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Payday Blues

The payday loan industry wins again

by G.W. Schulz

In a strip center on the north side of the 3300 block of E. 51st St. South is a shuttered payday loan vendor--a rare sight since Oklahoma authorized payday lenders to do business in the state two years ago.

The only thing left is the company's corporate logo on the glass door and signage above the shop.

It's called Federal Cash Advance and a caterer who works next door at Bodean's Seafood, Brian Prewitt, says the place rarely seemed to do business. He often saw the employees playing cards to pass the time.

"They were always pushing their employees to go out and put flyers in the neighborhoods. 'Come borrow money from us!'" Prewitt said.

The company has dropped from nine locations to seven across the state--a phenomenon opposite of what the nation's largest payday lenders have experienced.

When we reached a company manager, the man refused to speak with *Urban Tulsa Weekly*, or give us his name. But, he said the store had been sold. A location in Broken Arrow is closed as well.

In the same strip center just a few doors down is another payday loan location called Advance America, the country's largest payday advance provider, which earned more than half a billion dollars in total revenue last year and is founding member of the Community Financial Services Association, the payday loan industry's representative organization.

Advance America is also the most ubiquitous in Tulsa with 16 locations locally and 2,400 nationally in 34 states. The company opened 469 new centers across the country in 2004 alone. It's one of the 10 largest companies doing business in Oklahoma, accounting for 73 percent of payday loan locations across the state.

Payday lenders offer short-term, high-interest loans mostly to poor folks needing a quick infusion of cash "to bridge a short-term cash crunch between paydays, without incurring a revolving debt," Advance America's Web site states.

But numbers compiled by the state's Department of Consumer Credit and released in June show typical borrowers are taking out loans at an alarming rate, either to recover from previous loans or as a response to life's little unexpected monetary emergencies--a whole bunch of them if you're chronically poor.

Most customers took out a median number of nine loans of between \$400 and \$500 during the last recorded one-year period. But, at the higher end of the scale, nearly 900 Oklahomans took out an astounding 30 or more loans. Lower-end borrowers brought the total average loan to about \$300 each, DDC numbers show. The average fee for individual loans was about \$45.

The number of transactions were steadily climbing as of May, reaching near December's peak levels and giving new meaning to the phrase "Christmas in July."

In order to obtain a loan, the customer brings a pay stub along with ID, a bank statement and a post-dated check for the amount of the loan plus interest, and receives up to \$500, a state-mandated cap. The borrower then has generally 12 to 14 days to pay the loan back or the lender cashes the check and the borrower's bank account presumably has enough money in it from a recent paycheck to cover the amount or it bounces.

State limits place the lending fees Advance America and others can charge at \$15 per \$100 on the first \$300 and \$10 for each additional \$100. The cap is \$65 for a \$500 loan.

The annualized interest rate on such loans, however, can climb to more than 450 percent.

Nearly 100,000 Oklahomans took out at least one payday loan during the last year totaling more than 700,000 transactions.

Boomer Sooner Cash

Federal Cash Advance, however, is a curiosity in the industry because it was founded in part by Barry Switzer, the local football hero and revered coaching legend once at the helm of the championship Sooners.

Switzer had campaigned heavily for Brad Henry's 2002 run for the Governor's mansion. When Switzer later decided to pursue the seemingly profitable business venture of payday lending with a group of partners, he lobbied Henry by telephone to support the legislation, which by then had made its way through the House and Senate in a contentious battle between the payday loan industry and anti-poverty advocates. He even contributed \$5,000 to Henry's campaign, state records show.

In an ad circular, Switzer is grinning assuredly in a Sooners polo-style shirt, championship ring on his finger, with a caption next to him over a clip art dollar sign reading "We make any day a payday!"

How could you help but take out a loan with an enormously high interest rate from the man who more than once took the Sooners to the Orange Bowl?

State law actually prohibits Switzer from making any day a payday. Nonetheless, Switzer's "deferred deposit" lending outfit is somewhat of an anomaly. Most of the lenders who poured into Oklahoma following the passage of Senate Bill 583 in 2003, known as the Oklahoma Deferred Deposit Lending Act, are based out of state.

Tulsa has 69 locations owned by out-of-state companies of the 75 or so total stores in the city registered with the DCC. The handful of locally owned storefronts are in Muskogee and on South Peoria. In fact, Federal Cash Advance was incorporated with a Texarkana, Texas address, according to state records.

The overall number of payday lenders in Oklahoma swelled dramatically after legislators passed 583, now numbering 440 locations since the law took effect. Approximately 40 locations opened between April and May alone.

The bill was pitched by supportive lawmakers, the payday loan industry and its lobbyists as a consumer protection effort intended to safeguard burrowers in need of quick cash and simultaneously allow lenders to offer loans and profit from their efforts without too burdensome of a regulatory scheme.

"It simply was to provide a lending opportunity for individuals who do not otherwise have access to capital," said Sen. Angela Monson (D-Oklahoma City), who authored the bill. "We've got safeguards in. Our law has been a model around the country. It protects the consumer and provides an opportunity for consumers to have access to capital at a fair rate, (and) it's cheaper than bouncing a check."

But the bill was also a deregulatory measure that enabled the industry to conduct business in Oklahoma without having to circumvent the law, which it did prior to the passage of Senate Bill 583.

Before 583, companies that offered multiple services, like Cash America International, Inc., which many Tulsans might know as a chain of pawn shops, would broker payday loans for customers, at least on paper, with a chartered, out-of-state bank that Oklahoma law couldn't touch.

The pawn shop, and now payday loan company, would form a partnership with that bank in which Cash America "marketed" the bank's loan services to its customers, each partner contributing to the amount the borrower received, and part of the revenue generated from loan fees would then enter the pockets of Cash America.

In other words, you were technically taking out a loan from a bank in another state outside of Oklahoma's jurisdiction, but Cash America was earning a sizeable cut of the interest you paid on the loan.

Steven Schlein, an industry representative for CFSA, said the arrangement was not unlike what credit card companies offer their customers through individual banks and said that no required ratio amount of investment between banks and lenders had been established.

"Creating this is a job for legislators or for Congress to decide what constitutes a bank partnership," Schlein said.

But a Georgia government commissioner critical of the arrangements began investigating Advance America and its related lending practices in 2002. The state eventually passed a law prohibiting payday lenders altogether.

The company still faces lawsuits in three other states alleging Advance America is the "true lender" and not its bank partner, according to company records. Texas-based Ace Cash Express, Inc. settled a similar suit in 2003 in its home state for \$5 million. Cash America is currently facing such a suit in Georgia, and another in Florida for alleged usury, i.e. charging an illegally high rate of interest on borrowed money. But ultimately, it seemed to be in Cash America's best interest to cut out the bank's portion of the profits and do away with the partnerships.

It was a back-door approach that could only be locked shut, Cash America told the Legislature, if lawmakers passed a "regulatory" bill permitting them to do business in Oklahoma a little more legitimately.

Lawmakers agreed, but the reasoning had to be expanded to ensure it would be digestible for everyone including opponents, voters, the industry and its competitors. The payday loan industry is not unaware of its image.

Sen. Monson, known for her consumer advocacy and diligent work on behalf of her generally lower-income Oklahoma City constituents, argued payday lending would give consumers additional options for small emergency loans beyond what were already permitted in

Oklahoma--"supervised loans," or B-Loans that were regulated under an entirely separate section of state statutes, which her own sister had fallen victim to.

Payday loans are cheaper than a bounced check, she reasoned. In the face of competition, B-lenders would possibly offer more reasonable interest rates, and many of them, she said, have already begun payday-loan style offers to customers.

"If you can't go to the bank or the credit union and get a loan and you need a loan, I think it does our people a disservice to say, 'No, sorry'" Monson said. "Banks charge you more if you've got poor credit. It's the nature of the financial industry."

Payday loans are an option for those who can't access credit cards. They give instant cash to the poor during tough times, and no one can tell when the worst might happen, when medication, groceries, clothes or school supplies might need to be purchased.

But as an altogether independent industry, B-lenders offer low-income borrowers up to \$760 with a maximum annualized interest rate of 240 percent, capped by state law. While payday loans tend to be extremely short-term, generally 12 to 14 days allowed before the loan must be paid back, and tend to be smaller in terms of the actual amount loaned, B-lenders are required by state law to offer 30 to 60 days for repayment of a loan.

In some very important ways, however, B-lenders face fewer restrictions. They can offer as many outstanding loans to a single customer as they wish, for instance. Monson hoped to at least increase the number of loan options for her constituents.

Politics and Sausage Making

Here's where it gets messy.

While it seemed in the best interests of the B-lenders to keep payday lenders out of Oklahoma, they remained noticeably quiet as Monson declared she could not get the payday loan legislation passed unless she ceased discussion of imposing upon B-lenders similar restrictions the payday lenders faced. Taking the B-lenders on directly was impossible, she said, due to their considerable power.

The payday loan industry maintains that it would still prefer even-handed competition.

"We always say we want to compete with anyone who wants to compete," Schlein of CFSA

said. "Let's all compete under the same rules. We have competitors working behind the scenes in a lot of states trying to hurt us. Create an even playing field and we'll compete."

Oklahoma law also doesn't require B-lenders to give customers a "cooling off" period in between loans that might feasibly help prevent quick submersions into debt. And the B-lenders are not required to participate in the Consumer Credit Department's database created from a payday-loan reform bill passed last year that keeps track of short-term, loan-related debt.

The payday lenders fall under those restrictions, which the industry cited to show it was attempting to work in the best interests of consumers.

"We want regulations that keep us in business, that don't overburden us with too much regulation and make it unprofitable and put us out of business, but that are fair consumer protections," Schlein said.

A memo sent out by Monson and co-sponsor Sen. Rick Littlefield (D-Grove) to colleagues prior to the vote on 583 explaining just how heavy the regulatory measures were almost exactly parallels another sent out by McSpadden & Associates, one of the industry's top lobbyists at the Capitol Building.

Another memo circulated to legislators by Clayton Taylor, a lobbyist for Cash America, stated that without 583, the law "restricts competition and does not serve the market."

But after deals were made designating both industries to separate sections of the statutes to ensure the B-lenders would remain quiet on the matter, state law limited competition, in a sense, by enabling the two industries to offer different services to cash-strapped consumers.

"In other words, they added these payday loans and did nothing with the B-loans," said David Blatt, director of public policy for the non-profit consumer advocacy group Community Action Project in Tulsa, which lobbied heavily against the payday lenders. "So now you have two products. Different lenders. Different licensing regimes. Different regulations. Now people who run into problems with payday loans can still go out and start borrowing from B-lenders and people who run into problems with B-lenders can go to payday loans. They've just added another product to the market."

Taylor's memo also noted interestingly that the law prior to 583 "leaves the market to out-of-state interests." The memo included Cash America's letterhead with its corporate address in Fort Worth, Texas.

Senate Bill 583, nonetheless, passed the Legislature 98 to 43 and was signed by the Governor

despite the best efforts of vocal critics.

The *Tulsa World* later fervently editorialized against the “nightmare law.”

“The addictive nature of these loans and their extremely high interest rates discourage all but the most desperate and vulnerable customers,” the *World* opined. “The Legislature and Governor succumbed to a high-dollar lobbying effort waged on behalf of the out-of-state lenders and enacted the law having been warned what was coming.”

A bill of intended reforms appeared the following year, which included tightening caps on fees the payday lenders charged, manifested eventually as Senate Bill 1565. But for each reform proposed in the bill’s initial drafts, it seemed, other portions were weakened as a peace offering to the industry and its active lobbyists, such as allowing the industry to require loan repayment within 12 days instead of 14 days.

Discussion of reining in the B-lenders failed in that bill, as well. But the bill did require that after a fifth consecutive loan, in which the consumer takes out a new loan immediately after paying off another, the consumer must wait 24 hours. The lenders must also now offer the option of a payment plan for the third, fourth and fifth consecutive loans giving the customer more time to pay up before the loans become a quick cycle of debt.

And the legislation, which eventually passed, did ban payday lenders from offering more than two outstanding loans at the same time. But a Muskogee bankruptcy attorney named Mark Bonney told us that nearly every case he sees that involves short-term, high-interest loans includes four outstanding--two for each spouse.

“Show me a family that can afford four and I’ll show you a family headed for bankruptcy,” Bonney said. “Maybe they can afford two--that would be one per adult--but seriously I doubt even that.”

Nevertheless, memos weren’t entirely enough to promise clout for the industry and its lobbyists throughout the debate on the two bills. The effort to introduce payday lending in Oklahoma was indeed high-dollar.

Following two trips to Oklahoma City, state records reviewed by *UTW* showed the payday loan industry and its lobbyists have contributed at least \$32,000 since 2000 to the campaigns of key legislators, including leaders of the House and Senate, authors of the payday lending bills, and the governor. (See sidebar for details.)

Gov. Brad Henry received more than \$14,000 during that time, \$3,000 of which came directly

from the industry and two of its top executives. That number is in addition to the \$5,000 Switzer gave.

Sen. Jeff Rabon (D-Hugo), chair of the Finance Committee when it reviewed the initial payday lending legislation, received \$500 from Cash America this year. Rep. Bill Nations (D-Norman), a co-sponsor the Deferred Deposit Lending Act along with Sen. Monson and a subsequent vocal supporter of its passage, received \$1,000 from Cash America during that time.

Monson received \$1,500 from industry lobbyists. CFSA also paid an undisclosed amount to become a "Platinum Plus" sponsor of a 2003 black caucus gala, of which Monson was then chair.

The industry's lobbyists, registered with the state Ethics Commission, generally contribute to candidates across the board to maintain general influence and communication with lawmakers. The list of lobbyists includes Clem and Bart McSpadden and Jamie Longacre of McSpadden & Associates, which represented CFSA, and Clayton C. Taylor and Spencer W. Guinn, who represented Cash America.

To be sure, payday lending opponents gave to lawmakers as well. Blatt of CAP gave a token \$50 to Monson's re-election campaign in 2002. But the two had a falling out over the issue, which riled other of her supporters as well. He even once worked on her Senate staff and had considered himself "a great admirer of her work as a legislator prior to her decision to carry these bills in 2003 and 2004," he told us in an e-mail.

But Monson has steadfastly defended her decision.

"I still consider myself a protector of those who have no voice, an advocate for those who have no opportunity," Monson told the *World* in 2003, calling attacks on CFSA's black-caucus sponsorship "tacky."

"But there is a realization out there in the real world that not everyone has plus credit, not everyone when they are in need of some financial assistance can wander to their bank or credit union and say, 'I need a line of credit,' or, 'I need a short-term loan,'" she said.

The issue of payday lending appeared again during the 2005 legislative session when industry critics attempted to introduce a new list of reforms.

Sen. Judy Eason McIntyre (D-Tulsa) drafted Senate Bill 892, which, among other things, would

have barred lenders from garnishing military wages or salary from soldiers who borrow. Press accounts over the last two years have shown that military personnel and their families have come to depend heavily on the lenders, which often open numerous locations near bases.

Her bill also would have lowered the amount in fees lenders can charge, as well as extend the amount of time by two days that borrowers have to pay. McIntyre voted in support of the industry in 2003, but has since declared that her vote was a mistake.

Regardless, Senate Bill 892 never made it to an initial hearing by the Finance Committee, because the committee chair, Sen. Jay Paul Gumm (D-Durant), wanted to give the law "some time to work" and did not want to "stir up that hornet's nest again," CAP's Blatt told us.

Coincidentally, Gumm received \$500 from Cash America earlier this year.

The industry still resents suggestions that it takes advantage of consumers and decries the use of the word "predatory."

Schlein of CFSA said the industry wants to work with lawmakers to ensure consumer safeguards, filter out bad actors and protect its right to earn a profit.

"Our customers are trying to avoid the high fees charged for bouncing checks or overdraft protection for missing a rent check or utility payoff," he said. "They look at our fees and consider the \$15 fee on a \$100 loan to be a good choice. Obviously, it's a growing industry and the customers are preferring it."

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Payday at the State Capitol

State records reviewed by Urban Tulsa Weekly show that since 2000, the payday loan industry and its lobbyists have given at least \$32,000 to the campaigns of key legislators, including leaders of the House and Senate, authors of the payday lending bills, and the governor.

Cal Hobson was President Pro Tem of the Senate when 583 was being considered; Larry Adair was the House Leader. Rep. Bill Nations co-sponsored the bill.

Sen. Jeff Rabon was at that time chair of the Senate Finance Committee (he still

sits on the committee). Sen. Jay Paul Gumm is the current chair. Rep. Debbie Blackburn was then chair of the House Finance Committee.

Industry lobbyists registered with the state Ethics Commission include Jamie Longacre and Clem and Bart McSpadden of McSpadden & Associates, which represented Community Financial Services Association, and Clayton C. Taylor and Spencer W. Guinn, who represented Cash America.

The contributions to legislators and the Governor from the loan industry and its representative are as follows:

Bill Nations (D-Norman)

Cash America: \$1,000

Lobbyists: \$750

Federal Cash Advance partner Barry Switzer: \$100

Federal Cash Advance President Jeff Smith: \$100

Federal Cash Advance partner Robert White: \$100

Gov. Brad Henry

Cash America: \$1,500

Ace Cash Express President Jay B. Shipowitz: \$750

American Check Cashers owner W. Cosby Hodges: \$750

Lobbyists: \$6,250

Barry Switzer: \$5,000

Rep. Debbie Blackburn (D-Oklahoma City)

Lobbyists: \$1,450

Sen. Jeff Rabon (D-Hugo)

Cash America: \$500

Lobbyists: \$250

Sen. Cal Hobson (D-Lexington)

Lobbyists: \$3,750

Sen. Angela Monson (D-Oklahoma City)

Lobbyists: \$1,500

Sen. Jay Paul Gumm (D-Durant)

Cash America: \$500

Lobbyists: \$4,050

Rep. Larry Adair (D-Stillwell)

Lobbyists: \$1,500

Sen. Littlefield (D-Grove)

Lobbyists: \$550

