

**Written Testimony of Ed Sivak
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**Before the Mississippi House of Representatives
Banking and Financial Services Committee**

“Federal Regulation and Access to Small Dollar Credit”

May 20, 2014

Chairman Zuber, thank you for holding a hearing on the important topic of Federal Regulation and Access to Small Dollar Credit. I appreciate the opportunity to speak before this committee. I serve as the Chief Policy and Communications Officer for the Hope Enterprise Corporation (HOPE) www.hope-ec.org, a nonprofit community development finance institution that also sponsors Hope Federal Credit Union. For twenty years, HOPE has worked to break the cycle of poverty throughout Mississippi and the Mid-South by undertaking a wide range of income and asset development strategies to improve the quality of life for the region’s low- and moderate-income residents. Over that time period, HOPE has generated \$2 billion in investments that have touched the lives of 500,000 individuals.

I also serve as the current Director of the Mississippi Economic Policy Center (MEPC) www.mepconline.org. An initiative of HOPE, MEPC engages in rigorous and accessible analysis that informs the policy debate on issues affecting the economic and social well-being of Mississippi’s working families.

Introduction

In his remarks in Nashville earlier this spring, Richard Cordray, Director of the Consumer Finance Protection Bureau (CFPB) reiterated the charge of this important agency. When created,

“Congress charged the Consumer Financial Protection Bureau with the dual responsibility for assuring that consumers have access to financial services and making sure that the markets for those services are fair, transparent and competitive.” He went on to conclude that the CFPB envisions “a marketplace where both consumers and honest businesses can benefit from reliable small-credit lending.”

It is amid the backdrop painted by Director Cordray that I share my remarks today. Over the last two years I have been in a number of conversations with industry representatives from the installment lending, credit life and payday lending industry where the term “uncertainty” and “CFPB action” have dominated the discussion. Many are nervous about the specter of new regulation and how it will affect each industry. Some have reached out to explore options for new products that meet the test outlined by Director Cordray. In particular, discussions between segments of the installment loan industry and consumer advocates have been productive.

At the same time, we must be honest with ourselves and recognize that Mississippi finds itself in an untenable predicament today because we have failed, at multiple junctures, to implement meaningful, state level consumer protections for small dollar loans. The failure of all of us, to implement meaningful consumer oriented reforms has created an environment where abuses occur, that, in my opinion, will fuel the CFPB to work vigorously to rectify.

Borrower Case Study

One of my greatest concerns about our small dollar loan industry – particularly those of less than \$500 – is that there is currently no mechanism to track the number and dollar of loans that a borrower has outstanding and no mechanism to determine whether or not a borrower can afford to repay a loan. While there are loan limits, the current law allows borrowers to move from lender to lender amassing an insurmountable level of debt. The following case, from a borrower assisted by Hope Federal Credit Union, illustrates the limits of the Mississippi Check Cashers Act.

In late July, 2012, a borrower came to HOPE looking for assistance. The borrower had initially taken out a payday loan to cover expenses after the car broke down. Once the borrower had taken out the first loan, the borrower got behind and then took out another loan and then another. By the time the borrower had made it to HOPE, the borrower had eight payday loans outstanding from seven different lenders – all scheduled to be withdrawn from the checking account on the next payday. A breakdown of the loans is as follows:

Table 1	
Payday Loan Summary – Borrower Case	
Lender	Amount of Loan
Lender #1	\$400
Lender #2	\$365.85
Lender #3	\$249.60
Lender #4	\$180
Lender #5	\$234
Lender #6	\$210
Lender #7	\$240(a)
Lender #7	\$240(b)

Additionally, I have attached three exhibits from the borrower case above to illustrate the limits of the current law and the abuses that it allows:

- Exhibit A – the contract for Lender #5. Note that the payment is scheduled to be presented on July 27, 2012.
- Exhibit B – the contract for Lender #7. Note that the payment is scheduled to be presented on July 27, 2012. Also, note that the payment is for \$240.
- Exhibit C – the contract is for Lender #7. Note that the payment is scheduled to be presented on July 27, 2012. Also, note that the payment is for \$240. Exhibits B and C differ in that both loans are secured by two different checks.

Combined, the loan summary and the three exhibits illustrate a number of abuses. First, multiple lenders were set up to collectively draft well over \$500, on July 27, 2012. Second, Lender #7 engaged in the practice of “loan splitting.” This practice allows the lender to circumvent the requirement that any payday loan secured by a check with a face value of higher than \$250 will have a repayment term of 28 to 30 days.

In total, the borrower faced having \$2,119.45 taken from the checking account at the end of the month. The borrower’s take home pay for the month of July totaled \$2,076.49 – which was divided over two pay periods. Clearly, multiple lenders in this example made loans that the borrower could not afford to repay. It should be noted, that payday loans do not show up on a credit report. Additionally, there is no single reporting system that would alert lenders to a borrower that was over extended.

Policy Options

Unfortunately, the case outlined above is not unique. Lawmakers, mayors, local business people from around the state frequently refer people to HOPE who find themselves in similar situations. To that end, the following policy options would begin to change the environment in Mississippi in a positive way for consumers:

Loan Rationing

Lawmakers could implement a cap on the total amount of payday loans outstanding as a percent of gross monthly income. Such a recommendation would require the use of a state administered real time data base.

Replace existing payday loan structure with an installment loan structure based on ability to repay

Moving towards an installment loan structure addresses the fundamental issues surrounding ability to repay. By giving borrowers six months to repay a loan, in equal installments, borrowers would be more likely to find themselves in situations where the loan could be repaid and the need to renew the loan would decrease. Such an approach should require affordability thresholds or some level of underwriting, a fee structure that does not incentivize lenders to flip loans before the loans fully amortize and limits on loan terms. Similar reforms are also applicable for the installment loan industry in Mississippi.

Conclusion

At the outset of the testimony, I commented that the failure to implement meaningful consumer protections is the failure of all of us who work in this space. In many ways, the CFPB was created to respond to those failures. While much uncertainty exists, one variable that is absolutely known is that change is coming. It's up to us to decide whether or not we will lead the change or if the change will lead us.