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PREDATORY LENDING RESEARCH AND INTERVIEW FINDINGS

Analysis of Predatory Lending in New York: From Origins to Interviews

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WHAT LED TO THE PROMINENCE OF PAYDAY LENDERS?

The 1960s Neoliberalism Revolution created the idea that the 'free market' picks picks winners and losers based on their contributions to the economy, and that private corporations can do more for people's economic well-being than government can (1).

This led to banking deregulation, with the idea being that deregulation would lead to more vibrant competition that's better for consumers. However, time has shown that **market consolidation** is what happens instead. with **profit motives leading to the cuts of jobs and salaries** (1).

The banking deregulation of the 1980s and 90s **led to many low-income communities losing their only bank;** "when federally subsidized banks left low-income communities, **vulture-like fringe lenders," including payday lenders, "filled the void"** (1).

To combat the effects of neoliberalism and deregulation, **public markets need to take over places that private markets have failed to serve to guarantee basic services to everyone.**

PREDATORY LENDING ORIGINS AND THE ROLE OF PRIVATE EQUITY

PRIVATE EQUITY FIRMS ARE INVESTED IN SOME OF THE LARGEST PAYDAY LENDERS IN THE COUNTRY:

- **Marnier Finance,** a company offering payday loans, **is owned by the $11 billion dollar private equity firm Warburg Pincus;** the firm's president, Timothy Geithner, used to be Treasury Secretary of the Obama Administration (2)
- Money Mart, Speedy Cash, and ACE Cash Express, three payday lenders, are **all owned by private equity firms** (2)
- Today, **three of the largest companies in consumer installment lending are owned to a significant extent by private equity firms:**
  - Marnier, owned by Warburg Pincus
  - Lendmark Financial Services, owned by Blackstone
  - OneMain Financial, purchased in part by Apollo Global

SPECIFIC PREDATORY TACTICS USED BY LENDERS:

- **Mass mailing checks to strangers** and waiting for them to sign the loans (2)
- **High interest rates**; short-term payday loans typically exceed 300% interest, and in some states top even 600% (3)
  - lenders also allow loans to 'roll over' by having people pay fees to delay repayment (called **loan churn)** (3)
- Operating out of locations with **lax requirements**; in the case of Marnier Finance, they operate an insurance company out of Turks and Caicos. These insurance policies are offered to lenders, promising that they will continue payment in case of unforseen circumstances (2)
- **Aggressive collection practices**, including calling customers daily and embarassing them by calling friends and relatives (2)

(1) https://www.nytimes.com/2020/07/02/opinion/private-equity-inequality.html?action=click&module=Opinion&pgtype=Homepage
(2)https://www.washingtonpost.com/business/economy/a-way-of-monetizing-poor-people-how-private-equity-firms-make-money-offering-loans-to-cash-strapped-americans/2018/07/01/5f7e2670-5dee-11e8-9ee3-49d6d4814c4c_story.html
(3) buzzfeednews.com/article/paulmcleod/trump-consumer-watchdog-payday-loans

WHY NEW YORK BUSINESSES ARE PARTICULARLY AT RISK OF PREDATORY LENDING

Lenders typically require owners to repay advances through daily weekly automatic bank account withdrawals. **Owners must give lenders full access to bank accounts for the automatic withdrawals** (4)**.**

If the owner does not pay, the predatory lender can freeze business owners' accounts through the filing of a **confession of judgment** (COJ). A COJ can allow a judgement to be passed and enforced without a lawsuit (5). **These filings are popular in New York state because the the state statute allows COJ filings to be "entered without a hearing or review by a judge"** (4).

Filings are typically double the owed amount and **most businesses are not made aware of a filing until after it has happened.** Lenders commonly demand that the borrower pay their attorney fees on top of owed money, which can typically add up to 33% of the original balance extra (4).

Legal filings from financial technology companies that partake in predatory lending have rampantly increased during the COVID-19 pandemic. New York state records **at least 313 new legal actions from 98 companies from March 9th through March 20th** (4)**.**

(4) https://www.nbcnews.com/business/economy/ftc-official-legal-loan-sharks-may-be-exploiting-coronavirus-squeeze-n1173346
(5) https://www.starrandstarr.com/confessions-of-judgment-in-new-york.html#:~:text=A%20confession%20of%20judgment%20(%E2%80%9CCOJ,and%20LLCs)%20can%20confess%20judgment.

PAYDAY LENDING: AMG SERVICES

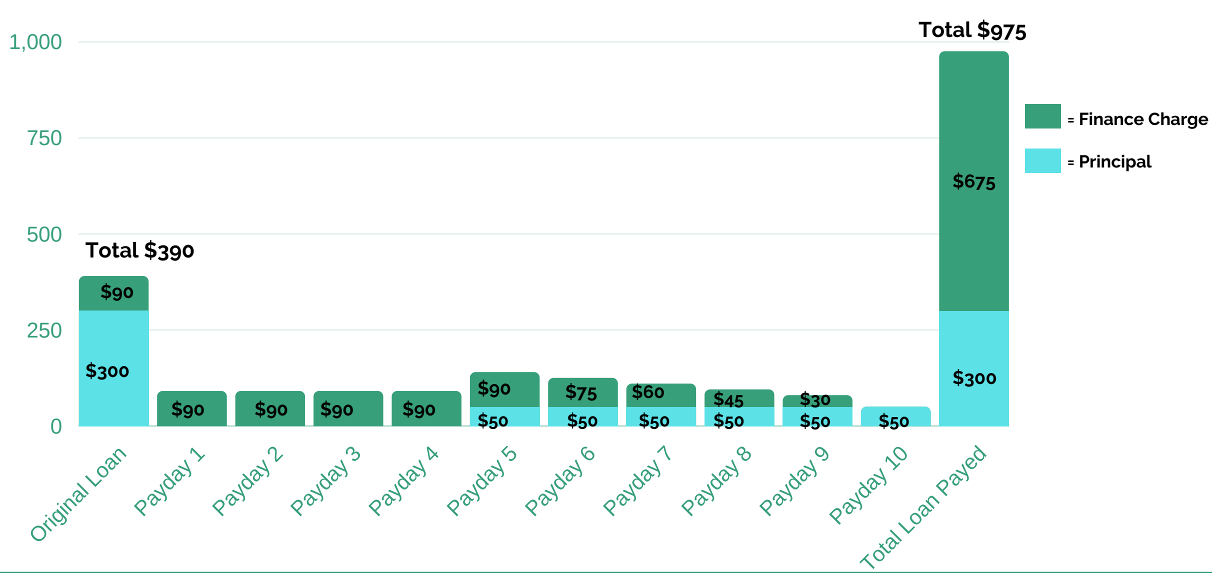
AMG Services was the **highest volume payday lending operation in the United States, affecting 1.5 million people and causing $1.3 billion in damage** (6). The company and its founder Scott Tucker were sued by the Federal Trade Commission (FTC) for **violating the FTC Act and the Truth in Lending Act** by deceiving customers across the country and charging them undisclosed and inflated fees (7). The $1.3 billion dollar civil court judgement was a record-setting ruling, and the FTC-issued refund checks to victims of the payday lending scheme totaled $505 million, making it the **largest redress program in agency history** (7).

WHAT TACTICS DID AMG SERVICES USE TO DECEIVE CONSUMERS?

AMG services would automatically withdraw payments from borrowers' checking accounts, but these payments **would not go toward the principal** of the loan. Instead, AMG required that the loans be payed off in full. **For every period the loan was not paid off in full, borrowers would have to pay a loan renewal fee**, which was not applied to their principal and hugely increased the amount they'd have to pay back (6). See below for a breakdown of how a $300 loan would actually end up costing borrowers almost $1,000 (data from 6):

HOW DID AMG SERVICES BECOME THE BIGGEST PAYDAY LENDING OPERATION IN THE U.S?

- **Online applications:** While payday lending is legal in some states, it is illegal in others; **online applications allowed AMG Services to bypass specific state laws** and launch a national platform instead that could reach a broader audience (6)
- **Sovereign immunity:** Native American tribes have sovereign immunity, which prevents state (though not federal) governments from suing tribal governments. Scott Tucker and AMG Services partnered with three Native American tribes to exploit this loophole, **allowing the company to operate in states it wouldn't otherwise be allowed to.**
    - While the tribes all agreed to this deal, they did so for the perceived economic benefit to the reservation; in actuality, the tribe shown in one documentary only received about 1% of total revenue from the operation (6). The FTC later obtained settlements with the tribes (7).



(6) "Payday." *Dirty Money*. Dir. Jesse Moss. Jigsaw Productions, 2018. Netflix
(7) https://www.ftc.gov/news-events/press-releases/2018/09/ftc-doj-return-record-505-million-consumers-harmed-massive-payday

CONSUMER FINANCIAL PROTECTION BUREAU RULING

On July 7th, 2020, the Consumer Financial Protection Bureau (CFPB) released a rule **making it easier for payday lenders to give out high-rate interest loans to people who may not be able to repay them** (3). They did so by rescinding an Obama-era regulation that would require payday lenders to first **assess whether someone taking out a loan can afford to repay it**, as well as **limiting the number of loans someone can take out in a row.**

After Obama left office, the Trump Administration appointed Mick Mulvaney as acting director of the CFPB, who announced that implementation of the rule will be delayed. Now, the CFPB is getting rid of the requirement altogether, though they are keeping minor provisions such as preventing lenders from repeatedly trying to take funds from a borrower's overdrawn bank account.

Current CFPB Director Kathleen Kraninger says this move was made to provide consumers "more access to capital" (3). According to the New York Times, though, keeping this regulation in place would have **saved consumers almost $7 billion a year in fees** (8).

In addition, the Washington Post published leaked audio of **payday lenders** in 2019 discussing the need to **"raise large sums of money for Trump's re-election campaign to gain favor with the administration" (9).** In fact, the New York Times reports that **payday lenders have contributed $16 million to congressional candidates,** mostly Republicans, since 2010 (8).

Lastly, a June 29th, 2020 Supreme Court ruling granted the President power to fire the CFPB's DIrector at will, undoing previous policy saying the director cannot be fired without cause (3). This gives the scrapped rules potential to be revived if Trump loses the presidency following this fall's election. Nonetheless, the Bureau's rulings are troubling when it comes to protecting vulnerable consumers against payday lenders.

(8) https://www.nytimes.com/2020/07/07/business/payday-consumer-financial-protection-bureau.html
(9) https://www.washingtonpost.com/business/2019/10/29/payday-lenders-discussed-raising-money-trumps-campaign-fend-off-regulation-audio-reveals/

INTERVIEW WITH PREDATORY LENDER

"Our company partners with banks, such as Associated Bank, Regions Bank, and Citizens Bank, to provide loans to them and to small businesses. We process Paycheck Protection Program (PPP) loans for 2 large banks, one top 5 bank and one top 20 bank."

"Our primary clients are institutions, again being service providers for banks. We do like seeing well-tenured businesses that have been around for about 10 years with an average annual revenue in the 1-2 million range. We offer term-loans and lines of credit to business owners. Although we do not gear toward startups, we have been experimenting into different products for new businesses. For startups looking for loans we recommend pursuing online lending options such as Kabbage."

"We tend not to favor industries with substantial risk associated with them, such as car dealers or real estate firms."

"Our average interest rates are in the teens, but this can fluctuate. Our average APR is not much higher than the interest rate. For loans under $100,000, we ask for basic information such as the past 3 months of bank statements and tax returns."

"We find that the demand for conventional credit is low right now. Instead, we have processed over 100,000 applications for PPP loans. Business owners will likely take advantage of PPP for as long as they can, but we predict that conventional credit will regain popularity by the end of the summer. Small businesses are going to need capital in the coming months, and the degree of government assistance will eventually go down."

Researcher spoke with a representative of Fundation, an organization with history of predatory lending practices.

KEY TAKEAWAYS

- This predatory lender recommended Kabbage, another financial technology company with a history of malicious lending. These companies promote each other to further popularity of predatory lenders.
- Company did not go into specifics concerning APR/interest rates, only that they can fluctuate. Lack of specificity allows lenders to get away with charging obscene prices and rates on loans.
- Small businesses are taking advantage of PPP loans in the current economic climate. However, when funding for PPP decreases, conventional predatory lending will resurge.
- Many lenders draw new business owners in with an illusion of legitimacy. This lender provides access to federally-backed loans and has a polished website, two signs of professionalism. However, it is important that one does thorough research on a prospective lender and consults with trusted financial experts, either from CDFIs or close business associates, on a lender's legitimacy.

CDFI EMPLOYEE INTERVIEWS

Researcher spoke with representatives from two New York CDFIs:

COOPERATION BUFFALO

Why did you choose to work at this CDFI?

The representative views Cooperation Buffalo's work as transformative and revolutionary because of its ability to bring democracy to the economic sector. Helping workers having direct control over their jobs and profits they create makes their work worthwhile.

What services does your CDFI provide?

Cooperation Buffalo does not provide funding themselves, but partners with other CDFIs to provide businesses with access to capital. They also provide technical assistance once loans are paid off, with a unique system where repayment comes out of company profits, meaning companies do not repay if they are not yet profitable.

What issues (including, but not limited to predatory lending), have you seen in your time working here?

The main issue noted by the representative is the lack of awareness of CDFIs and available resources.

BOTH CDFI REPRESENTATIVES HIGHLIGHTED HOW THEIR ORGANIZATION IS WORKING TO SOLVE WIDE-REACHING SYSTEMIC ISSUES, WHILE ALSO EMPHASIZING A NEED FOR BROADER AWARENESS OF THEIR SERVICES.

PATHSTONE ENTERPRISE CENTER

Why did you choose to work at this CDFI?

The representative chose Pathstone because of its focus on helping vulnerable communities, which they view as a needs-based mission that aligns with their personal values.

What services does your CDFI provide?

Pathstone provides financial and technical assistance to businesses. Both are very hands-on, and Pathstone regularly follows up with businesses who come to them whether they are loan clients or not.

What issues (including, but not limited to predatory lending), have you seen in your time working here?

The business owners seeking their help typically have limited or sub-prime credit, which makes it riskier for a CDFI to provide assistance. Low credit scores are symptoms of broader issues though, including poverty and low financial literacy. There is also difficulty balancing micro and macro environments, where desire to help a specific company needs to be weighed with how that affects the CDFI's funds. Lastly, the representative noted that not all potential clients come in seeking services that would actually best help them; additional capital isn't always more important than making internal company changes.