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INTRODUCTION

Most of us would never dream of paying 300-600% per annum for a loan. Yet every year between two and four percent of the U.S. population does just that, by taking out a high-cost credit product such as a payday loan.[1] Others take out expensive title

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[1] Nathalie Martin & Koo Im Tong, *Double Down and Out: The Connection Between Payday Loans and Bankruptcy*, 39 SW. U. L REV. 785, 801-02 (2010) (surveying studies and finding that between 2.4 and 5% of North Americans from the U.S. and Canada have used payday loans). A payday loan is a small, short-term, triple digit interest rate loan, typically in the range of $200 to $500 dollars, secured by the consumer's post-dated check or debit authorization. *Id.* at 785. Most commonly, the loan is designed as an interest-only loan, with the interest payment due every two weeks thereafter. American consumers currently own several billion dollars in loans of this type. *Id.* (citing LESLIE PARRISH & URIAH KING, CTR. FOR RESPONSIBLE LENDING, PHANTOM DEMAND: SHORT-TERM DUE DATE GENERATES NEED FOR REPEAT PAYDAY LOANS, ACCOUNTING FOR 76% OF TOTAL VOLUME 13 (July 9, 2009), http://www.responsiblelending.org/payday-lending/research-analysis/phantom-demand-final.pdf (stating that "[t]he result of these 59 million unnecessary loans is that borrowers pay about $3.5 billion in fees to avoid having to permanently part ways with the principal borrowed in one fell swoop.")).

loans.[2] What would you expect the general demographic characteristics of the payday and title loan users to be? Would they be primarily middle-income Americans or people closer to the poverty level? Would they be primarily homeowners or renters? This article describes the demographic characteristics of high-cost loan users by reporting on studies done by others, as well by reporting on our study analyzing bankruptcy data for debtors who filed in New Mexico between 2007 and 2011.

Currently, seventeen states and the District of Columbia either ban payday loans or subject them to a 36% interest rate cap.[3]

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[2] Title loans are similar but rather than securing payment through a post-dated check or a debit authorization, payment is secured through a security interest in an otherwise unencumbered vehicle. Nathalie Martin & Ozymandias Adams, *Grand Theft Auto Loans: Repossession and Demographic Realities in Title Lending*, 77 MO. L. REV. 41, 42 (forthcoming 2012), *available at* http://ssrn.com/abstract=2041575. Typical interest rates on title loans run 300% per annum, significantly cheaper than payday loans, though still no bargain, and with arguably much more at stake than a payday loan. *Id.* at 48. There are also other forms of high-interest loans, which vary in design and may or may not pay off principal. For example, in one form of New Mexico loan, the customer borrows $100, to be repaid in 26 bi-weekly installments of $40.16 each, plus a final installment of $55.34. In total, this borrower would pay $100 in principal and $999.71 in interest, for an APR of 1,147%. *See* Felix Salmon, *Loan sharking datapoints of the day*, L. Blog (Jan. 6, 2010), http://blogs.reuters.com/felix-salmon/2010/01/07/loan-sharking-datapoints-of-the-day/.

[3] The states that ban or cap payday loans at 36% or less are Arkansas, Arizona, Connecticut, District of Columbia, Georgia, Maryland, Massachusetts, Montana, New Hampshire, New Jersey, New York, North Carolina, Ohio, Oregon, Pennsylvania, Vermont, Virginia and West Virginia. *See* NAT'L CONSUMER L. CTR., SMALL DOLLAR LOAN PRODUCTS SCORECARD – UPDATED, (May 2010), http://www.nclc.org/images/pdf/high_cost_small_loans/payday_loans/cu-small-dollar-scorecard-2010.pdf; *Payday Lending Statutes*, NAT'L CONF. OF STATE LEGISLATURES (Dec. 7, 2011), http://www.ncsl.org/issues-research/banking/payday-lending-state-statutes.aspx. Unfortunately, even among these, some like Ohio allow other forms of high-interest loans that are as expensive if not more expensive than payday loans. *See* Nathalie Martin, *1,000% Interest—Good While Supplies Last: A Study of Payday Loan Practices and Solutions*, 52 ARIZ. L. REV. 563, 591-92 (2010). Three federal agencies—Department of Defense ("DOD"), Federal Deposit Insurance Corp. ("FDIC"), and the National Credit Union Association ("NCUA")—have suggested 36% as the benchmark to construct responsible and fair small dollar loan frameworks. LAUREN K. SAUNDERS, LEAH PLUNKETT & CAROLYN CARTER, NAT'L CONSUMER L. CTR., STOPPING THE PAYDAY LOAN TRAP: ALTERNATIVES THAT WORK, ONES THAT DON'T 11 (June 2010), http://www.nclc.org/images/pdf/high_cost_small_loans/payday_loans/report-stopping-payday-trap.pdf (containing an extensive discussion of the origins

Nevertheless, payday and other short-term loan outlets now outnumber McDonalds and Starbucks combined.[4] Some claim that as the economy falters, growing numbers of middle income people will use these forms of credit. These loans are also very controversial, with lenders claiming that their products "bridge the unexpected need for short-term credit,"[5] while critics, on the other hand, contend that people are better off without the loans.[6] In addition to charging high interest rates, payday lenders engage in illegal collection[7] tactics and prey on racial/ethnic minority groups.[8] Lenders also target the poor

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of the 36% cap as a benchmark).

[4] Steven M. Graves, *McDonalds' vs. Payday Lenders -2006* and *Payday Lenders vs. Starbucks -2006*, CAL. STATE UNIV. NORTHRIDGE, http://www.csun.edu/~sg4002/research/research_home.html (last visited Apr. 24, 2012); *see also* Karen E. Francis, *Note, Rollover, Rollover: A Behavioral Law and Economics Analysis of the Payday Loan Industry*, 88 TEX. L. REV. 611, 619 (2010) (reporting that "By 2005, there were more payday-loan stores in the United States than McDonald's, Burger King, Sears, J.C. Penney, and Target stores combined.").

[5] AMANDA LOGAN & CHRISTIAN E. WELLER, CTR. FOR AM. PROGRESS, WHO BORROWS FROM PAYDAY LENDERS? AN ANALYSIS OF NEWLY AVAILABLE DATA 3 (Mar. 2009), http://www.americanprogress.org/issues/2009/03/pdf/payday_lending .pdf.

[6] In 2005, the FDIC claimed that "[w]hen used frequently or for long periods, the costs [of a payday loan] can rapidly exceed the amount borrowed and can create a serious financial hardship for the borrower." *Id.* (citing Press Release, FDIC, FDIC Revises Payday Lending Guidance (March, 3, 2005) [hereinafter *FDIC*]).

[7] *See* Chris Mahon, *Borrowing Against the Future*, BROWNSVILLE HERALD (Sept. 18, 2005), http://old.brownsvilleherald.com/ts_comments.php?id=67143_0_10_0_C. (reporting payday lenders use of an "intimidation sheet," to collect more fees and mislead customers.); *FTC Charges Payday Lending Scheme with Piling Inflated Fees on Borrowers and Making Unlawful Threats when Collecting*, FED. TRADE COMMISSION (Apr. 2, 2012), http://www.ftc.gov/opa/2012/04/amg.shtm (reporting payday lender threatening borrowers with arrest and lawsuits); *Court Orders Payday Lenders to Pay More than 294,000*, ACA INT'L (Jan. 9, 2012), http://www.acainternational.org/news-court-orders-payday-lenders-to-pay-more-than-294000-21968.aspx (reporting payday lender illegally garnishing wages); Jarrel Wade, *FTC Sues Companies tied to State Tribes over Payday Lending Practices*, TULSA WORLD (Apr. 2, 2012), http://www.tulsaworld.com/news/article.aspx?subjectid=14&articleid=20120402_14_0_TheFed781058&allcom=1 (reporting payday lender accused of threatening customers with arrest and imprisonment for failing to pay back bills).

[8] Alice Gallmeyer & Wade T. Roberts, *Payday Lenders and Economically Distressed Communities: A Spatial Analysis of Financial Predation*, 46 SOC. SCI. J. 521, 529 (2008) (discussing lending to racial minorities); Jane Cover, Amy Fuhrman Spring & Rachel Garshick Kleit, *Minorities on the Margins? The Spatial Organization of Fringe Banking Services*, 33 J. URBAN AFFAIRS 317, 335-36 (2011); URIAH KING, WEI LI, DELVIN DAVIS, & KEITH ERNST, CTR. FOR

who are not in a position to absorb the tremendous costs associated with these loans, or to pay off lump-sum, non-amortizing, interest-only loans.[9] As the FDIC has noted, "providing high-cost, short-term credit on a recurring basis to customers with long-term credit needs is not responsible lending."[10] The most troubling aspect of payday and title loans is the rollover, meaning the tendency for customers to keep the loan for very long periods, rather than using them for short-term needs.[11]

This symposium article addresses the question of whether payday and title lenders serve primarily the working poor, as some critics claim, or the middle class, as the payday and title loan

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RESPONSIBLE LENDING, RACE MATTERS: THE CONCENTRATION OF PAYDAY LENDERS IN AFRICAN AMERICAN NEIGHBORHOODS IN NORTH CAROLINA 16 (Mar. 22, 2005), http://www.responsiblelending.org/north-carolina/nc-payday/research-analysis/racematters/rr006-Race_Matters_Payday_in_NC-0305.pdf. *See also* Martin & Tong, *supra* note 1, at 786 n.9 (reporting on *Valued Services of Kentucky v. Watkins*, Commonwealth of Kentucky, Court of Appeals, No. 2008-CA-001204-MR, in which a customer was trapped in a payday lender's store by a store employee, that proceeded to call her manager and say "I have a black guy over here that refuses to pay his bill and he's not going to leave until he does." Watkins later sued for false imprisonment.); *but see* Donald P. Morgan & Kevin J. Pan, *Do Payday Lenders Target Minorities*, FED. RES. BANK N.Y. (Feb. 8, 2012), http://libertystreeteconomics.newyorkfed.org/2012/02/do-payday-lenders-target-minorities.html (claiming that payday lenders do not target minorities by demonstrating that the income and other demographics for all payday loan users are the same, regardless of race).

[9] *See* Michael A. Stegman & Robert Ferris, *Payday Lending: A Business Model that Encourages Chronic Borrowing*, 17 ECON. DEV. Q. 8, 25 (2003).

[10] Press Release, FDIC, FDIC Revises Payday Lending Guidance (Mar. 2, 2005).

[11] Consumer groups and lenders alike acknowledge that the loans are frequently rolled over and that many people use the loans continuously. A 2007-2008 study commissioned by the State of California collected data from lenders who reported that 80% of their business is attributable to repeat customers. APPLIED MANAGEMENT AND PLANNING GROUP, 2007 DEPARTMENT OF CORPORATIONS: PAYDAY LOAN STUDY vi (Dec. 2007, updated June 2008), http://www.corp.ca.gov/Laws/Payday_Lenders/Archives/pdfs/PDLStudy07.pdf. Likewise, in 2003, the Center for Responsible Lending "found that only one percent of payday loans go to borrowers who take out one loan per year and walk away free and clear after paying it off . . . . [while] ninety-one percent of payday loans go to borrowers with five or more loan transactions per year." URIAH KING, LESLIE PARRISH & OZLEM TANIK, CTR. FOR RESPONSIBLE LENDING, FINANCIAL QUICKSAND: PAYDAY LENDING SINKS BORROWERS INTO DEBT WITH $4.2 BILLION IN PREDATORY FEES EVERY YEAR 3 (Nov. 30, 2006), http://www.responsiblelending.org/payday-lending/research-analysis/rr012-Financial_Quicksand-1106.pdf.

industries claim. The payday lending industry has long relied on a 2001 study to assert that its customers are primarily middle income, and by implication, middle class.[12] The industry has repeated the middle class claim endlessly in various incarnations,[13] even though most other study data to date contradict this claim.[14] Title lenders and the scholars that support them also claim that title loan customers are primarily middle class, a claim that is also inconsistent with data collected by states concerning the lending process itself.[15]

This article collects available data on payday loan and title loan customer demographics from prior studies. It then reports on our study of bankruptcy filers in the state of New Mexico from 2007-2011, which compares bankruptcy debtors with payday loans to those without payday loans on income levels, home ownership status, and home value. The study then separates out all homeowners in the sample we studied and measures whether the homeowners' use of payday loans increased after the 2008 recession.

This article starts by discussing how and why lenders claim to serve the middle class. It then describes how scholars define the middle class and the typical indicia of middle class America. The paper then summarizes the demographic data gathered to date on payday and title loan customers, focusing on income and home ownership rates, and concluding that these data refute the middle class myth. The article also briefly discusses how geographic studies bear on the questions of class and payday and title loans. Next, this article describes the methodology and results of our own study of payday demographics, which analyzes data from the Bankruptcy Court for the District of New Mexico from 2007-2011.[16] This article ends with the results of this modest study, which conclude that

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[12] GREGORY ELLIEHAUSEN & EDWARD C. LAWRENCE, CREDIT RES. CTR., MCDONOUGH SCH. BUS., PAYDAY ADVANCE CREDIT IN AMERICA: AN ANALYSIS OF CONSUMER DEMAND, 28-29 (Apr. 2001), http://faculty.msb.edu/prog/CRC/pdf/mono35.pdf. (finding that 51.5% of payday borrowers made $25,000 - $49,999 a year, and claiming that "[p]ayday advance customers are less likely than the general population to have either low or higher incomes.").

[13] *See infra* note 17-49 and accompanying text.

[14] *See infra* note 100-136 and accompanying text.

[15] *See infra* note 137-51 and accompanying text.

[16] Since bankruptcy debtors are known to come primarily from the middle class rather than the poor, a study of the debts and assets of bankruptcy debtors is uniquely suited to challenging the middle class myth. TERESA A. SULLIVAN, ELIZABETH WARREN & JAY LAWRENCE WESTBROOK, THE FRAGILE MIDDLE CLASS: AMERICANS IN DEBT 6 (2000) (noting that "bankruptcy is a largely middle-class phenomenon").

bankruptcy debtors who list payday loans are far less likely to own their own homes and overall, have lower incomes than bankruptcy debtors who do not list payday loans. It also concludes that the bankruptcy debtors in the sample who also own homes did not turn to payday loans in higher numbers after the 2008 crisis.

I. DANCING DEMOGRAPHICS: THE GENESIS OF THE MIDDLE CLASS MYTH

According to the Community Financial Services Association of America ("CFSA"), an association representing over half of the nearly twenty-four thousand payday advance locations nationally,[17] "payday advance customers represent the heart of America's middle class."[18] By insisting that they provide services primarily to the middle class, they hope to show that they do not take advantage of the poor.[19] Thus, there is arguably no greater need to regulate these

[17] *See* Colleen Kelley, *The Payday Loan Industry and CFSA*, SUITE101.COM (July 21, 2011), http://colleenkelley.suite101.com/the-payday-loan-industry-and-the-cfsa-a380854.

[18] CFSA first asserted that "payday advance customers represent the heart of America's middle class" to counter the "myth" that payday lenders target the poor and minorities. Although this claim no longer appears on their website, it continues to be widely distributed online by payday lenders. *See, e.g.*, *CFSA: Myth vs. Reality about Payday Loans*, PAYDAY LOAN ADVOCATE, www.paydayloanadvocate.com/information/cfsamyth-vs-reality-about-payday-loans (last visited Apr. 13, 2012); *Payday Loans. Myth #2. Payday lenders take advantage of poor people and minorities*, A1 CASH ADVANCE, http://www.a1cashadvance.com/pay-day-loans-explained.asp (last visited Apr. 24, 2012); *FAQ: Myth: Payday loans are extremely expensive and have exorbitant interest rates*, EASY MONEY EMG, http://www.easymoneynow.com/index.php/about-us/faq (last visited Apr. 24, 2012). Nonetheless, CFSA does continue to claim on its website that the majority of payday advance customers earn between $25,000 and $50,000 annually and that 32% of their customers own their own homes. *Customer Demographics*, COMMUNITY FIN. SERVICES ASS'N AM., http://cfsaa.com/about-the-payday-advance-industry/customer-demographics.aspx (last visited Apr. 13, 2012) (citing ELLIEHAUSEN & LAWRENCE, *supra* note 12).

[19] Michael Kenneth, *Payday Lending: Can "Reputable Banks End the Cycle*, 42 U.S.F. L. REV. 659, 664 (2008). As Professor Kenneth states:

> The question of who payday lending customers are, primarily regarding their income levels and borrowing characteristics, is in dispute between consumer advocates and the payday lending industry. An industry under constant scrutiny does not want to appear to be taking advantage of a vulnerable customer base. Instead, the industry describes its customers as middle-income consumers who need short-term credit for

credit products than any other middle class credit product.[20]

It may seem obvious that few middle class people would choose to pay 300% interest or more for a short-term credit product. Nevertheless, payday and title lenders, and scholars who have received research funds from these industries, repeatedly claim that these lenders draw their clientele primarily from the middle class.[21] These lenders often refer to a study published in 2001 by Gregory Elliehausen & Edward Lawrence to substantiate claims regarding the nature of their clientele.[22] This study, completed through phone calls to payday customers up to one year after they took out a payday loan, asked customers to self-report their income and then recorded this data.[23]

The study, now eleven years old, found that over half of payday-loan consumers had incomes ranging from $25,000 to $49,999.[24] The study further reported that two-thirds of payday loan

> a temporary problem. As one participant in a forum on payday lending described the industry's view: "They say their customers are solidly middle class and don't need 'protection.' In short, leave them alone."

Id. (citations omitted).

[20] Recent credit card legislation really turns this argument on its head, because credit cards are now heavily regulated and these products are not. Credit Card Accountability Responsibility and Disclosure Act of 2009, Pub. L. No. 111-24, 123 Stat. 1734 (2009).

[21] For a few of the many statements made on payday lending websites, *see* *Payday Loan Myths*, USPAYDAYCENTER, http://uspaydaycenter.com/payday-loan-myths (last visited Mar. 2, 2012) (stating that "most people receiving such loans make between $25,000 and $50,000 a year"); *Your On Line Payday Center*, PCA PERSONAL CASH ADVANCE, http://www.personalcashadvance.com/payday-loans.html (last visited Mar. 2, 2012) (stating that it is "debunking" payday loan myths and that "[m]ost cash advance borrowers earn $25,000-$50,000 annually"); *see also* Dick Hughes, *Advance America Banks on Surprise*, J. WATCHDOG, (Oct. 30, 2011, 8:18 PM), http://www.journalwatchdog.com/business/ 1290-advance-america-banks-on-surprise (quoting an industry study as saying that "[t]he Community Financial Services Association ("CFSA"), which represents payday lenders, cites research showing that two-thirds of payday customers are under 45, 41% earn $25,000-$50,000 and 39% more than $40,000"); Larry Meyers, *Payday Loans v. Installment Loans*, PAYDAYLOAN FACTS BLOG (Jan. 1, 2011), http://www.paydayloanfacts.com/blog/credit-options/payday-loans-vs-installment-loans/ (stating that 63% of payday loan borrowers "have annual household incomes of more than $25,000, with 46% earning $25,000 to $50,000 a year").

[22] ELLIEHAUSEN & LAWRENCE, *supra* note 12, at 28. Only two-fifths of the general adult population lies within this income range. *Id.* Only 427 payday loan consumers, out of a sample size of 5,364 consumers, completed the survey. *Id.* at 21.

[23] *Id.* at 20-21.

[24] *Id.* at 29, Tbl. 5-1.

consumers were under the age of forty-five, that the majority were either married or living with a partner,[25] that 38% had high-school diplomas, and that 36% had attended some college.[26] Based on these and similar statistics, the industry claims that its consumers are middle class Americans who just need occasional help to cover emergency expenses.[27] This claim is critical to the payday lending industry's assertion that it does not take advantage of the poor.

Scholars have criticized the methodologies and results of the oft-cited Elliehausen study. Naturally, telephone surveys, such as the one used in the Elliehausen study, do not reach all customers. In that study, one-third of those reached denied ever taking out a payday loan.[28] Another nearly 40% of those reached refused an interview.[29] Nearly 60% more people denied taking out a payday loan than completed the survey.[30] In all, only 427 interviews were taken from an original sample of 5,364 people, creating a response rate of just 8%.[31] This data is also less reliable than data coming directly from lenders or regulators because researchers did not corroborate the data with documentary evidence.[32]

Focusing exclusively on the data on income, Elliehausen's income data, showing that half the customers make $25,000 to $50,000, is far higher than almost all other income data collected from payday loan customers.[33] Professor John Caskey, one of the first scholars to study payday lending extensively, notes that the customers who answered Elliehausen's phone survey may have higher incomes than the average payday customers for a variety of

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[25] *Id.* at 30, Tbl. 5-3.

[26] *Id.* at 33, Tbl. 5-6. The study also concluded that 75% of borrowers thought the government should regulate these loans by capping interest and fees and large numbers misunderstood the terms of the loan. *Id*. at 35, Tbl. 5-8, 49.

[27] *See*, *e.g.*, Charles A. Bruch, *Taking the Pay Out of Payday Loans: Putting an End to the Usurious and Unconscionable Interest Rates Charged by Payday Lenders*, 69 U. CIN. L. REV. 1257, 1271 (2001).

[28] ELLIEHAUSEN & LAWRENCE, *supra* note 12, at 21.

[29] *Id*.

[30] *Id.*

[31] *Id.*

[32] John P. Caskey, *Payday Lending: New Research and the Big Question* (Research Dep't Fed. Reserve Bank of Phila., Working Paper No. 10-32, 2010), *available at* http://ssrn.com/abstract=1696019 (generally summarizing the debate on whether these loans are on balance, good or bad).

[33] *See infra* notes 106-36 and accompanying text.

reasons.[34] First, these could be the customers with the most stable residential patterns or living conditions, given that they were reachable by phone long after taking out the loans.[35] Also, the customers surveyed all received loans from large national monoline payday loan stores, which according to several payday lenders, have higher household incomes than customers who get payday loans from check cashers and outlets that provide a broader range of services.[36] Additionally, as Dollar Financial explained in its 10-K, its customers prefer to get loans in an office-like environment, compared to a check-casher, which typically involves getting the loan through bulletproof glass.[37]

The title lending industry also relies on questionable data to conclude that its customers are predominantly middle class. Professor Todd Zywicki claimed in one of the few scholarly papers on title lending that, based upon one New Mexico "study," title loan borrowers make on average $50,000 a year.[38] As Part III.B below demonstrates, however, these claims are even more dubious in the context of title loan customers, who appear to be even worse off financially when compared to payday loan customers.[39]

Finally, commentators and scholars have recently predicted that the financial crisis in which we are currently embroiled has caused many more middle class people to use payday loans.[40] Most

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[34] John P. Caskey, *The Economics of Payday Lending*, CREDIT UNION ASS'N AM., 23 n.27 (2002), https://www.cuany.org/access_files/outreach/Filene_-_The_Economics_of_Pay_Day_Lending.pdf

[35] *Id.*

[36] *Id.*

[37] *Id.* (citing Dollar Financial 2001 10-K, at 7).

[38] In the context of title lending, *see* Todd Zywicki, *Consumer Use and Government Regulation of Title Pledge Lending*, 22 LOY. CONS L. REV. 425, 442 (2010) [hereinafter *Consumer Use*]. A shorter version of this article appears in Todd Zywicki, *Money to Go*, 33 REG. 32, 37 (2010) [hereinafter *Money to Go*], *available at* http://www.cato.org/pubs/regulation/regv33n2/regv33n2-7.pdf, which makes the same claim. *See also* Todd Zywicki & Gabriel Okolski, *Potential Restrictions on Title Lending*, 62 MERCATUS ON POL'Y 1, 1-2 (2009); William J. Verant, *Consumer Lending Study Committee Report for the Forty Fourth Session of the New Mexico State Legislature* 36, submitted by the Financial Institutions division Director, as requested by House Memorial (2000) (on file with author).

[39] *See infra* notes 137-51 and accompanying text.

[40] *See*, *e.g.*, Kim Christensen, *Payday Loans Mushroom Among Middle Class*, L.A. TIMES, Jan. 11, 2009, *available at* http://www.pittsburghlive.com/x/pittsburghtrib/business/s_606566.html#. This article claims that "In years past, a worker might have asked his employer for an advance on his paycheck. Now, with a driver's license, a pay stub and a checking account, he can walk into a typical payday loan store, postdate a check for $300

of the claims that payday loans are used by the middle class have been made by industry itself, in an attempt to dispute claims that the industry takes advantage of the vulnerable working class and poor.[41] As one industry website explains:

> The perception of cash advance payday loans is that they are mainly used by low-income persons. Recent news shows that fast cash loans are becoming more popular with the middle class. Payday lenders report increased loan requests from middle class and working families . . . . [42]A new study also debunks the mainstream perception that paydays target low-income consumers.[43]

Another industry website claims, "a common myth is that payday loan consumers are mostly poor, uneducated and African American. This stereotype is often used by politicians when trying to

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and stroll out with $255 in cash after a $45 fee . . . No muss, no fuss, no credit check." The same article quotes Harvard Professor Elizabeth Warren as stating that "as the economy has worsened, payday loans have increasingly become crutches for those higher up the economic scale." More middle-class families use the loans "to put off the day of reckoning," she said. "Too many families live with no cushion, so when something goes wrong, they turn to payday lenders." *See also Payday Loans Rush to Rescue the Middle Class*, PAYDAYLOANS (Jan. 9, 2010), http://www.paydayloans.org/payday-loans-rush-to-rescue-middle-class (stating that "as the economy has gotten worse, payday loans work their way up the economic scale. Middle class families with little or no cushion left turn to payday loans to hold off other creditors or to deal with emergency issues.").

[41] Gaurav Bhola, *Cash Advance Loans Attract Middle Class Crowd*, MY PAYDAY CASH ADVANCE LOANS.COM, http://www.mypaydaycashadvanceloans.com/cash-advance-loans-attract-middle-class-crowd.aspx (last visited Mar. 2, 2012).

[42] *Id.* stating that "[a]s demand for these short-term personal loans expands, so does the consumer demographic for the loans. In recent years, the annual fast cash loan volume has reached about $40 billion. This can be explained by the growing popularity of payday loans and their use beyond emergency funds. Many payday lenders such as Advance America have been opening financial centers in middle class and upper class neighborhoods." The article also claims that "helped by financial deregulation, the payday industry has had an almost exponential expansion in the past years. Additionally, due to the current economic atmosphere, more people have been turning to personal loans to sustain themselves."

[43] *Id.* (citing Michael R. Strain & Donald P. Morgan, *Payday Holiday: How Households Fare after Payday Credit Bans*, FED. RES. BANK N.Y. (Nov. 2007), http://www.newyorkfed.org/research/staff_reports/sr309.html (revised Feb. 2008); Donald P. Morgan, Michael R. Strain, & Ihab Seblani, *Payday Credit Access, Overdrafts, and Other Outcomes*, J. OF MONEY, CREDIT, & BANKING (forthcoming 2012) (copy on file with author).

justify 'feel good' payday loan laws that end up hurting consumers."[44] The site purports to report on a demographic study performed by the industry that examined the gender, age, ethnicity,

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[44] *See Payday Loan Demographics Study – December 2010*, ONLINE PAYDAY LOANS (Dec. 4, 2010), http://www.online-payday-loans.org/articles/demographics-december-2010/ [hereinafter *Payday Loan Demographics Study*]. This site purports to report on a demographic study performed by industry that examined the gender, age, ethnicity, household income and education of 2,228,799 different visitors to 18 internet payday loan sites in November of 2010. The demographics that emerged included:

Gender Statistic	**Male**	**Female**
Mean (Average)	36%	64%
Median (Middle)	37%	63%
Mode (Most Frequent)	37%	63%
Minimum (Lowest)	28%	54%
Maximum (Highest)	46%	72%

Age Statistic	**Age 18-34**	**Age 35-49**	**Age 50+**
Mean (Average)	31%	31%	18%
Median (Middle)	32%	32%	18%
Mode (Most Frequent)	27%	26%	21%
Minimum (Lowest)	19%	24%	11%
Maximum (Highest)	47%	37%	26%

Ethnicity Statistic	**Caucasian**	**African Am.**	**Asian**	**Hispanic**
Mean (Average)	57%	30%	03%	08%
Median (Middle)	58%	30%	02%	08%
Mode (Most Frequent)	52%	23%	02%	07%
Minimum (Lowest)	45%	21%	01%	04%
Maximum (Highest)	67%	42%	05%	17%

Children Statistic	**No Kids**	**Has Kids**
Mean (Average)	48%	52%
Median (Middle)	47%	53%
Mode (Most Frequent)	46%	54%
Minimum (Lowest)	38%	32%
Maximum (Highest)	68%	62%

household income and education of 2,228,799 different visitors to eighteen internet payday loan sites in November 2010.[45] The site claims that "a little over half of all payday loan consumers have children seventeen years of age or younger in their household" and wonders aloud, taking into consideration that women outnumber men two to one, how many payday loan consumers are single moms. [46]

As Part III of this article demonstrates, the additional industry data on gender, age, children in the household, and ethnicity show what non-industry studies show, that generally users tend to be younger than average, disproportionately women with children, and also disproportionately from minorities.[47] On the question of income, however, which seems most pertinent to the question of whether payday customers are primarily middle class, this web-based industry study also appears to be an outlier. It claims "most payday loan consumers have an annual household income of $30,000 to $60,000" and that "[a]bout 22% earn over $60,000 and about 15% over $100,000." It further claims "only about 1 in 4 earn less that [sic] $30,000" and adds "[c]learly, payday loans are not just for the poor."[48] These income data are far different than that collected by states and non-industry scholars, indicating that either these numbers are outliers or that web-based internet lending serves a different

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[45] *Id*

[46] *Id.*

[47] On this last point, the site claims that "most online payday loan consumers are Caucasian, noting that on average, Caucasians outnumber African Americans by almost two to one." *Id*. This observation is made without pointing out that Caucasians outnumber minorities in the general population. *See* Karen R. Humes, et. al., *Overview of Race and Hispanic Origin: 2010,* 2010 CENSUS BRIEFS, 4,Tbl. 1 (Mar. 2011), http://www.census.gov/prod/cen2010/briefs/c2010br-02.pdf. (showing that as of 2010, 75.1% of the population was white). Another recent analysis of minority use of payday loans was done by Donald Morgan and Kevin J. Pan of the Federal Reserve Bank of New York. *See* Morgan & Pan, *supra* note 8. In a recent web article, these two Federal Reserve employees use the most recent Federal Reserve's Survey of Consumer Finances ("SCF"), a triennial, nationally representative survey of about 4,400 households to study whether payday lending is actually more common among minority groups, once one controls for non-racial demographics and for general overall financial condition. *Id.* They conclude that once we control for demographic and financial characteristics, the link between payday credit usage and race is statistically insignificant. They use this data to attempt to disprove the idea that payday lenders target minorities, by showing that people of lesser financial means use these loans to the same extent regardless of their race. They acknowledge, however, that minorities use these loans to a far greater extent than white people, as a percentage of the population, something these web sites do not acknowledge. *Id.*

[48] *Payday Loan Demographics Study*, *supra* note 44.

demographic.[49]

II. INDICIA OF THE MIDDLE CLASS

This section uses the work of social scientists to define what the label "middle class" means in order to see if typical payday loan customers fit this definition. As a starting point, social scientists sometimes break U.S. classes into four categories: upper class, middle class, working class, and lower class.[50] When looking at self-reported data, only about one percent of the population typically self-identifies as upper class, 67% report themselves as middle class or upper-middle class, 35% self-report as working class, and just 7% self-report as lower class.[51] This is true even though in 2007, 12.5% of Americans lived at or below the official poverty level.[52] This over-reporting into the middle class suggests that the label may also be used by those who aspire to middle class status, even if they have not yet reached that point. It also suggests that self-reporting may not be the most accurate way to measure middle class income.

As a recent Congressional Research Service ("CRS") study shows, there is no clear consensus on what it means to be middle class, either as a government definition or as a matter of public opinion.[53] Moreover, while it is not clear that middle class means middle income, most studies examining the group comprising the middle class use income as the primary indicator of middle class status. For example, the CRS study referenced above uses the median income as a starting point for its analysis of the middle class.[54] It notes that in 2007, just a few years after the Elliehausen payday industry study, the median income for U.S. households was $50,233. The report notes that the U.S. Census Bureau has published figures for 2007 breaking down U.S. household income into quintiles or fifths. Under the narrowest view of middle class, the middle class would have an income of between $39,100 and $62,000, which

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[49] The site claims at the end that "this study is not definitive. It was never intended to be. We simply wanted more data, less demagoguery." *Id.*

[50] *See* Brian W. Cashell, CONG. RESEARCH SERV., RS 22627, *Who Are the Middle Class?* 3 (Oct. 22, 2008), *available at* http://digitalcommons.ilr.cornell.edu/key_workplace/554/.

[51] *Id.* (citing *Class Matters: An Overview*, N.Y. TIMES, May 15, 2005, [hereinafter *Class Matters*], *available at* http//:www.nytimes.com/indexes/2005/05/15/national/class/index.html).

[52] *Id.*

[53] *Id.* at 1.

[54] *Id.* at 1-2.

would consist of just the middle quadrant.[55] A more broad view of middle class would encompass all three of the middle quintiles and range from $20,291 to $100,000.[56]

According to the CRS Study, if the results of a 2005 *New York Times* survey which asked people to identify their social class is compared to the 2007 U.S. Census Bureau's household income distribution data then the self-reported middle class, broadly defined, would range from a low of $40,000 to over $250,000 in 2007.[57] The CRS report concluded that:

> No attempt to identify the middle class in the income distribution can be expected to yield a precise answer. But the term is used so often that it is worth the effort to attach some numbers to it. If the middle class is taken to be those who have more than enough to afford basic necessities, it can be presumed to exclude those at or near the poverty thresholds.[58]

The CRS study thus finds income near $40,000 to be a minimum to be middle class in 2007. While self-reported status has its issues, one's own opinion on which class one falls into is an important indicator of a person's perception of his/her class.

Of course, middle class status encompasses more than just income analysis. In a recent Pew Research Center study, researchers explored other possible indicia of the middle class. According to a study conducted by the Pew Research Center in 2008, people who self-identify as middle class, as opposed to working or lower class, have the following characteristics:[59]

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[55] *Id.* at 3.

[56] *Id.*

[57] *Id.*

[58] Cashell, *supra* note 50, at 6 (citing *Class Matters*, *supra* note 51).

[59] PEW RESEARCH CENTER, INSIDE THE MIDDLE CLASS: BAD TIMES HIT THE GOOD LIFE (Apr. 9, 2008), http://pewsocialtrends.org/assets/pdf/MC-Middle-class-report.pdf. Median Income for a household of four identified as middle class was found to be $68,698 in 2006. *Id.* at 32. The study further found that 53% of Americans call themselves "middle class," "some 19 percent say they are upper middle class and another 19% say they are lower middle class; 6% say they are lower class and 2% say they are upper class." *Id.* at 8.

Category	**% of Middle Class in Category**	**% of Lower Class in Category**
College Graduates	25%	14%[60]
Own a home	68%	46%[61]
Home worth under $100,000	19%	43%
Home worth between $100,000- $249,999	46%	35%[62]
Rent a home	26%	48%[63]
Have trouble meeting monthly expenses, or just barely meet expenses	23%	58%
Have trouble paying bills	25%	60%
Have trouble saving	51%	67%[64]
Have income between $40,000 & $99,999	43%	Data not available
Income less than $40,000	30%	Data not available[65]

Thus, in addition to income, other factors also lead one to conclude that he or she is middle class. Home ownership seems to be the second most common indicator of middle class status, followed by education, and ability to meet one's expenses without difficulty.

According to a U.S. Department of Commerce Study, middle class Americans or those aspiring to middle class status seek economic security, a home, and a secure retirement.[66] They want to

[60] *Id.* at 28.
[61] *Id*. at 93.
[62] *Id*. at 51.
[63] *Id*. at 93.
[64] *Id*. at 49.
[65] *Id*. at 31.
[66] *See* U.S. DEPARTMENT OF COMMERCE, ECONOMICS AND STATISTICS, ADMINISTRATION- OFFICE OF THE VICE PRESIDENT OF THE UNITED STATES-MIDDLE CLASS TASK FORCE, MIDDLE CLASS IN AMERICA 4-5 (Jan. 2010), http://www.esa.doc.gov/sites/default/files/reports/documents/middleclassreport.pdf.

protect their children's health and send them to college. They also would like to own a car for every adult and be able to afford occasional family vacations.[67] This study claims that home ownership is the most common aspiration of the middle class,[68] but notes that income levels alone are the most common defining measure of middle class status.[69]

A more nuanced view of the middle class can be found in a 2008 Pew Research Center study in which researchers identified four middle classes, the Top of the Class, the Satisfied Middle Class, the Anxious Middle Class, and the Struggling Middle Class.[70] The researchers asked groups of consumers which class they felt they belonged to, then performed a cluster analysis of how consumers answered a series of questions, looking for patterns in how self-identified middle class Americans answered key survey questions.[71] Based upon their findings in the cluster analysis, the authors formed the four groups, which broke down statistically as follows: 35% in Top of the Class, 25% in the Satisfied Middle Class, 23% in the Anxious Middle Class, and 17% in the Struggling Middle Class.[72]

They found that one group in the middle class was doing quite well, typical in some ways of the upper class.[73] This group, the Top of the Class, was predominantly male, disproportionately well-educated and financially secure.[74] They were more likely to have investments and retirement funds and to claim to be living "comfortably."[75] This was also the largest of the four groups.[76] The Satisfied Middle, alternatively, had comparatively modest incomes but was optimistic about their futures.[77] They did not make a lot of

[67] *Id*.
[68] *Id.* at 4.
[69] *Id.* at 2.
[70] Richard Morin, *America's Four Middle Classes*, PEW SOC. & DEMOGRAPHIC TRENDS, 1 (July 29, 2008), http://www.pewsocialtrends.org/files/2010/10/Four-middle-classes.pdf.
[71] "These four groups are all part of the 53% majority of Americans who identified themselves as "middle class" in a Pew telephone survey taken from Jan. 24 through Feb. 19, 2008, among a nationally representative sample of 2,413 adults. The groups were revealed by a statistical technique known as cluster analysis that searched for patterns in the way these self-identified middle class Americans answered key survey questions." *Id.* at 2.
[72] *Id.* at 1.
[73] *Id.* at 2.
[74] *Id.* at 1.
[75] *Id.* at 5.
[76] *Id.* at 1.
[77] *Id.* at 14-15.

money, with over half earning between $20,000 and $40,000 and many on social security.[78] In fact, eight in ten earned between $20,000 and $50,000.[79] They were mostly younger people or retired people. Eighty-eight percent reported living comfortably despite their low incomes.[80]

The Anxious Middle Class fell right in the middle of the spectrum on most factors and were better off in terms of income than the Satisfied Middle Class group.[81] Thus, by the conventional yardsticks of income, education, age, employment and family status, this group is the most middle class of the four middle class groups—and the most dissatisfied and downbeat of them all.[82] While they enjoyed some of the economic advantages of the Top of the Class, they expressed many of the same bleak judgments about their lives as those in the Struggling Middle, as described below.[83] They made up slightly less than a quarter of all middle class Americans.[84] They tended to work in fields in which their futures were uncertain and reported feeling financially vulnerable despite their high incomes.[85] Half said they had trouble paying their bills.[86]

The Struggling Middle Class was the worst off of the groups.[87] Composed mostly of women and minorities, this group made up 17% of the study participants.[88] In many ways, members of the Struggling Middle Class had more in common with the lower class than they did with those in the other three groups and actually had a lower median family income than Americans who put themselves on the lowest rungs of the social ladder.[89] About one-in-six self-identified middle class Americans fell into the Struggling Middle.[90] On virtually every measure of social status, including income, education, home ownership, and health, the Struggling Middle Class fell behind the other groups.[91] They were the only

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[78] *Id.* at 15.
[79] *Id.*
[80] *Id.* at 16.
[81] *Id.* at 8, 15.
[82] *Id.* at 1.
[83] *Id.* at 8-10.
[84] *Id.* at 7.
[85] *Id.* at 10.
[86] *Id.*
[87] *Id.* at 11.
[88] *Id.*
[89] *Id.*
[90] *Id.*
[91] *Id.*

group in which the majority did not own its own homes.[92] They had trouble paying the rent or mortgage, and 30% had incomes of less than $10,000.[93] Six in 10 had total family income of just $20,000 a year.[94]

Women dominated this group with 63% of the Struggling Middle Class being female, the largest proportion of any of the four groups.[95] The Struggling Middle contained the largest proportion of minorities with 20% being black, 19% Hispanic, and 56% white.[96] The Struggling Middle also included the largest proportion of non-citizens at 14%, as well as adults born in another country, which accounted for 21%.[97] The Struggling Middle was also disproportionately young.[98] Notably, only 8% of the Struggling Middle were college graduates, 31% did not graduate from high school, and 45% did not go on to college after they graduated from high school.[99]

In many ways, this group looks typical of those who take out payday loans. Thus, if it is indeed true that payday and title loans serve the middle class, it is more likely that they serve this portion of the middle class, those struggling to pay bills, who are often single women with children with relatively low incomes compared to the rest of the middle class.

III. PAYDAY AND TITLE LOAN CUSTOMER DEMOGRAPHICS: EVIDENCE REFUTING THE MIDDLE CLASS MYTH

As stated above, the 2001 Elliehausen study reported that the majority of payday borrowers had incomes between $25,000 and $49,999.[100] The same statistic is quoted by the Community Financial Services Association of America, the national payday loan trade association.[101] Additionally, Financial Service Centers of America,

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[92] *Id.* at 12.
[93] *Id.* at 11.
[94] *Id.*
[95] *Id.* at 12.
[96] *Id.*
[97] *Id.*
[98] *Id.*
[99] *Id.*
[100] ELLIEHAUSEN & LAWRENCE, *supra* note 12, at 27.
[101] *Customer Demographics*, COMMUNITY FIN. SERVICES ASS'N AM., http://cfsaa.com/about-the-payday-advance-industry/customer-demographics.aspx (last visited Apr. 17, 2012). This source says customer incomes average $25,000 to $50,000; *see also Payday Advance National Customer Survey*, CYPRESS RESEARCH

Inc., another national trade association for payday lenders, reports that borrowers from their members "have an average annual household income of $40,000 or more."[102] Additionally, Advance America's Form 10-K for 2005 reports that the median income of one of its borrowers is $40,557, which compares to a national median income of $47,845 and $48,201 in 2005 and 2006 respectively according to the U.S. Census.[103]

The income data reported by Elliehausen and the industry is higher than virtually all other data on the same subject. The home ownership data from industry sources is also far higher than that collected in any other way.[104] Below we summarize data that has been made public from federal and state databases regarding the income of payday and title loan customers. Starting with payday loans, we report on a study analyzing Federal Reserve Board data, as well as data collected by states from lenders as part of the licensing and regulation process, which include California, Colorado, Illinois, Wisconsin and Indiana. We then discuss what little demographic data is available for title loan customers. Next we report on geographic studies regarding income of title loan borrowers.[105] All these data suggest that the Elliehausen study tells just part of the story.

A. Demographics of Payday Loan Borrowers

1. Federal Reserve Data from 2007

The most extensive evidence of payday customer

GROUP (2004), http://www.checkintocash.com/docs/media_center/Cypress_Research.pdf.

[102] *Fact Sheet: Payday Advances*, FIN. SERVICE CTRS. AM., http://www.fisca.org/Content/NavigationMenu/AboutFISCA/FiSCAFactSheet/FiSCAFactSheetPDA52008.pdf (last visited Apr. 17, 2012). The Financial Service Centers of America is a "national trade association that represents more than 7,000 neighborhood financial service outlets across the United States." *See also Chairman's Message: A Letter from Joe Coleman, Chairman of the Financial Service Centers of America*, FIN. SERVICE CTRS. AM., http://www.fisca.org/AM/Template.cfm?Section=Chairman_s_Message&Template=/CM/HTMLDisplay.cfm&ContentID=2163 (last visited Apr. 17, 2012).

[103] Carmen DeNavas-Walt et al., *Income, Poverty, and Health Insurance Coverage in the United States: 2006,* U.S. CENSUS BUREAU 4 (Aug. 2007), available at http://www.census.gov/prod/2007pubs/p60-233.pdf.

[104] Moreover, most other studies gather data from more reliable sources, namely directly from the loan documentation itself rather than from customer self-reporting over the phone, long after the loan was incurred.

[105] *See infra* notes 137-51.

demographics to date comes from a very comprehensive 2009 study funded by the Center for American Progress, a progressive public policy think tank.[106] This paper used 2007 data from the Federal Reserve Board to examine the financial and demographic characteristics of the U.S.'s payday loan borrowers.[107] Prior to this study, government survey data on payday loan use had never been publicly available. For the first time the Federal Reserve's data set, the Survey of Consumer Finances ("SCF"), included questions on payday loan use. Thus, this SCF report offers a far more detailed look at the characteristics of payday loan borrowers from a large sample of reliable data. Generally speaking this study reported that:

> Families who had taken out a payday loan within the past year tend to have less income, lower wealth, fewer assets, and less debt than families without payday loans.
>
> Families who borrowed from a payday lender in the past year were more likely to be minorities and single women than their counterparts. They also tended to be younger and had less educational attainment.
>
> Approximately 4 out of 10 families who borrowed from a payday lender within the past year owned their own home, while nearly 7 out of 10 families who had not taken out a payday loan were homeowners.
>
> Only 14 percent of families who withdrew a payday loan

[106] LOGAN & WELLER, *supra* note 5, at 4. The SCF is conducted every three years and is sponsored by the Federal Reserve Board in cooperation with the Department of Treasury. The survey gathers information about financial characteristics of American families, including their income, net worth, financial and nonfinancial assets, debt, use of financial institutions, and recent and planned expenditures. It also looks at their attitudes on financial and economic conditions and demographic characteristics, such as age, race, and educational attainment of heads of households. *Id.* Data from the SCF are unique in that no other national survey gathers comparable information on families' assets and debt. 2007 was the first year that the SCF asked respondents whether they had taken out a payday loan in the past year. Overall, just 2.4% of families surveyed reported having withdrawn a payday loan within the last year. That may seem like a small percentage of overall borrowers, but the demographic and financial characteristics of these two groups—payday loan borrowers and non-payday loan borrowers—were quite different. *Id.*

[107] *Id.* The authors of the study note that anecdotal evidence has suggested that payday lenders tend to service those least able to afford their 400% or more interest rates. *Id.* at 1.

> within the past year had ever been delinquent on a payment for any type of loan. This was nearly three times as large as the share of families without a payday loan who had also not been delinquent on payment.
>
> Roughly one-quarter of families who had borrowed from a payday lender within the past year identified themselves as savers, compared to nearly half of families who did not withdraw a payday loan.
>
> Payday loans are taken out primarily for convenience, to cover an emergency, and to pay for basic consumption needs, such as gas and food.[108]

The authors note that some of these findings "largely echo figures available on payday lending industry websites and studies published by private researchers concerning data collected during the first half of this decade, but that their analysis provides a far more comprehensive comparison between payday loan borrowers and non-borrowers."[109]

More specifically on the subject of income, the authors reported that the median income of the payday loan borrower was $30,892, whereas the median income of the non-payday users was $48,397, 56% greater.[110] The mean income was $32,614 for payday borrowers and $85,473 for non-payday users, 62% greater. Net worth rates were also astoundingly different among payday loan users and general survey participants, with payday users having a mean net worth of $22,616 and non-payday users having a mean net worth of $469,374, a $446,758 difference.[111] On home ownership rates, the authors reported that 41% of payday loan users owned their own homes, whereas 69% of non-payday users owned their own homes, 29% greater.

In sum, based upon the 2007 SCF data from the Federal Reserve, families who took out a payday loan within the year prior to the study had lower income, net worth, asset level, and debt level than families who had not withdrawn a payday loan.[112] The families that used payday loans were also less likely to be homeowners and

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[108] *Id.*

[109] *Id.* at 1. For a more detailed discussion of the other studies to which the authors refer, see *id.* at 5-6.

[110] *Id.* at 8.

[111] *Id.*

[112] *Id.* at 12.

less likely to have savings.[113] The heads of households of families who borrow from a payday lender also tended to be younger, were more likely to be single women, and overall had less education than non-payday loan users. They were also more likely to be minorities than the non-users.[114] In concluding the study, the authors noted that:

> Because payday loans are accompanied by high fees to some extent, which on an annualized basis amount to around 400 percent, the use of these types of loans may impede the wealth creation for many borrowers who already have less wealth to begin with. Given the explosive growth in payday lending transactions, payday lending practices and regulations deserve the close scrutiny of policymakers.[115]

These study findings confirm earlier research and regulator data, demonstrating that minorities, lower-income, and otherwise vulnerable families are the typical customers of payday lenders.

2. Data Gathered by States from Lender Reporting

Information from state regulators suggests even lower household income rates and lower home ownership rates, though admittedly these data report only on individual incomes not household incomes.

a. Data Collected by the State of Colorado

Colorado has a new payday loan law as of 2010,[116] which

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[113] *Id.*

[114] *Id.*

[115] *Id.*

[116] *See* Colo. H.B. 10-1351, 67th Gen. Assemb., Sec. Reg. Sess. (Colo. 2010), *available at* http://www.leg.state.co.us/CLICS/CLICS2010A/csl.nsf/fsbillcont3/04 1577DBD253C4C9872576D20063325F?Open&file=1351_01.pdf. The rule change governing HB1361 sets limits on the fees payday lenders may impose on customers, caps the annual interest rate of said loans at 45%, and the term of the loans was extended from one pay period to six months. *State Legislature Passes New Regulatory Bill Regarding Payday Loans in Colorado*, CASHADVANCE.COM (Nov. 4, 2010), http://www.cashadvance.com/news/colorado-attorney-general-approves-payday-loan-rules. The bill originally required that cash advance companies no longer collect an origination fee. However Colorado Attorney General John Suthers ruled that lenders could continue to collect such fees, but set a limit on such fees at $75 per $500 loaned. He also required payday loan companies to return a prorated amount if the loan is paid off early. *Id.*

caps interest at 45% per annum.[117] Even before 2010, however, Colorado collected extensive data on payday customers and their loans.[118] Pursuant to a 2000 law, the Colorado Attorney General's

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[117] *See* Colo. H.B. 10-1351, 67th Gen. Assemb., Sec. Reg. Sess. (Colo. 2010). The Colorado legislation page summarizes the new Colorado law as follows:

> **Summary of Legislation**
>
> Under current law, a lender may impose a finance charge for each deferred deposit loan (payday loan) up to 20 percent of the first $300 lent plus 7.5 percent of any amount lent in excess of $300. HB10-1351 limits the finance charge to a maximum annual percentage rate of 45 percent. A minimum loan term of six months is required with no prepayment penalty. The bill provides that a lender may charge a monthly maintenance fee for each outstanding loan, not to exceed $7.50 per $100 loaned, up to a maximum of $30 per month. Although multiple loans may be made to the same consumer, the total amount financed cannot exceed $500 at any one time. A 30-day waiting period between loans is required. The Governor signed the bill into law on May 25, 2010, and unless a referendum petition is filed, the bill will take effect August 11, 2010. The bill applies to loans made or renewed on or after that date.
>
> **Background**
>
> Payday loans are limited by law to $500 or less, and are due to the lender on the consumer's next payday, typically in two weeks. The typical annual percentage rate on a two-week $500 payday loan, at the maximum $75 finance charge, is 391 percent. In 1998, 303,462 Colorado residents obtained 1,534,976 payday loans from the state's 610 licensed lenders. Over $566 million in loans were made during 2008. The average payday loan was $369, with a 317 percent average annual percentage rate.
>
> **Assessment**
>
> Limiting the maximum annual percentage rate on payday loans to 45 percent plus $7.50 per $100 loaned with a $30 monthly cap is assessed at having no state or local fiscal impact. Currently, the Department of Law licenses payday lenders and conducts compliance examinations of their loans. Examinations will be modified to reflect the new rates established by statute. The department currently investigates and litigates cases involving payday lenders. Existing resources are sufficient to continue to litigate these types of cases in the future. Therefore, no further state expenditures are required.

Concerning the Maximum Authorized Interest Rate for a Payday Loan, COLO. GEN. ASSEMBLY (July 1, 2010), http://www.leg.state.co.us/clics/clics2010a/csl.nsf/fsbillcont3/041577DBD253C4C9872576D20063325F?Open&file=HB1351_f1.pdf.

[118] In Colorado, the Attorneys General's office regulates and enforces payday loan laws. This is a significant departure from most states, where the separate regulatory body, frequently understaffed or with higher priorities, is in charge of

office also maintains very detailed data about the demographics of payday loan customers.[119] Since 2000, examiners from the Office of the Colorado Attorney General have gathered information in connection with supervised lender compliance examinations.[120]

Regarding income of customers in Colorado, the mean gross income of all borrowers was $2,458 per month, or $29,496 annually.[121] The monthly average was $2,691, or $32,292 annualized, for men and $2,266, or $27,192 annualized, for women. Borrowers with gross monthly income of $2,500 or less accounted for more than 60% of all borrowers and the median income for all borrowers was $2,199.[122] By comparison, the average per capita personal income for Coloradans during the same period (2000-2009) was $38,490.[123] The payday loan users' income is far below the overall median.

b. Data Collected from the State of California

The California Department of Corporations recently hired an outside service, Applied Management Services, to study payday borrowers and lenders between August and December of 2007.[124] The study consisted of an online survey of lenders, a download of all customer demographic information from 93% of active payday lenders in the state, a phone survey of 1,494 borrowers, and five customer focus groups.[125] Income data from customer files was collected in ranges. The largest percentage of customers reported gross income between $30,000 and $39,999,[126] compared to a per

enforcement.

[119] *Payday Lending Demographic and Statistical Information, July 2000 through December 2009*, CFA PAYDAY LOAN CONSUMER INFO. (Mar. 2, 2010), http://www.paydayloaninfo.org/elements/www.paydayloaninfo.org/File/DDLASummary(2009).pdf.

[120] *Id.*

[121] *Id.* at 4.

[122] *Id.* at 3-4.

[123] *Annual State Personal Income and Employment. Personal Income, Per Capita Personal Income, Disposable Personal Income, and Population (SA1-3, SA51-53)*, U.S. DEP'T COMM., BUREAU ECON. ANALYSIS, http://www.bea.gov/iTable/iTable.cfm?reqid=70&step=1&isuri=1&acrdn=4 (last visited Apr. 17, 2012) [hereinafter *State Per Capita Income Summaries*] (limiting search to Colorado, 2000-09, per capita personal income).

[124] APPLIED MANAGEMENT AND PLANNING GROUP, 2007 DEPARTMENT OF CORPORATIONS: PAYDAY LOAN STUDY (Dec. 2007, updated ed. June 2008), http://www.corp.ca.gov/Laws/Payday_Lenders/Archives/pdfs/PDLStudy07.pdf .

[125] *Id.* at vi-viii.

[126] *Id.* at 63.

capita personal income in the state of $43,211.[127]

c. Data Collected from the State of Wisconsin

In 2000, the Wisconsin Department of Financial Institutions studied the income of 450 customers at seventeen lenders in Wisconsin.[128] The department found that 54% of borrowers were women and that of the customers who disclosed their income in terms of gross income, the average annualized income was $24,673,[129] compared to an average per capital personal income in the state for the same period of $29,141.[130] On home ownership, Wisconsin found that 64% of the people surveyed rented their homes.[131]

d. Data Collected from the State of Illinois

In 1999, Illinois collected data from customers of payday loan stores through payday customer surveys.[132] The average age of the payday loan customer was 36.9, 60% of users were women, and the average salary was $25,131,[133] compared to the two-year average per capita personal income in the state of $31,632 for 1999-2000.[134] Seventy-five percent claimed to be renters, and 15% said they owned their homes. The remaining 10% had other living arrangements.[135] More specifically, analyzing these data provided by the Illinois Department of Financial Institutions, the Woodstock Institute found that 19% of customers earn less than $15,000, 38% earn from

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[127] *State Per Capita Income Summaries*, *supra* note 123 (limiting search to California, 2007, per capita personal income).

[128] *State of Wisconsin Department of Financial Institutions*, *Review of Payday Lending in Wisconsin 2001*, WIS. DEP'T FIN. INSTITUTIONS, 4 (2001), http://legistar.milwaukee.gov/attachments/22854.pdf.

[129] *Id.*at 5.

[130] *State Per Capita Income Summaries*, *supra* note 123 (limiting search to Wisconsin, 2000, per capita personal income).

[131] *State of Wisconsin Department of Financial Institutions*, *supra* note 128, at 5.

[132] CONSUMER CREDIT DIVISION, ILLINOIS DEP'T OF FINANCIAL INSTITUTIONS, SHORT TERM LENDING: FINAL REPORT, 23-25, http://www.idfpr.com/dfi/ccd/pdfs/Shorterm.pdf (last visited Apr. 17, 2012) [hereinafter SHORT TERM LENDING].

[133] *Id.* at 26.

[134] *State Per Capita Income Summaries*, *supra* note 123 (limiting search to Illinois, 1999-2000, per capita personal income).

[135] SHORT TERM LENDING, *supra* note 132, at 26.

$15,000 to $24,999, 31% earn from $25,000 to 39,999, and 12% earn $40,000 or more.[136]

B. Demographics of Title Loan Borrowers

Industry claims of middle class patronage are even more dubious when dealing with title loans. Professor Todd Zywicki has produced three articles based upon interviews with title lenders, all claiming with little substantiation that the typical title loan customer makes more than $50,000 annually.[137] The American Association of Responsible Auto Lenders ("AARAL") – a title lending trade association – claims that the average title loan borrower has a household income of "over $50,000" and the President of a large title lender in Texas testified that the average borrower earns between $50,000-$65,000 nationally.[138] Professor Zywicki also concludes, without much substantiation, that car title borrowers generally fall into three main categories: (1) the unbanked who lack access to both mainstream credit and subprime credit such as payday loans which require a bank account; (2) relatively higher-income borrowers with poor credit; and (3) owners of very small businesses or sole proprietorships, such as landscapers or handymen who use these loans to make payroll or purchase items for a job.[139] Zywicki notes

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[136] Caskey, *supra* note 34, at 24 (citing Woodstock Inst., *Unregulated Payday Lending Pulls Vulnerable Consumers Into Spiraling Debt*, Reinvestment Alert (Mar. 2000). In addition, according to Michael E. Stegman and Robert Ferris, Indiana regulators report that borrowers in Indiana tend to be primarily in the $25,000 to $30,000 income range. Stegman & Ferris, *supra* note 9, at 15.

[137] *See Consumer Use*, *supra* note 38, at 442; *Money to Go*, *supra* note 38, at 34; Zywicki & Okolski, *supra* note 38, at 2. Zywicki's three scholarly articles on the subject, all similar in content and all published in 2009 and 2010, all argue that title lending is useful to many consumers and should not be regulated. *See Consumer Use*, *supra* note 38, at 447-48; *Money to Go*, *supra* note 38, at 36-7; Zywicki & Okolski, *supra* note 38, at 3. Zywicki and his co-authors rely almost exclusively on industry interviews to support their numbers. *See, e.g.*, *Consumer Use*, *supra* note 38, at 434 n.27, 442 n.59; *Money to Go*, *supra* note 38, at 34. These interviews were turned into a report and used to influence the New Mexico legislature. Most of the information in this report came from industry insider Robert Reich, the current president of Texas Car Title Loan Services and Community Loans of America. *See* Verant, *supra* note 38, at 36.

[138] *See* Texas Senate Committee on Business and Commerce (Feb. 22, 2011), http://www.senate.state.tx.us/75r/senate/commit/c510/c510.htm (Statement of Robert Reich, President of Community Loans of America and Texas Car Title Loans Services, at Part I, from 1:33.50-1:48.30; cited statement made at 1:39.22 to 1:39.27).

[139] *Money to Go*, *supra* note 38, at 33-35.

that borrowers most commonly fall into the first "unbanked" category, members of which make up about half of all title loan borrowers.[140]

Data reported on by Martin and Adams, using New Mexico data reported directly by lenders to the State of New Mexico Financial Institutions Division, tell a different and far less prosperous picture. These data show that the average title loan borrower in New Mexico makes between $20,116 and $27,719.[141] The data were collected in a state where the median income for even a single-person household is far above any of these income numbers.[142] In Table 12.1 of their article, *Grand Theft Auto Loans*, Martin and Adams compare the average incomes for title loan borrowers for each year to the Federal Health and Human Resources Poverty Guidelines for a family of four.[143] The comparison revealed that, rather than being middle class, most borrowers are near or below the poverty line.[144] Moreover, these data show that the average income of all title loan customers is far below the median or average income of the rest of the state.[145] Data from other states similarly show gross incomes between $22,000 and $26,000.[146] Illinois regulators, for instance, report that title loan customers in Illinois earn an average of $19,808,[147] which is far lower than the two-year average per capita personal income of $31,632 for 1999-2000 for the state.[148] These data show that in Illinois, title loan customers had even lower incomes than payday loan customers.

The Illinois data also demonstrate that homeownership rates for title loan borrowers are far below the national average, with 80% of title loan borrowers reporting that they rent their homes.[149]

[140] *Id*. at 34.

[141] Martin & Adams, *supra* note 2, at 76, 77, Tbls. 12-12.1. The average is between $20,116 and $27,719 even when you include in the data one borrower with an alleged income of over two million dollars.

[142] *Id.* at 76, Tbl. 12.

[143] *Id.* at 77, Tbl. 12.1.

[144] *Id*.

[145] *Id.* at 78.

[146] According to Illinois data from 1999, the average title loan consumer has an income of less than $20,000, and in Missouri, less than $25,000, as of 2006. *See* Jean Ann Fox & Elizabeth Guy, *Driven Into Debt: CFA Car Title Loan Store & On-Line Survey*, CONSUMER FED. AM., 3 (Nov. 2005), http://www.consumerfed.org/_pdfs/_Car_Title_Loan_Report_111705.pdf.

[147] SHORT TERM LENDING, *supra* note 132, at 26.

[148] *State Per Capita Income Summaries*, *supra* note 123 (limiting search to Illinois, 1999-2000, per capita personal income).

[149] SHORT TERM LENDING, *supra* note 132, at 26.

Additionally, the typical title loan borrower is a non-homeowner whose income is well below the median and who is unbanked.[150] A recent FDIC study reports that the unbanked, which make up approximately 8% of the total U.S. population, are more likely to earn less than $30,000 a year, be people of color, be unmarried, have less than a high school degree, and be foreign-born Spanish speakers.[151] In summary then, title loan customers appear to be far from middle income and are perhaps even less well-off financially than payday loan borrowers.

IV. PAYDAY AND TITLE LOANS STORE LOCATIONS: FURTHER EVIDENCE REFUTING THE MIDDLE CLASS MYTH

Given that payday and title loan stores are often located in poor or working class neighborhoods, it seems unlikely that the primary demographic served is the middle class. Numerous geographical studies have examined the spatial distribution of alternative financial service providers ("AFSPs") such as payday and title loan providers.[152] These studies undermine the credibility of

[150] *Id.*

[151] FDIC NATIONAL SURVEY OF UNBANKED AND UNDERBANKED HOUSEHOLDS, FED. DEPOSIT INS. CORP. 16-19 (2009), http://www.fdic.gov/householdsurvey/full_report.pdf (explaining that "Minorities more likely to be unbanked include blacks (21.7 percent), Hispanics (19.3 percent), and American Indian/Alaskan (15.6 percent).").

[152] Steven M. Graves, *Landscapes of Predation, Landscapes of Neglect: A Location Analysis of Payday Lenders and Banks*, 55 PROF. GEOGRAPHER 303, 312 (2003) (analyzing the site location strategies of banks and payday lenders in metropolitan Louisiana and Cook County, Illinois, Graves finds that "the payday lending industry is targeting neighborhoods with a higher percentage of poor and minority residents."); Gallmeyer & Roberts, *supra* note 8, at 534 (reporting that neighborhoods occupied by payday lenders in the front range communities of Colorado "are characterized by lower median household income levels and higher mean poverty rates," but observe that minority communities or those with a higher percentage of young adults do not disproportionately attract payday lenders while communities characterized by a larger percentage of foreign-born or the elderly "are significantly more likely to host payday lending, even controlling for their economic profile"); William C. Apgar Jr. & Christopher E. Herbert, *Subprime Lending and Alternative Financial Service Providers: A Literature Review and Empirical Analysis*, U.S. DEP'T HOUSING & URBAN DEV., II-34 (Mar. 1, 2006), http://www.huduser.org/Publications/pdf/sublending.pdf (finding that areas without banks but with an AFSP "have a much larger than average Hispanic share and much lower incomes. They also have fewer citizens, more households on public

industry's claims that its products are used primarily by the middle class. These studies have repeatedly found that AFSPs are most commonly located in low-income neighborhoods with moderate poverty, where a large percentage of the residents are members of racial/ethnic minority groups, young or elderly, or recent immigrants. Many residents of these areas also lack a high school diploma.[153] Conversely, these studies show that as a neighborhood's median household income increases and its residents' skin pigment whitens, AFSPs become increasingly scarce while the concentration of banks increases.[154]

In one study, Professor Prager examined county-wide data for the entire country and found that counties with the highest concentration of AFSPs are counties in which a large percentage of the population has no credit score or a "credit score that would place them in the subprime category."[155] This finding suggests that AFSPs "simply locate where the demand for their services is likely to be greatest."[156]

In another study, Professors Cover, Spring and Kleit found that commercial activity is a strong determinant of AFSPs' location, as the payday and title loan industries have long contended.[157] However, in two of the four metropolitan areas studied, market

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assistance, [and] fewer households with some college education."); Robin A. Prager, *Determinants of the Locations of Payday Lenders, Pawnshops and Check-Cashing Outlets*, FED. RES. BRD., 3, 21 (2009), http://www.federalreserve.gov/pubs/feds/2009/200933/200933pap.pdf (finding that AFSPs are more prevalent in areas where a large percentage of the population is black); Mark L. Burkey & Scott P. Simkins, *Factors Affecting the Location of Payday Lending and Traditional Banking Services in North Carolina*, 34 REV. OF REG'L. STUDIES 191, 198 (2004) (finding that areas in North Carolina with the higher numbers of AFSPs have a higher percentage of minorities, lower education levels, more people receiving public assistance, a younger population, and more recent immigrants); Tony E. Smith, Marvin M. Smith & John Wackes, *Alternative Financial Service Providers and the Spatial Void Hypothesis*, 38 REG'L SCI. & URBAN ECON. 205, 223 (2008) (finding that in the four county region around Philadelphia, Pennsylvania, the median household income of neighborhoods with high concentrations of AFSPs was, on average, nearly 40% less than the county-wide median household income).

[153] Prager, *supra* note 152, at 21 (finding that AFSPs are more prevalent in areas where a large percentage of the population lacks a high school diploma).

[154] Graves, *supra* note 152, at 312 (reporting that bank neighborhoods are substantially whiter and wealthier than are payday loan neighborhoods."); Apgar & Herbert, *supra* note 152, at II-23, Exhibit 2.

[155] Prager, *supra* note 152, at 21.

[156] *Id.*

[157] Cover, Spring & Kleit, *supra* note 8, at 339.

factors, such as the size of the population, percent urban, or amount of commercial activity could not explain the significantly greater numbers of AFSPs in neighborhoods with large percentages of Hispanics.[158] Accordingly, it seems highly unlikely that these stores serve primarily the middle classes. Rather, the typical payday customer has more in common with those who live in or near the neighborhoods where payday lenders most often do business than with middle class households.

V. Demographics Study of Payday Loan Use Among Bankruptcy Filers in New Mexico

To add something new to the data on high-cost loans and customer demographics, we applied for a grant to study high-cost loan borrowers who ultimately file for bankruptcy. The study was funded by the National Conference of Bankruptcy Judges and took place in New Mexico,[159] where there are more payday and installment lenders per person that any other state.[160] The idea was to compare the income and homeownership data for high-cost loan users who filed for bankruptcy in a given period, to those of the general population of bankruptcy debtors for the same period. Our working hypothesis was that even among credit-challenged bankruptcy debtors, people who list high-cost loans like payday loans, title loans, and installment loans in their bankruptcy petitions would be worse off financially than those who did not list these types of loans.

A. Assumptions

One might question whether studying bankruptcy debtors is an appropriate way to study the income and homeownership demographics of payday loan borrowers as compared to the general population, but it makes a certain degree of sense. Scholars have long claimed that bankruptcy debtors themselves come primarily from the middle classes.[161] Moreover, middle income people have become far

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[158] *Id.* at 335-336.

[159] The study was conducted by author Nathalie Martin.

[160] Steven Graves, *Think Payday Lending Isn't Out of Control in the United States?*, CAL. STATE UNIV. NORTHRIDGE, http://www.csun.edu/~sg4002/research/mcdonalds_by_state.htm (last visited Apr. 17, 2012) (reporting 41.78 payday lenders per 100,000 persons).

[161] SULLIVAN, WARREN & WESTBROOK, *supra* note 16, at 6 (noting that "bankruptcy is a largely middle-class phenomenon"). Poorer people often have less

more cash-constrained since the financial crisis of 2008.

Thus, the rationale for studying bankruptcy debtors and their debts, income, and homeownership rate was that the sample of bankruptcy debtors would reflect a mostly middle class population that was also cash-constrained. What could be a better sample upon which to test the theory that payday borrowers are cash-constrained, mostly middle class people? Moreover, studying bankruptcy debtors seemed to be one way in which to test the theory that more middle class people are using payday loans since the financial crisis of 2008. Finally, if one isolated homeowners who file for bankruptcy from those who are not homeowners, we might be able to tell, albeit through a somewhat unique sample, whether more homeowners who are cash constrained are using payday loans since the recession.

The study originally contemplated gathering data in 2007, 2008, and 2009 only. After the crisis, the study was expanded to include data from 2010 and 2011 so any changes that may have occurred as a result of the financial crisis were captured. Ultimately, the data was calculated in two different ways, first by separating out the payday loan users from the whole and comparing their income and home ownership to the general bankruptcy filer population, and second, by culling out the homeowners and comparing their use of payday loans year-by-year to determine if there was an increase in the use of such loans after the crisis. We took the first step in order to determine whether payday loan users had similar income and home ownership rates to the rest of bankruptcy filers. We were using income and homeownership as the indicia of middle class status. We took the second step in order to see if cash-constrained homeowners in this sample resorted to payday loans more often after the recession, assuming that if payday loan users were indeed middle class, and if homeowners were generally middle class as the 2008 financial crisis hit, more homeowners would use payday loans to bridge the gap.

As set out below, we found that payday loan users generally had lower income and home ownership rates than bankruptcy debtors as a whole, as well as less valuable homes if they were homeowners. We also found that bankrupt homeowners did not resort to payday loans more often after the crisis. We concluded that based upon the results of this one modest study, there was little support for the notion that middle class people use these loans more often following

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access to an attorney, and also may be judgment proof and thus find less need for bankruptcy than people with more income and more assets. Poorer people also have historically had less access to credit, though that is obviously less true today than in the past.

the crisis.[162]

B. Methodology

To get started, we needed to figure out how to identify the loans we wanted to study when breaking out the group using high-cost credit. In New Mexico, where we gathered our data, a new law was passed in 2007 that heavily regulated payday loans.[163] The new law defined a payday loan as a loan with a duration of fourteen to thirty-five days,[164] involving a post-dated check or an automatic debit.[165] After the new law, the majority of New Mexico payday lenders reconfigured their loans to get outside this definition, and thus outside the regulation.[166]

While most of the payday loan market left traditional payday lending after the new law, some smaller lenders in the local market continued to offer non-amortizing payday loans due on a borrower's next payday. Moreover, compared to 2007-2009, many more New Mexico consumers began using internet payday loans in 2010 and 2011. Based on these facts, we knew we needed to count both payday loans and installment loans.[167] For simplicity, we refer to all of these loans as payday loans throughout this paper, but we measured the usage rate for both.

Some of the data for this study was gathered in connection with a previous study. In the prior study, author Nathalie Martin and Koo Im Tong set out to measure the incidence of payday and

[162] The sample was taken in one state over a period of five years, in part to capture changes that were captured over time that also might be the result of the financial crisis of 2008. The study by no means purports to predict anything on a national level, and only attempts to make small predictions on a more regional level. At most it makes predictions and conclusions about whether payday borrowers in a poor state who file for bankruptcy are less likely to be middle class than bankruptcy debtors who do not use payday loans. The study can easily be replicated in states that are not as poor in order to see if the results are the same.

[163] Martin, *supra* note 3, at 577-84.

[164] N.M. Stat. Ann. §58-15-32 (West 2012)

[165] N.M. Stat. Ann. §58-15-34 (West 2012).

[166] *Id.* at 585-86.

[167] We were unsure whether to count title loans, but ultimately decided not to include them. Initially we looked for title loans but found very few. Including them required us to check an additional bankruptcy schedule, Schedule D, which did not seem worthwhile given the number of petitions we reviewed. We also did not count installment loans by traditional consumer lenders like Beneficial and Household Finance, but rather only lenders who offer loans at 100% per annum or more. As set out above, most charged much more to most if not all customers.

installment loan usage among consumer bankruptcy debtors, both in Chapter 7 and Chapter 13, in New Mexico.[168] We measured whether the usage of these loans was constant over a 2007-2009 period, in relation to the number of overall bankruptcy debtors.[169] Our data indicate that, from 2007 to 2009, an average of 18.9% of bankruptcy debtors in New Mexico reported using payday or high-cost installment loans. Bankruptcy rates also increased significantly year-by-year from 2007 through 2010.[170] We also found that the percentage of bankruptcy debtors using payday loans went down steadily in 2009 and 2010, but jumped back to pre-crisis levels in 2011.[171] Finally, we found that the use of high-cost loans among bankruptcy debtors was far higher than among the general population.[172]

To perform the demographic comparisons described above, we downloaded all the bankruptcy petitions, schedules, and statements for all Chapter 7 filers in New Mexico for the months of June 2007, 2008, and 2009, 2010 and 2011.[173]

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[168] *See* Martin & Tong, *supra* note 1.

[169] Overall, we gathered and studied data from 1,179 petitions: 269 in 2007, 377 in 2008, and 506 in 2009. For June of 2009, we found that 14% of bankruptcy debtors listed at least one payday loan in their schedules, and 56.1% of those who had loans had more than one listed. For 2008, 23% of bankruptcy debtors listed at least one payday loan in their schedules, and 76.8% of those who had loans had more than one listed. For June of 2007, we found that 23% of bankruptcy debtors listed at least one payday loan in their schedules, and 76.1% of those had more than one listed. Under any measure, the data show that bankruptcy filers in New Mexico used a tremendous number of payday loans, and unquestionably far more than in the general population.

[170] *Annual Business and Non-Business Filings by State* (2007-2011), AM. BANKR. INST., http://www.abiworld.org/AM/Template.cfm?Section=Annual_U_S_Filings1&Template=/TaggedPage/TaggedPageDisplay.cfm&TPLID=62&ContentID=36294 (last visited Apr. 17, 2012) (reporting that in New Mexico the number of non-business filers nearly doubled from 2007 (3,261) to 2010 (6,292)).

[171] In the prior study, we found that for the 1,036 debtors who filed in June of 2007, 2008, and 2009, 23%, 23%, 14%, respectively, listed payday or high-cost installment loans on their bankruptcy schedules. These numbers included both chapter 7 and chapter 13 debtors. For 2010 and 2011, we only looked at Chapter 7 cases. For 2010, the percentage of debtors using payday loans dipped to 10.4% but it was back up to 21.4% by 2011.

[172] Previous studies showed that payday loan use among the general population ranges between 2.4% and 6% of the population. *See* Martin & Tong, *supra* note 1 at 801-02 (citations omitted). Payday loan usage rates as found in Martin and Tong's study reveal a rate of usage for bankruptcy debtors at four to five times that of the general population. *Id.* at 803-05.

[173] We eliminated any filers who did not file Schedules because there was no

1. Comparing the Payday Borrowers to the Whole of Bankruptcy Filers

For part one of the study, we identified the payday and installment loans on the Schedule F of each debtor's Schedules of Assets and Liabilities, and then split out the filers with these loans from the rest of the filers. We then compared these high-cost loan user debtors' incomes and home ownership rates to the income and home ownership rates for the bankruptcy debtors as a whole.

a. Income of Bankruptcy Filers as a Whole Compared to those with Payday Loans

Chart 1

Year	Income – Overall	Income – Payday
2007	$28,848	$26,724
2008	$27,204	$24,156
2009	$37,380	$36,756
2010	$32,394	$30,730
2011	$31,243	$28,275

As these data show, payday loan users' income was lower on average than the whole of debtors in each year studied. In most years, these differences were quite significant, representing an increase in

data for those debtors. We did not include Chapter 13 cases for this part of the study. We chose to use data from the month of June of each year because it is a fairly average month in terms of payday loan use, a fact we gleaned by talking to industry people. June is a month in which there are no major holidays and thus it typically does not see an increase in payday loan use. We thought it was a good month in which to get average, if not conservative, payday loan usage rate. Moreover, June tends to be a very average month for bankruptcy filings. Late winter and early spring always see a spike in bankruptcy filing rates, with February being a very popular time to file for bankruptcy. *See* Robert Lawless, *No Surprise: Bankruptcy Filings Jump in February*, CREDIT SLIPS, http://www.creditslips.org/creditslips/2012/03/no-surprise-bankruptcy-filings-jump-in-february.html#more (last visited Mar. 11, 2012). Daily bankruptcy filing rate slowly erodes throughout the year, as shown by the charts on this blog and in its sources. As author Robert Lawless explains "a simple regression on each year implies that the daily filing rate erodes an average of around 1.3% each month from its high in the early part of the year. This downward trend over the course of the year is true even in years like 2009 and 2010 when the total annual bankruptcy rate increased as compared to the previous year. Thus, when bankruptcy filings go up on an annual basis, the bulk of the increase comes in the early part of the year."

income between the two groups of 7-13% for most years. This was not true in 2009, when the percentage of income increase for the whole over the payday users was just 1.6%, and which turned out to be statistically insignificant. While the differences in income between the two groups was not always statistically significant when looking at each year individually, as a whole the income differences were statistically significant.[174]

Moreover, if median income is an indicator of middle class status, the New Mexico Chapter 7 bankruptcy filers in our general sample clearly were more lower-middle class than middle class. Their incomes overall were significantly below the median in the state for a family of any size for every year. Even so, the payday loan sample had lower incomes than the overall debtor sample.[175]

b. Home Ownership Rates Among Bankruptcy Filers Overall Compared to Those with Payday Loans

While the income differential between the payday users and the whole were not large, the home ownership rates were starkly different in the two groups. As a point of reference, national home ownership rates were between 65.9 and 68.4% from 2007-2011,[176] and New Mexico home ownership rates were between 68.6 and 71.5% for the same period.[177] Below we compare home ownership rates among the bankruptcy filers to those of those with payday loans.

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[174] To test for statistical significance, we ran a t-test comparing incomes of bankruptcy debtors as a whole with those who took out payday loans. This test showed that overall, there was a statistically significant difference between the incomes for payday bankruptcy debtors and bankruptcy debtors in general, p=0.03 or less.

[175] The per capita personal incomes in New Mexico were $31,675 for 2007, $33,490 for 2008, $32,389 for 2009, $33,342 in 2010, and $34,575 in 2011. *State Per Capita Income Summaries*, *supra* note 123 (limiting search to New Mexico, 2007-2011, per capita personal income)

[176] *Table 14. Homeownership Rates for the U.S. and Regions: 1965 to Present,* U.S. CENSUS BUREAU, http://www.census.gov/hhes/www/housing/hvs/historic/index.html (last visited Apr. 17, 2012) (recording a low of 65.9% in the second quarter of 2011 and a high of 68.4% in the first quarter of 2007).

[177] *Table 15. Homeownership Rates by State: 1984-2011,* U.S. CENSUS BUREAU, http://www.census.gov/hhes/www/housing/hvs/annual11/ann11ind.html (last visited Apr. 17, 2012) (recording a low of 68.6% for 2010 and a high of 71.5% for 2007).

Chart 2

Year	Home Ownership – Overall	Home Ownership – Payday
2007	52%	9%
2008	55%	13%
2009	51%	5%
2010	62%	40%
2011	54%	38%

Averaging the first three years, bankruptcy debtors in the sample had a 53% home ownership rate, whereas those with payday or other high-cost loans had just an 8% home ownership rate. Data from 2010 and 2011 tell a very different story. The rate of homeownership among payday loan users spiked dramatically in 2010. It is not clear why home ownership rates went up so much in 2010 and 2011. Perhaps the home mortgage crisis allowed many people to purchase homes that would not otherwise have had such an opportunity, including more people from lower economic groups. Perhaps home ownership itself is no longer such a good indicator of middle class status following the 2008 home mortgage crisis.

c. Home Values Among the Bankruptcy Filers Overall Compared to Those with Payday Loans

Chart 3

Year	Average Home Values – Overall	Average Home Values – Payday
2007	$177,376	$91,524
2008	$233,129	$85,174
2009	$171,226	$95,096
2010	$60,844	$102,535

For all the years studied, average home values were far lower for payday users than for the general population of bankruptcy debtors.

2. Increase or Decrease in Payday Loan Usage Among All Homeowners From 2007 to 2011

For part two of the study, we did not separate out the payday loan users from the rest of the bankruptcy filers. Rather, we separated out the homeowners from the non-homeowners. We then measured the rate of payday loan usage among these bankruptcy homeowners over the five-year periods.

Chart 4

Year	Percentage of Homeowners Using Payday	Percentage of All Debtors Using Payday
2007	17.2%	23%
2008	23.5%	23%
2009	9.7%	14%
2010	17%	10.4%
2011	15.4%	21.4%

From these data, we learned that payday loan usage among bankrupt homeowners did not increase after the 2008 crisis. Rather, such loan usage has stayed the same or dipped slightly since 2008 and 2009. This could cause one to conclude that, at least according these limited data, payday loan usage has not increased among the middle class, even among the cash-constrained lower middle class.

VI. CONCLUSION

In sum, our data show that Chapter 7 filers typically have a statistically significant median income well below the median income in the state overall.[178] Not surprisingly, when you separate out the bankruptcy filers who took out payday loans from those who did not, and compare the payday users' income to the whole of bankruptcy filers, the filers with payday loans had even lower median incomes than the sample of bankruptcy debtors as a whole. High-cost loan

[178] Again, the per capita personal income in New Mexico, was $31,675 for 2007, $33,490 for 2008, $32,389 for 2009, $33,342 in 2010, and $34,575 in 2011. *See State Per Capita Income Summaries*, *supra* note 123 (limiting search to New Mexico, 2007-2011, per capita personal income). Median incomes for all bankruptcy debtors in our sample, as well as the payday borrowers only, are in Chart 1above.

users also had lower home ownership rates. From 2007-2009, the payday users had far lower home ownership rates, up to ten times lower. In 2010 and 2011, however, the homeownership rates among the bankruptcy debtors who used payday loans spiked considerably, making the difference between the two groups more like 10-30% as opposed to 1,000%.

Since homeownership has long been considered an indicator of middle class status, we also wanted to see if these bankruptcy data would shed light on whether more homeowners were using payday loans more often following the crisis. To test this possible hypothesis, we recalculated the data, this time starting with the homeowners rather than the payday lending customers as the breakout group to compare to the whole. In other words, if we isolated all of the homeowners in the sample, would the rate of payday loan usage among homeowners go up after the crisis? The answer turned out to be no. Even if homeowners in bankruptcy have not turned to these loans with greater frequency, can we really conclude that the loans were now more popular with the middle class? We think not.

Many scholars had previously analyzed the high-cost loan industries' claims that they serve primarily the middle class. All sources other than the industries' own studies have found the middle class myth to be just that, a myth. Our own study, though limited in scope, suggests that the 2008 financial crisis has not necessarily changed the demographics for payday loans and other high-cost loans. Rather, these products most likely continue to be used by the same demographic traditionally served, namely the working poor. Given that these individuals have more to lose through high-cost credit than a more middle class clientele would, more effective regulation is warranted.