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Payday Lending in Louisiana, Mississippi, and Arkansas: Toward Effective Protections for Borrowers

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INTRODUCTION

"These people are barely making ends meet; [they] will go to one of these [payday lending] places for what they think is a quick fix and find out that it's a nightmare. They never get out from under it."

H.C. Klein, Founder
Arkansans Against Abusive Predatory Lending[1]

Flora Johnson, a thirty-six-year-old single mother, lives in the Mississippi Delta. Every day she hears about the country's economic downturn and looming recession. She worries, for the hundredth time, about how she will pay the bills this month.[2] While she has a steady job earning about $25,000 per year, Flora, like millions of Americans, cannot rest easy:[3] she has just reached the limits of her credit cards and home foreclosure is imminent.[4] When an unexpected medical bill comes in the mail, Flora sighs in resignation.[5] Even though she worries about paying it back, she knows just where she must turn for help: a payday loan.[6] Payday loan stores are everywhere in Mississippi.[7] Besides being one of

1. Jim Edwards, Editorial, *Legal Usury in Arkansas*, CAMDEN NEWS (N.J.), Oct. 24, 2007, at 4, http://www.stoppaydaypredators.org/pdfs2/07_1024_editorial.pdf.

2. For a discussion of the challenges facing middle-class American families (including fictional characters like Flora, who need to take out a payday loan), see ELIZABETH WARREN & AMELIA WARREN TYAGI, THE TWO-INCOME TRAP: WHY MIDDLE-CLASS MOTHERS AND FATHERS ARE GOING BROKE 4 (2003) (arguing that the number of American families who find themselves in serious financial trouble is "shockingly large"); *id.* at 57 (arguing that the middle class has no safety net and no place to turn "in the case of a calamity"); *id.* at 112 (noting that compared to past generations, average savings for families has dropped to –1% and credit card debt has risen to 12%).

3. *See* Aaron Huckstep, *Payday Lending: Do Outrageous Prices Necessarily Mean Outrageous Profits?*, 12 FORDHAM J. CORP. & FIN. L. 203, 216–18 (2007) (comparing studies of average salaries of payday loan borrowers and concluding that the average salary is likely in the mid-$20,000s).

4. *See* Nick Carey, *Payday Loans Exacerbate the Housing Crisis*, REUTERS, Mar. 24, 2008, http://www.reuters.com/article/newsOne/idUSN1045663120080324 (showing the correlation between home foreclosure rates and families' increased reliance on payday lenders to make ends meet).

5. *See* WARREN & WARREN TYAGI, *supra* note 2, at 85 (noting illness increases the likelihood that families are in poor economic shape and must declare bankruptcy).

6. *Cf.* Michael S. Barr, *Banking the Poor*, 21 YALE J. ON REG. 121, 124 (2004) (explaining that payday lenders often serve borrowers who cannot use credit cards).

7. *Infra* note 8.

the nation's poorest and most rural states,[8] Mississippi has more payday lending stores than McDonald's restaurants.[9]

With payday lenders such as Cash Money Payday Loans, Advance America, and Check-into-Cash lining the roads to and from work, Flora finds it easy to select one and request a $325 loan, the state's average.[10] To obtain the loan, she shows only her driver's license and proof of a bank account and an income.[11] The lender never checks her credit, which is one reason the loan is so appealing and easy to get.[12] She writes the lender a personal check, and he agrees not to cash the check until after her next payday in two weeks.[13] For the $325 loan, the lender charges $55, which

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8. *See, e.g.*, Press Release, U.S. Census Bureau, Income Climbs, Poverty Stabilizes, Uninsured Rate Increases (Aug. 29, 2006), http://www.census.gov/Press-Release/www/releases/archives/income_wealth/007419.html (explaining Mississippi has one of lowest mean incomes in the nation). *See also* Rural Poverty Research Center, http://www.rprconline.org (last visited Oct. 17, 2008) (showing the location of persistently poor counties in the United States, many of which cluster along the Mississippi River and in the Mississippi Delta area).

9. For per-capita payday lending store saturation, see Email from Beth Orlansky, Staff Attorney, Mississippi Center for Justice (Sept. 18, 2007) (on file with author) [hereinafter Orlansky Email]. *See also* Steven M. Graves, Cal. State Univ. Northridge, Payday Lenders vs. McDonald's, http://www.csun.edu/~sg4002/research/mcdonalds_by_state.htm (last visited Sept. 26, 2008) (explaining Mississippi has 124 McDonald's restaurants and more than 1,100 payday lending establishments).

10. URIAH KING, LESLIE PARRISH & OZLEM TANIK, CTR. FOR RESPONSIBLE LENDING, FINANCIAL QUICKSAND: PAYDAY LENDING SINKS BORROWERS IN DEBT WITH $4.2 BILLION IN PREDATORY FEES EVERY YEAR 2 (2006), *available at* http://www.responsiblelending.org/pdfs/rr012-Financial_Quicksand-1106.pdf.

11. *See id.* at 3.

12. *See* Erik Eckholm, *Seductively Easy, Payday Loans Often Snowball*, N.Y. TIMES, Dec. 23, 2006, at A1, http://www.nytimes.com/2006/12/23/us/23payday.html (noting because lenders do not check borrowers' credit, borrowers may be more likely to default in some situations; however, most borrowers extend loans and pay repeat fees to lenders).

13. Flora, who is a fictional character, is an example of millions of Americans who rely upon "alternative financial services," including check cashing and payday lending. This Article will focus solely on payday lending. Check cashing, not to be confused with payday lending, occurs when a provider cashes an employer's check in exchange for a service fee. Payday lending occurs when a lender makes a temporary loan against the delayed cashing of an employee's post-dated personal check. *See* JOHN P. CASKEY, FRINGE BANKING 30–31 (1994); KING ET AL., *supra* note 10. The term "payday" developed because when consumers seek loans, they write a date on their checks to correspond to their next payday. *See* 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, 673 (2005). Theoretically, after the next payday, the borrower's checking account would contain more money, and at that time the lender would cash the check. As this

works out to an Annualized Percentage Rate ("APR") of 531%.[14] The lender never explains the interest rate computation to Flora, and she never asks.

A few weeks later, Flora realizes she does not have the extra money to repay the lender. Concerned that her check will bounce if the payday lender deposits it, Flora decides that she will instead renew her loan. She pays $55 that month and every month thereafter, "rolling over" the loan without paying a cent toward the principal.[15] Flora eventually pays nearly $800 *in interest* on her original loan.[16] Her lender probably knew this would happen; in fact, he urged her to roll over the loan, knowing full well the debt would trap her.[17] Later, when a friend asks why she would agree to such oppressive loan terms, she says with regret that she thought her luck would change and that she could someday pay the money back.[18]

Flora's story is not unique. The payday lending industry has raised the ire of borrowers, lawyers, and consumer advocates because they say lenders are "predatory."[19] That is, lenders prey on

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Article will demonstrate, the theoretical ideal of payday lending is rarely realized.

14. To calculate the APR on a $325 loan, take the fee ($55), divide by the amount received ($270) and multiply by the fraction of the number of days in a year (365) divided by the loan length (14 days). *See, e.g.*, Mississippi Check Cashers Act Regulations, 03-000-015 MISS. CODE R. § 3(4) (Weil 2003), *available at* http://www.dbcf.state.ms.us/documents/cons_finance/final_check_cashing_regs-2-20-2003.pdf (formula for APR calculation).

15. Rollover loans are common. For an informative interview with Rebecca Flippo, a former payday loan officer, see Video: Inside the Payday Industry: Loans Trap Borrowers (Ctr. for Responsible Lending 2007), http://www.responsiblelending.org/issues/payday/inside-the-payday-industry.html [hereinafter Flippo Interview] (explaining that borrowers usually take out a $500 loan and spend $3900 in fees on the same $500 amount from the original loan).

16. Flora's story was based loosely on true stories from KING ET AL., *supra* note 10. *See also* Thomas A. Wilson, Comment, *The Availability of Statutory Damages Under TILA to Remedy the Sharp Practice of Payday Lenders*, 7 N.C. BANKING INST. 339, 339–40 (2003) (reporting story of young woman trapped in payday lending cycle); MISS. ECON. POLICY CTR., MISSISSIPPI PAYDAY LENDING FACT SHEET 1, (2007), http://www.mepconline.com/images/admin/spotedit/attach/4/Payday_Lending_Fact_Sheet_FINAL.pdf.

17. *See* Charles A. Bruch, *Taking the Pay Out of Payday Loans: Putting an End to Usurious and Unconscionable Interest Rates Charged by Payday Lenders*, 69 U. CIN. L. REV. 1257, 1280–81 nn.263–65 (2001).

18. *See* Posting of Paige Marta Skiba, *Why do People Use Payday Loans?*, to Credit Slips, http://www.creditslips.org/creditslips/2008/03/why-do-people-u.html (Mar. 17, 2008).

19. *See* notes and materials from Miss. College Sch. of Law, Economic Justice Summit on Payday Lending, July 23, 2007 (on file with author)

unsophisticated poor people and ensnare them in extremely expensive loans with an average APR of 470%.[20] Loans become predatory when payday lenders lend to borrowers through five or more transactions a year.[21] According to the Center for Responsible Lending, a consumer advocacy group, 91% of payday loans fit this description.[22] Each month, lenders across the country collect thousands of dollars in interest from the people who can least afford it.[23]

In this Article, my argument is two-fold. I argue first that the problems facing payday loan borrowers are particularly acute in the South. I argue second that legislation aimed to protect borrowers is pitifully weak, and in some cases futile, for residents in Louisiana, Mississippi, and Arkansas. Given this framework, I nevertheless suggest federal and state solutions to protect borrowers. Part I provides background information about typical lenders, their practices, and relevant legal developments. Part I also situates payday lending among the economic, educational, and geographical challenges facing many southern residents. Part II describes the payday lending laws of Louisiana, Mississippi, and Arkansas. Part III recommends solutions for effective protection of borrowers in the South.

I. GENERAL BACKGROUND

A. Development of the Payday Lending Industry

Payday lending has changed dramatically from a relatively unknown financial service in the early 1900s to a billion-dollar

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[hereinafter Economic Justice Summit]. *See also* Eckholm, *supra* note 12 (noting most money comes from borrowers who "rollover" loans, repaying fees each month until they pay off loan amount, thus creating extraordinarily high interest rates).

20. *See* Consumer Fed'n of Am., Payday Loan Consumer Information: Facts, http://www.paydayloaninfo.org/facts.cfm (last visited Nov. 3, 2008); *see also supra* note 14 and sources cited therein; Orlansky Email, *supra* note 9.

21. MISS. ECON. POLICY CTR., *supra* note 16.

22. CTR. FOR RESPONSIBLE LENDING, FACT V. FICTION: THE TRUTH ABOUT PAYDAY LENDING INDUSTRY CLAIMS (2001), http://www.responsiblelending.org/issues/payday/briefs/page.jsp?itemID=29557872.

23. *Id. See also* Eckholm, *supra* note 12 (describing a New Mexico man who reportedly traveled thirty miles each month for his "ritual," in which he would give $1,500 to lenders for loans he had taken out years ago); Jane Bryant Quinn, *Payday Loans Can Be a Trap*, NEWSWEEK, Oct. 8. 2007, http://www.newsweek.com/id/41906/ (explaining "over two years, a $300 loan, renewed and renewed, can cost $2,340 and you're still in debt").

industry in 2008. Payday lending has roots in the "salary buying" business in which consumers who needed short-term cash sometimes took advantage of "salary buyers."[24] A buyer purchased a borrower's salary and provided immediate funds in exchange for the right to "buy" the borrower's entire salary in the future.[25] When a borrower did not pay the loan on time, salary buyers used aggressive collection tactics, leading working class people to coin the term "loan sharks."[26] For most of the twentieth century, borrowers applied for modest loan amounts at low rates, thanks to strict caps on interest rates (usury).[27] Until the 1980s, most states had traditional usury rates that capped interest between 18% and 42%.[28] In the mid-1980s and 1990s, states began to relax their prohibition on high interest rates.[29]

In 1993, an entrepreneur named W. Allan Jones established the payday lending industry when he opened his first Check-into-Cash store in Cleveland, Tennessee.[30] A payday loan is fundamentally different from other products, such as a pawnshop loan. The interest rate is higher, and payday loan borrowers are legally obligated to pay their loans.[31] These borrowers cannot simply surrender their security ("pawn") and walk away. The industry grew quickly, and from 2000 to 2004, the number of payday lending stores more than doubled, in part because of each store's profitability.[32] With $300,000 in the market, a lender can potentially make $1,716,000 in one year.[33] A whopping 90% of the revenue generated in the payday lending industry comes from interest and other fees charged by borrowers.[34] In 2007, payday lenders collected $8.6 billion in fees from American families

24. *See* CASKEY, *supra* note 13, at 31 (explaining the origins of payday loans).
25. *Id.*
26. *See* Graves & Peterson, *supra* note 13, at 670.
27. WARREN & WARREN TYAGI, *supra* note 2, at 128 (noting that usury laws used to create "ironclad limits" on lending and families that wanted to borrow money had to prove they had a very high likelihood to repay).
28. Patrick Enright, *Thou Shalt Not Steal? The Surprising Correlation Between Payday Lenders and Conservative Christians*, NEWSWEEK, Feb. 21, 2008, http://www.newsweek.com/id/114407.
29. *See id.*
30. *See* Huckstep, *supra* note 3, at 205.
31. *See* Bruch, *supra* note 17, at 1273.
32. *See* Huckstep, *supra* note 3, at 205 ("[T]he number of payday lending stores rose from 10,000 in 2000 to 22,000 in 2004.").
33. *See* NYU Wagner Sch. of Pub. Serv., Presentation, Strategies to Combat Payday Lending in Mississippi 5 (Feb. 11, 2008). The presentation also notes that the majority of a lender's profits come from borrowers who take out more than seven loans. *Id.* at 7.
34. KING ET AL., *supra* note 10, at 7.

borrowing nearly $50 billion in loans.[35] To maintain high revenues, lenders must be savvy about their target market.

B. Lenders' Customer Base

The typical lender knows who its best customers are: America's poorest people. The payday lending industry affects one in twenty Americans, which means that the range of borrowers is huge.[36] A typical borrower is likely to be a woman who earns anywhere from $18,000 to $50,000 a year.[37] Like most Americans, she lacks basic financial literacy, which makes it more likely for her to agree to the loan terms.[38] Lenders are fully aware that people from poor areas are likely to default and can be coaxed or threatened into rolling over their loans.[39]

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35. *See* Bob Driehaus, *Some States Set Caps to Control Payday Loans*, N.Y. TIMES, Sept. 7, 2008, http://www.nytimes.com/2008/09/07/us/07payday.html (according to the brokerage firm Stephens, Inc. in Little Rock, Arkansas, lenders collected $8.6 billion in fees in 2007).

36. *See* John Leland, *Nonprofit Payday Loans? Yes, to Mixed Reviews*, N.Y. TIMES, Aug. 28, 2007, http://www.nytimes.com/2007/08/28/us/28payday.html.

37. DoughRoller.net, How to Get a Payday Loan (If You Must), http://www.doughroller.net/money-management/-payday-loan/ (last visited Nov. 3, 2008) (noting more than 60% of payday loan borrowers are women). In terms of income, not all studies agree that poor people, like Flora, are typical payday loan customers. *See* Huckstep, *supra* note 3, at 214. For example, one industry-sponsored study explains that most payday loan borrowers are "middle" class, have access to other forms of credit, have steady jobs, and "use payday loans exactly as intended," for short-term emergencies. *Id.* Other studies dispute the average annual income of borrowers, suggesting most borrowers are high school or even college graduates making close to $50,000 each year. Aimee A. Minnich, *Rational Regulation of Payday Lending*, 16 KAN. J.L. & PUB. POL'Y 84, 88 (2006).

38. *See* Daniel McGinn & Temma Ehrenfeld, *Clues for the Clueless*, NEWSWEEK, Apr. 14, 2008, at 28, http://www.newsweek.com/id/130590.

39. *See* Steven M. Graves & Christopher L. Peterson, *Usury Law and the Christian Right: Faith-Based Political Power and the Geography of American Payday Loan Regulation*, 57 CATH. U. L. REV. 637, 643 & n.22 (2008) (noting "[i]nvestigations by federal banking regulators and statements of former payday lending employees confirm that payday lenders create compensation incentives encouraging employees to manipulate borrowers into long-term borrowing"). Borrowers accept loans because they do not know they can do better. *See* WARREN & WARREN TYAGI, *supra* note 2, at 136. *See also* Edmund L. Andrews, *Fed Shrugged as Subprime Crisis Spread*, N.Y. TIMES, Dec. 18, 2007, http://www.nytimes.com/2007/12/18/business/18subprime.html?_r=1&hp&oref=slogin; Paul Krugman, Editorial, *A Catastrophy Foretold*, N.Y. TIMES, Oct. 26, 2007, http://www.nytimes.com/2007/10/26/opinion/26krugman.html (noting a speech by late Federal Reserve Governor Ed Gramlich, in which he asked why "the most risky loan products are sold to the least sophisticated borrowers," and answered that the "least sophisticated borrowers are probably duped into taking these

Without offering a payment plan or flexible terms, many payday lenders "keep consumers poor" by requiring the impossible: after two weeks, pay the amount in full or pay the fees associated with a bounced check.[40] In fact, studies show that it is mathematically impossible for typical borrowers to repay payday loans in two weeks.[41] In one study, a borrower making $25,000 a year would, *without* making payments on a loan, fall short $14 each week on recurring payments for food, housing, healthcare, transportation, and utilities.[42] She would be unable to pay her loans without taking a second job—or a second loan. A person making $35,000 per year would have a surplus of $67 each week to pay down her loans.[43] A slightly longer repayment term could provide positive results for borrowers, as one South African study found.[44] A "loan alternative," such as a credit card advance, could be more manageable. The APR on a bank-issued credit card is 98.18% and the APR on a credit union-issued credit card advance is 10.99%.[45] However, these options are not generally available.

With statistics like these, it is no wonder borrowers "roll over" their loans to the next pay period.[46] On average, borrowers like Flora roll over a loan seven times.[47] Some lenders characterize borrowers who renew loans more than seven times as "26ers,"

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products"). The concept that lenders can dupe unsophisticated people is also a theme in payday lending.

40. *See* Flippo Interview, *supra* note 15.

41. *See* Bruch, *supra* note 17, at 1280–81 nn.263–65.

42. *Id.*

43. *Id.*

44. Economists Dean Karlan and Jonathan Zinman also found that payday lenders can provide a positive support mechanism, at least in South Africa. In a recent study, a South African lender experimented by offering loans to those who were previously ineligible; those customers took out a 200% interest loan and paid it back during a four-month period. The researchers found that the customers were less likely to go hungry and their chances of being in poverty fell 19% *because* of the loan. While the researchers found higher stress levels, particularly among women borrowers, the customers reported more control over their lives and a positive outlook. *In Praise of Usury*, THE ECONOMIST, Aug. 4, 2007.

45. ARK. ADVOCATES FOR CHILDREN & FAMILIES, PAYCHECKS AND POLITICS 2 (2006), http://www.aradvocates.org/_images/pdfs/Alternatives2.pdf. This option is not available to all residents. Recall that Flora, from the Introduction, turned to payday loans because she had reached the limits on her credit cards.

46. *See* Huckstep, *supra* note 3, at 207 (explaining most borrowers do not have funds to pay original loan and seek renewal or rollover). *See also* Wilson, *supra* note 15, at 340–41 (explaining payday loans are short-term transactions in which most lenders make money through rolling over loans).

47. Wilson, *supra* note 16, at 341.

because they may take out one loan and then roll it over every two weeks (twenty-six times) for an entire year to avoid defaulting on the original loan.[48] Many consumers take out a second or third loan from another payday lender to pay the first, thus becoming indebted to multiple creditors.[49]

Payday lenders know where to find their desired customers: economically disadvantaged areas, towns near military bases,[50] and minority neighborhoods.[51] Payday lenders' geographically oriented tactics have become so well-known that they inspired Seattle-based programmer Mike Mathieu to start a satirical website, "Predatory Lending Association," about the targeting phenomenon.[52] The site includes a Google map tool using "patent-pending Poor Finder™ technology" that "locates the most profitable lending locations by analyzing sales records from pawn shops, liquor and gun stores, and the lottery."[53] Make no mistake, lenders seek poor, unsophisticated customers—and then they sell the customers products they do not need and cannot afford.

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48. *See* KING ET AL., *supra* note 10; Driehaus, *supra* note 35 (noting two-thirds of lenders' revenue comes from borrowers who take out a dozen loans annually). *See also* Huckstep, *supra* note 3, at 205.

49. *See* Graves & Peterson, *supra* note 13, at 663.

50. *See id.* at 704–08 (showing a general correlation between ZIP codes with a high population of military and ZIP codes with the greatest number of payday lenders); *id.* at 755–61 (specific information about Louisiana); MISS. ECONOMIC POLICY CTR., *supra* note 16, at 5 (military personnel are more likely to use payday loans).

51. Payday lenders also target certain racial demographics, with some scholars demanding that payday loans be "called by their true names: legally sanctioned corporate plans to steal from minorities." WARREN & WARREN TYAGI, *supra* note 2, at 160. Many are located in areas with large percentages of minority residents. In Washington, payday loan stores are twice as likely to be located in African-American areas as in white areas. In Texas, lenders are more likely to lend to African-Americans, who comprise 43% of borrowers even though the state's African-American population is 11%. *See* notes and sources cited, *supra* note 13. Similar results have been found in the Native American community. *See* FIRST NATIONS DEVELOPING INST., BORROWING TROUBLE: PREDATORY LENDING IN NATIVE AMERICAN COMMUNITIES (2008), http://www.firstnations.org (follow "Publications" hyperlink; then follow "Predatory Lending" hyperlink on left).

52. *See* Predatory Lending Ass'n, http://predatorylendingassociation.com (last visited Oct. 1, 2008). *See also* Craig Harris & John Cook, *The Insider: Satirical Site Bashes Predatory Lending*, SEATTLE POST-INTELLIGENCER, Nov. 19, 2007, at C1, http://seattlepi.nwsource.com/business/340153_theinsider19.html.

53. *See* Predatory Lending Ass'n, *supra* note 52.

C. Lenders' Inconsistent and Unlawful Disclosure Practices

The typical lender also knows how to market its product. Many lenders go to great lengths to conceal important financial information from their customers.[54] For example, although some states have "posting" laws requiring lenders to post information in large font in a visible place, those laws are rarely followed.[55] Furthermore, even if the lender posts the information, he does not always explain it to the consumer. The former manager of a payday loan store explained in a video for the Center for Responsible Lending that when selling financial products, she and her coworkers would disclose the loan's APR, but they would not talk about it or explain what it meant.[56] Loan salespeople would also patronize and goad borrowers into signing lending documents, as depicted in the documentary *Maxed Out,* where one salesperson said, "[t]his is going to be all right. Just put your little name right here."[57] Lenders can thus easily take advantage of vulnerable borrowers.

Additionally, interest rates are typically calculated based on the face value of the payday loan check, which may confuse consumers. Thus, instead of paying 17.5% APR, the borrower pays 17.5% of the check's face value *every two weeks.* Not surprisingly, this rate may be more than twenty-six times what the consumer thinks (because interest compounds every two weeks for a year).[58] Most payday loan consumers mistakenly believe they are paying the same rate they pay their credit card company.[59] Borrowers are in such a desperate financial state that they will believe anything—and lenders know it.[60]

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54. *See* Flippo Interview, *supra* note 15 (noting that borrowers often did not know or understand what "APR" meant).

55. *See infra* Part I.C. This information barrier may weaken in the future. In January 2008, the Community Financial Service Association of America (CFSA) began requiring that all of its affiliated payday lending stores provide clear, easy-to-read posters that will show the amount of the advance, the fee, and the annual percentage rate of borrowers' loans. *See* Press Release, Cmty. Fin. Serv. Ass'n. of Am., Payday Lending Industry Implements Unprecedented Fee Disclosure (Jan. 15, 2008), http://www.cfsa.net/downloads/Press_Releases/Fee%20Implementation.pdf.

56. *See* Flippo Interview, *supra* note 15.

57. *See* MAXED OUT: HARD TIMES, EASY CREDIT AND THE ERA OF PREDATORY LENDERS (Trueworks 2006).

58. *See* Graves & Peterson, *supra* note 13, at 662.

59. *See id.*

60. Katie Orr, *Confusion Mars Ohio Vote on Payday Loans* (NPR All Things Considered radio broadcast Oct. 22, 2008), http://www.npr.org/templates/story/story.php?storyId=95997205 (quoting one borrower describing the payday

D. Legal Developments Concerning Payday Lending

Besides being characterized as targeting certain demographic populations and luring them into a debt trap, the industry is also known for its disregard for the law.[61] Indeed, several payday lenders are now facing lawsuits from former and current borrowers.[62] The suits have arisen from violations of federal and state legislation.[63]

The following discussion paints a general picture of the legal landscape of payday lending. Two federal laws govern the industry, although the laws provide minimal protections for borrowers. Many states have attempted to either curtail payday lending activities through rate caps, licensing statutes, or banning payday lenders altogether.[64] Unfortunately, due to slow-moving litigation and a lack of enforcement, these efforts have not been an efficient tool to regulate payday lending.

1. Federal Efforts to Curtail Predatory Payday Lending

The federal government has attempted to regulate the payday lending industry, although lenders have used federal regulations to their advantage.[65] For example, the National Bank Act (NBA)

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lending experience: "You're in such an emotional state, you see it as a solution and you don't really think about it.").

61. *See* Graves & Peterson, *supra* note 13, at 664.

62. *See, e.g.*, Livingston v. Fast Cash USA, Inc., 753 N.E.2d 572 (Ind. 2001) (holding that lenders could not charge minimum loan finance charges above 36% APR). *See also* Marie Price, *Class-Action Lawsuit Filed in a Pennsylvania Court Names Okla. Lenders as Defendants*, J. REC. (Oklahoma City, Okla.), Sept. 19, 2007; Laura Smitherman, *$17 Million Still Lost in Check Case*, BALTIMORE SUN, Dec. 2, 2007, at 1A (class action based on theft from consumers); Yvonne M. Wenger, *Legislators Join Suit Over Loans: Payday Lenders Face New Complaint*, POST & COURIER (Charleston, S.C.), Sept. 20, 2007, at B1.

63. *See, e.g.*, Jim DuPlessis, *Bill Puts Heat on Payday Lenders*, THE STATE (Columbia, S.C.), May 4, 2008 (explaining a recent bill to ban payday lending in South Carolina following news that borrowers had sued South Carolina-based Advance America, the nation's largest payday lender, in several class-action lawsuits).

64. Connecticut, Georgia, Maine, Maryland, Massachusetts, New Jersey, New York, North Carolina, Pennsylvania, Vermont, and West Virginia have effectively banned payday lending establishments. KING ET AL., *supra* note 10, at 23. Arkansas, the District of Columbia, New Hampshire, Oregon, and Ohio have capped rates at 36% or lower. Driehaus, *supra* note 35.

65. Arguments for federal regulation to cap interest rates are strong but need to be fully developed. *See, e.g.*, WARREN & WARREN TYAGI, *supra* note 2, at

"even[s] the playing field between relatively weak federal banks and burgeoning state banks."[66] The NBA evened the playing field by allowing federal banks to charge customers in other states the interest rates in the states where the federal bank was located.[67] Payday lenders have used this law to their advantage. Although no longer allowed, payday lenders affiliated with federal banks in states with no interest rate restrictions—and thus charged whatever they wished.[68] For example, in *Hudson v. ACE Cash Express*, an Indiana district court judge dismissed a customer's complaint that an Indiana payday lender charged an interest rate of 391% on a payday loan in violation of the state's interest rate cap.[69] The court found that because the lender was affiliated with a national bank in California, and the California Constitution prohibits rate caps, the lender did not violate the law. At the time, the lender acted legally in charging an incredibly high interest rate.[70]

One federal law that Congress intended to protect consumers from being misled about the cost of credit is the Truth in Lending Act (TILA).[71] The statute addresses issues such as disclosure statements, total finance charges, damages, and APR.[72] In 2000, the Federal Reserve System added an official commentary stating that TILA regulates payday loans.[73] Even with this commentary, certain

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149 (arguing that regulation would "eliminate the worst abuses of a lending industry run amok" but neglecting to expand upon that claim).

66. *See* National Banking Act, 12 U.S.C. § 38 (2000). *See also* Bruch, *supra* note 17, at 1262.

67. *See* Bruch, *supra* note 17, at 1262.

68. *See id. See also* Graves & Peterson, *supra* note 39, at 677 (noting the Supreme Court's decision in *Marquette Nat'l Bank v. First of Omaha Service Corp.*, 439 U.S. 299, 312–13 (1978), "sparked a new era of federal preemption of state usury limits by granting national banks the authority to export high interest rates from [other] states"); Graves & Peterson, *supra* note 13, at 705; Economic Justice Summit, *supra* note 19.

69. *See* Hudson v. ACE Cash Express, Inc., No. IP01-1336-C-H/G, 2002 WL 31255461 (D. Ind. Sept. 27, 2002).

70. *See id. But see* Flowers v. EZPawn Oklahoma, Inc., 307 F. Supp. 2d 1191, 1196 (N.D. Okla. 2003) (holding the lender did not act legally); Goleta Nat'l Bank v. Lingerfelt, 211 F. Supp. 2d 711, 718–19 (E.D.N.C. 2002).

71. *See* 15 U.S.C. §§ 1601–1665 (2000). *See also* Jackson v. Am. Loan Co., No. 99 C 2067, 1999 U.S. Dist. LEXIS 9143, at *9 (N.D. Ill. June 10, 1999), *aff'd*, 202 F.3d 911 (7th Cir. 2000) (explaining the legislative history of TILA).

72. *See* §§ 1601–1665. One issue that has become particularly challenging for consumers is statutory damages, governed by section 1640. Circuit courts are split over whether the statutory damages provisions contained in section 1640 apply to payday lenders. For a discussion of this issue, see Wilson, *supra* note 16, at 346–50.

73. *See* 65 Fed. Reg. 17131 (Mar. 31, 2000).

provisions of the law, such as TILA's statutory damages sections, can frustrate a plaintiff's attempt to seek a remedy.[74] As with the NBA, however, actions to sue payday lenders are not always successful, and this law provides weak protections to consumers.[75]

2. *State Efforts to Curtail Predatory Payday Lending*

States can provide stronger protections to consumers by imposing interest rate caps on payday loans.[76] Advocates of the payday lending industry argue the caps are unfair and that they must charge extremely high interest rates because of their operating costs.[77] They also argue that they charge high rates because the market will bear it: payday lending, in their eyes, provides a necessary service to a population with such poor credit that they often cannot qualify for credit cards or other bank loans.[78]

Lenders have circumvented rate caps by "deceptive recharacterizations" of the true nature of the loan products.[79] For example, to circumvent state laws concerning interest rates on small loans, payday lenders will claim their loans are simply "deferred presentment products," meaning that their only service is deferring presentation of the check to the issuer's bank by waiting two weeks to cash it.[80] Therefore, according to these lenders, a payday loan is not a loan at all.

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74. 15 U.S.C. § 1640. *See also* Wilson, *supra* note 16, at 346–49.

75. *See* Jenkins v. First Am. Cash Advance of Ga., L.L.C., 400 F.3d 868 (11th Cir. 2005) (holding that under TILA, unconscionability of a payday lending agreement could be determined by the court instead of an arbitrator); Brown v. Payday Check Advance, Inc., 202 F.3d 987 (7th Cir. 2000) (rejecting plaintiffs' claims for damages under TILA); Cooper v. QC Fin. Servs., 503 F. Supp. 2d 1266 (D. Ariz. 2007) (same).

76. *See infra* Part III.A–B.

77. *See* Huckstep, *supra* note 3, at 221. Furthermore, many payday lenders are fighting interest rate caps by collecting signatures to add statewide ballot initiatives to overturn the lending cap. Driehaus, *supra* note 35. Some voters claim that the advertisements for the initiatives are confusing voters by characterizing bans on lending as job-loss initiatives. *See* Orr, *supra* note 60.

78. *See* Huckstep, *supra* note 3, at 221.

79. *See* Bruch, *supra* note 17, at 1274.

80. *See id.* Another practice, which a New York court has since found to be illegal, was one in which a lender used catalog sales with gift certificates. Borrowers would have to buy $15 in gift certificates for every $50 they wished to borrow. The borrowers would present the store with a check that totaled the amount of the certificates plus the amount they wished to borrow, and the store would deposit the check the next payday. *See* ConsumerAffairs.com, No Payday for Payday Lenders in Texas, New York, May 11, 2005, http://www.consumeraffairs.com/news04/2005/ny_payday_case.html (last visited Nov. 3, 2008).

Another way states curtail payday lending is to require lenders to apply for a state license and follow laws regulating loan advertising.[81] Nevertheless, some payday lenders refuse to obtain licenses and offer misleading advertisements about the cost of credit.[82] Their disregard for the law goes unpunished because many states do not have the resources to regulate and monitor the payday lending industry.[83] Furthermore, many states do not punish payday lenders who use false threats of prosecution to intimidate borrowers.[84] With minimal enforcement, payday lenders have few incentives to comply with state law, and plaintiffs have little hope of recovering damages.

Finally, states can restrict payday lending through the common law doctrine of unconscionability. The doctrine, a combination of statute and common law, has been applied through the Uniform Commercial Code section 2-302 to most credit-related legislation.[85] The *Restatement (Second) of Contracts* states that the doctrine of unconscionability prevents oppression of parties and eliminates unfair surprise in contracts.[86] An analysis of whether a transaction is unconscionable relies on two prongs: substantive unconscionability and procedural unconscionability. To determine whether a transaction is substantively unconscionable, a court will look at whether an agreement is so "one-sided" that it "shocks the conscience."[87] Courts have held that a 500% interest rate on a payday loan is unconscionable, as is a clause prohibiting class action lawsuits.[88] To determine whether a contract is procedurally unconscionable, a court will consider the relative bargaining strength of the parties and examine whether the complaining party had a meaningful choice, considering the party's intelligence,

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81. *See* Bruch, *supra* note 17, at 1275.

82. *Id.*

83. *See* CASKEY, *supra* note 13, at 9–10 (arguing that American "society devotes substantial resources to protecting consumers in the financial markets and institutions serving middle- and upper-income households" but that very few resources are devoted to regulating "fringe banking" establishments such as pawnshops and payday loan stores).

84. *See also* DuPlessis, *supra* note 63.

85. *See* Bruch, *supra* note 17, at 1263 (citing cases in which courts applied unconscionability doctrine to relevant credit-related legislation).

86. RESTATEMENT (SECOND) OF CONTRACTS § 208 (2002).

87. *See id.* cmt. d (summarizing cases that exemplify factors weighing in favor of a finding of unconscionability in contexts such as apartment leases, insurance, and employment).

88. *See* Smith v. Cash Store Mgmt., Inc., 195 F.3d 325 (7th Cir. 1999) (interest rate); Cooper v. QC Fin. Servs., 503 F. Supp. 2d 1266, 1279 (D. Ariz. 2007) (holding that a payday lender's policy prohibiting class action suits against the payday lender is unconscionable substantively, procedurally, and against public policy, but granting defendant's motion to compel arbitration).

education, and level of financial distress.[89] Litigation on theories of unconscionability in the payday lending context is limited.[90]

In sum, the federal and state laws in this area have developed slowly and tend to favor lenders.[91] Consequently, vulnerable borrowers have little judicial recourse and will seek effective protections through other means. Thus, a legislative solution based on clarifying and strengthening laws is the optimal means to achieve protection for southern borrowers.

E. Payday Lending in the South

The South is a particularly relevant lens through which to examine the payday lending industry and its effects on residents.[92] Some researchers say the "culture of debt" in the region stems from the vestiges of sharecropping.[93] Louisiana, Mississippi, and Arkansas are home to some of the "most entrenched" payday lenders, many of whom have been there for a decade.[94] These three states also have the highest and most persistent poverty rates in the country.[95] Further, the labor pool in the South is largely uneducated, with low proportions of college-educated workers and high proportions of high school graduates who do not plan to attend college.[96]

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89. *See, e.g.*, Williams v. Walker-Thomas Furniture Co., 350 F.2d 445, 449 (D.C. Cir. 1965).

90. *See* Bruch, *supra* note 17, at 1278–81.

91. *See supra* note 62.

92. Telephone Interview with Steven M. Graves, Professor of Geography, Cal. State Univ. Northridge (Oct. 4, 2007) (notes on file with author) [hereinafter Graves Interview]. This region is also interesting, considering the strong religious underpinnings of such highly Christian states. One would expect, as Professors Graves and Peterson did, that in highly religious areas, state government would apply biblical principles condemning usury in economic legislation to protect residents. They found that the opposite is true. States with high political power among Christian groups also have a high density of payday lenders. The researchers defined political power by a number on the "Christian Power Index," which is generated by ranking states according to three variables: (1) the per capita density of evangelical Christians and Mormons; (2) the Christian Political Organization score assigned by three political actions groups; and (3) voting records. For example, Mississippi ranks first in payday lending activity and second on the Christian Power Index. *See* Graves & Peterson, *supra* note 39. *See also* Enright, *supra* note 28.

93. *See* MAXED OUT, *supra* note 57; Graves Interview, *supra* note 92.

94. *See* Graves & Peterson, *supra* note 39, at 700.

95. *See* sources cited *supra* note 8.

96. *See* THE HIDDEN AMERICA: SOCIAL PROBLEMS IN RURAL AMERICA FOR THE TWENTY-FIRST CENTURY 28 (Robert M. Moore III ed., Associated Univ. Presses, Inc. 2001).

Payday loan problems are especially acute for southerners. First, southern residents' limited economic opportunities mean that they are more likely to take out payday loans without considering the alternatives.[97] Second, southern residents have lower levels of educational attainment and financial literacy, which means they have fewer avenues to inform themselves about alternatives to payday loans.[98] Third, spatial isolation and limited transportation mean that even if residents knew of lending alternatives, they would have greater difficulty accessing them. Isolation contributes to residents' lack of political clout as residents do not have the know-how to influence legislation, including laws related to regulating payday lending.[99]

1. Economic Challenges

Statistics describing the typical southern family and the typical payday loan borrower indicate that the two groups overlap significantly. In terms of earning potential, the typical payday loan borrower earns an annual salary in the mid-$20,000s range.[100] Similarly, residents in the South are low earners, with an average annual household income of $30,549 for male workers and $21,584 for female workers.[101] Residents of Louisiana, Mississippi, and Arkansas who earn incomes that are lower than that of the average payday loan borrower are likely to use payday loans.

Furthermore, the jobs available to some southern residents are often less financially rewarding than those available in states with more affluent populations.[102] In southern states in particular,

97. *See infra* Part I.E.1.
98. *See infra* Part I.E.2.
99. *See infra* Part I.E.3.
100. *See* Huckstep, *supra* note 3.
101. In Mississippi, the median annual income for males is $30,549; for females it is $21,584. For similar statistics in Louisiana, see U.S. CENSUS BUREAU, AMERICAN FACT FINDER: DP-3 PROFILE OF SELECTED ECONOMIC CHARACTERISTICS (2000), http://factfinder.census.gov/home/saff/main.html?_lang=en (follow "Data Sets" hyperlink; then follow "Decennial Survey" hyperlink; then click on third radio button for "Census 2000 Summary File 3 (SF-3)"; follow blue link for "Quick Tables"; under "Select a geographic type," select "State" and then add states).
102. *See* Lisa R. Pruitt, *Missing the Mark: Welfare Reform and Rural Poverty*, 10 J. GENDER, RACE & JUST. 439, 464 (2007). *See also* FORGOTTEN PLACES: UNEVEN DEVELOPMENT IN RURAL AMERICA 3 (Thomas A. Lyson & William W. Falk eds., 1993) (arguing many rural families "are unable to improve their life chances because of structural factors beyond their control . . . [constituting] a reserve army of unemployed and underemployed workers"); U.S. DEP'T AG. ECON. RES. SERV., RURAL EMPLOYMENT AT A GLANCE,

residents find themselves relegated to low-skilled work and welfare assistance.[103] Due to limited economic opportunities, poor residents will rely upon additional income sources—or income advances—to help them through tough economic times. Thus, without the possibility of earning more money,[104] many workers will turn to payday lenders to make ends meet.

2. *Educational Challenges*

Besides economic factors, low levels of educational attainment and financial literacy increase the likelihood of payday loan usage. Educational attainment in states with significant rural populations is lower than the national average.[105] Education levels also correlate with financial literacy.[106] Further, education levels matter when courts consider whether to enforce an agreement between a person from a rural area and an experienced lender.[107] Uneducated borrowers might find it more challenging to understand basic financial concepts, such as APR calculations.[108] In an industry-sponsored telephone survey, 72% of payday loan borrowers did not know the APR of their most recent loans; those who thought they did guessed that the actual rates were lower.[109] In these states, the

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INFORMATION BULLETIN NO. 21 (2006), http://www.ers.usda.gov/Emphases/Rural [hereinafter RURAL EMPLOYMENT].

103. *See* RURAL POVERTY IN AMERICA 104 (Cynthia M. Duncan ed., 1992). *See also* Lisa Pruitt, Gender, Geography, and Rural Justice 15–16 (Aug. 1, 2008) (UC Davis Legal Studies Research Paper No. 129), *available at* http://ssrn.com/abstract=1103559.

104. *See* Pruitt, *supra* note 103, at 446 (explaining "most rural residents share certain structural challenges to financial survival").

105. *See* U.S. DEP'T AG. ECON. RES. SERV., RURAL DEVELOPMENT RESEARCH REPORT NO. 98 (2004) (updated Mar. 1, 2007), http://www.ers.usda.gov/publications/rdrr98/rdrr98.htm (explaining that 15.5% of those twenty-five and over have bachelor's degrees, compared with 26.6% nationally).

106. *See* Deborah Thorne & Katherine M. Porter, Financial Education for Bankrupt Families 3, (Jan. 2008) (Univ. Iowa College of Law Paper No. 08-03), *available at* http://ssrn.com/abstract=1032968.

107. *See, e.g.*, State v. Hamrick, 236 S.E.2d 247, 247 (W. Va. 1977) (taking note of plaintiff, a "twenty-six year old woman of very limited intelligence, [who is a] poor, uneducated . . . resident of rural West Virginia" and holding that she was entitled to a new trial because, due to her lack of intelligence, she could not have understood paperwork she signed at a police station when charged with voluntary manslaughter); LaCour v. Sanders, 442 So. 2d 1280 (La. App. 3d Cir. 1983) (holding that in a dispute over property ownership, the property owner who was an uneducated rural resident was a good faith possessor).

108. *See supra* notes 58–59 and accompanying text.

109. *Id.*

percentage of payday loan borrowers who did not know the APR for their loans would quite possibly be even higher than 72%. As a result, payday lenders in Louisiana, Mississippi, and Arkansas can take advantage of residents by talking them into accepting a loan they do not fully understand.

3. Geographical Challenges

Distance can also exacerbate borrowers' vulnerabilities to payday lenders. Most people underestimate the challenges that physical distance poses to America's poorest people. They assume that physical distance is no obstacle for people with limited means. In the South, 20% of the population is considered "rural," which means they live away from cities of 50,000 or more people.[110] Because of this geographical isolation, families have limited means and are at a greater risk for debt problems.[111] One financial journalist suggested recently that, to avoid payday loans of $200 or $300, poor people should just "borrow that $300 from relatives . . . or spend $300 less."[112] Most poor families, especially those that are physically isolated from each other, have neither rich relatives nearby nor the option to spend less money.[113] They spend their meager salaries on necessities such as transportation or medical care.[114] It may not be feasible to travel somewhere else to pick up additional funds.

Physical and technological isolation also makes it more difficult for residents to connect as advocates and lobby for greater protections for themselves.[115] Residents' physical distance from one another means they are disconnected from larger social movements, information about loan alternatives, and the Internet.[116] Thus, support and advocacy will likely germinate in urban areas. One

110. U.S. DEP'T AG. ECON. RES. SERV., RURAL POVERTY AT A GLANCE, RURAL DEVELOPMENT RESEARCH REPORT NO. 100 (2004) http://www.ers.usda.gov/publications/rdrr100/rdrr100_lowres.pdf [hereinafter Rural Poverty at a Glance].

111. *See* Graves & Peterson, *supra* note 39, at 683–84.

112. *See* Quinn, *supra* note 23.

113. Pruitt, *supra* note 102, at 18 (describing networks of kith and kin in rural areas and noting that most engage in informal economy together and are at same economic level).

114. *See* Katherine Porter, *Going Broke the Hard Way: The Economics of Rural Failure*, 2005 WIS. L. REV. 969, 1008 (2005) (explaining budgetary priorities of rural families).

115. *See* Pruitt, *supra* note 102, at 17–18 (explaining how "structural obstacles" including lack of transportation and child care restrict labor force participation and shape their status as workers).

116. *Id.* at 19 n.74.

solution that accommodates southern residents' isolation is mobile services that enable residents to access information more easily.[117]

In sum, payday lending is an acute problem nationwide and especially in the South. Payday loans are expensive, and borrowers do not always understand the loan terms. Lenders target poor people, and many lenders circumvent the law. Lawsuits are helping to change the industry, but progress is slow. In regions where both financial resources and educational attainment are minimal, borrowers may feel extra pressure to take out loans. However, spatial isolation makes it more challenging for borrowers to learn about and access alternatives. Unfortunately, without government intervention, borrowers may learn too late the high price they have paid for quick, "convenient" cash.

II. STATE LAW

Most southern states, including Louisiana, Mississippi, and Arkansas, have welcomed payday lenders. These three states offer varying degrees of protection for payday borrowers and differing restrictions on payday lenders. Of the three, Louisiana is the friendliest to lenders, and Arkansas is the least friendly. Because of their proximity to one another, these three states provide a fascinating basis for comparison.

The first question for many consumer advocates, however, is whether these services are truly necessary and, if so, whether states effectively regulate them. One consumer advocate, who compared borrowers' reliance on payday lending to a crack cocaine addiction, told a local newspaper, "[l]ots of folks buy crack, but that doesn't mean there's a legitimate need for it."[118] Annually, states lose millions in loan fees that could instead stay in local communities.[119] Louisiana, Mississippi, and Arkansas are all grappling with how to best regulate the payday lending industry.

A. Louisiana

Payday lenders may find Louisiana a good place to do business. Besides its minimal regulations, Louisiana has entertained other forms of short-term, high-interest loan legislation, including car title

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117. *See infra* Part III.B.

118. Andre Salvail, *Payday Loan Perils: Critics See Rash of Payday-Loan Stores as Predators on Low-Income Earners*, THE INDEPENDENT (Lafayette, La.), July 26, 2006, http://www.theind.com/index.php?option=com_content&task=view&id=262&Itemid=103.

119. *See infra* Part II.A–C. *See also* NYU Wagner Sch. of Pub. Serv., *supra* note 33.

loans.[120] In 2007, the state was home to 977 lending outlets.[121] Borrowers generated total loan fees of $345,877,855, and the APR for Louisiana lenders was 560%.[122] These figures are high relative to other states because Louisiana has lax regulations and its Attorney General has not aggressively pursued enforcement. The Louisiana Deferred Presentment and Small Loan Act ("Louisiana Act") governs payday loans.[123]

Several provisions in the Act are noteworthy. First, the legislative intent of the Louisiana Act *initially* states that payday loans "meet a legitimate credit need" for many consumers and *lastly* states that to "protect consumers from excessive charges," certain restrictions on lenders are necessary.[124] This statement suggests that protecting lenders is a higher priority than protecting consumers. Second, the maximum fee and posting language is both vague and permissive. A licensee may not charge greater than 16.75% of the face value of the check or $45, whichever is greater.[125] The Act permits loan rollovers.[126] Further, the Louisiana Act encourages, but does not require, posting a notice of the fees in a "conspicuous manner" at the lending location.[127] These provisions, especially regarding posting, are unclear.

The Act's provisions have implications for Louisiana borrowers. Louisiana's stated commitment to sustaining the payday lending industry signifies that consumer protection is a lower priority than industry protection. Permitting rollovers means that poor people will not understand the risks of relying upon multiple lenders when they "borrow from Peter to pay Paul." As a former president of the Better Business Bureau in Acadiana, home to a large (and mostly poor) Cajun population, observed, borrowers often do not understand what they are doing, and "they [are not] aware of the repercussions of [their actions]."[128] A law requiring posting in a "conspicuous manner" is not specific enough to help borrowers, like those in Acadiana, who are sometimes unaware of

120. For example, Louisiana legislators proposed State Senate Bill 743 and House Bill 924/1050 in 2006. The bills would have gone so far as to allow lenders to offer short-term loans with the borrower's vehicle as collateral. The bill was defeated. *See* Salvail, *supra* note 118.

121. *See* Graves & Peterson, *supra* note 39, at 696.

122. KING ET AL., *supra* note 10, at 17.

123. LA. REV. STAT. ANN. § 9: 3578.1 (2000 & Supp. 2008).

124. § 9: 3578.2.

125. *See* § 9:3578.4.

126. *See* § 9:3578.6(7).

127. *See* § 9:3578.7.

128. *See* Salvail, *supra* note 118.

the consequences of the borrowing. The Louisiana Act does not require the payday lender to do very much at all.

Even if the legislature clarified aspects of the vague Louisiana Act, several ineffective protections remain. First, the Office of Financial Institutions (OFI) planned in 2006 to post those payday lenders that consumers have rated highly on its website.[129] As of the time of this writing, the posting has yet to happen. Furthermore, the website's design is poor and information is not readily accessible or obvious to users.[130] The OFI should instead consider the number of residents who will seek payday loans and look to more traditional outreach: advertisements in newspapers, on television, and radio. Advertisements could contain ratings information from the website as well as basic financial information. Second, all complaints about payday lenders must be directed to the Attorney General, and they must be made in writing only. This requirement could exclude people whose educational backgrounds may not enable them to engage in a letter-writing campaign. Instead, the state should consider also adding a telephone number for complaints.[131] The payday lending situation in Louisiana offers a point of comparison with Mississippi's more progressive approach.

B. Mississippi

Mississippi provides somewhat stricter laws than Louisiana for its 1,069 payday lending stores.[132] Payday lenders in the state collected nearly $200 million in loan fees in 2006.[133] The average APR was 573% in 2007.[134] The Mississippi Check Cashers Act ("Mississippi Act") regulates the payday lending industry.

The Mississippi Act addresses topics similar to those in the Louisiana Act but provides greater specificity. First, the Mississippi Act caps the maximum loan amount at $400 per

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129. *See id.*

130. *See id. See also* La. Office of Fin. Insts., http://www.ofi.state.la.us (last visited Dec. 1, 2008). As of Dec. 1, 2008, the OFI website did not contain any listing of payday lenders who lost their licenses.

131. *See infra* Part III. *See also* § 9:3578.7 (suggesting the state commissioner may provide notice in lending location with toll-free number for the commissioner's office).

132. *See* Graves & Peterson, *supra* note 39, at 681.

133. *See* NYU Wagner Sch. of Pub. Serv., *supra* note 33. *See also* MISS. ECON. POLICY CTR., *supra* note 16, at 2.

134. *See* KING ET AL., *supra* note 10, at 17. *See also* Graves & Peterson, *supra* note 39, at 689 tbl.2 (interest rates).

loan.[135] Unlike the Louisiana Act, which is silent about the required language of its payday loan contract, the Mississippi Act is very clear that each contract between lender and borrower "shall be documented by a written agreement that has been signed by the customer and licensee."[136] The agreement must contain a statement of the total amount of any fees charged, "expressed as a dollar amount and as an annual percentage rate."[137] The fee can be no greater than 18% of the face amount of the check.[138] Instead of vague language requiring "conspicuous posting" of rates, the regulations accompanying the Mississippi Act require a twenty-inch-by-twenty-inch sign that must be "large and bold" in order to allow customers to easily read the information.[139] The poster must also include contact information for the Mississippi Department of Banking and Consumer Finance, in case there are "unresolved problems" with transactions.[140]

The regulations provide an example of the proper computation of the APR and the fee, information that borrowers and their advocates can use in enforcement actions.[141] Another protective measure states that a payday lender may accept a credit card as payment, but the lender may not charge the credit card at the beginning of the transaction, "thus encumbering the customer's funds . . . ."[142] Finally, the law prohibits some rollovers, stating that "no check cashed under the provisions of this section shall be repaid by the proceeds of another check cashed by the same licensee or an affiliate of the licensee."[143]

For Mississippi consumers, the greater specificity of the Mississippi Act protects those who might make poor decisions due to limited economic and educational resources. The provision to cap loan amounts and fees helps prevent an accrual of fees, which could trap residents for years. The provision to require plain

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135. *See* MISS. CODE ANN. § 75-67-519(2) (1998 & Supp. 2007). This provision and all others under section 67 are scheduled to be repealed effective July 1, 2012.

136. *See* § 75-67-519(3).

137. *Id.*

138. *See* § 75-67-519(4).

139. The Department of Banking and Consumer Finance promulgates the accompanying regulations, the Mississippi Check Cashers Act Regulations. In addition, section 5 requires the lender to post the fees for payday loan. *See* Mississippi Check Cashers Act Regulations, 03-000-015 MISS. CODE R. § 5 (Weil 2003), *available at* http://www.dbcf.state.ms.us/documents/cons_finance/final_check_cashing_regs-2-20-2003.pdf.

140. *Id.* (providing example of required sign).

141. *See id.* § 3(4).

142. *See id.* § 3(10).

143. *See id.* § 3(5) & (10).

language in the contract reduces the likelihood of unconscionability due to oppressive and unclear contractual terms. Further, regulations that prevent rollovers could force consumers to make different financial choices, such as paying off the loan or accepting a bounced check fee.

In terms of specific protections for borrowers, the only information appears to be a "For the Consumer" section on the Mississippi Department of Banking and Consumer Finance website. The section simply includes a list of regulatory agencies and "consumer alerts."[144] Again, this information is available only to people who can afford computers or are close to libraries with public computer access. While Mississippi provides protection for consumers through more detailed language, its solutions and protections are not sufficiently strong. Arkansas has even more specific laws and better protections.

C. Arkansas

The State of Arkansas has some of the most borrower-friendly legislation in the country. The payday lending industry there is small compared to those of Louisiana and Mississippi. Arkansas has just 264 stores[145] charging $27,512,665 annually in fees.[146] The average APR was 432% in 2007.[147] Arkansas is unique because it is one of the only states with usury laws, which prohibit excessively high interest rates.[148] The state constitution imposes a usury cap of 17% APR on consumer loans.[149] Many payday lenders, however, have violated the state constitution by charging higher rates.[150] In 1999, payday lenders lobbied for a law to legalize their activities. They succeeded, and the Check Cashers Act of 1999 ("Arkansas Act") stated that the interest charged in check-cashing and payday lending does not violate the usury laws because lenders may charge "service fees," but not interest.[151] In 2001, the Supreme Court of Arkansas found parts of the statute

144. *See* Miss. Dep't of Banking & Fin., For the Consumer, http://www.dbcf.state.ms.us/consumer.htm (last visited Nov. 6, 2008).

145. *See* Graves & Peterson, *supra* note 39, at 696.

146. *See* KING ET AL., *supra* note 10, at 17.

147. *Id. See also* Graves & Peterson, *supra* note 39, at 689 tbl.2 (interest rates).

148. *See* ARK. CONST. art. XIX, § 13.

149. *Id.*

150. *See* Edwards, *supra* note 1 (noting many payday lenders continue charging 295% in loan fees, despite usury provisions).

151. ARK. CODE ANN. § 23-52-104 (2004). *See* Check-Cashing Rules & Regulations, pt. XVIII(A), *available at* http://www.asbca.org/pdf/rules_regs.pdf (business practices referring to "service fees permitted by law").

unconstitutional, and in early 2008 the state Attorney General began cracking down on lenders, asserting in a March letter that 156 lenders were charging interest well above the state's usury caps.[152] In May, the Attorney General sued four lenders for violating the state constitution by charging borrowers excessive interest rates.[153] In November 2008, the Arkansas Supreme Court held that allowing lenders to charge triple-digit interest rates did indeed violate the state constitution.[154]

Several key provisions distinguish the Arkansas Act and its accompanying regulations from the Mississippi and Louisiana Acts. In terms of disclosure, the payday lender must post a detailed, unambiguous schedule of fees, a list of acceptable identification, and its license permit.[155] As in Mississippi, the regulation requires that lenders display fee signs in plain view with a large-size form and typeface. Fees are 10% of the face value of the check, in addition to a $5 initial processing fee and a $10 fee for personal checks. These fees are lower than those in both Louisiana and Mississippi. The Arkansas Act states that the agreed-upon date for the check deposit must be presented in language that is "clear and understandable" to the customer. The regulations permit the consumer to make partial loan payments without additional fees.[156] Arkansas is also progressive in that it prohibits "unfair or unconscionable" business practices.[157]

For Arkansas consumers, the Act and its regulations provide strong protections. First, low fees mean that payday lending will not make those who use it even poorer. The partial payments

152. *See* Chris Rizo, *Arkansas AG Files Suit Against Payday Lenders*, LEGAL NEWSLINE.COM, May 3, 2008, http://legalnewsline.com/news/211867-arkansas-ag-files-suit-against-payday-lenders.

153. *Id.*

154. McGhee v. Arkansas State Bd. of Collection Agencies, No. 08-164, 2008 WL 4823540 (Ark. Nov. 6, 2008).

155. *See* Check-Cashing Rules & Regulations, *supra* note 151, pt. XIV.

156. *See id.* pt. XVII (A)–(G).

157. *See id.* pt. XXI ("No licensee shall engage in unfair or deceptive acts, practices or advertising in the conduct of its check cashing business."). Lest the picture appear too rosy, it should be noted that enforcement remains a problem even in a state with strong legislation. Even with highly protective laws in place, unfortunately, payday lenders are not following the rules. According to a report by one nonprofit organization, even though the Arkansas Act prohibits repeat borrowing, many payday lenders ignore the law and rollover loans every two weeks. *See* ARKANSANS AGAINST ABUSIVE PAYDAY LENDING, PAYDAY LENDERS IN ARKANSAS: THE REGULATED AND THE UNREGULATED: AN UPDATED STUDY 6 (2006), http://www.stoppaydaypredators.org/pdfs/news%20 articles/06_0200_Payday_U_Study.pdf. Furthermore, the lenders also ignore the prohibition to limit outstanding payday loans to $400, often issuing loans for nearly double that amount. *See id.*

provision is unique, as it means a consumer like Flora, had she lived in Arkansas, would have been able to pay her loans bit by bit instead of having only the option to pay everything at once. Furthermore, language prohibiting unconscionability puts the onus on lenders to make the loan terms fair. The language also shows the state's commitment to protecting vulnerable borrowers.

Arkansas state agencies have enacted specific solutions to combat lenders' disregard for the law. First, the Division of Check Cashing, which attaches to the state's Board of Collection Agencies and Credit Bureaus, relies upon the advice of a board of directors ("Board").[158] The Board consists of five members appointed by the Arkansas Governor.[159] Those members represent various constituencies, including credit bureaus, check-cashing companies, the public, and the elderly.[160] Other solutions require state support for alternatives to payday loans, such as working with creditors to develop payment plans.[161] Creditors' interest rates are more manageable than those that payday lenders charge. Arkansas's laws are the most progressive and clear of the three states analyzed in this Article. Other states could look to Arkansas's approach as a model in tackling inequities in payday lending.

In sum, states have addressed problems of payday lending—specifically unregulated interest rates and the posting of information—in a variety of ways. Beginning with the Louisiana Act, one can easily trace the progression from laws that favor the lender to those that favor the borrower, ending with the Arkansas Act. Southern residents will benefit from laws that increase access to information about payday lenders and provide solutions that will support fiscally sound decisions.

III. RECOMMENDATIONS

This careful review of the relevant statutes in Louisiana, Mississippi, and Arkansas shows that each state has areas for improvement. A judicial enforcement is too slow to provide the protections borrowers need. So, current federal and state solutions provide a starting point for recommendations. However, current federal solutions are not promising.

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158. ARKANSANS AGAINST ABUSIVE PAYDAY LENDING, *supra* note 157.
159. *Id.*
160. *Id.* at 13.
161. ARK. ADVOCATES FOR CHILDREN & FAMILIES, *supra* note 45.

A. Current Federal Solutions

Considering the differing treatment that borrowers face when getting payday loans in Louisiana, Mississippi, and Arkansas, it would seem that national legislation or national programs could be effective means to protect borrowers. After all, the federal government already regulates some aspects of the banking industry.[162] For example, TILA requires that payday lenders disclose to consumers the finance charge as a dollar amount and the APR on a loan.[163]

More recently, representatives in Congress have proposed bills attempting to regulate the payday lending industry. Unfortunately, none of the bills has made it past committee. For example, H.R. 1684, the Payday Borrower Protection Act of 1999, proposed extensive licensing, reporting, and procedural safeguards.[164] In early 2007, New Mexico Representative Tom Udall introduced H.R. 2871, the Payday Loan Reform Act of 2007, which proposed to "amend the Truth in Lending Act and the Federal Deposit Insurance Act to prohibit payday loans based on checks drawn on, or authorized withdrawals from, depository institutions and to prohibit insured depository institutions from making payday loans."[165]

One federal law that *has* taken effect, the Military Lending Act, sets interest rate caps of 36% on certain payday, auto title, and other loans made to military families.[166] Upon hearing testimony in 2006 that high-interest loans were one of the biggest personal financial problems facing the military in the past 100 years, members of Congress acted quickly. The impetus for the law arose from the desire to protect soldiers near military bases, who often become targets of predatory lenders.[167] North Carolina Senator Elizabeth Dole said at a hearing that "predatory lenders are blatantly targeting our military personnel, undermining stability, and tarnishing their service records."[168] She added that predatory

162. *See supra* Part I.C. Furthermore, Elizabeth Warren and Amelia Warren Tyagi have argued that regulating the lending industry to protect consumers makes sense, given current regulation of products like children's pajamas, aspirin, and automobiles. WARREN & WARREN TYAGI, *supra* note 2, at 147.

163. *See generally* 15 U.S.C. §§ 1601–1665 (2000).

164. *See* Bruch, *supra* note 17, at 1285.

165. *See* Payday Loan Reform Act of 2007, H.R. 2871, 110th Cong. (2007), *available at* http://www.govtrack.us/congress/bill.xpd?bill=h110-2871.

166. Military Lending Act, 10 U.S.C. § 987 (2007).

167. *See supra* Part I.B.

168. Press Release, Consumer Fed'n of Am. & Nat'l Consumer Law Ctr., Military Lending Act to Take Effect October 1: Federal Law Will Protect

loans undermine military readiness.[169] Congress is unlikely to enact a similar law that would protect all borrowers in the near future. With an ongoing war and the accompanying sentiment that stabilizing service members' financial backgrounds is akin to protecting our country, the military can show a stronger need for protection than poor borrowers can. Passage of a federal law to regulate payday lending is therefore unlikely.

The federal government has nonetheless implemented informal measures to protect borrowers. For instance, the Federal Deposit Insurance Corporation (FDIC) started a program called "Money Smart," which attempts to improve financial literacy among low- and moderate-income adults.[170] The program partners with local organizations, such as housing authorities, to offer classes to adults, and it has recently begun offering classes to high school students.[171] Studies have shown that financial literacy classes beginning at a young age are effective in helping attendees avoid future financial difficulty.[172] The FDIC has begun a pilot program through banks in which banks will distribute small-dollar loans.[173] The loans will have APR rates below 36% on loans less than $1,000, an automatic savings component, and loan amortization periods longer than a single pay cycle.[174] The purpose of this pilot program is to expand relationships with individuals who do not use mainstream banking and to "create consumer goodwill" by offering products "with significant savings over payday loan fees."[175] On a more modest level, the Federal Trade Commission,

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Troops and Their Families From Some Predatory Loans (Sept. 27, 2007), http://www.consumerfed.org/pdfs/FINAL_MLA_take_effect_PR_9-27-07.pdf.

169. *Id.*

170. *The Federal Government's Role in Empowering Americans to Make Informed Financial Decisions Before the Subcommittee on Oversight of Government Management, the Federal Workforce, and the District of Columbia of the Committee on Homeland Security and Governmental Affairs*, 110th Cong. (2007) (statement of Sheila C. Bair, Chairman, Fed. Deposit Ins. Corp.), *available at* http://www.fdic.gov/news/news/speeches/archives/2007/chairman/spapr3007.html.

171. *See id. See also* McGinn & Ehrenfeld, *supra* note 38 (noting only eighteen states require personal finance instruction in high schools but noting increase in education following subprime mortgage crisis).

172. *See, e.g.*, Thorne & Porter, *supra* note 106 (noting that over half of respondents, who were selected based on bankruptcy filings and willingness to answer questionnaires, believed that a financial management course would have helped at least "somewhat" to avoid bankruptcy).

173. *See* Fed. Deposit Ins. Corp., Small-Dollar Loan Pilot Program, http://www.fdic.gov/smalldollarloans (last visited Oct. 1, 2008).

174. *See id.*

175. *See id.*

in a publication called "Payday Loans—Costly Cash," instructs consumers, "[s]hop first and compare all available offers."[176] These examples show the ways in which the federal government has, ineffectively, addressed the payday lending problem.

B. Current State Solutions

Individual states need to be catalysts for change, although state action will be difficult, but not impossible.[177] Given the aforementioned considerations about the harm that payday loans cause to a state's residents, the threshold question is whether a state should even permit payday lending in the first place.[178] Solutions will need to: (1) address economic concerns with favorable loan terms; (2) address education through outreach; and (3) address spatial isolation through mobile services. These recommendations focus on the borrowers themselves—to invest in people, not places.[179]

The following recommendations are part of a two-step process. First, a state must decide, either through a decision by the state legislature or a referendum of the voters, whether to permit payday lending.[180] Second, if the state decides to allow payday lending, the legislature should proceed to draft clear and specific laws governing the industry.[181] The state must also commit financial resources to

176. Fed. Trade Comm'n, Consumer Alert, Payday Loans Equal Very Costly Cash: Consumers Urged to Consider the Alternatives (Mar. 2008), http://www.ftc.gov/bcp/edu/pubs/consumer/alerts/alt060.shtm.

177. In 2007 and 2008, state legislatures failed to pass measures that would protect borrowers. *See, e.g.*, H.B. 149 (La. 2008) (reducing maximum fee for lenders from 16.75% to 15%); H.B. 1291 (Miss. 2008) (requiring banking commissioner to impose civil penalties on payday lenders in limited situations); H.B. 718 (Miss. 2008) (increased disclosure); S.B. 923-86 (Ark. 2007) (designed to impose duties and restrictions on check-cashers who serve military customers); H.B. 1216, S.B. 2801 (Miss. 2007) (requires check casher licensees to file annual reports with commissioner of banking and consumer finance).

178. *See, e.g.*, Eckholm, *supra* note 12 (noting that in New Mexico, advocates are split between those who want to outlaw the industry and those who want to promote tough rules, such as mandatory reporting of loans and limits on fees and rollovers).

179. *See* THE HIDDEN AMERICA, *supra* note 96, at 317 (suggesting that rural economic policy begin investing in residents). *See also* DAVID L. BROWN & LOUIS E. SWANSON, CHALLENGES FOR RURAL AMERICA IN THE TWENTY-FIRST CENTURY 2 (2003) (arguing equity is reason to be concerned with rural people).

180. Although spatial distance separates residents in some areas such that lobbying or protesting together might be difficult, other efforts, such as petitions signed in front of grocery stores, might be effective in amassing the required support behind reform.

181. *Cf.* Robert H. Frank, *Payday Loans Are a Scourge, But Should Wrath Be Aimed at the Lenders?*, N.Y. TIMES, Jan. 18, 2007, http://www.nytimes.com/

enforcement and outreach. Several of the provisions from the Mississippi and Arkansas Acts are excellent models.

The recommendations involved in the first step are as follows. States should:

1. *Ask payday lenders to provide data about typical borrowers.* The State of Illinois has already begun doing so, with good results.[182] Through data collection, the state can ascertain whether payday lending is a strong economic influence.
2. *Establish a task force to ascertain the effects of payday lending on the populace.* Arkansans Against Abusive Predatory Lending (AAAPL) is an active group that has issued several reports since its formation in 2003. The task force should (a) report to the state agency that regulates payday loans and (b) enlist the support of state representatives to disseminate task force findings.
3. *Decide whether to ban payday lending.* Several states already have, but the majority seeks to regulate, with a trend toward greater regulation.[183]

Assuming that the state's residents wish to allow payday lending, the second step involves further recommendations for amending laws to:

4. *Add a protective legislative intent.* The amendment should demonstrate the state's commitment to protecting consumers from predatory lenders that prey on vulnerable populations.[184] Arkansas's language prohibiting unconscionability goes to the heart of protecting vulnerable people in the state.
5. *Ensure enforcement of a rate cap.* Even in the three southern states featured in this Article, which purport to have rate caps, lack of enforcement is evident. The state should add criminal

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2007/01/18/business/18scene.html (arguing that legislators, not payday lenders, should be charged with responsibility of solving problems in industry).

182. *See* ILL. PAYDAY LOAN REFORM ACT CONSUMER REPORTING SERV., ILLINOIS TRENDS IN PAYDAY LENDING (2006), http://www.idfpr.com/newsrls/103106VeritecReport.pdf. *See also* Press Release, State of Illinois: Office of the Governor, Report Shows Governor Blagojevich's Payday Lending Reforms Save Illinois Borrowers $6.4 Million (Oct. 31, 2006), http://www.idfpr.com/newsrls/103106IDFPRPayDayReport.asp.

183. *See* Frank, *supra* note 181.

184. The amendment could also include language that encourages municipalities to consider enacting zoning restrictions for payday lenders. *See* Jake Sandlin, *NLR Looks at a Delay on Cashers*, ARK. DEMOCRAT GAZETTE, Aug. 28, 2007, http://www.stoppaydaypredators.org/pdfs2/07_0828_nlr.pdf (suggesting municipalities enact zoning laws similar to those governing sexually oriented businesses).

penalties for those lenders who continue to issue loans with interest rates greater than the legal maximum.

6. *Allow partial payments on the principal of the loan.*
7. *Strengthen the posting requirements for consumer information.*
   a. The Mississippi law is a good model because it is highly specific. The law should require that posting is mandatory and attach criminal penalties for failure to comply. State agencies should routinely inspect payday lenders to insure compliance.
   b. The posting should include a sample calculation and fee schedule, much the way federal student loan agencies provide this information for students.[185]
   c. The law should establish a toll-free hotline for consumers and ensure the posting provides all of the relevant contact information.
   d. The law should require the financial equivalent of the Surgeon General's health warning displayed prominently at the lending outlet and in the loan paperwork, so that the consumer understands the consequences of working with this payday lender before he or she can receive the loan.[186]
8. *Suggest that counties partner with local agencies.* A public-private or public-nonprofit partnership would provide support, information-sharing, and resources for local residents.[187]

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185. For a sample disclosure form, see Campus Partners, Student Loan Disclosure Statement, http://www.campuspartners.com/documents/D8218.pdf (last visited Oct. 1, 2008). Of course, just as with student loans, borrowers may be so eager—and desperate—that no amount of information is powerful enough to dissuade them from signing on the dotted line.

186. Surgeon General warnings on alcohol and cigarette packaging caution against the extreme dangers of using those products. For example, one label says, "Smoking causes lung cancer, heart disease, emphysema, and may complicate pregnancy." SURGEON GENERAL'S REPORT—REDUCING TOBACCO USE (2000), http://www.cdc.gov/tobacco/data_statistics/sgr/sgr_2000/highlights/highlight_label s.htm. Payday loans may be just as dangerous to a consumer's financial health, and a warning with equally serious language could be in order. A label might say, "This loan may be impossible to pay back given your current salary and may result in serious debt that you cannot escape from in your lifetime."

187. In Louisiana, for instance, a local credit union has developed a "stretch loan" program with lower fees ($3 per week and 12% interest). *See* FANNIE MAE FOUND., INNOVATIONS IN PERSONAL FINANCE FOR THE UNBANKED: EMERGING PRACTICES FROM THE FIELD (2003), http://www.fanniemaefoundation.org/programs/pdf/fscs_ASITOC.pdf. A similar program has developed in New Mexico. *See* Eckholm, *supra* note 12 (noting that under the plan, customers who attend classes and agree not to seek loans elsewhere will have 80% of their loan fees returned to them and put into a personal savings account). Additionally, the state could consider partnering with the bank and providing information to adults and teens. Under the guidance of a state staff person, federal programs, such as the FDIC's "Money Smart," could also be expanded from high schools to gathering places for adults, such as community centers.

These recommendations address the challenges of payday lending for southerners. Recommendations 4–6 address economic challenges by limiting oppressive terms. Recommendation 7 ensures that consumers have a greater range of information available when making decisions. Recommendation 8 focuses on expanding opportunities for financial literacy and bridging spatial distances. Whichever recommendations the state adopts, the state must include outreach efforts designed for all residents and educational levels. Mobile outreach is ideal because otherwise residents would have to drive great distances at hours that may be inconvenient or conflict with work time.[188] Organizations could take a lesson from library "bookmobiles" and consider creating a "bankmobile" with staff who would travel to disadvantaged regions to teach people about financial services and offer information about loan alternatives.[189] In sum, the current solutions are just the beginning of state-specific efforts to regulate payday lending. These recommendations, if implemented and widely promoted, could serve as an inspiration for other regions with similar economic, educational, and geographical challenges.

CONCLUSION

Payday lending creates a number of troubling problems for America's poorest citizens. Those in Louisiana, Mississippi, and Arkansas face greater challenges with respect to economic opportunities, financial literacy, and spatial isolation. Being a southerner and a payday loan borrower is an oppressive combination.

States must protect consumers from lenders, enforce existing laws, and ensure that alternatives are accessible. States need to take measures to protect residents; this Article suggests but a few.

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188. *See* Salvail, *supra* note 118.

189. The services would need to address the challenges that some scholars have identified, such as the rapid changes in the industry that make it hard for educators to keep up. Stephen Gandel, *Why You Can't Teach Money*, CNN MONEY, Aug. 26, 2008, http://money.cnn.com/2008/08/25/pf/teaching_money.moneymag/index.htm?postversion=2008082605.