STATE OF NEVADA

STEVE SISOLAK
Governor

DEPARTMENT OF BUSINESS AND INDUSTRY

TERRY REYNOLDS
Director

FINANCIAL INSTITUTIONS DIVISION

SANDY O'LAUGHLIN
Commissioner

Minutes of Adoption Hearing to Solicit Comments on Proposed Regulations S.B.201- NRS/NAC 604A

Date: Wednesday, December 9, 2020

Time: 10:00 a.m.

Location: Webex meeting- videoconference and teleconference

1. Call to Order:

The adoption hearing to consider S.B.201 was called to order Wednesday, December 9, 2020 at 10:02 a.m. The purpose of the adoption hearing was to receive input with respect to the proposed regulation pertaining to Chapter 604A of the Nevada Administrative Code ("NAC"), as provided by Senate Bill No. 201, requiring the Commissioner of Financial Institutions to develop, implement and maintain a database storing certain information relating to deferred deposit loans, title loans and high-interest loans made to customers in this State; and providing other matters properly relating thereto, as described by the Notice of Intent Upon a Regulation and Hearing Agenda posted on November 9, 2020.

Financial Institutions Division Staff Present at the Hearing:
Commissioner Sandy O'Laughlin
Deputy Commissioner Mary Young
Deputy Attorney General Vivienne Rakowsky
Examiner Jennifer Ramsay

2. Comments by General Public:

There were fourteen (14) commenters during this public comment period. Ten (10) were opposed of the regulation as written and four (4) were in support of the regulation as written. A total of three (3) written comments were received, of which six (6) of these commenters submitted written comment and/or the company they represented submitted comments.

The comments in opposition included, but are not limited to, as summarized below:

- Heidi Welch, USA Cash Services. They are not opposing the database but wants the database to work in a real-life loan center. Claims that this will hurt their business. States FID is going way beyond the legislative intent and the FID is not listening to all their concerns and glossing over them. Urges FID to not adopt the regulations as written today. The Ferraro Group also submitted written comment on behalf of USA Cash Services.
- Victoria Newman, TitleMax of Nevada Inc. First concerned that FID is suggesting these be permanent regulations. Wants to know who the vendor is or the timeline. FID is going beyond intent of SB201. Has made these comments before but FID has not heeded any warnings. Written comment was submitted by Lewis Roca on behalf of TitleMax of Nevada, Inc. for the record.
- Peter Guzman, Latin Chamber of Commerce. Stated he is not here fighting for an industry but for small businesses. Short term, installment lenders are here for businesses to prosper. Access to capital keeps businesses. This could destroy small business. FID creating overly burdensome policies that no one can follow. Wants FID to consider the individuals, his members, that are being put into the database. His members are nervous about the data base, for obvious immigration reasons. Urges FID to not adopt these regulations.
- Janet Phillips, USA Cash Services. This regulation is seriously flawed. Did not like FID's responses to their comments or that FID did not make their requested changes. FID is not listening to their concerns. FID does not understand how to work with customers, loan management software or a database. The Ferraro Group also submitted written comment on behalf of USA Cash Services.
- Ryan Marchesi, Check City. Thought they had a constructive relationship with FID in the past. They are disheartened and disappointed with the regulation process FID has displayed. No two-way dialog. They have submitted lengthy written comment for FID to review. Does not object to a database or regulation but believes that there are numerous flaws and gaps in the regulation as drafted and FID is still overreaching. In no one's interest to take this into the courts. Urges FID to not adopt these regulations. The Ferraro Group also submitted written comment on behalf of Check City.
- Julie Townsend, Purpose Financial, Parent company of Advance America. Unsure about the timeline. In other states it takes 4-6 months to comply with a database and these regulations are more complex so would like a timeline. Ms. Townsend submitted written comments for the record.
- Tom Clark, Nevada Payday and Loans. Agrees with the previous commenters especially with respect to the vendor and timeline. Wants to understand the impact to the whole industry since as of now no vendor or timeline.
- Trent Matson, Moneytree, Opposes the adoption of this rule. The process has been flawed. The final rule is not in harmony with the enabling statute. Refers us to prior written comments from prior workshops. Section 13 goes beyond the scope of S.B.201. Specially section 18 subsection (2)(n) goes way beyond the scope. Opposes the adoption of these regulations. Believes the long term and short-term impacts are incorrect. The Ferraro Group also submitted written comment on behalf of Moneytree.
- William Horne, Strategy 360 on behalf of Enova. Agrees with comments already stated. FID has created a new ability to repay methodology. Does not object to database but the scope exceeds FID's authority. Specifically, total obligations in section subsection (2)(n).

Lenders are already complying with the laws and comments made that lenders are taken advantage of borrowers during a pandemic is false.

- Melissa Soper, CURO Financial DBA: Rapid Cash. Opposes the regulations. The basis for her opposition is against the volume of information being requested and not the database itself. Concerned with data integrity issues. The Ferraro Group also submitted written comment on behalf of CURO.

The comments in support included, but are not limited to, as summarized below:

- Taylor Altman, Consumer Rights Project with Legal Aid. Excited these regulations will be adopted and will go into effective. The database is important especially in light of COVID-19 and widespread unemployment. The database will help low-income and vulnerable borrowers take out loans within their ability to repay, including those who are struggling to stay in their homes and keep food on the table.
- Barbara Paulsen, Nevadans for the Common Good. Database is a valuable consumer protection. Especially now during these unusual times. They strongly support this regulation and urges FID move forward, would like to see this go in effective as soon as possible.
- Christine Saunders, The Progressive Leadership Alliance of Nevada. Supported S.B.201 during the session because it was a commonsense solution to track high-interest loans and proper enforcement of current laws in the loan application process. Imperative now with COVID to protect suffering Nevadans from predatory lenders. This regulation has been delayed for too long. It has been 527 days since S.B. 201 was passed and 161 days since the bill should have been effective. Urges FID to adopt these regulations swiftly.
- Peter Aldous, Legal Aid Center of Southern Nevada. He echoes the comments his colleague Taylor Altman stated. 604A is to protect Nevadans from predatory lenders and practices. S.B.201 is necessary. FID did what the legislative asked of them. FID carefully developed these regulations to do their job that the legislature has asked them to do. Excited that these regulations will finally be adopted to help FID protect Nevadans.

To review and/or listen to comments in its entirety, please refer to the attached written comments and/or the audio recording below. The recording can also be found at: www.fid.nv.gov

SB201 Notice of
Intent to Act Upon a R

3. Presentation and Discussion of Proposed Regulation:

The Division received numerous comments, including but not limited to, that the Division was exceeding its statutory scope and authority in drafting these regulations; that the regulations allowed for the database vendor to make the underwriting decisions; wanting to know why the name of the vendor has not been provided to the industry; concerns of consumer privacy risks; concerns with the costs associated with the database to both a licensee and customer; concerns of

the Division requesting a customer's total obligations; concerns with "due date" and "closed loan" definitions and not defining certain other terms; and concerns if the system goes down that they take the customer's written representation.

The Division addresses those concerns as follows:

The Division drafted these regulations within its statutory authority and scope as provided in chapter 604A, including but not limited to, NRS 604A.303. The datapoints and specifications outlined in the regulation is to assist licensees to be in compliance with NRS 604A and their ability to verify additional loans a customer may have outstanding with other lenders. S.B. 201 was passed to provide frontend enforcement of current consumer protections in existing law governing loans under NRS Chapter 604A. S.B. 201 requires the Division to contract with a service provider to develop, implement and maintain a database of loans under NRS Chapter 604A in order to accomplish the intent of the bill and ensure compliance with existing law. Testimony provided during the legislative session made clear the database would provide frontend compliance to verify loan eligibility and compliance with NRS 604A, in a proactive rather than a reactive approach. Legislative counsel digest on page two of S.B.201 requires that the commissioner of the financial institutions division to develop, implement and maintain, by contract with a vendor or service provider, a database for all deferred deposit loans, title loans and high-interest loans in this state, for the purposes ensuring compliance with existing law governing these types of loans. The Division has an obligation to protect consumers and to prohibit lenders from violating the law. The database is a tool that provides this goal in conjunction with the Division. The Division has statutory authority and responsibility to obtain any information necessary to ensure a licensee is in compliance with NRS Chapter 604A and NAC Chapter 604A.

The database is not taking over the lender's underwriting role. It applies existing law that mandates that a lender must not make certain loans including loans that exceed the 25% limit. Lenders will still make independent underwriting decisions to determine if the loan is in compliance with existing law. The decision to make the loan is not being taken away from a licensee. It will assist a licensee in making a loan that complies with Chapter 604A.

The Division has not released a vendor name or a timeline as the Division has not reached the point of selecting a vendor to provide the name. The division will work with the Nevada State Purchasing Division to select a vendor and determine the timeline but cannot do so until the regulations are finalized. During the early stages of the rulemaking process, the division conducted preliminary research on a database vendor, discussing the basic concepts with other state regulators that have a database requirement in their state. It was determined the vendor's system interfaces directly with a licensee's current software and there would be no additional expenses for a licensee to operate the database, there are no start-up fees and the minimal charge per approved loan could be passed on to the customer. It was also determined that a vendor would train and work with both the licensees and the division to implement the system.

The Purchasing Division will vet each vendor to its criteria including the security of data entered into a database. FID has spoken with its department Business and Industry's IT professional and was advised that a vendor providing such a database would have to have high standards for security to operate in this state. Possibly the need for the highest designation allowed as a PCI Level 1 Compliant. This designation is equivalent to what is allowed for credit card processors governed by the Payment Card Industry Council. Validation requirements include yearly assessments to be completed by the vendor to maintain its designated level.

The Division understands to ensure compliance with NRS 604A and frontend enforcement requires the necessity to request a customer's obligations to determine the customer has the ability to repay a loan back to the licensee. The intent was not to create additional burden or restrictions for the licensee outside current NRS 604A laws, but to assist both a customer in repaying a loan and a licensee in making a loan. The underwriting standards of making of the loan is still decided by a licensee.

Some other comments expressed concern with the due date definition. The definition of due date was simplified by LCB from the division's initial submission. Due date includes 1. The date that payment is due to pay the loan in full to extinguish the debt, which would include all amounts owed by a customer to a licensee, which includes the principal, interest and any charges or fees or 2. The date that a scheduled payment is due. The Division does not anticipate this definition to cause any licensee issues. There was also a comment regarding a current legal case involving the fair market value of a vehicle. Since this is an ongoing case, the division cannot provide further comment. There was a comment concerning the definition of a "closed loan" claiming that the definition is not clear if a licensee deems a loan to be charged off but is still trying to collect on it. A loan that is still being collected on would be considered active and not a charged-off loan. A licensee's remedy to collect for default loans prior to charge off are under current NRS 604A laws. Some definitions were not implemented in the regulation for several reasons, one is that the term is already used in the statute and is not needed and/or two if a word is not used in a sense different from its natural meaning, such as "real time".

Concerns in the event that the system goes down are alleviated by allowing a licensee to use a customer's written representation. This section was added to only be used in the very rare case that the system was down due to unscheduled system maintenance, so that a licensee could continue to operate without disruption. The division does not anticipate the database being down due to technical issues.

The Division considered all written comments received from the small business impact survey, all written and verbal comments received prior to and during the first and second workshops as well as written comments received prior to this adoption hearing. In consideration of all comments, the Division removed language and/or requirements, and added or removed definitions that were confusing or would cause unnecessary efforts on the part of NRS 604A licensees, as long as it did not impact the consumer protection responsibility of the Division or the spirit and intent of the law. The division's intent was not to cause any burden to a licensee and the majority of the information in the regulation is already requested and reviewed by the division and maintained by a licensee but is now also being requested in a different format to input into database. The Division has and always will appreciate the industry's willingness to help and continuous efforts to maintain compliance. The Division will work with the vendor and the industry to ensure all parties are in full understanding of the requirements of the database.

The initial agency draft regulation was submitted to LCB on March 12, 2020 and revisions in consideration of industry comments were submitted on June 24, 2020 and August 27, 2020 to LCB for their review to determine that the regulation conformed to legislative authority and intent. LCB completed their initial review and provided its revised regulation dated October 26, 2020 and a draft revised proposed regulation dated November 13, 2020 that corrected three items from the version dated October 26, 2020. Those three corrected items were : first item in section 3, missing the number "4" from 604A, it read NRS 60A.303 should have read NRS 604A.303, second item, was an unnecessary apostrophe at the beginning of section 14 subsection 2 and third item was three

sections where “monthly” was added to gross income to read “gross monthly income” in align with NRS Chapter 604A in sections 14, section 18 subsection 2(m) and section 22 subsection(1).

Revised LCB file R037-20, dated November 13, 2020 is being adopted here today.

The proposed revised regulation R037-20 was read into the record

Section 1. Chapter 604A of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 25, inclusive, of this regulation.

Section. 2. As used in sections 3 to 25, inclusive, of this regulation, unless the context otherwise requires, the words and terms in NRS 604A.036, 604A.038 and 604A.057, and sections 3 to 7, inclusive, of this regulation, have the meanings ascribed to them in those sections.

Section. 3. “Database” means the database required by NRS 604A.303 to be developed, implemented and maintained.

Section. 4. “Delete” means to erase data by overwriting the data.

Section. 5. “Due date” means the date, based on a payment schedule and subject to all statutory requirements, on which a customer is scheduled to:
1. Make a payment, either to pay the full amount of a loan, including principal, finance charge and fees, and extinguish the debts; or
2. If applicable, make an installment payment.

Section. 6. “Identifying customer information” means:
1. The name of a customer;
2. The social security number or alien registration number of a customer;
3. The driver’s license number of a customer; or
4. The number of an identification card which was issued to a customer by the Federal Government, this State or any other state,
that is entered into the database.

Sec. 7. “Service provider” means the vendor or service provider with which the Commissioner has contracted to develop, implement and maintain the database.

Section. 8. For the purposes of sections 2 to 25, inclusive, of this regulation, a loan is closed if the final status of the loan is no longer active because the loan has been paid in full under the loan agreement, because the loan is a title loan and the vehicle securing the loan has been repossessed, because the licensee has charged off the loan or for any other reason.

Section. 9. The service provider shall:
1. Develop, implement and maintain the database.
2. Take all actions the service provider deems necessary to protect the confidentiality and security of the information contained in the database and be responsible for the confidentiality and security of such information.

Section. 10. The service provider shall:

1. Retain the data in the database only as required to ensure that a licensee complies with the requirements of this chapter and chapter 604A of NRS.
2. Unless notified by the Commissioner that the data and identifying customer information relating to a transaction of a customer is needed for the purposes of a pending investigation or enforcement action:
(a) Archive the data in the database not later than 2 years after the loan is closed. As used in this paragraph, "archive" means to copy data to a long-term storage mechanism separate from the database.
(b) Delete the data and any identifying customer information from the database on the date that is 3 years after the date on which the loan is closed.
3. If the database becomes unavailable for any reason, notify the Office of the Commissioner not later than the next business day after the database becomes unavailable.

Section. 11. 1. Access to the database must be limited to members of the staff of:
(a) A licensee who underwrite and process loans;
(b) A licensee who collect and post payments made on loans;
(c) A licensee who are senior staff members;
(d) The service provider; and
(e) The Office of the Commissioner.
2. Each user of the database must be required to:
(a) Create a password to access the database that meets the criteria of the service provider for passwords; and
(b) Safeguard the password by not sharing the password with any person or by committing the password to writing.

Section. 12. 1. Before making a deferred deposit loan, title loan or high-interest loan, a licensee shall query the database.
2. To verify the identity of a customer, a query made pursuant to subsection 1 must include, at a minimum:
(a) The full name of the customer, including, without limitation, first and last name and middle initial;
(b) The social security number or alien registration number of the customer; (c) The number of a valid identification card issued by a governmental entity which contains a photograph of the customer ; and
(d) The date of birth of the customer.
3. The service provider shall retain each query of the database for review by the Office of the Commissioner.

Section. 13. 1. In response to a query by a licensee, the database must:
(a) Provide the licensee with the information which a licensee may obtain pursuant to paragraphs (a) to (d), inclusive, of subsection 1 of NRS 604A.303;
(b) Inform the licensee whether a customer is eligible for a loan pursuant to this chapter and chapter 604A of NRS; and
(c) If the customer is ineligible for a loan, provide the licensee with the reason for such ineligibility.
2. In determining the ability of a customer to repay a loan for the purposes of chapter 604A of NRS, a licensee shall consider the information provided pursuant to subsection 1 and any other available information.

3. A licensee may approve a loan only if the making of the loan is permissible pursuant to the provisions of this chapter and chapter 604A of NRS.
4. If the database informs a licensee that a customer is ineligible for a loan, the licensee must provide the customer with a written notice which contains:
(a) The reason for the ineligibility;
(b) The contact information of the service provider; and
(c) A statement advising the customer to submit an inquiry to the service provider if the customer has questions regarding the specific reason for the ineligibility.

5. A written notice provided by a licensee pursuant to subsection 4 does not preclude or replace any disclosure required by federal law.

Section. 14. 1. During any period in which the database is unavailable due to technical issues on the service provider's side of the system, a licensee may rely upon the written representation of a customer applying for a loan and assess the ability of the customer to repay the loan by obtaining the documentation required by this chapter and chapter 604A of NRS to verify that making the loan for which the customer applied is permissible pursuant to this chapter and chapter 604A of NRS.
2. The written representation of a customer applying for a loan, which a licensee may rely on pursuant to subsection 1, must include, without limitation:
(a) An affirmation that the customer does not have any loan outstanding at the time the customer applies for the loan;
(b) If, at the time the customer applies for a deferred deposit loan or high-interest loan, the customer has another outstanding loan, an affirmation that:
(1) The amount of the additional deferred deposit loan or high-interest loan, as applicable, for which the customer is applying would not, when combined with the amount of the outstanding loan of the customer, exceed 25 percent of the expected gross monthly income of the customer; and
(2) The customer has the ability to repay the loan and the additional deferred deposit loan or high-interest loan for which the customer is applying; or

(c) If, at the time the customer applies for a title loan, the customer has outstanding another title loan, an affirmation that:
(1) The customer has the ability to repay the outstanding title loan and the additional title loan for which the customer is applying; and
(2) The title to the vehicle is not perfected with another lender or licensee.

3. If a licensee makes a loan to a customer during a period when the database is unavailable, whether due to a scheduled outage or other technical issues, a licensee must: (a) Enter the loan into the database not later than 24 hours after the database becomes operational;
(b) Notate on the loan file that the loan was originated during a period the database was unavailable; and
(c) Retain all records of the loan transaction as required for any loan which is made by a licensee pursuant to the provisions of this chapter and chapter 604A of NRS.

Section. 15. 1. Except as otherwise provided in this section, the service provider shall charge and collect a fee from each licensee for each loan which the licensee approves and enters into the database. The fee:
(a) Must have been established by the competitive procurement process through which the service provider was selected by the Commissioner; and
(b) Must not exceed $3 per approved loan.

2. The service provider shall not charge or collect a fee from a licensee for a loan which is:

(a) Not approved;
(b) Voided; or
(c) Rescinded.

3. The fee may be charged only at the time of the origination of a loan and cannot be charged to extend, roll over, renew, refinance or consolidate a loan, or for any other action which would extend the due date.

Section. 16. 1. A licensee shall not charge or collect from a customer a fee:
(a) If a loan is not approved.
(b) If a loan is voided.
(c) If a loan is rescinded.
(d) In an amount which exceeds the actual cost of the fee charged to the licensee by the service provider.

2. The fee must be itemized on the loan agreement, regardless of whether the fee is required to be included in the finance charge under the Truth in Lending Act, as amended, 15 U.S.C. §§ 1601 et. seq., and Regulation Z, 12 C.F.R. Part 226.

Section. 17. Except as otherwise provided in section 13 of this regulation, a licensee shall enter into the database, in real time:
1. Each loan originated by the licensee;
2. Each renewal, extension, rollover and refinance of a loan;
3. Information concerning a loan that has entered a grace period;
4. Each payment on a loan;
5. The date on which an offer of a repayment plan is sent;
6. The date on which a repayment plan is entered into by the customer and the licensee;
7. Each declined loan; and
8. Any other transaction relating to a loan, as applicable, and in compliance with the provisions of this chapter and chapter 604A of NRS.

Section. 18. 1. A licensee who makes:
(a) A deferred deposit loan; or
(b) A high interest loan,
shall comply with the requirements of subsection 2.

2. Except as otherwise provided in section 13 of this regulation, a licensee who makes a loan described in subsection 1 shall, in real time, enter into the database the following information:
(a) Whether the customer is a covered service member.
(b) Whether the customer is a dependent of a covered service member.
(c) The origination date of the loan.
(d) The term of the loan.
(e) The principal amount of the loan.
(f) The total finance charge associated with the loan.
(g) The fee charged for the loan.
(h) The due date of the loan.
(i) The annual percentage rate of the loan.
(j) The scheduled payment amount.
(k) The payment details as required by section 20 of this regulation.
(l) The type of loan product.
(m) The gross monthly income of the customer.
(n) The total obligations of the customer.

Section. 19. Except as otherwise provided in section 13 of this regulation, a licensee who makes a title loan shall, in real time, enter into the database the following information:

1. Verification that the customer is the legal owner of the vehicle which secures the loan.
2. Whether the customer is a covered service member.
3. Whether the customer is a dependent of a covered service member.
4. The origination date of the loan.
5. The term of the loan.
6. The principal amount of the loan.
7. The total finance charge associated with the loan.
8. The fee charged for the loan.
9. The due date of the loan.
10. The annual percentage rate of the loan.
11. The scheduled payment amount.
12. The payment details as required by section 20 of this regulation.
13. The year, make, model and vehicle identification number of the vehicle which secures the loan.
14. The fair market value of the vehicle as valued by a third-party vendor.
15. If applicable:

(a) The name of the legal co-owner of the vehicle; and

(b) The consent of the legal co-owner of the vehicle for the vehicle to serve as security for the loan.

Section. 20. 1. Except as otherwise provided in section 13 of this regulation, for each payment made on a loan, the licensee shall, in real time, enter into the database the following information, without limitation:

(a) The scheduled payment amount.

(b) The due date of the payment.

(c) The actual payment amount.

(d) The date on which the payment was made.

(e) The allocation of the total payment, including, without limitation, the dollar amount applied to the principal and the dollar amount applied to interest and fees.

(f) The amount and date of the payment received from a customer when the loan is paid in full.

2. If a customer fails to make a payment as scheduled, the licensee shall enter into the database the following information:

(a) The new interest rate, if applicable.

(b) Whether a repayment plan was offered.

(c) Whether the customer entered into a repayment plan.

(d) The duration of the grace period, if any.

3. If a customer enters into a loan agreement which requires installment payments, the licensee must enter into the database the information required pursuant to subsection 1 for each installment payment.

Section. 21. Each licensee shall enter into the database and maintain the status of each loan originated by that licensee, including, without limitation:

1. If the loan is in collection, whether being collected by the licensee or by a third party:

(a) The date on which the loan entered into collection.

(b) The payment history of the loan.

2. If the loan is in default:
(a) The date on which the loan entered into default.
(b) The payment history of the loan.
(c) And if the interest rate changed, the new rate and the date on which the rate changed.
3. If the loan is in a grace period:
(a) The date on which the loan entered into the grace period.
(b) The payment history of the loan.
4. If the loan is in a repayment plan:
(a) The date on which the loan entered the repayment plan.
(b) The payment history of the loan.
5. If the loan is closed:
(a) The date on which the loan closed.
(b) The reason the loan was closed.
6. If a vehicle which secured a loan was ordered to be repossessed:
(a) The date on which the vehicle was ordered to be repossessed.
(b) The date on which the repossession of the vehicle occurred.

Section. 22. A licensee shall retain for not less than 3 years all data and documentation collected and reviewed for any loan, loan transaction or query made in the database. For the purposes of this section, "documentation" includes, without limitation:
1. All copies of the documents considered in determining the ability of a customer to repay a loan, including the gross monthly income of the customer, identity and credit history; and
2. For title loans, any third-party vendor documentation which shows the fair market value of the vehicle which secured the title loan and a copy of the title to the vehicle.

Section. 23. 1. Except as otherwise provided in section 10 of this regulation, a licensee shall not delete any information relating to a customer that is entered into the database.
2. If a loan or loan transaction is voided or rescinded, a licensee must notate on the loan file and in the database that the loan or loan transaction is voided or rescinded, as applicable, and the reason that the loan or loan transaction is voided or rescinded. Except as otherwise provided in section 10 of this regulation, the licensee shall not delete the voided or rescinded loan or loan transaction from the database.

Section. 24. 1. The Office of the Commissioner must have access to the database and will use the database as a tool of enforcement to ensure the compliance of each licensee with the provisions of this chapter and chapter 604A of NRS.
2. The Office of the Commissioner may periodically run reports for purposes other than examinations, investigations or internal reporting, including, without limitation, to publish online a report regarding the scope of the industry. The data in such a report must not disclose identifying customer information or information which identifies a licensee, including, without limitation, the name, address or number of the license of a licensee. The report may contain:
(a) The number of loans made for each loan product;
(b) The number of defaulted loans;
(c) The number of loans paid, including the number of loans paid by their respective due dates and loans paid after their respective due dates;
(d) The total amount borrowed and collected; and
(e) Any other permissible data that the Commissioner or his or her designee deems necessary.

Section. 25. A customer may request from a licensee, without charge, fee or cost, a copy of his or her loan history, file, record and any other documentation relating to any loan for which the customer applied or the repayment of any loan made to the customer.

That completes the presentation of the proposed regulation, we will now move on to item # 4 adoption of proposed regulation

4.Adoption of the Proposed Regulation:
Following the reading of the proposed regulation into the record, the Financial Institutions Division adopted revised regulation R037-20, which pertains to Chapter 604A of the Nevada Administrative Code, as described in the Legislative Counsel Bureau version dated November 13, 2020.

5.Public Comments:
There were three (3) commenters during this final public comment period. Two (2) were opposed to the regulation as written and one (1) was in support of the regulation as written.

Final comments in opposition included, but are not limited to, as summarized below:

- Neal Tomlinson, Brownstein Hyatt, representing Dollar Loan Center. Stated the FID did not address all their comments. Claimed these regulations are not workable for the industry. The industry has already declined during the pandemic and these regulations caused part of it. This will hurt everyone and not help anyone. Urges not to adopt these regulations.
- Michael Kerr, Enova, Intl. Urge FID to respond to all concerns. Specifically, exceeding its authority. Recommends dropping customers total obligations from the regulation. It is causing a lot of heartburn.

Final comments in support included, but are not limited to, as summarized below:

- Bailey Bortolin, Nevada Coalition of Legal Service Providers. Appreciates FID through job on this. Comments by the industry were more of a lamenting of the state regulatory process for those that may not be familiar with it. FID followed the procedures to a "T". Confident in the regulations. They were reviewed by the experts, by the attorney general office and by the attorney's at LCB. These regulations were already delayed 6 months. Encourage the state to move on this as soon as possible.

To review and/or listen to comments in its entirety, please refer to the attached written comments and/or the audio recording above. The recording can also be found at: www.fid.nv.gov

6.Close Workshop (Adjournment):
The adoption hearing for R037-20 pertaining to Senate Bill 201 and Chapter 604A of the Nevada Administrative Code was closed and adjourned on December 9, 2020 at 11:12 a.m.

November 17, 2020

Mary Young, Deputy Commissioner
State of Nevada Department of Business and Industry
Financial Institutions Division
3300 W. Sahara Ave., Ste 250
Las Vegas, NV 89102

Re: Proposed Regulations Pertaining to Senate Bill 201

Dear Ms. Young,

Purpose Financial, Inc., which operates eleven Advance America locations in Nevada, submits the following comments in response to the Financial Institutions Division's Proposed Rule on deferred presentment, title, and high-interest loans, as revised and posted on November 9, 2020 pertaining to Senate Bill 201.

We appreciate that the Division's most recent revisions to the Proposed Rule address several concerns previously expressed by Purpose Financial and other licensees. However, an overarching concern remains: the Proposed Rule would impose on licensees and borrowers a burdensome information collection and reporting regime that is not designed to monitor compliance and exceeds the scope of the underlying statute as revised by SB 201. We set out our specific objections and recommendations below.

As a national company operating in twenty-seven states, we have a sophisticated loan management system and many successful integrations with state lending databases. However, the database provisions of the Proposed Rule would pose an unprecedented operational and technological challenge for our organization. This is a result of both the sheer volume of information we would be required to collect and the frequency of reports to the database. The Proposed Rule requires extensive data not only at origination but also each time a payment is made (or missed) as well as detailed information about grace periods, repayment plans, and collection activities.

Moreover, the data collection and reporting requirements of the Proposed Rule are not tailored to the purpose of ensuring compliance and therefore exceed the authority the legislature conferred on the Division in Senate Bill 201. This is particularly evident with respect to the new requirement to calculate and report a customer's total obligations.

In this letter, we address information collection and reporting requirements, which raise questions regarding the function of the database as a credit reporting agency, as well as privacy risks to consumers and the scope and utility of information collection the Division has proposed. Next, we examine the "customer's total obligations" calculation and reporting requirement. Finally, we address concerns regarding timing of implementation for this complex Proposed Rule.

1. Information Collection and Reporting

The Proposed Rule would require the database provider to report certain information to the licensee, upon which the licensee must base underwriting decisions. This carries significant legal implications for the database provider as well as the licensee. Additionally, the Propose Rule would require licensees not only to provide information to the database prior to origination, but also report the details of every customer payment (or missed payment) as well as information on grace periods, repayment plans, and collection activities. We offer four licensed loan products in Nevada, and three of the four products provide for multiple payments. The degree of detail required with each report and the frequency of the reporting represents an overwhelming burden for licensees and consumers. Further, consumers will experience privacy risks as a result of these requirements, many of which do not serve to monitor compliance and exceed the Division's authority under Chapter 604A as amended by SB 201.

a. Information to be Reported by the Database

Section 13 of the Proposed Rule would require the database provider to report information about an applicant's borrowing history to a licensee. The section further states that licensees must consider those borrowing history factors in underwriting decisions. This is in addition to the typical "eligible" or "ineligible" result that state databases provide. Since the proposed rule requires the database to return information on which a licensee must base underwriting decisions, the database provider would likely be considered a "credit reporting agency" under the federal Fair Credit Reporting Act (FCRA). This would have significant legal implications for the database provider as well as for licensees using the information provided by the database for underwriting.

b. Consumer Privacy Risks

The extreme complexity of the transactional data reporting and the timing of such reporting poses data privacy concerns, leaving consumers vulnerable to the increased risk of data loss and more time and effort to obtain a loan. The Proposed Rule would require customer-specific data to be input at the time of a database query, presumably this information would be retained in the database regardless of whether a loan is originated at that time. Additional data would be entered in the database at the time of origination and, after loan origination, licensees would be required to enter data regarding loan payments and status, such as defaults, repayment plans and grace periods.

Many of these customer-specific data points the proposed rule would require are not needed for the database provider to determine eligibility with the GMI provisions for deferred deposit and high interest loans under Chapter 604A as amended by SB 201. Providing unnecessary personal information to the database, to be maintained with similar information from many thousands of other consumers, increases the applicant's risk of identity theft, financial fraud and data loss while providing her with no countervailing benefit. And, as noted above, consumers could experience this risk even if a loan is not originated.

c. Low Utility for Compliance

These costs and risks to licensees and consumers are not justified by the utility of the information the Proposed Rule would require, much of which is either irrelevant to compliance monitoring or redundant with information already collected by licensees. For example, as discussed above, the applicant's total obligations are not required to comply with Chapter 604A. In fact, the Proposed Rule requires more than 20 datapoints to be entered in the database, while only 9 are required by Chapter 604A as amended by SB 201, and few of these datapoints are relevant for determining eligibility or monitoring compliance with the 25% GMI standards set in statute. Finally, the requirement to provide the co-owner's name and consent before making a title loan is not linked to any statutory requirement. In fact, Chapter 604A specifically prohibits licensees from considering ability to repay with respect to anyone except the borrower of a title loan.

We urge the Division to consider its legislative mandate to establish a database for the purpose of ensuring compliance and tailor the database requirements to that purpose. Requiring information that does not advance this purpose not only exceeds the Division's statutory authority but also imposes undue costs on licensees and consumers.

2. Customer's Total Obligations

For deferred deposit (605A.5011) and high interest (604A.5038) loans, the Proposed Rule would require licensees to calculate and enter into the database a customer's "total obligations," a term which is not defined. The concept of total obligations did not appear in Chapter 604A before the adoption of Senate Bill 201, and Senate Bill 201 did not add it.

Though "customer's total obligations" is not defined in the Proposed Rule, we believe it is a similar concept to "net disposable income," which the Division first introduced in a non-binding guidance issued last year. This concept was included as a binding provision in a previous version of the Proposed Rule. In responding to concerns of licensees about the additional burden, the Division stated that these requirements were included in the existing "ability to repay" underwriting requirements for deferred deposit (604A.5011), high interest (604A.5038), and title loans (604.5065). These three similar statutory provisions require licensees to consider the following as part of a general ability to repay analysis before making a loan:

- The applicant's current or reasonably expected income;
- The applicant's current employment status based on documentary evidence, such as a pay stub or bank deposit;
- The applicant's credit history;
- The amount due under the original term of the covered loan, any monthly payment required on the covered loan, or the potential repayment plan; and
- "Other evidence", including bank statements and written representations by the applicant.

a. Requirement exceeds Division's authority under Chapter 604A

Neither a customer's total obligations nor net disposable income are required underwriting factors under Chapter 604A. The requirement of such exceeds the Division's authority with respect to establishment of the database. Senate Bill 201 authorizes the Division to implement a database from which licensees and the Division can obtain information "to ensure compliance with [Chapter 604A]." The Proposed Rule similarly states that the Division will use the database as "an enforcement tool to ensure licensees' compliance." This purpose is predicated on the existence of a customer's total obligations values that would cause a loan to violate Chapter 604A. However, the Division has not (and cannot) explain what those values are because neither pre-amendment Chapter 604A nor Senate Bill 201 require licensees to calculate or report a customer's total obligations.

The only numeric underwriting requirements in Chapter 604A pertain to the applicant's gross monthly income, a value that lenders routinely consider in underwriting. Compliance with the gross-monthly-income cap does not require calculation of a customer's total obligations, which presumably – though undefined in the Proposed Rule - would be a difficult and costly process of determining an applicant's expenses.

b. Requirement is overwhelmingly burdensome on licensees and consumers

A licensee cannot calculate a customer's total obligations using the information it is required to collect. While we are uncertain as to the exact calculation of a customer's total obligations, since the term is undefined in the Proposed Rule, presumably the lender must know not only the applicant's income and repayment obligations on the covered loan but information on all income deductions, "verifiable" expenses, and debt service obligations of the applicant. This goes beyond the scope of underwriting short-term lenders perform today and would demand significant additional time and expense. As the CFPB acknowledged before retracting the ability to repay underwriting requirement of its 2017 short-term credit rule: "Developing procedures to make a reasonable determination that a borrower has the ability to repay a loan without reborrowing while paying for major financial obligations and basic living expenses will likely be costly and challenging for many lenders."

This large investment of time and expense makes sense for lenders and borrowers of large loans, such as mortgages, and is typical for such loans. However, the same investment is not justifiable with respect to small-dollar loans which provide fast and convenient access for consumers. Further, compliance with the "customer's total obligations" requirement increases lender costs which would have to be passed along to consumers.

We urge the Division to remove the customer's total obligations requirement from the Proposed Rule, as this requirement is overwhelmingly burdensome to licensees and consumers, serves no utility for compliance and exceeds the Division's authority under Chapter 604A as amended by SB 201.

3. Effective Date and Timing

The Proposed Rule does not indicate an effective date for implementation of a database or provide any insight regarding timing for licensees to comply. Compliance with the reporting requirements of the Proposed Rule would be inordinately difficult under any circumstances. A typical new database implementation takes about four to six months from the time the database's technical specifications are determined to the go-live date. The Proposed Rule would implement a regime much more complex than any we have encountered. This would significantly extend the implementation and testing phase, which we would have to complete separately for each of our four distinct loan products. We respectfully request the Division consider addressing these timing concerns and establishing a reasonable effective date prior to adopting a final rule.

We respectfully request the Division to reconsider the Proposed Rule to implement Chapter 604A as amended by SB 201. As we have outlined, this Proposed Rule exceeds the authority granted to the Division in SB 201, poses unnecessary privacy risks to consumers and imposes undue costs on licensees, while many of the provisions serve very low utility in monitoring compliance with Chapter 604A.

As with the previous workshops on this issue, we look forward to participating in the December 9 hearing when the Department may consider adoption of this Proposed Rule.

Sincerely,

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November 17, 2020

COMMENTS ON PROPOSED REGULATIONS PERTAINING TO SENATE BILL 201

Dear Deputy Commissioner Young:

Our firm represents TitleMax of Nevada, Inc. ("TitleMax"), which hereby submits its comments on the proposed regulations pertaining to Senate Bill 201 ("S.B. 201"), circulated on November 9, 2020 in the "Notice of Intent to Act upon a Regulation and Hearing Agenda" (hereinafter "Notice"). TitleMax appreciates the opportunity to comment on the proposed regulations and attend the hearing scheduled for December 9, 2020. Below is a summary of concerns and suggestions related to the revised regulations proposed by the State of Nevada, Financial Institutions Division ("FID") pertaining to S.B. 201.

Despite multiple workshops and numerous industry participants raising substantive concerns regarding the scope of the proposed regulations, several overarching concerns still have not been meaningfully addressed. The proposed regulations still far exceed the statutory authorization in S.B. 201. The Nevada Legislature approved the creation of the database to collect data that the FID and other licensees may access – nothing more. *See* NRS 604A.303. However, the proposed regulations consistently overreach and reflect a very different vision of a database that determines loan eligibility and ensures statutory compliance. *See infra* ¶ 3; *see also* Notice at 35 (the FID responding to small business comments and stating, "The database was implemented to verify the eligibility of a loan to keep consumers off the debt treadmill").) Nothing in S.B. 201 gives the database or database provider the power to determine loan eligibility, and nothing in S.B. 201 delegates to the database or database provider the FID's duty to ensure statutory compliance. TitleMax sincerely hopes the FID will carefully consider the concerns raised by the industry and refrain from enacting regulations that exceed the scope of S.B. 201.

1. Permanent v. Temporary Regulations: The Notice indicates that the "purpose of the hearing is to receive comments from all interested persons regarding the adoption of permanent regulations." (Notice at 1 (emphasis added); *see also id.* at 2 ("The purpose of this public hearing is to receive final comments from all interested persons regarding this permanent regulation and the adoption of Chapter 604A of the Nevada Administrative Code ('NAC'), LCB File No. R037-20, dated October 26, 2020."). However, because the proposed regulations were submitted to the Legislative Counsel "between August 1 of an even-numbered year and July 1 of the succeeding odd-numbered year," they can only be temporary regulations and must expire on November 1, 2021. *See* NRS 233B.063(2)-(3).

TitleMax trusts that if the FID enacts the proposed regulations, the regulations will be enacted only as temporary regulations and that the FID will then follow the appropriate procedures for enacting any permanent regulations.

2. Unknown Service Provider and Time Frame: Licensees still have not been told who the service provider will be. Licensees cannot coordinate with the service provider and conduct the necessary information technology (IT) work to ensure their systems will be able to interface with the database until they know who the service provider is. Licensees are still lacking basic information and details about the database. Licensees also have not been informed of any proposed date regarding when the proposed regulations might go into effect. Licensees cannot sync their systems with a complex database overnight. Much work and coordination with the service provider will be required.

   TitleMax does not understand how the FID can make temporary or permanent rules related to the database when the FID still has not provided basic information such as who the service provider will be and what is expected of licensees. In the Small Business Impact Statement, the FID Commissioner "noted that a common concern from the 604A community is the unknown of how the database operates. Unaware that it is a live database that interfaces with a licensee's current software and for licensees that maintain manual records; an online portal will be provided for their use. The Division and service provider will assist any licensee with questions during an examination to alleviate any concerns." (Notice at 29 (emphasis added).) Respectfully, by the time a licensee is subjected to an examination by the FID, it will be too late. The point is that licensees want to be in compliance with any passed regulations *before* licensees are examined and cited for purported regulatory violations. The FID has not released any details about the service provider or how licensees' current software will interface with the database, nor has the FID released any details or training regarding the "online portal" for licensees who maintain manual records. Before any regulations are enacted, TitleMax requests that the FID provide information on the service provider and a proposed time period in which licensees will be able to work with the service provider to ensure proper interfacing with their systems. Once licensees begin to work with the service provider, various issues may come to light that can be addressed in the proposed regulations.

3. Exceeding Statutory Scope: The Notice indicates that the proposed regulations are "required as a result of the passage of Senate Bill ('SB') 201" and that the proposed regulations are "needed to establish the specifications of the database for the Division to administer, carry out and enforce the provisions of S.B. 201." (Notice at 2.) However, the proposed regulations go well beyond the scope of S.B. 201.

   S.B. 201 enacted NRS 604A.303, which provides:

   > **NRS 604A.303 Commissioner required to implement and maintain database of certain information related to deferred deposit loans, title loans and high-interest loans; fee; confidentiality; regulations. [Effective July 1, 2020.]**
   >
   > 1. The Commissioner shall, by contract with a vendor or service provider or otherwise, develop, implement and maintain a database by which the Commissioner and licensees may obtain information related to deferred deposit loans, title loans and high-interest loans made by licensees to customers in this State to ensure compliance with the provisions of this chapter. The information the Commissioner and licensees **may obtain** includes, without limitation:

(a) Whether a customer has a deferred deposit loan, title loan or high-interest loan outstanding with more than one licensee;

(b) Whether a customer has had such a loan outstanding with one or more licensees within the 30 days immediately preceding the making of a loan;

(c) Whether a customer has had a total of three or more such loans outstanding with one or more licensees within the 6 months immediately preceding the making of the loan; and

(d) Any other information necessary to determine whether a licensee has complied with the provisions of this chapter.

2. After the development and implementation of the database created pursuant to subsection 1, a licensee who makes a deferred deposit loan, title loan or high-interest loan **shall enter** or update the following information in the database for each such loan made to a customer at the time a transaction takes place:

(a) The date on which the loan was made;

(b) The type of loan made;

(c) The principal amount of the loan;

(d) The fees charged for the loan;

(e) The annual percentage rate of the loan;

(f) The total finance charge associated with the loan;

(g) If the customer defaults on the loan, the date of default;

(h) If the customer enters into a repayment plan pursuant to NRS 604A.5027, 604A.5055 or 604A.5083, as applicable, the date on which the customer enters into the repayment plan; and

(i) The date on which the customer pays the loan in full.

3. The Commissioner shall establish, and cause the vendor or service provider administering the database created pursuant to subsection 1 to charge and collect, a fee for each loan entered into the database by the licensee. The money collected pursuant to this subsection must be used to pay for the operation and administration of the database.

4. Except as otherwise provided in this subsection, any information in the database created pursuant to subsection 1 is confidential and shall not be considered a public book or record pursuant to NRS 239.010. The information may be used by the Commissioner for statistical purposes if the identity of the persons is not discernible from the information disclosed.

5. The Commissioner shall adopt regulations that:

(a) Prescribe the specifications for the information entered into the database created pursuant to subsection 1;

(b) Establish standards for the retention, access, reporting, archiving and deletion of information entered into or stored by the database;

(c) Establish the amount of the fee required pursuant to subsection 3; and

(d) Are necessary for the administration of the database.

(Added to NRS by 2019, 942, effective July 1, 2020)

NRS 604A.303 (emphases added). Subsection 5 authorizes the FID to adopt regulations to prescribe *specifications* for information entered into the database, to establish retention/archive standards for information entered into the database, to establish regulations necessary for the *administration* of the database, and to establish the amount of the fee required pursuant to subsection 3. However, the FID was **not given** authority to determine what information must be entered into the database. The Legislature already enumerated what information must be entered into the database in subsection 2.

Notwithstanding this, several sections of the proposed regulations prescribe numerous items to be entered into the database far exceeding the careful balance struck by the Legislature. (*See, e.g.*, Sec. 17; Sec. 19; Sec. 20; Sec. 21.) It is confusing to have so many sections governing what must be entered into the database. More importantly, requiring entry into the database of items beyond what the Legislature has already prescribed exceeds the statutory scope of the FID's rule-making authority. *Bowen v. Georgetown Univ. Hosp.*, 488 U.S. 204, 208 (1988) ("It is axiomatic that an administrative agency's power to promulgate legislative regulations is limited to the authority

delegated by [the Legislature].”). If the FID seeks to provide specifications around the statutorily enumerated items, TitleMax proposes that they be contained in one section.

The proposed regulations also purport to require licensees to query the database for specific information and consider this information in determining loan eligibility. (*See* Sec. 13.) However, this goes beyond the scope of S.B. 201. NRS 604A.303, as enacted, contains certain requirements. For example, the “Commissioner ***shall*** . . . develop, implement and maintain a database” and licensees “***shall*** enter or update” the information prescribed in subsection 2. NRS 604A.303(1)-(2). But nothing in S.B. 201 ***requires*** licensees to access any particular information in the database. Rather, “the Commissioner and licensees ***may obtain*** information related to deferred deposit loans, title loans and high-interest loans.” NRS 604A.303(1). While “shall” “imposes a duty to act,” the word “may” “confers a right, privilege or power.” NRS 0.025. Thus, while licensees can access certain information if they so choose, nothing in S.B. 201 *requires* licensees to make any particular query or access any particular information. In imposing such obligations, the proposed regulations exceed, and are contrary to, the statutory requirements of S.B. 201.

Moreover, the database was touted to the Legislature as an important first step to collect information – nothing more. The Legislature did *not* forbid loans if there is an outstanding loan with another licensee or if the customer has had three or more NRS 604A loans outstanding within the past 6 months. This is merely information that *may* be obtained from the database. NRS 604A.303(1). Yet the proposed regulations purport to *require* licensees to consider such information and even state that “the database must … [i]nform the licensee whether a customer is eligible for a loan.” (Sec. 13.) The Legislature did not give the database or the database service provider power to determine eligibility for a new loan. While some states have systems and statutes in place authorizing the database itself to determine loan eligibility, the Nevada Legislature has enacted no such law. The FID itself assured the Nevada Legislature that S.B. 201 “does not provide us with any abilities that we do not currently have, nor would it provide us any additional powers . . . . The database would be a place to start and provide us another resource as we perform examinations and investigations.” Nevada Assembly Committee Minutes, 5/10/2019 (testimony of Rickisha Hightower, former Interim Commissioner of the FID).

In some sections of the proposed regulations, the FID purports to impose requirements that have nothing to do with the database. (*See, e.g.*, Sec. 25 (allowing customers to request loan documents).) The FID states that the purpose of the proposed regulations is to develop and implement the database referred to in S.B. 201. But at times, the FID imposes requirements that are not related to the database at all and that change the statutory requirements of NRS 604A. The FID is not authorized to add to the statutory requirements of NRS 604A or impose regulations that are inconsistent with the statutory terms. “We reaffirm the core administrative-law principle that an agency may not rewrite clear statutory terms to suit its own sense of how the statute should operate.” *Util. Air Regulatory Grp. v. E.P.A.*, 573 U.S. 302, 328 (2014); *see also Food & Drug Admin. v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 125 (2000) (an administrative agency “may not exercise its authority in a manner that is inconsistent with the administrative structure that Congress enacted into law.”) (quotations omitted).

TitleMax will now address specific sections of the proposed regulations.

4. Section 5: Section 5 of the proposed regulations defines “due date” as “***the date, based on a payment schedule and subject to all statutory requirements, on which a customer is scheduled***

to: 1. Make a payment, either to pay the full amount of a loan, including principal, finance charge and fees, and extinguish the debts; or 2. If applicable, make an installment payment." TitleMax suggests that a clearer and more concise definition would be "the date on which the customer is contractually scheduled to make a payment." It is already a given that contractual terms must comply with all statutory requirements. At a minimum, it appears that the text "Make a payment, either to" should appear before the numeral "1" as a matter of correct grammar.

TitleMax objects to the FID defining the "full amount of the loan" as including "principal, finance charge and fees" within the definition of "due date." A previous version of the proposed regulations contained a definition for "full amount of the loan," but this section was deleted. The FID apparently retains the deleted definition, just including it in the definition of "due date." This is problematic because the meaning of the term "loan" or "full amount of the loan" might vary depending on statutory context. Moreover, the FID does not use the term "full amount of the loan" elsewhere in the proposed regulations.

Most concerning to TitleMax is that the FID defines "full amount of the loan" as including "principal, finance charge and fees" in a proposed regulation when TitleMax and the FID have been litigating over what "title loan" means for purposes of NRS 604A.5076(1) (providing that a title lender shall not "[m]ake a title loan that exceeds the fair market value of the vehicle securing the title loan"). A Nevada district court ruled in TitleMax's favor, declaring that NRS 604A.5076(1) means only that principal cannot exceed fair market value and that "title loan" does not include the finance charge and fees. *TitleMax of Nevada, Inc. v State, Dept. of Business and Industry Financial Institutions Div*, No. A-18-786784-C, 2019 WL 3754784, at *10 (Nev. Dist. Ct. June 20, 2019). The FID cannot manufacture a regulation that contradicts statutory terms as interpreted by a court of law. *Fed. Election Comm'n v. Democratic Senatorial Campaign Comm.*, 454 U.S. 27, 32 (1981) ("courts are the final authorities on issues of statutory construction"); *see also Ctr. for Biological Diversity v. U.S. Army Corps of Engineers*, 941 F.3d 1288, 1299 (11th Cir. 2019) ("regulations cannot contradict their animating statutes or manufacture additional agency power").

TitleMax proposes that "due date" be defined simply as "the date on which the customer is contractually scheduled to make a payment." There is no need to separately mention deadlines to extinguish the debt v. to make an installment payment.

5. Section 8: Section 8 provides, "***For the purposes of sections 2 to 25, inclusive, of this regulation, a loan is closed if the final status of the loan is no longer active because the loan has been paid-in-full under the loan agreement, because the loan is a title loan and the vehicle securing the loan has been repossessed, because the licensee has charged off the loan or for any other reason.***" TitleMax objects that this definition is ambiguous. There is no definition of "active" or "charged off." What it means to "charge off" a loan may be different for each licensee. For example, there are instances in which TitleMax labels a loan account as "charged off," yet TitleMax is still trying to collect on a loan. Would the loan be considered "closed" or active" in this situation? In addition, the definition is rendered broad and even more ambiguous by the catch-all phrase "or for any other reason." It is unclear when a loan would be "no longer active" for "any other reason." TitleMax suggests the definition should be clarified, particularly with regard to what "active" and "charged-off" mean. If "active" means that the licensee is still trying to collect on the loan, the definition should indicate that.

6. Section 10: Section 10 provides in part, "***The service provider shall: 1. Retain data in the database only as required to ensure that a licensee complies with the requirements of this chapter and chapter 604A of NRS.***" TitleMax objects to this section as contrary to, and beyond the scope of, S.B. 201. Nothing in S.B. 201 gives the service provider power or responsibility "to ensure that a licensee complies with the requirements of this chapter and chapter 604A of NRS." Presumably, ensuring licensee compliance with NRS Chapter 604A and NAC 604A is the duty of the FID. Nothing in S.B. 201 gives the service provider power to determine loan eligibility or ensure statutory compliance.

7. Section 11: Section 11 provides, "***1. Access to the database must be limited to members of the staff of:***
(a) A licensee who underwrite and process loans;
(b) A licensee who collect and post payments made on loans;
(c) A licensee who are senior staff members;
(d) The service provider; and
(e) The Office of the Commissioner.
2. Each user of the database must be required to:
(a) Create a password to access the database that meets the criteria of the service provider for passwords; and
(b) Safeguard the password by not sharing the password with any person or committing the password to writing."

   TitleMax proposes that (a), (b), and (c) referring to licensee staff members be combined into one subsection allowing access by "Licensee staff members and those associated with a Licensee who need to access the database to provide services." As currently drafted, it is unclear who would qualify as "senior staff members." There does not appear to be a reasoned basis to allow access by all Commissioner staff members and all service provider staff members, but only certain licensee staff members. In addition, there may be corporate affiliate staff members who need to access the database to provide services. For example, TitleMax of Nevada, Inc. relies on employees of its corporate affiliates to provide Information Technology (IT) and other services. An employee of TitleMax's affiliate might need to access the database to ensure that information is properly interfacing with TitleMax's loan platform or check the database upon a question from a FID examiner. TitleMax's proposed language would ensure that the appropriate persons associated with TitleMax could access the database.

   TitleMax has no objection to requiring anyone who accesses the database to do so via a password that meets the criteria of the service provider. However, TitleMax suggests that Section 2(b) be deleted. While it may be good practice to refrain from sharing a password with anyone and to refrain from writing it down, some individuals may share their passwords with administrative assistants, secretaries, or IT personnel. And some individuals may keep a list of all their passwords or be unable to remember their password without writing it down. While good security measures should be encouraged, it should not be a regulatory offense if someone shares his/her password with a fellow staff member or commits the password to writing.

8. Section 12: Section 12 provides, "***1. Before making a deferred deposit loan, title loan or high-interest loan, a licensee shall query the database. 2. To verify the identity of a customer, a query made pursuant to subsection 1 must include, at a minimum:***
(a) The full name of the customer, including, without limitation, first and last name and middle initial;
(b) The social security number or alien registration number of the customer;
(c) The number of a valid identification card which contains a photograph of the customer and was issued by a governmental entity; and
(d) The date of birth of the customer."

   TitleMax objects to this section as beyond the scope of S.B. 201. First, under S.B. 201, licensees are not required to query the database for anything. Rather, they "may obtain" certain information if they so choose. (*See supra* ¶ 3.)

   Second, nothing in S.B. 201 addresses verifying the identify of a customer – that is not what NRS 604A.303 specifies is the role of the database. The database was not statutorily provided for to detect identity fraud or to ensure a customer is who he or she says she is. Verifying the identity of a customer is beyond the scope of S.B. 201. Moreover, it seems excessive to purport to require licensees to search the database by name, social security/alien registration number, driver's license or other government ID number, *and* the customer's birth date. Name and birth date *or* the number on a government ID (including a social security card) should suffice.

   Section 12 exceeds the permissible scope of regulations to implement S.B. 201.

9. Section 13: Section 13 provides:
"***1. In response to a query by a licensee, the database must:***
(a) Provide the licensee with the information which a licensee may obtain pursuant to paragraphs (a) to (d), inclusive, of subsection 1 of NRS 604A.303;
(b) Inform the licensee whether a customer is eligible for a loan pursuant to this chapter and chapter 604A of NRS; and
(c) If the customer is ineligible for a loan, provide the licensee with the reason for such ineligibility.
2. In determining the ability of a customer to repay a loan for the purposes of chapter 604A of NRS, a licensee shall consider the information provided pursuant to subsection 1 and any other available information.
3. A licensee may approve a loan only if the making of the loan is permissible pursuant to the provisions of this chapter and chapter 604A of NRS.
4. If the database informs a licensee that a customer is ineligible for a loan, the licensee must provide the customer with a written notice which contains:
(a) The reason for the ineligibility;
(b) The contact information of the service provider; and
(c) A statement advising the customer to submit an inquiry to the service provider if the customer has questions regarding the specific reason for the ineligibility.
5. A written notice provided by a licensee pursuant to subsection 4 does not preclude or replace any disclosure required by federal law."

   Section 13 exceeds the scope of S.B. 201 and purports to change its requirements. NRS 604A.303(1) provides that "the Commissioner and licensees may obtain" the information listed in subsections (1)(a)-(d) – not that they are required to. NRS 604A.303(1). Sections 12 and 13

work together to *require* licensees to query the database and then consider the information provided. This is inconsistent with NRS 604A.303(1).

Section 13 also exceeds the scope of S.B. 201 when it provides that "the database must … [i]nform the licensee whether a customer is eligible for a loan pursuant to this chapter and chapter 604A of NRS." S.B. 201 does not provide for the database to determine loan eligibility. This may be a future step Nevada takes, but it has not done so yet. S.B. 201 simply provides for the creation of a database that will store information. (*See supra* ¶ 3.) Moreover, it is unclear how the database would determine compliance with *all* requirements of NRS 604A and NAC 604A even if the database was supposed to determine loan eligibility. Licensees determine loan eligibility, not the database.

Section 13 further exceeds the scope of S.B. 201 when it provides, "In determining the ability of a customer to repay a loan for the purposes of chapter 604A of NRS, a licensee shall consider the information provided pursuant to subsection 1 and any other available information." S.B. 201 did not amend the ability-to-repay statute (NRS 604A.5065 for title loans) or add the information prescribed in NRS 604A.303(1)(a)-(d) as items to be considered in determining ability to repay. S.B. 201 did not provide that a loan cannot be made if a customer has another NRS 604A loan outstanding or has had three or more such loans outstanding within the past 6 months. (*See supra* ¶ 3.) Requiring licensees to consider such information and suggesting that these factors may make a customer ineligible for a loan is contrary to S.B. 201. Requiring licensees to consider "any other available information" in determining ability to repay is also inconsistent with NRS Chapter 604A. NRS 604A.5065 specifies the particular underwriting factors to be considered in determining a customer's ability to repay. The regulation turns the specific statutory requirements into a broad and amorphous requirement to consider "any other available information," and the regulation requires consideration of factors not present in NRS 604A.5065. This is impermissible. *See Portland Audubon Soc. v. Endangered Species Comm.*, 984 F.2d 1534, 1543 n.21 (9th Cir. 1993) ("Regulations that are inconsistent with the provisions of the act they implement cannot stand."); *United States v. Bastide-Hernandez*, 360 F. Supp. 3d 1127, 1135 (E.D. Wash. 2018) ("An agency cannot, through the passage of a regulation, change a statute.").

Section 13(3) states that "A licensee may approve a loan only if the making of the loan is permissible pursuant to the provisions of this chapter and chapter 604A of NRS." Nothing in S.B. 201 altered when the making of a loan was permissible – and thus, nothing in S.B. 201's implementing regulations should do so either. It is already a given that making a loan must comply with NRS Chapter 604A, so this provision is unnecessary and beyond the scope of S.B. 201.

Moreover, S.B. 201 imposes no requirement on licensees to "provide the customer with a written notice which contains: (a) The reason for the ineligibility; (b) The contact information of the service provider; and (c) A Statement advising the customer to submit an inquiry to the service provider if the customer has questions regarding the specific reason for the ineligibility." Section 13(4) adds new requirements that are inconsistent with NRS Chapter 604A and beyond the scope of S.B. 201. In addition, it seems deceptive to advise customers to submit an inquiry to the database provider should they have questions regarding the reason for their loan ineligibility. The database provider does not determine loan eligibility. Presumably, the database provider can only access data. It cannot alter information (even if such information is inaccurate), nor can it discuss

with customers potential avenues to assist customers in obtaining the loans they need, such as taking out a loan for a lower amount. Moreover, there may be situations in which a customer is ineligible for a loan not because of any statutory or regulatory requirements, but because of the licensee's own proprietary underwriting standards. It is the licensee that determines loan eligibility and may inform the customer of its determination in any way it sees fit. Section 13(4) exceeds the scope of S.B. 201.

10. Section 14: Section 14 provides, "***1. During any period in which the database is unavailable due to technical issues on the service provider's side of the system, a licensee may rely upon the written representation of a customer applying for a loan and assess the ability of the customer to repay the loan by obtaining the documentation required by this chapter and chapter 604A of NRS to verify that making the loan for which the customer applied is permissible pursuant to this chapter and chapter 604A of NRS.***
2. The written representation of a customer applying for a loan, which a licensee may rely on pursuant to subsection 1, must include, without limitation:
(a) An affirmation that the customer does not have any loan outstanding at the time the customer applies for the loan;
(b) If, at the time the customer applies for a deferred deposit loan or high-interest loan, the customer has another outstanding loan, an affirmation that:
(1) The amount of the additional deferred deposit loan or high-interest loan, as applicable, for which the customer is applying would not, when combined with the amount of the outstanding loan of the customer, exceed 25 percent of the expected monthly gross income of the customer; and
(2) The customer has the ability to repay the loan and the additional deferred deposit loan or high-interest loan for which the customer is applying; or
(c) If, at the time the customer applies for a title loan, the customer has outstanding another title loan, an affirmation that:
(1) The customer has the ability to repay the outstanding title loan and the additional title loan for which the customer is applying; and
(2) The title to the vehicle is not perfected with another lender or licensee.
3. If a licensee makes a loan to a customer during a period when the database is unavailable, whether due to a scheduled outage or other technical issues, a licensee must: (a) Enter the loan into the database not later than 24 hours after the database becomes operational;
(b) Notate on the loan file that the loan was originated during a period the database was unavailable; and
(c) Retain all records of the loan transaction as required for any loan which is made by a licensee pursuant to the provisions of this chapter and chapter 604A of NRS."

First, to the extent that the regulation suggests that "a licensee may rely upon the written representation of a customer applying for a loan" only when the database is not operational, that is contrary to the statutory authorization to rely on customers' written representations in assessing their ability to repay. NRS 604A.5065(2)(e). TitleMax reiterates that licensees are not required to search the database for any particular information (*see supra* ¶ 3) and that licensees can rely on customers' written representations regardless of whether the database is operational. To the extent the regulation provides that licensees must always obtain documentation "to assess" a customer's ability to repay – beyond and apart from "a customer's written representation" – that is contrary to NRS 604A.5065 and cannot stand. *See Portland Audubon Soc. v. Endangered*

Species Comm., 984 F.2d 1534, 1543 n.21 (9th Cir. 1993) ("Regulations that are inconsistent with the provisions of the act they implement cannot stand."); *United States v. Bastide-Hernandez*, 360 F. Supp. 3d 1127, 1135 (E.D. Wash. 2018) ("An agency cannot, through the passage of a regulation, change a statute.").

Second, there is no prohibition on making a title loan to a customer who has other outstanding loans. If the licensee wishes to accept the risk of having its interest subordinate to another lender, that is its choice and the statute does not prohibit such activity. Section 14 imposes requirements that have nothing to do with the database and that exceed the requirements of NRS Chapter 604A when it purports to mandate what customers must affirm in writing.

Third, it is unclear whether or how licensees will know whether the database is unavailable. Nothing in S.B. 201 requires licensees to query the database when making a loan, and the FID has represented that the database will interface with licensees' current software systems. Thus, it is not apparent that anything would alert licensees to the fact that the database is unavailable. It is unfair to require licensees to notate on loan files that the loan was originated during a period in which the database was unavailable if the licensee does not know the database is unavailable. If the database truly interfaces with licensees' systems, it is unclear why there is a requirement for licensees to "[e]nter the loan into the database not later than 24 hours after the database becomes operational." Presumably, this would happen automatically once the database is operational. To the extent this is something licensees must do manually, TitleMax suggests that "not later than 24 hours after the database becomes operational" be changed to "not later than the licensee's next business day after the database becomes operational." The database could become operational during times in which the licensee is closed for business.

11. Section 15: Section 15 provides, "***1. Except as otherwise provided in this section, the service provider shall charge and collect a fee from each licensee for each loan which the licensee approves and enters into the database. The fee:***
(a) Must have been established by the competitive procurement process through which the service provider was selected by the Commissioner; and
(b) Must not exceed $3 per approved loan.
2. The service provider shall not charge or collect a fee from a licensee for a loan which is:
(a) Not approved;
(b) Voided; or
(c) Rescinded.
3. The fee may be charged only at the time of the origination of a loan and cannot be charged to extend, roll over, renew, refinance or consolidate a loan, or for any other action which would extend the due date."

TitleMax objects to the language that the "fee may be charged only at the time of the origination of a loan and cannot be charged to … refinance or consolidate a loan, or for any other action which would extend the due date." When TitleMax refinances a title loan or refinances two previous loans into one (consolidates the two), a completely new loan is made, with a new loan agreement, new Truth-in-Lending-Act Disclosures, and a new payment schedule. When a new loan is entered into the database, the service provider will not know whether it is a refinance or an initial loan, and the service provider will presumably charge TitleMax the service provider fee. As contemplated by statute and the regulations as currently drafted, TitleMax must be able to pass

on any database charge it incurs to its customers. Moreover, "origination" is not defined. A refinance is a new loan that is originated as of the day the loan is made.

By listing together "extend, roll over, renew, refinance or consolidate a loan, or for any other action which would extend the due date," the FID appears to attempt to provide by regulation that refinancing and consolidation extend the due date of the original loan and are equivalent to extensions. This is improper, as a Nevada district court has affirmed that TitleMax's refinances create a new loan rather than extend an original loan. *TitleMax of Nevada, Inc. v State, Dept. of Business and Industry Financial Institutions Div*, No. A-18-786784-C, 2019 WL 3754784, at *7 (Nev. Dist. Ct. June 20, 2019). The FID cannot pass a regulation contrary to the court's statutory interpretation. *Fed. Election Comm'n v. Democratic Senatorial Campaign Comm.*, 454 U.S. 27, 32 (1981) ("courts are the final authorities on issues of statutory construction"); *see also Ctr. for Biological Diversity v. U.S. Army Corps of Engineers*, 941 F.3d 1288, 1299 (11th Cir. 2019) ("regulations cannot contradict their animating statutes or manufacture additional agency power").

Furthermore, TitleMax's understanding is that when a loan is made, the service provider fee will be charged then. Instead of providing that the service provider fee cannot be charged for a voided or rescinded loan, the regulations should provide that the service provider must refund to licensees – and licensees must refund to the customer – the service provider fee charged for a loan that is later voided or rescinded.

12. Section 16: Section 16 provides, "***1. A licensee shall not charge or collect from a customer a fee:***
(a) If a loan is not approved.
(b) If a loan is voided.
(c) If a loan is rescinded.
(d) In an amount which exceeds the actual cost of the fee charged to the licensee by the service provider.
2. The fee must be itemized on the loan agreement, regardless of whether the fee is required to be included in the finance charge under the Truth in Lending Act, as amended, 15 U.S.C. §§ 1601 et. seq., and Regulation Z, 12 C.F.R. Part 226."

    TitleMax reiterates that voiding and rescinding loans occur *after* a loan has been made. The regulations should provide that licensees must refund to the customer the service provider fee charged for voided or rescinded loans.

    As "itemized" is not defined, TitleMax suggests it would be clearer to state that "the service provider fee must be disclosed in the loan agreement and listed separately from any other charge."

13. Section 17: Section 17 provides, "***Except as otherwise provided in section 13 of this regulation, a licensee shall enter into the database, in real time:***
1. Each loan originated by the licensee;
2. Each renewal, extension, rollover and refinance of a loan;
3. Information concerning a loan has entered a grace period;
4. Each payment on a loan;

5. The date on which an offer of a repayment plan is sent;
6. The date on which a repayment plan is entered into by the customer and the licensee;
7. Each declined loan; and
8. Any other transaction relating to a loan, as applicable and in compliance with the provisions of this chapter and chapter 604A of NRS."

As an initial matter, Section 13 does not address what a licensee shall enter into the database, so it is unclear why Section 17 commences with "Except as otherwise provided in section 13 of this regulation."

Second, as explained above in Paragraph 2 of these comments, Section 17 exceeds the scope of permissible regulations under S.B. 201. NRS 604A.303(2) already specifies exactly what information the licensee must enter into the database. For example, NRS 604A.303(2) requires licensees to enter the date of default and the date on which the customer enters into a repayment plan. NRS 604A.303(2)(g)-(h). Section 17 is duplicative when it requires entry of the "date on which a repayment plan is entered into," and it is inconsistent when it purports to add additional requirements of what information must be entered into the database (such as refinances, grace periods, and declined loans). The Legislature already specified exactly what information had to be entered into the database and did not leave this to regulation.

Third, "real time" is not defined. In responding to comments, the FID previously stated that the "database operates in real time. It interfaces with the licensee's current system; there, the information will be entered into the database as the licensee enters it into their software." (Notice at 34.) TitleMax would like to understand exactly how information will interface with TitleMax's proprietary loan management software. TitleMax uses IT personnel that are constantly updating and maintaining TitleMax's proprietary loan management software. TitleMax has concerns about the amount of access to its proprietary loan management software, which it has invested significant time and money in developing and that contains trade secret and confidential information. In addition, it is unclear if "real time" means that as long as the information in TitleMax's proprietary loan management software interfaces with the database, this is sufficient – or if the regulation is requiring that licensees enter information into their own systems "in real time." This merits clarification.

Fourth, requiring entry of "[a]ny other transaction relating to a loan, as applicable and in compliance with the provisions of this chapter and chapter 604A of NRS" is both overbroad and contradictory. "Transaction" is not defined. Would this, for example, include "payment receipts" and "collection notes" that appeared in a previous version of the regulations, but were then deleted? Licensees must be able to understand precisely what information they are required to enter into the database – each piece of information must be carefully enumerated (as the Legislature already did), not captured with an ambiguous catch-all phrase such as "any other transaction." Moreover, since NRS 604A.303(2) already lists precisely what must be entered into the database, there are no other transactions that must be entered into the database "in compliance with the provisions of this chapter and chapter 604A of NRS."

Fifth, the proposed regulation purports to require entry of each "declined loan" into the database. NRS 604A.303(3) provides, "The Commissioner shall establish, and cause the vendor or service provider administering the database created pursuant to subsection 1 to charge and collect, a fee

for each loan entered into the database by the licensee." Thus, if a declined loan has to be entered into the database, there must be a fee for this. However, the proposed regulations also provide, "A licensee shall not charge or collect from a customer a fee: (a) If a loan is not approved." (Sec. 16.) If there is no fee for a declined loan, then a declined loan should not have to be entered into the database. NRS 604A.303 requires both that a fee should be charged for each loan "entered into the database" and that licensees must enter information only for loans "made to a customer." NRS 604A.303(2)-(3). If a loan is declined, no loan is made to any customer and the licensee should not be required to enter anything into the database.

Sixth, the proposed regulation requires entry into the database of "[e]ach loan originated by the licensee" and "[e]ach renewal, extension, rollover and refinance of a loan." TitleMax's refinances are new loans "originated by the licensee," so they would be entered into the database as new loans. To the extent the FID is attempting to provide via regulation that refinances are not new loans (by listing refinances with extensions and rollovers) – or that title loan refinancing is not permissible – a Nevada district court has ruled against the FID on these precise issues. *See TitleMax of Nevada, Inc. v State, Dept. of Business and Industry Financial Institutions Div*, No. A-18-786784-C, 2019 WL 3754784, at *5-10 (Nev. Dist. Ct. June 20, 2019). The FID cannot circumvent the court's statutory interpretation by passing a contrary regulation. *Fed. Election Comm'n v. Democratic Senatorial Campaign Comm.*, 454 U.S. 27, 32 (1981) ("courts are the final authorities on issues of statutory construction").

14. Section 18: TitleMax believes Section 18 exceeds the scope of S.B. 201 by requiring entry into the database of information not required by S.B. 201. However, TitleMax will not address Section 18 in detail, as it pertains to deferred deposit and high-interest loans, not title loans.

15. Section 19: Section 19 provides, "***Except as otherwise provided in section 13 of this regulation, a licensee who makes a title loan shall, in real time, enter into the database the following information:***
1. Verification that the customer is the legal owner of the vehicle which secures the loan.
2. Whether the customer is a covered service member.
3. Whether the customer is a dependent of a covered service member.
4. The origination date of the loan.
5. The term of the loan.
6. The principal amount of the loan.
7. The total finance charge associated with the loan.
8. The fee charged for the loan.
9. The due date of the loan.
10. The annual percentage rate of the loan.
11. The scheduled payment amount.
12. The payment details as described in section 20 of this regulation.
13. The year, make, model and vehicle identification number of the vehicle which secures the loan.
14. The fair market value of the vehicle as valued by a third-party vendor.
15. If applicable:
(a) The name of the legal co-owner of the vehicle; and
(b) The consent of the legal co-owner of the vehicle for the vehicle to serve as security for the loan."

As an initial matter, it is unclear to TitleMax why so many different sections of the proposed regulations address what licensees allegedly must enter into the database (Sections 17, 18, 19, and 20). The regulations would be more coherent if there were one section governing everything that must be entered into the database (even if there are different subsections for high-interest, deferred deposit, and title loans).

More fundamentally, Section 19 surpasses the statutory scope of S.B. 201, which already specifies exactly what information licensees must enter into the database. NRS 604A.303(2); (*see also supra* ¶ 3.) Section 19 duplicates certain requirements of S.B. 201, such as by requiring entry of the date of the loan, the principal, the total finance charge, the fees charged for the loan, and the annual percentage rate of the loan. *See* NRS 604A.303(2)(a), (c)-(f).) [1] There is no need to require entry of this information by regulation when it is already statutorily required. Section 23 is inconsistent with S.B. 201 by purportedly requiring entry of several additional details that S.B. 201 does not authorize.

16. Section 20: Section 20 provides, "***1. Except as otherwise provided in section 13 of this regulation, for each payment made on a loan, the licensee shall, in real time, enter into the database the following information, without limitation:***
(a) The scheduled payment amount.
(b) The due date of the payment.
(c) The actual payment amount.
(d) The date on which the payment was made.
(e) The allocation of the total payment, including, without limitation, the dollar amount applied to the principal and the dollar amount applied to interest and fees.
(f) The amount and date of payment received from a customer when the loan is paid in full.
2. If a customer fails to make a payment as scheduled, the licensee shall enter into the database the following information:
(a) The new interest rate, if applicable.
(b) Whether a repayment plan was offered.
(c) Whether the customer entered into a repayment plan.
(d) The duration of the grace period, if any.
3. If a customer enters into a loan agreement which requires installment payments, the licensee must enter into the database the information required pursuant to subsection 1 for each installment payment."

Section 20 purports to require licensees to enter into the database detailed information as to each and every payment. This is inconsistent with S.B. 201, which already prescribes what information a licensee must enter into the database. NRS 604A.303(2); (*see also supra* ¶ 3.) S.B. 201 requires:

(a) The date on which the loan was made;
(b) The type of loan made;

[1] While NRS 604A.303 requires licensee to enter the "fees charged for the loan," NRS 604A.303(2)(d), the proposed regulation refers to the "fee charged for the loan" in the singular. It is ambiguous what fee this is referring to. The statutory language and the regulatory language should be consistent – which is why it is problematic and unnecessary for the regulations to repeat certain items already present in the statute (and then add additional, unauthorized items).

(c) The principal amount of the loan;
(d) The fees charged for the loan;
(e) The annual percentage rate of the loan;
(f) The total finance charge associated with the loan;
(g) If the customer defaults on the loan, the date of default;
(h) If the customer enters into a repayment plan pursuant to NRS 604A.5027, NRS 604A.5055 or NRS 604A.5083, as applicable, the date on which the customer enters into the repayment plan; and
(i) The date on which the customer pays the loan in full.

NRS 604A.303(2). That is all S.B. 201 requires. Section 20 goes far beyond S.B. 201 and requires details the Legislature rejected. For example, Section 20 requires entry of the amount and date of each payment. Sometime customers make several small payments, and the Legislature wisely did not include such minutiae in S.B. 201. Only the main terms of the loan agreement, the date of default, the date of any repayment plan, and the date on which the customer pays the loan in full are required. NRS 604A.303(2).

Moreover, there are now many sections governing what must purportedly be entered into the databased. Entry of whether a customer entered a repayment plan is now required by NRS 604A.303(2)(h), Section 17, Section 20, and Section 21. There is no need for such redundancy – it only makes it more cumbersome to ensure compliance with all statutory and regulatory provisions.

17. Section 21: Section 21 provides, "***Each licensee shall enter into the database and maintain the status of each loan originated by that licensee, including, without limitation:***
1. If the loan is in collection, whether being collected by the licensee or by a third party:
(a) The date on which the loan entered into collection.
(b) The payment history of the loan.
2. If the loan is in default:
(a) The date on which the loan entered into default.
(b) The payment history of the loan.
(c) And if the interest rate changed, the new rate and the date on which the rate changed.
3. If the loan is in a grace period:
(a) The date on which the loan entered into the grace period.
(b) The payment history of the loan.
4. If the loan is in a repayment plan:
(a) The date on which the loan entered the repayment plan.
(b) The payment history of the loan.
5. If the loan is closed:
(a) The date on which the loan closed.
(b) The reason the loan was closed.
6. If a vehicle which secured a loan was ordered to be repossessed:
(a) The date on which the vehicle was ordered to be repossessed.
(b) The date on which the repossession of the vehicle occurred."

It is again unclear to TitleMax why so many different sections purportedly govern what must be entered into the database. Parts of Section 21 are duplicative of Section 20 (such as requiring

payment history) and NRS 604A.303(2) (such as specifying the date a repayment plan was entered into). However, Section 21 is inconsistent with S.B. 201 in that it requires much more information to be entered into the database than what NRS 604A.303(2) requires. (*See supra* ¶ 3.)

NRS 604A.303(2) provides the only information a licensee must "enter or update," and the updates are manageable as they require only entering or updating the primary terms of the loan, the date of default, the date a repayment plan is entered, and the date on which the customer pays the loan in full. NRS 604A.303(2). Section 21, in contrast, is extremely burdensome and exceeds the scope of S.B. 201. For example, a loan is theoretically always "in collection" status until it is paid in full, yet the proposed regulation purports to require entry of the "date on which the loan entered into collection." This does not make sense to TitleMax as the loan is always in first-party collection until it is paid in full or referred to a third-party collector. The regulation is inconsistent with its animating statute.

Moreover, if the database truly interfaces with licensees' loan systems (as the FID previously suggested), it is unclear why the status of the loan would have to be entered into the database at all – presumably, the status of any loan would be ascertainable because the database would interface with the lender's loan platform. TitleMax suggests that Section 21 be deleted in its entirety.

18. Section 22: Section 22 provides, "***A licensee shall retain for not less than 3 years all data and documentation collected and reviewed for any loan, loan transaction or query made in the database. For the purposes of this section, 'documentation' includes, without limitation:***
1. All copies of the documents considered in determining the ability of a customer to repay a loan, including the gross income of the customer, identity and credit history; and
2. For title loans, any third-party vendor documentation which shows the fair market value of the vehicle which secured the title loan and a copy of the title to the vehicle."

First, this regulation purports to require retention of any and all data and documentation reviewed for any loan, loan transaction, or query made in the database (even though "loan transaction" is not defined and is unclear). The proposed regulation exceeds the scope of S.B. 201, as it purports to impose a broad document retention standard unrelated to information in the database. Moreover, such a document retention regulation is unnecessary, as NAC 604A.200 already provides, "Except as otherwise provided in NRS 604A.700, a licensee shall maintain for at least 3 years the original or a copy of each account, book, paper, written or electronic record or other document that concerns each loan or other transaction involving a customer in this State." Proposed Section 21 is duplicative and unnecessary (and to the extent it is not duplicative, it would be inconsistent with NAC 604A.200). The FID deleted former proposed sections that dealt with document retention as well. The FID should delete proposed Section 21, as NAC 604A.200 is already a comprehensive regulation governing document retention.

Second, TitleMax objects to any purported requirement to retain "[a]ll copies of the documents considered in determining the ability to of a customer to repay a loan, including the gross income of the customer, identity and credit history." That has nothing to do with the database and is again beyond the scope of S.B. 201. To the extent the FID is attempting to amend NRS 604A.5065 via regulation, that is improper. While NRS 604A.5065(2) lists the "current or

reasonably expected income of the customer" and the "credit history of the customer" as potential underwriting factors to be considered "to the extent available," documents reporting the customer's income and credit history are not always available or provided to TitleMax. TitleMax cannot retain documents it does not have. Moreover, "credit history" is not defined. "Credit history" could refer to TitleMax's own assessment of a customer's credit history with TitleMax, or it could refer to a third-party report. But nothing in NRS Chapter 604A requires TitleMax to order and pay for a credit history report from a third-party company such as Equifax, Experian, or TransUnion. To the extent proposed Section 22 purports to require lenders to always retain documentation of a customer's income and credit history, that is inconsistent with NRS 604A.5065(2) and should be amended. *See Portland Audubon Soc. v. Endangered Species Comm.*, 984 F.2d 1534, 1543 n.21 (9th Cir. 1993) ("Regulations that are inconsistent with the provisions of the act they implement cannot stand."); *Duke v. United States*, 255 F.2d 721, 724 (9th Cir. 1958) ("If there is any conflict between the statute and the regulation, the former prevails."); *United States v. Bastide-Hernandez*, 360 F. Supp. 3d 1127, 1135 (E.D. Wash. 2018) ("An agency cannot, through the passage of a regulation, change a statute.").

Section 22 exceeds the scope of S.B. 201, is inconsistent with 604A.5065(2), and is unnecessary in light of NAC 604A.200.

19. Section 23: Section 23 provides, "***1. Except as otherwise provided in section 10 of this regulation, a licensee shall not delete any information relating to a customer that is entered into the database.***
2. If a loan or loan transaction is voided or rescinded, a licensee must notate on the loan file and in the database that the loan or loan transaction is voided or rescinded, as applicable, and the reason that the loan or loan transaction is voided or rescinded. Except as otherwise provided in section 10 of this regulation, the licensee shall not delete the voided or rescinded loan or loan transaction from the database."

    Section 10 addresses the service provider archiving and deleting information, whereas Section 23 addresses the licensee deleting information. Section 10 does not appear to be an exception to Section 23, and it is unclear why Section 23 commences, "Except as otherwise provided in section 10." It is also unclear to TitleMax whether licensees will even have the ability to delete information in the database. If not, there is no reason for this regulation.

20. Section 24: Section 24 provides, "***1. The Office of the Commissioner must have access to the database and will use the database as a tool of enforcement to ensure the compliance of each licensee with the provisions of this chapter and chapter 604A of NRS.***
2. The Office of the Commissioner may periodically run reports for purposes other than examinations, investigations or internal reporting, including, without limitation, to publish online a report regarding the scope of the industry. The data in such a report must not disclose identifying customer information or information which identifies a licensee, including, without limitation, the name, address or number of the license of a licensee. The report may contain:
(a) The number of loans made for each loan product;
(b) The number of defaulted loans;
(c) The number of loans paid, including the number of loans paid by their respective due dates and loans paid after their respective due dates;
(d) The total amount borrowed and collected; and

(e) Any other permissible data that the Commissioner or his or her designee deems necessary."

It is unclear what the regulation means when it states that the FID "will use the database as a tool of enforcement." The FID itself assured the Nevada Legislature that S.B. 201 "does not provide us with any abilities that we do not currently have, nor would it provide us any additional powers." Nevada Assembly Committee Minutes, 5/10/2019 (testimony of Rickisha Hightower, former Interim Commissioner of the FID). To the extent the FID proposes regulatory requirements that are inconsistent with S.B. 201 and then wants to use the database to enforce those requirements that are inconsistent with NRS Chapter 604A, that is an improper use of the FID's rule-making power.

Moreover, in providing that reports from the database may contain "[a]ny other permissible data that the Commissioner or his or her designee deems necessary," the regulation is broad, ambiguous, and vests the FID with unbridled discretion. Why list what reports from the database may contain if they may contain anything at all?

TitleMax suggests that Section 24 is impermissibly broad and vague.

21. Section 25: Section 25 provides, "***A customer may request from a licensee, without charge, fee or cost, a copy of his or her loan history, file, record and any other documentation relating to any loan for which the customer applied or the repayment of any loan made to the customer.***"

    This section has nothing to do with the database and is beyond the scope of S.B. 201. TitleMax already has procedures in place whereby customers can request a copy of their loan agreement and any documents they have signed. However, the proposed regulation is overbroad, as it encompasses *any* documentation relating to any loan. This could potentially include confidential and propriety information as well as collection notes and attorney-client privileged information. Nothing in S.B. 201 addresses customers having a right to request information from licensees, and this section exceeds the statutory authorization for the FID to implement regulations "necessary for the administration of the database." NRS 604A.303(5)(d). Thus, this section should be removed as beyond the scope of S.B. 201 and potentially in conflict with Nevada's privilege statutes (*see* NRS Chapter 49).

Thank you for the opportunity to provide comments and suggestions regarding the proposed regulations. Please feel free to contact me should you have any questions or require any clarifications.

Sincerely,

/s/ Dale Kotchka-Alanes
Dale Kotchka-Alanes
Lewis Roca Rothgerber Christie LLP

September 15, 2020

Original VIA US Mail with copy
to: fidmaster@fid.state.nv.us

Ms. Sandy O'Laughlin
Commissioner of Financial Institutions
3300 W. Sahara Ave., Suite 250
Las Vegas, Nevada 89102

In re: Comments on Proposed Regulations Pertaining to Senate Bill 201 (S.B. 201)- Revises Provision Governing Loans- NRS 604A Database

Dear Ms. O'Laughlin:

Check City supports the reasonable interpretation of laws and the adoption of regulations that promote consumer protection and the availability of safe, regulated credit. We have worked closely together with the FID for years with respect to regulatory matters. The primary intent of the FID with regards to this new regulation is to provide very clear, implementable, succinct guidelines and direction to licensees with regard to the implementation of SB 201. We understand a database will be implemented. Check City and other Licensees understand, based on actual experience with similar-purpose databases, the size and scope of the project with which the FID has been tasked. We provide our comments with the intent that the FID will make changes to the Proposed Regulations, so licensees have clear, irrefutable direction for execution once regulations are adopted. Check City stands at the ready to engage in constructive dialog and collaboration with the FID in the spirit of advancing the identification and resolution of the multiple problematic provisions of the current Proposed Regulations.

We appreciate you providing licensees the opportunity to comment on the Proposed Regulations pertaining to Senate Bill 201 (the "Proposed Regulations"). Given the ongoing pandemic, and the impact of the Governor's Emergency Directives[1], we would like to request additional time to assemble data and submit additional comments regarding the Proposed Regulations. Our participation as a stakeholder, and others have been hampered by the Governor's Emergency Directives.

Although we recognize that certain regulations will benefit consumers, licensees, and the Nevada Financial Institutions Division ("FID"), we have concerns about several provisions of the Proposed Regulations as they (i) exceed the FID's statutory authority,

[1] http://gov.nv.gov/News/Emergency_Orders/2020/2020-08-31_-_COVID-19_Declaration_of_Emergency_Directive_031_(Attachments)/

(ii) lack a sufficient statutory basis, (iii) impose impermissibly broad requirements, and (iv) change the plain meaning of the statutes. As such, those provisions of the Proposed Regulations would be deemed arbitrary and capricious rulemaking if challenged.

In addition, we respectfully reassert our comments in our letter dated April 28, 2020, and our letter dated July 6, 2020, and supplement our comments as set forth herein.

Therefore, as provided below, we respectfully request that the FID hold a public hearing, delay all actions related to the Proposed Regulations until the termination of the Governor's Emergency Directives, and consider our comments to the Proposed Regulations.

1. **Summary of Senate Bill 201**. The Legislature amended NRS 604A to implement a database for one purpose only—to allow lenders access to a common database to verify a consumers outstanding loans (deferred, high interest, and title) with all licensees. Checking the database would allow licensees to comply with the new requirements prohibiting the making of a deferred deposit loan or high interest loan, in combination with any other outstanding loan, that would exceed 25 percent of the expected gross monthly income of the customer when the loan is made.[2]

The specific provisions involve NRS 604A.5017 and 604A.5045 and require that licensees check a newly authorized "database" created by statute to ensure the making of the loan does not exceed 25% of the customer's expected gross monthly income. The Legislature did not create authority for the FID to design and impose an entirely new underwriting methodology that goes beyond the new gross monthly income limitations in NRS 604A.5017 and NRS 604A.5045.

In order to accomplish its purpose, the Legislature mandated licensees to submit limited loan information into a statewide database that will be queried during a request for credit to identify other outstanding 604A loans, if any, and the amount of such outstanding loans. A Licensee will then use that information to underwrite the customer—either denying credit if the consumer has reached his or her maximum loan amount or extending credit to the customer up to his or her maximum loan amount. Subject to the maximum loan amount, the actual amount of credit extended will be determined by each lender's own underwriting systems and models.

The word "database" is mentioned 13 times in the statute in 3 different sections—11 times in NRS 604A.303, the new section describing the creation of a database and requirements of licensees to upload information, and the other two times in NRS 604A.5017 and NRS 604A.5045 respectfully, in which licensees are required to check

[2] See Synopsis of the Act provided by the Nevada Advance Legislative Services.

the database to ensure compliance with gross income limitations. The Legislature understood that one common database tracking all deferred deposit, high interest, and title loans, would provide lenders with the necessary information for compliance with NRS 604A.5017 and NRS 604A.5045.

As a result, the Legislature in amending NRS.604A directed the Commissioner:

a. to contract with a service provider to develop, implement and maintain a database of information; [3]
b. to require that the database's information relate to certain deferred deposit, title loans, and high interest loans made by licensees,[4]
c. to establish standards for the retention, access, reporting, archiving and deletion of information entered into or stored by the database,[5]
d. to establish the amount of the fee charged by the database,[6]
e. to prescribe the specifications for the database information used by the Commissioner for statistical purposes, and used by licensees to comply with the new gross monthly income requirements;
f. to "adopt any other regulations as necessary to carry out the provisions of this chapter;[7]
g. to adopt regulations that are necessary for the administration of the database;[8]

By requiring licenses to query the database prior to making a loan[9], the Legislature in amending NRS.604A directed licensees to timely update the following information in the database for each loan (hereinafter the "Statutory Database Fields"):

(a) The date on which the loan was made;
(b) The type of loan made;
(c) The principal amount of the loan;
(d) The fees charged for the loan;
(e) The annual percentage rate of the loan;
(f) The total finance charge associated with the loan;
(g) If the customer defaults on the loan, the date of default;

[3] NRS 604A.300 1.
[4] *Id.*
[5] NRS 604A.300 5. (b)
[6] NRS 604A.300 3.
[7] NRS 604A.300 2. (b)
[8] NRS 604A.303 5. (d)
[9] See, NRS 604A.5017 and NRS 604A.5045

> *(h) If the customer enters into a repayment plan pursuant to NRS 604A.5027, 604A.5055 or 604A.5083, as applicable, the date on which the customer enters into the repayment plan; and*
> *(i) The date on which the customer pays the loan in full.*[10]

The Legislature knew that these NRS 604A.303 database fields would provide licensees with information to comply with the new NRS 604A.5017 (deferred deposit) and NRS 604A.5045 (high interest) limitations.

The Legislature cautiously guarded the confidentiality of the database information by prohibiting disclosure under NRS 239.010, and allowing information to be used by the Commissioner for "*statistical purposes if the identity of the persons is not discernible from the information disclosed.*"[11]

Given the legislative directive to adopt reasonable, necessary regulations to carry out the database provisions of the statute, the FID has now proposed rules relating to the database and seeks comments on such rules. Rather than reasonable and necessary regulations, the FID is attempting to leverage the database by subverting its statutory purpose, and convert it into massive data gathering tool which imposes significant additional restrictions that are not authorized by SB 201.

2. **General Comments on the Proposed Regulations**.

The Proposed Regulations and timetable for comment have been rushed during a statewide pandemic, and we are concerned that has resulted in denial of an opportunity to appear in person to make public comments.

The Governor's Emergency Directives have also inhibited the ability of the industry from adequately collecting data and assessing the impact of the rulemaking in changing economic conditions.

The FID's Proposed Regulations are arbitrary and capricious because the provisions:

a. are broad and far exceed the limited statutory basis as expressly required for the database;
b. create new loan qualification requirements or ability to repay requirements not authorized by the statute;
c. issue directives that change the plain meaning of the Statute;
d. impermissibly expand the FID's statutory enforcement authority;
e. shift loan qualification decisions from the licensee to the database service provider and/or other licensees;

[10] NRS 604A.303 2. (a) – (i)
[11] NRS 604A.303 4.

f. require the maintenance of sensitive customer information for time periods that exceed those prescribed by statute;
g. are vague, imprecise, and impracticable and will lead to restrictions in the manner licensees may operate, inconsistent implementation and enforcement;
h. requires massive amounts of data transmission (much of which is outside of the scope of data collection authorized by SB 201) on a continuous and "real time" basis;
i. require licensees to incur tremendous costs of time and funds to implement changes which lack any statutory basis or authority;
j. not reasonably necessary to administer the database or carry out the provisions of the statute;
k. pose an unprecedented operational and technological challenge for our Company given both the sheer volume of information we would be required to collect and the frequency of reports to the database;
l. do not provide licensees with adequate time prior to the database launch date to interface with the database provider;
m. create new and odious limitations on the availability of credit, in that these provisions will force licensees out of business.

The FID's Proposed Regulations are arbitrary and capricious because the FID failed to review the Proposed Regulation to determine whether its provisions go beyond the FID's rulemaking authority. The FID should address the scope of its rulemaking authority and limit the provisions of the Proposed Regulation to what is authorized in SB 201.

The FID's Proposed Regulations are arbitrary and capricious because the FID has ignored testimony that implementation of a database is a lengthy and technical process that requires advance planning and coordination with the database provider. It requires the exchange of technical specifications and documentation; and it relies on pre-launch and post-launch testing. Licensees cannot interface with a database provider until all of this work is completed, and the interface and data exchange are proven accurate and timely. Failure to allow adequate time for all licensees to build and test the interface will very likely result in erroneous data and inaccurate lending decisions causing customer harm.

The FID's Proposed Regulations are arbitrary and capricious because the FID has not considered the significant costs to licensees associated with providing information to the database because "the database will interface with Licensees current system." That is simply incorrect. No matter how well the Database interfaces with a licensee's current lending software, each licensee must incur significant setup and programming expenses to "interface" with the database. For example, many of these data points simply are not stored in Check City's existing software, and we assert other Licensees are in a similar position. The FID has completely brushed aside the

significant implementation costs and has further ignored the maintenance costs of compliance going forward. Licensees will be responsible to monitor the data transmissions to ensure proper compliance and issues such as interruptions in Internet service in rural areas as well as potential server issues need to be corrected on a regular basis. Programming changes in other areas of the software need to be tested as well to make sure that they do not interfere with this process. These costs, based on the proposed Regulation as written, will have a devastating financial impact on Licensees. Yet, the Division has undertaken no fact finding whatsoever to actually determine if there will be a financial impact on Licensees, and to what extent that impact will be. It has simply chosen to rely upon unsupported assumptions instead of data, and forgetting that rulemaking requires more than speculation. Worst of all, the Division has ignored Licensees' comments that the proposed Regulation is cost prohibitive and will put many Licensees out of business.

The FID's Proposed Regulations are arbitrary and capricious because the FID has not included any provision which requires the FID to (i) notify licensees in writing via email or USPS that the database has been completed by the service provider and is functioning properly; and (ii) give the licensees a reasonable number of days to complete their software upgrades to link to the database, test the data transmission, before a final compliance implementation date. That is, the Proposed Regulations should not become final immediately, but rather should contain a specific provision delaying implementation of the database (uploading of information by licensees) to give licensees a reasonable amount of time for compliance before a final effective date.

Furthermore, even the Legislative Counsel's Digest notes that NRS 604A.303 requires the Commissioner "to develop, implement and maintain, by contract with a vendor or service provider or otherwise, a database of all deferred deposit loans, title loans and high- interest loans in this State, *for the purposes of ensuring compliance with existing law governing these types of loans.*"

In addition, Check City incorporates all of the Comments in Opposition outlined in the Minutes of the Workshop to Solicit Comments on Proposed Regulations S.B. 201 – NRS/NAC604A dated Wednesday, July 8, 2020 including, but are not limited to, the following:

- The FID is exceeding legislative intent.
- FID going beyond what is written in S.B.201.
- FID was not given the authority to request some of the data points being requested in the proposed regulation.
- FID is overreaching, specifically in section 18.
- The database was not created as an eligibility check database but only to check for what other loans the customer may have, to ensure all loans would not exceed 25% of the customer's gross monthly income and adding

protections for military personal.

- The proposed language would seem that FID and/or the database service provider would be underwriting the loans and not the lenders.
- FID is requesting a huge amount of information that is not needed for compliance.
- As written, these regulations will hurt consumers and push them to unlicensed illegal lenders.
- Section 19 can cause confusion with a customer if two notices are being issued to a customer, both the Regulation B adverse action notice and notice from a licensee that the consumer is ineligible for the loan.
- Not clear if a sold loan to a 3rd party will remain a closed loan or left open in the database.
- FID should not require "real-time" entry into the database but instead "timely" upload.
- S.B.201 did not call for changes to current NRS 604A statutes.
- S.B.201 does not refer to ability to repay, therefore, the proposed regulations should not include it. Nor should it include total obligations to determine a customer's ability to repay.
- How will the database affect the approval/denial process that the military database already has? If one database says a loan is eligible or ineligible and the other one says differently.

Regulations expanding the scope of an authorizing statute are invalid or void.[12] Under the Nevada Administrative Procedures Act, NRS 233B.040 ("NAPA") an "agency may adopt reasonable regulations to aid it in carrying out the functions assigned to it by law and shall adopt such regulations as are necessary to the proper execution of those functions." Under standard administrative law principles, Courts invalidate administrative rules adding to the statute they are intended to implement.[13] Courts reviewing the reasonableness of the Proposed Regulations under NAPA would follow such standards. Nevada Courts would invalidate any provisions of the Proposed Regulations enlarging or adding to the statutory requirements.

Below we will outline specific comments on each section of the Proposed Regulations which further address our general comments, concerns and objections; however, all of the following confirm that the Proposed Regulations are arbitrary and capricious as set forth above and as follows:

1. The statute's sole purpose for the database is to allow licensees to verify a consumers outstanding loans (deferred, high interest, and title) with all licensees, and thereby comply with the new gross

[12] 2 Am Jur 2d Administrative Law § 224.
[13] 2 Am Jur 2d Administrative Law § 224.

monthly income limitations.[14] During a time when cyber criminals have repeated illegally obtained access to consumer's proprietary confidential information contained within 3rd party databases[15], the FID seeks to expand in excess of statutory limits rather than restrict the confidential data of Nevada residents within the database to the statutory mandates. Instead of archiving and deleting the information as soon as practicable, the Regulations provide for retention of data far beyond statutory requirements.[16] The statute created 9 database fields authorized by the statute[17], but the FID has outlined 50 plus database fields.[18] The FID has turned the database into consumer reporting agency under federal law[19] by requiring the reporting of declined loans,[20] collecting of data regarding all payments, timely or untimely,[21] collection status of loans,[22] and a requirement to give a letter to the consumer when the database determines the customer is ineligible for a loan.[23] Although the statute limited the use of the database by the FID to statistical purposes[24], the Proposed Regulations have turned what should be a very limited database into a broad repository of consumer information which it can use as an "enforcement tool"[25] when examining licensees.

2. Underwriting is unique to each licensee doing business in Nevada.[26] Because only licensees may make loans, only licensees may underwrite loans. The statute's restrictions on licensees

[14] See Synopsis of the Act provided by the Nevada Advance Legislative Services.
[15] https://www.ftc.gov/enforcement/cases-proceedings/refunds/equifax-data-breach-settlement
[16] Sections 11 and 13.
[17] 604A.303 2. (a)-(i).
[18] Sections 18, 21, 22, 23, 24, 25
[19] 15 U.S.C 1681a (f) The term "consumer reporting agency" means any person which, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties, and which uses any means or facility of interstate commerce for the purpose of preparing or furnishing consumer reports.
See also, 15 U.S.C 1681a (d) CONSUMER REPORT.-- (1) IN GENERAL.--The term "consumer report" means any written, oral, or other communication of any information by a consumer reporting agency bearing on a consumer's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living which is used or expected to be used or collected in whole or in part for the purpose of serving as a factor in establishing the consumer's eligibility for--(A) credit or insurance to be used primarily for personal, family, or household purposes;
[20] Section 21
[21] Section 22, 23, and 24
[22] Section 25
[23] Section 20
[24] NRS 604.303 4.
[25] Sections 11 and 16
[26] Anti-trust laws prohibit competing licensees from making an agreement upon underwriting factors.

underwriting deferred,[27] high interest[28] and title loans involve very specific "ability to repay" safe harbor provisions. However, the FID has (i) created new underwriting requirements which the Legislature never intended,[29] and (ii) shifted the underwriting from licensees to the database.[30]

The Legislature has clearly spoken on "ability to repay" and limitations on underwriting, and the FID cannot arbitrarily require that which licensees proprietary underwriting criteria must consider. The Proposed Regulations exceed the statutory language by requiring a licensee to consider "total obligations"[31] which is not even defined in the regulations or statute, and also refer to "gross income"[32] when the statute refers to expected gross monthly income.[33] A licensee has total discretion whether or not to consider these items in its proprietary underwriting criteria, and to require same without statutory approval subjects licensees to claims of "antitrust" activities.[34] Likewise, licensees, not the database, must determine whether a customer is eligible or ineligible for a loan.

3. For regulations to be necessary to administer the statute, such regulations must be fair, precise, and practical. The Proposed Regulations are completely devoid of the "how" and "when" to upload information. As such, the FID never considered the practical effects of its Proposed Regulations and has drafted vague requirements which will lead to inconsistent compliance and great expense to licensees. For example, the Proposed Regulations not only require licensees to query the database before making a loan, but also enter certain information before making a loan that is just not workable or possible. That is, the APR exists only after a loan is made. Is impractical to enter the APR on a loan before it is made. The Proposed Regulations further require that a licensee must enter the status of the loan into the database, including if the loan is in collection (whether first party or third party), and payment

[27] NRS 604.5011, NRS 604.5017, NRS 604.5029 2.,
[28] NRS 604.5038, NRS 604.5045, NRS 604.5029 2.,
[29] Section 19 The database will provide the licensee information prescribed in NRS 604A, Section 303, subsection 1(a) –(d), which a licensee ***must consider*** in determining a customer's ability to repay a loan under chapter 604A of NRS and in conjunction with all other available information, if these factors will make a customer ineligible for a loan and only approve the loan if permissible under the provisions of this chapter and chapter 604A of NRS.
[30] Section 20 provides that the database shall inform a licensee on whether a consumer is eligible. Section 18 the database "shall allow" a licensee to make a loan.
[31] Section 22(n)
[32] Section 22(m)
[33] NRS 604A.5017, NRS 604A.5045, Section 22 (m) and (n).
[34] Sherman Anti-Trust Act of 1890. Federal Trade Commission Act.

> history.[35] Payment history implies that payments that have been made in the past (and not uploaded) must be uploaded.[36] That is, if the licensee transfers an account to a 3rd party for collection, and the 3rd party collector collects payments, then the licensee must upload such "payment history" into the database. However, Section 25 does not provide when such payment history information must be entered into the database. To require that the licensee upload the information in "real time" is impracticable. The Regulations do not even define "real time."[37] Payment history[38] implies payments have been made sometime in the past and have not been entered—therefore to require payment history to be uploaded in real time is impracticable in that 3rd party collectors have no access to the database[39] Thus, to upload payments to a 3rd party collector in real time would require licensee and each 3rd party collector to have proprietary software in which the 3rd party would notify licensee in real time of the collection payment, and then the licensee's must have proprietary software that will take the information from such 3rd party and notify the database of such payment in real time. Similar issues arise for the requirement to upload the "verification that the customer is the legal owner of the vehicle securing the loan"[40] and "consent from the co-owner"[41]. All of these requirements are impracticable, vague, and exceed any statutory basis. Attached as Exhibit A is a list of practical implementation issues that the FID has failed to consider in the Proposed Regulations.

3. **Specific Comments on Various Sections of the Proposed Regulations**.

Section 3

Section 3 includes within the definition of "due date[42]" the following language which is unclear:

> the date . . . .subject to all statutory requirements and legal contractual stipulations" the customer is schedule to make . . . .

[35] Section 25 (1)
[36] However, as the Proposed Regulations require all payments to be entered into the database—one must ask why would entering a "payment history" be necessary.
[37] Sections 21, 22, 23 and 24.
[38] Section 25
[39] Section 12. 1—only licensees and the FID have access to database information.
[40] Section 23 (a).
[41] Section 23 (o).
[42] Sec. 3 "Due Date" is defined as the date, based upon the payment schedule, subject to all statutory requirements and legal contractual stipulations, that the customer is scheduled to make a payment, either to pay the full amount of the loan (principal, finance charge and fees) and extinguish the debt, or if applicable, makes an installment payment.

For example, does this mean the payment schedule must comply with all statutory requirements? Or does it mean the "due date" might vary or be altered via a contractual stipulation as long as the contractual stipulation is deemed "legal" and compliant with "statutory requirements"? The language is unclear and should be stricken.

We propose that "due date" be defined simply as "the date on which the customer is contractually scheduled to make a payment."

Section 4.

The word "immediately" is found 9 times in NRS 604A[43], and 2 times in the Proposed Regulations. The proposed definition of the word "immediately" is inconsistent with standard dictionary definitions, and cannot be consistently applied for each use in the statute and regulation. Defining the word "immediately" in NRS 604A.303 (b) and (c) to mean "the action must occur within one business day" is hard to reconcile with its use in such sentences, in that such definition is nonsensical construction, bound to create compliance inconsistencies for enforcement an compliance purposes. In addition, "business day" is not defined. Therefore, Section 4 should be stricken as it causes confusion, is not needed, and changes the plain meaning of the Statute.

Section 5.

The definition of "Extent Available" in Section 5 is impermissibly broad, changes the plain meaning of the statute, and provides the FID with unauthorized enforcement presumptions. Section 5 impermissibly changes the plain meaning of statutes by taking away a licensee's discretion to qualify a customer for credit, beyond the statutory limits.

NRS 604A.5011 NRS 604A.5038, and NRS 604A.5065 give licensees complete discretion in qualifying consumers for a loan.[44] In each of these sections, the words "extent available" occur within a context that allows a licensee complete discretion "after considering, to the extent available," the certain factors listed in the statute to approve and make a loan. Since each customer is different and may or may not have certain documents relating to his or her creditworthiness, each statutory provision lists a number of items licensees may review "to the extent available" in making such assessment, including but not limited to:

(a) The current or reasonably expected income of the customer;

[43] NRS 604A.045, 604A.303, 604A.5026, 604A.503, 604A.5058, 604A.5085, 604A.605, 604A.645.
[44] See, NRS 604A.5011 NRS 604A.5038, and NRS 604A.5065.

> *(b) The current employment status of the customer based on evidence including, without limitation, a pay stub or bank deposit;*
> *(c) The credit history of the customer;*
> *(d) The amount due under the original term of the high-interest loan, the monthly payment on the high-interest loan, if the high-interest loan is an installment loan, or the potential repayment plan if the customer defaults on the high-interest loan; and*
> *(e) Other evidence, including, without limitation, bank statements, electronic bank statements and written representations to the licensee.*[45]

Each statute[46] does not require that the licensee review and obtain each of these items in every transaction, with every customer. By using the terms, "to the extent available," the Legislature delegated to the lender and customer, the authority to determine whether certain materials are in fact available. Each statute[47] recognizes that this list of items are only examples of information the licensee should consider reviewing at the time of conducting its loan underwriting, and that not all of these items will be available or are necessary to review.

By contrast, without express authority to contradict the Legislature, the FID's definition changes the plain meaning of the statute, and now creates a "presumption" to use against licensees when auditing for compliance—namely that if a document which exists (a pay stub, bank deposit, credit report, etc.) and was not produced at closing (hereinafter a "post-closing document"), such document "*is presumed to be readily available or easily obtainable in a reasonable amount of time from a customer prior to making the loan."*

In other words, the FID when auditing the loan qualification can look at a post-closing document (a pay stub or bank deposit, credit report, etc.) and now "presume" upon the licensee that such post-closing document was "obtainable from a customer prior to making the loan." Thereby, providing justification to the FID for any claims that that licensee failed to follow the loan qualification provisions in the statute. This presumption is without any statutory basis, and directly conflicts with the plain language of the statute. Allowing such definition will provide justification for the FID to impose its judgment (after the fact use of a different set of criteria) into each loan underwriting decision by each licensee, despite lack of statutory authority to do so.

Therefore, we request that you strike Section 5.

Sections 8 and 9.

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[45] *Id.*
[46] *Id.*
[47] *Id.*

Section 8 defines the words "identifying customer information;" but these words "identifying customer information" are not found in the current regulations (NAC 604A), the statute, or in any other part of the Proposed Regulations. Section 9 defines the words "closed loan," but these words "closed loan" are not found in the current regulations (NAC 604A), NRS 604A, or in any other part of the Proposed Regulations. In addition, within the definition of "closed loan" are the words "active" or "charged-off loan." However, these words are not defined. What it means to "charge off" a loan may be different for each licensee. If a licensee is still trying to collect on a loan, does this mean it is "active"? The definitions of "identifying customer information" and "closed loan" are not reasonably necessary to administer the database or carry out the provisions of the statute, and should be stricken. For regulations to be necessary to administer the statute, such regulations must be fair, precise, and practical. Check City has repeatedly made this comment, yet the FID has consistently chosen to ignore same in proposing additional changes to the Regulations. Clearly, no one in good faith can argue that defining a term and then never using the term again within the Regulation provides licensees with Regulations that are precise and practical. By contrast, such action shows the FID's blatant disregard for the comments received to date from members of the industry, and a total unwillingness to make even the simplest of changes, even when a licensee points out a clear error by the FID. Such inattention to detail, lack of valuing the process of receiving and reviewing fair and reasonable comments, not only shows the FID's calcitrant position of proposing regulations that are irresponsible, unauthorized, and impractical, but also shows a lack of good faith in violation of its mission statement.[48] By contrast, in the last call, numerous members of the Industry repeatedly asked for an audience with the FID to work through such issues, with the goal being clear, concise, understandable, and practical regulations that will provide an equitable means to administer statutory database requirements, which will benefit all citizens, licensees, and the FID.

Section 10.

Section 10 addresses the fee charged by the service provider. In doing so, it creates confusion and inconsistency in the consumer disclosures because it does not clarify whether the database fee is a finance charge under Regulation Z, or whether it may be excluded from the definition of finance charge. For consistency purposes in auditing licensees, the FID should revise the language clarify this issue so that all licensees will give consistent disclosures to consumers. In addition, in order to reasonably administer the database and carry out the provisions of the statute, Section 10 should also be revised to give licensee's prior notice of a change in the amount of

[48] The mission of the Financial Institutions Division is to maintain a financial institutions system for the citizens of Nevada that is safe and sound, protects consumers and defends the overall public interest, and promotes economic development through the efficient, effective and equitable licensing, examination and supervision of depository, fiduciary, and non-depository financial institutions. See, http://fid.nv.gov/About/About/

the database fee. Failing to give prior notice of a change in the amount of the fee, can result in unanticipated programming issues for licensees. Surprising licensees with programming changes could lead to significant, unanticipated costs.

Sections 11 and 13.

Section 11 requires the maintenance of sensitive customer information for time periods that exceed those prescribed by statute, and as such Section 11 is broad and far exceeds the limited statutory basis as expressly required for the database.[49] Keeping data for more than 1 year is not needed to fulfill the requirements and limitations in NRS 604A.303. The plain language of the statute specifically implemented the database to allow the licensees to make an underwriting decision that would provide accurate and timely information with respect to loans outstanding. In addition, the language of Section 11, would require the service provider to retain all of the information outlined in the Proposed Regulations (which exceeds statutory restrictions) for these periods and as such is broad and far exceeds the limited statutory basis as expressly required for the database. Section 13 requires the maintenance of sensitive customer information by the licensee for time periods that exceed those prescribed by statute and as such is broad and far exceeds the limited statutory basis as expressly required for the database.[50] Furthermore, to keep such information longer than the statute requires creates an unnecessary risk of such information be improperly disclosed as a result of a data breach. For example, federal privacy and unfair trade practices law requires that persons retain confidential personal information for only as long as is reasonably necessary to fulfill the purpose for which the information was collected, and ensure proper destruction thereafter.[51] To reasonably administer the database or carry out the provisions of the statute, Section 11 should be amended to delete the data after 1 year, and Section 13 should be amended to retain the data in accordance with NRS 604A.700.

Section 14

According to Section 10 of the Proposed Regulations, the service provider charges and collects a fee from licensee for each loan licensee enters and approves in the database. Section 14 requires a fee cannot be charged for a voided or rescinded loan. Instead of providing that the service provider fee cannot be charged for a voided or rescinded loan, the regulations should provide that the service provider must refund to licensees – and licensees must refund to the customer – the service provider fee charged for a voided or rescinded loan.

[49] NRS 604A.700 requires that licensees shall preserve all such books and accounting records for at least 2 years after making the final entry.
[50] NRS 604A.700 requires that licensees shall preserve all such books and accounting records for at least 2 years after making the final entry.
[51] See, https://www.ftc.gov/tips-advice/business-center/guidance/protecting-personal-information-guide-business, https://www.ftc.gov/news-events/media-resources/protecting-consumer-privacy/privacy-security-enforcement, and https://www.ftc.gov/news-events/blogs/business-blog/2018/05/under-coppa-data-deletion-isnt-just-good-idea-its-law

Section 16.

Section 16 provides that the "Office of the Commissioner:

> shall have access to and utilize the database as an enforcement tool to ensure licensees' compliance with the provisions of this chapter and chapter 604A of NRS." (Emphasis added.)

Such provision (i) is broad and far exceeds the limited statutory basis as expressly required for the database; (ii) impermissibly expands the FID's statutory enforcement authority; (iii) is not reasonably necessary to administer the database or carry out the provisions of the statute, and (iv) will require licensees to incur tremendous costs of time and funds to respond to additional enforcement questions from the FID. Therefore, it should be stricken from the Proposed Regulations.

Section 16 is especially egregious because the Commissioner in Sections 21 through 25 of the Proposed Regulations has sought numerous unnecessary additional data fields that far exceed the limited statutory database fields Statutory Database Fields. By adding those unnecessary additional data fields, the Commissioner has turned the database into a government database full of excessive amounts of information about consumers that serves no statutory purpose. This is a significant leap for a database intended to serve as a repository for licensees to use for compliance with gross income limitations. The Legislature did not intend any purpose for the database, other than the qualification of consumers pursuant to its legislative efforts.

Attempting to unlawfully collect and retain unnecessary consumer information, without the assent of the legislative process sets a dangerous precedent for bureaucratic agencies partnering with private third-party databases. At a time when several states and Congress are looking to reduce risks related to transmitting sensitive consumer data, its inexplicable that the Proposed Regulations attempt to assemble any data that is not necessary under the statute. It's a dangerous information grab that would not likely survive litigation that would emerge from not only members of industry, but also consumer privacy advocates.

The Legislature has specifically chose to limit the Commissioner in proposing regulations that "carry out" the provisions of the chapter"[52] and are reasonably necessary for the administration of the database.[53] The Legislature went one step further, and even specified the data fields (the Statutory Database Fields) that are

[52]NRS 604A.300 states: 1. The Commissioner may establish by regulation the fees that a licensee who provides check-cashing services may impose for cashing checks. 2. The Commissioner shall adopt: (a) Regulations to administer, carry out and enforce the provisions of *NRS 604A.5983*, *604A.5985* and *604A.5987*. (b) Any other regulations as are necessary to carry out the provisions of this chapter. (Emphasis added.)
[53] NRS 604A.303.

necessary for the database—while leaving some additional authority for the Commissioner to propose additional fields necessary to administer the database. Note, the Legislature didn't authorize any fields of interest. The statute narrowly established a list of database fields, and allowed fields necessary to administer the database described in its list.

As such, the FID in proposing additional data fields should follow the longstanding legal maxim of *Ejusdem generis*—which is Latin for "of the same kind."[54] That is, in this case because the statute lists very specific data for the database that licensees should access and upload, followed by a general right of the FID propose additional items necessary to administer the database, the FID when adding data fields is limited to the types of things identified by the specific words of the statute and which fulfill the limited purposes of administering the database. Certainly, Nevada courts would not construe the legislative intent to be one of expanding the fields beyond those necessary to administer the database. No consumer would ever anticipate a government agency and its private contractor retaining vast amounts of sensitive consumer data beyond the information legislative authorized.

If the Legislature had desired to give the Commissioner an unlimited ability to require any database fields, even beyond those necessary, it would have included such right within the statute, and would not have included within the statute text a list of very specific database fields (Statutory Database Fields), and the clear limitation "necessary" to administer the database. That is, the Legislature would have no reason to list any database field, if the intent was to give the Commissioner free reign require whatever data base fields it wanted. Clearly, the Legislature desired to limit the information of Nevada residents within the database to only that information which truly would help serve the purpose of the database, which is for licensees to comply with the gross income limitations and make an ability to repay determination.

The language in NRS 604A.303.1(d)[55] coupled with NRS 604A.303.5(d)[56] together provide a commonsense catch-all provision that allows for certain data fields that are necessary in order to effectively implement the Statutory Database Fields, not an invitation to add new and unnecessary fields. For example, a technical reading of the Statutory Database Fields[57] does not require the name, address, identifying

[54] For example, if a law refers to automobiles, trucks, tractors, motorcycles, and other motor-powered vehicles, a court might use *ejusdem generis* to hold that such vehicles would not include airplanes, because the list included only land-based transportation.

[55] NRS 604A.303.1(d) allows the licensee and Commissioner to obtain information from the database necessary "to determine whether a licensee has complied with the provisions of this chapter."

[56] NRS 604A.303.5(d) allows the licensee and Commissioner to adopt regulations that are necessary for the administration of the database.

[57] The database fields include: *(a) The date on which the loan was made; (b) The type of loan made; (c) The principal amount of the loan; (d) The fees charged for the loan; (e) The annual percentage rate of the loan;*

identification information (such as state ID). However, certainly those fields are necessary to an effective administration of the database for all licensees and the Commissioner.

The statutory verbiage prevents regulations that would require licensees to upload numerous additional categories of information that are not necessary to administer the database, and are far in excess of the limited fields as specified in Statutory Database Fields. These unnecessary fields coupled with the ability of using the database for purposes beyond administering the database far exceeds legislative intent, places Nevada residents' personal information at risk, and wields inappropriate access to the Commissioner and a third-party contractor. In addition to the foregoing statutory and consumer concerns, we note that currently examiners review licensees once per year, and expanding the FID's authority so that it has an endless review of unnecessary data, will significantly expand compliance costs for licensees, despite any lack of statutory authority to do so.

As such, we request that Section 16 be stricken.

Section 17.

Section 17 states that "a licensee may rely on "a customer's written representation" during any period when the database is not operational. This language is contrary to the statutory authorization to rely on customers' written representations in assessing their ability to repay.[58] As noted above, licensees are not required to search the database for any particular information, and furthermore licensees can rely on customers' written representations regardless of whether the database is operational. In addition, there is no prohibition on making a title loan to a customer who has other outstanding loans. If the licensee wishes to accept the risk of having its interest subordinate to another lender, that is its choice and the statute does not prohibit such activity. As outlined in our Exhibit A, the FID should strike the requirement to enter the loan into the database within 24 hours, as such is not practical, and does not take into consideration that licensees do not operate 7 days a week, 24 hours a day. Given

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(f) The total finance charge associated with the loan; (g) If the customer defaults on the loan, the date of default; (h) If the customer enters into a repayment plan pursuant to NRS 604A.5027, 604A.5055 or 604A.5083, as applicable, the date on which the customer enters into the repayment plan; and (i) The date on which the customer pays the loan in full.

[58] NRS 604A.5076. **Prohibited acts by licensee regarding amount of loan, ownership of vehicle and customer's ability to repay loan.** A licensee who makes title loans shall not:

* * *

4. Make a title loan without requiring the customer to sign an affidavit which states that:
(a) The customer has provided the licensee with true and correct information concerning the customer's income, obligations, employment and ownership of the vehicle; and
(b) The customer has the ability to repay the title loan.

some licensees do not operate on Sundays and holidays, such provision should be revised. Therefore, the FID should revise Section 17 accordingly.

Sections 18 and 20.

Section 18 requires that licensees query the database before making a loan, and retaining the query as part of its customer records. However, the Proposed Regulation requires that the

> **database shall allow a licensee to make** a deferred deposit loan, title loan or high-interest loan only if making the loan is permissible under the provisions of this chapter and chapter 604A of NRS.

Section 20 states:

> Upon a licensee's query, the database **shall inform a licensee whether a customer is eligible** for a new loan and, if the customer is ineligible, the reason for such ineligibility.

Furthermore, Section 20 requires after the database determines a consumer is "ineligible" for the loan, and relays such information to the licensee, that the licensee provide the consumer with a written notice:

> with the reason for ineligibility, the database provider's contact information, and a statement advising the customer to submit an inquiry to the database provider should they have questions regarding the specific reason for such ineligibility.

Only licensees are authorized to make loans under NRS 604A, and as such only licensees are authorized to determine whether a consumer is "eligible" or "ineligible" for a loan. These provisions impermissibly shift the underwriting responsibilities from licensees to the database and directly conflict with the statutory requirements upon licensees. The Legislature **never** contemplated shifting the responsibility of making customer qualification determinations away from the licensees offering credit. Throughout the statute, the licensee not the service provider or database is responsible for underwriting, that is, determining whether a consumer is eligible for a loan, and if so, the amount and type of loan.[59] Sections 18 and 20 should be stricken accordingly.

Section 19.

Section 19 as revised states that the database will provide the licensee with information "prescribed in NRS 604A, section 303, subsection 1(a)-(d)." Furthermore,

[59] See, NRS 604A.5017, NRS 604A.5045, and NRS 604A.5076.

Section 19 requires that the licensee "must consider" these factors and other available information in determining a consumer's "ability to repay" for all loan types—deferred deposit, high interest and title loans. By contrast, the Legislature clearly limited a licensee's requirement to review such information only to deferred deposit and high interest loans. Please note NRS 604A.5017(2)(b) sets forth the requirement that licensee use such information received under NRS 604A, section 303, subsection 1(a)-(d):

> to ensure that the deferred deposit loan, in combination with any other outstanding loan of the customer, does not exceed 25 percent of the customer's expected gross monthly income when the deferred deposit loan is made[60].

Likewise, note the statute in NRS 604A.5045(2)(b) sets forth the requirement that licensee use such information received under NRS 604A, section 303, subsection 1(a)-(d):

> to ensure that the terms of the high-interest loan, in combination with any other outstanding loan of the customer, do not require any monthly payment that exceeds 25 percent of the customer's expected gross monthly income when the loan is made.[61]

The Legislature chose **not** to revise the ability to repay provisions of the title loan sections of the statute to include a similar requirement. Likewise, the Legislature has delegated to licensees, guided by the statutes, to determine their underwriting criteria—not the Commissioner.

Furthermore, NRS 604A.303 is not an ability to repay provision and the information listed is **permissive** and – not mandatory.[62] The statute specifically says:

> The information the Commissioner and licensees ***may obtain*** includes. . . . (emphasis added.)

NRS 604A.303 does **not** require that the license "**must consider"** such information, only that the licensee "may" consider such information. That is, these provisions do not require a 30 day cooling off period after a customer pays off a loan,

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[60]NRS 604A.5017(2)(b)
[61]NRS 604A.5045(2)(b)
[62] The information the Commissioner and licensees may obtain includes, without limitation:
(a) Whether a customer has a deferred deposit loan, title loan or high-interest loan outstanding with more than one licensee;
(b) Whether a customer has had such a loan outstanding with one or more licensees within the 30 days immediately preceding the making of a loan;
(c) Whether a customer has had a total of three or more such loans outstanding with one or more licensees within the 6 months immediately preceding the making of the loan; and
(d) Any other information necessary to determine whether a licensee has complied with the provisions of this chapter.

or restriction upon lending to consumers who have obtained and successfully repaid three or more loans in the prior six months. The FID's restrictions on credit were not mandated by the Nevada Legislature in SB 201. Instead, the Legislature approved only two **new** considerations for licensees when determining whether to extend a deferred deposit loan or high interest loan: (1) whether the consumer is a covered military borrower or dependent of a covered military borrower; and (2) whether the applied-for loan will exceed 25% of the consumer's GMI taking into consideration amounts outstanding with other licensees.

The Legislature never intended for the provisions of SB 201 to put industry members out of business. Sections 604A.5011, 5038, and 5065 contain very clear language about what a licensee **must consider** in determining that a borrower has the ability to repay. SB 201 did not amend, modify or alter any of these sections. Instead, the *Legislature left these provisions completely unchanged in SB 201*. Had the Legislature intended to impose new ability to repay considerations, it would have done so in the provisions explicitly addressing ability to repay. Rather, SB 201 created "safe harbors" from violations of the 25% caps found in Sections 12 and 13 of SB 201:

> A licensee who operates a [deferred deposit] [high-interest loan] service is not in violation of the provisions of this section if . . . The licensee has utilized the database established pursuant to section 8 of this act to ensure that the [deferred deposit loan] [terms of the high-interest loan], in combination with any other outstanding loan of the customer, [does not exceed 25 percent of the customer's expected gross monthly income when the deferred deposit loan is made] [do not require any monthly payment that exceeds 25 percent of the customer's expected gross monthly income when the loan is made.]

There would be no need for a safe harbor, if licensees **must consider** the factors outlined in Section 8 of SB 201 in determining a borrower's ability to repay. Rather, a licensee can choose to review such information if it so desires. Some licensees may as part of its underwriting consider whether a consumer has taken out and successfully repaid a loan in the prior 30 days, viewing such history as demonstrating the consumer does have an ability to repay. Likewise, if a consumer has taken out and successfully repaid three loans in the prior six months, some Licensees may view such demonstrates the consumer does have the ability to repay. Other licensees may view such information negatively, as evidence that the consumer does not have the ability to repay. Ultimately, it is the licensee that must make this decision, not the Commissioner or database.

Such Proposed Regulations directly conflict with the statutory requirements and impermissibly shift the underwriting and making of a loan from the licensee to the Commissioner. As such, the proposed regulation exceeds statutory authority and should be stricken.

Section 21.

Section 21 is a broad provisions that exceed the limited data fields in NRS 604A.303, that requires licensees to enter into the database in real time all loans, renewals, extensions, rollovers, refinances, grace periods, payments, sending of payment plan offers, entering into of payment plans, declined loans, and **any** transactions relating to the loans. The Regulations fail to specify "any transaction relating to the loan." Licensees have no way to understand what is meant by such language. For example, a customer who has failed to enter into a written repayment plan pursuant to NRS 604A.5027 and has been in default for 90 days, may call a licensee in response to a collection letter and agree verbally and informally with licensee to payment plan. Does this language "**any** transactions relating to the loans" now require licensees to update the database in real time the moment it mails a collection letter, and in real time after having a call in which the licensee and customer have informally entered into a payment plan? This vague requirement will result in inconsistent interpretations across different licensees and create a trap for erroneous compliance requirements as the FID now can make up requirements under this broad language.

In addition, the statute does not authorize the reporting of "declined loans", and such requirement exceeds the limited statutory basis as expressly required for the database, and issues directives that change the plain meaning of the statute. Arguably, the reporting of declined loans, and the making of such information available to licensees causes the database to be a consumer reporting agency[63] under Fair Credit Reporting Act ("FCRA"). As such, licensees as reporters of such information become a "furnisher" under the FCRA, and subject to a number of requirements.[64] This far exceeds the Legislative intent in creating a database, and as such Section 21 should be stricken.

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[63] Section 603 (f) of the FCRA defines a "consumer reporting agency" as:

> any person which, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties, and which uses any means or facility of interstate commerce for the purpose of preparing or furnishing consumer reports.

Section 603 (f) of the FCRA defines a "consumer report" as:

> any written, oral, or other communication of any information by a consumer reporting agency bearing on a consumer's credit worthiness. . . which is used or expected to be used or collected in whole or in part for the purpose of serving as a factor in establishing the consumer's eligibility for (A) credit . . .

[64] See, FCRA § 623. Responsibilities of furnishers of information to consumer reporting agencies [15 U.S.C. § 1681s-2]

Sections 22 and 23.

Sections 22 and 23 were recently updated[65] as follows:

~~Sec. 24.~~ *Sec.22.* ~~*In addition to items (a) – (f) (g) in Section 18 17 21, a*~~ *A licensee shall enter the following information in the database, in real time,* ~~*for prior to*~~ *when a transaction takes place as prescribed in NRS 604A, Sections 5983-5987 and Section 303, Subsections 2 and 5 for each loan made pursuant to NRS 604A.501- NRS 604A.5034 and NRS 604A.5035- NRS 604A.5064, without limitation:*	~~Sec. 25.~~ *Sec.23.* ~~*In addition to items (a) – (f) (g) in Section 18 17 21, a*~~ *A licensee shall enter the following information in the database, in real time,* ~~*, for prior to*~~ *when a transaction takes place as prescribed in NRS 604A, Sections 5983-5987 and Section 303, Subsections 2 and 5 for each loan made pursuant to NRS 604A.5065- NRS 604A.5089, without limitation:*

As such, the data fields required to be submitted in Sections 22 and 23 are arguably limited solely to transactions with a "covered service member or dependent of a covered service member" (herein after "Covered Borrowers") under NRS Sections 5983 - 5987.[66] That is, the added language "when a transaction takes place as prescribed in NRS 604A, Sections 5983-5987" is conditional language. Therefore, if the transaction does not take place as prescribed in NRS 604A, Sections 5983-5987, then licensee is not required to enter the information in Sections 22 and 23. However, if the FID takes the position that this language[67] is not conditional and was only included to ensure licensees upload information about "covered borrowers" as well as all other customers, we nevertheless believe Sections 22 and 23 are overbroad, in that such provisions require the collection of data not authorized by NRS604A.303.

We recognize that NRS604A.303 does provide for certain data fields. Therefore, we have no objection to the following data field requirements which are referenced in Section 20[68]:

1. **customer's full name: first and last name, and middle initial;**[69]
2. **valid government-issued photo ID number;** [70]
3. **date of birth, mm/dd/yyyy;**[71]

[65] Matters in (1) ***blue bold italics*** is language in the original proposed regulation; (2) **green bold underlining** is language proposed to be added in this amendment and ***green bold italics*** was proposed in the prior amendments; (3) **red strikethrough** is deleted language in the original proposed regulation in prior amendments; and (4) **purple double strikethrough** is language proposed to be deleted in this amendment. Revisions made after July 8, 2020 workshop. **green bold underlining** is language proposed to be added in this amendment. **purple double strikethrough** is language proposed to be deleted in this amendment.

[66] **CONSUMER CREDIT TO COVERED SERVICE MEMBERS**
NRS 604A.5983 Prohibited annual percentage rates.
NRS 604A.5985 Required disclosures.
NRS 604A.5987 Prohibited terms of consumer credit to covered service member.

[67] "when a transaction takes place as prescribed in NRS 604A, Sections 5983-5987"

[68] Although there is no requirement to upload these data field, there is a requirement to query such fields. Therefore, Sections 22 and 23 should be revised to require the uploading of these data fields.

[69] NRS 604A.303 5(d) and Section 18 (a) which is a required data field pursuant to Section 22.

[70] NRS 604A.303 5(d) and Section 21 (c) which is a required data field pursuant to Section 22.

[71] NRS 604A.303 5(d) and Section 21 (d) which is a required data field pursuant to Section 22.

We suggest that although **Database Fields 1 through 3** are not specifically listed in NRS 604A.303—a NRS 604A.303 Database Field, such are necessary to administer the database or carry out the provisions of the statute. That is, the customer's name, ID, and date of birth are merely identifying information necessary to the other data fields. We also have no objection to the following data field requirements in Sections 22 and 23:

4. ***the origination date of the loan***[72]**;**
5. ***the principal amount of the loan***;[73]
6. ***the total finance charge associated with the loan***;[74]
7. ***the fees charged for the loan***;[75]
8. ***the annual percentage rate of the loan***;[76] **and**
9. ***type of loan product (deferred deposit, high interest, title)***;[77]

We also have no objection to the following data field requirements in Section 25:

10. ***date entered into default***;[78]
11. ***date customer enters into repayment plan.***[79]

Please note that ***Database Fields 4 through 12*** are specifically listed in NRS 604A.303—a NRS 604A.303 Database Field. As such, it is reasonable to require licensees to upload such information into the database.

Section 22 requires that licensees upload in real time to the database for various information including the customer's "gross income" and "total obligations." The words "gross income" do NOT appear within the statute or current regulations. However, the words "gross monthly income" appear within the statute and the current regulations.[80] Both the statute and regulations place the obligation to verify the consumer's gross monthly income upon the licensee,[81] thereby eliminating any need for the licensee to upload within the database or query the database for the customer's gross income. For example, each licensee at the time of making a deferred deposit or high interest loan must verify the customer's gross monthly income—that is, the licensee cannot rely upon some other licensee's verification of "gross income" uploaded into the database to fulfill the licensee's statutory obligations. Section 22 (m) which requires licensees to upload

[72] NRS 604A.303 2(a) and Section 22 (c) and Section 23 (e); however, this provision should be revised to read: the date on which the loan was made" to match the statute.
[73] NRS 604A.303 2(c) and Section 22 (e) and Section 23(f).
[74] NRS 604A.303 2(f) and Section 22 (f) and Section 23(g).
[75] NRS 604A.303 2(d) and Section 22 (g) and Section 23(h).
[76] NRS 604A.303 2(e) and Section 22 (i) and Section 23(h).
[77] NRS 604A.303 2(b) and Section 22 (l).
[78] NRS 604A.303 2(g) and Section 25 (2) limited solely to date of default.
[79] NRS 604A.303 2(h) and Section 25 (4) limited solely to the date of entering into repayment plan.
[80] NRS 604A.5017, NRS 604A.5045, and NAC 604A.180
[81] See NRS 604A.5017, NRS 604A.5045, and NAC 604A.180

in real time to the database a customer's gross income should be stricken because such requirement far exceeds the limited statute basis as expressly required for the database, and is not reasonably necessary to administer the database or carry out the provisions of the statute.

The words "total obligations" are not defined anywhere in the current regulations, statute,[82] or Proposed Regulations. Without more guidance on what is meant by "total obligations" the licensees will upload inconsistent information into the database, and queries for "total obligations." Licensees working with applicants should consider "obligations" in making a loan, and their effect upon the repayment of the loan. That is, each licensee will have its own underwriting criteria, which is unique to the licensee, which incorporates federal and state law limitations. For example, federal law prohibits underwriting criteria that discriminates against applicants on a prohibited basis. Likewise, state law in the case of deferred deposit loans and high interest loans places underwriting limitations that the loan—may not exceed 25% of the customers gross monthly income. The statute does not require that licensees consider "total obligations" and as such, the requirement to upload "total obligations" would create new loan qualification requirements not authorized by the statute. Section 22(n) which requires licensees to upload in real time to the database a customer's total obligations should be stricken because such requirement far exceeds the statutory limits as expressly required for the database, and is not reasonably necessary to administer the database or carry out the provisions of the statute.

All of the data fields in Sections 22 and 23, except as set forth above, should be stricken because they far exceed the limited statutory basis as expressly required for the database; create new loan qualification requirements not authorized by the statute; issue directives that change the plain meaning of the Statute; impermissibly expand the FID's statutory enforcement authority, contain vague, imprecise, and impracticable provisions, and require licensees to incur tremendous costs of time and funds to implement changes which lack any statutory basis or authority. Finally, the number of data fields required to be uploaded far exceed similar database statutes in other states.[83]

Sections 24 and 25.

[82] NRS 604A.5076 states: A licensee who makes title loans shall not: * * * 4. Make a title loan without requiring the customer to sign an affidavit which states that: (a) The customer has provided the licensee with true and correct information concerning the customer's income, obligations, employment and ownership of the vehicle. . .

[83] Alabama Code § 5-18A-13(o), Delaware Code 5 § 2235B, Florida Statutes §§ 560.4041 and 560.404, Illinois Complied Statutes 815 ILCS 122/1-10 and 112/2-15, Indiana Code § 24-4.5-7-404, Kentucky Revised Statutes §§ 286.9-010, 286.9-100, 286.9-140, Michigan Complied laws §§ 487.2122, 487.2140, 487.2142, 487.2152, 487.2153, 487.2154, 487.2155, 487.2156, New Mexico § 58-15-37, North Dakota Century Code § 13-08-12, 59 Oklahoma Statutes §§ 3103.1, 3108, 3109, 3116, South Carolina Code §§ 34-39-130, 34-39-175, 34-39-180, 34-39-270, 34-39-280, 34-39-290, Code of Virginia §§ 6.2-1810, 6.2-1817, Revised Code of Washington §§ 31.45.073, 31.45.093, Wisconsin Statutes § 138.14 (1), (8), (10), (14).

Sections 24 and 25 should be stricken because the these sections require licensee to a number of database fields that far exceed the limited statutory basis as expressly required for the database; create new loan qualification requirements not authorized by the statute; issue directives that change the plain meaning of the Statute; impermissibly expand the FID's statutory enforcement authority, contain vague, imprecise, and impracticable provisions, require licensees to enter information without designating the customer's name or identification information, and require licensees to incur tremendous costs of time and funds to implement changes which lack any statutory basis or authority.

All of the data fields in Sections 24 and 25[84] should be stricken because they far exceed the limited statutory basis as expressly required for the database; create new loan qualification requirements not authorized by the statute; issue directives that change the plain meaning of the Statute; impermissibly expand the FID's statutory enforcement authority, contain vague, imprecise, and impracticable provisions, and require licensees to incur tremendous costs of time and funds to implement changes which lack any statutory basis or authority.

In addition, Section 25 requires the "status of the loan be uploaded," but does not identify when such status should be uploaded. Arguably, if the information regarding the loan under Sections 21, 22, 23, and 24 is already in the database, then why would the status of the loan be needed. Also, how does one upload the payment history, if arguably other sections have already required payments to be uploaded? That is, there should be no "payment history." Also, when is a licensee required to enter the date of repossession? Repossession may occur on a Saturday night, and the licensee may not be open for business until Monday. Is a licensee required to enter the information about repossession immediately (Saturday night) or some later time? Finally, the number of data fields required to be uploaded in Sections 24 and 25 when combined with Sections, 21, 22, and 23, far exceed similar database statutes in other states.[85]

Section 26.

Section 26 is impermissibly broad in that it assumes that the FID may use the information in the database for examinations, investigations, or internal reporting. As provided above, the statute is clear that the information is intended for administration of the database, not the entire statute. The only deviation from this clear statutory

[84] The allocation to interest, fees, and principal, new interest rate, duration of grace period, co-owner information, fair market value, repossession, first or third party collection status, etc.
[85] Alabama Code § 5-18A-13(o), Delaware Code 5 § 2235B, Florida Statutes §§ 560.4041 and 560.404, Illinois Complied Statutes 815 ILCS 122/1-10 and 112/2-15, Indiana Code § 24-4.5-7-404, Kentucky Revised Statutes §§ 286.9-010, 286.9-100, 286.9-140, Michigan Complied laws §§ 487.2122, 487.2140, 487.2142, 487.2152, 487.2153, 487.2154, 487.2155, 487.2156, New Mexico § 58-15-37, North Dakota Century Code § 13-08-12, 59 Oklahoma Statutes §§ 3103.1, 3108, 3109, 3116, South Carolina Code §§ 34-39-130, 34-39-175, 34-39-180, 34-39-270, 34-39-280, 34-39-290, Code of Virginia §§ 6.2-1810, 6.2-1817, Revised Code of Washington §§ 31.45.073, 31.45.093, Wisconsin Statutes § 138.14 (1), (8), (10), (14).

limitation is NRS 604A.303 in which the Legislature authorized provides that the Statutory Database Fields may be used by the Commissioner for statistical purposes if the identity of the persons is not discernible from the information disclosed. The database was not created so that the FID would have unlimited access to information about licensees and consumers for enforcement purposes.[86] Therefore, the Section 26 should be revised to only allow for the statistical reporting of de-identified information.

Conclusion.

As noted above, the statute's sole purpose for the database is to allow licensees to verify a consumers outstanding loans (deferred, high interest, and title) with all licensees, and thereby comply with the new gross monthly income limitations. As such, the statute proposes 9 limited and specific items to be uploaded to the database. However, the Proposed Regulations vastly and unnecessarily expands the volume of consumer data to 50 plus data fields, thereby subjecting Nevada residents to the possibility of having unnecessary confidential information subject to risk of data breach by cyber criminals. Lacking any statutory authority, the FID has turned the database into a consumer reporting agency and a broad repository of consumer information which it can use as an "enforcement tool" when examining licensees.

The Proposed Regulations wrongly mandate underwriting criteria licensees **must consider** (although the statute clearly provides that licensees "**may consider**" such information), and incorrectly delegate to the database loan approval decision authority.

The Proposed Regulations add numerous provisions that create risks for consumer information, exceed statutory authority, are unduly burdensome on licensees, abrogate licensee's statutory right to make underwriting decisions in the manner authorized by statute, and do not aid the FID in carrying out the functions assigned to it by law. Such provisions are unnecessary to the proper execution of the FID's functions. In addition, they are overreaching, as they exceed the statutory authority the Legislature granted to the FID. The Proposed Regulations are the result of a procedurally defective rulemaking process.

For example, the rules are being passed during a pandemic, when neither licensees nor consumers can appear at a public hearing, or muster the full resources and data necessary to respond. Licensees have been denied due process which arguably requires an in person meeting, after notice for members of the public to appear and make comments. By contrast, the FID is holding meetings via "computer and the Internet" and are mandating those requirements upon the public to exercise their right to appear and make comments on these regulations. Such action takes away the fundamental rights of persons in Nevada to appear in person and question the FID on the Proposed Regulations, and favors only those persons that have the technology to

[86] See comments to Section 16.

access such hearing via, computer, software, Internet, etc. The Proposed Regulations are arbitrary and capricious. They are likely to result in conflicting issues in the enforcement context. The FID has failed to consider the true cost upon licensees of database implementation, and forecasted that implementation will impose no significant cost burdens on licensees. With even a cursory amount of research, the FID should have concluded that a number of the provisions are impracticable and unworkable, and that the costs of database implementation would be significant for licensees, and its data field requirements far exceeded the data fields in other states that have implemented similar-purpose databases. Even with a superficial review of the comments to date, the FID should have revised a number of the provisions that are simply mistaken—such as issuing a regulation defining "identifying customer information," when such term is never used in the statute, existing regulations, or proposed regulations (except for the definition section.)

Going through this process of minimal changes by the FID, with total disregard for the comments from industry members shows a clear usurpation of licensees rights, and an extreme bias against licensees, as evidenced by the sheer cost that will be placed on licensees to spend on compliance with such sections. Many licensees will simply have to go out of business because they will be unable to sustain the costs associated with compliance, should these Regulations go unchanged.

We remind the FID of its mission statement, which is **to maintain a financial institutions system for the citizens of Nevada that is safe and sound, protects consumers and defends the overall public interest**, and **promotes economic development through the efficient, effective and <u>equitable</u>** licensing, examination and **supervision of** depository, fiduciary, and **non-depository financial institutions**.

For some unknown reason, the FID has made it abundantly clear that it is not interested in equitable supervision of non-depository financial institutions licensed by the FID to operate a check-cashing service, deferred deposit loan service, high-interest loan service or title loan service. Rather it has directly chosen to treat licenses unfairly, as opposed to equitably, and penalize licensees with unprecedented supervision through overbearing and overreaching regulations with no basis under Nevada law.

Therefore, we again renew our request that the FID delay the rulemaking process, until in person meetings may be held, request additional information from members of the industry and consumers, and significantly revise the Proposed Regulations to come up with a workable, practicable set of regulations in line with statutory mandates.

In an effort to save time and resources, we respectfully request your consideration of these matters at this time. We urge the FID to issue another small business survey, and look at the actual costs licensees will incur to comply with the Regulations, actually schedule informal meetings with members of the public, industry

members and entities interested in becoming the service provider, in order to discuss all of the practical concerns relating to such regulations, and to redraft the Proposed Regulations to benefit consumers, licensees, and FID.

FID's actions to date have only hurt consumers, the very persons licensees serve on a daily basis. More importantly, without significant revisions, the Proposed Regulations will disproportionately hurt borrowers who are most in need of credit, by limiting access to credit, and significantly increasing the cost of operation upon licensees, who will in turn, pass such costs on to the borrowers.

In conclusion, the Legislature intentionally drafted SB 201 in order to enforce the loan limits already contained in NRS Chapter 604A across all Nevada licensees, while specifically referencing information to be collected by the database. The Proposed Regulation requires massive data collection and expanded licensee underwriting and other obligations that are not contemplated in SB 201.

We again renew our invitation that Check City stands at the ready to engage in constructive dialog and collaboration with the FID in the spirit of advancing the identification and resolution of the multiple problematic provisions of the current Proposed Regulations we have identified herein.

We reserve the right to supplement this comment and provide additional comments after the scheduled workshop.

We request that the FID hold a public hearing, pursuant to NRS 233B.061.

If you have any questions, please feel free to contact us directly.

Best regards.

Yours Very Truly,

James T. Marchesi
Check City Partnership, LLC

CC: Mary Young, Deputy Commissioner

Exhibit A

Please note Check City has set forth its objections to the Proposed Regulations. These questions and issues in Exhibit A are raised *assuming arguendo* that no changes are made to the Proposed Regulations. Check City does not waive any of its objections to the Proposed Regulations by setting forth the questions and issues in this Exhibit A.

1. Section 12 limits access to the database, but does not define "Licensee senior staff members". Would a licensee's senior staff member include IT personnel, compliance staff, internal auditing staff, etc.?

2. Section 13 requires a licensee to retain all query made in the database for 3 years. How can licensees retain a query—will the database allow the licensee to receive the query in an electronic form that can be saved?

3. Section 13 requires for title loans that a licensee retain the third-party vendor documentation showing the fair market value of the vehicle securing the title loan. What information qualifies as third-party vendor documentation? Is there a list of approved 3rd Party Vendors?

4. Section 17 addresses situations in which the database is unavailable due to technical issues attributable to the service provider. How are licensees able to know "if the database is unavailable due to technical issue on the service provider side"? For example, a licensee may query the database, and receive no response or a a licensee may query the database, and receive a nonsensical response. The issue may be due to a software issue or hardware issue with the Service Provider, or a 3rd party vendor for the service provider. However, the issue may be due to licensee's software, hardware, Internet Service Provider, etc. which may be unknown to the licensee's employee. How are licensees to determine whether the issues with no service from the database are due to the service provider and or its 3rd party vendors or the licensee and or its 3rd party vendors?

5. Section 17 also requires the licensee within 24 hours of the database becoming operational. Our stores are open Monday through Thursday: 10 AM - 6 PM, Friday: 9 AM - 7 PM, Saturday: 10 AM - 6 PM, Sunday: closed. In addition, we are closed for holidays. Check City, like many licensees may not be open for business within 24 hours of the database becoming operational. For example, if the database is not operational at 5:00 PM on a Saturday and remains not operational until 7:00 PM, and Check City makes 200 loans between Saturday 5:00 PM and Saturday 6:00 PM, then according to Section 17, Check City must update such information into the Database by 7:00 PM on Sunday. However, Check City is not open on Sundays, and if Monday is a holiday (Labor Day), Check City employees will not return to work until Tuesday at 9:30 AM, which is

62.5 hours from 7:00 PM on Saturday. Because the Database provider was unable to maintain continuous service, does Section 17 creates a responsibility for Check City open its offices for business when they are normally closed?

6. Section 18 provides that the database **shall allow** a licensee to make a deferred deposit loan, title loan or high-interest loan only if making the loan is permissible under the provisions of this chapter and chapter 604A of NRS.
    a. How will the database provider communicate the terms of the loan it has approved the licensee to make? Will it tell the licensee

        i. the amount of the loan allowed;
        ii. the type of loan allowed (deferred deposit, high interest, title);
        iii. the term of the loan;
        iv. the amount licensee may charge for making the loan;
        v. the schedule of payments;
        vi. the Annual percentage Rate; and
        vii. the Total of Payments, etc.

        Section 18 provides that the query should contain the first and last name, and middle initial. Some persons do not have a middle name, and therefore no middle initial. Some persons have two last names. Section 18 provides that licensee's query must include a valid government-issued photo ID number but does not reference which governmental entity.

6. Section 20 provides that the database shall inform a licensee whether the customer is eligible for a new loan, and if ineligible, the reason for such ineligibility. What are the criteria and/or reasons used by the database to determine whether a customer is "eligible" or "ineligible" for a loan?

7. Section 21 requires a licensee to enter into the database in "real time" a great deal of information, but gives no specific requirement directions for licensees. For example, a licensee's software may generate a letter to a customer regarding a repayment plan at 10:00 AM, but the licensee may not mail the repayment plan letter until 2:00 PM that same day, when the mail carrier comes to the licensee's store. When should the database be updated? In addition, what does "any transaction pertaining to the loan mean? Does it mean the summary of a collection call in which the customer agreed to make payments to bring the account current must be entered immediately after the customer call? Does it mean a customer's complaint that the time required to make a payment was too long must be entered immediately after the customer call? Does it mean a customer's compliment that the staff was friendly to the customer must be entered immediately after the customer call? For licensees that refer accounts to an attorney to file suit, does it mean the licensee must enter such decision immediately after the call with the lawyer. In addition, if the lawyer sends a

demand letter to collect the account, must licensee enter into the database that the letter was sent immediately at the time the letter was mailed. If the lawyer speaks with the customer by phone, must licensee enter into the database that a summary of the call immediately at the time the lawyer and customer finish speaking. If the judge in collection lawsuit renders a verdict in favor of the licensee, must time licensee immediately update the database? The list of questions goes on and on because the regulation is not precise and limited.

8. Section 22 a requires the licensee to enter into the database in real time the "origination date." What is the "origination date" is that the date the loan is consummated by the parties signing the loan agreement? Is the "total finance charge associated with the loan" the finance charge disclosed to the customer at consummation or the amount of the finance charge the customer pays after all deferrals, extensions, rollover, refinancings, etc.? Does the "fee charged for the loan" include "interest"?

   Section 22 a requires the licensee to enter into the database in real time the payment details as described in Section 24. Section 24 requires If a scheduled payment was missed: (1) The new interest rate, if applicable; (2) Whether or not a repayment was offered; (3) Did a customer enter a repayment plan; and (4) The duration of the grace period, if applicable. How does a licensee enter in real time whether a customer enters into a repayment plan? NRS 604A.5027 requires a licensee to offer a repayment plan for a period of at least 30 days after default. Must licensee upload to the database at the end of day for the 30 days following default, the fact that the customer did not enter into a repayment plan on that day. If the licensee gives the customer a 5 day grace period, but the customer pays in full on day 3 of the grace period, must the licensee upload 5 days or 3 days for the "duration of the grace period"?

   Section 22 requires a licensee to upload the "customer's gross income" and the "customer's total obligations" in real time. The terms "customer's gross income" and "customer's total obligations" are never mentioned in the statute. For consistency purposes how are licensee supposed to report this information in real time, if these matters are not further defined. Without strict definitions for licensees to follow, the data reported under these fields by licenses will be inconsistent.

9. Section 23 a requires the licensee to enter into the database in real time the "origination date." What is the "origination date" is that the date the loan is consummated by the parties signing the loan agreement? Is the "total finance charge associated with the loan" the finance charge disclosed to the customer at consummation or the amount of the finance charge the customer pays after all deferrals, extensions, rollover, refinancings, etc.? Does the "fee charged for the loan" include "interest"?

Section 23 a requires the licensee to enter into the database in real time the payment details as described in Section 24. Section 24 requires If a scheduled payment was missed: (1) The new interest rate, if applicable; (2) Whether or not a repayment was offered; (3) Did a customer enter a repayment plan; and (4) The duration of the grace period, if applicable. How does a licensee enter in real time whether a customer enters into a repayment plan? NRS 604A.5027 requires a licensee to offer a repayment plan for a period of at least 30 days after default. Must licensee upload to the database at the end of day for the 30 days following default, the fact that the customer did not enter into a repayment plan on that day. If the licensee gives the customer a 5 day grace period, but the customer pays in full on day 3 of the grace period, must the licensee upload 5 days or 3 days for the "duration of the grace period"?

Section 23 requires a licensee to upload the fair market value of the vehicle from a third-party vendor. Without strict definitions for licensees to follow, the data reported under these fields by licenses will be inconsistent. For example, some 3rd party vendors give value for "trade in", "private party sales", "wholesale value," "retail value," and "true market value." However, all 3rd party vendors without seeing and inspecting a vehicle make certain assumptions regarding the vehicle, and may limit their valuations to standard vehicle, with no accessories. For example, a vehicle may contain numerous "non-standard" accessories, expensive sound systems, rims, tires, paint, etc. Therefore, licensee may be unable to find a 3rd party vendor that will be able to give an accurate the fair market value for the vehicle. How do licensees deal with custom cars, when a licensee cannot find a fair market value from a 3rd party vendor for such custom vehicle?

Section 23 requires a licensee to enter the co-owner's consent. What does that mean? Is the consent a document signed by the Co-Owner that must be uploaded? Must the licensee upload the personal information of the co-owner, such as name, address, phone number, social security number, etc.?

10. Section 24 requires If a scheduled payment was missed: (1) The new interest rate, if applicable; (2) Whether or not a repayment was offered; (3) Did a customer enter a repayment plan; and (4) The duration of the grace period, if applicable. How does a licensee enter in real time whether a customer enters into a repayment plan? NRS 604A.5027 requires a licensee to offer a repayment plan for a period of at least 30 days after default. Must licensee upload to the database at the end of day for each of the 30 days following default, the fact that the customer did not enter into a repayment plan on that day. If the licensee gives the customer a 5 day grace period, but the customer pays in full on day 3 of the grace period, must the licensee upload 5 days or 3 days for the "duration of the grace period"?

11. Section 25 requires the status of the loan entered into the database, but does not specify when the status is to be entered. Section 25 states the collection status—whether first party or third party, the date entered into collection and payment history. When does a licensee have to enter whether account is being serviced by a first party or third party collector? Does the licensee have to enter the status in "real time"? If not, when must the status be entered? Section 25 requires "payment history" status be entered? If licensees are required under other section to enter payments in real time—how will there ever be any payment history to enter, and if such payment history exists, when is it required to be entered under Section 25?

    Section 25 requires the date the loan was "closed as defined in this chapter." The word "closed" is not defined, and typically means the date of consummation—that is the "loan closing" or "closing of the loan." However, the proposed regulations appear to imply the term "close" means "charge off". However, each licensee may treat the date of charge off different from other licensees. For example, charge off may have a particular meaning under the federal tax laws.

    Section 25 requires the licensee to upload the date repossession is ordered and date repossession occurred. However, there is no time specified for reporting such information. What if the repossession occurs on a day licensee is closed, or after hours on a day licensee operates? When must licensee enter the information in the database?

The Ferraro Group
PUBLIC RELATIONS & PUBLIC AFFAIRS

November 16, 2020

Commissioner Sandy O'Laughlin
Office of the Commissioner
3300 W. Sahara Ave., Suite 250
Las Vegas, Nevada 89102

Dear Commissioner O'Laughlin,

The Ferraro Group (TFG) represents a coalition of several Licensees who are subject to the proposed Regulation R037-20. As an initial matter, our clients are not opposed to SB 201 or Commissioner's development of regulations to implement SB 201 (the Proposed Regulation).

Our clients DO oppose the way in which the Proposed Regulation has been developed and much of its content. The Proposed Regulation has been developed without a true and open dialog and the Departments' written responses to our clients' legitimate concerns show that staff has either purposefully mischaracterized those concerns or does not understand them. Moreover, the Proposed Regulation exceeds the Commissioner's statutory rulemaking authority and contains provisions that go way beyond the scope and intent of SB 201. Unfortunately, our clients' concerns about the process and the content have, so far, fallen on deaf ears, despite written comments submitted by multiple Licensees on multiple occasions, which can be found attached to this cover letter for submission to the record, yet again.

Because the Proposed Rule is outside of the Department's statutory rulemaking authority and the scope and intent of SB 201. We ask the Proposed Rule not be adopted, and instead reconsidered following a real dialogue with the stakeholders who will be most immediately impacted. This process has not happened but is required of the Commissioner according to the Attorney General's Office official guide for rulemaking.

According to that guide (The Administrative Rulemaking - A Procedural Guide 2015): *"The decision to engage in rulemaking may come about in one of three ways:*

- *The Legislature may mandate that an agency adopt regulations addressing a particular subject;*
- *The agency may exercise its discretion to adopt a regulation within the permissible scope of its statutory authority; or*
- *A member of the public may petition the agency to adopt, amend or repeal a regulation. See NRS 233B.100.*

> *Even where a particular regulation has not been initiated by a member of the public, participation in the rulemaking process by interested members of the public is a central theme of the procedural requirements of the Administrative Procedure Act*

Rulemaking may be used as a tool for fostering better understanding of legal requirements between an agency and those subject to the law administered by the agency." Page 7 of Administrative Rulemaking - A Procedural Guide 2015.

By inference when a member of the public petitions the agency to adopt, amend or repeal a regulation, *there must be a two-way dialogue between the parties*. In the instance of this regulation with pages upon pages of written comment from industry leaders which attempted to address legal and technical issues in the proposed rule, neither the Commissioner, her staff nor her Deputy Attorney General (DAG) chose to ask or address any questions. The workshop hearings were passively held without two-way dialogue and were set as "check the box" events in which the Department refused to answer direct questions submitted by industry members and merely "accepted comments" that were later mischaracterized in the staffs' non-responsive, responses. In sum, the rulemaking process that has been conducted to-date has utterly failed to foster a "better understanding" of the Proposed Regulation by the Commissioner or anyone else.

Moreover, even after pointing out that the process was flawed, industry attempts to rectify those failures to positively impact the content of the Proposed Regulation have been flatly rejected. TFG requested to meet with the Commissioner through a request on September 14th to the DAG. The Deputy asked "which regulation" and then never responded to the request. Again, on September 21st, TFG reached out again to the DAG meet with the Commissioner regarding technical issues in the draft. On October 6th, TFG received, in part, the following from the DAG. *"My client thanks you for your offer, but has decided that at this time they will decline a two-way dialogue to discuss the regulation. The FID prefers discussions regarding the proposed regulation take place in a public setting or be submitted in writing to preserve a complete record."* Email dated October 6, 2020.

Again, on October 12th, TFG reached out to the DAG and asked that the Commissioner hold another workshop with a two-way dialogue so that the technical issues might get ironed out. On October 14th, the DAG declined the request for another workshop stating, in part, *"My client had already submitted the draft to LCB several weeks ago."*

During this process our clients have continued to submit written remarks at each of the workshops with no follow-up question or comment from the Commissioner, the staff or the DAG. Moreover, in its written responses, the Department has mischaracterized questions and

criticisms of the Proposed Regulations in order to provide inaccurate dismissals of those concerns.

Again, let us clearly and strongly state for the record, our clients are not opposed to the database described in SB 201 or the Department's implementation of SB 201 through the rulemaking process. They do however, strongly object to the manner in which the one-sided and exclusionary way the rulemaking has been conducted and to various components of the Proposed Regulation that are outside of the Department's rulemaking authority and far beyond the scope and intent of SB 201. In order to get the regulation properly working for ALL parties, it is worth the time and effort to delay implementation of the Proposed Regulation until there is a true and s open dialogue so everyone's voice can help educate staff, participants and interested parties on the real world impact of the Proposed Regulation.

On behalf of our clients, we oppose the adoption of this regulation until such time that the Commissioner conducts open workshops with a two-way dialogue to address some of the scope and technical issues brought forth in their written testimony and spoken comments.

We close with a quote from Page 18 of Administrative Rulemaking a Procedural Guide 2015. *"It seems clear, however, the workshop is intended to provide interested persons with a reasonable opportunity to meet informally with agency staff to discuss the general subject matter of the regulation proposed to be adopted*." We urge the Commissioner to grant our clients' request with this tenant as a guide.

Sincerely,

The Ferraro Group
Mike Sullivan
Nicole Willis-Grimes
Barbara Smith Campbell

Enclosures:

- Moneytree Workshop written comments
- Check City Workshop written comments
- Curo Workshop written comments
- USA Cash Services written comments

Submitted to: fidmaster@fid.state.nv.us

September 15, 2020

Ms. Sandy O'Laughlin
Commissioner of Financial Institutions
3300 W. Sahara Ave., Suite 250
Las Vegas, Nevada 89102

RE: Comments on Proposed Regulations Pertaining to Senate Bill 201 (S.B. 201)

Dear Ms. O'Laughlin:

CURO Financial Technologies Corp., is the parent corporation of Advance Group, Inc., FMMR Investments, Inc., and Principal Investments, Inc. doing business in Nevada as Rapid Cash ("Rapid Cash"). Rapid Cash provides small dollar loans and other financial services through its 19 fronts and online at www.rapidcash.com. We appreciate the opportunity to comment on the Proposed Regulations Pertaining to Senate Bill 201 (the "proposed regulations"). We have serious concerns with the breadth of the proposed regulations and believe that the proposed regulations go beyond the scope and intent of Senate Bill 201. Below please find a summary of our concerns and more specifically, the requirements in the proposed regulations that must be removed in order for the proposed regulations to properly reflect the provisions of Senate Bill 201.

1. **Amended NRS 604A.**

With Senate Bill No. 201 (2019) ("S.B. 201"), the Legislature issued revised provisions governing loans provided under NRS 604A. S.B. 201 specifically required the Commissioner of Financial Institutions (the "Commissioner") to "develop, implement and maintain a database by which the Commissioner and licensees may obtain information related to deferred deposit loans, title loans and high-interest loans made by licensees to customers in this State to ensure compliance with the provisions of this chapter." NRS 604A.303(1).

a. **Information licensees may utilize from the database.**

In addition to establishing the database, the Legislature clarified that licensees who operate a deferred deposit loan service[1] or a high-interest loan service[2], would not be in violation of the already established gross income limitations, if the licensee utilized the database to ensure that either a deferred deposit loan or a high-interest loan, in combination with any other outstanding loans of the customer, does not exceed twenty-five percent (25%) of the customer's expected gross monthly income when the loan is made.

The information licensees may utilize from the database include:

(a) Whether a customer has a deferred deposit loan, title loan or high-interest loan outstanding with more than one licensee;
(b) Whether a customer has had such a loan outstanding with one or more licensees within the thirty (30) days immediately preceding the making of a loan;
(c) Whether a customer has had a total of three or more such loans outstanding with one or more licensees within the six (6) months immediately preceding the making of the loan.[3]

After determining that either a deferred deposit loan or a high-interest loan, in combination with any other outstanding loans of the customer, does not exceed twenty-five percent (25%) of the customer's expected gross monthly income, licensees are then able to make a determination as to whether a customer meets their own individual underwriting criteria.

b. <u>Information licensees are to enter into the database.</u>

The Legislature explained that a licensee "who makes a deferred deposit loan, title loan or high-interest loan shall enter or update the following information in the database for each such loan made to a customer at the time a transaction takes place:

(a) The date on which the loan was made;
(b) The type of loan made;
(c) The principal amount of the loan;
(d) The fees charged for the loan;
(e) The annual percentage rate of the loan;

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[1] "A licensee who operates a deferred deposit loan service is not in violation of the provisions of this section if . . . The licensee has utilized the database established pursuant to section 8 [NRS 604A.303] of this act to ensure that the deferred deposit loan, in combination with any other outstanding loan of the customer, does not exceed 25 percent of the customer's expected gross monthly income when the deferred deposit loan is made." NRS 604A.5017(2)(b).

[2] "A licensee who operates a high-interest loan service is not in violation of the provisions of this section if . . . The licensee has utilized the database established pursuant to section 8 of this act to ensure that the terms of the high-interest loan, in combination with any other outstanding loan of the customer, do not require any monthly payment that exceeds 25 percent of the customer's expected gross monthly income when the loan is made." NRS 604A.5045(2)(b).

[3] NRS 604A.303(1).

(f) The total finance charge associated with the loan;[4]"

Licensees are also directed to update the following information during the life of the loan:

(g) If the customer defaults on the loan, the date of default;
(h) If the customer enters into a repayment plan pursuant to NRS 604A.5027, 604A.5055 or 604A.5083, as applicable, the date on which the customer enters into the repayment plan; and
(i) The date on which the customer pays the loan in full.[5]

2. The Proposed Regulations.

On August 31, 2020, the Commissioner issued revised proposed regulations pertaining to S.B. 201. While the Legislature specified that the Commissioner "[m]ay adopt regulations and make orders for the administration and enforcement of this chapter, in addition hereto and not inconsistent herewith," the Commissioner's proposed regulations are overly broad and change the plain meaning of S.B. 201.

a. Information licensees are to enter into the database.

In the proposed regulations, "[a] licensee shall enter the following information in the database, in real time, when a transaction takes place as prescribed in NRS 604A, Sections 5983-5987 and Section 303, Subsection 2 and 5 for each loan made pursuant to [deferred deposit loan services] and [high-interest loan services], without limitation:

(a) If the customer is a covered service member;
(b) If the customer is a dependent of a covered service member;
(c) The origination date of the loan;
(d) The term of the loan;
(e) The principal amount of the loan;
(f) The total finance charge associated with the loan;
(g) The fee charged for the loan;
(h) Due date of the loan;
(i) The annual percentage rate of the loan;
(j) The scheduled payment amount;
(k) The payment details as described in section 24;
(l) Type of loan product;
(m) The customer's gross income; and,
(n) The customer's total obligations.[6]"

Under S.B. 201, a licensee who makes a deferred deposit loan or high-interest loan shall enter into the database for each such loan made, nine (9) specifically enumerated data

[4] NRS 604A.303(2).
[5] *Id*.
[6] Section 22, Proposed Regulations.

points.[7] Section 22 of the proposed regulations is inconsistent with S.B. 201 as the Legislature did not authorize or direct licensees to enter a customer's "gross income" and "total obligations." Because of this, subparts (m) and (n) should be removed from the proposed regulations.

Similar to Section 22 of the proposed regulations, Section 23 requires a licensee offering title loan services to "enter the following information in the database, in real time, when a transaction takes places as described in NRS 604A, Sections 5983-5987 and Section 303, Subsections 2 and 5 for each loan made pursuant to [title loan services], without limitation:

(a) Verification that the customer is the legal owner of the vehicle securing the loan;
(b) If the customer is a covered service member;
(c) If the customer is a dependent of a covered service member;
(d) The origination date of the loan;
(e) The term of the loan;
(f) The principal amount of the loan;
(g) The total finance charge associated with the loan;
(h) The fee charged for the loan;
(i) Due date of the loan;
(j) The annual percentage rate of the loan;
(k) The scheduled payment amount;
(l) The payment details as described in section 24;
(m) The year, make, model, and Vehicle Identification Number (VIN) of the vehicle;
(n) The fair market value of the vehicle from a third-party vendor; and
(o) The legal co-owner's name and consent from co-owner, if applicable[8]."

Again, this section of the proposed regulations is inconsistent with the provisions of S.B. 201[9]. Only the information directed to be entered into the database under S.B. 201 should be required. Because of this, subparts (a) and (m)-(o) under Section 23 should be removed from the proposed regulations in their entirety.

Under Section 24 of the proposed regulations concerning payment details, licensees are required to "enter the following information in the database, in real time, for each payment made on the loan, without limitation:

(a) The scheduled payment amount;
(b) The scheduled date of the payment;
(c) The actual payment amount;
(d) The date the payment was made;

[7] NRS 604A.303(2).
[8] Section 23, Proposed Regulations.
[9] NRS 604A.303(2).

(e) The allocation of the total payment, dollar amount applied to principal and dollar amount applied to interest and fees;
(f) Amount and date of payment received from a customer when the loan is paid in full;
(g) If a scheduled payment was missed:
    (1) The date the payment was missed;
    (2) If the missed payment changed the interest rate;
    (3) The new interest rate, if applicable;
    (4) Whether or not a repayment was offered;
    (5) Did a customer enter a repayment plan; and
    (6) The duration of the grace period, if applicable.

If a customer enters into a loan agreement requiring installment payments, the licensee shall enter the information required pursuant to this section for each installment payment[10]."

None of the information required under Section 24 was authorized by the Legislature under S.B. 201. Additionally, this information is unnecessary for a licensee utilizing the database to ensure compliance with NRS 604A. Therefore, Section 24 should be removed from the proposed regulations in its entirety.

Under Section 25 of the proposed regulations, all licensees are required to enter the status of the loan into the database, "without limitations:

(1) If in collection, whether first party or third party, the date entered into collection and payment history;
(2) If the loan is in default, the date entered into default and payment history. If an interest rate changed, the rate and date it changed;
(3) If the loan is in grace period, the date entered into a grace period and payment history;
(4) If in a repayment plan, the date entered into a repayment plan and payment history;
(5) The date the loan was closed as defined in this chapter;
(6) The reason the loan was closed as defined in this chapter;
(7) The date repossession of the vehicle was ordered, if applicable; and
(8) The date repossession occurred, if applicable"[11].

S.B. 201 only contemplated a licensee entering information regarding default on the loan, whether a customer enters into a payment plan, and date on which the customer pays the loan in full.[12] Only this information should be required under the proposed regulations

[10] Section 24, Proposed Regulations.
[11] Section 25, Proposed Regulations.
[12] NRS 604A.303(2)(g)-(h).

to ensure compliance with NRS 604A, and subsections (1), (3), (6), and (7)-(8) of Section 25 should be removed in their entirety.

Finally, subsections (2) and (4) under Section 25 should be changed as follows: (2) If the loan is in default, the date entered into default ~~and payment history. If an interest rate changed, the rate and date it changed~~ . . . (4) If in a repayment plan, the date entered into a repayment plan ~~and payment history~~. By making these changes, the proposed regulations would follow the Legislature's requirements under S.B. 201[13].

b. <u>Information licensees may utilize from the database.</u>

The Legislature specifically enumerated limited information that licensees may utilize to ensure compliance with NRS 604A[14]. As mentioned above, the proposed regulations include information unnecessary, pointless, unworkable and impractical for a licensee utilizing the database to ensure compliance with NRS 604A, and those provisions should be removed in their entirety.

In addition to requiring licensees which offer deferred deposit loan services and high-interest loan services, the proposed regulations also require licensees offering title loan services to query the database before making such a loan[15]. The Legislature did not amend the provisions relating to title loans, and therefore "title loan" must be removed from this section (Section 18) to ensure adherence to the Legislature's intent.

3. <u>Conclusion.</u>

The proposed regulations, as enumerated above, which dramatically digress from the authority granted under S.B. 201, improperly expand on the Legislature's intent in adopting S.B. 201, are unnecessary in part, and impractical in operation, and unworkable in other respects. The changes delineated above would revise the proposed regulations to be consistent with the provisions of S.B. 201 and aid the Financial Institution Division in carrying out its functions and authority as authorized under S.B. 201.

Thank you again for the opportunity to provide feedback on the proposed regulations, and please do not hesitate to contact me directly at AaronMansfield@curo.com if you have any questions.

Sincerely,

Aaron Mansfield
Corporate Counsel

[13] NRS 604A.303(2)(g),(h).
[14] NRS 604A.303(1).
[15] Section 18, Proposed Regulations.

CC: Mary Young, Deputy Commissioner (delivered to mmyoung@fid.state.nv.us)

September 15, 2020

Ms. Sandy O'Laughlin, Commissioner
State of Nevada, Department of Business and Industry
Financial Institutions Division
3300 W. Sahara Ave., Suite 250
Las Vegas, NV 89102
fidmaster@fid.state.nv.us

Sent via U.S. Mail with Copy via Electronic Mail

Re: **REVISED DRAFT PROPOSED REGULATION OF THE COMMISSIONER OF THE FINANCIAL INSTITUTIONS DIVISION PERTAINING TO S.B. 201 – 604A; LCB File No. R037-20; Dated August 31, 2020**.

Dear Commissioner O'Laughlin,

Moneytree appreciates the opportunity to comment on the revised proposed regulation pertaining to the implementation of SB 201 (Proposed Regulation).

A. Introduction

Moneytree outlined its history as a regional financial services company in prior comments. To recap, Moneytree has been in business approximately 37 years and is a privately held, family-owned business headquartered in Renton, Washington.

Moneytree has a long track record of working cooperatively and collaboratively with federal and state legislatures and administrative agencies to craft and pass laws and regulations that are consumer protective, preserve access to regulated credit and function efficiently. We are proud of the partnerships we have forged with our regulators to mutually improve our processes and to improve our customers' experiences. While Moneytree appreciates the opportunity to provide comments, our experience in this rulemaking process has been unusual insomuch as the Industry's offers to collaborate and to engage in a two way dialogue with its regulator have fallen on deaf ears. Unfortunately, Industry questions have gone unanswered and the Proposed Regulations have not been altered to reflect real operational and other Licensee concerns.

As we have stated in prior comments, implementing a database is a complex endeavor that is highly technical. It requires a solid understanding of *how transactions are actually processed* and how Licensee systems operate in the background. The current rulemaking process involves FID's first foray into the difficult task of "standing up" a consumer lending database that carries with it a great deal of responsibility as it will affect hundreds of thousands of Nevada residents, hundreds of business locations and employees; and a significant segment of the Nevada economy. The Proposed Regulations require more information and more complexity in terms of the information that must be submitted to the database (many of which are unrealistic and simply will not be possible) and timing of data submission than any

other similar-purpose database in the country. Given the massive undertaking of designing such a database, one would expect that experience and input from Licensees with database experience would be welcomed. Many of the Licensees participating in the current rulemaking, including Moneytree, have extensive experience in drafting database regulations, working with database providers, designing and programming processes necessary for a database to operate, and in *actual* day-to-day Licensee/database operation and reporting. We would like to renew our invitation to FID to collaborate to share the Industry's expertise in identifying and fixing problematic provisions of the Proposed Regulations.

In addition to our experience working in database states, our Industry has extensive transactional and "cause and effect" experience borne of hundreds of combined years of operating in the financial services industry. It is our experience that the most effective consumer protections come from laws and regulations that consider the best interests of the consumer and the economic and operational supply-side realities. Laws and regulations that fail to balance supply-side interests invariably fail the consumer and lender alike. They are fraught with administrative headache, confusion and unintended fallout when put into actual practice. They also tend to come as a surprise to affected consumers who are unexpectedly faced with a less convenient and more costly marketplace. And, ultimately, these laws have a history of providing less protection to consumers as they drive regulated lenders out of business leaving consumers without good options and vulnerable to illegal sources that stand ready to fill any void. We again renew our invitation to FID to collaborate to avoid the real trap of overzealous regulation that puts the stakeholders (consumers and Licensees) in this process in jeopardy.

Finally, as a point of clarification, in the prior public hearing, testimony was introduced by supporters of the prior draft of Proposed Regulations that seemed to call into question whether a database would be implemented. Moneytree and other Licensees understand that the Nevada Legislature has authorized a database and we stand ready to work with the FID to draft implementing regulations that comport with the language and intent of SB 201. Moneytree supports some of the work the FID has done in the Proposed Regulation. However, some provisions of the Proposed Regulations still go far beyond the plain language and intent of SB 201; and Moneytree believes that continued refinement of the Proposed Regulation is necessary to comport with FID's legal rulemaking authority and the directives and intent of the Legislature.

B. Reassertion of Prior Comments

On July 7, 2020, Moneytree submitted its comments on a prior version of the Proposed Regulations. Moneytree reasserts its July 7, 2020 comments to the extent that the content or the impact of those provisions remains unchanged. While the FID has made changes to the Proposed Regulation, the new draft contains examples of problematic requirements that should be significantly revised or eliminated but that have instead simply been moved from one section in the Proposed Regulations to another. Sometimes, specific language describing *ultra-vires* requirements have been eliminated only to be incorporated by reference (see e.g. Section 19). Some of the Proposed Regulations also appear to try to legitimize an *ultra vires* expansion of ability to repay (ATR) requirements by simply citing to the ATR provisions *that have been adopted into law* by the Legislature and that are found at Sections 5011, 5038, 5065 of Chapter 604A (ATR Provisions). Simply citing to provisions that were approved by the Legislature but that have no bearing on the legislative directives in SB 201 does not confer legislative powers on the

FID. There is no doubt that the Legislature approved the ATR Provisions; just as there is no doubt that the Legislature *did not approve* expansion of those provisions in SB 201 or by the FID in its current rulemaking process.

C. Notification from FID and Timing of Database Implementation

The Proposed Regulation should be amended to include notification requirements from the FID to Licensees about the status of database implementation and a reasonable compliance date at least six to nine months after a database provider contract is in place and the Industry has had technical and other necessary onboarding meetings and information to program and integrate with the database. Moneytree renews its recommendation that FID organize a "task force" of industry participants, representatives of the FID and the database service provider to consider and make recommendations on the database implementation schedule. This will help to insure maximum Licensee onboarding and ongoing database efficiencies are met. In addition, this will minimize errors and challenges for the FID.

D. Proposed Regulation

The purpose of the Proposed Regulation is: "To adopt regulations under the Nevada Administrative Code, as provided by Senate Bill No. 201 (2019) requiring the [FID] to develop, implement and maintain a database storing certain information relating to deferred deposit loans, title loans and high-interest loans made to customers in [the State of Nevada]; and other matters properly relating thereto." See Revised Draft Proposed Regulation of the Commissioner of the Financial Institutions Division LCB File No. R037-20. To the extent that the Proposed Regulations attempt to create or impose new laws or rules that go beyond the purpose of SB 201 and/or the stated purpose of Proposed Regulation, they should be amended or eliminated.

1. Section 10(d)

Moneytree agrees with the latest amendment to the Proposed Regulation requiring the database service provider (as opposed to the Licensee) to immediately notify the FID if the database is unavailable for any reason. This amendment places the responsibility to notify on the party most likely to know the database is unavailable and with the most ability to correct the situation. It also eliminates uncertainties in the prior draft Proposed Regulation over whether Licensees had to notify of a database unavailability once or with each transaction in which the database is unavailable and prevents multiple notifications to the FID from each affected Licensee when there is an outage.

2. Section 17 of the Proposed Regulation

Section 17 of the Proposed Regulation states that during periods of unavailability of the database the Licensee can rely on the consumer's written representation which "includes, without limitation, a customer does not have any outstanding loans at the time the loan was made." Section 17 should be rewritten so as not to assume that the consumer must represent that he or she does not have an outstanding loan when that may not be the case. Consumers can have more than one loan outstanding subject to the maximum loan limitations in NRS § 604A.5017 or NRS § 604A.5045.

Also, the representation given by the consumer should include a statement that the deferred deposit loan or high-interest loan does not exceed the maximum loan amounts in NRS §§ 604.5017, or 604.5045 (as the case may be) irrespective of whether the consumer has a current loan outstanding or not. In other

words, the representation of the consumer *should serve as a safe harbor irrespective of whether the customer has an outstanding loan or does not*.

3. Section 19 of the Proposed Regulation

a. FID may not Usurp Legislature Authority by Creating New Laws that have not been Authorized by the Nevada Legislature.

In its prior comments, Moneytree objected to *new* ATR requirements that *were not authorized by the Legislature in its 2017 adoption of the ATR Provisions* (NRS §§ 604A.5011, 5038 and 5065)[1]. In fact, the requirements for Licensees to consider a consumer's total obligations and to engage in some sort of a net disposable income analysis[2] (see Sections 22 and 23 below) were explicitly rejected in the Legislature's consideration and adoption of the ATR Provisions. Thus, FID's prior attempts to introduce a "net disposable income" analysis and its current efforts to require Licensees to obtain and enter a consumer's total obligations in to the database are *ultra vires*.

So too is the FID's attempt to create *new* ATR requirements to consider current or prior borrowing activity that were not authorized by the Legislature in SB 201. To put it simply, *SB 201 was not an ATR bill and it did not authorize the FID to create new ATR criteria.*

Section 19 of the current version of the Proposed Regulations contains the same objectionable over-reach as the former Section 18. Like the former Section 18, Section 19 represents an impermissible attempt by FID to usurp legislative authority and to create new law of its own making. Moneytree renews all of its prior comments related to former Section 18 and supplements those comments as follows:

The FID's rulemaking scope has been clearly delineated by the Legislature at NRS § 604.303(5). That Section provides the Commissioner with the authority to prescribe specifications for the information entered into the database, to establish standards for retention, access, reporting, archiving and deleting information, to establish a database fee and other rules "necessary for the administration of the database." Importantly, the Legislature *did not give* the FID the authority to created *new* ATR considerations that a Licensee "must" consider when originating a loan.

The FID's rulemaking authority to prescribe specifications for what information must be entered into the database is limited by NRS §604A-303(1), which provides:

> The Commissioner shall, by contract with a vendor or service provider or otherwise, develop, implement and maintain a database by which the Commissioner and *licensees may obtain*

[1] Those sections were very recently adopted by the Nevada Legislature, showing that when the Legislature intends to create "ability to repay" criteria, it is very capable of doing so. No such intent was evident in the adoption of SB 201.[1]

[2] The concept of "net disposable income" was included in the original versions of the Proposed Regulations at former Sections 5 & 6. Current section 18 (formerly 18, 17 & 21) required Licensees to query the database before originating a loan in order to determine the consumer's gross monthly income, the consumer's "total obligations" and the consumer's "net disposable income" to determine whether the consumer is "eligible" for a loan.

> information related to deferred deposit loans, title loans and high-interest loans made by licensees to customers in this State to ensure compliance with the provisions of this chapter. The information the Commissioner and licensees *may obtain* includes, without limitation:
>
> (a) Whether a customer has a deferred deposit loan, title loan or high-interest loan outstanding with more than one licensee;
>
> (b) Whether a customer has had such a loan outstanding with one or more licensees within the 30 days immediately preceding the making of a loan;
>
> (c) Whether a customer has had a total of three or more such loans outstanding with one or more licensees within the 6 months immediately preceding the making of the loan; and
>
> (d) Any other information necessary to determine whether a licensee has complied with the provisions of this chapter.

NRS §604A-303(1).

Former Section 18 and the current Section 19 of the Proposed Regulation each attempt to impermissibly turn the above emphasized (and permissively stated) language (i.e. "*may obtain*") into an absolute legal mandate that licensees "must" consider when determining a borrower's ATR. Had the Legislature intended to create new ATR requirements, it clearly knew how to unambiguously do that. The requirements for Licensees to consider ATR were added to the statutory scheme of Chapter 604A in 2017. In 2019, the Legislature was certainly aware of specific provisions addressing ATR. Had it intended to create new ATR requirements, it could have easily amended the ATR Provisions. In its consideration of SB 201 in 2019, the Legislature did not address itself to the question of ATR and it did not amend the ATR Provision evidencing its intent that *SB 201 was intended as a database bill and not an ATR bill*.

The Legislative Counsel's Digest (LCD) summarizing SB 201 refutes that it was the Legislative intent to create new laws regarding ATR. Instead, it describes Section 8 of SB 201 as "Section 8 of this bill requires the Commissioner of Financial Institutions to develop, implement and maintain, by contract with a vendor or service provider or otherwise, a database of all deferred deposit loans, title loans and high-interest loans in this State, for the purposes of ensuring compliance with *existing law governing* these types of loans." If SB 201 was intended to create new requirements for ATR, the LCD would have (1) described those new criteria and (2) not described the bill's intent as compliance with "existing law." There is no evidence that the Legislature intended to address ATR, let alone impose new required ATR considerations when it approved SB 201.

To prevail in its attempt to create new and mandatory ATR considerations, FID must convince a court that that plain language of Section 8 of SB 201 which states:

> The information that the Commissioner and licensees *may obtain* includes . . .

Should instead be read as:

> The information that the Commissioner and licensees must obtain and utilize in making a determination of whether or not the customer has the ability to repay any loan in advance of originating a loan includes . . .

This interpretation stretches the imagination and credulity and it would not be upheld by a reviewing court. If challenged, FID's position would not be entitled to agency deference. Instead the inquiry of the court would be confined to whether "may obtain" contained in SB 201 actually means "must obtain and use in a mandatory ability to repay determination". The construction of a statute is a question of law and independent appellate review of an administrative ruling, rather than a more deferential standard of review, is appropriate. *Maxwell v. State Indus. Ins. Sys*., 109 Nev. 327, 329-30, 849 P.2d 267, 269-70 (1993) (citations omitted). "Where the language of the statute is plain and unambiguous, such that the legislative intent is clear, a court should not "add to or alter [the language] to accomplish a purpose not on the face of the statute or apparent from permissible extrinsic aids such as legislative history or committee reports." *Id.* (citations omitted).

Section 19 substantively expands the legal requirements for licensee underwriting in the complete absence of any statutory authority to do so. Section 19 represents an over-reach beyond the rulemaking authority of the FID and should be stricken from the Proposed Regulation.

b. FID Has Shown a Pattern of Attempts to Improperly Create New ATR Requirements in the Absence of Any Supporting Statutory Authority or Legislative Intent.

The current attempt by the FID to improperly create *new* ATR requirements that have not been approved by the Legislature, is unfortunately not its first. In a prior version of the Proposed Regulation, the FID attempted to impose a requirement on Licensees to obtain and enter into the database documentation used to determine a borrower's ATR "including *the method used by a licensee to calculate a customer's net disposable income*." As introduced, the ATR Provisions contained a "seven-pronged factor" ability to repay test that included two prongs that were later excluded from the final law. Those excluded prongs were "monthly residual income of the customer" and "monthly payments on other obligations owed by the customer." While the FID has since backed away from its obvious attempt to require net disposable income is an ATR consideration, the attempt alone is disturbing given that the Legislature so clearly rejected its equivalent ("monthly residual income") as a required ATR considerations.

As more fully set forth below, the language of Section 22 and 23 of the Proposed Regulation are still disturbingly aimed at including the consumer's "other obligation" as a data point that must be entered into the database. The Legislature rejected the consumer's "other obligations" as an ATR consideration. Given that, there is no reason to include a consumer's "other obligations" as a required data entry.
Requiring a consumer's "other obligations" to be included in database information together with the consumer's "gross income" is a not so subtle attempt to back into a "net disposable income" ATR consideration that will be enforced in the examination process without a legitimate mandate by the Legislature. As set forth more fully below, the FID cannot "overturn" what the Legislature has considered and rejected.

4. Section 20 of the Proposed Regulation

Section 20 provides that "[u]pon a licensee's query, the database shall inform a licensee whether a customer is *eligible* for a new loan and, if the customer is *ineligible*, the reason for such ineligibility." Moneytree renews all of its previous comments regarding this language formerly found at Section 19 of the previous draft of the Proposed Regulations. The database should return information in response to a query and an "ineligibility" result should only be returned when the applied for loan would be in excess of the 25% maximum loan caps in NRS § 604A.5017 or § 604.5045; or the consumer is a Covered Borrower.

5. Section 21 of the Proposed Regulation

Section 8(2) of SB 201 (codified at NRS § 604A.303 (2) clearly outlines the information that a licensee must enter into the database and provides: "a licensee who makes a deferred deposit loan, title loan or high-interest loan *shall enter or update the following information in the database for each such loan made to a customer at the time a transaction takes place*:

(a) The date on which the loan was made;
(b) The type of loan made;
(c) The principal amount of the loan;
(d) The fees charged for the loan;
(e) The annual percentage rate of the loan;
(f) The total finance charge associated with the loan;
(g) If the customer defaults on the loan, the date of default;
(h) If the customer enters into a repayment plan pursuant to NRS 604A.5027, 604A.5055 or 604A.5083, as applicable, the date on which the customer enters into the repayment plan; and
(i) The date on which the customer pays the loan in full.

Section 604A.303 (2) does not include language (e.g. "including but not limited to") that additional information can be added. But Section 21 attempts to improperly expand this list to improperly include these additional categories of information not authorized by SB 201:

(j) All renewals
(k) All extensions
(l) All rollovers
(m) All refinances, when permissible
(m) When a repayment plan offer is sent
(n) Declined loans
(o) Any transaction pertaining to the loan

Had the Legislature intended to include the information set forth in (j) through (o) above, it would have included it in the enumerated data points in SB 201. SB 201 did not confer on the FID the ability to add to the data the Legislature has specified. NRS § 604A.303 (5) directs the FID to "prescribe specifications for the information entered into the database." It does not confer authority to create new categories of data. It is a matter of longstanding rule of statutory construction that when a statute enumerates certain criteria to the exclusion of others (as is the case with respect to the information outlined in NRS § 604A.303 (2)) the statute will be interpreted as an intentional Legislative omission of additional criteria. *Sheriff, Pershing Cty. v. Andrews*, 128 Nev. 544, 548, 286 P.3d 262, 264 (2012)

Furthermore, the following terms lack definitional clarity:

- The term "rollover," were it to be used, must be clearly defined.
- "Grace period" should be defined by reference to Section 604A.070.
- "Repayment plan" should be defined by reference to Sections 604A.5027, 5055, and 5083.
- The term "real time" should be defined.

Furthermore, the requirement to enter "[a]ny transaction pertaining to the loan" is particularly overbroad, unclear and potentially representative of onerous administrative burdens on licensees and should be eliminated.

Furthermore, many of these data points are incapable of being entered into the database "in real time" (e.g. defaults, date of the default, and repayment plan information). Section 20 should be revised to reflect transaction and service timing realities.

Finally, the onerous language of Section 21 seems to require the transmission of account details every time a consumer loan is serviced or "touched". The amount of data and constant interaction between Licensees and the database is unprecedented in any existing database legislation. It either serves no public interest or such interest is outweighed by the overwhelming burden it places on Licensees.

6. Section 22 & 23 of the Proposed Regulation (Section 22 and Section 23)

Section 22 attempts to legitimize the FID's overreaching attempt to require Licensees to input data into the database *that the Legislature did not prescribe* by referencing what the Legislature *did authorize in NRS § 604A.303*. This Sections' simple citation to Section 303(2) & (5) in Chapter 604A does not magically turn the FID's attempt to obtain more information than the Legislature specified into a legal rule.

Section 303(2) is clear and specific about what information a Licensee must input into the database. It provides:

> "After the development and implementation of the database created pursuant to subsection 1, a licensee who makes a deferred deposit loan, title loan or high-interest loan shall enter or update the following information in the database for each such loan made to a customer at the time a transaction takes place:
>
> (a) The date on which the loan was made;
> (b) The type of loan made;
> (c) The principal amount of the loan;
> (d) The fees charged for the loan;
> (e) The annual percentage rate of the loan;
> (f) The total finance charge associated with the loan;
> (g) If the customer defaults on the loan, the date of default;
> (h) If the customer enters into a repayment plan pursuant to NRS 604A.5027, 604A.5055 or 604A.5083, as applicable, the date on which the customer enters into the repayment plan; and
> (i) The date on which the customer pays the loan in full.

While Moneytree agrees that it is preferable for the Licensee to enter the results of its own Covered Borrower search into the database and thus the inclusion of the requirement for the Licensee to enter Covered Borrower information besides the information specifically set out in Section 303(2) is correct and in keeping with the general statutory mandate of SB 201; there is no statutory or other authority for FID to require entry of the following information:

- The schedule of payments
- The payment details described in Section 24 of the Proposed Regulations
- The customer's gross monthly income

- The customer's other obligations

Similarly, reference in Sections 22 and 23 to Section NRS § 604A.303 (5) cannot legitimize this unauthorized overreach. NRS § 604A.303 (5) provides the FID with the authority to adopt regulations necessary for the implementation and administration of the database and nothing more. That Section *does not authorize the FID to require information to be put into the database that was not approved by the Legislature*.

The requirement to obtain and enter the consumer's total obligations is *completely outside the scope of SB 201* and the FID's rulemaking authority. SB 201 did not impose underwriting obligations on licensees beyond the 25% cap loan amount and loan payment maximums. NRS §§604A.5011, 5038 and 5064 clearly address what information the licensee must consider when determining ability to repay. None of these provisions were amended or authorized by the Legislature in SB 201 to include a requirement to consider the consumer's total obligations. Collecting this information is beyond the scope of the law as it existed before the passage of SB 201, beyond the scope of SB 201 and beyond the FID's rulemaking authority.

In addition, the requirement to submit the "customer's total obligations" and the "customer's gross monthly income" into the database is an attempt to back into an impermissible "net disposable income" ATR requirement (see comments to Section 19 above). In adopting the ATR Provisions, the Legislature considered whether a consumer's total obligations should be part of the information that that Licensees must consider in originating a loan and rejected both concepts. The FID does not have the power to "overturn" the Legislature's decision or enact regulations contrary to clear Legislative intent. The Legislature has rejected the concept that Licensees must consider a consumer's total obligations and decided in the negative. Thus, the FID has no legitimate purpose in requiring Licensees to obtain or track this information.

7. Section 24 of the Proposed Regulation

Section 24 provides that "[a] licensee shall enter the following information in the database, in real time, for each payment made on the loan, without limitation:

(a) The scheduled payment amount
(b) The scheduled date of the payment
(c) The actual payment amount
(d) The date the payment was made
(e) The allocation of the total payment, dollar amount applied to principal and dollar amount applied to interest and fees
(f) The amount and date of payment received from a customer when the loan is paid in full
(g) If a schedule payment was missed
    1. The new interest rate, if applicable
    2. Whether or not a repayment was offered
    3. Did a customer enter a repayment plan and
    4. The duration of the grace period, if applicable"

All of this information must be entered for each payment if the loan is a high interest loan. When a loan is written, the scheduled payment amount and scheduled payment date are written to the database. To again transmit this information in "real time" is not only redundant but adds an onerous programming burden and it provides no benefit to the consumer. Subsequently, the loan payoff must be recorded in

order to close that loan in the database and *free-up* that amount of credit for the consumer. The other required fields serve no purpose, provide no benefit to the consumer and are merely an attempt gather huge amounts of continuous data.

8. Section 25 of the Proposed Regulation

Section 25 provides that the status of the loan must be entered into the database, without limitation:

1. If in collection, whether first party or third party, the date entered into collection and payment history
2. If the loan is in default, the date entered into default and the payment history. If an interest rate changed, the rate and date it changed
3. If the loan is in [sic] grace period, the date entered into a grace period and payment history
4. If in a repayment plan, the date enter into a repayment plan and payment history
5. The date the loan was closed as defined in this chapter
6. The reason the loan was closed as defined in this chapter
7. The date repossession of the vehicle was ordered, if applicable
8. The date repossession occurred, if applicable

Once again, these data points are not authorized by the Legislature in SB 201 and provide no benefit to the consumer. The only imaginable reason to record this information is solely to facilitate continuous and onerous data reporting to the FID from licensees. The "loan status" should be limited to "open," "closed," "default/returned" in order to accurately assess that the current loan amount is not over 25% of GMI which is one of only two data points SB 201 requires licensees to obtain from the database.

10. Conclusion

In conclusion, SB 201 was intentionally drafted and passed into law to enforce the loan limits already contained in Chapter 604A across all Licensees. While Moneytree appreciates the time and effort that the FID has devoted to the Proposed Regulation as amended, some provisions represent over-reach beyond the FID's statutory authority. Some provisions of the Proposed Regulation also ignore transactional and process realties and will result in unworkable mandates on Licensees. The FID should work cooperatively with all stakeholders, including the members of the Industry to craft regulations that comport with its statutory authority and that will result in reasonable regulations that reflect Legislative intent. Moneytree stands ready to work with the FID as a responsible partner in these endeavors.

USA Cash Services
LOAN CENTER
1752 Combe Rd. #1 Ogden, UT 84403 801-476-4242

November 13, 2020

Written Comment for the Record November 2020

Re: REVISED DRAFT PROPOSED REGULATIONS PERTAINING TO S.B. 201 – 604A

In September 2020 rather than re-listing our issues from July, we provided FID with solutions.

Please find to follow both our September comment, and our July comment.

Sincerely,

Janet Phillips

Janet Phillips
Operations Director

USA Cash Services
LOAN CENTER
1752 Combe Rd. #1 Ogden, UT 84403 801-476-4242

September 11, 2020

Ms. Sandy O'Laughlin
Commissioner of Financial Institutions
3300 W. Sahara Ave., Suite 250
Las Vegas, NV 89102

Written Comment for the Record of September 16, 2020 Workshop

Re: REVISED DRAFT PROPOSED REGULATIONS PERTAINING TO S.B. 201 – 604A

We are happy to work with the FID to establish the database criteria in order to ensure that the database can accomplish the intentions of SB-201; to prevent consumers from exceeding 25% of their gross income, even if they were to borrow from multiple lenders.

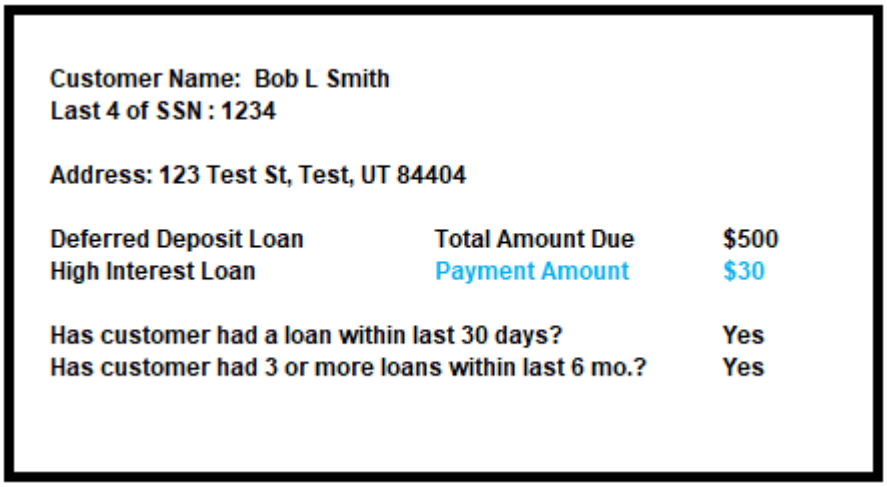
In reviewing the revised draft of the proposed regulations, we did not find any substantial changes that addressed the concerns in our July 8, 2020 letter. None of these issues seem to have been addressed, they were just moved around to different portions of the regulation. They are still a concern to us. Rather than re-state the same concerns, we would like to take the time to suggest solutions.

Our proposal to implementing the database would not only put it in compliance with SB-201, but would also serve to ensure that consumers will not exceed 25% of their gross income, even if they were to borrow from multiple lenders.

Please see our proposed solution to follow: (Blue indicates items not listed in SB-201 that need to be added to make the database operate properly.)

Our Proposed Solution

- As per SB-201 Sec 8: (a)-(d) the database should only display to the lenders the following information:



  - With this information, in addition to the lender's underwriting policies, the lender (not the database) will determine if the customer qualifies for a loan.
    - **SB-201 Sec. 12. (b)** The licensee has utilized the database to ensure that the deferred deposit loan, in combination with any other outstanding loan of the customer, does not exceed 25 percent of the customer's expected gross monthly income when the deferred deposit loan is made.
    - **SB-201 Sec. 13. (b)** The licensee has utilized the database established pursuant to section 8 of this act to ensure that the terms of the high-interest loan, in combination with any other outstanding loan of the customer, do not require any monthly payment that exceeds 25 percent of the customer's expected gross monthly income when the loan is made.
  - If the lender chooses not to loan, the customer is given an adverse action notice in compliance with federal regulations ECOA and FCRA Regulation B.

- When the lender makes the decision to issue a loan, they then enter into the database the following datapoints authorized by SB-201:
  - **SB-201 Sec. 8:2** After the development and implementation of the database created pursuant to subsection 1, a licensee who makes a deferred deposit loan, title loan or high-interest loan shall enter or update the following information in the database for each such loan made to a customer at the time a transaction takes place:
    a. The date on which the loan was made;
    b. The type of loan made;
    c. The principal amount of the loan;
    d. The fees charged for the loan;
    e. The annual percentage rate of the loan;
    f. The total finance charge associated with the loan;
    g. The payment amount of high interest loans;

- When the status or disposition of the loan changes, the lender will enter the following datapoints from SB-201:
    - **SB-201 Sec. 8:2 (continued)**
        h. If the customer defaults on the loan, the date of default;
        i. If the customer enters into a repayment plan pursuant to NRS 604A.5027, 604A.5055 or 604A.5083, as applicable, the date on which the customer enters into the repayment plan; and
        j. The date on which the customer pays the loan in full.
        k. If the balance due of the deferred deposit loan changes, the new balance due.

In summary the information as listed in SB-201 Sec. 8:2 (*with the additions of the items in blue above*) is enough information on its own for the database to accurately display the required information, to enable the lenders and the commissioner to determine that the customer's loan obligations do not exceed 25 percent of the expected gross monthly income. Any information beyond this is unnecessary and overreaching.

It is our desire to work together to get this accomplished in a matter that will be beneficial to our customers. Your consideration is appreciated. We look forward to working with you.

Sincerely,

Janet Phillips

Janet Phillips
Operations Director

CC: Mary Young, Deputy Commissioner

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July 6, 2020

Ms. Sandy O'Laughlin
Commissioner of Financial Institutions
3300 W. Sahara Ave., Suite 250
Las Vegas, NV 89102

Written Comment for the Record of July 8, 2020 Workshop

Re: REVISED DRAFT PROPOSED REGULATIONS PERTAINING TO S.B. 201 – 604A

We appreciate the positive changes that you have made to this proposed regulation. However, more changes are needed before this new regulation is finalized.

SB-201 was passed to ensure that consumers will not exceed 25% of their Gross Income, even if they were to borrow from multiple lenders. As currently written, the proposed regulations are overreaching and excessive.

Furthermore, while we do have procedures in place to mitigate risk to our customers and employees during this pandemic, these new regulations as written will increase the risk to our employees and customers as they will cause transactions to take far longer. Customers will spend much more time in our locations and this will increase the chances of exposure to COVID-19.

We have the following objections:

1. **Section 18: Ability to Repay**
   As drafted, this section is overreaching and excessive. It is requiring us to use this information in determining ability to repay and is not authorized by either SB-201 or required by NRS 604A.

   SB-201 specifies that:

   The information the Commissioner and licensees may obtain includes, without limitation:
   (a) Whether a customer has a deferred deposit loan, title loan or high-interest loan outstanding with more than one licensee;
   (b) Whether a customer has had such a loan outstanding with one or more licensees within the 30 days immediately preceding the making of a loan;
   (c) Whether a customer has had a total of three or more such loans outstanding with one or more licensees within the 6 months immediately preceding the making of the loan; and
   (d) Any other information necessary to determine whether a licensee has complied with the provisions of this chapter.

   After ensuring that the loan will not exceed 25% of the customer's gross income, licensees will use their own underwriting criteria to determine eligibility.

2. **Section 19: Eligibility**
   As drafted, this section attempts to change this regulation so that the database determines eligibility. SB-201 was not written to determine eligibility, but to inform licensees of other outstanding loans so that they can ensure that the consumer is not borrowing more than 25 percent of their gross monthly income, even if they are borrowing from multiple lenders.

3. **Section 20: Transaction Data Points**
   As drafted, this section requires an excessive amount of detailed information regarding payments and transactions.

   SB-201 authorizes these datapoints on already issued loans:

- *If the customer defaults on the loan, the date of default*
- *If the customer enters into a repayment plan pursuant to NRS 604A.5027, 604A.5055 or 604A.5083, as applicable, the date on which the customer enters into the repayment plan*
- *The date on which the customer pays the loan in full*

The following items listed in Section 20 are not included in SB-201: Anything in excess of these is overreach and not relevant to ensure that consumers will not exceed 25% of their Gross Income. This would include:

- Grace Periods
- Payments
- When a repayment plan offer is sent
- Declined Loans
- Other transactions pertaining to the loan

4. **Section 21: Query Data**

Since it is not the purpose of this database to determine eligibility, there is no need for the database to track the customer's income. It is the responsibility of the licensee to ensure that the customer does not borrow more than 25% of their gross income at the time of the loan.

We also object to being required to obtain and report the customer's total obligations for the following reasons:

- It is overly burdensome
- it is not authorized by SB-201
- It is irrelevant to the intent of SB-201 as it does not prevent consumers from exceeding 25% of their gross income

5. **Section 22: Loan Data**

As drafted, this section exceeds the authority under SB-201, is overreaching, and overly burdensome to the licensee:

SB-201 authorizes the following data points when a loan is issued:

a. *The date on which the loan was made*
b. *The type of loan made*
c. *The principal amount of the loan*
d. *The fees charged for the loan*
e. *The annual percentage rate of the loan*
f. *The total finance charge associated with the loan*

We object to all other data points in excess of the six authorized by SB-201 listed above, specifically the following:

- If the customer is a covered service member;
- If the customer is a dependent of a covered service member
- The term of the loan
- Due date of the loan

- The payment details

The licensee should only be required to enter in this information at the time that the loan takes place. It would not be possible for our system to transmit this information prior to the loan being created. Paying employees to manually enter this data would be overly burdensome to the licensee.

6. Section 23: Title Loan Data

As drafted, this section exceeds the authority under SB-201, is overreaching, and overly burdensome to the licensee:

SB-201 authorizes the following data points when a loan is issued:

a. *The date on which the loan was made*
b. *The type of loan made*
c. *The principal amount of the loan*
d. *The fees charged for the loan*
e. *The annual percentage rate of the loan*
f. *The total finance charge associated with the loan*

We object to all other data points in excess of the six authorized by SB-201 listed above, specifically the following:

- If the customer is a covered service member;
- If the customer is a dependent of a covered service member
- The term of the loan
- Due date of the loan
- The payment details
- The year, make, model, and VIN of the vehicle
- The fair market value of the vehicle from a third-party vendor
- The legal co-owner's name and consent from co-owner, if applicable

The licensee should only be required to enter in this information at the time that the loan takes place. It would not be possible for our system to transmit this information prior to the loan being created. Paying employees to manually enter this data would be overly burdensome to the licensee.

7. Section 24: Payment Transactions

As drafted, this section exceeds the authority under SB-201, is overreaching, and overly burdensome to the licensee.

There is no requirement under SB-201 to enter any payment details.

The adverse economic effect upon our business will increase based on the amount of information that must be reported to this database. Any information that we will be required to report will either have to be handled manually by our employees as they transact business with our

customers, and/or via automatic processes that we will have to pay to have programmed into our system.

- As our employees are having to submit this manually, it will be very time consuming and will reduce their productivity in other areas, causing us to need more employees, which is not fiscally possible for our company.
- This will also have an adverse economic effect on our customers. Many of them have to take a break from work or come on their lunch to do business with us, and they will have to wait much longer to receive a loan or make a payment.

If the programming required to make these processes automatic is too complicated, it will be too burdensome for any small business to accomplish.

The information that is required by SB-201 will be kept current in the database by the licensees at the time the transactions take place. Licensees will simply report the updated balance of the loan at each payment. This information will be sufficient to determine whether issuing a loan to a customer will be within 25% of their gross income.

We object to reporting the data points in this section, as they are not authorized by SB-201. The specific datapoints that need to be removed are:

- The scheduled payment amount
- The scheduled date of the payment
- The actual payment amount
- The date the payment was made
- The allocation of the total payment, dollar amount applied to principal and dollar amount applied to interest and fees
- Amount of payment received from a customer when the loan is paid in full
- If a scheduled payment was missed
- The new interest rate, if applicable
- Whether or not a repayment was offered
- Did a customer enter a repayment plan
- The duration of the grace period, if applicable

8. **Section 25: Loan Status**

As drafted, this section exceeds the authority under SB-201, is overreaching, and overly burdensome to the licensee.

SB-201 requires licensees to update the following status changes in the database:

- If the customer defaults on the loan, the date of default;
- If the customer enters into a repayment plan pursuant to NRS 604A.5027, 604A.5055 or 604A.5083, as applicable, the date on which the customer enters into the repayment plan; and
- The date on which the customer pays the loan in full.

The information that is required by SB-201 will be kept up to date in the database by the licensees at the time the transactions take place. This information will be sufficient to determine whether issuing a loan to a customer will be within 25% of their gross income.

We object to reporting the data points in this section as they are not authorized by SB-201. The specific datapoints that need to be removed are:

- If in collection, whether first party or third party, the date entered into collection and payment history
- If the loan is in default, the payment history
- If an interest rate changed, the rate and date it changed
- If the loan is in grace period, the date entered into a grace period and payment history
- If in a repayment plan, the payment history
- The reason the loan was closed as defined in this chapter
- The date repossession of the vehicle was ordered, if applicable
- The date repossession occurred, if applicable

Thank you for taking the time to address our objections to these proposed regulations. We look forward to continuing this discussion with you at the workshop on July 8th. If the workshop leads to further questions, we will submit an additional comment letter.

Your consideration is appreciated. We look forward to working with you in the future.

Janet Phillips

Operations Director
USA Cash Services

CC: Mary Young, Deputy Commissioner