NCLC®

NATIONAL CONSUMER LAW CENTER®

Why 36%?

The History, Use, and Purpose of the 36% Interest Rate Cap

April 2013

By

Lauren K. Saunders

National Consumer Law Center®

ABOUT THE AUTHOR

Lauren K. Saunders is Managing Attorney of the National Consumer Law Center in Washington, DC, where she directs NCLC's federal legislative and regulatory work. She regularly speaks, writes and testifies in areas including the Consumer Financial Protection Bureau, prepaid cards, mobile payments, small dollar loans, credit cards, bank accounts, and preemption. She contributes to NCLC legal treatises, including *Consumer Banking and Payments Law*, *Consumer Credit Regulation*, and *Fair Credit Reporting*, and has authored many reports and white papers. She previously directed the Federal Rights Project of the National Senior Citizens Law Center; was Deputy Director of Litigation at Bet Tzedek Legal Services; and was an associate at Hall & Phillips. She graduated magna cum laude from Harvard Law School and was an Executive Editor of the *Harvard Law Review*, and holds a Masters in Public Policy from Harvard's Kennedy School of Government and a B.A., Phi Beta Kappa, from Stanford University.

NCLC®
NATIONAL CONSUMER LAW CENTER®

ABOUT THE NATIONAL CONSUMER LAW CENTER

Since 1969, the nonprofit National Consumer Law Center® (NCLC®) has used its expertise in consumer law and energy policy to work for consumer justice and economic security for low-income and other disadvantaged people, including older adults, in the United States. NCLC's expertise includes policy analysis and advocacy; consumer law and energy publications; litigation; expert witness services, and training and advice for advocates. NCLC works with nonprofit and legal services organizations, private attorneys, policymakers, and federal and state government and courts across the nation to stop exploitive practices, help financially stressed families build and retain wealth, and advance economic fairness.

www.nclc.org

TABLE OF CONTENTS

I. Introduction 1

II. The History of the 36% Rate Cap: Early 20th Century Reform and the Russell Sage Foundation 1

III. The 36% Rate Cap Today 2

A. The Deregulation of the 1970s and 1980s 2

B. The Current Trend Toward a 36% Cap For Small Dollar Loans 3

C. Endorsement of 36% by Congress and Federal Agencies 4

IV. The Impact of a 36% Cap on Affordability 5

A. Payments for a Payday Loan and a 36% Loan 5

B. Loans with Longer Terms and a More Affordable Structure 6

V. Conclusion 7

End Notes 8

Tables

Table 1: States that Ban Payday Loans or Cap at 36% APR or Less 3

Table 2: Repayment of Payday Loan and 36% Installment Loan 6

I. Introduction

Policymakers around the United States are reconsidering interest rate deregulation in light of the devastating impact that 300% APR or higher loans have had on struggling families. Many advocates are pushing for a 36% annual interest rate cap for small loans. In these debates, the question often arises: why 36%?

Interest rate caps are more than numbers: they are reflections of society's collective judgment about moral and ethical behavior, as well as business and personal responsibility. Interest rate caps embody fundamental values.[1] Interest rate caps also reflect an assessment about the upper limits of sustainable lending that does not undermine individual or societal economic stability.

The 36% rate is not just an arbitrary number. It has gained wide acceptance because:

- The 36% rate has a long and well-recognized history in America dating back 100 years.
- The 36% rate has been reaffirmed repeatedly at the state and federal level in recent years. Congress and three federal agencies have endorsed the rate. More and more states and their voters are capping small loans at 36% or less – currently 15 states and the District of Columbia.
- The 36% rate for small loans results in payments that consumers have a decent chance of being able to pay.
- A 36% rate gives lenders an incentive to offer longer term loans with a more affordable structure and to avoid making loans that borrowers cannot afford to repay.

II. The History of the 36% Rate Cap: Early 20th Century Reform and the Russell Sage Foundation

The 36% rate cap for small dollar lending emerged in the first half of the twentieth century.[2] The situation then has remarkable parallels to today, and the 36% cap is no less valid now.

In the late 19th and early 20th centuries, a black market for illegal usurious small loans, run by loan sharks, was thriving as the American economy transitioned toward greater reliance on the purchase of personal goods.[3] Strikingly similar to contemporary payday lenders,[4] these so-called "salary lenders" would make short-term loans of small amounts, repayable on the borrower's next payday. A typical product carried a *four-digit* annual interest rate.[5]

Reformers pursued multiple strategies to wrest small dollar consumer lending from the grip of these lenders, who built their business on a "variety of legal ruses and questionable practices . . . ."[6] But legal alternatives were few and far between. The general civil usury statutes in most states hovered around 6%, so legitimate lenders focused on making large dollar loans to businesses, which netted them more money than small dollar consumer lending.[7]

The idea behind the 36% interest rate cap was to create an exception to the lower general usury statutes so that legitimate lenders would have the incentive to enter the small dollar loan market. Lenders would make a profit—despite the higher costs of administering consumer, as opposed to business, loans—and consumers in turn would be given a reasonably-priced product.[8]

This idea and the 36% figure itself are generally credited to the Russell Sage Foundation ("RSF"), "among the most respected and influential American social policy research and advocacy institutions during the Progressive Era and beyond."[9] Even though the RSF was not the only institution exploring this approach to the loan shark problem, it is the most responsible for the dissemination and implementation of its Uniform Small Loan Laws.[10]

From 1914 to 1943, 34 states adopted a version of the Uniform Small Loan Law or its equivalent.[11] The exact amount of the recommended interest rate cap varied over the course of the more than half a dozen incarnations of the Uniform Small Loan Law, though it generally ranged from 3% to 3.5% per month (36% to 42% per year).[12]

The interest rate caps suggested in the Uniform Small Loan Laws were the result of both "political compromise and practical experience."[13] In other words, they were the result of hypotheses, bolstered by some research studies[14] and testing in real world arenas.

The real world validated the RSF's efforts. The landscape for small dollar lending was transformed. Through the 1960s, the RSF-inspired small loan laws kept small dollar consumer loans available to consumers.[15]

Eventually credit cards "began to supplant (and expand) the market for small dollar credit" previously dominated by traditional small dollar lenders.[16] Credit cards are now the primary source of small dollar loans. Though most credit cards operate today outside of legal usury limits, rates above 36% are exceedingly rare.

III. The 36% Rate Cap Today

A. The Deregulation of the 1970s and 1980s

Until the deregulation of the 1970s and 1980s, virtually all states had usury caps, though they varied widely and were typically well below 36% for larger loans.[17] But that changed with deregulation, which was spurred by two developments, neither of which reflects on the appropriateness of rate caps today.

First, a Supreme Court decision permitted banks to charge the interest rate of their home state, regardless where the loan was made.[18] The decision led some states to repeal their interest rates in exchange for banks' relocating their headquarters. Other states were forced to follow suit or lose their banking industry.[19]

Second, double-digit inflation squeezed the availability of credit, especially mortgage credit that was often constrained by much lower interest rate caps, and spurred a general climate of deregulation.

The response of many states to the combined developments was to eliminate interest rate caps.[20] Many states today have no usury caps or have carved out holes in their rate caps that effectively gut them.

B. The Current Trend Toward a 36% Cap For Small Dollar Loans

The 36% rate for small dollar loans continues to have wide acceptance at the state and federal level. Today, over 35 jurisdictions – 70% of states – still provide for annual interest rate caps at the 36% benchmark or less within their statutory schemes governing small-dollar installment loans by nonbank lenders.[21]

This does not mean that the full annual cost of all small-dollar loans in all of these states is capped at 36%. Many of these laws also permit fees and charges in addition to interest, which can bring the APRs for small loan products well above 36%.[22] Typically, the interest rate caps were adopted before fees on top of interest began proliferating on loans. In addition, as the payday loan industry was developing, before the dangers were well documented, the industry was very successful in getting exceptions to more general usury rates in order to sell its products.

But the deregulatory tide has begun to turn. The explosive growth of the payday industry – which barely existed two decades ago – and growing recognition of the dangers of high rate lending have caused many states to reexamine exemptions for payday loans from rate caps.[23]

Currently, 16 jurisdictions either ban payday loans or subject them to a 36% APR cap or lower:

Table 1: States that Ban Payday Loans or Cap at 36% APR or Less

Arkansas	District of Columbia	Massachusetts	New Jersey	Ohio	West Virginia
Arizona	Georgia	Montana	New York	Pennsylvania	
Connecticut	Maryland	New Hampshire	North Carolina	Vermont	

Some of these states permit an origination fee on top of interest. But the APR for a 2-week, 6-month, and 12-month loan is well below triple-digits in all of those states even with the fee included.[24]

The trend is toward an APR cap of 36% or less on small loans. Since 2005, at least 8 jurisdictions have restricted high cost lending and 5 – Arizona, the District of Columbia, Montana, New

Hampshire, and Ohio – have re-imposed rate caps at or below 36% for short-term small loans. In addition, in recent years several other states that have tightened restrictions restricted high cost lending but still permit some loans above 36%.[25]

Voters, when given the choice, overwhelmingly support a 36% rate. In 2010, 72% of voters in Montana voted to impose a 36% rate cap on small loans in an otherwise very conservative election year. Voters threw out a state law that permitted payday loans up to $25 per $100 (652% APR for a two-week $250 loan) and allowed payday lending to flourish. Earlier, voters in Ohio and Arizona also supported annual rate caps of 28% and 36%, respectively, over massive industry spending to promote triple-digit APR payday lending.[26]

These developments show a growing reluctance to tolerate legal loan sharking. A wide variety of consumer, civil rights, community and religious groups are continuing to urge rate caps of 36% or even less.[27]

C. Endorsement of 36% by Congress and Federal Agencies

Several arms of the federal government have also endorsed a 36% rate cap.

In 2006, the Department of Defense (DOD) issued a report detailing the problems that payday loans and other high-cost credit products were posing for servicemembers and military readiness.[28] Immediately in response, Congress voted to impose a 36% rate cap, including fees, on loans offered to active duty members of the military and their dependents.[29] As DOD made clear in its implementing regulations that covered payday, car title, and refund anticipation loans, the 36% rate was adopted "to balance protections with access to credit."[30]

Congress reaffirmed its support for the 36% rate cap for servicemembers in 2012 when it strengthened the enforcement provisions and directed DOD to remain vigilant to protect servicemembers from continuing and evolving predatory lending practices.[31]

In 2007, the Federal Deposit Insurance Corporation (FDIC) announced Small Dollar Loan Guidelines, encouraging lenders to offer loans at rates less than 36% with low or no fees.[32] In 2008, the FDIC followed up with a two-year pilot program to study sound small dollar loan products based on the 2007 guidelines.[33] The FDIC deemed a 36% APR, as well as the other features set forth in its guidelines, to be helpful for institutions to "meet the goal of safe and sound small-dollar credit programs, which is to provide customers with credit that is both reasonably priced and profitable."[34]

In 2010, the National Credit Union Administration (NCUA) enacted rules to allow federal credit unions, which currently have an 18% usury cap, to charge 28% APR plus a single $20 application fee on short-term, installment loans of $200 to $1,000.[35] NCUA explained that the higher rate would allow federal credit unions "to make loans cost effective while the limitations will appropriately constrain the product to meeting its purpose as an alternative to predatory credit products."[36]

Thus, in the last few years, three federal agencies and Congress have drawn upon the 36% benchmark to construct responsible and fair small dollar loan frameworks. The DOD views its "social compact" with military families as including an understanding of "personal finances as an integral part of their quality of life."[37] The "social compact" between society as a whole and civilian consumers demands no less.

Even 36%, of course, is high, and that rate is appropriate only for small dollar loans. The DOD, FDIC and NCUA caps are all directed at small loans. The DOD report noted that lenders "should not interpret the 36 percent cap as a target for small loans provided to Service members; it would be a ceiling, and often a lower rate would be more appropriate to the risk of a borrower."[38] NCUA limited the higher 28% rate to loans of $1,000 and below; higher amounts are still subject to the 18% rate cap.[39] Many state credit unions also are subject to an 18% rate cap.

In addition, outrage over rampant credit card rate increases into the 25% to 30% range spurred considerable public anger and helped propel passage of a new federal credit card law that limits unrestrained rate increases. Bills have been introduced in Congress to impose a 15% rate on all lenders.[40]

For small loans, the 36% rate has widespread and long-standing support. It is high enough to make up for the small dollar values on which the interest accrues, but low enough to avoid predatory lending.

IV. The Impact of a 36% Cap on Affordability

Beyond its history and wide acceptance, the 36% rate cap also works on a practical level for small loans. For a loan of the typical size and duration of a payday loan, a 36% rate results in payments that payday borrowers are more likely to be able to make while actually paying off the loan. A 36% rate also forces lenders to offer longer term loans with a more affordable structure and to more carefully consider ability to pay to avoid write offs.

A. Payments for a Payday Loan and a 36% Loan

Although the standard payday loan is structured as a two-week loan, the borrower can rarely repay it in two weeks. The typical loan is rolled over eight to nine times and takes four months to pay off.[41] For example, a typical borrower who takes out a $300 payday loan at $15 per $100 will manage to pay the $45 in fees every two weeks but will make no progress paying off the original loan amount. Only after several months of those $45 payments – and often much longer – some borrowers will borrow the money from friends or family or manage to scrape it together from sources that could have been used to avoid the loan and repeated fees in the first place.[42] But half of borrowers will default in the first year, after paying multiple finance charges.[43]

As banks have entered the payday loan business with "deposit advance" products, research has shown a similar pattern of repeat borrowing. Although the cost per $100 borrowed is typically somewhat lower for bank payday loans – from $7.50 to $10 – the debt trap is worse, with an average of 16 loans per year.[44]

Given that the typical payday borrower takes at least four months to pay off a loan, it is instructive to compare the cost of that loan to a 36% installment loan covering roughly the same time period. If a borrower took out a 90-day, $300 installment loan carrying a 36% APR,[45] the borrower would have to pay about $48 every two weeks, including interest and a portion of the principal. That is virtually the same as the $45 fee that payday borrowers commonly now pay every two weeks to carry over a payday loan without making progress on the principal. Even $48 is a lot for someone living paycheck to paycheck, as most payday borrowers are. But the payments are realistic, unlike the repayment schedule of a payday loan, and match the payments that borrowers are actually making. For a borrower with a $35,000 annual income, $48 would account for less than 4% of after tax income every two weeks, an amount that is conceivably within a family's budget.

Table 2: Repayment of Payday Loan and 36% Installment Loan

	Payday Loan (2-weeks @ $15 per $100)	Installment Loan (36% APR, 90-days)
Amount borrowed	$300	$300
Biweekly payments: weeks 2 to 13	$45	$48
Amount owed at end of week 13	$300	$0

A survey of payday borrowers by the Pew Charitable Trusts similarly found that the average borrower reported being able to pay $100 per month, or about $50 per two weeks.[46] That is, renewing payday loans is affordable, but paying them off is not. A 90-day, $300 loan at 36% results in payments that payday borrowers can afford and that will actually pay off the loan.

B. Loans with Longer Terms and a More Affordable Structure

One of the benefits of a 36% rate cap is that it forces lenders to offer longer term, installment loans that have a more affordable structure. Lenders are also encouraged to do more careful underwriting to ensure that the borrower can afford the loan. Payday loans are unaffordable not only because of their rate but also because of their short term and single balloon payment structure.[47] Payday borrowers cannot afford to pay off a $300 loan in two weeks even if the loan were free.[48] One study found that 76% of payday loans are churned loans – ones that are made not because of a new need for credit, but rather to pay off a previous unaffordable payday loan.[49]

A two-week loan is thus a dangerous product that leads to churning and perpetual debt. Forcing lenders to stay within a 36% rate deters them from making these loans. A 36% rate cap gives lenders the incentive to make longer-term loans so that they can earn enough interest to cover their origination costs.

As long as fees are included in the rate cap, a 36% rate gives lenders an incentive to design realistic loan terms rather than unrealistic ones that induce loan flipping in order to generate new fees. Application costs are a challenge at 36% for longer term loans as well, though there are various alternatives to payday loans on the market that are under 36%.[50] In general, all fees should be included in any rate cap in order to avoid loopholes and incentives to churn loans. At most, a single, modest, once-a-year application fee could be excluded from a rate cap without causing distortions.[51]

Finally, a 36% rate also forces lenders to minimize write-offs and avoid bad loans. High defaults are a sign of predatory lending, not a justification for higher rates.[52] Without a triple-digit rate to cover defaults, lenders need to be more careful about responsible lending to borrowers who can actually afford to repay the loans.

V. Conclusion

States widely adopted a 36% annual interest rate cap 100 years ago to combat a problem eerily similar to today's payday loans: to combat the destruction caused by the spread of triple-digit short-term loans repaid on the next payday. The payday loans of the early 20th century were illegal, made by loan sharks, and today's are legal, flourishing as a result of interest rate deregulation and loopholes designed by the payday industry. But in both cases, the challenge is to find an alternative rate for small loans that permits reasonably priced loans to be made to borrowers who can afford to repay them and to prohibit destructive loans to borrowers who cannot.

As the evils of deregulation of unbridled interest rates have become more and more clear, the 36% rate has gained renewed currency. Congress, three federal agencies, and seventeen states have adopted rates of 36% or less as the benchmark for affordable small loans. The rate has gained widespread acceptance not only because of its historical pedigree or fashion, but also because it results in payments for small loans that borrowers are likely to be able to afford.

END NOTES

[1] *See* National Consumer Law Center, CONSUMER CREDIT REGULATION § 1.2.2 (2012) ("CONSUMER CREDIT REGULATION") (tracing the origin of the general usury laws on the books in many states today to England's laws before American independence).
[2] *See* CONSUMER CREDIT REGULATION, *supra* note 1, § 1.2.3.
[3] CONSUMER CREDIT REGULATION, *supra* note 1, § 1.2.3.
[4] Lynn Drysdale & Kathleen Keest, "The Two-Tiered Consumer Financial Services Marketplace: The Fringe Banking System and Its Challenge to Current Thinking About the Socio-Economic Role of Usury laws in Today's Society, 51 S.C. L. Rev. 589, 619 (2000) (describing the "direct antecedent of today's postdated check [payday] loan: some early salary lenders convinced borrowers to sign a bank check in the amount of the loan's principal and interest, even though the borrower had no bank account.").
[5] CONSUMER CREDIT REGULATION, *supra* note 1, at § 1.2.3.
[6] Christopher L. Peterson, *Usury Law, Payday Loans, and Statutory Slight of Hand: Salience Distortion in American Credit Pricing Limits*, 92 MINN. L. REV. 1110, 1119–20 (2008).
[7] *See* CONSUMER CREDIT REGULATION, *supra* note 1, § 1.2.3.
[8] *See* CONSUMER CREDIT REGULATION, *supra* note 1, § 1.2.3.
[9] Elisabeth Anderson, Experts, Ideas, and Policy Change: The Russell Sage Foundation and Small Loan Reform, 1910–1940, at 2 (Mar. 8, 2006) ("Small Loan Reform"), *available at* http://www.yale.edu/scr/andersen.doc.
[10] *See* Small Loan Reform, *supra* note 9, at 17, 39.
[11] Small Loan Reform, *supra* note 9, at 39.
[12] *See* Small Loan Reform, *supra* note 9, at 36–37, 42.
[13] Small Loan Reform, *supra* note 9, at 27–28.
[14] *See* Small Loan Reform, *supra* note 9, at 34–39 (discussing RSF's use of studies related to the Uniform Small Loan laws, which were generally state-specific as opposed to systemic).
[15] *See* Drysdale & Keest, *supra* note 4, at 623.
[16] *See* Drysdale & Keest, *supra* note 4, at 625.
[17] *See generally* CONSUMER CREDIT REGULATION, *supra* note 1, §§ 1.2.2, 1.2.3, 1.2.5. Though exceptions for small, short-term loans have since been carved in many of them, the usury rates that are still in effect for mid-size loans are typically those that would have applied to small dollar loans before deregulation. For a summary of state statutes governing the interest rates and fees on small dollar loans, see Leah Plunkett & Ana Lucia Hurtado, "Small-Dollar Loans, Big Problems: How States Protect Consumers from Abuses and How the Federal Government Can Help," 44 Suffolk U. L. Rev. 31, Appx. B (2011). A slightly older version of the same information can be found in National Consumer Law Center, Consumer Federation of America, and Consumers Union, Small Dollar Loan Products Scorecard 2010: Statutory Back-Up (May 13, 2010), *available at* http://www.nclc.org/issues/payday_loans/content/cu-small-dollar-scorecard-backup-2010.pdf.
[18] Marquette National Bank v. First of Omaha Serv. Corp., 439 U.S. 299 (1978).
[19] South Dakota and Delaware sought to attract that industry as part of their economic development strategy. They wanted to "provide [their] citizens with the jobs and benefits a large national credit card operation can provide (attracted by the ability to export limitless credit card rates to other states)." Indep. Cmty. Bankers' Ass'n of S.D. v. Board of Governors, Federal Reserve Sys., 838 F.2d 969, 975 (8th Cir. 1988). *Cf.* Eckman, The Delaware Consumer Credit Bank Act and Exporting Interest Under § 521 of the Depository Institutions Deregulation and Monetary Control Act of 1980, 39 Bus. Lawyer 1264 (1984).
[20] CONSUMER CREDIT REGULATION, *supra* note 1, § 1.2.5.
[21] *See supra* note 17.

[22] *See* National Consumer Law Center, Consumer Federation of America, Consumers Union, Small Dollar Loan Products Scorecard—Updated (May 2010) ("Small Dollar Loan Scorecard"), *available at* http://www.nclc.org/issues/payday_loans/content/cu-small-dollar-scorecard-2010.pdf.
[23] *See* Drysdale & Keest, at 625; CONSUMER CREDIT REGULATION, *supra* note 1, § 9.3 (explaining the state statutory frameworks that permit or prohibit payday lending).
[24] *See* Small Dollar Scorecard, *supra* note 22. New Hampshire recently imposed a 36% rate cap, with no fees, on payday loans, but the state has no rate cap for longer term loans. Georgia permits triple-digit auto-title loans.
[25] For state by state information, SEE CONSUMER CREDIT REGULATION, *supra* note 1, § 9.3; http://paydayloaninfo.org/state-information.
[26] In 2009, Ohio voters defeated an industry-sponsored ballot initiative to undo the state's new 28 % rate cap. Arizona voters in the 2008 election rejected a ballot initiative that would have permitted payday lenders to remain in business permanently, instead of allowing the 2010 sunset provision in the payday loan law to go into effect, restoring Arizona's 36% small loan rate cap for all lenders. *See* Tyler Evilsizer, Nat'l Institute on Money in State Politics, Lenders Couldn't Buy Laws 6–8 (Aug. 18, 2009), *available at* http://www.followthemoney.org/Research/index.phtml.
[27] *See, e.g.,* Uriah King & Leslie Parrish, Center for Responsible Lending, Springing the Debt Trap (Dec. 2007) (documenting that reforms short of rate caps of roughly 36% will not stop payday lending), *available at* http://www.responsiblelending.org/payday-lending/research-analysis/springing-the-debt-trap-exec-summary.pdf.; *Virginia's 'Faithful Pledge' Challenges Payday Lenders*, WASH. POST, Aug. 27, 2007. Over 100 organizations signed a letter in support of a federal 36% usury cap.
[28] *See* Department of Defense, Report on Predatory Lending Practices Directed at Members of the Armed Forces and Their Dependents 13(Aug. 9, 2006) ("DOD Report"), *available at* http://www.defense.gov/pubs/pdfs/Report_to_Congress_final.pdf; Center for Responsible Lending, Nine Signs of Predatory Payday Loan, *available at* http://www.responsiblelending.org/payday-lending/tools-resources/ninesigns.html.
[29] *See* John Warner National Defense Authorization Act of 2006, Pub. L. No. 109-364, § 670 (2006). The Military APR ("MAPR") calculation is based on a finance charge that must include more fees than the finance charge under the Truth in Lending Act and Regulation Z. Limitations on Terms of Consumer Credit Extended to Service Members and Dependents, 72 Fed. Reg. 50,580, 50,587–90 (Aug. 31, 2007); 32 C.F.R. § 232.3(h); CONSUMER CREDIT REGULATION, *supra* note 1, § 2.2.5.8.
[30] 72 Fed. Reg. at 50,582.
[31] Public Law No. 112-239, §§ 661 to 663 (Jan. 2, 2013) (adding 10 U.S.C. § 987(f)(5)); H.R. 4310, H. Rep. 112-705 Text of the Joint Statement of Managers, Subtitle G-Military Lending 110–111, *available at* http://www.rules.house.gov/Media/file/PDF_112_2/PDF/HR4310crJES.pdf;
[32] *See* FDIC, PR 52-2007, Small Dollar Loan Guidelines, *available at* http://www.fdic.gov/news/news/press/2007/pr07052a.html.
[33] FDIC: Small Dollar Loan Pilot Program, *available at* http://www.fdic.gov/smalldollarloans/.
[34] FDIC, Small Dollar Loan Guidelines.
[35] 12 C.F.R. § 701.21(c)(7)(iii).
[36] NCUA, Short-Term, Small Amount Loans, 75 Fed. Reg. 58,283 (Sept. 24, 2010).
[37] 72 Fed. Reg. at 50,580.
[38] DOD Report, *supra* note 28, at 7.
[39] 12 C.F.R. § 701.21(c)(7)(iii)(A)(1).
[40] *See, e.g.,* Interest Rate Reduction Act, S. 582 (111th Cong.), United States Senate (introduced by Sen. Sanders Mar. 12, 2009).
[41] *See* Springing the Debt Trap, *supra* note 27.

[42] Pew Charitable Trust, "Payday Lending in America: Who Borrows, Where They Borrow, and Why" (July 19, 2012), *available at* http://www.pewstates.org/research/reports/who-borrows-where-they-borrow-and-why-85899405043.
[43] *See* Paige Marta Skiba and Jeremy Tobacman, Payday Loans, Uncertainty, and Discounting: Explaining Patterns of Borrowing, Repayment, and Default (Aug. 21, 2008) (determining that by the time loans are written off by the lender, borrowers have repaid fees equaling about 90% of their initial loan principal but are counted as defaults for the full amount of the loan), *available at* http://www.law.vanderbilt.edu/faculty/faculty-personal-sites/paige-skiba/publication/download.aspx?id=1636.
[44] Rebecca Borné, Joshua Frank, Peter Smith, and Ellen Schloemer, Center for Responsible Lending, Big Bank Payday Loans: High-Interest Loans Through Checking Accounts Keep Customers in Long-Term Debt 6 (July 2011), *available at* http://www.responsiblelending.org/payday-lending/research-analysis/big-bank-payday-loans.pdf.
[45] These are the criteria for affordable payday loan alternatives recommended in the National Consumer Law Center, Stopping the Payday Loan Trap: Alternatives that Work, Ones that Don't (June 2010), *available at* http://www.nclc.org/images/pdf/high_cost_small_loans/payday_loans/report-stopping-payday-trap.pdf.
[46] Pew Charitable Trust, Payday Lending in America: Report 2, How Borrowers Choose and Repay Payday Loans 13–14 (Feb. 2013), *available at* http://www.pewstates.org/uploadedFiles/PCS_Assets/2013/Pew_Choosing_Borrowing_Payday_Feb2013.pdf.
[47] *See* Stopping the Payday Loan Trap, *supra* note 44, at 8–18 (discussing the criteria for affordable payday loan alternatives).
[48] *See* Springing the Debt Trap, *supra* note 27, at 7–8.
[49] *See* Uriah King & Leslie Parrish, Center for Responsible Lending, Phantom Demand: Short-Term Due Date Generates Need for Repeat Payday Loans, Accounting for 76% of Total Volume (July 2009), *available at* http://www.responsiblelending.org/payday-lending/research-analysis/phantom-demand-short-term-due-date-generates-need-for-repeat-payday-loans-accounting-for-76-of-total-volume.html.
[50] *See* Stopping the Payday Loan Trap, *supra* note 44, at A-1.
[51] For example, one congressional bill would impose a federal 36% usury cap, including fees, but would exclude a $30 application fee, once a year, for 90-day or longer installment loans of at least $300. *See* Protecting Consumers from Unreasonable Credit Rates Act, S. 3452, 112th Cong. (introduced by Sen. Durbin July 26, 2012).
[52] *See* Stopping the Payday Loan Trap, *supra* note 44, at 6–8 (discussing 10 myths of payday loan alternatives).

Boston Headquarters:
7 Winthrop Square
Boston, MA 02110-1245
Phone: 617/542-8010
Fax: 617/542-8028
www.nclc.org

NCLC®
NATIONAL CONSUMER LAW CENTER®

Advancing Fairness in the Marketplace for All

Washington Office:
1001 Connecticut Ave, NW
Suite 510
Washington, DC, 20036
Phone: 202/452-6252
Fax: 202/463-9462