WYOMING LEGISLATIVE SERVICE OFFICE

Research Memo

05 RM 063

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Re: Options for Enhanced Regulation of Post-Dated Check Cashing

QUESTION

1. **Identify policies adopted by other states that incorporate enhanced regulation of post-dated check cashing. Briefly outline the potential intended and unintended consequences of such policies.**

ANSWER

1. **According to a June 2005 National Conference of State Legislatures (NCSL) publication, 36 states (and the District of Columbia) have imposed legislation related to payday lending or post-dated check cashing. According to NCSL, in the remaining states, lenders are subject to adopted interested rate maximums for more traditional "loans."**

   Among the states with specific payday lending legislation, substantial variation exists regarding: maximum fees, duration for payback, maximum principal amounts, ability to rollover outstanding commitments, and disclosure requirements. Furthermore, levels of compliance brought about by complex administration and enforcement requirements may result in significant divergence between established policy and real world practice.

MAXIMUM RATES/FEES Wyoming's statute limits the finance charge to the greater of $30 or 20 percent per month on the principal balance of the post-dated check. At post-dated check amounts under $150, Wyoming's finance charge tends to be among the highest base finance charges for states that have imposed a maximum limit. For higher principal amounts, Wyoming remains at the high end of the range of rates; however, other states also have 15 to 25 percent caps.

Despite the comparatively higher base rates, Wyoming statute currently prohibits "any amount as a charge in connection with a post-dated check or similar arrangement" other than the finance charge itself. Some other states allow for additional fees or charges, which would influence the above comparison by essentially raising the effective cost to the consumer. Fees for such things as court costs cannot be retrieved from delinquent customers in Wyoming. The current statute regulating the finance charge provides a simple, straightforward mechanism for reimbursing lenders. However, one *potential* unintended consequence of this policy is customers who repay money as arranged ultimately pay the same fees as those who become delinquent.

REGULATION OF EXTERNAL ENTITIES According to materials from consumer advocacy groups, a prominent concern in other states is the existence of "rent-a-banks" whereby local lenders partner with out-of-state banks, allegedly, to circumvent state limits on finance charges, etc. Similar concerns have been expressed regarding the operation of certain Internet sites which offer post-dated check cashing, or similar, services.[1] Some consumer advocates point to a Georgia law (2004 S.B. 157) which was recently upheld by the 11th Circuit Court of Appeals as a means of limiting payday lending through out-of-state banks. Despite these concerns, the Wyoming Department of Audit reported that similar concerns have not previously been identified in Wyoming. Wyoming's comparatively high finance charges may serve to diminish the incentive to establish relationships with out-of-state banks, since such relationships would be much more advantageous in states with lower regulated rates, or other limitations.

MAXIMUM LOAN AMOUNT Wyoming statutes do not impose a maximum on the amount of the post-dated check. According to LSO Research staff analysis of NCSL data, 27 states do establish maximum loan amounts for payday lending.[2] The maximum amounts range from $300 to $1,000, with the most common maximum being $500.

Establishing a maximum loan amount in isolation of other policies may be difficult to enforce and could inadvertently result in higher fees for post-dated check customers, by encouraging "loan splitting." First, without a simultaneous limit on the number of transactions, a maximum amount per post-dated check could be circumvented by writing multiple checks, potentially with multiple check cashing businesses. Second, under Wyoming's current finance charge structure, if a customer desired to write a post-dated check for $400 (for one month), the finance charge for the transaction would be capped at $80, or 20 percent of $400. However, by splitting the transaction into two transactions ($300 and $100), possibly with two different check cashing businesses, the customer could be charged up to $90, i.e., $60 charge for the $300 transaction and $30 charge for the $100 transaction.[3]

Multiple outstanding transactions, by themselves, are not prohibited by Wyoming statutes. Nonetheless, W.S. 40-14-349 governing supervised loans does prohibit the following:

> "more than one (1) loan agreement with the lender or with a person related to the lender, *with intent to obtain a higher rate of loan finance charge than would otherwise be permitted by the provisions on loan finance charge* for supervised loans (W.S. 40-14-348) or to avoid disclosure of an annual percentage rate pursuant to the laws relating to disclosure and advertising." (emphasis added)

In practice, the Wyoming Department of Audit applies this requirement to post-dated checks as well.

NUMBER OF POST-DATED CHECKS OUTSTANDING Aside from prohibitions against "rollovers,"[4] and excessive finance charges (discussed above), Wyoming statutes do not limit the number of post-dated checks any customer can have outstanding at any one time, particularly with multiple check cashers. W.S. 40-14-364 does limit "rollovers." It states, "No post-dated check or similar arrangement shall be repaid or otherwise consolidated by proceeds of another post-dated check or similar arrangement accepted by the same post-dated check casher."

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[1] For completeness, according to the Wyoming Department of Audit, there are a handful of Internet operations that are licensed in Wyoming. Further, a recent state audit of one of these Internet operators identified no violations of state requirements.
[2] Two other states impose a limit that is at least partially based upon a consumer's gross income.
[3] Even in the absence of a maximum amount for post-dated checks, the Department of Audit reported identifying instances of "splitting," potentially with the intent of increasing the total finance charge on the transaction.
[4] Rollovers are essentially defined by using the proceeds of one post-dated check to cover the balance of prior post-dated check.

Based on a review of several of the states with maximum check amounts, it appears that states generally impose the maximum on the check cashing business by limiting the number of checks held by any one institution for each customer. Such a policy would not prohibit individuals from visiting multiple check cashing businesses, however.

The administrative complexities inherent in limiting the number of outstanding checks of a customer appear to constrain the ability to enforce limitations on customers who elect to pursue arrangements with multiple check cashers. Nonetheless, ***Florida*** and ***Oklahoma*** are two identified states with statutes that prohibit more than one deferred presentment agreement in force at one time. For example, see Fla. Stat. Ann. 560-404(19) below. Florida statute limits the number of outstanding transactions per customer, imposes a 24-hour "cooling off" period upon the repayment of the transaction, and, in another section (Fla. Stat. Ann. 560-404(23)), provides for a statewide, real-time database along with a $1 transaction charge for administration.

> (19) A deferred presentment provider may not enter into a deferred presentment transaction with a person who has an outstanding deferred presentment transaction with that provider or with any other deferred presentment provider, or with a person whose previous deferred presentment transaction with that provider or with any other provider has been terminated for less than 24 hours. The deferred presentment provider must verify such information as follows:
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> (a) The deferred presentment provider shall maintain a common database and shall verify whether that deferred presentment provider or an affiliate has an outstanding deferred presentment transaction with a particular person or has terminated a transaction with that person within the previous 24 hours.
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> (b) The deferred presentment provider shall access the office's database established pursuant to subsection (23) and shall verify whether any other deferred presentment provider has an outstanding deferred presentment transaction with a particular person or has terminated a transaction with that person within the previous 24 hours. Prior to the time that the office has implemented such a database, the deferred presentment provider may rely upon the written verification of the drawer as provided in subsection (20).

The implementation of a statewide database, particularly in rural areas, is a chief policy concern with this approach.

ROLLOVERS As discussed previously, Wyoming statute prohibits refinancing or repaying one post-dated check with another. Other states do allow for the refinancing, or "rollover" of a post-dated check. The national payday lending industry association, Community Financial Services Association of America (CFSA) includes statement against rollovers in their best practice guidelines:

> **Rollovers.** A member will comply with State laws on rollovers (the extension of an outstanding advance by payment of only a fee). In States where rollovers are not specifically allowed a member will not under any circumstances allow a customer to do a rollover. In the few States where rollovers are permitted, a member will limit rollovers to four (4) or the State limit, whichever is less.[5]

Notwithstanding the statutory language and the industry platform, Wyoming state regulators did explain that, in practice, some institutions do engage in what is referred to as "touch and go loans." In these cases, a customer may engage in a $100 post-dated check transaction, return on the date of the post-dated check, and repay the $100 and appropriate finance charge (probably $30). Then the customer may subsequently enter

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[5] Source: http://www.cfsa.net/genfo/egeninf.html, visited June 30, 2005.

into a second transaction and receive $100 in return. In short, the customer leaves after paying the $30 finance charge and has essentially extended repayment of a $100 principal. Moreover, under the current statute, a customer could enter into a transaction with a second check casher in order to pay off a prior transaction with the original check casher. Florida's statute which provides for the combination of a statewide database system and a cooling off period of 24 hours is the only mechanism imposed in other states that could be identified to address this potential.

MAXIMUM DURATION OF LOAN Wyoming statute establishes the maximum term of any post-dated check "shall be one (1) calendar month." (W.S. 40-14-363(b)) According to the Department of Audit, one unrelated benefit of the month limitation is the calculation and application of the finance charge, which is currently established at 20 percent per calendar month. A limited review of state statutes by LSO Research staff suggests that one calendar month (or 30 or 31 days) is the most common maximum duration of a post-dated check transaction. However, there are exceptions, ***Ohio*** has a particularly long maximum term of six months (Ohio Rev. Code Ann. 1315.39(A)(2)) and the maximum term in ***Kentucky*** is 60 days (Ky. Rev. Stat. Ann. 368.100(13)).[6] Another state, ***Missouri***, imposes a minimum term of 14 days on post-dated check transactions (Mo. Rev. Stat. 408.506). One consumer rights organization argues for a *minimum* loan term of 90-days, "to enable borrowers to recover from financial emergencies."[7]

DISCLOSURE REQUIREMENTS & OVERSIGHT The Department of Audit regulates the post-dated check cashing industry in Wyoming. In this role, the Department licenses firms, requires repayment of inappropriate charges, and enforces applicable Uniform Consumer Credit Code (UCCC) requirements. For example, the Department of Audit requires the notification of the annual percentage rate (APR) on the transaction paperwork, providing notice to customers. In some states, more explicit disclosure statements are mandated by statute. Recent legislation adopted by the ***Illinois*** Legislature (2005 Public Act 94-0013) provides an example of a state with much more explicit disclosure requirements. It requires check cashers to provide a pamphlet to consumers with a toll-free number to see if the lender is licensed, and disclosure statements that advise that the transaction is not intended to meet long-term financial needs and warnings that the customer cannot be prosecuted in criminal court to collect on the loan.

If you have any additional questions on this or another topic, do not hesitate to contact LSO Research staff at 777-7881.

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[6] Due to time and resource constraints LSO Research staff narrowed the review of state statutes to those identified by third parties as being different than one month (or equivalent number of days).
[7] Source: Center For Responsible Lending, http://www.responsiblelending.org/pdfs/2b002-payday2005.pdf, visited July 1, 2005.