

City Of Milwaukee

**CONVENIENT LENDING
TASK FORCE**

DRAFT

**FINAL REPORT AND
RECOMMENDATIONS**

Issued April, 2006

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INTRODUCTION

The City of Milwaukee's Convenient Lending Task Force was created by Common Council File Number 041000, which was adopted on February 22, 2005 (Appendix A). This resolution directed the 10-member Task Force to "investigate the impacts of convenient cash businesses on surrounding neighborhoods, including but not limited to effects on public safety and community and economic development". It further directed the Task Force to develop a list of recommended public-policy solutions to problems it identifies and to present its findings and recommendations to the Common Council.

TASK FORCE MEMBERSHIP

The 10 members of the Convenient Lending Task Force are:

Ald. Joe Davis, Sr., chair (appointed by the Common Council President)
Ald. Terry Witkowski, vice-chair (Common Council President)
Chris Callen, Wisconsin Bankers Association (Common Council President)
Kathryn Crumpton, CCCS of Greater Milwaukee (Mayor)
Dorothy Dean, citizen at large (Common Council President)
Dimitri Jordan/Albert Franitza, Department of City Development (Commissioner of City Development's designee)
Deputy Inspector Anna Ruzinski, Milwaukee Police Department (Police Chief's designee)
Bethany Sanchez, Metropolitan Milwaukee Fair Housing Council (Common Council President)
Jim Walrath, Legal Aid Society of Milwaukee (Common Council President)
Bobbie Webber, Jr., Neighborhood Assistance Corporation of America (Common Council President)

MEETING DATES

The Convenient Lending Task Force convened on the following dates:

June 9, 2005
July 8, 2005
September 16, 2005
October 14, 2005
November 10, 2005
December 2, 2005
February 3, 2006
March 3, 2006
April 7, 2006

The agendas and minutes these meetings are found in Appendix B.

DEFINITIONS

The resolution creating the Convenient Lending Task Force directed the Task Force to study the impacts of “convenient cash businesses”. This term refers to three types of businesses in particular: currency exchanges (i.e., check-cashing businesses), payday loan agencies and title loan agencies. In many cases, a particular business establishment functions as two of these types of businesses, most commonly a currency exchange combined with a payday loan agency. These establishments are also referred to as “convenient lending businesses”.

The City’s Zoning Code defines the three types of convenient cash businesses as follows:

CURRENCY EXCHANGE means, in accordance with s. 218.05, Wis. Stats., any person except banks incorporated under the laws of this state and national banks organized pursuant to the laws of the United States and any credit union operating under ch, 186, Wis. Stats., which obtains a certificate of authority from the Wisconsin commissioner of credit unions, engaged in the business of and providing facilities for cashing checks, drafts, money orders and all other evidences of money acceptable to such community currency exchange for a fee, service charge or other consideration. This term does not include any person engaged in the business of transporting for hire, bullion, currency, securities, negotiable or nonnegotiable documents, jewels or other property of great monetary value nor any person engaged in the business of selling tangible personal property at retail nor any person licensed to practice a profession or licensed to engage in any business in this state, who in the course of such business or profession and, as an incident thereto, cashes checks, drafts, money orders or other evidences of money. (s. 295-201-135)

PAYDAY LOAN AGENCY means an establishment providing loans to individuals in exchange for personal checks as collateral. (s. 295-201-445)

TITLE LOAN AGENCY means an establishment providing loans to individuals in exchange for receiving titles to the borrowers’ motor vehicles as collateral. (s. 295-201-661)

All three types of convenient cash businesses are licensed by the Wisconsin Department of Financial Institutions, Division of Banking – currency exchanges under s. 218.05, Wis. Stats. (community currency exchanges) and the other two types under s. 138.09, Wis. Stats. (precomputed loan law).

NUMBER AND DISTRIBUTION OF CONVENIENT LENDING BUSINESSES

Appendix C shows the current geographic distribution of convenient cash businesses in the city of Milwaukee. The following table shows the number of establishments by aldermanic district, as well as the non-white population and median household income of each district.

Aldermanic District	No. of Convenient Cash Businesses, Jan., 2006	Pct. Of Population Non-White, 2000 Census	Median Household Income, 2000 Census*
1	7	82.2%	\$30,265
2	12	68.4%	\$35,038
3	1	21.1%	\$35,019
4	4	56.9%	\$21,586
5	5	29.9%	\$41,751
6	5	93.5%	\$20,452
7	5	89.0%	\$30,704
8	3	55.8%	\$31,394
9	8	56.9%	\$37,025
10	2	35.2%	\$39,437
11	1	13.0%	\$40,737
12	9	79.2%	\$24,833
13	5	19.4%	\$41,990
14	0	21.5%	\$37,960
15	4	94.5%	\$21,198
City Total	71	54.6%	\$32,216

* Median household income is an approximation based on assignment of census "block groups" to aldermanic districts.

Geographic Distribution

Both the map and the table indicate that the distribution of convenient cash businesses in Milwaukee is highly uneven. The 2nd Aldermanic District on the Northwest Side has the largest number of these establishments (over one-sixth of the city total), followed by the 12th District on the Near South Side and the 9th District on the Far Northwest Side. The concentrations along North 76th Street and West Capitol Drive are particularly notable. Central-city aldermanic districts tend to have an average number of convenient cash businesses (see Districts 4, 6, 7 and 15), as does the Far South Side (District 13). (Note: In this analysis, 4 or 5 establishments is considered an average number of convenient cash businesses in an aldermanic district.) Convenient lending establishments are relatively rare on the East, Far West and Far Southwest Sides (Districts 3, 10 and 11), and there are none at all on the Southeast Side (District 14).

Correlation with Minority Population

The three aldermanic districts with the most convenient cash businesses -- 2, 12 and 9 -- all have minority populations above the citywide average of 54.6%. However, they are not the districts with the largest non-white populations. Those districts -- 15, 6 and 7 -- all have just an average number of convenient cash businesses. On the other hand, the districts that have the fewest convenient cash businesses -- 14, 3 and 11 -- all have lower-than-average concentrations of

minority residents. Among districts with low minority populations, only district 13 has at least an average number of convenient lending businesses.

Correlation with Income

There does not appear to be a strong correlation between the number of convenient cash businesses in an aldermanic district and the median household income in the district. Two of the three districts with the most convenient cash businesses – 2 and 9 – have median household incomes above the citywide average, while incomes in the other district -- 12 -- are well below the city average. The three poorest districts -- 6, 15 and 4 -- all have just an average number of convenient cash businesses. The two highest-income districts – 13 and 5 – both have an average number of convenient lending businesses. However, it should be noted that the three districts with the fewest convenient cash businesses -- 14, 3 and 11 -- all have above-average median household incomes.

Other Wisconsin Communities

Milwaukee is not the only Wisconsin community to experience a proliferation of convenient cash businesses. As the following table shows, Milwaukee actually has fewer such establishments per 10,000 residents than most other large municipalities in the state. Neighboring West Allis actually has twice as many convenient cash businesses “per capita” as Milwaukee, although Milwaukee’s second-largest suburb, Wauwatosa, has none. (Another suburb, Greenfield, has 10 convenient cash businesses, for a rate of 2.77 per 10,000 residents).

CONVENIENT CASH BUSINESSES IN 15 MOST POPULOUS WISCONSIN MUNICIPALITIES		
Municipality	No. of Licenses	No. of Licenses per 10,000 Residents (2004 pop. Est.)
1. Milwaukee	80	1.35
2. Madison	22	1.01
3. Green Bay	32	3.09
4. Kenosha	20	2.15
5. Racine	21	2.60
6. Appleton	19	2.64
7. Waukesha	7	1.05
8. Oshkosh	15	2.30
9. Eau Claire	16	2.50
10. Janesville	14	2.28
11. West Allis	16	2.64
12. La Crosse	12	2.33
13. Sheboygan	8	1.58
14. Wauwatosa	0	0
15. Fond du Lac	8	1.87

Note: This table shows the total number of currency exchange licenses and payday lender/title lender licenses in each municipality. Some establishments have both types of licenses; hence, Milwaukee has 80 licenses, but only 71 establishments (9 establishments hold both types of licenses).

OVERVIEW OF CONVENIENT LENDING INDUSTRY

As noted previously, the convenient lending industry is made up of payday lenders, title loan lenders and currency exchanges. The nature of this type of business is to appeal to a segment of the population that is either distrustful of traditional lending institutions or unable to use them because of credit issues.

Payday lending originated in the early 1990s, and its popularity continues to grow among certain segments of society. This has resulted in rapidly growing problems for some consumers and an increasing source of income for lenders. Payday loans are short-term loans of small amounts, generally less than \$500 with an annualized percentage rate that ranges from 391% to 572%. Typically, a consumer will write a check for \$345 and receive \$300 from the payday lender with the promise to hold the check for two weeks. The check will then be presented for payment. The cost of the loan is \$15 per \$100. If the consumer cannot afford to have the check clear his or her account in two weeks, the consumer returns to the payday lender, renegotiates the loan for another two weeks and pays another \$45. The average payday loan borrower pays \$800 to borrow \$325.

Title loans work much the same way, only with a lower interest rate, as the borrower will turn over the car title as collateral. The interest rate for these loans is about one-third the rate of traditional payday loans.

Currency exchange businesses market to persons who lack banking relationships and need a place to cash checks. The currency exchange business will charge a percentage of the check as a fee for cashing the check. The fee is generally 10% of the check amount.

Payday lending has grown in recent years. In 2004, 22,000 payday loan stores nationwide extended about \$40 billion in short-term loans. Fifty-two percent of the borrowers made between \$25,000 and \$50,000 annually, while 29% earned less than \$25,000 a year. Repeat borrowers account for 99% of payday loans. The average payday loan is “flipped” or “rolled over” 8 times by a single lender.

What is the appeal of a payday loan? It’s quick – all you need is a steady source of income and a checking account. Credit is no issue for those who may not qualify for a traditional loan or have a credit card. Payday loan amounts are small and generally intended to cover an emergency. A payday loan might be used for car repairs, to stop a utility disconnection, medical emergency or to cover a gambling debt. As a rule, banks and credit unions do not write loans for under \$1000. The payday loan is the type of loan that wouldn’t be needed if there were money in a savings account or a relative the borrower could ask to borrow money from. Borrowers say that payday loans are easy to understand, with a fee that is upfront and no hidden costs.

Those who have no relationship with a financial institution use currency exchange businesses. This may be because they don’t trust banks and credit unions or it may be because they have misused an account in the past and been denied access to the banking community. They may also be in this country illegally and not want to open an account because of their illegal status.

For these consumers, it is easier to pay a fee to cash a check with no questions asked than to apply for an account at a traditional financial institution.

Additional information on the customer base of the convenient lending industry is found in the Fannie Mae Foundation's in-depth 39-page report titled "Analysis of Alternative Financial Service Providers"

(www.fanniemae.foundation.org/programs/pdf/021904_altfin_servproviders.pdf). The authors of this report, Noah Sawyer and Kenneth Temkin, conclude, on the basis of their analysis of the locations of check-cashing outlets, payday lenders and pawnshops in Washington, DC, and 7 major urban counties across the nation, that:

- Convenient cash businesses are disproportionately located in minority, low-income neighborhoods.
- Convenient cash businesses tend to cluster in neighborhoods with a higher share of minority and low-income residents.
- More convenient lending businesses per capita, and fewer banks per capita, are found in census tracts that are disproportionately minority and/or poor.

As for why convenient lending industry customers are not using traditional financial institutions, Sawyer and Temken state: "It appears that mainstream financial providers either are not offering lower-income, minority households the core products and services they need or providers are not effectively reaching out to these consumers" (Sawyer and Temken, p. 4).

Appendix D contains a number of additional articles providing background information on the payday lending industry, including information on characteristics of the industry's customer base.

PUBLIC SAFETY ISSUES

Maps showing the locations of convenient lending institutions and robberies in the first 11 months of 2005, by police district, are found in Appendix E. In addition, Appendix E contains a citywide map showing the locations of banks, convenient lending institutions and 2005 robberies.

Also relevant to the issue of public safety are data on reported "Part 1" crimes (i.e., violent crimes) within 500-foot and 1,500-foot radii of convenient lending businesses and citywide in 2002, 2003 and 2004. These data are found in a table that is included Appendix E.

Based on the number of violent crimes (especially robberies) that have occurred in the vicinity of convenient cash businesses, as indicated by the crime maps and table, it appears that these establishments tend to set up in neighborhoods that have other socioeconomic issues. While the conclusion that these types of businesses increase crime in an area cannot be drawn, such establishments do increase the opportunity for crime to occur. Because convenient lending institutions do not fall under the same security guidelines as mainstream financial institutions, there are no sanctions for them not providing a safe environment in which to do business. For instance, they are not required to have security cameras or any specific types of lighting. This

creates an atmosphere for crimes of opportunity, such as robberies and thefts. Criminals have easy access to victims, who are perceived to have large amounts of currency on them. Victims in the normal course of business are not always cognizant of their surroundings, especially since they may have money matters or "troubles" on their minds. Combine these two conditions with the lack of a requirement for any type of surveillance deterrent and it makes for an inviting atmosphere for criminals. We must be careful to not blame convenient lending institutions for a rise in crime in the surrounding area, but these establishments are a contributing factor to the overall perception of lack of security in the area, which drives crime.

NEIGHBORHOOD IMPACT ISSUES

In the course of developing this report, the Task Force came to the realization that there are not readily-available data on the activities and impacts of convenient lending establishments (e.g., number and dollar volume of loans made, number of loan rollovers, geographic distribution of customers, etc.). The State of Wisconsin needs to do a better job of collecting data and disseminating it to the public. The Task Force found it particularly difficult to obtain data from Wisconsin Department of Financial Institutions, the agency that regulates convenient cash businesses.

Alderman Davis, on behalf of the Task Force, submitted a formal Open Records request to DFI for aggregate data collected by DFI on Schedule B of the "Loan Company Annual Report" which every payday loan business is required to submit to DFI by March 15 of each year (see copy of letter in Appendix F). Prior to the mailing of this letter, a member of the Task Force was informed by a DFI representative that DFI considers the information contained in the loan company annual reports confidential. However, in its response to the Open Records request, DFI provided the following aggregate (statewide) data on payday loan stores in Wisconsin:

Year	No. of Payday Loan Office Locations	No. of Loans Made	Total Value of Loans	Avg. Loan Amount
1996	64	80,000	\$11,200,000	\$140
1997	126	350,618	\$73,911,085	\$211
1998	162	630,300	\$147,180,513	\$234
1999	174	839,285	\$200,200,768	\$239
2000	202	955,666	\$241,526,398	\$253
2001	241	1,087,213	\$316,175,386	\$291
2002	274	1,222,864	\$367,296,623	\$300
2003	337	1,324,405	\$429,749,464	\$324
2004	393	1,502,391	\$506,621,990	\$337

These statistics indicate that in the most recent 4-year period for which data are available (2000 to 2004), the number of payday loan outlets statewide nearly doubled, the number of loans made increased 57% and, perhaps most significantly, the total value of payday loans made more than doubled, from \$241.5 million to \$506.6 million. While these figures are not broken down by county, municipality or ZIP code, they do indicate that convenient lending businesses are taking millions of dollars out of Wisconsin communities and neighborhoods. Also, as described earlier,

these are high-interest-rate loans that are frequently rolled-over by borrowers. Therefore, payday lenders have significant economic impacts on the neighborhoods in which their borrowers live, extracting millions of loan-fee dollars that might otherwise be used by neighborhood residents for long-term wealth-building.

While statistical data on the neighborhood-level impacts of convenient cash businesses are difficult to come by, there is plenty of evidence of harmful effects of these businesses. Perhaps foremost among these impacts is the increasing level of criminal activity near convenient cash businesses. As more convenient cash businesses locate within their boundaries, municipalities are noticing increases in violent and property crimes affecting business employees and customers, such as robberies, thefts and burglaries (see Appendix G for newspaper articles describing violent crimes occurring within or just outside Milwaukee convenient lending establishments). The public-safety impacts of convenient cash businesses on the City of Milwaukee are documented and discussed in the preceding section of this report.

Further evidence of the neighborhood impacts of convenient lending businesses is found in Steven L. Graves' article in The Professional Geographer, "Landscapes of Predation, Landscapes of Neglect: A Location Analysis of Payday Lenders and Banks" (Appendix H). Graves analyzed the location strategies pursued by banks and payday lenders in seven Louisiana parishes and in Cook County, Illinois, with particular emphasis on comparing the race and income characteristics of neighborhoods that have each type of business. This article also provides considerable useful background information on the characteristics of payday loans and the payday lending industry. The findings of Graves' statistical analysis suggest that payday lenders are locating in neighborhoods that are poorer and have higher concentrations of minorities than the community as a whole. Conversely, Graves found that banks favor locations in areas that have higher incomes and lower proportions of minorities than the community as a whole (this relationship was even stronger than the correlation between payday lender locations and minority/low-income populations). He also found that these relationships are particularly strong in large, urban counties. He concludes that, in less-populous counties, the spatial availability of retail space is a more important factor in location decisions of banks and payday lenders than income and racial characteristics of the local populations. In summary, Graves found that payday lenders target minority and low-income neighborhoods, while banks avoid and neglect the same neighborhoods.

Other notable problems associated with convenient cash businesses include increased traffic, pressures on limited parking, business and customer activities after normal business hours (especially affecting adjacent residential areas), and signage and lighting that are out of character with surrounding businesses. These same issues have already arisen in lower-income neighborhoods that have experienced the arrival of adult entertainment establishments, the spread of liquor stores, and the increasing presence of corner convenience stores.

ALTERNATIVES TO CONVENIENT LENDING BUSINESSES

One approach to stemming the proliferation and overconcentration of convenient cash businesses and to reducing their harmful impacts on communities is to offer their customers alternatives to convenient lending. Many of these alternatives are described in the Fannie Mae Foundation report titled "Innovations in Personal Finance for the Unbanked: Emerging Practices from the Field" (Appendix I). Among the case-study alternatives described in this report are:

- The "Stretch Loan" offered by ASI Federal Credit Union to its customers in Southern Louisiana. ASA members can obtain loans of \$200 to \$500 to tide them over until their next paychecks. These loans have an annual interest rate of only 12% and a weekly fee of \$3. ASI also offers one-on-one credit counseling and seminars on personal finance management.
- The "Cash & Save" initiative of the Union Bank of California. Cash & Save offers customers a combination of check-cashing services and traditional banking services in an effort to assist low- and moderate-income customers in making the transition to traditional banking.
- The Bethex Federal Credit Union and RiteCheck Partnership. This is a partnership between a traditional financial institution (Bethex) and a chain of check-cashing outlets (RiteCheck). Under this partnership, the institutions can offer a range of services extending from traditional banking products to check-cashing, money-wiring and utility-bill payment. RiteCheck customers receive free check-cashing of Bendix-issued checks. RiteCheck is also able to offer Bethex depository services to its customers.
- NorthSide Community Federal Credit Union's "Hot Funds/Cold Cash" initiative. This Chicago credit union offers small, low-interest-rate loans to its customers as an alternative to payday lending. Loans of up to \$500 have an annual interest rate of 16.5% and an initial loan fee of \$10, with repayment over a six-month term. Loan roll-overs are not permitted, but partial payments are allowed. Another NorthSide initiative called "Payday Alternative Loan" allows borrowers to take a second loan of up to \$500 if the balance on the first loan is \$250 or less.
- Compass Center's banking services for the homeless. With assistance from the for-profit Commerce Bank of Washington, the Compass Center, a non-profit organization that provides various services to Seattle's homeless population, offers basic banking services to the homeless at low or no cost. Homeless individuals are able to open and maintain bank accounts and to deposit their entitlement payments in those accounts. Commerce Bank maintains the master account for the Compass Center that is used to operate this program.
- Directo Program. Directo is an Atlanta-based financial technology firm. It has created a payroll-based debit card program that functions as an alternative to traditional checking accounts. A DirectoCard account is, in effect, an all-electronic checking account. An employee's paycheck is deposited directly in an electronic bank account, and funds can be withdrawn at any ATM. The Directo program is particularly beneficial to individuals who have been denied traditional checking accounts based on poor credit history. It allows an individual to establish a depository account (with ATM privileges) based solely on employment status, not credit history. Directo customers also benefit by being able to "cash" their paychecks without having to pay the fees charged by check-cashing establishments.

- Shorebank's Extra Credit Savings Program. This is a partnership between Chicago's ShoreBank and the non-profit Center for Economic Progress. Program participants (households eligible for the Earned Income Tax Credit) receive free tax preparation and financial education services. They are also encouraged to open bank accounts into which their tax refunds can be deposited directly. The Extra Credit Savings Program benefits low-income households by providing them with free income tax return preparation and a bank account, while providing ShoreBank with an expanded customer base.
- Northeast Community Federal Credit Union Tenderloin branch services. This credit union operates a branch in San Francisco's low-income Tenderloin neighborhood at which homeless, immigrant and low-income customers can obtain basic banking services (savings accounts, direct deposits) as well as services typically offered by convenient lending establishments (check-cashing, money orders and short-term loans similar to payday loans). Customers also receive financial education and one-on-one financial counseling. Thus, this program not only offers customers an alternative to high-cost convenient-cash business services, but also an opportunity to enter the traditional banking market and to begin the wealth-building process.
- Florida Central Credit Union services. This credit union operates two branches in Tampa's Hillsborough neighborhood. By paying a small membership fee, customers at these branches can obtain both lower-cost versions of convenient-cash services (e.g., check cashing and payday loans) as well as traditional banking services (e.g., savings and checking accounts, financial counseling). While Florida Central Credit Union charges risk-based interest rates for its consumer loans (i.e., higher rates for borrowers with poor credit histories), its rates are still far lower than those of convenient lending institutions.

Two other articles relating to alternatives to convenient-cash businesses are also found in Appendix I. One article describes a new bank in South Bronx that will offer full check-cashing services to its customers in an attempt to attract more unbanked people to become regular bank users. The other article discusses a New York State program under which banks in designated "banking development districts" (areas deemed underserved by traditional financial institutions) are rewarded with millions in state and municipal deposits, thereby giving them an incentive to open branches and make more loans in low-income neighborhoods. By encouraging the development of traditional banks and thrifts in underserved areas, the New York program in effect creates more alternatives to convenient lending.

Closer to home, there are at two significant alternatives-to-payday-lending initiatives underway in Wisconsin. In June, 2005, Goodwill Industries of North Central Wisconsin and Appleton-based Prospera Credit Union jointly opened the "GoodMoney" facility inside a new Goodwill store outside Appleton. At GoodMoney, consumers can obtain short-term loans and check-cashing services from Prospera at substantially lower cost than at convenient-cash outlets. Loan customers are not subject to credit checks but must have accounts with Prospera (with a balance as low as \$5), live in Prospera's four-county services area and pay a \$9.90 loan fee. Loans are in the \$200-\$750 range. Over 1,000 loans have been made since inception of the program, even though there has been no advertising. In addition to low-cost loans and check-cashing services, GoodMoney customers are also given information on the financial workshops and money/budget counseling services offered by the Goodwill-sponsored Financial Information & Service Center at another location. A news release relating to the GoodMoney initiative is found in Appendix J.

A second alternative to convenient lending is being offered to Wisconsin residents through "REAL Solutions," a collaborative effort of the Filene Research Institute (Madison), the Wisconsin Credit Union League and participating credit unions. This program, created in 2004, offers participating credit unions toolkits for developing low-cost alternatives to government and payroll check cashing and new alternatives to payday lending. It also offers services that don't relate to convenient lending *per se*, but target the same customer base, such as free direct deposit of income-tax refunds for consumers who open credit-union accounts. (Income-tax "refund anticipation loans" are similar to payday loans in that they typically have exorbitant interest rates and are aimed at low-income households.) REAL Solutions targets three groups of consumers: low-income tax filers, Hispanics and users of payday loan services. During 2005, 40 credit unions with more than 140 locations across the state joined the REAL Solutions program. More information about the REAL Solutions initiative is included in two Credit Union League documents in Appendix J.

REGULATION OF CONVENIENT LENDING BUSINESSES

The discussion of laws and regulations governing convenient lending businesses in this section of the Task Force report will concentrate mainly on payday loan and auto title loan businesses. There are, of course, other sources of convenient credit and check-cashing services that are targeted to low-income consumers. Convenient credit businesses also include pawnbrokers, rent-to-own stores, income-tax preparers that offer refund anticipation loans, and currency exchanges. But, in the main, it is the payday lenders and auto title lenders that have shown explosive growth in Milwaukee and around the state of Wisconsin. Surprisingly, this exceptional growth has not brought any significant changes to the legal framework within which these convenient lending businesses operate. The laws and regulations, at least at the federal and state levels, are basically the same as they were more than ten years ago when payday lending and other short-term consumer loan enterprises first opened their doors.

This discussion will first describe various federal and state laws that are intended to protect consumers from misleading, abusive, or unconscionable practices that have been observed in convenient lending transactions in Wisconsin, particularly Milwaukee. Second, the discussion will explore the extent to which zoning regulations have been crafted in Milwaukee to counteract the perceived, deleterious effects of convenient lending operations on neighborhoods or the city at a whole.

Federal Controls

The primary federal consumer protection regulation affecting convenient lending in Wisconsin is the federal Truth in Lending Act, or "TILA". As is the case with Wisconsin's own consumer protection laws, TILA is intended primarily to make consumer credit transactions, including consumer loans, uniform, transparent and useful for comparison-shopping purposes. TILA was first enacted in 1968 to cut back on deceptive creditor practices, such as misleading terminology and hidden, unstated charges. It imposes disclosure requirements that should be complied with before any consumer transaction is finalized. Perhaps the most common of these disclosure requirements is the "federal box" section on loan documents. This part of the loan contract is supposed to declare in conspicuous, bold print certain basic information: the amount loaned, the amount of the finance charges, the total amount of the loan and charges owed and payable; and

the "APR" or annual percentage rate, or annualized cost of credit. For enforcement purposes, TILA allows consumers to file suit for violations of its disclosure requirements.

The Truth in Lending Act does not, however, place restrictions on how much a lender can charge in loan interest, various fees (e.g., late fees) or other finance charges. Instead, TILA operates on the theory that ample disclosure of charges and terms will let consumers make informed, market-based decisions; that is, fully-informed consumers will be able to distinguish a good loan deal from a bad one, with overpriced loan products and the lenders that market them inevitably losing business. The market, so goes the theory, will regulate itself, and arguably arbitrary legislative or regulatory limits dictating how much lenders should charge, and what loan terms they can impose, will be unnecessary.

Another major source of federal consumer protection, the Fair Debt Collections Practices Act ("FDCPA"), prohibits various forms of abusive debt collection activities. This law was enacted primarily to protect consumers from unwarranted threats and harassment by bill collectors. Like TILA, the law gives consumers the right to claim in court that a creditor has engaged in prohibited, abusive conduct to collect a debt. But, also like TILA, the FDCPA does not impose limits on how much a lender can charge borrowers, either as fees and interest in the underlying loan transaction or as charges imposed as part of the debt collection process.

The Truth in Lending Act and the Fair Debt Collections Practices Act have governed payday and auto title lenders in Wisconsin since these businesses first appeared here. Moreover, these establishments have not protested the applicability of these laws to their operations. By contrast, in many states other than Wisconsin, convenient lending businesses have argued that TILA and state small-loan laws (typically usury statutes that place caps on interest rates) do not apply to their transactions at all. They have contended, for example, that their transactions are deferred check-cashing arrangements (sometimes called "deferred presentments") involving check-cashing service charges, not extensions of credit.

Why have these lenders openly promoted their products in Wisconsin as "loans," and conceded in this state that they are subject to TILA disclosure rules? The answer is tied to the Wisconsin's unique legislative stance on loan rate caps -- caps that are usually found in state small-loan laws or usury statutes. Wisconsin has no such caps; they were eliminated in 1984. Indeed, Wisconsin and New Mexico are the only states in the country that do not have rate ceilings on small loans. Accordingly, these states provide an exceedingly fertile environment for high-cost, high-rate loan deals. Payday lenders can charge over 1000% APR and auto title lenders can impose finance charges starting at 300% APR, just two examples from Milwaukee convenient lender deals, because Wisconsin does not control or limit the amount a consumer can be charged for a small loan (see sample loan agreement in Appendix K).

As a corollary, these lenders have found that cash-desperate consumers in Wisconsin are willing to pay incredibly high finance charges, even if they are fully and openly disclosed in compliance with TILA requirements. Thus far, market competition has not materialized; consumers in search of convenient, small loans clearly are showing a strong inclination to sign up for loans at very high costs.

Clearly, convenient lending businesses are booming despite TILA and the FDCPA. The main source of consumer protection under federal law – TILA -- has had little influence on loan product pricing by lenders, or on comparison shopping by borrowers. Payday and auto title lenders have generally complied with TILA disclosure rules simply because they have learned that their astronomical, fully-disclosed interest rates are not discouraging potential customers from becoming borrowers. Moreover, there have been few FDCPA lawsuits against these lenders because, in general, they have not needed to send delinquent accounts to debt collectors. Apparently, there are so many high-cost (and profitable) loans in the portfolios of these lenders that they find it unnecessary to pursue borrowers in default. As a result, there have been few occasions for FDCPA violations to occur.

State of Wisconsin Controls

In many respects, Wisconsin's legislative strategy to control abuses by payday and title loan businesses is similar to the federal approach. Loan terms and rates must be adequately disclosed; debt collection abuses are prohibited. But, as noted above, there is no restriction on what a lender can set as an interest rate, or on the amount of interest a lender can charge. Nor is there a limit on the number of times a payday loan can be "rolled over". Disclosure requirements are imposed by provisions of Wisconsin's Precomputed Loan Law" (s. 138.09, Wis. Stats.; copy can be found in Appendix F), and the Wisconsin Department of Financial Institutions ("DFI") is responsible for taking action against lenders who fail to comply. The precomputed loan law provides in part that no lender shall:

“...advertise, print, display, publish, distribute or broadcast or cause to be printed, displayed, published, distributed or broadcast in any manner, any statement with regard to the rates, terms, or conditions for the lending of money, credit, goods or things in action which is false or calculated to deceive.” (s. 138.09(5))

Further, every lender shall:

“(a) Deliver to the borrower, at the time a loan is made, a statement in the English language showing in clear and distinct terms the amount and date of the note and of its maturity, the nature of the security, if any, for the loan, the name and address of the borrower and of the licensee, the amount of interest, the proceeds of the loan after deducting such interest, a description of the payment schedule and the default charge. Disclosures made in accordance with the federal consumer credit protection act [TILA] and regulation Z shall also indicate that the borrower may prepay the borrower's loan in whole or in part and that if the loan is repaid in full the borrower will receive a refund of interest as provided by this section. The statement shall also indicate the percentage per year of interest charged in the transaction.

(b) Give to the borrower a plain and complete receipt for all cash payments made on account of any such loan at the time such payments are made.

(c) Permit payments of the loan in whole or in part prior to its maturity.

(d) Upon repayment of the loan in full mark indelibly every obligation, other than a security agreement, signed by the borrowers with the word "Paid" or "Canceled"

and cancel and return any note. When there is no outstanding secured obligation such licensee shall restore any pledge, cancel and return any assignment, cancel and return any security agreement given to the licensee by the borrower and file a termination statement terminating any filed financing statement.

(e) Take no note, promise to pay, security nor any instrument in which blanks are left to be filled in after the loan has been made except that a detailed description or inventory of the security may be filled in, with the written consent of the borrower within 10 day thereafter." (s. 138.09(8))

Interestingly, while the Precomputed Loan Law does not specify a maximum interest rate for payday loans, the very next section of the Statutes imposes such restrictions on pawnbroker loans (see copy of s. 138.10, Wis. Stats., also in Appendix L). Specifically, the Statutes limit pawnbroker loan amounts to \$150 and interest rates to 3% per month.

Beyond the controls given to DFI under the Precomputed Loan Law, the Wisconsin Consumer Act ("WCA") protections against unfair loan terms in chs. 422 and 425, Wis. Stats., as well as the protections against collection abuses set out in ch. 427, are enforceable by consumers in private actions. For example, the WCA imposes limits on the amount a lender may charge in delinquency charges for overdue payments, as well as limits on when lenders can assess attorney fees for debt collection efforts. It prohibits lenders from leaving out essential provisions in transaction documents -- provisions that might later be used to the borrower's disadvantage. The WCA also prohibits lenders and other creditors from engaging in "unconscionable" dealings such as price gouging and taking advantage of a consumer's lack of education or inability to understand the language of a contract.

Provisions such as these have formed the basis for private litigation against some payday lenders in Wisconsin. Some of these lawsuits have ended in monetary settlements for large numbers of customers. See, for example, news articles describing a settlement involving National Cash Advance in Appendix M. However, even million-dollar settlements benefiting thousands of borrowers have not dissuaded these businesses from continuing to charge loan rates ranging from 500 to 1000% APR.

Lastly, the Precomputed Loan Law and the Wisconsin Consumer Act contain an important mechanism for regulating consumer lending practices not found in the federal legislation, namely, licensing requirements. In order to do business in Wisconsin, a payday lender or auto title lender needs to comply with ss. 138.09 and 426.201 of the Wisconsin Statutes. In particular, s. 138.09 requires the business to be licensed by DFI. Application fees and surety bonds must be submitted. Background information forms must be completed to satisfy DFI that the corporate applicant and its officers meet standards of suitable character, general fitness, and financial responsibility. (However, consumers do not have a remedy against lenders who obtain licenses by misrepresentation or fraud.). After a license is obtained, the lender must file annual reports disclosing, among other things, consumer complaints that have been filed against it, the general volume of its loan activities, the volume of its delinquent and bad debt accounts, and its "rollover" payday loan inventory (a copy of the loan company annual report form is provided in Appendix N). The information provided on these reports could tell Wisconsin consumers a lot

about the profitability and volume of payday and title lending in the state, but DFI does not allow public access to the reports.

While the Precomputed Loan Law authorizes DFI to revoke or suspend lender licenses for misinformation in applications and reports, the Task Force is not aware of any occasion in which DFI has in fact revoked or suspended the license of a payday or title loan business for false, misleading, or incomplete reports; nor is the Task Force aware of any DFI action against a licensed lender for violations of the Precomputed Loan Law or the Wisconsin Consumer Act.

In summary, Wisconsin consumer protection laws do provide more enforcement tools to combat abusive practices by payday and title lenders than are available under TILA or the FDCPA. Litigation efforts, relying on the private remedies in the WCA, have successfully obtained rebates of finance charges, but litigation has not caused lender practices to change significantly, or, most importantly, brought about a reduction in fees and charges. Similarly, administrative enforcement of licensing rules by DFI has not curtailed the expansion of convenient lending businesses in municipalities around the state. Overall, these tools have done little to curb the overpricing of loan products or the abuses of repeated loan "rollovers."

In conversations with DFI officials, Task Force members learned that DFI is not at this time proposing any legislation to "toughen up" state regulations of convenient lending establishments. Thus, any changes in state law will need to be initiated at the "grass roots" level, with sponsorship by assembly and senate members who can get things done and help from effective lobbyists.

Local Regulations

While the federal and state governments regulate convenient lending businesses primarily from a consumer-protection perspective, the focus of local regulations has been on addressing the local impacts of such businesses through zoning.

City of Milwaukee Zoning Regulations

The City of Milwaukee began explicitly regulating convenient cash businesses in May, 1990, when the Common Council passed File Number 891575. This ordinance created a definition of "currency exchange" based on state statutes and designated currency exchanges as special uses in commercial, central business and industrial zoning districts. It did not create regulations applicable to payday loan or title loan businesses.

With the passage of Common Council File Number 990366 in November, 1999, the City of Milwaukee started to regulate title loan businesses. This ordinance made title loan agencies special uses in the same zoning districts in which currency exchanges were already special uses. Common Council File Number 000395, passed in September, 2000, imposed the same requirement on payday loan businesses.

In 2003 and 2004, the Common Council considered File Number 021309, a proposed ordinance that would have made all three types of convenient cash businesses prohibited uses in all zoning districts. The City's Zoning Code Technical Committee and, in particular, the City Attorney's Office did not look favorably on this legislation because it would have made it impossible to locate one of these businesses in the city of Milwaukee. They also felt that the legislation did not

provide convincing evidence that convenient lending businesses have substantial adverse impacts on the communities in which they locate. In November, 2004, the Common Council voted to place this ordinance on file.

While the Common Council did not find passage of File Number 021309 to be appropriate, it did enact another piece of legislation that further regulated the location of convenient cash businesses. In November, 2004, the Council passed File Number 031614, an ordinance that required any new currency exchange, payday loan agency or title loan agency to be located:

1. At least 1,500 feet from any existing currency exchange, payday loan agency or title loan agency.
2. At least 150 feet from any single-family or two-family residential zoning district.

In conjunction with development of these distance requirements, the City Attorney's Office prepared a legal opinion on this topic. This opinion, which can be found in Appendix N, states that the Common Council has, under proper circumstances, the authority to establish distance requirements in the zoning code for uses such as payday loan businesses. It is noted that courts have generally upheld distance requirements as being reasonably related to promoting the public welfare because they mitigate harmful effects of the restricted use. The City Attorney also indicates that the Common Council must make its decision to establish spacing requirements based on a substantial record of evidence which demonstrates a reasonable relationship between the proposed distance requirement and the reduction of harmful impacts of the regulated use.

Common Council File 031614 was the City's most recently enacted legislation relating to convenient cash businesses. All current Zoning Code provisions for these businesses can be found in Appendix O.

A Department of City Development analysis of Board of Zoning Appeals cases involving convenient cash businesses and considered by the Board since passage of File 031614 found that the City's current zoning regulations having been highly effective in preventing the further proliferation of these establishments. Specifically, DCD found that the Board:

1. Renewed special use permits for 2 existing convenient cash outlets.
2. Granted one existing facility a use variance.
3. Denied or dismissed special use permit requests for 6 proposed (new) convenient cash outlets.
4. Denied or dismissed use variance requests for 8 existing or proposed convenient cash outlets for which use variances are required.
5. Has not approved a special use permit or a use variance for any new convenient cash facility.

City of Milwaukee Non-Zoning Legislation

While most City legislation relating to convenient cash businesses has been in the area of zoning, the Common Council has considered a few non-zoning items. In October, 2000, the Common Council adopted File Number 000797, a resolution authorizing and directing the City's Intergovernmental Relations Division to lobby for introduction and passage of state legislation establishing a maximum interest rate that may be charged by payday loan agencies. However, as mentioned earlier, no interest-rate limits have been established to date. More recently, the Common Council adopted File Number 051001, a resolution expressing the City's support for enactment of 2005 Assembly Bill 914, which would establish a maximum finance charge of 2% per month for payday loans. Copies of these two Common Council files, as well as Assembly Bill 914, can be found in Appendix P.

Finally, in May, 2004, Ald. Joe Davis, Sr., introduced an ordinance that would require convenient cash businesses to meet various security-related requirements. For example, each business would be required to maintain a safe on the premises, have customer entrance and exit doors made of glass or other transparent material and maintain a list of all current employees that includes names, home addresses and home telephone numbers. In addition, this ordinance would require all managers and employees of convenient cash businesses to complete a training course in robbery prevention provided by the Milwaukee Police Department. In September, 2004, the City Attorney's Office issued an opinion on the proposed ordinance (copies of both the ordinance and the legal opinion can be found in Appendix P). The opinion indicates that the ordinance is not legal and enforceable and is problematic primarily on two grounds:

1. Certain provisions of the ordinance may exceed the statutory limits of the City's police powers.
2. Certain provisions of the ordinance may violate the Equal Protection Clause of the federal and state constitutions in that they mandate security measures for a certain class of businesses (i.e., convenient cash businesses) but do not require those same measures of other businesses that are similar in nature.

In this opinion, the City Attorney also notes that:

“.. regulatory measures may not be imposed against the quasi-financial industry due to opposition to its presence in the City or to its lending or other credit practices, including interest rates and collection methods. These are matters properly reserved for State regulation and that are in all likelihood pre-empted by State law.”

The City Attorney states that the most serious problem with this proposed legislation is the virtual lack of a legislative record in the ordinance file. The legislative record contains insufficient evidence to demonstrate a rational relationship between the specific provisions of the proposed ordinance and attainment of the police-power objective of enhancing public safety. Nor does it contain sufficient evidence to substantiate a basis and rationale for targeting the convenient lending industry, as opposed to other types of businesses. If additional evidence and appropriate legislative findings were provided, many of the City Attorney's concerns about the proposed ordinance might be sufficiently addressed. However, in its current form, the ordinance

is not legal and enforceable and it remains "in committee" (Zoning, Neighborhoods and Development Committee).

Regulations in Other Communities

Nationally, at least 34 municipalities are known to have enacted zoning ordinances or other general welfare regulations to curtail perceived problems generated by convenient cash business locations. A selected listing of such municipalities, the nature of the businesses regulated (e.g., check cashing, title loan, etc.) and the types of local controls is set forth in Appendix Q, "Payday Lending Zoning Laws/Legislation." Of the 34 municipalities, at least 23 have used zoning ordinances as a means of managing dramatic increases in the number and operation of convenient lending businesses. Some communities have classified such businesses as "special uses." With this classification, it is presumed that convenient cash businesses are not generally permitted uses and must, therefore, satisfy local zoning authorities that their presence will not adversely affect surrounding areas, particularly residential neighborhoods or nearby businesses. Likewise, as special uses, these businesses must demonstrate that their operations will not be detrimental to the "public health, safety and general welfare." Currently, the City of Milwaukee uses that approach, as does Superior, Wisconsin.

Some municipalities have carried the regulatory response a step further, enacting ordinances that limit the density of establishments or the number of convenient cash business locations allowed (usually based on a formula of one location per several thousand residents). Examples of these communities are denoted in the "Basis for Limits" column in Appendix Q under the term "Density." For example, the land use development ordinance of West Valley City, Utah, limits the number of check cashing or "deferred deposit loan" businesses to one per every 10,000 residents (see also the excerpt from the West Valley City code in Appendix Q). Other municipalities, such as Madison, Wisconsin, have focused not on controlling the number of businesses but, rather, on the hours of business operations (see the United States District Court decision for *The Payday Loan Store of Wisconsin, Inc. d/b/a Madison's Cash Express v. City of Madison* dated August 5, 2004, in Appendix Q). In the case of Madison, the court upheld such controls against a challenge based on claims of arbitrary and discriminatory legislating by the Madison Common Council. The Court reasoned that the city did not have to tackle all types of situations where businesses may produce certain adverse effects; it was enough that the Common Council speculated that convenient cash businesses could generate increased crime activity or more noise, traffic or distracting lighting. "There are rational reasons for legislating," said the court.

Consistent with those concerns, other cities and towns have imposed even greater limits on convenient cash businesses related to security and safety concerns, noise and signage. For example, Oakland, California, requires the presence of uniformed security guards, anti-loitering signs, unobstructed windows, and other strategies to deter criminal activity (Appendix Q).

Overall, more and more communities around the country are looking to municipal regulations to control the growth and adverse effects of convenient cash businesses. Even this February 28, the Tucson City Council enacted an ordinance that makes "non-chartered financial institutions" special uses and requires such businesses to be located at least one-quarter-mile from one another and at least 500 feet from residentially-zoned property. That city's planning commission memorandum and city attorney legal memorandum on this ordinance (Appendix Q) demonstrate

how local regulations can be developed, consistent with the concerns raised by municipal attorneys, to address the very same issues now under consideration by this Task Force.

RECOMMENDATIONS OF THE TASK FORCE

Based on its research, findings and analysis, the Convenient Lending Task Force makes the following recommendations:

1. The Wisconsin Department of Financial Institutions should amend its "Loan Company Annual Report" form (specifically, Schedule B of the form) to require loan companies to include information on the geographic distribution of their customers (e.g., distribution of customers by ZIP code or census tract). The Department of Financial Institutions should also make this information (on an aggregate basis, at least) available to the general public.
2. The Milwaukee Police Department, the Legislative Reference Bureau and the City Attorney should be directed to work together to explore options for tightening or creating City ordinances relating to regulation of the convenient lending industry. One such ordinance might set forth security requirements (e.g., store opening/closing procedures and requirements for security cameras, employee lists and parking-lot lighting) that are both enforceable and legal. This City working group may wish to consider regulations similar to those adopted by Oakland, California.

APPENDIX A

Common Council File No. 041000, resolution creating the Task Force



City of Milwaukee Common Council

Legislative File Number 041000 (version 2)

Title

Substitute resolution creating a task force to study the impacts of "convenient cash businesses" on Milwaukee neighborhoods.

Body

Whereas, In recent years, the city of Milwaukee has witnessed a proliferation of payday loan agencies, check-cashing businesses and similar "convenient cash" establishments; and

Whereas, Convenient cash businesses, because of the frequency of cash transactions and the amounts of money exchanged, may be attractive to criminals seeking to commit robberies or similar crimes; and

Whereas, Convenient cash businesses may have secondary impacts on the communities in which they are located, including effects on public safety and on neighborhood economic development efforts; and

Whereas, In order to identify and document the community impacts of convenient cash businesses, and to devise any necessary public-policy strategies for addressing those impacts, the Common Council finds that the health, safety and welfare of Milwaukee residents could benefit from the creation of a public task force to carry out these duties; now, therefore, be it

Resolved, By the Common Council of the City of Milwaukee, that the City of Milwaukee Task Force on the Impacts of Convenient Cash Institutions is created; and, be it

Further Resolved, That this Task Force shall consist of 10 members:

1. Two Common Council members (appointed by the Common Council President).
2. A representative of the Mayor's Office (appointed by the Mayor).
3. The Chief of Police or the Chief's designee.
4. A representative of the Wisconsin Bankers Association (appointed by the Common Council President).
5. A representative of the Metropolitan Milwaukee Fair Housing Council (appointed by the Common Council President).
6. A representative of the Legal Aid Society of Milwaukee (appointed by the Common Council President).

7. The Commissioner of City Development or the Commissioner's designee.

8. A representative of the Neighborhood Assistance Corporation of America (appointed by the Common Council President).

9. One citizen at large (appointed by the Common Council President).

; and, be it

Further Resolved, That the Common Council President shall designate one of the 2 Common Council members as the chair of the Task Force; and, be it

Further Resolved, That the Task Force is directed to investigate the impacts of convenient cash businesses on surrounding neighborhoods, including but not limited to effects on public safety and community and economic development; and, be it

Further Resolved, That the Task Force shall develop a list of recommended public-policy solutions to any issues or problems it identifies; and, be it

Further Resolved, That the Task Force shall submit and present its findings and recommendations to the Common Council within one year of adoption of this resolution, and shall thereafter be dissolved; and, be it

Further Resolved, That the City Clerk's Office shall provide staff support to the Task Force.

Drafter

LRB04441-3

JDO

01/31/05

Analysis

This resolution creates a 10-member City of Milwaukee "Task Force on the Impacts of Convenient Cash Institutions". It further directs the Task Force to investigate the impacts of convenient cash businesses on surrounding neighborhoods (including effects on public safety and community and economic development) and to develop a list of recommended public-policy solutions to any problems it identifies. The Task Force shall submit and present its findings and recommendations to the Common Council within one year of adoption of this resolution, and shall thereafter be dissolved.

APPENDIX B

Agendas and minutes from Task Force meetings



City of Milwaukee

Meeting Agenda

200 E. Wells Street
Milwaukee, Wisconsin
53202

CONVENIENT LENDING TASK FORCE

Ald. Joe Davis, Chair

Ald. Terry Witkowski, Vice-Chair

*Chris Callen, Kathryn Crumpton, Dorothy Dean, Dimitri Jordan, Anna Ruzinski,
Bethany Sanchez, Jim Walrath, Bobbie Webber*

Staff Assistant: Diana Morgan, 286-2231

Fax: 286-3456; E-mail: dmorga@milwaukee.gov

Thursday, June 9, 2005

9:00 AM

Room 301-A, City Hall

- 1) Task Force Members Introductions

- 2) Discussion of the Task Forces' Purpose

- 3) Discussion of what the Task Force should be looking at

- 4) Comments from the Public

- 5) Next meeting date, time and agenda



City of Milwaukee

Meeting Minutes

200 E. Wells Street
Milwaukee, Wisconsin
53202

CONVENIENT LENDING TASK FORCE

Ald. Joe Davis, Chair
Ald. Terry Witkowski, Vice-Chair
Chris Callen, Kathryn Crumpton, Dorothy Dean, Dimitri Jordan, Anna Ruzinski,
Bethany Sanchez, Jim Walrath, Bobbie Webber

Staff Assistant: Diana Morgan, 286-2231
Fax: 286-3456; E-mail: dmorga@milwaukee.gov

Thursday, June 9, 2005

9:00 AM

Room 301-A, City Hall

These minutes are a draft and have not been approved by the Convenient Lending Task Force.

Meeting convened: 9:09 AM

Members present: Ald. Joe Davis - Chair, Sr., Kathryn Crumpton, Dimitri Jordan, Anna Ruzinski, Bethany Sanchez, Jim Walrath.

Members absent: Terry Witkowski, Chris Callen, Dorothy Dean, and Bobbie Webber, Jr.

1) **Task Force Members Introductions**

Those present introduced themselves and offered an overview of their employment background and previous experience with convenient cash business establishments.

2) **Discussion of the Task Forces' Purpose**

Ald. Joe Davis offered an overview of the purpose of the creation of the Convenient Lending Task Force, according to File #0410000:

The Convenient Lending Task Force was created to study the impacts of "convenient cash businesses" on Milwaukee neighborhoods in a formal body, and to develop a list of recommendations that could be used as public-policy solutions to any problems that are identified. The Task Force should submit their findings to the Common Council within one-year of its creation.

3) **Discussion of what the Task Force should be looking at**

The following recommendations, were offered as initial study points of convenient cash establishments, by task force members:

Mr. Dimitri Jordan - Department of City Development:

- How many businesses exist in the City of Milwaukee?
- What types?
- Customer base?
- Dollar amounts being loaned, including interest on the loans?
- How can traditional lending institutions fill the existing gaps?
- How are current regulations established?
- The fiscal impact of convenient cash businesses on the City of Milwaukee, specifically the market interest rates the institutions are charging that are not going back into Milwaukee communities?
- Development of demographic maps outlining the areas in which convenient cash establishments are located.
- Visual charts comparing the interest rates associated with convenient cash businesses to those of traditional lending establishments.

Deputy Inspector, Anna Ruzinski - Milwaukee Police Department

Deputy Inspector Ruzinski recommended that the Task Force also review public safety issues surrounding convenient lending establishments. She advised that there is a higher potential for robberies in the neighborhoods where these establishments are located, and that one of the biggest deterrents to these types crimes, are vibrant involved neighborhoods. Deputy Inspector Ruzinski further advised that one of the ways to decrease these crimes is through the economics in neighborhoods and the concern of the citizens.

Deputy Inspector Ruzinski compared the convenient lending businesses to renter -a-centers in mid 1980's and early 1990's advising the task force of the similarities in practices.

Jim Walrath - Legal Aid Society of Milwaukee

Mr. Walrath recommended reviewing convenient lending establishments from the perspective of the impact they have on the consumer.

- How were the demands for cash met prior to the creation of convenient lending establishments?
- What causes them to be in high demand?

Mr. Walrath advised members of data available to the task force, from various organizations such as studies circulated by The National Consumer Law Center, which discusses the concentration of convenient cash businesses in minority neighborhoods and on military bases.

Mr. Walrath further commented that along with safety and appearance issues that there is also the danger of the nature of convenient cash businesses, and the type of marketing strategies they use, which come very close to raising the issue of blight, especially when in high concentration. He continued by explaining that the nature of advertisement that these enterprises engage in is generally revealed in their name, "Payday Loan Businesses". He expressed concern about the extent these businesses are drawing in consumers who really don't have paydays, but social security check days. He stated that this addresses the question, who is the customer base, and what income range are they in?

The other advertising issue Mr. Walrath recommended the task force explore is convenient lending businesses' stated goal of helping the consumer meet their short-term cash needs and whether that matches the actual practice and history these institutions have with their customers.

Ald. Davis requested that Mr. Walrath devise a list containing the recommendations of the task force, which can be used for research purposes. He suggested that the Marquette Law students working with Mr. Walrath in conjunction with the Legislative Reference Bureau to address specific questions, which can be reviewed from a legal standpoint.

Kathryn Crumpton - CCCS of Greater Milwaukee

Ms. Crumpton recommended that gaining an understanding of the profile of the consumer be considered by reviewing the following:

- Demographic maps*
- Marketing strategies*
- Why consumers are not using traditional institutions*
- Consumer education*

Bethany Sanchez - Fair Housing Council

Ms. Sanchez recommended the convenient lending task force research the impact of convenient cash businesses on families in their entirety. She commented that some consumers encounter predatory lenders in various ways, which leads to a vicious cycle, starting with predatory home loans the consumer seeks assistance through payday loan lenders.

Ms. Sanchez continued by recommending research of the following:

- Current regulations*
- Laws in other jurisdictions*
- Educational activities*

-How to encourage mainstream lenders to reestablish relationships in the cities communities?

Ald. Davis advised task force member of crime statistics involving convenient cash businesses within the past 6 months.

4) **Comments from the Public**

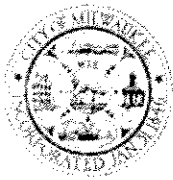
There were no public comments.

5) **Next meeting date, time and agenda**

The Convenient Lending Task Force members will discuss the recommendations listed in item #3 at the July 9, 2005 meeting, at City Hall, Room 301-A, 9:00 AM.

Meeting adjourned: 10:17 AM

*Diana Morgan
Staff Assistant*



City of Milwaukee

Meeting Agenda

200 E. Wells Street
Milwaukee, Wisconsin
53202

CONVENIENT LENDING TASK FORCE

Ald. Joe Davis, Chair

Ald. Terry Witkowski, Vice-Chair

*Chris Callen, Kathryn Crumpton, Dorothy Dean, Dimitri Jordan, Anna Ruzinski,
Bethany Sanchez, Jim Walrath, Bobbie Webber*

Staff Assistant: Diana Morgan, 286-2231

Fax: 286-3456; E-mail: dmorga@milwaukee.gov

Friday, July 8, 2005

9:00 AM

Room 301-A, City Hall

- 1) Review and approval of minutes of the June 9, 2005 meeting
- 2) Report of open meeting, open records policies, Council Records Manager, James Owczarski
- 3) Review of proposed goals and objectives of the Convenient Lending Task Force:

- 1. How many businesses exist in the City of Milwaukee, including types?*
- 2. What is the customer base?*
- 3. What are the dollar amounts being loaned and the interest rates on these loans?*
- 4. How to encourage mainstream lenders to reestablish relationships in the cities communities?*
- 5. How are current regulations established?*
- 6. The fiscal impact of convenient cash businesses on the City of Milwaukee, specifically the market interest rates the institutions are charging that are not going back into Milwaukee communities?*
- 7. The development of demographic maps outlining the areas in which convenient cash establishments are located.*
- 8. Visual charts comparing the interest rates associated with convenient cash businesses to those of traditional lending establishments.*
- 9. How were the demands for cash met prior to the creation of convenient lending establishments?*

10. *What causes convenient cash businesses to be in high demand?*
11. *What types of marketing strategies are being used?*
12. *Why aren't consumers using traditional institutions?*
13. *How to educate consumer about the impact of convenient cash businesses?*
14. *What are the current regulations?*
15. *What are the laws in other jurisdiction?*
16. *Public Safety issues related to convenient lending establishments in Milwaukee neighborhoods*

Version (1)

- 4) Comments from the Public
- 5) Next meeting date, time and agenda

NOTE: a) Members of the Common Council, and members of its Standing Committees who are not members of this Committee, may attend this meeting to participate or to gather information. Therefore, notice is given that this meeting may constitute a meeting of the Common Council or any of its Standing Committees, and must be noticed as such, although they will not take any formal action at this meeting.

b) Upon reasonable notice, efforts will be made to accommodate the needs of persons with disabilities through sign language interpreters or auxiliary aids. For additional information or to request this service, contact the Council Services Division ADA Coordinator at 286-2998, (FAX)286-3456, (TDD)286-2025 or by writing to the Coordinator at Room 205, City Hall, 200 E. Wells Street, Milwaukee, WI 53202.

c) Limited parking for persons attending meetings in City Hall is available at reduced rates (5 hour limit) at the Milwaukee Center on the southwest corner of East Kilbourn and North Water Street. Parking tickets must be validated in Room 205, (City Clerk's Office) or the first floor Information Booth in City Hall.

d) Effective July 1, 2005, persons engaged in lobbying as defined in s. 305-43-4 of the Milwaukee Code of Ordinances are required to register with the City Clerk's Office License Division. More information is available at www.milwaukee.gov/lobby or by calling 414-286-2238.



City of Milwaukee Meeting Minutes

City Hall
200 East Wells Street
Milwaukee, WI 53202

CONVENIENT LENDING TASK FORCE

ALD. JOE DAVIS, Chair

Ald. Terry Witkowski, Vice-Chair, Chris Callen, Kathryn Crumpton, Dorothy Dean, Dimitri Jordan, Anna Ruzinski, Bethany Sanchez, Jim Walrath, Bobbie Webber Jr.

*Staff Assistant: Diana Morgan, 286-2231, Fax: 286-3456
E-mail: dmorga@milwaukee.gov*

*File Specialist: Charlotte Rodriguez, 286-8797
E-mail: crodri@milwaukee.gov*

Friday, July 8, 2005

9:00 AM

Room 301-A, City Hall

Meeting Convened: 9:13 AM

Members Present: Ald. Joe Davis, Dorothy Dean, Dimitri Jordan, Bethany Sanchez, Jim Walrath and Bobbie Webber Jr.

Members Excused: Ald. Terry Witkowski, Kathryn Crumpton, Anna Ruzinski and Chris Callen.

1) **Review and approval of minutes of the June 9, 2005 meeting**

Motion to approve the minutes of the June 9, 2005 Convenient Lending Task Force meeting by Ms. Sanchez. Seconded, Mr. Walrath.

2) **Report of open meeting, open records policies, Council Records Manager, James Owczarski**

Mr. Owczarski offered an overview of the policies and procedures involved in open records and open meetings. He advised the committee that public bodies are required to notice meetings or discussions that involve committee business. This includes e-mail messages, with the exception of the discussion of the scheduling of items.

In addition, Mr. Owczarski advised the committee that the dissemination of information in terms of simple forwarding is okay, but that detailed communication regarding the information is not permissible, examples are if you make a communication, "John Smith called" it's okay; however a communication that would include "John Smith called and said" relaying more detailed information would be considered the conducting of business that should be noticed.

Other examples of communications that are not permissible include any communication between two members where a consensus is made, whereby one of the members relays the consensus and other information to another member and that member relays the information, and eventually the communication is made to several other committee members, essentially creating a walking quorum.

Mr. Owczarski advised that the best practice for the dissemination of information maybe

to communicate or forward the information to the Chair of the committee, or council staff for distribution to other members.

Mr. Owczarski further recommended the Wisconsin Public Records and Open Meetings Handbook as a reference guide to committee members.

3) Review of proposed goals and objectives of the Convenient Lending Task Force:

Ald. Davis open the floor to discussion relative to the proposed goals and objectives of the Convenient Lending Task Force, as listed on the agenda.

1. How many businesses exist in the city of Milwaukee, including types?

Ald. Davis requested Mr. Walrath give his observation using a demographic map created by the Legislative Reference Bureau (LRB), to outline the areas most concentrated with convenient lending businesses in the city of Milwaukee.

Mr. Walrath submitted exhibit 1, (listing of convenient lending establishments in the city of Milwaukee). The listing included, currency exchanges, loan companies (payday and title loan).

The task force determined that a comparison of the listing of convenient lending establishments provided by LRB, (exhibit 1), Convenient Cash Businesses in the city of Milwaukee and (exhibit 2), submitted by Mr. Walrath, indicating the number of convenient lending businesses in the city of Milwaukee be completed to determine the accuracy of the demographic map to assure thorough research and recommendations.

In addition, Mr. Walrath recommended that general income statistics be included as part of the research relative to the demographic positioning of convenient lending businesses in Milwaukee communities.

Ald. Davis recommended the development of map overlays for future meetings. He informed task force members that he would speak with LRB regarding the development of clear clip on overlays that will be used as a base map with census tract numbers inside, in addition to census tract data listed in a document that the task force can refer to for future research.

Mr. Jordan suggested that the map overlays reflect the locations of convenient lending businesses relative to traffic patterns and average income ranges.

In addition, Ms. Sanchez suggested that map overlays also include racial makeup.

2. What is the customer base?

Ms. Elyse Aasen, an intern working with Mr. Walrath, offered a summary of (exhibit 3), an abstract document, Race Matters, highlighting race and predatory lending. Based on the information contained in this document, Ms. Aasen used statistical data to compare the customer base of convenient lending establishments.

Mr. Bobbie Webber Jr. moved to make exhibit 2 part of the public record.

Ald. Davis recommended that the task force review the information submitted by Ms.

Aasen regarding the customer base, in combination with question three on the agenda, relative to dollar amounts being loaned and interest rates on the loans.

3. What are the dollar amounts being loaned and the interest rates on these loans?

Mr. Walrath submitted (exhibit 4), CUSTOMER B'S PAYDAY LOAN EXPERIENCE as a reference point for this topic.

Ms. Dean moved to make exhibit 4 part of the public record.

Ms. Dean recommended that the task force research the process of loan roll overs by convenient lending establishments.

4. How to encourage mainstream lenders to reestablish relationships in the cities communities?

The task force reviewed exhibit 5 presented by Ms. Crumpton.

Ald. Davis advised members that part of the task force's language and recommendations to the Planning Commission should detail how systematic locations are used as a strategy by convenient lending establishments to gain success specifically in lower income areas. Ald. Davis further explained how the data collected by the task force throughout their research may be useful in connecting with traditional lenders on the negative impact convenient lending establishment policies have on many lower income communities.

Ald. Davis further discuss the concept of small amounts of loans with extreme interest rate

4) Comments from the Public

There were no public comments.

5) Next meeting date, time and agenda

The next meeting is scheduled, Wednesday, August 17, 2005, 9:00 AM.

Meeting Adjourned: 11:04 AM.

*Diana Morgan
Staff Assistant*



City of Milwaukee

City Hall
200 East Wells Street
Milwaukee, WI 53202

Meeting Agenda

CONVENIENT LENDING TASK FORCE

ALD. JOE DAVIS, Chair

Ald. Terry Witkowski, Vice-Chair, Chris Callen, Kathryn Crumpton, Dorothy Dean, Dimitri Jordan, Anna Ruzinski, Bethany Sanchez, Jim Walrath, Bobbie Webber Jr.

**Staff Assistant: Diana Morgan, 286-2231, Fax: 286-3456
E-mail: dmorga@milwaukee.gov**

**File Specialist: Charlotte Rodriguez, 286-8797
E-mail: crodri@milwaukee.gov**

Friday, September 16, 2005

9:00 AM

City Hall, Room 301-B

- 1) Review and approval of minutes of the July 8, 2005 meeting
- 2) Review of proposed goals and objectives of the Convenient Lending Task Force:
 1. How many businesses exist in the City of Milwaukee, including types?
 2. What is the customer base?
 3. What are the dollar amounts being loaned and the interest rates on these loans?
 4. How to encourage mainstream lenders to reestablish relationships in the cities communities?
 5. How are current regulations established?
 6. The fiscal impact of convenient cash businesses on the City of Milwaukee, specifically the market interest rates the institutions are charging that are not going back into Milwaukee communities?
 7. The development of demographic maps outlining the areas in which convenient cash establishments are located.
 8. Visual charts comparing the interest rates associated with convenient cash businesses to those of traditional lending establishments.
 9. How were the demands for cash met prior to the creation of convenient lending establishments?
 10. What causes convenient cash businesses to be in high demand?
 11. What types of marketing strategies are being used?
 12. Why aren't consumers using traditional institutions?

CITY OF MILWAUKEE

2005 SEP 14 AM 9:41

RONALD D. LEONHARDT
CITY CLERK

13. *How to educate consumer about the impact of convenient cash businesses?*

14. *What are the current regulations?*

15. *What are the laws in other jurisdiction?*

16. *Public Safety issues related to convenient lending establishments in Milwaukee neighborhoods*

Version (3)

- 3) Public Comments
- 4) Next meeting date, time and agenda

This meeting will be webcast live at www.milwaukee.gov/channel25.

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City of Milwaukee Meeting Minutes

City Hall
200 East Wells Street
Milwaukee, WI 53202

CONVENIENT LENDING TASK FORCE

Friday, September 16, 2005

9:00 AM

Room 301-B, City Hall

Meeting Convened: 9:13 AM.

Members PRESENT:

Members Present: Ald. Davis, Ald. Witkowski, Mr. Callen, Ms. Crumpton, Ms. Dean, Mr. Jordan and Ms. Sanchez.

Members Excused: Ms. Ruzinski, Mr. Walrath and Mr. Webber Jr.

1) Review and approval of minutes of the July 8, 2006 meeting

Motion by Ms. Sanchez to approve the minutes of the July 8, 2005 Convenient Lending Task Force meeting.

2) Review of proposed goals and objectives of the Convenient Lending Task Force:

Ald. Davis open the meeting with an update relative to data collected by the committee to date.

Mr. Jordan provided information relative to items 2 (customer base) and 7 (demographic data) from the committee's list of proposed goals and objectives. This data consist of a transparency to be used as an over lay for a total of 11 demographic maps(Exhibit 1). Mr. Jordan explained that the maps contained data relative to the estimated average household income from the 2000 census, 1996 data estimating the income per square mile, 2000 census percentage of population under 18 year of age, percentage population by race, diversity and ethnicity, in addition to the percentage of housing units owner occupied.

Mr. Jordan advised the committee that the data suggest that the population of cash businesses have greatly increased in metropolitan areas in most communities.

Ald. Witkowski moved to make this data part of the record.

Ms. Sanchez requested a detail review of the data provided by Mr. Jordan.

Mr. Jordan advised members that he would summarize the data to determine whether there is a correlation between location, age, ethnicity, etc. detailed review at a future task force meeting.

Ald. Davis asked Mr. Callen to address item 4 on the task force's list of proposed goals and objectives relative to how to encourage mainstream lenders to re-establish relationships in communities.

Mr. Callen responded that from a practical standpoint, in addition to the literature the committee has researched, it appears that the reason the convenient lending businesses have become so popular is due to the convenience they provide, whether that be no hassle loan processing or location.

Mr. Callen stated that he would be interested in learning more about the loss experience that are derived from these loans.

Ms. Crumpton commented that credit unions market overdraft protection similar to the way payday loans have been marketed.

Ald. Davis advised the committee that the fact that Wisconsin has the 7th highest poverty level and unemployment rate has compelled the city to review the practices of convenient cash businesses. Ald. Davis continued by explaining that by assessing the strategies used especially in low-income areas will assist officials in determining what the actual impact of these institutions has on the city as a whole.

Ald. Davis concluded that his overall objective is to change the behavior patterns as a means of addressing the poverty level in Wisconsin.

A motion was made by Ms. Dean recommending the city of Milwaukee, CDBG program to include funding relative to consumer protection for fair lending.

Mr. Jordan referred to a Fannie Mae Foundation article to address item 6 (what is the fiscal impact of convenient cash businesses in low-income communities), on the committee's list of proposed goals and objectives, which indicates that impoverished neighborhoods pay extremely large interest rates when financing a loan through convenient cash businesses, which could otherwise create a substantial savings for the consumer.

Mr. Callen recommended that convenient cash businesses be forced to follow the same policies as banks under federal and state regulations. He questioned whether convenient cash businesses are checked on.

Mr. Callen further advised the committee that educating the consumer about the impact of convenient cash businesses is essential. He stated that he believes that educating the consumer should start in the schools as part of the curriculum.

Ms. Sanchez informed the committee that her organization currently visits various schools to speak about predatory home lending. She states that she has recently solicited fund raising from several financial institutions to do educational and outreach efforts in high schools

Ms. Sanchez referred to an article co-authored by Jim Carr, relative to a study for the Fannie Mae Foundation about how banks are missing out on opportunities to make money, by not doing businesses in many communities. Mr. Carr's study gave the impact over the United States.

Ms. Sanchez advised the committee that the statements in the article are no longer true because the banks have begun funding many of the convenient cash businesses.

Ms. Sanchez informed the committee that she had the opportunity to speak with Mr. Carr

a few years ago about how the city of Milwaukee could Mr. Carr's study and make it local. She was advised by Mr. Carr that by going to the Department of Financial Institutions and extrapolate from the number of payday loans that DFI has on record.

Ms. Sanchez further indicated that when Jim Carr did the study for the Fannie Mae foundation he was asked what he thought the solution was for this problem. She states that Mr. Carr stated that he did not believe that legislation would be as effective as education.

Ms. Sanchez stated that in more recently years when speaking with Mr. Carr he had changed his previous opinion about his study, he believed that a combination of both legislation and education are imperative to the resolve of predatory lending.

Mr. Jordan advised the committee that by requesting data from the Department Financial Institutions relative to the number of loans, the average amount of interest rates charged would help the committee could extrapolate numbers for the city of Milwaukee.

Ald. Davis requested the committee revisit the effectiveness of disclosure, he also asked members to include any recommendations.

Mr. Callen advised the committee that from his experience, the consumer does not always understand a disclosure. Mr. Callen also commented that he did not believe that the amount of interest involved when individuals use convenient cash establishments are not a deterrent for consumers, because the main objective is the convenience. He stated, the longer the disclosure form the less likely the consumer will read it.

Mr. Callen volunteered to research the statue of operating rules and the disclosure requirements are for convenient cash lenders for the next meeting. He will also develop a comparison of what might be paid at a financial institution versus what would be paid at a payday loan establishment.

Ald. Davis asked the committee to review item 9 (how needs were met prior to convenient lending establishments) on their list of proposed goals and objectives. Financial Institutions gave options to those who were credit worthy

Ms. Sanchez indicated that closer family and community ties served as positive lending options to in previous years. Other options were pun shops and long sharks. Most of these options did not include high interest rates.

Ald. Davis asked committee members to address item 10 (what causes the consumer to use the convenient lending businesses.

Mr. Callen indicated that knowing right from wrong is not a concern, as much as the convenience and willingness of convenient cash business to make loans to individuals who might not otherwise have the option obtaining cash.

Ald. Davis requested the committee review item 11 (marketing strategies being used by convenient cash businesses). Members agreed the concentration of convenient cash businesses, targeting specific areas, ads offering easy loans.

The committee made recommendations for using counter strategies such as education, shorter disclosures with understandable language for the consumer.

Motion, by Ms. Dean to review items 11-16 at the next meeting of the Convenient Lending Task force Committee.

Public Comments: Peggy Partenfelder-Moede, Director, SE Camera Consulting appeared before the committee. Ms. Partenfelder-Moede offered the committee an overview of some of the policies and procedures currently used by convenient lending establishments. In addition Ms. Partenfelder-Moede offered suggestions on data she believed might assist the committee in future research.

Next Meeting Date: October 14, 2005

Meeting Convened: 11:20 AM.

*Diana Morgan
Staff Assistant*

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City of Milwaukee

Meeting Agenda

City Hall
200 East Wells Street
Milwaukee, WI 53202

CONVENIENT LENDING TASK FORCE

Friday, October 14, 2005

9:00 AM

Room 301-A, City Hall

- 1) **Review and approval of the minutes of the September 16, 2005 meeting.**

- 2) **Review of proposed goals and objectives of the Convenient Lending Task Force:**
 1. *How many businesses exist in the City of Milwaukee, including types?*
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City of Milwaukee

Meeting Minutes

CONVENIENT LENDING TASK FORCE

City Hall
200 East Wells Street
Milwaukee, WI 53202

Friday, October 14, 2005

9:00 AM

Room 301-A, City Hall

Members PRESENT: Ald. Davis, Ald. Witkowski, Mr. Callen, Ms. Crumpton, Ms. Dean, Mr. Jordan, Deputy Inspector Ruzinski, Ms. Sanchez, Mr. Walrath and Mr. Webber Jr.

1) Review and approval of the minutes of the September 16, 2005 meeting.

1. Review and approval of the minutes of the September 16, 2005 meeting.

Motion by Ms. Dean to approve the minutes of the September 16, 2005 meeting of the Convenient Lending Task Force. Seconded by Ms. Sanchez.

Prevailed. 10-0

2) Review of proposed goals and objectives of the Convenient Lending Task Force:

Members Present: Ald. Witkowski, Ms. Sanchez, Deputy Inspector Ruzinski, Mr. Webber Jr., Mr. Walrath, Mr. Callen, Ms. Crumpton, Ms. Dean, Mr. Jordan and Ald. Davis.

Jeff Osterman, Legislative Research Analyst was also present.

2. Review of proposed goals and objectives of the Convenient Lending Task Force.

Mr. Walrath offered members an overview of a conference both he and Ald. Davis attended sponsored by The Consumer Federation of America, the Consumer Law Litigation Clinic at UW-Madison, and Wisconsin Public Interest Research Group (WISPIRG), for the purpose of reviewing the national overview of payday lending and title lending in the United States, and more specifically to review current legislation relative to payday and title lending in Wisconsin. The following topics were discussed:

- The developing areas of interest.*
- Legislation in Wisconsin.*
- Presentations on other forms of potential regulations.*
- Zoning Issues.*
- Consumer home lending.*

Motion by Ald. Davis to make the information collected from the conference part of the record (exhibit 1), to be reviewed by members, to assist in the development of the committee's final report.

Prevailed 10-0

3. Mr. Callen provided documentation Loan Company Applications and Regulations (exhibit 2), for committee review. He referenced tab 11, Wisconsin Department of Financial Institutions (Strengthening Wisconsin's Financial Future).

In previous meetings members identified educating the consumer as one of the committees recommendations for their final report.

Mr. Callen informed members that the information he collected indicates that disclosure information is available to the consumer, however because of the length of the disclosure document the consumer may not always review the information carefully.

Ald. Davis advised members that one of the committees objectives is to analyze the geographic locations of payday lending establishments in the city of Milwaukee, to determine whether there has been an increase in crime and poverty associated with location of these establishments. If there is proven correlation, then the committee may want to review the limitation of the number of payday loan establishments in specific areas.

Ms. Dean referenced a study by Habitat for Humanity indicating many tactics currently being used by predatory lenders is targeting homeowners to roll over their unsecured debt into the debt secured by their homes. Ms. Dean stated that this is a clear indication that there is a lot of money at the disposal of predatory lenders, which is used to target those that are most vulnerable.

Ald. Davis questioned whether there are current provisions or guidelines by housing organizations relative to home equity to consumers?

In addition, Mr. Jordan questioned the basis of the cities current ordinances (safety, criteria, etc.). He also questioned the legality of the city to enact an ordinance restricting the location of payday lending establishments based upon the income level in specific areas and limiting the hours of operation?

Mr. Osterman explained that a few of the areas the current ordinances address relative to the location of payday lending establishments, is not being within 150 feet of a dual or two family residential district and prohibited in all residential zoning districts with special use in all commercial zoning districts. He continued stating the creation of the ordinance is various reasons including the safety and economic detriment in specific areas.

Ald. Davis added that the enactment of the current ordinances were a direct result of distance requirements adopted by other cities so that payday lending establishments were not concentrated in particular areas.

Mr. Walrath referenced to the data collected by Mr. Callen in (exhibit 2), tab 9. Which addresses the current levels of regulation payday lending establishments are governed under, the report referenced an annual report form (page 3, paragraph 2) indicating payday lenders are required to report the number of delinquent loans as well as the number of roll over loans they acquire. Mr. Walrath advised the committee that this data is not available to the public due to a general privacy provision in the statute.

Mr. Walrath commented that the committee should also analyze as part of their report, the current regulations of payday lending establishments.

Ms. Dean suggested that the committee obtain a compilation of data by county that would indicate the types of lenders most affected and the types of lending practices used.

She also advised the committee that payday lenders subsequently refer borrowers who have established a large debt with one establishment to other predatory lenders.

Ald. Davis and Mr. Webber Jr. were excused from the meeting at 9:40 AM.

Mr. Callen informed the committee that several years ago there was concern at the national level about specific states and municipalities passing predatory lending legislation. He requested clarification of the committees focus of research for the implementation legislation in their report (i.e. zoning)?

Mr. Walrath referred the committee to (exhibit 3, City Attorney Opinion), Wisconsin Consumer Protection Roundtable (starting at page 25-27). To what extent could a city like Milwaukee use zoning to impose consumer protection. The report does indicate that zoning can be used to limit the negative effects on neighborhoods or the city as a whole.

Mr. Walrath advised that based upon the report, the regulation of hours and distance are examples of regulating zoning, not consumer protection.

Ms. Dean asked clarification of non-zoning laws that maybe imposed?

Mr. Jordan asked if public welfare could be interpreted as the economy of an area?

Mr. Callen commented on the committees previous communication regarding the compilation of data used by payday lending establishments. He referenced a 2001 DFI statistical study and recommended obtaining an updated copy of the information.

Motion by Ms. Dean to send a letter to DFI requesting updated data relative to the 2001-2004 statistical study for the City of Milwaukee and Milwaukee County in addition to the 2004 Annual Loan Company Report containing aggregated data for the City of Milwaukee and Milwaukee County. Seconded by Ms. Sanchez.

Prevailed. 8-0

Mr. Callen stated, he would be willing to contact DFI to request the updated annual data by county submitted by payday lenders, however his concern was that DFI would not be willing release the information to him without prior knowledge of who he was and his purpose for the request.

Ms. Sanchez informed the committee that she would be willing to contact Carrie Templeton at DFI to let her know to expect a letter from the committee requesting a compilation of data used in annual reports by payday lenders.

Mr. Callen's report (exhibit 2) addressed item 14 on the agenda.

Ms. Sanchez informed the committee that she and Mr. Jordan are currently researching item 6 on the agenda. They are collecting quantified numbers to address the fiscal impact of convenient cash businesses on the city of Milwaukee.

Mr. Walrath requested members review (exhibit 3, City Attorney Opinion), Wisconsin Consumer Protection Roundtable (pages 1-5) relating to zoning regulations and other laws

around the country. He suggested review of and discussion of the information at future meeting.

Mr. Jordan questioned the security regulations governing the city of Milwaukee where payday lenders are concerned?

Deputy Inspector Ruzinski referred to a newly enacted city ordinance requiring digital security cameras after 3 offenses. She recommended the committee review Salt Lake City Utah's security requirements prior to drafting their recommendations.

Mr. Osterman advised the committee of a previous City Attorney Opinion objecting a security related ordinance.

Ald. Witkowski asked Mr. Osterman to provide copies of the ordinance in question at the next meeting?

Mr. Callen asked if the committee currently had statistics relative to crime in and around payday loan establishments?

Deputy Inspector Ruzinski advised the committee that she would provide statistical data from the past three years relative to the crime levels in and around payday lending establishments up to 2500 feet.

Next meeting date: November 10, 2005, 9:00 AM.

Meeting Adjourned: 10:20 AM.

All data researched and reviewed by this committee may be viewed at
<http://legistar.milwaukee.gov/mattersearch/>
under File #050489



City of Milwaukee

City Hall

Meeting Agenda

CONVENIENT LENDING TASK FORCE

ALD. JOE DAVIS, Chair

Ald. Terry Witkowski, Vice-Chair, Chris Callen, Kathryn Crumpton, Dorothy Dean, Dimitri Jordan, Anna Ruzinski, Bethany Sanchez, Jim Walrath, Bobbie Webber Jr.

*Staff Assistant: Diana Morgan, 286-2231, Fax: 286-3456
E-mail: dmorga@milwaukee.gov*

*File Specialist: Charlotte Rodriguez, 286-8797
E-mail: crodri@milwaukee.gov*

Thursday, November 10, 2005

9:00 AM

Room 301-A, City Hall

- 1) **Review and approval of the minutes of the October 14, 2005 meeting.**

- 2) **Discussion of proposed goals and objectives of the Convenient Lending Task Force.**
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Version 5

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City of Milwaukee

Meeting Minutes

CONVENIENT LENDING TASK FORCE

City Hall
200 East Wells Street
Milwaukee, WI 53202

ALD. JOE DAVIS, Chair

Ald. Terry Witkowski, Vice-Chair, Chris Callen, Kathryn Crumpton, Dorothy Dean, Dimitri Jordan, Anna Ruzinski, Bethany Sanchez, Jim Walrath, Bobbie Webber Jr.

*Staff Assistant: Diana Morgan, 286-2231, Fax: 286-3456
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Thursday, November 10, 2005

9:00 AM

Room 301-A, City Hall

Meeting Convened: 9:13 AM

Members Present: Ald. Davis, Ald. Witkowski, Mr. Callen, Ms. Crumpton, Deputy Inspector Ruzinski, Mr. Webber Jr., Ms. Sanchez and Mr. Walrath.

Members excused: Ms. Dean, Mr. Jordan.

Mr. Walrath was excused at 10:00 AM.

Deputy Inspector Ruzinski was excused at 10:15 AM.

1) Review and approval of the minutes of the October 14, 2005 meeting.

1. Review and approval of the minutes from the October 14, 2005 Convenient Lending Task Force meeting.

Motion by Mr. Callen to approve the minutes of the October 14, 2005 meeting of the Convenient Lending Task Force at the December 2, 2005 meeting.

Prevailed 8-0

2) Discussion of proposed goals and objectives of the Convenient Lending Task Force.

2. Discussion of the proposed goals and objectives of the Convenient Lending Task Force.

Crime Analysis Map and statistics (exhibit 1) presented by Deputy Inspector Ruzinski. Deputy Inspector Ruzinski offered an overview of the statistics explaining that the data is approximated and reported to State and Federal entities annually. The statistics were broken down within a 500 feet radius buffer zone of check-cashing establishments (indicated by the yellow dots on the map). The pink or salmon colored dots identified the buffer zone within a 1500 feet radius for 2002, 2003 and 2004.

Deputy Inspector Ruzinski explained that robberies were the most frequent crimes

committed around checking cash/ convenient lending establishments. The 2004 statistics indicated a total of 315 robberies within 500 feet of a check cashing/convenient lending establishment with a total of 2800 robberies citywide. She also advised members that based on the data there is no clear indication of a correlation that there were more robberies committed in the vicinity of checking cashing/convenient lending establishments than there are around other businesses.

Ald. Davis requested that Deputy Inspector Ruzinski identify and prepare data for the committee's final report relative to the crime trends and adverse impact of having check cashing/convenient lending establishments located in neighborhoods.

Ms. Sanchez suggested a comparison of crime data for grocery stores to that of convenient lending establishments.

Deputy Inspector Ruzinski informed the members that based upon the number of stores located in the city of Milwaukee it would be almost impossible to collect data to use for a comparison of crime between grocery stores and convenient lending establishments.

Mr. Osterman advised the committee that because gas stations are licensed by the city it might be easier to compare the crime statistics of gas stations with that of convenient lending establishments.

Ald. Witkowski and Mr. Webber Jr. arrived at 9:20 AM.

Mr. Walrath advised the committee that comparisons between gas stations and taverns might not provide the appropriate data for the committee to make an informed recommendation due to the fact that the data may be similar to commercial strips. He suggested comparing the crime data of other financial or traditional institutions with that of convenient lending establishments.

Ald. Davis asked Deputy Inspector Ruzinski about the possibility of obtaining data that would indicate the difference between the required security measures of traditional institutions (security cameras, security guards, armored cars, etc.) to those of convenient lending establishments.

Ms. Crumpton suggested including crime analysis data for credit unions.

Mr. Webber Jr. provided a statute of limitation study (exhibit 2), on debt collection and default of loans by the consumer from the time of the loan to the last payment date.

Ald. Davis presented an ordinance and City Attorney Opinion (exhibity3) for review.

Mr. Osterman summarized the City Attorney Opinion in question, explaining that the ordinance and City Attorney Opinion were related to security features and the rationale or relationship between the requirements and the protection of the public health, safety and welfare, in addition to the reasons for treating particular businesses different from other businesses.

Mr. Osterman continued by explaining that the City Attorney Opinion indicates that there were not sufficient legislative findings in the ordinance to make an accurate conclusion.

Mr. Walrath suggested that the committee research the responses and findings of legislation in other states to gain an understanding of the impact and approaches used by

other localities with similar problems.

Ald. Davis asked for suggestions for the compilation of the committee's final report. He also offered the recommended the following suggestions relative to chapters to be included in the committee's final report:

- A legal overview with City Attorney Opinions and Attorney General Opinions.*
- Consumer Protection rights (social and economic impacts).*
- Comparison of legal overview and law enforcement.*
- Review how convention businesses are run in comparison to traditional institutions.*

Ms. Sanchez suggested listing the chapters in the committee's final report as outlined in the task forces' proposed goals and objectives.

Mr. Osterman informed the committee that he would began developing a table of contents for the committee's final report based on the topics created by task force members.

Ms Crumpton advised the committee that she would provide an update at the next meeting on the progress of current legislation being drafted relative to the prosecution of payday lenders.

Next Meeting Date: Friday, December 2, 2005, 9:00 AM

There were no public comments.

Meeting Adjourned: 10: 30 AM

*All data researched and reviewed by this committee may be viewed at
<http://legistar.milwaukee.gov/mattersearch/>
under File #050489*



City of Milwaukee

City Hall
200 East Wells Street
Milwaukee, WI 53202

Meeting Agenda

CONVENIENT LENDING TASK FORCE

ALD. JOE DAVIS, Chair

Ald. Terry Witkowski, Vice-Chair, Chris Callen, Kathryn Crumpton, Dorothy Dean, Dimitri Jordan, Anna Ruzinski, Bethany Sanchez, Jim Walrath, Bobbie Webber Jr.

**Staff Assistant: Diana Morgan, 286-2231, Fax: 286-3456
E-mail: dmorga@milwaukee.gov**

**File Specialist: Charlotte Rodriguez, 286-8797
E-mail: crodri@milwaukee.gov**

Friday, December 2, 2005

9:00 AM

Room 301-A, City Hall

- 1) **Review and approval of the minutes of the October 14, 2005 and November 10, 2005 meetings.**

- 2) **Discussion of proposed goals and objectives of the Convenient Lending Task Force.**
 1. *How many businesses exist in the City of Milwaukee, including types?*
 2. *What is the customer base?*
 3. *What are the dollar amounts being loaned and the interest rates on these loans?*
 4. *How to encourage mainstream lenders to reestablish relationships in the cities communities?*
 5. *How are current regulations established?*
 6. *The fiscal impact of convenient cash businesses on the City of Milwaukee, specifically the market interest rates the institutions are charging that are not going back into Milwaukee communities?*
 7. *The development of demographic maps outlining the areas in which convenient cash establishments are located.*
 8. *Visual charts comparing the interest rates associated with convenient cash businesses to those of traditional lending establishments.*
 9. *How were the demands for cash met prior to the creation of convenient lending establishments?*
 10. *What causes convenient cash businesses to be in high demand?*
 11. *What types of marketing strategies are being used?*
 12. *Why aren't consumers using traditional institutions?*

13. *How to educate consumer about the impact of convenient cash businesses?*
14. *What are the current regulations?*
15. *What are the laws in other jurisdiction?*
16. *Public Safety issues related to convenient lending establishments in Milwaukee neighborhoods.*

Version 6

NOTE: a) Members of the Common Council, and members of its Standing Committees who are not members of this Committee, may attend this meeting to participate or to gather information. Therefore, notice is given that this meeting may constitute a meeting of the Common Council or any of its Standing Committees, and must be noticed as such, although they will not take any formal action at this meeting.

b) Upon reasonable notice, efforts will be made to accommodate the needs of persons with disabilities through sign language interpreters or auxiliary aids. For additional information or to request this service, contact the Council Services Division ADA Coordinator at 286-2998, (FAX)286-3456, (TDD)286-2025 or by writing to the Coordinator at Room 205, City Hall, 200 E. Wells Street, Milwaukee, WI 53202.

c) Limited parking for persons attending meetings in City Hall is available at reduced rates (5 hour limit) at the Milwaukee Center on the southwest corner of East Kilbourn and North Water Street. Parking tickets must be validated in Room 205, (City Clerk's Office) or the first floor Information Booth in City Hall.

d) Effective July 1, 2005, persons engaged in lobbying as defined in s. 305-43-4 of the Milwaukee Code of Ordinances are required to register with the City Clerk's Office License Division. More information is available at www.milwaukee.gov/lobby or by calling 414-286-2238.



City of Milwaukee

Meeting Minutes

CONVENIENT LENDING TASK FORCE

City Hall
200 East Wells Street
Milwaukee, WI 53202

ALD. JOE DAVIS, Chair

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Friday, December 2, 2005

9:00 AM

Room 301-A, City Hall

Meeting Convened: 9:24 AM

Members Present: Ald. Davis, Ald. Witkowski, Ms. Dean, Deputy Inspector Ruzinski, Mr. Walrath and Ms. Crumpton.

Members Excused: Mr. Callen, Mr. Jordan, Ms. Sanchez and Mr. Webber Jr.

- 1) Review and approval of the minutes of the October 14, 2005 and November 10, 2005 meetings.**

Motion by Ms. Dean to amend the minutes of the October 14, 2005 meeting.

Prevailed. 6-0

Motion by Deputy Inspector Ruzinski to approve the minutes of the October 14, 2005 as amended. Seconded by Ms. Dean.

Prevailed. 6-0

Motion by Mr. Walrath to approve the minutes of the November 10, 2005 meeting. Seconded by Ald. Witkowski.

Prevailed. 6-0

- 2) Discussion of proposed goals and objectives of the Convenient Lending Task Force.**

Review of Objectives set forth by the Convenient Lending Task Force.

Jeff Osterman, Legislative Fiscal Analyst, Legislative Reference Bureau, recommended the following draft outline for the table of contents to be included in the final recommendations of the task force:

I. Introduction of the task force, summarizing its mission in accordance with the common council file that created the task force, also describing the issues the task

force was created to review with final report and recommendations.

II. Summary of Task Force recommendations. The beginning of this item would include a summary of the the overall report, with detailed recommendations at the end of the report.

III. Definitions of the types of businesses discussed in the report, which would be taken from the cities zoning code.

IV. Map showing the distribution of convenient lending businesses in the city.

V. More descriptive information about the convenient lending industry, such as business practices, ie. interest rates, loan terms and data on customer base, based upon the articles and reports submitted by task force members.

VI. Data on crime in the vicinity of convenient lending establishments, based upon maps and tables provided by Deputy Inspector Ruzinski.

VII. Review of existing regulations for convenient lending establishments, including unsuccessful past attempts to create legislation at the state and city levels. This would also include review of regulations of communities across the nation.

VIII. Review of City Attorney Opinions on proposed convenient lending legislation, to determine the constraints the task force faces as they make their recommendations for legislation.

The final section would include the recommendations as set forth by the task force, divided into three sections; city legislation, state legislation and non-legislative recommendations such as consumer education related to alternatives to payday lending.

Mr. Osterman informed members that supporting documentation would be referred to appendices or attachments which will be included in the final recommendations.

Ald. Davis advised members that one of the objectives is that the final recommendations should allow analyzation that would help determine whether legislation is warranted.

Based upon regulatory information received from M & I Bank, Deputy Inspector Ruzinski addressed members regarding safety regulations relative to convenient lending establishments. She advised members that convenient lending establishments are not required to have federal insurance and thus are not governed under safety regulations. This provided a clear explanation of why mainstream lenders are required to have certain security such as cameras and certain types of vaults, all based upon the federal insurance on their money.

She also recommend review city ordinance that govern particular regulations, such a recent city ordinance requiring retail establishments to purchase security cameras after approximately 3 robberies.

Ald. Davis followed up on this topic by expressing the reluctance of various business owners protect their interest by investing in security cameras. In addition many business owners will equipment their establishment with bullet proof glass, believing that the glass would provide the ultimate safety, with little consideration for the safety of their customers.

Deputy Inspector Ruzinski advised members that there is an ordinance that specifies that if an establishment has the bullet proof glass they are not required to have security cameras.

Ms. Dean addressed members regarding DFI regulations. In addition she wanted to clarify the difference between Legislation, regulations and ordinances. She advised members that based upon her research, there were various things that DFI could do within the existing charter and state laws, however those things are not being implemented. Ms. Dean continued that there may be many reasons for this. Members were also advised that during the course of the task force's research they may find regulations that are not being enforced, that don't require state legislation or city legislation, that may simply require someone ask why its not being done.

Mr. Walrath recommended that the draft copy of table of contents be setup to so that additional sections could be added between items VI and VII picking up the theme in item VI of public safety issues, with another section detailing other neighborhood impact issues related to convenient lending establishments.

He also suggested that under item VIII (b) relative to state legislation, there be two possible sub-categories. One that would allow possible consumer legislation containing proposed amendments to the Wisconsin consumer. The other enabling legislation by the state that would permit Milwaukee or other municipalities to get more involved in regulating convenient lending establishments.

Deputy Inspector Ruzinski recommended that an item VIII (c) be added under public safety to provided an analysis of the maps included in the final recommendation. She advised that she would be willing to work Mr. Osterman to develop this data.

Mr. Osterman advised members that has included a section in the table of contents to allow for analysis of the impacts of convenient lending establishments, however he has not found solid data to support this area.

Ms. Dean requested review of a specific convenient lending establishment located on Capitol and Humboldt on the south/west corner for the purpose of determining the number of automobile accidents that result due to inappropriate parking. She added that overall data relative accidents that occur around convenient lending establishments might also provide useful data.

Motion by Deputy Inspector Ruzinski to accept the recommend outline as amended.
Seconded by Ms. Dean.

Prevailed. 6-0.

A formulazation of research by members for the next meeting is as follows:

- I. Completed (overview of how things are created).
- II. Table pending data
- III. Self explanatory (related to DFI).
- IV. Jeff Osterman/Deputy Inspector Ruzinski will provide data containing numbers.
- V. Crumpton
- VI. Deputy Inspector Ruzinski

- VI 1/2. Ms. Dean
- VII. Mr. Walrath
- VIII. City Legislation

Ald. Davis requested City Clerk staff contact Ms. Sanchez and Mr. Webber, Jr. regarding the impact of convenient lending establishments on homebuyer credit.

All researched documentation should be submitted to Mr. Osterman no later than January 13, 2006.

Next meeting, January 27, 2006, Room 301-A, 9:00 A.M.

*Diana Morgan
Staff Assistant*

All documents researched by the task force may be reviewed by going to www.milwaukee.gov, under Common Council click on Council Files and enter file number 050489.



City of Milwaukee

Meeting Agenda

CONVENIENT LENDING TASK FORCE

City Hall
200 East Wells Street
Milwaukee, WI 53202

ALD. JOE DAVIS, Chair

*Ald. Terry Witkowski, Vice-Chair, Chris Callen, Kathryn Crumpton, Dorothy Dean,
Dimitri Jordan. Anna Ruzinski, Bethany Sanchez, Jim Walrath, Bobbie Webber Jr.*

*Staff Assistant: Diana Morgan, 286-2231, Fax: 286-3456
E-mail: dmorga@milwaukee.gov*

*File Specialist: Charlotte Rodriguez, 286-8797
E-mail: crodri@milwaukee.gov*

Friday, February 3, 2006

9:00 AM

Room 301B, City Hall

- 1) Approval of the minutes of the December 2, 2005 meeting
- 2) Review of Draft Recommendations
- 3) Public Comments
- 4) Next meeting date, time and agenda



City of Milwaukee
Meeting Minutes
CONVENIENT LENDING TASK FORCE

City Hall
200 East Wells Street
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ALD. JOE DAVIS, Chair
Ald. Terry Witkowski, Vice-Chair, Chris Callen, Kathryn Crumpton, Dorothy Dean, Dimitri Jordan, Anna Ruzinski, Bethany Sanchez, Jim Walrath, Bobbie Webber Jr.

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File Specialist: Charlotte Rodriguez, 286-8797
E-mail: crodri@milwaukee.gov

Friday, February 3, 2006

9:00 AM

Room 301B, City Hall

Meeting Convened: 9:10 A.M.

Members Present: Ald. Davis, Deputy Inspector Rusinski, Ms. Dean, Mr. Callen, Mr. Walrath, Ms. Sanchez, Ms. Crumpton.

Members Excused: Ald. Witkowski, Mr. Webber Jr.

Mr. Jeff Osterman, Legislative Reference Bureau was also present as research staff for the task force.

1) Approval of the minutes of the December 2, 2005 meeting,

Motion by Ms. Dean to approve the minutes of the December 2, 2005 meeting.
Seconded by Mr. Walrath.

2) Review of Draft Recommendations

Mr. Osterman provided a draft copy of the table of contents to members for review. He advised members that page 5 should be amended to read Appendix (B), rather than Appendix (A) in the first paragraph.

In addition, Mr. Osterman advised members that he is still waiting for documentation for the following areas:

Neighborhood impact issues - Ms. Dean

Regulations of convenient businesses - Mr. Walrath

Recommendations of the task force, pending completion of research.

Ms. Sanchez informed members that she is still researching the fiscal impact on the city, which will be included in the neighborhood impact issues. She will also provide additional research on the customer base, and why consumers use convenient lending establishments rather than mainstream lenders. She advised members that she would also include alternatives to using convenient lending establishments.

Ald. Davis suggested that the final report be condensed by referencing relative case studies.

In addition, Ald. Davis requested, Mr. Franitza and Mr. Osterman work together to review ordinances that have been amended, as well as any new ordinances that have affected zoning.

Mr. Osterman recommend that the sections being researched by Mr. Walrath be listed in the final report as attachments in the appendices:

- City ordinances*
- State regulations*
- Regulations in other cities*
- City Attorney Opinions*

Mr. Osterman also suggested that summarizing these areas would help to condense relevant information.

In addition, Mr. Osterman referenced new State Legislation, Assembly Bill 914, introduced January 17th, which sets a limit of 2% per month on the interest rate imposed by convenient lending establishments.

Ald. Davis requested that reference to 2005 Assembly Bill 914 be included in the task force's final recommendations, including a through analysis. He also requested that Mr. Osterman also include data indicating median income based upon 2000 census data relative to ethnicity in Aldermanic Districts.

Deputy Inspector Ruzinski referred to the Public Safety section of the task force's recommendations. She advised members that research does not provide supporting evidence to indicate that convenient lending establishments cause crime to increase in neighborhoods; but that research does imply that convenient lending establishments tend to locate in high crime areas where there are social and economic conditions among other factors.

Deputy Inspector Ruzinski advised members that she will work with Mr. Osterman to develop a map of the city with 2005 crime statistics plotted on the map with a plastic overlay of convenient lending establishments.

Mr. Osterman advised members that he would provide City Attorney Opinions.

Ald. Davis advised members that the target deadline date for completion of the task force's final recommendations will be between mid March and early April.

Ms. Dean advised members of an opinion the state attorney general is currently working on relative to what states can do and what municipalities can't do. She suggested that this information be included the final report, if complete prior to that time.

Ald. Davis requested that members start to submit final recommendations to city clerk staff to be included in a spread sheet.

In addition, Mr. Callen and Ms. Dean will research the following:

Whether there is a financial relationship between conventional lending institutions and

convenient lending establishments.

Both Ald. Davis and Ms. Sanchez will speak with Congresswoman Moore relative to federal regulations.

3) Public Comments

There were no public comments.

4) Next meeting date and time

The next meeting is scheduled March 3, 2006, 9:00 A.M., Room 301-B.

Meeting Adjourned: 10:20 A.M.

*Diana Morgan
Staff Assistant*

All documents researched by the Convenient Lending Task Force may be reviewed by going to www.milwaukee.gov, under Common Council click on Council Files and enter file number 050489.



City of Milwaukee

Meeting Agenda

City Hall
200 East Wells Street
Milwaukee, WI 53202

CONVENIENT LENDING TASK FORCE

ALD. JOE DAVIS, Chair

Ald. Terry Witkowski, Vice-Chair, Chris Callen, Kathryn Crumpton, Dorothy Dean, Dimitri Jordan, Anna Ruzinski, Bethany Sanchez, Jim Walrath, Bobbie Webber Jr.

Staff Assistant: Diana Morgan, 286-2231, Fax: 286-3456

E-mail: dmorga@milwaukee.gov

File Specialist: Charlotte Rodriguez, 286-8797

E-mail: crodri@milwaukee.gov

Friday, March 3, 2006

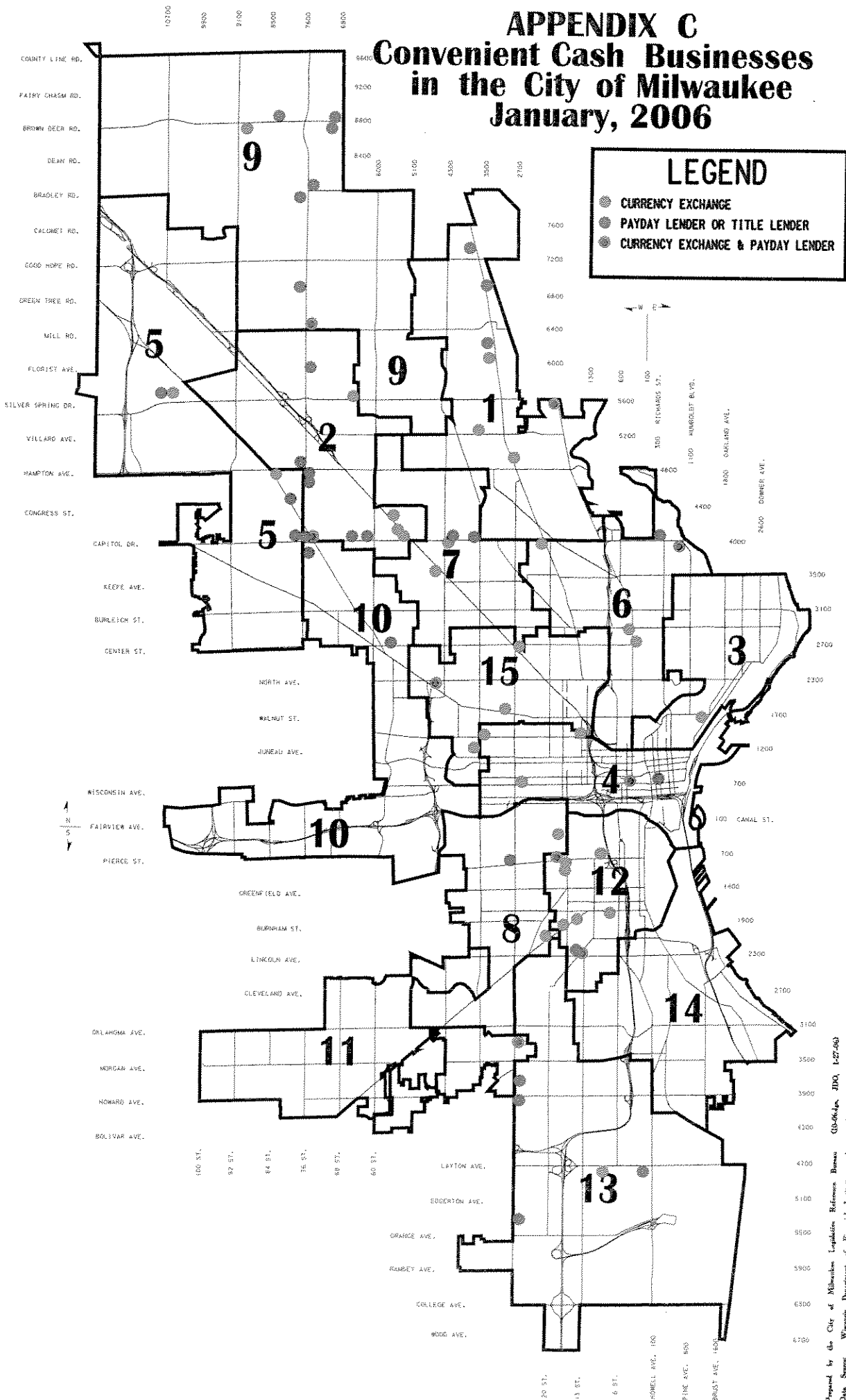
9:00 AM

City Hall, Room 301-B

- 1) Approval of the minutes of the February 3, 2006 meeting
- 2) Review of draft outline and recommendations
- 3) Public Comments
- 4) Next meeting date and time

APPENDIX C

Convenient Cash Businesses in the City of Milwaukee January, 2006



LEGEND

- CURRENCY EXCHANGE
- ◐ PAYDAY LENDER OR TITLE LENDER
- ◑ CURRENCY EXCHANGE & PAYDAY LENDER

Prepared by the City of Milwaukee Legislative Reference Bureau 03-06-Jan. JDO, L&Z-60
 Data Source: Wisconsin Department of Financial Institutions website - Bureau database

APPENDIX D

Articles providing overview of convenient lending industry



The Annie E. Casey Foundation

FOR IMMEDIATE RELEASE

**Contact: Ed Hatcher (301) 656-0348
Marci Bransdorf (410) 223-2852**

**BANKS SHOULD OFFER ALTERNATIVES TO PAYDAY LOANS TO BETTER
SERVE LOW AND MIDDLE-INCOME CUSTOMERS, SAYS NEW REPORT**

BALTIMORE — In banking, as in life, doing the right thing can pay off.

Banks and credit unions have the capacity to help their credit-strapped low and middle-income customers by offering lower cost alternatives to high-fee payday loans, a new report concludes. What's more, banks can make money by providing more small-dollar credit products to their customers.

"Payday loans are an extremely high-cost form of short-term credit," says Sheila Bair, a professor at the University of Massachusetts at Amherst, and the report's author. "The high fees are exacerbated by many borrowers using the product 10 to 12 times a year. They are used predominantly by those who can least afford them."

Payday loans are short-term loans of small amounts, generally less than \$500. The loans are secured by the borrower's personal check and post-dated until the borrower's next payday. Typically, the cost ranges from \$15 to \$22 per \$100 for a two-week loan, which works out to an expensive annualized percentage rate (APR) of 391 to 572 percent. Here's how it works: When a customer borrows \$300, and the charge is \$15 per \$100 of loan, the customer writes a check for \$345. The lender agrees to defer deposit of the check until the customer's next payday.

Payday lending has grown explosively in recent years. Last year (2004), 22,000 payday loan stores nationwide extended about \$40 billion in short-term loans. Most borrowers — 52 percent — make between \$25,000 and \$50,000 per year, and 29 percent earn less than \$25,000 a year.

The report, "Low Cost Payday Loans: Opportunities and Obstacles," was made possible through a grant by the Annie E. Casey Foundation in Baltimore. The Casey Foundation is working to improve life outcomes for vulnerable children by increasing their families' ability to provide real economic security. "Even though many low-income parents are working harder and longer, too many continue to find it difficult to get by and get ahead," said Doug Nelson, president of the Foundation. "Finding alternatives to expensive and avoidable financial practices, such as payday loans, is part of our strategy to help working families achieve financial success." Copies of the report are available at: http://www.aecf.org/publications/data/payday_loans.pdf.

Several factors make it economically viable for banks and credit unions to offer payday alternatives. Banks and credit unions already have the infrastructure, such as physical facilities, loan staff, and collection processes. Unlike payday loan storefronts, banks and credit unions can

- more -

minimize credit losses through the use of direct deposit and automatic deductions for repayment. They can offer small-dollar credit at lower margins because they offer a wide variety of banking products and services. Revolving credit lines offered by banks and credit unions provide convenience, greater privacy and speed for the customer, compared to payday loans, says the report.

The biggest impediment to low cost payday alternatives is the proliferation of fee-based bounce protection programs. "So many banks rely on bounce protection to cover customers' overdrafts for fees ranging from \$17 to \$35 per overdraft that they don't want to cannibalize profits by offering customers other low-cost options," says Bair.

Other barriers preventing banks and credit unions from entering this market include the stigma associated with offering small dollar loans, and the misperception that federal banking regulators are hostile to the idea. "On the contrary, our research shows that regulators view low-cost, properly structured payday loan alternatives as positive and likely warranting credit under the Community Reinvestment Act," says Bair. "We recommend that regulators step up to the plate and publicly encourage payday alternatives."

The report describes several examples of profitable payday loan alternatives. The best model, says Bair, is the North Carolina State Employees' Credit Union (NCSECU), which since 2001 has offered customers a checking account linked to a revolving line of credit. It charges an APR of 12 percent, or \$5.00 for a \$500, 30-day loan. It also requires borrowers to save five percent of any money borrowed and place it in a savings account. After 18 months, this program generated more than \$6 million in cumulative savings.

Another good model is the Citibank Checking Plus program, which is a revolving line of credit linked to a customer's checking account, offered at a 17 percent APR. "This product can be used by low and middle-income families to meet short-term emergency cash needs," Bair says. Other recommendations include:

- The Federal Reserve Board should require banks and credit unions to disclose the cost of fee-based bounce protection to customers who use it on a recurring basis. This would help consumers understand the real cost and strengthen the institutions that offer competing lower cost options.
- Banks and credit unions should combine small dollar products with mandatory savings features to help customers accumulate savings.

###

The Annie E. Casey Foundation is a private charitable organization dedicated to helping build better futures for disadvantaged children in the United States. It was established in 1948 by Jim Casey, one of the founders of UPS, and his siblings, who named the Foundation in honor of their mother. The primary mission of the Foundation is to foster public policies, human-service reforms, and community supports that more effectively meet the needs of today's vulnerable children and families. In pursuit of this goal, the Foundation makes grants that help states, cities, and neighborhoods fashion more innovative, cost-effective responses to these needs. For more information visit: www.aecf.org

In February 2002, the National Endowment for Financial Education and the Consumer Federation of America co-sponsored a forum entitled "The Debt Cycle: Using Payday Loans to Make Ends Meet." Prominent researchers, academicians, public policy advisors, foundation executives, consumer advocates, and members of the military or associations that serve the military all participated in the forum to examine Americans' increasing use of "fringe banking" establishments, and whether these institutions serve an unfulfilled need in society or are, in fact, a troubling and predatory financial practice. Participants also explored questions such as how well do alternative banking customers understand payday loans, what risks do they perceive, and what are the broader societal implications of the growth of the payday lending industry? In an effort to add to the existing knowledge of payday lenders and their customers, the Consumer Federation of America has planned a study that will look more closely at many of the issues raised by the forum. A report on the forum follows.

"THE DEBT CYCLE: USING PAYDAY LOANS TO MAKE ENDS MEET"

A Forum Co-Sponsored by the

National Endowment for Financial Education

and the Consumer Federation of America

Washington, D.C., February 27-28, 2002

Payday lending is a recent phenomenon that shows no sign of stopping. This has resulted in a rapidly growing problem for consumers, a healthy and increasing source of revenue for lenders, and extremely polarized views of its place in our society. But what exactly is a payday loan? Also known as a cash-advance loan, post-dated check loan, or deferred deposit check loan, a payday loan is a high-interest, two-to-four week loan backed by a post-dated personal check that the borrower promises to repay out of the next paycheck.

The popularity of payday lenders continues to grow among certain segments of society. Consider the following statistics.

Industry revenues have ballooned from \$810 million in 1998 to a projected \$45 billion in 2002.¹ Payday lenders currently make about 65 million annual transactions involving approximately 10 million U.S. households.² Payday lending is profitable—it boasts a 35 percent rate of return-on-equity—and its customer base is growing. Although it literally didn't exist 10 years ago (by one estimate, there were zero payday loan outlets in 1992 and approximately 10,000 today), it now has significant geographical reach across the U.S. In some areas, it is more ubiquitous than fast food—in California, for example, the payday lending industry has more retail outlets than do either McDonald's or Burger King.³

And depending on one's perspective, it is either an industry that fills a financial void for millions of underserved consumers, or a pernicious and addictive form of "financial apartheid."

Why is a payday loan such an attractive option for some people? Picture a single mother trying to support herself and her two children on a wage of \$10.50 an hour. She has an unexpected expense and seeks \$200 from a payday lender in her neighborhood. She provides some basic information and gets the \$200—in probably less than 30 minutes. No questions, no credit check, no hassle.

Now here's why that same transaction is so troubling to many people: During the six months following her initial transaction, the single mother has paid her lender \$27 every two weeks. She's paid \$324—and still owes the original \$200. Even if she had taken only a five-day "Monday to Friday" loan of \$50, in some states she would have been charged an annual percentage rate (APR) of *1,610 percent*.⁴

How is this possible? What individual or family would choose this option? And, what can be done to break the often-related cycle of debt and desperation that, for many Americans, threatens their ability to save and create a better future for themselves and their families?

In February 2002, the National Endowment for Financial Education® (NEFE®), a nonprofit foundation based near Denver, and the Consumer Federation of America (CFA), a consumer protection and advocacy group headquartered in Washington, D.C., hosted a forum entitled "The Debt Cycle: Using Payday Loans to Make Ends Meet." Participants in the Payday Lending Forum included prominent researchers, academicians, public policy advisors, foundation executives, consumer advocates, and members of the military or associations that serve the military.

The forum featured Kathleen Keest, JD, as keynote speaker. Keest is the Assistant Attorney General for the Iowa Department of Justice and a nationally known consumer protection advocate who writes and speaks extensively on payday lending issues.

NEFE and CFA share a long-standing concern about abusive lending practices and the importance of asset development in helping low- and moderate-income consumers achieve financial stability and improve their quality of life. NEFE has worked with community-based organizations to educate consumers about alternatives to payday lenders, and CFA has been a leader in advocating for consumer protections that reduce the cost and risk of payday loans.

The Payday Lending Forum was convened to discuss guidelines for a future research study by CFA on consumers who use payday lenders. While there *is* some information available on payday lending customers, most of the surveys have been small, more “informal,” and sponsored by the payday lending industry. And statistics from other surveys, as well as anecdotal information, are often at odds with what has been reported by the industry. Are customers college-educated young professionals—“starter families”—making \$50,000 a year? Or are their earnings less than half of the median family income in some metropolitan areas? Are they struggling to make ends meet on a regular basis? Or are they failing to plan for expenses? What are their alternatives to a payday loan? More importantly, what are their *perceptions* of their alternatives?

NEFE and CFA believe that a more scientific and comprehensive study will yield a better understanding of payday loan customers—who they are and what motivates them—that can result in better education and beneficial alternatives to meet their financial needs and encourage paths to financial self-sufficiency.

“Currently, there are two diametrically opposed views of the payday lending industry and its customers,” noted a forum participant. The industry paints a picture of its patrons as satisfied middle-income consumers who need a short-term solution to a temporary cash-flow problem, a solution not provided by mainstream financial institutions. One participant described the industry’s current position this way: “They say their customers are solidly middle class and don’t need ‘protection.’ In short, leave them alone.”

Consumer advocates, however, say the picture of the payday lending industry and its customers is much darker: CFA believes that payday lenders encourage personal debt and target minority communities and vulnerable groups of consumers. According to Jean Ann Fox, director of consumer protection for CFA, “Payday loan customers are those unable to exert enough market pressure to protect *themselves*.”

The forum participants generally agreed with the way one participant described the current payday lending environment: “People are using these loans and, in some cases, using them to excess. The result is that customers are undermining their own financial future.”

The results of the study also may help to influence public policy about payday lending. In an August 2001 white paper, the Fannie Mae Foundation acknowledged that fringe lenders provide critical services to customers whose extremely low or unreliable incomes, limited tangible assets, or inability to manage credit make them unlikely candidates for mainstream financial services. But it also argues that the explosive growth of financial services storefronts over the past decade raises many critical policy issues. First, because fringe lenders do not provide savings accounts, households that rely exclusively on them lack both the incentive and option to save. Second, the heavy concentration of fringe lenders in minority communities means that those areas are disproportionately burdened with second-class financial services options. Finally, reliance on fringe lenders, even to the extent they provide needed financial services, routinely comes at a very high cost.⁵

Based on the discussion during the Payday Lending Forum, the participants agreed on some specific questions, listed below, that warrant in-depth examination in the proposed survey.

For Payday Loan Customers:

Do consumers know how much these loans really cost?

What could "traditional" financial institutions do to better respond to payday lending customers' needs?

How could these institutions improve the trust and comfort level of these customers?

Do payday loan customers know what their financial alternatives are?

If customers weren't able to get a payday loan, what would have been their second choice?

Did the loan's cost affect the customer's ability to make *another* financial choice?

If borrowers aren't able to pay the loan off right away, what are the long-term effects on their finances?

For Policymakers and Consumer Education Advocates:

What would payday loan customers do if these types of lenders disappeared?

Realistically, what are their alternatives?

What would it take to get more payday lending customers to move into the financial mainstream?

Is the current heavy use of payday lenders a question of excessive spending or inability to understand budgeting, or is it a question of a deepening and widening wage and opportunity gap?

How have programs such as welfare-to-work affected people's use of payday loans?

What do people, who are in similar circumstances, do if they *don't* use payday lenders?

The fact that payday lending exists *at all* is somewhat problematic for financial education and awareness efforts. That it has grown to such a substantial business in merely a decade—with a sizeable and growing customer base that readily "purchases" its products—is the result of numerous factors, both macro and micro, at work. Its everyday place in a segment of U.S. society also is a sobering reality.

As Fox said in her opening remarks during the forum when reviewing current research on payday lending, "What does it tell us that at the beginning of the 21st century, American consumers are willing to write checks without money in the bank to cover them, pay triple-digit interest rates, grant complete strangers access to their bank accounts, and run the risk of being unable to repay in full within days just to get a few hundred dollars in immediate cash?"

It is hard to say what ultimately will become more clearly known about these consumers, and what effort it may take to educate them about better financial options. Nonetheless, NEFE, CFA, and the forum participants hope these findings may result in a sea change in the payday lending "market," which Keest described this way:

"For many people, it's like trying to run up a down escalator, and stopping for breath means a ride to the bottom."

The Alternative Financial Sector and Payday Lending: From Obscurity to Everyday Occurrence

Some call it legal loan-sharking. Others call it a viable alternative for unexpected financial emergencies. And still others—payday lending customers themselves—call it both a blessing and a curse. In the words of one customer:

*"I have four [payday lenders]. On a monthly basis I pay \$350 worth of interest. That's my car payment right there in interest. I am making two car payments, but I have only one car. In a way, they are doing a favor for people, but in the long run it's not a favor. You have to pay them to get your money back so you can pay somebody else. It's not designed so you can get yourself together—it's designed for you to come back to them."*⁶

This customer's view reflects the ambivalence that many payday loan customers seem to have—they are both seduced and repelled by their use of payday loans. And, in many cases, they are dependent on them. How did they get to this point?

For one thing, payday loans, and their counterparts—cash-advance loans, post-dated check loans, and deferred deposit check loans—are easy to get. Some companies lend electronically, automatically depositing and withdrawing funds from a customer's bank account. (Although the transaction is considered a loan, the industry commonly uses the phrase "payday advance" in its marketing materials.⁷) While the typical customer of a check-cashing outlet usually doesn't use a bank (known as being "unbanked"), the payday loan customer *must* present evidence of a bank account and a pay stub. In addition, he or she is frequently asked to provide a driver's license, bank statement, and telephone bill. Yet the processing is minimal, and the results are immediate: cash in hand. Although payday lenders do not get a traditional credit report for loan applicants, many lenders use reporting services such as TeleTrack to screen out high-risk check writers.

For this "privilege," the payday loan customer pays an average annual percentage rate (APR) nationally of 474 percent, according to research done by in 1999 by CFA and the Public Interest Research Groups (PIRGs). The research also discovered that some lenders charge interest as high as 871 percent on loans of between \$100 and \$400. In a follow-up survey conducted in 2001, CFA/PIRGs found that one-third of 235 payday lenders surveyed charged an APR greater than 500 percent for a \$100, 14-day loan.⁸ The CFA/PIRGs research also found that payday loans were being made in some states despite usury ceilings far below the APRs that customers are charged.⁹ These loans are exempt from many state and local usury laws largely on the basis that they are for a very short term and intended only for occasional use.

Some states—17 in all—have either prohibited or effectively banned payday loans through caps on interest rates. In the other 33 states, such loans are legal—testament to the industry's aggressive lobbying to legalize payday loans as an option for its "underserved" customer base. More troubling are attempts by the industry to avoid state consumer protection laws by partnering with banks. Using this "rent-a-bank" strategy, payday lenders are exploiting legal loopholes by forming partnerships with federally insured depository institutions to make loans that do not comply with state usury laws, small loan rate caps, and even state payday loan laws.

Today's payday loans have their roots in the late 19th century with the "\$5 for \$6 boys"—the original loan sharks.¹⁰ Fifty years after this type of loan first appeared, the Uniform Small Loan Law was passed in the 1940s. Its intent was to drive loan sharks out of the business by making it profitable for *regular businesses* to make small loans to individuals. The law put an annual cap of 36 percent on small loans, a rate significantly in excess of general usury rates. Lenders, typically finance companies, were allowed to charge these rates in return for regulating their businesses, the risk involved in personal lending, and the higher administrative expense incurred in making small loans.¹¹ But during the 1960s and 1970s, many of these finance companies dropped small loans, finding more profitability in auto finance, business loans, and home-equity lines of credit.

Bank branches began to disappear in many communities, too. The dearth of mainstream financial institutions led to the rise of the "alternative financial services" (AFS) or "fringe banking" sector, which today is a major source of banking services for low-income and working poor consumers, residents of minority neighborhoods, and those with blemished credit histories. These neighborhood "bankers" are storefront retailers that pawn items, cash checks, offer rent-to-own merchandise, and provide payday advance loans, auto title loans, and refund anticipation loans. Their products and services revolve around small, short-term, high-cost financial transactions. According to the Federal Reserve, there are currently about 6,000 check-cashing institutions nationwide processing 180 million checks worth \$55 billion, typically for the "unbanked" consumer. Nationally, the average fee charged by check-cashing institutions is between two percent and three percent of the face amount of the check.¹²

Check-cashing services also have experienced steady and healthy growth, with the number of establishments doubling between 1996 and 2001. But it is payday lending, considered the poster child for "fringe banking" services, that has experienced phenomenal growth throughout the U.S.¹ One forum participant noted that it's now also becoming commonplace in other countries: "It's happening in Canada, Europe, Australia, and South Africa. As soon as someone figures out that they can make a lot of money doing this, it emerges." The industry's own internal documents describe payday lending's strategic rationale as, among other things: "significant cash flow, significant cash flow, and significant cash flow."

The rise in payday lending in the U.S. is attributed by "fringe banking" scholar John Caskey to three complementary factors¹³:

1. With the rise of direct deposit and electronic delivery of public benefits, check-cashing companies are looking for new business because there are fewer checks to cash.
2. Friendly state legislatures allow payday lenders to charge fees that, while moderate in absolute terms, translate into extremely high and profitable compound interest rates.
3. Strong demand is fueled by a steady increase in the number of people with impaired credit.

Keest believes the economic “anything goes” attitude that typified the early 1980s had as much to do with the rise of payday lending as did direct deposit and individuals’ impaired credit. “At some point during the last two decades of the 20th century, we developed what some people have called the Theology of the Marketplace,” she said. “In doing so, the *moral* basis for usury laws somehow became irrelevant, and usury laws themselves didn’t fit into the prevailing economic dogma of a ‘self-correcting’ market that demands minimal intervention.”

Whatever the reasons for its rise, payday lending today is an everyday occurrence for millions of Americans who are using these loans to make ends meet. The industry maintains that it is providing a valuable and necessary service for people who have few, if any, alternatives from mainstream financial institutions. Critics, however, say that the industry is exploiting, even abusing, financially vulnerable people who are least able to afford these services. As one forum participant put it: “Regardless of who’s offering these loans, and at what rate, at some point customers are going to be overwhelmed by debt.”

“It’s important to note that today’s payday lending customers somehow ‘got along’ before payday lenders emerged,” said another participant. “It’s a complex situation, and we must know more about individuals who are willing—or driven—to use this option.”

So, who are these people?

The Payday Lending Customer: An Incomplete Picture

According to the payday lending industry, its customers are teachers, firefighters, civil servants, and members of the military—in short, middle-class, middle-income Americans who are making informed, rational decisions, and understand what they’re doing. And what they’re doing is using a short-term tool for cash flow management. The Community Financial Services Association of America (CFSA), the trade association for the payday loan industry, classifies its customers as follows.

. . . overwhelmingly young, one- and two-parent families in the early life cycle stages, when they have not yet reached their peak earning years nor accumulated large amounts of liquid assets . . . Payday advance customers typically have higher incomes and higher levels of education [than the typical “fringe banking” consumer]. Customers expressed very favorable attitudes toward payday advance companies, with 92 percent agreeing that they provide a useful service. . . . The favorable attitudes toward payday advances and the high level of satisfaction with the most recent transaction suggests that for many customers, continued use of payday advance credit was a choice, not a burden.¹⁴

That is the payday lending industry’s profile of its typical customer and his or her view of the product. But is it accurate?

The most commonly known and cited study to date of the payday loan customer, including the one referenced in CFSA's materials, is one funded by the CFSA and conducted in 2001 by the Credit Research Center at Georgetown University. According to its critics, the GU/CFSA study has two major flaws: the lenders offer no information about how the customer samples were selected nor is there any information on geographic distribution. From a universe of 5,430 names to be surveyed, 3,168 could not be reached (either because telephones were disconnected or not answered), 858 refused to be interviewed, and 185 began but did not complete the surveys. "More tellingly," noted one forum participant familiar with the study, "is that 726 people denied using payday loans, even though their names were provided by the lenders." Other studies have been done by academic institutions, some of which include data from states that track payday lending.

The NEFE-CFA forum participants acknowledged that even a more rigorous, scientific survey of payday lending customers faces obstacles. "No doubt there is difficulty in reaching these people," said one participant. "Are they using lenders near where they work? Or near where they live? Will they be willing to talk honestly and openly, if at all? What will motivate them to share their experience?"

Although the participants believe further research will "challenge" current information on payday loan customers, the picture that has emerged from industry, academic, and state regulatory studies describes customers with the characteristics shown below.¹⁵

Young in age. Two-thirds of customers are less than 45 years old (GU/CFSA), with a median age of 32 years (Utah Consumer Lending Association study).

Female. Sixty-two percent are female (Federal Reserve Board), and 62 percent have children under age 18 living at home (Utah Consumer Lending Association study).

Employed. Half of payday lending customers have held their current job three years or less, while 23 percent have held their jobs for five years or more (Utah Consumer Lending Association study). The GU/CFSA study says that customers have held their current job 3.9 years.

Have an average annual household income of \$25,000 to \$50,000. (GU/CFSA). While the payday lending industry heavily touts this "middle-class" income figure, data from a study done by the Woodstock Institute from the Chicago area found differently. According to its study, customers' median income was \$23,690, or 40 percent of the median family income for the Chicago metropolitan area in 1998. Nineteen percent earned less than \$15,000, 38 percent earned \$15,000 to \$24,999, and 31 percent earned \$25,000 to \$39,999. Consumers Union found an average annual income in California of \$25,000. Borrowers in Wisconsin, according to state regulators, are even less affluent, with an average income of \$19,000.

More likely to rent, than to own, a home.

White, according to the Federal Reserve Board.

Married. Forty percent are married with children (GU/CFSA).

Likely to have some college education. In a Federal Reserve Board study, 35 percent had a college degree, compared with 55 percent reported in the GU/CFSA study. In the Utah trade group study, only 21 percent had a college degree.

The fact that there are significant differences about payday loan customers—level of education and income, for example—among the studies is why many payday lending experts, and forum participants, believe the picture is “incomplete.” The participants in the payday lending forum noted that income from the GU/CFSA study is given as “between \$25,000 and \$50,000,” but many believe that more customers fall toward the bottom end of that range than the top. Statistics from other studies also warrant further research, the participants believe. For example, a study done in North Carolina indicated that African-Americans are twice as likely to borrow from a payday lender as whites—10.1 percent of lower-income black families in North Carolina have taken out at least one payday loan in the past two years, compared to 5.2 percent of all lower-income whites.¹⁶

The Woodstock Institute’s analysis of the Chicago area found that borrowers from lenders located in ZIP code areas with higher minority populations had more contracts with payday lenders than did borrowers in mostly white areas. In areas where the population was greater than 30 percent minority, the *average number of contracts per borrower was 13.8*, or 37 percent higher than the average number of contracts per borrower for lenders located in predominantly white ZIP code areas.

In research done by CFA in 2001, 53 percent of people surveyed in a random national sample said that they “sometimes,” “most of the time,” or “always” live from paycheck to paycheck. Members of this “strapped and struggling” group, as they have been called, may or may not be payday loan customers, although they do share certain characteristics. But certainly, by definition a payday loan customer is not making it from payday to payday, and not just occasionally. The U.S. Census Bureau’s 1995 report “Extended Measures of Well Being” concluded that approximately 49 million people, or one person in five, live in a household that had difficulty meeting basic needs. The Bureau’s report further concluded that when people had a problem meeting a basic need, it *wasn’t* a one-time event.

Other research indicates that those either currently living on welfare, or recently living on welfare, are prime targets for payday loans. In a study conducted in North Carolina, researchers found that 10 percent of all current welfare recipients and 20 percent of former welfare recipients had taken out at least one payday loan. More significant is that 40 percent of current welfare recipients had become *chronically dependent* on payday loans.¹⁷

Are payday loans the only choice that customers have? If not, why aren’t they taking advantage of better alternatives? What motivates the payday loan customer to choose a loan with a 400 percent APR, when alternatives—such as credit union loans and check overdraft protection—come far less expensively?

What Do Consumers Need? And Why Are They Turning to Payday Lenders?

It may be difficult to determine with great certainty why customers turn to payday lenders—and how they’re using the money they borrow. For one thing, lenders don’t ask. They even use that point in their marketing messages. The Web site of one payday lender makes a point of saying it “never asks you to explain the reason why you need the cash.”¹⁸

Studies to date indicate that many people turn to payday lenders because of unexpected financial emergencies, such as auto repairs, medical expenses, or a temporary reduction in income. The Federal Reserve also found that many people seek payday loans when there is an increase in dependents in their household. Still others indicate customers use these loans for "planned expenses" and "other reasons."¹⁹ And advertising messages from some payday lenders offer other reasons: One promotes borrowing to pay for an anniversary celebration and another says "... maybe you're just trying to get in on a great sale."

While "emergencies" likely constitute the single largest reason for most loans, defining what constitutes an emergency needs further examination, the forum participants agreed. "There probably are many customers who have a car repair problem, for example, and need it fixed to continue going to work and earning money," said one participant. "Then there may be others who chronically spend more than they make, and are always behind. To them, an emergency may be defined in a totally different way. It could be as simple as 'I need money to have fun this weekend.'"

One participant commented that more exhaustive information on customers' needs for or use of the loans may be difficult to come by, given that a significant population of people in an existing study denied even taking out a loan. As one participant stated, "Among some types of customers, there may be a stigma associated with saying 'I couldn't make ends meet this month' or 'I just had to have some new clothes and I didn't have the money.'" But another participant argued that there appears to be little stigma about taking a payday loan, at least among some customers. "When all of your friends and members of your peer group are doing it, it's 'accepted,'" said the participant.

This "acceptance" may also be due in part to payday lenders' savvy advertising. "Television commercials are very professionally done, and they imply that this is a typical middle-class product that provides a short-term solution to an immediate need. Payday lenders have carefully created their image," said this participant.

Payday lenders advertise heavily among the populations they serve, promoting the convenience and quick service of payday loans. Perhaps payday lenders have created an artificial demand through their advertising, added one participant at the forum. "Before payday loans, people either lived within their means or went to churches, charitable organizations, or government agencies for emergency help. Because the industry markets their products with the soundbites of 'fast, no hassle, and no credit check involved,' they may have created a demand that previously wasn't there. Customers hear what they want, initially, and whatever information they get later is less critical to them. And what they're hearing is 'easy quick cash,' not 'easy quick loan.'"

While other participants agreed with this view, they also believe that it may not matter whether the demand is real or artificial. The payday loan industry has done a good job of saturating prospective customers with appealing messages about its products, the participants agreed. One participant put it bluntly: "When it comes to helping people understand their options, we're losing the marketing war."

A participant who works with a relief agency serving the military noted that the agency can even provide short-term cash assistance to families at zero cost. "It's free money. It's not even a loan. Yet many people will still turn to a payday lender first."

What alternatives are available to payday lending customers? "It's an article of faith that consumers who turn to payday loans have serious credit constraints," said one participant. Industry surveys indicate that borrowers do have other sources of credit available to them, but are more likely to have been turned down for credit in the last few years, indicating they had reached their limits. In one industry survey, 68 percent of people surveyed wanted to apply for credit but didn't, *expecting* to be turned down. Borrowing from family or friends would seem to be a likely alternative for emergency assistance, yet in one industry survey, only five percent of customers said they had considered it.

Some payday loan customers *have* turned to credit unions over the years. These institutions offer check overdraft protection and, in some areas, "micro loans" at an 18 percent APR. "But we don't have the product that payday lenders do," said a forum participant associated with the credit union industry. "We don't give out cash in 20 minutes."

Part of the reason many people may go to payday lenders is that the alternatives at mainstream financial institutions seem unpalatable. In other words, payday lenders *don't* do things that the mainstream financial institutions do—they *don't* ask questions, suggest that the customer take a budgeting class, and conduct a full credit check. Here is the way

the "competitive" environment was described by a participant whose organization serves the military:

"They [members of the military] see this huge ad in the military newspaper every week: 'It's fast, it's easy, bankruptcies welcome.' They can 'order' their loan via the Internet, and never leave their desks. They don't have to sit in a glass-enclosed office in a bank and wonder whether their commanding officer will walk in and see them. They can be completely anonymous to the rest of the world." And another participant said, "Banks, with their mahogany and brass, reek money. The payday loan customer probably views them as being for older, more affluent people or, at the very least, 'not for me.'"

Privacy is often cited by the industry as a key factor for why people choose payday loans. But one forum participant wondered why customers believe that a payday loan transaction is more private than one at a bank or credit union, given that lenders often have access to the customer's bank account through electronic debit. Said another participant, "It's the *experience* of privacy. Customers believe it's more private because the lenders don't ask them questions. And being able to order a loan while sitting at their computer makes it seem 'unseen' by anybody." Still another participant added, "It's almost viewed as an 'off-the-books' transaction."

Perceptions of privacy and neighborhood friendliness may be motivating factors, but the primary reason customers cite for the reason they turn to payday loans is that the lenders "say yes." In the GU/CFSA study, "speed and ease of loans" was named by 60 percent of customers. And in a major state study, 49 percent of respondents who considered alternatives to payday lending chose a payday loan for convenience.²⁰

Customers' Understanding and Use of Payday Loans

How much do customers really understand about a payday loan transaction?

The GU/CFSA study found borrowers knew that their loans carried a finance charge, but could not recall the annual percentage rate (APR) on their most recent loan. It is more likely, the participants agreed, that a typical customer knows the *absolute* cost of the loan—\$15 to borrow \$100, for example—but not the APR. In fact, APR may be a completely foreign or meaningless concept to many customers, an assumption that appears to be validated by industry studies indicating that more than half of customers who claimed to know their loan's APR did not quote a credible rate.²¹

Customers also may not know the APR because it may not be provided, a violation of the federal Truth in Lending Act (TILA). In a 2001 study done by law students and a professor at the Ohio State University College of Law, known as the "Ohio Survey," students posing as potential customers visited 83 payday lending outlets in Franklin County (Columbus), Ohio. They found lenders often refusing to provide customers with basic written information about the payday loan transaction. Sixty-eight percent of lenders surveyed refused to allow a customer to have a copy of the application to take home and review, and many simply stated, "I'll tell you all you need to know." In several instances, customers were told: "It's illegal for you to take the application out of the store."

The survey also discovered lenders giving consumers false or misleading information about the cost of credit, failing to advertise the cost of credit using APR, and refusing to supply customers with written disclosures prior to contract consummation. Just 32 percent of the lenders surveyed disclosed the APR on a \$100 loan, even when specifically asked. Thirty-two percent of the lenders even denied there *was* an APR associated with the loan, while 18 percent claimed they did not know the rate. Fourteen percent stated that the \$15 finance charge was the APR and five percent gave an evasive answer such as: "That doesn't count because you don't have the money for a whole year." Eighty-four percent of lenders who did have some type of posted fee schedule failed to disclose the APR on the schedule. TILA stipulates that an advertisement of a finance charge rate must be stated as an annual percentage rate, using that term.²²

But here is how most customers see the "cost" of a payday loan, and why they don't necessarily view that cost as onerous: "Amount You Want = \$50, Fee = \$7.50, Total Amount of Your Check = \$57.50."

The perception is that this is a reasonable cost. "They know their initial cost, but more information is needed about whether customers know what their *total* costs, including rollover fees, are," said a participant. And another participant noted that some studies indicate the majority of *all* consumers recognize the term APR and know what it stands for but do not really understand what it means. "APR is an abstraction to many people, and especially to payday loan customers," said a participant. "What they can understand and relate to is a specific amount, like \$15."

Unfortunately, many payday loan customers are not occasional, one-time users who pay \$15 for a \$100 loan. Rollovers, which occur when a borrower cannot repay a loan and thus renews it for *another* one with *additional* fees, are the industry's "weak spot," according to the CFA. The rollover problem can lead to a vicious cycle of perpetual debt.

In a Congressional hearing conducted by Sen. Joseph Lieberman (D.-Conn.) in 1999, information presented showed that a family earning either \$25,000 or \$35,000 a year could not repay an average payday loan on their next payday and meet other budget obligations without going into the red. John Caskey, a professor of economics at Swarthmore College and a "fringe banking" scholar, analyzed data on 322 payday lending customers in Wisconsin in 2000 and found that 38.5 percent of customers had four or more sequential renewals and 15.5 percent had seven or more. Information from other states on their residents' use of rollovers provides some startling statistics:

In Indiana, 77 percent of payday loans are rollovers, with the average customer taking out more than 10 loans per year.

The average customer in California takes out 11 payday loans a year.

In Illinois, the typical customer averages more than one payday loan per month.

In North Carolina, a typical payday loan customer took out approximately seven loans in 2000, up from 5.8 loans in 1999.²³

Payday loan customers also tend to use multiple lenders—in effect, "borrowing from Peter to pay Paul."²⁴ The GU/CFSA study revealed that 47 percent of all customers across the country had obtained loans from more than one company in the year of their survey—two-thirds used two companies, one-quarter used three, and 13 percent used four or more.

The short-term result can be bad enough—the inability to pay off the loan when it's originally due—but the long-term result of a pattern of rollovers can be extremely detrimental to an individual's ability to stay afloat financially, much less get ahead.

"Most of the time, a payday loan does not solve a person's problem; it just creates a new and bigger one," said one participant.

Consumers' Perceptions of Risk: What Happens When They Can't Pay?

Do customers understand the risks involved in a payday loan? That question actually begs another one: do they even understand that they're taking out a *loan*, and not just getting an advance on their paycheck? "This is a learning curve that's kind of hidden in quicksand," commented one forum participant. "Many customers go into it the first time not really understanding what it is and not asking themselves how they're going to pay it off. By the time they've learned that, both feet are stuck."

Because the industry frequently uses the term "payday *advance*" in marketing, many customers may not understand that they are engaging in a credit transaction. "By using every other term but the word 'loan,' customers' red flags don't go up," said a participant. "The industry is deliberately trying to lower people's defenses."

Nor are some customers likely to understand what the law either *provides for or doesn't allow* if they are unable to complete their credit transaction with a timely payment. Generally, consumers who default on a loan are not committing a crime. However, a payday loan is secured by a post-dated personal check, which the lender agrees to hold until the customer's pay is deposited. Because states *do* consider it a crime to write a check knowing there are not sufficient funds to cover it, payday lending customers are vulnerable to the threat of criminal prosecution by their lender.

Customers also may not understand that, in some cases, they're granting a payday lender the right to electronically debit their checking account to cover fees and interest payments—or that they don't *have* to agree to this. In fact, the Electronic Funds Transfer Act prohibits making electronic access to an account a *condition* of granting credit.

"It's going on every day," said one participant. "So it's a real question of voluntary, informed consent. Any customer can call at any time and tell the lender to stop electronic debits. But few know their rights. For lenders, this is the best kept secret around."

Some payday lenders also require borrowers to agree to mandatory arbitration for payment disputes, yet the forum participants agreed that most customers likely do not know what they're agreeing to. Nor is it likely they understand that their paycheck could actually be garnished if they don't make the loan payment. "Many people's perception of garnishment is that it's only for child support," said a forum participant.

The "Ohio Survey" found that payday lenders also frequently engage in unfair and illegal collection tactics. ". . . [T]hey subject payday loan customers to horrific collection practices that are not imposed on consumers defaulting on traditional forms of credit. . . . Complaints of inappropriate collection practices [fall into] four areas: (1) harassing customers and their employers and relatives with vexing telephone calls, (2) threatening violence against customers unable to repay, (3) collecting excessive damages from customers, and (4) threatening criminal prosecution against those who fail to repay."²⁵

The payday lending industry has developed a set of "Best Practices," one of which states that the lender will collect debts in a "fair and lawful manner." But, as the "Ohio Survey" states, "Although technically legal, reasonable minds cannot conclude that the practice of using a victim's compensation statute to collect treble damages [allowed in some states for victims of bad checks] is fair, especially given that the majority of payday loan customers have no alternative means of getting a loan and that payday lenders do no pre-loan assessment of the debtor's ability to repay. Because payday lenders do no assessment of a customer's ability to repay and because they know that the post-dated checks given to them are not good, payday lenders can hardly be classified as crime victims entitled to collect treble damages."²⁶

The Broader Implications of Payday Lending on Individuals, Families, and Society

In-depth research on consumers' understanding of the risks involved in payday loans may provide information on what many of the forum participants believe to be the *real* risk to customers. That is, what *doesn't* get paid because of the fees being charged for these loans? For some people, whether they're called "strapped and struggling" or by some other name, on a short-term basis it could be utilities, food, even medication that they must do without. And on a long-term basis, items not getting paid for can result in more serious consequences—repossession of a car, foreclosure of a home, possible bankruptcy, a downward cycle of debt, and a continuing inability to build financial assets for the future.

Obviously, relying on savings as a financial cushion for unexpected expenses is a lower-cost way for individuals to meet such expenses than turning to a payday lender. Even relying on credit for smaller financial needs may be a better alternative, and one that is widely available to many people—consumers with good credit histories can obtain a personal, unsecured loan of \$1,000 to be repaid over 36 to 60 months at an average 10.61 percent APR.²⁷ But the person typically seeking a payday loan does not have a clean credit history, has no emergency cash, and has little or no immediate access to lower-cost credit.

Relying on providers that are out of the financial mainstream, however, harms individuals in ways other than just the higher costs assessed. According to CFA:

Consumers who use traditional financial institutions typically receive 'credit' for their success because they build a documented history within the financial system. It is this history that makes them eligible for additional loans in the future. Repaying a consumer loan may qualify them for an auto loan, for example, which in turn may help them become eligible for a mortgage loan. In contrast, successfully repaying the loan obtained at a fringe financial service provider does *not* create a similar benefit and thus impacts a household's long-term financial health. Participating in fringe financial services can certainly hurt an individual's or household's credit rating, but successful payment of fringe credit products does not improve credit ratings because payday loan companies, rent-to-own stores, title lenders, and pawnshops don't consult credit reports and don't report successful payment to national credit bureaus These fringe services [are] "dead-end credit" because consumers who managed to pay off their loans are still stuck with the tarnished credit report that led them to use a fringe provider in the firstplace.²⁸

In addition to the lack of a financial history, payday loan customers also are those most likely to face the difficult choice of where to allocate limited discretionary funds from the next paycheck—to the loan, or to other pressing needs? The dilemma may turn customers whose intentions were to seek a one-time, short-term loan into those with long-term, chronic dependencies on payday loans.

The result? They are caught in a cycle that prevents them from taking positive steps toward building financial assets for the future. As the Illinois Department of Financial Institutions put it, "What [the industry has] failed to mention was that the financial strains placed on consumers were rarely short-lived. Customers playing catch-up with their expenses do not have the ability to overcome unexpected financial hardships because their budgets are usually limited. The high expense of a short-term loan depletes the customer's ability to catch up, therefore making the customer 'captive' to the lender."²⁹

Ultimately, payday loans can result in a crushing, never-ending debt cycle for some borrowers. Consider the case of one customer in Kentucky:

She took out her first loan when faced with a family emergency and was still paying to roll the loan over every payday three years later. At first, this 36-year-old woman viewed her payday loan as a safe and easy way to obtain "free money." For the next three years, she paid the interest but was unable to repay the balance in a cycle that she could not end. Over the life of the \$300 loan, she paid a total of \$4,130 (\$17.65 per \$100 x 3 x 78 renewals). She still owes the principal.³⁰

The Fannie Mae Foundation argues that the costs of alternative financial services fees can greatly undermine the asset-building capacity of lower-income households:

... [F]ringe services for cash conversion and bill paying would cost an average \$20,000-income household between \$86 and \$500 per year, while the same services at a bank would cost only \$30 to \$60 (assuming that low-cost banking services are available and that the prospective customer is not disqualified for an account by lack of credit). Yet \$500 per year saved for a period of 10 years at a modest interest rate of only 4 percent would grow to more than \$6,000. That amount would be sufficient for a down payment on a modestly priced home Assuming a household relied on fringe lenders for only an additional \$300 worth of services per year, the new total of \$800 of potential savings would grow to nearly \$10,000 over a 10-year period, again assuming a modest 4 percent rate of return. . . . [F]ailure to access mainstream financial services institutions undermines long-term asset accumulation.³¹

For those concerned with the issue of why customers choose fringe financial services, some of the key words may be found above: "... assuming that low-cost banking services are available." For many people, they're not. The Fannie Mae Foundation white paper cites information from a 1999 article in the *Harvard Business Review* that illustrates the extreme disparity in financial services options available to residents of two neighborhoods in Los Angeles, one in south central Los Angeles and the other in Pacific Palisades. South central Los Angeles has one depository institution for every 36,000 people, while Pacific Palisades has one for every 1,250 people.³²

Conversely, about 38 percent of the statewide population in California lives within one mile of at least one payday lender, with 27 percent of white non-Hispanics, 57 percent of African-Americans, and 49 percent of Hispanics living within one mile of a lender. Los Angeles contains more than 25 percent of the state's payday lending outlets.³³

“We all have this great ability to be optimistic—to think that something great, particularly financial, is going to happen to us tomorrow,” said another participant. “Many times, urgent needs, such as putting food on the table *today*, overwhelm a person’s ability to think cautiously about the future. There’s the tendency to think ‘surely it will be better next payday.’”

Another psychological factor may play a certain role with the payday loan user, commented a participant who has had first-hand experience with such customers. “They do indicate that they know it’s expensive, but at least they know exactly what the dollar amount of the fee will be. To them, nothing is ‘hidden,’ which is their perception of transactions with banks and credit card companies. The certainty of the fee makes them feel in control, and much of the rest of their lives probably feels out of control,” the participant said.

Clearly, policymakers in the U.S. must address how to increase low-income consumers’ access to a wider range of financial services and entry into the federally insured banking system. Because consumers should be encouraged to save as a way to break away from high-cost payday loans and to create better financial futures for themselves, environments that support savings are essential. Indeed, saving money is difficult, if not impossible, outside the formal banking system. In addition, more financial institutions must be encouraged to create lower-cost alternatives that reflect the unique make-up of their constituencies. Some of the more recent developments by credit unions offer potential.

For example, in January 2001, the North Carolina State Employees Credit Union (NCSECU) introduced a new Salary Advance Loan (SALO) product. SALO is a reusable line of credit with a maximum loan of \$500, at an APR of 11.75 percent. It is available to all NCSECU members who receive their salary by direct deposit. SALO advances are repaid automatically from the borrower’s next direct payroll deposit. SALO has been a huge success, which has been a mixed blessing. As with traditional payday loans, renewals are outnumbering new loans by a 3:1 margin, with the average SALO borrower having used the product more than four times in the first nine months of its availability. With renewals substantially outnumbering new originations, management is troubled that its payday loan substitute seems to be as habit-forming as the actual payday loan it’s designed to replace.³⁷

Credit unions in other states have developed similar programs as alternatives to high-cost payday loans. The Orange County (Florida) Teachers Federal Credit Union established the People Helping People (PHP) Program, which provides up to \$500 to credit union members in hardship situations. The loans are generally for six months. PHP is not a standard loan product of the credit union; neither interest nor fees are charged. South Carolina's Carolina Trust Federal Credit Union developed its Micro Loan Program in 1998. Micro Loans are six-month, 18-percent, payroll-deduction loans for \$300 that do not require normal underwriting procedures. In Tampa, the Florida Central Credit Union formed a Credit Union Service Organization (CUSO) in an inner-city neighborhood to offer both short-term loans and check cashing. The CUSO will offer small loans to be repaid in periods from three to 12 months, as well as low-cost check cashing for both members and non-members, affordable money orders, bill-paying services for utilities, envelopes and stamps, international wire services, bus tokens, and a full-time consumer credit counselor.³⁸

Reminding the other forum participants that the payday loan customer is *not* unemployed, one participant suggested that a simple but effective educational message could be: "If you have a paycheck, you have other alternatives." Another participant added that because payday loan customers *do* have banking relationships, education on alternatives should be built around that fact: "Every person who has taken out a payday loan has written a check against a traditional financial institution account."

The Unclear Future of Payday Loans

Is payday lending niche marketing offering a valued service for those unable to participate in the credit society? Or is it "financial apartheid?" The disparate views of payday lending clearly indicate the need for further study of the customers who use these loans and other products of the alternative financial sector. NEFE and CFA believe that use of payday loans frequently results in consumers finding themselves trapped in a cycle of borrowing and debt that is difficult to escape. It is a cycle that represents a formidable barrier to the saving behavior that can help Americans of all classes and income levels create a better future for themselves and their families.

In her keynote address to the Payday Lending Forum, Keest noted the nearby Franklin Delano Roosevelt Memorial, upon which are carved these words:

"The test of our progress is not whether we add more to the abundance of those who have much, it is whether we provide enough for those who have too little."

She also noted the writings of the respected economist Lester Thurow, who has studied industries that "create" wealth by exploiting sociological disequilibria—in effect, transferring wealth, not creating new wealth. Said Keest, "Billions of dollars in payday loans is a lot of wealth to transfer out of the hands of those who are already on the bottom half of the nation's income profile."

Not all will agree with the forum participants' conclusion that payday loans are harmful, high-risk, high-cost financial choices. Some will argue that while alternatives *are* available to payday loan customers, they're not convenient, time-sensitive, or customer-friendly—in short, they do not meet the needs of *these* individuals. Others may point to weaknesses or contradictions in public policy. For example, commented one participant, “We always want to encourage saving, but we need to examine whether there are disincentives to saving. In some states, you can have only a certain, often quite low, threshold of financial assets to receive state-funded healthcare.”

There are many issues surrounding payday lending that need to be addressed. Through its planned research, CFA hopes to acquire more information about people who turn to payday loans and, ultimately, help them better understand their financial choices. NEFE hopes to raise awareness of the issues, encourage people to consider better alternatives, and stimulate public dialogue. As one participant put it, “Nobody in this country should ever need money so badly that they're compelled to borrow it at 390 percent interest. So if, in fact, payday loans are serving a useful purpose, we in America are failing a significant segment of our citizens.”

###

End Notes

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*Final article by Creola Johnson to be published by the Minnesota Law Review at year-end 2002

PREDATORY PAYDAY LENDING TRAPS BORROWERS



Many working families live from paycheck-to-paycheck. When these families experience an unforeseen expense, some products marketed as emergency loans seem to offer a solution. But they almost invariably lead these families further into financial crisis.

Research shows that payday lending, also known as cash advance or deferred deposit, fails to help families solve their financial crises. There are many more payday borrowers trapped in loans than there are occasional users—ninety-nine percent (99%) of payday loans go to repeat borrowers. Instead of benefiting borrowers, payday loans trap them in high-cost debt.

To qualify for a payday loan, borrowers need only a bank account and a steady income. They write a post-dated

personal check and exchange it for cash from the lender. But payday lenders typically allow borrowers just two weeks to repay, and borrowers frequently find that they cannot come up with the cash to pay back their loan so quickly.

Without adequate funds in their bank account, the lender's possession of a signed check becomes a major problem for the borrower. If the lender deposits the check, the borrower will be assessed bounced check fees from the lender and from their own bank. The borrower may even fear going to jail for "writing a bad check."

So to avoid default, the borrower agrees to renew the loan and pay the interest fee again. The lender either keeps the same loan outstanding, or reopens it in a back-to-back transaction. Payday borrowers get trapped in this cycle of debt, forced to pay the interest every two weeks to avoid default, often for months or

years. On a loan of \$325 (with a typical APR of over 400%), that interest is typically \$52 every two weeks, or \$104 every month.

Fees from these trapped borrowers are the lifeblood of the payday lending industry. A 2003 CRL study found that borrowers with five or more loans per year account for 91 percent of payday lenders' business. A University of North Carolina study likewise found that the financial success of payday lenders depends on their ability to cultivate repeat borrowers who take out at least one loan per month.

An August 2004 statement issued by Advance America, the largest payday lender in the nation, placed the average number of loans to its borrowers at 9 per year. Many borrowers take loans from second and third lenders as they try to manage a worsening crisis, making the number of loans per year even higher.

Continued »»»

The Center for Responsible Lending is a nonprofit, nonpartisan research and policy organization dedicated to protecting home-ownership and family wealth by working to eliminate abusive financial practices. CRL is affiliated with Self Help, one of the nation's largest community development financial institutions. Please visit our website at www.responsiblelending.org.

 **CENTER FOR
RESPONSIBLE
LENDING**

302 W. MAIN ST., DURHAM, NC 27701
PHONE 919 313 8500

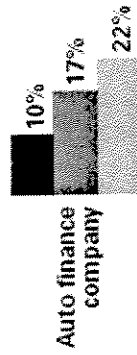
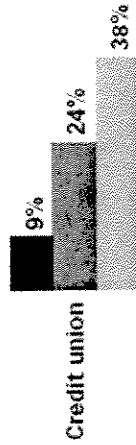
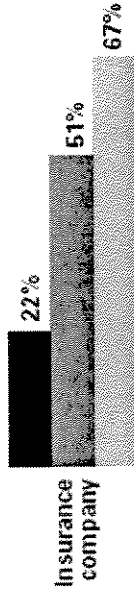
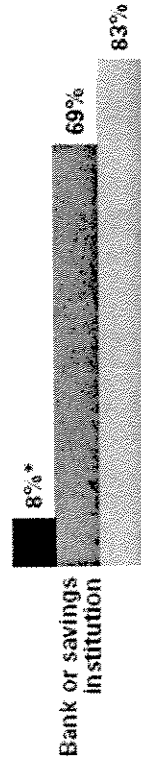
910 17TH STREET NW, SUITE 500
WASHINGTON, DC 20006

from The American Banker
 Friday, December 16, 2005

The Unbanked and the Underbanked

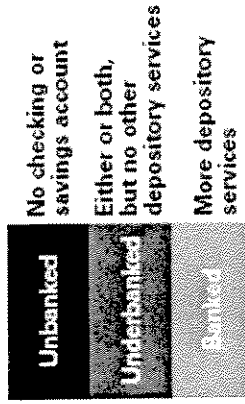
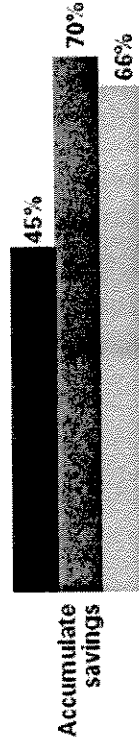
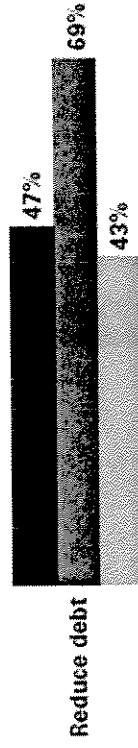
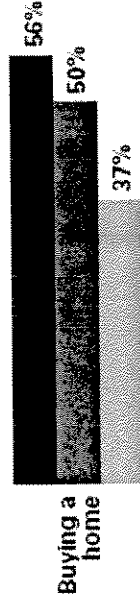
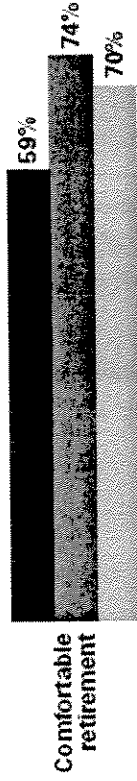
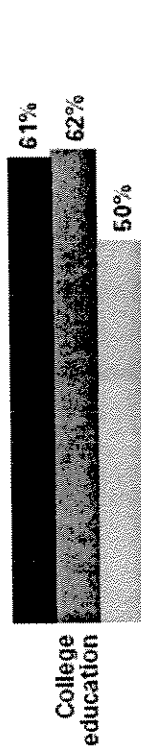
From a September phone survey of 900 adults with household income of \$40,000 or less

A fifth of the unbanked have some kind of financial account or service from an insurer — but only 8% from a bank or savings institution

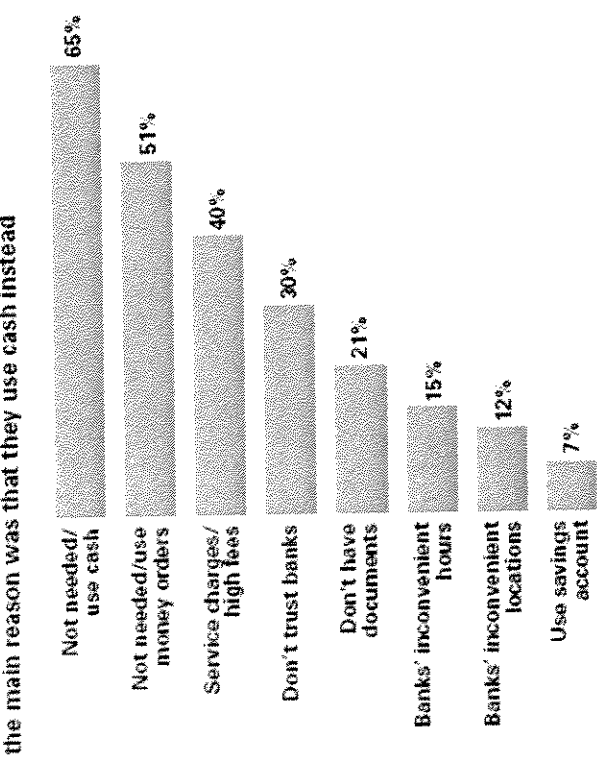


*For example, a CD or IRA

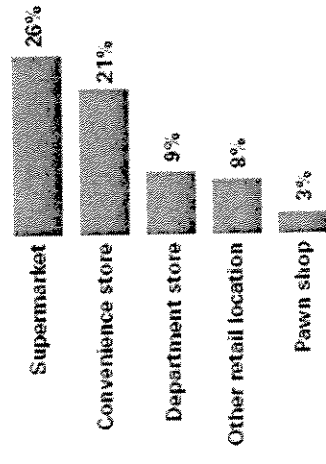
College, a comfortable retirement, and buying a home are very important financial goals for most of them



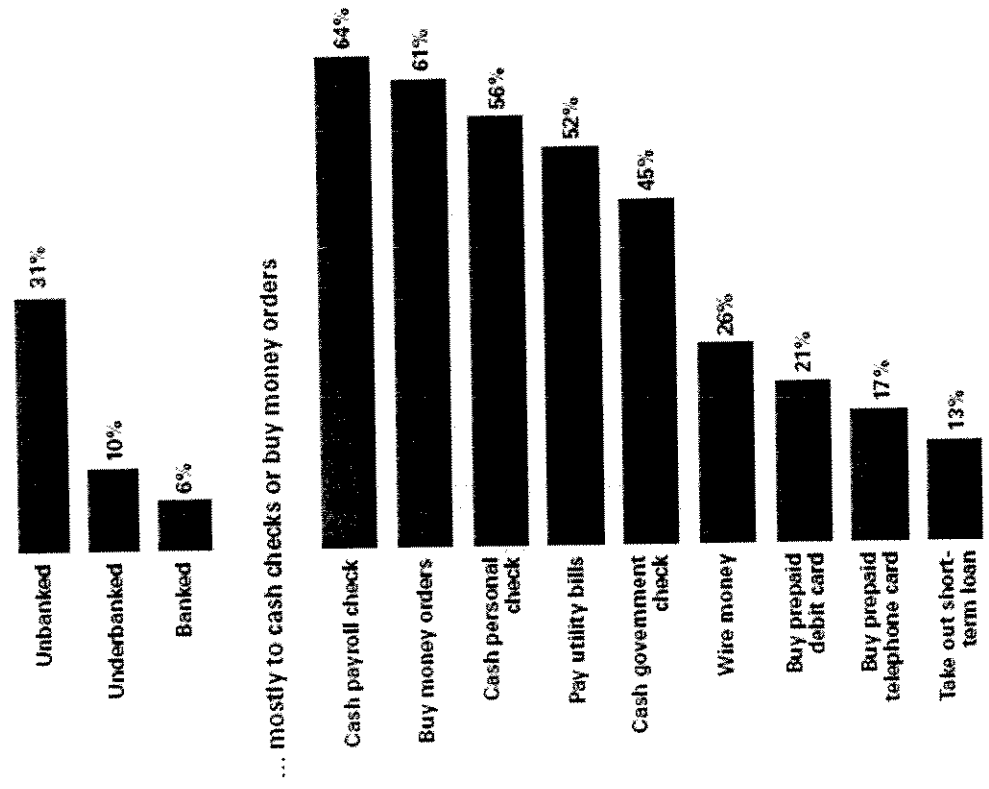
Almost two-thirds of respondents without checking accounts said the main reason was that they use cash instead



Over a quarter of the unbanked have cashed checks at supermarkets, and over 20% at convenience stores



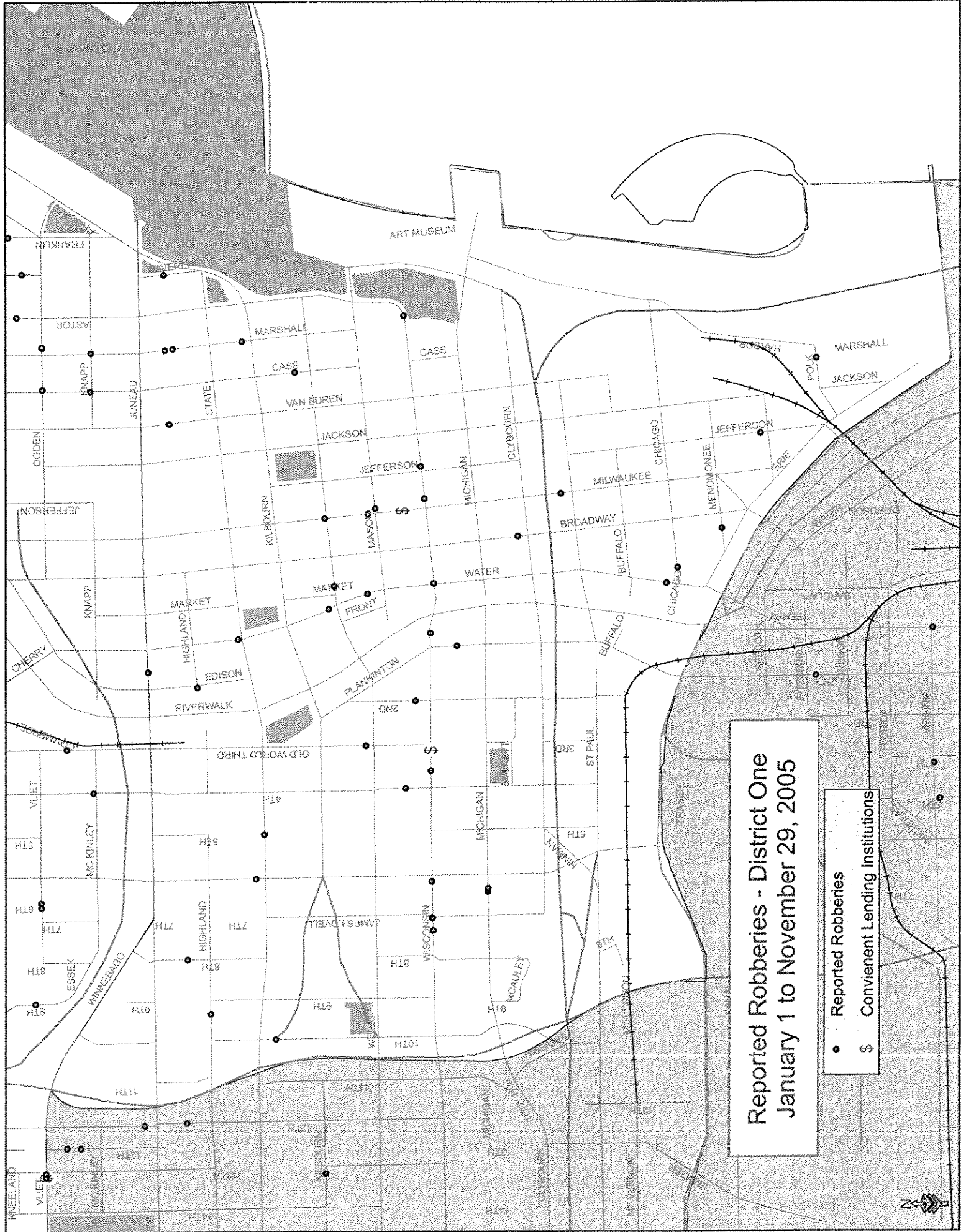
Almost a third of the unbanked have used check-cashing centers ...



Source: Synergetics Research Corp.

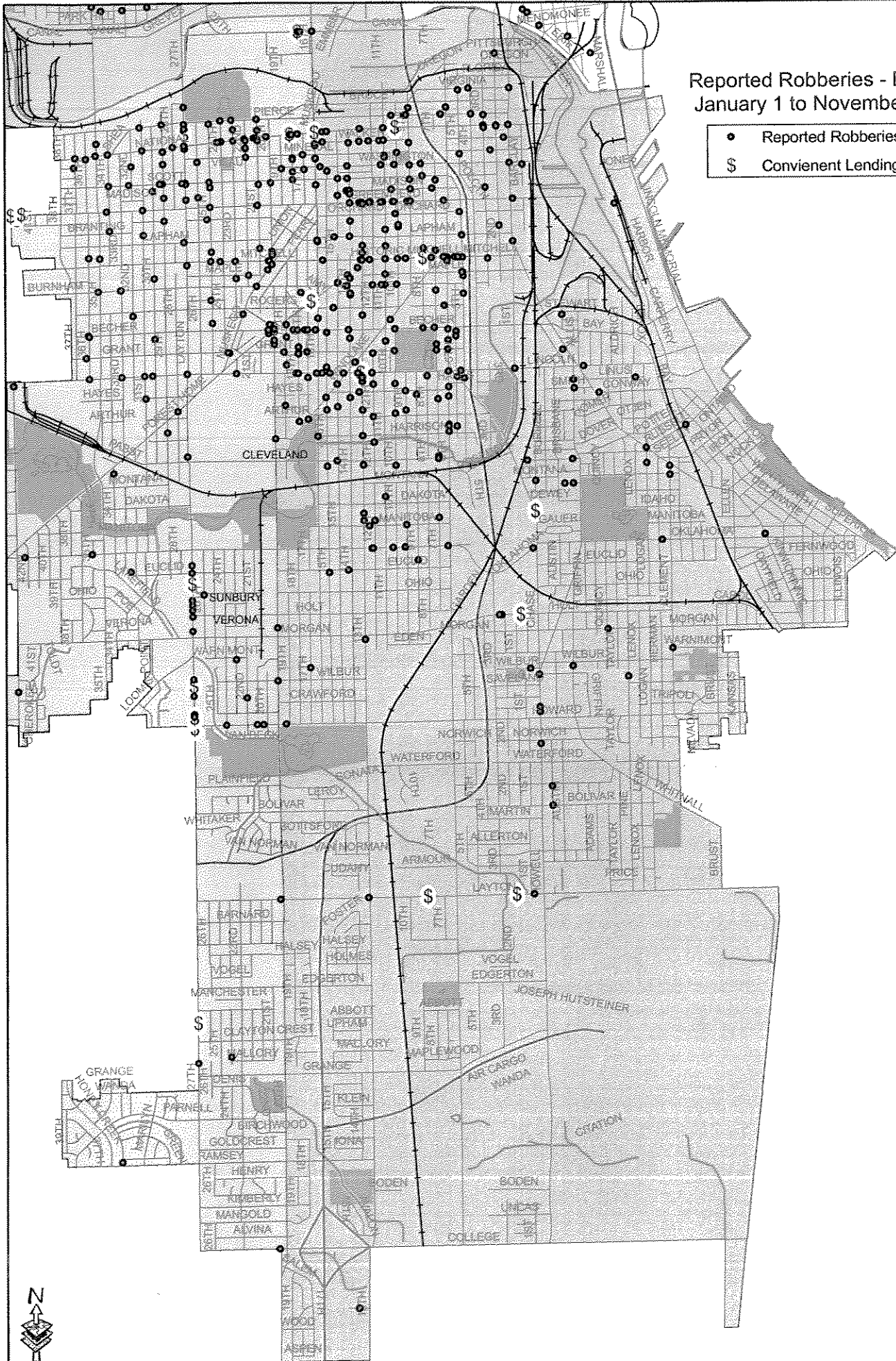
APPENDIX E

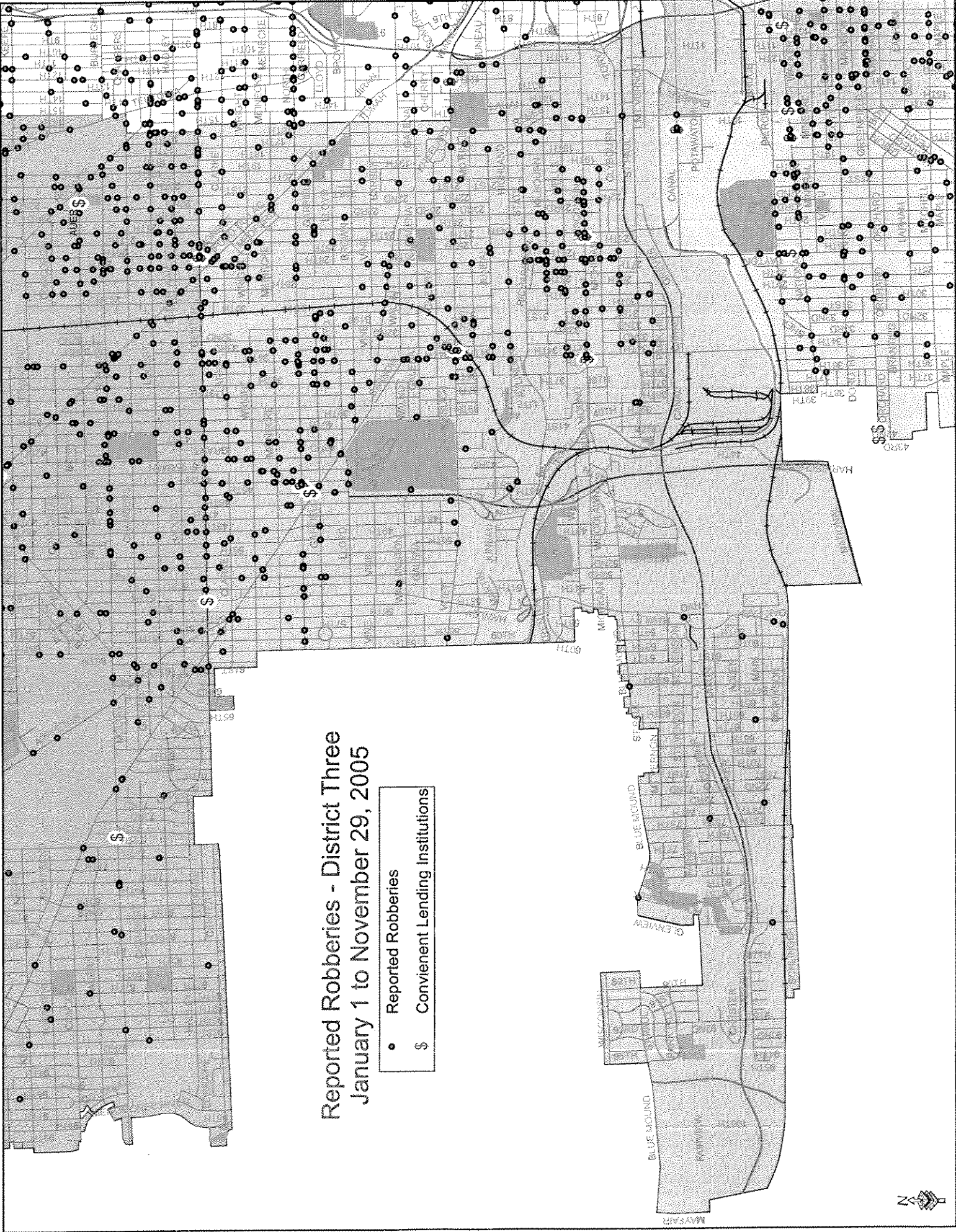
Crime maps and data – City of Milwaukee



Reported Robberies - District Two January 1 to November 29, 2005

- Reported Robberies
- \$ Convenient Lending Institutions





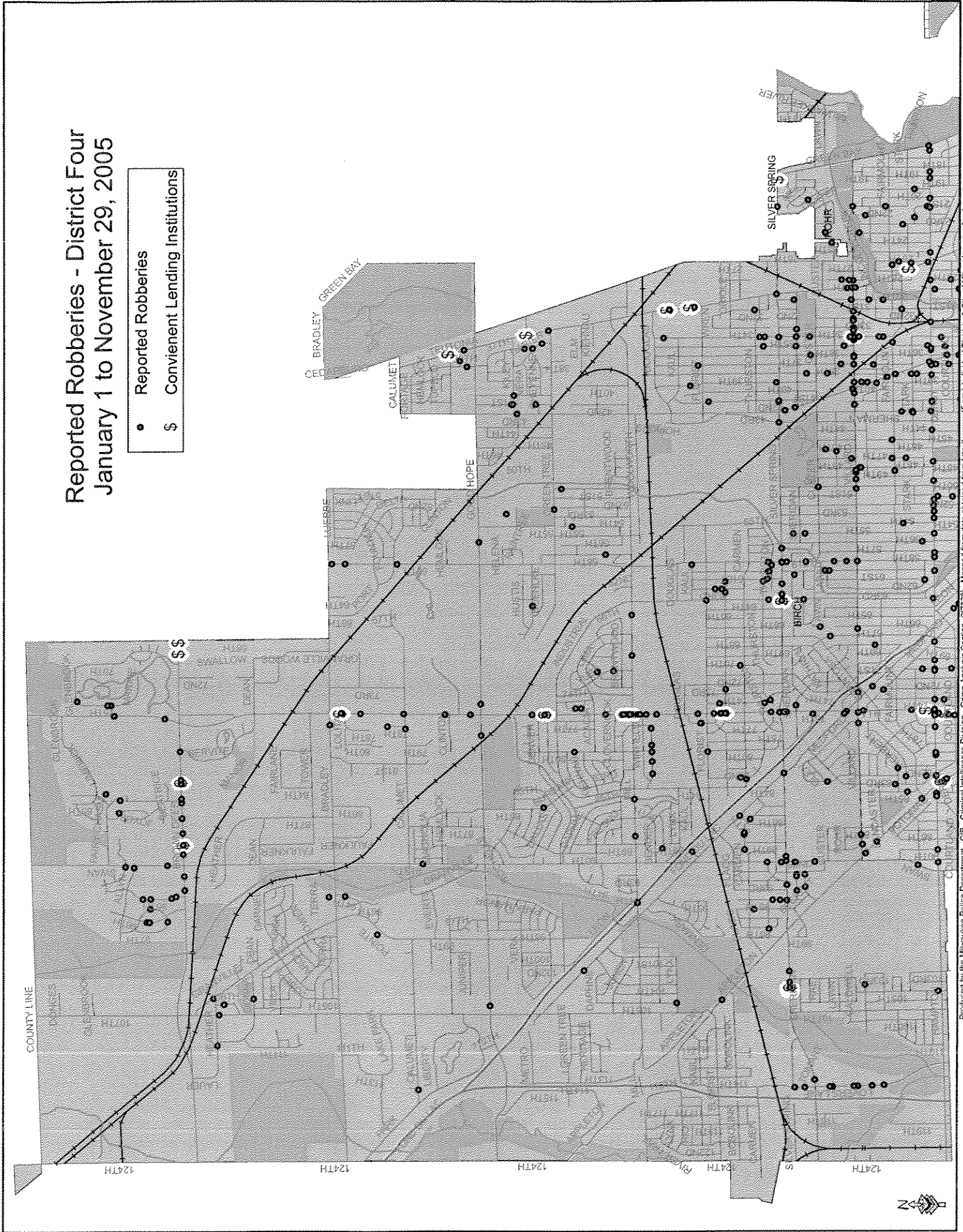
Reported Robberies - District Three January 1 to November 29, 2005

- Reported Robberies
- \$ Convenient Lending Institutions



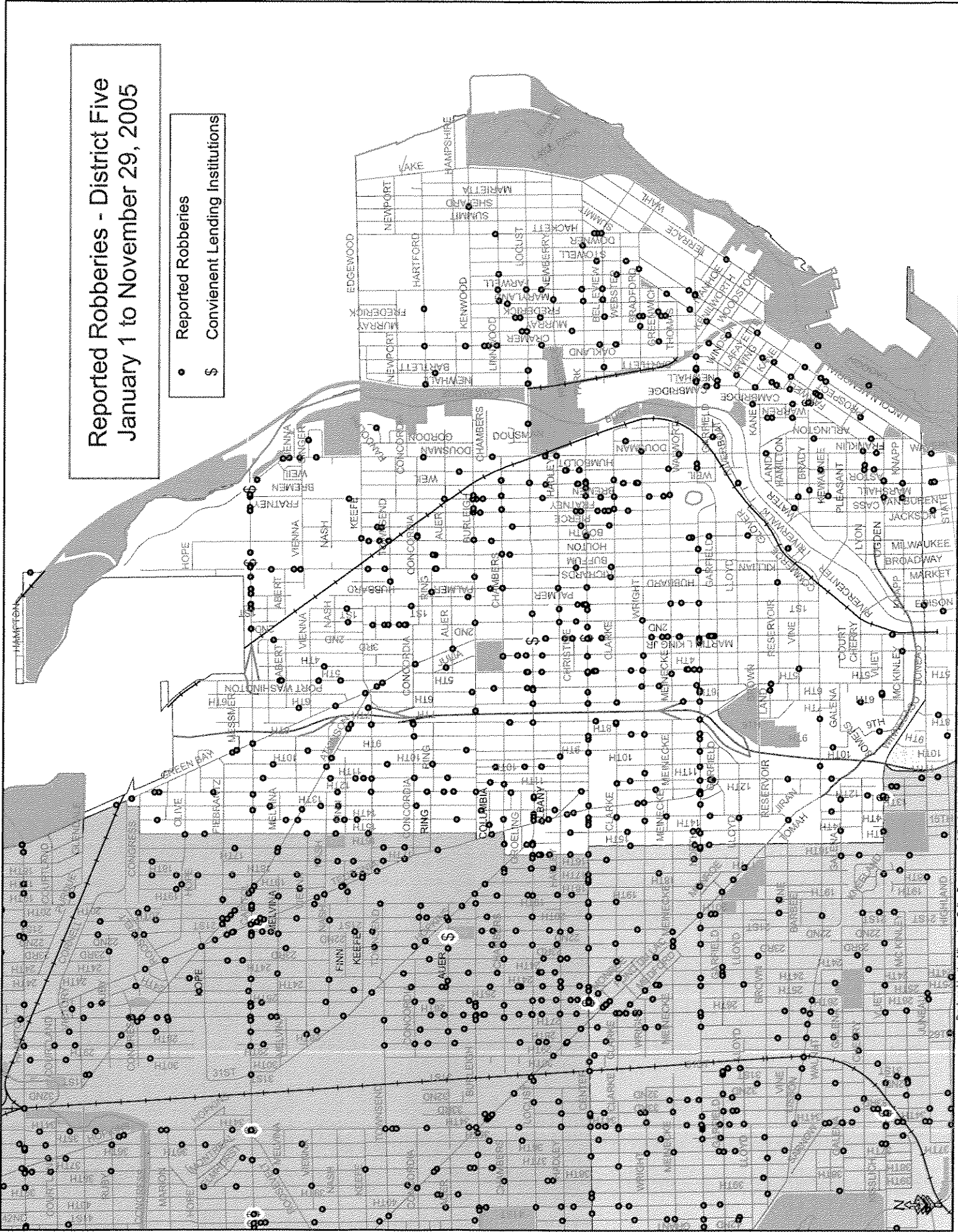
Reported Robberies - District Four January 1 to November 29, 2005

- Reported Robberies
- \$ Convenient Lending Institutions



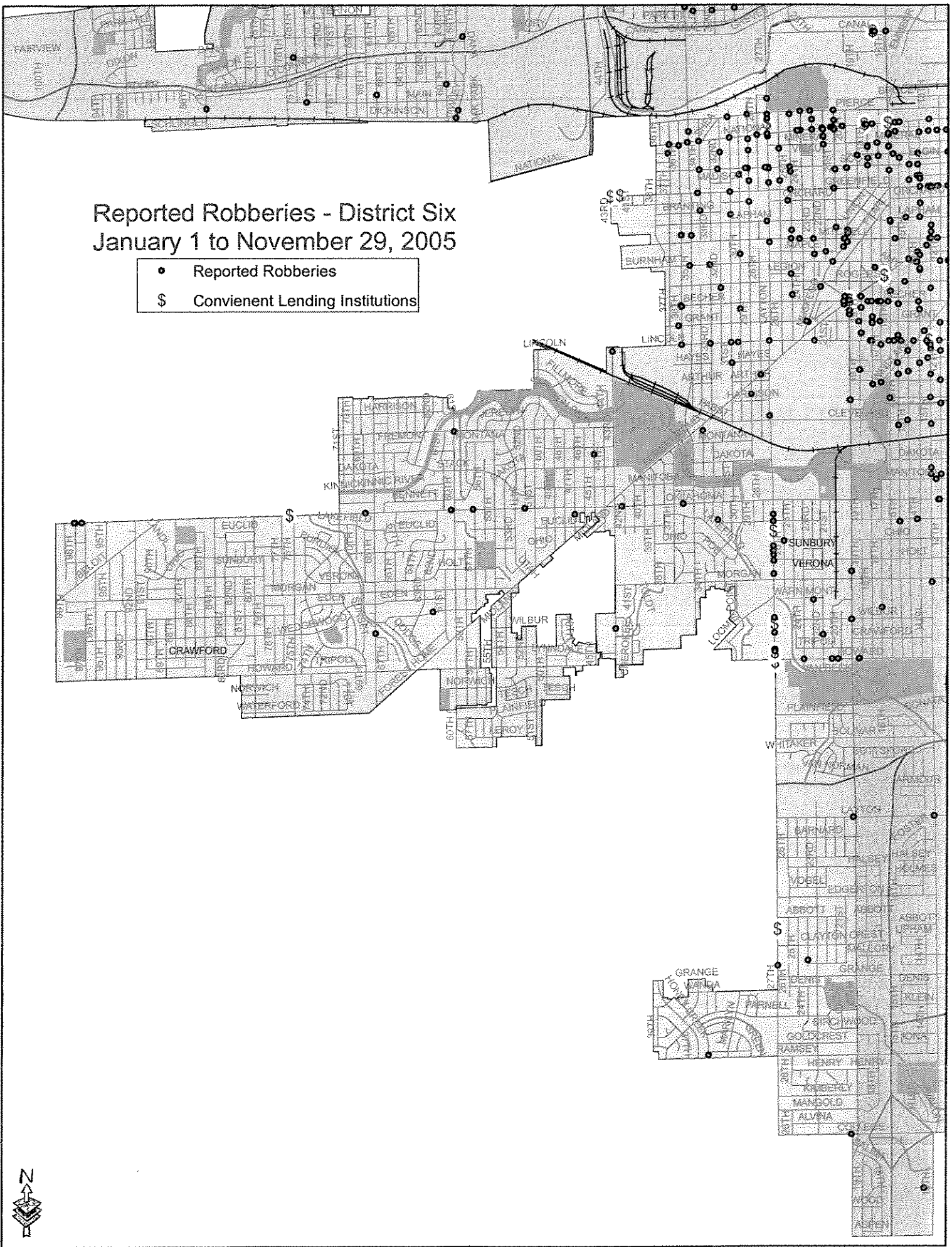
Reported Robberies - District Five January 1 to November 29, 2005

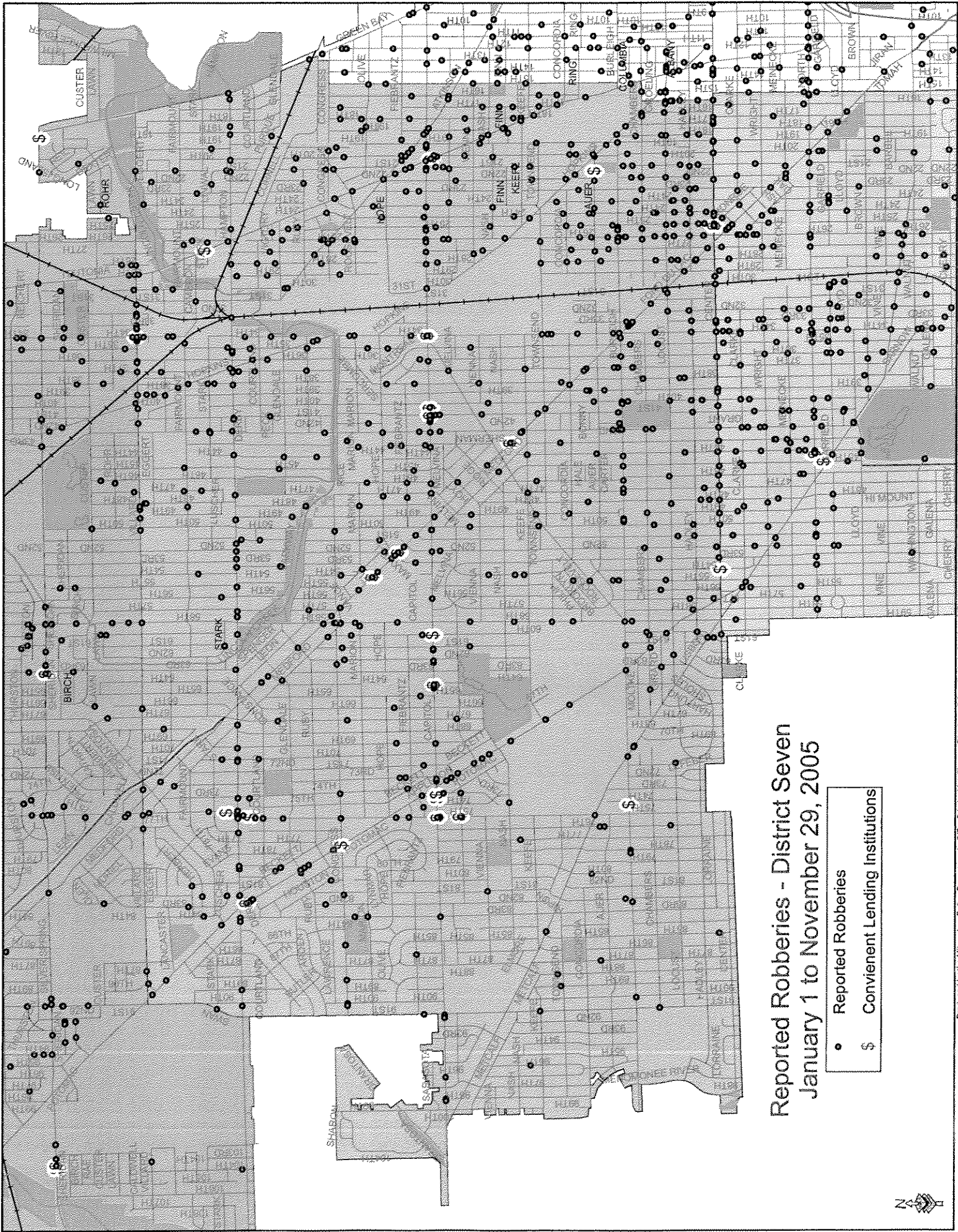
- Reported Robberies
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Reported Robberies - District Six January 1 to November 29, 2005

- Reported Robberies
- \$ Convenient Lending Institutions





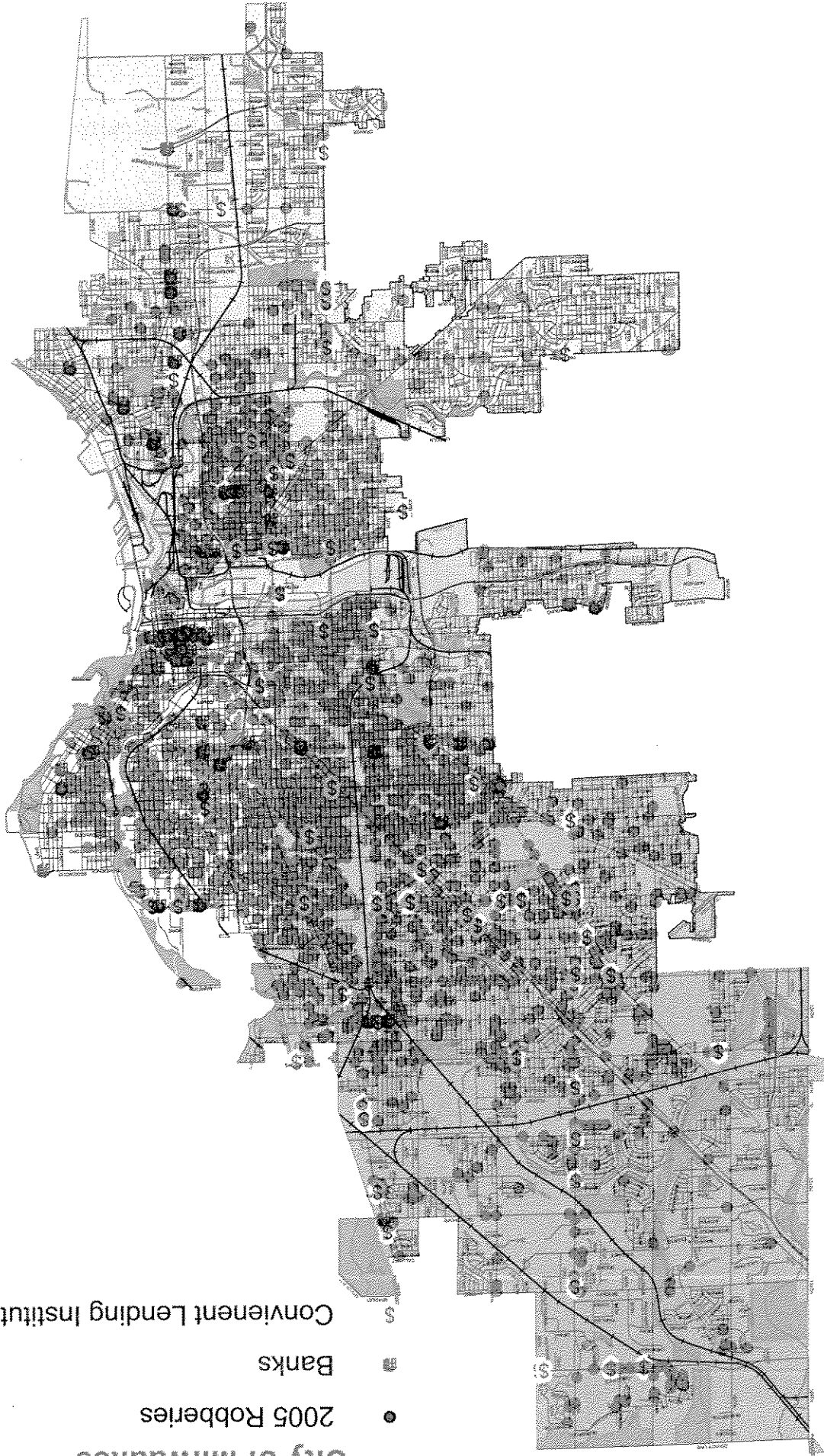
Reported Robberies - District Seven January 1 to November 29, 2005

- Reported Robberies
- \$ Convenient Lending Institutions





- 2005 Robberies
- Banks
- ⌘ Convenient Lending Institutions



City of Milwaukee - Reported Part 1 Crimes

Citywide and Buffer Areas around Convenient Lending Businesses

2004 Part 1 Crimes	500' Buffer 2004	1500' Buffer 2004	2004 City
ARSON	7	61	292
AGG ASSAULT	187	942	3590
BURGLARY	7	1179	4960
HOMICIDE	4	31	88
MOTOR VEH THEFT	311	1676	6555
ROBBERY	315	970	2830
SEX ASSAULT	26	176	750
THEFT	1522	6290	23561
TOTAL Reported Crimes	2379	11325	42626

2004 Geocoding results: 41341 matched, 1197 unmatched for a 97% geocoding rate

2003 Part 1 Crimes	500' Buffer 2003	1500' Buffer 2003	2003 City
ARSON	18	97	354
AGG ASSAULT	208	1077	3880
BURGLARY	279	1468	5991
HOMICIDE	7	26	106
MOTOR VEH THEFT	272	1627	6643
ROBBERY	120	951	2941
SEX ASSAULT	29	181	778
THEFT	1881	7075	25589
TOTAL Reported Crimes	2814	12502	46282

2003 Geocoding results: 44904 matched, 1272 unmatched for a 97% geocoding rate

2002 Part 1 Crimes	500' Buffer 2002	1500' Buffer 2002	2002 City
ARSON	8	106	415
AGG ASSAULT	210	1121	4268
BURGLARY	264	1593	6755
HOMICIDE	3	29	108
MOTOR VEH THEFT	339	1810	7592
ROBBERY	408	1150	3203
SEX ASSAULT	24	195	880
THEFT	2071	7449	26260
TOTAL Reported Crimes	3327	13453	49481

2002 Geocoding results: 47868 matched, 1505 unmatched for a 97% geocoding rate

There are 79 Convenient Lending Businesses located in the City of Milwaukee.

THIS REPORT IS FOR INTERNAL USE ONLY!

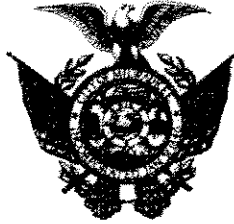
The information in this report is an approximation based on data retrieved from a dynamic database. The Data has not been reviewed and approved and is subject to change or deletion. The Data has not been edited for NIBRS/WIBRS/UCR crime reporting purposes. This report is not to be released to the public without prior approval of the Chief of Police. Offense Data was obtained from the Records Management System.

X7328

APPENDIX F

Chairman Davis' letter to Wis. Dept. of Financial Institutions

Joe Davis, Sr.
Alderman, 2nd Aldermanic District



CHAIR

• Community and Economic Development Committee

MEMBER

• Finance and Personnel Committee
• Steering and Rules Committee
• National League of Cities' Community and Economic Development Policy and Advocacy Steering Committee

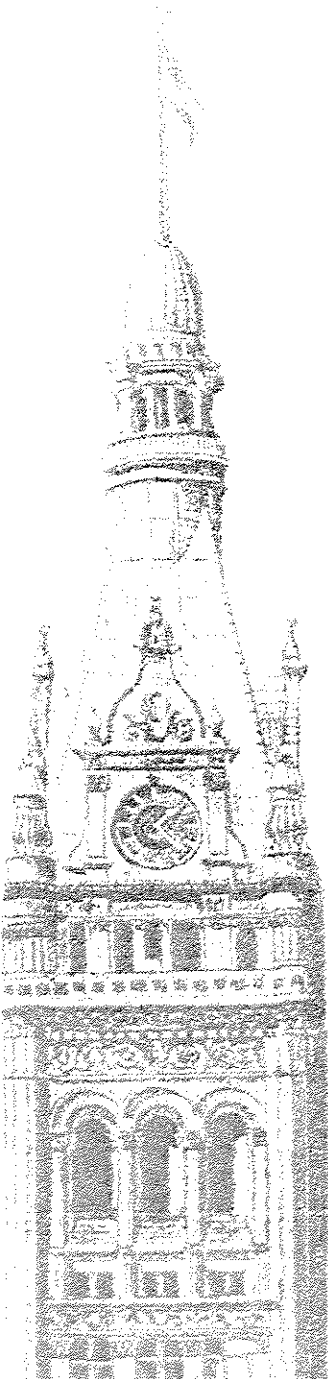
March 7, 2006

Carrie Templeton, Executive Assistant to the Secretary
Wisconsin Department of Financial Institutions
P.O. Box 8861
Madison, WI 53708-8861

Dear Ms. Templeton:

In February 2005, the Milwaukee Common Council created the City's Convenient Lending Task Force. The Task Force was given the mission of investigating the impacts of convenient cash businesses (currency exchanges, payday loan stores and auto title loan agencies) on surrounding neighborhoods, including effects on public safety and community and economic development. The Task Force has also been directed to develop a list of recommended public-policy solutions and to present its findings and recommendations in a report to the Common Council. The Task Force has 10 members, including representatives of the Milwaukee Common Council, the financial services industry, the Milwaukee police and planning departments and various community non-profit organizations. I serve as chairman of the Task Force.

In order to carry out its mission, it is critical that the Task Force obtain relevant data on the convenient cash industry and its customers. However, the Task Force has so far been unable to obtain the necessary information from the Wisconsin Department of Financial Institutions. Therefore, pursuant to s. 19.35 of the Wisconsin Statutes ("Access to Records"), I am requesting that your office provide the following information to the City of Milwaukee's Convenient Lending Task Force no later than March 31, 2006:



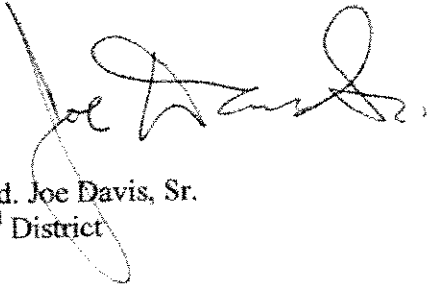
Carrie Templeton
March 7, 2006
Page 2

- Any reports from the last 5 years (2001-2005) aggregating the data collected by the DFI Division of Banking on Schedule B of the "Loan Company Annual Report" which each precomputed loan business is required to file with DFI by March 15 of each year. If available, the aggregate data are requested for (in order of preference):
 1. Loan companies with offices in the City of Milwaukee.
 2. Loan companies with offices in City of Milwaukee zip code areas (53201 through 53228).
 3. Loan companies with offices in Milwaukee County.
- If no aggregate Schedule B data are available, copies of the Schedule B portions of the individual Loan Company Annual Reports filed with DFI in the past 5 years (2001-2005 filing periods). Again, records for loan company offices in the City of Milwaukee, Milwaukee zip code areas or Milwaukee County are preferable to statewide records.
- Any data or reports collected or produced by DFI describing the customer base of precomputed loan companies (e.g., data on the place of residence of payday loan borrowers by zip code).

The requested information may be sent to the Task Force in care of:

Jeff Osterman
City of Milwaukee Legislative Reference Bureau
200 E. Wells Street, Room B-11
Milwaukee, WI 53202

Thank you for your cooperation in this matter.



Ald. Joe Davis, Sr.
2nd District

APPENDIX G

Articles relating to crimes near convenient cash businesses

Teen charged in robbery ;Teen charged in robbery, homicide;Complaint says boy was drinking beforehand Milwaukee Journal Sentinel (Wisconsin) November 20, 2003 Thursday

Copyright 2003 Journal Sentinel Inc.
Milwaukee Journal Sentinel (Wisconsin)

November 20, 2003 Thursday FINAL EDITION

SECTION: NEWS; Pg. 02B

LENGTH: 355 words

HEADLINE: Teen charged in robbery ;
Teen charged in robbery, **homicide**;
Complaint says boy was drinking beforehand

BYLINE: JESSE GARZA jgarza@journalsentinel.com

BODY:

A 17-year-old boy who had been drinking brandy and smoking marijuana fatally **shot** a man outside a west side **check-cashing** service after robbing him of \$10 and a cell phone, a criminal complaint says.

Shomas T. Winston of the 1500 block of N. 29th St. was charged with first-degree intentional **homicide** and armed robbery with the use of force in the slaying Friday behind Community Financial, 3432 W. Vliet St.

Cary T. Dace, 37, was **shot** four times in the parking lot of the business and died a short time later at Froedtert Memorial Lutheran Hospital in Wauwatosa, the complaint says.

According to the complaint:

A 13-year-old accomplice to the robbery was identified, taken into custody and interviewed by police.

The boy said he agreed to participate in the robbery with Winston and would look for a target at the **check-cashing** business by acting as though he were begging customers for money. The boy and a third suspect, identified only as "Dank," took turns looking inside the lobby of the business for potential victims.

They saw Dace walk into the business, and the boy said Dace "looked like he cashed a big check."

As Dace walked toward the parking lot, the boy signaled to Winston, who was waiting across the street at a bus stop.

When interviewed by detectives, Winston said he had been in front of the boy's house drinking brandy and smoking marijuana with others before the robbery. While there, he mentioned that he had been robbed of marijuana and money and needed a gun for protection.

Someone at the house was selling a .380-caliber handgun for \$100, and Winston and the boy then came up with the plan to rob someone in order to get money to pay for the gun.

Winston accosted Dace in the parking lot with the gun and demanded money, and Dace gave him a \$10 bill, a piece of paper and a two-way cell phone/pager. Winston said Dace indicated

he had no more money, began to open the door to his car and said, "Shoot me."

Winston said he pointed the gun with his finger on the trigger in order to scare Dace and the gun went off "three or four times," the complaint says.

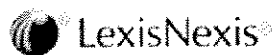
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NewsBank InfoWeb

Milwaukee Journal Sentinel

Milwaukee Journal Sentinel (WI)

November 20, 2003

Security guard shoots 2 at payday loan center

Author: From Journal Sentinel staff and correspondent

Edition: Final

Section: B News

Page: 03

Estimated printed pages: 1

Article Text:

A security guard wounded two people in an exchange of gunfire at a northwest side payday loan center, Milwaukee police said Wednesday.

A 26-year-old man and a 17-year-old boy were shot shortly after 5 p.m. Tuesday at Advance America, 8066 N. 76th St., Lt. Clint Harrison said.

Harrison could not confirm that the gunfire stemmed from a robbery attempt but said it occurred after the pair entered the business and one of them pulled out a gun.

Their wounds were not life-threatening; both were hospitalized under police guard Wednesday, Harrison said.

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Record Number: 2003112009511195

Article Bookmark(OpenURL Compliant): Milwaukee Journal Sentinel (WI): Security guard shoots 2 at payday loan center
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*15-year-olds in court on robbery spree charges Milwaukee Journal Sentinel (Wisconsin)
March 16, 2002 Saturday*

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March 16, 2002 Saturday FINAL EDITION

SECTION: NEWS; Pg. 02B

LENGTH: 297 words

HEADLINE: 15-year-olds in court on robbery spree charges

BYLINE: JAMAAL ABDUL-ALIM of the Journal Sentinel staff

BODY:

A string of violent north side robberies, including one in which a young woman was pistol-whipped, were replayed this week in **Milwaukee** County Children's Court in delinquency petitions filed against two 15-year-old boys.

The woman pleaded with her assailants that she needed her small amount of money to care for her 3-year-old child. She had just emerged from the **check-cashing** store at 3432 W. Vliet St. on Jan. 16.

The response: She was repeatedly struck in the head with guns, one of which had been pointed at her stomach, as the hoodlums searched her and took her money while her 14-year-old sister and 3-year-old daughter waited in a car, court records say.

The robbery spree occurred from mid-January into March.

One of the suspects faces five counts of armed robbery, two counts of battery and one count of possession of a dangerous weapon by a child. The other boy is charged with two counts of armed robbery and one count of battery.

The boys were ordered to remain in secure detention while their cases are pending. They also face waiver into adult court.

Ezra Sanders and Maurice Lee, both 17, have been charged in adult court and face multiple armed robbery counts in connection with the robbery spree.

According to court records, the robberies also include:

-- On March 6, a group confronted a woman in the 1400 block of N. 35th St. and threatened to kill her. She surrendered her purse, which contained about \$100 and charge cards. Her husband turned over about \$70 to the robbers.

-- On Feb. 27, a group followed a woman into her car after leaving the Community Financial Building, 4525 W. North Ave. The robbers spotted a man leaving the business they intended to rob, and he was punched, kicked and **shot** at by the robbers.

LOAD-DATE: March 16, 2002

APPENDIX H

Article on location strategies of payday lenders and banks

ARTICLES

Landscapes of Predation, Landscapes of Neglect: A Location Analysis of Payday Lenders and Banks*

Steven M. Graves

California State University, Northridge

Since the period of bank deregulation in the 1980s, deferred deposit loan operations, better known as payday lenders, have become commonplace in the landscapes of many American cities. At the same time, traditional banking facilities have become less common, especially in the inner city. Growing disparities in the type of and accessibility to credit in the inner city has generated calls for greater regulation to curb practices by payday lenders that critics claim disproportionately affect poor and minority consumers. Payday lenders argue that they serve communities neglected by traditional banks. This article analyzes the site-location strategies of banks and payday lenders in metropolitan Louisiana, and in Cook County, Illinois, and finds that disenfranchised neighborhoods are simultaneously targeted by payday lenders and neglected by traditional banks. The implications these findings have for public policy and for ongoing discourses on the urban condition, race, and class are briefly discussed. **Key Words:** banking, GIS, landscape, predatory lending, race.

Introduction

Abandoned buildings, pawnbrokers, pool halls, and secondhand stores have marked the landscapes of America's inner cities for decades. All too often, these markers of urban disinvestments occupy spaces formerly home to signifiers of the American dream, such as supermarkets, department stores, and restaurants. In the 1970s, banks also began to trickle out of the inner city. By the 1980s, banks were in full retreat in some areas. In their stead arrived several new signifiers of American urban poverty, among them deferred deposit lenders, popularly known as "payday lenders." In recent years, these and other sources of quick cash have begun to mark the boundaries of tough neighborhoods, vying for space among other emergent signifiers of poverty, such as rent-to-own appliance stores and plasma collection centers.

Payday lenders make small cash loans to people who need money quickly. In exchange for the cash, the borrower writes the payday lender a postdated check for the loan amount plus fees and interest that will be cashed after a few weeks or upon the deposit of the borrower's wage check. The process is easy and quick and

requires little of the consumer beyond the provision of proof of employment, a phone number, and a valid driver's license. For some, payday loans are a convenient and efficient stopgap when unexpected expenses arise. For others, payday loans offer entrance into a treacherous spiral of mounting debt.

During the 1990s, some 10,000 payday lenders opened shop in many parts of the United States, sprouting most rapidly in states where banking regulations did not undercut the profit potential of the industry (Robinson and Lewis 1999). Triple-digit growth in the deferred-deposit industry, its potentially predatory lending practices, and the prominence of payday loan centers in minority and low-income neighborhoods have generated calls by consumer advocacy groups and progressive politicians for greater regulation. The payday loan industry has countered that additional regulation is not necessary because their fee and interest-rate schedules are not usurious and because they do not target specific racial or income groups. Payday lenders also argue that they offer important banking services in low-income and minority neighborhoods that were abandoned by mainstream bankers during the era of bank deregulation in the 1980s.

*The author would like to thank several anonymous reviewers, the Illinois Department of Financial Institutions, and the Louisiana Office of Financial Institutions for their assistance with this project.

This article examines portions of the competing claims made above through an analysis of the location strategies pursued by banks and payday lenders. I compare the ethnicity and income characteristics of neighborhoods that have payday lenders to those that have bank branches in seven parishes in Louisiana and in Cook County, Illinois, using a difference of means *t*-test. This analysis, though primarily empirical, is intended to help facilitate a better understanding of how the spatial practices of these two lending institutions condition the (de)construction of urban landscapes. I discuss my findings briefly in terms of their public-policy implications and of how they help to empirically inform current discourses on urban landscapes.

Background

As a system of both meaning and social reproduction, landscapes factor into the way people understand themselves, others, and the life world we must all navigate (Duncan and Duncan 1988). Landscapes have become an increasingly popular and useful tool for understanding the operation of culture and economics in our daily lives (see, e.g., Mitchell 2000). Cultural theorists argue that landscapes act forcefully to condition people's sense of self and group identity. Race, class, gender, and nationality are all constructed through tightly held notions of place and space (Mitchell 2000). Often, analyses of identity are tied to powerful theoretical discourses explaining the dialectic of capital and landscape (e.g., Harvey 1982, 1989; Duncan and Ley 1993). The divisive effect of increasingly mobile capital on the urban landscape has been particularly compelling (Davis 1990; Jakle and Wilson 1992).

Arguably, every urban landscape is a product of capital, but both the structure and the agency of the financial system are frequently masked by the landscape itself (Mitchell 2000, 103-4). The spatial arrangement of payday-loan outlets and bank branch buildings represents a rupture in the mask—a tear where the theoretical structure of capitalism is laid bare as physical structures on the landscape. As such, the two-tiered landscape of banking offers opportunities to analyze a small but visible cog in the capitalist machine that actively builds and destroys urban landscapes.

As powerful as the theoretical tools for understanding landscapes have become, they

must stay partially grounded by empirical research, the type that is frequently undertaken with public-policy findings in mind. The spatial practices of the banking industry have stimulated volumes of research since the 1960s. Perhaps most well known is the research focusing on ethnic and racial biases among mortgage lenders (Becker 1971; Darden 1980; Holloway 1998a; Reibel 2000). Several of these studies found that banks and other lenders have systematically, if not purposefully, limited access to loans for minorities. Other studies have found less compelling evidence of race bias (Perle and Lynch 1994). Applied research into practices such as steering and redlining may have helped fashion federal legislation, such as the Equal Credit Opportunity Act (1974), the Home Mortgage Disclosure Act (1975), and the Community Reinvestment Act (1977), that sought to ensure fair lending practices for all consumers.

Despite legislative effort designed to promote fair access to credit, however, studies show that equity is still not a lived reality. Recent studies such as Ando's (1988) examination of bank loans found that black entrepreneurs were still more likely to be rejected by banks, and that blacks were likely to receive less credit from banks than whites when they were approved for a loan. Bates (1997) found that, perhaps because black business owners receive smaller bank loans than their white counterparts, black entrepreneurs are more prone to use alternative forms of credit, such as credit cards, than are whites. Though frequently characterized in the media as a violation of *individuals'* right to fair access to capital, discriminatory limitations upon access to investment credit have been shown to be significant in the emergence of grossly uneven development in urban *regions* (e.g., Darden et al. 1987; Dymski and Veitch 1996).

The development gap within American cities grew during the 1970s and 1980s, as mainstream banks themselves moved out of inner cities. Banks failed at a much higher rate than they had in previous decades, in itself a reason for many closures. Bank deregulation was also a significant factor in the out-migration of banks, because it increased competition among various lending institutions. While giving some consumers access to low-interest lines of credit, increased competition among lenders undermined the ability of traditional banks to

subsidize bank branch facilities producing less than desirable rates of return (Squires 1992; Caskey 1994; Pollard 1996). Pollard (1996) points out that branch closure is a sharp reversal of strategy from that pursued by banks during 1950s and 1960s, when banks established a wide network of branches in hopes of appealing to potential customers' desire for convenience. Recently, the service revenue produced by a bank branch facility has become a major determinant of any branch location's viability.

Compounding the bifurcating effects of lending biases and branch closure upon the economic health of inner cities has been the growth of the "fringe banking" sector (Caskey 1994). Although this sector generally offers much more costly banking services than do mainstream bankers, many inner-city consumers have embraced fringe banking, a trend that drains even more money out of already undercapitalized neighborhoods.

Despite the frustratingly scant attention given to economic geography by public-policy-makers, some evidence exists suggesting a slight strengthening in the political clout of spatially informed economic studies, as classical economics "discovers" geography. The chance to affect public-policy discourse has energized some corners of the discipline, generating calls for renewed effort to produce research bearing policy implications (e.g., Martin 1999; Amin and Thrift 2000; Henry, Pollard, and Sidaway 2001). Several studies have already answered the call. Analyses of the expanding role of other forms of nontraditional credit among poor and minority groups indicate the dangerous potential of payday lenders (Caskey 1994, 1997; Woodstock Institute 1997; CFA 1998). Several other studies have shown that check-cashing operations, similar in some ways to payday lenders, were prevalent in low-income and minority neighborhoods in Milwaukee (Squires and O'Connor 1998; MCCD 2000; Woodstock Institute 2000). These studies also found that fringe banking operations were preferred over other types of credit sources because they had more convenient locations and extended hours of operation.

Excellent primers on payday lenders and other forms of fringe banking include Stegman and Faris (2003) and Caskey (1994, 1997). However, in general, payday lending has received much less attention from scholars, espe-

cially geographers. Because payday lending is the most rapidly expanding segment of the credit industry, and because so little has been published to date on this industry, even a cursory analysis of the spatial pattern of the industry may inform regulatory action on predatory lending as it evolves in the coming years.

Complementing research on the landscapes of credit and finance is an impressive body of accessibility studies, many of which focus on urban quality-of-life issues. Numerous studies (e.g., Brooks and Sethi 1997; Downey 1998) have examined the race, ethnic, and income characteristics of citizens living in close proximity to urban disamenities, such as hazardous-waste sites and industrial polluters. These works have drawn some media interest, critical in forwarding the policy agendas of activists working on such issues. Accessibility studies have also examined landscapes of crime and vice. Several studies (e.g., Voorhees and Swank 1997; LaVeist and Wallace 2000) have shown that use of tobacco and alcohol are underwritten in poor and minority neighborhoods by especially high densities of establishments specializing in the sale of these products and of advertisements promoting the use of these products. Areas with high concentrations of alcohol outlets and alcohol advertising have higher violent crime rates, even when other factors of neighborhood demographics are controlled (see, e.g., Alaniz 1998; Gorman et al. 2001). And the list goes on. Consumers shopping in neighborhoods with high percentages of black or elderly residents have been shown to pay more for groceries while shopping in dirtier stores with a more restricted selection of foodstuffs than those available to consumers shopping in other areas of town (Hall 1983). Additionally, studies have found that accessibility to landscapes offering a variety of amenities—such as parks, employment, or public transportation—is frequently wanting in inner-city neighborhoods (e.g., Ottensmann 1980; McLafferty 1982; Talen 1997; Holloway 1998b).

Studies such as these inform the present research on several fronts. First, accessibility studies occasionally enter public-policy debates. Second, they provide essential methodological guidance, especially in terms of the variety of accessibility measures employed. Finally, these studies help complete our understanding of the

recursive interplay between capital and culture in America's urban areas.

Payday Lenders

Establishments offering high-interest, short-term loans have long existed in various guises. In the past, pawnbrokers and "loan sharks" serviced the short-term credit needs of many who, for various reasons, could not or did not use banks. Many states and communities passed laws regulating or outlawing particularly abusive loan practices. In order to make short-term credit more accessible, legislators across the United States permitted banks to loosen restrictions on interest-rate schedules through the passage of various "small loan acts." However, the rate of return on small loans made under these laws remains shy of what is necessary to motivate banks to engage aggressively in the small-loan trade. As access to bank-managed, high-interest credit cards expanded through the 1970s and 1980s, banks naturally balked even more frequently at the prospect of loaning customers less than U.S.\$1,000. Bank deregulation during the 1980s made short-term lending even less attractive to bankers, as much higher rates of return became available elsewhere in the financial markets. Deregulation not only propelled the reconfiguration of the mainstream banking industry during this era, but also encouraged the evolution of various forms of alternative financial services that today constitute the fringe banking industry. This alternative banking sector includes payday lenders, check cashers, title/pawn lenders, rent-to-own stores, and subprime mortgage lenders, as well as a variety of hybrid combinations (Caskey 1994).

During the 1990s, the payday loan industry spread rapidly, becoming legal in thirty-one states by decade's end. The remaining states have either tried to outlaw payday lenders or have discouraged the industry by extending existing banking laws or legislating new ones specific to payday lenders. Legislative opposition has been notably weak in the South. About half of all payday loan outlets are in six southern states: Mississippi, Missouri, Kentucky, Tennessee, North Carolina, and South Carolina (Jean Ann Fox, director of consumer protection, Consumer Federation of America, personal correspondence, 30 March 2000).

Payday loan stores are opening rapidly elsewhere as well: in Illinois alone, 500 payday lenders opened between 1995 and 2000 (Woodstock Institute 2000). According to the *Los Angeles Times* (2001), California has about 2,000 outlets, already outnumbering McDonald's and Burger King franchises. Industry experts think that in the first decade of the new millennium, market saturation will set in when there are approximately 25,000 outlets nationwide (Robinson and Lewis 1999).

This estimate may prove conservative, however, when additional factors are taken into consideration. Several states are considering measures to further deregulate banking, a move likely to compound the effect of the previous two decades of deregulation. States with strict usury laws continue to see a proliferation of payday lenders, despite legislative and regulatory efforts to outlaw the practice. Payday lenders evade state usury laws by using a loophole in federal banking laws. Under current federal law, payday lenders in states with more liberal usury laws (e.g., Delaware, North Carolina) partner with federally insured banks in other states and offer loans across state lines. Other partnering agents, such as check-cashing outlets, pawnbrokers, liquor stores, and title-pawn outlets, also offer loans made by out-of-state payday lenders. The agents dispense the loan, but the debt is sold to out-of-state payday lending operations, who in turn take the risk and service the loan on terms dictated by the payday lenders' home-state laws (Caskey 2002). Consumer groups and state and federal regulatory authorities have begun to mount legal challenges to this practice (Fox 2002).

Possibly the greatest growth potential in payday lending lies dormant among mainstream bankers. Various newspaper accounts estimate that payday loan operations already earn around \$1.5 billion annually (a significant proportion of which is generated during the holiday season, when the number of payday outlets expands by 15 to 25 percent). More compelling is the rate of return realized by payday lending. Estimated to be anywhere from 20 to 45 percent annually (see Stegman and Faris 2003, 10), payday lending's profit margin may prove irresistible to mainstream bankers. Currently, many small payday-lending operations capitalize their business through low-interest loans from traditional banks. Payday

lenders take this money across town and reloan it at a significantly higher interest rate. Surely aware of these trends, several banks have already established subsidiary payday lending operations of their own (National Check Cashers Association 1998).

Because state laws regulate payday lending, where, how, and by whom a payday loan is made varies. Some commonalities do exist, however. Most payday loans total less than \$500 and are made for a term of two to three weeks. Often, the cost of a payday loan, including interest and fees, is around 20 percent of the value borrowed. For example, in order to get a loan of \$300, the borrower must provide a postdated check to the lender for \$360, along with proof of employment, a photo ID, and a current phone bill. Once the period of the loan expires, the lender notifies the borrower that the borrower's check is soon to be deposited. The parties may agree to refinance or "rollover" the loan for an additional period of time if insufficient funds to cover the check are in the borrower's account.

In some ways, this exchange differs little from the exchange one might make at a standard bank, but key differences exist. Chief among them are the manner in which payday loans are marketed, the dollar value of the loans, the term length of the loans, and the cost of the loan. Rarely do traditional banks offer easy-to-get, short-term loans for less than \$500. Banks that do offer small, short-term loans tend not to aggressively market this service, nor do they advertise these loans as a means to building (or rebuilding) credit histories, as is often the case with payday lenders. Payday loans are offered quickly, with minimal paperwork and less scrupulous attention to borrowers' credit-worthiness. Banks infrequently allow borrowers the opportunity to instantly and repeatedly refinance a loan in the event the borrower has difficulty with payments.

The differences listed above are significant, because they condition the type of consumer likely to use a bank or a payday lender. The payday-loan industry reports that poor and minority borrowers often find mainstream banks standoffish or even hostile (National Check Cashers Association 1998). With the proliferation of hidden fees, penalties, actions against credit histories, and bad-check policies, banks have become far less consumer-friendly,

especially to those whose financial means are precarious. Perhaps as important, payday lenders do not extend to credit-challenged borrowers irresponsibly large credit lines, a practice common to many issuers of credit cards. Payday lenders tend to be, at least initially, more sensitive to these sorts of customer-service issues than are banks. Payday lenders stand out from other short-term credit providers in that they will not (immediately) come to your house to repossess your car or take your VCR as collateral. Given the perceived and real differences between banks, payday lenders, and other creditors, it is hardly surprising that the poor and many minorities have begun increasingly to turn to payday lenders.

Friendly service and convenience aside, consumers using payday lenders, almost without fail, encounter fees and interest rates in excess of what they could expect at a bank or other traditional lending institutions. Banks and credit-card lenders are subject to interest-rate regulations that keep annual percentage rates on loans generally under 25 percent. Payday lenders avoid marketing the cost of their loans as interest charges, preferring instead to characterize the cost of taking a loan as "fees." Payday lenders frequently charge as much as \$50 in fees on a loan of \$200. While this amount may represent only 25 percent of the face value of such a loan, when calculated in terms of an annual percentage rate (APR), the cost of a payday loan may be the equivalent of 500 to 1,000 percent.

Concerns over the rising tide of personal debt and the potentially abusive lending practices of payday lenders have drawn the ire of consumer advocacy groups and some legislators, but payday lending has commanded only a fraction of the attention given over to other types of predatory lending practices, such as subprime mortgage lending. Many state legislatures have recently considered payday-lending bills, and further legislative action is likely as the industry expands. Thus far, however, legislation designed to regulate payday lending has had an unimpressive rate of passage (see, e.g., Stegman and Faris 2003, 26). Even where state laws have been stiffened, loopholes in federal regulation have undermined their effectiveness. Senator Joseph Lieberman (D-CT) held hearings in late 1999 on the payday-loan industry, and two bills regarding payday lending

have been forwarded in Congress, but support for additional regulation has been weak.

Politicians and consumer advocacy groups base their calls for greater regulation upon claims that payday lenders charge abusive interest rates while targeting the working poor and minorities. The method of determining whether or not an interest rate is usurious is central to the debate surrounding payday lenders. It is argued by some that APR is an appropriate means to measure interest and fees collected on payday loans because it is a widely accepted measure of the cost of a loan: APR allows consumers to quickly compare the costs of various loan options. Also, since a significant proportion of payday-loan customers maintain relationships with payday lenders over a period of many months, if not perpetually, an *annual* measure of interest accumulation is most appropriate, even though payday loans are ostensibly short-term loans. The Woodstock Institute (2000), a Chicago-based consumer advocacy group, found that a significant proportion of payday-loan consumers refinance or "roll over" payday loans, thus ensuring a long-term relationship with one or more payday lenders. Stegman and Faris (2003) also found that many payday loan customers "roll over" their loans frequently.

Opponents of the payday-loan industry also charge that payday lenders target low-income groups, minorities, and other at-risk groups, trapping them in a spiral of indebtedness. The Woodstock Institute (1997) found currency exchanges, often doubling as payday loan outlets, outnumbered banks eleven to one in some minority neighborhoods in Chicago, with the most uneven ratios in African-American neighborhoods, even though Hispanics were most likely to use currency exchanges. Stegman and Faris (2003, 13) found that payday lenders in Charlotte, North Carolina favored neighborhoods where median incomes range between \$20,000 and \$40,000. They (2003, 16) also found that blacks were more than twice as likely as whites to use payday lenders, but Hispanics were less likely to use payday lenders than were whites. Neighborhoods in Charlotte with high concentrations of minorities were found to be one-third less likely to have a bank but four times more likely to have a payday lender (Kolb 1999, cited in Stegman and Faris 2003, 13). Perhaps most important, the Wood-

stock Institute (1997) found that consumers using alternative credit outlets were likely to pay several hundred dollars more per year for financial services than consumers who used traditional banks paid.

The payday-loan industry vigorously defends its business practices and strategies. It has fought, with some success, numerous battles within state legislatures and courts to block further regulation. According to the principal industry association, the Financial Service Centers of America (or FiSCA, formerly known as the National Check Cashers Association), the payday-loan industry serves a legitimate consumer need in communities either neglected or abused by mainstream bankers. The organization (NaCCA 1998) argues that demand for payday loans is rooted in the inappropriate and outdated banking legislation that regulates small loans. Industry officials also vigorously oppose the use of APR as a measure of the cost of their short-term loans. They justify their fee and interest-rate structures by asserting that they assume more credit risk than banks while enduring similar but more frequent processing costs. The payday-loan industry also counters claims that they target at-risk populations. Pointing to the fact that payday lenders require borrowers to have, at the minimum, a checking account, a car, a phone, and a job, industry officials characterize their clientele as people temporarily short on cash or experiencing unexpected expenses. Although payday lenders have not publicly commented on the ethnic composition of their consumers, they do describe their consumers as middle-income, claiming the typical payday borrower in 1998 had an annual income of between \$25,000 and \$50,000 (NaCCA 1998). Although several studies agree with this broad assessment, others find the estimate too high (see Stegman and Faris 2003, 15).

Methods

To begin to better understand the effects of the increasingly uneven topography of credit in the urban landscape, a useful first step is to map banks and payday lenders, so that an analysis of their location strategies can be undertaken. The spatial distribution of payday loan outlets may indicate the extent to which the

payday-loan industry actually targets poor and minority consumers. Mapping the spatial distribution of banks may serve to reinforce earlier studies (e.g., Pollard 1996) that showed banks progressively abandoning poor and minority neighborhoods.

Since the cost of living varies greatly from city to city and region to region, it is not possible to accurately judge the payday-loan industry's assertion that they target households with incomes between \$25,000 and \$50,000. Payday-loan customers—indeed, all consumers living in locations where wages and prices are high, such as Cook County, Illinois—are likely to fall within the income range cited by the payday loan industry (see Table 1). The reverse is true for those living where the cost of living is low. Taken thus, poverty is a relative measure, an indication of relative deprivation as measured against others within a reasonable market range. An alternate test is therefore forwarded that compares the ethnic and income differences between residents in neighborhoods with nearby payday lenders and residents in neighborhoods without payday lenders. This test is designed to test several hypotheses. My basic

hypothesis holds that if payday lenders do not target specific income or ethnic groups, as payday-industry officials suggest, then there will be no statistically significant difference between the mean income and ethnic compositions of neighborhoods with payday lenders and the countywide means. Because poor and minority citizens often live in neighborhoods zoned for commercial purposes—including payday lending—and middle-class whites often live in neighborhoods restricted to residential purposes, statistical tests would very likely demonstrate that *all* commercial interests locate in relatively poorer and minority neighborhoods. To circumvent the potential biases created by zoning ordinances, a secondary hypothesis is necessary. In addition to comparing the statistical composition of payday loan neighborhoods to countywide means, the payday loan neighborhoods will also be compared to neighborhoods containing traditional banks and their branch facilities. The second hypothesis rests on an untested presumption: that banks and payday lenders are subject to identical zoning regulations in each county in the study. A final hypothesis holds that statist-

Table 1 Income and Ethnicity Means for Selected Counties and Target Neighborhoods

County	Data Group	% White	% Black	Median Household Income	% Poor	% Vpoor	% Renter-Occupied	Median House Value
Caddo	Countywide	53.59	44.02	\$21,421	27.27	14.53	29.76	\$53,095
	Bank neighborhoods	67.06	30.07	\$24,377	21.91	11.57	32.63	\$59,951
	Payday neighborhoods	67.1	30.54	\$22,490	20.99	10.15	31.65	\$50,457
Calcasieu	Countywide	72.62	25.96	\$23,990	20.18	10.22	28.25	\$53,544
	Bank neighborhoods	78.54	20.87	\$28,350	16.17	8.23	31.08	\$61,583
	Payday neighborhoods	68.38	31.28	\$23,460	18.48	8.65	37.18	\$55,825
East Baton Rouge	Countywide	58.28	40.21	\$27,573	23.00	12.38	31.66	\$66,167
	Bank neighborhoods	67.61	30.7	\$29,928	20.30	10.90	33.49	\$72,719
	Payday neighborhoods	57.46	40.29	\$25,670	23.51	12.77	34.98	\$65,637
Lafayette	Countywide	74.92	23.59	\$24,554	23.07	12.12	32.65	\$61,101
	Bank neighborhoods	72.01	25.95	\$23,618	25.28	14.09	38.16	\$63,018
	Payday neighborhoods	69.91	28.07	\$21,851	27.48	14.91	40.00	\$55,677
Orleans	Countywide	36.4	61.27	\$19,892	31.86	17.82	46.05	\$77,395
	Bank neighborhoods	50.69	46.34	\$24,137	27.55	15.06	47.42	\$94,075
	Payday neighborhoods	27.19	69.77	\$16,562	34.49	18.81	52.05	\$62,408
Ouachita	Countywide	67.06	32.07	\$22,442	25.99	12.58	31.59	\$51,402
	Bank neighborhoods	72.85	25.92	\$20,914	18.10	8.59	26.54	\$56,689
	Payday neighborhoods	61.67	37.76	\$21,534	25.72	12.13	39.48	\$52,619
Rapides	Countywide	69.31	29.42	\$20,457	24.30	11.80	30.47	\$48,650
	Bank neighborhoods	68.72	29.53	\$21,103	19.73	8.48	29.40	\$47,891
	Payday neighborhoods	64.96	33.48	\$21,524	21.09	7.28	29.54	\$49,567
Cook (IL)	Countywide	63.1	26.89	\$35,423	13.97	7.51	34.44	\$103,251
	Bank neighborhoods	56.89	17.68	\$36,754	11.85	6.26	34.36	\$115,735
	Payday neighborhoods	70.97	30.77	\$31,332	16.39	8.69	41.24	\$92,987

ical differences between the data groups will be increasingly evident as the population of the study area increases.

The means by which "neighborhood" was defined was critical in the selection of an analytic strategy. I adapted the definition of "neighborhood" found in public documents filed with the Securities and Exchange Commission (SEC) by a leading payday lender, Check Into Cash Incorporated. According to these filings, Check Into Cash claims that "[C]onvenience of a store's location is extremely important to customers"; therefore, "[M]anagement seeks to open each new store within three miles of the market area that it is intended to serve" (Check Into Cash 1998). Accessibility was also cited as a key advantage of payday lenders in a study done for Union Bank in California by Andre Associates (cited in Stegman and Faris 2003, 13). Stegman and Faris (2003, 19, 23) also found that the rate of use of payday lending is positively associated with accessibility and that location was the primary variable in store profitability. My informal windshield surveys of payday-loan locations in a handful of metropolitan areas across the United States strongly suggests that payday lenders have adopted Check Into Cash's assessment of the importance of location. They agglomerate in patterns similar to automobile dealerships and furniture stores: it is easy to find commercial corridors with a half-dozen or more payday lenders crowded onto a single mile stretch.

Data necessary to conduct the statistical test of neighborhood similarities included address lists and census data. Seven variables were extracted from the 1990 census: percent white, percent black, median household income, percent below poverty, percent 50 percent below poverty level, percent renter-occupied at the block-group level, and median house value (see Table 1). Bank branch addresses were downloaded from the Federal Deposit Insurance Corporation (FDIC) website. Payday-loan outlet addresses in Louisiana and Illinois were obtained through each state's respective banking regulatory authority.

Study sites in Louisiana and Illinois are ideal for a variety of reasons. Payday lending is legal in both states, both states have witnessed recent legislative action on payday lending, and both states' regulatory offices eagerly shared

GIS-ready address data for payday lenders. The eight counties selected for inclusion in the study were chosen because they represent a range of city sizes, from 131,000 in Rapides Parish, Louisiana to more than five million in Cook County, Illinois. Each county has a statistically viable number of banks and payday loan operations, and each has sizeable poor and minority districts. Cook County and the metropolitan parishes in Louisiana are also attractive candidates for study because, in some ways, they represent opposite ends of the economic development spectrum and patterns of cost of living and racial segregation. At the same time, all of these counties include a significant proportion of residents that have family histories deeply rooted in the debt servitude of the Delta South. This may be important, as familial attitudes toward debt and savings have been shown to affect the rate of payday lending use (Stegman and Faris 2003).

As a prelude to testing the hypothesis, income and ethnicity data were mapped for each county in the study at the block-group level. Next, the street addresses of no fewer than 95 percent of payday loan outlets in Louisiana were geocoded with a GIS program. In Cook County, 90 percent of addresses for both stand-alone payday-loan outlets and sub-contracted payday operations—legally known as "limited-purpose branch offices"—were geocoded. Limited-purpose branches are typically payday-loan outlets set up inside previously established businesses. Subcontracting payday lending or co-operating with these businesses allows payday lenders to take advantage of good site locations and the host businesses' generally credit-impaired customer bases. Once the addresses of payday lenders were mapped, each block group within a quarter mile of any payday lender was extracted from the map. Most of the extracted block-group clusters consisted of three or four contiguous block groups. Collectively, these extracted block groups form a subset of data hereafter referred to as "payday-loan neighborhoods." The process was repeated for bank branch locations. Collectively, these clusters form a second subset of census block groups, hereafter referred to as "bank neighborhoods."

Ethnicity and income variables for each county were compared against the twin subsets of neighborhoods using a two-sample differ-

ence of means test. This test was chosen for several reasons. First, the test is a relatively simple one, and its ease of use may prove valuable to others, especially public-advocacy groups seeking to replicate this study in other regions. Second, it is capable of testing the fundamental questions issued by the test hypotheses. Similar tests have been successfully applied in other access studies in which ethnicity and income comparisons were sought (e.g., Talen 1997). Third, the large datasets (e.g., Cook County has over 1,000 bank branches, over 300 payday lenders, and more than 4,500 census block groups) made many of the competing accessibility measures unwieldy. This test is designed to determine whether or not two samples were drawn from a single population. As the test value of *t* grows, the probability decreases that differences between the two sample means are due to chance. When the value of *t* exceeds ± 1.96 , the probability that the two groups are statistically similar drops to zero at the 95-percent confidence interval.

Findings

The results of the difference of means tests suggest that payday lenders are locating in neighborhoods that are poorer and have higher concentrations of minorities than their county of location as a whole. The test reveals an even stronger pattern of locational bias among banks, one in favor of neighborhoods that are wealthier and whiter than countywide means. These results are strongest in counties with populations in excess of 250,000 (see Table 1). In counties with populations under 250,000, *t*-test results are mixed, indicating that in less

populous market areas, site-location strategies of banks and payday lenders are conditioned less by income and ethnicity than by limitations on retail space. In Ouachita Parish, for example, the 1990 countywide median household income was \$22,442, for bank neighborhoods it was \$20,914, and for payday loan neighborhoods it was \$21,534 (see Table 1). Although these differences are not statistically significant, the trend is opposite to what critics of payday lenders expect (see Tables 2, 3 and 4). Ethnic patterns are also less distinct. Ouachita Parish is roughly 67 percent white and 32 percent black. Bank neighborhoods are 73 percent white and 26 percent black; payday loan neighborhoods are 62 percent white and 37 percent black. While these statistics do support the notion of ethnic bias, none of these differences produce statistically significant *t*-scores. Similar patterns hold true for Rapides, Calcasieu, Caddo, and Lafayette parishes. Among these less populous metropolitan parishes, only percent renter-occupied generated significant statistical differences.

In Caddo and Rapides parishes, several of the test results were the opposite of expectations. This is largely because neither parish has a sizeable commercial district in any poor or minority districts. Banks and payday lenders are largely concentrated along routes through neighborhoods that are above the county average for percent white and median household income. Here, the *t*-test revealed a significant locational bias on the parts of both banks and payday lenders *against* black and poor neighborhoods (see Tables 2 and 3). Accordingly, no significant statistical difference was found between bank neighborhoods and payday loan neighborhoods (Table 4).

Table 2 *t*-Test Scores for Comparisons of Bank Neighborhoods versus Countywide Means

County	% White	% Black	Median Household Income	% Poor	% Vpoor	% Renter-Occupied	Median House Value
Caddo	3.26*	-3.42*	1.79	-2.17*	-1.72	1.27	1.85
Calcasieu	1.35	-1.16	2.43*	-1.88	-1.45	1.01	2.39*
East Baton Rouge	2.83*	-2.85*	1.6	-1.44	-1.25	0.96	1.87
Lafayette	-0.74	0.59	-0.53	0.82	1.09	2.14*	0.50
Orleans	5.45*	-5.64*	3.32*	-2.89*	-2.58*	0.96	3.49*
Ouachita	1.17	-1.23	-0.92	-2.93*	-2.36*	-1.73*	1.39
Rapides	-0.11	0.02	0.37	-2.13*	-2.39*	-0.32	-0.24
Cook (IL)	8.70*	-10.07*	2.72*	-5.12*	-4.50*	-0.11	5.65*

* Significant at the 95 percent confidence interval.

Table 3 *t*-Test Scores for Comparisons of Payday Neighborhoods versus Countywide Means

County	% White	% Black	Median Household Income	% Poor	% Vpoor	% Renter-Occupied	Median House Value
Caddo	2.96*	-2.97*	0.76	-2.32	-2.64*	0.80	-0.92
Calcasieu	-0.7	0.87	-0.26	-0.69	-1.03	2.36*	0.53
East Baton Rouge	-0.23	0.02	-1.34	0.28	0.33	1.69	-0.16
Lafayette	-1.02	0.91	-1.33	1.31	1.31	2.67*	-1.40
Orleans	-3.18*	2.82*	-3.05*	1.22	0.59	3.14*	-4.44*
Ouachita	-0.64	0.68	-0.38	-0.05	-0.17	1.86	0.25
Rapides	-0.63	0.58	0.47	-2.13*	-2.39*	-0.32	-0.24
Cook (IL)	-5.73*	3.34*	-8.75*	4.85*	3.55*	8.45*	-4.72*

* Significant at the 95 percent confidence interval.

The lack of significant statistical differences in these smaller metropolitan parishes is directly attributable to their lack of viable retail-site options. Where market thresholds are less than 250,000, banks and payday lenders are largely confined to fewer than five retail-service clusters. In these parishes, the imperative to locate near target customers is diminished, because consumers are forced to do business in fewer available commercial districts. Smaller cities tend to have shopping districts less distinctly associated with area neighborhoods; here, everyone in the market range frequents all commercial strips and malls. In regions with larger populations, there may be numerous retail districts, each with distinct mixtures of retail and service establishments that reflect local neighborhood conditions. Where distance and travel costs are great, location becomes a more critical element of site location.

In the most populous counties in the study, neighborhoods with payday loan outlets nearby are generally much poorer and much less white than is the county as a whole. As expected, neighborhoods with banks are much wealthier and whiter than countywide averages (see

Tables 2 and 3). Compared against one another, bank neighborhoods are substantially whiter and wealthier than are payday loan neighborhoods (Table 4). The largest study areas have the most extreme test scores. Mean differences among the three datasets are greatest in Cook County (see tables and Figures 1 and 2). Test results reveal substantial differences between payday loan neighborhoods and bank neighborhoods when income and poverty variables are compared. Ethnic differences among the test neighborhoods are greater still, with *t*-scores pushing past 10 for percent white and percent black.

Discussion

The results of the statistical tests suggest that the payday lending industry is targeting neighborhoods with a higher percentage of poor and minority residents. At the same time, traditional banks are avoiding poor and minority communities. In most counties, *t*-test results indicate that banks avoid poor and minority neighborhoods at a rate greater than payday lenders target such neighborhoods. These trends are most pronounced in the more

Table 4 *t*-Test Scores for Comparisons of Payday Neighborhoods versus Bank Neighborhoods

County	% White	% Black	Median Household Income	% Poor	% Vpoor	% Renter-Occupied	Median House Value
Caddo	-1.05	0.01	0.09	-0.3	-0.71	-0.35	-2.49*
Calcasieu	-2.08*	-1.58	1.6	0.85	0.25	1.44	-1.19
East Baton Rouge	-2.58*	-2.60*	2.42*	1.54	1.41	0.66	-1.79
Lafayette	-0.76	-0.38	0.38	0.58	0.33	0.59	-1.58
Orleans	-5.18*	-6.99*	6.78*	2.98*	2.11*	2.19*	-6.44*
Ouachita	0.24	-1.29	1.36	1.48	1.36	2.85*	-0.74
Rapides	0.08	-0.89	0.9	0.57	-0.93	0.03	0.35
Cook (IL)	-9.88*	-12.20*	10.80*	8.48*	6.80*	7.64*	-8.76*

* Significant at the 95 percent confidence interval.

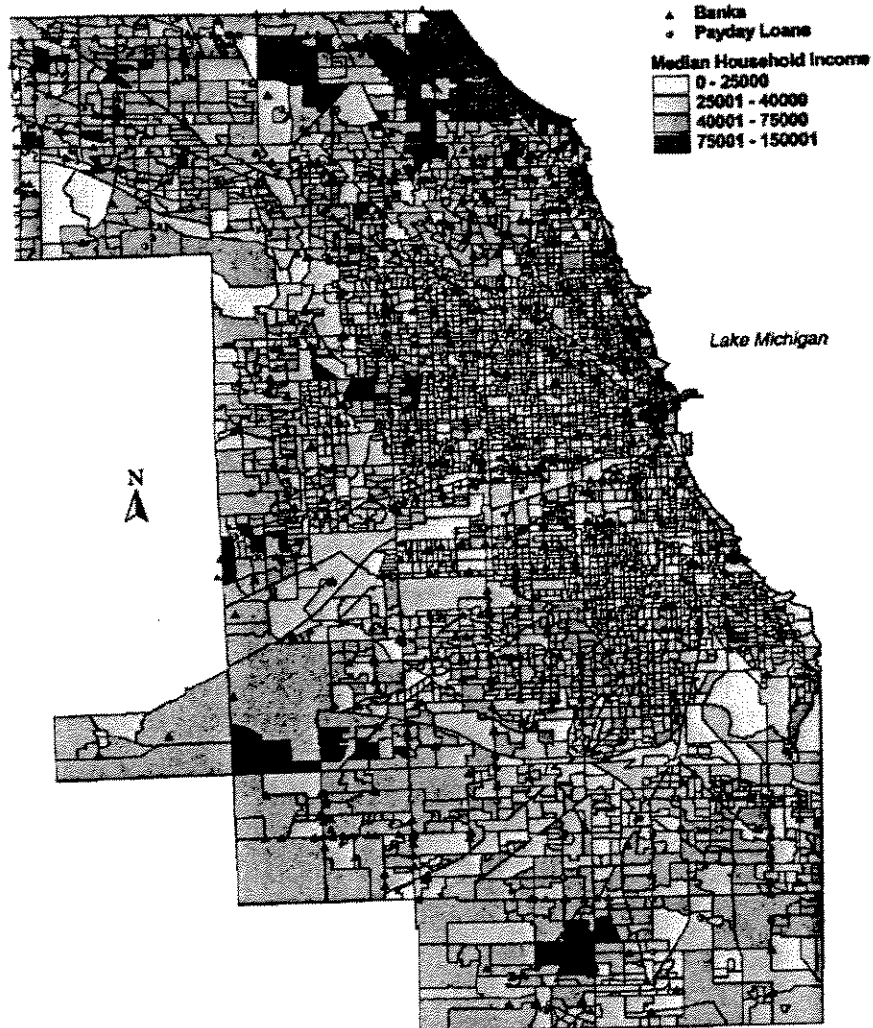


Figure 1 Median household income and location of payday lenders and banks in Cook County, Illinois.

populous study sites containing New Orleans and Chicago. In the less populous study sites, the site-location strategies of banks and payday lenders are less evident. Where market thresholds are small and the friction of distance is unexceptional, fewer retail districts emerge. In these instances, banks and payday lenders have less latitude in their location strategies.

The two sample difference of means test used in this study proved to be a useful tool in the characterization of difference between the target neighborhoods. Without this tool, it is

difficult to quickly estimate the magnitude of statistical differences between the economic and demographic characteristics of target neighborhoods. However, the utility of this measure as a tool for engaging makers of public policy may be undermined by its inaccessibility to lay audiences, especially mass media audiences, whose political support might be needed to advance legislation on banking practices. The standardized nature of this test statistic may prove useful if can be successfully translated for consumption by voters and politicians.

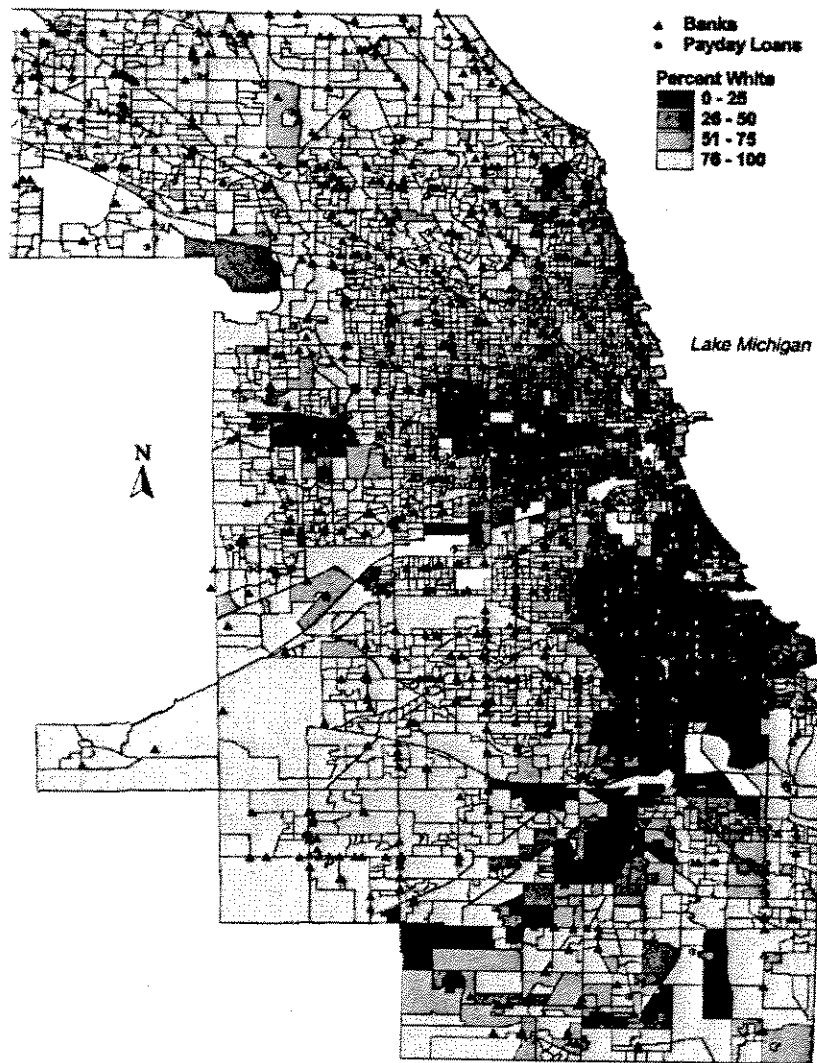


Figure 2 Percent white and location of payday lenders and banks in Cook County, Illinois.

I hope that my findings lend empirical support to the discourses surrounding urban life. If the metaphor of the stage is a useful one for understanding human action, then this study helps prove that the stages under the feet of America's inner-city residents are mined with trap doors. Payday lenders are but one invitation to make a bad decision, but one element in what appears to be the predatory landscape of the inner city. In addition to the real costs of predatory lending, the psychological costs may

be just as damaging. Perception of neighborhood quality has been shown to be an important and reliable measure of behavioral outcome (Hadley-Ives et al. 2000). Perceptive inner-city residents no doubt understand that opportunities to lower one's quality of life dot the landscape, especially where minorities predominate (see, e.g., Walters 1996). Stores selling overpriced groceries, lottery tickets, liquor, and tobacco compete unscrupulously for scarce dollars with payday lenders, rent-to-own stores,

check cashers, pawnbrokers, and other rip-off artists.

While it is tempting to simply characterize predatory lenders as the sleazy villains in yet another scheme to take advantage of helpless inner-city victims, it would be wholly insufficient to do so. Indeed the appeal of payday lending lies in the effective and misleading marketing of payday lending and in the inability of some to fully comprehend the long-term cost of this type of credit (see, e.g., Bates 1997). What is less obvious is how the lack of transparent options for the credit-needy figures into the success of payday lending. This study partly supports the somewhat dubious plea of innocence made by payday lenders, who claim to serve communities underserved by traditional lenders. While it is true that payday borrowers are not completely unbanked, if they live in large cities they may find themselves riding a bus for many blocks to visit a bank that does not serve them pleasantly or appropriately. If traditional banks were able and willing to fulfill the intent of the fair-lending legislation of the 1970s, then payday lenders would have little market appeal. This self-reinforcing pattern of abuse and neglect is widely visible on the urban landscape. For each landscape item signifying structural predation, there is generally a landscape signifying structural neglect. The absence of quality schools, parks, banks, and grocery stores all figure into the construction and maintenance of structural restrictions upon residents' ability to make informed life choices. Far from being a pathologically bad credit choice, payday lending may seem to many inner-city residents to be the best of the bad options available.

If inner-city residents understand the proliferation of payday lenders and retreat of banks as signifiers of the systematic impoverishment of their neighborhoods, what, then, is the effect upon these residents? My guess is that payday lenders are quickly becoming signifiers of "the system" that, by hook or by crook, keeps the downtrodden down. The success of payday lending is very likely underwritten by inner-city cultures that have, over generations, come begrudgingly—or perhaps even passively—to accept perpetual indebtedness as a way of life.

The emergence of a two-tiered financial system offers many opportunities for addi-

tional study. The long-term effect of predatory lending practices on economically challenged neighborhoods, their crime patterns, and urban renewal efforts are particularly intriguing. Because payday lenders comprise only one segment of the alternative financial industry, further study into the spatial practices of check cashers, rent-to-own establishments, title-pawn outlets, and subprime lenders is warranted. Continued analysis of the spatial strategies of mainstream bankers is also necessary. How credit unions, community banks, and other consumer-friendly sources of banking sources factor in the production of positive urban landscapes presents yet more opportunities for research.

The growth of a two-tiered financial system in the United States is but one of a number of unwelcome consequences of the deregulatory spirit fashionable among American politicians during the last couple of decades. As has been the case elsewhere, deregulation has disproportionately affected the poor. Clearly, a need exists to revisit earlier banking legislation, and new legislation may be necessary. Pundits, politicians, consumer-advocacy groups, and other researchers have already forwarded numerous legislative suggestions for state and federal policy makers (see, e.g., Woodstock Institute 2000; PPI, AARP 2001; Stegman and Faris 2003), as has the payday-lending industry (NaCCA 1998). There seems to be general agreement that payday lenders can and should continue to provide their unique services. Without them, the prospect of encouraging considerably more dangerous and completely unregulated loan sharks reappears. A consensus may also be possible on appropriate measures to take to discourage multiple rollovers and other practices that create long-term, spiraling debt. Disagreements tend to emerge over the way in which payday lenders should be allowed to market their services and what constitutes a reasonable interest/fee structure.

Perhaps the most contentious debate is over the apparent lack of federal regulation of cross-border, interstate payday lending. Used to evade state regulations, interstate charter-bank lending undermines local and state authority and seems to transgress the spirit of laws intended to prevent such practices. Payday lenders who are willing to take advantage of the shelter afforded to interstate bankers by federal statutes should be held to federal regulations

that require banks to equitably serve the communities in which they operate. Congressmen who shield local interests from federal regulation by standing behind the cloak of states' rights must also extend their logic in order to protect local constituents—especially the debt-prone ones—from out-of-state, predatory lenders. Left unchecked, the combination of financial neglect by legitimate bankers and predation by fringe bankers threatens to further destroy inner cities and to erode the already fragile condition of America's working poor. ■

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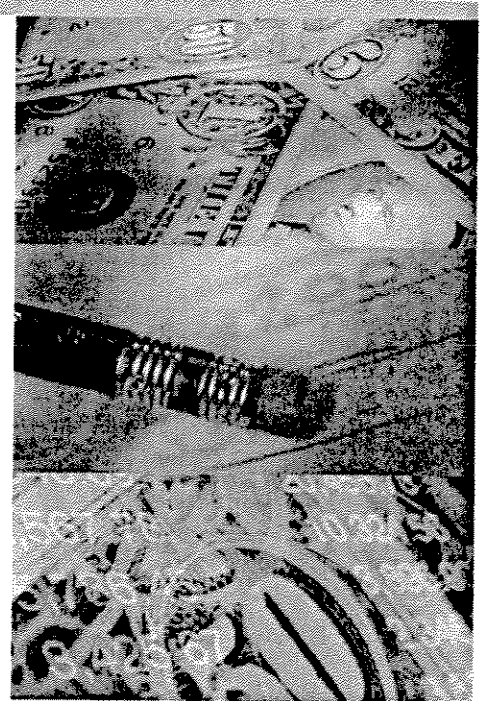
STEVEN M. GRAVES is an assistant professor of geography in the Department of Geography, California State University, Northridge, CA 91330-8249. E-mail: steve.graves@csun.edu. His research interests include social justice, popular culture, and American landscapes.

APPENDIX I

Articles on alternatives to convenient cash businesses

Innovations in Personal Finance for the Unbanked:

Emerging Practices from the Field



I. Transactions and Basic Banking

Cash & Save, Union Bank of California

Bethex Federal Credit Union and RiteCheck Partnership

Florida Central Credit Union

Northeast Community Federal Credit Union

II. Access and Second-Chance Accounts

Extra Credit Savings Program—ShoreBank

Directo Program

Get Checking

Compass Center

III. Alternative Payday Lending and Basic Banking

Stretch Loan, ASI Federal Credit Union

NorthSide Community Federal Credit Union: Hot Funds/Cold Cash

The opinions expressed in these case studies are those of the financial organizations featured and do not necessarily represent the views of Fannie Mae Foundation or its officers or directors.

The American financial system—arguably among the most sophisticated and efficient in the world—facilitates savings and investment for millions of American families. In these households, each generation learns the habits of their parents and comfortably embraces banks, savings institutions, mortgage banks, credit unions, insurance companies, and other mainstream financial enterprises. These households graduate from simple savings and checking accounts to more sophisticated products, such as credit accounts, investments, and home mortgage loans. In this way, they create and build wealth to benefit their families and the next generation.

Millions of American households, however, rarely, if ever, use mainstream financial services. Vast segments of low-income, minority, and immigrant families have not yet been exposed to such wealth-building opportunities. Estimates of the “unbanked,” people without any banking relationship, range from 10 million to 22.2 million households, comprising 25 million to 56 million adults. According to the Federal Reserve, these households are disproportionately found among lower-income households, African-American and Hispanic households, households headed by young adults, and households that rent their homes.

These unbanked households, as well as a sizable portion of those in low-income neighborhoods with a bank account, operate in a cash economy and rely on a variety of high-cost financial services offered by check cashing outlets, payday and title lenders, pawnshops, rent-to-own stores, and other alternative providers. The dollars that flow through the alternative or fringe financial sector may top \$168 billion annually, with at least 280 million transactions, yielding \$5.4 billion in fees for the alternative service owners. While these alternative,

fringe financial service providers offer convenient services and easy access to cash, their services often come at a very high cost to low-income families.

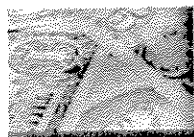
Heavy reliance on these high-fee-for-service providers greatly limits a household’s ability to save and undermines its long-term financial prospects. According to some estimates, fringe services for cash conversion and bill paying alone can cost a \$20,000 income household between \$86 and \$500 a year, while the same services at a bank would cost only \$30 to \$60. Five hundred dollars per year saved for 10 years at an interest rate of only 4 percent would grow to more than \$6,000—an amount sufficient for a down payment on a modestly priced home. Moreover, because many of these households also resort to payday loans, pawnshops, and rent-to-own retail, the actual costs of using fringe financial services is likely even higher.

Enhancing basic financial service options for lower-income and minority households is a strategic priority for the Fannie Mae Foundation. If these households use less-expensive financial services, they can start saving and building assets in order to enjoy the same financial benefits, ultimately including homeownership, that millions of Americans currently enjoy. The Foundation views individual wealth building as critical to building economic vitality in distressed, underserved communities. As part of this commitment, the Fannie Mae Foundation brings together in this collection a number of emerging practices that connect unbanked, underserved low-income households in distressed, low-income communities to the financial mainstream. These practices use a variety of product mixes and innovative services to respond to the immediate and longer-term financial service needs of unbanked consumers. Furthermore, these practices

have the potential to increase the efficiency of financial markets in low-income and minority neighborhoods through increased competition and product innovation.

All of the personal financial case studies covered in this collection offer a low-cost account option at a depository, federally insured banking institution—the first step toward building savings and beginning longer-term wealth accumulation. These accounts are competitively priced (via use of partnerships, banking technologies, and networks), and make creative use of existing financial service delivery channels, including check-cashing outlets. Many of these practices combine delivery of financial services with the financial planning and financial education that are essential to the ability of this consumer segment to build/rebuild credit history and get on the path to savings and wealth building. While there is currently limited performance information on many of these practices—because they are new and their viability as sustainable (or profitable) businesses is subject to how they fare in the marketplace over the years—the practices do offer useful insights about approaches and strategies for product development as well as policy creation targeted to lower-income consumers.

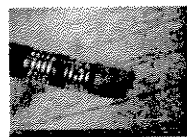
The case studies are grouped under three major categories based on the primary products offered to low-income consumers:¹



I. Transactions and Basic Banking

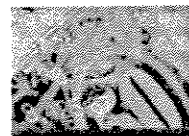
Case studies in this category include practices that provide transaction services similar to those offered by check-

cashing establishments to engage low-income consumers in a depository relationship. The practices offer check-cashing, money-wiring, and utility bill-payment services, along with ancillary services (such as paid phone cards, photocopying, and metro cards) that are often offered by check-cashing establishments.



II. Access and Second-Chance Accounts

Case studies in this category primarily focus on issues of inadequate income and poor account management histories that keep low-income consumers from using the financial mainstream. These practices help consumers take advantage of their Earned Income Tax Credit returns to start a savings account, receive financial education to rebuild their damaged credit history, and get payroll debit cards that eliminate the need for cashing payroll checks.



III. Alternative Payday Lending and Basic Banking

The practices in this category provide alternatives to high-cost payday loans in the organizations' communities and help financially vulnerable households avoid getting into a vicious debt cycle. To engage low-income consumers in a depository relationship, they offer low-cost, short-term personal loans with the same features as payday loans.

The Fannie Mae Foundation hopes that the information in these case studies will inform the industry's efforts to

¹ The case studies featured in this collection partly draw from materials generated under two research projects sponsored by the Fannie Mae Foundation: (1) "Expanding the Reach of Mainstream Financial Markets to Distressed Communities," by the National Community Investment Fund, 2002; and (2) "Financial Innovations Roundtable," by Southern New Hampshire University.

design more appropriate products and more effective delivery channels and will contribute to improving access to wealth-building opportunities in underserved,

distressed communities. The Foundation seeks to stimulate new ideas about meeting the financial service needs of low-income, low-wealth households and communities.



Case Studies

The following is a brief summary of the practices featured in this collection of personal finance case studies. For each case study, there is a short stand-alone summary that provides basic information about the practice and highlights its unique product features and partnerships. Following this summary, each case study provides a brief history and background about the organizations offering the practice; the business model; products and pricing; consumer segment served; technology; distribution channels; and the education, outreach, and marketing components.

I. Transactions and Basic Banking

▼ *Cash & Save, Union Bank of California (UBOC).* Cash & Save in Southern California is a hybrid check-cashing and transitional network of bank branches to help low- to moderate-income check-cashing customers make the transition to traditional banking services. It offers a full range of check-cashing services, including payroll and government check cashing (without requiring a UBOC bank account); transitional banking services; and full-service banking products, deposits, and mortgages. In 2000, Union Bank of California bought a 60 percent stake in Nix Check Cashing and created the Nix Alliance. As of May 2002, 20 Nix outlets offer Cash & Save transitional banking services through this alliance.

▼ *Bethex Federal Credit Union and RiteCheck Partnership.*

This partnership combines traditional banking services offered by Bethex with check-cashing, money-wiring, and utility bill-payment services offered by RiteCheck, a large check-cashing outlet in New York. The partnership helps the institutions offer a spectrum of transaction, deposit, and credit products that otherwise would not have been possible. RiteCheck provides Bethex customers free check-cashing services on Bethex-issued checks (Bethex picks up the fee for these services) and reduced rates on non-Bethex checks. Meanwhile, RiteCheck benefits from increased business brought by Bethex customers and gets to offer depository services to its customers, thus enhancing its image in the community.

▼ *Florida Central Credit Union (FCCU).* FCCU provides low-cost mainstream alternatives to fringe financial services that operate in the Hillsborough neighborhood of Tampa, FL, including affordable alternatives to check cashing and payday lending. By paying a small membership fee, FCCU customers gain access to such banking services as savings and checking accounts and financial counseling. The two FCCU branches in the Hillsborough neighborhood give low-income individuals a chance to use lower-cost versions of the products that they are familiar with, such as check cashing, while increasing their exposure to

bank accounts and help in saving money for investment and future needs.

▼ *Northeast Community Federal Credit Union (NCFCU)*. At a branch in the Tenderloin neighborhood of San Francisco, NCFCU offers “lifeline” financial services to low-income, immigrant, and homeless populations. Member services include saving accounts, limited check cashing, direct deposits, money orders, and “Grace Loan,” a payday loan alternative. NCFCU serves the community by providing an alternative to fringe financial providers, thus helping members begin to build wealth. Providing financial education and one-on-one financial counseling to its members is an important component of NCFCU’s business model. NCFCU has greatly benefited from the backing of its local community partners, including community-based organizations, credit unions, banks, and local businesses.

11. Access and Second-Chance Accounts

▼ *Extra Credit Savings Program, ShoreBank (ECSP)*. ECSP is a partnership between ShoreBank and the Center for Economic Progress (formerly Center for Law and Human Services) in Chicago. The ECSP reaches out to people who are eligible to receive the federal Earned Income Tax Credit and provides them with free tax preparation services. When they come to get their taxes done, they are offered free financial education and encouraged to open a bank account in which their tax credit can be deposited directly. Now in its fourth year, ECSP has led to the opening of about 500 accounts. The program has had a clear effect on the financial habits of participants in terms of how they handle money and how they think about their financial future.

▼ *Directo Program*. Directo, an Atlanta-based financial technology company, offers a payroll-based debit card called DirectoCard (or DirectoCash), a convenient, secure, low-cost alternative to a traditional checking account. The customer gets the card through an employer and a participating bank. Directo works with the bank to open the demand deposit account for the cardholder/customer. Employee compensation is directly deposited into an electronic bank account. Funds can be withdrawn at any ATM, and purchases, often with a cash-back option, are available at point-of-sale terminals. The DirectoCard holder can get additional cards and use them to transfer funds to as many as 10 family members or significant others anywhere in the world at a fraction of the cost of a regular money transfer. This is an especially important benefit to immigrant workers, who frequently send money to relatives in their native countries.

▼ *Get Checking*. Get Checking is an innovative partnership that uses financial education to give unbanked individuals with past financial difficulties a chance to reenter the financial mainstream. The program provides an introduction to banking and practical money management skills. People who successfully complete the program can open a qualifying checking or saving account at participating financial institutions in more than 30 communities in 11 states where the program currently operates. Get Checking was jointly developed by eFunds Corporation, Consumer Credit Counseling Services of Milwaukee, the University of Wisconsin Extension, and the University of Wisconsin–Milwaukee School of Continuing Education.

▼ *Compass Center*. The Compass Center, a nonprofit homeless service provider in Seattle, offers basic banking services to homeless people free of charge or at

nominal cost. Individuals can have their Federal entitlement payments electronically deposited to their bank accounts and maintain bank accounts for savings and safekeeping of cash. Representative Payee Services are also available for those who are disabled, receive government payments, and require a third party to administer their finances. The Commerce Bank of Washington plays a crucial role in helping the Center with its banking services to homeless clients. It maintains a master account for the Center that is used for making credits and debits to its individual client accounts. Several other local banks (including Key Bank) and other community partnerships support Compass Center operations.

III. Alternative Payday Lending and Basic Banking

▼ *Stretch Loan, ASI Federal Credit Union.* Stretch Loan is a revolving line of credit offering Southern Louisiana's ASI credit union members from \$200 to \$500, a small cushion to tide them over until their next paycheck. With an annual interest rate of 12 percent and a weekly fee of \$3, Stretch Loan is an attractive low-cost alternative to local payday loans whose annualized

percentage rates can rise to several hundred percentage points and trap households in a vicious cycle of debt through rollovers. ASI positions the Stretch Loan as an entry into longer-term asset building and financial self-sufficiency for its members. To this end, ASI offers one-on-one counseling and seminars on personal finance management.

▼ *NorthSide Community Federal Credit Union (NorthSide): Hot Funds/Cold Cash.* In Chicago, NorthSide's Hot Funds/Cold Cash loan serves as a low-cost alternative to payday loans for its members. Designed as a small consumer loan with an interest rate of 16.5 percent and an initial \$10 loan fee, the program offers credit up to \$500 repaid with equal monthly payments over a six-month term. Unlike payday loans, Hot Funds/Cold Cash loans cannot be rolled over and can be repaid with partial payments. In April 2002, Northside started offering a modified version of Hot Funds/Cold Cash called Payday Alternative Loan (PAL). PAL allows borrowers to take a second loan if the outstanding loan amount does not exceed \$500 and the balance on the first loan is \$250 or less.

Acknowledgments

The Fannie Mae Foundation thanks Lisa Richter, fund advisor, the National Community Investment Fund, and Dan Leibsohn, president, Community Development Finance, for their generous assistance, support, and intellectual contribution to the development of this collection. Special thanks are also extended to Kil Huh, Lopa Kolluri, and Michelle McDonough, who provided valuable research assistance at various stages during

the development of the case studies featured in this collection. Ayse Can Talen, a senior director in the Foundation's research group, oversaw the development of this collection under the guidance of Jim Carr, senior vice president. Any questions about this collection should be directed to Ayse Can Talen at 202.274.8030 or by e-mail at actalen@fanniemaefoundation.org.

Start-Up's Strategy Is to Turn Cashing into Bank Customers

John Reosti. American Banker New York, N.Y.:Jan 18, 2006. Vol. 171, Iss. 11, p. 5

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photo, Perri

A bank set to open this spring in a predominantly Hispanic neighborhood in New York's South Bronx will try to attract customers by operating as a check casher too.

Though other banks own or have stakes in check cashers, CheckSpring Bank would apparently be the first in recent memory to offer full-fledged check-cashing services from bank teller windows. Its organizers are betting it will convert unbanked people into banking customers. "That is the key to our model," said Charles R. Wilcox, the president chief executive of the parent CheckSpring Community Corp. "We're going to cash checks for a fee. It will be lower for depositors, and it will get even lower as people's balances grow, so we're building incentives to save."

CheckSpring will focus on blue-collar and low-income people who are not served well by traditional banks, Mr. Wilcox said.

The most similar current service may be one offered by the \$91 billion-asset KeyCorp of Cleveland. In a pilot program, a handful of its Cleveland-area branches have begun cashing noncustomers' payroll and government checks.

A few other banking companies have bought stakes in check cashers and are marketing bank products in their stores. These include the \$51.3 billion-asset UnionBanCal Corp., mostly owned by Mitsubishi UFJ Financial Group Inc. of Tokyo.

The San Francisco company's Union Bank of California has installed teller windows in Nix Check Cashing stores so people can open accounts and apply for loans there. Last month Tom Branch, the head of alternative financial services at UnionBanCal, said about 40% of Nix's check cashing customers become Union Bank of California depositors. CheckSpring has leased space in a building on East 167th Street a few blocks from Yankee Stadium. Mr. Wilcox said that he expects many people in the neighborhood to open accounts right away, but that persuading many others will take time.

"A lot of people are going to be on the fence, but if we give them good service, we can bring them into the fold," he said.

Banks largely abandoned the South Bronx in the 1970s, when politicians including President Carter called it a classic example of urban decay. Now construction and new small businesses are luring banks back, said Adolfo Carrion Jr., the borough president. "Branches are opening up throughout the borough," he said Tuesday. "There is definitely a sense that this is a growing community; whoever misses the boat now is missing out on a tremendous opportunity."

The last time a new bank opened with headquarters in the Bronx was 1982, and the borough still has the lowest ratio of branches to residents -- about one to 11,100 -- in the city. (The ratio in Staten Island, by contrast, is one branch per 5,000; in Manhattan it is one for every 2,500 people.)

Though 35,000 families live within half a mile of the space CheckSpring has

leased, "it is a half-mile to the nearest branch," Mr. Wilcox said. "In New York, that is a long way to go without passing a bank," he said. The disparity with other parts of the city "is amazing." Mr. Wilcox is a former vice president for strategic development at Citigroup Inc. Last week CheckSpring Community Corp. said it had hired Gerard A. Perri, the chief financial officer at the \$360 million-asset Metropolitan National Bank, in Manhattan, to be CheckSpring Bank's president and chief executive.

The state Banking Department has approved CheckSpring's charter application, and the Federal Deposit Insurance Corp. has approved its application for deposit insurance. Mr. Perri said raising initial capital is the last hurdle. The plan is to start with \$13.4 million in capital, and Mr. Perri said the organizers hope "to open as early as possible in the second quarter."

"As soon as we get the cash we want to put it to good use in the community," he said.

Joe Coleman, the president and chief executive of Rite Check Cashing Inc. in New York, said Thursday that he will be watching CheckSpring's effort closely. "I'm very curious to see how it works out," he said.

Rite Check operates seven stores in the Bronx. Mr. Coleman said CheckSpring will face the same challenge as other banks that have moved into low-income urban areas: that the people it wants for customers value cash in hand more than savings. "Check cashers succeed because we market liquidity in an area that needs it badly," he said. "I don't think the fact CheckSpring will have a bank aspect will take many customers away from me. My most successful store has four banks around it, and all four are willing to serve low-income customers."

Mr. Wilcox said CheckSpring will serve small businesses in addition to individuals. It will target stores and other businesses with sales of less than \$2 million, he said. "When you boil it down, we're a pretty standard community bank play," Mr. Wilcox said. (c) 2006 American Banker and SourceMedia, Inc. All rights reserved. <http://www.americanbanker.com> <http://www.sourcemedia.com> @

Varying Goals In Low-Income Neighborhoods

Luke Mullins. American Banker New York, N.Y.:Jan 13, 2006. Vol. 171, Iss. 9, p. 1

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photo, Taylor, Wright

This month Diana L. Taylor, the New York State banking superintendent, designated part of northern Harlem as a "banking development district" under a program meant to stimulate development in low-income communities.

One immediate beneficiary will be Carver Federal Savings Bank, which operates the only branch in the district.

Under a 1998 law, banks and thrifts in communities the state designates as underserved are rewarded with millions in state and municipal deposits, which the \$650 million-asset Carver intends to use to make more loans -- and generate more profits. The branch is Carver's third in a banking development district. A branch in Queens was designated as a banking development district in 2004, and in 2001 Carver opened a branch on Malcolm X Boulevard in Harlem, largely to take advantage of the law that created the districts. That branch received \$50 million of state deposits and another \$5 million from New York City.

Deborah C. Wright, the savings bank's chairman and chief executive officer, said the deposits "eased the up-front pressure" that comes with opening a branch. Even in more affluent neighborhoods, most new branches can take two to three years to break even, but the Malcolm X Boulevard branch was profitable "right away," she said.

New York is the only state that awards large deposits to banks and thrifts that open or stay in neighborhoods that other banks fled long ago. Since Gov. George Pataki signed the law, the state has established 18 banking development districts, primarily in New York City, but also in Buffalo and some smaller upstate communities. Carver, a black-owned thrift established in 1948, has a history of serving low-income communities. Ms. Wright said that the banking development district designation is helping to stimulate economic activity in these neighborhoods by providing banks with funds that would otherwise take years to accumulate.

The deposits should also help accelerate Carver's growth, Ms. Wright said. Though Carver has "more objectives than just making money," its first responsibility is still to its shareholders. "We're a publicly traded company. Shareholders would not be interested in social service."

Andrew Dorn, the president and CEO of Greater Buffalo Savings Bank, takes a different view of the districts.

Its branch in a district in Buffalo is a way to provide a low-income neighborhood with financial services and jobs, not something that will drive the savings bank's earnings, Mr. Dorn said. Since it opened in 1999 the branch has received about \$35 million of state deposits, but only about \$5 million from the community. "Quite frankly, very few of the people who live in that community have money to deposit," he said.

Banks that receive state funds have to return the money eventually, so they would need to bring in tens of millions of dollars from the community to remain profitable. Still, Mr. Dorn said his \$770 million-asset savings bank is planning to open another branch in a banking development district in Buffalo this summer.

"The banking development districts gives us a chance to help the community without losing money," he said.

When Carver opened the Malcolm X Boulevard branch, it set out to raise \$30 million of deposits from the community in its first three years. The savings bank missed the target date by two years -- largely on account of the Sept. 11 attacks, Ms. Wright said -- but by Sept. 30, 2005, the branch had taken in more than \$29 million from the community. Under its agreement, Carver will return the \$50 million to the state in September. Ms. Wright said that the Malcolm X branch has enough deposits to be profitable without the state's help. "The deposits were really a bridge for us to give the community time to catch up with the branch," she said.

Ms. Taylor said that banking development districts were not created to force banks to choose between making money and serving the underbanked. "From a regulatory standpoint, I don't want branches that are not going to be profitable. It's not good from a safety-and-soundness perspective," she said.

In New York City, at least, Ms. Wright said Carver can do good and do well. The improving economic conditions in the inner cities create opportunities for both residential and commercial lending, she said.

"The inner city is booming. There is a lot more business than just consumers," she said. "You have to have the fundamental belief that the neighborhood will evolve." (c) 2006 American Banker and SourceMedia, Inc. All rights reserved. [http:// www.americanbanker.com](http://www.americanbanker.com) <http://www.sourcemediacom.com>
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APPENDIX J

Documents relating to Wisconsin alternatives



News Release

Contact: Sandy Schultz
Vice President, Marketing
Prospera Credit Union
920-882-4804 or 920-740-8888
sandy.schultz@myprospera.com

Rich Redman
Director of Marketing
Goodwill Industries of North Central WI
920-968-6811 or 920-213-0103
rredman_gw@gwicc.org

For immediate release –

GoodMoney: A new model from Goodwill NCW and Prospera to serve the unbanked and the financially underserved

Appleton, Wisconsin, May 11, 2005 – Have you noticed the growing number of quick-cash and payday lending outlets in the Fox Valley? That means there is an increasing customer demand for ready cash, and that often results in people paying exorbitant loan fees and spiraling deeper and deeper into debt.

Today, Goodwill NCW and Prospera Credit Union are announcing **GoodMoneySM**, a powerful new collaboration that will address this issue head-on. On the surface, **GoodMoney** is a specialized service branch of Prospera that will be located just inside the front entrance of Goodwill's brand new store being built in Darboy. At its core, **GoodMoney** is an innovative collaboration between not-for-profit organizations that will deliver financial services at reasonable prices, and financial education to people who need it.

GoodMoneySM
Cash • Credit • Convenience

So, who are the players?

- ◆ **Goodwill Industries of North Central Wisconsin** (Goodwill NCW) is one of 207 not-for-profit Goodwill organizations across the world. Based in Menasha and covering 35 counties with 18 stores, Goodwill NCW helps people with disabilities and other barriers to independence become

more fully contributing members of society.

FISC – the Financial Information & Service Center – is a program of Goodwill NCW that offers “practical financial advice for real people.” FISC offers financial workshops and money/budget counseling to help people manage their money, and develops debt management plans with those who are already in financial trouble. It focuses on financial literacy – helping to put people in control of their money, and their futures. The not-for-profit Consumer Credit Counseling Service serving this part of Wisconsin, FISC is a member of the National Foundation for Credit Counseling, and is accredited by COA, the Council on Accreditation.

FISC will serve **GoodMoney** customers with financial education and counseling through its main location at 921 Midway Road, Menasha.

- ◆ **Prospera Credit Union** is a community credit union with five full-service branch locations and approximately 15,000 members throughout the Fox Cities. The mission of Prospera is to help people prosper financially to enhance the quality of life.

What products and services will GoodMoney offer?

Short-term loans

Loans at a substantially lower fee than with payday lenders

Check cashing

Payroll and government-issued check cashing for a small fee (this is especially important for the growing number of people who have no checking account).

Convenience services

Money orders
Stamps
Bill payment services

Financial education access

At the FISC office, customers will have access to:

- ◆ workshops and counseling to help them sharpen their money management skills and prevent debt.
- ◆ debt management plans for those experiencing financial difficulties.

FISC will help put people in control of their money and their futures.

How can GoodMoney offer loans and other services at lower fees than payday lending facilities?

GoodMoney is a collaboration between two not-for-profit organizations. As a credit union, Prospera typically charges lower service fees and rates as a way of returning some of what would ordinarily be

"profits" to its members. Both Prospera and Goodwill have a commitment to serving people with financial barriers in a way that will be fair and helpful to them.

What typical credit union services will GoodMoney not offer?

GoodMoney is a limited service branch of Prospera Credit Union and therefore will not offer on-site auto loans, mortgage services, investment services, CDs, money markets or checking accounts. These services can be accessed at Prospera's full service Darboy branch located across from the Darboy Club on County Road N.

What's the relationship between FISC and GoodMoney?

As a Consumer Credit Counseling Service, FISC is prohibited by law from conducting its business in the same physical facility where loans or other financial transactions are handled. So, the FISC educational, money management and debt planning services will all be delivered through its main location at 921 Midway Road, Menasha or its satellite facilities in other communities.

GoodMoney staff will offer brochures, workshop flyers and other FISC information to its customers, and will proactively connect the services of FISC to people whose frequent use of **GoodMoney** services would suggest that financial counseling would be helpful.

Are there other models of this kind of collaboration?

Not to our knowledge. We think it is unique in both the credit union industry and in human services – especially the concept of offering both banking services and financial education opportunities. We also feel that this has tremendous potential to really be of help to our customers. The representatives of the Wisconsin Credit Union League who have been involved in the development of the concept are quite excited about its potential. And, Goodwill executives from across the country will get to see it first-hand when they tour the Darboy store as part of the Goodwill International Delegate Assembly conference being held in Appleton June 25-29. We are expecting that some may want to replicate it in their home areas, as well.

What's the timeline?

GoodMoney will open when the Goodwill Retail Store and Training Center of Darboy opens on Thursday, June 16.



REAL Solutions - Initiative Summary

In 2005, The Wisconsin Credit Union League launched for the first time in the United States an initiative called REAL Solutions. The aim is to develop less costly alternatives to predatory financial practices – such as high cost payday loans - and, through credit union membership, help low-income people better their financial position over time by offering affordable loans, access to savings, financial counseling and more.

Participating credit unions meet consumers' immediate needs for transaction services while moving consumers through the steps of opening basic deposit accounts, building creditworthiness with small loans, and – over time – building wealth. As a result, consumers will be less susceptible to using predatory services and gain the solid financial footing they need to remain self-supporting, contributing members of our state's economy.

The need in Wisconsin

The initiative is timely and sorely needed in light of the explosive growth of predatory lenders in Wisconsin. For example, over the last decade in Wisconsin, the number of payday loan outlets in the state increased from 17 to 445. In 2004, payday lenders issued \$506 million in loans here.

Currently in Wisconsin there is neither a limit on what these lenders can charge (interest as high as 520% APR or more) nor a limit on the number of times a loan can be extended for an additional fee. Lawmakers and community leaders have expressed concerns that these services target people in low-income areas and can trap people in an unending cycle of debt.

Program highlights to date include:

2004

- **The effort was developed** in partnership with the Filene Research Institute in Madison, Wis. Lois Kitsch with Filene worked closely with The League on program development and implementation.
- **The League held informational meetings** about the effort at several credit unions around the state.
- **A “Memorandum of understanding”** was developed to explain the roles of The League, Filene Research Institute and participating credit unions as part of the effort. The MOU is not a contract; it details what each partner can and should do or take advantage of to maximize their involvement.
- **A 12-member advisory task force was formed** by participating credit unions to guide the effort.
- **Toolkits began helping credit unions develop less costly alternatives** to government and payroll check cashing, as well as new options to fight payday lending, and more. The kits are free to participating credit unions.
- **The program was unveiled publicly** in October, 2004 as part of a press conference held at a credit union serving a low-income area in the city of Milwaukee – Brewery Credit Union.

N25 W23131 Paul Road Pewaukee, Wisconsin 53072-5779

Phone: (262) 549-0200 or (800) 242-0653 Fax: (262) 549-7722 Web: www.theleague.coop

Member Credit Union National Association

2005

- **Media and lawmakers expressed broad support** and interest in the effort. Pro-credit union editorials appeared in daily newspapers and legislators applauded credit unions at our 2005 Government Affairs Conference.
- **Partnerships emerged** with other organizations that could help us reach low-income people, new Americans and others using predatory financial services. Talks began with the Wisconsin Department of Revenue and Wisconsin Department of Agriculture, Trade and Consumer Protection to determine how best to extend services to Wisconsin residents most in need. Presentations were also provided for members of the Wisconsin JumpStart Coalition, whose members collaborate to improve financial education in the state.
- **State examiners showed support.** The Director of the Office of Credit Unions cited her support for the effort in *The League News* and League staff met with field examiners to brief them on the program so they could work effectively with credit unions implementing REAL Solutions programs and services.
- **Credit unions signed on to the effort.** During the year, 40 credit unions signed on to the effort. Collectively, those credit unions have more than 140 locations across the state, more than 846,000 members (about 41% of all credit union members in the state) and upwards of \$6.2 billion in assets (about 43% of Wisconsin credit union assets).
- **Participant meetings were held to develop the program.** Participating credit unions were invited to three meetings in 2005 at The League that explored needs in Wisconsin, capabilities of Wisconsin credit unions, and opportunities to develop or expand services to various target groups. The meetings focused on:
 - **Serving the Hispanic/Latino community**, which is growing in Wisconsin at three times the national average.
 - **Helping low-income tax filers avoid predatory “refund anticipation loans”** by using credit union accounts for fast, free direct deposit of refunds, and
 - **Developing a business plan** that incorporates REAL Solutions strategies.
- **Communications about the program intensified.** Every issue of The League’s newsletter promoted REAL Solutions and updated readers about the status of the effort. A session at the League’s annual convention focused on the initiative. Periodic updates were shared via email with participating credit unions. A comprehensive REAL Solutions website was developed to equip credit union partners with resources and information 24/7. Finally, information about the program was also shared with lawmakers and media through publications and press releases.
- **Credit unions determined their focus moving forward.** Participating credit unions determined three target groups for the effort moving forward, including:
 - Low-income tax filers
 - Hispanics/Latinos
 - Users of payday loan services

2006

- **A significant effort to help low-income tax filers began in January.** Credit unions began working with the Department of Revenue at Volunteer Income Tax Assistance (VITA) sites to offer fast, free direct deposit of tax refunds as an alternative to costly refund anticipation loans, which are aggressively marketed to

the poor during tax season. Thanks to a series of visits by the League and its partners to several Wisconsin newspapers' editorial boards – the effort again captured significant coverage in the press.

- **Additional partnerships are emerging.** Opportunities are being explored with Centro Hispano – the Madison area's primary community organization serving the Hispanic/Latino community – to offer direct deposit for tax refunds.
- **Assessment of our help for low-income tax filers will set our future course.** The League will meet with the Department of Revenue to review the achievement of our VITA partnership and make plans to expand the effort in 2007. We will also explore ways of further tracking and reporting the program's success.
- **Educational sessions will further highlight the program.** A session is planned for The League's 2006 convention to increase credit union participation in the program. The League's Education & Training Department is also planning several educational sessions for later in the year to help advance the effort.
- **The League is developing a payday lending product** that can be offered by credit unions participating in REAL Solutions. The goal is to develop a lower cost option for a short term loans that can be implemented widely by credit unions across the state, maximizing the number of Wisconsin residents who can be helped.
- **Plans are being explored to further "brand" and expand awareness of REAL Solutions.** Methods for communicating about REAL Solutions are being explored to increase recognition for credit unions among consumers, media and lawmakers.
- **REAL Solutions earned a Governor's Award** in 2006 as an innovative effort that improves the financial literacy and capabilities of Wisconsin citizens.



NEWS RELEASE

For Immediate Release
January 9, 2006

Contact: Chris Olson
(800) 242-0833, Ext. 3167
colson@theleague.coop
www.theleague.coop

Credit unions' help for low-income tax filers is part of larger effort to offer alternatives to predatory financial practices that hurt Wisconsin

Pewaukee, Wis. – Wisconsin credit unions are hoping that their help for low-income tax filers this year will flow more “unbanked” Wisconsin consumers into the financial mainstream, where they will receive fairer pricing for services and – beyond that – help to gain a stronger financial footing. Credit unions are helping low-income tax filers by opening deposit accounts into which fast, free refunds can be deposited, providing a no-cost alternative to costly “refund anticipation loans” that, according to the state, pick \$28.5 million from taxpayers’ pockets.

Credit unions in Milwaukee, Madison, Dodgeville, Fond du Lac, Eau Claire, Wausau, Hayward and near the Menominee Indian Reservation will open deposit accounts for low-income tax filers, as well as work alongside volunteers from the Wisconsin Department of Revenue who are assisting them, at Volunteer Income Tax Assistance (VITA) sites. The sites offer free tax preparation, tax education and asset-building strategies to people with low incomes, the disabled, individuals with limited English proficiency and the elderly.

Many low-income filers – who often seek a fast refund to pay bills and meet immediate needs – turn to paid tax preparers charging interest as much as 521% APR to obtain what’s called a “refund anticipation loan,” or RAL. These short-term, high-interest loans – secured by the pending refund – can drain hundreds of dollars from a typical refund. RALs are aggressively marketed in low-income communities.

“Credit unions want to see that low-income people don’t get taken advantage of this tax season,” said Brett Thompson, President & CEO of The Wisconsin Credit Union League, the trade association supporting 280 not-for-profit, member-owned financial institutions. “Low-income people who don’t have an account with a financial institution may see a RAL as their only option to get a fast refund. That’s what needs to change.”

It only takes a small deposit – as well as meeting member eligibility requirements (such as living or working in a particular area) – to open a basic deposit account at a credit union. The account can then be used to receive tax refunds at no cost via electronic transfer. Taxpayers receiving help at VITA sites benefit not only by avoiding tax preparation fees and the “rapid refund” charges that are typical of RALs, but get their refunds in as little time as if they had used a RAL: usually within a week.

(MORE)

By providing an alternative to RALs, credit unions are also helping the state curb the broader “drain” RALs have on the economy. For example, RALs siphon away the tax benefit low-income filers should receive by claiming the Earned Income Tax Credit (EITC); as much as \$8 million in this benefit was lost in 2003 in Wisconsin to RALs. Local economies also suffer when tax dollars are diverted due to an economic “multiplier” effect: The estimated \$3 million in RAL fees by federal EITC recipients in Milwaukee in 2003, for example, denied the city of as much as \$6 million in economic activity that could have resulted had consumers been spared those costs.

Thompson emphasizes, however, that credit unions’ help for tax filers is just one way of combating a more pervasive problem in the state: low-income people being targeted by non-traditional financial providers charging excessive costs for services that can be obtained more reasonably through mainstream providers like credit unions.

Through an initiative called REAL Solutions, Wisconsin credit unions statewide are developing lower-cost alternatives to a range of services that are often sought by low-income people, including short term “paycheck advance” services, check cashing, wire transfers and more. While doing so will not drive profits for credit unions, they see their effort as part of their mission as cooperatives. The purpose of not-for-profit credit unions is to serve members, not make profits.

“RALs are just one example of how predatory services hurt Wisconsin,” Thompson adds. “Just look at the payday lenders popping out of just about every strip mall. People who use them for a short term loan often find they can’t afford to pay it back once the high fees and interest are applied, and take out another loan and another until they’re completely mired in debt. This effect depresses a whole segment of our economy.”

Thompson says credit unions’ goal with REAL Solutions is to meet consumers’ immediate needs for transaction services while moving them through the steps of opening basic deposit accounts, building creditworthiness with small loans, and – over time – building wealth.

Credit unions make loans as small as a few hundred dollars and offer free financial counseling to improve their members’ overall financial position.

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Editors note: Visit www.theleague.coop (Press Room) for the contact names and phone numbers of credit unions helping tax filers in 2006. For further comment by The League, contact [Sandy Malone](#) at (800) 242-0833, Ext. 3166.

N25 W23131 Paul Road, Pewaukee, WI 53072-5779

Credit unions are cooperative financial institutions that are owned by their members and do not have stockholders. Because they are not-for-profit, they return earnings to members in the form of more competitive rates of return on accounts, lower interest on loans, lower fees and improved services. Two million Wisconsin residents belong to credit unions, of which nearly half are open to the local community. People can find a credit union to join by looking in the phone book or by visiting www.creditunion.coop.

APPENDIX K

State of Wisconsin "Consumer Loan Agreement"

(Only use with Payday Loans)

CONSUMER LOAN AGREEMENT

Date _____

Account # _____

(Lender Name)
(Lender Address)
(Lender City, State Zip)
(Lender Phone Number)

(Customer Name)
(Customer Address)
(Customer City, State Zip)
(Customer Phone Number)

In this Consumer Loan Agreement (hereinafter referred to as the "Agreement") the words "you," and "your" mean each and all customers who have signed it. The words "we," "us," and "our" mean (Lender Name).

YOUR PROMISE TO PAY

You promise to pay us the Total of Payments shown below and other charges identified in this Agreement. On the date stated in your Payment Schedule you will pay us, at the address indicated above, or at such address as we direct you in writing, the amounts stated. Any unpaid balance of the Amount Financed after the final installment due date will bear interest at the same Annual Percentage Rate as was assessed before maturity.

FEDERAL TRUTH IN LENDING DISCLOSURES

ANNUAL PERCENTAGE RATE	FINANCE CHARGE	Amount Financed	Total of Payments
The cost of your credit as a yearly rate.	The dollar amount the credit will cost you.	The amount of credit provided to you or on your behalf.	The amount you will have paid after you have made all payments as scheduled.
%	\$	\$	\$

Your Payment Schedule will be:

One Payment in the Amount of \$ _____ is due on: _____ (date)

Security Interest: Your check is security for this Agreement.

Prepayment: If you pay off early, you may be entitled to a refund of part of the finance charge.

Late Payment: If you fail to make all or any part of a scheduled installment on or before the 10th day after its scheduled or deferred due date, you may be charged \$10.00 or 5% of the unpaid amount of the installment, whichever is less. If interest is assessed after maturity, no late payment fee will be charged on the final installment.

See the contract provisions on the reverse side for any additional information about nonpayment, default and prepayment refunds.

Itemization of Amount Financed: Amount given to you \$ _____, Amount paid on your account \$ _____.

You warrant and represent that you are not a debtor under any proceeding in bankruptcy, insolvency or reorganization and have no intention to file a petition for relief under any chapter of the United States Bankruptcy Code.

For Wisconsin Residents Only: You are married unmarried legally separated. If you are married and your spouse is not signing below, the name of your spouse is _____ and your spouse resides at the address shown above or at _____

NOTICE TO CUSTOMER

- A) DO NOT SIGN THIS BEFORE YOU READ THE WRITING ON THE REVERSE SIDE, EVEN IF OTHERWISE ADVISED.
- B) DO NOT SIGN THIS IF IT CONTAINS ANY BLANK SPACES.
- C) YOU ARE ENTITLED TO AN EXACT COPY OF ANY AGREEMENT YOU SIGN.
- D) YOU HAVE THE RIGHT AT ANY TIME TO PAY IN ADVANCE THE UNPAID BALANCE DUE UNDER THIS AGREEMENT AND YOU MAY BE ENTITLED TO A PARTIAL REFUND OF THE FINANCE CHARGE.

x _____
Customer Signature

Date

x _____
Customer Signature

Date

SEE REVERSE SIDE FOR ADDITIONAL PROVISIONS

ADDITIONAL PROVISIONS

METHOD OF PAYMENT: Your personal check in the amount of the Total of Payments stated in the federal Truth in Lending Disclosures will be held by us as security on this Agreement. You agree that we may deposit this check on the payment date if you have not paid us in cash, cashier's check, money order or other immediately available funds in the amount of the Total of Payments before close of business on the payment date. If full payment is made prior to the deposit of your personal check, we will return the check to you at the time we receive full payment.

RETURNED CHECK CHARGES: Pursuant to section 422.202(1)(d) of the Wisconsin Statutes, you agree to pay a fee of \$15 for each check presented for payment that is returned unsatisfied because drawer does not have sufficient funds in drawer's account, drawer does not have an account with the drawee bank or drawer does not have sufficient credit with the drawee bank.

PREPAYMENT: You may prepay this agreement in full or in part at any time without penalty, except you may be assessed a minimum finance charge of \$5 when the amount financed is \$75 or less and \$7.50 when the amount financed is greater than \$75. Earned finance charges are determined by applying the annual percentage rate to the unpaid balance of the amount financed for the actual time those balances were unpaid.

DEFAULT: A customer shall be in default under this Agreement when the payment remains unpaid for more than 40 days after its scheduled or deferred due date, or if the customer fails to comply with any of the terms of this Agreement if the failure materially impairs the condition, value or protection of or the Lender's right to the collateral or materially impairs the customer's ability to pay the obligation due under this Agreement.

LENDER'S RIGHTS IN THE EVENT OF DEFAULT: In the event of default, and if you have the right to cure the default pursuant to sec. 425.105, Wis. Stats., you fail to cure the default within 15 days after you are given notice of the default, the lender may declare the whole outstanding balance due under this agreement payable at once and proceed to collect it, including commencing legal action.

TIME: It is essential that you make your payment on time.

WAIVER: You agree to be liable for the repayment of this Agreement even if we do not give you notices such as presentment, protest, demand, and notice of dishonor. We shall not waive any of our rights under this Agreement by making an accommodation for you or someone else. No waiver, consent or approval by us or changes or amendment of this Agreement shall be effective unless it is in writing and you and we have signed it.

CREDIT REPORTING: We may report your performance under this Agreement to credit reporting agencies. You agree and hereby authorize us to obtain credit reports on you at any time any portion of the Total of Payments remains owed to us. You specifically acknowledge and agree that we may disclose any default by you under this Agreement, along with any other relevant information, to credit reporting agencies.

JOINT AND SEVERAL: If this Agreement is signed by more than one customer, you each agree to be liable to us jointly, and each of you will also be liable to us individually for the loan and other obligations under this Agreement. We may require that either of you pay the amounts due without asking the other to pay. We may file suit against any one or more of you without giving up any of our rights against the others. This Agreement is also binding upon the heirs and personal representatives in probate of all signers and upon anyone to whom any signor assigns his assets or who succeeds to him or her in any other way.

GOVERNING LAW: This Agreement shall be construed, applied and governed by the laws of State of Wisconsin. Unless otherwise required by the Wisconsin Consumer Act, the unenforceability or invalidity of any portion of this Agreement shall not render unenforceable or invalid any other portions.

ASSIGNMENT: We may assign or transfer this Agreement or any of our rights hereunder. Your obligations under this Agreement cannot be assigned to a third party without our prior written consent.

APPENDIX L

Wisconsin "Precomputed Loan Law" and pawnbroker statutes

138.06 Effect of usury and penalties. (1) All instruments, contracts or securities providing a rate of interest exceeding the rate allowed in s. 138.05, 138.051 or 138.052 shall be valid and effectual to secure the repayment of the principal amount loaned in excess of \$2,000; but no interest may be recovered thereon except upon bottomry and respondentia bonds and contracts.

(2) Any lender or agent of a lender who violates s. 138.05, 138.051 or 138.052 may be fined not less than \$25 nor more than \$500, or imprisoned not more than 6 months, or both.

(3) Any borrower who paid interest on a loan or forbearance at a rate greater than the rate allowed in s. 138.05, 138.051 or 138.052 may personally or by personal representative recover in an action against the lender or personal representative the amount of interest, principal and charges paid on such loan or forbearance but not more than \$2,000 of principal, if the action is brought within the time provided by s. 893.62.

(4) Any borrower to whom a lender or agent of a lender fails to provide the statement required in s. 138.05 (4) with respect to a loan or forbearance may by himself or herself or his or her personal representative recover in an action against the lender or the lender's personal representative an amount equal to all interest and charges paid upon such loan or forbearance but not less than \$50 plus reasonable attorney fees incurred in such action.

(5) Notwithstanding subs. (1) to (4), if any violation of s. 138.05, 138.051 or 138.052 is the result of an unintentional mistake which the lender or agent of the lender corrects upon demand, such unintentional violation shall not affect the enforceability of any provision of the loan contract as so corrected nor shall such violation subject the lender or the agent of the lender to any penalty or forfeiture specified in this section.

(6) In connection with a sale of goods or services on credit or any forbearance arising therefrom prior to October 9, 1970, there shall be no allowance of penalties under this section for violation of s. 138.05, except as to those transactions on which an action has been reduced to a final judgment as of May 12, 1972.

(7) Notwithstanding sub. (6), a seller shall, with respect to a transaction described in sub. (6), refund or credit the amount of interest, to the extent it exceeds the rate permitted by s. 138.05 (1) (a), which was charged in violation of s. 138.05 and paid by a buyer since October 8, 1968, upon individual written demand therefor made on or before March 1, 1973, and signed by such buyer. A seller who fails within a reasonable time after such demand to make such refund or credit of excess interest shall be liable in an individual action in an amount equal to 3 times the amount thereof, together with reasonable attorney fees.

(8) This section does not apply to a loan or forbearance made on or after November 1, 1981.

History: 1971 c. 308; 1979 c. 168 s. 21; 1979 c. 323, 355; 1981 c. 45 ss. 4, 51; 1993 a. 482, 490.

Sub. (7) is constitutional. *Wiener v. J. C. Penney Co.* 65 Wis. 2d 139, 222 N.W.2d 149 (1974).

Class actions for the recovery of usurious interest charged by revolving credit plans are not precluded by (3). *Mussallem v. Diners' Club, Inc.* 69 Wis. 2d 437, 230 N.W.2d 717 (1975).

Sub. (6) is constitutional. 60 Atty. Gen. 198.

138.09 Precomputed loan law. (1d) In this section, "division" means the division of banking.

(1m) (a) Before any person may do business under this section or charge the interest authorized by sub. (7) and before any creditor other than a bank, savings bank, savings and loan association or credit union may assess a finance charge on a consumer loan in excess of 18% per year, that person shall first obtain a license from the division. Applications for a license shall be in writing and upon forms provided for this purpose by the division. An applicant at the time of making an application shall pay to the division a nonrefundable \$300 fee for investigating the application and a \$500 annual license fee for the period terminating on the last day of the current calendar year. If the cost of the investigation exceeds \$300, the applicant shall upon demand of the

division pay to the division the amount by which the cost of the investigation exceeds the nonrefundable fee.

(b) 1. Except as provided in par. (c), an application under par. (a) for a license shall contain the following:

a. If the applicant is an individual, the applicant's social security number.

b. If the applicant is not an individual, the applicant's federal employer identification number.

2. The division may not disclose any information received under subd. 1. to any person except as follows:

a. The division may disclose information under subd. 1. to the department of revenue for the sole purpose of requesting certifications under s. 73.0301.

b. The division may disclose information under subd. 1. a. to the department of workforce development in accordance with a memorandum of understanding under s. 49.857.

(c) 1. If an applicant who is an individual does not have a social security number, the applicant, as a condition of applying for or applying to renew a license, shall submit a statement made or subscribed under oath or affirmation to the division that the applicant does not have a social security number. The form of the statement shall be prescribed by the department of workforce development.

2. Notwithstanding sub. (3) (b), any license issued or renewed in reliance upon a false statement submitted by an applicant under subd. 1. is invalid.

(2) The division may also require the applicant to file with the division, and to maintain in force, a bond in which the applicant shall be the obligor, in a sum not to exceed \$5,000 with one or more corporate sureties licensed to do business in Wisconsin, whose liability as such sureties shall not exceed the sum of \$5,000 in the aggregate, to be approved by the division, and such bond shall run to the state of Wisconsin for the use of the state and of any person or persons who may have a cause of action against the obligor of the bond under the provisions of this section. Such bonds shall be conditioned that the obligor will conform to and abide by each and every provision of this section, and will pay to the state or to any person or persons any and all moneys that may become due or owing to the state or to such person or persons from the obligor under and by virtue of the provisions of this chapter.

(3) (a) Upon the filing of such application and the payment of such fee, the division shall investigate the relevant facts. Except as provided in par. (am), if the division shall find that the character and general fitness and the financial responsibility of the applicant, and the members thereof if the applicant is a partnership, limited liability company or association, and the officers and directors thereof if the applicant is a corporation, warrant the belief that the business will be operated in compliance with this section the division shall thereupon issue a license to said applicant to make loans in accordance with the provisions of this section. If the division shall not so find, the division shall deny such application.

(am) The division may not issue a license under this section to an applicant if any of the following applies:

1. The applicant fails to provide any information required under sub. (1m) (b).

2. The department of revenue certifies under s. 73.0301 that the applicant is liable for delinquent taxes.

3. The applicant fails to comply, after appropriate notice, with a subpoena or warrant issued by the department of workforce development or a county child support agency under s. 59.53 (5) and related to paternity or child support proceedings.

4. The applicant is delinquent in making court-ordered payments of child or family support, maintenance, birth expenses, medical expenses or other expenses related to the support of a child or former spouse, as provided in a memorandum of understanding entered into under s. 49.857.

(b) Every license shall remain in force and effect until suspended or revoked in accordance with this section or surrendered by the licensee, and every licensee shall, on or before each Decem-

ber 10, pay to the division the annual license fee for the next succeeding calendar year.

(c) Such license shall not be assignable and shall permit operation under it only at or from the location specified in the license at which location all loans shall be consummated, but this provision shall not prevent the licensee from making loans under this section which are not initiated or consummated by face to face contact away from the licensed location if permitted by the division in writing or by rule or at an auction sale conducted or clerked by a licensee.

(d) A separate license shall be required for each place of business maintained by the licensee. Whenever a licensee shall change the address of its place of business to another location within the same city, village or town the licensee shall at once give written notice thereof to the division, which shall replace the original license with an amended license showing the new address, provided the location meets with the requirements of par. (e). No change in the place of business of a licensee to a different city, village or town shall be permitted under the same license.

(e) 1. Except as provided in subd. 2., a licensee may conduct, and permit others to conduct, at the location specified in its license, any one or more of the following businesses not subject to this section:

a. A business engaged in making loans for business or agricultural purposes or exceeding \$25,000 in principal amount, except that all such loans having terms of 49 months or more are subject to sub. (7) (gm) 2. or 4.

b. A business engaged in making first lien real estate mortgage loans under ss. 138.051 to 138.06.

c. A loan, finance or discount business under ss. 218.0101 to 218.0163.

d. An insurance business.

e. A currency exchange under s. 218.05.

f. A seller of checks business under ch. 217.

2. A licensee may not sell merchandise or conduct other business at the location specified in the license unless written authorization is granted to the licensee by the division.

(f) Every licensee shall make an annual report to the division for each calendar year on or before March 15 of the following year. The report shall cover business transacted by the licensee under the provisions of this section and shall give all reasonable and relevant information that the division may require. The reports shall be made upon forms furnished by the division and shall be signed and verified by the oath or affirmation of the licensee if an individual, one of the partners if a partnership, a member or manager if a limited liability company or an officer of the corporation or association if a corporation or association. Any licensee operating under this section shall keep the records affecting loans made pursuant to this section separate and distinct from the records of any other business of the licensee.

(4) (a) The division for the purpose of discovering violations of this chapter may cause an investigation to be made of the business of the licensee transacted under this section, and shall cause an investigation to be made of convictions reported to the division by any district attorney for violation by a licensee of this chapter. The place of business, books of account, papers, records, safes and vaults of said licensee shall be open to inspection and examination by the division for the purpose of such investigation and the division may examine under oath all persons whose testimony the division may require relative to said investigation. The division may, upon notice to the licensee and reasonable opportunity to be heard, suspend or revoke such license after such hearing if:

1. The licensee has violated any provision of this chapter and if the division determines such violation justifies the suspension or revocation of the license;

2. Any fact or condition exists which, if it had existed at the time of the original application for such license, would have warranted the division in refusing to issue such license; and

3. The licensee has failed to pay the annual licensee fee or to maintain in effect the bond, if any, required under sub. (2).

(b) The division shall restrict or suspend a license under this section if, in the case of a licensee who is an individual, the licensee fails to comply, after appropriate notice, with a subpoena or warrant issued by the department of workforce development or a county child support agency under s. 59.53 (5) and related to paternity or child support proceedings or is delinquent in making court-ordered payments of child or family support, maintenance, birth expenses, medical expenses or other expenses related to the support of a child or former spouse, as provided in a memorandum of understanding entered into under s. 49.857. A licensee whose license is restricted or suspended under this paragraph is entitled to a notice and hearing only as provided in a memorandum of understanding entered into under s. 49.857 and is not entitled to a hearing under par. (a).

(c) The division shall revoke a license under this section if the department of revenue certifies that the licensee is liable for delinquent taxes under s. 73.0301. A licensee whose license is revoked under this paragraph for delinquent taxes is entitled to a hearing under s. 73.0301 (5) (a) but is not entitled to a hearing under par. (a).

(5) No licensee shall advertise, print, display, publish, distribute or broadcast or cause to be printed, displayed, published, distributed or broadcast in any manner any statement with regard to the rates, terms or conditions for the lending of money, credit, goods or things in action which is false or calculated to deceive. With respect to matters specifically governed by s. 423.301, compliance with such section satisfies the requirements of this section.

(6) (a) Except as provided in par. (b), the licensee shall keep such books and records in the licensee's place of business as in the opinion of the division will enable the division to determine whether the provisions of this chapter are being observed. Every such licensee shall preserve the records of final entry used in such business, including cards used in the card system, if any, for a period of at least 2 years after the making of any loan recorded therein.

(b) A licensee may keep the books and records specified in par. (a) at a single location inside or outside of this state if the books and records are kept at a location licensed under this section. The licensee shall organize the books and records by the place of business where the records originated and shall keep the books and records separate from other records for business conducted at that location. Actual costs incurred by the division to examine books and records maintained outside of this state shall be paid by the licensee.

(7) (a) In this section:

1. "Precomputed loan" means a loan in which the debt is expressed as a sum comprising the principal and the amount of interest computed in advance.

2. "Principal" means the total of:

a. The amount paid to, received by or paid or payable for the account of the borrower; and

b. To the extent that payment is deferred: the amount actually paid or to be paid by the licensee for registration, certificate of title or license fees if not included in subd. 2. a.; and additional charges permitted under this section.

(b) A licensee may charge, contract for or receive a rate of interest for a loan or forbearance made prior to April 6, 1980, which does not exceed the greater of either of the following:

1. With respect to installment loans or forbearances which are repayable in substantially equal successive installments at approximately equal intervals, and where the principal does not exceed \$3,000 excluding any interest authorized under this section, and where the scheduled maturity of the loan contract is not more than 36 months and 15 days from the date of making, interest may be deducted in advance at a rate not in excess of \$9.50 per \$100 per year on that part of the loan not exceeding \$1,000 and \$8 per \$100 per year on any remainder. Interest shall be computed

at the time the loan is made on the face amount of the contract for the full term of the contract, notwithstanding the requirement for installment repayments. The face amount of the loan contract or note may exceed \$3,000 by the amount of interest deducted in advance. On contracts which are one year or any number of whole years, the charge shall be computed proportionately on even calendar months.

2. With respect to any loan of any amount, at a rate not to exceed 18% per year computed on the declining unpaid principal balances of the loan from time to time outstanding, calculated according to the actuarial method, but this does not limit or restrict the manner of contracting for the interest, whether by way of add-on, discount or otherwise, so long as the rate of interest does not exceed that permitted by this paragraph.

(bm) A licensee may charge, contract for or receive a rate of interest for a loan or forbearance made on or after April 6, 1980 and prior to November 1, 1981, which does not exceed the greater of either of the following:

1. With respect to installment loans or forbearances which are repayable in substantially equal successive installments at approximately equal intervals, and where the principal does not exceed \$3,000 excluding any interest authorized under this section, and where the scheduled maturity of the loan contract is not more than 36 months and 15 days from the date of making, interest may be deducted in advance at a rate not in excess of \$9.50 per \$100 per year on that part of the loan not exceeding \$2,000 and \$8 per \$100 per year on any remainder. Interest shall be computed at the time the loan is made on the face amount of the contract for the full term of the contract, notwithstanding the requirement for installment repayments. The face amount of the loan contract or note may exceed \$3,000 by the amount of interest deducted in advance. On contracts which are one year or any number of whole years, the charge shall be computed proportionately on even calendar months.

2. With respect to any loan of any amount, at a rate not to exceed 19% per year computed on the declining unpaid principal balances of the loan from time to time outstanding, calculated according to the actuarial method, but this does not limit or restrict the manner of contracting for the interest, whether by way of add-on, discount or otherwise, so long as the rate of interest does not exceed that permitted by this paragraph.

(bn) 1. A licensee may charge, contract for or receive a rate of interest, calculated according to the actuarial method, which may not exceed the greater of the following for a loan or forbearance of less than \$3,000 entered into on or after November 1, 1981 and before November 1, 1984:

a. Twenty-three percent per year.

b. A rate of 6% in excess of the interest rate applicable to 2-year U.S. treasury notes as determined under subd. 3. a.

c. A rate of 6% in excess of the interest rate applicable to 6-month U.S. treasury bills as determined under subd. 3. b.

2. A licensee may charge, contract for or receive a rate of interest, calculated according to the actuarial method, which may not exceed the greater of the following for a loan or forbearance of \$3,000 or more entered into on or after November 1, 1981 and before November 1, 1984:

a. Twenty-one percent per year.

b. A rate of 6% in excess of the interest rate applicable to 2-year U.S. treasury notes as determined under subd. 3. a.

c. A rate of 6% in excess of the interest rate applicable to 6-month U.S. treasury bills as determined under subd. 3. b.

3. a. For purposes of subsd. 1. b. and 2. b., the interest rate applicable to 2-year U.S. treasury notes for any calendar year quarter is the average annual interest rate determined by the last auction of the notes in the preceding calendar year quarter, increased to the next multiple of 0.5% if the average annual interest rate includes a fractional amount.

b. For purposes of subsd. 1. c. and 2. c., the interest rate applicable to 6-month U.S. treasury bills for any month is the average annual discount interest rate determined by the last auction of the bills in the preceding month, increased to the next multiple of 0.5% if the average annual discount interest rate includes a fractional amount.

4. Information regarding the amount of the maximum finance charge under subsd. 1. and 2. for any month or calendar year quarter shall be available at the office of the division.

5. This paragraph does not restrict the manner of contracting for interest, whether by add-on, discount or otherwise, if the interest rate does not exceed the rate under this paragraph.

(bp) A loan, whether precomputed or based upon the actuarial method, made after October 31, 1984, is not subject to any maximum interest rate limit.

(c) 1. Where the interest is precomputed, the interest may be calculated on the assumption that all scheduled payments will be made when due and the effect of prepayment is governed by the provision on rebate upon prepayment. If a loan is prepaid out of the proceeds of a new loan made under this section, the principal of such new loan may include any unpaid charges on the prior loan which have accrued before the making of the new loan, unless the prior loan was precomputed in which event the principal of the new loan may include the balance remaining after making the required rebate plus any accrued charges.

2. For the purpose of computing interest under this section, whether at the maximum rate or less, a day shall be considered one-thirtieth of a month when such computation is made for a fraction of a month. Loan contracts providing for installments payable at monthly intervals may provide for a first period between the date of the contract and the first installment due date of not more than 45 days and not less than 15 days. Where the first period is greater or lesser than one month, interest may be charged only for each day in the first period, at a rate not to exceed one-thirtieth of the interest which would be applicable to a first installment period of one month, but such first period may be considered a monthly interval for purposes of determining rebates. Where the first period is greater than one month, any additional interest charge shall be earned and may be added to and collected at the time of the first installment payment.

3. In lieu of deducting the interest and charging the delinquency and deferral charges authorized in this section, a licensee may contract for and receive a rate of charge not exceeding that rate which, computed on scheduled unpaid balances of the proceeds of the loan contract, would produce an amount of charge equal to the total of the interest which may be deducted from such loan contract under this section, and such rate of charge may be computed on actual unpaid principal balances from time to time outstanding until the loan is fully paid. When such rate of charge is made in lieu of other charges, the provisions relating to refunds and delinquency charges shall not apply to such loans.

4. If 2 installments or parts thereof of a precomputed loan are not paid on or before the 10th day after their scheduled or deferred due dates, a licensee may elect to convert the loan from a precomputed loan to one in which the interest is computed on unpaid balances actually outstanding. In this event the licensee shall make a rebate pursuant to the provisions on rebate upon prepayment as of the due date of an unpaid installment, and thereafter may charge interest from the due date as provided in subd. 3. or by par. (b) 2. and no further delinquency or deferral charges shall be made. The rate of interest may equal but not exceed the annual percentage rate of finance charge which was disclosed to the borrower when the loan was made. The rate of interest shall be computed on actual unpaid balances of the contract as reduced by the rebate for the time that such balances are actually outstanding from the due date as of which the rebate was made until the contract is fully paid.

138.09 MONEY AND RATES OF INTEREST

(d) 1. No loan of \$3,000 or less, excluding interest, scheduled to be repaid in substantially equal installments at equal periodic intervals shall provide for a scheduled repayment of principal more than 36 months and 15 days from the date of the contract if the principal exceeds \$700, nor more than 24 months and 15 days from the date of the contract if the principal is \$700 or less.

2. A licensee may make loans under a continuing loan agreement which provides for future or additional advances under the same instrument if at the time of each new advance of money, any existing unpaid balance is reduced by any required rebate and the resulting amount plus the additional money advanced plus interest, official fees and premiums or identifiable charges for insurance, if any, are combined, and for the purpose of the limitations of subd. 1. only, the date of the loan contract shall be deemed the date of said advance.

(e) 1. With respect to a precomputed loan which is scheduled to be repaid in substantially equal installments, the parties may agree to a delinquency charge on any installment not paid in full on or before the 10th day after its scheduled or deferred due date, in an amount not to exceed 5% of the unpaid amount of the installment. The delinquency charge may be collected only once on any one installment but may be collected when due or at any time thereafter.

2. With respect to other loans the delinquency charge shall not exceed the rate allowed under par. (b), computed upon the unpaid principal balance exclusive of interest on the loan.

3. Notwithstanding subds. 1. and 2., delinquency charges on precomputed consumer loans shall be governed by s. 422.203.

(f) 1. Subject to subds. 2. and 3., with respect to a precomputed loan, the parties before or after default may agree in writing to a deferral of all or part of any unpaid installment, and the licensee may make and collect a charge computed in the same manner as the deferral charge computed in accordance with s. 422.204 (1) to (5) whether or not the loan under this section is a consumer loan.

2. In addition to the deferral charge, the licensee may make appropriate additional charges. The amount of such charges which is not paid in cash may be added to the amount deferred for the purpose of calculating the deferral charge.

3. The parties may agree in writing at any time, including at the time of a precomputed loan that if an installment is not paid within 30 days after its due date, the licensee may grant a deferral and make charges under this section, if a notice is sent to the customer advising the customer of the amount of the deferral charge, the period of deferral and that if the installment is prepaid before maturity that a proportionate refund of the deferral charge will be given. No deferral charge may be made for a period after the date that such a lender elects to accelerate the maturity of the agreement.

4. Notwithstanding subds. 1., 2. and 3., deferral charges on precomputed consumer loans shall be governed by s. 422.204.

(g) Except as provided in par. (gm), upon prepayment in full by cash, renewal, refinancing or otherwise, the borrower shall be entitled to a rebate of the unearned interest as provided in this paragraph. If the combined rebate of interest and credit insurance premiums otherwise required is less than \$1, no rebate need be made. The refunds shall be determined as follows:

1. On a loan where the interest is precomputed and which is repayable in substantially equal successive installments at approximately equal intervals, whether or not the precomputed loan is a consumer loan, the amount of rebate shall be computed under s. 422.209 (2) (a) except for any additional interest charge covered under subd. 3.

2. For any other loan, the amount of the rebate of interest shall not be less than the difference between the interest charged and the interest earned at the agreed rate computed upon the unpaid principal balances, exclusive of interest, of the transaction prior to payment in full.

3. If the first payment period is greater than one month and additional interest is charged as permitted under par. (c) 2., the

additional interest charged for the extension of the first payment period is considered wholly earned on the first installment date and is not considered in computing rebates.

(gm) 1. Upon prepayment in full of a loan entered into on or after November 1, 1981 and before November 1, 1984, and which has a term of less than 49 months, by cash, renewal, refinancing or otherwise, the borrower shall be entitled to a rebate of the unearned interest as provided in this paragraph. If the combined rebate of interest and credit insurance premiums otherwise required is less than \$1, no rebate need be made. The refunds shall be determined as follows:

a. On a loan where the interest is precomputed and which is repayable in substantially equal successive installments at approximately equal intervals, the amount of rebate shall be computed under s. 422.209 (2) (a) except for any additional interest charge under par. (c) 2.

b. For any other loan, the amount of the rebate of interest may not be less than the difference between the interest charged and the interest earned at the agreed rate, computed upon the unpaid principal balance.

c. If the first payment period is greater than one month and additional interest is charged under par. (c) 2., the additional interest is earned on the first installment date and may not be considered in computing rebates.

2. Upon prepayment in full of a loan for personal, family, household or agricultural purposes, of \$25,000 or less, entered into on or after November 1, 1981 and before August 1, 1987, and which has a term of 49 months or more and upon prepayment in full of any loan entered into on or after May 10, 1984 and before August 1, 1987, and which has a term of more than 49 months, by cash, renewal, refinancing or otherwise, the borrower shall be entitled to a rebate of the unearned interest under s. 422.209 (2) (b). If the combined rebate of interest and credit insurance premiums otherwise required is less than \$1, no rebate need be made. If the first payment period is greater than one month and additional interest is charged under par. (c) 2., the additional interest is earned on the first installment date and may not be considered in computing rebates.

3. Upon prepayment in full of a loan of less than \$5,000 which is entered into on or after August 1, 1987, and which has a term of less than 37 months, by cash, renewal, refinancing or otherwise, the borrower shall be entitled to a rebate of the unearned interest as provided in this subdivision. If the combined rebate of interest and credit insurance premiums otherwise required is less than \$1, no rebate need be made. The refunds shall be determined as follows:

a. On a loan where the interest is precomputed and which is repayable in substantially equal successive installments at approximately equal intervals, the amount of rebate shall be computed under s. 422.209 (2) (a) except for any additional interest charge under par. (c) 2.

b. For any other loan, the amount of the rebate of interest may not be less than the difference between the interest charged and the interest earned at the agreed rate, computed upon the unpaid principal balance.

c. If the first payment period is greater than one month and additional interest is charged under par. (c) 2., the additional interest is earned on the first installment date and may not be considered in computing rebates.

4. Upon prepayment in full of a loan of \$5,000 or more or a loan of less than \$5,000 if for a term of 37 months or more, entered into on or after August 1, 1987, by cash, renewal, refinancing or otherwise, the borrower shall be entitled to a rebate of the unearned interest computed under s. 422.209 (2) (b) 1. or 2. The licensee may determine whether the rebate is computed under s. 422.209 (2) (b) 1. or 2. If the combined rebate of interest and credit insurance premiums otherwise required is less than \$1, no rebate need be made. If the first payment period is greater than one month and additional interest is charged under par. (c) 2., the addi-

tional interest is earned on the first installment date and may not be considered in computing rebates.

(h) A licensee may require property insurance, and may accept, but shall not require, credit life insurance or credit accident and sickness insurance or both, if such insurance is issued in accordance with ch. 424, whether or not the loan is a consumer loan.

(i) In addition to interest, the licensee may charge:

1. The additional charges allowed in s. 422.202 whether or not the loan is a consumer loan;

2. An amount sufficient to cover the fee for filing the termination statement required by s. 409.513 on loans secured by merchandise other than a motor vehicle, a manufactured home, or a boat; and

3. On motor vehicle loans, the actual filing fee required for filing with the department of transportation under ch. 342 or, on boat loans, the filing fee required for filing with the department of natural resources under ch. 30.

(j) No licensee may divide or encourage a borrower to divide any loan for the purpose of obtaining a higher rate of finance charge than would otherwise be permitted under this section.

(jm) 1. Subject to subd. 2., a licensee may charge, in addition to interest, a loan administration fee on a consumer loan, including a refinancing or loan consolidation, if all of the following conditions are met:

a. The loan administration fee does not exceed 2% of the principal in the consumer loan, refinancing or consolidation.

b. The loan administration fee is charged for a consumer loan that is secured primarily by an interest in real property or in a mobile home, as defined in s. 138.056 (1) (bm).

2. Notwithstanding subd. 1., if a licensee charges a loan administration fee on a consumer loan that is prepaid from the proceeds of a new loan made by the same licensee within 6 months after the prior loan, then the licensee shall reduce any loan administration fee on the new loan by the amount of the loan administration fee on the prior loan.

3. A loan administration fee charged under this paragraph may be included in the amount financed in the consumer loan. The loan administration fee is earned by the licensee when charged and need not be refunded under par. (gm) 3. or 4. A licensee who charges a loan administration fee under this paragraph may not also retain a loan administration fee under s. 422.209 (1m) in connection with the same consumer loan transaction.

(k) All consumer loans as defined in s. 421.301 (12) shall be governed by chs. 421 to 427, but to the extent that chs. 421 to 427 are inconsistent with this section, this section shall govern.

(8) Every licensee shall:

(a) Deliver to the borrower, at the time a loan is made, a statement in the English language showing in clear and distinct terms the amount and date of the note and of its maturity, the nature of the security, if any, for the loan, the name and address of the borrower and of the licensee, the amount of interest, the proceeds of the loan after deducting such interest, a description of the payment schedule and the default charge. Disclosures made in accordance with the federal consumer credit protection act and regulation Z shall be deemed to comply with such disclosures. The statement shall also indicate that the borrower may prepay the borrower's loan in whole or in part and that if the loan is prepaid in full the borrower will receive a refund of interest as provided by this section. The statement shall also indicate the percentage per year of interest charged in the transaction.

(b) Give to the borrower a plain and complete receipt for all cash payments made on account of any such loan at the time such payments are made.

(c) Permit payments of the loan in whole or in part prior to its maturity.

(d) Upon repayment of the loan in full mark indelibly every obligation, other than a security agreement, signed by the bor-

rower with the word "Paid" or "Canceled" and cancel and return any note. When there is no outstanding secured obligation such licensee shall restore any pledge, cancel and return any assignment, cancel and return any security agreement given to the licensee by the borrower and file a termination statement terminating any filed financing statement.

(e) Take no note, promise to pay, security nor any instrument in which blanks are left to be filled in after the loan has been made except that a detailed description or inventory of the security may be filled in, with the written consent of the borrower within 10 days thereafter.

(9) (a) No person, except as authorized by statutes, shall directly or indirectly charge, contract for or receive any interest or consideration greater than allowed in s. 138.05 upon the loan, use or forbearance of money, goods or things in action, or upon the loan, use or sale of credit. The foregoing prohibition shall apply to any person who as security for any such loan, use or forbearance of money, goods or things in action, or for any such loan, use or sale of credit, makes a pretended purchase of property from any person and permits the owner or pledgor to retain the possession thereof, or who by any device or pretense of charging for his or her services or otherwise seeks to obtain a greater compensation than is authorized by this section.

(b) No loan made under this section, for which a greater rate or amount of interest, than is allowed by this section, has been contracted for or received, wherever made, shall be enforced in this state, and every person in any wise participating therein in this state shall be subject to this section. If a licensee makes an excessive charge as the result of an unintentional mistake, but upon demand makes correction of such mistake, the loan shall be enforceable and treated as if no violation occurred at the agreed rate. Nothing in this paragraph shall limit any greater rights or remedies afforded in chs. 421 to 427 to a customer in a consumer credit transaction.

(10) Any person, partnership or corporation and the several officers and employees thereof who shall violate any of the provisions of this section shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not more than \$500 or imprisoned for not more than 6 months or both.

(11) The division may employ necessary examiners or other personnel from time to time and fix their compensation.

(12) No person, association, partnership or corporation doing business under the authority of any law of this state or of the United States relating to banks, savings banks, trust companies, savings or building and loan associations, or credit unions shall be eligible to become a licensee under this section.

History: 1971 c. 60, 125, 239, 307; 1973 c. 2, 243; 1975 c. 407; 1977 c. 29 s. 1654 (7) (b); 1977 c. 444; 1979 c. 110 s. 60 (13); 1979 c. 168; 1981 c. 45 ss. 11 to 16, 51; 1983 a. 36, 192, 385; 1985 a. 127; 1987 a. 27; 1989 a. 31; 1991 a. 39, 221; 1993 a. 112, 184, 368, 482, 490; 1995 a. 27, 225, 272; 1997 a. 27, 191, 237; 1999 a. 9, 31, 32, 53; 2001 a. 10, 107.

Installment sellers are not precluded by s. 138.09, 1973 stats., from charging pre-computed interest. *First National Bank of Wisconsin Rapids v. Dickinson*, 103 Wis. 2d 428, 308 N.W.2d 910 (Ct. App. 1981).

Wisconsin has compelling interest in applying statutory regulations to banking activities on Indian reservations. 80 Atty. Gen. 337.

138.10 Pawnbrokers. (1) DEFINITIONS. In this section:

(a) "Pawnbroker" includes any person who engages in the business of lending money on the deposit or pledge of personal property, other than choses in action, securities, or written evidences of indebtedness; or purchases personal property with an expressed or implied agreement or understanding to sell it back at a subsequent time at a stipulated price.

(b) "Pawnbroking" means the business of a pawnbroker as defined in this section.

(c) "Pawn ticket" means the card, book, receipt or other record furnished to the pledgor at the time a loan is granted containing the terms of the contract for a loan.

138.10 MONEY AND RATES OF INTEREST

(d) "Person" includes an individual, partnership, association, business corporation, nonprofit corporation, common law trust, joint-stock company or any group of individuals however organized.

(e) "Pledge" means an article or articles deposited with a pawnbroker as security for a loan in the course of the pawnbroker's business as defined in par. (a).

(f) "Pledgor" means the person who obtains a loan from a pawnbroker and delivers a pledge into the possession of a pawnbroker, unless the person discloses that he or she is or was acting for another in which case a "pledgor" means the disclosed principal.

(2) **MAXIMUM LOAN.** Unless made by a person licensed under s. 138.09, a pawnbroker's loan may not exceed \$150.

(2m) **PAWN BROKING BY LICENSED LENDERS.** The division of banking may promulgate rules regulating the conduct of pawnbroking by persons licensed under s. 138.09.

(4) **MAXIMUM INTEREST OR CHARGES.** A pawnbroker shall not charge, contract for or receive interest in excess of 3% per month on any loan or balance thereon and such interest shall not be increased by charging commission, discount, storage or other charge directly or indirectly, nor by compound interest; provided, however, that when the interest herein specified amounts to less than \$1 per month, the minimum charge shall be \$1 for the first month and 50 cents for each succeeding month during the loan period.

(4m) **WHEN LIMIT ON MAXIMUM INTEREST DOES NOT APPLY.** Subsection (4) does not apply to a pawnbroker's loan made after October 31, 1984 and before November 1, 1987.

(5) **COMPUTATION OF INTEREST OR CHARGES.** The interest and charges authorized by this section shall be computed at the rates specified on the actual principal balance of the loan due for the actual time which has elapsed from the date of the loan to the date of payment. For the purpose of calculation of interest and charges permitted under this section, a year shall be 12 calendar months, and a month shall be one calendar month, or any fractional part thereof. A calendar month shall be any period from a certain date in one month to the same date in the next succeeding month.

(6) **FORFEITURE.** A pawnbroker who charges, contracts for or receives interest or charges greater than permitted under this section shall forfeit both principal and interest, and shall return the pledge upon demand of the pledgor and surrender of the pawn ticket, without tender or payment of principal or interest.

(7) **PENALTY.** Any pawnbroker who shall refuse to comply with sub. (6) shall, upon conviction, be punished by imprisonment in the county jail not more than one year or by fine not exceeding \$500.

(8) **SALE OF PLEDGE.** Upon default in the payment of any loan, a pawnbroker may sell the pledge upon the conditions contained in this section.

(a) A pawnbroker may sell a pledge at private sale for an amount not less than that agreed to by the pledgor, which amount shall be stipulated on the pawn ticket and shall not be less than 125% of the amount of the loan. A pledge which cannot be sold at private sale at the minimum price agreed to by the pledgor must be sold at public auction, which sale shall be conducted in the manner provided by s. 779.48 (1).

(b) No unredeemed pledge may be sold before the expiration of 90 days after the due date of the loan unless otherwise specifically authorized in writing by the pledgor. The authority to sell an unredeemed pledge prior to the expiration of 90 days after the due date of the loan must be given by the pledgor on a date subsequent to the due date of the loan.

(c) An unredeemed pledge must be sold within 12 months of the due date of a loan. No interest or charges permitted under this section may be collected on a loan after the expiration of 12 months of the due date of a loan, whether the loan is renewed or the loan is paid and the pledge redeemed.

(9) **NOTICE OF SALE.** A pawnbroker shall not sell any pledge unless due notice of such contemplated sale has been forwarded to the pledgor by registered mail to the address given by the pledgor at the time of obtaining the loan or to such new address of the pledgor, as shown on the pawnbroker's record. Notice of the contemplated sale of a pledge shall be mailed to the pledgor not less than 30 days prior to the date of sale. Such notice shall state total amount of principal, interest and charges due on the loan as of the date of the notice.

(10) **DISPOSITION OF PROCEEDS.** The proceeds from the sale of a pledge shall be applied in the order specified, to the following purposes: Payment of the auctioneer's charges if sold at public auction, or commission for selling not to exceed 5% if sold at private sale; payment of principal of the loan; payment of the interest on the loan permitted under this section, and payment of the charges on the loan permitted under this section; and payment of postage for mailing notice to the pledgor of the contemplated sale or notice of the surplus. The surplus, if any, shall be paid to the pledgor or such other person who would have been entitled to redeem the pledge had it not been sold.

(11) **NOTICE OF SURPLUS.** Notice of any surplus from the sale of a pledge shall be forwarded to the pledgor within 10 days of the date of sale by registered mail to the address given by the pledgor at the time of obtaining the loan or to such new address of the pledgor, of which the pawnbroker has received notice.

(12) **REVERSION OF SURPLUS.** If a surplus remaining from the sale of a pledge is not paid or claimed within one year from the date of sale, such surplus shall revert to the pawnbroker. The pawnbroker shall not be required to pay any interest on an unpaid surplus.

History: 1979 c. 32 s. 92 (9); 1981 c. 45; 1983 a. 189; 1989 a. 257; 1993 a. 482; 1997 a. 27.

138.12 Insurance premium finance companies.

(1) **DEFINITIONS.** For purposes of this section:

(a) "Division" means the division of banking.

(b) "Insurance premium finance company" means a person engaged in the business of entering into insurance premium finance agreements.

(c) "Licensee" means an insurance premium finance company holding a license issued by the division under this section.

(d) "Premium finance agreement" means an agreement by which an insured or prospective insured promises to pay to an insurance premium finance company the amount advanced or to be advanced under the agreement to an insurer or to an insurance agent or broker in payment of premiums on an insurance contract together with a service charge or interest charge as authorized and limited by this chapter.

(2) **SCOPE.** This section shall not apply to:

(a) Any insurance company or agent defined in s. 628.02, any savings and loan association, savings bank, sales finance company, motor vehicle installment seller, bank, trust company, licensed lender or credit union authorized to do business in this state, but such organizations, if otherwise eligible, are exempt from the licensing under this section, but subs. (9) to (12) and any rules promulgated by the division pertaining to such subsections shall be applicable to all premium finance transactions entered into by such organizations in this state if an insurance policy or any rights thereunder is made the security or collateral for repayment of the debt.

(b) The inclusion of insurance in connection with an installment sale of a motor vehicle or other goods and services.

(d) Life insurance.

(3) **LICENSES.** (a) No person except those listed in sub. (2) (a) shall engage in the business of financing insurance premiums in this state without first having obtained a license. Any person who engages in the business of financing insurance premiums in this state without obtaining a license may be fined not more than \$200.

APPENDIX M

Articles describing lawsuit against National Cash Advance



www.jsonline.com

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Original URL: <http://www.jsonline.com/news/state/mar02/30911.asp>

Payday loan company settling lawsuit for \$1.4 million

By NICOLE SWEENEY
of the Journal Sentinel staff

Last Updated: March 28, 2002

National Cash Advance, a paycheck loan company, has settled a class-action lawsuit by agreeing to pay \$1.4 million in cash and debt relief to more than 10,000 Wisconsin customers who were slammed with annual percentage rates ranging from 500% to more than 1,000%.

The company now requires customers to sign an arbitration agreement, thus waiving their right to participate in any class action against it.

And because the arbitration agreement is retroactive, it cut the class size of the lawsuit in half, said Claudia Callaway, one of the attorneys representing National Cash Advance.

The settlement received preliminary approval Thursday from U.S. District Judge Charles N. Clevert. A final hearing is scheduled for June 26.

About 6,500 people who paid off their small loans and added fees will share \$555,000. Another \$858,000 will go to erasing the debt of about 3,500 customers who have not paid off their loans and fees.

The consumers involved took out a total of \$84,000 in loans from National Cash Advance's 16 branches in Wisconsin.

The settlement is unique, said James Walrath, executive director of the Legal Aid Society of Milwaukee Inc., which represented the consumers.

Wisconsin does not limit the interest rate charged on small loans, so the lawsuit raised the issue of whether loan rates can be challenged as "unconscionable," he said.

Callaway said the company was happy with the settlement.

"We are very pleased to have this lawsuit resolved and to continue to provide this product to Wisconsin residents," Callaway said.

If the settlement receives final approval, consumers could get checks in the mail as early as August, Walrath said.

Appeared in the Milwaukee Journal Sentinel on March 29, 2002.

Original URL: <http://www.jsonline.com/news/metro/dec00/check14121300a.asp>

Payday loan suit certified class action

11,000 customers included in claim of exorbitant loan charges

By GRETCHEN SCHULDT
of the Journal Sentinel staff

Last Updated: Dec. 13, 2000

A lawsuit alleging that costs charged by a payday loan company are "unconscionable" was certified as a class action this week by a federal judge.

U.S. District Judge Charles N. Clevert, however, also excluded from the class the customers of McKenzie Check Advance of Wisconsin LLC who signed agreements to take disputes to arbitration rather than to court.

Customers of McKenzie, which operates 16 National Cash Advance stores in the state, may borrow up to \$300 at a flat rate of 22% of the amount borrowed, according to court documents. The annual percentage rates for the short-term loans range from 500% to more than 1,000%.

Under Clevert's decision, the class challenging the costs will consist of all Wisconsin consumers who have entered into loan agreements with National Cash Advance in the state at any time since April 17, 1996, except for those who have signed the arbitration agreement.

Lawyers on both sides described the ruling as positive.

"We were very pleased that the court approved the class claim, that is that three customers can proceed on behalf of 11,000 customers to prove that the loan costs are unconscionable," said James Walrath, executive director of Legal Aid Society of Milwaukee Inc.

The three named plaintiffs in the case are Damien N. Dienese and Luana Y. Cook of Milwaukee and Lonnie E. Cummins of Sharon.

Clevert said in his decision that data available up to Nov. 15, 1999, showed National Cash Advance transacted 237,687 loans with 20,845 consumers and that 9,535 of them signed arbitration agreements.

Legal Aid, co-counsel for the plaintiffs in the case, had sought to include in the class the customers who signed the agreements. The plaintiffs alleged the agreements were confusing, coercive and misleading, but Clevert rejected that argument.

McKenzie began requiring the arbitration agreements after the lawsuit was filed in late 1998, according to court documents.

Attorney Claudia Callaway, representing McKenzie Check, said the defendants had argued all along that there was a class of affected customers, just not the class the plaintiffs wanted.

"The court agreed with us," she said.

She said National Cash Advance provided a service for people that allowed them to avoid bouncing checks or being late with payments. It can actually help people save money, she said.

For More Info

People seeking information about the suit should call Legal Aid at (414) 765-0600 Ext. 6143.

Callaway said the ruling was "a victory for the defendants. Not only did the court uphold the validity of our consumer arbitration agreement, the decision also leaves room to further reduce the class."

Appeared in the Milwaukee Journal Sentinel on Dec. 14, 2000.

APPENDIX N

State of Wisconsin "Loan Company Annual Report"

LOAN COMPANY ANNUAL REPORT

Due Date:
March 15, 2005



State of Wisconsin
Department of Financial Institutions
Division of Banking
PO Box 7876
Madison, WI 53707-7876
Telephone: (608) 261-7578
345 W. Washington, 4th Floor
Madison, WI 53703
FAX: (608) 267-6889

TTY: (608) 266-8818

www.wdfi.org

FOR YEAR ENDING DECEMBER 31, 2004

SCHEDULE A: GENERAL INFORMATION

1. Name of Licensee: _____

2. Name, title, address, phone and FAX number of person to whom questions concerning this report should be addressed:

E-mail address: _____

3. Are office quarters of any licensed location shared with any other business? _____ If yes, explain the type(s) of other business.

4. Please provide the following information:

Corporation: List all key officers and the percentage of common stock owned. In addition, list all other stockholders who own 10% or more of the outstanding shares. "Key Officers" include the chief executive officer, chief operating officer, president, executive or senior vice president, secretary and treasurer.

Limited Liability Company: List all key members and each member's interest. In addition, list all other members whose interest in the LLC is 10% or more.

Limited Partnership: List all general partners and each partner's interest. In addition, list all limited partners whose interest in the limited partnership is 10% or more.

Partnership: List all partners and the percentage of ownership.

Sole Proprietorship: List name of proprietor.

<u>OFFICER, MEMBER, PARTNER, OWNER</u>	<u>TITLE OR POSITION</u>	<u>% OWNERSHIP</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

<u>OTHER SHAREHOLDERS/OWNERS</u>	<u>% OWNERSHIP</u>
_____	_____
_____	_____
_____	_____

SCHEDULE A: GENERAL INFORMATION (CONTINUED)

5. The following questions must be answered by marking an "X" in the appropriate box. If you answer "Yes" to any question, give all details on a separate sheet. "Key Officers" include the chief executive officer, chief operating officer, president, executive or senior vice president, secretary and treasurer. If your company has not previously filed an annual report with the Division of Banking, the questions should be answered for the time period since your license application was submitted.

Yes No

Since filing your previous annual report, has any key officer, member, partner or owner been convicted of any misdemeanor or felony (other than minor traffic offenses) in this state or any other state? Provide details about the misdemeanor or felony, including but not limited to conviction, conviction date, penalty and court.

Are there any felony or misdemeanor charges (other than minor traffic offenses) pending against any key officer, member, partner or owner in this state or any other state? Provide details about the pending charges, including but not limited to charge, date and court.

Since filing your previous annual report, has the licensee or any key officer, member, partner or owner been the subject of disciplinary action including, but not limited to, civil forfeitures, cease and desist orders, injunctions, license suspensions, denials, revocations, warnings, reprimands, enforcement actions, probation and limitations by any regulatory agency in this state or any other state? Provide details about the disciplinary action, including but not limited to date, regulatory agency and type of discipline.

Is disciplinary action pending against the licensee or any key officer, member, partner or owner in this state or any other state? Provide details, including but not limited to action, regulatory agency and state.

Since filing your previous annual report, has the licensee or any key officer, member, partner or owner surrendered, resigned, cancelled or been denied a professional license or other credential in this state or any other state? Provide details, including but not limited to date, credential and state.

Since filing your previous annual report, has the licensee or any key officer, member, partner or owner been the subject of derogatory credit (bankruptcy, judgment, tax lien, collections, etc.)? Provide details, including but not limited to date, circumstances and court or agency.

Since filing your previous annual report, has the licensee or any key officer, member, partner or owner been the subject of any suit, claim, or other civil action in this state or any other state that was settled, or included a ruling or decision not in the licensee's or individual's favor? Provide a description of the suit, claim, or other civil action, agency or court, date filed, and outcome.

Is a suit, claim or other civil action pending against the licensee or any key officer, member, partner or owner in this state or any other state? Provide details, including but not limited to agency or court and date.

SCHEDULE B: WISCONSIN LENDING ACTIVITY

This schedule applies only to direct loans and indirect sales contracts made with **Wisconsin customers**. Loan and contract balances should be reported **net of unearned finance charges**.

	<u>NUMBER</u>	<u>NET BALANCE</u>
1. Outstanding loan and contract balances as of 12/31/04:		
a) Consumer Loans		
Standard Consumer Loans	# _____	\$ _____
Payday Loans	# _____	\$ _____
Pawn Loans	# _____	\$ _____
Total Consumer Loans	# _____	\$ _____
Estimated percent of total consumer loans with an APR > 18%	_____ %	
b) Sales Contracts	# _____	\$ _____
c) Other Loans (1 st mortgages, commercial, or loans > \$25,000).....	# _____	\$ _____
2. Loans and contracts contractually delinquent 90 days or more as of 12/31/04:		
a) Consumer Loans		
Standard Consumer Loans	# _____	\$ _____
Payday Loans	# _____	\$ _____
Pawn Loans	# _____	\$ _____
Total Consumer Loans	# _____	\$ _____
Percentage of total consumer loans charged off to bad debt during the year ..	_____ %	
b) Sales Contracts	# _____	\$ _____
c) Other Loans (1 st mortgages, commercial, or loans > \$25,000).....	# _____	\$ _____
3. Loans and contracts originated or purchased between 1/1/04 and 12/31/04:		
a) Consumer Loans		
Standard Consumer Loans	# _____	\$ _____
Payday Loans	# _____	\$ _____
Pawn Loans	# _____	\$ _____
Total Consumer Loans	# _____	\$ _____
Estimated percent of total consumer loans with an APR > 18%	_____ %	
b) Sales Contracts	# _____	\$ _____
c) Other Loans (1 st mortgages, commercial, or loans > \$25,000).....	# _____	\$ _____

SCHEDULE B: WISCONSIN LENDING ACTIVITY (CONTINUED)

4. Number of **consumer loans** originated between 1/1/04 and 12/31/04 where the following products were sold. If none, please indicate "None."

- a) Credit life insurance# _____
- b) Credit accident and health insurance.....# _____
- c) Credit unemployment insurance.....# _____
- d) Property insurance.....# _____
- e) Automobile insurance# _____
- f) Life (non-credit) insurance.....# _____
- g) Auto club or thrift club.....# _____
- h) Other (specify)
- _____ # _____
- _____ # _____
- _____ # _____

5. Excluding lending and the items listed in item 4, list any other activities conducted, services provided, or products sold at any licensed location. If none, please indicate "None."

6. COMPLETE ONLY IF PAYDAY LOANS ARE OFFERED

a) Do you permit borrowers to "rollover" the loan by paying only the finance charge and refinancing the loan balance in a new loan? _____

If yes, how many times in a row can a borrower "rollover" and refinance a loan before you require the borrower to pay the loan in full? Note: If a borrower is permitted to "rollover" four times before paying the loan in full, four new loans would be made to that borrower **after** the initial transaction. _____

b) Do you permit borrowers to payoff a loan and take out a new loan on the same day? _____

**SCHEDULE C: STATEMENT OF ASSETS, LIABILITIES AND EQUITY
FOR THE LICENSED LEGAL ENTITY
AS OF DECEMBER 31, 2004**

ASSETS

Cash and Cash Equivalents	\$ _____
Finance Receivables – Consumer Loans *	\$ _____
Finance Receivables – Sales Contracts	\$ _____
Finance Receivables – Other Loans	\$ _____
Less: Loan Loss Reserve	(\$ _____)
Less: Unearned Income	(\$ _____)
Net Finance Receivables	\$ _____
Net Leasehold Improvements	\$ _____
Net Fixed Assets	\$ _____
Notes Receivable From Related Parties (Identify Related Parties)	\$ _____
Intangible Assets	\$ _____
Other Assets (Specify and Include Itemization)	\$ _____
Total Assets	\$ _____

LIABILITIES AND EQUITY

Notes Payable to Related Parties	\$ _____
Other Notes Payable	\$ _____
Other Liabilities (Specify and Include Itemization)	\$ _____
Total Liabilities	\$ _____
Capital Stock (if Corporation)	\$ _____
Additional Paid in Capital	\$ _____
Retained Earnings	\$ _____
Less Treasury Stock	(\$ _____)
Net Income/Loss	\$ _____
Total Equity	\$ _____
Total Liabilities and Equity	\$ _____

* Consumer Loans include loans subject to Section 138.09, Wis. Stats.

**SCHEDULE D: STATEMENT OF INCOME AND EXPENSE
FOR THE LICENSED LEGAL ENTITY
FOR THE YEAR ENDING DECEMBER 31, 2004**

INCOME

Finance Income..... \$ _____
 Collection on Accounts Previously Charged Off..... \$ _____
 Other Income (Specify and Include Itemization)..... \$ _____
 Total Income..... \$ _____

EXPENSE

Interest Expense..... \$ _____
 Bad Debt Expense..... \$ _____
 Other Operating Expenses..... \$ _____
 Income Tax Expense..... \$ _____
 Total Expenses..... \$ _____

NET INCOME (LOSS)..... \$ _____

AFFIDAVIT

I, _____, the undersigned, being the duly authorized representative of
 (Print Name of Key Officer/Member/Partner/Owner)
 _____ hereby certify that each statement and representation in this
 (Name of Licensee)
 annual report is true and correct to the best of my knowledge.

 (Signature of Key Officer/Member/Partner/Owner) (Title) (Date)

SUBSCRIBED AND SWORN TO BEFORE ME

THIS _____ DAY OF _____, _____.

 (Notary Public)

My Commission Expires: _____

Notice: Completion of this form is required under Section 138.09, Wisconsin Statutes. Failure to comply may result in further action by our Department. Personal information you provide may be used for secondary purposes.

This document can be made available in alternate formats upon request to qualifying individuals with disabilities.

APPENDIX O

City of Milwaukee Zoning Code provisions relating to
convenient cash businesses

to, offices of firms or organizations providing architectural, computer software consulting, data management, engineering, interior design, graphic design, real estate, insurance, investment or legal services. This term does not include a bank or other financial institution or the office of a physician, dentist, optometrist or chiropractor.

b. "Government office" means an administrative, clerical or public contact office of a government agency, including a postal facility, together with incidental storage and maintenance of the agency's vehicles.

c. "Bank or other financial institution" means an establishment providing retail banking, credit and mortgage services. This term does not include a currency exchange, a payday loan agency or a title loan agency.

d. "Currency exchange" means, in accordance with s. 218.05, Wis. Stats., any person except banks incorporated under the laws of this state and national banks organized pursuant to the laws of the United States and any credit union operating under ch. 186, Wis. Stats., which obtains a certificate of authority from the Wisconsin commissioner of credit unions, engaged in the business of and providing facilities for cashing checks, drafts, money orders and all other evidences of money acceptable to such community currency exchange for a fee, service charge or other consideration. This term does not include any person engaged in the business of transporting for hire, bullion, currency, securities, negotiable or nonnegotiable documents, jewels or other property of great monetary value nor any person engaged in the business of selling tangible personal property at retail nor any person licensed to practice a profession or licensed to engage in any business in this state, who in the course of such business or profession and, as an incident thereto, cashes checks, drafts, money orders or other evidences of money.

e. "Title loan agency" means an establishment providing loans to individuals in exchange for receiving titles to the borrowers' motor vehicles as collateral.

f. "Payday loan agency" means an establishment providing loans to individuals in exchange for personal checks as collateral.

g. "Retail establishment, general" means an establishment providing retail sale of new products to the public and rendering services incidental to the sale of such products, including, but not limited to, sales of: art supplies and picture frames, art works, auto parts, baked goods, bicycles, books, newspapers and magazines, collectibles, dry goods, notions and novelties, flowers and plants, food and beverages, furniture and floor coverings, hardware, hobbies, toys and games, household goods, jewelry, luggage, major appliances, music, records, compact discs and tapes, paint and wallpaper, pets, pharmaceutical products, photo equipment and processing, sewing apparatus, sporting goods, stationery, tobacco products and wearing apparel. This term includes, but is not limited to, a grocery store, specialty food store, antique store, liquor store, butcher shop, delicatessen, portrait studio, furniture or appliance rental establishment or video rental or sales business. This term does not include an adult book store, lumber yard, building supply or home improvement center, garden center or secondhand store.

h. "Garden supply or landscaping center" means an establishment providing the retail sale of plants and the sale or rental of garden and landscape materials and equipment. This term includes outdoor storage of plants, materials or equipment.

i. "Home improvement center" means an establishment providing the sale or rental of building supplies, construction equipment or home decorating fixtures and accessories. This term includes a lumber yard or a contractors' building supply business and may include outdoor storage or tool and equipment sales or rental. This term does not include an establishment devoted exclusively to retail sales of paint, wallpaper or hardware or activities classified under vehicle/equipment sales and services, including vehicle towing services.

j. "Secondhand store" means an establishment in which used merchandise is sold at retail. This term includes a pawn shop but does not include an antique or collectibles store or other general retail establishment.

k. "Outdoor merchandise sales" means retail sale of produce, other foodstuffs or any of the products listed in par. g, primarily outside an enclosed structure, for more than 90 days in any calendar year. This term shall not include a motor vehicle sales facility, garden supply or landscaping center, lumber yard, building supply or home improvement center, or Christmas tree lot.

Definitions

Table 295-403-2-a	
NUMBER OF PARKING SPACES REQUIRED, BY USE	
Uses	No. of Parking Spaces Required
Convent, rectory or monastery	one per facility
Dormitory	one for every 15 beds or fraction thereof
Fraternity or sorority	one for every 2 rooms
Adult family home	one
<i>Foster Homes</i>	
Foster family home	one
Small foster home	one
Group home or group foster home	one
<i>Shelter Care Facilities</i>	
Family shelter care facility	one
Small group shelter care facility	one
Large group shelter care facility	one
Community living arrangement	one
Transitional living facility	one per dwelling unit
EDUCATIONAL USES	
Day care center	None (limited use) or as required by the board (special use)
School, elementary or secondary	none
College	none
School, specialty or personal instruction	none
COMMUNITY-SERVING USES	
Library	none
Cultural institution	none
Community center	as required by the board for special use approval
Religious assembly	one for every 6 seats in the assembly hall
Cemetery or other place of interment	none
Public safety facility	none
Correctional facility	none
COMMERCIAL AND OFFICE USES	
General office	one for each 250 sq. ft. of the first 2,000 sq. ft. of gross floor area; one for each 1,000 sq. of gross floor area in excess of 2,000 sq. ft.
Government office	see general office
Bank or other financial institution	see general office
* Currency exchange, payday loan or title loan agency	see general retail establishment
Retail establishment, general	one for each 500 sq. ft. of gross floor area on the first floor; one for each 1,000 sq. ft. of gross floor area on the 2 nd floor and above
Garden supply or landscaping center	see general retail establishment
Home improvement center	see general retail establishment
Secondhand store	see general retail establishment
Outdoor merchandise sales	one for each 500 sq. ft. of outdoor or indoor space devoted to the display of goods for sale

**Table 295-503-1
RESIDENTIAL DISTRICTS USE TABLE**

Uses	Zoning Districts							
	RS1-RS5	RS6	RT1-RT3	RT4	RM1-RM2	RM3-RM7	R01	R02
COMMERCIAL AND OFFICE USES								
General office	N	L	N	L	N	L	Y	Y
Government office	N	L	N	L	N	L	Y	Y
Bank or other financial institution	N	L	N	L	N	L	Y	Y
Currency exchange, payday loan or title loan agency	N	N	N	N	N	N	N	N
Retail establishment, general	N	L	N	L	N	L	L	L
Garden supply or landscaping center	N	N	N	N	N	N	N	N
Home improvement center	N	N	N	N	N	N	N	N
Secondhand store	N	N	N	N	N	N	S	S
Outdoor merchandise sales	N	N	N	N	N	N	N	N
Artist studio	N	L	N	L	N	L	Y	Y
Adult retail establishment	N	N	N	N	N	N	N	N
HEALTH CARE AND SOCIAL ASSISTANCE USES								
Medical office	N	L	N	L	N	L	Y	Y
Health clinic	N	N	N	N	N	S	S	S
Hospital	N	N	N	N	N	N	N	N
Medical research laboratory	N	N	N	N	N	N	N	N
Medical service facility	N	N	N	N	N	N	N	N
Social service facility	N	N	N	S	N	S	S	S
Emergency residential shelter	N	N	N	N	S	S	S	S
Nursing home	N	S	N	S	S	S	S	S
GENERAL SERVICE USES								
Personal service	N	L	N	L	N	L	Y	Y
Business service	N	S	N	S	N	S	L	L
Building maintenance service	N	N	N	N	N	N	N	N
Catering service	N	L	N	L	N	L	L	L
Funeral home	N	L	N	L	N	L	Y	Y
Laundromat	N	N	N	N	N	N	L	L
Dry cleaning establishment	N	L	N	L	N	L	L	L
Furniture and appliance rental and leasing	N	N	N	N	N	N	N	N
Household maintenance and repair service	N	N	N	N	N	N	N	N
Tool/equipment rental facility	N	N	N	N	N	N	N	N
Animal Services								
Animal hospital/clinic	N	N	N	N	N	N	N	N
Animal boarding facility	N	N	N	N	N	N	N	N
Animal grooming or training facility	N	N	N	N	N	N	N	N
MOTOR VEHICLE USES								
<i>Light Motor Vehicle</i>								
Sales facility	N	N	N	N	N	N	N	N

Table 295-603-1 COMMERCIAL DISTRICTS USE TABLE							
Y = Permitted Use S = Special Use	L = Limited Use N = Prohibited Use		Zoning Districts				
USES	NS1	NS2	LB1	LB2	RB1	RB2	CS
EDUCATIONAL USES							
Day care center	S	S	S	S	S	S	S
School, elementary or secondary	S	S	S	S	S	S	S
College	Y	Y	Y	Y	Y	Y	Y
School, specialty or personal instruction	Y	Y	Y	Y	Y	Y	Y
COMMUNITY-SERVING USES							
Library	Y	Y	Y	Y	Y	Y	Y
Cultural institution	Y	Y	Y	Y	Y	Y	Y
Community center	S	S	S	S	S	S	S
Religious assembly	S	S	S	S	Y	Y	Y
Cemetery or other place of interment	N	N	N	N	N	N	N
Public safety facility	Y	Y	Y	Y	Y	Y	Y
Correctional facility	N	N	N	N	N	N	N
COMMERCIAL AND OFFICE USES							
General office	Y	Y	Y	Y	Y	Y	Y
Government office	Y	Y	Y	Y	Y	Y	Y
Bank or other financial institution	Y	Y	Y	Y	Y	Y	Y
Currency exchange, payday loan or title loan agency	S	S	S	S	S	S	S
Retail establishment, general	L	L	L	L	L	L	L
Garden supply or landscaping center	N	N	Y	Y	Y	Y	Y
Home improvement center	N	N	S	S	Y	Y	Y
Secondhand store	S	S	S	S	S	S	S
Outdoor merchandise sales	S	S	S	S	S	S	S
Artist studio	Y	Y	Y	Y	Y	Y	Y
Adult retail establishment	N	N	N	N	S	S	N
HEALTH CARE AND SOCIAL ASSISTANCE USES							
Medical office	Y	Y	Y	Y	Y	Y	Y
Health clinic	S	S	S	S	S	S	S
Hospital	N	N	S	S	S	S	S
Medical research laboratory	N	N	S	S	S	S	Y
Medical service facility	N	N	S	S	S	S	S
Social service facility	S	S	S	S	S	S	S
Emergency residential shelter	S	S	S	S	S	S	S
Nursing home	S	S	Y	Y	Y	Y	Y
GENERAL SERVICE USES							
Personal service	Y	Y	Y	Y	Y	Y	Y
Business service	Y	Y	Y	Y	Y	Y	Y
Building maintenance service	N	N	S	S	Y	Y	Y
Catering service	Y	Y	Y	Y	Y	Y	Y
Funeral home	Y	Y	Y	Y	Y	Y	Y
Laundromat	Y	Y	Y	Y	Y	Y	Y
Dry cleaning establishment	Y	Y	Y	Y	Y	Y	Y
Furniture and appliance rental and leasing	S	S	Y	Y	Y	Y	Y
Household maintenance and repair service	Y	Y	Y	Y	Y	Y	Y

z-6. The plant shall be screened with a 9-foot opaque fence, including but not limited to a chain-link fence with inserted slats.

aa. Live Entertainment Special Event. aa-1. If the event is to occur on the public right-of-way or other public property, the person, firm or organization coordinating the event shall obtain a special event permit in accordance with s. 105-55.5.

aa-2. The person, firm or organization coordinating the event shall obtain a festival permit, if required to do so by s. 261-103.

aa-3. If the event will include carnival rides, the property owner or carnival operator shall obtain a carnival site permit in accordance with s. 87-14.

aa-4. The event shall be located on property owned or leased by the person, firm or organization that is coordinating it. Alternatively, such person, firm or organization may furnish the department with written evidence that the property owner has given the operator permission to use the premises for a live entertainment special event.

3. ADDITIONAL SPECIAL USE STANDARDS. No special use permit for a currency exchange, payday loan agency or title loan agency shall be granted by the board unless the board finds, in addition to the findings required by s. 295-311-2-d, that:

a. No other currency exchange, payday loan agency or title loan agency is located within 1,500 feet of the proposed use.

b. The proposed use will not be located within 150 feet of a single-family or 2-family residential zoning district.

4. ACCESSORY USES. a. General. An accessory use to a principal use shall be allowed if it complies with all applicable development standards, all other regulations of this chapter and all provisions of this code relating to odors, smoke, dust or noise, or the open storage of materials or equipment.

b. Motor Vehicle Repair, Service or Maintenance on Lots Used for Residential Purposes. No motor vehicle repair, service or maintenance shall be permitted on any lot used wholly or in part for residential purposes without a certificate of occupancy for such motor vehicle uses, unless the following conditions are met:

b-1. The motor vehicle repaired, serviced or maintained is owned by a person who resides on the lot.

b-2. Not more than one motor vehicle shall be repaired, serviced or maintained at any one time.

b-3. The removal of any vehicle components, including but not limited to engines, transmissions, radiators, wheel assemblies, doors and hoods, shall be performed only within an enclosed garage and out of view of the general public. All vehicle parts, components and repair tools shall be stored within an enclosed garage and kept out of view of the general public. Junk yards shall not be permitted.

b-4. Motor vehicle body work and painting shall be permitted only if a certificate of occupancy for a light motor vehicle body shop has been issued by the department.

c. Home Occupations. Home occupations, except live-work units as defined in s. 295-201, shall comply with the following standards:

c-1. The home occupation shall be subordinate to the residential use of the dwelling unit.

c-2. No one other than a resident of the dwelling unit shall be employed in the conduct of the home occupation.

c-3. No accessory building or open space may be used for the conduct of a home occupation or for the storage of related equipment or supplies. However, up to 50% of private residential garage space may be used for storage of related equipment or supplies provided any parking requirements established by this chapter are met.

c-4. There shall be no external alteration of the dwelling unit and the existence of the home occupation shall not be apparent beyond the boundaries of the site.

c-5. Not more than 20% of the total usable floor area of the principal building and the basement may be devoted to the home occupation.

c-6. The home occupation shall create no additional traffic and require no additional parking above that normally associated with a dwelling unit.

c-7. No signs relating to the home occupation shall be permitted.

d. Rummage Sales. Not more than 2 rummage sales shall occur on a residential premises in one calendar year. No rummage sale shall exceed 3 days in length. Items offered for sale shall be limited to household items from one dwelling unit.

Applies in commercial, downtown, industrial and institutional districts where these businesses are a "special use."

Table 295-703-1								
DOWNTOWN DISTRICTS USE TABLE								
Uses	Zoning Districts							
	C9A	C9B	C9C	C9D	C9E	C9F	C9G	C9H
EDUCATIONAL USES								
Day care center	S	S	S	S	S	S	S	S
School, elementary or secondary	Y	Y	Y	Y	S	Y	Y	S
College	S	S	S	Y	S	S	Y	Y
School, specialty or personal instruction	S	Y	Y	S	S	S	Y	S
COMMUNITY-SERVING USES								
Library	Y	Y	Y	Y	S	Y	Y	N
Cultural institution	L	L	Y	Y	S	Y	Y	N
Community center	S	S	S	S	S	S	S	S
Religious assembly	Y	Y	Y	Y	L	Y	L	N
Cemetery or other place of interment	N	N	N	N	N	N	N	N
Public safety facility	Y	Y	Y	Y	Y	Y	Y	Y
Correctional facility	N	N	N	S	N	N	N	N
COMMERCIAL AND OFFICE USES								
General office	L	Y	Y	Y	L	Y	Y	Y
Government office	L	Y	Y	Y	L	Y	Y	Y
Bank or other financial institution	L	Y	Y	Y	Y	Y	Y	N
Currency exchange, payday loan or title loan agency	N	S	S	S	S	S	S	S
Retail establishment, general	L	Y	Y	S	Y	Y	Y	S
Garden supply or landscaping center	N	N	N	N	N	N	S	S
Home improvement center	N	N	N	N	N	N	N	S
Secondhand store	N	S	S	N	S	S	Y	S
Outdoor merchandise sales	S	S	S	N	S	S	Y	S
Artist studio	L	Y	Y	N	L	L	Y	S
Adult retail establishment	N	N	N	N	N	N	S	S
HEALTH CARE AND SOCIAL ASSISTANCE USES								
Medical office	L	Y	Y	Y	L	Y	Y	Y
Health clinic	S	S	S	S	L	Y	Y	N
Hospital	S	S	S	S	N	S	S	N
Medical research laboratory	N	S	S	S	S	Y	Y	Y
Medical service facility	N	S	S	S	S	Y	Y	Y
Social service facility	S	S	S	S	S	S	S	S
Emergency residential shelter	N	S	S	S	N	N	S	N
Nursing home	S	S	S	N	N	N	N	N
GENERAL SERVICE USES								
Personal service	L	Y	Y	S	Y	Y	Y	N
Business service	S	Y	Y	Y	L	Y	Y	Y

Table 295-803-1 INDUSTRIAL DISTRICTS USE TABLE				
Uses	Zoning Districts			
	I01/ I02	IL1/ IL2	IM	IH
RESIDENTIAL USES				
Single-family dwelling	N	N	Y	N
Two-family dwelling	N	N	Y	N
Multi-family dwelling	N	N	Y	N
Attached single-family dwelling	N	N	Y	N
Live-work unit	N	N	Y	N
Mobile home	N	N	N	N
Watchman/service quarters	Y	Y	N	Y
Family day care home	N	N	Y	N
GROUP RESIDENTIAL USES				
Rooming house	N	N	S	N
Convent, rectory or monastery	N	N	Y	N
Dormitory	N	N	S	N
Fraternity or sorority	N	N	S	N
Adult family home	N	N	L	N
<i>Foster Homes</i>				
Foster family home	N	N	Y	N
Small foster home	N	N	L	N
Group home or group foster home	N	N	L	N
<i>Shelter Care Facilities</i>				
Family shelter care facility	N	N	Y	N
Small group shelter care facility	N	N	L	N
Large group shelter care facility	N	N	S	N
Community living arrangement	N	N	L	N
Transitional living facility	N	N	S	N
EDUCATIONAL USES				
Day care center	S	S	L	S
School, elementary or secondary	N	N	Y	N
College	S	S	S	N
School, specialty or personal instruction	S	S	S	N
COMMUNITY-SERVING USES				
Library	N	N	Y	N
Cultural institution	N	N	L	N
Community center	N	N	S	N
Religious assembly	N	N	S	N
Cemetery or other place of interment	N	N	N	N
Public safety facility	Y	Y	Y	Y
Correctional facility	N	N	N	N
COMMERCIAL AND OFFICE USES				
General office	Y	Y	Y	L
Government office	Y	Y	Y	L
Bank or other financial institution	S	S	Y	N
Currency exchange, payday loan or title loan agency	N	N	S	N

Table 295-903-2-a PARKS DISTRICT USE TABLE	
Y = Permitted Use S = Special Use	L = Limited Use N = Prohibited Use
Uses	Zoning District
Uses	PK
Government office	Y
Bank or other financial institution	N
* Currency exchange, payday loan agency or title loan agency	N
Retail establishment, general	L
Garden supply or landscaping center	N
Home improvement	N
Secondhand store	N
Outdoor merchandise sales	N
Artist studio	N
Adult retail establishment	N
HEALTH CARE AND SOCIAL ASSISTANCE	
Medical office	N
Health clinic	N
Hospital	N
Medical research laboratory	N
Medical service facility	N
Social service facility	N
Emergency residential shelter	N
Nursing home	N
GENERAL SERVICE USES	
Personal service	N
Business service	N
Building maintenance service	N
Catering service	N
Funeral home	N
Laundromat	N
Dry cleaning establishment	N
Furniture and appliance rental and leasing	N
Household maintenance and repair service	N
Tool/equipment rental facility	N
Animal Services	
Animal hospital/clinic	N
Animal boarding facility	N
Animal grooming or training facility	N
MOTOR VEHICLE USES	
<i>Light Motor Vehicle</i>	
Sales facility	N
Rental facility	N

Table 295-905-2-a		
INSTITUTIONAL DISTRICT USE TABLE		
Y = Permitted Use	L = Limited Use	Zoning District
S = Special Use	N = Prohibited Use	
Uses		TL
Community center		S
Religious assembly		Y
Cemetery or other place of interment		Y
Public safety facility		Y
Correctional facility		S
COMMERCIAL AND OFFICE USES		
General office		Y
Government office		Y
Bank or other financial institution		L
* Currency exchange, payday loan agency or title loan agency		S
Retail establishment, general		L
Garden supply or landscaping center		N
Home improvement center		N
Secondhand store		N
Outdoor merchandise sales		N
Artist studio		Y
Adult retail establishment		N
HEALTH CARE AND SOCIAL ASSISTANCE		
Medical office		Y
Health clinic		S
Hospital		S
Medical research laboratory		Y
Medical service facility		S
Social service facility		S
Emergency residential shelter		S
Nursing home		Y
GENERAL SERVICE USES		
Personal service		L
Business service		L
Building maintenance service		S
Catering service		S
Funeral home		Y
Laundromat		S
Dry cleaning establishment		S
Furniture and appliance rental and leasing		N
Household maintenance and repair service		N
Tool/equipment rental facility		N
Animal Services		
Animal hospital/clinic		N

• A population of Americans who rely on fringe financial services providers and a population of Americans who rely on mainstream financial institutions could result in an entrenched two-tiered financial system in which the “have-nots” continue to be thwarted in their efforts to realize at least a small amount of upward mobility. And, ultimately, according to Fannie Mae, building *community* wealth requires the building of *individual* wealth.³⁴

Addressing the payday lending “problem,” though, isn’t just a matter of providing incentives to banks to maintain a presence in lower-income neighborhoods, of expanding lower-cost credit availability, or of teaching basic budgeting skills. For a large segment of Americans, it’s a matter of trying to stretch extremely limited financial resources into places they won’t stretch, Keest reminded the forum participants.

“Whether we use the figure of \$25,000—the average payday loan customer’s income found in non-industry data—or of \$35,000—the industry’s estimate for the average borrower—either level is below the three-year average median income reported for the nation between 1996 and 1998, which was \$37,779,” she said. “Wages at the bottom and middle of the wage scale stagnated or declined during most of the last decade, and the modest rises near the end of the decade didn’t make up for that decline.” Two scholars, she noted, have written about the possibility of debt as a substitution for increases in real wages. And, as Keest said at the 2001 Practising Law Institute (PLI) conference, a lawyer for the payday loan industry cited his clients’ market as lower-middle income—the group that is the largest and fastest growing in the U.S.

Fixing the “Problem”: New Consumer Messages, New Financial Alternatives

Can payday lending customers be brought into the financial “mainstream?” One of the broader challenges of the fringe financial credit—and resulting debt—situation is the *mainstream* credit and debt situation in the U.S. today. According to Keest:

Consumer credit is now a driving force in our economy. By one gross measure, aggregate household debt rose from \$653.9 billion in 1975 to \$5.6 trillion in 1998. Comparing those figures to aggregate annual household income, the 1975 ratio was 24 percent; the 1998 ratio was an astounding 104 percent. This growth is a two-edged sword, reflecting the dual character of debt. Even the two names we give to this product reflect this dual character: "credit" has a positive connotation, but "debt" still rings with a negative one. Credit can be used for productive investment for the household. Without question, a large portion of the increased ratio of aggregate annual income to debt load from 1975 is positive. The level of homeownership in this country has risen to historic highs—66 percent in 1998—a fact reflected in the higher level of mortgage debt. It also reflects a rapid acceleration in attitude changes about debt. There is an increasing willingness to "hock" the home through home equity lending, sometimes for long-term investment purposes such as education or home improvements, and sometimes for consumption—vacations or consolidation of credit card debt. Credit card debt, which grew from \$19.5 billion in 1975 to \$586.5 billion in 1998, is now used partly for asset building (such as financing the purchase of consumer durables), partly for convenience (such as avoiding carrying cash), and partly to finance consumption (such as groceries, vacations, and restaurant meals). For good and bad, the increasing willingness of Americans to go into debt has been part of the engine driving economic growth in the 1990s.³⁵

The Wall Street Journal even reported recently that major credit card firms such as Visa, MasterCard, and American Express are trying to expand their reach by securing agreements with apartment companies and mortgage companies—allowing customers to make their rent and mortgage payments with credit—and also to such consumer "institutions" as McDonald's. Some colleges and universities allow parents to pay for their children's tuition with credit cards, and the IRS also allows payment of taxes on a credit card. While some credit card users use their cards for convenience (and perhaps to accumulate airline miles or benefit from rewards with other affinity cards) and diligently pay their balances in full each month, that's unfortunately not the case for the majority of users. According to the *Journal*, the average credit card debt per household is now \$8,367, more than double the level in 1993.³⁶

Two aspects of this credit-and-debt phenomenon may represent particular challenges to consumer education efforts about avoiding high-cost payday loans, said the forum participants.

"It's similar to the lack of stigma among peers about taking a payday loan. The thinking is: If everybody *else* in America is loaded with debt, it can't be all that bad," said one participant. "In general, most members of the Baby Boomer generation, for example, are extremely comfortable with credit and debt. It's just a part of their lives."

And the other pervasive view may be one that is common among many people, not just the payday loan customer: wishful thinking.

APPENDIX P

Non-Zoning legislation related to convenient cash businesses



City of Milwaukee Common Council

Legislative File Number 000797 (version 0)

Title

Resolution authorizing and directing the Intergovernmental Relations Division - Department of Administration to lobby for introduction and passage of state legislation establishing a maximum interest rate that may be charged by payday loan agencies and other businesses that make precomputed consumer loans.

Body

Whereas, The City of Milwaukee has witnessed a recent proliferation of payday loan agencies and similar businesses that make non-traditional, short-term consumer loans; and

Whereas, While payday loan agencies and similar businesses are required to be licensed by the State of Wisconsin if they charge interest rates that exceed 18% on an annual basis (s. 138.09(1m), Wis. Stats.), there is no statutory limit on the interest rate they may charge (s. 138.09(7)(b), Wis. Stats.); and

Whereas, According to the Wisconsin Department of Financial Institutions, payday loan businesses typically charge interest rates that compound to 350% to 500% on an annual basis; and

Whereas, Because of these high interest rates, the payday loan borrower often has difficulty repaying the loan when payday arrives, and will either take out another loan or "roll over" the loan by paying another loan fee to defer repayment for 2 additional weeks, thereby pushing the borrower deeper into debt; and

Whereas, According to a recent report by the Chicago-based Woodstock Institute, more than half of Illinois consumers with payday loans have had 11 or more loan "rollovers"; and

Whereas, The high interest rates charged by payday loan businesses and the frequently-occurring cycle of refinancing they produce suggest that payday loan agencies and their unregulated interest rates have great potential to wreak havoc on the personal lives of Milwaukee residents and to ultimately harm the economic well-being of the Milwaukee neighborhoods in which such businesses are located; now, therefore, be it

Resolved, By the Common Council of the City of Milwaukee, that the Intergovernmental Relations Division - Department of Administration is authorized and directed to lobby state legislators for introduction and passage of state legislation establishing a maximum interest rate that may be charged by payday loan agencies and other businesses that make

precomputed consumer loans.

Drafter

00452-1
JDO
9/22/00

Analysis

This resolution authorizes and directs the Intergovernmental Relations Division - Department of Administration to lobby for introduction and passage of state legislation establishing a maximum interest rate that may be charged by payday loan agencies and other businesses that make precomputed consumer loans.



City of Milwaukee Common Council
Legislative File Number 051011 (version 1)

Title

Substitute resolution relative to various legislative bills.

Body

Whereas, The Judiciary and Legislation Committee of the Common Council has recommended the following position on the bill hereinafter listed and the Common Council being advised of said matter; now, therefore, be it

Resolved, By the Common Council of the City of Milwaukee, that it hereby approves the following legislative bill and instructs the Division of Intergovernmental Relations to appear before the proper committees to support such bill and use its best endeavors to have the same enacted into law, viz:

AB-914 Finance charges for payday loans

; and, be it

Further Resolved, That it hereby opposes the following legislative bill and hereby instructs the Division of Intergovernmental Relations to appear before the proper committees in opposition to said bill and use its best endeavors in opposition to the same viz:

AB-919 Ballast water management, providing a penalty, and making an appropriation

SB-455 Releasing persons arrested for certain offenses related to operating a vehicle while intoxicated

Drafter

jp 1/30/06

2005 ASSEMBLY BILL 914

January 17, 2006 - Introduced by Representatives SCHNEIDER, BOYLE, TRAVIS, MUSSER, ALBERS, HAHN and SHERIDAN, cosponsored by Senators JAUCH and MILLER. Referred to Committee on Financial Institutions.

1 AN ACT *to amend* 138.09 (1m) (a) and 422.201 (3); *to repeal and recreate*
2 138.09 (title); and *to create* 138.14 of the statutes; **relating to:** finance charges
3 for payday loans.

Analysis by the Legislative Reference Bureau

Under current law, a lender other than a bank, savings bank, savings and loan association, or credit union generally must obtain a license from the Division of Banking in the Department of Financial Institutions (division) in order to assess an finance charge greater than 18 percent per year. This type of lender is generally referred to as a "licensed lender." With certain limited exceptions, current law provides no maximum finance charge for a loan entered into by a licensed lender.

Currently, a lender who makes payday loans is typically required to be a licensed lender. In a standard payday loan transaction, the lender accepts a personal check from the borrower, pays the borrower the amount of the check less any applicable finance charge, and agrees to wait a short time, such as two weeks, before depositing the check. Current law does not specifically regulate payday loan transactions.

This bill creates a maximum finance charge for payday loans. Under the bill, a lender, other than a bank, saving bank, savings and loan association, or credit union, who makes payday loans in the regular course of business, which the bill defines as a "payday loan provider," may not assess a finance charge that exceeds 2 percent per month. In addition, a payday loan provider must obtain the license described above. Also, the bill requires the division to enforce the bill's prohibition.

ASSEMBLY BILL 914

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 138.09 (title) of the statutes is repealed and recreated to read:

2 **138.09 (title) Licensed lenders.**

3 **SECTION 2.** 138.09 (1m) (a) of the statutes is amended to read:

4 **138.09 (1m) (a)** Before any person may do business under this section or charge
5 the interest authorized by sub. (7) and before any creditor other than a bank, savings
6 bank, savings and loan association or credit union may assess a finance charge on
7 a consumer loan in excess of 18% per year or assess a finance charge subject to s.
8 138.14, that person shall first obtain a license from the division. Applications for a
9 license shall be in writing and upon forms provided for this purpose by the division.
10 An applicant at the time of making an application shall pay to the division a
11 nonrefundable \$300 fee for investigating the application and a \$500 annual license
12 fee for the period terminating on the last day of the current calendar year. If the cost
13 of the investigation exceeds \$300, the applicant shall upon demand of the division
14 pay to the division the amount by which the cost of the investigation exceeds the
15 nonrefundable fee.

16 **SECTION 3.** 138.14 of the statutes is created to read:

17 **138.14 Payday loan providers. (1) DEFINITIONS.** In this section:

18 (a) "Check" has the meaning given in s. 403.104 (6).

19 (b) "Payday loan" means any of the following:

20 1. A transaction between a person and the issuer of a check in which the person
21 agrees to accept a check from the issuer, hold the check for a period of time before

ASSEMBLY BILL 914

1 negotiating or presenting the check for payment, and pay to the issuer, upon
2 accepting the check, the amount of the check less any finance charge.

3 2. A refinancing or consolidation of a transaction described in subd. 1.

4 (c) "Payday loan provider" means a person, other than a bank, savings bank,
5 savings and loan association, or credit union, who makes payday loans in the
6 ordinary course of business.

7 (2) FINANCE CHARGES. Notwithstanding ss. 138.09 and 422.201 (9), no payday
8 loan provider may assess a finance charge on a payday loan that exceeds 2 percent
9 per month. The division of banking shall enforce this subsection.

10 **SECTION 4.** 422.201 (3) of the statutes is amended to read:

11 422.201 (3) ~~For Notwithstanding sub. (2), for licensees under s. 138.09 and~~
12 ~~under ss. 218.0101 to 218.0163, the finance charge, calculated according to those~~
13 ~~sections, may not exceed the applicable maximums permitted in and calculated~~
14 ~~under ss. 138.09, 138.14, and 218.0101 to 218.0163, respectively.~~

15 **SECTION 5. Initial applicability.**

16 (1) This act first applies to payday loans made, refinanced, or consolidated on
17 the effective date of this subsection.

18 **SECTION 6. Effective date.**

19 (1) This act takes effect on the first day of the 6th month beginning after
20 publication.

21

(END)



City of Milwaukee Common Council
Legislative File Number 040176 (version 2)

Title

A substitute ordinance relating to required security features for currency exchanges, payday loan agencies and title loan agencies.

Body

Whereas, In recent years, the number of licensed "convenient cash" businesses (i.e., check-cashing businesses, payday loan agencies and car title loan agencies) in the city of Milwaukee has grown dramatically; and

Whereas, While these businesses are licensed and regulated by the State of Wisconsin (ss. 138.09 and 218.05, Wis. Stats.), state regulations do not specify measures that licensed "convenient cash" businesses are required to take to ensure the safety and security of their customers and employees; and

Whereas, "Convenient cash" businesses have been the locations of several violent crimes in the city of Milwaukee, including two incidents in November, 2003, that left one person dead and two others wounded; and

Whereas, "Convenient cash" businesses typically require customers to disclose personal and financial information orally in store lobbies where other customers can overhear that information, thereby putting the privacy and safety of customers at risk; and

Whereas, "Convenient cash" businesses typically require customers to complete transactions while standing unprotected at counters; and

Whereas, The Milwaukee Common Council finds that there is a great and urgent need to enact legislation that will increase the safety and security of customers and employees of "convenient cash" businesses; now, therefore

The Mayor and Common Council of the City of Milwaukee do ordain as follows:

Part 1. Section 105-76 of the code is created to read:

105-76. Convenient Cash Businesses; Security Measures. 1. DEFINITION. In this section:

a. "Convenient cash business" means any of the following:

a-1. Currency exchange, meaning, in accordance with s. 218.05, Wis. Stats., any person except banks incorporated under the laws of this state and national banks organized pursuant to the laws of the United States and any credit union operating under ch. 186, Wis. Stats., which obtains a certificate of authority from the Wisconsin commissioner of credit unions, engaged in the business of and providing facilities for cashing checks, drafts, money orders and all other evidences of money acceptable to such community currency exchange for a fee, service charge or other consideration. This term does not include any person engaged in the business of transporting for hire, bullion, currency, securities, negotiable or nonnegotiable

documents, jewels or other property of great monetary value nor any person engaged in the business of selling tangible personal property at retail nor any person licensed to practice a profession or licensed to engage in any business in this state, who in the course of such business or profession and, as an incident thereto, cashes checks, drafts, money orders or other evidences of money.

a-2. Title loan agency, meaning an establishment providing loans to individuals in exchange for receiving titles to the borrowers' motor vehicles as collateral.

a-3. Payday loan agency, meaning an establishment providing loans to individuals in exchange for personal checks as collateral.

b. "Person" means an individual, firm, partnership, association, corporation or any other business entity.

2. REGULATIONS. All convenient cash businesses shall:

a. Limit advertising on windows and on glass entrance and exit doors to allow a reasonable level of vision into the premises from outside.

b. Maintain one of the following on the premises:

b-1. A safe that was in use at the convenient cash business on the effective date of this ordinance [city clerk to insert date].

b-2. A drop safe or time-release safe that weighs at least 500 pounds or which is attached to or set into the floor in a manner approved by the police department.

c. Provide lighting for the business's parking area during all hours of darkness when employes or customers are on the premises at a minimum of 2 foot-candles per square foot, unless the business is not open after sunset or before sunrise.

d. Install, maintain in proper working order and operate, during all hours the establishment is open for business, at least 2 security cameras which can produce retrievable images. These images shall be made available to the police department within 12 hours of request. Recorded images shall be kept for a minimum of 72 hours.

e. Have customer entrance and exit doors that are made of glass or other transparent material, except that a business that does not have such doors on the effective date of this ordinance [city clerk to insert date] shall have until the date that is 90 days after the effective date of this ordinance [city clerk to insert date] to install doors of this type.

f. Locate the customer service area (counter and registers) in such a manner that at the time of any business transaction, the employe and the customer are both visible from the sidewalk outside the establishment, provided such location can be accomplished without incurring additional cost that would not otherwise be ordinarily incurred. If there is no sidewalk, the customer service area (counter and registers) shall be located so that at the time of a business transaction, a person directly outside the convenient cash business has an unobstructed view of the employe and customer, if such location can be accomplished without incurring additional cost that would not otherwise be ordinarily incurred.

g. Employ a fully operational system of alarms along the building perimeter, as well as panic alarms behind the customer service counter inside the establishment.

h. Have at least 2 representatives of the business on duty at all times within 15 minutes before and after the time the business opens, and within 15 minutes before and after the time the business closes.

i. Have all deliveries of cash to the business and pick-ups of cash from the establishment accomplished using an armored courier service whenever the amount of cash being transferred exceeds \$5,000.

j. Maintain a list of the names, home addresses and home telephone numbers of all current employees of the establishment. This list shall be made available to the police department within 60 minutes of request.

3. ROBBERY PREVENTION TRAINING. Managers and employees of convenient cash businesses shall be required to complete, within 120 days of employment, a training course in robbery prevention provided by the police department.

4. ENFORCEMENT; PENALTY. The police department shall enforce the provisions of this section. Any person convicted of violating any provision of this section shall, upon conviction, be subject to a forfeiture of not less than \$100 nor more than \$500, plus the costs of prosecution, and in default of payment thereof, shall be imprisoned in the county jail or house of correction for not more than 20 days.

Drafter

LRB04175-3

JDO

07/15/04

Analysis

This ordinance provides that "convenient cash" businesses (currency exchanges, payday loan agencies and car title loan agencies) shall:

a. Limit advertising on windows and glass entrance and exit doors to allow a reasonable level of vision into the premises from outside.

b. Maintain a safe on the premises.

c. Provide lighting for the business's parking area during all hours of darkness when employees or customers are on the premises.

d. Install, maintain in proper working order and operate, during all hours the establishment is open for business, at least 2 security cameras which can produce retrievable images that can be provided to the police department within 12 hours of request.

e. Have customer entrance and exit doors that are made of glass or other transparent material.

f. Locate the customer service area (counter and registers) in such a manner that at the time of any business transaction, the employee and the customer are both visible from the sidewalk outside the establishment, provided such location can be accomplished without incurring additional cost that would not otherwise be ordinarily incurred.

g. Employ a fully operational system of alarms along the building perimeter, as well as panic alarms behind the customer service counter inside the establishment.

h. Have at least 2 representatives of the business on duty at all times within 15 minutes before and after

the time the business opens, and within 15 minutes before and after the time the business closes.

i. Have all deliveries of cash to the business and pick-ups of cash from the establishment accomplished using an armored courier service whenever the amount of cash being transferred exceeds \$5,000.

j. Maintain a list of the names, home addresses and home telephone numbers of all current employees of the establishment.

In addition, this ordinance requires that all managers and employees of convenient cash businesses complete, within 120 days of employment, a training course in robbery prevention provided by the police department.

CITY OF MILWAUKEE

Form CA-43

GRANT F. LANGLEY
City Attorney

RUDOLPH M. KONRAD
PATRICK B. McDONNELL
LINDA ULISS BURKE
Deputy City Attorneys



OFFICE OF CITY ATTORNEY
800 CITY HALL
200 EAST WELLS STREET
MILWAUKEE, WISCONSIN 53202-3551
TELEPHONE (414) 286-2601
TDD (414) 286-2025
FAX (414) 286-8550

September 1, 2004

To the Honorable
Committee on Public Safety
City Hall, Room 205

Re: Common Council File No. 040176: A substitute ordinance relating to required security features for currency exchanges, payday loan agencies and title loan agencies

Dear Committee Members:

This letter will respond to your request for the opinion of this office as to the legality and enforceability of the above-referenced proposed ordinance (denoted as "Substitute 2"). We find this proposed ordinance to be problematic on two grounds:

(1) It implicates the issue of the scope and extent of the City's police powers, which have been delegated to it by the legislature, per Wis. Stat. § 62.11(5) and whether any provisions of the proposed ordinance exceed the limits of those police powers.

(2) It raises issues arising under the Equal Protection Clause, embodied in the Fourteenth Amendment of the U.S. Constitution and Article 1, § 1 of the Wisconsin Constitution, in that certain security measures may be mandated with respect to the categories of business within its scope that are not required of other businesses that are similar in nature or that implicate comparable security concerns.

We will first discuss these police-power and equal-protection issues generally, emphasizing the standards applicable to evaluation of the provisions of this proposed ordinance. We will then apply those standards to an evaluation of the legality and enforceability of each of the specific security measures mandated by the proposed

BEVERLY A. TEMPLE
THOMAS O. GARTNER
BRUCE D. SCHRIMPF
ROXANE L. CRAWFORD
SUSAN D. BICKERT
HAZEL MOSLEY
HARRY A. STEIN
STUART S. MUKAMAL
THOMAS J. BEAMISH
MAURITA F. HOUREN
JOHN J. HEINEN
MICHAEL G. TOBIN
DAVID J. STANOSZ
SUSAN E. LAPPEN
JAN A. SMOKOWICZ
PATRICIA A. FRICKER
HEIDI WICK SPOERL
KURT A. BEHLING
GREGG C. HAGOPIAN
ELLEN H. TANGEN
MELANIE R. SWANK
JAY A. UNORA
DONALD L. SCHRIEFER
EDWARD M. EHRlich
LEONARD A. TOKUS
MIRIAM R. HORWITZ
MARYNELL REGAN
G. O'SULLIVAN-CROWLEY
DAWN M. BOLAND
KATHRYN M. ZALEWSKI

Assistant City Attorneys

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September 1, 2004
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ordinance. For your convenience, we attach a copy of a previous opinion of this office, dated May 7, 2003, concerning the application of the "public health, safety and welfare" special-use permit criterion contained in § 295-311-2-d-1, *Milwaukee Code of Ordinances* to the payday loan industry, to which we refer subsequently in this letter.

Legal Doctrines Affecting the Legality and Enforceability of the Proposed Ordinance

1. The Police Power and its Limits

The proposed ordinance consists of a series of regulatory measures aimed at three distinct, but somewhat related, lines of businesses: Currency exchanges, payday loan agencies and title loan agencies¹ (collectively, "quasi-financial institutions"). The City's legal authority to regulate business practices in this fashion derives from its statutory police powers to act in furtherance of the public health, safety and welfare, as set forth in Wis. Stat. § 62.11(5). This provision states as follows:

(5) Powers. Except as elsewhere in the statutes specifically provided, the council shall have the management and control of the city property, finances, highways, navigable waters, and the public service, and shall have power to act for the government and good order of the city, for its commercial benefit, and for the health, safety, and welfare of the public, and may carry out its powers by license, regulation, suppression, borrowing of money, tax levy, appropriation, fine, imprisonment, confiscation, and other necessary or convenient means. The powers

¹ Although the proposed ordinance lumps these three types of businesses into one category, there are, in fact, significant distinctions among them. For example, payday loan agencies do not cash checks and require customers to be employed and to have a regular bank checking account - in contrast to currency exchanges, which do cash checks and which do not impose these requirements upon their customers. Title loan agencies make only secured loans upon vehicles or other collateral; payday loan agencies make only personal (unsecured) loans and currency exchanges generally do not engage in the lending business at all. While these distinctions do not necessarily render invalid the proposed ordinance's approach of treating quasi-financial institutions as a single category, subject to a single regulatory regime, the Committee should be aware that the legality or enforceability of particular security measures as applied to specific "branches" of the quasi-financial industry may be affected by them.

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hereby conferred shall be in addition to all other grants, and shall be limited only by express language.

The extent of the City's discretion in the exercise of its police powers is broad, although not unlimited, and, in cases such as these, the requisite standards and analysis are well-established. It is a basic principle that ordinances enjoy a presumption of validity. *State ex rel. Grand Bazaar Liquors Inc. v. City of Milwaukee*, 105 Wis. 2d 203, 208-209, 313 N.W.2d 805, 808 (1982); *State ex rel. Hammermill Paper Company v. La Plante*, 58 Wis. 2d 32, 46, 205 N.W.2d 784, 792-793 (1973). The subject-matter of this proposed ordinance does not implicate any "fundamental rights" or "suspect classes," such as would require a particularly high standard of scrutiny. *Dog Federation of Wisconsin, Inc. v. City of South Milwaukee*, 178 Wis. 2d 353, 367, 504 N.W.2d 375, 381 (Ct. App. 1993); *New York City Friends of Ferrets v. City of New York*, 876 F. Supp. 529, 533, 534 (S.D.N.Y. 1995). Under such circumstances courts will employ the less-stringent "rational basis" standard of review to the constitutionality of this proposed ordinance. *Id.*, citing *Funk v. Wollin Silo and Equipment, Inc.*, 148 Wis. 2d 59, 69, 435 N.W.2d 244, 248 (1989).

This standard requires that courts uphold the constitutionality, legality, and enforceability of a municipal ordinance if the ordinance is "rationally related" to promotion of the public health, safety, morals or general welfare. *State ex rel. Grand Bazaar Liquors, Inc. v. City of Milwaukee, supra*, 105 Wis. 2d 203, 209, 211, 313 N.W.2d 805, 808, 810 (1982). Every presumption is exercised in favor of sustaining "police power" ordinances, and the burden of proof is on the party challenging the validity of such an ordinance: if there is any "reasonable basis for its enactment" the ordinance is sustained. *State ex rel. Baer v. City of Milwaukee*, 33 Wis. 2d 624, 630, 633-634, 148 N.W.2d 21, 24, 26 (1967). *State ex rel. Normal Hall, Inc. v. Gurda*, 234 Wis. 290, 299-300, 291 N.W. 350, 354-355 (1940). In *Thorp v. Town of Lebanon*, 235 Wis. 2d 610, 612 N.W.2d 59, 2000 WI 60 (2000), the Wisconsin Supreme Court reaffirmed the following mode of analysis to any constitutionally-based claim that the provisions of an ordinance lacks a "rational basis," stating as follows:

. . . [W]e note that the burden on a plaintiff to prove that an ordinance lacks a rational relationship to a valid governmental objective is difficult. The rational basis test has been characterized as creating a 'frequently

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insurmountable task' for the challenger of an ordinance to prove 'beyond a reasonable doubt that the ordinance possesses no rational basis to any legitimate municipal objective' *Grand Bazaar*, 105 Wis. 2d 209, 313 N.W.2d 805. Moreover, ordinances enjoy a presumption of validity, even when they are challenged on the basis of equal protection. *State v. Post*, 197 Wis. 2d 279, 301, 541 N.W.2d 115 (1995). An opponent of an ordinance must establish the ordinance's unconstitutionality beyond a reasonable doubt. *Id.*: *Kimec v. Town of Spider Lake*, 60 Wis. 2d 640, 651, 211 N.W.2d 471 (1973)" 235 Wis. 2d 610, 637, 612 N.W.2d 59, 74.

In formulating a proposed ordinance, care should be taken to assure the following: (a) that the means employed by the ordinance are "reasonable"; (b) that the means employed by the ordinance are "rationally related" to the attainment of its stated objectives; and (c) that the ordinance itself operates in a nondiscriminatory fashion. *State ex rel. Grand Bazaar Liquors, Inc. v. City of Milwaukee, supra*; *Clark Oil and Refining Corp. v. City of Tomah*, 30 Wis. 2d 547, 141 N.W.2d 299 (1966); *Froncek v. City of Milwaukee*, 269 Wis. 276, 281-282, 69 N.W.2d 242, 245-246 (1955). While the police-power "test" applicable to this proposed ordinance is not particularly stringent, it must still be met. "The rational-basis standard of review is 'not a toothless one.'" *State ex rel. Grand Bazaar Liquors, Inc. v. City of Milwaukee, supra*, 105 Wis.2d 203, 209, 313 N.W.2d 805, 809, citing *Schweiker v. Wilson*, 450 U.S. 221, 234, 101 S.Ct. 1074, 1082, 67 L.Ed.2d 186 (1981).

The ostensible aim of the security measures mandated by the proposed ordinance is to reduce the incidence of robberies, burglaries and other criminal activity occurring at quasi-financial institutions. This is certainly an objective directly related to enhancement of public safety and thus well within the parameters of the City's police powers. The difficulty is that the legislative record in this case is so sparse as to be essentially devoid of any content demonstrating the requisite "rational relationship" between the specific provisions of the proposed ordinance and the attainment of this objective. For example, the ordinance file contains a City map contending that 22 robberies occurred near "check cashing businesses" through July 14, 2004. This map raises more questions than it answers, including:

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- (1) Over what period of time prior to July 14, 2004 did the robberies occur?
- (2) Did these robberies occur "within [a] one quarter mile buffer area" of such businesses (as indicated by the title of the chart) or right at the site of the businesses, i.e. on the premises or against customers entering or leaving those premises (as indicated by the chart itself)?
- (3) Did these robberies occur at only check cashing/currency exchange outlets or did any occur at the other two legs of the quasi-financial tripod, payday loan agencies or title loan agencies – and, if so, how many?
- (4) How do the number of robberies at these locations over the relevant period of time compare with the incidence of similar crimes in or around other businesses that pose potential security risks (e.g. banks, jewelry stores, pawnbrokers, etc.)?
- (5) How would the specific measures enumerated in the proposed ordinance enhance security and forestall robberies and similar crimes in and around quasi-financial institution outlets? (Nothing in the ordinance file addresses this issue, not even the Police Chief's letter of endorsement.)

We caution that regulatory measures may not be imposed against the quasi-financial industry due to opposition to its presence in the City or to its lending or other credit practices, including interest rates or collection methods. These are matters properly reserved for State regulation and that are in all likelihood pre-empted by State law. See our opinion of May 7, 2003 (attached).

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2. Equal Protection Considerations

The proposed ordinance may also be subject to challenge on equal-protection grounds because it targets quasi-financial institutions, but not (a) conventional financial institutions such as banks or credit unions; or (b) other types of retail business that operate on a cash basis and that carry potentially sizable amounts of cash on the premises. The issue here is whether a classification consisting of currency exchanges, payday loan agencies and title loan agencies for purposes of determining an appropriate array of security features associated with the usual conduct of business, will withstand scrutiny under the equal-protection clauses of the United States and Wisconsin Constitutions.²

The U.S. Supreme Court has stated that: "The Equal Protection Clause of the Fourteenth Amendment . . . is essentially a direction that all persons similarly situated should be treated alike." *City of Cleburne v. Cleburne Living Center*, 473 U.S. 432, 439, 105 S.Ct. 3249, 3254, 87 L.Ed.2d 313 (1985), citing *Plyler v. Doe*, 457 U.S. 202, 216, 102 S.Ct. 2382, 2394, 72 L.Ed.2d 786 (1982); see also *McDonald v. Village of Winnetka*, 371 F.3d 992, 1008 (7th Cir. 2004); *DeSalle v. Wright*, 969 F.2d 273, 275 (7th Cir. 1992). "The Equal Protection Clause grants to all Americans 'the right to be free from invidious discrimination in statutory classifications and other governmental activity.'" *Nabozny v. Podlesny*, 92 F.3d 446, 453 (7th Cir. 1996); citing *Harris v. McRae*, 448 U.S. 297, 322, 100 S.Ct. 2671, 2691, 65 L.Ed.2d 784 (1980). The Wisconsin Supreme Court has stated that:

Traditionally, we have recognized two types of equal protection claims. The first involves intentional discrimination based on membership in a particular class or group. See, e.g., *State v. Chosa*, 108 Wis.2d 392, 395-97, 321 N.W.2d 280 (1982). The second involves challenges to legislation alleged to make irrational and arbitrary classifications. See, e.g., *State v. Post*, 197 Wis.2d 279, 541 N.W.2d 115 (1995).

² The equal-protection guarantees of the United States and Wisconsin Constitutions are identical. *Kenosha County v. C&S Management, Inc.* 223 Wis. 2d 3763, 393-394, 588 N.W.2d 236, 246-247 (1999); *In the Matter of Care and Maintenance of K.C. v. Department of Health & Social Services*, 142 Wis.2d 906, 915, 420 N.W.2d 37, 39 (1988)..

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Penterman v. Wisconsin Electric Power Company, 211 Wis.2d 483-484, 565 N.W.2d 521, 534 (1997).

An equal-protection challenge to the proposed ordinance seems to fit the second category more closely. In this respect it must be emphasized that police-power legislation is accorded a broad presumption of validity as against equal-protection challenges. The Seventh Circuit has gone so far as to state that a challenge to laws or policies alleged to make irrational distinctions "rarely succeeds nowadays." *Esmail v. Macrane*, 53 F.3d 176, 178 (7th Cir. 1995). The U.S. Supreme Court described the obstacles facing such challenges as follows:

When local economic regulation is challenged solely as violating the Equal Protection Clause, this Court consistently defers to legislative determinations as to the desirability of particular statutory discriminations... Unless a classification trammels fundamental personal rights or is drawn upon inherently suspect distinctions such as race, religion, or alienage, our decisions presume the constitutionality of the statutory discriminations and require only that the classification challenged be rationally related to a legitimate state interest. States are accorded wide latitude in the regulation of their local economies under their police powers, and rational distinctions may be made with substantially less than mathematical exactitude.

427 U.S. at 303, 96 S.Ct. at 2516-2517; see also *Heller v. Doe*, 509 U.S. 312, 319-320, 113 S.Ct. 2637, 2642-2643, 125 L.Ed.2d 257 (1993); *Forseth v. Village of Sussex*, 199 F.3d 363, 371 (7th Cir. 2000); *Listle v. Milwaukee County*, 138 F.3d 1155, 1158-1159 (7th Cir., 1998); *Northwest Properties v. Outagamie County*, 223 Wis.2d 483, 490-491, 589 N.W.2d 683, 687 (Ct. App. 1998).

The classification drawn by the proposed ordinance, *i.e.*, that of quasi-financial institutions, is unrelated to any "fundamental personal right" and is not premised upon any "inherently suspect distinctions." Thus, it is subject only to rational-basis review for equal-protection purposes. That is not a difficult standard to meet, and has been described by the U.S. Supreme Court as follows:

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Under rational-basis review, where a group possesses “distinguishing characteristics relevant to interests the State has the authority to implement,” a State’s decision to act on the basis of those differences does not give rise to a constitutional violation. . . . “Such a classification cannot run afoul of the Equal Protection Clause if there is a rational relationship between the disparity of treatment and some legitimate governmental purposes.” . . . Moreover, the State need not articulate its reasoning at the moment a particular decision is made. Rather, the burden is upon the challenging party to negative “any reasonably conceivable state of facts that could provide a rational basis for the classification.” . . .

(Citations omitted). *Board of Trustees of the University of Alabama v. Garrett*, 531 U.S. 356, 366-367, 121 S.Ct. 955, 963-964, 148 L.Ed.2d 866 (2001); *see also*, *Discovery House, Inc. v. Consolidated City of Indianapolis*, 319 F.3d 277, 282 (7th Cir. 2003); *Gusewelle v. City of Wood River*, --- F.3d ---, 2004 WL 1516710 at p. 9 (7th Cir. 7/8/2004); *In re Commitment of Dennis H.*, 2002 WI 104, 255 Wis.2d 359, 381-382, 647 N.W.2d 851, 861; *In the Matter of the Care and Maintenance of K.C. v. Department of Health & Social Services*, 142 Wis.2d 906, 916, 420 N.W.2d 37, 40 (1988).

If a proposed City ordinance directed at regulation of a particular business or industry avoids “invidious discrimination” and satisfies the foregoing rational-basis test, it should withstand a constitutional equal-protection challenge. Indeed, the City has already adopted operational standards governing one line of business. See, § 68-4.3, *Milwaukee Code of Ordinances* (convenience food stores). As noted, these are not particularly difficult standards, but they are ones that must be met. The problem under these circumstances is the virtual absence of any legislative record as to why this particular classification (i.e., quasi-financial institutions) was targeted for this particular array of required security features. In order to deal with any potential equal-protection challenge, we suggest that the legislative record underlying this proposed ordinance be enhanced with evidence and legislative findings substantiating the basis and rationale for the specific industry classification that it has selected. The current legislative record is insufficient for this purpose.

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In this respect, we have examined Federal regulations mandating the adoption of certain security measures by conventional financial institutions, including banks and thrift institutions.³ Congress has authorized "Federal supervisory agencies" to promulgate such regulations per 12 U.S.C. 1882(a), which states as follows:

§ 1882. Security measures

- (a) Rules for installation, maintenance, and operation of security devices and procedures

Within six months from July 7, 1968, each Federal supervisory agency shall promulgate rules establishing minimum standards with which each bank or savings and loan association must comply with respect to the installation, maintenance, and operation of security devices and procedures, reasonable in cost, to discourage robberies, burglaries, and larcenies and to assist in the identification and apprehension of persons who commit such acts.

Federal regulations have divided conventional financial institutions into four categories for purposes of this statute: (a) national banks, 12 C.F.R. Part 21; (b) state banks that are Federal Reserve members, 12 C.F.R. Part 208; (c) FDIC-insured banks that are not Federal Reserve members, 12 C.F.R. Part 326; and (d) savings associations, a/k/a "thrifts," 12 C.F.R. Part 568. Institutions falling within any of these categories, however, are required to adopt essentially the same security measures:

- (1) Appointment of a "security officer" and development of a "security program" by the institution's board of directors for each location, which would include provisions for opening and closing procedures, identification of perpetrators of crimes against the institution, identification of currency handled by the institution, maintenance of a security video camera, and retention of actual or attempted robberies, burglaries, or larcenies.

³ The State of Wisconsin has chosen not to intervene in this area. There are no Wisconsin statutes or Administrative Code provisions mandating any form of security features for financial institutions.

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- (2) Initial and periodic training of employees in robbery prevention and proper conduct during and after robberies.
- (3) Maintenance of a vault, safe, or other "secure space" to protect cash and other liquid assets, as well as a lighting system to illuminate the area outside the vault (or equivalent) if it is visible from outside the banking officer area.
- (4) Installation of "tamper-resistant locks" on exterior doors and windows that may be opened.
- (5) Maintenance of an alarm system or equivalent "for promptly notifying the nearest responsible law-enforcement officers of an attempted or perpetrated robbery, burglary, or larceny.
- (6) Other security devices and measures deemed to be appropriate by the institution's designated "security officer" given that institution's security environment and cost considerations.

These regulations affecting the businesses most closely analogous to quasi-financial institutions are contained in 12 C.F.R. §§ 21.3, 208.61, 326.3, and 568.3, copies of which are attached to this opinion.

**The Legality and Enforceability of the Specific Security
Measures Included Within The Proposed Ordinance.**

Given this background, we can now assess the status of each of the specific items comprising the array of mandated security features enumerated in the proposed ordinance.

1. Limits on advertising upon windows and glass entrance and exit doors. The proposed ordinance states that this is designed "to allow a reasonable level of vision into the premises from outside." This appears reasonable on its face as a crime deterrent. We are, however, concerned about disparate treatment of quasi-financial institutions, as compared with conventional financial institutions (which are not required to implement a measure of this type), convenience stores, or other businesses

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that may be prone to criminal activity and whose operations implicate security concerns, at least without further substantiation of the basis for this distinction.

2. Maintenance of a safe on the premises. We again believe that this is a reasonable crime deterrent. Federal regulations impose a similar requirement upon banks and savings associations. We also note that a comparable on-premises safe requirement has been imposed upon convenience food stores (§ 68-4.3-2-c., *Milwaukee Code of Ordinances*).
3. Provision of lighting for the parking area. We are skeptical of the “rational basis” for this measure, which is not required of any other business. We also note the practical difficulty of applying this requirement in those (frequent) situations where quasi-financial institutions share a common parking area with other businesses in a strip mall or other retail cluster.
4. Installation and maintenance of on-premises security cameras. Generally, this is a reasonable crime-deterrent measure, and one imposed by Federal regulation upon banks and savings associations. We would inquire as to the basis for the particular requirements in this proposed ordinance as contrasted to parallel (but different and somewhat less stringent) security-camera requirements imposed upon convenience food stores, § 68-4.3-2-e., *Milwaukee Code of Ordinances*.
5. Glass/transparent entrance and exit doors. This requirement is very similar to item #1, above, and we take the same position as we have expressed in that case.
6. Location of customer service area. This requirement is most likely within the reasonable scope of the City’s police powers as a crime deterrent, although it does impinge more directly upon the conduct of the day-to-day business of a quasi-financial institution than is the case with store-design measures such as those presented in items ## 1 and 5, above. A parallel requirement has been imposed upon convenience food stores. § 68-4.3-2-a., *Milwaukee Code of Ordinances*. Again, banks and savings associations do not face similar requirements (unless it becomes part of an individual institution’s own “security program”), and we are concerned that the legislative record contains no exposition of the basis for this distinction.

7. Perimeter and panic alarms. This is certainly a reasonable and effective crime deterrent. Convenience food stores are not subject to any such requirement by City ordinance, but banks, savings associations, and other conventional financial institutions are, which bolsters the conclusion that this requirement would likely pass muster as to legality and enforceability.

8. Requirement of two on-duty employees. This requirement applies, under the proposed ordinance, whenever a quasi-financial institution is open for business and for 15 minutes before opening and after closing. This is a very costly and restrictive mandate not imposed by the City upon any other business or industry, or applicable to other types of financial institutions (by Federal regulation) or to other cash businesses. There is also no clear relationship between this requirement and deterrence of criminal activity on or around the premises of quasi-financial institutions or (for that matter) any other discernible rational basis for it. As such, we believe that this item is both beyond the legitimate scope of the City's police powers and vulnerable to challenge on equal-protection grounds and is thus neither legal nor enforceable.

9. Requirement of an armored courier pickup for cash transfers of over \$5,000. Our opinion on this item is identical to our opinion with respect to item #8, above. This is an extremely costly mandate, and one not imposed by City ordinance on any other type of business, including businesses such as jewelers, pawnbrokers, and other retailers that regularly deal in large amounts of cash or by Federal regulations upon conventional financial institutions.

10. Maintenance by quasi-financial institutions of lists of employee names, home addresses, and home telephone numbers. Our opinion as to this item is identical to that expressed with respect to items ## 8 and 9, above. This requirement additionally would endanger the personal safety of employees if lists fell into the wrong hands.

11. Mandatory robbery-prevention training. We believe that this requirement is directly related to deterrence of crime and is thus a legitimate objective of the City's police powers. Federal regulations require a variant of this requirement to be incorporated into the "security program" of each regulated conventional financial institution. We are concerned, however, that the City does not require managers or employees of any other line of business or industry (including other types of financial

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institutions or cash-based retail outlets) to obtain such training and believe that this disparity implicates potential equal-protection concerns.

We reiterate that the most serious problem affecting the status of this proposed ordinance is the virtual lack of a legislative record in the ordinance file. In our opinion, many of the questions that we have raised might be sufficiently resolved by augmentation of that record with additional evidence and appropriate legislative findings. Please contact this office if you have any additional questions as to the legality or enforceability of this proposed ordinance. We will be pleased to consult with you on any further development of its provisions.

Very truly yours,



GRANT E. LANGLEY
City Attorney



STUART S. MUKAMAL
Assistant City Attorney

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enclosures
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APPENDIX Q

Regulations in other communities

PAYDAY LENDING ZONING LAWS/LEGISLATION

JURISDICTION	BASIS FOR LIMITS	DETAILS	CITATION
Gardendale, AL	Moratorium		
Marana, AZ	Draft	Zoning ordinance similar to Pima County	
Phoenix, AZ	Zoning	Proposed zoning rule first considered at Planning Commission meeting on 11/9/05: check-cashing stores must be at least 1,000 ft. apart	
Pima County, AZ	Zoning	New payday lenders not allowed to open within 1,320 ft (one quarter mile). of existing operations or 500 ft. of homes of residentially zoned property. Also requires a special use permit.	
Tucson, AZ	Draft		
South Tucson, AZ	Density	Limited to three business zones. Cannot open within 1,000 ft. of existing operations or within 500 ft. of houses.	City Council Ordinance NO:05-03 amending Chapter 24, Article I SEC. 24-1, Article IV
National City, CA	Draft	One year moratorium (date?)	Ordinance No. 2003, Chapter 10.58
Oakland, CA	Permit	Special Use Permit, must not be closer than 1,000 ft. from another check casher/payday lender; must be at least 500 ft. away from: -Community education civic activities (schools) -State or federally chartered banks, savings associations, credit unions, or industrial loan companies -Community assembly civic activities (churches) or -Liquor stores (excluding full service restaurants or liquor stores with 25 or more full time employees).	Oakland Planning Code 17.102.430
Sacramento, CA	Prohibition	Not allowed in an area zoned for commercial mixed use development.	
San Diego, CA	Unknown		
LA, CA			
San Francisco, CA	Moratorium	90 days, beginning 1/9/06	
Ft. Lauderdale, FL Pembroke Pines, FL	Permit	City Zoning Code does not prohibit or permit check cashing services – decision on a case-by-case basis. Requires public hearing.	
Jacksonville, FL	Density	600 ft. between lenders; no closer than 5 miles to an active military installation.	City Ordinance 2005-1012

Bellwood, IL	Licensing	Requires special licensing process.	City Ordinance 117.999
Chicago, IL	Zoning Change	Change zone classification from a service district to special use, which would require public hearing.	
Glendale Heights, IL	Permit	Special Use Permits	
Superior, MN	Permit	Special Use Permits 2,500 ft. required between payday lenders.	
JURISDICTION	BASIS FOR LIMITS	DETAILS	CITATION
Arnold, MO	Permit	Conditional Use Permit for small business. Limits business to certain commercial areas.	
Berkeley, MO	Pending	Create classification for payday institutions different from financial institutions.	
North Kansas City, MO	Zoning	Restricts payday lenders and check cashers from doing business in certain zones.	
St. John, MO	Licensing	Create a separate license category for payday lending - \$400 for business license vs. \$750 for a regular bank.	
St. Louis County, MO	Permit	Conditional Use Permit for each location. Requires public hearing for each request.	
Jackson, MS	Draft	Moratorium	
Clark County, NV	Density	Distance requirements similar to Las Vegas.	
Henderson, NV	Permit	Essentially banned in Downtown Redevelopment Area. In 2004, began requiring a Conditional Use Permit for all new payday loan centers and declared several zoning categories off limits to them. New rules considered: separation requirements from schools, residential areas, and other check-cashing businesses.	
Las Vegas, NV	Permit/ Density	Special Use Permit Requirement. May not be within 200 ft. from residences. Must be 1,000 ft. from other financial institutions, auto title loan businesses, and pawn shops.	
North Las Vegas, NV	Moratorium	A 6 mo. moratorium on new payday lenders started in July 05. Considering restrictions similar to Las Vegas.	
Pittsburgh, PA (north side)	Density	Must be 500 ft. from residence, 1,000 ft. from a similar business.	
Columbia, SC	Permit	Special Use Permits	
South Salt Lake City, UT	Density	Restricts vicinity to 600 ft. from the nearest residential zone (some exceptions). Restricts the number of facilities to 1 for every 5,000 people. Prevents all check cashing establishments from certain districts of city. Density (?)	

Taylorsville, UT	Density	One per 10,000 residents. They presently exceed that limit and there is a moratorium on new payday loan outlets until that level is reached.	
West Valley City, UT	Density	600 ft. between payday lending outlets. One outlet per 10,000 residents.	City Code Section 7-1-103, Subsection 30
Chesterfield, VA	Conditional Use	Conditional use process that allows a site-specific review by the Board of Supervisors.	
Chesterfield County, VA	Zoning	Limited to certain commercial zones.	
Colonial Heights, VA	Unknown		
JURISDICTION	BASIS FOR LIMITS	DETAILS	CITATION
Henrico Co (Richmond, VA)	Moratorium	Establish "sunset" period to phase out locations	
Langley, VA	Zoning	Only in an enclosed mall with C3 commercial zoning.	
Burlington, VT	Prohibition	Zoning does not include check cashing.	
Superior, WI	Zoning	2,500 ft. separation; commercial highway locations only.	
Milwaukee, WI	Permit	Special Use Permits: 1,500 ft. from similar business; 150 ft. from single or two-family zoned property.	Milwaukee Code of Ordinances, Section 295-311-2-h (Ch 295 is the Zoning Code)

(8) "Alley" means a public way which generally affords a secondary means of vehicular access to abutting properties and not intended for general traffic circulation.

(9) "Alteration" means a physical change or addition to a site, building, or structure.

(10) "Amenity" means an aesthetic, recreation, or service component integrated into a development in order to increase its desirability within a community or its marketability to the public.

(11) "Animal" means any of a kingdom of living being typically differing from plants in capacity for spontaneous movement and rapid motor response to stimulation.

(12) "Animal Training" means the training of two or more animals for remuneration. Animals may be boarded on the premises or transported to the premises for each scheduled training period.

(13) "Applicant" means a person, firm, association, partnership, private corporation, public corporation, or any combination thereof, requesting a modification or approval as required by this Title. An applicant shall be listed as the owner of the property for which the modification or approval is being requested or may be the legally designated agent of the owner.

(14) "Arterial Street, Major" means a street for which the principal function is movement of large volumes of traffic from collector streets. Providing access to abutting land is a secondary function.

(15) "Arterial Street, Minor" means a street for which the principal function is movement of traffic. Providing access to abutting land is a secondary function.

(16) "Attached" means a physical connection between buildings, or parts of buildings, and may consist of either a common wall or an overhead roof structure or canopy which may be either enclosed or unenclosed.

(17) "Automobile Sales and Service" means the sales, repair and maintenance of automobiles and trucks. Such uses may include, but are not limited to, sales lots, body shops, transmission shops, lube centers, tire stores, car washes as a primary use, and auto glass shops, among other things. This definition does not include retail sales of auto parts and supplies where no service or repair is performed on the premises.

(18) "Basement" means a story partly underground. A basement shall be counted as a story for purposes of height measurement if over one-half of its total height is above grade.

(19) "Billboard" means a freestanding, outdoor sign located on industrial, commercial, or residential property if the sign is designed or intended to direct attention to a business, product, or service that is not sold, offered, or existing on the property where the sign is located. "Billboard" includes, where applicable,

any sign structure, including any necessary devices, supports, appurtenances, and lighting that is part of or supports an outdoor sign.

(20) "Brew Restaurant" means a business licensed to sell beer for on-premises consumption in connection with a bonafide restaurant where the revenue from the sale of beer is less than 30 percent of the gross dollar volume. A Brew Restaurant is also licensed to brew beer in batch sizes that provide enough beer for the sale and consumption on site in connection with the restaurant, or for retail carry-out sale in containers holding less than 2 liters.

(21) "Brew Restaurant and Liquor Retailer" means a Brew Restaurant that also has a liquor license subject to the applicable provisions of the Alcoholic Beverage Control Act.

(22) "Buildable Area" means that portion of a lot that may be developed after required setbacks are deducted.

(23) "Building" means any structure having a roof supported by columns or walls, for the housing or enclosure of persons, animals or chattels.

(24) "Building Coverage" means the percentage of a lot that is, or may be, covered by buildings.

(25) "Building Height" means the vertical distance from the grade to the highest point of the coping of a flat roof, or to the deck line of a mansard roof, or to a point midway between the lowest part of the eaves or cornice and ridge of a hip roof.

(26) "Building, Primary" means the principal building or one of the principal buildings upon a lot, or the building or one of the principal buildings housing a principal use upon a lot.

(27) "Canopy" means a roofed structure not completely enclosed by walls supported by structural supports extending to the ground directly underneath and providing a protective shield for pedestrian walkways and/or automobiles. This definition does not include carports.

(28) "Car Title Loan" means taking possession of an automobile title in exchange for consideration or extending a loan. This definition does not include a federal- or state-chartered bank or credit union.

(29) "Carport" means a private garage not completely enclosed by walls or doors supported by structural supports extending to the ground directly underneath the carport.

* (30) "Check Cashing" means cashing a check for consideration or extending a Deferred Deposit Loan and shall include any other similar types of businesses licensed by the State pursuant to the Check Cashing Registration Act. No check cashing or deferred deposit loan business shall be located within 600 feet of any other check cashing business. Distance requirements defined in this section shall be measured in a straight line, without regard to intervening structures or zoning districts, from the entry door of each business. One check cashing or

deferred deposit loan business shall be allowed for every 10,000 citizens living in West Valley City. The term Check Cashing shall not include fully automated stand alone services located inside of an existing building, so long as the automated service incorporates no signage in the windows or outside of the building.

(31) "Church" means a building, together with its accessory buildings and uses, where persons regularly assemble for religious worship, and which buildings, together with its accessory buildings and uses, is maintained and controlled by a non-profit religious body organized to sustain public worship.

(32) "City" means West Valley City.

(33) "City Attorney's Office" means the Law Department of West Valley City.

(34) "City Council" means the City Council of West Valley City.

(35) "City/County Health Department" means the Salt Lake City/County Health Department which is authorized to act as the Health Department for West Valley City.

(36) "City Manager" means the chief executive officer of West Valley City.

(37) "City Recorder" means the West Valley City Recorder.

(38) "Collector Street" means a street which carries traffic from minor streets to the arterial street system, including the principal entrance streets of residential developments and the primary circulating streets within such developments.

(39) "Commercial" means any use involving the exchange, buying, or selling of goods or services for gain or economic profit.

(40) "Commercial Complex" means two or more commercial uses, whether on one lot under one ownership or on several adjacent lots under separate ownership, which are dependent on one another to meet minimum standards for parking, vehicular circulation, or landscaping; or which are approved as elements in an overall site plan under a conditional use or subdivision application.

(41) "Community and Economic Development Department" means the Community and Economic Development Department of West Valley City.

(42) "Community Use" means uses which have the primary purpose of serving the educational, recreational, religious, or governmental needs of the community in general. Such uses may include churches, public and private educational institutions, private non-profit recreation grounds, public parks, public buildings, public facilities, cemeteries, and other similar uses. This definition shall not include detention facilities, half-way houses, alcohol rehabilitation centers, and other similar uses, or buildings that provide lodging or serve as a residence *in addition to the community use.*

(43) "Conditional Use" means a land use that, because of its unique characteristics or potential impact on the municipality, surrounding neighbors, or adjacent land uses, may not be compatible in some areas or may be compatible only if certain conditions are required that mitigate or eliminate the detrimental impacts.

(44) "Conditional Use Permit" means a permit issued by the City outlining the requirements of approval for a conditional use and including written conditions, as well as final, approved development plans, if applicable.

(45) "Condominium" means the ownership of a single unit in a multi-unit project, together with an undivided interest in common in the common areas and facilities of the property. "Condominium" also means "planned unit development" as defined in this Section, except where the context clearly indicates otherwise.

(46) "Consolidated Fee Schedule" means the schedule of fees adopted as Chapter 1-2 of the City Code.

(47) "Convalescent Center" means any commercial establishment where three or more persons suffering from, afflicted with, or convalescing from any infirmity, disease, or ailment are customarily kept, boarded, or housed for remuneration. The term "Convalescent Center" shall include "nursing home," but shall not include hospitals.

(48) "Convenience Store" means any building which contains less than 5,000 square feet of net floor area and which is generally used for the retail sale of prepackaged food, produce and/or other non-food commodities.

(49) "Cul-de-sac" means a minor street with only one outlet and having an appropriate terminal for the safe and convenient reversal of traffic.

(50) "Dairy" means a commercial establishment for the manufacture or processing of dairy products.

(51) "Day Care/Preschool Center" means any facility, at a nonresidential location, operated by a person qualified by the State of Utah, which provides children with day care and/or preschool instruction as a commercial business.

(52) "Dedication of Land" refers to land set aside by the subdivider to be used by the public, such land being conveyed to the City.

(53) "Deferred Deposit Loan" means a transaction where:

- (a) a person presents to a check cashing business a check written on that person's account; and
- (b) the check cashing business:
 - (i) provides the maker an amount of money that is equal to the face value of the check less any fee or interest charged for the transaction; and

- (ii) agrees not to cash the check until a specific date.

(54) "Density" means the number of dwelling units per gross acre of land.

(55) "Development" means any man-made change to improved or unimproved real estate, including but not limited to, buildings or other structures, mining, dredging, filling, grading, paving, excavation, or drilling operations.

(56) "Development Agreement" means an agreement negotiated and entered into by the City and a property owner or developer, pursuant to a proposed development within the City, that shall run with the land and be binding on all successors and assigns of the property owner or developer.

(57) "Development Plan" means all plans, studies, plats, statements, reports and information required by applicable provisions of this Title.

(58) "Director of Health" means the legally designated Director of the Salt Lake City/County Health Department or any representative authorized by such official to act in his or her behalf.

(59) "Dwelling" means any building, or portion thereof, which is designed for residential occupancy, except hotels or motels.

(60) "Dwelling, Single-family" means a building arranged or designed to have one dwelling unit for occupancy by one family on one lot.

(61) "Dwelling, Two-family" means a building arranged or designed to be occupied by two families, the structure having only two dwelling units under one ownership, i.e., duplex, on one lot.

(62) "Dwelling, Three-family" means a building arranged or designed to be occupied by three families, the structure having only three dwelling units under one ownership, i.e., triplex, on one lot.

(63) "Dwelling, Four-family" means a building arranged or designed to be occupied by four families, the structure having only four dwelling units under one ownership, i.e., four-plex, on one lot.

(64) "Dwelling, Multiple-family" means a building arranged or designed to be occupied by more than four families on one or more lots.

(65) "Dwelling Group" means a group of two or more dwellings located on a parcel of land in one ownership and having any yard or court in common.

(66) "Dwelling Unit" means one or more rooms connected together in a structure in which doors and hallways provide shared access to common living facilities, which include provisions for sleeping, eating, cooking and sanitation, for not more than one family.

(67) "Easement" means a non-profitable interest in property owned by another that entitles its holder to a specific use on, under, or above said property.

(68) "Elderly Housing" means residential development designed specifically for the accommodation of senior citizens, such developments

being located in residential zones, and which may exceed the maximum density allowed in such zones.

(69) "Elderly Person" means a person who is 60 years of age or older, who desires or needs to live with other, elderly persons in a group setting, but who is capable of living independently.

(70) "Entrance" means the location of ingress to a room, building or lot.

(71) "Exit" means the location of egress from a room, building or lot.

(72) "Extended Stay Hotel" means a hotel in which provisions for cooking are made in individual rooms or suites, and in which guests stay for more than 30, but less than 180, days.

(73) "Family" means:

(a) Any number of persons living together in a dwelling unit, sharing common living facilities, who are related by blood, marriage, or adoption and including up to three additional unrelated adults for which each unrelated person owning or operating a motor vehicle shall have an off-street parking space, meeting all requirements of this Title, in addition to required parking for the dwelling; or

(b) One to four unrelated adults living together in a dwelling unit, sharing common living facilities, and sharing possession, use, and responsibility of the entire unit and property associated with that unit, whose relationship is of a continuing nontransient domestic character, living as a single, self-governing housekeeping unit, without extensive supervision or control by a non-resident landlord, innkeeper, or property owner, for which each person owning or operating a motor vehicle shall have an off-street parking space meeting all requirements of this Title.

(74) "Fast Food Establishment" means any establishment whose principal business is the sale of foods, frozen desserts or beverages to the customer in a ready-to-consume state and whose principal method of operation includes the following characteristics:

(a) Foods, frozen desserts or beverages are usually served in edible containers or in paper, plastic or other disposable containers;

(b) The consumption of foods, frozen desserts or beverages is not restricted to tables and counters inside the establishment or on a dining patio immediately adjacent thereto; and

(c) The establishment provides drive-in, drive-through and/or walk-up service.

339 F. Supp. 2d 1058, *; 2004 U.S. Dist. LEXIS 15830, **

THE **PAYDAY LOAN** STORE OF WISCONSIN, INC. D/B/A MADISON'S CASH EXPRESS,
Plaintiff, v. CITY OF MADISON, Defendant.

04-0365-C

UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF WISCONSIN

339 F. Supp. 2d 1058; 2004 U.S. Dist. LEXIS 15830

August 5, 2004, Decided

SUBSEQUENT HISTORY: Summary judgment granted by **Payday Loan** Store of Wis., Inc. v. City of Madison, 333 F. Supp. 2d 800, 2004 U.S. Dist. LEXIS 17577 (W.D. Wis., Aug. 31, 2004)

DISPOSITION: **[**1]** Plaintiff's motion for preliminary injunction DENIED.

CASE SUMMARY:

PROCEDURAL POSTURE: Plaintiff business sued defendant, the City of Madison, Wisconsin, alleging that a city ordinance that regulated **payday loan** operations denied the business equal protection of the law and due process. The business moved for a preliminary injunction enjoining enforcement of the ordinance.

OVERVIEW: The business sought to enjoin the enforcement of Madison, Wis., Gen. Ordinance § 23.08, which limited the hours of operation of **payday loan** businesses. The business argued that the ordinance violated the Equal Protection and Due Process Clauses, was unconstitutionally vague, and was preempted by state law. The business failed to show that it was likely to prevail on the merits of its claims, that it would suffer irreparable harm if no injunction issued, that issuance of an injunction would serve the public interest, or that the harm the business would suffer absent an injunction outweighed the harm the City would suffer if an injunction issued. The City could speculate rationally that people emerging from **payday loan** stores at night with large amounts of money would be involved in crime, either as victims or participants. It made no difference whether users of ATM machines, which were not subject to the ordinance, were also targets of robbers. The City might also speculate rationally that a **payday loan** store increased traffic and noise in a particular area. The business did not claim to have been denied any procedural right. The ordinance was not vague or preempted by state law.

OUTCOME: The court denied the motion.

CORE TERMS: payday, ordinance, neighborhood, equal protection, bright lights, state law, injunction, preempted, traffic, night, equal protection claim, classifications, quiet, users, unconstitutionally vague, preliminary injunction, government interest, rational basis, legislating, regulating, rationally, speculate, nighttime, monetary, currency, machines, robbery, enjoin, noise, sited

LexisNexis(R) Headnotes

Constitutional Law > Equal Protection > Scope of Protection
Constitutional Law > The Judiciary > Case or Controversy > Constitutionality of Legislation
HN1 † Legislatures are presumed to have acted constitutionally even if source materials

normally resorted to for ascertaining their grounds for action are otherwise silent, and their statutory classifications will be set aside only if no grounds can be conceived to justify them.

Constitutional Law > Equal Protection > Level of Review

HN2 Under the United States Constitution, the political branches of the Government get to decide what steps to take to advance governmental goals. Their decisions are not subject to review, except in unusual situations, generally involving fundamental rights or suspect classifications. The power to decide, to be wrong as well as to be right on contestable issues, is both privilege and curse of democracy.

Constitutional Law > Equal Protection > Scope of Protection

HN3 Legislation does not violate the Equal Protection Clause just because it does not address every aspect of a particular governmental goal. A legislature may legislate in small increments, taking one step at a time, addressing itself to the phase of the problem which seems most acute to the legislative mind.

Banking Law > Bank Activities > Securities Activities > Nonbank Banks

HN4 See Madison, Wis., Gen. Ordinance § 23.08(2).

Constitutional Law > Supremacy Clause

Banking Law > Bank Activities

Banking Law > Regulatory Agencies

HN5 Even when it comes to banks, which are governed closely by federal and state law, cities retain the authority to determine such matters as where they may be sited, what access they must provide for drivers and walk-in patrons, how tall the buildings may be, etc.

COUNSEL: For City of Madison, DEFENDANT: Michael P May, City Attorney, Madison, WI USA.

JUDGES: BARBARA B. CRABB, District Judge.

OPINIONBY: BARBARA B. CRABB

OPINION: [*1060] ORDER

A hearing was held on plaintiff's motion for a preliminary injunction on August 5, 2004, before United States District Judge Barbara B. Crabb. Plaintiff The **Payday Loan** Store of Wisconsin appeared by Joseph Goode. Defendant City of Madison was represented by Catherine Rottier and Catherine Centrangelo.

Plaintiff is seeking to enjoin the enforcement of Madison General Ordinance § 23.08, entitled "Hours of Operation for **Payday Loan** Businesses" on the grounds that it violates plaintiff's rights to equal protection and due process, that it is unconstitutionally vague and that it is preempted by state law.

Under the Madison ordinance, **payday loan** operations such as plaintiff's must close between the hours of 9 pm and 6 am. Plaintiff contends that the ordinance violates its equal protection rights because it has no rational relation to a legitimate government interest. **[**2]** Plaintiff argues that the city council had no rational basis to distinguish between plaintiff's operation and ATM machines and other business operations that supply cash back as part of a business purchase; if the city's purpose is to reduce the amount of cash so as to reduce the number of robberies, it cannot single out **payday loan** operations from all the businesses that make

cash available at nighttime. Also, plaintiff argues, in saying that it wants to reduce noise and bright lights in residential neighborhoods, the city is discriminating against **payday loan** stores by making them close at night when it has no evidence that these stores generate more light or traffic than other similarly situated businesses.

In order to succeed on its equal protection claim, plaintiff must show that the city council had *no* rational basis on which to conclude that closing **payday loan** stores at night would reduce the opportunity for crime and reduce noise and bright lights in city neighborhoods. ^{HN1}

¶ "Legislatures are presumed to have acted constitutionally even if source materials normally resorted to for ascertaining their grounds for action are otherwise silent, and their statutory classifications **[**3]** will be set aside only if no grounds can be conceived to justify them." *Johnson v. Daley*, 339 F.3d 582, 586 (7th Cir. 2003) (citing *McGowan v. Maryland*, 366 U.S. 420, 6 L. Ed. 2d 393, 81 S. Ct. 1101 (1961); *Kotch v. Board of River Port Pilot Commissioners*, 330 U.S. 552, 91 L. Ed. 1093, 67 S. Ct. 910 (1947); *Lindsley v. Natural Carbonic Gas Co.*, 220 U.S. 61, 55 L. Ed. 369, 31 S. Ct. 337 (1911)).

The standard for evaluating the ordinance is not whether the city's action was the best one it could have taken to reduce crime and keep neighborhoods quiet and free of bright lights; it is whether **[*1061]** the court can imagine any rational explanation for the council's action. If it can, the game is over. ^{HN2} ¶ Under our Constitution, the political branches of government get to decide what steps to take to advance governmental goals. Their decisions are not subject to review, except in unusual situations, generally involving fundamental rights or suspect classifications. "The power to decide, to be wrong as well as to be right on contestable issues, is both privilege and curse of democracy." *National Paint & Coatings v. City of Chicago*, 45 F.3d 1124 (7th Cir. 1995). **[**4]**

The city council could speculate rationally that people emerging from a **payday loan** store with large amounts of money in their pockets would be involved in crime, either as victims of robbery or as customers for illegal drugs or prostitution. Increased crime results in higher demands for police services and a deterioration of the surrounding neighborhood. The city might also speculate rationally that a **payday loan** store increases traffic to a particular area, making it noisier and disturbing the quiet of nearby residences. These are rational reasons for legislating.

^{HN3} ¶ Legislation does not violate the equal protection clause just because it does not address every aspect of a particular governmental goal. A legislature may legislate in small increments, taking "one step at a time, addressing itself to the phase of the problem which seems most acute to the legislative mind." *Johnson*, 339 F.3d at 586-587 (citing *Williamson v. Lee Optical of Oklahoma, Inc.*, 348 U.S. 483, 489, 99 L. Ed. 563, 75 S. Ct. 461 (1955)). Thus, it makes no difference whether plaintiff believes that users of ATM machines are as much targets for robbers as are users of **payday loan** stores or whether **[**5]** other commercial establishments in plaintiff's neighborhood are noisier, have brighter lighting or attract more nighttime traffic.

Plaintiff has advanced a claim of violation of due process, arguing that "due process requires that a statute or ordinance bear a rational connection to a legitimate government interest." *Plt's Br.*, dkt. # 4, at 28. So characterized, plaintiff's claim is no different from its claim of equal protection. Plaintiff does not claim to have been denied any procedural rights to which it was entitled. Because plaintiff is unable to show that it has an equal protection claim, it has *no* substantive due process claim. *Minnesota v. Clover Leaf Creamery Co.*, 449 U.S. 456, 470 n.12, 66 L. Ed. 2d 659, 101 S. Ct. 715 (1981).

Plaintiff's third challenge to the ordinance is that it is unconstitutionally vague. This challenge fails on a reading of the ordinance. Subsection (2) of § 23.08 ^{HN4} ¶ reads, "No **payday loan** business may be open between the hours of 9:00 p.m. and 6 a.m." Plaintiff argues that this

leaves some question whether it may continue to offer its non-**payday loan** services, such as its currency exchange, its notary service, etc. The answer is obvious. It may not **[**6]** offer those services at night within its **payday loan** store without violating the ordinance's requirement that it close its **payday loan** business between 9 and 6.

Finally, plaintiff argues that the ordinance is preempted by state laws regulating **payday loan** operations first, because it requires that no **payday loan** business can be sited within 5000 feet of an existing **payday loan** business and second, because the entire state scheme demonstrates an intent to preempt the field. Plaintiff has not shown that it has standing to challenge the ordinance on the first ground after it has received all of its zoning approvals for its current operation. Moreover, despite what plaintiff would argue, the ordinance does not operate to prohibit plaintiff or anyone else from operating **[*1062]** both a currency exchange and a **payday loan** operation in the same building. It merely prohibits the operation of two separate stores within 5000 feet of one another.

As for the argument that state law preempts the field of **payday loan** operations, plaintiff has not shown that the state has occupied the field of **payday loan** operations so completely that the city is preempted from legislating any aspect of the business. ^{HNS}Even **[**7]** when it comes to banks, which are governed closely by federal and state law, cities retain the authority to determine such matters as where they may be sited, what access they must provide for drivers and walk-in patrons, how tall the buildings may be, etc. Plaintiff has not shown any express conflict between the state laws regulating such matters as rates of interest, permissible charges, and disclosures and the city's regulation of the operating hours of **payday loan** transactions.

I conclude that plaintiff has shown no likelihood that it could prevail on the merits of its claim, I conclude also that it cannot show that it will suffer irreparable harm if an injunction does not issue (because the only harm it has suggested it would suffer is monetary and monetary harm is compensable), that the public interest would be served by the issuance of an injunction or that the harm plaintiff would suffer if the injunction is denied outweighs the harm defendant would suffer if the injunction issued.

ORDER

IT IS ORDERED that the motion for a preliminary injunction filed by plaintiff The **Payday Loan** Store of Wisconsin, Inc., seeking to enjoin the enforcement of Madison General Ordinance § **[**8]** 23.08 is DENIED.

Entered this 5th day of August, 2004.

BY THE COURT:

BARBARA B. CRABB

District Judge




Source: [Command Searching > Federal & State Cases, Combined](#) 

Terms: **payday loans** ([Edit Search](#) | [Suggest Terms for My Search](#))

View: Full

Date/Time: Wednesday, September 21, 2005 - 9:53 AM EDT

* Signal Legend:

-  - Warning: Negative treatment is indicated
-  - Questioned: Validity questioned by citing refs
-  - Caution: Possible negative treatment

17.102.430 Regulations applying to check cashier and/or check cashing activity.

A. Additional Use Permit Criteria. A conditional use permit for any conditionally permitted check cashier and or check cashing activity as defined in Section 17.10.365 of the Oakland Planning Code may only be granted upon determination that the proposal conforms to the general use permit criteria set forth in the conditional use permit procedure in Chapter 17.134, to any and all applicable use permit criteria set forth in the particular individual zone regulations. and to all of the following performance standards:

1. That each check cashier and or check cashing activity be located not less than one thousand (1,000) feet from the nearest check cashier and check cashing activity within the city of Oakland.
2. That each check cashier and or check cashing activity be a minimum of five hundred (500) feet from the following activities, which on the date of an application for check cashier and/or check cashing activity had a vested right under California law to operate:
 - a. Community education civic activities,
 - b. State or federally chartered bank, savings association, credit union, or industrial loan company,
 - c. Community assembly civic activities, or
 - d. Alcoholic beverage sales commercial activities, excluding full service restaurants and alcoholic beverage sales commercial activities with twenty-five (25) or more full time equivalent (FTE) employees and a total floor area of twenty thousand (20,000) square feet or more. (Note that this precludes combining check cashing with alcoholic beverage sales commercial activities because alcoholic beverage sales commercial activities are always considered a primary activity and therefore subject to this distance standard).
3. That each check cashier and or check cashing activity meets the following performance standards and that these performance standards are included as standard conditions of approval. These performance standards may be amended or expanded by Staff and/or the Planning Commission as they are applied to individual locations and projects:
 - a. A lighting plan shall be reviewed and approved by the Zoning Administrator prior to issuing building permits and installed prior to establishing the activity. Exterior lighting shall be provided on all frontages. Such lighting shall be designed to illuminate persons standing outside such that they can be identified fifty (50) feet away. Exterior lighting shall be designed so as not to cast glare offsite.
 - b. Storefronts shall have glass or transparent glazing in the windows and doors. No more than ten (10) percent of any window or door area shall be covered by signs, banners, or opaque coverings of any kind so that law enforcement personnel will have clear view of the entire public area in the premises from the public sidewalk.
 - c. Days and hours of operation shall be, no earlier than 7:00 AM nor later than 7:00 PM Monday through Saturday. Patrons shall be discouraged from loitering prior to, during and/or after hours. At least one no loitering sign with letters at least two inches tall shall be installed and maintained where it will be most visible

to pedestrians on each side of the building in which the activity is located including, but not limited to, street frontages and parking lots.

d. Graffiti shall be removed within seventy-two (72) hours of application.

e. No exterior pay telephones shall be permitted.

f. Litter shall be removed at least two times daily or as needed from in front of and for twenty (20) feet beyond the building along adjacent street(s). All "street furniture" such as crates or mattresses shall be removed daily or as needed.

g. The applicant shall post at least one certified uniformed security guard on duty at all times the business is open. The security guard shall patrol the interior and all exterior portions of the property under control of the owner or lessee including, but not limited to, parking lots and any open public spaces such as lobbies. (Ord. 12626 § 5, 2004)



PLANNING COMMISSION

Department of Urban Planning & Design • P.O. Box 27210 • Tucson, AZ 85726-7210

DATE: February 1, 2006

TO: Planning Commission
Albert Elias

FROM: Albert Elias AICP, Executive Secretary

SUBJECT: Land Use Code Amendment – Pay Day Lending Facilities

Issue – This is a public hearing before the Planning Commission for a *Land Use Code (LUC)* amendment intended to control the number of payday lending facilities operating within the City limits and to be consistent with similar ordinances adopted by Tucson area jurisdictions. Currently the *LUC* does not regulate payday lending facilities.

Recommendation – Staff recommends that the Planning Commission forward this item to the Mayor and Council with a recommendation for adoption.

Background – The proposed *LUC* amendment, addressing payday lending facilities, was presented to the Planning Commission on October 5, 2005 and January 17, 2006. During January 17th study session, staff provided a brief overview of the *LUC* amendment proposed and informed the Commission of the ordinances recently adopted by Pima County and South Tucson. Staff also provided information about similar efforts currently underway by the cities of Phoenix and Glendale. In addition, the Commission requested specific information to be provided for their review.

Surrounding Jurisdictions

The Pima County Board of Supervisors adopted an ordinance on December 6, 2005 that requires a conditional use process for payday facilities. The businesses must be located in the CB-2 (General Business) zone with a separation of 1,320 feet between like businesses and 500 feet from residential zones. A hearing notification area of three hundred feet from the proposed property is also required. On October 24, 2005, the City of South Tucson also adopted an ordinance that limits the concentration of payday facilities by restricting the location to commercial zones and requiring a separation between facilities, as well as a separation between the payday facilities and residential zones.

In addition, the City of Glendale and Phoenix are currently considering ordinances modeled after the Pima County ordinance. The cities of Peoria and Tempe Arizona have had ordinances in place since 2002 and 2005 respectively.

Staff believes that without a similar ordinance, the City of Tucson would likely experience an increasing concentration of these facilities within the city limits due to the restrictive zoning

in surrounding jurisdictions. In addition, the Mayor and Council have directed staff to proceed with an amendment that is consistent with those adopted by Pima County and South Tucson.

Discussion of the Amendment - Staff is proposing an amendment to the *LUC* that is consistent with Pima County and South Tucson and similar to ordinances adopted by Tempe and Peoria to ensure a regional zoning approach.

The proposed *LUC* amendment is provided as Attachment A and includes the following:

- Definition of the use that includes check-cashing services, loans for payment of a percentage fee, deferred presentment and auto title lenders.
- Limits the use to the C-2 and C-3 (Commercial) zones subject to criteria.
- Approval through a special exception process.
- Subject to a separation between facilities of 1320 feet and 500 feet of separation between the facility and residential zones.

Requiring 1,320 feet of separation between facilities and 500 feet between facilities and residential zones reduces the amount of commercial property available for payday lending locations. Staff analyzed the remaining amount of commercial property in the C-1, C-2 and C-3 zones once the separation criteria were applied. The results were: approximately 300 acres or 3% remaining in C-3, 577 acres or 6% remaining in C-2 and 207 acres or 2% remaining in C-1. By restricting payday lending store locations to the C-2 and C-3 zones and requiring approval by a special exception process, the use will be limited but opportunity for locating within the City will be provided. In addition, the City's zoning will more closely match the ordinances adopted by Pima County and South Tucson. Staff believes that the special exception process would be effective particularly to provide an opportunity for public input and with the separation criteria is an effective measure in limiting the concentration of these facilities.

Additional Information – The information that was requested by the Commission at the January 17, 2006, study session is provided below. The Southwest Center for Economic Integrity and the City of Tucson's Intergovernmental Relations Department will make presentations during the public hearing.

- 1) *Data on criminal activity associated with payday lending facilities* – According to the Tucson Police Department a total of four crimes were committed at payday lending facilities in 2005; two burglaries and two robberies. No information is available regarding the affects of payday lending facilities on adjacent properties.
- 2) *Informed response from the legal department regarding this type of ordinance, particularly if this type of ordinance is discriminatory* – This is addressed by the City Attorney's Office. See Attachment B.

- 3) *The reasons for a separation from residential zones* – Requiring a separation between payday establishments and residential zones provides consistency with the ordinances adopted by Pima County and South Tucson as well as other jurisdictions in the Phoenix metropolitan area. The separation further limits the facility locations while allowing ample opportunities for new facilities.
- 4) *The results of inaction* - Staff believes that without a similar ordinance, the City of Tucson would likely experience an increasing concentration of these facilities within the city limits due to the restrictive zoning processes required in surrounding jurisdictions.
- 5) *Is the definition too broad? Does it apply to credit unions?* – This is addressed by the City Attorney's Office. See Attachment B.
- 6) *What is being evaluated in a Special Exception process* – The LUC amendment proposed requires approval through a Special Exception process. This is an administrative procedure requiring a public hearing and approval by the Zoning Examiner in accordance with a Zoning Examiner Full Notice Procedure. The Zoning Examiner evaluates the request according to the following:
 - A. Meets the standards expressly applied by all adopted codes and regulations for that type of land use or for the Land Use Class applicable to the proposed use.
 - B. Does not adversely affect adjacent land uses or the surrounding neighborhood or that such adverse effects can be substantially mitigated through the use of additional conditions.
 - C. Provides for adequate and efficient vehicular and pedestrian access and circulation and vehicular parking.
 - D. Can be adequately and efficiently served by public facilities and services, such as water, stormwater drainage, fire and police protection, and solid and liquid waste disposal and/or collection as may be required by the City or the Pima County Health Department.
 - E. Complies with the *General Plan* and any applicable subregional, area, or neighborhood plan.

In approving an application, the Development Services Department Director or Zoning Examiner may impose such reasonable and appropriate conditions and safeguards as may be necessary to ensure compliance with the criteria for approval. Such conditions and safeguards may also be imposed to reduce or minimize any potentially injurious effects on adjacent properties; the character of the neighborhood; or the health, safety, or general welfare of the community. Such conditions may include, but not be limited to:

- A. Setbacks for structures or activities greater than the minimum required by the applicable zoning district.

- B. Structural or vegetative screening greater than that required by the landscaping and screening regulations of this Chapter to buffer the surrounding land uses from the proposed use.
 - C. Limitations on the height, size, or illumination of signs more restrictive than the applicable requirements of the Tucson Sign Code.
 - D. Limitations on the conduct of the proposed use, such as, but not limited to, hours of operation, or use of loudspeakers or external lighting, as necessary to protect adjacent land uses.
 - E. Dedication of necessary right-of-way for streets, alleys, drainageways, and utilities.
- 7) *Contact any association of Payday lenders* – Staff contacted the Community Financial Services Association of America (CFSA), the national membership trade association that provides services exclusively to the Deferred Presentment industry. CFSA represent approximately two-thirds of this market segment with over 8,000 stores nationwide. According to CFSA representatives, local chapters of the association do not exist and they are unaware of any other similar organizations representing the industry. Information about payday lenders is available at the CFSA website at <http://www.cfsa.net/>
- 8) *Information about what the City will be asking the Legislature.* Staff will present this information from the City's Intergovernmental Relations Office during the public hearing.
- 9) *Information about the bill on Payday Lending before the Legislature* – As of January 13, 2006, four bills are proposed: SB1006, HB2498, HB2330, and HB2546. The last three have not been first read and assigned to committees. Each bill is summarized below.

SB1006 – Establishes requirements for deferred presentment loans to members of the U.S. military or their spouses. The provisions include: prohibiting deferred presentment licensees from garnishing wages, prohibits collection activity during a military member's deployment to combat or during active duty, prohibits a licensee from contacting the member's employer about a deferred presentment debt, prohibits deferred presentment transactions from occurring in locations that the member's commanding officer disallows, binds a licensee to terms of repayment agreement negotiated through a military counsel or third party, requires licensee to provide written statement to a member of the military or the member's spouse stating the prohibited practices, before engaging in the transaction.

HB2546 – Establishes a provision to verbally provide information on fees charged to all telephone inquiries. Establishes that prior agreements be closed for at least 24 hours before the written agreement is executed. Prohibits "roll over" of transactions. Requires the licensee to access a database to verify whether the customer has

outstanding agreements, etc., before entering into another deferred presentment agreement.

HB2498 – Includes the following provisions: 1) a copy of the agreement translated into Spanish shall be provided on request of the customer, 2) that State law allows only one deferred presentment transaction at a time, 3) the customer shall have no other outstanding deferred presentment agreement, 4) customers who are prevented by law from extending an unpaid deferred presentment agreement may enter into a repayment plan.

HB2330 – The bill restricts the accrual of late fees for at least two weeks following the final extension of the presentment or deposit of a check.

- 10) *Information about where such corporations are based* – Staff contacted the Arizona Department of Financial Institutions (formerly named the Arizona Department of Banking) responsible for regulating such establishments. Department representatives reported that many of the payday stores are branches of a larger corporation under the same name (i.e., Ace America’s Cash Express – a branch of Ace Cash Express, Inc.) or are established as Limited Liability Companies (i.e., 1 Stop Check Cashing \$ Payday & Title Loans, LLC, a branch of 1 Stop Check Cashing \$ Payday & Title Loans, LLC).
- 11) *Information about how such facilities affect property values, the quality of life in neighborhoods, and the extent to which this ordinance serves as mitigation* – As indicated by staff, the state legislation exempted short term loans from usury cap have been in place since 2000. Staff is unaware of any local land use studies associated with this particular business. To the extent the new facilities will be regulated and include notice to adjacent property owners as part of the special exception process, there will be greater opportunity to discuss and mitigate any negative impacts associated with this use. The process in and of itself encourages dialogue and assessment of the advantages and disadvantages of these facilities and an opportunity to understand the unique characteristics of each site.

Conclusion – Staff recommends that the Planning Commission forward this item to the Mayor and Council with a recommendation to adopt the attached *Land Use Code* amendment.

AE: AS: GM:JI/s:/CodeRev/Payday/PCPH020106

Attachments:

- A – Draft Amendment
- B – Legal Memorandum



MEMORANDUM

Date: January 20, 2006

To: Planning Commission Board Members

From: Viola Romero-Wright
Senior Asst. City Atty.
X4221

Subject: Payday Lending

The Planning Commission asked that the following questions be addressed regarding the proposed Payday Lending Ordinance.

Issue No. 1: What types of businesses are included in the proposed "Non Chartered Financial Institution" definition?

Answer:

The proposed definition is as follows:

Non-Chartered Financial Institution. A use, other than state or federally chartered bank, credit union, mortgage lender or savings and loan association, that offers deferred presentment services as defined in A.R.S. Sec. 6-1251(3) or check cashing services and loans for payment of a percentage fee. Specifically included are check cashing businesses that charge a percentage fee for cashing a check or negotiable instrument, payday loan businesses that make loans upon assignment of wages received and auto title lenders who offer a short-term loan with a car title as a means to secure the loan.

The term "Non-chartered Financial Institution" covers payday lending services, cash checking services, and auto title lenders. The definition would have no impact on banks, credit unions or savings and loans that are under the charter of federal or state law. See Exhibit A.

Non-Chartered Financial Institutions
Deferred Presentment Services (Payday
Lenders)
Check Cashing Services
Auto Title Lenders

Chartered Financial Institutions
Banks
Credit Unions
Mortgage Lenders
Saving and Loan Association

The definition used in Tucson's payday lending ordinance is modeled after ordinances adopted in Peoria, South Tucson and Pima County. However, other Arizona cities have adopted a more simplified version. For example, Tempe defines payday and auto lenders as follows:

Deferred Presentment Company means a business that engages in a transaction pursuant to a written agreement in which the licensee accepts a check and agrees to hold the check for at least five calendar days before presentment for payment of deposit. These services are commonly known as Pay Day Loans. Tempe ZDC § 7-105.

Auto title loan means a business that operates as a short-term loan company which provides a loan by holding title of an automobile. Tempe ZDC § 7-102.

Tempe prohibits that placement of a deferred presentment company 1,320 feet from the lot line of another deferred presentment company. Likewise, auto title loan businesses are prohibited from being 1,320 feet from the lot line of another auto title loan business.

Issue No. 2: Is this ordinance discriminatory? Can the treatment of payday lending services be legally justified?

Answer:

The decision to focus on one type of use, as opposed to other uses that may have adverse impacts, is a policy decision that is determined by Mayor and Council. Even though other uses may have adverse impacts, the local governing body may choose which use should be given regulating priority. The Planning Commission does not have policy-making authority. The Planning Commission's role is to hold public hearings and makes a recommendation to the legislative body on LUC text amendments.

To succeed on a claim that an ordinance is discriminatory or violates a plaintiff's equal protection rights, a plaintiff must show that the ordinance is not rationally related to any legitimate government goal. In Arizona, local governing bodies have wide latitude in establishing zoning classifications. A zoning classification will be declared unconstitutional if it appears to be arbitrary and unreasonable and without any substantial relation to the public health, safety and general welfare. Arizona courts defer to local judgment in determining the reasonableness of the regulation. *City of Tucson v. Arizona Mortuary*, 34 Ariz. 495, 272 P.2d 923 (1928). Furthermore, there is no requirement that the legislative decision be based upon evidence or empirical data; it may be based on rational speculation. In short, if the zoning regulation is reasonably related to the public health, safety and general welfare is should withstand legal challenge.

Issue No. 3: What are some of the criteria that neighbors could use to address the impacts of this use?

Answer:

Special Exception Land Uses are uses that are not allowed by right within a zone but are permitted if approved through a special exception land use procedure. LUC § 5.3.9. When a use is designated as a special exception land use, there is a recognition that the land use is acceptable but because of its nature and impact is not suitable for every location within a zone. The special exception process protects neighborhoods and prevents negative impacts on the community as a whole.

Therefore, the approval procedures provide objective criteria that insure that the special exception land use does not adversely affect adjacent land uses or surrounding neighborhoods. The Zoning Examiner's findings are identified in LUC § 5.3.9.3 A-E. The Zoning Examiner must find that "[t]he use does not adversely affect adjacent land uses or the surrounding neighborhood or that such adverse effects can be substantially mitigated through the use of additional conditions." LUC § 5.3.9.3 (B).

There are no Arizona cases that address payday lending services; however some identifiable adverse impacts were discussed in *Missouri Title Loans, Inc, v. City of St. Louis Board of Adjustment*, 62 S.W.3d 408 (App. 2002). In the Missouri case, the Board of Adjustment denied a conditional use permit for a title loan company. The Board found that the proposed use would be detrimental to public safety and general welfare and would reduce and impair property values because of additional noise, pollution, traffic (vehicle and pedestrian) and security problems (due to cash on the premises) which the business would generate. The Board's decision was based upon the testimony of nearby neighbors who complained that the title loan use would be similar to a payday loan business in that it would lower property values, create safety issues with the amount of cash on the premises, and it would invite undesirable business invites. The appeals court upheld the Board of Adjustment's decision finding it based upon competent and substantial evidence.

	Supervision		Insurance
Banks	Federal	Office of Comptroller of Currency (OCC)	Federal Deposit Insurance Corporation (FDIC)
	State	Department of Financial Institutions (DFI)	FDIC
Credit Unions	Federal	National Credit Union Administration (NCUA)	NCUSIF
	State	DFI	NCUSIF
Savings & Loans	Federal	Office of Thrift Supervision (OTS)	FDIC
	State	DFI	FDIC