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THINK NEW MEXICO

A Results-Oriented Think Tank Serving New Mexicans

How Predatory Lending Swallowed New Mexico and What We Can Do About It

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About Think New Mexico

Think New Mexico is a results-oriented think tank whose mission is to improve the quality of life for all New Mexicans, especially those who lack a strong voice in the political process. We fulfill this mission by educating the public, the media, and policymakers about some of the most serious challenges facing New Mexico and by developing and advocating for effective, comprehensive, sustainable solutions to overcome those challenges.

Our approach is to perform and publish sound, nonpartisan, independent research. Unlike many think tanks, Think New Mexico does not subscribe to any particular ideology. Instead, because New Mexico is at or near the bottom of so many national rankings, our focus is on promoting workable solutions that will lift New Mexico up.

Results

As a results-oriented think tank, Think New Mexico measures its success based on changes in law we help to achieve. Our results include:

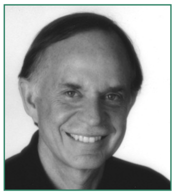
- Making full-day kindergarten accessible to every child in New Mexico
- Repealing the state's regressive tax on food and successfully defeating efforts to reimpose it
- Creating a Strategic Water Reserve to protect and restore the state's rivers
- Redirecting millions of dollars a year from the state lottery's excessive operating costs to college scholarships
- Establishing New Mexico's first state-supported Individual Development Accounts to alleviate the state's persistent poverty
- Reforming title insurance to lower closing costs for homebuyers and homeowners who refinance their mortgages
- Winning passage of three constitutional amendments to streamline and professionalize the Public Regulation Commission (PRC)
- Creating a one-stop online portal to facilitate business fees and filings
- Establishing a user-friendly health care transparency website where New Mexicans can find the cost and quality of common medical procedures at any of the state's hospitals
- Enacting the New Mexico Work and Save Act to make voluntary state-sponsored retirement savings accounts accessible to New Mexicans who lack access to retirement plans through their jobs

Think New Mexico's Board of Directors

Consistent with our nonpartisan approach, Think New Mexico's board is composed of Democrats, Independents, and Republicans. They are statesmen and stateswomen, who have no agenda other than to help New Mexico succeed. They are also the brain trust of this think tank.

Clara Apodaca, a native of Las Cruces, was First Lady of New Mexico from 1975–1978. She served as New Mexico's Secretary of Cultural Affairs under Governors Toney Anaya and Garrey Carruthers and as senior advisor to the U.S. Department of the Treasury. Clara is a former President and CEO of the National Hispanic Cultural Center Foundation.

Jacqueline Baca has been President of Bueno Foods since 1986. Jackie was a founding board member of Accion and has served on the boards of the Albuquerque Hispano Chamber of Commerce, the New Mexico Family Business Alliance, and WESST. In 2019, she was appointed to the Federal Reserve Bank of Kansas City's Denver Branch Board of Directors.



Paul Bardacke served as Attorney General of New Mexico from 1983–1986. He is a Fellow in the American College of Trial Lawyers, and he currently handles complex commercial litigation and mediation with the firm of Bardacke Allison in Santa Fe. Paul was a member of the National Park System Advisory Board for seven years.

Notah Begay III, Navajo/San Felipe/Isleta Pueblo, is the only full-blooded Native American to have played on the PGA Tour, where he won four tournaments. He now works with Native communities to develop world-class golf properties and he is also the Founder and Chief Executive Officer of KivaSun Foods. Notah founded The Notah Begay III Foundation (NB3F), which works to reduce obesity and diabetes among Native American youth.

Garrey Carruthers served as Governor of New Mexico from 1987–1990 and as Chancellor of the system and President of New Mexico State University from 2013–2018. In between he served as Dean of the College of Business at NMSU and as President and CEO of Cimarron Health Plan. Garrey was instrumental in establishing the Arrowhead Center for economic development in Las Cruces.

LaDonna Harris is Founder and Chair of the Board of Americans for Indian Opportunity. She is also a founder of the National Women's Political Caucus. LaDonna was a leader in the effort to return the Taos Blue Lake to Taos Pueblo. She is an enrolled member of the Comanche Nation.

Edward Lujan is the former CEO of Manuel Lujan Agencies, the largest privately owned insurance agency in New Mexico. Ed is also a former Chairman of the Republican Party of New Mexico, the New Mexico Economic Development Commission, and the National Hispanic Cultural Center of New Mexico, where he is now Chair Emeritus.

Liddie Martinez is a native of Española whose family has lived in northern New Mexico since the 1600s. Liddie is the Market President-Los Alamos for Enterprise Bank and Trust, and a past Board Chair of the Los Alamos National Laboratory Foundation. She also farms the Rancho Faisan. Liddie currently serves on Governor Michelle Lujan Grisham's Economic Recovery Council.

Fred Nathan, Jr. founded Think New Mexico and is its Executive Director. Fred served as Special Counsel to New Mexico Attorney General Tom Udall from 1991–1998. In that capacity, he was the architect of several successful legislative initiatives and was in charge of New Mexico's lawsuit against the tobacco industry, which resulted in a $1.25 billion settlement for the state.

Roberta Cooper Ramo is the first woman elected President of the American Bar Association and the American Law Institute. Roberta has served on the State Board of Finance and was President of the University of New Mexico Board of Regents. In 2011, she was inducted into the American Academy of Arts and Sciences. Roberta is a shareholder in the Modrall Sperling law firm.

Dear New Mexican:

Think New Mexico's policy report this year proposes to end state-sanctioned triple-digit interest rates for small loans. For too long, these predatory loans have created debt traps that have made it impossible for many New Mexicans to escape from grinding poverty.

In order to not just protect New Mexicans but also empower them with the tools to better their financial situations, this report also recommends that the legislature and the governor make a semester course in financial literacy and personal finance a requirement for high school graduation. Seventeen states, including several of our neighbors, have enacted this reform in the last decade and are already seeing many positive results.

These two reforms build upon a social mobility theme that has been present throughout Think New Mexico's work. For example, last year our policy report focused on retirement security. In it, we proposed making voluntary retirement savings accounts accessible to New Mexicans who lack access to retirement plans through their jobs. With the help of a bipartisan group of legislators and advocates, we were able to get the New Mexico Work and Save Act to the Governor's desk, and she signed it into law in late February.

This year's reforms will go even further toward increasing social mobility in New Mexico. They are especially urgent right now when so many New Mexicans are vulnerable to predatory lending because of the economic crisis caused by the Covid-19 pandemic.

As we detail in the following pages, we learned from studying the experience of other states that lowering New Mexico's top interest rate on small loans from 175% to 36% will save New Mexicans millions of dollars while still maintaining their access to small, short-term loans. The dollars they save will likely be spent immediately and go right back into the state's economy, shoring up local small businesses and creating jobs.

Susan Martin, Business Manager; Fred Nathan, Executive Director; Othiamba Umi, Field Director; and Kristina G. Fisher, Associate Director. Think New Mexico masks now available with a donation. *Photo by Kate Monahan.*

Think New Mexico's Reforms to End Predatory Lending & Strengthen Financial Literacy

ENACT LEGISLATION TO:

- **Cut the state's interest rate cap on small loans from 175% to 36%**
- **Make a financial literacy course a graduation requirement for New Mexico high school students and add it to the state's education standards**

Kristina Fisher, Think New Mexico's ace Associate Director, co-authored this report with me and directed the extensive research effort performed mostly by Think New Mexico's summer interns. We fully expect they will be leading the state in a decade or two. They are: Rohan Angadi of Clovis, a senior at Yale majoring in economics and mathematics; Daniel Estupiñan of Sunland Park, a graduate of New Mexico State University with a degree in Business Administration and Finance who is now at the Harvard Kennedy School seeking a Master's in Public Policy; Chloe Larkin, a graduate of United World College in Montezuma, NM and a junior at Wellesley College studying Sociology and Philosophy; Kate Monahan of Santa Fe, a recent graduate from USC with a major in Law, History & Culture who is now earning a Master's in Public Policy from USC; Raffaele Moore of Albuquerque, a junior at Brown University where he is majoring in International & Public Affairs and History; and Ariane Talou of Santa Fe who is a junior at UCLA studying Economics and Public Affairs.

Special thanks as well to Susan Martin and Othiamba Umi, Think New Mexico's dedicated Business Manager and diligent Field Director, respectively. Susan coordinated the printing of this report and its distribution to more than 12,500 New Mexicans. Othiamba is already working to build a broad bipartisan coalition to enact the recommendations in this report during the 2021 legislative session and to fight an army of lobbyists paid for by the predatory loan industry.

If you would like be part of this effort to stop predatory lending and to strengthen financial literacy, please visit our website at www.thinknewmexico.org where you can sign up for email updates on our progress or contact your legislators and the governor to express your opinion. You are also invited to join the many New Mexicans who invest in Think New Mexico's work each year by making a contribution online or in the yellow reply envelope you will find in the middle of this report.

Fred Nathan Jr.

Founder and Executive Director

THE PREDATORY LENDING CRISIS IN NEW MEXICO

Meet Mary Shay. She lives with her sister in a two-room house without electricity on the Navajo Reservation. Desperate to buy firewood in order to heat their home, Mary got a ride one day to Gallup, just a few miles down the road. There she took out a small loan to buy enough firewood to get through the winter.

However, that loan, with its triple-digit interest rate, turned into a quagmire of debt for Mary. She says, "I thought they'd arrest me," when bill collectors started calling her at work about her loan, which she was struggling to pay off. So Mary took out more loans to pay off the first one. More than a decade later, the original loan had mushroomed into half a dozen loans. She was now making payments of about $600 every month, which was more than the amount of the original loan.

Ironically, Mary could no longer afford firewood, since most of her income from her primary job cleaning rooms in a hotel and her second job at a Catholic Charities thrift store was being diverted to make interest payments on her loans. Mary says she can't count the number of cold nights without firewood that she has endured.

Mary's plight is not uncommon today in New Mexico, a state which is saturated with small loan stores. Remarkably, in New Mexico there is a small loan store for every 3,819 residents. By comparison, there is one McDonald's restaurants for every 23,298 New Mexicans.

These small loan stores are particularly prevalent in places where high populations of Native Americans live. Nearly 60% percent of New Mexico's small loan lenders are located within 10 miles of a pueblo or tribal reservation, according to the New Mexico Center on Law and Poverty. "The city of Gallup has more small-loan lenders than any other community in the state of New Mexico, per capita," says Patty Lundstrom, the state Representative who represents Gallup in the state legislature and who chairs the House Appropriations and Finance Committee. "And I don't think that's by coincidence. I think that's because we're a border community with the biggest Indian reservation in the country."

Mary Shay at her home on the Navajo Nation. *Photo by Seth Freed Wessler, NBC News.*

There are eight companies with multiple small lending storefronts in Gallup, where Mary got her loan. One them is World Acceptance Corporation ("World"). World began with four stores in Greenville, South Carolina in 1962. Today, World operates 1,243 loan stores nationally. It has hundreds of thousands of customers and had $1.07 billion of loans outstanding as of June 30, 2020.

World is typical of predatory loan companies in New Mexico, as most of these lenders are not local companies. In fact, our analysis of the licenses for the 549 predatory lending stores in New Mexico revealed that only 81 of them, or

World Finance store in Taos, NM. *Photo by Arlyn Nathan.*

about 15% of all predatory lending stores in New Mexico, are owned by local New Mexico companies. The remaining 85% of the state's predatory lending stores are part of national corporations or their subsidiaries. In fact, more than a quarter of the licenses in New Mexico to operate predatory[1] lending stores are owned by just four national corporations, including World.

World operates exclusively in states that allow the highest interest rates and that have a relatively lenient regulatory environment. In addition to South Carolina, where it is headquartered, and New Mexico, World operates in Alabama, Georgia, Idaho, Illinois, Indiana, Kentucky, Louisiana, Mississippi, Missouri, Oklahoma, Tennessee, Texas, Utah and Wisconsin.

1] In this report we use the term "predatory" to refer to lenders that target economically vulnerable individuals with loans that have annual interest rates that are 100% or more — in other words, loans in which the annual interest is at least as much as the amount of money being borrowed.

Through its subsidiary, World Finance Corporation, World owns 37 lending stores in New Mexico, which makes it the second largest predatory lender in New Mexico, as the chart on the next page demonstrates.

We are able to gain some insight into World's business because it is a publicly traded company listed on the NASDAQ stock market. Under federal law, publicly traded companies must file a report called a Form 10K with the Securities and Exchange Commission (SEC) every year, disclosing their revenues, expenses, debts, lawsuits, and various other things that privately held corporations do not have to disclose.

According to its 162-page fiscal year 2019 Form 10K filing, World specializes in small loans, which are "generally between $300 and $4,000," and sometimes as low as $100, with the average loan being $1,482. The loans must be paid back in six to 36 months.

These loans are targeted, according to World's Form 10K, to "individuals with limited access to other sources of consumer credit such as banks, credit unions, other consumer finance businesses and credit card lenders." Those individuals are also known as "the unbanked" and "the underbanked."

Normally, one would expect fierce price competition in a lucrative business like predatory lending, but as the financial journalist Bethany McLean has observed, those who borrow from predatory lenders are generally "too desperate, too unsophisticated, or too exhausted" to engage in price shopping.

Small Lenders with the Most Stores in New Mexico

NAME OF SMALL LOAN COMPANY	NUMBER OF STORES IN NM	HOME STATE
Security Finance of NM	54	SC
World Finance Corp. of NM	37	SC
SW & Pacific Specialty Finance	28	OH
Infinity Loans of NM	24	TX
OneMain Financial Group	22	MD
New Mexico Credit Corp.	19	NM
Sun Loan Co. NM #3	18	TX
New Mexico Title Loans	17	GA
North American Title Loans	16	GA
Regional Finance Co. of NM	16	SC
CF New Mexico	15	TX
TitleMax of NM	15	MS
Title Cash of NM	13	MS
Midwest Finance Corp.	13	TX
TLB Sun Loan Co. NM #1	12	TX
Western-Shamrock Corp.	10	TX
Liberty Finance Co.	10	OK
QC Financial Services	10	KS
Populus Financial Group	8	CA
Payment 1 Financial	7	NM
Courtesy Loans of NM	7	OK
Money Lender	6	CA
SW Financial Services Abq	6	AZ
Excel Finance New Mexico	5	TX

Source: New Mexico Regulation & Licensing Department, Small Loan Company Directory as of August 6, 2020.

Indeed, World acknowledges in the Form 10K filing that they do not compete on price. Instead, they "generally charge at, or close to, the maximum rates allowable under applicable state law." In New Mexico, that is 175% a year. World asserts that it and the rest of their industry charge "higher interest rates and fees" to compensate for the greater risk of delinquencies and defaults because its borrowers tend to have lower credit scores, and many loans are made without any collateral, like a car title.

Even if its customers fail to fully repay their loans, World has no incentive to cut its interest rates and deviate from its business model of charging the highest rate allowed by state law. That is because, unstated in its 10K filing, World can make a profit even when a customer eventually fails to be able to keep up with their payments: high interest rate loans reach the point of profitability long before the end of the loan term.

World also notes in its Form 10K that "it is not unusual for the Company [i.e., World] to have made a number of loans to the same customer over the course of several years, many of which were refinanced with a new loan." Nearly 79% of World's loans in 2019 "were generated through refinancings of outstanding loans and the origination of new loans to previous customers." This is consistent with the national average, as the Consumer Financial Protection Bureau has found that about 80% of supposedly short-term loans are rolled over rather than paid off.

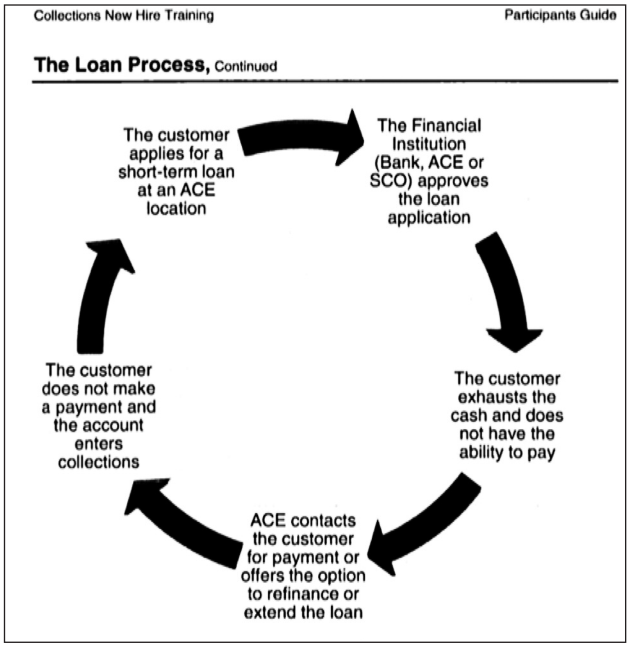
Something World does not disclose in its Form 10K are its aggressive sales and collection tactics. These came to light as the result of a joint investigation by ProPublica, an investigative journalism nonprofit, and the Marketplace, a nonprofit news organization specializing in business and the economy. The reporters examined more than 100 of World's loans in 10 states and quoted former World employees discussing how World exploits its customers.

One of the investigation's central findings was World's relentlessness in pushing their customers to "renew" their loans. As ProPublica noted, "if World can persuade a customer to renew early in the loan's lifespan, the company reaps the lion's share of the loan's charges while keeping the borrower on the hook for most of what they owed to begin with."

One former employee explained, "That was the goal … to get them [i.e., customers] to renew, because as soon as they do, you've got another month where they're just paying interest." To lure the borrower into renewing a loan, World would offer borrowers a cash payout in the amount that they had already paid on the principal of their loan.

World sends out mailers and makes phone calls to tell borrowers that they have "funds available," and their employees are trained to pitch customers on renewals when they enter a store. "We were taught to make [customers] think it was beneficial to them," said another former employee. ProPublica noted, "In every [World] office, employees say, there were loan files that had grown inches thick after dozens of renewals."

ProPublica also detailed aggressive collection practices by World: "Phone calls are the first resort, and they begin immediately — sometimes even before the payment is due for customers who were frequently delinquent. When repeated calls to the home or cell phone, often several times a day, don't produce a payment, World's employees start calling the borrower at work. Next come calls to friends and family, or whomever the borrower put down as the seven 'references' required as part of the loan application." Naturally, World employees offered to renew the loans if the customer wanted to stop the intimidating calls and threats to seize their possessions.



An investigation by the Consumer Financial Protection Bureau into predatory lender ACE Cash Express (which operates in New Mexico) discovered this page from ACE's training manual. In 2014 ACE paid out $5 million in refunds and a $5 million penalty for illegal debt collection tactics, such as using harassment and false threats of lawsuits or criminal prosecution to pressure borrowers into taking out additional loans they could not afford. *Source: Consumer Financial Protection Bureau, Consent Order 2014-CFPB-0008*.

These are the same tactics that Mary Shay experienced, and that trap so many New Mexicans like her in an endless cycle of debt. In 2019, the New Mexico Regulation and Licensing Department reported that New Mexicans took out 592,398 installment loans (i.e., short-term loans under $5,000) worth over $666 million. At the end of the year, over 44% of the loans were outstanding — not yet paid off — and about one in three loans were 10 or more days past due at some point during the year. Meanwhile, predatory lenders repossessed 2,293 vehicles from New Mexicans last year.

In addition to locating in states that allow high interest rates, and that have light regulatory environments, predatory lenders like World seek out states that have an attractive demographic profile for their business. Nationally, the Pew Charitable Trusts found that nearly half of borrowers from predatory lenders had incomes less than $25,000 in 2012.

The unbanked and underbanked are the sweet spot for World, where they find the vast majority of their customers. This makes New Mexico's demographics ideal for World's business model, as 11.5% of households in New Mexico are unbanked, according to a survey by the Federal Deposit Insurance Corporation (FDIC). Unbanked households are those in which no one has a checking or savings account.

In 2019, WalletHub, a personal finance website, found that New Mexico had the 3rd highest percentage of unbanked households in the country, trailing only Mississippi and Louisiana.

Underbanked households have some access to mainstream financial institutions but mostly rely on alternative financial institutions (non-bank check cashers, pawn shops and predatory lenders). When you add the unbanked and the underbanked together in New Mexico, the combined percentage exceeds 45% of New Mexico households, according to a 2013 FDIC study.

WalletHub also ranks New Mexico 47th in the nation for financial literacy, as we discuss later in this report.

Perhaps it is not surprising then that of the 16 states in which World operates, New Mexico is its second biggest market as measured by stores per capita, after its home state of South Carolina.

Predatory loans and ancillary businesses like tax preparation services add up to a very lucrative busi-

World Acceptance Corporation's stock performance has outstripped the major stock indicies over the past 25 years. *Chart created using Yahoo Finance.*

ness for World's shareholders. World's stock price has increased steadily from $7 per share in 1991 when World joined the NASDAQ stock market to more than $174 per share before several recent scandals reduced the stock price.[2] World has easily outperformed the NASDAQ composite index.

World's top executives are also extremely well-compensated. For example, in 2019, seven World executives collectively received more than $51 million in World stock awards in addition to their salaries, according to filings with the SEC.

These profits come at a high price for the thousands of New Mexicans who are stuck in debt traps. Understanding how to break this cycle of out-of-state predatory lenders impoverishing New Mexico families requires understanding how we got into it in the first place. The story begins more than a century ago.

2] World recently paid $21.7 million to settle SEC charges that it had violated the Foreign Corrupt Practices Act by paying more than $4 million in bribes to Mexican officials to secure the ability to make predatory loans to government employees in that country and ensure that those loans were repaid on time. World admitted no wrongdoing.

HOW PREDATORY LENDING CAME TO NEW MEXICO

"Since antiquity, legislators have fixed the maximum rate of interest. In Rome it was 12 percent, in Elizabethan England 6 percent, and in the United States, it has ranged from 6 percent to 40 percent. ... Few economic and social issues have the distinction of appearing, in one guise or another, in the Old Testament, canon law, English common law, and the Dodd-Frank Act of 2010 as a difficult problem doing harm to society."

–Charles Geisst, *Loan Sharks: The Birth of Predatory Lending*

Pre-Statehood: The Advent of Loan Sharking in New Mexico

Banks and other formal lending institutions are a relatively modern phenomenon. The first bank in the southwest and New Mexico was First National, which opened for business in Santa Fe in 1870. In the following years, banks began to dot the landscape across the Land of Enchantment, with the first banks appearing in Albuquerque and Roswell in 1890, Tucumcari in 1901, Farmington in 1902, Las Cruces in 1905, and Clovis and Silver City in 1906.

Like banks across the U.S. at that time, these early New Mexico banks catered exclusively to businesses and wealthy individuals. This meant that other borrowers who did not fit into those categories, such as those seeking small household loans, needed to find a wealthy relative, friend, or local pawnbroker.

Around the same time that the first banks were opening in New Mexico, a new competitor began to emerge across the nation to fill this void and

Albuquerque National Bank, 1892. *Special Collections/Center for Southwest Research (UNM Libraries) #000-119-04861930.*

service these borrowers. "They were lean operations that could move their offices quickly when necessary. They became known as loan sharks," according to Charles Geisst, Professor of Finance at Manhattan College.

It is not exactly clear when the first loan sharks surfaced in New Mexico, but it was likely well before statehood in 1912. A scathing editorial, "The 'Loan Shark' Evil," was printed in the *Albuquerque Journal* on October 27, 1914. It stated in part:

"One of the serious evils afflicting almost every city of the country is the loan shark—the man who makes loans to indigent people or those who ... suddenly find themselves in financial straits, takes collateral security, and charges 5, 10 even 15 percent a month [60%, 120% or even 180% annually]."

The newspaper concluded by urging the legislature to "pass a drastic loan shark law."

Loan sharks were likely attracted to New Mexico because our territorial legislature did not bother to enact usury laws limiting the interest rates on loans. Western states in general were very slow to adopt usury laws, according to the National Consumer Law Center, even though the American colonies had adopted them prior to independence.

Post-Statehood: The Rise of Reform Nationally

Around the time New Mexico achieved statehood in 1912, a national movement arose to combat loan sharks. It was led by the Russell Sage Foundation, which was founded by the widow of Wall Street financier and railroad tycoon Russell Sage. The Foundation's mission was to propose solutions to the problems facing low-income Americans.

States in the East and Midwest at that time had usury laws that capped rates at around 6% per year. The Russell Sage Foundation observed that these usury laws kept rates so low that they disincentivized legitimate lenders from offering loans, and loan sharks filled the vacuum and circumvented the usury laws with undisclosed fees and misleading rates.

The Foundation proposed a counterintuitive solution: raise low usury rates. The Foundation thought this made more sense than attempting to enforce unrealistically low rates. They looked to pawnbroking, one of the oldest forms of lending, as a model. Pawnbrokers were licensed by many states as sort of "lenders of last resort" for the working man and woman, and generally charged rates of around 3% per month (or 36% annually) on short-term loans.

The Foundation concluded that rates around 36% annually would entice reputable lenders to offer loans to low-income borrowers and compensate the lender for the risk involved. While rates around 36% were not ideal, they were many times lower than rates offered by loan sharks.

First National Bank on the east side of the Santa Fe Plaza, where it was located from 1912-1954. *Photo by T. Harmon Parkhurst, 1930. Palace of the Governors Photo Archives (NMHM/DCA) #010639.*

The Foundation drafted a Uniform Small Loan Law (USLL), which required all lenders to be licensed by the state and allowed a rate of interest between 2.5% and 3.5% per month (which equates to 30% to 42% annually.) New Jersey was the first to adopt it in 1914. By 1930, 36 states had adopted it. New Mexico, however, was not among them.

Not everyone was happy with the USLL. Reformers believed that the cap of 36-42% annual interest rates was simply too high. Indiana, for example, proposed reducing its interest rate cap from 36% to 18%. Meanwhile, loan sharks fiercely opposed these laws and sought out loopholes that would allow them to skirt the law and continue charging triple-digit interest rates.

The Great Depression: Early Attempts at Reform in New Mexico

In 1930, the New Mexico State Bank Examiner, Lawrence Tramme, began advocating for New

Mexico to pass a law that would regulate small loans under $300, based on the model developed by the Russell Sage Foundation.

No action was taken by the legislature on Tramme's proposal until 1939, when the legislature passed New Mexico's first law regulating small loans. It allowed the state bank examiner to license loan companies and capped the rates for small loans at 10% per year if secured by collateral and 12% per year if the loan was unsecured.

Unfortunately, it soon became clear that the law was riddled with loopholes. As the *Albuquerque Journal* opined in 1943: "The small loans act passed by the legislature in 1939 was an improvement over the almost unregulated operations which had existed previously. But … the 1939 act should be studied carefully and strengthened to eliminate some loopholes such as the fee rates through which the borrowers, because of forced renewals, oftentimes pay a total which is exorbitant."

Post-World War II: The 36% Compromise

Reform efforts in New Mexico were given a boost by the results of a national study of small loans by the Pollack Foundation for Economic Research, which gave New Mexico a poor rating for its small loan regulation relative to other states. For example, while Nebraska was deemed a "Leader in Regulation," New Mexico was dubbed a "Leader in Complicated Fees."

Finally, after several years of trying, the legislature enacted the 1947 Small Loan Act, which was closely modeled after the USLL promoted by the Russell Sage Foundation. The law set maximum interest rates of 3% per month (or 36% annually) on loans of less than $150, 2% for loans $150-$300, and 1% on loans $301-$500. Larger loans remained capped at 10% and 12% per year.

Lenders challenged the constitutionality of the law in court, and in December 1947, the New Mexico Supreme Court upheld it. The law was further strengthened, improved, and expanded to loans of up to $1,000 in 1955 (with loans of $300-$1,000 capped at 1% per month). In 1959, the Bank Installment Loans Act was enacted and applied similar reforms to loans issued by banks.

The laws worked well until an accident of history intervened.

The Late 1970s and Early 1980s: The Return of Predatory Lending to New Mexico

In the late 1970s, the United States entered a period of double-digit inflation that raised interest rates above the limits set by many states' usury laws, including New Mexico's.

New Mexico at this time was still capping interest rates on loans larger than $1,000 at 10% if they were secured by collateral and 12% if they were unsecured. Banks and credit unions could not profitably lend in New Mexico at those capped rates. Moreover, New Mexico at that time was one of only three states in the country that had usury ceilings of 10% or less for loans secured by collateral.

In 1981, the legislature and Governor Bruce King amended the usury law to allow the state bank examiner to increase the allowable interest rate to 3% above the federal discount rate, which allowed the cap to rise to 15%.

Yet over the following months, inflation kept rising and interest rates kept going up. Rather than having the bank examiner continually tinkering with the interest rate cap, the legislature repealed the state's usury laws for two years, abolishing interest rate caps on every kind of loan. The law now read: "The maximum rate of interest authorized by law shall be that rate agreed to in writing by the parties."

The bill's sponsor, Representative James Otts (D-Eddy), claimed that "the purpose of the measure is to enable borrowers to shop for money like you can shop for a loaf of bread." Other proponents testified that because lenders could get more interest on their money in other states, money for consumer loans in New Mexico was drying up.

An opponent of the bill, Representative Ted Asbury, (D-Bernalillo), worried the bill could drive interest rates beyond the means of some consumers. "I wonder if the long-term effect isn't going to be disastrous," Asbury said.

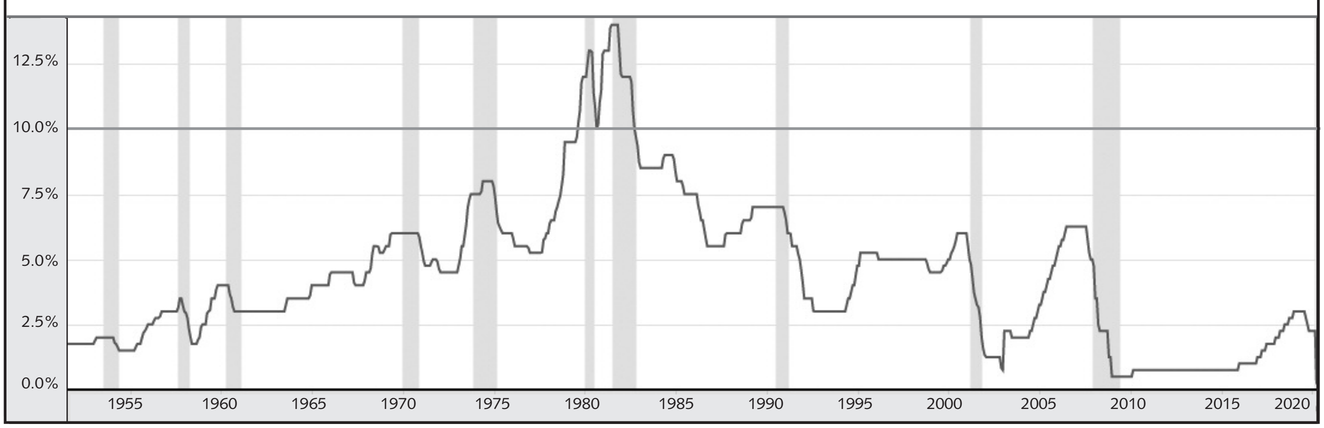
Asbury's warning went unheeded, and in 1983, the legislature made the repeal permanent. In 1991 the legislature repealed its General Usury Statute, which at that point only required certain disclosures to be made about loan rates and terms. Federal interest rates soon fell back to historic norms, as shown in the chart below, but by then it was too late: there were no more limits on interest rates for loans in New Mexico.

With New Mexico's limits on interest rates abolished, predatory lenders rapidly moved into the state. In 1992, there were 23 small loan firms. By the close of 2001, there were 349 predatory lenders—a 1,417% increase, while the population of New Mexico grew only 20% from 1990 to 2000.

Some legislators who had been involved in repealing New Mexico's interest rate caps expressed remorse. For example, Senator Billy McKibben (R-Hobbs), who had been one of the leading champions of the 1981 legislation to eliminate the ceiling on interest rates, became disgusted with the predatory lending that had erupted in his community and around the state. In 1999, McKibben championed legislation that would have reestablished a ceiling on interest rates at 45%, but the bill failed.

By 2000, New Mexico was one of only six states with no usury ceiling, and predatory lending was running rampant in the state.

U.S. Discount Rate (Federal Interest Rate) 1950-2020



Only for a few years in the late 1970s and early 1980s did the U.S. Discount Rate, the interest rate set by the Federal Reserve, exceed 10%. Yet to address this temporary problem, New Mexico permanently abolished its caps on interest rates for loans. *Source: Federal Reserve Bank of St. Louis, fred.stlouisfed.org. Shaded bars indicate recessions.*

Cartoon by John Trever for the Albuquerque Journal, copyright 1991.

The 2017 Reforms

After years of failed efforts to rein in predatory lending in New Mexico, in 2017 the legislature and Governor Susana Martinez enacted the state's first substantial limitations on small lenders in nearly four decades.

The legislation was sponsored by the bipartisan team of Representatives Patty Lundstrom (D-Gallup), Debbie Rodella (D-Española), Yvette Herrell (R-Alamogordo) and Jane Powdrell-Culbert (R-Corrales).

The new law applied to all loans of less than $5,000. This put New Mexico in a better place than the many other states whose laws regulating small loans have carve-outs allowing payday lenders to continue charging unlimited rates. Online lenders were also covered by New Mexico's law and were required to register their operations with the state.

The 2017 law requires lenders to give borrowers at least 120 days to pay back a loan, eliminating so-called "payday" loans that had to be repaid in two to four weeks. The law also requires loans to be paid back in at least four installments of both interest and principal, eliminating "interest only" loans where borrowers would pay interest every month and never reduce the principal owed on the loan.

Finally, the law imposed an annual interest rate cap on all small loans in New Mexico. Unfortunately, that interest rate cap was set extremely high: 175% per year.

This was the compromise required in return for achieving the other hard-fought reforms in the bill. However, some of the leading consumer advocates balked at the compromise. For example, Representative Patricia Roybal Caballero (D-Albuquerque) refused to support the bill, explaining, "I cannot and I will not support anything that's in the triple digits."

The bill passed the House 64-2 and the Senate 27-14, with the opposing Senate votes split down the middle: seven from Democratic legislators who objected to the triple-digit interest rate cap, and seven from Republicans who opposed government interference in the lending market.

Despite its excessively high interest rate cap, the law did bring down the cost of small loans, which averaged 347% prior to the law. Consumer advocates who worked on the bill estimated that capping the rate at 175% has saved New Mexican families as much as $250 million a year.

These immense savings underscore how many millions of dollars are still being drained from New Mexicans and the state's economy under the 175% cap, and how much further we have to go to truly protect families from falling into debt traps.

THE SOLUTION, PART I: CUT THE INTEREST RATE CAP ON SMALL LOANS FROM 175% TO 36%

Congress Protects the Military from Predatory Lenders

In 2005, the U.S. military was facing a serious problem. As it struggled to recruit enough personnel to wage wars in Afghanistan and Iraq, more and more service members were having their security clearances denied or revoked.

The reason for as much as 80% of those security denials and revocations was predatory lending, according to a 2006 report by the Department of Defense.

Predatory lenders had clustered around military bases, targeting service members who tended to be young and financially inexperienced, and who quickly got in over their heads in debt.

Between 2001 and 2006, the nonprofit Navy-Marine Corps Relief Society went from providing $5,000 to assist nine military families to paying out more than $1.37 million to nearly 1,500 service members who had fallen victim to predatory lenders.

The predatory lending crisis facing the military was both dangerous and expensive. Service members under stress from mounting debt struggled to focus on their mission, jeopardizing the safety of their military units. Meanwhile, because service members are required to stay current on any debt payments in order to remain in good standing, many who got caught in debt traps were forced out of the military—costing U.S. taxpayers about $58,000 in training and recruitment costs for every service member who had to leave.

As the 2006 report by the Department of Defense concluded: "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."

Members of Congress from both parties saw the urgent need to protect the troops from this domestic threat. In 2006, after reviewing the findings of the Department of Defense report, Senators Jim Talent (R-MO) and Bill Nelson (D-FL) introduced the Military Lending Act. The core provision of the Act capped the interest rates of all credit provided to service members and their families at no higher than 36%. This cap was comprehensive, including all fees and finance charges.

The Military Lending Act was added as an amendment to the National Defense Authorization Act, and it passed the Republican Congress with overwhelming support and was signed into law by President George W. Bush.

The law worked.

By 2018, the number of families requesting emergency financial assistance from the Navy-Marine Corps Relief Society had fallen to just three, who needed only $4,000. Moreover, a 2019 study found that the Military Lending Act had not had a negative effect on access to credit for members of the military. Instead, they were able to borrow easily from credit unions, banks, and other mainstream lenders. Today, the Military Lending Act protects the 17,741 active duty, national guard, and reserve members in New Mexico from predatory lenders.

States Follow the Lead of the Military Lending Act

Passage of the Military Lending Act set off a wave of action in the states. Several states already capped interest rates for small loans at or around 36%, but in the wake of the federal law, more began to join them, starting with Oregon and

Washington DC in 2007; followed by Arizona and Arkansas in 2008; New Hampshire in 2009; Montana in 2010; Connecticut and South Dakota in 2016; and Maryland in 2017.

The momentum behind this reform has continued to accelerate in the last year, with California capping interest rates on small loans in October 2019, and Virginia enacting its 36% cap in April of 2020.

Today, 42 states and the District of Columbia cap the annual interest rates on short-term, small-dollar consumer loans, as shown in the chart on the following page. In 37 of those states, the caps are between 30-40%, and all but a handful are well below 100%.[3]

New Mexico's 175% Interest Rate Cap is Among the Highest in the Nation

Unfortunately, as more and more states have taken action to rein in predatory lenders, New Mexico has fallen further and further behind.

Today, the interest rates allowed on small loans in New Mexico are far higher than those in all but two of the other states with interest rate caps. Predatory lenders can charge rates to New Mexicans that are nearly five times higher than the national average.

Why has New Mexico been unable to lower its interest rate cap below a staggering 175%?

3] It should be noted that a number of these states still have loopholes allowing payday lenders, a specific type of predatory lender, to charge rates in excess of those interest rate caps. However, these payday lending loopholes are steadily being closed. As of this June, 16 states and Washington DC cap the interest rates of payday loans at 36% or less.

DOING THE MATH: WHY 175% IS SO EXPENSIVE

Imagine a New Mexican who borrows $400 for 120 days (about 4 months) but rolls it over every 120 days for a year. At 175% APR (annual percentage rate), the interest totals $700. Together with the initial loan amount of $400, the total cost is $1,100 to borrow $400 for a year.

To fully pay off this $400 loan in a year requires the borrower to make payments of about $92 every month. Many borrowers will struggle to make those payments, and will end up taking out more loans or refinancing the original one over and over again, as the costs continue to mount.

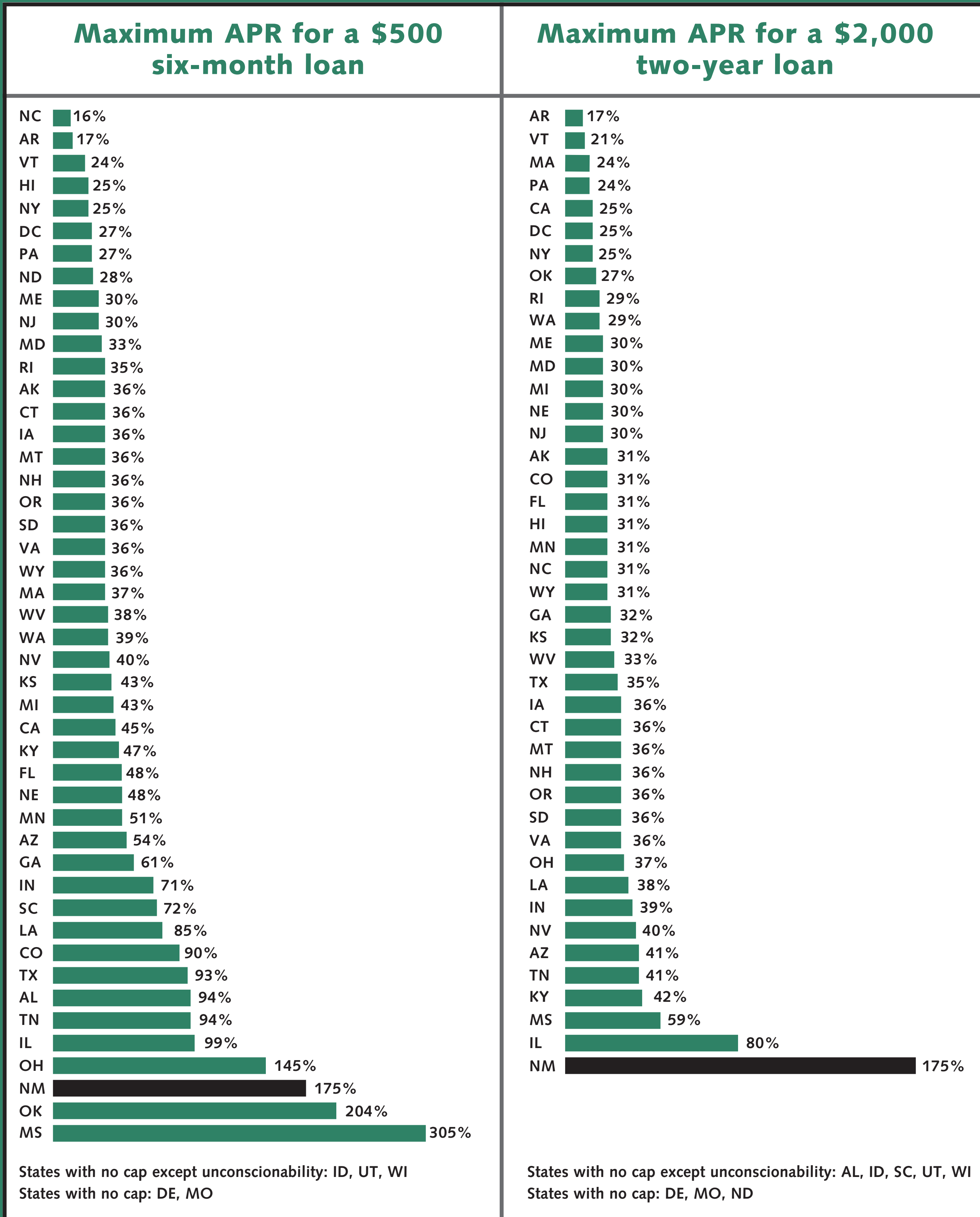
Compare this with a situation in which interest rates were capped at 36%. In that case, the annual interest adds up to $144, and the total cost of borrowing $400 for a year would be $544. If the borrower was able to pay about $45 a month, the loan would be fully paid off at the end of the year.

Annual cost of borrowing $400 at 175%:
$400 x 175% = $700
$400 + $700 = **$1,100**

Annual cost of borrowing $400 at 36%:
$400 x 36% = $144
$400 + $144 = **$544**

The Difference = $556

Bottom Line: It costs $556 more to borrow $400 at 175% APR than at 36% APR.



Because every state sets its own maximum interest rates, allowable fees, and size of loan regulated (e.g., under $500, $1,000, $2,500, etc.), the true maximum APR in each state varies by the size and length of the loan. This chart shows the maximum APRs for two sample loans. *Source: National Consumer Law Center, Predatory Installment Lending in the States: 2020.*

It has not been for a lack of trying. Between 2006 and 2020, nearly two dozen bills were introduced by more than a dozen legislators of both parties to significantly lower the cap on interest rates.[4]

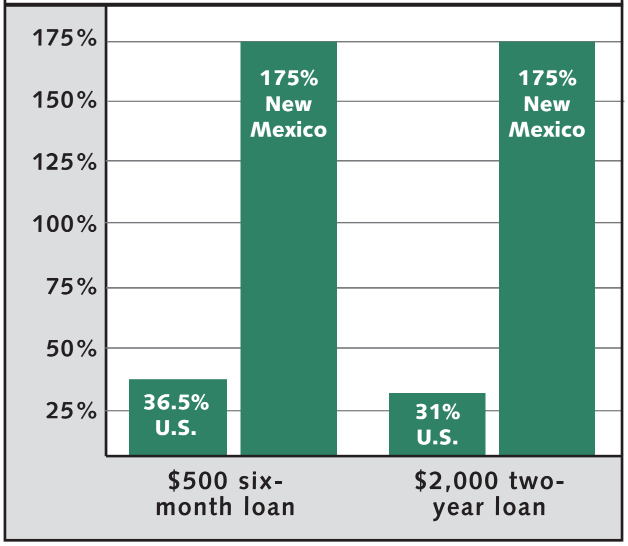
Yet almost every one of those bills died without passing a single committee.

Part of the explanation is the enormous amount of power and influence that the predatory lending industry has amassed over the past several decades. During the last 10 years, predatory lenders and their political action committees have donated nearly $900,000 to New Mexico state candidates and party committees.

Beyond the donations, predatory lending companies have also employed over a dozen powerful and well-connected lobbyists. This lobbying force was an important factor behind the repeated failure of bills to cap interest rates at 36%, according to Steve Fischmann, who served four years in the New Mexico Senate and later served as Co-Chair of the New Mexico Fair Lending Coalition. He explained: "A lot of it is relationships. Relationships are so established, legislators tend to do what the lobbyists tell them to do, and they lose track of what the citizens want. It's just human nature. [Lobbyists] are just people you see all the time."

4] Legislators sponsoring bills to cap small loan interest rates include Representatives Christine Chandler (D-Los Alamos), Gail Chasey (D-Albuquerque), Sharon Clahchischilliage (R-Farmington), Daymon Ely (D-Albuquerque), Susan Herrera (D-Española), Yvette Herrell (R-Alamogordo), Patty Lundstrom (D-Gallup), Andrea Romero (D-Santa Fe), Patricia Roybal Caballero (D-Albuquerque), and Senators Michael Sanchez (D-Los Lunas), Benny Shendo (D-Jemez Pueblo), William Soules (D-Las Cruces), and Peter Wirth (D-Santa Fe).

New Mexico's Interest Rate Cap vs. National Median



Source: National Consumer Law Center, Predatory Installment Lending in the States, 2020.

While some of the predatory lending industry's influence likely results from its generous campaign contributions and its influential lobbyists, the industry has also been surprisingly successful in convincing policymakers of three main claims: 1) the small loan industry is an essential lender of last resort for working New Mexicans who have no alternative options for short-term credit; 2) a 36% interest rate cap would drive all small loan providers out of business, shuttering their storefronts and putting their employees out of work; and 3) capping interest rates at 36% would drive legitimate small loan companies out of the state and open the door to unscrupulous online loan sharks.

Too often, these assertions have gone unexamined and unchallenged. So it is worth taking a hard look at each of them, and separating facts from fiction.

Fact-Check #1: Affordable Credit Exists Without Predatory Lenders

Five years ago, South Dakota had no restrictions on predatory lending. Predatory lenders crowded the state, with about one small loan storefront for every 2,000 South Dakotans.

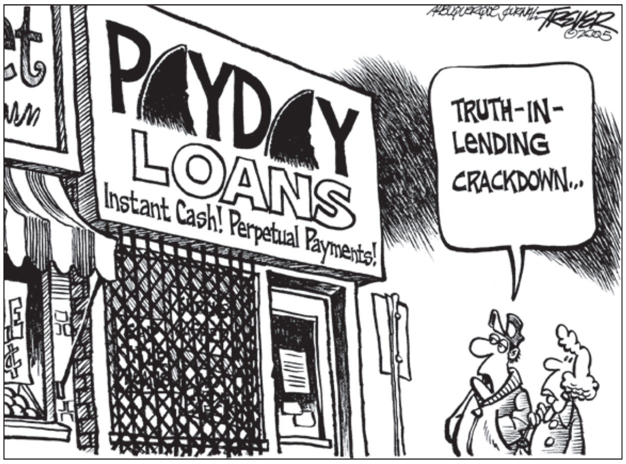
In 2016, Steve Hickey, a Republican legislator and pastor who was appalled at the negative impact predatory lending was having on his constituents and congregants, teamed up with Democratic strategist Steve Hildebrand to create South Dakotans for Responsible Lending. They brought a ballot initiative that would cap interest rates on small loans in South Dakota at 36%, including all fees and finance charges.

The industry fought back hard. They formed a political action group and contributed nearly $1.4 million to defeat the ballot measure, compared with less than $90,000 raised by the supporters of the reform. Despite the proponents being outspent 15 to 1, the initiative passed with the support of 76% of South Dakota voters.

Predatory lenders issued dire warnings about the impact of the new interest rate cap, insisting that it would "end short-term lending in South Dakota."

Instead, as the Center for Responsible Lending concluded in its aptly titled 2020 analysis, "The Sky Doesn't Fall: Life After Payday Lending in South Dakota," four years after the 36% cap had been enacted, South Dakotans continue to have ready access to affordable credit.

The alternatives that worked in South Dakota can work equally well here in New Mexico. They include:



Cartoon by John Trever for the Albuquerque Journal, copyright 2005.

1) Credit Unions

Credit unions were first established over a century ago, when businesses began organizing "remedial loan societies" to try to protect their employees from unscrupulous loan sharks. Originally limited to members of a specific company or industry, they are now widely accessible to the public. Credit unions differ from banks because they are nonprofit organizations owned by their members. Because of their community focus, credit unions are generally willing to make small loans to borrowers who do not have the credit scores to qualify for a loan from a bank.

Two years after South Dakota enacted its 36% interest rate cap, the Center for Responsible Lending found that credit unions were filling much of the need for small, short-term loans. The total number of small loans from credit unions in South Dakota increased by 11% between 2014-2018 and the total dollar amount loaned grew by 21%.

All of these loans were far more affordable than the predatory loans they replaced. Federal regulations require credit unions to cap their interest rates at 28% for "payday alternative loans" and 18% for all other loans.

Credit unions are a good alternative for New Mexicans as well. There are 41 credit unions currently operating in New Mexico with 142 locations across the state. Becoming a member of a credit union is generally simple and inexpensive. For example, Nusenda Credit Union, which has branches from Taos to Socorro, requires only a $25 deposit to open a checking account and a $5 minimum balance after that. New Mexico's credit unions already have around 900,000 members who could turn to them for affordable credit rather than going to a predatory lender.

2) Community Development Financial Institutions

A major source of credit for South Dakotans after the passage of that state's 36% interest rate cap has been Community Development Financial Institutions, or CDFIs, which are designated by the U.S. Treasury as institutions whose primary mission is to provide financial products and services to people and communities who are underserved by traditional financial institutions. Some credit unions and banks have been recognized as CDFIs, while other CDFIs are stand-alone organizations like Native Community Finance, based in Laguna Pueblo.

In South Dakota, after the 36% cap was enacted many borrowers turned to CDFIs like the Native-led Black Hills Community Loan Fund, which offers a "credit builder loan" designed to help borrowers escape the payday lending debt trap. According to an analysis by the Center for Responsible Lending, shifting away from predatory loans to credit unions and CDFIs has saved South Dakotans an estimated $81 million a year in interest and fees.

New Mexico is home to 17 CDFIs. In 2017, the most recent year for which data is available, these CDFIs provided $39 million in small loans to borrowers across the state. In a 2015 report, the New Mexico Legislative Finance Committee noted that, "Native Community Finance, a CDFI, is able to provide financial counseling and refinance loans at APRs less than 15 percent for subprime borrowers."

Because of their focus on bringing unbanked and underbanked New Mexicans into the financial system, CDFIs are an ideal alternative to predatory loans.

3) Other Mainstream Sources of Credit

While credit unions and especially CDFIs are the best alternatives to predatory lenders, there are also other forms of mainstream credit that can provide New Mexicans with access to funds at rates far below 175% a year.

In 2016, the Center for Responsible Lending examined a number of academic studies on the availability of credit for lower-income borrowers, and concluded that about one-third of the borrowers who believed that predatory loans were their only option actually had significant untapped sources of less expensive credit. For example, nearly 20% of borrowers had unused savings at the time they took out a loan. More than half of predatory loan borrowers also had credit cards (which carry an average interest rate of 14.5%, according to the Federal Reserve), and two-thirds of them had substantial unused credit remaining on their cards the day they chose to take out the loan.

4) Employer-Based Loans

In recent years, an innovative new source of affordable credit has become increasingly available: employer-based loans. This system involves an employer partnering with a lending company to provide its employees with access to small loans as a job benefit. The largest lender offering these employer-based loans is TrueConnect, which provides loans of $1,000-$3,000 at an APR of 24.99%.

TrueConnect uses an employee's income and employment history to underwrite the loan, meaning that employees with poor credit scores can still access funds. The employer that partners with TrueConnect agrees to set up automatic paycheck deductions to allow the employee to pay back the loan over time. These payroll deductions cannot exceed 8% of an individual's paycheck, preventing employees from becoming overwhelmed with debt.

Over 1,000 employers nationwide have signed up with TrueConnect, including several major ones in New Mexico: the New Mexico Association of Counties; the cities of Albuquerque, Las Cruces, and Santa Fe; Santa Fe Public Schools; Central New Mexico Community College; and Comcast New Mexico. As of 2019, nearly 16,000 New Mexicans had access to TrueConnect loans, and a New Mexico nonprofit, Prosperity Works, is working to expand access to TrueConnect loans to even more workers across the state.

Along with TrueConnect, a similar company called Kashable partners with the federal government, providing access to affordable small loans to the more than 33,000 New Mexicans employed by the federal government here in the state, including members of the military.

With this growing array of traditional and evolving alternatives, working New Mexicans would continue to have access to credit even if every predatory lender closed or left the state tomorrow.

Average Costs of Alternative Sources of Credit

SOURCE OF CREDIT	APR
CDFIs	8-15%
Credit Cards	14.5%
Credit Unions	18-28%
Employer-Based Loans	24.9%

Source: Compiled by Think New Mexico from the National Credit Union Administration; U.S. Department of the Treasury; U.S. Federal Reserve; and TrueConnect.

Fact-Check #2: Small Loan Providers Can Be Profitable Under a 36% Cap

Predatory lenders argue that if a 36% interest rate cap were enacted, they would all go out of business, putting their hundreds of employees out of work and leaving a wasteland of vacant storefronts scattered across the state.

This claim is contradicted by what has happened in other states that have enacted 36% caps. In fact, many of those states still have small lenders loaning money at 36% or below—including several small loan companies that also operate in New Mexico.

One such company is OneMain Financial Group, which operates 22 storefronts in Alamogordo, Albuquerque, Clovis, Farmington, Gallup, Hobbs, Las Cruces, Las Vegas, Rio Rancho, Roswell, and Santa Fe. OneMain Holdings is one of the largest small loan companies in the U.S., with around 1,500 branches in 44 states, including many states with 36% interest rate caps.

Small loan storefront in Taos, NM. *Photo by Arlyn Nathan.*

OneMain not only provides small loans in states that cap interest rates at 36%, it proactively caps the annual interest rates on all of its loans at 35.99%, even in jurisdictions where it is allowed to charge rates that are many times higher. This has not prevented OneMain from earning a solid profit: $855 million in 2019, according to the company's most recent annual filing with the Securities and Exchange Commission (SEC).

Another example is Regional Finance Company, which has 16 locations in New Mexico and is also in business in North Carolina and Virginia, two states with 36% caps. The average interest rates on their small loans ($500-$2,500) nationwide is 42.6%, according to their latest SEC filings.

Part of what allows companies like OneMain and Regional Finance to stay profitable in states with 36% interest rate caps is that they both provide a diversity of other credit products, especially larger loans over longer terms, which tend to be lower risk and less expensive for the lenders.

As the CEO of another small lender, Oportun, puts it: "We have long aspired to a 36% APR cap, because it dispels the notion that small-dollar lending to unbanked or under-banked consumers requires APRs above 36%." Oportun caps all of its loans at 36% and began opening stores in New Mexico in 2018.

So lenders like OneMain, Regional Finance, and Oportun would very likely continue operating in New Mexico under a 36% interest rate cap, just as they have in other states with these caps.

On the other hand, predatory lenders like World Acceptance Corporation, which bases its business model on operating in states that allow it to charge triple-digit interest rates, would likely leave New Mexico if the legislature and governor cap interest rates at 36%.

However, this is not necessarily a bad thing. In fact, it would result in a net positive impact on New Mexico's economy and job creation.

The Center for Economic Development studied the economic impact of the predatory lending industry, and found that every dollar spent to pay the interest on a high-cost loan reduced a household's spending by $1.94. This is money that could instead be spent at other local businesses, creating jobs in communities across the state.

Fact-Check #3: A 36% Cap Will Not Open the Door to Online Loan Sharks

A final argument that predatory lenders make when states propose enacting a 36% cap is that, because the cap will result in many small lenders shutting their doors, it will open the floodgates to unscrupulous online loan sharks.

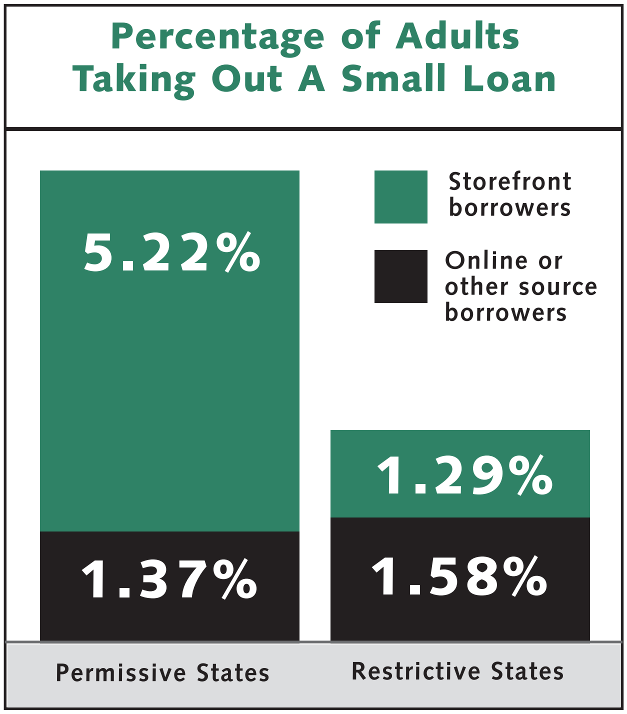
This was a major argument that the predatory lending industry made in Montana in 2010, when 72% of voters in that state supported a ballot initiative lowering the annual interest rate on small loans from 400% to 36%.

At first, complaints against online lenders who were violating the 36% interest rate cap did increase, rising from one complaint in 2011 to 101 in 2013. But that spike was only temporary, and by 2016, the Montana Attorney General received only seven complaints about online lenders.

As *Governing Magazine* reported in 2017: "What had looked like a crisis turned out to be an adjustment period. That is, while some Montanans may have turned to online lenders to fill their need for ready cash, they eventually weaned themselves off the payday practice. They turned to friends and families for financial help. In some cases, credit unions offered loans as a way to attract people into opening a bank account." Twelve Montana credit unions that tracked their small loan business before and after the cap reported a 26% increase in their lending by the end of the first year.

Montana's experience is consistent with a national study by the Pew Charitable Trusts, which compared the rates of online borrowing in states that had capped interest rates at reasonable levels ("restrictive states") with those that permitted high interest rates ("permissive states"). Pew found that the rate of online lending was just about the same in both types of states: 1.58% of adults in the restrictive states reported taking out an online small loan, compared with 1.37% of adults in permissive states.

The real difference between the two types of states was that people simply took out fewer small loans in states that strictly regulated interest rates. In states with tight interest rate caps, just 2.9% of adults reported taking out small, short-term loans from any sources (storefronts or online) in the past five years. By contrast, 6.6% of adults in states with the least regulation had taken out small loans in the past five years.



The number of people who borrow from online lenders is about the same in states that tightly restrict interest rates as it is in states that permit high rates. However, the number of people borrowing from small loan stores falls dramatically in restrictive states. *Source: Pew Charitable Trusts, Payday Lending In America: Who Borrows, Where They Borrow, and Why, 2012.*

When interest rates are capped at a reasonable level, and the number of small loan stores falls, people do not shift from storefronts to online lenders. Instead, in many cases, they decide not to take out a loan at all. As Pew concluded, "in states that restrict storefront payday lending, 95 of 100 would-be borrowers elect not to use payday loans at all—just five borrow online or elsewhere."

This is because, in many cases, predatory loans are being taken out because they are convenient and readily available, not because they are essential. Like any business, predatory lenders create demand for their product. When there are fewer of them around, people use them less, save money, and are better able to meet their expenses over the long term.

A 36% Cap for New Mexico is Urgently Needed

When the evidence from other states is considered, the claims made by the predatory lending industry fall apart. There is no good reason why New Mexico should not cap interest rates on small loans at 36%. In doing so, we can follow in the footsteps of Virginia, whose experience parallels that of New Mexico in many ways.

Like New Mexico, Virginia had adopted strong laws regulating small loans by the 1950s, capping interest rates at 36%. Like New Mexico, Virginia repealed those laws in the early 1980s, and predatory lenders flooded into the state. About 90% of the 650 predatory lenders operating in Virginia by 2019 were based out of state. They were a very powerful political force, making about $1 million in campaign contributions to candidates of both parties during the most recent legislative election.

In 2019, the Pew Charitable Trusts rated Virginia's predatory lending markets as "among the nation's riskiest." Pew noted that Virginians were paying three times as much as borrowers in other states for the same types of loans, due to the state's failure to cap interest rates at a reasonable level.

In January 2020, Virginia lawmakers took action. They introduced the Fairness in Lending Act, which closed all the loopholes in existing state law—similar to New Mexico's 2017 reforms—and also capped the interest rate on all loans at 36%. The bill passed both chambers with bipartisan support, and was signed into law by the governor in April of this year. A poll by the Wason Center for Public Policy found that 72% of Virginia voters support this reform.

Virginia's law takes effect on January 1, 2021, and Pew estimates that the new law will save Virginians more than $100 million annually. Based on the experience in other states, it will also improve the quality of life for the thousands of families who have been caught up in debt traps caused by high-interest loans.

Seven years after Arkansas began enforcing a 17% interest rate cap, a researcher from Washington University surveyed 100 former predatory loan borrowers. Nearly 60% said they were better off (and another 29% said their lives were about the same). Similar results were found in a survey of more than 400 former predatory loan borrowers in North Carolina six years after that state's 36% cap was enacted.

If Virginia—and South Dakota, Montana, Arkansas, and North Carolina, among others—can cap small loan interest rates at 36%, so can New Mexico.

We join a bipartisan group of legislative champions, as well as consumer advocates like the New Mexico Center on Law and Poverty, Prosperity Works, and the Native American Voters Alliance, in calling on the legislature and governor to end predatory lending in New Mexico by capping interest rates on all small loans in the state at 36%, returning to the system that worked well for New Mexicans from the 1950s through the early 1980s.

THE SOLUTION, PART II: STRENGTHEN FINANCIAL LITERACY EDUCATION IN NEW MEXICO

New Mexico's high proportion of unbanked and underbanked citizens makes our state a very attractive market for predatory lenders, as we noted in the first section of this report. To change this dynamic, it is essential to not only cap the interest rate on small loans at 36%, but also to improve the state's poor performance in financial literacy.

New Mexico is currently one of the least financially literate states in the nation. WalletHub, the personal finance website, conducted a study in 2019 that ranked New Mexico 47th for overall financial literacy.

Our low ranking is not helped by the fact that New Mexico is one of only five states that fails to include personal finance in its state education standards, according to the Council on Economic Education. (State standards determine what material students are tested on in standardized assessments.) The reason financial literacy concepts are not included in New Mexico's standards is because there is no requirement in our state for students to complete a personal finance or financial literacy course in order to obtain a high school degree.

These courses teach topics like budgeting, saving, investing, credit scores, and the costs of borrowing. They are often tailored to be relevant to students with focuses on things like the cost of college and student loans.

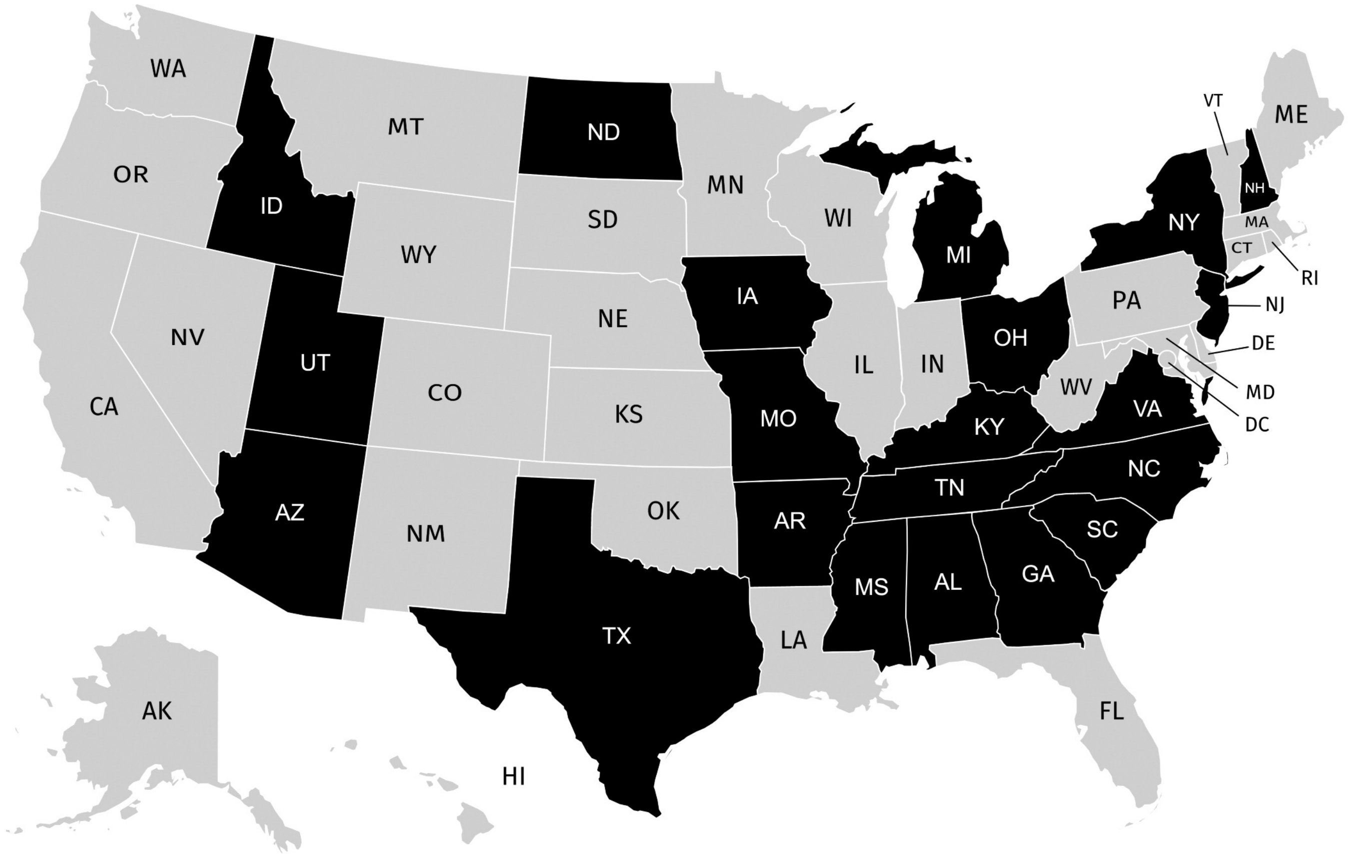
State Financial Literacy Rankings

STATE	RANKING	STATE	RANKING
Virginia	1	Missouri	27
Utah	2	Vermont	28
New Hampshire	3	Georgia	29
New Jersey	4	Oregon	30
Minnesota	5	Massachusetts	31
Maryland	6	South Carolina	32
Maine	7	Idaho	33
Colorado	8	Indiana	34
North Dakota	9	Wyoming	35
New York	10	Pennsylvania	36
Illinois	11	California	37
Michigan	12	West Virginia	38
Nebraska	13	Nevada	39
Alabama	14	D.C.	40
Iowa	15	Arkansas	41
Ohio	16	Rhode Island	42
North Carolina	17	South Dakota	43
Washington	18	Hawaii	44
Arizona	19	Kentucky	45
Kansas	20	Oklahoma	46
Wisconsin	21	New Mexico	47
Tennessee	22	Delaware	48
Florida	23	Mississippi	49
Montana	24	Alaska	50
Texas	25	Louisiana	51
Connecticut	26		

Source: WalletHub, Most & Least Financially Literate States. April 2019.

Since 2008, financial literacy has been available as an elective course for high school students in New Mexico's public schools. Yet, only 10,722 of the state's 97,076 high school students completed one of these classes during the 2019-2020 school year—slightly more than 10% of those who were eligible. The low take-up rate for financial literacy courses by high school students resulted in New Mexico receiving a grade of "C" for the quality and accessibility of our high school financial literacy education from Champlain College's Center for Financial Literacy.

States Where Personal Finance is a Graduation Requirement



Source: Council for Economic Education, Survey of the States 2020. Map created with mapchart.net

Teaching financial literacy is particularly important for students from low-income families, which research indicates have far less access to financial literacy courses than do their wealthier peers. Tim Ranzetta, the founder of Next Gen Personal Finance, a nonprofit that partners with teachers to help them teach financial literacy in public schools, observes that if you teach financial literacy to kids, they often will bring those lessons home to their parents, which benefits the whole family.

A steadily growing number of states are requiring public high school students to complete a course in financial literacy or personal finance in order to graduate. Five states have adopted this requirement in just the last two years as momentum continues to build for it around the country. This trend is occurring in both blue and red states because teaching financial literacy is a nonpartisan issue.

Nationally, 21 states have made a personal finance or financial literacy course a high school graduation requirement, with 17 of them adding it in the last decade. Among these states are three of New Mexico's neighbors: Texas, Utah, and Arizona. (Arizona enacted its financial literacy graduation requirement about two months before we went to press with this report.)

Utah has had its requirement in place since state lawmakers enacted it in 2003. Today, Utah is the only state in the country to have received an A+ for the quality and the availability of high school financial literacy education from the Center for Financial Literacy.

This is a big reason why Utah is now ranked second in the nation by WalletHub for its financially literate population. Research compiled by the Consumer Financial Protection Bureau has shown that requiring this education leads to better personal financial behavior, making graduates more likely to have a checking account and retirement savings, and less likely to borrow from predatory lenders. When students increase their financial literacy, studies find that that they shift from high-cost to low-cost sources of credit and student loans. This may help explain why Utah college students borrow 21% less than the national average.

Making financial literacy a graduation requirement will not cost very much to implement since districts are already required to offer it as an elective. In addition, there are many free resources available to teachers from nonprofits like Next Gen Personal Finance and Jump$tart. Another nonprofit, the Council for Economic Education, provides free lesson plans and professional development for teachers.

Some school districts might choose to make financial literacy an online class to take advantage of some of the excellent programs that already exist online, like the personal finance course at Kahn Academy; "Money Smart" by the FDIC; the "High School Financial Planning Program" from the National Endowment for Financial Education; and "Financial Fitness for Life" by the Council for Economic Education. Virginia, which ranks first among the states in WalletHub's financial literacy report card, provides some of their high school financial literacy program through pre-recorded videos that the state department of education paid to produce.

Of course, a required high school course will not help the many adults in New Mexico who need to enhance their financial literacy skills. The good news is that the 2017 law that capped small loan interest rates at 175% also required the New Mexico Regulation and Licensing Department (RLD) to "develop and implement curriculum for a financial literacy program with elements that shall include a basic understanding of budgets, checking and savings accounts, credit and interest and considerations in deciding how and when to use financial services, including installment loans and refund anticipation loans."

This adult financial literacy education is supported by a $200 annual fee on every licensed small loan store in the state, which is placed into a Financial Literacy Fund at RLD to make the program self-sustaining. RLD will soon launch an online course, podcast, and other educational materials that will be available through its website. The agency has ambitious plans to partner with grassroots groups like AARP-NM to distribute these financial literacy teaching tools widely across the state, with an initial focus on New Mexico's Native communities.

The curriculum and materials being developed by RLD could also form the basis for high school financial literacy courses that are tailored to the needs of New Mexico's cultures and communities.

It is time to build on the important progress that has been achieved by making financial literacy a graduation requirement in public high schools across New Mexico and including it in our state education standards.

CONCLUSION

Earlier this year, when Virginia became the latest state to cap interest rates at 36%, bill sponsor Lamont Bagby remarked:

> "This legislation was critical before COVID-19 started impacting our communities. Now, even more Virginians may find themselves in financial distress and vulnerable to predatory lending practices. We need to get these strong consumer protections enacted as fast as possible so people can benefit from more affordable credit."

We are facing a similarly urgent crisis here in New Mexico, as struggling families weather the worst economy in generations. As of July, nearly one in every four New Mexicans was receiving unemployment benefits, and some legislators are warning that a "tsunami of evictions" is threatening the state.

As New Mexicans struggle to keep their heads above water, the loan sharks are circling.

"It's a great time for predatory lenders," Nadine Buerger of U.S. Eagle Federal Credit Union told KOB-TV News recently. Predatory lending rates increased in the wake of the Great Recession a decade ago, and they are poised to do the same now if we fail to act swiftly. A national survey conducted this past spring by the Financial Health Network found that Americans who have lost income due to the pandemic are already turning to predatory lenders.

New Mexicans are strongly in support of the 36% cap. A 2020 poll by Morning Consult found that 71% of registered voters in New Mexico support a 36% annual interest rate cap on small loans. (Nationally, the poll found that nearly two-thirds of the voters who opposed the cap did so because they felt 36% was too high.)

Local governments are also supportive, with Alamogordo, Albuquerque, Las Cruces, Santa Fe, and Doña Ana County, along with the New Mexico Municipal League and Association of Counties, all adopting resolutions in 2014 supporting a 36% annual percentage rate cap.

Combining a 36% interest rate cap with financial literacy education for all of New Mexico's students protects families today and gives the next generation the tools they need to make better financial decisions.

It is urgent that the legislature and governor finish the job of ending predatory lending in New Mexico so that no more New Mexicans will end up stuck in the sort of debt traps that have ensnared so many hard-working New Mexicans like Mary Shay.

Think New Mexico's Reforms to End Predatory Lending & Strengthen Financial Literacy

ENACT LEGISLATION TO:

- **Cap the interest rates of small loans at 36%**
- **Make a financial literacy course a graduation requirement for New Mexico high school students and add it to the state's education standards**

TAKE ACTION! Visit www.thinknewmexico.org and sign up for email alerts to join the fight to end predatory lending and strengthen financial literacy in New Mexico!

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