

## PAYDAY LENDING DATABASES

As a way to try to protect consumers from predatory lending practices, lawmakers in several states have sought to restrict the number or amount of payday loan obligations a borrower can have outstanding at one time. States that move forward with these restrictions have begun to look toward creating database systems for payday lenders to use in determining whether or not a borrower is eligible for a new loan. These states require payday companies to register with a specified database provider and regularly submit information such as the number of loans in a given week and fees, and other charges made in connection with the loan. They must also submit a variety of personal identifying information on the borrowers that take out the loans.

In some cases, databases have begun to carry over to include installment lending and other small-sum lending. The zeal for legislative solutions to perceived problems with payday and small-sum lending has been steady for the past couple of years and looks likely to continue at its current pace. Installment lenders are pushing back on what they perceive as inadvertent inclusion in such databases, based on the bureaucratic burden entailed and the unnecessary limitations it imposes on access to safe and affordable loans.

### AFSA'S POSITION

AFSA has a number of concerns regarding such payday lending databases as a regulatory tool, quite apart from their likely negative effects on its installment loan members. AFSA members do not think that these databases add any useful function to established credit reporting agencies and that expanding them to cover traditional installment loans would be unnecessary and overly burdensome for an industry that is already well regulated and recognized as providing alternatives to payday loans.

The rationale behind the expansion of payday lending databases to installment lending is unclear. The function these databases ostensibly fulfill is already performed by established credit reporting agencies regulated under the Fair Credit Reporting Act (FCRA) (to which installment lenders, unlike payday lenders, report consumer data). Database providers are not subject to FCRA, and therefore offer no recourse for consumers to view the data collected about them, no ability to resolve disputes and none of the other consumer protections afforded by the FCRA.

AFSA also contends that databases are unfair to traditional installment lenders because they do not capture information from lenders who operate solely online, giving them an unfair competitive advantage. In addition, these databases do not track public record information such as bankruptcy proceedings or their outcomes. This can, and does result, in the denial of credit to

consumers whose debts have been discharged which may lead consumers to resort to borrowing from unregulated internet lenders or loan sharks.

Privacy concerns relating to the outsourcing of data management and security responsibilities to private entities have also been cited as criticisms of payday databases. Lending databases contain sensitive information about lenders, borrowers and their behaviors, including social security numbers. This type of data is of significant value to criminals who would seek access to it. AFSA notes that without adequate oversight of the database providers themselves, there is no way to be sure that the information is held securely and in keeping with data security best practices.