Greed:

An In-depth Study of the Debt Collection Practices, Interest Rates, and Customer Base of a Major Illinois Payday Lender

March 2004

MONSIGNOR JOHN EGAN CAMPAIGN FOR PAYDAY LOAN REFORM

Acknowledgments

The Monsignor John Egan Campaign for Payday Loan Reform acknowledges the invaluable research assistance provided by Susan Staskowski and Jessica Palys of the Women's Self-Employment Project, Puneet Arora and Genevieve Harrison of the Sargent Shriver National Center on Poverty Law, and Julissa Ruiz and Thanh Co Lu of Citizen Action/Illinois. These individuals spent long hours gathering court cases and inputting data that served as the primary basis for this report.

The Egan Campaign also acknowledges the leading role played by Citizen Action/Illinois, the Coalition for Consumer Rights, and the Woodstock Institute in preparing this report.

Finally, this project would not have been possible without the support of the Consumer Federation of America, which funded this project with a generous grant from the Ann K. Lower State and Local Grants Program.

Table of Contents

<u>Executive Summary</u>

Payday lenders claim that their business plays an important role in the community. This report, however, shows that a significant portion, if not the vast majority, of payday loan customers face never-ending debt, extreme financial anxiety, and the threat of costly and traumatic litigation. *Greed: An In-depth Study of the Debt Collection Practices, Interest Rates, and Customer Base of a Major Illinois Payday Lender* tells the stories of individuals who were trapped in a payday loan cycle of debt and provides concrete evidence of the aggressive and often litigious payday loan debt collection practices in Chicago. Unless otherwise noted, the findings in this report are based on a sample of 444 debt collection cases filed against payday loan customers by Americash Loans, LLC, one of the biggest payday lenders in the state.

<u>For the period 2002 to 2003, among this report's key findings are the following</u>:

- A payday loan is not an affordable lending option. **The average annual percentage rate (APR) on Americash loan products with terms of 31 days or less was 573.18%.** APRs ranged from 521.43% to 592.08%.

- The average payday loan was \$331.14, **yet payday loan customers were charged an average finance charge of \$144.35 – an amount equal to almost half the amount of the loan itself.**

- **The average award in a payday loan debt collection action was nearly *triple* the average payday loan amount.** For the cases in which judgment was entered for Americash, the company was awarded an average of \$954.52, inclusive of court costs and additional interest that accrued after the complaint was filed.

- **The poor and ethnic minorities represent a disproportionate share of Americash's customer base.** Customers sued by Americash are overwhelmingly located in areas that are over 75% ethnic minority and in areas in which most families earn less than 80% of the federal census' "Metropolitan Statistical Area" median family income.

- **Women are disproportionately represented in Americash debt collection lawsuits.** Nearly two-thirds of the customers sued were women, 31% were male, and 6% were gender unknown.

- **For the period 2002 to 2003, the average attorneys' fee demanded from payday loan customers was almost as much as the average payday loan amount.** The average attorneys' fee was \$303; the average payday loan amount was \$331.14.

- It is a common practice for a payday lender to secure a debt through the assignment of a customer's wages. **97.8% of the cases in 2002 and 98.5% of the cases in 2003 contained evidence of a wage assignment.**

Introduction

In only a few years, the business of payday lending has exploded across the state of Illinois. Only a decade ago, these storefront operations, offering short-term loans at triple-digit interest rates, were rarities, but now they outnumber McDonald's franchises. While the Illinois Department of Financial Institutions (DFI) lists 625 payday loan outlets in Illinois as of February 2004, there are only about 250 McDonald's restaurants across the state.[1]

Illinois' criminal usury statute prohibits charging an APR greater than 20%. The statute exempts from this requirement licensed lenders, including licensed payday lenders. As a result, payday lenders are free to charge any interest rate they choose. While these lenders tend to characterize the interest charged on their loans as a "finance charge" or "one-time fee," the effect on the consumer is the same. Whether an individual takes out a loan for one week or one month, the APRs on payday loans in Illinois are commonly close to 600%.[2]

In addition, payday lenders allow and often encourage their customers to "roll over" loans if they are unable to pay their total balance by the end of the loan term. Under this scenario, payday loan customers pay finance charges on loans consisting of the unpaid balance of the original principal amount plus the original finance charge. In other words, customers who rollover a payday loan pay finance charges on finance charges. Amidst all this refinancing, loans that were originally intended to last for only a few weeks can take several months to pay off. A customer is free only when he or she either pays off the total payable amount of the loan, inclusive of finance charges, or declares bankruptcy.

The Egan Campaign worked closely with members of the Illinois General Assembly to authorize DFI to establish a regulatory framework under which the payday loan industry could lend money responsibly. As a result of these efforts, new DFI rules went into effect on August 1, 2001.[3] The rules' key provisions are as follows:

- A $400 maximum limit on individual loans;
- A maximum of two rollovers, provided that the principal has been reduced by at least 20%;

---

[1] A complete list of licensed payday lenders in Illinois is available at http://www.state.il.us/dfi/ccd/ccd_licensees.htm. Information on the number of McDonald's franchises in Illinois was obtained from a conversation with a McDonald's customer service representative on March 8, 2004.

[2] *See, e.g.*, Jean Ann Fox and Edmund Mierzswinski, *Rent-A-Bank Payday Lending: How Banks Help Payday Lenders Evade State Consumer Protections*. Downloaded on March 7, 2004, from http://uspirg.org/uspirg.asp?id2=5031&id3=USPIRG&.

[3] Ill. Admin. Code tit. 38, § 110.1 *et seq*.

- A waiting period of 15 days (a.k.a. "cooling-off period") upon fulfillment of a loan before another loan could be made; and

- A ban on multiple simultaneous loans.

The DFI rules apply only to loans of 30 days or less. Presently few, if any, payday loans fall within the 30-day prerequisite. **This report illustrates that the Illinois payday lending industry responded to the DFI rules by creating loan products that evaded the 30-day prerequisite.**[4] After the DFI rules went into effect, the traditional payday loan with a term of 14 days became a loan with a term of 31 days – one day outside the DFI rules' reach. In addition, the industry now offers "installment loans" – loans payable in equal installments for a period of months but less than one year. The loan amount for an installment loan can be well in excess of $400. [5]

This report is the first comprehensive study of the payday loan industry based on public court records. Such records are clear, unbiased, and incontrovertible. Payday lenders have never made available to the public comparable information about their business practices. Absent such information, the Egan Campaign's in-depth analysis focused on one of the state's largest payday lenders: Americash Loans, LLC. Additional reasons to focus on Americash include

- The vast body of litigation commenced by Americash enabled us to form statistically sound conclusions, and

- Americash cases were easy to identify because Americash filed the cases under the name "Americash" and not under a different corporate name or under the name of an affiliated company or a collection company to which the case had been assigned.

<u>Americash: An Introduction</u>

Americash Loans, LLC, based in Des Plaines, is the fastest growing Illinois-headquartered payday loan company. As of 2003, Americash had 39 outlets in the Chicago metropolitan area and is opening new ones at a steady pace.

Americash filed hundreds of collection cases against customers in the past two years. **From 2002 to 2003, Americash filed at least 367 cases against customers in Chicago alone.** The average judgment for Americash in those cases was $954.52.

---

[4] In addition to rendering the DFI rules moot by creating loan products that fall outside the 30-day prerequisite, the payday loan industry sued Illinois to invalidate the DFI rules. The Illinois Supreme Court heard oral arguments in the case on January 22, 2004, and a final decision is expected later this year. The lower courts upheld the DFI rules.

[5] Throughout this report, when referring to a particular loan or set of loans, "payday loan" means a loan payable in 31 days or less and "installment loan" means a loan payable in a period of weeks or months in excess of 31 days. "Payday loan industry," "payday loan store," "payday lending," and "payday loan customer" refer to the industry in general.

Americash is controlled by a handful of investors, all of whom have been involved in the founding and growth of the currency exchange industry in Illinois.[6] The five managers of the company are Frank Tufano, Anthony Fornelli, Richard Barr, Dustin Mauldin, and Bonnie Schoenberg.

Tufano, Fornelli, and their families are among the earliest investors in currency exchanges. Fornelli currently serves as chairman and lobbyist for the currency exchange PAC. Richard Barr and his father Irving are owners of dozens of currency exchanges. Irving Barr, along with Fornelli and Tufano, started and funded much of the currency exchange industry's political and legislative operation.[7] Bonnie Schoenberg and her husband Steven own at least ten Chicago-area currency exchanges with Barr or on their own.

---

6 *See* Msgr. John Egan Campaign for Payday Loan Reform, "A Closer Look at the Players Who Dominate the Illinois Payday Loan Industry," Mar. 2003.

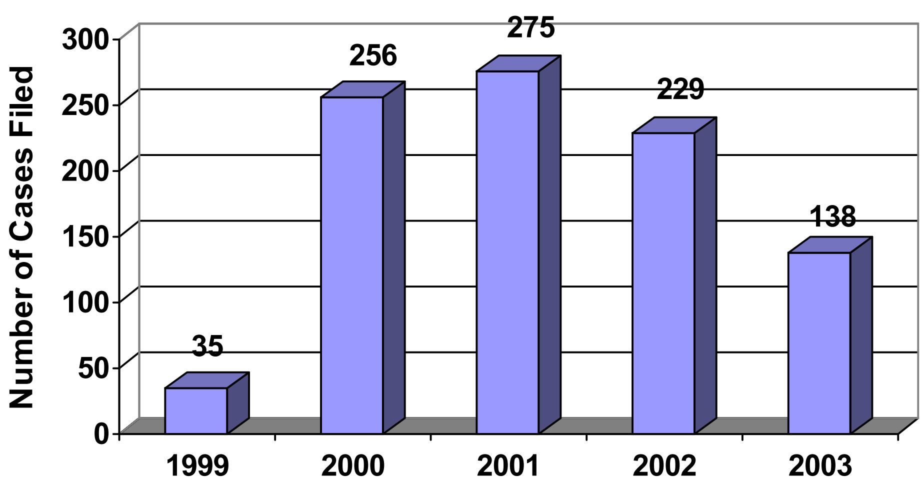
7 The Illinois Campaign for Political Reform is releasing, concurrently with this report, a report of the payday loan industry's political contributions.

Americash v. Its Customers: 1999 to 2003

Over a period of several months, a team of researchers gathered court records from the Circuit Court of Cook County, Illinois, and entered data from 444 payday collection cases filed by Americash into a database (Appendix C). All of the statistics below come from this sample or a subset thereof. All cases in the sample were filed in the First Municipal District, the district that encompasses the City of Chicago. The sample includes nearly all Americash debt collection cases filed in 2002 and 2003 as well as several from 1999 and 2000. As explained more fully below, the database provides a detailed account of how a short-term "fix" can turn into a long-term nightmare.

Americash Litigation in Chicago: An Overview

Americash steadily pursues its customers through the court system. The figures contained in the table below represent the total number of cases filed by Americash in Chicago from 1999 to 2003. All in all during this period, Americash filed 933 debt collection cases in Chicago against its customers.



The total number of cases filed in Chicago by Americash dropped after 2001. There is no available information to conclusively explain this trend. Three possible explanations, however, are

- Americash is increasingly relying on the wage assignment agreements that it obtains from customers; such agreements permit Americash to garnish a customer's wages without court intervention;

- Americash has reduced the number of debt collection cases that it files under the name "Americash" by selling delinquent accounts to a debt collection agency or by designating another corporate entity to pursue the matter; and/or

- As the payday loan industry has come under increased scrutiny in Illinois and across the United States, Americash is using less public forms of debt collection to reduce its visibility and eliminate its paper trail in the court system.

Litigation Triples Costs to Customers

Being sued causes emotional distress and has a negative impact on a person's credit rating as well as on other societal measured of "good character." For example, applicants to become licensed attorneys in the state must list all court complaints field against them to prove their "character and fitness."

Litigation can also have devastating financial consequences. In a typical payday loan collection case, a customer must pay the outstanding balance of the loan obligation plus the lender's attorneys' fees. **For the period 2002 to 2003, the average attorneys' fee demanded from payday loan customers was almost as much as the average loan amount.** The average attorneys' fee was $303; the average payday loan amount was $331.14. These awards of attorneys' fees were granted despite the fact that the vast majority of cases required minimal legal work: the documents prepared by Americash's attorneys were forms into which the borrowers' information was simply inserted. In no case was there an accounting of the time actually spent and fees actually charged by Americash's attorneys.

On average, **the total amount of damages sought by Americash in payday loan cases was over twice the average payday loan amount.** The average amount of damages sought was $825.77; the average payday loan amount was $331.14. For the cases in which judgment was entered for Americash, the company was awarded an average of $954.52, which includes court costs and additional interest that accrued after the complaint was filed. **The average award in a payday loan debt collection action was nearly *triple* the average payday loan amount.** The award does not include payments made to Americash prior to the award.

In every case for which there is a recorded decision on the merits of the case, Americash was victorious. Only in cases of settlement, the customer's bankruptcy, or voluntary dismissal by Americash did the company not obtain a judgment in its favor. *See* Appendix C.

Americash Gets a Grip on Customers' Wages

Today it is common for a payday lender to secure a debt through the assignment of a customer's wages. A wage assignment is an agreement by the customer to have his or her wages garnished in the event that he or she defaults on the loan. Obtaining a wage assignment has become a popular practice in recent years. In no case collected from 1999 and 2000 was there any evidence of a wage assignment. By contrast, **97.8% of cases in 2002 and 98.5% of the cases in 2003 contained evidence of a wage assignment.**

Even when a customer does not provide the lender with a wage assignment, a lender who is successful in court can obtain a wage deduction order requiring the customer's employer to deliver a portion of the customer's wages to the lender. Of the cases in which Americash was victorious, **Americash sought a wage deduction order in at least 86% of its cases.**

Exorbitant Interest Rates

Triple-digit APRs are standard in the payday loan industry. **For the period 2002 to 2003, the average APR on payday loans was 573.18%.** APRs ranged from 521.43% to 592.08%. The median APR for such loans was 573.57%. The payday loan industry claims that 520% is the average APR for the industry.

In terms of actual dollars, **the finance charge on payday loans was an amount equal to almost half the principal loan amount.** The average payday loan amount was $331.14; the average finance charge was $144.35.

Americash Targets Ethnic Minorities and Lower Income Groups

To examine the distribution of payday loan customers by ethnicity and income level, the Woodstock Institute conducted a geographic analysis by ZIP code of the customers sued by Americash. Appendix A is a map showing that customers sued by Americash are overwhelmingly located in areas that are over 75% ethnic minority. Appendix B is a map showing that customers sued by Americash are overwhelming located in areas in which most families earn less than 80% of the federal census' "Metropolitan Statistical Area" median family income. The implications of this analysis are clear: **the poor and ethnic minorities represent a disproportionate share of Americash's customer base.**

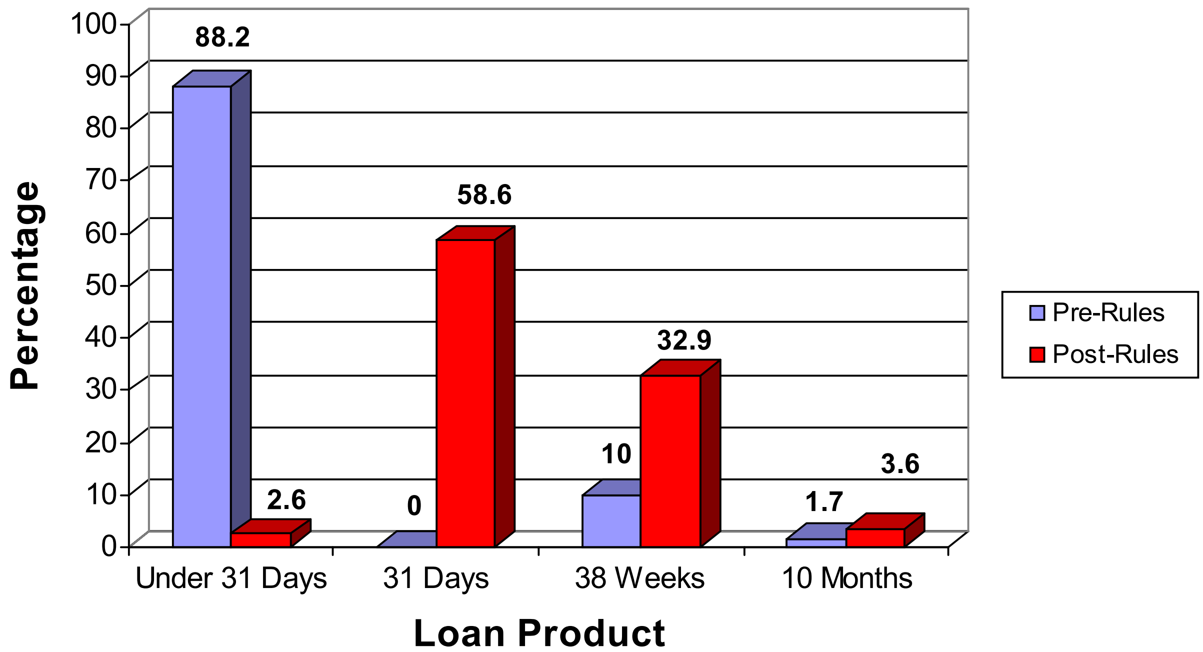
Most Payday Loan Customers are Women

As with the poor and ethnic minorities, **women are disproportionately represented in Americash debt collection lawsuits.** For the period 2002 to 2003, 63% of the customers sued were women, 31% were male, and 6% were gender unknown.

DFI Rules Are Irrelevant

Loans that fall under the DFI rules are practically extinct. **Only one loan made for the period 2002 to 2003 fell within the scope of the DFI rules.** For the period 2002 to 2003, 45% of the loans were for terms of exactly 31 days – one day longer than loans to which the DFI rules apply. About one-third of the loans during this period were "installment loans": 38% of the loans were for terms of 38 weeks and 5% of the loans were for terms of 10 months. The remaining 13% of loans for the period 2002 to 2003 were loans of various other terms, or loans for which the data was missing or illegible.

The loans made in the period 1999 to 2001 are dramatically different. No 31-day loans were made before August 1, 2001, the date on which the DFI rules became effective. For the period 1999 to August 1, 2001, 88% of the loans were for a term of 14 days or less and would have fallen within the scope DFI rules if the loans had been made on or after August 1, 2001.



Escaping the reach of the DFI rules is not a mere technicality. **The DFI rules limit payday loans to a maximum amount of $400 per loan, but the average installment loan amount was $784.05.**

<u>Installment Loans: Longer Terms, Lower Interest, and More Debt</u>

Offering "installment loans" with terms longer than 31 days has become a more popular industry practice in recent years. These loans have 120% to 140% APRs, and tend to be for larger amounts. The average installment loan was for $784.05; the average loan with a term of 31 days or less was $331.14. Thus, while the interest rates are lower, the total payable amount is substantially higher.

Of all the cases in the sample, 28% were debt collection actions based on an installment loan. Moreover, **the average damages amount sought in installment loan cases was $1,402.26 -- almost twice the average installment loan amount.** (The average attorneys' fee in these cases is $345.) Adding court costs and interest that accrued after the complaint was filed, the average installment loan customer owed $1,513.30.

<u>Customers Strike Back: Litigation Against Americash</u>

In only two cases did customers "put up a struggle" in the claims brought against them by Americash. In both cases, Americash opted to voluntarily dismiss its claims.

In the first case (Case No. 99C3255, N.D. Ill.), the customer filed a lawsuit against Americash in federal district court alleging violations of the Truth in Lending Act (TILA) and claiming that the payday loans were unconscionable and fraudulent under state law. The court dismissed the TILA claim, finding that the loan agreement was not misleading, and dismissed the remaining claims on jurisdictional grounds.

In the second case (Case No. 99C6266, N.D. Ill.), the borrower filed a class action in federal court against one of Americash's law firms, Ferleger & Associates, Ltd., alleging that the firm's debt collection practices violated the Fair Debt Collection Practices Act. In particular, the complaint alleged that the firm's practice of using form letters to borrowers claiming damages under Illinois' "bad check statutes" constituted a false, misleading, deceptive, and unfair debt collection practice. Ferleger settled the case for $12,300.

Payday Loan Customers Share Their Stories

In late January 2004, the Egan Campaign convened a diverse group of individuals who were current or former customers of various payday loan stores. The personal experiences recounted below lend even greater urgency to the need for payday loan reform in the state.

General Experiences with Payday Lending

All people attending the Egan Campaign's meeting had at least one payday loan, and most had more than one loan at a time (one woman had three loans at one time) or had multiple loans in succession. At least one individual reported having as many as eight payday loans. Several rolled them over too many times to count.

As V.[8] explained her rollover situation:

> Forever, six months to a year it was every other week. I would get paid and then I would pay it and then they would tear my check up and I would not have to pay \$120, I would pay \$110 and then I would want another \$100. So, I would write another check for \$120 and over and over. Then, I went to a second Nationwide Finance so I had two Nationwides to pay Americash and then back and forth forever. It never stopped.

Most of the group's motives for a short-term loan were for necessities, not frivolous expenses. Consider what M. said:

> I needed to have my brakes fixed right away, right away. They were like grinding really, really, really bad. I could not wait until next week until I got paid.

Experiences with Litigation

V., who was sued by her lender, had no idea that the judgment and court costs would dwarf her loan so dramatically:

> I was looking at the papers last night and I do not think, I think my loan was \$250 and I looked at the papers last night, the court papers, they wanted me to pay \$1,235 that was the court fees and everything.

Americash: An Especially Abusive Lender

Americash was frequently identified as a particularly unsympathetic payday lender. Several individuals had particularly negative encounters with Americash staff.

---

[8] All names have been changed to respect the privacy of the participants.

As S. said:

> Americash is really bad though. They will harass you and I got so that I knew the number. So, he would call like every other day and he was horrible. I think he was the manager or something but he was growling like his tone was going to scare me. I was trying to explain to him that I am going to get your payment…and I was not working at the time. I was off and I was trying to explain. That is not my problem. I want you to send this payment in. I said I cannot send you anything I do not have.

S. had trouble with Americash garnishing her wages even after the company said it would stop, and found it difficult to get the company to agree to a payment plan. At least two people complained that Americash and others deposited their checks early.

P. added:

> I went to Americash before and I was supposed to have gone there on Friday but I always go in there on Saturday. She had sent all three of my checks through the bank, $600, sent them through and I called the 800-customer service number and complained to the manager.

Policy Recommendations

The DFI payday loan rules have no practical significance and are irrelevant. The only loans subject to the rules are those with terms of 30 days or less. Loans of this type become practically extinct after August 1, 2001, the effective date of the rules. At the same time, the 31-day loan product, a loan that escapes the rules by *one day*, makes its introduction after August 1, 2001. Due to the total non-applicability of the DFI rules, new legislation is needed to protect consumers and to curb abuses by payday lenders.

At a minimum, this consumer protection legislation should include the following:

- **An expansive loan definition.** The legislation should be drafted to include all loans secured through a wage assignment, post-dated check, or automatic checking account debit.

- **Lower total payable amounts and number of outstanding loans.** The total payable amount of a borrower's loans, *in aggregate*, ought never to exceed 15% of his or her gross monthly income. (Under the Illinois Wage Assignment Act, a weekly wage assignment cannot exceed 15% of the debtor's gross weekly wages.) Additional ways to ensure that loan obligations do not exceed the borrower's ability to pay are limits on the total number of outstanding loans and giving borrowers a "loan free" period before they take out additional loans (a.k.a. "a cooling off period").

- **APR caps.** Triple-digit APRs are excessive. Until the 1980s, it was a felony to charge in excess of 20% APR.[9] Under no circumstances should any lender be permitted to abuse its customers by charging interest rates that approach or even exceed 600% APR.

- **Rollover limits.** By repeatedly extending, refinancing, or "rolling over" loans, borrowers can find themselves in an unending cycle of debt. The number of rollovers should be limited and, when that limit is reached, the total payable amount should be forever frozen and paid in equal monthly installments for a set time period (e.g., 12 months).

- **No attorneys' fees.** Attorneys' fees are not recoverable in contract actions unless otherwise agreed to by the parties. Due to the boilerplate, one-sided nature of the form loan agreements used by payday lenders, attorneys' fees ought never to be recoverable in actions to collect on payday loans.

---

[9] 720 ILCS 5/39-1 to –3.