VENABLE LLP

AUTHORS

Suzanne Fay Garwood

RELATED INDUSTRIES

Consumer Financial Protection Bureau Task Force

Financial Services

ARCHIVES

2014 2010 2006
2013 2009 2005
2012 2008 2004
2011 2007

Articles

March 31, 2014

Venable CFPB Update: CFPB's Nashville Field Hearing on "Payday" Lending: Not What They Expected

Last week, the CFPB held a **field hearing on payday lending issues**. The purpose of the hearing was to release the CFPB's latest report on payday lending and hold a forum to discuss the report's findings as well as payday lending generally.

This alert discusses the report as well as the field hearing.

CFPB Payday Report

The report, "**CFPB Data Point: Payday Lenders**," was published by the Bureau's Office of Research and written by Kathleen Burke, Jonathan Lanning, Jesse Leary, and Jialan Wang. (The **press release** announcing the report is also available.) The data for the report was gathered from the Bureau's examination of storefront lenders.

The report is divided into two major parts: (i) loan sequences; and (ii) annual loan usage. The key findings are:

- **Rollovers.** Over 80 percent of payday loans are rolled over or followed by another loan within 14 days (renewed).
- **Sequences.** Fifteen percent of new loans are followed by a loan sequence at least 10 loans long. Half of all loans are in a sequence at least 10 loans long.
- **Amortizing Loans.** Few borrowers amortize their loans. Loan size is more likely to go up in longer loan sequences.
- **Monthly Payments.** Monthly borrowers are likely government benefit recipients and likely to stay in debt for 11 months or longer.
- **Renewals.** Most borrowing involves multiple renewals rather than distinct borrowing episodes.

Loan Sequences

For purposes of this report, a loan sequence is defined as a series of loans taken out within 14 days of repayment of a prior loan.

- 82 percent of loans are renewed within 14 days.
- 36 percent of new sequences end with the initial loan being repaid.
- 4 percent of new sequences result in a borrower defaulting on the first loan.
- More than half of new sequences do not go past a single renewal.
- 22 percent of sequences extend for seven or more loans.
- 15 percent of sequences extend for 10 or more loans.
- Borrowers do not self-amortize their payday loans.

Annual Loan Usage

- Relatively few borrowers have multiple periods of borrowing separated by periods without borrowing within a given year.
- The median number of loans per 11 months is six.
- 64 percent of new borrowers renew their loans; 20 percent of new borrowers default; 15 percent of new borrowers repay.
- Differences in the number of loans taken primarily are driven by the length of the sequences not the number of sequences.

The report does not draw any conclusions from this data or provide recommendations for a regulatory approach. Nevertheless, it is clear that the Bureau continues to focus on the issue of "sustained use" of small dollar product and the industry should anticipate that any regulations issued by the Bureau will focus on that concept.

Nashville Field Hearing

On March 25, 2014, the Bureau held a field hearing on payday lending in Nashville, Tennessee. As is typical, the hearing was divided into three parts: (i) welcoming remarks; (ii) panel presentation; and (iii) audience participation. What wasn't typical was the outpouring of support for the lenders that were the focus of the hearing.

Welcoming Remarks

Cheryl Parker Rose introduced CFPB Director Richard Cordray and **Tennessee Attorney General, Robert E. Cooper, Jr.**, who made the welcoming remarks.

Attorney General Cooper recalled his time of service with Director Cordray when he was the Attorney General of Ohio, and noted Cordray's accomplishments, including an $11 million default judgment against a military lender. Cooper noted that he believes consumers should receive the information they need to shop for credit, that prices should be upfront and clear, the risks should be visible, and there should be no fine print.

Cordray followed Attorney General Cooper and announced the release of the CFPB's report. He noted that consumers continue to need reliable lending channels that meet their short-term need for credit. At present, over 12 million consumers use payday loans. However, Cordray is concerned that the study indicates that consumers are not using the product to respond to emergency situations. Accordingly, Cordray stated that the goal of the Bureau is to preserve access to credit, but eliminate sequential or sustained use by customers.

Panelists

The panelists, identified below, provided an array of perspectives on payday lending; however, most were supportive of retaining the product in one form or another. Corey Stone, Cheryl Parker Rose, Richard Cordray, and David Silberman from the Consumer Financial Protection Bureau sat on stage with the panelists, but they did not present at the hearing.

- **Paige Skiba** – Vanderbilt Law School. Dr. Skiba is an economist, who has dedicated her research to payday loans. The results of her findings are mixed because the loans help some but are "devastating" to others. Dr. Skiba noted that what is absent from the conversation is an analysis of how consumers end up at the shop in the first place and how to prevent consumers from getting into a situation of needing the loans. Although Dr. Skiba did not recommend a particular solution, she cautioned against banning the product altogether.
- **Stephen Reeves** – Cooperative Baptist. Mr. Reeves provided insight from the "faith" perspective. He noted that churches are on the front lines of assisting consumers with financial stability and he found that stories of abuses by payday lenders were more common than unusual.
- **Oneshia Herring** – Center for Responsible Lending. Ms Herring believes that payday lending is predatory for three reasons. First, the loans have a triple-digit interest rate. Second, they are designed to create a long-term cycle of debt because a "good" customer is one who reborrows. And third, payday lenders avoid analyzing whether the consumer has an ability to repay, rather they look only at their ability to collect. She urged the CFPB to limit the terms that payday lenders can offer (because they cannot limit usury) to provide consumers with financial stability.
- **Jamie Fulmer** – Advance America. Mr. Fulmer provided the audience with insight into consumer experiences with their products, which are a mix of payday and installment. Mr. Fulmer noted that consumers are "overwhelmingly satisfied" and that few consumers file complaints with state or federal agencies. He noted that in 2013, 200 complaints on 11 million transactions were filed, and some of those were fraud. Mr. Fulmer warned that historically the focus has been on restrictions on lenders; however, regulators need to switch focus to consumer need and avoid rules that ignore how consumers act in the real world.
- **D. Lynn DeVault** – Check Into Cash. Ms DeVault works for a small lender based in Cleveland, TN. They have 1,000 stores in 30 states and they worked closely with CFSA to create the association's Best Practices. Her overarching message is that a one-size-fits-all solution will not be the best result for consumers and that the Bureau needs to retain regulatory flexibility to allow for innovative financial solutions.
- **Pamela Banks** – Consumers Union. Ms. Banks works with activists to pass consumer protection laws to provide for a fair, just marketplace. Her goal is to empower consumers to protect themselves. She has taken a strong stance against deposit advance products and supports guidance from the CFPB for ability-to-repay tests and limiting the number of loans taken.

Also present in the audience from the CFPB (but did not speak) were Holly Petraeus and Laura Udis.

Audience Participation

Although the CFPB heard from a number of attendees, one of the important messages sent to the Bureau was the unspoken message. Filling the audience were large stickers that read "Our Credit/Our Choice." For every commenter who spoke up against the product, at least two consumers advocated for it. A few examples:

- Alisha Brown has worked for a payday lender for twelve years and noted that for every "horror story" that we hear, she has seen "a dozen more success stories."
- Jessica Parker, a single mother with two kids, needed money for rent and everyone else told her "no" – except for her payday lender.
- Gary McNabb is the CEO of small payday lender in rural Tennessee. On his way to the hearing he called four banks. Their minimum loan amount was between $1,000 - $5,000 and they would not do smaller loans because they cannot make money on smaller dollar loans.

What Is Next?

Following the hearing, CFPB staff confirmed that the next step in their rulemaking process is to convene a **SBREFA panel**. That panel will discuss a number of issues that will be the topic of a rulemaking. After the panel is created, the Bureau will issue a proposed rulemaking.

If you would like to participate in or learn more about the SBREFA panel, please contact a **Venable CFPB Taskforce attorney**.