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Fixing Payday Lending: The Potential of Greater Bank Involvement

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Notes & Comments

Fixing Payday Lending: The Potential of Greater Bank Involvement

I. INTRODUCTION

Sandra Harris is an average American.1 When unforeseen financial difficulties struck her family, she turned to payday lenders for relief.2 Although this worked at first, Sandra soon found herself living paycheck to paycheck, just trying to pay off the loan fees.3 Eventually, Sandra began to bounce checks and her car was repossessed.4 She was forced to reduce her income tax withholding to increase her take home pay, but this led to thousands of dollars in tax liability and eventually wage garnishment.5 Only through the help of her credit union and her family has Ms. Harris been able to begin her climb out of the "debt trap"6 caused by payday lending.7

Sandra's story is not unique; critics of payday lending often cite similar examples.8 Such negative publicity has caused widespread

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2. See id.
3. See id.
4. See id.
5. See generally id.
6. Within the context of this Note, "debt trap" refers to the situation where a consumer falls into debt and is unable to pay down the principal of the debt. The borrower is stuck in a cycle of paying interest or finance charges that will end only as a result of outside help or bankruptcy.
7. See SANDRA HARRIS STORY, supra note 1.
disapproval of the payday lending industry. Indeed, some techniques used by payday lenders such as repeated rollover, high interest rates (often exceeding 200% Annual Percentage Rate (APR)), and the threat of criminal prosecution upon default may justify this disapproval.

This Note addresses whether these practices are necessary characteristics of the payday lending market, and argues that the objectionable qualities of the subprime credit market exist because of the current dynamics of this market. The payday lending market is currently functioning at an equilibrium that is harmful to consumers, where payday lenders are collecting economic rent. This Note suggests that the entry of banks into the payday lending market could solve this problem by enhancing the competitive market forces within the industry, which would shift the market to a new equilibrium and extinguish economic rent. Also, there is evidence that suggests that banks could benefit from the huge profits that the payday lending industry has been reaping, while reaching consumers that they have

payday/victims.cfm (last visited Oct. 8, 2004) [hereinafter CFRL].

9. See, e.g., Michael S. Barr, Banking the Poor, 21 YALE J. ON REG. 121, 149 (2004); Johnson, supra note 8, at 2; Christopher L. Peterson, Truth, Understanding, and High Cost Consumer Credit: The Historical Context of the Truth in Lending Act, 55 FLA. L. REV. 807, 902-03 (2003); see also Brusch, supra note 8, at 1257; Moss, supra note 8, at 1729; see generally Daniel A. Edelman, Payday Loans: Big Interest Rates and Little Regulation, 11 LOY. CONSUMER L. REV. 174, 175 (1999) (arguing that payday loans have interest rates that are not cost justified and that payday lenders violate the Truth in Lending Act (TILA)). For disapproval of payday lending by Consumer Groups, see JEAN ANNE FOX, UNSAFE AND UNSOUND: PAYDAY LENDERS HIDE BEHIND FDIC BANK CHARTERS TO PEDDLER USURY (March 30, 2004), available at http://www.consumerfed.org/pdlrentabankreport.pdf (last visited Oct. 31, 2004) (voicing the disapproval of the Consumer Federation of America); COUNCIL FOR RESPONSIBLE LENDING WEBPAGE at http://www.responsiblelending.org/payday/index.cfm (last visited Oct. 31, 2004).

10. Rollover refers to when a loan is refinanced when the term of the loan comes due. See Johnson, supra note 8, at 2-3. Repeated rollover is when a loan is rolled over many times and this can be predatory when the high interest rates over longer periods push a debtor into an inescapable cycle of debt. See id.

11. Annual Percentage Rate (APR) is a way of calculating the interest rate on a loan. See Definition of APR at http://www.goodmortage.com/mortgage_school/MSAPR.htm (last visited Jan. 5, 2005). APR refers to the amount of interest that would have to be paid on the principal of a loan if the term of the loan extended for one year. See id.

12. See Johnson, supra note 8, at 26.

13. See infra notes 94-118 and accompanying text.

14. See infra text accompanying notes 78-97 (explaining the economic terms used in this article); infra text accompanying notes 94-118 (explaining the dynamics of the payday lending market).

15. See infra notes 157-161 and accompanying text.

16. See infra notes 162-204 and accompanying text.
not been serving as effectively. 17

Section II of this note explains the characteristics of payday loans and the payday lending market. 18 Section III analyzes the payday lending market using the tools of law and economics and argues that payday lenders are earning economic rent. 19 Section IV analyzes the failed attempts at regulating the payday lending market. 20 Section V proposes and evaluates a new solution to fixing the payday lending market: greater bank involvement. 21

II. CHARACTERISTICS OF THE PAYDAY LENDING MARKET

A. Characteristics of the Payday Loan

Payday loans are short term, high interest rate, consumer loans. 22 In the basic payday loan transaction, the borrower writes a postdated or undated check to the lender, with the understanding that the check will not be deposited until the borrower’s next payday (usually two weeks away). 23 The lender then pays the borrower the face value of the check minus the payday loan fee, which is usually around $15 for every $100 loaned 24 (an APR of 390% if the loan term is two weeks), 25 but which can be higher. 26

The borrower has several options for paying off the payday loan. 27 The borrower may either allow the check given to the payday lender to be cashed, or, alternatively, he can pay the lender that same amount in advance of the due date. 28 However, if the borrower cannot afford to pay off the loan at the end of the loan period, the borrower can "roll over" the loan by paying the lender an additional fee, extending it

17. See infra note 228 and accompanying text.
18. See infra notes 22-77 and accompanying text.
19. See infra notes 78-118 and accompanying text.
20. See infra notes 119-151 and accompanying text.
21. See infra notes 152-227 and accompanying text.
22. See Johnson, supra note 8, at 2.
24. See id.
25. See id. at 342.
26. See Johnson, supra note 8, at 31; Moss, supra note 8, at 1729.
27. See Schaaf, supra note 23, at 342.
28. See id.
another two weeks.  

B. How Payday Loans Exist in the Credit Market

The payday lending industry has grown tremendously in the short time since its inception in the early 1990s. By 2000, more than 10,000 payday lenders operated in the U.S. Payday lenders make around “sixty-five million loans to between eight and ten million households” a year, with total loan value exceeding $10 billion. Part of the reason for this growth is the profitability of this industry (the industry brings in revenue of over $2 billion a year). Payday lenders average returns on capital of 24% or more. A majority of these profits is derived from rollover fees, as most payday borrowers roll over their loans frequently.

29. See id.
30. See Barr, supra note 9, at 149 (noting in addition that “the short-term lending function has long been filled by pawnshops, auto title lenders, retail installment credit, and loan sharks, to name a few”).
31. See id.
32. See id. at 150.
33. See id. at 149-50.
34. See id. ("The industry reports gross margins of 30%-45% of revenue, with losses at 1%-1.3% of receivables and return on investment of 24%"); see also Daniel A. Edelman, Regarding Payday and Title Loans, at http://www.edcombs.com/CM/News/news20.asp (last visited Nov. 29, 2004) (citing studies that showed payday lender returns on capital at 30% and 40% which is about 3 times the returns that banks are making) [hereinafter Regarding Payday Loans]; Brendan Koerner, Preying on Payday, at http://www.motherjones.com/news/outfront/2001/05/payday.html (last visited Nov. 29, 2004) (citing a return on equity of 35%); TRIHOUSE ENTERPRISES INC., INDUSTRY OVERVIEW, at http://www.paydayandpaycheckloans.com/payday-loan-industry.html (last visited Nov. 29, 2004) (citing a return on capital of 30%).
35. See Barr, supra note 9, at 157. This means that the majority of payday lender’s gross income comes from payday loans that are renewed. Id. The fact that payday lenders make the majority of their income on payday loans that are renewed is a reflection of the statistics that show that the majority of payday loan fees come from the renewal of a preexistent loan rather than from new customers taking out new loans. See id. at 157.
In North Carolina in 2000, 40% of all payday loan revenues were generated by the 18% of customers who took out an average of at least one loan per month. Each 1% increase in the share of customers who borrow at least monthly from the company increased the outlet’s bottom line by $790.

36. See Barr, supra note 9, at 156.
A study of payday borrowers in Illinois found that the median borrower had more than ten loan contracts over a two-year period, and that one-fifth of borrowers had twenty or more contracts in that time. In
The population that uses payday loans tends to be low to moderate earners with incomes between $25,000 and $50,000. Payday borrowers tend to be credit constrained in some way and thus lack access to more traditional forms of credit. The majority of customers use payday loans to pay for unanticipated emergency costs, such as car repairs or medical bills.

Payday loans are appealing to consumers for two primary reasons. First, payday borrowers often perceive that they have no other credit options. This perception can be incorrect; in fact there is evidence that many subprime borrowers could qualify for prime credit. Second, payday loans can be obtained with great ease and speed. A payday loan can usually be obtained in under twenty minutes with little or no credit check, these being typically limited to checking for other outstanding payday loans. All a borrower needs to have to get a payday loan is “a checking account, a steady job, and no history of

Wisconsin, 56% of payday borrowers took out at least eleven loans in one twelve-month period. In Indiana, 77% of all payday transactions were rollovers, and the average annual number of loan renewals was ten. In North Carolina, the typical payday loan customer took out seven loans in one year from one lender. The CFSA study found that three-quarters of payday borrowers rolled over their loan at least once, and that 30% had seven or more rollovers. Using the Wisconsin statistic as an example, the typical payday loan consumer, who takes out eleven two-week payday loans per year, for the average loan amount of $300, at the average 470% APR from the Consumer Federation of America (CFA) survey, spends nearly $600 annually in fees.

See id. See also Edelman, supra note 9, at 174; Brusch, supra note 8, at 1272; Schaaf, supra note 23, at 346.

37. See Barr, supra note 9, at 153.
38. See id. See, e.g., Johnson supra note 8, at 11 (stating that the reasons for being credit constrained range from lacking a home and thus lacking an equity line of credit to having a damaged credit history possibly declaring bankruptcy and having little or no savings).
39. See Johnson, supra note 8, at 103.
40. See infra text accompanying notes 41-47.
41. See e.g. Schaaf, supra note 23, at 344.
43. See Schaaf, supra note 23, at 344.
44. See Barr, supra note 9, at 151.
45. See Edelman, supra note 9, at 174; Schaaf, supra note 23, at 343.
46. See Barr, supra note 9, at 151 (explaining that Tele-Trak is used by payday lenders to track the number of subprime loans outstanding).
C. Payday Lending and the Debt Trap

Payday lending pushes consumers into a debt trap for several reasons. First, rollover is inevitable for most payday loan users, given the short, two week term of most payday loans. Most payday borrowers only have a small surplus of cash in any given week, and thus are rarely able to repay the loan within the two week term while still paying for necessary expenses.

Another factor that increases consumer susceptibility to the debt trap is the lending practices of many payday lenders. A recent survey of payday lenders in Ohio revealed that payday lenders are quite willing to allow individuals to obtain multiple loans simultaneously without any determination of the individual’s ability to repay the loans, a practice commonly associated with predatory lending. Since the majority of payday lenders use the Tele-Track service, they know when consumers have multiple outstanding loans, and yet the study revealed that it was

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47. See Schaaf, supra note 23, at 343.
48. See infra notes 49-77 and accompanying text.
49. See Brusch, supra note 8, at 1280-81.
50. See Brusch, supra note 8, at 1280.

One study analyzed the ‘ability to [r]epay’ of borrowers earning $25,000 a year and borrowers earning $35,000 a year. This study concluded that a person making $25,000 a year would, without payments on a payday loan, fall $14 a week short on recurring payments for food, housing, healthcare, transportation, and utilities, and a person making $35,000 would have a weekly surplus of $67. These figures do not include emergency payments for car repairs or medical treatment, which points to the second major factor contributing to the high default rate of payday loans; the two-week duration of most payday loans does not give borrowers a chance to recover from the problem that sent them to the payday lender in the first place. As previously illustrated, borrowers start out with an extremely small surplus. To give them only two weeks to accumulate enough money to pay off a loan, and to leave them with nothing to pay for emergencies that may arise during the life of the loan, is an untenable proposition.

Id.

51. See Johnson, supra note 8, at 26.
52. See id. at 63.
54. See Johnson, supra note 8, at 61. Tele-Track is a subprime credit reporting service.

Id.
possible to obtain multiple loans from the same payday lender quite easily.\textsuperscript{55} Given that consumers often have difficulty paying off a single payday loan in two weeks, it is clear that many will be unable to pay off multiple payday loans in the same time period.\textsuperscript{56}

The disclosure practices of payday lenders also play a role.\textsuperscript{57} Payday lenders erect barriers to price shopping, enabling them to charge higher prices.\textsuperscript{58} For example, many payday lenders hide basic information about payday loans from consumers.\textsuperscript{59} The Ohio survey showed that a majority of the payday lenders refused to let consumers take the loan contract home to examine it prior to the loan or to let the consumer have a copy of the contract after the loan was made.\textsuperscript{60} A few of the payday lenders even claimed that it was against the law to take the contract out of the store.\textsuperscript{61} Payday lenders often gave false or misleading information about payday loans, or failed to give the interest rate in terms of APR\textsuperscript{62} as required by federal law.\textsuperscript{63} One payday lender, when asked, even denied that the interest rate of a payday loan could be measured as an APR.\textsuperscript{64} Other payday lenders also failed to state the interest rate of payday loans as an APR in advertisements for payday loans even though this is also required by federal law.\textsuperscript{65}

Another way that payday lenders prevent price shopping is by delaying disclosure of loan terms.\textsuperscript{66} Since payday lenders are not required to release information such as the interest rate or finance charges until immediately before the consummation of the loan contract,\textsuperscript{67} payday lenders can use this delay tactic to raise the cost of price shopping. Payday lenders often confirm the borrower’s

\begin{itemize}
\item \textsuperscript{55} See id. at 63.
\item \textsuperscript{56} See supra note 50 and accompanying text.
\item \textsuperscript{57} See Peterson, supra note 9, at 890.
\item \textsuperscript{58} See id.
\item \textsuperscript{59} See Johnson, supra note 8, at 32.
\item \textsuperscript{60} See id. at 35-36.
\item \textsuperscript{61} See id. at 36.
\item \textsuperscript{62} See id. at 38.
\item \textsuperscript{63} 15 U.S.C. § 1606.
\item \textsuperscript{64} See Johnson, supra note 8, at 38-39.
\item \textsuperscript{65} See id. at 40. 84\% of payday lenders failed to cite the APR of their loans in advertisements as specifically required by the Truth in Lending Act. \textit{Id}.
\item \textsuperscript{66} See Peterson, supra note 9, at 898.
\item \textsuperscript{67} See id.
\end{itemize}
employment with a phone call to the borrower’s place of employment.\textsuperscript{68} If lenders make such calls before disclosure of payment terms, as is the common practice, this can end a borrower’s attempt at price shopping immediately lest the borrower risk the potential embarrassment and employment risk that a bombardment of confirmation calls by multiple payday lenders would pose.\textsuperscript{69} Also, by delaying disclosure of loan terms, payday lenders force borrowers to invest more time and effort in obtaining loan information, which makes price shopping more difficult.\textsuperscript{70} These tactics create serious barriers to price shopping and often result in borrowers failing to extend their price searches beyond one or two lenders.\textsuperscript{71}

Payday lenders have debt collection options that most debt collectors lack.\textsuperscript{72} When a borrower defaults, the payday lender can use civil and criminal remedies available under bad check statutes.\textsuperscript{73} For instance, in Ohio, payday lenders used the bad check statute to threaten suit for treble damages and sometimes even wage garnishment.\textsuperscript{74} Further, the threat of criminal prosecution under bad check statutes is also a very effective debt collection practice.\textsuperscript{75}

The debt trap resulting from the disclosure practices, the price shopping barriers, and the collection resources of payday lenders is the basis of the disapproval of payday lending by consumer protection groups.\textsuperscript{76} These practices suggest that payday loans are probably not optimally serving the needs of the subprime borrower.\textsuperscript{77}

\section*{III. Payday Lending and Economic Rent}

To analyze the payday lending market, this Note uses the tools

\begin{itemize}
\item \textsuperscript{68} See id. at 895.
\item \textsuperscript{69} See id. at 896.
\item \textsuperscript{70} See id. at 898.
\item \textsuperscript{71} See id. at 894.
\item \textsuperscript{73} See id.; Brusch, supra note 8, at 1281-82.
\item \textsuperscript{74} See Johnson, supra note 8, at 78.
\item \textsuperscript{75} See Johnson, supra note 8, at 86; see also Drysdale & Keest, supra note 72; Brusch, supra note 8, at 1281-82.
\item \textsuperscript{76} See CFRL, supra note 8; Fox, supra note 9.
\item \textsuperscript{77} See supra notes 30-75 and accompanying text.
\end{itemize}
of law and economics. A "perfect market" is characterized by several qualities. First, it is assumed that in any given market, there are a large number of sellers that offer substantially identical products. Second, there are a large number of buyers that are perfectly informed of the qualities of the good that they are buying, including the likelihood that the good will malfunction, and also of the prices for this good offered by all of the different sellers. Third, all actors in the market are rational profit maximizers, that is, each actor attempts to maximize his economic benefits and acts in a way that is rationally aimed towards profit maximization. Fourth, there are no barriers for sellers to enter or exit the market. A market with these qualities, a "perfect market," will achieve a state known as perfect equilibrium, that is, the supply of the good offered by sellers will equal the demand for the good, and the price of the good will be stable because small fluctuations in demand will be matched by similar responsive moves in supply through the entrance to and exit from the market of sellers.

The perfect market will have one additional attribute. The return on capital for the seller in an efficient market for a particular good will be identical to the return on capital in every other efficient market once adjusted for risk. This is because if the return on capital in different product markets differs, sellers, being profit maximizers will leave the market with the lower return on capital and enter the market with the higher return on capital. The movement of sellers into and out of a market causes the return on capital in both markets to equalize. If the return on capital in one market is greater than the return on capital in other markets, that difference is referred to as economic rent and this means that either buyers are paying disproportionately too much for a good or sellers are taking on disproportionate risk. The implication is that a perfectly functioning

79. See id.
81. See KARL E. CASE & RAY C. FAIR, PRINCIPLES OF ECONOMICS 105 (Custom UNC Chapel Hill ed. 2002) [hereinafter PRINCIPLES].
82. See id. at 194.
83. See id. at 108-109.
84. See generally id. at 48, 108-109, 143, 151.
85. See id. at 53.
market extinguishes economic rent because sellers are profit maximizers (e.g. rent seekers) that maximize profits by price competing with each other.\textsuperscript{87}

An imperfect market exists when one or more of the four qualities of a perfect market are absent. In an imperfect market, the price can be stable (in equilibrium) while at the same time, sellers are earning economic rent.\textsuperscript{88} Thus, the normal workings of the perfect market fail to extinguish economic rent in an imperfect market.\textsuperscript{89} One common example of an imperfect market is a monopoly where there is only one seller in the market.\textsuperscript{90} While in a perfect market sellers will base the price of a good on the cost of production,\textsuperscript{91} in a monopoly, the seller will maximize profits by basing his prices on buyer need to a greater degree.\textsuperscript{92} Thus, monopolists earn excess return on capital, economic rent, and the consumer is worse off than if the market functioned perfectly.\textsuperscript{93}

Game theory predicts that a persistent imperfect market will occur when there are certain factors that create an incentive for sellers to engage in tacit price collusion and form an oligopoly.\textsuperscript{94} There is an incentive for collusion when long term collusion would lead to greater profits than long term competition.\textsuperscript{95} A number of factors make this incentive to tacitly collude more likely to control firm behavior. These factors include the youth of the industry, the number of competitors in the industry remaining small, the inability of buyers to price shop, easy access to the price information of competitors, and the existence of competition based on factors other than price.\textsuperscript{96} The more of these factors that are present in a particular market, the more likely persistent tacit price collusion will occur and sellers will earn economic rent.\textsuperscript{97}

The payday lending market exhibits many of these factors.

\textsuperscript{87} See generally PRINCIPLES, supra note 81, at 48, 108-109, 143, 151.
\textsuperscript{88} See BAIRD, supra note 80, at 172.
\textsuperscript{89} See generally PRINCIPLES, supra note 81, at 199.
\textsuperscript{90} See id.
\textsuperscript{91} See id. at 134.
\textsuperscript{92} See id. at 215.
\textsuperscript{93} See id.
\textsuperscript{94} See BAIRD, supra note 80, at 165.
\textsuperscript{95} See id. at 172.
\textsuperscript{96} See id. at 172-175.
\textsuperscript{97} See id.
First, this market is relatively young, being in existence since only the early nineties. As a result, price competition has not had as much of an opportunity to be established as a strategy of firms in the market.

Second, payday borrowers are not particularly sophisticated, inhibiting their ability to price shop. Unsophisticated buyers will not appreciate the true cost that they are paying for goods and thus they will accept a higher price for the goods than if they had correct information. Thus, unsophisticated borrowers are less capable of the price comparison necessary to make payday lenders price compete. This allows payday lenders to charge a higher price than borrowers would accept if they had perfect information and this allows payday lenders to earn economic rent.

Third, payday lenders are engaged in activities that discourage price shopping and instead compete based on other factors such as location of the store, flashy signs, promises of quick cash, and name recognition. When payday lenders increase the cost of gathering information, buyers cannot efficiently price shop. When this is the case no seller has an incentive to decrease his prices since no buyer will be able to perceive the significance of this change, and thus payday lenders will continue to charge higher prices and earn economic rent.

Further, when there are barriers to entry into a market created either by high start up costs, laws, or other factors, new firms may have difficulty entering this market and may be dissuaded entirely, allowing the imperfect market to exist persistently. Large players like banks have not entered the payday lending market to act as payday lenders because of such barriers to entry. First, banks may be prevented for reputational reasons from engaging in payday lending since there is

98. See Schaaf, supra note 23, at 356.
99. See supra text accompanying note 96.
100. See Peterson, supra note 9, at 891-892.
101. See generally Craswell, supra note 78, at 88.
102. See supra text accompanying note 96.
103. See generally Craswell, supra note 78, at 88.
104. See supra text accompanying notes 57-71.
105. See Peterson, supra note 9, at 896.
106. See generally Craswell, supra note , at 89.
107. See generally id.
108. See PRINCIPLES, supra note 81, at 245.
109. See infra notes 110-113 and accompanying text.
potentially a stigma attached to lending at rent seeking interest rates to unsophisticated customers.\textsuperscript{10} Second, the costs of servicing and creating payday loans are significant and pose a significant barrier to entry into the market.\textsuperscript{11} Third, many banks do not have branches in the areas primarily served by payday lenders and do not offer as convenient hours.\textsuperscript{12} Thus, banks might have to open additional branches and offer more extensive hours to reach payday borrowers. Fourth, because payday lenders do not price compete, banks would have to compete using the same tools as payday lenders to consistently earn the same economic rent, and banks cannot easily or potentially soundly compete based on location of the branch, flashy signs, promises of quick cash, and name recognition.\textsuperscript{13}

These factors suggest that payday lenders are earning economic rent, and there is empirical evidence to support this contention. Although payday lenders claim that the fees they charge are proportional to the risk and costs of their loans,\textsuperscript{14} critics of payday lenders claim that the default rates of payday loans are no higher than those of loans with much lower interest rates.\textsuperscript{15} Further, payday lenders are earning at least 24\% return on capital with triple digit interest margins,\textsuperscript{16} while banks are making closer to 15\% return on

\begin{itemize}
\item[\textsuperscript{10}] See generally FDIC, Guidelines for Payday Lending, at http://www.fdic.gov/regulations/safety/payday/ (last visited Nov. 11, 2004).
\item[\textsuperscript{11}] Ben Jackson, More Banks Pitching Alternatives to Payday Loans, AM. BANKER, Dec. 22, 2004, at 1.
\item[\textsuperscript{12}] See Barr, supra note 9, at 182.
\item[\textsuperscript{13}] See Peterson, supra note 9, at 896.
\item[\textsuperscript{14}] See, e.g., Schaaf, supra note 23, at 349. There are higher transaction costs associated with underwriting and servicing payday loans compared to other forms of credit. See Barr, supra note 9, at 155 ("Payday loans, unlike credit cards, require lenders to interact face-to-face with borrowers each time they originate a new payday loan. They need to conduct more follow up with borrowers than other lenders, and must charge enough to cover loan losses."). Also, these loans are perceived as riskier than more standard loans. See FINANCIAL SERVICE CENTERS OF AMERICA, WHITE PAPER: THE CONSUMER'S CHOICE: THE ROLE OF DEFERRED DEPOSIT SERVS. IN MEETING SHORT TERM FIN. NEEDS, available at http://www.fisca.org/whitepaper.htm (last visited Nov. 29, 2004) [hereinafter WHITE PAPER]. Contra CENTER FOR RESPONSIBLE LENDING, FACT VERSUS FICTION: THE TRUTH ABOUT PAYDAY INDUS. CLAIMS, at http://www.responsiblelending.org/payday/factfiction.cfm (last visited Oct. 31, 2004) [hereinafter FACT VS. FICTION].
\item[\textsuperscript{15}] See FACT VS. FICTION, supra note 114. This claim is supported by the fact that payday lenders have losses of only 1-1.3\% of accounts receivable; See Barr, supra note 9, at 150. While Wachovia claimed a 1.35\% loss of accounts receivable from December 30-June 30, 2004. WACHOVIA CORP., SECOND QUARTER 2004: MANAGEMENT'S DISCUSSION AND ANALYSIS QUARTERLY FINANCIAL SUPPLEMENT 1 (2004) [hereinafter WACHOVIA REPORT].
\item[\textsuperscript{16}] See supra notes 33-34 and accompanying text. Interest margin refers to the
capital with interest margins closer to 3%. This difference is significant, especially in the credit market where the return on capital for major players should be substantially similar due to the size and sophistication of the players in the market. Thus, payday lenders are earning economic rent.

IV. FAILED ATTEMPTS TO REGULATE PAYDAY LENDING

While legislatures have attempted to improve the payday lending market for consumers, their efforts have largely failed. Legislatures have attempted to regulate payday lenders with two categories of laws: usury regulation and regulation of loan terms disclosure. This section will show that neither kind of regulation effectively regulates the operation of payday lenders, although changes in the nature of either regulation might alter this verdict.

A. Usury Regulation

Usury regulation limits the maximum interest rate that can be charged on a loan. Although there are usury regulations imposed by statute at both the state and federal levels, Federal usury regulation does not effectively limit interest rates. Indeed, Federal law enables banks to circumvent state usury regulations, since banks are allowed to charge the interest rate allowed in the state where the bank is located. Thus, even though many states have regulations limiting interest rates, the rates are not binding many lenders because of federal preemption.
Non-bank lenders such as payday lenders can take advantage of federal preemption by partnering with an out-of-state bank that makes the payday loan and then immediately sells it to the payday lender that is located in the state with the restrictive usury laws. This practice is referred to as charter renting.

Charter renting to payday lenders is only practiced by Federal Deposit Insurance Corporation (FDIC) regulated state banks since all other bank and savings association regulators have put a stop to charter renting arrangements. The FDIC has not followed suit however, and thus FDIC regulated state banks may still charter rent. If the FDIC does follow suit in the future and prohibit charter renting to payday lenders, then state usury regulation would have the power to control payday lending.

Usury regulation may also become a more effective means of regulating payday lenders in the wake of the recent Georgia case, Bankwest v. Baker. In Bankwest v. Baker the Federal District Court for the Northern District of Georgia upheld a Georgia law that defined an in-state agent as the maker of a loan if it retained a predominant economic interest in the loan. The purpose of this law was to bring charter renting payday lenders within the reach of Georgia usury but banks can escape these limits by locating in a state that does not have similarly restrictive usury laws. See Brusch, supra note 8, at 1262. For a more in depth examination of preemption, exportation, and charter renting see Darrell L. Dreher & Deborah Freye, Continuing Challenges to Interstate Lending by Depository Institutions, 57 BUS. LAW. 1297, 1297 (2002); Elizabeth R. Schiltz, The Amazing, Elastic, Ever-Expanding Exportation Doctrine and Its Effect on Predatory Lending Regulation, 88 MINN. L. REV. 518, 622 (2004); James J. White, The Usury Trompe l'Oeil, 51 S.C. L. REV. 445 (2000); Tasha L. Winebarger, Comment, The Beginning of the End: The Demise of Bank Partnerships with Payday Lenders, 7 N.C. BANKING INST. 317 (2003); Elizabeth Willoughby, Recent Development, Bankwest v. Baker: Is it a Mayday for Payday Lenders in Rent-a-Charter Arrangements?, 9 N.C. BANKING INST. (forthcoming April 2005).

126. See Barr, supra note 9, at 151.
127. See id.
128. See OCC ANN. REP. 17 (2003); Fox, supra note 9, at 17. The Office of the Comptroller of the Currency has prohibited National banks from charter renting; the Fed has prohibited State banks that are members of the Federal Reserve System from charter renting; the Office of Thrift Supervision has prohibited savings associations from charter renting. Id.
129. See Fox, supra note 9, at 14.
130. See id.
laws. Thus, this state law, if upheld on appeal, would open the door for states to be able to stop charter renting nationally. Thus, there is the possibility that either state law or FDIC regulatory action could make state usury regulations binding on all payday lenders.

One danger posed by the use of usury law to regulate payday lending is that the regulator could set the maximum allowable interest rate below the perfect market interest rate which would drive all lenders out of the market, and this would hurt consumers. However, if used correctly, usury regulation could be used to extinguish the economic rent that is arguably present in the current payday loan market, making loan terms more favorable to consumers. The effectiveness of usury limits for extinguishing rent is thus dependent on the ability of the regulator to predict the non-rent interest rate.

133. GA. CODE ANN. § 16-17-1(c) (2004).
134. See Willoughby, supra note 125, at 21.
135. See supra notes 128-134 and accompanying text. In addition, if the FDIC did prohibit charter renting, this would provide banks with an opportunity to enter the payday lending market with no competitors since the payday lenders would be out of business. See generally supra text accompanying note 130. Since banks do not charter rent, having independent bank charters themselves, they would still be able to operate even with usury regulations limiting the interest rate to below the efficient market rate. See generally supra text accompanying note 124.

136. A prohibition on emergency credit options will only hurt the most vulnerable borrowers by increasing the rates at which they must borrow, because a prohibition on the sale of a commodity creates a black market. See PRINCIPLES, supra note 81, at 64. Interest rate caps below the efficient market rate would completely stop payday lending by legal lenders. See id. at 108-109. However, when a certain commodity is completely unavailable through legal channels because of regulation, the demand for that product still exists. See generally id. If an individual has a need for credit, be it an emergency or otherwise, that individual will either fulfill this need by obtaining the credit that is available or will suffer a deprivation. See generally id. at 64. This leads to the formation of a black market that offers the product at rates that are even higher than those that would be offered if the market were unregulated. See id. Although this is undesirable, attempting to deny credit to all consumers in this segment of the market hurts the consumers with legitimate credit needs and it potentially does not help those who abuse credit since these individuals may also resort to the use of the black market to fulfill their credit demand. See generally PRINCIPLES, supra note 81, at 64.

137. When interest rates are above the efficient market rate, interest rate caps that are below what is currently being charged but at or above the efficient rate will not prohibit loans to that segment of the market entirely, but will only decrease the price of these loans. See supra note 136.

138. See generally PRINCIPLES, supra note 81, at 48, 108-109, 143. This prediction would have to take into account the costs of doing business, the overall risk of the subprime market, the general return on capital in the credit market as a whole, and potentially other factors as well. See generally id. Further, regulators would have to be able to adjust the interest rate cap based upon fluctuations in the efficient market interest rate. See generally id.
open market competition would extinguish rent automatically without running the risk of closing the market.\textsuperscript{139}

B. Truth in Lending Act

The primary regulation regarding the disclosure of loan terms is the Truth in Lending Act (TILA).\textsuperscript{140} The purpose of TILA was to provide consumer protection by facilitating an efficient market outcome by encouraging price shopping.\textsuperscript{141} Sadly, TILA has failed to provide real protection to payday borrowers.\textsuperscript{142} TILA requires the disclosure of interest and finance charges to borrowers before the consummation of the loan;\textsuperscript{143} Regulation Z, a regulation promulgated by the Federal Reserve interpreting TILA, requires that these disclosures be made "clearly and conspicuously in writing, in a form that the consumer may keep ... before the consummation of the transaction."\textsuperscript{144} Theoretically, if TILA required these disclosures to be made sufficiently far in advance, it would ensure real price shopping in the payday lending market.\textsuperscript{145}

Courts, however, have not read the timing requirement strongly. Both the Fourth and Seventh Circuits have held that the disclosure of the terms need only be made moments before the consummation of the agreement.\textsuperscript{146} Also, in a ruling further limiting the effectiveness of TILA, the Sixth Circuit, in Baker v. Sunny Chevrolet, Inc.,\textsuperscript{147} stated that statutory damages are not available for a violation of the timing requirement of Regulation Z. Thus, Baker requires proof of actual damages, a prospect extremely chilling to those considering representing a payday borrower.\textsuperscript{148} These rulings eviscerate the power

\textsuperscript{139} See generally id. at 197.
\textsuperscript{141} See Peterson, supra note 9, at 881.
\textsuperscript{142} See id. at 901.
\textsuperscript{144} 12 C.F.R. § 226.17(b) (2004).
\textsuperscript{145} See supra, text accompanying notes 57-71.
\textsuperscript{147} Baker v. Sunny Chevrolet, Inc., 349 F. 3d 862 (6th Cir. 2003).
\textsuperscript{148} Id. at 869. Statutory damages accrue automatically when a sufficient violation of TILA is found. Thomas A. Wilson, Comment, The Availability of Statutory Damages Under TILA to Remedy the Sharp Practice of Payday Lenders, 7 N.C. BANKING INST. 339,
of TILA to force payday lenders to allow meaningful price shopping in
the payday lending market.149 As Judge Posner has said, "[s]o much
for... [TILA] as a protection for borrowers."150 Although a stronger
TILA or binding usury laws would potentially fix many of the problems
with payday lending,151 this note suggests a different possible solution
that would not require regulatory change: bank involvement in the
payday lending market.

V. THE SOLUTION: GREATER BANK INVOLVEMENT IN THE SUBPRIME
CREDIT MARKET

This note suggests that the payday lending market would be
fixed if banks entered the market and competed with payday lenders. So
far many banks have chosen not to enter the payday lending market
and price compete with payday lenders152 though this is starting to
change.153 There are several reasons for this. First, banks themselves
state that the payday lending market is not sufficiently profitable.154 As
explained earlier, there are barriers to entry such as high servicing costs
that prevent banks from competing as payday lenders.155 Second,
regulation such as state usury regulation may appear to be a barrier to
banks that wish to participate in this market for either logistical or
reputational reasons. This note suggests that if banks take advantage of
cost saving devices, they can price compete successfully with payday
lenders while also offering a superior product.156

Banks can shift the payday lending market into a more perfect

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149. See supra text accompanying notes 57-71.
150. Peterson, supra note 9, at 902 (citing Emery v. Am. Gen. Fin., Inc., 71 F. 3d 1343,
1346 (7th Cir. 1995)).
151. See Elwin Griffith, Searching for the Truth in Lending: Identifying Some Problems
that a stronger TILA would help consumers in general); Wilson, supra note 148, at 352
(suggesting that a stronger TILA would provide greater access to statutory damages and this
would help consumers).
152. See Jackson, supra note 111.
153. See infra notes 176-181 and accompanying text.
154. See Barr, supra note 9, at 182.
155. See supra notes 108-113 and accompanying text.
156. See infra notes 157-204 and accompanying text.
equilibrium by instituting price competition, and banks can capture the entire payday lender market share if they offer an alternative credit instrument with better terms than a payday loan. Banks could institute price competition by advertising both the costs of their loans and the fact that they are cheaper than the loans offered by payday lenders. Consumers might well be willing to travel longer distances and deal with less extensive hours to take advantage of lower rates and better terms offered by banks. Banks following this proposal would gain access to a larger customer base which allows the diversification of risk and easier access to customers. Also, serving the subprime market specifically should increase the likelihood of the bank earning a favorable Community Reinvestment Act (CRA) Rating. The following subsection analyzes current and potential credit instruments that could compete with payday loans.

A. Current and Possible Alternatives to Payday Loans

The State Employee Credit Union (SECU) salary advance loan (SAL) exists explicitly to compete as a lower cost alternative to payday loans. This loan is available to any member of the SECU who has his paycheck directly deposited at the SECU. The SECU provides a maximum ceiling of $500 for these loans and they are offered at an APR of 11.75%. Further, the SECU offers free credit counseling for users of any of their loans. In addition, the SECU creates Salary

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157. If consumers can price shop, this will help fix the market failure. See PRINCIPLES, supra note 81, at 201.
158. See id. at 94. Even if consumers can price shop, payday lenders profit from the structure of their loan and so providing alternatives will help facilitate the process of fixing the objectionable qualities of payday loans by allowing substitution away from the payday loans. See id.
159. See id. This kind of advertisement would help break the perception of many borrowers that they could not get credit from a bank. See Barr, supra note 9, at 183.
160. See supra text accompanying note 112.
161. Kathleen C. Engel & Patricia A. McCoy, The CRA Implications of Predatory Lending, 29 FORDHAM URB. L.J. 1571, 1600 (2002). The Community Reinvestment Act rates how well a bank has been serving the credit needs of the community and having a high rating is important when banks want to merge or open new branches. See id. at 1574.
162. See State Employees Credit Union: Salary Advance, at http://www.ncsecu.org/Loans/Personal/SALO.asp (last visited Jan. 9, 2005) [hereinafter SAL Webpage].
163. Id.
164. Id.
165. Id.
Advance Cash Account (SACA) for each member that takes out a SAL, and a small portion (5%) of each SAL goes into the SACA and is pledged as collateral for the loan. Since the SACA grows every time a borrower takes out or renews an SAL, a borrower can use his SACA to eventually pay off an outstanding SAL, guaranteeing that the cycle of reliance on the SAL will end.

Phil Greer, SECU Senior Vice President of Loan Administration, explains that the SAL is a feasible loan instrument for the SECU. Although exact statistics on these loans were not available, Mr. Greer estimates that the SECU makes around a 3% net retention in earnings on these loans after taking into account losses and operating costs. Over 40,000 SECU members have used this service, and there is an approximate default rate of around 2.8%. Over the past four years this default rate has lead to a charge off of around $800,000 though $120,000 has later been recovered. The direct deposit requirement of the SAL decreases the default rate because the loan is repaid immediately after the paycheck is deposited. Nonetheless, default does occur because the individuals with the loan can switch banks or lose their jobs while the loan is still outstanding.

Further, although no exact statistics were available, members' responses to both the SAL and to the credit counseling option have been very positive. The SECU is not the only credit union to offer an alternative credit instrument to the payday loan, and other credit unions have had similarly positive experiences.

166. Id.
167. Id.
168. Telephone Interview with Phil Greer, Senior Vice President of Loan Administration, SECU (Nov. 24, 2004).
169. Net retention in earnings is analogous to profit but since the SECU is non-profit it would be incorrect to label it as such. See generally id.
170. Telephone Interview with Phil Greer, Senior Vice President of Loan Administration, SECU (Nov. 24, 2004).
171. Id.
172. Id.
173. Id.
174. Id.
Austin Bank of Chicago is also planning on offering an instrument to compete with payday loans.\textsuperscript{176} The instrument is a line of credit.\textsuperscript{177} "Would-be borrowers will apply for three-year loans of $1,000 to $10,000. If approved, they will receive checks for drawing on the loan. If they write checks, they will have to make monthly payments of 3\% of the principal and accrued interest until the balance is paid."\textsuperscript{178} This kind of credit alternative has lower transaction costs than a payday loan.\textsuperscript{179} To qualify for this credit line the borrower would have to hold an account with the bank.\textsuperscript{180} Wells Fargo & Co. of San Francisco has a Direct Deposit Advance program that "allows customers with direct deposit accounts to borrow up to half of the money directly deposited a week in advance."\textsuperscript{181}

Professor Michael Barr suggests that banks could also compete with payday lenders by offering overdraft lines of credit.\textsuperscript{182} He argues that overdraft lines of credit could be offered at both lower cost and lower risk because there is no need for face-to-face transactions and the loan repayments could occur automatically.\textsuperscript{183} Banks would have to alter the period over which the loan is repaid though from the current policy of around 30 days.\textsuperscript{184} These overdraft lines of credit would have to differ from the bounce protection offered by many banks if they are to serve the credit needs of consumers both in terms of the cost of these lines of credit and in terms of the qualifications required to qualify for overdraft lines of credit.\textsuperscript{185} For instance, banks would have to dispense with the requirement of a good credit report to qualify for overdraft lines of credit\textsuperscript{186} to reach the borrowers targeted by the proposal and would probably have to loosen other requirements as well.
B. The Economic Feasibility of Offering Alternatives to Payday Loans

Payday loans are perceived as unfeasible by banks probably because of the high transaction costs in servicing and underwriting these loans. Indeed, the Winnipeg Study, a feasibility analysis of lower cost payday lending, came to the conclusion that the break even interest rate for payday lenders is around 130%. This analysis is based on the assumption that the lender's only business is to offer loans and that a single staff person would make 190 loans in a year of value totaling $40,000 and would do the labor involved in accounting for these loans. The break even calculation assumes loan loss rates of 3% (which is closer to those of the SECU than to the lower loss rates of payday lenders) and it takes into account building maintenance costs and rent. Banks would probably not be enthusiastic about offering loans with APRs exceeding the 130%. Further, since a small loan can cost as much to underwrite as a large loan, the payday lending business model is probably not a feasible option for banks in the current market.

However, innovations in banking services can decrease the transaction costs involved in making payday loans, allowing banks to charge lower interest rates than the feasibility study suggests and giving banks a significant advantage over payday lenders. First, banks have greater access to capital at cheaper rates than payday lenders since banks accept deposits. Second, lines of credit like that offered by Austin Bank of Chicago or like those suggested by Professor Barr decrease the servicing costs of these loans since banks would not need employees helping borrowers renew loans every two weeks as payday

187. See supra notes 114, 154-155 and accompanying text.
188. See WINNIPEG STUDY, supra note 175, at Appendix G(C).
189. See id.
190. Compare Barr, supra note 9, at 150, with Telephone Interview with Phil Greer, Senior Vice President of Loan Administration, SECU (Nov. 24, 2004) (showing that SECU losses were 2.8% while payday lender losses were between 1 and 1.3%).
191. See WINNIPEG STUDY, supra note 175, at Appendix G(C).
192. See Jackson, supra note 111.
193. See generally WINNIPEG STUDY, supra note 175, at 169.
194. See infra notes 195-201 and accompanying text.
195. See supra text accompanying notes 176-180.
196. See supra text accompanying notes 182-186.
lenders do with loan rollover.\textsuperscript{197} Having a direct deposit requirement like the SECU\textsuperscript{198} or Wells Fargo & Co. of San Francisco\textsuperscript{199} would also decrease servicing costs by allowing direct deduction of loan payments while also decreasing the likelihood of default.\textsuperscript{200} Indeed, assuming that a bank was offering overdraft protection, the APR of 130\% used by the Winnipeg Study would yield a net return on capital of close to 100\%.\textsuperscript{201}

Although it might appear that payday lenders have an economic advantage over banks in abusive collection practices,\textsuperscript{202} this advantage is not significant competitively. While the exact economic value of this advantage is not entirely clear,\textsuperscript{203} this apparent economic advantage is not a competitive advantage for payday lenders because of the working of the market. Abusive collection practices allow the payday lender to save money on collections, but this only works if consumers know about the practices (e.g. consumers can only be encouraged to default less frequently by bad check laws if payday lenders actually make threats). When banks do not make such threats, the abusive collection practices become just another contract term that is assigned an economic value by the market, and this extinguishes the payday lenders' advantage.\textsuperscript{204}

\textbf{C. The Regulatory Feasibility of Bank Involvement}

Banks face two potential regulatory hurdles in offering alternatives to payday loans: usury laws and safety and soundness concerns. Even though banks may be able to feasibly offer alternatives

\textsuperscript{197} See supra note 114.
\textsuperscript{198} See supra text accompanying note 163.
\textsuperscript{199} See supra text accompanying note 181.
\textsuperscript{200} See supra note 114.
\textsuperscript{201} See Winnipeg Study, supra note 175, at Appendix G(C). This is based on the assumption that the employee would be able to work significantly fewer hours and that a separate bank branch would not be necessary to offer these loans (which yields a savings of almost $35,000 to be measured against the loan capital of $40,000). See id.
\textsuperscript{202} See supra text accompanying notes 72-75.
\textsuperscript{203} It should be noted that payday lenders report a default rate of between 1 and 1.3\%. See supra note 34 and accompanying text. Comparatively, the SECU reports a default rate of approximately 2.8\% as a result of their direct deposit requirement. Telephone Interview with Phil Greer, Senior Vice President of Loan Administration, SECU (Nov. 24, 2004). The Winnipeg study assumes an even greater default rate in its calculations. See Winnipeg Study, supra note 175, at Appendix G(C).
\textsuperscript{204} See Craswell, supra note 78, at 88.
to payday loans, banks still might have to circumvent usury laws in some states with more stringent usury limits (such as North Carolina with its 16% limit on small loans). The most obvious way to do this is for the bank to import interest rates under federal law from a bank located in a state with favorable usury laws. This could be done by having the in-state bank act as an agent of an out-of-state bank owned by the same holding company as is done with credit card banks. This is not charter renting because the loans would be held by an out of state affiliated bank, and not subsequently transferred to an entity that could not make the loan independently.

Banks making subprime loans are subject to various regulatory guidelines to ensure that they continue to operate in a safe and sound manner. The federal bank regulators have divided banks making subprime loans into two groups. Those banks whose subprime lending programs account for less than 25% of tier one regulatory capital are subject to the Interagency Guidance for Subprime Lending Programs (IGSLP) (March 1, 1999). Those banks with subprime lending programs greater than or equal to 25% of tier one regulatory capital are, in addition, subject to the Expanded Guidance for Subprime Lending Programs (Expanded IGSLP).

The IGSLP "establishes the agencies’ expectations for proper business planning, risk management, and controls." Banks that do not properly account for risk under these guidelines are lending in an unsafe and unsound manner. The IGSLP notes that effective credit risk evaluations and collection practices may differ from those that could be used with prime borrowers, and thus banks need to move

207. See Schiltz, supra note 125, at 578.
208. See supra text accompanying notes 124-127.
209. See infra notes 210-223 and accompanying text.
211. Tier One Regulatory Capital is stockholder equity and retained earnings. See BROOME & MARKHAM, supra note 53, at 586.
212. See OCC, 2001-6, EXPANDED GUIDANCE FOR SUBPRIME LENDING PROGRAMS 2 (2001).
213. See id.
215. See id. at 3.
carefully into the subprime credit market. The IGSLP essentially requires banks to have a more detailed set of internal evaluations of collection practices, credit risks, and underwriting requirements than they would with prime loans. Also, if institutions intend to securitize subprime portfolios, due to the volatility of the market, they are required to develop a contingency plan to deal with the event that they will not be able to sell the subprime loans.

Pursuant to the Expanded IGSLP, if examiners determine that risk management provisions are deficient, the examiners may require that the bank cease to engage in subprime lending. The Expanded IGSLP also details the appropriate procedures for banks to deal with expected losses from subprime loans. Lenders are required to document their opinion on the capital necessary to offset the added risk of subprime loans and examiners are to evaluate these opinions on a case by case basis. In general, the Expanded IGSLP places greater burdens upon banks to prove that they are lending in a safe and sound manner. These two sets of guidelines show that banks are not prohibited from engaging in subprime lending for safety and soundness reasons, and must take sufficient steps to deal with the risks and costs associated with these programs. Banks must also determine the level of regulation that they are willing to accept in establishing the appropriate size for their subprime lending programs.

D. Reputational Feasibility of Bank Involvement

There are two primary reputational concerns raised by bank entry into this market. First, there may be a reputational risk arising if banks were forced to circumvent state usury laws. However, the fact that banks routinely circumvent these laws with their credit card

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216. See id. at 4-5.
217. See id. at 5-6.
218. See id. at 7-8.
220. See id. at 3-5.
221. See id. at 5.
222. See id. at 3-11.
223. See supra notes 209-222 and accompanying text.
programs should help assuage this concern. Second, the reputational risk associated with debt collection practices is a concern for banks. The threat of criminal prosecution under bad check laws, although effective, is probably something that banks would want to avoid for reasons of reputation. The Interagency Guidelines for Subprime Lending acknowledge that different collection practices may be necessary for subprime loans. However, the FDIC guidelines for Payday Lending note that illegal collection practices should hurt a bank’s CRA rating. Thus, banks will have to develop a plan for how to appropriately deal with collection practices in a safe and fair manner under this proposal to avoid reputational risks. The use of a direct deposit requirement could help decrease debt collection reputation risk by automating debt collection to a greater degree.

VI. CONCLUSION

Greater bank involvement in the payday lending market has a number of policy advantages. First, consumers would have better access to more affordable credit than is currently available. The better terms and prices afforded by efficient competition would enable individuals to obtain credit better tailored to their specific situations. Second, bank involvement would allow many subprime borrowers to develop positive credit histories. Payday lenders do not report their loans to credit reporting agencies. Thus, borrowers who use payday loans never develop positive credit histories. Bank involvement could very easily remedy this problem and allow many subprime borrowers to cease to be subprime credit risks. The SECU already

224. See Schiltz, supra note 125, at 578.
226. OCC, FIL. 99-10, INTERAGENCY GUIDANCE FOR SUBPRIME LENDING PROGRAMS 5-6 (1999).
227. See FDIC, Guidelines for Payday Lending, at http://www.fdic.gov/regulations/safety/payday/ (last visited Nov. 11, 2004); see also supra note 161.
228. See supra text accompanying note 77.
229. See supra text accompanying notes 157-186.
230. See Barr, supra note 9, at 158.
231. See id.
232. See id.
233. See id.
reports salary advance loans to credit reporting services so that its users can develop positive credit histories.\textsuperscript{234}

Banks may have a unique opportunity to enter and reform a market and at the same time make a profit. This opportunity is an illustration of self interest resulting in collective benefit. Should banks continue to determine that there is profit to be made in this market and enter this market in greater numbers, then they will be able do something that federal and state legislatures, federal and state agencies, and even consumer groups have been largely unable to accomplish: stop the abusive lending practices of payday lenders.

\textsc{Michael Bertics}

\textsuperscript{234} Telephone Interview with Phil Greer, Senior Vice President of Loan Administration, SECU (Nov. 24, 2004).