



## **2021 UPDATE TO:**

# **“STILL WRONG: WRECKED BY DEBT / TITLE LENDING IN ARIZONA 2019”**

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Jean Ann Fox

Kelly Griffith

Rob Stansfield



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## 2021 UPDATE TO “STILL WRONG: WRECKED BY DEBT/TITLE LENDING IN ARIZONA 2019”

Arizona law<sup>1</sup> permits car title lending at 120 to 204% APR for asset-based lending that traps vulnerable families in repeat borrowing and risks repossession of a key family asset or default judgments followed by garnishment of wages to collect. This brief updates earlier CEI survey reports<sup>2</sup> on the status of title lending in Arizona and describes advocacy around high-cost lending during 2020. The Brief concludes with recommendations for the Arizona Legislature, Congress and federal and state financial regulators.

### FINDINGS

- The title loan industry continues the trend of consolidation. The number of Arizona-licensed Sales Finance companies making car title loans after license renewals in mid-2020 is 63 companies licensing 71 trade names with 436 licensed locations, down from 476 licensed locations in 2019.
- Out-of-state companies control a growing share of licensed locations in Arizona, with 67 percent of licensed locations owned by out-of-state companies in 2020 compared to 59 percent in 2019.
- Former payday lenders are a growing share of the title loan market in 2020 with ten title lenders with 189 licensed locations, or 43 percent of all licensed locations, that were licensed as payday lenders in 2007. This is up from 37 percent in 2019.
- Payday loans are made by title loan companies despite the 2010 sunset of Arizona’s payday loan law. Sales Finance companies are exploiting the weak “Secondary Motor Vehicle Finance Transaction” law and lax enforcement by the Department of Insurance and Financial Institutions and the Office of Attorney General to make triple-digit-rate payday-loan look-alike “registration” loans, purportedly “secured” by vehicles that consumers do not own free and clear. Lenders typically demand bank account access to back “registration” loans, a key feature of payday loans.

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<sup>1</sup> A.R.S. 44-281 “Secondary Motor Vehicle Finance Transaction” loans, in Motor Vehicle Time Sales Disclosure Act (A.R.S. Title 44, Chap. 2.1)

<sup>2</sup> CEI, “Still Wrong: Wrecked by Debt/Title Lending in Arizona 2019,” August 2019 at <https://economicintegrity.org/wp-content/uploads/2019/08/2019-CEI-Brief-Update-Car-Title-Loan-Survey-8-4-19.pdf> and, CFA/CEI, “Wrong Way: Wrecked by Debt – Auto Title Lending In Arizona,” January 26, 2016 at <https://consumerfed.org/reports/wrong-way-wrecked-by-debtauto-title-lending-in-arizona/>

- Consumers most likely to use title loans are low-income, disproportionately minorities who are also most impacted by the COVID-19 pandemic and economic recession.
- Arizona failed to protect consumers against predatory title lending, repossessions and debt collection during the economic upheaval of the COVID-19 pandemic. In fact, the Governor declared illegal payday loans an “essential service”.
- Federal agencies and Congress failed to strengthen consumer protections against usurious and predatory lending in 2020 even during a pandemic. The Consumer Financial Protection Bureau (CFPB) gutted the payday/title loan rule that would have required determination of borrowers’ ability to repay before the rule took effect. Federal legislation to extend the Military Lending Act 36% inclusive rate cap to protect all Americans did not get a hearing in committee. Advocates renew their call for improved protections in 2021.

## INTRODUCTION

“Title loans” are cash loans secured by the borrower’s vehicle and are made by licensed Sales Finance companies in Arizona. High-cost title lending is available in less than half the states, due to specific authorizing laws, loopholes in state law, or the absence of state usury caps for consumer lending.<sup>3</sup> Title loans are banned outright for active-duty servicemembers and their families under the federal Military Lending Act. In Arizona title loans are authorized by A.R.S. 44-281, the “Secondary Motor Vehicle Finance Transaction” provision of the Motor Vehicle Time Sales Disclosure Act (A.R.S. Title 44, Chap. 2.1).

Title loans in Arizona can cost 120 up to 204 percent APR based on the size of the loan. Title lending under the law enacted in 2000 is a carve-out from Arizona’s Consumer Lender law usury limit and consumer protections. Triple-digit title loan rates did not “sunset” with payday loans in 2010 following the No vote on Prop 200 in 2008 and many payday lenders switched licenses to become title lenders to continue making high-cost loans.

Title loans are asset-based lending which can trap borrowers in repeat borrowing to avoid losing their vehicles when they are unable to repay loans. In addition to repossession, lenders file civil lawsuits to collect on defaulted loans. For information on the harm title loans can cause for borrowers, see CEI’s summary of research conducted by the Consumer Financial Protection Bureau.<sup>4</sup>

This 2021 Brief updates title loan industry statistics and trends from the 2019 CEI report “Still Wrong: Wrecked by Debt/Title Lending in Arizona 2019,”<sup>5</sup> and expands on key policy issues for consumers and policymakers. This brief summarizes advocacy efforts to confront high-cost lending during the - pandemic.

Car title lender licensee information is based on a CEI analysis of the Department of Insurance and Financial Institutions’ Sales Finance licensee roster as of August 2020 obtained by public records request. DIFI does not publish a separate list of Sales Finance licensees that make loans under the Secondary Motor Vehicle Finance Transaction provision of Arizona law<sup>6</sup> and does not collect or report industry-wide information from Arizona-licensed title lenders.

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<sup>3</sup> Consumer Federation of America, “Car Title Loan Regulation,” November 16, 2016 at [https://consumerfed.org/wp-content/uploads/2017/01/11-16-16-Car-Title-Loan-Regulation\\_Chart.pdf](https://consumerfed.org/wp-content/uploads/2017/01/11-16-16-Car-Title-Loan-Regulation_Chart.pdf)  
Two states, California and Ohio have since closed loopholes used to make CTLs.

<sup>4</sup> <https://nomoreloansharksaz.org/gallery/2019%20az%20factsheet%20car%20title%20loan%20harm%20and%20risks%20cfpb%20rule.pdf>

<sup>5</sup> <https://economicintegrity.org/wp-content/uploads/2019/08/2019-CEI-Brief-Update-Car-Title-Loan-Survey-8-4-19.pdf>

<sup>6</sup> A.R.S. §§ 44-281, 44-291

## TRENDS IN TITLE LOAN MARKET IN ARIZONA SINCE 2019

### TREND: CONTINUED CONSOLIDATION OF LICENSEES

The number of companies and locations licensed to make title loans continues to shrink. Following the biennial license renewal in mid-2020, **63 companies with 71 licenses** are making loans under the Secondary Motor Vehicle Finance Transaction provision of Arizona’s sales finance law. This is down from 2019, when 73 companies held 80 unique licenses to make title loans. These 63 companies had **436 licensed locations** in 2020, compared to 476 licensed locations in 2019.

### LARGEST TITLE LENDERS IN ARIZONA BY NUMBER OF LICENSED LOCATIONS

Rank	Name / DBA	AZDFI SF License #	# Licensed Locations
#1	TitleMax of Arizona, Inc.	SF-0917582 SF-0920145	79
#2	Populus Financial Group, Inc. branches ACE Cash Express, Inc.	SF-0911038, SF-0911039	37
#3	Fast Auto Loans, Inc.	SF-0904877	28
#4	Cash Time Title Loans, Inc. Presto Loan Centers, LLC	SF-0903593 SF-1000814	26
#5	Allied Cash Advance Arizona LLC	SF-0909493	25
#6	Buckeye Check Cashing of Arizona, Inc.	SF-0914026	24
#7	Check into Cash of Arizona, Inc.	SF-0910897	23
#8	Checkmate Express Corporation	SF-0910900	23
#9	AAA Auto Title Loans, LLC	SF-0907852	17
#10	LoanMax, LLC	SF-0908734	16
#11	A Speedy Cash Car Title Loans, LLC, Todd Car Title, Inc.	SF-0904074, SF-0906262	15

#12	Phoenix Title Loans L.L.C.	SF-0907496	11
#13	Tio Rico Te Ayuda of Arizona Inc.	SF-0946935	11
#14	Arizona Auto Lenders, Inc.	SF-0904650, SF-0926362	9
#15	1 Stop Money Centers LLC	SF-0905387	8
#16	Southwest Title Loans, Inc.	SF-0950286	7
#17	Auto Title Loans And More, LLC	SF-0910837	6
#18	Pegar Investments LLC	SF-0930497	6
#19	Auto Title Loans USA, LLC	SF-0923997	5
#20	Wheels Financial Group, LLC	SF-0910582, SF-0924928, SF-0924933, SF-0931438	5
#21	Arizona Smart Cash, Inc.	SF-0908728	4
#22	Rapido Express Tax Service Corporation	SF-0920196	3
41 other companies with 1 or 2 Licensed Locations =			48
<b>Total Number of Licensed Locations =</b>			<b>436</b>

Source: CEI analysis of AZDFI Sales Finance Licensee list September 2020

The number of licensed locations held mostly steady for the largest companies in 2020 although several small operations did not renew their licenses or no longer make title loans. Florida-based Smart Pawn 1<sup>st</sup> which had 17 licensed locations in 2019 is no longer a licensed title lender in Arizona and does not advertise title loans on its website or show up on the 800LoanMart roster of title loan service locations in Arizona as it did in 2019. Wheels Financial Group/800LoanMart has sharply reduced the number of its listed Arizona locations for servicing title loans made online, going from 97 locations in 2019 to just 11 in 2020.<sup>7</sup> Cash Time Title Loans Inc. acquired Presto Loan Centers, LLC since the last report. Their combined 26 licensed locations move the company to the fourth largest title lender slot in Arizona.

<sup>7</sup> <https://www.800loanmart.com/title-loans-arizona/> viewed 09/29/2020

## TREND: GROWING SHARE OF THE MARKET HELD BY OUT-OF-STATE LENDERS

A growing majority of Arizona-licensed locations (67 percent in 2020 compared to 59 percent in 2019) is made up of out-of-state companies that have stores here, utilize local agents, and/or make loans online to Arizona borrowers. These include the *largest title lenders* in the country, such as TMX Finance's TitleMax and TitleBucks stores; Select Management Resources' LoanMax; California's largest title loan chain Wheels Financial Group/800LoanMart; and Community Loans of America's Fast Auto Loans, Inc., Simple Fast Loans, and Southwest Title Loans, Inc.

## 2020 AZDFI-LICENSED TITLE LENDERS HEADQUARTERED OUTSIDE ARIZONA

Licensee and Parent Company	AZDFI License # and Parent Company Address	Headquarters	No. of Locations
<b>TitleMax of Arizona, Inc. / TitleBucks</b> TMX Finance LLC	SF-0917582, SF-0920145 15 Bull Street, Ste 200, Savannah, GA 31401	Georgia	79
<b>Populus Financial Group</b> Ace Cash Express, Inc. branches	SF-0911039, SF-0911038 300 E John Carpenter Fwy, Ste 900, Irving, TX 75062	Texas	37
<b>Fast Auto Loans, Inc.</b>	SF-0904877	Georgia	28
<b>Simple Fast Loans</b>	SF-1001084	Georgia	1
<b>Southwest Title Loans, Inc.</b> Community Loans of America	SF-0950286 8601 Dunwoody Pl, Ste 406, Atlanta, GA 30350-2550	Georgia	7
<b>Allied Cash Advance Arizona LLC</b> CNG Holdings, Inc., owns Axxess Financial Services with brands Check 'N Go and Allied Cash Advance	SF-0909493 7755 Montgomery Rd., Suite 400, Cincinnati, OH 45236	Ohio	25
<b>Buckeye Check Cashing of Arizona, Inc.</b> Community Choice Financial Inc. / CCF Holdings LLC	SF-0914026 5165 Emerald Parkway, Suite 100, Dublin, OH 43017	Ohio	24
<b>Check Into Cash of Arizona, Inc.</b>	SF-0910897	Tennessee	23

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	201 Keith St SW Ste 80, Cleveland, TN 37311-5867		
<b>Checkmate Express Corporation</b>	SF-0910900	California	23
Pacific Rim Alliance Corporation	5800 Armada Drive, #240, Carlsbad, CA 92008		
<b>LoanMax, LLC</b>	SF-0908734	Georgia	16
Select Management Resources, LLC	3440 Preston Ridge Rd, Ste 500, Alpharetta, GA 30005-3823		
<b>A Speedy Cash Title Loans</b>	SF-0904074	Kansas	11
<b>Todd Car Title, Inc.</b>	SF-0906262	Kansas	4
CURO Group Holdings Corp	3527 N Ridge Rd, Wichita, KS 67205-1212		
<b>Wheels Financial Group, LLC</b>	SF-0910582, SF-0924928, SF-0924933, SF-0931438	California	5
	15400 Sherman Way, Suite 170, , Van Nuys, CA 91406		
<b>Kathleen Marie Mason</b>	SF-0912627	Nevada	2
	7780 La Cienega St, Las Vegas, NV 89123-1708		
<b>USA Cash Services of Arizona Inc. #2</b>	SF-0918028	Utah	2
	1752 Combe Road, Ste 1, Ogden, UT 84403		
<b>Approved Financial, Inc.</b>	SF-0942994	Florida	1
	175 SW 7th St Suite 1900, Miami, FL 33130-2992		
<b>CCR Investment Group, Inc.</b>	SF-1002004	California	1
	3710 Artesia Ave Unit B, Fullerton, CA 92833-2542		
<b>MLJD, LLC</b>	SF-0910631	Delaware	1
Auto Equity Loans of DE, LLC	105 Foulk Rd, Wilmington, DE 19803		
<b>Moo Loans</b>	SF-0922904	California	1
	6631 Lankershim Blvd, North Hollywood, CA 91606		
<b>Westlake Services, LLC</b>	SF-0917316	California	1
	4751 Wilshire Blvd, Ste 100, Los Angeles, CA 90010		
<b>Wilshire Commercial Capital LLC</b>	SF-0911158	California	1
	4751 Wilshire Blvd, Los Angeles, CA 90010		
<b>TOTAL NUMBER OF LOCATIONS =</b>			<b>293</b>

## TREND: FORMER PAYDAY LENDERS MAKING TITLE LOANS HOLD A GROWING SHARE OF THE MARKET IN 2020 COMPARED TO 2019

The primary tactic used by payday lenders to continue operations after the payday loan law sunset in 2010 was to become licensed as title loan lenders. In 2020, **ten title lenders with 189** licensed locations (**43 percent** of total licensed locations) were licensed as payday lenders in 2007.

## FORMER PAYDAY LENDERS STILL LICENSED TO MAKE TITLE LOANS IN 2020

Payday Loan Licensee (2007)	Title Loan Licensee (2020)	# Title Loan Locations
ACE Cash Express, Inc.	Populus Financial Group, Inc. <i>branches ACE Cash Express, Inc.</i>	37
Fast Payday Loans, Inc.	Fast Auto Loans, Inc.	28
Allied Cash Advance Arizona LLC	Allied Cash Advance Arizona LLC	25
Buckeye Check Cashing II, Inc. #1, Buckeye Checking Cashing of Arizona, Inc. #1	Buckeye Check Cashing of Arizona, Inc.	24
Check Into Cash of Arizona, Inc.	Check Into Cash of Arizona, Inc.	23
LMSA Financial Corporation Arizona d/b/a Checkmate Payday Loans	Checkmate Express Corporation	23
Galt Ventures d/b/a Speedy Cash, Todd Financial Inc.	A Speedy Cash Car Title Loans, LLC, Todd Car Title, Inc.	15
1 Stop Check Cashing, Payday & Title Loans, LLC	1 Stop Money Centers LLC	8
Arizona Smart Cash Inc. #2	Arizona Smart Cash, Inc.	4
Kathleen Mason d/b/a Advance Cash	Kathleen Marie Mason	2
	<b>Total =</b>	<b>189</b>

Source: AZDFI Deferred Presentment Licensee list, 2007 and AZDFI Sales Finance Licensee list May 2019

In 2019, 37 percent of all title lender licensed locations were licensed as payday lenders 13 years ago. In 2015, half of the largest title lenders based on the number of licensed locations had been licensed as payday lenders in 2007.<sup>8</sup> *Large payday loan chains* from outside Arizona with a strong presence in the title loan market include Populus Financial Group’s ACE Cash Express outlets; Allied Cash Advance; Check Into Cash; Checkmate Express; and Buckeye Check Cashing / CheckSmart.

## TREND: TITLE LENDERS EXPAND PAYDAY-LOAN-LOOK-ALIKE “REGISTRATION” LOANS

Due to weak laws and lax enforcement, Arizona permits licensed sales finance lenders to charge title loan rates to consumers who do not hold a clear title to the vehicle used to “secure” the loan.<sup>9</sup> Lenders call these products “registration” or “personal” loans and lend to borrowers who hold a vehicle registration but not a clear title. Borrowers are typically required to have a bank account and provide a voided check, ACH authorization or sign contracts that permit demand drafts to withdraw payment. *These payday-loan-look-alikes are used by title lenders to lend at triple-digit rates for loans that should be covered by the Consumer Lender law usury cap.*

In 2020, **61 companies with 410** licensed locations made loans secured by a clear title to the borrower’s vehicle, the typical title-lending product. Title loan borrowers are usually not required to show an active bank account to obtain loans, since title loans are based on the value of the borrower’s vehicle.

In 2020, **24 companies with 343** licensed locations or **78 percent** of the total, made payday-loan-look-alike “registration” loans. By comparison, in 2019, twenty-five licensed lenders with 359 licensed locations or **75 percent** made payday-loan-look-alike “registration” loans. In 2016 just 20 companies with almost 50 percent of locations made these loans.

Three Arizona licensees with 28 locations only make payday-loan-look-alike “registration” loans that do not require a clear title to secure the loan. These companies are Allied Cash Advance Arizona LLC, Simple Fast Loans, Inc., and Kathleen Marie Mason d/b/a Advance Cash.

Like payday loans, payday-loan-look-alike “registration” loans are secured by access to borrowers’ bank accounts. In 2020, of those payday-loan-look-alike “registration” lenders with websites listing requirements to get loans, 17 companies with 277 licensed locations (about 80

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<sup>8</sup> CEI/CFA, “Wrong Way Report,” 2016 p. 9. <https://bit.ly/wrongwayreport>

<sup>9</sup> See “Primer on Title Loans” page 5-6 in 2019 CEI Report for discussion of “registration” loans. <https://economicintegrity.org/wp-content/uploads/2019/08/2019-CEI-Brief-Update-Car-Title-Loan-Survey-8-4-19.pdf>

percent of registration lenders) listed a bank account, debit card, and/or bank account routing numbers as a loan requirement.

Since lenders cannot place a lien on the title to a vehicle for which the borrower has a registration but not a clear title, consumers can become trapped in multiple loans "secured" by the same vehicle. An Arizona consumer posted a query to a debt issues website in 2012 that described this situation:

"My husband and I have 5 registration loans out, we live in Az. We were not eligible for a title loan since we do not own the car. None of them took my registration for my car, my husband does not even own a car or a drivers license but they gave him a loan off of mine. I owe Checkmate \$1100, 1-stop \$500, Ace cash express \$600 and Speedycash \$500 and my husband owes Checkmate \$500 we have had all these loans for more than a year and have been paying them the best we could but I am no longer working due to illness and the financial hardship it has caused..."<sup>10</sup>

See policy recommendations below for our solutions to predatory car title lending abuses in Arizona.

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<sup>10</sup> Query posted 5/30/2012 by C. Rene Galloway, viewed 11/16/2020  
<https://answers.debtcc.com/Payday-loan-consolidation-and-help/My-husband-and-I-have-5-registration-loans-out-we.html>

## MAJOR DEVELOPMENTS IN 2020 THAT IMPACTED CONSUMERS AND CONSUMER PROTECTIONS IN THE CAR TITLE LOAN MARKET

The COVID-19 pandemic and resulting economic crisis, the assault by the Consumer Financial Protection Bureau and high-cost lenders on consumer protections for payday and car title lending, and inaction by Arizona officials to protect consumers combined to worsen the plight of vulnerable Arizona families and highlight the need for prompt action by Congress, the Arizona Legislature, and financial regulators to protect the most vulnerable consumers from debt-trap lending. The major 2020 events relating to title lending issues are described below.

### 2020: ARIZONA FAILED TO PROTECT CONSUMERS FROM PREDATORY LENDING DURING THE COVID-19 PANDEMIC; TITLE AND ILLEGAL PAYDAY LENDERS LISTED AS “ESSENTIAL” SERVICES BY GOVERNOR

In the face of the COVID-19 pandemic, Governor Ducey issued Executive Order 2020-12 to prohibit the closure of essential services defined as “one specifically identified as such or a function that promotes the public health, safety and welfare of the state or assists others in fulfilling such functions...”<sup>11</sup> On March 30, the Governor’s Stay-At-Home Executive Order confirmed that businesses listed as “essential” could continue to operate throughout the crisis.

Included in the Governor’s list of “essential services” were licensed financial services such as title lending (sales finance companies) and specifically “payday loans” despite that credit product being illegal in Arizona. In Executive Order 2020-33, the Governor ordered citizens to limit their time away from home except...to utilize any services or products provided by Essential Businesses...”

On April 3, 2020, **CEI and other advocates wrote to Governor Ducey** and the Interim Director of the Department of Financial Institutions<sup>12</sup> to urge that the Executive Order listing essential services be amended to comply with state law, specifically the Arizona Department of Financial Institutions Order, updated June 9, 2016, which requires former payday lenders to comply with the Consumer Lender law.<sup>13</sup> We also urged the Governor to require that licensed lenders charge no more than the usury limit of 36% annual interest for new loans during the COVID-19 crisis and for 90 days following the end of the crisis, to exclude collection agencies from the roster of “essential services,” and to stop collection of debt, repossessions, and

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<sup>11</sup> Governor’s Office Executive Orders available at <https://azgovernor.gov/executive-orders>

<sup>12</sup> <https://www.nomoreloansharksaz.org/gallery/2020-04-03%20arizona%20covid-19%20letter%20to%20gov%20and%20azdfi.pdf>

<sup>13</sup> AZDFI Regulatory and Consumer Alert, CL/CO-16-01 at [https://dfi.az.gov/sites/default/files/FE-AD-PO-Regulatory\\_and\\_Consumer\\_Alert\\_CL\\_CO\\_06%2009-16-2016.pdf](https://dfi.az.gov/sites/default/files/FE-AD-PO-Regulatory_and_Consumer_Alert_CL_CO_06%2009-16-2016.pdf)

overdraft fees for the duration of the crisis. These steps are particularly important since Arizona has weak protections against seizure of wages and essential property resulting from debt collector lawsuits.<sup>14</sup>

Cynthia Zwick, Executive Director of Wildfire: Igniting Community Action to End Poverty in Arizona, stated in the press release announcing the letter, “During this crisis, no lender should be allowed to gouge desperate borrowers by charging rates up to 204% APR for title or registration loans or up to 160% APR for online installment loans made by unlicensed ‘rent-a-bank’ lenders.”<sup>15</sup> The Governor did not respond to this letter and none of these actions were taken. Other states and local governments did take such actions to protect consumers.<sup>16</sup>

### **“Essential” Title Lenders Operated During the Pandemic**

As “essential services,” title lenders kept their doors open and websites running to make triple-digit-rate loans secured by borrowers’ vehicles and bank accounts. CEI conducted a brief survey of the larger title lenders’ websites in early April to see how lenders were operating. Most had notices about operations during the COVID-19 crisis on their homepages that noted steps such as reduced hours, limited number of customers in stores, and frequent store cleaning. ACE Cash Express posted that it was an “essential” service, while some lenders noted they were open to serve customers.

Title lenders featured ways to make payments during the pandemic without visiting stores in person. Allied Cash Advance waived fees charged to make payments via their automated phone system, while Cash Time Loan Centers promoted online payment using a debit card. Both Fast Auto Loans and A Speedy Cash promoted payday-loan-look-alike registration loans available through their websites without store visits. Fast Auto Loans offered to go to the borrower to finalize title-secured loans instead of requiring borrowers to come to their stores. Only TitleMax announced that it was suspending repossession of vehicles, stating, “At this time, we are suspending involuntary collateral recovery practices.” TitleMax also urged people to sing its TV ad jingle, “Get Your Title Back with TitleMax” a few times as they washed hands

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<sup>14</sup> NCLC, “No Fresh Start 2020: Will States Let Debt Collectors Push Families Into Poverty in the Wake of a Pandemic?” at <http://bit.ly/rpt-no-fresh-start>  
Arizona gets a D grade as a state with weak protections under exemption laws.

<sup>15</sup> CEI Press Release, “Arizona Advocates Urge Governor Ducey to Safeguard CARES Act Stimulus Funds from Creditors and Debt Collections,” April 15, 2020 at <https://nomoreloansharksaz.org/gallery/2020-04-15%20press%20release%20-%20safeguard%20cares%20stimulus%20of%20funds%20of%20from%20debt%20collectors.pdf>

<sup>16</sup> NCLC, “State Limits on Collection Lawsuits, Post-Judgment Remedies, Debt Collection, Repossessions (Private Creditors),” viewed 11/16/2020  
<https://library.nclc.org/major-consumer-protections-announced-response-COVID-19#content-7>

with soap for 20 seconds. None of the largest title lenders surveyed offered to reduce the cost of loans during the crisis.<sup>17</sup>

The **Attorney General’s Office** wrote to more than 1,000 financial institutions to urge forbearance on debt collections and to work with consumers during the pandemic. In an April 13, 2020 letter, advocates applauded the Attorney General’s efforts: “We support your call for financial and lending institutions, including title loan companies and consumer lenders, to waive payments for 90 days with those payments placed on the back of the loan with no balloon payments, for an end to repossessions by lenders for at least 90 days, for an end to late fees and default interest for late payments for at least 90 days, and for an end to negative reporting to credit bureaus for borrowers who make late payments.” We also urged the office of the Attorney General to take action to safeguard CARES ACT stimulus funds deposited into Arizonans’ bank accounts from debt collection, seizure or set-off to pay bank fees, and to stop title lenders from collecting debts from borrowers’ bank accounts.<sup>18</sup> The Attorney General responded that Arizona law does not exempt stimulus monies from debt collection and urged us to seek solutions from the legislature and Congress.<sup>19</sup>

The stimulus bill enacted by Congress in December 2020 protected new \$600 stimulus payments from garnishment by debt collectors, a reform advocated by Arizona consumer advocates along with national and state organizations. This reform was also backed by banking industry organizations.<sup>20</sup>

### **Arizona Consumer and Public Interest Groups Called on Congress to Help Arizona Families**

Arizona consumer advocates joined organizations around the country in urging Congress to protect consumers during the COVID-19 economic crisis. In August, Arizona PIRG and the Center for Economic Integrity joined 90 state and national organizations in a letter to the Senate Majority and Minority Leaders and the Chairman and Ranking Member of the Senate Committee on Banking, Housing and Urban Affairs to detail consumer protections needed in

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<sup>17</sup> Title lender website print outs on file with CEI.

<sup>18</sup> <https://nomoreloansharksaz.org/gallery/2020-04-13%20letter%20to%20az%20ag%20re%20protecting%20consumers%20in%20covid-19%20crisis.pdf>

<sup>19</sup> <https://nomoreloansharksaz.org/gallery/2020-04-21%20letter%20of%20reply%20from%20az%20oag%20to%20cei.pdf>

<sup>20</sup> NCLC, “Important wins, but unmet needs, in new stimulus package,” December 22, 2020 at [Important wins, but unmet needs, in new stimulus package - National Consumer Law Center \(nclc.org\)](https://www.nclc.org/important-wins-but-unmet-needs-in-new-stimulus-package) See, also, Arizona sign on letter to Congress, August 12, 2020 at [2020-08-12-Letter-to-Senate-leadership-consumer-covid-priorities.pdf \(nomoreloansharksaz.org\)](https://nomoreloansharksaz.org/2020-08-12-Letter-to-Senate-leadership-consumer-covid-priorities.pdf) and April 21, 2020 [Letter to Congress Re: Garnishment \(nclc.org\)](https://www.nclc.org/letter-to-congress-re-garnishment)

the next COVID stimulus legislation.<sup>21</sup> CEI and Wildfire: Igniting Community Action to End Poverty in Arizona also joined 102 national and state organizations in urging Senate action on the HEROES Act “to give small businesses, nonprofits and consumers a path to recovery” from the COVID-19 crisis.<sup>22</sup>

**Recommendation:** All COVID-19 relief and stimulus legislation enacted by Congress should include consumer protections to safeguard funds from wage and bank account garnishment, and to prevent debt collectors from seizing this season’s tax refunds that will include stimulus payments, Earned Income Tax Credit benefits, and Child Tax Credit payments.<sup>23</sup>

## 2020: TITLE LOAN BORROWERS AMONG ARIZONANS HARDEST HIT BY COVID-19

### Borrowers Most Likely to Use Title Loans Also Disproportionately Harmed by Pandemic

Families that were hardest hit by the pandemic are also most likely to borrow at triple-digit rates from title lenders and other high-cost credit providers. In 2019, before the economic crisis caused by the pandemic, new FDIC Census research confirmed that consumers who borrow against their vehicles tend to be **lower income, less-educated, younger, black and Hispanic and households with volatile income**.<sup>24</sup> The FDIC groups title loans in the category of “non-bank credit” along with payday loans, pawn loans, rent-to-own and tax refund anticipation loans.

The poverty level in Arizona is 13.5% of the population, with a median household income of \$62,055, according to U.S. Census data.<sup>25</sup>

The same segment of the community most likely to use high-cost title loans is also most impacted by the economic recession caused by the pandemic. The Federal Reserve (FRB) report on the pandemic’s early effects on consumers found that vulnerable populations, such as low- and moderate-income (LMK) communities and racial and ethnic minorities, had been particularly hard hit. Surveys done in April 2020 found that workers living in households with

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<sup>21</sup> Consumer Group Letter to Senate Leadership re: Consumer Protections for Next COVID legislation, August 12, 2020, at <https://nomoreloansharksaz.org/gallery/2020-04-15%20press%20release%20-%20safeguard%20cares%20stimulus%20ofunds%20ofrom%20debt%20collectors.pdf>

<sup>22</sup> Consumer Group Letter to Senate Leadership re: Support debt collection provisions of HEROES Act.... June 23, 2020 at <https://nomoreloansharksaz.org/gallery/2020-06-23%20heroes-debt-collection-provisions-2020.pdf>

<sup>23</sup> Letter to President Biden Re: Consumer protections for next COVID legislation, Feb. 1, 2021 at <Ltr-to-President-Biden-Re-COVID-Consumer-Protections.pdf> (consumerfed.org)

<sup>24</sup> FDIC, “How America Banks: Household Use of Banking and Financial Services/2019 FDIC Survey,” October 2020, at <https://www.fdic.gov/analysis/household-survey/>

<sup>25</sup> <https://data.census.gov/cedsci/profile?q=0400000US04#>

lower incomes were the most likely to lose their jobs making them less likely to be able to pay their monthly bills or have sufficient funds to cover a \$400 expense. The FRB found that 39 percent of people working in February living in households earning less than \$40,000 per year reported being laid off in March or early April.<sup>26</sup>

Low-income Arizonans are not gaining employment at the same rate as middle and high wage workers as the pandemic has worn on. As of November 2020, the employment rate for workers making \$27,000 a year or less had decreased 22.3% compared to employment in January 2020. Employment rates were up 4.6% for middle-wage workers (\$27,000 to \$60,000) and up 6.2% for high-wage earners (over \$60,000) since before the pandemic.<sup>27</sup>

Even before the pandemic disrupted the economy, minority families were struggling financially. The Federal Reserve survey in October 2019 found that 59 percent of Black respondents with a high school degree or less said they would not be able to fully pay their current month’s bills if they also had to pay an unexpected \$400 expense. Responses were similar for 51 percent of Hispanic respondents and 35 percent of White respondents, both with high school degrees or less. (FRB at 8)

The population that uses car title loans is also more likely to have been disproportionately impacted by COVID-19. The Center for Disease Control (CDC) reports as of November 2020 that racial minorities had a higher rate of COVID-19 cases, hospitalizations, and death than White, non-Hispanic persons, with Hispanic or Latino persons 1.7 times as likely as White, non-Hispanic persons to have COVID-19 and 4.1 times as likely to be hospitalized. Black or African American, non-Hispanic persons were 1.4 times as likely as White persons to have COVID-19, 3.7 times as likely to be hospitalized and 2.8 times as likely to die from the disease.<sup>28</sup> Analysis of data from the Arizona Department of Health Services found that 12 of the 16 ZIP Codes with more than 3,000 COVID-19 cases had more than 20% of their population living below the poverty line.<sup>29</sup>

***Given the close overlap of this vulnerable population with consumers most likely to borrow from car title lenders and with communities most impacted by the pandemic and resulting recession, it is extremely important that Congress and the Arizona legislature take prompt action to protect consumers from predatory debt-trap lending.***

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<sup>26</sup> Federal Reserve Board, “Household Finances under COVID-19: Evidence from the Survey of Household Economics and Decisionmaking,” *Consumer and Community Context*, November 2020, p. 2, 3 at <https://www.federalreserve.gov/publications/files/consumer-community-context-20201118.pdf>

<sup>27</sup> “Opportunity Insights Economic Tracker,” Harvard University, <https://www.tracktherecovery.org> Select Arizona. Viewed Feb. 3, 2021.

<sup>28</sup> [Infographic: COVID-19 Cases, Hospitalization, and Death by Race/Ethnicity | CDC](#)

<sup>29</sup> Jerod MacDonal-Evoy, “More than a quarter of those living in COVID hot zones live in poverty,” *AZMirror*, Nov. 17, 2020 at [More than a quarter of those living in COVID hot zones live in poverty \(azmirror.com\)](https://www.azmirror.com)

## Title Loan Industry and Customer Stats

Less than two percent of households uses car title/registration loans in Arizona. In 2019, the FDIC found that 1.5 percent of Arizona households used auto title loans or 43,500 households. An additional 0.4 percent reported using payday loans or 11,600 households. Since “payday loans” are illegal in Arizona, it is likely that consumers who reported using this product got “registration” loans made by title lenders or illegal online payday loans. **The total number of Arizona households using title/payday loans in 2019 was 55,100, prior to the financial disruptions in 2020, according to the FDIC.**<sup>30</sup>

In a typical year, Arizona borrowers pay **\$254,924,519 in fees and interest** for car-title loans, according to research by the Center for Responsible Lending.<sup>31</sup> The Arizona Department of Insurance and Financial Institutions does not issue annual reports on licensee loan operations that would provide the public and policymakers with facts about the operation of title lenders in Arizona. States such as California and New Mexico, that collect lender data and issue public reports, have not issued reports for 2020. Most of the title lenders that operate in Arizona are privately owned and do not report business operations.

One indicator of the impact of the pandemic on high-cost lending comes from the pawn industry. The National Pawnbrokers Association reported loans falling as much as 40 percent in 2020 due to the combination of people staying home and spending less and the infusion of funds into low-income household budgets from stimulus checks, expanded unemployment benefits and Paycheck Protection Program loans to small businesses. The trade group also noted that eviction moratoriums and forbearance on mortgages and student loan payments may have been a factor in the reduction in demand for pawn loans.<sup>32</sup>

Publicly traded CURO Holdings which operates in Arizona as title lender A Speedy Cash reported a sharp reduction in loan revenue in its year-end financial report. Excluding results from California, CURO reported a year-end 32% decrease in revenues from unsecured installment lending and almost 19% decrease in secured installment loan revenues. CURO’s single-payment loan revenue fell 37% during 2020, compared to 2019, “primarily due to COVID-19 impacts on loan volume and balances, which declined \$37.7 million or 46.2%.”<sup>33</sup>

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<sup>30</sup> FDIC, “How America Banks: Household Use of Banking and Financial Services/2019 FDIC Survey,” October 2020, at <https://www.fdic.gov/analysis/household-survey/>

<sup>31</sup> Center for Responsible Lending, “Payday and Car Title Lenders Drain Nearly \$8 Billion in Fees Every Year,” Updated April 2019 at [www.responsiblelending.org/sites/default/files/nodes/files/research-publication/crl-statebystate-fee-drain-apr2019.pdf](http://www.responsiblelending.org/sites/default/files/nodes/files/research-publication/crl-statebystate-fee-drain-apr2019.pdf)

<sup>32</sup> Emily Stewart, “It’s easy to assume pawnshops are doing great in the pandemic. It’s also wrong.” *Vox*, Nov. 30, 2020 at <https://www.vox.com/the-goods/21611583/pawn-shop-COVID-19-economy>

<sup>33</sup> News Release, “CURO Group Holdings Corp. Announces Fourth Quarter and Full Year 2020 Financial Results,” 2/4/2021, at <https://ir.curo.com/news-releases/2021/02-04-2021-210049429>

Even if some consumers have avoided title loans during the pandemic, the expiration of enhanced unemployment benefits, cash stimulus payments and other financial benefits along with the eventual expiration of the moratorium on mortgage foreclosures, student loan payments, and evictions will again put financial pressure on the vulnerable families most likely to pay triple-digit rates for title loans.

*It is counterproductive to pour stimulus money into communities, only to have high-cost lenders extract payments to stave off repossessions, default judgments with garnishment of wages, and loss of funds in bank accounts.*

### **Arizona Title Lenders Got Federal Pandemic Funds/PPP Loans**

Initially the Small Business Administration excluded all companies that made loans from eligibility for Paycheck Protection Program loans, however, industry lobbying and legal challenges changed that.<sup>34</sup> According to the *Arizona Mirror's* analysis, Arizona businesses got up to \$8.6 billion in Paycheck Protection Program loans, with over 85,000 loans averaging \$101,636 made to Arizona businesses as part of the program adopted by Congress in March 2020 to help businesses retain employees.<sup>35</sup>

CEI analyzed the Small Business Administration's December 1, 2020 release of PPP loan level data<sup>36</sup> and identified three Arizona-based car title lenders that got \$2,869,529 in loans. The largest by far was Cash Time Title Loans, Inc., based in Scottsdale, which received \$1,683,029. Other Arizona-based title lenders receiving taxpayer assistance were AAA Auto Title Loans, LLC (d/b/a Cash 1) which received \$810,800 and Tio Rico Te Ayuda of Arizona Inc. which got \$375,700. In addition, out-of-state headquartered payday/title lenders that are licensed in Arizona also received PPP loans or other business support from the federal government.<sup>37</sup>

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<sup>34</sup> Todd Frankel and Jonathan O'Connell, "Strip Clubs, Payday Lenders, Lobbyists Fight to Get Emergency Federal Loans," *The Washington Post*, May 6, 2020 at [Strip clubs and payday lenders fight to get emergency small-business loans \(The Washington Post\)](https://www.washingtonpost.com/business/2020/05/06/strip-clubs-payday-lenders-lobbyists-fight-to-get-emergency-federal-loans/) See, also, Sam Brodey, "Payday Lenders Ask Their Pals in D.C. for Gov't Handout," *The Daily Beast*, May 13, 2020 at <https://www.thedailybeast.com/payday-lenders-ask-their-pals-in-dc-for-govt-handout>

<sup>35</sup> Jerod MacDonald-Evoy, "Health care, restaurant, tech companies among top PPP recipients in Arizona," *AZMirror*, Dec. 22, 2020. <https://www.azmirror.com/blog/health-care-restaurant-tech-companies-among-top-ppp-recipients-in-arizona/>

<sup>36</sup> <https://www.sba.gov/funding-programs/loans/coronavirus-relief-options/paycheck-protection-program/ppp-data> and <https://sba.app.box.com/s/5myd1nxutoq8wxecx2562baruz774si6/folder/127200074608>

<sup>37</sup> Peter Whoriskey, Joel Jacobs and Aaron Gregg, "Debt collectors, payday lenders collected over \$500 million in federal pandemic relief," *The Washington Post*, Jan. 15, 2021 at <https://www.washingtonpost.com/business/2021/01/15/debt-collectors-payday-ppp/> See, also Sam Brodey, "Government Propped Up Payday Lenders with PPP Loans," *The Daily Beast*,

Loan Amount	Business Name / Business Type	Address	NAICS Code	Jobs Reported	Date Approved	Lender	CD
\$810,800	<b>AAA AUTO TITLE LOANS, LLC</b> Sole Proprietorship	725 E Covey Lane, Suite #170 Phoenix, AZ 85024	561312	101	4/13/20	ReadyCap Lending, LLC	AZ-06
\$1,683,029	<b>CASH TIME TITLE LOANS INC</b> Corporation	8590 E SHEA BLVD STE 110 Scottsdale, AZ 85260	522291		5/1/20	Wells Fargo Bank, National Association	AZ-06
\$375,700	<b>TIO RICO TE AYUDA OF ARIZONA INC.</b> Subchapter S Corporation	4240 GLENDALE AVE Phoenix, AZ 85051	522298	41	4/10/20	Western Alliance Bank	AZ-06

## 2020: STRONG BI-PARTISAN PUBLIC SUPPORT FOR FAIR RATE CAPS, FEDERAL LEGISLATION INTRODUCED TO EXTEND MILITARY LENDING ACT USURY CAP TO ALL AMERICANS

Arizona voters rejected triple-digit interest rate consumer lending when they voted NO on the payday loan industry’s Prop 200 in 2008 by a margin of 60 to 40 percent. As a result, the Arizona law authorizing single payment “deferred presentment” payday loans at over 450 percent APR sunset on June 30, 2010. Payday loans became subject to the same rate cap as all other lenders under the Consumer Lender Act, a 36% rate cap for loans up to \$3,000 and 24% for loans over \$3,000 up to \$10,000 plus a 5 percent administrative fee up to \$150.<sup>38</sup> *Since title loans are authorized under a separate law, triple-digit rates for those loans continue.*

Since Arizona voted No on triple-digit rates for payday loans in 2008, voters in Montana, Colorado, South Dakota, and Nebraska have voted to cap small loan rates at 36% APR. The Nebraska Initiative 425 on the 2020 ballot won by an 82.8 percent “Yes” to 17.2 percent “No” vote on lowering the cost of payday loans. In 2020, the California law capping rates at about 36% for loans up to \$10,000 took effect. Ohio’s legislature closed the “credit services business” loophole exploited by title lenders in 2019. **Proposed legislation to reign in abusive title lending in Arizona has not gotten a hearing in any committee since voters rejected payday lending ballot proposition 200 in 2008.**

Polling shows strong support for fair interest rate caps in Arizona. Arizona voters support a 36% interest cap on payday lenders by 70%, with a majority strongly supporting the 36% rate cap. Of those in a national poll that opposed the 36% rate cap, 61% thought the rate should be **lower** than 36%.<sup>39</sup>

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July 16, 2020 at

<https://www.thedailybeast.com/government-propped-up-payday-lenders-with-ppp-loans>

<sup>38</sup> AZDFI Regulatory and Consumer Alert, CL/CO-16-01, updated from CL/CO-13-01, June 9, 2016 at [https://dfi.az.gov/sites/default/files/FE-AD-PO-Regulatory\\_and\\_Consumer\\_Alert\\_CL\\_CO\\_06%2009-16-2016.pdf](https://dfi.az.gov/sites/default/files/FE-AD-PO-Regulatory_and_Consumer_Alert_CL_CO_06%2009-16-2016.pdf)

<sup>39</sup> CEI/CRL Brief, “Arizona Voters Overwhelmingly Support 36% Rate Cap,” 2020 at <https://nomoreloansharksaz.org/gallery/2020-02-26%20crl%20cei%20az%20polling%20on%20rate%20cap.pdf>

States continue the trend of capping rates for high-cost loans. In early 2021, the Illinois legislature enacted the Predatory Lending Prevention Act which prohibits lenders from charging more than 36% APR on consumer loans including payday and title loans which cost up to 297% in Illinois. The bill limits the rate cap as defined by the Military Lending Act. As of February 1, Illinois SB 1792 is awaiting the Governor’s signature.<sup>40</sup>

Arizona consumer and community groups called on members of the Congressional delegation to support federal legislation to curb usury. The Veterans and Consumers Fair Credit Act, S. 2833 and H.R. 5050, expands the protections provided to active-duty service members through the federal Military Lending Act to veterans and all consumers. The companion bills cap interest at 36% APR and prevent hidden fees and loopholes that could drive up the cost of credit. This 36% inclusive rate cap is the same as the Military Lending Act, as implemented by Department of Defense rules, and already protects active-duty service members and their dependents. States can have stronger consumer protections, such as Arizona’s Consumer Lender law cap of 24% on loan amounts over \$3,000. *As of November 2020, no member of the Arizona Congressional delegation had signed on to co-sponsor this legislation.*<sup>41</sup> *This legislation is expected to be refiled in the 2021 Congress.*

**Recommendation:** Congress should enact the Veterans and Consumers Fair Lending Act to extend the 36% interest rate cap in the Military Lending Act to veterans and all consumers to prevent high-interest loans. Arizona’s Congressional delegation should reflect wide-spread support from their constituents for a 36% inclusive rate cap on consumer credit.

## 2020: CFPB REPEALED PAYDAY / TITLE LOAN RULE THAT WOULD HAVE HELPED ARIZONA CONSUMERS

Arizona advocates have long supported rules developed by the federal Consumer Financial Protection Bureau to curb debt-trap payday and title lending. Since CFPB is not permitted to set a federal usury cap to stop debt-trap lending, the rules finalized in 2017 required lenders to determine borrowers’ ability to repay loans and set limits on repeat lending at high rates. While

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<sup>40</sup> Woodstock Institute, “Lenders and consumer advocates join with elected officials and faith groups to rally behind Black Caucus’ Predatory Loan Prevention bill, urging Governor to sign,” at <https://woodstockinst.org/news/press-release/1792release/>  
Includes link to SB 1792 and letter to Governor Pritzker.

<sup>41</sup> Arizona Letter to Senators McSally and Sinema, Re: Your Support for a 36% Federal Usury Cap, June 19, 2020 at <https://nomoreloansharksaz.org/gallery/2020-06-19%20AZ%20Usury%20Cap%20letter%20to%20Senate.pdf>  
House of Representatives letter at <https://nomoreloansharksaz.org/gallery/2020-06-19%20AZ%20Usury%20Cap%20letter%20to%20House.pdf>

payday lending is not legal in Arizona, the CFPB rule provisions apply both to title loans and any payday-loan-look-alike “registration” loans as “vehicle secured loans.”<sup>42</sup>

The CFPB rule required lenders to determine borrowers’ ability to repay by verifying income and major financial obligations for short-term title loans (45 days or less) and balloon payment installment title loans. The rule capped the number of short-term payday and title loans and longer-term balloon payment loans made in quick succession at three loans, followed by a mandatory 30-day cooling-off period. As a result, title lenders would probably stop making single-payment or balloon payment loans, since Arizona title lenders would only be able to evade these “ability to repay” requirements by making loans of 46 days or more without a large balloon payment. “Ability-to-repay” rules are especially important for title loans which are asset-based loans. Title lenders often advertise that loans are based on the value of the vehicle used to secure it, and that credit reports are not checked to determine if consumers qualify for a loan. Lenders count on borrowers’ fears of losing their transportation to keep up loan renewals or interest-only payments to avoid repossession.

After delays on implementing the 2017 CFPB payday/title loan rule, the agency announced in July 2020 that it was stripping out the debt-trap protections that were due to take effect in August.<sup>43</sup>

The CFPB reversal on consumer protections during a pandemic was widely criticized.<sup>44</sup> The National Association for Latino Community Asset Builders, represented by Public Citizen and the Center for Responsible Lending, sued CFPB, seeking to overturn the July 2020 regulation nullifying the ability-to-repay rules for payday and title lenders. The lawsuit alleged violations of the Administrative Procedures Act and the Dodd-Frank Wall Street Reform and Consumer

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<sup>42</sup> “Vehicle security” for title loans defined in final CFPB rule as “an interest in a consumer’s motor vehicle obtained by the lender or service provider as a condition of the credit, regardless of how the transaction is characterized by State law, including (1) any security interest in the motor vehicle, motor vehicle title, or motor vehicle registration whether or not the security interest is perfected or recorded;....” Rule at §101.2(a)(19)) (Rule at 1508). Specifically, the CFPB final rule stated: “In a few States, a clear vehicle title is not required, and vehicle title loans may be made as secondary liens against the title or against the borrower’s automobile registration.” (Rule at p. 62, footnote 173)

<sup>43</sup> Press Release, “Consumer Financial Protection Bureau Issues Final Rule on Small Dollar Lending,” CFPB, July 7, 2020 at [Consumer Financial Protection Bureau Issues Final Rule on Small Dollar Lending | Consumer Financial Protection Bureau \(consumerfinance.gov\)](#) See, also, Press Release, “CFPB Rolls Back Payday Loan Rule Just When Consumers Need More, Not Less, Protection,” CFA, July 7, 2020 at [CFPB Rolls Back Payday Loan Rule Just When Consumers Need More, Not Less, Protection - Consumer Federation of America](#)

<sup>44</sup> Center for Responsible Lending, “Overview: CFPB’s Repeal of its 2017 Ability-to-Repay Standard for Payday & Car Title Loans,” August 24, 2020 at <https://www.responsiblelending.org/sites/default/files/nodes/files/research-publication/crl-payday-rule-1pager-aug2020.pdf>

Protection Act.<sup>45</sup> While new leadership at the CFPB is expected to reverse this action (or Congress could reject the July CFPB rule under the Congressional Review Act), any timely protections for consumers against usurious title/registration loans or debt-trap terms is not certain. *In order for the CFPB ability-to-repay rule to be more effective in Arizona, it should be expanded to longer-term installment loans, since Arizona sets no maximum loan term limits on “Secondary Motor Vehicle Finance Transaction” title loans.*

**Recommendation:** The Consumer Financial Protection Bureau should reverse the payday / title loan rule repeal and expand ability-to-repay protections to include longer-term high-cost lending.

## 2020: USE OF “RENT-A-BANK” TACTIC BY ONLINE AND TITLE LENDERS UNDERMINES ARIZONA’S USURY LAW

Rent-a-bank lending is a tactic used by nonbank lenders to evade state usury laws. Since banks are largely not subject to state interest rate caps, lenders that are governed by state usury laws form business arrangements with a handful of small banks in states that do not cap bank rates and claim not to be subject to state laws. This tactic used by payday lenders a decade ago was squelched by federal bank regulators and state enforcement efforts. Now online installment lenders are laundering triple-digit rate loans through a few banks to make loans in Arizona at rates that far exceed the Consumer Lender usury cap.

Rent-a-bank lending is opposed by Arizona voters. Sixty-five percent of Arizona voters are concerned about evasion of state usury caps, with a third of Arizona voters very concerned about high-cost lenders arranging loans through banks at rates higher than state laws allow.<sup>46</sup>

At present, no rent-a-bank deals documented by CEI involve title loans made to Arizona consumers, but two instances are of note.

### 1. California Regulators Investigate Wheels Financial/LoanMart

A California lender, Wheels Financial Group, LLC, makes online title loans in Arizona under the names 800Loan Mart and LoanMart. In 2020 California’s usury cap of about 36 percent was expanded from loans up to \$2,600 to loans up to \$10,000. Previously, LoanMart was making title loans at rates over 100 percent for loans just over \$2,600. When the new law took effect in 2020, LoanMart stopped making state-licensed loans directly and started “marketing” and

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<sup>45</sup> Center for Responsible Lending, Press Release, “NALCAB, Public Citizen, CRL Sue to Restore Payday Lending Protections for Borrowers in U.S. District Court,” October 29, 2020 at <https://www.responsiblelending.org/media/nalcab-public-citizen-crl-sue-restore-payday-lending-protections-borrowers-us-district-court>

<sup>46</sup> CEI/CRL Brief, “Arizona Voters Overwhelmingly Support 36% Rate Cap,” 2020 at <https://nomoreloansharksaz.org/gallery/2020-02-26%20crl%20cei%20az%20polling%20on%20rate%20cap.pdf>

“servicing” loans “made” by CCBank in Utah at rates over 90 percent. The California Department of Business Oversight launched an investigation into whether Wheels Financial Group is evading California’s usury law. The outcome of the case in California will be instructive in Arizona where Wheels Financial operates online title lending as an Arizona licensee. If Arizona enacts title loan reforms, title lenders, such as LoanMart, could launder their loans through banks to charge illegal rates.

## **2. Arizona-Licensed Sales Finance Company Makes Rent-a-Bank Loans via a Sister Company**

CURO Financial, based in Kansas, licenses A Speedy Cash and Todd Car Title d/b/a Speedy Cash as sales finance companies making title loans in Arizona. Verge Credit, another brand name of CURO Financial Technologies Corp.,<sup>47</sup> offers online unsecured consumer loans in Arizona without being licensed as a Consumer Lender. Verge Credit makes personal loans using Stride Bank, NA, based in Salt Lake City, Utah. The Verge loans are for \$500 to \$5,000 for six to sixty month terms at **37 to 179% APR**. According to the Verge website, a sample \$2,000 loan at 94.02% APR repaid over 24 months would include a finance charge of \$2,496.46 for total due of \$4,496.46.<sup>48</sup>

CURO Financial’s brand Avio Credit is using a Sales Finance license to make high-cost loans in Arizona via Verge Credit, not directly as Avio. The Department of Financial Institutions issued an Escrow Agent license (EA-1007370) to CURO’s brand Avio Credit, Inc. on behalf of Verge Credit in March 2020, which is displayed on the Verge Credit website to show that the company is “licensed.”<sup>49</sup> While Avio Credit holds a Sales Finance license (SF-0942721), it does not make loans in the Avio Credit name in Arizona at the present time. If Arizona repeals its title loan carve out from the Consumer Lender usury law, CURO is set-up to switch its title loan business over to its rent-a-bank brand to continue charging triple-digit rates.

Arizona advocates have urged the Office of the Attorney General and the Department of Insurance and Financial Institutions to take action against lenders using the rent-a-bank tactic to evade state consumer protections, but no action has been observed to date.<sup>50</sup> Arizona

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<sup>47</sup> <https://www.curo.com/brands>

<sup>48</sup> <https://www.vergecredit.com/rates-and-terms/>

<sup>49</sup> <https://www.vergecredit.com/rates-and-terms/> viewed 9/10/2020

<sup>50</sup> CEI Letter to Attorney General and Director of Financial Institutions, July 15, 2020 at <https://nomoreloansharksaz.org/gallery/2020-07-15%20AZ%20CEI%20Letter%20to%20AG%20and%20AZDFI.pdf> and September 23, 2020 at <https://nomoreloansharksaz.org/gallery/2020-09-23%20CEI%20RAB%20letter%20to%20AZ%20AG%20and%20DIFI.pdf>

groups have also actively opposed actions by the FDIC<sup>51</sup> and OCC<sup>52</sup> that enable rent-a-bank lending. Consumer advocates expect that the new leadership at federal bank regulatory agencies will uphold states’ authority to enforce state usury laws and will repeal the OCC’s “true lender” rule and the FDIC and OCC’s “valid when made” rules that encourage rent-a-bank lending.

To learn more about rent-a-bank lending, please visit [NoMoreLoanSharksAZ.org](https://nomoreloansharksaz.org) and click on the Rent-A-Bank tab. The list of rent-a-bank lenders operating in Arizona is posted at that page.<sup>53</sup>

**Recommendation:** The federal Office of Comptroller of the Currency and the Federal Deposit Insurance Corporation should repeal recently enacted rules that facilitate “rent-a-bank” lending and take enforcement actions and conduct bank oversight to halt current bank-lender deals that undercut Arizona’s usury laws.

## 2020: ARIZONA FAIR LENDING ACT BALLOT INITIATIVE WITHDRAWN

Consumer and community organizations proposed ballot measure I-16-2020<sup>54</sup> in 2019 that would have permitted Arizona voters to reform title lending by enacting the Arizona Fair Lending Act ballot measure in 2020. Public groups turned to the ballot after the majority in the Arizona legislature failed to even grant a hearing to a title loan reform bill. The 2020 ballot proposal was withdrawn due to adverse court decisions that would have made qualifying the measure prohibitively expensive.<sup>55</sup> However, the 2021 Arizona legislature should enact legislation based on this proposal to curb usury, safeguard borrowers, and foster fair competition with licensed Consumer Lenders.

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<sup>51</sup> CEI Letter to FDIC, Re: Comments on FDIC Notice of Proposed Rulemaking, Federal Interest Rate Authority, 12 CFR Part 331, RIN-3064-AF21, February 4, 2020 at <https://nomoreloansharksaz.org/gallery/2020%20fdic%20rab%20comment%20arizona%20coalition.pdf>

<sup>52</sup> CEI Letter to OCC, Re: Comments on Proposal “National Banks and Federal Savings Associations as Lenders,” Docket ID: OCC-2020-0026 RIN 1557-AE97, September 3, 2020 at <https://nomoreloansharksaz.org/gallery/2020-09-03%20Comment%20from%20AZ%20on%20OCC%20True%20Lender%20docket.pdf>

<sup>53</sup> CEI Brief, “Rent-a-Bank Lenders Operating in Arizona,” September 2020 at <https://nomoreloansharksaz.org/gallery/2020%20AZ%20Factsheet%20Rent-A-Bank%20lenders.pdf>

<sup>54</sup> [I-14-2020.pdf \(azsos.gov\)](https://www.azsos.gov/elections/2020/ballot-measures/i-16-2020)

<sup>55</sup> CEI Press Release, “Arizona Coalition Files Measure to End Predatory Car Title Lending,” May 15, 2019 at <https://nomoreloansharksaz.org/gallery/2019-05-15%20press%20release%20-%20arizona%20coalition%20files%20measure%20etc.pdf> and “Statement from Arizonans for Fair Lending on Ending 2020 Campaign,” February 3, 2020 at <https://nomoreloansharksaz.org/gallery/2020-02-03%20press%20release%20-%20afl%20on%20ending%20campaign.pdf>

## POLICY RECOMMENDATIONS FOR 2021

### THE ARIZONA LEGISLATURE SHOULD REFORM CAR TITLE LOANS TO PROTECT BORROWERS

The Arizona legislature has held the line on new forms of usury since before the Prop 200 vote in 2008 to sunset payday lending. Over the last decade, bills to restore payday loans or to authorize new forms of high-cost lending have failed. To deliver on the reforms voters overwhelmingly support, the Arizona legislature should close the title loan loophole to Arizona’s usury law. Lawmakers can either repeal the Secondary Motor Vehicle Finance Transaction provisions of the law, placing these lenders under the Consumer Lender law with its 36% rate cap and loan term protections, revise Title 44, Chap. 2.1 provisions to cap rates and protect borrowers, or enact a new title loan law that mirrors the consumer protections of the proposed Arizona Fair Lending Act initiative.<sup>56</sup> The goal should be to implement the following protections.

#### Cap Title Loan Rates at Arizona’s Usury Limit using the Military Lending Act definition

The Arizona legislature should cap vehicle-secured small loans at 36% annual rates including fees, ancillary products and other charges associated with the loan. Arizona voters prefer a loan rate cap that includes fees on loans for all consumers by an 88 percent super-majority.<sup>57</sup> The Military Lending Act definition includes not only interest, but fees and ancillary services sold with credit. This is the rate cap recently enacted by the Illinois legislature for consumer loans, including payday and title loans. This reform leads to fair competition between title lenders and Consumer Lenders already subject to a 36-percent rate cap.<sup>58</sup>

Capping rates for secured loans at a relatively high 36% permits lending to borrowers with less than perfect credit while providing lenders with a financial incentive to determine borrower ability-to-repay before making loans. This is the rate cap used in many states’ small loan laws.<sup>59</sup>

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<sup>56</sup> [I-14-2020.pdf \(azsos.gov\)](#)

<sup>57</sup> CEI/CRL Brief, “Arizona Voters Overwhelmingly Support 36% Rate Cap,” 2020 at <https://nomoreloansharksaz.org/gallery/2020-02-26%20crl%20cei%20az%20polling%20on%20rate%20cap.pdf>

<sup>58</sup> CEI Fact Sheet, “Title Lenders and Consumer Lenders Should Play by the Same Rules in AZ,” December 2020 at <https://nomoreloansharksaz.org/gallery/2020%20AZ%20Factsheet%20Car%20Title%20Lenders%20cf%20Consumer%20Lenders.pdf>

<sup>59</sup> National Consumer Law Center, “Why 36% The History, Use, and Purpose of the 36% Interest Rate Cap,” April 2013 at <http://www.nclc.org/images/pdf/pr-reports/why36pct.pdf>

### **Stop Title Loans from Trapping Borrowers in Never-Ending Debt**

Loans secured by the borrower's vehicle should be repaid in equal installments over a reasonable period of time to enable borrowers to successfully repay loans on a predictable schedule. Interest-only payments for short-term loans that can be renewed indefinitely and balloon payment contracts that trap borrowers in perpetual debt should be prohibited for title loans as they already are for Consumer Lender loans.

### **Clearly Define Title Loans to Protect Lenders and Borrowers**

Lenders are using the title loan law to make payday-type loans at high rates. Borrowers should only be able to secure title loans with clear titles to their vehicles. Currently Arizona permits loans to be "secured" by vehicles for which borrowers do not hold the title and for which lenders cannot obtain a first lien. Lenders should be required to file a lien on titles used to secure loans so that only one loan per vehicle can be obtained. A lien provides a public record that can warn other lenders whether the vehicle being offered to secure a loan is encumbered. Unsecured small loans are made under the protections and usury cap of the Arizona Consumer Lender law.

### **Prohibit Other Forms of Security for Title Loans**

Arizona lenders that make payday-loan-look-alike "registration" loans to borrowers who do not hold clear title to their vehicles often secure payment with access to borrower bank accounts as a form of collateral. If a consumer fails to return monthly to at least pay the interest on a loan, lenders can and do use bank account and routing numbers to withdraw payment from the borrower's bank account. The ability to unilaterally withdraw payment from a deposit account makes "registration" loans function as payday loans, a product rejected by Arizona voters. The only security for a title loan should be the clear title to the vehicle, not bank account access or other personal property of the borrower. Since the Department of Insurance and Financial Institutions has failed to halt lending secured by bank account access, the law should be amended to explicitly prohibit that form of lending.

## COMPARISON OF ARIZONA TITLE LOAN LAW AND AZ FAIR LENDING BALLOT

Term	Title Loan Law	2020 Fair Lending Ballot Initiative
<b>Code</b>	A.R.S. §44-281(13), 289, 291(G)	Ballot #: Prop 16-2020
<b>License</b>	AZDFI, Sales Finance or OAG RSP	AZDFI, Sales Finance or OAG RSP
<b>Security</b>	Loan secured by borrower’s vehicle, clear title not required	Loan secured by clear title to vehicle, lien must be filed on title.
<b>Maximum Loan Size</b>	No Limit	\$5,000
<b>Maximum Interest Rate</b>	204% yr. to \$500 180% yr. to \$2,500 156% yr. to \$5,000 120% yr. over \$5,000	36% annual rate inclusive of fees, interest and charges for ancillary products
<b>Fees</b>	Loan doc. fees prohibited	No additional fees beyond 36% inclusive rate
<b>Max Term</b>	No term limits	4 years
<b>Disclosures</b>	Annual finance rate, TILA	TILA (Truth In Lending Act)
<b>If over-charge</b>	Void	Void
<b>Refinance Limits</b>	No limits	No limits, No interest-only payments to extend loan.
<b>Payment Schedule</b>	No protections. Balloon loans, interest-only payments not prohibited	Prohibits balloon payments, irregular installments
<b>Prepayment Penalties</b>	Prohibited	Prohibited
<b>Anti-evasion</b>	None	Required. No sale-leaseback, cash rebate on pretextual sale, or broker/arranger deals.
<b>Unlicensed</b>	Loans void	Loans void