



MAINE DEPARTMENT OF

**Professional & Financial Regulation**

Report of the Department of Professional & Financial Regulation,  
Office of Consumer Credit Regulation

to

the Joint Standing Committee on Business, Research & Economic Development

Pursuant to Resolve 2005, Chapter 24

“Resolve, Authorizing the Office of Consumer Credit Regulation to Study the Payday Advance  
Industry and Related Consumer Credit Lending Issues in Maine”

February 1, 2006

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- Exhibit #1.....LD 788, “An Act to Establish Consumer Protections and Regulations for Deferred Deposit Loans”
- Exhibit #2.....Resolves 2005, Chapter 24 “Resolve, Authorizing the Office of Consumer Credit Regulation To Study the Payday Advance Industry and Related Consumer Credit Lending Issues in Maine”
- Exhibit #3.....Notice to Interested Parties; Request for Comments and Notice of Hearing
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## Introduction, Procedure and Issues

On February 15, 2005, LD 788, titled “An Act to Establish Consumer Protections and Regulations for Deferred Deposit Loans”, was introduced in the 122<sup>nd</sup> Maine Legislature, First Regular Session – 2005. The bill proposed to remove regulation of payday loans from the Consumer Credit Code (Title 9-A, Maine Revised Statutes) and establish a new Chapter 80-B within Title 32, titled “Deferred Deposit Act.” Among other changes in the laws governing such extensions of credit, LD 788 would increase the charges that could be assessed borrowers to a fee equal to 17.5% of the loan amount, regardless of the term of the loan.<sup>1</sup>

The bill, attached to this report as Exhibit #1, was referred to the Committee on Business, Research and Economic Development (hereinafter the “BRED Committee”).

The BRED Committee held a public hearing on March 25, 2005. Testifying in favor of the bill were a spokesperson for an industry association (Community Financial Services Association of America), a representative of a payday lending company (Check ‘N’ Go) and a Colby College professor. Testifying in opposition to the bill were the Attorney General’s Office, the Maine Credit Union League, AARP, Maine Community Action Association, the Center for Responsible Lending, the Maine Association of Independent Neighborhoods, a retired Navy commander, the Southern Midcoast Maine Chamber, the AFL-CIO and the Office of Consumer Credit Regulation (hereinafter “OCCR”).

At the work session, held on March 31, 2005, the BRED Committee asked its analyst to redraft the legislation into a “Resolve.” That Resolve was subsequently approved by the Legislature, signed by the Governor on May 18, 2005 as Resolves 2005, Chapter 24, and is titled “Resolve, Authorizing the Office of Consumer Credit Regulation to Study the Payday Advance Industry and Related Consumer Credit Lending Issues in Maine” (copy of Resolve attached as Exhibit #2).

The Resolve requests the OCCR to study certain issues relating to payday lending, and report its findings, together with any proposed legislation, to the BRED Committee, by February 1, 2006.

On August 19, 2005 the OCCR mailed a memo titled “Notice to Interested Parties; Request for Comments and Notice of Hearing” (copy of notice attached as Exhibit #3) to the industry associations, individuals, advocates, lobbyists and regulators who had participated in the legislative process or had requested such notice (interested party spreadsheet attached as Exhibit #4). Notice of the opportunity for public comment was also published in the September/October issue of the *Maine Creditor Update*, the OCCR’s newsletter that is sent to 3,000 licensed entities, creditor attorneys and consumer groups (copy of published notice attached as Exhibit #5).

The notice reminded recipients that, in preparing the report, the OCCR was directed to consult with the Attorney General’s office, as well as with the banking and lending industries

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<sup>1</sup> Although LD 788 included a stated cap of “7.5%” of the loan amount, proponents stated in testimony before the BRED Committee that the figure was a misprint, and that their actual request was for a limit of “17.5%”.

and consumer advocates. It quoted the Resolve in specifying the topics to be studied; namely, “the current market for payday advance services and subprime lending practices in the State, and related consumer protection laws and educational services.” The notice also made clear that the OCCR was limiting the scope of its study to unsecured subprime loans, as opposed to secured (e.g., mortgage) subprime loans.

The notice expanded upon the summary language in the Resolve, and posed the following questions to be addressed at the public meeting:

*1) Consumer demand*

*(a) What is the current market demand in the State of Maine for payday lending advance services or other unsecured subprime lending products?*

*(b) If state law should be changed with respect to this market demand, what specific changes should be proposed?*

*2) Consumer protection laws*

*(a) Are current consumer protection laws sufficient to regulate the offering of payday lending advance services or other unsecured subprime lending products, as those products are currently available or as they may be offered in the future?*

*(b) If not, what specific statutory changes should be proposed?*

*3) Consumer education*

*(a) What current consumer education services are offered with respect to payday lending advance services or other unsecured subprime lending products?*

*(b) Are those educational services sufficient to provide information to consumers about the products?*

*(c) If not, how could effective educational services be offered?*

Pursuant to the notice, a public meeting was held on September 21, 2005 at the State of Maine Gardiner Annex. Numerous witnesses appeared, testified and submitted written materials (a copy of the attendance list is attached as Exhibit #6; a copy of the list of all parties who submitted written comments is attached as Exhibit #7).

This report is the result of input received at that opportunity for public comment, as well as information derived from supplemental sources. The report is structured in an outline format utilizing the three questions above, including the various subparts of each question.

## Question 1: Consumer demand

### (a) *What is the current market demand in the State of Maine for payday lending advance services or other unsecured subprime lending products?*

On the issue of evaluating the level of consumer demand for payday advance services, the opinions of commenters varied widely, depending on their relative perspectives. For example:

- A representative of America's Cash Express (ACE), a licensed payday lender with locations in Portland and Brunswick, stated, "We feel there is a limited market at the current rates allowed by law, and that market seems to be adequately serviced."
- FiSCA, the Financial Service Center of America, stated: "There exists an extensive demand for short-term (cash) advances among the residents of Maine, and many of them now are obtaining those advances over the Internet and through telephonic/fax means ("loans-by-phone") at fees substantially greater than could be charged under a reasonable regulatory statute . . . ." In a follow-up letter, FiSCA estimated that nationally, \$13 billion is loaned through Internet sources. The association illustrated the marketing of payday advance services by submitting copies of national tabloids sold in Maine, such as *The National Inquirer*, the *Globe*, the *Sun* and the *National Examiner*. Based on interpolations of estimated national data and population, FiSCA predicted that Mainers may borrow \$43 million from payday advance lenders during the next 12 months, primarily by taking out loans from Internet and loan-by-phone lenders.

FiSCA also argued that free market forces will prevail on this issue, and that attempting to limit Mainers' access to payday loans is akin to the unsuccessful national efforts to prohibit alcohol consumption in the 1920's and 1930's.

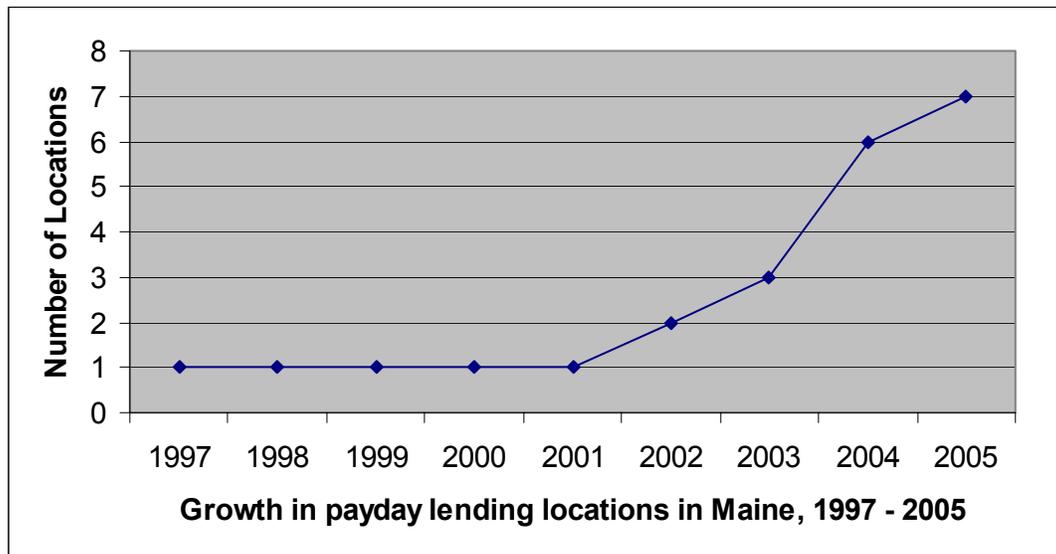
The association buttressed its argument about the popularity of Internet borrowing by submitting a lengthy report from the Consumer Federation of America titled "Internet Payday Lending – How High-Priced Lenders Use the Internet to Mire Borrowers in Debt and Evade State Consumer Protections".

- The Maine Credit Union League (MCUL) opined that "there does appear to be a segment of consumers, though relatively small, that uses payday lending advance services . . . ." However, stated MCUL, "it is our belief that traditional financial institutions, including credit unions, better serve these consumers."
- The Maine Association of Community Banks (MACB) submitted a letter in which it stated that "payday lending is an important service for some Maine consumers . . . ." The letter indicated that MACB has no statistics on market demand for such loans, and further that it prefers that any amendments to the law be made only after "an in-depth analysis of the open market system and the actual positive and negative aspects" of such lending, rather than changing Maine law "solely based on an analysis of market demand."

- Maine Bankers' Association suggested that, if an extensive market demand study is required, the OCCR may wish to employ an outside source or vendor to perform the necessary analysis.
- Coastal Enterprises, Inc. (CEI) acknowledged that the availability of payday loans creates a "demand" for such services; however, CEI opined that the demand "is primarily created by repeated loan flipping," and that 90% of loan volume growth can be attributed to "repeat use and larger loan amounts by the same borrowers."
- A spokesperson for the Community Financial Services Association of America and Advance America Cash Advance Centers, Inc. stated that demand was created "when traditional financial institutions stopped making small denomination, unsecured loans." He said that high insufficient funds (NSF) fees, late payment fees and "bounce protection" fees charged by banks across the country result in "millions of consumers [choosing] payday advance as a convenient, less costly alternative . . . ." The spokesperson presented demographic data indicating that Mainers fit the profiles of citizens of other states in which payday lenders do high volumes of business; therefore, he stated that it is reasonable to assume that the same actual or potential demand is present in Maine.
- Mary Young, Examiner-in-Charge employed by the OCCR, testified that the 7 payday lending offices in Maine are currently doing "a good level of business." In addition, she reported that in the past 18 months, at least 5 consumers have contacted the OCCR after being subjected to "aggressive collections" from Internet-based payday lenders.
- A spokesperson for the American Association of Retired Persons (AARP) acknowledged that Mainers "need . . . access to small, short-term loans," but stated that most consumers can find such loans "at their local credit union, neighborhood bank, or through their employer or workplace."
- An attorney for the Maine Association of Independent Neighborhoods (MAIN), while not commenting on market demand, stated that payday advance loans were a "pernicious form of lending [that] traps people in endless cycles of debt and resulting poverty."
- The Maine Women's Lobby (MWL) cited a Center for Responsible Lending report from 2005 indicating that 91% of payday lender revenues are derived from borrowers who take out 5 or more loans. MWL expressed the view that "payday lending undermines women's struggles for equality and economic well-being," and that other, more favorable options exist.

## Analysis

The first payday lender in Maine, NH Cash Express Inc. d/b/a ACE America's Cash Express ("ACE"), with an office on St. John Street in Portland, obtained a "supervised lender" license more than 8 years ago, on August 13, 1997. In 2002, National Home Rentals d/b/a Cash X-Press obtained a license for a Bangor location, and RepubliCash opened an office in Portland. More recently, Redi-Cash obtained a license for a Biddeford location, ACE opened a second office in Brunswick, and RepubliCash established two additional branches, one in Lewiston and a second in Biddeford.



Maine's seven locations, however, constitute an extremely small number of lenders. By way of comparison, California currently has more than 2,000 licensed payday lending storefronts, while Texas, Tennessee, Ohio, Alabama and Florida each have more than 1,000 licensed locations.<sup>2</sup>

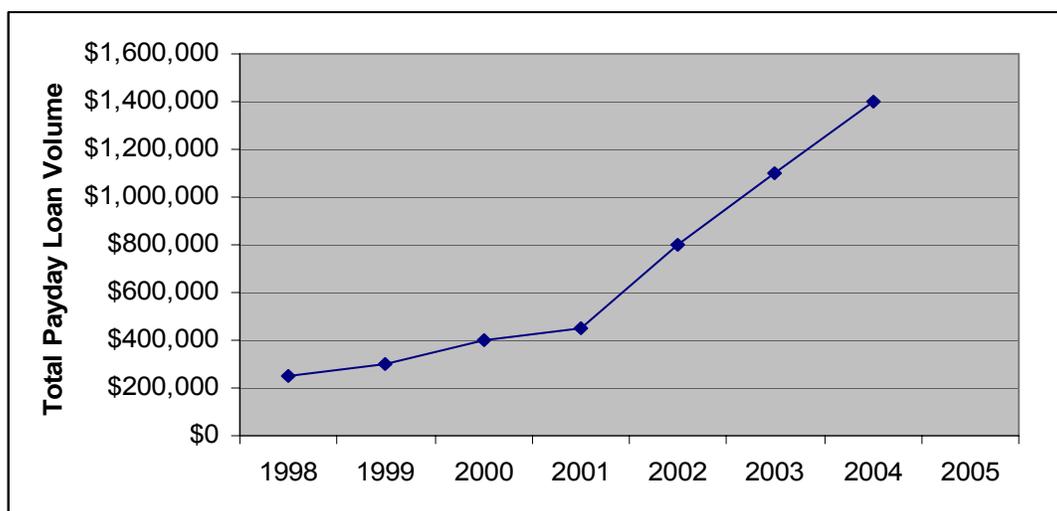
Evaluating market demand for payday lending in a state like Maine that does not currently experience a great deal of payday lending activity is a challenging endeavor. Most of the public commenters, both supporters and opponents of the industry, addressed this challenge by citing evidence from other states, in the belief that Maine consumers are sufficiently similar to the residents of other states, such that the information from those other states can be assumed valid in this state.

However, a more direct measure of demand is available; specifically, a review of the growth in the number of lenders offering payday loans in Maine, and an evaluation of the level of business (or "volume") being transacted by those lenders.<sup>3</sup>

<sup>2</sup> Source: Stephens Research, Inc.; Dallas, TX

<sup>3</sup> All lenders and creditors must report, on an annual basis, their total loan or credit volume, to the Office of Consumer Credit Regulation (OCCR). Such data on individual companies is confidential; *see* 9-A MRSA § 6-116(2). Aggregate industry data for the state, however, is not confidential. In this case, whenever volume information could be linked to a specific company because of the small size of the industry in Maine, specific permission was sought and granted to list the volume information in this report.

As the numbers of licensed locations has grown since 1997, the total volume of payday loans made to Maine borrowers has also increased.



When an industry is new to a state and when a sample size begins with extremely small values, it is important not to place too much significance on growth percentages. However, it is nonetheless noteworthy that in Maine, the number of payday lenders has grown from one to seven locations within the past 5 years, and the overall loan volume for licensed payday lenders has increased by more than 300% in that same time period.

The growth in terms of numbers of licensed locations, and the increase in loan volume of those locations, leads to the inescapable conclusion that there exists in Maine a demand for short-term, unsecured loans.

However, despite the rapid growth of payday lending activity in terms of percentages, the fact remains that there are only seven payday lending locations in the entire State of Maine, which has a population in excess of 1 million people. Whatever demand for payday loans exists in Maine, it exists only in sufficient strength to result in establishment of lending offices in major population centers of the state (Portland, Lewiston, Biddeford, Bangor and Brunswick), but so far that demand has not resulted in locations outside those population centers.

In addition, interviews with the owners of current Maine payday lending companies reveal that those establishments are not relying solely on income from short-term loans to remain financially viable. In fact, two lenders report that less than 25% of their profits are derived from such loans, with the balance coming from other financial services provided to consumers (especially those consumers without checking accounts), such as the cashing of payroll checks and other checks; the issuance of money orders, travelers' checks and stored-value cards; and receipt of fees for facilitating the electronic payments of utility bills.

With respect to the issue of consumer demand for payday loans, therefore, after reviewing actual data for the State of Maine, the conclusion reached by the OCCR is that there exists a significant and growing demand for such services, perhaps in conjunction with other

financial services that are utilized either out of necessity (such as for those consumers without a checking account) or convenience (*e.g.*, utility payments). The specific level of demand is difficult to quantify. While that demand has been sufficient to prompt companies to establish outlets in Maine and in some cases to open additional branches, it is apparently insufficient to permit payday lenders to conduct business without offering additional or ancillary services, and it has also been insufficient to warrant establishment of licensed offices in areas other than a few high-population, high-travel locations in the state.

It is also important to address the issue of Internet-based (and toll-free telephone-number based, so-called “loan by phone”) payday lending; specifically, to evaluate the assertions by proponents of the original bill who claim that Mainers’ demand for payday lending services is being met through consummation of unregulated transactions arranged over the Internet or by phone.

Not a great deal of verifiable data is known about the proclivity of Mainers to obtain short-term loans over the Internet or by telephone. To do so, a consumer must provide a distant lender with the account number of his or her checking account. Funds are electronically placed into the consumer’s account by the lender, and then at the end of the contracted-for time (usually 7 days or 14 days), the principal balance plus a fee are electronically deducted from the checking account.

No Internet-only or telephone-based payday lenders are currently licensed by OCCR. However, under Maine law, arguably those companies would require a license only if the lender electronically “induces” Maine consumers by phone or through e-mail to take out a loan; 9-A MRSA § 1-201(1).<sup>4</sup> Maine law would not generally be viewed as regulating a transaction that takes place, for example, if a Maine consumer conducts an Internet search, or places an outgoing call, and initiates a payday loan transaction with a lender located in another state or another country.

Because such out-of-state lenders do not possess a Maine license, they do not report their annual loan volume to Maine regulators at the OCCR. Specific information about the extent of their activities, therefore, is limited to anecdotal evidence derived primarily through resolution of consumer complaints from Maine residents.

In the past two years, the OCCR has received no complaints resulting from telephone-based loans, and only 5 complaints relating to Internet-based payday lending. In one such Internet case, a lender located in the country of Ireland allegedly threatened to immediately garnish the wages of a Portland woman who failed to repay a high-cost payday loan (under the Consumer Credit Code, pre-judgment garnishment is illegal with respect to most consumer loans in Maine). The threats stopped once the OCCR contacted the foreign lender. In another case, an unlicensed lender in Nevada agreed to stop making high-cost Internet-based payday loans with Mainers after receiving a “cease and desist” letter from OCCR.

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<sup>4</sup> 9-A MRSA § 1-201(1) states that a loan is subject to Maine’s Consumer Credit Code if “[t]he creditor, wherever located, induces the consumer who is a resident of this state to enter into the transaction . . . by face-to-face, mail, telephone or electronic mail solicitation . . . .”

In these cases and others, the OCCR did not learn about the lending activity prior to or during the loan term. Rather, it was only after non-payment by the borrowers and excessive collection threats by the lenders that the borrowers or their attorneys contacted state regulators.

There is no doubt that payday borrowing opportunities exist for Maine consumers who initiate their own searches using the Internet or by perusing national print publications. For example, inputting “payday loans” into the general Google search engine brings up a full page of results, and a complete list of “sponsored links”, with the added information that the results shown are “1 – 10 of about 6,190,000” total items.

Likewise, Maine readers of national tabloids can view an average of more than 10 classified ads per issue with headings such as “Payday Loans”, “Cash by Phone”, “Cash Loans Now”, and “Loans Guaranteed”.

However, gleaned an accurate estimate of the number of Mainers who utilize Internet or phone-generated payday loans has proved elusive. In the estimation of the OCCR, the number is much more closely represented by the 5 complaints that office has received, than by the estimate of “tens of thousands of Internet PDAs (payday advance loans) . . . being made annually to Maine residents,” an estimate contained in the comment letter of Robert E. Rochford, deputy general counsel for the Financial Service Center of America (FiSCA), a payday advance industry trade association. In a separate letter, Rochford estimated that in calendar year 2006, Maine residents will obtain \$43 million in Internet and phone-based payday loans. The OCCR believes this estimate is too high: although Maine consumers have a reputation of being private and reserved by nature, the OCCR believes that any lending activity of this magnitude would result in complaints that would come to the attention of the OCCR or the Office of the Attorney General.

On a tangential but persistent issue, the payday lending industry has put forward the argument that high demand for short-term loans can be assumed by noting the common usage of bank overdraft plans (known as “bounce protection”), which the spokesperson for the Community Financial Services Association of America (CFSA) referred to at the original hearing on LD 788 as “essentially short-term loans to consumers” that are “more expensive than a payday advance.” However, within the scope of this report the OCCR has not attempted to derive data on the extent to which Maine bank or credit union customers utilize overdraft protection plans. In addition, in our opinion no clear link has been established between the use of overdraft protection plans, and demand for payday loans.

To summarize, the slow but steady growth in Maine-based payday lending activity demonstrates that a certain amount of consumer demand exists for such a source of credit. However, the claims by the industry that millions of dollars in Internet-based and phone-based loans are being made to Maine residents, cannot be accurately evaluated without evidence of some sort, evidence that is not currently forthcoming from any verifiable source. The current level of unlicensed Internet or phone-based lending involving Maine borrowers is nearly impossible to precisely quantify, and it is therefore difficult to assess the level of consumer demand for payday loans by evaluating the level of such “off the books” activity.

Many other states have chosen to assert clear jurisdiction over Internet companies regardless of whether the lender or the borrower initiates the transaction. In order to provide state regulators with the tools needed to determine the extent of payday lending being done by unlicensed, out-of-state lenders, a first step that the Legislature could take is to follow the lead of those other states by asserting jurisdiction over payday loans made to consumers located in Maine, regardless of who initiates the transaction; regardless of the means of consummating the transaction (*e.g.*, Internet or telephone); and regardless of the physical location of the lender. As will be seen at the end of this report, the OCCR recommends that, with respect to payday lending, the Legislature should assert jurisdiction over lenders, wherever located, who make payday loans to consumers located in this state. That step will help OCCR and the Legislature to learn the extent of Internet-based and telephone-based payday lending, and will provide a valuable tool to state regulators who receive complaints from Maine consumers who find themselves in transactions with out-of-state or foreign unlicensed lenders.

**Question 1(b)** *If state law should be changed with respect to this market demand, what specific changes should be proposed?*

Consumer lending in Maine is governed by the Consumer Credit Code, Titled 9-A MRSA § 1-101 *et seq.* (hereinafter “the Code”). Among other limitations, the Code establishes interest rate ceilings on unsecured loans; *see* 9-A MRSA § 2-401, “Finance charge for consumer loans.” For loans of \$2,000 or less (an amount easily encompassing all common payday loans), the interest rate cap is established at 30% per year (30% APR). In the absence of any other provision, this limitation would restrict a two-week loan to an interest rate of approximately 1.15%, or \$2.87 on a \$250 loan.

However, existing payday lenders in Maine conduct business under a legal exception to the general interest rate cap. This provision is known as the “minimum finance charge” exception, and it is found in 9-A MRSA § 2-401(7). This alternative allowance is based on the assumption that a lender incurs certain minimum expenses for extending any loan, regardless of its size or term (duration), and that therefore the lender is entitled to a certain “minimum finance charge” to cover those fixed expenses. Therefore, the Code permits the following charges to be assessed for loans within the ranges indicated, regardless of the term of the loan.

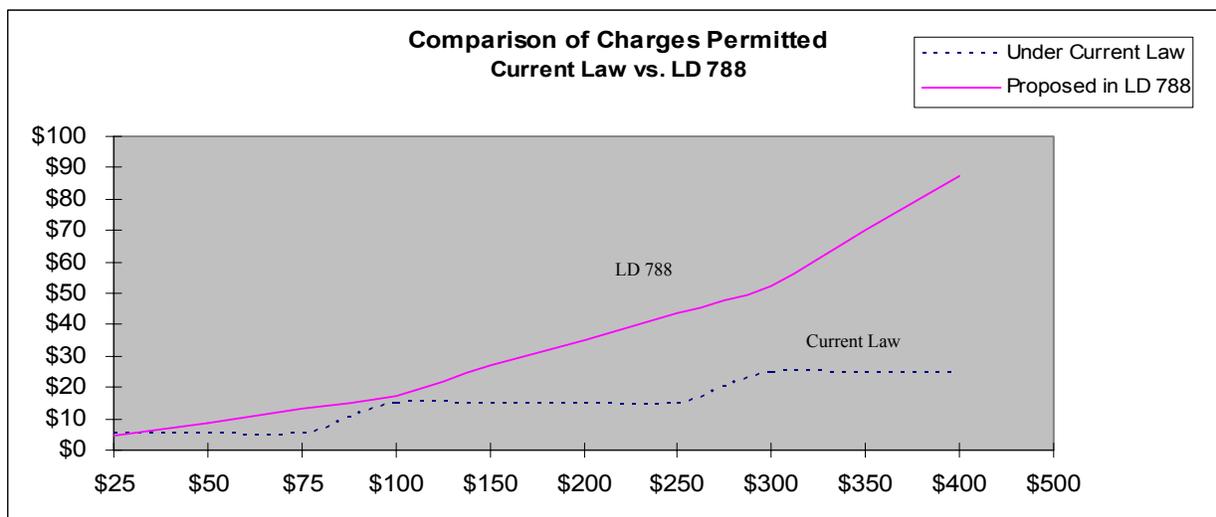
<u>Loan Amount</u>	<u>Charge Permitted</u>
\$0 - \$75	\$5
\$75.01 - \$249.99	\$15
\$250 - \$8,000	\$25

Up until 1999, the so-called “minimum finance charge” for the middle range of these loans was established at a lower rate. Prior to that time, the fixed charge for a loan from \$75.01 to \$249.99 was \$7.50. However, in 1999, the nascent payday lending industry in Maine proposed a change in the permissible fee (*see* Public Laws 1999, c.184, § 3) which doubled that “middle” rate from \$7.50 to \$15.

In its barest essence, LD 788, the bill introduced to the first regular session of the current Legislature in 2005, was an effort to once again increase these so-called “minimum finance charges.” The industry proposed to replace the three-step schedule with a separate fee, a fee based on a percentage of the loan. Specifically, the industry asked for approval of a fee amounting to 17.5% of the loan amount.

The difference between permissible charges under current law compared to those that would be available under the increase requested in LD 788 is substantial, as shown by the chart below:

<u>Loan Amount</u>	<u>Charge Permitted by Current Law</u>	<u>Charge Permitted under LD 788</u>
\$25	\$5	\$4.38
\$50	\$5	\$8.75
\$75	\$5	\$13.13
\$100	\$15	\$17.50
\$150	\$15	\$26.25
\$200	\$15	\$35.00
\$250	\$15	\$43.75
\$300	\$25	\$52.50
\$400	\$25	\$70.00
\$500	\$25	\$87.50



As shown by the preceding chart and graph, while there are a few loan dollar amounts for which the charges permitted by current law are similar to those proposed by LD 788 (loans of less than \$150), for larger loans the allowable fees proposed by LD 788 would be double or even triple the amounts permitted under current law.

The experience in other states reveals that payday loans are generally made at or near the maximum rates permitted by law. In its own submissions at the public proceeding held to develop input for this report, the payday industry stated that if the permitted charge were increased to 15% of the loan amount, competition between payday lenders was likely to drive that figure down a single percentage point, to 14%.<sup>5</sup>

In other states, however, regulators report very little downward movement in fees due to competitive forces. A recent study in Colorado, for example, revealed that 92.75% of payday loans made in that state in 2004 involved fees of the maximum amount, to the very penny, permitted by that state's law.<sup>6</sup>

It is also important to keep in mind, when discussing these proposed charges, especially if a legislative body chooses to adopt the industry preference of a certain percentage of the loan, that these percentages are not annual percentage rates (APR, the foundational basis of truth-in-lending disclosures). Rather, these are weekly or bi-weekly percentage rates, which, in the example of a 17.5% note, when converted to APRs, amount to 910% APR (17.5% of the loan amount for a one-week loan) or 455% APR (17.5% for 2 weeks).

Returning to the question at hand, which is whether state law should be changed with respect to consumer demand for payday loans, the answer depends on whether the Legislature believes the existing rate of growth of payday lending should be accelerated, or whether that industry should be permitted to grow at its current, moderate pace. If it is the sentiment of the BRED Committee and the Legislature to encourage growth in the payday lending industry, the answer is that lifting the cap on permitted charges will result in the establishment of additional payday lending outlets around the state. The secondary questions would then be: Should rates be increased under the current, 3-step rate schedule, or should the industry's proposed model (charges based on a percentage of the loan amount) be adopted (or possibly a hybrid of the two types); and if so, to what levels should the rates be raised?

With respect to the questions raised above, therefore, OCCR makes the following recommendations:

1) Our agency does not recommend changing the statutes to permit additional or higher fees to the industry as a way of encouraging expansion of the payday lending industry in Maine. The payday lending industry will continue to grow in Maine, even without a change in the law to speed the rate of growth. Growth in the industry under current law has been slow but steady, in terms of numbers of office locations and in terms of loan volume of those offices making loans.

2) If the committee or the Legislature decides that rate caps should be raised in order to encourage a faster rate of growth of the industry, or growth into areas of the state other than the highest population, maximum traffic areas, we recommend that the current 3-step structure, or a modified 4-step or 5-step schedule, be maintained. Retaining this approach more accurately reflects the historic reason for permitting these so-called "minimum finance charges"; namely, to

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<sup>5</sup> FiSCA letter of 9/16/2005

<sup>6</sup> Denver University Law Review (2005), Vol. 83, No. 2, page 409

reimburse the lender for the fixed costs of making a loan, regardless of the amount or term of the loan.

For example, if the committee and the Legislature wished to gradually accelerate the growth of payday lending business in Maine, the maximum rates could be incrementally increased as follows:

<u>Loan Amount</u>	<u>Permitted Fee</u>
\$0 - \$75	\$7.50
\$75.01 - \$150.00	\$15.00
\$150.01 - \$249.99	\$20.00
\$250.00 - \$350.00	\$30.00
\$350.01 +	\$35.00

In the alternative, a hybrid consisting of a fixed fee and a percentage could be adopted. The state of Florida, for example, hosts a large and ever-expanding payday lending industry, which is limited to charging 10% of the loan amount, plus a \$5 “verification fee” to cover the cost of checking with a statewide database to ensure that borrowers do not have payday loans currently outstanding with other payday lending companies.

As will be discussed in the following section, if the maximum rates are not increased, and if the payday lending industry is permitted to grow only at its current moderate pace, we are of the opinion that major additional consumer protections do not need to be added to the Consumer Credit Code, since that set of laws already contains significant protections. However, if the BRED Committee and the Legislature decide to increase the permissible rates, we would expect rapid growth in the numbers of lenders established and loans made, and in our opinion multiple specific additional protections must be added to the Code.

## **Question 2: Consumer protection laws**

***(a) Are current consumer protection laws sufficient to regulate the offering of payday lending services or other unsecured sub-prime lending products, as those products are currently available or as they may be offered in the future?***

This question, like the previous ones, will be answered on an “If . . . then” basis. Specifically, if payday lending continues to grow at the current, moderate pace, then the OCCR is of the opinion that the existing protections of the Consumer Credit Code are adequate to address issues and problems that may arise, especially if the law is clarified to establish jurisdiction over out-of-state and foreign payday lenders. However, if it is the determination of lawmakers that the allowable interest rates should be increased, OCCR expects that growth in numbers of unsecured, short-term lenders will increase dramatically and that additional protections will be required, and those protections must be tailored to focus on the specific types of issues that arise in the context of short-term, unsecured loans.

At the current rate of growth, existing law can be utilized to ensure accountability from the industry, while maintaining regulatory control over the industry. The Office of Consumer Credit Regulation administers current law using the following tools and statutory protections:

- 1) Licensing. Today, payday lenders in Maine must obtain a “supervised lender” license. They must post a \$50,000 surety bond to ensure compliance with state law. They must demonstrate “safety and soundness” by providing balance sheets verifying an appropriate net worth.
- 2) Compliance examinations. All payday lenders are examined to determine compliance with the law. Specific consumer loan contracts are reviewed, and fee and interest calculations are verified.
- 3) Consumer complaint response. All licensees must respond promptly to consumer complaints, and must immediately refund any overcharges.
- 4) Notice of right to cure default. Consumers must receive a type of “warning notice” if they default (fail to pay on time) on their loans. The notices give consumers a certain number of days to “cure” their default by paying arrearages.
- 5) Truth-in-lending. The true annual percentage rate (APR) of all loans must be disclosed to each borrower before consummation of the loan.
- 6) Insurance and other ancillary charges. Any additional services must be optional, and the costs must be fully disclosed.
- 7) Limits on collection actions. Lenders are limited in the steps they can take to collect debts; for example, they cannot disclose collection information to third parties in order to harm a debtor’s reputation.
- 8) Private cause of action. Consumers can bring their own legal actions against lenders for violations of the law. If successful, those consumers must be awarded their costs and attorney’s fees.

Therefore it becomes clear that a comprehensive framework of protections and remedies is available to loan customers and to state regulators. In our opinion, this framework is sufficient to deal with the current moderate growth of the payday lending industry.

**Question 2 (b) *If current consumer protection laws are insufficient, what statutory changes should be proposed?***

If state law were changed to encourage rapid growth in the payday lending industry, then in the opinion of OCCR, and based on information from other states, significant new protections would also need to be placed into Maine law. The practical difficulty with most such measures, however, is that they can be circumvented by lenders and borrowers, leading to an ever-evolving process of changes in lending practices, enactment of countermeasures in the law, more changes in lending practices, more law amendments, and so on. This process can be illustrated by the following discussion.

Although payday loans are presented as short-term loans, the fact is that in a percentage of all cases, the consumer will be unable, at the end of the term, to pay off the loan and the interest fee. For example, if the consumer borrows \$100 for two weeks, and if the interest fee is \$17.50, the consumer might find that he or she is unable to come up with the full \$117.50 at the end of the two-week period. However, the consumer might have \$17.50, with which he or she can “renew” the loan for another two weeks.

At the end of the next two week period, the consumer might again find that although he or she can pay the \$17.50 fee, the entire balance is not available, so a renewal is again arranged.

After three months of these renewals, the consumer will have paid more in fees (\$105) than the amount of the original loan (\$100), and the original loan has still not been repaid.

In more than 30 states, lawmakers have recognized the danger and expense of repeated renewals, and they have enacted laws that attempt to curtail this cycle of renewals by restricting the number of renewals that a lender and borrower can negotiate. In fact, even the “best practices” of the industry group FiSCA call for a limit of four such renewals.

However, a limit on renewals is easily avoided if, rather than being “renewed,” a loan is paid off and a “new” loan is made. Such instant renewals are known as “rollovers” (an old loan is “rolled over” into a new loan), or even a “touch and go,” since the previous loan is paid off at the same time as a new loan contract is entered into (and in fact, the concern is that the old loan is paid off using “new” funds). When regulators in many states found that such practices were developing, laws were changed in those states such that new loans and renewals were viewed as equivalents. When even those measures did not stop the problem of endless refinances, several states such as Florida, Illinois, Indiana and South Dakota enacted “cooling off periods” ranging from 48 hours to 2 weeks, requiring that consumers pay off existing loans and then “cool off” by being prevented from obtaining additional credit for that period of time, in an effort to ensure that those consumers did not stay on an endless cycle of unpaid payday loan debt.

However, the limits imposed on renewals and “touch and go” new loans only apply to loans made by the same lender. Soon, credit regulators in several states around the country determined that their efforts at preventing continuous debt were unsuccessful, since certain consumers were found to be obtaining payday loans from one payday lender, in order to pay off other payday lenders. That is why at the present time in Florida and Oklahoma (and soon in Indiana, Illinois and North Dakota), payday lenders are required by law to submit the name of a consumer who applies for a loan to a statewide database such as TeleTrack or VeriTech, to determine whether or not the consumer has existing unpaid loans to other payday lenders, and to prevent additional extensions of credit until the other debts are paid off.

Based on very recent information from regulators in Colorado,<sup>7</sup> this concern for consumers caught in a “cycle of debt” is not a hypothetical concept, but is borne out of statistical analysis. In a study in that state, researchers found that:

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<sup>7</sup> As reported in Denver University Law Review (2005), Vol. 83, No. 2, page 387 *et seq.*

- 20% of borrowers borrow 12 or more times per year, and account for nearly one-half (46%) of the total loan volume.
- 33% of borrowers account for 66% of loan volume.
- Fully one-third of all payday loans are “touch and go” (refinancings of previous payday loan debt) transactions.
- 10% of borrowers were indebted *every single day* of the 6 months preceding a compliance examination by Colorado state regulators, and the *average* debtor in that state was indebted for a total period of just over five out of the last twelve months at each location at which they do business.

Colorado does not maintain a statewide database of all payday loans, so these figures reflect only repeat business at the same locations and therefore may significantly underestimate the scope of the issue. Indeed, Colorado regulators reported that the state examiners “saw many of the same consumers’ names appearing time and again in [different] lenders’ records.”<sup>8</sup>

For these reasons, the experiences of regulators in the many other states that oversee payday loans make it clear that regulation of payday loans cannot be attempted on a piecemeal basis; rather, a comprehensive and encompassing approach is required. The basic regulatory framework would include:

- 1) Limits on the total amount of any loan, and any combination of loans (for example, capping the sum of all loans at \$400);
- 2) Limits on how short the loan term could be (for example, by prohibiting a loan for any term shorter than 2 weeks);
- 3) Limits on the number of renewals, and the number of consecutive loans;
- 4) Limits on “splitting” of loans to avoid multiple loans in which the total balance exceeds the statutory limits; and
- 5) Requirements for “cooling off” periods between loans.

In addition, certain “safety net” measures should probably also be adopted; for example:

- 1) A provision that if any balance of payday loans were unpaid after a period of time (for example, after 4 weeks), that balance would automatically convert to a fixed-rate loan subject to the usual Consumer Credit Code rates (30% APR), payable over a year; and
- 2) A requirement that the industry establish and utilize a statewide database, to prevent consumers from obtaining multiple loans from multiple sources, and also to provide lawmakers with a method of monitoring lending volume and growth in the industry.

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<sup>8</sup> Denver University Law Review (2005), Vol. 83, No. 2, page 411, footnote 101

As a final note, before taking any of the above steps, the BRED Committee should obtain information from other states to determine the fiscal impact of overseeing the payday lending activity in those states. Specifically, the committee should determine whether the costs of such regulation have been absorbed within those states' existing regulatory resources, or whether additional resources have had to be allocated, and if so, the sources of those additional resources.

To summarize, the experience in other states demonstrates that payday lenders and borrowers shift and evolve their activities in response to rules and regulations, and that if the Maine Legislature takes steps to encourage rapid growth in the industry, it must be prepared to deploy additional, comprehensive protections, and then to modify those protections to match the changing practices of the industry.

### **Question 3: Consumer education**

**(a) *What current consumer education services are offered with respect to payday lending advance services or other unsecured sub-prime loans?***

Although in its reference to “education services” the Legislature almost certainly sought to focus on brochures, pamphlets and other educational efforts, it is important to remember the existence of a noteworthy form of “education” that is the direct result of Congress’ and the Maine Legislature’s decision that borrowers in any credit or loan transaction should be told of the specific cost and terms of the transaction. That requirement comes through the disclosures mandated by Truth-in-lending, which is required by laws enacted at the federal<sup>9</sup> and the state<sup>10</sup> levels.

Truth-in-lending requires that before a transaction is consummated, the consumer must be told 1) the amount financed (the note amount less prepaid finance charges); 2) the total cost of credit (the finance charge in dollar terms); and the annual percentage rate, or “APR”. The law also requires that the terms of the transaction be disclosed; *i.e.*, the frequency and amount of payments required to repay the principal and interest.

Federal and state lawmakers attempted to ensure that this important information was made available to consumers at the most significant “teachable moment,” the moment before the consumer obligated himself or herself to repay the loan. In theory, this disclosure of the cost and terms of the loan permits consumers to compare rates available from several lenders, and obtain the most favorable terms by utilizing the forces of the competitive marketplace.

With specific respect to payday loans, generic educational materials and programs have been developed by the industry for use in other states, and the payday advance industry expressed a willingness to distribute these materials here in Maine. Like other financial services materials developed with input from industry, however, these materials start with the premise that payday loans are a useful product for all borrowers, at least some of the time. For example,

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<sup>9</sup> The federal Consumer Protection Act, “Truth-in-lending,” implemented by federal Regulation Z.

<sup>10</sup> 9-A MRSA, Article VIII; “Truth-in-lending”, and state regulation 02-030-240, “Regulation Z-2”.

the FiSCA “Code of Conduct” guides its members to “strive to inform consumers about the proper use of this short term financial product and its improper use [to address] a long term financial need.”

On the issue of whether payday lending educational materials are currently available in Maine, written comments regarding payday loan education from Maine’s financial community ranged from the stark assessment offered by the Maine Credit Union League (“None [*i.e.*, no payday loan educational services offered] at this time.”), to general lists of the financial literacy programs offered by 12 different financial institutions members of the Maine Association of Community Banks. (However, not one of the more than 30 bank-sponsored programs specifically referenced payday lending, ostensibly since the industry does not exist in Maine at levels that warrant such educational attention.)

Payday lenders provided educational materials as part of the information solicited in the development of this report. A review of the information reveals that, as is typical in any industry, the educational materials developed by payday lenders are designed to show the business activity in a positive light. The Community Financial Services Association of America (CFSA) brochure titled “The Facts About Payday Advance Services,” contains information in a question/answer format. However, the responses often provide a “hoped-for” result rather than a data-based result. For example, the third question is: “How often do most people use this service?” The response advises borrowers that “repeated or frequent use can create serious financial hardships,” and recommends that people who need financial assistance work with a credit counseling service. However, not included is the fact that studies show that “rollovers,” or repeated refinancings, are frequent occurrences. The Colorado data showing the prevalence of repeat transactions in that state is cited earlier in this report. A recent Illinois study revealed that the average payday loan there is renewed or refinanced 13 times.<sup>11</sup> The State of Washington’s 2005 annual payday lending report indicates that 10,000 borrowers in that state used payday lending services more than 12 times in 2004, entering into a total of more than 120,000 transactions.<sup>12</sup>

In considering the value of educational materials, it is important to consider the question: Would educational programs or pamphlets have prevented those consumers from taking out the initial loan, or from repeatedly renewing that loan by paying only the periodic interest due? Despite the obvious quality of some of the educational materials presented for our review, we are of the opinion that educational materials, no matter how well presented, cannot be substituted for strict limits on payday lending fees and practices.

To summarize, there currently exists little or no educational material in Maine relating to payday advance services, because the industry is not a significant force here at this time. With respect to materials prepared for use in other states, the tone of such materials reflects the perspectives of its authors, such that the materials most readily available at consumer outlets, materials developed by the industry, appear to provide helpful suggestions based on hypothetical “best practices,” as opposed to providing specific advice or establishing self-imposed limits based on actual consumer behavioral statistics.

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<sup>11</sup> Illinois Department of Financial Institutions; Chicago, IL.

<sup>12</sup> “Payday Lending Report; Statistics & Trends, 2004” issued by the Washington State Department of Financial Institutions.

**Question 3 (b) *Are those educational services sufficient to provide information to consumers about the products?***

As discussed above, informational materials specific to the payday advance industry are virtually nonexistent in Maine, because of the relatively small levels of such lending activity found in this state. As the industry grows, especially were it to achieve rapid growth if state law is changed to permit increased profitability, the lack of educational and informational material would become more acute and obvious.

In our opinion the most helpful “facts” to be contained in educational materials would be facts derived from actual statistical studies of the industry, rather than being the results of the industry establishing its own “best practices” and then encouraging its members and its customers to operate within those voluntary guidelines.

For example, rather than advising consumers that payday loans are not a good solution for long-term credit needs, consumer information could present statistics on the average length of time before a loan (or its renewals or refinancings) is fully paid off, and the average total finance charge assessed over that period of time. This type of factual statistic is certainly known to the industry, and would provide a prospective borrower with a realistic view of the benefits and risks of such loans.

**Question 3 (c) *How could effective educational services be offered?***

With respect to payday loan customers, the OCCR is not of the opinion that a general education campaign with the message “payday loans are expensive sources of credit” will resonate with prospective borrowers, nor would it be effective at convincing them to opt for other sources of credit or to forgo obtaining credit altogether. We believe that consumers already know that payday loans are expensive, but that they feel that they do not have easy alternatives in terms of other sources of funds.

Therefore, as payday lending activity increases, we recommend that consumers be provided with basic information telling them their legal rights, and also identifying the state regulator to contact if they have questions or concerns. The model contract and disclosure form contained in Maine’s loan broker statute (9-A MRSA § 10-302, 10-303) serve as good examples of documents that a consumer will retain in his or her possession, and that contain easy-to-understand information about costs and terms of the loan, including protections provided by state law if problems or questions arise.

This information should be provided before or at the initial transaction. Similar information should be provided at the time of any renewal of a loan, or at a refinancing of a prior loan into a new loan. Lenders could be required to provide additional information if a consumer defaults on a loan, and that information could include descriptions of any “safety net” protections enacted by the Legislature to address a circumstance of default on a loan, and could provide specific advice and resources to assist the consumer.

To summarize, the OCCR recommends against an expensive, non-specific educational program designed to teach consumers that payday loans are inappropriate sources of long-term credit. Rather, if such loans are to become more prevalent in Maine, and especially if state law is changed to encourage rapid growth in the industry, consumers entering into such loans in this state should be told that the lender is licensed and has posted a surety bond; that the costs of the loan must be made clear to the consumer; and that certain listed protections are in place as a matter of law to assist the consumer.

## **Conclusion**

Whether or not there exists a “demand” for payday loans in Maine, experience in other states makes it clear that if permissible rates are increased and if numerous additional payday lenders come to this state or expand their presence here, Mainers will utilize those lenders.

However, it is also important to keep in mind that payday lending is not prohibited or even strictly regulated (other than an interest rate cap) at the present time in this state. Seven lending locations have been established, mostly within the past 4 years, and those businesses are thriving, offering payday loans and other types of financial services.

With respect to the current Maine interest rate cap, an allowable rate of \$15 on a \$75 loan for two weeks, or the equivalent of 520% APR, is certainly a rate of return that appears high enough to sustain moderate, reasonable growth in the industry.

As detailed in this report, however, the experience of other states supports the view that a Legislature cannot permit large-scale growth in the payday lending industry unless it is also willing to place strict limits on loan amounts; limits on renewals and new loans; caps on total loans from any payday lender; cooling-off periods; a statewide payday lending database; and other strict regulations. In addition, based on what we have learned about the experiences of regulators in other states, it is apparent that there exists no permanent, ultimate set of regulations. Rather, lawmakers here in Maine would need to be prepared to modify any provisions decided upon, since each effort to cap activity seems to be met with new and innovative arrangements designed to maintain loan volume and profits.

Overall, the OCCR recommends that the industry be permitted to maintain its current slow but steady level of growth under the existing legal guidelines. Such moderate growth will permit identification of any Maine-specific issues, so that those issues can be addressed in a timely manner. With respect to the assertion by the industry that Mainers are borrowing millions of dollars through Internet or phone-based payday lenders, the OCCR recommends enactment of a clarification in the law (attached to this report as proposed legislation) to provide for specific jurisdiction over such out-of-state and foreign lenders. This will provide a first step toward gathering loan data and evaluating claims about the extent of out-of-state activity, and it will provide the protections of Maine law to any consumers who find themselves obligated to distant lenders who have not obtained a Maine license.

## Proposed Legislation

Sec. 1 9-A MRSA, Article III, Part 6 is enacted to read as follows:

### Part 6 Payday Loans

#### 3-601 Definition of payday loan.

“Payday loan” means a supervised loan or other credit transaction in which a cash advance is made to a consumer in exchange for the consumer’s personal check, or in exchange for the consumer’s authorization to debit the consumer’s deposit account, and where the parties agree either that the check will not be cashed or deposited, or that the consumer’s deposit account will not be debited, until a designated future date.

#### 3-602 Territorial application – payday loans.

Notwithstanding section 1-201, this Act applies to a payday loan transaction if the lender, wherever located, enters into a payday loan transaction with a consumer who is located in this state.

### Summary

This bill clarifies that the Consumer Credit Code applies to a payday lender, wherever located, who makes a payday loan to a consumer located in this state.

Exhibit #1

**LD 788, "An Act to Establish Consumer Protections and Regulations for Deferred Deposit Loans,"** *which was introduced at the request of the payday advance industry on February 15, 2005:*

# 122<sup>nd</sup> MAINE LEGISLATURE

## FIRST REGULAR SESSION-2005

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Legislative Document

No. 788

H.P. 565

House of Representatives, February 15, 2005

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### An Act to Establish Consumer Protections and Regulations for Deferred Deposit Loans

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Be it enacted by the People of the State of Maine as follows:

Sec. 1. 32 MRSA c. 80-B is enacted to read:

#### CHAPTER 80-B

#### DEFERRED DEPOSIT LOAN ACT

##### §6185. Short title

This chapter may be known and cited as "the Deferred Deposit Loan Act."

##### §6186. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

1. Administrator. "Administrator" means the Director of the Office of Consumer Credit Regulation within the Department of Professional and Financial Regulation.

2. Consumer. "Consumer" means a person other than an organization who is the buyer, lessee or debtor to whom credit is granted in a deferred deposit loan transaction.

**3. Deferred deposit loan.** "Deferred deposit loan" means a transaction when a lender, for a fee, does the following:

- A. Accepts a dated instrument from a consumer;
- B. Agrees to hold the dated instrument for a period of time prior to negotiation or deposit of the dated instrument; and
- C. Pays to the consumer, credits to the consumer's account or pays to another person on the consumer's behalf the amount of the dated instrument, less charges authorized under section 6193.

**4. Instrument.** "Instrument" means a personal check or authorization to transfer or withdraw funds from an account signed by the consumer and made payable to a person subject to this chapter.

**5. Lender.** "Lender" means any person who offers or makes a deferred deposit loan, who arranges a deferred deposit loan for a 3rd party or who acts as an agent for a 3rd party, regardless of whether the 3rd party is exempt from licensing under this chapter or whether approval, acceptance or ratification by the 3rd party is necessary to create a legal obligation for a 3rd party.

"Lender" includes, but is not limited to, a supervised lender as defined in Title 9-A, section 1-301, subsection 39 and a supervised financial organization as defined in Title 9-A, section 1-301, subsection 38-A. Notwithstanding that a supervised lender or supervised financial organization may be exempt from this chapter's license and fee requirements under federal law, all other applicable provisions apply to both a deferred deposit loan and a lender.

**6. Person.** "Person" means an individual or an organization.

**7. Renewal.** "Renewal" means any deferred deposit loan when the loan is not paid in full and the lender agrees to allow the consumer to pay the fee only for a new deferred deposit loan.

### **§6187. License requirements**

**1. License; renewal.** A lender may not engage in the business of making deferred deposit loans without obtaining a license from the administrator as provided in this chapter. A license may not be transferred or assigned. A license issued under this chapter expires on December 31st of the year approved. An annual license application must be mailed by December 1st of each year for the following year.

**2. Application.** An application for an initial license or renewal under this chapter must be made in writing in the form and manner approved by the administrator. The application must include the following information:

A. The name and address of the license applicant and, if the applicant is a corporation, limited liability company or partnership, the name and address of each officer, director, registered agent or principal member of the corporation, limited liability company or partnership; and

B. The physical location and address of each business office to be licensed.

The application may also include any other information concerning the financial responsibility, background, experience and activities of the applicant required by the administrator.

**3. Fees.** The initial application for a license may be filed at any time and must include a fee of \$500. The license fee is not refundable in any event and is not abated by surrender, suspension or revocation of the license. The fee for a renewal of a license is \$250.

**4. Qualifications.** Upon the filing of an application, the administrator must determine whether the applicant and its members, officers, directors or principals have the financial responsibility, character, experience and general fitness to engage in the business of making deferred deposit loans in a fair and efficient manner in

accordance with the public interest and the applicable law. If the administrator fails to make such a determination under this subsection, the administrator may not issue a license and shall notify the applicant in writing of the reasons for the denial.

**5. Investigations.** Prior to issuing a license, the administrator may make such investigations as the administrator determines necessary to verify that the applicant for a license has complied with the applicable provisions of this chapter.

**6. Display of licenses.** A license must be prominently displayed in each business location of the lender.

**7. Additional offices or relocations.** A lender may not open an additional office or relocate any office without prior approval of the administrator. An application for approval must be made in writing in the form and manner approved by the administrator and must include a fee of \$150. The administrator shall approve the additional office or relocation unless the administrator finds that the lender does not have the required assets or has not conducted business in accordance with this chapter. Unless the administrator mails a notice denying approval within 30 days of receiving the request, the application is approved. The lender shall give written notice to the administrator within 10 days of commencing business at the additional or relocated office.

**8. Notification of closing.** A lender shall notify the administrator in writing within 10 days of the closing of any business office and provide any other information related to the closing required by the administrator.

### **§6188. Surety bond**

Each license application must be accompanied by evidence of a surety bond in the aggregate amount of \$10,000 per business office, not to exceed a total of \$50,000, to run to the administrator for use by the administrator and any person or persons who may have a cause of action against a lender. The terms of the bond must run concurrently with the period of time during which the license is in effect. The bond must be conditioned on the applicant or lender performing all written agreements with consumers, accurately accounting for all funds received and operating the business in accordance with this chapter and other applicable laws.

### **§6189. Retention of books, accounts and records**

A lender shall maintain all books, accounts and records necessary to determine the lender's compliance with this chapter. Books, accounts and records related to making deferred deposit loans must be maintained apart and separate from other books, accounts and records of the lender. Books, accounts and records must be retained for at least 3 years after final payment on any deferred deposit loan.

### **§6190. Reporting requirements**

**1. Annual report.** A lender shall annually on or before March 31st submit a written report to the administrator with information required by the administrator concerning the deferred deposit loans issued during the preceding calendar year. The report must be submitted in the form and manner required by the administrator.

**2. Other reporting.** Within 15 days of the event, a lender shall notify the administrator of any of the following events and describe the expected impact of the event on the business operations of the lender:

A. The filing of bankruptcy, reorganization or receivership proceedings by or against the lender;

B. Any regulatory or administrative proceedings instituted by any governmental authority involving the lender;

C. Any felony indictments of the lender or its directors, officers, members, principals or partners; or

D. Any felony convictions of the lender or its directors, officers, members, principals or partners.

### **§6191. Examinations**

**1. Examination.** The administrator may examine the books, accounts and records of a lender and make investigations to determine compliance with this chapter. At a minimum, the administrator shall conduct an examination of each lender licensed under this chapter at least once every 3 years.

2. Expenses. The expenses of the administrator necessarily incurred in the examination or investigation of a lender are chargeable to the lender.

**§6192. Requirements and disclosures for deferred deposit loan agreements**

A lender shall comply with the following requirements of this section.

1. Written loan agreement. Each deferred deposit loan must be evidenced by a written loan agreement that is signed and dated by the consumer and an authorized representative of the lender on the same day the loan is made and disbursed. The written agreement must contain the name of the consumer, the transaction date and the amount of the instrument. The agreement must also establish a date not less than 7 days or more than 40 days after the loan transaction date when the instrument may be deposited or negotiated by the lender. The lender shall give a duplicate of the original loan agreement to the consumer at the time of the transaction.

2. Required disclosures. The loan agreement must also disclose the following to the consumer:

A. The principal amount of the loan;

B. Any fees charged;

C. The annual percentage rate determined in accordance with Federal Reserve Board Regulation Z;

D. Evidence of receipt from the consumer of a check dated the same date as the loan to be used as security for the loan or evidence of authorization to withdraw or transfer funds from the consumer's account for the benefit of the lender;

E. An agreement by the lender not to present the check for payment or deposit until a specified maturity date; and

F. A description of the consumer's right to cancel the loan transaction at any time before the close of business on the next business day following the transaction by repaying to the lender the amount advanced to the consumer.

**§6193. Authorized charges to consumers**

A lender may charge the following fees or charges to a consumer in conjunction with making or arranging a deferred deposit loan.

1. Administrative fee. A lender may charge as a fee for each loan an amount that does not exceed 7.5% of the total amount of loan proceeds advanced to the consumer.

**2. Dishonored instrument charge.** If an instrument held by a lender as a result of a deferred deposit loan is returned to the lender from a financial institution due to insufficient funds, a closed account or stop payment order, the lender may contract for and collect a returned instrument charge, not to exceed \$25. The charge under this subsection is not permitted if the instrument dishonored by a financial institution or a stop payment order is placed by the consumer due to forgery or theft of the instrument. This subsection does not prohibit a lender from also exercising all civil means authorized by law to collect the face value of the instrument and any costs or attorney's fees awarded by a court and incurred as a result of the dishonored instrument, except that an award of attorney's fees may not exceed the total amount of the deferred deposit loan.

For the purposes of this section, "financial institution" has the same meaning as in Title 9-B, section 131, subsection 17.

### **§6194. Prohibited practices**

A lender may not engage in any of the following business practices.

**1. Prohibited clauses.** A lender may not obtain any agreement from the consumer:

A. Giving the lender or any 3rd party a power of attorney or authority to confess judgment for the consumer;

B. Authorizing the lender or any 3rd party to bring suit against the consumer in a court outside this State; or

C. Waiving any right granted to the consumer under this chapter.

**2. Renewal.** A lender may not renew the same loan more than twice.

**3. Postdated instrument.** A lender may not require or accept a postdated instrument as security for or in payment of a loan.

**4. Obligation on more than one loan.** A lender may not cause a consumer to be obligated on more than one loan at any time for the purpose of increasing charges payable by the consumer.

**5. Other security.** A lender may not take an interest in any property other than an instrument as security for a loan.

**6. Prescribed terms.** A lender may not make a deferred deposit loan with a term of less than 7 days or more than 40 days.

**7. Maximum loan amount.** A lender may not lend an amount greater than \$700 or 25% of the gross monthly income of a consumer, whichever is less, and the amount financed may not exceed \$700 at any time.

**8. Maximum amount of instrument.** An instrument held as a result of a deferred deposit loan may not exceed \$822.50.

**9. Treatment of Armed Forces personnel.** A lender may not engage in any of the following activities with respect to a deferred deposit loan issued to a consumer who is a member of the Armed Forces of the United States called to active duty:

A. The garnishment of wages or salary for repayment of a loan;

B. The initiation of any collection activity during the period of active duty; and

C. Any communication with the military chain of command with regard to a loan issued to a member of the Armed Forces of the United States.

A lender must comply with the terms of any repayment agreement negotiated through a military counselor on behalf of a consumer who is a member of the Armed Forces of the United States and called to active duty.

#### **§6195. Consumer rights**

**1. Criminal liability.** A consumer is not subject to any criminal liability or penalty for entering into a deferred deposit loan agreement in the event the instrument held by the lender is dishonored unless the consumer's account on which the instrument is drawn was closed before the specified maturity date in the loan agreement.

**2. Right of rescission.** A consumer has the right to rescind a deferred deposit loan on or before the close of the next business day following the transaction date of the loan by repaying to the lender the amount advanced to the consumer.

#### **§6196. Suspension or revocation of licenses**

After notice and hearing, the administrator may suspend or revoke a lender's license if the administrator finds that:

**1. Grounds for denial.** A fact or condition exists that, if it had existed at the time when the lender applied for its license, would have been grounds for denying the application;

**2. Violation.** The lender knowingly violates a provision of this chapter or a rule or order validly adopted by the administrator under authority of this subchapter or violates any other law or rule applicable to the lender's conduct;

**3. Conviction; judgment.** The lender has been convicted of a felony or subject to a court judgment involving fraud, misrepresentation or deceit;

**4. Federal; other state order.** A federal or state administrative order has been entered against the lender for a violation of federal law or rule or another state's law or rule;

**5. Failure to perform written agreements.** The lender has failed to conduct its business in accordance with written agreements with consumers;

**6. Refusal of examination.** The lender refuses to permit the administrator to make an examination or investigation authorized by this chapter;

**7. Failure to respond.** The lender fails to promptly and adequately respond to communications or orders from the administrator; or

**8. Failure to report; make payments.** The lender willfully fails to make a report or fails to pay any fees required by this chapter.

For purposes of this section, acts of any officer, director, member, principal or partner are deemed acts of the lender.

#### **§6197. Administrative enforcement orders**

After notice and hearing, the administrator may order any person to cease and desist from engaging in violations of this chapter. The administrator may also order affirmative action designed to correct past or future violations of this chapter. Any hearing held under this subsection must be conducted in accordance with the procedures of the Maine Administrative Procedure Act, Title 5, chapter 375, subchapter 4. A respondent aggrieved by an order of the administrator may obtain judicial review of the order and the administrator may, through the Attorney General, obtain an order of the court for enforcement of its order in the Superior Court. The proceedings for review or enforcement must be initiated and conducted in accordance with the Maine Administrative Procedure Act, Title 5, chapter 375, subchapter 7.

#### **§6198. Violations; civil penalties**

The administrator, through the Attorney General, may bring a civil action against a person to recover a civil penalty for knowingly violating this chapter and if the court finds that the defendant has engaged in a knowing violation of this chapter or a violation of an assurance of discontinuance, it may assess a civil penalty of not more than \$1,000. For the purposes of this section, each separate violation may be subject to the penalty permitted under this section, and, for violations of section 6194, each deferred deposit loan made or arranged in violation of that section constitutes a separate violation.

## **§6199. Rules**

The administrator shall adopt rules to implement the provisions of this chapter as necessary. Rules adopted pursuant to this chapter are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

### **SUMMARY**

This bill establishes a regulatory mechanism for deferred deposit loans. The bill designates the Department of Professional and Financial Regulation, Office of Consumer Credit Regulation as the regulator of lenders making deferred deposit loans. It sets forth necessary licensing, fees and bond requirements for lenders. The bill also sets out requirements for lender reporting and examination of these lenders.

The bill specifically provides a number of consumer protections, including the disclosure requirements for written loan agreements, maximum loan amounts, limitations on fees charged to consumers, maximum and minimum terms for loan agreements and requirements for collection practices.

Exhibit #2

**RESOLVES**  
**First Special Session of the 122<sup>nd</sup>**  
**Legislature**

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**CHAPTER 24**  
**H.P. 565 - L.D. 788**

**Resolve, Authorizing the Office of Consumer Credit Regulation To Study the Payday Advance Industry and Related Consumer Credit Lending Issues in Maine**

**Sec. 1. Office of Consumer Credit Regulation authorized to study payday advance industry and related consumer credit lending issues in State. Resolved:** That the Department of Professional and Financial Regulation, Office of Consumer Credit Regulation, in consultation with the Office of the Attorney General, the banking and lending industry and consumers, shall conduct a study on the current market for payday advance services and subprime lending practices in the State and related consumer protection laws and educational services; and be it further

**Sec. 2. Reporting date established. Resolved:** That the Department of Professional and Financial Regulation, Office of Consumer Credit Regulation shall report its findings under section 1, including any proposed legislation, to the Joint Standing Committee on Business, Research and Economic Development by February 1, 2006.

Effective September 17, 2005.

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Exhibit #3



STATE OF MAINE  
DEPARTMENT OF PROFESSIONAL  
AND FINANCIAL REGULATION  
OFFICE OF CONSUMER CREDIT REGULATION  
35 STATE HOUSE STATION  
AUGUSTA, MAINE  
04333-0035

JOHN ELIAS BALDACCI  
GOVERNOR

WILLIAM N. LUND  
DIRECTOR

**NOTICE TO INTERESTED PARTIES  
REQUEST FOR COMMENTS AND NOTICE OF HEARING**

RELATING TO MAINE LEGISLATIVE RESOLVE 2005, CHAPTER 24, AUTHORIZING THE OFFICE OF CONSUMER CREDIT REGULATION TO STUDY THE PAYDAY LENDING ADVANCE INDUSTRY AND RELATED LENDING ISSUES

To: Interested Parties  
From: Will Lund, Director, Maine Office of Consumer Credit Regulation  
Date: August 19, 2005  
Re: Payday Lending Study

On May 18, 2005 Maine Governor John Elias Baldacci signed Resolve, Chapter 24, authorizing and directing the Office of Consumer Credit Regulation to study payday lending and related credit activities.

In conducting the study, the resolve requires that our agency consult with 1) the Attorney General's Office, 2) the banking and lending industry and 3) consumer advocates. The specific topic to be studied is "the current market for payday advance services and subprime lending practices in the state and related consumer protection laws and educational services ...." The Resolve establishes a deadline of February 1, 2006 for submission of a final report, including any suggested legislation, to the Legislature's Joint Standing Committee on Business, Research and Economic Development.

Our office will limit the subject matter of this study to subprime *unsecured* lending, as opposed to subprime or predatory *mortgage* lending, since unsecured payday lending was the sole topic addressed by the legislation (LD 788; "An Act to Establish Consumer Protections and Regulations for Deferred Deposit Loans") that led to this resolve, and since a comprehensive study of subprime mortgage lending would require time and resources beyond those allocated for the present study.

All interested parties, as well as the general public, are therefore invited and requested to submit written input on the following questions:



PRINTED ON RECYCLED PAPER

PHONE: (207)624-8527

(207) 624-8563 (HEARING IMPAIRED)

FAX: (207)582-7699

Internet: [william.n.lund@Maine.gov](mailto:william.n.lund@Maine.gov)

OFFICES LOCATED AT:  
122 NORTHERN AVENUE, GARDINER, MAINE

*1) What is the current market demand in the State of Maine for payday lending advance services or other unsecured subprime lending products? If state law should be changed with respect to this market demand, what specific statutory changes should be proposed?*

*2) Are current consumer protection laws sufficient to regulate the offering of payday lending advance services or other unsecured subprime lending products, as those products are currently available or as they may be offered in the future? If not, what specific statutory changes should be proposed?*

*3) What current consumer education services are offered with respect to payday lending advance services or other unsecured subprime lending products? Are those educational services sufficient to provide information to consumers about the products? If not, how could effective educational services be offered?*

Written materials should be mailed, such that they are received on or before Friday, September 16, 2005 at 5 PM, to the following address: Director, Office of Consumer Credit Regulation; #35 State House Station; Augusta, ME 04333; or the materials can be submitted by e-mail to [doris.a.whitaker@maine.gov](mailto:doris.a.whitaker@maine.gov).

Interested parties will also have an opportunity to present their materials in person. The Director will be accepting testimony on Wednesday, September 21, 2005 beginning at 10 AM, in the Central Conference Room, State of Maine Gardiner Annex, 122 Northern Avenue, Gardiner, Maine 04347. Attendees will then have an additional seven (7) days to submit written information on issues or questions that arise at the public meeting.

Please RSVP if you plan to attend the September 21 meeting, so that proper accommodations can be provided. Please contact Doris A. Whitaker, Administrative Secretary, with questions.

Exhibit #4

## 2005 Payday Lender Study Interested Party List

FIRST NAME	LAST NAME	TITLE	COMPANY & ADDRESS	TELEPHONE
BRUCE C	GERRITY		PRETI FLAHERTY BELIVEAU PACHIOS & HALEY LLC 45 MEMORIAL CIRCLE PO BOX 1058 AUGUSTA ME 04332-1058	623-5300
JON R	DOYLE		DOYLE & NELSON 150 CAPITOL STREET AUGUSTA ME 04330	622-6124
RICK	TETREV	CHAIRMAN	BNAS TASK FORCE	
ED	PINEAU		MAINE CREDIT UNION LEAGUE PO BOX 1236 PORTLAND ME 04104	773-5671
JOHN	MURPHY	PRESIDENT	MAINE CREDIT UNION LEAGUE PO BOX 1236 PORTLAND ME 04104	773-5671
REP ROBERT	DUPLESSIE		MAINE HOUSE OF REPRESENTATIVES 41 CAROL STREET WESTBROOK ME 04092	797-8482
JAMES	MITCHELL		MITCHELL & DAVIS PA 86 WINTHROP STREET AUGUSTA ME 04330-5508	622-1365
SEN NANCY	SULLIVAN		MAINE STATE SENATE 20 WESTWOOD DRIVE BIDDEFORD ME 04005	282-5594(H)
SEN KARL	TURNER		MAINE STATE SENATE 16 TOWN LANDING RD CUMBERLAND ME 04110	829-9231(H)
REP ANNE	PERRY		MAINE HOUSE OF REPRESENTATIVES 474 SOUTH STREET CALAIS ME 04619	454-7338(H)
REP JOSHUA	TARDY		MAINE HOUSE OF REPRESENTATIVES PO BOX 381 NEWPORT ME 04953	368-5858(H)
SEN LYNN	BROMLEY		MAINE STATE SENATE 102 MITCHELL ROAD SOUTH PORTLAND ME 04106	799-2065

## 2005 Payday Lender Study Interested Party List

FIRST NAME	LAST NAME	TITLE	COMPANY & ADDRESS	TELEPHONE
REP NANCY	SMITH		MAINE HOUSE OF REPRESENTATIVES 259 TILLSON ROAD MONMOUTH ME 04259	933-2707
TONY S	COLETTI	EXECUTIVE VICE PRESIDENT	COMMUNITY FINANCIAL SERVICES ASSOCIATION OF AMERICA (CFSA) 515 KING STREET SUITE 300 ALEXANDRIA VA 22314	703-684-1029
HANNA	THOMAS	RESEARCH ASSOCIATE	COASTAL ENTERPRISES INC 36 WATER STREET PO BOX 268 WISCASSET ME 04578	882-7552 ext. 127
RON	PHILLIPS		COASTAL ENTERPRISES INC 36 WATER STREET PO BOX 268 WISCASSET ME 04578	882-7552
CARLA	DICKSTEIN		COASTAL ENTERPRISES INC 36 WATER STREET PO BOX 268 WISCASSET ME 04578	882-7552
JOHN	RABENOLD		CHECK 'N' GO	
DAVE	FINLEY	PROFESSOR & INDUSTRY CONSULTANT	COLBY COLLEGE 4000 MAYFLOWER HILL WATERVILLE ME	
RUSSELL	ANDERSON		MAINE ASSOCIATION OF INDEPENDENT NEIGHBORHOODS	
NANCY	KELLEHER		AARP	
BRIAN	MAHANEY		AARP	
TOM	BOUDIN		MAINE COMMUNITY ACTION ASSOCIATION C/O AROOSTOOK COUNTY ACTION PROGRAM PO BOX 1116 711 PRESQUE ISLE ME 04769	764-3721
URIAH	KING		CENTER FOR RESPONSIBLE LENDING	919-313-8519
NED	MCCANN		AFL/CIO	
MARK	WALKER	VP & COUNSEL	MAINE BANKERS ASSOCIATION 132 MAIN STREET PO BOX 735 AUGUSTA ME 04332-0745	622-6131

## 2005 Payday Lender Study Interested Party List

FIRST NAME	LAST NAME	TITLE	COMPANY & ADDRESS	TELEPHONE
CHRIS	PINKHAM	PRESIDENT	MAINE ASSOCIATION OF COMMUNITY BANKS 489 CONGRESS STREET PORTLAND ME 04101-3430	791-8400
BARBARA	RICHARDSON		SOUTHERN MIDCOAST MAINE CHAMBER OF COMMERCE	
BARBARA	REINERTSEN		MIDCOAST MAINE CHAMBER OF COMMERCE	
RALPH	JENSEN		AMERICA'S CASH EXPRESS (ACE) 107 PLEASANT STREET BRUNSWICK ME 04011	780-9988
JEAN ANN	FOX		CONSUMER FEDERATION OF AMERICA 1424 16TH STREET NW SUITE 604 WASHINGTON DC 20036	202-387-6121
PETER	FESSENDEN		STANDING CHAPTER 13 TRUSTEE- DISTRICT OF MAINE 14 MAINE STREET SUITE 307 PO BOX 429 BRUNSWICK ME 04011-0429	728-1300
			FINANCIAL SERVICE CENTERS OF AMERICA	201-487-0412
CAROL	STEWART		ADVANCE AMERICA/NATIONAL CASH ADVANCE	864-342-5694
JIM	BOULEY	SENIOR DIRECTOR GOVERNMENT AFFAIRS	ADVANCE AMERICA/NATIONAL CASH ADVANCE 124 EAST SIDE DRIVE CONCORD NH 03301	603-225-8210
LAURALEE	RAYMOND		MAINE WOMEN'S LOBBY	
DOUG	CLOPP		MAINE CITIZEN LEADERSHIP FUND	
JACK	COMART		MAINE EQUAL JUSTICE PROJECT	
HECTOR W	SOTO	DIRECTOR OF POLICY AND ADVOCACY	CHILDREN'S DEFENSE FUND 420 LEXINGTON AVE SUITE 655 NEW YORK NY 10170	212-697-2323
RACHEL	COOPER	PROGRAM AND POLICY ASSOCIATE	CHILDREN'S DEFENSE FUND 420 LEXINGTON AVE SUITE 655 NEW YORK NY 10170	212-697-2324
QUINCEY H	HENTZEL	DIRETOR OF GOVERNMENT AFFAIRS	MAINE CREDIT UNION LEAGUE 2 LEDGWOOD DRIVE WESTBROOK ME 04092	773-5671 ext. 265

## 2005 Payday Lender Study Interested Party List

FIRST NAME	LAST NAME	TITLE	COMPANY & ADDRESS	TELEPHONE
CHARLES	DOW	SPECIAL ASSISTANT TO THE ATTORNEY GENERAL	OFFICE OF THE ATTORNEY GENERAL 6 STATE HOUSE STATION AUGUSTA ME 04333-0006	626-8577
ALAN	STEARNS	SENIOR POLICY ADVISOR	OFFICE OF THE GOVERNOR 1 STATE HOUSE STATION AUGUSTA ME 04333-0001	287-3531
CHRISTINE A	BRUENN	COMMISSIONER	DEPARTMENT OF PROFESSIONAL & FINANCIAL REGULATION 35 STATE HOUSE STATION AUGUSTA ME 04333-0035	624-8510
LLOYD P	LAFOUNTAIN III	SUPERINTENDENT	BUREAU OF FINANCIAL INSTITUTIONS 36 STATE HOUSE STATION AUGUSTA ME 04333-0036	624-8575
COLETTE M	MOONEY	DEPUTY SUPERINTENDENT	BUREAU OF FINANCIAL INSTITUTIONS 36 STATE HOUSE STATION AUGUSTA ME 04333-0036	624-8574
JOHN A	BARR	ATTORNEY	BUREAU OF FINANCIAL INSTITUTIONS 36 STATE HOUSE STATION AUGUSTA ME 04333-0036	624-8561
DAVID	BRAGDON	DIRECTOR OF GOVERNMENT AND PUBLIC AFFAIRS	GALLAGHER CALLAHAN & GARTELL PA 168 CAPITOL STREET PO BOX 5010 AUGUSTA ME 04332-5010	626-0395
STEVEN M	MEYER MD JD		PAYDAY ADVANCE PLUS INC 11965 VENICE BLVD SUITE 401 LOS ANGELES CA 90066	
MELANIE	MUNSEY	CIC	CP CURTIS INSURANCE AGENCY	

Exhibit #5

## PAYDAY LENDING STUDY NOTICE TO INTERESTED PARTIES

Legislative Resolve, Chapter 24 (2005) authorizes and directs the Office of Consumer Credit Regulation to study payday lending and related credit activities. All interested parties, as well as the general public, are invited and requested to submit written input on the following questions:

- 1) *What is the current market demand in the State of Maine for payday lending advance services or other unsecured subprime lending products? If state law should be changed with respect to this market demand, what specific statutory changes should be proposed?*
- 2) *Are current state consumer protection laws sufficient to regulate the offering of payday lending advance services or other unsecured subprime lending products as those products are currently available or as they may be offered in the future? If not, what specific statutory changes should be proposed?*
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Interested parties will also have an opportunity to present their materials in person. The Director will be accepting testimony on Wednesday, September 21, 2005 beginning at 10 AM, in the Central Conference Room, State of Maine Gardiner Annex, 122 Northern Avenue, Gardiner, Maine 04345. Attendees will then have an additional seven (7) days to submit written information on issues or questions that arise at the public meeting.

Attendees are asked to RSVP to attend the September 21 meeting, so that proper accommodations can be provided. Contact Doris A. Whitaker, Administrative Secretary, at the above e-mail address, with questions.

Exhibit #6

**OFFICE OF CONSUMER CREDIT REGULATION\***  
**PAYDAY LENDER COMMENT MEETING**

September 21, 2005

<b><u>NAME and ADDRESS</u></b>	
Uriah King 301 W. Main Street Durham, NC	
Hannah Thomas Coastal Enterprises P.O. Box 2681 Wiscasset, ME 04578	
Chris Pinkham Maine Association of Community Banks	
Tim Bouley CFSA – Advance America Concord, NH	
Colette Mooney Bureau of Financial Institutions	
Nancy Kelleher AARP – Maine	
Travis Brennan AARP - Maine	
Quincy Hentzel MECUL	
Bob Rochford 21 Main Street Hackensack, NJ 07601	Financial Service Centers of America
Norman Ferguson, Jr. AARP - Maine	

*\*Note: This document was typed using information from the sign-in sheet of attendees at the September 21, 2005 public comment meeting. A copy of the original document is available upon request at 624-8527.*

Exhibit #7

## Payday Lending Comments 9/21/05

Received from:

Name and Address	Date Received
Marti McNichol N.H. Cash Express, Inc. d/b/a ACE America's Cash Express 107 Pleasant Street Brunswick, ME 04011	9/15/05
Robert E. Rochford, Esq. FiSCA Deputy General Counsel Winne, Banta, Hetherington, Basralian & Kahn, P.C. Court Plaza South – East Wing 21 Main Street PO Box 647 Hackensack, NJ 07602  Note: Filed on behalf of the Financial Service Center of America (FISCA)	9/16/05 & supplementals 9/28/05 and 10/3/05
Quincy H. Hentzel Director of Governmental Affairs Maine Credit Union League 2 Ledgeview Drive Westbrook, ME 04092	09/16/05
Christopher Pinkham, President Maine Association of Community Banks 489 Congress Street Portland, ME 04101-3430	9/19/05
Mark L. Walker, Vice President & Counsel Maine Bankers Association PO Box 735 Augusta, ME 04332	9/19/05
Ronald L. Phillips, President Coastal Enterprises, Inc. 36 Water Street PO Box 268 Wiscasset, ME 04578-0268	9/19/05 & supplemental 9/28/05
Jim Bouley representing The Community Financial Services Association of America and Advance America Cash Advance Centers, Inc. 124 East Side Drive Concord, NH 03301	9/19/05
Mary Young, Examiner-in-Charge Office of Consumer Credit Regulation 35 State House Station Augusta, ME 04333-0035	9/20/05

<b>Name and Address</b>	<b>Date Received</b>
Norman Ferguson AARP Maine 1685 Congress Street Portland, ME 04102	9/21/05
Jack Comart Attorney at Law Maine Equal Justice 126 Sewall Street Augusta, ME 04330-6822	09/26/05
Lauralee Raymond Legislative Coordinator Maine Women's Policy Center & Maine Women's Lobby 207) 622-0851 fax (207) 621-2551 lobbyist@mainewomen.org	9/26/05