Oklahoma
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Common-tary

Newsletter of Common Cause Oklahoma
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In Memoriam

Lowell H. Betow, a resident of Ponca City, Oklahoma, since 1957, died peacefully on December 11, 2014, at the age of 92. Mr. Betow had been a faithful member of the Common Cause Oklahoma Board of Directors for more than 30 years.

Born in Shakopee MN in 1922, he graduated in 1944 from Colorado Agricultural and Mechanical College (now Colorado State University) in Fort Collins CO with a B.S. degree in chemistry. While there, he played on the varsity basketball team. He married Wanda Fay Lunsford in 1948. They had four children: Beverly, Gary, Joel, and Paul.

Following graduation, Betow was hired as a chemist in the control laboratories division of Conoco's Ponca City refinery. He subsequently worked for Conoco in Artesia NM, Westlake LA, and Houston TX. In 1967 he was appointed Director of Personnel Relations for the Ponca City refinery and continued in that position until his retirement in 1982. During his tenure, he took great care to protect the safety and rights of workers at the refinery.

Lowell was a devoted husband and father. He loved nature, especially the rivers and mountains, and he was actively involved in efforts to save the Illinois River during the 1960s. Throughout his lifetime, he dedicated himself to issues of social justice and open government. In addition to his membership on the board of Common Cause Oklahoma, he served on the boards of Helpline, Peachtree Landing, and the Ponca City Housing Authority.

Lowell H. Betow is survived by his four children, three grandchildren, and three great-grandchildren.

For the Record

Common-tary is a publication of Common Cause Oklahoma. It is intended to inform our members of our activities and concerns. This issue of December 2015 deals primarily with the structure and functions of the payday lending industry in Oklahoma and with efforts nationally to regulate the industry.

The first piece by Richard Hilbert focuses on the provisions of payday-lending legislation in Oklahoma, but also on our concerns for the impact of the corresponding practices on the mainly poor people who avail themselves of the industry's services. It therefore serves as a justification for our efforts to inform our members and citizens generally with respect to the provisions of this legislation in the hope of one day making changes in them. The piece by David Blatt, a long-time advocate for regulating the industry, expresses his particular concerns for the impact of current practices on consumers. The article by Laurie Lucas focuses on efforts at the national level to regulate the industry. The last piece is not concerned with payday lending, but rather with another development which has come to our attention: the exploitation of gamblers for the benefit of both the gaming industry and state legislatures. The poem which follows is by Lowell Betow, whose obituary "In Memoriam" opens this issue of the newsletter. In the poem Betow expresses his thoughts about a concern of Common Cause since its inception: the need for campaign finance reform.

This issue of *Common-tary* was edited and prepared for publication by William Riggan.

REH

Payday Lending in Oklahoma

By R. E. Hilbert

Some years ago I noted that there are undoubtedly lots of poor people who are helped by the existence of payday-lending operations in their neighborhoods. But precisely because they are poor, they are likely to be vulnerable to exploitation if not protected. In our view, public policy should emphasize such protections.

Historically in the U.S. we have done this for the young, the old, the infirm, and those who are mentally unstable, to cite just a few. So why not extend such protections to those whose financial situation makes them easy targets for lenders whose actions too often resemble those of "loan sharks" rather than of responsible public citizens?

Payday lending is an extremely profitable industry, providing a return on investment of 350% APR for a two-week loan, according to a study of the situation in Oklahoma by the Howard University Center on Race and Wealth. This helps to explain why over 300 outlets opened up in September of 2003, the date when payday lending became legal in Oklahoma, and why by 2011 there were 358 such outlets. This figure, moreover, does not include the online firms that have begun to operate in Oklahoma in recent years.

Finally, the Howard University study presents hard data on the Oklahomans targeted by the industry—the elderly, young adults, immigrants, and low-income persons generally—and also on the amount of money involved. In 2011, the average loan was $394.22, with an average fee of $52.94.

What are payday loans? In Oklahoma, they are loans backed by a borrower's personal check. Under current law, a payday lender can charge $15 per hundred dollars advanced for the first $300 and $10 per hundred dollars advanced up to a maximum of $500. The permitted time period for such a loan is a minimum of 12 days and a maximum of 45 days. Rollovers are prohibited.

However, despite the prohibition, it is characteristic of payday lenders to encourage repeat borrowing. As reported in a publication of the Oklahoma Coalition of Consumer Advocates (OCCA), "One national study found that 91% of the payday loans were made to borrowers who took out 5 or more loans per year."

In addition to economic costs, there are important social costs. Borrowers sometimes "get in over their heads" and are simply unable to repay their loans. The result: a ruined credit rating, repeated insufficient-fund charges, and harassment by aggressive collection agencies.

Historically, lending money at excessive rates of interest was called "usury," and although treated critically in the Bible, it is today rarely prohibited by mainline Christian churches. Muslims, on the other hand, may not lend money at any rate of interest or invest in banks and other financial institutions that do so, according to a publication of CAIR, the Council on American-Islamic Relations.

What can be done to curb the more undesirable practices of the industry? This is clearly a political question, the answer to which invariably involves references to the influence of those of us who would regulate the industry on the grounds that vulnerable citizens should be to some degree protected versus the influence of those who oppose such regulations. At the present time, in Oklahoma, power rests with those who oppose such regulations, so we are not optimistic about curbing such practices.

Efforts have been made to do something about the law in Oklahoma. In 2007 Senator Andrew Rice authored a bill that would have restricted borrowers to one short-term loan at a time and mandated a waiting period between loans. It would also have reduced the maximum fee to $10 per hundred borrowed and increased the minimum loan term from 12 to 14 days. At present, Oklahomans can have two loans at the same time, and a waiting period is required only after a fifth consecutive loan. In an effort to gain support for his bill, Rice argued that "we are not going after the industry; we [simply] want to help people protect themselves from making rash decisions [when] in difficult circumstances." Unfortunately, the bill died in committee and was never brought up again.

Changes in the level of regulation are possible, however, and are under consideration in a number of states. Florida recently instituted a one-loan limit, and Oregon caps the interest rate on short-term loans at 36%. The Oregon law is consistent with a federal law which caps the interest rate on short-term loans charged to military personnel at 36%. In our view, Oklahoma should consider similar changes in its payday-lending legislation.

R. E. Hilbert is Professor Emeritus of Sociology at the University of Oklahoma.

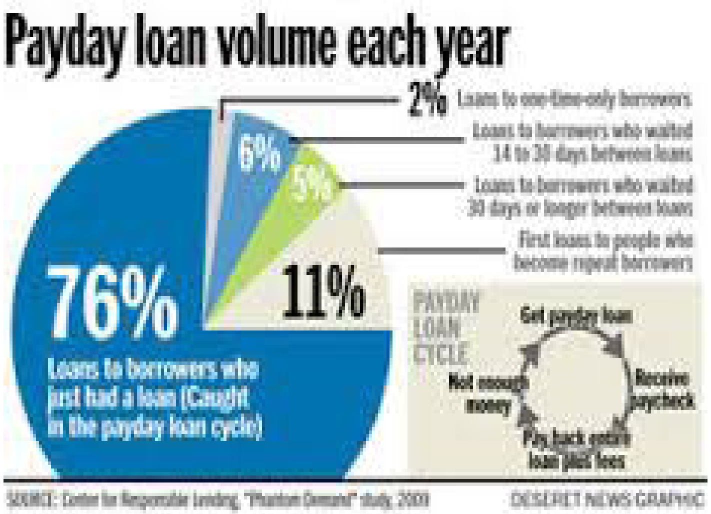
Update on the Federal Regulation of Payday Loans

By Laurie A. Lucas

At the federal level, the Consumer Financial Protection Bureau (CFPB) regulates consumer financial products and services. When the economy collapsed in late 2007, Congress passed the Dodd-Frank Wall Street Reform and Consumer Protection Act, which created the CFPB and consolidated the previously disparate federal regulation of consumer credit. The Dodd-Frank Act, however, did not preempt state regulation of consumer financial products and services, and the CFPB has pursued joint enforcement actions with state attorneys general against lenders. The CFPB also has entered into enforcement actions against regulated lenders with other federal regulators, including the Federal Trade Commission (under the FTC Act), the FDIC, and the U.S. Department of Justice (DOJ).

There are many high-risk consumer products and services in the finance sector that are regulated by the CFPB, including payday loans. The CFPB also regulates other short-term loan products, including deposit advance products (i.e., lines of credit tied to deposit accounts), vehicle title loans, high-cost loans, and loans that are open-ended.

Payday Loans: What are they? Payday loans are generally tied to a consumer's paycheck and require that the consumer give the lender access to the consumer's deposit account, either electronically or by a prepaid check payable to the lender. Consumers then generally receive the loan proceeds in cash, by check, or through a prepaid card. The broader category of short-term installment loans (which may include payday loans) can be structured in a variety of ways, including a longer term than the traditional payday loan. Though terms do vary, most payday loans are for small amounts, consumers may be charged anywhere from $15 to $20 per $100 borrowed, and the Annual Percentage Rate may average around 400% (or more) depending on what is allowed under the consumer's state law. (In Oklahoma, for example, lenders may charge $15 per $100 on the first $300 loaned, then $25 per $100 on loans over $300, with the maximum interest rate allowed on a 14-day loan being 390%.) Payday lenders make loans to consumers through retail brick-and-mortar locations and, increasingly, online.



Online Lending and Native American Tribes. Making payday loans online may allow a lender to avoid state laws that cap the interest rate and other fees charged by lenders. A related phenomenon occurred in the 1990s, for example, when some payday lenders partnered with federally-chartered banks in order to make loans to consumers that were not subject to restrictive state laws (because the federally-chartered bank was regulated at the federal and not the state level). These lenders became known as "rent-a-bank" payday lenders. More recently, some online payday lenders have partnered with businesses owned by Native American tribes, because the tribes are sovereign nations and enjoy sovereign immunity in many instances; it is currently disputed (i.e., it is being litigated) whether these tribal businesses are subject to state laws regulating short-term loans. These lenders have been referred to as "rent-a-tribe" payday lenders and are viewed as taking advantage of economically vulnerable smaller tribes, especially when the business model used by the lender does not require any meaningful involvement from the tribe or its members in the process.

Regulating Payday Lending. Payday lending that exploits sovereign immunity may be ebbing, however, as federal and state regulators are increasing scrutiny in this area. In 2013 the DOJ began "Operation Choke Point," which focused on prosecuting third parties that were affiliated with the tribes, rather than targeting the tribes themselves, thereby avoiding issues related to sovereign immunity. This operation led many financial institutions and other third-party payment processors to stop processing payments for payday lenders affiliated with the tribes. More recently, the DOJ brought charges under the Racketeer Influenced and Corrupt Organizations [RICO] Act against a Pennsylvania payday lender accused of making tens of millions from illegal payday loans. Among the allegations were claims that the lender promised to pay a California Indian tribe a monthly commission (one percent of monthly revenues or $20,000, whichever was greater) and legal expenses if the tribe agreed to appear as the official owner of the business and to assert sovereign immunity if the business was ever investigated. The government has alleged that the tribe had little to do with the daily operation of the business. (Note: there are tribes that own and operate legitimate and legal payday lending businesses, and of course many tribes object to the use of the term "rent-a-tribe.")

The CFPB also has pursued administrative enforcement actions against several online tribal payday lenders. These cases are disputed because the tribes are asserting that they have sovereign immunity and therefore are not required to respond to civil investigative demands. Finally, the FTC and many states (especially New York and California) have brought enforcement actions against online tribal payday lenders under the FTC Act and their state laws, respectively, which also have been challenged by the tribes with claims of sovereign immunity.

This intense scrutiny of short-term lenders at the federal level increased in 2015. EZ Corporation, the sixth largest operator in the payday lending industry, for example, stopped offering payday loans and publicly stated that regulatory pressure was the primary reason. More importantly, the CFPB has begun the rulemaking process to regulate short- and longer-term credit products that are marketed to financially vulnerable consumers. This would include the payday lending industry.

What can be done? The proposals to regulate payday loans, which are focused on "prevention" and "protection," include the following: changing the definition of covered loans to capture more of the products being offered, as many are longer than the traditional 14-day loans; requiring lenders to determine a consumer's ability to repay the loan, including interest and fees, when the loan is made and/or refinanced; restricting the number of loans issued in any 60-day period; limiting the consumer's ability to "roll over" loans consecutively; capping the loan amount and other finance charges; prohibiting the use of a consumer's vehicle as collateral for a loan (vehicle title loans); requiring a lender to notify a consumer before accessing the consumer's deposit account; and, in an effort to limit overdraft fees and the like, limiting to two the number of times a lender may attempt to collect money from a consumer's deposit account. At this writing, the CFPB is still in the informal stages of the rule-making process. Plans have been announced, for example, to gather feedback from small lenders and others in the industry. After consulting with all stakeholders, the CFPB will then issue proposed regulations, followed by a public comment period. After considering all feedback, and after the close of the formal comment period, the CFPB will issue formal regulations. The rule-making process likely will be lengthy, given the complexity of the industry's structure and related issues.

Further information about payday loans, and other consumer finance products and services, may be found at the CFPB's website: http://www.consumerfinance.gov/

Laurie A. Lucas is Associate Professor of Legal Studies and William Spears Chair in Business Administration at Oklahoma State University.

Payday Loans: Myths and Reality

By David Blatt

With the holiday season approaching, many Oklahomans are worrying about how they can cover their bulging shopping lists on already-thin budgets. Some will be tempted to take out payday loans, high-interest short-term loans that are available from hundreds of stores in strip malls and on street corners across Oklahoma. Despite the promise of a quick fix to their financial shortfalls, these hard-pressed consumers would be well advised to think twice and stay away from the payday-loan quagmire.

The industry case for payday loans was stated in a commentary by Tom Lehman, a professor at Indiana Wesleyan University, that ran on NPR's "MarketPlace Money." Responding to widespread concerns about the high cost of payday loans and their tendency to trap borrowers on a treadmill of debt, nearly half of all states have either prohibited payday loans (fifteen states) or enacted tight limits on fees and loan usage (eight states), according to a 2012 report by the Pew Charitable Trusts.

In arguing against restrictions on payday lending, Prof. Lehman stated, “You do not help marginal borrowers by laying out their available options and then eliminating by regulation the one they actually choose.” However, his defense of payday lending is based on several major errors and mischaracterizations.

Myth #1: The typical payday loan fee is $25. Prof. Lehman claims fees for payday loans are “typically $25 per transaction.” In reality, the average fee on a payday loan in Oklahoma is more than twice that–$52.94, according to the state’s deferred deposit loan database. A borrower taking out the maximum allowable loan of $500 will be charged $65 for a loan of as short as twelve days. That equates to an Annual Percentage Rate of 395%.

More significantly, the average borrower takes out seven loans over the course of a year, which means he or she incurs annual fees of $370. Over the the most recent twelve-month period for which data are available, Oklahomans took out over one million payday loans and paid out $54.3 million in fees.

Myth #2: Most borrowers use payday loans for unexpected emergencies. Echoing the official industry line, Prof. Lehman asserts that payday borrowers who take out multiple loans are “almost always” confronted by “unexpected financial emergencies, like surprise medical bills or car repairs.” Actually, most of the borrowers surveyed in the Pew Study said they used payday loans for recurring expenses, not emergencies. More than two in three payday

borrowers–69% to be precise–used their initial payday loan to cover recurring expenses like utilities, car payments, credit card bills, rent, or food. Just 16% used a payday loan for an unexpected emergency expense.

The fact that most borrowers turn to payday loans to deal with recurring expenses explains the pattern of repeat and chronic borrowing associated with most customers. In Oklahoma, about 75% of loans go to borrowers who take out nine or more loans over the course of a year, and a full 50% average at least one loan every single month. Struggling consumers turn to payday loans because they find themselves without enough money to make ends meet. While many first-time borrowers assume a payday loan will provide a one-time fix, the reality is that few borrowers’ financial problems have been resolved by the time the loan comes due two weeks later. Spurred on by ‘helpful’ lenders, borrowers take out a second loan to pay off the first, and then a third and a fourth; it’s like burning your furniture to heat your house. The typical Oklahoma payday loan borrower ends up indebted for 212 days of the year.

Myth #3: Payday loans are the best recourse for borrowers with no other options. Prof. Lehman refers to payday loans as a vital credit option “for households with no other recourse for loans”—i.e., for people who would otherwise be faced with bank overdraft charges, late fees, and disconnect penalties from utilities. In reality, most payday borrowers have less expensive options. The

Pew Survey asked borrowers what they would do if faced with a cash shortfall and payday loans were unavailable. Eighty-one percent said they would cut back on expenses, 62% would delay paying some bills, 57% would borrow from family and friends, and 57% would sell or pawn personal possessions. None of these alternatives is likely to lead to large, recurring fees as borrowers take out successive high-cost loans. What's more, taking out payday loans fails to avert the worst financial outcomes–research finds that payday borrowers are more likely to become delinquent on their credit cards, pay other bills late, and get hit with bank overdraft fees.

One argument against restricting payday loan stores is that desperate consumers will turn to online payday lending, which is largely unregulated and even more expensive. Yet comparing usage in states with permissive and restrictive laws, Pew was able to conclude that in states that restrict payday lending, 95 out of 100 would-be borrowers elect not to use payday loans at all; just five borrow online or elsewhere.

The Pew report found that more Oklahomans turn to payday loans than do residents of any other state. Rather than swallow the myths, Oklahoma policymakers need to look at the reality of payday lending and adopt strong reforms that will protect Oklahoma consumers.

David Blatt is Executive Director of the Oklahoma Policy Institute.

" USURY?! AROUND HERE WE PRONOUNCE IT USUR-AH "

Predatory Gambling

By R. E. Hilbert

In a piece I wrote recently, I argued that public policy with respect to the payday lending industry should include protections for the vulnerable, adding, "Historically in the U.S. we have done this for the young, the old, the infirm, and those who are mentally unstable, to cite just a few. So why not extend such protections to those whose financial situation makes them easy targets for lenders whose actions too often resemble those of 'loan sharks' rather than of responsible public citizens?"

The target in that piece was the vulnerable poor. And this is still the case for the thousands of store-front operations in depressed neighborhoods throughout the 36 states that permit payday lending operations. There are now more such operations in those states than there are McDonald's franchises. Taken together, they are a $46 billion industry with a great deal of political clout.

A recent development suggests that the gaming industry is equally predatory, in that it has moved its operations out of destination resorts and into malls and riverboats, closer to middle- and working-class customers. And state governments are involved because of the revenue the industry produces. In the *Washington Post* of July 9, 2015, Michael Gershon argued:

> State governments raise money by taxing revenues generated by slot machines that are really sophisticated computers, designed to encourage players to enter the "zone" and play "to extinction." Compulsive behavior is the intended goal of the software program, and thus the intended goal of state legislators who would rather encourage addiction than ask the broader public for taxes.

Let's hope Oklahoma legislators will choose not to participate in this development. They should not be in the business of treating citizens as marks and dupes.

R. E. Hilbert is a Professor Emeritus of Sociology at the University of Oklahoma. He is a longtime member of CCOK's Board of Directors and currently serves as the organization's Treasurer.

A Poem

We talk about our freedom
And sing of the land we love.
We claim to have democracy
Blessed by the One above.

But something wrong has happened,
Our system has gone astray.
The people we're electing
Are corrupted the wrong way.

Millions used for campaigning
Came from a privileged few.
They buy special access
Denied to me and you.

Government of the people,
By them and for them too,
Is no longer working.
Big money runs the crew.

The ordinary citizens,
Those called you and me,
Must reform the system
And take back our liberty.

Join the fight for the land we love.
Don't let money be king.
Get the word to your Congressman,
Once more let freedom ring.

Whoever blocks campaign reform
Is not the people's voice.
Remove from Congress every one
Who thwarts the public's choice.

—Lowell Betow, 1997

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Name on card: ____________________ Exp.Date: Month _____ Year _______

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