S. HRG. 109–1081

A REVIEW OF THE DEPARTMENT OF DEFENSE'S REPORT ON PREDATORY LENDING PRACTICES DIRECTED AT MEMBERS OF THE ARMED FORCES AND THEIR DEPENDENTS

HEARING

BEFORE THE

COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS UNITED STATES SENATE

ONE HUNDRED NINTH CONGRESS

SECOND SESSION

ON

UNFAIR OR ABUSIVE LOANS, CREDIT SALES TRANSACTIONS, AND COLLECTIONS PRACTICES THAT ARE PARTICULARLY HARMFUL TO SERVICE MEMBERS AS IT UNDERMINES MILTARY READINESS AND HARMS TROOP MORALE

THURSDAY, SEPTEMBER 14, 2006

Printed for the use of the Committee on Banking, Housing, and Urban Affairs

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THURSDAY, SEPTEMBER 14, 2006

WITNESSES

Additional Material Supplied for the Record

A REVIEW OF THE DEPARTMENT OF DEFENSE'S REPORT ON PREDATORY LENDING PRACTICES DIRECTED AT MEMBERS OF THE ARMED FORCES AND THEIR DEPENDENTS

THURSDAY, SEPTEMBER 14, 2006

U.S. SENATE,
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS,
Washington, DC.

The Committee met at 10:05 a.m., in room SD–538, Dirksen Senate Office Building, Hon. Richard Shelby, presiding.

OPENING STATEMENT OF SENATOR RICHARD C. SHELBY

Senator SHELBY. The Committee will come to order.

This morning, the Committee will hear testimony on the recently completed Department of Defense report on predatory practices directed at members of the armed forces and their dependents. The report draws attention to the problems of predatory lending around military communities and the plight of servicemen and women who are caught in what the report describes as debt traps.

Although predatory lending schemes differ in their details, they share certain characteristics. For example, some lenders target financially inexperienced consumers and make loans without regard to the consumers' ability to repay. The lending products they offer also feature high interest rates and fees.

These lenders often count on the fact that borrowers will be unable to pay the loan in full when it becomes due, forcing borrowers to seek additional loans which generate more fees. The end result is often the same: mounting debt, a deteriorating credit rating, and reduced availability of credit sources.

Unfortunately, military personnel and their families are particularly attractive targets for this type of lending. They are often young and financially inexperienced, sometimes receiving their first steady paycheck. Because they fear military sanctions, including the loss of security clearance, servicemen and women are less likely to default entirely on loans and, therefore, represent a low credit risk to lenders. Finally, the fact that they are concentrated in large numbers on and around military bases makes them a readily accessible market for these types of loans.

In addition to describing the most prevalent forms of predatory lending, the report that Secretary Chu will expound on also offers concrete legislative recommendations to reduce the impact and frequency of predatory lending. The Defense Department, is to be applauded for the effort it has made to promote financial literacy among service members and their families, but education can only do so much.

As the Committee has learned in the cases and situations involving certain mutual funds and insurance products aimed at military personnel, stronger Congressional action may be required. As long as certain unscrupulous lenders continue to employ predatory practices, our servicemen and women suffer and the toll on our readiness will increase.

I would like at this time to take a minute to commend Senator Dole, for her work to initiate this important study. It was through her efforts that this study was included in last year's Defense Authorization Act, and she has been very, very important to this cause.

On our first panel today, we will have Dr. David Chu, Under Secretary of Defense for Personnel and Readiness; he will discuss the department's report. Our second panel will consist of: Admiral Charles S. Abbot, President and Chief Executive Officer of the Navy-Marine Corps Relief Society; Dr. William O. Brown, Associate Professor at the Bryan School of Business and Economics at the University of North Carolina in Greensboro; Ms. Lynn Drysdale, a staff attorney with the Jacksonville Area Legal Aid; Mr. Hilary B. Miller, President of the Payday Loan Bar Association; and Mr. Christopher L. Peterson, Assistant Professor of Law at the Levin College of Law, University of Florida.

STATEMENT OF SENATOR TIM JOHNSON

Senator JOHNSON. Well, thank you, Mr. Chairman, for this hearing, and I appreciate the Committee is meeting today to discuss an issue of critical importance.

Thousands of our military personnel are currently serving in harm's way in defense of our country. In my State of South Dakota, over 3800 military personnel and civilians are stationed at Ellsworth Air Force Base, 300 of which recently deployed in support of the Global War on Terror. As a father of an active duty soldier, an enlisted man who served combat tours in Iraq and Afghanistan, I am acutely aware of the very personal and financial challenges facing our men and women in uniform. I am proud of their courage and professionalism and am grateful for their service to our country.

Financial stress can affect any soldier regardless of their marital or deployment status, but in particular younger or lower-ranked enlisted personnel. We all sympathize with the soldier who incurs debt because he is blind-sided by unexpected emergencies, auto repairs, personal or family illness, or is just struggling with basic living expenses.

I share DoD's concern about service members falling into a cycle of debt whether through inappropriate use of credit cards, payday loans, or other forms of credit. I believe Congress and DoD must work together to improve the financial literacy of our service members and crack down on abusive and truly predatory practices by any lender.

It is very clear that military personnel, like many other consumers, have a real and legitimate need for short-term small denomination credit products. According to the Federal Reserve, payday loans typically total $500 or less with fees ranging from $15 to $100. As the loans typically last for just 2 weeks, however, the annualized interest rates tend to be high.

Now, one of the concerns that I have as we discuss this issue is that there are various steps that the committee and Congress could take relative to various sectors of the credit industry, but the underlying problem remains, and that is the problem of military personnel, particularly younger enlisted, but others as well, who are not able to make ends meet; and whatever we do with the various sources of credit, those problems remain. Obviously, one of the reasons that payday lenders have stepped into a vacuum is because the banking industry and the credit union industry have chosen not to pursue that level of lending with very much aggressiveness, and as a result, a vacuum has occurred.

If we are to eliminate payday lending altogether and make it unviable in this niche, then the question I have is who fills then that niche, because the need remains. Do we then go to increasing use of pawnshops? Internet lenders? Loan sharks out of the back of their car? Where do we go next? That is one of the concerns that I have, is that we not jump from the frying pan literally into the fire in terms of abusive practices toward our military personnel.

So I think we have some far-ranging questions that need to be answered. I know that the military is aware of the need for greater financial literacy, which is part of the problem. That is a national problem, not simply a military, but it is a national problem. We have got a long ways to go on that, but I am concerned that the underlying problem remains and I want to make sure that we don't have unintended consequences that are worse than the current illness that we may have.

So as we continue to address the issue of predatory lending to the military, the primary goal, I believe, should be to develop meaningful solutions that will offer the greatest protections to our service members while avoiding measures that carry the potential for negative unintended consequences and driving service members into potentially far more abusive and more expensive and unregulated forms of credit. So, again, I thank you, Mr. Chairman, for holding this hearing and I hope that this leads us to a very constructive debate about how best to serve the needs of our American military personnel.

STATEMENT OF SENATOR ELIZABETH DOLE

Senator DOLE. Mr. Chairman, I thank you for your interest in this subject and thank you for holding this hearing today. Secretary Chu, thank you so much for your excellent report. I appreciate the diligent efforts that have been made by those who assisted you in this effort. I also want to thank the witnesses who appear before us today in addition to Secretary Chu. I look forward to hearing from all of you.

I have to say I am proud to have authored this legislation that directed the Department of Defense to prepare the report that we are focused on today, because this problem does provide a real threat to our national defense in my view. It is a real threat and it poses issues that need to be focused upon.

Predatory lenders are blatantly targeting our military personnel, undermining their financial stability and tarnishing their service records. This practice not only creates financial problems for individual soldiers and their families, but also weakens our military's operational readiness. Military conduct codes stress financial solvency, and bad credit can prevent service members from having the security clearances they need to perform their duties. Unfortunately, all too many are reluctant to seek help until it is too late, resulting in disciplinary measures that can end a career.

Let me focus on testimony from a commanding officer included in the DoD report, and I quote: "Between 2000 and 2005, revoked or denied security clearances for sailors and Marines due to financial problems have increased 1600 percent." I find it telling that the report also shows that in the same time period, the number of payday lenders more than doubled from 10,000 in the year 2000 to 23,000 in 2005.

Overall, predatory lending cost U.S. consumers more than $25 billion a year, and these lenders profit from the most vulnerable borrowers. As we see in this report, Mr. Chairman, several factors make our men and women in uniform particularly susceptible to this practice, as we have already heard this morning. For starters, many are young, and like most young Americans, they lack financial savvy and security. In fact, the Defense Department is the largest employer of young adults in the United States with nearly half of its enlisted members under the age of 25.

In addition, service members have job security and steady incomes, and they are fashioned by a military culture that emphasizes financial responsibility and settling debts. Borrowing can be an alluring option for a young soldier to get cash fast and easy, but exorbitant interest rates can quickly send an individual into a downward spiral of debt.

As the Pentagon's report mentions, my home State of North Carolina has been aggressively cracking down on predatory lenders, imposing a 36 percent small loan usury cap reinforced by a strong bank regulator. Other States also are active in combating this practice. While this is, indeed, encouraging, the report also mentions States where the problem continues, like Arkansas which has a low usury cap in its constitution, but still allows lenders to charge triple-digit interest rates to service members stationed at Little Rock.

We need national standards that ensure that all of our courageous men and women in uniform are protected no matter where they are based. The DoD report states that as many as one in five service members are falling victim to predatory loan operations. Still, there are some who question whether these lenders are truly targeting our military even when many, specifically military and installment lenders, market themselves with names and logos that imply an official military connection. For example, you see here "Armed Force Loans", "Military Loans.com", and "Pioneer Military Lending".

In addition, the geographic evidence speaks for itself. Let us look at this February 2005 map of the State of North Carolina. This was prepared by Dr. Steven Graves from California State University, Northridge. Now, keep in mind that this map was created at a time when North Carolina had 612 payday lenders. Today, because of our State's laws, these lenders no longer operate in North Carolina.

This 2005 map shows us the most targeted ZIP Codes for payday lending in North Carolina. We can see that the larger population centers, like around Charlotte and Raleigh, have high concentrations of payday lenders, as would be expected. But look at the counties with the greatest number of payday lenders. These are areas with significant military presence. The county with the State's highest concentration was Wayne County, home of Seymour Johnson Air Force Base. Cumberland County, where Fort Bragg and Pope Air Force Base are located, has the third-highest concentration, and Craven County, the site of Marine Corps Air Station at Cherry Point, has the fourth.

Let us specifically look at Fort Bragg and Pope Air Force Base. In 2005, statewide, there were roughly four banks to one payday lender, but in the entire three-mile zone surrounding the perimeter of Bragg and Pope, the ratio was four banks to every five payday lenders. Now let us look at the February 2000 map of just the eastern side of Bragg and Pope. This map shows that seven of the thirty-six payday lenders in just this area, or about 20 percent, were within one mile of the bases while just five of the 68 banks are in the same area. And if we look between one and two miles of the base, there are six additional payday lenders and only one bank. In the two- to three-mile zone, the ratio of payday lenders to banks gets closer to the statewide average with three payday lenders and six banks.

In reviewing the DoD report and other maps produced by Dr. Graves, it is apparent that some unscrupulous payday lenders are clustering around military bases across the nation.

As a Senator representing more than 115,000 North Carolina-based service members and as a member of both this committee and the Senate Armed Services Committee, this issue is one of my top priorities. With my support, the Senate approved an amendment to the Fiscal Year 2007 defense authorization sponsored by Senator Jim Talent to enact a 36 percent annual interest rate cap on abusive loans to service members. Last year, Mr. Chairman, you will remember I proposed a similar amendment to the Defense Authorization Bill, but I encountered jurisdictional objections.

The interest rate cap provision now awaits consideration by a House Senate Conference Committee. I am hopeful that a provision on predatory lending that includes the rate cap as well as additional recommendations from the Pentagon report will be included in the final legislation. Should the conference report not properly address this problem, I will introduce legislation that incorporates recommendations made in the report.

Supporting our service members means more than providing the equipment and training necessary for fighting the War on Terror, Mr. Chairman. We should also support their livelihood and their families, and predatory lending can seriously harm both.

I look forward to working with this committee as we strive to put a stop to this egregious practice. Thank you, Mr. Chairman.

STATEMENT OF SENATOR JACK REED

Senator REED. Well, thank you very much, Mr. Chairman. I commend you for holding this hearing and I commend Senator Dole for her efforts in this regard, and I don't represent North Carolina, but I used to command a parachute company in Fayetteville, North Carolina at Fort Bragg in the 504th Parachute Infantry Regiment, and I have seen young soldiers at payday who are financially strapped and willing to sign anything to get a few dollars, and I think this behavior, if it is targeted to exploit soldiers is absolutely reprehensible. We owe them a lot more than that.

This is a command responsibility. I am glad the Secretary of Defense and the Defense Department are taking steps with this report. The commander at that base and every base in the country have to work hard to educate their soldiers. The community leaders of the Fayettevilles and all the other military towns had to step up to the box too, and we have to do our part.

The provision that Senator Dole talked about, a 36 percent cap, I think is more than reasonable. Some of these loans have average annual percent rates of 470 percent. One of the advantages I had back in the 1970's commanding a company is most States had usury laws capping interest rates at 21 percent or so. That is a thing of the past now. We didn't have to worry, at least, in licensed agencies like this having soldiers pay a 470 percent interest rate.

So I think we have to do more. I hope we can keep this provision in the bill, and I will not, I think, be here to ask questions. I have to go to the Armed Services Committee, I think along with Senator Dole, because of the military tribunal issue; but I would ask every witness to give their position with respect to that 36 percent cap, starting with Secretary Chu.

Thank you, Mr. Chairman.

STATEMENT OF SENATOR WAYNE ALLARD

Senator ALLARD. Thank you, Mr. Chairman, for holding this hearing to examine the "Department of Defense's Report on Predatory Lending Practices Directed at Members of the Armed Forces and Their Dependents". I am proud to represent a State with a significant military presence, and I am looking forward to the opportunity to learn more about this matter.

We owe our military personnel a great debt. They volunteered to risk their lives to protect freedom and democracy; therefore, it is only reasonable to expect that we would protect them against predatory lending. Predatory lending is an abhorrent practice, especially when it takes advantage of our men and women in uniform.

Earlier this year, I was pleased to support Senate Bill 418, the Military Personnel Financial Services Protection Act. This is one way in which we can help prevent predatory practices aimed at those in uniform. During our hearings on that bill, it became obvious that financial literacy is key to preventing predatory practices and the Department of Defense has a serious need to fill regarding financial education. Unfortunately, too many people today lack basic financial literacy and skills, and military personnel face the same challenges. Therefore, it is important that the DoD help provide financial education that will enable personnel to make appropriate financial decisions.

The DoD report includes information on their strategy to educate members of the armed forces and their families regarding predatory lending as well as programs to reduce or eliminate predatory lending. This is particularly important for my home State of Colorado where military personnel are four times more likely than civilians to have taken a payday loan. Military personnel make up 1.1 percent of the adult population, but they account for 4.6 percent of payday loan customers.

While not all payday loans are necessarily predatory, these numbers do raise important concerns. First, why do military personnel account for a disproportionate share of payday loans? The second, do the personnel have other options? And third, do members of the armed forces understand the implications of the different alternatives?

I am eager to learn more about these issues as we delve into the report. I would like to thank the witnesses for being here today. Their testimony will provide us with a better understanding of the issues. I look forward to their testimony.

Thank you, Mr. Chairman.

STATEMENT OF SENATOR CHARLES E. SCHUMER

Senator SCHUMER. Well, thank you, Mr. Chairman. Thank you for holding this timely hearing, and I want to praise my colleague, Senator Dole, for getting this report done and into the Defense Authorization Act. We may be at loggerheads on certain things outside the Capitol, but we can work well together inside the Capitol.

Senator DOLE. Thank you.

Senator SCHUMER. Now, this is a topic that has been of great concern to me for a long time. I have heard of so many bad stories in New York State by Fort Drum near Watertown, our largest military installation, one of the largest in the country, in the capital region in Albany by Watervliet near the Stratton Air Force Base, and in western New York by Niagra Air Force Base. We are in a funny situation in New York. We have pretty strict usury laws. So you would think that payday lending wouldn't occur, these loans as high as 800 percent, just absolutely disgusting, ripping off service men and women and their families; but the banks find ways around so that at first, we had New York processing the loans through, say, Delaware or other banks, and we worked with the FDIC, and they finally shut that down.

But in this new information society, the internet, newspapers, etc., still hold the service men and women, who we are so proud of in New York, they are holding us victim.

So here, and I would like to point this to Secretary Chu's attention, the "Army Times", and you have fast cash, Force One lending from Albuquerque, New Mexico. A soldier in Fort Drum can read that, go on line, or whatever. "Need a loan?" This is one in Nevada.

So unless we have a national law, we are not going to stop this no matter what we do at the State level, no matter what we do in terms of the FDIC, and one thing, Mr. Secretary, I would urge you to do is—I don't know if there is a way you can, but could you prohibit ads like this in the "Army Times"? Maybe you will talk about that when you come before us and the other kinds of newspapers that DoD has a real hand in putting out and helping. There is freedom of speech, but I don't think if they put an ad, you know, join a bank robber, come join Joe Smith Bank Robbery Team, you would put that in. Well, this is sort of the same thing. So I would urge you to look into that.

And I would ask unanimous consent that the rest of my statement be put in the record. I want to thank you, Mr. Chairman.

Senator SHELBY. Without objection, it will be made part of the hearing record.

Senator SCHUMER. Thank you, Mr. Chairman, for the good work you have done with the Military Personnel Financial Services Protection act which we passed in June, and that did a good job about abusive sales practices. We need to do the same good job about abusive lending practices, and I know that we decided against including those lending practices in this bill so DoD would conduct a review, and now we don't have to wait. So I want to join with you and all of my colleagues to make sure we shut this down once and for all.

STATEMENT OF SENATOR MEL MARTINEZ

Senator MARTINEZ. Mr. Chairman, thank you very much. I would ask again, likewise, that my entire statement be made part of the record.

Senator SHELBY. Without objection, your entire opening statement will be made part of the record.

Senator MARTINEZ. Thank you. Also, a letter from Daniel Mica, President and CEO of CUNA, be made part of the record.

Senator SHELBY. It will be made part of the record. He is head of the credit union.

Senator MARTINEZ. Correct.

Mr. Chairman, I would just comment along the lines of what Senator Schumer said, that this is an egregious practice. It is a terrible plight upon the lives of our service men and women and really to all people who fall prey to this kind of lending. When I was Mayor of Orange County in Orlando, Florida, we had a problem with payday loans, a very similar problem, more afflicting the civilian population, but nonetheless where they would take the security, a vehicle, and then people get a bunch of cash. Within 6 months after they have paid off a car, they no longer have a car. It has been repossessed from them. This is the kind of practices that take place.

As the chairman well knows, during my time at HUD, we did a lot to try to work against predatory lending in home lending, which is a first cousin to this problem. So let me just commend you for holding the hearing and commend Senator Dole for her leadership on this issue, and I share my full support for whatever we can move forward to ensure that this egregious practice, particularly the plight upon our servicemen and women comes to a stop.

Senator SHELBY. Thank you, Senator Martinez.

Secretary Chu, your written statement will be made part of the hearing record in its entirety. You can proceed as you wish. We appreciate your work in doing this report. Thank you very much.

STATEMENT OF DAVID S.C. CHU, UNDER SECRETARY FOR PERSONNEL AND READINESS, DEPARTMENT OF DEFENSE

Secretary CHU. Thank you, Mr. Chairman, members of the Committee. It is a privilege to be here this morning to testify on the report that we rendered at the direction of the Congress on this issue of predatory lending practices directed at military personnel. It certainly is a special privilege to be here with Senator Dole whose actions led to that direction and to which we were delighted to respond.

Financial readiness in our judgment equates to mission readiness. It was my privilege in May of 2003 to join with the Treasury Department in launching our broader financial readiness campaign. That campaign encourages service members to achieve good credit standing and to save on a regular basis for emergencies, to watch their borrowing practices, including the interest rates they accept, to take advantage of the Thrift Savings Plan and the Service Members and Veterans Group Life Insurance Program. Through these diverse efforts, we focus on the issue of personal financial stability. We hope to develop a culture that focuses on sound financial decisions by our military personnel. That culture will encourage service members to reduce reliance on credit cards, to implement short-term and long-term savings plans, and to resist predatory lenders.

The department, as we reported, is concerned about predatory lending because it is detrimental to mission readiness and because it can have disastrous consequences on the quality of life and for the careers of service members. It is one of the reasons that we have made this issue, predatory lending, one of the 10 key issues the department and the Secretary of Defense is addressing with the Governors of our Nation and other State officials to seek their assistance as well.

We do recognize that it is the first responsibility of the Department of Defense to prepare our service members through education and counseling, and as the report indicates, the military services have devoted considerable time and talent to educating service members and, to the extent possible, their spouses so that they do, indeed, become better stewards of their finances. To enhance the educational capability of the military services, several prestigious nonprofit agencies and members of the Federal Financial Literacy Commission have joined our financial readiness campaign, and they will help us increase awareness, understanding, and knowledge of the assistance that is available to our military personnel.

Commanders at every echelon, from the Chiefs of Staff down to the unit commanders, as Senator Reed testified, have been involved in emphasizing this important message to our troops. It was my privilege this week to invite the service department secretaries to endorse a campaign that we will be initiating next February called “Military Saves”, which asks everyone associated with the Department of Defense to consider reducing his or her debt, and save for the future. This campaign is part of “America Saves”, which has been endorsed by the Chairman of the Federal Reserve Board.

It is through these diverse efforts, we believe, that we will keep our current focus on the issue of personal finance in place and develop the intended culture within the military that encourages service members to seek assistance when they need it rather than burying their financial concerns in additional debt. The report we provided to Congress gives an overview of the efforts within the department to educate, inform, and influence service members and their families to take control of their finances, to build wealth, and to escape the cycle of debt for their own well-being and to enhance their military readiness.

The department has, indeed, recommended—specifically to Senator Schumer's question, the department has recommended establishing an interest rate cap of 36 percent for service members and their families. The department believes service members who acquire loans with interest rates above 36 percent should seek assistance and not consider further debt load. The 36 percent limit creates a barrier for installment lenders to refrain from packing fees and premiums—and others have alluded to this this morning—onto the base interest rate that is charged for a loan. The limit of 36 percent is considered appropriate since it mirrors the limitations found in several States, actually a majority of States, for their small loan products. It is an amount that has been proven reasonable for consumers and the industries that serve them.

To accelerate this process, we have recommended in our report to the Congress that limits be placed on the credit opportunities that do not consider service members' ability to repay their debt, and that is the subject you mentioned, Mr. Chairman. We want service members to take the tough steps necessary to get themselves out of debt rather than the quick cash solutions that lead them to much worse circumstances. It is our job to give them the tools they need to resolve their debt. We are continuing to improve the already substantial system of support available to them, but we need your assistance in limiting the availability of loans that fail to consider the ability of the borrower to repay so that service members can and will consider other alternatives.

As long as these options are legal, we have little to no control over how much and how often service members access these options. By the time commanders are aware of their troops' financial problems, that damage is done.

Service members inherently understand that limits on interest rates are appropriate even if these limits will decrease the ability of credit. When asked in a recent survey, 74 percent of service members agreed with the statement, and I quote it, The Government should limit the interest rates that lenders can charge even if it means fewer people will be able to get credit, end quote.

Service members are in agreement that there should be limits. Commanders have made their positions known that limits should be established. The department sees this as an important issue as part of our compact with our commanders, service members, and their families for their well-being and in support of military readiness. The department asks for your assistance in adopting the statutory steps necessary to establish more effective limits.

I am very grateful for this opportunity to appear, Mr. Chairman, to share our concerns with you and the members of the Committee. The department is ready to assistant your committee in developing effective limits on predatory lending that affects military readiness. Thank you, sir.

Senator SHELBY. Senator Dole, you are the leader here. We will recognize you first.

Senator DOLE. Thank you, Mr. Chairman.

Secretary Chu, I thank you very much for your testimony this morning.

In a June article in "Sea Power Magazine", Master Chief Petty Officer of the Navy Terry Scott is quoted as saying: "The No. 1 reason our sailors are forced from one job to another is because they lose their security clearance, and the No. 1 reason they lose their security clearance is because of financial difficulties." Do you know this statement to be accurate and are these financial difficulties due to predatory lending?

Secretary CHU. Ma'am, my understanding is that Master Chief Scott's statement is based on an internal Navy analysis and, therefore, I would accept it as a good description of the challenge we face in this arena. And, yes, an important part of that problem is the result of predatory lending.

Senator DOLE. Now, in your report, you included testimony from a commanding officer stating that revoked or denied security clearances for sailor and Marines due to financial problems have increased 1600 percent between the year 2000 and the year 2005. Is predatory military lending a leading cause of these financial problems and do you expect this trend to continue without legislative action?

Secretary CHU. We need legislative action, to get to the bottom line, because without it, and I think members of this committee have spoken to that, we cannot curtail the migration of this set of predatory practices to other products. The advantage, I think, of the Senate amendment that you co-sponsored is that it does shut it off. It shuts it off by including fees within the cap. It shuts it off by making internet-based loans unenforceable across State lines. So even if State A fails to curb the internet lender, the contract is null and void across the country. You can't enforce it if you are a military person.

So, yes, ma'am, we do need legislative assistance to curb this problem. We do think we are making progress in the awareness of our people about their situation and how they should conduct themselves, but education and preparation alone are not enough given the practices that you so eloquently described with the maps that you showed just a few moments ago.

Senator DOLE. Now, you reported the strong actions—I think this is page 47 of your report—that North Carolina has taken to combat predatory lending. Can you tell the committee how this has affected personnel who are stationed at bases in North Carolina? Have the actions taken by North Carolina eliminated the threat of predatory lending or are there further actions the State should take?

Secretary CHU. First of all, I want to commend North Carolina for its actions. They have had a dramatic affect. They have substantially reduced the problem. At least that is what our commanders tell us at the important bases in that State. They do not—this gets to your issue, ma'am, of do we need national legislation.

Our view is, yes, it would be very beneficial, and I particularly value the provisions in the Senate amendment you co-sponsored because of their effect in curbing the internet interstate lending operation by making those contracts unenforceable. That is a key provision.

Moreover, it helps us in other States. I don't want to in any way denigrate what North Carolina has done, but we need national action on this as far as military personnel are concerned.

Senator DOLE. You cite a Center for Responsible Lending report as follows: "Active duty personnel are three times more likely than civilians to have taken out a payday loan and that predatory payday lending costs military families over $80 million in abusive fees every year." Do you believe this analysis is correct, Secretary Chu?

Secretary CHU. We have done our internal estimates. They are not precisely the same, but they are in the same ballpark. You would get similar results from other methodologies. Yes, ma'am.

Senator DOLE. And the report on page 14 states that: "The Uniform Code of Military Justice penalizes service members for deliberately writing a check not covered by funds on deposit." Can you describe the penalties that the service members are subjected to?

Secretary CHU. First, let me emphasize the important provision of the Code, because it makes personal financial responsibility something that is governed by our military justice system, and so it calls it to the attention of all our personnel. What the penalties are depends, of course, upon the seriousness of the offense, and as you appreciate, ma'am, we administer it on a decentralized basis where commanders decide the immediate courts-martial, or other administrative authorities decide what the penalties should be. So there will be a range of penalties depending upon the seriousness of the infraction.

Senator DOLE. Thank you.

The final question, Mr. Chairman, the report states: "Lenders who only lend to nonresident military personnel in about half the States have either been granted formal exemption from State regulation or have not been required to be licensed or supervised by State regulators under a variety of legal arguments." Secretary Chu, can you describe in greater detail how these lenders circumvent regulation and are they able to do this in North Carolina?

Secretary CHU. As you suggest, ma'am, and this is another reason for national legislation, a number of States have taken the position that if you are lending to a non-State resident, the State law does not apply. We do not like that rule. We are advocating the States to change that position, but it is essential, I think, to have national legislation. That is also an issue in North Carolina, I would acknowledge.

Senator DOLE. Thank you very much.

Thank you, Mr. Chairman.

Senator SHELBY. Senator Johnson.

Senator JOHNSON. Thank you, Secretary Chu.

I think it is easy for us to sit here in a committee room and say that, Well, these military personnel should just forego getting credit; they have a funeral to go to; they have no cash; the heck with them. That isn't a very satisfactory answer and I don't think it is very realistic either. I think that they are going to continue to seek credit for low denomination short-term debt. I think that is a given.

The question is if we eliminate—if we place a 36 percent cap, that means you cannot borrow $250 for airfare for a $25 fee because that would, annualize, exceed the cap. Where do you suggest these guys go? What should they do?

It seems to me that it's saying, Well, just don't borrow money. That is a good thing to say, but these needs do arise. They have arisen, and that is the reason we have this vacuum that has been filled by this particular industry, because the credit unions, the banks have not stepped in. And so I just wonder what do you say to that young soldier. He wants to go to his mother's funeral. What are you going to do?

Secretary CHU. Nothing we propose, Senator, and nothing that has been advanced is about broadly denying credit to military personnel. Many, if not most, military personnel have credit cards to help them pay for airline tickets, not cash. Cash: I believe the Transportation Security Agency views it as a signal that perhaps you are not a person we want on our airlines.

So I don't think that is the issue, Senator. The issue is predatory lending, getting people in over their heads, and the maps Senator Dole displayed, are, in fact, the indictment of this practice and the reason we need to curb it. These people are taking military people into a debt load that they cannot sustain. It is not about the airline ticket to a funeral.

For that purpose specifically, if a military person has a pressing need, that is why we have and why we encourage the Military Aid Societies. I have talked with every military service about this. They have energetic programs to make sure that if there is a legitimate emergency, the Military Society is there to step forward, is eager to step forward. A major fraction of what they do these days is make sure that those kinds of needs are covered. We are also talking with the credit unions and other agencies of that type that offer regular banking products to be sure that they are responsive to these needs as well.

So I don't think the example that you offered, sir, is, in fact, the situation. That is not what we are confronting here. We are confronting people in over their heads on a long-term basis. This is the rollover issue.

Senator JOHNSON. Well, that is somewhat my point, is that it seems to me the problem here is not so much a fee on a particular low denomination loan as it is the rollover problem and how many rollovers are going to go on, and it seems to me that that is the larger issue than a fee that a credit card company charges or a bank charges for an overdraft and so on. It is how deep you go and how long you stretch out the loan, it seems to me, the greater problem than the 36 percent issue.

But in any event, I appreciate your observations. It just seems to me that the need for low denomination short-term loans is not going to go away. I hope that there are mechanisms to deal with it.

One of other points that it has brought out to me that I think we need to have some discussion as this goes forward is that two of the lenders that Senator Dole has focused on would not be affected by the 36 percent rate cap because their fees are not subject to the Truth-in-Lending Act. So I think we have some other issues that we need to work together on as well as we go forward with this.

But I want to see all of our soldiers treated fairly, and I think we are all on the same page with that. The only reservations I raise are we are going to wind up denying short-term credit for people who have a legitimate need that is not rolled over time and time and time again and are we going to wind up putting a lot of our military personnel in a uniquely difficult circumstance that the other citizens of America don't have. So that is the issue I raise. I think we all are in good faith trying to do what is right for our men and women in uniform, but these are things I think we need to talk through in the committee.

Secretary CHU. If I may, Senator, respond very briefly to two important points you made, first of all, we agree that you need a broad set of legislative restrictions. That is why we like the Talent-Nelson amendment to the Senate Defense Authorization Bill. It accomplishes that purpose in our judgment.

The second issue of need for cash on an emergency basis, that is one of the reasons we have emphasized in our financial readiness campaign the importance of saving; you need to start setting the money aside. We pay adequately in the military these days. It is not the Army of 30 years ago. So one of the points is you need to start setting aside some money yourself for a rainy day.

Senator JOHNSON. Well, I would say that we on the Congressional side think some of our enlisted personnel would maybe disagree with you that the military, particularly if they have children, is paying at a level that doesn't occasionally cause some financial stress; but one last question, and I know nothing about this proposal myself. It was called to my attention that the CFSA has made a proposal to DoD relative to an alternative approach to managing these loans. Have you had any opportunity to review that at all?

Secretary CHU. We have the proposal from them. We will look at their proposal. I think our preliminary assessment is it doesn't fully deal with the issues at hand. I think, again, we believe that the Senate Authorization Bill, Section 666, if I recall, Senator, correctly does do a good job in that regard.

Senator JOHNSON. Well, thank you for testimony.

Secretary CHU. Thank you, sir.

Senator SHELBY. Senator Martinez.

Secretary CHU. Good morning.

Senator MARTINEZ. Good morning. How are you, sir?

Secretary CHU. Fine. Thank you.

Senator MARTINEZ. We had the pleasure to work together a little bit on some of these issues, frankly, relating to our servicemen and women when we began this war. We worked at little bit on the Sailors and Seamen's Relief Act, which I think is a very good thing, and I appreciate your working with me at that time.

Mr. Chairman, I am pleased that there are some Floridians on the second panel today: Lynn Drysdale, Staff Attorney with the Jacksonville Area Legal Aid, and Christopher Peterson, Associate Professor of Law at the University of Florida. I don't know if I will be here, but I want to make sure the Committee will issue a welcome to them from myself.

The issue of rollover has come up, and I wanted to ask you whether you thought a prohibition of these rollovers and loan flipping would address many of the practices that we see as the most egregious.

Secretary CHU. That type of prohibition would, indeed, be helpful, sir, because that is part of the problem, people taking one loan. Then when it comes due, they can only pay it off by taking the next loan, and, of course, the fees and the interest rate build on that total. That is partly how you get these high numbers and you get people in a kind of trouble which they find tough to extricate themselves from.

Senator MARTINEZ. One of the things that I notice in your report is that this industry particularly advertises and preys upon our military personnel. Why is that? And if you can explain and articulate that, what is it that causes our folks in the military to be so vulnerable and at the same time to be such a target of these unscrupulous lenders?

Secretary CHU. It is a very important question, sir. I agree. I think there are several reasons. First of all, as Senator Dole brought out, we insist people pay their debts. So you have got the power of our leadership behind making good on the loan eventually.

Second, they have a steady paycheck, and so as you know, many payday loans are, indeed—just as the name implies, they predate a check. They know, unlike perhaps might be true in the private sector where sometimes you get paid—sometimes you don't get paid—they know that paycheck is going to show up in the bank account the first of the month. They are certain to get the money back.

Second, or third I should say, our people have started to accumulate assets. Some have cars. So another version of this is the car title. They have an asset that can secure the loan. So our people do have collateral often, and they, unfortunately, for whatever reason, give it up for what is really a terrible financial deal. Of course, that is an educational issue for us, to make sure they understand, no, you really shouldn't go there; that is not the way to handle your situation; come to one of the other possible sources of assistance instead.

Senator MARTINEZ. I understand that at times people may have an emergency and they need short-term financial assistance. Is there not a network of assistance to our military families and the personnel in the event of a family death or bereavement sort of trip, things of that nature that can be available to them through governmental and nongovernmental sources?

Secretary CHU. I think this is another example of the great volunteer spirit in our nation. We have a set of military aid societies, essentially one per military department. They have made it a priority to devote a substantial fraction of their resources to this issue of short-term cash needs. As Senator Johnson indicated, we need to lecture people and encourage them to save, but if you do get to the point where you need the cash, we ask that you come to the military aid society. That is why they are there. I reviewed with them just very recently what fraction of their portfolios are they devoting to this, and it is a high number in each case.

They are trying to do that job. They are willing to do more if that is necessary. So there is a safety net out there. We are also asking our credit unions—we have credit unions on our military installations—to be sure they offer appropriate small loan products to our personnel as well.

So I think there are several avenues of assistance. Ultimately what is needed is the military member or family member needs to get control of their finances, whatever pressed them to the wall.

Senator MARTINEZ. Financial literacy, in other words.

Secretary CHU. Right. The loan is a Band-Aid. It is not a solution.

Senator MARTINEZ. I understand payday loans are now available on the internet from off-shore lenders, and if Congress acts to curb unethical lending practices at home, what more can we do to protect the Nation's military personnel from online lenders outside the country?

Secretary CHU. Well, I think the important provision that is in this, as I understand the Senate Authorization Amendment, is to make internet contracts as far as military personnel are concerned unenforceable, and that means we can go—I am not trying to encourage inappropriate behavior, but if we faithfully execute that provision as Congress might desire, it will essentially make it unattractive for any internet lender to lend to a military person.

Senator MARTINEZ. Often times, subprime lending, particularly longer-term loans, can be confused with predatory lending. There is a difference between the two, is there not? There can be people with a credit rating that may not be as worthy as another or their loan might be at a higher interest rate, still within the law, still within reason, but a higher interest rate. That is not what we are talking about here today, is it?

Secretary CHU. You are absolutely correct, sir. That is not what we are talking about. That is why we have endorsed the 36 percent limit. That is a high number. It is a high number, but we think it allows for subprime lending. It does cutoff a source of credit that might be important to people. It is consistent with the laws of a majority of States of our nation.

Senator MARTINEZ. Speaking of State laws, in 2001, partially in reaction to what Orange County had done in Florida, the State passed a very comprehensive law to prohibit the abuse of payday loans and by both licensed providers and consumers, and some say that the Florida laws are some of the strictest in the country. Are there aspects, if you are familiar with Florida law, that you believe would be a good basis for a national model? And perhaps our next panel might be better to answer this question, but I wanted to put it before you.

Secretary CHU. Thank you, sir. I should probably turn to them. I am not an expert on Florida law, but I do know that across the board, Florida has been a leader in trying to support our military families in this area and in several other arenas as well.

Senator MARTINEZ. Thank you, Mr. Chairman.

Senator SHELBY. Thank you, Senator Martinez.

Dr. Chu, it is my understanding that the Armed Forces Disciplinary Control Board can place commercial entities off limits to military personnel. Can you explain why this mechanism is not being used more frequently to ban specific predatory lenders from accessing military personnel? First, it that true? Can the Armed Forces Disciplinary Control Board place commercial entities off limits to military personnel?

Secretary CHU. Yes, sir, it can.

Senator SHELBY. Have you done that? Has the Pentagon done any? If not, why not or do you plan to?

Secretary CHU. It is a responsibility at the local level, installation level, as you can appreciate, sir.

Senator SHELBY. Is that by commander?

Secretary CHU. By commanders. The difficulty, as I believe you are aware, is that as a matter of law, and I am not a lawyer, but as I understand the situation, basically, the way they place them off limits is because the establishment is violating the law. Of course, that is the essence of the issue here. These practices in many States are not illegal. We have looked at using this mechanism. Our counsels, plural, advise it is legally problematic to do that for this and other reasons.

So in our judgment, the Disciplinary Control Board mechanism placing establishments off limits, at least under the present statutory construct, will not be effective for this purpose.

Senator SHELBY. For this purpose, but it could help, could it not?

Secretary CHU. It is doubted by our legal staff that we can get very far with that instrument.

Senator SHELBY. In other words, the base commander can to some extent restrict who is coming on that base. Is that right?

Secretary CHU. That is a different statement, sir, but in terms of patronizing off-base establishments—

Senator SHELBY. Off base.

Secretary CHU. He is, as I appreciate the law and I ought to let the lawyers speak to this, he is restricted to those establishments that are violating a law. If the product is legal, and that is our central problem, if the product is legal, however much we may find it distasteful, that establishment is not violating the law and he can't reach it with this mechanism.

Senator SHELBY. I believe Senator Dole said something to the effect that over half of the service people are under 25 years of age. A lot of them are 18 and 19 years of age.

Secretary CHU. Yes, sir, and some of their spouses are younger.

Senator SHELBY. Do you know what percentage are 18 or 19 years of age?

Secretary CHU. Not of the top of my head, sir. I can get those numbers for you.

Senator SHELBY. Could you do that for the record?

Secretary CHU. I would be delighted to, sir.

Senator SHELBY. I just believe that we should, working with you and the Administration, do everything we can to protect the young soldiers because they are highly vulnerable, are they not?

Secretary CHU. We agree, sir. They are early in their careers. Our nation's educational establishments, I think you and others noted this morning, do not give a large amount of education on financial management. That is something that is worth looking at, I think as a country, but, of course, people come to us with the preparation that our country gives them, and they often don't have the preparation. That is why we are investing in their preparation starting in basic training, but it does take time for those lessons to sink in.

So yes, sir. We would appreciate the kinds of steps that Congress is considering to put temptation aside.

Senator SHELBY. Most of these young people, most of them or a great percentage of them, this is their first steady paycheck. I believe Senator Dole mentioned that I, as well Senator Martinez. Is that correct?

Secretary CHU. Yes, sir. That is true.

Senator SHELBY. So people know that they have got a steady paycheck. So they know where the potential is often times for exploitation.

Secretary CHU. Yes, sir.

Senator SHELBY. Does the report that you are talking about today indicate any trends concerning the prevalence and the impact of predatory lending on our service members? I think it does, but I would like to hear from you.

Secretary CHU. Yes, sir. We have seen a growth, and Senator Dole's maps are eloquent in the North Carolina case, a growth in predatory lending institutions near military bases. I was struck just yesterday that a citizen with no connection to the problem, unaware that the department had done a survey, raised with me why when he was in the White Sands Missile Base did he see a clustering of these kinds of payday lenders right outside the gate. He thought that was shameful and a blot on our national reputation.

Senator SHELBY. Your report makes clear that loopholes and State laws or exemptions granted by State authorities are often abused by predatory lenders to avoid interest rates caps, disclosure requirements, and other consumer protections. Has the Defense Department approached the States with its concerns, with your concerns, and if so, what kind of response have you seen from the States in this regard?

Secretary CHU. Yes, sir, we have. As I indicated, it is one of the issues the Secretary is personally engaging the Governors on, and as a broad matter, we are pleased with the Governors' willingness to listen to us. That does not, of course, always mean they can get the necessary legislation enacted in their States. That is why I think all of us pulling together can make a difference here, and I think national legislation will send a strong signal to every State that this is where the country wants us to be.

Senator SHELBY. Dr. Chu, we appreciate your work as the Under Secretary of Defense for Personnel and Readiness and especially in this issue. We will continue to work with you to try to resolve a real problem that we have on the bases. Thank you very much.

Secretary CHU. Thank you, Mr. Chairman. Thank you for the opportunity. Thank you for your questions.

Senator SHELBY. I am going to call up now our second panel: Admiral Charles S. Abbot, Retired, President and Chief Executive Officer, Navy-Marine Corps Relief Society; Dr. William O. Brown, Jr., Associate Professor, Department of Accounting and Finance, Bryan

School of Business and Economics, University of North Carolina; Ms. Lynn Drysdale, Staff Attorney, Jacksonville Area Legal Aid; Mr. Hilary Miller, President of the Payday Loan Bar Association; Mr. Christopher Peterson, Assistant Professor of Law, Levin College of Law, University of Florida.

If you will all take your seats.

Senator SHELBY. All of your written testimony, as I have previously said, will be made part of the hearing record in its entirety, and what we would like to do, because we are going to have a vote on the floor in a little bit and we will have to move on, is let you sum up your top points that you want to make orally as fast as you can.

Admiral Abbot, we will start with you. Welcome to the Committee.

STATEMENT OF ADMIRAL CHARLES S. ABBOT, RETIRED, PRESIDENT AND CHIEF EXECUTIVE OFFICER, NAVY-MARINE CORPS RELIEF SOCIETY

Admiral ABBOT. Mr. Chairman, members of the Committee, thank you very much.

I am grateful for the opportunity to appear here and to comment on the Department of Defense report, and I will abbreviate my remarks to leave the entirety as a part of the record, but as the President of the Navy-Marine Corps Relief Society, I am a head of a military charity, one of the four that Secretary Chu mentioned, and for a hundred years, we have been providing support to sailors and Marines and their families. I would like to say that as I look at the history of our organization, this problem with predatory lending, with payday lending, is the most serious single financial problem that we have encountered in that hundred years, and we know that the industry has said that they don't, in fact, target military personnel, but certainly our experience, we see it at the suffering end of these individuals that they are, in fact, a direct target.

And I echo Senator Schumer's comment about the "Navy Times' and other similar publications having ads in them where the lending organizations state that, in fact, they are purposefully organized to target military personnel. We see every day in our offices around the country individuals who have come in and have fallen into the venus fly trap of the payday lending problem, and it has literally destroyed their lives, and we provided cases to the Department of Defense for them to use in their report and we see additional ones every day which are contained in my draft comments to you.

I believe that it is a growing problem. Every year, we see more of these individuals coming in the door at our offices, and over the last 5 years, it has been in excess of 5,000 individuals in more than two and a half million dollars, and we also see the growing problem of the internet payday lending business and the effect that that is having on the problem more broadly.

So we enthusiastically support the recommendations of the DoD report. I do believe that in addition to the interest rate limitation, that flipping of the loans is, in fact, one of the serious problems. It is, in fact, what causes the individuals to get caught in the trap.

There aren't very many who simply get a single loan and that is the last time they were ever seen. There are statistics which show that the average number of loans is usually as high as about five for an individual, and it destroys lives. It destroys families.

Senator SHELBY. It doesn't help readiness either, does it?

Admiral ABBOT. It does not, sir. We see that effect as the individuals come to us and they are removed from their duties to be able to deal with these problems, and then some, as Dr. Chu describes, in fact, lose their clearance and are unable to continue to serve in their assigned billets.

So I thank you very much for the opportunity to appear before the Committee.

Senator SHELBY. Thank you.

Dr. Brown.

STATEMENT OF WILLIAM O. BROWN, JR., ASSOCIATE PROFESSOR, DEPARTMENT OF ACCOUNTING AND FINANCE, BRYAN SCHOOL OF BUSINESS AND ECONOMICS, UNIVERSITY OF NORTH CAROLINA

Mr. BROWN. Yes. I will shorten my remarks that are in my statement, as you wish. I have conducted some research on payday lending and on payday lending in the military.

Senator SHELBY. Have you published in that area too?

Mr. BROWN. I have not published academic journal articles, but hopefully I will at some point.

This research has focused on trying to figure out why it is that military personnel use payday loans and why payday loans are used by the broader sort of population and student population as well. As noted here, this business has expanded greatly in the last 10 years. It almost went from a business that didn't exist to a business that now has over 20,000 outlets. So I will summarize some of our key factors that found.

We surveyed a list of personnel in the four service branches regarding their attitudes toward and uses of the short-term credit, including payday loans. Our analysis is based on the empirical data that we collected through a random sample of people who live on the military bases.

The first finding is that a small percentage of enlisted personnel use payday loans. We found that roughly 13 percent of the 460 enlisted personnel that lived around the military bases that responded to our survey indicated that they had used a payday loan in the previous year. That number, I mean, 13 percent to some extent may seem high, but this is just enlisted personnel, which you already noted the people are often times 18, 19 years old. If you compare that to a similar group of population among the general population, you will find that that number is not out of line with people that are 18, 19 years old in terms of what they are doing with payday loans as well.

Military borrowers report that they use payday loans for the same things as civilian borrowers do. They are paying bills that they otherwise can't afford. They have unexpected automobile, home repairs, those kinds of things, and so they are reporting that they are using it for those purposes.

Despite this admonition that they should save, you know, spending a lot of time around young people, these admonitions don't go very far. Right? You should also study for your exams. Right? With students, sometimes it takes a while to learn that. Right? So it is only after failing on occasion that sometimes you learn and stuff hits.

So I think just admonishing them to save and not actually giving them the ability to fail in small steps—now, you want to prevent these serious egregious things that happen which you can make sure that you give people the ability to learn from their mistakes in some cases as well.

What we also found is that the military enlisted personnel look much different from civilians using payday loans in that they tend to pay them back more quickly. We don't see the same rollover problem that you see with the civilian users and the military of payday loans. Forty-nine percent of the military payday loans, borrowers had two or fewer loans in the last 12 years. I mean the last 12 months. So it is not an indication that they are rolling these things over or rolling them over continuously.

Again, there is a small group in the sample that do roll these over, and you should be concerned about those people and find better education for them, but given the overall low default rate on these loans to begin with, given the military personnel and the small fraction that are using them, and given that most of them aren't using them and don't have these serious rollover issues and are only using them once or twice a year, we indicate that there is not really a threat to military preparedness, and there is nothing in the DoD report that suggests, that gives anything other than this anecdotal evidence that these sometimes create problems. There is no large scale statistical evidence that this is a problem.

Senator SHELBY. Ms. Drysdale.

STATEMENT OF LYNN DRYSDALE, STAFF ATTORNEY, JACKSONVILLE AREA LEGAL AID

Ms. DRYSDALE. Thank you, Honorable Chairman and Committee Members.

I am a legal services attorney in Jacksonville, Florida, home of Naval Air Station Jacksonville and Mayport Naval Station. Based upon the increasing number of clients I represent and the military people I talk to, the DoD report is right on target, and I urge you to adopt the recommendations for statutory changes.

In brief, the payday loans I see are generally short-term 2-week loans with interest rates ranging from 390 percent to well over 900 percent. If I don't have $300 today, it is unlikely that I am going to have $300 today plus 900 percent interest 2 weeks later. So they are destined to fail.

Why do people sign these loans? Because even your mainstream payday lenders explain away the interest rate. They say, Well, the APR is 390 percent, but it is only a 2-week loan rather than a year loan, so don't worry about the interest rate. Others use loan disguises. I am going to reference just a few.

Senator SHELBY. How much do you say the APR was?

Ms. DRYSDALE. Anywhere from 390 percent.

Senator SHELBY. 390 percent?

Ms. DRYSDALE. 390 percent up to—the most recent I have seen is 906 percent. The lenders which do this get around Florida law by using loan disguises. I will describe very briefly several of my clients, and some of them I will have to refer by an initial. Please keep in mind that these are only representative of dozens of other clients with the same problems.

Mr. B went to a payday lender which disguised its loan as rebates. In other words, he was getting not a loan, but a rebate in return for his paying for the right to use the internet on the small computer they had in their office that was not plugged in. When he could not repay the loan at a 400 percent interest rate, they took the loan amount plus hundreds of dollars directly out of his bank account, meaning that he did not have enough money to pay rent. He also not have enough money to put groceries on the table and not enough money to pay for diapers for the family's small children. When this company had taken all of the money out of the bank account, they sent him an unauthorized letter on State Attorney letterhead threatening criminal prosecution if he didn't pay the debt.

Not only do these lenders illegally try to use our State Attorney's Office for a law enforcement arm, but they also use the military chain of command as a collection enforcement tool. Because the members of the military are governed by the Uniform Code of Military Justice, the payday lenders contact the service members to harass them and they also contact their chain of command.

You may have seen the Hubbells, a family represented in an ABC News story who started out by taking out one payday loan because Ms. Hubbell was stricken with a very aggressive form of breast cancer. They were both in the military, but she was forced to quit work. They took out a payday loan to address some of the financial stress involved with her illness. Over the years, they have borrowed about $10,000 in payday loans, most of which did not benefit them, but went to rollovers. They have paid tens of thousands of dollars back and still owe $12,2000.

Mr. Hubbell once got a call when he was at work. He was an E–6 air traffic controller and got a call at work from a payday lender threatening and harassing him to pay. He told them he had an attorney, and so the call ended. Twenty-five minutes later, his superior officer called Mr. Hubbell and said, I have already had two phone calls from the same gentleman harassing me, ordering me to give him the name of your commanding officer so he could call him. Mr. Hubbell was terrified he was going to lose his security clearance, he was going to lose rank, he was going to lose pay and maybe even his job.

Mr. G sent me an E-mail. He was stationed out in the middle of the Mediterranean in an undisclosed location. He was terrified because his wife had E-mailed him telling him that a payday lender was threatening to put her in jail which would mean their two children would not have a parent at home.

Mr. Kahne was so frightened by all of these types of collection techniques that he spent his entire day off going from payday lender to payday lender, rolling over loans with nine different companies so that he would not bounce a check.

Mr. Wall sued Military Financial Network because they debited his account 11 times in 1 day, creating hundreds of dollars in bounced check fees with his financial institution. The lender also added additional fees and charges. Military Financial Network also put a clause in Mr. Wall's contract that if he didn't pay the debt, he would be subject to a court-martial, imprisonment, and dishonorable discharge. Also, if Mr. Wall wanted to sue this company because of all of these illegal actions, he was precluded from doing so even though this company had all rights of enforcement. They put a clause in his contract that if he didn't like the way they were operating, he could not go to court; he had to go through expensive arbitration in Delaware despite the fact that he was located in Florida when he signed the loan.

You will hear that the pay day lenders' organization, the CFSA, has best practices that all of its members are required to follow. Well, let me comment on a women I started representing 2 weeks ago. She is a Navy wife who has taken out a loan with one of this industry organization's founding members. In Florida, there is a prohibition to rollovers, but this company and other companies get around it by requiring the borrow to wait 24 hours before getting the rollover loan.

Florida also allows a grace period with no additional penalties or fines or interest if you seek credit counseling. Ms. Griffin went to pay off her loan and was told that she needed to roll it over because she was $45 short, which she did. The next time she went back, she had obtained the required credit counseling from the Navy-Marine Corps Relief Society, which is an authorized credit counseling agency for the purposes of getting the grace period. They still refused the grace period, and ironically, in their contract, the lender stated it was a member of the CFSA and followed the best practices.

The Director of the Navy-Marine Corps Relief Society, Retired Captain Dave Faraldo, called this company and said, "You are required to give her the grace period." The employee said, "No, we don't have to give her the grace period and, in fact, I have been a trainer of employees for 8 years and we have never had to give the grace period." She refused to speak to him anymore, and would only speak to her attorney.

I called them as her attorney. They refused to speak to me even if I did provide a written release. I said, I would like to speak to your supervisor. She said, I can't give you the name or the number of that person, but I will have them call you. That is 2 weeks ago. I haven't heard a word from them.

And the real shame in this is that all of these people I have mentioned would have the alternative of the Navy-Marine Corps Relief Society, and even my credit union offers a similar short term loan for emergencies. They did a study and determined they could provide a similar product and they could feasibly do it at 14 percent APR. There is also a savings component in with the loan as well as credit counseling. My credit union is responsible to me to make sure it is making financially sound decisions.

I have filed lawsuits against the internet lenders and am presently pursuing those cases, and also there have been enforcement actions by other States against the internet lenders so they would not be immune to the type of legislation that has been proposed.

Senator SHELBY. Thank you.

Mr. Miller.

STATEMENT OF HILARY B. MILLER, PRESIDENT, PAYDAY LOAN BAR ASSOCIATION

Mr. MILLER. Thank you, Mr. Chairman and Members of the Committee. It is a pleasure and honor to be here today. My name is Hilary Miller and I am here both as an expert on subprime lending and also on behalf of the payday advance industry's national trade association, the Community Financial Services Association of America or CFSA.

Both the Payday Loan Bar Association, of which I am President, and CFSA subscribe to the highest principles of ethical and fair treatment of borrowers. CFSA represents the owners of approximately half of the estimated 22,000 payday advance retail outlets in the United States. CFSA has and, importantly, enforces among its members responsible industry practices and appropriate consumer rights and protections, including special protections for the benefit of military personnel.

There are serious flaws in the Defense Department's report. Those flaws involve both fundamental matters of methodology and policy. We think that decisions involving potentially far-reaching implications regarding the cost and availability of consumer credit should be reached only after a careful gathering of data from a variety of sources and even-handed analysis of such data. By failing to synthesize information from balanced sources and by systematically excluding any input from independent economists, from consumer credit experts, or from the industry itself, the DoD report presents the views only of opponents of the kind of lending that is discussed in the report. The result is a biased, inaccurate, and incomplete picture of the market for such credit.

Our industry, contrary to some of the discussion of the ability-to-repay issue, has a vital interest in making sure that military borrowers can repay their loans, and for one simple reason: as lenders, we only make money when our borrowers repay us. If they do not pay, not only do we fail to collect their finance charges, which the DoD criticizes, but we also lose many times those finance charges in loan principal. In short, it is contrary to our interests to have service members get into trouble with their loans.

The reason we lend to military borrowers at all is that the entirety of the available scientific data suggests that only a tiny percentage of military borrowers actually do get into trouble with payday loans. Anecdotes derived from a non-representative sample of this small group are now being used to drive public policy for the much larger numbers of military borrowers who use payday loans for their intended purpose and who repay their loans on time and without financial difficulty.

There are serious flaws that I have mentioned, and here are some of them, in the report: First, the DoD report determines that payday loans are predatory solely by uncritically adopting eight factors used by an opponent of the industry, the Center for Responsible Lending, without making the independent determination that such loans are unfair or abusive as required by the applicable statute. No other recognized authority has used these factors.

Second, according to DoD's own internal data, fewer than 5 percent of service members have had a payday loan. That is not indicative of a problem from my standpoint, and because fewer than 6 percent of payday loans ultimately default, at most 6 percent of that 5 percent, or 0.3 percent, of all service members have experienced financial difficulty with a payday loan. In other words, 99.7 percent of service members have either not had a payday loan or have not had financial difficulty with payday loans. There is simply no statistical evidence that payday loans contribute to military readiness problems to any measurable degree.

Now, although some service members with financial problems have taken out payday loans, DoD data do not support the conclusion that payday loans cause financial problems. It is purely a correlation-is-causation argument in their report. Payday loans are intended to solve financial problems and the overwhelming majority of users employ them in that manner.

DoD's data regarding the asserted hardship related to payday loans consists of a mere 12 anecdotes drawn from the experience of 1,400,000 active-duty military personnel. We did a sample of service members who had a variety of different kinds of debts and who went into bankruptcy, which is the ultimate example of financial failure. Now, we looked at not only what kind of payday loans they had, but what all of their other loans were, and our experience was that the payday loans were the last loans that they got. They were not the first loans that they got. Most of those borrowers had mountains of credit card debt. They had automobile loans. They had student loans. They were not going "belly-up" because of payday loans.

DoD's principal recommendation is to reduce the maximum permissible charge on loans to 36 percent, which is below the lender's marginal cost of producing the type of credit that the payday advance industry provides. The effect of that cap would be to drive legitimate regulated lenders out of the market and to compel borrowers to deal with illegal lenders such as overseas lenders. Those lenders will just as likely pursue illegal collection methods when the time comes to collect the loan.

There are many other approaches to dealing with it. Our trade association, the CFSA, has proposed alternative approaches to the DoD, and for the most part, we have been spurned, but we look forward to having a dialog with the Defense Department and to working these matters out.

Thank you very much for your time and for your patience. I look forward to answering your questions.

Senator SHELBY. Thank you, Mr. Miller.

Professor Peterson.

STATEMENT OF CHRISTOPHER L. PETERSON, ASSISTANT PROFESSOR OF LAW, LEVIN COLLEGE OF LAW, UNIVERSITY OF FLORIDA

Mr. PETERSON. Thank you, Mr. Chairman, Ranking Member Sarbanes, and other members of the Committee. It is a real honor and a privilege for me to get to come and share some thoughts about this with you today.

I spent a significant chunk of my life writing this study that Senator Dole showed some maps from along with my co-author, Professor Graves, and what we did is we looked at 109 military bases around the country and the State that those bases were in, and we analyzed every location of every payday lender in all of those States and every bank location in all of those States.

Senator SHELBY. Do we have the study? Have you furnished that to the staff?

Mr. PETERSON. Sure. Yes. I believe I have, but it is around. It is right here in the Ohio State Law Journal. Go Buckeyes.

What we looked at were all the counties and all the ZIP Codes, and what we came up with was I think pretty irrefutable statistical evidence suggesting that payday lenders cluster around military bases, targeting military personnel. There are a lot of reasons for that. I think some of them Admiral Abbot and Dr. Chu explained, but I really don't think there is any doubt about that.

The one State that we didn't find that, which was really sort of troubling to me when I realized it, was New York. Fort Drum in upstate New York, when we started trying to get the data, we couldn't find any payday lenders up there. It troubled me so much that in the middle of January, I got on an airplane and flew all the way up there to the Canadian border, which is tough for a Florida boy.

I drove around the entire base, every street to make sure that our data was right on this, and there were a couple that had sort of snuck up and were disguising it, but the Attorney General is shutting them down. The reason, clearly, was because New York had stuck by their guns in their traditional interest cap of 25 percent.

That brings me to a historical point that I would like to make, that predatory lending to military personnel is nothing new. I have done a lot of reading of history, and it has happened in the Chinese Empire, in the Roman Empire. The first succession from the Roman Republic was a riot that spread all throughout the Roman society over abusive loans to military veterans. The Romans figured that out. Their emblems are here still adorning our room, and they put a 12 percent interest rate cap on.

They were the first to do it. The very first comprehensive law in the history of our species, the Code of Hammurabi from 1750 B.C., the legend was that Hummurabi ascended the mountain where Shamash, the god of justice gave him this comprehensive code and they chiseled in on a rock, and we still have it. It is in the Louvre in Paris. It has an interest rate cap in it of 20 percent for loans made in bulk silver and 30 percent for loans in grain. This is before we figured out how to coin money.

And it actually, if you translate it, it is almost exactly the same as the 18 percent interest rate cap that happens to still be on the books, although not enforced particularly well, in the great State of Florida. So the first law in still in the State of Florida now, but we have fallen away from that. Throughout the history of our country, our republic, we have always had interest rate caps. Thomas Jefferson and George Washington would have been pretty upset if there were lenders lending at 500 percent to the Continental Army. They would not have tolerated that, those guys.

And I don't think General Eisenhower would have in World War II. Throughout the Great Depression and World War II, this was an illegal practice. We would not tolerate that. It is only in the past 15 years or so, for the first time in the history of our republic, that we have come to the point where we could say something along the lines that the Congress will not stand up and stop 500 percent loans to the Marine Corps. Well, that is a very peculiar and troubling thing to me.

And last, an economic point: I note that there is a profound difference between market competition, of which I believe in—free market is very important, but there is a difference between market competition and market anarchy. We don't allow unregulated markets in any market. If somebody wants to sell weapons-grade plutonium, we won't tolerate that. If they want to sell child pornography, we don't tolerate that. If they want to sell 500 percent interest rate, loans to the Marine Corps, I don't think that we should tolerate that. I think it is a bad idea for our national security and it is a bad idea for ourselves in our own moral sense of who we want to be as a country.

So with respect, I would strongly urge the Committee and Senators to support providing some national limit to what I think is a tragedy. These soldiers are going over to Iraq and they are bleeding out on the desert floor, and the Congress can't come up with a cap for the loans that they are being charged? It is time for us to do something about it.

Thank you.

Senator SHELBY. Thank you, Professor.

I have a number of questions that I am going to submit them for the record to all of you, because we have just now been notified we have a vote on the floor and we are going to have to leave here in just a few minutes.

I want to recognize Senator Sarbanes. He has been in another meeting.

STATEMENT OF SENATOR PAUL S. SARBANES

Senator SARBANES. Thank you very much, Mr. Chairman. I will be very brief. I just want to make some comments.

First of all, I want to thank the panel for their contributions. I want to commend Chairman Shelby for holding this hearing on the "Defense Department's Report on Predatory Lending Practices Directed at Members of the Armed Forces and Their Dependents". In my view, it portrays clearly unacceptable practices on the part of a number of short-term lenders.

This report is a result of an amendment that Senator Dole included in the National Defense Authorization Act mandating a study on predatory lending. I think it provides a disturbing insight into how predatory lenders target military personnel. It details the disastrous effects of high-cost predatory lending on our military and outlines actions taken by the military to address predatory lending and makes recommendation for further statutory protection.

There are approximately 1.3 million members of the U.S. Armed Forces. Even 10 percent of those would be 130,000 people. These men and women play an important role in our defense, obviously, and the view that a number of these practices are directed at them in a whole range of ways, I think is a matter for the considerable concern.

The DoD report cites a study showing that service members are three to four times more likely, actually, to have payday loan than are civilians. They are not typically based on the borrower's ability to pay. I was interested in Mr. Miller's comment that this is the loan of last resort, that they have been through all these other things showing a weakened financial condition and everything else. Why are you making this loan to someone who has got that kind of financial trouble?

They carry annualized interest rates often of more than 400 percent, often extended through rollovers, which, of course, include additional high fees, no payment of the principal. Service members get trapped in the seemingly never ending cycle of debt.

I have some examples here, but due to the shortage of time, I won't put those in the record. I do want to commend the military for its efforts to address these predatory lending practices. I don't think there is sufficient protection for service members.

And, Mr. Chairman, I hope that we will be able to take a very careful look at the recommendations of the DoD report and other proposals that have been put forward in order to try to get this situation under control. Our men and women in the armed forces deserve better than this. Thank you.

Senator SHELBY. Senator Martinez. I know you have a Floridian here.

Senator MARTINEZ. I know, and I want to just welcome both of my Floridian friends here and commend both of you for your testimony. I know Senator Dole wanted me to welcome you.

Senator SHELBY. Floridians. I said one.

Senator MARTINEZ. There are two, actually.

Senator SHELBY. You stacked the panel, didn't you? No, you didn't.

Senator MARTINEZ. Well, we are concerned about this in Florida, sir. We have got Mayport and NAS in Jacksonville. They are very important to our national defense, and I know we have got to go vote. So I will be very brief, but I just can't help but ask Mr. Miller.

I just want you to know that I am not impressed that you are only destroying the financial lives of a small percentage of our service members; but understanding that, this agreement, what is the average percentage rate of your lenders in this business of average payday loans? I believe we heard a 390 percent to 906 percent. Do you dispute those figures?

Mr. MILLER. I think there are probably relatively few operators who are in the 900 percent range.

Senator MARTINEZ. Where would most of them be? Five hundred or so?

Mr. MILLER. Standard pricing for a payday loan would be a finance charge of approximately $15 for a 2-week, $100 loan.

Senator MARTINEZ. Just do it in a percentage, in an APR. What would be the APR rate? We are all grown-ups and know what that means.

Mr. MILLER. That would be equivalent to a 398 percent APR or 390 percent APR.

Senator MARTINEZ. What is your evidence that the cost of lending that—that is before they get in trouble, by the way, and could escalate then further with penalties and fees and so forth, but what is the financial basis for a 390 percent lending rate? Is there a sound basis that you can say these loans are so risky that we have to charge that high a rate? Because you on the other hand were telling us that very few actually are bad loans, that most of them are not bad loans.

Mr. MILLER. Senator, that is a very good question, and I am happy to respond to it. The principal costs associated with making payday loans are real estate and personnel costs. They are not credit-related costs. The costs of keeping stores open generally on a 24–7 basis in some of the larger areas, of processing numerous very small transactions that involve a tremendous amount of back office activity is what generates the costs associated with this business, and there is a study done by two researchers at the FDIC that substantiates that the costs are primarily office-related costs rather than credit-related costs.

Senator MARTINEZ. But you wouldn't disagree that a 390 percent loan is unconscionable?

Mr. MILLER. I would disagree with you.

Senator MARTINEZ. You would disagree with me? That is a fair rate of lending and that that is not going to drive someone to financial ruin if they are paying that kind of an interest rate, particularly when they are working in a fairly modest salary scale in the first place?

Mr. MILLER. Well, I respectfully disagree with you.

Senator MARTINEZ. Do you think an 18-year-old taking a loan at 390 percent is conscionable? You can look at me with a straight face and tell me that that is, in fact, what you believe?

Mr. MILLER. I believe that used for its intended short-term purpose, that loan can be very helpful to bridge a financial problem that an 18-year-old might have.

Senator MARTINEZ. Have you ever gone through a credit counseling place where people counsel folks on credit counseling and how to avoid financial difficulties such as that? Do you think anyone ever in a credit counseling session would recommend someone to go get yourself a loan with a 390 percent?

Mr. MILLER. I don't know. I am not familiar with how credit counseling operations act.

Senator MARTINEZ. You should become familiar. Your organization should become familiar, because our servicemen and women need to be become familiar, and part of avoiding this kind of unconscionable problem is for them to be better informed on issues of financial literacy, and I think that is one of the areas we really show focus, but I also don't understand how a credible organization purporting to serve the public interest could suggest that loans at those rates of interest are really in the best interest of our servicemen and women.

Thank you.

Senator SHELBY. Senator Carper.

Senator CARPER. Thank you, Mr. Chairman.

I spent some time at some of those bases that Senator mentioned, Jacksonville, Mayport, those places. I was in the Navy for 23 years and active in the Reserves, and one of the things I was struck by in the training that I had and I suspect the training that given to our enlisted personnel down in Orlando and other places around the country, that apparently we don't do a very good job of literacy training, financial literacy training, for the officers that were coming up and I am sure for enlisted men and women as well.

Let me just ask our friends here from the DoD and maybe Admiral Abbot your own thoughts on the kind of financial literacy training we are providing to people that are in the armed services, especially with the enlisted ranks.

Admiral ABBOT. Senator, the Navy and I believe all the services are doing a job good job at financial literacy training and it is getting better. It starts at boot camp and it continues on into the specialty schools afterwards. They have to start off at square one. As has been mentioned before, a lot of these young people haven't ever had a paycheck, haven't had a checking account. They are required to have a checking account in order to have their pay deposited. You have to start off by teaching them how to read an earning statement and how to balance a checkbook, and then they move on in subsequent sessions to give them more of an education on handling the basics of life, of buying an automobile and housing and paying for groceries and dealing with the family; but it requires a continuum of education and repetition, and the Navy and the Marine Corps I know are focused on that and getting better.

Senator CARPER. Good. I know when I got to the Naval Air Station in Pensacola when I was a brand new enlisted man, one of the first things I did was I opened up an account at the Navy Federal Credit Union right there in Pensacola and used that to buy a car, and I know a lot of my colleagues did the same kind of thing. We have Federal Credit Unions. We have banks all over the country as well. The access to credit unions on the military base is pretty good, and the idea is that an enlisted man or woman or an officer can go into a credit union or a local community bank and get access to pretty low rates, especially in those credit unions. I am not sure why that are not better used.

The other thing I would say—Senator Martinez has gone. What I find especially objectionable and concerning with respect to the kinds of loans that we are talking about here today is not so much they are paying $15 to get a loan for a transaction cost. The real problem is when the loans roll over and over and over and extend beyond a week or two. That is where the real problem lies and that is where I hope that we will focus our attention and the industry will focus its attention.

The other thing is, Mr. Chairman, my hope is that when we go to the next year that we can come back and revisit this issue in the context of predatory lending in a broader sense that is going on in this country. I am very concerned, and I know you are in Alabama and other States, and this is one that we need to just keep our eye on the ball and do something responsible and soon.

Thank you.

Senator SHELBY. We have a vote. We have got to conclude the panel. We thank you for your contribution. We appreciate what you are doing. This is something that I believe we have to address.

Thank you very much.

The Committee is adjourned.

[Whereupon, at 11:43 a.m., the hearing was adjourned.]

[Prepared statements, responses to written questions, and additional material supplied for the record follow:]

PREPARED STATEMENT OF SENATOR TIM JOHNSON

Thank you, Mr. Chairman and Ranking Member Sarbanes. I appreciate that the Committee is meeting today to address this issue of critical importance.

Thousands of our military personnel are currently serving in harm's way in defense of this country. In South Dakota, over 3,800 military personnel and civilians are stationed at Ellsworth Air Force Base, 300 of which recently deployed in support of the Global War on Terror.

As the father of an active-duty soldier who has served combat tours in Iraq and Afghanistan, I am acutely aware of the very personal challenges facing our men and women in uniform. I am proud of their courage and professionalism, and grateful for their service to our country.

Congress has an obligation to ensure each soldier is combat ready before deployment. This includes equipping our troops with body armor, up-armored Humvees, night vision goggles, and other essential life-saving equipment. But our commitment to our servicemembers does not just involve protecting their personal safety. I hear much too often that our military personnel and their families are not equipped with the tools to adequately manage their personal finances.

Financial stress can affect any soldier regardless of their marital or deployment status—in particular, younger or lower-ranked enlisted personnel. We all sympathize with the soldier who incurs debt because he was blindsided by unexpected emergencies, auto repairs, personal or family illness or is just struggling with basic living expenses.

To ensure our servicemembers are capable of addressing their financial needs, we must first provide them with adequate compensation. To that end, I have consistently supported robust pay raises each year in the defense appropriations bill.

At the same time, we must help our soldiers exercise financial responsibility. This has proven to be a challenge for many Americans and financial literacy remains a critical issue of importance.

I share DoD's concern about servicemembers falling into a "cycle of debt" whether through inappropriate use of credit cards, payday loans, or other forms of credit, and I believe Congress and DoD must work together to improve the financial literacy of our servicemembers, and crack down on abusive and predatory practices by any lender.

It is essential that military personnel and their families have access to information and assistance and that DoD's commitment to financial readiness extends from the top down and is consistent throughout all branches. I am concerned that DoD's Financial Readiness Campaign that began in 2003 has not been fully embraced by all of the services.

I look forward to hearing from our witnesses today, and I am especially interested in hearing from Secretary Chu regarding the report's findings and recommendations. I am concerned that DoD is recommending a federal ceiling on the cost of credit to military borrowers and their families, capping the APR at 36%. This would, in effect, ban short term, high APR loans, but would do nothing to address predatory lending by "military lenders" that specifically target 100% of their loans to servicemembers, DoD employees, and retired servicemembers.While well intentioned, I am not convinced that this approach would solve the larger problem.

It is very clear that military personnel like many other consumers have a real and legitimate need for short-term, small denomination credit products. And we must remain mindful of that fact as we address the issue of predatory lending. There are clear differences of opinion as to how those products should be structured, and how they should be delivered. I have a real concern that if these types of financial services products are pushed outside of a regulated environment or banned outright, it will open the door for abuse and inevitably result in less consumer protection. There is something to be said for striking the right balance between regulation, consumer protection, and effectively meeting consumers' credit needs especially those of our service men and women.

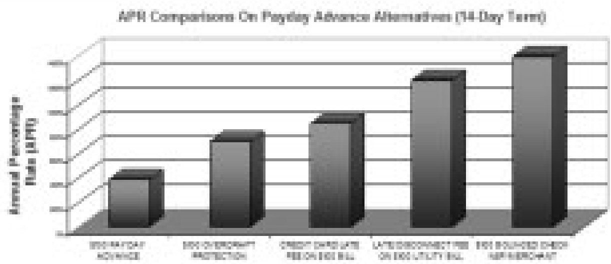
Our servicemembers, like all other consumers, should be afforded the benefit and opportunity to choose the financial services and products that best suit their needs. Additionally, the financial services industry must continue to develop and offer meaningful products, including short term credit products that will meet the needs of the military while also protecting all consumers, including servicemembers, from potentially abusive and predatory practices by lenders. And it is equally critical that the regulatory agencies foster a regulatory environment that supports short-term credit products and one in which such products can thrive while providing the greatest benefit to the consumer.

As we continue to address the issue of predatory lending to the military, the primary goal should be to develop meaningful solutions that will offer the greatest protections to our servicemembers, while avoiding measures that carry the potential for the unintended consequence of driving servicemembers into potentially abusive, and far more expensive forms of credit.

Mr. Chairman, I would like to include with my statement a cost comparison chart of payday loan alternatives.

Payday Advance: A Cost Comparison

Payday advance fees are lower than many of consumers' alternatives, even when expressed as an annual percentage rate (APR).



CREDIT ALTERNATIVE	$100 PAYDAY ADVANCE	$100 OVERDRAFT PROTECTION	CREDIT CARD LATE FEE ON $100 BILL	LATE/DISCONNECT FEE ON $100 UTILITY BILL	$100 BOUNCED CHECK NSF/MERCHANT
Fee	$15.00	$26.00	$32.61	$46.16	$53.55
APR	391%	701%	850%	1203%	1400%

Consumer groups and academic researchers comment on the cost of payday advance versus its alternatives:

"We find that fixed operating costs and loan losses justify a large part of the high APR charged on payday advance loans . . . These operating costs lie in the range of [payday] advance fees, suggesting that payday loans may not necessarily yield extraordinary profits."—Payday Lending: Do the Costs Justify the Price, Center for Financial Research, Federal Deposit Insurance Corporation, 2005

"Critics also contend that [overdraft] bounce protection fees, as high as $37 per transaction, are little more than high-priced credit. 'If a bank lends you $100 and charges you a $20 fee—and then you pay the money back in two weeks—that's an annualized interest rate of 520%,' notes Jean Ann Fox, director for consumer protection at the Consumer Federation of America in Washington. 'It's worse than a payday loan'."—Business Week, May 2, 2005

"Unlike payday lending programs, the extraordinarily high APRs in fee-based overdraft programs are never disclosed as such, and none of the other consumer protections are provided. Moreover, fee-based overdraft programs are aimed at the very same customers that payday lenders are seeking . . . and the costs rival or exceed those of payday lending."—Comment letter to Board of Governors of the Federal Reserve System from 90 consumer group organizational signators, January 27, 2003

"Interviews and industry survey indicate that payday loan customers do make a cost analysis in comparing the price of a payday loan with the alternative costs of bouncing a check and/or incurring late fees . . . When used on a recurring basis for small amounts, the annualized percentage rate for fee-based bounce protection far exceeds the APRs associated with payday loans."—Low-Cost Payday Loans: Opportunities and Obstacles, Annie Casey Foundation Report, June 2005

"Courtesy pay is not marketed as an alternative to a payday loan, but it serves a similar function when used as credit. Credit unions charge fees ranging from $15 to $35 to cover an overdraft."—Credit Union Payday Loan Alternatives, National Association of Community Credit Unions, December 2005

PREPARED STATEMENT OF DAVID S.C. CHU

UNDER SECRETARY FOR PERSONNEL AND READINESS, DEPARTMENT OF DEFENSE

SEPTEMBER 14, 2006

Mr. Chairman and members of the committee, it is a privilege to testify on the predatory lending DoD report. This report, required by Section 579 of the Fiscal Year 2006 National Defense Authorization Act, reviews the impact of lending practices that prey on Service members and their families, the efforts of the Department to ameliorate those impacts, and recommendations for legislative remedies to assist our military families.

This Administration recognizes personal finance as a primary aspect of "quality of life" for Service members and their families. It has included payday lending as one of ten key issues requiring the assistance of state governments to protect their well-being. Permit me to summarize how we reached this conclusion as context for the report.

Social Compact

In 2001, the President directed the Secretary of Defense to "undertake a review of measures for improving the quality of life for our military personnel." We collaborated with the Military Services to develop a "Social Compact" that describes the reciprocal nature of the commitments among Service members (to the defense of the nation), their families (to being part of that commitment) and the Department of Defense (to caring for their well-being). This bottom-up review articulated the linkage between quality of life programs as a human capital management tool and the strategic goal of the Department—military readiness.

The Social Compact lays out long term strategic-level plans for key aspects of quality of life, of which financial readiness is one. The long-term vision for financial readiness is to develop a *military culture that values financial competency and responsible financial behavior*. Financial readiness is equally important as other military skills and attributes.

Financially ready Service members seek out information to be proficient, and seek assistance when they encounter difficulty. Financially ready Service members would *not* seek to hide their financial problems by continuing to build debt to the point of destroying their finances, adversely impacting their family life and jeopardizing their military careers.

The goals associated with this strategic plan focus on the benefits of financial readiness to the individual and to the Department. We seek to:

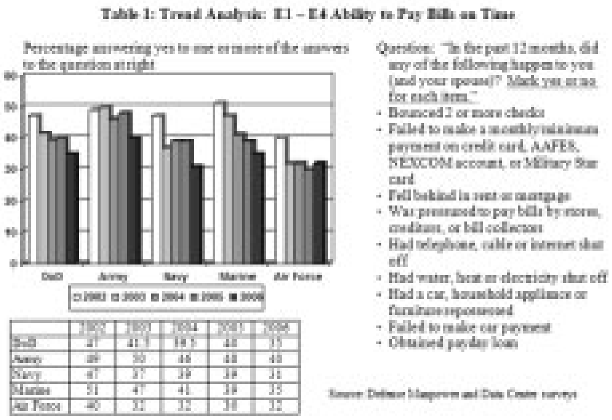
- Reduce the stresses related to financial problems—the stress of out-of-control debt that can impact the performance of Service members and their family's quality of life.
- Increase savings—a personal and family goal of motivated Service members to control their finances and plan and prepare for their futures.
- Decrease dependence on high interest rate or unsecured debt—the vulnerability associated with living from paycheck to paycheck.
- Decrease the prevalence of predatory practices—protection from financial practices that seek to deceive Service members or that take advantage of them at a moment of vulnerability.

These goals establish an environment and culture in which Service members can feel secure about their finances and are ready to engage in the military mission. To accomplish these goals, Service members need to be competent in dealing with finances, protected from financial predators and motivated to achieve financial readiness. The Department uses awareness media, education programs and assistance through counseling to help Service members conform their behavior to the goals. But these tools do not protect them from predators as they develop their financial competency.

Financial Education Policy and Metrics

The Military Services are expected to provide instruction and information to meet the needs of Service members and their families. To this end, the Department published in November 2004: DoD Instruction 1342.27, *Personal Financial Management Programs for Service Member.*

As outlined in the Government Accountability Office Report 05–348, each Military Service tailors its programs for training first-term Service members on the basics of personal finance. These programs vary in terms of venue and duration, but all Military Service programs must cover the same core topics to the level of competency necessary for first-term Service members to achieve financial readiness. The Department monitors the ability of Service members to pay their bills on time, as a reflection of their financial competency and ability to apply basic financial principles. The Department has tracked the performance of the first four enlisted ranks as a leading indicator for the rest of the force. Since 2002, these Service members' self-reported assessments indicate they are paying better attention to keeping up with their monthly payments (graph at Table 1).



	2002	2003	2004	2005	2006
DoD	47	41.5	39.5	40	35
Army	49	50	46	48	40
Navy	47	37	39	39	31
Marine	51	47	41	39	35
Air Force	40	32	32	30	32

The Department is adding another indicator this year to the performance measure for personal finance: enrollment in the Thrift Savings Plan.

I review these metrics quarterly along with metrics that measure other important aspects of Service member and family quality of life.

The Department is developing an evaluation tool that measures first-term Service members' ability to apply basic principles to scenarios they may encounter. This tool will standardize the evaluation process throughout the Military Services and will help ensure that Service members can apply the instruction they receive.

Financial Readiness Campaign

To assist the Military Services in delivering financial messages, the Department established the Financial Readiness Campaign in May 2003. It is now supported by 26 nonprofit organizations and federal agencies. In the past three years, Service members have benefited from the materials and assistance from:

- Air Force Aid Society (AFAS)—provides financial counseling and emergency monetary support for airmen in need.
- American Savings Education Council (ASEC)—provides over 60 award winning public service announcements that have been shown on American Forces Radio and Television Service (AFRTS).
- Army Emergency Relief (AER)—provides counseling, education programs and emergency financial relief to soldiers.
- Consumer Federation of America (CFA)—established the "Military Saves Campaign" as part of the CFA "America Saves" initiative, to encourage Service members to establish emergency savings and invest in the Thrift Savings Program.
- Association of Military Banks of America (AMBA)—AMBA members provide educational programs to supplement programs offered by the Military Services, as part of the responsibility for residing on military installations. Additionally, AMBA assists the CFA in deploying the Military Saves Campaign.
- Council of Better Business Bureaus—works with the Military Services to assist Service members and their families with a variety of consumer-related issues, along with providing education programs upon request.
- Defense Credit Union Council (DCUC)—members of DCUC provide education programs to supplement programs offered by the Military Services, and assist in the deployment of Military Saves.

- Federal Deposit Insurance Corporation (FDIC)—made available their "Money Smart" curriculum and train-the-trainer program to the Military Services, as well as AMBA and DCUC members.
- Federal Reserve Board—studies the impact of the AER sponsored education course conducted at Fort Bliss, TX, to determine the effect of training on financial behavior.
- Federal Trade Commission (FTC)—provides most widely disseminated materials available outside of DoD, on various topics concerning consumer protection.
- Financial Literacy and Education Commission (FLEC)—consolidates the materials available through the federal agencies via the "www.mymoney.gov" website, and accompanying toll-free number. It is widely advertised and linked to DoD and Military Service websites concerning personal finance.
- InCharge Institute—provides access to credit counseling/debt management, and publishes a quarterly magazine "Military Money" in partnership with the National Military Family Association (NMFA). The magazine is designed primarily to reach out to military spouses on a variety of financial, spouse and family life topics. To accompany the magazine, InCharge also provides public service announcements called the "Military Money Minute," on AFRTS, covering helpful financial tips on military pay, deployment preparation, etc.
- Institute for Consumer Financial Education—helps individuals and counselors with credit questions and understanding credit reports.
- Moneywise with Kelvin Boston—provides access to his syndicated television program for broadcast on AFRTS.
- National Association for Credit Counseling—partners with military installations to provide educational classes and credit counseling services.
- National Association of Securities Dealers (NASD) Foundation—funds a multi-year awareness and education program to supplement the programs provided by the Military Services. Included in the program are multimedia public service announcements (through sources such as AFRTS, Military Times magazines and local radio); an interactive website; sponsorship of a scholarship program for military spouses (through partnership with NMFA) to accredit them as Financial Counselors in return for volunteer hours in military communities; and education for Military Service Financial Counselors and Educators.
- National Endowment for Financial Education (NEFE)—provides access to its "Project for Financial Independence," to severely injured Service members, members of the Guard and Reserve, and their families. The Project for Financial Independence connects Certified Financial Planners with Service members (geographically separated from an active duty military installation where they can obtain financial counseling) to accomplish pro bono financial planning.
- National Military Family Association (NMFA)—partners with several other organizations to facilitate reaching military spouses, a primary target of the Financial Readiness Campaign.
- Navy-Marine Corps Relief Society—provides education, counseling and emergency financial support for sailors and Marines in need.
- Securities and Exchange Commission—provides seminars at military installations, along with investor education materials in libraries on military installations.

These partnerships allow the Military Services to choose the programs that can best supplement the education, awareness and counseling services they provide.

Education and Predatory Lending

Predatory lending practices are covered as topics in initial financial education training and in refresher courses offered at the military installations. As described in the report, the Military Services have provided over 11,800 classes and trained over 324,000 Service members (approximately 24 percent of the force), as well as 19,400 family members.

In addition to these classes, Financial Readiness Campaign partner organizations conducted 1,300 classes for a total of 60,600 Service members and family members. These classes were primarily provided by the staff of banks and credit unions located on military installations. These institutions provide these classes as part of their responsibilities outlined in the DoD Financial Management Regulation. Other organizations involved include local Credit Counseling Agencies, state financial regulatory agencies, the InCharge Institute and the NASD Foundation.

The Military Service financial educators, along with partner organizations, have also distributed over 223,000 brochures and pamphlets, with the Military Services and Federal Trade Commission the primary provider of these products. In addition, Military Money Magazine has run several articles, including two cover article editions, on predatory lending. The free distribution of the magazine is through military commissaries, family support centers, other service agencies on the installation. The magazine is sent to residents on the military installations and home addresses off the installation upon request. Approximately 250,000 copies are distributed per quarter.

Predatory Lending Practices Considered

The lending practices covered in education programs parallel those covered in the report: payday loans, Internet loans, military installment loans, tax refund anticipation loans and rent-to-own programs. Education programs also cover budgeting, the appropriate use of credit, credit cards, and other financial services.

The loans covered in the report include those with high interest rates, little or no responsible underwriting, loan flipping or repeat renewals that ensure profit without significant payment of principal, loan packing with high cost ancillary products whose cost is not included in computing interest rates, a non-mortgage loan structure or terms that transform these loans into the equivalent of highly secured transactions; and loans that involve fraud or deception, waiver of meaningful legal redress, or operation outside of state usury or small loan protection law or regulation. These characteristics strip earnings or savings from the borrower, place the borrower's key assets at undue risk, potentially deepen the borrower's financial shortfall and trap the borrower in a cycle of debt. These loans take advantage of the borrower's lack of understanding, vulnerability or both.

The types of loans included in the report were chosen as a result of feedback from military financial counselors and legal assistance attorneys who have provided counsel to Service members with financial problems. The Military Services and Military Aid Societies provided 3,393 case studies providing information about incidents where Service members have requested assistance with their lending problems. These case studies showed that the typical scenario involved indebtedness resulting from a lack of financial control, a financial emergency, or both. Many of these cases involved military borrowers who owed money to installment lenders and payday lenders that created a cycle of debt.

Efforts to Curb the Prevalence and Impact of Predatory Loans

The Department has attempted to use the processes and resources available within the Department to curb the prevalence of payday lenders. But the Armed Forces Disciplinary Control Board (AFDCB) and command policy are not adequate to address the issue. The AFDCB is designed to address commercial entities providing services that are a detriment to good order and discipline, and in violation of federal or state statute. Without appropriate statute, commanders and AFDCBs have difficulty citing payday lenders as the focus of remedial action. Moreover, in states that authorize payday lending, AFDCBs must establish their own local guidelines in addition to the provisions of state law, ensure all affected businesses are aware of these new rules, and then require these businesses to comply. The Department has considered establishing guidelines that would ameliorate the concerns posed by lenders characterized above, but establishing these policies within DoD poses legal problems and raises the potential for troublesome litigation against the Department. There is no established authority for DoD to make rules governing off-base private business dealings.

Military installment companies have also attempted to evade state usury limits and oversight. In 2005, the California Department of Corporations considered a complaint filed against one such company, alleging it operates without a license, charges usurious interest, collects prepaid finance charges which are not permitted in California, contracts for excessive dishonored check fees, and automatically adds various forms of credit insurance to loan agreements (98 percent of contracts include "voluntary" insurance purchases).

Internet lenders claim jurisdiction in states with lax protections and unlimited rates and often attempt to bypass the state credit, usury or payday loan laws of the state where the borrower receives the loan. All military installment lenders cited in the report listed Nevada as their home state. State regulators have successfully enforced home-state law against Internet payday lenders making loans to consumers in their states in Colorado, New York, Massachusetts, Kansas, Pennsylvania and the District of Columbia.

The scope and methods of payday, military installment and Internet lenders are outside the capability of the Department to place "off limits" as a way of dealing with good order and discipline concerns associated with these lenders' practices. It is also unrealistic to believe that the Department can adequately control these concerns through education alone. The recent survey accomplished by the Consumer Credit Research Foundation stated that the primary reason Service members choose payday loans is because they are convenient. Certainly, obtaining "fast cash" from a payday lender is far more convenient than debt counseling or addressing inherent overspending that creates situations where sub-prime loans are needed. The Department seeks your assistance in helping Service members find convenient, less costly options that build their financial future.

Alternatives

The Department would prefer Service members and their families seek out the alternatives available through Military Aid Societies, military banks and defense credit unions. These institutions have established programs and products designed to help Service members and their families resolve their financial crises, rebuild their credit and establish savings.

The Military Aid Societies are strong advocates for limiting the cost associated with credit and for developing alternative products by financial institutions for Service members who cannot otherwise qualify for loans. Within their own resources they provided $87.3 million in no-cost loans and grants to Service members and their families in 2005.

As described in the report, many military banks and defense credit unions have developed products and services to assist Service members recover from their financial problems. These alternative programs require Service members to commit to changing their financial behavior. The Department is seeking this outcome in its awareness campaigns, education programs, and the counseling services it offers, and supports reasonable alternative programs that help Service members recover their financial well-being.

Legislative Recommendations

For the reasons outlined above, the Department is requesting the Congress' assistance in establishing limits that will help Service members seek out alternatives capable of motivating them to change their financial behavior. The report outlines several recommendations that are designed to curb the corrosive nature of predatory loans. Each recommendation seeks to limit the abuses articulated in the report:

- **Require that unambiguous and uniform price disclosures be given to all Service members and family members with regard to any extension of credit (excluding mortgage lending).** All fees, charges, insurance premiums and ancillary products sold with any extension of credit should be included within the definition of finance charge for the computation and disclosure of the annual percentage rate (APR) for all loans made to military borrowers. As stated in the report, some loan companies pack loans with additional fees not included in the APR calculation. Additionally, many Internet lenders do not disclose their interest rates and fees on their websites, and are only disclosed after the borrower has committed to taking the loan.
- **Require a federal ceiling on the cost of credit to military borrowers, capping the APR to prevent any lenders from imposing usurious rates.** Lenders should be prohibited from directly or indirectly imposing, charging, or collecting rates in excess of 36 percent APR with regard to extensions of credit made to Service members. This APR is expected to cover all cost elements associated with the extension of credit. This limitation is expected to affect all lenders referenced in the report (payday, installment, Internet, tax refund anticipation, and rent-to-own). This limit may affect payday lenders, but by their own statistics, the military represent only one to four percent of their market. True, a 36 percent APR may preclude some Service members from obtaining credit. The Department believes Service members who require loans with interest rates above 36 percent APR should seek assistance and not consider further increasing their debt load. The 36 percent APR limit creates a barrier for installment lenders to refrain from packing fees and premiums onto the base interest rate they charge for a loan. The limit of 36 percent APR is considered ap-

propriate, since it mirrors the limitations found in several states for their small loan products. For those states where the cap is lower than 36 percent, the state limit and consumer protections would apply.

- **Prohibit lenders from extending credit to Service members and family members without due regard for the Service member's ability to repay.** Perhaps the most important limit that can be applied is assuring Service members are not provided loans they cannot repay in a timely manner. If they are in situations that require them to take loans to meet short-term obligations without considering their short- and long-term ability to repay, then they should be obtaining counseling and assistance to restructure their debt and develop long-term budgets that can help them recover from their financial concerns. Such a prohibition would also limit the use of high interest credit to make impulse and unnecessary purchases, since these outlays push Service members and their families deeper into debt. Lenders that require checks, access to bank accounts or car titles to secure obligations consider these essential assets to mitigate their risk and do not consider the ability of the borrower to repay the loan. Lenders that require allotments to repay loans deliver their products under the same expectations. Access to essential assets places the borrower in a position of undue duress, with no options but to pay according to the schedule, even if the borrower has no capability of doing so. Again, this is not of concern to the lender holding these assets. If this restriction precludes some Service members from obtaining credit, then they may consider the alternatives—counseling, assistance and a change in financial behavior.
- **Prohibit provisions in loan contracts that require Service members and family members to waive their rights to take legal action.** Service members should maintain full legal recourse against unscrupulous lenders. Loan contracts to Service members should not include mandatory arbitration clauses or onerous notice provisions, and should not require the Service member to waive his or her right of recourse, such as the right to participate in a plaintiff class. Waiver is not a matter of "choice" in take-it-or-leave-it contracts of adhesion. To the contrary, Service members should be given the opportunity to hold lenders accountable for situations where they have violated their rights.
- **Prohibit contract clauses that require Service members to waive any special legal protections afforded to them.** These proposed protections, and those provided to Service members through the Servicemembers Civil Relief Act, were intended to strengthen our national defense by enabling Service members to devote their entire energy to the defense needs of the Nation. In the interest of our national defense, such protections should not be subjected to waiver (other than in circumstances stated in the Servicemembers Civil Relief Act), in writing or otherwise.
- **Prohibit states from discriminating against Service members and family members stationed within their borders, and prohibit lenders from making loans to Service members that violate consumer protections of the state in which their base is located.** States should be prohibited from discriminating against Service members stationed within their borders and should be required to assure that such Service members are entitled to and receive the benefit of all protections offered to citizens of the state, including regulation of lenders located in the state or that provide loans via the Internet to Service members stationed there. States have a vested interest in assuring the financial safety and stability of Service members stationed within their borders. States should be prohibited from authorizing predatory lenders to treat "non-resident" Service members stationed within the state's borders differently than the state would permit that lender to treat in-state residents. Lenders should be prohibited from charging Service members stationed within a state an APR higher than the legal limit for residents of the state, and should also be prohibited from violating any other consumer lending protections for residents of the state in which the base is located.

Conclusion

The Department appreciates the opportunity to report to the Congress on the issue of predatory lending. The report outlines the prevalence around military installations of payday lenders and the overt marketing of some installment and Internet lenders. The report and this testimony provide an overview of the efforts within the Department to educate, inform and influence Service members and their families to take control of their finances, build wealth and escape the cycle of debt—for their own well-being and to enhance their military readiness. The Department's strategic plan seeks to increase savings and decrease dependence on debt. The strategic plan also focuses on improving the protection afforded Service members and their families in the market place—again to help assure their military readiness.

The vision for personal finance in the Department is to develop *a military culture that values financial competency and responsible financial behavior,* in other words, a system that values Service members addressing their financial problems, rather than perpetuating them through high interest loans. Service members inherently understand that limits on interest rates are appropriate, even if these limits would decrease the availability of credit. When asked in a recent survey conducted by the Consumer Credit Research Foundation if Service members strongly/somewhat agree or disagree with the statement: "The government should limit the interest rates that lenders can charge even if it means fewer people will be able to get credit," over 74 percent of the Service members surveyed agreed with the statement (with over 40 percent strongly agreeing). Similarly when asked their position on the statement "There is too much credit available today," 75 percent of Service members not using payday loans and 63 percent of Service members using payday loans agreed (with 51 percent of non-users strongly agreeing).

Service members agree that there should be limits. Commanders have made their positions known that limits should be established. This issue is an important part of the Department's social compact with commanders, Service members and their families, for their well-being and in support of military readiness. The Department asks for your assistance enacting the statutory language necessary to establish more effective limits.

I thank you for this opportunity to share these concerns with you and the committee. The Department stands ready to assist the committee in developing effective limits on predatory lending.

Report On Predatory Lending Practices Directed at Members of the Armed Forces and Their Dependents.

August 9, 2006

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1. Introduction

This report is in answer to the requirements established in Section 579 of the National Defense Authorization Act for Fiscal Year 2006, which states as follows:
SEC. 579. REPORT ON PREDATORY LENDING PRACTICES DIRECTED AT MEMBERS OF THE ARMED FORCES AND THEIR DEPENDENTS.

(a) Report Required- Not later than 180 days after the date of the enactment of this Act, the Secretary of Defense shall submit to the appropriate committees of Congress a report on predatory lending practices directed at members of the Armed Forces and their families. The report shall be prepared in consultation with the Secretary of the Treasury, the Chairman of the Federal Reserve, the Chairman of the Federal Deposit Insurance Corporation, and representatives of military charity organizations and consumer organizations.

(b) Elements- The report under subsection (a) shall include the following:

(1) A description of the prevalence of predatory lending practices directed at members of the Armed Forces and their families.

(2) An assessment of the effects of predatory lending practices on members of the Armed Forces and their families.

(3) A description of the strategy of the Department of Defense, and of any current or planned programs of the Department, to educate members of the Armed Forces and their families regarding predatory lending practices.

(4) A description of the strategy of the Department of Defense, and of any current or planned programs of the Department, to reduce or eliminate—

(A) the prevalence of predatory lending practices directed at members of the Armed Forces and their families; and

(B) the negative effect of such practices on members of the Armed Forces and their families.

(5) Recommendations for additional legislative and administrative action to reduce or eliminate predatory lending practices directed at members of the Armed Forces and their families.

(c) Definitions- In this section:

(1) The term `appropriate committees of Congress' means—

(A) the Committee on Armed Services and the Committee on Banking, Housing, and Urban Affairs of the Senate; and

(B) the Committee on Armed Services and the Committee on Financial Services of the House of Representatives.

(2) The term 'predatory lending practice' means an unfair or abusive loan or credit sale transaction or collection practice.

The report will be presented in the following sequence:

a. Executive summary of the report, summarizing the findings of the report.

b. Description of the prevalence of predatory lending around military communities – reviewing payday lending, internet lending, car title lending, military installment lending, rent-to-own programs, tax refund anticipation loans, and coercive collection actions. The forms of lending included in this report were selected through feedback from military financial counselors and legal assistance attorneys. Mortgage lending was not considered by these counselors as having the level of prevalence associated with the types of loans listed above, and consequently was not reviewed as part of this report.

c. Education programs provided to Service members and their family members – education provided in 2005 concerning predatory practices, other on-going financial awareness and education efforts, and planned changes to enhance current efforts.

d. Strategies and practices to reduce the prevalence and impact of predatory lending – actions taken by commanders to reduce the prevalence and alternatives provided to reduce the impact of predatory lending.

e. Effect of predatory lending on Service members and their families – effect of predatory lending and the influences of on-going education and efforts to reduce the impact of predatory lending on Service members and their families.

f. Review of legislative assistance – a review of legislative initiatives at the state and federal level concerning predatory lending

g. Recommendations for statutory control – final recommendations for federal legislative controls.

Predatory lending in the small loan market is generally considered to include one or more of the following characteristics: High interest rates and fees; little or no responsible underwriting; loan flipping or repeat renewals that ensure profit without significantly paying down principal; loan packing with high cost ancillary products whose cost is not included in computing interest rates; a loan structure or terms that transform these loans into the equivalent of highly secured transactions; fraud or deception; waiver of meaningful legal redress; or operation outside of state usury or small loan protection law or regulation. The effect of the practices include whether the loan terms or practices listed above strip earnings or savings from the borrower; place the borrower's key assets at undue risk; do not help the borrower resolve their financial shortfall; trap the borrower in a cycle of debt; and leave the borrower in worse financial shape than when they initially contacted the lender.

This report has been compiled with the assistance of Personal Financial Management Specialists and Legal Assistance Officers assigned to military installations worldwide, with research assistance provided by Army Emergency Relief, Navy-Marine Corps Relief Society, Air Force Aid Society, the Consumer Federation of America, the Center for Responsible Lending, the National Association of Consumer Advocates, and the National Consumer Law Center. In addition, representatives from the US Treasury, Office of Financial Institutions Policy; the Federal Deposit Insurance Corporation; and the Federal Reserve Board, Division of Consumer and Community Affairs, were consulted.

During the development of this report, two unsolicited letters were received by the Department from the American Bar Association and the Navy-Marine Corps Relief Society. These letters are provided in Appendix 1 of the report.

2. Executive Summary

a. Predatory lending practices are prevalent and target military personnel, either through proximity and prevalence around military installations, or through the use of affinity marketing techniques, particularly on-line. Mortgage lending was not considered as part of this report. The predatory lenders reviewed as part of this report provide short term loans (payday, car title, and tax refund anticipation loans) and installment loans (unsecured loans focused on the military and rent-to-own). These lenders have several characteristics in common:

(1). Predatory lenders seek out young and financially inexperienced borrowers who have bank accounts and steady jobs, but also have little in savings, flawed credit or have hit their credit limit. These borrowers are less likely to weigh the predatory loan against other opportunities and are less likely to be concerned about the consequences of taking the loan.

(2). Predatory lenders make loans based on access to assets (through checks, bank accounts, car titles, tax refunds, etc.) and guaranteed continued income, but not on the ability of the borrower to repay the loan without experiencing further financial problems.

(3). Predatory lenders market to the military through their ubiquitous presence around military installations and/or through the use of terms to affiliate themselves with the military. Increasingly the Internet is used to promote loans to Service members.

(4). Predatory products feature high fees/interest rates, with some requiring balloon payments, while others pack excessive charges into the product. The result of their efforts is to obfuscate the comparative cost of their product with other options available to the borrower.

(5). Most of the predatory business models take advantage of borrower's inability to pay the loan in full when due and encourage extensions through refinancing and loan flipping. These refinances often include additional high fees and little or no payment of principal.

(6). Predatory lenders attempt to work outside of established usury limits, either by attempting to obtain exemptions from federal and state statutes or by developing schemes designed to circumvent existing laws.

b. The Department is exerting significant effort to educate Service members on the potential dangers of using predatory loans, better ways of managing their finances, and in the event they have financial problems, better solutions for them to pursue.

(1). The Military Services educated 354,000 Service members and family members in 2005, and partner organizations educated an additional 61,000. Messages were also transmitted through 960 news articles and 157 official memos on military installations.

(2). On-going programs to enhance awareness, to continue the awareness process, to provide counseling and to provide assistance are included in a comprehensive strategic plan.

c. Commanders are using the methods available to them to curtail the prevalence of predatory loans; however, doing so is not a simple proposition.

(1). The Armed Forces Disciplinary Control Board (AFDCB) provides an avenue to declare a lender off-limits; however, the process is not suited to deal with businesses that work within the law. The Department is taking steps to improve this process.

(2). Senior commanders are delivering the message that obtaining counseling and assistance is a far better option than using predatory loans or continuing to service debt through high cost loans.

(3). Alternatives to payday loans and high interest installment loans are available through the Military Aid Societies and through several banks and many credit unions located on or near military installations. The Military Aid Societies provided over $87 million in assistance in 2005 and have established special programs to assist Service members trapped in high cost loans.

d. There are on-going efforts to persuade Service members not to fall victim to the lure of easy credit to solve their financial concerns, and to consider several better options. As a result, Service members are doing better with their finances, though considerable predatory lending problems still remain.

For example: Active duty Air Force E-4, assigned to Maxwell AFB, AL, originally obtained a $500 payday loan with an agreement to pay back $600 in two weeks. She then took out other payday loans and was forced to do multiple rollovers on each one. To pay off these loans she contacted an installment loan company who provided her with a $10,000 loan at 50 percent annual percentage rate (APR). Total cost to pay off the payday loans was $12,750 and her total obligation to the installment loan company was $15,000. Her financial problems were a contributing factor to her pending divorce.

e. Eleven States including Connecticut, Georgia, Maine, Maryland, Massachusetts, New Jersey, New York, North Carolina, Pennsylvania, Vermont, and West Virginia continue to maintain strong usury laws and to aggressively enforce those laws, thereby limiting the impact of predatory lending on their citizens. In addition, some states have enacted statutes to eliminate exemptions which lenders have used to operate outside of existing state usury caps. For example:

(1). The State of Georgia recently enacted a tough anti-payday loan law to close loopholes and strengthen penalties against lenders that exceed the state's 60% usury cap. The State of North Carolina refused to reauthorize its payday lending law following the sunset of its original authorization.

(2). The other thirty-nine states have legalized payday lending using provisions such as mandatory databases, cooling off periods, attempts to stop rollovers and back-to-back transactions, and attempts to stop borrowing from multiple lenders. However, even with the addition of all these "consumer bells and whistles", these laws do not stop the debt trap.

f. The Department of Defense seeks the following protections against predatory lending to Service members, as described in the report:

(1). **Require that unambiguous and uniform price disclosures be given to all Service members and family members regard to any extension of credit (excluding mortgage lending).**

(a). Require all fees, charges, insurance premiums and ancillary products sold with any extension of credit to be included within the definition of finance charge for the computation and disclosure of the APR for all loans made to military borrowers.

(b). Require that the finance charge and the APR be included in all advertising to Service members including on-line websites and be quoted verbally to prospective military borrowers prior to application.

(c). It is understood that such special military disclosures may discourage lenders and limit the availability of credit to certain Service members, but the Department believes this risk is justified given the impact of predatory loans.

(2). **Require a federal ceiling on the cost of credit to military borrowers, capping the APR to prevent any lenders from imposing usurious rates.**

(a). Lenders should be prohibited from directly or indirectly imposing, charging, or collecting rates in excess of 36 percent APR with regard to extensions of credit made to Service members and their families. This APR must include all cost elements associated with the extension of credit, including the "optional" add-ons commonly used to evade ceilings, such as credit insurance premiums.

(b). It is understood that such an interest rate cap may limit the availability of credit to certain Service members. Limiting high-cost options assists the Department in making the point clear to Service members and their families that high cost loans are not fiscally prudent. A clear, unambiguous rate ceiling is justified given the high fees, interest and other charges associated with loans to Service members reviewed in this report, and the impact of those predatory loans on military readiness and troop morale.

(b). Lenders should not interpret the 36 percent cap as a target for small loans provided to Service members; it would be a ceiling, and often a lower rate would be more appropriate to the risk of a borrower. The passage of such a protection should not be deemed an authorization for any lender to lend at a rate not otherwise authorized by applicable state or federal law.

(3). **Prohibit lenders from extending credit to Service members and family members without due regard for the Service member's ability to repay.**

(a). Prohibit lenders from using checks, access to bank accounts and car title pawns as security for obligations. These methods provide undue and coercive pressure on military borrowers and allow lenders more latitude in making loans without proper regard for the Service member's ability to repay. They also place key assets at undue risk.

(b). Restrict the ability of creditors and loan companies to require or coerce Service members into establishing allotments to repay their obligations. Allotments must be at the convenience and discretion of the military borrower and not a prerequisite for obtaining a loan.

(4). **Prohibit provisions in loan contracts that require Service members and family members to waive their rights to take legal action.**

Service members should maintain full legal recourse against unscrupulous lenders. Loan contracts to Service members should not include mandatory arbitration clauses or onerous notice provisions, and should not require the Service member to waive his or her right of recourse, such as the right to participate in a plaintiff class. Waiver is not a matter of "choice" in take-it-or-leave-it contracts of adhesion.

(5). **Prohibit contract clauses that require Service members to waive any special legal protections afforded to them.**

These proposed protections, and those provided to Service members through the Servicemembers Civil Relief Act, were intended to strengthen our national defense by enabling Service members to devote their entire energy to the defense needs of the Nation. In the interest of our national defense, such protections should not be subjected to waiver (other than in circumstances currently stated in the Servicemembers Civil Relief Act), in writing or otherwise.

(6). **Prohibit states from discriminating against Service members and family members stationed within their borders, and prohibit lenders from making loans to Service members that violate consumer protections of the state in which their base is located.**

(a). States should be prohibited from discriminating against Service members stationed within their borders and should be required to assure that such Service members are entitled to and receive the benefit of all protections offered to citizens of the state, including regulation of lenders located in the state or that provide loans via the Internet to Service members stationed there.

(b). States have a vested interest in assuring the financial safety and stability of Service members stationed within their borders. States should be prohibited from authorizing predatory lenders to treat "non-resident" Service members stationed within the state's borders differently than the state would permit that lender to treat in-state residents.

(c). Lenders should be prohibited from charging Service members stationed within a state an APR higher than the legal limit for residents of the state, and should also be prohibited from violating any other consumer lending protections for residents of the state in which the base is located.

g. It is understood that limits, such as interest rate caps, may limit the availability of credit to certain Service members. The intent of these limits is to reduce availability if the credit being offered does not factor in Service members' ability to repay. Limiting high-cost options assists the Department in making the point clear to Service members and their families that high cost loans are not fiscally prudent and that they are to resolve their financial problems through counseling and alternatives, rather than perpetuate them through predatory high cost loans.

h. Service members see the value of limitations on the availability of credit and the cost of obtaining it. When asked by the Consumer Credit Research Foundation whether "government should limit the interest rates that lenders can charge even if it means fewer people will be able to get credit," 75 percent of non-payday borrowers and 74% of payday borrowers surveyed said they agreed.[1]

i. The Department takes seriously the responsibility of the individual Service member to make prudent decisions and to manage personal finances well. However, predatory lending undermines military readiness, harms the morale of troops and their families, and adds to the cost of fielding an all volunteer fighting force. Education, counseling, assistance from Aid Societies, and sound alternatives are necessary but not sufficient to protect Service members from predatory lending practices or products that are aggressively marketed to consumers in general and to military personnel directly.

[1] Dr. William O. Brown, Jr., and Dr. Charles B. Cushman, Jr., "*Payday Loan Attitudes and Usage Among Enlisted Military Personnel*," Consumer Credit Research Foundation, June 27, 2006, p. 10

3. Prevalence of Predatory Lending Around Military Communities

Military families have characteristics that can make them a market of choice for predatory lenders. Forty-eight percent of enlisted Service members are less than 25 years old,[2] typically without a lot of experience in managing finances, and without a cushion of savings to help them through emergencies. They are on their own without the guidance or assistance of family, with perhaps their first significant paycheck. They are paid regularly and are not likely to be downsized, outsourced or to quit their employment. Also, the military culture emphasizes financial responsibility, with basic policy explicitly stating that Service members are to pay their just debts.[3]

Finally, geographic concentration is another factor making Service members and their families a lucrative market. Active-duty military are physically concentrated in and around bases, and having a clearly defined cultural identity allows some lenders to identify themselves in the virtual market place as being close to the military community.

a. Payday Lending

Payday loans are small loans secured by the borrower's personal check or by an agreement to electronically withdraw payment from the borrower's bank account. Loans average about $350, are due in full on the next payday, typically in 14 days, and cost from 390 to 780% annual interest rate. Payday lending has emerged in the last ten years and is now allowed in thirty-nine states. Payday loans are made by storefront lenders, check cashing outlets, pawn shops, rent-to-own stores and via Internet sites.

Payday lenders are heavily concentrated around military bases in states where this product is legal. In the case of Camp Pendleton, CA, McChord/Lewis, WA, Newport News/Norfolk, VA and Fort Campbell, KY (maps at Appendix 2), there is clear evidence that certain portions of the lending industry are focused on the military market. These maps were produced by Professor Steven M. Graves, California State University, Northridge, as an update to the original research written by Professor Graves and Professor Christopher L. Peterson, University of Florida and published in the Ohio State Law Journal, Volume 66, Number 4, 2005, "Predatory Lending and the Military: The Law and Geography of 'Payday' Loans in Military Towns."

Most notably, payday lenders and military installment lenders situate themselves in close proximity to the front gates of military installations. More particularly, payday lending storefront operations outnumber military installment loan companies as much as 137 to

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[2] Population Representation in the Military Services for FY 2004, Office of the Under Secretary of Defense, Personnel and Readiness, website: http://new.humrro.org/poprep04/appendix/appendix.html

[3] DoD Directive 1344.9, Indebtedness of Military Personnel, October 27, 1984

1[4] in the maps at Appendix 2. Analysis of statewide statistics shows that each of the communities hosting these installations easily rank among the most heavily targeted communities in their respective states. Near McChord Air Force Base and Fort Lewis, there are four times as many payday lenders per capita compared to residents living in the rest of Washington State.[5]

Professor Graves makes the point clear that the prominent placement of payday lending storefronts is according to market-based plans:

> "According to these filings, Check Into Cash claims that, 'convenience of a store's location is extremely important to customers' therefore, 'management seeks to open each new store within three miles of the market area that it is intended to serve' (Check into Cash, 1998)."

Peterson and Graves based their findings on their analysis of 20 states and nearly 15,000 payday shops. The authors found that payday lenders are located in counties and ZIP codes adjacent to military bases in significantly greater numbers and densities than other areas. This held true in 19 of the 20 states they studied.

For example, the zip code at the southern gate of Camp Pendleton Marine Corps in Oceanside, California has 22 payday lenders; 17 more than what would be expected based on Oceanside's population. Similarly, in the zip codes around Davies-Monthan Air Force Base in Tuscan Arizona, there are 12 more payday lenders than you would expect based on statewide averages. In a zip code in Killeen, Texas at the main commercial district just outside Fort Hood, there are 9 payday lenders, which is 7.3 more payday lenders than would be expected for the population in that zip code. Within 3 miles of Fort Hood's perimeter, there are at least 18 payday lenders and 13 of those are within one mile of base.

A notable exception is Parris Island Marine Corps Recruit Depot, located in South Carolina, which has virtually no payday lending because the Marine recruits do not have an opportunity to leave the installation during the time they are assigned to that location. Without the availability of these Service members, the payday lending industry is far less likely to establish a presence in the host community.

Payday lending industry has experienced fast store and volume growth over the last couple of years, and has reached $40 billion volume in 2005.[6]

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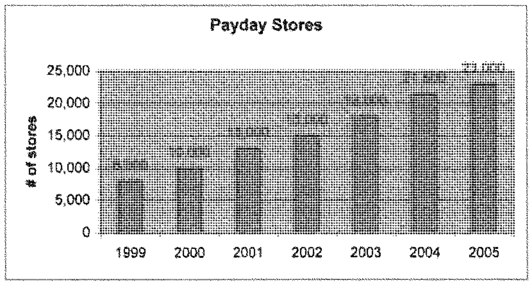
[4] Comparison of payday lending locations versus installment loan locations on the map of San Diego, CA region at Appendix 2 of this report. Other maps show ratios of 135:1 around Tidewater, VA; 99:1 around Fort Lewis /McChord AFB, WA; and 9:1 around Fort Campbell, KY.

[5] Gordon Trowbridge and Karen Jowers, "Payday Predators," *Army Times*, May 2, 2005, p. 4 of 14.

[6] Stephens Inc. presentation at CFSA conference in 03/06

Figure:1 Payday Store Growth [7]



Determining the use of payday loans by active duty Service members and their families is more difficult to ascertain. Surveys of active duty Service members by the Defense Manpower and Data Center (DMDC) provide lower usage through self reported data than usage numbers that can be derived through extrapolation of industry information.

Based on a Center for Responsible Lending September 2005 analysis of the payday industry's own data and statements, active-duty military personnel are three times more likely than civilians to have taken out a payday loan. This report also estimates, again based on industry data, that one in five active-duty Service members were payday borrowers, and, finally, predatory payday lending costs military families over $80 million in abusive fees every year. [8] While military personnel make up 1.1 percent of the adult population of Colorado, they account for 4.6 percent of payday loan customers in Colorado.[9] This military targeting ratio is even higher than that reported by the Center for Responsible Lending, with military personnel in Colorado more than four times more likely than civilians in Colorado to have taken a payday loan.

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	1999	2000	2001	2002	2003	2004	2005
# of stores	8,000(1)	10,000(2)	13,000(2)	15,000(2)	18,000(3)	21,500(3)	23,000(3)
Growth		*25%*	*30%*	*15%*	*20%*	*19%*	*7%*

(1) Stephens Inc report Sep, 99 estimates 8000-10000 stores
(2) Stephens Inc report Sep, 03 "Update on the Payday Loan Industry: Observations on Recent Industry Developments"
(3) Stephens Inc. presentation at CFSA conference in 03/06

[8] "Payday Lenders Target the Military," Center for Responsible Lending, September 2005. *"Predatory payday lending —fees charged to borrowers caught in the debt trap, or on their fifth and subsequent payday loans in one year — costs American families at least $5.5 billion in abusive fees every year, up from $3.4 billion in 2002. If 1.5 percent of payday borrowers are military personnel, then military families are losing over $80 million in abusive fees every year to predatory payday lenders."* http://www.responsiblelending.org/pdfs/ip011-PaydayMilitary-0905.pdf

[9] Paul Chessin, "Borrowing from Peter to Pay Paul: A Statistical Analysis of Colorado's Deferred Depsoit Loan Act," Denver University Law Review, Vol. 83 No. 2, 2005, p. 407.
http://dola.colorado.gov/demog/Population/PopulationTotals/CurrentEstimates/Table1-04FinalEstimates.pdf

By comparison, the March 2006 DMDC survey data shows that approximately 5 percent of the active force use payday loans. This estimate (69,000 Service members[10]) appears far too low if compared to the industry estimate that the military represents approximately 1 to 4 percent of their market of 15 million households,[11] which equates to approximately 150,000 to 600,000 military borrowers. Using a conservative estimate of 1.5 percent of the payday lending market, there would be approximately 225,000 Service members using payday loans (17 percent of the force). This estimate is in the range between the Consumer Credit Research Foundation (CCRF) results of 13 percent of enlisted Service members[12] and the findings of Center for Responsible Lending which estimated 19 percent of Service members using payday loans.[13] CCRF results (13%) imply that military members are twice as likely as civilians to be a payday borrower.[14]

The DMDC survey also states that Service members used an average of 4.6 loans in 2005 and rolled these loans over an average of two times. This represents a potential of 13 loan transactions per year.[15] If the average amount borrowed is $1,654, the average loan would be $360, which is congruent with the typical payday loan. The amount of fees charged to Service members would be approximately $744,[16] which would represent an estimated total of $167 million in fees for the $372 million borrowed.

High cost is one of the characteristics that make these loans problematic for Service members. The Center for Responsible Lending lists the following predatory characteristics of payday loans:[17]

(1). Triple digit interest rate
Payday loans carry very low risk of loss, but lenders typically charge fees equal to 400% APR and higher.

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[10] Represents 5 percent of 1,336,972 active duty Service members (not including academy cadets) as of December 31, 2005, according to the Defenselink website: http://siadapp.dior.whs.mil/personnel/MILITARY/rg0512.pdf
[11] "Payday Lenders Target the Military," http://www.responsiblelending.org/pdfs/ip011-PaydayMilitary-0905.pdf
[12] Dr. William O. Brown, Jr., and Dr. Charles B. Cushman, Jr., "*Payday Loan Attitudes and Usage Among Enlisted Military Personnel*," Consumer Credit Research Foundation, June 27, 2006, p. 2.
[13] "Payday Lenders Target the Military," http://www.responsiblelending.org/pdfs/ip011-PaydayMilitary-0905.pdf
[14] This figure makes military members twice as likely to be a payday borrower than civilians based on CRL methodology in their paper "Payday Lenders Target the Military," http://www.responsiblelending.org/pdfs/ip011-PaydayMilitary-0905.pdf

Percentage of payday borrowers in civilian population (a)	6.75%
Percentage of payday borrowers in military population (b)	13%
Number of times military personnel are more likely to be payday borrowers than civilians (b/a)	2

[15] Average number of loans (4.6) times the average number of rollovers (2) plus the initial transaction fee.
[16] The $744 equals $1,654 (total amount borrowed) times an average fee of $15 per $100 borrowed, times an initial fee plus two rollovers.
[17] "Nine Signs of Predatory Payday Loan," Center for Responsible Lending website: http://www.responsiblelending.org/payday/signs.cfm

(2). Short minimum loan term
75% of payday customers are unable to repay their loan within two weeks and are forced to get a loan "rollover" at additional cost. In contrast, small consumer loans have longer terms (in NC, for example, the minimum term is six months.)

(3). Single balloon payment
Unlike most consumer debt, payday loans do not allow for partial installment payments to be made during the loan term. A borrower must pay the entire loan back at the end of two weeks.

(4). Loan flipping (extensions, rollovers or back to back transactions)
Payday lenders earn most of their profits by making multiple loans to cash-strapped borrowers. 90% of the payday industry's revenue growth comes from making more and larger loans to the same customers.

(5). Simultaneous borrowing from multiple lenders
Trapped on the "debt treadmill", many consumers get a loan from one payday lender to repay another. The result: no additional cash, just more renewal fees.

(6). No consideration of borrower's ability to repay
Payday lenders encourage consumers to borrow the maximum allowed, regardless of their credit history. If the borrower can't repay the loan, the lender collects multiple renewal fees.

(7). Deferred check mechanism
Consumers who cannot make good on a deferred (post-dated) check covering a payday loan may be assessed multiple late fees and NSF check charges or fear criminal prosecution for writing a "bad check."

(8). Mandatory arbitration clause
By eliminating a borrower's right to sue for abusive lending practices, these clauses work to the benefit of payday lenders over consumers.

Check-holding, a central feature of payday loans, is particularly risky for military borrowers. Every payday loan involves a prospective "bad" check. Military borrowers are required to maintain bank accounts in order to receive direct deposit of military pay and are subject to the Uniform Code of Military Justice that penalizes deliberately writing a check not covered by funds on deposit. Borrowers become trapped in repeat borrowing or renewals of loans in order to keep the check used to obtain the loan from bouncing, a key reason that payday loans are debt traps.

The two-week loan payday lenders claim they are providing is virtually nonexistent. Research by Center for Responsible Lending shows that only one percent of loans go to borrowers who take out one loan in a year. Indeed, the industry relies on revenue from borrowers caught in a debt trap. Ninety-one percent of payday loans go to borrowers with five or more loan transactions per year.[18] They are trapped in this wage-stripping debt through loan terms that require them to either pay off the entire principal on payday, which most of these borrowers cannot afford to do, or to pay another fee of about $50 every payday for weeks, months, or years as they repeatedly roll over the loan or renew it in a back-to-back transaction. They do this to avoid default, for if the lender deposits their uncovered check, they face serious consequences. This debt trap is the rule, not the exception: the average borrower pays back $834 for a $339 loan.[19]

b. Internet Lending

In addition to the marked increase in the volume of storefront locations, military personnel stationed anywhere in the world can get high cost loans from lenders that advertise, accept applications, deliver and collect loans via the Internet. Military borrowers encounter a booming virtual market of small loan offers, payday loans, and "military" loans via the Internet. Search results and sponsored links fill page after page. Referral sites feed applications to actual lenders and affiliate marketing places loan ads on numerous sites.

There are no reliable statistics on the volume of payday loans, installment loans, or car title loans made online or by telephone/fax. An industry analyst estimates that Internet payday lending brings in $500 million in annual revenue.[20] One installment lender reported to the SEC that much of its growth in finance receivables came from its Internet subsidiary. Loans made by Pioneer via the Internet in fiscal year 2005 grew 59 percent from $84.2 million to $134.1 million.[21] An online search for "military loans" gets over

[18] Keith Ernst, John Farris & Uriah King, *Quantifying the Economic Costs of Predatory Payday Lending*, Center for Responsible Lending (2003), at http://www.responsiblelending.org/pdfs/CRLPaydayLendingStudy121803.pdf.
[19] According to recent state regulator data (2004 and/or 2005) average loans per borrower is 9. The data of the states given below except Florida and Oklahoma reflect the average transactions per borrower from a single shop, and do not account for the fact that payday borrowers typically use more than one lender. Therefore, the average total loan transactions per borrower per year is in fact higher.

States with payday loan data	Average loans per borrower per Year
Washington State	9
Florida	8
Oklahoma	9
Colorado	9
Virginia	7
Iowa	12
Average	9

According to the 2005 SEC filings of Advance America, the nation's largest payday lender, average principal is $339, and average fee is $55. For a loan renewed eight times, a borrower pays back $834.
[20] Dennis Telzrow, "Industry Report: Payday Loan Industry," Stephens Inc., April 5, 2006, p. 17.
[21] Pioneer Financial Services, Inc., Form 10-K Year Ended September 30, 2005, Securities and Exchange Commission, page 13.

thirty-eight million hits on Google, while "military payday loan" fills over three million pages. Sponsored links on search pages connect potential military borrowers to numerous online lenders as well as web sites that appear to be educational but are laden with ads for high cost loans.

A 2004 survey[22] of Internet payday lending found that finance charges range from $25 (650% APR) to $30 (780% APR) per $100 borrowed for two-week terms with loans ranging from $200 to $2,500. Loans are delivered and collected online through electronic fund transfer. Some lenders structure loans to automatically renew with payment of the finance charge unless the borrower takes extra steps to terminate the debt with full payment. Internet loans expose borrowers to privacy and security risks due to applications with detailed financial information transmitted to distant lenders and electronic access granted to bank accounts.

Internet lenders claim jurisdiction in states with lax protections and unlimited rates and often attempt to bypass the state credit, usury or payday loan laws of the state where the borrower receives the loan. All of the military installment lenders surveyed for this report listed Nevada as their home state. State regulators have successfully enforced home-state law against Internet payday lenders making loans to consumers in their states in Colorado, New York, Massachusetts, Kansas, Pennsylvania and the District of Columbia.

Military borrowers who search under typical loan terms are shown lenders that cater to the military and those that make loans uniformly to any borrower. The military loan sites use military names, sometimes display official-looking seals, and tout their understanding of Power of Attorney forms and ask for Leave and Earnings Statements as the basis for making loans. A snapshot of military loan sites visited for this report is provided at Appendix 3.

c. Car Title Lending

Car title lenders make loans secured by the title to vehicles owned free and clear by borrowers. The typical loan is for a fraction of the car's value, costs 300% APR, and has a one-month loan term. Title loans are often renewed month after month, without reduction in principal. Failure to repay can result in repossession of the vehicle. The Tennessee Department of Financial Institutions reported that title lenders with 931 outlets repossessed 17,313 vehicles in 2004.[23] The high cost and risk of car title loans traps borrowers in repeated loan renewals in order to keep from losing essential transportation and key family assets.

[22] Consumer Federation of America, "Internet Payday Lending: How High-priced Lenders Use the Internet to Mire Borrowers in Debt and Evade State Consumer Protections," November 30, 2004.
[23] Tennessee Department of Financial Institutions, "Report to the Tennessee General Assembly, Pursuant to Public Chapter 440, Acts of 2005, Section 7(e)," February 1, 2006.

This form of high cost, high risk credit is legal in twenty-two states while lower rates are authorized for title-secured loans in another four states. In some states loans are sized to fall outside state rate caps or lenders structure loans to evade rate caps. California caps rates for small loans of $2,500 or less, leading some title lenders to make larger loans secured by titles without rate caps or to characterize title loans as sale-leaseback arrangements. Maps for bases in Texas, Kentucky, and Washington at Appendix 2 do not show title loan outlets. In these states, title loans are either prohibited or rates are capped at low levels under state laws.[24]

Outlets loaning money secured by car titles are heavily concentrated around some bases but not at others due to varying legal status for this form of lending. The maps at Appendix 2 for bases in Virginia and Tennessee show the most title loan locations. Title lending, structured as open-end credit, is not regulated in Virginia and has grown rapidly in the last few years. Authorized rates are extremely high for fully-secured loans. Tennessee permits title lenders to charge 22% per month or 264% APR for loans, while Arizona caps rates on a sliding scale of 10 to 17% per month or 120 to 204% annual interest.

National industry-wide data is not available on title lenders but it is evident that title lending is becoming more widespread. The industry estimates that title loans are a $20 million business in California, while the Mississippi Department of Banking and Consumer Finance reports almost $25 million in loans made during 2003.

d. Military Installment Loans

Several of the loan companies offering high interest loans through the Internet, such as Armed Forces Loans of Nevada, are known as "military installment loan companies." Military installment loan companies offer small loan products exclusively to military members. In addition to providing their services through the Internet, three of these companies (Pioneer, Patriot and Omni) operate about 51 shops in 16 states, primarily situated around military installations. Several of the Internet sites of military installment loan companies are listed in Appendix 3.

Lenders who only lend to non-resident military personnel stationed in about half the states have either been granted formal exemption from state regulation or have not been required to be licensed or supervised by state regulators under a variety of legal arguments. This gap in protection for military borrowers results from state credit laws written to apply to residents. Since military borrowers list their home state on Leave and Earnings Statements, lenders claim that their customers are not residents and therefore

[24] Consumer Federation of America, "Driven into Debt: CFA Car Title Loan Store and Online Survey," November 2005, Appendix A: 50-State Car Title Loan Legal Status.

not covered by state requirements. For example, installment lenders who loan only to Service members in Virginia and North Carolina are not licensed small loan companies. In other cases lenders have argued that state regulation would violate the Commerce Clause of the US Constitution or that their broker business model should not trigger state requirements.

For example, Pioneer Military Lending is licensed in Nevada, Georgia and Washington State, and has received letters from the state agencies in Alaska, Arizona, Colorado, Kansas, Kentucky, Michigan, New Mexico, and Wyoming to operate without a license or regard for state rate caps. Without this exemption from state small loan laws, a military lender would be subject to rate caps and other requirements. Alaska, Arizona, Colorado, Kansas and Kentucky have rate limits of 36% APR. Georgia's rate cap is 60%, Michigan and Washington rate caps are 25%, plus a fee up to 5% and Nevada has no rate cap and is where many Internet loans originate. State rate caps do not include the added cost of premiums for "voluntary" credit insurance or other ancillary products required to get the loan.

California had provided Pioneer Military Lending with an exception, but rescinded it on May 19, 2006. Significantly, the California Department of Corporations stated in their public statement: "After further review, the Commissioner has determined that there are other state interests that apply to military personnel, regardless of whether they are residents or non-residents of California."

Of particular concern with the lack of universal state licensing is that these companies do not have to comply with state laws covering disclosure, rate caps, fee limits, loan size and collateral requirements. For example, the lender can request the pledge of a nominal personal possession as part of the loan agreement as a basis for providing high mark-up credit property insurance. If this insurance is provided as a "voluntary" purchase, the cost is not calculated in the APR. Without licensing there is no oversight provided on these lending institutions.

Repeat lending or loan flipping are characteristic of installment lenders as well as payday lenders. For example, Pioneer reports that it typically makes a number of loans to the same customer over the course of several years, "many of which were refinanced with a new loan after approximately one third of the scheduled payments were made. We market the opportunity to refinance existing loans prior to maturity, thereby increasing the amount borrowed and increasing the fees and other income we realize. In fiscal 2005, approximately 45.8% of the number and 30.2% of the amount of our loan originations were refinancings of outstanding loans." One of the reasons loans are easily renewed is the master credit agreement that Pioneer customers sign. The agreement, which helps expedite the extension of subsequent loans to the customer, is licensed from the sole director and CEO of the company who receives a royalty of $2.76 for every contract signed.[25]

A complaint filed with the California Department of Corporations in 2005 against Omni Military Loans alleges lending practices that harm military borrowers. The complaint states that Omni operates without a license, charges usurious interest, collects a prepaid finance charge which is not permitted in California, contracts for excessive dishonored check fees, and automatically adds various forms of credit insurance to the loan agreement, with 98% of loans including "voluntary" purchase of credit insurance. The complaints states that Omni also fails to post or quote the APR for loans so that the borrower first sees the 34.95% APR on the contract when the loan check is presented to the borrower. [26] The Internet study attached to this report found that Omni does not quote an APR on its loan web site.

e. Rent-to-Own Lending

The rent-to-own industry is composed of dealers who rent furniture, electronics, major appliances, computers, jewelry and other products with an option to buy. Rent-A-Center, RentWay, and Aaron Rents are a few of the large chains. In 2005 there were 8,300 stores, serving 2.7 million people, and the industry earned $6.6 billion in revenue.[27]

Rent-to-own programs allow consumers who may not otherwise qualify for a credit purchase to immediately take possession of a desired item or items. However in providing this opportunity, the lender does not consider the borrower's ability to pay, charges three-to-four times the value of the item in rental fees and does not disclose the true cost of the rental/purchase. For example, a consumer may rent a television for $10 per week for 78 weeks prior to paying off (purchasing) the item, paying a total of $780, even though the television retails for approximately $220. The $560 in charges above the retail price equals a 228 percent annualized interest rate.

While the rent-to-own industry claims only 25-30 percent of customers purchase rented items, the Federal Trade Commission (FTC) reported "sixty-seven percent of customers intended to purchase the merchandise when they began the rent-to-own transaction, and 87 percent of the customers intending to purchase actually did purchase." The FTC study also portrays the RTO customer base as among the poorest consumers.[28]

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[25] Pioneer Financial Services, Inc., Form 10-K Fiscal Year Ended September 30, 2005, SEC, page 3 and 40.
[26] Corporal Joshua W. Brack complaint, California Department of Corporations, filed September 13, 2005 by Frank J. Fox, Esq..
[27] The Association of Progressive Rental Organizations website http://www.rtohq.org/About%5Frent%2Dto%2Down/Industry%5Foverview/
[28] James M. Lacko, Signe-Mary McKernan, and Manoj Hastak, "Survey of Rent-to-Own Customers," Federal Trade Commission Bureau of Economics Staff Report, http://www.ftc.gov/reports/renttoown/rtosummary.htm, Executive Summary

These purchases are made without disclosure of the cost of credit involved and are not specifically regulated by federal law. According to a Federal Trade Commission report:[29]

> "Clear and accurate disclosure of the total cost and other terms of purchase would allow potential customers to compare rent-to-own transactions to other alternatives, and would help ensure that consumers choosing rent-to-own transactions do so on an informed basis. Disclosure of the total cost and other basic terms of purchase on product labels, along with disclosures in advertisements and agreement documents, would ensure that the information is available to consumers while they are considering the rent-to-own transaction."

Only New Jersey imposes a usury ceiling on rent-to-own, while Vermont requires APR disclosure and Minnesota, Wisconsin and North Carolina impose other consumer protection provisions. Recently the Governor of Wisconsin vetoed a bill that would have removed the requirement for rent-to-own retailers to disclose interest rates on purchases.

f. Refund Anticipation Loans

Refund anticipation loans (RALs) are very expensive short-term loans secured by the taxpayer's expected tax refund. Consumers took out approximately 12.38 million RALs during the 2004 tax-filing season and paid $1.24 billion in RAL fees and $360 million in associated fees to tax preparers and banks that make these loans. RALs cost 40% to 700% annual interest rates for ten-day loans. The annualized interest rate for a loan of the average refund size of about $2,150 is 178% APR.

RALs are mostly marketed to low-income taxpayers by commercial tax preparers. According to IRS data, 78% of RAL applicants in 2004 had adjusted gross incomes of $35,000 or less. IRS data also shows that nearly 56% of RAL consumers were Earned Income Tax Credit (EITC) recipients while EITC recipients made up only 17% of individual taxpayers in 2004.[30]

g. Coercive Collection Actions

Examples of coercive collection actions occur in all segments of this industry. The Community Financial Service Association (CFSA) has produced a set of voluntary best practices, which describes some of the coercive collection actions they advocate their members to refrain from considering or using as a threat towards a military customer:

[29] Ibid.
[30] National Consumer Law Center and Consumer Federation of America, "Another Year of Losses: High-Priced Refund Anticipation Loans Continue to Take a Chunk Out of Americans' Tax Refunds," January, 2006.

(1). Requesting a garnishment of military wages.

(2). Attempting to collect a loan from a military customer who has been deployed to a combat or combat support posting.

(3). Contacting the military chain of command in an effort to collect on a loan.

Though these military best practices sound good, they are voluntary with no enforcement mechanism. In addition, since the majority of national payday chains are CFSA members who presumably would already be abiding by these best practices, it is clear that they have not been sufficient to stop the debt trap. In addition, threats of criminal prosecution are sometimes used by lenders to coerce borrowers to pay their debts or keep paying to renew loans.

Also, check holding creates an *in terrorem* effect of disproportionate penalties to borrowers. Some payday lenders threaten criminal sanctions when borrowers are unable to make good on the checks used to secure payday loans. For example, the Washington Department of Financial Institutions and the Arizona Attorney General brought charges against licensees accused of threatening prosecution to consumers unable to repay loans.

Some state laws treat the unpaid payday loan as a civil or criminal bad check, triggering multiple damages, attorneys' fees and court costs. Because the lender holds the means of repayment, the consumer does not have due process rights to present defenses to the debt and loses control over decisions on when to pay which debts.

Finally, the Federal Arbitration Act limits the ability of state legislatures and regulators to restrict the application of arbitration clauses, therefore limiting their ability to protect consumers in their state. This further eliminates the borrowers' opportunity to obtain legal recourse. The third party arbitrator, paid for by the lender, has final jurisdiction over any disputes that may arise as part of the contract.

h. Conclusion

The predatory lenders described in this portion of the report have several characteristics in common:

(1). Predatory lenders seek out young and financially inexperienced borrowers who have bank accounts and steady jobs, but also have little in savings, flawed credit or have hit their credit limit. These borrowers are less likely to weigh the predatory loan against other opportunities and are less likely to be concerned about the consequences of taking the loan.

(2). Predatory lenders make loans based on access to assets (through checks, bank accounts, car titles, tax refunds, etc.) and guaranteed continued income, but not on the ability of the borrower to repay the loan without experiencing further financial problems.

(3). Predatory lenders market to the military through their ubiquitous presence around military installations and/or through the use of terms to affiliate themselves with the military. Increasingly the Internet is used to promote loans to Service members.

(4). Predatory products feature high fees/interest rates, with some requiring balloon payments, while others pack excessive charges into the product. The result of their efforts is to obfuscate the comparative cost of their product with other options available to the borrower.

(5). Most of the predatory business models take advantage of borrower's inability to pay the loan in full when due and encourage extensions through refinancing and loan flipping. These refinances often include additional high fees and little or no payment of principal.

(6). Predatory lenders attempt to work outside of established usury limits, either by attempting to obtain exemptions from federal and state statutes or by developing schemes designed to circumvent existing laws.

In each of the situations discussed, the borrower is placed at a disadvantage and penalized through high fees and interest and dire consequences if they default. Borrowers who seek out these options may not realize the financial ramifications of using these products or may assume there are no other options. They may also believe that these loan products are sanctioned or approved by the military, due to extensive affinity marketing tactics. Consequently, the Department has directed effort towards three major initiatives to resolve predatory lending issues: education, alternatives and effective policy/statute. This report will cover all three elements, starting with the effort to educate and motivate Service members and their families to control their finances and build savings so they will not need "fast cash" loans, and in the event of needing emergency funding, understanding that there are much better sources of funding.

4. Education Programs

The Department has established basic policy for personal finance in DoD Instruction 1342.27, *Personal Financial Management Programs for Service Members*, November 17, 2004. At a minimum, this policy requires Services members receive assistance to accomplish the following:

> "Within 3 months after arriving at the first permanent station, a Service member shall demonstrate a basic understanding of pay and entitlements, banking and allotments, checkbook management, budgeting and saving (to include the thrift savings plan), insurance, credit management, car buying, permanent change of station moves, and information on obtaining counseling or assistance on financial matters.
>
> Prior to any deployment that exceeds 4 weeks, a Military Service member shall be able to establish an extended absence financial plan as part of personal readiness preparation.
>
> Prior to assuming a leadership role as a supervisor, officers and noncommissioned officers shall have a basic understanding of policies and practices designed to protect junior military Service members within their command/supervisor, to include those policies and practices governing commercial solicitation."

The overall message of these courses is to manage your finances, spend less than you earn, save money for when you need it, use credit wisely so that payments do not become overwhelming and be cautious in the marketplace. First term Service members receive information about predatory lending as part of their initial training upon arriving (or prior to arrival at) their first permanent duty station. The policy does not specify the amount of time required to instruct Service members, but requires that they be trained to possess a basic understanding of the topics listed above. A basic understanding is defined as a Service member being able to comprehend the underlying principles of a subject and apply them to everyday life situations.

To determine how much training has been accomplished that includes information on predatory lending, a survey was sent to all military installations for them to provide feedback on the following for programs provided in 2005:

a. Number of courses in which predatory lending is covered, the predatory lending topics covered, number of times courses are offered per year and total number of participants.

b. Number of government-provided pamphlets/brochures covering predatory lending, the predatory lending topics covered and number distributed.

c. Number of informational articles in base newspapers and daily bulletins.

d. Number of command-sponsored memos and policy letters.

e. Partner organizations that provided education courses, to include the topics covered, number of times courses are offered per year and total number of participants.

f. Partner organizations that provided educational materials, predatory lending topics covered, and the number distributed.

The Military Services provided the following information about their courses and government provided materials as a result of the survey:

Service	Installations reporting	Number of courses	Classes per year	Service members attending	Family members attending	Total number attending	Products distributed per year
Army	59[1]	264	6,197	79,641	5,721	85,362	16,634
Navy	50	269	2,772	96,368	4,124	100,492	116,752
Marine Corps	17	78	1,550	113,398	5,171	118,569	10,870
Air Force	61	161	1,345	35,065	4,461	39,526	6,997
DoD total	187	772	11,864	324,472	19,477	353,949	151,253

The most prevalent topics covered in the presentations and the materials included: payday lending, military installment loans, auto financing, rent-to-own programs, title loans and overall credit management. Education materials provided were most commonly generated by the Military Services or provided by the Federal Trade Commission.

Service members attending education include new enlistees, Service members arriving at new duty stations, those attending command-directed training and those seeking additional information. The totals reflected above show relatively good coverage when compared to the number of recruits assessed into the Military Services for Fiscal Year 2005 (recruit numbers driving the requirement for basic educational classes). There were 73,373 recruits assessed into the Army, 37,703 into the Navy, 32,961 into the Marine Corps and 19,222 into the Air Force.

In addition to courses and educational materials, the Military Services delivered 960 news articles in local base papers and base bulletins, and 157 memos from command on the topic of predatory lending. Numbers of articles and policy memos by Military Service are as follows:

Service	Number of news articles	Number of policy memos
Army	217	23
Navy	273	80
Marine Corps	131	13
Air Force	339	41
DoD total	960	157

The Military Services provided the following educational programs and materials covering predatory lending practices through external organizations that have partnered with the Military Services to supplement their basic educational programs:

Service	% reporting installations using partners	Classes per year	Service members attending	Family members attending	Total number attending	Products distributed per year
Army	54%	387	5,611	343	5,954	15,397
Navy	56%	445	37,955	198	38,153	40,026
Marine Corps	29%	198	11,355	382	5,954	7,305
Air Force	34%	270	4,431	395	4,826	9,208
DoD total	46%	1300	59,352	1,318	60,670	71,936

The most predominant partner organizations providing support were the Banks and Credit Unions on military installations, which have the responsibility as part of their operating agreement to provide free education. Other organizations participating were state agencies and private organizations that are partners in the DoD Financial Readiness Campaign.

The Financial Readiness Campaign represents the collaborative efforts of approximately 20 federal agencies and nonprofit organizations which provide materials and assistance to supplement the efforts of the Military Services. The efforts of these organizations has been incorporated into a strategic plan (included at Appendix 4) that outlines the assistance many of these organizations provide to the Department to support financial awareness campaigns and education to Service members and their families. These activities, outlined in sections 3 – 6 of the Strategic Plan are on-going and enhance the capability of the Department to influence the behavior of Service members and particularly their family members.

The Strategic Plan also outlines in sections 1 and 2, the follow-on approach the Department plans to take to providing basic level financial education, which will also provide a measurement of competency rather than training. The Department plan includes the use of a web-based program that evaluates the basic policy: comprehension of basic understanding, as defined above. This self-administered test would determine the ability of Service members to apply basic principles to life scenarios. Those Service members who are able to pass the test would not need to attend the basic education. Those Service members who do not pass can use the website to obtain the information (while the question is still fresh in their minds) or if web-based training is not sufficient, receive classroom instruction and coaching. There are also plans to introduce games as instructional tools (currently being considered by the National Association of Securities Dealers Foundation).

Along with providing education to those who need it, in a format that suits their learning styles, the proposed competency-based evaluation and training system will also provide a more results-oriented oversight of financial education. Instead of measuring one-size-fits-all training events, we will be able to assess the competency of Service members and identify those who may need additional assistance. This is a significant change to our current approach of providing financial education and will require further development, testing and incremental implementation to ensure there will be no lapses in the education currently being provided.

The web-based evaluation is the first step in the education process outlined in the strategic plan. Follow-up efforts, described in sections 3 – 6 include awareness campaigns, educational seminars and readily available educational materials (as fulfillment to the awareness efforts), opportunities to contact a counselor for further consultation, and assistance in those situations where Service members have financial problems. These efforts are already in place and are provided as part of the strategic plan to show their relevance to the overall program.

One awareness program being implemented by the Military Services that may have particular impact on predatory lending is "Military Saves," which is a social marketing campaign to persuade, motivate and encourage Service members and their families to save money and reduce consumer debt. The parent campaign, America Saves, is sponsored by Consumer Federation of America (CFA), which is a non-profit partner in the DoD Financial Readiness Campaign. Following service-specific tests in the Army, Navy, and Marine Corps, Military Saves was developed by a multi-disciplinary team at Eglin AFB from June 2004 to October 2005, and launched 7 February 2006. Military Saves engages leadership to be involved in promoting wealth building messages and conducting campaigns for military members to set savings goals, open savings accounts, make regular contributions to household savings, increase debt payments, and participate in financial education programs. The campaign at Eglin AFB has enrolled 1,151 "Savers" who have pledged to save $2.9 million annually.

Their average monthly savings is $209, with the top 5 goals in number of Savers being: 1) general savings/investment; 2) retirement; 3) emergency fund; 4) debt reduction; 5) home ownership. The top 5 goals in dollars pledged is: 1) retirement; 2) general savings/investment; 3) home ownership; 4) debt reduction; 5) emergency fund.

Financial education and support is not a one-time effort, or comprised of a one-dimensional solution. The Department will continue to provide various sources of instruction and education as a way of effecting change in the financial behavior of Service members and their family members. Even with the amount of outreach and education currently being conducted by the Military Services and through partner organizations, there are hundreds of thousands of Service members using predatory loan products. Additional educational efforts to curb the use of potentially harmful short-term lending products can only go so far. As with many other forms of abusive practices, some limits are also needed in the supply of these services.

5. Strategies and Practices to Reduce the Prevalence and Impact of Predatory Lending

a. Strategies to Reduce Prevalence of Predatory Lending

In addition to providing education to Service members, the survey of military installations showed that commanders are taking action to reduce the prevalence of predatory lending activities in their communities. There have been a total of fourteen actions taken against lenders in the past few years and ten locations placed off-limits.

Predatory lenders have seldom been placed off-limits, primarily because the process associated with placing commercial entities off-limits, through the review and recommendations of the Armed Forces Disciplinary Control Board (AFDCB), is not well suited to this purpose. The AFDCB, covered by Joint Army Regulation 190-24, is designed to make businesses outside of military installations aware that their practices cause morale and discipline concerns and to offer these businesses an opportunity to modify their practices to preclude being placed off-limits. When the commercial entity refuses to comply, the AFDCB recommends to the regional command authority to place the business off-limits for all Service members within the region (regardless of Service).

Normally concerns are raised when a business has demonstrated practices that violate state or federal statute, and remediation involves the business curtailing these illegal practices. In the case of payday lending, businesses usually offer their services within the legal limits. Since the AFDCB takes on businesses one at a time, bringing a payday lender under scrutiny has been difficult if the lender is complying with the same rules as its competitors. Additionally, the magnitude of mediating with the number of outlets surrounding military installations has exacerbated the process.

State lawmakers have questioned representatives of the Department on several occasions about why DoD does not make payday lenders off-limits. Without appropriate guidelines, commanders and AFDCBs have difficulty citing payday lenders as needing to take remedial action. In states that authorize payday lending, AFDCBs must establish their own local guidelines in addition to the provisions of state law, ensure all affected businesses are aware of these new guidelines, and then monitor whether these businesses comply when dealing with military personnel. The Department may appear to become a financial regulatory agency for entities outside the military installation, establishing policy, monitoring this policy and deciding whether to place violators off limits based on this policy.

There is no legal authority for the Department of Defense to establish rules governing off-base private business dealings. Having either state or federal statutes which protect Service member from the lending practices listed in section 3 of this report would allow commanders to consider using their AFDCB process in monitoring the actions of local lenders with military personnel, in the same manner that the AFDCB is used to address other illegal activities that impact the good order and discipline of Service members.

The Commandant of the Marine Corps and the Vice Chief of Naval Operations have sent messages to commanders expressing concern about predatory lending and directing them to encourage Service members in their command to seek financial education and to request assistance for financial concerns, rather than become trapped in a potential cycle of high interest debt. The message from the Commandant of the Marine Corps tells commanders to take firm but fair action through the AFDCB to deny access to lenders who take unfair advantage of Marines. The message from the Vice Chief of Naval Operations also clearly states that Service members should not feel shame in discussing their financial problems or in seeking assistance. These messages are included in Appendix 5.

These senior uniformed leaders are addressing the issue of predatory lending as well as the aspects of military culture that perpetuate Service members being reluctant to address their financial problems. Service members should view their need for assistance not as an issue to be hidden from their peers and from their supervisors, but as an issue that can detract from the mission, which needs to be resolved to preclude reoccurrence. They must be encouraged to use available resources without stigma. Commanders must also consider what actions they need to take to protect their Service members from those who take unfair advantage.

The Commander of the Navy Southwest Region has established a taskforce for the region to deal with predatory lending. Captain Mark Patton, Commanding Officer, Naval Base Point Loma, CA, and head of the taskforce, testified to the California Assembly on May 23, 2006 to express concerns about high cost lending within the Southwest Region. His testimony is included in Appendix 5.

b. Strategies to Reduce the Impact of Predatory Lending

In addition to internal efforts to decrease the availability of predatory loans, the Department strongly advocates making alternative financial resources available to assist those Service members who need this support. Whereas there may be few alternatives for the average consumer with bad credit to obtain cash, there is a safety net available for Service members and their families outside of high interest loans. The Military Services have the support of the Army Emergency Relief (AER), the Navy-Marine Corps Relief Society (NMCRS) and the Air Force Aid Society (AFAS) that are chartered expressly to assist Service members and their families who have financial crises. Additionally, the banks and credit unions located on military installations have begun to provide lending products that fulfill the need for quick cash.

The survey of military installations shows that the Military Aid Societies are broadly seen as providing funding for emergency needs. In 2005, the Aid Societies provided the following support, either through no-interest loans or grants:

Society	Number of cases	Amount of support	Average per case
AER	43,039	$39,473,978	$917
NMCRS	42,934	$35,858,780	$835
AFAS	14,835	$12,000,000	$808
Total/average	100,808	$87,332,758	$866

These totals represent support provided for various reasons to include travel, rent, repair to the primary automobile, food and utilities. AER provided support for the following reasons:

Reason for Assistance	Number of cases	Percent	Dollar amount	Percent
Required travel	8,912	21	$8,156,669	21
Rent	8,181	19	$11,050,075	28
Essential automobile	7,548	18	$9,021,569	23
Food	5,203	12	$1,996,104	5
Utilities	4,755	11	$1,898,261	5
Other	3,720	9	$1,998,827	5
Referrals	3,177	7	$2,714,496	7
Funeral	558	1	$1,472,263	4
Non-receipt of pay	506	1	$542,076	1
Medical/dental	362	.8	$484,062	.7
Loss of funds	117	.2	$139,576	.3
Total	43,039	100	$39,473,978	100

AER has established a new program entitled "Commander's Referral Program," which allows Commanders and First Sergeants to refer soldiers who need assistance with basic living expenses as well as financial problems associated with high-interest debts, such as payday loans. The new program has provided $2.1 million in assistance through April 2006, which represents 16% of total AER assistance to Soldiers.

Since August 2001, NMCRS has tracked loans and grants provided to Service members who have needed them as a result of payday loans. The amount provided to clients has progressively increased every year in terms of the number of clients, the dollar amounts and the amount per client:

Calendar year	Number of cases	Dollar amount	Average per case
2002	697	$275,546	$395
2003	1,144	$516,069	$451
2004	1,511	$755,423	$499
2005	1,509	$987,077	$654
Total/average	4,861	$2,534,115	$521

The Federal Deposit Insurance Corporation held a conference on September 29, 2005 entitled "Meeting the Needs: Affordable, Responsible Short-Term Lending," in an effort to develop an understanding of why there is a lack of affordable credit in the marketplace and highlighting alternative loan programs that can be used to meet this need. Speakers included academics, bankers and representatives from public interest organizations. The program included a panel discussion on the special credit problems and needs of military personnel, which featured a description of availability of payday lending around military installations, a description of programs considered as alternatives for the military, and an example of a bank which provides alternatives for Service members with financial problems.[31]

The banks and credit unions located on military installations are encouraged to provide small loans at reasonable fees and interest charges, often with a requirement that borrowers who use the small loan also must obtain additional financial education. The June 2005 Annie E. Casey Foundation report, "Low-Cost Payday Loans: Opportunities and Obstacles" states that:[32]

> "Depository institutions have the tools and infrastructure that they could deploy to offer their customers low-cost alternatives to payday loans. Whether they are willing to enter this market remains to be seen. Perceptions of high operational costs and credit losses appear to be exaggerated based on the limited experience of institutions that have successfully offered payday loan alternatives to date. Perceptions of regulatory hostility also appear to be unfounded. Our interviews with regulators indicated unanimous agreement that development by depository institutions of their own low-cost payday loan alternatives would be positive from a public policy standpoint and likely warrant CRA [Community Redevelopment Act] credit."

In fact, the survey of military installations yielded a variety of alternative programs. The following are examples of alternative programs designed to assist Service members who need small short term loans:

(1). 1st Advantage Federal Credit Union (Fort Eustis, VA) – provides loans up to $500 at 17.95% APR for up to 31 days, with 5% of the loan deposited in a savings account.

[31] Information on the conference may be found at http://www.fdic.gov/news/conferences/affordable/.
[32] Shiela Bair, "Low-Cost Payday Loans: Opportunities and Obstacles," A report by the Isenber School of Management, University of Massachusetts at Amherst, prepared for the Annie E. Casey Foundation, June 2005, page 38.

(2). Arkansas Federal Credit Union (Little Rock AFB, AR) provides signature loans starting at $100, with a minimum payback of $35 per month and APR as low as 11.5%.

(3). Armed Forces Bank (Fort Rucker AL; Yuma MCAS, Fort Huachuca, and Luke AFB, AZ; NAS San Diego, NAS North Island, Fort Irwin, Travis AFB, Vandenberg AFB, and Edwards AFB, CA; Fort Carson, CO; MacDill AFB and NAS Pensacola, FL; Moody AFB, GA; NTC Great Lakes, IL; Fort Leavenworth and Fort Riley, KS; Fort Knox, KY; Fort Leonard Wood, MO; Grand Forks AFB, ND; McGuire AFB, NJ; Nellis AFB, NV; Fort Bliss, TX; Fort Myer and NS Norfolk, VA; Fairchild AFB, McChord AFB and Fort Lewis, WA) – provides "Workout Loans," limited to the borrower's gross monthly pay, at 18% APR and up to 24 months to repay. Loan decisions are not based on the borrower's credit score and provide an opportunity to rebuild credit.

(4). Coasthills Federal Credit Union (Vandenberg AFB, CA) provides signature loans starting at $250 with up to 36 months to repay at 15.95% APR, with monthly minimum repayment of $25 per month.

(5). Credit Union West (Luke AFB, AZ) – provides a "Payday Assistance Loan" with a line of credit up to $500 at 18% APR, payable in one to four paydays. In addition, the borrower is referred to financial counseling and must open a savings account.

(6). Dayton Credit Union (Wright Patterson AFB, OH) – provides "Salary Advance Loan" line of credit up to $500 at 18% APR, with an annual fee of $35.

(7). Eglin Federal Credit Union (Eglin AFB, FL) – provides loans up to $500 at 16.9% APR, with 90 day repayment period and minimum semi-monthly payments of $50.

(8). Eisenhower Bank (Fort Sam Houston, Fort Hood, Randolph AFB, Lackland AFB and Goodfellow AFB, TX) – provides a first loan program for first term Service members, up to $1,200 at 16% APR.

(9). First Citizens Bank (Fort Bragg, Pope AFB, Camp Lejeune and Cherry Point MAS, NC) – provides signature loans $700 - $1,000 at 16% APR, with a 12 month repayment period. There is a $25 fee for loans that close.

(10). First National Bank of Midwest City (Tinker AFB, OK) – provides consolidation loans up to $5,000 at 16% APR, with a mandatory savings element and monthly budget coaching.

(11). Fort Belvoir Federal Credit Union (Fort Belvoir, VA) – provides installment loans up to $500 and provides up to three months to repay with an 16% - 18% APR (approximately $14.86 for $500 at 18% APR).

(12). Fort Bragg Federal Credit Union (Fort Bragg, NC) – provides installment loans as small as $300 up to a maximum of 14% APR. Requires minimum $20 per month payment towards principal and interest. Fort Bragg FCU also provides the "Asset Recovery Kit (ARK)," which are loans of $50 to $500 (or 80 percent of the applicants pay) for a flat fee of $6. Loans are for two weeks and include financial education/counseling.

(13). Fort Hood National Bank (Fort Hood, TX) – provides "Flash Cash" signature loans from $50 to $500 with repayment terms from 4 to 12 months. Loans are subject to credit approval.

(14). Fort Sill Federal Credit Union (Fort Sill, OK) – provides a tiered rate loan offered to members with little or no credit and/or some credit problems. Loans are for up to $500 at a maximum rate of 18% APR, with up to 6 months to pay.

(15). First Light Federal Credit Union (Fort Bliss, TX) – provides the "Pawnshop Buster Loan" of up to $500 at 18% APR, to be paid back in 4 months, at which time it can be converted into a line of credit.

(16). Global Credit Union (Fairchild AFB, WA) – provides installment loans up to $700 loan for a $5 flat fee.

(17). Keesler Federal Credit Union (Keesler AFB, MS) – provides a credit card service to first-term Service members with minimal or no credit, through the "First-Term Airman Pilot Program." Card has a $750 limit, with comparable interest rates to other VISA/Mastercards.

(18). Langley Federal Credit Union (Langley AFB, VA) – provides emergency loans up to $500, called Quick Cash, at 18% APR, or a little over $3.00 for a $500 loan for two weeks.

(19). Miramar Credit Union (NAS Miramar, CA) – provides signature loans (13.5% APR) and signature lines of credit (13% APR), starting with a $300 limit.

(20). Navy Federal Credit Union – provides a line of credit from $500 to $15,000 credit limit at 12.5% APR. Requires monthly payment of 2% of the principal balance or $20, whichever is greater.

(21). Pacific Marine Credit Union (Camp Pendleton and MCRD San Diego) – provides a "Ready Cash" line of credit at 24% APR, $50 minimum monthly payment for borrowers with no credit or a credit score between 525 and 619.

(22). Pentagon Federal Credit Union (Fort Bragg, NC; Fort Hood, TX) – provides the "Asset Recovery Kit (ARK)," which are loans of $50 to $500 (or 80 percent of the applicants pay) for a flat fee of $6. Loans are for two weeks and include financial education/counseling.

(23). Travis Credit Union (Travis AFB, CA) – provides signature loans starting at $500 with repayment up to 48 months with an APR between 15.25% and 17.75%.

(24). Windward Credit Union (Marine Corps Base Hawaii, HI) – provides loans of less than $2,000 for six months at interest rates between 10.9% and 12.9%. Credit report is used to determine the applicant's ability to repay, and those with debt to income ratio of more than 55% receive additional attention.

In addition to these specific loan products, many banks and credit unions offer other alternatives to high cost borrowing. These include, among others: traditional overdraft programs (discussed in next paragraphs), low interest rate credit cards (secured and unsecured), signature lines of credit, small signature loans, and most importantly, savings programs to build family wealth.

The Annie E. Casey Foundation report goes on to say a "more substantial impediment to banks and credit unions entering this market is the proliferation of fee-based bounce[d] [check] protection."[33] Obtaining higher fees through these services may drive some financial institutions to view small dollar credit alternatives not to be in their best interest.

Overdraft protection has inadvertently become a source of short term lending for some consumers. Traditionally, bank customers have contracted to cover overdrafts through line of credit loans, or transfer from a linked savings account or to a credit card. Recently banks have adopted "courtesy" overdraft programs and cover ATM withdrawals, point of sale purchases with debit cards, and checks drawn on insufficient funds while charging the bank's overdraft fee. Consumers do not receive Truth in Lending Act cost of credit disclosures for these non-contractual loan products. Overdrafts and fees are repaid from the accountholder's next deposit into the account. Although overdraft protection was not intended to be used as loans, individuals who frequently use them can be liable for fees that represent high interest rates, depending on the size of the overdraft, the fee, and the time to repay.

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[33] Ibid

The Center for Responsible Lending Issue Paper on overdraft protection shows that 16% of the individuals surveyed accounted for 71% of the fees collected by financial institutions. Additionally, they found that individuals who use overdraft protection provided through a line of credit or automatic funds transfer from another account were far less vulnerable. For example, the average "courtesy" overdraft charge in their survey was $26.90, which produces an APR of 877% for $80 overdraft paid for in two weeks. Comparatively, a traditional line of credit with an interest rate of even 19% APR would cost $0.58 for an $80 overdraft, paid for in two weeks.[34]

Most military banks and credit unions offer overdraft protection through a line of credit or credit card connected to the account, or through an automatic funds transfer from savings. A survey of the websites of the 283 Armed Forces Financial Network (AFFN) members, which provide financial services to Service members on or near military installations, shows that 58% advertise line of credit and transfer from savings as the primary form of overdraft protection for checking accounts. Of the remaining members, 10% advertise courtesy (fee based) overdraft as the primary form of protection, 6% did not have an available website and 26% do not indicate the form of their overdraft protection.[35]

Some financial institutions on military installations use their overdraft programs as a way of identifying Service members who need assistance. For example, Eisenhower Bank (Fort Sam Houston, Fort Hood, Randolph AFB, Lackland AFB, and Goodfellow AFB, TX) provides a program called "Second Chance/Overdraft Workout Program," which notifies bank customers who have multiple overdrafts and offers them an opportunity to move the indebtedness to a "savings account" where they can pay it off within 90 days without incurring fees or interest charges. Thirty percent of these customers choose to keep an automatic transfer of funds to the savings account after the indebtedness has been paid, establishing an emergency fund.

Alternative sources of financial relief do require Service members to bring their financial problems into the light; whereas their underlying financial concerns can remain undetected when borrowing from payday lenders, title loan companies and military installment lenders. The Department provides financial education to Service members so they can maintain their finances as part of their personal readiness. When Service members develop financial problems, the Department would rather know about these issues (sooner than later) so that Service members can be assisted and provided whatever remedial education and counseling is needed. As the Vice Chief of Naval Operations stated in his message, Service members should not feel shame for having created a financial bind. What is seen as more reprehensible is having Service members continue to service and increase debts without changing the core behavior that created it. In these

[34] Lisa James and Peter Smith, "Overdraft Loans: Survey Finds Growing Problem for Consumers," Center for Responsible Lending, Issue Paper No. 13, April 24, 2006, page 4

[35] Armed Forces Financial Network, Participating Financial Institutions, http://www.affn.org/financial_insts.php

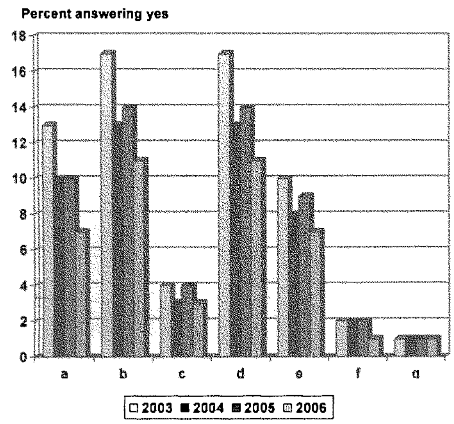
situations, Service members begin to lose their mission effectiveness, their security clearances and their career status.

Consequently, the Department also views credit counseling and debt management (when accomplished through agencies without excessive fees) as part of the alternatives to high interest debt. Military installations provide credit counseling as part of their family support programs. Several installations recognized Consumer Credit Counseling Agencies in the survey as providing viable alternatives for Service members to consider restructuring of their debt and developing budgets that can reduce their monthly cash outflow. DoD resources, such as the Military OneSource toll free number and website, provide 24 – 7 access to credit counseling to afford Service members an opportunity to discuss options to alleviate their financial burdens instead deepening their burden with high cost loans. Counseling sessions with Military OneSource are confidential and allow the Service member to obtain credible assistance without embarrassment or career concerns. Partner organizations in the Financial Readiness Campaign have provided their resources to assist Service members in breaking their cycle of debt. The InCharge Institute provides free credit counseling via a toll free number and offers debt management with a minimal contribution from the military client (the contribution is voluntary and the service will be provided without a contribution).

6. Effect of Predatory Lending on Service Members and Their Families

The prevalence of predatory lenders, along with the actions taken within the Department of Defense provide context for the effect of these lending practices on Service members and their families. The Department measures the self-assessed abilities of Service members to maintain their finances through a question posed as follows: "In the past 12 months, did any of the following happen to you (and your spouse)?" The chart below shows the results for Service members of all the Services, with the bars representing the percentage of respondents answering yes to choices a. through g. listed beside the chart.

Survey of Active Duty Service Members



a. Bounced two or more checks

b. Failed to make a monthly/ minimum on your credit card, AAFES, NEXCOM account, or Military Star Card account

c. Fell behind in paying your rent or mortgage

d. Was pressured to pay bills by stores, creditors or bill collectors

e. Had your telephone, cable or Internet shut off

f. Had your water, heat or electricity shut off

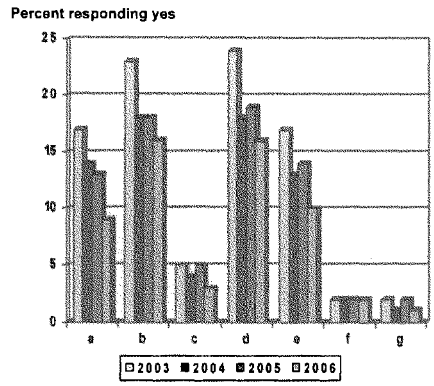
g. Had a car, household appliance, or furniture repossessed

Source: Defense Manpower Data Center Active Duty Survey.

As can be seen in the above bar chart, Service members have progressively improved their ability to manage their finances (the margin of error on these results are ± 2 for 2003 and ± 1 for the subsequent three years). There is significant decrease in all categories which have over 4 percent affirmative response. This shift can be attributed to several factors, to include pay increases, financial education and command attention.

The Department reviews survey data on abilities of Service members in the first four enlisted ranks to ensure the individuals with the least income and least financial experience are able to cope with their financial responsibilities. The responses of E1 – E4s on the survey question shown above are as follows:

Survey of E1-E4 Service Members



Source: Defense Manpower Data Center Active Duty Survey.

a. Bounced two or more checks

b. Failed to make a monthly/ minimum on your credit card, AAFES, NEXCOM account, or Military Star Card account

c. Fell behind in paying your rent or mortgage

d. Was pressured to pay bills by stores, creditors or bill collectors

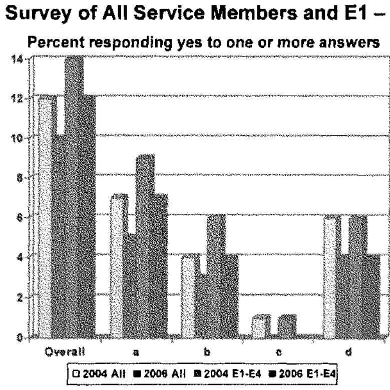
e. Had your telephone, cable or Internet shut off

f. Had your water, heat or electricity shut off

g. Had a car, household appliance, or furniture repossessed

As discussed in section 3, the self reported information concerning the use of predatory loans is significantly lower for payday loans than information extrapolated from industry derived data or from other survey efforts. However, the DMDC data is useful to show trends over time in the reported use of predatory loans. The review of high cost lending practices considered as predatory in 2004 shows a similar downward trend between August 2004 and March 2006. Overall, the number of respondents using these products dropped from 12 percent in 2004, to 10 percent in 2006, with a maximum margin of error of ± 1 percent. A review of overall responses and the E1 – E4 responses is as follows:

Survey of All Service Members and E1 – E4 Service Members



a. Payday loans

b. Rent-to-buy

c. Automobile title pawn

d. Tax refund anticipation loan

Source: Defense Manpower Data Center Active Duty Survey.

It is possible to assume that Service members would need fewer high cost loans if they are doing better at paying bills on time. It is also possible that the factors responsible for improving their ability to maintain their financial responsibilities has also led to a decrease in the dependence of these forms of loans.

Continued emphasis from military leadership, and on-going efforts to raise awareness and understanding have provided some improvement to Service members' ability to control their finances. However, case-studies collected as part of information requested from military installations, and also provided by the Navy-Marine Corps Relief Society, show that high interest loans, whether provided as a payday loan, military installment loan, or as a result of unscrupulous automobile financing can leave a Service member with enormous debt, family problems, difficulty maintaining personal readiness and a tarnished career.

Regardless of the efforts of the Military Services to educate Service members and provide them effective alternatives, problems associated with poor financial management will be a source of considerable collateral damage unless Service members select more positive interventions to relieve their financial burdens. For example, a recent study within the Navy showed that the number of security revocations and denials for financial reasons has increased from 212 in fiscal year (FY) 2002, to 1,999 in FY 2005 (representing 80 percent of all revocations and denials for that year).[36]

As part of the installation-level review of education, actions to reduce the prevalence of predatory lenders, and alternatives to high cost products, anonymous case-studies were collected, designed to obtain information on the impact of predatory loans. Financial counselors and legal assistance attorneys from the installation were requested to complete worksheets to help articulate situations where they assisted Service members with the aftermath of being trapped in high interest loans. A total of 3,393 case studies were collected. A few of the case studies are as follows:

a. Active duty Air Force E-4, assigned to Maxwell AFB, AL. She was behind in her car and rent payments and quickly needed some cash. Since she had bad credit, she felt a payday loan was a good choice. She originally obtained on $500 loan with an agreement to pay back $600 in two weeks. Unable to repay, she then took out other payday loans and was forced to do multiple rollovers on each one. To pay off these loans she contacted an installment loan company who provided her with a $10,000 loan at 50 percent APR. Total cost to pay off the payday loans was $12,750 and her total obligation to the installment loan company was $15,000. Her financial problems were a contributing factor to her pending divorce.

[36] Department of the Navy Central Adjudication Facility

b. Active duty Air Force E-5, assigned to Maxwell AFB, AL. A pattern of over-spending drew him to take out a title loan. He used his wife's car as collateral. For a few months all he could pay was the fee to keep the account current, without paying any of the principal. When he missed two months of payments, the car was repossessed in the middle of the night. After the repossession, the title loan store reported that he still owed them $1,000. With this balance, as well as other credit obligations, the member decided to file for bankruptcy. In addition his financial difficulties resulted in him receiving disciplinary action.

c. Active duty Air Force E-4, assigned to Scott AFB, IL. She had payday loans over seven months with two lenders, totaling $900 owed in principal, with $200 in fees each month to rollover the loans. At the time she went to financial counseling she had spent $1,875 carrying the loans. In addition, she had a military installment loan for $7,000 and an additional loan for $13,000. The interest rate on the military installment loan was 61 percent, and the loan agency would not provide any accommodations to allow her to extend her repayments.

d. Active duty Air Force E-4, assigned to Robins AFB, GA, single parent. Service member was short $400 and borrowed from a payday lender. She could not pay back the loan and went to a second payday lender in order to pay off the first payday loan. This process was repeated five times until she realized she was paying $1,200 per month to maintain the loans. By the time she sought help she had paid $3,000 on the $400 loan. She had to declare bankruptcy to financially survive.

e. Active duty Air Force E-4, assigned to Columbus AFB, MS. He obtained a payday loan for $300 that he paid for over 18 months at a cost of $2,700 involving 3 payday lenders. He could not escape the cycle of debt and eventually filed for bankruptcy.

f. Active duty Navy E-5 (21 years old), assigned to the Navy Mid-Atlantic Region, and married with three children. He began using payday loans in March 2004 with 3 payday loans to take his family to visit his grandfather across country who was diagnosed with cancer. By October 2005, he had 4 payday loans, totaling $2,300 and costing him $600 every month in rollover fees. To cover all of this plus the bounced checks that the heavy debt load caused, he borrowed from his thrift savings plan account and obtained loans from three military installment lenders. He also routinely paid late charges for rent and car payments.

g. Active duty Navy E-6, assigned to the Navy Mid-Atlantic Region, married. He had taken out a payday loan to pay for his wife's trip to Japan to visit her ill father. He had taken out another loan to pay off the first and began to take more to cover the initial obligation. Eventually he had taken out 10 payday loans. He used his Selective Re-enlistment Bonus to pay off the lenders, and refinanced his house to pay off other outstanding debts.

h. Active duty married Navy E-5, assigned to Navy Southwest Region. He and his wife had 9 payday loans and one installment loan outstanding at the time they approached the Navy-Marine Corps Relief Society (NMCRS) for assistance to pay the $7,561 they owed ($2,156 in finance charges and $5, 405 in principal). In addition, they were regularly using the courtesy overdraft protection provided by their credit union at $25 per returned check.

i. Active duty Navy E-5, assigned to Navy Mid-South Region, and a single mother with two children. She obtained a consolidation loan from an installment lender to cover $1,020 in bills at a total commitment of $2,708. She was operating at a $145 deficit at the end of each month attempting to pay off the loan. With the assistance of NMCRS, she was able to pay off the loan.

j. Active duty Navy E-5, assigned to the Navy Mid-Atlantic Region, Norfolk, VA. He requested assistance from NMCRS for four payday loans (total principal owed of $1,738) in conjunction with requesting assistance to repair his car ($1,886). The Service member was married only four months at the time and was supporting two households because his new wife lived in another state with her disabled father. NMCRS provided a no interest loan to cover both debts.

k. Active duty Marine E-2, assigned to Camp Pendleton, CA, married. He and his wife had accrued 10 payday loans (total of $2,390 in principal owed) with a monthly finance charge of $422. He eventually went to NMCRS to obtain a no interest loan to pay off the continuing debt.

l. Active duty married Marine E-4, assigned to Marine Corps Region, Midwest. When his wife could no longer work because of a problem pregnancy, he took out a payday loan to make up the difference in the family budget. He did not tell his command of his problem until he had taken 9 payday loans ($4,527 in principal owed), overdrew two bank accounts ($1,344) and missed a car payment of $307. NMCRS provided him a no-interest loan payable over 24 months to allow for affordable monthly payments of $258.

m. Active duty single Marine E-2, assigned to Marine Corps Southwest Region, CA. After 5 months at his first duty station he had accrued $8,609 in debt, with 8 payday loans ($3,123 in principal owed), 2 military installment loans ($1,735), a cell phone bill of $1,020 a bank overdraft of $340, car repairs of $335 and impound fees of $2,056. His car repair, impound fees, car rental fees and other expenses had driven him to take payday loans to cover his obligations. The payday loans had sent him into a spiral of debt. NMCRS provided him with a no interest loan for 36 months to allow him time to payback his debts.

n. Active duty Army E-7, assigned to Fort Jackson, SC. He had two payday loans ($1,862), a car loan ($37,550) and two military installment loans ($15,400). With the significant debt load from his car payment and his installment loans, the additional requirement of paying off two payday loans was more than his budget could withstand. Prior to paying off these loans, he was harassed and threatened by debt collectors, closed his bank account, was sued and had the unit intervene in collecting on his debts.

o. Active duty married Army O-3, assigned to Miami, FL. Captain had loans from four military installment lenders (total of $15,465) with interest rates ranging from 14 percent to 26 percent. Additionally he had payday loans from four lenders for approximately 24 months. His indebtedness impacted his family and he was pending disciplinary action from his unit when the case was reported.

p. Active duty Army E-6, assigned to Fort Jackson, SC. He had three installment loans for $2,660 and $1,000 owed to a rent-to-own company. As a result of his loans, he closed his bank account, was threatened that his wages would be garnished, had his unit involved in the collection action and received disciplinary action from his unit.

r. Active duty Army E-1, assigned to Fort Irwin, CA. As an E-1, he received a car loan for $42,000 at 24.1 percent APR. In addition he had an installment loan for $2,500. As an E-1, his take home pay is approximately $2,340, and with a 60 month pay back, his monthly payment on the car loan would be $1,211 (about half his monthly pay). After 60 payments he will have paid the equivalent of a year's salary ($30,292) in interest.

These case studies share several common factors that could be summarized as follows:

a. The majority were junior enlisted in grade. For example, 80 percent of the Army case studies were from grades E-1 through E-4.

b. Many that were counseled had gone through multiple loans and options prior to going to seek counseling. They had turned to payday loans, high interest installment loans and title loans as a result of a financial emergency, a history of over-extended credit, or both.

c. Many were harassed by the lender, through phone calls, threats to contact their commander or supervisor, or threatened with garnishment of pay. The most grievous harassment noted in a case study was an active duty Air Force E-4, assigned to Pope AFB, NC, who was served a summons at his duty section.

d. Some had experienced disciplinary action as a result of their attempt to solve financial difficulties through predatory loans. The extent of the disciplinary action went from letters of reprimand and non-judicial punishment, to loss of promotions and separation from the military.

e. The case studies did not emphasize how the loans were finally resolved, because many of them involved several overlapping loans. The March 2006 DMDC survey provided the following insight concerning repayment of payday loans:

Sources of funding outside of payday lending	
Aid society	11%
Bank/credit union	14%
Family/friends	27%
Family budget	54%
Additional job	16%
Another loan	13%
(respondents were able to chose more than one answer)	

The sources of financial support listed above could have been available to support the initial requirement that prompted the Service member to consider a payday loan, military installment loan or car title loan. As previously stated, borrowers seek out these options in a panic to find financial resources to fulfill their immediate needs (emergency travel, car payments, overdue bills, etc.), or to make an impulse purchase spurred by aggressive push marketing, without fully considering the financial ramifications of taking out a loan that is not predicated on their ability to repay.

Service members themselves see the value of limits placed on credit and the costs involved in obtaining it. The June 2006 Consumer Credit Research Foundation survey of Service members gave the following responses concerning the availability of credit when asked in the following sequence whether they strongly agreed, agreed somewhat, disagreed somewhat or strongly disagreed with the following statements:[37]

[37] Dr. William O. Brown, Jr., and Dr. Charles B. Cushman, Jr., "*Payday Loan Attitudes and Usage Among Enlisted Military Personnel*," Consumer Credit Research Foundation, June 27, 2006, pp. 10 – 11.

Statement	Responses	% of non-payday borrowers surveyed	% of payday borrowers surveyed
"Most people benefit from the use of credit"	**Net agree**	**72%**	**78%**
	Strongly agree	30%	32%
	Agree somewhat	42%	46%
	Net disagree	**29%**	**23%**
	Disagree somewhat	17%	14%
	Strongly disagree	12%	9%
"The government should limit the interest rates that lenders can charge even if it means fewer people will be able to get credit"	**Net agree**	**75%**	**74%**
	Strongly agree	42%	40%
	Agree somewhat	33%	34%
	Net disagree	**25%**	**26%**
	Disagree somewhat	20%	18%
	Strongly disagree	5%	8%
"There is too much credit available today"	**Net agree**	**75%**	**63%**
	Strongly agree	51%	37%
	Agree somewhat	24%	26%
	Net disagree	**25%**	**37%**
	Disagree somewhat	18%	21%
	Strongly disagree	7%	16%

The lender only considers the borrowers' income and presumes that their loans will be paid prior to other requirements. The use of checks, access to bank accounts, mandatory allotments and car titles pressure the borrower to consider loan payments as being their top priority. The harassment received by borrowers through debt collection activities reminds them of this impending obligation.

7. Need for Federal and State Legislative and Statutory Protections

The data and information from the previous chapters of this report clearly indicate that:

(1). As the Graves-Peterson study of predatory lending around military bases showed, predatory loan practices and unsafe credit products are prevalent and targeted at military personnel through proximity and concentration around military installations, through the use of affinity marketing, through easy online access to military personnel around the globe, and through use of military allotment payment arrangements.

(2). Predatory loans to Service members come with extremely high interest rates and often include extra fees and charges not disclosed in APR calculations. Due to unaffordable payment terms and the lack of an ability to repay these loans, borrowers find themselves trapped in repeat transactions and susceptible to coercive collection tactics designed to take their assets pledged for loans or harm their good service ratings in the military.

(3). Although the Department of Defense provides extensive financial training, a significant number of Service members, especially in the lower ranks of enlisted personnel, still fall victim to easy credit widely available around bases or online. Education does not trump the marketing of these loans and the easy availability of quick cash with few questions asked.

(4). Commanders have imperfect methods available to curtail the prevalence of predatory lending off base. Clearer standards for placing lenders off-limits can be used by Armed Forces Disciplinary Control Boards (AFDCBs) to restrict access to individual lenders, but AFDCBs will not supplant the role of state and federal credit regulators, consumer protection requirements, or private remedies for borrowers.

(5). Appropriate alternatives to high cost loans are available for Service members while charities provide additional assistance. Banks and credit unions on-base and near bases offer numerous better alternatives to Service members.

(6). Loans at 400% and up that are secured by personal checks written without funds on deposit, or that cost 300% APR with payment in full due in one month and secured by a vehicle title, or involve larger installment loans repaid by required military allotments, and other forms of harmful lending undermine troop readiness, morale, and quality of life. Financial issues account for 80 percent of security clearance revocations and denials for Navy personnel.

(7). Because most predatory lenders require borrowers to waive their rights to go to court to resolve disputes and instead submit borrowers to private adjudication through mandatory arbitration, Service members need to have recourse to administrative remedies through state credit regulators and to judicial remedies through the courts for redress. Due to state credit law provisions on residency in many states, state regulators do not license lenders that claim to lend only to non-resident personnel stationed there and do not supervise these lenders or enforce state laws.

a. Need for Federal and State assistance

The Department of Defense cannot prevent predatory lending without assistance from Congress, the state legislatures, and federal and state enforcement agencies. Although the Department can assist with enforcing stronger laws and regulations through its disciplinary process and can educate Service members on their rights and recourse, statutory protections are necessary to protect Service members from unfair, deceptive lending practices and usurious interest rates and to require uniform disclosure of credit costs and terms. Specifically, lenders should not be permitted to base loans on prospective bad checks, electronic access to bank accounts, mandatory military allotments, or titles to vehicles. All costs involved in borrowing should be included in interest rate calculations and disclosures. Laws and regulations must be changed to close regulatory loopholes that leave non-resident military borrowers unprotected in many states.

It is clear that the payday lending business model is based on the repeat collection of high loan fees from one borrower in successive transactions, without the extension of new principal. The industry has a vested interest in legislation and regulations that allow the high fees and repeat borrowing cycle to continue. As states work to balance the need for short-term credit with effective borrower protections, regulation of the payday lending industry presents a daunting challenge.

In 2004, The Department called on the states to support 10 key issues that would improve the quality of life for Service members and their families. One of the ten issues requested that states enforce their usury laws to prohibit predatory payday lending. To date, eleven states have met that standard by preventing triple-digit interest rates for payday loans including the States of Connecticut, Georgia, Maine, Maryland, Massachusetts, New Jersey, New York, North Carolina, Pennsylvania, Vermont, and West Virginia. These states have been successful in maintaining strong usury laws and aggressively enforcing those laws. Despite Arkansas's low constitutional usury cap, the state has permitted payday lenders to charge triple-digit interest rates, including to airmen stationed at Little Rock.

For example, the State of Georgia recently enacted a tough anti-payday loan law to close loopholes and strengthen penalties against lenders that exceed the state's 60% usury cap. The presence and testimony by Navy personnel before the Georgia State Legislature sparked its passage. In North Carolina, state legislators refused to reauthorize its payday lending law following the 2001sunset of its original authorization. Following the sunset, payday lenders tried to circumvent North Carolina's 36 percent APR small loan usury cap with the "rent a bank" model, i.e. affiliating with an out of state bank. In December 2005, the North Carolina Commissioner of Banks ruled that Advance America was making illegal loans under this model, and ordered them to cease and desist. Several months later, the State Attorney General reached consent agreements with the three payday chains still operating in the state, forcing them to also stop their payday lending in North Carolina.

In the other thirty-nine states, a variety of laws have been enacted to authorize loans based on checks drawn on insufficient funds and costing over 300 percent APR. Many of these States that have legalized payday lending have included in their authorization statutes a variety of provisions purporting to lessen the harm of repeat borrowing that result from the design of these loans. These provisions include mandatory databases, cooling off periods, attempts to stop rollovers and back-to-back transactions, and attempts to stop borrowing from multiple lenders. Even with the addition of all these "consumer bells and whistles," these laws do not stop the debt trap.

For example, when some states banned "rollovers," meaning the borrower could extend the loan for another fee without paying it back, payday lenders attempted to circumvent this reform by offering back-to-back transactions. The borrower paid off the loan and immediately opened a new one for the same amount. This had the same detrimental effect on the borrower, and also allowed the payday lender to call the transaction a "new" loan, even though they were handing back the same amount of money. Even when the transactions are separated by a couple of days or a week, the borrower is still caught in the cycle of debt. If they were using these loans as an occasional boost to get to the next payday, they would have only a few loans a year, with weeks or months between.

As another example, the State of Florida limits borrowers to one loan at a time from all lenders, enforced by a data reporting system licensees must use. Other states using databases include the States of Illinois, Oklahoma, North Dakota, and Michigan (in the near future). Unfortunately these attempts have been unsuccessful; even with loan restrictions and enforcement tools, the average borrower in Florida takes out eight loans per year and the average borrower in Oklahoma takes out nine payday loans per year.

Some state payday loan laws include limits intended to prevent repeat borrowing but are easily circumvented. For example, the recent Illinois payday loan law is widely touted by the payday loan trade association as a model of protections. It permits total loans up to $1,000 or 25 percent of gross monthly income, caps rates at over 400 percent APR for two-week loans, permits borrowers to have two loans at the same time, imposes a seven-day recovery period after borrowers have used loans for 45 days, and provides for an extended repayment plan only after repeat use of these loans. Loan restrictions are monitored through a central database. Illinois officials report that payday lenders are evading these limitations by getting another form of state license and making loans at similar rates for longer periods of time.

The State of Oregon recently enacted a law to cap payday loan rates at 36 percent interest and a fee of $10 per $100 borrowed with a minimum 31-day repayment period. Similar limits were contained in a proposed referendum where advance polling showed 72 percent of the populace supported the protections in the Oregon ballot proposal. Although the new law will not take effect until mid-2007, payday lenders are already switching to a lender's license that does not cap rates or put any limits on repeat borrowing in order to avoid these restrictions.

b. State Legislative Recommendations

The most effective state protections combine strict usury limits and vigorous enforcement. The failure of numerous states to enforce their small loan laws and regulations with predatory lenders who target both resident and non-resident military personnel leaves these borrowers unprotected from loans with high rates and packed with extra fees and insurance premiums. Effective state legislative and regulatory assistance that provides access to responsible and affordable credit that improves Service members' lives is needed.

c. Congressional Legislative Recommendations

Effective Congressional legislation is also needed. The following Congressional legislation has been introduced during this session, which has the potential to protect Service members and their families from predatory lenders:

(1). Amendment to S. 2766, the Defense Authorization Bill of 2007. This amendment was offered by Senators Talent (R-Mo) and Nelson (D-Florida) and passed the Senate unanimously on June 22, 2006. It would cap interest rates for loans to Service members and their dependents at no more than 36 percent APR including all fees for credit related services EXCEPT bona fide credit insurance. If a state has a lower rate cap, that would apply. This amendment is nearly identical to H.R. 97 listed below.

(2). H.R. 97, introduced by Representative Graves (R-Mo), would place a 36 percent APR limit on loans made to Service members and restrict automatic renewal, refinancing, repaying or consolidation of loans using the proceeds of other loans. The rate cap does not include the cost of ancillary products sold with the loan or provide a private right of action to make the protections enforceable.

(3). S. 1878, introduced by Senator Akaka (D-HI), and H.R. 5350, introduced by Representative Udall (D-NM), would prohibit loans secured through the use of checks, share drafts, or electronic access to bank accounts for all borrowers. In addition, the bills prohibit depository institutions from directly or indirectly making payday loans. Rep. Udall's bill also calls on the Federal Reserve Board to study better cost disclosure rules under Truth in Lending.

(4). H.R. 458, introduced by Representative Davis (R-KY), contains a Title II that provides some limitations for a subclass of lenders termed "military lenders" (defined as either explicitly marketing to Service members or having more than 10 percent of customers in the military) and primarily targets military installment loan companies. Title II applies to collection actions, including limits on garnishment, contacting unit commanders, requiring Service members to waive their Service Members Civil Relief Act (SCRA) rights, and restrictions on using military terms to market their products. These restrictions are currently largely addressed in statute and DOD policy. Title II does not limit the cost of loans or prohibit the solicitation of unfunded checks or pledge of car titles to secure loans.

Provisions that only impact collection actions of lenders fail to address the terms of loans that make them harmful to Service members, such as usurious interest rates, a requirement to write checks without funds on deposit or to sign over a car title or tax refund. Garnishments are covered by federal statute and include due process requirements and restrictions.

8. Recommendations for Statutory Controls

Given the problems with predatory lending practices that Service members have faced, particularly in light of states failing to enforce their own loan laws on behalf of non-resident Service members, the Department of Defense seeks additional protections against predatory lending to Service members. The Department of Defense takes no position on the applicability of these recommended statutory approaches to civilian borrowers and their families. These recommendations are based on the state and federal legislation reviewed and other information explored in this report:

a. Require that unambiguous and uniform price disclosures be given to all Service members and family members with regard to any extension of credit (excluding mortgage lending).

(1). Require all fees, charges, insurance premiums and ancillary products sold with any extension of credit to be included within the definition of finance charge for the computation and disclosure of the APR for all loans made to military borrowers.

(2). Require that the finance charge and the APR be included in all advertising to Service members including on-line websites and be quoted verbally to prospective military borrowers prior to application.

(3). It is understood that such special military disclosures may discourage lenders and limit the availability of credit to certain Service members, but the Department believes this risk is justified given the impact of predatory loans.

b. Require a federal ceiling on the cost of credit to military borrowers, capping the APR to prevent any lenders from imposing usurious rates.

(1). Lenders should be prohibited from directly or indirectly imposing, charging, or collecting rates in excess of 36 percent APR with regard to extensions of credit made to Service members and their families. This APR must include all cost elements associated with the extension of credit, including the "optional" add-ons commonly used to evade ceilings, such as credit insurance premiums.

(2). It is understood that such an interest rate cap may limit the availability of credit to certain Service members. Limiting high-cost options assists the Department in making the point clear to Service members and their families that high cost loans are not fiscally prudent. A clear, unambiguous rate ceiling is justified given the high fees, interest and other charges associated with loans to Service members reviewed in this report, and the impact of those predatory loans on military readiness and troop morale.

(2). Lenders should not interpret the 36 percent cap as a target for small loans provided to Service members; it would be a ceiling, and often a lower rate would be more appropriate to the risk of a borrower. The passage of such a protection should not be deemed an authorization for any lender to lend at a rate not otherwise authorized by applicable state or federal law.

c. Prohibit lenders from extending credit to Service members and family members without due regard for the Service member's ability to repay.

(1). Prohibit lenders from using checks, access to bank accounts and car title pawns as security for obligations. These methods provide undue and coercive pressure on military borrowers and allow lenders more latitude in making loans without proper regard for the Service member's ability to repay. They also place key assets at undue risk.

(2). Restrict the ability of creditors and loan companies to require or coerce Service members into establishing allotments to repay their obligations. Allotments must be at the convenience and discretion of the military borrower and not a prerequisite for obtaining a loan.

d. Prohibit provisions in loan contracts that require Service members and family members to waive their rights to take legal action.

Service members should maintain full legal recourse against unscrupulous lenders. Loan contracts to Service members should not include mandatory arbitration clauses or onerous notice provisions, and should not require the Service member to waive his or her right of recourse, such as the right to participate in a plaintiff class. Waiver is not a matter of "choice" in take-it-or-leave-it contracts of adhesion.

e. Prohibit contract clauses that require Service members to waive any special legal protections afforded to them.

These proposed protections, and those provided to Service members through the Servicemembers Civil Relief Act, were intended to strengthen our national defense by enabling Service members to devote their entire energy to the defense needs of the Nation. In the interest of our national defense, such protections should not be subjected to waiver (other than in circumstances currently stated in the Servicemembers Civil Relief Act), in writing or otherwise.

f. Prohibit states from discriminating against Service members and family members stationed within their borders, and prohibit lenders from making loans

to Service members that violate consumer protections of the state in which their base is located.

(1). States should be prohibited from discriminating against Service members stationed within their borders and should be required to assure that such Service members are entitled to and receive the benefit of all protections offered to citizens of the state, including regulation of lenders located in the state or that provide loans via the Internet to Service members stationed there.

(2). States have a vested interest in assuring the financial safety and stability of Service members stationed within their borders. States should be prohibited from authorizing predatory lenders to treat "non-resident" Service members stationed within the state's borders differently than the state would permit that lender to treat in-state residents.

(3). Lenders should be prohibited from charging Service members stationed within a state an APR higher than the legal limit for residents of the state, and should also be prohibited from violating any other consumer lending protections for residents of the state in which the base is located.

There may be other alternatives that could provide protections for Service members and their families which could safeguard them from falling into a spiral of debt. However, effective provisions cannot be predicated on the conscientiousness of the lenders to comply, or borrowers' desires to protect their rights at the time they sign contracts. Clear, effective limitations that can be verified by oversight agencies and understood by borrowers are necessary. Options that favor opt-out provisions and extensions, which may not be fully disclosed by lenders or requested by ill-informed borrowers who fail to read the fine print, are ineffective in protecting our nation's Service members from abusive loans.

Also, provisions that only impact the collection actions of lenders fail to address the inherent problems associated with predatory loans. Among many others, these problems include: usurious interest rates, lending without regard to ability to repay, and making loans based on access to assets (through checks, bank accounts, car titles, tax refunds, etc.). Issues such as garnishments are covered in federal statute and have due process requirements and restrictions associated with their use. The actions of a commanding officer when contacted concerning an indebtedness are already defined in DoD policy. In both situations, circumstances are weighed (by a judge or a commander) to determine whether action is warranted.

Predatory lending to Service members is best prevented by clear enforceable limitations that can be verified by financial regulators and understood by borrowers. Self regulation, fine print, opt-out provisions and cosmetic "protections" are not effective.

9. Conclusion

The Department takes seriously the responsibility of the individual Service member to make prudent decisions and to manage personal finances well. Education, counseling, assistance from Aid Societies, and sound alternatives are necessary but not sufficient to protect Service members from predatory lending practices or products that are aggressively marketed to consumers in general and to military personnel directly.

Predatory lending undermines military readiness, harms the morale of troops and their families, and adds to the cost of fielding an all volunteer fighting force. The report outlines the prevalence around military installations of payday lenders and the overt marketing of some installment and Internet lenders. The products they provide are of primary concern.

The report provides an overview of the efforts within the Department to educate, inform and influence Service members and their families to take control of their finances, build wealth and escape the cycle of debt – for their own well being and to enhance their military readiness. The Department has a strategic plan that seeks to increase savings and decrease dependence on debt. The strategic plan also focuses on improving the protection afforded Service members and their families in the market place – again to help assure their military readiness.

Service members are in agreement that there should be limits. Commanders have made their positions known that limits should be established. The Department sees this as an important issue with commanders, Service members and their families, for their well being and in support of military readiness. Service members need better protections and enforcement from Congress and state credit regulators to prevent predatory lending abuses.

APPENDIX 1

Legal Services

AMERICAN BAR ASSOCIATION

Defending Liberty
Pursuing Justice

Standing Committee on Legal Assistance for Military Personnel
http://www.abalegalservices.org
321 North Clark Street
Chicago, IL 60610-4714
FAX: (312) 988-5483

By UPS Express Delivery

June 1, 2006

Leslye Arsht
Deputy Undersecretary of Defense
for Miltary Community and Family Policy
5A726
4000 Defense Pentagon
Washington, D.C. 20301-4001

Dear Ms. Arsht:

On behalf of the more than 400,000 members of the American Bar Association ("ABA"), I respectfully submit this statement of the ABA's position on predatory lending practices targeting our nation's servicemembers and their families. I direct this statement to you in your capacity as Principal of the ongoing Department of Defense study of predatory lending practices, conducted pursuant to Section 579 of the Fiscal 2006 Defense Authorization Act (the "Sec. 579 Study" or "Study"). I request all appropriate consideration hereof in the findings and recommendations to be presented in your final report to Congress pursuant to Section 579.

The ABA regards the panoply of abusive lending practices that have long burdened the nation's military men and women – particularly those many lower-income members who can least afford to be financially exploited – as harmful to servicemembers and their families and bad for military morale and readiness. Lending practices that prey on our military men and women, moreover, are an affront to a national business community that by and large not only lives by fair business practices but gratefully honors those who serve. That the sharp practices of a relative few continue to ensnare our military members in usurious debt, and that specific corrective Congressional action has not yet been taken against these abusive practices, is of concern to the organized bar of this nation.

The ABA believes that the ample record adduced to date with respect to the destructive impact of these practices on our servicemembers and their families speaks powerfully to an urgent need for remedial Congressional action, not limited to so-called payday loans but extending to other unfair consumer credit practices, such as deceptive auto financing, auto title pawn practices, and abusive installment loans. Indeed, we recognize that some of these other practices may now match the payday loan scandal in terms of overall harmful economic impact on our servicemembers. The ABA commends you and your Study staff for conscientiously assessing, in the course of the Study, the effects of these additional practices on the military, and we urge you to propose corrective action in all instances where warranted.

June 1, 2006
Page 2

At the same time, we do have concerns that broadening the scope of the Study and its report beyond payday loans not have the unintended result of legislative inaction once the final Sec. 579 Study report is submitted. The ABA therefore urges that the final Sec. 579 Study report prioritize those abusive practices identified, in terms of acuity and breadth of the practice, and offer guidance as to which of the identified problems are most ripe for corrective action by Congress, taking into account the real remedial value of particular prospective Congressional measures.

With respect to predatory payday loans, the ABA applauds your Study staff for according significant weight to research on the subject, including the widely cited Graves-Peterson study, which tends to establish that predatory lenders have deliberately exploited servicemembers by clustering their offices outside the gates of military installations.

The ABA also is aware that your Study staff has gathered empirical and anecdotal information from military lawyers and counselors with first-hand knowledge of the effects of predatory credit practices on their servicemember clients. We urge the Study staff to draw on this resource in a way that preserves and underscores the personal dimension of this problem in your final report to Congress. It must not be lost on those charged with addressing these issues that the greatest harm caused by predatory lending practices is damage done to the lives and dreams of servicemembers and their families by unremitting, unjust consumer debt.

Thank you for your consideration of the position of the American Bar Association on this important issue.

Sincerely,

E. E. Anderson

Earl E. Anderson, Gen., USMC (Ret.)
Chair, ABA StC on Legal
Assistance for Military Personnel

For the American Bar Association

cc: Mr. Marcus Beauregard (via email)

Navy-Marine Corps Relief Society
875 North Randolph Street, Suite 225 • Arlington, Virginia 22203
Tel: (703) 696-4904 • DSN 426-4904 • Fax: (703) 696-0144
www.nmcrs.org

June 27, 2006

Ms. Leslye Arsht
Deputy Under Secretary of Defense for Military Community and Family Policy
Room 5A726
4000 Defense Pentagon
Washington, DC 20301-4000

Dear Ms. Arsht:

For the past six months, the Navy-Marine Corps Relief Society has had the privilege of joining other organizations to help prepare the report to Congress required by Section 579 of the National Defense Authorization Act for Fiscal Year 2006. This report documents the alarming growth of the predatory lending industry, illustrates why members of the Armed Forces are prime victims and makes concrete recommendations on action required to fix the problem. The downward spiral of staggering debt associated with this industry can be summarized by the statistic from the Center for Responsible Lending that estimates that 91% of all payday loans are made to borrowers with five or more payday loans per year.

Education, consisting of effective personal financial management training, and an intensive, sustained publicity campaign to alert our military families can reduce the problems resulting from this legalized loan shark industry. Education, alone, however, is not enough. Responsible and reasonable alternative sources of short term loans by banks and credit unions are required, and Federal legislation will be necessary that, at a minimum provides the following:

- Caps interest rate at 36% APR (to include all fees and insurance)
- Eliminates all loan roll-overs or the ability for individuals to take out another loan to pay off the first loan which creates a vicious cycle of debt
- Requires all payday lending businesses to belong to a PDL association that will serve as a clearing house to ensure clients don't have outstanding payday loans from other payday lenders, and allows monthly payment plans
- Regulates on-line payday loan transactions. On-line predatory lending is a relatively new phenomenon that is particularly alarming because it is often impulsive, silent and unregulated since it bypasses state laws that restrict payday lending activities

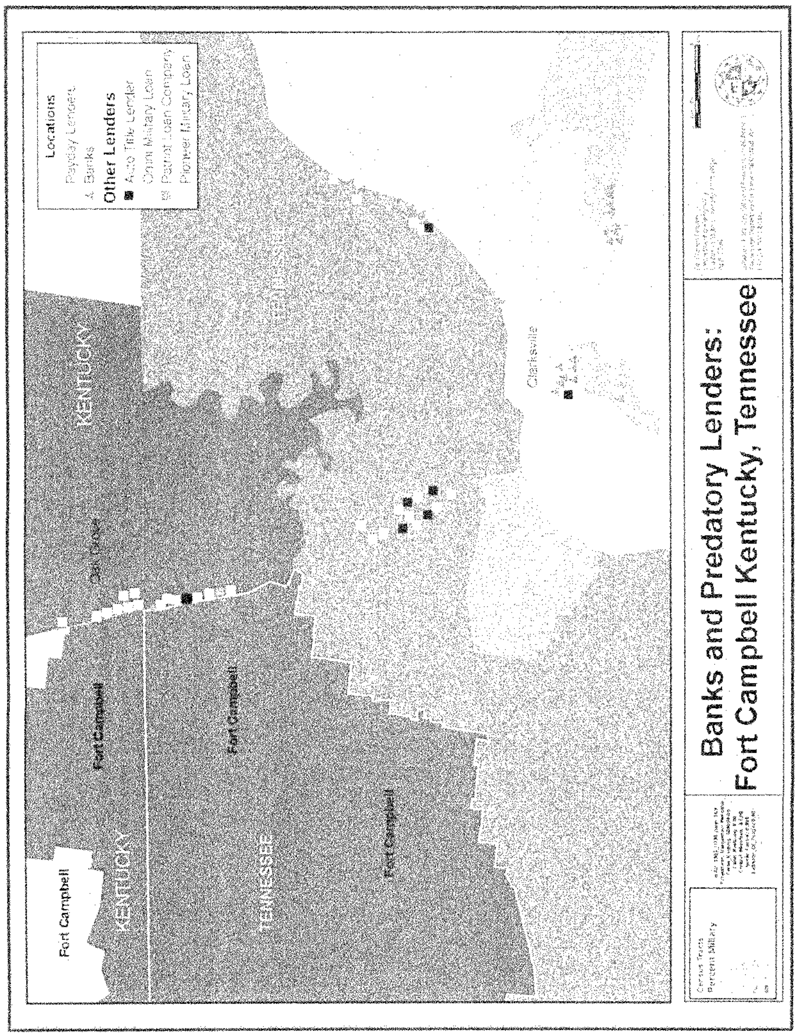
Thank you for focusing attention on this significant problem that affects military readiness and the lives of our men and women in uniform. We hope that Congress will take prompt and effective action by drafting and passing effective Federal legislation.

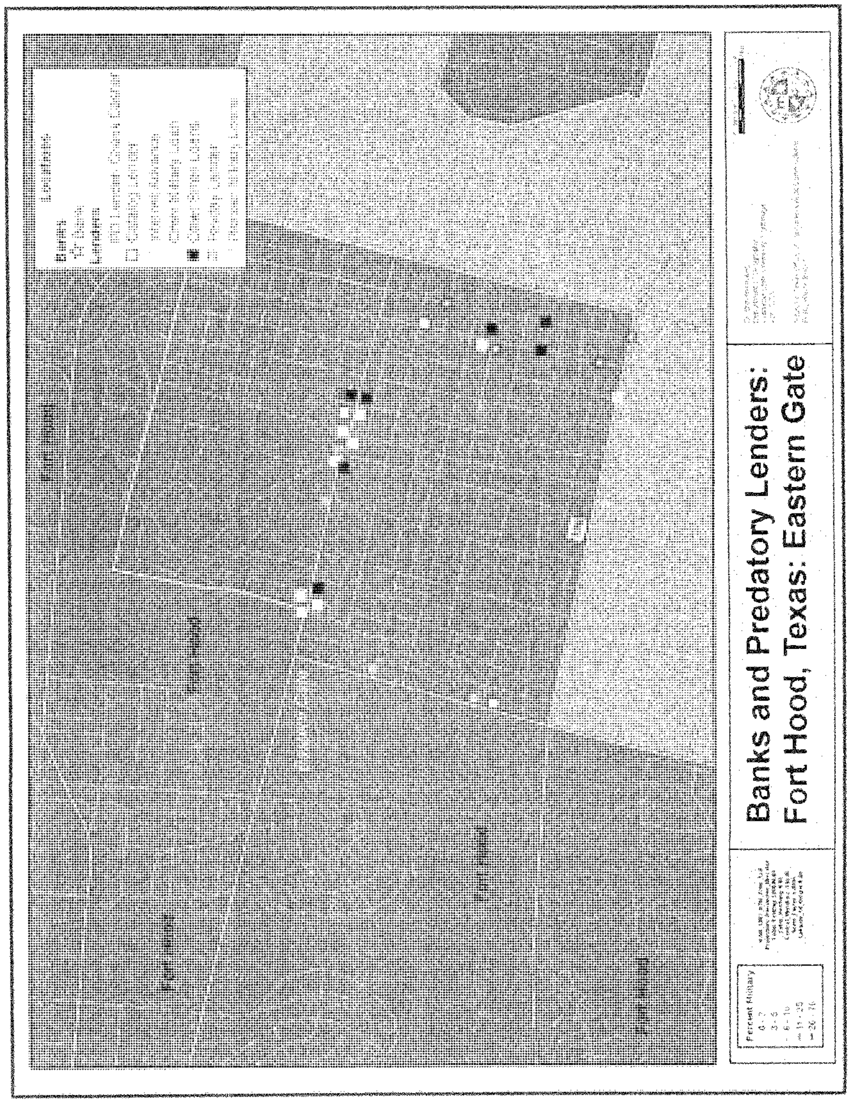
Sincerely,

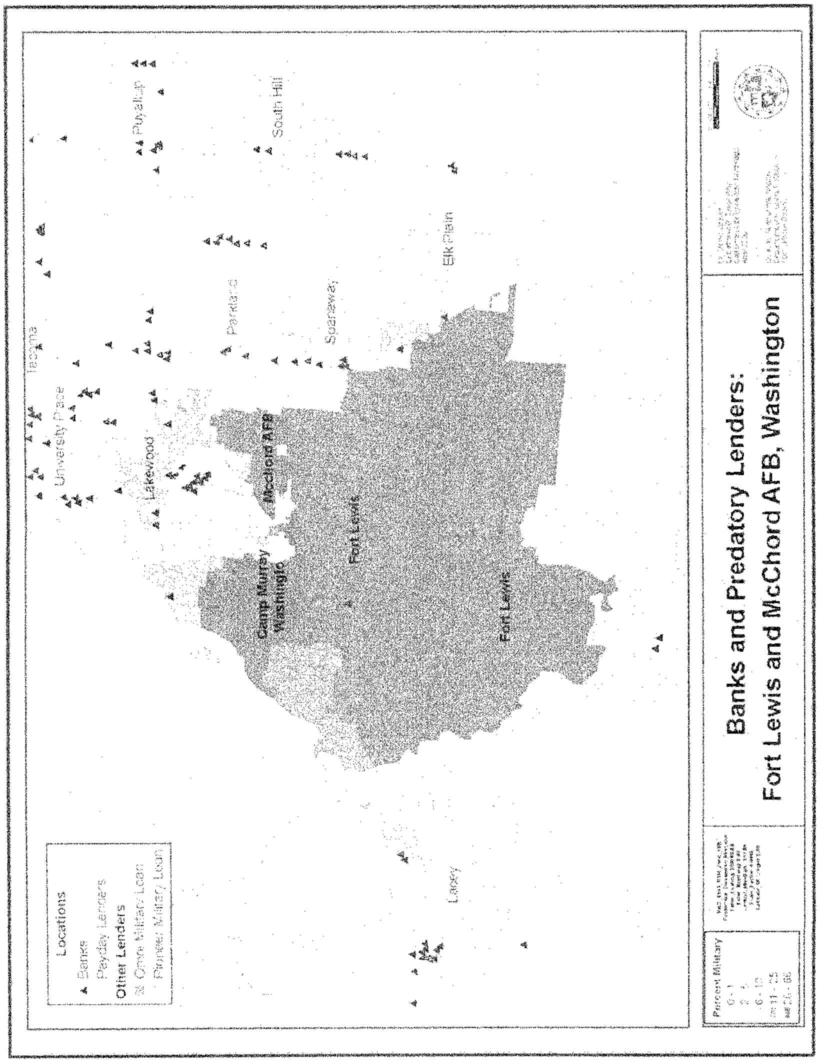
Steve Abbot
Admiral, U. S. Navy (Ret.)
President and Chief Executive Officer

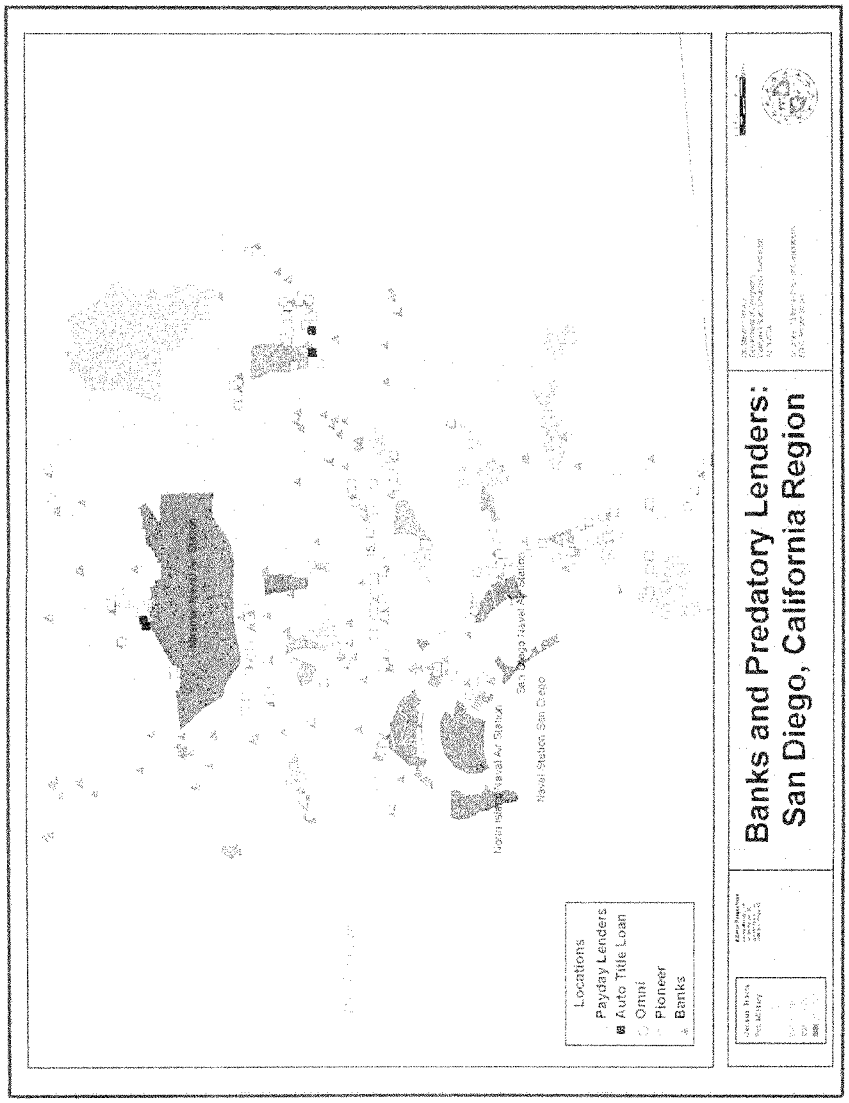
Since 1904 ... Helping nearly four million Sailors, Marines, and their Families with more than one billion dollars in interest-free loans and grants!

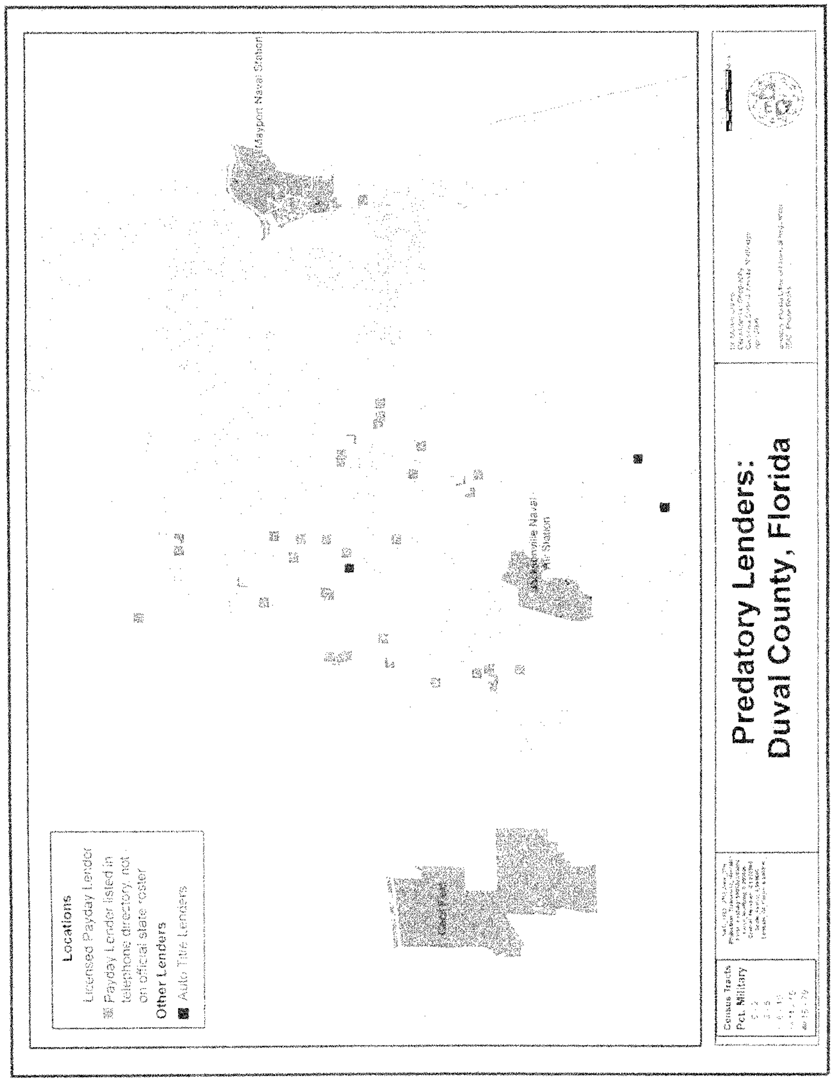
APPENDIX 2

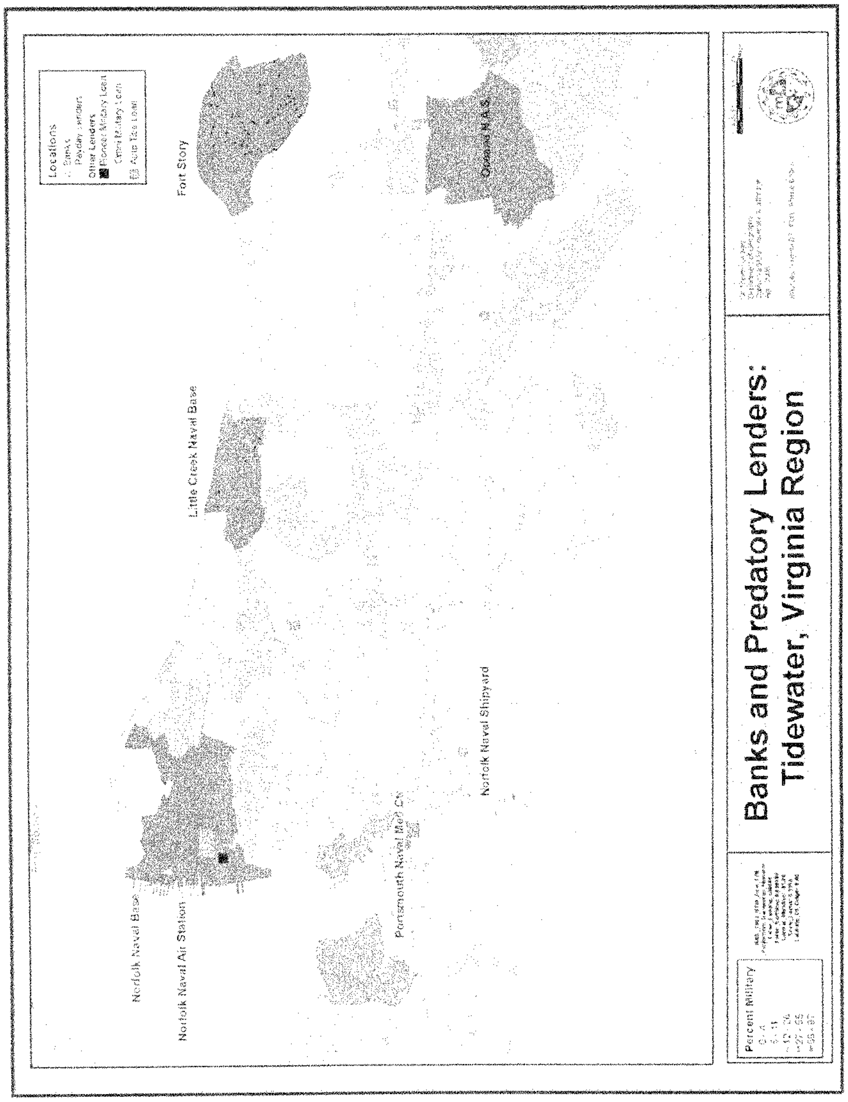

Banks and Predatory Lenders:
Fort Campbell Kentucky, Tennessee
Locations
Payday Lenders
Banks
Other Lenders
Auto Title Lender
Omni Military Loan
Patriot Loan Company
Pioneer Military Loan
Fort Campbell
KENTUCKY
TENNESSEE
Oak Grove
Clarksville


Banks and Predatory Lenders:
Fort Hood, Texas: Eastern Gate
Fort Hood


Banks and Predatory Lenders:
Fort Lewis and McChord AFB, Washington
Locations
Banks
Payday Lenders
Other Lenders
Omni Military Loan
Pioneer Military Loan
Percent Military
Tacoma
University Place
Lakewood
Parkland
Spanaway
Elk Plain
South Hill
Puyallup
Lacey
Camp Murray
Washington
McChord AFB
Fort Lewis
Fort Lewis
Fort Lewis


Banks and Predatory Lenders:
San Diego, California Region
Locations
Payday Lenders
Auto Title Loan
Omni
Pioneer
Banks
North Island Naval Air Station
Naval Station San Diego


Predatory Lenders:
Duval County, Florida
Locations
Licensed Payday Lender
Payday Lender listed in telephone directory, not on official state roster
Other Lenders
Auto Title Lenders
Mayport Naval Station
Jacksonville Naval Air Station
Census Tracts
Pct. Military


Banks and Predatory Lenders:
Tidewater, Virginia Region
Locations
Fort Story
Oceana N.A.S.
Little Creek Naval Base
Norfolk Naval Base
Norfolk Naval Air Station
Portsmouth Naval Med Ctr
Norfolk Naval Shipyard
Percent Military

APPENDIX 3

Survey on Internet Payday Loan and Installment Lenders

Military borrowers who search the Internet under typical loan terms are shown lenders that cater to the military and those that make loans uniformly to any borrower. The military loan sites use military names, display official-looking seals or action pictures of people in uniform, and tout their understanding of Power of Attorney forms and ask for Leave and Earnings Statements as the basis for making loans. Some sites disclaim official military endorsement in the fine print. Payday loan web sites with little connection to military themes also pop up in searches for "military payday loans."

A small sample of Internet lenders visited for this report illustrates trends in loans to military borrowers. Searches used the terms "military payday loans," "military cash advances," and "military loans." Eight sites that offer installment small loans to military borrowers and ten payday lenders were selected from the top of the search results, sponsored links, and from referrals by military relief societies. Some installment lenders appeared near the top of searches for payday loans.

Findings:

All installment lenders with information on their location are in Nevada, a state with no rate cap for consumer loans. Online payday lenders that listed a location were either in Costa Rica or Delaware, a state that also does not cap rates for loans.

Loan size available from installment lenders ranged from $500 to $10,000. Payday loan sizes were as high as $1,500 or 40 percent of monthly take-home pay. One surveyed site provides a four payday installment schedule while other lenders set single-payment loan terms of 14 to 16 days. Installment lenders usually make loans payable in twelve months or more.

Loan sites with heavy military focus require the applicant to submit Leave and Earnings Statements, require or encourage payment by allotment, and include graphics, links, or text designed to appeal to members of the armed forces. Most payday loan sites have little emphasis on "military" beyond pages headed "military payday loans."

Borrowers have a hard time finding out the cost of loans before submitting an application. Cost of loans was not disclosed on installment lender sites except for a calculator at one site that permits borrowers to enter loan amounts to see finance charges that do not include insurance premiums for credit insurance. Installment lenders did not otherwise post annual percentage rates (APRs). All but one payday loan sites listed APR information somewhere on the web site which ranged from 391.07% to 782.14% APR for 14-day loans.

Payday Loan Site Notes:

MyCashNow, www.mycashnow.com/military.php, visited May 15, 2006.
This Internet lender has a section for military borrowers. Official looking seals provide links to each of the Military Aid Societies. The finance charge for loans is $18.62 for a $100 loan due in seven to fourteen days. The APR disclosure required by Truth in Lending Act is buried at the bottom of a page of disclosures, not on the fee page. Loans cost "485.450 percent APR..."

Military Financial, Inc., www.militaryfinancial.com, visited May 15, 2006.
Payday lender for military borrowers offers loans of up to 40% of monthly take home pay to personnel at E-2 through O-6 ranks. No credit checks are made and loans are available anywhere in the world. Repayment can be spread over four paydays. The site accepts a Power of Attorney. Loan is paid through electronic debit. There is no cost to borrow information disclosed on the site. The FAQ answers a cost question with "The actual amount you pay will be clearly stated on your loan paperwork." Lender claims loans are subject to Delaware law which does not cap rates.

www.payday-today.us/loans_military_payday_loans.php, visited May 9, 2006.
Referral site says payday lenders loan up to 40% of take-home pay and lists 391.07% APR for loans. FAQ states: "Do Military Payday lenders run credit checks? No, due to the high ethical codes of military personnel and the regulations of the Uniform Code of Military Justice, Military Payday lenders will not subject military personnel to credit checks." The site warns that "According to the Uniform Code of Military Justice article 123a, military personnel that do not meet their financial commitments may be subjected to confinement, clearance, court marshal, transfer, or even discharge."

www.nationalpayday.com/education/payday_loans/military, visited May 9, 2006.
This general payday loan web site has a Military page. "No credit, bad credit? No problem!" Lender charges $25 to borrow $100. A separate chart lists the annual percentage rate for varying loan amounts of $100 to $300 with the highest APR at 1303% for a seven day loan.

www.military-loan.info, visited May 23, 2006.
Referral site for Nevada payday lenders promises Military Loans of $100 to $500 available overnight for service members. Big print promises "If you're serving...you're pre-approved!" The site manager claims to be a Sergeant in the US Army Reserves.

www.paydayloansavings.com, visited June 6, 2006.

Referral site includes a military page that links to the Cash Advance Network's regular payday loan site. There are no military specific provisions for the application or loan.

MyPaydayLoan.com, www.mypaydayloan.com/military-payday-loans.htm, visited May 9, 2006.
Loans are offered to active duty and retired military by a company located in Costa Rica. Minimum required is $1,000 per month income and a checking account open at least three months. Borrowers can click on a loan increase feature that lets them increase the loan amount and get extra cash before the next due date. Borrowers can roll over the loan by paying the finance charge of $25 per $100 borrowed without any limit on renewals.

Installment Loan Notes:

The two largest installment lenders to military personnel, Omni and Pioneer, are featured in ads and on multiple web sites. For example, MilitarySpot.com runs a banner ad at the top of its home page for Pioneer's loans of up to $10,000, available "24/7 Worldwide." Numerous sites feature "articles" or consumer advice with links back to Pioneer. Both companies offer linking to other web sites as affiliates, paying a fee for completed, qualifying applications that originate from "your Military-friendly site!"

Military Funding USA, www.loansmilitary.com, visited May 23, 2006.
Repayment is by discretionary military allotments. Applicants are asked if they can repay the loan in 12 months and if at least 18 months remain in the tour of duty. A Leave and Earning Statement (LES) must be faxed to apply. The site includes links to official U.S. military websites and urges other sites to link to Loansmilitary.com to improve search standings.

Armed Forces Loans of Nevada, Inc., www.armedforcesloans.com, visited May 15, 2006.
"We are a leading provider of loans to active duty military personnel serving in the army, navy, marines, air force and coast guards." All active duty military personnel are eligible. Applicants must email their LES. Official-looking military seals are displayed on the site. To qualify, military personnel need only be E-2 and active duty and have at least 18 months left on enlistment. Payment is by allotments "to avoid late fees." The site includes this message: "The Sailor's and Soldiers Civil Relief Act is not applicable to our customers…The relief act is waved (sic) when you accept the loan."

US Military Lending Corp., www.usmilitarylendingcorp.com, visited May 23, 2006.
USMLC, based in Nevada, says a portion of every dollar earned is donated to the Armed Forces Relief Trust. The site states that it is not affiliated with the U. S. military or the U.S. government. Loan terms are not disclosed on the site but are provided on loan documents mailed to the applicant for signature. Payment by allotment appears to be

required. Borrowers must send a check for first payment in case the allotment is delayed. A LES is required with the application.

MilitaryLoans.com, visited May 23, 2006.
Loans up to $10,000 are direct deposited into the military borrower's bank account wherever he or she is stationed worldwide. This Internet-only lender is part of the Omni Financial group of loan companies, based in Nevada. The site recommends payment by allotment. In answer to the question "What interest rates does Militaryloans.com charge?" the site does not provide information on the finance charge or APR for loans. A leave and earnings statement is required to process a loan application and the site provides step by step instructions to email the LES from the official DFAS site.

Pioneer Military Lending of Nevada, Inc., www.pioneermilitaryloans.com, visited May 22, 2006.
Pioneer's Internet lender offers loans up to $10,000 only to military personnel, retirees and Department of Defense employees. An LES is required to apply. The site does not provide loan cost information in chart form but gives a calculator to answer questions about payment size or loan amount based on monthly payment. For a $500 loan with a 24% interest rate and twelve monthly payments, the finance charge is $122.02 and the APR is 36.48%. According to its FAQs, Pioneer charges an origination fee to set up and service a loan and a prepayment penalty if the loan is repaid ahead of time. Payment is by allotment or electronic funds transfer or credit card through Western Union. To apply for a loan, the borrower must "consent to the Lender contacting my Commanding Officer in connection with the collection of the loan made hereby at any time when it is in default and until such time as the loan has been paid in full."

Chart Notes:

The following charts summarize information for payday loan and installment loan websites visited. Loan terms and cost to borrow information is that available prior to formally applying for a loan. Where information is not available on the lender's website, the space is left blank.

Company							
Payday Lender	**URL**	**Max Loan**	**Max Term**	**Fee/$100**	**APR/$100**	**APR Posted**	**Rollover**
Military Financial	www.militaryfinancial.com	40% of monthly take home pay	4 paydays		depends on amount and how long	No	
Military Payday Loan	www.tendollarpaydayloan.com	$ 1,000	17 days	$30	782.14%	Yes	Yes, Automatic up to 4times
National Payday	www.nationalpayday.com	$300 first loan $600 second loan and up	16 days	$25	651.79%	Yes	
Instantly Approved	www.instantlyapproved.com	$ 1,000			684.38%	No	Yes, not beyond 12wks from inception of loan
Payday Today	www.payday-today.us	40% of pay	14 days	$10 to $30/$100	391.07%	Yes	Yes
My Payday Loan	www.mypaydayloan.com	$300 first loan $600 second loan and up	14 days	$25	651.79%	Yes	Yes
Payday Loans Savings	www.paydayloansavings.com		14 days	$30	782.14%	Yes	4 times
Cash Advance Network	www.cashadvancenetwork.com	$ 1,000	17 days	$30.00	782.14%	Yes	4 times
My Cash Now	www.mycashnow.com	$ 1,500	21 days	$19	485.45%	Yes	3 times
Online Military Loans	www.military-loans.info	$ 500				No	

Installment Lenders						
Pioneer Military Lending	www.pioneermilitarylending.com	$ 10,000		Calculator gives finance charge and APR. For $500 at 24% int., $122.02 fin.chg. And 36.48% APR	determined by credit history, military rank, years of service and debt-to-income ratio	Only in calculator examples
US Military Lending Corp	www.usmilitarylendingcorp.com	$ 3,000	12 months		ability to repay the loan	No
Armed Forces Loans	www.armedforcesloans.com	$ 3,000	12 months		determined by credit report, cash flow, income and credit history w/ AFL	No
MilitaryLoans.com	www.militaryloans.com	$ 10,000			ability to repay the loan	No
Military Funding USA, Inc	www.loansmilitary.com	$ 3,000	12 months			No
Military Loan Company	www.militaryloancompany.com	$ 10,000			ability to repay the loan	No
Military Payday Loans	www.militarypaydayloan.com	$ 10,000			ability to repay the loan	No
Omni Military Loans	www.yesomni.com	$ 10,000			ability to repay the loan	No

APPENDIX 4

DoD Strategy for Personal Finance

Goal: Increase personal readiness by reducing the stressors related to personal finance.

Objectives:

- Increase awareness and abilities
- Build wealth and reduce dependence on credit
- Increase protection against predatory practices

Seven primary strategies:

1. Certify Service member and supervisor **core competency.** Through evaluation, Service members and supervisors validate that they have the abilities necessary to manage their finances and to prevent predatory activities happening on installations.

2. Provide **resources to obtain core competency.** Web-based, traditional lecture, and interactive resources will be provided to support Service members and supervisors attaining core competencies.

3. Create **awareness of personal finance resources.** Multimedia campaigns will work to motivate Service members to act on their core competencies and to have Service members and their spouses seek additional information to support their financial needs throughout life events.

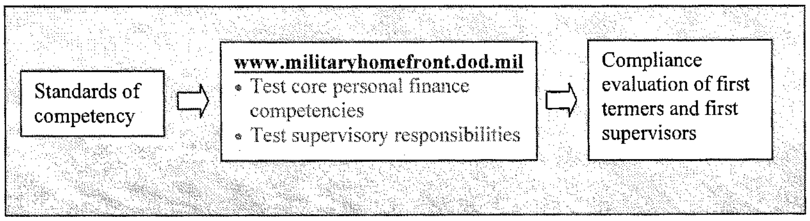
4. Provide **financial resources to support life events** for Service members and spouses. Through web-based, toll-free numbers and installation storefront resources, Service members and their spouses will be provided access to unbiased financial information and planning assistance to support life events.

5. **Provide interventions** for Service members and families in need of assistance. Support Service members and their families with quality counseling and assistance when they encounter financial distress.

6. **Protect** Service members and their families through information, assistance, limits on predatory practices, **and support** through better financial products.

7. **Track** significant of sections 1 – 6 above. Develop reporting processes that inform leadership on the productivity and outcome of personal finance programs to support Service members and their families throughout their military career.

1. Certify Service member and supervisor core competency.



1.1. The DoD Instruction 1342.17, Personal Financial Management for Service Members, prescribes the competencies that must be achieved in the following areas:

1.1.1. Service members must be able to demonstrate basic understanding in: pay and entitlements, banking and allotments, checkbook management, budgeting and saving (to include thrift saving plan), insurance, credit management, car buying, permanent change of station moves and information on obtaining counseling and assistance on financial matters (DoDI 1342.17, paragraph E3.1.1.1).

1.1.2. Service member must be able to establish an extended absence financial plan prior to any deployment that exceeds 4 weeks (DoDI 1342.17, paragraph E3.1.1.2).

1.1.3. Supervisors must have a basic understanding of policies and practices designed to protect military Service members (DoDI 1342.17, paragraph E3.1.1.3).

1.1.4. The policy requirement to *evaluate* Service members' competency changes the training model that ensured training was received, regardless of it's impact on competency. Demonstrating competency requires Service members to show their ability to apply the acquired knowledge.

1.2. Evaluation will require standards of competency. DoD will develop these standards of competency by:

1.2.1. Obtaining assistance from Financial Readiness Campaign partner organizations to develop the basic criteria for the issues listed in paragraph 1.1.1 – 1.1.3.

1.2.2 In addition to the basic criteria, these organizations could provide valuable input to the questions needed to test the basic understanding of the topics listed in paragraph 1.1.1. – 1.1.3. Sufficient numbers of questions would need to be developed to ensure each test would represent a sample and not the complete list of questions.

1.2.3. The evaluation questions would focus on scenarios to evaluate capability to apply principles established through standards of competency.

1.3. To facilitate efficient evaluation of standards of competency, DoD will develop a web-based evaluation process.

1.3.1. The website could include requirements for registration to facilitate tracking of pass-fails and to ensure universal application.

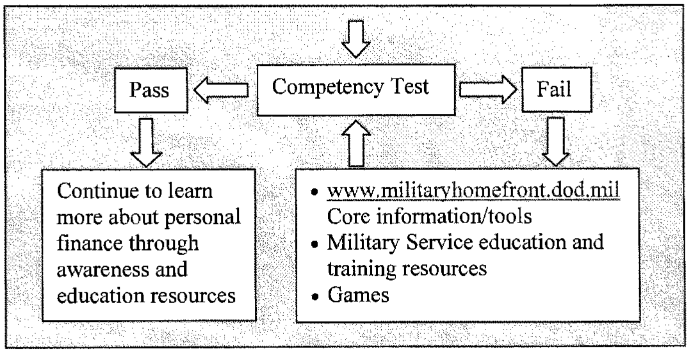
1.3.2. The web-based educational tool would allow "discovery" learners to test their competence before reading and experimenting with the learning tools provided in the website.

1.3.3. DoD will use www.militaryhomefront.dod.mil as the primary platform for the evaluation and the educational materials to support the evaluation. Core competency for Service members would be carried in the "Troops and Families" portion of the web portal, with the supervisory requirement carried on the "Commanders" portion.

1.3.4. The web-based approach would be available as a paper test to allow the Military Services to administer the test in a proctored environment, such as following personal financial management training, or as part of formal military training.

1.4. From the standpoint of compliance, Service members must be informed of the provisions of the Servicemembers Civil Relief Act (SCRA) as required by 50 U.S.C., Appendix, Section 515. Compliance with this provision is not covered as part of this strategy. Efforts to facilitate understanding by both the Service member and businesses is covered in part 3.5.3.

2. Provide resources to obtain core competency.



2.1. Service members are anticipated to either pass or fail the competency test. If they pass, they fulfill the initial requirements established in policy. If they fail, then they are obligated to learn sufficient information to pass the evaluation.

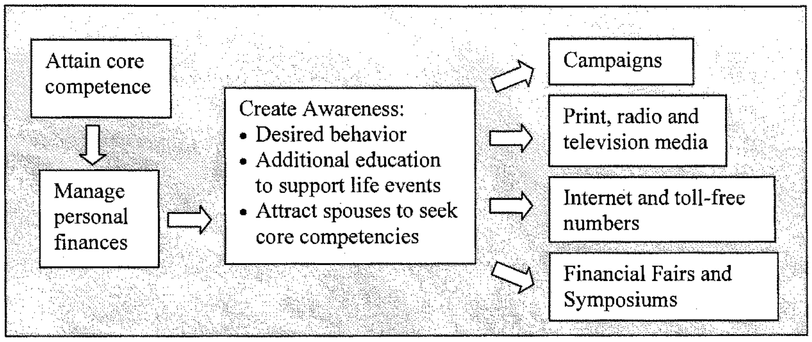
2.1.1. The website would represent the initial and primary educational tool for Service members to use to learn the core principles about personal finance to pass the evaluation, since it will be available as part of the web-based evaluation.

2.1.2. The educational materials in the "Troops and Families" portion of the www.militaryhomefront.dod.mil website would also be open to family members without a requirement to register for the evaluation.

2.2. In addition to the educational materials available on www.militaryhomefront.dod.mil, Service members would be able to develop their understanding through established educational programs of the Military Services. The Military Services may still wish to provide education prior to administering a test. The Service member will be required to pass the evaluation regardless of whether they have received education.

2.3. In addition to the resources available through the website and the Military Services, interactive computer-based games would be developed to provide Service members an alternative to computer-based educational materials and traditional lecture.

3. Create awareness of personal finance resources.



3.1. DoDI 1342.17 contains the following guidance for providing supplemental information on saving, investing, home purchase and other aspects of financial planning to Service members and families in addition to the basic competencies required for Service members and supervisors:

3.1.1. "Instructional and informational materials shall be made available to Service members that assist them with critical life stages impacting personal finance (e.g., marriage, parenthood, college, and retirement)" (DoDI 1324.17, paragraph E3.1.2.).

3.1.2. The Military Services shall provide information on personal finances to National Guard and Reserve personnel as an integral part of mobilization training (DoD 1342.17, paragraph E3.1.3.).

3.1.3. Programs shall be established to encourage spouses of Military Service members to participate in Personal Financial Management Programs (DoD 1342.17, paragraph E3.1.5.).

3.2. The initial requirement to fulfill the policies listed above will be to create awareness for the need to engage in additional financial education and personal financial planning. Through campaigns that promote the benefits of these activities, Service members and their families will be encouraged take advantage of additional personal financial services. Awareness resources will include:

3.2.1. The Military Saves Campaign is a grass-roots approach to encouraging Service members and their families to get out of debt and to save money. Groups such as Better Opportunities for Single Soldiers (BOSS) and the Single

Marine Program have agreed to promote this campaign with young troops. Other test sites in the Army, Navy and Air Force have used a coalition of support activities to promote the campaign. Individuals sign up on line or can call Military OneSource to become a Saver.

3.2.2 *Moneywise with Kelvin Boston* is shown on Armed Forces Network. The program focuses on low and middle income families succeeding in their financial efforts. Kelvin Boston has agreed to do a tour of 15 CONUS installations in 2005 – 2006.

3.2.3. The InCharge Institute sends out 250,000 copies of its *Military Money Magazine* to CONUS and overseas installations quarterly for distribution in commissaries, exchanges, family support centers, hospitals, and direct mail to homes. It is oriented towards the interests and needs of military spouses. InCharge also sponsors the *Military Money Minute*, which is heard on Armed Forces Radio and Television Service.

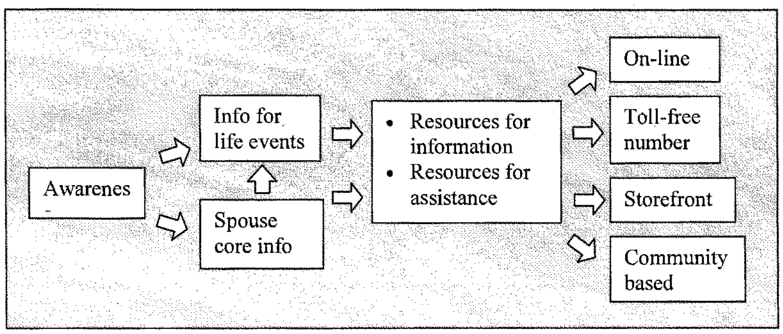
3.2.4. The National Association of Securities Dealers (NASD) Foundation is establishing an investor education program as a result of the settlement with 1st Command Financial Services. The program will include awareness efforts and point Service members towards a website, Military OneSource and Family Support Programs to obtain fulfillment.

3.2.5. Efforts to currently promote Military OneSource can also be used to emphasize the resources available to help Service members and their families to get out of debt and to get on the road towards building wealth.

3.2.6. Websites that are used by Service members and their families, such as www.military.com and www.militaryhomefront.dod.mil, can market available assistance as well as provide additional educational information.

3.2.7. Financial fairs are being accomplished at various military installations to expose Service members and their families to resources available through federal and government agencies, nonprofit groups and Military Service resources

4. Provide financial resources to support life events for Service members and spouses.



4.1. A variety of media resources will be used to support the financial information needs of Service members and their spouses. Awareness efforts will direct potential users to these resources, which will include:

4.1.1. Web-based resources to provide information on a wide array of life skills efforts (in addition to the basic skills covered as part of the competency requirement) would be provided on www.militaryhomefront.dod.mil with links to other excellent sources of information, such as the Federal Reserve website, Securities and Exchange Commission (SEC) website, www.mymoney.gov (which also sends literature to the requester), and the National Endowment for Financial Education (NEFE) website.

4.1.2. The www.militaryhomefront.dod.mil, and www.military.com websites will direct individuals to the Military OneSource toll-free number for an opportunity to ask questions and find out more information concerning their topic in question. Alternatively, these websites have email capability that refer questions to the experts at Military OneSource, or to other partner organizations under expressed agreement (such as the SEC, NEFE, InCharge Institute, and NASD Investor Education Foundation). The Military OneSource will also send information upon request to fulfill questions on all aspects of personal finance. Through a direct link with the Mymoney help center, information will be forwarded to Service members as a result of a single call to the Military OneSource toll-free number.

4.1.3. Seminars and educational events that can be provided through partner organizations, such as the USDA Cooperative Research, Education and Extension Service (CREES), the Better Business Bureau and the NASD Investor

Education Foundation. This includes seminars provided using partner furnished materials and train-the-trainer support, such as the FDIC Money Smart program.

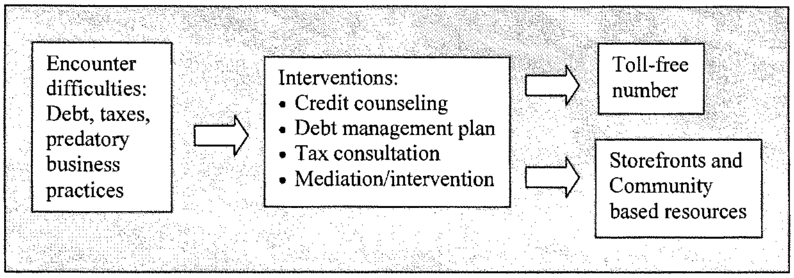
4.2. In addition to providing information, Service members and their families will be able to receive follow-on guidance and assistance to help them go beyond comprehension to be able to take action. Through the efforts of awareness and educational programs, Service members and their family members are led to resources that can help them develop individual plans and actions to improve their personal finances.

4.2.1. Military OneSource will be seen as the primary fulfillment for awareness programs and web-based education programs. Military OneSource, the Storefront Financial Resource Centers, and the Family Assistance Centers will be the primary conduit for Service member and families to receive additional assistance and support. Appointments with financial planners (pro bono or on a fee basis) will be provided through these primary resources.

4.2.2. The Project for Financial Independence, sponsored by NEFE and incorporating financial planning professionals from four national societies can provide pro-bono, face-to-face financial planning assistance for Service members and their families, particularly for National Guard and Reserve members who do not have direct access to military installations to obtain assistance from Family Support Programs. Financial planning is provided upon referral from Military OneSource or from the Family Support Center.

4.2.3. The National Military Family Association (NMFA) is developing a scholarship for military spouses to obtain the educational portion of becoming certified as an Accredited Financial Counselor (AFC). To assist spouses in completing the two-year experience requirement for the AFC, installations offer volunteer opportunities to work in personal finance. Opportunities would include managing "Military Spouse Financial Networks" that bring together small groups of spouses to learn about personal finance, manage a Military Saves Campaign on an installation, and providing personal financial education in DoD schools and youth programs for children of military families. After volunteering on the installation, spouses would network with banks, credit unions, credit counseling centers, hospitals (client services), and colleges (student services) to find paid positions.

5. Provide interventions for Service members and families in need of assistance.



5.1. Service members and their families who often fall into debt, require assistances with tax issues and are often victims of unscrupulous companies which take advantage of them. To assist these Service members and families in need, awareness materials will feature where help can be obtained, and information sources will direct them to the appropriate source of assistance.

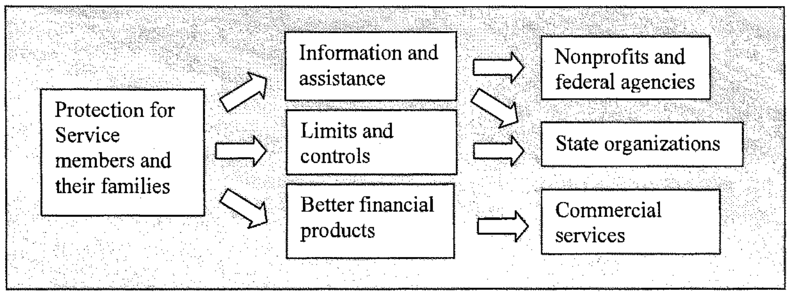
5.2. Military OneSource, the Storefront Financial Resource Centers, and the Family Assistance Centers provide Service member and families direct counseling support or refer them to other organizations specializing in resolving financial concerns.

5.2.1. Directly, or through a "warm handoff" from Military OneSource/Family Assistance Centers, Service members and their families can obtain quality debt management assistance through the InCharge Institute. InCharge provides debt consolidation, assistance with family budgeting and follow-up assistance to ensure the Service member and family stay on track.

5.2.2. The Federal Trade Commission modified a portion of their "Consumer Sentinel" website to "Military Sentinel" to allow Service members and their families to register instances of what they believe to be fraudulent or unfair business practices. The information is shared with state, local and military justice officials so that unscrupulous businesses can be brought to court, their practices can be stopped, and consumers can be compensated.

5.2.3. The Council of Better Business Bureaus (CBBB) has established a website: military.bbb.org to allow Service members and their families to register instances of unfair business practices. CBBB relays instances of unfair practices to their network of local bureaus to review the situation and aid the military consumer through mediation to resolve disputes with companies. Also as part of this initiative, CBBB is establishing local programs that will educate military consumers on protecting themselves in the marketplace, and they are establishing ethics agreements with local vendors to ensure military consumers obtain a fair deal.

6. Protect Service members and their families through information, assistance, limits on predatory practices and support through better financial products.



6.1. As already described in 5.2., the Federal Trade Commission Military Sentinel and the Council of Better Business Bureaus provide information and assistance for Service members and their families concerning predatory practices. In addition to these organizations, the following organizations have committed to assisting Service members and their families:

6.1.1. The Center for Responsible Lending provides support by articulating issues of predatory practices to state-level legislators and by providing information to Service members and their families on predatory practices within their state.

6.1.2. The California Corporations Division has established a program called Troops Against Predatory Scams (TAPS) that is being distributed at all military installations in California. The program provides tips and a hotline to report concerns. The California Corporations Division plans to identify their program as a best practice at national conferences in the hope that other states will do likewise.

6.2. The Government Accountability Office has recommended DoD use the Armed Forces Disciplinary Control Board (AFDCB) to place payday lending establishments outside military installations off-limits. Although this will be a difficult undertaking (AFDCB actions require due-process and there are tens of outlets around military installations), DoD will have installation AFDCBs meet on a quarterly basis to engage the issue of payday lending.

6.3. In addition to the use of the AFDCB, DoD is working with state governments to review policies and statutes to place adequate controls on payday lending practices through the following measures:

6.3.1. Limits on interest rates and fees. Payday loans have annual percentage rates of over 300 percent. Many states have interest rate caps, but make an exception for payday loans. DoD has informed states of the impact of high interest rates on Service members and their families and of efforts of other states to limit rates.

6.3.2. Limits on having multiple loans and rolling over payday loans (rolling over a payday loan involves paying for a loan with another loan). Multiple loans and rollovers build high interest rates that create spiraling debt. Surveys show Service members rollover loans an average of 4 times per year. Some states have statutes that prohibit rollovers and multiple loans and have established databases to ensure the prohibition is enforced. DoD has informed states of the practice and impact it has in reducing spiraling debt.

6.4. New products and services are becoming available in the financial services market. Without creating endorsement of any commercial products, there are opportunities for contracting services, or for advocating the market place to provide certain products and services to support the military community.

6.4.1. The Pentagon Federal Credit Union Foundation has established a program called the "Asset Recovery Kit (ARK)," that provides a small, short-term loan to Service members (regardless of their credit worthiness), up to $500 for a flat fee of $6. Service members are limited to two loans per year and must receive personal financial training after receiving the loan. Other defense credit unions have implemented similar efforts as viable alternatives to payday loans.

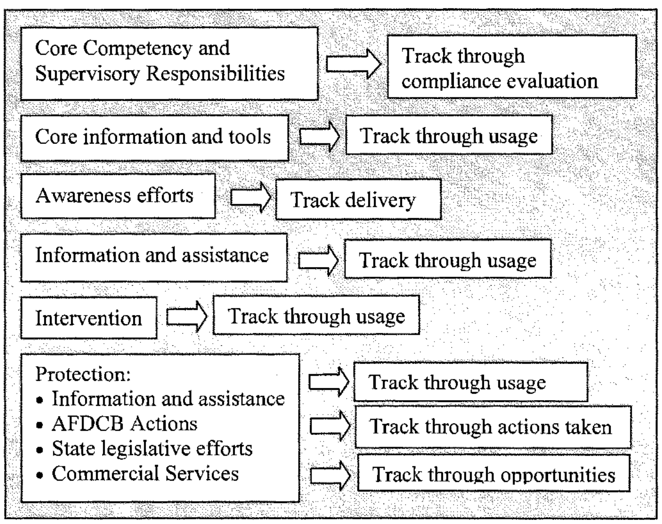
6.4.2. The U.S. Central Command provides two phone services in addition to email and Internet services to assist Service members communicating with family and businesses back home. Service members receive two official15-minute Health, Morale and Welfare (HMW) calls per week, plus they have access to unofficial telephone, Internet and email resources through the Armed Services Exchange Services. Service members have free prepaid phone cards available through "Help Our Troops Call Home."

6.4.2.1. Armed Services Exchanges have launched an information campaign to assist Service members, their families and friends to understand the unique challenges of communicating during deployment, special programs supporting HMW and unofficial telecommunications, and lowest cost options available. The information has also been carried on DoD websites, Armed Forces Information Service and in DoD Public Affairs news releases.

6.4.2.2. In addition, DoD will provide Service members information on the Service member Civil Relief Act (SCRA), tips on dealing with credit issues while overseas, and information on using Military OneSource toll-free assistance while deployed to limit the number of phone calls needed to resolve personal finance issues.

6.4.2.3. DoD will participate in a teleconference with members of the American Bankers Association to explain the DoD implementation of the SCRA, and to inform them of the impact deployments have on Service members and their families.

7. Track significant aspects of 1 – 6 above.



7.1 Evaluating core competency and supervisor understanding will become a compliance issue. As part of the documentation of formal training, Service members will be required to take the on-line test, which will provide documentation of pass/fail.

7.1.1. Core competency: The Military Services currently provide training on the core personal financial management issues listed in DoDI 1342.17. Through the on-line test, Service members entering the Military Services (officer and enlisted) can demonstrate their proficiency. The online test also creates a record that can be matched against their personnel file at their first duty station to ensure they have passed the test. Results of the test would be accessible by the Military Service headquarters to ensure the test is being required and follow-up action is taken. The Military Services would be required to report results to the Office of the Secretary of Defense (OSD) on a quarterly basis.

7.1.2. Supervisory understanding: The Military Services would require all officers upon assignment to their first duty station to demonstrate proficiency (since all officers are or will be in some supervisory role). The Military Services can document any exceptions to this rule. For non commissioned officers, the test could be administered as part of their initial formal leadership training, which generally precedes supervisory responsibilities. Either a web-based or paper test can be used to ensure compliance. As an alternative, the Military Services can make the evaluation part of the documentation for supervisory responsibilities within the unit. In any event, the Military Service headquarters would evaluate statistics to ensure the test was administered and prospective supervisors passed the evaluation. The Military Services would be required to report results to OSD on a quarterly basis.

7.2. Tracking use of core information and training sources: The number of visits to the website and the number of individuals trained are secondary measures to ensuring all Service members reach the standard level of competency. Usage of information and training sources will be tracked to determine which are most used by Service members to obtain the information needed to pass the competency test.

7.3. Tracking awareness activities: Implementation of these activities can be tracked through the units of distribution: number of TV and radio spots, the number of *Military Money Magazines* circulated, and the number of participants in Military Saves events and Financial Fairs.

7.4. Tracking information and assistance: The web will be the main method for providing information, so tracking hits on the major websites will provide feedback on the number of individuals seeking information. Additionally, the number of individual contacting Military OneSource and the number participating in seminars and education of events can provide a sense of the use of these sources of information. The number of financial planning sessions will similarly be tracked through the usage of these services.

7.5 Tracking interventions: These services are provided by organizations that track the services they provide. DoD will request these organizations provide a quarterly review of usage.

7.6. Tracking actions to support a fair business environment should measure support provided to individual consumers, the number of actions taken to improve the business environment, and the number and productivity of favorable business products that have been made available to Service members and their families.

7.6.1. The activities of the Federal Trade Commission, state efforts such as the California TAPS program and the efforts of the Better Business Bureau can be measured through the number of individuals that have contacted the agency and the action taken to remedy the consumers' complaints. DoD can request these agencies provide a quarterly report of usage and actions taken.

7.6.2. The actions taken by the AFDCB can be tracked, on at least an annual basis to determine the number of actions taken and completed.

7.6.3. The activity of DoD to work with state governments can be chronicled during the legislative sessions. The number of contacts and the outcome of all legislative activity (regardless of DoD contact) can be monitored on an annual basis.

7.6.4. The number of beneficial financial products brought to the market can be reviewed annually to determine progress. For those products and services that are provided through contract, or through a military bank or defense credit union, OSD can request usage information to determine benefit to Service members over the course of a year.

APPENDIX 5

ALMAR 060/05

Date signed: 12/02/2005 **MARADMIN Number:** 060/05

Subject: FINANCIAL READINESS ADMINISTRATION

R 021000Z DEC 05
FM CMC WASHINGTON DC(UC)
UNCLASSIFIED//
ALMAR 060/05
MSGID/GENADMIN/CMC WASHINGTON DC JA//
SUBJ/FINANCIAL READINESS ADMINISTRATION//
GENTEXT/REMARKS/1. A MARINE'S FINANCIAL READINESS DIRECTLY IMPACTS UNIT READINESS AND, CONSEQUENTLY, THE CORPS' ABILITY TO ACCOMPLISH ITS MISSION. WE MUST ACT TO ENSURE OUR MARINES AVOID FINANCIAL PITFALLS AND MAKE WISE DECISIONS.

2. RECENT STUDIES INDICATE THAT APPROXIMATELY SEVEN PERCENT OF MILITARY PERSONNEL USE PAYDAY LOANS. PAYDAY LOANS ARE ATTRACTIVE TO MARINES FACING FINANCIAL DILEMMAS BECAUSE THEY ARE EASILY OBTAINED. SUCH LOANS ARE USUALLY SMALL, SHORT-TERM ARRANGEMENTS DESIGNED TO TIDE OVER CASH-STRAPPED BORROWERS UNTIL THEIR NEXT PAYCHECK. HOWEVER, THEY ARE HIGH INTEREST, RAPIDLY COMPOUNDING LOANS THAT CAN DEVASTATE A MARINE'S PERSONAL FINANCES - ESPECIALLY SINCE MOST PAYDAY LOANS ARE NOT IMMEDIATELY PAID OFF. NOTABLY, THE INTEREST AND FEES FOR PAYDAY LOANS AVERAGE MORE THAN 300 PERCENT ABOVE THE LOAN AMOUNT. THERE ARE BETTER OPTIONS FOR MARINES EXPERIENCING FINANCIAL DISTRESS.

3. PERSONAL FINANCIAL MANAGEMENT PROGRAMS PROVIDED BY MARINE CORPS COMMUNITY SERVICES STAND READY TO EDUCATE AND COUNSEL MARINES AND THEIR FAMILY MEMBERS REGARDING PERSONAL FINANCES. COMMANDERS SHOULD ALSO ENCOURAGE MARINES TO SEEK LEGAL ASSISTANCE PRIOR TO SIGNING LOAN DOCUMENTS OR OTHER CONTRACTS. LASTLY, WE MUST TAKE FIRM AND FAIR ACTION THROUGH THE ARMED FORCES DISCIPLINARY CONTROL BOARD AND OTHER MEANS TO DENY ACCESS TO LENDERS WHO TAKE UNFAIR ADVANTAGE OF MARINES. YOU CAN FIND MORE INFORMATION REGARDING THE DEPARTMENT OF DEFENSE'S PAYDAY LENDING INITIATIVES AT WWW.MILITARYHOMEFRONT.DOD.MIL BY FOLLOWING THE "LEADERSHIP" LINK TO THE "FINANCIAL READINESS" LINK.

4. THROUGH YOUR CONTINUED EMPHASIS OF PERSONAL FINANCIAL EDUCATION AND LEGAL ASSISTANCE FOR OUR MARINES, WE CAN IMPROVE THE FINANCIAL READINESS OF OUR MARINES AND CURB THE USE OF PAYDAY LOANS. ENSURE ALL MARINES ARE MADE AWARE OF THIS MATTER, AND IMMEDIATELY REFER THEM TO THE INSTALLATION PERSONAL FINANCIAL MANAGEMENT PROGRAM, LEGAL ASSISTANCE OFFICE, OR STAFF JUDGE ADVOCATE FOR ASSISTANCE.

5. KEEP ATTACKING, M. W. HAGEE, GENERAL, U.S. MARINE CORPS, COMMANDANT OF THE MARINE CORPS.//

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SUBJ/PREDATORY LENDING PRACTICES//

GENTEXT/REMARKS/1. A SAILOR'S FINANCIAL READINESS DIRECTLY IMPACTS UNIT READINESS AND THE NAVY S ABILITY TO ACCOMPLISH ITS MISSION. I AM CONCERNED WITH THE NUMBER OF SAILORS WHO ARE TAKEN ADVANTAGE OF BY PREDATORY LENDING PRACTICES, THE MOST COMMON OF WHICH IS THE PAYDAY LOAN. OTHER PREDATORY-TYPE LOANS INCLUDE AUTOMOBILE TITLE PAWN, TAX REFUND, AND RENT-TO-OWN FURNITURE. A RECENT SURVEY BY THE DEFENSE MANPOWER DATA CENTER INDICATES THAT 13 PERCENT OF SAILORS HAVE USED A PREDATORY LOAN IN THE PREVIOUS 12 MONTHS.

2. PREDATORY LOANS ARE USUALLY SMALL, SHORT-TERM ARRANGEMENTS DESIGNED TO BRIDGE CASH-STRAPPED BORROWERS UNTIL THEIR NEXT PAYCHECK. HOWEVER, THEY ARE EXPENSIVE, HIGH-INTEREST LOANS THAT OFTEN COST 10-44 DOLLARS PER WEEK PER 100 DOLLARS BORROWED, PLUS FEES. THE ANNUAL INTEREST RATE ROUTINELY EXCEEDS 1,000 PERCENT. PREDATORY LOANS CAN FURTHER DEVASTATE A SAILOR S PERSONAL FINANCES, ESPECIALLY SINCE MANY OF THESE LOANS ARE NOT PAID AT THE ORIGINAL PAYMENT DUE DATE AND ARE ROLLED-OVER TO THE NEXT PAYDAY. THE

ROLLOVERS ARE OF GREAT CONCERN SINCE MULTIPLE ROLLOVERS QUICKLY LEAD TO A SITUATION WHERE MOST SAILORS CANNOT PAY OFF THE LOAN.

3. THERE ARE BETTER OPTIONS FOR SAILORS EXPERIENCING FINANCIAL CHALLENGES. FOR EXAMPLE, PERSONAL FINANCIAL MANAGEMENT TRAINING AND INFORMATION PROGRAMS ARE AVAILABLE FROM THE COMMAND FINANCIAL SPECIALIST (CFS), THE LOCAL FLEET AND FAMILY SUPPORT CENTER, THROUGH NAVY KNOWLEDGE ON-LINE (NKO), AND NAVY-MARINE CORPS RELIEF SOCIETY (NMCRS). THEY EACH STAND READY TO EDUCATE AND GUIDE SAILORS AND THEIR FAMILIES REGARDING PERSONAL FINANCES, INCLUDING ISSUES RELATED TO PREDATORY LOAN USE. NAVY LEADERSHIP, AT ALL LEVELS, MUST ENCOURAGE SAILORS TO SEEK LEGAL ASSISTANCE PRIOR TO SIGNING LOAN DOCUMENTS OR OTHER FINANCIAL-RELATED CONTRACTS. WE MUST ENCOURAGE OUR SHIPMATES WHO ARE USING PREDATORY LOANS TO STOP AND, WHEN NECESSARY, SEEK IMMEDIATE ASSISTANCE FROM THE NAVY'S AVAILABLE RESOURCES TO STABILIZE THEIR PERSONAL FINANCES.

4. EACH OF US HAS PROBABLY EXPERIENCED A FINANCIAL HARDSHIP AT ONE TIME OR ANOTHER IN OUR LIVES. THERE IS NO SHAME IN DISCUSSING OR SEEKING HELP FROM YOUR SHIPMATES AND LEADERS. IT IS BETTER TO ASK FOR ASSISTANCE BEFORE SOME RELATIVELY MINOR FINANCIAL ISSUE BECOMES A SERIOUS DIFFICULTY IN YOUR PERSONAL AND PROFESSIONAL LIFE. ADDITIONALLY, WE MUST DISCUSS THE DANGERS AND AVAILABLE ASSISTANCE/RESOURCES RELATED TO PREDATORY LOANS WITH OUR SPOUSES AND OTHER FAMILY MEMBERS. INFORMATION ABOUT THE DANGERS AND CONSEQUENCES OF SHORT-TERM, HIGH-INTEREST LOANS IS AVAILABLE AT WWW.NKO.NAVY.MIL AND WWW.LIFELINES.NAVY.MIL WEBSITES.

5. TO THOSE OF YOU WHO ARE COMMAND FINANCIAL SPECIALISTS, YOUR WORK IS ESSENTIAL. YOU ARE ON THE FRONT LINES IN THE BATTLE AGAINST PREDATORY LOANS AND YOUR CONTINUED EFFORTS TO EDUCATE MEMBERS OF

YOUR COMMAND ON THIS ISSUE ARE CRITICAL TO ACHIEVE SUCCESS.

CONTINUED FOCUS ON PERSONAL FINANCIAL MANAGEMENT TRAINING, COMBINED WITH SAILORS REGULARLY TAKING ADVANTAGE OF NAVY LEGAL SERVICE OFFICE FREE LEGAL ASSISTANCE BEFORE SIGNING A LOAN AGREEMENT WILL INHIBIT THE USE OF PREDATORY LOANS AND IMPROVE PERSONAL AND FAMILY READINESS AS WELL AS MISSION READINESS.

6. RELEASED BY VADM J. C. HARVEY, JR., N1.//

BT

#0300

STATEMENT BY CAPT MARK D. PATTON, USN
COMMANDING OFFICER, NAVAL BASE POINT LOMA, CALIFORNIA
HEAD, TASK FORCE PREDATORY LENDING (SOUTHWEST)
BEFORE
THE CALIFORNIA STATE SENATE JOINT ASSEMBLY
SUNSET REVIEW / CONSUMER PROTECTION
23 MAY 2006

Good morning, Madam Chairman and members of the committee. I appreciate the opportunity to appear before you concerning protection of the financial health of 90,000 active duty sailors serving our Country in the State of California - and the very real problem of Predatory Practices that directly impact the readiness of our Armed Forces. I realize this body is familiar with the statistics, and I appreciate the California Car Buyers Bill of Rights as an example of how legislation can help combat predatory practices and their impact on our Sailors. But recently there has been an explosive increase in the number of predatory establishments that encourage deferred deposit transactions with single balloon payments and easy – even encouraged – loan flipping policies. This is a direct threat to military readiness. There are nearly four Payday Lenders for every McDonalds in California.[38]

Additionally, established so-called military loan companies, often utilizing retired service members and out of state home offices, manipulate California legal oversight by targeting our non-resident sailors. They sell complex high interest loans and life insurance policies that are virtually worthless to unsuspecting military members. These predatory practices place many in a hopeless spiral of debt. An estimated $80 million a year in abusive fees and interest - taken from the pockets of our active duty military and their families nationwide - drain our relief organizations of needed funds as they help our sailors financially recover.[39]

I am concerned that many do not understand why military service members - and their families - require special consideration when it comes to these predatory establishments. We MUST protect our protectors.

The average age of sailors at my last command, the fast attack nuclear submarine USS Topeka, was 22. Today's young military member, often right out of high school or junior college, is placed almost immediately into a position of tremendous responsibility. He or she operates and maintains equipment worth millions -- sometimes billions -- of dollars. Our young men and women manage and maintain live ordnance, fighter aircraft and nuclear reactors – and the lives of many others are routinely placed in their hands. Obviously I must have utmost confidence in my troops to entrust such positions and equipment to them. Many of our youngsters must attain and maintain security clearances that demand complete and unquestionable integrity. A service member saddled with debt, fear, and considerable stress, could suddenly find his integrity compromised. His job performance will probably suffer, and he most likely will lose his security

[38] California State University Northridge / University of Florida, *Predatory Lending and the Military: The Law and Geography of "Payday" Loans in Military Towns*, April 2006, at http://www.law.ufl.edu/faculty/pererson/publications.shtml
[39] Ozlem Tanik, Financial Service Analyst, Payday Lenders Target the Military, Center for Responsible Lending Issue Paper No. 11, September 29, 2005, at http://www.responsiblelending.org

clearance and be temporarily removed from his assignment. Between 2000 and 2005, revoked or denied security clearances for Sailors and Marines due to financial problems have increased 1600 percent.[40]

At a time when we are at war, this is an unacceptable loss of valuable talent and resources.

As we gather more and more data from organizations like Navy and Marine Corps Relief Society and the Center for Responsible Lending, we are gaining a greater understanding of the true impact of Predatory Lending Practices. But the recent tasking provided by the highest levels of the Department of Defense provides the best evidence that the military believes this is a very real and emergent threat. The Secretary of Defense has listed Payday Lending as one of his top ten key issues for The Department of Defense/States Partnership.[41] The Vice Chief of Naval Operations recently sent a personal message to all Commanders, Commanding Officers and Officers in Charge that stated Predatory Lending practices demanded "Intrusive Leadership" and that the Navy Enterprise must establish "a sustained, long term effort employing all of the financial assistance available in our institutions".[42] In response to this direction, and others from our leadership, Commander, Navy Region Southwest has formed Task Force Payday Lender – a dedicated group of senior enlisted and officer leaders. They are aggressively addressing Education, Culture and Business Partnering to meet this threat to our sailors.

The Navy also does *not* accept the popular argument that these financial lending institutions are doing a service for our sailors.

*** It is not a *service to our sailors* to mask triple digit interest rates by applying "service fees" scaled to the dollar amount of a single balloon payment loan.

*** It is not a *service to our sailors* to deny a sailor options for multi-payment financing at reasonable rates for a deferred deposit transaction.

*** It is not a *service to our sailors* to allow simultaneous borrowing from multiple lenders or not verify a sailor's ability to repay a loan before it is made.

*** It is not a *service to our sailors* to build entire business models around out of state financial organizations that ply high interest loans and near-worthless insurance products to the particular demographic of non-resident junior enlisted men and women in order to avoid State and Local regulation.

The Center for Responsible Lending has identified nine signs of predatory financial practices and the State of California permits all nine practices against most of the sailors assigned to California.[43]

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[40] Seapower Magazine, Double Whammy – Payday Loan Victims Face Security Clearance Problems, Vol 49, No 9, Amy Klamper, Jun 06. www.navyleague.org/sea_power

[41] Department of Defense publication *Key Issues – Department of Defense/States Military Partnership*. www.USA4MilitaryFamilies.org.

[42] CNO Washington DC message 212330Z APR 06 *Predatory Lending Practices*, Personal for Commanders, Commanding Officers, and Officers in Charge from Admiral Willard.

[43] Center for Responsible Lending. *Payday Lending in California, California Deferred Deposit Transaction Law Codifies the Payday Debt Trap*. 2005. www.responsiblelending.org

Congress appropriates resources to the Navy to provide counseling and assistance to sailors in need. Millions of dollars are donated every year to military relief organizations. Tens of thousands of volunteer hours are dedicated to helping our sailors. And yes, there ARE MANY patriotic businesses and institutions that stand ready to assist the young men and women who dedicate their lives to the defense of our country. We do not need the so-called services of predators outside our gates who are little more than legalized loan sharks.

There is no Enemy that our Navy is more passionate about defeating than one who targets our own sailors. We will do everything WE possibly can to turn this trend around and defeat unscrupulous practices that prey on our sailors. But these efforts demand tremendous resources; both in manpower and available funds. These are resources we cannot afford to waste in a time of War.

This legislature, by partnering with us, can strengthen the laws and close the loopholes that allow these predatory practices. Our service members are already stretched thin, balancing increased operational requirements with the demands of personal and family life. We need to protect our protectors. YOU can help us achieve this victory.

And the Navy is not alone in facing this challenge. We are fighting this problem because we have a safety net for our sailors to fall back on. It is estimated that only 1 in 5 individuals using Payday Loan institutions come from the military.

PREPARED STATEMENT OF ADMIRAL CHARLES S. ABBOT, RETIRED

PRESIDENT AND CHIEF EXECUTIVE OFFICER, NAVY-MARINE CORPS RELIEF SOCIETY

SEPTEMBER 14, 2006

Mr. Chairman, Senator Sarbanes, Members of the Committee on Banking, Housing, and Urban Affairs: I am honored to have the opportunity to testify this morning on the Department of Defense Report on Predatory Lending Practices Directed at Members of the Armed Forces and Their Dependents. The Navy-Marine Corps Relief Society was founded by President Theodore Roosevelt in 1904 to provide emergency financial assistance in the form of interest-free loans and grants to Sailors, Marines and their families. Through the decades, our organization has encountered various scams, but none as flagrant and serious as today's predatory lending industry. As President of the Society, I have personally witnessed the downward spiral of debt suffered by our Sailors, Marines and their families who seek financial assistance from predatory lenders. This industry says it does not target the military, but pick up any edition of Army, Navy, Air Force or Marine Corps Times and you'll see large, color advertisements with quotes like "Our entire focus is on the U.S. Military"; or "We are dedicated exclusively to military personnel." Instead of solving what may be temporary cash flow problems, these military families become overwhelmed and financially destroyed when they fall into the payday loan trap. The resulting low morale and pre-occupation with personal financial difficulties have a negative impact on military readiness. Their stories are heartwrenching:

- A 21-year-old Active Duty Sailor in Virginia Beach, with four dependents was involved in payday loans for two years. He started in March 2004 by taking out three payday loans to take his family to visit his grandfather who was diagnosed with cancer. By October 2005, he had four payday loans totaling $2,300 that cost him $600 every month just to roll over. To cover all of this, plus the bounced checks that it caused, he also borrowed from his Thrift Savings Plan and took out additional loans. He routinely paid late charges for his rent and car payments.
- An E–4 Active Duty Sailor with a wife and child in the Pacific Northwest was assisted by the Society with payment of 8 payday loans totaling $5,250 in July 2005. The service member took out two payday loans to make a down payment on a car. His two loans grew to four, six, then eight as he rolled them over and continued to make up his budget deficit by taking out additional payday loans. His electricity was cut off. The family had to go and live with relatives. His car was repossessed, sold at auction, and he currently owes $12,000 on that automobile.
- An E–6 Active Duty Sailor requested assistance in paying one month's mortgage ($1,870.38) payment. The service member stated he got behind on his mortgage when his wife's father became ill in Japan and he had to send her home to provide support. At that time, he turned to payday lenders. He took out 10 payday loans. During some months, he needed two payday loans to pay off earlier loans. He used his reenlistment bonus check to pay off the lenders and refinanced his house to pay off all of his other debts, but still required the Society's assistance to catch up on his mortgage.
- In Jacksonville, Florida, an E–5 Active Duty Sailor with a wife and three children accumulated nine payday loans totaling $5,409. The interest rate on these various loans varied from 121% to 421%. Having no credit cards, this military couple purchased furniture by using payday loans on the occasion of a permanent change of station move. There was a death in the family, followed by an ill relative. Each month they rolled the loans over, paying a fee to take out additional new loans. Finally, they sought assistance from our organization.

These examples illustrate the ever-growing problem. Since August of 2001, the Society has assisted more than 5,500 Navy and Marine Corps clients victimized by predatory lenders in the amount of $2,597,881.19. The problem has been made more difficult to monitor and control now that these loans are easily accessible on the Internet. The web sites of these predators are as compelling as the neon signs that beckon unsuspecting Soldiers, Sailors, Airmen and Marines at establishments outside our military bases across the United States. If one reads the not so fine print at these web sites, one can learn that:

- At Checkmate, you can borrow $150 for three days with a finance charge equivalent to an Annual Percentage Rate (APR) of 3,220 percent;
- At Northway Financial Corporation, you can borrow $700 and the cost for your credit as a yearly rate is 758.08% APR;

- At ATMAdvance.com, you can borrow $170 for two weeks and the finance charge is equivalent to 460.16% APR;
- At Cashcall, you can borrow $5,000, and if you make scheduled payments only (120 payments over ten years), you will end up paying back more than $30,000.

It is a grim picture that is brought into sharp focus when destitute military clients come to the military aid societies to ask for help. The Department of Defense report does a commendable job of documenting the problem and its impact on our military families. Equally commendable is the Department's aggressive education program designed to inform our military families about the perils of accepting financial assistance from predatory lenders. Education, consisting of effective personal financial management training, and an intensive, sustained publicity campaign can reduce the problems resulting from this legalized loan shark industry. It is an important first step, but education alone is not enough.

Two additional requirements are critically important to solving this serious problem: responsible alternative sources of short term loans and, equally important, Federal legislation with teeth. There has been some success fighting this battle on the state level; but Federal legislation will be necessary that, at a minimum, provides the following:

- Caps the interest rate at 36% (to include all fees and insurance).
- Eliminates all loan roll overs or the ability for individuals to take out another loan to payoff the first loan which creates a vicious cycle of debt.
- Requires all payday lending businesses to belong to a PDL association that will serve as a clearing house to ensure clients don't have outstanding payday loans from other payday lenders, and allows monthly payment plans.
- Regulates on-line payday loan transactions.

Thank you for focusing attention on this significant problem that affects military readiness and the lives of our men and women in uniform. I appreciate this opportunity to share my concerns with members of this committee. I hope that Congress will take prompt and effective action by drafting and passing effective anti-predatory lending legislation.

I would be pleased to answer your questions.

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F.A.Q.
About MFI
Another Loan

About Military Financial, Inc.

Military Financial Inc. is a veteran owned and operated institution. As a Delaware Licensed Lender, MFI has provided advance pay loans exclusively to the U. S. Military since 1999. Our corporate philosophy is based on providing the highest level of service available to members of the armed forces.

Because [redacted], members of the armed forces may obtain an advance pay loan from anywhere on the globe. We have provided our services to all ranks from E-2 through O-6.

In addition to courteous service, MFI's "Military Only" charter provides an understanding that separates MFI from non-military lenders. For example, we understand the importance of the Military Power of Attorney (POA), and we will advance funds to a spouse or family member based on a POA. We understand that when a service member is PCS, additional funds can assist during this transition.

From vacations to emergency travel, we are here to serve you. At Military Financial, we believe that your membership in the armed forces entitles you to special treatment. Our corporate and personal goal is to provide the level of service that you deserve.

CFSA

We are a member of the Consumer Finance Service Association, and follow the CFSA's lending "best practices".

AUSA

We are a member of the Association of the United States Army.

We secure our website using thawte SSL for your protection.

Delaware Lending Law | Privacy Policy | Disclosure

ArmedForcesLoans

Home Page
About Us
To Qualify
On-line Application
Questions & Answers
Privacy

ABOUT US

OUR GUARANTEE FOR MILITARY LOANS

We guarantee your satisfaction 100%. No questions asked. If for any reason you are not completely satisfied, you may return the money sent to you within 15 days AT NO COST TO YOU.

MISSION STATEMENT OF ARMED FORCES LOANS OF NEVADA

We at Armed Forces Loans promise to give prompt, courteous service to all active Military personnel. We do not discriminate on the basis of race, color, national origin, religion, sex, marital status, or age.

We are committed to helping you in a professional and friendly manner.

WE ARE DEDICATED EXCLUSIVELY TO MILITARY PERSONNEL

Armed Forces Loans is a licensed finance company, dedicated to help Military personnel serving in Army, Navy, Marines, Air Force and Coast Guards in getting their finances back on track, or just obtain some extra cash to buy something they've been dreaming about. We are committed to helping you achieve your goal. Qualify to borrow up to $3,000.

Most of us at AFL have been in the military, or have had experience with the armed forces and understand your needs.

SOFTWARE SOLUTION DEVELOPMENT FOR FINANCIAL COMPANIES

Our software division consists of valued Microsoft Certified Professionals. We are in the process of developing a complete solution for financial companies. The solution will be developed using the Microsoft products. The solution will have application tracking, loan tracking, loan follow up, collection and loan accounting modules.

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Check Mate #865
6306 Miramar Road Suite C
San Diego, CA 92121
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DEFERRED DEPOSIT AGREEMENT AND DISCLOSURE STATEMENT

NAME: ____________ ____________ **DATE:** 2/24/04 1:09:06

PROMISE TO PAY:
You promise to pay us the "Total of Payments", which includes interest, on the due date shown in the Payment Information below.

ARBITRATION: You agree to submit all claims or disputes arising out of or relating in any way to this Agreement to final and binding arbitration under the rules of the American Arbitration Association. The Arbitration Rules for the Resolution of Consumer-Related Disputes will apply, unless the claim or dispute is not eligible for resolution under such rules, in which case the Commercial Arbitration Rules will apply.
By signing this agreement, you acknowledge and agree that you are waiving your right to litigate disputes in a court and to have a jury trial, and that you are agreeing instead to resolve all disputes through binding arbitration.

OTHER TERMS: You have provided us with your personal check for the "Total of Payments". You grant us a security interest in your check, which may be presented to your bank for payment at any time on or after the payment due date. If the check deposited to repay this loan is returned unpaid by your bank, a $15 returned check fee will be charged. If your check is lost, stolen, mutilated or destroyed, and cannot be deposited into your bank account or is returned for any reason, you authorize us or our financial institution to debit your account through Automatic Clearing House ("ACH") for the total loan amount or any portion thereof. If we must send your loan to a collection agency, you agree to pay any collection fees and reasonable attorney fees and other costs to collect the loan.

Federal Truth-In-Lending Act Disclosures

ITEMIZATION OF AMOUNT FINANCED OF .... $ $150.00

Amount Paid Directly To You..... $ $150.00

Prepaid Finance Charge:
Application Fee .... $ ________

ANNUAL PERCENTAGE RATE	FINANCE CHARGE	Amount Financed	Total of Payments
The cost of your credit as a yearly rate.	*The dollar amount the credit will cost you.*	*The amount of credit provided to you.*	*The amount you will have paid after you have made all payments as scheduled.*
[redacted]	$	$ [redacted]	$ $170.47

PAYMENT INFORMATION: One payment in the amount of $ $170.47 due on 3/26/04 (Date) (Year)
SECURITY: You are giving us a security interest in your personal check.
PREPAYMENT: If you pay off early, you will not be entitled to a refund of any part of the finance charge.
See the above terms for additional information about nonpayment and default.

The boxed-in above disclosures are part of the terms and conditions of your agreement with us. The $ ________ Finance Charge disclosed above represents add-on interest imposed in connection with this loan as set forth in California Civil Code Section 1789.35. The Annual Percentage Rate figure above is a measurement of the cost of your loan, expressed as a yearly rate, assuming daily compounding of interest.

Notice of Your Financial Privacy Rights

We respect the privacy of our customers and are committed to treating customer information responsibly. We collect "nonpublic personal information" about you from the following sources: 1) Information we receive from you on applications or other forms; 2) Information about your transactions with us, and 3) Information we received from a consumer-reporting agency.

We do not disclose any nonpublic personal information about our customers or former customers to anyone, except as permitted by law. We restrict access to nonpublic personal information about you to those employees who need to know that information to provide products or services to you. We maintain physical, electronic, and procedural safeguards that comply with federal standards to guard your nonpublic personal information.

By signing below, I declare that I have read and do agree to the above terms of this loan agreement.

Customer Signature ____________ 02/24/04 Date ____________ Witness

08/14/2006 11:23

Page 1 of 4

Loan Document

CASHCALL PROMISSORY NOTE AND DISCLOSURE STATEMENT

Account No.: 539197
Lender: CashCall, Inc.
Address: 17360 Brookhurst Street
Fountain Valley, CA 92708

Date of Note: May 22, 2006
Borrower:
Address:

TRUTH-IN LENDING DISCLOSURE

ANNUAL PERCENTAGE RATE *The cost of your credit as a yearly rate*	FINANCE CHARGE *The dollar amount the credit will cost YOU*	AMOUNT FINANCED *The amount of credit provided to YOU*	TOTAL OF PAYMENTS *The amount you will have paid after all payments are made as scheduled*
59.85 %	$25,120.37	$5,000.00	$30,120.37

PAYMENT SCHEDULE
You will make one payment of $333.48 on July 01, 2006.
You will make 119 monthly payments of $250.31 beginning on August 01, 2006.

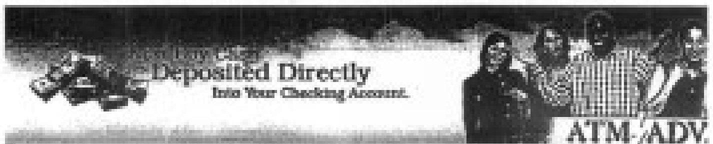
Late Charge: If a payment is late, you will be charged $15.00.

Prepayment: If you pay off this loan early, you will not have to pay any penalty.

Please see the remainder of this document for additional information about nonpayment, default and any required repayment in full before the scheduled date.

ITEMIZATION OF AMOUNT FINANCED	
Amount Financed:	$5,000.00

https://www.cashcall.com/LoanStatus/ViewLoanStatusDoc.aspx 8/10/06



Home | Requirements | Application | Fees | Extension Request | Returning Customers | Status | Contact | Privacy Policy

AtmAdvance.com Fee Disclosure

Amount Financed to Customer	Amount Repaid by Customer	Finance Charge
$85.00	$100.00	$15.00
[redacted]	$200.00	$30.00
$255.00	$300.00	$45.00

*Other Fees

Return Item Charge: Any item that is presented to your bank and is returned for any reason will result in a $15.00 charge.

APR Schedule

Number of Days	Annual Percentage Rate (APR)	Number of Days	Annual Percentage Rate (APR)
5	1288.40%	18	357.90%
6	1073.71%	19	339.07%
7	920.32%	20	322.11%
8	805.28%	21	306.77%
9	715.81%	22	292.83%
10	644.23%	23	280.10%
11	585.66%	24	268.43%
12	536.85%	25	257.69%
13	495.56%	26	247.78%
14	[redacted]	27	238.60%
15	[illegible]	28	230.08%
16	402.64%	29	222.15%
17	378.96%	30	214.74%

Pay day advances are available to all states that legally permit deferred deposit advances. Click here for repayment disclosure terms.

06/16/2006 10:48
Loan Status Component

Online PDL

Northway Financial Corporation Ltd
LOAN AGREEMENT

Customer Name:
Customer Address:
Customer Bank:

7-1-2006 (Month/Day/Year)

Customer Bank Account #:

SSN: [redacted]

In this Loan Agreement (this "Agreement"), the words "you" and "your" mean the customer who has signed this Agreement and who is identified above. The words "us", "our", "we" and Creditor mean the lender in this transaction, Northway Financial Corporation Limited, conducting business in and incorporated under the laws of the Republic of Malta and duly licensed by the Malta Financial Services Authority. The word "Broker" means the broker in this transaction, Northway Broker Limited doing business as Cash Transfer Centers. Carrying on business in and incorporated under the laws of the Republic of Malta duly licensed by the Malta Financial Services Authority.

Promise to Pay: You promise to pay the "Total of Payments" shown in the box below on the due date shown in the "Payment Schedule" in the Disclosure box below, including the:
Broker Fee of: $ 175.00 due to the Broker in consideration for the services which the Broker provides to you.
Amount Financed of: $700.00 repayable to us, and
Loan Charge of: $ 14.00 due to us.

Other Terms: You authorize us or our financial institution to debit your Account through an Automated Clearing House ("ACH") debit at any time on or after the Loan due date for the Total of Payments. If there are insufficient funds in your Account on the day we debit your Account, a $25 fee for insufficient funds will be charged by us and debited from your Account by the Broker. If we must send your Loan to a collection agency, you agree to pay any collection fees and reasonable attorney fees and other costs to collect the Loan.

You acknowledge that the Total Amount payable under this loan agreement has been pledged to third parties.

Because this Agreement is not made until we have accepted it at our office in the Republic of Malta, the laws of the Republic of Malta shall apply to this Agreement.

We provide you the following disclosures solely for the purpose of helping you to understand your transaction with us.

ANNUAL PERCENTAGE RATE The cost of your credit as a yearly rate.	FINANCE CHARGE The dollar amount the credit will cost you.	Amount Financed The amount of credit provided to you or on your behalf.	Total of Payments The amount you will have paid after you have made all payments as scheduled.
[illegible]%	$189.00	$700.00	$ 889.00

Payment Schedule: One payment in the amount of $ 889.00 due on 7-14-2006 (Month/Day/Year)
Security Interest: You are giving us a security interest in your ACH debit in the amount of Total of Payments, plus applicable NSF, collection and reasonable attorney fees.
Prepayment: Even if you pay the Loan prior to its due date, you must pay the full finance charge. There will be no refund on any part of the finance charge.

https://www.cashtransfercenters.com/psc/ps_5/CUSTOMER/CRM/c/RBF_ISSUES_SS.FD_C... 8/7/06

Payday Loans Don't Pay

UofA UNIVERSITY OF ARKANSAS
DIVISION OF AGRICULTURE
Cooperative Extension Service

Various types of credit and the cost:

Type of Credit	Annual Interest Rate	Borrowing Period	Cost of Borrowing $1,000 for one year
Home Mortgage	5.43%	30 years	$56
Home Equity Loan	6.98%	5 years	$72
Car Loan	6.24%	4 years	$64
Personal Loan	12.51%	5 years	$133
Credit Card	18.00%	3 years	$196
"Payday" Loan	**521.42%**	14 days	$5,200

PREPARED STATEMENT OF WILLIAM O. BROWN, JR.

ASSOCIATE PROFESSOR, DEPARTMENT OF ACCOUNTING AND FINANCE, BRYAN SCHOOL OF BUSINESS AND ECONOMICS, UNIVERSITY OF NORTH CAROLINA

SEPTEMBER 14, 2006

Chairman Shelby, Senator Sarbanes and members of the Committee, thank you for the opportunity to speak to you today about the Department of Defense's report on lending practices directed at members of the armed forces. I am currently an Associate Professor in the Department of Accounting and Finance at the University of North Carolina at Greensboro and an economist by training. Over the past two years I have conducted research on payday lending, military compensation and the use of payday loans by military personal. In June of this year, I released a study with my colleague, Dr. Charles B. Cushman, Jr. from The George Washington University, of payday loan attitudes and usage among enlisted military personnel. Our results are cited on several occasions in the Department of Defense Report.

I would like to take this opportunity to share with you some of our key findings and then raise some of my concerns about the methodology and analysis in the recent Department of Defense report. Our study surveyed U.S. enlisted personnel in four branches of the armed service regarding their attitudes toward, and usage of, short-term credit, including payday loans. Our survey is the first systematic survey of enlisted military personnel regarding their economic circumstances and attitudes toward short-term credit. Our analysis is based on empirical data that we collected through a random sample of enlisted military personnel who live near military bases in the United States.

I want to briefly discuss some of our findings that I believe are relevant to the discussion today. Our results indicate that 13% of the 460 enlisted personnel that lived around military bases and responded to our survey had obtained payday loans in the previous year. It is important to note that these numbers are only for enlisted personnel and not all military personnel. It is suggested in the Department of Defense report and elsewhere that our number indicates a higher incidence of payday loan use by members of the military than the general population. However, our results do not provide such a comparison. One would need to compare enlisted personnel with a civilian population of similar age and income in order to make such a comparison. Otherwise, it is an apples to oranges comparison.

Military borrowers report that they use payday loans to help pay bills, for auto and home repairs, family emergencies, relocations and other short term cash flow disruptions. This usage is very similar to that reported by civilian users of payday loans.

The military enlisted personnel who have had a payday loan repay them more quickly than their civilian counterparts. Forty-nine percent of military payday loan borrowers have had two or fewer loans in the last 12 months, and 78% have had four or fewer loans. A 2001 study indicated that only 35% of civilian payday loan users had fewer than four loans. There is little evidence that military users of payday loans use these loans as a substitute for longer term credit. Given the relative low overall default rate for such loans in general, the claims of some opponents to payday lending that payday loan are a threat to military readiness appear unsupported.

Payday loans are but one form of short-term credit available to military personnel. Bounced-check fees, late fees and utility reconnect fees can be and are often more costly than a payday loan. The majority of military survey respondents reported that they choose a payday loan for convenience related reasons. In addition some military personnel reported a lack of alternative options or lack of knowledge about alternative sources of short term loans indicating that the military may need to do a better job of educating enlisted personnel about short term credit options.

As potential decisions regarding the cost and availability of consumer credit by members of the armed services are considered today, I sincerely believe that our comprehensive study, which I have only briefly reviewed here today, would be a valuable body of information to inform your views on this topic. For this reason, I am submitting a copy of our full study for the record today.

As to the Department of Defense report, I have several points of concern and disagreement with the conclusions drawn.

From anecdotes portrayed in the news media and mentioned in the Department of Defense report, one could have the impression that the majority of military personnel are deep in debt, the victims of aggressive payday loan issuers. I am sure many on the anecdotal stories are true. However, anecdotes only tell us what can happen in some cases, they fail to give us a bigger picture view or tell us how often these things happen. There is nothing in the Department of Defense report to give any indication of the prevalence of problem borrowing by military personnel.

There are certainly some military personnel with financial problems and service members with financial problems may have obtained payday loans, but there is no evidence that payday loans are the cause rather than a symptom of these financial problems. This causation connection is completely missing in the Department of Defense report.

Consumer make purchasing decisions based on a number of factors: price, convenience and opportunity being chief among them. This Department of Defense report fails to consider that service members either choose payday loans either because of they lack a better alternative or because they lack available information about better alternatives. In either case, the Department of Defense needs to do a better job of working with financial services firms to provide products that meet the needs of military personnel and educating military personnel about the availability and use of those products.

Finally, the Department of Defense's recommendation to reduce the maximum permissible charge on payday loans to 36% would likely drive lenders out of the market. The problem is that marginal cost of providing small consumer loans is high. This is why so many banks and financial service firms fail to provide such products. When you take choices away from consumers, prices go up, not down. Again, members of the military have a demonstrated need for access to short-term credit. The likely impact of such a rule would be to make military personnel with short term credit needs significantly worse off.

Mr. Chairman and members of this Committee, I thank you for the opportunity to appear before you and will be happy to answer any questions you may have.

Payday Loan Attitudes and Usage Among Enlisted Military Personnel

William O. Brown, Jr., Ph.D.
The University of North Carolina at Greensboro

Charles B. Cushman, Jr., Ph.D.
The George Washington University

July 12, 2006

This study was supported by the non-profit Consumer Credit Research Foundation, which is working to foster economic research into the issues surrounding the availability, choice and cost of consumer credit for middle-class Americans.

Abstract

A survey was conducted of 805 U.S. enlisted military personnel in four branches of the armed services to ascertain their attitudes toward, and usage of, short-term credit, including payday loans. This survey supplements the previous study, *Compensation and Short-Term Credit Needs of U.S. Military Enlisted Personnel* (April 2006), by the authors and is the first systematic survey of enlisted military personnel regarding their economic circumstances and attitudes toward short-term credit.

The findings are significant:

- *"Only a small fraction — 13% — of military enlisted personnel who live in or around military bases have had a payday loan in the last year.* Given the relatively low overall default rate for such loans in general, the claims of some opponents of payday lending that payday loans are a threat to military readiness appear unsupported".
- *"Military enlisted personnel who have had payday loans repay them more quickly and are more likely to remain out of debt than their civilian counterparts:* 49% of military enlisted payday-loan borrowers reported they have used a payday loan no more than twice in the last year (compared to 16% of the general population of payday borrowers); 79% said they had no more than four loans in the last year (compared to 65% of the general population). "
- *"Military enlisted payday-loan borrowers choose to incur payday-loan credit because of the simplicity and speed of the application process, and in 87% of cases the geographic convenience of lender was not a primary factor in their choice of credit.* This finding suggests that putative "targeting" of military borrowers by payday lenders may play little role in the borrowers' actual behavior."
- *"Military enlisted personnel overwhelmingly (83%, vs. 44% of the general population) consider themselves to be financially secure; even among military payday-loan borrowers, 69% consider their personal finances to be secure.* As the authors have previously reported, military incomes are predictable and dependable to an extent not experienced in the civilian workplace."
- *"Like their civilian counterparts, military borrowers use payday loans to help with personal emergencies, auto repairs, relocation and other temporary cash-flow issues."*
- *"Military enlisted payday-loan borrowers are, on average, somewhat younger than their non-borrowing military counterparts (age 28.3 vs. 32.4).* This finding is consistent the authors' prior study suggesting that youth is a factor in reduced precautionary savings and the need for short-term credit to smooth irregular cash outflows."

This survey confirms the authors' view, as articulated in their prior study, that the youngest enlisted personnel are most likely to pursue a payday loan, or to demonstrate other characteristics of irregular cash requirements, such as NSF checks and bill deferral; it is likely that this cohort will most directly benefit from targeted financial education initiatives during the early years of their careers. The survey also confirms that many members of this group are unable to access mainstream unsecured credit products and may benefit from favorable credit bureau reports of their payday-loan repayment histories. Finally, it appears that military personnel who move off-base encounter financial difficulties at a rate that is somewhat higher than that of those who remain on-base; this, too, may be an area where additional financial counseling may be beneficial to some soldiers not fully

aware of the costs associated with off-base residence. Further study of the causes of such difficulties may be warranted.

Payday Loan Attitudes and Usage Among Enlisted Military Personnel

As the authors noted in their prior study, *Compensation and Short-Term Credit Needs of U.S. Military Enlisted Personnel* (April 2006), Congress has made the competitiveness of compensation and benefits for enlisted personnel a priority in order to ensure adequate staffing of an all-volunteer military. Military enlisted personnel now earn salaries commensurate with the base pay of their civilian peers; when supplemental and implicit compensation is included, military compensation frequently exceeds civilian compensation. Because junior enlisted servicemembers are young and frequently involved in household formation, they have generally accumulated little in the way of precautionary savings and face cash-flow irregularities that may occasionally require the use of various types of credit. Few broad studies of this topic exist. In light of the conclusions of the prior research, this study was initiated with the purpose of exploring in more detail the attitudes of enlisted personnel toward short-term credit and the credit usage patterns of such personnel.

Information concerning the awareness, attitudes and usage of military enlisted personnel regarding short-term credit products has been limited primarily to anecdotal data. The Defense Department and others have conducted some service-specific surveys to assess the financial circumstances of members of the military.[1] However, to date there has been no systematic examination of short-term credit needs of military personnel or of specific practices like the use of payday loans and bank overdraft facilities. The purpose of this survey is to provide empirical insights into such matters.

Methodology

This survey was designed as a brief telephone survey of a random sample of enlisted military personnel in the United States. Initial efforts to obtain a statistically usable sample of military payday-loan borrowers proved to be extremely difficult, when only 59, or 13%, of the first 460 enlisted military respondents were found to have been payday-loan borrowers during the preceding year.[2]

---

[1] See, *e.g.*: Congressional Research Service (2005). *Military Pay and Benefits: Key Questions and Answers*. Retrieved April 5, 2006 from http://www.fas.org/sgp/crs/natsec/IB10089.pdf; Defense Manpower Data Center (1999). *Survey of Active Duty Military Personnel*. Retrieved June 26, 2006 from http://www.gao.gov/archive/2000/ns00110t.pdf; General Accounting Office (2004). *Military Personnel: Bankruptcy Filings among Active Duty Service Members*. Retrieved June 26, 2006 from http://www.gao.gov/new.items/d04465r.pdf.

[2] In the absence of a publicly available list of all enlisted military with working phone numbers, the best way to select a nationally representative sample of this population is to randomly draw a sample of households, screen for enlisted members of the military and then, further screen or filter for those that have taken a payday loan in the last twelve months. This idealized approach however, is impractical and cost-prohibitive given the incidence of enlisted military in the population as a whole (0.5% of total U.S. population in 2006) and the presumed low incidence of those within the military that have chosen to obtain a payday loan in the last twelve months. These realities require alternative approaches to reaching the target population that strike a balance among the rigors of a probability-based sample, practicality and resource constraints. The two target audiences within the enlisted military population — those that have and have not used a payday loan in the last twelve months — present different sets of challenges.

Accordingly, in this study, sampling of the enlisted military was based on a combination of national probability sample of all exchanges and area codes in every military installation across the United States as well as a compiled list of self-reported military personnel drawn from earlier surveys. This dual approach ensured a geographical distribution closely representing the U.S.-stationed military personnel.

A total of 59 military enlisted personnel, or 13% of the general military sample, had payday-loan experience within the last twelve months.[3] To augment this cohort, a list of recent payday-loan borrowers was provided by members of the Community Financial Services Association ("CFSA"), a trade association representing the lending industry. Limited military payday customer data were provided by payday lenders, in compliance with applicable privacy laws governing the use of customer information. Participating companies provided appropriate contact information with respect to borrowers who described themselves as active members of the military and who subsequently and voluntarily confirmed to interviewers that they had used a payday loan in the previous twelve months. Names were compiled and called on a random basis by the survey company used for this project.

A total of 404 interviews were completed among non-payday loan borrowers and 401 among borrowers. The margin of error for both samples is ±5% at the 95% confidence level (statistically significant differences are indicated by an asterisk in the tables that follow). All interviews were conducted from May 16-28, 2006 by professional interviewers using a computer-assisted telephone interviewing system. For the non-payday loan borrowers, the final survey results were weighted to match an average — across all branches and ranks — of the off-base and on-base distribution of the military population based on the most recent available data from the Department of Defense.[4]

Key Findings

Demographic Profile

The two distinct samples, military personnel who have and have not used a payday loan in the past twelve months, for purposes of this report, are referred to as "borrowers" and "non-borrowers," respectively. All respondents in this study are enlisted personnel on active duty in the military (by design, officers were excluded from both samples).

Four branches of the military are represented in the samples for this study. The Army has the highest representation, followed by the Air Force, the Navy and the Marines. Coast Guard members do not appear in this study for reasons largely of inaccessibility. Ranks across the sample are similar, with fewer respondents in lower military ranks (e.g. private or airman) and most being corporals or of higher rank. While the sample does not perfectly reflect the distribution of the military population by service branch, responses across service branches do not differ significantly.

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[3]This initial finding suggests that claims that payday loans may be a threat to military readiness are likely to be overstated. On the assumption that military net loss rates mirror overall experience of 5% or less, the percentage of military enlisted personnel with a payday loan in write-off status would be less than 0.6%.

[4]Department of Defense (2001). *1999 Survey of Active Duty Military Personnel.* Reviewed June 26, 2006 at http://www.dmdc.osd.mil/surveys/actdpers99/pdfs/00-008.pdf.

BRANCH/RANK	NON-BORROWER	BOR-ROWER
Army	50%	63%
Navy	18%	15%
Air Force	27%	16%
Marines	5%	6%
Total	100%	100%

BRANCH/RANK	NON-BORROWER	BOR-ROWER
ARMY		
Staff sergeant	* 31%	16%
Sergeant	34%	39%
Corporal	20%	* 34%
Specialist	13%	10%
Private first class	2%	2%
Private	0%	2%
NAVY		
Petty officer 1st class	* 40%	23%
Petty officer 2nd class	29%	34%
Petty officer 3rd class	19%	* 29%
Seaman	8%	10%
Seaman apprentice	2%	2%
Seaman recruit	1%	1%
AIR FORCE		
Technical sergeant	* 35%	16%
Staff sergeant	33%	38%
Senior airman	20%	* 33%
Airman first class	12%	10%
Airman	2%	2%
Airman basic	0%	2%
MARINES		
Staff sergeant	33%	27%
Sergeant	17%	* 40%
Corporal	17%	13%
Lance corporal	17%	13%
Private	17%	7%

Borrowers and non-borrowers differ demographically. For example, borrowers tend to be younger (but closer to the enlisted military's average age of 24), have lower income, and have completed somewhat less formal education compared to their non-loan counterparts. Borrowers are also more likely to be unmarried and to have chosen to live off-base rather than in on-base, military housing.

	NON- BOR-ROWER	BOR-ROWER
AGE		
18-24	21%	* 33%
35-34	39%	* 50%
35-44	* 30%	14%
45+	* 8%	2%
Refused	2%	1%
Mean	32.4	28.3

	NON- BOR-ROWER	BOR-ROWER
INCOME		
Less than $15,000	3%	1%
$15,000 but less than $20,000	6%	* 10%
$20,000 but less than $30,000	20%	* 27%
$30,000 but less than $40,000	23%	29%
$40,000 but less than $50,000	14%	19%
$50,000 but less than $75,000	* 19%	10%
$75,000 but less than $100,000	* 7%	2%
$100,000 or over	* 4%	1%
Refused	* 5%	1%

	NON- BOR-ROWER	BOR-ROWER
EDUCATION		
Some high school	2%	3%
High school grad	44%	48%
Technical/vocational	2%	3%
Some college	29%	* 37%
College grad	15%	6%
Graduate degree	* 8%	2%
Refused	0%	1%

Personal Financial Situation

Among borrowers, 69% describe their personal financial situation as very secure (14%) or fairly secure (55%). Close to one-third (30%) report that their finances are very shaky (10%) or fairly shaky (20%). This proportion is significantly higher than among non-borrowers; among that group, only 17% consider their finances to be fairly (11%) or very shaky (6%).

"Would you describe the state of your own personal finances these days as very secure, fairly secure, fairly shaky or very shaky?"

	NON- BOR-ROWER	BOR-ROWER	National Sample[3] n=759
NET SECURE	* 83%	69%	44%
Very secure	* 29%	14%	20%
Fairly secure	54%	55%	24%
NET SHAKY	16%	* 29%	56%
Fairly shaky	10%	* 20%	24%
Very shaky	6%	9%	32%
Don't know	1%	1%	0%

However, military borrowers' assessments of their personal finances are more optimistic than those of a demographically similar sample of the U.S. population. According to the *General Social Survey* conducted by the University of Michigan in 2002, only 44% of respondents considered their finances to be very secure (20%) or fairly secure (24%); the majority (56%) stated that their finances were either fairly shaky (24%) or very shaky (32%).

Most payday advance borrowers report their financial situation has improved or stayed the same over the last few years. A majority say they are better off (46%) or about the same (38%) financially as they were a few years ago. Only 16% of payday advance borrowers report that their finances are getting worse. This number, while low overall, is higher than among non-borrowers (9%).

"During the last few years, has your financial situation been getting better, worse, or has it stayed the same?"

	NON- BOR-ROWER	BOR-ROWER
Getting better	49%	46%
Getting worse	9%	* 16%
Stayed the same	42%	38%
Don't know	<1%	<1%

[3] *General Social Survey*, 2002. Respondents between 18 and 34 years of age, making less than $40,-000 in annual income, with a high school education.

Within both the payday advance and the non-borrower sample, close to 8 in 10 participants (78%) have been moved or redeployed during the course of their service. This fact of military life reportedly has had no impact on most respondents' financial situation (54% and 50% no effect for military and payday respectively). Of those who report their move impacted them financially, the effect is equally positive and negative.

"Would you say your redeployment or move worsened, improved or had no effect on your financial situation? If 'worsened or improved,' would you say it (worsened/improved) your financial situation somewhat or a great deal?"

	NON- BOR-ROWER	BOR-ROWER
	n=307	n=321
NET WORSENED	25%	28%
Worsened a great deal	10%	9%
Worsened somewhat	15%	19%
NET IMPROVED	21%	22%
Improved somewhat	15%	16%
Improved a great deal	6%	6%
No effect	54%	50%

Most borrowers and non-borrowers have a car loan (77% and 73% respectively), and similar proportions of each group have a home equity line of credit (16% non-borrowers, 12% borrowers). Credit card access however, is where the two groups are appreciably different. Significantly fewer payday loan borrowers have either a secured or unsecured bank credit card than among non-borrowers. While credit cards are held by nine in ten people in the non-borrower group (91% report some type of bank credit card), just over 70% of the payday loan borrowers report having one (71% have a credit card).

"Do you have any of the following?" (Select all that apply)

	NON- BOR-ROWER	BOR-ROWER	National[6]
Home mortgage	* 31%	13%	55%
Home equity loan/line of credit	16%	11%	26%
Car loan	73%	77%	74%
NET CREDIT CARD	91%	71%	92%
Secured bank credit card	37%	31%	42%
Unsecured bank credit card	* 54%	40%	50%

The profile of the payday loan borrower in the military differs from that of the non-borrower in their reported ability to pay their bills on a monthly basis. While close to 9 in 10 non-borrowers

[6] UBS/Gallup Survey, July 2004.

say they never or seldom have a problem playing their bills on time, the ratio drops to 6 in 10 among payday loan borrowers.

"Sometimes, people are just unable to pay all of their regular, monthly bills on time. Thinking about the last six months, how often would you say you had to pay a regular monthly bill late?"

	NON- BOR-ROWER	BOR-ROWER
Frequently	3%	* 14%
Occasionally	7%	25%
Seldom	24%	* 41%
Never	* 65%	21%

This same pattern is true for credit card debt repayment. One-third (33%) of payday borrowers with a credit card report they hardly ever pay the balance in full. This is significantly higher than non-payday borrowers — only 24% report they hardly ever pay their full balance monthly. Most of this group (49%) always pay their monthly balance in full (compared to only 34% of payday loan borrowers).

"In the past 12 months, how often did you pay off your monthly credit card balance in full?"

	NON-BORROWER n=293	BOR-ROWER n=241
Almost always	* 49%	34%
Sometimes	24%	28%
Hardly ever	24%	33%
Don't know (DNR)	3%	5%

Also, payday loan borrowers are more than twice as likely to have bounced a check as non-borrowers (78% versus 35% respectively).

"Sometimes people overdraw a checking account or bounce a check when they are short on cash. Have you ever bounced a check or overdrawn an account when you were short on cash?"

	NON-BORROWER	BOR-ROWER
Yes	35%	* 78%
No	* 64%	22%

Financial Attitudes and Behaviors

Military personnel who have used payday loans and those who have not hold some similar views toward the overall value of credit; both groups agree that most people benefit from the use of credit. Both also would like to see the government limit the interest rates that lenders can charge even if it means fewer people will be able to get credit. However, non-borrowers are more likely to agree there is too much credit available than their counterparts who have used payday loans. This attitudinal difference is consistent with payday borrowers reporting less access to (secured and unsecured) bank credit cards.

"Please tell me whether you strongly agree, agree somewhat, disagree somewhat, or strongly disagree with each of the following statements."

"Most people benefit from the use of credit."

	NON-BORROWER	BOR-ROWER
NET AGREE	72%	78%
Strongly agree	30%	32%
Agree somewhat	42%	46%
NET DISAGREE	29%	23%
Disagree somewhat	17%	14%
Strongly disagree	12%	9%

"The government should limit the interest rates that lenders can charge even if it means fewer people will be able to get credit."

	NON-BORROWER	BOR-ROWER
NET AGREE	75%	74%
Strongly agree	42%	40%
Agree somewhat	33%	34%
NET DISAGREE	25%	26%
Disagree somewhat	20%	18%
Strongly disagree	5%	8%

"There is too much credit available today."

	NON-BORROWER	BOR-ROWER
NET AGREE	75%	63%
Strongly agree	51%	37%
Agree somewhat	24%	26%
NET DISAGREE	25%	37%
Disagree somewhat	18%	21%
Strongly disagree	7%	16%

Another key difference between the groups is how they view different types of loans. Military personnel who have used payday loans are much more likely to make a distinction based on duration of the loan; 58% view short-term and long-term loans differently, while a slight majority of non-borrowers view all types of loans the same.

"Which of the following best describes your view of money that is loaned to you by a financial institution?"

	NON-BORROWER	BOR-ROWER
I view long term loans differently than short-term	47%	42%
I view all loans the same	53%	58%

Short-Term Loan Needs and Behaviors

Most military respondents (both borrowers and non-borrowers) state that they have enough different choices to meet their short-term borrowing needs (63% and 85% respectively). However, more than twice as many borrowers believe they do not have enough choices (37% compared to 15% of non-borrowers).

"Do you think you have or don't have enough different choices for meeting your short term borrowing needs?"

	NON-BORROWER	BOR-ROWER
I have enough choices	85%	62%
I don't have enough choices	15%	38%

One quarter of enlisted military personnel (from the non-borrower sample) needed some form of short-term credit in the past twelve months. Most met this need by borrowing from a bank (43%), credit union (17%) or other finance company (10%). This source of borrowing was the first choice for the vast majority of non-borrowers (87%). For the remaining 13%, half did not use their first borrowing choice because they were declined (46%).

Use of Payday Loans

Payday loans have very high awareness among the non-borrower group (89%), with half reporting they first heard about payday loans through advertising (59%). Another 27% say they first learned about payday loans from the military (19%) or from a friend or family member (8%).

"Where did you first hear about payday loans?"

	NON-BOR-ROWER n=400	BOR-ROWER n=362
Advertising by companies	59%	61%
The military told me about it	19%	10%
Friend/Family	8%	14%
Store Presence	7%	8%
Television	4%	5%
Other	4%	2%

For most payday loan borrowers, the most important reason they chose payday loans over another source for their short-term loan is because the process is quick and easy (40%). Other reasons that top the list are faster approval (15%). Significantly, fewer than one-in-five (18%) say that they chose a payday loan because there were no other alternatives. Also, only 13% were influenced primarily by the geographic proximity of a payday lender; this finding suggests that claims by various opponents of payday lending that lenders "target" military borrowers may be misguided.

"What was the MOST IMPORTANT reason for choosing a payday loan rather than another source?"

	BOR-ROWER n=401
Quick and easy process	40%
No other alternative	18%
Faster approval	15%
More convenient location	13%
Less impact on credit	4%
Short term/no revolving debt	2%
Greater privacy	2%
Less paperwork	1%
Less expensive than other sources	1%
Recommendation	1%
Other	3%

Only one fourth of payday loan users indicate that the payday loan was not their first choice for meeting their short term borrowing needs. Of those, the plurality said their first choice was a loan from a friend or relative or that they did not know another source.

"If a payday loan was not your first choice, what was your first choice?"

	BOR-ROWER n=390
Loan from a friend/relative	40%
Don't know another source	29%
Bank or savings loan	17%
Military Program	6%
Finance Company	2%
Pawn shop	2%
Credit card company	2%
Credit union	1%
Bounce Check	0%
Other	1%

The number-one reason cited for needing a payday loan is to pay bills followed by family emergencies, household needs and travel. Thirteen percent (13%) needed the payday loan to help with an auto payment or repair.

"Thinking about the last payday loan you received; could you tell me specifically what you needed the money for?"

	BOR-ROWER n=302
Bills	30%
Family emergency	14%
Relocation	9%
Automotive repair	7%
Household needs	9%
Travel	7%
Vehicle payment	6%
Home improvement	2%
Pay off debt	1%
Don't know	11%
Other	6%

Most borrowers have taken fewer than four payday loans in the last twelve months, and 12% report only taking one. The median number of payday loans in the last twelve months is two.[7]

[7] Elliehausen, G. and E. C. Lawrence (2001) observed much higher rates of repeat usage, and longer periods of indebtedness, among the general population than in the present study of military enlisted borrow-

"Approximately how many times in the past 12 months have you received a payday loan?"

	BOR-ROWER n=401
1	32%
2	17%
3	13%
4	9%
5,6	8%
7,8	2%
9,10	2%
11 20	2%
21 50	2%
Don't know	7%
Mean	4.10
Median	2.00

Most people using payday loans borrow between $200 and $500 (59%) and most can correctly recall the fee they paid. Slightly more borrowers are dissatisfied (41%) than are satisfied (39%) with the fee amount they were charged with the balance, 19%, holding a neutral view.

"What was the dollar amount you borrowed (not including the fee)?"

	BOR-ROWER n=401
0-100	8%
101-200	20%
201-300	30%
301-400	11%
401-500	18%
500+	6%
Don't know	6%
Mean	348
Median	300

More than 8 in 10 (84%) say they were told about the annual percentage rate but nearly two-thirds (64%) were unable to recall it and only 9% cited an APR over 8%.

ers. *Payday Advance Credit in America: An Analysis of Customer Demand*, Monograph No. 35, Georgetown University, Credit Research Center. Only 16% of the general population of payday-loan borrowers had fewer than two loans in the last year; 65% of the general population had fewer than four loans.

Two in three borrowers are satisfied overall with their last payday loan (63%) and relatively few say they are dissatisfied (20%). Those who are dissatisfied cite the cost (70%) as the main reason.

"Overall, how satisfied or dissatisfied are you with your experience with your most recent payday loan?"

	BORROWER n=364
NET SATISFIED	39%
Very satisfied	13%
Somewhat satisfied	26%
NET DISSATISFIED	41%
Somewhat dissatisfied	20%
Very dissatisfied	21%
Neither satisfied or dissatisfied	19%

A complete copy of the instrument with annotated figures is provided in the appendix of this report.

Discussion and Conclusion

As suggested in the authors' earlier study, these data underscore the importance of a thorough, comprehensive education in financial issues for military personnel, including the chain of command. While U.S. military personnel receive base pay comparable to that of their civilian counterparts, the youngest servicemembers — like the youngest members of the civilian workforce — experience financial stresses associated with household formation make more use of payday-loan services than others in the military. These stresses can be exacerbated when youthful servicemembers first decide to move off-base and assume responsibility for the economic welfare of family members. While the acquisition of durable goods can provide a stream of perceived economic benefits at this stage in life, problems associated with the use of credit for such acquisitions can frequently be avoided through education.

The authors continue to recommend that the Defense Department pursue a training program in financial awareness for all military personnel, particularly targeted on the chain of command and younger enlisted personnel.

About the Authors

William O. Brown, Jr. recently joined the faculty at The University of North Carolina at Greensboro, where he serves as Associate Professor of Finance. Before moving to UNC, Prof. Brown taught at Claremont McKenna College for 12 years, where he served as the Associate Director of the Financial Economics Institute. Prior to that, he was a member of the economics departments at the University of Louisville and Ball State University. He received his B.A. from Clemson University in 1988 and his Ph.D. in Applied Economics from Clemson University in 1993. Prof. Brown's research focuses on asset price markets, corporate governance and university governance. He has published articles in professional journals including the *Journal of Finance* and the *American Economic Re-*

view. He has worked on a variety of consulting projects related to public policy issues in California, including after-school programs, the revision of tax laws and tribal gaming.

Charles B. Cushman, Jr. is Associate Dean of the Graduate School of Political Management at The George Washington University. A West Point graduate, he served nine years in the Army as an armor officer, commanding troops in Germany and at Fort Knox, Kentucky, and completing his service as an instructor at West Point. Prior to GWU, Dr. Cushman was a consultant to the Defense Department, and to the Space Commission headed by current Secretary of Defense Donald Rumsfeld. He has also been a lobbyist working to advance peace in the Middle East, and a defense advisor to Rep. David Price (D-NC) in the 105th Congress. He teaches courses on politics and public policy and national security policymaking. Prof. Cushman received his Ph.D. from The University of North Carolina at Chapel Hill.

Appendix A: Call Dispositions

Call Dispositions

Sample						
Total	6,228	Usable	4,181	Est. Usability	67.14%
Released	6,228	Unusable	2,047	Est. Eligibility	40.89%
Unreleased	-	Qualified	2,044	Est. Response	16.44%

% of -->	Qualified	Usable	Released	Total	TOTAL
Unusable			**28.42%**	**28.42%**	**1,770**
Disconnected			26.11%	26.11%	1,626
Fax			0.69%	0.69%	43
Gov't/Business			1.62%	1.62%	101
Usability Unknown	**27.66%**	**13.52%**	**13.52%**	**13.52%**	**842**
No Answer	26.67%	13.04%	13.04%	13.04%	812
Busy	0.99%	0.48%	0.48%	0.48%	30
Usable/Eligible	**17.03%**	**8.32%**	**5.59%**	**5.59%**	**348**
Complete	16.44%	8.04%	5.39%	5.39%	336
Break-Off	0.59%	0.29%	0.19%	0.19%	12
Usable/Eligibility Unknown	**55.32%**	**66.13%**	**44.40%**	**44.40%**	**2,765**
Refused	27.57%	32.96%	22.13%	22.13%	1,378
Language Barrier	0.30%	0.36%	0.24%	0.24%	15
Answering Machine	12.22%	14.61%	9.81%	9.81%	611
Call Back-Retired	5.90%	7.06%	4.74%	4.74%	295
Privacy Mgr/Cell	4.32%	5.17%	3.47%	3.47%	216
Strong Refusal	5.00%	5.98%	4.01%	4.01%	250
Usable/Ineligible		**12.03%**	**8.08%**	**8.08%**	**503**
Not in Military		4.62%	3.10%	3.10%	193
Not Pay Grade		4.69%	3.15%	3.15%	196
No Pay Day Loan		1.55%	1.04%	1.04%	65
Not in the Navy		1.17%	0.79%	0.79%	49

Appendix B: Quantitative Research Topline Data

May 2006
N=401 NON-BORROWER; N=404 PAYDAY-LOAN BORROWER
MARGIN OF ERROR FOR EACH SAMPLE =+/-5% AT 95% CONFIDENCE INTERVAL

SCREENERS

S1. Are you currently a member of the United States military?

	Non-Borrower n=401	Borrower n=404
Yes	100%	100%

S2. Can you please tell me your current rank?

	Non-Borrower	Borrower
Army Staff Sergeant	17% (33%)	16% (25%)
Army Sergeant	16% (31%)	20% (32%)
Army Corporal	4% (7%)	4%* (14%)
Army Specialist	8% (18%)	9% (14%)
Army Private First Class	4% (7%)	7% (11%)
Army Private	1% (2%)	2% (3%)
Army Private (Recruit)	0% (0%)	0% (0%)
Total Army	63% (100%)	52% (100%)
Air Force Technical Sergeant	10% (31%)	3% (16%)
Air Force Staff Sergeant	9% (34%)	6% (39%)
Air Force Senior Airman	5% (20%)	5% (34%)
Air Force Airman First Class	3% (13%)	2% (10%)
Air Force Airman	1% (2%)	0% (2%)
Air Force Airman Basic	0% (0%)	0% (2%)
Total Air Force	30% (100%)	15% (100%)
Marines Staff Sergeant	1% (25%)	2% (25%)
Marines Sergeant	1% (19%)	2% (38%)
Marines Corporal	1% (19%)	1% (21%)
Marines Lance Corporal	1% (25%)	1% (13%)
Marines Private	1% (13%)	0% (4%)
Total Marines	4% (100%)	6% (100%)
Petty Officer First Class	12% (67%)	3% (21%)
Petty Officer Second Class	3% (19%)	6% (38%)
Petty Officer Third Class	1% (7%)	5% (30%)
Seaman	1% (4%)	1% (7%)

Seaman Apprentice	0% (2%)	1% (3%)
Seaman Recruit	0% (2%)	0% (2%)
Total Navy	14% (100%)	15% (100%)

Parenthetical percentages indicate rank as a percentage of its respective branch of the armed forces.

1. Would you describe the state of your own personal finances these days as very secure, fairly secure, fairly shaky or very shaky?

	Non-Borrower	Borrower
Very secure	29%*	14%
Fairly secure	54%	55%
Fairly shaky	11%	20%
Very shaky	6%	10%
Don't know (DNR)	1%	1%

* indicates significance at the 95% level.

2. During the last few years, has your financial situation been getting better, worse, or has it stayed the same?

	Non-Borrower	Borrower
Getting better	49%	46%
Getting worse	9%	16%
Stayed the same	42%*	38%
Don't know (DNR)	0%	0%

3. Thinking about your friends and the people you went to school with who are not in the military, do you think YOU are generally better off financially, generally worse off financially, or about the same as they are?

	Non-Borrower	Borrower
Generally better off financially	41%	48%
Generally worse off financially	13%	13%
About the same off financially	36%	34%
Don't know (DNR)	10%	6%

4. Have you ever been redeployed or moved by the military?

	Non-Borrower	Borrower
Yes	78%	77%
No	22%	23%

[IF YES IN Q4]

5. Would you say your redeployment or move worsened, improved or had no affect on your financial situation? If "worsened or improved", would you say it (worsened/improved) your financial situation somewhat or a great deal?

	Non-Borrower	Borrower
	n=315	n=307
Worsened a great deal..........	10%	9%
Worsened somewhat...........	16%	19%
Net: worsened.....................	26%	28%
Improved somewhat............	15%	16%
Improved a great deal	6%	6%
Net: improved.....................	21%	22%
No effect	54%	50%

6. Please tell me whether you strongly agree, agree somewhat, disagree somewhat, or strongly disagree with each of the following statements.

Most benefit from the use of credit

	Non-Borrower	Borrower
Strongly Agree....................	30%	31%
Agree somewhat..................	42%	47%
Net: agree..........................	72%	78%
Disagree somewhat.............	17%	15%
Strongly Disagree	11%	8%
Net: disagree	28%	23%

There is too much credit available today

	Non-Borrower	Borrower
Strongly Agree....................	51%*	37%
Agree somewhat..................	24%	26%
Net: agree..........................	75%	63%
Disagree somewhat.............	18%	21%
Strongly Disagree	7%	16%*
Net: disagree	25%	37%

The government should limit the interest rates that lenders can charge even if it means fewer borrowers will be able to get credit.

	Non-Borrower	Borrower
Strongly Agree....................	42%	40%
Agree somewhat..................	33%	34%

Net: agree	75%	74%
Disagree somewhat	20%	18%
Strongly Disagree	5%	8%
Net: disagree	25%	26%

7. Do you have any of the following? *(select all the apply)*

	Non-Borrower	Borrower
Car loan	73%	77%
Unsecured bank credit card	54%*	40%
Secured bank credit card	37%	31%
Home mortgage	31%*	13%
Home equity loan or line of credit	16%	11%
None (DNR)	7%	7%

[IF CREDIT CARD, secured or unsecured]

8. In the past 12 months, how often did you pay off your monthly credit card balance in full?

	Non-Borrower n=293	Borrower n=241
Almost always	49%*	34%
Sometimes	25%	28%
Hardly ever	24%	33%*
Don't know (DNR)	3%	5%

9. Which of the following best describes your view of money that is loaned to you by a financial institution?

	Non-Borrower	Borrower
I view long-term loans differently from short-term loans	47%	58%*
I view all types of loans the same	53%*	42%

For now, let's talk about short-term loans or borrowing, which for purposes of this survey is a smaller loan that is paid back in a short period of time.

10. Have you needed a short-term loan in the past 12 months?

	Non-Borrower	Borrower
Yes	26%	70%*
No	74%*	30%

[IF YES IN Q10]

11. Thinking about the last time you needed a short-term loan, where did you go to borrow money? *(open-ended with pre-codes)*

	Non-Borrower n=106	Borrower n=346
Bank or savings and loan	43%*	27%
Payday loan	9%	42%*
Credit union	17%*	6%
Finance company	10%	9%
Credit card company	6%*	1%
Loan from a friend or relative	4%	3%
Car title loan	1%	1%
Home equity loan	0%	1%
Home equity line of credit	0%	1%
Pawn shop	0%	1%
Bounce check	0%	0%
Military aid program	8%	8%
Other	2%	2%

[IF PAYDAY LOAN IN Q11]

12. Did you receive the payday loan from a company on the Internet, or from a store?

	Non-Borrower n=8	Borrower n=99
Store	90%	94%
Internet	10%	6%

13. Was the **[INSERT RESPONSE FROM Q11]** your first choice for borrowing money for this short term need?

	Non-Borrower n=106	Borrower n=279
Yes	88%*	73%
No	12%	27%*

[IF NO IN Q13]

14. What was your first choice? *(open-ended with pre-codes)*

	Non-Borrower n=13	Borrower n=76
Bank or savings and loan	39%	41%
Loan from a friend or relative	22%	21%
Credit union	12%	8%

Credit card company	10%*	5%
Payday loan	5%	5%
Military Program	7%	8%
Finance company	0%	7%
Home equity line of credit	0%	1%
Pawn shop	0%	1%
Car title loan	0%	0%
Home equity loan	0%	0%
Bounce check	0%	0%
Other	12%	2%

15. Why did you not go with your first choice? *(open-ended)*

	Non-Borrower n=13	Borrower n=76
Declined	46%	72%*
High Interest Rate/Too Expensive	15%*	6%
No Other Source	15%	3%
Borrower Service	8%	6%
Not Fast Enough	8%	6%
Don't Remember	0%	3%
Other	8%	3%

[IF YES IN Q13]

16. Thinking about the last time you borrowed money from **[INSERT RESPONSE FROM Q11]**, could you tell me specifically what you needed the money for? *(open-ended)*

	Non-Borrower n=93	Borrower n=204
Bills	26%	29%
Automotive Repair	13%	15%
Pay Off Debt	11%	8%
Travel	9%	10%
Family Emergency	9%	6%
Household Needs	5%	6%
Vehicle Payment	5%	5%
Relocation	5%	6%
Home Improvement	5%	4%
Other	2%	7%
Don't Know (DNR)	10%*	4%

[IF NOT BOUNCE CHECK IN Q14]

17. Sometimes people overdraw a checking account or bounce a check when they are short on cash. Have you ever bounced a check or overdrawn an account when you were short on cash?

	Non-Borrower	Borrower
Yes	35%	78%*
No	64%*	21%
Don't know (DNR)	1%	1%

[IF YES IN Q17]
18. Which of the following best describes your situation

	Non-Borrower n=143	Borrower n=311
My bank or financial institution charges a fee for bounced checks and disclosed the fee amount to me	77%	87%*
I do not recall my bank telling me whether they charge a fee or not	15%*	4%
My bank or financial institution charges a fee but never disclosed the fee amount to me	7%	6%
My bank or financial institution does not charge a fee for bounced checks	1%	2%

19. Sometimes, people are just unable to pay all of their regular, monthly bills on time. Thinking about the last six months, how often would you say you had to pay a regular, monthly bill a little bit late? Would you say you did this…

	Non-Borrower	Borrower
Frequently	3%	14%*
Occasionally	7%	25%*
Seldom	24%	41%*
Never	65%*	21%

20. Do you think you have or don't have enough different choices for meeting your short term borrowing needs?

	Non-Borrower	Borrower
I have enough choices	85%*	62%
I DON'T have enough choices	15%	38%*

Now let's talk about payday loans.

A payday loan is a short-term loan that you pay back on your next payday, also known as a payday advance or a deferred deposit loan.

21. Before this survey, had you ever heard of payday loans?

	Non-Borrower n=392	Borrower n=298
Yes	89%	100%*
No	11%*	0%

[IF YES IN Q21]

22. Where did you first hear about payday loans?

	Non-Borrower n=400	Borrower n=362
Advertising by companies	59%	61%
The military told me about it	19%	10%
Friend/family	8%	14%*
Store Presence	7%	8%
Television	4%	5%
Other	4%	2%

[IF NOT USED PAYDAY LOAN IN Q11]

23. Have you ever received a payday loan?

	Borrower n=209
Yes	100%*
No	0%
Don't know (DNR)	0%

24. Thinking about the last payday loan you received; could you tell me specifically what you needed the money for?

	Borrower n=302
Bills	30%
Family Emergency	14%
Relocation	9%
Automotive Repair	7%
Household Needs	9%
Travel	7%
Vehicle Payment	6%
Home Improvement	2%

Pay off debt	1%
Don't Know	11%
Other	6%

25. Did you get the payday loan on the internet or did you go into an actual store?

	Borrower n=302
Online	5%
Store	95%

26. Approximately how many times in the past 12 months have you received a payday loan?

	Borrower n=401
1	32%
2	17%
3	13%
4	9%
5-6	8%
7,8	2%
9,10	2%
11-20	2%
21-50	2%
Don't Know (DNR)	7%
Mean	4.1
Median	2.0

For the next few questions, please think about your experience with your most recent payday loan.

27. Before you received your payday loan, did you consider sources other than payday loan companies for borrowing the cash?

	Borrower n=302
Yes	49%
No	51%

[IF YES IN Q27]
28. What other sources did you consider?

	Borrower n=147
Bank or savings and loan	48%

Loan from a friend or relative	41%
Credit card company	5%
Credit union	8%
Military Assistance Program	6%
Finance company	3%
Pawn shop	3%
Car title loan	1%
Bounce check	0%
Other	2%

29. What was the MOST IMPORTANT reason for choosing a payday loan rather than another source?

	Borrower n=401
Quick and easy process	40%
Faster approval	15%
No other alternative source	18%
A more convenient location	13%
Less harm to my credit	4%
A short term or no revolving debt	2%
Greater privacy	2%
Less expensive than other sources for borrowing cash	2%
Less paper work	1%
Recommendation	1%
Other	3%

30. If a payday loan was not available to you, which source would you have used to borrow the cash?

	Borrower n=390
Loan from a friend or relative	40%
Bank or savings and loan	17%
Military Program	6%
Finance company	2%
Credit card company	2%
Pawn shop	2%
Credit union	1%
Bounce check	0%
Car title loan	0%
Don't know of any other source	29%
Other	1%

Again, please think about your experience with your most recent payday loan for the next few questions.

31. What was the dollar amount you borrowed, NOT INCLUDING THE FEE?

	Borrower n=283
0-100	8% (47%)
101-200	20% (44%)
201-300	30% (41%)
301-400	11% (82%)
401-500	18% (62%)
500+	6% (41%)
Don't know (DNR)	6%
Mean	348
Median	300

Parenthetical percentages indicate the proportion of respondents in each loan gradation that correctly listed the amount of the fee according to the industry standard of $15 fee per every $100 lent.

32. How satisfied or dissatisfied are you with the fee that you paid to receive the payday loan?

	Borrower n=364
Very satisfied	13%
Somewhat satisfied	26%
Net: satisfied	39%
Neither satisfied nor dissatisfied	19%
Somewhat dissatisfied	20%
Very dissatisfied	21%
Net: dissatisfied	41%
Don't know (DNR)	1%

33. Were you given any information on the annual percentage rate of interest when you got this payday loan?

	Borrower
Yes	84%
No	16%

[IF YES IN Q34]

34. What was the annual percentage rate of interest?

	Borrower n=337
0-2	5%
2.01-4	15%
4.01-6	8%
6.01-8	2%
8+	9%
Don't know (DNR)	64%
Mean	8.0
Median	4.1

35. Overall, how satisfied or dissatisfied are you with your experience with your most recent payday loan?

	Borrower
Very satisfied	28%
Somewhat satisfied	35%
Net: satisfied	63%
Neither satisfied nor dissatisfied	17%
Somewhat dissatisfied	8%
Very dissatisfied	12%
Net: dissatisfied	20%
Don't know (DNR)	1%

[IF DISSATISFIED IN Q36]

36. Why were you dissatisfied with the payday loan?

	Borrower n=77
Too costly	70%
Create a cycle of debt	11%
Inconvenient	10%
Borrower service was not good	4%
Other	5%

I just have a few final questions for classification purposes only.

37. How long do you plan to remain in the military?

	Non-Borrower	Borrower
1-3 years	27%	33%

4-6	18%	18%
7-10	13%	14%
11-20	26%	26%
20+	2%	3%
Don't know (DNR)	14%	11%
Mean	8.81	8.32
Median	6.00	5.00

38. Do you live on-base or off-base?

	Non-Borrower	Borrower
On-base	44%	37%
Off-base	56%	63%

39. Which of the following best describes your marital status?

	Non-Borrower	Borrower
Married or living with partner	82%*	68%
Separated	2%	7%*
Divorced	5%	7%
Never Married	11%	18%*
Refused	1%	0%

[IF MARRIED]
40. Is your spouse also in the military?

	Non-Borrower	Borrower
	n=332	n=271
Yes	13%	11%
No	87%	89%

41. Could you please tell me your age?

	Non-Borrower	Borrower
18-24	21%	33%*
25-34	41%	50%*
35-44	30%*	14%
45+	8%*	2%
Don't know (DNR)	1%	2%
Mean	32.42	28.34

42. For tabulation purposes only, please tell me which of the following income categories includes your total household income for 2004 – just stop me when I read the correct category:

	Non-Borrower	Borrower
Less than $15,000	3%	1%
$15,000 but less than $20,000	6%	10%*
$20,000 but less than $30,000	20%	27%
$30,000 but less than $40,000	23%	29%
$40,000 but less than $50,000	14%	19%
$50,000 but less than $75,000	19%*	10%
$75,000 but less than $100,000	7%*	2%
$100,000 or over	4%*	1%
Don't know/refused	5%*	1%

43. What was the last grade you completed in school?

	Non-Borrower	Borrower
0-11	2%	3%
High school grad	44%	48%
Technical/vocational school...	2%	3%
Some college...........................	29%	37%*
College grad............................	15%*	6%
Graduate degree	8%*	2%
Refused	0%	1%

44. Record Gender

	Non-Borrower	Borrower
Male	78%	80%
Female.....................................	22%	20%

PREPARED STATEMENT OF LYNN DRYSDALE

STAFF ATTORNEY, JACKSONVILLE AREA LEGAL AID

SEPTEMBER 14, 2006

Introduction

Chairman and members of the Committee, thank you for the opportunity to speak in support of the *Department of Defense Report on Predatory Lending Practices Directed at Members of the Armed Forces and Their Dependents* and to illustrate the problems and proposed solutions in the report with the experiences of military families I represent in Florida.

Since 1988, I have been a consumer protection attorney with Jacksonville Area Legal Aid, Inc. and represent low income consumers in Duval County. I am co-author of a law review article titled "The Two-Tiered Consumer Financial Services Marketplace: The Fringe Banking System and its Challenge to Current Thinking About the Role of Usury Laws in Today's Society," published in the *South Carolina Law Review* in 2000. This widely quoted article covers the high cost loan products detailed in the Department of Defense report to Congress. I serve on the Jacksonville Bankruptcy Bar Association Board of Directors and have been a trainer for Judge Advocates, legal officers and Senior Leadership at Naval Air Station Jacksonville.

Duval County, FL is home to Jacksonville Naval Air Station and Mayport Naval Station where about thirty thousand service members plus their families and retirees live and work. Over the years I have represented many of these Sailors and their dependents as well as veterans who have fallen victim to the predatory loan practices described in the DOD Report to Congress. Today I will use their stories to put a face on the problems identified in the Department of Defense report and to support the recommended solutions to those problems.

Why military consumers are ideal customers for quick cash lenders

Despite their moderate incomes, many Service members are young and financially inexperienced, with young families and tight budgets. They are attractive to lenders because their pay is certain, their residence is easy to find and they live in concentrated areas. They have stable and steady employment and, as members of the Armed Forces, unlike civilian borrowers, they are easy to collect from because the lender routinely contacts their employer pre-judgment. Service members must comply with the Uniform Code of Military Justice and could lose rank, miss opportunities for advancement in rank and pay, and could lose their jobs for failure to honor their debts.

Military pay arrangements benefit lenders

Members of the Armed Forces are required to maintain bank accounts in order to receive direct deposit of their federal pay. This makes them attractive to payday lenders whose only qualifications for quick cash loans are a steady source of income and an open bank account. Because they must have a bank account, Service members have added incentive to pay additional sums to renew loans in order to keep the checks provided as security from being returned for insufficient funds. The Uniform Code of Military Justice penalizes a service member's failure to make good on a check drawn on his or her bank account. Many, if not most, lenders can and do ask military borrowers to sign over electronic access to their bank accounts to repay loans. Some lenders require their loans to be repaid by allotment of military pay, which means that funds are taken out of their pay and sent to creditors before the Service member has an opportunity to use the money to pay rent or utilities. This is a form of payment that is supposed to be voluntary and a convenience to the Service member but has been turned into a way to ensure that high cost lenders get paid before funds are available to pay pressing bills or feed the family. A few lenders even require borrowers to sign wage assignments to insure payment is made timely, despite the federal prohibition on wage assignments in loans to enlisted Service members.

While these Service members have unique features, such as needing to prove financial responsibility, to strive for advancement in rank and pay, and to preserve security clearances, their experiences with predatory lending are replicated in low to moderate income families in civilian life. The Department's report, in many ways, describes the plight of all low to moderate income consumers who struggle to make ends meet in a predatory lending environment.

In my testimony, I will highlight three main points:

1. Predatory loan products and services are expanding rapidly, including quick cash loans offered in exchange for a personal check to be deposited next pay-

day, loans secured by the free and clear title to the family vehicle, and installment loans repaid by military allotments or electronic access to the bank accounts Service members are require to have. All of these loans place important assets at risk, come at a steep cost, and often trap borrowers in repeat borrowing or renewals. These products also do not provide even the compliant consumer with a credit history that helps them escape from this choice of borrowing. High cost predatory lenders target service members by location, affinity marketing, presence on the Internet, or because they are widely available in the communities where military families reside.

2. Service members are not being protected by most states, either because high cost lenders have been carved out of usury or loan laws, or lenders claim that state credit laws do not protect nonresident borrowers such as Service members stationed in the jurisdiction, or because lenders have exploited every loophole to evade consumer protections. High cost loan contracts are grossly one-sided and include unilateral, mandatory arbitration clauses to deprive Service members of their day in court and limit their remedies, both of which are the cornerstones of the American justice system they fight to preserve. Congress must step in to protect Service members.
3. Service members are disproportionately targeted and punished by the products and practices of high cost lenders who harass them, their families and those in their command and who threaten criminal prosecution, court martial, loss of rank and pay, loss of security clearance and dishonorable discharge. Service members fear the consequences of failure to make good on checks used to get payday loans, and facing automatic and electronic withdrawal of money from their accounts are forced to juggle finances to stay afloat. They fear the loss of the family car whose title is pledged for loans. They fear the lender retaliation resulting from the cancelling of an allotment given to a lender. This struggle leads to stress, to loss of morale and impedes military readiness in addition to harsh financial consequences felt by the entire family. The practices and problems described in the DOD Report come alive in my clients' stories.
    - Mr. Hubbell and his wife are both service members. You may have seen their story on a recent ABC News program. Due to the costs of his wife's illness and her inability to work, they took out a payday loan which led to thousands of dollars in outstanding loans from both payday lenders and installment loan companies. The more they paid, the more they owed and have repaid tens of thousands of dollars. One loan led to another because they had to keep borrowing more money to avoid the threats of criminal prosecution and the consequences of the lender contacting Mr. Hubbell's command. Over a five-year period of time, they were forced to borrow just over $10,000 and still have a monthly payday loan debt of just over $3,500. The Hubbells still owe over $12,000 on loans, most of which only went to pay off other loans and provided no benefit to the Hubbells except for digging them deeper into debt. Mr. Hubbell is an air traffic controller and felt he had no option but to stay on this debt treadmill because of his fear of the real danger of losing his security clearance and his rank.
    - Another of my clients borrowed from a sham lender who pretended to sell Internet access to cloak a criminally usurious loan. When he was unable to keep up with payments, the lender directly debited his account for more than the amounts needed to pay off his loan. The lender also harassed him on his ship and called his superior officers. He was faced with not having enough money for groceries and rent for his family, including three children.

Problems Identified in the DOD Report

1. Predatory loan practices and unsafe credit products are high risk for military borrowers

The Report describes the same types of high-cost, high-risk loan products that we addressed in the law journal article about the two-tiered financial services market: Payday loans, rent to own, car title loans, high cost installment loans, and refund anticipation loans. From my experience helping low income and military consumers, I concur with the Report's description of the lenders' extreme high costs and their unsafe and unsound lending practices. I also concur with the description of the risk to borrowers' assets. Lenders require borrowers to grant them electronic access to their bank accounts as a condition of getting a payday loan at a store or via the Internet or to borrow from a military installment lender. As a result, consumers lose control of their bank accounts and rack up multiple fees when lenders make repeated efforts to collect on the loan by electronically accessing their bank accounts multiple times in one day for just one loan.

Predatory lending is not committed only by one class of lenders. Even banks have begun to join the fray of those lending at triple digit rates. Two banks are offering "account advances" that work just like a payday loans: the bank advances up to $500 for a short, typically two week loan that must be paid back on the next payday, at annual rates up to 500%. In North Little Rock, Arkansas, near Camp Robinson and Camp Pike, ACE Cash Express partners with First Bank of Delaware to offer an installment loan at a 390% APR rate. The bank can violate Arkansas' constitutional 17% usury cap because banks are exempt from state regulation.

The high risks to military borrowers who must maintain bank accounts and who rely on their military pay are illustrated by a Navy borrower I represented.

- Mr. M had an installment loan through a "military" lender that required automatic access to his bank account for electronic payment. When he did not make a timely payment, the lender "hit" his bank account eleven times in one day, causing hundreds of dollars in late fees, NSF fees and other bank charges.

Lenders often require the borrower to sign a military allotment, which permits the lender to be paid directly by the Department of Defense out of the Service member's pay before funds are deposited in the bank. Allotments to pay consumer debt are supposed to be a convenience for the Sailor, payday and installment lenders turn this convenience into a mandatory wage assignment which is prohibited by federal law for enlisted personnel. The allotment becomes another method used by the payday lender to put the Service member at risk.

- Ms. W obtained a loan from a "military" lender that was marketed online. The lender required her to pay them through a military allotment check. They threatened to contact her Command if the allotment was redirected. This put Ms. W in a bind because the costs were so high for the loan that the allotment took away money she needed for food, transportation to and from work and utilities.

Deceptively marketed car title loans have also been problematic for my clients. In these loans, borrowers sign over the free and clear title to their vehicle to secure loans for a fraction of the vehicle's value. Typically these loans must be repaid in full at the end of the month to avoid repossession of the family's transportation. We had a plague of title loan abuses in Florida until the Legislature finally imposed a reasonable 30 percent interest rate cap on these secured loans. Although Florida now caps these rates, the Report maps show that title loan sales outlets are still located in Jacksonville to channel customers to lenders across state lines in Georgia where title lenders are permitted to charge 300 percent annual interest.

- I represented several Sailors who were in constant fear of losing the family's only means of transportation and their only means of getting to work. In addition to being responsible for sound financial decisions, Service members must also be at work on time. The stress of a potential loss of transportation left one aircraft mechanic constantly distracted while trying to take care of Navy aircraft.

2. Predatory Lenders Target Military Borrowers

The Report includes a set of maps created by Professor Steve Graves from California State University at Northridge, illustrating the clustering of payday lenders, installment lenders and a few title loan outlets around military bases in Duval County. In addition, payday lenders that do not explicitly "target" the military have a big presence in the commercial areas of Jacksonville. For example, the largest national chain, Advance America has twenty-nine outlets in Jacksonville, Orange Park, and Atlantic Beach yet stated that only about five percent of its borrowers in Duval County are members of the military or their spouses.

The Report also includes a brief survey of online lenders and notes there are millions of "hits" representing companies that appear when someone uses "military" and "loans" as their search terms. Some of these sites are designed to appeal to Service members with photos of Service people, flags, patriotic symbols, and military-sounding names. Other online lenders that appear in searches market to the general public but include "military" pages to attract more hits from Service members.

The problems for military borrowers come from both lenders that wrap themselves in the flag and those that market generally to cash-strapped consumers either in communities where Service members and reservists' families live or through websites available to Service members anywhere around the world where they have access to the Internet. The loans are just as expensive and risky for Service members whether made by a lender with "military" in the title or by a national chain marketing to the entire community.

My clients tell me that they are influenced by loan ads that include military trappings. They think advertisements appearing in local Navy papers have been approved by the military.

- Mr. M and Ms. W are both in the Navy and are stationed at NAS-Jax. They each responded to advertisements in the local Navy newspaper and on the Internet by companies called Loans 4 Military and Military Financial Network, Inc. They both thought that the lenders were approved by the Navy because of their names, their patriotic web sites and because they were advertised in the Navy paper. The lender advertised a much lower rate than that which was actually provided. As a result, the borrowers were left with insufficient funds to pay their bills because these lenders required repayment by allotment. They had to take more loans to cover the bills that were not being paid because of the allotments.

3. High cost loans, abusive collection practices, and the debt trap

The Defense Report describes the high and deceptively marketed costs, illegal collection practices and repeat borrowing trap that results from predatory lending to Service members.

- The cost of payday loans for my clients over the years has ranged from 390 percent to 906 percent.
- One of my clients had an installment loan with a disclosed interest rate of 17% while the true but undisclosed interest rate was 102%.
- Mr. N who is in the Navy obtained a title loan deceptively marketed as the sale and buy back of his motor vehicle. The lender hid the 300% rate charged because the Florida Legislature had reduced the interest rates that title lenders could charge from 264% to 30%.
- I regularly see clients who have loans with an installment lender which deceptively markets its products to Service members and claims to provide low interest rates. For example, the disclosed rate in one $1,000 loan was 19%. The lender also required the borrower to pay $475.95 for insurance that provided absolutely no real benefit for the borrower. The insurance was actually additional interest disguised as a real "insurance" product.

The Department of Defense Report includes results of this year's Defense Manpower survey and questions about payday loan use. Those Service members who admitted to using payday loans reported an average of 13 transactions last year (including new loans and loan roll-overs). This loan use pattern is at the top of the range for average transactions per borrower as reported by publicly-traded lenders and state regulators who collect that data, as noted in the Report. If a consumer pays for thirteen $350 two-week payday loans at a cost of $15 per $100, they would pay $682.50 in finance charges to use $350 for twenty-six weeks of the year.

It isn't just the high cost of payday loans that springs the debt trap. Failure to pay or renew a loan means that the check written to secure the loan will bounce and set off a cascade of bounced check fees charged by both the payday lender and the consumer's bank, not to mention the adverse impact on the borrower's credit report as a result of the perceived failure to maintain the bank account.

- Mr. K spent his entire day off going from payday lender to payday lender to keep from having his checks bounce. At one time, he was trying to juggle nine loans. This is the same experience that a witness reported to Senator Lieberman at his 1999 forum on payday lending here in the Senate.

Coercive collections are made easy due to the terms included in payday loans, car title loans and installment loans.

- A payday lender sent one of my clients, who was required to allow electronic access to his bank account in the loan transaction collection, letters written by the lender on State Attorney letterhead. In these unauthorized and illegal collection letters, the lender threatened criminal prosecution when he did not have sufficient money to pay the loan in full.
- Mr. W borrowed from Military Financial Network which included language in their documents threatening Court Martial, imprisonment and a dishonorable discharge if he did not pay.
- Mr. G contacted me via email from an undisclosed location at sea. He was worried about his wife and family because of his outstanding payday loan debt. Due to threats she had received, he was afraid that the payday lender would put his wife in jail, leaving their two babies without a parent.

4. Service members sign away their rights in the credit market

Every contract I see includes a binding, unilateral pre-dispute mandatory arbitration clause which is especially burdensome to military borrowers who are not able to pay the costs associated with arbitration or travel to participate in arbitration. For example, Mr. W, who had the Military Financial Network loan while stationed in Florida, was prohibited from suing MFN and, if he thought they acted illegally, was required to arbitrate his dispute in Delaware. Therefore, he effectively had no remedy when MFN debited his account eleven times in one day, used a contract threatening Court Martial, and threatened him while at work.

5. Consumer Protections are evaded, not enforced, or nonexistent

Thirty-nine states have carved payday lenders out of usury or small loan rate caps or repealed their credit restrictions for all licensed lenders. Half the states permit title lenders to make short term cash loans at an average of 300% APR. In about half the states, installment lenders claim that state credit code or rate caps do not apply to nonresident service members stationed in that state. My home state of Florida is now in Federal court over the claim that Pioneer Military Lending is not licensed as a small loan company and does not comply with Florida protections. Installment lenders that make loans to military borrowers are not licensed or supervised in North Carolina or Virginia. Just recently California regulators withdrew its licensing waiver for one military lender, deciding that there was a public interest in supervising these companies.

Over the years I have witnessed payday lenders use every trick in the book to escape real protections.

Hiding behind the check cashing statute. In Florida, payday lenders tried for years to operate under the state check cashing law to avoid compliance with the state small loan law and credit protections. Eventually, Florida allowed payday lenders a safe harbor, permitting rates up to 390% APR for a $100 loan. Even with such generous rates, some lenders have attempted to evade Florida law.

Rent-a-bank evasion of state limits were used by some of the largest payday lenders until the Federal bank regulatory agencies halted that tactic. Cash America, a publicly traded pawn and loan chain, used a series of out of state banks as a partner, claiming that they did not have to comply with Florida regulation. Jennafer Long borrowed money from ACE Cash Express while it partnered with Goleta National Bank to make loans at rates that exceeded Florida caps. The company repeatedly debited her bank account and harassed her supervising officers and threatened her with criminal prosecution when she was unable to repay on the due date. We sued and got a favorable ruling from the Federal court. Thankfully, the Comptroller of the Currency, the Office of Thrift Supervision, the Federal Reserve and the FDIC put a stop to the misuse of the charters of financial institutions through strict guidelines, safety and soundness enforcement and close examination of partner institutions.

Sham transactions to cloak loans: There is no limit to the lengths some lenders will go to loan money to consumers at outrageous terms. Mr. B, a low-ranking Navy member, entered into a loan transaction with Florida Internet. The loan was characterized as the “sale of the right to use the Internet” for hourly increments. The loan was cloaked as a “rebate” for buying Internet time. The lender required direct electronic access to the borrower’s bank account. This company was hiding interest rates which exceeded 400%, which made the loans criminally usurious and well above the 18% general loan rate in Florida. The same lender used a “catalogue” sales model to avoid Florida usury and payday loan law and was sanctioned by the State Attorney in Pensacola, another Navy town. The lender has been convicted of racketeering charges and is awaiting sentencing after decades of predatory lending from Washington to New York’s Fort Drum.

Claim to broker loans for other lenders under the credit service organization model: Cash America is claiming to be a credit services organization as a ruse to “broker” payday loans in Florida for an Ohio-based finance company, which may be a Cash America subsidiary. Cash America guarantees repayment of the loans to the Ohio company, which should take them out of the definition of a credit services organization and put them in the category of a loan guarantor. Cash America’s loans cost $18 per $100 for the “broker fee,” plus interest charged by the purported lender. This makes Cash America loans even more expensive than Florida’s limits for payday loans. I believe that this arrangement does not comply with Florida’s Credit Services Organization Act and is simply done to charge Florida borrowers higher rates than even the state payday loan law allows.

Attempt to avoid state protections by doing business online

I recently filed a lawsuit against an Internet lender, Sonicpayday.com. This lender is available only on the Internet and charges interest rates as high as 900%. They do not allow the grace period provided by Florida law and encourage rollover transactions (paying off an outstanding loan with another more expensive loan). Sonic also requires its borrowers to sign a "voluntary" wage assignment. When my clients were unable to pay these high cost loans, Sonic contacted their employers and demanded the employers pay Sonic directly. They also contacted the Service member's chain of command when he told them he could not pay on time. Sonic loans have a term of two weeks or less. The short term makes the loan even harder to pay back.

Noncompliance with protections. In July, Florida regulators took EZPawn to court over its failure to get a license to make payday loans. The Office of Financial Regulation alleged that EZPawn Florida, Inc. unlawfully blocked examiners from inspecting its loan papers and other records. This company, one of the large publicly traded payday loan and pawn chains, has at least eighteen locations in Florida

The public record is replete with instances of large payday loan companies violating state consumer protection laws. This summer the Washington Department of Financial Institutions filed a case against Check'n Go for continued violation of state rules for payday lenders. Illinois Department of Financial Institutions fined Advance America earlier this year for violating the new Illinois law. West Virginia's Attorney General settled a case against Advance America for debt collection tactics used by its Ohio stores with West Virginia consumers. Arizona's Attorney General brought a case against a payday lender for threatening criminal prosecution for nonpayment. The Colorado Attorney General settled a case against an Internet payday lender that failed to comply with Colorado law. The North Carolina Banking Commissioner ruled that Advance America violated its small loan law while brokering loans through a series of out-of-state banks.

Industry "best practices" voluntary codes fail to protect consumers

Trade group "best practices" codes of conduct are more public relations than consumer protection. The CFSA "Best Practices" do not call on their members to cap interest rates, to stop enticing consumers to write checks without money in the bank, to consider ability to repay in extending credit, or to provide affordable repayment terms for their loans. Instead, the trade group's voluntary guidelines call for lenders to obey the Truth in Lending Act and state law relating to disclosures, to refrain from threatening criminal prosecution if a check used to get a loan is returned unpaid, and calls for a 24–hour right to cancel the loan by returning the amount borrowed. Even where the guidelines appear to offer the protection of a four roll-overs limit (unless state law requires less), these companies do not consider back-to-back loans as roll-overs restricted by this limit. Their Best Practices call for borrower responsibility but says nothing about lender responsibility to make appropriate loans.

One of my clients had a bad experience with a payday lender which bragged about being a member of CFSA in its contract and claimed that it followed CFSA's Best Practices:

- Ms. Griffin is a Navy wife who has a payday loan with Advance America in Florida, which, as stated above, is a state that requires licensed lenders to grant at least a 60–day grace period with no additional fees, charges or costs if a borrower seeks credit counseling. Despite the grace period and a prohibition on "roll-overs" in her contract, she was required to roll over her loan when she could not pay. When she went to pay it off, she was $45 short, not realizing that she would be charged another fee to roll over the loan. Advance America refused the grace period even after she told them she already had the counseling at the Navy Marine Corps Relief Society, an authorized State of Florida Deferred Presentment Provider counseling agency. The director of NAS Jax NMCRS, Ret. Capt. Dave Faraldo, called the lender only to be told they did not have to talk to him and did not have to provide the grace period. You might think this was a matter of an inexperienced employee; however, the Advance America employee said she had been an employee trainer for eight years and they never had to provide the grace period. When I provided a signed release that I was Ms. Griffin's attorney, the Advance America staffer refused to speak to me about the legally-required grace period on her account.

The organization also promotes its "military best practices" as all the protection military borrowers need. A close examination reveals no cap on interest rates; no ban on check holding or electronic access to bank accounts; no prohibition on mandatory arbitration clauses, and no ban on waiver of rights or access to the courts. Instead, the code prohibits after-the-loan practices that are already largely addressed by Department of Defense rules, the Servicemembers Civil Relief Act, or are promises that sound good but deliver little. Payday lenders use the borrowers' automatic access to bank accounts and checks to collect, not garnishment, in most cases. Federal law provides significant protections against garnishment of wages for enlisted personnel. Officers are directed by DOD not to assist creditors in collecting "exorbitant" debts. The other weak provisions of the CFSA Military Best Practices, adopted in 2004, call for honoring repayment agreements negotiated by credit counselors, providing educational materials including a brochure, and maintaining a web site. Since these guidelines have been in effect for over two years, it is obvious their application did not prevent the serious problems identified by the Department of Defense in last month's report.

Solutions Needed

I agree with the reforms urged by the Department of Defense to protect military borrowers and believe these protections are needed by all consumers struggling to make ends meet.

1. Rate cap which the Senate has already enacted as part of the 2007 Defense Authorization bill, now in conference with the House. DOD calls for a 36% APR cap to include all fees, premiums, other charges. This is the typical state small loan rate cap and is double the federal interest rate cap for Federal credit unions. It is six times the interest rate for loans held by Service members prior to joining the military. The Talent-Nelson amendment places a federal ceiling on interest rates (helpful for those states that neglect to protect nonresident Service members who live in their states) but permits states to provide more protection.

2. Loans should not be based on key assets for families. This puts too much risk into borrowing, fosters coercive collection tactics, and encourages consumers to take desperate steps to avoid losing those assets. S. 1878, introduced by Senator Akaka, would prohibit lending based on solicitation of unfunded checks or electronic access to bank accounts. It is already illegal for lenders to require consumers to pay debts through periodic electronic payments. This protection should be extended to single payment payday loans. No lender should be permitted to require a Service member to sign an allotment to military pay, providing a *de facto* wage assignment to lenders.

3. Service members deserve to have the full range of American rights when dealing with creditors. They should not be asked to waive their rights under state and federal law or be forced to accept binding, unilateral mandatory arbitration. No one should have to sign that they will not sue a lender for illegal practices and will not join a class action lawsuit. Often class litigation is the most efficient means for both parties to litigate illegal practices relating to hundreds of cases involving relatively small sums. Also, no one should be required to agree to pay the lender's expenses to remove them from a class or promise they will not file for bankruptcy in the future. I agree with DOD that "waiver is not a matter of 'choice' in take-it-or-leave-it contracts of adhesion."

PREPARED STATEMENT OF HILARY B. MILLER

PRESIDENT, PAYDAY LOAN BAR ASSOCIATION

SEPTEMBER 14, 2006

Mr. Chairman and members of the Committee, it is a distinct honor to appear before you today. My name is Hilary Miller, and I am president of the Payday Loan Bar Association. I am here today as an expert in subprime lending, and I appear on behalf of the payday-advance industry's national trade association, the Community Financial Services Association of America ("CFSA").

Our bar association and CFSA both subscribe to the highest principles of ethical and fair treatment of borrowers. CFSA represents owners of approximately half of the estimated 22,000 payday-advance retail outlets in the United States. CFSA has established—and, critically, enforces among its members—responsible industry practices and appropriate consumer rights and protections, including special protections for the benefit of military personnel.[1]

There are serious flaws in the Defense Department's recent *Report on Predatory Lending Practices Directed at Members of the Armed Forces and Their Dependents* (the "DoD Report").[2] Those flaws involve fundamental matters of both methodology and policy.

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[1] These protections and information resources for service members, which include prohibitions on garnishment and contacting the chain of command for collection assistance, can be viewed in their entirety at *http://www.cfsa.net/genfo/MilBestPractie.html* (visited September 2, 2006).

[2] A copy of the report is available at *http://www.defenselink.mil/pubs/pdfs/Report*_to_Congress_final.pdf.

Decisions having potentially far-reaching implications regarding the cost and availability of consumer credit used by members of the Armed Forces must be reached only after careful gathering of data from a variety of sources and even-handed analysis of such data.

By failing to synthesize information from balanced sources—and by systematically excluding any input from independent economists, consumer-credit experts or the industry itself—the DoD Report presents the views only of opponents of the kinds of lending discussed.[3] The result is a biased, inaccurate and incomplete picture of the market for such credit, of the industry's practices and, most importantly, of the likely impact on military consumers were the DoD Report's recommendations to be adopted.

The language of the report reveals the author's bias. Instead of providing an objective explanation of his findings, the author frequently employs normative and emotionally charged terms to describe subprime lending, thereby suggesting—without a basis in research—that such lending is a societal evil.

Our industry has a vital interest in making sure that military borrowers can repay their loans, for one simple reason: as lenders, we only make money when our borrowers repay us. If they do not pay, not only do we fail to collect their finance charges—which the DoD criticizes—but we also lose many times those charges in loan principal. In short, it is contrary to our interests to have service members get into trouble with their loans. And the reason we lend to military borrowers at all is that the entirety of the available scientific data suggest that only a tiny percentage of military borrowers actually do get into trouble with payday loans. Anecdotes derived from a non-representative sample of this small group are now being used to drive public policy for the much larger numbers of military borrowers who use payday loans for their intended purpose and who repay their loans on time.

Here are some of the DoD Report's principal flaws:

- The DoD report determines that payday loans are "predatory" solely by uncritically adopting eight factors used by a vociferous opponent of the industry, the Center for Responsible Lending, without making an independent determination that such loans are "unfair" or "abusive" as required by the applicable statute. No other recognized authority has adopted these factors.
- According to DoD's own internal data, fewer than 5% of service members have had a payday loan.
- Because fewer than 6% of payday loans ultimately default, at most 6% of that 5%, or 0.3%, of all service members have experienced financial difficulty with a payday loan. In other words, 99.7% of service members have either not had a payday loan or experience no financial difficulties with payday loans. There is simply no statistical evidence that payday loans contribute to military readiness problems to any measurable degree.
- Although some service members with financial problems have taken out payday loans, DoD has presented no data showing that payday loans *cause* financial problems. Payday loans are intended to *solve* short-term financial problems, and the overwhelming majority of users employ them in that manner.
- DoD's data regarding asserted hardship relating to payday loans consist of a mere 12 anecdotes drawn from the experiences of 1,400,000 or more service members.
- For a sample of service members with payday loans who have experienced bankruptcy, payday loans account for less than 4% of their total liabilities, and the financial difficulties suffered by such service members manifestly relate to preexisting (*i.e.*, non-payday-loan) factors.
- DoD's data regarding "targeting" of service members by payday lenders are flawed because they do not control for demographics and fail to include tests of statistical significance. The "targeting" argument assumes, in defiance of logic, that the industry would commit disproportionate resources to customers who account for only 1% of revenues.
- Service members appreciate the convenience and ease of obtaining a payday loan; 78% of service members with payday loans agree that "most people benefit from the use of credit."

[3] A flawed report was perhaps predictable in light of the original directive of Congress that the Secretary of Defense consult with "representatives of military charity organizations and consumer organizations" but not with industry representatives, economists or consumer-credit experts. Section 579 of the National Defense Authorization Act for Fiscal Year 2006, P.L. 109–163, 119 Stat. 3276–77 (the "2006 Act").

- DoD's principal recommendation is to reduce the maximum permissible charge on such loans to 36%, which is below lenders' marginal cost—thereby driving legitimate, regulated lenders out of the market and compelling borrowers to deal with illegal lenders. Those lenders would just as likely pursue illegal collection methods.
- A 36% rate cap is not the only possible approach to addressing the needs of overburdened service members. The industry has suggested allowing service members a longer repayment plan similar to that offered by the banks highlighted in the DoD Report. Our proposal to DOD was to allow service members to repay their defaulted loans over a term of six months or longer, and to limit interest rates to 36% in the post-default period. It is hard to understand why the bank program is embraced by DoD and the payday-advance industry's proposal is ignored.
- Ironically, payday lending competes with bank and credit union overdraft charges and service fees and is often less expensive for the consumer. For example, if a service member is a Pentagon Federal Credit Union member, the charge for a $100 overdraft is $25; our industry typically charges only $15 for a $100 advance. Similarly, Pentagon Federal's late charge on a credit card is $39, which explains why more than 70% of our customers use payday advances to avoid late fees.

In a comprehensive submission attached to these remarks, we discuss the DoD Report as it addresses payday lending. However, many of our criticisms of the DoD Report are equally applicable to the other forms of credit addressed in the DoD Report.

The DoD Report should be rejected, and the subjects raised by the report should be given appropriately balanced further study and analytical reflection by qualified experts.

Thank you for your interest. I will be pleased to take any questions.

Analysis

I. Payday Loans Are Not "Predatory"

The DoD Report adopts wholesale, and without critical analysis, a set of eight criteria promulgated by a vociferous opponent of the industry, the Center for Responsible Lending ("CRL") , for determining whether a payday loan is "predatory."[4] No political, regulatory or academic authority has adopted CRL's criteria. There exists no principled rationale for the use of these criteria to the exclusion of more established notions of what constitutes a "predatory" loan.[5]

Although not clear from the DoD Report, it appears that both CRL and the author of the DoD Report believe that the CRL criteria should be applied disjunctively; *i.e.*, that a loan that possesses any one of the eight criteria is "predatory." Since all payday loans possess at least two of the CRL criteria ("high" cost and the use of a check-repayment mechanism), the DoD Report effectively classifies all payday lending as "predatory"—without making an independent determination, as required by Congress, of how payday loans are "unfair or abusive" (within the meaning of the 2006 Act).[6] By circularly defining payday loans to be "predatory," the result of the DoD Report is a political statement, not science.

We discuss these eight factors individually.

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[4] DoD Report at pp. 13–14.

[5] A standard definition is an unsuitable loan designed to exploit vulnerable and unsophisticated borrowers. A predatory loan has one or more of the following features: charges more in interest and fees than is required to cover the added risk or cost of lending to borrowers with credit imperfections, contains abusive terms and conditions that surprise or trap borrowers and lead to increased indebtedness, does not take into account the borrower's ability to repay the loan, or violates fair lending laws by targeting women, minorities and communities of color. *Payday loans meet none of these criteria*. *See*, generally, U.S. Dep't of Treasury/U.S. Dep't of Housing and Urban Development, *Joint Report on Recommendations to Curb Predatory Home Mortgage Lending* (2000), available at *http://www.hud.gov/library/bookshelf12/pressre1/treasrpt.pdf* (visited August 29, 2006).

[6] Section 576(c)(2) of the 2006 Act defines a "predatory lending practice" as "an unfair or abusive loan or credit sale transaction or collection practice."

Interest Rate

The DoD Report's principal objection to all of the types of loans it criticizes is their "high cost."[7] Yet no other authoritative source has classified *any* form of consumer lending as "predatory" based solely on pricing.[8]

In the case of payday loans, the cost of credit, standing alone, is neither "unfair" nor "abusive," even though the interest rates on such loans (expressed as an annual rate) are nearly universally in the triple digits. Rather, such pricing has been found to be justified by the fixed costs of keeping stores open and the relatively high initial default rates on such loans. To the extent that CRL—and the author of the DoD Report, by unquestioningly adopting CRL's political views—claim otherwise, their views are inconsistent with the research of federal consumer credit regulators.[9]

In large measure, the perceived high cost of payday lending is driven by the small dollar amount of each loan, the high cost of maintaining stores in operation (both during and outside of traditional business hours), and the costs of marketing, originating and collecting such loans. Payday loans are thus "expensive" for the same reason that, for example, small quantities of food, available on a 24/7 basis from 7-Eleven, cost more than the same items purchased in bulk from Sam's Club during regular business hours. Likewise, so-called "low-documentation" mortgage loans have higher default rates and are more expensive than those based on more time-consuming credit investigations.[10] Consumers who buy in small quantity and want it "right now" and with no "hassle" pay higher prices for those privileges. This is not an unfair or deceptive business practice; it is part of the American system of freedom of economic choice.

There is no evidence that payday-loan pricing causes economic harm. Indeed, borrowers' economic welfare is generally enhanced, rather than reduced, as a result of such borrowing. Any analysis of the cost of payday-loan credit must take into account the cost to the borrower of not obtaining such credit. For example, a consumer with limited credit alternatives may write a check drawn on insufficient funds. Even if the depository bank pays the overdraft, the cost of such credit is substantial, because the consumer is charged a service charge of $18 to $25 (or more) for the overdraft.[11] But in most cases, middle-income consumers do not find that their banks are willing to pay overdrafts; rather, the checks are returned unpaid. When the check "bounces," not only does the consumer's bank impose its service charge, but the consumer is also subjected to a returned-check fee by the merchant to whom the check had been written—generally another $25 or more. Thus, the total cost of "bouncing" a check, which may provide a consumer with a few days or weeks of credit until the check is paid is often $45 or more. Alternatively, a consumer with limited credit alternatives may engage in self-help to obtain an extension of credit in the form of a deferred payment of rent, a utility bill, or an installment due on a mortgage or a car loan. Such late payments will generally subject the consumer to late fees—penalties charged by the landlord or creditor which are very substantial relative to the true amount of temporary credit of which the consumer has availed himself. If the payment is made to a utility, often the consumer is subject

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[7] DoD Report at pp. 13, 16–20.

[8] As a general matter, consumer credit experts understand the term "predatory" to be rooted in deceptive and/or illegal practices to coerce borrowers into unfavorable agreements. Stephen C. Bourassa, *Predatory Lending in Jefferson County*. University of Louisville 2003, *http://www.lul.org/?foreclosed.htm* (visited August 29, 2006). *See* also, Remarks by Governor Edward M. Gramlich at the Housing Bureau for Seniors Conference, Ann Arbor, Michigan (2002):

> In understanding the problem, it is particularly important to distinguish predatory lending from generally beneficial subprime lending. Predatory lending refers to activities and practices just cited—asset-based lending, loan flipping, packing of unnecessary fees and insurance, fraudulent or deceptive practices. Subprime lending, on the other hand, refers to *entirely appropriate and legal lending to borrowers who do not qualify for prime rates*, those rates reserved for borrowers with virtually blemish-free credit histories. Premiums for extending credit to these borrowers compensate lenders for the increased risk that they incur and range several percentage points over rates charged on prime loans. Although some have argued that these premiums are excessive, market forces should eliminate inappropriate spreads over time.*http://www.federalreserve.gov/boarddocs/speeches/2002/20020118/default.htm* (visited August 29, 2006) (emphasis added).

[9] Mark Flannery and Katherine Samolyk, *Payday Lending: Do the Costs Justify the Price?* FDIC Center for Financial Research Working Paper No. 2005–09. *http://www.fdic.gov/bank/analytical/cfr/workingpapers.html#payday* (visited August 29, 2006).

[10] Roberto G. Quercia, Michael A. Stegman and Walter R. Davis, *The Impact of Predatory Loan Terms on Subprime Foreclosures: The Special Case of Prepayment Penalties and Balloon Payments* (2005), Center for Community Capitalism, University of North Carolina. *http://www.kenan-flagler.unc.edu/assets/documents/foreclosurepaper.pdf* (visited September 29, 2006).

[11] The cost of overdraft-protection credit can be astronomical and generally exceeds the cost of comparable payday-loan credit. Banks are not required to disclose these costs as an annual rate. For unknown reasons, the DoD Report does not address them.

to disconnect and/or reconnect fees. These charges have also risen to the point that consumers will almost always find it less expensive to employ a payday advance instead. Academic literature supports this welfare-enhancing view of payday lending.[12]

The pricing of payday loans is thus not "unfair" because, among other reasons, given the costs of providing credit, such pricing does not result in a grossly disproportionate exchange of value with the consumer or excess profitability to the lender.

A recent study by Karlan and Zinman (2006) provides the best and most complete scientific answer to the question, "Do high-interest short-term loans harm consumers?" The authors used a lender to conduct a large-scale, randomized trial in which marginal borrowers who would not ordinarily receive access to short-term loans were granted loans. Those who received these loans were, one year later, less likely to be poor, unemployed or hungry.[13] There is no comparably rigorous study showing a contradictory result.

Both Hanson and Morgan (2005), fn. 12, and Bond, Musto and Yilmaz (2006)[14] conclude that predatory lending is effectively eliminated through robust competition.[15] There can be no more perfectly competitive industry than the payday-loan business.[16]

In summary, there is no authoritative or theoretical support for the DoD Report's conclusion that the "high" interest rates traditionally charged on payday loans, without more, render them "predatory."

—Short Minimum Loan Term

The DoD Report asserts—again adopting, without analysis or question, the CRL view—that the short-term nature of the loan, without more, renders a payday loan "predatory."[17]

The sole support for this claim is the unsubstantiated statement that "75% of payday customers are unable to repay their loan within two weeks." There is no factual basis for this statement.

Both CRL (and the author of the DoD Report) assume, without factual basis, that the reason all payday loans that have been renewed, or "rolled over," is that the borrowers were *unable* to repay them. This conclusion is but one of many possible conclusions why borrowers may choose to extend the maturity of their loans. None of the academic literature in this field addresses the *reason* for "rollovers."

Even assuming that the average number of rollovers cited for non-military users were correct, the rate of repeat usage of payday loans among military borrowers is known to be much lower. In a recent independent study, 49% of military enlisted

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[12] Samuel Hanson and Donald P. Morgan, *Predatory Lending?* Federal Reserve Bank of New York working paper (2005), available at *http://www.consumercreditresearchfoundation.org/*__files/FRB__Morgan__Hanson__5__2005.pdf (visited August 29, 2006) (no evidence that payday lending is "predatory").

The notion that the borrower engages in his own welfare-enhancement calculus is likewise suggested by Thomas E. Lehman of Indiana Wesleyan University:

> In all likelihood, the borrower cares not what the "effective APR" is on the loan. The real price signal to which the borrower responds is the flat fee that is charged to hold the postdated check. If the value attached by the borrower to the immediate cash advance exceeds the value of the [principal] plus the fee one or two weeks hence, then the borrower will undertake the transaction . . . .

"In Defense of Payday Lending," *The Free Market*, Ludwig von Mises Institute, Vol. 23, No. 9 (2003).

See also, James J. White, "The Usury Trompe L'Oeil," 51 S.C. L. Rev. 445, 466 (2000) ("Contrary to those who claim to befriend the impecunious consumer, . . . even the poorest consumers are quite savvy. They understand the alternatives and make choices about borrowing that are wise for them even when the decisions seem foolish or wasteful to middle-class observers").

[13] Dean S. Karlin and Jonathan Zinman, *Expanding Credit Access: Using Randomized Supply Decisions to Estimate the Impacts* (2006). *http://www.dartmouth.edu*~jzinman/Papers/Karlan&Zinman%20Consumer%20Credit%20Impacts.pdf (visited August 29, 2006).

[14] Philip Bond, David K. Musto and Bilge Yilmaz, *Predatory Lending in a Rational World*, Federal Reserve Bank of Philadelphia Working Paper No. 06–092 (2006). *http://ideas.repec.org/p/fip/fedpwp/06-2.html* (visited August 29, 2006).

[15] *See also*, "Let competition curb payday lending excesses," *Crain's Chicago Business* (May 17, 2004).

[16] *See*, generally, *Banking on the fringe*, Federal Reserve Bank of Minneapolis (July 2004), *http://minneapolisfed.org/pubs/fedgaz/04-07/banking.cfm* (visited August 29, 2006).

[17] "The letters from the regulators recognize that a practice that can be abusive in some contexts can also—in absence of fraud or deception—be highly beneficial to consumers." Report of the Staff to Chairman Gramm, Committee on Banking, Housing and Urban Affairs, Predatory Lending Practices: Staff Analysis of Regulators' Responses (August 23, 2000) available at *http://banking.senate.gov/docs/reports/predlend/predlend.htm* (visited August 29, 2006).

payday-loan borrowers reported they have used a payday loan no more than twice in the last year (compared to 16% of the general population of payday borrowers); 79% said they had no more than four loans in the last year (compared to 65% of the general population).[18]

Finally, there is no theoretical support for the supposition that a loan, the duration and cost of which are fully disclosed to the consumer, and which (as noted in the preceding paragraph) military borrowers actually repay in accordance with the original schedule, is "predatory" within the meaning of the 2006 Act. The cost of renewal credit is neither "unfair" nor "abusive" for the same reasons (*supra*, pp. 2–4) that the cost of the original loan is not predatory. The mere fact that a minority of military borrowers may find it necessary to renew their loans likewise does not render such loans "unfair" or "abusive" because the consequences of renewal do not result in either a meaningful reduction in consumer economic welfare nor excess profits to the lender.

—Single Balloon Payment

The DoD Report again incorporates, without examination, a CRL criterion for "predatory" lending that the entire balance of a consumer loan is repayable in a single balloon payment.[19] The report incorrectly states that payday loans do not allow for partial installment payments to be made during the loan term; in fact, nearly all payday lenders permit partial payments, and such prepayments are required to be accepted under the laws of many states.[20]

The DoD Report fails to set forth any principled reason why a requirement for repayment in a single balloon payment is evidence of predation. As with the "short minimum loan term" issue discussed above, the nature and terms of the loan are fully disclosed to, and understood by, the borrower at the time the loan is entered into—perhaps more than any other aspect of any loan's terms. There is no fraud or deception regarding the consequences to the consumer of being unable to make partial repayments or of failure to make the single required repayment. There is no material economic difference to the borrower, ceteris paribus, in being required to make a single payment in two weeks instead of two payments at one-week intervals; indeed, because payday loans generally have a "bullet" maturity date at or immediately after the borrower's next payday, the single-installment nature of the loan benefits the borrower by allowing payment coincident with his employer's payroll practices.

—Loan "Flipping"

The DoD Report adopts the CRL terminology of "loan flipping" to refer to "rollovers," or loan renewals. Neither CRL nor the DoD Report correctly utilizes the term "flipping," although use of the term gives the issue more of a political charge, as CRL hopes and expects; and in this respect, the author of the DoD Report is likely an unwitting dupee.

"Loan flipping" is a "predatory" practice by *mortgage* lenders where the lender *induces* the borrower to refinance an existing, favorable mortgage (often serially) by falsely representing the benefits of the new loan, and ultimately providing little or no economic benefit for the consumer because the manifest benefit is consumed by additional loan points, loan fees, prepayment penalties and fees from financing the sale of credit-related products such as life and disability insurance.[21] For example, some homeowners are pressured by lenders into refinancing existing subsidized mortgage loans in exchange for commercial loans at higher interest rates, but with slightly lower monthly payments and substantial fees rolled into an increased principal balance. These tactics, because the consumer is actively deceived into believing that the transaction produces a net economic benefit for him, are clearly "abusive" within the meaning of the 2006 Act.

In contrast, renewals of payday loans are initiated not by the lender but rather by the *borrower*. The borrower fully understands at the outset of the original loan

[18] William O. Brown, Jr. and Charles B. Cushman, *Payday Loan Attitudes and Usage Among Enlisted Military Personnel* (2006). Available at *http://www.consumercreditresearchfoundation.org/*__files/060628MilitaryPDLSurvey.pdf (visited August 29, 2006).

[19] Many "mainstream" forms of consumer credit are payable in a single balloon payment, such as the currently popular interest-only home mortgages and certain home equity lines of credit. The DoD Report fails to explain how, if at all, these credit vehicles are distinguishable in predation from payday loans.

[20] *E.g.*, Nevada, Utah, Louisiana and Virginia.

[21] *See*, Comptroller of the Currency, *Guidelines for National Banks to Guard Against Predatory and Abusive Lending Practices*, O.C.C. Advisory Letter 2003–2, available at *http://www.occ.treas.gov/ftp/advisory/2003-2.doc* (visited August 29, 2006).

and of any renewal loan what the costs and benefits are to him of repayment or renewal. Pricing of a payday loan is straightforward and does not involve complex computations to determine the cost of credit. There is no opportunity for the lender to conceal costs or to confuse the borrower regarding the economic benefits of extension.

The payday lender's "default setting" is that the loan must be repaid in full on the original due date. Because payday-loan renewals are initiated by the borrower, the harms sought to be avoided by federal and state anti-"flipping" regulations are simply absent from this arena.

Under the Best Practices for the Industry of the CFSA, CFSA members limit payday-loan renewals to the lesser of four or the number permitted by applicable state law.[22] Applicable state laws in Arizona (for military borrowers), California, District of Columbia, Florida, Hawaii, Illinois, Indiana, Iowa, Kansas, Kentucky, Michigan, Minnesota, Mississippi, Montana, Nebraska, New Hampshire, Ohio, Oklahoma, South Carolina, Tennessee, Virginia, Washington and Wyoming *proscribe all rollovers whatsoever*. State laws in Alabama, Colorado, North Dakota and Rhode Island limit the permissible number of rollovers to *one*. Laws in the other 12 states which permit payday lending have variable limits on the number of rollovers permitted.

There is no factual or authoritative support for the DoD Report's conclusion that merely permitting rollovers, to the very limited extent allowed by law or by CFSA's Best Practices, is a predatory practice.

—Simultaneous Borrowing from Multiple Lenders

It is theoretically possible for a borrower to incur substantial amounts of debt by contracting simultaneously with multiple payday lenders—just as a borrower may have multiple credit cards, mortgages, car loans and doctors' bills. Neither CRL nor the author of the DoD Report explains how this possibility is the result of a predatory practice by *lenders*. Virtually any consumer good or service holds risks if it is over-consumed. To the extent that a borrower can become indebted to multiple lenders simultaneously, consumer activists like CRL (and, by wholesale adoption, the author of the DoD Report) appear to expect lenders to protect borrowers not from predation by lenders but rather from the results of the borrowers' own improvident financial decisions.

It is ironic that the proponents of such protections expect sellers of credit services to ascertain whether the buyers have relationships with competitors, and, if so, to refrain from doing business with those buyers. In any other field of endeavor, the Sherman Act would be loudly invoked, and the Justice Department would be vitally concerned about the anticompetitive nature of these behaviors.

Once again, the author of the DoD Report does not explain how it is "unfair" or "abusive" for a lender to extend credit to a borrower who has existing credit relationships with others—especially, as is usually the case, if the lender is unaware of those relationships.[23]

—No Consideration of the Borrower's Ability to Repay

CRL's language, which is once again adopted unquestioningly and verbatim by the DoD report, asserts that "payday lenders encourage consumers to borrow the maximum allowed, regardless of their credit history." The notion that payday lenders extend credit regardless of the likelihood of repayment by borrowers is preposterous and reveals the utter ignorance of the DoD Report's author regarding how the industry operates.

Every payday lender employs a credit-scoring system to make credit decisions regarding individual borrowers. Such systems are ubiquitous in the consumer credit industry and are employed equally for credit cards, car loans, store credit and mortgages; the models vary from lender to lender and by type of loan. The largest and most sophisticated payday lenders employ computer-based models that are tested against large databases of actual experience and that are continually refined over time. Smaller lenders often use paper-based "check the box" systems to ensure that borrowers meet their credit criteria. The systems take into account such factors as whether the borrower has a telephone at his residence, whether he has a steady source of income, his prior credit history with the lender and others, and his legal ability to contract. The factors vary by lender.

[22] Community Financial Services Association, *Best Practices for the Industry*, *http://www.cfsa.net/genfo/egeninf.html* (visited August 29, 2006).

[23] Alabama, Florida, Illinois, Indiana, Michigan, North Dakota and Oklahoma have state "database" requirements that limit or proscribe multiple loans to a single borrower from multiple payday lenders and provide for an electronic means to determine the existence of an outstanding loan from a competitor.

All of these systems have one goal, and one goal only: to screen out borrowers who are unlikely to repay their payday loans.

Lenders make money only if borrowers pay them; if they do not repay, lenders go out of business. It is beyond silly to suggest that lenders are unconcerned about the possibility that a borrower will default.

—Deferred Check Mechanism

A universal feature of a payday loan is that the borrower gives the lender a check or other authorization to debit the borrower's checking account on the maturity date of the loan. If the borrower has not prepaid the loan in cash or otherwise, on the maturity date, the lender deposits the check. If the check is returned unpaid, the borrower may be subjected to a service charge by *his bank* because the borrower failed to arrange to have sufficient funds in his checking account at loan maturity.

Once again, the DoD Report fails to explain how it could be predatory from the standpoint of the lender when a third party charges the borrower for returning a check unpaid. The lender does not control such charges and is a stranger to the relationship between the borrower and his depository bank. The borrower, but not the lender, had the power to avoid the charge by assuring that adequate funds were in the borrower's account.

Automatic charges to the borrower's checking account are a routine feature of many "mainstream" forms of consumer credit. The DoD does not suggest how a lender's right to initiate such charges, standing alone, is "unfair" or "abusive."

The DoD Report also improperly suggests that a borrower "may fear criminal prosecution" for such returned checks. Any such fears are unfounded. CFSA, through its Best Practices (*supra*, fn. 22), forbids its members from threatening or pursuing criminal action against a borrower as a result of the borrower's check being returned unpaid. This proscription is codified in most of the state laws that permit payday lending.[24]

—Mandatory Arbitration Clauses

Many consumer and non-consumer contracts contain arbitration clauses. *Parties to arbitration clauses do not waive their substantive rights* or, as the DoD Report erroneously states, eliminate the borrower's right to sue for abusive lending practices.[25] Congress enacted the Federal Arbitration Act to promote the expeditious and inexpensive resolution of both contractual disputes *and* statutory claims. Longstanding federal public policy strongly supports arbitration of disputes. As the U.S. Supreme Court has held:

> By agreeing to arbitrate a statutory claim, a party does not forgo the substantive rights afforded by the statute; it only submits to their resolution in an arbitral, rather than a judicial, forum. It trades the procedures and opportunity for review of the courtroom for the simplicity, informality, and expedition of arbitration.[26]

Arbitration permits the vindication of consumer claims for abusive and other improper lending practices. An analysis of actual awards and results suggests that consumers fare better in arbitration than in the judicial system and are satisfied with the results.[27]

The DoD Report's statements regarding arbitration are simply unfounded.

II. The DoD Report Fails to Demonstrate the Existence of a Problem Warranting Legislative Action

The DoD Report presents what is at best a confused, inconsistent and anecdotal picture regarding the prevalence of payday-loan use among service members. It is impossible to draw any conclusion from the report regarding (a) what percentage of military borrowers have experienced extreme financial difficulties while having payday loans outstanding, or (b) whether, and in what percentage of cases, payday loans were themselves a material factor in causing or contributing to the financial

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[24] See, e.g., Cal. Fin. Code §§ 23035(c)(3) and (d)(1).

[25] The DoD Report incorrectly states (at p. 21) that the Federal Arbitration Act "eliminates the borrowers' opportunity to obtain legal recourse" and improperly suggests that arbitrators "paid for by the lender" will be biased in favor of the lender. These statements are patently false.

[26] *Mitsubishi Motors Corp.* v. *Soler Chrysler-Plymouth, Inc.*, 473 U.S. 614, 629, 105 S.Ct. 3345, 87 L.Ed.2d 444 (1985).

[27] Michael T. Burr, *The Truth About ADR*, 14 Corporate Legal Times 44, 45 (2004); Ernst & Young, *Outcomes of Arbitration—An Empirical Study of Consumer Lending Cases* (2004), *http://www.adrforum.com/rcontrol/documents/ResearchStudiesAndStatistics/2005ErnstAndYoung.pdf* (visited August 29, 2006).

difficulties. Without such information, Congress cannot make an informed decision regarding the legislative action, if any, to be taken. It may indeed be the case that some change is warranted, but it is impossible to draw any conclusions from the haphazard presentation of data contained in the DoD Report.

—No Meaningful Percentage of Service Members Appear to be "In Trouble" with Payday Loans

The author's methodology in drafting the DoD Report is highly problematic. Although a quantitative survey of military personnel was undertaken to determine what actual percentage of service members make use of payday loans, that study was not used as a vehicle to determine how such loans have contributed to (or deterred) the service members' economic welfare. Instead, the Defense Department now discredits its own survey and substitutes, for quantitative data, a number of "case studies" culled from reports by "financial counselors and legal assistance attorneys" in instances where assistance had been rendered to service members after "being trapped in high interest loans."[28]

These "case studies" were not chosen at random from all financial-assistance files.[29] The "case studies" are not asserted to be a representative cross-section of all military families, of all military payday-loan users, or, indeed, of all users of military financial counseling. Rather, they are the product of the author's attempt to extract the most sympathetic (and possibly most egregious) examples of personal financial mismanagement by service members and then to hold them out as the "evidence" of the need for legislative relief.

It is impossible to determine the *prevalence* of personal financial problems from the anecdotes presented in the DoD Report. Assuming, in the light most favorable to the DoD Report's author, that the 3,393 "case studies" are drawn only from a single short time period, they represent a mere 0.2% of the 1,379,879 active duty personnel;[30] if the "case studies" were collected over a longer period, possibly of years—during which the armed forces experienced considerable turnover—then the incidence of such "cases" is much lower than 0.2%. The DoD Report simply does not disclose enough information to be able to fix the proper denominator.

The "case studies" were distilled into 17 anecdotes in the DoD Report. A mere 12 of these anecdotes involved payday loans.[31] Twelve anecdotes should not be deemed sufficient evidence to warrant extraordinary legislative action.

The best evidence of the absence of a "problem" is contained in other, inconsistent aspects of the DoD Report itself:

First, *according to the Defense Department's own data, only 5% of service members use payday loans at all*.[32]

Second, the DoD Report states that "payday loans carry very low risk of loss";[33] in other words, the default rate—the best proxy for the rate at which payday-loan borrowers "get in trouble"—is low. CRL claims the default rate to be 6%.[34] Assuming this rate to be accurate, or even in the ballpark, the percentage of all service members who "get into trouble" while having payday loans outstanding is about 6% of 5%, or 0.3%. In other words, 99.7% of service members either do not use payday loans or are unaffected by "troubled" payday loans.

Finally, the DoD Report itself suggests that the "problem," if one exists at all, is diminishing substantially without legislative action—a 20% decline from 2004 to 2006—through, among other things, education and command attention.[35]

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[28] DoD Report at p. 39.

[29] The DoD Report does not disclose how the "financial counselors and legal assistance attorneys" were instructed to select the "case studies."

[30] Department of Defense, Directorate for Information Operations and Reports (2006). Military Personnel Statistics. *http://www.dior.whs.mil/mmid/military/rg0601.pdf* (visited August 30, 2006).

[31] DoD Report at pp. 39–42.

[32] DoD Report at p. 13. The author of the DoD Report insists that his own data must be incorrect because such data are is inconsistent with a study by the Consumer Credit Research Foundation (fn. 18, *supra*) that found the incidence of payday-loan use by enlisted military personnel at 13%. But the Foundation only surveyed personnel who live on and in the immediate vicinity of military bases in the continental United States; if deployed and otherwise stationed personnel —who generally will not have access to payday loans at retail locations—were included in the denominator, the result would likely be much lower and consistent with the DoD Report's 5% figure.

[33] *Id.*

[34] *Center for Responsible Lending, Fact* v. *Fiction: The Truth about Payday Lending Industry Claims. http://www.responsiblelending.org/issues/payday/briefs/page.jsp?itemID=29557872* (visited August 30, 2006).

[35] DoD Report at pp. 37–38.

A problem which is not experienced by 99.7% of all service members, and where usage is declining to immaterial levels, cannot be said to be worthy of immediate legislative action.

—There Is No Evidence That Payday Loans Cause Financial Hardship or Affect Military Readiness

As noted above, in a very small percentage of cases—0.3% of all service members—there is a default or "trouble" with a payday loan.

The data do not show whether payday loans *caused* the service members' financial difficulty, or whether—as is far more likely—the payday loan was merely an unsuccessful attempt to find a solution to a preexisting financial problem.

The 12 anecdotes presented in the DoD Report involving payday loans fail to present, in a balanced way, the totality of the financial circumstances of the borrowers. It is impossible to determine from those anecdotes how the service members fell on hard times, whether they sought payday loans before or after experiencing other financial reversals, the other obligations they had outstanding, and why they were ultimately unable to repay their debts.

The author of the DoD Report wishes readers to believe that payday loans were the cause of the service members' difficulties in those cases where the service members (a) had outstanding payday loans, and (b) experienced financial difficulties. In other words, he concludes that the mere coincidence of payday loans and financial difficulties means that payday loans must be the *cause* of the financial difficulties. This *post hoc, ergo propter hoc* reasoning—that correlation is causation—is a tempting logical fallacy for an author whose conclusion had been reached before the research began.

Such an explanation is not supported by DoD Report's data and, more importantly, is inconsistent with what is known generally about how consumers behave with payday-loan borrowings. Although the vast majority of payday-loan borrowers use such credit responsibly, for its intended short-term purpose and under circumstances where repayment is likely, a small minority of borrowers seek payday loans when they are already in serious financial difficulty and when their repayment prospects are poor. Such borrowers may hold a good-faith expectation that their circumstances will improve if they can temporize, or they may simply seek to postpone the day of reckoning. Either way, this small minority of borrowers is generally operating under an enormous debt load *before* incurring payday-loan debt. Often, the debts have been caused by circumstances beyond the borrower's control, such as unforeseen medical expenses (medical expenses are a factor in approximately half of all personal bankruptcies, even among fully insured debtors[36]). In such circumstances, a payday loan will have postponed, but ultimately made little difference to, the debtor's financial failure.

This analysis is borne out by a random sample conducted by CFSA of service members' bankruptcy petitions in cases where payday loans were discharged, which provide the details of their debts on a creditor-by-creditor basis.[37] Payday-loan debt comprises less than 4% of such bankrupt service members' total liabilities. Perhaps more interesting is that none of such petitions reveals either a judgment or garnishment for payday-loan debt, while such judgments and garnishments for other debts were commonplace.

It is likewise difficult, because of the lack quantitative data, to accept at face value the DoD Report's implicit (and unexamined and unexplained) conclusion that high-interest-rate lending, without more, adversely affects military readiness. While being "in financial trouble" may result in loss of a security clearance, there is no logical causation chain that connects merely having access to payday loans to being "in trouble." As noted above, the vast majority of payday-loan borrowers repay their loans without "trouble." To the extent that these borrowers are "in trouble," the data available show that they were universally "in trouble" *before* obtaining payday-loan credit. In the vast majority of cases, payday loans are a solution to a problem, not *the* problem—and there is no objective evidence to the contrary.

Finally, if it is assumed—as CRL posits—that some military borrowers make use of multiple payday loans, the total amount they pay in interest is extremely unlikely, without more, to give rise to a "readiness" problem. A borrower with ten loans over a two-year period who pays $600 in interest will have paid less in payday-loan interest than the cost of a twice-weekly cup of coffee from Starbucks.

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[36] See, generally, "MarketWatch: Illness And Injury As Contributors To Bankruptcy," *Health Affairs* (February 2, 2005) (available at *http://content.healthaffairs.org/cgi/content/full/hlthaff.w5.63/DC1* [visited August 31, 2006]).

[37] Details available on request.

In summary, the DoD Report fails to set forth any evidence from which Congress may logically conclude that payday loans cause or contribute to financial difficulties for service members. To the contrary, the data suggest that the vast majority of borrowers repay their payday loans without difficulty, as intended, and use them as the short-term "bridge" for which they are designed.

—Alleged "Targeting" of Military Customers is Not Meaningful to this Analysis

The DoD Report cites at length a study (Graves and Peterson, 2005)[38] purporting to show that payday lenders concentrate their retail locations near military institutions in order to "target" potential military borrowers. Even assuming the correctness of this analysis, such putative "targeting" is irrelevant if (a) payday loans are not "predatory" (within the meaning of the 2006 Act), or (b) payday loans do not materially cause or contribute to a decrease in economic welfare for borrowers. As noted above, the DoD Report sheds heat, but no light, on these matters.

Moreover, even if the concentration data are credited, there are innocent as well as sinister explanations for such concentration. For example, areas around military bases universally contain large numbers of support businesses, the employees of which are often more squarely within the demographic profile of payday-loan users than service members themselves.

Graves and Peterson also assume that demographics alone explain retailers' store-location decisions. They do not consider, and thus do not include in their analysis, other factors that may explain these decisions. For example, rental costs, payroll costs, zoning regulations and proximity to other retail outlets ("agglomeration effects," in economic terms) are all factors in store-location strategy.[39]

The "targeting" argument also defies common sense. Military customers account for a very small percentage of all users of payday loans.[40] It is illogical that payday-loan companies would devote disproportionate resources to marketing to such a small percentage of their customer base.

Finally, the unspoken message of both the DoD Report and of Graves and Peterson is that it is somehow wrongful for businesses to address their services directly to groups of their potential customers. Yet military borrowers have legitimate needs for short-term credit, based on their age, their stage in the economic lifecycle and the high value to them of immediate consumption of certain kinds of goods and services:

> While military compensation tends to be stable, the household cash expenditures of military enlisted personnel can be irregular because of features of the military lifestyle and rules governing service. Enlisted personnel, because of their young age, general standard of living and historical low incomes, are not likely to have amassed significant precautionary savings to address these issues. However, they are able to smooth these irregularities in cash outflows by taking on debt, and they can repay that indebtedness through their stable incomes.
>
> Because of their youth, military enlisted personnel tend to be at the stage in life where the acquisition of durable goods can provide a stream of perceived economic benefits that substantially exceeds the cost of consumer credit.[41]

In the final analysis, however, there is simply no analog for Graves and Peterson's "targeting" analysis in any other field of endeavor. Public policy regarding the serv-

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[38] "Predatory Lending and the Military: The Law and Geography of 'Payday' Loans in Military Towns." 66 Oh. St. Law Rev. 653 (2005).

[39] Graves and Peterson's study does not follow customary social science protocols by controlling for, for example, characteristics of the nearby non-military populations such as income, unemployment, home ownership and education levels. Their paper implicitly assumes that all those characteristics are distributed equally across each state, and that military bases are placed in random locations. Graves and Peterson calculate the "predicted" number of payday lenders by calculating a statewide number of payday outlets per person and multiplying that number by the population in the military installation's ZIP Code. Their theory assumes, effectively, that Detroit and Grosse Point should have the same number of payday lenders per person. They fail to provide t-statistics from which a reader can determine whether the difference between the "predicted" and "actual" number of lenders is statistically significant. For these reasons, the study cannot be accorded any scientific weight.

[40] Letter from Penn, Schoen & Berland Associates, Inc., *Results of Poll Determination Payday Loan Usage Among Active Duty Members of the US Military* (January 2005), available at *http://www.cfsa.net/genfo/Military-Polling-Results-Memo.pdf* (visited September 5, 2006).

[41] William O. Brown, Jr. and Charles B. Cushman, *Compensation and Short-Term Credit Needs of U.S. Military Enlisted Personnel* (2006). *http://www.consumercreditresearchfoundation.org/*__files/060427MilitaryCredit.pdf (visited August 31, 2006).

ices offered by fast-food stores, convenience stores, gasoline stations, supermarkets, liquor stores or casinos is not derived from studies of the concentration of their outlets around military bases. Rather, an objective and quantitative determination must be made regarding the nature of the services offered and their value to society. The DoD Study fails to provide a scientific and factual basis for such a determination.

III. The DoD Report's Conclusions Are Not Supported by Economic Theory or Sound Public Policy

The DoD Report fails to provide quantitative and scientific evidence to demonstrate the existence of a "problem" requiring a legislative solution. But even if the DoD Report's deeply flawed analysis were credited, the principal recommendations of its author find little theoretical support in economic literature or public policy. Although apparently well intentioned, implementation of the author's recommendations will not provide a meaningful benefit to service members and will materially diminish the economic choices available to military personnel, while creating unintended consequences and problems. These recommendations should therefore be rejected.

—36% APR Ceiling

The DoD Report's principal and most dramatic recommendation is a 36% across-the-board federal interest-rate ceiling on all lending to military borrowers. If this interest rate were to be applied to payday lending, it would fix the consumer price below the lenders' marginal costs and well below the lenders' average costs (Flannery and Samolyk, 2005, fn. 9). The practical effect of such a rate cap would be to eliminate the legitimate market for such lending altogether.

The economic effects of price controls of any kind are notorious. While affordability and consumer protection are generally cited as the goals of price ceilings, price controls invariably become a wealth-redistribution mechanism. This mechanism evolves into a system of implicit subsidies, under which some rates are maintained at levels that are artificially high so that others can be restrained. Usury ceilings erode service quality, as lenders reduce the expenses of their operations and weed out all but the most creditworthy borrowers; pricing to the most desirable customers is invariably increased so that the least desirable customers can be subsidized, if they are served at all. The distortion of market forces that occurs with rate caps will deprive the most desperate of borrowers of the opportunity to borrow from legitimate, regulated lenders and instead compel marginal borrowers to deal with lenders who are willing to lend illegally[42] and who, more likely than not, will pursue just as illegal collection practices when the loans come due.

The DoD Report assumes, without any theoretical or practical foundation, that: (a) payday loans will continue to be available in a legitimate market, even if rates are fixed below lenders' costs; or (b) if such loans are unavailable, borrowers will behave in a manner deemed more "responsible" financially.

History teaches that Congress has vast powers, but it cannot suspend the laws of economics; needy borrowers will obtain the credit that they need, even if they can only do so illegally.

The effect of a legitimate and regulated market for payday loans has been salutary. As noted above, CRL claims that at least 94% of payday-loan borrowers repay their loans without default; approximately 99.7% of all service members appear to be unaffected by payday-loan defaults. There is no meaningful black market for military credit, so that the opportunities for a wide range of criminal behaviors simply do not exist—yet.

Consumer credit experts, even those who favor usury ceilings, recognize the bluntness of usury as a tool for regulating consumer credit policy.[43] Other tools, while less direct, may have a consumer-friendly effect while allowing the market itself to create the proper pricing. For example, liberalized bankruptcy exemptions and restrictions on creditor remedies (such as on garnishment and collection) force lenders to internalize the costs of improvident credit decisions while not restraining prices artificially. Likewise, as the DoD Report recommends, enhanced disclosures may be useful to promote informed shopping and to eliminate the effects of unintended transactions. Finally, there are a variety of approaches that are gaining popularity

[42] Rationing and under-the-table payments are common results of statutory price ceilings. "Loan sharking" is the most prevalent result of artificially low usury ceilings.

[43] Steven M. Crafton, *An Empirical Test of the Effect of Usury Laws*, 23 J.L. & Econ. 135, 145 (1980); James E. McNulty, *A Reexamination of the Problem of State Usury Ceilings: The Impact in the Mortgage Market*, 20 Q. Rev. Econ. & Bus. 16, 26–27 (1980); Loretta J. Mester, *Why Are Credit Card Rates Sticky?*, 4 Econ. Theory 505, 505, 521 (1994); *Usury Laws: The Bad Side of Town*, Economist, Nov. 28, 1998, at 30.

in Europe but have not been attempted in the United States, such as requiring lenders to give advice regarding appropriate forms of credit and so-called "responsible lending" rules.[44] (The CFSA Best Practices, fn. 22, are a form of "responsible lending" principles.) There is thus sound scholarly support for the notion that usury regulations should be the last resort, not the first, in regulating credit markets. Evidence of need for such crude re-regulation is simply absent from the DoD Report.

The DoD Report proposes to reverse years of enlightened deregulation of credit markets. This deregulation has resulted in unprecedented access to credit for low-income borrowers.[45] Moreover, deregulation has caused the average cost of credit to existing borrowers todecline. [46]

Service members obviously appreciate the convenience and ease of obtaining a payday loan; 78% of service members agree that "most people benefit from the use of credit." [47] Other authorities are in accord.[48]

The state legislatures of 37 states have performed this calculus and reached conclusions that are directly contrary to those of the author of the DoD Report. Recognizing that it is better to have a robust and competitive but *regulated* market for the kinds of credit that borrowers actually demand, these states have, after careful study, both enabled such lending and set interest-rate ceilings at levels that exceed lenders' costs. The DoD Report discounts the decisions of these state legislatures entirely.

Throughout, the DoD Report notes that many borrowers turn to payday lending because they *already* have bad credit. The DoD Report's "solution" is to eliminate a borrowing option when the damage (*i.e.*, bad credit) has already been done. The most appropriate and effective policy response would be one that addresses the root cause, not one that eliminates a possible, albeit temporary, solution. Education and the fostering of sound personal finances would create more financial options for households than any other solution.

The DoD Report gives no attention to the possible harm caused by eliminating *lawful* access to payday-loan credit for the 99.7% of service members who either do not payday loans at all, or who use them responsibly and for their intended purpose. Further study of this issue is warranted prior to material legislative change.

—Ability to Repay

As noted above, the DoD Report discusses the extension of credit without regard to ability to repay. Payday lenders *never* extend credit without consideration of the borrower's ability to repay. An essential feature of any positive credit decision is that the borrower has a steady source of income, and that income can be used to make loan payments. This is the same criterion that is employed by providers of both secured and unsecured credit of virtually every kind (with the possible exception of pawn lending).

The overarching unique feature of a payday loan is that the borrower provides the lender with a check for the aggregate of the loan principal and finance charge at the inception of the relationship; the lender knows that the check is likely to be honored because the borrower's checking account is periodically replenished by the borrower's employer. It is this very check that provides the lender with the borrower's assurance of repayment. The DoD Report stands logic on its head by recommending

[44] *See, e.g.*, Commission of the European Communities, Proposed Directive on Consumer Credit Agreements (2005), available at *http://ec.europa.eu/consumers/con_int/fina_serv/cons_directive/2ndproposal_en.pdf* (visited August 31, 2006).

[45] *See*, generally, Baxter, W.F., "Section 85 of the National Bank Act and Consumer Welfare," 1995 Utah L. Rev. 1009, 1023:

"Finally, notwithstanding the familiar populist politics of usury laws, the greatest gains from federal preemption are likely to accrue to the least well-off consumers in society. Regulatory restrictions in credit markets hurt highest-risk borrowers the most. Based on a review of the empirical literature estimating the impact of restrictive interest rate ceilings before *Marquette*, one study concludes that 'lower-income families and families headed by younger persons would seem to be among those most likely to be denied credit as a result of such [interest rate] ceilings.' [footnote omitted] In credit card markets in particular, both the Credit Research Center survey data and a New York State study echo this result. These studies indicate that pre-*Marquette* rate ceilings affected the probability that a low-income or lower-middle-income family would hold a credit card but did not affect the probability of cardholding for higher-income families."

[46] *Id.* at 1022.

[47] DoD Report at p. 44.

[48] "Payday lenders have grown dramatically in the past few years precisely because they are meeting both a need and a service banks and credit unions have failed to provide—convenient, small loans on a short-term basis . . . Payday lenders are fast, friendly and have convenient hours; they are open until 6 p.m. and on Saturdays . . . They have a good business model; they fill a need and provide a service that people want." National Association of Community Credit Unions, *Credit Union Alternatives to Payday Lending* (January 2006), available at *http://www.naccu.coop/white_papers.html* (visited August 29, 2006).

that this check be dispensed with, thereby eliminating the lender's assurance of the borrower's ability to repay.

If taking the borrower's check were proscribed, a payday loan would have very different economic characteristics, because the lender's collection costs and overall credit experience would be dramatically and adversely affected. Elimination of the check would drive lenders' costs up to the point were it would no longer be economic to extend credit at current market rates; such credit would be unthinkable at the proposed ceiling rates.

—Arbitration

The DoD Report recommends that arbitration clauses in loan contracts with military borrowers be forbidden. As noted earlier in this letter, there is no evidence of a "problem" to which this "solution" purports to be responsive. Overall complaint rates to regulators regarding payday loans are extremely low: on the order of magnitude of one complaint per million loans. Other than litigation involving the now-defunct "bank model," there have been only a handful of reported cases relating to the payday-loan industry.

As noted above, agreeing to arbitration does not amount to the waiver of any substantive rights. By agreeing to arbitrate, a consumer submits his claims to an impartial tribunal that is authorized to award any remedy that a court might award, including injunctive relief, attorneys' fees and costs. Arbitration is more expeditious and less expensive than litigation and produces results with which consumers are nearly universally satisfied.

This recommendation is inconsistent with federal public policy that encourages non-judicial resolution of disputes and should be rejected.

—Other Recommendations

CFSA takes no position regarding the remaining recommendations of the DoD Report.

Although the report makes the uncontroversial suggestion that uniform cost-of-credit disclosures be given to military borrowers, in fact such disclosures are already being made to all payday-loan borrowers because they are required under the Truth in Lending Act, 15 U.S.C. § 1601 *et seq.*, and the Federal Reserve Board's implementing Regulation Z, 12 C.F.R. Part 226. The requirement for such disclosures is likewise incorporated in many of the state-law provisions that enable payday lending. It is unclear whether this recommendation is intended to remedy a perceived deficiency in payday lending or in some other form of credit.

The report also makes the recommendation that lenders be precluded from contracting for waivers of the protections provided by the Servicemembers' Civil Relief Act.[49] Such waivers are unenforceable in any event, and it is once again not clear what wrong is sought to be remedied by the author's recommendation.

Conclusion

The DoD Report is biased, unscientific and fails to follow the routine social-science protocols that enable policy makers to reach informed decisions regarding consumer-credit law. The report makes recommendations that are unsound from a policy standpoint, and those recommendations are intended to address problems that have not been proven to exist with any demonstrated rate of incidence. The overwhelming evidence is that payday loans are employed by borrowers for their intended short-term purpose, and nearly all borrowers repay them as agreed, without financial distress.

The DoD Report should be rejected in its entirety.

PREPARED STATEMENT OF CHRISTOPHER L. PETERSON

ASSISTANT PROFESSOR OF LAW, LEVIN COLLEGE OF LAW, UNIVERSITY OF FLORIDA

SEPTEMBER 14, 2006

It is an honor to appear today before this Committee. Thank you for the opportunity to share some thoughts on predatory lending practices directed at military personnel and their dependents. My name is Christopher Peterson and I am a law

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[49] This law protects not only those on active duty but also Reservists and activated members of the National Guard. 50 U.S.C. App. § 501 *et seq*. The U.S. Supreme Court has said that the predecessor statute should be read "with an eye friendly to those who dropped their affairs to answer their country's call," *Le Maistre* v. *Leffers*, 333 U.S. 1, 6 (1948), and its provisions are generally considered to be non-waivable.

professor at the University of Florida where I teach commercial law and consumer law classes. I commend you, Mr. Chairman, Senator Sarbanes, and other members of the Committee for organizing these hearings and for providing an opportunity to discuss this important and timely national issue.

As you know, the Department of Defense recently released a large report on predatory lending to military personnel. I have been asked to share my reactions to this report. In short, I believe that deceptive and onerous credit is a significant problem for both the military and for many middle and lower income Americans. The Department of Defense's report does an excellent job of compiling the various predatory lending threats to its personnel and in recommending an appropriate policy response. In this testimony, I will briefly discuss some historical, economic, geographic, and legal considerations which may be of assistance to you in deliberating on the meaning and significance of this report.

Military Personnel Have Historically Been Vulnerable to Oppressive Credit

Predatory lending is not a new phenomenon either in American or world history. Since humanity's earliest recorded history, some creditors have always been willing to take advantage of desperate, incautious, or naive borrowers by making loans with ruinous interest rates and remedies. While today's borrowers wonder whether they will have sufficient funds in their account to cover a check post-dated two weeks in advance, ancient debtors dreaded "the end of the moon" when their high cost loans came due.

Moreover, government and religious leaders of virtually all complex civilizations have tried to limit the harsh consequences these contracts can have both for borrowers and for their communities and institutions. It is no coincidence that humanity's very first recorded comprehensive legal system, the Code of Hammurabi (c.1750 B.C.E.), includes aggressive consumer protection rules. According to legend, the Babylonian Emperor Hammurabi ascended a mountain where Shamash, the Babylonian God of Justice gave him a comprehensive code which was used to govern that civilization for over a thousand years. Included in the statute was a usury law that limited interest rates to 20% per annum for loans of silver and 33% on loans of grain. The text of the code bears a remarkable similarity to interest rate caps adopted thousands of years later, including the interest rate cap purporting to limit interest rates to 18%, which is still in the State code in my home state of Florida. Ironically, the loans offered by companies that surround virtually all of our military bases would have been illegal in ancient Babylon.

History books are full of evidence suggesting military personnel have tended to be especially vulnerable to oppressive moneylenders. For example, violent riots broke out in the early Roman Republic (before they adopted a usury law) when the public learned of an oppressive credit contract between a military veteran and a money lender. When the veteran was unable to pay his debt the moneylender took his farm and imprisoned him. The resulting riots, usually called the "First Secession" by Roman historians, threatened to undermine the entire emerging Roman Republic. Public resentment of oppressive credit contracts was stabilized when the government adopted an interest rate cap in the twelve tables, a law which served as the foundation of Roman law and still influences civil legal systems in Europe and the state of Louisiana. Throughout most of the Roman Empire and eventually the Byzantine Empire, the government capped interest rates at 12% per annum.

All throughout our national history—with the exception of the past decade or two—we have attempted to protect military and non-military borrowers alike with usury laws. The founding fathers brought over English interest rate caps when they arrived in America. When the U.S. Constitution was ratified, low usury ceilings and a frontier thrift ethic were nearly universally agreed upon by America's first leaders. It is extraordinarily unlikely that George Washington, Thomas Jefferson, or Alexander Hamilton would have tolerated 500 percent interest rate loans to members of the Continental army. Certainly Benjamin Franklin, who frequently wrote on the subject and was a strong proponent of usury law, would have been outraged at today's military loans.[1]

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[1] "For example, Franklin once wrote: Think what you do when you run in Debt; *You give to another Power over your Liberty*. If you cannot pay at the Time, you will be ashamed to see your Creditor; you will be in Fear when you speak to him; you will make poor pitiful sneaking Excuses, and by Degrees come to lose your Veracity, and sink into base downright lying; for, as Poor Richard says, *The second Vice is Lying, the first is running in Debt*. . . . Poverty often deprives a Man of all Spirit and Virtue: *Tis hard for an empty Bag to stand upright . . . . The Borrower is a Slave to the Lender, and the Debtor to the Creditor,* disdain the Chain, preserve your Freedom; and maintain your independency: Be *industrious and free*; be *frugal* and *free*." David M. Tucker, the Decline of Thrift in America: Our Cultural Shift From Saving to Spending 9–10 (1991); 7 The Papers of Benjamin Franklin 342–49 (Leonard W. Labaree ed., 1963).

During America's rise to international power in the twentieth century federal and state governments relied on usury laws to deter, educate, and exercise symbolic moral leadership on predatory lending. During the years when so-called "greatest generation" governed our country, very few states or leaders were willing to depart from our traditional usury laws. Our military, along with our allies (all of which, incidentally, did not tolerate predatory lending to their troops either), managed to win the Second World War without the assistance of triple digit interest rate loans in whatever form those loans might take. In the economic boom years following the war, our country became more comfortable with using credit to finance a middle class lifestyle. But it was not until much later that loopholes in our law, including the Supreme Court's historically dubious interpretation of the National Bank Act, allowed lenders to begin marketing loans with terms that in past generations would have been associated with illegal loansharks.

A long term historical perspective suggests that the Department of Defense's recent report on predatory lending is actually quite conservative in substance and modest in proposals. Any responsible look at our national history reveals that at no other time would the Pentagon have been forced to implore the Congress to protect its personnel from triple digit interest rate loans. In every previous American generation, the Department of Defense's substantive legal recommendations would have been accepted with little or no debate.

The Department of Defense Report is Economically Sound

Free and competitive enterprise is one of the backbones of American society. And, no institution is more responsible for preserving our freedom to conduct business than the Department of Defense. However, I would respectfully counsel the Senate to recall the great difference between a competitive market and market anarchy.

In a competitive market, self-interested, autonomous commercial behavior creates better policy outcomes than government intervention, because each individual can be trusted to make their own resource allocation decisions. As each individual makes decisions about where to invest their time, services, and funds, competitive markets naturally evolve into a result that is better than could have been achieved had government intervened. Adam Smith famously compared this process of individual, self-interested decision making to an "invisible hand" that guides social policy to the optimal outcome.

Unfortunately, sometimes the invisible hand alone does not work. Responsible leaders uniformly agree that the government must intervene in the market for some goods and services. We can all agree that the U.S. government should ban free markets for weapons grade plutonium, child pornography, or heroin. These products have characteristics associated with them that make an unregulated market unacceptable. The sale of plutonium to terrorists would likely impose the highest externalities on those killed by a bomb made as a result of the contract. We ban child pornography because contracts to purchase it create an incentive to assault our children, and because we refuse to recognize economic demand for that product as morally legitimate. We ban the sale of heroin because buyers of this product tend to make non-rational decisions by virtue of the product's addictive characteristics. Our ancient (and only recently relaxed) laws against predatory loans are evidence of analogous market imperfections associated with credit contracts.

At least three market imperfections prevent the market for high cost short term loans from resolving to an efficient equilibrium: (1) imperfect information, (2) behavioral distortion, and (3) externalities. First, consumers have great difficulty comparing the prices of credit. Despite the best efforts of our educational system, many people in our society still have (and likely will always have) difficulty learning to read or make simple mathematical calculations. The "invisible hand" cannot create efficient outcomes when individual borrowers do not compare the price of a loan to its opportunity cost. In markets that are targeted by predatory lenders, it is likely that a large percent of the served population have little or no idea how to compare credit prices. Moreover, because creditors can hide and obscure those prices through inaccurate disclosure, hidden fees (including contingent charges such as late fees, over-the-limit fees, attorney fees, etc.), and worthless add-on products that even rational borrowers will not attempt to shop, since doing so is likely to be an unproductive use of time.[2]

[2] Although the government has attempted to assist in this respect by passing the Truth in Lending Act, most people agree that there are serious problems with this statute as it is currently written. TILA disclosures are difficult to understand, come far too late in negotiations (after a loan applicant has already decided to borrow), and are riddled with exceptions that distort the usefulness of disclosures. Moreover, inflation has outdated the dollar limits to the scope

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Second, Consumers, including military personnel, do not always make economically rational decisions. As the nobel prize winning research of Daniel Kahneman and Vernon Smith demonstrates, people often fail to match their estimation of the value of the a product to the utility they actually receive from it. For example, consumers often unreasonably discount the value of future income. Sometimes, for better or worse, people want today, what they should wait for until tomorrow. That is why it is difficult to save for retirement and it is one reason why many people borrow more money than they should. Similarly, consumers tend to overestimate their own ability to control financial outcomes and underestimate factors outside their control, such as unexpected car repairs, illness, payroll mistakes, job loss, etc. This common tendency leads borrowers into believing they can quickly repay high cost loans, when in reality, they cannot. Predatory lenders understand how these behavioral distortions operate in the credit market, and intentionally exploit them. This is why advertisements for "fast cash" or "easy credit" can tempt people, including soldiers, sailors, airmen, and marines, into making unreasonable financial decisions.

Third, predatory loans have significant costs—usually referred to as externalities—born by those not privy to the contract. For example, when a predatory loan does not only hurt the borrower, it can also lead to deprivation of resources that would have otherwise gone to the borrower's children or other dependents. Neighborhoods that host predatory lenders often suffer from lower property values. Utilities, hospitals, land lords, and mainstream financial service providers all have greater difficulty obtaining timely payment from consumers who become mired in high cost debt. Because they tend to be more aggressive than other creditors, predatory lenders frequently skip to the head of the line obtaining payment before others with less questionable debts.

The Department of Defense report should be seen as an emphatic example of the externalities associated with predatory loans. Military leaders are speaking out, explaining that predatory lending is eroding the military readiness of our armed forces. Who better to know whether this is true than the Pentagon along with the many generals, admirals, and other officers who have spoken out on this issue? By trapping military borrowers in high cost predatory loans, lenders are disrupting the family lives and emotional well being of those who are protecting us in a complex and dangerous world. The evidence cited by the Pentagon on the thousands of service members who have suffered revoked security clearances as a result of predatory lending should be seen as concrete, unimpeachable evidence of a market distorting externatility associated with high cost consumer loans.

The Department of Defense Report is Empirically Sound

A previous study conducted by Professor Stephen Graves, of California State University, Northridge, and myself examined the location patterns of one type of predatory lender in relation to military installations around the country.[3] In our study we examined 20 states, 1,516 counties, 13,253 ZIP codes, nearly 15,000 payday lenders, and 109 military bases. We found high concentrations of predatory lending businesses in counties, zip codes, and neighborhoods in close proximity to military bases. Our study controlled our observations by comparing the density of payday lender locations in military areas to statewide averages and also by comparing payday lender locations to bank locations. We could find no statistically reasonable explanation for these location patterns except for the presence of military personnel living on or in close proximity to military bases.

This pattern existed in every state we looked at, except for New York, which had consistently and aggressively enforced its 25 percent per annum interest rate cap. Unlike every other major military installation we studied, Ft. Drum (home to the Army's 10th Mountain Division) in upstate New York was not surrounded by payday loan outlets. While other credit options were available, including finance companies, credit unions, banks, thrifts, and pawnshops, there was not a large on the ground force of triple digit interest rate lenders surrounding the base. In contrast, voluntary trade association guidelines, or so-called "best practices" agreements, did not create any demonstrable influence on the geographic patterns associated with payday lenders and military installations. Similarly, a variety of ancillary state consumer protection rules, such as rollover limitations, internet databases, and licensing requirements, did not deter payday lender clustering around military bases. We

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of the statute and the remedial damage awards that deter non-compliance. Besides, predatory lenders consistently disregard and obscure TILA disclosure rules anyway. *See generally* CHRISTOPHER L. PETERSON, TAMING THE SHARKS: TOWARDS A CURE FOR THE HIGH COST CREDIT MARKET (U. Akron Press, 20034)

[3] Steven M. Graves & Christopher L. Peterson, *Predatory Lending and the Military: The Law and Geography of "Payday" Loans in Military Towns*, 66 Ohio St. L.J. 653–832 (2006).

concluded that usury laws—the time tested, conservative, historical American response to predatory lending—appeared to be the best legal tool for addressing concerns about predatory lending to military personnel.

The Department of Defense report further corroborates our findings. It uses a variety of quantitative and qualitative data to establish the existence of a significant predatory lending problem. The report makes realistic estimates of the percent of service members using payday loans. The report also accurately summarizes a variety of other potentially predatory credit products used by military personnel. The report accurately describes Department of Defense financial education efforts, as well as the inherent limitations to this approach. The report accurately summarizes the many better alternatives to predatory loans available to military borrowers, and pragmatically explains that these alternatives are not likely to prevent service members from falling into predatory debt traps. The report persuasively presents compelling qualitative narratives of service members and their families who have suffered real personal, financial, emotional, and professional lossses as a result of predatory lending. And the report compiles a useful list of suggestions for policy reform—all of which would meaningfully improve the lives of military service members.

In conclusion, I do have one reservation with the Department of Defense report. I am afraid the comprehensive nature of the report might be used as a tool to prevent immediate reform of credit laws. While I believe comprehensive reform is necessary, reestablishing our traditional, time-tested usury law should be a necessary first step on the path to comprehensive reform. Accordingly, I strongly urge Congress to take the opportunity presented by the Talent-Nelson amendment to this year's defense authorization bill. This amendment reasonably re-establishes a cap on allowable interest rates charged to military personnel at a generous 36 percent per annum. Loans in excess of this amount have proven historically dangerous, economically inefficient, and geographically targeted at the military. For additional information on these issues I invite the Committee members and their staff to review my prior published writing.[4]

[4] A bibliography of my research is available at *http://www.law.ufl.edu/faculty/peterson/*

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RESPONSE TO WRITTEN QUESTIONS OF SENATOR SHELBY FROM ADM. CHARLES S. ABBOT (RET.)

Q.1. While military relief societies seem to present a means to help soldiers in financial distress, a recent *Washington Post* article claimed that these societies have cumbersome procedures and require referrals from a ranking officer prior to obtaining financial assistance. Do these procedures create obstacles for service members and if so, what can be done to reduce or eliminate them?

A.1. The mission and charter of each service's Military Aide Society (MAS) are designed to best support the requirements of the service. Each provides a different level and variety of services to their clients. All the MAS have an agreement that allows them to provide assistance to service members and families from the other military services.

The Navy-Marine Corps Relief Society was established in 1904 and has been dedicated to the financial health and welfare of Sailors, Marines and families since. Though a private non-profit, volunteer service organization, we work in partnership with the Navy and Marine Corps to support the financial readiness of the service member and family. With 53 full service offices on Navy and Marine installations around the world, we provide financial, educational and other assistance to those in need. The majority of our assistance is provided for basic living expenses, vehicle repair, and emergency travel.

As a charity supported by the generosity of active duty and retired Sailors and Marines, the Society has a responsibility to provide assistance based on valid needs. In every case, we require verification of eligibility, and in non-emergency cases we verify financial need. Our caseworkers are well trained, case management records are automated, and our procedures well refined and efficient. We require no referral by the service member's chain of command. Many of our clients are "walk-ins" at our offices. Every client's case is thoroughly reviewed by a qualified caseworker.

We have a policy of confidentiality and do not involve the clients command unless there is misconduct or criminal activity. If a client's request is denied at the local level, the client may decide to involve the command and request an appeal from the Society's leadership.

I am proud to say that during our most recent (2006) client satisfaction survey, the Society received a 98% satisfaction rate.

RESPONSE TO WRITTEN QUESTION OF SENATOR SHELBY FROM WILLIAM O. BROWN, Jr.

Q.1. You criticize the Department of Defense Report methodology on several grounds. One of these grounds is that the Report fails to show how payday loans cause financial problems, rather than being a mere symptom of larger financial problems. Could you explain this lack of causation argument?

A.1. The Department of Defense Report only provides anecdotes of military members that had financial difficulties and acquired payday loans. The Department of Defense does not conduct a study of bankruptcy filings by military personnel in order to determine if there is any systematic relationship between payday lending and bankruptcy. The Report provides no evidence that financial problems among military personnel are caused by their usage of payday loans. Payday loans are small denomination loans intended to solve short-term financial problems and my research indicates that most members of the military use them for that purpose. The rate of default on payday loans is in the neighborhood of 5% indicating that few individuals with payday loans have larger financial problems that would prevent the repayment of the loans. Most individuals that declare bankruptcy or experience severe financial problems have a variety of financial problems caused by unexpected negative life events or overspending. These problems are usually far larger in scale than the amount borrowed through payday lending. To the extent that those with severe financial problems use payday loans, they already have these problems when they obtain the payday loans and using them as a last attempt to pay off other creditors.

RESPONSE TO WRITTEN QUESTION OF SENATOR CRAPO FROM WILLIAM O. BROWN, Jr.

Q.1. What would be the potential unintended consequences of price caps on individuals seeking access to the growing demand for short-term, small denomination credit?

A.1. There was a study in 2005 by two economists at the FDIC that found that the current price of payday loans just cover the cost of providing this service. If prices are capped, then the industry will no longer be able to profitably provide these loans and legitimate providers will no longer offer them. There is a demonstrated need for such products by military personnel. These military personnel will no longer be able to use what they consider as a valuable source of short-term credit and will likely turn to alternative sources for their short term borrowing needs. These may include legal lenders such as pawn shops where borrowers risk forfeiting personal possessions or credit cards where borrowers are more likely to carry an ongoing credit balance. Some former payday loan customers will almost certainly turn to lenders that are willing to violate both the legal interest rate cap and legal collection practices when dealing with borrowers. Studies indicate that countries with more stringent interest rate caps on consumer loans have larger and more active illegal lending markets. As a result, the price caps may have the ultimate result of sending military borrowers to legal credit products that are less well fit for their needs or illegal credit products that come with much higher costs than the existing legal products. A combined program of encouraging more competition in the market for short-term loan products and better education about financial products among military personnel would be more beneficial than the proposed interest rate caps.

RESPONSE TO WRITTEN QUESTIONS OF SENATOR SHELBY FROM LYNN DRYSDALE

Q.1. The Report discusses coercive actions that are often employed by lenders to collect on debts, such as garnishment of wages or attempting to collect when a customer has been deployed. The Report also mentions that many loan contracts require borrowers to waive their rights to legal action or any special legal protections afforded to them. What evidence have you seen of either coercive collections actions or mandatory waivers of important legal rights?

A.1. In Florida payday lenders are called deferred presentment providers. I see many varieties of coercive collection practices and all lenders include clauses in their contracts prohibiting consumers from filing lawsuits against the lenders and cutting off other consumer rights. These contracts and practices are particularly harmful in these high cost, short-term loans because the loans are almost impossible to timely pay and are deceptively marketed. I have seen coercive collection techniques lead to the payment of payday loans before other essential household bills exacerbating rather than alleviating financial emergencies. Also, the coercion leads to stress which affects individuals and their families.

Representative samples of coercive collection techniques and mandatory waivers of important legal rights follow:

- Mr. Hubbell and his wife are both service members. Due to the costs of his wife's illness and her inability to work, they took out a payday loan which eventually led to thousands of dollars in outstanding loans from both payday lenders and installment loan companies. Over a five year period, the more they paid, the more they owed. They have repaid tens of thousands of dollars and still owe over $12,000, a monthly payday loan debt of just over $3,500. Most of the repaid sums went to pay off other loans and provided no benefit to the Hubbells except for digging them deeper into debt.

Mr. Hubbell is an air traffic controller. Therefore, he felt he had no option but to stay on the debt treadmill because of the fear created by threats of criminal prosecution and the inevitable consequence of lenders' contacts to Mr. Hubbell's command which would lead to loss of his security clearance and his rank. Lenders were harassing him on base and at home. One day a lender called him while on the ship, cussed at him and threatened him. Mr. Hubbell told the collector to contact his attorney. Twenty-five minutes later his superior officer called and said the lender had called him twice in the short period of time since he hung up from speaking with Mr. Hubbell. The collector harassed the superior officer and demanded the name and number of the base Commanding Officer.

Each of the lenders required either payment by allotment or electronic assess to his bank account as additional security, required him to allow them to debit his account more than once in one day, and one required him to sign an illegal wage assignment. See Exhibit "A" attached.

Each of the loan contracts contained a unilateral, mandatory arbitration clause. The required arbitration was expensive and prevented Mr. Hubbell from suing them for illegal actions while the lenders retained the right to take money directly from his account without prior notice.

- Mr. Bartholomew borrowed from a sham lender who pretended to provide "rebates" instead of loans when a person purportedly purchased Internet access. The disguise was used so the lender could hide criminally usurious loans, ignore the Florida anti-rollover laws and ignore Mr. Bartholomew's right to a grace period.

This lender required electronic access to his account as additional security for his loan. When he was unable to keep up with payments, the lender directly debited his account for more than the amounts needed to pay off his loan. The lender also harassed him on his ship and called his superior officers. He was faced with not having enough money for groceries and rent for his family, including three small children; they debited his account multiple times in one day. When he closed the account because the lender's actions rendered the account overdrawn, the lender sent him a letter which was copied on to the official letterhead from our local State Attorney's Office threatening to put him in jail for failing to pay the loan.

Mr. Bartholomew's contract also contained a unilateral, mandatory arbitration clause. The arbitration required was expensive and attempted to prevent Mr. Bartholomew from suing them for illegal actions while the lender retained the right to take money directly from his account. The clause contained in his contract also limited the remedies he could seek in arbitration. See Exhibits "B" (Loan Document) and "C" (unauthorized letter using State Attorney letterhead) attached.

• Mr. Wall had an installment loan through a "military" lender that required automatic access to his bank account for electronic payment and required him to allow multiple debits in one day for a single loan. When he did not make a timely payment, the lender "hit" his bank account eleven times in one day. The lender then charged him $525.00 in late and bad check fees and his credit union charged him $275.00 in NSF charges. See Exhibit "D" attached.

The lender also included provisions in his contract preventing him from suing the lender for illegal actions and requiring him to take all claims to an expensive arbitration process in Delaware even though he was solicited and signed the loan in Florida. Lastly, his contract contained the following phrase: "I understand that persuant (sic) to Art 134 and Art 123a of the Uniform Code of Military Justice that failure to comply with the terms of this agreement may result in a maximum penalty of a bad conduct discharge, 6 months confinement and forfeiture (sic) of all pay and allowances." See Exhibit "E" attached.

• Ms. Worrow obtained a loan from a "military" lender that was marketed online. The lender required her to pay through a military allotment check. They threatened to contact her Command if the allotment was redirected. This put Ms. W in a bind because the costs were so high for the loan that the allotment took away money she needed for food, transportation to and from work and utilities. See Exhibit "F" attached.

Her lender also prevented her from suing them for illegal practices and required her to sign a unilateral, mandatory arbitration clause. Therefore, she could not sue them but they could take money directly from her pay check or bank account.

• Mr. K spent his entire day off going from payday lender to payday lender to keep from having his checks bounce. At one time, he was trying to juggle nine loans. Each time a payday loan became due he felt compelled to take out another, more expensive loan because the lenders were harassing him with illegal threats of criminal prosecution. They also contacted his superiors at work and required him to agree to automatic withdrawal from his bank account.

• Mr. G contacted me via email from an undisclosed location at sea. He was worried about his wife and family because of his outstanding payday loan debt. Due to threats she had received, he was afraid that the payday lender would put his wife in jail, leaving their two babies without a parent.

• Ms. Griffin is a Navy wife who has a payday loan with Advance America in Florida. In its contract, Advance America claimed it was a member of the Community Financial Services Association, a payday lender trade association. It also claimed it followed the Best Practices of this association published on its Web site such as promises to follow state law. Florida law requires lenders to grant at least a 60-day grace period with no additional fees, charges or costs if a borrower seeks credit counseling and prohibits "rollovers." Instead of providing the grace period, Advance America required her to roll over her loan when she could not pay. When she went to pay it off, she was $45 short, because of the "roll over" fee.

Advance America refused the grace period even after she told them she already had the counseling at the Navy Marine Corps Relief Society, an authorized State of Florida Deferred Presentment Provider counseling agency. The director of NAS Jax NMCRS, Ret. Capt. Dave Faraldo, called the lender only to be told they did not have to talk to him and did not have to provide the grace period. The Advance America employee added she had been an employee trainer for eight years and they never had to provide the grace period. When I contacted Advance America as Ms. Griffin's attorney and provided a signed release, the employee refused to speak to me about the legally-required grace period on her account.

RESPONSE TO WRITTEN QUESTIONS OF SENATORS SHELBY AND JOHNSON FROM HILARY B. MILLER

Q.1. Although the Report acknowledges that many payday lenders voluntarily adopt a set of best practices, it criticizes the lack of a mechanism to monitor and enforce them. Is there more the industry could be doing to make sure lenders are complying with these best practices?

A.1. The industry's principal trade association, Community Financial Services Association of America ("CFSA"), seeks to enforce its Best Practices by causing them to be enacted into positive state law and by assuring that state regulators have appropriate information, authority and enforcement powers. To date, CFSA member companies have dedicated millions of dollars to this activity, and 37 states and the District of Columbia have enacted laws that incorporate CFSA's Best Practices in some part. Compliance with CFSA's Best Practices is also mandatory for CFSA's members, and the association investigates and takes appropriate enforcement steps with respect to violations. Because of both the transparency and simplicity of loan terms, consumers are highly unlikely to be misled by non-compliant lenders. The industry continues to work with legislators and regulators to assure consistent and, to the greatest extent possible, uniform regulation of these loan products.

Q.2. In your testimony you state that it is contrary to the interests of the payday lending industry to have service members get into trouble with their loans. But if borrowers can not pay in full when the loan is due and choose to roll over the current loan into another, larger loan, don't lenders benefit from the additional fees that result? How frequently are loans rolled over?

A.2. As noted in my prepared statement, a recent independent study showed that 49% of military enlisted payday-loan borrowers have used a payday loan no more than twice in the last year, and 79% had had no more than four loans in the last year.[1] Of the 38 states that have permitted payday lending, 36 have strict statutory limitations on rollovers, and there is an outright ban in 22 of those states. CFSA's Best Practices ban rollovers unless they are allowed by state law, in which case rollovers are limited to the lesser of four or the state-law limit. While rollovers are frequently mentioned as an issue with payday loans, the reality is that military borrowers very rarely experience repayment problems with their loans and, as a group, are in debt for much shorter periods than their civilian counterparts. Payday lenders do not earn more in fees from a loan rollover than from a new loan. While payday lenders charge a fee for rollovers, every lender (including bank overdraft lenders, as well as mortgage lenders, credit card lenders and auto lenders) benefits to some extent when a borrower pays a fee for the privilege of paying late. This is the inherent nature of consumer lending, and it is not fundamentally wrongful or misleading. Moreover, the consequences to a borrower of not being able to extend—on a limited and responsible basis—the maturity of a payday loan may often be more costly to the borrower than the small extra fee for this service; those consequences may include adverse credit-bureau entries, bounced checks, overdraft fees, late-payment fees and other vendor charges.

Q.3. Did your industry seek to work with DoD and give it input on this study? What, if anything, has the industry proposed to DoD to stop specific abusive practices that may occur when payday loans are made?

A.3. CFSA made repeated good faith attempts to work with DoD, but DoD clearly had no interest in doing so. First, over a year ago before the study was prepared, CFSA representatives met with key DoD representatives—including some whom we understand were directly involved in preparing the report—and requested that DoD work with CFSA to address concerns with respect to payday lending to military personnel. These DoD officials showed no interest in working with CFSA and failed to follow up with any further contact. Then, while the study was being conducted, CFSA became concerned that DoD had not contacted the association or its members for information or input. Accordingly, CFSA made a number of requests for meetings with relevant DoD officials; DoD staff would schedule meetings with CFSA but subsequently cancel those meetings. Finally, again at CFSA's initiative and request, about a week before the study was released, Dr. Chu and several of his as-

[1] William O. Brown, Jr. and Charles B. Cushman, *Payday Loan Attitudes and Usage Among Enlisted Military Personnel* (2006). Available at *http://www.consumercreditresearchfoundation.org/*__files/060628MilitaryPDLSurvey.pdf (visited August 29, 2006).

sociates met with CFSA representatives. During the meeting, CFSA sought to educate DoD regarding the fundamental fallacies of certain arguments and factual assertions by opponents of the industry like the Center for Responsible Lending ("CRL"). CFSA also proposed amending federal law to include over a dozen additional safeguards for military borrowers, including a total ban on rollovers and a payment plan, but DoD had no interest in these proposals and proceeded to issue its report a few days later. I am attaching a separate memorandum summarizing CFSA's proposals to DoD. I trust that you and other Committee members will see from this memorandum that CFSA was proposing tough measures that would have prevented abuses while at the same time preserving payday loans as a credit option for service members. DoD unfortunately had no interest in adopting such responsible measures and instead continued to follow its course of blindly accepting erroneous CRL contentions and flawed studies and of recommending unwarranted measures.

Q.4. Wouldn't the use of a properly constructed payment plan resolve most of the "cycle of debt" problems some military customers may have in repaying their loans? If so, will industry support such a plan?

A.4. Absolutely. The industry supports such plans and would support them for military borrowers. In states where payment plans have been required by law, such plans have enabled tens of thousands of customers to defer payment in accordance with a plan that meets their individualized cash-flow requirements. Such plans give borrowers options rather than, as the DoD report urges, taking them away. As noted above, CFSA proposed banning rollovers and requiring an extended payment plan. The effect of such a plan would be to provide military borrowers with an interest-free, long-term principal-reduction plan that would make it just as easy to repay a payday loan as it is to obtain one.

Q.5. On pages 14 and 15, the report states as a fact that the two-week loan cited by payday lenders "is virtually nonexistent." It then says that Center for Responsible Lending research shows that only 1% of loans go to borrowers who take out only 1 loan a year and 91% of payday loans go to borrowers with 5 or more loan transactions per year. It says that it is the rule, not the exception, that payday loans catch the borrower in a debt trap with the average borrower paying back $834 for a $339 loan. Are these statements accurate?

A.5. No. Unfortunately, the Center for Responsible Lending generally is not responsible or accurate when making most of its contentions regarding payday lending. It repeatedly puts forth erroneous "facts" and reaches unsupportable and misleading conclusions based on faulty and biased analyses. To date, there have been only a handful of legitimate academic studies regarding the rate of repeat payday loan usage, and these studies do not support CRL's assertions with respect to military borrowers. Among service members—which is the only relevant population for purposes of the DoD Report, not the general population—the correct facts are as set forth on page 2 above. DoD's own statistics show that the rate of usage, including repeat usage, of payday loans among military borrowers is extremely low. These low rates of usage and repeat usage were not demonstrated to be sufficiently problematic to warrant extraordinary legislative action. DoD proceeded to reject its own data and disregarded other readily available information—including independent third-party data—contrary to CRL's positions, and adopted CRL's inaccurate contentions and inappropriate "solutions" without critical or responsible analysis.

ATTACHMENT

A Case Against Prohibition of Regulated Storefront Payday Lenders as a Short-term Credit Option for Military Personnel

Most public policy debates revolve around a perceived problem and a proposed solution.

In this case, the Department of Defense ("the Department", or "DOD") has determined that an increasing number of military personnel have become sufficiently concerned about their domestic financial obligations, to cause an adverse effect on military readiness. In response to this problem, the DOD has recommended, as one primary solution, that Congress prohibit the offering of payday advances that charge a fee exceeding 36% when annualized over 365 days ("APR").

The Community Financial Services Association of America ("CFSA") does not question the DOD's analysis of its military's state of readiness to defend our country. In fact, no fair-minded critic of the payday advance industry has ever suggested that the owners and employees of this industry do not unequivocally support our military and the DOD's duty to protect the men and women who serve our nation.

The focus of this discourse is not on the problem, but instead, on the proposed solution. It is our intention only to illustrate the inherent flaws in the proposed 36% APR cap, which would effectively apply to just one small segment of the short-term, unsecured consumer credit market and, most certainly have unintended consequences to the very ones it is intended to protect.

A DISPASSIONATE ANALYSIS OF THIS SHORT-TERM, UNSECURED CREDIT MARKET INDICATES THAT PROHIBITION OF ONE SEGMENT WILL LIKELY EXACERBATE, NOT REMEDY, THE PROBLEM.

Virtually every commentator who has opined upon the payday advance issue, has agreed upon at least one fact—there is an enormous demand for short-term access to money in small denominations. Consumers define short-term to mean until their next influx of cash, typically occurring on their next payday.

The market satisfying this demand is estimated at approximately $100 billion and is supplied by a number of financial and quasi-financial services, none of which are traditional loan products. All of the diverse providers in this short-term, unsecured credit market offer the same end product—the ability of a consumer to access credit by entering into a fee transaction to be "settled up" at the customer's next receipt of income. In decreasing order by size, this market volume is composed of the following credit products:

1. Late fees—paying one creditor, or funding an immediate cash need, by delaying a payment to another creditor;

2. Bank non-sufficient funds fees—using an unfunded check, either unintentionally or intentionally, to pay a creditor by forcing your bank to "front" the payment until funds are available to replenish your account;

3. Courtesy overdraft, or "bounce", protection fees—using your bank's permission to overdraw your account, thereby creating immediate cash funds;

4. Payday advance fees at storefront lenders—using regulated payday advance lenders to "cover" your unfunded check until payday;

5. Payday advance fees at offshore Internet lending sites or from other subterfuge products—satisfying your need for short-term cash through lenders who are immune to state or federal regulation.

A common mistake when evaluating the cost of a payday advance is to compare it to traditional loan products. Such a comparison serves no useful purpose, since the comparison would be of products that occupy very different segments of the financial services market and, accordingly, fill very different needs of consumers. A fair analysis of the payday advance service must be made in the context of the actual products and services with which it competes, and with an understanding of the real alternatives available to its customers. Below is a comparison of the costs and the total fee volumes for these market segments.

COSTS AND MARKET FEE VOLUME OF CONSUMERS' SHORT-TERM UNSECURED CREDIT OPTIONS

Credit option	Cost per $100 loan or Occurrence	Total fee volume	State Regulation
Storefront Payday Advance	$15	$6 billion	38 States
Offshore Internet Payday Advance	$10–$40	Unknown	None
Bounced Check Fees	$54	$22 billion NSF + Unknown Merchant Fees	None
Overdraft Protection Fees	$27	$10 billion	None
Late Fees (credit card, landlord, utilities, etc.)	$39	$57 billion	None

THE DOD'S PROPOSED 36% APR CAP WILL ELIMINATE ONLY THE SMALLEST SEGMENT OF SHORT-TERM CREDIT OPTIONS AVAILABLE TO MILITARY PERSONNEL.

A payday advance cannot be offered at a 36% APR. The typical payday advance customer is charged $15 for a $100, 14-day advance, resulting in an annualized rate of 391% (use of the APR assumes the customer takes out the loan every two weeks for 52 weeks—in reality, this virtually never occurs as most states prohibit such constant rollovers, as do our mandatory industry Best Practices). At a 36% APR, the total fee charged for that same $100 advance would be $1.38, representing a **91% reduction in gross revenue.** The public filings of publicly traded payday advance companies indicate that the average net profit, after taxes, is between 10%–20% of gross revenue, well in line with, and often below, other financial services companies. No serious policy maker believes that the payday advance product can be offered with a 36% APR, a belief shared by thoughtful commentators as exhibited in this excerpt from an August 14, 2006 editorial in the ***St. Louis Post Dispatch:***

—"Sen. Talent's proposal, tacked on as an amendment to a defense bill (SB 2766), would limit the annual percentage rate to 36% percent for military members and dependents. That works out to about $1.38 on a two-week loan of $100. Payday lenders argue that's less than it costs to service such loans, and that the industry couldn't stay in business at rates that low. There's truth to that argument, and payday loans—if they're [not] allowed to snowball out of control—do serve a legitimate purpose. While the Talent/Nelson amendment has the support of the Center for Responsible Lending, a nonpartisan research center in Washington, and the Consumer Federation of America, there are other approaches. Mr. Talent might take a look at the new reforms in Illinois."

Economists, academicians and state policy makers have substantiated the fact that this restrictive APR would not be feasible for payday advance lenders. Researchers representing many of the nation's credit unions and the Federal Deposit Insurance Corporation (FDIC), neither of which are advocates for the payday advance product, have studied the issue of cost and profitability and come to the conclusion that the costs largely justify the price. Below are two references from such studies.

The Economics of Payday Lending, **John P. Caskey, Filene Research Institute & The Center for Credit Union Research, Madison, WI, 2002.**

—"Another possible approach to the rise of payday lending would be for credit unions to undercut payday lenders by offering low-cost small-value loans to payday loan customers. But this approach is unlikely to be successful. If a credit union were to find good loan candidates and charge them its top loan rate of 18% APR for a short-term small-value loan, this would not cover its costs."

—"For example, a $200 two-week loan at 18% APR would generate $1.38 in interest, not enough to cover even the origination cost. In other words, the high cost of payday loans substantially reflects the high cost of making small-value, short-term loans."

Payday Lending: Do the costs justify the price?, **Mark J. Flannery and Katherine Samolyk, for the Center for Financial Research, FDIC, 2005.**

—"The payday advance product's structure makes it costly to originate these short-term loans, whose default rates substantially exceed the customary credit losses at mainstream financial institutions."

—. . ."an important reason why advance fees are high is that the loan is short-term and non-amortizing."

—"We find that fixed operating costs and loan losses justify a large part of the high APR charged on payday advance loans . . . These operating costs lie in the range of [payday]

advance fees, suggesting that payday loans may not necessarily yield extraordinary profits.”

—“These APRs substantially exceed the rates associated with mainstream consumer credit products, although some mainstream services (e.g., overdraft protection fees or credit card late payment fees) might translate into similar APRs if providers were required to report such information.”

Additionally, policy makers in 37 states (plus D.C.) have studied the rate issue and passed legislation allowing an average fee of $17.50 per $100. In fact, Indiana, Kansas and Rhode Island, having previously enacted restrictive fees averaging about $12.50 per $100, repealed those rates in favor of a $15 per $100 fee. Policymakers in these states found that rates below $15 per $100 had restricted competition and forced consumers to more expensive, less desirable and even unregulated alternatives.

AVAILABILITY OF MARKET ALTERNATIVES MAKES IT UNLIKELY THAT ELIMINATION OF THE STOREFRONT PAYDAY ADVANCE OPTION FOR SERVICEMEMBERS WILL DECREASE THE READINESS PROBLEM.

On the surface, it might seem reasonable to assume that reducing the annual percentage rate (from 391% to 36%) paid by military personnel for a storefront payday advance might correspondingly reduce the DOD’s military readiness problem. Given the current market short-term credit alternatives discussed previously, the reality must be that it will either have no effect, or intensify the problem. What is clear is that the **expected result** of lowering the APR of a storefront payday advance to 36% **will not occur**— but the unintended result of forcing the military to more expensive, or more dangerous alternatives, **surely will.**

As noted earlier, there exists a $100 billion demand for financial services that provide immediate access to needed money or credit. Storefront payday advances comprise about 6% of the supply side of that market. The remaining 94% of the market will not be subject to the 36% rate cap. Since prohibition of the storefront payday advance service option will not eradicate the demand for the service by the 6% of customers in the market that currently use it, those customers will simply shift to one of the other alternative products available.

Case studies of consumers who had unfortunate, and sometimes dire, experiences with these other sources of higher cost credit are plentiful. Consider just these few recent examples.

—Mark Keil, of Dayton, OH, stopped at a convenience store for $19.45 worth of cigarettes. The expense cleared his debit card, along with several others over the next several days, but he didn’t know his bank had automatically covered these overdrafts. He paid $198 to his bank for covering $59 in overdrafts. Six months later he had amassed $1,194 in overdraft fees. (AARP Magazine, September & October 2006)

—Carolyn Russell, of Fort Worth, TX and living on a fixed income, called her bank and was told she had $2.32 available in her checking account. She immediately bought that amount of gas for her car. Eight days later she received a notice from her bank that she was overdrawn by two cents and required to pay a $36 fee. After calling to inquire, she went to the bank the next day to pay the overdraft, which by then had grown to more than $70, due to daily penalties. (Star Telegram, July 7, 2006)

—Unidentified customer from Bristol, TN, signed up for a payday loan on the Internet and it “turned into a nightmare. They were debiting my bank account, so months later I was still getting deductions from my bank account . . . On the whole run I lost about three or four hundred dollars.” (Briston Herald Courier, January 4, 2006)

—Fatemeh Hosseini, of Sunnyvale, CA, worked a second job to try to keep up with her credit card payments. Although she had stopped using her cards to buy anything, in two years her debt nearly doubled. “That’s because Hosseini’s payments sometimes were tardy, triggering late fees ranging from $25 to $50 and doubling interest rates.” She eventually filed for bankruptcy. (The Washington Post, March 6, 2005)

These readily available alternatives have raised the ire of **consumer advocates, credit union officials and state regulators** of financial services:

—Paying overdraft fees “can be as costly as payday loans . . . $80 one week overdraft loan with a $26.90 fee equals 1,753% interest.” (Center for Responsible Lending issue paper on bank overdraft fees, April 2006)

—“Critics also contend that bounce-protection fees, as high as $37 per transaction, are little more than high-priced credit. “If a bank lends you $100 and charges you a $20 fee—and then you pay the money back in two weeks—that’s an annualized interest rate of 520%,” notes Jean Ann Fox, director for consumer protection at the Consumer Federation of America in Washington. “It’s worse than a payday loan.” (Business Week, May 2, 2005)

—“These products [overdraft “bounce” protection] are worse than payday loans. With payday loans at least you get a disclosure, which is required by federal law, so you know how much they’re gouging you,” says Chi Chi Wu with the National Consumer Law Center. (AARP Magazine, September & October 2006)

—“About 80% of our members are using courtesy pay the way it was intended just a few times a year here and there,” explained First Financial Federal Credit Union CEO Rob Windsor. “But 20% were paying us a lot more than they should be . . . Our courtesy pay fee is $15, which is pretty low, but even with that low fee, we see people who are paying thousands in courtesy pay fees.” (Banking Wire, March 2, 2006)

—“A common complaint against online payday lenders is that the customer is required to give banking information, whereas if they walk into a payday lender store they give them a postdated check. But what’s happening online is the payday lender uses the bank information to make unauthorized withdrawals from the consumer's account. They say they're collecting funds owed to them. They can make these withdrawals in a way they can't with a postdated check," said Karolyn Klohe, financial legal examiner, WA Department of Financial Institutions. (Bankrate.com, September 12, 2005)

—"People who use online payday lenders risk losing money, paying excessive fees and having their identities stolen, the Nebraska Department of Banking and Finance warned Tuesday. 'Using the Internet for this type of transaction puts the borrower back into an unregulated electronic alley, possibly dealing with lenders from foreign countries,' said John Munn, director. (Omaha World-Herald, April 12, 2006)

The previously discussed alternative short-term credit products each fill a niche and may be, depending on the circumstances, a better or worse choice for a consumer than a payday advance. But no one can deny that, if a consumer is seeking a payday advance from a storefront lender, it will in many cases be:

1. less expensive than NSF/merchant fees, overdraft protection fees, most internet lending fees and some late fees;
2. safer than a transaction with an internet lender located overseas;
3. void of any negative impact on the customer's credit score, unlike NSF or late fees.

It is ironic that storefront payday advances represent

—the smallest segment of a distinct market

—often the least expensive supplier in that market

—an industry that fully discloses all costs associated with the transaction and seeks responsible regulation from state policy makers

. . . and, yet, is the only significant supplier in the market subject to prohibition by the DOD proposed 36% rate cap.

TRADITIONAL, LOWER COST ALTERNATIVES TO PAYDAY ADVANCE LOANS, BOUNCED CHECK FEES AND LATE BILL PAYMENTS CANNOT FILL THE DEMAND FOR THIS SHORT-TERM, LOW DENOMINATION CREDIT.

Even with the best intentions and advocacy efforts, the DOD and other organizations are not equipped to provide enough alternative financial resources to eliminate the $100 billion short-term credit market in the foreseeable future. Given the level of consumer demand, if business enterprises could offer them at 36% APR, traditional financial institutions would already be doing so. Even nonprofit entities—with well-funded operating resources, tax-exempt status and a mission to provide affordable financial aide to those in need—have found it difficult, if not impossible, to offer low-cost alternatives to payday advances.

While a number of institutions have talked about providing low cost alternatives to payday advance loans, there has been little real progress made in offering similar, viable products that are attractive to consumers. In fact, there is one school of thought that traditional financial institutions may have little incentive to do so.

The Annie E. Casey Foundation has recently released a report, authored by former Assistant Secretary of the U.S. Department of the Treasury and current Chairman of the FDIC Sheila Bair, entitled, *"Low-Cost Payday Loans: Opportunities and Obstacles."* (http://www.aecf.org) The report underscores the importance of small-denomination, short-term loans and encourages banks and credit unions to offer lower cost payday loan alternatives to their customers. But the report points out that banks and credit unions may be reluctant to do so, saying:

> —*"Though depository institutions have the means to offer low-cost payday loan alternatives, the proliferation of fee-based bounce protection programs represents a significant impediment to competition."*
>
> —*". . . fee-based bounce protection programs are functionally equivalent to payday loans when used by customers as a form of credit. When used on a recurring basis for small amounts, the annualized percentage rate for fee-based bounce protection far exceeds the APRs associated with payday loans."*
>
> —*"To the extent so many depository institutions are relying on bounce protection for significant fee income, they may view it as against their own interests to cannibalize profits through development of other, lower-cost forms of small dollar credit."*

The report goes on to say that payday loans can be the lowest-cost option available to some consumers:

> —*"Interviews and industry survey indicate that payday loan customers do make a cost analysis in comparing the price of a payday loan with the alternative costs of bouncing a check and/or incurring late fees."*
>
> —*"When used on a recurring basis for small amounts, the annualized percentage rate for fee-based bounce protection far exceeds the APRs associated with payday loans."*
>
> —*". . . APR disclosure of fee-based bounce protection might help payday loan vendors, since for some consumers, their product will be less expensive."*

CFSA supports the exploration and encouragement of payday advance alternatives. The entry of traditional financial institutions into the payday advance market would accelerate overall acceptance of the service and provide more consumer choices—both having positive effects on consumers and the industry. In the interim, consumers need to have viable and safe credit options. And while a payday advance isn't the best choice for consumers in every situation, increasing evidence shows it is often the lower cost, more desirable alternative.

THE CFSA PROPOSAL

CFSA has continually worked with legislators, regulators, policymakers, customers and critics around the country to resolve concerns about the payday advance product. To that end, 37 states have passed legislation that balances consumer protections with the consumer's right to continued access to the product. After passage of such legislation, it is common to see the number of complaints filed with the state regulator, statistically disappear.

It is also important to note that, while thousands of legislators have participated in hundreds of hearings in which the rate issue has been debated and votes have been taken, no legislature has passed a fee cap that results in a 36% APR for payday advances. There are two reasons that such attempts at 36% APR caps fail.

First, it is understood that such a cap is implicit prohibition of the product, thereby taking a choice away from consumers instead of empowering the consumer with options. Legislators' sentiments seem to echo remarks made by Jeffrey M. Lacker, president of the **Federal Reserve Bank of Richmond**, at the Conference of State Bank Supervisors May 18, 2006:

> *—"Much of the popular response to consumer credit expansion and its byproducts has been less about prudential supervision, however, and more about consumer protection. Many proposals amount to calls for lending restrictions or the outright prohibition of some lending practices. This strikes me as a dangerous approach. In the long run, it would tend to slow innovation and constrain the availability of financial products to a broad range of consumers in order to protect the relatively few who use a credit product inappropriately or unadvisedly."*

Second, nearly all policy informed makers understand that rate is not the issue on which to focus.

The first reason serves as the basis for why a 36% rate will not help the DOD solve its problem. The second reason forms the foundation of CFSA's proposal to help do so.

It is not a $15 fee that causes some consumers to struggle with a payday advance, but, rather, the repayment of the $100 principal amount—which is a common issue for all the products serving this market. While customers are able to repay a $15 payday advance fee, or the $25 overdraft fee or even the $39 late fee, some will have difficulty repaying the underlying principal balance. It is those customers that need a safety net to help them manage their obligations, without making their situation any worse.

CFSA would be willing to discuss a payment plan option that would allow military customers to repay their principal balance due, over many months, without the accumulation of any interest or charges. A military customer would be eligible for the plan under either of two conditions:

1. the customer has completed a DOD-approved financial readiness program; or
2. the customer has entered into 4 or more consecutive payday advances.

Under either condition, the customer would be able to unilaterally convert his payday advance into a longer term, less expensive installment loan, which, when adding in the initial payday advance fee, would result in an overall APR of 36% or less. The dual conditions would require payday advance companies to provide this special assistance to those members of the military who have either chosen to help themselves through financial readiness programs or have exhibited the need to be helped by their demonstrated repeated use of the service. At the same time, however, DOD would be allowing continued access to the product for all others, who neither seek nor need such assistance.

CFSA Is Willing to Discuss a Number of Consumer Protections for the Military, Many of Which Have Been Promoted and Implemented in Various States:

- Provide military customers the unfettered opportunity to convert payday advance transactions into longer term, cost-free payment plans (resulting in a 36% APR), if either of the following events occur:
  - The customer completes a DOD-approved financial readiness program; or
  - The customer enters into 4 or more consecutive payday advance transactions.
- Prohibit the rollover of payday advances by military customers.
- Require unambiguous and uniform price and term disclosures.
- Require payday advance companies to provide information to the military customer concerning appropriate use of the service, counseling options and alternative programs and products available to the customer.
- Prohibit prepayment penalties and require the rebate of unearned fees.
- Prohibit mandatory arbitration clauses which are unconscionable, oppressive, unfair or substantially in derogation of the rights of the military customers.
- Prohibit the garnishment, or allotment, of military wages.
- Prohibit the payday advance company from contacting, or threatening to contact, the customer's commanding officer or any other person in the customer's military chain of command, in effort to collect on an advance.
- Prohibit the waiver of a military customer's rights under the Servicemembers Civil Relief Act or under any other federal or state law.
- Prohibit the use of any representations or symbols that suggest, give the appearance of, or provide reasonable cause to believe, that any component of the Armed Forces, the Department of Defense, or any other federal entity sponsors or endorses the payday advance company.
- Require payday advance companies to defer all collection activity and halt the accrual of interest or any other fees, upon the deployment of a military customer to a combat, combat support or combat service support posting.
- Provide military customers the right to rescind a payday advance, without cost, within 2 business days of entering into the transaction.
- Prohibit payday advance companies from threatening or pursuing criminal action against a military customer as a result of the customer's check being returned unpaid or the customer's account not being paid.

- Consider the use of payday advance locations as platforms for the dissemination of DOD approved financial readiness materials.

Conclusion

The Department of Defense has voiced its concern—the financial obligations of our military men and women should not escalate into a distraction from their duties, nor should it impair the country's military readiness. In addressing this concern, the Department may:

1. Attempt to eliminate the storefront payday advance option, and naively hope that its personnel choose not to use the unrestricted alternative products, or
2. Allow CFSA to work with the Department in designing and implementing real, effective solutions regarding payday loans for the military personnel who need assistance.

We are prepared to offer you a list of references from across the country that will confirm that CFSA has successfully resolved the concerns of many of its critics and, in doing so, has demonstrated its integrity and good faith. We respectfully request the opportunity to enter into such discussions with the Department of Defense.

RESPONSE TO WRITTEN QUESTIONS OF SENATOR SHELBY FROM CHRISTOPHER L. PETERSON

Q.1. It is my understanding that you conducted a study that found that payday lenders were disproportionately located near military installations. How many locations did you examine as part of your study and what do you think are the implications of these findings?

A.1. Steven Graves, a Geography Professor at the University of California at Northridge, and I recently published a study on predatory lending to military personnel. The full citation to the study is Steven M. Graves & Christopher L. Peterson, *Predatory Lending and the Military: The Law and Geography of "Payday" Loans in Military Towns,* 66 OHIO STATE LAW JOURNAL 653–832 (2005). It should be available in the Library of Congress and any other law library around the country. Moreover, a copy of the study accompanies this correspondence. We would be honored to have the study or any portion thereof accompany the written record of this hearing.

In conducting our study, we examined 20 states, 1,516 counties, 13,253 ZIP codes, nearly 15,000 payday lenders, and 109 military installations. Our study found high concentrations of payday lending businesses in counties, ZIP codes, and neighborhoods in close proximity to military bases. In order to assure that this pattern of "clustering" around military bases was not caused by factors unrelated to the presence of military personnel, we controlled our observations by comparing the density of payday lender locations to that of bank locations. Even when accounting for commercial development patterns and zoning ordinances with bank locations, payday lender location patterns unambiguously show greater concentrations per capita near military populations. We believe our findings stand as conclusive proof that the payday lending industry targets members of the armed forces and their families.

In addition to our empirical findings, our research included an extensive discussion of sociological and historical literature on the financial well being of military families. We concluded that clustering of payday lenders around military installations was the most recent incarnation of an ancient history of predatory lending to military personnel both in our country and around the world. Payday loans, which typically have interest rates of between 300 and 900 percent, are extremely dangerous financial products that can trap consumers with modest income in a ruinous cycle of high cost borrowing.

Our study recommended reestablishing the traditional American response to predatory lending: usury law. For the great majority of the past century, the American government protected service members from high-cost predatory loans with usury laws limiting interest rates to between 18% and 42% per annum. Through federal preemption and state legislative change, these laws have given way to an environment in which service members are literally surrounded by lenders clamoring to charge annual rates averaging around 450%. Military personnel both in ancient history and contemporary America have chronic financial vulnerabilities owing to their demanding and semi-nomadic lifestyles. Inevitably, many struggling military personnel and their families find the temptation of short term financial quick fixes advertised as "easy," "no hassles," "no credit check," or "quick cash" too difficult to pass up.

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Predatory Lending and the Military: The Law and Geography of "Payday" Loans in Military Towns

STEVEN M. GRAVES* AND CHRISTOPHER L. PETERSON**

A heated national debate has developed over whether one type of high-cost predatory lender, commonly known as "payday lenders," target financially vulnerable military families and whether the law protects them from such predation. Writing within the relatively new interdisciplinary "law and geography" movement, this Article provides geographic evidence that payday lenders do aggressively target American military personnel, irrespective of most forms of legal regulation.

This Article first provides a comprehensive introduction to payday lending business practices and to the financial vulnerability of military personnel. Next, this Article presents empirical research gathered from an examination of 20 states, 1516 counties, 13,253 ZIP codes, nearly 15,000 payday lenders, and 109 military bases. High concentrations of payday lending businesses in counties, ZIP codes, and neighborhoods in close proximity to military bases were found. Observations were controlled by comparing the density of payday lender locations to bank locations.

Each of the 20 states studied had a different legal and regulatory strategy for addressing payday lending. However, the only regulatory strategy which prevented payday lenders from targeting military personnel was the aggressive and consistent enforcement of civil and criminal usury law. Going beyond the debate over predatory lending to military personnel, this research provides a realist check on pure legal reasoning and unfounded faith in current consumer protection rules.

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*Assistant Professor of Geography, California State University, Northridge. The author gratefully acknowledges generous financial assistance from the College of Social and Behavioral Sciences at California State University, Northridge.

**Assistant Professor of Law, University of Florida, Frederic G. Levin College of Law. The author wishes to thank the following for helpful conversations, comments, encouragement, research assistance, and suggestions: Reed Clary, Lynn Drysdale, Mark Fenster, Diana Henriques, Lyrissa Lidsky, Diane Mazur, Tera Peterson, Buddy Schulz, Sarah Stoddard, Michael Wolf, and Barbara Woodhouse. Special thanks to Blake Delaney for exceptionally thorough and helpful research assistance.

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I. INTRODUCTION

"Support the troops" has become a national rallying cry. Because we live in a complex and dangerous world, we as a society rely on the military to protect us. President George W. Bush recently stated that "Americans live in freedom because of our veterans' courage, dedication to duty, and love of country."[1] This sentiment speaks to the fundamental debt of honor and respect we owe the women and men who make great sacrifices, sometimes the ultimate sacrifice, to protect us.[2] In satisfying this debt, the United States expends vast resources in caring for current and former military personnel and their families.[3] The

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[1] President George W. Bush, Proclamation on Veterans Day (Nov. 9, 2004) (transcript *available at* http://www.whitehouse.gov/news/releases/2004/11/20041109-5.html).

[2] *See* BERNARD J. VERKAMP, THE MORAL TREATMENT OF RETURNING WARRIORS IN EARLY MEDIEVAL AND MODERN TIMES 103–08 (1993) (discussing differing social approaches to reassimilating returning veterans with complex emotional and moral problems).

[3] One commentator has emphasized the relative cost of family support programs:

Department of Defense maintains a comprehensive system of social services aiming to meet every need of every member of every armed service family.[4]

Nevertheless, profound questions remain about the extent and nature of our support of military personnel. In recent years, scholars have asked compelling questions about the quality of life and overall well-being of military families.[5]

> Indeed, $25 billion of Defense Department spending on family support is actually $3 billion more than the Navy will spend this year developing and buying new ships, submarines, and aircraft. It exceeds what the Army, Navy, and Air Force each spend on their worldwide operations in a year. It equals nearly half of the Army's total budget.

John Luddy, *Meet the U.S. Government's Biggest Family Welfare Program*, AM. ENTERPRISE, May/June 1996, at 63.

[4] These programs include: a system of worship services, locations, and chaplains, government housing, housing subsidies, cost of living salary adjustments, and relocation assistance programs, day care, youth activities, child development programs, and single-parent support programs; mental health, substance abuse, suicide prevention, marital, family, legal, and financial counseling; recreation, fitness, and entertainment opportunities, commissaries and subsistence allowances, and a comprehensive medical and dental system for military personnel, their families, and veterans. RICHARD BUDDIN, BUILDING A PERSONNEL SUPPORT AGENDA: GOALS, ANALYSIS FRAMEWORK, AND DATA REQUIREMENTS 1–2 (Rand Publication Series MR-916-OSD, 1998); M. AUDREY BURNAM ET AL., ARMY FAMILIES AND SOLDIER READINESS 7 (Rand Publication Series R-3884-A, 1992); Sondra Albano, *Military Recognition of Family Concerns: Revolutionary War to 1993*, 20 ARMED FORCES & SOC'Y 283, 297 (1994).

[5] *See, e.g.*, MARGARET C. HARRELL, INVISIBLE WOMEN: JUNIOR ENLISTED ARMY WIVES 110–11 (2000) (describing financial deprivation, isolation, and invisibility of spouses of junior enlisted personnel); CATHERINE LUTZ, HOMEFRONT: A MILITARY CITY AND THE AMERICAN TWENTIETH CENTURY 7–9 (2001) (describing the complex and troubling relationship between military installations and military towns); PETER A. MORRISON ET AL., FAMILIES IN THE ARMY: LOOKING AHEAD 49–51 (Rand Publication Series R-3691-A, 1989) (discussing stresses placed on military families); Gary L. Bowen et al., *Family Adaptation of Single Parents in the United States Army: An Empirical Analysis of Work Stressors and Adaptive Resources*, 42 FAM. REL. 293, 302–03 (1993) (emphasizing need for greater social support resources for single parent Army families); BURNAM, *supra* note 4, at 75 (finding that "[t]he proportion of soldiers screening positive for depression . . . is three to four times higher than that among civilians with similar gender and age characteristics"); James A. Martin & Dennis K. Orthner, *The "Company Town" in Transition: Rebuilding Military Communities*, *in* THE ORGANIZATION FAMILY: WORK AND FAMILY LINKAGES IN THE U.S. MILITARY 163, 172–74 (Gary L. Bowen & Dennis K. Orthner eds., 1989) (discussing morale problems stemming from isolated, tightly controlled, "company town" military installations); Dennis K. Orthner et al., *Growing Up in an Organization Family*, *in* THE ORGANIZATION FAMILY: WORK AND FAMILY LINKAGES IN THE U.S. MILITARY, *supra*, at 137 (discussing inadequacy of military programs treating stress placed on children and adolescents of military families); Mario R. Schwabe & Florence W. Kaslow, *Violence in the Military Family*, *in* THE MILITARY FAMILY: DYNAMICS AND TREATMENT 125, 129–30 (Florence W. Kaslow & Richard I. Ridenour eds., 1984) (discussing social, economic, and demographic risk factors for military family violence); Theodore G. Williams, *Substance Misuse and*

Recent events, such as soldier discontent over unarmored vehicles in Iraq, have heightened these concerns.[6] Similarly, many have pointed to unfairness over the military's use of stop-loss orders to impose extended tours of duty.[7] Closer to home, recent studies have increasingly found many members of the armed forces suffer a long-term earnings penalty later in life.[8] Several commentators have suggested that military personnel may be targeted for a variety of consumer scams, such as over-priced insurance and sham investments.[9]

Similarly, a heated national debate has developed over whether abusive high-cost lenders are targeting financially vulnerable military families.[10] Consumer advocates and the media have accused one group of lenders, commonly known

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Alcoholism in the Military Family, *in* THE MILITARY FAMILY: DYNAMICS AND TREATMENT, *supra*, at 73, 77 (noting evidence of high incidence of alcoholic fathers amongst military family dependents).

[6] *See* Julian E. Barnes, *A Well-Aimed Question*, U.S. NEWS & WORLD REP., Dec. 20, 2004, at 16; Charisse Jones, *Soldier Says He'd 'Feel Safer in a Volvo': Military Families Criticize Use of Unarmored Vehicles*, USA TODAY, Dec. 9, 2004, at 2A.

[7] *See* Mark Fisher, *Hobson: Treat Military Fairly: Regular Troops Can Leave, but Not Guard, Reserve*, DAYTON DAILY NEWS, Jan. 4, 2004, at B1; Jones, *supra* note 6.

[8] Alan B. Krueger, *Warning: Military Service Can Be a Drain on Later Earning Power in Civilian Life*, N.Y. TIMES, Nov. 11, 2004, at C2. This stands in stark contrast to the World War II era when military service provided disadvantaged young men "an unprecedented opportunity to better their lives through on-the-job training and further education." Robert J. Sampson & John H. Laub, *Socioeconomic Achievement in the Life Course of Disadvantaged Men: Military Service as a Turning Point, Circa 1940-1965*, 61 AM. SOC. REV. 347, 364 (1996). In contrast to the massive social intervention of the GI bill, today "policy has regressed to the point at which, for some segments of society, imprisonment is the major governmental intervention in the transition to young adulthood." *Id.* at 365; *see also* Robert L. Phillips et al., *The Economic Returns to Military Service: Race-Ethnic Differences*, 73 SOC. SCI. Q. 340, 340 (1992) (showing no significant post-service earnings benefit from military service for blacks and Hispanics).

[9] Paul K. Davis, *Fighting Consumer Frauds Which Target Military Personnel*, DIALOGUE, Winter 2001, at 7.

> Scam artists . . . have developed a talent for effectively targeting distinct groups of consumers for their sales pitches. Unfortunately, military consumers are considered particularly vulnerable by many of these companies . . . .As a result, military consumers are not only subjected to the same deceptive acts and practices as consumer in general; they are also specifically targeted by unscrupulous companies.

Id. Diana B. Henriques, *Deepening Debate on Soldiers and Insurers*, N.Y. TIMES, Sept. 8, 2004, at C1 (discussing overpriced insurance sold to military personnel); Tom Philpott, *Military Update: First Command Investors Eligible for Restitution*, STARS & STRIPES, Jan. 22, 2005 (discussing Securities and Exchange Commission settlement of fraud and securities law violations).

[10] CBSNews.com, *New Enemy for U.S. Troops: Debt*, Dec. 17, 2003, http://www.cbsnews.com/stories/2003/12/17/national/printable589033.shtml.

as payday lenders, of causing particular trouble for enlisted military personnel.[11] For instance, a front page *New York Times* article discussed a growing chorus of complaints that payday lenders charge exorbitant and unfair prices to unsuspecting and desperate military borrowers.[12] These critics have pointed to anecdotal evidence suggesting that payday lenders have identified the armed forces as a profitable market to exploit, leading to hardship on military families.[13] Some military officers have agreed, going so far as to complain that payday lenders are eroding military readiness by undermining troop morale.[14] These officers believe that payday lenders sabotage all of the expensive programs and services designed to preserve the quality of life for members of the armed forces.[15] For their part, payday lenders say they are helping their debtors out of short-term cash problems at an affordable price.[16] Payday lenders emphasize that

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[11] Editorial, *Loan Businesses Prey on Troops*, ST. PETERSBURG TIMES (Fla.), Dec. 12, 2004, at 2P ("Not far outside the gates of many military bases lurks a predator lying in wait for unwitting troops to make a mistake. These are not terrorists but storefront businesses that offer financially naive troops quick loans at unconscionably high interest rates."); MARK MUECKE & ROB SCHNEIDER, CONSUMERS UNION, PAYDAY LENDERS BURDEN WORKING FAMILIES AND THE U.S. ARMED FORCES 4 (July 2003) (quoting former Joint Chiefs of Staff member Admiral J. L. Jonson) ("'There can be no question that military families are among the "targeted group." A preponderance of payday lenders and cash advance offices are located in the immediate vicinity of our military bases.'").

[12] Diana B. Henriques, *Seeking Quick Loans, Soldiers Race Into High-Interest Traps*, N.Y. TIMES, Dec. 7, 2004, at A1 ("Hardships . . . are becoming more common in the military as high-cost easy money lenders increasingly make service members a target market. As a result, many military people have become trapped in a spiral of borrowing at sky-high rates that can ruin their finances, distract them from their duties and even destroy their careers."). The *New York Times* article also features preliminary results of the study presented in this Article, including a graphic reproducing of the author's map of Ft. Lewis and McChord Air Force Base in Washington. *Id. See also Loan Businesses Prey on Troops*, *supra* note 11 (editorial condemning payday lending to military personnel highlighting preliminary results of research presented in this Article).

[13] *Senator: Borrowers Trapped by 'Payday' Loans, High Interest*, JEFFERSON CITY NEWS TRIB. (Jefferson City, Mo.), Dec. 28, 1999, http://newstribune.com/articles/1999/12/28/export151440.txt [hereinafter *Borrowers Trapped*] ("Navy Capt. Robert W. 'Andy' Andersen calls it a 'financial death spiral' in which strapped sailors get short-term, high-interest 'payday loans' and fall into a cycle of borrowing and debt.").

[14] *See* Tom Shean, *Payday-Loan Bill Draws Criticism from Military: Effort to Regulate High-Interest Loans Would Backfire, They Say*, VIRGINIAN-PILOT (Norfolk, Va.), Feb. 16, 2002, at D1.

[15] *Payday Loans: The High Cost of Borrowing Against Your Paycheck*, ARMY LAW., Feb. 2001, at 23 [hereinafter *The High Cost of Borrowing*]; Debbie Rhyne, *Aid Fund Offers Help to Military Personnel, Families*, MACON TELEGRAPH, Dec. 29, 2001, at B1.

[16] *See* Doug Bandow, *Those Misguided Payday-Loan Critics*, SAN DIEGO UNION-TRIB., Mar. 25, 2004, at B11.

their customers borrow voluntarily and they accuse their critics of paternalism.[17] Still, fearing a public relations nightmare, payday lenders and their trade associations have vociferously denied targeting military personnel.[18]

This Article attempts to ascertain whether payday lenders do in fact target members of the armed services. Employing analytical tools of the emerging interdisciplinary law and geography movement, this study compares the payday lender storefront locations in military towns across differing state legal regimes. Moreover, this Article describes and evaluates the different legal strategies that the federal and state governments have used to curtail perceived social problems associated with payday lending. In particular, we examine whether differing state legal approaches may have affected the extent to which payday lenders target military personnel. Our study systematically surveys 20 states, 1516 counties, 13,253 ZIP codes, nearly 15,000 payday lenders, and 109 military bases. We conclude that (1) there is irrefutable geographic evidence demonstrating that payday lenders are actively and aggressively targeting U.S. military personnel, and (2) all state legal strategies except for aggressive criminal prosecution of usury laws have been ineffective in deterring this commercial behavior. Our interdisciplinary use of law and geography should serve as a realist check on pure legal reasoning and unfounded faith in the efficacy of our existing legal strategies.

Part II of our Article describes the payday lending industry, frames the background of financial vulnerability facing past, current, and future military personnel, and introduces the emerging debate over payday lending to military personnel. Part III introduces leading law and geography theory and summarizes our empirical methodology. Part IV juxtaposes our empirical description of payday lender location strategies near U.S. military bases with descriptions of the payday lending legal environment in force at each location. Part V analyzes the results of this study, ultimately drawing descriptive and prescriptive conclusions for policy makers, including state and federal law makers, as well as military leaders.

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[17] Chris Johnson, Vice President Urgent Money Service, Letter to the Editor, GREENSBORO NEWS & REC., Jan. 7, 2002, at A6 ("I'm sure it's easy for you to sit in your office and tell your readers how 'bad' payday lenders are. We offer a service, plain and simple . . . . Our customers like our service. If they didn't, they wouldn't use us, plain and simple.").

[18] Paul Fain, *The Few, the Proud, the Indebted: Payday Loan Shops Are Drawing Fire from the Military's Top Brass*, MOTHER JONES, May-June 2004, at 19.

II. BACKGROUND

A. *Payday Lending*

1. *What Are Payday Loans?*

Payday loans are high interest rate, rapidly compounding loans meant to tide over cash-short borrowers until their next paycheck.[19] In a typical transaction, a customer might borrow $200 by writing a check drawn on her personal checking account and made out to the lender for $235.[20] Typically, the borrower "post-dates" the check by writing a date one or two weeks in the future.[21] This date is the day that the parties agree the borrower will repay the loan and interest. Before making the loan, payday lenders generally verify the debtor's identity by asking for documents or identification such as a driver's license, recent pay stubs, bank statements, car registration, or telephone bills.[22] Many lenders telephone the borrower's human resource manager or boss to verify the borrower's employment.[23] Virtually all lenders require the names, addresses, and telephone numbers of close family and friends in the event that the borrower skips town.[24] Payday lenders usually decide whether to issue a loan on the spot without obtaining a credit report.[25] Both parties are aware that the borrower's checking account does not have sufficient funds to cover the check when the check is signed.[26] The assumption is that the borrower will have deposited sufficient funds in her checking account to cover the check before the due date of the loan. After the paperwork is complete, the debtor walks away with $200 in cash or a check drawn on the lender's account. When the two weeks are up, the debtor can

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[19] Payday loans go by many other names, including deferred deposit transactions, deferred presentment check cashing, post-dated check loans, and check loans. Jean Ann Fox, *What Does It Take to Be a Loanshark in 1998? A Report on the Payday Loan Industry*, 772 PRAC. L. INST./COM. 987, 989 (1998).

[20] Some lenders are now replacing the use of checks with a borrower's agreement to allow the lender to simply debit the borrower's bank account on the due date of the loan. Michael S. Barr, *Banking the Poor*, 21 YALE J. ON REG. 121, 149 (2004).

[21] *See* Scott Andrew Schaaf, Note, *From Checks to Cash: The Regulation of the Payday Lending Industry*, N.C. BANKING INST. 339, 341–42 (2001).

[22] Fox, *supra* note 19, at 989.

[23] Christopher L. Peterson, *Only Until Payday: A Primer on Utah's Growing Deferred Deposit Loan Industry*, UTAH B.J., Mar. 2002, at 16.

[24] *Id.*

[25] Fox, *supra* note 19, at 990.

[26] *See id.*; Deborah A. Schmedemann, *Time and Money: One State's Regulation of Check-Based Loans*, 27 WM. MITCHELL L. REV. 973, 974–76 (2000).

redeem the check with cash or a money order, permit the check to be deposited, or attempt to renew the loan by paying another fee.[27] If the borrower cannot pay off the loan, the obligation continues to accrue $35 in interest every two weeks. Although the initial $35 fee represents only 17.5% of the loan amount, the annual percentage rate of the transaction is around 455%.

A 455% interest rate is by no means uncommon.[28] Studies by state governments, scholars, and consumer advocates generally indicate that average payday loan rates range from 364% to 550%. A consumer advocate coalition study surveying lenders in nineteen states and the District of Columbia found an average interest rate of 474%.[29] Other regional data tend to roughly confirm this figure. For instance, the Indiana Department of Financial Institutions survey found that the average Indiana payday loan interest rate was 498.75%.[30] North Carolina consumers purchase about 63% of their payday loans at annual interest rates between 460.08% and 805.15%.[31] A recent report on Oklahoma payday lenders may suggest a slightly lower average APR of around 364.47% in that state.[32] A report on payday lenders in Salt Lake City showed an average rate of 528.49%.[33] Still, some lenders charge rates far in excess of these averages. For example, Indiana regulators found one lender offering payday loans at an interest rate of 7600%.[34] Moreover, these interest rates do not include common contingent charges, including late fees and bounced check fees, which can cost nearly as much, or even more, interest as the loan itself.

Payday lenders argue that quoting an annual percentage rate for a two-week

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[27] Fox, *supra* note 19, at 990.

[28] CHRISTOPHER L. PETERSON, TAMING THE SHARKS: TOWARDS A CURE FOR THE HIGH COST CREDIT MARKET 10–11 (2004).

[29] JEAN ANN FOX & EDMUND MIERZWINSKI, SHOW ME THE MONEY 8 (2000).

[30] IND. DEP'T OF FIN. INSTS., SUMMARY OF PAYDAY LENDER EXAMINATION (July-Sept. 1999), http://www.in.gov/dfi/legal/paydaylend/Payday.pdf [hereinafter IND. DEP'T OF FIN. INSTS.].

[31] OFFICE OF THE COMM'R OF BANKS, REPORT TO THE GENERAL ASSEMBLY ON PAYDAY LENDING, Feb. 22, 2001, at 3 (N.C. Feb. 22, 2001).

[32] A survey of payday loans registered in a database required under Oklahoma law suggested an average payday loan principal of $307.59 with an average fee of $43. OKLAHOMA TRENDS IN DEFERRED DEPOSIT LENDING: OKLAHOMA DEFERRED DEPOSIT PROGRAM 4 (Dec. 2004), http://www.veritecs.com/OK_trends_12_2004.pdf [hereinafter OKLAHOMA TRENDS]. Assuming a fourteen-day repayment period, these figures suggest an APR of 364%.

[33] Christopher L. Peterson, Note, *Failed Markets, Failing Government, or Both? Learning from the Unintended Consequences of Utah Consumer Credit Law on Vulnerable Debtors*, 2001 UTAH L. REV. 543, 563.

[34] IND. DEP'T OF FIN. INSTS., *supra* note 30, at 1.

loan is misleading and unhelpful.[35] Instead, payday lenders prefer to quote loan prices as a percent of the principal borrowed.[36] For instance, if the consumer borrows $300 for two weeks in exchange for a fee of $52.50, lenders will often describe this as a "17.5%" loan. Lenders suggest payday loans compare favorably to bounced check fees, which average around $21.[37] Critics of payday lending retort that a bounced check fee is a one-time charge that does not continue to compound again and again.[38] For loans, annualized interest rates are the uniform metric which all mainstream creditors use to compare prices. Home mortgages, student loans, and automobile loans are all disclosed and regulated with an annual percentage rate terminology. Even other short-term lenders, such as credit card issuers, use annual percentage rates. Consumers wishing to compare the price of available credit options tend to be confused and surprised by different price quoting conventions for different types of credit. To those with limited financial literacy, or even to casual observers, a cash advance or purchase on a 17.5% APR credit card may be indistinguishable from a payday loan with 17.5%-of-principal fee. Most payday loan borrowers will be surprised to know that the interest rate of the latter loan is about *26 times more expensive* than that of the former. Not surprisingly, one industry-sponsored telephone survey found that 72% of payday loan borrowers said they did not know the annual percentage rate of their most recent loan.[39] More than half of the small minority who claimed to know their annual percentage rate incorrectly believed that their rate was far lower than it actually was.[40]

Annual percentage rate terminology is also appropriate for payday loans because these loans often compound for durations coming close to or exceeding a year. For any given loan, many payday loan borrowers simply lack the funds to pay on the due date and are accordingly forced to roll over the loan.[41]

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[35] *See Stay Away from Payday Lenders: There are Few, If Any, Sensible Reasons to Use a Payday Lender*, WIS. STATE J., Nov. 10, 2002, at B3.

[36] Professor Johnson's study of Ohio payday lending found that lenders systematically obscure their annual percentage rates by leaving them out of advertisements and refusing to provide Truth in Lending disclosures until after loan consummation. *See* Creola Johnson, *Payday Loans: Shrewd Business or Predatory Lending?*, 87 MINN. L. REV. 1, 38–41, 44 (2002).

[37] BD. OF GOVERNORS OF THE FED. RESERVE SYS., ANNUAL REPORT TO THE CONGRESS ON RETAIL FEES AND SERVICES OF DEPOSITORY INSTITUTIONS 5 (June 2002).

[38] *See* John Hackett, *Ethically Tainted*, U.S. BANKER, Nov. 2001, at 48, 50.

[39] JOHN P. CASKEY, THE ECONOMICS OF PAYDAY LENDING 3 (2002) (citing GREGORY ELLIEHAUSEN & EDWARD C. LAWRENCE, PAYDAY ADVANCE CREDIT IN AMERICA: AN ANALYSIS OF CUSTOMER DEMAND 54–55 (2001)).

[40] *Id.*

[41] Barr, *supra* note 20, at 156. Some lenders and borrowers use "same day advances" where "[t]he borrower pays the loan in full, but that same day takes out another payday loan in an amount equivalent to the balance paid earlier." *Id.*

Compelling evidence suggests that a substantial portion of the payday loan market is made up of extensions of previous loans, sometimes for protracted durations. North Carolina regulators found that about 87% of borrowers would roll over any given loan at least one time with any given lender.[42] Not counting debtors who borrowed from multiple locations, nearly 40% of North Carolina borrowers renewed their payday loans more than ten times.[43] The Indiana Department of Financial Institutions study found that 77% of all payday transactions were extensions of previous loans.[44] In Oklahoma, the average payday loan customer took out 4.3 payday loans during a four-month period from August 2004 to November 2004—just over one per month.[45] Consumer advocates have found that the average payday loan customer borrows 10.19 payday loans per year.[46] In Iowa, the Division of Banking found an average of 12.5 loans per year per customer.[47] An industry-sponsored study found that 30% of borrowers had seven or more loans in a year, and that about 75% of borrowers rolled over their loan at least one time.[48] Regulators in Illinois found payday loan borrowers "who were borrowing continuously for over a year on their original loan."[49] An empirical study by Professor Creola Johnson found that payday lenders repeatedly roll over payday loans even in states with statutes prohibiting this practice.[50] Moreover, there are frequent reports of loans outstanding for one, two, or even three years.[51] Collectively these statistics have led consumer advocates to argue that payday loans trap borrowers into a cycle of "chain debt."[52]

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[42] OFFICE OF THE COMM'R OF BANKS, *supra* note 31, at 6.

[43] *Id.*

[44] IND. DEP'T OF FIN. INSTS., *supra* note 30, at 3.

[45] OKLAHOMA TRENDS, *supra* note 32, at 9.

[46] FOX & MIERZWINSKI, *supra* note 29, at 8.

[47] Kathleen E. Keest, *Stone Soup: Exploring the Boundaries Between Subprime Lending and Predatory Lending*, *in* CONSUMER FINANCIAL SERVICES LITIGATION 2001 at 1107, 1114 (Practicing Law Institute Corporate Law and Practice Course Handbook Series B-1241, 2001) (citing IOWA DIVISION OF BANKING, SURVEY (Dec. 2000)).

[48] ELLIEHAUSEN & LAWRENCE, *supra* note 39, at 54–55. This study likely understates the duration of payday loans because it relies on a sample of more affluent payday borrowers, only surveys borrowers willing to discuss their loans, and did not reach borrowers who had their telephone service disconnected.

[49] ILL. DEP'T OF FIN. INSTS., SHORT TERM LENDING: FINAL REPORT 30 (1999), http://www.state.il.us/dfi/ccd/pdfs/Shorterm.pdf.

[50] Johnson, *supra* note 36, at 32–33.

[51] *See* Peterson, *supra* note 33, at 569 n.167 (payday loan store cashier stating loans accrue interest for "two or three years" in state with twelve-week limit on rollover duration); FOX & MIERZWINSKI, *supra* note 29, at 8 (loan renewed 66 times for two and a half years).

[52] *See, e.g.*, Barr, *supra* note 20, at 149; Johnson, *supra* note 36, at 6–7.

Payday lenders argue that the high prices and long durations of their loans are justified by the high administrative costs of doing business and by the high default rates.[53] Scholars have countered that high payday loan prices actually "mutually reinforc[e]" loan losses because the high prices induce default, which in turn raises prices.[54] Moreover, even if payday loan loss rates justify higher pricing, the payday lending business has still proven wildly profitable. A Federal Deposit Insurance Agency official wrote that, despite credit and reputational risks, "higher pricing on payday loans promises higher revenues and wider margins for lenders."[55] One economics professor has estimated that payday lending operations "earn ten to twenty times higher 'return on equity' than traditional banks."[56] Similarly, after the Tennessee Legislature took steps to legalize payday lending, the Tennessee Department of Financial Institutions conducted a follow-up survey, finding that licensed payday lenders "earned over [30%] return on investment in the first nine months of legal operation."[57] But perhaps most interesting is that payday lender profits come disproportionately from high-frequency borrowers. Peter Skillern's study of the North Carolina market found that 85% of payday lender revenue in that state comes from borrowers receiving five or more payday loans in a year.[58]

Critics of the payday lenders have also complained of a culture of disregard for the rule of law in the industry. For example, in 713 payday lender inspections conducted over a three-year period, North Carolina banking officials found 8911 violations of simple state consumer-protection rules.[59] Payday lenders in many states refuse to obtain licenses required by state law.[60] Over a thousand payday lenders in Texas openly ignore state interest rate limitations.[61] Creola Johnson's

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[53] *See* Marcus Franklin, *Payday Loans Role Debated at Forum*, DAYTON DAILY NEWS, Nov. 9, 1999, at 1B.

[54] Barr, *supra* note 20, at 155 n.148; *see also* Joseph E. Stiglitz & Andrew Weiss, *Credit Rationing in Markets with Imperfect Information*, 71 AM. ECON. REV. 393 (1981).

[55] Barbara A. Monheit, *Consumer Financial Services Litigation: The Regulators Speak*, 1361 PRACTICING LAW INSTITUTE: CORPORATE LAW AND PRACTICE COURSE HANDBOOK SERIES 459, 503 (March-May 2003) (PLI Order No. B0-01TA).

[56] Mike Hudson, *Going for the Broke: How the 'Fringe Banking' Boom Cashes in on the Poor*, WASH. POST, Jan. 10, 1993, at C4.

[57] FOX & MIERZWINSKI, *supra* note 29, at 8.

[58] PETER SKILLERN, CMTY. REINVESTMENT ASS'N OF N.C., SMALL LOANS, BIG BUCK$: AN ANALYSIS OF THE PAYDAY LENDING INDUSTRY IN NORTH CAROLINA 4 (2002), http://www.cra-nc.org/small_loans_big_bucks.pdf.

[59] OFFICE OF THE COMM'R OF BANKS, *supra* note 31, at 2.

[60] There are widespread reports of unlicensed payday lenders in many states, including California, Florida, and North Carolina. *See infra* notes 84, 106, and 130 and accompanying text.

[61] JEAN ANN FOX, CONSUMER FEDERATION OF AMERICA, UNSAFE AND UNSOUND: PAYDAY LENDERS HIDE BEHIND FDIC BANK CHARTERS TO PEDDLE USURY 13 (Mar. 30,

study of Ohio payday lenders found that payday lenders in that state systematically provided false and misleading information on loan contract terms, illegally advertised the cost of credit without using annual percentage rate terminology, and allowed "consumers to roll over payday loans in violation of state law."[62] And there are widespread reports that many payday lenders use false but intimidating threats of criminal prosecution under "bad check" laws.[63] Needless to say, criminal prosecution has not been a remedy available to traditional creditors since debtors prisons were outlawed after the Civil War.[64]

2. *Payday Lending in History: Ancient Lineage and Recent Resurgence*

Payday loans are only one recent incarnation of a consumer financial product dating back to our earliest recorded civilizations. While it is true that the use of a negotiable instrument (or an agreement to allow an electronic debit) as a form of collateral is a relatively recent innovation amongst consumer borrowers, pledging to pay one's earnings in the immediate future in exchange for money today is ancient. High-cost loans with contractual terms similar to payday loans have existed for thousands of years. Even before governments learned to coin currency, records of ancient Mesopotamian and Mediterranean civilizations amply document high-cost consumer loans payable in grain, animals, or metal.[65] Just as today's debtors collect wages and borrow money using checks, ancient peasants, who earned a living raising grains and animals, repaid their high-cost debts in kind.[66] While today's borrowers wonder whether they will have sufficient funds in their accounts to cover a check post-dated two weeks in advance, ancient debtors "dreaded 'the end of the moon'" when their high-cost loans came due.[67] And, like today's high-cost debtors, ancient borrowers signed short-term loans intending to repay quickly, but in fact found themselves committed to loans that "often compounded over long periods."[68] "Because

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2004), http://www.consumerfed.org/pdfs/pdlrentabankreport.pdf.

62 Johnson, *supra* note 36, at 32–33.

63 In only one year, payday lenders filed 13,000 criminal charges against their customers in one Dallas precinct. 146 CONG. REC. S178 (daily ed. Feb. 1, 2000) (statement of Sen. Lieberman). *See also* Fox & MIERZWINSKI, *supra* note 29, at 10 (discussing threats of criminal prosecution in Ohio).

64 Christopher L. Peterson, *Truth, Understanding, and High-Cost Consumer Credit: The Historical Context of the Truth in Lending Act*, 55 FLA. L. REV. 807, 846 (2003).

65 *See* SIDNEY HOMER & RICHARD SYLLA, A HISTORY OF INTEREST RATES 25–31 (3d rev. ed. 1996).

66 *Id.*

67 *Id.* at 35.

68 *Id.* at 40.

[high-cost] creditors lent to those in desperate need of food or shelter, the relative bargaining position of debtors often placed them at a significant disadvantage."[69] One commentator explained the earliest credit markets thus: "Human nature being what it is . . . [t]he rich extracted hard bargains and grew richer; the poor fell into perpetual debt and forfeited their meager possessions."[70] It is an open question whether this comment is less applicable today.

There is also significant historical evidence dating back thousands of years of predatory loans harming military personnel and their families. While a comprehensive discussion of this history is beyond the scope of our Article, a few short examples are illustrative. First, the Roman Republic was forced to address abusive high-cost lending to military personnel prior to its rise to a preeminent power in the ancient Mediterranean.[71] In the fifth century B.C.E., Romans were only one of several ethnic groups present in Italy, and they were still far away from assuming their later historical importance.[72] In 494 B.C.E., a violent civil revolt took place.[73] A large number of poor plebeians withdrew from the city and gathered on a hill overlooking the Tiber River, where they preceded to elect their own shadow legislature, officials, and tribunes, essentially seceding from the Roman Republic.[74] The revolt, called the First Secession, threatened to rip apart the emerging Roman nation.[75] Interestingly, "[b]y all accounts the principal cause of the First Secession was a debt crisis."[76]

Many historians, both modern and ancient, have focused on one story which may have lit the fire.[77] Apparently, a war veteran's farm was destroyed during a battle with a rival tribe.[78] The loss of his farm, combined with government tax demands, forced the veteran to borrow money at dangerously high rates.[79] When

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[69] Peterson, *supra* note 64, at 809.

[70] James M. Ackerman, *Interest Rates and the Law: A History of Usury*, 1981 ARIZ. ST. L.J. 61, 63.

[71] *See* KARL CHRIST, THE ROMANS: AN INTRODUCTION TO THEIR HISTORY AND CIVILISATION 13 (Christopher Holme trans., University of California Press, 1984); STEPHEN L. DYSON, COMMUNITY AND SOCIETY IN ROMAN ITALY 78 (1992).

[72] *See* MICHAEL CRAWFORD, THE ROMAN REPUBLIC 31–42 (2d ed. 1993) (relating a brief history of the Roman conquest of Italy); CHESTER G. STARR, JR., THE EMERGENCE OF ROME AS RULER OF THE WESTERN WORLD 7–13, 16 (1953).

[73] T.J. CORNELL, THE BEGINNINGS OF ROME: ITALY AND ROME FROM THE BRONZE AGE TO THE PUNIC WARS (C. 1000-264 B.C.) 256–57 (1995).

[74] *Id.*

[75] *Id.* at 13.

[76] CORNELL, *supra* note 73, at 266.

[77] *See, e.g.*, F.R. COWELL, THE REVOLUTIONS OF ANCIENT ROME 31, 39–40 (1962).

[78] *Id.* at 40 (quoting 1 TITUS LIVIUS, THE HISTORY OF ROME Book 2, Part 2.3 (Ernest Rhys ed., Rev. Canon Roberts trans., J.M. Dent & Sons, Ltd., London 1905)).

[79] *Id.*

he was unable to pay, his creditor imprisoned and tortured him.[80] Eventually, the veteran appeared in the city forum where those who heard his story were so enraged they took to the streets rioting.[81] The first major codification of Roman law, called the Twelve Tables, was in part a response to the debt crisis of the First Secession.[82] The Twelve Tables included Rome's first usury law and some basic provisions to enforce it.[83] Eventually settling on a 12% percent interest rate cap, Rome rose to power under a legal regime which clearly outlawed today's payday loans.[84] This 12% interest rate cap remained the legal limit for centuries and was eventually adopted by both the later Empire and the Byzantine Empire in Constantinople.[85]

Predatory lending to military personnel has not been limited to Western cultures. For example, historical sources link the decline of the Ming dynasty in China to debt-related peasant riots sparked by predatory lending to soldiers. During the Ming dynasty, China was home to a large and thriving industry of creditors that loaned money to the working poor at high interest rates. Records suggest that in 1587, over 20,000 pawn shops operated across China.[86] Similarly, businesses owned by wealthy families with links to imperial authority often took high-priced mortgages on the homes and land of poor farmers.[87] When subsistence farmers fell behind on payments, creditors relied on local "roughnecks" to collect.[88] In the late Ming dynasty, these contracts dispossessed a substantial portion of the population and helped cement a wide gap between the

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[80] *Id.*

[81] *Id.*

[82] STARR, *supra* note 72, at 23.

[83] HOMER & SYLLA, *supra* note 65, at 45–47 (establishing an 8.33% cap, which was later amended to 12%).

[84] Historians suggest that even illegal extortionate lenders in ancient Rome charged interest rates hundreds of points lower than today's average payday loans. COWELL, *supra* note 77, at 31.

> There was at first no limit to the interest that might be demanded on loans, so those in desperate want were forced to accept any terms. Moneylenders in ancient times were notorious for their harsh, grasping greed and, left uncontrolled as they were, they demanded thirty, fifty, a hundred percent interest and more.

Id.

[85] HOMER & SYLLA, *supra* note 65, at 47–49.

[86] RAY HUANG, 1587: A YEAR OF NO SIGNIFICANCE: THE MING DYNASTY IN DECLINE 144 (1981).

[87] *Id.* at 145 ("Essentially, such exploitation was the economic basis of the bureaucracy as an institution. Official families, who collected rents from landholdings and interest from the moneylending business, were an integral part of the rural economy.").

[88] *Id.* at 138.

rich and poor.[89]

Some historians believe these financial conditions weakened China, inviting invasion by hostile neighbors. The Ming dynasty ended after a series of peasant rebellions paved the way for Manchurian invaders from the North.[90] An ancient Chinese historian attributes predatory loans to Chinese military personnel as the trigger of these riots—bearing a remarkable similarity to Roman history. Apparently the incident involved a predatory lender who named himself "Ch'ien," which is the Chinese word for money.[91] Surprising soldiers with deceptively high rates, Ch'ien demanded repayment far in excess of the principal originally borrowed.[92] This lender, and presumably others, managed to enforce his loans by sharing the profits with officials, including a garrison commander.[93] Eventually, soldiers became so outraged that they mutinied and organized local peasants suffering from crushing poverty to join them.[94] Unlike Rome, which successfully reformed its laws, the Ming dynasty was too slow to react and eventually faltered.

Historians have recorded similar incidents in American history as well. In the nineteenth century, as the United States began expanding westward, military personnel were often posted in remote frontier garrisons.[95] Similarly, during the Civil War, Union soldiers faced long and disrupted supply lines.[96] These conditions meant that soldiers often had insufficient food and clothing and also received their wages at irregular intervals.[97] A particular type of merchant followed Union Army units, setting up operations on the outskirts of each camp or garrison.[98] Sometimes called "sutlers," these merchants came to specialize in

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[89] *Id.* at 145 ("Agrarian exploitation of the poor . . . was far from limited to . . . isolated incidents. It affected all walks of life and was carried out on a large and small scale without surcease generation after generation.").

[90] JAMES BUNYAN PARSONS, THE PEASANT REBELLIONS OF THE LATE MING DYNASTY xiii, xv (1970); F.W. MOTE, IMPERIAL CHINA, 900–1800, at 795–96 (1999).

[91] Of course today's payday lenders take similar names, such as Check into Cash, Ca$h Now, and ACE Cash Express.

[92] PARSONS, *supra* note 90, at 5 n.* (discussing CHI LIU-CH'I, MING CHI PEI LUEH 4/11a-b).

[93] *Id.*

[94] *Id.*

[95] *See* BEYOND THE BATTLEFIELD: THE ORDINARY LIFE AND EXTRAORDINARY TIMES OF THE CIVIL WAR SOLDIER 150, 152–55 (David Madden ed., 2000) [hereinafter BEYOND THE BATTLEFIELD].

[96] *Id.* at 152–55.

[97] *Id.*

[98] ROBERT WOOSTER, SOLDIERS, SUTLERS, AND SETTLERS: GARRISON LIFE ON THE TEXAS FRONTIER 77 (1987).

providing goods and services to struggling soldiers.[99] Many sutlers lent cash, but they also supplied food, clothing, boots, gloves, medication, tobacco, and alcohol on credit.[100] Some sutlers refused to advance funds or provide change in currency, instead giving cardboard tickets redeemable exclusively at the sutler's own store.[101] This forced hungry and cold soldiers to trade away the liquidity of their wages. With their wages converted into sutler's tickets, soldiers could not force price competition with other sutlers, nor could they shop with traditional merchants when the opportunity arose.[102] While sutlers did take risks, many got rich by charging outrageous prices and interest rates to soldiers who made steady wages and had few options.[103] Some sutlers gave "presents" to officers who then looked the other way.[104]

Recognizing its own limitations in meeting soldiers' needs, the Army tolerated sutlers, allowing up to one sutler for each regiment.[105] Rank and file soldiers, however, often despised their creditors; they "did not appreciate the 'risks' taken by men who were getting rich at their disadvantage, who did not conform to military rules, and who were exposed to enemy fire only by accident, and they accused the sutlers of price-gouging and profiteering."[106] While the practices associated with Civil War era sutlers varied from unit to unit, their situation repeatedly led enraged soldiers to rise up and rampage through their own camps.[107] Many units took matters into their own hands, chasing their sutler lenders out of camp with all-too-real death threats.[108]

The immediate commercial precursor to today's payday lenders developed in large eastern U.S. cities during this same period of time: the mid-nineteenth century. A type of lender commonly referred to as a "salary lender" emerged by serving a clientele typically composed of employees of large government and industrial institutions, including "civil servants, railroad workers, streetcar

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[99] DAVID MICHAEL DELO, PEDDLERS AND POST TRADERS: THE ARMY SUTLER ON THE FRONTIER 50–52 (1992).

[100] BEYOND THE BATTLEFIELD, *supra* note 95, at 151.

[101] *See generally* KENNETH KELLER, SUTLER PAPER MONEY (1994) (cataloging sutler scrip as collectible memorabilia); DAVID E. SCHENKMAN, CIVIL WAR SUTLER TOKENS AND CARDBOARD SCRIP (1983) (same).

[102] DELO, *supra* note 99, at 131–32.

[103] BEYOND THE BATTLEFIELD, *supra* note 95, at 151–52.

[104] DELO, *supra* note 99, at 132.

[105] BEYOND THE BATTLEFIELD, *supra* note 95, at 151–52.

[106] *Id.* at 151–52.

[107] *Id.* at 152 ("Repeatedly, sutlers were subjected to reprisals. Rampaging troops would pillage their supply tents, sometimes stealing, sometimes simply destroying . . . .").

[108] *Id.* ("[O]ften a sutler would be chased out of a camp at the risk of his life should he return.").

motormen, and clerks in firms such as insurance companies."[109] Such workers, often recent immigrants or former agricultural laborers, formed the foundation of the emerging lower middle class of urban American society.[110] These people usually borrowed to meet unexpected needs, such as family illness or moving expenses.[111] Nevertheless, they held steady jobs and had family obligations which prevented them from simply skipping town.[112] Salary lenders targeted these workers because their steady supply of disposable income made them likely to repay, and their frequent minor income shocks made them likely to borrow.[113]

It was these salary lenders whom working class people in the eastern United States first came to describe as "loan sharks."[114] Although the term was new, the contractual terms and collection tactics of the lenders were reminiscent of the high-cost wage-based lending common in previous centuries. In a typical transaction, a debtor would borrow five dollars and repay six within the next week or so.[115] Very similar to today's payday loans, the charge of 20% of the loan principal amounted to around 520% per annum, assuming a two-week maturation period.[116] The charge of one or two dollars itself seemed fairly innocuous for any one given week. But, when a debtor lost a job, was not paid for his work, became ill, had a family member become ill, or was prevented from paying for any other reason, the simple transaction rapidly swelled into a sizeable drain on an already strained budget. Thus, late nineteenth and early twentieth century salary loans often ended up compounding over lengthy periods of time.[117] Newspapers of the day frequently gave anecdotal accounts of debtors trapped by their salary loans, such as "the employee of a New York publishing house who supported a large family on a salary of $22.50 per week and had been paying $5 per week to a salary lender for several years, until he had paid more

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[109] Mark H. Haller & John V. Alviti, *Loansharking in American Cities: Historical Analysis of a Marginal Enterprise*, 21 AM. J. LEGAL HIST. 125, 128 (1977).

[110] *Id.* at 127, 129.

[111] *Id.* at 128.

[112] *Id.* at 128–29.

[113] Ackerman, *supra* note 70, at 89–90; Robert W. Kelso, *Social and Economic Background of the Small Loan Problem*, 8 LAW & CONTEMP. PROBS. 14, 15–20 (1941).

[114] Haller & Alviti, *supra* note 109, at 125–26. Thus, today's payday lenders *are* loansharks in the most historically correct sense of the term. Contrary to Hollywood imagery, the term "loanshark" did not come to describe the mafia until at least the 1930s. PETERSON, *supra* note 28, at 10.

[115] HOMER & SYLLA, *supra* note 65, at 428.

[116] *Id.* There were, of course, variations in loan terms. Many lenders used one-week balloon payments. *Id.* Also, often lenders charged African Americans rates twice as high in the same type of transaction, where a loan of five dollars was repaid with seven at the end of the week. *Id.*

[117] Haller & Alviti, *supra* note 109, at 133.

than ten times the original loan."[118] Similarly, a Chicago consumer borrowed $15, but "ten years later [he] had repaid $2,153 and still owed the original $15."[119] More compelling were the records of one salary lender in New York City, which showed that out of approximately 400 debtors, 163 had been making payments on the loans for over two years.[120]

Late nineteenth and early twentieth century salary lenders charged interest rates far in excess of state usury laws. A far cry from contemporary American attitudes about credit, early American culture strongly condemned borrowing money for personal purposes. Early colonial leaders, including the founding fathers of the U.S. Constitution, believed borrowing was a moral vice.[121] Accordingly, these leaders adopted interest rate caps, called general usury laws, which limited annual interest rates to around six percent.[122] With a few exceptions, these interest rate caps remained intact into the twentieth century.[123] Nevertheless, salary lenders in eastern U.S. cities managed to conduct business through a variety of thinly veiled disguises and sham transactions.[124] For instance, many lenders justified ignoring the interest rate cap by phrasing the contract as a purchase or assignment of future wages, rather than as a loan.[125] Other lenders would manipulate the legal "time-price doctrine" to avoid interest rate caps.[126] Under English law, when a buyer purchased a physical good over time through installments, it was not considered a loan for purposes of a statutory interest rate cap.[127] This led some lenders to avoid interest rate caps by, for example, requiring the debtor to "purchase" a worthless oil painting at the time the loan contract was signed.[128] The debtor would owe the same amount of

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[118] *Id.*

[119] *Id.* at 134.

[120] *Id.* at 133.

[121] HOMER & SYLLA, *supra* note 65, at 274.

[122] KATHLEEN E. KEEST & ELIZABETH RENUART, NATIONAL CONSUMER LAW CENTER, THE COST OF CREDIT: REGULATION AND LEGAL CHALLENGES 37 (2d ed. 2000); Ackerman, *supra* note 70, at 85; Tracy A. Westen, *Usury in the Conflict of Laws: The Doctrine of the Lex Debitoris*, 55 CAL. L. REV. 123, 131 n.45 (1967). Most of these statutes were roughly modeled on the English Statute of Anne. *See* Laurence M. Katz, Comment, *Usury Laws and the Corporate Exception*, 23 MD. L. REV. 51, 52 n.11 (1962).

[123] KEEST & RENUART, *supra* note 122, at 37.

[124] Peterson, *supra* note 69, at 852–54 (providing a more thorough discussion of salary lender evasion of state usury law).

[125] LENDOL CALDER, FINANCING THE AMERICAN DREAM: A CULTURAL HISTORY OF CONSUMER CREDIT 50 (1999); DAVID J. GALLERT ET AL., SMALL LOAN LEGISLATION: A HISTORY OF THE REGULATION OF THE BUSINESS OF LENDING SMALL SUMS 180 (1932).

[126] KEEST & RENUART, *supra* note 122, at 38.

[127] *Id.* at 37–38.

[128] CALDER, *supra* note 125, at 50.

money, and could immediately throw the painting away, but the transaction would be at least superficially legal.[129]

Beginning in the 1910s and 1920s, a widespread movement aimed at cracking down on the salary lending industry, now often called the "loan shark problem," developed. Nonprofit organizations, often backed by the fortunes of deceased captains of industry, attacked salary lenders through legal advocacy and by providing low-cost charitable alternatives to salary loans.[130] The media began exposing and editorializing against salary lenders, creating pressure for reform. Appellate courts began handing down stinging rebukes of salary lenders and developing common law language exhorting trial judges to ignore salary lender subterfuges that concealed illegal interest rates.[131] State legislatures began amending their general usury laws to raise interest rate caps in order to attract legal private capital to the markets for consumer loans.[132] These "special usury laws," commonly called small loan laws, allowed lenders—who would agree to licensing, bookkeeping, security interest, and collection practice rules—to lend small amounts at between 36% and 42% per year.[133] The hope was that, with these new interest rate caps, honest, respectable private lenders would flow into the market for costly consumer loans, creating healthy competition and driving the salary lenders out of business.[134] And finally, large industry accepted these reforms because they themselves wanted to begin lending to consumers at moderate prices which nevertheless exceeded the low colonial-era general usury laws. Collectively, these forces significantly curtailed salary lending throughout the United States for most of the twentieth century.

Economic forces and legal changes in the 1970s and 1980s began to lay a foundation for a resurgence in salary lending, however. Unprecedented inflation forced the Federal Reserve Board to adopt monetary policy resulting in high long-term commercial interest rates. The high cost of funds made it difficult for banks, credit unions, and other mainstream lenders to loan money within state interest rate caps. It became fashionable for neoclassical economists and legal and economics scholars to goad leaders into abandoning usury laws. State legislatures were increasingly making a habit of granting special permission to lenders to charge higher and higher interest rates. Retail installment stores, pawnshops, and rent-to-own furnishing stores all successfully lobbied for special treatment. Many state legislatures also raised, or even eliminated, their interest

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[129] *See, e.g.*, *id.*

[130] KEEST & RENUART, *supra* note 122, at 38.

[131] *See, e.g.*, *In re* Home Disc. Co., 147 F. 538, 546 (N.D. Ala. 1906) (characterizing salary lenders as having "brought on conditions which were yearly reducing hundreds of laborers and other small wage earners to a condition of serfdom in all but name").

[132] KEEST & RENUART, *supra* note 122, at 39.

[133] GALLERT, *supra* note 125, at 89; KEEST & RENUART, *supra* note 122, at 48.

[134] *See* KEEST & RENUART, *supra* note 122, at 48.

rate caps.[135] Moreover, the Supreme Court's decision in *Marquette National Bank v. First of Omaha Service Corp.*,[136] which is discussed in greater detail in the next Part, encouraged these trends.

At the beginning of the 1990s, the best available estimate suggests that fewer than 200 business locations nationwide offered payday loans—loans that were clearly a throw-back to the old salary lending business mostly stamped out 50 or so years before.[137] Businesses offering payday loans at this point were usually focused primarily on cashing paychecks for consumers who lacked traditional banking services. These businesses found that they could attract larger clientele and make staggering profits by agreeing to "cash" consumers' post-dated personal checks. If a consumer needed a loan, she could write a check for funds she did not actually have in her checking account.[138] If the "check casher" agreed to wait two weeks before attempting to tender the check, then the consumer would have time to make some more money, deposit additional funds in her checking account, and thus cover the check by the agreed-upon date.[139] The term "payday loan" derived from this practice because often the date consumers wrote on their checks corresponded to their next payday. When sued by consumers alleging usury violations, these check cashers maintained that they were not lending money, but were simply cashing a check.[140]

Current payday lenders make similar arguments. Some payday lenders claim to be "leasing" money to the consumer, rather than making a loan.[141] In these sale-leaseback transactions, the consumer "sells" a household appliance to the business, which then "leases" it back for a fee until the consumer can repurchase it. "The appliance, however, is never actually delivered to the lender. Instead, the lender gives the consumer cash and takes only a post-dated check from the consumer as security."[142] Other payday lenders disguise their loans as "catalog sales."[143] Similar to the worthless oil painting dodge of a century ago, these lenders require that the consumer buy certificates, which they can redeem for merchandise from a catalog. The consumer writes a check and in return obtains cash and some certificates redeemable for merchandise from a catalog on

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[135] *Id.* at 55.

[136] Marquette Nat'l Bank v. First of Omaha Serv. Corp., 439 U.S. 299 (1978).

[137] JOHN P. CASKEY, THE ECONOMICS OF PAYDAY LENDING 3 (2002).

[138] Johnson, *supra* note 36, at 12–13.

[139] *Id.*

[140] *See* Schmedemann, *supra* note 26, at 978.

[141] Jeff Gelles, *Payday Loans Will Just Make It Worse*, PHILADELPHIA INQUIRER, Nov. 21, 2001, at C01.

[142] Johnson, *supra* note 36, at 18–19.

[143] People v. JAG NY, LLC, 794 N.Y.S.2d 488, 489 (N.Y. app. Div. 2005) (describing the loans as "sales of gift certificates for catalog merchandise").

display.[144] While the borrower may never redeem the catalog certificates, the real point of the transaction is that the lender waits about two weeks before tendering the borrower's check. Oblivious to the recurring patterns from disguised salary loans of a century earlier, some courts have gone along with these charades.[145] The Federal Reserve Board, however, has been relatively quick to recognize the fees associated with these transactions for what they are: a finance charge subject to disclosure as interest under the Truth in Lending Act.[146]

Still, with state courts and regulatory authorities slow to act, and with enormous profits to be had, the payday lending business exploded in the late 1990s. In North Carolina, payday lending outlets roughly quadrupled in four years, growing from 307 in 1997 to 1204 in 2000.[147] Payday lending outlets quintupled in Salt Lake City between 1994 and 2000.[148] Wyoming payday lenders almost tripled between 1996 and 1997.[149] Iowa's payday lenders increased from eight to 64 in two years.[150] In states where payday lending was once illegal under state law, bills purporting to regulate the industry have in fact legitimized it, leading to astonishing growth nearly overnight. For instance, after Mississippi began regulating payday lenders in 1998, the number of outlets in that state quickly tripled.[151] Some lenders, such as QC Holdings, Inc., have proven so profitable that they have filed with the SEC and are now publicly traded corporations.[152] As of 2001, over 12,000 payday loan outlets were

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[144] *Id.*

[145] *See, e.g.*, Betts v. ACE Cash Express, Inc., 827 So. 2d 294, 297 (Fla. Dist. Ct. App. 2002). Some state legislatures have attempted to prevent these disguised payday loans by statute. *See, e.g.*, ALA. CODE § 5-18A-12(d) (2004) ("No person shall use any device, subterfuge, or pretense whatsoever, including, but not limited to, catalog sales, discount vouchers, Internet instant-rebate programs, phone card clubs, or any agreement, including agreements with affiliated persons, with the intent to obtain greater charges than would otherwise be authorized by this chapter.").

[146] Truth in Lending Act, 15 U.S.C. § 1601 (2000), *discussed in* Official Staff Commentary § 226.2(a)(14)-2, *as published in* 65 Fed. Reg. 17,129 (Mar. 31, 2000).

[147] OFFICE OF THE COMM'R OF BANKS, *supra* note 31, at 5.

[148] Peterson, *supra* note 33, at 560–61.

[149] CONSUMER FEDERATION OF AMERICA, THE GROWTH OF LEGAL LOAN SHARKING: A REPORT ON THE PAYDAY LOAN INDUSTRY 3 (Nov. 1998), http://www.consumerfed.org/The_Growth_of_Legal_Loan_Sharking_1998.pdf.

[150] *Id.*

[151] Jimmie E. Gates, *Check-Cashing Businesses Rolling out the Dough*, CLARION-LEDGER (Jackson, Miss.), Feb. 6, 2005, *available at* http://www.clarionledger.com/apps/pbcs.dll/article?AID=/20050206/NEWS01/502060399/1002/NEWS01.

[152] *See* Stephen Roth, *Payday Loan Firm Seeks Cash on Wall Street*, BUS. J. (Kansas City, Mo.), June 18, 2004, http://www.bizjournals.com/kansascity/stories/2004/06/21/story5.html.

operating nationwide, with the industry continuing to expand rapidly.[153] Attempting to put this fundamental shift in the financial services industry into perspective, the U.S. Comptroller of the Currency famously remarked that "California alone has more payday loan offices—nearly 2,000—than it does McDonalds and Burger Kings."[154]

B. *Financial Vulnerability of Military Personnel*

For those who care about the well-being of American military service members, the recent resurgence of an industry which first gave rise to the term "loan shark" has troubling overtones. A large and well-documented body of literature has explored the precarious financial position of members of the U.S. military. We believe this literature suggests that military service members may have several characteristics which make them especially vulnerable to high-cost indebtedness. From this literature, we have distilled four factors which tend to suggest that military personnel may be uniquely viable targets for predatory lending in general, and payday loans in particular: (1) demographic characteristics which predispose military service members toward high-cost indebtedness; (2) the form, amount, and distribution of military compensation; (3) dislocation faced by military service members and their families; and (4) military cultural considerations.

1. *Demographic Predisposition*

Military service members tend to have demographic characteristics associated with personal indebtedness problems. While there is considerable variation among different service branches, the great majority of military service members are young enlisted personnel. Junior enlisted personnel make up about 75% of the military.[155] In fact, the Department of Defense is "the nation's largest employer of American youth."[156] Unlike their civilian peers, a relatively large proportion of these young people are recently married and have young

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[153] CONSUMER FEDERATION OF AMERICA & THE U.S. PUBLIC INTEREST RESEARCH GROUP, RENT-A-BANK PAYDAY LENDING: HOW BANKS HELP PAYDAY LENDERS EVADE STATE CONSUMER PROTECTIONS 1–2 (Nov. 2001).

[154] Barr, *supra* note 20, at 150 (quoting remarks by John D. Hawke, Jr., Comptroller of the Currency, before the ABA National Community and Economic Development Conference, Baltimore, MD, Mar. 18, 2002).

[155] Pamela C. Twiss & James A. Martin, *Conventional and Military Public Housing for Families*, 73 SOC. SERV. REV. 240, 241 (1999).

[156] Phillips, *supra* note 8, at 340; *see also* DAVID GOTTLIEB, BABES IN ARMS: YOUTH IN THE ARMY (1980) (surveying motivation and experiences of new Army recruits).

children.[157] Some commentators have suggested that high health care costs and the growing scarcity of health insurance have forced young parents to turn disproportionately to the military because of its relatively generous government-provided health care system.[158] A small but growing minority of these families are single-parent households.[159]

Historically, young enlisted military personnel have hailed from primarily economically disadvantaged backgrounds.[160] Moreover, vulnerable groups have sought out the armed services as a means of moving along both formal and informal paths of citizenship and social privilege.[161] For centuries, minorities and recent immigrants have seen service in the armed forces as a way to achieve social legitimacy and legal rights.[162] Especially during major conflicts, such as the Civil War and both World Wars, authorities have waived normal citizenship requirements for alien military personnel.[163] Many refugees and temporary workers still turn to the military as a way of speeding up immigration procedures.[164] Currently, a small but symbolically important group of about 32,000 non-citizens is serving in the U.S. military.[165] More significant demographically is the disproportionate representation of African Americans in the military, who make up about 13% of the American civilian population, but about 20% of enlisted personnel.[166]

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[157] Twiss & Martin, *supra* note 155, at 241. The percent of married military service members has increased steadily since the military converted to an all volunteer force. Brenda L. Moore, *The Propensity of Junior Enlisted Personnel to Remain in Today's Military*, 28 ARMED FORCES & SOC'Y 257, 272 (2002). Interestingly, the decrease in the median age at first marriage for military personnel runs opposite to the civilian trend of marrying later in life. Charles C. Moskos, *The American Enlisted Man in the All-Volunteer Army*, *in* LIFE IN THE RANK AND FILE: ENLISTED MEN AND WOMEN IN THE ARMED FORCES OF THE UNITED STATES, AUSTRALIA, CANADA, AND THE UNITED KINGDOM 35, 40 (David R. Segal & H. Wallace Sinaiko eds., 1986). Currently about 65% of military members are married. BUDDIN, *supra* note 4, at 4.

[158] Harrell, *supra* note 5, at 23.

[159] Twiss & Martin, *supra* note 155, at 241; Karen Jowers, *Single Parents a Growing Segment of Military*, ARMY TIMES, Jan. 25, 1999, at 18.

[160] Glen H. Elder, Jr., *Military Times and Turning Points in Men's Lives*, 22 DEVELOPMENTAL PSYCHOL. 233, 244 (1986).

[161] The armed forces are more ethnically diverse than the civilian population. Twiss & Martin, *supra* note 155, at 241.

[162] MORRIS JANOWITZ, MILITARY CONFLICT 77–78 (1975); DAVID R. SEGAL, RECRUITING FOR UNCLE SAM: CITIZENSHIP AND MILITARY MANPOWER POLICY 10 (1989).

[163] SEGAL, *supra* note 162, at 10.

[164] Nina Bernstein, *Fighting for U.S., and for Citizenship*, N.Y. TIMES, Jan. 15, 2005, at B1.

[165] *Id.*

[166] Phillips et al., *supra* note 8, at 341.

Enlisted military personnel also have had historically limited educational backgrounds.[167] For instance, at the end of the 1970s, almost half of military enlistees lacked a high school diploma, and only 2.2% had any college experience.[168] Because in recent years military recruiters have focused on applicants with high school degrees, currently about ninety-nine percent of enlistees are high school graduates.[169] Nevertheless, almost half of enlisted personnel list the primary motivation for joining the military as the ability to receive future assistance in obtaining an education that they have not yet acquired.[170]

Consumer finance research suggests these demographic characteristics of the nation's enlisted military personnel are serious risk factors for personal debt problems. Young people often lack financial experience and tend to borrow with less regard for the long-term consequences.[171] Young families have extreme financial pressure from child-rearing expenses, making debt a tempting option.[172] The emerging class of single-parent military personnel may be especially vulnerable.[173] Empirical evidence consistently finds an association between single-parent families and a variety of social, health, and financial impairments.[174] Single-income families are less able to overcome income shocks and sudden expenses, making them more likely to borrow and less likely to repay successfully. A recent study of bankrupt families found that "[h]ouseholds without a male present were nearly twice as likely to file for bankruptcy giving a medical reason or identifying a substantial medical debt as households with a male present."[175] Similarly, because enlisted service members tend to come from financially vulnerable backgrounds, they may have fewer familial resources to

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[167] Moskos, *supra* note 157, at 35–37. Professor Glen Elder's study of archival data of men born in the 1920s in Berkeley, California showed that young men with poor high school grades and teenage self-inadequacy predicted early timing of military service. Elder, *supra* note 160, at 244.

[168] Moskos, *supra* note 157, at 35–36.

[169] Moore, *supra* note 157, at 259.

[170] GOTTLIEB, *supra* note 156, at 19. Roughly half of enlistees report that they enlisted because they faced unsatisfactory employment options. *Id.*

[171] PETERSON, TAMING THE SHARKS, *supra* note 28, at 168.

[172] Frank Green & Mike Freeman, *The Debt Generation: Free Spending 20-Somethings Lured by Easy Credit*, SAN DIEGO UNION TRIB., Jan. 3, 2002, at A1.

[173] Leslie N. Richards & Cynthia J. Schmiege, *Problems and Strengths of Single-Parent Families: Implications for Practice and Policy*, 42 FAM. REL. 277, 282 (1993) (finding financial problems are "pervasive" for single mothers).

[174] *Id.* at 280.

[175] Elizabeth Warren, Teresa Sullivan, and Melissa Jacoby, *Medical Problems and Bankruptcy Filings*, 2 (Harv. Law Sch. Pub. Law and Legal Theory Working Paper Series, Working Paper No. 009, 2000).

draw on in financial emergencies, in turn forcing them to creditors. Many recent immigrants and their families have tenuous personal finances, face language barriers, and hail from countries relatively unaccustomed to credit.[176] Several commentators have argued persuasively that these characteristics leave recent immigrants vulnerable to targeting by predatory lenders.[177] A large literature suggests that African Americans and other ethnic minorities have faced exclusion from inexpensive creditors and targeting by predatory lenders.[178] Finally, many commentators have argued that individuals with limited education and financial experience have greater difficulty shopping for lower priced loans, leaving them at risk for marketing by high-cost and predatory lenders.[179] All of these factors suggest troubling implications for military service members.

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[176] *See generally* Steven W. Bender, *Consumer Protection for Latinos: Overcoming Language Fraud and English-Only in the Marketplace*, 45 AM. U. L. REV. 1027 (1996).

[177] *See, e.g.*, Charu A. Chandrasekhar, Note, *Can New Americans Achieve the American Dream? Promoting Homeownership in Immigrant Communities*, 39 HARV. C.R.-C.L. L. REV. 169, 172, 188–91 (2004).

[178] *See, e.g.*, ROBERT SCHAFER & HELEN F. LADD, DISCRIMINATION IN MORTGAGE LENDING (1981); Harold A. Black, *Is There Discrimination in Mortgage Lending? What Does the Research Tell Us?*, 27 REV. OF BLACK POL. ECON. 23, 25–27 (1999); Cathy Cloud & George Galster, *What Do We Know About Racial Discrimination in Mortgage Markets?*, 22 REV. OF BLACK POL. ECON. 101, 116–17 (1993); Theodore E. Day & S. J. Liebowitz, *Mortgage Lending to Minorities: Where's the Bias?*, 36 ECON. INQUIRY 3 (1998); Stephen A. Fuchs, *Discriminatory Lending Practices: Recent Developments, Causes and Solutions*, 10 ANN. REV. BANKING L. 461, 466–73 (1991); Fred Galves, *The Discriminatory Impact of Traditional Lending Criteria: An Economic and Moral Critique*, 29 SETON HALL L. REV. 1467, 1472–73, 1481–83 (1999); Glenn W. Harrison, *Mortgage Lending in Boston: A Reconsideration of the Evidence*, 36 ECON. INQUIRY 29 (1998); Helen F. Ladd, *Evidence on Discrimination in Mortgage Lending*, 12 J. ECON. PERSP. 41, 46–47 (1998); Stanley D. Longhofer, *Discrimination in Mortgage Lending: What Have We Learned?*, ECON. COMMENT., Aug. 15, 1996, at 1; Robert E. Martin & R. Carter Hill, *Loan Performance and Race*, 38 ECON. INQUIRY 136 (2000); Alicia H. Munnell et al., *Mortgage Lending in Boston: Interpreting HMDA Data*, 86 AM. ECON. REV. 25, 25–26, 31, 41 (1996); Reynold F. Nesiba, *Racial Discrimination in Residential Lending Markets: Why Empirical Researchers Always See It and Economic Theorists Never Do*, 30 J. ECON. ISSUES 51, 52–55 (1996); Ron Nixon, *Application Denied: Do Lending Institutions Overlook Hispanics?*, 11 HISP. 30, 32–33 (1998); Ronald K. Schuster, *Lending Discrimination: Is the Secondary Market Helping to Make the 'American Dream' a Reality?*, 36 GONZ. L. REV. 153, 162–73 (2000/2001); Peter P. Swire, *The Persistent Problem of Lending Discrimination: A Law and Economics Analysis*, 73 TEX. L. REV. 787, 806–14 (1995). *See also Discrimination in Home Mortgage Lending: Hearing Before the Subcomm. on Consumer and Regulatory Affairs of the S. Comm. on Banking, Housing, and Urban Affairs*, 101st Cong. 118 (1989) (statement of Sen. Alan J. Dixon).

[179] *See, e.g.*, Tania Davenport, Note, *An American Nightmare: Predatory Lending in the Subprime Home Mortgage Industry*, 36 SUFFOLK U. L. REV. 531, 533 (2003).

2. *The Military Compensation System*

The form, amount, and distribution of military compensation may also place military personnel at risk for high-cost debt problems. The most important aspect of military compensation is the lack of it. Junior enlisted military personnel are low-wage entry-level workers. A typical Army private first class makes $16,884 per year.[180] Like all low-wage workers, military personnel tend to live month-to-month, often struggling to pay their bills. Military surveys reveal that nearly one-third of enlisted service members self-report moderate to severe difficulty in paying their bills.[181] Sudden unexpected expenses such as car trouble or legal problems, as well as poor personal financial choices, can all pitch low-wage workers into financial hardship caused by debt. For junior enlisted military personnel, these cash shortages do not always resolve themselves over time because these enlistees tend to see relatively little growth in their monetary compensation over the course of their careers.[182]

Furthermore, military compensation comes with high opportunity costs from long and irregular hours. As Professors Bowen and Orthner observed:

> Service in the armed forces involves more than an occupation choice; it is the selection of a life style that permeates almost every aspect of a person's life. Few civilian occupations require the high level of commitment and dedication from their employees that the military services require. Even fewer ask their employees, much less members of the employees' families, to make such a range of personal and family sacrifices to accommodate the work mission, including long work hours, high-stress assignments, required relocations, frequent family separations and reunions, remote tours of service, long-term separations from extended family and friends, residence in foreign countries, and frequent subservience of family needs to mission responsibilities.[183]

At the most practical level, when military personnel fall into financial difficulty, they do not have the option of taking a second job to cover their expenses, which is an important route to overcome financial hardship for civilians.[184] Nor does the military pay overtime to its employees despite requiring

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[180] U.S. ARMY, BENEFITS: MONEY, http://www.goarmy.com/benefits/money.jsp (last visited Oct. 17, 2005).

[181] Martha McNeil Hamilton, *Ignorance Costs Plenty: Officials Promote Financial Literacy*, WASH. POST, Feb. 6, 2002, at E01.

[182] Moore, *supra* note 157, at 261.

[183] Gary L. Bowen & Dennis K. Orthner, *Introduction*, *in* THE ORGANIZATIONAL FAMILY: WORK AND FAMILY LINKAGES IN THE U.S. MILITARY, *supra* note 5, at *ix*, *xiii*.

[184] *See* GOTTLIEB, *supra* note 156, at 163; HARRELL, *supra* note 5, at 108.

long hours.[185]

The predictability of monthly income for junior enlisted personnel also may place them at risk for debt problems. On the one hand, prospective creditors can be relatively certain that military personnel are going to be paid. Unlike comparable private sector workers, such as service employees, construction workers, and small business entrepreneurs, junior enlisted military personnel are unlikely to be laid off, fired, or have their businesses fail. On the other hand, junior enlisted military personnel often have great difficulty predicting exactly what their monthly income will be in any given month. The Government Accountability Office has found that military families chronically suffer from delays and mistakes in the distribution of their wages. But even when wages are paid correctly, enlisted family income varies significantly with the deployment schedule of the unit.[186] For example, many military families receive a subsistence allowance intended to feed the service member, and many rely on this allowance to feed the entire family and to pay bills.[187] Yet when the service member is unexpectedly deployed or called into the field, this separate allowance is no longer provided, potentially creating an unexpected income shock.[188] The simultaneous likelihood that military members will eventually be paid, combined with unpredictable changes in compensation, make military families likely to borrow to bridge unexpected gaps.

The form of military compensation also limits the ability of military families to adapt to financial crises, potentially forcing them to turn to creditors. Much of military compensation comes in the form of non-fungible in-kind goods and services, rather than a traditional paycheck. Military health care, future tuition assistance, military housing, military food, access to commissaries, and access to military recreational facilities and entertainment are all important components of the compensation package for military personnel.[189] Military recruiters understandably use these side benefits as a way of explaining and justifying relatively low military pay. Nevertheless, the non-fungible nature of non-cash compensation prevents military personnel from converting a significant portion of their resources to overcome income shocks and unexpected expenses. If a civilian family car breaks down, because the primary wage earner is likely to receive all or nearly all of his or her compensation in the form of cash payment, the family can divert resources normally allocated to important but ultimately expendable purchases into repairing the car. For instance, the family might be able to forego entertainment or cut back on food expenditures through more

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[185] GOTTLIEB, *supra* note 156, at 163; HARRELL, *supra* note 5, at 108.

[186] HARRELL, *supra* note 5, at 108.

[187] *Id.* at 108–09.

[188] *Id.*

[189] *See supra* note 3 and accompanying text.

parsimonious shopping. A family that is saving for educational expenses can temporarily halt monthly contributions, or even draw from pre-existing reserves. Cash compensation can be more readily applied to repairing the car (or to servicing a loan balance which paid for repairing the car). This diversion of resources may be more difficult for military families because their pool of *fungible* resources is relatively smaller than their otherwise identical civilian counterparts. A military family cannot transform its right to receive military entertainment or food into cash. Nor can it transform a military promise to pay future school tuition into cash which might be useful in repairing the car. This is, of course, not to belittle the value of the considerable in-kind compensation military families receive; it is merely to point out its illiquidity. Because military families receive a comparatively greater portion of their compensation in non-cash forms, we should expect that they will be marginally less able to adapt their monthly budget to overcome financial hurdles than will a family that receives liquid cash compensation of the same absolute value.

The military wage distribution system may also give aggressive lenders a relatively greater opportunity to capture the income of enlisted military personnel. As a service to military members, the armed services have allowed members to "allot" their income; creditors, including landlords, utilities, merchants, and others, can be paid directly by the government out of service members' wages.[190] This provides a convenience to service members who may be unable to mail payments while in the field. However, some creditors make allotments a condition of lending money. Margaret Harrell's study of junior enlisted Army personnel suggests that the system tends to encourage service members to take on credit, for which they would not qualify if they were civilians.[191] If true, this would leave members precariously over-extended and vulnerable to high-cost debt marketing. We should also expect that the system will erode the ability of military borrowers to deter creditor over-reaching with the most effective strategy: refusing to repay.[192]

3. *The Dislocation of Military Service Members*

Military service members may be at risk for debt problems because they have difficulty maintaining traditional support networks within the institutional constraints of the armed forces. The military is a prototypical example of what

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[190] *See* 32 C.F.R. § 113.6 (2005).

[191] HARRELL, *supra* note 5, at 109.

[192] The Truth in Lending Act recognizes the importance of the ability to refuse payment by allowing credit card borrowers to assert against credit card lenders most claims and defenses assertable against merchants who honor credit cards.

Lewis Coser called a "greedy" institution.[193] For instance, the military tends to place great demands on its members with respect to geographic mobility. Military personnel are frequently transferred between posts and assignments. Historically, most military assignments last for no more than three years. One study found that 86% of enlisted personnel moved at least once in the three years preceding the survey.[194] Seasoned service members and officers are also expected to change locations frequently. Seventy-six percent of enlisted personnel with seven to ten years of service reported moving three or more times.[195] For officers, this figure rose to 82%.[196] "For those with more than fourteen years of service, 40% of enlisted personnel and 55% of officers reported more than nine moves."[197] Moreover, because there are often waiting lists for military housing, many transfers involve two moves: one into a temporary private rental home and a second move into less expensive military housing when it becomes available.[198]

Because of security and training needs, military posts are also often in isolated locations far from mainstream civilian institutions. Even when stationed at bases located in large metropolitan areas, service members face significant emotional and cultural barriers which prevent them from developing a sense of community with nearby civilians.[199] Moreover, many may be hesitant to integrate into civilian communities because they move so frequently.[200] Accordingly, military members are often reluctant to engage in, and are slow to be recognized by, local democratic institutions.[201] Low voter registration and participation rates of military personnel may make local leaders less responsive to financial hardship suffered by soldiers at the hands of politically aggressive local merchants.[202] Many military personnel also report outright tension between

[193] LEWIS A. COSER, GREEDY INSTITUTIONS: PATTERNS OF UNDIVIDED COMMITMENT (1974); Mady Wechsler Segal, *The Military and Family as Greedy Institutions*, 13 ARMED FORCES & SOC'Y 9, 9 (1986).

[194] Zahava D. Doering & William P. Hutzler, *Description of Officers and Enlisted Personnel in the U.S. Armed Forces: A Reference for Military Manpower Analysis* 161 (1982).

[195] Segal, *supra* note 193, at 17.

[196] *Id.*

[197] *Id.* (citing Doering & Hutzler, *supra* note 194).

[198] *Id.* at 22.

[199] Martin & Orthner, *supra* note 5, at 175.

[200] For example, Buddin has found that military members living in military housing typically have higher use rates for military family support and recreation programs and may integrate into surrounding communities slowly. BUDDIN, *supra* note 4, at 73.

[201] LUTZ, *supra* note 5 (discussing weak local democratic culture from low voter registration and participation around Ft. Bragg).

[202] *Id.*

service members and civilians who live near military posts.[203] Overseas assignments not only create geographic isolation, but also place service members and their families in foreign and sometimes resentful cultures.

These geographic mobility issues dislocate military personnel from their extended families, which can erode their ability to bridge unexpected expenses and income shocks.[204] When a car breaks down, siblings, parents, or long-time friends may not be available to assist with temporary transportation. When a child is ill, or when work requires long hours, grandparents may not be close by to provide free child care. Geographic separation is especially difficult for young enlisted personnel and their spouses, many of whom are away from their families and long-time friends for the first time.[205] There may be less incentive to invest in new friendships and long-term support networks, since these relationships are likely to be severed when the service member is next transferred.[206]

Geographic constraints placed on military families also create a significant earnings penalty for the spouses of service members. Although 60% of military spouses work outside the home, they suffer disruption to their careers when the family is forced to relocate. And, because bases are typically in isolated locales which often have depressed economies, there are often few employment prospects for spouses.[207] The military does provide spousal employment services, which aim to help spouses adjust financially to relocation;[208] however, service members rated this service dead last in user satisfaction among all military community and family support programs.[209] Studying this phenomenon in over 18,000 military personnel observations, Payne, Warner, and Little found that three-year rotations caused a 40% decrease in the income that a spouse would have earned had he or she been able to remain at one location for six years.[210]

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[203] One soldier explained:

> I never seen anything like it anywhere. It's like they can't wait to see you. Like they know when troops get paid so they have everything ready. The prices just go sky high whenever you get paid. They make it real clear that they hate you. Even when they are taking your money they make you feel like you are not a human person. Anything goes wrong in that town and they blame the Army. Babies come up missing, people getting killed. The soldier gets all the blame for it, so they look at all of us that way.

GOTTLIEB, *supra* note 156, at 60.

[204] HARRELL, *supra* note 5, at 108–09.

[205] Segal, *supra* note 193, at 17–18.

[206] *Id.* at 18.

[207] HARRELL, *supra* note 5, at 108–09.

[208] BUDDIN, *supra* note 4, at 51–52.

[209] *Id.* On a five-point scale, respondents gave military spouse employment services an average score of 2.88. *Id.* at 51. In comparison, the highest-rated service was chaplain services, rated at 4.12. *Id.*

[210] Deborah M. Payne, John T. Warner & Roger D. Little, *Tied Migration and Returns*

Recognizing these facts, many military families end up foregoing human capital investments for military spouses because education, training, and occupational experience are less likely to yield returns in the long run.[211] This suggests another risk factor for debt problems because a second income is an important hedge for income shocks and sudden expenses.[212] When one partner suffers a setback, the other can take up the slack to avoid reliance on creditors. Spouses of military personnel are comparatively less able to do this because of the demands placed on military families.

Frequent moves also prevent military members from reaping many of the benefits of home ownership. This is important because family homes are often the most important device for accumulating and stabilizing wealth in the American middle class. Unlike other common middle- and lower-class physical assets, such as automobiles, homes generally appreciate in value over time, giving their owners an investment return. Home mortgages are also forced savings mechanisms which discipline families. As homeowners pay down their mortgages, they accumulate equity in a valuable asset, which they can leverage to obtain low-cost financing. Low-cost home mortgages are a valuable tool in overcoming income shocks and unexpected expenses without relying on high-cost lenders. Similarly, when long-time homeowners suffer a permanent decline in income from illness, divorce, retirement, or job loss, they have the option of selling their home to create a pool of liquid funds with which to restart their financial development. Professor Dalton Conley has argued persuasively that home ownership is also the most important asset in promoting long-term inter-generational transfer of wealth from parents to their children.[213]

Because military families move frequently, it makes less sense for them to invest in purchasing a family home.[214] Most financial planners advise that realtor commissions, mortgage loan closing costs, and large interest payments at the beginning of a mortgage loan term eliminate the financial benefits of home ownership for families that plan to own a home for fewer than three years. Moreover, those military families who do end up staying in one location long enough to make home ownership feasible will not usually know this ahead of time. The result is that many military families are forced to rent their homes, either in fact (from a landlord) or in effect (from the real estate sales and finance industry costs). Military housing or housing allowances offset missed home ownership to a degree, but these substitutes do not create investment returns,

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to Human Capital: The Case of Military Wives, 73 SOC. SCI. Q. 324, 328, 337 (1992).

[211] *Id.* at 325.

[212] HARRELL, *supra* note 5, at 108–09.

[213] DALTON CONLEY, BEING BLACK, LIVING IN THE RED: RACE, WEALTH, AND SOCIAL POLICY IN AMERICA 41–43 (1999).

[214] RICHARD BUDDIN ET AL., AN EVALUATION OF HOUSING OPTIONS FOR MILITARY FAMILIES 26 (1999).

forced savings, low-cost borrowing opportunities, or intergenerational wealth transfer effects.[215] Moreover, service members have given these benefits and services low marks, complaining of long waiting lists, poor distribution of information, and poor quality housing stocks.[216]

4. *Military Culture and Financial Obligations*

Military attitudes toward financial problems may facilitate predatory lending to enlisted personnel. The military, both as a matter of policy and institutional culture, steadfastly refuses to allow service members to avoid financial obligations.[217] While this policy is certainly laudable in most contexts, such as child support or tax obligations, it may be more problematic in the context of predatory lenders. The institutional demand that service members have their financial affairs in order is backed up with the very real threat of reprimand, loss of security clearances, bar to re-enlistment, denial of promotion, court martial, and dishonorable discharge.[218] "Soldiers are required to manage their personal affairs satisfactorily and pay their debts promptly," explain Army regulations.[219] "Failure to do so damages their credit reputation and affects the Army's public image."[220] Thus, military service members who do not pay their bills are often subject to intense pressure from their commanding officer.[221] Where many

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215 *Id.* at 28.

216 BUDDIN, *supra* note 4, at 51–52.

217 Alan L. Cook, *The Armed Forces as a Model Employer in Child Support Enforcement: A Proposal to Improve Service of Process on Military Members*, 155 MIL. L. REV. 153, 168–69 (1998).

218 *Id.* at 169 n.103; CBSNews.com, *supra* note 10. For example, the Navy Military Personnel Manual states:

> Members of the Naval service are expected to pay their just debts and financial obligations in a proper and timely manner.
>
> . . .
>
> The way in which one handles their private financial affairs provides a reliable indication of their general character and trustworthiness.
>
> . . .
>
> Failure to pay just debts . . . is evidence of irresponsibility and may jeopardize their security clearance status, advancement status, duty assignment, qualification for reenlistment or extension of enlistment, retention, and in aggravated circumstances may become grounds for disciplinary and/or administrative separation action.

NAVY MILITARY PERSONNEL MANUAL 7000-020 (2005), http://buperscd.technology.navy.mil/bup-updt_CD/BUPERS/MILPERS/Milpers.pdf.

219 Indebtedness of Military Personnel, Army Regulation 600-15, at 1-5*a* (1986).

220 *Id.*

221 Edward Robinson, *Big Banks Fuel Growth of Payday Lenders*, TENNESSEEAN.COM,

working-class Americans might simply refuse to pay an over-reaching lender, service members may not have this option. We should also expect that bankruptcy is a less realistic option for most military personnel. Where civilians might be able to defeat over-reaching unsecured creditors by filing a Chapter 7 bankruptcy petition, many in the military might simply refuse to entertain this possibility.

This military cultural commitment to financial responsibility also helps ensure that military personnel are relatively easy to track. For some high-cost lenders, the possibility that the debtor may simply skip town or disappear is one of the greatest risks of doing business. High-cost creditors often employ skip tracing departments and private investigators to track down delinquent debtors. Creditors also face difficulty in delivering service of process on elusive civilian borrowers delaying judicial collection proceedings. Some civilian debtors can obtain an informal "discharge" of their debts by simply disappearing. In comparison, the military maintains a system for locating their service members. Importantly, the military has a defined and mechanical system where it actively assists companies and individuals seeking to serve process on military personnel.[222]

The military culture and policies dealing with financial obligations make it relatively more difficult for military personnel to escape their financial past. This fact should make military borrowers a better credit risk which, given efficient price competition, could encourage lenders to pass on lower prices. But it also probably encourages targeting of military service members by lenders who specialize in extending onerous loans to uninformed and overextended borrowers. Predatory lending is, above all, a collection business. Unsecured predatory lenders do not attempt to compete by offering lower prices than their competition, but rather by extracting debts others cannot. The military insistence on repayment under all circumstances may simply assist predatory lenders in making and enforcing questionable loans. Unlike the civilian marketplace, creditors specializing in loans to military personnel can expect a free and effective built-in pressure and tracking network to assist them in forcing payment.

C. *Payday Lending to Military Personnel*

1. *Congress's Position: The Servicemembers' Civil Relief Act*

Historically, Congress has not been blind to the financial vulnerability of military personnel. Ever since the early nineteenth century, Congress has taken

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Nov. 29, 2004, http://www.tennessean.com/business/archives/04/11/62129411.shtml (sergeant discussing discharge of soldiers from debt defaults).

[222] Cook, *supra* note 217, at 170–72.

steps to protect service members from civil lawsuits brought by creditors. During both the War of 1812 and the Civil War, Congress passed "stay laws" which suspended civil proceedings against soldiers and sailors until they returned from war.[223] When passing similar legislation during World War I,[224] a House Report explained:

> [T]here are . . . tens of thousands of men in military service who will be utterly ruined and their families made destitute if creditors are allowed unrestrictedly to push their claims; and yet these same soldiers, if given time and opportunity can, in most cases, meet their obligations dollar for dollar. The country is asking . . . its young men to risk their lives and, if need be, to give up their lives for their country. Before long even more will be asked to make the same sacrifice. Is it more than naked justice to give to the savings of these same men such just measure of protection as is possible?[225]

World War II ignited similar concerns, causing Congress again to protect service members, this time with the Soldiers' and Sailors' Civil Relief Act of 1940.[226] This law authorized "temporary suspension of legal proceedings and transactions which [could have] prejudice[d] the civil rights of persons" fighting in World War II.[227] Unlike previous legislation, the World War II law did not

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[223] Terry M. Jarrett, *The Servicemembers' Civil Relief Act: Important New Protections for Those in Uniform*, 60 J. MO. B. 174 (2004) (quoting H.R. REP. NO. 108-81, at 32 (2003)). The Civil War era statute read:

> [W]henever, during the existence of the [Civil War], any action, civil or criminal, shall accrue against any person who, by reason of [war], . . . cannot be served with process . . . the time during which such person shall so be beyond the reach of legal process shall not be deemed . . . as any part of the time limited by law for the commencement of such action.

Act of June 11, 1864, ch. 118, 13 Stat. 123; *see* U.S. ARMY JUDGE ADVOCATE GENERAL'S SCHOOL, SOLDIERS' AND SAILORS' CIVIL RELIEF ACT GUIDE 1-1 (July 2000), http://www.louisvillelaw.com/federal/ArmyPubs/ja260_sscra_db.pdf [hereinafter JAG GUIDE].

[224] The Soldiers' and Sailors' Civil Relief Act of 1918, ch. 20, 40 Stat. 440, did not completely ban all civil actions, instead requiring "trial courts to take whatever action equity required when a service member's rights were involved in a controversy." JAG GUIDE, *supra* note 223, at 1-1. Specifically, it protected soldiers from proceedings in bankruptcy, foreclosure, repossession of property, default judgments, stays of proceedings, and evictions. Jarrett, *supra* note 223, at 174 (citing H.R. REP. NO. 108-81, at 33 (2003)).

[225] Boone v. Lightner, 319 U.S. 561, 565 n.2 (1943) (quoting H.R. REP. NO. 65-181, at 2–3 (1918)).

[226] Soldiers' and Sailors' Civil Relief Act of 1940, ch. 888, § 100, 54 Stat. 1178 (1940).

[227] *Id.* at 1179. The Act's specific protections included the following:

> staying civil court proceedings if military service materially affected the service

automatically expire at the end of the war. As a result, although Congress amended the Act many times,[228] it stayed in effect until December 2003, when Congress completely overhauled it under the new name of the Servicemembers' Civil Relief Act of 2003 (SCRA).[229]

Like previous statutes, the purpose of the SCRA is:

> to provide for, strengthen, and expedite the national defense
>
> .
>
> [and to enable] servicemembers of the United States . . . to devote their entire energy to the defense needs of the Nation [by providing] for the temporary suspension of judicial and administrative proceedings and transactions that may adversely affect the civil rights of servicemembers during their military service.[230]

Among other provisions, the SCRA protects against default judgments;[231] prohibits creditors from repossessing, selling, foreclosing on, or seizing the property of a service member;[232] and protects military families from being evicted.[233] Perhaps most significantly, the SCRA also enables service members to reduce interest rates on any previous obligations to a six percent annual rate.[234]

Nevertheless, the SCRA has virtually no impact on payday lending. Payday lenders generally do not take security interests in personal property, making repossession protections irrelevant. And, although the Act requires a reduction in

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> member's ability to defend his or her interest; reducing interest rates to six percent on pre-service loans and obligations; requiring a court order before a service member's family could be evicted from a rented residence for non-payment if the monthly rent was $1200 or less; terminating a pre-service residential lease; and allowing service members to retain their state of residence for tax purposes despite military relocations to other states.

Jarrett, *supra* note 223, at 175.

[228] *E.g.*, Act of Oct. 6, 1942, ch. 581, 56 Stat. 769; Act of Jan. 20, 1942, ch. 10, 56 Stat. 10; Act of May 13, 1942, ch. 303, 56 Stat. 276; Revenue Act of 1942, ch. 619, 56 Stat. 798; Soldiers' and Sailors' Civil Relief Act Amendments of 1991, Pub. L. No. 102-12, 105 Stat. 34; Veterans Benefits Act of 2002, Pub. L. 107-330, 116 Stat. 2820.

[229] 50 U.S.C. app. §§ 501-596 (2005).

[230] *Id.* § 502.

[231] *Id.* § 521.

[232] *Id.* §§ 532-533.

[233] *Id.* § 531.

[234] *Id.* § 527. This protection applies only to obligations incurred by the service member prior to entering active duty.

interest rates to six percent on any debt incurred before going on active duty,[235] the legislation imposes no limit on rates of loans consummated *after* a service member is activated. Consequently, the SCRA's only threat to the payday loan industry would arise if a service member entered into a payday loan transaction and then, and only then, was called up to active duty. In that case, the SCRA would reduce the annual interest rate on the loan from around 450% to 6% "during the period of military service."[236] Currently, federal law provides no interest rate cap whatsoever on loans made to active duty service members.

Some legislators from both parties have acknowledged their discomfort with this fact.[237] As of this writing, Congress is considering at least one bill, called the Servicemembers Anti-Predatory Lending Protection Act, which would cap annual percentage rates of payday loans to military members at 36%—a reduction of about 400 percentage points from current average rates.[238] Sponsored by Congressman Sam Graves (R-Mo.), the bill would also prohibit payday lenders from automatically renewing, refinancing, or consolidating a payday loan with the proceeds of another loan without executing a new loan document.[239] The bill has struggled under intense behind-the-scenes opposition from payday lenders.[240] With Representative Graves's bill seemingly stalled, and national attention focused on the well-being of service members suffering from conflict in the Middle East, the issue appears likely to remain at the forefront for some time.

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[235] 50 U.S.C. app. § 527 (2005).

[236] *Id.* § 527(a)(1). In order for a service member to take advantage of the provision, he or she need only provide to the lender written notice and a copy of the military orders calling the service member to duty. *Id.* § 527(b). If the lender were to object, a court could refuse to reduce the interest rate if it determined that the service member's military service did not "materially affect[]" his or her ability to pay the interest as stated in the original loan contract. *Id.* § 527(c).

[237] *See* Ken Newton, *Bill Targets Payday Loans to Military*, ST. JOSEPH NEWS-PRESS (St. Joseph, Mo.), Feb. 10, 2005, at 1B.

[238] H.R. 5300, 108th Cong. § 2 (2004).

[239] *Id.*

[240] When Representative Graves first introduced the legislation in 2004, it was referred to the House Committee on Veterans' Affairs, and then to the Subcommittee on Benefits. Thirteen days later, the bill stalled and sank. Henriques, *supra* note 12. On January 4, 2005, Representative Graves resubmitted the bill with the same text. As of February 2005, the House Committee on Veterans' Affairs was still reviewing the bill, and it was considering expanding the bill to include non-military borrowers. Newton, *supra* note 237.

2. *The Debate: Do Payday Lenders Target Military Service Members?*

Given the resurgence of payday lending in the past decade, the factors placing military personnel at risk for debt problems, and the absence of direct federal regulatory control under the SCRA, it was perhaps inevitable that questions over payday lending to service members would develop. Recently, military leaders and rank-and-file enlisted personnel have complained about the harsh consequences of payday loans for service members. A front page *New York Times* article told the story of a young Navy Petty Officer and his wife who borrowed $500 from a Puget Sound payday lender. The sailor's wages could not keep up with the interest forcing him to borrow again and again until he had borrowed over $4000—about 25% of his annual income—in instant loans from lenders with official names like "Military Financial Network."[241] Based on industry records, the article informally estimated that 26% of all military households have borrowed from payday lenders.[242] Network television news bureaus have given airtime to military complaints.[243] Faculty from the Judge Advocate General's School have bemoaned the consequences of payday loans for enlisted personnel, arguing that "[r]arely does the service member emerge from [a payday loan] . . . in better financial condition and often only gets deeper in debt."[244] Rear Admiral David Architzel has complained that payday loans "seem [like] an appealing solution" for the tight budget problems of enlisted military personnel, but actually "compound[] their financial problems by subjecting them to the additional hardships of what are effectively unreasonable interest rates."[245] A director of a state Navy Marine Corps Relief Society, which attempts to assist service members in financial trouble, explained that the payday lending problems for service members are "getting worse, really—much, much worse."[246] A chorus of military personnel and journalists have complained that payday lenders are now flocking to the highways and strip malls near the gates of military bases to feed off the wages of enlisted personnel.[247]

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[241] Henriques, *supra* note 12; U.S. ARMY, *supra* note 180.

[242] Henriques, *supra* note 12. Previous research by Gregory Elliehausen suggests that approximately 180,000 military households used payday loans in 2002. The *New York Times* compared this figure to Pentagon personnel figures to come up with the 26% estimate. *Id.*

[243] CBSNews.com, *supra* note 10.

[244] *The High Cost of Borrowing*, *supra* note 15

[245] Shean, *supra* note 14.

[246] Henriques, *supra* note 12.

[247] *See, e.g.*, Ian McNutly, *Fast Cash Outfits Win Enemies*, NEW ORLEANS CITYBUSINESS, Jan. 21, 2002, at 1 ("[I]t was changes in state laws that opened the doors to payday lending in Louisiana and around the country. In the early 1990s, payday lenders first started showing up around Fort Polk army base in Leesville."); *Borrowers Trapped*, *supra* note 13 ("The [payday] loans are made by storefront businesses in 'flashy, neon sign-adorned

Consumer advocacy groups have also seized on these complaints and conducted informal investigations over the merits of these claims. Steven Tripoli and Amy Mix, consumer advocates with the National Consumer Law Center, prepared a report discussing a variety of consumer scams and high-priced loans, including payday loans targeted at military service members.[248] The study informally collected business newspaper advertisements, loan contracts, applications, and disclosure statements.[249] The report also includes letters from military leaders complaining of the effects of payday loans and other harsh business practices on service members.[250] Finally, the National Consumer Law Center researchers visited the locale surrounding Kings Bay Naval Submarine Base in southeastern Georgia and Mayport Naval Air Station nearby in northeastern Florida.[251] The report concludes that predatory lending, high-priced goods and services, and other scams are plaguing military communities.[252] Consumers Union, the publisher of *Consumer Reports* magazine, also has inquired whether payday lenders target military personnel, conducting an informal telephone survey of 31 payday lenders in six Texas cities.[253] The purpose of the informal survey was to show how the payday loan processes work, rather than to collect statistical information on payday lender rates, practices, or clientele.[254] The small survey sample and informal methods did not distinguish between payday loans to military and civilian customers. Nevertheless, the report concluded that payday lenders are targeting military personnel.

Payday lenders vociferously deny these claims, attacking consumer advocacy reports as unscientific. To support their position, the Community Financial Services Association (CFSA), a payday lending industry trade association, has recently retained two public relations firms specializing in reputation crisis

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buildings (that) line the roadways surrounding the military bases, obviously targeting the serviceman . . . .'"); Shean, *supra* note 14 ("Prall of the Navy-Marine Corps Relief Society said payday lenders tend to concentrate near military installations because members of the military have steady jobs and checking accounts for direct deposit of their paychecks."); CBSNews.com, *supra* note 10 ("On Gen. Screven Way, the one-mile strip of fast-food joints and pawn shops leading to the front gate of Fort Stewart, getting a cash loan of $100 to $500 is about as easy as buying a cheeseburger.").

[248] NATIONAL CONSUMER LAW CENTER, IN HARM'S WAY—AT HOME: CONSUMER SCAMS AND DIRECT TARGETING OF AMERICA'S MILITARY AND VETERANS (2003), http://www.consumerlaw.org/initiatives/military/content/report_military.pdf.

[249] *Id.* at 45–54.

[250] *Id.* at 59–66.

[251] *Id.* at 7–9.

[252] *Id.* at 29.

[253] MUECKE & SCHNEIDER, *supra* note 11.

[254] *Id.* at 1–2.

management to influence popular perceptions of payday loans.[255] These firms have issued a press release reporting a telephone survey purporting to establish that few military personnel have borrowed from payday lenders.[256] In conducting the survey, the public relations firms purchased a list of military personnel from Equifax, a credit reporting agency that maintains credit histories of consumers.[257] The firms then telephoned approximately 1000 military personnel, of whom 37 admitted to taking out a payday loan in the last five years.[258] From this, the public relations firms concluded that 3.69% of military personnel use payday loans.[259]

However, this telephone survey methodology is seriously flawed for at least six reasons. First, the survey did not speak with spouses of service members, many of whom actually handle family finances, including borrowing money.[260] Second, the survey ignores a classic self-response bias in that many debtors do not admit to borrowing money when approached by strangers.[261] In part a result of personal embarrassment over financial problems, this self-reporting bias is a serious methodological problem that has challenged consumer credit research for over a century.[262] Third, relying on a credit reporting agency for a contact list introduces serious sample problems. Many of the most financially vulnerable service members are as young as eighteen years old, and either may not yet have credit histories with Equifax, or may not be identified as military personnel in those histories. Relying on credit histories for the survey sample probably artificially selects relatively established service members, such as officers and senior enlisted personnel. Fourth, many of the most vulnerable military service members are impossible to reach through a telephone survey. Some junior

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[255] Press Release, Steven Schlein & Jay Leveton, Less Than 4 Percent of Military Have Taken a Payday Advance Loan Says New Survey (Feb. 3, 2004) (on file with authors).

[256] *Id.*

[257] Memorandum from Penn, Schoen & Berland Associates to Board of Directors, Community Financial Services Association of America (Jan. 26, 2005) (on file with authors).

[258] *Id.*

[259] *Id.*

[260] Because about 65% of military service members are married, we should expect surveying only service members and not their spouses to significantly reduce reported payday loan rates from actual use. BUDDIN, *supra* note 4, at 4.

[261] *See, e.g.*, Jeff McDonald & Norberto Santana Jr., *Payday Loans Have Financial Dark Side: High Charges Lead to Lasting Cycle of Debt, Officials Warn*, SAN DIEGO UNION-TRIB., Mar. 9, 2004, at A1 (discussing refusal of approached San Diego sailor to discuss terms of payday loan).

[262] *See* CALDER, *supra* note 125, at 40 (discussing Census Bureau fears that public hostility from survey questions about debt would destroy the entire 1890 census); JANET FORD, THE INDEBTED SOCIETY: CREDIT AND DEFAULT IN THE 1980S, 126–130 (1988) (empirical findings suggesting many debtors actively conceal debt problems out of embarrassment).

enlisted personnel live in on-base barracks that lack individual telephones. Similarly, many service members are currently out of reach in combat zones overseas, even though their families may be financially struggling at home. Fifth, the survey focused on payday loans identified as such, and does not make reference to payday loans masquerading as something else, such as a "sale-lease-back" transaction or "catalog sale" loan.[263] Some survey respondents may have reported not taking out a payday loan, even though they have used a "catalog sale" lender. Finally, the survey authors have not published, nor even publicly released, their survey instrument or methodology for peer review. Given that the public relations firms that commissioned and conducted the study have reputations for bare knuckle political advocacy, the veracity of the survey should perhaps be treated with some caution.[264] Nevertheless, there is certainly some truth to the argument advanced by one lobbyist for payday lenders in Georgia. He asserts: "They're not preying on anybody—they're just open for business."[265]

III. METHODS

To date, there has been no nationwide, scientific research on whether payday lenders do in fact target military personnel. In Part III.A, we first discuss the viability of using combined geographic and legal analysis to probe issues surrounding payday lending and the military. In Part III.B, we describe our methodology in conducting an extensive empirical study of payday lending to military personnel.

A. *Law and Geography: Theoretical Considerations*

Interdisciplinary legal and geographic scholarship explores the relationship between law and space. It shows how law and legal institutions can manifest themselves in traceable ways across locations and boundaries. While legal rules are a product of human thought and communication, they are designed to control and influence events in the physical world. Jurists, legislators, and administrators

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[263] *See* Gelles, *supra* note 141 and accompanying text.

[264] Douglas Fischer, *Chemical Industry May Fight Tests*, OAKLAND TRIB., Nov. 21, 2003 (on file with author); *see also* Glen Martin, *Chemical Industry Told to Get Tough: Lobbyist's Memo Advises Hardball Tactics for Fighting Tighter California Regulations*, S.F. CHRON., Nov. 21, 2003, at A21 ("'They're known for creating deceptive, phony front groups,' Walker said. 'They go through people's trash; they make a policy of hiring former FBI and CIA operatives. Their motto basically is that they're not a PR firm—you hire them when you want to win a war.' . . . Steven Schlein, a senior vice president with Nichols-Dezenhall, defended the firm's tactics. 'We may be aggressive in the service of our clients, but we never break the law,' he said.").

[265] CBSNews.com, *supra* note 10.

all perceive the physical world and craft their policies in relation to it. Thus, "law and geography" scholarship uses geographic tools to understand the consequences of legal policies and institutions. In turn, it explores the "inertia of space"—that is, how space shapes the process and substance of law.[266]

In recent years, many law and geography scholars have come to "interrogate the legal from a critical geographic perspective," often exposing the hidden bigotries of our laws.[267] These scholars sometimes draw inspiration from Foucault, who noted that "[a] whole history remains to be written of *spaces*—which would at the same time be the history of *powers* (both these terms in the plural)—from the great strategies of geo-politics to the little tactics of the habitat, . . . passing via economic and political installations."[268] For example, Richard Ford has argued that race-neutral local jurisdictional boundaries are vestiges of America's segregated past that continue to racially define residential space and in turn perpetuate a cycle of inequality independent of our private choices.[269] Similarly, David Delaney has examined the way courts have used perceived geographic "facts" to provide authority for limiting constitutional protection of black school children in school desegregation cases.[270] Carol Sanger has pointed out that in the post-automobile world, suburban geographic patterns and zoning ordinances have helped rigidify gender roles by creating the "chauffeur-mother."[271] Leslie Moran uses a spatial analysis of Manchester's gay

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[266] Nicholas K. Blomley & Joel C. Bakan, *Spacing Out: Towards a Critical Geography of Law*, 30 OSGOODE HALL L.J. 661, 664 (1992). There is, of course, far too much useful law and geography scholarship to list here. For a short introduction to the still-emerging field, see *id.*; David Delaney, et al., *Preface: Where is Law?*, *in* THE LEGAL GEOGRAPHIES READER: LAW, POWER, AND SPACE xiii (Nicholas Blomley et al. eds., 2001); Jane Holder & Carolyn Harrison, *Connecting Law and Geography*, *in* LAW & GEOGRAPHY 2 (Jane Holder & Carolyn Harrison eds., 2002).

[267] Delaney, et al., *supra* note 266, at xv.

[268] Richard Thompson Ford, *The Boundaries of Race: Political Geography in Legal Analysis*, 107 HARV. L. REV. 1841, 1857 (1995) (quoting Michel Foucault, *The Eye of Power*, *in* POWER/KNOWLEDGE 146, 149 (Colin Gordon ed., Colin Gordon et al. trans., 1980)).

[269] *Id.* at 1845; *see also* Kay J. Anderson, *The Idea of Chinatown: The Power of Place and Institutional Practice in the Making of a Racial Category*, 77 ANNALS ASS'N. AM. GEOGRAPHERS 580 (1987) (exploring how legal classification of an area as "Chinatown" affected discriminatory racial ideology); Richard Thompson Ford, *Geography and Sovereignty: Jurisdictional Formation and Racial Segregation*, 49 STAN. L. REV. 1365 (1997) (contrasting the legal treatment of electoral districts with that of local government boundaries).

[270] David Delaney, *The Boundaries of Responsibility: Interpretations of Geography in School Desegregation Cases*, *in* THE LEGAL GEOGRAPHIES READER, *supra* note 266, at 54, 67.

[271] Carol Sanger, *Girls and the Getaway: Cars, Culture, and the Predicament of Gendered Space*, 144 U. PA. L. REV. 705, 709 (1995).

village in the United Kingdom as a vehicle to explore heterosexism in law.[272] Moreover, the landmark case *Shelley v. Kraemer*, which struck down legal enforcement of racially restrictive covenants, is perhaps best thought of as a critical "law and geography" motivated opinion.[273]

Other law and geography scholars use geographic tools to tease out otherwise imperceptible legal inefficiencies or to track troubling spatial results of law. For instance, Robert Ellickson has argued that if we used municipal codes of conduct regulating panhandling and other chronic nuisances that varied spatially from street to street, we might better balance rights of homeless people and other city dwellers.[274] Geographic analysis of the Organ Transplant Act showed pockets of inadequate organ distribution and missed opportunities for organ harvesting in rural areas and among ethnic minorities.[275] Erik Luna has advocated the use of crime mapping in developing more transparent, efficient, and fair policing.[276] Robert Goldstein has argued that recent advances in mapping technology have the potential to better measure and conceptualize the success and failures of environmental law.[277]

Interdisciplinary law and geography analysis has also produced influential consumer financial services scholarship. Most prominently, several authors have used geographic analysis of home mortgage lending patterns to demonstrate racial bias in approval of credit applications.[278] Moreover, geographic analysis

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[272] Leslie J. Moran, *The Queen's Peace: Reflections on the Spatial Politics of Sexuality in Law*, *in* LAW & GEOGRAPHY, *supra* note 266, at 85, 99–107.

[273] Shelley v. Kraemer, 334 U.S. 1 (1948).

[274] Robert C. Ellickson, *Controlling Chronic Misconduct in City Spaces: Of Panhandlers, Skid Rows, and Public-Space Zoning*, 105 YALE L.J. 1165, 1171–72 (1995); *cf.* Don Mitchell, *The Annihilation of Space by Law: The Roots and Implications of Anti-Homeless Laws in the United States*, 29 ANTIPODE 303, 310–12 (1997) (arguing that laws seek to erase the homeless through outlawing activities connected to their existence in the only spaces available).

[275] Tom Koch & Ken Denike, *Geography: The Problem of Scale, and Process or Allocation: The U.S. National Organ Transplant Act of 1986, Amended 1990*, *in* LAW & GEOGRAPHY, *supra* note 266, at 109, 122–23, 127–29.

[276] Erik Luna, *Transparent Policing*, 85 IOWA L. REV. 1107, 1177–1193 (2000) (conducting spacial analysis of drug arrests along the north coast of San Diego County, California).

[277] Robert J. Goldstein, *Putting Environmental Law on the Map: A Spatial Approach to Environmental Law Using GIS*, *in* LAW & GEOGRAPHY, *supra* note 266, at 523, 536–37.

[278] *See* Joe T. Darden, *Lending Practices and Policies Affecting the American Metropolitan System*, *in* THE AMERICAN METROPOLITAN SYSTEMS: PRESENT AND FUTURE 93 (Stanley D. Brunn & James O. Wheeler eds., 1980); Steven R. Holloway, *Exploring the Neighborhood Contingency of Race Discrimination in Mortgage Lending in Columbus, Ohio*, 88 ANNALS ASS'N. AM. GEOGRAPHERS 252 (1998); Michael Reibel, *Geographic Variation in Mortgage Discrimination: Evidence from Los Angeles*, 21 URBAN GEOGRAPHY

convinced Congress that in some specific neighborhoods and communities, banks accepted deposits but did not give out equivalent amounts in loans—a process sometimes called "disinvestment."[279] Accordingly, Congress adopted the Community Reinvestment Act (CRA) requiring that depository institutions make efforts to lend in low- and moderate-income neighborhoods within the contiguous geographic area surrounding their office or group of offices.[280] Finally, there is compelling evidence suggesting that check cashers, pawnshops, and payday lenders all disproportionately locate their branches in poor and minority neighborhoods.[281]

Our current Article draws on and expands this law and geography literature. Our empirical investigation explores what lessons the spatial relationship between payday lending operations and military personnel might hold for today's policy makers. In particular, this Article seeks to provide a definitive resolution to the national debate over whether payday lenders target military service members. Payday lenders, like most businesses, carefully locate near their targeted customers. For instance, in its Securities and Exchange Commission filing, one national lender disclosed that its stores are located within three miles of their intended market.[282] Accordingly, mapping payday lender locations can reliably determine the extent to which payday lenders target military personnel.

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45 (2000).

279 *Community Credit Needs: Hearings on S. 406 Before the S. Comm. on Banking, Housing, and Urban Affairs*, 95th Cong. 17 (1977); S. REP. NO. 95-175, at 33 (1977); Robert G. Boehmer, *Mortgage Discrimination: Paperwork and Prohibitions Prove Insufficient—Is It Time for Simplification and Incentives?*, 21 HOFSTRA L. REV. 603, 622 (1993).

280 12 U.S.C. § 2903 (2000). Under the CRA, banking regulators are required to conduct periodic law and geographic analyses of depository institutions potentially denying permission to merge or open new branches to institutions receiving poor evaluations. *See* Jonathan R. Macey & Geoffrey P. Miller, *The Community Reinvestment Act: An Economic Analysis*, 79 VA. L. REV. 291, 300–01 (1993) (describing this process).

281 Steven M. Graves, *Landscapes of Predation, Landscapes of Neglect: A Location Analysis of Payday Lenders and Banks*, 55 PROF. GEOGRAPHER 303, 312 (2003) (studying payday lender location patterns in urban Illinois and Louisiana); KENNETH TEMKIN & NOAH SAWYER, FANNIE MAE FOUNDATION, ANALYSIS OF ALTERNATIVE FINANCIAL SERVICE PROVIDERS 11–26, http://www.fanniemaefoundation.org/programs/pdf/021904_altfin_servproviders.pdf (last visited Oct. 17, 2005) (studying check casher, pawnshop, and payday lender location patterns in Chicago, Atlanta, Houston, Kansas City, Los Angeles, Miami, Memphis, and Washington, D.C.).

282 Payday lenders themselves candidly admit that they take great pains to find locations close to their target demographic. *See, e.g.*, Check Into Cash, Inc., Registration Statement Form S-1, at 33 (July 31, 1998), http://www.sec.gov/Archives/edgar/data/1067289/0000931763-98-001978.txt [hereinafter Check Into Cash S-1 Registration Statement] (explaining importance of proximity of store location to target market).

Moreover, if payday lenders do target service members, we consider the extent to which various state legal environments have held this targeting in check. Specifically, we ask what legal approaches, if any, have demonstrated promise in preventing targeting of military personnel for triple-digit interest rate payday loans.

B. *Empirical Methodology*

1. *Study Overview: Sample, Scales of Resolution, and Control Group*

Our study analyzes the locations of payday lenders in 20 states. We chose our sample of states based on several criteria. First and foremost, we looked for states that are home to what might best be described as "military towns." By this we mean places where military personnel are the clear consumer demographic, due to either the large population of the military base, the small size of the surrounding communities, or both. Studying payday lender outlet locations in these areas reduces the chance that observed commercial retail patterns would be unduly affected by other demographic variables, such as race or poverty. Second, we sought to analyze military bases in states with a wide variety of legislative and regulatory strategies for addressing payday lending issues. This was necessary to discover whether variation in state regulation created any demonstrable effect on the spatial relationship of payday lenders and military installations. Accordingly, in some cases we also considered states with military installations where military personnel are a less predominant component of local business demographics. Third, we attempted to include states with bases of special military importance as well as bases from all the branches of the armed forces. Thus, San Diego, California and the Greater Norfolk, Virginia regions were included because of the significant military population residing in those locales, despite the potential for causal noise from their large coextensive civilian populations. States with little or no military presence were not included in our study.

For each of these 20 states, we attempted to construct maps and statistical analyses based on four levels of geographic resolution. First, for each state we made several generalizations about the intensity of payday lending in that state as compared to others. Second, we conducted countywide statistical analyses. County-level analysis enables comparison of the distribution and density of payday lenders within a state, and it provides an important scale by which to examine industry density locations relative to military installations. Because military bases are often as large as counties themselves and may have several scattered off-base retail and service districts, the county-level resolution sometimes catches concentrations that disappear at more local scales. Third, we analyzed every ZIP code region in each of the 20 states.[283] Maps at this scale are especially useful because ZIP code regions frequently replicate the market range and threshold parameters used by site location analysts who very likely figure heavily into the final location of banks and payday lenders.[284] In other words, most local ZIP code regions contain those consumers whom payday lenders operating in that ZIP code hope to attract. And fourth, several military installations were chosen as focal points for more detailed, street-level case analyses of payday lending. At this "neighborhood" scale, specific street addresses were mapped for an entire county or counties in which the base(s) is located. Not only does this allow us to know the absolute location of payday lenders throughout a county, but it also allows us to track the distance from base gates and service member quarters.

To further refine the validity of our study, we also mapped all bank and bank branch locations in all 20 states. The bank control group allowed us to compare the number of payday lenders with the number of banks in a given state, county, ZIP code region, or neighborhood. And mapping banks also allowed us to compare the distance separating payday lenders and military bases with the distance separating banks and military bases. These comparisons are important because they provide spatial context, giving us something of a barometer of commercial activity in an observed locale. Mapping banks also helps account for variations in zoning regulations. For example, it is theoretically possible that current or past zoning ordinances might force payday lenders into geographic areas in close proximity to military bases, even though military personnel are not making relatively greater use of payday lender services. This becomes a much less plausible explanation of payday lender locations if payday lenders are clustered near military bases, but banks, who face similar zoning rules, are not. By mapping banks, we gain some insight into where retail and service activity is permissible in the towns and cities we are analyzing and get a good idea of where consumers are likely to be found.

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283 Matching addresses to ZIP code polygons is highly reliable, and over 98% of all addresses used in the study reported a ZIP code that could be located and placed on a map. Banks and payday lenders reporting a point location, such as those assigned a university, mall, or P.O. Box address, were assigned the ZIP code region containing the ZIP code point in question. Less than two percent of the addresses were reported as points.

284 Range refers to the distance a consumer will travel to obtain a good or service. Threshold refers to the minimum population necessary to maintain solvency for a given business. Location analysts commonly conduct geographic market range and threshold parameter studies on behalf of businesses seeking locations and forming business plans. *See* DEAN M. HANINK, PRINCIPLES AND APPLICATIONS OF ECONOMIC GEOGRAPHY: ECONOMY, POLICY, ENVIRONMENT 247 (1997) (discussing theoretical issues in market range evaluation).

2. *Data Sources and Mapping Techniques*

To complete our study, we required four types of data: population information, military base locations, bank locations, and payday lender locations. All civilian population information was obtained from the U.S. Census Bureau.[285] The absence of an authoritative reliable source for military population made analysis requiring this information somewhat more problematic. Because military personnel are frequently being deployed, reassigned, trained, and moved, many of the bases we contacted were unable to give us reliable manpower figures. After consulting with representatives from the Department of Defense (DOD), we selected the DOD's annual *Base Structure Report* of 2004 as our primary databank.[286] Data regarding personnel was cross-referenced with a report published by the DOD's Statistical Information Analysis Division[287] as well as with the data from the Census Bureau.

Data on military base locations in general is widely available. However, the precise boundaries of military bases are sometimes ambiguous. In delineating base boundaries, we primarily relied on maps issued by the United States Geologic Survey (USGS) and published by the Environmental System Research Institute (ESRI). However, we found several instances where USGS maps did not match maps created by either the U.S. Department of Transportation or other private digital map vendors. Discrepancies in base location were resolved via telephone calls to information offices at individual bases. Many bases are large and include multiple parcels of land, sometimes flung over several counties. Where this was the case, the ZIP code region(s) containing the base headquarters and the majority of on-base housing was used to delineate the boundaries of the military installation under consideration.

While bank and bank branch addresses were easily obtained from the Federal Deposit Insurance Corporation (FDIC),[288] obtaining reliable data on payday lender locations proved more challenging. We obtained the addresses of payday

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[285] *See* United States Census Bureau, Census 2000 Summary File 3, http://www.census.gov/Press-Release/www/2002/sumfile3.html.

[286] *See* DEPARTMENT OF DEFENSE, BASE STRUCTURE REPORT (2004), http://www.defenselink.mil/pubs/20040910_2004BaseStructureReport.pdf. According to officials in this office, this data was submitted to the DOD by officials on base.

[287] Department of Defense, Directorate for Information Operations and Reports, Statistical Information Analysis Division, Distribution of Personnel by State and by Selected Locations, http://web1.whs.osd.mil/mmid/pubs.htm (last visited Oct. 17, 2005). According to officials in this office, this data was collected through payroll records.

[288] Federal Deposit Insurance Corporation, Find an Institution, http://www2.fdic.gov/idasp/main.asp (last visited Oct. 17, 2005). The FDIC recognizes several different categories of banks. For our purposes, we included all branch locations irrespective of the FDIC's categories.

lenders from the state regulatory authority charged with oversight of payday lenders in all but three states included in the study. In most instances, regulatory oversight offices host a website where the addresses of payday lenders can be downloaded; several other states sent lists of payday lenders via electronic mail or as paper copies via U.S. Postal Service. Though we believe the individual licensing agencies are the best source for addresses, we do not believe they are comprehensive. Ample anecdotal evidence suggests that many payday lenders operate without a license from the state. We were able to phone several payday lenders listed in local telephone directories that were not licensed or included on the list of payday lenders provided by various states. Conversations with state authorities and other industry observers confirmed our observations.[289]

Though incomplete, we are confident that the lists provided by the states do include businesses engaged in the business of payday lending. To that end, each regulatory authority was contacted in order to ensure that the criteria used to define "payday lender" in our study was consistent from state to state. In three states vital to our survey—New York, North Carolina, and Texas—we could not obtain adequate data from state regulators, and accordingly we used alternative data gathering strategies. Our data collection methods for these three states are elaborated in Part IV alongside discussions of the law and empirical findings in those states.

In terms of mapping technique, we used commercial mapping software to map the addresses of individual payday lender and bank locations onto TIGER centerline files.[290] Using these files, we are able to enter a database of addresses into mapping software that places points on street maps indicating the location of each address. For each case study location, a minimum 75% match rate was achieved; but in most cases, especially for payday lenders, match rates of over 90% were realized, giving us reliable sample sizes and excellent statistical confidence.[291] Matched addresses were randomly checked for accuracy by cross-

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[289] Telephone conversations with several state officials and other industry analysts confirmed our suspicion that there are many unregulated payday lending operations in each state. Telephone Interview with Jennifer Delacamp, Lawton Area Supervisor, Consumer Credit Counseling of Oklahoma (Jan. 2005). Independent of the conclusions of this Article, it is troubling that some payday lenders simply have refused to acknowledge the authority of state regulators by openly disregarding state licensing requirements.

[290] TIGER Line files are the basis for street and road maps used by many government agencies. *See, e.g.*, KANG-TSUNG CHANG, INTRODUCTION TO GEOGRAPHIC INFORMATION SYSTEMS 308 (2002) (describing TIGER/Line files). Our maps were created using the Geocode function in ESRI's ArcMap 9.0 software, a common professional geography computer program which allows users to compile, author, analyze, map, and publish geographic information. *See* Environmental System Research Institute, What is ArcGIS?, http://www.esri.com/software/arcgis/about/overview.html (last visited Oct. 17, 2005).

[291] *See* GARETH SHAW & DENNIS WHEELER, STATISTICAL TECHNIQUES IN GEOGRAPHICAL ANALYSIS 48–53 (2d ed. 1994) (describing statistical significance in mapping match rates).

referencing matched locations with several widely available on-line address-matching services.[292]

3. *Statistical Analysis of Payday Lender Location Density*

Maps were analyzed using simple, widely-understood statistical measures in hopes that the findings would be transparent to the widest possible audience. At the county and ZIP code levels, three basic measures of payday lending were employed. The first was the total number of payday lenders per geographic region. The second was payday lenders per capita, generally expressed in terms of payday lenders per 100,000 persons. The third measure we used is a measure of payday lending density relative to banking density. Professional geographers have a variety of commonly accepted methods for measuring relative location density of two business types. Most geographers typically use a standard business density formula known as a "location quotient."[293] In calculating payday lender density relative to banks, we used statistically acceptable variations on the standard location quotient formula tailored to capture subtle differences in payday lender and bank density for our county and ZIP code level analyses.[294]

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[292] *See, e.g.*, Environmental System Research Institute, ArcWeb Showcase: Map Viewer Application, http://arcweb.esri.com/sc/viewer/index.html (last visited Oct. 17, 2005); Google Maps, http://maps.google.com (last visited Oct. 17, 2005); Mapquest, Mapping Service, http://www.mapquest.com/ (last visited Oct. 17, 2005); Yahoo Maps, http://maps.yahoo.com (last visited Oct. 17, 2005).

[293] Location quotient is the most frequently used statistic to determine a region's share of some business activity. One standard location quotient formula is:

$$LQ = \frac{\frac{Xi}{\sum X}}{\frac{Yi}{\sum Y}}$$

where LQ is the location quotient, X and Y are the businesses in question, and i is the geographic location, such as a ZIP code or a county. SHAW & WHEELER, *supra* note 291, at 313. However, an in-depth discussion of analytic statistical geography is beyond the scope of this Article. For an excellent introduction to this topic, see generally JAMES E. BURT & GERALD M. BARBER, ELEMENTARY STATISTICS FOR GEOGRAPHERS (2d ed. 1996).

[294] The standard location quotient formula is not appropriate for this study, given the data limitations inherent in tracking payday lending locations. Because there are many ZIP codes with no payday lenders, the standard formula is not suited to measuring this industry. Modifying this formula allows us to use the data we have available to include those areas without payday lenders, instead of tossing them aside, and to see subtle differences between two areas with identical ratios of banks to payday lenders but with different numbers (volume) of banks and payday lenders. In the alternative, we conducted experiments with numerous formulaic variations and produced nearly identical results. We selected a very simple county level ratio:

Next, we ranked each of these three statistical measures against their intrastate counterparts, with the lowest rank (first) in each category assigned to the county or ZIP code with the highest score on each variable. So, for example, the county with the highest total number of payday lenders would therefore receive a rank of first in that category. Similarly, the ZIP code region with the highest relative density of payday lenders in comparison to banks would receive the first place ranking for that category. Finally, the ranks for all three categories were averaged together to produce a *composite index* for each scale level. Because the composite index is a function of our three measured categories, the lowest ranked counties and ZIP code regions will generally feature a relatively large number of payday lenders, a relatively high density of payday lenders per capita, and a relatively high ratio of payday lenders to banks. These composite index scores were also assigned ranks with the highest composite index score again receiving the first place ranking. Importantly, our composite index scores create an opportunity to express the proximity of the payday lending industry as a whole in any given county or ZIP code to military bases with a single, easily comparable number.

In order to give us some perspective on the per capita density of payday lenders in any unit of analysis, such as a ZIP code, we calculated the statewide average for payday lenders per 100,000 people. By multiplying the statewide average by the population in smaller-area units, such as a ZIP code, we were able to predict the number of payday lenders that *should be* in that unit of analysis, if it were to conform to the statewide average.[295] Finally, we compared our

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$$LQ = \left(\frac{X}{Y}\right) \times 100$$

where LQ is the location quotient, X are payday lenders, and Y are banks. For ZIP code regions, our relative measurement of payday lender to bank density needed additional refinement to account for the great number of ZIP codes without banks, payday lenders, or either. Once again, after numerous experiments, we selected the following formula which distinguishes ZIP code regions that have identical ratios payday lenders and banks, but have different absolute numbers of bank and payday lenders. Our ZIP code region formula is:

$$LQ = \left[\frac{X}{(X+Y) \times 100}\right] + (X - Y)$$

where, once again, LQ is the location quotient, X are payday lenders, and Y are banks. We believe these formulas provide the best opportunity to see subtle differences in the density of payday lending (relative to banks) among counties and ZIP codes in each state. Moreover, they are well within traditionally accepted geographic methodology. SHAW & WHEELER, *supra* note 291, at 313–15.

[295] The formula we used to determine the expected number of payday lenders is:

prediction, or "expected" number, of payday lenders against the actual number of payday lenders observed in each geographic unit. This allowed us to accurately characterize the actual number of payday lenders as being in excess of, equal to, or below the statewide per capita average for any given regional population.

For those bases mapped at the neighborhood level, we analyzed data in a manner we hoped would show differences in the prevalence of payday lending close to and far away from a given base. In these analyses we adopted two spatial categories: neighborhoods were "near" a base when they were located within a three-mile radius of the base, while "distant" neighborhoods were outside the three-mile zone. We chose the three-mile radius following the industry's own commonly agreed-upon store location goals.[296] In several maps presented later, we used mapping software to draw buffer zones one, two, and three miles around each base. Then we counted the number of people, payday lenders, and banks both within and outside the three-mile buffer zone.[297] "Near base" census tracts could then be statistically measured against those outside the three-mile buffer. Near base tracts could also be measured against countywide and statewide averages. Statistical measures employed at the neighborhood level included the absolute number of payday lenders and banks and the density of payday lenders and banks per capita. These near base statistical analyses provide a useful quantitative snapshot of the landscape immediately surrounding military service members.

$$X = \left(\frac{\sum L}{\sum P} \right) \times p$$

where X is the expected number of payday lenders in a given county, ZIP code, or other geographic region; L is all payday lenders statewide; P is the population statewide; and p is the population of the county, ZIP code, or other geographic region in question.

[296] For example, Check Into Cash explained its store location threshold in an SEC filing:

> Management believes that most consumers reside within a five-mile radius of the store that they visit and that the convenience of a store's location is extremely important to customers. As a result, management seeks to open each new store within three miles of the market area that it is intended to serve.

Check Into Cash S-1 Registration Statement, *supra* note 282, at 33.

[297] We estimated population totals within each buffer zone by summing the population of all census tracts with a centroid point inside the selected buffer zone.

IV. RESULTS: THE LAW AND GEOGRAPHY OF MILITARY PAYDAY LENDING JUXTAPOSED

A. *Federal Banking Law and the* Marquette *Doctrine: A Backdrop to American Payday Lending*

The law and geography of payday lending to military personnel in individual states cannot be understood without an appreciation of federal banking law in general and the landmark case of *Marquette National Bank v. First Omaha Service Corp.* in particular.[298] The *Marquette* decision interpreted a Civil War era congressional statute called the National Bank Act.[299] When Congress passed the National Bank Act in the 1860s, states and the federal government were competing aggressively for regulatory and tax control over the emerging American banking industry.[300] Banks could (and still can) receive their charters either from state governments or from the federal government.[301] Both the states and the federal government were actively encouraging banks to choose charters from their own level of government.[302] In order to entice banks to charter at the state level, some states passed laws allowing state banks to charge higher interest rates than federal chartered banks lending within that state's borders.[303] Claiming unfair discrimination against federally chartered banks, and fearing encroachment on its tax and regulatory power, Congress drew on its authority under the Commerce Clause of the U.S. Constitution to prohibit states from authorizing higher permissible interest rate caps for state banks than for federal banks.[304]

Over a hundred years later, the growing credit card industry in the 1970s

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298 Marquette Nat'l Bank v. First Omaha Serv. Corp., 439 U.S. 299 (1978).

299 *Id.* at 310 n.23.

300 James J. White, *The Usury* Trompe l'Oeil, 51 S.C. L. REV. 445, 450 (2000).

301 Elizabeth R. Schiltz, *The Amazing, Elastic, Ever-Expanding Exportation Doctrine and Its Effect on Predatory Lending Regulation*, 88 MINN. L. REV. 518, 540 (2004).

302 White, *supra* note 300, at 450.

303 *See, e.g.*, Tiffany v. Nat'l Bank of Missouri, 85 U.S. (18 Wall.) 409, 411 (1873) (discussing state law which provided an eight percent interest rate cap for state banks and a ten percent cap for all other lenders).

304 The statute, now referred to as section 85 of the Act, allows national banks to charge:

> interest at the rate allowed by the laws of the State, Territory, or District where the bank is located . . . and no more, except that where by the laws of any State a different rate is limited for banks [of issue] organized under State laws, the rate so limited shall be allowed for [national banks] organized or existing in any such State . . . .

National Bank Act, ch. 106, § 30, 13 Stat. 99, 108 (1864) (codified as amended at 12 U.S.C. § 85 (2000)).

forced the Supreme Court to face a novel question. The issue was which state's interest rate cap applies when a bank located in one state loans money across borders at an interest rate in excess of the state interest rate cap where the borrower lives. The *Marquette* Court held that the National Bank Act—which originally leveled the playing field between federal and state banks—now authorized federally chartered national banks to *export* the interest rate cap (or lack thereof) of a bank's home state to consumers in other jurisdictions.[305]

The Supreme Court's intervention in what had been state lawmaking was the starting gun in a corporate race to the bottom that significantly eroded the power of state governments to set meaningful interest rate caps.[306] Lenders quickly relocated in states with no interest rate caps such as Delaware and South Dakota and exported those laws to states that chose more aggressive price regulation.[307] States with interest rate caps became much more amenable to removing them in order to hold on to their financial services industry jobs.[308] Because the *Marquette* decision only applied to national banks, state chartered banks were at a significant competitive disadvantage.[309] Bowing to pressure by state banks, Congress included language in the Depository Institutions Deregulation and Monetary Control Act of 1980 (DIDMCA) that allowed state banks to charge interest at the rate allowed by the laws of the state where the bank is located.[310] Section 521 of this act granted exporting powers to state banks similar to those of national banks.[311]

The extent to which the *Marquette* decision (for national banks) and § 521 of DIDMCA (for state banks) applies to payday lending currently remains in flux. Payday lenders, at least some of whom have always sought new ways to circumvent state interest rate caps, began attempting to use the *Marquette* exporting doctrine to their advantage in the 1990s.[312] In general, banks were unwilling to risk their own reputations by offering triple-digit interest rate loans out of their own branch lobbies in their own communities. However, a small minority of banks were willing to form business relationships to make payday loans through storefront payday companies usually located in other states. In

[305] Marquette Nat'l Bank v. First Omaha Serv. Corp., 439 U.S. 299, 310–12 (1978).

[306] William F. Baxter, *Section 85 of the National Bank Act and Consumer Welfare*, 1995 UTAH L. REV. 1009, 1010–11; Schiltz, *supra* note 301, at 619–20.

[307] White, *supra* note 300, at 447–48.

[308] *Id.* at 454.

[309] Schlitz, *supra* note 301, at 565–66.

[310] Depository Institutions Deregulation and Monetary Control Act of 1980, Pub. L. No. 96-221, § 521, 94 Stat. 132 (1980) (codified at 12 U.S.C. § 1831(d)(a) (2004)).

[311] Hill v. Chemical Bank, 799 F.Supp. 948, 951 (D. Minn. 1992) ("Congress enacted § 521 to create parity between national and state banks with respect to usury limitations.").

[312] CONSUMER FEDERATION OF AMERICA & U.S. PUBLIC INTEREST RESEARCH GROUP, *supra* note 153, at 12–15.

these transactions, which have become standard in the industry, the payday loan company manages marketing, staff, locations, customer service, and loan applications, but the bank advances the loan funds to borrowers. On paper, every loan is "made" by the bank, but the name on the door is that of the payday loan company, and the only person the borrower ever sees is an employee of the payday lender.[313] By prior agreement, the payday loan company usually then immediately purchases the right to receive payment from consumers back from the bank.[314] Then, the payday loan company goes on to handle the most important aspect of the business: collections. The bank, in effect, "rents" its charter powers under the *Marquette* doctrine or § 521, either in exchange for a per loan fee or for ownership in a small percent of the proceeds of each loan.[315] The entire point of the business relationship is to circumvent interest rate caps adopted by state legislatures.[316]

Not surprisingly, many bankers and bank regulators were extremely uncomfortable with these "charter-renting" relationships. In 2002, the Office of the Comptroller of the Currency (OCC) used its oversight powers over federally chartered banks to crack down on charter-renting. Speaking on the *Marquette* doctrine, the Comptroller of the Currency explained:

> Let me raise one . . . caution . . . . The benefit that national banks enjoy by reason of this important constitutional doctrine cannot be treated as a piece of disposable property that a bank may rent out to a third-party that is not a national bank. Preemption is not like excess space in a bank-owned office building. It is an inalienable right of the bank itself.
>
> . . .
>
> Indeed, the payday lending industry has expressly promoted such a "national bank strategy" as a way of evading state and local laws. Typically, these arrangements are originated by the payday lender, which attempts to clothe itself with the status of an "agent" of the national bank.
>
> . . .
>
> Not only do these arrangements constitute an abuse of the national charter, but they are highly conducive to the creation of safety and soundness problems at the bank, which may not have the capacity to manage effectively a multistate

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[313] Letter from Carlene McNulty, North Carolina Justice and Cmty. Dev. Ctr., to Joseph A. Smith, Jr., North Carolina Banking Comm'n 2 (Nov. 9, 2004) (on file with authors).

[314] Schiltz, *supra* note 301, at 583.

[315] *Id.* at 582–83.

[316] *Id.*

loan origination operation that is in reality the business of the payday lender.[317]

Following this reasoning, one by one, the OCC gave negative oversight evaluations to every federally chartered bank involved in payday lending.[318] Under threat of losing their bank charters, all national banks terminated their charter-renting relationships with payday loan companies.

State-chartered banks have been a different story. Banks chartered by state governments are primarily regulated by that state's bank examiner or department of financial institutions. However, state-chartered banks also receive oversight from the Federal Deposit Insurance Corporation (FDIC), which is an independent federal agency created in 1933 in response to bank failures during the Great Depression.[319] State banks are under FDIC oversight because the banks purchase federal insurance from the FDIC to protect the bank accounts of their customers from theft and other losses. Unlike the OCC, the FDIC has turned a blind eye to charter-renting, taking the position that state bank charter-renting to payday loan companies is just as legal as the credit card loans made in the *Marquette* case.[320] Consumer advocates have responded by furiously accusing the FDIC of undemocratically undermining every usury law in the nation.[321] But the FDIC, which has an institutional history and culture focused almost exclusively on preventing bank failures, has essentially ignored the consumer protection concerns of payday lending critics.[322] Thus, payday loan companies and state banks continue to claim a license to ignore state interest rate laws. Under this highly controversial interpretation of the law, so long as officials at the FDIC and *one* state government in the entire country refuse to prevent 450% loans, one state bank located in that one state may empower payday loan companies to export the state's law (or lack thereof) to *every borrower* in the country. Sheltered under this protective regulatory umbrella, twelve state banks of the more than 5200 institutions currently supervised by the FDIC continue to act as facilitators for many of the nation's payday loan companies.[323]

For their part, courts have not been able to agree on a definitive legal resolution as to whether banks and payday loan companies may use the

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317 John D. Hawke, Jr., Comptroller of the Currency, Remarks Before the Women in Housing and Finance (Feb. 12, 2002), http://www.occ.treas.gov/ftp/release/2002-10a.txt.

318 FOX, UNSAFE AND UNSOUND, *supra* note 61, at 17–19.

319 FEDERAL DEPOSIT INSURANCE CORP., WHO IS THE FDIC?, http://www.fdic.gov/about/learn/symbol/index.html (last visited Oct. 17, 2005).

320 FOX, UNSAFE AND UNSOUND, *supra* note 61, at 19–22.

321 *Id.* at 29.

322 By statute, the mission of the FDIC is to protect the safety and soundness of insured depository institutions. 12 U.S.C. §§ 1816, 1828(c)(1), 1831m-1, 1831p-1 (2005).

323 Press Release, Federal Deposit Insurance Corp., FDIC Revises Payday Lending Guidance (Mar. 2, 2005), http://www.fdic.gov/news/news/press/2005/pr1905.html.

Marquette doctrine to simply disregard state interest rate laws. Nevertheless, two trends have emerged. The first was cemented into place by *Beneficial National Bank v. Anderson*, where the Supreme Court held that state usury law does not bind national banks and "there is, in short, no such thing as a state-law claim of usury against a national bank."[324] However, *Beneficial* did not resolve the issue of the extent to which a bank may alienate its ability to ignore state usury law to other non-bank companies, such as payday lenders. On this issue, lower courts over the past few years have emphatically stated that while a bank may have the right to export interest rate laws, non-bank payday loan companies in a contractual relationship with a bank do not. At least nine courts have held that there is no federal preemption of usury claims where the victim alleges that a payday loan company is, in fact, making payday loans while using the name of a bank as a pretext to avoid state usury law.[325] A federal district court in New York has gone so far as to hold that no federal legal issue exists where a state attorney general accuses a state bank of criminally aiding a payday loan company in committing criminal usury through a charter-renting arrangement.[326] Thus, while banks may presently be free to avoid state usury law, it must, as a matter of economic fact, be the bank that makes and retains the risk on loans.[327] As we

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[324] Beneficial Nat'l Bank v. Anderson, 539 U.S. 1, 11 (2003) (complete preemption doctrine required reversal of U.S. Court of Appeals order remanding state law usury claims to state court when brought against a national bank.)

[325] Long v. ACE Cash Express, Inc., No. 3:00-CV-1306-J-25TJC, 2001 U.S. Dist. LEXIS 24617, at *3–4 (M.D. Fla. June 18, 2001); Brown v. ACE Cash Express, Inc., Civ. No. S-01-2674, 2001 U.S. Dist. LEXIS 25847, at *5–6 (D. Md. Nov. 14, 2001); Colorado v. ACE Cash Express, Inc., 188 F. Supp. 2d 1282, 1284–85 (D. Colo. 2002); Goleta Nat'l Bank v. Lingerfelt, 211 F. Supp. 2d 711, 717 (E.D.N.C. 2002); Goleta Nat'l Bank v. O'Donnell, 239 F. Supp. 2d 745, 755–56 (S.D. Ohio 2002); Flowers v. EZPawn Oklahoma, Inc., 307 F. Supp. 2d 1191, 1204–06 (N.D. Okla. 2003); People v. County Bank of Rehoboth Beach, 1:03-CV-1320 (N.D.N.Y. May 25, 2004), www.abanet.org/buslaw/committees/CL230044pub/links.shtml (subscription required); Carson v. H&R Block, Inc., 250 F. Supp. 2d 669, 675 (S.D. Miss. 2003); BankWest, Inc. v. Oxendine, 598 S.E.2d 343, 347–48 (Ga. Ct. App. 2004).

[326] The court stated:

> [The bank's argument] would be relevant if the State in this case were asserting state law usury claims against County Bank. However, as stated above, the State's claims against County Bank include only allegations of criminal facilitation, fraudulent business conduct, and deceptive business practices, none of which is preempted by federal law.

People v. County Bank of Rehoboth Beach, 1:03-CV-1320, at 8 (N.D.N.Y. May 25, 2004), www.abanet.org/buslaw/committees/CL230044pub/links.shtml (subscription required).

[327] One federal judge explained:

> In this case . . . , [a]lthough Ace contends that Goleta is the real maker of the loans at issue, the state contends just the opposite: that Ace is using Goleta's name as mere

shall see in the next subsection, this subtle, fact specific, and still-evolving rule appears to have a significant impact on payday lending to military personnel in some states.

B. *State Law and Empirical Results*

In this section, we present our empirical findings regarding geographic location strategies of payday lenders. However, because our intention is not to provide mere geographic information, but also to explore the legal implications of that information, we present our empirical results alongside a description of the laws controlling payday lending in each state. Thus, for each state, we present a short summary of state payday lending law, a characterization of the prevalence and density of payday lending statewide, and brief descriptions of the patterns of payday lending found at the county and ZIP code resolutions near military installations. For those particularly significant military installations chosen for in-depth, street-level analysis, we include a short discussion of those findings where appropriate. We also provide maps to assist readers in visualizing payday lender location strategies.[328]

1. *Alabama*

Like many states, Alabama has a general usury law, which caps interest rates at eight percent and is riddled with exceptions for various types of lenders.[329] In 2003, payday lenders successfully lobbied the Alabama legislature to enact the Deferred Presentment Services Act (DPSA). The statute authorizes the Alabama Bureau of Loans to grant licenses to payday lenders.[330] Licensed payday lenders are allowed to charge "17.5% of the amount advanced."[331] As a result, the Act

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> subterfuge for its own unlawful lending practices. Thus, a sharp factual issue is presented as to whether Goleta, a national bank, is the real lender at issue. If Ace is the de facto lender, then its payday loans may violate the North Carolina Check Casher Act

Goleta Nat'l Bank, 211 F. Supp. 2d at 717.

[328] A complete presentation of our results and data is beyond the space limitations of this Article. However, complete records of our results are on file with the authors. Unless noted otherwise, all data is drawn from sources as explained in Section III.B, which describes our methodology. All annual percentage rate calculations were computed using the National Consumer Law Center's rate calculation software and assume a fourteen-day loan term. *See* KATHLEEN E. KEEST ET AL., THE COST OF CREDIT: REGULATION AND LEGAL CHALLENGES (2d ed. 2000 & Supp. 2004) (software disk accompanying treatise).

[329] ALA. CODE §§ 8-8-1, 5-18-1 to 5-19-31 (2005); KEEST & RENAULT, *supra* note 328 at § 2.5.

[330] ALA. CODE § 5-18A-3 (2005).

[331] *Id.* § 5-18A-12(a).

authorizes an effective APR of around 455%, one of the highest state payday loan interest rate caps in the country.[332] Loans made under the DPSA are limited to an amount of $500,[333] and their duration must be between ten and 31 days,[334] although lenders may renew or extend the loan one time.[335] Also, a lender is not supposed to make a new payday loan to pay off an old loan.[336] However, the provisions discouraging this practice are relatively weak. The statute requires lenders to use a third-party private sector database to deny payday loan applications sought by borrowers with outstanding payday loans.[337] However, lenders must only deny applications from borrowers who have over $500 in outstanding payday loan debt,[338] and referencing the third-party database is only required if such a database is "available."[339] Payday loan lenders are also supposed to display a schedule of all fees, charges, and penalties,[340] and disclose to borrowers the total amounts of all fees and other costs that will or potentially could be imposed as a result of entering a deferred presentment transaction.[341]

Under these laws, Alabama has seen an explosion in payday lending, becoming one of the states most densely populated with payday lenders in the nation. Today, payday loan companies are now nearly as common in Alabama as traditional banks. In 2004, Alabama was home to 1077 payday lenders and 1458 banks.[342] This is the highest payday lender-to-bank ratio of any state in our survey. Alabama also has the highest number of payday lenders per person, with over 24 for every 100,000 residents. To put this rate into some perspective,

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[332] Assuming a loan term of fourteen days, a 17.5% fee equates to an effective annual percentage rate of about 455%. Although payday lenders could also operate under the authority of the Alabama Small Loan Act, *Id.* §§ 5-18-1 to 5-18-24, including its 36% annual interest rate, *Id.* § 5-18-15(a), lenders clearly prefer the generous interest rates authorized by the DPSA. Lenders also may charge a fee of $30 for any bounced check. *Id.* §§ 5-18A-12(d), 8-8-15.

[333] *Id.* § 5-18A-12(a).

[334] ALA. CODE § 5-18A-13(c) (2005).

[335] *Id.* § 5-18A-12(b).

[336] *Id.* § 5-18A-13(n).

[337] *Id.* § 5-18A-13(o).

[338] *Id.*

[339] *Id.* This provision of the Alabama statute originally required the state to establish a central database of payday loans, but local consumer advocates argue that a last-minute change to the provision severely weakened the legislation. ARISE CITIZENS' POLICY PROJECT, HARD CASH: PREDATORY LENDING IN ALABAMA, http://www.alarise.org/Predatory%20lending%20fact%20sheet%2010-04.pdf (last visited Oct. 17, 2005).

[340] ALA. CODE § 5-18A-13(m) (2005).

[341] ALA. CODE § 5-18A-13(f) (Supp. 2004).

[342] State of Alabama Banking Department, ADPSA License Search, http://www.bank.state.al.us/ADPSA_licenses.asp (last visited Oct. 17, 2005).

consider Colorado, which has about 100,000 fewer people than Alabama, has 711 fewer payday lenders, but only 68 fewer banks.

As extraordinary as the density of payday lenders is in Alabama as a whole, several military areas nevertheless manage to stand out. Coffee County, which shares much of its eastern border with the Army's Fort Rucker, has the second highest density of payday lenders, based on our composite index measurement. As illustrated in Table 1, the 43,615 people living in Coffee County have only fourteen banks, but have 20 payday lenders. Even for Alabama, the density of payday lenders located near Fort Rucker is extremely high. By way of perspective, Coffee County has two more payday lenders than Ohio's blue-collar Lorain County, which has a population of 285,000 people, and the 43,615 people of Coffee County have two times the number of payday lenders as Fairfax County, Virginia, where almost one million people live. Other Alabama counties with large military installations, including Houston, Montgomery, Calhoun, Autauga, and Morgan counties, also show high payday lending location densities.

Table 1. Alabama: Top 27 Counties Ranked by Payday Lending and Selected Military Counties

Nearest Base(s)	County	Pop.	Bnks	PD Lndrs	PD/100K Pop	LQ	Rnk PD	Rnk PC	Rnk P Bnk	Cmpsit Rank	Exp PD	Obs -Exp
	Marshall	82231	37	40	48.64	108.11	6	2	8	1	19.92	20.08
Fort Rucker	Coffee	43615	14	20	45.86	142.86	16	3	1	2	10.56	9.44
Fort Rucker	Houston	88787	35	37	41.67	105.71	7	5	9	3	21.51	15.49
	Pike	29605	13	15	50.67	115.38	20	1	3	4	7.17	7.83
	DeKalb	64452	24	25	38.79	104.17	12	6	10	5	15.61	9.39
	Covington	37631	10	14	37.20	140.00	22	9	2	6	9.11	4.89
Maxwell AFB	Mntgmry.	223510	73	68	30.42	93.15	3	15	18	7	54.14	13.86
Anniston, Ft McClellan (recently closed)*	Calhoun	112249	31	32	28.51	103.23	9	20	11	8	27.19	4.81
	Talladega	80321	19	21	26.15	110.53	15	22	5	9	19.46	1.54
	Cherokee	23988	8	9	37.52	112.50	33	7	4	10	5.81	3.19
Maxwell AFB	Autauga	43671	14	14	32.06	100.00	22	11	12	11	10.58	3.42
	Mobile	399843	103	98	24.51	95.15	2	27	16	11	96.85	1.15
	Tuscaloosa	164875	46	41	24.87	89.13	5	25	19	13	39.94	1.06
Redstone Arsenal	Morgan	111064	39	32	28.81	82.05	9	19	22	14	26.90	5.10
	Chilton	39593	11	12	30.31	109.09	27	16	7	14	9.59	2.41
	Colbert	54984	22	18	32.74	81.82	18	10	23	16	13.32	4.68
Fort Benning, GA	Russell	49756	16	15	30.15	93.75	20	17	17	17	12.05	2.95
	Jefferson	662047	196	148	22.35	75.51	1	31	25	18	160.36	-12.36
	Clarke	27867	17	12	43.06	70.59	27	4	27	19	6.75	5.25
	Dallas	46365	10	11	23.72	110.00	30	29	6	20	11.23	-0.23
	Butler	21399	9	8	37.38	88.89	37	8	20	20	5.18	2.82
Eglin AFB, FL	Escambia	38440	17	12	31.22	70.59	27	12	27	22	9.31	2.69
	Etowah	103459	28	23	22.23	82.14	13	33	21	23	25.06	-2.06
Redstone Arsenal	Madison	276700	79	58	20.96	73.42	4	38	26	24	67.02	-9.02
	Limestone	65676	14	14	21.32	100.00	22	36	12	25	15.91	-1.91
Eglin AFB, FL	Baldwin	140415	70	35	24.93	50.00	8	24	41	26	34.01	0.99
	Barbour	29038	13	9	30.99	69.23	33	14	29	27	7.03	1.97
Maxwell AFB	Elmore	65874	18	14	21.25	77.78	22	37	24	31	15.96	-1.96
Fort Rucker	Dale	49129	16	11	22.39	68.75	30	30	30	35	11.90	-0.90

Zip code regions reveal further evidence of high payday lender density near military installations. For example, the 9000 soldiers and civilian employees[343] at the Army's Redstone Arsenal in Huntsville only have to travel a little more than a mile up General Patton Road before they run into the heaviest concentration of payday lenders in all of Alabama. Ranking first on our composite statistic is ZIP code 35816, which contains at least fourteen payday lenders, roughly ten more than one would expect based on Alabama's already high state average and the ZIP code's population of about 15,000 people.

Fifth in our payday lender composite density ZIP code ranking is 36201 in Anniston, home to Anniston Army Depot and Fort McClellan, a recently closed Army base. About 3500 people still work for the Department of Defense in Anniston, most of them in civilian capacities. Anniston (36201) has sixteen payday lenders and only nine banks. This is about eleven more payday lenders than statistically expected. In a pattern we shall see repeated elsewhere, many towns that have suffered the loss of a military base within the last fifteen years, though disposed of the economic benefit of the base, nevertheless retain a high density of payday lenders.

Enterprise, Alabama ranks ninth in the state on the list of payday lender density by ZIP codes with eighteen payday lenders for its 31,000 people and 5000 soldiers at nearby Fort Rucker. Daleville, the tiny town at the entrance to Fort Rucker, has only one payday lender. However, about twelve miles from Daleville, Dothan (ZIP 36303), where many Fort Rucker soldiers are likely to shop for goods and services, has 24 payday lenders, thereby giving it the third highest composite ZIP code density of payday lenders in Alabama.

Other high ranking ZIP codes in Alabama include Montgomery (36109) and Phenix City (36867). Montgomery, home to Maxwell Air Force Base (Gunter Annex), is ranked twelfth and is only a few miles from the main base. Phenix City, located across the river and about ten miles from Fort Benning, Georgia, ranks twentieth. Its fifteen payday lenders exceed the statistical expectation by 10.56, and many of these lenders are located on the road that leads to Fort Benning.

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343 Statistical Analysis and Information Division, *supra* note 287.

Table 2. Alabama: Top 30 ZIP Codes Ranked by Payday Lender Density

Nearby Base	ZIP	Town or City	Payday Lenders	Exp. PD	Banks	PD/100K	Rank PD	Rank PC.	Rank LQ	Composite Rank
Redstone Arsenal	35816	HUNTSVILLE	14	3.72	4	91.12	12	10	20	1
	35957	BOAZ	14	3.42	6	99.13	12	8	29	2
Ft. Rucker - 7 mi	36303	DOTHAN	24	7.43	13	78.24	2	16	33	3
	35476	NORTHPORT	14	1.71	8	198.02	12	2	44	4
Clad Army Depot	36201	ANNISTON	16	5.23	9	74.14	6	19	39	5
	35214	BIRMINGHAM	14	5.30	5	63.99	12	28	25	6
	35215	BIRMINGHAM	25	11.22	11	53.95	1	45	21	7
	35661	MUSCLE SHOALS	15	3.71	10	97.94	10	9	55	8
Ft. Rucker	36330	ENTERPRISE	18	7.53	8	57.97	4	39	34	9
	35228	BIRMINGHAM	7	2.61	0	64.96	51	27	1	10
	35208	BIRMINGHAM	11	4.34	4	61.42	26	32	26	11
Maxwell AFB/Gunter	36106	MONTGOMERY	14	8.07	7	55.32	12	41	37	12
	35068	FULTONDALE	6	1.43	2	101.90	59	7	27	13
	35045	CLANTON	11	3.21	7	82.89	26	13	54	13
	36081	TROY	12	3.35	9	86.74	22	11	67	15
	36535	FOLEY	14	4.28	12	79.23	12	15	76	16
	36420	ANDALUSIA	10	4.07	5	59.51	30	36	38	17
	35601	DECATUR	23	8.45	20	65.95	3	26	75	17
	35967	FT. PAYNE	12	4.27	8	68.06	22	25	58	19
Ft Benning GA- 5 mi	36867	PHENIX CITY	15	4.44	15	81.82	10	14	82	20
	36619	MOBILE	10	3.48	6	69.58	30	23	53	20
	36571	SARALAND	10	3.22	7	75.29	30	18	60	22
	35020	BESSEMER	16	7.70	10	50.30	6	55	51	23
	35611	ATHENS	14	5.54	11	61.26	12	34	69	24
	35950	ALBERTVILLE	12	4.18	11	69.60	22	21	81	25
Maxwell AFB/Gunter	36107	MONTGOMERY	5	2.39	8	57.55	76	51	7	26
	36116	MONTGOMERY	16	9.43	10	41.11	6	76	51	27
	36801	OPELIKA	13	5.14	13	61.27	19	33	82	28
	36604	MOBILE	6	2.83	2	51.36	59	54	27	29
	35960	CENTRE	6	2.30	4	63.30	59	30	59	30

2. *Arizona*

Arizona's payday lending legislation is similar to Alabama's. Payday lenders who are licensed with the state may charge a "fee" of 15% of the face amount of a borrower's check, which is the equivalent of an annual interest rate of about 459%.[344] Licensed payday lenders are permitted to extend a payday loan up to three times, and the lender may assess a new 15% fee each time.[345] The statute also prohibits borrowers from entering into more than one payday loan transaction at the same time. However, there is little or no guarantee that payday lenders will actually comply with these time and volume limits. The statute merely instructs lenders to "take reasonable measures to ensure that no customer has more than one deferred presentment loan outstanding at any time with any" payday loan lender in Arizona.[346] However, all the lender must do to comply with the rule is *ask* every borrower whether he or she has loans with other lenders, and the lender can rely on the borrower's answer in order to satisfy the statute's requirements.[347]

Under this law, Arizona has developed approximately 538 payday lenders and 1056 banks for its 5.1 million people.[348] These figures place Arizona toward the middle of the states in our survey in terms of the density of payday lending per capita at 10.5 per 100,000. There are four mid-sized military installations in the state, three of which are air stations. Unlike most states, Arizona is divided into only fifteen relatively large counties. These large counties make it difficult to

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[344] ARIZ. REV. STAT. ANN. § 6-1260(F) (Supp. 2004). Section 6-1260(H) states that a payday lender fee is "not interest" for purposes of any other Arizona state law. *Id.* § 6-1260(H). This attempt at redefining the concept of interest is at odds with any coherent notion of commercial reality, as well as with a standard interpretation of the federal Truth in Lending Act. White v. Check Holders, Inc., 996 S.W.2d 496, 500 (Ky. 1999) (holding deferred check presentment fees should be "interest" for purposes of state usury law); Smith v. Cash Store Management, Inc., 195 F.3d 325 (7th Cir. 1999) (applying TILA to deferred presentment check cashing). A fee of 15% of the face amount of the check allows a lender to charge $17.65 for every $100 loaned (i.e., if a borrower desired to borrow $100, he or she would need to write a check for $117.65). Assuming a loan duration of fourteen days, a fee of $17.65 is the equivalent of an APR of 459%.

[345] ARIZ. REV. STAT. ANN. § 6-1260(I) (Supp. 2004). The lender may also charge a bad check fee of $25 in addition to any charge assessed by the financial institution that dishonored the check. *Id.* §§ 6-1259(B)(10).

[346] *Id.* § 6-1259(B)(10).

[347] *Id.* § 6-1260(C).

[348] For Arizona payday lender data, see OFFICIAL WEBSITE OF THE ARIZONA STATE BANKING DEPARTMENT, DEFERRED PRESENTMENT COMPANIES, http://www.azbanking.com/Lists/DPC_List.HTML (last visited Oct. 17, 2005).

draw generalizations about payday lender proximity to military bases.[349]

Nevertheless, at the ZIP code level, a more workable analysis is possible. As illustrated in Table 3, two sites of interest are Luke Air Force Base in Phoenix and the recently closed Williams Air Force Base in Mesa. In the ZIP codes adjacent to Luke A.F.B., we found only a few banks and zero payday lenders. Yet, about ten miles from the base is the ZIP code with the worst payday lending rank in the state. Although the former Williams A.F.B. area exhibits a similar pattern with very little activity near the base, the second worst ZIP code in the state is located about ten miles down the freeway.

This same pattern shows up in several Air Force bases in our survey. We speculate that, due to security concerns and the noise associated with military jet aircraft, the distance between Air Force bases and the surrounding commercial-retail districts is, on average, a few miles greater than it is at bases affiliated with other branches of the military. We have also noticed that Air Force personnel seem to have a more diffused housing pattern than service persons in the other branches of the Armed Forces and tend to live further from the base.

Davis-Monthan Air Force Base in Tucson is not as isolated from its local commercial districts as are the Luke and the former Williams bases. The 6000 airmen and support personnel associated with the base are located next to two ZIP codes (85713 and 85714) that together have at least eighteen payday lenders and nine banks. These ZIP codes rank fifth and tenth worst for the greatest density of payday lenders by ZIP code in Arizona. Based on the combined population of these ZIP codes, there are twelve more payday lenders than one would expect based on statewide averages.

The Army's Fort Huachuca (5000 troops) near the Mexican border is relatively free of payday lending. Yet the neighboring town of Sierra Vista has eight banks and five payday lenders. Although this is nearly double the number of payday lenders than one would predict based on the town's population, it hardly seems impressive considering the densities near other bases.

349 For example, in Maricopa County, the most populous county in the state and home to Luke Air Force Base, we identified 347 payday lenders and 660 banks. While this is a large aggregate number, given that there are over three million people in the county, the number and density of payday lenders is outstanding compared to other large metropolitan counties. The size of the county does not permit an inference as to whether or not the payday lenders in the state are targeting military personnel.

Table 3. Arizona: Top 30 ZIP Codes Ranked by Payday Lender Density

Nearby Base	ZIP	Town or City	Payday Lenders	Exp. PD	Banks	PD/100K	Rank PD	Rank PC.	Rank LQ	Composite Rank
Luke AFB -10 mi	85031	PHOENIX	11	2.89	3	39.60	9	2	9	1
Clsd Williams AFB-10 mi	85202	MESA	15	4.58	8	33.99	1	5	16	2
	85014	PHOENIX	9	2.84	1	32.91	17	7	8	3
	85017	PHOENIX	11	3.94	4	29.02	9	17	11	4
Davis-Monthan AFB	85713	TUCSON	13	4.69	7	28.77	6	18	17	5
Luke AFB -7 mi	85033	PHOENIX	13	5.33	6	25.34	5	22	14	6
	85201	MESA	14	4.95	9	29.40	2	15	24	6
Luke AFB -7 mi	85301	GLENDALE	14	5.98	8	24.34	2	26	20	8
	85040	PHOENIX	9	2.94	6	31.75	17	9	25	9
Davis-Monthan AFB	85714	TUCSON	5	1.42	2	36.45	30	3	15	10
Clsd Williams AFB-6 mi	85204	MESA	14	6.91	8	21.06	2	35	20	10
Luke AFB -10 mi	85302	GLENDALE	11	3.85	11	29.70	9	14	37	12
	85051	PHOENIX	9	4.31	3	21.71	17	33	10	12
	85023	PHOENIX	10	3.56	8	29.19	13	16	32	14
	86442	BULLHEAD CITY	9	3.09	8	30.21	17	11	36	15
	85021	PHOENIX	10	4.01	8	25.92	13	20	32	16
	85535	EDEN	2	0.01	0	2597.40	67	1	2	17
	85381	PEORIA	6	2.35	3	26.57	33	19	18	17
Clsd Williams AFB-10 mi	85210	MESA	9	3.79	7	24.66	17	25	29	19
Davis-Monthan AFB	85712	TUCSON	10	3.18	11	32.57	13	8	31	20
	85621	NOGALES	7	2.38	7	30.54	28	10	37	21
Davis-Monthan AFB	85711	TUCSON	11	4.52	15	25.30	9	23	33	22
	85020	PHOENIX	8	3.61	7	23.05	23	28	35	23
	86040	PAGE	3	0.93	2	33.64	56	6	26	24
	85257	SCOTTSDALE	6	3.17	3	19.65	33	37	18	24
Davis-Monthan AFB	85706	TUCSON	8	7.28	3	11.41	33	36	12	26
	85018	PHOENIX	9	3.65	12	25.62	17	21	58	27
	86326	COTTONWOOD	5	2.07	5	25.06	39	24	37	28
	85013	PHOENIX	4	2.28	2	18.19	45	39	22	29
	85016	PHOENIX	13	3.78	30	35.77	5	4	97	29

3. *California*

California's Constitution includes an interest rate cap of ten percent per year for money loaned for personal, family, or household purposes.[350] Moreover, the state's civil and criminal usury laws impose a maximum annual interest rate of 12% for loans of money to be used for other purposes.[351] Nevertheless, the California Deferred Deposit Transaction Law (CDDTL) charges the Department of Corporations with licensing payday lenders, who then receive safe harbor exemption from constitutional and statutory usury laws.[352] The CDDTL currently authorizes payday lenders to charge "15 percent of the face amount of [a] check," which equates to an annual percentage rate of about 459%.[353] Lenders are not supposed to allow their borrowers to pay off some or all of a payday loan with the proceeds of another payday loan,[354] nor may they use the borrower's original check for a subsequent payday loan.[355] The statute also forbids lenders from entering into multiple payday loans with the same customer during any one period of time.[356] However, the statute provides little guarantee that lenders will follow these guidelines because there is no procedure or system for verifying whether a borrower has multiple loans from multiple lenders.

California's leaders have largely stood on the sidelines as the state's payday lending industry flared in the late 1990s. According to the Associated Press, the industry did not take root in California until 1997, but thereafter "tripled in size each year" until 2002.[357] California's regulation has been held hostage while the legislature has debated and negotiated what to do about the problem for over three years.[358] Recently the Attorney General's office handed off oversight responsibilities of payday lenders (but not check cashers) to the Department of Corporations.[359] This dynamic environment has created uncertainty over the total

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[350] CAL. CONST. art. XV, § 1.

[351] CAL. CIV. CODE §§ 1916-1, 1916-3 (West 1985).

[352] CAL. FIN. CODE §§ 23000-23106 (West Supp. 2005).

[353] *Id.* § 23036(a). Until recently, California law also allowed a ten dollar "set up fee." Associated Press, *Davis Approves Audits, Study of Payday Lending Industry*, SAN DIEGO UNION-TRIB., Sept. 22, 2002, at A4. The CDDTL still authorizes a payday lender's returned check fee of $15. CAL. FIN. CODE § 23036(e) (West Supp. 2005).

[354] CAL. FIN. CODE § 23037(a) (West Supp. 2005).

[355] *Id.*

[356] *Id.* § 23036(c).

[357] Associated Press, *supra* note 353.

[358] Jim Evans, *California's "Payday" Policing Up in the Air*, SACRAMENTO BEE, Feb. 6, 2004, at D1, *available at* 2004 WLNR 12390767.

[359] *Id.*; CAL CIV. CODE § 1789.35(e) (West Supp. 2005) (Attorney General charged with enforcing check cashing law).

number of payday lenders in the state. For our research, we have relied on data supplied to us by the state Attorney General's office, which lists a total of 2294 payday lenders in the state.[360] Even assuming the Attorney General's conservatively small count, this is probably the largest number of payday lenders in any state. However with a population of about 34 million, this suggests that there are approximately 6.64 payday lenders per 100,000 people, placing California toward the very bottom in per capita payday lender density.

Of California's 58 counties, several counties with a significant military presence or legacy ranked highest in payday lending. San Bernardino and San Diego counties, perhaps the two counties in the state with the greatest military presence, both rank among the top five counties in terms of the number and density of payday lending. San Bernardino County, home to Fort Irwin Army Training Facility, Twentynine Palms Marine Corps Base, the eastern gates of Edward Air Force Base, China Lake Naval Weapons Facility, and several recently closed bases, is tied for the county with the highest density of payday lenders in the state. This county has 161 payday lenders, but only 217 banks, giving it the highest bank-to-payday lender ratio in the state. San Bernardino County has nearly 45 more payday lenders than one would expect, given its countywide population. San Diego County, home to Camp Pendleton and a host of naval installations, has 238 payday lenders, making it second only to Los Angeles County and giving it about 50 more than its population would suggest. Interestingly, Orange County, which neighbors San Diego County and has only a few thousand more people—but no significant military presence—has 73 fewer payday lenders. Sacramento County, though presently home to only 2100 military persons, was in recent years home to three military installations (Sacramento Army Depot and the McClellan and Mather Air Force Bases). Although the bases are closed today, many of the payday lenders that were established before the closures are still in business. The economic hardship wrought by the base closings may be partly responsible for the continued presence of the payday lenders in the area.

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360 CAL. DEP'T OF JUSTICE, OFFICE OF THE ATT'Y GEN., CALIFORNIA DEFERRED DEPOSIT LENDER LIST (2003) (on file with authors) (provided on floppy disk by authors upon request). There are reports of much larger numbers of payday lenders in California. One *Bloomberg News* newspaper article provides an unattributed estimate of over 5600 payday lenders in California. Robinson, *supra* note 221. Some of the discrepancy may be due to growth in the industry or the *Bloomberg News* figure may include check cashers not specifically licensed as payday lenders. We also believe California probably has an unusually high number of unlicensed payday lenders given the recent regulatory handoff from the Attorney General's office to the Department of Corporations. *See* Evans, *supra* note 358. We have cautiously relied on the Attorney General's figures, which, in the worst case, conservatively undercount the number of payday lenders near military installations.

Table 4.California: Top 30 Counties Ranked by Payday Lending

Nearest Base(s)	County	Pop	Bnks	PD Lndrs	PD/100K Pop	LQ	Rnk PD	Rnk PC	Rnk P Bnk	Cmpsit Rank	Exp PD	Obs -Exp
McClellan, Mather AFB, Sac. Army Depot (closed)	Sacramento	1223499	197	125	10.22	63.45	5	7	2	1	81.24	43.76
Twenty-Nine Palms USMC	S.Bernardino	1709434	217	161	9.42	74.18	4	9	1	1	113.50	47.50
LeMoore NAS	Fresno	799407	143	82	10.26	57.34	7	8	6	3	53.08	28.92
Edwards AFB	Kern	661645	95	59	8.92	62.11	10	11	3	4	43.93	15.07
NS San Diego, Camp Pend	S.Diego	2813833	537	238	8.46	44.32	2	12	13	5	186.83	51.17
	Madera	123109	23	14	11.37	60.87	23	1	4	6	8.17	5.83
	Tulare	368021	67	35	9.51	52.24	14	8	10	7	24.44	10.56
Camp Pendleton, Clsd March AFB	Riverside	1545387	260	117	7.57	45.00	6	19	12	8	102.61	14.39
LA AFB, Seal Beach NWS	Los Angeles	9519338	1621	671	7.05	41.39	1	21	16	9	632.06	38.94
	Stanislaus	446997	100	41	9.17	41.00	12	10	17	10	29.68	11.32
	S.Joaquin	563598	102	44	7.81	43.14	11	16	14	11	37.42	6.58
	Merced	210554	31	17	8.07	54.84	19	15	8	12	13.98	3.02
Travis AFB	Solano	394542	62	30	7.60	48.39	17	17	11	13	26.20	3.80
	Del Norte	27507	5	3	10.91	60.00	38	2	5	13	1.83	1.17
	Tehama	56039	11	6	10.71	54.55	33	3	9	13	3.72	2.28
Seal Beach, Clsd El Toro	Orange	2846289	606	165	5.80	27.23	3	26	24	16	188.99	-23.99
Beale AFB	Yuba	60219	9	5	8.30	55.56	36	13	7	17	4.00	1.00
	Lake	58309	15	6	10.29	40.00	33	5	18	17	3.87	2.13
	Butte	203171	48	15	7.38	31.25	21	20	21	19	13.49	1.51
LeMoore NAS	Kings	129461	19	8	6.18	42.11	28	23	15	20	8.60	-0.60
	Mendocino	86265	23	7	8.11	30.43	31	14	22	21	5.73	1.27
	S.Clara	1682585	332	76	4.52	22.89	8	33	27	22	111.72	-35.72
	Sutter	78930	15	6	7.60	40.00	33	18	18	23	5.24	0.76
	Colusa	18804	7	2	10.64	28.57	44	4	23	24	1.25	0.75
	Alameda	1443741	292	65	4.50	22.26	9	35	30	25	95.86	-30.86
	Humboldt	126518	30	8	6.32	26.67	28	22	25	26	8.40	-0.40
Port Hueneme	Ventura	753197	150	34	4.51	22.67	15	34	29	27	50.01	-16.01
	Shasta	163256	44	10	6.13	22.73	26	24	28	27	10.84	-0.84
	S.Francisco	776733	261	38	4.89	14.56	13	29	38	29	51.57	-13.57
Vandenberg AFB	S.Barbara	399347	95	19	4.76	19.39	18	31	32	30	26.52	-7.52

Smaller military counties in California also have greater than expected densities of payday lenders. Yuba County, home to Beale Air Force Base and with only a little over 60,000 people, has at least five payday lenders—about two more than one would expect given statewide averages. Five additional payday lenders are located just across the county line in Yuba City, a town of only about 30,000 people and situated less than ten miles from the somewhat isolated U2 spy plane base. The other counties ranking in the top ten in number and density of payday lenders include Los Angeles County and several in the impoverished San Joaquin Valley, where poverty rates are typically over 15%.

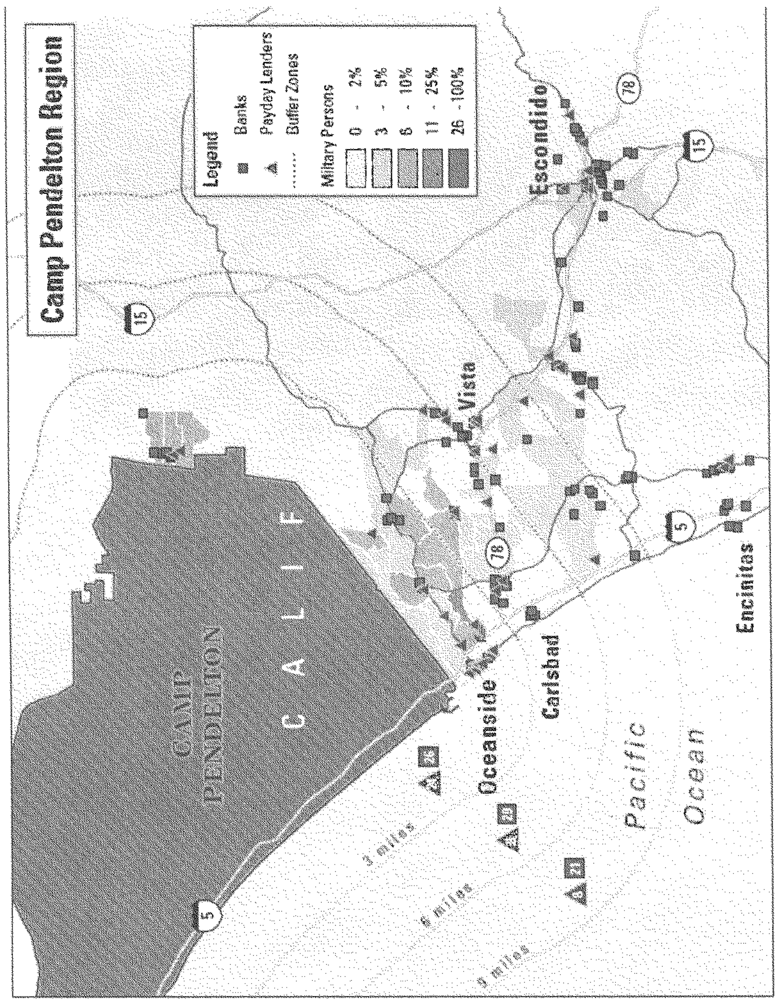
Based on statewide averages, we found higher than expected densities of payday lenders around military bases when mapped at ZIP code level as well. Fourteen of the top 20 payday lending ZIP codes in California are within five miles of an active or recently closed military installation. Perhaps the most telling picture emerged just south of Camp Pendleton Marine Corps Base in Oceanside. The ZIP code at Camp Pendleton's southern gate is a relatively affluent, beachfront community—hardly the place one would expect a large number of payday lenders. Yet this ZIP code region (92054) has 22 payday lenders, five more than any of the other 1661 ZIP code regions in California. Given Oceanside's population, there should be roughly five payday lenders, but it has seventeen more than what would be expected. Even if one were to consider the entire population of 30,000 Marines at Camp Pendleton as part of Oceanside's demographics, there would still be at least thirteen extra payday lenders, four more than we found in all of Marin County (population 250,000). Oceanside (92054) has six more payday lenders than banks. For the sake of comparison, the neighboring ZIP codes in Carlsbad, California (92008 and 92009) have 3000 more people than Oceanside (92054) but only two payday lenders. Admittedly, Carlsbad is slightly more affluent than Oceanside, but this cannot explain the stark difference in the number and density of payday lenders in these two neighboring towns. Clearly, the difference is Oceanside's proximity to the nearly 30,000 Marines stationed at Camp Pendleton.

Table 5. California: Top 30 ZIP Codes Ranked by Payday Lending

Nearby Base	ZIP	Town or City	Payday Lenders	Exp. PD	Banks	PD/100K	Rank PD	Rank PC	Rank LQ	Composite Rank
Clsd Sac Army Depot	95820	SACRAMENTO	9	2.46	0.0	24.04	32	36	2	1
Clsd McClellan AFB	95660	NOR.HIGHLANDS	10	2.02	2.0	32.10	21	21	41	2
NAS - LeMoore 20 mi	93727	FRESNO	13	3.66	4.0	23.18	4	40	49	3
Clsd Norton AFB	92410	SAN BERNARDINO	9	2.87	0.0	20.26	32	60	2	4
	91767	POMONA	11	3.14	3.0	22.77	11	41	47	5
Clsd McClellan AFB	95841	SACRAMENTO	9	1.38	3.0	42.74	32	11	57	6
MCAGCC Twentynine Palms	92277	TWENTYNINE PALMS	7	1.19	2.0	39.93	56	14	55	7
	90028	LOS ANGELES	11	1.98	7.0	36.82	11	16	107	8
NS San Diego- 4 mi	91945	LEMON GROVE	7	1.70	2.0	27.09	56	29	55	9
	90014	LOS ANGELES	12	0.25	9.0	317.21	6	3	137	10
MCAS and NH Camp Pendleton	92054	OCEANSIDE	22	4.96	15.0	25.04	1	33	117	11
	93726	FRESNO	10	2.56	6.0	25.67	21	32	105	12
Clsd Norton AFB- 5 mi	92376	RIALTO	14	5.06	7.0	17.93	3	78	79	13
Clsd March AFB	92553	MORENO VALLEY	13	4.05	9.0	20.78	4	56	118	14
NS San Diego	92105	SAN DIEGO	12	4.70	6.0	18.57	8	93	30	15
	90249	GARDENA	6	1.75	2.0	22.64	83	43	59	16
NWS Seal Beach	90630	CYPRESS	8	3.12	3.0	16.66	46	90	62	17
Clsd Long Beach NS- 3 mi	90745	CARSON	10	3.69	6.0	17.70	21	80	105	18
MCAS-Miramar- 5 mi	92021	EL CAJON	12	3.98	9.0	19.68	6	64	137	19
NWS Seal Beach	90716	HAWAIIAN GRDNS	4	0.99	0.0	26.38	171	30	8	20
	92704	SANTA ANA	15	6.07	10.0	16.07	2	99	109	21
NS San Diego	91950	NATIONAL CITY	9	3.52	5.0	16.74	32	97	98	22
	93306	BAKERSFIELD	10	3.55	7.0	18.47	21	72	121	23
	91763	MONTCLAIR	7	2.23	4.0	20.39	56	59	102	24
NWS Seal Beach	92804	ANAHEIM	11	5.71	3.0	17.59	11	161	47	25
Clsd McClellan AFB	95842	SACRAMENTO	5	2.12	0.0	15.53	110	110	5	26
	90022	LOS ANGELES	11	4.61	7.0	15.67	11	107	107	26
	90011	LOS ANGELES	11	6.75	0.0	10.65	11	214	1	28
	91601	NOR. HOLLYWOOD	7	2.53	4.0	18.10	56	75	102	29
Los Angeles AFB	90260	LAWNDALE	9	2.23	0.0	14.84	110	123	5	30

San Diego County was the location chosen in California for a street-level analysis, which is partially reproduced in Map 1. Since San Diego County is large and includes multiple military installations, our primary focus was on the Camp Pendleton region, but other military neighborhoods were also examined and analyzed. In the three-mile buffer zone around Camp Pendleton (and its adjacent DOD property, such as the Fallbrook Naval Weapons Annex), we found 24 payday lenders. This is ten percent of all the payday lenders we were able to map in all of San Diego County. By comparison, there were 25 banks in this three-mile buffer, representing only 4.65% of the total bank branches mapped in San Diego County. Approximately 148,859 people live inside this three-mile buffer zone, accounting for just over five percent of the county's population. Combined, the buffer zone extending three to nine miles around the base has only sixteen payday lenders, although there are 204,396 persons living in these buffer zones.

The rest of San Diego County is speckled with military installations. Rather than placing buffer zones around individual DOD properties on this map, which was the practice in other cases, we instead placed buffer zones around census tracts with high percentages of military persons. This method was employed for this area because DOD installations are so numerous and so scattered in San Diego County that the map would have virtually no space not covered by a buffer zone. Also, many of the service persons and their families do not live on-base, as was the case with many of the military towns we examined. Instead, we focused on census tracts with over ten percent of the population aged 18 to 64 actively serving in the Armed Forces, designating them military census tracts. Buffers were created around each of these tracts. The primary value of this map is to show the dispersed nature of the military population in San Diego. The heightened density of payday lending in these neighborhoods is less suggestive than it is in Oceanside, but it is visible nevertheless. None of the military neighborhoods in San Diego are lacking multiple payday lenders, though several are not well-served by banks. Countywide, more than two-thirds of the payday lenders are within three miles of a military neighborhood, while less than half of the banks are within the same three-mile buffer.


Camp Pendelton Region
Legend
Banks
Payday Lenders
Buffer Zones
Military Persons
0 - 2%
3 - 5%
6 - 10%
11 - 25%
26 - 100%
CAMP PENDELTON
C A L I F
Vista
Escondido
Oceanside
Carlsbad
Encinitas
Pacific Ocean
3 miles
6 miles
9 miles
15
78
5

4. *Colorado*

Section 5-12-103 of Colorado's state code makes it a felony to lend at interest rates in excess of 45% percent per annum.[361] Historically, supervised small loan lenders in Colorado were limited to a 36% interest rate for loans of less than $1000.[362] However, like many other states, payday lenders have successfully pressured the Colorado legislature into granting them a special exemption from the criminal usury law.[363] The Colorado Deferred Deposit Loan Act (DDLA) gives licensed payday lenders the right to charge 20% of the first $300 loaned, plus 7.5% of any amount loaned in excess of $300.[364] For a typical two-week $300 payday loan, this amounts to an annual percentage rate of about 520%. Once the loan is made, Colorado law authorizes accrual of interest for only the first 40 days after the loan transaction date; even if the lender chooses to delay completion of the transaction beyond this time, the lender is not supposed to charge any additional fees.[365] To prevent lenders from indefinitely extending the 40-day loan period through periodic "renewals," the Colorado legislature has instructed payday lenders not to renew loans more than once.[366] Still, payday lenders are free to refinance a payday loan under the Uniform Consumer Credit Code (UCCC) with a maximum annual interest rate of 36%.[367] However, Colorado has no program to actually guarantee that consumers do not extend their payday loans indefinitely by switching between different lenders, nor by extending loans with one lender.

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[361] COLO. REV. STAT. § 5-12-103 (2004). Section 18-15-104(1) states:

> Any person who knowingly charges, takes, or receives any money or other property as a loan finance charge where the charge exceeds an annual percentage rate of forty-five percent or the equivalent for a longer or shorter period commits the crime of criminal usury, which is a class 6 felony.

COLO. REV. STAT. § 18-5-104(1) (2004).

[362] *Id.* § 5-2-201.

[363] *Id.* § 18-15-104(4)(a).

[364] *Id.* § 5-3.1-105. A consumer borrowing $100 must write a check for $120 so that the lender may take its $20 fee from the check. Assuming that the consumer borrows this money for fourteen days subject to a 20% fee, the effective annual interest rate is 520%.

[365] *Id.* § 5-3.1-103.

[366] *Id.* § 5-3.1-108(1). The DDLA, as introduced by Colorado Senate Bill 00-144, would have allowed up to three renewals on a single deferred deposit loan, but the Senate Business Affairs and Labor Committee reduced that number to just one. Letter from Laura E. Udis, Administrator of the Uniform Consumer Credit Code 2 (June 27, 2000), http://www.ago.state.co.us/UCCC/opinions/deferdeploan062700.pdf.

[367] COLO. REV. STAT. § 5-3.1-108(4) (2004); Letter from Laura E. Udis, *supra* note 366,

Nevertheless, unlike many states, Colorado officials have made some significant efforts to enforce the loan duration limitations in their payday lending statute. For example, in July 2001, Colorado Attorney General Ken Salazar filed a civil lawsuit in state court against ACE Cash Express, Inc., the largest check-cashing business in the country,[368] for violating the DDLA.[369] Salazar accused ACE of regularly allowing borrowers to renew payday loans far more times than allowed under the state rollover limit.[370] Moreover, ACE had not even bothered to obtain a license to operate legally under Colorado state law.[371] ACE removed the case to federal court, claiming that it was an agent of California-based Goleta National Bank.[372] Employing a "charter-renting" argument, ACE argued that the federal National Bank Act preempted any state law claims arising under the DDLA.[373] The Federal District Court of Colorado disagreed, however, finding that resolution of Salazar's complaint was not controlled by the National Bank Act.[374] Even though ACE Cash Express may have been an agent of Goleta, the court distinguished *Marquette* because ACE was not a *subsidiary* of Goleta.[375] The court further stated that ACE and Goleta were "*separate* entities" and, thus, ACE could not escape the authority of Colorado state law.[376] After the case was remanded to state court, ACE settled with the Colorado Attorney General, agreeing to pay $1.3 million in restitution to Colorado consumers and to comply with Colorado's payday lending laws in the future.[377]

In October 2002, Salazar again initiated disciplinary proceedings, this time against Americash, a Knoxville, Tennessee-based payday lender operating ten payday loan stores in Denver and Colorado Springs.[378] As before, Salazar

at 2. Specifically, a payday lender may charge either (1) 36% interest for the first $1000, 21% interest on any balance in the amount of $1000 to $3000, and 15% interest on any part of the loan in excess of $3000 or (2) 21% interest on the entire loan. *Id.* § 5-2-201(2).

[368] Press Release, California Reinvestment Comm., Community Groups Warn Goleta National Bank Shareholders of Dangers of Ace Cash Express Partnership (May 23, 2002), http://www.calreinvest.org/PRESS/press_5_23_02.html.

[369] Press Release, Office of the Attorney Gen. of Colo., ACE Cash Express to Pay $1.3 Million in Restitution to Consumers (May 6, 2002), http://www.ago.state.co.us/press_detail.cfm?pressID=371.

[370] *Id.*

[371] *Id.*

[372] People v. ACE Cash Express, Inc., 188 F. Supp. 2d 1282, 1284 (D. Colo. 2002).

[373] *Id.*

[374] *Id.*

[375] *Id.*

[376] *Id.* at 1285.

[377] Office of the Attorney General of Colo., *supra* note 369.

[378] *Americash Shut Down*, DENV. BUS. J., Nov. 18, 2003, *available at* http://www.bizjournals.com/denver/stories/2003/11/17/daily16.html.

claimed that Americash was operating in violation of Colorado's payday lending law by renewing loans more than one time and by falsifying its records to make it appear as if the borrower had paid off the original loan in full before obtaining a new loan.[379] One year later, Americash settled with the Attorney General, agreeing not to engage in payday lending in the future in Colorado. It further consented to surrender its license and pay $18,000 in damages.[380] Colorado officials said they would use the money in part to reimburse the costs incurred in prosecuting the case and for consumer education.[381]

Colorado ranks toward the bottom of our list of states in terms of the number and the density of payday lending. Colorado has 4.3 million people, 361 payday lenders, and 1390 banks.[382] The relative lack of payday lending statewide may be partially attributable to the general prosperity and relatively well-funded educational system in Colorado. Still, where payday lenders are found in high concentrations, they tend to be near military installations. There are 63 counties in Colorado and only six of them either house or border a military installation. These same six counties are the six top counties in the state for payday lending. The two counties most densely populated with payday lenders in our composite ranking, Pueblo and El Paso, both share the Army Base at Fort Carson. These two military counties alone account for 26% of the payday lenders in the entire state.

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[379] *Id.*

[380] *Id.*

[381] *Id.*

[382] Uniform Consumer Credit Code Div., Colo. Depart. of Law, Colo. Deferred Deposit Lender List, Dec. 2003 (on file with authors) (provided in digital format by authors upon request).

Table 6. Colorado: Top 22 Counties Ranked by Payday Lending

Nearest Base(s)	County	Pop	Bnks	PD Lndrs	PD/100 K Pop	LQ	Rnk PD	Rnk PC	Rnk P Bnk	Cmpsit Rank	Exp PD	Obs -Exp
Fort Carson	Pueblo	141472	57	28	19.79	35.08	6	1	1	1	11.47	16.53
Fort Carson, Peterson, Schriever	El Paso	516929	129	66	12.77	51.16	1	5	3	2	43.59	22.41
Buckley AFB	Adams	363857	62	45	12.37	72.58	4	6	2	3	30.54	14.46
Fort Carson	Fremont	46145	13	6	13.00	46.15	11	4	4	4	3.87	2.13
Buckley AFB	Denver	554636	164	52	9.38	31.71	2	12	7	5	46.55	5.45
Buckley AFB	Arapahoe	487967	146	46	9.43	31.51	3	11	8	6	40.05	5.95
	Alamosa	14966	7	2	13.36	28.57	12	3	9	7	1.26	0.74
	Teller	20555	5	2	9.73	40.00	12	9	5	8	1.73	0.27
	Mesa	116255	41	11	9.46	26.83	10	10	10	9	9.76	1.24
	Lincoln	6087	4	1	16.43	25.00	18	2	11	10	0.51	0.49
	Logan	20504	8	2	9.75	25.00	12	8	11	10	1.72	0.28
	Weld	180936	57	14	7.74	24.56	8	14	13	12	15.19	-1.19
	Jefferson	527056	173	39	7.40	22.54	5	16	15	13	44.24	-5.24
	Moffat	13184	3	1	7.58	33.33	18	15	6	14	1.11	-0.11
	Larimer	251494	75	17	6.76	22.67	7	18	14	14	21.11	-4.11
	Montezuma	23830	10	2	8.39	20.00	12	13	16	16	2.00	0.00
	Archuleta	9898	8	1	10.10	12.50	18	7	19	17	0.83	0.17
	Montrose	33432	12	2	5.98	16.67	12	21	17	18	2.81	-0.81
	Boulder	291288	112	14	4.81	12.50	8	24	19	19	24.45	-10.45
	Las Animas	15207	6	1	6.58	16.67	18	19	17	20	1.28	-0.28
	Prowers	14483	8	1	6.90	12.50	18	17	19	20	1.22	-0.22
	Chaffee	16242	8	1	6.16	12.50	18	20	19	22	1.36	-0.36

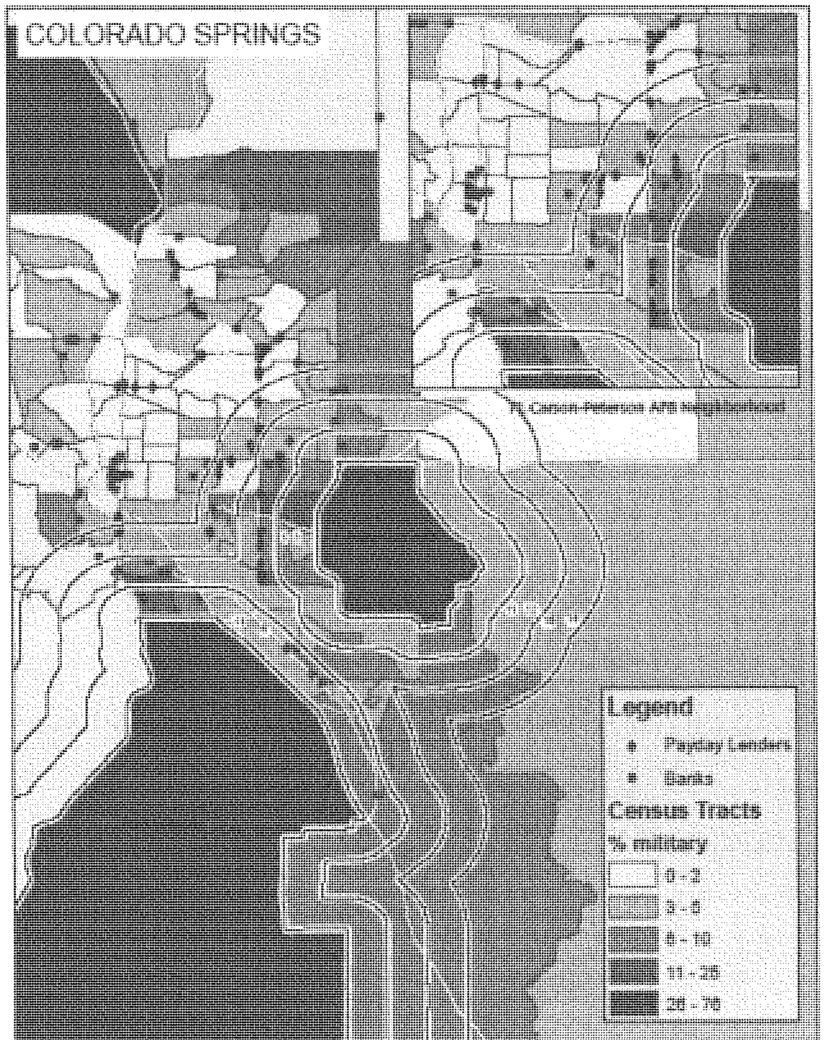
At the ZIP code level, the military districts in Colorado also stand out in our ranking of payday lending regions. One of the worst ZIP codes in the state is 80012 in Aurora, Colorado. Situated essentially in the middle of two recently closed bases (Lowry Air Force Base and Fitzsimons Army Medical Center) and the still-active Buckley Air Force Base/Air National Guard Base, this ZIP code has fifteen banks and eleven payday lenders, the third most of any ZIP code in the state and 7.4 more payday lenders than statistically expected.

A ZIP code analysis clearly demonstrates that the Fort Carson area is the favorite spot in the state for payday lenders. Bordering Fort Carson on the south is Pueblo, Colorado. Pueblo has only seven ZIP codes, but still manages to include the first, sixth, and ninth worst ZIP codes in the state. Pueblo has 36 banks and 28 payday lenders—nearly double our statistical expectations. Eight of those payday lenders are in Pueblo ZIP code 81008, which directly borders Fort Carson. Because this ZIP code has less than 7000 people in it, statewide averages suggest there should not be a single payday lender operating there. Instead, the ZIP code bordering Fort Carson has the highest density of payday lenders per capita in the state.

Table 7. Colorado: Top 30 ZIP Codes Ranked by Payday Lending

Nearby Base	ZIP	Town or City	Payday Lenders	Exp. PD	Banks	PD/100K	Rank PD	Rank PC	Rank LQ	Composite Rank
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
	80631	GREELEY	11	3.64	18.0	25.39	3	16	43	**17**
Clsd Lowrey AFB- 3 mi	80205	DENVER	5	2.48	3.0	16.89	22	31	12	**18**
Buckley AFB	80220	DENVER	5	2.82	3.0	14.89	22	36	12	**19**
	80030	WESTMINSTER	6	1.37	12.0	36.79	18	6	46	**19**
	80110	ENGLEWOOD	8	3.69	14.0	18.18	9	24	44	**21**
	80601	BRIGHTON	5	1.85	9.0	22.68	22	17	42	**22**
Buckley AFB	80014	AURORA	6	2.67	9.0	17.57	18	28	36	**23**
Clsd Lowrey AFB- 3 mi	80222	DENVER	6	1.63	14.0	30.85	18	9	56	**24**
	80538	LOVELAND	5	2.92	6.0	14.37	22	40	23	**25**
USAF Academy	80918	CO. SPRINGS	7	4.16	10.0	14.17	13	42	33	**26**
	81501	GRAND JNCTION	7	1.74	19.0	33.81	13	8	67	**26**
Ft Carson/Peterson	80911	CO SPRINGS	4	2.47	3.0	13.69	32	45	17	**28**
Buckley AFB	80022	COMMERCE CITY	4	2.37	5.0	14.19	32	41	25	**29**
	80210	DENVER	4	2.58	4.0	13.00	32	47	19	**29**

The northern part of Fort Carson is bordered by Colorado Springs, one of the United States' best known "military towns," and is therefore an ideal case study site for additional analysis. Colorado Springs is a fairly large city and has 24 ZIP codes. Five of them rank among the worst in the state and contain most of the 65 payday lenders citywide. As illustrated in Map 2, almost all of the nearly 27 extra payday lenders in Colorado Springs are in three ZIP codes located very close to Fort Carson and Peterson Air Force Base. For example, ZIP code 80909 has thirteen payday lenders, the most of any ZIP code in the state and almost ten more than we predicted based on the local population. The second worst ZIP code in the state (80916) has only two banks but nine payday lenders for its 32,000 people. Most of the payday lenders in this part of town are on Academy Boulevard. This street, which runs south from the Air Force Academy toward the other two bases in town has at least nineteen payday lenders, with two more just off Academy Boulevard. Seventeen of the payday lenders on Academy are along a roughly five-mile stretch in the neighborhoods closest to Peterson Air Force Base and Fort Carson. By contrast, only six banks can be found along the same five-mile stretch of Academy Boulevard. This stretch of highway is very likely home to one of the heaviest concentrations of payday lenders anywhere in the country. Thirty-eight of the 63 payday lenders (60.3%) whose addresses could be matched in El Paso County were within three miles of Peterson Air Force Base or Fort Carson, which are only a few miles apart. That is more than ten percent of the total number of payday lenders statewide, serving only three percent of the state's population, and about 26 more payday lenders than statistically expected given the number of people inside that perimeter.


COLORADO SPRINGS
Legend
Payday Lenders
Banks
Census Tracts
% military
0 - 2
6 - 10
11 - 25

5. *Delaware*

Delaware has long had a reputation for its laissez faire corporate, tax, and banking laws. In the wake of the *Marquette* decision, Delaware actively encouraged banks to export the state's regulatory environment to states more focused on consumer protection issues. Today, the state is well-known as the epicenter of the nation's credit card lending operations. Delaware also imposes no interest rate cap for payday loans allowing lenders to charge interest "as the agreement governing the loan provides."[383] Delaware law purports to limit the duration of payday loans to 60 days and the number of payday loan rollovers to no more than four times.[384] However, the effect of these provisions is ambiguous in that payday lenders may refinance the entire outstanding and unpaid amount of a payday loan, and they may even charge a refinancing fee for doing so.[385]

Lenders operating in states with strict payday lending laws now consistently seek to partner with Delaware banks in order to export Delaware's deregulated interest rates to their home states.[386] For example, First Bank of Delaware, which rents its charter to payday lenders around the country, had $5 million in outstanding payday loans by the end of 2002, equating to 20% of its total assets.[387] Similarly, the State of New York has accused County Bank of Rehoboth Beach, a Delaware-chartered state bank, of criminally facilitating evasion of New York's usury laws.[388] In a different vein, PDL Marketing, LLC is a Delaware-based company that generates 7000 payday loan applications each day for payday lenders located throughout the United States.[389]

For our purposes, Delaware is also of interest because it is home to Dover Air Force Base, which is the best example of an urban, East Coast base in a small state. Despite its liberal banking environment, payday lending is no more common here than it is in some rural southern states. Delaware has 256 banks

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[383] DEL. CODE ANN. tit. 5, § 2229 (2001).

[384] *Id.* §§ 2227(7), 2235A(a)(1) (Supp. 2004).

[385] *Id.* § 2235A(c).

[386] Consumer Federation of America, Consumer and Cmty. Groups Call on Fed. Reserve Bd. to Halt Rent-A-Bank Payday Lending by Del. Bank (Apr. 15, 2003), http://www.consumerfed.org/FedLetter.html.

[387] *Id.*

[388] People v. County Bank of Rehoboth Beach, No. 1:03-CV-1320 (N.D.N.Y. May 25, 2004), www.abanet.org/buslaw/committees/CL230044pub/links.shtml (subscription required).

[389] Press Release, PRWeb, Del. Based PDLMarketing.com Driving Force Behind America's Newest Bus. Success Stories (Jan. 10, 2005), http://www.prweb.com/releases/2005/1/prweb194851.php.

and 120 payday lenders[390] for its 784,000 people. These numbers rank it in the upper half in terms of payday lending density among the states we surveyed.

There are only three counties in Delaware, but Kent County, which includes Dover A.F.B., ranks first in the state in payday lending activity. In Kent County there are approximately 127,000 people, 32 banks and 30 payday lenders. This is about ten more payday lenders than predicted for that population according to our statistics.

[390] Del. Office of the State Bank Comm'r, Non-Depository Institutions (Dec. 1, 2003), http://www.state.de.us/bank/information/nondepsearch.shtml (search parameters included "all licensed lenders").

Table 8. Delaware: Top 3 Counties Ranked by Payday Lending

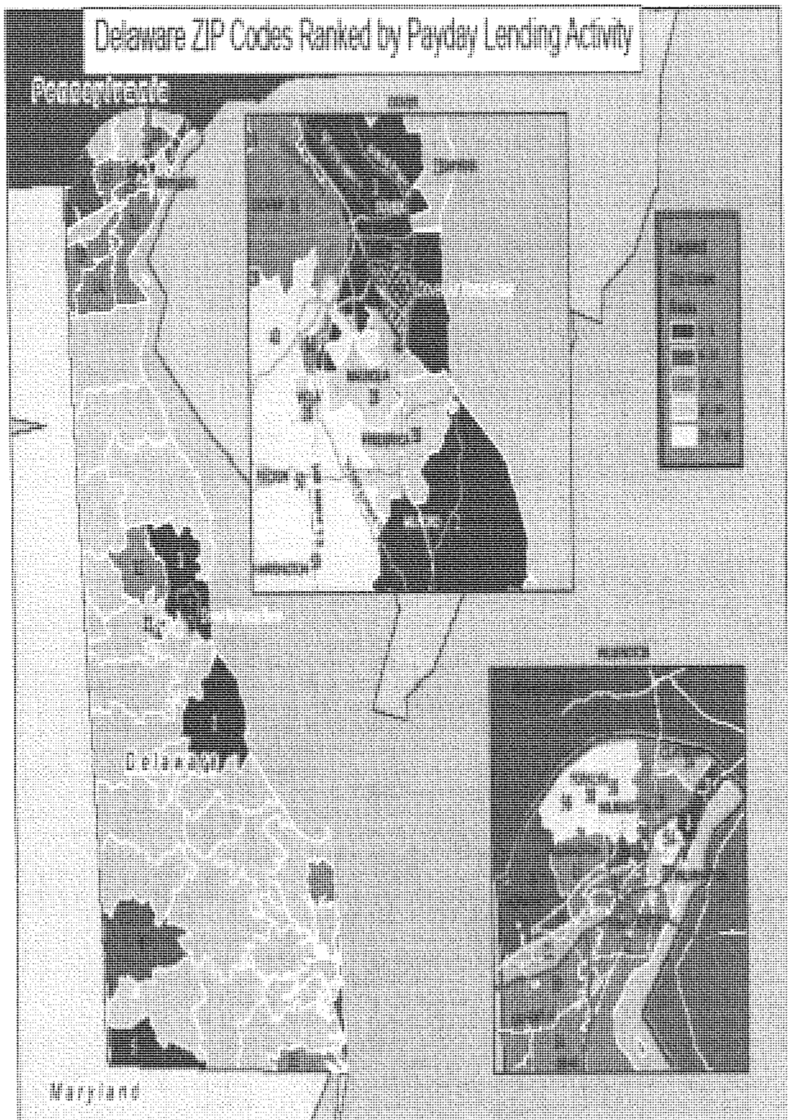
Nearest Base(s)	County	Pop	Bnks	PD Lndrs	PD/100 K Pop	LQ	Rnk PD	Rnk PC	Rnk P Bnk	**Cmpsit Rank**	Exp PD	Obs -Exp
Dover AFB	Kent	126697	32	30	23.68	93.75	2	1	1	1	19.40	10.60
	New Castle	500265	170	72	14.39	42.35	1	2	2	**2**	76.61	-4.61
	Sussex	156638	54	18	11.49	33.33	3	3	3	**3**	23.99	-5.99

Because of Delaware's lack of consumer protection laws, we expected to find the majority of the high-ranking ZIP codes bordering other nearby states that would serve borrowers from Maryland and New Jersey. This payday lender location strategy was evident to some extent. However, as Map 3 illustrates, the ZIP codes that ranked first and second for payday lending density statewide were both next to the Air Force Base in Dover. Dover ZIP 19901 had less than 32,000 people and six banks, but had fifteen payday lenders, which amounts to ten more than statewide averages would lead us to expect based on this population. Just a few miles from the base is Milford (ZIP 19963). Though only populated by less than 15,000 people, Milford has seven banks and eight payday lenders, which is about six lenders above statistical expectations.

Table 9. Delaware: Top 27 ZIP Codes Ranked by Payday Lending

Nearby Base	ZIP	Town or City	Payday	Exp PD	Banks	PD/100K	R PD	R PC	LQ Rank	Composite Rank
Dover AFB	19901	DOVER	15	4.03	6.0	41.35	1	5	1	1
Dover AFB-4 miles	19963	MILFORD	8	2.17	7.0	56.60	4	4	5	2
	19809	WILMINGTON	6	2.23	2.0	41.19	6	7	2	3
	19703	CLAYMONT	7	2.35	3.0	45.68	5	6	4	3
	19940	DELMAR	3	0.79	1.0	58.30	15	3	3	5
	19973	SEAFORD	6	3.38	7.0	27.21	6	8	9	6
	19930	BETHANY BEACH	2	0.39	2.0	77.82	18	2	6	7
	19711	NEWARK	10	8.60	14.0	17.82	2	14	13	8
	19944	FENWICK ISLAND	1	0.09	1.0	163.93	24	1	6	9
	19805	WILMINGTON	6	6.14	8.0	14.96	6	20	10	10
Dover AFB	19904	DOVER	5	4.26	8.0	17.89	10	13	15	11
	19720	NEW CASTLE	9	8.86	17.0	15.57	3	17	18	11
	19806	WILMINGTON	2	1.47	3.0	20.86	18	11	11	13
	19701	BEAR	5	5.08	8.0	15.09	10	19	15	14
	19975	SELBYVILLE	1	0.89	1.0	17.28	24	15	6	15
	19804	WILMINGTON	3	2.74	5.0	16.75	15	16	14	15
	19808	WILMINGTON	6	6.04	18.0	15.22	6	18	21	15
	19803	WILMINGTON	4	3.26	14.0	18.81	12	12	22	18
	19702	NEWARK	4	6.67	6.0	9.19	12	24	12	19
	19971	REHOBOTH BEACH	2	1.42	11.0	21.51	18	10	25	20
Dover AFB	19977	SMYRNA	2	2.16	4.0	14.22	18	21	17	21
	19713	NEWARK	3	4.79	7.0	9.59	15	23	19	22
	19966	MILLSBORO	2	2.86	6.0	10.70	18	22	20	23
	19810	WILMINGTON	2	3.87	11.0	7.92	18	25	25	24
	19947	GEORGETOWN	1	2.28	6.0	6.73	24	26	23	25
	19709	MIDDLETOWN	1	3.09	6.0	4.95	24	27	23	26
	19801	WILMINGTON	4	2.27	29.0	27.01	12	9	58	27

Dover Air Force Base was selected for additional street-level analysis. In the first two miles from the base, we could find only one bank, but six payday lenders. We saw a slight return to normalcy between two and three miles from the base, as banks outnumbered payday lenders at a ratio of nine banks to five payday lenders.


Delaware ZIP Codes Ranked by Payday Lending Activity
Maryland

6. *Florida*

Like other states discussed so far, Florida has legislation specifically authorizing payday lenders to exceed the state's interest rate cap.[391] Under Florida law, payday lenders may charge ten percent of the loan. Payday lenders are also authorized to charge the borrower a "verification fee" of no more than five dollars.[392] Combined, the two charges allow Florida lenders to charge an effective annual percentage rate of 390%.[393]

On the other hand, Florida has been innovative in trying new ways to avoid the problem of chronic rollovers by borrowers who are unable to repay their initial payday loans when due. First, the Deferred Presentment Act strictly prohibits any rollover of a payday loan;[394] indeed, a borrower must wait 24 hours after redeeming or otherwise terminating a payday loan before entering into another payday loan transaction.[395] Second, the Act forbids a lender from redeeming, extending, or otherwise consolidating a payday loan with the proceeds of an additional payday loan made by the same or an affiliated lender.[396] Finally, it prohibits a lender from extending a payday loan to any person who has an outstanding payday loan with that lender *or with any other payday lender*.[397] To facilitate compliance with these requirements, Florida has implemented a common database, accessible via the internet, connecting all deferred presentment providers.[398] Lenders must submit the personal information of any borrower entering into a payday loan into the database, including the borrower's name, address, social security number, driver's license number, amount of the transaction, and the dates that the transaction commences and terminates.[399] Florida has experienced an 82% decrease in multiple outstanding

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[391] The Deferred Presentment Act effectively exempts payday loans from the state's normal usury laws capping interest at an annual rate of 18%. *See* FLA. STAT. ANN. §§ 687.02(1), 687.03(1) (West 2003).

[392] *Id.* § 560.404(6) (West 2002 & Supp. 2005).

[393] For every $100 loaned, a payday lender may charge interest of ten dollars and a verification fee of five dollars, amounting to a total fee of 15%; assuming an average loan duration of fourteen days, the annual percentage rate of interest is 390%.

[394] FLA. STAT. ANN. § 560.404(18) (West 2002 & Supp. 2005).

[395] *Id.* § 560.404(19).

[396] *Id.* § 560.404(18).

[397] *Id.* § 560.404(19).

[398] *Id.* § 560.404(23).

[399] *Id.* The information entered in to the database is confidential except when payday lenders need to access it to verify whether a potential borrower has any outstanding (or recently terminated) deferred presentment transactions. FLA. STAT. ANN. § 560.404(23) (West 2002 & Supp. 2005).

payday loans since implementing the internet database.[400]

Moreover, if a borrower cannot repay a payday loan at the end of the loan's original term, Florida's Deferred Presentment Act also imposes strict regulations on both the lender and the borrower. First, the Act prohibits the lender from depositing the check so long as the borrower informs the lender that the check will bounce.[401] Second, the lender—without any additional charge—must give the borrower a 60-day grace period to repay the loan.[402] Finally, the Act requires that, as a condition of receiving the 60-day penalty-free grace period, the borrower must enter a consumer credit counseling program with a counseling agency approved by the State.[403]

Many payday lenders have actively sought to circumvent or ignore these rules. For example, state authorities discovered that ACE Cash Express simply chose to ignore the 390% interest rate cap.[404] As explained below, our research also suggests that a significant number of Florida payday lenders may have failed to obtain licenses to operate payday loan businesses. If some lenders are not obtaining licenses, one can only speculate to what extent these and other lenders are registering their loans on the state database, or for that matter, complying with rollover limitations. Nevertheless, Florida has taken some limited enforcement measures, such as the settlement imposed on ACE Cash Express. In exchange for Florida's withdrawing its lawsuit, ACE agreed to comply with the Deferred Presentment Act in the future and to pay $500,000 in damages: $250,000 to the state government and $250,000 to the University of Florida law school.[405]

In this regulatory environment, Florida has developed a payday lending industry that is relatively small, given its sizeable population of about sixteen million people, particularly in comparison to the high payday lender numbers found other southeastern states. In fact, Florida has about the same number of payday lenders as Alabama or Missouri, even though it has about ten million more people than either. Because Florida has a number of very large metropolitan regions and mostly Air Force bases, we suspected that military towns would not figure heavily in the pattern of payday lenders statewide. That suspicion is only partly supported by the data.

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[400] Don Kennedy, *It's Hard to Break Free from Payday Lending Trap*, FLAGSHIP, June 19, 2003, http://www.flagshipnews.com/archives_2003/jun192003_2.shtml.

[401] FLA. STAT. ANN. § 560.404(21) (West 2002 & Supp. 2005).

[402] *Id.* § 560.404(22)(a).

[403] *Id.*

[404] Associated Press, *Payday Lender Settles Florida Dispute*, ST. PETERSBURG TIMES (Fla.), Jan. 3, 2003, http://www.sptimes.com/2003/01/03/news_pf/Business/Payday_lender_settles.shtml.

[405] *Id.*

We conservatively estimate that there are 1071 payday lenders in the state. This may be an undercount. The Florida Department of Financial Services' Office of Financial Regulation lists 1040 firms that have submitted notices to conduct business as a Deferred Presentment Provider.[406] However, we found an additional 46 businesses with the word "payday" in their business name who apparently have not submitted such a notice; nonetheless, we chose to add those to our list. There were several hundred more businesses with names that suggested that they too were involved in payday lending, but we chose not to include them in order to err on the side of caution. A search of the Reference USA business database produced a list of 1172 businesses in the category of "check cashing."[407] A quick survey of this list revealed that it includes well over 75% of the same businesses as the list of Deferred Present Providers published by the State of Florida. Therefore, though we consider the official state list somewhat short of a full account of payday lending in Florida, we are nevertheless confident that it represents a highly reliable statistical sample of payday lending in the state.

Duval County, which includes the city of Jacksonville, two recently closed facilities at Whitehouse Field and Cecil Field Naval Air Stations, Jacksonville Naval Air Station, and Mayport Naval Base, ranks first in the state for payday lending. However, because Duval County is so large, it is difficult to tell at the county level if the bases are specifically targeted by the payday lending industry.

Hillsborough County is second worst statewide and, like Duval County, has a military base, MacDill Air Force Base. Yet, because the base is located in a large city, Tampa, county-level analysis does not permit a reliable inference as to whether the payday lending density is caused by the presence of military personnel. Predictably, heavily populated areas such as Broward (Miami), Polk, and Orange Counties also rank poorly on our payday lending scale. The remaining military counties of note are Bay County (ranked eighth of 67), which contains Tyndall Air Force Base; Escambia County (ranked thirteenth of 67), home to the Pensacola Naval Air Station; and Okaloosa County (ranked eighteenth of 67), which is the principal county housing Eglin Air Force Base. Curiously, the sixth worst county is Hamilton County, which borders Georgia's Lowndes County, home of Moody Air Force Base.

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[406] Office of Financial Regulation, Fla. Dept. of Financial Serv., Licensing Data Download Site, http://www.fldfs.com/OFR/licensing/download.htm (last visited Oct. 17, 2005).

[407] InfoUSA, ReferenceUSA, http://www.ReferenceUSA.com (last visited Oct. 17, 2005). ReferenceUSA is a commercially-prepared internet-based database sold to corporations and libraries which contains information on U.S. and Canadian businesses, health care providers, and consumers. *See id.*

Table 10. Florida: Top 30 Counties Ranked by Payday Lending

Nearest Base(s)	County	Pop	Bnks	PD Lndrs	PD/100 K Pop	LQ	Rnk PD	Rnk PC	Rnk P Bnk	Cmpsit Rank	Exp PD	Obs -Exp
NAS Jacksonville, NS Mayport	Duval	778879	273	77	9.89	28.21	4	11	7	1	52.19	24.81
MacDill AFB	Hillsbrgh.	998948	384	87	8.71	22.66	3	15	12	2	66.94	20.06
Avon Park AF Bombing Range	Polk	483924	204	41	8.47	20.10	8	16	14	3	32.43	8.57
	Broward	1623018	711	120	7.39	16.88	2	20	18	4	108.76	11.24
	Gadsden	45087	7	5	11.09	71.43	33	6	2	5	3.02	1.98
	Hamilton	13327	3	3	22.51	100.00	40	1	1	6	0.89	2.11
	Bradford	26088	6	3	11.50	50.00	40	4	3	7	1.75	1.25
Tyndall AFB	Bay	148217	70	14	9.45	20.00	20	13	15	8	9.93	4.07
	Jackson	46755	20	5	10.69	25.00	33	7	8	8	3.13	1.87
	Suwannee	34844	16	4	11.48	25.00	37	5	8	10	2.33	1.67
	Orange	896344	334	62	6.92	18.56	5	28	17	10	60.07	1.93
Csd Homestead AFB	Miami-Dade	2253362	938	154	6.83	16.42	1	30	20	12	151.00	3.00
NAS Jacksonville	Clay	140814	48	11	7.81	22.92	24	17	11	13	9.44	1.56
NAS Pensacola, others	Escambia	294410	137	22	7.47	16.06	12	19	21	13	19.73	2.27
	Seminole	365196	173	27	7.39	15.61	9	21	23	15	24.47	2.53
	Calhoun	13017	8	2	15.36	25.00	43	3	8	16	0.87	1.13
	Taylor	19256	7	2	10.39	28.57	43	9	6	17	1.29	0.71
Eglin AFB	Okaloosa	170498	133	17	9.97	12.78	17	10	34	18	11.43	5.57
	Alachua	217955	101	16	7.34	15.84	18	23	22	19	14.61	1.39
	Madison	18733	9	2	10.68	22.22	43	8	13	20	1.26	0.74
	Marion	258916	126	19	7.34	15.08	16	24	25	21	17.35	1.65
	Glades	10576	3	1	9.46	33.33	51	12	5	22	0.71	0.29
	Jefferson	12902	2	1	7.75	50.00	51	18	3	23	0.86	0.14
	Putnam	70423	25	5	7.10	20.00	33	26	15	24	4.72	0.28
	Leon	239452	108	16	6.68	14.81	18	32	27	25	16.05	-0.05
	Pasco	344765	145	21	6.09	14.48	13	36	29	26	23.10	-2.10
	Franklin	11057	16	2	18.09	12.50	43	2	35	27	0.74	1.26
	St. Lucie	192695	92	13	6.75	14.13	22	31	32	28	12.91	0.09
	Volusia	443343	227	26	5.86	11.45	10	37	39	29	29.71	-3.71
MacDill AFB	Pinellas	921482	497	51	5.53	10.26	7	39	42	30	61.75	-10.75

At the ZIP code level, it is easier to discern the location strategy of the payday lending industry in Florida. One of the ZIP codes adjacent to the Naval Air Station in Jacksonville (32210) ranks first in the state for total number of payday lenders (eleven) and ranks fifteenth worst of 916 ZIP codes statewide. Four and a half miles north of the base, on U.S. Highway 17, is ZIP code 32205. This ZIP code ranks second worst in the state. Together, these two ZIP codes have approximately 87,000 people, 24 banks, and 22 payday lenders—15.2 payday lenders above the statistical prediction based on this population. The intensity of payday lending witnessed around closed military facilities is not as evident in Jacksonville as we have seen elsewhere, even though the aforementioned ZIP code 32210 does border the abandoned Cecil Field. Also in the Jacksonville area is Mayport Naval Station; with its smallish force, the area has only two payday lenders in its adjacent ZIP codes.

MacDill Air Force Base in Tampa has three payday lenders in the ZIP code adjacent to it, and although this is one more than our statistical prediction, the total number is very modest, ranking this ZIP code out of the top 100 statewide. About five miles up U.S. 92, soldiers can find a group of Tampa ZIP codes containing over 50 payday lenders—33 more than one would predict given the population in that part of Tampa. Given its locale, this nearby density may undermine any greater payday lending density in the ZIP codes immediately adjacent to MacDill.

Tyndall Air Force Base has two adjacent ZIP codes, 32401 and 32404, that rank twenty-ninth and thirty-eighth, respectively, among Florida's 917 ZIP code regions for payday lending. Together they have 59,000 people, sixteen banks and ten payday lenders, about six payday lenders more than statistically projected for this population.

Table 11. Florida: Top 30 ZIP Codes Ranked by Payday Lending

Nearby Base	ZIP	Town or City	Payday	Exp PD	Banks	PD/100K	R PD	R PC	LQ Rnk	RANK
	33334	FT. LAUDERDALE	11	2.07	6.0	35.65	1	10	23	**1**
NAS Jacksonville- 4 mi	32205	JACKSONVILLE	10	2.01	9.0	33.43	5	12	31	**2**
MacDill AFB- 9 mi	33610	TAMPA	9	2.18	4.0	27.72	8	19	22	**3**
NS Mayport - 8 mi	32211	JACKSONVILLE	10	2.16	12.0	31.10	5	15	49	**4**
	33169	MIAMI	9	2.42	6.0	24.94	8	34	27	**4**
	32808	ORLANDO	11	3.38	7.0	21.86	1	49	24	**6**
	33781	PINELLAS PARK	7	1.65	8.0	28.45	20	18	46	**7**
	32351	QUINCY	5	1.25	3.0	26.79	43	23	25	**8**
	32208	JACKSONVILLE	7	2.33	2.0	20.20	20	58	17	**9**
	32216	JACKSONVILLE	8	2.06	12.0	26.07	13	25	59	**10**
	32701	ALTAMONTE SP.	7	1.51	11.0	31.02	20	16	63	**11**
	33584	SEFFNER	5	1.38	5.0	24.22	43	37	32	**12**
MacDill AFB- 9 mi	33604	TAMPA	6	2.41	0.0	16.71	30	83	1	**13**
	33312	FT. LAUDERDALE	8	3.08	7.0	17.44	13	78	30	**14**
NAS Jacksonville	32210	JACKSONVILLE	11	[illegible]	15.0	[illegible]	1	54	57	**15**
	34112	NAPLES	5	1.78	2.0	18.80	43	70	21	**16**
	33617	TAMPA	10	2.87	18.0	23.41	5	40	90	**17**
	33142	MIAMI	8	3.56	3.0	15.06	13	107	19	**18**
	33147	MIAMI	7	3.26	6.0	14.41	20	114	29	**19**
	33936	LEHIGH ACRES	4	1.06	7.0	25.36	70	30	65	**20**
NAS Jacksonville	32217	JACKSONVILLE	5	1.36	10.0	24.74	43	36	37	**21**
	32096	WHITE SPRINGS	2	0.17	0.0	79.97	161	1	4	**21**
	33803	LAKELAND	7	1.75	17.0	26.83	20	22	126	**23**
	34601	BROOKSVILLE	5	1.41	10.0	23.82	43	39	87	**24**
	33023	HOLLYWOOD	9	4.09	12.0	14.77	8	109	54	**25**
	33809	LAKELAND	6	1.74	13.0	23.07	30	42	100	**26**
	33068	POMPANO BEACH	6	3.23	2.0	12.46	30	135	18	**27**
	32218	JACKSONVILLE	6	2.55	9.0	15.81	30	96	58	**28**
Tyndall AFB/NSWC	32401	PANAMA CITY	5	[illegible]	10.0	[illegible]	43	[illegible]	[illegible]	**29**
	32117	DAYTONA BEACH	5	1.58	11.0	21.18	43	52	97	**30**

Eglin Air Force Base is massive and covers parts of several counties, but the ZIP code closest to the main gates at Eglin is Fort Walton Beach (ZIP 32548). This part of Fort Walton Beach has less than 22,000 people, but eight payday lenders, which is about seven more than its smallish population would suggest. These two statistics would likely put Fort Walton Beach in the top five statewide for payday lending, but like other resort areas, it also has a lot of banks (24) for its population, which drags the statistical composite ranking downward to forty-fourth. Mary Esther, a very small ZIP code also adjacent to the beach, is similar statistically, with only three payday lenders, but still two more than its small population would suggest.

The biggest military installation in Florida is the Air Station at Pensacola and, in relative terms, it has very few payday lenders. ZIP code 32507, which essentially encloses the base, has about 28,700 people, nine banks, and five payday lenders. This is about three lenders more than we expected given the population. This same ZIP code, though better off than most military areas, still ranks thirty-first worst out of 916 ZIP codes statewide and is much more crowded with payday lenders than the other seven ZIP codes in and around Pensacola.

Pensacola Air Station was chosen for additional street-level analysis because of its large troop levels and its peculiar infrequency of payday lending at the ZIP code level. At this resolution, we found that the greatest concentration of payday lenders in the Pensacola area was in a highway corridor just north of the base. Within three miles of the base there are at least four payday lenders, but a greater concentration of payday lending can be found if the buffer is drawn around the enlisted housing annex at Corry Station. Six payday lenders can be found within three miles of it, making it easily one of the heaviest concentrations of such activity in the region.

7. *Idaho*

Idaho payday loan legislation strongly favors lenders. It does not include any limitation on interest rates.[408] On the contrary, like Arizona, Idaho law specifically provides that payday loan fees "shall not be deemed interest for any purpose of law."[409] Idaho allows three rollovers with a new round of fees for each.[410] While lenders are not supposed to issue a payday loan for the purpose of allowing the borrower to pay off an existing payday loan from the same lender,[411] the statute does not appear to address paying off one payday lender with the proceeds of a loan from a different lender.

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[408] IDAHO CODE § 28-46-412 (2005).

[409] *Id.* § 28-46-412(3). Lenders may further assess a fee of up to $20 for any check that bounces or is returned for insufficient funds. *Id.* § 28-46-413(3).

[410] *Id.* §§ 28-46-413(6), 28-46-412(5)(b).

[411] *Id.* § 28-46-413(2).

Idaho, with approximately 1.3 million people, is the least populous state in the survey, but still has about 160 payday lenders, or roughly 12.4 per 100,000 people.[412] Idaho's small population, both statewide and in many of the counties and ZIP codes, and the relatively small military presence in Idaho make it a curiosity in terms of our study, but perhaps representative of conditions in a rural, Mountain West state.

Mountain Home Air Force Base, home to just over 4000 troops, is in Elmore County. Elmore ranks ninth out of 44 counties in our composite score for payday lending. Mountain Home, ZIP code 83647, ranks sixth out of 251 ZIP code areas in the state with a ratio of four payday lenders to every seven banks. Although four payday lenders may seem insignificant, it is still double what one would expect in Idaho given the tiny population of Mountain Home (16,600). Two of the four payday lenders list their address as "Airbase Road," clearly indicating their target demographic.

[412] STATE OF IDAHO, DEPARTMENT OF FINANCE, PAYDAY LENDERS LIST (November 26, 2003), http://finance.state.id.us/industry/icc_lists.asp.

Table 12. Idaho: Top 30 ZIP Codes Ranked by Payday Lending

Nearby Base	ZIP	Town or City	Payday	Exp PD	Banks	PD/100K	R PD	R PC	LQ Rnk	Composite Rank
	83201	POCATELLO	16	4.45	13	44.43	1	2	4	1
	83404	IDAHO FALLS	8	2.26	1	43.82	3	3	3	2
	83714	GARDEN CITY	6	0.97	6	76.33	8	1	5	3
	83864	SANDPOINT	6	2.04	7	36.43	8	4	11	4
	83338	JEROME	4	1.92	7	25.71	11	11	13	5
Mountain Home AFB	83647	MOUNTAIN HOME	4	2.96	7	24.11	11	12	13	6
	83687	NAMPA	3	2.36	0	15.74	17	23	1	7
	83709	BOISE	5	4.32	5	14.32	10	26	5	7
	83501	LEWISTON	7	4.05	14	21.39	5	14	23	9
	83704	BOISE	8	4.82	17	20.54	3	15	24	9
	83651	NAMPA	7	2.56	18	33.79	5	5	33	11
	83301	TWIN FALLS	12	5.25	26	28.29	2	9	32	11
	83536	KAMIAH	1	0.45	1	27.45	31	10	5	13
	83815	COEUR D ALENE	3	2.83	0	13.12	17	28	1	13
	83703	BOISE	4	3.22	7	15.35	11	24	13	15
	83211	AMERICAN FALLS	2	0.73	4	33.70	25	6	20	16
	83313	BELLEVUE	1	0.39	2	32.02	31	7	16	17
	83814	COEUR D ALENE	7	2.76	20	31.40	5	8	42	18
	83276	SODA SPRINGS	1	0.55	2	22.34	31	13	16	19
	83333	HAILEY	2	1.22	4	20.29	25	16	20	20
	83318	BURLEY	3	1.97	8	18.87	17	17	27	20
	83202	POCATELLO	2	2.03	2	12.18	25	31	5	20
	83705	BOISE	4	3.25	11	15.22	11	25	30	23
	83221	BLACKFOOT	3	2.90	6	12.78	17	29	22	24
	83686	NAMPA	3	3.80	4	9.76	17	39	12	24
	83619	FRUITLAND	1	0.75	2	16.60	31	22	16	26
	83716	BOISE	1	1.15	1	10.77	31	36	5	27
	83706	BOISE	4	3.68	12	13.45	11	27	34	27
	83467	SALMON	1	0.71	3	17.54	31	19	24	29
	83805	BONNERS FERRY	1	0.73	3	17.00	31	20	24	30

8. *Kentucky*

In Kentucky, payday lenders may charge fees equating to an effective annual interest rate of 459%.[413] However, Kentucky law is clear that this charge is a "service fee," *not* interest.[414] As a result, payday lenders are not subject to the Commonwealth's interest rate cap of 19%.[415] In the event that a borrower's check bounces, a lender may charge, in addition to its service fee, a returned check fee in any amount, so long as that amount is disclosed to the borrower in the original loan documents.[416] Once a lender extends a payday loan to a borrower, the lender may not enter into any further payday loan transactions with the same borrower until the original loan is terminated.[417] However, a consumer may enter into a second payday loan transaction at any one time, provided that the loans are from two different lenders and that the aggregate amount of the loans does not exceed $500.[418] Finally, a lender may not renew, roll over, or consolidate a payday loan, unless it does so without charging the borrower a fee.[419]

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[413] KY. REV. STAT. ANN. § 368.100(2) (West 2004). Specifically, a payday loan fee may not exceed 15% of the face amount of the check. *Id.* For example, for every $100 check written, the borrower receives $85 while the lender receives $15. As a result, the borrower actually incurs a charge of 17.65%; assuming an average payday loan duration of fourteen days, the borrower is charged an effective annual percentage rate of 459%.

[414] *Id.*

[415] *See id.* § 360.010(1).

[416] *Id.* § 368.102(3).

[417] *Id.* § 368.100(10).

[418] KY. REV. STAT. ANN. § 368.100(11) (West 2004).

[419] *Id.* § 368.100(15).

According to the Kentucky Department of Financial Institutions, the Commonwealth has 583 payday lenders.[420] At the county level, the state's two military counties stand out statistically. The worst county in the state for payday lending is Christian County, where most of the troops at Fort Campbell live. It has 21 banks and eighteen payday lenders for its roughly 72,000 people. This is nearly 25 payday lenders per 100,000 and seven more than statistically expected for the population here, which includes the Kentucky component of the on-base population. Ranking fifth out of 120 counties in Kentucky is Hardin County, home to Fort Knox. Ironically, this county has 22 payday lenders to its 38 banks for its nearly 100,000 people. By comparison, Fayette County, which includes metropolitan Lexington and 260,000 people, has only four more payday lenders, but 63 more banks.

[420] COMMONWEALTH OF KENTUCKY, DEPARTMENT OF FINANCIAL INSTITUTIONS, PAYDAY LENDER LIST (June 15, 2004) (on file with authors) (provided in digital format by authors' request).

Table 13. Kentucky: Top 30 Counties Ranked by Payday Lending

Nearest Base(s)	County	Pop	Bnks	PD Lndrs	PD/100 K Pop	LQ	Rnk PD	Rnk PC	Rnk P Bnk	Cmpsit Rank	Exp PD	Obs -Exp
Fort Campbell	Christian	72265	21	18	24.91	85.71	5	11	2	1	10.42	7.58
	Henderson	44829	18	13	29.00	72.22	8	6	8	**2**	6.47	6.53
	Johnson	23445	9	7	29.86	77.78	23	4	5	**3**	3.38	3.62
	McCracken	65514	24	15	22.90	62.50	6	15	12	**4**	9.45	5.55
Fort Knox	Hardin	94174	38	22	23.36	57.89	3	13	18	5	13.58	8.42
	Graves	37028	11	9	24.31	81.82	18	12	4	**5**	5.34	3.66
	Jessamine	39041	16	10	25.61	62.50	13	9	12	**5**	5.63	4.37
	Boyle	27697	18	10	36.10	55.56	13	2	19	**5**	4.00	6.00
	Knox	31795	15	9	28.31	60.00	18	7	14	**9**	4.59	4.41
	Caldwell	13060	6	5	38.28	83.33	36	1	3	**10**	1.88	3.12
	Warren	92522	42	21	22.70	50.00	4	16	21	**11**	13.35	7.65
	Taylor	22927	12	7	30.53	58.33	23	3	17	**12**	3.31	3.69
	Rowan	22094	9	6	27.16	66.67	29	8	10	**13**	3.19	2.81
	Wayne	19923	7	5	25.10	71.43	36	10	9	**14**	2.87	2.13
	Bell	30060	13	7	23.29	53.85	23	14	20	**15**	4.34	2.66
	Hopkins	46519	21	10	21.50	47.62	13	20	26	**16**	6.71	3.29
	Carter	26809	10	6	22.31	60.00	29	17	14	**17**	3.88	2.12
	Mason	16800	10	5	29.76	50.00	36	5	21	**18**	2.42	2.58
	Franklin	47687	22	10	20.97	45.45	13	24	27	**19**	6.88	3.12
	Pulaski	56217	30	12	21.35	40.00	10	21	34	**20**	8.11	3.89
	Clark	33144	16	7	21.12	43.75	23	23	30	**21**	4.78	2.22
	Lawrence	15569	4	3	19.27	75.00	48	30	6	**22**	2.25	0.75
	Breathitt	16100	4	3	18.63	75.00	48	31	6	**23**	2.32	0.68
	Calloway	34177	12	6	17.56	50.00	29	35	21	**23**	4.93	1.07
	Scott	33061	19	7	21.17	36.84	23	22	42	**25**	4.77	2.23
	Knott	17649	3	3	17.00	100.00	48	39	1	**26**	2.55	0.45
	Perry	29390	15	6	20.42	40.00	29	28	34	**27**	4.24	1.76
	Barren	38033	18	7	18.41	38.89	23	32	40	**28**	5.49	1.51
	Clay	24556	6	4	16.29	66.67	42	44	10	**29**	3.54	0.46
	Bourbon	19360	9	4	20.66	44.44	42	27	28	**30**	2.79	1.21

The county in Tennessee serving Fort Campbell's soldiers is Montgomery County. It has 21 payday lenders for its 134,000 residents, including those on-base. In terms of total number of lenders, it ranks thirteenth among Tennessee's 95 counties, but in terms of per capita density, Montgomery ranks in the middle percentile.

At the ZIP code level, locations adjacent to military bases appear highly attractive to payday lenders. The top four ZIP code regions in the state are all located near the state's only two military bases. Radcliff (ZIP 40160), which lies adjacent to Fort Knox Army Base, has the greatest composite density of payday lenders in the state. Though home to only 24,000 people and six banks, it has managed to attract twelve payday lenders, 8.6 more than statistically predicted. Radcliff ranks poorly in virtually all of our statistical categories and is the single most targeted location in the state of Kentucky for payday lending.

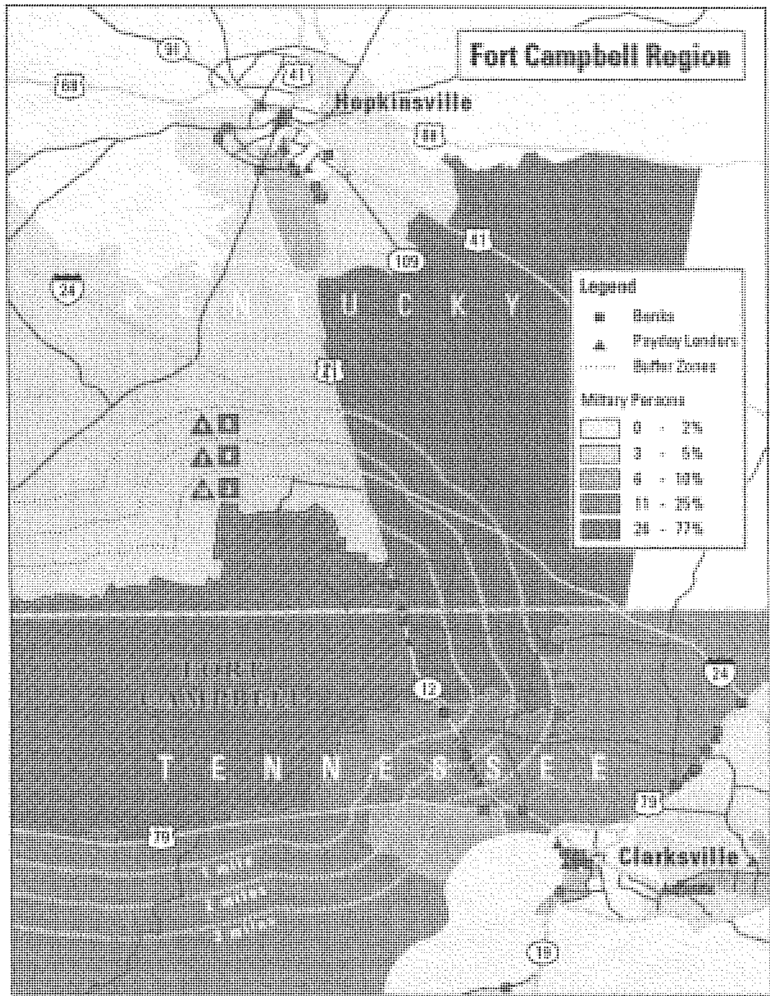
Oak Grove, probably the place most soldiers at Fort Campbell would go for a payday loan, has eight lenders to chose from, but only one bank. With less than 8000 people in Oak Grove, statewide averages predict only one payday lender in this ZIP code, unless you include the more than 20,000 soldiers stationed at Fort Campbell. Even when we added those soldiers to Oak Grove's population, there are still 3.5 payday lenders beyond the expected number. Hopkinsville and Clarksville, Tennessee, which sandwich Oak Grove on Highway 41, offer another ten payday lenders for the soldiers at Fort Campbell to choose from. The density of nearby competition, both in Kentucky and just across the border in Tennessee, makes the number of payday lenders in Oak Grove even more statistically dramatic.[421]

[421] For a closely related discussion of payday lending in Tennessee, see *infra* Section IV.B.17.

Table 14. Kentucky: Top 30 ZIP Codes Ranked by Payday Lending

Nearby Base	ZIP	Town or City	Payday	Exp PD	Banks	PD/100K	R PD	R PD	LQ Rank	Composite Rank
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
	40422	DANVILLE	10	3.30	14.0	43.72	8	17	34	6
	41240	PAINTSVILLE	7	1.20	10.0	84.28	23	9	31	7
	40404	BEREA	3	0.06	0.0	704.23	63	1	1	8
	42445	PRINCETON	5	1.64	5.0	43.83	34	16	15	8
	42420	HENDERSON	13	5.28	18.0	35.49	3	29	37	10
	40218	LOUISVILLE	9	4.42	8.0	29.36	16	45	13	11
	40356	NICHOLASVILLE	10	4.46	13.0	32.30	8	40	26	11
	42104	BOWLING GREEN	9	2.99	14.0	43.37	16	18	41	13
	40505	LEXINGTON	9	3.80	12.0	34.14	16	34	27	14
	41822	HINDMAN	3	0.44	3.0	98.98	63	6	15	15
	42330	CENTRAL CITY	4	1.41	3.0	40.94	51	21	12	15
	40965	MIDDLESBORO	6	2.02	9.0	42.69	30	20	35	17
	41143	GRAYSON	5	1.88	7.0	38.24	34	25	28	18
	41653	PRESTONSBURG	5	1.52	8.0	47.36	34	15	39	19
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
	42001	PADUCAH	11	4.07	20.0	38.91	5	24	66	21
	42501	SOMERSET	10	2.34	20.0	61.67	8	12	78	22
	42765	MUNFORDVILLE	3	0.71	4.0	61.22	63	13	23	23
	40701	CORBIN	10	4.06	17.0	35.49	8	30	61	23
	42633	MONTICELLO	5	2.33	7.0	30.88	34	42	28	25
	40351	MOREHEAD	6	2.87	9.0	30.10	30	44	35	26
	42367	POWDERLY	1	0.13	0.0	106.95	104	4	3	27
	41815	ERMINE	1	0.15	0.0	96.81	104	7	3	28
	41230	LOUISA	3	1.31	3.0	32.91	63	37	15	29
	42718	CAMPBELLSVILLE	7	3.26	12.0	30.93	23	41	52	30
	42431	MADISONVILLE	9	3.96	16.0	32.72	16	38	62	30

The Fort Campbell area was also chosen for street-level analysis, and at this resolution, the pattern is remarkable. As illustrated in Map 4, within three miles of the main entrance to the base, we located seventeen payday lenders and ten banks. Outside the three-mile buffer in the surrounding region there are 23 payday lenders and 69 banks. Twenty-four of the 41 total payday lenders in the region are located on Fort Campbell Boulevard.


Fort Campbell Region
Hopkinsville
Legend
Banks
Payday Lenders
Buffer Zones
Military Persons
0 - 2%
3 - 5%
6 - 10%
11 - 25%
26 - 77%
KENTUCKY
TENNESSEE
Clarksville

9. *Louisiana*

Payday lenders in Louisiana operate under the authority of the Deferred Presentment and Small Loan Act (DPSLA).[422] The DPSLA allows lenders to charge interest rates of as much as 520%,[423] well exceeding Louisiana's usury law prohibiting conventional interest in excess of 12%.[424] The Act prohibits lenders from extending payday loans that exceed a term of 60 days[425] or are for an amount greater than $350.[426] If the borrower cannot repay a payday loan on time, the lender may continue charging interest, but at a reduced rate (36% annual interest during the first 365 days following the extension, and then 18% annual interest thereafter).[427] If the borrower's check bounces for any reason upon the lender's attempted deposit, the lender may recover a returned check fee.[428] The Act's protections for consumers are minimal—lenders may not divide a payday loan into multiple agreements for the purpose of charging a higher fee,[429] nor may they renew or roll over a payday loan.[430] However, a lender may make a new payday loan to a borrower if the borrower pays off at least 25% of the original loan.[431]

Louisiana has two major military installations: the Army's Fort Polk and Barksdale Air Force Base. Louisiana also has 685 payday lenders and 1524 banks.[432] Because it has about 4.5 million people, it ranks sixth among the 20 states in our survey in terms of the density of payday lending but better than most of the other southern states in our survey.

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[422] LA. REV. STAT. ANN. §§ 9:3578.1 to 9:3578.8 (2004).

[423] *Id.* § 9:3578.4.A. Specifically, the Act allows a payday lender to charge a fee of 16.75% "of the face amount of the check issued." *Id.* Consequently, a consumer borrowing $100 must write a check for $120, which is the equivalent of 20% interest. Assuming an average loan duration of fourteen days, Louisiana's DPSLA allows payday lenders to charge an annual interest rate of 520%.

[424] *Id.* § 9:3500.C.

[425] *Id.* § 9:3578.3(6).

[426] *Id.* § 9:3578.3(2)(c).

[427] LA. REV. STAT. ANN. § 9:3578.4.A (2004).

[428] *Id.* § 9:3578.4.B. The returned check fee must be for the same amount that the lender's banking institution charged the lender for returning the check. *Id.* However, this returned check fee may be assessed only one time per check, regardless of the number of times that the check was returned to the lender by the lender's bank. *Id.*

[429] *Id.* § 9:3578.6.A(4).

[430] *Id.* § 9:3578.6.A(7).

[431] LA. REV. STAT. ANN. § 9:3578.6.A (2004).

[432] STATE OF LOUISIANA, DEPARTMENT OF FINANCIAL INSTITUTIONS, PAYDAY LENDER LIST (2001) (on file with authors) (list mailed on authors' request).

Louisiana has many places where quick loans would seem popular, from the third-world like poverty of the Delta, to the swamps of the Achafalaya Basin, to the streets of New Orleans. The swampy St. Martin's Parish has the worst payday lending numbers in the state at the county level. The second and third worst parishes are two less likely candidates for payday lending, until you factor in military demographics.[433] Bossier Parish, home to Barksdale Air Force Base, has almost 100,000 people, 22 banks, and 24 payday lenders, about eight more than expected. These statistics rank it second worst among the 64 parishes in Louisiana. Vernon Parish ranks third worst, and with just over 50,000 people and fourteen banks, its fourteen payday lenders are well above what one would expect in rural Louisiana were it not for the presence of Fort Polk in the heart of Vernon Parish.

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[433] Parishes are the functional and geographic equivalent of counties in Louisiana.

Table 15. Louisiana: Top 30 Parishes Ranked by Payday Lending

Nearest Base(s)	County	Pop	Bnks	PD Lndrs	PD/100 K Pop	LQ	Rnk PD	Rnk PC	Rnk P Bnk	Cmpsit Rank	Exp PD	Obs -Exp
	St. Martin	48583	17	17	34.99	100.00	13	2	4	1	7.45	9.55
Barksdale AFB	Bossier	98310	22	24	24.41	109.09	9	8	3	2	16.07	8.93
Fort Polk	Vernon	52531	14	14	28.65	100.00	15	7	4	3	8.05	5.95
	Concordia	20247	6	7	34.57	116.67	23	3	2	4	3.10	3.90
	Allen	25440	9	7	27.52	77.78	23	6	6	5	3.90	3.10
	St. Helena	10525	3	4	38.00	133.33	34	1	1	6	1.61	2.39
	E. Baton Rou.	412852	140	75	18.17	53.57	1	20	16	7	63.28	11.72
	Tngphoa.	100588	34	21	20.88	61.76	10	14	14	8	15.42	5.58
	Rapides	126337	52	27	21.37	51.92	7	12	19	8	19.36	7.64
	Acadia	58861	21	13	22.09	61.90	16	10	13	10	9.02	3.98
Barksdale AFB	Caddo	252161	68	43	17.05	63.24	4	24	12	11	38.65	4.35
	Franklin	21263	9	6	28.22	66.67	28	5	9	12	3.26	2.74
	Claiborne	16851	7	5	29.67	71.43	32	4	8	13	2.58	2.42
	Webster	41831	17	9	21.52	52.94	20	11	17	14	6.41	2.59
	LaFourche	89974	41	20	22.23	48.78	12	9	27	14	13.79	6.21
	Ouachita	147250	64	30	20.37	46.88	5	16	28	16	22.57	7.43
	Lincoln	42509	18	9	21.17	50.00	20	13	20	17	6.52	2.48
	St. John B.	43044	9	7	16.26	77.78	23	26	6	18	6.60	0.40
	Morehouse	31021	9	6	19.34	66.67	28	18	9	18	4.75	1.25
	Jefferson	455466	130	65	14.27	50.00	2	34	20	20	69.81	-4.81
	St. Bernard	67229	19	10	14.87	52.63	19	31	18	21	10.30	-0.30
	Red River	9622	3	2	20.79	66.67	46	15	9	22	1.47	0.53
	Ascension	76627	22	11	14.36	50.00	18	33	20	23	11.75	-0.75
	Iberia	73266	31	13	17.74	41.94	16	21	34	23	11.23	1.77
	Calcasieu	183577	70	28	15.25	40.00	6	30	35	23	28.14	-0.14
	Jackson	15397	5	3	19.48	60.00	42	17	15	26	2.36	0.64
	Terrebonne	104503	36	16	15.31	44.44	14	29	31	26	16.02	-0.02
	St. Mary	53500	20	9	16.82	45.00	20	25	30	28	8.20	0.80
	Union	22803	8	4	17.54	50.00	34	23	20	29	3.50	0.50
	Orleans	484674	104	48	9.90	46.15	3	46	29	30	74.29	-26.29

At the ZIP code level, the pattern is similar. Two ZIP codes in Baton Rouge have the worst ranking for payday lending statewide, but military-adjacent ZIP codes in Louisiana are not absent from our rankings. ZIP codes 71112 and 71111, which flank Barksdale Air Force Base in Bossier City, rank fifth and ninth in the state respectively. These two ZIP codes have fifteen banks and 23 payday lenders serving roughly 57,000 people, or fourteen more than statistically expected given their combined populations. The second highest composite density ZIP code in the state (71118) is just across the river in Shreveport. Its fifteen payday lenders are available to service men and women at Barksdale after only a short and commonly made trip across the Red River into Shreveport.

Table 16. Louisiana: Top 28 ZIP Codes Ranked by Payday Lending

Nearby Base	ZIP	Town or City	Payday	Exp PD	Banks	PD/100 K	R PD	R PC.	LQ Rnk	Composite Rank
	70806	BATON ROUGE	19	4.16	10.0	70.05	1	3	9	1
Barksdale - 7 mi	71118	SHREVEPORT	15	3.66	8.0	62.85	5	8	10	2
	70815	BATON ROUGE	16	4.44	10.0	55.23	2	12	14	3
Ft. Polk	71446	LEESVILLE	14	3.67	12.0	58.37	7	10	25	4
Barksdale AFB	71112	BOSSIER CITY	10	4.19	2.0	36.58	14	28	6	5
	70538	FRANKLIN	8	2.30	5.0	53.38	21	14	15	6
	71301	ALEXANDRIA	16	3.70	19.0	66.22	2	5	50	7
	70127	NEW ORLEANS	11	4.67	8.0	36.10	11	29	17	7
Barksdale AFB	71111	BOSSIER CITY	13	4.76	13.0	41.86	8	22	28	9
	70403	HAMMOND	9	3.26	7.0	42.28	17	21	20	9
	71373	VIDALIA	4	1.15	2.0	53.33	55	15	11	11
	70058	HARVEY	11	6.40	8.0	26.32	11	53	17	11
	70401	HAMMOND	8	2.59	9.0	47.35	21	17	46	13
	71463	OAKDALE	5	1.70	4.0	45.08	44	19	23	14
	71040	HOMER	4	1.10	3.0	55.91	55	11	21	15
	70601	LAKE CHARLES	16	5.38	22.0	45.56	2	18	67	15
	70121	NEW ORLEANS	4	1.99	1.0	30.77	55	35	7	17
	70053	GRETNA	7	2.67	8.0	40.14	28	23	47	18
	70380	MORGAN CITY	8	3.57	11.0	34.38	21	31	57	19
	70126	NEW ORLEANS	8	6.28	3.0	19.52	21	80	8	19
	71201	MONROE	15	3.35	26.0	68.63	5	4	101	21
	70052	GRAMERCY	2	0.48	1.0	64.14	94	6	12	22
	70363	HOUMA	7	4.39	6.0	24.41	28	62	26	23
	70043	CHALMETTE	9	4.92	12.0	28.05	17	46	53	23
	70458	SLIDELL	10	5.01	14.0	30.55	14	37	65	23
Barksdale - 4 mi	71103	SHREVEPORT	3	1.63	0.0	28.25	72	45	1	26
	70062	KENNER	6	2.91	7.0	31.62	37	33	48	26
	71079	SUMMERFIELD	1	0.02	0.0	847.46	116	1	2	28
	70714	BAKER	5	3.10	3.0	24.72	44	59	16	28
	70506	LAFAYETTE	8	5.55	7.0	22.10	21	71	27	28

The composite score for payday lending is fourth highest in Leesville (ZIP 71446). Leesville has 12 banks and 14 payday lenders for its approximately 24,000 people—10.33 more payday lenders than the population would suggest, even if the population of soldiers at Fort Polk were included.

Leesville was selected for additional neighborhood analysis, which revealed that payday lenders were crowded around the main entrance to Fort Polk and less frequent in Leesville itself, which lies some six miles up Louisiana Highway 171. We found six payday lenders and one bank located less than a mile from Fort Polk's border. In the three-mile buffer, we were able to map fourteen payday lenders and ten banks, but upon closer inspection we found that five of the payday lenders were crammed along Entrance Road, located within a mile of the base. Soldiers traveling to Leesville would pass five additional payday lenders in the next two miles. In Leesville itself, there were only three payday lenders, only one of which was not on the main route toward the base.

10. *Missouri*

Missouri's payday lending law is one of the most creditor-friendly in the nation. The statute actually authorizes lenders to charge fees equating to an annual interest rate of 1950%.[434] Lenders are also essentially free to turn these loans into long-term obligations by allowing borrowers to renew six times, so long as the borrower pays down the loan by at least five percent upon each renewal.[435] Lenders may not accept repayment out of the proceeds of another payday loan made by the same or an affiliated lender.[436] However, lenders are not required to use a unified system to track whether consumers have more than one loan outstanding with other non-affiliated lenders.

Missouri is another state with a large number and high density of payday lenders. There are roughly 5.6 million people in Missouri, and they have some 2193 banks and 1138 payday lenders from which to choose.[437] There are more than 20 payday lenders per 100,000 people in the state, ranking it fifth worst among the 20 states in our survey. Fort Leonard Wood and Whiteman Air Force Base are the only significant military installations in the state. Because Fort Leonard Wood has many missions and functions partly as a training facility,

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[434] A lender in Missouri may charge 75% interest on any payday loan. MO. REV. STAT. § 408.505(3) (2005). Assuming an average loan duration of fourteen days, this equates to an eye-popping annual rate of 1950%. It should be noted, however, that the 75% in interest authorized by Missouri law applies to the total of the initial loan and up to six renewals. *Id.* §§ 408.505(3), 408.500(6).

[435] *Id.* § 408.500(6).

[436] *Id.* § 408.505(5).

[437] STATE OF MISSOURI, DIVISION OF FINANCE, SECTION 408.500, SMALL, SMALL LOAN COMPANIES (Dec. 16, 2004), http://www.missouri-finance.org/pdfs/smallsmallloans.pdf.

estimates of its population vary from just over 10,000 to more than 20,000 personnel, many of whom are from branches other than the Army.[438] Whiteman Air Force Base houses approximately 4000 service persons.

With sixteen payday lenders and just over 41,000 people, Pulaski County, home to Fort Leonard Wood, ranks eleventh of 115 counties in terms of the number and density of payday lending. Neighboring Laclede County ranks tenth in the state, despite its isolation in south-central Missouri.

[438] Two sources from the DOD provide divergent estimates of troop levels at Fort Leonard Wood. The DOD's Base Structure Report estimates roughly 20,000 troops and the DOD's Directorate of Information, Operations and Reports estimates troops to be around 10,000. DEPARTMENT OF DEFENSE, *supra* note 284; DIRECTORATE FOR INFORMATION OPERATIONS AND REPORTS, STATISTICAL INFORMATION ANALYSIS DIVISION WORK FORCE PUBLICATIONS (Fiscal Year 2004), http://www.dior.whs.mil/mmid/L03/fy04/ATLAS_2004.pdf.

Table 17. Missouri: Top 30 Counties Ranked by Payday Lending

Nearest Base(s)	County	Pop	Bnks	PD Lndrs	PD/100 K Pop	LQ	Rnk PD	Rnk PC	Rnk P Bnk	Cmpsit Rank	Exp PD	Obs -Exp
	Dunklin	33155	15	23	69.37	153.33	11	1	1	1	6.75	16.25
	Scott	40422	17	24	59.37	141.18	8	3	2	1	8.22	15.78
	S.Francois	55641	23	24	43.13	104.35	8	12	4	3	11.32	12.68
	Barry	34010	26	22	64.69	84.62	14	2	14	4	6.92	15.08
	Butler	40867	19	19	46.49	100.00	17	10	5	5	8.31	10.69
	Howell	37238	19	18	48.34	94.74	19	8	9	6	7.58	10.42
	Vernon	20454	9	10	48.89	111.11	30	7	3	7	4.16	5.84
	Stoddard	29705	21	16	53.86	76.19	20	5	17	8	6.04	9.96
	Newton	52636	19	19	36.10	100.00	17	25	5	9	10.71	8.29
	Laclede	32513	13	13	39.98	100.00	25	18	5	10	6.61	6.39
Fort Leonard Wood	Pulaski	41165	17	16	38.87	94.12	20	20	10	11	8.37	7.63
	Moniteau	14827	9	8	53.96	88.89	38	4	12	12	3.02	4.98
	Randolph	24663	11	10	40.55	90.91	30	16	11	13	5.02	4.98
	Mississippi	13427	7	6	44.69	85.71	44	11	13	14	2.73	3.27
	Polk	26992	13	10	37.05	76.92	30	23	15	14	5.49	4.51
	Henry	21997	18	11	50.01	61.11	28	6	35	16	4.48	6.52
	Taney	39703	23	15	37.78	65.22	23	22	31	17	8.08	6.92
Fort Leonard Wood	Phelps	39825	18	13	32.64	72.22	25	30	22	18	8.10	4.90
	Greene	240391	108	65	27.04	60.19	3	43	36	19	48.91	16.09
	Webster	31045	14	10	32.21	71.43	30	31	23	20	6.32	3.68
	Franklin	93807	39	25	26.65	64.10	7	44	34	21	19.08	5.92
	Wright	17955	10	7	38.99	70.00	40	19	27	22	3.65	3.35
	Grundy	10432	7	5	47.93	71.43	55	9	23	23	2.12	2.88
	Saline	23756	14	9	37.89	64.29	36	21	32	24	4.83	4.17
	Andrew	16492	5	5	30.32	100.00	55	35	5	25	3.36	1.64
	Livingston	14558	10	6	41.21	60.00	44	15	37	26	2.96	3.04
	Pemiscot	20047	8	6	29.93	75.00	44	37	18	27	4.08	1.92
Fort Leonard Wood	Texas	23003	10	7	30.43	70.00	40	34	27	28	4.68	2.32
	Cape Girardeau	68693	35	20	29.12	57.14	16	41	44	28	13.98	6.02
	Perry	18132	9	6	33.09	66.67	44	29	29	30	3.69	2.31

At the ZIP code level, the effect of the base on Fort Leonard Wood's tiny gateway town is evident. Although St. Robert has only 5200 people, apparently enough to support only two banks, eight payday lenders have decided it is a good location—seven more than necessary according to statistical predictions. Given the number and density of payday lending for this population, St. Robert is the second worst place in the state for this activity. While Whiteman Air Force Base has been somewhat spared of payday lenders, the tiny town of Windsor, less than five miles from the base on Route 23, has attracted as many payday lenders (four) as banks, thereby earning the town a ranking in the top 30 statewide for payday lending.

Table 18. Missouri: Top 30 ZIP Codes Ranked by Payday Lending

Nearby Base	ZIP	Town or City	Payday	Exp PD	Banks	PD/100K	R PD	R PC.	LQ Rank	**Composite Rank**
	63801	SIKESTON	21	4.71	10.0	90.72	1	24	31	**1**
Ft. Leonard Wood	65584	SAINT ROBERT	8	1.05	2.0	154.86	28	10	27	**2**
	63863	MALDEN	8	1.33	3.0	122.38	28	12	32	**3**
	63134	SAINT LOUIS	8	3.10	0.0	52.57	28	65	1	**4**
	64772	NEVADA	10	2.56	6.0	79.48	16	32	50	**5**
	63857	KENNETT	10	2.66	6.0	76.58	16	34	50	**6**
	63841	DEXTER	11	2.64	9.0	84.65	13	26	66	**7**
	63132	SAINT LOUIS	8	2.91	1.0	55.94	28	59	25	**8**
	63901	POPLAR BLUFF	19	6.74	16.0	57.33	2	57	65	**9**
	65270	MOBERLY	10	2.85	10.0	71.36	16	42	77	**10**
	63703	CP. GRARDEAU	6	2.03	2.0	60.21	55	53	29	**11**
	65018	CALIFORNIA	6	1.52	4.0	80.28	55	31	54	**12**
	63640	FARMINGTON	12	4.66	10.0	52.34	10	68	68	**13**
	64054	INDEPENDENCE	4	0.85	2.0	95.33	87	20	43	**14**
	65625	CASSVILLE	6	1.29	6.0	94.46	55	21	77	**15**
	64118	KANSAS CITY	17	7.80	12.0	44.34	3	100	53	**16**
	65023	CENTERTOWN	2	0.32	0.0	127.71	144	11	2	**17**
	65020	CAMDENTON	7	2.09	6.0	68.00	42	46	71	**18**
	65723	PIERCE CITY	3	0.62	1.0	99.14	112	16	34	**19**
	63019	CRYSTAL CITY	4	0.79	3.0	103.20	87	15	61	**20**
	65536	LEBANON	13	5.28	12.0	50.07	7	82	76	**21**
	63664	POTOSI	6	1.73	5.0	70.40	55	44	70	**22**
	65613	BOLIVAR	8	3.07	8.0	52.95	28	64	77	**22**
	63074	SAINT ANN	7	3.10	3.0	46.00	42	91	40	**24**
	64124	KANSAS CITY	6	2.66	1.0	45.87	55	94	26	**25**
	64628	BROOKFIELD	5	1.26	5.0	80.53	72	30	77	**26**
	64133	KANSAS CITY	14	6.69	12.0	42.54	5	107	69	**27**
Whiteman AFB -4 mi	65360	WINDSOR	4	0.85	4.0	96.11	87	19	77	**28**
	65109	JEFFERSON CITY	12	7.21	4.0	33.85	10	149	28	**29**
	65453	CUBA	5	1.66	4.0	61.35	72	52	67	**30**

11. *New York*

Proponents of the payday lending industry have thus far failed to sway the New York state legislature to their cause. Unlike most states with a significant military presence, New York has steadfastly stood by its criminal and civil interest rate caps. Except where authorized, New York's civil usury law imposes a maximum interest rate of 16% per year.[439] And New York also has a criminal usury law which makes lending at interest rates over 25% per annum a class E felony for first offenses, and a class C felony for subsequent offenses.[440] To further reinforce the state's prohibition against payday lending, New York expressly bars check cashers from advancing money on postdated checks and requires them to deposit any checks cashed within one business day.[441] Regulatory authorities have also aggressively pursued payday lenders. The state banking department superintendent has unequivocally expressed disdain for banks that rent their charters, accusing them of abusing the public trust.[442] Similarly, the New York Attorney General has accused a Delaware-chartered state bank of criminally facilitating evasion of New York's usury laws.[443] Nevertheless, the interaction between New York usury law and federal law preempting interest rate caps for banks presents an interesting legal puzzle. If payday lenders are correct in their argument that federal law legalizes "charter-renting," then the Supremacy Clause of the U.S. Constitution, under this theory, would make payday lending as legal in New York as in other states.

We included New York in our sample both because it is home to Fort Drum, a relatively significant Army post located near the "military town" of Watertown, New York, and because of the state's legal and financial importance. However, the regulatory climate in New York creates a challenging data collection problem. State authorities actively attempt to sue or prosecute businesses found to be engaged in payday lending, so authorities do not maintain a list of payday lenders. Similarly, payday lenders may not list their addresses or phone numbers

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439 N.Y. BANKING LAW § 14-a (McKinney 2004); N.Y. GEN. OBLIG. LAW § 5-501. (McKinney 2004).

440 N.Y. PENAL LAW §§ 190.40, 190.42 (McKinney 2004).

441 N.Y. BANKING LAW § 373 (McKinney 2004).

442 Elizabeth McCaul, Superintendent of Banks, Industry Letter on Payday Loans (June 13, 2000), http://www.banking.state.ny.us/lt000613.htm ("[B]anks that choose to offer this type of loan product at exorbitant interest rates are blatantly abusing [federal] authority. These types of actions, when judged in the court of public opinion, can lead to a groundswell of outrage resulting in reputational harm and safety and soundness problems.").

443 People v. County Bank of Rehoboth Beach, No. 1:03-CV-1320 (N.D.N.Y. May 25, 2004), www.abanet.org/buslaw/committees/CL230044pub/links.shtml (subscription required).

in commonly available telephone directories or in any other business address database. A survey of directories in the Watertown, New York area near Fort Drum produced no listings for "Check and Cash Advances," "Check Cashers," or any other similar categories. In an effort to ensure that our data was as accurate and reliable as possible, we chose to conduct in-person field work at Fort Drum to verify the presence or absence of payday lending and/or businesses offering equivalent services. Our field work methodology was essentially a standard "windshield survey," which involved driving the streets and highways of our target area, making note of and paying visits to establishments we suspect are making payday loans, and collecting address data and other useful information. In conducting our field work, we drove through all commercially-zoned areas within a five-mile radius of Fort Drum's main gate and through every commercial district of nearby Watertown. Our search focused not only on lenders openly offering payday loans, but also businesses offering payday loans disguised as other transactions.

Our field work revealed two outlets in the Fort Drum region offering the functional equivalent of payday loans under the common façade of "catalog sales."[444] As discussed in Section II, catalog sales are a thin disguise aimed at illegally lending in excess of state usury laws. Subsequent to conducting our field work, the New York Attorney General's office obtained a permanent injunction shutting down both of these lending operations, holding their owner personally liable for restitution.[445] The Attorney General's office has subsequently confirmed that these two payday lending locations near Fort Drum have now ceased operations.[446] Combined with our field work, this verifies that unlike every other significant military installation in all 20 states we studied, there are essentially no payday lenders targeting military personnel in the Fort Drum area.[447] The FDIC lists fifteen banks in Jefferson County, New York, the main home to Fort Drum. Based upon that statistic, this county ranks perhaps best of all the military counties in all 20 states included in our survey on all three counts: total number of payday lenders, per capita density, and ratio to banks.

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[444] *See infra* note 143 and accompanying text.

[445] *See* People v. JAG NY, 794 N.Y.S.2d 488 (2005).

[446] Telephone Interview with Mark D. Fleischer, Assistant N.Y. Att'y Gen. (Mar. 2, 2005).

[447] Nevertheless, our field work did identify numerous other potential credit sources including traditional banks, credit unions, finance companies, rent-to-own furnishing stores, and pawn shops.

12. *North Carolina*

North Carolina provides an interesting contrast to New York. In 1997, North Carolina enacted legislation authorizing payday lending. This statute was comparable to those in many states included in our study in that it created a statutory mechanism allowing payday lenders to obtain licenses authorizing them to charge fees of 15% of the face amount of a borrower's check (an annual interest rate cap of 459%).[448] However, the North Carolina legislature also included a four-year "sunset provision" on the special usury law. In August 2001, the legislature allowed the four-year experimental law to expire, despite venomous opposition by payday lenders.[449] As a result, North Carolina law reverted to its traditional small loan law which caps the annual interest rate for small consumer loans at 36%.[450] After 2001, payday lending became as illegal in North Carolina as it is in New York.

Nevertheless, nearly four years later, North Carolina has not been able to successfully stop payday lending in the state. Shortly after the payday lending law expired, state authorities began to order businesses to stop making payday

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[448] The 1997 law authorized payday loans that did not exceed a duration of 31days or an amount of $300. N.C. GEN. STAT. § 53-281(a), (b) (1997) (repealed 2001). It allowed lenders to charge interest of 15% of the amount of the face amount of the check the borrower used to borrow the money, or $17.65 for every $100 check. N.C. GEN STAT. § 53-281(d)(1997) (repealed 2001). Assuming an average loan duration of fourteen days, payday lenders used to be able to charge an effective annual interest rate of 459%.

[449] *See* CENTER FOR RESPONSIBLE LENDING, N.C. PAYDAY LENDING: HISTORY OF PAYDAY LENDING IN N.C., http://www.responsiblelending.org/predlend_nc/payday.cfm (last visited Oct. 17, 2005). The legislature allowed the law to sunset because it was concerned with the consumer protection issues arising from it. From 1999 to 2000, for example, the number of payday lending companies increased by 16%, with revenues rising by 28% to more than $123 million. *See* Rick Rothacker, *Researchers Call For Payday Lending Reforms*, CHARLOTTE OBSERVER, Feb. 17, 2003, at 7D, http://www.charlotte.com/mld/observer/5198784.htm?1c. A study conducted by the North Carolina Banking Commissioner showed that 87% of North Carolina consumers rolled-over their loans at least one time with any given lender. OFFICE OF THE COMMISSIONER OF BANKS, REPORT TO THE GENERAL ASSEMBLY ON PAYDAY LENDING 6 (Feb. 22, 2001). Not counting debtors who borrowed from multiple locations, 38.3% of borrowers renewed their payday loan more than ten times. *Id.* About 14% of borrowers renewed their loans more than nineteen times a year with each lender. *Id.*

[450] N.C. GEN. STAT. § 53-173(a) (2004) (imposing an interest rate cap of 36% for loans under $600, and a cap of 15% on any amount loaned from $600 to $3000). This interest rate cap is a component of the North Carolina Consumer Finance Act (NCCFA). *Id.* §§ 53-164 to 53-191. Small loans under the NCCFA are generally limited to a duration of about two to four years, but lenders may refinance loans if necessary. *Id.* §§ 53-181(a)(9), 53-180(a) (2004). Lenders can also charge a five percent fee no more than twice a year. *Id.* § 53-173(a)(1) (2004).

loans.[451] A consumer advocacy organization reported that after the payday loan law sunset, some smaller payday lending companies sold out to larger chains while others reverted to their original check cashing business.[452] Many lenders simply continued to offer payday loans without licenses through catalog sales, sale-leaseback transactions, and other disguises.[453] Other payday lenders turned to out-of-state banks and began payday lending under a charter-renting theory.[454]

State leaders and consumer protection attorneys have waged a continuing legal and political battle over the future of payday lending in the state. In 2002, for example, North Carolina Attorney General Roy Cooper filed suit against ACE Cash Express for offering payday loans in violation of the state's payday lending laws.[455] Only a few months later, ACE agreed to stop its payday lending activities for one year and to pay civil penalties of $325,000.[456] In February 2003, North Carolina's Office of the Comptroller of the Currency filed suit against Advance America, Cash Advance Centers Inc., and Peoples National Bank for engaging in illegal payday lending transactions in the state. The parties eventually reached a settlement agreement, agreeing to end their payday lending arrangement in North Carolina; in addition, Peoples National Bank agreed to pay $175,000 in civil penalties.[457] Finally, in July 2004, consumers filed a series of lawsuits against Advance America, Check into Cash, and Check 'N Go, alleging that the lenders were exploiting poor people by luring them into quick loans that carry exorbitantly high interest rates.[458]

This regulatory uncertainty created data collection challenges in studying payday lender locations around North Carolina's important and large military installations. Because the state Commissioner of Banks has taken the position that payday lending is illegal in the state, it does not publish a list of payday lenders. However, it does maintain a list of companies licensed as check

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[451] Richard Wagner, *Court Shuts Down Payday Lender*, CAROLINA J., Dec. 15, 2003, http://www.carolinajournal.com/articles/display_story.html?id=1241.

[452] CENTER FOR RESPONSIBLE LENDING, *supra* note 449.

[453] *Id.*

[454] *Id.* Using a charter-renting arrangement, as of mid-2004, Advance America was operating 114 stores in North Carolina, generating revenues of more than $30 million per year, and two other payday lending outlets, Check 'N Go and Check Into Cash, together had one hundred stores in the state, bringing in combined revenues of $28 million every year. *See* TRIAL LAWYERS FOR PUBLIC JUSTICE, CONSUMERS FILE CLASS ACTION LAWSUITS AGAINST THREE OF NORTH CAROLINA'S LARGEST PAYDAY LENDERS, July 28, 2004, http://www.tlpj.org/pr/nc_payday_072804.htm.

[455] CENTER FOR RESPONSIBLE LENDING, *supra* note 449.

[456] *Id.*

[457] *Id.*

[458] TRIAL LAWYERS FOR PUBLIC JUSTICE, *supra* note 454.

cashers.[459] Many of the check cashers on this list are the very companies that are using charter-renting relationships with state banks to evade North Carolina's interest rate cap. However, other payday lenders that do not engage in simple check cashing are not included on this list, making it unsuitable for our purposes. Instead we painstakingly culled payday lender addresses statewide from current classified business and telephone directory listings.[460] While significantly more time-consuming than state regulatory databases, use of classified business and telephone directories is widely accepted by social scientists conducting studies similar to ours.[461]

Based on our analysis of classified directories, we estimate that 612 payday lenders currently serve North Carolina's eight million-plus people. When compared to the 2478 banks in the state, North Carolina ranks tenth of 20 states in our survey in the total number of payday lenders, and sixteenth in per capita

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[459] OFFICE OF THE COMMISSIONER OF BANKS, STATE OF NORTH CAROLINA, NORTH CAROLINA LICENSED CHECK CASHERS, https://www.nccob.org/Online/CCS/CompanyListing.aspx (last visited Oct. 17, 2005).

[460] After searching dozens of business directories and telephone directories, we found that the most reliable and extensive directory of payday lenders was to be found in several on-line directories. We would have preferred to use the BellSouth Yellow Pages, available on-line through Yahoo.com, because this directory allowed us to look up businesses under the heading "Check and Cash Advances." Unfortunately, this database did not allow us to compile a comprehensive list of payday lenders for the entire state. After some searching, we found the business database Reference USA that offered statewide listings, but unfortunately did not list the same businesses as "Check and Cash Advances," rather listing them as "Check Cashing Services." After numerous trials in which we compared the directory listings provided by both services, we became confident that the Reference USA and the BellSouth Yellow Pages listings, though categorized under different headings, were essentially the same list. We concede that some businesses in both databases may offer only check-cashing services and not loans, but clearly the vast majority of those listed in the Reference USA database are offering loans and thus we chose to use the addresses in this database as a proxy for payday lenders. We would also like to note that the use of proxy variables is a common and accepted practice among social scientists and researchers who conduct studies similar to ours. From the Reference USA database, we compiled a list of 612 businesses that we will call payday lenders. Reference USA, Category Heading: Check Cashing Services, http://www.referenceusa.com (last viewed Oct. 17, 2005). Over half of the list is comprised of national payday lenders such as Advance America and Check N' Go. One hundred additional businesses on this list have words such as "loan," "advance," "payday," or "pawn" in their names, indicating that they too are offering loans.

[461] For example, John Caskey has used a similar technique to measure growth and distribution of check cashers and pawnshops. *See* JOHN P. CASKEY, FRINGE BANKING: CHECK-CASHING OUTLETS, PAWNSHOPS, AND THE POOR 46 n.6 (1994) ("A comparison of the number of pawnshop outlets listed in the classified pages of telephone books with the number reported by state regulators shows a generally close correspondence."). Because most lenders are anxious to advertise their services, telephone directories tend to provide business lists as accurate or more so than comparable government databases.

density of payday lenders at 7.60 per 100,000. This rate is much lower than its neighbors Tennessee and South Carolina, but still above the 6.64 per 100,000 density found in Virginia, despite the fact that under state law payday lending is legal in Virginia and illegal in North Carolina. There are six military bases in North Carolina with over 4000 troops, but the Marine Corps' Camp LeJeune (30,000) and the Army's Fort Bragg (40,000) are the largest. All told there are well over 100,000 active military personnel stationed in North Carolina.

The counties with the greatest number and density of payday lenders tend to be those with significant military activity. The county with the greatest composite ranking in the state is Wayne County, home of Seymour Johnson Air Force Base. Wayne County has 113,400 persons, 30 banks, and seventeen payday lenders, which is about 8.5 more than our statistical prediction.

Craven County, where the Marine Corps Air Station at Cherry Point is housed, ranks fourth worst in the state. Cumberland County, which shares Fort Bragg and encloses Pope Air Force Base, has an estimated 32 payday lenders, ranking it third in the state for sheer volume and sixth worst out of 101 counties on our composite payday lending score. Not far behind is Onslow County, where Camp LeJeune is sited. Onslow County has 25 banks and fourteen payday lenders, which gives it a ranking of eight out of 101.

Table 19. North Carolina: Top 31 Counties Ranked by Payday Lending

Nearest Base(s)	County	Pop	Bnks	PD Lndrs	PD/100 K Pop	LQ	Rnk PD	Rnk PC	Rnk P Bnk	Cmpsit Rank	Exp PD	Obs -Exp
Seymour Johnson AFB	Wayne	113329	30	17	15.00	56.67	7	6	5	1	8.62	8.38
	Sampson	60161	16	11	18.28	68.75	14	1	3	1	4.57	6.43
	Edgecombe	55606	10	10	17.98	100.00	16	2	1	3	4.23	5.77
MCAS Cherry Point	Craven	91436	19	12	13.12	63.16	13	11	4	4	6.95	5.05
	Durham	223314	67	27	12.09	40.30	4	13	12	5	16.98	10.02
Fort Bragg, Pope AFB	Cumberland	302963	65	32	10.56	49.23	3	18	10	6	23.03	8.97
	Vance	42954	9	7	16.30	77.78	26	4	2	7	3.27	3.73
Camp LeJeune	Onslow	150355	25	14	9.31	56.00	10	24	6	8	11.43	2.57
	Pasquotank	34897	11	6	17.19	54.55	30	3	7	8	2.65	3.35
	Mecklenburg	695454	219	71	10.21	32.42	1	20	24	10	52.88	18.12
	Catawba	141685	51	16	11.29	31.37	8	15	25	11	10.77	5.23
	Rockingham	91928	30	10	10.88	33.33	16	17	19	12	6.99	3.01
	Scotland	35998	10	5	13.89	50.00	37	8	8	13	2.74	2.26
	Halifax	57370	20	7	12.20	35.00	26	12	17	14	4.36	2.64
	Beaufort	44958	17	6	13.35	35.29	30	10	16	15	3.42	2.58
	Pitt	133798	40	13	9.72	32.50	11	22	23	15	10.17	2.83
	Lenoir	59648	20	7	11.74	35.00	26	14	17	17	4.54	2.46
	Martin	25593	10	4	15.63	40.00	40	5	13	18	1.95	2.05
	Alamance	130800	42	13	9.94	30.95	11	21	27	19	9.94	3.06
	Columbus	54749	16	6	10.96	37.50	30	16	14	20	4.16	1.84
	Forsyth	306067	98	26	8.49	26.53	5	28	31	21	23.27	2.73
	Stanly	58100	18	6	10.33	33.33	30	19	19	22	4.42	1.58
	Wake	627846	211	52	8.28	24.64	2	31	37	23	47.74	4.26
	New Hanover	160307	62	15	9.36	24.19	9	23	39	24	12.19	2.81
	Robeson	123339	32	10	8.11	31.25	16	35	26	25	9.38	0.62
	Washington	13723	6	2	14.57	33.33	55	7	19	26	1.04	0.96
	Randolph	130454	45	11	8.43	24.44	14	29	38	26	9.92	1.08
	Granville	48498	9	4	8.25	44.44	40	32	11	28	3.69	0.31
	Davidson	147246	37	10	6.79	27.03	16	38	29	28	11.20	-1.20
	Nash	87420	34	8	9.15	23.53	22	25	40	30	6.65	1.35
Fort Bragg, Pope AFB	Harnett	91025	27	7	7.69	25.93	26	36	32	31	6.92	0.08

The story was much the same once we examined the numbers at the ZIP code level. It was clear that within the military counties overcrowded with payday lenders, the ZIP codes adjacent to bases were the hottest spots for payday lending. For example, Goldsboro, home to about 65,000 civilians and 4500 service persons at Seymour Johnson Air Force Base, has nineteen banks and seventeen payday lenders citywide, but the ratio is most uneven on the side of town where the main base gates are located (ZIP 27534). Here, the ratio climbs to eleven payday lenders to only four banks, and with less than 30,000 people, it is the most thickly concentrated ZIP code in the state for payday lending.

Ranking fourth highest out of 735 possible ZIP codes in North Carolina is Jacksonville (28546). This ZIP code, adjacent to Camp LeJeune, has almost 33,000 people, eight banks, and ten payday lenders—7.5 more than the population would predict based on state averages. The Marine Corps Air Base at Cherry Point is situated just up the road in Havelock. The ZIP code here (28532) ranks tenth in the state, with its three banks and six payday lenders.

Fort Bragg and Pope Air Force Base share the same general space on the west side of Fayetteville. These bases have a number of local ZIP codes with unusually high numbers and densities of payday lenders. Fayetteville's 28303 ZIP code ranks highest among the local ZIP codes, (eight of 735) with seventeen banks and twelve payday lenders for roughly 32,000 people. The other nearby ZIP code of note is 28301, which has an additional nine payday lenders, helping to make it the fourteenth worst ZIP in the state for payday lending. Another ZIP (28311) bordering the base also has more payday lenders than one would expect and together the three Fayetteville ZIP codes near the bases have 26 payday lenders, 18.3 more than the population in those ZIP codes statistically warrants.

Table 20. North Carolina: Top 30 ZIP Codes Ranked by Payday Lending

Nearby Base	ZIP	Town or City	Payday	Exp PD	Banks	PD/100K	R PD	R PC	LQ Rnk	Composite Rank
Seymour Johnson AFB	27534	GOLDSBORO	11	2.34	4	35.75	3	7	9	1
	27610	RALEIGH	14	3.32	5	32.05	1	14	8	2
	28217	CHARLOTTE	10	1.47	7	51.58	6	2	16	3
Camp LeJeune	28546	JACKSONVILLE	10	2.48	8	30.61	6	16	19	4
	27604	RALEIGH	11	2.45	13	34.07	3	10	35	5
	28205	CHARLOTTE	11	3.52	7	23.75	3	33	13	6
	28208	CHARLOTTE	9	2.72	8	25.16	10	28	20	7
Ft. Bragg/Pope AFB	28303	FAYETTEVILLE	12	2.43	17	37.47	2	4	54	8
	27703	DURHAM	7	2.44	3	21.85	14	38	11	9
MCAS Cherry Point	28532	HAVELOCK	6	2.09	3	21.86	20	37	12	10
	27886	TARBORO	5	1.23	5	30.97	34	15	21	11
	28602	HICKORY	8	2.08	11	29.21	12	19	45	12
	28358	LUMBERTON	10	2.79	14	27.22	6	22	52	13
Bragg/Pope - 5 mi	28301	FAYETTEVILLE	9	2.74	12	24.99	10	29	42	14
	27603	RALEIGH	6	2.51	2	18.16	20	52	10	15
	28212	CHARLOTTE	8	2.69	10	22.62	12	35	38	16
	27536	HENDERSON	6	1.40	9	32.61	20	13	53	17
	27870	ROANOKE RAPIDS	7	2.15	10	24.78	14	31	48	18
	27263	HIGH POINT	6	1.36	11	33.64	20	11	71	19
	28334	DUNN	6	1.76	10	25.99	20	25	58	20
	27704	DURHAM	7	2.05	12	26.00	14	24	65	20
	27601	RALEIGH	4	0.75	6	40.77	52	3	49	22
	27127	WINSTON SALEM	5	1.89	6	20.14	34	41	33	23
	28203	CHARLOTTE	3	0.77	3	29.68	73	18	21	24
	28215	CHARLOTTE	6	3.16	4	14.45	20	78	15	25
	28001	ALBEMARLE	6	2.08	10	21.97	20	36	58	26
	27892	WILLIAMSTON	4	1.19	5	25.65	52	27	36	27
	27217	BURLINGTON	5	2.61	1	14.57	34	76	7	28
Ft. Bragg/Pope AFB	28311	FAYETTEVILLE	5	2.61	3	15.12	34	71	14	29
Ft. Bragg/Pope AFB	28315	ABERDEEN	3	0.67	4	34.14	73	9	39	30
	28431	CHADBOURN	2	0.43	2	35.57	92	8	21	30

Because Fort Bragg and Pope Air Force Base together constitute one of the largest installations in the country, Fayetteville has become one of the nation's best known "military towns" and serves as an excellent site for additional analysis at the street level. When we mapped payday lenders in the region, we found roughly 36 total in Cumberland County, plus two others in a neighboring ZIP code in Harnett County, just to the north of Fort Bragg and Pope Air Force Base.[462] We were able to map the location of each payday lender, plus all 68 banks in this same region. After placing a series of one-mile buffers around the three ZIP codes that largely constitute the two bases, we counted the banks, payday lenders, and people living within each buffer zone.

As shown in Map 5, seven out of 36 payday lenders or about 20% of the payday lenders in the region were within one mile of the bases, while only five of the 68 banks (7.35%) were in that same one-mile buffer zone around the bases. Our mapping software counted eight banks either on-base or on the bases' immediate perimeter. There are no payday lenders on-base. Six additional payday lenders were between one and two miles from the bases, while only one bank was found in that zone. From two to three miles from the bases, the ratio of payday lenders to banks begins to edge back toward statewide averages with three payday lenders and six banks. Statewide there are roughly four banks to each payday lender, but in the three miles adjacent to Fort Bragg and Pope Air Force Base, the ratio is four banks to every five payday lenders.

Overall, about half of the payday lenders in the Fort Bragg region are within three miles of the base, while only about 17.5% of the banks are in that same three-mile zone. Even if we add in the on-base banks, only about 30% of the banks in the region are close to the Bragg/Pope area. There are about 90,000 people living within three miles of a base and, on average, 16% of this population is military. If this area conformed to state-wide averages, there should be less than seven payday lenders for this population, nine fewer than what we found in this three-mile zone around the Base. According to our statistical measures, those nine extra payday lenders next to the bases are enough to serve 120,000 additional North Carolinians. Outside the three mile buffer, there remains additional payday lending capacity, with at least six of the 21 remaining area payday lenders just beyond the three mile circumferential border used in our study.

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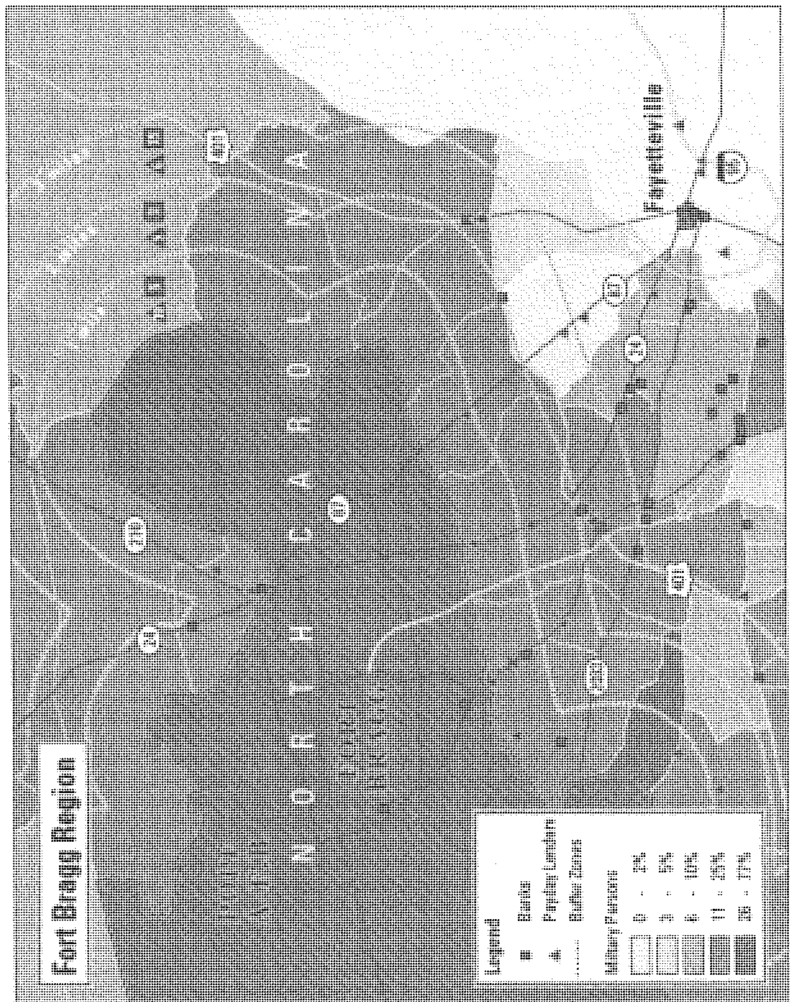
[462] A listing of addresses for the Fayetteville region listed under "Check and Cash Advance" was downloaded from Yellow Pages and cross-checked against the database of check cashers. We found all but two of the entries matched, boosting our confidence in the accuracy of our proxy variable.


Fort Bragg Region
N O R T H C A R O L I N A
Fayetteville
Legend

13. *Ohio*

In Ohio, unless otherwise authorized by law, charging interest in excess of 25% per annum is criminal usury, which is a fourth degree felony.[463] However, the Ohio legislature has passed legislation protecting licensed payday lenders from the criminal law statute.[464] Licensed Ohio payday lenders are authorized to charge interest of five percent per month[465] in addition to an "origination fee" of ten percent,[466] which is the effective equivalent of an annual rate of interest of 390%.[467] Further, payday lenders may also charge defaulting borrowers returned check fees[468] and check collection fees.[469] The statute forbids allowing payday loans to extend beyond a term of six months, the longest duration of any state included in our survey.[470] The statute also includes a prohibition of entering into a payday loan transaction for the purpose of "retiring" an existing loan, but only as between the original two parties.

While Ohio's large population and relatively lax payday lending regulation is reflected by the large number of payday lenders (1042),[471] the state does not have a great density of payday lenders (9.18 per 100,000 residents), nor does it have a sizeable number of military facilities. Wright-Patterson Air Force Base near Dayton, Ohio is the only significant active military installation in the state. This base is large and touches at least three other counties. The off-base population is widely scattered throughout the four-county region. Among those counties bordering Wright-Patterson, only Greene County ranks in the top ten in payday lending. Only Montgomery County ranks high in any of the statistical categories we examined, and only in terms of the total number of payday lenders (165), but given its population of over a half million people, this number is about what we expected statistically.

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463 OHIO REV. CODE ANN. §§ 2905.21(H), 2905.22 (West 2004).

464 *Id.* §§ 1315.36–1315.38.

465 *Id.* § 1315.39(B). Specifically, the lender may charge five percent interest "per month *or fraction of a month* on the unpaid principal." *Id.* § 1315.39(B) (emphasis added).

466 *Id.* § 1315.40(A). The ten percent rate is allowed for loans under $500; if a loan exceeds $500, the interest rate is capped at 7.5 percent.

467 Assuming an average loan duration of fourteen days, a 15% fee (including the interest and the origination fee) equates to an annual interest rate of 390%.

468 OHIO REV. CODE ANN. § 1315.40(B) (West 2004). Returned check fees are the actual fees charged by the lender's bank for a returned check. *Id.*

469 *Id.* § 1315.40(B). Check collection fees are additional fees, not to exceed $20, that a lender may charge a borrower for the inconvenience of depositing a worthless check. *Id.*

470 *Id.* § 1315.39(A)(2).

471 OHIO DIVISION OF FINANCIAL INSTITUTIONS, OHIO CHECK LENDERS (Dec. 12, 2003) (on file with author) (provided by mail on authors' request).

Table 21. Ohio: Top 30 Counties Ranked by Payday Lending

Nearest Base(s)	County	Pop	Bnks	PD Lndrs	PD/100 K Pop	LQ	Rnk PD	Rnk PC	Rnk P Bnk	**Cmpsit Rank**	Exp PD	Obs -Exp
	Lawrence	62319	21	12	19.26	57.14	22	4	3	1	5.69	6.31
	Guernsey	40792	13	9	22.06	69.23	29	1	2	2	3.72	5.28
	Tuscarawas	90914	39	15	16.50	38.46	15	12	14	3	8.30	6.70
	Seneca	58683	20	10	17.04	50.00	27	11	6	4	5.36	4.64
	Allen	108473	39	15	13.83	38.46	15	15	14	4	9.90	5.10
	Fayette	28433	8	6	21.10	75.00	42	2	1	6	2.59	3.41
	Gallia	31069	11	6	19.31	54.55	42	3	5	7	2.84	3.16
	Washington	63251	35	12	18.97	34.29	22	5	24	8	5.77	6.23
Closed Newark AFB	Licking	145491	44	17	11.68	38.64	13	26	13	9	13.28	3.72
Wright-Patterson AFB	Greene	147886	40	17	11.50	42.50	13	30	12	10	13.50	3.50
	Mahoning	257555	82	30	11.65	36.59	8	28	20	11	23.51	6.49
	Scioto	79195	21	10	12.63	47.62	27	22	8	12	7.23	2.77
	Clinton	40543	16	7	17.27	43.75	39	9	10	13	3.70	3.30
	Ross	73345	21	9	12.27	42.86	29	23	11	14	6.69	2.31
	Stark	378098	116	41	10.84	35.34	7	35	21	14	34.51	6.49
Wright-Patterson AFB	Miami	98868	39	13	13.15	33.33	18	19	27	16	9.02	3.98
	Hocking	28241	9	5	17.70	55.56	53	8	4	17	2.58	2.42
	Jackson	32641	16	6	18.38	37.50	42	6	17	17	2.98	3.02
	Pike	27695	10	5	18.05	50.00	53	7	6	19	2.53	2.47
	Muskingum	84585	32	11	13.00	34.38	26	20	23	20	7.72	3.28
	Belmont	70226	41	12	17.09	29.27	22	10	37	20	6.41	5.59
	Fairfield	122759	34	13	10.59	38.24	18	37	16	22	11.20	1.80
	Champaign	38890	16	6	15.43	37.50	42	13	17	23	3.55	2.45
	Franklin	1068978	294	100	9.35	34.01	1	47	25	24	97.56	2.44
	Richland	128852	47	15	11.64	31.91	15	29	31	25	11.76	3.24
	Lucas	455054	127	43	9.45	33.86	6	45	26	26	41.53	1.47
	Trumbull	225116	74	23	10.22	31.08	9	38	32	27	20.55	2.45
	Crawford	46966	21	7	14.90	33.33	39	14	27	28	4.29	2.71
	Van Wert	29659	9	4	13.49	44.44	58	17	9	29	2.71	1.29
	Huron	59487	27	8	13.45	29.63	34	18	34	30	5.43	2.57

At the ZIP code level, the picture remains cloudy. For example, Fairborn (ZIP 45324), which is Wright-Patterson's "gateway town," ranks fifty-third among Ohio's 1016 ZIP codes because it has ten banks and seven payday lenders for its nearly 40,000 people including those on-base. Just across U.S. 35 lies Dayton's 45420 ZIP code. It ranks twenty-third in the state with seven banks and six lenders for its 25,000 people. Otherwise, the ZIP codes surrounding Wright-Patterson are statistically unremarkable.

Table 22. Ohio: Top 30 Zip Codes Ranked by Payday Lenders

Nearby Base	ZIP	Town or City	Payday Lenders	Exp. PD	Banks	PD/100K	Rank PD	Rank PC	Rank LQ	Composite Rank
	43213	COLUMBUS	13	2.69	11	44.08	1	9	21	**1**
	44310	AKRON	9	2.19	6	37.48	5	14	15	**2**
	43912	BRIDGEPORT	7	0.70	5	91.83	20	2	17	**3**
	44906	MANSFIELD	8	1.59	8	45.88	11	7	22	**4**
	44320	AKRON	8	2.16	3	33.84	11	22	9	**5**
	44137	MAPLE HEIGHTS	9	2.38	7	34.52	5	21	18	**6**
	43616	OREGON	7	1.51	8	42.28	20	11	44	**7**
	44708	CANTON	7	2.35	7	27.17	20	41	22	**8**
	43952	STEUBENVILLE	8	1.87	11	39.00	11	13	70	**9**
	43725	CAMBRIDGE	7	1.93	9	33.03	20	24	61	**10**
	44683	UHRICHSVILLE	4	0.80	3	45.79	83	8	19	**11**
	43229	COLUMBUS	12	4.18	15	26.21	2	46	64	**12**
	44709	CANTON	6	1.76	7	31.03	38	29	46	**13**
	44515	YOUNGSTOWN	8	2.54	11	28.70	11	33	70	**14**
	43612	TOLEDO	7	2.89	7	22.13	20	73	22	**15**
	44306	AKRON	6	2.31	4	23.65	38	64	16	**16**
	43160	WASHINGTON COURT HOUSE	6	2.01	7	27.19	38	39	46	**17**
	45255	CINCINNATI	6	2.09	7	26.21	38	45	46	**18**
Wright Patterson AFB-9 mi	45449	DAYTON	6	1.81	8	30.19	38	30	65	**19**
	45662	PORTSMOUTH	8	2.84	11	25.70	11	52	70	**19**
	44483	WARREN	7	2.65	9	24.15	20	59	61	**21**
	45690	WAVERLY	5	1.30	7	34.98	55	20	68	**22**
Wright Patterson AFB	45420	DAYTON	6	2.31	7	23.71	38	63	46	**23**
	44505	YOUNGSTOWN	7	2.04	12	31.29	20	26	101	**23**
	44123	EUCLID	5	1.69	6	27.03	55	43	51	**25**
	45669	PROCTORVILLE	4	0.94	5	39.01	83	12	55	**26**
	45210	CINCINNATI	3	0.88	1	31.21	114	27	10	**27**
	44112	CLEVELAND	6	3.05	2	17.95	38	106	8	**28**
	43078	URBANA	6	1.91	10	28.68	38	34	86	**29**
Wright Patterson AFB-7 mi	45504	SPRINGFIELD	5	1.79	6	25.47	55	53	51	**30**
	43113	CIRCLEVILLE	6	2.16	8	25.30	38	56	65	**30**

The street-level analysis done for Wright-Patterson did, however, show some greater clustering around the base that the other resolutions did not. In the three-mile buffer zone around the base, we found 21 of the 75 payday lenders in the tri-county region. This is 28% of the region's payday lenders, but only ten percent (25 of 242) of the region's banks are found in the same three-mile buffer zone. In the first two miles from base, the ratio of payday lenders to banks is twelve to eight. We have documented similarly uneven ratios in other states, but in Ohio such an imbalance is actually quite rare. Of the 1016 ZIP code regions in Ohio, only 38 have more payday lenders than banks, and of those, only one in Akron has a greater imbalance between payday lending and banks than the two-mile radius around Wright-Patterson. By taking the number of people in the three-mile buffer, plus those living on-base, we can estimate that there should be about 14.5 payday lenders there, which is roughly seven *fewer* than what we actually found in the three miles surrounding Wright-Patterson. Because the banks, payday lenders, and population are split into numerous ZIP codes, the pattern we normally see at the ZIP code level is diluted. If, however, the near-base neighborhoods were collapsed into a single ZIP code, surely it would be one of the worst in Ohio.

14. *Oklahoma*

In Oklahoma, payday lenders are licensed and regulated under the state's Deferred Deposit Loan Act (DDLA).[472] The Oklahoma DDLA authorizes payday lenders to charge a fee of $15 for every $100 loaned up to the first $300.[473] Assuming a fourteen-day loan of an amount within this range, the statute allows an effective annual interest rate of 390%. The DDLA further allows lenders to charge an additional returned check fee of $25.[474] Initial loan terms are limited to between twelve and 45 days.[475] The DDLA prohibits any renewal or rollover of a payday loan.[476] But, the Act also allows lenders to make two payday loans to a given borrower at one time, suggesting that the prohibition

[472] OKLA. STAT. tit. 59, §§ 3101–19 (Supp. 2005).

[473] *Id.* § 3108. For payday loans of more than $300, the lender can charge an additional $10 for every $100 advance in excess of $300. *Id.*

[474] *Id.* § 3108(B).

[475] *Id.* § 3106(8). However, a loan term may exceed 45 days if the debtor has entered into an installment payment plan.

[476] *Id.* § 3109(A). A renewal is defined as a transaction in which the borrower refinances all or part of the unpaid balance of a payday loan with the proceeds of a new payday loan, regardless of whether the new payday loan is extended by the same or a different lender. *Id.* § 3102(16). A renewal is further defined as a payday loan made within thirteen days after a previous payday loan has been entered into between the lender and the borrower. OKLA. STAT. tit. 59, § 3109(C).

on rollovers may be unenforceable.[477] To verify that a borrower has no more than two outstanding loans, every payday lender must require the borrower to sign an affidavit, and then the lender must "verify the accuracy of the affidavit" by searching through the lender's own records and by searching through an on-line database managed by a government contractor.[478] The DDLA also regulates "consecutive" payday loans, which are defined as loans extended to a borrower no later than seven days after the date on which a previous loan was fully paid off by that borrower.[479] The Act allows a borrower to pay the fourth loan in a series of consecutive payday loans through means of an installment payment plan for which the lender can charge no more than $15.[480] If a borrower has entered into five consecutive payday loans, the DDLA mandates that the borrower wait until at least 8:00 a.m. on the second business day after the fifth loan has been fully repaid before entering into his or her next payday loan transaction.[481] Finally, the Act also establishes the regulatory revolving fund, which is intended to be used to pay claims filed by aggrieved Oklahoma consumers.[482]

Under this regulation, Oklahoma has developed about 407 payday lenders[483] and about 1241 banks. This is about 11.8 payday lenders per 100,000 people, which is somewhere in the middle of the survey. The pattern of payday lending statewide is disproportionately focused in the state's two metropolitan counties. Together, Tulsa County and Oklahoma County have about one-third of the population but about one-half of the payday lenders. Oklahoma County is home

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[477] Oklahoma consumer advocates complain that Oklahoma's DDLA has not prevented chronic borrowing:

> Since the Oklahoma Deferred Deposit Lending Act became effective September 1, 2003, the average Oklahoma payday loan customer is borrowing at a pace of a little over one payday loan per month, which equals 13 loans a year. During the four month period August-November, 2004, most payday borrowers (77%) had taken out consecutive loans, and 36.4% had taken out 3 or more consecutive loans.

COMMUNITY ACTION PROJECT, PAYDAY LENDING: SB 892 WILL HELP PROTECT CONSUMERS, http://www.captc.org/pubpol/Payday_Lending/SB892_IssueBrief.pdf (last visited Oct. 17, 2005).

[478] OKLA. STAT. tit. 59, § 3109(B)(2) (Supp. 2005); Steve Kanigher, *Florida, Oklahoma Databases Reduce Loans Per Customer*, LAS VEGAS SUN, Mar. 6, 2005, at D4. The database is funded by a $0.46 assessment charged to lenders for every payday loan transaction. *Id.*

[479] OKLA. STAT. TIT. 59, § 3102(4) (Supp. 2005).

[480] *Id.* §§ 3104(E), 3109(D).

[481] *Id.* § 3110.

[482] *Id.* §§ 3118–19. The fund is funded by payday lender license fees, examination fees, and application fees, as well as a $0.05 charge assessed to payday lenders for every loan transaction entered into. *Id.* §§ 3118–19 (Supp. 2005).

[483] STATE OF OKLAHOMA, DEPARTMENT OF CONSUMER CREDIT, DEFERRED DEPOSIT LENDER ROSTER, http://www.okdocc.state.ok.us/ROSTERS/rosterDDL.pdf (last visited Oct. 17, 2005).

to Tinker Air Force Base. Garfield County, home of Vance Air Force Base, ranks tenth in the state on our composite scale, and Comanche County, where Fort Sill is located, ranks twenty-third of 77 counties. Muskogee County, which does not have a military base, ranks first in our composite scale, and no obvious causal variables can be found for this anomalous statistical condition.

Table 23. Oklahoma: Top 30 Counties Ranked by Payday Lending

Nearest Base(s)	County	Pop	Bnks	PD Lndrs	PD/100 K Pop	LQ	Rnk PD	Rnk PC	Rnk P Bnk	**Cmpsit Rank**	Exp PD	Obs -Exp
	Muskogee	69451	24	13	18.72	54.17	4	3	4	1	8.19	4.81
Tinker AFB	OK	660448	226	107	16.20	47.35	1	6	7	2	77.90	29.10
	Bryan	36534	11	7	19.16	63.64	11	2	1	2	4.31	2.69
	Tulsa	563299	183	90	15.98	49.18	2	7	6	4	66.44	23.56
	Rogers	70641	16	10	14.16	62.50	5	13	2	5	8.33	1.67
	Cherokee	42521	14	7	16.46	50.00	11	5	5	6	5.02	1.98
	Okmulgee	39685	11	6	15.12	54.55	14	11	3	7	4.68	1.32
	Kay	48080	25	8	16.64	32.00	7	4	23	8	5.67	2.33
	Payne	68190	20	8	11.73	40.00	7	24	8	9	8.04	-0.04
Vance AFB	Garfield	57813	24	8	13.84	33.33	7	16	18	10	6.82	1.18
	Delaware	37077	13	5	13.49	38.46	19	17	10	11	4.37	0.63
	Washington	48996	16	6	12.25	37.50	14	21	12	12	5.78	0.22
	Mayes	38369	13	5	13.03	38.46	19	20	10	13	4.53	0.47
	Pontotoc	35143	15	5	14.23	33.33	19	12	18	13	4.15	0.85
	Marshall	13184	5	2	15.17	40.00	32	10	8	15	1.56	0.44
	Pottawatomie	65521	19	7	10.68	36.84	11	27	13	16	7.73	-0.73
Tinker AFB	Cleveland	208016	50	17	8.17	34.00	3	34	17	17	24.54	-7.54
	Cimarron	3148	3	1	31.77	33.33	39	1	18	18	0.37	0.63
	Logan	33924	11	4	11.79	36.36	22	23	14	19	4.00	0.00
	Stephens	43182	22	6	13.89	27.27	14	15	30	19	5.09	0.91
Altus AFB	Jackson	28439	13	4	14.07	30.77	22	14	24	21	3.35	0.65
	Canadian	87697	28	8	9.12	28.57	7	30	25	22	10.34	-2.34
Fort Sill	Comanche	114996	35	10	8.70	28.57	5	33	25	23	13.56	-3.56
	Carter	45621	23	6	13.15	26.09	14	19	31	24	5.38	0.62
	Murray	12623	7	2	15.84	28.57	32	8	25	25	1.49	0.51
	Custer	26142	18	4	15.30	22.22	22	9	34	25	3.08	0.92
	Osage	44437	11	4	9.00	36.36	22	31	14	27	5.24	-1.24
	Sequoyah	38972	12	4	10.26	33.33	22	28	18	28	4.60	-0.60
	Creek	67367	21	6	8.91	28.57	14	32	25	29	7.95	-1.95
	Wagoner	57491	11	4	6.96	36.36	22	39	14	30	6.78	-2.78

Examining the data at the ZIP code level produces a clearer picture of the pattern of payday lending around military bases. The ZIP code next to Tinker Air Force Base (73110) has nine payday lenders, which ties it for third most in the state and gives it almost five more payday lenders than one could expect given the local population. Overall, ZIP code 73110 ranks ninth worst out of 591. Ranking tenth worst on our composite ranking is another ZIP code near Tinker Air Force Base (73115), which has six additional payday lenders. The other military installations in Oklahoma have lower numbers and densities of payday lenders than we have documented elsewhere. Fort Sill's adjacent ZIP code has seven payday lenders, which is two more than one would expect given the population, but if one were to include the numbers from Fort Sill proper, the combined number would be about on target. Phone interviews conducted with financial advisors at Fort Sill suggested very strongly that the state of Oklahoma's registry of payday lenders is incomplete and that many of the nearby payday lenders are operating without licenses. A survey of the phone book listings in Fort Sill's gateway town of Lawton revealed fourteen payday lenders, of which only five were on the state's list of licensees for Lawton. Moreover, five payday lenders that were on the state's list of payday lenders could not be found in the phone book. By combining the lists and taking care not to double count those on both lists, the total number of payday lenders in Lawton stands at nineteen. A representative with the Consumer Credit Counseling Service in Oklahoma estimated that 20 or more payday lenders operated in Lawton as of January 2005.[484]

[484] Telephone Interview with Jennifer Delacamp, Lawton Area Supervisor, Consumer Credit Counseling of Oklahoma, in Oklahoma City, Okla. (Jan. 19, 2005).

Table 24. Oklahoma: Top 30 Zip Codes Ranked by Payday Lending

Nearby Base	ZIP	Town or City	Payday	Exp PD	Banks	PD/100K	R PD	R PC	LQ Rank	Composite Rank
	74145	TULSA	11	2.10	1	61.70	1	1	2	**1**
	74129	TULSA	8	2.09	0	45.25	7	3	1	**2**
Tinker- 6 miles	73119	OKLAHOMA CITY	10	3.22	5	36.62	2	7	9	**3**
Tinker-7 miles	73107	OKLAHOMA CITY	9	2.93	9	36.17	3	10	22	**4**
	74115	TULSA	7	2.79	2	29.62	10	17	8	**4**
	74105	TULSA	9	3.44	7	30.83	3	15	17	**4**
	74701	DURANT	7	2.27	7	36.40	10	9	22	**7**
	74403	MUSKOGEE	8	3.56	6	26.47	7	26	16	**8**
Tinker AFB	73110	OKLAHOMA CITY	9	4.07	8	26.11	3	27	21	**9**
Tinker AFB	73115	OKLAHOMA CITY	6	2.59	4	27.30	17	22	14	**10**
Tinker AFB- 5 mi	73139	OKLAHOMA CITY	7	1.92	9	43.02	10	5	39	**11**
	74075	STILLWATER	5	2.12	3	27.83	23	21	12	**12**
	74804	SHAWNEE	5	2.27	3	25.98	23	28	12	**13**
	74464	TAHLEQUAH	7	2.52	10	32.73	10	13	46	**14**
	74361	PRYOR	4	1.51	4	31.24	34	14	22	**15**
	74006	BARTLESVILLE	6	2.83	6	25.01	17	31	22	**15**
Tinker AFB- 6 mi	73106	OKLAHOMA CITY	4	1.85	2	25.50	34	29	10	**17**
	73132	OKLAHOMA CITY	9	2.94	15	36.14	3	11	62	**18**
	74112	TULSA	5	2.69	4	21.96	23	43	19	**19**
	74601	PONCA CITY	6	2.41	10	29.38	17	18	53	**20**
	73127	OKLAHOMA CITY	5	3.02	4	19.54	23	55	19	**21**
	73122	OKLAHOMA CITY	3	1.59	2	22.29	47	40	15	**22**
	74146	TULSA	5	1.69	10	34.83	23	12	68	**23**
	74344	GROVE	4	1.55	7	30.49	34	16	54	**24**
	74107	TULSA	4	2.36	3	19.98	34	52	18	**24**
	73116	OKLAHOMA CITY	4	1.11	9	42.31	34	6	70	**26**
Tinker AFB	73160	OKLAHOMA CITY	7	4.81	8	17.15	10	65	37	**27**
	73128	OKLAHOMA CITY	1	0.26	1	44.84	90	4	22	**28**
	74116	TULSA	1	0.43	0	27.27	90	23	3	**28**
	74033	GLENPOOL	2	0.98	2	24.03	63	33	22	**30**
Ft. Sill	73503	LAWTON	7	5.41	11	15.25	10	72	62	**39**
Tinker AFB	73149	OKLAHOMA CITY	1	0.69	0	17.20	90	64	3	**52**

15. *South Carolina*

Payday lenders in South Carolina operate under the authority of the South Carolina Deferred Presentment Services Act (SCDPSA).[485] Under the Act, licensed payday lenders may assess a maximum fee of 15% of the face amount of the check,[486] which equates to an annual percentage interest rate of 459%.[487] Lenders may issue a loan with a maximum duration of 31 days.[488] The loan may not be issued for the purpose of paying off another payday loan from the same lender,[489] nor may a lender renew a payday loan.[490]

With over 900 payday lenders[491] but just over four million people, South Carolina has one of the heaviest densities of payday lenders in the country at over 22 per 100,000 people. South Carolina is home to Advance America Cash Advance Centers, Inc., one of the largest payday lenders in the country.[492] Advance America operates nearly 2300 storefronts in 34 states and makes more than 1.5 million loans per year.[493] In December of 2004, the company raised $322.5 million in an initial public offering on the New York Stock Exchange.[494] South Carolina is also home to three significant military bases: the Fort Jackson Army Base, Shaw Air Force Base, and the Beaufort/Parris Island Marine Corps complex.

Our data, mapped at the county level, revealed that counties with a significant military presence had comparatively high numbers and densities of payday lenders. Richland County, home to the Army's Fort Jackson had the most payday lenders among all counties statewide. Third on this list was Charleston County, where Charleston Air Force Base is located.

Though not high on the list of total payday lenders, Sumter County, home to Shaw Air Force Base, still had 13.5 more payday lenders than its population

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[485] S.C. CODE ANN. §§ 34-39-110 to 34-39-260 (Supp. 2004).

[486] *Id.* § 34-39-180(E).

[487] The SCDPSA allows a fee of 15%, which equates to a fee of $17.65 for every $100 loaned. Assuming an average loan duration of fourteen days, the Act authorizes an effective APR of 459%.

[488] S.C. CODE ANN. § 34-39-180(A) (Supp. 2004).

[489] *Id.* § 34-39-180(F).

[490] *Id.*

[491] STATE OF SOUTH CAROLINA, STATE BOARD OF FINANCIAL INSTITUTIONS, DEFERRED PRESENTMENT SERVICES LICENSEES (Dec. 12, 2003) (on file with authors) (mailed to authors by request).

[492] Ieva M. Augstums, *Dallas-Area Companies Expand as Payday Lending Goes Mainstream*, DALLAS MORNING NEWS, Jan. 4. 2005.

[493] *Id.*

[494] *Id.*

would suggest, making it the third worst on a per capita basis. Sumter also ranks first in the ratio of payday lenders to banks in the state (37 to 15), giving it the worst overall ranking in the state for payday lending. Although Aiken County does not contain a military base, it had seven payday lenders beyond what one would expect, enough to serve an additional 31,000 plus people. It also has five more payday lenders than banks in the county, giving it overall the third worst record in the state. After zooming out from the map, a strong rationale for the odd number of payday lenders in Aiken County becomes evident: it is just a few miles away from the 10,000 troops stationed across the Georgia border at the Fort Gordon Army Base.

Table 25. South Carolina: Top 25 Counties Ranked by Payday Lending, Plus Selected Military Counties

Nearest Base(s)	County	Pop	Bnks	PD Lndrs	PD/100 K Pop	LQ	Rnk PD	Rnk PC	Rnk P Bnk	Cmpsit Rank	Exp PD	Obs -Exp
Shaw AFB	Sumter	104646	18	37	35.36	205.56	10	2	1	1	23.50	13.50
	Florence	125761	53	47	37.37	88.68	5	1	14	2	28.24	18.76
Fort Gordon, GA-10 mi	Aiken	142552	34	39	27.36	114.71	8	11	8	3	32.01	6.99
	Kershaw	52647	13	16	30.39	123.08	15	7	6	4	11.82	4.18
MC Beaufort (AS Parris Is) 6 mi	Colleton	38264	11	13	33.97	118.18	19	3	7	5	8.59	4.41
	Greenwood	66271	25	22	33.20	88.00	14	4	15	6	14.88	7.12
	Clarendon	32502	6	10	30.77	166.67	26	6	2	7	7.30	2.70
	Orangeburg	91582	25	24	26.21	96.00	13	13	12	8	20.57	3.43
	Greenville	379616	154	104	27.40	67.53	1	10	29	9	85.25	18.75
Fort Jackson	Richland	320677	97	72	22.45	74.23	2	21	20	10	72.02	-0.02
	Cherokee	52537	13	13	24.74	100.00	19	15	9	10	11.80	1.20
	Chester	34068	7	9	26.42	128.57	28	12	4	12	7.65	1.35
	Williamsburg	37217	12	11	29.56	91.67	23	8	13	12	8.36	2.64
	Anderson	165740	60	42	25.34	70.00	6	14	26	14	37.22	4.78
	Spartanburg	253791	77	56	22.07	72.73	4	22	21	15	57.00	-1.00
Charleston AFB, NWS	Berkeley	142651	21	27	18.93	128.57	12	32	4	16	32.04	-5.04
	Lancaster	61351	9	13	21.19	144.44	19	26	3	16	13.78	-0.78
	Saluda	19181	6	6	31.28	100.00	34	5	9	16	4.31	1.69
	Newberry	36108	13	10	27.69	76.92	26	9	19	19	8.11	1.89
	Darlington	67394	22	16	23.74	72.73	15	18	21	19	15.14	0.86
Charleston AFB, NWS	Charleston	309969	112	68	21.94	80.71	3	23	34	21	69.61	-1.61
	Laurens	69567	16	14	20.12	87.50	18	29	16	22	15.62	-1.62
	Marlboro	28818	9	7	24.29	77.78	32	16	17	23	6.47	0.53
	Union	29881	9	7	23.43	77.78	32	19	17	24	6.71	0.29
	York	164614	44	31	18.83	70.45	11	33	25	25	36.97	-5.97
Charleston AFB, NWS	Dorchester	[illegible]	27	11	11.41	40.74	[illegible]	[illegible]	40	[illegible]	[illegible]	[illegible]
MC Beaufort (AS Parris Is)	Beaufort	[illegible]	[illegible]	8	[illegible]	13.11	[illegible]	42	44	42	[illegible]	[illegible]
MC Beaufort (AS Parris Is)	Jasper	[illegible]	[illegible]	[illegible]	0.00	0.00	45	[illegible]	45	[illegible]	[illegible]	[illegible]

The analysis of payday lending at the ZIP code level produced a pattern mimicking what we found at the county level. The ZIP code ranked first in the state for payday lending is Sumter (29150), which has 30 payday lenders and sixteen banks for just over 38,000 people. Statistically, one would expect to find about ten payday lenders in a ZIP code this size, even including the 5000 plus Air Force personnel stationed at Shaw Air Force base in the adjacent ZIP code.

ZIP codes within five miles of Fort Jackson's borders also stand out. West Columbia (29169) ranks third worst in the state, Columbia (29210) ranks sixth and Columbia (29223) also scores poorly with excess capacity. Together these three ZIP codes have 48 payday lenders and only 28 banks. Adjacent to Charleston Air Force Base is North Charleston (21624), which has fifteen payday lenders, and only seven banks. This is 10.14 payday lenders above the number expected and makes this ZIP code the fifth worst in the state. The second worst ZIP code in South Carolina is North Augusta (29841), the ZIP code closest to Fort Gordon in Augusta, Georgia. Home to less than 30,000 people, North Augusta has eighteen payday lenders, more than eleven beyond statistical expectations for the population.

The Beaufort/Parris Island area deserves some notice as well. Beaufort ZIP code 29906, with four payday lenders and no banks, ranks highest in the state in terms of payday lenders per bank, and seven of the eight payday lenders in the county are within three miles of the Marine Corps Air Station. Still, our statistical analysis does not reveal the concentration of payday lending found near Marine bases elsewhere in our study. The local context provides some additional explanation that bears mentioning. Beaufort County has an unusually large number of banking facilities, more than double what is statistically expected for the population there. Much of that is due to the large excess of banks in the luxury resort town of Hilton Head. The density of banking reduces the overall ranking calculated for Beaufort County. The other likely factor in the moderate number of payday lenders in the area is the complete absence of this activity near the Marine Corps' training facility at Parris Island. This is surely due to the Marines' exceptional restrictions upon their boot-camp trainees, including a prohibition against having private automobiles while at Parris Island.

Table 26. South Carolina: Top 30 ZIP codes Ranked by Payday Lending

Nearby Base	ZIP	Town or City	Payday Lenders	Exp. PD	Banks	PD/100K	Rank PD	Rank PC	Rank LQ	Composite Rank
Shaw AFB	29150	SUMTER	30	8.80	16	78.41	1	3	17	1
Ft. Gordon, GA 10 mi	29841	NORTH AUGUSTA	18	6.69	7	60.41	4	9	14	2
Ft. Jackson-4mi	29169	WEST COLUMBIA	18	4.76	9	84.95	4	2	24	3
	29649	GREENWOOD	14	5.28	3	59.63	11	12	11	4
Charleston AFB	29418	N. CHARLESTON	15	4.86	7	69.37	9	4	23	5
Ft. Jackson-4mi	29210	COLUMBIA	17	7.85	8	48.68	6	22	20	6
	29020	CAMDEN	13	4.85	7	60.25	13	10	30	7
	29609	GREENVILLE	15	6.55	8	51.45	9	19	29	8
	29505	FLORENCE	11	4.20	5	58.78	21	13	25	9
	29115	ORANGEBURG	17	6.63	12	57.61	6	14	39	9
	29102	MANNING	9	3.54	3	57.06	38	15	15	11
	29303	SPARTANBURG	12	5.66	6	47.63	16	25	27	11
	29611	GREENVILLE	12	6.31	5	42.73	16	34	18	11
	29306	SPARTANBURG	11	3.59	9	68.90	21	5	53	14
	29625	ANDERSON	10	5.28	4	42.52	25	35	19	14
	29301	SPARTANBURG	14	6.55	11	48.03	11	23	45	14
Charleston AFB	29405	N. CHARLESTON	12	7.02	6	38.43	16	39	27	17
	29678	SENECA	10	4.30	8	52.28	25	18	49	18
	29560	LAKE CITY	8	3.01	5	59.69	45	11	38	19
Charleston AFB-4 mi	29407	CHARLESTON	17	8.20	17	46.58	6	27	63	20
	29706	CHESTER	9	4.72	4	42.86	38	33	26	21
Ft. Jackson	29206	COLUMBIA	10	4.71	8	47.66	25	24	39	22
	29607	GREENVILLE	21	6.96	24	67.80	2	6	92	23
	29720	LANCASTER	13	9.90	5	29.51	13	74	16	24
	29108	NEWBERRY	10	4.41	9	50.99	25	20	60	25
	29624	ANDERSON	6	3.55	1	37.99	54	42	12	26
NWS Charleston	29461	MONCKS CRNER	10	5.30	6	42.37	25	36	49	27
	29488	WALTERBORO	11	5.35	10	46.20	21	28	61	27
	29662	MAULDIN	7	2.33	7	67.46	47	7	63	29
	29605	GREENVILLE	12	7.03	12	38.33	16	40	63	30
MCAS Beaufort	29906	BEAUFORT	4	4.88	0	18.43	69	105	1	52

16. *South Dakota*

South Dakota law imposes few restrictions on payday lenders operating within its borders. Lenders must be licensed with the state[495] and they may not enter into payday loan transactions with borrowers who already have an outstanding payday loan.[496] Further, a payday loan may not be renewed more than four times.[497] However, beyond these minimal requirements, South Dakota imposes no limits on the duration of payday loans[498] and no maximum interest rate so long as the parties establish the interest rate in a written agreement.[499] Similar in many respects to Delaware, South Dakota is a state with a small population (755,000), a single Air Force base (Ellsworth), and a laissez faire lending and taxation tradition. Despite its sparse population, South Dakota has 448 banks and 175 payday lenders.[500] South Dakota has the highest number of banks per capita in the survey and the second highest density of payday lenders per capita (23.18 per 100,000) among the states in our survey. It is possible that the banking density can be seen partly as a manifestation of the number of banks that operate in South Dakota for taxation purposes only. It is also partly a result of so many very small communities with multiple, very small banking operations. The density of payday lending statewide may also be partly a result of these conditions. At least seven South Dakota banks are currently renting their charters to lenders in states with more restrictive payday lending laws.[501]

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[495] S.D. CODIFIED LAWS § 54-4-40 (Supp. 2003).

[496] *Id.* § 54-4-65.

[497] *Id.*

[498] Payday loans are referred to as "small, short-maturity loan[s] on the security of a check." *Id.* § 54-4-36(12).

[499] *Id.* § 54-3-1.1.

[500] STATE OF SOUTH DAKOTA, DEPARTMENT OF REVENUE AND REGULATION, DIVISION OF BANKING, LIST OF LICENSEES, http://www.state.sd.us/drr2/reg/bank/licensee.htm (last visited Oct. 17, 2005).

[501] Joe Mahon, *Banking on the Fringe: Payday and Title Loans Continue to be Popular, and States Continue to Seek Tougher Regulation for an Industry Adept at Finding Ways to Grow*, FEDGAZETTE, July 2004, http://minneapolisfed.org/pubs/fedgaz/04-07/banking.cfm. Some state officials around the country are challenging South Dakota-based lenders for violating their own state usury laws. For example, Arkansas Attorney General Mike Beebe is investigating two lenders based in South Dakota, Mount Rushmore Loan Co. and Dakota Loan Co., for entering into payday loan transactions carrying interest rates far in excess of the Arkansas constitutional usury limit. *Arkansas AG Investigating Payday Lenders, Including 2 From S.D.*, PRESS & DAKOTAN (Yankton, S.D.), Jan. 21, 2005. Similarly, the Georgia Attorney General's office is pursuing legal action against South Dakota-based Bank West for violations of Georgia's payday lending law. Mahon, *supra* note 501.

Pennington County, which contains the majority of Ellsworth Air Force Base, ranks first in the state for payday lending. It has almost 90,000 residents, 28 banks, and 40 payday lenders. This is about 21 more payday lenders than the population of 90,000 people would suggest, even in South Dakota where densities are high. Pennington County, with 12% of the population, has 23% of the state's payday lenders. It may be tempting to speculate that Pennington County's American Indian population is another possible causal variable; however, because this county is only about seven percent Native American, one of the lower rates in South Dakota, such speculation proves unfounded.

Table 27. South Dakota: Top 20 Counties Ranked by Payday Lending

Nearest Base(s)	County	Pop	Bnks	PD Lndrs	PD/100 K Pop	LQ	Rnk PD	Rnk PC	Rnk P Bnk	Cmpsit Rank	Exp PD	Obs -Exp
Ellsworth AFB	Pennington	88565	28	40	45.16	142.86	2	2	1	1	20.65	19.35
	Brown	35460	19	14	39.48	73.68	3	4	4	2	8.27	5.73
	Minnehaha	148281	92	55	37.09	59.78	1	5	7	3	34.57	20.43
	Walworth	5974	4	3	50.22	75.00	12	1	2	4	1.39	1.61
	Beadle	17023	8	6	35.25	75.00	7	7	2	5	3.97	2.03
	Yankton	21652	11	8	36.95	72.73	5	6	5	5	5.05	2.95
	Union	12584	10	5	39.73	50.00	9	3	8	7	2.93	2.07
	Lawrence	21802	10	7	32.11	70.00	6	9	6	8	5.08	1.92
	Codington	25897	19	9	34.75	47.37	4	8	10	9	6.04	2.96
	Davison	18741	13	6	32.02	46.15	7	10	11	10	4.37	1.63
	Hughes	16481	11	5	30.34	45.45	9	12	12	11	3.84	1.16
	Tripp	6430	5	2	31.10	40.00	13	11	13	12	1.50	0.50
	Brookings	28220	13	5	17.72	38.46	9	15	14	13	6.58	-1.58
	Moody	6595	2	1	15.16	50.00	16	16	8	14	1.54	-0.54
	Fall River	7453	6	2	26.83	33.33	13	13	15	15	1.74	0.26
	Brule	5364	4	1	18.64	25.00	16	14	17	16	1.25	-0.25
Ellsworth AFB	Meade	24253	6	2	8.25	33.33	13	20	15	17	5.65	-3.65
	Grant	7847	5	1	12.74	20.00	16	17	18	18	1.83	-0.83
	Charles Mx	9350	6	1	10.70	16.67	16	18	19	19	2.18	-1.18
	Clay	13537	6	1	7.39	16.67	16	21	19	20	3.16	-2.16
	Lake	11276	8	1	8.87	12.50	16	19	21	20	2.63	-1.63

At the ZIP code level, Rapid City ZIP code 57701, which borders Ellsworth Air Force Base on the west, ranks first in the state for payday lending. This ZIP code, with roughly 40,000 people and nineteen banks, has 28 payday lenders—nineteen more than its population would suggest based on statewide averages.

Table 28. South Dakota: Top 30 ZIP Codes Ranked by Payday Lending

Nearby Base	ZIP	Town or City	Payday Lenders	Exp. PD	Banks	PD/100K	Rank PD	Rank PC	Rank LQ	Composite Rank
Ellsworth AFB	57701	RAPID CITY	28	9.29	19.0	70.26	1	2.00	3	**1**
	57105	SIOUX FALLS	22	5.64	13.0	90.93	2	5.00	2	**2**
	57401	ABERDEEN	14	6.75	12.0	48.38	4	6.00	7	**3**
	57201	WATERTOWN	9	5.47	16.0	38.38	5	3.00	19	**4**
	57106	SIOUX FALLS	9	6.42	16.0	32.70	5	3.00	19	**4**
	57350	HURON	6	3.26	6.0	42.90	9	12.00	8	**6**
Ellsworth AFB-9 mi	57702	RAPID CITY	7	6.88	3.0	23.73	7	22.00	1	**7**
	57078	YANKTON	7	4.21	9.0	38.76	7	9.00	14	**7**
	57783	SPEARFISH	6	2.84	4.0	49.26	9	17.00	5	**9**
	57049	NRTH SIOUX CITY	5	1.02	5.0	113.84	12	13.00	8	**10**
	57110	SIOUX FALLS	5	2.01	5.0	57.97	12	13.00	8	**10**
	57104	SIOUX FALLS	15	6.07	29.0	57.64	3	1.00	29	**10**
	57301	MITCHELL	6	4.08	12.0	34.30	9	6.00	22	**13**
	57006	BROOKINGS	5	4.36	9.0	26.76	12	9.00	17	**14**
	57501	PIERRE	5	3.70	10.0	31.50	12	8.00	21	**15**
	57601	MOBRIDGE	3	0.93	3.0	75.15	17	22.00	8	**16**
	57103	SIOUX FALLS	4	7.66	9.0	12.18	16	9.00	23	**17**
	57580	WINNER	2	1.12	4.0	41.75	19	17.00	18	**18**
	57747	HOT SPRINGS	2	1.31	5.0	35.61	19	13.00	24	**19**
	57785	STURGIS	2	2.06	3.0	22.63	19	22.00	15	**19**
Ellsworth AFB	57703	RAPID CITY	3	2.46	2.0	28.45	17	38.00	6	**21**
	57069	VERMILLION	1	2.65	5.0	8.81	23	13.00	31	**22**
	57732	DEADWOOD	1	0.61	3.0	37.99	23	22.00	25	**23**
	57325	CHAMBERLAIN	1	0.73	3.0	31.83	23	22.00	25	**23**
	57252	MILBANK	1	1.18	3.0	19.80	23	22.00	25	**23**
	57108	SIOUX FALLS	1	1.38	3.0	16.91	23	22.00	25	**23**
	57042	MADISON	1	1.92	4.0	12.12	23	17.00	30	**23**
	57380	WAGNER	1	0.77	2.0	30.14	23	38.00	16	**28**
Ellsworth AFB	57719	BOX ELDER	2	0.88	1.0	53.12	19	66.00	4	**29**
	57031	GAYVILLE	1	0.16	1.0	148.81	23	66.00	8	**30**
	57028	FLANDREAU	1	0.94	1.0	24.80	23	66.00	8	**30**

17. *Tennessee*

Payday lenders in Tennessee operate under the authority of the Deferred Presentment Services Act (DPSA).[502] For each payday loan issued, the DPSA authorizes lenders to charge a fee equating to an annual rate of interest of 459%.[503] However, the Act is clear that the fee is not to be deemed "interest for any purpose of law;" instead, the "fee" is considered compensation to cover a lender's operating costs.[504] As a result, the "fees" associated with payday loans under the DPSA avoid the state constitution's usury provision prohibiting interest in excess of ten percent per year.[505] In fact, the Act reinforces this notion by specifically exempting the fees charged for payday loans from control by "any other statute governing the imposition of interest, fees or loan charges,"[506] including the State's statutory limit of ten percent annual interest for loans of less than $1000.[507] Loans may not exceed a duration of 31 days.[508] After a payday loan is made, the lender may not renew or consolidate the loan with the proceeds of another payday loan made by the same lender.[509]

Tennessee has 1201 payday lenders which translates into 21.05 per 100,000 people.[510] This gives Tennessee one of the highest rates of payday lending in the country, with several counties and ZIP codes ranking among the most densely populated with payday lenders in the country. Military installations in Tennesee include the Naval Support Facility in Millington and a small arsenal in Milan. Of much greater importance is Montgomery County and the town of Clarksville, just across the border from the Army's Fort Campbell in Kentucky. Montgomery County has 21 payday lenders for its 134,000 residents, including those on the base. In terms of total number of lenders, it ranks thirteenth among Tennessee's

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502 TENN. CODE ANN. §§ 45-17-101 to 45-17-119 (2000).

503 *Id.* § 45-17-112(b)(1)-(2) (2000). Specifically, the DPSA authorizes lenders to charge a fee not exceeding the greater of 15% of the face amount of the check or $30. *Id.* This means that a borrower who writes a check for $100 actually receives only $85, with the remaining $15 going to the lender as its fee; the borrower actually incurs a charge of 17.65%. Consequently, assuming an average payday loan duration of fourteen days, this equates to an annual percentage rate of 459%.

504 *Id.* § 45-17-112(b)(2).

505 *See* TENN. CONST. art. XI, § 7.

506 TENN. CODE ANN. § 45-17-118 (2000).

507 *Id.* § 47-14-104(a).

508 *Id.* § 45-17-112(d) (2000).

509 *Id.* § 45-17-112(q).

510 STATE OF TENNESSEE, DEPARTMENT OF FINANCIAL INSTITUTIONS, LICENSED DEFERRED PRESENTMENT LIST, http://www.tennessee.gov/tdfi/Lic_DP.html (last visited Oct. 17, 2005).

95 counties, but in terms of per capita density, Montgomery ranks near the 50th percentile.

Because the most significant military population affecting payday lender location strategies is stationed over the border, the ZIP code level of analysis is most helpful. In Clarksville (ZIP 37042), near Ft. Campbell, there are ten payday lenders and nine banks. However, if one were to drive away from Fort Campbell into other parts of Clarksville, the ratio begins turning toward average. We found that in Clarksville's other two ZIP codes there are eleven payday lenders and 34 banks.[511] With at least 2000 military personnel, the Naval support facility near Millington is relatively large, but at only five percent of the population, the military does not attract a large number of payday lenders. Millington itself has seven banks and six payday lenders, a ratio that would be alarming in other states, but in Tennessee, where payday lending is rampant, this ratio is not unusual and is about what one would expect on a per capita basis. Immediately to the south are two ZIP codes (38127 and 38128), which together host 25 payday lenders close to the service members stationed at Millington. ZIP code 38122, which is less than six miles from Millington, ranks second worst in our composite ranking of Tennessee.

[511] For a street-level analysis of Fort Campbell, see Part IV.B.8 *supra*.

Table 29. Tennessee: Top 30 ZIP Codes Ranked by Payday Lending

Nearby Base	ZIP	Town or City	Payday Lenders	Exp. PD	Banks	PD/100K	Rank PD	Rank PC	Rank LQ	Composite Rank
	37412	CHATTANOOGA	17	4.33	6.0	82.70	9	5	6	**1**
Mid South-Navy Support-6 mi	38122	MEMPHIS	18	5.18	8.0	73.20	6	10	13	**2**
	38555	CROSSVILLE	19	3.88	14.0	103.20	5	3	28	**3**
	38115	MEMPHIS	22	8.47	11.0	54.69	3	21	14	**4**
	38118	MEMPHIS	23	9.98	11.0	48.53	2	30	12	**5**
	37209	NASHVILLE	16	7.30	6.0	46.17	10	35	8	**6**
	38464	LAWRENCEBURG	14	4.58	12.0	64.41	12	13	40	**7**
	37411	CHATTANOOGA	11	3.69	8.0	62.75	21	15	31	**8**
	37303	ATHENS	14	5.02	14.0	58.71	12	17	46	**9**
	37055	DICKSON	14	5.06	14.0	58.20	12	18	46	**10**
	37211	NASHVILLE	24	13.40	11.0	37.70	1	66	9	**10**
Milan Arsenal	38358	MILAN	8	2.46	5.0	68.40	46	12	22	**12**
	37321	DAYTON	9	3.95	5.0	47.93	39	32	20	**13**
	37745	GREENEVILLE	8	3.44	5.0	48.97	46	27	22	**14**
	37766	LA FOLLETTE	10	3.95	10.0	53.29	29	23	46	**15**
	38111	MEMPHIS	15	9.12	6.0	34.64	11	78	10	**16**
	38401	COLUMBIA	21	10.69	20.0	41.36	4	53	45	**17**
	38116	MEMPHIS	18	10.74	13.0	35.28	6	75	27	**18**
	37407	CHATTANOOGA	6	1.65	4.0	76.75	73	9	29	**19**
	37415	CHATTANOOGA	10	4.75	9.0	44.31	29	41	42	**20**
	37918	KNOXVILLE	14	7.58	13.0	38.90	12	60	44	**21**
	37748	HARRIMAN	8	4.04	4.0	41.72	46	52	19	**22**
	38583	SPARTA	9	4.36	7.0	43.49	39	45	34	**23**
Mid South-Navy Support-6 mi	38128	MEMPHIS	14	9.23	7.0	31.94	12	95	18	**24**
	37388	TULLAHOMA	10	5.20	10.0	40.47	29	55	46	**25**
	37416	CHATTANOOGA	7	3.07	7.0	48.02	59	31	46	**26**
	38012	BROWNSVILLE	7	3.27	6.0	45.07	59	37	41	**27**
	37324	DECHERD	4	1.08	3.0	78.16	97	8	35	**28**
	37347	JASPER	5	1.64	5.0	64.17	84	14	46	**29**
	38501	COOKEVILLE	18	6.72	24.0	56.39	6	19	119	**29**

The other high-ranking ZIP codes in Tennessee include a few county seats in Eastern Tennessee. Interestingly, the number one ZIP code in Tennessee is Chattanooga (ZIP 37412) which borders Georgia along Interstate 75, reminiscent of the Georgia border-town phenomena we observed in Alabama, South Carolina, and Florida.

18. *Texas*

The Texas Legislature has not adopted a statute that regulates payday lenders separately from other small consumer lenders in the state. This means that lenders licensed under Texas's small loan law who wish to offer payday loans must comply with the state's traditional small loan interest rate cap of 48% per annum.[512] However, Texas law also allows licensed lenders to charge an additional "acquisition" fee of up to ten dollars per loan.[513] When combined, the interest and acquisition fee amount to an effective annual percentage rate of about 309%, assuming a $100 loan with an initial term of fourteen days.[514] At the end of the loan period, the lender may either renew the loan continuously or convert the loan from a single payment balloon loan to a declining balance installment note.[515] Because Texas's price limits are lower than many states, a significant percentage of payday lenders in Texas have turned to charter-renting relationships with out-of-state banks. Consumer advocates have reported that over one thousand payday outlets in the state are circumventing the 48% interest plus ten dollar fee price limitation.[516] In 2002, for example, Check 'N Go alone

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[512] 7 TEX. ADMIN. CODE § 1.605(c) (2005); TEX. FIN. CODE ANN. § 342.252(3)(B) (Vernon Supp. 2004).

[513] 7 TEX. ADMIN. CODE § 1.605(c) (2005); TEX. FIN. CODE ANN. § 342.252(3)(A) (Vernon Supp. 2004).

[514] For example, a consumer borrowing $100 would need to pay a ten dollar acquisition charge in addition to interest, which, at an annual rate of 48%, would be $1.87 if the borrower planned to repay the loan after fourteen days. Consequently, the total fees of $11.87 represent 11.87% interest over the two-week period, which is the equivalent of an annual rate of interest of 309.47%. Loans with larger principles will have smaller annual percentage rates because lenders cannot proportionally increase the ten dollar acquisition charge. Thus, a fourteen-day loan of $300 would have a maximum finance charge of $15.60 and an annual percentage rate of 135.57%. *See* 7 TEX. ADMIN. CODE § 1.605(c) Exhibit 1 (2005). This creates an incentive to induce borrowers to make multiple loans in smaller increments. Thus, Texas regulators, consumer attorneys, and courts should carefully give careful scrutiny to payday lending arrangements where multiple loans are taken from the same lender.

[515] *Id.* § 1.605(f)(1).

[516] CONSUMER FEDERATION OF AMERICA, PAYDAY LENDERS USE FDIC BANKS AND SHAM REBATES TO PEDDLE EXORBITANTLY PRICED SMALL LOANS (Mar. 31, 2004), http://www.consumerfed.org/033104_2004payday.html.

extended more than $1 million in payday loans to Texas consumers by renting a charter from Ohio-based First Place Bank.[517]

Texas is an expansive state, with a very large and very diverse population, including pockets of extreme poverty, numerous large metropolitan areas, and a long border with Mexico. This variety creates several variables that would presumably draw payday lenders away from military bases, leading one not to expect the same high concentrations of payday lending around military bases in the Lone Star State. Nevertheless, payday lenders have many bases to target in Texas, including seven large installations and dozens of smaller facilities scattered around the state. Because the bases are located in a variety of geographic and demographic settings, Texas is an ideal location for close inspection.

However, because Texas has the same licensing rules for payday lenders as it does for other consumer lenders, the state's Consumer Credit Commissioner does not maintain a separate database of lenders offering payday loans. Rather their registry of consumer lenders includes not only payday lenders, but also pawn shops, tax preparation offices, signature loan companies, and others. The Consumer Credit Commission lists 3239 licensed consumer lenders, all of whom have the legal authority to make payday loans.[518] Nevertheless, many of these lenders have different business models and do not engage in payday lending. In an attempt to get a more accurate count of payday lenders in Texas, we again turned to the Reference USA business database, which lists 1664 payday lenders, or about eight payday lenders per 100,000 people, ranking Texas fifteenth of our 20 states surveyed.[519]

In spite of our initial hypothesis to the contrary, many of the counties with excess payday lenders are those with a military base. The worst county in the state is Wichita County, home to Sheppard Air Force Base and its nearly 10,000 personnel. With 132,000 people, 35 banks, and 22 payday lenders, Wichita county ranks high in all three categories of measurement and has about twelve more payday lenders than statistically expected. Ranking second is Nueces County, home to Corpus Christi and its Naval Air Station. There are over

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[517] *See* Letter to James E. Gilleran, Director of the Office of Thrift Supervision (Jan. 3, 2003), http://www.naca.net/OTSletter.doc.

[518] STATE OF TEXAS, OFFICE OF CONSUMER CREDIT COMMISSIONER, LICENSED LENDER LIST (Dec. 2003) (on file with authors).

[519] Reference USA, Category Heading: Check Cashing Services, *available at* http://www.referenceusa.com/ (last visited Oct. 17, 2005). *See infra* note 407, and accompanying text (discussing statistical reliability of Reference USA database). In cross-checking the Reference USA figure, we found 1,570 businesses statewide with the terms such as "Advance," "Payday," "Cash," and "EZ" in the business name in the state's list of small loan companies. STATE OF TEXAS, OFFICE OF CONSUMER CREDIT COMMISSIONER, LICENSED LENDER LIST (Dec. 2003) (on file with authors).

300,000 people and 77 banks in this county, but it has 45 payday lenders—20 more than our predictions based on population. El Paso County, home to Fort Bliss, ranks ninth worst in the state with 70 banks and 61 payday lenders for approximately 680,000 residents. Goodfellow Air Force Base is in Tom Green County; this county ranks tenth worst statewide with 104,000 people, 29 banks, and fourteen payday lenders. In fact, of the ten largest military bases in Texas, only Laughlin and Dyess Air Force Bases are not in or bordering one of the worst sixteen counties in Texas for payday lending. Because there are 245 counties in the state, this is a highly suggestive statistic.

There are 1745 ZIP codes in Texas and dozens of military installations. Therefore, we must limit our discussion to the largest handful of installations in the state. Almost every base in the state has a ZIP code adjacent to it that has payday lenders in excess of statewide averages. Several of the bases that have closed within the last ten years, such as Carswell Air Force Base, Reese Air Force Base, Bergstrom Air Force Base, and Chase Naval Air Station also have adjacent ZIP codes with large numbers or high densities of payday lenders. Though Dyess Air Force Base in Abilene and Laughlin Air Force Base in Del Rio do have more payday lenders nearby than we predicted based on local populations, they are the only two bases out of nearly a dozen we examined that do not have unusually large numbers of payday lenders in the neighboring ZIP codes.

Sheppard Air Force Base, perhaps the second largest Air Force Base in the country, has within three miles of its gates two ZIP codes (76301 and 76306) that rank in the top 25 statewide and a third ZIP code (76308) 4.5 miles away that ranks fifty-second out of 1745 ZIP codes. In the two closest ZIP codes, there are only four banks but twelve payday lenders. That is 9.25 payday lenders above statistical expectations for the populations in those ZIP codes.

San Angelo ZIP code 76903 ranks forty-seventh in the state, easily among the worst five percent statewide. This ZIP code borders Goodfellow Air Force Base and has a population of about 32,000. We counted eleven banks in this ZIP code and eight payday lenders, which is 5.5 more payday lenders than expected based on statewide averages.

Corpus Christi has multiple bases and excess payday lending capacity. Although the Naval Air Station is somewhat separated from the rest of Corpus Christi, it is just over three miles to a business district (ZIP code 78411) that ranks eleventh worst in Texas. It has twelve banks and twelve payday lenders, ten over statistical expectations. Adjacent to ZIP 78411 are several other ZIP codes badly overrepresented by the payday lending industry, including 78415, due south of base, which has at least eight payday lenders and only one bank for almost 40,000 people. Interestingly, there are 26 establishments with a license to make short-term loans here according to State of Texas. If they were all making payday loans, this would be one the heaviest concentrations of payday lenders in the country. Using our conservative estimate, there are at least five more payday lenders than one would expect for the local population, and about 20 extra payday lenders if we were to define them as the State of Texas does.

There are six military bases in and around San Antonio, two of which are partially closed. Still, with over 30,000 active duty troops in Bexar County, greater San Antonio remains one of the great military towns in the country. It also ranks among the great payday lending cities in the nation. Among the six bases, all but the mostly closed Camp Bullis have an adjacent ZIP code with an unexpectedly high number of payday lenders.

The third worst ZIP code in Texas is ZIP code 78218. Here, on the northeast side of the Army's Fort Sam Houston, there are only three banks, but eleven payday lenders. For the 30,000 people who live there, that is 8.56 more payday lenders than statistically expected. Three other nearby ZIP codes (78202, 78203 and 78220) together contain another six payday lenders and three banks, raising the total number of excess payday lenders in the area by another 3.25.

There are twelve ZIP codes adjacent to or within a few miles of Lackland and Kelly Air Force Bases, which are essentially adjoined and function together. Three of these ZIP codes rank among the worst 30 ZIP codes statewide, and ZIP code 78238 is twelfth worst. Several of the remaining twelve nearby ZIP codes also have unexpectedly high concentrations of payday lenders. Combined, these twelve ZIP codes contain 321,000 people and 25 banks, but 40 payday lenders, which is fourteen more than the population warrants. Two ZIP codes (78227 and 78238) contain most of this excess capacity. It is very likely that these neighborhoods are where most of the personnel from Lackland and Kelly do their shopping because these ZIP codes are both within three miles of the base and straddle the Interstate 410 beltway. These two ZIP codes combined should have less than five payday lenders based on their combined population, but seventeen have set up shop here close to the service persons at Lackland-Kelly Air Force Base.

It is about seven miles between the eastern gates of Kelly Air Force Base and the western edge of Brooks Air Force Base. Lying halfway between the two and within three miles of each on Texas Loop Road 13 is ZIP code 78221. This ZIP code has five banks and eight payday lenders, almost five more than it should have given its population. Even Randolph Air Force Base in the northeastern suburbs of San Antonio has a payday lending surplus. Although fewer than 15,000 people live there and there are only five banks, four payday lenders have set up shop, which is about three too many for that population.

Soldiers stationed at Fort Bliss in El Paso may have the greatest number and variety of short-term loan options of any persons in the military. There are 182 licenses issued for El Paso County and we estimate that at least 61 of those licensees are actually making payday loans. Unlike many of the other communities we have examined, we cannot be as certain that the military is the sole focus of the payday lending industry here. Because El Paso is a border town, we believe that many of the payday lenders here are at least as involved in check cashing and currency exchanging as they are in lending. Nevertheless, this fact does not reduce the availability of high-interest, short-term loans to soldiers at Fort Bliss, and may only serve to intensify the competition and marketing activities of payday lenders in the region.

Table 30. Texas: Top 30 Counties Ranked by Payday Lending

Nearest Base(s)	County	Pop	Bnks	PD Lndrs	PD/100 K Pop	LQ	Rnk PD	Rnk PC	Rnk P Bnk	Cmpsit Rank	Exp PD	Obs -Exp
Sheppard AFB	Wichita	131664	35	22	16.71	62.86	12	4	8	1	10.51	11.49
NAS Corpus Christi	Nueces	313645	77	45	14.35	58.44	7	13	10	2	25.03	19.97
	Ector	121123	26	18	14.86	69.23	19	11	7	3	9.67	8.33
	Potter	113546	32	17	14.97	53.13	20	9	17	4	9.06	7.94
	Maverick	47297	7	7	14.80	100.00	36	12	2	5	3.77	3.23
Clsd Dallas NAS	Dallas	2218899	533	234	10.55	43.90	2	25	25	6	177.07	56.93
	Bee	32359	4	5	15.45	125.00	45	6	1	6	2.58	2.42
	Victoria	84088	19	11	13.08	57.89	26	16	11	8	6.71	4.29
Fort Bliss	El Paso	679622	70	61	8.98	87.14	6	44	4	9	54.23	6.77
Good Fellow AFB	Tom Green	104010	29	14	13.46	48.28	23	15	22	10	8.30	5.70
	Howard	33627	7	5	14.87	71.43	45	10	5	10	2.68	2.32
	Hale	36602	11	6	16.39	54.55	41	5	15	12	2.92	3.08
Clsd Bergstrom AFB	Travis	812280	193	82	10.10	42.49	5	28	30	13	64.82	17.18
	Angelina	80130	23	11	13.73	47.83	26	14	23	13	6.39	4.61
Fort Hood	Lampasas	17762	7	4	22.52	57.14	51	2	12	15	1.42	2.58
Clsd Carswell AFB	Tarrant	1446219	338	141	9.75	41.72	3	32	31	16	115.41	25.59
Lackland, Ft. Sam Houston, Randolph AFB	Bexar	1392931	229	124	8.90	54.15	4	46	16	16	111.16	12.84
	Webb	193117	36	19	9.84	52.78	18	31	18	18	15.41	3.59
	Harris	3400578	784	324	9.53	41.33	1	35	32	19	271.37	52.63
	Jim Wells	39326	7	5	12.71	71.43	45	19	5	20	3.14	1.86
	Uvalde	25926	7	4	15.43	57.14	51	7	12	21	2.07	1.93
	Chambers	26031	7	4	15.37	57.14	51	8	12	22	2.08	1.92
	Midland	116009	38	15	12.93	39.47	22	18	34	23	9.26	5.74
	McLennan	213517	46	20	9.37	43.48	15	37	26	24	17.04	2.96
	Jefferson	252051	53	23	9.13	43.40	10	41	27	24	20.11	2.89
	Walker	61758	10	6	9.72	60.00	41	33	9	26	4.93	1.07
	Kent	859	1	1	116.41	100.00	82	1	2	27	0.07	0.93
	Wilbarger	14676	7	3	20.44	42.86	59	3	28	28	1.17	1.83
	Ellis	111360	28	11	9.88	39.29	26	30	35	29	8.89	2.11
	Johnson	126811	30	12	9.46	40.00	25	36	33	30	10.12	1.88

There are four ZIP codes in El Paso that rank in the top 100 statewide, but only one of them, 79901, which ranks thirtieth, actually borders Mexico. This suggests that the military is at least as attractive to check casher-payday lenders as cross-border transient workers are. The more intensive payday lending activity appears to be closer to Fort Bliss. ZIP code 79925, which is partly surrounded by Fort Bliss, is the fourteenth worst in the state for payday lending. There are about 41,000 people here and seven banks, but ten payday lenders, seven above statistical expectations. The adjacent ZIP code 79903, which also borders Ft. Bliss has three banks and three payday lenders, however, 20 companies have a license to make payday loans here, making it potentially one of the most densely crowded ZIP codes in the country for short-term loans. The ZIP code bordering the southwestern section of Fort Bliss (79904) also seems heavy on payday lenders with four, even though it has no banks, making it one of top three ZIP codes statewide in terms of the ratio of payday lenders to banks.

Fort Hood, which is one of the largest military bases in the United States, has more than its share of payday lenders lined up at its many gates, but the Killeen area is a little less saturated with payday lending than some of the other military towns in Texas. Because Fort Hood is so massive, its off-base commercial districts are a bit more scattered than those around many other bases. The main commercial district just outside Fort Hood is Killeen's 76541 ZIP code. Here, we found eleven banks and nine payday lenders, which is about 7.3 more payday lenders than would be expected for the population in that ZIP code. Even if we added 43,000 soldiers from Fort Hood to that ZIP code's population, we would still only expect there to be five payday lenders, four less than there are. This ZIP code ranks twenty-seventh worst statewide on our composite index but has the ninth most lenders of ZIP codes statewide. Using the State of Texas list, this ZIP code has the fourth most small-loan licenses in the state with eleven. Clearly, there are many businesses offering loans next to Fort Hood. There are other nearby ZIP codes that add to the availability of quick, high-interest loans for soldiers. Copperas Cove, other parts of Killeen, and nearby Temple, Texas all have excess payday lending capacity.

Table 31. Texas: Top 30 ZIP Codes Ranked by Payday Lending

Nearby Base	ZIP	Town or City	Payday Lenders	Exp PD	Banks	PD/100K	Rank PD	Rank PC	Rank LQ	Composite Rank
	76033	CLEBURNE	8	1.74	0.0	36.72	21	17	1	1
	77081	HOUSTON	12	3.90	1.0	24.52	2	47	5	2
Ft. Sam Houston	[illegible]	SAN ANTONIO	11	2.44	3.0	[illegible]	4	[illegible]	44	3
	77091	HOUSTON	9	1.84	3.0	38.94	13	14	52	4
	79107	AMARILLO	9	2.55	2.0	28.21	13	29	43	5
[illegible]	[illegible]	WICHITA FALLS	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	6
Carswell AFB-5mi	[illegible]	FT. WORTH	7	[illegible]	2.0	[illegible]	[illegible]	[illegible]	[illegible]	7
Carswell AFB-6mi	[illegible]	FT. WORTH	7	1.63	1.0	[illegible]	37	22	[illegible]	8
Carswell Bergstrom AFB	[illegible]	AUSTIN	7	1.70	2.0	[illegible]	37	26	[illegible]	9
Carswell AFB-6mi	[illegible]	FT. WORTH	6	1.57	1.0	[illegible]	57	[illegible]	42	10
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	11
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	12
Carswell AFB-5-10mi	[illegible]	FT. WORTH	11	[illegible]	6.0	[illegible]	4	[illegible]	[illegible]	13
NAS CC-5mi	[illegible]	CORPUS CHRISTI	8	[illegible]	1.0	[illegible]	21	[illegible]	[illegible]	14
	79763	ODESSA	6	2.43	0.0	19.72	57	88	2	15
[illegible]	[illegible]	EL PASO	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	16
	76011	ARLINGTON	8	2.39	6.0	26.75	21	37	105	17
Carl Bergstrom AFB-7mi	[illegible]	AUSTIN	10	3.10	[illegible]	[illegible]	[illegible]	41	[illegible]	18
	77063	HOUSTON	8	2.29	7.0	27.84	21	32	113	19
	75220	DALLAS	9	4.02	3.0	17.85	13	108	52	20
[illegible]	[illegible]	WICHITA FALLS	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	21
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	22
Ellington AFB-5mi	[illegible]	PASADENA	7	[illegible]	2.0	[illegible]	37	[illegible]	[illegible]	23
	77076	HOUSTON	6	2.34	3.0	20.45	57	84	61	24
[illegible]	[illegible]	LUBBOCK	[illegible]	[illegible]	1.0	[illegible]	[illegible]	[illegible]	[illegible]	25
	77055	HOUSTON	11	3.32	12.0	25.44	4	38	164	26
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
	76504	TEMPLE	5	1.79	2.0	22.25	89	62	57	28
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	SAN ANTONIO	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	EL PASO	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]

Because Fort Hood is so large and houses so many soldiers, we chose to analyze payday lending activity in the neighborhoods surrounding it. Within three miles of Fort Hood's perimeter, there are at least eighteen payday lenders, and thirteen of those are within one mile of base. For soldiers and their families driving east off-base using the Tank Destroyer Boulevard exit, they would leave base onto Rancier Boulevard. Before they had traveled 1000 yards past the security gates, they would pass no fewer than seven payday lenders. After that initial tangle of payday lenders, they could drive to the nearby town of Belton and only pass one more payday loan shop. If the family turned right off Tank Destroyer and went south on Fort Hood Street (Highway 195), they would pass at least three additional payday lenders before they made it to U.S. Highway 190, a mile and a half from the gates. Once they were at that intersection, within two miles in any direction they could find six additional payday lenders. If the family were to leave Fort Hood at the Clear Creek exit and drive west to the next exit off-base, they would come to Copperas Cove. Just a few feet into Copperas Cove, they would pass their first payday lender; two more are within the first mile and two additional ones are in the second mile.

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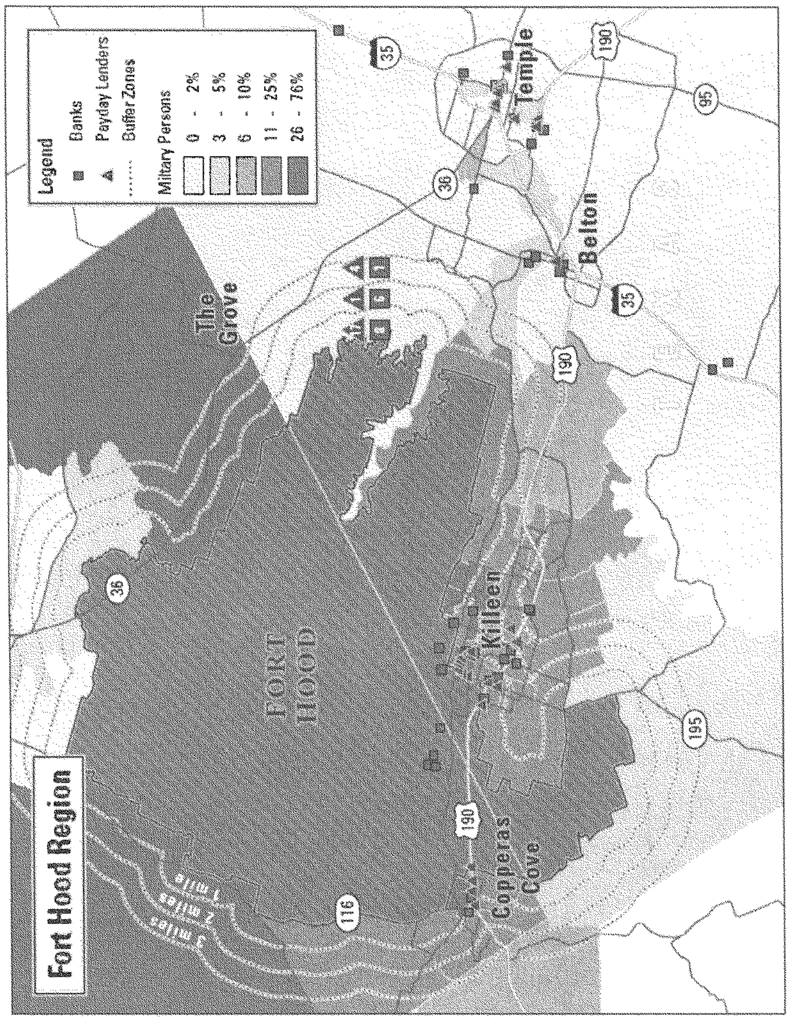
Fort Hood Region
Legend
Banks
Payday Lenders
Buffer Zones
Military Persons
0 - 2%
3 - 5%
6 - 10%
11 - 25%
26 - 76%
FORT HOOD
The Grove
Temple
Belton
Killeen
Copperas Cove
1 mile
2 miles
3 miles
35
36
95
116
190
195

19. *Virginia*

Payday lenders in Virginia operate under the authority of the Commonwealth's Payday Loan Act (PLA).[520] The lender may charge a fee no greater than fifteen percent of the amount of the loan proceeds,[521] which is equivalent to an annual percentage rate of interest of 390%.[522] At the end of the original loan period, a lender may not refinance, renew, or extend any loan.[523] Furthermore, a lender may not extend a payday loan to the borrower to pay off a previous loan from the same lender.[524]

Virginia is another state with vast numbers of military personnel, rivaling California for supremacy as the leading military state. Most of Virginia's military population is in two areas: near Washington D.C., where there are more command and intelligence personnel, and the Newport-Portsmouth region where there are many thousands of enlisted troops. Virginia ranks at the bottom of the states in terms of numbers and densities of payday lenders. Although the population numbers over seven million and there are 2434 banks, there were only about 460 payday lenders registered with state authorities in 2004.[525] Statewide, there are on average 6.50 payday lenders per 100,000 people, the lowest rate of any state other than New York. This is presumably a by-product of the short history of payday lending in Virginia, where the activity was made legal on July 1, 2002. Though legal only a few years in Virginia, the densities of payday lenders around military bases differs little from what we observed in other parts of the country where it has been legal for many years.

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[520] VA. CODE ANN. §§ 6.1-444 to 471 (Supp. 2004). The state legislature enacted the PLA in 2002, since which time five hundred payday lending outlets have sprung up around the Commonwealth. *See* Bill Sizemore, *State Lawmakers Want to Regulate Payday Loans*, VIRGINIAN-PILOT, Jan. 22, 2005, http://home.hamptonroads.com/stories/story.cfm?story=80962&ran=135970.

[521] VA. CODE ANN. § 6.1-460 (Supp. 2004).

[522] A consumer borrowing $100 must write a check for $115 to cover the interest charged by the lender. Assuming an average payday loan duration of fourteen days, this 15% rate of interest equals an annual rate of interest of 390%.

Although Virginia's usury law invalidates contracts "made for the payment of interest on a loan greater than twelve percent per year," the law specifically exempts payday loans from its control. VA. CODE ANN. § 6.1-330.55 (Supp. 2004).

[523] *Id.* § 6.1-459(6).

[524] *Id.* § 6.1-459(11). Of course this provision does not prevent a lender from extending a payday loan to a borrower in order to pay off a payday loan obtained from another lender.

[525] COMMONWEALTH OF VIRGINIA STATE CORPORATION COMMISSION, BUREAU OF FINANCIAL INSTITUTIONS, PAYDAY LENDERS LICENSED IN VIRGINIA, http://www.scc.virginia.gov/division/banking/paydaylend.htm (last visited Oct. 17, 2005).

At the county level,[526] the pattern of payday lending is evidently focused on military bases. The number one county for payday lending in Virginia is Prince George County, home of the Army's Fort Lee and Logistics Center. The population of just over 33,000 people in Prince George County is served by five banks; however, fourteen payday lenders have moved in. Prince George ranks first of 135 counties in terms of density per capita, first in density per bank, and its fourteen payday lenders are about twelve more than statistically expected for this county. Henrico County, which is about 6.5 miles north of the base on Interstate 295, ranks tenth worst in the state and offers 30 additional payday lenders.

Perhaps the most militarized region in the United States is the Norfolk-Portsmouth-Newport News region. The four counties that house most of the military population in the area (Newport News, Hampton, Norfolk and Portsmouth) have a combined population of over 661,000, 63 banks, and a whopping 101 payday lenders. This stands in stark contrast to the statewide ratio of one payday lender to every five banks. Given the population in these counties, this is 56 payday lenders above what statewide averages would predict. Each of the four counties in the region ranks among the ten worst in Virginia.

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[526] Virginia has both counties in the classic sense and a number of municipal districts that are classified as counties by the government and are used as such in our analysis.

Table 32. Virginia: Top 30 Counties Ranked by Payday Lending

Nearest Base(s)	County	Pop	Bnks	PD Lndrs	PD/100 K Pop	LQ	Rnk PD	Rnk PC	Rnk P Bnk	Cmpsit Rank	Exp PD	Obs -Exp
Fort Lee	Prince George	33047	5	14	42.36	280.00	10	1	1	1	2.15	11.85
	Pittsylvania	61745	11	17	27.53	154.55	7	3	2	1	4.01	12.99
Multiple Sites-Norfolk	Portsmouth	100565	17	21	20.88	123.53	5	5	3	3	6.54	14.46
	Henry	57930	17	11	18.99	64.71	11	6	8	4	3.76	7.24
Fort Eustis, Langley AFB	Newport News	180150	41	27	14.99	65.85	4	16	7	5	11.71	15.29
	Washington	51103	22	11	21.53	50.00	11	4	12	5	3.32	7.68
Langley AFB, NS Norfolk	Hampton	146437	27	18	12.29	66.67	6	19	5	7	9.52	8.48
Multiple Sites-Norfolk	Norfolk	234403	63	35	14.93	55.56	2	18	10	7	15.23	19.77
	Southampton	17482	7	5	28.60	71.43	25	2	4	9	1.14	3.86
	Henrico	262300	83	30	11.44	36.14	3	25	17	10	17.05	12.95
	Halifax	37355	11	6	16.06	54.55	23	12	11	11	2.43	3.57
	Roanoke City	94911	49	15	15.80	30.61	9	13	24	11	6.17	8.83
	Lynchburg	65269	39	11	16.85	28.21	11	10	26	13	4.24	6.76
NAS Oceana, Fort Story, others	Virginia Beach	425257	102	40	9.41	39.22	1	34	15	14	27.64	12.36
	Augusta	65615	16	8	12.19	50.00	19	20	12	15	4.26	3.74
	Bedford	60371	11	7	11.59	63.64	21	23	9	16	3.92	3.08
	Wythe	27599	16	5	18.12	31.25	25	7	23	17	1.79	3.21
	Wise	40123	17	6	14.95	35.29	23	17	19	18	2.61	3.39
NSY Norfolk, others	Chesapeake	199184	48	17	8.53	35.42	7	36	18	19	12.94	4.06
	Grayson	17917	7	3	16.74	42.86	36	11	14	19	1.16	1.84
	Tazewell	44598	30	7	15.70	23.33	21	14	33	21	2.90	4.10
	Smyth	33081	12	4	12.09	33.33	28	21	20	22	2.15	1.85
	Pulaski	35127	11	4	11.39	36.36	28	26	16	23	2.28	1.72
	Roanoke	85778	31	9	10.49	29.03	17	28	25	23	5.57	3.43
	Alleghany	12926	6	2	15.47	33.33	41	15	20	25	0.84	1.16
	Montgomery	83629	33	8	9.57	24.24	19	32	31	26	5.43	2.57
	Winchester	23585	32	4	16.96	12.50	28	9	48	27	1.53	2.47
	Giles	16657	8	2	12.01	25.00	41	22	28	28	1.08	0.92
	Rockingham	67725	21	5	7.38	23.81	25	38	32	29	4.40	0.60
	Amherst	31894	11	3	9.41	27.27	36	33	27	30	2.07	0.93

Our analysis of payday lending using ZIP code data revealed a strong bias toward military areas as well. Newport News (ZIP 23605) ranked worst in the state on our composite index for payday lending. Only a few miles in any direction to a number of military bases and home to a significant off-base population, this ZIP code has ten payday lenders but only one bank for its almost 15,000 people, of whom about one-fourth are military personnel. This per capita density is roughly ten times the statewide density for payday lending and its payday lender-to-bank ratio ranks third worst in the state.

Making these statistical anomalies more remarkable is the fact that Newport News is bordered by other ZIP codes with similar densities of payday lenders. Though this ZIP code is the worst, it is closely followed by a dozen or so neighbors in the statewide rankings. In this very small four-county area, five of the top ten and ten of the top 20 ZIP codes for payday lending are located. These ten ZIP codes contain 63 banks and 74 payday lenders—54 more payday lenders than statistically expected based on the population.

Looking outside the Newport-Norfolk region, other military bases also rank high in payday lender density. The second highest composite ranking ZIP code among the 847 ZIP Code regions in Virginia was adjacent to Fort Lee. Petersburg (ZIP 23805) has five banks and nine payday lenders. Only one payday lender would be predicted based on the small population here and statewide averages. On the other side of Fort Lee, Colonial Heights (ranked thirteenth), and Hopewell (ranked thirty-fifth) combine to provide an additional eleven payday lenders, almost eight more than their combined populations would predict. The other top ranking ZIP codes were all border towns with regional service functions in western Virginia.

Table 33. Virginia: Top 30 ZIP codes Ranked by Payday Lending

Nearby Base	ZIP	Town or City	Payday Lenders	Exp PD	Banks	PD/100K	Rank PD	Rank PC	Rank LQ	Composite Rank
Langley-4 miles	23605	NEWPORT NEWS	10	0.96	1.0	67.90	3	5	3	**1**
Ft. Lee	23803	PETERSBURG	9	1.16	5.0	50.44	6	8	9	**2**
	24540	DANVILLE	12	2.42	5.0	32.24	1	21	5	**3**
Norfolk/Portsmouth	23702	PORTSMOUTH	5	0.76	0.0	42.86	23	11	1	**4**
	24202	BRISTOL	5	0.77	3.0	42.06	23	13	12	**5**
NS Norfolk	23502	NORFOLK	9	1.38	13.0	42.45	6	12	31	**6**
	24605	BLUEFIELD	6	0.70	8.0	55.63	20	7	29	**7**
NS Norfolk	23505	NORFOLK	7	1.76	7.0	25.91	13	29	16	**8**
Norfolk/Portsmouth	23701	PORTSMOUTH	7	1.76	7.0	25.90	13	30	16	**9**
NS Norfolk	23518	NORFOLK	8	1.92	9.0	27.06	10	27	24	**10**
	23851	FRANKLIN	5	0.87	6.0	37.36	23	17	25	**11**
Norfolk/Portsmouth	23703	PORTSMOUTH	6	1.79	3.0	21.78	20	36	8	**12**
Ft. Eustis	23608	NEWPORT NEWS	7	2.70	1.0	16.87	13	53	4	**13**
	23223	RICHMOND	7	2.81	3.0	16.21	13	56	7	**14**
Ft. Lee	23834	COLONIAL HTS	7	1.54	12.0	29.61	13	23	46	**15**
Langley AFB	23669	HAMPTON	9	3.17	13.0	18.48	6	45	31	**15**
	24112	MARTINSVILLE	8	2.37	13.0	21.99	10	37	36	**17**
NAS Oceana-4 mi	23464	VIRGINIA BEACH	10	4.59	9.0	14.15	3	67	15	**18**
	24012	ROANOKE	10	1.78	19.0	36.56	3	19	64	**19**
	24592	SOUTH BOSTON	5	0.89	9.0	36.73	23	18	47	**20**
NSY Norfolk	23324	CHESAPEAKE	4	1.41	3.0	18.40	32	46	14	**21**
	24073	CHRISTIANSBURG	7	1.60	14.0	28.43	13	25	54	**21**
Langley AFB	23661	HAMPTON	3	0.93	1.0	20.93	48	40	6	**23**
	24354	MARION	4	1.11	6.0	23.42	32	35	30	**24**
Langley AFB	23663	HAMPTON	3	0.92	2.0	21.15	48	39	13	**25**
NSY Norfolk-5mi	23463	VIRGINIA BEACH	1	0.00	0.0	3846.15	97	1	2	**25**
	24210	ABINGDON	6	0.96	14.0	40.84	20	14	75	**27**
	24382	WYTHEVILLE	5	0.91	12.0	35.71	23	20	71	**28**
Norfolk/Portsmouth	23707	PORTSMOUTH	3	0.96	4.0	20.38	48	41	27	**29**
	23416	OAK HALL	1	0.05	1.0	136.05	97	3	16	**29**
	23230	RICHMOND	4	0.43	11.0	61.06	32	6	78	**29**
Ft. Story	23452	VIRGINIA BEACH	11	4.00	22.0	17.90	2	51	73	**34**

The four-county Chesapeake Bay region was chosen for street-level analysis. Our analysis at this resolution reconfirmed our findings using ZIP code and county data. High concentrations of payday lenders are visible near the gates of nearly every installation in the Chesapeake Bay area, but the pattern is not as distinct as it at appears elsewhere. The relatively greater dispersion of payday lenders in this region is probably due to the sheer number of installations and the ubiquity of military personnel in all parts of these four counties.

Interestingly, but perhaps not surprising given the location and role of the installations at Quantico Marine Corps Base and Fort Belvoir near Washington D.C., neither base is significantly affected by payday lending. The counties and ZIP codes near these installations each rank near the median among their counterparts in Virginia.

20. *Washington*

In Washington, a payday lender must be a licensed "check casher"[527] with a small loan endorsement.[528] Although Washington's usury laws generally prohibit parties from contracting for a rate of interest in excess of 12% per year,[529] the State authorizes payday lenders to charge a rate of interest as high as 390%.[530] In addition to the interest, a lender may charge a one-time returned check fee in an amount determined by Washington's Director of Financial Institutions.[531] If a borrower realizes that payment of the loan on the date originally specified will not be possible, he or she may convert the loan to a payment plan, which generally must have a duration of 60 days.[532] The lender may charge the borrower a one-time conversion fee of ten to fifteen percent, but it cannot assess any other fee or charge as a result of converting a payday loan into a payment plan.[533] Regulators have found some of the largest lenders in the state regularly ignoring price limitations and engaging in illegal collection behavior.[534]

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527 WASH. REV. CODE § 31.45.010(5) (2005).

528 *Id.* §§ 31.45.030, 31.45.073(1).

529 *Id.* § 19.52.020(1).

530 Specifically, a payday lender may charge interest of 15% on the first $500 loaned, and ten percent on any amount loaned from $500 to $700. *Id.* § 31.45.073(3). Assuming an average payday loan of $100 for fourteen days, the effective annual rate of interest would be 390%.

531 *Id.* § 31.45.082.

532 *Id.* § 31.45.084(1).

533 WASH. REV. CODE §§ 31.45.084(1), 31.45.073(3) (2005). The lender may charge a set-up fee of 15% for any principal amount of $500 or less and ten percent for any principal amount greater than $500. *Id.* § 31.45.073(3).

534 ConsumerAffairs.com, *Fast Cash Loans Faces Charges*, Sept. 29, 2004, http://www.consumeraffairs.com/news04/fast_cash.html.

Washington is another state with several large military installations. Like the others included in our study, payday lending activity appears to be most intense in those locations where the military presence is significant. Washington has approximately 480 payday lenders[535] and 1830 banks. That means that there are approximately 8.15 payday lenders per 100,000 persons, a rate that places Washington fourteenth among the 20 states we studied.

At the county level, the number and density of payday lending is most pronounced in those counties with a significant military presence. The county with the highest composite score for payday lending was Spokane County, home to Fairchild Air Force Base. With roughly 55 payday lenders, it has about 20 more than expected based on its population. Ranking second and third worst in the state were Thurston and Pierce Counties respectively. Pierce County is home to McChord Air Force Base and the Army Base at Fort Lewis, which spills over into Thurston County. The two bases together have over 27,000 military personnel, making this area one of the most visible military regions in the country. Together, these two counties have about 94 payday lenders, nearly 20 more than the population would suggest. The other two counties with significant Navy populations, Kitsap and Whidbey Island also rank among the 20 worst counties for payday lending.

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535 STATE OF WASHINGTON, DEPARTMENT OF FINANCIAL INSTITUTIONS, DIVISION OF CONSUMER SERVICES, LICENSEE LIST, http://www.dfi.wa.gov/cs/list.htm (last visited Oct. 17, 2005).

Table 34. Washington: Top 30 Counties Ranked by Payday Lending

Nearest Base(s)	County	Pop	Bnks	PD Lndrs	PD/100 K Pop	LQ	Rnk PD	Rnk PC	Rnk P Bnk	Cmpsit Rank	Exp PD	Obs -Exp
Fairchild AFB	Spokane	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Fort Lewis	Thurston	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Bremerton Navy Sites	Pierce	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Fort Lewis, McChord AFB	Mason	[illegible]	11	7	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
	Cowlitz	92948	20	11	11.83	55.00	9	6	2	3	7.57	3.43
Umatila Army Dep., OR	Benton	142475	39	14	9.83	35.90	8	9	5	6	11.60	2.40
	Chelan	66616	24	7	10.51	29.17	14	7	7	7	5.43	1.57
	King	1737034	519	132	7.60	25.43	1	17	13	8	141.46	-9.46
	Grays Harbor	67194	33	8	11.91	24.24	13	4	15	9	5.47	2.53
	Clark	345238	88	25	7.24	28.41	5	18	10	10	28.12	-3.12
	Jefferson	25953	11	3	11.56	27.27	21	6	11	11	2.11	0.89
Bremerton Navy Sites	Kitsap	231969	70	16	6.90	22.86	7	20	16	12	18.89	-2.89
	Asotin	20551	7	2	9.73	28.57	24	11	8	12	1.67	0.33
	Douglas	32603	11	3	9.20	27.27	21	12	11	14	2.66	0.34
	Walla Walla	55180	20	5	9.06	25.00	17	13	14	14	4.49	0.51
	Lewis	68600	27	6	8.75	22.22	16	14	17	16	5.59	0.41
	Skagit	102979	46	9	8.74	19.57	11	15	22	17	8.39	0.61
NS Everett	Snohomish	606024	173	36	5.94	20.81	4	25	20	18	49.35	-13.35
Whidbey Island NAS	Island	71558	23	5	6.99	21.74	17	19	18	19	5.83	-0.83
	Clallam	64525	31	5	7.75	16.13	17	16	24	20	5.25	-0.25
	Grant	74698	25	5	6.69	20.00	17	21	21	21	6.08	-1.08
	Stevens	40066	7	2	4.99	28.57	24	28	8	22	3.26	-1.26
Yakima Training Ctr	Yakima	222581	60	11	4.94	18.33	9	29	23	23	18.13	-7.13
	Franklin	49347	14	3	6.08	21.43	21	23	19	24	4.02	-1.02
	Whatcom	166814	67	9	5.40	13.43	11	26	26	24	13.58	-4.58
	Lincoln	10184	10	1	9.82	10.00	28	10	28	26	0.83	0.17
Yakima Training Ctr	Kittitas	33362	13	2	5.99	15.38	24	24	25	27	2.72	-0.72
	Okanogan	39564	16	2	5.06	12.50	24	27	27	28	3.22	-1.22
	Adams	16428	10	1	6.09	10.00	28	22	28	28	1.34	-0.34
	Whitman	40740	25	1	2.45	4.00	28	30	30	30	3.32	-2.32

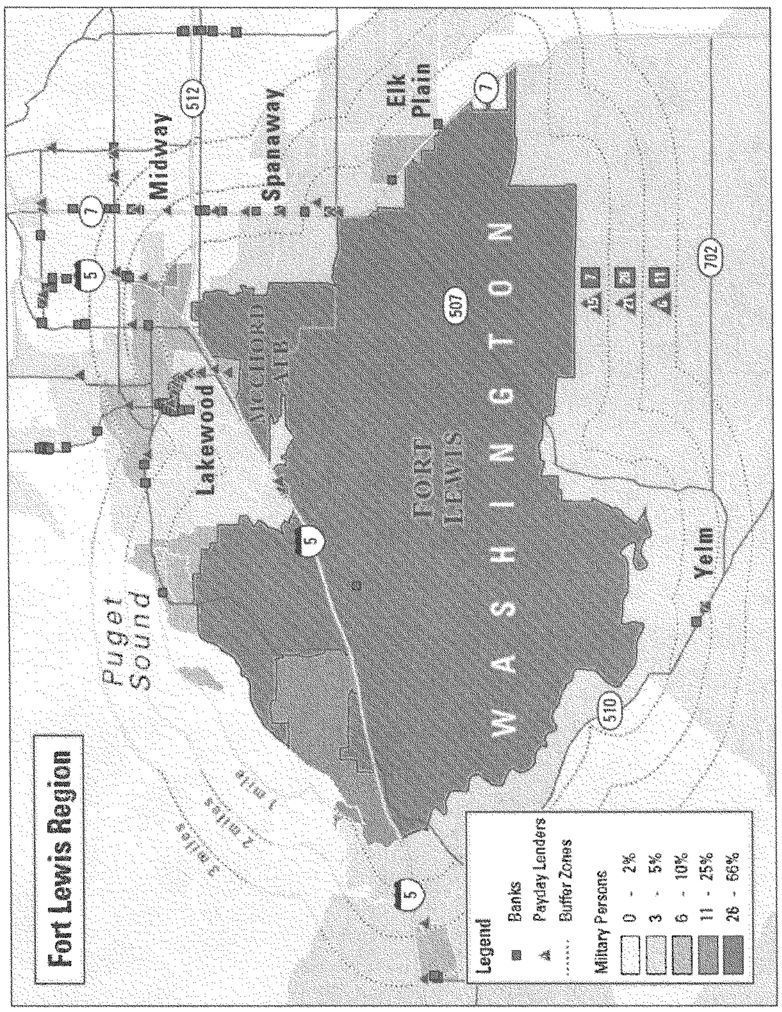
At the ZIP code level, a more telling picture emerges in Washington, especially when we examined the ZIP codes closest to Fort Lewis and McChord Air Force Base. Lakewood (ZIP code 98499), lying adjacent to McChord A.F.B. and just over a mile from Fort Lewis, has the highest composite score in the state. It has more payday lenders (sixteen) than any other ZIP code in the state, as well as the greatest excess number of payday lenders based on population (fourteen), and it is twelfth worst in the state in terms of its payday lender-to-bank ratio. This density of payday lending is all the more impressive considering that six ZIP codes bordering Lakewood combined have an additional 22 payday lenders, twelve more than predicted in those ZIP codes for their combined population.

ZIP codes in which payday lenders exceed the expected number can be found in close proximity to all of the major bases in Washington, but none of the densities appears as extreme as the density near Fort Lewis. The Bremerton area, with its many scattered facilities has about fourteen payday lenders, which is about six more than our statistical expectation. Even isolated Oak Harbor, with its Air Station at Whidbey Island has five payday lenders, double the amount suggested by its population. The Naval Station at Everett has nearly identical numbers. Service persons at Fairchild Air Force Base have to drive about ten miles to get to the business areas of Spokane, where there are 29 payday lenders and 49 banks in the six ZIP codes along the highway leading to the heart of Spokane. This is about eighteen more payday lenders than we predicted based on the population of those ZIP codes. Spokane includes the second and sixth worst payday lending ZIP codes in the state, and both of these neighborhoods are surely widely visited by the Air Force families in the area, many of whom live off-base in Spokane. It should be noted that Spokane does serve as the regional service hub, and therefore should have some additional commercial activity, but Spokane is easily the most overrun of the many service hubs in Washington in terms of payday lending.

Table 35. Washington: Top 30 ZIP Codes by Payday Lending

Nearby Base	ZIP	Town or City	Payday Lenders	Exp PD	Banks	PD/100K	Rank PD	Rank PC	Rank LQ	Composite Rank
Ft Lewis-McChord	98499	LAKEWOOD	16	2.37	13.0	54.96	1	4	12	1
Fairchild-10 miles	99202	SPOKANE	8	1.54	6.0	42.20	8	5	11	2
	98055	RENTON	11	2.25	10.0	39.81	2	7	15	2
	98661	VANCOUVER	10	2.96	9.0	27.57	3	16	14	4
McChord AFB	98444	TACOMA	8	2.53	8.0	25.81	8	22	16	5
Fairchild-10 miles	99207	SPOKANE	10	3.16	11.0	25.81	3	21	29	6
Fairchild-15 miles	99037	VERADALE	4	0.86	4.0	38.09	29	9	16	7
	98032	KENT	8	2.45	11.0	26.63	8	18	34	8
McChord-7miles	98403	TACOMA	3	0.62	2.0	39.40	47	8	8	9
	98148	SEATTLE	3	0.70	2.0	34.71	47	11	8	10
Ft Lewis-McChord	98498	LAKEWOOD	6	2.32	3.0	17.58	20	42	6	11
	98520	ABERDEEN	6	1.75	9.0	28.01	17	15	38	12
McChord AFB	98404	TACOMA	5	2.52	3.0	16.10	20	49	6	13
Fairchild-15 miles	99206	SPOKANE	7	2.55	11.0	22.35	14	29	40	14
NH-NS Bremerton	98528	BELFAIR	3	0.60	4.0	40.64	47	6	31	15
	98031	KENT	9	5.33	9.0	13.76	6	62	16	15
	98002	AUBURN	9	2.52	18.0	29.12	6	14	70	17
	98632	LONGVIEW	8	3.81	12.0	17.10	8	45	39	18
Ft Lewis	98597	YELM	3	1.14	3.0	21.39	47	30	16	19
McChord AFB	98408	TACOMA	4	1.56	6.0	20.92	29	33	37	20
Fairchild AFB	99224	SPOKANE	3	1.39	3.0	17.59	47	41	16	21
	99008	EDWALL	1	0.05	0.0	171.82	102	3	1	22
	98198	SEATTLE	4	2.57	3.0	12.70	29	71	13	23
	98531	CENTRALIA	5	1.77	11.0	23.06	20	27	68	24
	98003	FEDERAL WAY	8	3.39	17.0	19.20	8	35	72	24
	99212	SPOKANE	4	1.44	8.0	22.57	29	28	61	26
	99128	FARMINGTON	1	0.03	1.0	246.91	102	1	16	27
	98626	KELSO	3	1.84	2.0	13.29	47	64	8	27
	98506	OLYMPIA	3	1.40	4.0	17.50	47	43	31	29
	98801	WENATCHEE	7	2.98	15.0	19.15	14	36	71	29
NH-NS Bremerton	98312	BREMERTON	3	2.51	1.0	9.74	47	90	4	38
McChord AFB	98438	MCCHORD AFB	1	0.04	2.0	194.93	102	2	41	39
NS Everett	98205	EVERETT	2	1.34	1.0	12.14	75	74	5	42

For the street-level analysis, Thurston and Pierce Counties were chosen as the case study in Washington. Using the thre- mile buffer around the ZIP codes at Fort Lewis and McChord Air Force Base, we found 36 payday lenders and 37 banks. Statewide, there are more than four banks for each payday lender. The 216,738 people living within three miles of these bases have more than eighteen payday lenders beyond what is statistically expected for this region. By statewide standards, this is enough payday lenders to serve an additional 441,000 residents. The great majority of these payday lenders are found in two locations. The first is along or near Bridgeport Way, a road that leads north from McChord Air Force Base, and the other is Union Avenue, a road that runs along part of the northern border of Fort Lewis. Densities of payday lenders are very high in these two locations. In one two-mile stretch along Bridgeport Way, there are thirteen payday lending operations, including many of the industry leaders such as Check into Cash, Advance America, Advance Til Payday, etc. Five additional payday lenders are only a couple of miles down the road and again include widely recognized names in the business.


Fort Lewis Region
Puget Sound
Lakewood
McCHORD AFB
FORT LEWIS
WASHINGTON
Midway
Spanaway
Elk Plain
Yelm
1 mile
2 miles
3 miles
5
7
512
507
510
702
Legend
Banks
Payday Lenders
Buffer Zones
Military Persons
0 - 2%
3 - 5%
6 - 10%
11 - 25%
26 - 66%

V. ANALYSIS

A. *Empirical Discussion*

Nearly every statistical measure we used at every spatial scale points to the same conclusion: the payday loan industry targets military personnel. The evidence is overwhelming and incontrovertible. Our overall analysis included 20 states; 1516 counties; 13,253 ZIP codes; and nearly 15,000 payday lenders. Situated among those many counties and ZIP codes were 109 military bases and several dozen recently closed bases.[536] Within three miles of open bases were 150 counties and 813 ZIP codes. Payday lenders were in these military-adjacent counties and ZIP codes at greater numbers and in greater densities in almost every state we examined. These counties and ZIP codes represent a wide range of ethnic, income, and population characteristics and none of these variables account for the clarity of pattern that we have witnessed. With striking regularity, the counties and ZIP codes most overrepresented by payday lenders had one thing in common: large military populations.

The consistency with which we found payday lenders overrepresented in military regions was remarkable. In twelve of the nineteen states where county-level data was available, the worst county in the state was a military county. In Florida, Washington, California, and Colorado the top three, four, five, and six counties respectively all had a military legacy. The only states in which a military county did not have the highest composite density of payday lenders were (1) Alabama, where the second and third worst counties were military counties; (2) Idaho, which has only one small Air Force base; (3) Louisiana, where the second and third worst counties house military bases; (4) Missouri, where there is only one large base, which is adjacent to the second worst ZIP code statewide; (5) Ohio, with only one base in a top-ten county; (6) Oklahoma, where again the second worst county is a military county; and (7) Tennessee, which has no large base of its own, but shares Fort Campbell with Kentucky. The 150 counties housing or bordering a military base account for roughly one-tenth of all the counties in our survey and they account for a quarter of the total number of banks. Yet those same counties contain one-third of the payday lenders.

Often the most populous counties in our survey had the most payday lenders statewide, but in terms of per capita density, the worst counties tended to be military counties. Among the military counties we surveyed, we found 4765

[536] This number of bases includes only bases with over 550 on-base personnel, including civilians, according to the DOD's Directorate of Information Operations and Reports, Statistical Analysis and Information Division. *See* Department of Defense, *supra* note 287. Georgia's Fort Benning, which lies close to the Alabama border, and a few others, were also included in our study, but not counted among the 109 bases mentioned above.

payday lenders, which was 386 more than we predicted based on the population in these same counties. Seventeen of the 93 counties that had the highest per capita density of payday lending were military counties. Some of these counties, such as El Paso County, Texas, had huge populations while some, such as Mason County, Washington, had few people. However, both had military bases.

Moreover, we found the same pattern when we zoomed into the ZIP code level, often in even sharper focus. About sixteen million people live in a ZIP code near one of the bases in the nineteen states where ZIP code data was available, and well over a half-million of those people are currently serving in the Armed Forces. Including their families, this number probably reaches over one million. In these ZIP codes, we found about 1854 payday lenders and 3852 banks. This equaled 12.5% of the total number of payday lenders in our survey but only 8.5% of the banks in our survey. Given the population in these ZIP codes, this is about 370 payday lenders over the number we predicted based on the population in these ZIP codes. While 370 extra payday lenders may not seem an extraordinary excess, it is greater than the number of payday lenders in the entire state of Colorado, and if they were all in California it would be enough to service 5.6 million citizens.

In seven out of nineteen states, the single worst ZIP code in the state was adjacent to a military base. This is a momentous statistic given that many states have over a thousand ZIP codes statewide. Some of these worst-ranking ZIP codes would have been very difficult for us to predict before we began this study. Who among the casual observers of this industry would have guessed small towns like Lakewood, Washington; Radcliff, Kentucky; or Sumter, South Carolina would have the greatest combination of payday lending frequency and payday lending density in their states?

In five additional states, the worst payday lending ZIP code was either adjacent to a closed military base (California) or just beyond the three-mile range we set as our parameter for inclusion as an "adjacent" ZIP code. The statistical picture would have been even more compelling had we gone with a more liberal definition of geographic proximity. Many Air Force bases, such as Luke or Fairchild are isolated from the nearest commercial-retail district. This strategy removed several ZIP codes from our list, though they are by default the place where soldiers, sailors, and other service personnel and their families would take out a payday loan. Other ZIP codes were also left off our list because we used the primary on-base ZIP code to define the perimeter of what we consider the base, even though including off-base housing annexes and facilities would have included many more offending ZIP codes.

In several states, including Virginia, Washington, Colorado, and Texas, where multiple bases were found, more than half of the worst ZIP codes were within a few miles of a base. Only Ohio, Tennessee, and Florida were without a military-adjacent ZIP code among the ten worst in their respective states, and these anomalies are easily explained. Ohio, for example, has only one base and the payday lenders and service families surrounding Wright-Patterson Air Force Base are divided among a dozen different nearby ZIP codes, of which three manage to rank among the worst 30 in the state. Tennessee only has the small Navy Support Facility and part of Fort Campbell, so there are few military targets for payday lenders in the Volunteer State. Still, the second worst ZIP code in Tennessee is just over five miles from Millington, where the Navy Support Facility is located and the second worst ZIP code in Kentucky serves Fort Campbell just over the Tennessee border. In Florida, the caveat we offer is that the second, third, and fourth worst ZIP codes in the state lie just outside our three-mile buffer but still within very easy commuting distances from the bases they serve.

The pattern of payday lender targeting becomes even more troubling when compared to bank location strategies. Banks did not follow the same location patterns as payday lenders, suggesting that neither local zoning ordinances nor ordinary business development patterns forced payday lenders into military counties, ZIP codes, and neighborhoods. Our study found that the ratio of payday lenders to banks was most lopsided in counties and ZIP codes with a military base. Twenty-seven of the worst 100 counties in our survey on our Location Quotient score were military counties, almost three times the number we expected to see.

Concentrations of competitive businesses are common in certain industries, and there are a variety of good reasons why such clustering happens. For example, some businesses benefit from cooperative agglomeration, as is the case with car dealerships, appliance stores, furniture stores and other retailers of expensive durable goods which find clustering together helps consumers comparison shop. Fast food franchises also agglomerate along certain high traffic corridors, but generally these are carefully calculated site location decisions that keep them, as a group, from exceeding the population threshold necessary for survival. In the case of payday lenders, we find the agglomeration pattern difficult to explain utilizing any of the standard rationales for such patterns.

There are businesses that agglomerate in certain spaces of a city because they are making a conscious effort to be close to their target demographic. We have no doubt that the military is a target demographic for the payday lending industry. Around each of the bases we analyzed, the greatest concentration of payday lenders anywhere in the county was within a few miles of the military base. Payday lenders crowd around the gates of military bases like bears on a trout stream. Around most of the major military installations we have mapped, we have found at least 20 and sometimes as many as 40 payday lenders within just a few miles of the base gates. The only logical reason that we can fathom as to why ten to 20 businesses competing against one another for customers would locate within a few miles of each other, while simultaneously forsaking less crowded locations elsewhere in the community, is that there is something peculiarly profitable about the site of agglomeration.

Some would argue that the neighborhoods we have examined near bases suffer from poverty, have large minority populations, or high population densities, but this is not the case. We have found most military neighborhoods to be relatively prosperous, not particularly crowded, and generally unremarkable from a demographic standpoint. Indeed, in several instances, such as Oceanside, California, the neighborhood adjacent to the military base is affluent and without a large minority population. We have little doubt that the payday lending industry targets poor, minority, and crowded areas, but we can confidently assert that distance to military bases is the variable that best predicts a large number of payday lenders. When considered in light of the ancient history of predatory lenders targeting military personnel and the compelling body of social scientific literature suggesting financial vulnerability of service members, our findings should stand as conclusive proof that the payday lending industry targets members of the armed forces and their families.

B. *Legal and Public Policy Considerations*

1. *Voluntary Compliance and Industry Best Practices*

The public policy response of choice for the payday lending industry has been voluntary "best practices" lists written and sponsored by industry trade associations. Currently, two trade associations represent the interests of the payday lending industry: the Financial Services Center of the America (FiSCA) and the Community Financial Services Association of America (CFSA). FiSCA has a voluntary "code of conduct" which trade association members aspire to comply with.[537] FiSCA's code calls on trade association members to maintain "integrity" in eleven different business activities such as collection practices, invoking criminal process, consumer education, pricing and consumer charges, and extensions.[538] For example, the code states:

> Integrity in Invoking the Criminal Process. FiSca members will never threaten to file criminal charges against a customer merely for defaulting on a debt. Criminal charges can be appropriate where a customer seeks to defraud a FiSCA Member, such as by closing their checking account or passing a false

[537] Financial Services Center of America, Code of Conduct (Feb. 7, 2001), www.fisca.org/FiSCACodeCcc.pdf [hereinafter FiSCA Code of Conduct].

[538] *Id.* Other activities for which the code suggests acting with integrity include: marketing and advertising, operations, documentation, consumer's right to rescind, in the industry, and as a money service business. *Id.*

instrument.[539]

Similarly, the CFSA best practices list encourages members of that organization to give full disclosure, truthfully advertise, encourage consumer responsibility, limit rollovers to four or the state limit, whichever is less, and comply with "applicable" laws.[540] Recently, CFSA has also adopted a separate "military best practices" list. This list requires members not to garnish military wages, temporarily defer collection activity against a military customer deployed in combat, refrain from contacting commanding officers in an effort to collect a loan, honor the terms of any agreement, educate military customers, develop a brochure and a hotline, and develop and maintain a military best practices web site.[541]

Neither trade association's voluntary guidelines includes any form of price limitation, leaving members free to charge unlimited interest rates. Neither trade association has committed to refrain from refinancing one payday loan with another payday loan. With carefully qualified language, both policies appear to leave open the possibility of threatening borrowers with criminal prosecution.[542] Neither policy commits to comply with the Fair Debt Collection Practices Act.[543] Neither trade association imposes any penalty or sanction on members who do not comply with their best practices. Also, payday lenders who do not pay dues to join either trade association do not make even a nominal commitment to comply with the policies. CFSA's military best practices say nothing about obtaining judgments and then seizing automobiles or other property of service members, garnishing from bank accounts where wages are deposited, or garnishing the wages of service members' spouses.

But perhaps more fundamentally, our empirical findings raise significant red flags about whether the payday lending industry will comply with voluntary standards. While collecting our data, in state after state we found significant numbers of payday lenders openly doing business who are not registered to make

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[539] *Id.*

[540] Community Financial Services Association of America, Best Practices for Industry (Feb. 15, 2005), www.cfsa.net/genfo/egeninf.html [hereinafter CFSA Best Practices].

[541] Community Financial Services Association of America, Military Best Practices (2004), http://www.cfsa.net/genfo/MilBestPractie.html [sic].

[542] For example, FiSCA's Code somewhat ambiguously authorizes members to threaten borrowers with criminal prosecution for "passing a false instrument." FiSCA Code of Conduct, *supra* note 537. CFSA's prohibition of criminal threats is similarly ambiguous. CFSA Best Practices, *supra* note 540.

[543] By its own terms, the Fair Debt Collection Practices Act is not applicable to at least some payday lenders because it governs only professional third-party debt collection agencies, rather than originating lenders. 15 U.S.C. §§ 1692a(4), (6); 1692d (2004) (unlike "debt collectors," "creditors" are not barred from harassment or abuse under the federal statute).

payday loans as required by state law.[544] Moreover, dozens of lawsuits and enforcement proceedings are regularly brought by state attorneys general, financial institution regulators, and private consumer attorneys.[545] Literally thousands of payday lenders around the country openly and systematically ignore state consumer protection laws.[546] Despite trade association aspirational goals, no industry with which we are familiar, with the possible exception of the illegal narcotics business, so openly ignores the law. We do not see how reasonable observers of the payday lending industry can have faith in voluntary compliance standards. Either industry best practices will remain so substantively weak as to be irrelevant, or a large portion of lenders will not voluntarily comply. The financial incentives in lending at high rates to distressed and often uneducated borrowers appear to be too great to facilitate responsible lending in the absence of strict oversight. Finally, trade association voluntary guidelines will never recognize the possibility that communities in general, and military communities in particular, may simply be better off without easy access to triple-digit interest rate loans.

2. *State Law*

Payday lending law in the 20 states we studied can be divided into roughly six categories. The first and largest group includes thirteen states: Alabama, Arizona, California, Colorado, Idaho, Kentucky, Louisiana, Missouri, Ohio, South Carolina, Tennessee, Virginia, and Washington. These states have all clung to only a pretense of price control by adopting fee limitations equivalent to between 390% and 1950% per annum. Many of these states have ancillary rules, such as dollar amount limitations, roll-over limitations, and disclosure rules. Most of these provisions are either redundant with federal law, meaningless, or largely unenforceable. More likely than not, these ancillary provisions were mere bargaining chips used by payday lending industry lobbyists to create an illusion of consumer protection where there is little or none. Certainly there are laws among these states, Missouri's legislation for example, which stand out as less consumer—and service member—friendly than others. And, there are some states, such as Colorado, that have put more administrative backbone into enforcing their laws. Yet, none of the consumer protection statutes in these states have led to any identifiable reduction in the numbers of lenders clamoring to leech the income of military personnel.

Second, Florida and Oklahoma probably deserve separate mention from the first group of states if only because they have adopted laws requiring lenders to

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[544] *See infra* notes 360, 406, and 453 and accompanying text.

[545] *See infra* notes 369, 443, and 534 and accompanying text.

[546] *See infra* notes 50, 59, and 516 and accompanying text.

use statewide internet-based databases to verify that borrowers do not have outstanding payday loans to other companies. Still, it is far from clear whether payday lenders will actually comply with the database requirements. For example, our data collection efforts suggest that many payday lenders in both states have not bothered to obtain state payday lending licenses.[547] Certainly these lenders cannot be trusted to list each individual loan on the state's database system. Accordingly, the effectiveness of these database systems remains, at least to some degree, an open question.

The third group of states includes Delaware and South Dakota, which have abandoned consumer protections in order to attract financial service industry jobs to their small, primarily rural states. Similar to the first and second group of states, Delaware and South Dakota have no laws which might exert a restraining force on payday lenders seeking to target military personnel. And what may be more significant, with no price controls whatsoever, these two states have become the home of choice for banks that assist payday loan companies in circumventing consumer protection laws in other states. Delaware and South Dakota have legally specialized in undermining the consumer and service member protection efforts of their neighbors.

Texas, North Carolina, and New York all have unique regulatory environments which are materially different from every other state we studied. While Texas has not adopted legislation specifically addressing payday lending, its price controls are loose enough that payday lenders can still do business within the bounds of Texas law by lending at rates in the neighborhood of 309% per annum. Instead, soldiers in Texas, perhaps more than any other state, have suffered at the hands of the "charter-renting" legal strategy. With the cooperation of banks in Delaware, South Dakota, and other more loosely regulated states, thousands of payday lenders in Texas simply ignore the will and commands of the Texas legislature.

From 1997 to 2001, North Carolina was firmly within our first classification of states. But when the legislature allowed its payday loan licensing law to expire, the state became one of only two states we studied which retained the traditional small loan laws prevalent in the United States for most of the twentieth century. Our empirical results in North Carolina show how difficult it can be for legislatures and regulators who wish to turn back the clock. Once a payday lending industry is established, it is difficult to control. Payday lending in North Carolina continues today under a variety of questionable guises. There, the legislature made a deliberate choice to protect soldiers at Fort Brag, Marines at Camp LeJeune, and others. It remains to be seen if the courts, regulators, and future legislators will have the will power to stand by their decision.

In the empirical analysis, the State of New York stands alone. Of every major

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[547] *See infra* notes 289, 406, and 484 and accompanying text.

military base we studied, Fort Drum in upstate New York is the one location where service members and their families are not targeted for triple-digit interest rate loans. Ironically, the law in New York is not materially different from the law in North Carolina. Herein lies the most important legal insight of our study: state governments retain the power to prevent payday lending within their borders, both to military service members and to all consumers. In state after state, legislators have been sold on the notion that regulating payday lenders with a licensing statute is better than traditional interest rate caps since federal banking regulation makes payday lending inevitable anyway.[548] When out-of-state banks have rented their charters to payday loan companies hoping to cash in on the large and potentially lucrative New York market, the state has successfully sued the banks accusing them of criminally facilitating violation of the state criminal usury law.[549] Similarly, when payday lenders have tried to disguise their loans in thin veneers such as "catalog sales," the state has aggressively pursued management of these companies obtaining judgments that hold owners personally liable.[550] New York's stubborn enforcement of its 25% criminal usury cap has acted as a serious deterrent to banks and payday loan companies who consider flouting the will of the New York legislature. This is not to say the Ft. Drum area is free from other potential financial hazards. Credit card lenders, finance companies, car dealerships, rent-to-own furnishers, and pawnshops—as well as banks, thrifts, credit unions—all profitably provide copious amounts of credit to soldiers near Ft. Drum. Yet all of these businesses profit with less brazen rates and collection practices than payday lenders. Accordingly, the New York approach should serve as a model for North Carolina, Texas, and any other state wishing to more carefully protect the welfare of its soldiers and citizens than does Delaware or South Dakota.

3. *Federal Law*

It is a bizarre twist of fate that gave an agency with the primary mission of protecting banks the primary responsibility for protecting consumers from overreaching banks. Payday loans are a highly controversial financial product with terms nearly indistinguishable from those offered by our nation's first loan sharks, the nineteenth century salary lenders. Average payday loans carry interest

548 *See, e.g.*, Shean, *supra* note 14 ("Del. Harvey B. Morgan, patron of the bill said he and several other House members were uncomfortable with payday-loan practices. However, they decided that 'payday lending is here' and that some form of state regulation was needed. . . . ").

549 People v. County Bank of Rehoboth Beach, 1:03-CV-1320 (N.D.N.Y. May 25, 2004), www.abanet.org/buslaw/committees/CL230044pub/links.shtml (subscription required).

550 People v. JAG NY, 794 N.Y.S.2d 488, 489 (N.Y. Sup. Ct. May 5, 2005).

rates nearly twice as high as average rates of extortionate New York mafia syndicates.[551] Appreciating the profound reputational risk associated with this type of loan, the OCC has concluded that payday lending partnerships unacceptably endanger the safety and soundness of national banks. Unlike the OCC, the FDIC has taken a narrow view of safety and soundness. Our empirical results should serve as a wake-up call to the FDIC as to how serious a reputational threat payday loans are for state banks. For over a thousand years, citizens have surprised lenders and governments with fury over loans to soldiers at loan shark prices. Not only the FDIC, but the vast majority of more responsible banks who eschew payday lending should carefully consider whether the public will find an abuse of trust in triple-digit interest rate loans to eighteen-year-old soldiers and their families.

Independent of safety and soundness concerns, the FDIC's actions have also hobbled state consumer and service member protection law across the country—all for the benefit of twelve small banks. By creating a plausible veneer of legality on bank-payday company relationships, the FDIC has confused and frustrated enforcement of state regulations. But perhaps even more importantly, the FDIC's indifferent response to charter-renting places state legislators who wish to protect soldiers from predatory payday lenders in an untenable position. State legislators have been led to believe that payday lending is inevitable because the FDIC tolerates charter-renting by out of state banks. Many state legislators believe they can only protect consumers from in-state lenders because out-of-state lenders are beyond their reach. While New York's experience shows that this is not necessarily true, there should be no doubt that many state legislators around the country would prefer double-digit interest rate caps if they applied to all businesses equally. However, these state legislators cannot risk being accused of "discriminating" against local businesses in favor of large out-of-state interests. It is one thing for the FDIC to be ambivalent about protecting consumers, but it is something entirely different for the FDIC to force that ambivalence on other institutions whose mission is protecting their local constituents' well-being. Indeed, a significant amount of the impoverishment suffered by our nation's soldiers, sailors, Marines, and airmen at the hands of payday lenders is rightfully laid on the doorstep of the FDIC.

4. *Military Leadership on Payday Lending*

Just as military leaders must care for the physical and mental health of their people, so too must they take responsibility for service members' financial

[551] *Compare* FOX AND MIERZWINSKI, *supra* note 29 (national study showing average payday lender interest rates of 474% per annum) *with* Comment, *Syndicate Loan-Shark Activities and New York's Usury Statute*, 66 COLUM. L. REV. 167, 167 (1966) (reporting extortionate mafia loanshark interest rates averaging 250% per annum).

health. For too long, civilian government has stood by while a parade of cheats and charlatans have preyed on young service members and their families. With the increasing strain on military resources due to overseas engagements, the military should not expect to use its own funds to bail out enlisted personnel from financial traps, nor can the military expect that financial education and counseling will solve their problems. The expense of designing programs that will make a significant dent in current payday lending trends will be far beyond military capabilities. The Armed Forces cannot take the place of the nation's public school system. Commanding officer "off limits" orders are also unlikely to be a viable long term solution. These orders are difficult to enforce and monitor: payday lenders will in most cases be free to ignore them, and the orders only last as long as a given commanding officer remains stationed at any one location. Moreover, these orders have a side effect of increasing blame and pressure on those service members who disobey them when seeking quick solutions to their financial problems. These orders also do not bind military spouses, making them a partial solution at best.

Instead, military leaders should actively engage state and federal regulators, state legislatures, and Congress to lobby for better consumer protection laws. In particular, our data suggest that the Pentagon should advocate for a no-exception, criminal usury law with robust government enforcement and private litigation rights at both the federal and state level. The United States rose to power during the twentieth century with criminal usury laws limiting interest rates to a moderate range of around 18 to 42%. It was not until we abandoned these laws that payday lenders came to cluster around military bases in the current numbers and with such onerous contractual terms. Moreover, just such a law, as currently found in New York, has been the only legal strategy in the 20 states we surveyed which successfully protected service members from triple-digit interest rate loans. In furthering this goal, the Pentagon should designate an office with responsibility for tracking state and federal predatory lending legislation, assisting consumer advocacy organizations, and coordinating with state and federal consumer protection agencies. Above all, individual military leaders should not underestimate their influence and political capabilities. Military leaders possess a unique and persuasive voice in advocating for consumer protection of their enlisted personnel. Indeed, the military may be the one institution with the esteem and independence capable of trumping the millions of dollars predatory lenders will readily spend influencing legislative and public opinion with respect to their products.[552]

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[552] It is worth noting that current U.S. House of Representatives Majority Leader Tom DeLay gave a keynote address and attended a closed-door fundraiser at this year's annual payday lender trade association convention in Hollywood, Florida. CFSA Convention Schedule, CHEKLIST, Program Guide to the 2005 CFSA Annual Meeting in Hollywood, FL (Mar. 2005).

VI. CONCLUSION

This Article has conclusively demonstrated that payday lenders target military personnel. By surveying 20 states, 1516 counties, 13,253 ZIP codes, nearly 15,000 payday lenders, and 109 military bases, this research systematically tracked the location patterns of payday lenders in a preponderance of the military communities in the United States. Even when accounting for commercial development patterns and zoning ordinances with bank locations, payday lender location patterns unambiguously show greater concentrations per capita near military populations. Moreover, of the 20 state legal environments studied, only one was home to a prominent military base where troops were not targeted for payday loans: Fort Drum in upstate New York.

For all those who genuinely care for the welfare of American soldiers, sailors, Marines, and airmen, these empirical results should be profoundly troubling. Supporting the troops should not be merely an empty slogan. Ironically, many of those who claim most vocally to support the troops are the same individuals who adopt laws allowing predatory lenders to target those troops. What use is a Congress that eats "freedom fries" in the Capitol cafeterias but ties the hands of state regulators who hope to protect soldiers from predatory lending?[553] For the great majority of the past century, the American government protected service members from high-cost predatory loans with usury laws limiting interest rates to between 18% and 42% per annum. Through federal preemption and state legislative change, these laws have given way to an environment in which service members are literally surrounded by lenders clamoring to charge annual rates averaging around 450%. Military personnel both in ancient history and contemporary America have chronic financial vulnerabilities owing to their demanding and semi-nomadic lifestyles. Inevitably, many struggling military personnel and their families find the temptation of short term financial quick fixes advertised as "easy," "no hassles," "no credit check," or "quick cash" too difficult to pass up. For the reasonable and caring, supporting the troops should include an emphatic return to the traditional usury laws insisted upon by previous American generations.

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[553] In March of 2003, with tensions rising over French opposition to American foreign policy, the U.S. House of Representatives changed menus in the House cafeteria to serve "freedom fries" instead of french fries. Sheryl Gay Stolberg, *An Order of Fries, Please, But Do Hold the French*, N.Y. TIMES, March 11, 2003, at A5.

ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

HILARY B. MILLER, ATTORNEY AT LAW
Greenwich, CT, September 20, 2006

Hon. MELQUIADES R. MARTINEZ,
317 Hart Senate Office Building
Washington, DC.

Re: Predatory Lending Practices Directed At Members of the Armed Forces and Their Dependents

Dear Senator Martinez:

In the limited time available for last Thursday's hearing, it was not possible to provide complete information regarding the finance charges applicable to payday advances. On behalf of Community Financial Services Association of America, I write to supplement my responses at the hearing.

The finance charge for a payday advance is largely a function of the lender's costs (principally occupancy and personnel expenses). An FDIC study cited in my prepared remarks estimates that the these costs are approximately $13–$14 per $100 of loan principal advanced. [1] Thus, a finance charge of $15 per $100 to the consumer is, to use your term, entirely "conscionable" and results in a very normal profit margin to the lender.

There is considerable evidence that the industry's margins are not exorbitant, insofar as most of the largest operators are public companies and have readily ascertainable, audited profit figures. The absence of inappropriate profits makes sense when you consider that, unlike an installment or mortgage lender—which is able to recoup its costs through finance charges collected over a period of three, five or even thirty years—a payday lender must recover its entire costs of origination and servicing over the initial two-week typical loan term.

Moreover, the industry is nearly perfectly competitive. With over 22,000 retail outlets (and innumerable Internet-based providers), and very low barriers to entry, prices would be expected to converge toward lenders' marginal costs—and indeed that is precisely what has occurred. To phrase it differently, if the payday lending business were "unconscionably" profitable, lenders would be expected to flood the market and drive interest rates down.

Consumers can (and do) readily comparison shop because the industry universally quotes pricing both as a finance charge in dollars *and* as an annual percentage rate (as required by the Truth In Lending Act).

Finally, you asked why it might be appropriate for a young service member to borrow at the seemingly high annual percentage rates charged by payday lenders. Just as commuters understand that taxicabs are valuable and convenient when used for short-term travel needs but too expensive for extended trips, consumers understand that payday advances are useful when utilized for short-term needs but inappropriate for long-term borrowings. To America's working middle class, the payday-advance product serves as a dignified, discreet and cost-efficient "financial taxi" to tide the borrower over to his next payday when faced with an unexpected cash need.

Although it is tempting to cite high annualized interest rates as problematic, the use of annualized rates is inappropriate when comparing extremely short-term credit options. The vast majority of military borrowers have payday-loan credit outstanding for only a few weeks per year.[2]

Rollovers were mentioned at the hearing as a potential problem, but 36 of the 38 states that permit payday lending have strict statutory limitations on rollovers. For example, Florida forbids all rollovers. Fla. Stat. Ann. § 560.404(18). In contrast to this reality, the technical APR computation requires an assumption that the loan will be rolled over 25 times (even though the permitted number of rollovers is zero). *The actual interest rate on the loan is 15%, but the theoretical APR figure is 391%.* Thus, I am sure that you can understand how we believe that focusing on the APR is extremely misleading and typically presents a distorted picture of the real cost of payday loans.

As noted in my prepared remarks, analysis of the cost of payday-advance credit must take into account the cost to the borrower of *not* obtaining such credit. Faced

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[1] Mark Flannery and Katherine Samolyk, *Payday Lending: Do the Costs Justify the Price*? FDIC Center for Financial Research Working Paper No. 2005–09. *http://www.fdic.gov/bank/analytical/cfr/workingpapers.html#payday* (visited August 29, 2006).

[2] William O. Brown, Jr. and Charles B. Cushman, *Payday Loan Attitudes and Usage Among Enlisted Military Personnel* (2006). Available at *http://www.consumercreditresearchfoundation.org/files/060628MilitaryPDLSurvey.pdf* (visited August 29, 2006).

with the alternative of writing a check that may "bounce" or of a utility disconnect—often with implicit annualized costs in excess of 1,400% when expressed in APR terms for purposes of comparison—or being unable to afford repairs to a car needed for commuting to work, the modest cost of a short-term payday advance will almost always represent a good tradeoff for the borrower.[3]

The following table shows how a payday loan may be advantageous when compared with other forms of credit that a middle-income military consumer may choose:

Credit alternative	$100 Payday advance	$100 Overdraft protection	Credit card late fee on $100 bill	Late/Disconnect fee on $100 utility bill	$100 Bounced check NSF/merchant
Fee	$15.00	$26.90	$32.61	$46.16	$53.68
Effective APR	391%	701%	850%	1,203%	1,400%

Against this backdrop, a payday loan may be a very wise choice for a service member.

We respectfully urge you that there are two sides to this issue, and the DoD report contains only one of them. We will work diligently with you and your staff to make sure that you can make an informed and principled decision regarding this matter.

Thank you for you courtesies at the hearing and for your efforts on behalf of our service members and our nation.

Very truly yours,

/S/ HILARY B. MILLER

[3] "Critics also contend that [overdraft] bounce protection fees, as high as $37 per transaction, are little more than high-priced credit. 'If a bank lends you $100 and charges you a $20 fee—and then you pay the money back in two weeks—that's an annualized rate of 520%,' notes Jean Ann Fox, director for consumer protection at the Consumer Federation of America in Washington. 'It's worse than a payday loan.' "—*Business Week*, May 2, 2005.