How Predatory Payday Lenders Plot to Fight Government Regulation

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A man wears a sticker showing support for a bill dealing with high-interest rate payday loans in Little Rock, Arkansas in 2007. (AP Photo/Danny Johnston)

Months before a federal agency proposed a new rule threatening the profits of exploitative payday lenders across America, the industry's leaders gathered at a posh resort in the Bahamas to prepare for war.

At the March strategy session, Gil Rudolph of Greenberg Traurig, one of several law firms working with the lenders, described the coming storm this way: "It's like a tennis match. Every time you hit a ball, hopefully it comes back. Our job is to hit the ball back *hard*."

Most of us have a vague sense that corporate America doesn't like being told what to do, but rarely do we get a front-row seat into how the playbook for resisting federal regulation is written. VICE has obtained exclusive transcripts of this year's annual meeting of the

Community Financial Services Association of America (CFSA), the payday lending industry's trade group, at the Atlantis Paradise Island Resort. That's where lenders were taught exactly what it might take to beat back an existential threat to their business.

Payday loan customers typically borrow about $350 for a short-term deal, usually until their next paycheck. As a condition of the loan, they generally give the lender access to their bank account to extract fees of between $10 and $30 for every $100 borrowed. If borrowers can't pay the loan when it comes due, they can roll over into another loan, triggering more fees and getting trapped in what critics call a cycle of debt. The average payday or auto-title loan (where the customer uses their car as collateral) carries an annual percentage interest rate between 300 and 400 percent.

This June, the federal Consumer Financial Protection Bureau (CFPB) proposed that payday lenders can only issue loans to people they expect to actually be able to pay them back—while also meeting their other financial obligations. The number of additional loans would also be capped, and a 30-day cooling off period established to help prevent that vicious debt cycle, among other changes.

The industry decried the rule when it went public, highlighting a government simulation suggesting that 69 to 84 percent of storefront short-term payday loan volume would fall, potentially devastating their business. But the transcripts show lenders were already discussing how to prevent the rule from taking effect at the Atlantis back in March.

For starters, the industry plotted to bombard the Consumer Bureau with comments and studies suggesting regular people would be the real losers—even if their own oversized profits were obviously the focal point. "The bureau has illustrated its knee-jerk hostility to this industry," said Noel Francisco of corporate defense firm Jones Day. "So it is critical to point out the flaws... and include all of the evidence showing the enormous benefits that payday loans have to offer the consumers who use them."

Under the Small Business Regulatory Enforcement Fairness Act (SBREFA), the feds must talk to small businesses affected by their rules, in this case payday lenders, and respond to concerns. In addition, most proposed federal regulations allow the public to make comments. At the Atlantis, leaders stressed the need to deliver hundreds of thousands of such comments before the deadline on the payday rule, which is this October 7. They suggested getting employees, landlords, suppliers, bankers, neighbors, state and local politicians, and even pastors to write letters. ("We can't let them have all the ministers," said Tony Dias of Jones Day, referring to faith groups who support the feds.)

But the biggest resources for this project, according to the industry's leaders, are the customers who borrow against their future paychecks.

In a breakout session called "Take Action in the Rulemaking Process Comment Period," Dias asked lenders to "get every customer that comes into your store... to write out a handwritten letter and tell the bureau why they use the product, how they use the product, and why this will be a detriment to their financial stability." A handout given to attendees featured talking points for use in such letters, and Dias promised to send labels to every store with the proper reference number so comments could be mailed in. "We will have a team of three full-time writers in our office," to assist them, he noted. Thousands of these comments have already been submitted.

It doesn't appear lenders were encouraged to explicitly demand their customers write a letter as a condition of getting their loan, but some may have danced up against the line. There's precedent with that kind of thing, of course: In Arizona earlier this year, lawmakers received boxes of letters from borrowers claiming to support a bill that would have re-instituted high-interest payday loans eliminated in a 2008 ballot measure. When the borrowers were contacted, many said they had no idea what they were signing, and some expressed opposition to the bill.

Overwhelming the feds with comments serves three purposes, as was driven home throughout the sessions in the Bahamas. First, it puts pressure on the feds to change the rule in response to public outcry. Just as important, it sets a basis for litigation after the fact—by submitting comments contradicting the government's claims, the industry can argue that the Consumer Bureau violated the Administrative Procedures Act by instituting a rule arbitrarily, and without basing it on objective evidence.

The third and perhaps most critical goal is to delay the rule itself—that is, to keep the payday loan party going. If the agency has to wade through hundreds of thousands of comments—from homeowners to political officials and academics—to which they must respond, "then they are necessarily bogged down," as Dennis Shaul, CEO of the industry trade group, put in the Bahamas. Delay does not just force the feds to mull over the details, he added: "If the rule is delayed, operators are still continuing to be in existence and presumptively to make a profit."

It seemed like a good plan—assuming you aren't stuck in a cycle of debt.

"The industry complains about all this paperwork, these 900-page rules," Georgetown law professor Adam Levitin, who sits on the CFPB's Consumer Advisory Board, told VICE. "But by flooding with comments, they contribute to it. They're trying to make government less efficient."

Inside the Atlantis, Shaul noted with pride the various ways in which his group had already helped delay the rule: filing requests under the Freedom of Information Act (FOIA) to divert agency resources, issuing petitions and press releases and reports that require a rebuttal, and seeking meetings with regulatory personnel to argue their side. All of that, plus the

comment period, could move the final rule beyond the 2016 elections, at which point Shaul expressed hope for "wholesale changes" in regulatory personnel, perhaps leading to even longer delays. (A CFSA spokeswoman declined to comment for this story.)

Perhaps the conference's most interesting panel was called "Federal Rulemaking in 2016: What to Expect and What Alternative Products to Consider," run by Blake Sims and Justin Hosie of the consumer finance law firm Hudson Cook. This was a master class in how to exploit and manipulate regulatory loopholes.

For example, Hosie recommended that long-term installment loans could earn "similar rates of return" as the classic payday product, if structured correctly. An eight-week loan with four installment payments is effectively the same as a two-week payday loan rolled over three times, and if you add fees on top of the interest rate, borrowers could still pay over 300 percent interest on a $500 loan—even if the new rule goes into effect *and* gets enforced. Indeed, lenders have wasted no time beginning to experiment with these products while the rule sits in limbo. "Payday and auto title companies are already making installment loans in 26 of the 39 states where they operate," Nick Bourke, director of the small dollar loans research project at Pew Charitable Trusts, a public policy research organization, told me. "The rule makes it far too easy to make a high-cost loan."

Even if lenders abide by the humane ability-to-repay standard, there's "wiggle room" within it, Sims suggested at the resort. Customers could make themselves eligible for a loan by agreeing to cancel their cable or cellphone service, which would obviously reduce their overhead. (Of course, they could always re-up those bills once the loan got approved.) Borrowers could also find co-signers, whose income would be factored into the ability-to-repay test. And if a borrower had no co-signers, the payday lender could *rent* one to them, using an affiliated company inside the store to issue a guarantee of credit "offered for a fee to the consumer," Hosie said.

Other ideas included having customers pay a membership fee to access a payday storefront, recouping some of the lost profits from lower-cost loans. Or lenders could put online kiosks in stores to help people buy physical products. "If we can't give you a loan for $300, but you're going to use that for a new tire over here, we can finance the acquisition of that tire for you," as Hosie put it. That might technically be considered a form of credit, rather than a loan covered by the rule. The "product" could even be a *prepaid card*, Hosie noted, meaning that the consumer would essentially buy money on credit, to get around the payday loan restrictions.

The abundance of creative ways the payday industry tries to avoid regulation is no surprise given how active it's been at the state level, as a recent report from Democrats in Congress shows. "If you halt payday loans, they gravitate to title loans. If you halt title loans, they

gravitate to Internet loans," Democratic US senator Jeff Merkley, who has introduced legislation to prevent loans that don't comply with state laws, told me. "It's a hell of a scheme."

The feds have launched a probe into high-cost products not covered by the pending rule, including long-term installment loans. And they have anti-evasion measures baked into the new regulation, giving the Consumer Bureau extensive powers to catch trickery. But that all depends on proper enforcement. And even if the rule works, it's likely to catch companies *after* they have prospered by running a train on peoples' financial lives for months or years.

"That's their business model," said Gynnie Robnett, who directs the payday lending campaign at Americans for Financial Reform, a coalition of consumer groups. "And they seem determined to preserve it, any weasel-y way they can."

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