ABCs of Financial Institutions in Utah:
From APR to Reg Z with a stop at Payday lending along the way

Prepared by Allison Nicholson and Patricia Owen, staff to the Business and Labor Interim Committee

Office of Legislative Research and General Counsel

September 19, 2007
Today’s Discussion

A bout the industries

B ackdrop of federal issues

C urrent issues
About the Industries
Industries

Key Types
- Depository
  - Bank
  - Credit Union
  - Industrial Bank
  - Savings and Loan Association
- Nondepository
  - Consumer Lending
  - Mortgage Lending (DFI/DRE)
  - Holding Company
  - Trust Company
  - Money Transmitter
  - Escrow Agent
  - Check Casher (payday lender)
  - Title Lender

Key Regulators
- Federal
  - Federal Reserve
  - FDIC
  - OCC
  - NCUA
  - OTS
  - Others
- State
  - Department of Financial Institutions (DFI)
  - Others

Consumers
Industries

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State or Federal Charter
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Consumers

Depository Institutions

DFI Regulates:

- 26 banks
- 59 credit unions
- 31 industrial banks

Others:

- 10 national banks
- 6 out-of-state banks
- 52 federal credit unions
- 7 savings and loans

Industries

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Examinations “Safety & Soundness”

More Traditional Regulatory Approaches

Consumers
Backdrop of Federal Issues
Federal Issues

Dual Banking

Preemption

Other
Current Issues
Payday Lending

- Different names
  - Basic concept of lending based on the lender’s deferred right to access the borrower’s money

- Utah’s definition
  - "Deferred deposit loan" means:
    - a person presents a check or provides authorization to debit that person's account using an electronic payment
    - the lender provides the person an amount of money equal to the face value of the check or debit less any fee or interest charged and agrees not to cash the check or process the debit until a specific date

See Utah Code Ann. § 7-23-102
Payday Lending

Example Fees and APR per $100 Loan

<table>
<thead>
<tr>
<th>Days</th>
<th>Fee (in $)</th>
<th>APR</th>
</tr>
</thead>
<tbody>
<tr>
<td>5</td>
<td>$11.00</td>
<td>803%</td>
</tr>
<tr>
<td>10</td>
<td>$16.00</td>
<td>584%</td>
</tr>
<tr>
<td>15</td>
<td>$22.00</td>
<td>535%</td>
</tr>
<tr>
<td>20</td>
<td>$33.24</td>
<td>607%</td>
</tr>
<tr>
<td>25</td>
<td>$33.25</td>
<td>485%</td>
</tr>
<tr>
<td>30</td>
<td>$33.25</td>
<td>406%</td>
</tr>
</tbody>
</table>

Source: Payday Loans: Laws Protecting Montana Borrowers, Montana State University, Extension Service (7/02), [http://www.montana.edu/wwwpb/pubs/mt200102.html](http://www.montana.edu/wwwpb/pubs/mt200102.html) (5/1/07)
Prepared by the Office of Legislative Research and General Counsel (9/19/07)
<table>
<thead>
<tr>
<th>Payday Lending</th>
<th>Late Fee</th>
<th>“Bad” Check Fee</th>
</tr>
</thead>
<tbody>
<tr>
<td>Qwest</td>
<td>1.2% of balance &gt; $25 per bill after 10 day grace period</td>
<td>$15</td>
</tr>
<tr>
<td>Questar</td>
<td>1% of balance per monthly billing</td>
<td>$20</td>
</tr>
<tr>
<td>Rocky Mountain</td>
<td>1% of balance per monthly billing</td>
<td>$20</td>
</tr>
<tr>
<td>Zions Bank</td>
<td>$23 flat fee</td>
<td></td>
</tr>
<tr>
<td>Deseret First Credit Union</td>
<td>$22 flat fee</td>
<td></td>
</tr>
</tbody>
</table>

Source: Telephone calls to customer service offices, Office of Legislative Research and General Counsel (4/07 and 5/07)
Prepared by the Office of Legislative Research and General Counsel (9/19/07)
Payday Lending

Background

- **Growth nationally**
  - Approximately 300 in 1992 to now >20,000
    
    [http://www.cfsa.net/about_payday_advance.html](http://www.cfsa.net/about_payday_advance.html) (4/26/07), & Payday Lending and Public Policy: What Elected Officials Should Know, Indiana Wesleyan U. (8/06)

- **In US approximately $40B extended**
  
  [http://www.cfsa.net/about_payday_advance.html](http://www.cfsa.net/about_payday_advance.html) (4/26/07)

- **Storefront locations v. Internet**
  - “Internet search engines identify about 3,000 web sites delivering payday loans online, either directly to the consumer or by generating leads for Internet lenders”
    
    [CFSA](http://www.cfsa.net/state_legislation.html) [http://www.cfsa.net/state_legislation.html](http://www.cfsa.net/state_legislation.html) (4/26/07)

- **Degree of profitability debated**
Payday Lending

Total Registered
186

Payday Lenders
168
(18 check cashing only
354 locations)

Internet Lenders
79
(27 based in Utah)

Prepared by the Office of Legislative Research and General Counsel (9/19/07)
### Payday Lending

#### Written Complaints

<table>
<thead>
<tr>
<th>YR</th>
<th>Total</th>
<th>Internet Based</th>
<th>Nonresident Internet Based</th>
</tr>
</thead>
<tbody>
<tr>
<td>01</td>
<td>4</td>
<td></td>
<td></td>
</tr>
<tr>
<td>02</td>
<td>5</td>
<td></td>
<td></td>
</tr>
<tr>
<td>03</td>
<td>9</td>
<td></td>
<td></td>
</tr>
<tr>
<td>04</td>
<td>23</td>
<td></td>
<td></td>
</tr>
<tr>
<td>05</td>
<td>52</td>
<td>23</td>
<td>18</td>
</tr>
<tr>
<td>06</td>
<td>39</td>
<td>32</td>
<td>27</td>
</tr>
</tbody>
</table>

Source: DFI to OLRGC (5/11/07)
Prepared by the Office of Legislative Research and General Counsel (9/19/07)
### 2006 Examinations

<table>
<thead>
<tr>
<th>In Compliance</th>
</tr>
</thead>
<tbody>
<tr>
<td>APR in oral response</td>
</tr>
<tr>
<td><strong>77%</strong></td>
</tr>
<tr>
<td>Weekly rate avoided in oral response</td>
</tr>
<tr>
<td><strong>94%</strong></td>
</tr>
<tr>
<td>APR accurate in written disclosure</td>
</tr>
<tr>
<td><strong>94%</strong></td>
</tr>
<tr>
<td>Display fee schedule</td>
</tr>
<tr>
<td><strong>91%</strong></td>
</tr>
<tr>
<td>DFI phone # posted</td>
</tr>
<tr>
<td><strong>95%</strong></td>
</tr>
</tbody>
</table>

Source: DFI to OLRGC (5/11/07)
Prepared by the Office of Legislative Research and General Counsel (9/19/07)
## Payday Lending

<table>
<thead>
<tr>
<th></th>
<th>CFSA Website*</th>
<th>CFA Website‡</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Frequency</strong></td>
<td>70-80% use loans between once a year and once a month</td>
<td>91% of loans to debtor with ≥ 5 loans per year Ave of 8 to 13 loans per year at one lender</td>
</tr>
<tr>
<td><strong>Amount</strong></td>
<td>$100 to $500</td>
<td>$100 to $1,000</td>
</tr>
<tr>
<td><strong>Interest/Fees</strong></td>
<td>Typical $15 per $100</td>
<td>$15 to $30 per $100</td>
</tr>
</tbody>
</table>

* Community Financial Services Association of America, [http://www.cfsa.net/myth_vs_reality.html#3](http://www.cfsa.net/myth_vs_reality.html#3) (4/26/07) citing Credit Research Center, Payday Advance Credit in America: An Analysis of Customer Demand (4/01) or otherwise obtained from CFSA’s website citing Payday Lending and Public Policy: What Elected Officials Should Know, Indiana Wesleyan University (8/06)

‡ Consumer Federation of America, [http://www.paydayloaninfo.org/facts.cfm](http://www.paydayloaninfo.org/facts.cfm) (4/27/07) or otherwise obtained from CFA Website citing Financial Quicksand, Center for Responsible Lending (11/06)
## Payday Lending

### Background

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<tr>
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<th>CFSA Website*</th>
<th>CO Law Review‡</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Income</strong></td>
<td>$25K to $50K annual</td>
<td>$2,373 ave monthly gross (approx $28,476 annual)</td>
</tr>
<tr>
<td><strong>Age</strong></td>
<td>68% under 45 4% over 65</td>
<td>Ave age approx. 35.8 62.41% between 20-39 1.67% are 65 or over</td>
</tr>
<tr>
<td><strong>Education or Profession</strong></td>
<td>94% high school grad 56% some college</td>
<td>62.80% of borrowers are laborers, officer workers, or benefits recipients</td>
</tr>
<tr>
<td><strong>Family Status</strong></td>
<td>Majority married 64% have children</td>
<td>52.67% single 47.33% married</td>
</tr>
</tbody>
</table>

* Community Financial Services Association of America, [http://www.cfsa.net/myth_vs_reality.html#3 (4/26/07)](http://www.cfsa.net/myth_vs_reality.html#3) citing Credit Research Center, Payday Advance Credit in America: An Analysis of Customer Demand (4/01)


Prepared by the Office of Legislative Research and General Counsel (9/19/07)
Payday Lending

In 2005 UT registered payday lenders charged off > 41,000 loans (DFI indicated an industry est. of 17 to 20%)

DFI est. approx 80% roll over once while < 20% roll over for 12 weeks (Issue of beginning/end of a loan)

DFI est. typical amount is < $500, APR ranges 400-550%, 2 week term

Several offer products like title loans, traveler checks, money orders, and wire transmission services

Source: DFI to OLRGC (5/10/07)
Prepared by the Office of Legislative Research and General Counsel (9/19/07)
Payday Lending

**Annual registration with DFI**
- **Fees:** Original: $300, Annual: $200, Examination: $55 per hour
- **Provide basic information:** Name(s), address(es), designated agent, if no office in UT, how it operates, criminal and administrative information
- **Fine** for failure to register

**Operational Requirements**
- **Initiating the payday loan:** Postings, disclosures, written contract, oral review, certain federal laws
- **Examples of other requirements:** Allow partial payments, allow rescission next business day, limit rollovers, not threaten criminal process, process electronic payments in timely manner

Source: Utah Code Ann., Title 7, Chapter23, Check Cashing Registration Act
Prepared by the Office of Legislative Research and General Counsel (9/19/07)
Payday Lending

Enforcement
- **Examples of DFI powers include:** Receive and act on complaints, commence administrative/judicial actions, counsel persons on rights and duties, make rules, annual examinations

Penalties
- Class B misdemeanor
- Revocation of registration
- Cease & desist/prohibit engaging in business
- Fines

Source: Utah Code Ann., Title 7, Chapter23, Check Cashing Registration Act
Prepared by the Office of Legislative Research and General Counsel (9/19/07)
Payday Lending

Review of existing state surveys

- Spectrum of regulation
- Examples of provisions include:
  - Maximum loan amount
  - Loan term maximum/minimum
  - Finance charges
  - Limiting rollovers/refinancing
  - Posting
  - Disclosures
  - Written contract
  - Others
States that do not have specific payday lending statutes and/or require lenders to comply with interest rate caps on consumer loans: CT, MD, MA, NJ, NY, NC, PA, TX, VT, WV.


Prepared by the Office of Legislative Research and General Counsel (9/19/07)
Payday Lending

* Other regulations on rollover/renewal of a loan may apply
States with no number may or may not permit payday loans

Sources: Conference of State Bank Supervisors, 1004/2005 Profile of State-Chartered Banking, Maximum Interest Rates – Part II (2005)
Prepared by the Office of Legislative Research and General Counsel (9/19/07)
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Payday Lending

(Rule proposed/comments requested 4/11/07)

- Examples of key elements
  - Restrictions on interest include 36% APR cap
  - Mandatory disclosures
  - Limitations on certain loan provisions
  - Penalties and remedies
  - Preemption of state laws

- Applying the 36% APR cap
  - “Military annual percentage rate” (MAPR): Other than using this list of costs, calculated in accordance with Truth-in-Lending

Prepared by the Office of Legislative Research and General Counsel (9/19/07)
Industrial Banks

- What is an industrial bank?
  - Owner not subject to Bank Holding Company Act or Glass Steagall Act
  - May extend consumer and commercial loans and accept federally insured deposits, but may not accept demand deposits if its total assets > $100M
  - Subject to same regulatory oversight as a Utah-chartered commercial bank

- “[H]ighest concentration of IB’s in the nation”
  - Other states include CA, CO, IN, HI, MN, NV

- FDIC Moratorium and congressional interest

Sources:  http://www.dfi.utah.gov/whatisIB.htm (9/7/07) and "Utah Industrial Bank Profile," Economic Development Corporation of Utah (2006) Prepared by the Office of Legislative Research and General Counsel (9/19/07)
Mortgage Lending

- Split regulation between DFI and Division of Real Estate (DRE)
  - DRE is primary regulator of most residential first mortgage lenders and brokers
  - DFI regulates:
    - 2nd mortgage lenders
    - 1st mortgage servicers
    - Depositories or affiliates engaging in 1st mortgage brokering and/or lending

- Current concerns about sub prime lending
  - National trends v. Utah trends

Sources:  http://www.dfi.utah.gov/mortgage.htm (9/7/07)
Prepared by the Office of Legislative Research and General Counsel (9/19/07)
Questions