

Online Lending and the Integrity of the Banking System: Behind the Heated Rhetoric Over “Operation Choke Point”

BY NICK BOURKE¹

“Operation Choke Point” began in 2012 as an initiative of the U.S. Department of Justice, to “attack Internet, telemarketing, mail, and other mass market fraud against consumers,” in furtherance of “the goals of the Consumer Protection Working Group of the Financial Fraud Enforcement Task Force [FFETF], which has prioritized addressing third-party payment processor involvement in consumer fraud by choking fraudsters’ access to the banking system.”² The Department of Justice has announced three cases under the initiative so far, each involving allegations of illegal activity and misuse of the electronic payments system.

Critics have denounced “Operation Choke Point” as an abuse of government power, calling it “an organized attempt by the administration, the FDIC and the Department of Justice to bully and intimidate financial institutions so they won’t offer financial services to certain licensed, legally operating industries the government doesn’t like in an attempt to choke off those industries from our country’s banking system.”³ Others have dismissed

such claims as pandering to industry interests or even “whitewashing fraud.”⁴

Still, the idea of preventing and punishing fraud is not controversial, as even advocates for some of the affected industries have acknowledged.⁵ Behind the heated rhetoric about “Operation Choke Point” lies a simple truth: American consumers have lost millions of dollars to unscrupulous merchants and fraudsters who have abused the electronic payments system to gain access to their accounts.

Online lenders—specifically, the majority group of online payday lenders that do not obtain licenses in each state where they lend—are strongly implicated in cases involving consumer fraud and abuse of the banking system. In addition to the “Operation Choke Point” cases, online lenders

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(or those exploiting information obtained from online lenders or lead generators) have been the target of numerous state and federal complaints. Research shows that fraud and abuse are widely associated with online lending—and borrowers say they have experienced a variety of associated problems, including unauthorized withdrawals (32% of all online payday borrowers), threats (30%), and being contacted about debts they did not owe (32%).

This article summarizes the unique problems associated with online payday lending and highlights two risk factors that banks and their regulators should monitor for any online lender: (1) if the lender lacks a license for each state in which it lends; and (2) if the lender experiences an unusually high rate of returned electronic debits.

Additional problems, such as the easy availability of sensitive consumer data via the online loan lead generation system, suggest other ways that today's banking system enables fraud and abuse.

“Operation Choke Point” Cases Focus on Preventing Fraud and Abuse

It is worth quoting FFETF Executive Director Michael J. Bresnickat at length about the purpose of the Justice Department's “Choke Point” investigations:

[T]he Consumer Protection Working Group has prioritized the role of financial institutions in mass marketing fraud schemes—including deceptive payday loans, false offers of debt relief, fraudulent health care discount cards, and phony government grants, among other things—that cause billions of dollars in consumer losses and financially destroy some of our most vulnerable citizens.

* * *

Our prioritization of this issue is based on this principle: If we can eliminate the mass-marketing fraudsters' access to the U.S. financial system—that is, if we can stop the scammers from accessing consumers' bank accounts—then we can protect the consumers and starve the scammers. This will significantly reduce the frequency of and harm caused by this type of fraud. We hope to close the access to the banking system that mass marketing fraudsters enjoy—effectively putting a chokehold on it—and put a stop to this billion dollar problem that has harmed so many American consumers, including many of our senior citizens.

Sadly, what we've seen is that too many banks allow payment processors to continue to maintain accounts within their institutions, despite the presence of glaring red flags indicative of fraud, such as high return rates on the processors' accounts. High return rates trigger a duty by the bank and the third-party payment processor to inquire into the reasons for the high rate of returns, in particular whether the merchant is engaged in fraud.

Nevertheless, we have actually seen instances where the return rates on processors' accounts have exceeded 30 percent, 40 percent, 50 percent, and, even 85 percent. Just to put this in perspective, the industry average return rate for ACH transactions is less than 1.5%, and the industry average for all bank checks processed through the check clearing system is less than one-half of one percent. Return rates at the levels we have seen are more than red flags. They are ambulance sirens, screaming out for attention.⁶

Sure enough, the three Department of Justice settlements that have been attributed to “Operation Choke Point” have focused squarely on preventing consumer fraud and abuse of the banking system.

In the Four Oaks Bank case in 2014, the Department of Justice alleged that the bank facilitated an illegal scheme to take money from consumers' bank accounts, by providing payment system access to a third-party payment processor that served fraudulent merchants, including "large numbers of Internet payday lenders that engaged in fraud against borrowers."⁷ The Department of Justice contended that the bank knew or was willfully ignorant to its facilitation of a scheme to defraud consumers that resulted in millions of unauthorized debit transactions being charged to consumer bank accounts, and charged that the bank failed its obligations under federal law to prevent such unlawful activity from occurring in the national banking system.⁸

In its Four Oaks Bank complaint, the Department of Justice identified 13 payday lenders with return rates exceeding 30 percent, meaning at least that share of attempted customer account debits were being returned unpaid.⁹ By comparison, the national average return rate for electronic Automated Clearing House (ACH) transactions is 1.38 percent.¹⁰ Federal regulators treat a high rate of returned transactions—regardless of the reason for return—as a sign of suspicious activity in and of itself.¹¹ A bank employee noted the third-party payment processor in question had return rates specifically for "unauthorized, improper, or ineligible" transactions that were "far greater" than National Automated Clearing House Association's (NACHA's) warning threshold for seven months out of a 10-month period.¹²

More recently, the Department of Justice announced a settlement with CommerceWest Bank, which allegedly "ignored a series of glaring red flags," including high transaction return rates, thousands of complaints from consumers, and multiple complaints from other banks whose customers had been victims of related fraud.¹³ The complaint describes a "telemarketing scheme" that prompted an executive from another bank to send a letter to CommerceWest urging them to file a Suspicious Activity Report and claiming that

100 percent of the customers we have contacted regarding these items have indicated that the draft was not authorized, and the payee did not have permission to debit funds from any account. Of particular concern, we have found that the vast majority of the victims of these unauthorized drafts are elderly persons, prompting numerous elder abuse investigations at our banks.¹⁴

The complaint also describes a "payday loan finder scam" involving hundreds of thousands of unauthorized checks and numerous public and private reports of related fraud, which the bank allegedly ignored. The Department of Justice found evidence of return rates of approximately 50 percent for the merchant in question, including more than 100,000 transactions returned as "unauthorized" or "breach of warranty."¹⁵

The third Department of Justice settlement involved a similar fact pattern, sanctioning Plaza Bank for knowingly facilitating consumer fraud.¹⁶ The complaint describes various warning signs of fraud among merchants, in conjunction with a third-party payment processor, including transaction return rates of approximately 50 percent, complaints from consumers and their banks, and law enforcement inquiries about fraud—yet the bank failed to act on these warning signs.¹⁷ Internal warnings from the bank's own chief compliance officer allegedly went unheeded by the bank's chief operating officer, who according to the complaint held ownership interests in the third-party payment processor in question, which were not known to the compliance officer.¹⁸

A similar fact pattern runs through all three "Operation Choke Point" cases to date: Merchants and third-party payment processors engaged in activities that showed clear signs of risk—and in many cases resulted in actual fraud and harm to individuals—while the banks in question failed to react to protect their consumer account holders or the integrity of the electronic payments system. In each case, payday lenders were among the merchants implicated (for Four Oaks Bank specifically, online or Internet payday lenders accounted for 97 percent of all the implicated merchants).¹⁹

The remainder of this article focuses on the unique problems associated with online lending, starting with its uncertain legal status and continuing to a survey of legal developments and available evidence of widespread fraud and abuse. These problems are particularly related to a group of lenders that are not licensed in all the states where they lend money, as well as fraudsters that take advantage of the online loan lead generation system that makes sensitive consumer information freely available. There is overwhelming evidence that consumers and the banking system itself are exposed to great risk of harm by the current online lending system, which merits increased enforcement against bad actors in this space and more diligent efforts by all stakeholders to protect the integrity of the electronic payments system.

Is Online Lending Legal?

“Operation Choke Point” has focused on stopping fraudulent activity by preventing bad actors from obtaining access to the electronic payments system. Yet critics have claimed that government oversight has gone too far and blocked access for some merchants that are operating legally.²⁰ Few would disagree that merchants operating legally and within established rules should have access to the banking system, but there are serious questions about when an online lender can be said to be operating legally.

Online lenders do not have federal banking charters, which raises the issue of how and where they should be licensed. States generally require a license to lend to their residents, and many large, well-established lenders have obtained licenses in all of the states where they make loans.²¹ However, some lenders have argued that individual state licensing is not necessary.²² Today, online lenders follow one of four licensing models: (1) single-state license that they rely on in other states under choice of law principles (roughly 20 percent of online lenders, per industry estimates); (2) multi-state license approach, whereby they obtain a license in each state in which they lend (30 percent); (3) sovereign nation partnership, under claims that sovereign immunity negates the need for a state license (30 percent); and (4) offshore

incorporation, usually with no relevant state license in place (20 percent).²³ Altogether, approximately 70 percent of online lenders do not obtain a license in each state in which they make loans.²⁴

State officials have raised numerous objections to the practice of making online loans to their residents when the lender lacks an in-state license. At least fifteen states have adopted laws that render small-dollar loans void (or in the case of one state, make collection of finance charges illegal) if the lender lacks a state license or does not conform to the state’s usury laws.²⁵ In recent years, officials in these or other states have sought more control over online lending by taking legal action to halt noncompliant lenders’ activities or by requiring lenders to register with state regulators.²⁶

A common theme running through state enforcement actions is that online loans are often illegal because they include interest rates that far exceed applicable state usury laws. For example, New York has a 25 percent criminal usury rate cap.²⁷ By comparison, online payday loans have annual percentage rates (APRs) averaging 652 percent.²⁸

In 2013, the New York superintendent of financial services sent letters to 117 banks and NACHA asking them to develop procedures to prevent a list of 35 “illegal lenders” from accessing the ACH payments system. The letter reminded recipients that New York law carries civil and criminal penalties for making loans that exceed the state’s usury rate laws.²⁹ In April 2014, another letter from the superintendent warned of a number of online payday lenders that were allegedly using debit cards to circumvent protections in the ACH system to make loans that did not comply with state law.³⁰ The New York Governor subsequently announced that a group of banks agreed to use a database to “help prevent electronic payment and debit networks from being exploited by illegal, online payday lenders.”³¹

More recently, the New York Department of Financial Services announced that MoneyMutual, a lead generator for online lenders, would face sanctions after allegedly marketing illegal, online payday loans to consumers in the state. The announcement stated that “Internet payday lending is just as unlawful as payday lending made in

person in New York,” because such loans exceed New York usury limits and violate other applicable laws.³²

Similarly, Arkansas has sued to prevent numerous online payday lenders from offering loans to or collecting payments from state residents where the loans violate the state’s constitutional usury interest rate cap.³³ The Illinois Attorney General took similar actions in that state,³⁴ and Vermont’s Attorney General issued letters to companies notifying them that showing advertisements or processing payments for prohibited loans is illegal in Vermont.³⁵ California regulators reached a settlement with CashCall after alleging that the company “used deceptive sales pitches and marketing practices” in a scheme to avoid the state’s usury laws.³⁶ Some lenders do not make loans in these or other states because of efforts by regulators or law enforcement officials.³⁷

At the federal level, the Consumer Financial Protection Bureau (CFPB) has taken the position that companies can be held liable for unfair, deceptive, or abusive practices when attempting to collect on loans where the lender lacks a state license or fails to comply with state usury laws. In a complaint against CashCall and a group of affiliated parties, the CFPB alleged that such loans were void. The CFPB asserted that a relationship with a Native American tribe did not exempt the online lender from having to comply with state laws.³⁸ The CFPB has also rejected challenges to its own jurisdiction by online lenders that made sovereignty claims based on tribal affiliation.³⁹

Many online lenders rely on tribal sovereignty claims to justify operating in states where they do not have licenses. Though the question of tribal sovereignty is not settled with respect to the online lending market, proponents have suffered several setbacks in addition to the enforcement proceedings noted above. The United States Supreme Court recently decided a case, *Michigan v. Bay Mills Indian Community*, which supports the notion that tribal immunity cannot absolve a lender or debt collector from having to obtain a state license and abide by state laws. The court stated that, unless a federal law states otherwise, tribal members conducting business outside of reservation boundaries “are subject to any gener-

ally applicable state law.” In this case involving off-reservation gambling, the court held that the state had the power to deny the tribe a license and bring suit to enjoin tribal officials or employees from operating without a license.⁴⁰

In another case, the Second Circuit affirmed a lower court’s decision to bar claims of sovereign immunity in relation to online loans that did not comply with New York state law, stating: “The undisputed facts demonstrate that the activity the State seeks to regulate is taking place in New York, off of the Tribes’ lands. Having identified no ‘express federal law’ prohibiting the State’s regulation of payday loans made to New York residents in New York, the Tribes are subject to the State’s non-discriminatory anti-usury laws.”⁴¹ The Federal Trade Commission (“FTC”) has also prevailed against challenges to its jurisdiction over tribal entities in this market.⁴²

Online lenders that do not obtain licenses in all the states where they lend are on increasingly tenuous legal ground, which makes it increasingly difficult for banks and their regulators be sure that these companies are acting legitimately and should have access to the banking system.

There is Widespread Fraud and Abuse in the Online Payday Loan Market

This same group of companies is also associated with a variety of harmful or illegal business practices. There is a difference between the approximately 30 percent of online payday lenders that follow the multi-state licensing model—obtaining a license in every state where they lend—and the 70 percent that do not. Research from The Pew Charitable Trusts has demonstrated that there is widespread fraud and abuse in the online lending market, and that these problems are concentrated among the lenders that are not licensed in all the states where they lend and among fraudulent debt collectors.⁴³ This research, combined with evidence from numerous cases and enforcement actions, demonstrates that unlicensed online lenders represent significant risk to consumers and the banking system.

There are two key features of the online payday loan market that have made it ripe for fraud and abuse: (1) lenders' heavy use of electronic debits from consumers' accounts, and (2) their reliance on lead generators that collect and disburse sensitive consumer data.

Online loan operators generally depend on the ability to access a borrower's checking account directly through the use of electronic payment systems to disburse funds and debit payments. Though the Electronic Fund Transfer Act does not permit lenders to require electronic access to a checking account for multipayment loans, in practice lenders make it more difficult or less attractive to obtain a loan via other means. Borrowers who decline to grant access may receive their loan proceeds far more slowly, for example. Thus, it is standard practice for online lenders to obtain electronic access to borrower checking accounts. Therefore, consumers' banks and the ACH system play a crucial role in enabling online payday lending.⁴⁴

Most online payday lenders also rely at least in part on lead generators—third-party brokers—for acquiring new customers. The lead generators, in turn, spend hundreds of millions of dollars advertising to consumers. Through websites and other channels, they gather sensitive information about applicants, often including bank account and social security numbers, and sell this information to one or more lenders. Unfortunately, this information is also sometimes purchased or otherwise acquired by fraudsters, who can use the information to debit consumer checking accounts via the electronic payments system.⁴⁵ In this way, online lending is a substantial challenge to the integrity of the banking system and the electronic payments system in particular. As the Four Oaks Bank and other “Operation Choke Point” cases demonstrate, high rates of returned transactions are common among online payday lenders, and a clear symptom of fraudulent activity.

A string of other regulatory actions has likewise demonstrated fraudulent or abusive practices related to payday lending. For example, the FTC has announced more than a dozen claims and settlements in recent years alleging deceptive marketing practices in relation to online payday

lending, schemes used to charge consumers for loans that they never authorized, collection of allegedly fake payday loan debts, undisclosed or inflated loan fees, illegal garnishment of wages in connection to payday loan debt, mishandling of sensitive data related to payday borrowers or applicants, making unlawful threats (such as the threat of arrest) related to payday loan debt collection, and charges for unwanted debit cards or other products in association with online loans or applications.⁴⁶

In one case, the FTC took action against a company for allegedly falsely accusing consumers of fraud, untruthfully claiming to be working with the government, and illegally threatening arrest if payday loan or other debts were not repaid.⁴⁷ This action is representative of problems reported throughout the industry. Altogether, 30 percent of all online payday loan borrowers report being threatened in connection with an online payday loan, including threats of arrest (19 percent) or contacting the person's employer (20 percent).⁴⁸

Unauthorized or fraudulent withdrawals from consumer checking accounts are also commonly associated with online payday lending. The FTC obtained an injunction against a company for allegedly collecting more than \$5 million in “phantom payday loan ‘debts’ that consumers did not owe.”⁴⁹ Similarly, the court in that case granted an injunction after the FTC claimed that consumers were “victimized twice... first when they inquired about payday loans online and their personal information was not properly safeguarded, and later, when they were harassed and intimidated by these defendants, to whom they didn't owe any money.”⁵⁰ In several cases, the FTC took action against companies that allegedly made unauthorized withdrawals from the checking accounts of people who had applied for online payday loans, or billed them for products they had not purchased.⁵¹

These cases represent typical problems related to online payday loans: one-third of all borrowers say that money has been withdrawn from their bank account without their authorization; one-third have been contacted about debt they did not actually owe; and one-fifth report having received a product that they did not apply for or autho-

size.⁵² And for a variety of reasons, online payday loans put borrowers at risk of overdrafting their checking accounts: Nearly half (46 percent) report that online lenders have initiated withdrawals that caused overdrafts on their checking accounts—twice the rate reported by borrowers who obtained loans from local stores.⁵³

Many of the problems noted above stem from the online loan lead generation system, which gathers and broadly disseminates sensitive consumer information. As CFPB director Richard Cordray noted about the lead generation system, “the highest bidder may be a legitimate lender, but it could also be a fraudster that has enough of the consumer’s sensitive financial information to make unauthorized withdrawals from their bank account.”⁵⁴ In September of 2014, the CFPB announced a claim against Hydra Group for “running a brazen and illegal cash-grab scam” by using information purchased from online lead generators to create falsified loan documents, generate fake payday loans, and initiate unauthorized withdrawals from consumer checking accounts.⁵⁵ The CFPB claimed that consumers experienced ongoing problems due to the scheme, including being contacted and sued for loans they never agreed to even after closing their bank accounts to avoid further electronic debits.⁵⁶ The FTC has made similar claims against companies for debiting bank accounts or credit cards without consumer consent and noted that many of the victimized consumers had recently applied for online payday loans and could have had their information sold to third parties.⁵⁷ A number of state regulators have issued statements warning residents about the dangers of lead generators and online lenders that are not licensed in the state, including the risk of losing a bank account or having to close one due to unauthorized withdrawals.⁵⁸

There are many aspects of today’s lead generation system that put consumers at risk of confusion, harassment, and harm. Lead generators often sell an applicant’s information to many companies, and unscrupulous actors can acquire older leads at low cost and use them for fraudulent purposes such as those noted above. Consequently, consumers report receiving numerous offers for loans, finding their accounts debited for

loans that they did not authorize, and being confused about which company originated their loan or how to contact their lender.⁵⁹

For these and other reasons, 72 percent of all people who have used payday loans support more regulation of this industry, and by a two-to-one margin they support changes in how the loans work.⁶⁰ Specifically, those who have borrowed online have had some of the worst experiences, as online payday lenders are the subject of 89 percent of all consumer complaints about the payday loan industry.⁶¹ Complaints about billing or collection issues, including errors or unauthorized charges, are the most common.⁶²

In sum, online lending and the lead generation system have put consumers at serious risk of harm. They pose a threat to the relationship between banks and their customers, because many online borrowers experience problems that lead them to flee from or lose access to the banking system. One-fifth of all online borrowers report having lost a bank account because of payday loans—with 12 percent saying they had a bank close their account because of an online payday loan, and 16 percent saying they closed an account themselves to prevent a company from taking money.⁶³

Banks have sometimes been unwilling or unable to help their customers when they face these types of problems. For example, when customers have asked their banks to refuse electronic debits or even close accounts to avoid abusive or fraudulent transactions, they have sometimes been denied or have found that the withdrawals continued anyway.⁶⁴ Sometimes banks have refused to help, or told customers to contact the lender directly.⁶⁵ As an online borrower explained in a focus group, “I was told by my bank there was really no way that I can stop them from taking it out.”⁶⁶ In other cases, banks’ processes or systems appear to be inadequate for responding to this type of challenge. For example, some consumers have complained that after closing bank accounts to avoid further debits from online lenders or fraudsters, the bank reopened the account and allowed further debits and associated fees to continue—a phenomenon known as “zombie accounts.”⁶⁷

More recently, some banks have announced they are taking steps to correct these problems, including streamlining the process for stopping unwanted or unauthorized withdrawals, and limiting returned-item fees to one per lender in a 30-day period.⁶⁸ NACHA also approved new operating rules in 2014 aimed at improving the ACH system by reducing the number and costs of returned payment requests. The rule limits access to the electronic payments system by companies whose attempted withdrawals are declined at rates exceeding 15 percent, which is ten times the average rate for companies generally but far lower than the returned transaction rate for the payday lenders identified in the Department of Justice's case against Four Oaks Bank. NACHA also lowered the return rate threshold for *unauthorized* debits (for example, fraudulent transactions). These steps will make it more difficult for merchants, including online lenders or debt collectors, to access checking accounts in an aggressive or abusive fashion, with banks being responsible when their merchant customers exceed allowable thresholds.⁶⁹ NACHA noted that the new rules "are expected to improve the overall quality of the ACH Network by reducing the incidence of returned Entries and their associated costs, both financial and reputational, that such returned Entries impose on the ACH Network and its participants. These changes also are expected to increase customer satisfaction with the ACH Network by reducing the volume of transactions subject to customer dispute."⁷⁰ Yet these rules, which are set and enforced by a private organization owned by the banks themselves, do not have the force of law.

Conclusion

The three "Operation Choke Point" cases to date allege unlawful activity and misuse of the electronic payments system by bad actors and the banks that enabled them. In each case, the government cited clear yet unheeded indicators of fraud, including returned transaction rates that were at least 25 times greater than those for average merchants, voluminous consumer complaints

about unauthorized withdrawals, and warnings from other banks.

In the case of online payday lending—a business in which many merchants associated with the Choke Point cases were engaged—there are several common problems that banks and their regulators should watch out for. High rates of returned transactions, making loans in states where the lender does not hold a license, and doing business with online loan lead generators are all risk factors that warrant additional scrutiny on the merchant or payment processor. Additionally, because of widespread fraud associated with online lending and lead generators, banks should improve their capacity for blocking electronic debits against consumer accounts upon request.

Though critics of "Operation Choke Point" have cited it as a cause for limiting government authority and promoting the cause of licensed and lawful businesses that seek access the banking system, the integrity of the banking system demands ongoing diligence by law enforcement, as well as banks and their regulators to protect those that use it from being defrauded or abused.

NOTES

1. Member of the California state bar and director of the small-dollar loans project at The Pew Charitable Trusts (www.pewtrusts.org/small-loans). This paper draws heavily on the work I have conducted and overseen at Pew, especially the report entitled *Fraud & Abuse Online: Harmful Practices in Internet Payday Lending* (Oct. 2014). I am thankful especially to Alex Horowitz, research officer on the project, who drafted the bulk of that report, as well as Tara Roche, Walter Lake, and Olga Karpekina for their research support. Thanks also to colleagues Travis Plunkett and Mark Wolff for helping review and finalize this paper.
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5. See, e.g., William Isaac, *Why Payday Loans Are Good for Millions of People*, American Banker, Aug. 13, 2013, <http://www.americanbanker.com/bankthink/why-payday-loans-are-good-for-millions-of-people-1061280-1.html> (“I applaud the government’s efforts to weed out bad actors that engage in fraudulent transactions or violate federal laws. But I’m deeply concerned about the unintended consequences this could have on much needed financial services for underbanked people who rely on legitimate short-term lenders, commonly referred to as payday lenders.”). See also, Alan Zibel & Brent Kendall, *Probe Turns Up Heat on Banks: Prosecutors Target Firms That Process Payments for Online Payday Lenders, Others*, The Wall Street Journal, updated Aug. 7, 2013.
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 10. *Id.* at 22.
 11. *Id.* at 21, citing FinCEN Advisory: Risk Associated with Third-Party Payment Processors, FIN-2012-A010 (Oct. 22, 2012).
 12. *Id.* at 22. NACHA is the organization that oversees the automated clearinghouse (ACH) for electronic payments, operating under bylaws voted on by member banks and other institutions.
 13. Compl. at 2, *United States v. CommerceWest Bank*, No. 15-cv-00379 (C.D. Cal. Mar. 10, 2015), http://www.justice.gov/sites/default/files/opa/press-releases/attachments/2015/03/10/cwb_complaint_as-filed_cv1500379.pdf.
 14. *Id.* at 14.
 15. *Id.* at 15-19.
 16. Compl., *United States v. Plaza Bank*, No. 15-cv-00394 (C.D. Cal. Mar. 12, 2015), http://www.justice.gov/sites/default/files/opa/press-releases/attachments/2015/03/12/plaza_bank_complaint.pdf.
 17. *Id.* at 15.
 18. *Id.* at 2.
 19. *Four Oaks Compl.* at 13. Of the remaining 3% of merchants, some were conducting allegedly illegal activity such as Internet gambling and Ponzi fraud schemes.
 20. See, e.g., William Isaac, *‘Operation Choke Point’: Way Out of Control*, American Banker, Apr. 22, 2014, <http://www.americanbanker.com/bankthink/operation-choke-point-way-out-of-control-1067013-1.html>.
 21. For example, Advance America operates under a variety of names and works with various affiliates online and in stores. See, www.purposefinancialservices.com/assets/uploads/documents/Ohio_VS_AA_CK_Cashing_AA0062OHC-1.11.12.pdf and www.advanceamerica.net/assets/uploads/documents/privacy-policies/mississippi.pdf. Enova International, the largest online payday lender in the United States, is “licensed in all jurisdictions which require licensing.” Enova International, Inc., Form 10-K for the fiscal year ended Dec. 31, 2014, <http://app.quotemedia.com/data/downloadFiling?webmasterId=101533&ref=10162987&type=HTML&symbol=ENVA&companyName=Enova+International+Inc&formType=10-K&dateFiled=2015-03-20>.
 22. An early model for dealing with this situation entailed partnering with a nationally chartered bank located in a state with permissive regulations, and “exporting” that state’s laws to other states under the National Bank Act. But between 2000 and 2006, federal bank regulators effectively barred this practice, which is sometimes referred to as “rent-a-charter” or “rent-a-bank. See: Sheila Bair, *Low-Cost Payday Loans: Opportunities and Obstacles*, The Annie Casey Foundation, 2005, http://www.cfsinnovation.com/sites/default/files/imported/managed_documents/low-cost_payday_loans_opportunities_and_obstacles.pdf; Michael Stegman, *Payday Lending*, The Journal of Economic Perspectives at 21 (2007): doi:10.1257 / jep.21.1.169; *Guidelines for Payday Lending*, Fed. Deposit Ins. Corp., last modified Feb. 25, 2005, <http://www.fdic.gov/news/news/financial/2005/fil1405a.html>; *OCC Advisory Letter*, Office of the Comptroller of the Currency, last modified Nov. 27, 2000, <http://www.occ.gov/static/news-issuances/memos-advisoryletters/2000/advisory-letter-2000-10.pdf>.
 23. *Fraud & Abuse*, 22-23. This report provides a more detailed discussion of the different licensing models.
 24. *Id.*

25. The states that declare such loans void include Alabama, Arizona, Illinois, Indiana, Kentucky, Massachusetts, Minnesota, Montana, New Hampshire, New Jersey, New Mexico, New York, North Carolina, and Ohio. Colorado bars collection of finance charges. First Amended Complaint at 6-12, *Consumer Financial Protection Bureau v. CashCall Inc.*, No. 1:13-cv-13167-GAO (D. Mass. Mar. 21, 2013), http://files.consumerfinance.gov/f/201403_cfpb_amended-complaint_cashcall.pdf.
26. The following text draws heavily from The Pew Charitable Trusts, *Fraud & Abuse Online: Harmful Practices in Internet Payday Lending* (2013). The author was a co-author of that report and directs the small-dollar loans project at Pew, which was responsible for the report's production.
27. N.Y. Pen. Law § 190.40.
28. *Fraud & Abuse*, 3.
29. N.Y. Dept. of Fin. Servs., Letter to financial institutions regarding illegal online payday loans offered and sold to New York customers, last modified Aug. 6, 2013, <http://www.dfs.ny.gov/about/press2013/pr130806-link1.pdf>.
30. *Cuomo Administration Takes Action to Halt Illegal, Online Payday Lending Through Debit Card Networks*, New York Governor's Office, Apr. 30, 2014, <https://www.governor.ny.gov/press/04302014-online-payday-lending>.
31. Press Release, N.Y. Dept. of Fin. Servs., Governor Cuomo Announces Citibank, JP Morgan Chase, M&T Bank and Valley National Bank to Use DFS Database to Help Protect Consumers From Illegal, Online Payday Lending (Nov. 13, 2014), <http://www.dfs.ny.gov/about/press2014/pr1411131.htm>.
32. Press Release, NY Dept. of Financial Services, NYDF Announces MoneyMutual Will Pay \$2.1 Million Penalty: Montel Williams to Withdraw Endorsement for New York Payday Loans (Mar. 10, 2015), <http://www.dfs.ny.gov/about/press2015/pr1503101.htm>.
33. Press Release, Ark. Attorney Gen.'s Office, McDaniel Files Suit Against Online Payday Lender (Sept. 14, 2011), http://ag.arkansas.gov/newsroom/index.php?do:newsDetail=1&news_id=460; Press Release, Ark. Attorney Gen.'s Office, McDaniel Obtains Court Orders To Bar Online Payday Lenders (May 4, 2011), http://www.ag.state.ar.us/newsroom/index.php?do:newsDetail=1&news_id=418; Press Release, Ark. Attorney Gen.'s Office, McDaniel Files Suit Against Online Payday Lenders (June 9, 2014), <http://arkansasag.gov/news-and-consumeralerts/details/mcdaniel-files-suit-against-online-payday-lenders>.
34. Press Release, Ill. Attorney Gen.'s Office, Madigan Cracks Down On Unlicensed, Predatory Payday Lenders (Apr. 8, 2014), http://www.illinoisattorneygeneral.gov/pressroom/2014_04/20140408.html. Illinois Attorney General Lisa Madigan filed a lawsuit against MoneyMutual alleging that it offered loans that violate state law. She also "expressed concerns about the company's data collection practices. ... MoneyMutual requires potential borrowers to share their personal banking information, Social Security number, date of birth, driver's license information, private address and employment records, all of which can be shared with third parties, putting borrowers at significant risk of identity theft."
35. Press Release, Vt. Office of the Attorney Gen., Attorney General Announces \$1,000,000 Crackdown on Illegal Lending (Apr. 23, 2014), [http://ago.vermont.gov/focus/news/attorney-general-announces-\\$1000000-crackdown-on-illegal-lending.php](http://ago.vermont.gov/focus/news/attorney-general-announces-$1000000-crackdown-on-illegal-lending.php); Letter from Justin E. Kolber, Assist. Attorney Gen., to Jim Condon, Vt. Assoc. of Broadcasters (Apr. 22, 2014), http://ago.vermont.gov/assets/files/Consumer/Illegal_Lending/Letter%20to%20VT%20Broadcasters%20April%202014.pdf; Letter from Justin E. Kolber, Assist. Attorney Gen., to Marsha Jones, Third Party Payment Processors Assoc. (Mar. 31, 2014), http://ago.vermont.gov/assets/files/Consumer/Illegal_Lending/Letter%20to%20TPPPA%20April%202014.pdf.
36. Press Release, Cal. Dept. of Bus. Oversight, Lender CashCall to Pay Restitution, \$1 Million in Penalties and Costs to Settle Case with DBO: Firm Misled and Overcharged Consumers (Feb. 5, 2015), http://www.dbo.ca.gov/Press/press_releases/2015/CashCall.asp.
37. For example, before it stopped operating, Western Sky Loans stated that it did not make loans to residents of California, Colorado, Maryland, Missouri, South Dakota, or West Virginia. Cash Fairy's website states that it does not make loans to residents of Arkansas, Montana, or West Virginia. Lendgreen's website states that it does not make loans to residents of 20 states or the District of Columbia. State attorneys general have in many cases reached agreements with specific online payday lenders not to make loans to residents of their states. See, e.g., Press Release, Ark. Attorney Gen.'s Office, Court Order Restricts Online Payday Lender (Aug. 21, 2012), http://ag.arkansas.gov/newsroom/index.php?do:newsDetail=1&news_id=579; see *supra* n. 29.
38. First Amend. Compl., *Consumer Fin. Prot. Bureau v. CashCall Inc.*, No. 1:13-cv-13167-GAO (D. Mass. Mar. 21, 2013), http://files.consumerfinance.gov/f/201403_cfpb_amended-complaint_cashcall.pdf.

39. Decision and Order on Petition by Great Plains Lending LLC; Mobiloans LLC; and Plain Green LLC to Set Aside Civil Investigative Demands, No. 2013-MISC-Great Plains Lending-0001 (Consumer Fin. Prot. Bureau Sept. 26, 2013), http://files.consumerfinance.gov/f/201309_cfpb_decision-on-petition_great-plains-lending-to-set-aside-civil-investigative-demands.pdf.
40. 134 S. Ct. 2024, 2035 (2014).
41. *Otoe-Missouria Tribe of Indians v. NY State Dept. of Fin. Servs.*, 769 F.3d 105 (2d Cir. 2014).
42. *FTC v. AMG Servs.*, No. 12-cv-0536, 2014 U.S. Dist. LEXIS 29570 (D. Nev. Mar. 7, 2014); *Fraud & Abuse* Report, generally.
43. *Fraud & Abuse*, 25.
44. *Fraud & Abuse*, 5-7, 11-13.
45. A list of FTC actions is available at: <https://www.ftc.gov/news-events/media-resources/consumer-finance/payday-lending>. See also, *Fraud & Abuse*, 24.
46. Stipulated Prelim. Inj., *FTC v. Fed. Check Processing Inc.*, No. 1:14-cv-00122-WMS (W.D.N.Y. Mar. 24, 2014), <https://docs.google.com/gview?url=http://docs.justia.com/cases/federal/district-courts/new-york/nywdce/1:2014cv00122/97424/43/0.pdf?1395849487>. See also, [Proposed] Stipulated Order for Permanent Inj. & J. at 4, *FTC v. AMG Servs., Inc.*, No. 12-cv-0536 (D. Nev. July 18, 2013), <https://www.ftc.gov/sites/default/files/documents/cases/2013/07/130722amgstip.pdf> (barring defendants from claiming that consumers can be arrested or imprisoned for failure to pay debts).
47. *Fraud & Abuse*, 10. The CFPB has also noted that its investigations have indicated that some payday lenders have threatened and harassed borrowers. Consumer Financial Protection Bureau, Supervisory Highlights (Spring 2014), http://files.consumerfinance.gov/f/201405_cfpb_supervisoryhighlights-spring-2014.pdf.
48. *FTC v. Am. Credit Crunchers*, No. 12-cv-1028 (N.D. Ill. October 10, 2012), <https://www.ftc.gov/news-events/press-releases/2012/02/court-halts-alleged-fake-debt-collector-calls-india-grants-ftc>.
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53. Richard Cordray, Consumer Financial Protection Bureau, Remarks at Payday Loan Field Hearing (Jan. 19, 2012), www.consumerfinance.gov/speeches/remarks-by-richard-cordray-at-the-payday-loan-field-hearing-in-birmingham-al/.
54. Consumer Fin. Prot. Bureau, CFPB Sues Online Payday Lender for Cash-Grab Scam (Sept. 17, 2014), <http://www.consumerfinance.gov/newsroom/cfpb-sues-online-payday-lender-for-cash-grab-scam/>.
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56. Press Release, FTC, FTC Action Halts Operation That Billed More than \$25 Million to Consumers' Bank and Credit Card Accounts without Their Consent (Feb. 20, 2013), <https://www.ftc.gov/news-events/press-releases/2013/02/ftc-action-halts-operation-billed-more-25-million-consumers-bank>.
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