VI. Reversal in the CFPB: The Future of Federal Payday Lending Regulation

A. Introduction

Payday lending has historically been regulated differently than the greater lending industry.[1] Lawmakers have frequently engaged in vigorous discussion regarding the high interest rates that payday lenders charge in order to operate.[2] However, demand for such loans has only grown over time, demonstrating the necessity of short-term loans for borrowers.[3] Short-term loans have obvious advantages to consumers—particularly to those without access to cheaper forms of debt—but they also present dangers to less savvy consumers who may incur fees far greater than initially expected.[4] Regulation of payday lending institutions exists primarily at the state level, although a deregulation push by the states and the federal government during the 1990s led to a payday lending boom in the following years.[5] The recent Financial Crisis prompted the federal government to directly regulate the short-term lending industry with the creation of the Consumer Financial Protection Bureau (CFPB) as part of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act).[6]

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[1] Arthur H. Ham, *Remedial Loans: A Constructive Program*, 2 PROCS. ACAD. POL. SCI. CITY N.Y. 109, 109 (1912) (detailing efforts of the Washington, D.C. legislature to introduce a bill regulating the small loan industry, as yet unregulated like the greater lending industry).

[2] *Id.* at 109–10 (discussing benefits of legalizing and regulating the small loan industry, rather than allowing loan sharks to operate in the shadows charging up to 500% per annum).

[3] Bethany McLean, *Payday Lending: Will Anything Better Replace It?*, ATLANTIC, May 2016, at 64–69.

[4] Press Release, Consumer Fin. Prot. Bureau, CFPB Finalizes Rule to Stop Payday Debt Traps (Oct. 5, 2017), https://www.consumerfinance.gov/about-us/newsroom/cfpb-finalizes-rule-stop-payday-debt-traps [http://perma.cc/8VNJ-V9SV] [hereinafter CFPB Finalizes Payday Rule] ("Too often, borrowers who need quick cash end up trapped in loans they can't afford.").

[5] McLean, *supra* note 3, at 4.

[6] Dodd-Frank Wall Street Reform and Consumer Protection Act § 1024(a)(1)(E), Pub. L. No. 111-203, 124 Stat. 1376 (2010) (codified as amended at 12 U.S.C. § 5301, 5514(a)(1)(E) (2012)).

The Dodd-Frank Act gave the CFPB direct power to regulate the payday lending industry.[7] With this authority, the CFPB has primarily sought to curb predatory practices in the industry by enacting a rule intended to reduce the likelihood of consumers falling into "debt traps" as a result of payday loans.[8] This effort culminated in the Payday, Vehicle Title, and Certain High-Cost Installment Loans Rule (Payday Rule, Rule), which introduced several novel obligations for payday lenders in order to better protect consumers.[9] The Payday Rule became effective on January 16, 2018, and requires full lender compliance by August 19, 2019.[10] Effective November 28, 2017, President Donald Trump appointed Mick Mulvaney, also the Director of the Office of Management and Budget, as the Acting Director of the CFPB.[11] Mulvaney had previously accepted sizeable campaign contributions from payday lenders in 2015–16 when running for Congress, and almost immediately after becoming Acting Director of the CFPB indicated his intention to scale back enforcement actions of the aggressive Payday Rule.[12] Under Mulvaney's leadership, the CFPB

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[7] *Id.* (detailing power of CFPB to supervise any person "offer[ing] or provid[ing] to a customer a payday loan").

[8] CFPB Finalizes Payday Rule, *supra* note 4 ("The CFPB's new rule puts a stop to the payday debt traps that have plagued communities across the country . . . .") (quoting CPFB Director Richard Cordray). *See* Payday, Vehicle Title, and Certain High-Cost Installment Loans, 12 C.F.R. pt. 1041 (2018).

[9] CFPB Finalizes Payday Rule, *supra* note 4. Final codification of the Payday Rule can be found at 12 C.F.R. pt. 1041 (2018).

[10] Press Release, CFPB, CFPB Statement on Payday Rule (Jan. 16, 2018) https://www.consumerfinance.gov/about-us/newsroom/cfpb-statement-payday-rule [http://perma.cc/Q5HM-BAP2] [hereinafter CFPB Statement on Payday Rule].

[11] Katie Rogers & Tara Siegel Bernard, *President Wins Round in the Battle for a Bureau*, N.Y. TIMES, Nov. 29, 2017, at A16 (recounting Judge Timothy J. Kelly's ruling in favor of President Trump's power to appoint a replacement head of the Bureau, based on the Federal Vacancies Reform Act of 1998). *See* Federal Vacancies Reform Act of 1998, 5 U.S.C. §§ 3345–3349(d) (2012) (promulgating the method under which the President may appoint temporary replacements for officer positions of an executive agency for those that require appointment by the president and the advice and consent of the Senate).

[12] Kevin McCoy, *Mick Mulvaney: Payday Lending Campaign Contributions Pose No Conflicts of Interest*, USA TODAY (Dec. 4, 2017, 5:32 PM), https://www.usatoday.com/story/money/2017/12/04/mick-mulvaney-payday-

has only completed one enforcement action and has dropped a lawsuit in which the CFPB previously found instances of exorbitant interest rates.[13] Moreover, on the effective date of the Payday Rule the CFPB released a statement regarding its intention to reconsider the Payday Rule.[14] In the following months, the CFPB repeatedly sought to delay the compliance deadline for lenders, but has so far been unsuccessful.[15] Mulvaney has clearly changed the direction of the CFPB, but it is uncertain to what extent payday lending regulation will ultimately diverge from the stance taken under previous agency leadership.[16]

This article attempts to provide the background behind the Payday Rule, discuss current developments in the CFPB's regulatory policy and objectives, and analyze the future of federal short-term lending regulation. Part B provides a historical overview of short-term lending regulation in the U.S. Part C looks at the post-Financial Crisis developments, including the creation of the CFPB and its short-term lending regulation efforts.[17] Part D covers the CFPB's current push to modify the Payday Rule under Mick Mulvaney's leadership.[18] Part E analyzes the CFPB's likely path towards deregulating payday lending or softening the effect of the Payday Rule.[19] Part F discusses the

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lending-campaign-contributions-pose-no-conflicts-interest/920056001 [http://perma.cc/Z95G-85H7].

[13] Josh Keefe, *CFPB Drops Investigation into Payday Lender That Contributed to Mick Mulvaney's Campaigns*, INT'L BUS. TIMES (Jan. 23, 2018, 1:58 PM), https://www.ibtimes.com/political-capital/cfpb-drops-investigation-payday-lender-contributed-mick-mulvaneys-campaigns [http://perma.cc/QM4G-ZAC6].

[14] CFPB Statement on Payday Rule, *supra* note 10 ("The Bureau intents to engage in a rulemaking process so that the Bureau may reconsider the Payday Rule.").

[15] Kate Berry, *CFPB Path to Unwinding Payday Rule Riddled with Legal Land Mines*, AM, BANKER (Aug. 10, 2018, 4:50 PM), https://www.americanbanker.com/news/cfpb-path-to-unwinding-payday-rule-riddled-with-legal-land-mines.

[16] Memorandum from Mick Mulvaney, Acting Dir., Consumer Fin. Prot. Bureau, to _DL_CFPB_AllHands@cfpb.gov (Jan. 23, 2018, 12:59 PM) (on file with author) ("I also explained that things would be different under new leadership.").

[17] Dodd-Frank Wall Street Reform and Consumer Protection Act § 1024(a)(1)(E), Pub. L. No. 111-203, 124 Stat. 1376 (2010) (codified as amended at 12 U.S.C. §§ 5301, 5514(a)(1)(E) (2012)).

[18] CFPB Statement on Payday Rule, *supra* note 10.

[19] Kai Ryssdal, *Mulvaney on the CFPB: "We Need to Be a Regulator, Not Somebody's Child,"* MARKETPLACE (Apr. 20, 2018, 3:52 PM), https://www.

continuing controversy surrounding the payday lending industry, from the economic effects on consumers and the idea of payday lending as a "debt trap" to a comparison of alternatives to payday lending.[20]

B. Historical Payday Lending Regulation

In the early 1900s, high-interest-rate lending was illegal in most U.S. jurisdictions.[21] Some states had general interest rate caps on loans that effectively prevented lenders from making profitable short-term loans, which created a substantial black market in short-term lending dominated by loan sharks.[22] These practices led to calls to enact legislation legalizing and regulating higher interest rate loans to eliminate the power of the loan sharks and transform the short-term loan industry into a legitimate business model.[23] Eventually, many states adopted a version of the Uniform Small Loan Law in order to end predatory loan shark practices, apparently on the theory that regulation would be more effective at protecting consumers than illegality.[24] The 1916 version of the Uniform Small Loan Law mandated a maximum monthly interest rate of 3.5%—or 42% per annum—on loans of $300 or less.[25] State regulators thereafter retained control of the industry and established myriad regulations targeting short-term lenders.[26]

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marketplace.org/amp/2018/04/20/economy/mulvaney-cfpb-regulator-not-child [http://perma.cc/DYY7-BBGU].

[20] Robert DeYoung et al., *Reframing the Debate about Payday Lending*, FED. RES. BANK N.Y.: LIBERTY STREET ECONS. (Oct. 19, 2015), http://libertystreeteconomics.newyorkfed.org/2015/10/reframing-the-debate-about-payday-lending.html#.ViUxXfmrShd [https://perma.cc/37FE-79G6].

[21] Ham, *supra* note 1, at 109.

[22] *Id.* at 110 ("[I]n the state of Pennsylvania, where a higher rate of interest than 6% is forbidden, all cities and the larger towns are infested with loan sharks, one of whom was recently found to be charging more than 700% annual interest on his loans.").

[23] *The Uniform Small Loan Law*, 23 COLUM. L. REV. 484, 485 (1923) ("The most feasible and desirable method seems to be the introduction of commercial capital into the small loan field in sufficient quantities to satisfy the need for small loans at a rate of interest fair to both borrower and lender, and to eliminate the loan shark evil by competition rather than by restriction.").

[24] *Id*.

[25] *Id.*

[26] *Id*.

Payday lending experienced explosive growth during the 1990s and early 2000s due to federal exemptions in state interest rate restrictions for lenders that effectively legalized the type of extreme interest rate loans regulators attempted to curb almost a century earlier.[27] Higher interest rates have the dual effect of making short-term lending more expensive for consumers, but more available because payday lenders are able to make up their losses on high default rates.[28] Several states pushed back against the federal deregulation and enacted more stringent restrictions on payday lending within state borders, which has created a relatively fragmented national payday lending industry.[29] However, the next major change to payday lending regulation would coincide with the 2008 Financial Crisis.[30]

C. CFPB Regulation

After being given the general authority to regulate short-term lending activities by the Dodd-Frank Act in 2010, the CFPB eventually turned its attention to gaps in consumer protection.[31] On June 2, 2016, the CFPB proposed a rule aimed at ending payday debt traps, a common outcome of the predatory practices of payday lending institutions.[32] The proposed regulation would affect payday lenders in several concrete ways.[33] First, the "full-payment test" would require lenders to ensure borrowers could afford the full amount of each payment due, taking into account their living expenses and other existing financial obligations.[34] It would also prevent lenders from

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[27] McLean, *supra* note 3.
[28] *Id.*
[29] *Id.*
[30] *See generally* Dodd-Frank Wall Street Reform and Consumer Protection Act § 1024(a)(1)(E), Pub. L. No. 111-203, 124 Stat. 1376 (2010) (codified as amended at 12 U.S.C. §§ 5301, 5514(a)(1)(E) (2012)).
[31] *Id.* ("The Bureau shall prescribe rules to facilitate supervision of [any covered person who offers or provides to a consumer a payday loan] . . . and assessment and detection of risks to consumers.").
[32] Press Release, Consumer Fin. Prot. Bureau, Consumer Financial Protection Bureau Proposes Rule to End Payday Debt Traps (June 2, 2016) https://www.consumerfinance.gov/about-us/newsroom/consumer-financial-protection-bureau-proposes-rule-end-payday-debt-traps [https://perma.cc/C32T-FKGA] [hereinafter CFPB Proposes Payday Rule].
[33] *Id.*
[34] *Id.*

making more than a few loans to a borrower in quick succession.[35] Alternatively, for loans up to $500 with a more gradual principal reduction schedule, the "principal-payoff option" would allow consumers to avoid the "full-payment test."[36] In the final rule, lenders would also be prohibited from making more than three such loans to a consumer in quick succession, just as in the "full-payment test".[37] Second, the "debit attempt cutoff" would prevent lenders from debiting an account for payment after two unsuccessful attempts until the borrower reauthorizes debiting.[38] Additionally, lenders would be required to give written notice to borrowers before making an irregular debit attempt.[39]

After collecting comments and modifying the provisions slightly, the CFPB finalized the Payday Rule on October 5, 2017.[40] The effective date of the regulation was set as January 16, 2018, with lender compliance required by August 19, 2019.[41]

The CFPB fashioned the Payday Rule after making findings that borrowers of short-term loans often become entangled in expensive long-term debt situations.[42] Borrowers regularly take out loans that they cannot pay off in such a short time period, often between two and four weeks, and therefore face high fees for rolling over the debt or refinancing.[43] The CFPB found that more than eighty percent of payday loans are re-borrowed within a month, and almost twenty-five percent are re-borrowed more than eight times.[44] For these loans, borrowers end up paying more in fees than they ever receive in credit from lenders.[45] The CFPB's Payday Rule attempts to combat these identified predatory practices by ensuring that borrowers are able to repay their loans prior to the transaction, and by limiting the ability

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[35] *Id.*
[36] *Id.*
[37] CFPB Finalizes Payday Rule, *supra* note 4.
[38] CFPB Proposes Payday Rule, *supra* note 32.
[39] CFPB Finalizes Payday Rule, *supra* note 4.
[40] *Id.* (emphasizing the regulation as a strong "ability to repay" protection for consumers).
[41] Payday, Vehicle Title, and Certain High-Cost Installment Loans, 12 C.F.R. pt. 1041 (2018).
[42] CFPB Finalizes Payday Rule, *supra* note 4 ("The Bureau found that many people who take out these loans end up repeatedly paying expensive charges to roll over or refinance the same debt.").
[43] *Id.*
[44] *Id.*
[45] *Id.*

of lenders to engage in certain practices that rack up large fees.[46] Now that the Payday Rule is effective, lenders must determine how to become compliant before the deadline.[47]

D. Rollback Plans

Lenders have expressed concern over the measures they must take to become compliant, especially considering the uncertainty around a potential compliance date extension or fundamental change to the regulation.[48] Because the rates of default are so high in the industry, payday lenders must charge extremely high rates to remain profitable or even break even.[49] Additionally, payday lenders make a large proportion of their profits on fees from rollovers and refinancing, which could be drastically reduced if the borrowers most likely to default are not able to secure loans in the first place.[50] Therefore, the Payday Rule may have the potential to cause a significant proportion of payday lenders to close.[51] If this occurs, borrowers' access to emergency loans could be drastically reduced.[52]

The CFPB announced its intention to reconsider the Payday Rule in a statement on the same day the Rule became effective.[53] The process that the CFPB, as an administrative agency, must undergo to rewrite or retract the Payday Rule is extensive, entailing potentially years of work, comment periods, and delays.[54] This factor, along with

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46 *Id.*

47 Payday, Vehicle Title, and Certain High-Cost Installment Loans, 12 C.F.R. pt. 1041 (2018); *see* Berry, *supra* note 15.

48 Berry, *supra* note 15.

49 McLean, *supra* note 3 (explaining that even annualized rates of 36% are not enough to cover high rates of default inherent in industry).

50 CFPB Finalizes Payday Rule, *supra* note 4. *But see* DeYoung, *supra* note 20 ("A central element of the debt trap critique against payday loans is their 'spiraling' fees . . . . It's certainly true that payday loan fees add up if the borrower extends the loan (like any debt), but do they spiral? . . . '[S]piraling' suggests exponential growth, whereas fees for the typical $300 loan add up linearly over time: total fees = $45 + number of rollovers x $45.").

51 McLean, *supra* note 3.

52 *See* McLean, *supra* note 3, for a discussion of the potential effects of increased regulation of payday lending institutions.

53 CFPB Statement on Payday Rule, *supra* note 10.

54 *See generally* 5 U.S.C. § 553 (2012) (detailing the general process for informal rulemaking for administrative agencies as (i) publishing notice of proposed rule in Federal Register; (ii) allowing the public to participate in a

the concern that payday lenders will need to significantly restructure lending practices to become compliant with the Rule, has led both the CFPB and payday lenders to repeatedly request an extension of the compliance deadline, currently set at August 19, 2019.[55] However, each request has been denied by U.S. District Court Judge Lee Yeakel.[56] Notwithstanding the impending compliance date, the CFPB has the power to engage in rulemaking under the Administrative Procedure Act to enable the desired changes to the Rule, and it appears that Mulvaney is determined to do so.[57] While the CFPB has yet to engage in its rulemaking power to modify the Payday Rule, it seems likely to do so in the near future.[58]

E. Future of the Payday Rule

There is some uncertainty as to the final form the Payday Rule will take. Mulvaney accepted campaign donations from the payday lending industry in 2010 when running for representative for South Carolina's 5th Congressional District, including at least $4,500 from World Acceptance Corporation, a large international payday lender based in South Carolina.[59] Coincidentally, within two months of Mulvaney taking over as acting director of the CFPB, World Acceptance Corporation released a statement announcing that the CFPB had completed a four-year investigation into the company's marketing and lending practices without recommending subsequent enforcement action.[60] While Mulvaney has dismissed the campaign contributions

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comment period; (iii) incorporating comments into a finalized rule; and (iv) publishing the rule at least 30 days before the effective date).

[55] Berry, *supra* note 15.

[56] *See, e.g.,* Order, Cmty. Fin. Servs. Ass'n of Am., Ltd. v. Consumer Fin. Prot. Bureau, No. 1:18-cv-00295 (W.D. Tex. June 12, 2018) (denying the extension of the compliance deadline to 445 days after final judgment in the case).

[57] *See generally* 5 U.S.C. § 553 (2012); VANESSA K. BURROWS & TODD GARVEY, CONG. RESEARCH SERV., R41546, A BRIEF OVERVIEW OF RULEMAKING AND JUDICIAL REVIEW 1–2 (2011) (describing the procedure for rulemaking by administrative agencies).

[58] CFPB Statement on Payday Rule, *supra* note 10.

[59] Kate Berry, *CFPB Drops Probe into Lender That Gave to Mulvaney's Campaigns*, AM. BANKER (Jan 23, 2018, 3:43 PM), https://www.americanbanker.com/news/cfpb-drops-probe-into-lender-that-gave-to-mulvaneys-campaigns.

[60] Keefe, *supra* note 13.

from World Acceptance Corporation and other payday lenders as insignificant due to his policy as a congressman of only accepting meetings with lobbyists after receiving contributions, the donations correlate strongly with his actions thus far at the CFPB and lend support to attributing to him a pro-payday lender agenda.[61] The day after World Acceptance Corporation announced the completion of the CFPB's investigation, Mulvaney send out a memo to CFPB employees stating that he regarded the previous leadership of the agency to be too aggressive, and that the agency would be headed in a significantly different direction.[62] In the memo, Mulvaney specifically mentioned that only two percent of the complaints received by the CFPB concerned payday lending (compared to approximately on third of complaints relating to debt collection), and that such data would "guide" future agency action, implying its relatively minor overall importance.[63]

If the CFPB under Mulvaney is successful in modifying the Payday Rule using the rulemaking process, payday lenders will likely be able to operate as they currently do—mainly regulated by state laws with varying bans and restrictions.[64] However, Mulvaney's ability to follow through on this reversal in CFPB policy is not clear. In an April 2018 interview, Mulvaney stated that he does not expect to be at the CFPB longer than the end of the calendar year.[65] Since the rulemaking process would extend further than that, the next director of the CFPB could introduce an entirely new direction for the agency and for federal payday lending regulation.[66]

F. Criticism and Debate

Ever since payday lending became dominated by loan sharks in the early 1900s, scholars have engaged in lively debate on the

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[61] Glenn Thrush, *Mulvaney, Watchdog Bureau's Leader Mounts Charge Against Agency*, N.Y. TIMES, Apr. 25, 2018, at B1 ("If you're a lobbyist who never gave us money, I didn't talk to you. If you're a lobbyist who gave us money, I might talk to you.") (quoting Mulvaney at an American Bankers Association conference in Washington).

[62] Memorandum from Mick Mulvaney, *supra* note 16.

[63] *Id.*

[64] *See* 5 U.S.C. § 553 (2012).

[65] Ryssdal, *supra* note 19.

[66] See Ryssdal, *supra* note 19 for a full interview with Mulvaney on his priorities as the Acting Director of the CFPB, and for insight into his disposition regarding changes at the agency.

correct course to take with regard to small short-term loans such as payday loans.[67] A century ago, the debate mainly focused on the ability of regulation to take power away from dominant local loan sharks while still allowing consumers to gain access to necessary loans.[68] Now, scholars are split on whether payday loans are beneficial at all to consumers, or if they cause more harm than good.[69] The CFPB under Richard Cordray determined that the payday lending industry preys on financially vulnerable consumers with high rates and excessive fees, leading to potential debt traps.[70] The agency changed its stance under Cordray's successor, Mick Mulvaney, who has announced both his adversity to payday lending regulation and intent to modify the impending Payday Rule that his own agency promulgated.[71]

Academics, too, disagree regarding the economic effects of payday lending practices for those who take out short-term loans.[72] Some argue that alternatives to payday lending, such as overdraft systems provided by banks or pawn shops, become more expensive when payday lenders are regulated out of business.[73] Proponents of payday lending also contend that payday loans do not "spiral" out of control into a "debt trap" as the CFPB suggests, but are a way for consumers to easily gain access to debt that can be rolled over or refinanced quite easily.[74] However, studies have gone both ways determining whether access to payday lending improves consumer welfare.[75] One 2011 study concluded that payday loan applicants who are

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[67] Mingliang Li, *A Bayesian Analysis of Payday Loans and Their Regulation*, 171 J. ECONOMETRICS 205, 214 (2012).
[68] Ham, *supra* note 1, at 109–11.
[69] DeYoung, *supra* note 20.
[70] CFPB Finalizes Payday Rule, *supra* note 4.
[71] CFPB Finalizes Payday Rule, *supra* note 4; Memorandum from Mick Mulvaney, *supra* note 16 ("We don't just work for the government. We work for the people. And that means everyone . . . those who take loans, and those that make them . . . .").
[72] DeYoung, *supra* note 20 ("[T]he roughly half-dozen studies published in academic, peer-reviewed journals are thoroughly mixed on "the big question" of whether payday loans help or hurt their users.").
[73] Brian T. Melzer & Donald P. Morgan, *Competition in a Consumer Loan Market: Payday Loans and Overdraft Credit*, 24 J. FINAN. INTERMEDIATION 25, 42 (2015).
[74] DeYoung, *supra* note 20.
[75] Adair Morse, *Payday Lenders: Heroes or Villains?*, 102 J. FIN. ECON. 28, 42 (2011).

barely approved for credit are significantly more likely to file for chapter 13 bankruptcy than those barely rejected for credit.[76] Another study found that access to payday lending after a natural disaster can mitigate foreclosure rates and help prevent shoplifting.[77]

Other scholars maintain that payday lending cannot be evaluated just by the face terms, such as rates and fees, but must also be considered in the context of the industry's predatory practices, including tireless debit attempts and collection activities.[78] Another common concern is that payday lenders target minority neighborhoods, although little evidence of such targeting exists apart from the effect of the economic overlap of minority and low-income areas.[79] The effect of available payday lending on short-term loan competition is also widely debated; some claim that increased competition lowers rates across the board for short-term lending solutions,[80] but others counter that competition only increases the rates payday lenders must charge in order to recoup business spread to a greater number of institutions.[81]

The split on whether payday lending should be banned or regulated to varying degrees is pervasive. Until comprehensive research consensus emerges on the effects of bans and regulation of payday lending, it seems as though regulatory change will occur in the direction of the prevailing political power.

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[76] Paige Skiba & Jeremy Tobacman, *Do Payday Loans Cause Bankruptcy?* (Vanderbilt University Law School Law & Economics Working Paper No. 11-13, 2011), https://ssrn.com/abstract=1266215 [https://perma.cc/NLM8-C8H3] ("We find that payday loan applicants barely approved for their first loans file for chapter 13 bankruptcy significantly more often than barely rejected first-time applicants. The magnitude of the effect is very large, representing an increase of about 2 percentage points in bankruptcy filing rates.").

[77] Morse, *supra* note 75 ("I find that the existence of payday lending increases welfare for households that might face foreclosures or be driven into small property crime in times of financial distress. Specifically, the main result is that foreclosures increase dramatically (4.5 more foreclosures per 1,000 homes) in the year following a natural disaster; however, 1.0–1.3 of the 4.5 increase is mitigated by access to a lender.").

[78] *See* McLean, *supra* note 3.

[79] Neil Bhutta, *Payday Loans and Consumer Financial Health*, 47 J. BANKING & FIN. 230, 231 (2014).

[80] Melzer & Morgan, *supra* note 73.

[81] *See* McLean, *supra* note 3.

G. Conclusion

Payday lending has always been a topic of some controversy, especially with regard to the cascading fees inherent in the industry and the disproportionate effect on vulnerable demographics.[82] State regulation in the past has been effective and widespread, especially in recent years, whereas federal regulation is still comparatively minor.[83] While the role of federal regulation in the area remains passionately contested, political fluctuations may dictate when and how regulation exists in the near future.[84] What is clear is that consumers need access to short-term lending in certain situations, especially those who lack financial familiarity or strong credit.[85] Just how to ensure that borrowers are able to gain access to such a necessity and still be protected from predatory lending practices is an ongoing discussion unlikely to be resolved easily.

Timothy J. Nykamp[86]

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[82] CFPB Finalizes Payday Rule, *supra* note 4 ("Many borrowers end up repeatedly rolling over or refinancing their loans, each time racking up expensive new charges."); *id.* ("These loans are heavily marketed to financially vulnerable consumers . . . .").
[83] *The Uniform Small Loan Law*, *supra* note 23.
[84] *See* Jordan Weissmann, *Mick Mulvaney Says the Consumer Financial Protection Bureau Works for Payday Lenders, Too*, SLATE (Jan. 23, 2018, 9:58 PM), https://slate.com/business/2018/01/mick-mulvaney-says-the-consumer-financial-protection-bureau-works-for-payday-lenders-too.html [http://perma.cc/H5VS-MPZT] ("[To tangle with powerful opponents] is exactly what the agency was created to do. And it's what Mulvaney very obviously will not."); *see also* Memorandum from Mick Mulvaney, *supra* note 16 ("We don't just work for the government. We work for the people. And that means everyone . . . those who take loans, and those that make them . . . .").
[85] *See* McLean, *supra* note 3.
[86] Student, Boston University School of Law (J.D. 2020).