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Payday lenders aim to evade federal probes as borrowers plead for help

A powerful set of financial firms have delayed federal investigations or punishments into their allegedly predatory lending practices, as they seize on an industry-led lawsuit challenging the future of the Consumer Financial Protection Bureau.

By Tony Romm, October 28 [Washington Post]

Powerful financial firms that offer high-cost, short-term loans to poor Americans have blocked at least five federal investigations into their business practices since the start of last year, part of a broad and aggressive campaign by payday lenders to neuter or eliminate their chief watchdog agency in Washington.

The probes have stalled largely as a result of an industry-led lawsuit against the Consumer Financial Protection Bureau (CFPB) that now rests in the hands of the Supreme Court — even as low-income borrowers beg regulators to crack down on alleged predatory lending.

At the heart of the standoff are short-term lenders that offer a wide variety of loans to low-income Americans with poor credit, urgent financial needs and few other places to turn for help. The loans often feature unforgiving repayment timelines and annual interest rates well into the triple digits, leaving some of the neediest borrowers facing sky-high bills they cannot repay.

For years, the CFPB has heard complaints about such practices. But companies that offer short-term or payday loans — including Ace Cash Express, Advance America, Advance Financial and Check 'n Go — have vigorously opposed federal regulation. Some of the same firms have also supported a lawsuit challenging the future of the CFPB, which could see the nation's highest court rule that the agency's funding structure is unconstitutional.

The legal uncertainty has proven especially beneficial to lenders staring down the prospect of federal enforcement.

Some companies have successfully cited the pending Supreme Court decision to slow down ongoing CFPB investigations or fight off the agency's recent punishments, according to a Washington Post review of federal court filings and interviews with government and industry leaders. Top lending executives, meanwhile, have donated generously this year to Republican lawmakers and presidential candidates who previously signaled they could restrain, if not eliminate, the bureau.

In July 2022, for example, the CFPB sued Populus Financial Group, the operator of Ace Cash Express, alleging that it had deceived consumers about its borrowing practices. In the complaint, the government alleged that the Irving, Tex.-based firm hid options free repayment plans from customers struggling to manage insurmountable monthly bills, while Ace allegedly reaped at least $240 million in fees.

The case marked the second time the CFPB sought to penalize Ace, which it ordered in 2014 to stop steering borrowers toward new loans to pay off older debts. But lawyers for Populus Financial Group denied the newest charges in court: Citing the industry's lawsuit against the CFPB, the company last September asked a judge to dismiss the case because "the days of the bureau's unchecked administrative agency power … are, hopefully, over."

"They are moving in several ways at once to eliminate the cop on the beat."

Three months later, a judge paused the lawsuit, issuing a stay until the Supreme Court could rule on the agency's future.

"They are moving in several ways at once to eliminate the cop on the beat — or the effectiveness of the cop on the beat — to keep people from being trapped in unaffordable debt," said Ellen Harnick, an executive vice president at the Center for Responsible Lending, a nonprofit that has advocated for the agency.

Many of the companies tied to recent federal probes, or associated with litigation against the CFPB, did not respond to requests for comment or declined to comment. A lawyer for Populus Financial pointed to its previous statement that blasted the agency for a "baseless lawsuit." The company at the time stressed its loan products are popular with customers, adding: "Unfortunately, the CFPB has left ACE with no choice but to litigate and defend itself against these unjustified claims."

Michael Hodges, the chairman of Advance Financial, said he could not speak about an ongoing lawsuit. Executives at CNG Holdings, the parent company of Check 'n Go, did not respond to requests for comment.

Jessica Rustin, the chief executive of Purpose Financial, the parent company of Advance America, said customers broadly "appreciate what we have to offer," adding of the lawsuit against the CFPB, "To me, it is about holding the bureau accountable."

'Please help me if you can'

The fierce industry opposition has cast fresh doubt over the future of the CFPB, tasked with preventing consumer harm by banks, credit unions, debt collectors, mortgage companies and other institutions. Under its current director, Rohit Chopra, the CFPB has been at the heart of massive federal enforcement efforts targeting the financial sector — including probes into Wells Fargo, which was forced to pay a record $3.7 billion penalty after mismanaging customers' accounts last December.

“The idea behind the [CFPB] is not that we need a bunch of new consumer protection laws,” said Sen. Elizabeth Warren (D-Mass.), the chief architect of the agency. “We have a lot of laws, they’re just scattered among more than a half a dozen agencies. The enforcement of those laws was nobody’s first job.”

For the CFPB, the stakes were on display this month, as the Supreme Court considered a lawsuit that could determine the future of the agency. The case reached the justices after the payday loan industry won a critical victory in front of a lower court last year, which found the bureau’s funding to be unconstitutional since its money comes not from Congress but the Federal Reserve.

During oral arguments, the court’s conservatives and liberal justices alike seemed unswayed by that argument, though consumer rights advocates said they still fear an adverse outcome that could effectively shutter the agency — and potentially even nullify its past enforcement actions.

“The really big-picture implication is all of the rules of the last 12 years could be called into question,” said Lisa Gilbert, the executive vice president of Public Citizen, which filed a briefing with the Supreme Court in defense of the CFPB.

Noel Francisco, the former U.S. solicitor general now representing the payday lenders, did not respond to a request for comment. Sam Gilford, a spokesman for the CFPB, said the agency is “confident in the constitutionality of the statute that created” the bureau and supplies its funding.

“We will continue to carry out the vital work Congress has charged us to perform,” he added.

For years, the watchdog agency has taken a special interest in lenders that primarily target poor Americans. Some offer traditional payday loans, or small amounts that generally must be repaid — at high interest rates — in a week or two, once a borrower receives a paycheck. Other companies offer slightly longer-term repayment schedules on terms that vary by state, though they still can result in shocking bills to borrowers least able to afford them.

Fearful that poor Americans could become trapped in cycles of debt, the CFPB tried to crack down on the industry starting in 2017. It chiefly sought to prevent companies from repeatedly extending expensive loans to poor borrowers who could not afford to pay them back. But the prohibitions never fully took effect, after

Trump, then president, appointed a series of leaders with documented ties to payday lenders that previously supported his candidacy. (The Trump campaign did not respond to a request for comment.)

As the administration moved to roll back the rules, the industry also mobilized through one of its chief lobbying groups — the Community Financial Services Association of America — and sued the CFPB in 2018. By the time its case reached the Supreme Court this month, roughly five years later, the bureau had amassed a trove of complaints from aggrieved, indebted Americans, some of whom urged the government to probe the very companies that first sued to destroy the federal watchdog.

Last September, for example, a Nevada resident pleaded with the CFPB to intervene after Check 'n Go allegedly withdrew money from their bank account without permission, leaving them overdrawn by $460.

"Now they are telling me I have no options, that my account has been closed and there is nothing they can do," the individual wrote to the CFPB. "Please help me if you can."

In Tennessee, another borrower told the government this April that they "woke up this morning to find my checking account had been charged not once, but twice," for $380 by Advance Financial. The person said Advance Financial allegedly withdrew too much money from their bank account, leaving them to face massive fees.

"Are they allowed to do this [by] law?" the individual asked.

Over the past six years, the CFPB has received more than 30,000 similar comments, which the agency collects and publishes online in redacted form to protect personal information. Some of the complaints specifically involve companies whose executives served on the board of industry lobbying groups that have challenged the constitutionality of the bureau in court or tried to weaken its powers on Capitol Hill.

"There are a number of CFPB enforcement cases that have been put on hold," said Lauren Saunders, associate director at the National Consumer Law Center, noting the industry has been "extremely aggressive in pushing back against any regulation or legislation that would curtail the abuses."

Since the start of last year, three short-term lending companies — including Ace Cash Express — have tried to challenge the CFPB and delay the agency from imposing punishments for their allegedly predatory lending practices, according to federal court records. In each case, these companies specifically cited the industry's pending lawsuit at the Supreme Court, the outcome of which could effectively strip funding from financial regulators.

In four other cases, lenders facing federal scrutiny have even refused to turn over documents to CFPB investigators, the records show. Three companies cited the ongoing uncertainty around the agency's future as they urged a judge in recent months to halt proceedings until further notice.

Advance America "improperly induced borrowers to take out, renew, or refinance loan products that harmed them."

The targets include Spartanburg, S.C.-based Purpose Financial, which operates the chain Advance America. Earlier this year, the company balked at the CFPB's legal request for records, known as a civil investigative demand, in connection with a federal probe to determine if it had "improperly induced borrowers to take out, renew, or refinance loan products that harmed them," according to a government petition.

By June, CFPB asked a judge to intervene and force Purpose Financial to comply. Lawyers for the company, however, soon requested a stay, arguing that the CFPB's demand for information "was undoubtedly financed" unconstitutionally — exactly the industry's claim at the Supreme Court.

Government lawyers sharply opposed the motion, citing the fact the justices might not rule until next June in a move that risks "setting back this important part of its investigation and potentially making it more difficult to secure full and accurate records and testimony," they argued in August. The court has not yet ruled on the matter.

Rustin, the chief executive of Purpose Financial, said she could not comment on ongoing litigation but defended her business, stressing the industry broadly supports "balanced regulation." She previously served as president of the Community Financial Services Association of America.

The lobbying organization effectively ceased operations in 2020. While its lawsuit continued, the group merged with another to form a new operation called Infin, with many of the same board members.

Ed D'Alessio, the executive director of Infin, declined to be interviewed. But he said in a statement that customers "appreciate and value our services, voicing overwhelming satisfaction in surveys and reviews, and filing very few complaints with the CFPB and state regulators."

"No regulator with the authority and power of the CFPB should be insulated from oversight by officials elected to represent and advance the interests of the American public," he added.

'Most people cannot afford to pay'

With no clear federal rules targeting payday lenders, millions of poor Americans remain at the mercy of their states, meaning consumer protections — and borrowing costs — vary dramatically by location. Nationally, 22 states allow lenders to offer small-dollar loans that must be repaid all at once, and in those places, average annual interest rates can reach as high as 652 percent, according to data compiled last year by the Pew Charitable Trusts.

Caught in the middle are borrowers such as Laurie Molis, a retired teacher in Georgetown, Tex., who took out an expensive loan in February to defray the costs of her frequent three-hour trips to Houston, where her daughter received urgent medical care. To pay for travel and lodging, she borrowed $3,500 from a car title loan company, offered at a whopping 320 percent annual interest rate, which she had to repay in four months.

But the massive monthly payments soon reached more than $900 and quickly overwhelmed her, leaving the 55-year-old at risk of losing her vehicle as she fell deeper down a financial hole.

"I just couldn't keep up with the bills," recalled Molis, who said she found help through the Society of St. Vincent de Paul, a Catholic nonprofit in her community. "It was about a fourth of my paycheck."

In some cases, the payments can prove so large that families must roll over their unpaid balances into new debts, ultimately costing them even more money. A borrower who takes out $500 in Idaho, for example, might face an extra $1,000 in fees after they refinance their debt over a four-month period, according to Alex Horowitz, a project director who leads work on payday lending for Pew.

“Most people cannot afford to pay such a large share of their paycheck,” he said.

Eighteen states have outlawed or restricted payday loans, instituting limitations that include caps on interest rates, which the CFPB is prohibited by law from adopting nationally. But the issue recently has received limited attention on Capitol Hill, where Republicans remain fiercely opposed to significant new financial regulation more than a decade after the collapse of the nation’s banks precipitated the Great Recession.

Instead, many GOP lawmakers have sharply attacked the CFPB over its recent enforcement efforts. Republicans have also counted among the biggest beneficiaries of campaign donations from the payday lending industry. Between January and the beginning of July, payday lending companies and executives donated more than $1.2 million, primarily to GOP lawmakers who have been fiercely critical of the agency, according to data compiled by the money-in-politics watchdog OpenSecrets.

The beneficiaries include Rep. Patrick T. McHenry (N.C.), chairman of the House Financial Services Committee, and Sen. Tim Scott (S.C.), the top Republican on the Senate’s banking panel and a 2024 presidential candidate. Three months ago, the duo led roughly 130 House and Senate Republicans on an amicus brief to the Supreme Court, arguing that Congress, not the Federal Reserve, should have the sole power to set the agency’s budget.

The filing echoed many of the arguments made by the industry, raising the prospect that Republicans might cut or eliminate its funding if the court rules in their favor. McHenry in particular previously received donations from political action committees operated by Populus Financial, Purpose Financial, CNG Holdings and Infin, according to OpenSecrets data. Each of those companies has been the subjects of recent agency complaints and scrutiny.

Spokesmen for McHenry and Scott did not respond to requests for comment.

The amicus brief marked only the latest instance this year in which lawmakers collected checks from top payday lenders, then took aim at the CFPB, pressuring the agency over its enforcement efforts targeting the industry. This June, for example, members including Rep. Andy Barr (R-Ky.) and Josh Gottheimer (D-N.J.) wrote two letters to the agency questioning its enforcement efforts.

Lawmakers sent their June 13 missives, obtained by The Post, one day after the CFPB asked a federal judge to force companies, including Purpose Financial, to turn over key documents in related probes. While they did not mention any specific lenders by name, Barr still faulted the agency for a “concerted effort to intimidate and coerce covered financial services providers, including state licensed and regulated small-dollar lenders.”

A spokesperson for Barr did not respond to requests for comment.

In a statement, Gottheimer said his letter “raised questions about the equal enforcement of laws across the financial sector.”

The flurry of activity raises the odds that a Republican wave in the 2024 election could lead to a sharper effort to curtail the CFPB. Two executives — Michael and Tina Hodges, the chairman and chief executive, respectively, of Advance Financial — have donated this year to GOP presidential candidates including Ron DeSantis, the governor of Florida, and Mike Pence, the former vice president under Trump, according to federal disclosures and data from OpenSecrets.

Both similarly wrote checks to the Republican National Committee, and a series of groups that aim to help the party retain control of the House — and Michael Hodges donated about $150,000 to super PAC affiliated with Trump, federal records show.

The Hodgeses had been major backers of Trump’s first presidential campaign, after which Michael Hodges emerged as a key political conduit, representing the industry at a time when the CFPB looked to scrap its original payday lending rules. In audio obtained by The Post before the 2020 election, Hodges boasted about how campaign checks to Trump and the RNC had allowed companies to obtain “an audience” in a bid to stave off regulation.

Tina Hodges did not respond to a request for comment, and Michael Hodges declined an interview. In a statement, though, he noted his political donations are “well documented.” He added, “As a great American journalist once said … ‘in a democracy you have to be a player.’”

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