Michael & Suzanne Borrin Foundation

Working Towards a Fairer Consumer Credit Market

A study of the issues in New Zealand's consumer credit market and proposals for reform

FinCap

Victoria University Wellington
Te Whare Wānanga o te Ūpoko o te Ika a Māui

Community Law Canterbury
Te Ture Whānui o Waitaha

Michael & Suzanne Borrin Foundation

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Working Towards a Fairer Consumer Credit Market

A study of the issues in New Zealand's consumer credit market and proposals for reform

Interest rate caps, what do we know about their use and impact in other jurisdictions and how might they contribute to a fairer consumer credit regime in New Zealand

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Introduction

This research paper sets out the results to date (April 2019) of the research of the FinCap/Community Law Canterbury/Victoria University/BERL team on interest rate caps. Introducing an interest rate cap was one of the options proposed by MBIE in its June 2018 Discussion Paper "Review of Consumer Credit Regulation". MBIE stated (at p 13 of that Discussion Paper): *Caps on interest and fees (for all or some lenders) have the potential to address the excessive cost of some consumer credit agreements. To the extent that high-cost lenders are a disproportionate source of non-compliance with lender responsibilities, interest and fee caps could also contribute to addressing non-compliance issues.*

However, MBIE's subsequent proposals, which were approved by Cabinet in October 2018, did not include an interest rate cap. Instead what has been proposed is that interest and fees over the life of a high cost loan would be limited to 100% of the original loan principal.[1] This means that the borrower would repay no more than twice the original loan principal. MBIE stated (in the October 2018 Regulatory Impact Statement, at p 16): *we decided on a cap of 100% because as far as we are aware, this is the lowest of the voluntary caps currently applied in the New Zealand lending market.*

MBIE also stated (at p 20 of that Statement): *[The proposed reform] would be appear to only address a small subset of the harms caused by high-cost lending. The costs, however, in the form of restricting access to credit and costs to business are fairly low. The other two options (Cap Option B [which included an interest rate cap of between 200% and 300% per annum] and Cap Option C [which included an interest rate cap of between 30% and 50% per annum]) may have much larger benefits, but also come with significant risks of harm to consumers, due to them restricting access to credit. The uncertainty around the magnitude of the costs and benefits of Cap Option B and Cap Option C further makes them difficult for us to recommend with confidence.*

This research paper has been produced as part of a larger project that is looking into a series of issues that arise out of high cost lending in New Zealand. It will inform the final report on this project, expected to be finalised later in 2019. It records the research to date (April 2019) on the use of interest rate caps in other jurisdictions, and on studies that have been done to assess the harm caused by the contraction in the high cost lending market consequent on introduction of reforms (in the UK in particular) that have included an interest rate cap.

1 'High cost' is commonly understood to mean (in a New Zealand context) an interest rate of or above 50% per annum. The Responsible Lending Code treats as treats as high-cost credit agreements those agreements where the annual interest rate (expressed in terms of a percentage) is 50% or greater, and this definition was used in MBIE's review – see "Additional Information to Support the Discussion Paper", June 2018, 5, (Additional Information Document) accessible at: https://www.mbie.govt.nz/assets/3f19e04173/background-and-technical-detail-for-discussion-paper.pdf. The bill introduced in April 2019 (Credit Contracts Legislation Amendment Bill available from http://www.legislation.govt.nz/bill/government/2019/0131/latest/LMS184169.html) includes the following definition:

high-cost consumer credit contract—

a. means a consumer credit contract—
   i. that provides for an annual interest rate of 50% or more; or
   ii. under which the weighted average annual interest rate applied to the unpaid balance is, or is likely to be, 50% or more on any day during the life of the contract; and
b. includes a contract declared by regulations to be a type of contract that is a high-cost consumer credit contract

"Since the introduction of the cap… The majority of consumers turned down for a loan believed they were better off. There was no evidence of an increase in the use of illegal money lenders."

Summary of key points

The MBIE review conducted over 2017-2018 revealed serious problem in the high cost lending market in that there is evidence of on-going irresponsible lending and very high rates of interest.

Interest rate caps are a recognised way of addressing excessive cost of credit under consumer credit contracts. Caps also address irresponsible lending to an extent because lenders tend to become more risk averse in their lending practices when they must operate within a cap.

76 countries around the world include an interest rate cap as part of their regulation of high cost lending, as evidenced by a 2014 World Bank paper.

The UK introduced an interest rate cap on high cost short term loans in 2015. It includes a cap of .8% (per day) interest and fees. Introduction of the cap in the UK led to a contraction in the high cost lending market. There was a drop in the number of businesses offering high cost loans and a decrease in the loan acceptance rates.

A 2017 Financial Conduct Authority review of the UK regime found that the outcomes for consumers were positive. Since the introduction of the cap, consumers pay less, repay on time more often and are less likely to need help from debt charities. The majority of consumers turned down for a loan believed they were better off. There was no evidence of an increase in the use of illegal money lenders.

Australia introduced regulation of high cost lending in 2013.

Under Australian reforms, one off loans for 15 days or less for under $2000 are prohibited.

Loans of up to $2000 for longer than 15 days and up to one year are subject to regulation under which:

- No interest may be charged,
- An establishment fee of up to 20% of the loan amount can be charged, and
- A monthly fee of up to 4% can be charged (as well as certain other fees).

Loans above $2000 (up to $5000) for term of up to 2 years are capped at 48% pa interest (plus a $400 max fee).

The Australian cap led to a contraction in the high cost lending market (the number of lenders fell). But the volume of funds lent grew.

Further reforms have been proposed in Australia that will introduce a protected income level under which the total payable under all high cost loans due cannot exceed 10% of the borrower's net income. These changes are contained in draft legislation that has been prepared by the Australian Treasury and also a private member's bill. A 2019 Australian Senate Inquiry recommended that this reform be progressed.

Several of the lenders that submitted to MBIE's June 2018 Discussion Paper suggested that New Zealand should adopt the existing Australian cap regime.

15 states in the US have laws that prohibit payday lending. Of those state where payday lending is permitted, most impose an interest rate cap. Some states limit the amount that can be lent by reference to the borrower's income.

Several studies have been done overseas that have looked at the effect of introducing an interest rate cap, on those who are consequentially denied access to a high cost loan. These studies show that the need for cash does not disappear but the borrowers tend to turn to other sources, mainly being family and friends. There was no evidence of an increase in the use of illegal lenders. There was significant evidence that borrowers considered they were better off having been denied a high cost loan.

Recommendation: That the Government should introduce an interest rate cap on high cost lending as a means of reducing excessive interest rates and to support the lender responsibility principles. The detail of the cap should be determined after consideration of the likely impact of a cap on the consumer credit market when set at particular rates and be informed by the experience of interest rate cap regimes in the UK and Australia. It should be a total cost of credit cap, capturing interest and fees payable during the agreed loan duration.

A. Brief background to the interest rate cap issue

The lender responsibility principles

The current law regulating high cost lending is contained in the Credit Contracts and Consumer Finance Act 2003 (CCCFA), which has, since June 2015, contained lender responsibility principles.[2] Under the lender responsibility principles (the Principles), a lender under a consumer credit contract[3] must (among other obligations) make reasonable enquiries before entering into a loan to be satisfied that the credit provided will meet the borrower's requirements and objectives[4] (in other words, be suitable for the borrower), and that the borrower will be able to make the payments under the loan without suffering substantial hardship[5] (in other words, be affordable for the borrower).

Behind the Principles sits the Responsible Lending Code (the Code) which elaborates on the Principles and provides guidance as to how lenders can comply with the Principles.[6] The Code is non-binding, and non-compliance currently attracts no enforcement consequences. Evidence of a lender's compliance with the provisions of the Code will be treated as evidence of compliance with the Principles, including the specific lender responsibilities.[7] Non-compliance with the Principles can support a claim for reopening of the contract on the grounds that the contract was oppressive.[8]

Reopening allows the court to make a variety of orders, for example extinguish or alter obligations under the contract. Further, if the court finds that a person has suffered loss or damage by reason of a breach of the Principles, it can order the lender to pay compensation.[9] To date of writing (April 2019), only one case has been taken to court by the Commerce Commission relating to breaches of the Principles.[10]

Review of the operation of the principles

In December 2017 the (then new) coalition Government commissioned the Ministry of Business, Innovation and Employment (MBIE) to conduct a review to assess whether the 2015 amendments to the CCCFA that introduced the Principles had been effective in protecting vulnerable consumers. MBIE is primarily responsible for designing the current consumer credit reforms. The term 'vulnerable' encompasses persons that have low literacy or numeracy skills, or are not confident speakers of English, or are under financial and or time pressure.[11] Key findings from the 2017-2018 MBIE review were that there is evidence of continued irresponsible lending and of very high rates of interest. The review also revealed that there are significant problems around repeat borrowing and with some borrowers getting into debt spirals.

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2 Credit Contracts and Consumer Finance Act 2003, s 9C.

3 'Consumer credit contract' is defined in the Credit Contracts and Consumer Finance Act 2003, s 11.

4 Credit Contracts and Consumer Finance Act 2003, s 9C(3)(a).

5 Credit Contracts and Consumer Finance Act 2003, s 9C(3)(a).

6 The Responsible Lending Code was developed by MBIE and can be accessed from https://comcom.govt.nz/business/your-responsibilities-if-you-provide-credit/the-lender-responsibility-principles

7 Credit Contracts and Consumer Finance Act 2003, s 9E(3).

8 *'Oppressive'* means oppressive, harsh, unjustly burdensome, unconscionable, or in breach of reasonable standards of commercial practice, see Credit Contracts and Consumer Finance Act 2003, s 118. The High Court has expressed the view that lending at high rates is "oppressive" – see *Xiao v Sun* [2018] NZHC 536, [487]: "In my view, it is unnecessary to consider all of Ms Xiao's contentions. The interest rate of five per cent per week, or between 200 and 300 per cent per annum, is a clear sign of oppression."

9 Credit Contracts and Consumer Finance Act 2003, ss 93 and 94. The court also has an injunctive power to restrain breaches of the Principles, under s 96.

10 In mid-2018 the Commerce Commission filed proceedings against Ferratum New Zealand Ltd, see https://comcom.govt.nz/news-and-media/media-releases/2018/commission-alleges-irresponsible-lending-by-payday-lender-ferratum

11 See the October 2018 Cabinet paper (Cabinet Paper), 1. Accessible at: https://www.mbie.govt.nz/business-and-employment/consumer-protection/review-of-consumer-credit-law/review-of-consumer-credit-law-2018/. 'At any time, a proportion of the population is at significantly higher risk of making poor consumer decisions. General risk factors include poverty, lower proficiency in English, disability and low literacy and numeracy. These are heightened by financial shocks (like unexpected expenses or loss of income), stress or addiction.' (From MBIE's Review of Consumer Credit Regulation, June 2018, 11-12, (June 2018 Discussion Paper) accessible at: https://www.mbie.govt.nz/assets/6e872118c7/discussion-paper-cccfa-review-2018.pdf, 7).

Problems revealed by the MBIE review

The review conducted by MBIE found that consumers continue to be provided with loans that are unaffordable or unsuitable and end up with unmanageable debt.[12] In other words, notwithstanding the introduction of Principles in 2015, there is evidence that loans continue to be made in circumstances where the borrower could not realistically afford the repayments. Many stakeholders consulted by MBIE held a strong view that high cost lenders are a significant source of irresponsible lending. Consumer groups, regulators, dispute resolution schemes and some lenders reported that was common for some lenders to perform only superficial testing of loan affordability and take income and expense information provided to them by borrowers without proper questioning or verification, even where it is plainly incomplete or incorrect.[13] This view is borne out, said MBIE, by Commerce Commission complaint statistics.[14]

Another key finding of this review was that there was evidence of very high interest rates and fees for some credit products. Stakeholders commonly noted that "high cost credit was both readily available and normalised in low-income communities."[15] An earlier MBIE study had found high cost lenders offering unsecured loans for between 2 and 12 months charged 100% to 400% per annum. High cost lenders offering short term unsecured loans of between 2 days and 6 weeks charged 300% to 803% per annum.

High cost lenders argue that these rates are justified because of the costs associated with making small loans, and the increased risks of lending into the market of borrowers with poor credit risk.[16]

The review also found that repeat loans were a common problem.[17] MBIE received reports of lenders offering new loans to borrowers immediately after repayment (or even after default), borrowers confirming subsequent loans by text message and lenders with many loans per borrower. There were also reports of aggressive advertising of high-cost loans to consumers who had previously repaid them.[18]

MBIE stated that "debt spirals' or 'debt traps' were commonly reported problems, where borrowers accumulate interest and fees for long periods following default.[19] The review reported that a number of major short-term lenders implement voluntary caps to prevent debt spirals, so that interest and fees are not charged for more than two months, or beyond a certain multiple of the original loan value.

There were also reports of aggressive advertising of high-cost loans to consumers who had previously repaid them.

12 See June 2018 Discussion Paper, n 11, 10: "Across credit markets, there are inconsistent levels of compliance, and continued irresponsible lending by some lenders. Specific areas of significant non-compliance were in carrying out affordability assessments and in advertising practices."

13 June 2018 Discussion Paper, n 11, 17.

14 "Additional Information to Support the Discussion Paper", June 2018, 15, (Additional Information Document) accessible at: https://www.mbie.govt.nz/assets/3f19e04173/background-and-technical-detail-for-discussion-paper.pdf

15 June 2018 Discussion Paper, n 11, 10.

16 As evidenced by the submissions to the June 2018 Discussion Paper, n 11. See for example the submissions of lenders Save my Bacon and Cash Converters, accessible at: https://www.mbie.govt.nz/document-library/search?keywords=consumer+credit+regulation+review&df=01%2F05%2F2018&dt=31%2F12%2F2018&submit=Search&-type%5B66%5D=66&topic%5B3%5D=3&subtopic%5B19%5D=19&sort=.

17 Additional Information Document, n 14, 13.

18 June 2018 Discussion Paper, n 11, 17.

19 Additional Information Document, n 14, 14.

The June 2018 Discussion Paper

The December 2017 MBIE review resulted in the publication of a discussion paper by MBIE in June 2018 (the June 2018 Discussion Paper) and a call for submissions. In particular views were sought on whether the problems with high cost lending were significant and on a range of options, including capping interest rates. 86 submissions were received.

Financial capability and budgeting services (being services that offer a free service of assisting people who come to them for help in developing a manageable budget, forming a personal financial plan of action and advocating with those who they owe money to), and other bodies that provide assistance and support for consumers in financial difficulty, said that they are seeing clients daily who have got into an unmanageable debt situation as a consequence of taking on debt including high cost loans. In many cases it appeared (said these submitters) that the client should not have been given a high cost loan, because they could not afford the repayments. In other cases, the penalties added on once the client defaulted resulted in the client becoming liable to pay back significantly more than the original loan, so that the debt, while originally potentially manageable, became unmanageable. These submitters were almost unanimous in wanting payday lenders forced out of the credit market by the introduction of an interest rate cap (of between 30% and 50% per annum or in some cases a lower cap).[20]

Eight lenders currently operating in New Zealand in or just below the high cost lending market[21] submitted to the June 2018 Discussion Paper.[22] These lenders were generally against tighter regulation, saying the current laws are adequate but needed to be enforced more vigorously. Some supported a 100% total repayment cap, and several said they already incorporated this or a similar repayment cap in their high cost lending business. One theme that was repeated in these submissions was that high cost lending facilitates financial inclusion, in particular for those that do not have access to more mainstream credit facilities.

The issue of what might happen to borrowers who would be unable to access credit was not specifically addressed by the submitters, but some said there should be more funding for micro finance providers.[23] Several lenders suggested that the consequences of shutting down the payday lending industry included an increase in borrowers using illegal (unregulated) lenders.[24] However, some submitters directly addressed this concern, for example Dunedin Budget Advisory Service was not so concerned about lenders going underground, saying financial mentors will be told about these lenders and can report on them,[25] and the Family Finances Services Trust commented on illegal lenders saying they are already out there and the police have the power to take action against them.[26]

20 See for example the submissions of FinCap, Christians Against Poverty, Christian Budgeting NZ, Christchurch Budget Services, Network of Christian Social Services Providers, and Waahi Whaanui Trust, accessible at: https://www.mbie.govt.nz/document-library/search?keywords=-consumer+credit+regulation+review&df=01%2F05%2F2018&dt=31%2F12%2F2018&submit=Search&type%5B66%5D=66&topic%5B3%5D=3&sub-topic%5B19%5D=19&sort=

21 In other words, offering loans at rates of around 45% to 49% per annum.

22 In one case the lender was only operating in Australia but considering setting up business in New Zealand.

23 See for example the submission of New Zealand Council of Christian Social Services (at 2) to the effect that the government should support alternative low-cost credit facilities like Nga Tangata Microfinance.

24 See for example the submissions made by Moola, Sunshine Loans and Thorn Group Financial Services (accessible at: https://www.mbie.govt.nz/document-library/search?keywords=consumer+credit+regulation+re-view&df=01%2F05%2F2018&dt=31%2F12%2F2018&submit=Search&-type%5B66%5D=66&topic%5B3%5D=3&subtopic%5B19%5D=19&sort=

25 Dunedin Budget Advisory Service Submission to Consumer Credit Review, 3.

26 Family Finances Services Trust Upper Hutt Submission to Consumer Credit Review, 2.


DISCOUNTS FOR

B. What MBIE has decided about an interest rate cap

The issue of whether to introduce an interest rate cap was one specific issue on which views were invited in the June 2018 Discussion Paper. After consideration of the submissions, MBIE decided not to recommend an interest rate cap. Instead it has proposed that a 100% total repayment cap be introduced. This will put a cap on the total amount a borrower will have to repay (including interest and fees) of twice the amount borrowed. This recommendation has been accepted by Cabinet.

The 100% repayment cap

The October 2018 Cabinet paper explains the proposed 100% total repayment cap in these terms. For high cost loans, interest and fees over the life of the loan would be limited to 100% of the original amount of the loan. This means that even if the borrower defaults, they would not have to repay more than twice the original amount borrowed, including interest, default interest and all fees. This limit, says the Cabinet Paper, would apply to interest and fees on both the original loan and any subsequent loan provided by the same lender that is used to repay or replace the original loan.[27] This cap is intended to target lenders who generate their revenue from borrowers in default. It is intended to dis-incentivise lending to borrowers who are likely to default.[28] It is not intended to provide protections to borrowers who take out multiple loans or who borrow repeatedly (from the same or different lenders). It also does not directly address the rate of interest charged.

> "The 100% payment cap is not intended to provide protections to borrowers who take out multiple loans or who borrow repeatedly"

27 Cabinet Paper, n 11, [20].

28 Cabinet Paper, n 11, [22].

The cap as drafted in the bill introduced in April limits the maximum amount that can be paid back under a high cost loan to the amount of the 'first advance', meaning that it will capture top up advances and will also capture roll overs and refinancing so long as the creditor remains the same (including associated parties), the debtor remains the same, and there is an unpaid balance at all times. Potential for avoidance exists, for example by use of a friendly non associated creditor to repay an earlier loan. There is no general anti avoidance provision.

This type of cap, which can be described as a 'twice what you borrowed' cap, does not appear to have been adopted in any other country that has imposed a cap, as the sole means of regulating high cost loans (in other words, not in conjunction with an interest rate cap). High cost lending has been regulated in the UK since 2014/2015 and in Australia since 2013, and both those jurisdictions have adopted a regime that includes both a 100% total repayment cap and an interest rate cap. This suggests that a total repayment cap was not seen as sufficient in itself to regulate high cost lending.

MBIE's reasons for rejecting an interest rate cap

The reasons given in the October 2018 Cabinet Paper for not introducing a cap include that imposing a cap would likely result in the closure of "many" high-cost lenders and a significant tightening of credit criteria by those who remain, leaving borrowers with poor credit histories fewer option.[29] One of the main arguments against a cap is that caps may exacerbate financial exclusion for those without access to mainstream credit, by reducing or removing high cost lenders as a credit option.[30] MBIE also noted that an interest rate cap could increase illegal lending (from lenders charging higher interest rates in breach of the law), resulting in weaker protections for borrowers using these services.[31]

29 Cabinet Paper, n 11, [23].

30 Punching Loan Sharks on the Nose: Effective Interventions to reduce Financial Hardship in New Zealand, Signal and others, Health Promotion Journal of Australia 2012, 23(2), (Punching Loan Sharks on the Nose) 108, 109.

31 June 2018 Discussion Paper, n 11, 16.

A 100% total repayment cap was presented as Cap Option A in the June 2018 Discussion Paper. Cap Option B (which was rejected by MBIE and Cabinet) was an interest rate cap of between 200% and 300% plus a total repayment cap. Cap Option C was an interest rate cap of between 30% and 50% (also rejected).

There is no research currently available that has been done in New Zealand on the potential harm that could result from the introduction of an interest rate cap. However, the experience of what has happened in the UK and Australia after interest rate caps were introduced is instructive. In summary, after an interest rate cap was introduced in those jurisdictions, the high cost lending market contracted as some lenders withdrew from the market. The remaining lenders tightened up lending criteria. In the UK, for example, after the introduction of a cap of .8% a day (as part of a package of reforms), the rate of declined borrower applications increased significantly. The implications of this for consumers has been the subject of research in the UK, discussed below.

c. 2014 World Bank Study on use of interest rate caps around the world

A World Bank paper (*Interest Rate Caps Around the World, Still Popular but a Blunt Instrument*, October 2014),[32] has looked at the use of interest rate caps around the world, including where used as a consumer protection mechanism in the context of high cost lending. The paper found that 76 countries in the world impose some sort of interest rate cap on high cost loans.[33]

The World Bank paper stated that interest rate caps can be justified in order to protect consumers from usury[34] and exploitation, by guaranteeing access to credit at reasonable rates. Caps can also help avoid social harm by limiting access to credit to impaired and low-income consumers. The flip side of this, however, is that caps can cause financial institutions to curtail their lending to those who need it most and have little access to alternative sources of credit. If the cap is set at an unprofitable level it can also lead to banks and other lenders withdrawing from certain market segments because they cannot cover their costs.[35] The paper noted the importance of setting the cap at the right level, of including fees in the cap and having a clear definition of 'interest rate' to reduce opportunities for avoidance.

While caps are a popular tool, the World Bank paper stated that "in most cases the effects [of a cap] were predominantly negative."[36] Examples of 'negative' outcomes were lenders evading caps, lenders withdrawing from the market in particular from poor and more remote areas, lenders increasing the average loan size to improve efficiency and returns, a rise in illegal lending (in Japan and New York), and less transparency as lenders complied with the cap but imposed other less obvious fees.[37] The paper suggested other policy measures should be considered to reduce interest rates, such as increasing competition, improving financial consumer protection frameworks, increasing financial literacy and promoting micro finance products.

32 Interest Rate Caps around the World, Still Popular but a Blunt Instrument", Policy Research Working Paper 7070, World Bank Group October 2014 (Interest Rate Caps around the World).

33 Interest Rate Caps around the World, n 32, 6.

34 'Usury' may be defined as the action or practice of lending money at unreasonably high rates of interest.

35 Interest Rate Caps around the World, n 32, 3-4.

36 Interest Rate Caps around the World, n 32, 12.

37 Interest Rate Caps around the World, n 32, 12-13.


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D. The UK regime

The United Kingdom introduced a cap on high cost, short term credit in 2015. The cap was part of a package of reforms which also included a limit on the number of times a high cost short term loan could be rolled over. The UK Government was initially opposed to a cap but to the surprise of many decided to support a cap.[38] "High cost short term credit" is defined in the FCA Handbook for the purposes of the UK regime as an unsecured loan under which interest is charged at a rate of at least 100% per annum and which is due to be repaid within a year.

Background to the UK reforms

An Office of Fair Trading report into the payday lending industry in the UK, released in March 2013, had found (relevantly) that:[39]

- there was poor compliance with the law (and guidance) across the market and throughout the lifecycle of payday loans, from advertising of loans to debt collection,
- lenders competed by emphasising speed and easy access to loans, but borrowers were not getting a balanced picture of the costs and risks of taking out a payday loan,
- the majority of lenders were not conducting adequate affordability assessments and their revenue streams relied heavily on rolling over or refinancing loans, and
- around one in three loans was repaid late or not repaid at all.

A February 2015 report by the UK Competition Commission following an investigation into the supply of payday lending in the UK found that the supply of payday lending in the UK grew rapidly between 2008 and 2012, at which point total payday loan revenue was around £1.1 billion, with lenders issuing approximately 10.2 million payday loans worth £2.8 billion.[40] Customers often took out multiple loans and many used more than one lender. An average payday loan customer took out around six loans in a 12-month period, and approximately four in ten payday loan customers used more than one lender in 2012. Just over half of customers used the money for living expenses (such as groceries and utility bills), 10% said the money related to a car or vehicle expense and 7% said general shopping such as clothes or household items.

In 2014, regulation of consumer credit was transferred to the Financial Conduct Authority (FCA) and one of the first issues considered was whether to impose an outright ban on payday lending.[41] The FCA decided that payday lending had a place, but should only be offered to those that could afford it. In February 2014 the FCA published rules for consumer credit firms, setting out the standards they had to meet to continue doing business, including rules reflecting the Office of Fair Trading's previous guidance, for example on assessing if loans are affordable. These rules also introduced a limit on the number of times a loan could be rolled over, to twice. The FCA considered the more times a loan was rolled over, the more likely the borrower would find themselves in financial difficulty.[42]

Initially there was little support for an interest rate cap but the UK Government announced in November 2013 that payday loans would be caped, signalling a U-turn on the issue.[43] The FCA was then required to impose some form of cap. The cap the FCA introduced consists of several elements. It was developed after extensive research and discussions over a period of six months (including analysing credit records for 4.6 million people and carrying out a survey of 2,000 consumers) and is a balance of a number of factors, namely, consumer protection from loss of access to high cost loans because the risks of using these products are too

38 From the House of Lords debate on the relevant legislation: Lord Mitchell (Lab): My Lords, my head has been spinning in disbelief since the introduction of this Government's amendments. Even two weeks ago the Prime Minister, the Chancellor and the Business Secretary were resolute in their opposition to any form of capping of interest rates offered by payday lending companies and other suppliers of short-term credit; yet here we are today, legislating for just such a cap. (See HL Debates, 9 December 2013, column 691.)

39 Payday Lending, Compliance Review Final Report, Office of Fair Trading, March 2013, OFT 1481.

40 Payday Lending Market Investigation, Final Report, Competition and Markets Authority, 24 February 2015, 3-4.

41 Payday Loans: Filling the Gaps in the Short term Loan Market, Arora, Comp Law 2017, 38(6), 172 (Payday Loans: Filling the Gaps), 175.

42 Payday Loans: Filling the Gaps, n 41, 177.

43 This appears to have been in response to a campaign by certain MPs (backed by consumer groups) to curb the activities of payday lenders.

high, benefits to consumers from paying lower prices, the potential impact of significantly limiting the high-street distribution channel, and the detrimental impact on consumers of the loss of providers.[44]

Detail of the UK cap

The three elements of the UK cap are:

- a cap on interest and fees (combined) of .8% a day,[45]
- limits on default charges, which are fixed at 15 pounds and no default interest rate is permitted, and
- a cap on the total cost of the loan at 100% of the amount borrowed (ie you cannot be required to pay back more than twice what you borrowed) (the total cost cap).

If there is repeat lending (after the first loan is paid off) then the new loan is treated as a separate loan with its own total cost cap. Currently the only restrictions on repeat lending in the UK are requirements for affordability assessments and the rollover cap.[46]

The FCA stated in its detailed rules document that each element of the cap was considered necessary and played a different role in protecting consumers.[47] Specifically, the interest rate cap of .8% per day protects all borrowers, including those who pay back on time and those who refinance and those who default, from excessive charges. The cap on default fees protects borrowers who pay back late, from excessive charges on default. The total cost cap (the type of cap the New Zealand Cabinet has approved) limits escalating interest, fees and charges and getting into debt spirals.[48]

Impact of the UK cap on the high cost lending market

The cap was intended to both get the costs down for those consumers that would still be eligible for a high loan under the new regime and to cut off the option of a high-cost loan for those persons that are least able to afford a high cost loan and would have problems repaying. The cap was predicted to cause a contraction in the high cost lending market. Before the cap was introduced, the UK Government wrote to the UK high street banks urging them to explore ways in which they could provide short term affordable credit. However, the banks appear to have been reluctant to enter the high cost lending market.[49] A briefing paper to the House of Commons written in 2018 stated that "The FCA were very comfortable with the expectation that the new rules would result in a much smaller industry and that some people (people who previously only just qualified for loans) might no longer have access to credit but that, in economic welfare terms, they would be better off without it."[50]

What happened, as reported in the FCA's 2017 review of the high cost credit caps, is that the high cost loan market contracted after the introduction of these caps.[51] The scale of contraction in the market was beyond what the FCA predicted.[52] There was a significant drop in the number of applications for loans, a decrease in loan acceptance rates, and a drop in the number of

44 Proposals for a price cap on high-cost short-term credit, CP14/10, July 2014, FCA, July 2014, 33-34 (CP14/10).

45 The rate of .8% a day was chosen after economic modelling of the likely impact of a cap on the market. The .8% a day cap does not prevent compounding interest meaning that APRs for a payday loan in the UK can be over 1000%. It is a legal requirement in the UK for payday lenders to tell borrowers the APR of the loan but some lenders say this is misleading as they in fact only charge simple not compounding interest.

46 The FCA are keeping repeat lending under review but currently the policy is to apply a robust approach to enforcement of affordability assessment rules. See Detailed Rules for the Price Cap on High-Cost Short Term Credit, PS14/16, FCA Nov 2014, (Detailed Rules for the Price Cap), [5.17]. In October 2018 the FCA issued a letter to high cost lenders setting out expectations in light of increased complaints relating to repeat lending.

47 Detailed Rules for the Price Cap, n 46, 25-26.

48 The Consumer Finance Association reported that the cap has also placed a limit on the extent to which a lender can profitably roll over a loan, as any instalment loan longer than 6 months needs to have an interest rate below the .8% a day cap in order to meet the 100% of principal requirement. See "Impact of Regulation on High Cost Short Term Credit: How the Functioning of the HCSTC Market has evolved", Consumer Finance Association March 2017, 10 (Impact of Regulation on High Cost Short Term Credit).

49 Payday Loans: Filling the Gaps, n 41, 179.

50 High Cost Consumer Credit: The New Regulatory Regime, Briefing Paper to the House of Commons, 31 May 2018, CBP-07978, 3 (Briefing Paper to House of Commons).

51 High-cost credit, including review of the high-cost short-term credit price cap, FS17/2 FCA July 2017 (High Cost Credit Review FCA), 4, 19-20.

52 Briefing Paper to House of Commons, n 50, 3.

firms offering high cost loans. Profitably of the firms that remained decreased, as did default rates on loans. The average length of a loan almost trebled (from 30 to 80 days) and the costs to consumers decreased.[53] This is considered to be due to the fact that lenders are less likely to lend to consumers who cannot afford to repay. The FCA review stated that it did not appear that declined borrowers were turning to other high cost products or to illegal money lenders.[54]

Specifically, the FCA 2017 review stated that: [55]

> *"We have found improved outcomes for consumers since setting the cap. Consumers pay less, repay on time more often and are less likely to need help with HCSTC[56] products from debt charities. Debt charities have also indicated that consumers are presenting themselves earlier and with lower debts, suggesting that underlying problems are being addressed sooner."*

> *"We found no evidence that consumers who have not been able to get HCSTC products since the cap have generally had negative consequences as a result. The majority (63%) of consumers turned down for HCSTC products since the cap was introduced believe that they are better off as a result. We have not seen a significant 'waterbed effect' with consumers increasing their use of other high cost credit products after failing to get a HCSTC loan. We also found no evidence that consumers who have been turned down for HCSTC are more likely to have subsequently used illegal money lenders."*

> *"While the market has got much smaller since 2014, many firms have been able to continue operating under the cap. There has been a slight increase in the number and value of HCSTC loans issued since its low point in 2015 and we see some evidence of stronger competition within the market."*

UK's StepChange Debt Charity reported in 2017 that it had seen significantly fewer clients coming to it with high cost short term debts.[57] 16% of StepChange's clients had high cost short term debts in the first half of 2016 compared to nearly a quarter (23%) in 2013. The report stated "This suggests fewer people are getting these loans and less of those who take out HCSTC are struggling to repay."[58] However, the charity continued to see issues with repeat borrowing and around affordability assessments.

A 2017 paper prepared by the UK industry body for short term lenders (the Consumer Finance Association) reported on research done to assess how the high cost short term market in the UK had evolved since the introduction of the cap. [59] This paper reported that the cost of credit had come down by around a third, default rates had roughly halved, lenders had been incentivised to offer affordable loans and lenders were offering longer term loans (with the opportunity to repay early). Whereas previously lenders had been generating significant revenue from late fees, extending loans and relending, the report estimated that lenders were now receiving more than 80% of revenue from the contracted interest payments. However, access to credit had significantly reduced, to a larger degree than the FCA expected.
The FCA had estimated that the cap would result in 11% of borrowers no longer having access to a high cost loan.[60] The actual decline in consumers have access to this credit was twice what was expected.[61]

Further research has been done in the UK on the impact of the contraction in the high cost lending market, on persons seeking access to credit. This research is discussed below.

53 Briefing Paper to House of Commons, n 50, 3-4.

54 The Explanatory Memorandum that accompanied the Consumer Credit Legislation Amendment (Enhancements) Bill when that bill was introduced in Australia in 2011 contains references to other earlier research that supports the argument that introduction of a cap is unlikely to lead to an increase in illegal lending. See [11.147]- [11.149] of the Explanatory Memorandum.

55 High Cost Credit Review FCA, n 51, [1.15-1.17].

56 'HCSTC' stands for high cost short term credit.

57 "Payday loans: The next generation", StepChange Debt Charity, 2017, (Payday loans: The next generation) accessible at: https://www.stepchange.org/Portals/0/documents/Reports/Payday-loans-next-generation.pdf

58 Payday loans: The next generation, n 57, 2.

59 Impact of Regulation on High Cost Short Term Credit, n 48.

60 CP 14/10, n 44, [1.27].

61 Impact of Regulation on High Cost Short Term Credit, n 48, 16.

E. The Australian regime

A study done in in 2015 of trends in the Australian small loans market found that there had been a twenty-fold increase in demand for short term, small amount loans in the previous decade.[62] Over one million Australians were estimated to have taken out a small amount credit contract (SACC) type loan in 2012,[63] generating contracts valued between $800 million and $1 billion.[64] The market had also grown in terms of product variation, including a strong on-line presence.

Background to the Australian reforms

Australia introduced regulation on high cost lending in 2013. Two key studies of payday lending informed the reforms: *Payday Loans: Helping Hand or Quicksand?*[65] and *Caught Short: Exploring the Role of Small, Short-Term Loans in the Lives of Australians*.[66] These and other studies suggested that consumers of payday loans usually received low incomes and had little, if any, savings. "Compared with the general population, payday loan borrowers are more likely to have been raised in poverty, and many are disadvantaged by physical or mental illness and disability...Borrowers are more likely to be unemployed, and single parents with dependent children are over-represented."[67] Both key studies found that more women than men used payday loans. Borrowers often had relatively low levels of: English proficiency, general education and financial literacy; and often had significant physical, psychological or emotional health problems. They tended to lack the knowledge (or confidence) to pursue legal rights or remedies which may have been available. Consumers overwhelmingly used high cost short term loans to meet basic needs.[68] Repeat and frequent use of payday loans was common and the number of borrowers using payday loans as one-off transactions was relatively low.[69]

Amendments to Australian consumer credit law were introduced in a bill in 2011 (resulting in legislation in 2013), in particular in response to concerns that the responsible lending obligations already in force were insufficient to address borrower harm from payday loans.[70] The bill containing the credit reforms was significantly watered down during its passage through Parliament, due to lobbying by the lending industry.[71] The industry argued that their clients were primarily middle-class borrowers who were not particularly vulnerable and there was no need for special regulation. They also argued that the reforms as proposed would make lending unviable, which would result in the need for emergency finance for financially excluded people, which would become a responsibility of the Government. Specifically, the industry lobbied against any form of interest rate cap or ban on multiple lending or refinancing, stating that it was an economic fact that the industry was dependent on some form of refinance or rollover opportunity. [72]

> "Borrowers are more likely to be unemployed, and single parents with dependent children are over-represented."

62 Trends in the Australian Small Loans Market, Australian Centre for Financial Studies Commissioned Paper Series, Oct 2015, 9-14 (Trends in the Australian Small Loans Market), 5.

63 'SACC' means a Small Amount Credit Contract, which covers loans with a value of up to $2,000 with loan periods of between 16 days and one year.

64 Trends in the Australian Small Loans Market, n 62, 5.

65 "Payday Loans: Helping Hand or Quicksand?" Community Action Law Centre, September 2010, (Payday Loans: Helping Hand or Quicksand?) accessible from https://consumeraction.org.au/wp-content/uploads/2012/05/PayDayLendingReport-FINAL.pdf

66 Banks, Marston, Karger and Russell, "Caught Short, Exploring the role of small short term loans in the lives of Australians", August 2012, accessible at: https://researchbank.rmit.edu.au/view/rmit:49930 https://www.researchgate.net/profile/Marcus_Banks2/publication/273461528_Caught_Short/links/589ea923aca272046aa94101/Caught-Short.pdf

67 Ali, McRae and Ramsay, "The Politics of Payday Lending Regulation in Australia", Monash University Law Review, Vol 39(2), 2013, 411, 420-421 (Politics of Payday Lending in Australia).

68 Payday Loans: Helping Hand or Quicksand? n 65, 5.

69 Politics of Payday Lending in Australia, n 67, 425.

70 Politics of Payday Lending in Australia, n 67, 412.

71 Politics of Payday Lending in Australia, n 67, 412- 413.

72 Politics of Payday Lending in Australia, n 67, 428 – 429.

E. The Australian regime CONT.

Key consumer protection mechanisms were removed or substantially reduced during the passage of the bill. The caps on different types of fees were raised, for example the maximum establishment fee was increased from 10% to 20% of the loan amount. The bill as introduced had prohibited a lender from entering into a high cost short term loan where the borrower was already a debtor under such a loan (from any lender), or where the new loan was to refinance an existing high cost loan. These prohibitions were removed. Instead the lender has an obligation to consider whether the new loan is suitable for the borrower and there is a (rebuttable) presumption that it is unsuitable in certain situations, for example if the borrower is already in default on another high cost short term loan. Lenders are expected to make reasonable inquiries to find out this information but there is no national database of loans to use to access this information.

The interim report also found that high levels of repeat borrowing continued to be causing consumers financial harm.

Detail of the Australian regime

Under the 2013 reforms as enacted, one-off loan contracts for 15 days or less for amounts of up to $2000 are banned. For loans for amounts of up to $2000 for longer than 15 days but less than one year, no interest can be charged but the lender can charge an establishment fee of up to 20% of the loan amount, a monthly fee of up to 4%, a default fee, enforcement costs and any government fee payable. The maximum the borrower will have to pay back in the event of default is twice the loan amount. Loan contracts for amounts of between $2000 and $5000 for terms of up to 2 years attract different rules, in particular an interest rate cap of 48%pa plus a $400 maximum fee.

Impact of the Australian reforms on the high cost lending market

The regime was reviewed in 2015.[73] The interim report that resulted from this review noted a contraction in the market (some lenders closed shop), but the volume of funds advanced grew. Specifically, the interim report found that:[74]

- the SACC[75] industry in Australia had continued to grow in terms of the volume of funds advanced, the number of SACCs and the number of customers. Evidence suggested that the SACC market was between $A700 million to $A1.2 billion in terms of funds advanced per year and that between 500,000 to 1 million consumers used SACCs each year;
- while the volume of SACCs advanced had increased, the number of industry participants had fallen, suggesting the sector had consolidated since the introduction of the Enhancements Act that introduced the reforms; and
- more SACCs were being provided on-line instead of at bricks and mortar shopfronts as a result of improvements in technology.

The interim report also found that high levels of repeat borrowing continued to be causing consumers financial harm. The structure of the SACC cap and industry costs appeared to promote repeat borrowing and the rebuttable presumption did not appear to have been effective. It was noted that only one lender surveyed actually retained records that recorded how the presumption had been rebutted.[76]

73 See "Review of the Small Amount Credit Contract Laws, Interim Report", Dec 2015 (SACC Review Interim Report), and "Review of the Small Amount Credit Contract Laws, Final Report", March 2016 (Australian Government, The Treasury).

74 SACC Review Interim Report, n 73, 5.

75 'SACC' stands for small amount credit contract.

76 SACC Review Interim Report, n 73, 9-12.

Further reforms proposed in Australia

The final report resulting from the review recommended that the rebuttable presumption be removed as it had not been effective in addressing issues in relation to repeat borrowing and debt spiralling. Instead, strict rules on how great a proportion of a borrower's income could be committed to payments under high cost loans were recommended. This would be an extension of the current rule in Australia that for borrowers whose predominant source of income is Centrelink payments (in New Zealand terminology, beneficiaries), the total payable under all high cost loans due and not repaid cannot exceed 20% of the borrower's gross income. The final report recommended that the 20% limit be replaced with a 10% limit of the borrower's net income. The report used figures to show that a 10% net income cap would still allow consumers, regardless of their source of income, to access at least one $A500 SACC during a 12 month period (and at least two concurrently if both were of 12 months' duration). Those on average weekly earnings could access five $A500 SACC loans concurrently in a 12 month period, while someone on the minimum wage could have three concurrent 12 month SACCs or two concurrent six month SACCs.

None of the recommendations in the final report have to date (April 2019) resulted any changes to the law in Australia. In 2017 the relevant Minister said the government would introduce legislation to implement the SACC reforms and Treasury drafted and consulted on legislation that included these reforms but lack of any further action prompted Labor to introduce (as a private member's bill) the National Consumer Credit Protection Amendment (Small Amount Credit Contract and Consumer Lease Reforms) Bill 2018, in February 2018. This bill includes significant reforms to bolster consumer protection in Australia including removing the rebuttable presumption and introducing protected earnings levels for all borrowers (through amendments to regulations), so that the lender cannot lend if repayments under the loan and all other SACCs would exceed 10% of net income. This bill is not currently progressing. One of the recommendations of the recent Australian Senate Inquiry into Credit and Hardship (see Credit and Hardship; Report of the Senate Inquiry into credit and financial products targeted at Australians at risk of financial hardship, The Senate, Economics Reference Committee, February 2019) was the introduction and passage by the Government of the bill that had been earlier prepared by Treasury in response to the SACC review.

It is worth noting in the context of a discussion of the Australian regime that a number of high cost lenders currently operating in New Zealand are businesses that have their main operations in Australia (for example, Cash Converters). One submitter to the June 2018 Discussion Paper, Sunshine Loans, is an Australian high cost lender considering setting up business in New Zealand. This lender said in its submission, in response to a call for suggestions on the design of a cap: "The Australian reforms that commenced in 2013, involving a detailed and graduated capping system, provide a continuation of commercial lending – while consumers pay less. Sunshine Loans has found that, while profits were reduced following the replacement of the Australian interest rate and (some) fees for small loans by a 20% flat permitted establishment fee and a 4% flat permitted monthly fee, it has been possible to survive as a creditor lending these small loans."

Sunshine Loans was not the only lender that suggested New Zealand adopt the Australian cap regime. Acorn Finance and Rapid Loans both suggested in their submissions to the June 2018 Discussion Paper that New Zealand consider adopting the Australian cap. Adopting a regime similar to that which applies in Australia would also be in line with the Australian and New Zealand governments' commitment to trans-Tasman co-ordination of business laws.[77]

77 See the Memorandum of Understanding between the Government of New Zealand and the Government of Australia on Coordination of Business Law, 22 February 2006, which states: "This Memorandum of Understanding reflects our desire to deepen the trans-Tasman relationship within a global market, through increased coordination of business law, thereby creating a mutually beneficial trans-Tasman commercial environment."

F. Use of interest rate caps in the USA

The term “payday” loan appears to carry a particular meaning in the US and is differentiated from an “installment” loan.

A payday loan has these characteristics:[78]

- The loan amount typically ranges from $100 to $1,500.
- The loan is short-term, to be paid back in full in 30 days or less. Payment is ordinarily due on or immediately after receipt of the borrower’s next pay cheque.
- The loan is repaid either through a post-dated cheque (provided by the borrower at the time the loan is made), or by automatic electronic withdrawal after the borrower’s pay cheque has been directly deposited into their bank account.
- The lender charges a fee for the loan that can be calculated as an annual percentage rate (APR). A typical payday loan might be for a principal amount of $100, due in full in two weeks, with a fee of $15. Such a loan would carry an APR of 390 percent.
- The loan is typically unsecured, and the lender assesses the borrower’s ability to repay the loan based on provision to the lender of previous recent pay cheques.
- The loan can be, and often is, rolled over in full when due, if the borrower can’t pay it off. The borrower incurs additional fees and owes the original loan amount in another two to four weeks.

By contrast, an installment loan has these characteristics:

- The loan amount typically ranges from $150 to several thousand dollars. Principal, interest and other finance charges (fees, credit insurance premiums) are repaid in fixed monthly installments—typically over six months to a couple of years.
- The annual percentage rate (APR) ranges from approximately 25 percent to more than 100 percent.
- The effective APR on many loans is significantly higher than the stated APR listed on the loan contract, due to the purchase of some types of credit insurance, which the lender is not legally required (under the federal Truth in Lending Act) to include in the APR calculation.
- The loan can be renewed every few months, with new charging of interest, fees, and credit insurance premiums. Renewal is sometimes accompanied by a small ‘payout’ representing some of the principal already paid off in previous monthly installments. The loan amount typically resets to the original amount borrowed, or is increased.
- The loan is typically secured by personal property, excluding real estate. Collateral may include cars, consumer electronics, power tools, firearms and jewellery (excluding wedding rings).

78 Source: Market Place – An American Public Radio programme, produced and distributed by American Public Media. See https://www.marketplace.org/2013/05/13/wealth-poverty/beyond-payday-loans/whats-difference-between-payday-and-installment-loans

Payday lending is legal in most states of the USA. Many of these states impose a maximum loan amount, and an interest rate cap. As a typical example, in Alabama, the maximum loan amount is $500, the loan term can be between 10 and 31 days, and the maximum finance charge for a 14 day $100 loan is $17.50 (equivalent to 1.25% per day or 456.25% per annum). In the following states there is a prohibition on payday lending and/or a small loan rate cap (sometimes described as an annual percentage rate or APR) set at a level that in effect prohibits high cost short term lending: Arizona, Arkansas, Connecticut, Georgia, Massachusetts, Montana, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, South Dakota, Vermont, West Virginia, and Washington DC. Several states that allow payday lending, including Idaho, Illinois, Indiana and Oregon, impose limits on the amount of the loan by reference to a percentage of the borrower's income. Many states impose a limit on the number of times a loan can be rolled over. Some states have laws limiting the number of loans a borrower can take at a single time. Details of the regulation of payday lending state by state can be found in the Appendix.

As for federal regulation, the Dodd–Frank Wall Street Reform and Consumer Protection Act gave the Consumer Financial Protection Bureau (CFPB) specific authority to regulate all payday lenders, regardless of size. Also, the Military Lending Act imposes a 36% rate cap on tax refund loans and certain payday and auto title loans made to active duty armed forces members and their covered dependents, and prohibits certain terms in such loans. The CFPB has issued several enforcement actions against payday lenders for reasons such as violating the prohibition on lending to military members and aggressive collection tactics. The CFPB also operates a website to answer questions about payday lending. In addition, some states have aggressively pursued lenders they felt violate their state laws.

Payday lenders have on occasion used the sovereign status of Native American reservations to avoid payday lending regulation by forming partnerships with members of a tribe to offer loans over the internet which evade state law. However, the Federal Trade Commission has begun aggressively to monitor these lenders as well. While some tribal lenders are operated by Native Americans, there is also evidence many are simply a creation of so-called "rent-a-tribe" schemes, where a non-Native company sets up operations on tribal land. More details of the use of Native Americans by payday lenders is contained in the Appendix.

Prior to law reform in 2018, Ohio had the reputation for the highest interest rates for payday lending. The Pew Charitable Trusts stated in 2016: "Payday loans in Ohio are the country's most expensive, with a typical annual percentage rate (APR) of 591 percent. Lenders charge higher prices in Ohio than in any neighbouring state."[79] Pew Charitable Trusts research also found that 1 in 10 adults in Ohio—roughly 1 million people—had taken out a payday loan. During discussion at a conference organized by the Pew Charitable Trusts shortly after the reform was passed, advocates for the overhaul said they battled more than three-dozen lobbyists for the payday lending industry who wanted to maintain the status quo, including interest rates and fees that averaged nearly 600 percent. The advocates and lawmakers both maintained that the changes will allow the payday lending industry to continue to make money in Ohio, but will stop the cycle of high-interest and high-fee loans that many people can never pay off.[80] More information on the law reforms in Ohio is contained in the Appendix.

79 Source: The Pew Charitable Trusts, Dec 2016 Fact sheet. See: https://www.pewtrusts.org/-/media/assets/2016/12/ohio_has_the_highest_payday_loan_prices_in_the_nation.pdf

80 Source: http://www.wvxu.org/post/ohio-payday-lending-overhaul-examined-national-model#stream/0

F. Use of interest rate caps in the USA CONT.

Legality of payday lending in the USA by state:[81]

State	Payday Lending Legality	Number of Rollovers Allowed
Alabama	Legal	1
Alaska	Legal	2
Arizona	Prohibited	Prohibited
Arkansas	Prohibited	Prohibited
California	Legal	0
Colorado	Legal	1
Connecticut	Prohibited	Prohibited
Delaware	Legal	4
Florida	Legal	0
Georgia	Prohibited	Prohibited
Hawaii	Legal (Applies to check cashers only)	0
Idaho	Legal	3
Illinois	Legal	0
Indiana	Legal	0
Iowa	Legal	0
Kansas	Legal	0
Kentucky	Legal (Applies to check cashers only)	0
Louisiana	Legal	0
Maine	Permitted for supervised lenders only	Prohibited
Maryland	Prohibited	Prohibited
Massachusetts	Prohibited	Prohibited
Michigan	Legal	0
Minnesota	Legal	0
Mississippi	Legal	0
Missouri	Legal	6 (borrower must reduce principal amount of loan by 5% or more upon each renewal)
Montana	Legal but max APR of 36%	0
Nebraska	Legal	0
Nevada	Legal	Permitted (Lenders cannot extend payment period beyond 60 days after expiration of initial loan period)
New Hampshire	Legal but max APR of 36%	0
New Jersey	Prohibited	Prohibited
New Mexico	Legal	0
New York	Prohibited	Prohibited
North Carolina	Prohibited	Prohibited
North Dakota	Legal	1

81 Source: Wikipedia and checked against Consumer Federation of America information in the Appendix.

State	Payday Lending Legality	Number of Rollovers Allowed
Ohio	Legal but interest rate cap of 28%pa and max APR of 60%	Not specified
Oklahoma	Legal	0
Oregon	Legal	2
Pennsylvania	Prohibited	Prohibited
Rhode Island	Legal (Applies to check cashers only)	1
South Carolina	Legal	0
South Dakota	Legal but max APR of 36%	4
Tennessee	Legal	0
Texas	Legal	0
Utah	Legal (Applies to check cashers only)	Not Specified (cannot extend or renew loan more than 10 weeks from original loan date)
Vermont	Prohibited	Prohibited
Virginia	Legal	0
Washington	Legal (Lender must have a small loan endorsement to their check casher license in order to make payday loans)	0
West Virginia	Prohibited	Prohibited
Wisconsin	Legal	1
Wyoming	Legal	0
Washington, DC	Legal	

Details of the payday lending laws in each state are set out in the Appendix.

The Pew Charitable Trusts conducted a survey in 2011-2012 by means of an in-depth telephone survey of payday loan borrowers where 49,000 adults were contacted and screened for payday loan usage, and 451 borrowers subsequently completed a full questionnaire. The survey aimed to reveal information on who uses payday loans, why do borrowers use payday loans, what would the borrowers do if the payday loan was unavailable and does payday lending regulation affect usage. On the last issue, does payday lending affect usage, the report stated that in states that enact strong legal protections, the result is a large net decrease in payday loan usage.[82]

82 The report can be accessed at https://www.pewtrusts.org/~/media/assets/2013/02/20/pew_choosing_borrowing_payday_feb2013-(1).pdf


SAVE UP TO
50%
BLACK
FRIDAY
NOW IT'S TIME TO SAVE BIG

G. Use of interest rate caps in Canada

Payday loans in Canada are permitted under section 347.1 of the Criminal Code, so long as the province of the borrower has enacted sufficient provincial legislation concerning the provisioning of payday loans. In the event that no such provincial legislation exists (as is the case in Newfoundland and Labrador) payday loans are limited by usury laws, with any effective (compound) rate of interest charged above 60% per annum considered criminal.

British Columbia[83]

Since November 1, 2009, the Payday Loans Regulation (under the Business Practices and Consumer Protection Act) has been in force in British Columbia. A payday loan is a short-term loan of up to $1,500.

By law in British Columbia, a payday lender must:

- publicly display the cost of their loans. The most a borrower can be charged for a payday loan in British Columbia is $15 per $100 borrowed (as of September 1, 2018), which equals an annual interest rate of 391% (on a two-week loan),
- let the borrower repay the loan over two or three pay periods if the borrower is borrowing a third loan from that lender in the last two months, and
- be licensed by Consumer Protection BC, and clearly display their license number (this includes online payday lenders).

A payday lender in British Columbia, or one that provides loans in British Columbia even if located elsewhere, is not allowed to:

- give a borrower more than one loan at a time,
- roll over an existing loan into a new loan with new charges,
- give a borrower a loan for more than 50% of the borrower's pay cheque,
- make a borrower buy insurance for the loan,
- charge the borrower extra to put the loan on a cash card,
- make the borrower pay upfront for the loan, or
- ask, or require, the borrower to let them use or share personal information for any reason other than arranging or providing the loan.

Alberta[84]

A payday loan is a loan of $1,500 or less. The term of the loan cannot exceed 62 days. The maximum fee a payday lender can charge is $15 per $100, which includes all fees and charges related to the loan. A lender can charge additional fees if the loan is not paid on time.

Payday lenders must follow certain rules of conduct that are set out in the regulation. Payday lenders must not:

- discount the principal amount of a loan,
- grant rollover loans,
- require a loan to be due less than one full banking day after the borrower receives their pay or other income or charge any other fee for the loan other than those referred to in the loan agreement,
- make unauthorized withdrawals from the borrower's account,
- accept a cheque from borrower that is not made out to the payday lender,
- take information from the borrower that would give the payday lender or a third party direct access to the borrower's bank account, unless it is to be used for pre-authorized repayment of the loan,
- charge more than $25 on a dishonoured cheque or pre-authorized debit,
- directly solicit, negotiate or enter into another agreement for credit while a payday loan is outstanding, or
- market payday loans by directly contacting individuals.

Saskatchewan[85]

Payday loans are short-term loans of up to 62 days. In practice, most payday loans are due on the borrower's next payday. Prior to 2017, the maximum cost of

83 Source for information in this section: British Columbia Government website

see: https://www2.gov.bc.ca/gov/content/family-social-supports/borrowing-money/expensive-loans/payday-loans

84 Source for information in this section: Alberta Government website, see https://open.alberta.ca/dataset/9e8f5b13-a892-4e7e-8ad6-cabb49458e05/resource/eb9093aa-544d-474f-81cc-77b374927cce/download/payday-lending1.pdf

85 Source for this information: https://www.saskatchewan.ca/government/news-and-media/2017/august/11/payday-loan-fees

borrowing for a payday loan was capped at 23 per cent of the loan amount, no matter how many days the loan was for. That means, for every $100 a consumer borrows, they could be charged up to $23. The maximum cost of borrowing was reduced in 2018 to 17 per cent of the loan amount.

Additionally, the fee charged for a dishonoured cheque or payment typically known as a non-sufficient funds fee (NSF fee) will be reduced to $25 from $50 and may still only be charged once per loan. This means consumers who have one or more dishonoured payments in relation to the same payday loan would only be charged a single NSF fee of up to $25.

Manitoba[86]

In Manitoba, there are a number of consumer protection laws governing the payday loan industry:

- the most a borrower can be charged for a payday loan in Manitoba is $17 per $100 borrowed,
- a borrower has the right to cancel a payday loan within 48 hours,
- all fees and charges, the total cost of credit, the annual percentage rate and the date payment is due must be shown on the loan agreement, and
- payday loans are loans for not more than $1,500 and which have terms of no longer than 62 days without being renewed or extended.

Ontario[87]

The *Payday Loans Act 2008* helps protect people who take out payday loans. Under that Act:

- the borrower can't be charged more than $15 for every $100 that is borrowed,
- the borrower can't be sold or offered any goods or services in connection with the payday loan,
- the borrower has two business days to cancel a contract for a payday loan without any penalty (e.g., without paying a fee) and without having to give a reason, and
- "rollover" loans are not allowed (this means the borrower can't roll what is owed on a payday loan into a second payday loan).

As from July 1, 2018:

- lenders cannot lend more than 50% of the borrower's net income per loan,
- lenders must show the cost of borrowing a payday loan as an annual percentage rate in advertising or agreements, and
- the maximum fee that cheque cashing services can charge for government-issued cheques is $2 plus 1% of the face value of the cheque, or $10 – whichever is less.

As from July 1, 2018, lenders must give the borrower the option of an extended payment plan if the borrower takes out three loans within a 63-day period. If the borrower enters into an extended payment plan, it can:

- make prepayments at any time without any additional fee or penalty, and
- exit the extended payment plan at any time without any additional fee or penalty.

The borrower has the option to pay back the loan in equal instalments over multiple pay periods. The amount paid back per instalment will depend on how frequently the borrower is paid.

If the borrower is paid weekly, bi-weekly, semi-monthly or more frequently:

- the instalments must be spread out over at least three pay periods, and
- the maximum amount of each instalment is 35% of the combined total of the loan and cost of borrowing.

If the borrower is paid monthly or less frequently than semi-monthly:

- the instalments must be spread out over at least two pay periods, and
- the maximum amount of each instalment is 50% of the combined total of the loan and cost of borrowing.

86 Source for this information: Manitoba Government website, see: https://www.gov.mb.ca/consumerinfo/initiatives/money-matters/payday-loan-regulations.html

87 Source for this information: Ontario Government website: see https://www.ontario.ca/page/payday-loan-your-rights

Quebec

Historically payday loans have been hard to obtain in the province of Quebec.[88] The province has tight laws governing financial services, and these laws are especially tight around payday loans. However, financial companies are slowly adapting their payday loan programs to Quebec's unique regulations. In accordance to very specific structuring, financial companies can provide payday loan services to residents of Quebec.

Quebec has limited the rate of interest on payday loans to 35% annual interest, which makes it largely unprofitable for payday loan companies to operate in the region. For reference, if the borrower take out a 2-month loan of $1,000 with a monthly APR interest rate of 35% – the interest that the borrower will pay will amount to $43.96. This makes payday loans a largely unprofitable service for lenders. 35% annual interest rate on payday loans is comparable to the rate a borrower might pay for a cash advance on a credit card. This has put the majority of brick-and-mortar lenders in the province out of business. That being said, unlicensed and online lenders still operate in Quebec, often charging higher than allowable rates. Since online sources are much harder to regulate, it's difficult for the Canadian Government to get these websites shut down.

New Brunswick[89]

In 2018, the Province of New Brunswick implemented new regulations and a regulatory framework for licensing payday lenders. The Cost of Credit Disclosure and Payday Loans Act and the rules and regulations under this Act, which came into force on 1 January 2018, require all payday lenders to be licensed with the Financial and Consumer Services Commission (FCNB) to operate in New Brunswick. They also set the maximum fee on a loan at $15 per $100 borrowed; allow borrowers to cancel a loan within 48 hours at no charge; limit the number of loans that a lender can provide to a recipient at one time; and limit the loan amount to no more than 30 per cent of the recipients' net pay, among other requirements.

Nova Scotia[90]

By law in Nova Scotia, payday lenders can charge a maximum of $22 for every $100 borrowed. The maximum charge for a late payment is $40. Lenders can charge up to 60% interest (annual interest rate) if the borrower pays late.

The lender must have a sign in the place of business that shows the cost of borrowing. It is calculated on a $300 loan due after 14 days. The calculations must show the total that must be paid and the annual interest rate.

The lender cannot make the borrower pay for any additional services (for example, a cash card, credit card, bank account, or insurance) before giving a loan.

Prince Edward Island[91]

The most money a borrower can borrow in a payday loan in Prince Edward Island is $1,500 and the maximum term for this type of loan is 62 days.

Under the law on payday loans in Prince Edward Island:

- the maximum loan amount is $1,500,
- the minimum loan term is 1 – 2 weeks,
- the maximum loan term is 62 days, and
- the maximum interest: $25 for every $100 that is borrowed.

88 Source for this information – a lender's website see https://loanscanada.ca/posts/payday-loans-quebec/

89 Source for this information – Financial and Consumer Services Commission see http://www.fcnb.ca/what-is-a-payday-loan.html

90 Source for this information – Government website see: https://beta.novascotia.ca/payday-loans-your-rights

91 Source for this information – Government website see: https://www.princeedwardisland.ca/en/information/justice-and-public-safety/payday-loans-consumer-rights-and-responsibilities and Finder, see https://www.finder.com/ca/payday-loans-prince-edward-island

G. Use of interest rate caps in Canada CONT.

There are also rules of conduct for payday lenders:

- all payday lenders and loan brokers must be licensed and meet all requirements under the *Payday Loans Act,*
- lenders must give the borrower a copy of the loan agreement which will include the total cost of borrowing and other required information at the time of signing the agreement,
- the right to cancel "Two day Cooling Off Period" must be clearly and prominently disclosed on the agreement,
- if the borrower cancels the agreement, the lender must refund all payments, return all post-dated cheques or pre-authorize debits and destroy any pre-authorizations,
- the borrower must pay back any advance and return any goods received from the lender under the agreement,
- if a lender or broker is not licensed at the time of the agreement or if a lender does not give the borrower a copy of the agreement at the time of signing, or if a broker requests payment for assisting the borrower, or if a lender demands the cost of borrowing before the end of the term of the agreement, there is no costs to borrow,
- a lender cannot demand a penalty fee for paying the balance ahead of time, and
- a lender/loan broker cannot enter another agreement with the borrower (grant a rollover loan) unless the borrower has proof that at least 7 days have passed since the full balance was paid on the first agreement.

Newfoundland and Labrador[92]

Short-term loans are legal in Newfoundland and Labrador. Federal laws regulate the maximum amount of money that can be issued by lenders ($1,500) and the max length of the term (62 days).

Newfoundland and Labrador lack provincial regulations to govern the use of payday loans. This means that they don't cap their maximum interest rates, which currently sit at the federal maximum (equal to $60 per $100 borrowed). That being said, Service NL has proposed a maximum rate of $21 for every $100 borrowed, which is expected to be adopted in the near future.

Under the law on payday loans in Newfoundland and Labrador:

- the maximum loan amount is $1,500,
- the minimum loan term is 1 – 2 weeks,
- the maximum loan term is 62 days, and
- the maximum interest is $60 for every $100 that you borrow.

The payday lending industry will soon be regulated in this province.[93] In December 2016, the province passed legislation to protect consumers who use payday lending services, and also increase awareness of their payday loan agreement rights.

However, the province couldn't proclaim it law until the federal government allowed an exemption of a section of the Criminal Code. The specific section deals with the criminal interest rate provision as it relates to payday loan agreements.

With the granting of the exemption in late 2018, the government intends to publish the associated regulations and proclaim the legislation into law early in the New Year.

The new law will allow the provincial government to provide the following protections for users of payday loans:

- limiting the total cost of borrowing for payday loans,
- requiring payday loan agreements to include specified terms, information and disclosure statements,
- cancellation rights during a cooling-off period,
- prohibiting certain payday lender practices, and
- providing borrowers with remedies when payday lenders do not honour their responsibilities under this legislation.

92 Source for this information – Finder, see https://www.finder.com/ca/payday-loans-newfoundland-labrador

93 Source for this information – https://www.thetelegram.com/business/payday-loan-laws-to-be-enacted-in-newfoundland-and-labrador-in-new-year-267818/

H. Issues around enforcement of the current regime

One specific argument against interest rate caps, which can be considered part of "improving financial consumer protection frameworks"[94] is that if the current regime was more actively enforced then all lenders would be forced to be more "responsible", meaning that high cost loans would only be made to borrowers that could afford them. This would not address the issue of excessive interest rates but is premised on the basis that if the borrower can afford the loan, the rate charged (whatever that rate is) is not excessive.

Several of the lenders that submitted to the June 2018 Discussion Paper expressed the view that the real problem was with (under) enforcement. If the Principles were enforced more rigorously then irresponsible lending practices could be brought under control. In other words, so long as the borrower can afford the repayments, and the lender has made sure of that, then the lender should be able to charge whatever rate of interest it chooses.

When the Australian government was considering reforms to consumer credit law in 2012, the lending industry argued that with the introduction of responsible lending obligations in 2009, introduction of a cap was unnecessary.[95] The argument that all that was required was more enforcement was also made by lenders when the Australian SACC rules were reviewed. The interim report rejected the argument, finding that reliance on responsible lending obligations alone was not sufficient.[96] The interim report stated that rates of compliance were low, stakeholders noted that it could be difficult to understand and comply with the principle-based obligations, and academics had suggested that reliance on responsible lending was not in itself sufficient. One has suggested that "price regulation and responsible lending are complimentary, rather than alternate forms of regulation."[97] Responsible lending principles do not address the issue of excessive interest charges (in the absence of a court decision that determines a particular rate is irresponsible or oppressive), nor do they address the issues caused by additional charges becoming payable on default.

94 Referred to in the World Bank paper "Interest Rate Caps Around the World, Still Popular but a Blunt Instrument", (n 32) as one policy measure that should be considered.

95 Howell, "Small Amount Credit Contracts and Payday Loans", Alt LJ, 41(3), 174, 175 (Small Amount Credit Contracts).

96 SACC Review Interim Report, n 73, 7-8.

97 Small Amount Credit Contracts, n 95, 178.

One of the first judgments on the responsible lending obligations in Australia was the decision in *Australian Securities and Investments Commission v The Cash Store Pty Ltd*.[98] While the outcome was that large penalties were imposed on both the broker that arranged the high cost loans and the lender, the decision does not establish that responsible lending principles alone are sufficient to protect vulnerable consumers, in particular because of the use of open textured principles (defended by the lenders on the basis that there is a wide variety of circumstances for borrowers and the need for a flexible approach).[99] It has been suggested, for example, that it will be difficult to establish non-compliance with the requirement that the lender must be satisfied the repayments will not cause "substantial hardship".[100] Further, borrowers tend not to make complaints either due to lack of knowledge of rights or lack of inclination.[101] The lack of relevant case law that could give lenders guidance is also an issue. Like the Commerce Commission, ASIC has faced criticism of its enforcement approach.[102] However for the Commerce Commission to play a more active role in pursuing breaches of the Principles, it will have to be resourced appropriately.[103]

98 *Australian Securities and Investments Commission v The Cash Store Pty Ltd* [2014] FCA 926. The case concerned lender behaviour prior to the introduction of the cap.

99 See, for example, the submission of EB Loans to the June 2018 Discussion Paper: "Everyone's circumstances are different so applying mandatory formulas will not work." (at 6).

100 Small Amount Credit Contracts, n 95, 176. "Substantial hardship" is the term used in both the NZ law (Credit Contracts and Consumer Finance Act, s 9C) and the Australian law (National Consumer Credit Protection Act, ss 118(2)(a) and 131 (2)(a)).

101 Small Amount Credit Contracts, n 95, 176. A further issue is that disputes that are sorted out by a dispute resolution scheme do not generate case law that can be used as guidance.

102 Small Amount Credit Contracts, n 95, 178.

103 Cabinet has agreed to some increased enforcement powers for the Commerce Commission to assist with enforcement of the Principles, in particular the introduction of civil pecuniary penalties and statutory damages for breaches. Lenders will also be required to substantiate that they have made the required inquiries about affordability and suitability. More clarity around requirements for affordability assessments is proposed, but the details are, to date of writing, unavailable.

Responsible lending principles were also not found to be sufficient in the UK to address the harm caused by high cost lending. Regulation of consumer credit in the UK was the responsibility of the Office of Fair Trading (OFT) until 2014 when responsibility was transferred to the FCA. An OFT compliance review that reported in 2013 found widespread irresponsible lending in the high cost lending market. The FCA first introduced a cap on roll overs and restrictions on the use of continuous payment authorities (effective from July 2014), intended to curb harmful practices in the high cost short term lending market.[104] The FCA had considered focusing on increased supervision and enforcement only but rejected that option, stating:[105]

> *[...] we considered more actively supervising and enforcing current affordability requirements without introducing further rules. However, given the limits to our ability to monitor firms and the evidence of significant non-compliance with existing rules in the recent OFT [Office of Fair Trading] compliance review, we concluded that this (even with the risk warning) would not sufficiently improve consumer outcomes*
>
> *We concluded that rules that targeted the unaffordable lending resulting from ineffective competition in the market would be necessary to secure adequate consumer protection. The additional rules we are proposing, the caps on rollovers and the use of CPA [continuous payment authorities], aim to primarily prevent borrowers who are borrowing unaffordably from being lent to irresponsibly by firms. As explained above, we strongly believe that the addition of a limit on rollovers and CPAs, should prevent lenders from targeting borrowers who are most likely to be in financial difficulty and broadly benefit consumers overall.*

104 Detailed Proposals for the FCA regime for Consumer Credit, FCA Consultation Paper CP13/10, October 2013 (CP13/10), 52.

105 CP13/10, n 104, [6.86] – [6.87].

In December 2013, the FCA was given a statutory duty to introduce an interest rate cap. This followed an intensive campaign for tighter regulation of the high cost lending industry led primarily by Labour MP Stella Creasy. "The body of evidence that the payday lending market is failing to produce good outcomes for borrowers is now so large and so compelling that the FCA has been given a 'duty' to cap the total cost of credit in this market."[106]

Analysis done by the Association of Chartered Certified Accountants (ACCA) in 2014 on the online payday lending market in the UK prior to the introduction of the interest rate cap regime in 2015 suggests that lenders' incentives to, on the one hand, lend responsibly and on the other, make profits, are not aligned.[107] The report stated that if profitability and responsibility are not aligned in the payday lending market, the worst behaviours will be rewarded and responsible lenders will be crowded out.[108]

The ACCA study asked – why is a business which takes on only new borrowers with a high probability of repayment not automatically more profitable than one which takes on new borrowers with a low probability of repayment? "The answer seems to lie in the tradeoff between incurring the costs associated with performing meaningful Affordability Assessments and incurring the costs of higher defaults on small first loans."[109]

In other words, "it makes perfect business sense to lend to people who will not pay back as long as lenders do not keep on lending to them. If a subset of repeat borrowers are generating the lion's share of the loans (and paying an extremely high total cost of credit as a result), this would make it possible to operate profitably while taking on new borrowers with very high default probabilities."[110] "The cost of defaults is borne ultimately not by lenders who operate profitably, but by borrowers in the form of high charges and fees."[111]

The ACCA report stated:[112] "When lenders do not suffer losses as a result of poor lending decisions they are incentivized to extend credit regardless of affordability, potentially a bad outcome for borrowers. This effect is magnified where loans are originated via 'lead generators' (third parties, essentially credit brokers, who source borrowers' details and sell them to the highest bidder), who are paid per loan written. Lead generators have no 'skin in the game' – they get paid regardless of whether or not the loan is eventually repaid."

There is evidence that lead generators operate in the high cost lending market in New Zealand but they have not yet been the target of regulatory scrutiny.[113]

The ACCA report suggested that an interest rate cap would help because:[114] "Imposing a cap on the total cost of credit, assuming it is at least high enough to cover the operating costs of making loans, implies imposing a cap on losses due to default. A cap on the total cost of credit places an upper bound on the amount of underwriting risk a lender can take in a much clearer and more straightforward way than a vague requirement to 'assess affordability'. A cap at the right level will also make loans affordable, enabling more borrowers to successfully repay in full and on time."

106 Payday Lending – Fixing a Broken Market, Association of Chartered Certified Accountants, May 2014 (Fixing a Broken Market), 54.

107 Fixing a Broken Market, n 106, 38.

108 Fixing a Broken Market, n 106, 38.

109 Fixing a Broken Market, n 106, 37.

110 Fixing a Broken Market, n 106, 37.

111 Fixing a Broken Market, n 106, 25.

112 Fixing a Broken Market, n 106, 54.

113 See the submissions of Save my Bacon submission and also Moola – both these lenders wanted lead generators regulated.

114 Fixing a Broken Market, n 106, 39.

I. Research on what happens to borrowers denied loans after interest rate caps are introduced

MBIE stated in its October 2018 Consumer Credit Regulation Review Regulatory Impact Statement that the reason it was not prepared to recommend an interest rate cap was because of concerns about the potential harm that might be caused by the withdrawal of credit consequent on the introduction of an interest rate cap. MBIE has instead recommended a total repayment cap that it knows at least some high cost lenders are comfortable with.[115]

> Overwhelmingly, participants were unaware of fair, ethical alternative sources of credit.

The extent to which the supply of high cost credit would be affected by any kind of cap clearly depends on the type and level of the cap. Based on what happened in Australia and the UK, if a UK type interest rate cap or an Australian type cap was introduced, there would likely be a contraction in the high cost lending market in New Zealand.

There has been no research done in New Zealand that gives specific information on the likely impact on borrowers of a contraction in the high cost lending market. A 2018-2019 Survey of Financial Mentoring and Budget Services in Aotearoa on high cost loans, debt collection and other consumer credit issues found that 90% of participant agencies believed that clients were worse off overall (not just financially) by having taken out a high-cost loan.[116] Similarly, in a survey of Australian Financial Counsellors done in 2011,[117] 79% of respondents thought that payday lending "never" helped to improve their clients' financial situation.

UK study – PayDay Denied: Exploring the lived experience of declined payday loan applicants

A recent (2018) study done in the UK sought to find out what happened to consumers who had previously taken out high cost loans but were now denied such loans due to the tightening up of criteria.[118] The study found that while the FCA originally predicted that 60% of borrowers with no access to high-cost credit would no longer borrow at all, a significant proportion of the people denied loans were still looking for borrowing options. Participants were more likely to seek credit from another source (either an alternative formal lending route or friends and family) than "go without." The most common step that an individual took after being declined was to access credit from friends and family. The research interrogated this relationship further and found that this type of borrowing can sometimes have its own hidden costs.[119]

Overwhelmingly, participants were unaware of fair, ethical alternative sources of credit. The researchers recommended the development of more affordable borrowing options for those for whom borrowing is manageable. Because the demand for credit from those that were declined a payday loan was still significant, they recommended that it would be preferable to see an increased supply of alternatives to high cost loans as well as ways to help households reduce credit usage.

The study stated that the research results gave no reason to contradict the FCA's view that the cap on the cost of a payday loan would not increase levels of borrowing among informal creditors undertaking criminal activity.[120]

115 Consumer Credit Regulatory Review Regulatory Impact Statement (Regulatory Impact Statement), 20, available from: https://www.mbie.govt.nz/assets/c09d5636b6/coversheet-consumer-credit-regulation-review.pdf

116 Survey of financial mentoring and budgeting services in Aotearoa on high cost loans, debt collection and other consumer credit issues, Dr. Liz Gordon, Justice Innovation Centre, Community Law Canterbury 2019, 19 (Survey of services in Aotearoa) accessible from: https://www.fincap.org.nz/big-changes-needed-to-protect-consumers-from-high-cost-loans-and-debt-collection-practises/

A further question moderated that finding, noting that some were better off with such loans.

117 "What Financial Counsellors say about Payday Lending", Financial Counselling Australia, October 2011, 8-9.

118 Appleyard, Packman, Lazell, "PayDay Denied: Exploring the lived experience of declined payday loan applicants", Carnegie UK Trust 2018 (Payday Denied), Accessible at: https://www.carnegieuktrust.org.uk/publications/payday-denied-exploring-the-lived-experience-of-declined-pay-day-loan-applicants/

119 The study found that the human cost to families, relationships, dignity and respect was significant.

120 Payday Denied, n 118, 32.

Other UK studies on the impact on borrowers of reduced availability to high cost loans

A Consumer Finance Association paper produced in 2017 references another survey of consumers (also done in the UK) which asked high cost borrowers what they would have done if the loan had not been available.[121] The majority (over 35%) stated they would have borrowed from family or friends, with the second most popular answer being that they would have gone without the daily essentials.

The UK charity StepChange also undertook a survey in 2016 to find out what had happened to consumers who were denied a payday loan.[122] This research looked at clients who applied for a high cost loan, had previously been accepted, but since introduction of the price cap, had been rejected. It looked at where these people turned after they could not get a high cost loan. Some borrowed from other lenders, including other high cost providers, credit card, overdraft or home credit loans. Many missed an essential bill or another loan payment or borrowed from friends and family. The report stated:[123] "These households are facing seriously constrained choices between taking out high cost credit, missing a household bill payment or not having enough money to pay for essentials like feeding their family. This confirms that as our research has previously shown, certain households are struggling to get by without borrowing or getting into arrears, and there is still a significant gap in the market for accessible, affordable credit."

One of the key recommendations of the StepChange report was that the government should look at new ways to provide greater access to more affordable credit safety nets for the most financially vulnerable, including looking at international examples of no and low interest loan schemes.[124]

121 Impact of Regulation on High Cost Short Term Credit, n 48.

122 Payday loans: The next generation, n 57.

123 Payday loans: The next generation, n 57, 3.

124 Payday loans: The next generation, n 57, 4.

US studies

A 2012 study done by Pew Charitable Trusts found that if faced with a cash shortfall, and a payday loan was unavailable, 81% of borrowers said they would cut back on expenses. Many said they would delay paying the bills, rely on friends and family or sell personal possessions. Borrowing from friends and family was the third most popular option chosen.[125]

A study done in 2016 looked at the experiences of former payday loan borrowers in Akansas, seven years after the Supreme Court banned usurious payday lending rates.[126] The study entitled 'Into the Light', conducted by Southern Bancorp Community Partners, surveyed 100 former payday loan borrowers on their experiences since the State began enforcing the constitutional interest rate cap. The State constitution effectively banned payday lending by prohibiting interest rates higher than 17%pa and also limiting fees. However a typical interest rate for a payday loan was 391%pa or more. In 2009 payday loan stores closed for business after the Supreme Court declared payday lending unconstitutional.

Findings of the survey were:

- The majority of borrowers said they were better off in the wake of the industry departure (nearly 90% in total said they were better off (59%) or the same (29%) after the payday lenders left),
- Borrowers desired more fair small loan products to address financial crunches,
- Borrowers acknowledged they were industry targets and wanted strong consumer protections, and
- Borrowers used a number of safe, non-credit options to address financial shortfalls. The most popular alternative was turn to family or friends for money.

125 See Payday lending in America: Who borrows, where they borrow and why, Pew Charitable Trusts, produced as part of the Pew Safe Small-Dollar Loans Research Project, available from https://www.pewtrusts.org/~/media/legacy/uploadedfiles/pcs_assets/2012/pewpaydaylendingreportpdf.pdf

126 See: Into the Light, A survey of Arkansas borrowers seven years after state Supreme Court bans usurious payday lending rates, accessible at : https://banksouthern.com/sbcp/into-the-light/

J. What options are there for persons denied a high cost loan in New Zealand?

As stated earlier, the main argument against imposing an interest rate cap is the risk of increasing financial exclusion for those that do not have access to mainstream credit options. The level of such exclusion will depend on what other options are available for borrowers denied access to a high cost loan. This section looks at the current availability in New Zealand of no and low interest rate loans from the Government and the not for profit sector.

In New Zealand, Work and Income (part of the Ministry of Social Development) offers a range of one-off payments for persons who are in need of emergency funding for food, accommodation, bills and certain other types of expenses and have no other credit options. The type of payment available depends on whether the borrower is a beneficiary or not and some of the payments (especially for non-beneficiaries) do have to be repaid. Grants (which do not have to be repaid) are available for food and some dental care. Interest free loans are available for other types of expenses, with flexible repayment terms.

The charity Good Shepherd offers a 'step-up' loan of up to $5000 at a concessionary (6.99%) interest rate. Good Shepherd also offers a no-interest loan scheme for individuals and families on low incomes. No- interest loan amounts are up to $1,000 for essential goods and services. Repayments are set up at an affordable amount over a set period of time. There are criteria for borrowers such as being entitled to a community services card and having resided at the same address for more than three months. Good Shepherd services are delivered through 16 providers around New Zealand (for example, The Salvation Army). The step-up loan is a more popular product than the no-interest loans. Work and Income is seen as the preferable source of no-interest loans due to the strict criteria imposed by Good Shepherd in particular around affordability.

Micro finance provider Ngā Tangata Microfinance Trust was set up in 2009 with a strong sense of financial and social justice for those on low incomes, needing to borrow. Kiwibank came on board in 2010 and Ngā Tangata began to offer no interest and no fee loans in early 2011. Approximately 45 budget services throughout the North Island and Dunedin currently work in partnership with Ngā Tangata. No interest loans are available through the recommendation and support of financial mentors for up to $2,000, being purposed for family assets or well-being. To be eligible to apply, the borrower must be 18 years or over, have lived in the same place for two months or more, be on a low income and have enough in the budget to comfortably make the repayments within two years. Ngā Tangata also offers a no interest debt relief loan of up to $3000 for the purpose of repaying loans with high interest charges. The debt relief product is the most popular product offered by Nga Tangata. The borrower must be able to establish ability to repay and will have to have been working with a financial mentor to be eligible.

There are also a number of independent no-interest locally focused lenders scattered around the country, for example the Newtown Ethical Lending Trust.

No New Zealand research is available to assess whether these options are likely to be adequate to cope with the increase in demand on these services that may result from an interest rate cap, or on whether there could be other barriers to consumers using these services, such as inaccessibility, inability to service repayments, ineligibility, lack of awareness or a reluctance to admit extreme need. Several of the submitters to the June 2018 Discussion Paper suggested that more in the way of micro finance options was needed.[127]

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127 For example, Auckland Regional Public Health Service and Federation of Business and Professional Women. The UK's FCA has said there are limited alternatives in the UK in this area and that it is working to support initiatives to promote alternative sources of low-cost finance. See https://www.fca.org.uk/publication/documents/alternatives-high-cost-credit-our-approach-infographic.pdf

In an informal discussion with a financial mentor, the author was told that there are issues with the micro-finance providers being very risk-averse and careful about who they lend to, that WINZ has a reputation of denying people entitlements and that seeking assistance from WINZ can be a very dehumanising experience, and that high cost lenders develop very agreeable, friendly relationships with their customers, giving them frequent 'top-ups".

One of the current issues with expecting micro finance providers to fill the gap if high cost lenders become more constrained in who they lend to is that microfinance providers take their responsible lending obligations seriously (whilst at the same time endeavouring to be as flexible as possible to meet the economic-social need) . Microfinance organisations put a considerable effort into understanding the true financial situation of loan applicants. Applicants where one or more of the following applies will not generally be eligible for a microfinance loan:

- Evidence of transience in accommodation arrangements
- Fluctuating or uncertain income
- Arrears in existing loans
- A large number of other sizeable high interest loans not able to be addressed
- Debts with collection agencies that are not being repaid
- No weekly surplus in the budget to enable repayment

A loan will not be offered unless the microfinance organisation is confident that the applicant will be able to safely repay. This is at least in part because Kiwibank (which funds Nga Tangata) and BNZ (which funds Good Shepherd) expect a low default rate (eg less than ten percent).

A working group has been set up by the Government (through the Ministry of Social Development) to look at ways to improve access to safe credit for low income and vulnerable New Zealanders. Stakeholders have been invited to discuss the issues that arise at a series of workshops. No official report or strategy has been made publicly available to date of writing (April 2019).[128]

128 See https://www.msd.govt.nz/webadmin/html/enews/bfc/2019/bfc-14-february-2019.html


ORGANIC
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TOMATOES
BOX

K. Particular issues that arise out of the Government's proposals

The following section highlights four specific issues that arise out of the Government's proposal to introduce a 100% repayment cap. These points have not been addressed in the MBIE reports or Cabinet paper.

1. **What should be done with extreme rates of interest on loans for very short terms?**

The MBIE proposal as approved by Cabinet proposes an upper limit of interest and fees repayable on a loan, of 100%. This repayment cap does not vary with the length of the loan meaning that short-term loans may carry extraordinarily high rates of interest.

The 100% limit proposal is discussed at some length in the Cabinet Paper and in the MBIE Regulatory Impact statement, but without any justification of, or indeed recognition of, the possibly of extremely high interest rates on short term loans. It is notable that MBIE suggests that the 100% limit will "limit the level of interest and fees on some of the most extreme high-cost credit contracts"[129] – a conclusion for which there seems no logical base nor supporting data.

Although generally it appears high-interest consumer loans are for a period of some months, this is not always so. For example in *Commerce Commission v Twenty Fifty Club Ltd*[130] the lender was making loans for a term of only seven days – and charging "fees" of 50% of the amount borrowed. In effect, fees and interest amounted to 50% of the loan per week (which even on simple interest rates is over 2600%). The MBIE proposal risks having the effect that lenders may shorten the terms of loans made so as to maximise the effective interest rate.

MBIE did not support an alternative option of capping the maximum interest rate. There is a case for reconsidering that decision, at the very least in the case of very short term loans, and imposing some reasonable limitation on interest rates (and including fees).

2. **Will the courts still be able to re-open contracts as oppressive – or refuse to allow recovery of all interest and fees claimed – if the loan is for a very short term at an exorbitant rate of interest?**

Under the current law, judges in the District Court have effectively created a rule that lenders cannot recover interest at the default rate under a high-interest loan contract for more than a year.[131] The initiation of that practice is described in *Aotea Finance (West Auckland) Ltd v Hiku*[132] and proceeds from the premise that courts could, of their own motion, re-open credit contracts which were on their face oppressive. Therefore even where the issue arose in an application for summary judgment to which the defendant made no opposition, the Judge could refuse to grant judgment of fees or default interest charges which were, in the circumstances, oppressive. One consequence of this rule of judicial practice appears to be that some lenders now voluntarily limit the quantum of default interest claimed.[133] Such a limit, whether voluntary or compulsory, may be effective to limit the "debt spiral" in which borrowers may otherwise be trapped.

However the issue remains – what will happen if a 100% repayment cap is imposed? Will the courts still able be to re-open a credit contract on an application for summary judgment on the basis that the effective rate of interest on a loan of very short term is oppressive, even though the total sought does not exceed the 100% repayment cap?

3. **What will be the status of loan contracts providing for more than interest and fees totalling more than 100% of the amount borrowed?**

Section 136 of the CCCFA provides:

> **136 Application of law relating to illegal contracts**
>
> The fact that a credit contract, a consumer lease, or a buy-back transaction has been entered into in breach of this Act, or that an act that breaches this Act has been committed in the course of the performance of any contract, lease, or transaction, does not—

129 Regulatory Impact Statement, n 115, 16.

130 *Commerce Commission v Twenty Fifty Club Ltd* [2016] NZDC 7242, [31]-[36].

131 The rule is recognised, but not discussed in the Regulatory Impact Statement, n 115, [100].

132 *Aotea Finance (West Auckland) Ltd v Hiku* [2015] NZDC 22553.

133 Regulatory Impact Statement, n 115, [28].

a. make that contract, lease, or transaction illegal; or
b. make that contract, lease, or transaction or any provision of that contract, lease, or transaction unenforceable or of no effect, except as expressly provided in this Act.

There are no provisions in CCCFA which expressly provide for matters in breach of the Act to be illegal or unenforceable. Three sections stipulate that certain provisions in particular kinds of transactions are of no effect: s 76 (2) – provisions in buy-back schemes prohibiting lodging of caveats of no effect; s 83M(2) in relation to disabling devices for consumer goods and s 83ZO in relation to provisions purportedly granting a security interest over goods specified in s 83ZN.

The result is that under the CCCFA, non-compliance with the Act does not render the loan contract unlawful and unenforceable. As such this does not parallel the general law of contract, although there are certain other kinds of contracts where breach of a statute is stated not to make a contract unlawful. However contracts of loan which are not rendered unenforceable by the CCCFA may be illegal if they breach other enactments, as was the case with the relatively recent case of *Xiao v Sun*[134] dealing with illegality of the loan contract under the Gambling Act 2003.

> The result is that under the CCCFA, non-compliance with the Act does not render the loan contract unlawful and unenforceable.

The general position in contract law (statutory exceptions aside) is that breach of a statute either in the formation of a contract or in its performance will make the contract illegal, and therefore ineffective to create rights or obligations, where treating the conduct as lawful would frustrate the express words or the purpose of the statute breached.[135] Where a contract is illegal, the court may, under the Contract and Commercial Law Act 2017 s 76, grant relief by way of validation, variation or compensation in appropriate cases.[136] In *Xiao v Sun*, mentioned above, Gordon J declined to validate the loan contract but did make other orders under s 76.[137]

Section 136 of the CCCFA appears to have been intended to avoid any possibility of the courts or the Disputes Tribunal using statutory powers of this kind to vary and validate loan contracts which breached the law, particularly by significantly changing the interest rate payable under the contract or awarding compensation to a borrower who had already paid a significant sum by way of interest on a relatively small sum borrowed. It may be doubted that there was real substance to this concern.

The MBIE options for reform and proposals for changes to the CCCFA do not, at any stage, refer to s136 of the CCCFA. This is unfortunate as it is highly desirable that the effects of s 136 be carefully analysed and be taken into account in shaping changes to the legislation. In particular no consideration appears to have been given to the question of whether it is desirable that credit contracts which breach a statutory repayment cap, interest rate cap or service fee cap be illegal or otherwise unenforceable. (Given the lack of compliance with the current law it seems most unlikely that there will not be lenders who ignore, or attempt to circumvent, any statutory limitation). It seems highly probable that, despite the best efforts of government and non-government agencies alike, many borrowers will remain in ignorance of the effect of a cap and will pay – or endeavour to pay – any illegal rates or amounts of interest and fees where such a rate or amount has been stipulated without seeking to challenge the contractual term.

134 *Xiao v Sun* [2018] NZHC 536, [406]-[437].

135 Contract and Commercial Law Act 2017, s72. For a full discussion of illegality in contract law in New Zealand see Finn, Todd and Barber "*Burrows, Finn and Todd on The Law of Contract in New Zealand*" (6th ed 2018, Wellington, LexisNexis) ch 13.

136 Contract and Commercial Law Act 2017, ss 75 and 76.

137 *Xiao v Sun* [2018] NZHC 536, [445]-[455].

Unless the CCCFA is altered, where the loan contract stipulates fees and interest totalling more than 100% of the loan amount, the contract remains in force until and unless re-opened by a court or tribunal having jurisdiction under the Act. The borrower must pay the sums stipulated – even though they exceed the statutory maximum – and then seek to have the contract reopened either by legal action launched by the borrower or by the Commerce Commission. Action by a borrower to have a high-interest consumer loan set aside under the current law is most unlikely because the borrower will have neither inclination nor resources to bring a legal action where the borrower must show that fees are unreasonable or a contract is oppressive. In *Commerce Commission v Sportzone Motorcycles Ltd (in liquidation)*[138] the Commerce Commission called a number of expert witnesses on the issue of whether fees charged by a creditor were reasonable. No individual litigant would be likely to incur such a cost.

However the position is likely to be very different if the CCCFA is amended to impose a repayment cap or an interest rate cap (which would cap both interest and fees). It will be a much simpler exercise – and one quite possibly within the means of a borrower – to challenge a loan as being in breach of the statutory cap.

Consideration may also need to be given to the primacy of the statutory damages remedy, for cases where the contract beaches the CCCFA. In particular, it would seem inappropriate that where a contract has been re-opened because a statutory cap on interest and fees is breached the borrower may receive less than his or her actual losses because the creditor has in other cases complied with the law – as is possible under s 92 CCCFA.

An option which may be worth considering is simply to provide that contracts in breach of a statutory cap are void and unenforceable to the extent the payments exceed the cap, and to allow a borrower to recover any excess paid by action in the District Court or Disputes Tribunal, with all costs of such recovery being met by the creditor.

4. Should there be a criminal sanction for breach of a fee and interest cap?

The MBIE documents and Cabinet memorandum contain no proposals for enforcement of a 100% repayment fee and interest cap regime. The criminal law has a significant role to play both in deterring breach of the statute and in denouncing those who ought to comply but do not. It is apposite here to quote Justice Hayne's comment on the need for members of the banking industry to be accountable for their misconduct:

> Fourth, too often, financial services entities that broke the law were not properly held to account. Misconduct will be deterred only if entities believe that misconduct will be detected, denounced and justly punished. Misconduct, especially misconduct that yields profit, is not deterred by requiring those who are found to have done wrong to do no more than pay compensation. And wrongdoing is not denounced by issuing a media release.[139]

It is highly desirable that attempts to breach or circumvent any repayment cap or interest rate cap be a criminal offence with a suitable level of punishment. It would be appropriate for such an offence to be one of strict liability (ie, allowing the defendant to prove lack of fault on the balance of probability). Setting the appropriate penalty is more difficult, but various options could be explored, such as providing for a fine and/or a banning order to be made for a first offence, and a prison sentence to be imposed for a second or subsequent offence. The offence could be defined so as to make it clear it can be committed either by a company or by a person who has de facto control over the relevant elements of the creditor's activities.

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10 April 2019

138 *Commerce Commission v Sportzone Motorcycles Ltd (in liquidation)* [2013] NZHC 2531; [2014] 3 NZLR 355; final appeal dismissed *Sportzone Motorcycles Ltd (in liquidation) v Commerce Commission* [2016] NZSC 53; [2016] 1 NZLR 1024.

139 *Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry* (2019), p 3.

Appendix

More information on payday lending in the USA

A. US payday lending laws by state

Source: Consumer Federation of America's information resource on payday lending for consumers and advocates, https://paydayloaninfo.org/

Alabama

Legal status: Legal
Loan Terms:
Maximum Loan Amount: $500
Loan Term: 10-31 days
Maximum Finance Rate and Fees: 17.50%; 3%/month after default
Finance Charge for 14-day $100 loan: $17.50
APR for 14-day $100 loan: 456.25%
Debt Limits:
Maximum Number of Outstanding Loans at One Time: None (max $ amount of loans at one time: $500)
Rollovers Permitted: One (rollover)
Cooling-off Period: Next business day after 2 continuous loans repaid
Repayment Plan: Yes (Four equal monthly instalments)
Collection Limits:
Collection Fees: One $30 NSF fee; Court Costs; Reasonable Attorney's Fees up to 15% of face amount of check
Criminal Action: Prohibited (Unless check returned due to closed account)

Alaska

Legal status: Legal
Loan Terms:
Maximum Loan Amount: $500
Loan Term: Min: 14 days
Maximum Finance Rate and Fees: $5 + the lesser of $15 per $100 or 15%
Finance Charge for 14-day $100 loan: $20
APR for 14-day $100 loan: 520%
Debt Limits:
Maximum Number of Outstanding Loans at One Time: Not Specified
Rollovers Permitted: Two (renewals)
Cooling-off Period:
Repayment Plan: Yes (Up to 6 months; no extra fees; must pay 5% of balance due when plan signed.)
Collection Limits:
Collection Fees: $30 NSF fee; Court costs of up to $700 over the amount of the payment (if disclosed in loan agreement)
Criminal Action: Prohibited (Unless check returned due to closed account)

Arizona

Legal Status: Prohibited
Citation: Consumer Lenders Act applies. Ariz. Rev. Stat. Ann. §§ 6-601 et seq.
Small Loan Rate Cap: 36% per year plus 5% fee

Arkansas

Legal Status: Prohibited (Check Casher Act, Ark. Code Ann. 23-52-101 et. Seq., repealed 2011)
Citation: Usury cap in Arkansas Constitution applies. Ark. Const. Amend. 89 § 3.
Small Loan Rate Cap: 17% per year set by ballot in 2010

California

Legal Status: Legal
Citation: Cal. Fin. Code §§ 23000 to 23106
Loan Terms:
Maximum Loan Amount: $255 if maximum fee charged ($300 maximum check)
Loan Term: Max: 31 days
Maximum Finance Rate and Fees: 15% of check
Finance Charge for 14-day $100 loan: $17.65
APR for 14-day $100 loan: 459%
Debt Limits:
Maximum Number of Outstanding Loans at One Time: One
Rollovers Permitted: None (cannot charge fee for extension)
Cooling-off Period: None
Repayment Plan: Voluntary (no fees may be charged in conjunction with repayment extension)
Collection Limits:
Collection Fees: $15 NSF fee
Criminal Action: Prohibited

Colorado

Legal Status: Legal (Lower Cost)
Citation: Colo. Rev. Stat. 5-3.1-101 et seq.
Loan Terms:
Maximum Loan Amount: $500
Loan Term: Min: 6 Months
Maximum Finance Rate and Fees: 20%: $0-$300 + 7.5%: $301-$500 plus 45% per annum interest plus monthly maintenance fee $7.50 per $100 borrowed, up to $30, after first month.
Finance Charge for 14-day $100 loan: Not applicable
APR for 14-day $100 loan: Not applicable
Debt Limits:
Maximum Number of Outstanding Loans at One Time: No limit if total debt does not exceed $500 and 30-days between loans
Rollovers Permitted: One renewal at 45% interest allowed.
Repayment Plan:
Collection Limits:
Collection Fees: One $25 NSF fee; Court Costs; Reasonable Attorney's Fees not to exceed loan amount
Criminal Action: Prohibited (Unless the consumer's account was closed before the agreed upon negotiation date)

Connecticut

Legal Status: Prohibited
Citation: Usury act applies or small loan act applies. Conn. Gen. Stat. §§ 36a-563 et seq.
Small Loan Rate Cap: 30.03% APR or $17 per $100 up to $600; $11 per $100 up to $1,800; add-on interest

Delaware

Legal Status: Legal
Citation: Del. Code Ann. Tit. 5 2227 et seq.
Loan Terms:
Maximum Loan Amount: $1000
Loan Term: Less than 60 days
Maximum Finance Rate and Fees: Not Specified
Finance Charge for 14-day $100 loan: No Limit
APR for 14-day $100 loan: No Limit
Debt Limits:
Maximum Number of Outstanding Loans at One Time: Limit of five loans from all licensees in 12-month period.
Rollovers Permitted: Four (rollovers)
Cooling-off Period:
Repayment Plan: Voluntary workout agreements. Equal installments, minimum 90 days, no fees or interest
Collection Limits:
Collection Fees: One fee for non-payment if the contract so provides, not to exceed 5% of the payment amount. Attorney fees and court costs
Criminal Action: Prohibited

Florida

Legal Status: Legal
Citation: Fl. Stat. Ann. §§ 560.402 et seq.
Loan Terms:
Maximum Loan Amount: $500
Loan Term: 7-31 days
Maximum Finance Rate and Fees: 10% of check + verification fee not to exceed $5
Finance Charge for 14-day $100 loan: $16.11
APR for 14-day $100 loan: 419%
Debt Limits:
Maximum Number of Outstanding Loans at One Time: One
Rollovers Permitted: None (cannot rollover)
Cooling-off Period: 24 hours
Repayment Plan: Yes. Grace period extends term 60 days, no additional charge. Credit counselling required.
Collection Limits:
Collection Fees: All charges imposed on the lender by any financial institution; lender not entitled to treble damages
Criminal Action: Prohibited

Georgia

Legal Status: Prohibited
Citation: Ga. Code Ann. §§ 16-17-1 et seq.
Small Loan Rate Cap (Industrial Loan Act): 60% per year usury cap

Hawaii

Legal Status: Legal (Applies to check cashers only)
Citation: Hawaii Rev. Stat. Ann. 480F-1 et seq.
Loan Terms:
Maximum Loan Amount: $600 face amount of check
Loan Term: Max: 32 days
Maximum Finance Rate and Fees: 15% of check
Finance Charge for 14-day $100 loan: $17.65
APR for 14-day $100 loan: 459%
Debt Limits:
Maximum Number of Outstanding Loans at One Time: One
Rollovers Permitted: None (cannot refinance or consolidate)
Cooling-off Period:
Repayment Plan:
Collection Limits:
Collection Fees: $20 NSF fee; Check Casher that accepts check passed on insufficient funds not entitled to recover damages
Criminal Action: Prohibited

Idaho

Legal Status: Legal
Citation: Idaho Code §§ 28-46-401 et seq.
Loan Terms:
Maximum Loan Amount: $1000. Loan cannot exceed 25% of gross monthly income of borrower.
Loan Term: Not Specified
Maximum Finance Rate and Fees: Not Specified
Finance Charge for 14-day $100 loan:
APR for 14-day $100 loan: No Limit
Debt Limits:
Maximum Number of Outstanding Loans at One Time: Not Specified ($1000 aggregate loans outstanding to all licensees)
Rollovers Permitted: Three (renewals)
Cooling-off Period:
Repayment Plan: Yes. Available once in 12 months. At least four equal payments over at least 60 days, no fees.
Collection Limits:
Collection Fees: $20 NSF fee. Limit of two electronic presentments of borrower's check
Criminal Action: Prohibited

Illinois

Legal Status: Legal
Citation: 815 ILCS 122 et seq.
Loan Terms:
Maximum Loan Amount: lesser of $1000 or 25% gross monthly income. Payday instalment loan lesser of 22.5% gross monthly income or $1,000.
Loan Term: 13 to 120 days. Payday instalment loans 112 to 180 day terms.
Maximum Finance Rate and Fees: $15.50 per $100, plus a $1 verification fee
Finance Charge for 14-day $100 loan: $15.50
APR for 14-day $100 loan: 403%
Debt Limits:
Maximum Number of Outstanding Loans at One Time: Two
Rollovers Permitted: None (cannot rollover). Payday instalment loan can be refinanced one time during term.
Cooling-off Period: 7 days after 45 consecutive loan days. Payday instalment loan max 180 days in debt.
Repayment Plan: Yes. After 35 days, if payday loan unpaid, right to at least 55 days to repay in installments with no added cost.
Collection Limits:
Collection Fees: One $25 NSF fee (Presentment limit = 2)
Criminal Action: Prohibited

Indiana

Legal Status: Legal
Citation: Ind. Code §§ 24-4-4.5-7-101 et seq.
Loan Terms:
Maximum Loan Amount: $550 (not to exceed 20% of borrower's monthly gross income)
Loan Term: Min: 14 days
Maximum Finance Rate and Fees: 15%: $0-$250; 13%: $251-$400; 10%: $401-$500
Finance Charge for 14-day $100 loan: $15
APR for 14-day $100 loan: 390%
Debt Limits:
Maximum Number of Outstanding Loans at One Time: One per lender; Two total
Rollovers Permitted: None (cannot renew, repay, refinance or consolidate)
Cooling-off Period: 7 days after 6 consecutive loans
Repayment Plan: After 3 consecutive loans, lender must offer an extended payment plan of at least four equal instalments over at least 60 days at no additional cost

Collection Limits:
Collection Fees: One $25 NSF fee. May present check or attempt to debit account up to three times.
Criminal Action: Prohibited

Iowa

Legal Status: Legal
Citation: Iowa Code Ann. 533D.1 et seq.
Loan Terms:
Maximum Loan Amount: $500
Loan Term: Max: 31 days
Maximum Finance Rate and Fees: $15: $0-$100 on face amount of check; $10 per $100 thereafter
Finance Charge for 14-day $100 loan: $16.67
APR for 14-day $100 loan: 433%
Debt Limits:
Maximum Number of Outstanding Loans at One Time: Two, $500 total debt
Rollovers Permitted: None (cannot repay, refinance or consolidate)
Cooling-off Period: Not specified
Repayment Plan: Not specified
Collection Limits:
Collection Fees: One $15 NSF fee (exclusive remedy)
Criminal Action: Not Specified

Kansas

Legal Status: Legal
Citation: Kan. Stat. Ann. § 16a-2-404, 405
Loan Terms:
Maximum Loan Amount: $500
Loan Term: 7-30 days
Maximum Finance Rate and Fees: 15% of loan
Finance Charge for 14-day $100 loan: $15
APR for 14-day $100 loan: 390%
Debt Limits:
Maximum Number of Outstanding Loans at One Time: Two. May not make more than three loans to a borrower within 30 day period.
Rollovers Permitted: No
Cooling-off Period: Not specified
Repayment Plan: Not specified
Collection Limits: Not specified
Collection Fees: One NSF fee
Criminal Action: Prohibited

Kentucky

Legal Status: Legal (Applies to check cashers only)
Citation: Kentucky Rev. Stat. Ann. §§ 286.9.010 et seq.
Loan Terms:
Maximum Loan Amount: $500
Loan Term: 14-60 days
Maximum Finance Rate and Fees: $15 per $100 on face value of check + $1 database fee
Finance Charge for 14-day $100 loan: $17.65
APR for 14-day $100 loan: 459%
Debt Limits:
Maximum Number of Outstanding Loans at One Time: Two ($500 aggregate loans outstanding to all licensees)
Rollovers Permitted: None (cannot renew, rollover, or consolidate for a fee)
Cooling-off Period: None
Repayment Plan: Not specified
Collection Limits: Not specified
Collection Fees: One NSF fee (if disclosed)
Criminal Action: Prohibited

Louisiana

Legal Status: Legal
Citation: La. Rev. Stat. Ann. §§ 9:3578.1 et seq.
Loan Terms:
Maximum Loan Amount: $350
Loan Term: 60 days or less
Maximum Finance Rate and Fees: 16.75% of face-value of check, + $10 documentation fee (After default: months 1-12: 36% per year; months 13 and beyond: 18% per year)
Finance Charge for 14-day $100 loan: $30
APR for 14-day $100 loan: 780%
Debt Limits:
Maximum Number of Outstanding Loans at One Time: Not Specified
Rollovers Permitted: None (cannot renew or rollover but licensee may accept partial payment of 25% of amount advanced plus fees and enter into new loan)
Cooling-off Period:
Repayment Plan: Yes, once in a 12-month period. Four equal instalments, no fees or interest.
Collection Limits:
Collection Fees: One NSF fee of actual bank charge (if disclosed) + the greater of $25 or 5% of check (if disclosed); Court Costs; Reasonable Attorney's Fees
Criminal Action: Prohibited

Maine

Legal Status: Legal (Lower Cost)

Citation: Maine's UCCC applies. Me. Rev. Stat. tit. 9-A § 1-201, 2-401. 32 Me. Rev. Stat. § 6138(4((D) prohibits check cashers from advancing money on a postdated check. Supervised Lenders are exempt from that ban.

Small Loan Rate Cap: 30% per year on amounts up to $2,000 or a fee of $5 for amounts financed up to $75; $15 minimum charge for amounts financed of $75.01-$249.99; or $25 for amounts financed of $250 or more.

Maryland

Legal Status: Prohibited

Citation: Consumer loan act applies. Md. Code Com. Law § 12-101 et seq.

Small Loan Rate Cap: 2.75% per month; 33% per year.

Massachusetts

Legal Status: Prohibited

Citation: Small loan act applies. Mass. Gen. Laws Ann. ch. 140 §§ 96 et seq.; 209 Mass. Code Regs. 26.01. Check cashers are specifically prohibited from making loans unless licensed under the small loan act. 209 Mass. Code Regs. 45:14(8).

Small Loan Rate Cap: 23% plus $20 administrative fee upon the granting of a loan

Michigan

Legal Status: Legal

Citation: Mich. Comp. Laws §§ 487.2121 et seq.

Loan Terms:

Maximum Loan Amount: $600

Loan Term: Max: 31 days

Maximum Finance Rate and Fees: 15% of first $100, 14% of second $100, 13% of third $100, 12% of fourth $100, 11% of fifth $100, 11% of sixth $100 + any database verification fee

Finance Charge for 14-day $100 loan: $15

APR for 14-day $100 loan: 390%

Debt Limits:

Maximum Number of Outstanding Loans at One Time: Two, only one with same lender.

Rollovers Permitted: None (cannot renew; lender may extend only if it does not charge a fee)

Cooling-off Period:

Repayment Plan: Yes

Collection Limits:

Collection Fees: One $25 NSF fee

Criminal Action: Prohibited

Minnesota

Legal Status: Legal

Citation: Minn. Stat. 47.60 et seq.

Loan Terms:

Maximum Loan Amount: $350

Loan Term: Max: 30 days

Maximum Finance Rate and Fees: $5.50: $0-$50; 10%+$5: $51-$100; 7% (min. $10) + $5: $101-$250; 6% (min. $17.50) + $5: $251-$350 (After default: 2.75% per month)

Finance Charge for 14-day $100 loan: $15

APR for 14-day $100 loan: 390%

Debt Limits:

Maximum Number of Outstanding Loans at One Time: Not Specified

Rollovers Permitted: None (cannot repay with proceeds of another loan by same lender)

Cooling-off Period: Not specified

Repayment Plan: Not specified

Collection Limits:

Collection Fees: $30 NSF fee

Criminal Action: Not specified

Mississippi

Legal Status: Legal (Applies to check cashers only)

Citation: Miss. Code Ann. §§ 75-67-501 et seq.

Loan Terms:

Maximum Loan Amount: $500 face value of check

Loan Term: Under $250: maximum of 30 days; $250-$500: 28-30 days

Maximum Finance Rate and Fees: Under $250: $20 per $100 advanced; $250-500: $21.95 per $100 advanced

Finance Charge for 14-day $100 loan: $20

APR for 14-day $100 loan: 520%

Debt Limits:

Maximum Number of Outstanding Loans at One Time: Not Specified. Maximum $500 in one or more checks.

Rollovers Permitted: None (cannot renew or otherwise extend)

Cooling-off Period: Not specified

Repayment Plan: Voluntary

Collection Limits:

Collection Fees: $30 NSF fee; Court-awarded fees (if disclosed)

Criminal Action: Prohibited (When check returned due to NSF)

Missouri

Legal Status: Legal
Citation: Mo. Rev. Stat. §§ 408.500.1 et seq.
Loan Terms:
Maximum Loan Amount: $500
Loan Term: 14-31 days
Maximum Finance Rate and Fees: Not Specified (No borrower shall be required to pay a total amount of accumulated interest and fees in excess of 75% of the initial loan amount on any single authorized loan for the entire loan term and all authorized renewals. Otherwise, interest is set pursuant to small loan law which provides that parties may set rate by contract.)
Finance Charge for 14-day $100 loan: $75
APR for 14-day $100 loan: 1950%
Debt Limits:
Maximum Number of Outstanding Loans at One Time: No more than $500 to any one lender at one time
Rollovers Permitted: Six (borrower must reduce principal amount of loan by 5% or more upon each renewal)
Cooling-off Period: Not specified
Repayment Plan: Not specified
Collection Limits:
Collection Fees: NSF fee; Collection costs (including court costs and reasonable attorney's fees) Licensee cannot use a series of ACH transactions to collect a single check.
Criminal Action: Prohibited (Unless check returned due to closed account or stop-payment by maker)

Montana

Legal Status: Legal but max APR of 36%
Citation: Mont. Code Ann. 31-1-701 (Payday Loan Law enacted prior to Ballot Initiative 164 that capped rates at 36% APR remains on the books.)
Loan Terms:
Maximum Loan Amount: $300, up to 25% of monthly net income of borrower
Loan Term: Max: 31 days
Maximum Finance Rate and Fees: 36% APR
Finance Charge for 14-day $100 loan: $1.39
Debt Limits:
Maximum Number of Outstanding Loans at One Time:
Rollovers Permitted: No.
Cooling-off Period: Not specified
Repayment Plan: Not specified
Collection Limits:
Collection Fees: One $30 NSF fee
Criminal Action: Prohibited

Nebraska

Legal Status: Legal
Citation: Neb. Stat. Ann. §§ 45-901
Loan Terms:
Maximum Loan Amount: $500
Loan Term: Max: 34 days
Maximum Finance Rate and Fees: $15 per $100 or pro rata for any part thereof on amount of check
Finance Charge for 14-day $100 loan: $17.65
APR for 14-day $100 loan: 459%
Debt Limits:
Maximum Number of Outstanding Loans at One Time: Two
Rollovers Permitted: None (cannot repay, refinance, consolidate)
Cooling-off Period:
Repayment Plan:
Collection Limits:
Collection Fees: $15 NSF fee
Criminal Action: Not specified

Nevada

Legal Status: Legal
Citation: Nev. Rev. Stat. 604A.010 et seq.
Loan Terms:
Maximum Loan Amount: 25% of expected gross monthly income
Loan Term: 35 days
Maximum Finance Rate and Fees: Not Specified (After default: interest rate must be equal to or less than the prime rate at the largest bank in the State of Nevada plus 10"%)
Finance Charge for 14-day $100 loan: No Limit
APR for 14-day $100 loan: No Limit
Debt Limits:
Maximum Number of Outstanding Loans at One Time: Not Specified
Rollovers Permitted: Yes, with proceeds of new loan. (Lenders cannot extend payment period beyond 60 days after expiration of initial loan period)
Cooling-off Period:
Repayment Plan: Yes
Collection Limits:
Collection Fees: $25 dishonored check fee (max. two fees for insufficient funds; max. one fee for closed account); court costs; reasonable attorney's fees; service of process costs
Criminal Action: Prohibited (Unless customer acted with criminal intent)

New Hampshire

Legal Status: Legal but max APR of 36%.

Citation: N.H. Rev. Stat. Ann. 399-A:1 et seq.

Loan Terms:

Maximum Loan Amount: $500

Loan Term: 7-30 days

Maximum Finance Rate and Fees: 36% annual interest

Finance Charge for 14-day $100 loan: $1.38

APR for 14-day $100 loan: 36%

Debt Limits:

Maximum Number of Outstanding Loans at One Time: One

Rollovers Permitted: None (cannot refinance, renew, extend; borrowers can renew to obtain additional cash but prior loan must be paid in full from proceeds of new loan and marked as such)

Cooling-off Period: 60 days

Repayment Plan: Not specified

Collection Limits:

Collection Fees: Not specified

Criminal Action: Prohibited

New Jersey

Legal Status: Prohibited

Citation: Consumer loan act applies but rates as agreed to by contract. N.J. Stat. Ann. tit. 17:1 et seq. However, criminal law sets the usury cap at 30%. N.J. Stat. Ann. 2C: 21-19, 17:11C-36(a). A check cashing licensee cannot cash or advance money on a postdated check. N.J. Stat. Ann. 17:15A-47.

Small Loan Rate Cap: 30% per year

New Mexico

Legal Status: Legal

Citation: N.M. Stat. Ann. §§ 58-15-32 to 38

Loan Terms:

Maximum Loan Amount: $2500

Loan Term: 35 days

Maximum Finance Rate and Fees: $15.50 per $100; $.50 verification fee per $100

Finance Charge for 14-day $100 loan: $16

APR for 14-day $100 loan: 416%

Debt Limits:

Maximum Number of Outstanding Loans at One Time: Total loans and fees capped at 25% of gross monthly income

Rollovers Permitted: None

Cooling-off Period: 10 days after completion of a payment plan

Repayment Plan: Yes, equal installments over 130 day period, no additional fees.

Collection Limits:

Collection Fees: $15 NSF fee one time per loan

Criminal Action: Prohibited

New York

Legal Status: Prohibited

Citation: Licensed lender law applies but interest rate is that agreed to by contract. N.Y. Banking Law 340 et seq. A check casher licensee cannot make loans nor cash or advance any moneys on a post dated check unless it is a payroll check. N.Y. Banking Law 373. Criminal law sets the usury cap at 25%. N.Y. Penal Code 190.40.

Small Loan Rate Cap: 25% per year

North Carolina

Legal Status: Prohibited (N.C. Gen. Stat. 53-281 authorizing payday loans allowed to sunset in 2001)

Citation: The consumer finance act applies. N.C. Gen. Stat. 53-173

Small Loan Rate Cap: 36% per year

North Dakota

Legal Status: Legal

Citation: N.D. Cent. Code 13-08-01 et seq.

Loan Terms:

Maximum Loan Amount: $500

Loan Term: Max: 60 days

Maximum Finance Rate and Fees: 20% + databasing fee

Finance Charge for 14-day $100 loan: $20

APR for 14-day $100 loan: 520%

Debt Limits:

Maximum Number of Outstanding Loans at One Time: Not Specified ($600 aggregate loans outstanding to all licensees)

Rollovers Permitted: One (renewal fee not to exceed 20% of amount being renewed)

Cooling-off Period: 3 days

Repayment Plan: Not specified

Collection Limits:

Collection Fees: $20 NSF fee (if disclosed)

Criminal Action: Prohibited (Unless account was closed on date of original transaction)

Ohio

Legal Status: Legal	
Citation: Ohio Rev. Code Ann. 1321.35 et seq. Short-Term Loan Act (No payday lenders are licensed under this law.)	
Loan Terms:	
Maximum Loan Amount: $1000	
Loan Term: Minimum term 91 days, maximum term 1 year	
Maximum interest rate: 28%	
Maximum Finance Rate and Fees (APR): 60% • Monthly maintenance fee: 10% of the principal or $30, whichever is lesser • Origination fee: 2% of a loan amount greater than $500 • Check collection charge: $20 • Prepayment penalty: Lenders can't charge a prepayment penalty The loan may be less than 91 days if the total monthly payment on the loan doesn't exceed 6% of borrower's gross monthly income or 7% of net monthly income, whichever is greater. Borrower cannot take more than four payday loans within a year. Borrower is only allowed two short-term loans in every 90 day period, unless borrower has gone through a financial literacy program. Borrower may have no more than $2,500 in short-term loans borrowed and will be required to sign a declaration that borrower can legally borrow the loan.	

Oklahoma

Legal Status: Legal	
Citation: Okla. Stat. Tit. 59 §§ 3101 et seq.	
Loan Terms:	
Maximum Loan Amount: $500	
Loan Term: 12-45 days	
Maximum Finance Rate and Fees: $15 per $100: $0-$300; an additional fee of $10 per $100: $301-$500	
Finance Charge for 14-day $100 loan: $15	
APR for 14-day $100 loan: 390%	
Debt Limits:	
Maximum Number of Outstanding Loans at One Time: Two	
Rollovers Permitted: None (cannot renew; a loan made within 13 days after a previous one was entered into shall be considered a renewal and shall not be made)	
Cooling-off Period: Second business day after the 5th consecutive loan repaid	
Repayment Plan: Yes, after third consecutive loan. Repayable in four instalments. Fee of 10% up to $15.	
Collection Limits:	
Collection Fees: $25 NSF fee (if disclosed) unless dishonoured due to theft or forgery	
Criminal Action: Prohibited	

Oregon

Legal Status: Legal	
Citation: 54 Or. Rev. Stat. § 725A.010 et seq.	
Loan Terms:	
Maximum Loan Amount: $50,000 (Loan limit up to 25%of borrower's net monthly income if earns $60,000 per year or less.)	
Loan Term: 31 to 60 days	
Maximum Finance Rate and Fees: 36% max interest rate, one-time $10 per $100 of loan origination fee, up to $300	
Finance Charge for 14-day $100 loan: $13 for 31 day loan	
APR for 14-day $100 loan: 154% APR for 31 day loan	
Debt Limits:	
Maximum Number of Outstanding Loans at One Time: No Limit	
Rollovers Permitted: Two (renewals)	
Cooling-off Period: 7 days after prior loan expires	
Repayment Plan:	
Collection Limits:	
Collection Fees: One $20 NSF fee + additional bank charges	
Criminal Action: None, only civil penalties	

Pennsylvania

Legal Status: Prohibited	
Citation: Check cashers are specifically prohibited from making payday loans. 63 Penn Stat. Ann. § 2325. Otherwise, Consumer Discount Company Act applies. 7 Pa. Stat. Ann. §§ 6201 et seq.	
Small Loan Rate Cap: $9.50 per $100 per year interest, plus service charge of $1.50 per $50 per year, up to $150 if interest discounted.	

Rhode Island

Legal Status: Legal (Applies to check cashers only)	
Citation: R.I. Stat. Ann. 19-14.4-1 et seq.	
Loan Terms:	
Maximum Loan Amount: $500 face amount of check	
Loan Term: Min: 13 days	
Maximum Finance Rate and Fees: 10% of funds advanced	
Finance Charge for 14-day $100 loan: $10	
APR for 14-day $100 loan: 260%	
Debt Limits:	
Maximum Number of Outstanding Loans at One Time: 3/$500	
Rollovers Permitted: One (rollover)	
Cooling-off Period: Not specified	
Repayment Plan: Not specified	
Collection Limits:	
Collection Fees: Not Specified	
Criminal Action: Not Specified	

South Carolina

Legal Status: Legal
Citation: S.C. Code §§ 34-39-110 et seq.
Loan Terms:
Maximum Loan Amount: $550
Loan Term: Max: 31 days
Maximum Finance Rate and Fees: 15% of principal
Finance Charge for 14-day $100 loan: $15
APR for 14-day $100 loan: 390%
Debt Limits:
Maximum Number of Outstanding Loans at One Time: One.
Rollovers Permitted: None
Cooling-off Period: 2 days following eighth loan in a calendar year
Repayment Plan: Yes (Once per twelve month period, at least four equal installments, no additional fee)
Collection Limits:
Collection Fees: Not specified
Criminal Action: Prohibited

South Dakota

Legal Status: Legal (max APR of 36% pa)
Citation: S.D. Codified Laws 54-4-36 et seq.
Loan Terms:
Maximum Loan Amount: $500
Loan Term: Not Specified
Maximum Finance Rate and Fees: 36% APR
Finance Charge for 14-day $100 loan: $1.39
APR for 14-day $100 loan: 36%
Debt Limits:
Maximum Number of Outstanding Loans at One Time: Not Specified
Rollovers Permitted: Four (licensee can renew, rollover or flip loan if debtor pays outstanding fee each time)
Cooling-off Period: Not specified
Repayment Plan: Not specified
Collection Limits:
Collection Fees: Not Specified
Criminal Action: Not Specified

Tennessee

Legal Status: Legal
Citation: Tenn. Code Ann. 45-17-101 et seq.
Loan Terms:
Maximum Loan Amount: $425 ($500 check)
Loan Term: Max: 31 days
Maximum Finance Rate and Fees: 15% of the face value of the check
Finance Charge for 14-day $100 loan: $17.65
APR for 14-day $100 loan: 459%
Debt Limits:
Maximum Number of Outstanding Loans at One Time: 3 (2 per licensee) to maximum $500 face value of check/s
Rollovers Permitted: None (cannot renew or otherwise consolidate)
Cooling-off Period: Not specified
Repayment Plan: Not specified
Collection Limits:
Collection Fees: Court Costs
Criminal Action: Prohibited

Texas

Legal Status: Legal (Credit Access Businesses)
Citation: 5 Tex. Fin. Code §§ 393 et seq., 4 Tex. Fin. Code §§ 342.004
Loan Terms:
Maximum Loan Amount: Not specified
Loan Term: Loans of $100 or less: You have a maximum of one month per $10, up to six months to pay it back.More than $100: You have a maximum of one month per $20 to pay it back.
Maximum Finance Rate and Fees: No cap on Credit Access Business fees. Lender interest capped at 10%.
Finance Charge for 14-day $100 loan: No cap.
APR for 14-day $100 loan: No cap. Regulator reports average cost 410%.
Texas City regulations

Several cities in Texas have passed local ordinances regulating them. In these cities, any loan you get through a credit access bureau must meet the following standards:

- Payday loans can’t be more than 20% of the customer’s monthly income before taxes.
- Auto title loans can’t be more than 3% of their yearly income before taxes or 70% of the car’s value, whichever is less.
- Installment loans are limited to four repayments, with each covering at least 25% of the principal amount.
- Installment loans can’t be renewed or refinanced.
- Payday loans can only be renewed or refinanced three times.
- Any payday loan taken out seven days after a previous payday loan counts as a renewal or refinancing.
- If you refinance a payday loan, 25% of the new loan needs to go toward paying off your last loan’s principal.

Collection Limits:
Collection Fees: Late charge greater of 5% of payment or $7.50. Filing fees and $30NSF fees.
Criminal Action: Prohibited unless fraud or forgery.

Utah

Legal Status: Legal (Applies to check cashers only)
Citation: Utah Code Ann. 7-23-101 et seq.
Loan Terms:
Maximum Loan Amount: No Limit
Loan Term: May not exceed 10 weeks
Maximum Finance Rate and Fees: No usury limit
Finance Charge for 14-day $100 loan: No Limit
APR for 14-day $100 loan: No Limit
Debt Limits:
Maximum Number of Outstanding Loans at One Time: No limit
Rollovers Permitted: Not Specified (cannot extend or renew loan more than 10 weeks from original loan date)
Cooling-off Period: 1 day after payment on existing loan
Repayment Plan: Yes (Once per 12 month period; at least 4 equal payments, at least 60 days; no extra fees.)
Collection Limits:
Collection Fees: Not Specified
Criminal Action: Prohibited

Vermont

Legal Status: Prohibited
Citation: Small loan act applies. Vt. Stat. Ann. tit. 9 § 41a. Loans based on checks held for future deposit banned by 8 V.S.A.§ 2519(a)(13)
Small Loan Rate Cap: 18% per year

Virginia

Legal Status: Legal
Citation: Va. Code Ann. §§ 6.2-1800 et seq.
Loan Terms:
Maximum Loan Amount: $500
Loan Term: Min: 2 pay periods
Maximum Finance Rate and Fees: 36% annual interest + $5 verification fee + 20% of loan
Finance Charge for 14-day $100 loan: $26.38
APR for 14-day $100 loan: 687.76%
Debt Limits:
Maximum Number of Outstanding Loans at One Time: One
Rollovers Permitted: None (cannot refinance, renew, or extend)
Cooling-off Period: 1 day after payment; 45 days after 5th loan within 180 day period; 90 days after payment plan
Repayment Plan: Yes (Once per 12 month period; at least four equal installments, at least 60 days, no extra fees.)
Collection Limits:
Collection Fees: $25 NSF fee; Court Costs; Reasonable Attorney's Fees (not to exceed $250)
Criminal Action: Prohibited

Washington State

Legal Status: Legal (Lender must have a small loan endorsement to their check casher license)
Citation: Wash. Rev. Code Ann. 31.45.010 et seq.
Loan Terms:
Maximum Loan Amount: $700 or 30% of gross monthly income, whichever is less
Loan Term: Max: 45 days
Maximum Finance Rate and Fees: 15%: first $500; 10%: remaining portion of the loan in excess of $500 up to the $700 maximum
Finance Charge for 14-day $100 loan: $15
APR for 14-day $100 loan: 390%
Debt Limits:
Maximum Number of Outstanding Loans at One Time: A company cannot hold a check or checks in an aggregate face amount of more than $700 plus allowable fees from any one borrower at any one time. Maximum 8 loans in 12 months.
Rollovers Permitted: None (cannot refinance, renew, extend or pay off loan with proceeds of another)
Cooling-off Period:
Repayment Plan: Yes. (Plan is 90 days for debt of $400 or less and at least 180 days for larger debts. No extra fees.)
Collection Limits:
Collection Fees: $25 NSF fee (one time per instrument); collection costs (excluding attorney's fees, interest and damages)
Criminal Action: Prohibited

West Virginia

Legal Status: Prohibited

Citation: Small loan act applies. W. Va. Code § 46A-4-101 et seq. Check cashers prohibited from loaning money on check held for future deposit. §§ 32A-3-1 et seq.

Small Loan Rate Cap: 31% per year on a loan of $2,000 or less

Wisconsin

Legal Status: Legal

Citation: Wis. Stat. 138.14

Loan Terms:

Maximum Loan Amount: Lesser of $1,500 including fees or 35% gross monthly income

Loan Term: 90 days or less

Maximum Finance Rate and Fees: No Limit

Finance Charge for 14-day $100 loan: No Limit

APR for 14-day $100 loan: No Limit

Debt Limits:

Maximum Number of Outstanding Loans at One Time: No Limit

Rollovers Permitted: Yes, one renewal

Cooling-off Period: 24-hours after paying renewed loans

Repayment Plan: Yes (4 equal installments; one payment plan offer per 12 months.)

Collection Limits:

Collection Fees: $15 NSF fee, check presented once

Criminal Action: Prohibited

Wyoming

Legal Status: Legal

Citation: Wy. Stat. 40-14-362 et seq.

Loan Terms:

Maximum Loan Amount: Not Specified

Maximum Loan Term: 1 calendar month

Maximum Finance Rate and Fees: the greater of 20% per month or $30

Finance Charge for 14-day $100 loan: $30

APR for 14-day $100 loan: 780%

Debt Limits:

Maximum Number of Outstanding Loans at One Time: Not Specified

Rollovers Permitted: None (cannot repay, refinance or consolidate by proceeds of another check)

Cooling-off Period:

Repayment Plan: Yes (Once per 12 month period; at least 4 equal installments; at least 60 days)

Collection Limits:

Collection Fees: No NSF fees or other costs

Criminal Action: Prohibited

Washington, DC

Legal Status: Legal but not available due to the APR cap of 24%.

Citation: Amended D.C. Code Ann. 28-3301(a) and 26-319

Small Loan Rate Cap: 24% per year

B. Payday loan rates in different states (as at August 2018). This shows typical APR based on average rate for a $300 loan.

Source: Center for Responsible Lending 2019, https://www.cnbc.com/2018/08/03/states-with-the-highest-payday-loan-rates.html

Alabama	456%
Alaska	435%
Arizona	N/A
Arkansas	N/A
California	460%
Colorado	214%
Connecticut	N/A
Delaware	521%
District of Columbia	N/A
Florida	304%
Georgia	N/A
Hawaii	460%
Idaho	652%
Illinois	404%
Indiana	382%
Iowa	337%
Kansas	391%
Kentucky	460%
Louisiana	391%
Maine	217%
Maryland	N/A
Massachusetts	N/A
Michigan	369%
Minnesota	200%
Mississippi	521%
Missouri	443%
Montana	N/A
Nebraska	460%
Nevada	652%
New Hampshire	N/A
New Jersey	N/A
New Mexico	175%
New York	N/A
North Carolina	N/A
North Dakota	487%
Ohio (before 2018 law changes)	677%
Oklahoma	395%
Oregon	154%
Pennsylvania	N/A
Rhode Island	261%
South Carolina	391%
South Dakota	N/A
Tennessee	460%
Texas	662%
Utah	658%
Vermont	N/A
Virginia	601%
Washington	391%
West Virginia	N/A
Wisconsin	574%
Wyoming	261%

C. Article on use of Native Americans to get around payday lending laws.

From: Public Justice Impact Change: January 2, 2018

"Tribal Immunity" May No Longer Be a Get-Out-of-Jail Free Card for Payday Lenders

by Leslie Bailey
Staff Attorney

"…courts are cracking down on "tribal" lenders. In December 2016, the California Supreme Court issued a landmark decision that rocked the tribal payday lending world. In *People v. Miami Nation Enterprises* (*MNE*), the court unanimously ruled that payday lenders claiming to be "arms of the tribe" must actually *prove* that they are tribally owned and controlled businesses entitled to share in the tribe's immunity. The lower court had said the California agency bringing the lawsuit had to prove the lender was not an arm of the tribe. This was unfair, because the lenders, not the state, are the ones with access to all the information about the relationship between lender and tribe; Public Justice had urged the court to review the case and overturn that decision.

In *People v. MNE*, the California Supreme Court also ruled that lenders must do more than just submit form documents and tribal declarations stating that the tribe owns the business. This makes sense, the court explained, because such documentation would only show "nominal" ownership—not how the arrangement between tribe and lender functions in real life. In other words, for a court to tell whether a payday business is truly an "arm of the tribe," it needs to see *real evidence* about what purpose the business actually serves, how it was created, and whether the tribe "actually controls, oversees, or significantly benefits from" the business.

The need for reliable evidence is even more crucial given that one of the companies in the case (as well as defendant in two of our cases) admitted to submitting false tribal testimony to state courts that overstated the tribe's role in the business. Based on the evidence in *People v. MNE*, the California Supreme Court ruled that the defendant lenders had failed to show they should have tribal immunity. Now that the lenders' tribal immunity defense has been rejected, California's protections for payday loan borrowers may finally be enforced against these companies.

Second, the federal government has been cracking down. The Consumer Financial Protection Bureau recently sued four online payday lenders in federal court for allegedly deceiving consumers and collecting debt that was not legally owed in many states. The four lenders are purportedly owned by the Habematolel Pomo of Upper Lake, one of the tribes profiled in our report, and had not previously been defendants in any known lawsuits related to their payday lending activities. While the lenders will likely claim that their loans are governed only by tribal law, not federal (or state) law, a federal court rejected similar arguments last year in a case brought by the FTC against lending companies operated by convicted kingpin Scott Tucker. (Public Justice unsealed secret court records in the FTC case, as reported here. We've previously blogged on Tucker and the FTC case here and here.)

Third, some lenders are coming clean and crying uncle. In April 2017, in a fascinating turn of events, CashCall—a California payday lender that bought and serviced loans technically made by Western Sky, a business purportedly owned by a member of the Cheyenne River Sioux Tribe of South Dakota—sued its former lawyer and her law firm for malpractice and negligence. According to the complaint, Claudia Calloway advised CashCall to adopt a particular "tribal model" for its consumer lending. Under this model, CashCall would provide the necessary funds and infrastructure to Western Sky, a company owned by one member of the Cheyenne River Sioux Tribe. Western Sky would then make loans to consumers, using CashCall's money, and then immediately sell the loans back to CashCall. The complaint alleges clear that CashCall's managers believed—in reliance on bad legal advice—that the company would be entitled to tribal immunity and that its loans would *not* be subject to any federal consumer

protection laws or state usury laws. But in general, tribal immunity only applies where the tribe *itself*—not a company affiliated with another company owned by one tribal member—creates, owns, operates, controls, and receives the revenues from the lending business. And sure enough, courts consistently rejected CashCall's tribal immunity ruse.

The complaint also alleges that Calloway assured CashCall that the arbitration clause in the loan agreements would be enforceable. But that didn't turn out to be true either. Instead, in several cases, including our *Hayes* and *Parnell* cases, courts threw out the arbitration clauses on grounds that they required all disputes to be resolved in a forum that didn't actually exist (arbitration before the Cheyenne River Sioux Tribe) before an arbitrator who was forbidden from applying any federal or state laws. After losing case after case, CashCall ultimately abandoned the "tribal" model altogether. Other lenders may well follow suit.

Like sharks, payday lenders are always moving. Now that the tribal immunity scam's days may be limited, we're hearing rumblings about how online payday lenders might attempt take advantage of the OCC's planned Fintech charter as a path to avoid being governed by state law, including state interest-rate caps and licensing and operating requirements. But for now, the tide seems to be turning in favor of consumers and law enforcement. Let's hope it stays that way."

D. Background to payday law reforms in Ohio

Source: Article written for The Columbus Dispatch by Nick Bourke, Posted Oct 29, 2018 at 5:00 AM. See: https://www.dispatch.com/opinion/20181029/nick-bourke-ohios-payday-lending-law-could-be-national-model

"After more than a decade of waiting, Ohioans will finally see affordable small loans — thanks to the Fairness in Lending Act, the strong bipartisan reform measure recently passed by the legislature.

The new law effective today is the most consequential and balanced payday-loan reform enacted by any state. It achieves three fundamental goals: affordable payments, lower prices and reasonable time to repay. When loans issued under previous law become illegal in April, it will enable credit to flow while transforming Ohio's small loans into some of the safest and lowest-cost products available anywhere in the country. The law will protect consumers from the unaffordable payday loans that often led them into long-term cycles of debt, with 83 percent of the loans taken out within two weeks of a previous loan.

Borrowers are now expected to save more than $75 million per year, which can be reinvested in communities to strengthen local economies.

The reform honors the will of Ohio voters, who overwhelmingly supported a law passed in 2008 to rein in payday lending. But instead of getting licenses under that law, lenders registered as brokers, which enabled them to charge unlimited fees — leaving Ohio's payday-loan customers with far fewer protections and paying much higher prices than those in other states.

In the years leading up to the passage of the Fairness in Lending Act, six payday-loan chains in Ohio controlled more than 90 percent of the market. Many consumers paid more in fees than they originally received in credit, and loans often took up more than a third of their paychecks.

The response began with last year's House Bill 123, sponsored by state Reps. Kyle Koehler, R-Springfield, and Mike Ashford, D-Toledo, who recognized that credit can be helpful as long as it is affordable. As the bill made its way through the legislature, lawmakers made adjustments to give lenders additional flexibility and revenue while maintaining strong consumer protections, and — buoyed by the support of veterans' organizations, consumer advocates, civil-rights groups, newspaper editorial boards, borrowers, local governments, clergy and business leaders across the state — the final bill was passed by bipartisan majorities in the Senate on July 10 and the House of Representatives on July 24.

The Fairness in Lending Act balances the interests of borrowers and lenders to ensure widespread access to beneficial credit. Borrowers get at least three months to repay unless monthly payments are limited to 6 percent of the borrower's gross monthly income. Lenders can charge up to 28 percent annual interest and a maximum monthly fee of 10 percent, capped at $30, meaning that a $400, three-month loan won't cost more than $109. Before the law's passage, the same loan would have cost a borrower more than three times that amount.

Borrowers are protected from long-term indebtedness by the law's provisions limiting the total interest and fees to 60 percent of loan principal and requiring equal payments that reliably reduce the principal. And lenders now must get a license and follow all of the rules if they want to provide small loans in Ohio.

The law, which also features strong protections against illegal online lending, gives state regulators authority to supervise lenders, monitor the market over time and publish annual reports.

While some consumer advocates maintain that payday loans should be banned altogether and every store shut down, this fair-minded law won't do that. Instead, it is likely that there will be some consolidation of inefficient stores, while some lower-cost lenders enter the market to create much-needed competition.

Ohio lawmakers on both sides of the aisle addressed the problems of payday loans using a rigorous, evidence-based approach. As a result, borrowers will continue to have access to credit at much lower prices, and struggling families in Ohio will get some financial breathing room. They'll have more money to spend at the grocery store, more to meet their kids' needs and more to help ensure reliable transportation.

Other states grappling with payday-loan problems would be wise to take a lesson from Ohio's Fairness in Lending Act, which proves that reform that is fair to both lenders and borrowers is indeed possible."

Nick Bourke directs The Pew Charitable Trusts' consumer finance project.

Michael & Suzanne Borrin Foundation

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