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This Article analyzes empirical data on one of America's fastest growing credit products, the title loan. A title loan is a high-interest, deeply oversecured, consumer loan, in which the consumer uses an unencumbered automobile as collateral for a non-purchase money loan. Title loans are made based solely on equity in a car. If a customer has insufficient income to pay the payments under the loan, typically interest-only payments at 300% per annum or more, the lender repossesses the vehicle, many of which have GPS trackers installed for this purpose. Not surprisingly, the repossession rates for title loans are higher than regular auto repossession rates, as well as home foreclosure rates. Prior to repossession, lenders recover their principal many times over. For example, one customer paid over $10,000 on her $4000 loan. Another paid over $11,000 on a loan of $1500. Despite these realities, title loans have garnered little interest in the scholarly world. While legislatures around the nation struggle with how to regulate home loans, credit cards, and other middle class products, title loans go largely unnoticed and unregulated. This Article reports on data about who uses these loans and how often, as well as on repossession rates. It concludes that, given the protections we have provided to middle class consumer credit users, we also should regulate the consumer credit products used primarily by the lower and working classes.

I. INTRODUCTION

Susan Price was recently in a legal aid office, looking for an easy answer to a complex problem.[1] She filed for bankruptcy in 2005 after she be-

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1. Ms. Price is a client in the University of New Mexico Clinical Law Program. Her name has been changed, but the numbers recounted here reflect her actual loan.

came disabled. She now receives $980 a month in disability payments and her rent is $550. Not so bad unless you consider her last move to make ends meet. She borrowed $4000 to make it through the holidays and pay off some bills, using her $10,000 Jeep as collateral.[2] The Jeep was the last vestige of her formerly middle class life.

Under the terms of her eighteen-month loan, she pays $581.47 a month and will pay over $10,466.46 to pay off the $4000 loan.[3] Another client, Sean, paid $11,516 total on a $1500 loan. He renewed his loan forty times before the borrower buried his pride and asked his parents to pay off the $1500 in principal.[4] As Sean later explained, "I was too embarrassed to ask my parents for the initial loan money, ended up borrowing money from them to make some of the payments and ultimately had to ask them to pay off the whole loan, after losing tons of money along the way."[5]

Welcome to the world of auto title lending. A title loan is a high-interest, deeply over-secured consumer loan, in which the consumer uses an unencumbered automobile as collateral for a non-purchase money loan.[6] To qualify for a title loan, a borrower must own his or her vehicle outright and also must live in one of the thirty-six states that has no general interest rate or usury cap on consumer loans.[7]

Ms. Price's loan demonstrates one unique feature of title loans. We assert that of all the consumer loan products in existence, this product is the only one that is completely asset-based. With few exceptions, title lenders have no interest in whether the consumer borrowing the money can afford to pay back the loan or make the monthly interest payments.[8] Ability to repay is not part of the underwriting process.[9] Nor need it be in order for lenders to collect their loan and then some. Since some lenders lend at 40% of value or less,[10] they can rely on the car if the borrower stops making the monthly payments. These practices also explain why some title lenders sell used cars

2. Loan contract between lender and Susan Price (May 17, 2010) (on file with Missouri Law Review).

3. *Id.*

4. Telephone interview with Sean (Mar. 25, 2010). Confidential University of New Mexico Clinical Law Program interview notes remain on file with authors.

5. *Id.*

6. *See* Christopher Neiger, *Why Car Title Loans are a Bad Idea*, CNN LIVING (Dec. 8, 2008), http://articles.cnn.com/2008-10-08/living/aa.car.title.loans_1_car-title-loan-interest-rates-responsible-lending-for-title-loans?_s=PM:LIVING.

7. *See infra* notes 75-90 and accompanying text.

8. *See* Todd J. Zywicki, *Consumer Use and Government Regulation of Title Pledge Lending*, 22 LOY. CONSUMER L. REV. 425, 433 (2010) [hereinafter *Consumer Use*].

9. *See id.*

10. *See The Harsh Reality of Car Title Loans*, TOTAL BANKRUPTCY BLOG (June 1, 2011, 9:51 AM), http://www.totalbankruptcy.com/blog/the-harsh-reality-of-car-title-loans/.

as well.[11] Only in this context would a lender loan $4000 to someone who makes just $980 a month. By structuring a loan with $580 monthly payments from a person who makes less than $1,000 a month, a lender can assure that he or she will end up with the payments for some period, and then the car.

Title lenders insist that they rarely repossess borrowers' cars.[12] They also claim that consumers understand the terms of these loans before they take out the loans[13] and that their clientele is largely middle class.[14] This Article, and the empirical data contained in it, challenges these statements and concludes that none of these claims are true.

Title loans have garnered little interest in the scholarly world,[15] particularly compared to payday loans, a subject about which scholars have written dozens of articles.[16] Up until now, only one scholar has studied the title loan

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11. *See id.* Some lender parking lots are full of used cars and their signs read, "Buy here, pay here." *See, e.g.*, Title Cash of New Mexico, 2900 Eubank, NE, Albuquerque, New Mexico (Mar. 25, 2011).

12. *See Consumer Use*, *supra* note 8, at 435.

13. *See id.*

14. *See id.* at 441-42.

15. We have identified only one author who has written a scholarly article specifically about title loans, which is discussed below. *See Consumer Use*, *supra* note 8. For a discussion of this article, see *infra* notes 17-27 and accompanying text. A few scholars have written about title lending in the context of the broader topic of high-interest loans. *See* Lynn Drysdale & Kathleen E. Keest, *The Two Tiered Consumer Financial Services Marketplace: The Fringe Banking System and its Challenge to Current Thinking About the Role of Usury Laws in Today's Society*, 51 S.C. L. REV. 589 (2000); Mark S. Edelman, Robert A. Aitken & Raechelle C. Yballe, *The Road Ahead: Emerging Trends in Personal Property Finance*, 63 BUS. LAW. 597, 597 (2008); Jean Ann Fox, *Fringe Bankers: Economic Predators or A New Financial Services Model?*, 30 W. NEW ENG. L. REV. 135 (2007); Jim Hawkins, *Regulating on the Fringe: Reexamining the Link Between Fringe Banking and Financial Distress*, 86 IND. L.J. 1361, 1394 (2011); Creola Johnson, *The Magic of Group Identity: How Predatory Lenders Use Minorities to Target Communities of Color*, 17 GEO. J. ON POVERTY L. & POL'Y 165, 166 (2010); Jessie Lundberg, Comment, *Big Interest Rates Under the Big Sky: The Case for Payday and Title Lending Reform in Montana*, 68 MONT. L. REV. 181 (2007). There also have been a few practitioner-oriented articles written that discuss title lending as part of the broader topic of consumer finance. *See* Frank Burt et al., *Journey to the Fringe: A Survey of Select Fringe Lending Products in* 11TH ANNUAL CONSUMER FINANCIAL SERVICES LITIGATION INSTITUTE 365-75 (PLI Corp. L. and Prac. Course, Handbook Series No. 8565, 2006) WL 1532 PLI/Corp. 349; Annesley H. DeGaris, *Car Title Lending*, 2 AMERICAN ASSOCIATION FOR JUSTICE: AAJ ANNUAL CONVENTION REFERENCE MATERIALS (July 2007); Daniel A. Edleman, *Fringe Lending in* 11TH ANNUAL CONSUMER FINANCIAL SERVICES LITIGATION INSTITUTE 416-17 (PLI Corp. L. and Prac. Course, Handbook Series No. 8565, 2006) WL 1532 PLI/Corp. 409.

16. *See* Michael S. Barr, *Banking the Poor*, 21 YALE J. ON REG. 121 (2004); Richard R.W. Brooks, *Credit Past Due*, 106 COLUM. L. REV. 994, 997 (2006); Carmen M. Butler & Niloufar A. Park, *Mayday Payday: Can Corporate Social Responsi-*

industry in any depth, and this scholar reached the following conclusions: 1) that title loans are better for consumers than payday loans, 2) that few customers have their cars repossessed when taking out title loans, 3) that the terms of title loans are transparent and easy for customers to understand, and 4) that most payday loan customers make $50,000 or more a year.[17] This scholar claimed to use New Mexico data to reach these conclusions.[18]

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bility Save Payday Lenders?, 3 RUTGERS J.L. & URB. POL'Y 119 (2005); Daniel A. Edelman, *Payday Loans: Big Interest Rates and Little Regulation*, 11 LOY. CONSUMER L. REV. 174, 174-75 (1999); Creola Johnson, *Payday Loans: Shrewd Business or Predatory Lending?*, 87 MINN. L. REV. 1, 23-97 (2002); Ronald J. Mann & Jim Hawkins, *Just until Payday*, 54 UCLA L. REV. 855 (2007); Nathalie Martin, *1,000% Interest – Good While Supplies Last: A Study of Payday Loan Practices and Solutions*, 52 ARIZ. L. REV. 563 (2010); Nathalie Martin & Koo Im Tong, *Double Down-and-Out: The Connection Between Payday Loans and Bankruptcy*, 39 SW. L. REV. 785 (2010); Michael A. Stegman, *Payday Lending*, 21 J. ECON. PERSPECTIVES 169 (2007); Michael A. Stegman & Robert Faris, *Payday Lending: A Business Model that Encourages Chronic Borrowing*, 17 ECON. DEV. Q. 8 (2003); Therese Wilson, *The Inadequacy of the Current Regulatory Response to Payday Lending*, 32 AUSTL. BUS. L. REV. 193, 198-206 (2004); Michael Bertics, Note, *Fixing Payday Lending: The Potential of Greater Bank Involvement*, 9 N.C. BANKING INST. 133 (2005); Charles A. Bruch, Comment, *Taking the Pay out of Payday Loans: Putting an End to the Usurious and Unconscionable Interest Rates Charged by Payday Lenders*, 69 U. CIN. L. REV. 1257 (2001); Diane Hellwig, Note, *Exposing the Loansharks in Sheep's Clothing: Why Re-Regulating the Consumer Credit Market Makes Economic Sense*, 80 NOTRE DAME L. REV. 1567 (2005); Lisa Blaylock Moss, Commentary, *Modern Day Loan Sharking: Deferred Presentment Transactions & the Need for Regulation*, 51 ALA. L. REV. 1725 (2000). For information on the general issue of fringe lending, see Barr, *supra*; Michael S. Barr, *Credit Where It Counts: The Community Reinvestment Act and Its Critics*, 80 N.Y.U. L. REV. 513 (2005); Brooks, *supra*; Johnson, *supra* note 15; Angela Littwin, *Beyond Usury: A Study of Credit Card Use and Preferences Among Low-income Consumers*, 86 TEX. L. REV. 451 (2008); Susan Lorde Martin & Nancy White Huckins, *Consumer Advocates v. the Rent-to-Own Industry: Reaching a Reasonable Accommodation*, 34 AM. BUS. L.J. 385 (1997); Moss, *supra*, at 1731-33.

17. *See Consumer Use*, *supra* note 8, at 427-43. A shorter version of this article appears in Todd Zywicki, *Money to Go*, 33 REGULATION 32 (2010), *available at* http://www.cato.org/pubs/regulation/regv33n2/regv33n2-7.pdf [hereinafter *Money to Go*]. *See also* Todd Zywicki & Gabriel Okolski, *Potential Restrictions on Title Lending*, 62 MERCATUS ON POL'Y 1, 1-2 (2009). Zywicki's three scholarly articles on the subject, all similar in content and all published in 2009 and 2010, can be wrapped up in one thought: title lending is useful to many consumers and should not be regulated. *See Consumer Use*, *supra* note 8, at 441-42; *Money to Go*, *supra*, at 37; Zywicki & Okolski, *supra*, at 3. Without any documentation, all of the articles insist that the typical customer of title lenders make about $50,000 annually. *See Consumer Use*, *supra* note 8, at 442; *Money to Go*, *supra*, at 34; Zywicki & Okolski, *supra*, at 2. Zywicki and his co-authors rely almost exclusively on industry interviews to support their numbers, see, for example, *Consumer Use*, *supra* note 8, at 434 n.27, 442 n.59; *Money to Go*, *supra*, at 1 n.5; Zywicki & Okolski, *supra*, at 2 n.10, interviews that

The actual data from New Mexico, as well as from a number of other states, show that none of these facts are likely true. Co-author Ozymandias Adams interviewed each title lender in Albuquerque in business in October of 2011 to determine various industry practices and analyzed data collected by the state of New Mexico. This Article reflects the results of this comparison, along with other conclusions and insights into the typical terms of a title loan, the actual repossession rates nationwide, and the demographics of users.[19] The Article also discusses the national problems with enforcement of licensing laws and describes the strictly asset-based nature (as opposed to borrower income-based nature) of this form of lending. [20]

This Article also describes the reality of repossession. Lenders frequently repossess.[21] In fact, our research shows that as many as 71% of the title loan customers have their vehicles repossessed.[22] Once reclamation rates are taken into account, as many as 60% of customers lose their vehicles permanently. This rate is over ten times higher than the current home foreclosure rate in the United States,[23] and for the demographic that uses title loans, the loss of the car is similar in gravity. The customers are, for the most part, from the working classes,[24] and having a paid-off car can be one of their

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were turned into a report and used to influence the New Mexico legislature. Most of the information in this report appears to have been provided to the New Mexico Legislature by industry insider Robert Reich, the current president of Texas Car Title Loan Services and Community Loans of America. *See* William J. Verant, *Consumer Lending Study Committee Report for the Forty Fourth Session of the New Mexico State Legislature*, Submitted by the Financial Institutions Division Director, as requested by House Memorial 36 (Jan. 2000) [hereinafter INDUSTRY REPORT TO NEW MEXICO LEGISLATURE] (on file with author).

18. *See Money to Go*, *supra* note 17, at 34.

19. *See infra* notes 193-216 and accompanying text.

20. *See infra* notes 217-18 and accompanying text.

21. Burt et al., *supra* note 15, at 370 (quoting repossession rates of between 5% and 20%); *see also* JEAN ANN FOX & ELIZABETH GUY, CONSUMER FED'N OF AM., DRIVEN INTO DEBT: CFA CAR TITLE LOAN STORE & ON-LINE SURVEY 5 (2005), *available at* http://www.consumerfed.org/pdfs/Car_Title_Loan_Report_111705.pdf; AMANDA QUESTER & JEAN ANN FOX, CTR. FOR RESPONSIBLE LENDING & CONSUMER FED'N OF AM., CAR TITLE LENDING: DRIVING BORROWERS TO FINANCIAL RUIN 7 (2005), *available at* http://www.responsiblelending.org/other-consumer-loans/car-title-loans/research-analysis/rr008-Car_Title_Lending-0405.pdf.

22. *See* Table 14.2, *infra*.

23. Ryan M. Goodstein et al., *Are Foreclosures Contagious?* 26 fig.1(FDIC Ctr. for Fin. Research, Working Paper No. 2011-4, 2011) (finding the foreclosure rate in 2008 to be a little over 3%); *see* Gaurav Singh & Kelly Bruning, *The Mortgage Crisis Its Impact and Banking Restructure*, 10 ACAD. BANKING STUD. J. 23, 31 (2011). According to Singh and Bruning "[b]y August 2008, 9.2% of all U.S. mortgages outstanding were either delinquent or in foreclosure," and the average national foreclosure rate was 1.84%. *Id.*

24. *See* FOX & GUY, *supra* note 21, at 3. According to these authors,

greatest financial accomplishments. The loans are designed not to be repaid, so in a sense, repossession rates are surprisingly low.[25] Repossession rates this high are unlike any other in the secured lending world. Additionally, this Article also shows how large profits can be in this industry, as well as how large the industry is overall.

The Article concludes that, while the interest rates for title loans typically are lower than the interest rates for payday loans (100-300% versus 400-600%), title loans generally are more harmful to consumers than payday loans.[26] Finally, this Article concludes that, because we regulate consumer credit products the middle class uses,[27] we also should do so for credit products the lower class uses.[28] To do otherwise leaves those people most in need of protection, unprotected.

> [a] few state regulators provide information on title loan borrowers. Missouri's Auditor reported that 70 percent of payday and title loan customers earned less than $25,000 per year. Illinois title loan users had average salaries of less than $20,000 according to a Department of Financial Institutions study in 1999. New Mexico regulators report that the average income of title loan borrowers, as reported by licensees for 2004, was $21,818.50.

Id. (footnotes omitted); *see also* Gregory Elliehausen, *Consumers' Use of High-Price Credit Products: Do They Know What They are Doing?* 19 tbl.5 (Networks Fin. Inst. at Ind. State Univ., Working Paper No. 2006-WP-02, 2006) (stating in a fascinating table that the total household – not individual – income of persons taking out auto title loans as: less than $15,000 (11.9%), $15,000-24,999 (17.4%), $25,000-49,999 (40.8%), $50,000 or more (30.2%), and clarifying that payday loan customers are better off financially than title loan customers).

25. QUESTER & FOX, *supra* note 21, at 6. According to these authors,

> [t]itle lenders often make their short-term, high-interest loans with little or no regard to their borrowers' ability to repay the loans. Because a car secures each loan, the lender is protected even if the borrower defaults. Lenders frequently advertise that they do not perform credit checks, that loans can be completed on the spot, and that the application will take only a few minutes. For instance, a recent online advertisement stated: "If you own a car, you qualify!"
>
> Unfortunately, title lenders also often target borrowers who can ill afford such high-cost short-term balloon loans, virtually guaranteeing that many of the loans will fail.

Id. (footnotes omitted).

26. *See infra* notes 220-23 and accompanying text.

27. *See, e.g.*, Credit Card Accountability Responsibility and Disclosure Act of 2009, Pub. L. No. 111-24, 123 Stat. 1734 (regulating credit cards).

28. *See infra* note 224 and accompanying text.

II. THE BACKGROUND, CONTEXT, AND REGULATION OF TITLE LENDING

This Part describes the nuts and bolts of title lending, the place of title lending in the overall milieu of high-interest consumer credit products, and the regulation of title lending in the United States.[29]

A. Title Loans: How They Work (or Don't Work)

Just as the late-night advertising suggests, getting a title loan is quick and easy. As one internet advertiser proclaims:

> Need Cash Today? Have a Clear Car Title?
>
> Apply for an Auto Title Loan Today and Get up to $50,000 Cash
>
> No Credit Checks | Flexible Terms | Keep Your Car | Cash in 30 Minutes
>
> Just complete our Application Below or Call . . . to get Pre-Approved Now![30]

Securing a title loan is easy, as our phone interview data show. All one needs is a clear title to his or her car and an extra set of keys. Once the customer has filled out the basic paperwork, the borrower gives the actual title to the

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29. Very little has been written about the history of title lending, though some scholars suggest that title loans grew out of the pawn industry. *See* Drysdale & Keest, *supra* note 15, at 598. As they claim:

> The auto and auto-title pawn loans were designed to take advantage of this special treatment afforded pawn transactions while enjoying the security afforded by taking the consumer's transportation as collateral for a very small cash loan. While a few auto pawnbrokers demand physical possession of the vehicle, such practice obviously creates greater sales resistance. Thus was born the auto-title pawn, or "title loan." The first incarnation echoed the sale/leaseback schemes that have long been used to dodge usury laws. The borrower pledges the title, and the pawnbroker "leases" the vehicle back to the consumer. Some lenders require the customer to turn over a key to the car to facilitate repossession. They commonly limit the loan amount to one-third of the book value of the car, making the loans more than fully secured. While some transactions may involve weekly installments, the typical title loan is a one month, single payment loan.

Id. (footnotes omitted).

30. 1 STOP AUTO TITLE LOANS, http://www.1stopautotitleloans.com/title_loans.html (last visited Sept. 26, 2011).

lender, who holds on to the title until the loan is paid.[31] Some lenders do not perfect their lien in the vehicle by filing in the motor vehicle division of the state. In some states, such as Nevada, the law provides that the lender may perfect by holding the title.[32]

Thereafter, in a prototypical loan,[33] the borrower is to return in one month with the loan amount he or she borrowed plus the finance charge,[34] which can be any amount but is typically 300% per annum or 25% per month.[35] Thus, although terms can vary, if a borrower borrows $2000, the borrower typically would owe $2500 in one month's time. The borrower usually can renew the loan each month by paying the finance charge,[36] which in this example is $500. However, the loans are not necessarily small.[37] One internet company offers loans of up to $50,000,[38] and the New Mexico state data reflect loans up to $42,000.[39] Moreover, the amount of each loan is unrelated to a person's income; the amount is based solely upon the value of the vehicle used as collateral.

If a borrower does not pay the monthly loan payment, which is usually an interest-only payment,[40] a lender can add the monthly payment to the loan, then charging interest on interest, or 300% on 300%. If this is done, the amount of the loan can balloon into a huge debt. Repossessions are rampant

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31. *See* Drysdale & Keest, *supra* note 15, at 598.

32. *See* NEV. REV. STAT. ANN. § 604A.050 (West, Westlaw through 2009 75th Reg. Sess. and 2010 26th Spec. Sess. of the Nev. Legis. and technical corrections received from the Legis. Council Bureau (2010)).

33. These are the most common terms, but as Part II.B.2 of this Article shows, the loan terms vary, certainly far more than we anticipated.

34. *See* Drysdale & Keest, *supra* note 15, at 598-99.

35. *See id.* (referring to title loan interest rates between 200% and nearly 1000%).

36. *See id.* at 599.

37. Conversely, Professor Hawkins claims that "[t]wo important characteristics set pawn and auto title loans apart from other sources of credit – the amounts of the loans are usually quite small and customers have an escape hatch if they cannot pay off the loan." *See* Hawkins, *supra* note 15, at 1388. He further claims that "[t]hese two characteristics cast serious doubt on the assertion that pawnbroking and auto title lending cause financial distress." *Id.* The loans we see, however, are neither small nor non-recourse.

38. *See* Burt et al., *supra* note 15, at 369. To get an internet title loan, a customer fills out the paperwork online, *id.* at 368-69, then goes to a store. Internet title loans are allowed in many states, including South Carolina, California, Texas, Arizona, New Mexico, Nevada, or Utah. *See id.* 369.

39. *See infra* Table 1.

40. *See Questions and Answers*, TITLE LOAN ADVOCATES, http://titleloan advocates.org/Questions_and_Answers.html (last visited Nov. 8, 2011) (describing most title loans as "interest only payments").

and to aid in the process, lenders usually request copies of car keys,[41] and some lenders install a GPS tracking device so they can find and repossess the car.[42]

B. Title Lending in Context

Title lending is one way the working poor, lower-middle class, or any American experiencing financial difficulties, can make ends meet and smooth consumption.[43] Other options include payday loans, refund anticipation loans, pawn loans, and rent to own.[44]

1. Payday Loans[45]

Payday loans are small, short-term, triple-digit interest rate loans, typically in the range of $200 to $500 dollars, secured by the consumer's post-dated check or debit authorization.[46] Originally, these loans were designed to get a consumer through payday and thus be paid back in one lump sum.[47] A typical short-term loan product in today's market allows a customer to borrow $400, for fourteen days or less, for a $100 fee.[48] Most commonly, the loan is an interest-only loan, with the interest payment, here $100, due every two weeks thereafter.[49] The principal stays out indefinitely, and after two months, the lender has recouped the principal.[50] Americans owe several billion dollars in title loans.[51] Payday and other short-term loan outlets tripled in number from 1999 to 2006[52] and now outnumber McDonald's, Burger Kings,

41. *See Consumer Groups Call Car Title Loans Predatory*, MSNBC.COM (Mar. 2, 2008, 6:38:09 PM), http://www.msnbc.msn.com/id/23436573/ns/business-consumer_news/t/consumer-groups-call-car-title-loans-predatory/.

42. *See, e.g.*, Neiger, *supra* note 6 (discussing a title loan utilizing GPS).

43. *See* Hawkins, *supra* note 15, at 1370. Personally, we think less overall spending would help far more than very expensive smoothing, and we also find smoothing itself to be an urban myth. *See infra* Part IV.E.

44. *See* Patrick M. Aul, Note, *Federal Usury Law for Service Members: The Talent-Nelson Amendment*, 12 N.C. BANKING INST. 163, 164-65 (2008).

45. The content of this paragraph was taken from articles previously published by the author. Martin, *supra* note 16, at 564; Martin & Koo, *supra* note 16, at 785-86.

46. Martin & Koo, *supra* note 16, at 785.

47. *Id.*

48. Kept out for one year, this loan would earn interest of $2,600, and the borrower would still owe the $400.

49. Martin & Koo, *supra* note 16, at 785.

50. *Id.*

51. *Id.*

52. Aul, *supra* note 44, at 165. One customer noted that a shop with one employee in 2003 now has 6 employees. *See* Martin, *supra* note 16, at 564 n.4 (citing to interview with study participant no. SB11).

and Starbucks combined.[53] The author's previous research suggests payday lending is the fastest growing segment of the consumer-credit industry.[54] These loans vary in design. For example, in one form of New Mexico installment loan, the customer borrows $100, "to be repaid in twenty-six biweekly installments of $40.16 each, plus a final installment of $55.34." [55] Additionally, the loan payments may pay off very little of the loan principal. The borrower in this example would pay $100 in principal and $999.71 in interest, for an annual percentage rate (APR) of 1147%.[56]

2. Refund Anticipation Loans

Refund anticipation loans (RALs) are "short-term loans extended to consumers in anticipation of their tax refunds."[57] Commercial tax preparers market these loans as quick refunds, which allow taxpayers to immediately access their refund.[58] "In actuality, RALs are loans extended by banks through a contractual arrangement with the tax preparer."[59] Typically, "[w]hen the [bank makes the] loan[, it] prepares to collect on the loan by opening a temporary bank account for the borrower to receive electronic deposit of the refund."[60] The borrower signs documents that "instruct the IRS to direct deposit the refund into that account."[61]

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53. Christopher L. Peterson, *Usury Law, Payday Loans, and Statutory Sleight of Hand: Salience Distortion in American Credit Pricing Limits*, 92 MINN. L. REV. 1110, 1111 (2008) (stating that by 2002, there were more payday-loan stores in the United States than McDonald's, Burger King, Sears, J.C. Penney, and Target stores combined).

54. Martin, *supra* note 16, at 564.

55. Felix Salmon, *Loan Sharking Datapoints of the Day,* REUTERS (Jan. 6, 2010, 19:37 EST), http://blogs.reuters.com/felix-salmon/2010/01/07/loan-sharking-datapoints-of-the-day.

56. *Id.* This assumes the lender is not able to convince the borrower to reborrow the principal before the loan is paid back. *See* Martin, *supra* note 16, at 573-76 (referring to Part I.C of article).

57. Elizabeth R. Schiltz, *The Amazing, Elastic, Ever-Expanding Exportation Doctrine and Its Effect on Predatory Lending Regulation*, 88 MINN. L. REV. 518, 578 (2004).

58. *Id.*

59. *Id.* at 578.

60. *Id.* at 579 (quoting CHI CHI WU, JEAN ANN FOX, & ELIZABETH RENUART, CONSUMER FED'N OF AM. & NAT'L CONSUMER LAW CTR., REFUND ANTICIPATION LOAN REPORT 18-19 (2002)).

61. *Id.* As Professor Schiltz explains,

> [t]he contract usually contains a right of setoff, so the lender is repaid when the refund appears in the bank's account. The consumer is liable for the full amount of the loan if the refund is disallowed in whole or in part. The refund amount would be affected if, for example, [the] IRS disallows

Normally, a consumer pays "three fees in connection with RALs[:] a tax preparation fee to the tax preparer, an electronic filing fee to the tax preparer, and a loan fee to the bank making the loan."[62] The bank pays a portion of the loan fee to the tax preparer.[63] The loan fees vary "based on the size of the refund, translating into [APRs] ranging from 67% to 608%."[64] To get around any interest rate caps states impose, "the loans are extended by banks chartered in states with no restrictions on interest charges."[65] Until recently, two of the largest tax preparers, H&R Block and Jackson Hewitt, offered RALs.[66]

The availability of RALs is diminishing now that the IRS no longer gives tax preparers and financial institutions a debt report that indicates whether a tax refund will be reduced to pay past-due student loans, child support payments, or other debt.[67] H&R Block, a company based in Kansas

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> a deduction or if there is an intercept of the refund for child support or a student loan debt.

Id. (alteration in original).

62. *Id.*

63. *Id.*

64. *Id.* at 579.

65. *See id.*

66. *Id.*; *see also* John Malseed, *Costly Tax Refund Loans Dwindle in Availability*, WCF COURIER (Iowa), Mar. 21, 2011, http://wcfcourier.com/business/local/3ab10ed0-517f-11e0-8722-001cc4c03286.html. According to Malseed,

> [m]ore than 7 million people used RALs in 2009. They paid about $606 million in fees and another $58 million in add-on charges, according to a study issued by the National Consumer Law Center and the Consumer Federation of America. That compares to 8.4 million, who paid $738 million in fees, in 2008, according to the same organization.

Id.

67. *See id.*; *see also* Danielle Douglas, *End of the RALs?*, WASH. POST, Mar. 27, 2011, http://www.washingtonpost.com/capital_business/end-of-the-rals/2011/03/25/AFQJVkb_story.html. According to the Douglas article, a more rigorous regulatory climate created the end to RALs, a controversial product that consumer advocates lambasted as predatory because of its proliferation in low-income communities. *Id.* The article goes on to say that

> [y]ears of petitioning state and federal officials to rein in RALs yielded substantial results in 2010 that have crippled the market in a matter of months. Under pressure from consumer groups, J.P. Morgan Chase, one of the three largest lenders underwriting refund loans, pulled out of the market in April. The Internal Revenue Service then announced in August it would no longer provide tax preparers and financial institutions a key credit check on taxpayers for RALs. And by December, H&R Block bowed out when its banking partner HSBC terminated their agreement, thanks to a directive from the Office of the Comptroller of the Currency. As a result of the departure of J.P. Morgan and the actions of the OCC, only three community banks are originating RALs this year: Louisville-based Republic Bank & Trust, River City Bank in the same city, and Ohio

City, Missouri, was one of the largest providers of RALs until it decided to stop offering them during the 2012 tax season.[68] Moreover, "[t]he Federal Deposit Insurance Corporation (FDIC) is seeking a $2 million fine against Republic Bank & Trust of Kentucky," the only lender still offering RALs.[69] "The FDIC's investigation of Republic's RAL [loans] uncovered numerous violations by tax preparers, acting as agents of Republic, of various consumer protection laws."[70]

3. Pawn Loans

Many observers believe that title lending grew out of the pawn business.[71] "[I]n pawn transactions, the customer gives the pawnshop some form

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> Valley Bank in Gallipolis, Ohio, according to the National Consumer Law Center.

Id.

68. *See* Press Release, H&R Block, H&R Block Decides Not to Offer Refund Anticipation Loans in 2012 (Sept. 13, 2011), *available at* http://www.hrblock.com/press/Article.jsp?articleid=52784. According to the company,

> "[w]e evaluated our options to determine what was best for our clients, the business and our shareholders," said Bill Cobb, H&R Block[P]resident and CEO. "Knowing we had a strong 2011 tax season without RALs, our analysis did not present a compelling reason to bring back the product in 2012."

Id. H&R Block also said that it would offer refund anticipation checks (RAC) instead, which are not loans but rather a pre-paid debit card onto which a refund is loaded. *Id.* *See also* CHI CHI WU & JEAN ANN FOX, NAT'L CONSUMER LAW CTR. & CONSUMER FED'N OF AM., MAJOR CHANGES IN THE QUICK TAX REFUND LOAN INDUSTRY 2-6 (2010), *available at* http://www.consumerfed.org/elements/www. consumerfed.org/file/RAL%202010%20Report%20final.pdf. According to this source, "tax preparers and their bank partners made approximately 8.4 million RALs during the 2008 tax-filing season." *Id.* at 2. H&R Block "had about 3.9 million RAL customers in 2008, or 46% of the RAL market." *Id.* at 6. The second largest provider, Santa Barbara Bank and Trust, "had about 2.3 million RAL customers in 2008, and Republic [Bank & Trust] had about half a million." *See id.* at 7.

69. *See FDIC Seeks $2 Million Fine Against Republic Bank of Kentucky: Probe Found Numerous Violations in Bank's Refund Anticipation Loan Program*, CONSUMERAFFAIRS.COM (May 10, 2011), http://www.consumeraffairs.com/news04/2011/05/fdic-seeks-2-million-fine-against-republic-bank-of-kentucky.html.

70. *Id.* "The FDIC charged that Republic 'is unable to appropriately manage, monitor, and control third-party risk at its [tax preparers] in many aspects.'" *Id.* (alteration in original). The FDIC also alleges "inadequate management, monitoring and controlling [preparers] and third-party risk include a deficient training program; inadequate security for customer information and cash equivalents, including debit cards, inadequate computer safeguards, and [preparers'] failure to comply with law and regulation." *Id.* (internal quotation marks omitted) (alterations in original).

71. *See, e.g.*, Barr, *supra* note 16, at 165 (stating that "[t]he title industry grew out of pawnbrokers' efforts to lend larger amounts than televisions or jewelry could

of personal property that the pawnshop holds as collateral for the loan given to the customer."[72]

As fringe banking products go, pawn loans are among the least harmful. As Professor Jim Hawkins notes:

> [e]ven those very critical of fringe banking recognize the benefit of this structure: "One positive feature of pawn credit is its tendency to be naturally short-term and terminal. Unlike payday loans where consumers often are forced to repay their loans over relatively long periods, a defaulting pawn debtor simply forfeits the personal item left with the pawnbroker as collateral." Thus, for those who associate financial distress with having unmanageable debt, pawn broking [conclusively] can never directly cause financial distress because the debt is self-liquidating.[73]

While Professor Hawkins equates title loans with pawn loans in declaring the relative harmlessness of each,[74] title loans are more harmful than pawn loans, at least in New Mexico.

C. Title Loan Regulation: There's No "There There"

A majority of states have not enacted legislation or otherwise regulated the title loan industry by capping fees at less than 100% of the amount borrowed.[75] As of the date of this publication, it appears that only twenty-one

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collateralize"); *Consumer Use*, *supra* note 8, at 433 (stating that "[t]itle pledge lending grew out of traditional pawnbroker operations, mainly to enable making larger loans than traditional pawnshop loans backed by items such as consumer electronics, musical instruments, and jewelry"); *see also* Burt et al., *supra* note 15, at 366. Though numerous scholars have stated that title lending is an offshoot of the pawn industry, they offer no evidence of this. Currently, there is little connection between making pawn loans and making title loans in New Mexico, where only three small lenders authorized to make title loans are also pawn brokers. *See* Jessica J. Randall, Pawnbroking in New Mexico: An Industry Misunderstood 26 (Dec. 10, 2010) (unpublished paper, University of New Mexico) (on file with author).

72. Hawkins, *supra* note 15, at 1388. For an excellent history of the pawn industry, see JOHN P. CASKEY, FRINGE BANKING: CHECK-CASHING OUTLETS, PAWNSHOPS, AND THE POOR 1 (1994) [hereinafter FRINGE BANKING]; *see also* Jarret C. Oeltjen, *Florida Pawnbroking: An Industry in Transition*, 23 FLA. ST. U. L. REV. 995, 996-98 (1996); *see generally* John P. Caskey, *Explaining the Boom in Check-Cashing Outlets and Pawnshops*, 49 CONSUMER FIN. L. Q. REP. 4, 4-5 (1995) [(hereinafter *Explaining the Boom*] (providing additional background information on the pawn industry).

73. Hawkins, *supra* note 15, at 1389 (footnote omitted).

74. *Id.* at 1393.

75. Leah A. Plunkett & Ana Lucía Hurtado, *Small-Dollar Loans, Big Problems: How States Protect Consumers from Abuses and How the Federal Government Can Help*, 44 SUFFOLK U. L. REV. 31 app. A, at 56-63 (2011) [hereinafter Plunkett & Hur-

states appear to attempt to regulate title lending, and most states enable high interest, short-term loans.[76] Idaho's statute[77] merely requires title lenders to obtain a license,[78] give customers a written contract disclosing the cost of the

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tado, *Small-Dollar Loans*] (citing LEAH A. PLUNKETT, EMILY CAPLAN & NATHANAEL PLAYER, NAT'L CONSUMER L. CTR., SMALL DOLLAR LOAN PRODUCTS SCORECARD-UPDATED 14-20 (2010)); *see also* Edelman et al., *supra* note 15, at 598-99 (2008) (stating that "[c]urrently, sixteen states have enacted laws regulating title loans" and that the laws sometimes "set limits on loan terms, such as maximum loan amounts, interest rate caps, and costs, and regulate the frequency of renewals or extensions"). For prior history on state specific title loan laws, see Burt et al., *supra* note 15, at 371-73.

76. *See* Plunkett & Hurtado, *Small-Dollar Loans*, *supra* note 75, at app. A 56-63 (citing SCORECARD 2010, *supra* note 75, at 14-20); *see also* Alabama, Pawn Shop Act, ALA. CODE §§ 5-19A-1 to -20 (Westlaw through End of 2011 Reg. Sess.); Arizona, Motor Vehicle Time Sales Disclosure Act, ARIZ. REV. STAT. ANN. §§ 44-281 to -295 (Westlaw through 1st Reg. Sess. and 3d Spec. Sess. of the 50th Legis. (2011)); Florida, Title Loans, FLA. STAT. §§ 537.001, .018 (2010); Georgia, GA. CODE ANN. §§ 44-12-130 to -138 (LEXIS through 2011 Extraordinary. Sess.); Idaho, Title Loan Act, IDAHO CODE ANN. §§ 28-46-501 to -509 (LEXIS through 2011 Reg. Sess.); Illinois, Consumer Installment Loan Act, ILL. ADMIN. CODE tit. 38, §§ 110.300, .350, .390 (West, Westlaw through July 29, 2011); IOWA CODE § 537.2403 (Supp. 2011); Kentucky, KY. REV. STAT. ANN. §§ 286.10-260 to -530 (West, Westlaw through end of 2011 Legis.); Minnesota, MINN. ANN. STAT. ANN. § 325J.07 (West, Westlaw through end of the 2011 Reg. Sess.); Mississippi, MISS. CODE ANN. § 75-67-413 (LEXIS through 2011 Reg. Sess. and 1st Extraordinary Sess.); Missouri, MO. REV. STAT. § 367.515 (Supp. 2010); Montana, MONT. CODE ANN. §§ 31-1-816 to -817 (Westlaw through all 2011 laws, and 2010 ballot measures); Nevada, NEV. REV. STAT. ANN. § 604A.105 (West, Westlaw through 2009 75th Reg. Sess. and the 2010 26th Spec. Sess. of the Nev. Legis. and technical corrections received from the Legis. Council Bureau (2010)); New Hampshire, N.H. REV. STAT. ANN. § 399-A:14 (Westlaw through Ch. 268 of 2011 Reg. Sess., not including changes and corrections made by the State of New Hampshire, Office of Legis. Svcs.); New Jersey, N.J. ADMIN. CODE § 3:24-1.3 (West, Westlaw through Aug. 15, 2011; 43 N.J. Reg. No. 16); 2010 Or. Laws 1st. Spec. Sess. c. 23, § 20 (Westlaw through End of the 2011 Reg. Sess. and ballot measures approved at the Nov. 2, 2010 election, pending classification and text revision by the Oregon Reviser); South Carolina, S.C. CODE ANN. §§ 34-29-140, 37-3-201, and 37-3-413 (Westlaw through End of 2010 Reg. Sess.); Tennessee, TENN. CODE ANN. § 45-15-111 (LEXIS through 2011 Reg. Sess.); Utah, Title Lending Registration Act, UTAH CODE ANN. §§ 7-24-101 to -305 (West, Westlaw through 2011 2d Spec. Sess.); Vermont, VT. STAT. ANN. tit. 9, §41a(b)(4) (LEXIS through 2011 Sess.).

77. Title Loan Act, 2006 Idaho Sess. Laws ch. 323 (H. 784) (July 1, 2006) (codified at IDAHO CODE ANN. §§ 28-46-501 to -509.

78. *See* IDAHO CODE ANN. § 28-46-503. A title loan made by an unlicensed lender is void under Idaho law, and the lender forfeits the right to collect any monies including principal, interest, and other fees paid by the debtor in connection with the title loan agreement. *Id.*

loan over its initial term, [79] and not loan more than the vehicle's value.[80] Loans can be no longer than thirty days.[81] The statute does not cap interest rates, limit fees, or limit the number of loan renewals.[82] After the third renewal, the borrower must pay at least 10% of the outstanding principal amount in addition to any finance charges due.[83] This loan is an interest-only loan for three months, followed by many more months of interest, at a rate up to 300%.[84]

Oregon and Montana have amended their laws to impose a 36% interest rate cap on all consumer loans, including title loans.[85] In Oregon, a title lender can charge a one-time origination fee that does not exceed $10 per $100 of the loan amount or $30, whichever is less.[86] A lender also can collect one fee per loan transaction for dishonored or insufficient funds checks, but the fee cannot exceed $20.[87] In addition, the Oregon statute prohibits the making or renewing of title loans for a term of less than thirty-one days.[88] Statutes also prohibit title lenders from renewing an existing title loan secured by the same certificate of title more than two times after the loan is first made.[89] For the

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79. *See id.* § 28-46-504. "The Idaho statute requires the lender and borrower to execute a title lending agreement that must include statutorily required terms and disclosures." Edelman et al., *supra* note 15, at 599 (citing IDAHO CODE ANN. § 28-46-504(1)(2)).

80. IDAHO CODE ANN. § 28-46-508(3). We do not think this provision is needed to protect lenders or borrowers, since it is our understanding that it is industry practice to lend no more than 40% of value, and many lenders typically lend a far lesser percentage. QUESTER & FOX, *supra* note 21, at 5 ("Most title loans are also made for much less than the value of the car that secures the loan. The amount extended is usually based on how much the car is worth and typically does not exceed 33% of the car's value."). *See also infra* notes 119-21 and accompanying text.

81. IDAHO CODE ANN. § 28-46-506(1). Title loans cannot be renewed if: (1) "[t]he debtor has paid all principal and finance charges due in accordance with the title loan agreement;" (2) "[t]he debtor has surrendered possession, title and all other interest in and to the titled personal property to the title lender; or" (3) "[t]he title lender has notified the debtor in writing that the title loan agreement is not to be renewed." *Id.* Moreover, a lender cannot "[c]apitalize or add any accrued interest or fee to the original principal." *Id.* § 28-46-508(8).

82. *See id.* § 28-46-506(3).

83. *Id.*

84. *Consumer Use*, *supra* note 8, at 434. Our own study data confirm that 300% is a common interest rate for a title loan. *See infra* Appendix A.

85. MONT. CODE ANN. § 31-1-241 (West, Westlaw through all 2011 laws, and 2010 ballot measures); 2010 Or. Laws 1st. Spec. Sess. c. 23, § 20 (Westlaw through End of the 2011 Reg. Sess. and ballot measures approved at the Nov. 2, 2010 election, pending classification and text revision by the Oregon Reviser).

86. 2010 Or. Laws 1st. Spec. Sess. c. 23, § 20(2). The 36% interest rate cap excludes this origination fee. *Id.* § 20(1).

87. *Id.* § 19(1).

88. *Id.* § 20(3).

89. *Id.* § 20(9).

most part, other than rate caps for all loans at 36%, most states that have passed title lending legislation have authorized the types of triple-digit interest, industry-friendly, loan transactions described here.[90]

III. TITLE LOANS IN NEW MEXICO: THE DEVIL OR THE DEEP BLUE SEA?

This Part reports on the specific data in Albuquerque, New Mexico, as gathered by calling or visiting all lenders in the city and on data the state collected. A list of all lenders in our phone survey can be found in Appendix A and B. All lenders that offered title loans in Albuquerque in the fall of 2010 were contacted in order to determine their terms and practices. If a lender had more than one location, the authors assumed that locations owned by the same company had the same practices and terms.

Title lenders in Albuquerque, as in New Mexico generally, include a number of national lenders and very few locally-owned businesses. The line between local and national lenders, however, often is blurred. The only lender in New Mexico to offer only title loans is New Mexico Title Loans, which a Georgia company owns.[91]

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90. PLUNKETT, KAPLAN & PLAYER, *supra* note 75, at 14-20 (identifying 25 states that prohibit auto title loans, 8 of which set caps between 104% and 304% and 11 of which have no APR caps). Certain federal laws, such as the National Defense Authorization Act of 2006, attempt to curtail title lending in order to protect military personnel and their family against certain lending practices. *See* National Defense Authorization Act for Fiscal Year 2006, Pub. L. No. 109-163, § 579, 119 Stat. 3136, 3276-77 (2006) (codified at 10 U.S.C. § 992 (2006 & Supp. IV 2010)) (requiring the DOD to issue the Report). These laws leave the rest of us to fend for ourselves, however. Moreover, anecdotally, we have heard that many military personnel are told to avoid payday loans. *See* Scott E. Carrell & Jonathan Inman, *In Harms Way? Payday-Loan Access and Military Personnel Performance* 3 & n.3 (Research Dep't, Fed. Reserve Bank of Phila., Working Paper No. 08-18, 2008). We have heard anecdotally that at one time, servicemen and women were subject to serious penalties for even entering such establishments, along with "massage parlors" and other businesses of ill repute.

91. *See* Stephen Franklin, *Car Title Loans Snare Victims at 300% Rate*, KANSAS CITY STAR, Aug. 10, 2008, at D4; *Corporations Division*, NEW MEXICO PUB. REL. COMMISSION, http://web.prc.newmexico.gov/Corplookup/(S(e3mvr1trrd4t1hnendvvihrk))/CorpsSearch.aspx (last visited Nov. 10, 2011); *see also New Mexico Title Loans*, POWERPROFILES.COM, http://www.powerprofiles.com/profile/00005153539887/ COMMUNITY+LOANS+OF+AMERICA,+INC.-SANTA+FE-NM (last visited Jan. 18, 2012) (stating that New Mexico Title Loans is a branch of Community Loans of America). The president of New Mexico Title Loans, Robert Reich, is also president of many title lending companies nationwide. *See* Franklin, *supra*; *Corporations Division*, *supra*. Mr. Reich's company, Community Loans of America, is the largest title lender in America. *See* Franklin, *supra*. Mr. Reich is also the source of the report cited by Zywicki in *Money to Go*, *supra* note 17, at 34.

The State of New Mexico Financial Institutions Division (FID) gathers title loan data directly provided by lenders through self-reporting questionnaires.[92] From the time the state began requiring that title lenders file year-end reports in 2004[93] until the present, interest rates on title loans made in New Mexico have been reported in the range of 10,000% to 0%.[94] As Appendix A shows, the average interest charged over the five years was above 300%.[95] The zero percentage rate reflects the practice of offering consumers the first loan free, which is a common marketing tactic in the Albuquerque area. Some lenders also consider all their charges "fees." Thus, if a consumer asks the interest rate, they may say that there is none and may report a zero percentage rate to the FID.[96]

The FID requires that all entities that make title loans obtain an FID license,[97] and it maintains a database of all such licensed lenders. All of these licensed lenders must report annually various data to the FID.[98] The FID records these data in an annual Summary of Title Lending report.[99] In order for any given percentage interest rate to be included in the Summary of Title Lending report FID creates, the rate need only be offered to and accepted by a single customer, so aggregated numbers can be skewed easily.[100]

92. *See* N.M. STAT. ANN. §§ 58-15-10, -10.1 (West, Westlaw through 1st Reg. Sess. 2011).

93. *See* N.M. CODE R. § 12.8.6.5 (West, Westlaw current through all new rules amendments and appeals effective prior to Oct. 1, 2011) (showing effective date of Jan. 1, 2004).

94. *See infra* Appendix A.

95. *See infra* Appendix A.

96. A representative with the New Mexico FID told us that "[s]ome companies do report that they charge 0%, which has also been questioned by our department. The companies who have reported 0% say that in some cases they have charged 0%, but rarely does that happen." Telephone Interview with Representative, N.M. Fin. Insts. Div. (Oct. 27, 2010).

97. *See* N.M. STAT. ANN. § 58-15-3; Telephone Interview with Representative, *supra* note 96.

98. *See* N.M. CODE R. § 12.8.6.6, .8.

99. *See* N.M. FIN. INST. DIV., SUMMARY OF TITLE LOANS (2008) [hereinafter SUMMARY OF TITLE LOANS 2008] (on file with authors); N.M. FIN. INST. DIV., SUMMARY OF TITLE LOANS (2007) [hereinafter SUMMARY OF TITLE LOANS 2007] (on file with authors); N.M. FIN. INST. DIV., SUMMARY OF TITLE LOANS (2006) [hereinafter SUMMARY OF TITLE LOANS 2006] (on file with authors); N.M. FIN. INST. DIV., SUMMARY OF TITLE LOANS (2005) [hereinafter SUMMARY OF TITLE LOANS 2005] (on file with authors); N.M. FIN. INST. DIV., SUMMARY OF TITLE LOANS (2004) [hereinafter SUMMARY OF TITLE LOANS 2004] (on file with authors).

100. *See* sources cited *supra* note 99.

A. Telephone Survey of Lenders

The purpose of the telephonic portion of our survey was to find out how businesses offering auto title loans in New Mexico operate. We were most interested in the fees and interest rates charged as well as the terms of the loans. We also were interested in how title lenders present themselves to the public. Our survey was limited to businesses making auto title loans in Albuquerque, the largest city in New Mexico. We operated under the assumption that business practices in the city would give a fair idea of how these companies operate in New Mexico as a whole. Moreover, as the introduction to this Part indicates, most of the lenders are national; thus, these data may reflect how this business operates nationwide.[101]

1. Methodology

Identifying lenders making title loans in a particular market can be tricky. Not all lenders advertise in the Yellow Pages or on the Internet, as some lenders rely on drive-by business. Additionally, lenders come and go and move in and out of this segment of the consumer finance world. We made several attempts to capture all of the lenders in our data, but for reasons explained in this section, we feel certain that we missed a few lenders.

We attempted to identify all the title lenders in Albuquerque by creating a list of businesses that advertised title loans in Albuquerque. We first tried to use web searches, a general Google, and white pages search. This approach was not fruitful for several reasons. There is no web yellow page heading for auto title loans, few businesses have "auto title" in their names, and most of the web pages returned were owned by a limited number of businesses, only one of which was located in Albuquerque. We wanted to limit our survey to businesses that had at least one brick and mortar location in Albuquerque, so that we could call an actual local location and visit it. The sheer volume of items returned when we broadened our search to include all "loans" frustrated our search.

We next turned to the 2010-11 DEX yellow pages. Again, the advertisements had no heading for "Auto Title Loans" or "Title Loans," so we broadened our search to "Loans." Although few businesses had "Auto Title" in their name, loan companies appeared to have a lot of competition, and many advertisements in the yellow pages listed title loans as one of the products offered. The yellow pages gave us an initial list of twelve businesses, with a total of thirty-nine locations in Albuquerque. After calling these twelve to interview them, we discovered that one did not offer title loans, despite the Yellow Pages advertisement, which gave us a list of eleven businesses representing thirty-four separate locations.

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101. *See supra* note 91 and accompanying text.

We then began by driving up and down several large streets in Albuquerque,[102] looking for businesses advertising title loans. Our vehicle search discovered an additional ten companies, bringing our list to a total of twenty-one title loan companies representing sixty-six locations within the city limits of Albuquerque.[103]

After identifying the lenders, we turned to the FID database to identify all small lenders who were authorized to make title loans in New Mexico as of fall 2010.[104] From this data, we compiled Appendix B, which shows twenty lenders in fifty-eight locations authorized to make title loans.[105] When compared to Appendix A, one can see that not all of the lenders in our survey were authorized to make title loans in New Mexico, nor were all of the licensed companies making title loans in New Mexico.[106]

Next, we called the businesses on our list, first asking if they offered title loans and then asking for information about the loans. We were seeking information on interest rates, fees charged, and the term of loans offered. We also made notes during the calls as to the professionalism and demeanor of the employees with whom we spoke. We asked for information on a loan of $200. We made it clear that we were just getting information and were not prepared to take out a loan at this time. If they insisted on having personal information, we gave them a fictitious name, Brian Russell, and claimed to have no home phone. If they asked for vehicle information in order to give us a quote, we gave the information on a 1997 Ford F-150XL crew cab with a short bed, a V6 engine, and an automatic transmission. We stated the truck had about 250,000 miles on the odometer and was in "fair" condition, with a Kelley Blue Book[107] trade in value of about $950.00.

2. Results of the Title Lending Phone Survey

a. Annual Percentage Rate (APR)

One thing became apparent within the first few calls. Asking for the APR of the loans was not helpful. Most of the employees with whom we spoke were not able to convert the daily or monthly interest rate into an annual percentage rate. Some knew only the daily rate. As title loans typically have a monthly term, the interest rates that loan companies use are given as

102. The streets were Central Avenue (the old Route 66, and a major Albuquerque thoroughfare), Juan Tabo Boulevard, Eubank, Menaul, and San Mateo.

103. *See infra* Appendix A.

104. *See Facility Search*, N.M. REG. & LICENSING DEP'T, http://rldverification.rld.state.nm.us/ Verification/Search.aspx?facility=Y (last visited Jan. 19, 2012) (search results were obtained by selecting Profession: Financial Institutions and License Type: small loan company).

105. *See infra* Appendix B.

106. *See infra* Appendix A.

107. *See* KELLEY BLUE BOOK, http://www.kbb.com (last visited Oct. 19, 2011).

monthly or daily rates.[108] While we report the APR here, we calculated these from the monthly or daily percentage rate the employee of the lender provided. While employees of lenders sometimes provided us with an accurate APR, this accuracy was the exception rather than the rule.

The lowest APR we found was a 0% introductory rate from Quick Cash extended to first-time customers. Their normal annual interest rate is 300%. The next lowest rate was 88% from Shamrock Finance,[109] followed by 228% at Checkmate.[110] We have some doubts about the reliability of these numbers. The first location we called refused to provide any interest rate, and the employee at the second location said she thought the rate was "like 228% a year,"[111] but hung up the phone before we could get clarification. The next lowest annual percentage rate available in Albuquerque appears to be 240%, which Money Train and New Mexico Title Loans offer.[112] New Mexico Title Loans offers this rate only on "new cars"; their regular rate is 360%.[113] Post-survey, we learned that Lighthouse Financial regularly makes title loans at 148-160% per annum.[114]

The highest annual percentage rate recorded was 520%, from Check 'n Go.[115] The manager gave us this rate while trying to talk me into taking out a 260% installment loan instead. We found this conversation confusing at first, but after further research, we surmised that not all of the Check-n-Go locations made title loans. We probably called a non-title loan location and, rather than refer our business elsewhere, the manager attempted to sell us another product. As of this writing, we have not been able to confirm the APR for this lender. Approved Finance also charged a rate of 520%, and the next

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108. It is untrue that the APR is irrelevant for shorter term loans. First, not all these loans are actually short term. *See infra* note 149 and accompanying text. Moreover, just because a person drives less than a mile does not mean miles per hour is an irrelevant measure. Disclosure of the APR would at least in theory still allow customers to compare the cost of credit between different providers.

109. *See infra* Appendix A. While Shamrock is a licensed small lender, and while it makes title loans, it is not authorized by the New Mexico Financial Institutions Division to make them. *See Facility Search*, N.M. REG. & LICENSING DEP'T, http://rldverification.rld.state.nm.us/Verification/Search.aspx?facility=Y (search Facility Name: "Shamrock") (last visited Jan. 19, 2012) (returning five results, none of which is licensed to make title loans). Shamrock appears to have a complex system of fees and interest rates that vary between 88% and 260%, depending on the amount and term of the loan contract. *See infra* Appendix A. The employee we spoke with was unwilling to explain how their system worked in detail. Telephone Interview with Shamrock Finance Clerk (Oct. 16, 2011).

110. *See infra* Appendix A.

111. Telephone interview with Checkmate Clerk (Oct. 17, 2011).

112. *See infra* Appendix A.

113. Mr. Adams saw this printed on a small sign attached to the counter while visiting the New Mexico Title Loans location on Montgomery Boulevard.

114. *See, e.g.*, Loan contract, *supra* note 2.

115. *See infra* Appendix A.

highest APR was 450% from Ace Cash Express.[116] The average APR from our survey was 388%,[117] which equals a monthly interest rate of 32.33%. This figure was obtained by multiplying the number of locations of each title lender by the interest rate offered, then dividing the sum by the total number of title lenders in our survey.[118]

b. Loan to Value Ratios

Title loans are deeply over-secured. In other words, the value of the collateral used to secure the loan is far greater than the amount of the loan. While some lenders claimed that they lend "up to 50% the value of your car," those rates are for new, highly desirable cars, which few people own outright. Our phone survey data indicate that lenders typically lend between 25 and 40 % of a vehicle's value. In reality, even these values appear to be far higher than what is loaned. Lenders calculate the percentage of the vehicle's value to be loaned by looking at the wholesale, or trade-in value, of the car.[119] Wholesale values are significantly lower than the retail value. As an example, the lender valued Ms. Price's car at $10,000. Its Kelley Blue Book value at the time was $14,715, so the $4000 loan was 27.1% of the value of a relatively new car.[120] Other scholars have estimated the loan to retail value of the vehicle to be 30%.[121]

Exact data on the loan to value ratio from each lender was impossible to obtain. Clerks did not grasp the question and said it did not matter anyway. They said all they do is put the information into the computer and the computer tells them how much to lend.

c. Length of Loans

Our phone survey indicated that most loans are one month loans that can be rolled over as many times as a customer wishes. Rollovers are what make these loans so profitable for lenders and so harmful for borrowers. After three rollovers, customers have paid as much in interest as they borrowed, frequently without paying off any of the principal. There were a few lenders in our survey who did not use this lending model. For example, American Cash Loan gives fourteen-day loans, much like payday loans. Ace Cash Ex-

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116. *See infra* Appendix A.

117. *See infra* Appendix A.

118. *See infra* Appendix A.

119. This figure can come from several different sources. *See* BLACK BOOK, http://www.blackbookusa.com (last visited Oct. 12, 2011) (a subscription only service); KELLEY BLUE BOOK, http://kbb.com (last visited Oct. 12, 2011); NATIONAL AUTO DEALERS ASSOCIATION, http://www.nada.org/ProductServices/NADAGuides (last visited Oct. 12, 2011) ("yellow" or "orange" guides).

120. *See* Loan contract, *supra* note 2.

121. *See* Lundberg, *supra* note 15, at 191.

press structures its loans as ten equal installments paid every two weeks for five months, and Lighthouse Financial Services spreads its loan over eighteen equal monthly payments. While all lenders claimed to charge "no fee for early repayment," they define this clause ambiguously. The result of paying off the loan early varies between charging a flat daily interest on the principal borrowed until the loan is repaid, and repayment of all interest that would have been owed if the loan was completed under the original agreement.

d. Fees

In addition to interest, nine of the twenty-one lenders surveyed charged a "lien" fee, though few appear to record liens with the New Mexico Department of Motor Vehicles (DMV). Not surprisingly, the "lien" fees do not correlate to the amount the DMV charges to file a lien.[122]

e. Income Requirements

Income requirements in the analyzed loans were lenient to non-existent. Most lenders only require that the customer show some kind of income from some source, including Social Security or student loans. Some lenders would accept that you have a bank account with money in it. The Lighthouse Financial branches with which we spoke did not require information about income at all. The clerk with whom we spoke said point blank, "I don't care about income. As long as you have a clean title, I will give you a loan."[123] Only FastBucks requires a complete job history and proof of ability to repay the loan. These data confirm that the auto title lending industry is an asset-based business. Lenders rely on the vehicle for repayment, not the customer's ability to pay.[124]

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122. The New Mexico Department of Motor Vehicles charges $5.00 to place a lien on a car title. Telephone Interview with N.M. Dep't of Motor Vehicles Representative (Dec. 5, 2011). Of the nine lenders who charge an additional fee, six are simply passing along the $5.00 fee. Checkmate charges $8.00, and Money Train charges $8.50. New Mexico Title Loans charges a fee of $19.50, which they still refer to as the lien fee, but the fee is large enough to actually change the functional interest on a short term loan. It should be kept in mind that the New Mexico Department of Motor Vehicles charges an additional $5.00 to issue a new "clear" title. *Id.*

123. Interview with Lighthouse Financial Clerk in Albuquerque, New Mexico, October 17, 2010.

124. QUESTER & FOX, *supra* note 21, at 6 (stating that these loans are typically made without regard to borrowers' ability to repay) ; *Comments of the National Consumer Law Center on Behalf of Its Low Income Clients Regarding Petition for Rulemaking to Preempt Certain State Laws Federal Deposit Insurance Corporation*, NAT'L CONSUMER L. CENTER, 13 (May 16, 2005), http://www.nclc.org/images/pdf/preemption/archive/fdic_comments-05.pdf (stating that these "loans are typically made without regard to borrowers' ability to repay").

f. Demeanor

With only two exceptions, Checkmate and New Mexico Title Loans, every title lender employee with whom we spoke was courteous and professional. Most employees were downright friendly. They did not act like they were trying to trick us or hide relevant information, and when the monthly and annual percentage rates did not add up, it seemed as though they made an honest mistake. Compared to traditional banks, these lenders wanted our business and went out of their way to be as helpful as possible. We feel certain that this enthusiasm is one of the reasons that people use title lenders and use them often. As long as the customer is paying, the title lenders are pleasant.

g. Ownership

Lenders argue that they should not be regulated because regulation will hurt local (New Mexico) businesses.[125] Our survey showed that of the sixty-one authorized title lenders in Albuquerque, only four are incorporated in New Mexico and owned by New Mexicans. Thus, most of their profits are leaving the local economy.[126]

B. In-Store Survey of Title Loan Businesses in Albuquerque

In addition to these phone surveys, we visited ten stores at random in order to see what the process of obtaining a loan would be and to determine if the stores complied with signage laws. The signage law requires that all title and payday loan companies display in each licensed place of business a prominent sign, readily visible to borrowers, disclosing the schedule of charges in twenty-four point font or larger.[127] "The prominent sign in a reduced form, with font, no smaller than 10 point, must also be displayed at every workstation where loans are originated."[128]

In 2002, New Mexico Public Interest Research Groups (NMPIRG) did a statewide study of lender compliance with the signage and pamphlet provisions.[129] The study found that only one-third of the lenders were compliant

125. *See* INDUSTRY REPORT TO NEW MEXICO LEGISLATURE, *supra* note 9, at Resources and Materials 29.

126. It is not possible to have access to the data collections since all data collected or generated by the FID is protected by statute. All companies engaging in title loan activities are required to obtain a small loan license. *See* N.M. STAT. ANN. § 58-15-3 (West, Westlaw current through 1st Reg. Sess. of the 50th Legis. (2011)).

127. N.M. CODE R. § 12.18.4.8 (West, Westlaw current through all new rules, amendments and appeals effective prior to Oct. 1, 2011).

128. *Id.*

129. *See* RAY PRUSHNOK, NMPIRG EDUCATION FUND PAYDAY HEYDAY!: MEASURING GROWTH IN NEW MEXICO'S SMALL LOAN INDUSTRY 1990-2001 (2002),

with the brochure and signage laws.[130] In our ten visits, only one store was compliant with both the pamphlet and signage regulations.

C. State Data from Title Loan Companies

As indicated above, the FID requires that all title lenders register with the state and then report each year certain data about the loans they make to the FID.[131] This section reports on these industry-generated data. Given that these data involve industry self-reporting, that some lenders make loans without being registered, and that others do business without filing the reports, the data will contain inaccuracies.[132] Nevertheless, they provide useful insight into the title lending business. The reports are due each year when the lender applies to have its license renewed. The data are collected through a FID questionnaire, and then the FID creates a report of all such data each year.[133] We have summarized all of these annual reports and added line numbers so that the data can be analyzed. Our summary of 2004-2008 is attached as Appendix C. The data for 2009 is attached as Appendix D.

One problem with the yearly summaries is that they average all of the data, including obvious outliers.[134] While knowing the mode or median in addition to the mean would have been useful, having the raw data to work with would have been ideal.[135] A greater problem with the summaries is that they do not contain many basic data points, such as the total number of loans made for the year, the total number of customers served, the total principal loaned, the average lien fees charged, and the average time customers took to repay loans compared to original loan terms during the calendar year. We have attempted to create these data points ourselves.

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available at http://cdn.publicinterestnetwork.org/assets/qK5fOHM_o87IR4-f64ibPw/paydayheyday.pdf.

130. *Id.* at 6.

131. *See* N.M. CODE R. § 12.8.6.6, .8; N.M. STAT. ANN. § 58-15-3.

132. We have reported and analyzed various data from these reports in this Article. *See, e.g.*, Tables 1-4.1. We know, however, that the reports do not reflect the entire industry in New Mexico, due to a failure of some lenders to make annual reports and a failure of some lenders to become licensed. The reports also do not reflect loans made by licensed companies who go out of business in the reporting year, because such lenders are not required to turn in an annual report. Moreover, it is unclear whether companies that have made title loans for the reporting year, but do not intend to continue making title loans, are required to complete the questionnaire.

133. According to the FID, a small loan examiner does an annual examination of the licensed companies. Telephone Interview with Representative, *supra* note 110. For any of the small loan companies to do title lending in New Mexico, they must get approval from the Director of the FID, but it is not clear what is being examined. *Id.*

134. Since statistical outliers are not removed or accounted for before averaging, the data is skewed for several line items.

135. The FID has declined to provide us with this raw data, allegedly because of privacy concerns.

Below is the data from the five of the six years of summaries currently available – 2004 through 2008.[136] While the questions are consistent for each year, the original summaries do not have line numbers. We have added line numbers for easier reference. The first table beneath each numbered question is the original data; the rest is our analysis. We have kept the numbers the same as those numbers from the form, though the data at the end is in some ways the most interesting.

The topics on which the data relate are as follows, for each of the five calendar years: 1) the total dollar amount of all title loans originated, 2) the total dollar amount of all title loans outstanding, 3) the total number of all title loans outstanding 4) the total dollar amount of new title loans originated, 5) the annual percentage rate disclosed on all new title loans, 6) the number of days until maturity for each loan originated, 7) the average number of new title loans made to the same customer, 8) the number of times each title loan was renewed, refinanced, or extended, 9) the number of title loans charged off, 10) the dollar amount of title loans charged off, 11) the amount lenders collected on past due accounts, 12) the gross yearly income disclosed by title loan borrowers to lenders, 13) the number of borrowers sued by title lenders, 14) the total number of repossessions, 15) the total number of vehicles reclaimed by the borrower after repossession but before sale of the vehicle, 16) the total number of vehicles sold by the lender following repossession, 17) the total amount of excess proceeds from sales of repossessed vehicles, returned to borrowers, and finally, 18) the number of lenders reporting.

1. The Size of the Industry

This section assesses the size of the title loan industry in New Mexico. As a point of reference, the state has a population of approximately 2,000,000.[137] Its largest city, Albuquerque, has a population of approximately 535,000.[138] The median income in the state, at the time of this writing, is $34,585 for a single person, $46,907 for a family of two and $53,938 for a family of four.[139] Demographically, approximately 46% of the state identifies

136. *See* sources cited *supra* note 99. The report for 2009 became available during the edit process, but given how few lenders actually reported, these data are not useful. *See* N.M. FIN. INST. DIV., SUMMARY OF TITLE LOANS (2009) [hereinafter SUMMARY OF TITLE LOANS 2009] (on file with authors); *supra* Table 18.1.

137. Dan McKay, *N.M. Hispanics Overtake Anglos*, ALBUQUERQUE JOURNAL, Mar. 16, 2011, at A1, *available at* http://www.abqjournal.com/news/state/162346134362newsstate03-16-11.htm.

138. *Albuquerque Quick Facts*, ALBUQUERQUE – OFFICIAL CITY WEBSITE, http://www.cabq.gov/econdev/whyabqquickfacts.htm (last visited on Oct. 16, 2011).

139. *U.S. Trustee Program*, U.S. DEP'T. JUST., http://www.justice.gov/ust/eo/bapcpa/20081001/bci_data/edian_income_table.htm (last visited Oct. 16, 2011). Moreover, income has been flat in the state. *See Flat Income Relatively Good News*

as Hispanic, 41% Anglo or white, 8.5% Native American, and 1.7% African American.[140] It has the fifth largest population living below the poverty line[141] and has the second largest percentage of homes that are mobile homes.[142] These demographics and poverty levels make it likely that the industry is larger per capita in New Mexico than in most other states.[143] With this backdrop, this section assesses the size of the industry in New Mexico.

a. Dollar Amount of all Title Loans Originated During the Calendar Year

The data on loan size was indeterminate. The data show that title loans vary in size between $0 and $42,000 for the period in question.[144] Also, if zeroes are included in any averages, at least some of the results will be made unreliable. In 2007, for example, at least one reporting lender claims to have made a loan for $0 or no loans at all, and another lender made one loan for $42,000.[145] As mentioned earlier, outliers like these make averaging misleading.[146]

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for NM, KRQE.COM, Oct. 1, 2010, http://www.krqe.com/dpp/news/business/flat-income-relatively-good-news-for-nm.

140. McKay, *supra* note 137.

141. Behind Mississippi, Louisiana, Kentucky, and Arkansas, according to 2008 Census Bureau data. *Persons Living Below Poverty Level 2008*, U.S. CENSUS BUREAU, http://www.census.gov/compendia/statab/2011/ranks/rank34.html (last visited Oct. 16, 2011).

142. *Mobile Homes, Percent of Total Housing Units, 2008*, U.S. CENSUS BUREAU, http://www.census.gov/compendia/statab/2011/ranks/rank38.html (last visited Oct. 16, 2011) (reporting on percentage of homes that are mobile homes in each state).

143. One set of data shows that New Mexico has the highest number of payday lenders per capita of any U.S. state, and we are suggesting that the same may be true of title lenders. Steven M. Graves, *Think Payday Lending Isn't out of Control in the United States?*, CAL. ST. U., NORTHRIDGE, http://www.csun.edu/~sg4002/research/mcdonalds_by_state.htm (last visited Nov. 6, 2011).

144. *See infra* Table 1. We wondered, "What kind of a vehicle warrants a $42,000 loan?" Assuming a loan at 40% of wholesale value, this vehicle would have to be worth in excess of $105,000!

145. *See* SUMMARY OF TITLE LOANS 2007, *supra* note 99; *infra* Table 1. We were curious to know if the FID receives averages from the lenders, or whether it instead receives an actual list of all title loans made for the year, which is then reduced to the numbers in the report.

146. One can also question who would take out an auto title loan for $16, or $10. *See* SUMMARY OF TITLE LOANS 2005, *supra* note 99; SUMMARY OF TITLE LOANS 2004, *supra* note 99.

Table 1: Dollar Amount of Individual Loans Made During the Calendar Year

	2004	2005	2006	2007	2008
Min. Loan Reported by Any One Lender	$16.00	$10.00	$10.00	$0.00	$0.00
Max. Loan Reported by Any One Lender	$11,800.00	$10,167.00	$11,335.00	$42,000.00	$10,172.00

b. Total Principal Dollar Amount of all Title Loans Outstanding at End of Calendar Year

Table 2 reflects line two on the reporting form, which reports the total principal amount outstanding on all loans as of the end of each reporting year, as well as a per lender average.

Table 2: Total Principal Amount Outstanding on All Loans at End of Calendar Year

	2004	2005	2006	2007	2008
Total Principal All Lenders Reporting	$8,062,049.06	$8,472,918.13	$8,560,710.03	$9,010,027.27	$9,058,839.67
Avg. Principal Per Lender Reporting	$54,473.30	$59,251.18	$73,799.22	$70,390.84	$105,335.35

c. Total Number of all Title Loans Outstanding at the end of the Calendar Year

Table 3 shows the total of all loans outstanding at the end of the year. Again, end of year is not as useful as a yearly total, but it is a starting point for making further calculations.

Table 3: Total of All Loans Outstanding at the End of the Year

	2004	2005	2006	2007	2008
Total No. Loans Outstanding at Yr. End	19,271	14,993	13,902	15,098	13,740

As a point of comparison, Tennessee also keeps data on title loans, as do several other states. In 2006, Tennessee reported $40 million in outstanding title loans, with 206 companies at 645 locations around the state.[147] The number of loans extended was 92,489.[148] Tennessee had an estimated population of 6,038,803 at the time.[149]

d. Total Dollar Amount of New Title Loans Originated During the Calendar Year.

Table 4: Total Principal for All Loans Originated During the Calendar Year

	2004	2005	2006	2007	2008
Total Principal All Lenders Reporting	$18,320,348.60	$14,108,143.91	$12,527,018.76	$12,059,283.47	$9,465,855.35

We compared these numbers to the numbers in Table 2, the "Total Principal Dollar Amount Outstanding on All Loans at End of Calendar Year"[150] to get the average size of each loan. We also took 365 days of the year divided by the average term from Table 6, and multiplied the result by the princi-

147. TENN. DEP'T OF FIN. INSTS., REPORT ON THE TITLE PLEDGE INDUSTRY: A SUPPLEMENT TO THE 2006 REPORT TO THE TENNESSEE GENERAL ASSEMBLY 7 (2007), *available at* http:// www.tennessee.gov/tdfi/compliance/TPLSupplementalReport-FINAL.pdf [hereinafter REPORT ON THE TITLE PLEDGE INDUSTRY].

148. *Id.*

149. *See List of Tennessee Counties by Population*, GOVREGISTRY.US, http:// www.govregistry.us/states/tennessee.html (last visited Nov. 11, 2011).

150. *Compare* Table 2, *with* Table 4. Because these are allegedly short-term loans, one would expect the total loans for the year to be much greater than the outstanding loans at the end of the year. In fact, with loans of 30 days duration, on average, one would expect to see a total of loans for the year of approximately 12 times greater than the loans outstanding at the end of the year. Other curiosities abound. For example, how could the dollar amount of new title loans originated during the calendar year decline by 100% over five years while the value of loans outstanding at the end of each year remains fairly constant, and actually increases slightly? *Compare* Table 2, *with* Table 4. Even more puzzling, it is impossible for the total of outstanding loans at the end of 2008 to be only slightly less than the total dollar amount of new title loans originated for the year. *Compare* Table 2, *with* Table 4. The 2008 Title loan Lenders Annual Summary Report indicates that 87 companies reported. SUMMARY OF TITLE LOANS 2008, *supra* note 99. It does not report the total number of auto title lenders, so the percentage of title lenders that reported in 2008 cannot be demonstrated by simply referring to the 2008 Annual Summary Report. *See id.*

pal outstanding at the end of the year. This calculation helps us begin to calculate the size of the title lending industry in New Mexico.

Table 4.1: Estimated Industry Profits Per Year

	2004	2005	2006	2007	2008
Total $ Lent Per Yr.	$18,320,348.60	$14,108,143.91	$12,527,018.76	$12,059,283.00	$9,465,855.35
Avg. APR	322.64	309.14	309.99	293.8	261.56
Avg. Daily Interest Rate	0.883945205	0.846958904	0.849287671	0.804931507	0.71660274
Avg. Term	40	36.59	33.23	35.10	72.27
Min. Estimated Gross	$647,767,372	$437,214,572	$353,535,385	$340,712,079	$490,226,047
Avg. Time Renewed, Extended, Refinanced	3.37	3.96	3.53	3.33	2.66
Max. Est. Gross Profits	$2,182,976,045	$1,731,369,707	$1,247,979,910	$1,134,571,223	$1,304,001,285

This Table illustrates that, assuming customers paid off their first loan without defaulting or rolling over, at the very least, title lenders grossed over $647 million in New Mexico in 2004. They grossed over $437 million in 2005, over $353 million in 2006, over $340 million in 2007, and over $490 million in 2008. These dollar values represent the minimum returns on investment that the lenders could have made under these assumptions, based upon their own self-reporting, without taking into consideration any rollovers, refinances, additional fees, or other charges. It is strictly the yearly amount loaned times the average daily rate times the average term, as reported by the lenders. The maximum numbers on the last line of Table 4.1 above suggest that, when considering rollovers, these numbers could triple. We doubt that these maximums are ever reached, given the inevitable defaults. On the other hand, we believe that the minimum estimates above are too low and that industry claims that profits are low considering risk and default rates[151] are dubious.

2. The Interest Rate on the Loans

Interest rates on fringe banking products can be steep. Payday loans in New Mexico and their new incarnation, the installment loan, frequently run from 100% to 560%, and some interest rates are over 1000%.[152] Many ob-

151. *See* Drysdale & Keest, *supra* note 15, at 599-600.
152. Martin, *supra* note 16, at 606 n.211.

servers think that an average rate for payday loans is around 500-600%[153] and that title loans typically cost up to 300% per annum.[154] Our data from the phone interviews, as well as through the state data reports, confirm these results.

Regulation Z of the Truth in Lending Act of 1968 (TILA)[155] requires that lenders disclose all interest rates and fees.[156] "TILA was a prototype consumer-protection statute and became the 'template' for most consumer-credit legislation."[157] It requires that lenders "disclose all of a contract's terms and highlight, in a uniform way, critical terms like [APRs] and fees."[158] TILA governs the title lending industry as well.[159]

Whether lenders reported the interest rate for all loans made, or whether only their maximum and minimum loans were reported and then averaged by the state, is unclear. Currently, the average title loan interest rate in Albuquerque is 388%, and 300% is the most common interest rate, as reported from the phone survey.[160] The following chart illustrates the FID report data, showing the average APR converted into a daily interest rate, which is then multiplied by the average term from line six of the reports. By taking the estimated principal amount loaned for the year and multiplying it by the functional rate, we get an estimate of the return on the principal loaned for the year. Despite less than half the principal being loaned in 2008, as compared with 2006 and 2007, actual returns were very much the same.[161]

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153. *See, e.g.*, *PBS Newshour, What Will Financial Reform Mean for the Poorest?* (PBS television broadcast July 19, 2010) (transcript available at http://www.pbs.org/newshour/bb/business/july-dec10/usabroke_07-19.html).

154. *Consumer Use*, *supra* note 8, at 443

155. *See* Truth in Lending Act of 1968, Pub. L. No. 90-321, 82 Stat. 146 (codified as amended at 15 U.S.C. §§ 1601-67 (2006 & Supp. IV 2010)).

156. *See* Truth in Lending, Regulation Z, 12 C.F.R. §§ 226.6, .17 (2011).

157. Omri Ben-Shahar & Carl E. Schneider, *The Failure of Mandated Disclosure*, 159 U. PA. L. REV. 647, 653 (2011).

158. *Id.* at 653-54.

159. *See* Pendleton v. Am. Title Brokers, 754 F. Supp. 860, 864-65 (S.D. Ala. 1991); Hawkins, *supra* note 15, at 1388.

160. *See infra* Appendix A. This illustrates, once again, how averaging outliers can skew results. This is the functional interest rate, or the one the customer actually pays on their loan, based on the number of days the loan is outstanding, as well as the rate of return the lender will make on his investment of capital or principal.

161. Some of the numbers reported seem impossible, such as an annual interest rate of 10,250.66%, or of 9,125.00%. SUMMARY OF TITLE LOANS 2005, *supra* note 99; SUMMARY OF TITLE LOANS 2004, *supra* note 99. Our data simply reflects the reality that one lender has reported these interest rates shown. Keep in mind that even the numbers that appear more plausible reflect only an estimate of the return on principal loaned, not profits. This figure does not take into account any additional fees, rollovers, or refinances, all which will increase the amount collected, nor does it take into account lender expenses.

Table 5: Minimum, Maximum, and Average APRs Reported

	2004	2005	2006	2007	2008
Min. APR	0.00%	0.00%	0.00%	0.00%	0.00%
Max. APR	10,250.66%	9125.00%	2281.00%	689.00%	630.00%
Avg. APR	322.64%	309.14%	309.99%	293.80%	261.56%

Table 5.1: Daily Interest Rates (Avg. APR/365)

	2004	2005	2006	2007	2008
Avg. APR	322.64%	309.14%	309.99%	293.80%	261.56%
Daily Interest Rate	0.88%	0.85%	0.85%	0.80%	0.72%

3. The Length of the Loans

The common lore is that title loans have an initial one-month term.[162] While thirty days was the most common loan period, some loans were for longer or shorter periods. Table 6 reflects the number of days for which each loan was taken. The low end does not make sense, because some lenders report making loans for zero days or one day. The high end is more helpful, though alarming. At the long end, loans range from 1095 days in 2008 to 730 days in 2004, with the range for the other years falling somewhere in between.[163] These longest terms are startling. If these were three-year loans with an APR of 300% or more, the borrowers could have paid $10,000 to borrow $1000. Disturbingly, the initial loan term more than doubled between 2007 and 2008, from thirty-five days to seventy-two days, frequently at an effective interest rate of 300% or more.[164]

Table 6: Number of Days for the Initial Maturity Term on New Loans

	2004	2005	2006	2007	2008
Min. Length of Loan Reported	1	1	1	0	0
Max. Length of Loan Reported	730	900	910	970	1095
Avg. Length of Loan Reported	40	36.59	33.23	35.10	72.27

162. *See* Burt et al., *supra* note 15, at 367.

163. *See* SUMMARY OF TITLE LOANS 2008, *supra* note 99; SUMMARY OF TITLE LOANS 2004, *supra* note 99.

164. *See* SUMMARY OF TITLE LOANS 2008, *supra* note 99; SUMMARY OF TITLE LOANS 2007, *supra* note 99.

4. Lather, Rinse, and Repeat: Are the Loans Frequently Renewed?

This section discusses whether borrowers use these loans frequently or infrequently. Lenders claim these loans are money sources of last resort and are necessary to help consumers in emergencies.[165] Consumer groups insist that consumers frequently use these loans for regular or even luxury purchases, after which consumers are in a more dire financial situation than before. The data below describe the average number of loans per customer in New Mexico for the years in question, as well as the average times that borrowers roll over or renew their original loans. Together, these two sets of statistics paint a grim picture of almost constant indebtedness for consumers who use these loans.

a. Average Number of New Title Loans Made to the Same Customer Originated During Calendar Year

Table 7 reflects the number of loans made to individual customers in one year. This table refutes industry claims that these loans are used infrequently for emergencies[166] by showing that the average customer takes out

165. *Consumer Use*, *supra* note 8, at 431-32. While Professor Zywicki is not himself a lender, his work is the go-to source for title lenders when reporting official data. *See Hearing on S.B. 251, S.B. 253, and S.B. 254 Before the Tex. Senate Committee on Business & Commerce*, 82nd Reg. Sess. (2011) (testimony of Robert Reich, President of Tex. Car Title Loan Servs. and Cmty. Loans of Am.).

166. For industry claims, see Gregory Elliehausen & Edward C. Lawrence, *Payday Advance Credit in America: An Analysis of Customer Demand* 47 (Credit Research Ctr., McDonough Sch. of Bus., Georgetown Univ., Monograph #35, 2001) *available at* http://faculty.msb.edu/prog/CRC/pdf/Mono35.pdf (stating that 65.7 % of borrowers use the payday loans for "emergencies," 11.9 % for "planned expenses," and 22.5 % for "other" discretionary uses); Todd J. Zywicki, *Consumer Welfare and the Regulation of Title Pledge Lending* 12 , 31-32 (Mercatus Center, George Mason Univ., Working Paper No. 09-36, 2009), *available at* http://mercatus.org/publication/consumer-welfare-and-regulation-title-pledge-lending (claiming that "studies of similar products [like payday loans show] that consumers generally use nontraditional lending products to address short term needs for cash and to meet emergencies"). For consumer groups and one scholar claiming that the loans are not used primarily for emergencies, see QUESTER & FOX, *supra* note 21, at 2 (staing that "like payday loans, car title loans are marketed as small emergency loans, but in reality these loans trap borrowers in a cycle of debt"); Jim Hawkins, *Credit on Wheels: The Law and Business of Auto Title Lending*, 4-5 69 WASH. & LEE L. REV. (forthcoming 2012) (manuscript at 5) (available at http://ssrn.com/abstract=1952084) (stating that according to an FDIC source, 14.2-29.6% of people use title loans for emergencies, and 38% use them for regular expenses).

between 3.15 and 5 loans per year, *not* taking into account any rollovers.[167] If the *average* customer is taking out three to five title loans a year, one wonders how many times the frequent users make these loans. Could it be that most of the time a customer has one of these loans out? These data suggest a serious debt cycle on the part of consumers, rather than an occasional use for emergencies only. Consumers caught in such a debt cycle also are least likely to be able to afford these loans.

Table 7: Average Number of New Loans Per Customer

	2004	2005	2006	2007	2008
Avg. No. of Separate Loans Per Customer	5	3.9	4.4	3.22	3.15

These data allow us to estimate the number of loans made per year by dividing the amount of principal from Table 4 by the average loan amount from Table 1. The number of customers who use title loans in a given year can be estimated by dividing the result by the average from Table 7. Apparently, between 22,000 and 38,289 people use these products per year in New Mexico. Note the drastic drop in the number of customers in 2008.

167. The advertising also belies that the loans are used, or intended to be used, for emergencies only. For example, a company called Cupertino Title Loans tells this story of a "customer" in order to sell loans:

> Cupertino Title Loans helped me with an auto title loan when I really needed one a few weeks ago to help with my bills. I just got back from a crazy bachelor party in Las Vegas for one of my oldest friends from high school at the end of last month. I ended up spending too much money that [sic] my budget allowed, and I didn't have enough money for my end of the month bills when I got back home. I needed help paying my bills so that I could afford it later on . . . . I decided that a car title loan from Cupertino Title Loans would be the best decision for me. I got approved for my title loan on their website http://www.cupertinotitleloans.com thanks to their online help agents. Then I just had to go to Cupertino Title Loans to pick up my title loan whenever I was ready. I went that afternoon, and sure enough they had a check for my pink slip loan, and was able to keep my car too. They just kept my car's title for collateral, so that I could keep my car while I have the loan.

Title Loan in Cupertino for Expensive Vacation, SAN JOSE AUTO TITLE LOANS (Aug. 20, 2009), http://www.sanjoseautotitleloans.com/blog/title-loan/title-loan-in-cupertino-for-expensive-vacation/.

Table 7.1: Estimated Number of Title Loan Customers Per Year

	2004	2005	2006	2007	2008
Total Lent	$18,320,348.60	$14,108,143.91	$12,527,018.76	$12,059,283	$9,465,855.35
Avg. Loan Amount	$529.91	$507.31	$544.16	$648.23	$753.31
Avg. No. of Loans	34,572	27,809	23,020	18,603	12,565
Avg. Loans Per Customer	5	3.9	4.4	3.22	3.15
Est. No. of Cus-tomers	6914	7130	5231	5777	3988

b. Number of Times any Title Loan was Renewed, Refinanced, or Extended During the Calendar Year

Table 8 indicates the average number of rollovers on existing loans, which ranges from 2.66 to 3.53. This average suggests a high rate of rollovers, renewals, or refinances, and is further evidence that customers are unable to pay off the loans and thus frequently pay interest only, especially when combined with the data in Table 7.1. These data suggest that on average, title loan users take out 3.9 loans[168] and renew on average 3.3 times. Or, if all loans were one month old, these people have the loans out twelve months out of twelve months.[169] We know not all loans are a full month long. Nevertheless, customers who use these products appear to use them frequently and repetitively. It seems that the product design of title loans makes it more likely that they create a debt cycle than even payday loans at higher interest. This situation occurs because title loans are larger, and the ability to pay back the whole loan is smaller.

Table 8: Average Number of Rollovers Per Loan

	2004	2005	2006	2007	2008
Min. No. of Renewals	0	0	0	0	0
Max. No. of Renewals	32	75	120	78	39
Avg. No. of Renewals	3.37	3.96	3.53	3.33	2.66

168. This number was arrived at by averaging the rate for all five years and is thus not 100% accurate, as it would over count the rate in years in which there were more loans and undercount the rate for years in which there were fewer loans.

169. This actually comes out to 12.87, or more than all of the year. Since we do not know the length of a given extension, we cannot use this number to calculate anything further, but these data alone are indicative of a significant debt cycle.

5. Profits and Losses, Winners and Losers

a. Number of Title Loans Charged off During the Calendar Year

Table 9 records the number of charged-off loans in each year.[170]

Table 9: Total Number of Charged-off Loans Per Year

	2004	2005	2006	2007	2008
Total No. of Loans Charged Off Per Year	3808	6391	3925	3397	2509

b. Dollar Amount of Title Loans Charged off During the Year

Table 10 reflects the dollar amount of all loans charged off. This number is not, however, an actual loss of capital. Looking at the renewal rates from Table 8, we see that borrowers often refinance and continue to pay on their loans far past the original term. These payments exceed the principal amount of the loan, generating a profit for the lender without reducing the amount owed.[171]

Table 10: Dollar Amount of Loans Charged off Per Year

	2004	2005	2006	2007	2008
Total $ Amts. of All Loans Charged Off	$1,556,397.45	$1,827,509.32	$2,180,380.92	$1,896,165.59	$1,481,212.97

170. The phrase "charged-off loans" does not mean that the lender has given up trying to collect on the loan. This is simply the number of loans that were written off the books as a loss at the end of the year. This number includes past due loans in the active collections process and those on which the lender has stopped collecting at the moment. This does not mean that the lender has given up, of course; he or she can and does continue to attempt to collect for up to six years, and interest continues to accrue and can be written off as a loss for tax purposes by the lender. Moreover, these debts can be sold to debt collectors.

171. The potential profit that the lender would make is what is written off if the customer paid the interest due, meaning principal and interests, not just what was borrowed. All of this potential profit, which continues to grow every day a borrower does not make any payments, is considered a loss for tax purposes. Moreover, interest continues to accrue, even after a loan is charged off for tax purposes.

c. Dollar Amount of Recoveries on Title Loans During the Calendar Year

Table 11 reflects the total amount that lenders reported they collected on past due accounts charged off in previous years, further demonstrating that write-offs do not reflect losses.

Table 11: Amounts Collected on Charged-off Debts

	2004	2005	2006	2007	2008
Total Collected by Lenders on Charged-off Debts Per Yr.	$482,451.19	$670,783.10	$382,217.53	$931,490.23	$640,673.45

6. Borrower Demographics

Table 12 reflects the minimum and maximum gross income for all borrowers, as disclosed by the lenders.

Table 12: Minimum and Maximum Gross Income for all Borrowers Reported On

	2004	2005	2006	2007	2008
Min. Gross Income of Borrowers	$500.00	$0.00	$10.00	$0.00	$0.00
Max. Gross Income of Borrowers	$619,944.00	$439,000.92	$576,000.00	$2,080,000.00	$730,000.00
Avg. Gross Income of Borrowers	$21,962.73	$22,861.78	$24,678.65	$27,719.36	$20,116.00

These income data show an income range of borrowers from zero income to $2,080,000. If we assume that the reported numbers are the average of all reported income, outliers will affect the result, (for instance, $0 and $2 million). Thus, these data seem questionable and raise a number of questions, including why someone with such a large income would use such overpriced credit products, or why a lender would make a loan to someone without income.

Perhaps these data suggest that if the data does not matter to the lender, recording it accurately is not a priority. The law does not require lenders to get proof of income from borrowers, nor do their own underwriting rules seem to warrant doing so.[172] Also, the yearly averages are not representative of the population, because some data points, such as an income of $2,080.000, skew the entire database for that year. Regardless, this data set is all that is available so we will take it at face value. In Table 12.1 below, we compare the averages for each year to the Federal Health and Human Resources Poverty Guidelines for a family of four.

Table 12.1: Comparison of Borrower Income to Federal Poverty Guidelines

	2004	2005	2006	2007	2008
Avg. Gross Income of Title Loan Borrowers	$21,962.73	$22,861.78	$24,678.65	$27,719.36	$20,116.00
Poverty Line for Family of 4	$18,850.00[173]	$19,350.00[174]	$20,000.00[175]	$20,650.00[176]	$21,200.00[177]

While the industry and its proponents claim that a majority of their customers are middle class,[178] the data tell a different story in New Mexico. We see that most borrowers are near or below the poverty line. This data applies for all years except for 2007, where one customer reporting an income of over two million dollars skewed the data.[179]

In Table 12.2 below, we compare the average gross income of borrowers to the median incomes of families of all sizes in New Mexico.[180]

172. The alleged "income requirements," if you can call them that, vary greatly between lenders. Some require proof of regular employment, some will accommodate part-time or irregular employment, some will accept student loans and social security (which are not "income" for tax purposes), some will accept that the borrower has money in the bank, and some will make loans simply against the value of the vehicle, with no concern for income. Since income information is not used in making the loan, these numbers may be unreliable.

173. *The 2004 HHS Poverty Guidelines*, U.S. DEPARTMENT OF HEALTH AND HUM. SERVICES, http://aspe.hhs.gov/poverty/04poverty.shtml (last visited Nov. 11, 2011).

174. *The 2005 HHS Poverty Guidelines*, U.S. DEPARTMENT OF HEALTH AND HUM. SERVICES, http://aspe.hhs.gov/poverty/05poverty.shtml (last visited Nov. 11, 2011).

175. *The 2006 HHS Poverty Guidelines*, U.S. DEPARTMENT OF HEALTH AND HUM. SERVICES, http://aspe.hhs.gov/poverty/06poverty.shtml (last visited Nov. 11, 2011).

176. *The 2007 HHS Poverty Guidelines*, U.S. DEPARTMENT OF HEALTH AND HUM. SERVICES, http://aspe.hhs.gov/poverty/07poverty.shtml (last visited Nov. 11, 2011).

177. *The 2008 HHS Poverty Guidelines*, U.S. DEPARTMENT OF HEALTH AND HUM. SERVICES, http://aspe.hhs.gov/poverty/08poverty.shtml (last visited Nov. 11, 2011).

178. *See Consumer Use*, *supra* note 8, at 435.

179. *See* SUMMARY OF TITLE LOANS 2007, *supra* note 99.

180. This information was gathered from the United States Trustee's median incomes data, used for means test purposes in bankruptcy cases. *Census Bureau, IRS Data and Administrative Expenses Multipliers*, U.S. DEP'T. JUST., http://www.justice.

Table 12.2: Comparison of Average Gross Income of Borrowers to the Median Incomes of Families of All Sizes in New Mexico[181]

	2005	2006	2007	2008
Avg. Gross Income of Title Loan Borrowers	$22,861.00	$24,678.65	$27,719.36	$20,116.00
Median Income for Family of One in New Mexico	$38, 947.00	$40,028.00	$44,356,.00	$42,102.00

As Table 12.2 shows, compared to families of all sizes in New Mexico, the average incomes of all title loan customers is far below the median or average income of the rest of the state.

7. Lawsuits and Repossessions

Both Professor Todd Zywicki and, to some extent, Professor Jim Hawkins claim that lenders usually do not repossess the vehicles pledged as collateral for title loans.[182] Whether this claim is correct or not depends upon the meaning of the word "usually." Data obtained from the self-reported records show that between 20% and 71% of the title loan customers have their vehicles repossessed.[183] Once reclamation rates are taken into account, between 13% and 60% of customers permanently lose their vehicles.[184]

a. Number of Individual Title Loan Borrowers Against whom Lawsuits were Instituted

Table 13 reports on borrowers sued by their title lenders in connection with their title loans. While these data show that lenders infrequently utilize lawsuits, there is no indication that in New Mexico the loans are non-recourse. In the dozen or so contracts that we have seen, all allow the lender to sue for deficiencies, and some lenders do so.[185]

gov/ust/eo/bapcpa/meanstesting.htm (use dropdown for Data Required for Completing Form 22A and Form 22C by date) (last visited Nov. 6, 2011).

181. *See Median Household Income by State – Single-Year Estimates*, U.S. CENSUS BUREAU, http://www.census.gov/hhes/www/income/data/statemedian/.

182. *See* Hawkins, *supra* note 15, at 1392-93; *Consumer Use*, *supra* note 8, at 435.

183. *See* sources cited *supra* note 99; *infra* Table 14.2.

184. *See* sources cited *supra* note 99; *infra* Table 15.1.

185. *See infra* Table 13. Additionally, as we understand it, interest will still accrue at the contract rate on any balance owed. If a judgment is reached in favor of the borrower, the court has discretion to set a new interest rate, or to allow the contract rate to remain in effect. We speculate that one reason that lenders seldom take bor-

Table 13: Number of Suits Against Borrowers for Deficiencies

	2004	2005	2006	2007	2008
Total No. of Suits Filed by Lenders Against Borrowers	113	151	151	167	71

b. Total Number of Title Loan Repossessions During the Calendar Year

Table 14 reflects the total number of repossessions reported each year. Despite the fact that the number of loans made has decreased recently, the number of repossessions has increased.

Table 14: Total Number of Repossessions Reported

	2004	2005	2006	2007	2008
Total No. of Repossessions Per Yr.	1984	1441	2779	2745	2841

If we divide the number of reported repossessions for a given year by the number of loans made that year, we get the percentage of loans repossessed for the year.

Table 14.1: Repossession Rate by Loan

	2004	2005	2006	2007	2008
Total Lent	$18,320,348.60	$14,108,143.91	$12,527,018.76	$12,059,283.47	$9,465,855.35
Avg. Loan Amt.	$529.91	$507.31	$544.16	$648.23	$753.31
Avg. No. of Loans	34572	27809	23020	18603	12565
Total Repossessions	1984	1441	2779	2745	2841
% of Loans Repossessed	5.74%	5.18%	12.07%	14.76%	22.61%

While these rates are higher than we contemplated, they do not paint a complete picture. We must go further and divide the number of repossessions per year by the estimated number of customers we calculated in Table 7.1. This calculation provides an estimate of the yearly repossession rate per customer.

rowers to court is that is in their best interest not to allow the courts the chance to find their interest rates legally unconscionable.

Table 14.2: Repossession Rate by Customer

	2004	2005	2006	2007	2008
Avg. No. of Loans Per Yr.	34572	27809	23020	18603	12565
Avg. New Loans Per Customer Per Yr.	5	3.9	4.4	3.22	3.15
Total No. of Customers	6914	7130	5231	5777	3988
Total Repossessions	1984	1441	2779	2745	2841
% of Customers with Vehicles Repossessed	28.70%	20.21%	53.13%	47.52%	71.24%

As Table 14.2 shows, once we adjust the numbers to reflect the number of loans per customer, we find that the actual number of customers who get their cars repossessed jumps alarmingly. For example, in 2006, 53% of customers had their autos repossessed. To illustrate the magnitude of this repossession rate, we compare this rate to the current home foreclosure rate. In the fourth quarter of 2008 Nevada led the nation with a foreclosure rate between 2.574% and 4%, described by the New York Times as "dangerously widespread."[186] If that foreclosure rate is a crisis, what is 53%? Not only is a vehicle repossession a loss of a major asset, it is the loss of vital transportation.

Table 15: Number of Reclamations by Borrowers after Repossession

	2004	2005	2006	2007	2008
Total Reclamations	972	511	633	608	446

Table 15.1: Vehicle Loss Rate by Customer

	2004	2005	2006	2007	2008
Total Reclamations	972	511	633	608	446
Percentage of Loans	48.99%	35.46%	22.78%	22.15%	15.70%
Number of Autos Lost	1012	930	2146	2137	2395
% of Customers Who Lost Vehicles	14.64%	13.04%	41.02%	36.99%	60.06%

186. Catherine Rampell, *Foreclosure Rates Really Aren't that High . . .*, N.Y. TIMES ECONOMIX BLOG, (Mar. 2, 2009, 5:59 PM), http://economix.blogs.nytimes.com/2009/03/02/foreclosure-rates-arent-really-that-high/.

To say an auto is repossessed does not mean that it was lost permanently, only that a customer fell behind in the payments and the repossession process was at least started. This is reflected in Table 15, which shows the number of customers who reclaimed their autos after repossession. To find out how many customers actually lost their vehicles after repossession, we subtract the number of customers who reclaimed their autos after repossession, as shown in Table 15, from the number of repossessions. We divided the number of autos lost by the total number of customers, as calculated in Table 14.2. These numbers show actual loss rates of 14.64% for 2004, 13.04% for 2005, 41.02% for 2006, 36.99% for 2007, and 60.06% for 2008. These figures are alarming under any standard.

c. Total Number of Motor Vehicles Disposed of by the Lender During the Calendar Year

Table 16 reflects the total number of motor vehicles sold after repossession by the lender during the calendar year. This number should equal the Number of Autos Lost found in Table 15.1, which is calculated by subtracting the Number of Repossessions Reported from Table 14 from the Number of Reclamations by Borrowers After Repossession from Table 15. For some unknown reasons, it does not. This may be the result of vehicles being repossessed in one year and disposed of in another, but without more detailed data this is impossible to confirm.

Table 16: Total Number of Motor Vehicles Disposed of by the Lender

	2004	2005	2006	2007	2008
Total No. of Repossessed Cars Disposed of by Lender During Calendar Yr.	833	745	1277	1237	1325

d. Total Dollar Amount of Title Loan Excess Proceeds from Sale of Repossessed Vehicles Returned to the Borrowers During the Calendar Year

Table 17 reflects the difference in the selling price of repossessed vehicles as compared to how much the borrowers owe, or the total amount that all vehicle sales proceeds exceeded all loan amounts. New Mexico law requires lenders to return these overages to the borrower.[187]

187. N.M. STAT. ANN. § 55-9-615(d)(1) (West, Westlaw through the 1st Reg. Sess. of the 50th Legis. (2011)).

Table 17: Comparison of Sales Price of Repossessed Cars to Amount of Loan

	2004	2005	2006	2007	2008
Total Amt. Realized in Auto Sales Over Loan Amt.	$56,239.00	$35,156.00	$66,895.00	$36,185.00	$15,984.00

Below, we divided the amounts in Table 17 by the number of disposed vehicles to determine an estimate of the amount returned to the average customer. Surely some vehicles sell for more than the average and others sell for amounts insufficient to cover the outstanding loan. The data above indicate that the *average* amount returned is small and getting smaller every year. Since the lenders have to return any overage, the lenders are not motivated to sell vehicles for any more than they are owed.[188] It is most economical for them to sell the vehicles as quickly as possible, as shown in table 17.1.

Table 17.1: Average Amount Returned to Each Borrower Following Sale

	2004	2005	2006	2007	2008
Total Amt. Realized in Auto Sales Over and Above Loan Amount	$56,239.00	$35,156.00	$66,895.00	$36,185.00	$15,984.00
Total No. of Repossessed Cars Disposed of by Lender During Calendar Yr.	833	745	1277	1237	1325
Avg. Amt. Returned to Each Borrower Following Sale	$67.51	$47.19	$52.38	$29.25	$12.06

188. We recognize that in some cases, vehicles may have actually sold at a loss to the lender, but would imagine that those are somewhat rare instances, given that loans are generally made at 25-40% of wholesale value.

8. Reporting Woes

One theme quickly developed while analyzing these data. Lenders do not report and there are no ramifications. They do not lose their licenses or suffer any other consequences in response to their inaccurate reporting. We hope our paper will bring attention to and help remedy these practices. Table 18 shows a 32% decrease in lenders reporting between 2007 and 2008.[189] We carefully searched the New Mexico Regulation and Licensing Database for a count of all licensed small lenders authorized to make title loans from 2004 to 2008, data which is reflected in Table 18.1.

Table 18: Number of Licensees Reporting

	2004	2005	2006	2007	2008
Total Small Lenders Authorized to Make Title Loans who Reported to the FID	148	143	116	128	87

Table 18.1 Percentage comparison of lenders who filed reports to lenders authorized to make title loans.

Table 18.1 Number of Licensed Lenders Filing Reports

	2004	2005	2006	2007	2008	2009
No. of Lenders Reporting	148	143	116	128	87	65
No. of Lenders Licensed	157	155	145	137	138	165
% of Licensed Lenders Reporting	94.27%	92.26%	80.00%	93.43%	63.04%	39.39%

As the table above shows, in 2004, 94.27% of lenders responded, but in 2009 only about 40% of title lenders completed their FID required questionnaires. FID apparently has all but stopped enforcing its reporting requirements. Given what was reported, pursuant to N.M. Statutes Annotated § 58-15-10.1D(2), there should have been forty-eight more expired or revoked licenses in 2009.[190] In summary, while the reporting has never been perfect,

189. *See* SUMMARY OF TITLE LOANS 2008, *supra* note 99; SUMMARY OF TITLE LOANS 2007, *supra* note 99.

190. *See* N.M. STAT. ANN. § 58-15-10.1D. There have been numerous violations of the requirement that small lenders be authorized by the FID before making title loans. Under TILA, small loan companies are also required to disclose all fees and interest rates to the consumer in terms of APR, but it is not clear that this is being

the situation seems to be getting worse each year except for 2007, with no explanation for the drop. In 2008, the percentage of lenders reporting was abysmal.[191] By 2009, fewer than half the lenders complied with the reporting requirements.[192] This lack of compliance makes the 2009 data all but worthless.

IV. SOME CONCLUSIONS ABOUT TITLE LOAN CUSTOMERS, REPOSSESSION RATES, AND THE UTILITY OF THESE LOANS

This Part draws various conclusions about title lending from the data discussed in Part III above. In so doing, it challenges many of the myths about title lending. It discusses the demographics of title loan customers, the repossession rates on title loans, the legal implications of the data on surplus returns to customers, and finally, the utility of these loans to borrowers. This utility is discussed in the context of other loan products such as payday loans, as well as in light of industry claims that title loans smooth consumption for low-end borrowers with little access to other credit.

A. Title Loan Demographics: Who Uses Them?

Payday lenders have been claiming for years that they serve a primarily middle class population.[193] Some industry scholars have made this claim, ever since a 2001 industry-funded study found that most payday customers make between $25,000 and $50,000.[194] This claim is critical to the payday lending industry's assertion that it does not take advantage of the poor.[195]

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done. *See* Truth in Lending, Regulation Z, 12 C.F.R. §§ 226.6, .17 (2011). This lack of enforcement on the part of the FID has been an issue for as long as the FID has been responsible for monitoring title lenders, as indicated above in the section on compliance with signage laws. *See supra* Part II.2.B.

191. *See* SUMMARY OF TITLE LOANS 2008, *supra* note 99.

192. SUMMARY OF TITLE LOANS 2009, *supra* note 136.

193. *See Consumer Use*, *supra* note 8, at 458-59 & n.141.

194. Elliehausen, *supra* note 24, at 19.

195. For a few of the many statements made on payday lending websites, see *Payday Loan Myths*, USPAYDAYCENTER, http://uspaydaycenter.com/payday-loan-myths (last visited Dec. 11, 2011) (stating that "most people receiving such loans make between $25,000 and $50,000 a year"); *Your OnLine Payday Center*, PCA PERSONAL CASH ADVANCE, http://www.personalcashadvance.com/payday-loans.html (last visited on December 11, 2011) (stating that it is "debunking" payday loan myths and that "[m]ost cash advance borrowers earn $25,000-$50,000 annually"); *see also* Dick Hughes, *Advance America Banks on Surprise,* JOURNAL WATCHDOG, (Oct. 30, 2011, 8:18 PM), http://www.journalwatchdog.com/business/ 1290-advance-america-banks-on-surprise (quoting an industry study as saying that "[t]he Community Financial Services Association (CFSA), which represents payday lenders, cites research showing that two-thirds of payday customers are under 45, 41 percent earn $25,000-$50,000 and 39 percent more than $40,000"); Larry Meyers, *Payday Loans v. In-*

Lenders repeat this assertion over and over again, though never with any supporting data other than that created by the industry.[196]

The title lending industry has been far less vocal on this subject, but it still relies on faulty data to conclude that, based upon a New Mexico "study," title loan borrowers make on average $50,000 a year.[197] Our data, reported directly by lenders to the State of New Mexico Financial Institutions Division, prove otherwise. Our data show that the average borrower makes between $20,116 and $27,719, even when you include in the one borrower with an alleged income of over two million dollars.[198] This data is in a state where the median income for even a single person household is far above any of these income numbers. Data from other states similarly show gross incomes between $22,000 and $26,000.[199] Finally we can discard this middle class urban legend.

B. Repossession Rate: Another National Financial Crisis

Table 14.2 shows a repossession rate of between 20% and 71% per customer.[200] Once reclamation rates are taken into account, between 13% and 60% of customers permanently lose their vehicles.[201] Other states report the following repossession rates: 10% for South Carolina,[202] and 9% for Tennessee.[203] These rates appear to be as much as ten times higher than the reposses-

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stallment Loans, PAYDAYLOAN FACTS BLOG (Jan. 1, 2011), http://www.paydayloan facts.com/blog/credit-options/payday-loans-vs-installment-loa ns/ (stating that 63% of payday loan borrowers "have annual household incomes of more than $25,000, with 46% earning $25,000 to $50,000 a year").

196. In the context of title lending, see all three of Zywicki's articles. *See generally Consumer Use*, *supra* note 8; *Money to Go*, *supra* note 17; Zywicki & Okolski, *supra* note 17; *see also* INDUSTRY REPORT TO NEW MEXICO LEGISLATURE, *supra* note 17, at Resources and Materials 25-49.

197. *See Money to Go*, *supra* note 17, at 34.

198. *See supra* Tables 12-12.1.

199. According to Illinois data from 1999, the average title loan consumer has an income of less than $20,000, and in Missouri, less than $25,000, as of 2006. *See* FOX & GUY, *supra* note 21, at 3.

200. Numerically, based upon Table 14.2, this is between 1400 and 2800 repossessions per year. We suspect that the rate is even higher, but assuming this self-reported data is correct, the rate is still very significant.

201. *See supra* Tables 15-15.1. Keep in mind that the 2008 reporting rate was so low as to call these 2008 figures into serious question.

202. *See also* DeGaris, *supra* note 15, at 1839 (reporting on South Carolina).

203. In Tennessee, 14,832 cars were repossessed in 2008 while 161,417 loans were originated, giving us an estimated 9% repossession rate. *The 2010 Report on the Title Pledge Industry*, Tennessee Department of Financial Institutions (March 2010).

sion rate for regular auto loans.[204] While we realize that one could quibble with the results of a calculation that divides the average of two variables to reach a third average,[205] by any measure, this number represents a significant percentage of lost vehicles. Moreover, this rate is dozens of times higher than the current home foreclosure rate nationwide, which many consider to be a nationwide emergency and tragedy of nearly unprecedented proportion. Title loans are the secured auto loan equivalent of a home mortgage. Both types of loans lead to the loss of a significant asset for the person involved. Both forms of loss lead to displacement, and in the case of loss of a vehicle, an inability to function in the modern world.[206]

Also, building on the past section on demographics, for the borrowers involved, a vehicle likely is the most valuable asset they have. Though we have no actual data to support this, we believe they are unlikely to be homeowners as a general rule. Having an unencumbered vehicle is an important feat to most borrowers, and subsequent loss of that car is as much of an important negative financial event to these borrowers as losing a home has to the more affluent borrower. This reality is particularly true given that all of the repossessed cars would appear to have equity, and many of the foreclosed homes do not. The loss of these vehicles is indeed a forfeiture.

C. Article 9 and Title Loans: The Ultimate Contradiction

Article 9 of the Uniform Commercial Code applies to title loans and requires that once a lender has repossessed collateral, the lender must give notice to the owner and then sell the collateral in a commercially reasonable way.[207] Following such a sale, the lender must return to the borrower any surplus from sale, over and above the loan amount and the costs of sale.[208]

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204. *See, e.g.*, Joseph B. Cahill, *License to Owe, Title Loan Firms Offer Car Owners a Solution that Often Backfires*, WALL ST. J., Mar. 3, 1999, at A1 (stating the general rate of repossession at General Motors is one to two percent).

205. Professor Hawkins has noted when reviewing these data that calculating the numbers in this way leads to error. Hawkins, *supra* note 15, at 1392 n.173. We acknowledge at note 146, *supra*, that the problem with the yearly summaries is that they average all of the data, including obvious outliers. Professor Hawkins notes that this creates unknown error rates in each original average. *See* Hawkins, *supra* note 15, at 1392 n.173. Once two such averages are combined to perform a calculation, the error rate is compounded. We also perform our computations under the assumption that dividing the averages of two variables results in a third average – the average of the divided variables, which is not true. Unfortunately, given the lack of backup data, we have no choice. This does not change the fact that even at their lowest, these repossession rates are astronomical.

206. *See* Drysdale & Keest, *supra* note 15, at 600.

207. *See* U.C.C. §§ 9-608-14 (2010). The law also requires that, in some cases, the lender advertise the sale in the newspaper. *Id.*

208. *Id.* § 9-615.

The point of these provisions, which form the bedrock of the Article 9 remedies, is to avoid a forfeiture of borrower property at the hands of lenders. In essence, Article 9 forbids such forfeiture.[209]

We know from our phone interviews and from data other scholars have collected that lenders loan at somewhere between 20 and 55% of a vehicle's value.[210] We know from the self-reported data that lenders return somewhere between $12 and $68 in surplus per loan to customers.[211] So where is the rest of the value in these vehicles? Case law suggests that a sale is commercially reasonable if all of the notice requirements of Article 9 are met and the lender's sale brings between 57 and 70% of the fair market value of the collateral.[212] How can lenders be so over-secured but return so little surplus to foreclosed borrowers? Is it that lenders do not hold commercially reasonable sales? Is it that they sell back to themselves, or to a sister corporation, then resell the cars on the adjoining lot through a private sale that does not comply with Article 9? Is it that lenders do not, even by their own admission, return the surplus to borrowers? Or, is it that lenders wait to sell following repossession until the fees have increased enough to eat up whatever equity there was? All of these questions need to be explored in further research, but if lenders are accomplishing forfeiture by waiting to sell until the fees have eaten up the equity, there would be far more significant implications than anything else reported in this piece. The implication is that Article 9 provisions to prevent forfeitures of collateral do not work on secured personal property loans with interest rates this high. Article 9's anti-forfeiture provisions are insufficient to achieve their anti-forfeiture goal in the case of title loans.

D. Strictly Asset-Based Lending Leads to More Forfeiture

When a lender makes a loan based exclusively on the value of the collateral underlying the loan, rather than also on ability to repay, forfeiture is more likely. This fact is well-recognized in the commercial as well as the consumer context.[213] When your target population for a consumer product also has low income and low cash flow, the loans are likely to lead to forfei-

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209. *See* Michael Korybut, *Searching for Commercial Reasonableness*, 87 IOWA L. REV. 1383, 1395 (2002).

210. FOX & GUY, *supra* note 21, at 2 (noting the "most frequent loan-to-value set at 50 to 55 percent of the car's value"). We believe that some title lenders appraise the car at the lowest possible value (the wholesale price in bad condition) and then offer 50% or 33% of that value.

211. *See supra* Table 17.1.

212. *See* Andrea Coles-Bjerre, *Trusting the Process and Mistrusting the Results: A Structural Perspective on Article 9's Low-Price Foreclosure Rule*, 9 AM. BANKR. INST. L. REV. 351, 365, 383 (2001).

213. *See* Kathleen C. Engel & Particia A. McCoy, *A Tale of Three Markets: The Law and Economics of Predatory Lending*, 80 TEX. L. REV. 1255, 1261-62 (2002).

ture. Some commentators might say lenders designed the loans to lead to forfeiture. Commentators have criticized asset-based lending in other consumer law contexts, such as home mortgage lending.[214] Moreover, title loans are often huge compared to the borrower's income, as we saw with Ms. Price. In this context, more than any other, the law should require lenders to lend no more than what a consumer might be able to repay. Otherwise, we are condoning proven forfeiture, as shown here.

E. Frequent Rollover Rates Make Smoothing Consumption a Myth

Industry advocates and a small group of scholars argue that forcing fringe lenders like title lenders and payday lenders to charge more reasonable interest rates will put them out of business, which will in turn harm consumers who need these loans.[215] Consumers with low income, so the argument goes, need loans like these to "smooth consumption" during difficult financial situations.[216]

Smoothing consumption is a myth, however, when rollover and renewal rates are high, because even if the initial loan achieves this goal, the costs of the loan hamper the consumer's ability to smooth consumption in the future.

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214. *See, e.g.*, Kathleen C. Engel, Patricia A. McCoy, *Revisiting A Tale of Three Markets: The Law and Economics of Predatory Lending*, 82 TEX. L. REV. 439, 442 n.15 (2003) (stating that the authors are concerned about "asset-based lending, something that both we and Ms. Renuart assiduously oppose in residential mortgage lending")

215. Hawkins, *supra* note 15, at 1363; *Consumer Use*, *supra* note 8, at 431-33.

216. Hawkins, *supra* note 15, at 1370. For example, in his recent article, *Money to Go*, Professor Todd Zywicki concludes that outlawing title loans would be bad for consumers and that title loans are cheaper and better for consumers than their likely alternatives. *See Money to Go*, *supra* note 17, at 35-37. Many statements in the article seem questionable, including that: competition in the title loan business is "fierce," which keeps the interest rates low; title loan interest rates are strictly regulated by all but four states; title loan pricing is transparent and easy to understand, making it easy for customers to shop around for price; a large percentage of title loan customers use them to keep small businesses afloat; and 70% of borrowers have more than one car anyway, and most of the rest have access to public transportation. *Id.* at 32-33, 37.

Virtually all of the harms Zywicki identifies if these loans disappear are unsubstantiated. He claims that if a customer could not get a title loan, she would need to sell her car or use payday loans. *Id.* at 32. It seems untenable that anyone would need to sell her car rather than taking out a title loan, at least if they could go get an endlessly-available payday loan instead. Moreover, many people do have family or friends, even if they'll only lend, as Zywicki claims, in an emergency. *Id.* at 36. Zywicki also claims that where high cost credit is eliminated completely, loan sharking returns. *Id.* at 37. But is this true? Has this happened in Massachusetts and other places where they have eliminated payday and title loans? We have seen no study suggesting as much.

In Price's case, that extra bill, her title loan payment, was 60% of her monthly net income. Moreover, even if smoothing were achieved in some percentage of these loans, the price paid for it is not worth the cost, given that in a high percentage of these loans, customers lose their vehicles, and arguably, their jobs.

F. Regulation of Title Lending is Warranted Despite Obvious Paternalism

The low-income demographic, combined with the over-collateralized, asset-based lending, as well as the high repossession rates, all point to the need to regulate title lending. Some people will argue that not allowing people to borrow and lend at these rates is paternalistic and interferes with freedom of contract.[217] As a society, we have rejected these arguments in the context of many middle-class consumer lending products, including, most recently, credit cards and home loans.[218] Title loans, used most frequently by the lower and working classes, remain largely unregulated. Yet paternalism may be more justified among people with lower incomes and less assets and earning power than among the general population. People with lower income pay a higher percentage of their income and cash assets than wealthier people when they pay 300% interest on a loan. Moreover, people who take out title loans have smaller safety nets, if any, and thus live closer to the financial edge. Regulating products such people use is more justified than regulating products used by wealthier people, because the working poor have so much more to lose.

G. Comparing Title Loans to Payday Loans: Which is Better for Consumers?

Other scholars have argued that title loans are better for consumers than payday loans.[219] While both are generally harmful to consumers, we feel title loans are far worse for consumers than payday loans. The answer, however, can vary depending on the consumer's financial situation, namely whether the consumer feels able to pay the loan back. Interest rates are lower for title loans. Rates for title loans in New Mexico range from 88-300%.[220] This rate is roughly half the APR of a payday loan (or their new replacement, the in-

217. *See* Hawkins, *supra* note 15, at 1404-07.

218. *See, e.g.*, Credit Card Accountability Responsibility and Disclosure Act of 2009, Pub. L. No. 111-24, 123 Stat. 1734 (2010) (regulating credit cards).

219. *See Consumer Use*, *supra* note 8, at 443-44; *see also* Hawkins, *supra* note 15, at 1392-94.

220. *See* Appendix A.

stallment loan), which in the New Mexico market typically runs from 417-560%.[221]

If a customer is sure she can pay the money back and not borrow more, the title loan likely would be better. You can only get one title loan, whereas it is common for people to have several payday loans totaling more than their entire paychecks. In fact, one woman in a recent study of bankruptcy debtors had over thirty payday loans.[222] Thus, a title loan is best if one is sure one will pay it back in a cycle or two, but finding such a consumer would be difficult.

In our view, for the average borrower, the disadvantages of title loans far outweigh the advantages. Title lenders can and do repossess. As one woman in a survey reported: "title loans are worse [than payday loans]. They make you take their mandatory local AAA service, and if you are even one day late, they take your car. They took mine and I lost my job."[223] In sum, title loans are worse than payday loans because of the low loan-to-value ratio. Moreover, their completely asset-based nature typically makes it impossible for customers to ever pay back the large loans, and some customers cannot afford to pay the interest payments. This reality makes repossession and forfeiture likely.

V. CONCLUSION

This Article uncovers some stark realities about title lending, including triple-digit interest rates, no attempt by lenders to determine if customers can afford to pay back the loans, and high repossession rates. Title lending has gone unregulated in most states, which remains mysterious, given the demographic that uses title loans and the strong possibility of forfeiture of a vehicle, which could be the customer's most valuable asset. Some of the regulation that could help fix these problems might include absolute interest rate caps of 36% on all consumer loans,[224] more stringent and better enforced

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221. *See* Martin, *supra* note 16, at 584-85 (stating that a new law capped rates at 417% but that lenders quickly found ways around the new laws and continued to charge 500% and more).

222. Martin & Tong, *supra* note 16, at 804.

223. Interview with Payday Loan Customer in Albuquerque, N.M. (June 5, 2009) (outside payday lender's storefront). This consumer was a participant in author Nathalie Martin's curbside study, reported about in Martin, *supra* note 16. Although the payday lending study was only about payday loans, some consumers also reported on title loans at the end of their interviews, when asked if they had any other comments.

224. While it is not clear why 36% seems to be the cap that many states choose when capping interest, this does seem to be the case. Montana just capped interest on consumer loans at 36% and numerous other states have chosen this same number. *See* Plunkett & Hurtado, *Small-Dollar Loans*, *supra* note 75, app. A, at 56-63. Plunkett and Hurtado also propose a national federal interest rate cap of 36%. *Id* at 50. In

licensing procedures, and restrictions on rolling over title loans. Other things that also might be useful are better disclosures to consumers about the total cost of the loans over the life of the loan, disclosures about the fact that the loan is an interest-only loan, procedures for enforcing requirements that sales be commercially reasonable, procedures for ensuring that surpluses are returned to customers, a requirement that interest stop accruing after repossession, a prohibition against pre-payment penalties, and a requirement that lenders consider a borrower's ability to repay when lending. Non-compliance could result in forfeiture of the loan and security agreement.

It is up to the states to decide which of these provisions to adopt. But consciously or not, we are legislating differently for lower and working class people than for middle class people. We protect the middle class through a great web of legislation on the products they use, such as credit cards and home mortgages. Yet with products that the lower and working classes use, we do nothing. We do nothing if the Article 9 remedies do nothing to protect consumers, due to the enormous interest rates. We do nothing about the loss of one of life's largest assets for the people involved. It is unclear why this is the case. Is it that the working classes have no political clout? Are the lower classes hidden enough that this issue does not matter much to the rest of us? The people who most need protection are not receiving it. While legislatures around the nation, both federal and state, struggle with how to regulate home loans, credit cards, and other middle class products, title loans have gone unnoticed and unregulated. Given the protections we have provided to middle class consumer credit users, we also should consider regulating the consumer credit products used primarily by the lower and working classes.

2006, recognizing the troubling implications of payday lenders clustering around military installations, Congress adopted a 36% interest-rate cap on loans to all military personnel and their dependents. *See* John Warner National Defense Authorization Act for Fiscal Year 2007, Pub. L. No. 109-364, § 670(a), 120 Stat. 2083, 2266 (2006) (codified at 10 U.S.C. § 987) ("A creditor . . . may not impose an annual percentage rate of interest greater than 36 percent with respect to the consumer credit extended to a covered member or a dependent of a covered member."), *cited in* Christopher L. Peterson, *supra* note 53, at 1128 & n.88. As Professor Peterson notes, culturally, for whatever reason, we perceive certain interest-rate percentages as ethical and others as unethical. *Id.* at 1149-50. Peterson believes that the range of interest rates perceived as ethical ranges from 6 to 36%. *See id.* at 1150.

APPENDIX A: ALBUQUERQUE LENDERS PHONE SURVEY

Name	Address	Phone	Loc	APR	Fees
Shamrock Finance	3151 San Mateo	889-8979	1	88%-260%	
-+----------------+New Mexico Title Loans	5260 Montgomery	830-1808	4	240%-360%	$19.50
Check 'n Go	6211 4th	344-1669	4	520.00%	
Approved Finance	3400 San Mateo	888-1777	1	510%	
Ace Cash Express	4001 San Mateo	889-8084	17	450%	
American Cash Loan	2928 Carlisle	796-6212	1	416%	
Allied Cash Advance	3621 Menaul	888-0025	7	328%	$5.00
Dash 4 Cash	3244 San Mateo	888-7503	1	328%	$5.00
Fast Bucks	4000 Menaul	830-2277	8	306%	
Title Cash of New Mexico	2900 Eubank	275-7745	1	306.60%	$5.00
Cash 2 Go	5617 Menaul	883-0053	3	304.17%	
Express Cash Pawn	4710 San Mateo	888-9799	1	302.00%	
Cash Store	2010 Wyoming	349-0923	2	300.00%	$5.00
Quick Cash	5727 Central	839-2280	9	300.00%	
Speedy Cash	2108 Juan Tabo	277-8083	2	300.00%	$5.00
CNC Financial	6001 San Mateo	884-0560	1	300.00%	
Loan Max	3905 San Mateo	888-7611	2	292.00%	$5.00
Money Now	3500 San Mateo	830-9281	1	270.00%	
Lighthouse Financial	9320 Menaul	293-4883	1	254.00%	
Money Train	5717 Menaul	338-2580	2	240.00%	$8.50
Checkmate	1145 San Mateo	262-4914	6	228.00%	$8.00
		Total	66		
			Avg	388.18%	

APPENDIX B: STATE OF INCORPORATION OF TITLE LENDERS OPERATING IN ALBUQUERQUE

Name	No. Locations	Owner State
Ace Cash Express, Inc	17	Texas
Cashmax	1	Illinois
The Cash Store	1	Delaware
Money Train Title Loans	2	Utah
CNC Financial Services	1	Texas
Speedy Loan	4	Delaware
Express Cash Loan, Inc	1	New Mexico
FastBucks	9	Texas
Speedy Bucks	2	New Mexico
Fast Cash Loan, Inc.	1	New Mexico
Lighthouse Financial	1	Florida
Money Network Auto Title	1	Colorado
New Mexico Title Loans	4	Georgia
LoanMax	2	Georgia
Nationwide Budget Finance	1	Missouri
Wild Bill's Fast Cash	1	Nevada
Check N' Go	4	Ohio
Title Cash of New Mexico	1	Alabama
FastBucks	2	Idaho
Ready Money	2	Wisconsin
Total Albuquerque Lenders	61	
Number of New Mexico Owners	4	
Percent New Mexico Owners	6.56%	

APPENDIX C: SUMMARY OF TITLE LOANS
ANNUAL DATA COLLECTION FOR TITLE LOANS ISSUED BY SMALL LOAN LICENSEES DURING CALENDAR YEAR 2009

Dollar Amt. of all New Title Loans Originated During the Calendar Yr.	Min: $50.00 Max: $10,000.00 Avg: $855.52
Total Principal Dollar Amt. of all Title Loans Outstanding	Total: $5,586,432.51 Avg: $85,945.12
Total No. of all Title Loans Outstanding at End of Calendar Yr.	Total: 7184 Avg per Co.: 110.52
Total $ Amt. of all New Title Loans Originated During Calendar Yr.	Total: $10,785,123.44 Avg per Co: $165,924.98
Annual % Disclosed (pursuant to Fed. Reg. Z) on New Title Loans Originated During Calendar Yr.	Min: 0% Max: 426% Avg: 266.35%
No. of Days for the Licensee's Initial Maturity Term of New Title Loans Originated During the Calendar Yr.	Min: 1 Max: 910 Avg: 55.17
Avg. No. of New Title Loans Made to the Same Customer Originated During the Calendar Yr.	Avg: 1.9
No. of Times Any Title Loan was Renewed, Refinanced, or Extended During the Calendar Yr.	Min: 0 Max: 28 Avg: 2.31
No. of Title Loans Charged Off During the Calendar Yr.	Total: 1180
$ Amt. of Title Loans Charged Off During the Calendar Yr.	Total: $908,703.33
$ Amt. of Recoveries of Title Loans During the Calendar Yr.	Total: $1,008,510.88
Gross Yearly Income for any Title Loan Borrower, as Disclosed to Licensee During the Calendar Yr.	Min: $2400 Max: $390,000.00 Avg: $24,492.53
No. of Title Loan Borrowers Against Whom Lawsuits Were Instituted	Total: 70
Total No. of Title Loan Repossessions During the Calendar Yr.	Total: 975
Total Number of Title Loan Repossessions Reclaimed by Borrower During the Calendar Yr.	Total: 337
Total Number of Title Loan Repossessions Disposed of By Lender During the Calendar Year	Total: 473
Total $ Amt. of Title Loan Excess Proceeds from Sale of Repossessed Vehicles Returned to Borrowers During the Calendar Yr.	Total: $23,079.00
Companies Reported	Total: 65