PREDATORY INSTALLMENT LENDING IN 2017

STATES BATTLE TO RESTRAIN HIGH-COST LOANS

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ABOUT THE NATIONAL CONSUMER LAW CENTER

Since 1969, the nonprofit National Consumer Law Center® (NCLC®) has used its expertise in consumer law and energy policy to work for consumer justice and economic security for low-income and other disadvantaged people, including older adults, in the United States. NCLC's expertise includes policy analysis and advocacy; consumer law and energy publications; litigation; expert witness services, and training and advice for advocates. NCLC works with nonprofit and legal services organizations, private attorneys, policymakers, and federal and state government and courts across the nation to stop exploitive practices, help financially stressed families build and retain wealth, and advance economic fairness.

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EXECUTIVE SUMMARY

When the National Consumer Law Center published the report **Installment Loans: Will States Protect Borrowers From a New Wave of Predatory Lending**? in July 2015, predatory installment lenders were moving into the states, seeking statutory authority to make consumer installment loans at sky-high interest rates. The report analyzed which states allowed high-cost installment lending and which did not, but warned that state laws that protect citizens from predatory high-cost lending were under attack.

Since then, battles have raged around the country. In state after state, high-cost lenders sought to weaken state laws that protect consumers from predatory installment loans by non-banks. Typically the lenders pushing these proposals have been payday lenders, seeking to double down on the types of predatory loans offered in the states. Consumers and their advocates fought back, trying not only to defeat bills that would open the floodgates to predatory loans but also to tighten up existing state laws, which our 2015 report showed were often full of loopholes.

These battles have resulted in both gains and losses for consumers. The most striking gain is in South Dakota, which formerly placed no caps on interest rates or fees. Voters there passed a ballot initiative by a 75% vote that caps interest and fees for all loans made in the state at 36%—thereby throwing both payday lenders and high-cost installment lenders out of the state and saving South Dakotans $82 million a year. Maryland placed a firm 33% cap on credit card and other open-end lending by non-banks, so there is no longer a danger that lenders can charge a reasonable-sounding interest rate but then add on sky-high fees.

On the other hand, Mississippi legislators enacted the misleadingly named Mississippi Credit Availability Act that allows an APR of 305% for a $500 loan repayable over six months. The state joins Tennessee, which amended its lending laws in 2014 to allow non-bank lenders to make cash advances at 279%, to make up the “Terrible Two”—the two states that have done the most to open their doors even wider for predatory lending practices in recent years.

As in our 2015 report, we have calculated the full annual percentage rate (APR) that each state allows for four sample loans. These “full APRs” include all fees that the consumer is bound to pay in order to obtain and use the extension of credit, even those that are not included in the Truth in Lending Act (TILA) APR.

Nationally, for a $500 six-month loan:

- 21 states (up one from 2015) now cap the full APR at 36% or less,
- 12 states (down one from 2015) cap it at 36% to 60%,
- 11 states (up one from 2015) cap it at over 60%,
- 4 states have no cap other than unconscionability, and
- 3 states (down one from 2015) have no cap.

For a $2000 six-month loan:

- 32 states and the District of Columbia (up one from 2015) now cap the APR at 36% or less,
- 7 states cap it at 36% to 60%,
- One state caps it at over 60%,
- 6 states have no cap other than unconscionability, and
- 4 states (down one from 2015) have no cap at all.

The report includes charts, tables, and maps showing these changes, and provides a similar analysis of the changes affecting cash advances on credit cards or other open-end lines of credit, which are often governed by different state laws.

These and other developments since 2015 are detailed in this report. The report concludes with tips for consumers and recommendations for the states.

Recommendations

With respect to state laws that affect the interest rates or fees that can be charged for consumer loans, states should:

- *Examine consumer lending bills carefully.* Predatory lenders often propose bills that obscure the high cost of the loans the bill would authorize. For example, the flex loan bill that Tennessee passed in 2014 facially allows just a 24% interest rate but, in fact, the APR is 279%. Get a calculation of the full APR, including all interest, all fees, and all other charges, and reject the bill if it is over 36%.
- *Place clear, loophole-free caps on interest rates for both installment loans and open-end credit,* in addition to closed-end, short-term payday and car title loans. A maximum APR of 36% is appropriate for smaller loans, such as those of $1000 or less, with a lower rate for larger loans.
- *Prohibit or strictly limit loan fees* in order to prevent fees from being used to undermine the interest rate cap and acting as an incentive for loan flipping.
- *Ban the sale of credit insurance and other add-on products,* which primarily benefit the lender and increase the cost of credit.

In addition, states should make sure that their installment loan laws address other potential abuses, including:

- Require lenders to evaluate the borrower's ability to repay any credit that is extended—including an analysis of the borrower's income and expenses. States should, however, be wary of proposals to enact weak ability-to-repay requirements that merely act as window dressing for high-cost loans.
- Prohibit devices, such as security interests in household goods and post-dated checks that coerce repayment of unaffordable loans.
- Require full and fair proportionate rebates of all up-front loan charges when loans are refinanced or paid off early.

- Limit balloon payments, interest-only payments, and excessively long loan terms.
- Employ robust licensing and reporting requirements for lenders and make unlicensed or unlawful loans void and uncollectible. However, states should be wary of efforts to open up licensing regimes so that high-cost lenders can enter the market in the state.
- Minimize differences between state installment loan laws and state open-end credit laws so that high-cost lenders do not simply transform their products into open-end credit.
- Tighten up other lending laws, including credit services organization laws, so that they do not serve as a means of evasion.

A thorough discussion of all the issues addressed in this report, along with detailed updated summaries of the laws it discusses, may be found in the 2017 online update to the National Consumer Law Center's publication *Consumer Credit Regulation*.

INTRODUCTION

When the National Consumer Law Center published *Installment Loans: Will States Protect Borrowers from a New Wave of Predatory Lending?* in July 2015, predatory installment lenders were moving into the states, seeking statutory authority to make consumer installment loans at sky-high interest rates. The report analyzed which states allowed high-cost installment lending and which did not, but warned that state laws that protect citizens from predatory high-cost lending were under attack.

High-cost installment loans are a recipe for perpetual debt. When the interest rate is high, the consumer's payments go almost entirely to interest until well into the term of the loan so the payments barely reduce the balance owed. If the consumer hits a rough spot and misses a payment, late fees start piling on in addition to the interest, or the lender may induce the consumer to refinance, adding more up-front fees and extending the time the consumer is obliged to make payments. Ft. Campbell veteran Joshua Hause, who took out a high-cost installment loan in Tennessee, put it concisely when he stated, "I mean, I'll never get out of that hole."[1]

> *"I mean, I'll never get out of that hole."*
>
> —Ft. Campbell veteran Joshua Hause

Since our 2015 report, battles have raged around the country. In state after state, high-cost lenders sought to weaken state laws that protect consumers from predatory installment loans by non-banks. Typically the lenders pushing these proposals have been payday lenders, seeking to double down on the types of predatory loans offered in the states. Consumers and their advocates fought back, trying not only to defeat bills that would open the floodgates to predatory loans but also to tighten up existing state laws, which our 2015 report showed were often full of loopholes.

These battles have resulted in both gains and losses for consumers. The most striking gain is that voters in **South Dakota**, which formerly placed no caps whatever on interest rates or fees, passed a ballot initiative that caps interest and fees for all loans made in the state at 36%—thereby throwing both payday lenders and high-cost installment lenders out of the state and saving South Dakotans $82 million a year.[2] On the other hand, Mississippi legislators enacted the misleadingly named Mississippi Credit Availability Act governing installment loans of four to twelve months. For a $500 loan repayable over six months, it allows an APR of 305%. These and other developments since 2015 are detailed in this report.

Which State Installment Loan Laws Are Examined

In this report, we examine state laws that allow non-bank lenders—entities other than depository institutions—to make installment loans to consumers. Many of these lenders are currently involved in payday lending (loans of a few hundred dollars for a week or two, typically with APRs of 300-400%) but are seeking to move into longer-term installment lending.

Consumer Story (Delaware): How High-Cost Installment Loans Work to Trap People in a Cycle of Debt

Gloria James got her first job at age thirteen and has worked more or less continuously ever since. In 2007, she got a job in the housekeeping department of a Wilmington, Delaware hotel. Hard-working but financially unsophisticated, she had started resorting to high-cost payday loans in about 2010. By 2013, she was having trouble repaying them.

On May 7, 2013, James needed money for food and rent. She went to a "Loan Till Payday" storefront operation in hopes of borrowing $200. Unknown to her, that store was no longer making "traditional" short-term payday loans. To avoid a 2013 Delaware law that placed some limits on payday loans, the store had recast its offerings as seven- to twelve-month installment loans.

James' $200 loan called for twenty-six biweekly payments of $60 each, followed by a single payment of $260. With this payment schedule, she would repay $1820 over a year's time for her $200 loan. The APR for this loan was 838.45%. Although borrowers would eventually see the APR on the loan agreement, the store's employees followed a practice of telling customers that the APR had "nothing to do with the loan." Instead they described the interest rate as "$30 interest per $100 borrowed."

Shortly after obtaining the loan, James broke her hand while cleaning a toilet at the hotel and missed a week of work. She still managed to make the first $60 payment on the loan, but when she asked the lender to accommodate her with some type of arrangement because of her missed week of work, the store manager offered to *increase* her payment instead of reducing it.

James did not have a bank account, but used a prepaid VISA card. The hotel would deposit her paycheck onto this card, and then James would use the card to pay expenses. Once James became unable to make the payments on the loan, the lender began trying to deduct the payments due from the balance on this card, even though she had specifically declined to give the lender permission to do so when she took out the loan. The lender also started imposing late charges.

James ultimately filed suit against this lender. In 2016, after hearing the evidence of the structure of the loan, James' circumstances, the lender's take-it-or-leave-it approach with respect to the loan terms and the misleading way the lender had described the loan to her, the court held that the loan transaction was so fundamentally unfair to James that it was unconscionable and therefore invalid.

Facts taken from the court's opinion in James v. National Financial, LLC, 132 A.3d 799 (Del. Chancery Ct. 2016).

The report excludes laws and provisions of laws that are applicable only to banks, savings and loan associations, credit unions, and similar institutions. It also excludes state laws that apply only to installment lending that is secured by real estate, auto titles, or other collateral. Moreover, we have only analyzed state credit statutes that allow loans of at least $500 over at least a six-month term. The report is based on state laws as amended through June 2017.

Installment lending may be either closed-end or open-end. A closed-end loan is a loan of a specified amount for a specified term, such as a loan for $1000 repayable over one year. By contrast, with open-end credit, the lender authorizes the consumer to borrow amounts from time to time up to a credit limit. The payment term is not set in advance. Nor is the payment amount, beyond a minimum payment that may fluctuate. As the consumer repays the debt, freeing up more of the credit line, the consumer can borrow more money. Credit cards are one type, but not the only type, of open-end credit. Since a lender can present a high-cost loan as either open-end of closed-end credit, our 2015 report and this follow-up report analyze state laws governing both types of credit.

How We Calculated the APRs

As in our 2015 report, we calculated APRs for four sample loans under each state's installment loan laws—a $500 six-month loan, a $2000 two-year loan, a $500 cash advance repaid over six months, and a $2000 cash advance repaid over two years. All of our APR calculations are "full APRs" and include all the costs that the borrower is bound to pay in order to obtain and use the extension of credit. These costs include, for example, application fees, investigation fees, document preparation fees, transaction fees, "points," annual fees, and monthly fees.

We do not, however, include charges such as late charges or dishonored check charges that are imposed only if some future, unanticipated event occurs. Nor do we include any fees that can be charged only for mortgage loans or loans with other collateral, since the report focuses solely on unsecured non-real estate lending.

Consumer Story: Californian Gouged by High APR

"I took out an installment loan. . . . To date I have paid well over {$6900.00}, almost three times the principle. I still owe close to {$3000.00}. Prior to accepting the loan I did read the "fine print" but it was not easy to understand. It was not explicit stated that the monthly payments would be going to the interest and not to paying down the principle, making the loan impossible to pay off quickly.

"I called and spoke to a customer service agent on XXXX XXXX, XXXX (the call was recorded) and asked specifically for an amnesty on the remaining balance because I am having a hard time paying on this exorbitantly high interest loan for over 12 months. I also explained to her that to date I had paid almost three times the principle; she said 'no.' The fine print on this loan document was written in legalize that the average lay person could not possibly understand. There are many more months left on this loan; in the end, the total paid before it is satisfied will be over {$9500.00}! Paying {$7500.00} in interest for a {$2500.00} loan is outrageous and should be illegal."

Complaint filed by California consumer with Consumer Financial Protection Bureau on June 10, 2016. California caps interest rates and fees on consumer loans but only for those under $2500.

We also do not include credit insurance premiums in the "full APR" calculations. As discussed in our 2015 report, however, charges for credit insurance premiums and other ancillary products often drive up the cost of credit significantly. See Appendix D for details about our calculation methods.

HIGH-COST INSTALLMENT LENDING IN THE STATES: WHERE DO THE STATES STAND NOW?

When we published our report in 2015, twenty states (including the District of Columbia) capped full APRs for a $500 six-month loan at 36% or less, thirteen states capped it at 36% to 60%, ten states capped it at over 60%, and eight states had no cap at all (although four of those states prohibited unconscionable loan terms—terms that are so one-sided that they shock the conscience).

As of mid-2017, these numbers have shifted: one state (**South Dakota**) that formerly had no cap now has a 36% cap, while one state (**Mississippi**) that formerly capped the full APR at less than 60% now has a cap higher than 60%. Indeed, the cap is now much higher—a whopping 305%.

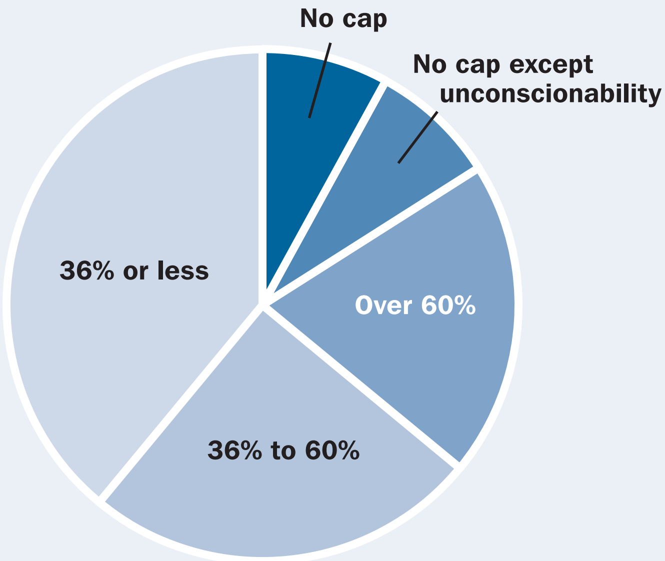
Our 2015 report also looked at full APRs for a $2000 two-year loan. We found that thirty-one states and the District of Columbia capped the full APR at 36% or less, seven states capped it at 36% to 60%, one state capped it at over 60%, and eleven states had no cap at all (although six of those states prohibited unconscionable loan terms).[3] As of mid-2017, **South Dakota**, which formerly had no cap, now has a 36% for these loans as well.

> In 2016 and 2017, predatory lenders pushed bills in more than a dozen states around the country that would have allowed installment loans at triple-digit interest rates.

More significant than what happened since 2015 is what did *not* happen. In 2016 and 2017, predatory lenders pushed bills in more than a dozen states around the country that would have allowed installment loans at triple-digit interest rates. Often presented as "flex loan" bills, these bills would have provided flexibility to lenders, but put consumers in a straitjacket with triple-digit unaffordable loans that would last for months or years. Consumers and consumer advocates mobilized in opposition to these bills, recognizing the harm they would inflict on already vulnerable people. State lawmakers listened and defeated these bills in all the states, except **Mississippi**. A forthcoming report by the Center for Responsible Lending will summarize these bills and law changes. Payday lenders are likely to continue this push again once the legislative season reopens this fall.

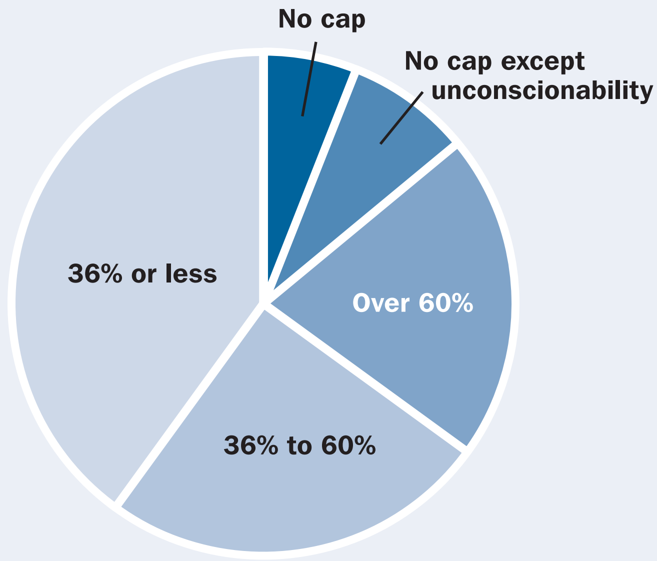
CHART 1

2015: Full APRs Allowed for a Six-Month $500 Loan



- No stated cap on finance charges (4 states: DE, MO, OH, SD)
- No numerical cap, but prohibits unconscionability (4 states: ID, NM, UT, WI)
- Allowable full APR over 60% (10 states: AL, CO, GA, IL, IN, LA, OK, SC, TN, TX)
- Allowable full APR between 36% and 60% (13 states: AZ, CA, FL, KS, KY, MA, MI, MN, MS, NE, NV, WA, WV)
- Allowable full APR of 36% or less (20 states: AK, AR, CT, DC, HI, IA, ME, MD, MT, NH, NJ, NY, NC, ND, OR, PA, RI, VT, VA, WY)

2017: Full APRs Allowed for a Six-Month $500 Loan



- No stated cap on finance charges (3 states: DE, MO, OH)
- No numerical cap, but prohibits unconscionability (4 states: ID, NM, UT, WI)
- Allowable full APR over 60% (11 states: AL, CO, GA, IL, IN, LA, MS, OK, SC, TN, TX)
- Allowable full APR between 36% and 60% (12 states: AZ, CA, FL, KS, KY, MA, MI, MN, NE, NV, WA, WV)
- Allowable full APR of 36% or less (21 states: AK, AR, CT, DC, HI, IA, ME, MD, MT, NH, NJ, NY, NC, ND, OR, PA, RI, SD, VT, VA, WY)

GAINS AND LOSSES: A STATE-BY-STATE REVIEW

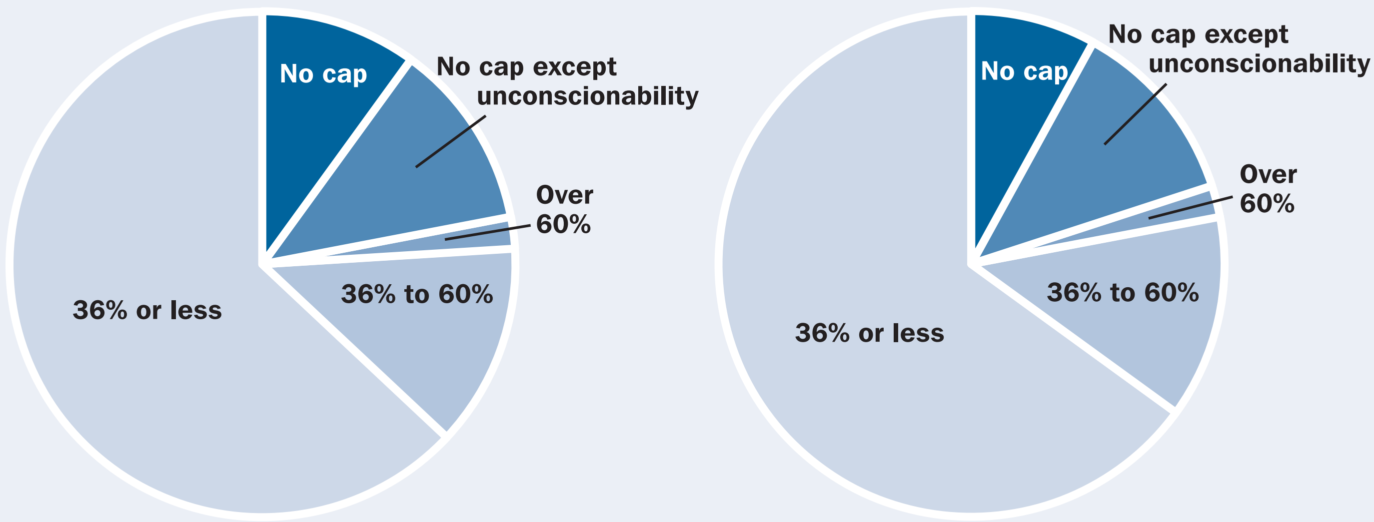
Gains for Consumers

Since 2015, consumers in several states have achieved significant victories. For example, in 2016, **South Dakota** voters overwhelmingly approved a ballot initiative that caps the APR for all loans in the state at 36%.[4] Until the voters passed this initiative, South Dakota had no caps at all on interest rates for consumer loans, and at least one lender

CHART 2

2015: Full APRs Allowed for a Two-Year $2000 Loan

2017: Full APRs Allowed for a Two-Year $2000 Loan



2015:

- No stated cap on finance charges (5 states: DE, MO, ND, OH, SD)
- No numerical cap, but prohibits unconscionability (6 states: AL, ID, NM, SC, UT, WI)
- Allowable full APR over 60% (1 state: IL)
- Allowable full APR between 36% and 60% (7 states: AZ, IN, KY, LA, MS, NV, TN)
- Allowable full APR of 36% or less (32 states: AK, AR, CA, CO, CT, DC, FL, GA, HI, IA, KS, ME, MD, MA, MI, MN, MT, NE, NH, NJ, NY, NC, OK, OR, PA, RI, TX, VT, VA, WA, WV, WY)

2017:

- No stated cap on finance charges (4 states: DE, MO, ND, OH)
- No numerical cap, but prohibits unconscionability (6 states: AL, ID, NM, SC, UT, WI)
- Allowable full APR over 60% (1 state: IL)
- Allowable full APR between 36% and 60% (7 states: AZ, IN, KY, LA, MS, NV, TN)
- Allowable full APR of 36% or less (33 states: AK, AR, CA, CO, CT, DC, FL, GA, HI, IA, KS, ME, MD, MA, MI, MN, MT, NE, NH, NJ, NY, NC, OK, OR, PA, RI, SD, TX, VT, VA, WA, WV, WY)

was offering six-month loans at an interest rate of 349%.[5] South Dakota's action followed an earlier **Montana** ballot initiative in 2010 that capped interest rates at 36%.[6] Indeed, whenever voters have had the opportunity to vote on a ballot initiative, they have always voted against high-cost predatory lending and in favor of reasonable interest rate caps.[7]

Other states closed loopholes in their installment loan laws. **Maryland** has long capped the interest rate at 24% for open-end credit extended by non-banks. However, until 2017, it did not provide explicit caps on all fees, raising the possibility that a lender might attempt to evade the interest rate cap by charging an enormous annual or even monthly fee that would push the true APR way above 24%. The legislature closed this loophole in 2017 after vigorous advocacy by the Maryland Consumer Rights Coalition and the Maryland CASH Campaign.[8] As amended, the law still provides that lenders can charge fees for open-end credit in addition to the interest rate, but the interest and the fees taken together cannot exceed an effective rate of 33%.

New Hampshire also imposed a cap on previously uncapped fees in 2016, but the cap is so high that it still allows highly predatory extensions of credit. Before 2016, New Hampshire capped interest rates at 36%, but for open-end credit it allowed one application fee and one annual fee per year, with no stated cap. In 2016 it capped these fees at $100 each.[9] The result is that there is now at least some firm cap on the amount of these fees, but with the fees plus the interest the full APR is 170% for a $500 cash advance payable over six months and 53% for a $2000 cash advance payable over two years.

New Mexico also amended its installment loan laws in a way that might be considered an improvement but will still allow high-cost predatory lending to flourish. For many years, New Mexico law has placed no cap at all on the interest and fees that lenders can impose. The result? Installment loans with interest rates as high as 1000% (although in the extreme, courts have found such loans unconscionable).[10] In 2017, the state legislature imposed a 175% cap, effective January 1, 2018.[11] It also increased the loan size limit to $5000. Having some sort of cap is better than no cap, and this amendment was part of a package that was intended to prevent lenders from making high-cost short term payday loans.[12] However, 175% interest on a loan of that size balloons rapidly. With a $5000 four-year loan at 175% interest, the borrower's payments will be $730 per month, and the borrower will pay *over $30,000* in interest. The lender will be repaid the amount borrowed after just seven months, yet the consumer will still owe forty-one more months of payments.

Connecticut amended its installment loan laws in 2016 in a way that raised the interest rate but reduced the potential for high fees.[13] Prior to the amendment, a lender could charge a full APR of just 28% for a $500 six-month loan and $23% for a $2000 two-year loan. The amendment allows lenders to charge 36% for these loans. But since the amended statute requires the 36% interest rate to be calculated including all fees, even fees for credit insurance, it appears to be a truly watertight cap. The legislature also tightened restrictions

TABLE 1

Progress against Predators: Maryland and South Dakota

STATE	2015	2017
Maryland	Interest on open-end capped at 24% but no cap on fees	33% overall cap for open-end credit
South Dakota	No cap on finance charges	36% cap

on lenders' ability to take collateral for these loans.

States that Became More Predator-Friendly

In contrast to the previously mentioned states, all of which enacted laws that made at least some improvements for consumers, **Mississippi** amended its laws to make its citizens even more vulnerable to highly abusive installment loans. Our 2015 report showed that Mississippi was not very protective of consumers: it allowed a full APR of 52% on a $500 six-month loan and a full APR of 39% on a $2000 two-year loan. But in 2016, the state enacted a "Consumer Alternative Installment Loan Act,"[14] authorizing loans of up to $4000, payable over nine months or more, at interest rates as high as 59%. And, not content with saddling its citizens with these costs for loans of nine months or more, Mississippi also, despite opposition from faith leaders and consumer advocacy groups,[15] enacted the Mississippi Credit Availability Act.[16] This law allows a charge of 25% of the outstanding balance *per month*—the equivalent of 300% interest per year—*plus* a 1% origination charge, for four- to twelve-month loans of up to $2500. The result? A $500 six-month loan can now carry a full APR of *305%* in Mississippi. As is often the case with bills that authorize high-cost credit, this law states that the 25% per month charge is not interest—perhaps as an attempt to give legislators deniability for authorizing such a shockingly high interest rate.

Tennessee had previously followed Mississippi's pattern, amending its already-weak installment loan laws in 2014 by adopting the so-called "Flexible Credit Act."[17] Before this 2014 enactment, Tennessee's lending laws allowed full APRs as high as 94% for a $500 six-month loan and 41% for a $2000 two-year loan. The 2014 act makes this bad situation even worse for Tennessee residents by allowing lenders to charge 24% interest per year *plus 7/10ths of one percent a day* on cash advances up to $4000. Seven-tenths of one percent may seem small, but when multiplied by 365 days in a year it is an annual rate of 255%. Combining the two charges results in an APR of 279%. Neither in Tennessee

Consumer Story (California):
"I Really Have Nothing Else to Give"

"I just found out that I will be paying {$7000.00} more than what I originally owed them within the next year. To me that is ridiculous because I cannot financially commit to something like that now. I have a credit score to fix and I have family to feed. . . . [S]o far I [have paid] {$2300.00}. . . . I really just cannot afford the payment any longer than this last month. I am at a point of eviction to my home and tight on every budget I can think of. Cash Central has no intentions of helping me settle this debt and stop making me pay the interest on the loan. They threaten to take further action and get a settlement attorney and make me pay more. They are sharks and harass my family, my references and me almost every day. . . . {$7000.00} more into a debt of only {$2500.00} is outrageous. The lady I spoke with told me that I would pay a total of {$9000.00} to them once I 'm done paying off the debt!!!!!! {$2500.00} vs {$9000.00}? How the hell am I going to do this? I hope you can help. I really have nothing else to give. . . ."

Complaint filed by California Consumer with Consumer Financial Protection Bureau on July 29, 2015. California caps interest rates and fees on consumer loans, but only for those under $2500. Cash Central is one of the subsidiaries of Community Choice Financial Inc.

A $500 six-month loan can now carry a full APR of *305%* in Mississippi.

nor in Mississippi were the new laws part of a package that reined in short-term payday loans or took any other steps to protect consumers.

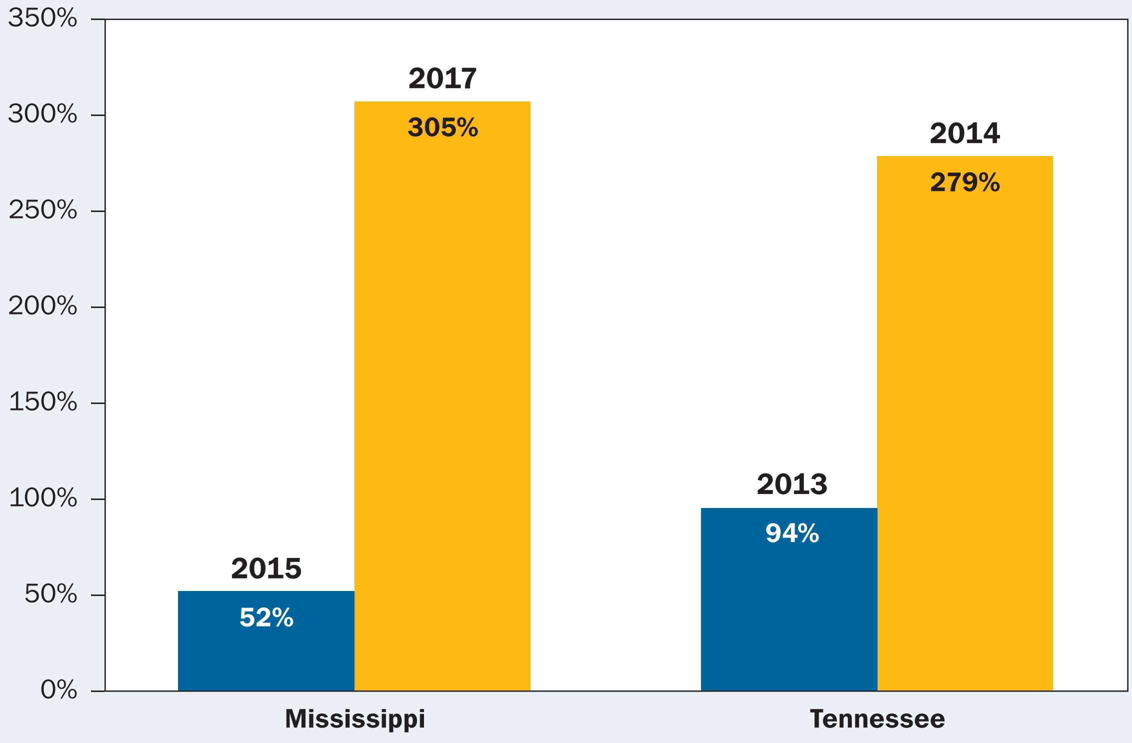
Several other states amended their non-bank installment lending statutes in less dramatic but still negative ways. **Alabama** amended its Small Loan Act to increase the charges that lenders can impose for certain loans—ones over $500 but no more than $1500. **Arizona** and **Mississippi** amended their consumer lending laws to allow lenders to pack loans with more different types of add-on products such as insurance.

Missouri, **Ohio**, and **Tennessee** amended their installment loan statutes in negative ways, but since all of these states already allowed even worse loans, the amendments did not change our classification of these states. Missouri increased the allowable loan fee for a consumer installment loan from $75 to $100, but since the state already allows the lender to charge any interest rate it chooses, it hardly changes the situation for Missouri consumers. Similarly, even though it had already enacted the Flexible Credit Act, allowing interest of 279% on cash advances up to $4000, in 2017 Tennessee also increased the allowable interest rates from 24% to 30% (plus a host of fees) for certain loans over

CHART 3

The Terrible Two: Mississippi and Tennessee

Full APRs Allowed on $500 Six-Month Loan Before and After 2014 and 2016 Enactments



$100 under its older Industrial Loan Act. And in Ohio, where high-cost lenders evade all state rate caps through the credit services organization loophole,[18] the state enacted a Consumer Installment Loan Act in 2017, allowing a full APR of 43% for a $500 six-month loan and 35% for a $2000 two-year loan.[19] The new law also has other dangerous features: it allows high rates for loans of any size and appears to allow non-amortizing or partially-amortizing loans, a recipe for perpetual debt.

Several additional states—**Illinois, Indiana, Iowa, Maine, Michigan, Minnesota, Oklahoma, South Carolina, Texas**, and **Utah**—have inflation adjustment provisions built into their statutes. In several of these states, these inflation adjustments resulted in some changes—usually increases—in the maximum amounts that lenders can charge for loans.

Looking at these amendments as a whole, the gains and losses for consumers from 2015 to 2017 were fairly evenly balanced. Some of the gains—particularly **South Dakota's** move from no APR cap to a 36% cap—are dramatic. And, some of the steps backward, such as those in **Missouri, Ohio**, and **Tennessee**, are less significant against the backdrop of those states' already predator-friendly legal environments. The current full APR caps for our two sample closed-end loans are shown on maps 1 and 2.

Can Predatory Lenders Evade State Protections by Making Open-End Loans?

The preceding discussion focuses on state laws governing closed-end loans: loans for a specified amount of money payable over a time period set at the outset, such as a $500 loan payable over six months. But many states also allow non-bank lenders to offer consumers loans by way of open-end credit. For example, the state may allow non-bank lenders to issue credit cards on which consumers can take cash advances. If the state has higher caps or no caps for credit card cash advances, predatory installment lenders may simply try to frame their high-cost products as open-end rather than closed-end credit.

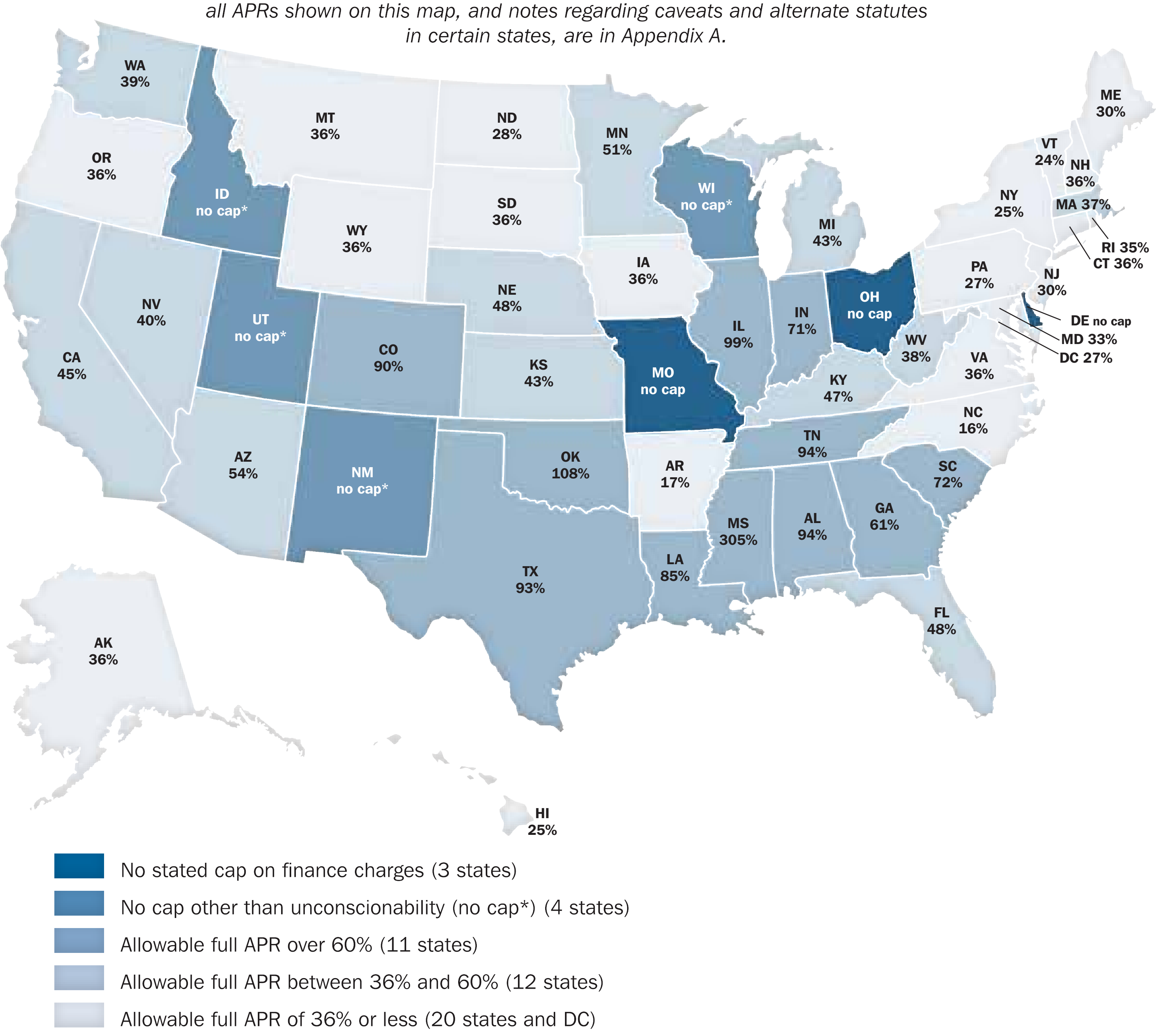
Our 2015 report classified sixteen states as not placing any cap on interest rates for open-end credit extended by non-bank lenders, although nine of these states had something of a cap in that they prohibited unconscionable loan terms. In addition, two of these sixteen states leave interest rates and fees uncapped only for some small-dollar cash advances: **Alabama** caps rates and fees for cash advances of less than $2000, and **South Carolina** for cash advances of less than $600. Our report classified fourteen states as capping the interest rate, but leaving at least one fee without an explicit cap, although eight of these states prohibited unreasonable or unconscionable fees and a ninth state allowed the state regulator to investigate unreasonable or unfair fees. Of the states that set numerical caps on both rates and fees for open-end credit, the APRs ranged from 18% to 279% for both a $500 cash advance repaid over six months and a $2000 cash advance repaid over two years.

Since 2015, **South Dakota**, which formerly had no rate cap, has imposed an APR cap of 36% for all loans, including open-end credit. **Maryland**, which formerly capped the interest rate but did not place an explicit limit on fees, now requires the APR, taking both the interest rate and fees into account, to be no more than 33%. **New Hampshire**, which formerly allowed an annual application fee and an annual participation fee without an

MAP 1

Full APRs Allowed for Six-Month $500 Installment Loan

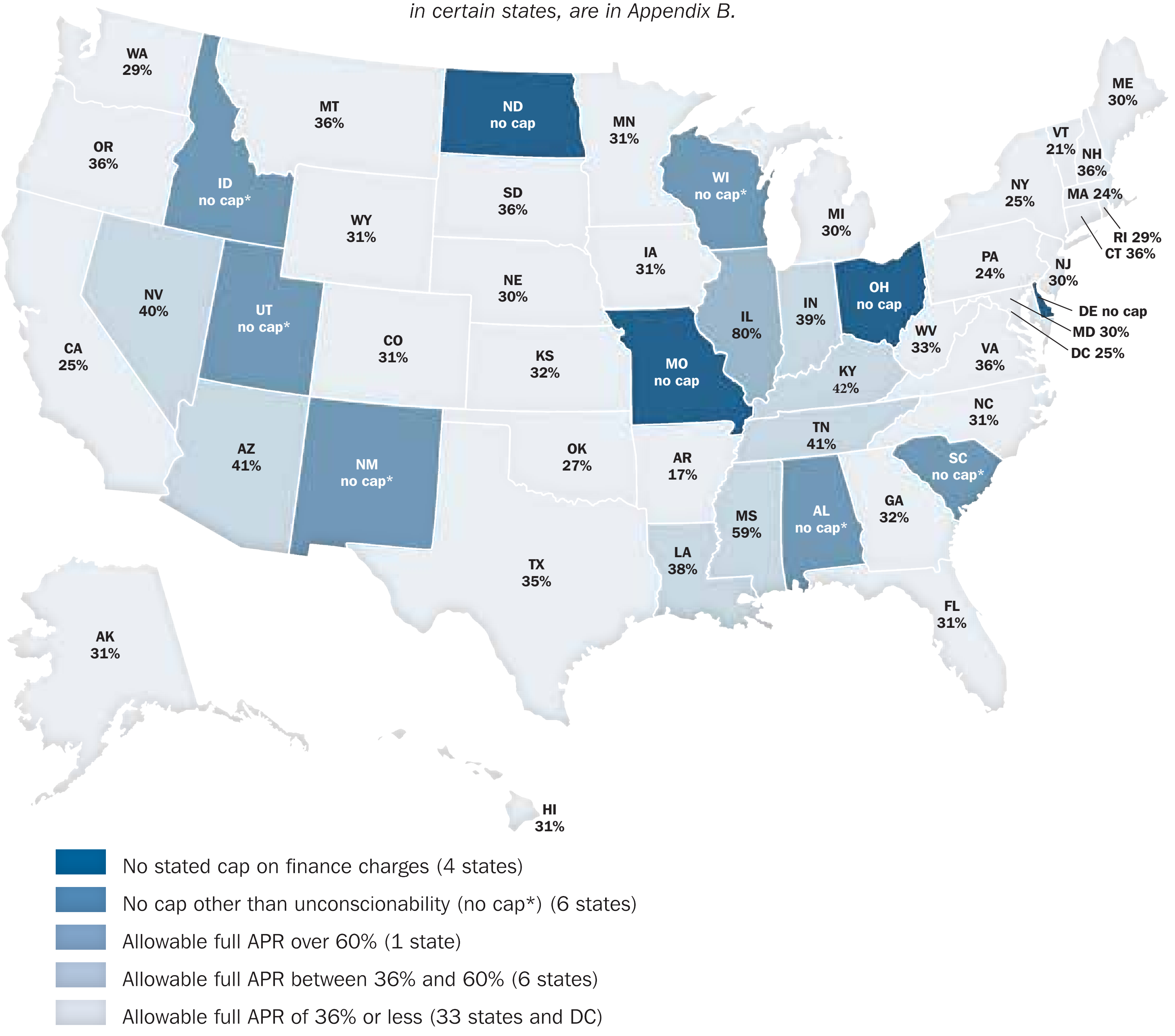
This map shows the maximum full APRs allowed for non-bank lenders. Details regarding all APRs shown on this map, and notes regarding caveats and alternate statutes in certain states, are in Appendix A.



MAP 2

Full APRs Allowed for Two-Year $2000 Installment Loan

This map shows the maximum full APRs allowed for non-bank lenders. Details regarding all APRs shown on this map, and notes regarding caveats and alternate statutes in certain states, are in Appendix B.

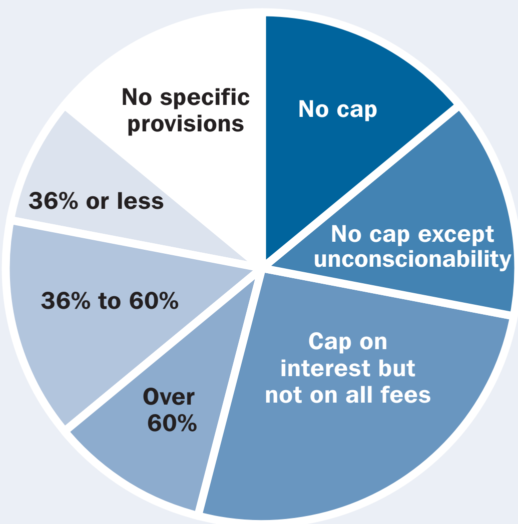


explicit cap, now caps them, but at such a high amount ($100 each) that the full APR can be as high as 170% for a $500 cash advance repaid in six months and 53% for a $2000 cash advance repaid over two years.

The changes in the full APRs allowed by the states for open-end credit since 2015 for a $2000 cash advance repaid over two years are illustrated by two pie charts.

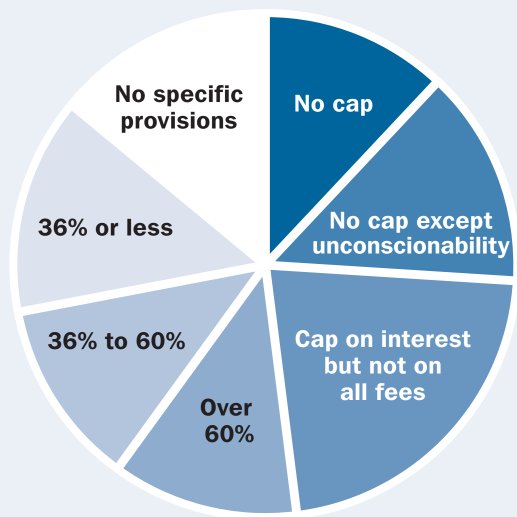
CHART 4

2015: Full APRs Allowed for a $500 Cash Advance Repaid over Six Months



- No stated cap on finance charges (7 states: DE, IL, MO, OH, RI, SD, VA)
- No numerical cap, but prohibits unconscionability (7 states: ID, IA, KS, ME, NM, UT, WI)
- Cap on interest but not on all fees (14 states: CA, CO, HI, IN, MD, MA, MI, MS, NH, OK, SC, WA, WV, WY)
- Allowable full APR over 60% (5 states: LA, MN, NJ, TN, TX)
- Allowable full APR between 36% and 60% (7 states: AL, AZ, CT, FL, NE, NV, PA)
- Allowable full APR of 36% or less (4 states: AK, NY, NC, OR)
- No specific provisions for non-bank lenders to extend open-end credit (7 states: AR, DC, GA, KY, MT, ND, VT)

2017: Full APRs Allowed for a $500 Cash Advance Repaid over Six Months

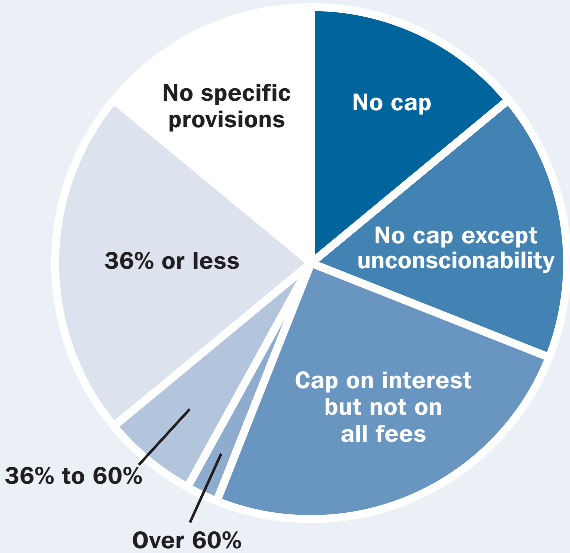


- No stated cap on finance charges (6 states: DE, IL, MO, OH, RI, VA)
- No numerical cap, but prohibits unconscionability (7 states: ID, IA, KS, ME, NM, UT, WI)
- Cap on interest but not on all fees (12 states: CA, CO, HI, IN, MA, MI, MS, OK, SC, WA, WV, WY)
- Allowable full APR over 60% (6 states: LA, MN, NJ, NH, TN, TX)
- Allowable full APR between 36% and 60% (6 states: AL, AZ, FL, NE, NV, PA)
- Allowable full APR of 36% or less (7 states: AK, CT, MD, NY, NC, OR, SD)
- No specific provisions for non-bank lenders to extend open-end credit (7 states: AR, DC, GA, KY, MT, ND, VT)

The changes in the full APRs allowed by the states for open-end credit since 2015 for a $500 cash advance repaid over six months are illustrated by the next two pie charts:

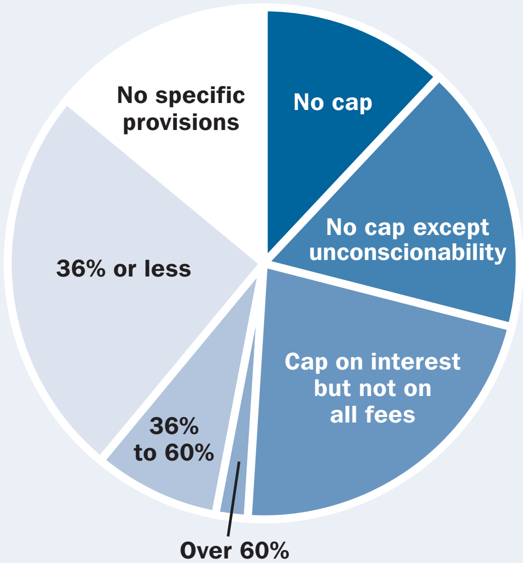
CHART 5

2015: Full APRs Allowed for a $2000 Cash Advance Repaid over Two Years



- No stated cap on finance charges (7 states: DE, IL, MO, OH, RI, SD, VA)
- No numerical cap, but prohibits unconscionability (9 states: AL, ID, IA, KS, ME, NM, SC, UT, WI)
- Cap on interest but not on all fees (13 states: CA, CO, HI, IN, MD, MA, MI, MS, NH, OK, WA, WV, WY)
- Allowable full APR over 60% (1 state: TN)
- Allowable full APR between 36% and 60% (3 states: AZ, LA, NV)
- Allowable full APR of 36% or less (11 states: AK, CT, FL, MN, NE, NJ, NY, NC, OR, PA, TX)
- No specific provisions for non-bank lenders to extend open-end credit (7 states: AR, DC, GA, KY, MT, ND, VT)

2017: Full APRs Allowed for a $2000 Cash Advance Repaid over Two Years

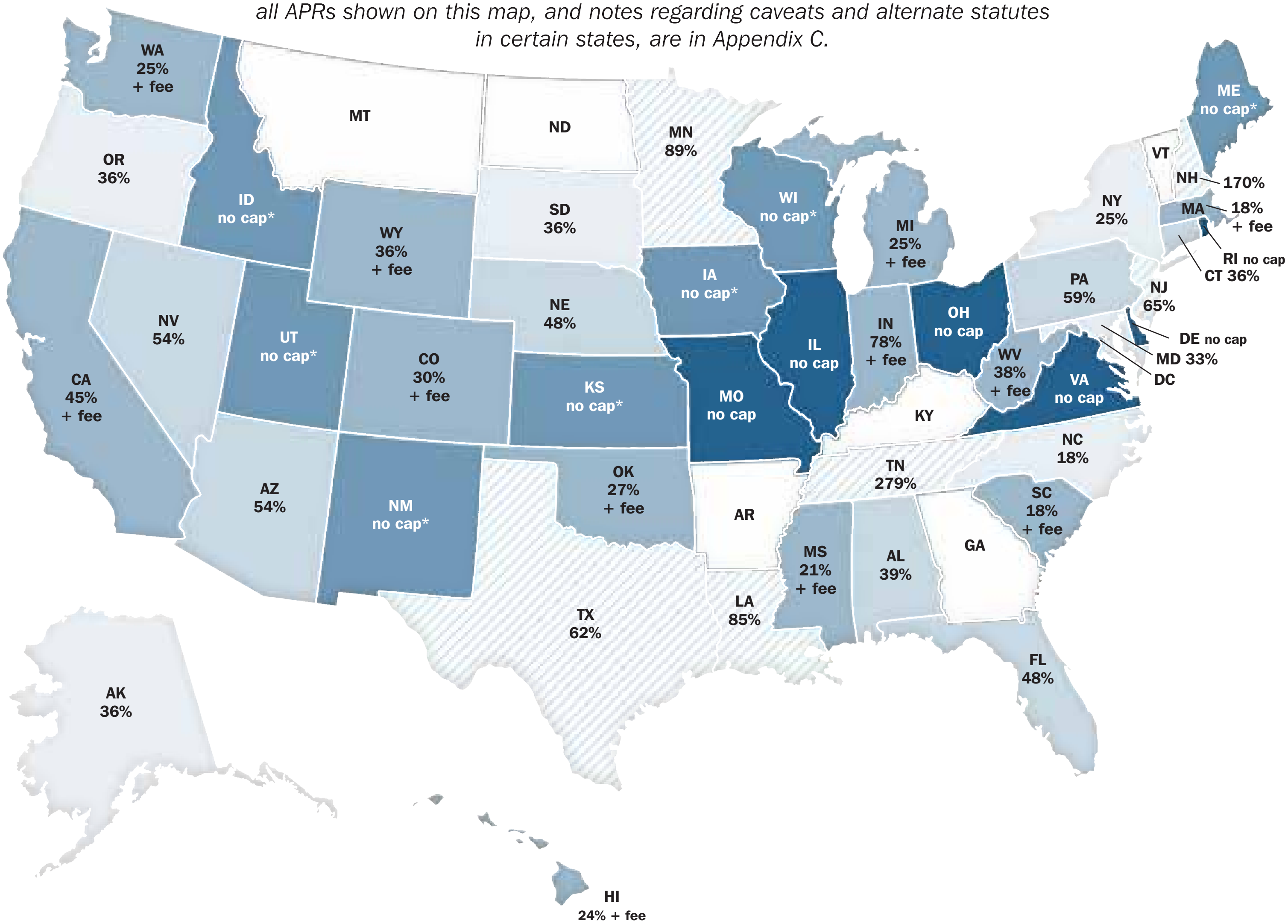


- No stated cap on finance charges (6 states: DE, IL, MO, OH, RI, VA)
- No numerical cap, but prohibits unconscionability (9 states: AL, ID, IA, KS, ME, NM, SC, UT, WI)
- Cap on interest but not on all fees (11 states: CA, CO, HI, IN, MA, MI, MS, OK, WA, WV, WY)
- Allowable full APR over 60% (1 state: TN)
- Allowable full APR between 36% and 60% (4 states: AZ, LA, NV, NH)
- Allowable full APR of 36% or less (13 states: AK, CT, FL, MD, MN, NE, NJ, NY, NC, OR, PA, SD, TX)
- No specific provisions for non-bank lenders to extend open-end credit (7 states: AR, DC, GA, KY, MT, ND, VT)

MAP 3

Full APRs Allowed for a $500 Cash Advance Repayable Over Six Months

This map shows the maximum full APRs allowed for non-bank lenders. Details regarding all APRs shown on this map, and notes regarding caveats and alternate statutes in certain states, are in Appendix C.

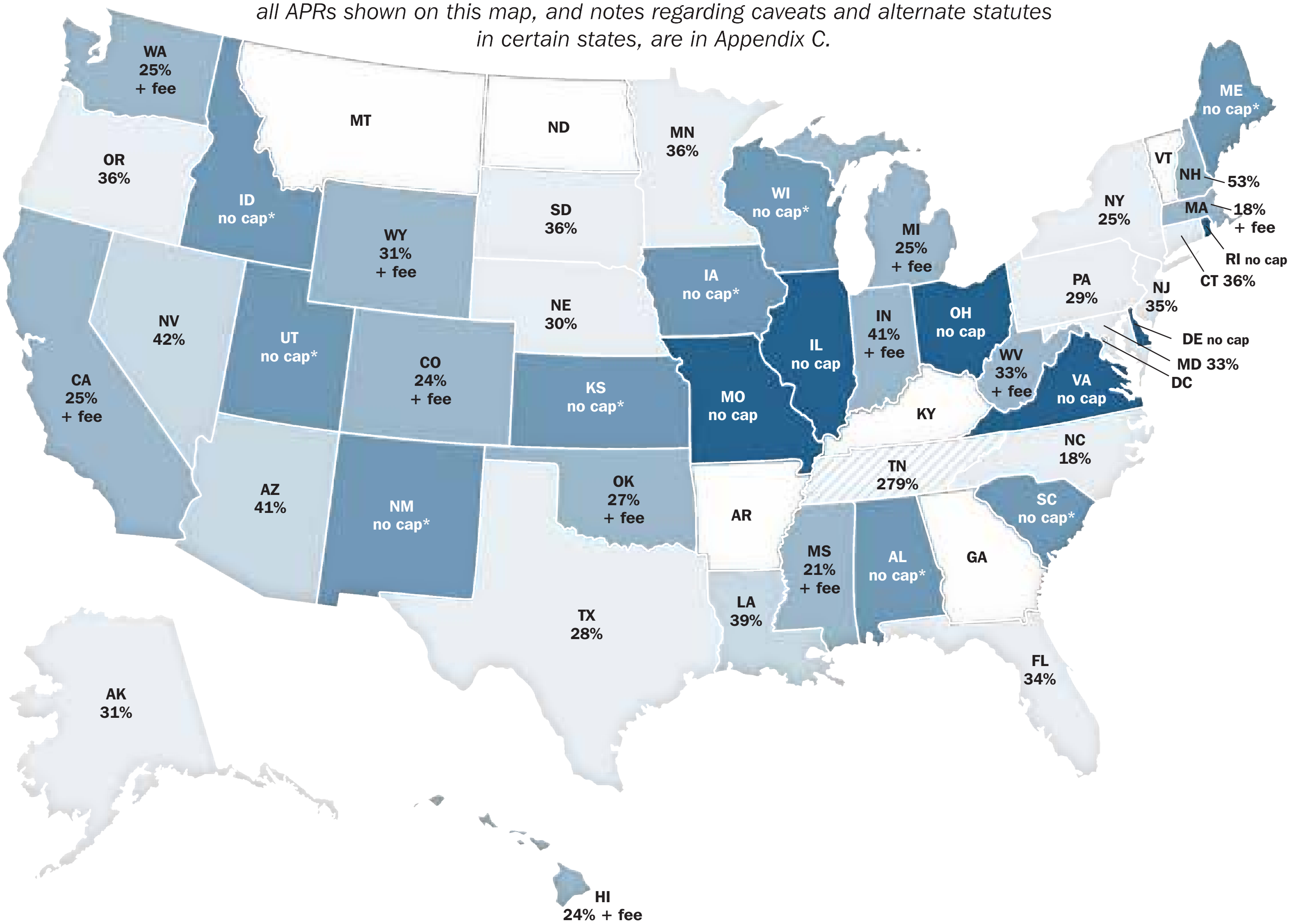


- No stated cap on finance charges (6 states)
- No numerical cap, but prohibits unconscionability (no cap*) (7 states)
- Cap on interest but no numerical cap on all fees (12 states)
- Allowable full APR over 60% (6 states)
- Allowable full APR between 36% and 60% (7 states)
- Allowable full APR of 36% or less (6 states)
- No specific provisions for non-bank lenders to extend open-end credit (AR, DC, GA, KY, MT, ND, VT). Open-end credit may fall under the closed-end cap or the state may not permit open-end lending by non-bank lenders. (6 states and DC)

MAP 4

Full APRs Allowed for a $2000 Cash Advance Repayable Over Two Years

This map shows the maximum full APRs allowed for non-bank lenders. Details regarding all APRs shown on this map, and notes regarding caveats and alternate statutes in certain states, are in Appendix C.



- No stated cap on finance charges (6 states)
- No numerical cap, but prohibits unconscionability (no cap*) (9 states)
- Cap on interest but no numerical cap on all fees (11 states)
- Allowable full APR over 60% (1 state)
- Allowable full APR between 36% and 60% (4 states)
- Allowable full APR of 36% or less (13 states)
- No specific provisions for non-bank lenders to extend open-end credit (AR, DC, GA, KY, MT, ND, VT). Open-end credit may fall under the closed-end cap or the state may not permit open-end lending by non-bank lenders. (6 states and DC)

KEY RECOMMENDATIONS FOR STATES

Since 2015, only a few states have succumbed to predatory lenders' push to authorize high-cost installment loans and some states have succeeded in tightening their laws. But some states have worsened their installment lending laws and state-by-state battles will continue to rage. Consumers, state policymakers, and advocates should be alert to predatory lenders' attempts to bring high-cost installment lending to their states.

States should place clear, loophole-free caps on interest rates for both installment loans and open-end credit. A maximum APR of 36% is appropriate for smaller loans, with a lower rate for larger loans.

The most important aspect of state installment loan laws is the cap they place on interest rates and fees. States should:

- ***Examine consumer lending bills carefully.*** Predatory lenders often propose bills that obscure the true interest rate, for example by presenting it as 24% per year plus 7/10ths of a percent per day instead of 279%. Get a calculation of the full APR, including all interest, all fees, and all other charges, and reject the bill if it is over 36%.
- ***Place clear, loophole-free caps on interest rates for both installment loans and open-end credit,*** in addition to closed-end, short-term payday and car title loans. A maximum APR of 36% is appropriate for smaller loans, such as those of $1000 or less, with a lower rate for larger loans.
- ***Prohibit or strictly limit loan fees*** in order to prevent fees from being used to undermine the interest rate cap and acting as an incentive for loan flipping.
- ***Ban the sale of credit insurance and other add-on products*** which primarily benefit the lender and increase the cost of credit.

Additionally, states should make sure that their installment loan laws address other potential abuses. They should:

- Require lenders to evaluate the borrower's ability to repay any credit that is extended—including an analysis of the borrower's income and expenses. States should be wary, however, of proposals to enact weak ability-to-repay requirements that merely act as window dressing for high-cost loans.
- Prohibit devices, such as security interests in household goods and post-dated checks that coerce repayment of unaffordable loans.
- Require full and fair proportionate rebates of all loan charges when loans are refinanced or paid off early.
- Limit balloon payments, interest-only payments, and excessively long loan terms. An outer limit of twenty-four months for a loan of $1000 or less and twelve months for a loan of $500 or less might be appropriate, with shorter terms for high-rate loans.
- Employ robust licensing and reporting requirements for lenders and make unlicensed or unlawful loans void and uncollectible. However, states should be wary of efforts to open up licensing regimes so that high-cost lenders can enter the market in the state.

- Minimize differences between state installment loan laws and state open-end credit laws so that high-cost lenders do not simply transform their products into open-end credit.
- Tighten up other lending laws, including credit services organization laws, so that they do not serve as a means of evasion.

Read our 2015 report for more details on these recommendations and installment loan laws.

TAKING OUT AN INSTALLMENT LOAN?
FIVE TIPS FOR CONSUMERS

1. **Look at the APR—if it's above 36%, don't take the loan.** The APR captures the full cost of credit, including junk fees—not just the interest rate. The higher the APR, the more you will pay for the loan. For a loan of more than a few hundred dollars, look for an APR considerably less than 36%.
2. **Say "NO" to credit insurance and other add-ons.** Some lenders try to increase their profits by slipping in insurance, auto club memberships, and other add-ons that provide few benefits to consumers. Look carefully at your loan papers and say no to any of these add-ons, even if that means that loan papers have to be rewritten. If the lender says the add-on is required, decline the loan, as this is a strong signal that the lender is trying to take advantage of you.
3. **Be VERY careful about whether to allow the lender to deduct your payments directly from your bank account.** If you choose this method of payment, the lender will deduct the payment from your bank account even if you have more important bills to pay (such as rent or food) and even if it means that other checks will bounce. These automatic payments can also be difficult to cancel. If you wish to pay automatically, it is better to set up automatic payments through your bank's online bill-pay feature than by giving the lender authority to debit your account.
4. **You have the right to cancel automatic payments.** If you authorized the lender to deduct your payments directly from your bank account, you have the right to cancel this at any time. Tell the lender in writing that you revoke authorization and keep a copy. If the lender debits your account after you have revoked authorization, show your bank the revocation and dispute the debit as unauthorized with your bank. You can also stop payments with your bank but you may pay a stop payment fee. The bank should be able to stop all recurring debits with a single order.
5. **Tell the CFPB if the lender treats you unfairly or deceptively.** The Consumer Financial Protection Bureau (CFPB) tries to resolve complaints, and often is able to help. It also uses information from consumers to identify bad practices. Tell them about your problem at http://www.consumerfinance.gov/complaint/.

ENDNOTES

1. Transcript of interview broadcast by WTVF, News Channel 5, Nashville, TN "Critics Call 279% Loan A 'Debt Trap' For Poor" (Feb. 16, 2016).
2. Center for Responsible Lending, "States without Payday and Car-title Lending Save Over $5 Billion in Fees Annually," January 2017 available at: http://www.responsiblelending.org/sites/default/files/nodes/files/research-publication/crl_payday_fee_savings_jun2016.pdf.
3. This count reflects the corrected version of our 2015 report, which in its original form erroneously misclassified Texas. The original version of that report also erroneously reported Hawaii's maximum APR for this loan as 34% instead of 31%, but either APR places Hawaii in the "36% or less" category.
4. Initiated Measure 21, 2017 S.D. Laws ch. 221, *amending* S.D. Codified Laws § 54-4-44.
5. *See* National Consumer Law Center, Misaligned Incentives: Why High-Rate Installment Lenders Want Borrowers Who Will Default 4 July 2016 *available at:* www.nclc.org/issues/misaligned-incentives.html (documenting South Dakota installment loan by Advance America).
6. Interest Rate from Lenders, 2010 Mont. Laws Balt. Meas. 164, *amending* Mont. Code Ann. § 32-5-301.
7. *See* Center for Responsible Lending, States without Payday and Car Title Lending Save over $5 Billion in Fees Annually (Jan. 2017), *available at* http://www.responsiblelending.org/sites/default/files/nodes/files/research-publication/crl_payday_fee_savings_jun2016.pdf (documenting ballot initiatives in Arizona, Montana, Ohio, and South Dakota).
8. Credit Regulation, Unsecured Open End Credit Plans, Fees and Charges, 2017 Md. Laws 724 (H.B. 1270), *amending* Md. Code Ann., Com. Law § 12-905 (West).
9. 2016 N.H. Laws ch. 180 (S.B. 308), *amending* N.H. Rev. Stat. § 399-A:16.
10. *See* State *ex rel.* King v. B & B Investment Group, Inc., 329 P.3d 658 (N.M. 2014).
11. 2017 N.M. Laws ch. 110 (H.B. 347), *amending* N.M. Stat. Ann. §§ 58-7-7 and 58-15-17. Since this cap is not yet in effect, it is not reflected in the maps and tables in this report.
12. The bill that enacted the 175% cap also deletes a definition of "payday loan" from N.M. Stat. Ann. § 58-15-2(H); adds §§ 58-5-7(C) and 58-15-17(I), which require all loans made under the statute other than refund anticipation loans to be repayable in at least four substantially equal installments of principal and interest; and adds § 58-15-17(H), which prohibits lenders from making loans under this statute other than installment loans or refund anticipation loans).
13. 2016 Conn. Pub. Act No. 16-65 (H.B. No. 5571), *amending* Conn. Gen. Stat. § 36a-558.
14. Miss. Code Ann. §§ 75-67-175 to 75-67-185, *enacted by* 2016 Miss. Laws ch. 301 (H.B. 1511).
15. *See* Mississippi Catholic, Governor signs payday loan expansion despite opposition, protests (May 26, 2016), *available at* http://www.mississippicatholic.com/2016/05/26/governor-signs-payday-loan-expansion-despite-opposition-protests/ (noting opposition by Bishops of Biloxi and Jackson, the ecumenical group Mississippi Religious Leadership Conference, and the Christian Action Committee, which is an agency of the Mississippi Baptist Convention).
16. Miss. Code Ann. §§ 75-67-601 to 76-67-637, *enacted by* 2016 Miss. Laws ch. 500 (S.B. 2409).
17. 2014 Tenn. Pub. Acts ch. 969 (S.B. 1988), *enacting* Tenn. Code Ann. §§ 45-12-101 to 45-12-126.
18. *See* National Consumer Law Center, Installment Loans: Will States Protect Borrowers from a New Wave of Predatory Lending? 41–42 July 2015 *available at:* http://bit.ly/2wTj1tN (describing credit services organization loophole by which lender makes a loan through a credit services organization, a purportedly separate third party that arranges or brokers loans from other entities for a fee. Typically the credit services organization's fee is very large

and would push the interest rate far above the legal maximum if it were considered part of the interest rate).

19. 2017 Ohio Laws File 7 (Sub. S.B. 24), *enacting* Ohio Rev. Code Ann. §§ 1321.62 to 1321.702, effective Sept. 12, 2017.
20. New Mexico has imposed a 175% cap, calculated pursuant to the federal Truth in Lending Act, as of Jan. 1, 2018. N.M. Stat. Ann. §§ 58-7-7(D), 58-15-17(J).
21. For a six-month $500 loan, Ohio's Small Loan Act would limit the full APR to 39%, and its Second Mortgage Loan Act and Consumer Installment Loan Act would limit it to 43%. However, these caps are ineffective in Ohio because the state allows credit services organizations to charge an additional—uncapped—fee for arranging a loan.
22. Ohio's Consumer Sales Practices Act Ohio Rev. Code § 1345.03 (West), includes a prohibition of unconscionability and applies to lenders making loans under the state's payday loan act, but most other non-mortgage lenders are exempt. Ohio Rev. Code Ann. § 1345.01(A) (West) (exempting financial institutions and dealers in intangibles as defined by Ohio Rev. Code § 5725.01).
23. In addition, Colorado's payday installment loan statute, Colo. Rev. Stat. §§ 5-3.1-101 to 5-3.1-123, allows APRs up to 180% for payday loans up to $500, as discussed in Section I(K)(1) of our 2015 report.
24. In addition, the Illinois payday installment loan statute, 815 Ill. Comp. Stat. § 122/2-5, allows APRs up to 435% for payday loans with terms up to 180 days, as discussed in Section I(K)(1) of our 2015 report.
25. Minnesota's short-term loan law, Minn. Stat. § 47.601, may allow APRs as high as 89% on a six-month loan, but the loan would require a contorted payment schedule.
26. Texas also allows a credit services organization to arrange a loan with a term of up to 180 days, and to charge an additional fee that adds considerably to the APR.
27. Under N.H. Rev. Stat. Ann § 399-A:16(I), for purposes of calculating the statutory 36% APR cap, one annual fee of up to $100 and one annual participation fee of up to $100 are to be excluded. However, § 399-A:15(XI) bars these fees for closed-end credit, so it appears that this provision is relevant only for purposes of calculating the statutory 36% APR cap for open-end credit.
28. Oregon also allows lenders to charge "other reasonable and bona fide fees, expenses or damages, subject to oversight and regulation by the Department of Consumer and Business Services." Or. Rev. Stat. § 725.340(1)(b).
29. Rhode Island also allows "other customary and reasonable costs incident to the closing, supervision, and collection of loans in this state." R.I. Gen. Laws § 6-26-2.
30. New Mexico has imposed a 175% cap, calculated pursuant to the federal Truth in Lending Act, as of Jan. 1, 2018. N.M. Stat. Ann. §§ 58-7-7(D), 58-15-17(J).
31. For a two-year $2000 loan, Ohio's Small Loan Act would limit the full APR to 28%,its Second Mortgage Loan Act would limit it to 31%, and its Consumer Installment Loan Act would limit it to 35%. However, these caps are ineffective in Ohio because the state allows credit services organizations to charge an additional—uncapped—fee for arranging a loan.
32. Ohio's Consumer Sales Practices Act, Ohio Rev. Code § 1345.03 (West), includes a prohibition of unconscionability and applies to lenders making loans under the state's payday loan act, but most other non-mortgage lenders are exempt. Ohio Rev. Code Ann. § 1345.01(A) (West) (exempting financial institutions and dealers in intangibles as defined by Ohio Rev. Code § 5725.01).
33. Under N.H. Rev. Stat. Ann § 399-A:16(I), for purposes of calculating the statutory 36% APR cap, one application fee up to $100 per year and one annual participation fee of up to $100 are to be excluded. However, § 399-A:15(XI) bars these fees for closed-end credit, so it appears that this provision is relevant only for purposes of calculating the statutory 36% APR cap for open-end credit.

34. Oregon also allows lenders to charge "other reasonable and bona fide fees, expenses or damages, subject to oversight and regulation by the Department of Consumer and Business Services." Or. Rev. Stat. § 725.340(1)(b).
35. Rhode Island also allows "other customary and reasonable costs incident to the closing, supervision, and collection of loans in this state." R.I. Gen. Laws § 6-26-2.
36. *See* 15 U.S.C. § 1601(a) ("It is the purpose of [the Truth in Lending Act, which requires disclosure of the APR] to assure a meaningful disclosure of credit terms so that the consumer will be able to compare more readily the various credit terms available to him"); National Consumer Law Center, Truth in Lending § 1.1.1 (9th ed. 2015), *updated at* library.nclc.org/TIL (purpose of TILA to provide uniformity and enable comparison of disclosures of cost of credit).
37. The Truth in Lending Act, 15 U.S.C. §§ 1601–1666j, enacted in 1968, requires disclosure of the APR and other key credit terms, and standardizes the language and calculations for these disclosures.
38. The Department of Defense has adopted a similar fee-inclusive approach in implementing the Military Lending Act's 36% cap on certain extensions of credit to servicemembers. *See* 32 C.F.R. § 232.3(h).
39. We also do not include fees imposed by state offices for recording security interests, since the report focuses on unsecured loans.

APPENDIX A

FULL APR TABLES FOR SIX-MONTH $500 LOAN

TABLE A-1

States that Do Not Cap Interest Rates for Six-Month $500 Installment Loan: 2017

STATE	LOANS FOR WHICH THERE IS NO CAP	DOES STATUTE PROHIBIT UNCONSCIONABILITY?
Delaware	All loans	No
Idaho	All loans	Yes
Missouri	All loans	No
New Mexico[1]	All loans	Yes (state deceptive practices statute)
Ohio[2]	All loans	No[3]
Utah	All loans	Yes
Wisconsin	All loans	Yes

[1] New Mexico has imposed a 175% cap, calculated pursuant to the federal Truth in Lending Act, as of Jan. 1, 2018. N.M. Stat. Ann. §§ 58-7-7(D), 58-15-17(J).

[2] For a six-month $500 loan, Ohio's Small Loan Act would limit the full APR to 39%, and its Second Mortgage Loan Act and Consumer Installment Loan Act would limit it to 43%. However, these caps are ineffective in Ohio because the state allows credit services organizations to charge an additional—uncapped—fee for arranging a loan.

[3] Ohio's Consumer Sales Practices Act Ohio Rev. Code § 1345.03 (West), includes a prohibition of unconscionability and applies to lenders making loans under the state's payday loan act, but most other non-mortgage lenders are exempt. Ohio Rev. Code Ann. § 1345.01(A) (West) (exempting financial institutions and dealers in intangibles as defined by Ohio Rev. Code § 5725.01).

TABLE A-2

States that Allow Full APRs of More Than 36% on Six-Month $500 Installment Loan: 2017

STATE	FULL APR ALLOWED	STATE	FULL APR ALLOWED
Alabama	94%	Michigan	43%
Arizona	54%	Minnesota[3]	51%
California	45%	Mississippi	305%
Colorado[1]	90% (Consumer Credit Code)	Nebraska	48%
Florida	48%	Nevada	40%
Georgia	61%	Oklahoma	108%
Illinois[2]	99% (Consumer Installment Loan Law)[3]	South Carolina	72%
Indiana	71%	Tennessee	94%
Kansas	43%	Texas[4]	93%
Kentucky	47%	Washington	39%
Louisiana	85%	West Virginia	38%
Massachusetts	37%		

[1] In addition, Colorado's payday installment loan statute, Colo. Rev. Stat. §§ 5-3.1-101 to 5-3.1-123, allows APRs up to 180% for payday loans up to $500, as discussed in Section I(K)(1) of our 2015 report.

[2] In addition, the Illinois payday installment loan statute, 815 Ill. Comp. Stat. § 122/2-5, allows APRs up to 435% for payday loans with terms up to 180 days, as discussed in Section I(K)(1) of our 2015 report.

[3] Minnesota's short-term loan law, Minn. Stat. § 47.601, may allow APRs as high as 89% on a six-month loan, but the loan would require a contorted payment schedule.

[4] Texas also allows a credit services organization to arrange a loan with a term of up to 180 days, and to charge an additional fee that adds considerably to the APR.

TABLE A-3

States that Cap Full APR for Six-Month $500 Loan at 36% or Less: 2017

STATE	FULL APR ALLOWED	STATE	FULL APR ALLOWED
Alaska	36%	New York	25%
Arkansas	17%	North Carolina	16%
Connecticut	36%	North Dakota	28%
District of Columbia	27%	Oregon[2]	36%
Hawaii	25%	Pennsylvania	27%
Iowa	36%	Rhode Island[3]	35%
Maine	30%	South Dakota	36%
Maryland	33%	Vermont	24%
Montana	36%	Virginia	36%
New Hampshire[1]	36%	Wyoming	36%
New Jersey	30%		

[1] Under N.H. Rev. Stat. Ann § 399-A:16(I), for purposes of calculating the statutory 36% APR cap, one application fee up to $100 per year and one annual participation fee of up to $100 are to be excluded. However, § 399-A:15(XI) bars these fees for closed-end credit, so it appears that this provision is relevant only for purposes of calculating the statutory 36% APR cap for open-end credit.

[2] Oregon also allows lenders to charge "other reasonable and bona fide fees, expenses or damages, subject to oversight and regulation by the Department of Consumer and Business Services." Or. Rev. Stat. § 725.340(1)(b).

[3] Rhode Island also allows "other customary and reasonable costs incident to the closing, supervision, and collection of loans in this state." R.I. Gen. Laws § 6-26-2.

APPENDIX B

FULL APR TABLES FOR TWO-YEAR $2000 LOAN

TABLE B-1

States that Do Not Cap Interest Rates for Two-Year $2000 Installment Loan: 2017

STATE	LOANS FOR WHICH THERE IS NO CAP	DOES STATUTE PROHIBIT UNCONSCIONABILITY?
Alabama	Loans of $2000 or more	Yes
Delaware	All loans	No
Idaho	All loans	Yes
Missouri	All loans	No
New Mexico[1]	All loans	Yes (state deceptive practices statute)
North Dakota	Loans of more than $1000	No
Ohio[2]	All loans	No[3]
South Carolina	Loans of more than $600	Yes
Utah	All loans	Yes
Wisconsin	All loans	Yes

[1] New Mexico has imposed a 175% cap, calculated pursuant to the federal Truth in Lending Act, as of Jan. 1, 2018. N.M. Stat. Ann. §§ 58-7-7(D), 58-15-17(J).

[2] For a two-year $2000 loan, Ohio's Small Loan Act would limit the full APR to 28%,its Second Mortgage Loan Act would limit it to 31%, and its Consumer Installment Loan Act would limit it to 35%. However, these caps are ineffective in Ohio because the state allows credit services organizations to charge an additional—uncapped—fee for arranging a loan.

[3] Ohio's Consumer Sales Practices Act, Ohio Rev. Code § 1345.03 (West), includes a prohibition of unconscionability and applies to lenders making loans under the state's payday loan act, but most other non-mortgage lenders are exempt. Ohio Rev. Code Ann. § 1345.01(A) (West) (exempting financial institutions and dealers in intangibles as defined by Ohio Rev. Code § 5725.01).

TABLE B-2

Full APRs Allowed for Two-Year $2000 Loan in States that Cap Finance Charges: 2017

STATE	FULL APR ALLOWED	STATE	FULL APR ALLOWED
Alaska	31%	Mississippi	59%
Arizona	41%	Montana	36%
Arkansas	17%	Nebraska	30%
California	25%	Nevada	40%
Colorado	31%	New Hampshire[1]	36%
Connecticut	36%	New Jersey	30%
District of Columbia	25%	New York	25%
Florida	31%	North Carolina	31%
Georgia	32%	Oklahoma	27%
Hawaii	31%	Oregon[2]	36%
Indiana	39%	Pennsylvania	24%
Iowa	31%	Rhode Island[3]	29%
Illinois	80%	South Dakota	36%
Kansas	32%	Tennessee	41%
Kentucky	42%	Texas	35%
Louisiana	38%	Vermont	21%
Maine	30%	Virginia	36%
Maryland	30%	Washington	29%
Massachusetts	24%	West Virginia	33%
Michigan	30%	Wyoming	31%
Minnesota	31%		

[1] Under N.H. Rev. Stat. Ann § 399-A:16(I), for purposes of calculating the statutory 36% APR cap, one application fee up to $100 per year and one annual participation fee of up to $100 are to be excluded. However, § 399-A:15(XI) bars these fees for closed-end credit, so it appears that this provision is relevant only for purposes of calculating the statutory 36% APR cap for open-end credit.

[2] Oregon also allows lenders to charge "other reasonable and bona fide fees, expenses or damages, subject to oversight and regulation by the Department of Consumer and Business Services." Or. Rev. Stat. § 725.340(1)(b).

[3] Rhode Island also allows "other customary and reasonable costs incident to the closing, supervision, and collection of loans in this state." R.I. Gen. Laws § 6-26-2.

APPENDIX C

TABLES SHOWING CHARGES FOR CASH ADVANCES

TABLE C-1

States that Do Not Place Numerical Cap on Interest Rates for Open-End Credit: 2017

STATE	DOES STATUTE PROHIBIT UNCONSCIONABILITY?
Alabama (for loans of $2000 or more)	Yes
Delaware	No
Idaho	Yes
Illinois	No
Iowa	Yes
Kansas	Yes
Maine	Yes
Missouri	No
New Mexico[1]	Yes (state deceptive practices statute)
Ohio[2]	No
Rhode Island	No
South Carolina (for loans of more than $600)	Yes
Utah	Yes
Virginia	No
Wisconsin	Yes

For an explanation of unconscionability, see Section II(A)(6) of our 2015 report and National Consumer Law Center, Consumer Credit Regulation § 10.2.6 (2d ed. 2015), *updated at* http://library.nclc.org/CCR.

[1] New Mexico has imposed a 175% cap, calculated pursuant to the federal Truth in Lending Act, as of Jan. 1, 2018. N.M. Stat. Ann. §§ 58-7-7(D), 58-15-17(J).

[2] Ohio's rate caps are ineffective because they can be circumvented through credit services organizations. See Section I(K)(3) of our 2015 report.

TABLE C-2

States that Cap Interest Rates but Not All Fees for Open-End Credit: 2017

STATE	INTEREST RATE ALLOWED	FEES PERMITTED BY STATUTE FOR WHICH NO NUMERICAL CAP IS STATED	DOES STATUTE PROHIBIT UNREASONABLE OR UNCONSCIONABLE FEES?
California	split rate ranging from 30% on first $225 to 12% on amount over $1650	Participation fee	Yes
Colorado	21%	Annual fee	Yes
Hawaii	24%	Participation fees imposed on an annual, periodic, or other basis	No
Indiana	36%	Annual fee	Yes
Massachusetts	18%	Annual fee	Yes (deceptive practices statute)
Michigan Regulatory Loan Act[1]	25%	Annual fee	Yes
Mississippi	21%	Any fees other than interest[2]	No
Oklahoma	27% on first $2910	Annual or membership fees, transaction fees, cash advance fees	Yes
South Carolina (for loans of $600 or less)	18%	Annual fee	Yes
Washington	25%	Annual fee	No
West Virginia	31% plus loan processing fee of 2% of amount financed	Annual fee	Yes
Wyoming	36% on first $1000, 21% on remainder	Annual fee for credit card	Yes

All of the states shown in this table allow the lender to charge at least one fee for which the statute does not set a numerical cap. California, Colorado, Indiana, and West Virginia also allow some fees in amounts set by the statute. Those fees are not shown on this table, but are included in the calculation of the rates shown on Maps 3 and 4.

For an explanation of unconscionability, see Section II(A)(6) of our 2015 report and National Consumer Law Center, Consumer Credit Regulation § 10.2.6 (2d ed. 2015), *updated at* www.nclc.org/library.

[1] A second law, Mich. Comp. Laws §§ 493.101 to 493.114, allows an interest rate of 18% plus an annual fee. The law does not place a cap on the annual fee or require that it be reasonable.

[2] Mississippi's lending law, Miss. Code § 75-17-19(6), is ambiguous about what charges and fees can be imposed. It appears that a non-bank lender cannot impose an annual fee, because annual fees are specifically addressed by § 75-19-17(2). Fees that would undermine the limit in § 75-17-19(1) on the periodic rate might also be at least implicitly prohibited.

TABLE C-3

States that Set Numerical Caps on Rates and Fees for Open-End Credit: 2017

STATE	INTEREST RATE CAP	CAP ON LOAN FEES	FULL APR FOR $500 6-MONTH CASH ADVANCE	FULL APR FOR $2000 2-YEAR CASH ADVANCE
Alabama (cap applies only to loans of less than $2000)	21% on first $750, 18% on remainder	Surcharge of 6% of amount financed	39%	no cap
Alaska	36% on first $850, 24% on remainder	No fees allowed	36%	31%
Arizona	36% on first $3000	5% of principal, capped at $150	54%	41%
Connecticut	36%	$50 annual fee	36%	36%
Florida	30% on first $3000	$25 investigation fee; $25 annual fee on each anniversary date	48%	34%
Louisiana (revolving loan account)	18%	$50 origination fee plus $20 document fee	85%	39%
Maryland	24%	Interest plus fees cannot exceed 33%	33%	33%
Minnesota	33% on first $1125, 19% on remainder	$50 annual fee, $30 cash advance fee	89%	36%
Nebraska	24% on first $1000, 21% on remainder	7% of first $2000 and 5% of remainder, or $500, whichever is less	48%	30%
Nevada	40%	$20 annual fee	54%	42%
New Hampshire	36%	one $100 application fee and one $100 participation fee per year	170%	53%
New Jersey	30%	$50 annual fee	65%	35%
New York	25%	Must fall within 25% cap	25%	25%
North Carolina[1]	18%	No fees allowed	18%	18%
Oregon[2]	36% (or a discount window rate plus 30 points)	No fees allowed	36%	36%
Pennsylvania	24%	$50 annual fee	59%	29%
South Dakota	36%	Must fall within 36% cap	36%	36%
Tennessee	279%	None	279%	279%

STATE	INTEREST RATE CAP	CAP ON LOAN FEES	FULL APR FOR $500 6-MONTH CASH ADVANCE	FULL APR FOR $2000 2-YEAR CASH ADVANCE
Texas	21%	$50 annual fee; plus cash advance fee of $2 or 2% of advance, whichever is greater	62%	28%

The fee-inclusive or "full" APRs in this table take into account all fees that are required as a condition of the extension of credit, including origination fees, periodic fees, and cash advance fees, but not post-transaction charges such as late fees and returned check fees. Arkansas, the District of Columia, Georgia, Kentucky, Montana, North Dakota, and Vermont are not included in this or Tables C-2 or C-3 because they do not have any specific statutory provisions for open-end credit by non-banks. In those states, open-end credit may fall under the closed-end cap or the state may not permit open-end lending by non-bank lenders.

[1] North Carolina authorizes a $24 annual fee for purchase money credit, and late fees for any open-end credit, but is silent as to any authorization for origination fees for cash advances. N.C. Gen. Stat. § 24-11(a), (d1).

[2] Oregon also allows lenders to charge "other reasonable and bona fide fees, expenses or damages, subject to oversight and regulation by the Department of Consumer and Business Services." Or. Rev. Stat. § 725.340(1)(b).

APPENDIX D
METHODOLOGY

A key component of this report is a comparison of the maximum APR permitted for installment loans under different state laws. The purpose of an APR is to express the full cost of a loan on an annual basis, so that the costs of loans of different amounts, different lengths, and different mixtures of interest and fees can be compared to each other.[1] The APR is especially important for revealing the full cost of a loan that charges fees in addition to a periodic interest rate. For example, Arizona allows 36% interest on a $500 six-month loan, but also allows an origination fee of 5% of the principal. Taking both the interest and this origination fee into account, the APR is 54%. If only the interest were allowed, the APR would be 36%.

Throughout this report, we discuss the "full APR." The federal Truth in Lending Act (TILA),[2] as implemented by Regulation Z, sets forth rules for calculating and disclosing an APR in consumer credit transactions. However, because of loopholes in Regulation Z, an APR calculated by its rules does not include all the charges that creditors impose as a condition of the extension of credit. These loopholes are especially significant for open-end loans but can also plague closed-end loans. As a result, the APR calculated under TILA rules often understates the real cost of a loan.

Instead of using the TILA APR calculation rules for this and our 2015 report, we have calculated "full APRs." Our full APRs include not only the interest that the state law allows the lender to charge, but also all fees specified in the statute that are a condition of the extension of credit. We include these fees whether or not they are included in the APR as defined by TILA and whether they are charged at the outset of the loan or built into the loan to be charged later.[3]

Thus, in calculating the "full APR," we include all fees that the borrower is bound to pay in order to obtain and use the extension of credit. These fees include, for example, application fees, investigation fees, document preparation fees, transaction fees, "points," annual fees, and monthly fees. We do not, however, include charges such as late charges or dishonored check charges that are imposed only if some future, avoidable event occurs.[4] Nor do we include any fees that can be charged only for mortgage loans, since the report focuses solely on non-real estate lending. We also do not include credit

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[1] *See* 15 U.S.C. § 1601(a) ("It is the purpose of [the Truth in Lending Act, which requires disclosure of the APR] to assure a meaningful disclosure of credit terms so that the consumer will be able to compare more readily the various credit terms available to him"); National Consumer Law Center, Truth in Lending § 1.1.1 (9th ed. 2015), *updated at* www.nclc.org/library (purpose of TILA to provide uniformity and enable comparison of disclosures of cost of credit).

[2] The Truth in Lending Act, 15 U.S.C. §§ 1601–1666j, enacted in 1968, requires disclosure of the APR and other key credit terms, and standardizes the language and calculations for these disclosures.

[3] The Department of Defense has adopted a similar fee-inclusive approach in implementing the Military Lending Act's 36% cap on certain extensions of credit to servicemembers. *See* 32 C.F.R. § 232.3(h).

[4] We also do not include fees imposed by state offices for recording security interests, since the report focuses on unsecured loans.

insurance premiums in the "full APR" calculations. As discussed in our 2015 report, however, charges for credit insurance premiums and other ancillary products often drive up the cost of credit significantly.

For this and our 2015 report, we have calculated the maximum "full APRs" allowed under each state's installment loan laws for two hypothetical loans: a $500, six-month loan and a $2000 two-year loan. If a state has several statutes, or its statute allows several different rates, we have used the highest rate allowed. For open-end credit, we have calculated the "full APR" for:

(1) a $500 cash advance, taken at the time of account opening, with payments sufficient to repay the advance in six months, with no additional cash advances, and

(2) a $2000 cash advance, taken at account opening and repaid over a two-year period with no additional advances.

For open-end credit statutes that allow an annual fee, we charged the first annual fee at account opening, and the second one (for the two-year loan) on the anniversary date, at which point we adjusted the payment amount to take the additional charge into account.

In many states, the allowed rates produce a higher "full APR" for the $500 loan than for the $2000 loan. This occurs for two reasons. First, some states impose lower rate caps on larger loans. Second, in states where lenders are permitted to charge a fixed fee on top of the interest rate, that fee will have a greater impact on a smaller loan than a larger one. For example, an additional $50 charged on a $500 loan will have more of an impact on the APR than the same $50 fee will have on a $2000 loan.

Many state lending laws have ambiguities that affect the calculation of the full APR. For example, a lending law may allow a lender to charge an origination fee without specifying whether it can also charge interest on that fee. In the absence of clear statutory language or regulatory guidance, in our calculations we treated origination fees as amounts that can be added to the principal and on which interest can be charged. For other ambiguities, we have used our best judgment to find an interpretation that seems consistent with the statutory language and the intent of the statute. Policymakers should consider issuing regulations or other guidance to close loopholes created by these ambiguities that high-cost lenders could exploit.

A thorough discussion of credit math calculations under state lending laws may be found in National Consumer Law Center, *Consumer Credit Regulation* Ch. 5 (2d ed. 2015), updated at http://library.nclc.org/CCR.

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