

Payday Lending in Rhode Island



Report of the
Rhode Island Advisory Committee to the
U.S. Commission on Civil Rights

October 2018

Advisory Committees to the U.S. Commission on Civil Rights

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Letter of Transmittal

**Rhode Island Advisory Committee to the
U.S. Commission on Civil Rights**

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The Rhode Island Advisory Committee, as part of its responsibility to advise the Commission on civil rights issues within the state, submits this report, "Payday Lending in Rhode Island." The report was adopted by the Advisory Committee by unanimous vote on October 16, 2018.

Sincerely,

Jennifer Steinfeld, *Chairperson*

Rhode Island Advisory Committee

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The Rhode Island Advisory Committee thanks all of the participants in the April 2018 briefing for sharing their expertise. Barbara de La Viez, the designated federal official assigned to the Rhode Island Advisory Committee, provided guidance and support for the project and report. In addition, the Committee greatly appreciates the superlative contributions of intern Nicole Carroll.

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I. Introduction

In Rhode Island, and across the country, payday lenders are most often concentrated in poor communities – predominantly in poor communities of color. According to a Pew Charitable Trusts report on payday lending in America, African Americans are 105 times more likely to take out a payday loan than other races or ethnicities.¹ The data and consistency of business locations in these poor communities suggest that lenders target these financially vulnerable residents.

Payday loans, also known as paycheck or cash advances, are small, short term loans meant to be used to cover expenses until the borrower’s next payday and come with much higher interest rates than normal loans. In Rhode Island, payday loan companies were granted a special exemption from state laws to allow for the high interest rates.

Rhode Island, contrary to other New England states, permits payday loans, allowing lenders to charge as much as 260 percent interest. Connecticut, New Hampshire, and Vermont have made payday lending entirely illegal and Maine and Massachusetts strictly regulate it. Payday lending is also illegal in 15 states and strictly regulated in seven others. Recognizing the harm of payday lending to military families, the Federal Government outlawed the practice for members of the U.S. military and their families.

In October 2017, the Consumer Financial Protection Bureau announced a new rule designed to curb predatory payday loans. This rule was issued after five years of field hearings, town hall meetings, research reports and over one million public comments. The rule required lenders to “reasonably determine that the consumer has the ability to repay the loan.”² The rule, which was set to go into effect on January 16, 2018, has been indefinitely suspended by the Consumer Financial Protection Bureau.

On April 27, 2018, the Rhode Island Advisory Committee to the U.S. Commission on Civil Rights (SAC) convened a public briefing at the Capital Building in Providence to hear testimony regarding civil rights concerns related to payday loans. The Committee held the briefing to

¹ The Pew Charitable Trusts, “Payday Lending in America: Who Borrows, Where They Borrow, and Why,” Pew Research Center, Washington, D.C. (July, 2012), http://www.pewtrusts.org/~media/legacy/uploadedfiles/pes_assets/2012/pewpaydaylendingreportpdf.pdf (hereafter *Pew Report*).

² 82 Fed. Reg. 54,871 (Nov. 17, 2017) (to be codified at 12 C.F.R. pt. 1041). The rule, which was widely supported by consumer and public-interest groups, requires lenders to: verify income and check expenses to see if borrower can repay loan by due date; limits overdrafts by limiting lenders with access to customer bank accounts from attempting withdrawals to reduce fees for insufficient funds; and sets caps of three loans in quick succession, requiring a mandatory cooling-off period of 30 days before another loan is allowed. The rule also allows that short-term loans, under \$500, exempt the lender from the ability to repay rule if it offers to stretch repayment over three installments.

examine whether there are disparities in payday lending practices and hear from elected officials, religious figures, advocates, and experts in the field.

In July 2018, subsequent to the Committee’s briefing, Governor Gina Raimondo declared that “rein[ing] in predatory payday lending” would part of her second-term goal of protecting working families.³ Her stated plan involves reducing the APR limits on payday loans to bring Rhode Island’s payday loan policies more in line with those of its regional neighbors.⁴

II. Legal Context

Federal Law

While payday lending is generally regulated at the state level, there are some important federal actions impacting the practice in Rhode Island.

The Truth in Lending Act requires creditors make certain disclosures to ensure that consumers can make informed credit decisions.⁵ The Truth in Lending Act is implemented through what is known as Regulation Z, which requires creditors disclose to consumers interest as an annual percentage rate (“APR”) of every potential loan.⁶ Commentary on Regulation Z, adopted in 2000, identifies payday lenders as creditors subject to these disclosure requirements.⁷

In 2006, following a Department of Defense (“DOD”) report on the experiences of military personnel with predatory lending,⁸ Congress passed the Military Lending Act.⁹ It covers loans to active-duty members of the armed forces and their dependents – veterans are not covered under the law¹⁰ – and limits the maximum interest rate to 36 percent APR, or Military Annual Percentage Rate.¹¹ DOD’s report recommended the 36 percent cap because it found that “predatory lending undermines military readiness” and that military families were targeted by payday loan companies.¹² In 2015, DOD amended its implementing regulations to eliminate

³ Press Release, Governor Gina Raimondo, Raimondo Announces Protections for Working Families (July 30, 2018), <https://ginaraimondo.com/updates/protections-for-working-families/>.

⁴ Governor Gina Raimondo, Protecting Opportunity for Working Families: Second-Term Policy Proposal (July 2018), <https://ginaraimondo.com/wp-content/uploads/2018/07/Working-Families-Policy-Brief-1.pdf>.

⁵ 15 U.S.C. §§ 1601, 1603-1604, 1631-1635, 1637(a).

⁶ 12 C.F.R. §§ 1026.17, 1026.18, 1026.22.

⁷ *Id.* (Supp. I, cmt. 2(a)(14)-2); 65 Fed. Reg. 17,129 (Mar. 31, 2000).

⁸ U.S. Department of Defense, *Report On Predatory Lending Practices Directed at Members of the Armed Forces and Their Dependents* (August 9, 2006), archive.defense.gov/pubs/pdfs/report_to_congress_final.pdf (hereafter *DOD Report*).

⁹ 10 U.S.C. § 987.

¹⁰ *Id.* § 987(i)(1).

¹¹ *Id.* § 987(b).

¹² *DOD Report*, at pp. 9-12.

coverage limitations relating to loan term and size, so currently the 36 percent Military Annual Percentage Rate applies to all loans for covered members.¹³

The Consumer Financial Protection Bureau (the “Bureau”), after researching the issue for five years and reviewing over 1.4 million comments, initiated rulemaking on the subject of payday loans in June 2016. It issued a final rule in November 2017 regarding “Payday, Vehicle Title, and Certain High-Cost Installment Loans,” (the “Payday Rule”).¹⁴ The final rule applies to loans that must be repaid within forty-five days of consummation and any loans with an interest rate above 36 percent APR.¹⁵ It requires that lenders reasonably determine whether a borrower has the ability to repay a loan before lending the borrower money; failing to do so constitutes an unfair and abusive practice, subject to Bureau action under the Dodd-Frank Act.¹⁶

The Bureau observed that “various submissions across the broad spectrum of stakeholders, including both industry participants and consumer groups, consistently reinforced the point that these loans disproportionately go to minority borrowers.”¹⁷ It also found that many borrowers do not have the ability to repay a payday loan, and are forced to choose between three options once the loan becomes due: borrow more money, default on the loan, or fail to meet basic living expenses.¹⁸ The payday lending business model is thus “dependent upon a large volume of re-borrowing.”¹⁹

The regulation went into effect on January 16, 2018, but most provisions do not require compliance until August 19, 2019.²⁰ On January 16, 2018, the Bureau’s new acting director issued a statement indicating that the Bureau would initiate a rulemaking process to reconsider the rule.²¹ Though it has not yet released any formal information about the reconsideration process, the Bureau reiterated this intention in its June 2018 Semiannual Regulatory Agenda,²² and in recent litigation filings. In April 2018, two trade associations, Community Financial Services Association of America and Consumer Service Alliance of Texas, filed a complaint against the Bureau, alleging, among many other reasons, that the final rule proposed is “unlawful because the Bureau misconstrues the statutory terms ‘unfair’ and ‘abusive’ and because, in any

¹³ 80 Fed. Reg. 43,607 (July 22, 2015) (codified at 32 C.F.R. § 232.3(f)).

¹⁴ Payday, Vehicle Title, and Certain High-Cost Installment Loans, 82 Fed. Reg. 54,472, 54,503, 54,514 (Nov. 17, 2017) (to be codified at 12 C.F.R. pt. 1041).

¹⁵ *Id.* at 54,873.

¹⁶ *Id.* at 54,874; 12 U.S.C. § 5531; The Dodd–Frank Wall Street Reform and Consumer Protection Act was signed into United States federal law by U.S. President Barack Obama on July 21, 2010. *See* Pub. L. 111–203, H.R. 4173.

¹⁷ 82 Fed. Reg. at 54,557.

¹⁸ *Id.* at 54,472.

¹⁹ *Id.* at 54,484.

²⁰ *Id.* at 54,472.

²¹ Press Release, Consumer Financial Protection Bureau, CFPB Statement on Payday Rule, (Jan. 16, 2018), <https://www.consumerfinance.gov/about-us/newsroom/cfpb-statement-payday-rule/>.

²² 83 Fed. Reg. 27,235 (June 11, 2018).

event, the Bureau lacks substantial evidence for its conclusions that payday and other covered loans are unfair and abusive.”²³ In June 2018, the U.S. District Court for the Western District of Texas granted a stay of the litigation during the agency review process, but denied the parties’ Joint Motion for Stay of Agency Action Pending Review.²⁴ In a response filed in support of plaintiffs’ motion for reconsideration of this order, the Bureau declared its intention to reinstate rulemaking by February 2019.²⁵ It also conceded that plaintiffs had presented a substantial case on the merits for their “claims that the rulemaking record did not provide substantial evidence for several findings . . . to that extent, the Rule is therefore arbitrary and capricious.”²⁶

Current Rhode Island Law

In 2001, the Rhode Island legislature expanded its check cashing statute to allow for payday lending or “deferred deposit transactions.”²⁷ The law defines a deferred deposit transaction as one in which a cash advance is made to a customer in exchange for either a post-dated check or authorization to withdraw the amount directly from the customer’s bank account on the agreed-upon date.²⁸ Currently, the statute permits payday lenders to lend amounts up to \$500 with the principal and a maximum of 10 percent interest due no less than thirteen days later.²⁹ Although generally the loans are due within fourteen days at a 10 percent interest rate, Rhode Island law requires that interest rate disclosures by payday lenders be expressed as both a dollar amount and an APR.³⁰ This reflects federal requirements under the Truth in Lending Act.³¹ A fourteen-day loan at 10 percent interest translates to a 260.71 percent APR.³² This 260 percent APR reflects the maximum rate that payday lenders can charge in Rhode Island.

²³ Complaint at 4, *Cmty. Fin. Serv. Ass’n of Am., Ltd. v. Consumer Fin. Prot. Bureau*, No. 1-18-cv-00295-LY (W.D. Tex. Apr. 9, 2018).

²⁴ Order, at 1-2, *Cmty. Fin. Serv. Ass’n of Am., Ltd. v. Consumer Fin. Prot. Bureau*, No. 1-18-cv-00295-LY (W.D. Tex. June 12, 2018), ECF No. 29.

²⁵ Response in Support of Plaintiffs’ Motion for Reconsideration at 3-4, *Cmty. Fin. Serv. Ass’n of Am., Ltd. v. Consumer Fin. Prot. Bureau*, No. 1-18-cv-00295-LY (W.D. Tex. June 22, 2018), ECF No. 34.

²⁶ *Id.* at 10-11.

²⁷ Act of July 13, 2001, ch. 371, §§ 1-4, 2001 R.I. Pub. Laws 371 (codified as amended at 19 R.I. Gen. Laws §§ 19-14-1; -14.1-10, -14.4-4, -14.4-5, -14.4-5.1).

²⁸ 19 R.I. Gen. Laws § 19-14-1(4).

²⁹ *Id.* §§ 19-14.4-4(4), 19-14.4-5.1(a), (d). The original law provided for a maximum loan amount of \$300 and a fixed term of fourteen days, but these terms were amended in 2005 to reflect the current law. Act of July 9, 2005, ch. 230, § 1, 2005 R.I. Pub. Laws 230; Act of July 9, 2005, ch. 235, § 1, 2005 R.I. Pub. Laws 235. The same 2005 legislation allowed for up to 15 percent interest on deferred deposit transactions, but the provision was changed back to 10 percent interest in 2010. *Id.*; Act Relating to Financial Institutions, ch. 204, § 1 (2010) R.I. Pub. Laws 204.

³⁰ 19 R.I. GEN. LAWS §§ 19-14.4-5(a), -5.1(b).

³¹ 15 U.S.C. § 1601 *et seq.*; 12 C.F.R. § 1026 *et seq.*

³² $(365/14) * 10 \text{ percent} = 260.71 \text{ percent APR}$.

If a borrower cannot afford the full payment on the due date, they may choose to “rollover” the loan, deferring the payment another term and paying just the fee on the initial due date.³³ The Rhode Island statute only allows borrowers to rollover a loan once, but it does not prohibit payday lenders from initiating a new loan on the same day to cover the cost of the previous loan.³⁴ The statute also limits the number of outstanding checks a single payday lender can hold for the same customer; the maximum is three checks.³⁵

The above provisions exempt payday lenders from Rhode Island’s small loan lender laws, which would otherwise be applicable. Rhode Island prohibits its small loan lenders from charging over 3 percent monthly interest for loans under \$300, over 2.5 percent monthly interest for loans between \$300 and \$800, and over 2 percent monthly interest for loans between \$800 and \$5,000.³⁶ These rates are equivalent to 24 to 36 percent APR, depending on the loan amount.³⁷ These small loans are for a maximum repayment terms of twenty-five months for loans \$1,000 and less and sixty months for loans between \$1,000 and \$5,000.³⁸ They also require repayment via evenly-spaced installments in equal amounts.³⁹ While the payday loan laws prohibit those lenders from requiring collateral, there is no similar prohibition for small loan lenders.

Proposed Rhode Island Legislation

Legislation introduced in the General Assembly in 2018 seeks to remove the special provisions for payday lenders and bring them back under the jurisdiction of the small loan lender laws.⁴⁰ This proposed legislation would repeal the sections of the check cashing statute that apply only to deferred deposit transactions. Payday lenders would then be subject to the small loan lender laws that cap interest at 36 percent APR. Although the explanation by the legislative council states that the act “would repeal provisions of the general laws allowing deferred deposit providers, also known as ‘payday lenders,’” the revision does not prohibit citizens from being able to access small dollar loans through more regulated providers.⁴¹

³³ 19 R.I. GEN. LAWS §§ 19-14.4-5.1(c). *See also generally* 82 Fed. Reg. 54,478 (Nov. 17, 2017) (discussing what a “rollover” is in terms of payday loans).

³⁴ *Id.* § 19-14.4-5.1(g).

³⁵ *Id.* § 19-14.4-5.1(f).

³⁶ *Id.* § 19-14.2-8.

³⁷ 12*2 percent=24 percent APR, 12*3 percent=36 percent APR.

³⁸ 19 R.I. Gen. Laws § 19-14.2-11.

³⁹ *Id.*

⁴⁰ H.R. 7557, 2018 Gen. Assemb., Jan. Sess. (R.I. 2018); S. 2173, 2018 Gen. Assemb., Jan. Sess. (R.I. 2018).

⁴¹ *Id.*

III. Background

Payday loans are generally short-term, high interest rate loans that are meant to tide over the borrower until his or her next “payday.” To qualify for a payday loan, a consumer need only have a bank account, a government-issued ID, and a form of income, which can include wages or government benefits such as Social Security, disability, or unemployment benefits.⁴² The borrower then either writes a postdated check for the full loan amount plus interest or authorizes the lender to debit the money directly from their bank account.⁴³ When the loan is due, the borrower rolls over the loan, returns to the store to pay in cash, or the money is taken out of their bank account through the payday lenders cashing the check or debiting the account directly.⁴⁴

Prevalence of Payday Loans Nationally

Payday lending is authorized by statute in thirty-seven states⁴⁵, though many of these have enacted recent restrictions limiting payday lending. In eleven states payday loans are subject to general consumer loan and usury laws, while in the remaining states and the District of Columbia payday lending is prohibited altogether.⁴⁶ In 15 states and the District of Columbia, prohibitions on payday loans or rate caps restrict small amount loans to a rate of 36 percent APR or less in

⁴² Diane Standaert, Director of State Policy, Center for Responsible Lending, Written Statement for the Rhode Island Advisory Committee to the United States Commission on Civil Rights, Apr. 27, 2018, at 5 [hereinafter cited as Standaert Statement]; Consumer Fin. Prot. Bureau, *Payday Loans and Deposit Advance Findings: A White Paper of Initial Data Findings* (2013), https://files.consumerfinance.gov/f/201304_cfpb_payday-dap-whitepaper.pdf (hereinafter *The Consumer Finance White Paper*).

⁴³ Standaert Statement, at 4.

⁴⁴ *Consumer Finance White Paper*, at 9; Standaert Statement, at 4.

⁴⁵ Ala. Code § 5-18A-1 (1975); Alaska Stat. § 06.50.010 (2018); Cal. Civil Code § 1789.30 (2008); Colo. Stat. § 5-3.1-103 (2010); 5 Del. Code § 978 (2002); Fla. Stat. § 560.404 (2009); Haw. Rev. Stat. § 480F-2 (2001); Idaho Code § 28-46-402 (2013); 815 Ill. Comp. Stat. 122/1-5; Ind. Code § 24-4.5-7-102 (2018); Iowa Code § 533D.3 (2013); Kan. Stat. § 16a-2-404 (2005); Ky. Rev. Stat. § 286.9-010 (2010); La. Stat. § 3578.2 (2000); Me. Rev. Stat. Ann. 9-A § 1-201 (2006); Mich. Comp. Laws § 487.2122 (2016); Minn. Stat. § 47.60 (2010); Miss. Code § 75-67-503 (2013); Mo. Stat. § 408.500 (2015); Mont. Code § 31-1-702 (2007); Neb. Stat. § 45-901 (2018); Nev. Rev. Stat. § 604A.010 (2007); N.D. Cent. Code § 13-08-01 (2005); N.H. Rev. Stat. § 399-A:17 (2018); Ohio Rev. Code § 1321.35 (2018); Okla. Stat. 59 § 3102 (2004); OR. Rev. Stat. 54 § 725A.010 (2010); R.I. Gen. Laws § 19-14.1-1 (2018); S.C. Code § 34-39-120 (1998); S.D. Codified Laws § 54-4-36 (2018); Tenn. Code § 45-17-102 (2011); Tex. Fin. Code § 341.001 (2001); Utah Code § 7-23-102 (2017); VA. Code § 6.2-1800 (2010); Wash. Rev. Code § 31.45.010 (2012); Wis. Stat. § 138.14 (2013); Wyo. Stat. § 40-14-363 (2014).

⁴⁶ Ariz. Rev. Stat. § 6-601 (2014); Ark. Code 23-52-101 (repealed 2011); Conn. Gen. Stat. § 36a-563 (2016); D.C. Code § 28-3301 (2011), § 26-319 (2007); Ga. Code § 16-17-1 (2005); Md. Code, Com. Law § 12-101 (2019); Mass. Gen. Laws 140 § 96 (2000); N.J. Stat. § 17:1-24 (repealed 2014); N.M. Stat. § 58-15-32 (repealed 2018); N.C. Gen. Stat. § 53-281 (statute authorizing payday loans expired in 2001); N.Y. Banking Law § 340 (1990); 63 Pa. Stat. § 2325 (1998); Vt. Stat. 8 § 2519 (2001); W. Va. Code § 46A-4-101 (1996).

interest.⁴⁷ In recent years the trend has been towards additional state regulation of payday loans.⁴⁸

Rhode Island is currently the only New England state that allows payday lending with rates above 36 percent APR.⁴⁹

Prevalence of Payday Loans in Rhode Island

There are twenty-eight payday loan stores in Rhode Island, twenty-six of which are branches of two national chains, Advance America and Check ‘N Go.⁵⁰ These two chains account for 95 percent of all payday loans made in the state⁵¹ and have stores located in the following cities: Cranston (1), East Providence (1), Johnston (2), Middletown (2), North Kingstown (1), North Providence (1), Pawtucket (3), Providence (3), Warren (1), Warwick (5), West Warwick (2), Westerly (1), and Woonsocket (3).⁵² Both of these main providers offer loans up to \$450, with the maximum allowed interest rate of 10 percent of the principal amount over two weeks, or 260.71 percent APR.⁵³ This rate is significantly higher than the highest credit card interest rates.⁵⁴

⁴⁷ Ark. Const. Amend. 89, § 3; Ariz. Rev. Stat. § 6-601 (2014); Conn. Gen. Stat. § 36a-563 (2016); D.C. Code § 28-3301 (2011); Ga. Code § 16-17-1 (2005); Md. Code, Com. Law § 12-101 (2019); Mass. Gen. Laws 140 § 96 (2000); Mont. Code § 31-1-702 (2007); N.H. Rev. Stat. § 399-A:17 (2018); N.J. Stat. Ann. 2C: 21-19, 17:11C-36(a) (criminal law sets the usury cap at 30%); N.Y. Penal Code 190.40 (criminal law sets the usury cap at 25%); N.C. Gen. Stat. § 53-173 (2013); Ohio Rev. Code § 1321.35 (2018); 7 Pa. Stat. § 6203 (1996); Vt. Stat. Ann. Tit. 9 § 41a (1995); W. Va. Code § 46A-4-101 (1996).

⁴⁸ 82 Fed. Reg. 54,484-86 (Nov. 17, 2017). *See infra* for a more in-depth discussion of payday regulation in other states.

⁴⁹ Maine has a 30 percent APR cap. Me. Rev. Stat. tit. 9-A § 2-401. New Hampshire has a 36 percent APR cap. N.H. Rev. Stat. § 399-A:17. And Connecticut, Massachusetts, and Vermont do not allow for payday lending outside of regular consumer loan regulation. Conn. Gen. Stat. § 36a-563; Mass. Gen. Laws 140 § 96; Vt. Stat. Ann. Tit. 9 § 41a.

⁵⁰ Standaert Statement, at 4.

⁵¹ Standaert Statement, at 4.

⁵² *Store Locations*, Advance America, <https://www.advanceamerica.net/store-locations> (last visited July 2, 2018) (enter “Rhode Island” or specific Rhode Island city into search field titled “Enter zip code or city, state”); *Store Directory*, Check ‘N Go, <https://locations.checkngo.com/rhode-island> (last visited July 2, 2018).

⁵³ *Payday Loans Near North Kingstown, RI*, Advance America, <https://www.advanceamerica.net/loans/details/payday-loan> (last visited July 2, 2018) (enter “Rhode Island” into search field titled “Enter zip code or city, state”); *Rhode Island Minimum Qualifications and Requirements and Finance Charge Schedule*, CHECK ‘N GO (Jan. 22, 2018), https://www.checkngo.com/wp-content/uploads/2018/02/RI_PDL_CNG_RETAIL_2018V1.pdf. *See also generally* 82 Fed. Reg. 54,478 (Nov. 17, 2017) (discussing other examples of high percentages for short term loans and fees that can amount to APR rates of 180 percent for a term of 30 days).

⁵⁴ Standaert Statement, at 7; Rachel Flum, testimony, *Briefing Before the Rhode Island State Advisory Committee to the U.S. Commission on Civil Rights*, Providence, RI, Apr. 27, 2018, transcript, pp. 71-72 (hereafter cited as *Providence Briefing*).

The Debt Trap -- Payday Loans May Trap Borrowers in a Cycle of Debt

For example, a borrower faced with unanticipated expenses may take out a \$450 payday loan, the maximum available at Advance America and Check 'N Go locations in the state. For this \$450 loan, a total amount of \$495 would be due fourteen days after initiation of the loan. This amount represents an interest rate of 10 percent, or 260.71 percent APR. If the borrower has trouble paying the full amount at the end of the two week period, he or she may choose to rollover the loan the one time allowed by Rhode Island law. With the rollover, the borrower would pay \$45 at the end of the fourteen days, and then \$495 at the end of the next fourteen-day period.⁵⁵ Because Rhode Island limits the number of rollovers to one, the maximum amount that can be charged on this one loan is \$540 over those two payments.

At the end of the second two-week period, the borrower either returns to the store to pay the \$495 in cash, or it is taken out of the borrower's account, which now includes their most recent paycheck or government benefit payment. If the check bounces or the account does not have sufficient funds, the borrower is subject to additional fees. Because the money is immediately taken out of their account, the borrower may then have trouble covering other necessary expenses such as rent and food. He or she may thus initiate a second payday loan to cover these essential costs. For any additional rollovers the same fees as above would apply. If the borrower takes out four consecutive loans and rolls over each loan once, by the end of the four-month period he or she has paid \$360 in interest and fees, or 80 percent of the original \$450 loan. This equates to a total cost of \$810 for the same \$450 of credit throughout the loan durations. Eight loans per year represents the average number of payday loans among payday borrowers nationally, but many people take on more than this average. For those that take on additional loans, interest rates approach the triple digits and borrowers can spend months or years accumulating fees on the same small gap in credit.

Payday loan business models depend on a high number of repeat borrowers such as the one described above.⁵⁶ A Pew Charitable Trusts survey found that borrowers, on average, took out

⁵⁵ *Payday Loans Near North Kingstown, RI*, Advance America, <https://www.advanceamerica.net/loans/details/payday-loan> (last visited July 2, 2018) (enter "Rhode Island" into search field titled "Enter zip code or city, state"); *Rhode Island Minimum Qualifications and Requirements and Finance Charge Schedule*, Check 'N Go (Jan. 22, 2018), https://www.checkngo.com/wp-content/uploads/2018/02/RI_PDL_CNG_RETAIL_2018V1.pdf.

⁵⁶ Susanna Montezemolo, Ctr. for Responsible Lending, *Payday Lending Abuses & Predatory Practices*, pp. 2-3 (2013), <http://www.responsiblelending.org/state-of-lending/reports/10-Payday-Loans.pdf>; Leslie Parrish & Uriah King, Ctr. for Responsible Lending, *Phantom Demand: Short-term due date generates need for repeat payday loans, accounting for 76 percent of total loan volume* 7 (2009), <https://www.responsiblelending.org/payday-lending/research-analysis/phantom-demand-final.pdf>; The Pew Charitable Trusts, *Payday Lending in America: Who Borrows, Where They Borrow, and Why* 7 (2012), http://www.pewtrusts.org/~media/legacy/uploadedfiles/pes_assets/2012/pewpaydaylendingreportpdf.pdf [hereinafter *Pew Report*].

eight loans each year.⁵⁷ In a Consumer Finance Protection Bureau white paper, 48 percent of borrowers studied had more than ten transactions over a 12-month period and 14 percent of the borrowers had more than twenty transactions over the same period.⁵⁸ Three-quarters of the fees from payday loans originated during this 12-month period were from borrowers who had more than ten transactions over the period.⁵⁹ For borrowers taking out more than six loans over the 12-month period, the vast majority of loans were initiated within two weeks of a previous loan, most often on the same day the previous loan closed.⁶⁰

In response to the Bureau's white paper, a trade association of payday lenders, including Advance America,⁶¹ petitioned the Bureau for its retraction.⁶² The trade association criticized the Bureau's white paper for using an unrepresentative sampling method improperly weighted in favor of finding more repeat borrowers;⁶³ however, the trade association also acknowledged that "[i]n any large, mature payday loan portfolio, loans to repeat borrowers generally constitute between 70 and 90 percent of the portfolio, and for some lenders, even more."⁶⁴ The trade association's insistence that the Bureau should have removed all repeat borrowers from the beginning sample population reveals the dependence of payday lenders on these repeat borrowers and the protracted length of borrower relationships with lenders.⁶⁵ The trade association argued that its internal data shows that the "median borrower becomes debt-free and remains debt-free for more than 14 days after approximately 1.5 rollovers."⁶⁶ Without the underlying data or further explanation, it is difficult to assess the validity of this claim. At the same time, this assertion confirms that many borrowers rollover their loans.⁶⁷

A 2009 report by the Center for Responsible Lending, a nonprofit organization that researches predatory lending, found that in Florida and Oklahoma over a 12-month period approximately half of successive payday loans were taken out at the first available opportunity, 87 percent were taken out within two weeks, and 94 percent were taken out within one month.⁶⁸ Similar analysis

⁵⁷ *Pew Report*, at 4, 8-9.

⁵⁸ *Consumer Finance White Paper*, at 21.

⁵⁹ *Id.*, at 22.

⁶⁰ *Id.*, at 25.

⁶¹ *2018 Corporate Members*, Community Fin. Servs. America, <https://www.cfsaa.com/corporate-members-2017> (last visited July 5, 2018).

⁶² Letter from Hilary B. Miller, Counsel, Cmty. Fin. Servs. of Am., to Chief, Info. Office, Consumer Fin. Prot. Bureau (June 20, 2013), https://files.consumerfinance.gov/f/201308_cfpb_cfsa-information-quality-act-petition-to-CFPB.pdf [hereinafter *Community Finance Services of America Letter*].

⁶³ *Community Finance Services of America Letter*, at 4-5.

⁶⁴ *Ibid.*, at 5.

⁶⁵ *See Community Finance Services of America Letter*, at 6.

⁶⁶ *Ibid.*, at 7.

⁶⁷ *See Community Finance Services of America Letter*, at 7.

⁶⁸ Leslie Parrish & Uriah King, Ctr. for Responsible Lending, *Phantom Demand: Short-term due date generates need for repeat payday loans, accounting for 76 percent of total loan volume 7* (2009),

in Colorado showed that two thirds of payday loans were renewed on the same day the previous loan was repaid.⁶⁹ These trends are representative of patterns occurring in other states, including Rhode Island.⁷⁰ The Center for Responsible Lending estimates that loan churn, or the practice of borrowers initiating new loans within two weeks of paying off their previous loan, accounts for 76 percent of total number of loans and loan volume nationally.⁷¹ Loans to one-time borrowers represent less than 2 percent of annual payday loan volume.⁷² In 2013, the Center for Responsible Lending found that nationally 85 percent of loans are made to borrowers who take out at least seven loans in a year.⁷³

One factor contributing to the debt cycle is how borrowers use payday loans. Though generally thought of as emergency assistance for unanticipated expenses, payday loans are often used to cover recurring regular expenses.⁷⁴ Because these expenses are recurring, borrowers have a hard time repaying their loan and often take out additional loans with additional fees to cover the same gap in credit. Payday loans in Rhode Island cost consumers \$7.5 million each year in fees.⁷⁵

Borrowers that default on a payday loan are subject to additional financial consequences. These include nonsufficient fund fees and overdraft fees, involuntary bank account closure, and bankruptcy.⁷⁶ These financial consequences can occur even when the borrower has already paid more in interest than the original loan amount.⁷⁷ There are also effects on the borrower's credit once a payday loan is referred to a collection agency for being in default.⁷⁸ Payday lenders do not report to credit bureaus, so borrowers cannot build their credit by making payments on their

<https://www.responsiblelending.org/payday-lending/research-analysis/phantom-demand-final.pdf> (The first available opportunity is the same day a borrower's prior loan was due, or the first day following a statutory cooling off period) (hereafter *Parrish & King Phantom Demand Report*).

⁶⁹ *Parrish & King Phantom Demand Report*, at 10.

⁷⁰ *Ibid.* ("little or no variance of repeat lending patterns among the states that authorize the basic payday loan product").

⁷¹ *Ibid.*, at 11-13.

⁷² *Ibid.*, at 3, 12.

⁷³ Susanna Montezemolo, Ctr. for Responsible Lending, *Payday Lending Abuses & Predatory Practices* (2013), <http://www.responsiblelending.org/state-of-lending/reports/10-Payday-Loans.pdf>, at 11-12 (hereafter *Montezemolo Payday Lending Abuses Report*).

⁷⁴ *Ibid.*, at 8; *Pew Report*, at 4-5, 13-15. The Consumer Finance Services of America letter objects to claims that payday lenders market the loans as being suitable for any specific borrowers or situations. *Community Finance Services of America Letter*, at 10-11.

⁷⁵ Standaert Statement, at 1.

⁷⁶ *Montezemolo Payday Lending Abuses Report*, at 6; *Parrish & King Phantom Demand Report*, at 16.

⁷⁷ *Montezemolo Payday Lending Abuses Report*, at 6.

⁷⁸ *Ibid.*

payday loans.⁷⁹ Once referred to a collection agency the loan default impacts the individual's credit score and can subject the borrower to aggressive collection practices.⁸⁰

Borrowers may also have additional difficulty paying other debts due to their obligations to payday lenders and the lenders' direct access to their bank accounts. Individuals with access to payday loans have been found to have 25 percent more difficulty paying bills when compared to individuals in the same income group without access to payday loans.⁸¹ The same study found a similar level of increased delay in seeking needed medical and dental care and prescription drug purchases.⁸²

Payday Lenders Disproportionately Target People of Color

The Committee was told that payday lenders choose store locations so as to target people in African American and Latino communities.⁸³ Though advocates of payday lending argue that their stores are located in low-income areas, which just happen to be majority communities of color, the trend holds even when comparing communities of the same income level.⁸⁴ In Rhode Island, payday lenders are disproportionately located in communities of color, even after controlling for income. According to the Center for Responsible Lending, Black and Latino neighborhoods with at least a 30 percent Black and Latino population and 80 percent to 120 percent area median income have an approximately 70 percent higher concentration of payday loan stores when compared to predominantly white neighborhoods with the same range of area median income.⁸⁵ This trend has been observed on the national level as well.⁸⁶

The Pew study also found that the chance of a person using a payday loan was 105 percent higher for African Americans than for other races, after controlling for other factors.⁸⁷ While 12 percent of African Americans have used a payday loan, that number is only 4 percent for white Americans and 6 percent for both Hispanic Americans and individuals of other races or ethnicities.⁸⁸

⁷⁹ Laura Rijo, testimony, *Providence Briefing*, transcript, pp. 121-22.

⁸⁰ Montezemolo, at 6.

⁸¹ Brian T. Melzer, *The Real Costs of Credit Access: Evidence from the Payday Loan Market*, 126 Q. J. Economics 517, 519-20 (2011).

⁸² *Id.*

⁸³ See, e.g., Standaert Testimony, *Providence Briefing*, transcript, pp. 80-85.

⁸⁴ Wes Li, Leslie Parrish, Keith Ernst, and Delvin Davis, Center for Responsible Lending, *Predatory Profiling: The Role of Race and Ethnicity in the Location of Payday Lenders in California* (March 26, 2009), available at <https://www.responsiblelending.org/california/ca-payday/research-analysis/predatory-profiling.pdf>.

⁸⁵ Standaert Statement, at 5.

⁸⁶ *Ibid.*, at 5-6.

⁸⁷ *Pew Report*, at 9.

⁸⁸ *Ibid.*, at 11.

IV. Summary of Briefing

The Committee invited twelve individuals, including elected officials, religious figures, advocates, and experts, to make presentations. Industry members were invited to participate in the briefing, but failed to respond to the invitation. Participants were placed on four panels.

The first panel included Senator Harold Metts, who, over the past few years, has been involved with legislative efforts to regulate payday lending. State Treasurer Seth Magaziner also provided context on the financial ramifications for Rhode Island families and background on the potential legislative solutions. Brian Azar of Navigant Credit Union discussed alternatives to payday loans available through his credit union.

The second panel was comprised of religious figures – Pastor William Sterrett, Pastor Ebony Grison, and Mufti Ikram ul Haq – who described the experiences that members of their communities have had with payday loans. They also provided religious perspectives on usury.

Experts on panel three were Rachel Flum, the Executive Director of the Economic Progress Institute, and Diane Standaert, Director of State Policy for the Center for Responsible Lending. They provided information on how payday loans perpetuate a cycle of debt and the effect on Rhode Island families of color.

The fourth and final panel included advocates who addressed the financial consequences for borrowers and current alternatives available in Rhode Island. Presenting were Jim Vincent of the Rhode Island NAACP; Laura Rijo, a current employee of the Capitol Good Fund and former Check ‘N Go employee; Alden Harrington, a bankruptcy lawyer; and Andy Posner, founder and CEO of Capital Good Fund.

During the Open Public Comment Section, Andrew Therrien described his personal experiences with payday loans.

VI. Findings and Recommendations

FINDINGS

Payday Loans are Targeted at People of Color

Payday loans are disproportionately targeted at Rhode Islanders of color. Payday loan stores are primarily located in communities of color.⁸⁹ When comparing neighborhoods with the same median income, neighborhoods with significant Black and Latino populations had a 70 percent higher concentration of payday loan stores than the White neighborhoods at the same income level.⁹⁰ These disparities in the concentration of payday lenders in communities based on race

⁸⁹ Flum Testimony, *Providence Briefing*, transcript, p. 74-75.

⁹⁰ Standaert Testimony, *Providence Briefing*, transcript, p. 87.

has been observed throughout the country and hold steady even after controlling for income.⁹¹ According to the NAACP, “studies have repeatedly shown that the wealth-stripping effects of predatory lending practices have a disproportionate impact on African Americans, Latinos, and low-wealth families.”⁹²

Payday Loans Create a Cycle of Debts

Payday lending in Rhode Island traps borrowers in a cycle of debt and leads to other negative financial consequences. Contributing to this cycle of debt are both the high interest rates and short terms of payday loans.

Borrowers often cannot afford the payday loans they take on. Payday lenders do not engage in any loan underwriting and often incentivize their employees to encourage borrowers to take out the largest possible loan, regardless of the borrower’s ability to pay it back.⁹³ Because payday lenders know borrowers likely cannot afford to repay the loan within the two-week period, their business model depends on a high number of repeat borrowers, creating a high level of loan churn.⁹⁴ On average, a payday loan borrower takes on more than eight loans per year, with 80 percent of payday loans taken out within a month of the previous loan.⁹⁵

This cycle of debt is exemplified by the story of a single mother’s experiences with payday loans in the state, as told by a former Check ‘N Go employee. The woman started with two \$450 payday loans at different companies, one being Check ‘N Go. For five years she took out new loans to cover the same \$900 gap. Over the five years, she paid \$10,000 for that \$900 of credit.⁹⁶

Other financial consequences of payday loan borrowing, including additional fees, involuntary bank account closure, adverse impact on credit scores, and bankruptcy, further contribute to the cycle of debt caused by payday loans.

Payday Loans Adversely Affect the Rhode Island Economy

Payday loans hurt Rhode Island’s economy. \$7.6 million in payday loan fees leave Rhode Island each year, channeled instead to the two national companies operating 95 percent of the payday loan stores in the state.⁹⁷ When low-income workers are able to keep money that is otherwise

⁹¹ *Id.*, at p. 87.

⁹² Vincent Testimony, *Providence Briefing*, transcript, p. 112.

⁹³ Rijo Testimony, *Providence Briefing*, transcript, p. 118.

⁹⁴ *Id.*, at pp. 121-22.

⁹⁵ Seth Magaziner, testimony, *Providence Briefing*, transcript, p. 12; Jim Vincent testimony, *Providence Briefing*, transcript, p. 113.

⁹⁶ Rijo Testimony, *Providence Briefing*, transcript, pp. 121-22.

⁹⁷ Flum Testimony, *Providence Briefing*, transcript, p. 74; Standaert Testimony, *Providence Briefing*, transcript, pp. 83, 92.

used for payday loan fees, that money is spent at local shops, going back into the local economy.⁹⁸

There is a Demand for Short-Term Loans

Many Rhode Islanders, especially people of color, are financially vulnerable and sometimes require access to credit advances. Thus, there is market need for small dollar loans available for those with poor credit. Payday loans are used to satisfy this need. However, borrowers often use payday loans to cover regular recurring expenses rather than cover unanticipated emergency expenses.

There are Available Alternatives to Payday Loans

There are other financial alternatives available for Rhode Islanders to access small dollar loans, even without established credit. Successful alternatives must address both the high cost and short term of payday loans.

The Navigant Credit Union in Rhode Island offers a Smart Start loan, which is a small dollar loan with a maximum value of \$600, an 18 percent APR, and a ninety-day repayment period.⁹⁹ At this interest rate the non-profit credit union breaks even, so they would expect to see profitability at the higher interest rate of 36 percent APR.¹⁰⁰

Capital Good Fund, another Rhode Island non-profit, offers a payday loan alternative involving loans of \$300 to \$500 with a 33 to 36 percent APR, longer repayment term, no prepayment penalty, and credit bureau reporting.¹⁰¹ Capital Good Fund also assesses borrowers' ability to afford each loan and "makes the smallest loan possible."¹⁰²

Both Capital Good Fund and Navigant have the capacity to scale their products to reach more consumers as long as consumers are aware of their products.¹⁰³ However, not all borrowers are approved for the above loan alternatives because an ability-to-pay analysis is conducted. Other options for Rhode Islanders with lower credit scores include credit cards, pawn, and payment plans from utilities, social services agencies, savings accounts, and others;¹⁰⁴ borrowers may also choose to postpone purchases and cut back on expenses.¹⁰⁵

⁹⁸ Flum Testimony, *Providence Briefing*, transcript, pp. 73-74.

⁹⁹ Brian Azar, testimony, *Providence Briefing*, transcript, p. 27.

¹⁰⁰ Azar Testimony, *Providence Briefing*, transcript, pp. 27-28.

¹⁰¹ Andy Posner, testimony, *Providence Briefing*, transcript, pp. 127-28.

¹⁰² Posner Testimony, *Providence Briefing*, transcript, p. 128.

¹⁰³ *Id.* at pp. 132-34.

¹⁰⁴ Standaert Testimony, *Providence Briefing*, transcript, p. 89.

¹⁰⁵ Posner Testimony, *Providence Briefing*, transcript, p. 132; *Pew Report*, at 5, 16-18.

Success of Legislative Restrictions in Other States

Legislative restrictions on payday lending in other states have experienced varying degrees of success. A 36 percent APR or similar rate cap in other states has allowed for continued access to emergency loans, but has decreased the number of citizens, especially people of color, in a cycle of debt.¹⁰⁶ After certain states implemented restrictions on payday lending, some more restrictive than the proposed Rhode Island restrictions, only about 5 percent of borrowers borrowed online or elsewhere.¹⁰⁷

However, loopholes in some state regulations restricting or eliminating payday loans have led to an increase in the number of vehicle title loans, open-end credit loans, online payday loans, payday installment loans, balloon payment or “flexpay” loans, and other statutory workarounds.¹⁰⁸ Legislative fixes that only address the length of payday loans also fall short, with borrowers still subject to triple-digit interest rates and prone to taking out multiple loans.¹⁰⁹

To avoid these pitfalls, legislative action in Rhode Island must address both the high cost and short terms of payday loans, as well as the potential for evasion through other workarounds. The legislature should consider revising the definition of a “loan made or funded within this state”¹¹⁰ to bring online lenders lending to Rhode Island residents within the scope of its authority.

RECOMMENDATIONS

Legislative Action

The General Assembly should pass a bill eliminating the statutory carve-out for payday lenders. The elimination of this payday lending exception does not prevent lenders from offering small dollar loans to Rhode Islanders.¹¹¹ Rather, payday lenders should be returned to the authority of the small loan lender statute that restricts the maximum interest rate on small loans to 36 percent APR.¹¹² This statute requires payments to be made in roughly equal installments at intervals of roughly equal length,¹¹³ which prohibits lenders from turning to the balloon payment loans or payday installment loans adopted by payday lenders following restrictions in other states.

¹⁰⁶ See *Pew Report*, at 5, 22; *Montezemolo Payday Lending Abuses Report*, at 8-9, 14-16.

¹⁰⁷ *Pew Report*, at 22; *Montezemolo Payday Lending Abuses Report*, at 14.

¹⁰⁸ 82 Fed. Reg. 54,485-86 (Nov. 17, 2017) (discussing Ohio, Colorado, Arizona, Virginia, and Delaware); *Montezemolo Payday Lending Abuses Report*, at 14-16.

¹⁰⁹ Tom Feltner, Diane Standaert, & Ellen Harnick, *Sinking Feeling: Colorado Borrowers Describe their Experiences with Payday Loans*, Center for Responsible Lending (July 2018), <https://www.responsiblelending.org/sites/default/files/nodes/files/research-publication/crl-sinking-feeling-jul2018.pdf>; *Montezemolo Payday Lending Abuses Report*, at 16.

¹¹⁰ 19 R.I. Gen. Laws § 19-14-1(9).

¹¹¹ Standaert Testimony, *Providence Briefing*, transcript, pp. 94-95.

¹¹² 19 R.I. Gen. Laws § 19-14.2-8.

¹¹³ *Id.*, at § 19-14.2-11.

The General Assembly should also consider investigating the use of vehicle title loans in the state. If payday loans are more heavily regulated, payday lenders may transition to offering more vehicle title loans with similar financial consequences for borrowers. To fully protect consumers in the state, Rhode Island should restrict all prohibitively high interest rate loans, including both vehicle title loans and payday loans.

Payday Loan Alternatives

Rhode Island should encourage the growth and development of small dollar loan programs that have lower interest rates and longer terms than payday loans. This could reflect a recent announcement by the Treasury's Office of Comptroller of the Currency calling for traditional banks to offer "responsible short-term small-dollar installment loans, typically two to 12 months in duration with equal amortizing payments, to help meet the credit needs of consumers."¹¹⁴ Loan programs such as those offered by Navigant and Capital Good Fund have the potential to meet consumers' needs without the adverse consequences of payday loans. These alternatives should be promoted, and the development of similar products encouraged.

Underlying Reasons for Financial Insecurity

Rhode Island should investigate the underlying financial circumstances that leave Rhode Islanders of color especially in need of the credit advances payday loans provide. This investigation may focus on state law and policy regarding education, housing, healthcare, human services, and transportation, among others.

¹¹⁴ Bulletin, Office of the Comptroller of the Currency, U.S. Department of the Treasury, Installment Lending, OCC Bulletin 2018-14 (May 23, 2018), <https://www.occ.treas.gov/news-issuances/bulletins/2018/bulletin-2018-14.html>.

**Rhode Island Advisory Committee to the
United States Commission on Civil Rights**



U. S. Commission on Civil Rights

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