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Payday Lenders' Extortionate Practices Face Consumer Protection Crackdown

By Grace Meador, J.D. Candidate 2016 | February 19, 2015

For many Americans who survive from one paycheck to the next, payday loans are one of the only forms of credit available. However, while providing emergency credit is a vital service, these loans often carry shockingly high interest rates that have drawn increased scrutiny from the Consumer Financial Protection Bureau. In order to finally address these predatory lending practices, the CFPB expects to hand down its first set of federal rules regulating this 46 billion dollar industry in the coming weeks.

Payday loans, also referred to as "cash advances," are generally short-term loans for amounts of $500.00 or less that become due on the borrower's next payday. In exchange for this money up front, lenders often demand direct access to the borrower's checking account or other intrusive assurances of repayment. To make matters worse for the borrower, these loans are typically coupled with exorbitant interest rates ranging from 391% to 521%.

The CFPB, created in the aftermath of the recent financial crisis, has had its eye on these predatory lenders for years, and began holding field hearings on regulating the industry in early 2012. While states have already attempted to clamp down on these lending practices, the lenders, essentially legal versions of classic loan sharks, have proven to be skilled at wriggling out of regulations. Despite outright bans in some states, lenders have prevailed through tactics that include making surface changes to avoid narrowly written laws, playing shell games with licensing, and partnering with Native American tribes to benefit from tribal sovereign immunity. Further, in addition to operating through storefronts, payday lenders are using the internet to avoid state laws.

The new CFPB rules are expected to contain provisions requiring lenders to assess whether or not loans can be repaid on time, as the bureau's studies have historically found that 80% of loans are rolled over or renewed within two weeks. With interest rates topping 300%, it's easy to see how these loans can quickly devour a borrower's livelihood in a matter of months, if not weeks. However, there is still some debate whether certain loans will fall under the rules' stricter underwriting requirements, such as loans backed by car titles and installment loans with similarly usurious interest rates.

Given the potential impact of the new rules, it's likely that their imminent promulgation will lead to a flurry of activity by lenders scrambling to lobby state and national officials for relief. The CFPB should also expect protests from a hostile-to-regulation Republican Congress, some members of which have already called for the CFPB's complete disbandment.