending.org/other-consumer-loans/crl_comment_treasury_marketplacelending_sept2015_final.pdf; Ellen Harnick, "Georgia's Payday Loan Law: A Model for Preventing Predatory Payday Lending", p. 1, (2006), *available at* http://www.responsiblelending.org/payday-lending/policy-legislation/states/pa-GeorgiaPayday-0606.pdf. *See also* Media Release, NC Justice Center, "North Carolina Class Action Against Country's Largest Payday Lender Reaches $18.75 Million Settlement", Sept. 21, 2010, *available at* http://www.ncjustice.org/?q=media-release-north-carolina-class-action-against-country%E2%80%99s-largest-payday-lender-reaches-1875.

[11] *See e.g.* Complaint, *Minnesota ex rel. Swanson v. CashCall et al.* (Hennepin Co. Dist. Ct. 2013) (File No. 27-CV-13-12740); Complaint, *North Carolina ex rel. Cooper v Western Sky Financial, et al.* (Wake Co. Sup. Ct. 2013) (Case No. 13CVS16487), http://www.ncdoj.gov/getdoc/0c087145-6dc7-4911-958a-705a8d75ddf4/CashCall-Complaint-Final-12-16-2013.aspx.

[12] *See Id*.

[13] *See e.g.* Final Order on Phase II of the Trial the State's Usury and Lending Claims, *West Virginia v. CashCall, et al.* (Kanawha Co. Cir. Ct. 2012) (Civil Action No. 08-C-1964) (holding that the *de facto* lender and enjoining it from making loans in West Virginia without a license and from making or collecting on usurious loans, declared all loans made by CashCall in West Virginia null and void, and imposing civil penalties); *See also*, Order to Cease and Desist, *In re CashCall et al., (New Hampshire Banking Department 2013)* (Case No. 12-308) (ordering CashCall et al. to halt their unlawful lending activities, including halting making further loans through Western Sky or collecting on existing loans, in addition to imposing civil penalty and restitution).

[14] See e.g., State of Colorado v. Western Sky Financial, LLC and Martin A. Webb, No. 11 CV 638 (State of Colorado, Denver County District Court, April 15,2013.)(granting the State's motion for summary judgment, holding that Mr. Webb "is not individually entitled to immunity, nor does his membership in the Tribe confer such immunity upon Western Sky," and ordering Western Sky to pay the State's attorneys' fees incurred in litigating this issue.). For list of rulings and orders on this point, is states such as Maryland, Iowa, Washington, and West Virginia, see Complaint, North Carolina ex rel. Cooper v Western Sky Financial, et al. (Wake Co. Sup. Ct. 2013) (Case No. 13CVS16487), http://www.ncdoj.gov/getdoc/0c087145-6dc7-4911-958a-705a8d75ddf4/CashCall-Complaint-Final-12-16-2013.aspx.

[15] *See e.g.* Opinion and Order, *North Carolina ex rel. Cooper v Western Sky Financial, et al.* (Wake Co. Sup. Ct. 2013) (Case No. 13CVS16487).

[16] *See e.g. Otoe-Missouria Tribe of Indians v. New York Dept. of Financial Services* (2d Cir. 2014) (13-3769-cv); *Cash America Net of Nevada, LLC v. Pennsylvania Dept. Of Banking* (Penn. Sup. Ct. 2010). *See also* Brief of Amicus Curiae Center for Responsible Lending Supporting Defendants-Appellees, *Otoe-Missouria Tribe of Indians v. New York Dept. of Financial Services* (2d Cir. 2014) (13-3769-cv); Teichert, *supra* note 5; Press Release, "Maryland Commissioner of Financial Regulation Issues Final Order to Cease and Desist Against MyCashNow, Paydaymax and Related Payday Lenders", (Sept. 17, 2013); Jessica Silver-Greenberg and Ben Protess, "New York Tells Online Lenders to Abide by State's Interest Rate Cap", NEW YORK TIMES, Aug. 5, 2013, http://dealbook.nytimes.com/2013/08/05/online-lenders-told-to-abide-by-interest-rate-cap-in-new-york/?_r=0. See also, First Amended Complaint, *Great Plains Lending et al. v. Connecticut Dept. of Banking* (Conn. Supp. Ct. 2015);

[17] *Cash America Net of Nevada, LLC v. Pennsylvania Dept. Of Banking* (Penn. Sup. Ct. 2010).

[18] *Id.*

[19] *Id.*

[20] Order Forfeiting All Charges and Fees Pursuant To Financial Code Section 23062; Citations Pursuant To Financial Code Section 23058; and Desist and Refrain Order Pursuant To Financial Code Section 23058, *Commissioner of Business Oversight of the State of California v. CNU California, LLC* (Cal. Dept. of Business Oversight 2015) (File No: 100-3271).

[21] *Id.*

[22] *Id.*

[23] Upturn, "Led Astray: Online Lead Generation and Payday Loans" (2015), *available at* https://www.teamupturn.com/static/reports/2015/led-astray/files/Upturn_-_Led_Astray_v.1.01.pdf.

[24] *See e.g. Illinois et al. v. Money Mutual* (Cook Co. Cir. Ct. 2014); Petition to Enforce Civil Investigative Demand, *State of Arkansas v. Selling Source, LLC et al.* (Pulaski Co. Cir. Ct. 2012) (60CV-2012-5049). *See also* Press Release, Pennsylvania Attorney General, "Attorney General Kane files lawsuit over alleged payday loan scheme", (Nov. 13, 2014).

[25] *See* Plaintiff's First Amended Complaint, *Pennsylvania ex rel. Kane v. Think Finance, Inc. et al.* (E. Penn. 2015) (14-7139-JCJ). The three Native Nations are not parties to the lawsuit.

[26] For a resource page on the actions by the Vermont Attorney General, see http://ago.vermont.gov/focus/consumer-info/money-and-credit/illegal-lending.php.

[27] Press Release, Vermont Attorney General, "Payment Processor Of High-Interest Internet Loans Will Pay $75,000 To Vermont Borrowers", (Oct. 14, 2014). A list of settlements and active lawsuits by the Vermont Attorney General targeting illegal lending may be found at: http://ago.vermont.gov/focus/consumer-info/money-and-credit/illegal-lending.php.

[28] 9 V.S.A. § 2481w(b)-(d). *See also* Press Release, Vermont Attorney General, *supra* note 27.

[29] *See* Silver-Greenberg and Protess, *supra* note 16. Advisory letters issued by the Vermont Attorney General regarding the consequences and implications of illegal and predatory lending in Vermont may be found at: http://ago.vermont.gov/focus/consumer-info/money-and-credit/illegal-lending.php.

[30] *See e.g.* Complaint, *Colorado ex rel. Suthers v. CashCall, et al.* (Denver Co. Dist. Ct. 2013); Complaint, *North Carolina ex rel. Cooper v Western Sky Financial, et al.* (Wake Co. Sup. Ct. 2013) (Case No. 13CVS16487). *See also* Patrick Lunsford, "State Shuts Down Collection Agency; Warns Other Debt Collectors on Payday Loans", INSIDEARM.COM, May 3, 2013, http://www.insidearm.com/daily/debt-buying-topics/debt-buying/state-shuts-down-collection-agency-warns-other-debt-collectors-on-payday-loans/.

[31] Joe Van Acker, "DC Accuses CashCall Of Preying On Debtors With High Rates", LAW360, Sept. 9, 2015, http://www.law360.com/articles/700932/dc-accuses-cashcall-of-preying-on-debtors-with-high-rates.

[32] *See e.g.* Implementation Agreement, *In the Matter of: MyCashNow et al. and Carey v. Brown* (Maryland Commissioner of Fin. Reg. 2014) (CFR-FY2011-134); Complaint, *North Carolina ex rel. Cooper v Western Sky Financial, et al.* (Wake Co. Sup. Ct. 2013) (Case No. 13CVS16487). *See also* Karmasek, *supra* note 9; Lunsford, *supra* note 30; Press Release, Pennsylvania Attorney General, "Attorney General Kane files lawsuit over alleged payday loan scheme", (Nov. 13, 2014); Press Release, Colorado Attorney General, "Attorney General Reaches Settlement With Online Lender Western Sky", (Jan. 22, 2014); Press Release, Arkansas Attorney General, "Settlement Reached In Suit Over Payday Loan Debt Collection", (Mar. 28, 2013); Press Release, Governor of the State of New York;

"Governor Cuomo Announces Department of Financial Services Notifies Debt Collectors Not to Seek Collection on Illegal Payday Loans", (Feb. 22, 2013).

[33] Complaint For Injunction and Other Equitable Relief, *FTC v. AMG Services, Inc., et al.* (D. Nev. 2012) (Case No. 2:12-cv-00536).

[34] *See Id.*

[35] *See Id.* 12 C.F.R. 1005.10(e) states "[n]o person may condition an extension of credit to a consumer on the consumer's repayment by preauthorized electronic fund transfers". The EFTA defines "preauthorized electronic fund transfer" as "an electronic fund transfer authorized in advance to recur at substantially regular intervals." 12 C.F.R. 1005.2(k).

[36] *See* Order And Report & Recommendations, *FTC v. AMG Services, Inc., et al.* (D. Nev. 2013) (Case No. 2:12-cv-00536-GMN-VCF), *available at* https://www.ftc.gov/sites/default/files/documents/cases/2013/07/130722amgorder.pdf.

[37] *See* Order, *FTC v. AMG Services, Inc., et al.* (D. Nev. Mar. 7, 2014) (Case No. 2:12-cv-00536-GMN-VCF). *See also* Press Release, FTC, "U.S. District Judge Finds that FTC Can Sue Deceptive Payday Loan Business Regardless of American Indian Tribal Affiliation", (Mar. 19, 2014), *available at* http://www.ftc.gov/news-events/press-releases/2014/03/us-district-judge-finds-ftc-can-sue-deceptive-payday-loan.

[38] *See* Order, *FTC v. AMG Services, Inc.*, *et al.* (D. Nev. May 28, 2014) (Case No. 2:12-cv-00536-GMN-VCF), *available at* http://www.ftc.gov/system/files/documents/cases/140604amgorder.pdf. *See also* Press Release, FTC, "U.S. District Judge Finds That Payday Lender AMG Services Deceived Consumers by Imposing Undisclosed Charges and Inflated Fees" (June 4, 2014), *available at* http://www.ftc.gov/news-events/press-releases/2014/06/us-district-judge-finds-payday-lender-amg-services-deceived.

[39] Press Release, FTC, "Online Payday Lending Companies to Pay $21 Million to Settle Federal Trade Commission Charges that they Deceived Consumers Nationwide", (Jan. 16, 2015).

[40] *Id.*

[41] *Id.*

[42] *See CFPB v. Great Plains Lending, LLC, et al.* (D. Cal. 2014) (Case No. 2:14-cv-02090-MWF-(PLA)).

[43] Order Discharging Order to Show Cause and Granting Petition to Enforce Civil Investigative Demands, *CFPB v. Great Plains Lending, LLC*, (D. Cal. May 27, 2014) (Case No. 2:14-cv-02090-MWF-(PLA)), *available at* http://www.cfpbmonitor.com/files/2014/07/CFPB-v-Great-Plains-order.pdf.

[44] *Id*. The ruling is stayed, pending current appeal to the Ninth Circuit Court of Appeals.

[45] Press Release, "CFPB Sues CashCall for Illegal Online Loan Servicing" (Dec. 16, 2013), *available at* http://www.consumerfinance.gov/newsroom/cfpb-sues-cashcall-for-illegal-online-loan-servicing/.

[46] Complaint, *CFPB v. CashCall, Inc.*, *et al.,* (D. Mass. 2013) (Case No. 1:13-cv-13167), *available at* http://files.consumerfinance.gov/f/201312_cfpb_complaint_cashcall.pdf.

[47] *Id*.

[48] *CFPB v. NDG Financial Corp, et al.*, (S.D.N.Y. 2015) (Case 1:15-cv-05211-CM), *available at* http://files.consumerfinance.gov/f/201508_cfpb_complaint-northway.pdf.

[49] Press Release, CFPB, "Consumer Financial Protection Bureau Takes Action Against Payday Lender for Robo-Signing" (Nov. 20, 2013), *available at* http://www.consumerfinance.gov/newsroom/consumer-financial-protection-bureau-takes-action-against-payday-lender-for-robo-signing/.

[50] *Id.*

[51] Press Release, CFPB, "CFPB Takes Action Against ACE Cash Express for Pushing Payday Borrowers Into Cycle of Debt" (July 10, 2014), *available at* http://www.consumerfinance.gov/newsroom/cfpb-takes-action-against-ace-cash-express-for-pushing-payday-borrowers-into-cycle-of-debt/

[52] *Id.*

[53] New Hire Training Manual, ACE Cash Express, Loan Process Diagram, *available at* http://files.consumerfinance.gov/f/201407_cfpb_graphic_ace-cash-express-loan-process.pdf.

[54] Press Release, CFPB, *supra* note 51.

[55] Financial Fraud Enforcement Task Force, U.S. Department of Justice, Executive Director Michael J. Bresnick speech at the Exchequer Club of Washington, D.C., (Mar. 30, 2013), *available at* http://1.usa.gov/1bEg8wc. *See also* Kevin Wack, "Banks Pressured to Settle in Online Lending Probe (DOJ)", AMERICAN BANKER, Sept. 25, 2013,

http://www.americanbanker.com/issues/178_186/banks-pressured-to-settle-in-online-lending-probe-1062408-1.html.
[56] *Id.*
[57] "Timeline: Operation Choke Point," AMERICAN BANKER, available *at* http://www.americanbanker.com/gallery/timeline-operation-choke-point-1066360-1.html.
[58] *See* Financial Institution Letter, FIL-43-2013, "FDIC Supervisory Approach to Payment Processing Relationships With Merchant Customers That Engage in Higher-Risk Activities" (Sept. 27, 2013 (updated July 2014)), *available at* https://www.fdic.gov/news/news/financial/2013/fil13043.pdf. *See also* Office of the Comptroller of the Currency, "Payment Processors: Risk Management Guidance" (Apr. 24, 2008) (providing guidance for banks' in exercising due diligence in relationships with payment processors, noting for example, "At a minimum, bank programs should verify the legitimacy of the processor's business operations, assess the bank's risk level, and monitor processor relationships for activity indicative of fraud."), *available at* http://1.usa.gov/176JsaI.
[59] *Id.*
[60] *See* Rick Hackett and Amir Fekrazad, "Does State Regulation of Small-Dollar Lending Displace Demand to Internet Lenders" at 2 (2015), *available at* https://www.nonprime101.com/wp-content/uploads/2013/10/Does-State-Regulation-of-Small-Dollar-Lending-Displace-Demand-to-Internet-Lenders2.pdf. ("The growth rates and market penetration are significantly affected after June 2013, likely as a result of federal regulatory interventions that are referred to in the media as 'Operation Choke Point'").
[61] "Timeline: Operation Choke Point," AMERICAN BANKER, *supra* note 57.
[62] *United States v. Four Oaks Fincorp, Inc.,* (E.D.N.C. 2014) (Case No. 5:14-cv-00014-BO). *See also* Press Release, U.S. Dept. of Justice, "United States Attorney Announces Settlement With Bank Accused Of Consumer Fraud" (Apr. 29, 2014), *available at* http://www.justice.gov/usao-ednc/pr/united-states-attorney-announces-settlement-bank-accused-consumer-fraud.
[63] Letter from State Organizations to CFPB Director Richard Cordray (July 2015), *available at* http://stopthedebttrap.org/wp-content/uploads/2015/08/nonauthorization_states_cfpb_10july2015.pdf.
[64] *Id.*
[65] Hackett & Fekrazad, *supra* note 60 at 7, fig. 3.
[66] "Payday Lending in America: Who Borrows, Where They Borrow, and Why", PEW CHARITABLE TRUSTS, (July 19, 2012), http://www.pewtrusts.org/en/research-and-analysis/reports/2012/07/19/who-borrows-where-they-borrow-and-why.