

WWW.PAYDAYLOANS.GOV: A SOLUTION FOR RESTORING PRICE-COMPETITION TO SHORT-TERM CREDIT LOANS

Eric J. Chang[†]

I. Introduction

Disclosure has been the primary mechanism for federal credit regulation¹ since the passage of the Truth in Lending Act (TILA) in 1968.² By mandating lenders to disclose key terms, TILA attempts to empower borrowers by enabling them to compare different lenders' rates before choosing one. As a result of this "comparison-shopping," lenders, in theory, price-compete among each other to offer the best rates or terms in order to attract the business of the borrower.³ Legislators, regulators, and the credit industry have long favored disclosure-based rules because they are less costly and burdensome than traditional interest rate caps or other forms of direct regulation.⁴

[†] J.D., The George Washington University Law School. B.A., University of California, Los Angeles. My gratitude to Dean Alan Morrison for his guidance and insight. Thank you to Professors Lesley Fair and Darren Long for their comments. I would like to acknowledge Jonathan Tse for his editorial assistance and H. Joshua Kotin Esq. for his comments and mentorship that helped inspire this paper's thesis. All errors are my own.

¹ Thomas A. Durkin & Gregory Elliehausen, *Disclosure as a Consumer Protection*, in THE IMPACT OF PUBLIC POLICY ON CONSUMER CREDIT 109, 110 (Thomas A. Durkin & Michael E. Staten, eds., 2002) ("[M]andatory disclosure has become the main financial consumer-protection approach."); see also Griffith L. Garwood, Robert J. Hobbs & Fred H. Miller, *Consumer Disclosure in the 1990's*, 9 GA. ST. L. REV. 777, 777 (1993) (discussing the pervasiveness of disclosure in consumer protection law).

² 15 U.S.C. §§ 1601–67 (2012).

³ See *infra* text accompanying notes 38–39.

⁴ See, e.g., Howard Beales, Richard Craswell, & Steven Salop, *Information Remedies for Consumer Protection*, 71 Am. Econ. Rev. 410, 411 (May 1981) ("Information strategies tend to be more compatible with incentives, less rigid, and do not require regulators to compromise diverse consumer preferences to a single standard."); Christopher L. Peterson, *Truth, Understanding, and High-Cost Consumer Credit: The Historical Context of the Truth in Lending Act*, 55 Fla. L. Rev. 807, 881–83 (2003) ("Although . . . neither industry nor consumer advocates have been entirely satisfied, the disclosure approach has in general garnered wide acceptance . . . high cost creditors have advocated disclosure rules to deflect legislative

Unfortunately, TILA has been ineffective with regards to payday lending. As explained below, payday loan borrowers have been unable to use the mandated disclosures to comparison-shop, and consequently, lenders have had no incentives to price-compete.⁵ Without price-competition, payday loan interest rates have remained exceptionally high.⁶ As a result, millions of payday loan borrowers end up owing more money to their payday lenders than to their original debtors.⁷

The Consumer Financial Protection Bureau (CFPB) has recently concluded that this lack of price-competition among payday lenders means that more direct regulation is needed.⁸ In March 2015, the CFPB released an advanced notice of proposed rulemaking and announced that it was considering two options in their forthcoming rules.⁹ Before issuing loans, lenders would either be required to verify a borrower's ability to repay the loan or else be required to provide affordable repayment options, such as a "no-cost" extension if borrowers default on their loans more than two times.¹⁰ However, these types of regulations have not only been proven ineffective in the few states that have already experimented with them,¹¹ but also run contrary to the principles of free-market economics and would thus further increase the cost of loans to borrowers.¹²

pressure for more substantive rules."); *see also* Lynn Drysdale & Kathleen E. Keest, *The Two-Tiered Consumer Financial Services Marketplace: The Fringe Banking System and Its Challenge to Current Thinking About the Role of Usury Laws in Today's Society*, 51 S.C. L. REV. 589, 659 (2000) ("The most frequently articulated view of usury . . . [is that] they interfere with matters best left to 'The Market.'"); Kathleen C. Engel & Patricia A. McCoy, *A Tale of Three Markets: The Law and Economics of Predatory Lending*, 80 TEX. L. REV. 1255, 1314 (2002) ("Ultimately, price controls . . . restrict the flow of credit, thereby hurting the very individuals they are designed to serve.").

⁵ Lauren E. Willis, *Decisionmaking and the Limits of Disclosure: The Problem of Predatory Lending: Price*, 65 MD. L. REV. 707, 751–54 (2006) (expressing that disclosures are not enough to motivate consumers to seek alternative sources of credit).

⁶ *See infra* note 8, at 9.

⁷ *Cf.* Jim Hawkins, *Regulating on the Fringe: Reexamining the Link Between Fringe Banking and Financial Distress*, 86 IND. L.J. 1361, 1384 n.128 (2011) (discussing how payday lending creates a "cycle of debt" and "traps consumers").

⁸ CONSUMER FIN. PROT. BUREAU, PAYDAY LOANS AND DEPOSIT ADVANCE PRODUCTS 45 (Apr. 24, 2013), http://files.consumerfinance.gov/f/201304_cfpb_payday-dap-whitepaper.pdf (stating that "further attention is warranted to protect consumers") [hereinafter CFPB WHITE PAPER].

⁹ CONSUMER FIN. PROT. BUREAU, FACTSHEET: THE CFPB CONSIDERS PROPOSAL TO END PAYDAY DEBT TRAPS 2–3 (Mar. 26, 2015), http://files.consumerfinance.gov/f/201503_cfpb-proposal-under-consideration.pdf [hereinafter CFPB PROPOSAL FACTSHEET].

¹⁰ *Id.*

¹¹ *See* Paige Marta Skiba, *Regulation of Payday Loans: Misguided?*, 69 WASH. & LEE L. REV. 1023, 1043–45 (2012) (surveying the ineffective solutions attempted by different state regulators).

¹² *See* Dwight Jaffee & Joseph Stiglitz, *Credit Rationing*, in 2 HANDBOOK OF MONETARY ECONOMICS 838, 847 (B.M. Friedman & F.H. Hahn eds., 1990) (discussing how price controls create severe economic

Instead, this Article argues that price-competition among payday lenders may be easily restored by creating an online exchange platform for them to voluntarily post their rates and offer their services to borrowers.¹³ By listing lenders' interest rates side by side, this website can facilitate comparison-shopping by providing borrowers with a tool to easily compare the rates and terms of different lenders. A federally operated website with a ".gov" web address will stand out amidst the myriad of for-profit comparison websites that currently dominate Internet searches.¹⁴

Part II provides the background for this Article by defining the payday loan, examining its dangers, and introducing TILA. Part III argues that TILA has failed to facilitate price-competition among payday lenders, and identifies three factors contributing to this problem. Part IV proposes the creation of an online comparison site and argues that this solution will directly address the three previously identified factors. Part V discusses and rebuts potential criticisms of this solution. Part VI addresses the CFPB's recent proposal and argues that it will be less effective than this Article's proposal.

II. Background: Payday Lending in America and the Regulatory Landscape

A. Defining the Payday Loan

Despite being labeled by one lawmaker as "the worst financial product out there,"¹⁵ the literal definition of a payday loan is simple: a short-term, small-dollar loan that is paid back in a single lump sum.¹⁶ Payday loans are particularly attractive to low-

threats by interfering with supply and demand).

¹³ Perhaps one of the greatest advantages of this solution is that payday lenders are not legally required to sign up. Instead, as more borrowers head to this website, payday lenders will be motivated to sign up simply because they want to reach this growing group of potential customers.

¹⁴ A simple web search for "payday lending" will reveal dozens of paid advertisements and websites that review and compare different lenders. *See, e.g.*, TOP 10 PAYDAY LENDERS, <http://www.top10paydaylenders.com> (last visited Nov. 5, 2015); TOP 10 PERSONAL LOANS, <http://www.top10personalloans.com> (last visited Nov. 5, 2015); PAYDAY LOAN COMPARISON, <http://paydayloancomparison.org> (last visited Nov. 5, 2015); COMPARE USA PAYDAY LENDERS, <http://online-payday-loans.org/compare/> (last visited Nov. 5, 2015).

¹⁵ *See* 151 CONG. REC. E1386 (daily ed. June 28, 2005) (statement of Rep. Gutierrez) ("Those who claim to support the troops should agree to restrict the worst financial product out there."); *see also* Christine Dalton, *John Oliver's 14 Greatest Takedowns on 'Last Week Tonight'*, HUFFINGTON POST, (Nov. 11, 2014, 10:26 AM) ("Payday loans are like the Lay's Potato Chips of finance. You can't have just one and they're TERRIBLE for you.") (quoting *Last Week Tonight: Episode 14* (HBO television broadcast Aug. 10, 2014)).

¹⁶ *What is a Payday Loan?*, CONSUMER FIN. PROT. BUREAU, <http://www.consumerfinance.gov/askcfpb/1567/what-payday-loan.html> [hereinafter *What is a Payday Loan?*] (last visited Oct. 19, 2014); *see also* Ronald Mann & James Hawkins, *Just Until Payday*, 54 UCLA L. REV. 855, 857 (2007) (explaining the mechanics of a typical payday loan).

income individuals who do not qualify for traditional forms of credit,¹⁷ and they are less costly than informal credit options such as overdraft protection, bounced checks, or late payment fees.¹⁸

A variety of independent studies have extensively documented America's need for some level of short-term, small-dollar loans.¹⁹ For instance, a 2011 study by the National Bureau of Economic Research found that nearly half of all American households could “probably not” or “certainly not” come up with \$2,000 to deal with a financial shock of that size—even if given thirty days.²⁰ Another report from the National Foundation for Credit Counseling concluded that to pay for an unplanned expense of \$1,000, sixty-four percent of households would have to seek credit elsewhere, such as borrowing from friends or family, or disregarding other monthly expenses.²¹ A report by the Federal Reserve Bank of New York further showed that states that have banned payday lending suffer from higher rates of bankruptcy and bounced checks than states in which payday lending is permitted.²²

With such a well-documented need, it is no surprise that the payday lending industry has seen exceptional growth throughout the country. Emerging in the early 1990s,²³ the number of payday lenders in America grew to over 10,000 by the year 2000.²⁴ Just ten years later, this number has doubled, and there are now twice as many payday lenders as

¹⁷ See Aaron Huckstep, *Payday Lending: Do Outrageous Prices Necessarily Mean Outrageous Profits?*, 12 FORDHAM J. CORP. & FIN. L. 203, 209 (2007) (discussing credit requirements and the lack of viable alternatives to payday lending).

¹⁸ See Aimee A. Minnich, *Rational Regulation of Payday Lending*, 16 KAN. J.L. & PUB. POL'Y, 84, 91–92.

¹⁹ See, e.g., FED. DEPOSIT INS. CORP., NAT'L SURVEY OF UNBANKED & UNDERBANKED HOUSEHOLDS 10 (Dec. 2009) (finding that about 7.7% of U.S. households, approximately nine million individuals, were “unbanked,” and approximately another 17.9%, about twenty-one million individuals, were “underbanked”).

²⁰ See Annamaria Lusardi, Daniel J. Schneider & Peter Tufano, *Financially Fragile Households: Evidence and Implications 2* (NAT'L BUREAU OF ECON. RESEARCH, Working Paper No. 17072, 2011), available at <http://www.nber.org/papers/w17072.pdf>.

²¹ See William M. Webster, IV, *Payday Loan Prohibitions: Protecting Financially Challenged Consumers or Pushing Them over the Edge?*, 69 WASH. & LEE L. REV. 1051, 1057–58 (2012).

²² See DONALD MORGAN & MICHAEL STRAIN, FEDERAL RESERVE BANK OF NEW YORK, PAYDAY HOLIDAY: HOW HOUSEHOLDS FARE AFTER PAYDAY CREDIT BANS 3 (2008), available at http://www.newyorkfed.org/research/staff_reports/sr309.pdf.

²³ See Charles A. Bruch, *Taking the Pay Out of Payday Loans: Putting an End to the Usurious and Unconscionable Interest Rates Charged by Payday Lenders*, 69 U. CIN. L. REV. 1257, 1270 (2001).

²⁴ See Mark Flannery & Katherine Samolyk, *Payday Lending: Do the Costs Justify the Price?*, FDIC CENTER FOR FINANCIAL RESEARCH 1 (June 2005), https://www.fdic.gov/bank/analytical/cfr/2005/wp2005/CFRWP_2005-09_Flannery_Samolyk.pdf (showing that in 2000, there were approximately 10,000 payday lenders in America).

Starbucks coffee locations.²⁵ In 2012, storefront lenders processed roughly 90 million transactions and provided nearly 30 billion dollars in loans.²⁶ Today, payday lenders provide loans to over nineteen million American households, particularly those households that suffer from poor credit scores and lack access to more traditional forms of credit.²⁷

B. The Danger of Payday Lending

Despite serving a legitimate need, the current payday lending landscape is undoubtedly problematic. The vast majority of payday loans in America tend to carry extremely high interest rates with a median rate of fifteen percent for a fourteen-day period,²⁸ which translates to an annual interest rate of around 391%.²⁹ These high interest rates are a primary contributor to nearly every real-life example of “payday lending gone bad.”³⁰

A recent federal study helps illustrate this danger by providing a few more data points.³¹ First, the report shows that in 2012, the median payday loan principal was \$350.³² Using the fourteen-day median interest rate from above, the cost of the loan is approximately \$52.50 for just two weeks. If at the end of the two-week term, the borrower cannot fully pay off the entire sum of \$402.50, the loan must be extended for another

²⁵ *10 Shocking Facts About Payday Loans*, PAYDAY LOANS BLOG (Oct. 26, 2009), <http://www.paydayloans.org/10-shocking-facts-about-payday-loans>.

²⁶ Carter Dougherty, *Payday Loans Curb Considered By Three Regulators*, BLOOMBERGBUSINESS (Apr. 24, 2013, 12:01 AM), <http://www.bloomberg.com/news/2013-04-24/payday-loan-curbs-considered-by-three-u-s-regulators.html> (stating “storefronts made \$30.1 billion of the \$48.7 billion in total payday loans made in 2012”).

²⁷ Glen Fest, *A Case of Payday Loans*, THE AMERICAN BANKER (July 1, 2011), http://www.americanbanker.com/magazine/121_7/kansas-city-feds-case-for-payday-loans-1039318-1.html.

²⁸ See CFPB WHITE PAPER, *supra* note 8, at 9.

²⁹ It should be noted that the payday lending industry advocates claim that the APR does not accurately describe the cost of payday loans because of the loans' short terms. See Michael S. Barr, *Banking the Poor*, 21 YALE J. ON REG. 121, 155 (2004).

³⁰ See, e.g., Bruch, *supra* note 23, at 1279–80 (arguing that it is the high interest rates that makes payday loans unconscionable); Benjamin D. Faller, *Payday Loan Solutions: Slaying the Hydra (and Keeping It Dead)*, 59 CASE W. RES. L. REV. 125, 139 (2008) (stating that “[t]he primary problem is that competition has not driven down prices.”); Creola Johnson, *Congress Protected the Troops: Can the New CFPB Protect Civilians from Payday Lending?*, 69 WASH. & LEE L. REV. 649 (2012) (arguing for an interest rate cap of thirty-six percent as a solution to payday lending); Chris Peterson, *Failed Markets, Failing Government, or Both? Learning from the Unintended Consequences of Utah Consumer Credit Law on Vulnerable Debtors*, 2001 UTAH L. REV. 543, 546–47 (2001) (explaining the “consequences the high cost consumer credit market poses”).

³¹ See CFPB WHITE PAPER, *supra* note 8.

³² *Id.* at 17.

two weeks and another fifteen percent fee. Simple math shows that when a typical borrower misses the loan deadline just once, perhaps due to another financial emergency, the borrower ends up owing a total of \$105 on top of the original principal. For these borrowers already facing financial difficulties, this is a huge sum that may potentially trap them in a debt cycle or “debt treadmill,” where borrowers must continually take out loans with multiple lenders to pay off debts from other lenders.³³

C. The Truth in Lending Act

In the face of this growing danger, the Federal Reserve Board officially included payday lenders as a covered entity under TILA in March of 2000.³⁴ TILA remains the primary body of law governing payday lenders today.³⁵ Originally passed in 1968, TILA is a disclosure statute that does not control what terms a creditor must offer, but requires that those terms be uniformly disclosed to the consumer. TILA presumes that rational consumers who are given “accurate and meaningful disclosure of the costs of consumer credit” will be able “to make informed choices”³⁶ and borrow money at the best price available.³⁷ Subsequently, as informed borrowers begin to gravitate towards the “best price,” other lenders are forced to lower prices to match or beat the “best price” or “best terms” to stay competitive.³⁸

To demonstrate, suppose there are two gas stations that are located at the same street corner. Both gas stations advertise their prices for drivers to see. Since antitrust laws prevent the stations from cooperatively setting high prices, price disclosure facilitates market competition by eliminating the possibility that any station can charge an unfair price. In order for either station to remain competitive, the station must set the price as low as possible so that it does not lose business to the neighboring station, but high enough that it still earns a fair profit. As a result, consumers who buy gas at either station

³³ See, e.g., Bruch, *supra* note 23, at 1279–80 (2001).

³⁴ Robert W. Snarr, *No Cash 'til Payday: The Payday Lending Industry*, FEDERAL RESERVE BANK OF PHILADELPHIA (2002), http://www.philadelphiafed.org/bank-resources/publications/compliance-corner/2002/first-quarter/q1cc1_02.cfm#one.

³⁵ *Id.*

³⁶ Elizabeth Renuart & Kathleen E. Keest, TRUTH IN LENDING § 1.1.1, 33 (4th ed. 1999).

³⁷ See Alan Schwartz & Louis L. Wilde, *Intervening in Markets on the Basis of Imperfect Information: A Legal and Economic Analysis*, 127 U. PA. L. REV. 630, 638 (1979) (“The competitive price is the lowest price a market can sustain, and all consumers would, other things equal, prefer to purchase at the lowest price.”).

³⁸ See Patrick E. Hoog, *Acceleration Clause Disclosure: A Truth in Lending Policy Analysis*, 53 IND. L. J. 97, 101 (1977) (stating that the purpose of disclosure requirements is to “promote comparative shopping by consumers among creditors in the pursuit of increased competition among credit extenders”).

are able to obtain it at what economists call the “equilibrium price,” the price where supply meets demand perfectly; both gas stations make fair income, and further government regulation is unnecessary.³⁹ This scenario demonstrates the primary presumption that drives all disclosure-based regulation, which has been affirmed in law reviews,⁴⁰ social science literature,⁴¹ treatises,⁴² administrative regulations,⁴³ U.S. Supreme Court decisions,⁴⁴ and a wide variety of other sources.⁴⁵

III. Recognizing the Problem: Why TILA has Failed to Facilitate Price-Competition among Payday Lenders

Unfortunately, TILA’s mandated disclosures have not effectively facilitated price-competition for payday lending.⁴⁶ While the number of lenders in the marketplace has increased,⁴⁷ payday lending prices remain remarkably high.⁴⁸ Scholars repeatedly cite three factors as the primary contributors to TILA’s ineffectiveness in facilitating price-

³⁹ JOSEPH E. STIGLITZ, *ECONOMICS* 87–88 (2d ed. 1997) (“[Equilibrium is] a situation where there are no [reasons] for change. No one has an incentive to change the result.”).

⁴⁰ *See, e.g.*, Peterson, *supra* note 4, at 814 (“The hope was that with uniformly disclosed prices, consumers would be able to shop for the best deal, thus better protecting themselves and forcing creditors to offer lower prices.”).

⁴¹ *See, e.g.*, Richard Hynes & Eric A. Posner, *The Law and Economics of Consumer Finance*, 4 AM. LAW & ECON. REV. 168, 192–93 (2002) (“The stated goals of the Truth in Lending Act are to increase economic stability, to enhance the ability of consumers to shop for attractive loan terms, and to prevent inaccurate and unfair billing.”).

⁴² *See, e.g.*, Ralph J. Rohner & Fred H. Miller, TRUTH IN LENDING 4 (Robert A. Cook et al. eds., 2000) (“The primary purpose of [TILA] is to promote the informed use of credit.”).

⁴³ *See* 12 C.F.R. § 226.1(b) (2010) (stating that Regulation Z is meant “to promote the informed use of consumer credit by requiring disclosures about its terms and cost”).

⁴⁴ *See Ford Motor Credit Co. v. Milhollin*, 444 U.S. 555, 559 (1981) (“The Truth in Lending Act has the broad purpose of promoting ‘the informed use of credit’ by assuring ‘meaningful disclosure of credit terms’ to consumers.”) (citing 15 U.S.C. § 1601 (2012)).

⁴⁵ Government regulation of securities also uses disclosure as the primary means to protect investors in the same manner. *See* Stephen M. Bainbridge, *Mandatory Disclosure: A Behavioral Analysis*, 68 U. CIN. L. REV. 1023, 1023 (2000) (“Mandatory disclosure is a—if not the—defining characteristic of U.S. securities regulation.”); Troy Paredes, *Blinded by the Light: Information Overload and Its Consequences for Securities Regulation*, 81 WASH. U. L.Q. 417, 421 n.11 (2003) (describing the literature on mandatory disclosure in securities law as “voluminous”).

⁴⁶ *Cf.* Pearl Chin, Note, *Payday Loans: The Case for Federal Legislation*, 2004 U. Ill. L. Rev. 723, 739–42.

⁴⁷ *See* 10 *Shocking Facts About Payday Loans*, *supra* note 25.

⁴⁸ *See* Paul Chessin, *Borrowing from Peter to Pay Paul: A Statistical Analysis of Colorado's Deferred Deposit Loan Act*, 83 DENV. U. L. REV. 387, 408–09 (2005) (describing how payday lending competition is not determining prices); Faller, *supra* note 30, at 139 (describing the payday lending market as a failed one).

competition among payday lenders: (A) consumers' inability to understand disclosures,⁴⁹ (B) high transactions costs of comparison-shopping,⁵⁰ and (C) deception by payday lenders.⁵¹

A. The First Factor: Many Borrowers Do Not Understand TILA's Disclosures

The first contributing factor has been discussed at length both before and after the passage of TILA: consumers may purchase credit even when they do not fully understand the costs of doing so.⁵² One study by the University of Michigan's Survey Research Center has gone so far as to state that most "consumers are wholly unaware" of the rate they pay for credit.⁵³ In addition, while many studies have established that consumer awareness of the "annual percentage rate" (APR) has significantly increased, these studies also reveal that consumers have difficulty processing that information.⁵⁴ For instance, one leading study indicates that as consumers become more knowledgeable about the APR, their knowledge of other equally important terms, like the finance charge, decreases.⁵⁵ Therefore, many scholars conclude that TILA has "succeeded in making consumers increasingly aware, but . . . has not managed to explain to them what . . . they have been

⁴⁹ See, e.g., 152 CONG. REC. S6405, S6406 (daily ed. June 22, 2006) (statement of Sen. Talent) ("[T]hese young men and women, many of whom are just out of high school, are not financially sophisticated and fall way behind in these payments."); Matthew A. Edwards, *Empirical and Behavioral Critiques of Mandatory Disclosure: Socio-Economics and the Quest for Truth in Lending*, 14 CORNELL J.L. & PUB. POL'Y 199, 224 n.136 (2005) (discussing criticism of unnecessarily complex contracts in the industry); Peterson, *supra* note 30, at 571 (listing borrowers' failure to understand disclosures as the first of five factors leading to ineffective regulation).

⁵⁰ See Peterson, *supra* note 30, at 572–73 (arguing that economic models relied upon in regulating payday lending do not properly account for transaction costs); see also Bruch, *supra* note 23, at 1282–83 (stating that payday loan consumers are often in dire financial straits and that lenders subsequently benefit from a "captive market"); Chessin, *supra* note 48, at 409 n.93 (describing borrowers as "rate insensitive"); Scott Andrew Schaaf, *From Checks to Cash: The Regulation of the Payday Lending Industry*, 5 N.C. BANKING INST. 339, 344 (2001) (stating that borrowers are not "price driven").

⁵¹ See Faller, *supra* note 30, at 140–41 (listing "abusive practices" by lenders as one of two problems with implementing regulations against payday lenders); see also Edwards, *supra* note 49, at 200–05 (discussing how lenders use "information asymmetry" to take advantage of borrowers).

⁵² See, e.g., Edward L. Rubin, *Legislative Methodology: Some Lessons from the Truth-in-Lending Act*, 80 GEO. L.J. 233, 243–64 (1991) (discussing the legislative debates prior to Congress's passage of the TILA).

⁵³ See *id.* at 244 (citing S. 2755, 86th Cong., 2d Sess. (1960), reprinted in *Consumer Credit Labeling Bill, 1960: Hearings on S. 2755 Before the Subcomm. on Production and Stabilization of the S. Comm. on Banking and Currency*, 86th Cong., 2d Sess. 803–14 (1960)).

⁵⁴ *Id.* at 235–236.

⁵⁵ *Id.* at 236 (citing William K. Brandt & George S. Day, *Information Disclosure and Consumer Behavior: An Empirical Evaluation of Truth-in-Lending*, 7 U. MICH. J.L. REF. 297, 303–07 (1974)).

made aware of.”⁵⁶ As a result of borrowers’ difficulty in deciphering what price or terms are actually in their best interest, the lenders’ incentive to price-compete is removed, and the market is prevented from ever reaching the “equilibrium price.”

Regrettably, this problem has proved particularly difficult to solve for low-income borrowers. They often have trouble understanding the English language and have general financial literacy or educational problems that may further limit their understanding of credit disclosures.⁵⁷

B. The Second Factor: Transaction Costs of Comparison-Shopping Are Too High for Payday Loan Borrowers

Comparison-shopping also requires significant upfront costs of time and effort. A prospective borrower is often required to fill out a loan application and verify his employment before the interest rate is ever disclosed to him.⁵⁸ By definition, comparison-shopping requires multiple rates for comparison, so a prospective borrower looking to comparison-shop would have to repeat this loan application process multiple times.⁵⁹ Given that the majority of borrowers tend to turn to payday lending out of a need for

⁵⁶ *Id.* at 236.

⁵⁷ See, e.g., Jeffrey Davis, *Protecting Consumers from Overdisclosure and Gobbledygook: An Empirical Look at the Simplification of Consumer-Credit Contracts*, 63 VA. L. REV. 841, 842 (1977) (stating that the benefits of disclosure laws “have been experienced almost entirely by those consumers who least need the protection—middle and upper class consumers”).

⁵⁸ See Peterson, *supra* note 30, at 573. While TILA requires lenders to make clear and conspicuous loan disclosures on a written form before the lender extends the loan, 12 C.F.R. § 226.17(a)–(b) (2015), in both the Fourth and the Seventh Circuits, however, lenders do not have to make these until immediately before consummation of the loan. See *Spearman v. Tom Wood Pontiac-GMC, Inc.*, 312 F.3d 848, 851 (7th Cir. 2002); *Gavin v. Koons Buick Pontiac GMC, Inc.*, 28 F. App’x 220, 222 (4th Cir. 2002) (unpublished opinion).

⁵⁹ Even borrowers using Internet lenders instead of store fronts must not only sift through hundreds of thousands of payday lender websites, but also must differentiate between real and fake lenders. See, e.g., Carter Dougherty, *Data From Payday Loan Applicants Sold in Online Auctions*, BLOOMBERGBUSINESS (Jun. 8, 2012, 12:01 AM), <http://www.bloomberg.com/news/articles/2012-06-08/data-from-payday-loan-applicants-sold-in-online-auctions> (describing a fake payday lender that merely sold applicant’s data). Then after finding a genuine lender, borrowers must differentiate between lenders with legitimate endorsements and those with fake or paid-for ones. To complicate matters further, borrowers that find a website that seemingly offers the opportunity to compare many payday lenders’ interest rates side by side, must differentiate between a website offering a genuine comparison service and one with for-profit or other ulterior motives. Some of these sites are simply aggregators that gather your information to sell. See Colleen Tressler, *Loan Aggregators, or Loan Aggravators?*, FED. TRADE COMM’N CONSUMER INFO. BLOG (Feb. 20, 2013), <http://www.consumer.ftc.gov/blog/loan-aggregators-or-loan-aggravators>. Others are paid-for or owned by one of the lenders they purport to compare. See, e.g., *Payday Lender Reviews*, TOP 10 PAYDAY LENDERS, <http://www.top10paydaylenders.com/doc/reviews> (last visited Nov. 6, 2015) (providing reviews and comparison charts for the site’s own “lending partners”).

emergency credit, these upfront costs of time and effort are impractical, if not unmanageable.⁶⁰

Furthermore, privacy concerns may impose additional costs on the transaction. For instance, many studies have reported that verifying a borrower's employment is often conducted by calling the borrower's supervisor.⁶¹ Visiting multiple lenders and having each of them call a borrower's supervisor to verify employment can be understandably unfavorable.⁶²

C. The Third Factor: Deceptive Practices by Lenders to Hide Disclosures

Lastly, even if borrowers were able to understand the disclosures and could afford comparison-shopping's transactions costs, many payday lenders would still use deceptive practices to manipulate borrowers.⁶³ For example, lenders have been reported to accompany disclosures with comments that marginalize the information by describing the terms as "just standard language" or purposely providing nonresponsive answers.⁶⁴ Aggressive salesmen might also intimidate borrowers by convincing them that they are the only possible loan source for a person like the borrower.⁶⁵ Lastly, some lenders provide no disclosures at all; instead, they offer the borrower a document with blanks that will be "completed later."⁶⁶ Given a combination of borrowers' deference to lenders' expertise, and borrowers' insecurity or fear of appearing ignorant, these marginalizing disclosures and nonresponsive explanations are rarely questioned.⁶⁷

IV. The Proposed Solution: Facilitating Price-Competition with an Online Exchange

⁶⁰ See *supra* Part II.A.

⁶¹ See Peterson, *supra* note 30, at 573.

⁶² Michael Bertics, *Fixing Payday Lending: The Potential of Greater Bank Involvement*, 9 N.C. Banking Inst. 133, 140 (2005) (describing the risk of "potential embarrassment and employment risk that bombardment of confirmation calls by multiple payday lenders would pose").

⁶³ See Edwards, *supra* note 49, at 227 (describing how salesman may use "high-pressure" tactics to discourage consumers from walking away); Peterson, *supra* note 30, at 573 (describing how lenders may purposefully or unconsciously increase shopping costs for borrowers to discourage comparison-shopping).

⁶⁴ Lloyd T. Wilson, Jr., *Effecting Responsibility in the Mortgage Broker-Borrower Relationship: A Role for Agency Principles in Predatory Lending Regulation*, 73 U. CIN. L. REV. 1471, 1500 (2005).

⁶⁵ *Id.* at 1500–01.

⁶⁶ *Id.* at 1501.

⁶⁷ See Kathleen C. Engel & Patricia A. McCoy, *A Tale of Three Markets: The Law and Economics of Predatory Lending*, 80 TEX. L. REV. 1255, 1309 (2002) (discussing questions that are "likely to result in self-serving answers").

To address these three factors, this Article proposes creating a federally operated online exchange (Exchange) for payday lenders to post their rates and for borrowers to apply and receive payday loans. By listing dozens of lenders' rates side by side, the Exchange restores comparison-shopping by providing borrowers with a tool to easily compare the rates and terms of different lenders. A federally operated online exchange with a ".gov" web address is not only less susceptible to moral hazards, but will stand out amidst the for-profit comparison sites and advertisements that currently dominate a borrower's web search for payday lenders.⁶⁸ The Exchange will aim to be a "one-stop" destination for prospective borrowers looking for payday loans, and payday lenders will voluntarily register with the Exchange in order to reach these potential customers.⁶⁹

While the technical details of the Exchange's user interface are not the subject of this Article, it is not difficult to visualize how the hypothetical Exchange might operate: prospective borrowers visiting the Exchange's web address will be prompted to enter a loan amount, location, loan duration, and other necessary facts similar to the information currently required by traditional storefront or online lenders. Borrowers will then be provided with a list of lenders and the total cost of each loan. They will then select a lender and confirm to complete the loan. This simple system will address all three flaws in TILA's disclosure regime.⁷⁰

A. The Exchange Helps Borrowers Understand Disclosures

First, the Exchange directly addresses a borrower's inability to understand disclosures or contract terms. The Exchange can offer standard disclosures and contract terms in virtually every language and afford the borrower as much time as necessary to digest the information. Likewise, the Exchange can provide definitions of confusing terms and improve the financial literacy of a subpopulation that arguably needs it the most.⁷¹

⁶⁸ The Internet is currently littered with privately operated lender-comparison websites. Unfortunately, the vast majority are owned by self-serving payday lenders. *See supra* Part III.C.

⁶⁹ Lenders will not be legally forced sign up with the Exchange; however, the market will incentivize them to sign up if they want to reach the Exchange's growing group of potential customers. *See infra* note 79–83 and accompanying text.

⁷⁰ *See supra* Part III.

⁷¹ *See, e.g.,* Megan S. Knize, *Payday Lending in Louisiana, Mississippi, and Arkansas: Toward Effective Protections for Borrowers*, 69 LA. L. REV. 317, 325 (2009) ("Payday lenders know where to find their desired customers: economically disadvantaged areas, towns near military bases, and minority neighborhoods."); Wei Li et al., CTR. FOR RESPONSIBLE LENDING, *Predatory Profiling: The Role of Race and Ethnicity in the Location of Payday Lenders in California* 10 (Mar. 26, 2009), <http://www.responsiblelending.org/california/ca-payday/research-analysis/predatory-profiling.pdf> (finding that Californian payday lenders concentrate their storefronts in predominantly minority neighborhoods).

More importantly, it realizes an additional layer of protection for borrowers. With the total costs of different lenders' loans side by side, a borrower's misunderstanding of contractual or financial terms is much less relevant. As long as the borrower selects the lowest total cost available, it matters little whether he truly understands what an interest rate or finance charge actually includes.⁷²

B. The Exchange Severely Reduces Transaction Costs of Comparison-Shopping

The Exchange also addresses the current reality that the costs of comparison-shopping are prohibitively high for prospective payday loan borrowers. By providing near instant comparisons, the Exchange significantly reduces the costs of comparison-shopping. Borrowers are required to fill out necessary loan information just once and are no longer required to seek out or travel to different lenders to compare rates and terms.

With the transaction costs reduced, borrowers will have more incentive to comparison-shop, and lenders will be re-incentivized to price-compete.⁷³ Professor Chris Peterson, Senior Counsel for Enforcement Policy and Strategy at the CFPB,⁷⁴ noted the high transaction costs of comparison-shopping:

Until there is proof that [comparison] shopping costs . . . do not swamp the benefits of shopping, there can be no safety in the belief that market forces will drive down prices. For example, if seven lenders were all lined up in a row, each with clearly described prices, we might feel confident that debtors had a financial incentive to compare the prices of each lender, and in turn, each lender would have an incentive to price-compete. But, if each lender were spread out, one on each of the seven continents, no debtor would bear the cost of shopping at each location.⁷⁵

⁷² This process essentially operates as the interest rate cap that many scholars currently advocate for. See, e.g., Johnson, *supra* note 30, at 713 (arguing for CFPB guidelines to cap interest rates at thirty-six percent); Nathalie Martin, *Public Opinion and the Limits of State Law: The Case for A Federal Usury Cap*, 34 N. ILL. U. L. REV. 259, 297–304 (2014) (arguing for a federal interest rate cap of thirty-six percent). For example, if there are two lenders, the one that offers a lower interest rate functionally sets an interest rate cap, as the consumer has no incentive to select the higher rate. The higher-cost lender must either lower his price to equilibrium or leave the market.

⁷³ See *supra* Part II.C.

⁷⁴ Christopher Lewis Peterson, *Faculty Profile*, FACULTY.UTAH.EDU, https://faculty.utah.edu/u0045920-CHRISTOPHER_LEWIS_PETERSON/biography/index.html (last visited Oct. 23, 2015).

⁷⁵ Chris Peterson, *Failed Markets, Failing Government, or Both? Learning from the Unintended Consequences of Utah Consumer Credit Law on Vulnerable Debtors*, 2001 UTAH L. REV. 543, 572–73

While Peterson uses the hypothetical row of seven lenders as an intentionally unrealistic “ideal scenario,” this is the very reality that the Exchange creates. Only instead of seven lenders side by side, the Exchange could host hundreds.

C. The Exchange Reduces Deceptive Sales Tactics by Lenders

Lastly, the Exchange addresses the current problem of lenders using deceptive sales tactics to prevent borrowers from benefiting from disclosures. The Exchange addresses this problem by removing any interaction between the borrower and lender prior to loan commitment.

Without any interaction, lenders have no opportunity to intimidate borrowers or evade and marginalize disclosures. Similarly, borrowers can overcome uninformative or confusing disclosure terms by hovering a cursor over a confusing term or simply opening a new tab and consulting Google.

Moreover, by originating payday loan transactions over a government-controlled medium, federal regulators would have more access to statistical data, which would allow them to better address bad actors with enforcement actions. For instance, a recent federal report on consumer-submitted complaints revealed that of all the payday loan borrowers submitting complaints, thirty-eight percent of the claims were for borrowers who were “charged fees or interest [they] did not expect,” while another twenty percent “applied for a loan, but [did not] receive money.”⁷⁶ Other common complaints included claims that the “[l]ender charged [the borrower’s] bank account on the wrong day or for the wrong amount” and that borrowers “received a loan [they] did not apply for.”⁷⁷ While industry professionals have criticized federal agencies for basing enforcement actions on these “unverifiable” consumer complaints, implementing the Exchange would allow regulators to cross-reference these complaints against the Exchange’s records. This would result in reduced costs and improved accuracy for federal regulators looking at payday lenders.⁷⁸

(2001).

⁷⁶ CONSUMER FIN. PROT. BUREAU, CONSUMER RESPONSE: A SNAPSHOT OF COMPLAINTS RECEIVED 26 (July 2014), http://files.consumerfinance.gov/f/201407_cfpb_report_consumer-complaint-snapshot.pdf.

⁷⁷ *Id.*

⁷⁸ See Alan S. Kaplinsky, *CFPB Expanded Consumer Complaint Database Raises Concerns*, 67 CONSUMER FIN. L.Q. REP. 189 (2013) (stating that “none of the complaints on the database have been or will be verified”); see also CONSUMER FIN. PROT. BUREAU, SUPERVISION AND EXAMINATION MANUAL UDAAP 9 (2d ed. 2012) (“Consumer complaints play a key role in the detection of unfair, deceptive, or abusive practices [and] have been an essential source of information for examinations, enforcement, and rule-making for regulators.”).

V. Addressing Potential Obstacles and Criticisms

Before addressing potential criticisms, it is important to recognize that the Exchange imposes neither new laws nor legal regulations on any parties. Lenders will voluntarily offer rates on the Exchange to reach prospective borrowers;⁷⁹ consumers will voluntarily visit the Exchange in search for lower prices; regulators will voluntarily use the information gathered by the new platform; and taxpayers will be minimally burdened.⁸⁰

Nonetheless, one consideration is that a significant percentage of payday loan customers may lack Internet access and thus would be unable to access the Exchange. Studies have shown that among low-income households with a median salary under \$30,000, nearly twenty-three percent of adults do not use the Internet,⁸¹ though nearly a third of these adults attribute their non-usage to a lack of interest, rather than a lack of access.⁸² However, even accounting for the continually decreasing percentage of non-users year-after-year, the current percentage of non-users is not insignificant.⁸³

However, even those borrowers without access to the Exchange will benefit from its existence. Neoclassical economists have long maintained that not all consumers must comparison-shop in order for the markets to function effectively.⁸⁴ As Professors Ted Cruz and Jeffrey Hinck explain, “if a sufficient number of buyers are well-informed re-

⁷⁹ Even without an initial critical mass of consumers using the Exchange, lenders will be incentivized to use the Exchange for the opportunity to be listed on a “.gov” web address. See *supra* text accompanying note 67. As discussed, lender’s advertising costs are substantial because the payday lending business model relies upon being the first to reach customers that do not have time to comparison-shop. The opportunity to promote on a “.gov” web address provides real monetary value.

⁸⁰ First, much of the infrastructure for the Exchange can be copied from the government’s already-implemented exchange platform, www.healthcare.gov. Second, posting rates on a “.gov” web address significantly reduces a lender’s operating costs. See *infra* text accompanying notes 92–95. The agency operating the website can charge lenders an operation fee, and so long as the fee charged to lenders is less than what lenders currently spend on advertising, there is value to be had. A number of states currently maintain databases of lenders, funded wholly by lender fees of one dollar per transaction. See, e.g., Fla. Stat. Ann. § 560.404(23). The Exchange could further drive this cost down through economies of scale.

⁸¹ Susannah Fox & Lee Rainie, *The Web at 25 in the U.S.*, PEW RESEARCH CTR. 18 (Feb. 27, 2014), http://www.pewinternet.org/files/2014/02/PIP_25th-anniversary-of-the-Web_0227141.pdf.

⁸² Kathryn Zickuhr & Aaron Smith, *Digital Differences*, PEW RESEARCH CTR. 7 (Apr. 13, 2012), http://www.pewinternet.org/files/old-media//Files/Reports/2012/PIP_Digital_differences_041312.pdf.

⁸³ Fox & Rainie, *supra* note 79, at 18; see also Monica Anderson & Andrew Perrin, *15% of Americans don’t use the internet. Who are they?*, PEW RESEARCH CTR. (Jul. 28, 2015) <http://www.pewresearch.org/fact-tank/2015/07/28/15-of-americans-dont-use-the-internet-who-are-they/>.

⁸⁴ See, e.g., Richard Hynes & Eric A. Posner, *The Law and Economics of Consumer Finance*, 4 AM. LAW & ECON. REV. 168, 172–73 (2002).

garding the price and quality of a product, then it will [benefit] the seller to sell . . . at the competitive price to *all* buyers.”⁸⁵ Essentially, a small number of “well-informed consumers can ‘police the market’” as long as lenders are not able to differentiate between the informed and uninformed consumers.⁸⁶

Lastly, this paper has admittedly operated on the assumption that TILA has been ineffective in regulating payday lenders thus far. While this assumption represents the majority view,⁸⁷ the minority argues that payday loans, while expensive for consumers, are not actually overly profitable for lenders.⁸⁸ These scholars and industry advocates argue that while payday loans are expensive, they are necessarily so, and further price-competition will not change this.⁸⁹ For instance, one study argues that payday lenders face substantial costs because payday loan transactions suffer from significantly higher rates of loan defaults.⁹⁰ Similarly, payday loan institutions have higher store operating

⁸⁵ R. Ted Cruz & Jeffrey J. Hinck, *Not My Brother's Keeper: The Inability of an Informed Minority to Correct for Imperfect Information*, 47 HASTINGS L.J. 635, 646 (1996) (emphasis added).

⁸⁶ See Edwards, *supra* note 49, at 242 (quoting William K. Brandt & George S. Day, *Information Disclosure and Consumer Behavior: An Empirical Evaluation of Truth-in-Lending*, 7 MICH. J. L. REF. 297, 327 (1974)). Of course, some scholars contend that sometimes lenders are in fact “able to differentiate between the informed and uninformed consumers” and thus are able to “offer less attractive terms to some consumers without risking the loss” of the informed. *Id.* at 243; see also Michael I. Meyerson, *The Reunification of Contract Law: The Objective Theory of Consumer Form Contracts*, 47 U. MIAMI L. REV. 1263, 1270-71 (1993) (“[T]here is no evidence that a small cadre of type-A consumers ferrets out the most beneficial subordinate contract terms, permitting the market to protect the vast majority of consumers.”). For example, at least one study demonstrates differentiation on the part of sellers by showing that poorly dressed men received average price quotes on cars that were significantly higher than the price quotes given to their well-dressed counter-parts. See Schwartz & Wilde, *supra* note 37, at 682 n.82 (citing Gordon L. Wise, *Differential Pricing and Treatment by New-Car Salesmen: The Effect of the Prospect's Race, Sex and Dress*, 47 J. BUS. 218 (1974)). Similarly, critics might argue that payday lenders may submit one price to the Exchange, but still offer another higher price to those uninformed borrowers that visit the lender’s brick and mortar location or directly visit the lender’s website. Admittedly, the validity of this argument remains to be seen. However, even if the uninformed borrowers do not benefit immediately, those uninformed should progressively move away from their local lenders and towards the Exchange in search of lower prices.

⁸⁷ See, e.g., Bertics, *supra* note 62, at 148 (“Sadly, TILA has failed to provide real protection to payday borrowers.”); Faller, *supra* note 30, at 142 (arguing that TILA and its “market ideology” represents “the federal government’s failure to deal with payday lending”).

⁸⁸ See, e.g., Huckstep, *supra* note 17, at 231 (“High profits for payday lenders . . . may be more myth than reality.”); Webster, IV, *supra* note 21, at 1085 (arguing that “payday lenders are not overly profitable organizations”).

⁸⁹ See, e.g., Flannery & Samolyk, *supra* note 24, at 21 (“[T]he ‘high’ APRs implied by payday loan fees can be justified by the fixed costs of keeping stores open and the relatively high default losses suffered on these loans.”).

⁹⁰ See *id.* at 2. But see Chessin, *supra* note 48, at 408–09.

costs because they must maintain longer hours than typical financial institutions.⁹¹ Critics of the Exchange may point to these costs and argue that the Exchange will not reduce payday loan interest rates to the equilibrium price because these rates *are already at equilibrium*.

However, even assuming the validity of these reported costs, the Exchange will still drastically reduce payday loan interest rates by shifting lenders' incentives to forgo certain inefficiencies. For example, while lenders currently have no incentives to compete on price, they do face incentives to compete on "location of store, flashy signs . . . and name recognition" in order to attract business.⁹² Implementing the Exchange will change these incentives. As borrowers begin to use the Exchange as the "one-stop destination" for payday loans, lenders will face less incentive to continue spending money on advertisements or expensive leases at busy locations. In addition, as more borrowers go online to the Exchange, the incentive for online lenders to pay for costly advertisements and search-engine-optimization, and for brick and mortar lenders to maintain costly storefronts, might be further reduced for those lenders not serving significant numbers of in-person borrowers. These reductions in overhead costs for lenders, coupled with increased price-competition, should yield lower interest rates.

To illustrate the magnitude of these interest rate reductions, consider a few useful statistics from an article written by William M. Webster, IV, chairman of two major national payday lenders. In his article, Webster defends the high rates of his stores by stating that in a typical hundred-dollar loan, the lender generates eighteen dollars.⁹³ From this amount, \$9.09 is spent on store operating expenses, including property leases, employee salaries, as well as radio, television, and online advertisements.⁹⁴

These figures demonstrate the magnitude of the potential reductions in interest rates that restoring price-competition with the Exchange could bring. If lenders were no longer incentivized to advertise or operate brick and mortar stores, the advent of the Exchange would immediately reduce interest rates by nearly sixty percent—even if lenders maintained the same amount of profit as they currently do. Therefore, regardless of the debate on whether payday loan profits are unfairly high, the Exchange can be an effective solution to high payday loan interest rates by reducing lender costs and passing those sav-

⁹¹ See Huckstep, *supra* note 17, at 222.

⁹² See Bertics, *supra* note 62, at 143.

⁹³ See Webster, IV, *supra* note 21, at 1084; *cf.* CFPB WHITE PAPER, *supra* note 8, at 9 (stating the average fee is fifteen dollars per hundred-dollar loan).

⁹⁴ See Webster, IV, *supra* note 21, at 1084.

ings to consumers.

VI. The CFPB's Recent Proposal

In contrast to the Exchange's emphasis on lowering loan costs for borrowers, the CFPB appears to be moving in a different direction. On March 26, 2015, the CFPB publicly announced that it would be considering rules that would impose one of two requirements on lenders making short-term loans: before issuing loans, lenders would either be required to verify a borrower's ability to repay the loan or else be required to provide borrowers with affordable repayment options, such as a "no-cost extension" on their loans if borrowers defaulted more than two times.⁹⁵ Essentially, the CFPB's two proposals make no attempt to address the *price* of current payday loan fees, only their recurring nature.

To illustrate, the CFPB's first requirement that lenders verify borrowers' ability to repay would specifically mandate that lenders go beyond verifying borrowers' income and verify borrowers' "major financial obligations . . . borrowing history . . . living expenses . . . [and] other outstanding covered loans with other lenders."⁹⁶ According to the CFPB, these requirements would require the verification of "housing payments (including mortgage or rent payments), required payments on debt obligations, child support, and other legally required payments."⁹⁷ This extensive verification process would not only significantly lengthen the application process, but would also require borrowers to submit a wide variety of documentation to meet these ability-to-repay requirements. This would further increase the transaction costs of comparison-shopping, and because of the lack of price-competition, the actual costs of this verification process would be passed on to the borrower. Moreover, requiring borrowers prove their ability to repay would result in many low-income families being left without their "lender of last resort."⁹⁸ Similarly, imposing a requirement that lenders offer a "no-cost extension" on defaulted loans would likewise incentivize lenders to increase initial loan charges to compensate for the loss of would-be renewal fees.

⁹⁵ See CFPB PROPOSAL FACTSHEET, *supra* note 10, at 2–3.

⁹⁶ *Id.*

⁹⁷ CONSUMER FIN. PROT. BUREAU, OUTLINE OF PROPOSALS UNDER CONSIDERATION AND ALTERNATIVES CONSIDERED 11–12 (Mar. 26, 2015), http://files.consumerfinance.gov/f/201503_cfpb_outline-of-the-proposals-from-small-business-review-panel.pdf.

⁹⁸ See Glen Fest, *A Case for Payday Loans*, THE AMERICAN BANKER, (July 1, 2011), http://www.americanbanker.com/magazine/121_7/kansas-city-feds-case-for-payday-loans-1039318-1.html. (stating that payday lenders meet the credit needs of borrowers who otherwise lack the credit scores necessary to attain credit).

While CFPB action demonstrates federal recognition of the problem, the CFPB's proposals are an imperfect solution. Their emphasis on reducing the "debt treadmill" effect of recurring payday loan fees ignores the issue of loan price entirely and thus comes at the expense of increasing loan costs. As a result, while borrowers may pay fewer loan fees, each fee will cost more.

VII. Conclusion

Along with exponential growth, the payday lending industry continues to face serious scrutiny and criticism. The rhetoric for federal action grows stronger as scholars, consumer advocates, and regulators emphasize high APRs and the repayment difficulties associated with them. However, despite the criticism and the need for change, it is important to recognize that the payday lending industry serves a genuine need for disenfranchised consumers.

As the discussion on possible solutions continues to grow, this Article offers one solution—creating a federally operated online exchange. This solution will facilitate the economic rationales that drive the Truth in Lending Act: inexpensive government enforcement costs, fair profits for lenders, and low prices for consumers.