

STATE OF NEVADA



STEVE SISOLAK  
*Governor*

DEPARTMENT OF BUSINESS AND INDUSTRY

TERRY REYNOLDS  
*Director*

**FINANCIAL INSTITUTIONS DIVISION**

SANDY O'LAUGHLIN  
*Commissioner*

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

Date: Wednesday, July 8, 2020

Time: 10:00 a.m.

Location: Webex meeting- videoconference and teleconference

**1. Call to Order:**

The workshop to consider S.B.201 was called to order Wednesday, July 8, 2020 at 10:03 a.m. The purpose of the workshop 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 Workshop dated and posted on June 22, 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 fifteen (15) commenters during this public comment period. Five (5) were in support of the regulation as written and Ten (10) were opposed to the regulation as written. Eleven (11) of these commenters submitted written comment and/or the company they represented submitted comment. Four (4) of these commenters did not submit a written comment for the record.

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

- The FID 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 3<sup>rd</sup> 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.

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

- The database will hold the payday industry accountable.
- Will require lenders to follow existing law.
- Will protect consumers upfront.
- Need the database more today than when the bill was passed due to COVID-19, and with an increase of unemployment.
- The regulations are vital to protect Nevada's economy.
- Protect vulnerable borrowers.
- Federal laws are being weakened, we need to strengthen state law for Nevada families and communities.
- The debt trap and predatory loans can cause trauma to a consumer, such loans made by the high interest loan industry.

- Lenders do not consider the customer's ability to repay and making the loans knowing they cannot pay the loan back.
- This will ensure a borrower has the ability to repay.
- Kids are going to bed hungry because their parents took loans out from these predatory lenders that they could not afford because the ability to repay was not considered.
- The database is not a burden standing in the way of responsible lenders.
- The database is a vital safeguard.
- The database will allow for enforcement during loan application.
- Will help keep consumers off the debt treadmill.
- Prevent loan rollovers.
- Nevada needs more enforcement, enforcement through the database.
- The database is not too burdensome.
- FID needs to implement as soon as possible, without delay.

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](http://www.fid.nv.gov)



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### 3. Presentation and Discussion of Proposed Regulation:

The proposed regulations were summarized as stated below during the hearing. The complete proposed regulation can be found at [www.fid.nv.gov](http://www.fid.nv.gov)

#### Regulation:

Sections 3-9 provide definitions for certain words or terms used throughout the chapter. Defines due date, immediately, extent available, archive, delete, identifying customer information, and closed loan.

#### Additional public comment during the presentation of sections 3-9, as summarized below:

- General comments were that most already provided written comment regarding the definitions.
- One stated had concerns with how "immediately" would be interpreted as well as other definitions.

Section 10 provides for the service provider of the database to charge and collect the fee to operate the database from a licensee and provides for when a licensee may be or may not be charged the fee and when they can charge and cannot charge the customer the fee.

Section 11 provides for the service provider of the database to retain, archive, and delete data concerning customers transactions.

Section 12 outlines who will have access to the database and how a user will protect their password. Also allows a customer the right to request a copy of their loan history, file, record, or any

documentation relating to their loan or the repayment of a loan, from a licensee, without a charge, fee or cost.

Section 13 provides for all data and documentation collected and reviewed for a loan to be retained for at least 3 years.

Section 14 does not allow deletion of customer information entered in the database. If a loan or loan transaction is void or rescinded, a licensee must notate such on the loan file and in the database. The service provider fee will not be charged to the customer or licensee for a void or rescinded loan.

Section 15 provides the information contained in the database is confidential and exempt from the Nevada Public Records Law.

Section 16 discusses that the service provider shall maintain and be responsible for the confidentiality and security of the information contained in the database. Gives the office of the commissioner right to access and utilize the database as an enforcement tool to ensure licensees' compliance with chapter 604A.

Section 17 discusses what is required of a licensee if the database is unavailable due to technical issues on the service provider side.

Additional public comment and questions during the presentation of sections 10-17, as summarized below:

- Question was raised about the State of Nevada Purchasing procedures. FID said that they are required to go through the request for procurement process but FID could not speak to the state purchasing procedures.
- Questions were raised if written comments needed to be verbally restated. FID responded it's not necessary unless they choose to do so.
- Question was raised if we would review those comments and respond. FID said they will review and will respond if and when appropriate.
- Comments regarding Section 17: the service provider is in the best position to notify FID if the database is operating or not and not the licensee. Also, the method and frequency of reporting is not clear.
- Another comment said that written representation is contrary to the ability to repay statute in NRS 604A.
- There was a comment regarding section 10 about the fees being charged. The service provider will not know if a new loan or refinance. The fee should still be charged to the customer.

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

Section 18 discusses that the database will provide the licensee information on whether a customer has an outstanding loan with more than one licensee; whether such outstanding loan is with one or more licensees within the 30 days immediately preceding the making of a loan; and 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. In addition to these factors and in conjunction with all other available information, a licensee must consider a customer's ability to repay a loan and only approve the loan if permissible under the provisions of chapter 604A.

Section 19 discusses the database shall inform the licensee whether the customer is eligible or ineligible for a loan and written notice by a licensee shall be provided to a customer if the customer is ineligible for the loan. In addition, the licensee must also provide the customer with an Adverse Action Notice pursuant to Regulation B.

Section 20 provides for all loans originated under the provisions of chapter 604A of NRS; all renewals; extensions; grace periods; payments; refinances; when a repayment plan offer is sent; when a repayment plan is entered into; declined loans; and any transaction pertaining to the loan be entered in real time into the database.

Section 21 discusses the initial query in the database to verify the identity of a customer and verify eligibility of the loan before a deferred deposit loan, title loan or high-interest loan is made.

Section 22 discusses the information required to be entered into the database in addition to items (a) – (f) in Section 21, prior to each deferred deposit and high-interest loan made pursuant to NRS 604A.501- NRS 604A.5034 for deferred deposit loans and NRS 604A.5035- NRS 604A.5064 for high-interest loans.

Section 23 discusses the information required to be entered into the database in addition to items (a) – (f) in Section 21, prior to each title loan made pursuant to NRS 604A.5065- NRS 604A.5089.

Section 24 discusses what information a licensee shall enter into the database for each payment made or not made on the loan.

Section 25 discusses the status of the loan must be entered into the database.

Section 26 discusses the Office of the Commissioner may run reports for purposes other than examinations, investigations, or internal reporting, in order to publish a report online regarding the scope of the industry. The data in a report shall not disclose personal identifying information, licensee identifying information such as the name of a licensee, address or license number.

Additional Public Comment during the presentation of sections 18-26, as summarized below:

- Comments were giving on section 21 and section 22. These sections are the “heart” of the problem.
- The vendor is determining eligibility, verify and making the underwriting decisions.
- Requesting the consumer's total obligations increases the scope of the power FID and vendor have, expanding beyond S.B.201.
- FID is asking for unneeded data.

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

#### 4.Public Comments:

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

- Section 20 exceeds FID's authority. Overbroad with saying "any transaction" and "realtime" is not defined.
- Section 21 query search of database. How can query provide total obligations of a customer?
- Requiring total obligations is outside S.B.201 and FID authority.
- Only required to look at 25% of gross monthly income of a customer.
- Section 22 requires determining certain information prior to each loan made. Cannot determine some of these items prior to the loan being made.
- Regulations are missing the what's, how's, and when's needed to be in full compliance.
- Willing to work with FID. Always had a good relationship with FID.
- Total amount of loan cannot exceed fair market value of the vehicle, this exceeds scope and is allowed.

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

- These regulations are not duplications to federal law.
- Need to protect and advocate for vulnerable consumers, the most preyed upon.
- Should not rely on federal rules and regulations but rely on our own state's and create strong ones.
- These regulations are meant to protect consumers.
- Don't delay in approving these regulations, we need now.
- Underwriting requirements are already part of NRS 604A.
- Licensees are required to consider ability to repay and determine underwriting factors pursuant to NRS 604A.
- High-interest loans for example, NRS 604A.5038, states "other evidence" which includes other data from the database. There is a statutory basis for FID to request this information.

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](http://www.fid.nv.gov)



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#### 5.Close Workshop (Adjournment):

The workshop pertaining to Senate Bill 201 and Chapter 604A of the Nevada Administrative Code was hereby closed and adjourned on July 8, 2020 at 11:27 a.m.

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April 29, 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”). TitleMax appreciates the opportunity to comment on the proposed regulations and attend the workshop scheduled for today. Below is a summary of concerns and suggestions related to the regulations proposed by the State of Nevada, Financial Institutions Division (“FID”) pertaining to S.B. 201.

1. Exceeding Statutory Scope: The FID states that the “proposed regulations are required as a result of the passage of Senate Bill 201 (S.B.201)” and cites S.B. 201 as the authority for the proposed regulations. (Notice of Workshop at 2, 4.) 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, to establish regulations necessary to 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. 14; Sec. 23; Sec. 24; Sec. 25; Sec. 30.) 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.

Several sections of the proposed regulations also purportedly require licensees to query the database for specific information and consider this information in determining loan eligibility. (*See, e.g.*, Sec. 17; Sec. 18; Sec. 21.) 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 (Sec. 18) and even state that “the database shall inform a licensee whether a customer is eligible for a new loan.” (Sec. 21.) 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, the 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. 28.) 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.

2. Section 3: Section 3 of the proposed regulations defines “due date” 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.***” It is unclear what “subject to all statutory requirements and legal contractual stipulations” means. 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”? TitleMax suggests that a clearer definition might 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 NRS 604A.

TitleMax also objects to the FID defining the “full amount of the loan” as “principal, finance charge and fees” within the definition of “due date.” The 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 inserting it parenthetically into 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 appear to use the defined term “full amount of the loan.” The FID later refers to the “total amount of the loan” in stating that the “total amount of the loan cannot exceed the fair market value of the vehicle.” (Section 25(r).) The FID appears to use “total amount of the loan” synonymously with “full amount of the loan.” However, in addition to having nothing to do with the database created by S.B. 201, whether principal, interest, and fees (as opposed to just principal) can exceed the fair market value of the vehicle is already the subject of current litigation between the FID and TitleMax. A Nevada district court ruled in TitleMax’s favor, declaring that NRS 604A.5076(1) means only that principal cannot exceed fair market value. *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’s proposed regulations cannot contradict the statute 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.”

3. Section 4: Section 4 provides, “***‘Immediately’ means the action must occur within one business day.***” The regulations do not define “business day” or what “within” means. For example, TitleMax is open for business on Saturdays, but not Sundays. If an event happens in the morning, it is unclear whether “immediately” means the action must occur by the close of business that day or the next day. TitleMax proposes a clearer definition would be “‘Immediately’ means the action must occur by close of business on the following business day. ‘Business day’ means any day on which the licensee’s stores are open to the public for business.”
4. Section 5: Section 5 defines “***net disposable income***” as “***the verifiable gross income minus (i) any and all deductions from income; and (ii) all verifiable and/or stated expense obligations including, but not limited to, rent or mortgage payments, utilities, and any other debt obligations.***”

“Net disposable income” is a term used nowhere in NRS 604A. Yet the proposed regulations purport to require licensees to retain documentation showing “the method used by a licensee to calculate a customer’s net disposable income.” (Sec. 15.) In responding to comments, the FID asserted that the requirement to determine “net disposable income” “is currently in . . . NRS 604A.5065 for determining a customer’s ability to repay.” (Notice of Workshop at 22.) However, NRS 604A.5065 states only that one factor in determining a customer’s ability to repay is the “current or reasonably expected income of the customer.” NRS 604A.5065(2)(a). The statute does not use the term “net disposable income” and in fact does not refer to deductions,

expenses, or obligations at all – which must necessarily be calculated and subtracted from income under the proposed definition of “net disposable income.” (Sec. 5.)

Moreover, the proposed regulations do not define “verifiable.” Under NRS 604A.5065, licensees are entitled to rely on customers’ “written representations to the licensee.” NRS 604A.5065(2)(e). If, by “verifiable,” the proposed regulations intend to require proof of income or expenses beyond a customer’s written representations, this is inconsistent with NRS 604A.5065. Licensees are in the customer service business – their relationship with customer is not generally adversarial. It strains the customer relationship to require licensees to demand more than what is required by statute and insist on proof of every single one of a customer’s written representations. That is unworkable.

TitleMax proposes that the definition of “net disposable income” be deleted in its entirety.

5. Section 6: Section 6 provides, “***‘Extent Available’ is defined as if a document exists, it is presumed to be readily available or easily obtainable in a reasonable amount of time from a customer prior to making the loan.***” “Extent available” is not used in the proposed regulations and has nothing to do with the database authorized by S.B. 201. Thus, the definition is beyond the scope of S.B. 201’s regulatory authorization.

Section 6 purports to amend NRS 604A.5065, which provides that “a customer has the ability to repay a title loan if the customer has a reasonable ability to repay the title loan, as determined by the licensee after considering, to the extent available, the following underwriting factors . . . .” NRS 604A.5065(2). “To the extent available” was specifically added at the request of a title lender: “If there is an amendment to be considered . . . , LoanMax would like the words ‘to the extent available’ be added after the word ‘consider’ . . . . This would clarify for LoanMax the ability to look at any or all of the evidence necessary but not a mandated list.” Senate Committee on Commerce, Labor and Energy, 5/10/2017.

By defining “extent available” to *presume* that any document that exists is readily available and easily obtainable, the proposed regulations essentially erase “to the extent available” from the statute. The regulations presume and explicitly hold that if a document exists, it is presumed available and the licensee must consider it. But documents sometimes exist, but are not readily available. Sometimes customers cannot or do not know how to obtain certain documents and provide them to TitleMax in a timely fashion. Presuming that documents are readily available may actually harm customers, who know their own finances most intimately and are often looking for quick, short-term relief they may not be able to find elsewhere. TitleMax objects to the proposed regulation as contrary to the statutory language in NRS 604A.5065 and beyond the scope of S.B. 201.

6. Section 10: Section 10 provides, “***‘Closed Loan’ indicates a final status of a loan that is no longer active. When a loan is closed it may include, but is not limited to, a paid-in-full loan agreement, a repossessed vehicle, or charged-off loan.***” However, the term “Closed Loan” is not used in the proposed regulations or S.B. 201 as a necessary entry into the database. There are references in the proposed regulations to when a “customer transaction is closed” or when a “loan is closed.” (Sec. 12; Sec. 27; Sec. 30.) If these sections are meant to refer to the definition of “Closed Loan,” they should use the defined term or the term itself should be changed. In

addition, there is no definition of “active” or “charged-off loan.” 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”? TitleMax suggests the definition be removed as confusing, unnecessary, and beyond the scope of S.B. 201.

7. Section 11: Section 11 provides, “***The service provider shall charge and collect a fee from a licensee for each loan the licensee enters and approves in the database. The fee is based upon a competitive procurement process but shall not exceed \$3.00 per approved loan. A licensee shall not collect from a customer an amount in excess of the actual cost charged to the licensee by the service provider. A licensee shall not collect any fee, charge or cost from a customer if a loan is not approved. The service provider shall not collect any fee, charge or cost from a licensee if a loan is not approved. The charge only occurs at origination and cannot be charged to extend, rollover, renew, refinance or consolidate or any action that would extend the due date or any of the like. The service provider 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 and Regulation Z.***”

First, TitleMax proposes that the regulations define “service provider” as “the entity responsible for administering the database provided for by NRS 604A.303.” Licensees should also be informed who the service provider will be once that is known.

Second, it is unclear what the proposed regulation means when it states that the “service provider fee must be itemized on the loan agreement.” 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.”

Third, TitleMax objects to the language that the service provider charge “cannot be charged to . . . refinance or consolidate . . .” 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 any database charge it incurs on to its customers. Moreover, “origination” is not defined. TitleMax also objects to the extraneous language “or any of the like” as ambiguous and unworkable.

To the extent the FID attempts to provide by regulation that a refinance extends the due date of the original loan, this is improper. TitleMax and the FID are currently litigating over title loan refinancing. 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.

8. Section 12: Section 12 provides in part that the service provider shall “***[a]rchive data in the database concerning a customer transaction within two years after a customer transaction is closed unless notified by the Commissioner that such data is needed***” and “***[d]elete data***”

***concerning a customer transaction from the database 3 years after the customer transaction is closed unless notified by the Commissioner that such data is needed.***

“Customer transaction” is not defined. To the extent this refers to making a loan or modifying the terms of a loan, TitleMax suggests a definition along those lines. In addition, “closed” is not defined, though “Closed Loan” is defined earlier in Section 10. (*See supra* ¶ 6.)

9. **Section 13:** Section 13 provides, ***“1. Access to the database is limited to:***  
***(a) Licensee staff members that underwrite and process the loans;***  
***(b) Licensee staff members that collect and post payments made on the loans;***  
***(c) Licensee senior staff members;***  
***(d) Office of the Commissioner staff members; and***  
***(e) Service provider staff members.***  
***Each user will be required to:***  
***(a) Create a password that meets the service provider’s password criteria; and***  
***(b) Safeguard the password by not sharing the password with any person or writing the password down.***  
***2. A customer has the right to request a copy of their loan history, file, record, or any documentation relating to their loan or the repayment of a loan, from a licensee, without a charge, fee or cost.”***

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 agree to keep confidential all information learned from the database and maintain proper security measures.

Part 2 of Section 13 exceeds the scope of S.B. 201 and is not related to the operation of the database. 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 the loan. This could potentially include confidential and proprietary 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 part 2 of Section 13 exceeds the statutory authorization for the FID to implement regulations “necessary for the administration of the database.” NRS 604A.303(5)(d). Thus, part 2 of Section 13 should be removed as beyond the scope of S.B. 201.

10. **Section 14:** Section 14 provides, ***“A licensee shall enter into the database, in real time, all loans originated under the provisions of chapter 604A of NRS; all renewals; extensions; grace***

*periods; payments; refinances; when a repayment plan offer is sent; when a repayment plan is entered into; ~~payment receipts; collection notes; declined loans; and any transaction pertaining to the loan, as applicable, and in compliance with this chapter and chapter 604A of NRS.~~*

First, as explained above in Paragraph 1, this section 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 14 is duplicative when it requires entry of “when 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. The Legislature already specified exactly what information had to be entered into the database and did not leave this to regulation.

Second, “real time” is not defined. In responding to comments, the FID states 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 of Workshop at 21.) 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” (as opposed to “immediately,” i.e. by the next business day). This merits clarification.

Third, requiring entry of “any transaction pertaining to the loan” is overbroad. “Transaction” is not defined. Would this, for example, include the deleted text of “payment receipts” and “collection notes”? 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 transaction.”

Fourth, the proposed regulations purports to require entry of “declined loans” 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 collect any fee, charge or cost from a customer if a loan is not approved. The service provider shall not collect any fee, charge or cost from a licensee if a loan is not approved.” (Sec. 11.) 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.

11. Section 15: Section 15 provides, “*A licensee shall retain all data and documentation collected and reviewed for any loan, loan transaction, or any query made in the database for at least 3 years. Documentation includes, but is not limited to, all copies of the documents considered in determining the ability to repay, including the method used by a licensee to calculate a customer’s net disposable income. In addition to the above mentioned, for title loans, the third-party vendor documentation showing the fair market value of the vehicle securing the title loan.*”

First, it is unclear whether this regulation applies to “data and documentation” entered into the database, or whether it imposes a retention requirement for any and all data and documentation reviewed for any loan. If the latter, the proposed regulation exceeds the scope of S.B. 201. 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 15 is therefore largely duplicative – and to the extent it is not duplicative, it is inconsistent with NAC 604A.200.

Second, it is unclear how licensees are supposed to retain “any query made in the database for at least 3 years.” As TitleMax understands it, a query is a search that the licensee makes of the database (such as searching for a customer name). TitleMax does not know how to “retain” the query. It is unclear if licensees are expected to make internal notes every time they search the database, writing down what search terms they used and when the search was conducted. If the database operates as most databases do, it appears that the service provider is the one who should retain electronic evidence of queries. For example, Westlaw is a database, and it retains a history of searches – it reports what user made the search (according to the electronic user ID), what search terms were used, and the date and time of the search. While it would be extremely burdensome for the user to record this information for each search, the database retains it automatically. It appears to TitleMax that the service provider should retain evidence of all queries made by licensees.

Third, TitleMax objects to any purported requirement to calculate and retain documentation relating to a customer’s “net disposable income,” as this is not a requirement of NRS 604A. (*See supra* ¶ 4.)

12. Section 16: Section 16 provides, “*A licensee shall not delete any consumer information entered into the database. If a loan or loan transaction is void or rescinded, a licensee must notate on the loan file and in the database that the loan or loan transaction is void and the reason the loan or loan transaction is void but shall not delete the loan or the loan transaction from the database. The service provider fee cannot be charged pursuant to this chapter and chapter 604A of the NRS for a voided or rescinded loan.*”

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 voided or rescinded loan.

13. Section 17: Section 17 provides, “***Before making a deferred deposit loan, title loan or high-interest loan, a licensee shall query the database and shall retain evidence of the query for the Office of the Commissioner’s review. 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. At a minimum, the query should include the below to verify the identity of a customer and verify eligibility of the loan:***
- (a) The customer’s full name: first and last name, and middle initial;***
  - (b) The customer’s social security number or alien registration number;***
  - (c) The customer’s valid government-issued photo ID number;***
  - (d) The customer’s date of birth, mm/dd/yyyy;***
  - (e) The customer’s gross income;***
  - (f) The customer’s total obligations; and***
  - (g) Net disposable income of the customer.”***

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* ¶ 1.)

Second, it is the service provider that should retain evidence of any query, not the licensee. (*See supra* ¶ 11.)

Third, the Legislature provided for the database only to collect information. The database does not determine compliance with NRS 604A/NAC 604A. The proposed language that the “database shall *allow* a licensee to make a” loan only if permissible under governing law is far beyond what the Legislature provided for. Licensees are responsible for determining loan eligibility and compliance with NRS 604A/NAC 604A, not the database. (*See supra* ¶ 1.)

Fourth, not all customers have a middle initial, and some have more than one last name. To the extent subsection (a) remains at all, it should simply state that a search of the customer’s full name is required.

Fifth, TitleMax understands “query” to be a search of the database. TitleMax does not understand how it can “query” the database for a customer’s “gross income,” “total obligations,” and “net disposable income.” Section 17(e)-(g). To the extent the FID means that licensees should enter this information into the database, entering information into the database when making a loan is different than searching to see if a customer is already in the database prior to the loan being started. NRS 604A.303(2) specifies what must be entered into the database, and it does not require licensees to search for any information at all. To the extent the FID means that licensees should search for a customer’s income information in the database, (1) this is not a requirement of S.B. 201; (2) this is a new database and will not have prior income information; and (3) income changes on a regular basis, making the relevance of prior income figures of doubtful relevance.

As currently worded, Section 17 is extremely unclear and far exceeds the permissible scope of regulations to implement S.B. 201.

14. Section 18: Section 18 provides, “***The database will provide the licensee information on:***
- (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. In determining a customer’s ability to repay a loan under chapter 604A of NRS, a licensee must consider if any of the above factors, in conjunction with all other available information, 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.”***

TitleMax has no objection to the database providing the information listed in (a)-(c), but reiterates that licensees “may obtain” such information – not that they are required to. NRS 604A.303(1). The proposed regulation exceeds the scope of S.B. 201 when it provides that “a licensee *must consider* if any of the above factors . . . make a customer ineligible for a loan.” S.B. 201 did not amend the ability-to-repay statute (NRS 604A.5065 for title loans). 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* ¶ 1.) Requiring licensees to consider such information is contrary to what S.B. 201 mandates and authorizes.

15. Section 19: Section 19 provides in part, ***“During any period that the database is unavailable due to technical issues on the service provider side, a licensee may rely on a customer’s written representation and assess the customer’s ability to repay by obtaining the documentation required by this chapter to verify that making the loan applied for is permissible under the provisions of this chapter. A customer’s written representation includes, without limitation, a customer does not have any outstanding loans at the time the loan was made. . . . If a customer has an outstanding title loan, the customer affirms that they have the ability to repay the outstanding loan and the additional title loan that they are about to enter into, and that the title is not perfected with another lender or licensee.”***

First, to the extent that the regulation suggests that “a licensee may rely on a customer’s written representation” 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* ¶ 1) and that licensees can rely on customers’ written representations regardless of whether the database is operational.

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. To the extent Section 19 means that licensees must evaluate the customer’s ability to repay, that is already a statutory requirement and need not be repeated in a regulation.

Section 19 goes on to provide, ***“If a licensee makes a loan to a customer during a time the database is unavailable, whether scheduled or for technical issues, a licensee must: (a) Enter the loan into the database within 24 hours of the system being operational[.]”*** If the database is unavailable on a Saturday, TitleMax is closed on Sunday and may not be able to enter the loan into the database within 24 hours of the database being operational. TitleMax suggests that “within 24 hours” be changed to “Immediately” if the amendments discussed in paragraph 3 are adopted (defining “Immediately” in reference to business days).

16. Section 21: Section 21 provides, “*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. If the database informs a licensee that a customer is ineligible for a loan, then a licensee shall provide written notice to a customer 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. The licensee must also provide the customer with an Adverse Action Notice pursuant to Regulation B.*”

Assuming “database provider” is the same as “service provider,” it should be referred to as the latter to maintain consistency throughout the regulations.

As described above, S.B. 201 does not provide for the database determining 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* ¶¶ 1, 13.) Thus, TitleMax objects to the regulation providing that “the database shall inform a licensee whether a customer is eligible for a new loan.” 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.

Moreover, S.B. 201 imposes no requirements on licensees to “provide written notice to a customer with the reason for ineligibility.” It seems deceptive to blame the database for customers’ ineligibility for a loan, telling customers they may submit an inquiry to the database provider should they have questions regarding the reason for their loan ineligibility. S.B. 201 says nothing about denying loans or providing an Adverse Action Notice. Section 21 exceeds the scope of S.B. 201.

17. Section 23: Section 23 provides, “*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) Method of each payment received from a customer;*
  - (g) Method and amount of payment received from a customer when the loan is paid in full;*
  - (h) 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;*
    - (6) Whether or not a grace period was offer; and*
    - (7) 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.”*

Section 23 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* ¶ 1.) S.B. 201 requires:

- (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, 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 23 goes far beyond S.B. 201 and requires details the Legislature rejected. For example, Section 23 requires entry of whether a grace period was offered (“offer” in Section 23(h)(6) is a typo), regardless of whether a grace period was actually entered or granted. Moreover, while the regulation purports to require entry of payment details “in real time” (which is itself unclear), it is unclear when the licensee would have to enter “[w]hether or not a grace period was offered.” Presumably, at every moment in which a grace period is not offered, there should be an entry that no grace period was offered. The Legislature wisely did not include such minutiae in S.B. 201. Only the main terms of the loan, 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).

18. Section 24: TitleMax believes Section 24 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 24 in detail, as it pertains to deferred deposit and high-interest loans, not title loans.
19. Section 25: Section 25 provides, “*In addition to items (a) – (g) in Section 17, a licensee shall enter the following information in the database, in real time, for prior to each loan made pursuant to NRS 604A.5065- NRS 604A.5089, without limitation:*
- (a) Verification that the customer is the legal owner of the vehicle securing the loan;*
  - (b) The customer’s current employer;*
  - (c) If the customer is a covered service member;*
  - (d) If the customer is a dependent of a covered service member;*
  - (e) The origination date of the loan;*
  - (f) The term of the loan;*
  - (g) The principal amount of the loan;*
  - (h) The total finance charge associated with the loan;*
  - (i) The fee charged for the loan;*
  - (j) Due date of the loan;*
  - (k) The annual percentage rate of the loan;*

- (l) The scheduled payment amount;**
- (m) The payment details as described in section 23;**
- (q) The year, make, model, and Vehicle Identification Number (VIN) of the vehicle; and**
- (r) The fair market value of the vehicle from a third-party vendor. The total amount of the loan cannot exceed the fair market value of the vehicle.**
- (s) The legal co-owner's name and consent from co-owner, if applicable;"**

The punctuation and lettering of Section 25 needs to be corrected given the deletions in the current version of the proposed regulations. Moreover, it is unclear to TitleMax why so many different sections of the proposed regulations address what licensees allegedly must enter into the database pursuant to these proposed regulations. The regulations would be much 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).

TitleMax understood that Section 17 governs the information a licensee must query or search for (though TitleMax maintains licensees are not statutorily required to query any information). Yet the introduction to Section 25 implies that Section 17 includes information that must be entered into the database. This is unclear. It is also unclear to TitleMax why Section 23 is a separate section incorporated by reference in Section 25(m) rather than being part of the same section.

More fundamentally, Section 25 surpasses the statutory scope of S.B. 201, which already specifies what information licensees must enter into the database. NRS 604A.303(2); (*see also supra* ¶ 1.) Section 25 duplicates certain requirements of S.B. 201, such as by requiring entry of the date of the loan, the principal, the total finance charge, any fees charged for the loan, and the annual percentage rate of the loan. (*Compare* Section 25(e), (g), (h), (i), (k), *with* NRS 604A.303(2)(a), (c)-(f).) There is no need to require entry of this information by regulation when it is already statutorily required.

Section 25 is inconsistent with S.B. 201 by purportedly requiring entry of several additional details that S.B. 201 does not authorize. Some of the information may not even exist. For example, Section 25(b) requires entry of the "customer's current employer." Not all customers are employed. Some receive government benefits or other forms of income. Moreover, it is not clear why the FID would need to know the customer's employer to ascertain compliance with NRS 604A.

TitleMax also objects to the added requirement that "[t]he total amount of the loan cannot exceed the fair market value of the vehicle." (Section 25(r).) As described in paragraph 2 above, this has nothing to do with administering the database, exceeds the scope of S.B. 201, and improperly attempts to override a court ruling interpreting NRS 604A.5076(1) to mean that only principal cannot exceed fair market value.

20. Sections 26-27: Section 26 provides, "***A licensee shall retain the following documentation and any and all documentation collected and reviewed in this chapter or chapter 604A of NRS for each loan made pursuant to NRS 604A.501-604A.5034, without limitation, copies of:***
- (a) Documents used to verify identity;***
  - (b) Documents used to verify the ability to repay;***
  - (c) Documents used to verify customer's income; and***
  - (d) The customer's credit history."***

Section 27 incorporates Section 26 and provides, ***“In addition to items (a) – (d) in Section 26, a licensee shall retain the following documentation and any and all documentation collected and reviewed in this chapter or chapter 604A of NRS for each loan made pursuant to NRS 604A.5065- NRS 604A.5089, without limitation:***

***(a) The vehicle title used to secure the loan. A copy of the title should be retained after the loan is closed;***

***(b) The third-party vendor documentation showing the fair market value of the vehicle securing the title loan at the time the loan was made;***

***(c) If there is a co-owner on the vehicle title, identification and consent form signed by the co-owner.”***

As described above (¶ 15), NAC 604A.200 already provides for the retention of written and electronic records and documents concerning “each loan or other transaction involving a customer in this State.” It is unclear why further regulations governing document retention are necessary.

Sections 26 and 27 appear to require the retention of documentation regardless of whether that documentation is entered into the database – and thus the Sections are beyond the scope of S.B. 201. Moreover, Sections 26 and 27 presume that all listed documents exist and are in the licensee’s possession. However, this may be a faulty presumption. For example, licensees may not have credit histories for each customer. While the ability-to-repay statute lists the “credit history of the customer” as one factor the licensee may consider “to the extent available,” NRS 604A.5065(2)(c), customers’ credit histories are not always available or provided to TitleMax. (See ¶ 5 (describing how “to the extent available” was added to NRS 604A.5065 to clarify the statute does not mandate consideration of each listed factor).)

Sections 26 and 27 exceed the scope of S.B. 201 and are unnecessary in light of NAC 604A.200.

21. Section 28: Section 28 provides, ***“For the purpose of NRS 604A.5076(5), a licensee must obtain written consent from each legal owner of the vehicle securing the title loan. The legal co-owner must be available in-person with a valid government-issued photo ID in order to sign a consent form. The consent form must advise the legal co-owner that if the borrower defaults on the loan and does not enter into a repayment plan, the licensee may seek repossession and sale of the vehicle. It should further disclose that the co-owner has no personal liability to make payments under the title loan agreement and is not personally obligated to repay the title loan, unless the co-owner signed the title loan agreement as a co-borrower.”***

Section 28 has nothing to do with the database and exceeds the scope of S.B. 201. Moreover, the regulation adds requirements that are entirely absent from NRS 604A.5076(5), which states only that a licensee shall not “[m]ake a title loan secured by a vehicle with multiple legal owners without the consent of each owner.” Section 28 does not involve the database and should be omitted.

22. Section 30: Section 30 provides, ***“Status of the loan must be entered 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.”**

It is again unclear to TitleMax why so many different sections purportedly govern what must be entered into the database. Parts of Section 30 are duplicative of Sections 23 and NRS 604A.303(2) (such as specifying the date entered into a repayment plan). However, Section 30 is inconsistent with S.B. 201 in that it requires more information to be entered into the database than what NRS 604A.303(2) requires. (*See supra* ¶ 1.)

Moreover, it is unclear when the “status of the loan must be entered into the database.” Presumably, every loan is in a certain status every moment of every day. The regulation is unclear as to when a certain status must be entered or updated. 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 30, in contrast, is extremely burdensome and exceeds the scope of S.B. 201.

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

Sincerely,

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July 7, 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 revised proposed regulations pertaining to Senate Bill 201 (“S.B. 201”), circulated on June 22, 2020. TitleMax appreciates the opportunity to comment on the proposed regulations and attend the workshop scheduled for July 8, 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.

1. Exceeding Statutory Scope: The FID states that the “proposed regulations are required as a result of the passage of Senate Bill 201 (S.B.201)” and cites S.B. 201 as the authority for the proposed regulations. (Notice of Workshop at 2, 6.) 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 to 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. 20; Sec. 22; Sec. 23; Sec. 24; Sec. 25.) 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.

Several sections of the proposed regulations also purportedly require licensees to query the database for specific information and consider this information in determining loan eligibility. (*See, e.g.*, Sec. 18; Sec. 19; Sec. 21.) 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 (Sec. 18) and even state that “the database shall inform a licensee whether a customer is eligible for a new loan.” (Sec. 19.) 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, the 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. 5.) 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.

2. **Section 3:** Section 3 of the proposed regulations defines “due date” as “*the date, based upon the payment schedule, subject to all statutory requirements, 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.*” TitleMax suggests that a clearer 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.

TitleMax also objects to the FID defining the “full amount of the loan” as “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 inserting it parenthetically into 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 appear to use the defined term “full amount of the loan.” The FID later refers to the “total amount of the loan” in stating that the “total amount of the loan cannot exceed the fair market value of the vehicle.” (Section 23(n).) The FID appears to use “total amount of the loan” synonymously with “full amount of the loan.” However, in addition to having nothing to do with the database created by S.B. 201, whether principal, interest, and fees (as opposed to just principal) can exceed the fair market value of the vehicle is already the subject of current litigation between the FID and TitleMax. A Nevada district court ruled in TitleMax’s favor, declaring that NRS 604A.5076(1) means only that principal cannot exceed fair market value. *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’s proposed regulations cannot contradict the statute 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.”

3. Section 4: Section 4 provides, “***‘Immediately’ means the action must occur within one business day.***” The regulations do not define “business day” or what “within” means. For example, TitleMax is open for business on Saturdays, but not Sundays. If an event happens in the morning, it is unclear whether “immediately” means the action must occur by the close of business that day or the next day. TitleMax proposes a clearer definition would be “‘Immediately’ means the action must occur by close of business on the following business day. ‘Business day’ means any day on which the licensee’s stores are open to the public for business.”
4. Section 5: Section 5 provides, “***‘Extent Available’ is defined as if a document exists, it is presumed to be readily available or easily obtainable in a reasonable amount of time from a customer prior to making the loan.***” “Extent available” is not used anywhere else in the proposed regulations. There is no reason to have a defined term that is not used. More importantly, the definition of “extent available” has nothing to do with the database authorized by S.B. 201. Thus, the definition is beyond the scope of S.B. 201’s regulatory authorization.

Section 5 purports to amend NRS 604A.5065, which provides that “a customer has the ability to repay a title loan if the customer has a reasonable ability to repay the title loan, as determined by the licensee after considering, to the extent available, the following underwriting factors . . . .” NRS 604A.5065(2). “To the extent available” was specifically added at the request of a title lender: “If there is an amendment to be considered . . . , LoanMax would like the words ‘to the extent available’ be added after the word ‘consider’ . . . . This would clarify for LoanMax the ability to look at any or all of the evidence necessary but not a mandated list.” Senate Committee on Commerce, Labor and Energy, 5/10/2017.

By defining “extent available” to *presume* that any document that exists is readily available and easily obtainable, the proposed regulations essentially erase “to the extent available” from the statute. The regulations presume that if a document exists, it is available and the licensee must consider it. But documents sometimes exist, but are not readily available. Sometimes customers cannot or do not know how to obtain certain documents and provide them to TitleMax in a timely fashion. Presuming that documents are readily available may actually harm customers, who know their own finances most intimately and are often looking for quick, short-term relief they may not be able to find elsewhere. TitleMax objects to the proposed regulation as contrary to the statutory language in NRS 604A.5065 and beyond the scope of S.B. 201.

5. Section 9: Section 9 provides, **“‘Closed Loan’ indicates a final status of a loan that is no longer active. When a loan is closed it may include, but is not limited to, a paid-in-full loan agreement, a repossessed vehicle, or charged-off loan.”** However, the term “Closed Loan” is not used in the proposed regulations. There is no reason to have a defined term that is not used. S.B. 201 also does not use the term “Closed Loan.” The definition is beyond the scope of S.B. 201. There are references in the proposed regulations to when a “customer transaction is closed” or when a “loan is closed.” (Sec. 11; Sec. 25.) If these sections are meant to refer to the definition of “Closed Loan,” they should use the defined term or the term itself should be changed. In addition, there is no definition of “active” or “charged-off loan.” 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”? TitleMax suggests the definition be removed as confusing, unnecessary, and beyond the scope of S.B. 201. At a minimum, the definition should be clarified, particularly with regard to what “charged-off” means, and the defined term should be used in the proposed regulations.
6. Section 10: Section 10 provides, **“The service provider shall charge and collect a fee from a licensee for each loan the licensee enters and approves in the database. The fee is based upon a competitive procurement process but shall not exceed \$3.00 per approved loan. A licensee shall not collect from a customer an amount in excess of the actual cost charged to the licensee by the service provider. A licensee shall not collect any fee, charge or cost from a customer if a loan is not approved. The service provider shall not collect any fee, charge or cost from a licensee if a loan is not approved. The charge only occurs at origination and cannot be charged to extend, rollover, renew, refinance or consolidate or any action that would extend the due date or any of the like. The service provider 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 and Regulation Z.”**

First, TitleMax proposes that the regulations define “service provider” as “the entity responsible for administering the database provided for by NRS 604A.303.” Licensees should also be informed who the service provider will be once that is known.

Second, it is unclear what the proposed regulation means when it states that the “service provider fee must be itemized on the loan agreement.” 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.”

Third, TitleMax objects to the language that the service provider charge “cannot be charged to . . . refinance or consolidate . . .” 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. TitleMax also objects to the extraneous language “or any of the like” as ambiguous and unworkable.

To the extent the FID attempts to provide by regulation that a refinance extends the due date of the original loan, this is improper. TitleMax and the FID are currently litigating over title loan refinancing. 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.

7. Section 11: Section 11 provides in part that the service provider shall “*[a]rchive data in the database concerning a customer transaction within two years after a customer transaction is closed unless notified by the Commissioner that such data is needed*” and “*[d]elete data concerning a customer transaction from the database 3 years after the customer transaction is closed unless notified by the Commissioner that such data is needed.*”

“Customer transaction” is not defined. To the extent this refers to making a loan or modifying the terms of a loan, TitleMax suggests a definition along those lines. In addition, “closed” is not defined, though “Closed Loan” is defined earlier in Section 9. (*See supra* ¶ 5.) The terms in the proposed regulations should match the defined terms.

8. Section 12: Section 12 provides, “*1. Access to the database is limited to:*  
*(a) Licensee staff members that underwrite and process the loans;*  
*(b) Licensee staff members that collect and post payments made on the loans;*  
*(c) Licensee senior staff members;*  
*(d) Office of the Commissioner staff members; and*  
*(e) Service provider staff members.*  
*Each user will be required to:*  
*(a) Create a password that meets the service provider’s password criteria; and*  
*(b) Safeguard the password by not sharing the password with any person or writing the password down.*  
*2. A customer has the right to request a copy of their loan history, file, record, or any documentation relating to their loan or the repayment of a loan, from a licensee, without a charge, fee or cost.”*

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 agree to keep confidential all information learned from the database and maintain proper security measures.

Part 2 of Section 13 exceeds the scope of S.B. 201 and is not related to the operation of the database. 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 the loan. This could potentially include confidential and proprietary 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 part 2 of Section 13 exceeds the statutory authorization for the FID to implement regulations "necessary for the administration of the database." NRS 604A.303(5)(d). Thus, part 2 of Section 13 should be removed as beyond the scope of S.B. 201 and potentially in conflict with Nevada's privilege statutes (*see* NRS Chapter 49).

9. Section 13: Section 13 provides, "***A licensee shall retain all data and documentation collected and reviewed for any loan, loan transaction, or any query made in the database for at least 3 years. Documentation includes, but is not limited to, all copies of the documents considered in determining the ability to repay, customer's income, customer's identity and credit history. In addition to the above mentioned, for title loans, the third-party vendor documentation showing the fair market value of the vehicle securing the title loan and a copy of the vehicle title.***"

First, this regulation purports to require retention of any and all data and documentation reviewed for any loan or loan transaction (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 13 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 26 and 27, which both dealt with document retention as well. The FID should delete proposed Section 13, as NAC 604A.200 is already a comprehensive regulation governing document retention.

Second, it is unclear how licensees are supposed to retain "any query made in the database for at least 3 years." As TitleMax understands it, a query is a search that the licensee makes of the database (such as searching for a customer name). TitleMax does not know how to "retain" the query. It is unclear if licensees are expected to make internal notes every time they search the database, writing down what search terms they used and when the search was conducted. If the database operates as most databases do, the service provider is the one who should retain electronic evidence of queries. For example, Westlaw is a database, and it retains a history of

searches – it reports what user made the search (according to the electronic user ID), what search terms were used, and the date and time of the search. While it would be extremely burdensome for the user to record this information for each search, the database retains it automatically. The service provider should retain evidence of all queries made by licensees. The FID appears to have acknowledged this when it changed what is currently Section 21 by deleting language that the licensee “shall retain evidence of the query” and replacing it with “The query shall be retained by the service provider.” That same change should be made here.

Third, TitleMax objects to any purported requirement to retain “customer’s income, customer’s 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. (See ¶ 4 (describing how “to the extent available” was added to NRS 604A.5065 to clarify the statute does not mandate consideration of each listed factor).) 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 13 purports to require lenders to always retain documentation of a customer’s income and credit history, that is inconsistent with NRS 604A.5065(2). 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 13 exceeds the scope of S.B. 201, is inconsistent with 604A.5065(2), and is unnecessary in light of NAC 604A.200.

10. Section 14: Section 14 provides, “***A licensee shall not delete any customer information entered into the database. If a loan or loan transaction is void or rescinded, a licensee must notate on the loan file and in the database that the loan or loan transaction is void and the reason the loan or loan transaction is void but shall not delete the loan or the loan transaction from the database. The service provider fee cannot be charged pursuant to this chapter and chapter 604A of the NRS for a voided or rescinded loan.***”

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 voided or rescinded loan.

11. Section 17: Section 17 provides in part, “***During any period that the database is unavailable due to technical issues on the service provider side, a licensee may rely on a customer’s written***

***representation and assess the customer's ability to repay by obtaining the documentation required by this chapter to verify that making the loan applied for is permissible under the provisions of this chapter. A customer's written representation includes, without limitation, a customer does not have any outstanding loans at the time the loan was made. . . . If a customer has an outstanding title loan, the customer affirms that they have the ability to repay the outstanding loan and the additional title loan that they are about to enter into, and that the title is not perfected with another lender or licensee."***

First, to the extent that the regulation suggests that "a licensee may rely on a customer's written representation" 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* ¶ 1) and that licensees can rely on customers' written representations regardless of whether the database is operational.

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. To the extent Section 17 means that licensees must evaluate the customer's ability to repay, that is already a statutory requirement and need not be repeated in a regulation.

Section 17 goes on to provide, "***If a licensee makes a loan to a customer during a time the database is unavailable, whether scheduled or for technical issues, a licensee must: (a) Enter the loan into the database within 24 hours of the system being operational[.]***" If the database is unavailable on a Saturday, TitleMax is closed on Sunday and may not be able to enter the loan into the database within 24 hours of the database being operational. TitleMax suggests that "within 24 hours" be changed to "Immediately" if the amendments discussed in paragraph 3 are adopted (defining "Immediately" in reference to business days).

12. Section 18: Section 18 provides, "***The database will provide the licensee information on:***  
***(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.***  
***In determining a customer's ability to repay a loan under chapter 604A of NRS, a licensee must consider if any of the above factors, in conjunction with all other available information, 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."***

TitleMax has no objection to the database providing the information listed in (a)-(c), but reiterates that licensees "may obtain" such information – not that they are required to. NRS 604A.303(1). The proposed regulation exceeds the scope of S.B. 201 when it provides that "a licensee *must consider* if any of the above factors . . . make a customer ineligible for a loan." S.B. 201 did not amend the ability-to-repay statute (NRS 604A.5065 for title loans). 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* ¶ 1.) Requiring licensees to consider such information is contrary to S.B. 201. *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.”).

13. Section 19: Section 19 provides, “***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. If the database informs a licensee that a customer is ineligible for a loan, then a licensee shall provide written notice to a customer 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. The licensee must also provide the customer with an Adverse Action Notice pursuant to Regulation B.***”

Assuming “database provider” is the same as “service provider,” it should be referred to as the latter to maintain consistency throughout the regulations.

As described above, S.B. 201 does not provide for the database determining 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* ¶ 1.) Thus, TitleMax objects to the regulation providing that “the database shall inform a licensee whether a customer is eligible for a new loan.” 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.

Moreover, S.B. 201 imposes no requirements on licensees to “provide written notice to a customer with the reason for ineligibility.” It seems deceptive to blame the database for customers’ ineligibility for a loan, telling customers they may submit an inquiry to the database provider should they have questions regarding the reason for their loan ineligibility. S.B. 201 says nothing about denying loans or providing an Adverse Action Notice. Section 21 exceeds the scope of S.B. 201.

14. Section 20: Section 20 provides, “***A licensee shall enter into the database, in real time, all loans originated under the provisions of chapter 604A of NRS; all renewals; extensions; grace periods; refinances, when permissible; payments; when a repayment plan offer is sent; when a repayment plan is entered into; ~~payment receipts; collection notes;~~ declined loans; and any transaction pertaining to the loan, as applicable, and in compliance with this chapter and chapter 604A of NRS.***”

First, as explained above in Paragraph 1, this section 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 14 is duplicative when it requires entry of “when 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. The Legislature already specified exactly what information had to be entered into the database and did not leave this to regulation.

Second, “real time” is not defined. In responding to comments, the FID states 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 of Workshop at 24.) 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” (as opposed to “immediately,” i.e. by the next business day). This merits clarification.

Third, requiring entry of “any transaction pertaining to the loan” is overbroad. “Transaction” is not defined. Would this, for example, include the now-deleted text of “payment receipts” and “collection notes”? 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 transaction.”

Fourth, the proposed regulation purports to require entry of “declined loans” 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 collect any fee, charge or cost from a customer if a loan is not approved. The service provider shall not collect any fee, charge or cost from a licensee if a loan is not approved.” (Sec. 10.) 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.

Fifth, the proposed regulation requires entry into the database of “all loans originated under the provisions of chapter 604A of NRS” and “refinances, when permissible.” The language “when permissible” was specifically added. The proposed regulation, as it currently reads, suggests that refinances need not be entered into the database if they are not permissible. Moreover, the language is inconsistent and confusing. TitleMax’s refinances are new “loans originated under the provisions of chapter 604A,” 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 – 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”).

15. Section 21: Section 21 provides, “***Before making a deferred deposit loan, title loan or high-interest loan, a licensee shall query the database. The query shall be retained by the service provider for the Office of the Commissioner’s review. 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. At a minimum, the query should include the below to verify the identity of a customer and verify eligibility of the loan:***
- (a) The customer’s full name: first and last name, and middle initial;***
  - (b) The customer’s social security number or alien registration number;***
  - (c) The customer’s valid government-issued photo ID number;***
  - (d) The customer’s date of birth, mm/dd/yyyy;***
  - (e) The customer’s gross income; and***
  - (f) The customer’s total obligations”***

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* ¶ 1.)

Second, the Legislature provided for the database only to collect information. The database does not determine compliance with NRS 604A/NAC 604A. The proposed language that the “database shall *allow* a licensee to make a” loan only if permissible under governing law is far beyond what the Legislature provided for. Licensees are responsible for determining loan eligibility and compliance with NRS 604A/NAC 604A, not the database. (*See supra* ¶ 1.)

Third, not all customers have a middle initial, and some have more than one last name. To the extent subsection (a) remains at all, it should simply state that a search of the customer’s full name is required.

Fourth, TitleMax understands “query” to be a search of the database. TitleMax does not understand how it can “query” the database for a customer’s “gross income” and “total obligations.” Section 21(e)-(f). To the extent the FID means that licensees should enter this information into the database, entering information into the database when making a loan is different than searching to see if a customer is already in the database prior to the loan being started. NRS 604A.303(2) specifies what must be entered into the database, and it does not require licensees to search for any information at all. To the extent the FID means that licensees should search for a customer’s income information in the database, (1) that is not a requirement of S.B. 201; (2) this is a new database and will not have prior income information; and (3) income changes on a regular basis, making the relevance of prior income figures of doubtful relevance.

As currently worded, Section 21 is extremely unclear and far exceeds the permissible scope of regulations to implement S.B. 201.

16. Section 22: TitleMax believes Section 22 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 22 in detail, as it pertains to deferred deposit and high-interest loans, not title loans.

17. Section 23: Section 23 provides, “*In addition to items (a) – (f) in Section 21, a licensee shall enter the following information in the database, in real time, prior to each loan made pursuant to NRS 604A.5065- NRS 604A.5089, 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; and*
  - (n) The fair market value of the vehicle from a third-party vendor. The total amount of the loan cannot exceed the fair market value of the vehicle.*
  - (o) The legal co-owner’s name and consent from co-owner, if applicable;”*

It is unclear to TitleMax why so many different sections of the proposed regulations address what licensees allegedly must enter into the database pursuant to these proposed regulations. The regulations would be much 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).

TitleMax understood that Section 21 governs the information a licensee must query or search for (though TitleMax maintains licensees are not statutorily required to query any information). Yet the introduction to Section 23 implies that Section 21 includes information that must be entered into the database. This is unclear. It is also unclear to TitleMax why Section 24 is a separate section incorporated by reference in Section 23(l) rather than being part of the same section.

More fundamentally, Section 23 surpasses the statutory scope of S.B. 201, which already specifies what information licensees must enter into the database. NRS 604A.303(2); (*see also supra* ¶ 1.) Section 23 duplicates certain requirements of S.B. 201, such as by requiring entry of the date of the loan, the principal, the total finance charge, any fees charged for the loan, and the annual percentage rate of the loan. (*Compare* Section 25(d), (f), (g), (h), (j), *with* NRS 604A.303(2)(a), (c)-(f).) 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.

TitleMax also objects to the proposed requirement that “[t]he total amount of the loan cannot exceed the fair market value of the vehicle.” (Section 23(n).) As described in paragraph 2 above, this has nothing to do with administering the database, exceeds the scope of S.B. 201, and improperly attempts to override a court ruling interpreting NRS 604A.5076(1) to mean that only principal cannot exceed fair market value.

18. Section 24: Section 24 provides, “*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) Amount of payment received from a customer when the loan is paid in full;*
- (g) 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.*

*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.”*

Section 24 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* ¶ 1.) S.B. 201 requires:

- (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, 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 24 goes far beyond S.B. 201 and requires details the Legislature rejected. For example, Section 24 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).

18. Section 25: Section 25 provides, “*Status of the loan must be entered 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.”**

It is again unclear to TitleMax why so many different sections purportedly govern what must be entered into the database. Parts of Section 25 are duplicative of Section 24 (such as requiring payment history) and NRS 604A.303(2) (such as specifying the date entered into a repayment plan). However, Section 25 is inconsistent with S.B. 201 in that it requires more information to be entered into the database than what NRS 604A.303(2) requires. (*See supra* ¶ 1.)

Moreover, it is unclear when the “status of the loan must be entered into the database.” Presumably, every loan is in a certain status every moment of every day. The regulation is unclear as to when a certain status must be entered or updated. 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 25, 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 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. Licensees are left to guess as to when they must enter the “status of the loan” into the database (daily? hourly?), and the regulation is inconsistent with its animating statute.

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

Sincerely,

/s/ Dale Kotchka-Alanes

Dale Kotchka-Alanes

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April 27, 2020

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Mary Young, Deputy Commissioner  
State of Nevada Department of Business and Industry  
Financial Institutions Division  
3300 West Sahara Avenue, Suite 250  
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**RE: NRS Chapter 604A Database—Senate Bill (“S.B.”) 201**

Deputy Commissioner Young:

This office represents Dollar Loan Center, LLC (“DLC”), a licensed NRS Chapter 604A lender. I am writing to you in connection with the Notice of Workshop (the “Workshop”) to Solicit Comments on Proposed Regulations Pertaining to Senate Bill 201—604A to Develop, Implement and Maintain a Database Storing Certain Information Relating to Deferred Deposit Loans, Title Loans, and High Interest Loans (the “Proposed Regulation”). Please accept the following written comments in preparation therefor.

**“We Are All In This Together”**

In the last two years, Nevada’s licensed short-term lenders have stepped up to the plate for Nevada, its residents, and for the State of Nevada Department of Business and Industry Financial Institutions Division (the “Division”). In the midst of a lengthy federal government shutdown in early 2019, DLC and other Licensees offered interest-free loans to state and federal government employees who were living without any income. On March 19, 2020, at the onset of a breaking pandemic, the Division called an industry-wide telephone conference on short notice to confirm that Licensees would (1) keep their doors open and continue to make loans available to qualified applicants; and (2) not take advantage of borrowers by increasing their interest rates during the crisis. Licensees committed to both propositions and have lived up to that commitment, at great financial cost to them, with significant increased risk.

During that recent industry call, the Division made a prescient observation—“We are all in this together.” That observation describes perfectly the delicate balance that comes with Chapter 604A lending. At one end of the spectrum, there is a significant portion of the population that not only desires access to capital, but cannot live without it. These people cannot get help from banks and other traditional lenders. These borrowers, while challenged financially, are not foolish. They know that while the interest rate on a Chapter 604A loan is high, the amount of interest they actually pay on a short term loan is often less than the high fees that come with late payments on rent and other debt. Most Chapter 604A loans are in fact repaid long before they become due, and consumers shrewdly take advantage of the no penalty/early repayment guarantees of Chapter 604A loans. As such, Chapter 604A lending constitutes an important and necessary source of capital for those who cannot otherwise access such money.

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At the other end of the spectrum, short-term consumer lending without reasonable rules hurts both consumers and the industry. Lenders and consumers count on a level playing field. And, this Division has raised concerns for more than a decade about the so-called “debt treadmill” in which some consumers take out a second or third Chapter 604A loan simply to pay off a prior Chapter 604A loan. These concerns ultimately led to the adoption of S.B. 201 in the 2019 Nevada Legislature.

Indeed, we **are** all in this together. As the Legislature has charged the Division with promulgating certain regulations for S.B. 201, it is important that the Division adopt rules in a manner that balances fulfilling its mandate within the text and intent of the law, while fashioning rules that are practical and workable for the industry. DLC hopes that the Division will take into account the following comments in this light.

### **Rulemaking In a Vacuum**

As a threshold matter, the Division has drafted a Proposed Regulation based upon a database that, at this time, exists only in theory, to be operated by a Service Provider that apparently has not been chosen. If a Service Provider has been chosen, the Division has not informed Licensees of this fact or allowed Licensees to confer with that Service Provider or review the technical specifications of that proposed database to understand how it will work. As a result, the rulemaking proposed thus far is based upon assumptions as to how the proposed database **might** work. DLC and other Licensees are simply unable to give truly meaningful comment without knowing the capabilities and limitations of that Service Provider’s proposed database.

Notably, it is unclear whether the Division envisions a database in which the Service Provider would be stepping into an approval role. The Proposed Regulation seems to suggest that the Service Provider would undertake such a role, despite the fact that NRS Chapter 604A squarely places the decision to approve or deny a loan with the Licensees. To the extent the Service Provider would undertake such a role, and assuming such a role would survive judicial scrutiny, the mechanics of how this would work are muddy at best.

Perhaps the most vivid example of the pitfalls of rulemaking without knowing the capabilities and limitations of the Service Provider’s database can be seen in a recent change to the Proposed Regulation, in which the Division has repeatedly inserted the concept of “real time” data entry into these rules. DLC suspects these changes were made to accommodate previous industry comments suggesting that manual data entry was cumbersome, expensive, time consuming, and ripe for reporting abuse. While DLC agrees that the concept of real time data entry is an improvement in theory to the Proposed Regulation, DLC does not know what “real time” means for these purposes without understanding the capabilities and limitations of the proposed database. Without understanding what those capabilities and limitations truly are, DLC cannot begin to assess whether and to what extent “real time” data entry is even possible. Given the potential regulatory penalties and civil litigation that might arise from noncompliance, this simply cannot be left to chance. The details cannot be worked out on the fly.

Another vivid example involves Section 17 of the Proposed Regulation, which seems to place approval authority in the hands of the Service Provider. This goes far beyond the text and intent of S.B. 201 and is almost certain to draw a legal challenge from a number of licensees. Beyond that, the Proposed Regulation does not articulate how the process will even work. Will the Service Provider advise as to the amount of the applicant’s borrowing capacity? Or will the Service Provider merely take a “red light/green light” approach in which Licensees must guess at the amount that they may lend while that Licensee submits and re-submit searches until it comes to a “green light” amount it can lend?

There are a jaw dropping number of data points required by the Division in the Proposed Regulation. These requirements not only exceed the Division’s authority and statutory mandate, this is a regulatory

mess waiting to happen. So there is no misunderstanding, these wildly excessive requirements do not reflect the “we’re all in this together” approach the Division has asked of its Licensees in recent months.

The Division’s response to the Small Business Survey is similarly flawed. In the response, the Division stated that there will be no adverse costs 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 DLC’s current lending software, DLC must incur significant setup and programming expenses to “interface” with the database. Many of these data points simply are not stored in DLC’s existing software, and DLC strongly suspects other Licensees are in a similar position. The Division seems to have completely brushed aside the significant implementation costs (estimated at \$30,000-\$40,000 for DLC alone), and has further ignored the maintenance costs of compliance going forward. Licensees will be responsible to monitor the data transmissions to insure 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 disagree with the Survey’s responses, relying on 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 Division seems to think that a database must be in place and operational on July 1, 2020. DLC does not read S.B. 201 this way. The Sections relating to the database directing the Division to develop, create, and maintain a database (and to promulgate certain regulations) merely take effect on July 1, 2020. Those provisions do not impose an artificial operational deadline upon the Division. DLC urges the Division get these regulations right the first time by following a more careful, thoughtful, and transparent process.

### **Rulemaking in the Middle of a Pandemic**

DLC and other Licensees are extremely alarmed at the prospect of rulemaking in the middle of a pandemic and the obvious risks that come with it. The Division’s Proposed Regulation is based upon small business economic impact comments that were made **prior** to the onset of the COVID-19 pandemic. The Proposed Regulation, as drafted, assumed that Licensees could weather the costs imposed by regulatory compliance in an ordinary economy. Since then, Chapter 604A lending has dropped significantly industry-wide.

This is not a question of a theoretical or slight economic downturn. Since the onset of the COVID-19 pandemic and the Governor’s Declaration of Emergency, Nevada has been hit as hard or harder than any other state from an economic perspective. Nevada is now in the midst of a severe recession, even worse than what we saw in 2008-11. I strongly suspect that, if queried now, nearly all Licensees would raise significant concerns about their own ability to comply with the Proposed Regulation and remain economically viable. They should be given another chance to respond in light of these changed circumstances.

It is not to say that regulations cannot under any circumstances be imposed during the kind of economic downturn we are facing. And of course the Division is specifically tasked by S.B. 201 with promulgating a regulation to implement the Database. But we can all agree that a rush to rulemaking in the midst of this crisis, where circumstances are literally changing by the day, is imprudent and unwise. DLC therefore asks the Division to stay the rulemaking process temporarily, until the economic landscape stabilizes somewhat. During that interim period, the Division could (1) issue a second Small Business Survey; and (2) undertake

the process for selecting a Service Provider, which would mitigate the concerns raised previously about rulemaking in a vacuum.

**The Proposed Regulation Exceeds the Statutory Mandate of S.B. 201 and Purports to Rewrite NRS 604A.303**

The design of S.B. 201 is relatively straightforward—create a database so that lenders can see an applicant’s recent and current Chapter 604A loan history when the Licensee is determining whether to approve a loan application. Yet, the Proposed Regulation (particularly Sections 23, 24, and 30) go far beyond what the Legislature authorized or intended. Specifically, it appears that the Division has misread S.B. 201—now codified at NRS 604A.303—as providing a blanket authorization to seek whatever information it pleases from Licensees, and for whatever purpose.

NRS 604A.303(1) authorizes the Commissioner to develop, create, and maintain a database through a private vendor. Section 1 also identifies four categories of information that Licensees and the Commissioner may **obtain** from the database:

- Whether a customer has a deferred deposit loan, title loan or high-interest loan outstanding with more than one licensee;
- 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;
- 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
- “Any other information necessary to determine whether a licensee has complied with the provisions of this chapter.”

Notably, the first three items here show up copied word for word in Section 18 of the Proposed Regulation.

In other words, Section 1 merely sets forth the purposes for which the database may be used by defining the information that may be **obtained** from the database. Section 1 allows the Division to create the database and use it for investigative purposes. Section 1 authorizes Licensees to use the database when assessing whether to approve a loan application. Section 1 says nothing about the information that must be **entered** into the database by Licensees.

Instead, NRS 604A.303(2)(a-i) mandates the information that must be **entered** into the database by Licensees. These data points are limited by statute, and there is no “catch-all” provision in Section 2. If additional points were required of Licensees, they would have been identified in Section 2. See *Horizons at Seven Hills v. Ikon Holdings*, 132 Nev. 362, 369, 373 P.3d 66, 71 (2016) (“The maxim *expressio unius est exclusio alterius* ... instructs that, where a statute designates a form of conduct, the manner of its performance and operation, and the persons and things to which it refers, courts should infer that all omissions were intentional exclusions.”); *Galloway v. Truesdell*, 83 Nev. 13, 422 P.2d 237 (Nev. 1967) (same). Nevada law requires that the Division give meaning to all provisions of the statute. *Harris Assoc. v. Clark County Sch. Dist.*, 119 Nev. 638, 642, 81 P.3d 532, 535 (2003) (“[W]e ‘construe statutes to give meaning to all of their parts and language, and this court will read each sentence, phrase, and word to render it meaningful within the context of the purpose of the legislation.’”). By embracing NRS 604A.303(1)(d) as a justification for requiring dozens of data points in addition to the discrete list of data points in NRS 604A.303(2), the Division renders Section 2 meaningless.

The Legislature's grant of regulatory authority here is limited to prescribing "specifications" for the information to be entered into the database under Section 2. NRS 604A.303(5)(a). This rule does not allow the Division to add to the substantive information listed under Section 604A.303(2). The Division, as a creation of the Legislature, may not rewrite an existing statute. *State v. State Farm Mut. Auto. Ins. Co.*, 116 Nev. 290, 995 P.2d 482 (2016) ("[A] court will not hesitate to declare a regulation invalid when the regulation violates the constitution, conflicts with existing statutory provisions or exceeds the statutory authority of the agency or is otherwise arbitrary and capricious."). Accordingly, under Nevada law and well-settled maxims of statutory construction, the Division may not rewrite or add to the statutorily mandated information required under **and limited by** Section 2.

The legislative history of S.B. 201 demonstrates that the purpose of the database is only to "ensure real-time enforcement of the laws." Testimony of Senator Cancela, Assembly Committee on Commerce and Labor (May 10, 2019), at p. 16. When queried by Assemblyman Yeager, Senator Cancela agreed at that same hearing that the intent of the database was solely so a licensee could "determine whether the loan would exceed 25 percent of the consumer's gross monthly income."<sup>1</sup> *Id.* at p. 18. This is consistent with Senator Cancela's testimony on March 30, 2019, in which she represented that the purpose of the database was to require Licensees to report each Chapter 604A loan by entering information "about the borrower and the transaction into the EES database." Testimony of Senator Cancela, Senate Committee of Commerce and Labor (March 20, 2019), at p. 6.

Indeed, Legal Aid noted that it could not identify violations because "lenders do not see the other loans that are out there before they give a borrower a new loan." Testimony of Ms. Perreira, Senate Committee of Commerce and Labor (March 20, 2019), at p. 7. The database was described as a "loan eligibility check system" in which the lender "enters information into the EES database and learns instantly whether the loan complies or does not." *Id.* at pp. 7, 9.

In other words, both the letter and intent of S.B. 201 preclude the Division from requiring the large swaths of data currently required in the Proposed Regulation. The information required not only rewrites S.B. 201 in violation of Nevada law, it is inconsistent with what was proposed by the sponsor of the bill.

Accordingly, Sections 23, 24, and 30 of the Proposed Regulation must be deleted in their entirety because they require Licensees to enter substantive loan information that is not required under NRS 604A.303(2). Portions of Section 14 and 17 also require revision to the extent they require Licensees to input information not required by NRS 604A.303(2). And, to the extent any other section requires information in addition to what is required in NRS 604A.303(2), it must be deleted from the Proposed Regulation.

### **Sections 23 and 24**

DLC additionally objects to Sections 23 and 24 of the Proposed Regulation because of the costs of compliance involved and the likelihood that it will make the loan application process unduly time consuming and burdensome. DLC estimates that its software programming costs will cost \$30,000-\$40,000 alone based upon the Proposed Regulation as currently drafted. DLC further estimates that half of that programming costs involves data points that go beyond the scope of NRS 604A.303(2).

DLC also believes that most smaller lenders do not have the size or scale to rewrite their programming to comply, and will simply be put out of business by this Proposed Regulation.

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<sup>1</sup> Senator Cancela was referring to the requirements in Chapter 604A which preclude a Licensee from making a loan in which the **monthly payment** of the loan does not exceed 25% of the expected monthly income of the borrower.

To the extent data entry is not truly a “real time” proposition, the loan application process will be greatly slowed. As the Division is aware, most Chapter 604A loans are in small dollar amounts, necessitating a relatively short application process. The purpose of the database is not to discourage loans by making the process difficult for the sake of difficult. The purpose is so that Licensees can see a borrower’s history when a borrower is applying for a loan and utilize that database information as part of their underwriting process.

Many of the terms in Sections 23 and 24 are also vague and/or gratuitous. For example, Section 23(e) purports to require a licensee to identify how a payment is allocated when made. Section 23(h)(6) and (7) require Licensees to input information regarding whether a grace period has been offered and accepted. Information concerning the allocation of payments and whether a grace period has been offered or accepted does not change the key inquiry (and the purpose of the database), which is to identify whether there is an outstanding loan.

### **Lack of Definition of “Service Provider” or “Real Time”**

There has been much confusion in the Proposed Regulation as to the term “Service Provider.” It appears the term references the third-party vendor with which the Commissioner will contract to operate the database. For the sake of clarity, a definition should be provided.

In addition, the most current draft of the proposed Regulation includes the term “real time.” Yet, there is no definition for what is now a key term in the Proposed Regulation.

### **Reporting of Declined Loans**

Section 14 requires the sending of declined loan information to the database, along with “any transaction pertaining to the loan.” This is particularly confusing because it appears that the Service provider will be making loan underwriting decisions, and DLC does not understand why it should be required to send to the Service Provider information it not only has in its possession, but that which the Service Provider generated.

Setting aside that Section 14 requires multiple data points beyond what is required under NRS 604A.303(2), the “any transaction pertaining to the loan” language is impossibly vague. Moreover, there is no apparent reason for this requirement, which does not fulfill the requirements or purpose of S.B. 201. There is also no cost justification for requiring Licensees to undertake the burden of reporting declined loans, especially given the undue burden required to comply. The stated purpose of S.B. 201 was to prevent borrowers from stepping on the “debt treadmill.” There is no “debt treadmill” issue implicated to the extent a loan is denied. Finally, this requirement imposes significant administrative costs that cannot be recovered without imposing application fees on borrowers.

### **Sections 5, 17, and 21 Exceed the Statutory Mandate with an Unworkable, Unlawful, and Unconstitutional Loan Approval Scheme**

Sections 5, 17, and 21 similarly exceed the Legislature’s mandate by using appointing the Service Provider as a “Super Loan Underwriter” which decides who qualifies for a loan. Specifically, Section 5 defines “net disposable income” for an applicant, while Section 17 requires Licensees to enter all sorts of data (not required by statute) concerning a borrower’s gross income, obligations, and net disposable income.<sup>2</sup>

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<sup>2</sup> It is unclear why the Division believes that such information, which will become stale immediately after entry into the database, is necessary or even of value to other Licensees who are determining a borrower’s

Section 21 then apparently allows the Service Provider to step into the role of loan underwriter by approving or denying loan requests. Nowhere in S.B. 201 did the Legislature authorize the Division or its agent the ability to step in and make loan application decisions for Licensees.

This kind of information and loan approval authority was never considered to be within the scope of S.B. 201 when it was enacted. Moreover, these sections seek to impose by regulation that which the Legislature has not authorized. Chapter 604A lenders are already required to assess a borrower's ability to repay according to certain specific criteria, and those statutes determine that criteria. See NRS 604A.5011, 604A.5038, and 604A.5065. In addition, lenders may not make a loan in which the monthly repayment amount exceeds 25% of that borrower's gross monthly income (or in the case of a title loan, the fair market value of the vehicle securing the loan). See NRS 604A.5017, 604A.5045, and 604A.5076. The defined "net disposable income" does not allow the Division to step into the role of loan underwriter, cannot override or usurp those statutes.

Moreover, Sections 17 and 21 are unworkable. Each Licensee has different loan products with different interest rates, different loan terms, that change regularly, The Service Provider cannot possibly track every loan product and make accurate decisions in "real time." Then, if the Service Provider declines a loan, the Licensee is somehow responsible for explaining why.<sup>3</sup> Here are other areas where the Proposed Regulation will invite an administrative mess for Licensees and the Division.

Finally, Section 17 violates NRS Chapter 233B and is unconstitutional. If the Service Provider makes a decision with which the Licensee disagrees during the loan application process, **there is no recourse for the Licensee or meaningful opportunity to challenge the decision of the Service Provider.** The Division must agree that, if it approached a Licensee with any decision or action, that Licensee would be afforded due process and have the opportunity to have that decision reviewed. Yet, this Proposed Regulation would have the Division's appointed agent (unquestionably a "state actor" within the meaning of 42 U.S.C. § 1983) approve or decline loan applications without providing any review whatsoever, much less a meaningful and prompt opportunity to be heard, to the Licensee. This scheme therefore obviates basic constitutional and statutory protections afforded to Licensees.

These proposed rules represent a new and dangerous attack on personal liberties. This is not mere "nanny state" criticism. DLC understands that reasonable rules are appropriate, and to a limited extent required by NRS 604A.303. Indeed, a key component of the Division's overall regulatory authority is to punish Licensees who violate the rules, while at the same time giving Licensees recourse to challenge such punishment. This scheme purports to turn regulatory compliance upside down. This Proposed Regulation seeks to prevent loans from happening in the first place, giving no opportunity to Licensees to challenge that decision.

If a Service Provider can deny a loan without recourse before it is made, the Government's power to attack personal liberty becomes limitless. It may choose to establish a "nutrition" database that tracks our dietary consumption, and can prevent someone from ordering a Big Mac if too many trips have been made to McDonald's in the last six months, or a "risk database" that would prevent a driver from buying a Corvette if

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present ability to repay at the time of application. One also wonders whether the Division has the authority to command and retain so much intensely private information of borrowers.

<sup>3</sup> Licensees often are required to respond to consumer complaints made to the Consumer Financial Protection Bureau (the "CFPB") when a Licensee *declines* a loan and the customer is unhappy with the result. If the Service Provider is stepping into the role of loan underwriter, will the Service Provider undertake responsibility for that consumer complaint? Also, will the Service Provider defend and indemnify Licensees in civil lawsuits and arbitrations for alleged violations of NRS Chapter 604A?

Mary Young, Deputy Commissioner  
April 27, 2020  
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he has too many speeding tickets. This is not what S.B. 201 was designed to do, what it allows, or what it may be used to accomplish.

Again, as stated previously, the information demanded here exceeds the information required under NRS 604A.303(2) and exceeds the Division's statutory mandate. The appointment of the Service Provider as a loan underwriter without recourse violates NRS Chapter 233B and the Nevada and U.S. constitutional guarantees of due process. These Sections must be deleted.

\* \* \*

Given the foregoing comments, DLC respectfully requests that the changes suggested by DLC in this letter be made to the Proposed Regulation. In addition, DLC urges the Division to issue another small business survey and schedule another workshop, notably after a Service Provider has been selected. Finally, DLC requests that the Division conduct a public hearing prior to the adoption of this Proposed Regulation, or any similar regulation, in accordance with NRS 233B.061.

DLC and I thank you for your time and attention to this matter.

Sincerely,

/s/  
Patrick J. Reilly

20646055

July 6, 2020

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**Via Electronic Mail ([FIDmaster@fid.state.nv.us](mailto:FIDmaster@fid.state.nv.us)) and U.S. Mail**

Mary Young, Deputy Commissioner  
State of Nevada Department of Business and Industry  
Financial Institutions Division  
3300 West Sahara Avenue, Suite 250  
Las Vegas, Nevada 89102

**RE: NRS Chapter 604A Database—Senate Bill (“S.B.”) 201**

Deputy Commissioner Young:

This office represents Dollar Loan Center, LLC (“DLC”), a licensed NRS Chapter 604A lender. I am writing to you in connection with the Notice of Workshop (the “Workshop”) to Solicit Comments on Proposed Regulations Pertaining to Senate Bill 201 (S.B. 201) Regulations of Provisions Governing Loans—NRS 604A Database and Workshop Agenda (the “Proposed Regulation”), currently scheduled for July 8, 2020. Please accept the following written comments in preparation therefor.

As a threshold matter, the amended Proposed Regulation, announced on June 22, 2020, does little to address the significant concerns of DLC and other licensees that were raised prior to the last workshop. As you recall, that incomplete workshop was interrupted due to technical failure of the virtual access platform used by the Division. For the record, DLC incorporates by reference and restates its previous comments herein. A copy of these comments is attached hereto as **Exhibit “A”**. DLC again urges the Division to incorporate these comments.

The two principal and fatal flaws of the previously drafted version of the Proposed Regulation was that it (1) wildly exceeded the statutory mandate given by the Nevada Legislature in S.B. 201; and (2) empowered the Division, through its Service Provider, to make underwriting decisions on behalf of licensed lenders, with no right of review of such government action. Those defects have not been corrected. DLC adds that the Proposed Regulation is even more confusing and vague than the prior version, and appears to constitute an attempt by the Division to effectively end Chapter 604A lending (which is expressly lawful per Nevada statutes) by regulating it to death.

S.B. 201 provides for the creation of a Chapter 604A borrower database and authorizes the Division to require certain *limited* data points for that database. The main purpose was so that lenders would better understand the recent Chapter 604A borrowing history of customers when they are applying for loans, and thus make better lending decisions as a result. The second purpose was to give the Division a tool to better investigate licensee compliance.

Indeed, the Database is called a “database” because its function is to store and provide information only. That is what a database does. The Database is not called a “Loan Calculator,” “Loan Approver,” or “Loan Underwriter” because, obviously, it was never to perform those functions. It is a database only. That

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database is what was presented to the Nevada Legislature. That is what the Nevada Legislature approved. That is what was in the bill that Governor Sisolak signed.

Implementation of the database should have been simple and straightforward. Instead, the Proposed Regulation is still deeply flawed, unlawful, and hopelessly vague. For example, Section 18(a-c) of the Proposed Regulation suggests that the database will simply provide information regarding the borrower's Chapter 604A loan history and then allow the licensee to determine whether to loan money to a customer based upon that information. Section 19, however, takes the exact opposite approach. In Section 19, the database decides whether the borrower is "eligible" for the loan. The concept of "eligibility" is never defined and no criteria for eligibility is ever explained in S.B. 201 or the Proposed Regulation. As mentioned in my previous comment, there is no ability whatsoever for the borrower or the licensee to obtain any review of this state action, much less for it to obtain a timely or meaningful review. And, by stepping into the role of loan underwriter in a private transaction, the Division and the Service Provider open themselves up to being joined as necessary parties in any litigation involving the State's determination of "eligibility" for a loan.

DLC urges the Division to consider there are many good reasons, constitutional, statutory, and practical, why the federal government regulates banks heavily but does not make lending decisions for them. The Proposed Regulation, as written, does not merely contemplate review and regulation of licensees—it is drafted for the Division to step into the Orwellian role of licensee by performing the licensee's primary operational activity, namely, risk assessment. This scheme is also guaranteed to become an operational quagmire for the Division, licensees, and borrowers that promises to grind this industry to a halt. That, indeed, appears to be the Division's intent.

Accordingly, DLC urges the Division to stay out of the business of lending and "get back to basics" on the Proposed Regulation by returning to the text of S.B. 201. Again, DLC urges the Division to issue another small business survey and schedule another workshop, notably after a Service Provider has been selected, so that licensees can engage with the Service Provider and truly understand how these regulations are going to work in the real world before the regulations are promulgated. Finally, DLC requests that the Division conduct a public hearing prior to the adoption of this Proposed Regulation, or any similar regulation, in accordance with NRS 233B.061.

DLC and I thank you for your time and attention to this matter.

Sincerely,

/s/  
Patrick J. Reilly

Enclosure

21228728

# **Exhibit A**

April 27, 2020

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**Via Electronic Mail ([FIDmaster@fid.state.nv.us](mailto:FIDmaster@fid.state.nv.us)) and U.S. Mail**

Mary Young, Deputy Commissioner  
State of Nevada Department of Business and Industry  
Financial Institutions Division  
3300 West Sahara Avenue, Suite 250  
Las Vegas, Nevada 89102

**RE: NRS Chapter 604A Database—Senate Bill (“S.B.”) 201**

Deputy Commissioner Young:

This office represents Dollar Loan Center, LLC (“DLC”), a licensed NRS Chapter 604A lender. I am writing to you in connection with the Notice of Workshop (the “Workshop”) to Solicit Comments on Proposed Regulations Pertaining to Senate Bill 201—604A to Develop, Implement and Maintain a Database Storing Certain Information Relating to Deferred Deposit Loans, Title Loans, and High Interest Loans (the “Proposed Regulation”). Please accept the following written comments in preparation therefor.

**“We Are All In This Together”**

In the last two years, Nevada’s licensed short-term lenders have stepped up to the plate for Nevada, its residents, and for the State of Nevada Department of Business and Industry Financial Institutions Division (the “Division”). In the midst of a lengthy federal government shutdown in early 2019, DLC and other Licensees offered interest-free loans to state and federal government employees who were living without any income. On March 19, 2020, at the onset of a breaking pandemic, the Division called an industry-wide telephone conference on short notice to confirm that Licensees would (1) keep their doors open and continue to make loans available to qualified applicants; and (2) not take advantage of borrowers by increasing their interest rates during the crisis. Licensees committed to both propositions and have lived up to that commitment, at great financial cost to them, with significant increased risk.

During that recent industry call, the Division made a prescient observation—“We are all in this together.” That observation describes perfectly the delicate balance that comes with Chapter 604A lending. At one end of the spectrum, there is a significant portion of the population that not only desires access to capital, but cannot live without it. These people cannot get help from banks and other traditional lenders. These borrowers, while challenged financially, are not foolish. They know that while the interest rate on a Chapter 604A loan is high, the amount of interest they actually pay on a short term loan is often less than the high fees that come with late payments on rent and other debt. Most Chapter 604A loans are in fact repaid long before they become due, and consumers shrewdly take advantage of the no penalty/early repayment guarantees of Chapter 604A loans. As such, Chapter 604A lending constitutes an important and necessary source of capital for those who cannot otherwise access such money.

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At the other end of the spectrum, short-term consumer lending without reasonable rules hurts both consumers and the industry. Lenders and consumers count on a level playing field. And, this Division has raised concerns for more than a decade about the so-called “debt treadmill” in which some consumers take out a second or third Chapter 604A loan simply to pay off a prior Chapter 604A loan. These concerns ultimately led to the adoption of S.B. 201 in the 2019 Nevada Legislature.

Indeed, we **are** all in this together. As the Legislature has charged the Division with promulgating certain regulations for S.B. 201, it is important that the Division adopt rules in a manner that balances fulfilling its mandate within the text and intent of the law, while fashioning rules that are practical and workable for the industry. DLC hopes that the Division will take into account the following comments in this light.

### **Rulemaking In a Vacuum**

As a threshold matter, the Division has drafted a Proposed Regulation based upon a database that, at this time, exists only in theory, to be operated by a Service Provider that apparently has not been chosen. If a Service Provider has been chosen, the Division has not informed Licensees of this fact or allowed Licensees to confer with that Service Provider or review the technical specifications of that proposed database to understand how it will work. As a result, the rulemaking proposed thus far is based upon assumptions as to how the proposed database **might** work. DLC and other Licensees are simply unable to give truly meaningful comment without knowing the capabilities and limitations of that Service Provider’s proposed database.

Notably, it is unclear whether the Division envisions a database in which the Service Provider would be stepping into an approval role. The Proposed Regulation seems to suggest that the Service Provider would undertake such a role, despite the fact that NRS Chapter 604A squarely places the decision to approve or deny a loan with the Licensees. To the extent the Service Provider would undertake such a role, and assuming such a role would survive judicial scrutiny, the mechanics of how this would work are muddy at best.

Perhaps the most vivid example of the pitfalls of rulemaking without knowing the capabilities and limitations of the Service Provider’s database can be seen in a recent change to the Proposed Regulation, in which the Division has repeatedly inserted the concept of “real time” data entry into these rules. DLC suspects these changes were made to accommodate previous industry comments suggesting that manual data entry was cumbersome, expensive, time consuming, and ripe for reporting abuse. While DLC agrees that the concept of real time data entry is an improvement in theory to the Proposed Regulation, DLC does not know what “real time” means for these purposes without understanding the capabilities and limitations of the proposed database. Without understanding what those capabilities and limitations truly are, DLC cannot begin to assess whether and to what extent “real time” data entry is even possible. Given the potential regulatory penalties and civil litigation that might arise from noncompliance, this simply cannot be left to chance. The details cannot be worked out on the fly.

Another vivid example involves Section 17 of the Proposed Regulation, which seems to place approval authority in the hands of the Service Provider. This goes far beyond the text and intent of S.B. 201 and is almost certain to draw a legal challenge from a number of licensees. Beyond that, the Proposed Regulation does not articulate how the process will even work. Will the Service Provider advise as to the amount of the applicant’s borrowing capacity? Or will the Service Provider merely take a “red light/green light” approach in which Licensees must guess at the amount that they may lend while that Licensee submits and re-submit searches until it comes to a “green light” amount it can lend?

There are a jaw dropping number of data points required by the Division in the Proposed Regulation. These requirements not only exceed the Division’s authority and statutory mandate, this is a regulatory

mess waiting to happen. So there is no misunderstanding, these wildly excessive requirements do not reflect the “we’re all in this together” approach the Division has asked of its Licensees in recent months.

The Division’s response to the Small Business Survey is similarly flawed. In the response, the Division stated that there will be no adverse costs 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 DLC’s current lending software, DLC must incur significant setup and programming expenses to “interface” with the database. Many of these data points simply are not stored in DLC’s existing software, and DLC strongly suspects other Licensees are in a similar position. The Division seems to have completely brushed aside the significant implementation costs (estimated at \$30,000-\$40,000 for DLC alone), and has further ignored the maintenance costs of compliance going forward. Licensees will be responsible to monitor the data transmissions to insure 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 disagree with the Survey’s responses, relying on 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 Division seems to think that a database must be in place and operational on July 1, 2020. DLC does not read S.B. 201 this way. The Sections relating to the database directing the Division to develop, create, and maintain a database (and to promulgate certain regulations) merely take effect on July 1, 2020. Those provisions do not impose an artificial operational deadline upon the Division. DLC urges the Division get these regulations right the first time by following a more careful, thoughtful, and transparent process.

### **Rulemaking in the Middle of a Pandemic**

DLC and other Licensees are extremely alarmed at the prospect of rulemaking in the middle of a pandemic and the obvious risks that come with it. The Division’s Proposed Regulation is based upon small business economic impact comments that were made **prior** to the onset of the COVID-19 pandemic. The Proposed Regulation, as drafted, assumed that Licensees could weather the costs imposed by regulatory compliance in an ordinary economy. Since then, Chapter 604A lending has dropped significantly industry-wide.

This is not a question of a theoretical or slight economic downturn. Since the onset of the COVID-19 pandemic and the Governor’s Declaration of Emergency, Nevada has been hit as hard or harder than any other state from an economic perspective. Nevada is now in the midst of a severe recession, even worse than what we saw in 2008-11. I strongly suspect that, if queried now, nearly all Licensees would raise significant concerns about their own ability to comply with the Proposed Regulation and remain economically viable. They should be given another chance to respond in light of these changed circumstances.

It is not to say that regulations cannot under any circumstances be imposed during the kind of economic downturn we are facing. And of course the Division is specifically tasked by S.B. 201 with promulgating a regulation to implement the Database. But we can all agree that a rush to rulemaking in the midst of this crisis, where circumstances are literally changing by the day, is imprudent and unwise. DLC therefore asks the Division to stay the rulemaking process temporarily, until the economic landscape stabilizes somewhat. During that interim period, the Division could (1) issue a second Small Business Survey; and (2) undertake

the process for selecting a Service Provider, which would mitigate the concerns raised previously about rulemaking in a vacuum.

**The Proposed Regulation Exceeds the Statutory Mandate of S.B. 201 and Purports to Rewrite NRS 604A.303**

The design of S.B. 201 is relatively straightforward—create a database so that lenders can see an applicant’s recent and current Chapter 604A loan history when the Licensee is determining whether to approve a loan application. Yet, the Proposed Regulation (particularly Sections 23, 24, and 30) go far beyond what the Legislature authorized or intended. Specifically, it appears that the Division has misread S.B. 201—now codified at NRS 604A.303—as providing a blanket authorization to seek whatever information it pleases from Licensees, and for whatever purpose.

NRS 604A.303(1) authorizes the Commissioner to develop, create, and maintain a database through a private vendor. Section 1 also identifies four categories of information that Licensees and the Commissioner may **obtain** from the database:

- Whether a customer has a deferred deposit loan, title loan or high-interest loan outstanding with more than one licensee;
- 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;
- 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
- “Any other information necessary to determine whether a licensee has complied with the provisions of this chapter.”

Notably, the first three items here show up copied word for word in Section 18 of the Proposed Regulation.

In other words, Section 1 merely sets forth the purposes for which the database may be used by defining the information that may be **obtained** from the database. Section 1 allows the Division to create the database and use it for investigative purposes. Section 1 authorizes Licensees to use the database when assessing whether to approve a loan application. Section 1 says nothing about the information that must be **entered** into the database by Licensees.

Instead, NRS 604A.303(2)(a-i) mandates the information that must be **entered** into the database by Licensees. These data points are limited by statute, and there is no “catch-all” provision in Section 2. If additional points were required of Licensees, they would have been identified in Section 2. See *Horizons at Seven Hills v. Ikon Holdings*, 132 Nev. 362, 369, 373 P.3d 66, 71 (2016) (“The maxim *expressio unius est exclusio alterius* ... instructs that, where a statute designates a form of conduct, the manner of its performance and operation, and the persons and things to which it refers, courts should infer that all omissions were intentional exclusions.”); *Galloway v. Truesdell*, 83 Nev. 13, 422 P.2d 237 (Nev. 1967) (same). Nevada law requires that the Division give meaning to all provisions of the statute. *Harris Assoc. v. Clark County Sch. Dist.*, 119 Nev. 638, 642, 81 P.3d 532, 535 (2003) (“[W]e ‘construe statutes to give meaning to all of their parts and language, and this court will read each sentence, phrase, and word to render it meaningful within the context of the purpose of the legislation.’”). By embracing NRS 604A.303(1)(d) as a justification for requiring dozens of data points in addition to the discrete list of data points in NRS 604A.303(2), the Division renders Section 2 meaningless.

The Legislature's grant of regulatory authority here is limited to prescribing "specifications" for the information to be entered into the database under Section 2. NRS 604A.303(5)(a). This rule does not allow the Division to add to the substantive information listed under Section 604A.303(2). The Division, as a creation of the Legislature, may not rewrite an existing statute. *State v. State Farm Mut. Auto. Ins. Co.*, 116 Nev. 290, 995 P.2d 482 (2016) ("[A] court will not hesitate to declare a regulation invalid when the regulation violates the constitution, conflicts with existing statutory provisions or exceeds the statutory authority of the agency or is otherwise arbitrary and capricious."). Accordingly, under Nevada law and well-settled maxims of statutory construction, the Division may not rewrite or add to the statutorily mandated information required under **and limited by** Section 2.

The legislative history of S.B. 201 demonstrates that the purpose of the database is only to "ensure real-time enforcement of the laws." Testimony of Senator Cancela, Assembly Committee on Commerce and Labor (May 10, 2019), at p. 16. When queried by Assemblyman Yeager, Senator Cancela agreed at that same hearing that the intent of the database was solely so a licensee could "determine whether the loan would exceed 25 percent of the consumer's gross monthly income."<sup>1</sup> *Id.* at p. 18. This is consistent with Senator Cancela's testimony on March 30, 2019, in which she represented that the purpose of the database was to require Licensees to report each Chapter 604A loan by entering information "about the borrower and the transaction into the EES database." Testimony of Senator Cancela, Senate Committee of Commerce and Labor (March 20, 2019), at p. 6.

Indeed, Legal Aid noted that it could not identify violations because "lenders do not see the other loans that are out there before they give a borrower a new loan." Testimony of Ms. Perreira, Senate Committee of Commerce and Labor (March 20, 2019), at p. 7. The database was described as a "loan eligibility check system" in which the lender "enters information into the EES database and learns instantly whether the loan complies or does not." *Id.* at pp. 7, 9.

In other words, both the letter and intent of S.B. 201 preclude the Division from requiring the large swaths of data currently required in the Proposed Regulation. The information required not only rewrites S.B. 201 in violation of Nevada law, it is inconsistent with what was proposed by the sponsor of the bill.

Accordingly, Sections 23, 24, and 30 of the Proposed Regulation must be deleted in their entirety because they require Licensees to enter substantive loan information that is not required under NRS 604A.303(2). Portions of Section 14 and 17 also require revision to the extent they require Licensees to input information not required by NRS 604A.303(2). And, to the extent any other section requires information in addition to what is required in NRS 604A.303(2), it must be deleted from the Proposed Regulation.

### **Sections 23 and 24**

DLC additionally objects to Sections 23 and 24 of the Proposed Regulation because of the costs of compliance involved and the likelihood that it will make the loan application process unduly time consuming and burdensome. DLC estimates that its software programming costs will cost \$30,000-\$40,000 alone based upon the Proposed Regulation as currently drafted. DLC further estimates that half of that programming costs involves data points that go beyond the scope of NRS 604A.303(2).

DLC also believes that most smaller lenders do not have the size or scale to rewrite their programming to comply, and will simply be put out of business by this Proposed Regulation.

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<sup>1</sup> Senator Cancela was referring to the requirements in Chapter 604A which preclude a Licensee from making a loan in which the **monthly payment** of the loan does not exceed 25% of the expected monthly income of the borrower.

To the extent data entry is not truly a “real time” proposition, the loan application process will be greatly slowed. As the Division is aware, most Chapter 604A loans are in small dollar amounts, necessitating a relatively short application process. The purpose of the database is not to discourage loans by making the process difficult for the sake of difficult. The purpose is so that Licensees can see a borrower’s history when a borrower is applying for a loan and utilize that database information as part of their underwriting process.

Many of the terms in Sections 23 and 24 are also vague and/or gratuitous. For example, Section 23(e) purports to require a licensee to identify how a payment is allocated when made. Section 23(h)(6) and (7) require Licensees to input information regarding whether a grace period has been offered and accepted. Information concerning the allocation of payments and whether a grace period has been offered or accepted does not change the key inquiry (and the purpose of the database), which is to identify whether there is an outstanding loan.

### **Lack of Definition of “Service Provider” or “Real Time”**

There has been much confusion in the Proposed Regulation as to the term “Service Provider.” It appears the term references the third-party vendor with which the Commissioner will contract to operate the database. For the sake of clarity, a definition should be provided.

In addition, the most current draft of the proposed Regulation includes the term “real time.” Yet, there is no definition for what is now a key term in the Proposed Regulation.

### **Reporting of Declined Loans**

Section 14 requires the sending of declined loan information to the database, along with “any transaction pertaining to the loan.” This is particularly confusing because it appears that the Service provider will be making loan underwriting decisions, and DLC does not understand why it should be required to send to the Service Provider information it not only has in its possession, but that which the Service Provider generated.

Setting aside that Section 14 requires multiple data points beyond what is required under NRS 604A.303(2), the “any transaction pertaining to the loan” language is impossibly vague. Moreover, there is no apparent reason for this requirement, which does not fulfill the requirements or purpose of S.B. 201. There is also no cost justification for requiring Licensees to undertake the burden of reporting declined loans, especially given the undue burden required to comply. The stated purpose of S.B. 201 was to prevent borrowers from stepping on the “debt treadmill.” There is no “debt treadmill” issue implicated to the extent a loan is denied. Finally, this requirement imposes significant administrative costs that cannot be recovered without imposing application fees on borrowers.

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Sections 5, 17, and 21 similarly exceed the Legislature’s mandate by using appointing the Service Provider as a “Super Loan Underwriter” which decides who qualifies for a loan. Specifically, Section 5 defines “net disposable income” for an applicant, while Section 17 requires Licensees to enter all sorts of data (not required by statute) concerning a borrower’s gross income, obligations, and net disposable income.<sup>2</sup>

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<sup>2</sup> It is unclear why the Division believes that such information, which will become stale immediately after entry into the database, is necessary or even of value to other Licensees who are determining a borrower’s

Section 21 then apparently allows the Service Provider to step into the role of loan underwriter by approving or denying loan requests. Nowhere in S.B. 201 did the Legislature authorize the Division or its agent the ability to step in and make loan application decisions for Licensees.

This kind of information and loan approval authority was never considered to be within the scope of S.B. 201 when it was enacted. Moreover, these sections seek to impose by regulation that which the Legislature has not authorized. Chapter 604A lenders are already required to assess a borrower's ability to repay according to certain specific criteria, and those statutes determine that criteria. See NRS 604A.5011, 604A.5038, and 604A.5065. In addition, lenders may not make a loan in which the monthly repayment amount exceeds 25% of that borrower's gross monthly income (or in the case of a title loan, the fair market value of the vehicle securing the loan). See NRS 604A.5017, 604A.5045, and 604A.5076. The defined "net disposable income" does not allow the Division to step into the role of loan underwriter, cannot override or usurp those statutes.

Moreover, Sections 17 and 21 are unworkable. Each Licensee has different loan products with different interest rates, different loan terms, that change regularly, The Service Provider cannot possibly track every loan product and make accurate decisions in "real time." Then, if the Service Provider declines a loan, the Licensee is somehow responsible for explaining why.<sup>3</sup> Here are other areas where the Proposed Regulation will invite an administrative mess for Licensees and the Division.

Finally, Section 17 violates NRS Chapter 233B and is unconstitutional. If the Service Provider makes a decision with which the Licensee disagrees during the loan application process, **there is no recourse for the Licensee or meaningful opportunity to challenge the decision of the Service Provider.** The Division must agree that, if it approached a Licensee with any decision or action, that Licensee would be afforded due process and have the opportunity to have that decision reviewed. Yet, this Proposed Regulation would have the Division's appointed agent (unquestionably a "state actor" within the meaning of 42 U.S.C. § 1983) approve or decline loan applications without providing any review whatsoever, much less a meaningful and prompt opportunity to be heard, to the Licensee. This scheme therefore obviates basic constitutional and statutory protections afforded to Licensees.

These proposed rules represent a new and dangerous attack on personal liberties. This is not mere "nanny state" criticism. DLC understands that reasonable rules are appropriate, and to a limited extent required by NRS 604A.303. Indeed, a key component of the Division's overall regulatory authority is to punish Licensees who violate the rules, while at the same time giving Licensees recourse to challenge such punishment. This scheme purports to turn regulatory compliance upside down. This Proposed Regulation seeks to prevent loans from happening in the first place, giving no opportunity to Licensees to challenge that decision.

If a Service Provider can deny a loan without recourse before it is made, the Government's power to attack personal liberty becomes limitless. It may choose to establish a "nutrition" database that tracks our dietary consumption, and can prevent someone from ordering a Big Mac if too many trips have been made to McDonald's in the last six months, or a "risk database" that would prevent a driver from buying a Corvette if

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present ability to repay at the time of application. One also wonders whether the Division has the authority to command and retain so much intensely private information of borrowers.

<sup>3</sup> Licensees often are required to respond to consumer complaints made to the Consumer Financial Protection Bureau (the "CFPB") when a Licensee *declines* a loan and the customer is unhappy with the result. If the Service Provider is stepping into the role of loan underwriter, will the Service Provider undertake responsibility for that consumer complaint? Also, will the Service Provider defend and indemnify Licensees in civil lawsuits and arbitrations for alleged violations of NRS Chapter 604A?

Mary Young, Deputy Commissioner  
April 27, 2020  
Page 8

he has too many speeding tickets. This is not what S.B. 201 was designed to do, what it allows, or what it may be used to accomplish.

Again, as stated previously, the information demanded here exceeds the information required under NRS 604A.303(2) and exceeds the Division's statutory mandate. The appointment of the Service Provider as a loan underwriter without recourse violates NRS Chapter 233B and the Nevada and U.S. constitutional guarantees of due process. These Sections must be deleted.

\* \* \*

Given the foregoing comments, DLC respectfully requests that the changes suggested by DLC in this letter be made to the Proposed Regulation. In addition, DLC urges the Division to issue another small business survey and schedule another workshop, notably after a Service Provider has been selected. Finally, DLC requests that the Division conduct a public hearing prior to the adoption of this Proposed Regulation, or any similar regulation, in accordance with NRS 233B.061.

DLC and I thank you for your time and attention to this matter.

Sincerely,

/s/  
Patrick J. Reilly

20646055



April 27, 2020  
Original VIA US Mail with copy  
to: [fidmaster@fid.state.nv.us](mailto: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:

We appreciate you providing licensees the opportunity to comment on the Proposed Regulations pertaining to Senate Bill 201 (the "Proposed Regulations"). As a threshold matter, given the ongoing pandemic, and the impact of the Governor's stay at home orders, we would like to request additional time to assemble data and submit additional comment regarding the Proposed Regulations. Our participation as a stakeholder, and others have been hampered by the order.

Although we recognize that certain regulations will benefit consumers, licensees, and the Nevada Financial Institutions Division ("FID"), several provisions of the Proposed Regulations appear to (i) exceed the FID's statutory authority, (ii) lack a sufficient statutory basis, (iii) impose impermissibly broad requirements, and (iv) change the plain meaning of the statutes, and as such the Proposed Regulations constitute "arbitrary and capricious" rulemaking. 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 stay at home orders, and consider our comments to the Proposed Regulations.

**1. The Legislature set forth limited information to be uploaded to the Database.**

The Legislature's amendments to NRS604A specifically indicated that the database would include limited information. According to the Legislature, the database contains certain limited information related to deferred deposit loans, title loans and high-interest loans" set forth in NRS 604A.303 2. ("Database Information").

In addition, the Legislature further amended NRS 604A to require that the "gross income" limitations for deferred deposit loans and high interest loans must consider all loans a consumer has outstanding with all licensees. Therefore, licensees will be able to use the **Database** to comply with NRS 604A.5017 and NRS 604A.5045.

The statute identifies the **Database information** which licensees are required to submit upon making a deferred deposit loan, title loan or high-interest loan at the time a transaction takes place as follows:

- (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.*

Given that the Legislature limited the scope to the terms above, if the FID expands the reach of the information required in the Database, beyond the items required by statute, then the FID would exceed its statutory authority, and the additional data requirements risk being deemed arbitrary and capricious by Nevada courts.

## **2. The Legislature recognized the Database would be used to assist licensees in complying with underwriting Deferred Deposit and High Interest Loans.**

The Legislature imposed specific restrictions regarding use of the Database and authorized the FID to adopt reasonable regulations relating to the Database. By adding additional fields, the FID has exceeded its statutory authority. Specifically, the Legislature amended the deferred deposit gross income limitation statutes to require that licensees use 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.<sup>1</sup>*

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<sup>1</sup> See, NRS 604A.5017(b) which states:

(b) The licensee has utilized the database established pursuant to NRS 604A.303 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.

The Legislature amended the high interest gross income limitation statute to require that licensees use the database:

*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.<sup>2</sup>*

The Legislature did **not** amend the title loan qualification provisions of the statute, rather, the Legislature notes in general that the **Database Information** required by NRS 604A.303 would allow the licensees to make an underwriting decision that would provide accurate timely information on the following underwriting considerations:

- (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.<sup>3</sup>*

After implementation of the database, all licensees will have real time access to an applying customer's outstanding transactions with all other licensees—thereby allowing licensees to more accurately analyze the applying customer's qualification status and history when applying for a loan. In addition, such Database Information will now provide accurate real time information to licensees to use and rely upon when underwriting loans—with the goal being to ensure licensees will not violate the gross income limitations in NRS 604A.5017<sup>4</sup> and NRS 604A.5045<sup>5</sup>. Given these limited

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<sup>2</sup> NRS 604A.5045 (b) The licensee has utilized the database established pursuant to NRS 604A.303 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.

<sup>3</sup> Senate Bill 201 did **not** update the title loan qualification provisions, which had recently changed in 2017, when the Legislature revised same by including a provision prohibiting the licensee from relying upon the income of a person who is not a legal owner of the vehicle.

<sup>4</sup> Senate Bill 201 amended the deferred deposit loan section effective July 1, 2020 to add the following:

2. A licensee who operates a deferred deposit loan service is not in violation of the provisions of this section if:

(a) The customer presents evidence of his or her gross monthly income to the licensee and represents to the licensee in writing that the deferred deposit loan does not exceed 25 percent of the customer's expected gross monthly income when the loan is made; and

(b) The licensee has utilized the database established pursuant to NRS 604A.303 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.

<sup>5</sup> Senate Bill 201 amended the deferred deposit loan section effective July 1, 2020 to add the following:

2. A licensee who operates a high-interest loan service is not in violation of the provisions of this section if:

restrictions set forth in NRS 604A.303, the Legislature authorized the FID to adopt reasonable regulations relating to the Database. However, by adding additional fields, the FID has exceeded its statutory authority.

### 3. General Comments on the Proposed Regulations.

The Proposed Regulations and timetable for comment have been rushed during a statewide pandemic, that has resulted in denial of an opportunity to appear in person to make public comments. The stay at home orders 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 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;
- f. require the maintenance of sensitive customer information for time periods that exceed those prescribed by statute;
- g. require licensees to incur tremendous costs of time and funds to implement changes which lack any statutory basis or authority.

Regulations expanding the scope of an authorizing statute are invalid or void.<sup>6</sup> 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.<sup>7</sup> Courts

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(a) The customer presents evidence of his or her gross monthly income to the licensee and represents to the licensee in writing that the monthly payment required under the terms of the loan agreement for the high-interest loan does not exceed 25 percent of the customer's expected gross monthly income; and

(b) The licensee has utilized the database established pursuant to NRS 604A.303 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.

<sup>6</sup> 2 Am Jur 2d Administrative Law § 224.

<sup>7</sup> 2 Am Jur 2d Administrative Law § 224.

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.

As outlined below, the Commissioner broadly interpreted its duty to implement regulations and has issued Proposed Regulations that change certain statutory obligations from licensees to the service provider or other licensees, enlarge the categories of information to be uploaded to the database, and mistakenly allow the Commissioner access to such information for enforcement activities. In addition, the Commissioner included a number of items that Licensees must upload into the database, which are outside the statutory mandated items specifically mentioned in NRS 604A.303, and thereby changed the plain meaning of the Statute. As noted above, the Legislature limited the intended data in the database.

#### 4. Specific Comments on each Section of the Proposed Regulations.

Please note that some of our comments relate to proposed changes which we have included within Appendix A, attached here to which is "REDLINE" of the Proposed Regulations with our suggested comments.

##### Section 6.

The definition in Section 6 of the proposed regulations is impermissibly broad. It changes the plain meaning of the statutes, and it provides the FID with unauthorized enforcement presumptions. Section 6 impermissibly changes the plain meaning statutes by taking away a licensee's discretion to qualify a customer for credit.

NRS 604A.511 NRS 604A.53, and NRS 604A.5056 give licensees complete discretion in qualifying consumers for a loan.<sup>8</sup> In each of 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 their creditworthiness, the statute 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;*
- (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.*

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<sup>8</sup> See, NRS 604A.511 NRS 604A.53, and NRS 604A.5056.

Each statute<sup>9</sup> 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<sup>10</sup> 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 or 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 (using 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 6.

## **Section 11.**

Section 11 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 that the database fee is a finance charge under Regulation Z.

Section 11 should also be revised to give licensee’s prior notice of a change in the amount of the database fee. Failing to give prior notice of a change, can result in unanticipated programming issues for licensees. Surprising licensees with programming changes could lead to significant, unanticipated costs.

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<sup>9</sup> *Id.*  
<sup>10</sup> *Id.*

We propose that our changes will lead to uniform disclosures by all licensees and will provide licensee’s prior notice of a change in the amount of the database fee. Below are our proposed changes to Section 11 and REDLINE of the changes.

Sec. 11 Proposed Regulations	Our Proposed Changes	Redline of Our Suggested Changes
<p>Sec. 11. The service provider shall charge and collect a fee from a licensee for each loan the licensee enters and approves in the database. The fee is based upon a competitive procurement process but shall not exceed \$3.00 per approved loan. A licensee shall not collect from a customer an amount in excess of the actual cost charged to the licensee by the service provider. A licensee shall not collect any fee, charge or cost from a customer if a loan is not approved. The service provider shall not collect any fee, charge or cost from a licensee if a loan is not approved. The charge only occurs at origination and cannot be charged to extend, rollover, renew, refinance or consolidate or any action that would extend the due date or any of the like. The service provider 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 and Regulation Z.</p>	<p>Sec. 11. The service provider shall only charge and collect a fee from a licensee for loans that are approved by the licensee and entered into the database. The charge only occurs at origination of a loan and cannot be charged to extend, rollover, renew, refinance or consolidate or any action that would extend the due date. The service provider shall rebate any fee charged for an approved loan, in which the customer timely rescinds such loan. The fee is based upon a competitive procurement process, and shall not exceed \$3.00 per approved loan. The Commissioner shall approve the amount of the fee and shall post the approved amount on the Commissioner’s website. Any change in the fee amount shall be approved by the Commissioner, and shall not take effect until 90 days after posting such change on the Commissioner’s website. A licensee shall not collect any fee, charge or cost from a customer if a loan is not approved, or any amount in excess of the actual cost charged to the licensee by the service provider. The service provider fee must be included in the finance charge calculation under the Truth in Lending Act and Regulation Z, and must be itemized in the loan agreement.</p>	<p>Sec. 11. The service provider shall <u>only</u> charge and collect a fee from a licensee for <del>each loan</del><u>loans that are approved by</u> the licensee <del>enters and approves in</del><u>entered into</u> the database. The <del>charge only occurs at</del><u>charge only occurs at</u> <u>origination of a loan and cannot be charged to extend, rollover, renew, refinance or consolidate or any action that would extend the due date.</u> <del>The service provider shall rebate any fee charged for an approved loan, in which the customer timely rescinds such loan.</del> <u>The fee is based upon a competitive procurement process</u><del>but, and shall not exceed \$3.00 per approved loan.</del> <del>A licensee shall not collect from a customer an amount in excess of the actual cost charged to the licensee by the service provider.</del><u>The Commissioner shall approve the amount of the fee and shall post the approved amount on the Commissioner’s website. Any change in the fee amount shall be approved by the Commissioner, and shall not take effect until 90 days after posting such change on the Commissioner’s website.</u> A licensee shall not collect any fee, charge or cost from a customer if a loan is not approved.<del>The service provider shall not collect any fee, charge or cost from a licensee if a loan is not approved. The charge only occurs at origination and cannot be charged to extend, rollover, renew, refinance or consolidate or any action that would extend the due date or any of the like.</del><u>or any amount in excess of the actual cost charged to the licensee by the service provider.</u> The service provider fee must <del>be itemized on the loan agreement, regardless of whether the fee is required to be included in the finance charge</del><u>be itemized on the loan agreement,</u> under the Truth in Lending Act and Regulation Z, <del>and must be itemized in the loan agreement.</del></p>

**Section 12.**

Section 12 requires the maintenance of sensitive customer information for time periods that exceed those prescribed by statute, 2 or 3 years. 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 “within the 30 days immediately preceding the making of a loan” and “loans outstanding with one or more licensees within the 6 months immediately preceding the making of the loan.”<sup>11</sup>

In addition, the language of Section 12, would require the service provider to retain all of the information outlined in the Proposed Regulations (which exceeds statutory restrictions) for these periods. We request that Section 12 be amended to delete the data after 1 year as follows.

Sec. 12 Proposed Regulations	Our Proposed Changes	Redline of Our Suggested Changes
<p>Sec. 12. The service provider shall do all the following:</p> <p>(a) Retain data in the database only as required to ensure licensee compliance with this chapter and chapter 604A of NRS;</p> <p>(b) Archive data in the database concerning a customer transaction within two years after a customer transaction is closed unless notified by the Commissioner that such data is needed for a pending investigation or enforcement action;</p> <p>(c) Delete any identifying customer data from the database when data is archived; and</p> <p>(d) Delete data concerning a customer transaction from the database 3 years after the customer transaction is closed unless notified by the Commissioner that such data is needed for a pending investigation or enforcement action.</p>	<p>Sec. 12. The service provider shall do all the following:</p> <p>(a) Retain data in the database as required by NRS 604.303; and</p> <p>(b) Delete any identifying customer data from the database one year after the customer data is entered into by a licensee unless notified by the Commissioner that such data is needed for a pending investigation or enforcement action.</p>	<p>Sec. 12. The service provider shall do all the following:</p> <p>(a) Retain data in the database <del>only</del> as required <del>to ensure licensee compliance with this chapter and chapter 604A of</del> <u>by NRS 604.303; and</u></p> <p><del>(b) Archive data in the database concerning a customer transaction within two years after a customer transaction is closed unless notified by the Commissioner that such data is needed for a pending investigation or enforcement action;</del></p> <p><u>(b) Delete any identifying customer data from the database when data is archived; and</u></p> <p><del>(d) Delete data concerning a customer transaction from the database 3 years</del> <u>one year</u> after the customer <del>transaction data is closed</del> <u>entered into by a licensee</u> unless notified by the Commissioner that such data is needed for a pending investigation or enforcement action.</p>

**Section 5, Section 14, Section 15, Section 17, Section 23, Section 24, Section 25, Section 26, Section 27, and Section 30.**

Section 5, Section 14, Section 15, Section 17, Section 23, Section 24, Section 25, Section 26, Section 27, and Section 30 (i) contain provisions that are outside the bounds of the statute, (ii) are impermissibly broad, (iii) require the licensees to upload customer information not required by the statute, (iv) change the statutory safe harbor provisions regarding licensees determining a customer’s qualifications, (v) shift the loan decision requirements from licensees to the service provider and/or other licensees, and (vi) create additional unnecessary burdens and costs, and as such are arbitrary and capricious.

<sup>11</sup> NRS 604A303 1.

Section 14, Section 17, Section 23, Section 24, and Section 25, Section 30 are impermissibly broad because they would require licensees to query and submit information to the database that far exceeds the limited statutory provisions. The statutory requirements limiting the database information to be uploaded into the database are set forth in NRS 604A.303 as follows:

- (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.*

The Legislature did not authorize other categories of information in the statute and did not authorize licensees to upload other consumer information into the database. Adding additional categories not explicitly authorized by the Legislature is outside the scope of the statute and creates additional burdens on licensees. Section 5, Section 15, and Section 17 add new provisions which are contrary to the statutory plain language safe harbor provisions, changing important rights the Legislature conferred upon licensees to take safe haven when deciding to approve or deny a covered loan.

### **Safe Harbor Provisions.**

The Legislature has afforded licensees certain statutory safe harbors for compliance. The statutory safe harbor provisions for deferred deposit loans are set forth in NRS 604A.5011<sup>12</sup> and NRS 604A.5017.<sup>13</sup> The safe harbor provisions for high

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<sup>12</sup> 2. For the purposes of subsection 1, a customer has the ability to repay a deferred deposit loan if the customer has a reasonable ability to repay the deferred deposit loan, as determined by the licensee after considering, to the extent available, the following underwriting factors:

- (a) The current or reasonably expected income of the customer;
- (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 deferred deposit loan, the monthly payment on the deferred deposit loan, if the deferred deposit loan is an installment loan, or the potential repayment plan if the customer defaults on the deferred deposit loan; and
- (e) Other evidence, including, without limitation, bank statements, electronic bank statements and written representations to the licensee.

<sup>13</sup> 2. A licensee who operates a deferred deposit loan service is not in violation of the provisions of this section if:

- (a) The customer presents evidence of his or her gross monthly income to the licensee and represents to the licensee in writing that the deferred deposit loan does not exceed 25 percent of the customer's expected gross monthly income when the loan is made;

interest loans are set forth in NRS 604A.5038.<sup>14</sup> The safe harbor provisions for title loans are set forth both in NRS 604A.5065<sup>15</sup> and NRS 604A.5076 which prohibits licensees from relying upon the income of a person who is not a legal owner of the vehicle.<sup>16</sup> Collectively, NRS 604A.5011, NRS 604A.5017, 604A.5038, 604A.5045, 604A.5065, 604A.5076 are hereinafter referred to as the "Safe Harbor Statutes." While the safe harbor statutory provisions reflect a legislative intent to promote compliance and authorize lenders to make credit decisions, the Proposed Regulations modify those statutory rights.

Section 5 (when read in tandem with Section 15) appears to modify the plain meaning of the Safe Harbor Statutes, by limiting the licensee's ability to make lending determinations in the manner required by the Legislature in those **Safe Harbor Statutes**. Senate Bill 201 only amended the lending limit provisions for deferred deposit loans<sup>17</sup> and high interest loans<sup>18</sup>, and did not amend the lending limit provisions relating to title loans.<sup>19</sup> **Please note that the Legislature did not change the methods a licensee may use for determining the "lending limit" of the customer in amending the statute.** But the FID appears to intend to go beyond the Legislative intent, and now restrict the method for determining the lending limit.

For both deferred deposit loan customers and high interest loan customers, the Legislature determined that a customer may present evidence to the licensee of "gross income" and may make representations to the licensee in writing regarding the payments not exceeding the 25% limitations with respect to gross income. The Legislature in SB 201 simply added an underwriting limitation that licensees must now combine the amounts of any outstanding loan of the customer identified in the database, together with the customer's requested loan amount such that the:

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<sup>14</sup> 2. A licensee who operates a high-interest loan service is not in violation of the provisions of this section if:  
(a) The customer presents evidence of his or her gross monthly income to the licensee and represents to the licensee in writing that the monthly payment required under the terms of the loan agreement for the high-interest loan does not exceed 25 percent of the customer's expected gross monthly income;

<sup>15</sup> 2. For the purposes of subsection 1, a customer has the ability to repay a title loan if the customer has a reasonable ability to repay the title loan, as determined by the licensee after considering, to the extent available, the following underwriting factors:

(a) The current or reasonably expected income of the customer;  
(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 title loan, the monthly payment on the title loan, if the title loan is an installment loan, or the potential repayment plan if the customer defaults on the title loan; and

(e) Other evidence, including, without limitation, bank statements, electronic bank statements and written representations to the licensee.

<sup>16</sup> 3. Make a title loan without determining that the customer has the ability to repay the title loan, as required by NRS 604A.5065. In complying with this subsection, the licensee shall not consider the income of any person who is not a legal owner of the vehicle securing the title loan but may consider a customer's community property and the income of any other customers who consent to the loan pursuant to subsection 5 and enter into a loan agreement with the licensee.

<sup>17</sup> See 604A.5017

<sup>18</sup> See 604A.5045

<sup>19</sup> See 604A.5065, 604A.5076

*"combination" in the case of a deferred deposit loan does "not exceed 25 percent of the customer's expected gross monthly income when the deferred deposit loan is made;"<sup>20</sup> and*

*"combination" in the case of a high interest loan does "not require any monthly payment that exceeds 25 percent of the customer's expected gross monthly income when the loan is made."<sup>21</sup>*

**Section 5** together with **Section 15** of the Proposed Regulations would change **the method for licensees determining the "gross income" of the customer**, by requiring that the licensee make such determination using calculations under undefined terms such as:

"verifiable gross income," "deductions from income," "verifiable expense obligations," and "stated expense obligations."

The Proposed Regulations impermissibly add a formula and require that the licensee to make a finding of "**net disposable income**" as a basis for making its ability to repay assessment.<sup>22</sup> Unlike the Legislative intent reflected in the statute, the Proposed Regulations would modify statutory rights afforded to licensees, and now obligate licensees to use a formula, without exception, for all customers. Failure to follow the new formula would lead to a presumption that the licensee violated NRS 604A.5017 and NRS 604A.5045.

Furthermore, under Section 17, the licensee must query the database for "net disposable income" along with "the customer's gross income and the customer's total obligations."<sup>23</sup> However, the regulations fail to require licensees to upload a consumer's "net disposable income, gross income and total obligations."<sup>24</sup> In other words FID asks licensees to verify information in the database, that neither statute nor regulation require licensees to upload into the database. **Proposing a rule to verify information in a**

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<sup>20</sup> See 604A.5017(b)

<sup>21</sup> See 604A.5045(b)

<sup>22</sup> See Sections 5 and 15 of the Proposed Regulations. Sec. 5. "Net disposable income" is defined as the verifiable gross income minus (i) any and all deductions from income; and (ii) all verifiable and/or stated expense obligations including, but not limited to, rent or mortgage payments, utilities, and any other debt obligations. Sec. 15. A licensee shall retain all data and documentation collected and reviewed for any loan, loan transaction, or any query made in the database for at least 3 years. Documentation includes, but is not limited to, all copies of the documents considered in determining the ability to repay, including the **method used by a licensee to calculate a customer's net disposable income**. In addition to the above mentioned, for title loans, the third-party vendor documentation showing the fair market value of the vehicle securing the title loan.

<sup>23</sup> Before making a deferred deposit loan, title loan or high-interest loan, a licensee shall query the database . . . . . At a minimum, the query should include the below to verify the identity of a customer and verify eligibility of the loan:  
\* \* \*

- (e) The customer's gross income;
- (f) The customer's total obligations; and
- (g) **Net disposable income of the customer.**

<sup>24</sup> *Id.*

**database, without requiring the information to be uploaded into the database provides significant evidence that the FID, like licensees, are strained to effectively respond to emerging requirements during this pandemic.**

The Proposed Regulations simply lack clear meaning. Lenders cannot query the database for “*net disposable income, gross income and total obligations*” when there is no obligation in the Proposed Regulations for licensees to submit a customer’s “*net disposable income, gross income and total obligations.*”

Section 17 also incorrectly shifts the determination of a consumer’s loan qualification—from the licensee making the loan under the **Safe Harbor Statutes**—to the database service provider. That is, it indicates that the service provider will allow a licensee to make a loan “*only if making the loan is permissible under the provisions of this chapter and chapter 604A of NRS.*” (Emphasis added.) In other words, under the Proposed Regulations, the database service provider would now make credit decisions, not the licensee. The Legislature never envisioned credit decisions being taken from the hands of licensees and given to a bureaucratic agency’s database.

Moreover, the Proposed Regulations actually impose an explicit formula requirement for qualifying customers for credit, when the statute itself as amended by SB 201 does not impose a formulation requirement. That is, the FID not only usurps licensee’s rights to make credit decisions, but it also imposes a formula that must be used in making credit decisions. However, the statutes as amended provide that if the licensee reviews the consumer’s gross income, checks the database, and limits the loan amount as required by the statutes—then the licensee qualifies for the safe harbor. The Proposed Regulations will curtail those statutory rights granted by the Legislature, and appear to require that licensees replace the Legislature’s statutory safe harbor with additional requirements in direct contravention of the statutory safe harbor. Absent a change in the Proposed Regulations, licensees that use the statutory safe harbors granted by the Legislature in NRS 604A.5017 and NRS 604A.5045, as written, would arguably be in violation of the Proposed Regulations.

The Legislature never contemplated shifting the responsibility of making customer qualification determinations away from the licensees offering credit. The FID should strike Section 5, Section 15, and Section 17 in their entirety, as such Proposed Regulations directly conflict with the statutory requirements.

Section 15 should be updated so that the time period for retaining documents will match the 25 month time period for record retention under the federal Equal Credit Opportunity Act, and Regulation B. See, 12 CFR 1002.12(b).

We request that FID amend and replace Section 14 and Section 15 as set forth below, and that the FID strike Section 5, Section 17, Section 23, Section 24, Section 25,

Section 26, and Section 30 in entirety. Please note that Section 26 and Section 27 would be superfluous after requested changes to Section 15.

Our changes in Section 14 track the items specifically identified in the language of NRS 604A.303.

Sec. 14 Proposed Regulations	Our Proposed Changes	Redline of Our Suggested Changes
<p>Sec. 14. A licensee shall enter into the database, in real time, all loans originated under the provisions of chapter 604A of NRS; all renewals; extensions; grace periods; payments; refinances; when a repayment plan offer is sent; when a repayment plan is entered into; declined loans; and any transaction pertaining to the loan, as applicable, and in compliance with this chapter and chapter 604A of NRS.</p>	<p><b>Sec. 14.</b> Unless the database is inaccessible by a licensee, before a licensee makes a deferred deposit loan or high interest loan to a consumer, the licensee shall submit a query to the database, in real time consisting of the consumer’s identifying customer information.</p> <p>The database in real time shall respond to licensee’s query and inform the licensee of the number, type and amount of loans outstanding relating to the consumer, and the total “amount of all loans outstanding.” For purposes of this Chapter, the type of loan outstanding refers to whether the loan is a deferred deposit loan, high interest loan, or title loan. The “amount of loan outstanding” refers to the principal amount of the loan outstanding on the date the customer obtained the loan.</p> <p>Unless the database is inaccessible by a licensee, in real time when making a loan, 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:</p> <ul style="list-style-type: none"> <li>(a) The date on which the loan was made;</li> <li>(b) The type of loan made;</li> <li>(c) The principal amount of the loan;</li> <li>(d) The fees charged for the loan;</li> <li>(e) The annual percentage rate of the loan;</li> <li>(f) The total finance charge associated with the loan;</li> <li>(g) If the customer defaults on the loan, the date of default;</li> <li>(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</li> <li>(i) The date on which the customer pays the loan in full.</li> </ul>	<p><del>Sec. 14. A licensee shall enter into the database, in real time, all loans originated under the provisions of chapter 604A of NRS; all renewals; extensions; grace periods; payments; refinances; when a repayment plan offer is sent; when a repayment plan is entered into; declined loans; and any transaction pertaining to the loan, as applicable, and in compliance with this chapter and chapter 604A of NRS.</del></p> <p><u>Unless the database is inaccessible by a licensee, before a licensee makes a deferred deposit loan or high interest loan to a consumer, the licensee shall submit a query to the database, in real time consisting of the consumer’s identifying customer information.</u></p> <p><u>The database in real time shall respond to licensee’s query and inform the licensee of the number, type and amount of loans outstanding relating to the consumer, and the total “amount of all loans outstanding.” For purposes of this Chapter, the type of loan outstanding refers to whether the loan is a deferred deposit loan, high interest loan, or title loan. The “amount of loan outstanding” refers to the principal amount of the loan outstanding on the date the customer obtained the loan.</u></p> <p><u>Unless the database is inaccessible by a licensee, in real time when making a loan, 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:</u></p> <ul style="list-style-type: none"> <li><u>(a) The date on which the loan was made;</u></li> <li><u>(b) The type of loan made;</u></li> <li><u>(c) The principal amount of the loan;</u></li> <li><u>(d) The fees charged for the loan;</u></li> <li><u>(e) The annual percentage rate of the loan;</u></li> <li><u>(f) The total finance charge associated with the loan;</u></li> <li><u>(g) If the customer defaults on the loan, the date of default;</u></li> <li><u>(h) If the customer enters into a repayment plan pursuant to NRS 604A.5027, 604A.5055 or 604A.5083, as applicable, the</u></li> </ul>

		<u>date on which the customer enters into the repayment plan; and</u> <u>(i) The date on which the customer pays the loan in full.</u>
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**Section 21.**

Section 21 is unnecessary because under federal law, the Equal Credit Opportunity Act and Regulation B already require that the licensees address the reasons customers are denied credit. Because Section 21 potentially contradicts federal requirements and could be therefore preempted, and at best is duplicitous of federal law, we request that you strike Section 21.

**Section 28.**

We propose clarifying **Section 28** to recognize the distinctions between the co-owner who only gives the licensee a security interest in the motor vehicle, and does not enter into a title loan agreement as a borrower, and an actual co-borrower that enters into a title loan agreement and receives credit. We request that **Section 28** be amended as follows.

Sec. 28 Proposed Regulations	Our Proposed Changes	Redline of Our Suggested Changes
Sec. 28. For the purpose of NRS 604A.5076(5), a licensee must obtain written consent from each legal owner of the vehicle securing the title loan. The legal co-owner must be available in-person with a valid government-issued photo ID in order to sign a consent form. The consent form must advise the legal co-owner that if the borrower defaults on the loan and does not enter into a repayment plan, the licensee may seek repossession and sale of the vehicle. It should further disclose that the co-owner has no personal liability to make payments under the title loan agreement and is not personally obligated to repay the title loan, unless the co-owner signed the title loan agreement as a co-borrower.	Sec. 28. For the purpose of NRS 604A.5076(5), a licensee must obtain written consent from each legal owner of the vehicle securing the title loan including any co-owner who is not a borrower under the loan. The legal co-owner must be available in-person with a valid government-issued photo ID in order to sign a consent form. The consent form shall provide: (a) that the co-owner has no personal liability to make payments under the title loan agreement, and is not personally obligated to repay the title loan; and (b) that if the borrower does not pay the loan, the licensee may seek repossession and sale of the vehicle.	Sec. 28. For the purpose of NRS 604A.5076(5), a licensee must obtain written consent from each legal owner of the vehicle securing the title loan <u>including any co-owner who is not a borrower under the loan.</u> The legal co-owner must be available in-person with a valid government-issued photo ID in order to sign a consent form. The consent form <del>must advise the legal co-owner that if the borrower defaults on the loan and does not enter into a repayment plan, the licensee may seek repossession and sale of the vehicle. It should further disclose</del> <u>shall provide: (a) that the co-owner has no personal liability to make payments under the title loan agreement, and is not personally obligated to repay the title loan, unless the co-owner signed the title loan agreement as a co-borrower; and (b) that if the borrower does not pay the loan, the licensee may seek repossession and sale of the vehicle.</u>

**Section 20 and Section 29.**

Section 20 is impermissibly broad in that it allows the FID unlimited access to information about licensees and consumers for enforcement purposes contradicting the express limitations within the statute. Examiners review licensees once per year, and expanding the FID’s authority so that it has an endless review of licensees, will

significantly expand compliance costs for licensees, despite any lack of statutory authority to do so.

Section 29 is impermissibly broad. It allows the FID unlimited access to information about licensees and consumers for both enforcement and statistical purposes, contradicting the express limitations within the statute.

The database was not created so that the FID would have unlimited access to information about licensees and consumers for enforcement and statistical purposes. The Legislature intended the database and information therein to be used by licensees and for the FID as necessary to enforce the provisions of NRS 604A.5017(b) and NRS 604A.5045(b). The Legislature specifically limited the information to nine (9) items listed in NRS 604.303 (2) (a)-(i), so that a licensee when submitting an inquiry to the database, could know whether a customer has loans outstanding with more than one licensee, whether the loans were within the last 30 days, and whether a customer has had three or more loans in the past 6 months.”<sup>25</sup> The Legislature noted that the information was “confidential” and could only be used by the “Commissioner for statistical purposes if the identity of the persons is not discernible from the information disclosed.”

By contrast to the 9 items listed in NRS 604.303 (2) (a)-(i), the Proposed Regulations impermissibly include over 40 items of information<sup>26</sup>, allow the Commissioner access to such information for 3 years<sup>27</sup>, and then in Section 20 grant the Commissioner the right to use such broad consumer confidential nonpublic personal information for enforcement purposes. Likewise, Section 29 impermissibly grants the Commissioner right to use such broad consumer confidential nonpublic personal information for both enforcement and statistical purposes. Therefore, Section 20 and Section 29 are overly broad, and should be amended as follows.

Sec. 20 Proposed Regulations	Our Proposed Changes	Redline of Our Suggested Changes
<p>Sec. 20. The database provider shall maintain the database, take all actions it 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. 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.</p>	<p>Sec. 20. The database provider shall maintain the database, take all actions it 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.</p>	<p>Sec. 20. The database provider shall maintain the database, take all actions it 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. <del>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.</del></p>

<sup>25</sup> NRS 604A.303

<sup>26</sup> See Proposed Regulations Sections 23, 24, and 25.

<sup>27</sup> See Proposed Regulation Section 12.

Sec. 29 Proposed Regulations	Our Proposed Changes	Redline of Our Suggested Changes
<p>Sec. 29. The Office of the Commissioner may periodically run reports for purposes other than examinations, investigations, or internal reporting, in order to publish a report online regarding the scope of the industry. The data in a report shall not disclose personal identifying information, licensee identifying information such as the name of a licensee, address or license number. It may contain the number of loans made per loan product, number of defaulted loans, number of paid loans including loans paid on the scheduled date and loans paid past the due date, total amount borrowed and collected, and any other data the Commissioner or his or her designee deems necessary.</p>	<p>Sec. 29. The Office of the Commissioner may use any information in the database for statistical purposes. The data in a report shall not disclose personal identifying information, licensee identifying information such as the name of a licensee, address or license number. Any statistical reports shall only reference the items in NRS 604A.303.</p>	<p>Sec. 29. The Office of the Commissioner may <del>periodically run reports</del> <u>use any information in the database</u> for statistical purposes <del>other than examinations, investigations, or internal reporting, in order to publish a report online regarding the scope of the industry.</del> The data in a report shall not disclose personal identifying information, licensee identifying information such as the name of a licensee, address or license number. <del>It may contain the number of loans made per loan product, number of defaulted loans, number of paid loans including loans paid on the scheduled date and loans paid past the due date, total amount borrowed and collected, and any other data the Commissioner or his or her designee deems necessary.</del> <u>Any statistical reports shall only reference the items in NRS 604A.303.</u></p>

**Conclusion.**

The Proposed Regulations add several provisions that 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 or consumers can appear at a public hearing, or can muster the full resources and data necessary to respond. The Proposed Regulations are arbitrary and capricious. They are likely to result in conflicting issues in the enforcement context. Finally, 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 the costs of database implementation would be significant for licensees. As noted above, the state limits the number of items to be uploaded to the database, whereas, the Proposed Regulations quadruples the volume of consumer data housed within the database.

We request that the FID delay the rulemaking process, request additional information from members of the industry and consumers, and significantly revise the Proposed Regulations. In an effort to save time and resources, we respectfully request your consideration of these matters at this time.

Ms. Sandy O'Laughlin  
April 27, 2020  
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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,



J. T. Marchesi  
Check City Partnership, LLC

CC: Mary Young, Deputy Commissioner



APPENDIX A

We have no comments for **Section 1.**

Proposed Reg. Sec. 1	Our Proposed Changes	Redline of Changes
Section 1. Chapter 604A of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 29, inclusive, of this regulation.	None	None.

Our changes for **Section 2** clarify that the terms used in the Proposed Regulations have the meanings assigned in NRS 604A. This change helps promote uniform interpretation of the statute and the Proposed Regulations.

Proposed Reg. Sec. 2	Our Proposed Changes	Redline of Changes
Sec. 2. Unless the context otherwise requires, the words and terms used in this chapter have the meanings ascribed to them in sections 2 through 4 of Senate Bill No. 201 and sections 3 through 10 of this chapter.	<b>Sec. 2.</b> Unless the context otherwise requires, the words and terms used in this chapter have the meanings ascribed to them in NRS 604A, sections 2 through 4 of Senate Bill No. 201 and this chapter.	<b>Sec. 2.</b> Unless the context otherwise requires, the words and terms used in this chapter have the meanings ascribed to them in <u>NRS 604A</u> , sections 2 through 4 of Senate Bill No. 201 and <del>sections 3 through 10</del> of this chapter.

Given our recommended changes below to **Section 14**, we request that you strike **Section 3.**

Proposed Reg. Sec. 3	Our Proposed Changes	Redline of Changes
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.	<b>Sec. 3.</b>	<del>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.</del>

Given our recommended changes below to **Section 14**, we request that you strike **Section 4.**

Proposed Reg. Sec. 4	Our Proposed Changes	Redline of Changes
Sec. 4. "Immediately" means the action must occur within one business day.	<b>Sec. 4.</b>	<del>Sec. 4. "Immediately" means the action must occur within one business day.</del>

See our letter for changes to **Section 5**.

Proposed Reg. Sec. 5	Our Proposed Changes	Redline of Changes
Sec. 5. "Net disposable income" is defined as the verifiable gross income minus (i) any and all deductions from income; and (ii) all verifiable and/or stated expense obligations including, but not limited to, rent or mortgage payments, utilities, and any other debt obligations.	Sec. 5.	<del>Sec. 5. "Net disposable income" is defined as the verifiable gross income minus (i) any and all deductions from income; and (ii) all verifiable and/or stated expense obligations including, but not limited to, rent or mortgage payments, utilities, and any other debt obligations.</del>

See our letter for changes to **Section 6**.

Proposed Reg. Sec. 6	Our Proposed Changes	Redline of Changes
Sec. 6. "Extent Available" is defined as if a document exists, it is presumed to be readily available or easily obtainable in a reasonable amount of time from a customer prior to making the loan.	Sec. 6.	<del>Sec. 6. "Extent Available" is defined as if a document exists, it is presumed to be readily available or easily obtainable in a reasonable amount of time from a customer prior to making the loan.</del>

Given our recommended changes below to **Section 12**, we request that you strike **Section 7**.

Proposed Reg. Sec. 7	Our Proposed Changes	Redline of Changes
Sec. 7. "Archive" means to copy data to a long-term storage mechanism apart from the database.	None	<del>Sec. 7. "Archive" means to copy data to a long-term storage mechanism apart from the database.</del>

Given our recommended changes below to **Section 12**, we request that you strike **Section 8**.

Proposed Reg. Sec. 8	Our Proposed Changes	Redline of Changes
Sec. 8. "Delete" means to erase data by overwriting the data.	Sec. 8.	<del>Sec. 8. "Delete" means to erase data by overwriting the data.</del>

We have no comments for **Section 9**.

Proposed Reg. Sec. 9	Our Proposed Changes	Redline of Changes
Sec. 9. "Identifying customer information" means the name of the customer, his or her social security number or alien registration number, driver license number, or other state-issued identification number, address and any account numbers entered into the database.	None	None.

Given our recommended changes below to **Section 14**, we request that you strike **Section 10**.

Proposed Reg. Sec. 10	Our Proposed Changes	Redline of Changes
<p>Sec. 10. "Closed Loan" indicates a final status of a loan that is no longer active. When a loan is closed it may include, but is not limited to, a paid-in-full loan agreement, a repossessed vehicle, or charged-off loan.</p>	<p><b>Sec.10.</b></p>	<p><del>Sec. 10. "Closed Loan" indicates a final status of a loan that is no longer active. When a loan is closed it may include, but is not limited to, a paid-in-full loan agreement, a repossessed vehicle, or charged-off loan.</del></p>

See our letter for changes to **Section 11**.

Proposed Reg. Sec. 11	Our Proposed Changes	Redline of Changes
<p>Sec. 11. The service provider shall charge and collect a fee from a licensee for each loan the licensee enters and approves in the database. The fee is based upon a competitive procurement process but shall not exceed \$3.00 per approved loan. A licensee shall not collect from a customer an amount in excess of the actual cost charged to the licensee by the service provider. A licensee shall not collect any fee, charge or cost from a customer if a loan is not approved. The service provider shall not collect any fee, charge or cost from a licensee if a loan is not approved. The charge only occurs at origination and cannot be charged to extend, rollover, renew, refinance or consolidate or any action that would extend the due date or any of the like. The service provider 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 and Regulation Z.</p>	<p><b>Sec. 11.</b> The service provider shall only charge and collect a fee from a licensee for loans that are approved by the licensee and entered into the database. The charge only occurs at origination of a loan and cannot be charged to extend, rollover, renew, refinance or consolidate or any action that would extend the due date. The service provider shall rebate any fee charged for an approved loan, in which the customer timely rescinds such loan. The fee is based upon a competitive procurement process, and shall not exceed \$3.00 per approved loan. The Commissioner shall approve the amount of the fee and shall post the approved amount on the Commissioner's website. Any change in the fee amount shall be approved by the Commissioner, and shall not take effect until 90 days after posting such change on the Commissioner's website. A licensee shall not collect any fee, charge or cost from a customer if a loan is not approved, or any amount in excess of the actual cost charged to the licensee by the service provider. The service provider fee must be included in the finance charge calculation under the Truth in Lending Act and Regulation Z, and must be itemized in the loan agreement.</p>	<p><del>Sec. 11. The service provider shall <u>only</u> charge and collect a fee from a licensee for <del>each loan</del><u>loans that are approved by</u> the licensee <del>enters and approves in</del><u>entered into</u> the database. The <u>charge only occurs at origination of a loan and cannot be charged to extend, rollover, renew, refinance or consolidate or any action that would extend the due date.</u> <u>The service provider shall rebate any fee charged for an approved loan, in which the customer timely rescinds such loan.</u> The fee is based upon a competitive procurement process <del>but, and</del> shall not exceed \$3.00 per approved loan. <del>A licensee shall not collect from a customer an amount in excess of the actual cost charged to the licensee by the service provider</del> <u>The Commissioner shall approve the amount of the fee and shall post the approved amount on the Commissioner's website.</u> <u>Any change in the fee amount shall be approved by the Commissioner, and shall not take effect until 90 days after posting such change on the Commissioner's website.</u> A licensee shall not collect any fee, charge or cost from a customer if a loan is not approved. <del>The service provider shall not collect any fee, charge or cost from a licensee if a loan is not approved. The charge only occurs at origination and cannot be charged to extend, rollover, renew, refinance or consolidate or any action that would extend the due date or any of the like, or any amount in excess of the actual cost charged to the licensee by the service provider.</del> The service provider fee <del>must be itemized on the loan agreement, regardless of whether the fee is required to</del> <u>be included in the finance charge calculation under the Truth in Lending Act and Regulation Z, and must be itemized in the loan agreement.</u></del></p>

See our letter for changes to **Section 12**.

Proposed Reg. Sec. 12	Our Proposed Changes	Redline of Changes
<p>Sec. 12. The service provider shall do all the following:</p> <ul style="list-style-type: none"> <li>(a) Retain data in the database only as required to ensure licensee compliance with this chapter and chapter 604A of NRS;</li> <li>(b) Archive data in the database concerning a customer transaction within two years after a customer transaction is closed unless notified by the Commissioner that such data is needed for a pending investigation or enforcement action;</li> <li>(c) Delete any identifying customer data from the database when data is archived; and</li> <li>(d) Delete data concerning a customer transaction from the database 3 years after the customer transaction is closed unless notified by the Commissioner that such data is needed for a pending investigation or enforcement action.</li> </ul>	<p>Sec. 12. The service provider shall do all the following:</p> <ul style="list-style-type: none"> <li>(a) Retain data in the database as required by NRS 604.303; and</li> <li>(b) Delete any identifying customer data from the database one year after the customer data is entered into by a licensee unless notified by the Commissioner that such data is needed for a pending investigation or enforcement action.</li> </ul>	<p>Sec. 12. The service provider shall do all the following:</p> <ul style="list-style-type: none"> <li>(a) Retain data in the database <del>only</del> as required <del>to ensure licensee compliance with this chapter and chapter 604A of</del> <u>by</u> NRS <u>604.303; and</u></li> <li><del>(b) Archive data in the database concerning a customer transaction within two years after a customer transaction is closed unless notified by the Commissioner that such data is needed for a pending investigation or enforcement action;</del></li> <li><del>(c) Delete any identifying customer data from the database when data is archived; and</del> <u>(b) (e) Delete any identifying customer data from the database</u></li> <li><del>(d) Delete data concerning a customer transaction from the database 3 years after the customer transaction is closed entered into by a licensee unless notified by the Commissioner that such data is needed for a pending investigation or enforcement action.</del> <u>one year after the customer transaction data is entered into by a licensee unless notified by the Commissioner that such data is needed for a pending investigation or enforcement action.</u></li> </ul>

Our changes to **Section 13** clarify that the licensee’s staff members process loans, and that a customer is entitled to a copy of the report from the database.

Proposed Reg. Sec. 13	Our Proposed Changes	Redline of Changes
<p>Sec. 13. 1. Access to the database is limited to:</p> <ul style="list-style-type: none"> <li>(a) Licensee staff members that underwrite and process the loans;</li> <li>(b) Licensee staff members that collect and post payments made on the loans;</li> <li>(c) Licensee senior staff members;</li> <li>(d) Office of the Commissioner staff members; and</li> <li>(e) Service provider staff members.</li> </ul> <p>Each user will be required to:</p> <ul style="list-style-type: none"> <li>(a) Create a password that meets the service provider’s password criteria; and</li> <li>(b) Safeguard the password by not sharing the password with any person or writing the password down.</li> </ul>	<p>Sec.13. 1. Access to the database is limited to:</p> <ul style="list-style-type: none"> <li>(a) Licensee staff members to process a consumer’s request for a loan;</li> <li>(b) Licensee staff members that service loans, including collecting and processing of payments, managing repossessions, etc. ;</li> <li>(c) Licensee senior staff members;</li> <li>(d) Office of the Commissioner staff members; and</li> <li>(e) Service provider staff members.</li> </ul> <p>Each user will be required to:</p>	<p>Sec. 13. 1. Access to the database is limited to:</p> <ul style="list-style-type: none"> <li>(a) Licensee staff members <del>that underwrite and to process the loans</del> <u>a consumer’s request for a loan;</u></li> <li>(b) Licensee staff members that <del>collect</del> <u>service loans, including collecting and post</u> <del>processing of payments, managing repossessions, etc. made on the loans;</del> <u>processing of payments, managing repossessions, etc. made on the loans;</u></li> <li>(c) Licensee senior staff members;</li> <li>(d) Office of the Commissioner staff members; and</li> <li>(e) Service provider staff members.</li> </ul>

<p>2. A customer has the right to request a copy of their loan history, file, record, or any documentation relating to their loan or the repayment of a loan, from a licensee, without a charge, fee or cost.</p>	<p>(a) Create a password that meets the service provider's password criteria; and</p> <p>(b) Safeguard the password by not sharing the password with any person or writing the password down.</p> <p>2. A customer has the right to request a copy of their loan history, file, record, or any documentation relating to their loan or the repayment of a loan, from a licensee, without a charge, fee or cost. A licensee shall submit a query to the database, and shall provide the customer with a copy of the report from the database.</p>	<p>Each user will be required to:</p> <p>(a) Create a password that meets the service provider's password criteria; and</p> <p>(b) Safeguard the password by not sharing the password with any person or writing the password down.</p> <p>2. A customer has the right to request a copy of their loan history, file, record, or any documentation relating to their loan or the repayment of a loan, from a licensee, without a charge, fee or cost. <u>A licensee shall submit a query to the database, and shall provide the customer with a copy of the report from the database.</u></p>
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See our letter for changes to **Section 14**.

Proposed Reg. Sec. 14	Our Proposed Changes	Redline of Changes
<p>Sec. 14. A licensee shall enter into the database, in real time, all loans originated under the provisions of chapter 604A of NRS; all renewals; extensions; grace periods; payments; refinances; when a repayment plan offer is sent; when a repayment plan is entered into; declined loans; and any transaction pertaining to the loan, as applicable, and in compliance with this chapter and chapter 604A of NRS.</p>	<p><b>Sec. 14.</b> Unless the database is inaccessible by a licensee, before a licensee makes a deferred deposit loan or high interest loan to a consumer, the licensee shall submit a query to the database, in real time consisting of the consumer's identifying customer information.</p> <p>The database in real time shall respond to licensee's query and inform the licensee of the number, type and amount of loans outstanding relating to the consumer, and the total "amount of all loans outstanding." For purposes of this Chapter, the type of loan outstanding refers to whether the loan is a deferred deposit loan, high interest loan, or title loan. The "amount of loan outstanding" refers to the principal amount of the loan outstanding on the date the customer obtained the loan.</p> <p>Unless the database is inaccessible by a licensee, in real time when making a loan, 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:</p> <ul style="list-style-type: none"> <li>(a) The date on which the loan was made;</li> <li>(b) The type of loan made;</li> <li>(c) The principal amount of the loan;</li> <li>(d) The fees charged for the loan;</li> <li>(e) The annual percentage rate of the loan;</li> <li>(f) The total finance charge associated with the loan;</li> <li>(g) If the customer defaults on the loan, the date of default;</li> </ul>	<p><del>Sec. 14. A licensee shall enter into the database, in real time, all loans originated under the provisions of chapter 604A of NRS; all renewals; extensions; grace periods; payments; refinances; when a repayment plan offer is sent; when a repayment plan is entered into; declined loans; and any transaction pertaining to the loan, as applicable, and in compliance with this chapter and chapter 604A of NRS.</del></p> <p><u>Unless the database is inaccessible by a licensee, before a licensee makes a deferred deposit loan or high interest loan to a consumer, the licensee shall submit a query to the database, in real time consisting of the consumer's identifying customer information.</u></p> <p><u>The database in real time shall respond to licensee's query and inform the licensee of the number, type and amount of loans outstanding relating to the consumer, and the total "amount of all loans outstanding." For purposes of this Chapter, the type of loan outstanding refers to whether the loan is a deferred deposit loan, high interest loan, or title loan. The "amount of loan outstanding" refers to the principal amount of the loan outstanding on the date the customer obtained the loan.</u></p> <p><u>Unless the database is inaccessible by a licensee, in real time when making a loan, 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:</u></p>

	<p>(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</p> <p>(i) The date on which the customer pays the loan in full.</p>	<p><u>(a) The date on which the loan was made;</u></p> <p><u>(b) The type of loan made;</u></p> <p><u>(c) The principal amount of the loan;</u></p> <p><u>(d) The fees charged for the loan;</u></p> <p><u>(e) The annual percentage rate of the loan;</u></p> <p><u>(f) The total finance charge associated with the loan;</u></p> <p><u>(g) If the customer defaults on the loan, the date of default;</u></p> <p><u>(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</u></p> <p><u>(i) The date on which the customer pays the loan in full.</u></p>
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See our letter for changes to **Section 15**.

<b>Proposed Reg. Sec. 15</b>	<b>Our Proposed Changes</b>	<b>Redline of Changes</b>
<p>Sec. 15. A licensee shall retain all data and documentation collected and reviewed for any loan, loan transaction, or any query made in the database for at least 3 years. Documentation includes, but is not limited to, all copies of the documents considered in determining the ability to repay, including the method used by a licensee to calculate a customer's net disposable income. In addition to the above mentioned, for title loans, the third-party vendor documentation showing the fair market value of the vehicle securing the title loan.</p>	<p><b>Sec. 15.</b> A licensee shall retain all customer identifying information and documentation collected and reviewed by licensee for any loan application and query made of the database for 25 months. Documentation includes but is not limited to all copies of documents showing the fair market value of the vehicle securing the title loan, copy of the certificate of title, co-owner consent, and copies of documents presented by the consumer evidencing his or her gross monthly income.</p>	<p><b>Sec. 15.</b> A licensee shall retain all <u>data</u><del>customer identifying information</del> and documentation collected and reviewed <u>by licensee</u> for any loan,<del>loan transaction, or any application and</del> query made <u>in</u><del>of</del> the database for <u>at least 3 years</u><del>25 months</del>. Documentation includes, but is not limited to, all copies of <del>the documents considered in determining the ability to repay, including the method used by a licensee to calculate a customer's net disposable income. In addition to the above mentioned, for title loans, the third-party vendor</del> documentation showing the fair market value of the vehicle securing the title loan, <u>copy of the certificate of title, co-owner consent, and copies of documents presented by the consumer evidencing his or her gross monthly income.</u></p>

We propose revising **Section 16** to allow for a reasonable process by licensees to correct mistakes in the database.

<b>Proposed Reg. Sec. 16</b>	<b>Our Proposed Changes</b>	<b>Redline of Changes</b>
<p>Sec. 16. A licensee shall not delete any consumer information entered into the database. If a loan or loan transaction is void or rescinded, a licensee must notate on the loan file and in the database that the loan or loan transaction is void and the reason the loan or loan transaction is void but shall not delete the loan or the loan transaction from the database. The service provider fee cannot be charged pursuant to this chapter and chapter 604A of the NRS for a voided or rescinded loan.</p>	<p><b>Sec. 16.</b> If a licensee mistakenly submits incorrect information to the database, the licensee shall contact the service provider in writing and inform the service provider of the mistake, and the licensee shall correct the mistaken information.</p>	<p><b>Sec. 16.</b> <del>A</del> If a licensee <del>shall not delete any consumer</del><u>mistakenly submits incorrect</u> information <del>entered into</del><u>to</u> the database. <del>If a loan or loan transaction is void or rescinded, a</del> licensee <del>must notate on the loan file and in the database that the loan or loan transaction is void and the reason the loan or loan transaction is void but shall not delete the loan or the loan transaction from the database. The</del><u>shall contact the</u> service provider <del>fee cannot be charged pursuant to this chapter and chapter 604A of the NRS for a voided or rescinded loan</del><u>in writing and inform the service provider of the mistake, and the</u> licensee shall correct the mistaken information.</p>

See our letter for changes to **Section 17**.

Proposed Reg. Sec. 17	Our Proposed Changes	Redline of Changes
<p>Sec. 17. Before making a deferred deposit loan, title loan or high-interest loan, a licensee shall query the database and shall retain evidence of the query for the Office of the Commissioner's review. 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. At a minimum, the query should include the below to verify the identity of a customer and verify eligibility of the loan:</p> <ul style="list-style-type: none"> <li>(a) The customer's full name: first and last name, and middle initial;</li> <li>(b) The customer's social security number or alien registration number;</li> <li>(c) The customer's valid government-issued photo ID number;</li> <li>(d) The customer's date of birth, mm/dd/yyyy;</li> <li>(e) The customer's gross income;</li> <li>(f) The customer's total obligations; and</li> <li>(g) Net disposable income of the customer.</li> </ul>	<p>Sec. 17.</p>	<p><del>Sec. 17. Before making a deferred deposit loan, title loan or high-interest loan, a licensee shall query the database and shall retain evidence of the query for the Office of the Commissioner's review. 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. At a minimum, the query should include the below to verify the identity of a customer and verify eligibility of the loan:</del></p> <ul style="list-style-type: none"> <li><del>(a) The customer's full name: first and last name, and middle initial;</del></li> <li><del>(b) The customer's social security number or alien registration number;</del></li> <li><del>(c) The customer's valid government-issued photo ID number;</del></li> <li><del>(d) The customer's date of birth, mm/dd/yyyy;</del></li> <li><del>(e) The customer's gross income;</del></li> <li><del>(f) The customer's total obligations; and</del></li> <li><del>(g) Net disposable income of the customer.</del></li> </ul>

We propose clarifying **Section 18** to reference only the only information licensees may obtain under NRS 604A.303 1.

Proposed Reg. Sec. 18	Our Proposed Changes	Redline of Changes
<p>Sec. 18. The database will provide the licensee information on:</p> <ul style="list-style-type: none"> <li>(a) Whether a customer has a deferred deposit loan, title loan or high-interest loan outstanding with more than one licensee;</li> <li>(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;</li> <li>(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.</li> </ul> <p>In determining a customer’s ability to repay a loan under chapter 604A of NRS, a licensee must consider if any of the above factors, in conjunction with all other available information, 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.</p>	<p>Sec. 18. The database will provide the licensee information on:</p> <ul style="list-style-type: none"> <li>(d) Whether a customer has a deferred deposit loan, title loan or high-interest loan outstanding with more than one licensee;</li> <li>(e) 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;</li> <li>(f) 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.</li> </ul>	<p>Sec. 18. The database will provide the licensee information on:</p> <ul style="list-style-type: none"> <li>(a) Whether a customer has a deferred deposit loan, title loan or high-interest loan outstanding with more than one licensee;</li> <li>(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;</li> <li>(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.</li> </ul> <p><del>In determining a customer’s ability to repay a loan under chapter 604A of NRS, a licensee must consider if any of the above factors, in conjunction with all other available information, 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.</del></p>

We propose revising **Section 19** to provide for a reasonable workable situation in the event the database is inaccessible by a licensee.

Proposed Reg. Sec. 19	Our Proposed Changes	Redline of Changes
<p>Sec. 19. During any period that the database is unavailable due to technical issues on the service provider side, a licensee may rely on a customer’s written representation and assess the customer’s ability to repay by obtaining the documentation required by this chapter to verify that making the loan applied for is permissible under the provisions of this chapter. A customer’s written representation includes, without limitation, a customer does not have any outstanding loans at the time the loan was made. If a customer does have an outstanding deferred deposit and/or high-interest loan, the customer affirms that an additional deferred deposit or high-interest loan they are about to enter into would not cause the customer to exceed 25% of the expected monthly gross income and they have the ability to repay the loan. If a customer has an outstanding title loan, the customer affirms that they have</p>	<p><b>Sec. 19.</b> For purposes of this chapter, the database is inaccessible by a licensee if the database is unavailable because of technical issues, including but not limited to the service provider’s technical issues, loss of power, loss of access to the Internet, etc. If the database is inaccessible, then the licensee shall notify the Department by email to _____.</p> <p>If a licensee makes a loan to a customer during a time the database is inaccessible by a licensee, a licensee may forgo the requirement to check the database under NRS 604A.303 and may rely on a customer’s written representation of the customer’s loans outstanding with other licensees. A licensee shall comply with all ability to repay provisions under NRS 604A.</p>	<p><del>Sec. 19. During any period that</del>For purposes of this chapter, <del>the database is inaccessible by a licensee if</del> the database is unavailable <del>due to because of</del> technical issues <del>on, including but not limited to</del> the service provider <del>side, a licensee’s</del> technical issues, loss of power, loss of access to the Internet, etc. <del>If the database is inaccessible, then the licensee shall notify the Department by email to _____.</del></p> <p><u>If a licensee makes a loan to a customer during a time the database is inaccessible by a licensee, a licensee may forgo the requirement to check the database under NRS 604A.303 and may rely on a customer’s written representation and assess of the customer’s loans outstanding with other licensees. A licensee shall comply with all ability to repay by obtaining the documentation required by this chapter to verify that making the loan applied for is permissible under the</u></p>

<p>the ability to repay the outstanding loan and the additional title loan that they are about to enter into, and that the title is not perfected with another lender or licensee. A licensee must immediately notify the Office of the Commissioner when the database is unavailable. If a licensee makes a loan to a customer during a time the database is unavailable, whether scheduled or for technical issues, a licensee must:</p> <ul style="list-style-type: none"> <li>(a) Enter the loan into the database within 24 hours of the system being operational;</li> <li>(b) Notate on the loan file that such loan was originated during a period the database was unavailable; and</li> <li>(c) Retain all record of the loan transaction as required for any loan made by a licensee pursuant to this chapter and chapter 604A of NRS.</li> </ul>	<p>A customer's written representation includes a written representation that:</p> <ul style="list-style-type: none"> <li>(a) a customer does not have any outstanding loans at the time the loan is made; or</li> <li>(b) if a customer has any other outstanding loan, the customer affirms that an additional deferred deposit loan in combination with all other outstanding loans of the customer, does not exceed 25 percent of the customer's expected gross monthly income when the deferred deposit loan is made; or</li> <li>(c) if a customer has any other outstanding loan, the customer affirms that an additional high-interest loan in combination with all other outstanding loans of the customer, does not require any monthly payment that exceeds 25 percent of the customer's expected gross monthly income when the loan is made.</li> </ul> <p>After the technical issues are resolved, the licensee must enter the information required in Section 14, into the database within one business day of the system being operational, and note that the loan file was originated during a period the database was unavailable; and</p> <p>A licensee shall retain all records as required for any loan made by a licensee pursuant to Section 19 of this chapter and chapter 604A of NRS.</p>	<p>provisions <del>of this chapter</del> under NRS 604A.</p> <p>A customer's written representation includes <del>without limitation;</del> <u>a written representation that:</u></p> <ul style="list-style-type: none"> <li>(a) <u>a customer does not have any outstanding loans at the time the loan <del>was</del>is made</u>; <del>If;</del> <u>or</u></li> <li>(b) <u>if a customer <del>does have an</del>has any other outstanding deferred deposit and/or high-interest loan, the customer affirms that an additional deferred deposit <del>or high-interest loan they are about to enter into would not cause</del>in combination with all other outstanding loans of the customer <del>to,</del> does not exceed 25% percent of the customer's expected gross monthly gross income and they have</u>when the <u>ability to repay the deferred deposit loan</u> <del>If is made;</del> <u>or</u></li> <li>(c) <u>if a customer has <del>any other</del> outstanding <del>title</del> loan, the customer affirms that <del>they have the ability to repay the outstanding loan and the</del>an additional <u>title</u> high-interest loan that they are about to enter into, and that the title is not perfected with another lender or licensee. A licensee must immediately notify the Office of the Commissioner</u>in combination with all other outstanding loans of the customer, <u>does not require any monthly payment that exceeds 25 percent of the customer's expected gross monthly income</u> when the <u>database</u>loan is unavailable. <del>If a licensee makes a loan to a customer during a time the database is unavailable, whether scheduled or for</del><u>made.</u></li> </ul> <p><u>After the technical issues are resolved, a licensee must:</u></p> <ul style="list-style-type: none"> <li>(a) <del>Enter the loan</del><u>licensee must enter the information required in Section 14, into the database within 24 hours</u><del>one business day</del> of the system being operational;</li> <li>(b) <del>Notate on, and note that</del> the loan file <del>that such loan</del> was originated during a period the database was unavailable; and</li> <li>(c) <del>Retain</del><u>A licensee shall retain</u> all <del>record of the loan transaction</del><u>records</u> as required for any loan made by a licensee pursuant to <u>Section 19</u> of this chapter and chapter 604A of NRS.</li> </ul>
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See our letter for changes to **Section 20.**

Proposed Reg. Sec. 20	Our Proposed Changes	Redline of Changes
<p>Sec. 20. The database provider shall maintain the database, take all actions it 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. 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.</p>	<p><b>Sec. 20.</b> The database provider shall maintain the database, take all actions it 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.</p>	<p><b>Sec. 20.</b> The database provider shall maintain the database, take all actions it 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. <del>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.</del></p>

See our letter for changes to **Section 21.**

Proposed Reg. Sec. 21	Our Proposed Changes	Redline of Changes
<p>Sec. 21. 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. If the database informs a licensee that a customer is ineligible for a loan, then a licensee shall provide written notice to a customer 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. The licensee must also provide the customer with an Adverse Action Notice pursuant to Regulation B.</p>	<p><b>Sec. 21.</b></p>	<p><del>Sec. 21. 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. If the database informs a licensee that a customer is ineligible for a loan, then a licensee shall provide written notice to a customer 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. The licensee must also provide the customer with an Adverse Action Notice pursuant to Regulation B.</del></p>

We have no changes to **Section 22.**

Proposed Reg. Sec. 22	Our Proposed Changes	Redline of Changes
<p>Sec. 22. The information contained in the database is confidential and exempt from the Freedom of Information Act and Nevada Public Records Law.</p>	<p>None</p>	<p>None.</p>

See our letter for changes to **Section 23.**

Proposed Reg. Sec. 23	Our Proposed Changes	Redline of Changes
<p>Sec. 23. A licensee shall enter the following information in the database, in real time, for each payment made on the loan, without limitation:</p> <ul style="list-style-type: none"> <li>(a) The scheduled payment amount;</li> <li>(b) The scheduled date of the payment;</li> <li>(c) The actual payment amount;</li> <li>(d) The date the payment was made;</li> <li>(e) The allocation of the total payment, dollar amount applied to principal and dollar amount applied to interest and fees;</li> <li>(f) Method of each payment received from a customer;</li> <li>(g) Method and amount of payment received from a customer when the loan is paid in full;</li> <li>(h) If a scheduled payment was missed:               <ul style="list-style-type: none"> <li>(1) The date the payment was missed;</li> <li>(2) If the missed payment changed the interest rate;</li> <li>(3) The new interest rate, if applicable;</li> <li>(4) Whether or not a repayment was offered;</li> <li>(5) Did a customer enter a repayment plan;</li> <li>(6) Whether or not a grace period was offer; and</li> <li>(7) The duration of the grace period, if applicable.</li> </ul> </li> </ul> <p>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.</p>	<p>Sec. 23.</p>	<p><del>Sec. 23. A licensee shall enter the following information in the database, in real time, for each payment made on the loan, without limitation:</del></p> <ul style="list-style-type: none"> <li><del>(a) The scheduled payment amount;</del></li> <li><del>(b) The scheduled date of the payment;</del></li> <li><del>(c) The actual payment amount;</del></li> <li><del>(d) The date the payment was made;</del></li> <li><del>(e) The allocation of the total payment, dollar amount applied to principal and dollar amount applied to interest and fees;</del></li> <li><del>(f) Method of each payment received from a customer;</del></li> <li><del>(g) Method and amount of payment received from a customer when the loan is paid in full;</del></li> <li><del>(h) If a scheduled payment was missed:</del> <ul style="list-style-type: none"> <li><del>(1) The date the payment was missed;</del></li> <li><del>(2) If the missed payment changed the interest rate;</del></li> <li><del>(3) The new interest rate, if applicable;</del></li> <li><del>(4) Whether or not a repayment was offered;</del></li> <li><del>(5) Did a customer enter a repayment plan;</del></li> <li><del>(6) Whether or not a grace period was offer; and</del></li> <li><del>(7) The duration of the grace period, if applicable.</del></li> </ul> </li> </ul> <p><del>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.</del></p>

See our letter for changes to **Section 24.**

Proposed Reg. Sec. 24	Our Proposed Changes	Redline of Changes
<p>Sec. 24. In addition to items (a) – (g) in Section 17, a licensee shall enter the following information in the database, in real time, prior to each loan made pursuant to NRS 604A.501- NRS 604A.5034 and NRS 604A.5035- NRS 604A.5064, without limitation:</p> <ul style="list-style-type: none"> <li>(a) The customer’s current employer;</li> <li>(b) If the customer is a covered service member;</li> <li>(c) If the customer is a dependent of a covered service member;</li> </ul>	<p>Sec. 24.</p>	<p><del>Sec. 24. In addition to items (a) – (g) in Section 17, a licensee shall enter the following information in the database, in real time, prior to each loan made pursuant to NRS 604A.501- NRS 604A.5034 and NRS 604A.5035- NRS 604A.5064, without limitation:</del></p> <ul style="list-style-type: none"> <li><del>(a) The customer’s current employer;</del></li> <li><del>(b) If the customer is a covered service member;</del></li> <li><del>(c) If the customer is a dependent of a covered service member;</del></li> </ul>

<ul style="list-style-type: none"> <li>(d) The origination date of the loan;</li> <li>(e) The term of the loan;</li> <li>(f) The principal amount of the loan;</li> <li>(g) The total finance charge associated with the loan;</li> <li>(h) The fee charged for the loan;</li> <li>(i) Due date of the loan;</li> <li>(j) The annual percentage rate of the loan;</li> <li>(k) The scheduled payment amount;</li> <li>(l) The payment details as described in section 23; and</li> <li>(p) Type of loan product;</li> </ul>		<ul style="list-style-type: none"> <li><del>(d) The origination date of the loan;</del></li> <li><del>(e) The term of the loan;</del></li> <li><del>(f) The principal amount of the loan;</del></li> <li><del>(g) The total finance charge associated with the loan;</del></li> <li><del>(h) The fee charged for the loan;</del></li> <li><del>(i) Due date of the loan;</del></li> <li><del>(j) The annual percentage rate of the loan;</del></li> <li><del>(k) The scheduled payment amount;</del></li> <li><del>(l) The payment details as described in section 23; and</del></li> <li><del>(p) Type of loan product;</del></li> </ul>
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See our letter for changes to **Section 25**.

<b>Proposed Reg. Sec. 25</b>	<b>Our Proposed Changes</b>	<b>Redline of Changes</b>
<p>Sec. 25. In addition to items (a) – (g) in Section 17, a licensee shall enter the following information in the database, in real time, prior to each loan made pursuant to NRS 604A.5065- NRS 604A.5089, without limitation:</p> <ul style="list-style-type: none"> <li>(a) Verification that the customer is the legal owner of the vehicle securing the loan;</li> <li>(b) The customer’s current employer;</li> <li>(c) If the customer is a covered service member;</li> <li>(d) If the customer is a dependent of a covered service member;</li> <li>(e) The origination date of the loan;</li> <li>(f) The term of the loan;</li> <li>(g) The principal amount of the loan;</li> <li>(h) The total finance charge associated with the loan;</li> <li>(i) The fee charged for the loan;</li> <li>(j) Due date of the loan;</li> <li>(k) The annual percentage rate of the loan;</li> <li>(l) The scheduled payment amount;</li> <li>(m) The payment details as described in section 23;</li> <li>(n)</li> <li>(o)</li> <li>(p)</li> <li>(q) The year, make, model, and Vehicle Identification Number (VIN) of the vehicle; and</li> <li>(r) The fair market value of the vehicle from a third-party vendor. The total amount of the loan cannot exceed the fair market value of the vehicle.</li> <li>(s) The legal co-owner’s name and consent from co-owner, if applicable;</li> <li>(t)</li> </ul>	<p><b>Sec. 25.</b></p>	<p><del>Sec. 25. In addition to items (a) – (g) in Section 17, a licensee shall enter the following information in the database, in real time, prior to each loan made pursuant to NRS 604A.5065–NRS 604A.5089, without limitation:</del></p> <ul style="list-style-type: none"> <li><del>(a) Verification that the customer is the legal owner of the vehicle securing the loan;</del></li> <li><del>(b) The customer’s current employer;</del></li> <li><del>(c) If the customer is a covered service member;</del></li> <li><del>(d) If the customer is a dependent of a covered service member;</del></li> <li><del>(e) The origination date of the loan;</del></li> <li><del>(f) The term of the loan;</del></li> <li><del>(g) The principal amount of the loan;</del></li> <li><del>(h) The total finance charge associated with the loan;</del></li> <li><del>(i) The fee charged for the loan;</del></li> <li><del>(j) Due date of the loan;</del></li> <li><del>(k) The annual percentage rate of the loan;</del></li> <li><del>(l) The scheduled payment amount;</del></li> <li><del>(m) The payment details as described in section 23;</del></li> <li><del>(n)</del></li> <li><del>(o)</del></li> <li><del>(p)</del></li> <li><del>(q) The year, make, model, and Vehicle Identification Number (VIN) of the vehicle; and</del></li> <li><del>(r) The fair market value of the vehicle from a third-party vendor. The total amount of the loan cannot exceed the fair market value of the vehicle.</del></li> <li><del>(s) The legal co-owner’s name and consent from co-owner, if applicable; (t)–</del></li> </ul>

See our letter for changes to **Section 26**.

Proposed Reg. Sec. 26	Our Proposed Changes	Redline of Changes
<p>Sec. 26. A licensee shall retain the following documentation and any and all documentation collected and reviewed in this chapter or chapter 604A of NRS for each loan made pursuant to NRS 604A.501-604A.5034, without limitation, copies of:</p> <p>(a) Documents used to verify identity;</p> <p>(b) Documents used to verify the ability to repay;</p> <p>(c) Documents used to verify customer's income; and</p> <p>(d) The customer's credit history.</p>	<p><b>Sec. 26.</b></p>	<p><del>Sec. 26. A licensee shall retain the following documentation and any and all documentation collected and reviewed in this chapter or chapter 604A of NRS for each loan made pursuant to NRS 604A.501-604A.5034, without limitation, copies of:</del></p> <p><del>(a) Documents used to verify identity;</del></p> <p><del>(b) Documents used to verify the ability to repay;</del></p> <p><del>(c) Documents used to verify customer's income; and</del></p> <p><del>(d) The customer's credit history.</del></p>

See our letter for changes to **Section 27**.

Proposed Reg. Sec. 27	Our Proposed Changes	Redline of Changes
<p>Sec. 27. In addition to items (a) – (d) in Section 26, a licensee shall retain the following documentation and any and all documentation collected and reviewed in this chapter or chapter 604A of NRS for each loan made pursuant to NRS 604A.5065- NRS 604A.5089, without limitation:</p> <p>(a) The vehicle title used to secure the loan. A copy of the title should be retained after the loan is closed;</p> <p>(b) The third-party vendor documentation showing the fair market value of the vehicle securing the title loan at the time the loan was made;</p> <p>(c) If there is a co-owner on the vehicle title, identification and consent form signed by the co-owner.</p>	<p><b>Sec. 27.</b></p>	<p><del>Sec. 27. In addition to items (a) – (d) in Section 26, a licensee shall retain the following documentation and any and all documentation collected and reviewed in this chapter or chapter 604A of NRS for each loan made pursuant to NRS 604A.5065- NRS 604A.5089, without limitation:</del></p> <p><del>(a) The vehicle title used to secure the loan. A copy of the title should be retained after the loan is closed;</del></p> <p><del>(b) The third-party vendor documentation showing the fair market value of the vehicle securing the title loan at the time the loan was made;</del></p> <p><del>(c) If there is a co-owner on the vehicle title, identification and consent form signed by the co-owner.</del></p>

Our changes to **Section 28** clarify the Proposed Regulations to specify the differences between a co-borrower and co-owner.

Proposed Reg. Sec. 28	Our Proposed Changes	Redline of Changes
<p>Sec. 28. For the purpose of NRS 604A.5076(5), a licensee must obtain written consent from each legal owner of the vehicle securing the title loan. The legal co-owner must be available in-person with a valid government-issued photo ID in order to sign a consent form. The consent form must advise the legal co-owner that if the borrower defaults on the loan and does not enter into a repayment plan, the licensee may seek repossession and sale of the vehicle. It should further disclose that the co-owner has no personal liability to make payments under the title loan agreement and</p>	<p><b>Sec. 28.</b> For the purpose of NRS 604A.5076(5), a licensee must obtain written consent from each legal owner of the vehicle securing the title loan including any co-owner who is not a borrower under the loan. The legal co-owner must be available in-person with a valid government-issued photo ID in order to sign a consent form. The consent form shall provide: (a) that the co-owner has no personal liability to make payments under the title loan agreement, and is not personally obligated to repay the title loan; and (b) that if the borrower does not pay the loan, the licensee may seek</p>	<p><del>Sec. 28.</del> For the purpose of NRS 604A.5076(5), a licensee must obtain written consent from each legal owner of the vehicle securing the title loan <u>including any co-owner who is not a borrower under the loan.</u> The legal co-owner must be available in-person with a valid government-issued photo ID in order to sign a consent form. The consent form <del>must advise the legal co-owner that if the borrower defaults on the loan and does not enter into a repayment plan, the licensee may seek repossession and sale of the vehicle. It should further disclose</del>shall provide: (a) that the co-owner has no</p>

is not personally obligated to repay the title loan, unless the co-owner signed the title loan agreement as a co-borrower.	repossession and sale of the vehicle.	personal liability to make payments under the title loan agreement, and is not personally obligated to repay the title loan, <del>unless the co-owner signed the title loan agreement as a co-borrower;</del> and (b) that if the borrower does not pay the loan, the licensee may seek repossession and sale of the vehicle.
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See our letter for changes to **Section 29**.

Proposed Reg. Sec. 29	Our Proposed Changes	Redline of Changes
<p>Sec. 29. The Office of the Commissioner may periodically run reports for purposes other than examinations, investigations, or internal reporting, in order to publish a report online regarding the scope of the industry. The data in a report shall not disclose personal identifying information, licensee identifying information such as the name of a licensee, address or license number. It may contain the number of loans made per loan product, number of defaulted loans, number of paid loans including loans paid on the scheduled date and loans paid past the due date, total amount borrowed and collected, and any other data the Commissioner or his or her designee deems necessary.</p>	<p><b>Sec. 29.</b> The Office of the Commissioner may use any information in the database for statistical purposes. The data in a report shall not disclose personal identifying information, licensee identifying information such as the name of a licensee, address or license number. Any statistical reports shall only reference the items in NRS 604A.303.</p>	<p><b>Sec. 29.</b> The Office of the Commissioner may <del>periodically run reports</del> <u>use any information in the database</u> for <u>statistical purposes</u> <del>other than examinations, investigations, or internal reporting, in order to publish a report online regarding the scope of the industry.</del> The data in a report shall not disclose personal identifying information, licensee identifying information such as the name of a licensee, address or license number. <del>It may contain the number of loans made per loan product, number of defaulted loans, number of paid loans including loans paid on the scheduled date and loans paid past the due date, total amount borrowed and collected, and any other data the Commissioner or his or her designee deems necessary.</del> <u>Any statistical reports shall only reference the items in NRS 604A.303.</u></p>

See our letter for changes to **Section 30**.

Proposed Reg. Sec. 30	Our Proposed Changes	Redline of Changes
<p>Sec. 30. Status of the loan must be entered into the database, without limitations:</p> <ol style="list-style-type: none"> <li>(1) If in collection, whether first party or third party, the date entered into collection and payment history;</li> <li>(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;</li> <li>(3) If the loan is in grace period, the date entered into a grace period and payment history;</li> <li>(4) If in a repayment plan, the date entered into a repayment plan and payment history.</li> <li>(5) The date the loan was closed as defined in this chapter;</li> <li>(6) The reason the loan was closed as defined in this chapter;</li> <li>(7) The date repossession of the vehicle was ordered, if applicable; and</li> <li>(8) The date repossession occurred, if applicable.</li> </ol>	<p><b>Sec. 30.</b></p>	<p><del>Sec. 30. Status of the loan must be entered into the database, without limitations:</del></p> <ol style="list-style-type: none"> <li><del>(1) If in collection, whether first party or third party, the date entered into collection and payment history;</del></li> <li><del>(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;</del></li> <li><del>(3) If the loan is in grace period, the date entered into a grace period and payment history;</del></li> <li><del>(4) If in a repayment plan, the date entered into a repayment plan and payment history.</del></li> <li><del>(5) The date the loan was closed as defined in this chapter;</del></li> <li><del>(6) The reason the loan was closed as defined in this chapter;</del></li> <li><del>(7) The date repossession of the vehicle was ordered, if applicable; and</del></li> <li><del>(8) The date repossession occurred, if applicable.</del></li> </ol>



July 6, 2020

Original VIA US Mail with copy  
to: [fidmaster@fid.state.nv.us](mailto: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:

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<sup>1</sup>, we would like to request additional time to assemble data and submit additional comment 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, (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 supplement our comments as set forth herein.

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<sup>1</sup> [http://gov.nv.gov/News/Emergency\\_Orders/2020/2020-06-29\\_-\\_COVID-19\\_Declaration\\_of\\_Emergency\\_Directive\\_026/](http://gov.nv.gov/News/Emergency_Orders/2020/2020-06-29_-_COVID-19_Declaration_of_Emergency_Directive_026/)

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.<sup>2</sup>

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.

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 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;<sup>3</sup>
- b. to require that the database’s information relate to certain deferred deposit, title loans, and high interest loans made by licensees,<sup>4</sup>
- c. to establish standards for the retention, access, reporting, archiving and deletion of information entered into or stored by the database,<sup>5</sup>

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<sup>2</sup> See Synopsis of the Act provided by the Nevada Advance Legislative Services.

<sup>3</sup> NRS 604A.300 1.

<sup>4</sup> *Id.*

<sup>5</sup> NRS 604A.300 5. (b)

- d. to establish the amount of the fee charged by the database,<sup>6</sup>
- 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;”<sup>7</sup>
- g. to adopt regulations that are necessary for the administration of the database;<sup>8</sup>

By requiring licenses to query the database prior to making a loan<sup>9</sup>, 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;*
- (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.*<sup>10</sup>

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.

Finally, 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.*”<sup>11</sup>

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.

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<sup>6</sup> NRS 604A.300 3.

<sup>7</sup> NRS 604A.300 2. (b)

<sup>8</sup> NRS 604A.303 5. (d)

<sup>9</sup>See, NRS 604A.5017 and NRS 604A.5045

<sup>10</sup> NRS 604A.303 2. (a) – (i)

<sup>11</sup> NRS 604A.303 4.

## 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 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;
- 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 ways licensees may operate, inconsistent implementation and enforcement;
- h. require licensees to incur tremendous costs of time and funds to implement changes which lack any statutory basis or authority; and
- i. not reasonably necessary to administer the database or carry out the provisions of the statute.

Regulations expanding the scope of an authorizing statute are invalid or void.<sup>12</sup> 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.<sup>13</sup> 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.

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<sup>12</sup> 2 Am Jur 2d Administrative Law § 224.

<sup>13</sup> 2 Am Jur 2d Administrative Law § 224.

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 monthly income limitations.<sup>14</sup> During a time when cyber criminals have repeated illegally obtained access to consumer's proprietary confidential information contained within 3<sup>rd</sup> party databases<sup>15</sup>, 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.<sup>16</sup> The statute created 9 database fields authorized by the statute<sup>17</sup>, but the FID has outlined 55 database fields.<sup>18</sup> The FID has turned the database into consumer reporting agency under federal law<sup>19</sup> by requiring the reporting of declined loans,<sup>20</sup> collecting of data regarding all payments, timely or untimely,<sup>21</sup> collection status of loans,<sup>22</sup> and a requirement to give an Adverse Action Notice when the database determines the customer is ineligible for a loan.<sup>23</sup> Although the statute limited the use of the database by the FID to statistical purposes<sup>24</sup>, the Proposed Regulations have turned what should be a very limited database into a broad repository of

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<sup>14</sup> See Synopsis of the Act provided by the Nevada Advance Legislative Services.

<sup>15</sup> <https://www.ftc.gov/enforcement/cases-proceedings/refunds/equifax-data-breach-settlement>

<sup>16</sup> Sections 11 and 13.

<sup>17</sup> 604A.303 2. (a)-(i).

<sup>18</sup> Sections 20, 21, 22, 23, 24, 25

<sup>19</sup> 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;

<sup>20</sup> Section 20

<sup>21</sup> Section 24

<sup>22</sup> Section 25

<sup>23</sup> Section 19

<sup>24</sup> NRS 604.303 4.

consumer information which it can use as an “enforcement tool”<sup>25</sup> when examining licensees.

2. Underwriting is unique to each licensee doing business in Nevada.<sup>26</sup> Because only licensees may make loans, only licensees may underwrite loans. The statute’s restrictions on licensees underwriting deferred,<sup>27</sup> high interest<sup>28</sup> and title loans involve very specific “ability to repay” safe harbor provisions. However, the FID has (i) created new underwriting requirements,<sup>29</sup> and (ii) shifted the underwriting from licensees to the database.<sup>30</sup>

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” which is not even defined in the regulations or statute, and also refer to “gross income” when the statute refers to expected gross monthly income.<sup>31</sup> 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.<sup>32</sup> 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

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<sup>25</sup> Sections 11 and 16

<sup>26</sup> Anti-trust laws prohibit competing licensees from making an agreement upon underwriting factors.

<sup>27</sup> NRS 604.5011, NRS 604.5017, NRS 604.5029 2.,

<sup>28</sup> NRS 604.5038, NRS 604.5045, NRS 604.5029 2.,

<sup>29</sup> Section 18 A licensee **must consider** if any of the above factors, in conjunction with all other available information, 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.

<sup>30</sup> Sections 18 provides that the database shall inform a licensee on whether a consumer is eligible. Section 21 the database “shall allow” a licensee to make a loan.

<sup>31</sup> NRS 604A.5017, NRS 604A.5045, Section 22 (f)

<sup>32</sup> Sherman Anti-Trust Act of 1890. Federal Trade Commission Act.

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 history.<sup>33</sup> Payment history implies that payments that have been made in the past (and not uploaded) must be uploaded.<sup>34</sup> That is, if the licensee transfers an account to a 3<sup>rd</sup> party for collection, and the 3<sup>rd</sup> 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. Payment history 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 3<sup>rd</sup> party collectors have no access to the database<sup>35</sup> Thus, to upload payments to a 3<sup>rd</sup> party collector in real time would require licensee and each 3<sup>rd</sup> party collector to have proprietary software in which the 3<sup>rd</sup> 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 3<sup>rd</sup> 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”<sup>36</sup> and “consent from the co-owner”<sup>37</sup>. All of these requirements are impracticable, vague, and exceed any statutory basis.

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

#### **Section 4.**

The word “immediately” is found 9 times in NRS 604A<sup>38</sup>, and including Section 4, Section 17, and Section 18 of 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, 30 days within one business day is a nonsensical construction, bound to create compliance inconsistencies

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<sup>33</sup> Section 25 (1)

<sup>34</sup> 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.

<sup>35</sup> Section 12. 1—only licensees and the FID have access to database information.

<sup>36</sup> Section 23 (a).

<sup>37</sup> Section 23 (o).

<sup>38</sup> NRS 604A.045, 604A.303, 604A.5026, 604A.503, 604A.5058, 604A.5085, 604A.605, 604A.645.

for enforcement and compliance purposes. 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.<sup>39</sup> In each of 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, the statutes each list 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;*
- (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.<sup>40</sup>*

Each statute<sup>41</sup> 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<sup>42</sup> 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.

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<sup>39</sup> See, NRS 604A.5011, NRS 604A.5038, and NRS 604A.5065.

<sup>40</sup> *Id.*

<sup>41</sup> *Id.*

<sup>42</sup> *Id.*

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 (using 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.

#### **Section 8.**

The words "identifying customer information" are not found in the current regulations (NAC 604A), NRS 604A, or the Proposed Regulations. The definition of "identifying customer information" is not reasonably necessary to administer the database or carry out the provisions of the statute, and should be stricken.

#### **Section 9.**

The words "closed loan" are not found in the current regulations (NAC 604A), NRS 604A, or the Proposed Regulations. The definition of "closed loan" is not reasonably necessary to administer the database or carry out the provisions of the statute, and should be stricken.

#### **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 that the database fee is a finance charge under Regulation Z. 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 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.<sup>43</sup> 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.<sup>44</sup> 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 person retain confidential personal information for only as long as is reasonably necessary to fulfill the purpose for which the information was collected, and insure proper destruction thereafter.<sup>45</sup> To reasonably administer the database or carry out the provisions of the statute, Section 11 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.

### **Sections 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

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<sup>43</sup> NRS 604A.700 requires that licensees shall preserve all such books and accounting records for at least 2 years after making the final entry.

<sup>44</sup> NRS 604A.700 requires that licensees shall preserve all such books and accounting records for at least 2 years after making the final entry.

<sup>45</sup> 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>

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<sup>46</sup> and are reasonably necessary for the administration of the database.<sup>47</sup> The Legislature went one step further, and even specified the data fields (the Statutory Database Fields) that are 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.”<sup>48</sup> 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

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<sup>46</sup>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.)

<sup>47</sup> NRS 604A.303.

<sup>48</sup> 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.

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)<sup>49</sup> coupled with NRS 604A.303.5(d)<sup>50</sup> together provide a common sense 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<sup>51</sup> does not require the name, address, identifying 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

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<sup>49</sup> 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.”

<sup>50</sup> NRS 604A.303.5(d) allows the licensee and Commissioner to adopt regulations that are necessary for the administration of the database.

<sup>51</sup> 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;* (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.*

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 18.**

Section 18 creates new loan qualification requirements not authorized by the statute, issues directives that change the plain meaning of the statute, and exceeds the limited statutory basis required for the database. Please note that the statute requires that the database make the items listed in Section 18 available to the licensee upon querying the database, but does not require that the licensee use same in its underwriting. That is, other provisions of the statute address underwriting and ability to repay.<sup>52</sup> Section 18 mandates that a licensee must consider such information in underwriting, when such information may or may not be relevant to a licensee’s decision to make a loan. Licensees, guided by the statutes, determine their underwriting criteria—not the Commissioner. As such, Section 18 should be stricken or revised to delete the requirement that licensee “must consider” the above factors in underwriting.

### **Section 19.**

Section 19 shifts the loan qualification decisions from the licensee to the database service provider and/or other licensees and is not reasonably necessary to administer the database or carry out the provisions of the statute. Section 19 provides that the database will provide information the licensee of whether a customer is “eligible” or “ineligible” for a loan. However, 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. Furthermore, Section 19 mandates the providing of an adverse action letter pursuant to Regulation B. Under the ECOA, a refusal to make a loan that would violate applicable law is not an adverse action requiring notice. Such provision is unnecessary to administer the database or carry out the provisions of the statute. As such, Section 19 should be stricken or revised so that the licensee is responsible to determine whether a customer is eligible or ineligible for a loan.

### **Section 20.**

Section 20 is a broad provision that requires licensees to enter into the database in real time all loans, renewals, extensions, grace periods, refinances, payment plans, declined loans, and transactions relating to the loans. Furthermore, all of the information (data fields) addressed in Section 20 (with the exception of declined loans)

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<sup>52</sup> NRS 604A.5017, NRS 604A.5045, and NRS 604A.5076.

are addressed in Sections 21, 22, 23, 24, and 25. As such, Section 20 contains duplicative requirements that are unnecessary to administer the database or carry out the provisions of the statute. 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. As such, Section 20 should be stricken.

### **Section 21.**

Section 21 requires that licensees query 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.<sup>53</sup> Both the statute and regulations place the obligation to verify the consumer’s gross monthly income upon the licensee,<sup>54</sup> 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 21(e) which requires licensees to query the database to obtain 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,<sup>55</sup> 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” will not provide consistent information to licensees. 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 query and upload “total obligations” would create new loan qualification requirements not authorized by the statute. Section 21(f) which requires licensees to query the

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<sup>53</sup> NRS 604A.5017, NRS 604A.5045, and NAC 604A.180

<sup>54</sup> See NRS 604A.5017, NRS 604A.5045, and NAC 604A.180

<sup>55</sup> 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. . .

database to obtain 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.

Furthermore, 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.<sup>56</sup> Section 21 should be revised to strike the provisions indicating that the “database” or “service provider” “allows a licensee to make loans.” Such Proposed Regulations directly conflict with the statutory requirements and impermissibly shift the underwriting and making of a loan from the licensee to the service provider or database.

### **Sections 22, 23, 24, and 25.**

Sections 22, 23, 24, and 25 contain the provisions requiring the licensees to upload numerous data fields. Section 22 requires that licensees upload the information in Section 21 (a) through (f).

We have no objection to the following data field requirements:

1. customer’s full name: first and last name, and middle initial;<sup>57</sup>
2. valid government-issued photo ID number; <sup>58</sup>
3. date of birth, mm/dd/yyyy;<sup>59</sup>
4. *the origination date of the loan*<sup>60</sup>;
5. *the principal amount of the loan*;<sup>61</sup>
6. *the total finance charge associated with the loan*;<sup>62</sup>
7. *the fees charged for the loan*;<sup>63</sup>
8. *the annual percentage rate of the loan*;<sup>64</sup>
9. *type of loan product (deferred deposit, high interest, title)*;<sup>65</sup>
10. *date of default*;<sup>66</sup>
11. *date customer enters into repayment plan; and*<sup>67</sup>

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<sup>56</sup> See, NRS 604A.5017, NRS 604A.5045, and NRS 604A.5076.

<sup>57</sup> NRS 604A.303 5(d) and Section 21 (a) which is a required data field pursuant to Section 22.

<sup>58</sup> NRS 604A.303 5(d) and Section 21 (c) which is a required data field pursuant to Section 22.

<sup>59</sup> NRS 604A.303 5(d) and Section 21 (d) which is a required data field pursuant to Section 22.

<sup>60</sup> NRS 604A.303 2(a) and Section 22 (c).

<sup>61</sup> NRS 604A.303 2(c) and Section 22 (e).

<sup>62</sup> NRS 604A.303 2(f) and Section 22 (f).

<sup>63</sup> NRS 604A.303 2(d) and Section 22 (g).

<sup>64</sup> NRS 604A.303 2(e) and Section 22 (i).

<sup>65</sup> NRS 604A.303 2(b) and Section 22 (l).

<sup>66</sup> NRS 604A.303 2(g) and Section 25 (2) limited solely to date of default.

<sup>67</sup> NRS 604A.303 2(h) and Section 25 (4) limited solely to the date of entering into repayment plan.

12. *date customer pays loan in full.*<sup>68</sup>

Please note that database fields 4 through 12 are specifically listed in NRS 604A.303—a NRS 604A.303 Database Field. 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.

All of the other data fields in Sections 21, 22, 23, 24, and 25<sup>69</sup> 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. For example, Section 22 and 23 require data fields relating to whether a customer is a “covered service member” or “dependent of a covered service member” under the federal Military Lending Act. The federal Military Lending Act gives lenders that check a federal database or certain private 3<sup>rd</sup> party databases certain safe harbor compliance assurances. However, the information lenders receive from some databases does not distinguish between whether the customer is a covered service member, or the dependent of a covered service member. As such, uploading information regarding the military status of Nevada Residents is unnecessary and creates additional requirements upon the database and licensees that exceed statutory mandates. In addition, Section 25 requires the status of the loan be uploaded, but does not identify when such status should be uploaded. Finally, the number of data fields required to be uploaded far exceed similar database statutes in other states.<sup>70</sup>

**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 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

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<sup>68</sup> NRS 604A.303 2(i) and Section 24 (c) limited solely to the final payment in full.

<sup>69</sup> 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.

<sup>70</sup> Alabama Code § 5-18A-13(o), Delaware Code 5 § 2235B, Florida Statutes §§ 560.4041 and 560.404, Illinois Compiled 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 Compiled 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).

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.<sup>71</sup> 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 items to be uploaded to the database. However, the Proposed Regulations vastly and unnecessarily expands the volume of consumer data to 55 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, 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. 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 sister states that have implemented databases.

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<sup>71</sup> See comments to Section 16.

Ms. Sandy O'Laughlin

July 6, 2020

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We request that the FID delay the rulemaking process, 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, actually schedule informal meetings with 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.

Without significant revisions, the Proposed Regulations will disproportionately hurt borrowers who are most in need of credit, by limiting access to credit.

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

July 6, 2020

Sandy O’Laughlin, Commissioner  
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Dear Commissioner O’Laughlin,

We welcome the opportunity to provide comments and input on the proposed regulations pertaining to Senate Bill 201-2019 (“SB 201”) (the “Proposed Regulations”). CashNetUSA supports good regulation based on current business and consumer trends and data. We strive to deliver the best products and services to our customers that help them move forward in their financial life, and we support states’ efforts to supervise lenders and protect consumers from unlawful business practices. SB 201 was signed into law on May 28, 2019. Among other things, SB 201 amended certain provisions of NRS §§ 604A *et seq.* to create a new loan database and set a compliance date target of July 1, 2020 (“compliance date”) for licensees to start using the new system. The Financial Institutions Divisions (“FID”) has enforcement and supervisory authority over 604A lenders.

We are concerned that the Proposed Regulations circulated by the FID with respect to this database significantly exceed the requirements of SB 201 as set out in detail below. We believe the Proposed Regulations need a significant amount of further work to ensure they do not disproportionately hurt borrowers who are most in need of credit. Accordingly, we respectfully request that collaborative work continue on the Proposed Regulations and that the compliance date be formally extended by at least six months to allow for this. .

### **A number of issues remain in the Proposed Regulations.**

1. The Proposed Regulations continue to significantly exceed the authority granted to FID under SB 201, specifically requiring the development of a new and untested underwriting methodology

SB 201 directs 604A licensees to enter loan and borrower information into the database, both for reporting purposes and to enforce new loan amount restrictions that would require licensees to consider the borrower’s outstanding debt with 604A-licensed lenders (the statute refers to “any other outstanding loan”, but the Proposed Regulations appropriately limit applicability to loans made by 604A licensees). The Proposed Regulations prohibit a licensee from making a deferred deposit (or higher-

cost) loan that, in combination with any other outstanding 604A loans of the customer, exceeds 25% of the customer's expected GMI. This is a fairly standard approach and has been used successfully by lenders to evaluate ability to repay.

SB 201 did not, however, create authority for the FID to design and impose an entirely new underwriting methodology that goes beyond the authorized 25% of GMI standard. Such methodologies should first be statistically validated, and the absence of thoughtful validation can lead to unfair restrictions on access to credit. While we acknowledge the deletion of the term "net disposable income", the Proposed Regulations continue to require licensees to query the customer's "total obligations" from the database and use that, along with "all other available information," when determining customer eligibility for a loan. (See Secs. 18 and 21(f)). "Total obligations" is neither defined nor required to be collected by licensees under the statutory provisions of 604A or SB 201. As a result, the Proposed Regulations appear to retain the net income requirement of the prior proposed regulations under the guise of a different name and continues to exceed the scope of the underwriting requirements authorized by SB 201.

Similarly, licensees are required to enter whether a customer is a covered service member or the dependent of a covered service member. Federal law (the Military Lending Act) already governs loans to covered persons and provides for a mandatory status check on a federal database as the system of record -- a private 3<sup>rd</sup> party database is not an appropriate or reliable alternative to existing Department of Defense mechanisms, and may lead to inconsistent determinations of eligibility.

On a federal level, the CFPB published a notice of Proposed Rulemaking in February of 2019 that reconsidered and rejected a residual income requirement from its pending Payday Rule, and we believe FID should do the same. We are concerned, for example, that such a metric discriminates against people who aren't the primary or even partial payers of housing or utilities and thus have no documentation of expenses, or whom have multiple sources of income that may include items not captured in monthly payroll documents, or whom live in multi-family housing situations where their expenses are offset by others sharing the same housing but whom do not have readily-available documentation of those shared expenses.

While gross income as shown in paystubs or bank statements is usually a reasonably obtainable metric with a common definition, "obligations" is not. Defining what should be included in "obligations" must be clear to make this approach work effectively (i.e. if there is only one payment remaining, is that an obligation that needs to be included? If it is only an occasional expense?) and can be difficult to reliably document; and, that lack of measurability is one principal reason other states and the CFPB have avoided or abandoned a residual income approach. Moreover, collection of this data does not align with the short duration and low dollar amount of a deferred deposit transaction.

2. The Proposed Regulations mandate the collection of a significant number of terms and data points not required under SB 201

The Proposed Regulations continue to require the collection of a number of data points not authorized or required by SB 201, and collection of this data is inherently imprecise and legally questionable. At a minimum these terms and concepts should be dropped from the Proposed Regulations. The Proposed Regulations require extensive data not only at origination but also each time a payment is made (or missed) as well as detailed information about the allocation of payments, collections activity, and whether grace periods, or repayment plans were offered. Further, the Proposed Regulations require licensees to “report” declined loans for no apparent purpose. (See Sec. 20). This requirement imposes an undue burden on the borrower and may function as a de facto form of discrimination by the state against certain categories of borrowers. This reporting, and the terms to be tracked, are significantly more burdensome than in other states that utilize a third-party database. Moreover, SB 201 does not require such reporting.

Several responses to the FID’s Small Business Impact questionnaire, including our own, raised these issues back in February but the simple fact remains that SB 201 does not require the FID to gather this information as part of its “consumer protection responsibilities.”<sup>1</sup>

In our survey response, we were asked to list any suggestions that would minimize adverse business impacts. Our response remains:

***Simplify the requirements of information to provide to the third-party database to be consistent with the explicit requirements of SB 201***

Several other states currently use small dollar databases to provide oversight to lender and borrower activities, but no states require the types and volumes of data contemplated in these Proposed Regulations. Below are some of the commercially verifiable items we currently provide in other states that require a third-party database, and which would be appropriate to enter into the database for loans under 604A:

- customer information: first name, last name (but not middle initial), address, state, zip, phone, email,
- DOB, driver’s license number and SSN
- loan information: agreement date, due date, advance amount, advance fee, database fee, payment method, return date, and payment dates and amounts.

In sum, at present the Proposed Regulations do not meet the basic requirements of the Nevada APA. They are unduly burdensome on licensees and are inconsistent with statutory law.<sup>2</sup> If FID thinks it needs information to be collected and retained, it should

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<sup>1</sup> If an agency determines . . . that a Proposed Regulation is likely to impose a direct and significant economic burden upon a small business . . . the agency shall consider methods to reduce the impact of the Proposed Regulation on small businesses, including simplifying the Regulation. NRS 233B.0608(2).

<sup>2</sup> “To the extent authorized by the statutes applicable to it, each 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.” State Bd. of Equalization v. Sierra Pac. Power Co., 634 P.2d 461, 97 Nev. 461 (Nev.

go back to the legislature for additional statutory authority, as this simply was not part of the bill.

### 3. Additional issues with the Proposed Regulations.

In addition to our primary concerns outlined above, we share in the concerns already addressed (by ourselves and others) about consumer privacy. The state is free to determine how its chosen vendor should handle customer PII, but that is a question for the agency's vendor contract and not an appropriate subject for licensee regulations or responsibility. Licensees should not bear legal responsibility for breaches of data required to be provided by Nevada Regulations. An additional question is raised by new Section 14 – what is a licensee's liability if a former customer later requests his or her information be deleted? The service provider as an agent of the state may be exempt from having to comply with consumer data requests, but licensees may not share that immunity.

Providing unnecessary personal information increases the risk of financial fraud and slows down the loan application and approval process. Further, the Proposed Regulations require licensees to provide ineligible applicants with an adverse action notice (“NOAA”) “pursuant to federal Regulations B”. Since licensees are already subject to federal law on NOAAs, this is redundant and an invitation for confusion and litigation. The requirement, along with the requirement to enter data on declined loans, should be removed.

### 4. Request for extension of the compliance date

Implementing a database is a lengthy, technical, and collaborative matter. Responsible and compliant 604A lenders must be given adequate time to integrate and test their systems with the database as well as adjust their operating protocols to accurately send and receive information about borrower loan eligibility and qualifying loan amounts. Lenders must also be given adequate time and opportunity to amend customer forms and disclosures to identify the database.

To date, no database vendor has been identified, APIs have not been developed, and no technical specifications or other information necessary to begin programming and integration processes has been provided. In our collective experience with complying with database legislation enacted in other states, at least six months is required after receiving technical specifications and other information and documentation from the database provider for licensees to program APIs, test file transmissions and adapt operations. Thus, even under the best of circumstances, there is simply not time for a database to be fully implemented on the compliance date.

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1981). SB 201 assigned to the FID the duty to develop, implement and maintain a database to ensure compliance with existing law. SB 201 does not grant to FID the authority to establish new standards governing and regulating the making of these types of loans.

The Proposed Regulations go much further in scope than any other state's small dollar database program. By requiring and providing both income and obligation information, in addition to other outstanding loans the Proposed Regulations may require a vendor that is in fact an FCRA-compliant consumer credit reporting agency.

Accordingly, we respectfully request that the development and implementation of database Regulations timeline be formally extended, that FID data points outside the stated provision of SB 201 be authorized in law before being pursued, and that a no-adverse-action statement be issued by FID and the Attorney General while the affected stakeholders continue to work on these issues.

Transmitted via Email to [Fidmaster@fid.state.nv.us](mailto:Fidmaster@fid.state.nv.us)  
MRK: 07/06/2020



Submitted to: [fidmaster@fid.state.nv.us](mailto:fidmaster@fid.state.nv.us)

July 7, 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)  
– Revises Provision Governing Loans – NRS 604A Database

Dear Ms. O’Laughlin:

CURO Financial Technologies Corp., doing business as Rapid Cash, provides small dollar loans and other financial services through its 19 storefronts and online at [www.rapidcash.com](http://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<sup>1</sup> or a high-interest loan service<sup>2</sup>, 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 licenses 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.<sup>3</sup>

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. Information licensees are to enter into the database.**

The Legislature explained that only after a licensee makes a deferred deposit loan, title loan or high-interest loan, is the following information is to be entered into the database:

- (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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<sup>1</sup> "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).

<sup>2</sup> "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).

<sup>3</sup> NRS 604A.303(1).

(f) The total finance charge associated with the loan<sup>4</sup>;

Licenses are also directed to enter in specific 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<sup>5</sup>.

## **2. The Proposed Regulations.**

On June 22, 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, “licensee shall enter the following information in the database, in real time, prior to 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; and

(l) Type of loan product<sup>6</sup>.”

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, prior to each loan made pursuant to [title loan services], without limitation:

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<sup>4</sup> NRS 604A.303(2).

<sup>5</sup> *Id.*

<sup>6</sup> Section 22, Proposed Regulations.

- (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) Full amount of the loan
- (g) The principal amount of the loan;
- (h) The total finance charge associated with the loan;
- (i) The fee charged for the loan;
- (j) Due date of the loan;
- (k) The annual percentage rate of the loan;
- (l) The scheduled payment amount;
- (m) The payment details as described in section 24;
- (n) The year, make, model, and Vehicle Identification Number (VIN) of the vehicle;
- (o) The fair market value of the vehicle from a third-party vendor. The total amount of the loan cannot exceed the fair market value of the vehicle; and
- (p) The legal co-owner's name and consent from co-owner, if applicable<sup>7</sup>."

Additionally, in 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".

S.B. 201 requires licensees to enter information in the database "for each such loan made to a customer at the time the transaction takes place,"<sup>8</sup> not prior to making the loan. Entering information about a loan prior to it being made is only anticipatory, as an agreement between the parties does not yet exist, and therefore is not a valid contract<sup>9</sup>.

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<sup>7</sup> Section 23, Proposed Regulations.

<sup>8</sup> NRS 604A.303(2).

<sup>9</sup> "Contract, *n.* 1. An agreement between two or more parties creating obligations that are enforceable or otherwise recognizable at law." Black's Law Dictionary, 318, (7<sup>th</sup> ed. 1999).

Before making a deferred deposit loan or high interest loan, the licensee is querying the database to ensure that a deferred deposit loan or high interest loan, in combination with any other outstanding loans, would not exceed 25% of the customer's expected gross monthly income. After querying the database to insure a customer is eligible for a new deferred deposit or high interest loan, the licensee would then complete their own proprietary underwriting process and determine if they will approve the loan application.

Requiring licensees to input payment details prior to even making a loan to a customer also makes no practical sense and, more importantly, is not consistent with S.B. 201. Entering this data prior to making a loan is not required for a licensee utilizing the database to ensure compliance with NRS 604A. Licensees should only be required to enter this information "at the time a transaction takes place" as specified by the Legislature in S.B. 201.

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;
- (e) The allocation of the total payment, dollar amount applied to principal and dollar amount applied to interest and fees;
- (f) Amount of payment received from a customer when the loan is paid in full;
- (g) If a scheduled payment was missed:
  - (9) The date the payment was missed;
  - (10) If the missed payment changed the interest rate;
  - (11) The new interest rate, if applicable;
  - (12) Whether or not a repayment was offered;
  - (13) Did a customer enter a repayment plan; and
  - (14) 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<sup>10</sup>."

Entering this information "prior to each loan made," as required under Section 22, is highly unworkable and not consistent with S.B. 201. Additionally, none of the information required under Section 24 was authorized by the Legislature under S.B. 201. Further, this information is unnecessary for a licensee utilizing the database to ensure compliance with NRS 604A. Based on the foregoing reasons, Section 24 should be removed from the proposed regulations in its entirety.

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<sup>10</sup> Section 24, Proposed Regulations.

With respect to title loan services, the proposed regulations are also inconsistent with the provisions of S.B. 201. Requiring licensees offering title loan services to enter into the database “(a) Verification that the customer is the legal owner of the vehicle securing the loan . . . (m) The year, make, model and Vehicle Identification Number (VIN) of the vehicle; and (n) The fair market value of the vehicle, from a third-party vendor. The total amount of the loan cannot exceed the fair market value of the vehicle. (o) The legal co-owner’s name and consent from the co-owner, if applicable” is not contemplated by S.B. 201 and is pointless for a licensee utilizing the database to ensure compliance with NRS 604A. Because of this, subparts (a) and (m)-(o) under Section 23 should be removed from the proposed regulations in their entirety.

Also with respect to title loan services under Section 25, requiring all licensees to enter the status of the loan into the database, including (1) If in collection, whether first party or third party, the date entered into collection and payment history . . . (3) If the loan is in grace period, the date entered into a grace period and payment history . . . (6) The reason the loan was closed as defined in this chapter; (7) the date of repossession of the vehicle was ordered, if applicable; and (8) The date repossession occurred; if applicable” is also not contemplated by S.B. 201 and is impractical for a licensee utilizing the database to ensure compliance with NRS 604A. Because of this, subsections (1), (3), (6), and (7)-(8) under Section 25 should also 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<sup>11</sup>.

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

The Legislature specifically enumerated limited information that licensees may utilize to ensure compliance with NRS 604A<sup>12</sup>. 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<sup>13</sup>. The Legislature did not amend the provisions relating to title loans, and therefore “title loan” must be removed from this section (Section 21) to ensure adherence to the Legislature’s intent.

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<sup>11</sup> NRS 604A.303(2)(g),(h).

<sup>12</sup> NRS 604A.303(1).

<sup>13</sup> Section 21, Proposed Regulations.

Finally, Section 24, provides that the query would include “(e) The customer’s gross income; and (f) The customer’s total obligations.” As neither of these items are required to be entered by any licensee<sup>14</sup> or contemplated under S.B. 201, they should be removed in their entirety.

### **3. Conclusion.**

The proposed regulations have specific sections, 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, and are unnecessary in part, and impractical, pointless, 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. Please do not hesitate to contact me directly at [AaronMansfield@curo.com](mailto:AaronMansfield@curo.com) should you have any questions.

Sincerely,

Aaron Mansfield  
Corporate Counsel

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

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<sup>14</sup> See Sections 22-24, Proposed Regulations.



**Nevada Department of Business & Industry, Financial Institutions Division Workshop: SB 201 Database  
Purpose Financial/Advance America Testimony  
April 29, 2020**

- Thank you, Commissioner O’Laughlin, for this opportunity. My name is Susie Schooff, and I am providing testimony on behalf of Purpose Financial, Inc., the parent company of Advance America, which operates 11 stores in Nevada, offering a range of small-dollar loans.
- The regulations being discussed today go beyond what the legislature intended in SB 201 when calling for a database to ensure compliance with state statute.
- These regulations are incredibly complex and burdensome, on top of an already significant, intensive, and technical undertaking.
- They essentially call for the state’s database provider to function like a credit reporting agency, further complicating the approval process for a loan of just a few hundred dollars.
- As you know, regulated lenders, including Advance America, use a proprietary process for determining customers’ ability to repay, to ensure they are successful borrowers.
- Yet the FID’s database regulations call for lenders to enter a customer’s “total obligations” and “net disposable income,” with little context as to the relevance of this information, as it is not necessary to comply with existing law, including the GMI cap, nor is it appropriate for small-dollar loans. The term “net disposable income” does not even appear in the statute.
- Further, the requirements regarding payment data go into greater detail than necessary and would not be applicable depending on when the payment is made.
- Similarly, the regulations also require the needless collection of consumers’ private information, including their driver’s license number and employer, along with other non-essential information typically not available nor relevant at the time of loan origination. The more unnecessary data collected in the database, the greater the security risk, as the database provider becomes a prime target for hackers.
- As a leading licensed operator, Advance America has substantial lending and compliance experience across 28 states, including nearly a dozen with databases. In other states, it typically has taken at least four to six months to fully comply with a database requirement.
- The complexity of the FID’s regulations – unlike any other state – will necessitate far more time and testing to guarantee compliance
- This timeline is further complicated by the unprecedented impact and uncertainty of the COVID-19 crisis, including on lenders’ operations and staff.
- As a result, we do not see how lenders can possibly comply with these regulations by the July 1 deadline.
- The inability for the database to be ready by the effective date, and our subsequent inability to comply, creates untenable and significant regulatory and litigation risks for lenders.
- We urge you to reconsider these regulations, to ensure a database in accordance with the letter and spirit of the law passed by Nevada’s legislature. We look forward to providing additional perspective in a written comment on these requirements. Thank you.



July 6, 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 Division's proposed rule on deferred presentment, title, and high-interest loans.

We urge the Financial Institutions Division ("Division") to reconsider the rule it proposed on June 22, 2020 pertaining to Senate Bill 201 (the "Proposed Rule"). We set out our specific objections and recommendations below. However, at the outset, we want to highlight an overarching concern: the Proposed Rule would impose on licensees and borrowers a burdensome information collection and reporting regime that is not designed to monitor compliance and far exceeds the scope of the underlying statute as revised by SB 201.

As a national company operating in twenty-eight 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.

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.

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. The requirements greatly exceed what is needed to ensure compliance, particularly with respect to the new requirement to calculate and report a customer's total obligations.



In this letter, we address first the introduction of the “customer’s total obligations” calculation and reporting requirement. Next, we examine the privacy risks to consumers as well as the scope and utility of information collection the Division has proposed. Last, we address technical issues and other deficiencies that would carry significant legal implications.

## **1. Customer’s Total Obligations**

The Proposed Rule would require licensees to calculate, and consider in underwriting, 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 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” and that database queries should include a customer’s total obligations in order to “verify eligibility of the loan.” This purpose is predicated on the existence of a customer’s total obligations values that would render an applicant ineligible or 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 net disposable income 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.

**2. Information Collection and Reporting**

The Proposed Rule would require licensees not only to provide information to the database prior to origination, but also to 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. 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 significant 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 *prior to each loan made*, again presumably retained in the database whether or not a loan is originated. 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 would experience this risk even if a loan is not originated.

### **b. 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.

## **3. Other Issues**

### **a. Information to be Reported by the Database**



Section 18 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 when determining a customer’s eligibility. 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. Requirement to Provide an Adverse Action Notice**

The Proposed Rule would require licensees to provide ineligible applicants with an adverse action notice “pursuant to federal Regulation B” (which implements the Equal Credit Opportunity Act or ECOA). We provide adverse action notices when applicable law requires them. However, we do not believe that the ECOA would require an adverse action notice for all ineligible applicants. Under the ECOA, a refusal to make a loan that would violate applicable law is not an adverse action requiring notice. For that reason, we recommend either deleting this requirement or altering the text to make clear that the regulation requires only those notices that are required by federal law.

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 far exceeds the authority granted to the Division in SB 201, poses unnecessary privacy risks to consumers and many of the provisions serve very low utility in monitoring compliance with Chapter 604A.

We look forward to continued dialog with the Division on the Proposed Rule and participating in the July 8 workshop. Prior to the April 29 “Workshop to Solicit Comments on Proposed Regulations Pertaining to Senate Bill 201” being suspended mid-meeting, Purpose Financial made verbal comments on the record. For your convenience, we have attached a written version of those comments.

Sincerely,

Julie Townsend  
Senior Policy Counsel  
Purpose Financial, Inc.

Enclosures



July 7, 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 PERTAINING TO S.B. 201 – 604A

Dear Commissioner O’Laughlin,

Moneytree, Inc. (Moneytree) is a family-owned, privately held financial services business. Moneytree was founded in 1983 in Renton, Washington and operates in five western states (including Nevada) and British Columbia, Canada. Moneytree offers in-Branch and online loans in the State of Nevada. It has 27 Nevada locations in the Las Vegas and Reno regions and employs over 150 Team Members in the State of Nevada. Moneytree prides itself on the cooperative and productive legislative and regulatory partnerships it has forged over the course of its 37 year history. Moneytree supports reasonable laws and regulations that promote consumer protection and the availability of safe, regulated credit.

We appreciate the opportunity to review the amended proposed regulation pertaining to the implementation of SB 201 (Proposed Regulation). It is clear when reviewing SB 201 and its history, the Nevada Legislature had a single purpose – to ensure the loan limits defined in NRS Chapter 604A will be enforced across all licensees. In order to accomplish its purpose, the Legislature has mandated licensees to record loans in a statewide database that will be queried during a request for credit to identify other outstanding Chapter 604A loans and the amount of those loans. Lenders will then use that information to either deny credit if the consumer is at his or her maximum loan amount or extend credit 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.

When reviewing the Proposed Regulation, it is abundantly clear that the Financial Institutions Division (FID) is attempting to leverage the database as a massive data gathering tool and impose additional lending restrictions that are not authorized by SB 201.

## **A. Introduction and Summary of Small Business Comments Submitted To-Date**

As an initial matter, Moneytree notes the following statement in the Proposed Regulation describing comments that were submitted at a prior public workshop: “The Division considered all comments and removed language and/or requirements that were confusing or would cause unnecessary efforts on the part of the NRS 604A licensee, if it did not impact the consumer protection responsibility of the Division.”

### **1. Failure to Address Rulemaking Authority.**

A review of the summarized comments reveal that the FID did not review the Proposed Regulation to determine whether its provisions go beyond the FID’s rulemaking authority. For example, in response to comments that Section 17 requires an excessive amount of detailed information, the FID addresses only administrative burden on the licensee rather than analyzing whether the scope of the data is outside of the FID’s rulemaking authority. In another example, the FID “answers” the summarized “concern that too much of customer’s personal data entered into the database” by reference to an automated database interface rather than addressing the fact the data required by the Proposed Regulation is 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.

### **2. Statutory Language Describing a Licensee’s Determination of Ability to Repay Does Not Require Consideration of a Consumer’s “Net Disposable Income.”**

One of the FID’s answers/mitigations misstates the clear language of three statutory provisions. While the concept of “net disposable income” has been removed from the Proposed Regulation, the FID claims that “net disposable income” is “currently in NRS §§ 604A-5011, 5038 and 5065.” This statement is flatly wrong. Consideration of “net disposable income” is not a requirement in any of the listed statutory provisions. In fact, the concept of “net disposable income” only exists in administrative guidance issued on March 15, 2019. Administrative guidance does not have the force and effect of law, and the agencies do not take enforcement actions based on administrative guidance. Moreover, given the removal of “net disposable income” from the Proposed Regulation, it is clear the concept of “net disposable income” is a non-consideration going forward. In addition (and significantly), even with full knowledge of this administrative guidance, the Nevada Legislature declined to include the concept of “net disposable income” in SB 201. The FID should correct its response to prior public comments and withdraw its March 15, 2019 administrative guidance.

### **3. Timing of Database Implementation.**

Many of the FID’s answers rely on automated data transfers between the licensees and the database provider. In the prior public workshop, industry participants provided 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 is proven accurate and timely. As set forth below, the Proposed Regulation 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. Even if the Proposed Regulation was contained to the data actually authorized in SB 201 (as opposed to its gross over-reach for data) licensee interfacing with the database provider will require at least six to twelve months

of programming and testing before licensees could be expected to interface with the database. In the prior public workshop, licensees implored the FID to provide information about the database timeline. To date, Moneytree is unaware of any communication from the FID about the expected launch date of the database. The FID should provide (1) regular updates on the database timeline, and (2) provide licensees with adequate time prior to the database launch date (between six and nine months) to interface with the database provider. 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 and could easily cause licensees to unknowingly violate the provisions of SB 201. Because of the complication of “standing up” a database, the FID should organize a task force of industry participants, representatives of the FID and the database service provider to ensure an orderly rollout plan is in place.

## **B. Proposed Regulation of the Commissioner of the FID**

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.

### **1. Former Section 5**

Moneytree agrees with the deletion of former Section 5 defining “net disposable income.” The concept of “net disposable income” is not contemplated by the clear language of SB 201 and therefore, is outside the scope of the FID’s rulemaking power. SB 201 contains only two new loan eligibility requirements that a licensee must consider when underwriting or extending a deferred deposit loan or high interest loan and those requirements are (1) a determination that the consumer is not a “covered service member” or “dependent” of a covered service member (see Sections 2, 3, 4, 5, 6 & 7 of SB 201)<sup>1</sup>; and (2) a determination: that the loan amount for which the consumer is applying does not exceed 25% of the consumer’s gross monthly income (GMI) (in the case of a deferred deposit loan) or the loan payments do not exceed 25% of the consumer’s GMI (in the case of a high interest loan) – each inclusive of other outstanding loans with the licensee or other licensees. See Section 12 of SB 201 amending NRS 604A.5017 (2); see Section 13 of SB 201 amending NRS 604A.5045 (2).

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<sup>1</sup> Licensees are already required by Federal law to verify whether the consumer is or is not a Covered Borrower as that term is defined in the Military Lending Act. 10 U.S.C. 987; 32 CFR part 232. Licensees are required to obtain this information from a third party consumer reporting agency (CRA). For the purposes of these comments, Moneytree is assuming that the Nevada database will return a “covered service member” or “dependent” of a covered service member status under Nevada law; rather than the licensee inputting Federal Covered Borrower status that licensees otherwise receive from a third party CRA. If that is not the case, the FID should clarify that a licensee can continue to use third party CRAs and that information returned under Federal law is a sufficient safe harbor from the imposition of liability under Nevada law.

## 2. Section 17

Section 17 of the Proposed Regulation addresses periods of inoperability of the database and requires licensees to “immediately notify . . . FID when the database is unavailable.” This requirement places the burden of communicating database inoperability on the wrong entity and it lacks sufficient guidance for licensees to comply.

- Section 17 imposes an undue burden on licensees. The database service provider, not the licensee, is in the best position to notify the FID of database inoperability.
- Imposing this burden on licensees will result in multiple and duplicative communications to the FID; whereas (rightly) shifting this burden to the database service provider would result in just two communications: (1) that the database is inoperable, and (2) that the database has become operable.
- Section 17 does not specify whether the communication from the licensee to the FID is a one-time communication during periods of inoperability or whether such a communication is required for each loan application checked against the database.
- Section 17 contains no method by which the communication must be delivered.

## 3. Section 18

Moneytree objects to Section 18 in its entirety because it imposes obligations on licensees and restrictions on consumer borrowing that goes far beyond the clear language, intent and scope of SB 201; and is arbitrary and capricious.

### a. Section 8 of SB 201 Is Not an Ability to Repay Provision.

Section 18 mandates that a licensee must consider the following when determining the consumer’s ability to repay:

- Whether the consumer has a deferred deposit loan, title loan or high-interest loan outstanding with more than one licensee;
- Whether a consumer has had such a loan outstanding with one or more licensees within the 30 days immediately preceding the making of a loan; and
- Whether a consumer 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 a loan.

Section 18 is a blatant over-reach that would turn language in Section 8 of SB 201 about the type of information that “may be made available” to the FID and to licensees into required “ability to repay” criteria.

Section 8 of SB 201 is not an ability to repay provision and the information listed in Section 8 is permissive – not mandatory. Section 8 of SB 201 provides only that the above listed information is among “[t]he information the FID and licensees *may* obtain” from a query to the database. SB 201 does not contain a requirement that this information “*must*” be “considered” by licensees for any purpose, let alone for the purpose of making a determination that the consumer has the ability to repay a loan.

b. **Section 18 Will Impose Additional Liability on Licensees that is Not Authorized in SB 201 and Will Force Licensees Out of Business.**

Section 18 represents agency over-reach that creates new and odious limitations on the availability of credit. It is also “a wink-and-a-nod” invitation to examiners to cite a licensee and for plaintiffs’ bar to sue a licensee if the licensee:

- Extends a loan to a consumer who has another loan outstanding with another lender – irrespective of whether the applied-for credit (when combined with other outstanding loans) is under the 25% GMI cap;
- Does not self-impose a 30 day cooling period on extending credit after the customer fully performs a prior loan; or
- Does not self-impose a prohibition on lending to consumers who have obtained and successfully repaid three or more loans in the prior six months.

None of these restrictions on credit were approved or intended by the Nevada Legislature in SB 201. Instead, the Nevada 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.

It was not also not the intent of the Legislature for the provisions of SB 201 to put industry members out of business. If forced to consider the unauthorized criteria in Section 18, licensees will significantly restrict credit out of fear that they will be cited by the FID, be sued by plaintiffs’ bar or both. As a result, some licensees will be forced out of business and the overall availability of legal, regulated credit will be reduced.

c. **Had the Legislature Intended to Create New Ability to Repay Requirements, It Would Have Done So In NRS Chapter 604A’s “Ability to Repay” Statutes.**

Nothing in Section 8 of SB 201 was intended to change the existing law with respect to a consumer’s ability to repay. Indeed, the ability to repay provisions in the current law are found at NRS §§ 604A.5011, 5038, and 5065. 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.<sup>2</sup>

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

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<sup>2</sup> These provisions were introduced in 2017 in Nevada Assembly Bill 163 and became effective in October 2017. According to the Legislative Counsel synopsis of AB 163 it “prohibits a person from making [a loan under Chapter 604A] unless the person has determined that the customer has the ability to repay the loan; and (2) **establishes the factors that the person making the loan must consider when determining whether a customer has the ability to repay the loan.**”

Legislature intended to impose new ability to repay considerations, it would have done so in the provisions explicitly addressing ability to repay. The attempt in Section 18 to introduce *new and mandatory* ability to repay considerations that were not approved by the Legislature is beyond the FID's rulemaking authority.

This is also evident from the Legislative Counsel's Digest, which describes Section 8 as a provision that, "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." The Legislative Counsel did not describe Section 8 as a provision that sets forth mandatory ability to repay considerations for the simple fact Section 8 does not address itself to an ability to repay analysis *at all*; let alone command that the information in Section 8 become part of mandatory ability to repay criteria.

This fact is further magnified when the treatment of the information in Section 8 is contrasted with the clear references to safe harbors from violations of the 25% GMI 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.]

Why would the Legislature provide a safe harbor if a licensee checks the database to determine the loan doesn't exceed the 25% GMI caps, but not make a similar provision for checking the database to determine whether the (1) consumer had an outstanding loan with another lender, (2) the consumer had another loan in the past 30 days or (3) the consumer had three or more loans in a six month period?  
**Answer:** Because the Legislature never intended licensees to be required to take the factors outlined in Section 8 into account in determining a borrower's ability to repay.

**d. Consideration of the Criteria in Section 18 Will Not Promote Consumer Protection or Any Other Legitimate Public Interest.**

The first new and unauthorized ability to repay consideration contained in Section 18 – whether a consumer has another loan outstanding with another lender – stands in direct conflict with the purpose of the database as SB 201 evolved. The purpose of the database was to ensure that the consumer does not obtain loans in excess of the 25% lending caps, across any and all licensees. What is the point of employing a 25% lending cap, if the real (albeit made-up) criteria, is actually whether the consumer has another loan outstanding with another licensee? Forcing licensees to also consider whether a consumer has a loan outstanding with another licensee undermines a borrower's ability to borrow in the amounts authorized by SB 201.

Similarly, consideration of whether a consumer has taken out another loan in the past 30 days or taken out more than three loans in a six month period has no bearing on whether the consumer has the ability to repay. In fact, if a consumer has taken out and successfully repaid a loan in the prior 30 days, if anything, that demonstrates the consumer does have an ability to repay. If a consumer has taken out and successfully repaid three loans in the prior six months, that fact, if anything, demonstrates the consumer does have the ability to repay. In addition, arbitrary caps on the number of loans a consumer obtains or the timing of borrowing are always spurious and inadequate proxies for “ability to repay.” What if a consumer takes out three \$20 loans in a six month period? Does that somehow demonstrate inability to repay? What if a consumer takes out a \$50 loan and 29 days later, he would like to borrow another \$50? Does that somehow demonstrate inability to repay?

Imposing the additional limitations contained in Section 18 on top of the 25% GMI lending caps will result in (1) unnecessary restrictions on the availability of consumer credit, (2) that will put some lenders out of business, (3) with absolutely no gain in additional consumer protection.

#### **e. Conclusion**

Section 18 substantively expands the legal requirements for licensee underwriting in the complete absence of any statutory authority to do so. Section 18 represents an over-reach beyond the rulemaking authority of the FID and should be stricken from the Proposed Regulation.

#### **4. Section 19**

Section 19 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.” Section 19 speaks in terms of the database returning an “eligible” or “ineligible” query result throughout. There are two (and only two) pieces of information that SB 201 authorizes that are mandated to be included in the licensee’s determination about whether a consumer is or is not “eligible” for a loan. Those two pieces of information are: (1) whether the consumer is not a “covered service member” or “dependent” of a covered service member (see Sections 2, 3, 4, 5, 6 & 7 of SB 201); and (2) whether the loan amount for which the consumer is applying does not exceed 25% of the consumer’s GMI (in the case of a deferred deposit loan) or the loan payments do not exceed 25% of the consumer’s GMI (in the case of a high interest loan) – each inclusive of other outstanding loans with the licensee or other licensees. See Section 12 of SB 201 amending NRS 604A.5017 (2); see Section 13 of SB 201 amending NRS 604A.5045 (2).

While this may be a simple matter of semantics, when queried, the database should provide the licensee with information about the status and amount of a consumer’s 604A borrowing activity. After that, the licensee will employ its own underwriting criteria to determine whether a consumer is eligible or ineligible for a loan.

#### **5. Section 20**

The FID uses Section 20 to mandate the collection of consumer information, once again creating its own improper “statute” via rulemaking that goes well beyond the clear requirements and scope of SB 201. As

such, it exceeds the FID's rulemaking authority. Section 8(2) of SB 201 clearly outlines the information that a licensee is required to 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 20 attempts to improperly expand this list to include six additional categories of information that are not authorized by SB 201:

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

The database was not created by the Legislature to gather these six additional categories of information.

Furthermore, the reference to when a "repayment plan" is entered (the only category of information contained in Section 20 that was actually authorized by the Legislature) requires clarification to mirror SB 201 by adding "pursuant to NRS 604A.5027, 604A.5055 or 604A.5083."

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. For example, is a no-fee one day extension on the due date of a loan a "transaction pertaining to the loan?" Is loading loan proceeds onto a consumer's debit card a "transaction pertaining to the loan?" This vague requirement may result in inconsistent interpretations across different licensees and provide the opportunity for erroneous compliance requirements to be added as interpretations are changed.

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

Finally, the onerous language of Section 20 seems to require the transmission of account details every time a loan is serviced or maintenance is performed.

## 6. Section 21

Section 21 provides that “[b]efore making a deferred deposit loan, title loan or high-interest loan, a licensee shall query the database. . . . 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.” This Section suffers from the same lack of clarity as to what information is returned by the database as is outlined in Moneytree’s critique of Section 19 above. Clarity is needed as to whether the database is returning “information” that is used by the licensee (in combination with the licensee’s other underwriting criteria) or whether the database is rendering decision-making such as “eligible” or “ineligible.” If the database is providing decision-making, the only data points that should bear on whether a consumer is “eligible” or not is (1) whether the consumer is a covered service member or dependent, or (2) whether the loan amount for which the consumer is applying exceeds 25% of the consumer’s GMI (in the case of a deferred deposit loan) or the loan payments exceed 25% of the consumer’s GMI (in the case of a high interest loan) – each inclusive of other outstanding loans with the licensee or other licensees. See Section 12 of SB 201 amending NRS 604A.5017 (2); see Section 13 of SB 201 amending NRS 604A.5045 (2).

Section 21 also states “[a]t a minimum, the query should include the below to verify the identity of a customer and verify eligibility of the loan”:

- (a) The customer’s full name: first and last name, and middle name
- (b) The customer’s social security number or alien registration number
- (c) The customer’s valid government-issued photo ID number
- (d) The customer’s date of birth, mm/dd/yyyy
- (e) The customer’s gross income
- (f) The customer’s total obligations

The requirement to obtain and enter the customer’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, 5028 and 5064 very clearly address what information the licensee must take into consideration 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 customer’s total obligations. Collecting this information is beyond the scope of the law as it existed prior to the passage of SB 201, beyond the scope of SB 201 and beyond the FID’s rulemaking authority. Collecting and entering a consumer’s “total obligations” into the database is also overly broad, arbitrary and aimed at no legitimate consumer protection or other public interest.

## 7. Sections 22 & 23

Section 22 mandates that licensees must enter the following information into the database for deferred deposit and high interest loans in “real time prior to each loan made”:

- (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) The due date of the loan
- (i) The annual percentage rate of the loan
- (j) The scheduled payment amount
- (k) The payment details described in section 24
- (l) The type of loan product

It is unclear from the Proposed Regulation if licensees are expected to perform a “covered service member” or “dependent” of a covered service member query from the Nevada database or continue to perform those inquiries through their current third-party CRAs. Assuming that the Proposed Regulation requires that query to be run through the Nevada database, and as to the requirements of (a) and (b), the database should be returning a covered service member or dependent of a covered service member result back to the licensee rather than the other way around and the FID must clarify how this requirement coexists with the Federal safe harbor received by licensees, which applies only if this information is obtained directly from the Department of Defense or from a national consumer reporting agency .

With respect to “payment details described in section 24,” Section 22 confuses whether the licensee’s employee is entering a query “at the time the loan is made” or updating the consumer’s database file as the loan is serviced or defaults.

We raise the same concerns regarding items (b) and (l) in Section 23.

## **8. Section 24**

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 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 is required to 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 at the time a payment is made is not only redundant and adds an onerous programming burden, 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.

## 9. Section 25

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 more than 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 in order to enforce the loan limits already contained in NRS Chapter 604A across all Nevada licensees. SB 201 intentionally leaves the concept of using Gross Monthly Income to calculate the loan limit currently in NRS Chapter 604A completely intact. Furthermore, SB 201 states specifically the information that will be collected by the database for the purpose of determining loan eligibility as it relates to the maximum loan limit to GMI ratio. The Proposed Regulation as amended, however, represents a gross over-reach by the FID. The Proposed Regulation requires massive data collection and expanded licensee underwriting and other obligations that are not contemplated in SB 201.

Sincerely,

A handwritten signature in blue ink that reads "Dennis J. Bassford". The signature is written in a cursive style with a large, sweeping initial 'D'.

Dennis J. Bassford  
President & CEO  
Moneytree, Inc.



April 24, 2020

Sandy O’Laughlin  
Commissioner  
State of Nevada Financial Institutions Division  
3300 W. Sahara Ave. Ste. 250  
Las Vegas, NV 89102

Commissioner O’Laughlin,

This letter is submitted as a written comment regarding proposed regulations to Chapter 604A of the Nevada Administrative Code (“NAC”) pertaining to Senate Bill 201 (S.B.201) passed during the 80th Session of the Nevada Legislature adjourned sine die on June 3, 2019.

Legal Aid Center of Southern Nevada is a private non-profit law firm which assists thousands of low-income Nevadans with debt collection matters. We believe the database implemented by S.B. 201 will be a powerful tool to ensure compliance with existing provisions of NRS 604A and we fully support the proposed regulations currently under consideration.

Due to the practical limitations of the auditing and enforcement capacity of the Financial Institutions Division some licensees are able to violate the provisions of NRS 604A for an extended period of time. The database implemented by S.B. 201 will prevent some of those violations from occurring and protect vulnerable Nevadans from those predatory and unscrupulous lenders while licensees who comply with the provisions of NRS 604A will not be significantly affected by the procedures required by the proposed regulations.

It is telling that some licensees have expressed concerns that the proposed regulations will negatively impact their profitability. Because the database is designed to interface with licensees’ existing software the cost of implementation should be low. The reduced profit that comes with compliance with existing ability-to-repay requirements, on the other hand, may be significant. That reduction in profit is not a downside to the proposed regulations but instead a natural consequence of the legislature’s intent in passing S.B. 201, i.e. ensuring that Nevadans are protected from predatory loans they have no ability to repay under their original terms. For that reason Legal Aid Center strongly supports the proposed regulations as written and does not believe any changes need to be made to reduce the burden on licensees.

Thank you for your consideration of our comments.

Sincerely,

Peter Aldous, Esq.  
Staff Attorney  
Legal Aid Center of Southern Nevada



Nevadans for the  
Common Good

c/o Holy Spirit Lutheran Church, 6670 W. Cheyenne, Las Vegas, NV 89108

My name is Barbara Paulsen and I am here today representing Nevadans for the Common Good. In 2019 Nevadans for the Common Good worked hard to see SB201 pass into law for two important reasons. One, it holds the payday industry accountable to following existing laws. Secondly, it protects consumers up front from taking on more debt than the law allows leading them into a debt burden that becomes a cycle from which they can't recover.

The protections this law provides are needed even more today than they were when the law was passed. Thousands of Nevadans are suffering from the economic impact of the Covid-19 pandemic, living daily with anxiety and insecurity about their ability to pay current bills and those looming in the future. The regulations being discussed today are vital to protecting our most economically vulnerable now and as we move forward from the current crisis. They are particularly important because federal regulations are being weakened. Protecting consumers from the debt trap of payday loans will help stabilize and strengthen Nevada families and communities.

Nevadans for the Common Good encourages you to approve these regulations and implement this program without delay.

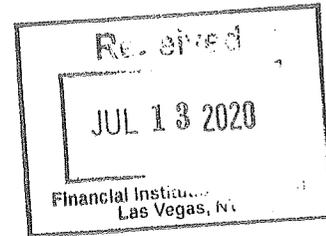
Barbara Paulsen  
Leader, Nevadans for the Common Good  
[Paulsenbnv@gmail.com](mailto:Paulsenbnv@gmail.com)  
702-561-5601

**USA** *Cash Services\**  
**LOAN CENTER**

1752 Combe Rd. #1 Ogden, UT 84403 801-476-4242

July 6, 2020

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



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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

Dear Ms. O'Laughlin;

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.

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Janet Phillips

*Janet Phillips*

Operations Director  
USA Cash Services

CC: Mary Young, Deputy Commissioner

## Jennifer Ramsay

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**From:** Mary M. Young  
**Sent:** Thursday, July 23, 2020 10:07 AM  
**To:** Mary M. Young  
**Subject:** FW: Comments on Proposed Regulations Pertaining to Senate Bill 201

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**From:** [martybaker@thrivos.com](mailto:martybaker@thrivos.com) <[martybaker@thrivos.com](mailto:martybaker@thrivos.com)>  
**Sent:** Wednesday, April 15, 2020 1:41 PM  
**To:** FID Master <[FIDMaster@fid.state.nv.us](mailto:FIDMaster@fid.state.nv.us)>  
**Cc:** [chadmiraglia@thrivos.com](mailto:chadmiraglia@thrivos.com)  
**Subject:** Comments on Proposed Regulations Pertaining to Senate Bill 201

Please accept the following comments from Chad Miraglia, President of CASH 1, LLC:

To: Nevada FID

We believe the regulations pertaining to S.B. 201 will be extremely burdensome on small businesses. The concept of manual entry of each and every loan, loan payment, and other status changes is particularly overwhelming, but can be mitigated by technology. However, both large and small operators need time to properly develop technological solutions and integration with the database vendor or service provider. If the vendor has already been announced and specifications are available, please let us know at your earliest convenience. As set forth below, we believe lenders need, at a minimum, 90 days from such announcement for development, plus an additional two to three weeks to complete employee training.

Regarding the completion of the tech work, our position is that licensees need at least 90 days from the date the database vendor is announced, specifications are released, and the vendor is ready and committed to work with lenders. Developing an interface to comply with the sophisticated and comprehensive data that is required to be bridged between lender loan management systems and the database vendor will take planning, development, testing, and roll-out.

Further, we believe the announcement should be delayed until the Governor has fully lifted the shutdown order, including mandatory social distancing. We are unable to effectively train groups of frontline employees regarding the use of the database in the midst of the pandemic. In fact, we can't legally convene large groups for training under the present circumstances. Our plan is to develop a standard operating procedure regarding the use of the database and for dealing with the rare instances when it is offline. We will need to train every frontline employee, which in our case is over 60 employees.

We strongly urge the Department to put the implementation of the database on hold pending the reopening of the economy and an end to social distancing. As you know, COVID-19 has touched all of us. We have never experienced a health crisis or economic disaster as far reaching as this pandemic. We are already dealing with thousands of deferred payment plans. This is not the time to hurry the implementation of the database to meet an arbitrary deadline. Nevada lawmakers certainly didn't intend to implement the database in the middle of a pandemic. In a time of economic shutdown, social distancing, crowded hospitals, and reeling businesses, lenders and consumers should be spared this additional, unnecessary burden at such a traumatic time.

Thank you for your consideration.

Chad Miraglia  
CASH 1, LLC  
President

## Jennifer Ramsay

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**From:** FID Master  
**Sent:** Wednesday, July 8, 2020 9:18 AM  
**To:** Mary M. Young  
**Subject:** FW: SB201 rules and Regulations

-----Original Message-----

From: Jami Johnson <jamijohnlv@gmail.com>  
Sent: Tuesday, July 7, 2020 4:09 PM  
To: FID Master <FIDMaster@fid.state.nv.us>  
Subject: SB201 rules and Regulations

I am a member of Good Samaritan Lutheran Church and I stand with Nevadans for the Common Good in support of SB201 and the regulations as proposed. Now more than ever, we need the database in place so that SB201 can be enforced and our most vulnerable can be protected from finding themselves in the payday-debt downward spiral. Just today the Consumer Financial Protection Bureau has rescinded the 2017 CFPB rule which required lenders to verify that a borrower can repay a loan before issuing that loan. Now, more than ever, it is up to each State to protect their citizens from predatory lenders!

This law is meant to protect consumers and I want to see that happen as soon as possible. We need these regulations and the database immediately! Please, don't delay!

Jami Johnson

## Jennifer Ramsay

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**From:** FID Master  
**Sent:** Wednesday, July 8, 2020 11:19 AM  
**To:** Mary M. Young  
**Subject:** FW: Web ex meeting

**From:** EZCHECK PAYDAYLOANS <ezcheck1919@gmail.com>  
**Sent:** Wednesday, July 8, 2020 11:13 AM  
**To:** FID Master <FIDMaster@fid.state.nv.us>  
**Subject:** Web ex meeting

Thank you for listening to the comments from the other lenders at the workshop today. While I agree with what the others have said, we need the database but only as it advises other lenders what a consumer already has out in loans so as not to exceed the 25 % GMI.

To address the concerns of the attorneys that were present today, I don't know any lender that will ethically lend to someone who is on unemployment or is by statute lend to someone who is unemployed, that to me is a ploy on their part to sway your decision.

Lenders wouldn't still be in business if they were loaning to people who were unemployed, so I urge you to work with the lenders to make these regulations work not only for the consumers but for lenders as well.

Thank you,  
Leanne Robertson  
RNL Corp DBA Ez Check Payday Loans  
618 S Bridge St., Suite A  
Winnemucca, NV 89445  
775-626-1919  
[ezcheck1919@gmail.com](mailto:ezcheck1919@gmail.com)