The Payday Lending Problem in Nebraska:

An Analysis of Non-Compliance with Regulatory Requirements

FEBRUARY 2017

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Across the country, borrowers spend about $7.4 billion annually on payday loans.[1] A payday loan is a short-term, small dollar loan, generally for five hundred dollars or less, that becomes due on the borrower's next payday. When the borrower's next payday arrives, they must repay the entirety of the loan in one lump sum. For the average borrower, who earns about $30,000 per year, repaying the loan in one lump sum will take up one-third of their monthly income. Since most borrowers cannot afford to repay one-third of their income for the loan and pay for other expenses (rent, groceries, health care costs) they are left with only one option – to pay off their current loan and immediately take out a new loan. When the next loan comes due most borrowers repeat this process. This is often called the debt trap.

What follows is a brief outline of payday lending in Nebraska, with a focus on examples of payday lenders failing to comply with current state lending regulations. Based upon this analysis, Nebraska should reform its payday lending laws to make loans more fair, reasonable and transparent.

Payday Lending in Nebraska

In Nebraska, the permissible charges for payday loans are dramatic. For example, current law allows an average annual percentage rate (APR) of 461 percent, for the loan maximum of $425 (on a two-week loan, $17.65 per $100 loaned).[2] This is one of the highest allowable rates in the nation.[3] This type of loan is permitted under the Delayed Deposit Services Licensing Act (DDSLA).[4] In general, the act provides that payday lenders must be licensed in the state in order to operate,[5] the conditions that must be met in order to be licensed,[6] fee limitations,[7] general prohibited acts,[8] the authority and powers of the Director of the Department of Banking,[9] and the penalty for operating without a license.[10]

The Nebraska Department of Banking and Commerce (Department) is tasked with regulating the payday lending industry. The Director of Banking (Director) has ultimate authority to administer and enforce the DDSLA, to investigate and publish legal violations, and to impose a fine or suspend or revoke the license of a lender found violating the law.[11]

Payday Lenders and Regulatory Non-Compliance

According to the most recent data available, as of June 20, 2015 Nebraska had 87 delayed deposit service businesses, or payday lenders.[12] Many of these businesses operated multiple storefronts.[13] The Department has the authority to investigate these entities, and enter into a "consent agreement," in instances where a lender is found to be out of compliance with a provision of the DDSLA. A consent agreement embodies the terms of a settlement between two parties to resolve a dispute. The details of the investigation are provided in the consent agreement itself.

Payday lenders compared to other financial institutions

Consent agreements between the Department and payday lenders are publically available.[14] These consent agreements embody instances where the Department investigated a lender, discovered some form of regulatory non-compliance, and resolved the issue through a joint agreement. According to these consent agreements, between 2010 and 2015, the Department entered into 277 separate consent agreements with payday lenders that were found to be out of compliance with state law, averaging around 40 consent agreements per year. Compared to other types of financial institutions in Nebraska, payday lenders are an outlier with respect to frequency of consent agreements.

Indeed, starting in 2006, payday lenders have been parties to 318 consent agreements and orders finding they were out of compliance with the DDSLA. Other financial institutions did not have a similar frequency of violations embodied through consent agreements. For example, mortgage bankers and brokers have received the second highest number of consent agreements and orders, with 47 since 2006. Despite the fact that there are far fewer payday lenders (as of 2015, there were 87 registered payday lenders as compared to 353 registered mortgage bankers and brokers), payday lenders have been a party to more than 15 times as many consent agreements and orders in the same period of time. *See the chart below*.

Comparison of financial institutions receiving consent agreements and orders from the Department since 2006

Type of Institution	Number of Institutions (2015)	Consent Agreements/ Orders (since 2006)
Broker/Dealers	1,373	40
Credit Unions	14	0
Mortgage Banker/Brokers	353	47
Mortgage Loan Organizers	2,693	8
Sales Finance Companies	94	4
State Chartered Banks	163	4
Payday Lenders	**87**	**318**

Source: *Nebraska Department of Banking and Finance*

Types and examples of non-compliance

The types of violations that lead to consent agreement vary.[15] One of the more frequent violations is the failure of the lenders to obtain a completed "Same Day Transaction Verification Form" (SDTVF) for customers. [16] Obtaining a SDTVF is important because the form verifies the customer is not taking out a new payday loan with the same lender on the same business day prior to paying off their original loan.[17] This form verifies that the lender is following state law, and failure to maintain these forms is a presumptive violation of the DDSLA.[18]

Other types of common compliance problems include failing to properly maintain customer records, failing to keep payday lending records and accounts separate from those of other businesses, attempting to collect two penalties for the same transaction, holding multiple checks from borrowers simultaneously, holding checks in excess of the allowable aggregate amount, and holding checks for a longer time period than is statutorily allowed.[19] Examples of non-compliance also include a 2010 investigation of a lender, wherein the Department found that every account reviewed contained errors.[20] The Department investigated the same lender one year later and found that every account reviewed contained errors. The lender was investigated five times in a seven-year period and was found to have committed 140 separate violations during that period.

In another instance, in 2015, a lender failed to submit information to the Department that is required to renew its license.[21] The Department notified the lender that it must cease lending operations until the necessary information is submitted and a new license issued. Despite this, the lender continued to operate several locations for multiple days without a valid license, which is a felony in Nebraska. The lender was fined $7,500.

In another case, a 2013 investigation revealed 128 separate violations by a payday lender.[22] One year later, the same lender was investigated. Every account examined contained errors in the second investigation. The investigation also noted several repeat and ongoing violations from previous investigations. After originally issuing the lender an order to show cause (requiring the lender to appear at a hearing and potentially face license suspension or revocation) the Department agreed to vacate the show cause order and accept a fine. The lender kept its license, continued to operate, and in August of 2015 was investigated again and found to have committed 33 separate violations of the law. No investigations of this lender have occurred since.[23]

Conclusion

Based on the forgoing, and on the nature and number of consent agreements entered into between the Department and payday lenders, it is clear that many lenders have a history of compliance issues. Based upon this, Nebraska should reform its payday lending laws to make loans more fair, reasonable and transparent.

Endnotes

1 Pew Charitable Trust, "*Payday Lending in America – Who Borrows, Where They Borrow, and Why*," July 2012, *available at* http://www.pewtrusts.org/~/media/legacy/uploadedfiles/pcs_assets/2012/pewpaydaylendingreportpdf.pdf.

2 Neb. Rev. Stat. §45-918.

3 Note, in Colorado significant reforms were made to interest, fees and charges and 91% of residents still lived within 20 miles of a payday loan store. Presentation by Nick Bourke, Pew Charitable Trust, "*Payday and Small-Dollar Loans: Research and Policy Solutions*," December 2015.

4 Nebraska Revised Statutes §45-901 through §45-930.

5 Neb. Rev. Stat. §45-904.

6 Neb Rev. Stat. §45-908.

7 Neb. Rev. Stat. §45-918.

8 Neb. Rev. Stat. §45-919.

9 Neb. Rev. Stat. §45-920-925.

10 Neb. Rev. Stat. §45-926.

11 Neb. Rev. Stat. §45-920 *et seq.*

12 Nebraska Department of Banking and Finance, Annual Report, (2016).

13 *Id.*

14 Consent agreements are accessible via Department of Banking website, at http://www.nebraska.gov/ndbf/searches/orders.php.

15 Nebraska Appleseed, review of consent orders on Department of Banking website, *last visited* February 2017. Consent agreements reviewed available upon request.

16 *Id.*

17 Neb. Rev. Stat. §45-919(1)(g).

18 Neb. Rev. Stat. §45-919(1)(g).

19 Nebraska Appleseed, review of consent orders on Department of Banking website, *last visited* February 2017. Consent agreements reviewed available upon request. See Neb. Rev. Stat. §44-909(c) for requirements.

20 Nebraska Appleseed, review of consent orders on Department of Banking website, *last visited* February 2017. Consent agreements reviewed available upon request.

21 *Id.*

22 *Id.*

23 *Id.*

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