Center for Responsible Lending

Senate Finance Committee
The Alaska State Legislature
Re: Senate Bill 39
March 25, 2025

Co-Chairs Hoffman, Olson, and Stedman, Vice Chair Merrick, and Members of the Committee:

I write to follow up on some questions the committee raised in the March 20 discussion of SB 39, a bill to simplify Alaska's consumer lending laws and close the loophole for deferred deposit transactions (commonly known as payday loans). I regret that technology issues prevented me from testifying at that hearing and thank you for the opportunity to respond in writing.

My name is Andrew Kushner and I am a senior policy counsel at the Center for Responsible Lending. CRL is a non-profit, non-partisan policy and research organization dedicated to building family wealth through curbing abusive financial practices. CRL is affiliated with the Self-Help family of credit unions, a national community development financial institution that provides access to safe, affordable financial services to low-income communities and borrowers. We have supported efforts like SB 39 to cap interest rates at 36% or less in states across the country.

First, I would like to respond to Senator Kiehl's question about the correlation between bankruptcy rates and the availability of predatory payday loans. The study to which Senator Kiehl referred – *Do Payday Loans Cause Bankruptcy?*[1] – is a very interesting study that found that payday loans increase personal bankruptcy rates by a factor of two. Relying on datasets of over 140,000 individuals' payday loan applications and over 550,000 bankruptcy filings, the authors of the study found that access to payday loans significantly caused personal bankruptcy rates to increase. The authors theorized that "the bankruptcies could arise because of the cash flow burden of pressing payday finance charges" (that is, the fee that borrowers must repay on payday).

This study is powerful evidence of the harms of payday loans. Although payday and other predatory lenders claim to provide borrowers with quick and easy cash for occasional needs, the evidence of harm to borrowers from these loans is well established

[1] Paige M. Skiba, *Do Payday Loans Cause Bankruptcy?*, 62 Journal of Law & Economics. 485 (2019), *available at* https://scholarship.law.vanderbilt.edu/faculty-publications/1128

and vast. The industry's very business model is trapping consumers in a cycle of debt. Nationally, 75% of payday loan fees are generated by people stuck in more than 10 loans a year.[2] In short, unaffordable credit is a feature, not a bug, of the predatory lender business model.

As far as I am aware, the *Do Payday Loans Cause Bankruptcy?* study is the only study to look at the correlation between bankruptcy rates and the availability of payday loans. No research has been done, as far as I'm aware, into any changes in bankruptcy rates after states repeal payday loan statutes or limit the loans to 36% APR.

Second, I would like to respond to the argument from opponents of SB 39 that payday loans are necessary for access to credit. Thirty-six percent rate caps are rapidly becoming the norm. In 2006, Congress passed a 36% rate cap in the Military Lending Act for active-duty military and their dependents. Voters subsequently overwhelmingly passed 36% rate caps in South Dakota, Colorado, and Nebraska in 2016, 2018, and 2020, respectively. State legislatures in Illinois, New Mexico, and Minnesota then passed interest rate cap bills in 2021, 2022, and 2023, respectively. SB 39 would put Alaska in line with laws applicable to active-duty military and in place in over a third of the states.

The experiences of the military and these 20 states confirm that the sky does not fall once lenders are prohibited from charging predatory interest rates. Many states without payday loans have never had them and have repeatedly rejected proposals to legalize them in their states. For other states that once had payday loans but now do not, borrowers are protected from predatory interest rates while at the same time healthy credit markets still exist, where consumers can get access to safe, responsible credit in times of need.

To take just one example, I am aware that opponents of SB 39 have argued that New Mexicans have had trouble accessing credit since that state's 36% law went into effect. That is inaccurate. A review of New Mexico's most recent annual report for licensed lenders shows:

- 54 active licenses for making secured loans under the state's Small Loan Act (SLA);
- 75 active licenses for making unsecured loans under the SLA;
- 102 active licenses for making secured loans under the states' Banking Institutions Small Loan Act (BILA); and

[2] Consumer Financial Protection Bureau. *Payday Loans and Deposit Advance Products: A White Paper of Initial Data Findings* (2013), *available at* https://files.consumerfinance.gov/f/201304_cfpb_payday-dap-whitepaper.pdf

· 117 active licenses for making unsecured loans under the BILA.[3]

In total, lenders made more than $438 million in loans in 2023 (principal) to more than 252,000 borrowers. New Mexico is far from the credit desert of predatory lenders' imagination.

Third, I would like to address the representations made at the hearing about section 3 of the bill, its anti-evasion provision. That provision is designed to combat "rent-a-bank" lending, where an online non-bank lender routes its loans through a bank in order to try to take advantage of the bank's ability to preempt state interest rate limits (a federal statutes allows state-chartered banks to make loans at the interest rate allowed in their home state to borrowers in other states, even if the loan interest rate exceeds the limits in the borrower's state).[4]

Section 3 of the bill simply provides that, in instance where the non-bank lender designs and effectively controls the lending program (including, for example, when the non-bank online lender has the "predominant economic interest" in the loan proceeds), the non-bank lender is the true lender and not the state-chartered bank. Notably, this language is not some novel outlier. Legislatures in Maine, New Mexico, Washington, Connecticut, and Illinois have passed identical, or nearly identical, language in recent years.

Moreover, states do not need to tolerate predatory online "rent-a-bank" lenders to ensure a healthy loan market. An interest-rate cap of 36% is actually squarely in the middle of a ranking of states' interest rate cap policy choices.[5] There is a thriving ecosystem of lenders who operate at or below that threshold, and it is not just consumer advocates that would say this. The American Fintech Counsel ("AFC"), the trade group that calls itself the "premier trade association representing the largest financial technology (Fintech) companies and innovative banks," does not admit lenders that lend above 36% APR.[6] AFC has even announced its support for a *nationwide* 36% interest rate limit on all loans.[7]

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[3] 2023 New Mexico Small Loan Act Annual Report, New Mexico Regulation and Licensing Department, Financial Institutions Division (2024) at 2, *available at* https://api.realfile.rtsclients.com/PublicFiles/1ee897135beb4b1c82715d36398de4c5/a3585761-9c35-45ef-a656-66018b3ad12a/2023%20New%20Mexico%20Small%20Loan%20Act%20Annual%20Report.pdf

[4] For more information about rent-a-bank lending please see *Stop High-Cost Lenders from Evading State Laws: An Overview of Rent-a-Bank Schemes & the Simple DIDMCA Opt-Out Solution*, CRL (2023), *available at* https://www.responsiblelending.org/research-publication/stop-high-cost-lenders-evading-state-laws-overview-rent-bank-schemes-simple

[5] High Cost Rent-a-Bank Watchlist, National Consumer Law Center ("NCLC") (Sept. 2024), *available at* https://www.nclc.org/resources/high-cost-rent-a-bank-loan-watch-list/

[6] Our Mission, AFC, available at https://www.fintechcouncil.org/our-mission

[7] Federal: American Fintech Council (AFC) Announces Support For New Legislation To Create 36 Percent Interest Rate Cap On Consumer Loans (October 31, 2023), *available at*

Indeed, my understanding is that section 3 of the bill was negotiated with representatives of AFC. It is only the most predatory, unscrupulous online lenders that oppose such a standard. The committee should not be misled into believing that the opponents of the bill who spoke on section 3 represent the financial services industry as a whole.

Once again, thank you for the opportunity to provide these written comments and for your attention to this issue. Should you have additional questions, please contact me at andrew.kushner@responsiblelending.org.

Sincerely,

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Senior Policy Counsel
Center for Responsible Lending

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https://www.fintechcouncil.org/press-releases/american-fintech-council-afc-announces-support-for-new-legislation-to-create-36-percent-interest-rate-cap-on-consumer-loans