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Fights over tribal payday lenders show challenges of financial reform

By Michael Hudson and David Heath

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More than 500 credit unions now offer payday loans, at a cost to customers that ranges from reasonable to exorbitant.

In the battle to shield themselves from lawsuits and government oversight, some high-interest payday lenders have found unlikely allies: Native American tribes.

In legal fights in California, New Mexico, West Virginia and Colorado, a group of Internet-based payday lenders have argued they are immune from lawsuits and regulation because they are "tribal enterprises." They claim they enjoy tribal-nation sovereignty, which allows them to operate outside state oversight — even when they're making loans to non-Native Americans living far from Indian lands.

State regulators and consumer lawyers say that the lender-tribe marriages are ruses designed to allow non-Native American companies to skirt consumer-lending laws. The tribes, they claim, are being used as fronts for the lenders.

An ex-employee of one tribal-affiliated lender testified the company secured post office boxes on tribal land to protect itself from attacks by consumer lawyers and government regulators. He claimed a manager told him: "They don't touch us on Indian reservations."

Affiliating with tribes is just one method some payday lenders have used to skirt existing laws and oversight. Others have operated online payday lending sites from offshore headquarters. And still others have claimed that borrowers are actually paying for Internet access with a rebate. In Texas, payday lenders get around state interest-rate limits by calling themselves credit service organizations set up to help consumers repair their credit records.

"This industry is so good at finding loopholes or gaps it can exploit," Jean Ann Fox of the Consumer Federation of America says.

So good that the new federal Consumer Financial Protection Bureau will be challenged to bring some order to the chaos. Experts say the new bureau will likely have rulemaking authority over tribal payday lenders. But it's also likely that any effort by the agency to take enforcement action against them would spark drawn-out court battles that would delve into the legal intricacies of tribal immunity.

The broad financial reform law passed by Congress last summer gives the consumer bureau the power to regulate payday lenders, which extended an estimated $42 billion in credit and took in more than $7 billion in revenues in 2008, according to investment bankers at Stephens, Inc.

In a typical payday loan transaction, a borrower might pay a $50 finance charge to borrow $300 that's scheduled to be paid back in two weeks, when his next payday comes around.

Payday lenders say they provide reasonably priced, short-term cash to people in need. The industry's trade association says its customers are "the heart of America's middle class. They are typical hard working adults who may not have savings or disposable income to use as a safety net when unexpected expenses occur."

Critics say many customers can't cover the quick repayment, so they're forced to roll over their loans many times and pay still more fees.

Interest Rate Over 1,200 Percent

A payday loan customer in California, Amy Baillie, claims that after she borrowed $300 from a tribal-affiliated lender, the company debited a total of $977 from her bank account over the next five months, then told her she still owed $430. The lender disclosed an annual interest rate on the loan of over 1,200 percent, according to her lawsuit in federal court in Oakland.

Andrea Felts, an assistant high school principal in Albuquerque, N.M., says she had a similar experience with three tribal-affiliated lenders.

While going through a divorce, Felts says, she went online to get some quick cash to help “reestablish” herself and her daughter. But the price ended up being steeper than she expected. On the final transaction, for example, her lawsuit says she paid an annual interest rate of 521 percent on a cash advance from Ameriloan, which claims a relationship with the Miami Nation of Oklahoma.

When she found she couldn’t keep up with the payments on the loans, Felts claims, collectors began calling her at home and at work, with one even threatening to have her arrested on a bad-check charge.

“It ends up being one big trap,” Felts says. “You take out one loan and before long you need to get another one to pay the first one and it will just continue. It’s a vicious cycle.”

Felts’ and Baillie’s cases are among three private lawsuits filed in New Mexico and California against tribal-affiliated lenders. All seek class action status.

The lenders and tribes involved in these cases could not be reached by the Center for Public Integrity for comment. An attorney for one group of tribal-affiliated lenders said in an e-mail: “We decline to comment on matters in litigation.”

‘Revolving Door of Debt’

The federal government has mostly left oversight of payday lenders up to the states, producing a regulatory patchwork.

Seventeen states ban or discourage payday lending. In the rest, the rules often allow them to charge annual interest rates of 400 percent or more.

The new Consumer Financial Protection Bureau won’t be able to regulate interest rates, but Fox and other activists say they want the agency to write rules that will make it harder for payday lenders to trap borrowers in cycles of debt by defining frequent, costly loan rollovers as an unfair practice.

Elizabeth Warren, the presidential aide who is overseeing the bureau’s launch on July 21, says payday lending will be a “high priority” for the agency. During a recent fact-finding trip to Ohio, Warren said families need access to small-dollar loans for emergencies, but “a model that is designed to keep those families in a revolving door of debt is not good for families — and ultimately not good for the economy.”

If the agency does seek tighter rules on payday loans, it will tangle with an industry that isn't shy about spending money to influence voters and lawmakers. In 2008 in Arizona and Ohio, the industry invested $30 million pushing unsuccessful ballot measures that would have wiped out laws banning payday lending, outspending opponents by more than 60 to 1.

Payday lenders say they're not against sensible regulation, but they're against laws that cut off access to consumers who need credit. These laws, the lenders say, are the work of critics who've spread misinformation about the industry.

They say their customers seldom get caught in cycles of debt and that quoting annual interest rates is misleading, since most loans are for two weeks.

Steven Schlein, a spokesman for the Consumer Financial Services Association , an industry group for payday lenders, says it's ridiculous to suggest that payday lenders go to great lengths to avoid regulation. "We're highly regulated by the states. We adhere to all the state laws." Consumer activists, he added, have "just got into this blind spot where they're just going to oppose anything the payday lending companies do, whatever product they offer."

As for the possibility that the new federal agency will get tough with payday lenders, Schlein says he's confident that, if they look at the facts, the agency's architects will see that consumers need ready access to the kinds of loans that the industry provides.

"They're not there to deny consumers credit," he says. "They're there to make sure that credit is done in a very simple, straight-forward way.''

'Rent-a-Bank, Rent-a-Tribe'

Not much is simple about the battles that have been waged over the past decade and a half over how payday lenders do business.

In the 1990s, as some states began enforcing limits on what they could charge, many payday lenders teamed with out-of-state banks to evade interest-rate caps in states with strict limits on finance charges.

Under federal law, a state-chartered bank could "export" interest rates allowed in its home state to another state — using one state's loose interest-rate rules to make loans in a state where interest rates were capped. The payday lenders structured the deals so that they acted, on paper, as loan brokers, and the out-of-state banks were the lenders of record.

Consumer advocates dubbed the arrangement "rent-a-bank."

That approach worked well for payday lenders until federal banking regulators enacted rules discouraging banks from working with payday lenders.

By 2005, with the “rent-a-bank” model essentially shut down, payday lenders began searching for new ways of doing business. It was around that time that a group of online payday lenders began using what consumer attorneys now call the “rent-a-tribe” model.

It was a model built on more than two centuries of legal precedent. Court decisions have decreed that state governments have little authority over tribes.

State authorities first became aware of the tribal lending model after they began investigating unlicensed operations that were offering loans over the Internet.

In 2005, Colorado’s attorney general obtained a court order for production of documents from two payday lenders, Cash Advance and Preferred Cash Loans, which ran various websites under names such as Ameriloan and One Click Cash.

After months of silence from the Nevada-based companies, state officials were surprised when two Indian tribes, the Santee Sioux Nation of Nebraska and the Miami Nation of Oklahoma, intervened in the case, claiming that they actually owned the businesses. The same scenario played out in California in 2007, when the state Department of Corporations went to court to try to stop Ameriloan, US Fast Cash, One Click Cash, and other online lenders from doing business in the state.

A company called Miami Nation Enterprises explained to a California judge that it was an “economic subdivision” of the Miami Tribe of Oklahoma and that it used Ameriloan and US Fast Cash as trade names in its payday lending business. Another company, SFS Inc. , explained that it was owned by the Santee Sioux Nation of Nebraska and that it made loans under the trade names One Click Cash and Preferred Cash.

Both said that, as arms of federally recognized tribes, they were immune from state enforcement actions. Both added, too, that the profits from payday lending were vital to the welfare of the tribes.

More than a century ago, their lawyers say, the tribes were “stripped of their economic vitality and forced to relocate to remote wastelands” incapable of supporting their populations. The Miami tribe says profits from payday lending are used to pay for such items as “tribal law enforcement, poverty assistance, housing, nutrition, preschool, elder care programs, school supplies and scholarships.”

Address Unknown for Tribe’s Lending Arm

Surrounded by flat farmland in northeastern Oklahoma sits a modern brick and stone building where the Miami Nation conducts its business. When a reporter from the Center for Public Integrity visited in December, the front door was locked. A receptionist said no one was available to answer questions, but promised to have an official from the tribe call the Center.

No one from the tribe responded to repeated requests for information from the Center over the following weeks.

Across the street is an empty warehouse that the tribe lists as the address for several businesses, including a rural Internet provider and an attorney's office.

But nowhere does the tribe list an address for its most controversial business, a collection of websites offering quick, small loans to cash-strapped borrowers.

The tribe, which has about 800 members in Oklahoma, is best known in the area for its casino, The Stables, one of 13 Indian casinos around the Bible-belt town of Miami, Okla.

Locals appear unaware of the Miami Nation’s online payday lending business, or its legal battles with states such as Colorado, California and West Virginia. The head of the local Chamber of Commerce knew nothing about it. And the websites themselves reveal nothing about who owns them.

Authorities in Colorado and California have tried to build the case that the relationships between the lenders and the tribes are marriages of convenience. California authorities have called the affiliations a “sham.”

Colorado authorities contend that Miami Nation Enterprises and SFS weren’t created until the spring of 2005 – as many as two years after they say the lenders had begun doing business. Colorado’s attorney general says that it was only after the state took enforcement actions against the lenders in late 2004 and early 2005 that the tribes incorporated the tribal enterprises and enacted payday loan ordinances.

The California Department of Corporations supported its case with a statement from a whistleblower who had worked for One Click Cash. William James said his former employer was part of a web of companies — as many as 500 in all — that were headquartered in an office complex in Overland Park, Kan., a suburb of Kansas City. Other than mailboxes on Indian land, James said, there was nothing to suggest the companies were owned or run by Native American tribes.

The companies kept their location top secret, barring employees from telling anyone where it was, James said. The third floor where he worked “was very private and extremely secure, and the environment was very luxurious and posh, including multiple 37-inch LCD televisions for the employees.”

Though James was making lots of money, he fretted that One Click Cash and its sister companies were taking advantage of people, “banking on the fact that a person will be unable to repay their loan on time, thus accruing exorbitant interest, extension and late fees.” He saw customer loans of $300 quickly turn into $900 debts, he said.

The lenders’ websites don’t give details about fees or interest rates charged. Money is deposited in a checking account, and payment is later automatically withdrawn from the same account. If there are insufficient funds, the loan is automatically renewed, with additional fees.

The Better Business Bureau, which lists addresses in Nevada, Kansas, Colorado and Oklahoma for Ameriloan, reports that the lender has received hundreds of complaints and gives it an "F" rating.

Bank Overdraft Fees Also Costly

In the Colorado case, lawyers for the lenders and tribes deny the allegations tossed at them by their critics. They suggest, for example, that interest rates charged by payday lenders are a bargain compared to the 3,500 percent annual interest rate that bank customers can shell out for a two-week, $20 overdraft.

The Santee Sioux Nation said in a court filing that all its loans are approved on tribal land. Despite evidence that the tribes are engaging in legitimate lending, the tribes say, the state of Colorado has pursued a "protracted, caustic assault on the Tribal Entities' status, replete with false allegations and innuendo."

After years of litigation, the tribal lenders' battles with California and Colorado show no end in sight. On Nov. 30, the Colorado Supreme Court ruled that tribal enterprises can use tribal immunity to block state investigations, but then sent the case back to the trial court so that the judge could determine whether the lenders were truly owned and operated by the tribes.

One case involving tribal lenders has been resolved. West Virginia's attorney general reached a $128,000 settlement in 2008 with companies associated with the Miami and Santee Sioux tribes as well as a third Native American group involved in payday lending, the Modoc Tribe of Oklahoma. The deal cancelled debts and provided refunds for 946 borrowers. The attorney general's office had claimed that Internet-based lenders associated with the tribes had violated West Virginia's limits on payday lending. The tribal companies didn't admit any wrongdoing.

Richard Guest, an attorney with the Native American Rights Fund in Washington, D.C., says that the tribes want to reach a settlement in Colorado, too, but state officials have shown no interest in working things out.

Guest notes that "I personally am not a big fan of payday lending," Still, he says, the tribes have to raise money somehow to pay for programs that the federal government has failed to cover.

"Tribes are the ones who've gotten screwed over," he says. "They are not looking to screw others over."

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http://www.iwatchnews.org/2011/02/07/2151/fights-over-tribal-payday-lenders-show-challenges-financial-reform/page/0/2?utm_source=publicintegrity&utm_medium=related_heds&utm_campaign=side_v1