CONSUMER LENDING PRACTICES IN NEW MEXICO
Report of Findings and Recommendations

Pursuant to House Memorial 131 from the 2015 Regular Session of the New Mexico Legislature
Sponsored by New Mexico Representative Patricia A. Lundstrom (District 9)

Submitted by
Legislative Finance Committee
September 2015

EXECUTIVE SUMMARY

During the 2015 regular session of the New Mexico Legislature, the House of Representatives passed House Memorial 131 that requested an interim study by the Legislative Finance Committee (LFC) on the consumer lending industry and to consider ways in which the state might better regulate lending practices (See Appendix E). LFC staff studied the legal history of consumer lending and organized a memorial study group to gather information on lending practices within the state. Members of the memorial study group represented interest groups, lenders, governmental agencies, lobbyists, policy research organizations, and the public. The memorial study group did not convene as a whole, but input was collected from field interviews of individual members.

Scope of Report. During the 1999 regular session of the New Mexico Legislature, the House of Representatives passed House Memorial 36 that requested the Financial Institutions Division of the Regulation and Licensing Department to study consumer lending practices and regulatory statutes in the state and recommend legislation necessary to provide a healthy economic environment for both lenders and consumers (See Appendix F). This report updates the House Memorial 36 report and finds that many of the concerns and recommendations of lenders and consumers are the same today. Information in this report focused on small consumer loan products and services offered by loan stores and online websites (See Appendix A).

Field Interviews. In-person and phone interviews were conducted between June 4, 2015, and August 25, 2015, from interested parties in the memorial study group. Input was solicited from all memorial study group members. Relevant information gathered from the responses was used to develop portions of this report. Participation in the memorial study group was voluntary and open to all interested parties willing to contribute information. Over 30 individuals representing 28 separate organizations participated in the memorial study.

Key Findings. Most of the field interview comments centered on interest rate caps. New Mexico eliminated interest rate caps on small loans in the 1980s but amended the Small Loan Act in 2007 to add requirements for payday loans. However, many payday lenders switched their business model to providing small installment loans and currently operate without rate caps. Other requirements for payday loans, such as restrictions on making loans that push borrower debt over 25 percent of gross monthly income, could not be enforced for installment loans. Unintended consequences of payday legislation included increases in the number of loan renewals, loans written-off, and loans with longer terms and larger principals.

Options and Alternatives. Consumer interest groups in New Mexico recommend placing an annual percentage rate (APR) cap of 36 percent or less on all loan products mirroring U.S. Department of Defense rules for lending to active military households with an inflation adjuster to deal with periods of hyperinflation. Alternatives include floors or ceilings for loan repayment terms, pro-rated rebates of loan charges when refinancing, prohibitions or limits on loan fees, restrictions on payment collection methods, and ability to repay guidelines. Consumer interest groups also recommend policies that financially support institutions such as credit unions, community development financial institutions, and community loan centers that provide small loan alternatives with APRs less than or equal to 36 percent. Absent an interest rate cap, consumer interest groups recommend expanded reporting of all loan products, including loans made with APRs less than 175 percent, and increased advertising and financial assistance for small loan alternatives.

Lending and industry groups in New Mexico recommend waiting until new Consumer Financial Protection Bureau (CFPB) proposals are finalized that set consumer protection and ability to repay guidelines. Lenders do not support an all-inclusive APR cap and request policies that allow companies to underwrite loans and assess borrower ability and willingness to repay. Setting APR caps or minimum loan repayment terms will limit borrowers to longer and larger loan options that may not fit their needs. In some cases, borrowers may be denied credit altogether or the ability to purchase debt protection that could mitigate their credit risk. The industry supports policies that encourage lenders to disclose material loan terms clearly, report repayments that build borrower credit scores, and conduct an underwriting process based on a consumer's ability to repay the debt. Other recommendations include increasing borrower financial literacy through educational programs, allowing borrowers to purchase credit insurance and debt protection, and regulating different loan products, such as tax refund anticipation loans, separately.

If New Mexico considers increased regulatory oversight of the small loan industry, legislation should carefully align borrowers' success with lenders' operability. Regulation that fails to meet the needs of both groups may lead to widespread circumvention by lenders or decreased access to credit for subprime borrowers.

BACKGROUND

The issues of consumer lending practices have never been static. Continuously evolving beliefs, market conditions, and adaptive responses to regulatory oversight have necessitated an ongoing review of consumer credit law in the United States. Therefore, a careful study of the legal history, economic trends, and public opinion of consumer loans is crucial for developing effective regulation of the industry.

Legal History. For the majority of the twentieth century, states regulated maximum rates of interest and terms on which loans could be made. To curb predatory lending practices of loan sharks in the early twentieth century, many states adopted a form of the Uniform Small Loan Laws of 1916 that capped interest rates for small loans at 2 percent or 3 percent per month. New

Mexico enacted small loan legislation in 1939, which did not conform to the Uniform Small Loan Laws, but included an interest rate cap of 12 percent per year on unsecured loans.[1]

In 1978, a Supreme Court decision, *Marquette National Bank of Minneapolis v. First of Omaha Service Corp*., held that banks could charge the interest rate of their home state regardless of where the loan was made. Consequently, states began to repeal interest rate caps to keep bank headquarters within their borders.[2] Federal preemption, subsequent case law, and the institutional shift from state entities to federally chartered entities limited the reach of traditional state regulations, which encouraged a general climate of deregulation in the 1970s and 1980s.[3] Between 1981 and 1991 the New Mexico legislature abolished limits on interest rates in response to federal deregulation of financial institutions.[4] Subsequently, the issuance of credit cards, payday loans, and tax refund anticipation loans increased during the 1990s.[5] Likewise, the number of complaints filed against small loan companies increased during this time.

Consumer Complaints. From 1999 to 2014, 269 complaints were filed with the New Mexico Financial Institutions Division of the Regulation and Licensing Department against small loan companies. From 2010 to 2014, over 1,400 complaints were filed with the New Mexico Attorney General's Office against consumer lending companies. Complaints filed against payday lenders, installment loan companies, and car title lenders accounted for 22.5 percent of all complaints while banks and credit unions accounted for 19 percent, and mortgage-related lenders accounted for 56 percent.[6] From 2011 to 2014, the Consumer Financial Protection Bureau (CFPB) handled approximately 395 thousand complaints.[7] Payday and consumer loan complaints, which included installment and car title loans, accounted for 6 percent of all complaints.[8] Bank account and service complaints accounted for 12 percent, and mortgage complaints accounted for 34 percent of all complaints.[9] The CFPB reported the most common payday loan advance complaint issues involved unexpected charges from fees or interest and applying for a loan but not receiving the

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1 New Mexico Session Law 1939 – Chapter 231

2 Lauren Saunders, "The History, Use, and Purpose of the 36% Interest Rate Cap," *National Consumer Law Center*, 2013

3 Adam Levitin, "The Consumer Financial Protection Bureau: An Introduction," *Review of Banking and Financial Law vol. 32*, 2013

4 Frank Weissbarth, "The Legal Environment: Consumer Lending in New Mexico," *New Mexico Financial Institutions Division of Regulation and Licensing Department House Memorial 36 Report*, 1999

5 Diane Hellwig, "Exposing the Loadsharks in Sheep's Clothing: Why Re-Regulating the Consumer Credit Market Makes Economic Sense," *Notre Dame Law Review vol. 80 Issue 4, Article 6*, 2005

6 Gary King, "Complaints filed with Attorney General Against Consumer Lending Companies Between 2010-September 5, 2014," *New Mexico Attorney General*, August 2015

7 Consumer Financial Protection Bureau, "Consumer Response: A Snapshot of Complaints Received," *CFPB*, July 2014

8 Ibid., 10

9 Ibid., 11

money.[10] About 63 percent of the complaints involved online payday loans, 10 percent involved store loans, and 27 percent did not state the loan type.[11]

<u>New Mexico Findings.</u> Following small loan legislation in 1939, New Mexico enacted the following statutes pertaining to the consumer lending industry:

- New Mexico Small Loan Act of 1955 (§§58-15-1 through 58-15-31 NMSA 1978)
- New Mexico Collection Agency Regulatory Act (§61-18A-1 NMSA 1978)
- New Mexico Motor Vehicle Sales Finance Act (§58-19-1 NMSA 1978)
- Money, Interest, and Usury statute (§§56-8-1 through 56-8-21 NMSA 1978)
- New Mexico Bank Installment Loan Act of 1955 (§58-7-1 NMSA 1978)
- Unfair Practices Act (§§57-12-1 through 57-12-22 NMSA 1978)
- Residential Home Loan Act (§§56-8-22 through 56-8-30 NMSA 1978)

The New Mexico Small Loan Act was amended in 2007 to set requirements for payday loans including loan terms, permitted charges, prohibited acts, payment plans, waiting periods, database verification, required disclosures and signage, and duties of the New Mexico Financial Institutions Division (FID) of the Regulation and Licensing Department. Amendments in 2011 and 2013 required FID to annually report specific, aggregated information on payday loans and all loans with an annual interest rate exceeding 175 percent (See Appendix B). According to FID, there were 121 small loan companies licensed in New Mexico in 1990, but by 2014 there were 684. After 2007 many payday lenders left the market or changed to installment lending by offering loan products with longer terms and installment payment plans (See Appendix A). By 2013, however, the number of payday lenders had returned to 2008 levels despite a 35 percent decrease in the number of loans during the 5 year period. From 2011 to 2014, the number of unsecured installment loans issued (with annual percentage rates of 175 percent or more) increased by 3,089 percent. The total amount of unsecured installment loan principal and interest written-off increased by 9,958 percent, and the number of loans renewed, refinanced, or extended increased by 1,681 percent. In 2014, the division reported the completion of 629 full scope examinations of these licensees and found 242 to be satisfactory with no violations, 214 satisfactory with few minor violations, and 173 unsatisfactory.[12]

A 2013 national survey by the Federal Deposit Insurance Corporation found that nearly 30 percent of New Mexico households reported using one or more alternative financial services (AFS) such as non-bank money orders, non-bank check cashing, non-bank remittances, payday

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[10] Consumer Financial Protection Bureau, "Consumer Response Annual Report (July 21, 2011 through June 30, 2014)," *CFPB*, July 2014
[11] Ibid., 27
[12] Financial Institutions Division, "2014 Annual Report," *New Mexico Regulation and Licensing Department*, 2015

loans, pawn shop loans, rent-to-own loans, and refund anticipation loans.[13] Households that reported using one or more AFS tended to be Hispanic, 25 to 34 years of age, employed, disabled, and unbanked. Most AFS users were not homeowners, lacked a high school degree, and reported family income less than $15 thousand.[14] According to the Corporation for Enterprise Development's (CFED) 2014 Assets and Opportunity Scorecard, about 44.4 percent of households in New Mexico were "liquid asset poor," meaning they had less than three months' worth of savings (measured as $5,887 for a family of four or three times monthly income at the poverty level).[15] About 56 percent of U.S. consumers have subprime credit scores, and many use AFS products to complement or meet financial needs.[16]

CONSUMER INTEREST GROUP POSITIONS

Interest Rate Caps. Increasing consumer complaints about high annual percentage rates, debt traps, aggressive debt collections, and unexpected fees have drawn attention from various policy research groups, religious organizations, and consumer advocates. Critics of the small loan industry claim that predatory lenders offer loan products and services structured to promote repeat borrowing that can worsen financial insecurity for subprime consumers. In 2006, the Department of Defense conducted a study on the impact of predatory lending on military personnel, stating in a summary passage of the report: "Predatory lending undermines military readiness, harms the morale of troops and their families, and adds to the cost of fielding an all volunteer fighting force."[17] The Military Lending Act was signed into law the following year, placing an all-inclusive 36 annual percentage rate (APR) cap on loans made to all active military personnel and their families.[18] According to CFED, 17 states and the District of Columbia (D.C.) prohibit or cap APRs for payday loans at 36 percent or lower. Twenty-nine states and D.C. cap or prohibit vehicle title loans, and 20 states and D.C. cap small dollar installment loans. Four states do not prohibit or cap APRs for small consumer loans (See Appendix C). New Mexico caps APRs for payday loans at about 400 percent by limiting administrative fees on loans with maturities between 14 days and 35 days to $15.50 for every $100 of principal borrowed. The law does not place restrictions on loans that fall outside of its definitive scope, which includes loans with principals greater than $2,500 or terms exceeding 35 days.

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13 Federal Deposit Insurance Corporation, "National Survey of Unbanked and Underbanked Households: Use of Alternative Financial Services," *FDIC*, June 2013, accessed through https://www.economicinclusion.gov/surveys/
14 Ibid.
15 Corporation for Enterprise Development, "New Mexico Assets and Opportunities Scorecard," *CFED*, January 2015, accessed through http://scorecard.assetsandopportunity.org/latest/state/nm
16 Ibid.
17 Center for Responsible Lending, "The Military Lending Act of 2006: Provisions and limitations of the 36% APR cap for loans to military personnel," *CRL Summary*, 2006
18 Ibid., 1

In 2014 the Supreme Court determined in *New Mexico, ex rel., King v. B&B Investment Group, Inc*. that 1,175 to 1,500 percent interest loans made by two New Mexico lenders in 2006 were legally "unconscionable" under the Unfair Practices Act.[19] The court ordered the lenders to refund all interest and loan fees in excess of an APR of 15 percent to affected borrowers.

The New Mexico Fair Lending Coalition recommends an APR cap of 36 percent or less on all state regulated loans. The group recommends a cap that emulates the 2015 Department of Defense ruling[20] for loans made to active military personnel and includes an inflation adjuster to deal with periods of hyperinflation. Nine cities and four counties in the state have passed resolutions supporting these interest rate caps.[21] A 2010 University of New Mexico study of 199 New Mexicans found that over 82 percent thought credit card interest rates should be capped at 25 percent or less, and over 72 percent felt that storefront or short-term loans should be capped at 25 percent or less.[22] In 2014 Public Policy Polling surveyed 601 New Mexico voters and found 80 percent of participants would support a change in state law lowering the maximum annual interest rates lenders could charge from 300 percent to 36 percent, even if the resulting cap would force some lenders to lay off employees or close stores.[23] According to The Pew Charitable Trusts, states with high or no rate caps have the most payday loan stores per capita, and states with lower rates have fewer stores but similar loan volumes.[24] There are no payday loan stores in the 15 states that prohibit payday lending or interest rates higher than 36 percent.[25]

Loan Rollovers. According to the New Mexico Financial Institutions Division of the Regulation and Licensing Department, consumers on average repeatedly borrowed between five and six payday loans a year for loans exceeding APRs of 175 percent from 2008 to 2013 (See Appendix B). A 2013 report from the Center for Responsible Lending found that 85 percent of payday loans went to borrowers with seven or more loans per year.[26] A 2005 working paper by the Federal Deposit Insurance Corporation did not find that lender profitability was dependent on loan rollovers and repeat borrowers, but did acknowledge that high-frequency borrowers accounted for a disproportionate share of a payday store's loans and profits.[27] The 2010

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19 Supreme Court of the State of New Mexico, *New Mexico, ex rel., King v. B&B Investment Group, Inc.* June 26, 2014

20 Department of Defense, "Limitations on Terms of Consumer Credit Extended to Service Members and Dependents: Final Rule," *Federal Register, Vol. 80 No. 140, 32 CFR Part 232*, July 22, 2015

21 Stephen Fischmann, "Loan Shark Lobby," *New Mexico Fair Lending Coalition,* 2015, accessed through http://www.loansharkattack.com/loan-shark-lobby.html

22 Nathalie Martin, "1000% Interest—Good While Supplies Last: A Study of Payday Loan Practices and Solutions," *University of New Mexico School of Law Legal Studies Research Paper Series*, 2010

23 Public Policy Polling, "January 21-22, 2014 Survey of 601 New Mexico voters," *Public Policy Polling*, 2014

24 Interview input from The Pew Charitable Trusts

25 Ibid.

26 Susanna Montezemolo, "The State of Lending in America and its Impact on U.S. Households," *Center for Responsible Lending*, 2013

27 Mark Flannery and Katherine Samolyk, "Payday Lending: Do the Costs Justify the Price?" *FDIC Center for Financial Research Working Paper No. 2005-09*, June 2005

University of New Mexico study found most payday loan customers shopped for loans based on location convenience rather than pricing, did not understand the significance of APR, were repeat customers, and used loans for recurring expenses like paying off other payday loans.[28]

Colorado Payday Loan Reform

In 2010, Colorado lawmakers passed a payday loan law that reduced fees, extended the length of loans to a minimum of six months, authorized installment payments, prohibited prepayment penalties, and required all finance charges to be refunded on a pro-rated basis for refinanced loans. According to The Pew Charitable Trusts, the following changes to payday loan data in the state occurred between 2010 and 2014:

- Average loan duration increased from 18.91 days to 98.62 days.
- Average APR decreased from 319 percent to 115 percent.
- Share of borrower biweekly income taken up by the next loan payment decreased from 38 percent to 4 percent.
- Share of loans that were renewals or taken out the same day decreased from 61.2 percent to 36.7 percent.
- Defaults per borrower per year decreased from 0.493 percent to 0.379 percent.
- Lender-charged bounced-check fees decreased from $960.2 thousand to $497.6 thousand.
- Number of stores decreased from 505 stores to 235 stores.
- Number of borrowers decreased from about 280 thousand to 259 thousand.
- Total dollars spent on loans decreased from $95.1 million to $54.8 million.
- Loan revenue per store increased from $188 thousand to $233 thousand.
- Borrowers' median annual income increased from $26 thousand to $27 thousand.

According to Pew's analysis, 74 percent of payday loans were repaid in full before six months and 18 percent were repaid in the first month. The average loan was repaid in about three months.

According to The Pew Charitable Trusts, borrowers typically cannot afford to spend more than 5 percent of their income on loan repayments.[29] A payday loan, which usually requires a balloon payment two weeks after the loan is made, can consume more than one-third of an average borrower's paycheck. As a result, borrowers tend to renew or refinance the loans and spend more on fees than they originally receive in credit.[30] Allowing borrowers to make smaller payments over a longer period of time could make loans more affordable.[31] The National Consumer Law Center recommends requiring full pro-rata or actuarial rebates of all loan charges when loans are

[28] Nathalie Martin, "1000% Interest—Good While Supplies Last: A Study of Payday Loan Practices and Solutions," 7
[29] The Pew Charitable Trusts, "Payday Loans and How to Fix Them," 2015, accessed through http://www.pewtrusts.org/en/multimedia/video/2015/payday-loans-and-how-to-fix-them
[30] Ibid.
[31] Ibid.

refinanced or paid off early and prohibiting prepayment penalties.[32] Requiring a pro-rated refund of loan charges when borrowers refinance loans discourages the lending practice of "loan flipping," or refinancing loans to generate fee income.[33]

<u>Payday Loan Alternatives.</u> Credit unions, community development financial institutions (CDFI), community loan centers, and some lenders have been able to provide small loan products within an APR cap of 36 percent. Credit unions like Government Employees Credit Union are able to offer small loans at an APR of 27.9 percent.[34] Native Community Finance, a CDFI, is able to provide financial counseling and refinance loans at APRs less than 15 percent for subprime borrowers.[35] Applicants that demonstrate an ability to repay the loan are generally offered fixed-term loans from $400 to $5,000 with maturities greater than six months. Since 2007, Native Community Finance has written off a total of $1,127 on these loan products. The New Mexico Fair Lending Coalition recommends the creation of state matching grants and a loan loss reserve fund to provide start-up and expansion stability for credit unions, CDFIs, and consumer finance lenders that partner with employers willing to provide affordable low documentation, small loans to subprime consumers.

LENDING INDUSTRY GROUP POSITIONS

<u>Ability to Repay Requirements.</u> After the 2008 financial crisis, the Dodd-Frank Wall Street Reform and Consumer Protection Act was passed in 2010 to provide comprehensive financial regulatory reform measures. The act created an independent Bureau of Consumer Financial Protection (CFPB) within the Federal Reserve specifically responsible for protecting consumers from unfair, abusive, or deceptive financial products or services provided by certain institutions. In 2015, the CFPB released a proposal to limit certain practices for payday, vehicle title, and similar loans. The proposal set ability to repay and alternative lending requirements for "covered loans" which the bureau defined as "short-term credit products with contractual durations of 45 days or less and longer-term credit products with an all-in annual percentage rate (APR) in excess of 36 percent where the lender obtains a preferred payment position by either obtaining access to repayment through a consumer's account or paycheck or a non-purchase money security interest in the consumer's vehicle (See Appendix D)." The industry is monitoring the progress of the CFPB proposal as it will have significant influence over current industry practices. Lenders and industry groups recommend waiting until the CFPB issues its final ruling before considering additional state regulation on consumer loans.

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32 National Consumer Law Center, "Installment Loans: Will States Protect Borrowers from a new wave of Predatory Lending?" 2015; 38
33 Interview input from The Pew Charitable Trusts
34 Interview input from New Mexico Fair Lending Coalition
35 Interview input from Native Community Finance

Lenders and industry groups do not support interest rate caps as it requires companies to provide longer and larger loans to meet APR ceilings. The term and size of these products have higher total dollar costs than short-term credit products and might not fit the needs of borrowers[36]. In some cases, borrowers may be denied credit altogether as industry underwriting practices that assess borrower ability to repay or credit risk may disqualify higher risk borrowers from obtaining higher cost loans. A 2005 Federal Deposit Insurance Corporation working paper found fixed operating costs and high loan loss rates justified a large part of the high APR charged on payday advance loans.[37] Traditional installment lenders like Sun Loan Company, Springleaf Financial Services, World Acceptance Corporation, and Check 'N Go underwrite loans and reject, on average, half of all applicants during the loan-making process.[38] Online lenders like Enova and Elevate use risk-based analyses to evaluate borrower risk using various algorithms and statistical methods.[39] After proper underwriting is conducted, lenders are able to provide a greater variety of credit options to borrowers based on their needs and ability, including short-term and long-term products. Rate caps would eliminate or limit short-term credit options for borrowers with lower credit scores.[40] Traditional installment lenders from stores and online companies in New Mexico recommend responsible underwriting practices that consider a borrower's ability to repay and increased financial literacy programs and disclosures for consumers so that they are aware of the risks and costs associated with the loan product.

In 2010, the Federal Deposit Insurance Corporation concluded a two-year pilot program to study the feasibility of banks offering affordable small-dollar loan products. Participating banks provided loan amounts up to $2,500, annual percentage rates of 36 percent or less, low or no fees, streamlined underwriting, and loan terms of 90 days or more. The pilot found that the interest and fees generated were not always sufficient to achieve robust short-term profitability.[41] Rather, most pilot bankers sought to generate long-term profitability through volume and by using small-dollar loans to cross-sell additional products.[42]

Ancillary Products. Traditional installment lenders that provide ancillary products and services, such as credit insurance, allow borrowers to voluntarily purchase protection for themselves and their families from loss through the purchase of credit insurance or debt protection products. Springleaf Financial Services makes loans with APRs less than 36 percent by practice, but also offers these voluntary ancillary products in addition to the loan. Addition of ancillary products

[36] Interview input from American Financial Services Association
[37] Mark Flannery and Katherine Samolyk, "Payday Lending: Do the Costs Justify the Price?" 2
[38] Interview input from Brundage Management, Springleaf Financial Services, World Acceptance Corporation, Axcess Financial
[39] Interview input from Enova and Elevate
[40] Interview input from American Financial Services Association
[41] Federal Deposit Insurance Corporation, "A Template for Success: The FDIC's Small-Dollar Loan Pilot Program," *FDIC Quarterly Vol. 4, No.2*, 2010
[42] Ibid., 32

would increase the APR of the loan depending on the loan terms[43]. The Truth in Lending Act permits the exclusion of premiums for credit life, accident and health, or loss of income insurance and debt collection fees from the APR calculation if the insurance or coverage is not required as a condition of the loan.[44] According to the Consumer Credit Industry Association, over $1.8 billion of credit insurance and debt protection claims were paid in 2013.[45] A 2013 national survey conducted by Harris Interactive of 1,004 customers of store-front companies within the Community Financial Services Association of America found that 93 percent of borrowers carefully weighed the risks and benefits of taking out a payday loan.[46] An all-inclusive APR cap at 36 percent, which would include ancillary products like credit insurance in the interest rate calculation, would eliminate or limit consumer options for credit insurance and debt protection services[47].

Refund Anticipation Loans. Across the board regulations on consumer loan products will affect lenders differently based on their product lines and services. Refund anticipation loans are credit products based on, and usually repaid by, a consumer's expected tax refund. The full amount of the loan must be repaid in a single lump-sum payment anywhere between a few days or three months, even if the refund is lower than the amount anticipated. During the 2015 regular session of the New Mexico legislature, refund anticipation lenders worked with the industry on legislation regulating all loans under the New Mexico Small Loan Act. During those discussions, it was determined refund anticipation loans would not work within the format that was being drafted. The drafted bill only applied to short-term or long-term installment type loans. Refund anticipation lenders[48] support separate regulations that:

- Set a maximum loan cap of 85 percent of the tax refund and grant the consumer the right to rescind the transaction before close of the next business day.
- Prohibited rollovers, refinancing, and late fees after 31 days.
- Permitted charges that included a cap on the amount of interest charged.
- Prohibited retention of personal identification documents as a loan condition.
- Informed consumers of their right to file income tax refunds without applying for a refund anticipation loan and disclosed the associated costs and fees.

Between 2009 and 2012, virtually all banks left the tax refund anticipation loan (RAL) market

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43 Interview input from Springleaf Financial Services
44 Truth in Lending Act, Regulation Z. *12 CFR 226.4*
45 Tom Keepers, "Consumer Credit Industry Association Product Value and Regulatory Structure," *CCIA*, July 2015
46 Harris Interactive Public Relations Research, "Payday Loans and the Borrower Experience: Executive Summary," *Community Financial Services Association of America*, December 2013
47 Interview input from Springleaf Financial Services
48Interview input from MJS Consulting

either voluntarily or as a result of regulatory enforcement.[49] With the decline in RALs in 2013, the usage of tax refund anticipation checks increased.[50] In February 2014, the U.S. Court of Appeals for the District of Columbia decision in *Loving v. Internal Revenue Service* held that the IRS lacked the authority to regulate tax return preparers. In 2015, only four states (California, Maryland, Oregon, and New York) had enacted laws to regulate the practice of tax preparation. Regulations included educational requirements, license fees, and state-developed examinations.[51]

DISCUSSION

Both consumer interest and lending industry groups in New Mexico agree increased regulatory oversight is needed to curb predatory lending practices in the state. Both groups generally support disclosing all material loan terms to borrowers, providing financial education and advisement to borrowers, assessing borrower ability to repay, reporting to credit bureaus when it helps consumers build creditworthiness, and imposing strict penalties for illegal lending practices. Both groups agree regulation of the industry must be carefully designed to prevent unintended harm to consumers. The following examples illustrate how well-meaning legislation has resulted in unintended consequences and should be considered when developing a regulatory framework for the industry:

- In 2008, Ohio payday lenders registered as "mortgage lenders" to make small-dollar loans that could sidestep the 28 percent interest rate cap regulation.[52]
- Credit services (repair) organizations in Texas do not issue loans but connect customers to third-party lenders and charge service fees that still result in triple-digit interest rates.[53] Courts have ruled that credit repair fees are not considered usurious interest.
- Payday loans are prohibited in the state of Georgia, but online non-lender third parties, like SameDay Payday, offer borrowers a connection to lenders in more permissive states so they can obtain online payday loans.[54]
- To evade a 2012 law prohibiting two-week loans from exceeding $250, Mississippi payday lenders began splitting up big loans into smaller, concurrent loans.[55] For example, lenders could not make a $400 loan due in two weeks, but could issue four $100 loans simultaneously to avoid the restriction.

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[49] Chi Chi Wu, "It's a Wild World: Consumers at Risk from Tax-Time Financial Products and Unregulated Preparers," *National Consumer Law Center*, 2014,
[50] Ibid., 11
[51] Nina E. Olson, "Written Statement of National Taxpayer Advocate before the Committee on Finance; United States Senate Hearing on 'Protecting Taxpayers from Incompetent and Unethical Return Preparers,'" 2014, 11-12
[52] Jeff Guo, "Many states have cracked down on payday loans. Here's how lenders still get away with it," *The Washington Post*, February 9, 2015
[53] Ibid.
[54] SameDay Payday, "Georgia Payday Loan," 2015, accessed through https://www.samedaypayday.com/Georgia-Payday-Loan
[55] Jeff Guo, "Many states have cracked down on payday loans. Here's how lenders still get away with it,"

- In 2015, the U.S. Department of Defense issued new rulings on the Military Lending Act to close up loopholes in the 2006 ruling. The 2006 law prohibited lenders from charging active military households more than 36 percent interest on loans of 90 days or shorter. Lenders were able to avoid this requirement by offering loans longer than 91 days.[56]
- According to the National Consumer Law Center, Tennessee enacted an open-end credit (loans, like credit cards, without fixed amounts or terms) law in 2014 that limited annual interest to 24 percent but allowed a daily charge that brought the full APR to 279 percent.[57] The provision incentivized a shift from installment loans to open-end credit.[58]
- A 2010 University of New Mexico study found language in the Small Loan Act on payday loans contained "several disincentives for consumers to convert these loans to free payment plans." [59] The statute did not required a cooling-off period, or waiting time between loans, for regular payday loans but did require a 10 day cooling-off period after repayment of a loan had been converted to a payment plan. Additionally, the cooling-off period did not start until the consumer had paid off all other outstanding payday loans.

Consumer interest and lending industry groups disagree on implementing an interest rate cap. Industry groups claim setting a lower interest rate cap will force more loan companies out of the market, especially lenders that only provide single product or service types. Some groups have questioned the effectiveness[60] of loan repayment period floors (as practiced in Colorado[61]) and adequacy of the Consumer Financial Protection Bureau's new proposals (which cannot include an interest rate cap). Policymakers should continue to monitor these rulings when developing and deciding on a regulatory framework for small loans.

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[56] Ibid.
[57] National Consumer Law Center, "Installment Loans: Will States Protect Borrowers from a new wave of Predatory Lending?" 38
[58] Ibid., 38
[59] Nathalie Martin, "1000% Interest—Good While Supplies Last: A Study of Payday Loan Practices and Solutions," 18
[60] Lauren Saunders, "Colorado Is No Model for a National Payday Rule." *American Banker*, December 10, 2014.
[61] American Financial Services Association, "Payday Lending in Colorado," *AFSA Talking Points*, June 2015

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Jean Phillips, New Mexico Legal Aid
David Schmidt, registered lobbyist
Diane Standaert, Center for Responsible Lending

APPENDIX A: Definitions

CONSUMER LOAN PRODUCTS	
Payday loans	Loans typically structured as short-term, single payment products with repayment due at the time of the consumer's next paycheck or benefit payment.
Vehicle title loans	Loans backed by a security interest in the consumer's vehicle and may be short-term or long-term. The lender may repossess the consumer's vehicle if the consumer is unable to pay.
Installment loans	Loans that have longer terms with a set number of scheduled payments, often over several months. Some loans may have balloon payments.
Tax refund anticipation loans	Loans based on and usually repaid by a consumer's expected tax refund. The full amount of the loan must be repaid even if the refund is lower than the amount anticipated.
Source: Consumer Financial Protection Bureau	

APPENDIX B: New Mexico Small Loan Company Data

NEW MEXICO PAYDAY LOAN DATA							
Year	**2008**	**2009**	**2010**	**2011**	**2012**	**2013**	**2014**
Active Locations	144	134	117	121	129	143	148
Loan Volume	113,272	92,045	80,077	83,077	79,087	72,704	65,837
Number of Borrowers	21,783	16,152	12,890	12,934	12,287	12,506	12,129
Avg. Loan Principal	$425.80	$380.16	$372.59	$375.44	$381.98	$377.12	$369.38
Total Loan Amount	$41,896,028	$35,000,000	$29,800,000	$31,200,000	$30,200,000	$27,400,000	$24,300,000
Total Fees	$6,335,559	$5,300,000	$4,500,000	$4,700,000	$4,600,000	$4,100,000	$3,700,000
Loans Open	13,081	9,848	7,380	7,205	7,391	7,253	7,627
Total Loan Amount Open	$4,746,042	$3,621,448	$2,673,920	$2,701,914	$2,758,856	$2,700,000	$2,800,000
Total Fees Open	$706,678	$542,023	$395,942	$402,007	$408,634	$397,000	$414,000
Effective APR	355.84%	359.41%	345.60%	337.06%	330.08%	322.22%	307.89%
Avg. Term Days	17.65	20.9	20.73	21.75	22.11	22.87	23.88
Avg. Days of Engagement	22.26	26.17	25.11	25.89	26.63	26.51	27.97
Avg. Loans Per Customer	5.13	5.70	6.21	6.42	6.44	5.81	5.43
Number of Write-offs	89	75	95	103	142	235	153
Write-off Amount	$27,874	$24,322	$31,132	$43,500	$46,804	$70,570	$47,972
Borrowers eligible for a Payment Plan	26,095	33,429	38,581	43,917	48,850	54,146	59,537
Borrowers entering a Payment Plan	3,647	2,186	1,221	1,115	1,088	1,108	1,247

NEW MEXICO UNSECURED LOAN DATA				
Year	**2011**	**2012**	**2013**	**2014**
Min APR	7%	7%	0%	0%
Max APR	382%	825%	1517%	699%
Avg. APR	226%	359%	486%	371%
Total number of loans	3,164	78,445	64,735	97,738
Total amount of loan principal	$907,142	$51,302,339	$38,426,487	$72,628,894
Avg. principal loan amount	$412	$699	$547	$916
Total number of loans not paid in full	1,708	38,141	30,554	102,316
Total amount of loan principal repaid	$556,270	$39,019,476	$29,239,880	$53,101,625
Total amount of interest received	$634,718	$16,839,074	$21,568,057	$45,633,464
Total amount of fees received	$22,800	$507,322	$614,265	$3,857,768
Total number of loans secured by collateral	2,537	27,161	16	24,703
Total number of secured loans foreclosed or repossessed	91	0	0	404
Total amount of loan principal written-off	$95,330	$4,735,616	$3,820,703	$11,608,290
Total amount of accrued interest written-off	$76,538	$1,794,216	$2,213,838	$5,506,890
Avg. percent of consumers who were new	32%	35%	44%	46%
Number of loans renewed, refinanced or extended	887	15,901	11,950	14,912
NEW MEXICO SECURED INSTALLMENT LOAN DATA				
Year	**2011**	**2012**	**2013**	**2014**
Min APR	0%	0%	0%	24%
Max APR	1517%	1517%	608%	548%
Avg. APR	424%	433%	350%	353%
Total number of loans	75,410	116,193	92,100	27,861
Total amount of loan principal	$39,039,745	$48,938,241	$59,811,008	$9,234,538
Avg. principal loan amount	$440	$1,845	$4,543	$1,352
Total number of loans not paid in full	783,610	375,114	29,531	140,378
Total amount of loan principal repaid	$24,677,196	$45,173,377	$48,151,658	$6,604,572
Total amount of interest received	$19,364,806	$37,501,529	$28,791,602	$5,801,714
Total amount of fees received	$541,981	$2,495,149	$440,467	$430,101
Total number of loans secured by collateral	20,777	26,164	92,251	13,477
Total number of secured loans foreclosed or repossessed	267	125	128	15
Total amount of loan principal written-off	$2,441,412	$4,829,429	$5,392,078	$823,922
Total amount of accrued interest written-off	$1,136,216	$2,302,567	$2,424,104	$236,000
Avg. percent of consumers who were new	128%	47%	47%	16%
Number of loans renewed, refinanced or extended	19,857	28,758	32,518	19,011
NEW MEXICO INSTALLMENT TITLE LOAN DATA				
Year	**2013**	**2012**	**2013**	**2014**
Min APR	N/A	0%	0%	24%
Max APR	N/A	450%	652%	410%

Avg. APR	N/A	314%	222%	221%
Total number of loans	N/A	9,669	31,732	16,603
Total amount of loan principal	N/A	$3,213,127	$33,081,019	$15,422,816
Avg. principal loan amount	N/A	$831	$1,237	$1,372
Total number of loans not paid in full	N/A	2,400	13,279	7,043
Total amount of loan principal repaid	N/A	$4,092,186	$19,664,271	$10,328,322
Total amount of interest received	N/A	$3,710,243	$15,874,238	$8,277,511
Total amount of fees received	N/A	$53,289	$242,141	$140,342
Total number of loans secured by collateral	N/A	6,913	31,727	16,472
Total number of secured loans foreclosed or repossessed	N/A	221	755	504
Total amount of loan principal written-off	N/A	$667,561	$2,498,804	$840,446
Total amount of accrued interest written-off	N/A	$104,581	$766,980	$371,485
Avg. percent of consumers who were new	N/A	58%	58%	42%
Number of loans renewed, refinanced or extended	N/A	4,163	21,851	4,510

NEW MEXICO SECURED CONSUMER LOAN DATA

Year	**2011**	**2012**	**2013**	**2014**
Min APR	217%	85%	N/A	N/A
Max APR	3042%	616%	N/A	N/A
Avg. APR	617%	287%	N/A	N/A
Total number of loans	26,648	2,836	N/A	N/A
Total amount of loan principal	$880,949	$2,296,697	N/A	N/A
Avg. principal loan amount	$329	$802	N/A	N/A
Total number of loans not paid in full	2,607	1,226	N/A	N/A
Total amount of loan principal repaid	$7,918,186	$1,930,929	N/A	N/A
Total amount of interest received	$0	$1,667,198	N/A	N/A
Total amount of fees received	$1,966,196	$0	N/A	N/A
Total number of loans secured by collateral	0	2,837	N/A	N/A
Total number of secured loans foreclosed or repossessed	0	105	N/A	N/A
Total amount of loan principal written-off	$406,057	$83,979	N/A	N/A
Total amount of accrued interest written-off	$23,524	$0	N/A	N/A
Avg. percent of consumers who were new	14%	64%	N/A	N/A
Number of loans renewed, refinanced or extended	0	1,862	N/A	N/A

NEW MEXICO TITLE LOAN DATA

Year	**2011**	**2012**	**2013**	**2014**
Min APR	0%	0%	0%	0%
Max APR	717%	652%	652%	655%
Avg. APR	281%	270%	292%	272%
Total number of loans	41,080	63,246	55,831	41,402
Total amount of loan principal	$27,090,228	$48,073,839	$47,090,776	$35,926,163
Avg. principal loan amount	$959	$1,020	$769	$763

Total number of loans not paid in full	35,396	62,102	22,636	16,414
Total amount of loan principal repaid	$20,427,778	$34,177,154	$33,785,063	$24,077,917
Total amount of interest received	$11,806,488	$25,831,737	$27,189,840	$20,848,626
Total amount of fees received	$455,148	$1,099,590	$1,087,128	$598,894
Total number of loans secured by collateral	49,913	62,416	55,369	41,441
Total number of secured loans foreclosed or repossessed	811	1,667	1,518	9,891
Total amount of loan principal written-off	$1,894,032	$4,519,252	$3,921,284	$2,136,667
Total amount of accrued interest written-off	$1,039,782	$4,202,871	$22,873,542	$492,224
Avg. percent of consumers who were new	47%	57%	54%	39%
Number of loans renewed, refinanced or extended	14,183	30,510	26,086	14,710
NEW MEXICO TAX REFUND LOAN DATA				
Year	**2011**	**2012**	**2013**	**2014**
Min APR	0%	15%	15%	79%
Max APR	522%	2738%	3288%	2738%
Avg. APR	219%	393%	349%	317%
Total number of loans	8,291	36,424	47,267	27,012
Total amount of loan principal	$8,639,275	$27,611,342	$34,060,260	$17,273,316
Avg. principal loan amount	$705	$679	$828	$1,199
Total number of loans not paid in full	12,358	342,985	372,628	33,250
Total amount of loan principal repaid	$1,721	$26,809,924	$23,002,665	$15,158,892
Total amount of interest received	$218	$2,832,299	$3,378,552	$2,590,240
Total amount of fees received	$1,950	$146,170	$114,823	$210,886
Total number of loans secured by collateral	2,491	15,195	17,214	24,152
Total number of secured loans foreclosed or repossessed	0	0	0	74
Total amount of loan principal written-off	$0	$521,705	$1,039,140	$805,692
Total amount of accrued interest written-off	$0	$87,594	$162,752	$48,383
Avg. percent of consumers who were new	5%	27%	16%	9%
Number of loans renewed, refinanced or extended	0	0	0	0
Source: New Mexico Regulation and Licensing Department, Financial Institutions Division, "Payday Loan Annual Report 2008 through 2014" and "Installment Loan Annual Report APR greater than 175% 2011 through 2014"				

APPENDIX C: State Comparison of Interest Rate Caps on Small Loans

STATE COMPARISON OF INTEREST RATE CAPS ON SMALL LOANS			
State:	**Interest rate cap on payday loans[1]**	**Interest rate cap on vehicle-title loans[1]**	**Interest rate cap short-term installment loans[1]**
Alabama	456%	300%	94%
Alaska	443%	Prohibited	36%
Arizona	Prohibited	204%	54%
Arkansas	Prohibited	Prohibited	17%
California	460%	Prohibited	45%
Colorado[2]	Prohibited	Prohibited	91%

Connecticut	30%	Prohibited	29%
Delaware[3]	No cap	No cap	No cap
District of Columbia	Prohibited	Prohibited	24%
Florida	342%	30%	30%
Georgia	Prohibited	304%	44%
Hawaii	460%	Prohibited	24%
Idaho	No cap	No cap	No cap
Illinois	404%	No cap	99%
Indiana	391%	Prohibited	66%
Iowa	358%	35%	36%
Kansas	391%	No cap	36%
Kentucky	471%	36%	42%
Louisiana[4]	574%	Prohibited	81%
Maine	30%	Prohibited	30%
Maryland	33%	Prohibited	33%
Massachusetts	23%	Prohibited	37%
Michigan	375%	Prohibited	43%
Minnesota	235%	116%	51%
Mississippi	572%	300%	52%
Missouri	1955%	No cap	No cap
Montana	36%	36%	36%
Nebraska	460%	Prohibited	47%
Nevada	No cap	No cap	40%
New Hampshire	36%	300%	36%
New Jersey	30%	Prohibited	30%
New Mexico	409%	No cap	No cap
New York	25%	Prohibited	25%
North Carolina	Prohibited	Prohibited	47%
North Dakota	520%	Prohibited	28%
Ohio[5, 6]	No cap	Prohibited	70%
Oklahoma	396%	Prohibited	46%
Oregon[7]	36%	154%	36%
Pennsylvania	24%	Prohibited	26%
Rhode Island	261%	Prohibited	30%
South Carolina	391%	117%	71%
South Dakota	No cap	No cap	No cap
Tennessee	313%	264%	87%
Texas	No cap	No cap	84%
Utah	No cap	No cap	No cap
Vermont	18%	Prohibited	24%
Virginia	610%	264%	36%
Washington[8]	390%	Prohibited	39%

West Virginia	31%	Prohibited	38%
Wisconsin	No cap	No cap	No cap
Wyoming	313%	Prohibited	36%

1. Payday loan maximum APR caps are based on a $250, two-week payday loan. Car-title loan maximum APR caps are based on a $300, one-month auto-title loan. Small dollar installment loan maximum APR caps are based on a $500, six-month installment loan.
2. Two-week payday loans are effectively prohibited in Colorado. However, the APR for a $250, six-month lump-sum repayment payday loan (the minimum length permitted by law) is 145 percent.
3. Delaware enacted legislation in 2012 limiting the number of short-term loans a consumer may take out in a twelve-month period to five. The law also expands the definition of short-term consumer loans to include all loans under $1,000 and creates a database that tracks the number of short-term loans consumers obtain.
4. Louisiana does not authorize car-title lending. However, car-title lenders operate under the Louisiana Consumer Credit Law.
5. In 2008, the Ohio legislature enacted and voters affirmed a 28 percent APR rate cap for short-term loans.
6. Although car-title lending is not authorized under Ohio law, some car-title lenders are operating under statutes not intended to regulate their practices and may be operating illegally.
7. While Oregon's payday loan maximum APR cap is 36 percent, lenders may still charge initial loan fees of $10 per $100 borrowed, up to $30, which would be higher than any other state with a rate cap.
8. Washington limits borrowers to eight payday loans in any twelve-month period. This has substantially decreased payday loan volume and the number of lenders in the state.

Source: Leah Plunkett and Ana Luc, "Predatory Short-Term Lending Protections," Corporation for Enterprise Development, January 2015; and Heather Morton, "Payday Lending State Statutes," National Conference of State Legislatures, January 2015.

APPENDIX D: CFPB 2015 Outline of Proposals

	SHORT-TERM LOANS Loan duration of 45 days or less	**LONGER-TERM LOANS** Loan duration more than 45 days with an all-in APR more than 36% and preferred repayment position[1]	
Ability to repay (ATR) requirements	**Short-term ATR**	**Longer-term ATR**	
	Lender must assess borrower's finances to ensure ability to repay: • Verify income • Verify major financial obligations • Check borrowing history[2] • Make a reasonable determination that sufficient income remains to cover loan costs and estimated living expenses	Lender must assess borrower's finances to ensure ability to repay: • Verification analysis is similar to short-term ATR loan • If borrower shows signs of distress, refinancing restrictions apply • Does not limit loan size, payment size, cost, duration or how long a lender may access to a deposit account or vehicle title	
Alternative requirements	**Short-term alternative**	**Longer-term alternative: NCUA-type loans[3]**	**Longer-term alternative: 5% payment-to-income ratio[4]**
	• $500 maximum loan amount • Mandatory 60 days without borrowing after three consecutive loans • 90-day maximum indebtedness per 12-month	• 28% interest + $20 fee • Loan amounts of $200 to $1,000 • Six-month maximum loan duration • Maximum of two	• Monthly payment cannot exceed 5% of gross monthly income • Six-month maximum loan duration • Maximum of two

	period • Taper to zero loan balance after several consecutive loans • No holding of vehicle titles	loans per six-month period	loans per 12-month period

Collecting payment: Lenders would be required to give notice before attempting to collect payment from a borrower's deposit account and could only make one additional attempt at withdrawal if the first attempt fails.

Multiple loans: Lenders may not issue a loan to a borrower who already has a covered loan outstanding.

Not covered: Most pawn loans, credit card accounts, real estate secured transactions, student loans, deposit account overdraft, and loans greater than 45 days where the lender has no preferred repayment position.

1. **All-in APR:** A measure that would include interest, application and other fees, and the cost of ancillary products sold along with the credit.
   Preferred repayment position: Includes holding a vehicle title or having access to a borrower's deposit account to help secure repayment.
2. **Check borrowing history:** For all loans, lenders would have to check commercially available reporting systems that operate according to CFPB specification and report loan activity to them. Lenders might also be required to check borrower's default history.
3. **NCUA-type loans:** Loans that generally satisfy the requirements of the Payday Alternative Loan program under the National Credit Union Administration.
4. **Payment-to-income (PTI) ratio:** For example, a 5 percent PTI for an average borrower who earns $30 thousand annually, or $2,500 monthly, would equal a monthly payment of no more than $125 ($2,500 x 5%), including principal and fees

Source: Consumer Financial Protection Bureau. "Small Business Advisory Review Panel for Potential Rulemakings for Payday, Vehicle Title, and Similar Loans. Outline of Proposals Under Consideration and Alternatives Considered; March 26, 2015; The Pew Charitable Trusts analysis

APPENDIX E: House Memorial 131

A MEMORIAL

REQUESTING THE LEGISLATIVE FINANCE COMMITTEE TO EXAMINE THE CONSUMER LENDING INDUSTRY IN NEW MEXICO AND CONVENE A TASK FORCE DURING THE 2015 INTERIM TO CONSIDER THE FURTHER REGULATION OF CONSUMER LENDING PRACTICES.

WHEREAS, in 2015, there are 684 small loan companies licensed pursuant to the New Mexico Small Loan Act of 1955 to do business in New Mexico; and

WHEREAS, consumer loans currently being made by companies in New Mexico and by online lenders to residents of New Mexico include installment loans, payday loans, car title loans and tax refund anticipation loans; and

WHEREAS, data collected by the financial institutions division of the regulation and licensing department for calendar year 2013 indicate that for the total of 64,735 unsecured installment loans:

A. the annual percentage rate of interest ranged from 0 percent to 1,517 percent, with an average of 486 percent;

B. the total amount of loan principal was $38,426,486.84, with an average principal loan amount of $546.57;

C. the total amount of loan principal repaid was $29,239,879.53, and the total amount of loan principal considered as a write-off or charge-off was $3,820,702.68;

D. the total amount of interest and fees received was $22,182,322.53, and the total amount of interest considered as a write-off or charge-off was $2,213,838.18; and

E. there were 30,554 loans for which the loan principal and accrued interest was not paid in full and 11,950 loans that were renewed, refinanced or extended; and

WHEREAS, the New Mexico legislature in 2007 enacted statutory reforms to regulate payday loans to address, among other things, the high cost of small loans, the frequency of rollovers and recurring cycles of debt; and

WHEREAS, since 2007, some small loan lenders have revised their loans and business practices to circumvent and avoid the consumer protections enacted in the 2007 payday loan reform legislation; and

WHEREAS, the New Mexico legislature in 2013 enacted legislation requiring licensees pursuant to the New Mexico Small Loan Act of 1955 to report to the financial institutions division of the regulation and licensing department specific information regarding loans with annual percentage rates greater than 175 percent to the state to enable the legislature to better understand the consumer lending industry in New Mexico; and

WHEREAS, in the ten regular legislative sessions prior to 2015, twenty-seven bills have been introduced concerning the regulation of consumer lending, of which only three received final legislative approval; and

WHEREAS, except for the effort during the 2006 legislative interim, which effort assisted in the passage of the payday lending reforms in 2007, efforts of interim committees and study groups since then have failed to build a consensus for additional reform of consumer lending regulations in New Mexico; and

WHEREAS, many New Mexicans need access to short-term and long-term loans for a variety of purposes, and this need extends throughout the population, affecting persons with both substantial income and financial resources as well as those with little or no income and inadequate financial resources; and

WHEREAS, companies making consumer loans are entitled to make a reasonable but not an excessive profit on loans made to New Mexicans; and

WHEREAS, it is in the best interest of New Mexico to assure reasonable access for all residents to affordable credit and to sources of short-term loans without the imposition of draconian fees or interest rates for all New Mexico consumers;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF THE STATE OF NEW MEXICO that the legislative finance committee be requested to study the consumer lending industry in New Mexico and convene a task force during the 2015 legislative interim to consider ways in which the state may better regulate lending practices in New Mexico to provide residents with consumer lending alternatives at reasonable rates and better protection from abusive lending practices; and

BE IT FURTHER RESOLVED that the legislative finance committee and the task force report their findings and recommendations to the appropriate legislative interim committees no later than September 30, 2015; and
BE IT FURTHER RESOLVED that copies of this memorial be transmitted to the president pro tempore of the New Mexico senate, the speaker of the New Mexico house of representatives, the director of the legislative finance committee, the director of the legislative council service, the attorney general and the director of the financial institutions division of the regulation and licensing department.

APPENDIX F: House Memorial 36

HOUSE MEMORIAL 36
44TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1999
INTRODUCED BY
Leo C. Watchman
A MEMORIAL

REQUESTING THE DIRECTOR OF THE FINANCIAL INSTITUTIONS DIVISION OF THE REGULATION AND LICENSING DEPARTMENT TO SELECT A STUDY COMMITTEE MADE UP OF REPRESENTATIVES OF THE LENDING INDUSTRY AND CONSUMERS TO STUDY THE EXISTING REGULATORY STATUTES OF AND THE EXISTING LENDING PRACTICES IN THE STATE TO DETERMINE WHAT, IF ANY, LEGISLATION IS NECESSARY TO PROVIDE A HEALTHY ECONOMIC ENVIRONMENT FOR BOTH LENDERS AND CONSUMERS.
WHEREAS, many New Mexicans need access to short-term and long-term loans; and
WHEREAS, this need extends throughout the population, affecting persons with both substantial income and financial resources as well as those existing with little or no income and inadequate financial resources on a daily basis; and
WHEREAS, computer and communications technology has made it possible to offer instant short-term high interest loans to people in dire financial circumstances without requirements for credit establishment or verification; and
WHEREAS, serious questions arise about whether this relatively new fast loan industry is regulated adequately under current law;
NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF THE STATE OF NEW MEXICO that the director of the financial institutions division of the regulation and licensing department be requested to select a committee made up of representatives of all segments of the loan industry and consumers within the state to study the existing regulatory statutes of and the existing lending practices in the state to determine what, if any, legislation is necessary to provide a healthy economic environment for both lenders and consumers; and
BE IT FURTHER RESOLVED that the director of the financial institutions division report to the second session of the forty-fourth legislature his findings and recommendations resulting from the study; and
BE IT FURTHER RESOLVED that copies of this memorial be transmitted to the governor, the superintendent of regulation and licensing and to the director of the financial institutions division of the regulation and licensing department.