Testimony of Jamie Fulmer

On Behalf Of

The Community Financial Services Association of America (CFSA)

Before the Senate Committee on Indian Affairs

Oversight Hearing On Lending Practices Affecting Indian Country

June 5, 2008

Introduction

Thank you for the opportunity to provide information at today's hearing. My name is Jamie Fulmer and I am Director of Public Affairs for Advance America Cash Advance Centers, Inc., a publicly held payday advance company headquartered in South Carolina. I am appearing today as the representative of the Community Financial Services Association of America (CFSA), of which my company is a founding member.

Background on the Community Financial Services Association

CFSA was founded in 1999 to promote laws and regulations relating to payday advance lending that protect consumers, while preserving their access to credit options, and to support and encourage responsible payday advance industry practices. Today, CFSA is comprised of 164 member companies, representing more than half of all payday advance locations nationally.

All CFSA member companies are required to adhere to a comprehensive set of payday lending *Best Practices* aimed at ensuring consumer protection. These *Best Practices,* a copy of which is attached, include requirements that often exceed those contained in state law and ensure that our member companies hold themselves to high standards of responsible service and help our customers make sound and informed financial decisions.

CFSA periodically audits its members to secure full compliance with its mandatory *Best Practices*. CFSA also continues to enhance these *Best Practices* as our industry evolves and I will highlight several important recent changes later in my testimony.

General Background on Payday Lending

How Payday Advances Work - The payday advance application process is simple and transparent. It requires supporting documents, including proof of a regular income, a personal checking account and identification. Individual companies have their own additional underwriting criteria.

If approved, a borrower reads and signs an agreement containing loan terms and disclosures required by the Truth in Lending Act and writes a personal check for the amount of the advance, plus a modest fee. The lender advances the customer funds immediately and waits to negotiate the borrower's personal check until an agreed upon date, usually within two to four weeks, when the borrower receives his or her next paycheck.

The average loan is around $300 and the typical fee is $15 per $100 borrowed. Payday lenders do not require collateral or personal property as security (e.g., no car titles) nor do payday loans involve check cashing.

State Regulated - Payday lending is highly regulated at the state level. CFSA member companies have taken a constructive leadership role in working with state legislators, regulators and other interested parties to help develop innovative and effective state statutes and regulations for this still-developing industry.

State requirements include, among other things, limits on the amount customers can borrow and the dollar amount of the fees lenders can charge. States also generally either prohibit loans from being "rolled-over" (i.e., extended for another term in exchange for the payment of another fee) or limit such rollovers to one or two times.

Size of Payday Advance Industry - There is a very strong consumer demand for short-term credit. Our industry serves approximately 19 million American households each year. Payday lenders extend about $40 billion annually in short-term, unsecured credit to hard-working, middle-class Americans who occasionally experience cash-flow shortfalls between paydays. According to analysts at Stephens, Inc., the payday lending industry employs more than 50,000 people in about 24,000 locations and pays its employees throughout the country roughly $2 billion in wages.

Payday Advance Customers - Research shows most payday advance customers to be from middle-income, educated, working families, with more than half earning between $25,000 and $50,000 annually, 58 percent having attended college, and one in five having a bachelor's degree.

Further, payday advance customers are <u>not</u> the "un-banked," as every customer is required to have a checking account at a bank or credit union plus a job or other steady source of income. Our customers turn to payday lenders for a reasonably-priced, well-regulated option for meeting unexpected, relatively low dollar, unbudgeted expenses and other short-term financial needs.

When CFSA members make a loan to our customers, we do so only if we believe the individual borrower can repay the loan in a timely manner. And, to state the obvious, our members can stay in business only if our customers do repay their loans.

Store Locations - Payday lenders are located in population centers and areas where customers live, work and shop. These convenient locations often include shopping centers with large national anchor tenants such as Wal-Mart, Blockbuster, Radio Shack, and/or regional grocery store chains.

Critics have often alleged that the payday lending industry inappropriately targets vulnerable populations. During the past few years, the industry unfairly has been accused of locating in communities with high populations of military personnel, women, the elderly, Hispanic Americans, Native Americans, African Americans, recent immigrants, young people, social security recipients, veterans, poor people and Christian conservatives. A recent *Business Week* article even said payday lenders are targeting affluent neighborhoods.

The claims that we target any specific group are without factual foundation. Payday lenders do not target people on the basis of class or specific racial, ethnic or other characteristics. In fact, we "target" the general population no differently than do Home Depot or other retail businesses and our lender locations reflect this fact. Payday advance stores are simply located near population and commerce centers. We do this for the convenience of our customers, who represent a broad demographic segment and cannot be fairly grouped based on race, sex, religion or similar characteristic.

Why Customers Choose Payday Advances - Customers use payday advances to cover small, unexpected expenses between paydays. They are generally ordinary people who have a bill to pay and who seek immediate, short-term credit to meet this obligation.

Short-term small loans of less than $1,000 generally are not offered by banking institutions. Banks have noted, and studies have confirmed, that the cost of offering such short-term loans is quite high relative to larger longer-term loans, and banks generally have deployed their lending resources in other more profitable ways.

Ordinary Americans who need such short-term credit therefore frequently must choose between a payday advance and more costly alternatives, such as bouncing a check or paying overdraft fees, late bill payment penalties and credit card late fees, or asking family members for money or pledging personal possessions as collateral. All of these alternative forms of credit have associated fees or costs, and while payday advances are not always the best option, in many other cases consumers determine that a payday loan is in fact the best and cheapest credit option available.

Payday Loan Critics Unfairly Use Misleading "APR" Calculations - In addition to factors such as convenience and privacy, our experience is that consumers generally look at the real cost of their available credit options and make a rational, informed decision when they choose a payday loan. By contrast, critics of our industry tend to disregard the true relative costs of short-term credit alternatives and attack payday advances because our loan product has a relatively high rate when expressed in terms of an APR, or annual percentage rate.

Overly-simplified APR comparisons in this context tend to be quite misleading. Measuring a two-week payday advance at an annual rate is like Blockbuster quoting you what it would cost to rent a movie for a year's worth of nights, when all you want is to rent it for one night. Let me explain how our critics' APR calculation works, or, in our view, does not work.

First, with respect to payday loans -- which typically are made on a two-week basis for a fee of $15 per $100 borrowed -- the APR is essentially calculated by making a theoretical assumption that the loan will be extended 26 times during a year with a new $15 fee being paid each time. Under this approach, the APR is almost 400% ($15 x 26 weeks = 390% in APR "interest"). This figure is totally misleading and suggests that a borrower normally would be paying $390 in interest on a $100 loan.[1] In reality, however, this theoretical APR situation never occurs and generally cannot occur as a matter of law. State laws now usually prohibit rollovers entirely, or allow only one or two. In real terms, the borrower is paying in most cases a fee that equates to an actual interest rate of 15% per $100 borrowed, which customers clearly understand.

Contrary to the impression given by some critics, financial data shows that payday lenders are not making excessive profits, and that their profits are often lower than

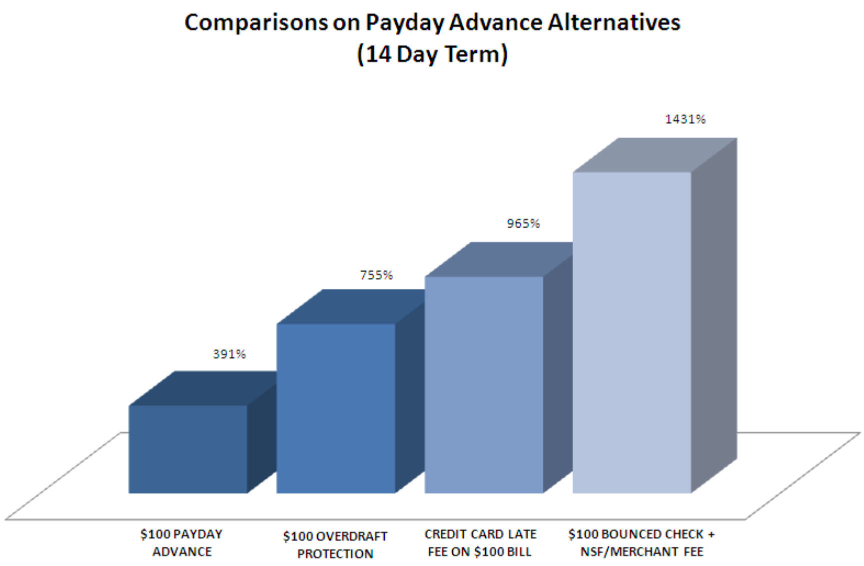
[1] The term length of a loan likewise skews an APR calculation. For example, a $15 fee for a one-week loan = 780% APR; a two-week loan for the same total $15 fee = 380% APR; a four-week loan with this same set $15 fee = 180% APR. Under the extended payment plans described below, this APR calculation continues to drop dramatically.

those of other financial institutions. *American Banker* reported public companies reported profits of 8.5% and an article published in the *Fordham Journal of Corporate & Financial Law* supports the position that payday advance fees are in line with the high costs of operating payday lending businesses. The market for payday loans demonstrates that payday lenders' fees also are not out of line with the cost of competing short-term credit alternatives when you consider the actual cost of all fees and interest charged for these other credit options.

"Apples and Oranges" APR Comparisons - Applicable regulations require that the fees charged by traditional payday advance lenders must be disclosed as interest and stated on an annualized basis in terms of an APR. Unfortunately, these rules do not require that the cost of many competing short-term credit options be stated in the same way. Instead, depository institutions like banks and credit unions typically have to disclose their interest rate as an APR, but <u>do not have to include in their APR calculation the various fees</u> they also charge for their short-term credit products.

The practical result of these differing APR calculation requirements is that many other lenders charge a fee <u>or</u> both a rate of interest <u>and</u> one or more fees for the short-term credit service they provide, and yet have a relatively low APR because all their fees are not included in the APR computations. "Apples and oranges" comparisons are then made by critics who unfairly attack payday loans because they usually have a higher APR under these flawed calculation methods.

Therefore, we believe that the APR, as currently required to be calculated, is generally quite misleading with regard to the real cost of payday loans compared to other small, short-term loan products. Payday loans often are less costly in real terms when the annualized rate for competing products is calculated so as to include all interest and associated fees, as FDIC Chairman Sheila Bair and other experts have recommended. Using an “apples to apples” comparison, payday advances often prove to be the better borrower option. Consider these typical rate examples for several basic short-term credit alternatives when expressed as an APR as opposed to fees: a $100 payday advance with $15 fee is 391% APR.; a $100 bounced check with $54.87 NSF/merchant fee is 1,431% APR; a $100 credit card balance with $37 late fee is 965% APR; a $100 utility bill with $46.16 late/reconnect fees is 1,203% APR; and a $29 overdraft protection fee on $100 is 755%.



Flawed APR Caps – Many critics have called for capping rates at a 36% APR level as has been done with respect to military personnel. Some critics now are saying that new loan products being offered by credit unions show that loans can be made well below the proposed cap. What’s the real story? It’s pretty simple, but not what the critics would have you believe.

If a rate cap of 36% APR is imposed, payday lenders cannot provide borrowers with this important short-term credit option. Such a cap would mean that in real terms, a lender could only charge about $1.38 per $100 borrowed. There clearly is no economically viable way, short of subsidization from some source, that a payday lender, or for that matter other lenders, can provide short-term small loans at such a low rate. Why? Because the actual cost of delivering the loan, not to even mention allowing for loan losses and a modest profit, is far higher than $1.38 per $100.00.

For example, Goodwill, a non-profit, tax-exempt charity charges customers $9.90 per $100 borrowed, a 252% APR, for their “GoodMoney” payday loan. Even the Goodwill could not offer the product under a 36% annual rate cap.

The simple economic reality of a 36% APR cap is why we can no longer offer payday advances to military personnel. We think this is unfortunate because the better public policy approach would be to allow military service members access to this important short-term credit alternative. Military personnel now have fewer choices and often have to select a credit option that is significantly more costly in real terms than a payday advance.

We are not alone in our view that borrowers, be they military members or other consumers, should not have their short-term credit options limited. A staff report from the Federal Reserve Bank of New York[2] notes that “banning payday loans is

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[2] *“Payday Holiday: How Households Fare after Payday Credit Bans”* by Federal Reserve Bank of New York Research Officer Donald P. Morgan and Cornell University graduate student Michael R. Strain.

not, by itself, going to motivate competitors to lower prices or invent new products." Research confirms that consumers have suffered in states where payday advances are no longer available. According to the authors of the Federal Reserve Bank of New York staff report, consumers in Georgia and North Carolina "…bounced more checks, complained more about lenders and debt collectors, and have filed for Chapter 7 bankruptcy at a higher rate" following the elimination of the payday lending industry in those two states.

It also is important to understand that many of the new alternative products, such as those being offered by credit unions, which are being touted by our critics, have various additional requirements and restrictions. Moreover, the "low rates" being advertised often prove to be comparable or higher in real terms when one considers both the interest rate and the fees being charged. In fact, if the current flaws in the APR calculation requirements were corrected to include both the interest rate and all fees, these alternative products could not be offered under a 36% APR rate cap. Despite what industry critics say, a 36% annual rate cap is not a reform approach, it is a ban.

Nonetheless, we welcome the further entry of credit unions and other financial institutions into the short-term credit advance market, and believe competition is good for the consumers we serve. We also recognize that some credit union products logically can be offered at somewhat lower rates because credit unions do not have to pay taxes, do not have to make a profit and may be able to subsidize the costs of such products.

In any case, most of the "alternatives" that we have seen are completely different products with different terms and different fee structures. Many come with a variety of restrictions and complicated fee structures. They provide another choice for some consumers, but have only a limited reach in the larger market we serve, and in all fairness cannot be considered a replacement for payday loans.

CFSA's Payday Lending *Best Practices*

Payday lending is a relatively new industry. As it evolves, CFSA has listened to the concerns raised about our industry and developed solutions to address them. In particular, we are proud that CFSA has demonstrated its commitment to responsible lending by adoption of payday lending industry *Best Practices*, beginning in 2000. Updating and changing our mandatory *Best Practices* are part of our ongoing efforts to respond to the concerns of policymakers and protect the financial well being of our customers. A copy of our current *Best Practices* is attached.

In the past year, CFSA has made significant changes to the *Best Practices* and I would like to take a few minutes to highlight two of them.

Fee Transparency - CFSA member companies have always met or exceeded all applicable regulations in this regard. We have provided clear information on our pricing structure in our loan documents and other materials as required by applicable laws. Customers generally tell us they clearly understand the cost associated with payday advances and appreciate the straight-forward and transparent nature of the product.

Providing consumers with clear, accessible and easy-to-understand pricing information is one of the most basic responsibilities of any business. We have an obligation to make sure our customers understand exactly how much a payday advance will cost before they enter into the transaction.

This year, we took additional steps to ensure that the cost of a payday advance is even clearer. CFSA began requiring all member companies to present consumers with fees on poster-size displays in all stores and on company websites. As a result, members of CFSA prominently display the fees and annual percentage rates for at least five different loan increments on posters that are at least 18” X 22” in size in all stores and on company websites.

Now, every time a customer walks into a store they see a large poster letting them know both the fee in a dollar amount and expressed as an Annual Percentage Rate. Company websites also display the fee and APR information. Potential customers are clearly aware of all fees before they enter the transaction process.

CFSA has also established a website to provide consumers with information about how to use payday advances responsibly. The site, www.knowyourfee.org, includes a user-friendly, interactive map to make sure consumers are aware of the maximum fees and rate caps allowed by law in individual states.

Some consumers may review the fee structure of a proposed payday loan and conclude that they would be better served with a different loan product. Others will decide that a payday advance is their best choice. In either case, the important thing is that consumers are fully aware of the fees involved, and are able to make an informed decision.

Extended payment plan - Last year, CFSA's Board of Directors unanimously approved an addition to the association's *Best Practices* mandating the establishment of a new Extended Payment Plan (EPP) that allows our customers additional time to repay their loans, with no additional fee or finance charge of any kind. This EPP practice was added to address the concern that borrowers sometimes are unable to repay their loans in a timely manner.

Under this progressive *Best Practice*, CFSA member-companies make an Extended Payment Plan available to all customers without restriction. We also are actively supporting efforts to enact such a repayment plan requirement into law at the state-level so that it will apply to all providers of payday advances. Our efforts include active outreach to state legislators, community leaders and other constituent groups. In the past year, four states have added an extended payment plan to their state law, joining the five states that previously had a mandatory extended payment plan.

Taken together, these initiatives help ensure that CFSA member companies hold themselves to a high standard of responsible service and assist customers in making sound financial decisions.

CFSA's Financial Literacy Programs

CFSA and its member companies are committed to helping consumers improve their personal finance skills and judgment. CFSA has sponsored national public education advertisements on television and in print media explaining that payday loans are only intended as a short-term option, and are not for continued long-term usage. CFSA encourages borrowers to use payday advances responsibly. CFSA also has developed community outreach programs aimed at educating consumers on how to become financially savvy.

Among these programs are the **CFSA Youth Learn & Save program**, which teaches high school and college students in Boys and Girls Clubs the importance of building a solid financial future; and the **CFSA Community Volunteer Train-the-Trainer program**, which provides volunteers with resources needed to teach financial literacy in their community. Based on **Money Smart,** a financial literacy curriculum developed by the **Federal Deposit Insurance Corporation (FDIC**), these programs cover a broad range of personal finance topics, including basic banking services, consumer credit, budgeting and money management, homeownership, and savings and investing.

To assist member companies in their efforts to support local financial literacy programs, CFSA provides **Financial Literacy Grant**s. Through this program, CFSA members can obtain a grant in amounts ranging from $500 to $2,500. These grants are matched by the member company, and are provided to community organizations to launch a CFSA financial literacy program.

To help payday advance customers improve their credit histories, CFSA partners with **Pay Rent Build Credit (PRBC)**, a nontraditional credit reporting agency designed to help consumers build and rehabilitate their credit. PRBC offers payday advance customers the opportunity to build an accurate and complete credit history by monitoring payments on all the bills they pay.

On the national level, CFSA partners with organizations to combat financial *illiteracy* around the country. In collaboration with the **National Conference of Black Mayors**, CFSA sponsors **Youth Empowerment Summits (YES)** to host a day-long financial education summit for high school and college students. These events are organized in partnership with minority institutions such as historically black colleges and universities.

In addition, a partnership with the **National Black Caucus of States Institute**, CFSA supports efforts to educate legislators on economic issues impacting the African American community. Last year, CFSA sponsored a series of **Economic Empowerment Forums** to underscore inadequacies in the nation's credit reporting system. In doing so, legislators examined how credit reporting methodologies negatively impact African American consumers' ability to obtain wealth-building assets.

We are deeply committed to increasing financial literacy in the communities in which we operate, and would welcome the opportunity to explore partnerships and financial literacy programs specific to the Native American community. We recognize that the Boys and Girls Clubs of America, with whom we have partnered in other areas, are very involved in Indian Country. And, we understand that, like the historically Black Colleges with whom we have partnered, Tribally Controlled Community Colleges offer a rich resource for consumer education and skill training. We look forward to expanding our involvement in tribal communities throughout Indian Country.

Conclusion - In closing, we are proud of the service we offer to millions of hard-working Americans who deserve access to more financial options, not fewer. We employ tens of thousands of people and provide them with good wages and benefits such as healthcare and retirement. We are active members of the communities where our employees and customers live and work. We spread wealth in the community by not only providing access to credit, but hiring vendors, renting storefronts and using other local services.

I would be pleased to answer any questions you may have. I have attached a copy of our CFSA *Best Practices* as well as a map showing the location of lenders licensed to provide payday and other loan products in North Dakota. I ask that my written testimony be accepted into the record of this hearing, including these attachments, as well as the additional written testimony of Dr. Pat Cirillo who is accompanying me at this hearing. Dr. Cirillo is an expert in the field of consumer financial services behavior and choices. Thank you for your time and interest.

Best Practices
for the
Payday Advance Industry

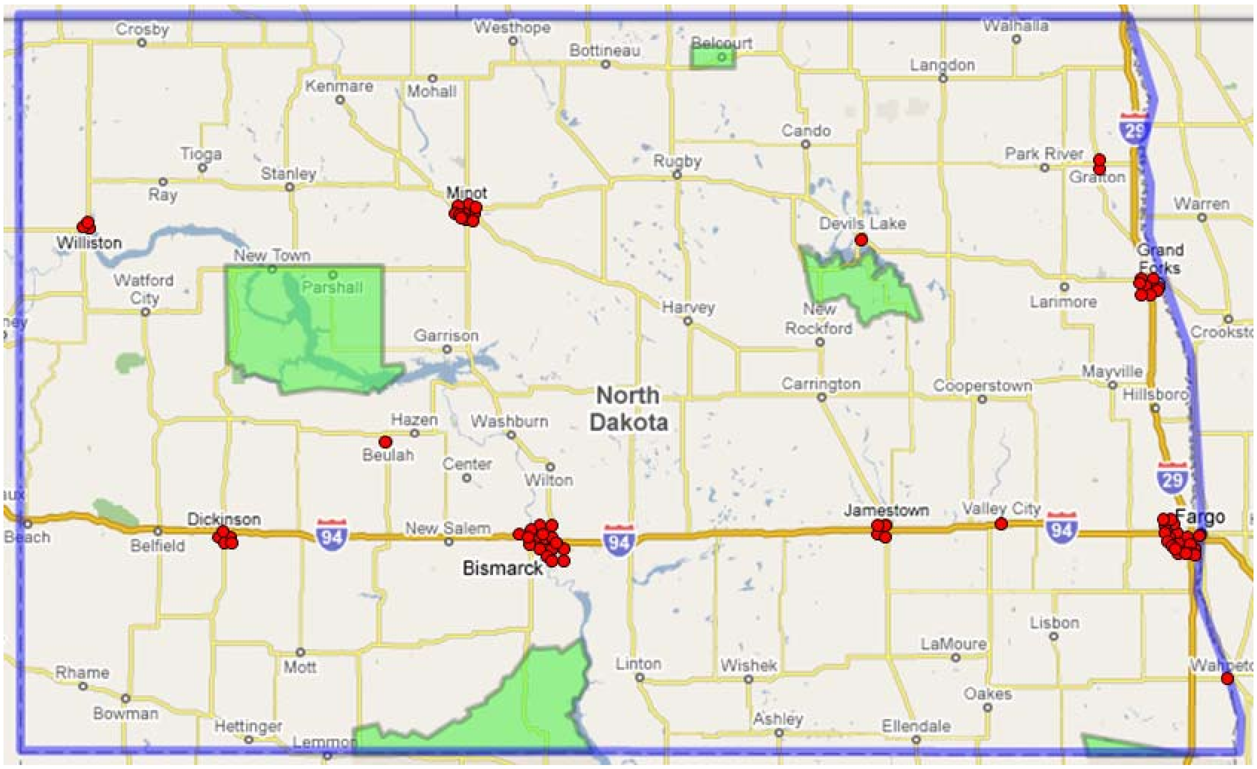
CFSA Members must abide by the following Best Practices:

1. **Full disclosure.** A member will comply with the disclosure requirements of the state in which the payday advance office is located and with federal disclosure requirements including the Federal Truth in Lending Act. A contract between a member and the customer must fully outline the terms of the payday advance transaction. Members agree to disclose the cost of the service fee both as a dollar amount and as an annual percentage rate ("APR"). A member, in compliance with CFSA guidelines where they do not conflict with applicable federal, state or local requirements, will further ensure full disclosure by making rates clearly visible to customers before they enter into the transaction process.
2. **Compliance.** A member will comply with all applicable laws. A member will not charge a fee or rate for a payday advance that is not authorized by state or federal law.
3. **Truthful advertising.** A member will not advertise the payday advance service in any false, misleading, or deceptive manner, and will promote only the responsible use of the payday advance service.
4. **Encourage consumer responsibility.** A member will implement procedures to inform consumers of the intended use of the payday advance service. These procedures will include the placement of a "Customer Notice" on all marketing materials, including all television, print, radio and on-line advertising, direct mail and in-store promotional materials.
5. **Rollovers.** Members shall not allow customers to rollover a payday advance (the extension of an outstanding advance by payment of only a fee) unless expressly authorized by state law, but in such cases where authorized the member will limit rollovers to four (4) or the state limit, whichever is less.
6. **Right to rescind.** A member will give its customers the right to rescind, at no cost, a payday advance transaction on or before the close of the following business day.
7. **Appropriate collection practices.** A member must collect past due accounts in a professional, fair and lawful manner. A member will not use unlawful threats, intimidation, or harassment to collect accounts. CFSA believes that the collection limitations contained in the Fair Debt Collection Practices Act (FDCPA) should guide a member's practice in this area.
8. **No criminal action.** A member will not threaten or pursue criminal action against a customer as a result of the customer's check being returned unpaid or the customer's account not being paid.
9. **Enforcement.** A member will participate in self-policing of the industry. A member will be expected to report violations of these Best Practices to CFSA, which will investigate the matter and take appropriate action. Each member company agrees to maintain and post its own toll-free consumer hotline number in each of its outlets.
10. **Support balanced legislation.** A member will work with state legislators and regulators to support responsible legislation of the payday advance industry that incorporates these Best Practices.
11. **Extended Payment Plan*.** A member will comply with Best Practices "guidelines" for Extended Payment Plans, which provides customers who are unable to repay a payday advance according to their original contract, the option of repaying the advance over a longer period of time at no additional charge. A customer shall be allowed to utilize an Extended Payment Plan at least once in a 12-month period. A member will adequately disclose the availability of the Extended Payment Plan to its customers.
12. **Internet lending.** A member that offers payday advances through the Internet shall be licensed in each state where its payday advance customers reside and shall comply with the disclosure, rollover, rate, and other requirements imposed by each such state, unless such state does not require the lender to be licensed or to comply with such provisions, or the state licensing requirements and other applicable laws are preempted by federal law.
13. **Display of the CFSA Membership Seal.** A member company shall prominently display the CFSA Membership Seal in all stores to alert customers to the store's affiliation with the association and adherence to the association's Best Practices.

* State law in some states does not permit implementation of CFSA's Extended Payment Plan (EPP). CFSA is working with regulators in these states to obtain approval of CFSA's EPP and with legislators to promote its adoption.

Supplemental Guidelines for member company implementation of CFSA Best Practices are incorporated herein by reference and are available upon request.

North Dakota
Payday Lending & Indian Country



Legend

- Locations of deferred presentment service providers who are licensed to provide payday loans.
- Indian Country

Population Rank	City	Population	Licenses
1	Fargo	90,599	18
2	Bismarck	55,532	13
3	Grand Forks	49,321	10
4	Minot	36,567	11
5	Mandan	16,718	3
6	Dickinson	16,010	5
7	Jamestown	15,527	4
8	West Fargo	14,940	2
9	Williston	12,512	3
10	Wahpeton	8,586	1
11	Devils Lake	7,222	1
12	Valley City	6,826	1
13	Grafton	4,516	2
14	Beulah	3,152	1

Sources: North Dakota Department of Financial Institutions, 2000 U.S. Census, NationalAtlas.gov, Google Maps