



# Predatory Payday Lending in Minnesota:

**How U.S. Bank and Wells Fargo hurt  
consumers with 'Cash Fast' loans**

[www.mnfaireconomy.org](http://www.mnfaireconomy.org)



## Introduction

In September 2011, Minnesota Attorney General Lori Swanson sued five out-of-state companies for making predatory payday loans; charging higher fees and interest rates than allowed by Minnesota law.<sup>1</sup> These companies operated over the Internet using marketing slogans to lure consumers in tight financial straits:

“Cash flow ‘til payday . . . Up to \$500 next business day!”<sup>2</sup>

“Get Your Cash Today! . . . Cash When You Need It!”<sup>3</sup>

“Fast and Easy . . . Get up to \$500 in your account tonight!”<sup>4</sup>

Several months later, however, two other payday lenders that also charge higher rates and fees than Minnesota law generally allows are still openly advertising online with similar slogans:

“Get Cash Fast When You Need it the Most!”<sup>5</sup>

“Help with unexpected expenses . . . [R]equesting an advance is easy.”<sup>6</sup>

These two lenders are **U.S. Bank** and **Wells Fargo**, which are both federally chartered banks. Banks argue that national bank pre-emption standards permit national banks to override state law in this circumstance.<sup>7</sup>

**Wells Fargo and U.S. Bank both directly engage in predatory payday lending, charging vulnerable customers annual percentage rates (APRs) of up to 365 percent interest.**

Wells Fargo and U.S. Bank make advances to their checking account customers who have direct deposit. The banks get repaid by deducting the entire loan amount plus fees when the customer’s next paycheck (or Social Security check) is deposited directly into their account.

One might assume the banks’ fees would be lower than those charged by storefront or Internet payday lenders, but in fact U.S. Bank and Wells Fargo’s fees are actually larger and their interest rates are higher.<sup>8</sup>

For instance, on a \$500 loan, repaid in the typical 10-day term:<sup>9</sup>

- Minnesota law prohibits payday lenders from charging more than \$29.50.<sup>10</sup>
- Wells Fargo charges \$37.50 in fees and interest for the same \$500 payday loan; a charge that amounts to an APR of 274 percent.<sup>11</sup>
- At U.S. Bank, a \$500 loan costs even more—\$50—which is an APR of 365 percent.<sup>12</sup>

U.S. Bank and Wells Fargo call their payday loan products “checking account advances.” The name may be the only thing that differentiates them from a payday loan. In addition to the triple digit interest rates, bank payday loans have the same predatory policies as payday loans. Banks make the loans without regard to the customer’s ability to repay the loan, require the loan to be repaid in one sum within a short period of time, and allow repeat and continued use which can trap customers in a cycle of debt.<sup>13</sup>

## About Payday Loans

*“We believe that the underbanked consumer market will continue to grow as a result of a diminishing supply of competing banking services . . . The industry in which we operate will see a significant increase in demand for our products and services.”<sup>14</sup>*

A statement from Dollar Corp., a large payday lender, to its shareholders (quoted above) noted that payday lending has taken off due to the large number of “underbanked”—households that have a bank account but do much of their business through other types of financial service providers. There has been a proliferation of payday loan stores. Ten years ago, payday lending played only a marginal role in the economy. Now, even though payday lending is only legal in 33 states, there are approximately 19,700 payday loan stores—more than the number of McDonalds.<sup>15</sup>

Payday loans are short-term consumer loans for small amounts and require the customer to have a bank account. They derive their name from their due date: the loans need to be repaid on the day when the customer receives the next paycheck (or government benefits check).

Payday lenders say their loans are meant to help people in a one-time emergency, but in fact payday loans often sink people deeper in debt and trap them in extremely expensive loans.

To obtain the loan, borrowers must agree to “secure” the loan by giving the lender a check for the loan amount plus interest, post-dated for their next payday, or authorization to make a withdrawal from the customer’s bank account.

Payday lenders have built their entire business on the simple truth that low- and moderate-income families don’t have a lot of money and are often in need of funds. These lenders beckon customers with

promises of how fast and easy the process will be (in contrast to the traditional loan process). As one payday lender operating in Minnesota advertises:

**“Need cash quickly? Get approved instantly.”<sup>16</sup>**

Payday lenders don’t consider whether the person can repay a loan before approving it. There are no credit checks. As long as someone has an ID, bank account and source of income, they can get a loan. Payday lenders profit most when consumers are unable to repay their loans.<sup>17</sup>

Most customers can’t afford to repay the whole loan in just a few weeks, and if the payday lender deposits their check, it will bounce, costing the customer even more in fees. So instead of incurring bounced-check fees, the customer agrees to renew the loan and just pays the interest, or takes out a new loan to pay off the old one, leading to a cycle of debt that can last for months or even years.

Just 15 percent of payday loan customers take out just one loan, and the average payday loan customer is indebted for more than half the year.<sup>18</sup>

One thing is clear: Payday loan customers don’t just walk away from their loans. They can’t. As an executive at one large payday lender said:

**“I think it’s important to note that we are essentially first in line when it comes to our customer spending. We get paid either out of the paycheck or on payday.”<sup>19</sup>**

The cumulative default rate on payday loans in Minnesota over an eight-year period was only 2.4 percent.<sup>20</sup>

## Who Uses Payday Loans

It should come as no surprise that payday loans, with their triple-digit interest rates, are not used by wealthy consumers. Seventy-five percent of payday loan customers have a household income less than \$50,000, and 33 percent had household income less than \$25,000.<sup>21</sup>



While less than 4 percent of all households have used a payday loan, 16 percent of underbanked households have been payday loan customers<sup>22</sup>. Underbanked households are those which have a checking or savings account but have used other financial services such as nonbank money orders, nonbank check-cashing, payday loans, rent-to-own agreements, or pawn shops at least once or twice a year<sup>23</sup>.

In addition to low- and moderate-income families, people of color make up a disproportionate number of payday loan users.<sup>24</sup> This is in part because of the large number of people of color who are underbanked.

A-third of African American households are considered underbanked, as are a quarter of American Indian and Latino households. In contrast, just 15 percent of white households are underbanked.<sup>25</sup>

## How Banks Drive Customers To Payday Lenders

Payday lenders exploited a need that banks were not meeting for their customers. To gain even more business, they have also made their product more accessible than traditional bank products. Almost half of underbanked households that use payday

lenders say they do so because payday loans are easier to qualify for than bank loans<sup>26</sup>.

Banks generally do not make small loans in amounts such as \$300 or \$500. Although banks offer credit cards, many customers either do not know about them or do not qualify for these credit cards.

Some bank customers say they have taken our payday loans precisely to avoid overdrawing their checking account and having to pay large non-sufficient funds (NSF) fees<sup>27</sup>, currently more than \$30 for each overdrawn check at Wells Fargo and U.S. Bank.<sup>28</sup>

***“Despite the tremendous demand for small-dollar, unsecured loans, most products available in the market come at a high cost to consumers,” said Sheila Bair, who chairs the Federal Deposit Insurance Corp. (FDIC). “Banks have the tools and infrastructure to create products meeting this need that are beneficial to both the banks and their customers.”<sup>29</sup>***

Rather than developing new products to better serve their customers’ needs, banks such as Wells Fargo and U.S. Bank opportunistically chose to invest in predatory payday lenders and share in their profits.



## Bank Financing Of Payday Lenders

Almost all of the major payday lenders receive their funding from large banks such as Wells Fargo and U.S. Bank.<sup>30</sup> Payday lenders would not have the money to lend to their customers if they did not receive financing from banks.

While homeowners and small businesses in our communities are starving for credit, Wells Fargo and U.S. Bank have continued to pump hundreds of millions of dollars of capital into the payday loan industry. As recently as December 2011, Wells Fargo, U.S. Bank and Bank of America together renewed their \$300 million line of credit to the biggest payday lender in the country—Advance America.<sup>31</sup>

Wells Fargo finances six of the eight largest payday lenders—more payday loan companies than any other bank.<sup>32</sup> Below is a list of the payday lenders Wells Fargo and U.S. Bank have financed.<sup>33</sup>

Wells Fargo has been involved since the very beginning of the payday loan industry, providing \$40 million with Bank of America in start-up financing to Advance America, which is now the largest payday company in the country.<sup>34</sup>

Some of the specific details of Wells Fargo's and U.S. Bank's investments are:

In 2006, Wells Fargo provided a \$36 million revolving credit line to ACE Cash Express and U.S. Bank provided \$30 million.<sup>35</sup>

In 2007, U.S. Bank provided a \$45 million line of credit to QC Holdings.<sup>36</sup>

In 2008, Wells Fargo provided a \$33.3 million line of credit to EZ Corp. and U.S. Bank provided \$10 million.<sup>37</sup>

In 2009, Wells Fargo arranged a \$115 million offering of debt securities for Cash America.<sup>38</sup>

In 2011, Wells Fargo acted as the administrative agent for a \$200 million revolving credit line to Dollar Financial, the owner of Money Mart.<sup>39</sup>

In 2010, Wells Fargo provided a \$10 million line of credit to First Cash.<sup>40</sup>

Wells Fargo also owns a significant stake in Dollar Financial. In 2010, Wells owned \$52 million in Wells Fargo stock, about 11 percent of all outstanding shares.<sup>41</sup>

In the last few years, Wells Fargo and U.S. Bank have begun to offer a payday loan product of their own. However, instead of being an affordable alternative to payday lenders, Wells Fargo and U.S. Bank charge even larger fees and higher rates than many payday lenders in Minnesota.

| Payday Lender                  | Bank Funder            | Number of Payday Stores |
|--------------------------------|------------------------|-------------------------|
| Advance America                | Wells Fargo, U.S. Bank | 2,313                   |
| Ace Cash Express               | Wells Fargo            | 1,200                   |
| Check into Cash                | Wells Fargo            | 1,100                   |
| Check N' Go                    | Wells Fargo            | 1,000                   |
| Cash America                   | Wells Fargo, U.S. Bank | 655                     |
| QC Holdings                    | U.S. Bank              | 523                     |
| EZ Corp.                       | Wells Fargo U.S. Bank  | 450                     |
| Dollar Financial/Money Mart    | Wells Fargo            | 312                     |
| First Cash Financial/Cash & Go | Wells Fargo            | 226                     |

## Bank Payday Lending

U.S. Bank calls its payday loan product “Checking Account Advance” and charges customers \$2 for every \$20 borrowed.<sup>42</sup>

Wells Fargo calls its payday lending product “Direct Deposit Advance” and charges \$1.50 for every \$20 borrowed.<sup>43</sup>

These fees may at first seem reasonable, but because the loan terms are so short (typically 10 days) they amount to an extremely high APR<sup>44</sup> – 365 percent at U.S. Bank and 274 percent at Wells Fargo.<sup>45</sup>

On a \$500 loan, U.S. Bank’s fees are higher than those charged by the three biggest payday lenders in Minnesota—Payday America, ACE Cash Express, and the UnLoan Company—and Wells Fargo’s fees are higher than the fees at ACE and the UnLoan Company.

### Fees and APRs<sup>46</sup> on a \$500 Loan

| Lender                           | Fee     | APR  |
|----------------------------------|---------|------|
| U.S. Bank <sup>47</sup>          | \$50    | 365% |
| Payday America <sup>48</sup>     | \$49.50 | 361% |
| Wells Fargo <sup>49</sup>        | \$37.50 | 274% |
| ACE Cash Express <sup>50</sup>   | \$29.50 | 215% |
| The UnLoan Company <sup>51</sup> | \$29.50 | 215% |

The banks make loans, up to a maximum of \$500, to their checking account customers who have direct deposit. Instead of requiring a post-dated check from the customer such as other payday lenders, Wells Fargo and U.S. Bank simply pay themselves back the entire loan amount plus fees directly from the customer’s next automatic direct deposit.

### The Debt Trap

Since people who use payday loans are often struggling just to get by, they may not be able to afford their basic living expenses if they have to repay the loan out of their next paycheck, so they end up taking out another loan. This traps borrowers into a cycle of debt where they continually



pay higher fees just to keep from sinking any further.

A study by the Center for Responsible Lending found on average, 44 percent of a bank payday loan customer’s next deposit goes toward repaying the payday loan, which basically forces the customer to take out another loan to make it to their next payday.<sup>52</sup> As a result, bank payday loan customers were in debt for an average of 175 days per year.<sup>53</sup>

The study also found that one out of every four bank

payday loan customers was on Social Security, and that people on Social Security were almost three times as likely to have used a bank payday loan as bank customers as a whole.<sup>54</sup>

U.S. Bank and Wells Fargo both admit their products are expensive and should only be used for the short term.<sup>55</sup> However, in practice U.S. Bank allows customers to use their payday loan product continually for up to nine months, followed by 90 days for the customer to “cool off” before taking more loans.<sup>56</sup> Wells Fargo lets customers be indebted with payday loans for six consecutive months before cutting them off. After a one-month break, Wells Fargo customers may resume taking payday loans.<sup>57</sup>

## Bank Payday Lending And Minnesota Law

In Minnesota, payday loans are regulated by the Consumer Small Loan Act (Minn. Stat. § 47.60). The maximum size of a loan permitted under the act is \$350 and the maximum fees that may be charged are \$26.<sup>58</sup>

Advance America, the largest payday lender in the country, does not have any stores in Minnesota but markets its payday loans in Minnesota online under the Consumer Small Loan Act. It doesn't make loans for more than \$350 and doesn't charge more than \$26 in fees.<sup>59</sup>

However, three large payday lenders in Minnesota—Payday America, ACE Cash Express and the UnLoan Co.—found a loophole so as not to be bound by the maximum loan or fee limit. These companies circumvented the state's payday lending law by registering as industrial loan and thrifts.<sup>60</sup>

As an industrial loan and thrift, these lenders make their loans under a different Minnesota statute §47.59.<sup>61</sup> Under this statute, lenders can charge a 33 percent interest rate plus a \$25 administrative fee on a "closed-end" loan (as ACE and the UnLoan Co. do) or a 33 percent interest rate plus a \$30 charge and up to a \$50 fee annual fee for an "open-end" loan (as Advance America does).<sup>62</sup>

U.S. Bank charges even higher rates than allowed through this loophole.

Banks that are chartered nationally by the Office of the Comptroller of the Currency (OCC), as U.S. Bank and Wells Fargo are, argue they are not bound by state laws on payday lending because national bank pre-emption standards allow them to override state law in some circumstances.<sup>68</sup>

In the last few years, a number of states have enacted restrictions on payday lending, but U.S. Bank and Wells Fargo continue to make payday loans in these states with higher fees and rates than permitted by state law.<sup>69</sup>

| Loan Amount | U.S. BANK <sup>63</sup> |      | PAYDAY AMERICA <sup>64</sup> |      | WELLS FARGO <sup>65</sup> |      | ACE CASH EXPRESS and the UNLOAN CO. <sup>66</sup> |      | ADVANCE AMERICA <sup>67</sup> |      |
|-------------|-------------------------|------|------------------------------|------|---------------------------|------|---|------|-------------------------------|------|
|             | Fee                     | APR  | Fee                          | APR  | Fee                       | APR  | Fee   | APR  | Fee                           | APR  |
| \$500       | \$50                    | 365% | \$49.50                      | 361% | \$37.50                   | 274% | \$29.50   | 215% | N/A                           | N/A  |
| \$400       | \$40                    | 365% | \$38.60                      | 352% | \$30.00                   | 274% | \$28.60   | 261% | N/A                           | N/A  |
| \$350       | \$35                    | 365% | \$30.15                      | 314% | \$26.25                   | 274% | \$28.15   | 294% | \$26                          | 271% |

| State                  | Payday loan regulations                                 | Year Enacted |
|------------------------|---|--------------|
| Arkansas <sup>70</sup> | Prohibited  | 2009         |
| Arizona <sup>71</sup>  | Limits charges on payday loans to a 36 percent APR      | 2010         |
| Colorado <sup>72</sup> | Consumers have at least six months to pay the loan back | 2010         |
| Montana <sup>73</sup>  | Limits charges on payday loans to a 36 percent APR      | 2010         |
| Oregon <sup>74</sup>   | 36 percent APR plus origination fee not more than \$30  | 2007         |



## What Can Be Done

- 1) The Consumer Financial Protection Bureau (CFPB) should implement consumer protections regulating the length of loans and “roll over” or “back- to-back” provisions to keep payday lenders from ensnaring consumers in a debt trap.

The head of the CFPB, Richard Cordray, held a field hearing in Birmingham, Ala., about payday lending and said his agency will be examining nonbank payday lenders as well as the large banks that offer deposit advances. “We recognize the need for emergency credit. At the same time, it is important that these products actually help consumers, rather than harm them.”<sup>75</sup>

- 2) The Office of the Comptroller of the Currency (OCC) should take action to prohibit banks from investing in payday lenders and to stop U.S. Bank and Wells Fargo from offering these unaffordable, high-cost payday loans.
- 3) Local and state governments should require, as a condition of being a depository or recipient of the public investments, that U.S. Bank and Wells Fargo stop making predatory payday loans.
- 4) Congress should enact a 36 percent rate cap on all lending.

- 5) U.S. Bank and Wells Fargo should discontinue making predatory payday loans themselves and stop providing the necessary financial backing to other predatory payday lenders. The banks should instead start offering affordable, small loan products that meet the needs of their customers.

### About Minnesotans for a Fair Economy:

Minnesotans for a Fair Economy brings together members of community, faith and labor organizations, and other Minnesotans to fight for an economy that works for all of us not just big corporations and the top 1%.

### Learn more about Payday Lending at: Minnesotans for a Fair Economy

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### The Center for Responsible Lending

[www.responsiblelending.org/payday-lending](http://www.responsiblelending.org/payday-lending)

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(202) 349-1850





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